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Insolvency and Bankruptcy Board of India

Breaking New Ground: IBC's Role in Building a Resilient Economy

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CONTENTS

PREFACE

Recognizing as a landmark policy reform, the Insolvency and Bankruptcy Code, 2016 (IBC/Code) represents a defining milestone in the evolution of insolvency and bankruptcy resolution framework in India. Enacted after extensive deliberations on the need for a unified framework, the Code provides a comprehensive mechanism for the resolution of insolvency and bankruptcy for companies, partnerships, and individuals within a strict and predictable timeline. By replacing a previously fragmented and inefficient regime scattered across multiple legislations, the IBC has addressed long-standing issues of delay, uncertainty, and value erosion.At its foundation, the IBC represents a vision of balanced outcomes-where creditors, debtors, employees, and the economy are served by a process that values resolution above liquidation. By empowering creditors through the Committee of Creditors and mandating decisions within strict timelines, it transforms insolvency from a prolonged ordeal into a structured opportunity for renewal. The Code also establishes institutional pillars such as the Insolvency and Bankruptcy Board of India (IBBI/Board), Insolvency Professionals (IPs), Insolvency Professional Agencies, and Information Utilities, creating a robust ecosystem for its effective implementation through a defined process framework.

By offering a clear and time-bound framework for revival, the IBC has strengthened creditor confidence and encouraged both domestic and foreign investment. The IBC has played a pivotal role in improving the ease of doing business in India by introducing a faster and more structured insolvency resolution process, maximising the value of assets, promoting entrepreneurship, availability of credit and balance the interests of all the stakeholders. The S&P Global Ratings report highlighted IBC's contribution in improving recovery and credit culture in India. The agency noted that under the previous bankruptcy regime, recovery values were between 15-20%. But with IBC, they have improved to over 30%.[1] As of June 2025, 8,492 cases have been admitted, with 6,587 reaching closure. Of these closed cases, while 3,763 companies- accounting for 57% of the closures were successfully rescued, another 2,824 resulted in liquidation. Among the rescued companies, 1,314 were closed due to appeal or review or settlement; 1,191 were withdrawn; and 1,258 concluded with the approval of resolution plans. Notably, 40% of the cases that ended with resolution plans had previously been with the Board for Industrial and Financial Reconstruction or were defunct.

The IBC has ushered in a profound behavioural shift among companies and their debtors. By establishing a credible possibility of losing control in the event of default, the Code has decisively altered the dynamic between debtors and creditors prompting disciplined management and discouraging actions that could lead to insolvency. This transformation is reflected in the National Company Law Tribunal (NCLT) data, wherein 30,310 cases involving underlying defaults of ₹ 13.78 lakh crore were resolved prior to admission up to December 2024. Reinforcing this trend, the Reserve Bank of India's *Financial Stability Report* (June 2025) highlights that Gross Non-Performing Assets (GNPAs) declined to a multi-decadal low of 2.3% as of March 2025. A significant factor

[1] *S&P upgrades ratings of 10 Indian financial institutions following sovereign action*, https://economictimes.indiatimes.com/news/economy/indicators/sp-upgrades-ratings-of-10-indian-financial-institutions-following-sovereign-action/articleshow/123343796.cms?from=mdr.

behind this reduction has been the deterrence and recovery framework created by the IBC, which has instilled credit discipline and strengthened the resolution of stressed assets. The RBI's *Report on Trends and Progress of Banking in India 2023-24* further underscores this, noting that Scheduled Commercial Banks recovered a total of ₹ 96,325 crore through various channels, of which IBC alone accounted for ₹ 46,340 crore—an impressive 48.1% of overall recoveries.

Studies by leading institutions have highlighted the far-reaching impact of IBC on firms and the credit ecosystem. A study by the Indian Institute of Management, Ahmedabad found that firms resolved under the Code experienced tangible improvements, including higher sales, increased employee expenses indicative of job creation, growth in assets, greater capital expenditure, a threefold rise in market valuation, and stronger liquidity. Another study by the Indian Institute of Management, Bangalore revealed that the IBC has reinforced credit discipline among corporate borrowers, with a notable decline in "overdue" loan accounts and quicker resolution of delinquencies. The proportion of accounts transitioning from 'Overdue' to 'Normal' category steadily increased between 2018 and 2024, reflecting improved borrower behaviour. The study further observed a 3% reduction in borrowing costs for distressed firms post-IBC, along with strengthened corporate governance through improved oversight and accountability.

IBC stands as a landmark reform that has reshaped India's credit landscape, instilling financial discipline, strengthening investor confidence, and inspiring confidence in the country's economic resilience. To sustain this momentum, research is central to the evolution of IBC, enabling policymakers and institutions to assess its impact, identify gaps, and refine the framework in line with dynamic market realities. This publication marks the seventh edition of IBBI's Annual Publication as the Code completes nine years of its journey. It explores the evolving landscape of IBC, including regulatory reforms governing IPs and processes, initiatives aimed at enhancing efficiency and strengthening the framework, key learnings and insights from its implementation, and institutional reflections from the NCLT on fortifying the adjudicatory pillar of the Code.

This publication also features eleven research papers which were presented at the IIM Ahmedabad Annual Research Workshop on Insolvency and Bankruptcy, in March 2025 which explores the critical dimensions of the Code, with a focus on the fiduciary role of IPs in safeguarding and maximizing value for creditors along with the pivotal role of the Adjudicating Authority (AA) in shaping the insolvency ecosystem through oversight and interpretation, while underscoring their close interface with IPs. In addition to the institutional dynamics, one of the research papers explores the potential of technology-especially AI-powered insolvency tools—as an underutilized means of enhancing efficiency. Another paper explores the nuances of real estate insolvencies wherein balancing the interests of financial creditors especially vulnerable homebuyers poses an acute challenge. Furthermore, one of the authors has also examined the emerging intersection of insolvency framework with other legal frameworks, such as the Data Protection Act, 2023, which imposes new responsibilities on the IPs in handling and safeguarding data.

The IBC is more than just legislation; it is a symbol of India's resolve to build a resilient and future-ready economy. By unifying insolvency and bankruptcy processes under a single framework, the Code has created a system where failing businesses can be restructured or resolved with speed

and clarity. In doing so, it not only preserves value but also unlocks capital for more productive use, fuelling growth and reinforcing trust in the financial system. With strategic intent and coordinated execution, the IBC can become a pillar in India's aspiration to be a $5 trillion economy.

The IBBI extends its sincere thanks to all the authors for generously contributing their valuable insights and expertise to this publication. We also acknowledge and appreciate the ongoing efforts of the Research Division in making this publication possible.

Dr. Bhushan Kumar Sinha
Whole Time Member
Insolvency and Bankruptcy Board of India

01

REGULATORY REFORMS GOVERNING INSOLVENCY PROFESSIONALS & PROCESSES: ENHANCING EFFICIENCY AND STRENGTHENING THE INSOLVENCY AND BANKRUPTCY CODE

Ashok Chandra

EXECUTIVE SUMMARY

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) replaced India's fragmented insolvency laws with a unified, time-bound, creditor-driven framework. It aims at faster resolution, value maximization, improved credit access and boosting India's ease of doing business. Since inception, the IBC has evolved through six major legislative amendments and over 122 regulatory changes by the Insolvency and Bankruptcy Board of India (IBBI). These reforms have enhanced transparency, efficiency, and stakeholder protection, contributing to improved recovery rates and India's rise in global ease of doing business rankings.

Despite its success, challenges persist, such as delays, unequal treatment across creditor classes, and operational hurdles faced by insolvency professionals. To address these, IBBI is actively exploring cross-border and group insolvency frameworks, expanding pre-packaged solutions for micro, small and medium enterprises (MSMEs), and integrating digital platforms to streamline processes.The IBC continues to be a dynamic instrument of economic reform, reinforcing credit discipline and fostering a resilient insolvency ecosystem.

OBJECTIVES OF THE IBC

The IBC, enacted in 2016, marked a transformative shift in India's approach to resolving financial distress.

At its core, the IBC sought to consolidate diverse insolvency laws into a single, coherent statute, simplifying procedures and accelerating resolution. It introduced strict timelines—180 days for resolution of accounts under corporate insolvency resolution process (CIRP) and 90 days for fast-track MSME cases—to prevent value erosion and ensure swift outcomes.

The Code emphasized maintaining the corporate debtor (CD) as a going concern and asset value maximization, not just debt recovery, enabling viable businesses to restructure and revive. By offering a transparent exit mechanism for failed enterprises, it reduced lending risks and promoted entrepreneurship, thereby improving credit availability.

A key innovation was the shift from a 'debtor-in-possession' model to a 'creditor-in-control'

approach, empowering financial creditors (FCs) to steer the resolution process. Simultaneously, the IBC aimed to balance the interests of all stakeholders—financial and operational creditors (OCs), employees, and government dues—through equitable treatment.

These reforms significantly enhanced India's ease of doing business, attracting investment and fostering a culture of credit discipline. It has played a significant role in reducing the non-performing assets (NPAs) by improving and pacing up recoveries. The IBC continues to evolve, reinforcing its role as a cornerstone of India's economic resilience.

THE FOUR PILLARS OF THE IBC

The IBC revolutionized India's approach to resolving financial distress by building a resilient institutional architecture. Its success rests on four foundational pillars, each reinforcing the integrity and efficiency of the insolvency framework:

1. **Insolvency and Bankruptcy Board of India (IBBI):** Established as the primary regulator, the IBBI oversees the entire insolvency ecosystem. Its functions include regulating all matters related to insolvency and bankruptcy, setting eligibility requirements for insolvency intermediaries (professionals, agencies, and information utilities), regulating their entry, registration, and exit, and making model by-laws. The IBBI plays a critical role in ensuring the integrity and smooth functioning of the Code.

2. **Adjudicating Authorities:** The Code established unified adjudicatory authorities to handle insolvency proceedings. For corporate persons, the National Company Law Tribunal (NCLT) serves as the Adjudicating Authority (AA), while the Debt Recovery Tribunal (DRT) handles cases involving individuals and partnership firms. Their duties include:-

   a) Approving applications to initiate the CIRP

   b) Appointing Insolvency Professionals

   c) Sanctioning resolution plans considering compliance as per IBC.

   Appeals from the NCLT are heard by the National Company Law Appellate Tribunal (NCLAT), with further appeals to the Supreme Court of India.

3. **Insolvency Professionals (IPs):** IPs form a specialized cadre of licensed professionals central to the insolvency process. They are responsible for

   a) Administering the insolvency resolution process

   b) Taking over the management of distressed companies

   c) Managing debtor assets

   d) Assisting in the collection and collation of relevant information

   e) Providing crucial data for creditors to make informed decisions.

   Their independent and neutral role is vital for maintaining the integrity of the insolvency

ecosystem.

4. **Information Utilities (IUs):** The Code introduced IUs as centralized electronic databases designed to collect, collate, authenticate, and disseminate financial information of debtors. Creditors are required to report financial information, including records of debt, liabilities, and defaults, to these utilities. The purpose of IUs is to remove information asymmetry and reduce reliance on debtor management for critical information, thereby expediting insolvency resolution.

KEY LEGISLATIVE AMENDMENTS (2017-2024)

The Code has constantly evolved over the years and undergone process of refinement. This continuous evolution reflects a pragmatic approach to legal reform, acknowledging that initial legislation cannot foresee all complexities and must adapt to implementation challenges, judicial interpretations, and evolving market needs. The summary of amendment in IBC since enactment till 2024 is as follows-

1. IBC (Amendment) Act, 2017 (and Ordinance)

Introduced via Ordinance in November 2017 and codified soon after, section 29A was a defining moment in the evolution of the IBC. It barred certain categories of applicants—such as undischarged insolvents, willful defaulters, long-term NPAs, and guarantors of defaulters—from submitting resolution plans.

The provision's central aim was to uphold the integrity of the insolvency process by preventing those responsible for a company's financial distress from re-acquiring it at distressed valuations. It also restricted the sale of debtor assets to ineligible parties during liquidation

By plugging critical loopholes, section 29A strengthened creditor protection, curbed backdoor entries of recalcitrant promoters, and reaffirmed India's commitment to transparent and accountable corporate resolution.

2. IBC (Amendment) Act, 2018

The 2018 amendment introduced several significant changes aimed at broadening stakeholder protection and streamlining the resolution process:

- **Inclusion of Homebuyers as FCs:** A crucial clarification was made, deeming allottees under a real estate project (property buyers) as FCs. This was based on the understanding that amounts raised from allottees for financing real estate projects have the commercial effect of borrowing. This change empowered homebuyers to initiate insolvency proceedings against defaulting developers and actively participate in the Committee of Creditors (CoC), providing them with a much-needed mechanism for recourse.
- **Reduction in Committee of Creditors (CoC) voting thresholds:** To facilitate

quicker decision-making and promote resolution over liquidation, the voting threshold for routine decisions of the CoC was lowered from 75% to 51%. For certain key decisions, such as the appointment of a Resolution Professional (RP), approval of a resolution plan, or extending the CIRP time limit, the threshold was reduced from 75% to 66%.

- **Exemption for Micro, Small, and Medium Enterprises (MSMEs):** Recognizing the unique nature and importance of MSMEs, the ineligibility criteria under section 29A (particularly regarding NPAs and guarantors) were made inapplicable to persons applying for the resolution of MSMEs. This provided a more flexible pathway for their revival.

- **Provision for Withdrawal of Resolution Applications (Section 12A):** This amendment introduced a mechanism allowing for the withdrawal of an application submitted to the NCLT, provided it received approval from 90% of the CoCs. This offered a pathway for out-of-court settlements even after formal proceedings had commenced.

- **Remuneration of Authorized Representatives:** The Bill changed the provision that remuneration payable to authorized representatives (for classes of FCs) would be jointly borne by the FCs, instead making it a part of the insolvency resolution costs. The inclusion of homebuyers as FCs, while broadening protection, also introduced complexities due to the large number of creditors involved, necessitating subsequent adjustments in thresholds and the introduction of facilitators. This exemplifies the continuous balancing act within regulatory reforms, aiming for inclusivity without unduly compromising efficiency.

3. IBC (Amendment) Act, 2019

The 2019 amendment focused on instilling greater discipline, clarity, and efficiency into the resolution process:

- **Mandatory 330-day Timeline for CIRP:** A strict outer limit of 330 days was introduced for the completion of the insolvency resolution process. This period explicitly included any extensions granted and the time taken in legal proceedings, directly addressing the issue of undue delays. Cases pending beyond this new limit were mandated to be resolved within 90 days of the amendment's enactment. This aimed at instilling discipline among stakeholders to adhere to timelines.

- **Minimum Payouts for Operational Creditors (OCs):** The amendment mandated that OCs receive an amount no less than what they would have received in liquidation, or the amount receivable under a resolution plan if distributed under the same priority order, whichever was higher. This aimed to ensure fairer treatment for OCs, whose interests were often overlooked.

- **Resolution Plans Binding on Governments:** A crucial clarification was made that an NCLT-approved resolution plan would be binding on the Central Government, State Government, and any local authority about the payment of dues arising under any law. This provision aimed to prevent government bodies from pursuing pre-CIRP claims post-resolution, providing finality to the resolution plan.

- **Thresholds for Certain Classes of Financial Creditors:** To manage the influx of applications from large groups of creditors, particularly real estate allottees and security/deposit holders, an additional requirement was introduced: such applications had to be filed jointly by at least 10% of their number or 100 such persons, whichever was less.

- **Continuity of Critical Supplies:** The amendment empowered the RP to compel suppliers to continue providing critical goods and services during the moratorium period, provided that current dues were paid. This was vital for maintaining the CD as a 'going concern'.

- **Immunity for Companies from Prior Offenses:** To encourage new investors and facilitate a 'clean slate' for resolved companies, the amendment provided immunity to the CD from liabilities for offenses committed prior to the CIRP commencement, provided there was a change in management/control and the new management was not involved in the offense. However, officers in default or persons associated with the company and directly or indirectly involved in the offenses committed by the company would continue to be liable.

4. IBC (Second Amendment) Act, 2020 (COVID-19 related)

In response to the unprecedented economic disruptions caused by the COVID-19 pandemic, the 2020 amendment introduced temporary measures to protect businesses:

- **Temporary Suspension of CIRP Initiation (Section 10A):** This significant provision prohibited the initiation of insolvency proceedings for defaults arising during a six-month period from March 25, 2020, which could be extended up to one year. The primary intent was to provide a "breathing space" to otherwise viable firms and prevent them from being prematurely pushed into insolvency due to pandemic-induced financial stress. The Ordinance stated that it was difficult to find an adequate number of resolution applicants during this period, which might increase the risk of liquidation.

- **Removal of Wrongful Trading Liability:** The amendment temporarily removed the provision that could hold directors or partners liable for wrongful trading for defaults occurring during the specified suspension period.

- This progression from a blanket suspension to more specialized, pre-negotiated frameworks demonstrate a maturing approach to insolvency policy, moving beyond

general crisis response to developing nuanced, sector-specific solutions.

5. IBC (Amendment) Act, 2021 (PPIRP for MSMEs)

Building on the lessons from the pandemic and recognizing the unique vulnerabilities MSMEs, the 2021 amendment introduced a specialized resolution mechanism:

- **Introduction of Pre-packaged Insolvency Resolution Process (PPIRP):**PPIRP was introduced as an alternative, expedited insolvency resolution mechanism specifically tailored for MSMEs. It was designed to address the specific requirements of MSMEs due to their unique nature and simpler corporate structures.

Key Features of PPIRP

- **Debtor-in-Possession Model:** A key distinction from the traditional CIRP is that the existing management of the MSME retains control during PPIRP, ensuring minimal disruption to business continuity and preserving enterprise value. This debtor-in-possession model is particularly suited for MSMEs, which often rely on the expertise and networks of their promoters.
- **Shorter Timelines:**PPIRP mandates a significantly shorter resolution timeline, with a maximum of 120 days for the entire process, including 90 days for stakeholders to finalize a resolution plan. This efficiency is critical for MSMEs, which often lack the financial cushion to withstand prolonged insolvency proceedings.
- **Pre-negotiated Plans:** The process involves pre-negotiation of a resolution plan between secured creditors (requiring at least 66% approval) and existing owners or potential investors, which is then formally approved by the NCLT.
- **Swiss Challenge Mechanism:** To ensure transparency and value maximization, the PPIRP framework allows for a 'Swiss challenge' to any resolution plan that provides less than full recovery for operational creditors.
- **Minimum Default Amount:**PPIRP can be initiated for defaults of at least one lakh rupees, with the central government having the power to increase this threshold up to one crore rupees.

The rationale behind PPIRP was to provide a quicker, cost-effective, and value-maximizing outcome for MSMEs, minimizing business disruption and preserving jobs, particularly in the face of economic challenges. It also aimed to reduce litigation and legal uncertainty by resolving contentious issues prior to formal filing.

6. Key Amendments in 2022-2024 (Acts and Regulations)

Beyond the major legislative acts, continuous regulatory amendments by the IBBI have played a crucial role in refining the IBC framework. These recent changes have

focused on streamlining processes, enhancing transparency, and strengthening stakeholder protection across various insolvency mechanisms:

- **Streamlining Liquidation Processes:** Amendments to the IBBI (Liquidation Process) Regulations, 2016, and IBBI (Voluntary Liquidation) Regulations, 2017, aimed to enhance efficiency, transparency, and accountability. Key reforms included:
    - **Auction Process Reforms:** Increasing the auction participation period from 14 to 30 days to attract more bidders, mandating the forfeiture of earnest money for ineligible bidders, introducing stricter eligibility verification for the highest bidder (H1) within three days, and allowing consideration of the next highest eligible bidder (H2) if H1 is ineligible. This aims to improve price discovery and reduce re-auction delays
    - **Fund Management and Compliance:** Mandating the filing of a final report by liquidators when a compromise or arrangement is approved, requiring detailed disclosure of tax deductions before depositing unclaimed dividends or proceeds, and enforcing electronic submission of forms with late fees for delays. It was also clarified that voluntary liquidation can be completed even if there is uncalled capital. The IBBI can now operate and manage the Corporate Liquidation Account through scheduled banks, instead of the Public Accounts of India, to expedite claim processing.
    - **Voluntary Liquidation Specifics:** New disclosure requirements mandate reporting of pending litigations and submission of status reports. The frequency of meetings with contributories has been increased (e.g., beyond 270 days for creditor-approved cases, 90 days for others), with liquidators required to file status reports with IBBI within seven days of such meetings. The process for individuals to claim money from the Corporate Voluntary Liquidation Account has also been simplified.
- **Strengthening IP Framework:**

  Amendments related to Insolvency Professionals' (IPs) operational flexibility, including allowing IPs to resign from assignments subject to CoC and AA approvals, permitting Insolvency Professional Entities (IPEs) to engage their partners or directors for certain tasks, and relaxing the validity of Authorization for Assignment (AFA). Stricter rules have been introduced for disclosing relationships with CD, creditors, and other professionals to mitigate conflicts of interest. Limits on the number of concurrent assignments an IP can undertake (e.g., maximum of ten assignments as RP, with not more than three having admitted claims exceeding ₹ 1000 crore) have been inserted to ensure quality and prevent overextension.

- **Enhanced Creditor Representation:** The introduction of interim representatives for creditor classes, such as homebuyers, aimed to ensure a stronger voice and more efficient resolution processes. Additionally, facilitators may be appointed for large creditor groups (exceeding 1,000 creditors) to bridge communication gaps between the authorized representative and creditors.
- **Improved Transparency and Efficiency in CIRP:** Recent amendments to the CIRP Regulations have brought significant procedural improvements:
    - **Facilitating Part-wise Resolution:** Resolution Professionals (RPs), with CoC approval, can now invite Expressions of Interest (EoIs) for the CD, for individual assets or business divisions, or for both. This flexibility aims to reduce timelines, prevent value erosion in viable segments, and encourage broader investor participation.
    - **Harmonizing Payment Timelines:** A notable amendment mandates that financial creditors who dissent from the approved resolution plan be paid at least pro-rata and priority over those who consented, in each stage of payment. This reinforces fairness in financial recovery.
    - **Facilitating Interim Finance Providers:** The CoC has been empowered to direct the RP to invite providers of interim finance to attend CoC meetings as observers (without voting rights). This measure aims to provide interim finance providers with a better understanding of the corporate debtor's operational status, potentially encouraging more capital flow into distressed companies.
    - **Presentation of All Plans:** RPs are now required to present all resolution plans received, including non-compliant ones, to the CoC along with relevant details. This ensures the CoC has access to comprehensive information for more informed decision-making.
    - **Real Estate Specific Reforms:** To address the unique complexities of real estate insolvencies, mandatory separate bank accounts for each real estate project have been introduced. Furthermore, RPs are now empowered to transfer possession of real estate units to allottees who have fulfilled their obligations, with CoC approval. The involvement of Real Estate (Regulation and Development) Act (RERA) authorities in CoC meetings as observers has also been facilitated to provide valuable inputs on project development.
    - **Monitoring Committee:** The mandatory formation of a Monitoring Committee to oversee the operationalization of approved resolution plans has been introduced. This committee typically comprises the RP, other IPs, CoC representatives, and the Resolution Applicant.
    - **Other CIRP Changes:** Reduced interval between CoC meetings (30 days,

quarterly minimum), streamlined voting period (24 hours to 7 days), CoC approval for insolvency resolution process costs, disclosure of fair value in Information Memorandum, and continuity of process activities pending disposal of extension application by AA.

7. Regulatory Reforms by IBBI: Enhancing Professionalism and Process Efficiency

The IBBI stands as the central regulatory authority within India's insolvency ecosystem, playing a pivotal role beyond mere enforcement. It functions as an adaptive regulatory architect, responsible for specifying regulations, monitoring performance, and taking disciplinary actions to ensure the smooth functioning and integrity of the insolvency processes. The sheer volume and specificity of IBBI's regulatory amendments, exceeding 122 since the IBC's inception, demonstrate its deep engagement with operational realities and a commitment to continuous improvement.

ROLE AND RESPONSIBILITIES OF INSOLVENCY PROFESSIONALS (IPs)

- IPs are the linchpin of the IBC framework, often described as its "backbone". Initially conceived for administrative tasks, their role has evolved into a multi-dimensional responsibility encompassing regulatory compliance, due diligence on creditor claims, asset valuation, and strategic decision-making throughout the resolution process.
- IPs are crucial in presenting and reviewing resolution plans, managing creditor claims, and ensuring compliance with the IBC's legal provisions. They are tasked with managing the CIRP, collecting and verifying claims from creditors, managing the debtor's assets, and ensuring fair conduct of the resolution or liquidation process. Their independent and neutral role is vital for maintaining the integrity of the insolvency ecosystem. To ensure the integrity and effectiveness of this critical role, IPs are bound by a stringent Code of Conduct, primarily outlined in the First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016. This code emphasizes core ethical principles such as integrity, objectivity, independence, impartiality, professional competence, and confidentiality. Specific requirements include disclosing conflicts of interest and prohibiting the direct or indirect acquisition of debtor assets by IPs or their relatives. IPs are expected to act in good faith, with utmost integrity, objectivity, independence, and impartiality, making earnest efforts to maximize the value of assets of the debtor.

KEY IBBI REGULATIONS AND AMENDMENTS (2017-2025)

The IBBI has consistently introduced a series of regulations and amendments to fine-tune the insolvency process:

- **IBBI (Insolvency Professionals) Regulations, 2016:** These regulations have seen continuous updates to govern IP conduct, fees, and assignments. Amendments have clarified fee structures, differentiating between individual IPs and IPEs and increasing fees. Stricter rules have been introduced for disclosing relationships with corporate debtors, creditors, and other professionals to mitigate conflicts of interest. Limits on

the number of concurrent assignments an IP can undertake (e.g., maximum of ten assignments as RP, with not more than three having admitted claims exceeding ₹ 1000 crore) have been inserted to ensure quality and prevent overextension. Provisions for IP resignation (with CoC/AA approval) and a one-year cooling-off period from accepting certain employment or professional services post-assignment have also been introduced to maintain independence.

- **New Guidelines for IP Appointments (2025):** In a significant move, the IBBI introduced "Insolvency Professionals to Act as Interim Resolution Professionals, Liquidators, Resolution Professionals, and Bankruptcy Trustees (Recommendation) Guidelines, 2025". These guidelines streamline appointments by creating zone-wise and bench-wise panels of eligible IPs for NCLT/DRT, aiming to expedite the process. Eligibility criteria include no pending disciplinary proceedings, no conviction in the past three years, a valid Authorization for Assignment (AFA), and submission of an EoI. Penalties, such as removal from the panel for six months, are imposed for refusing assignments without valid reasons, reinforcing accountability.

- **IBBI (Information Utilities) Regulations, 2017:** Amendments to these regulations have focused on strengthening default record management and verification processes for enhanced accuracy and efficiency. Revised timelines, such as a uniform seven-day period for information submission, have been introduced. A rigorous new verification process for debtor's email, proof of debt, and default is now required before issuing a record of default. Procedures for handling disputed defaults have been established, allowing debtors to provide reasons and evidence, with IUs recording the status as "disputed" or "authenticated". Shareholding norms were also amended in 2017, allowing certain persons to hold up to 51% of equity for three years, with diversified Indian companies potentially holding up to 100%, and requiring more than half of directors to be Indian nationals and residents.

- **IBBI (Liquidation Process) Regulations, 2016:** These regulations have seen significant reforms to the auction process, increasing the participation period from 14 to 30 days to attract more bidders. Mandatory forfeiture of earnest money for ineligible bidders and stricter eligibility verification for the highest bidder (H1) within three days have been introduced. The option to consider the next highest eligible bidder (H2) if H1 is found ineligible aims to prevent re-auction delays. In terms of fund management and compliance, mandatory final report filing by liquidators when a compromise or arrangement is approved, detailed disclosure of tax deductions before depositing unclaimed dividends or proceeds, and electronic submission of forms with late fees for delays are now required. The IBBI can now operate and manage the Corporate Liquidation Account through scheduled banks, instead of the Public Accounts of India, to expedite claim processing and improve fund management efficiency.

- **IBBI (Voluntary Liquidation Process) Regulations, 2017:** These amendments aimed to streamline voluntary closures, clarifying that the process can be completed even if

there is uncalled capital. New disclosure requirements mandate the reporting of pending litigations and submission of status reports. The frequency of meetings with contributories has been increased (e.g., beyond 270 days for creditor-approved cases, 90 days for others), with liquidators required to file status reports with IBBI within seven days of such meetings. The process for individuals to claim money from the Corporate Voluntary Liquidation Account has also been simplified.

IMPACT AND EFFECTIVENESS OF REFORMS: QUANTITATIVE AND QUALITATIVE OUTCOMES

The true measure of any legal and regulatory reform lies in its tangible impact on the ground. IBC's performance has been extensively reviewed across various parameters, revealing a complex picture of significant achievements alongside persistent challenges.

- **Ease of Doing Business:** The introduction and continuous refinement of the IBC have had a profound positive effect on India's global standing in terms of business environment. India's global ranking in the World Bank's Ease of Doing Business (EoDB) Index significantly improved, particularly in the "Resolving Insolvency" parameter. The country jumped an impressive 56 places to rank 52 in 2019 from 108 in 2018 in the "Resolving Insolvency" parameter, and from 142nd (2015) to 63rd(2018-2020)[1] overall. This improvement is a direct reflection of the streamlined insolvency processes and has demonstrably increased investor confidence, making India a more attractive destination for capital.

- **NPA Reduction and Recovery Rates:**The IBC has emerged as a transformative force in addressing the Non-Performing Assets (NPAs) crisis in the Indian banking sector. It has become the dominant recovery route for banks.

  In 2025, the Code is expected to continue its dominance in NPA recovery compared to SARFAESI (26% for FY 2023-24) and other mechanisms, though SARFAESI may still be favored for secured, asset-backed recoveries. The IBC has shown a higher recovery rate than SARFAESI and other methods, with an average recovery rate of 32.8% of admitted claims, according to the RBI Financial Stability Report. The Gross NPA (GNPA) and Net NPA[2] of Scheduled Commercial Banks (SCBs) have reached multi-decadal lows. Specifically, the GNPA ratio stands at 2.3%, while the Net NPA ratio is at 0.5%. These figures represent a significant improvement in asset quality for Indian banks and the impact of credit discipline. Further, maintaining the trend, it is expected that with the continuous efforts the banking sector is expected to remain resilient even under adverse scenarios as well.

  The creditors have realized ₹ 3.89 lakh crores under the resolution plans till March 2025. This realization is more than 32.8% as against the admitted claims and more than 170.1% as against the liquidation value. Resolution plans on average are yielding 93.41% of the fair value of the CDs.

[1] As per department for Promotion of Industry and Internal Trade (DPIIT).

[2] RBI's FSR June 2025.

Since the provisions relating to the CIRP came into force in December 2016, a total of 8,308 CIRPs have been initiated till March 3, 2025, out of which 6,382 (76.8 per cent of total) have been closed.

- **Resolution Timelines:**One of the primary objectives of the IBC was to ensure time-bound resolution. The Code has indeed brought about a significant improvement in resolution timelines, reducing the average time for resolution processes from 4-6 years in the pre-IBC era to approximately 317 days or 1.7 years. The average time for completion of 221 CIRPs yielding resolution was recorded at 415 days.

  However, despite these improvements and the mandatory 330-day timeline introduced in 2019, resolution processes frequently exceed statutory limits. As of March 2025, the average duration of a CIRP reached 713 days, more than double the stipulated 270-day deadline. Approximately 78% of ongoing CIRP cases have breached the 270-day threshold.

The regulatory revamp of India's Insolvency and Bankruptcy Code marks a critical inflection point. By empowering insolvency professionals, streamlining procedural complexities, and integrating technology, these reforms push the Code toward greater reliability and global competitiveness.

This transformation is not merely regulatory but philosophical also. It affirms that resolution should be swift, transparent, and fair. As India continues to modernize its financial ecosystem, a resilient insolvency framework will remain essential for investor confidence, economic stability, and the pursuit of entrepreneurial freedom.

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1) IBC Act 2016, amended from time to time

2) IBBI regulations, amended from time to time

02

INDIA'S INSOLVENCY AND BANKRUPTCY CODE: LEARNINGS & INSIGHTS

Rajneesh Karnatak

INTRODUCTION

The country's insolvency landscape has undergone a remarkable transformation since the enactment of the Insolvency and Bankruptcy Code (IBC/Code) in 2016. The initiative was aimed to reform the existing fragmented insolvency framework. The code has since grown into one of the most significant economic reforms in the country. The IBC brought a major change to the resolution process, shifting control from debtors to creditors, allowing for a quicker and more structured resolution, ensuring faster and more efficient outcomes.

As the country's economy continues to grow, the insolvency framework is also evolving. The recent amendments to the IBC, represent a critical evolution in this journey. These amendments are aimed at addressing practical challenges that have emerged over the last nine years of implementation by strengthening the fundamental principles to make the Code successful.

BACKGROUND

Before 2016, India's insolvency resolution process was characterized by multiplicity and complexity. The fragmented approach to resolution used to result in very high average resolution times and lower recovery rates of the claims.

The lack of coordination between different forums, the absence of clear timelines, and debtor-friendly provisions created a system where viable businesses often perished while unviable ones continued to operate, draining resources from the economy. Banks and financial institutions were facing mounting non-performing assets, and the absence of an effective exit mechanism discouraged entrepreneurship and risk-taking.

IBC: A NEW BEGINNING

The IBC emerged as a comprehensive solution to the above systemic issues. It established a unified legal framework that consolidated various insolvency-related laws and created specialized institutions, including the Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunals (NCLTs), and Information Utilities (IUs). The Code introduced a time-bound process with a maximum resolution period of 330 days, including appeals and judicial processes.

The guiding principles of the IBC include preventing the erosion of the value of assets, ensuring that viable businesses are rescued and unviable ones are liquidated efficiently. These approaches of the Code encourage creditors and debtors to negotiate effectively.

NINE YEARS OF IBC

The code has benefitted the financial landscape manifold and thrown up numerous insights and learnings.

A. Quantitative Insights

i. Resolution and Recovery - The performance of the IBC over nine years tells a remarkable story of transformation. Since its inception, IBC has facilitated the resolution of 6,382(77%) corporate insolvency cases with creditors realizing ₹ 3.89 lakh crores. This realization is more than 32.8% of the admitted claims and more than 170.1% of the liquidation value. Resolution plans, on average, are yielding 93.41% of the fair value of the corporate debtors.

Out of the 6,382 cases resolved, 1,194 have been through approval of resolution plans. Out of these 1,194 resolution plans, around 60% have been achieved in the last 3 years alone.

The IBC's going-concern approach has been successful in preserving and enhancing asset values compared to traditional liquidation scenarios.

ii. Reduction in non-performing asset (NPA) and improvement in Asset quality - The effectiveness of IBC also reflects in a significant decline in NPA of scheduled commercial banks since the inception of the code. The table below details the reduction in Gross and Net NPA position of Scheduled Commercial banks in the pre-IBC and post-IBC era:

Table - Gross and Net NPAs of Public Sector Banks (PSBs) and Scheduled Commercial Banks (SCBs)

Year (end-March)	Gross NPA (%) As Percentage of Gross Advances		Net NPA (%) As Percentage of Net Advances	
	PSBs	All SCBs	PSBs	All SCBs
2024-25	2.8	2.3	0.6	0.5
2023-24	3.5	2.7	0.8	0.6
2022-23	5.0	3.9	1.2	0.9
2021-22	7.3	5.8	2.2	1.7
2020-21	9.1	7.3	3.1	2.4
2019-20	10.3	8.2	3.7	2.8
2018-19	11.6	9.1	4.8	3.7
2017-18	14.6	11.2	8.0	6.0
2016-17	11.7	9.3	6.9	5.3
2015-16	9.3	7.5	5.7	4.4

Source – Reserve Bank of India - Statistical Tables relating to Banks in India: 2023-24 and RBI Publication - Operations and Performance of Commercial Banks, December 26, 2024; Financial Stability Report, RBI, June 2025.

The asset quality of PSBs has significantly improved post the inception of IBC with Gross NPA declining from 14.6% in March 2018 to 2.8% in March 2025. Similarly, Net NPA has also reduced from 8.0% to 0.6% over the same period.

B. Qualitative Insights

i. Behavioural Change in stakeholders – debtors and creditors - The IBC has brought important behavioural changes to India's business environment.

- It has improved credit discipline, making borrowers more aware of their repayment obligations.
- The risk of insolvency has discouraged deliberate loan defaults.
- The fear of change in business ownership and management in case of default has encouraged better corporate governance practices.
- The code has also encouraged compliance practices among corporates.
- The creditor-in-control model has empowered the financial creditors and enhanced the bank's confidence in the resolution process.
- The decline in NPA and improvement in asset quality of the banking sector underscore the importance of the role of IBC in the resolution of stressed assets and thus enhancing the ability of banks to lend.
- Gross NPA ratio and Net NPA Ratio of the Banking sector are at multi-decadal lows.

ii. Ease of Doing Business – improvement in the country's Rank-

IBC has been instrumental in streamlining the insolvency process and thus has increased the confidence of stakeholders. This, in turn, has positively impacted the ease of doing business. This reflects in leap in India's rank in ease of doing business post implementation of IBC in 2016-17.

Sr	Year	Ease of Doing Business Rank	Score
1	2015	142	53.97
2	2016	130	54.68
3	2017	130	55.27
4	2018	100	60.76
5	2019	77	67.23
6	2020	63	71.00

Source: World Bank Reports on Ease of Doing Business

iii. **Improvement in Underwriting standards –**All the IBC cases are generating valuable learnings and insights. The cases also generate valuable insights to enhance credit underwriting standards. These cases also help in developing insights into credit monitoring and the valuation of assets.

The 9 years of the implementation of the IBC have offered valuable insights into the complexities of insolvency resolution processes in India.

LEARNINGS

The resolution process of various cases has highlighted the need for safeguards for dissenting and interim creditors and the importance of transparency. A need has been felt for the introduction of flexibility in resolution strategies, an option for partial asset sales, and phased resolutions.

Some of the major learnings are:

a. Preservation of asset value during the process of resolution – The IBC works on the guiding principle of preserving the value of assets and ensuring the continuity of operations of the assets.

b. Time-bound approach-The focus on flexibility, transparency, and stakeholder protection enhances the efficiency and effectiveness of corporate insolvency resolution while maintaining time-bound resolution.

c. Capacity building –Since its inception, IBC has built capacity that plays a pivotal role in ensuring optimal outcomes. It has also developed a robust insolvency ecosystem of resolution professionals (RPs), resolution applicants (RAs), and legal professionals specialized in insolvency.

d. Impact of litigation- The code minimizes multiplicity and litigation and thus reduces the timeline of resolution processes.

e. Enhancing accountability – The creditor-in-control model also ensures accountability on the part of the creditors and debtors.

f. Judicial Clarity – Various judgments by Hon. Supreme Court and Hon. High Courts have in instrumental in clarifying matters pertaining to the rights of operational creditors, related party transactions, and the scope, etc.

These learnings have enhanced the effectiveness of the resolution process and helped in taking remedial measures.

A few of the prominent steps in this direction are as under:

A. Introduction of NARCL and PPIRP

The IBC continues to evolve as a dynamic framework. Since its inception in 2016, the code has introduced measures like the Pre-Packaged Insolvency Resolution Process

(PPIRP) and the National Asset Reconstruction Company Limited (NARCL).

PPIRP has been introduced via the IBC (Amendment) Act, 2021. The process offers a swift, cost-effective resolution for corporate Micro, Small, and Medium Enterprises (MSMEs). Initially resolution plan is prepared by the creditors and the corporate debtor (CD) for the insolvency resolution. Upon approval of the plan by the creditors, the same is submitted to the NCLT. An independent insolvency professional oversees PPIRP, ensuring transparency while maximizing asset value, aligning with global best practices.

NARCL was established in July 2021, with a capital of ₹ 6,000 crore and a government guarantee of Rs 30,600 crore. NARCL has acquired stressed assets worth around ₹ 2 lakh crore. With the availability of Govt support and sufficient capital, NARCL is able to handle bigger stressed assets as compared to other ARCs. NARCL employs diverse resolution strategies, including IBC's corporate insolvency resolution process (CIRP), to optimize asset recovery.

B. Latest Evolution

The latest amendment focuses on targeted improvements that will enhance efficiency, flexibility, and transparency while maintaining the core principles that have made the IBC successful.

The latest amendment allows the resolution professionals, with approval of committee of creditors (CoC), to invite expression of interest for the sale of one or more assets,the entire company, or both. These amendments also provide for pro rata payment to the dissenting creditor and in priority over other financial creditors who have voted in favour of the resolution plan. Interim credit providers can now attend the CoC meetings as observers without voting rights. Provisions of the Amendment require that all resolution plans, including the non-compliant ones, be presented to the CoC for better scrutiny.

Introduction of PPIRP, establishment of NARCL, and the 4th amendment exemplify the IBC's proactive approach, learning curve, and the Code's flexibility to incorporate the learnings of past cases.

While the above changes have enhanced the effectiveness of the code,a few measures, as detailed hereunder, will further enhance the efficiencies:

1. **Establishment of additional benches:** Establishing additional dedicated benches within the existing NCLT infrastructure will ensure faster case resolution. Additionally, implementing a real-time case monitoring dashboard will help to track delayed proceedings. Further, the introduction of strict guidelines to limit adjournments, except in exceptional circumstances, will prevent unwarranted delays. Presently, there are 15 benches of NCLT in the country. An increase in the number of benches of NCLT, particularly in jurisdictions with a higher number of cases, will improve the efficiency and thereby reduce the resolution time.

2. **Asset valuepreservation:** Giving priority to the sale of perishable inventory and assets with rapidly depleting value will maximize recovery rates for creditors. This proactive approach will ensure the preservation of the optimal value of assets during the resolution process.

3. **Digitization towards improvement in efficiency:** Accelerating digitization will ensure faster dissemination of information, data symmetry, and thus will enable faster decision-making.

   E-portal for the sharing of information and documents among all the stakeholders will enhance collaboration.

   Implementing mandatory e-filing and case tracking systems and the use of digitized systems for recording claims and transactions will be helpful in enhancing transparency and efficiency.

4. **Empowering the Committee of Creditors (CoC):** Mandating representation of senior-level decision makers in CoC will make the resolution process faster.Further, the provision of penalties for institutions that consistently send inadequately authorized representatives will discourage the practice of sending junior/ mid-level executives to CoC meetings.

5. **Introduction of performance metrics for Resolution Professionals (RPs):** Formulation of performance metrics and accountability criteria for the evaluation of RP's performance will ensure transparency in the resolution process. Formation of independent panels to review the decisions of RPs and provision of regular audit of RPs' operations will be effective tools in enforcing accountability of Resolution Professionals.

   Additionally, Banks may also form dedicated monitoring teams to track resolution and flag concerns.This will enhance oversight and fairness in the resolution process.

6. **Handling cases involving People in Prominent Positions (POPP):** Some of the cases involve prominent persons/ influential individuals as promoters of the company. Such cases need proper handling. Cases involving POPP may be handed over to a dedicated bench of IBC headed by experienced judges.

7. **Promoting rehabilitation over Liquidation:** 19% of the closed cases have been resolved through the approval of a resolution plan. There is a need for an increase in resolution through rehabilitation.

   Formulation of criteria for distinguishing between companies suitable for resolution versus liquidation is essential for optimizing the resolution process. Steps should be taken to encourage interim creditors towards adequate funding of units in distress. This will ensure continuity of operations of units under the resolution process.

8. **Streamlining asset valuation:** This is important for long-running cases. In such cases, periodical valuation of assets will help maintain consistency and accuracy of valuation, reflecting changes in valuation on account of market conditions.

9. **Forensic audit-**It is the legal duty of the RP to conduct a Transaction Audit, where warranted, under the provisions of the Insolvency and Bankruptcy Code.

However, in some cases,even though a Transaction Audit has been conducted by the RP, a separate Forensic Audit has also been mandated. This results in duplicity of work and delays in the completion of the Resolution Process.

At the early stage of the resolution process, defining the scope of the audit will address the issue. Further, the scope of Transaction Audit and Forensic Audit can be combined into one. Where cases are not complicated, a standardized audit template may be followed.

CONCLUSION

IBC has played a very important role in strengthening the financial sector of the company by streamlining the resolution process, addressing the longstanding NPA issues, etc. Improved health of the banking sector reflects the success of the code. Resolution of large NPAs has also resulted in the release of capital kept as provision, which in turn has allowed the banks to lend more effectively. During its journey of 9 years, IBC has focused on addressing the gaps, improving efficiency and effectiveness, increasing the confidence of stakeholders, etc, and overall fueling the economic growth of the nation.

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03

STRENGTHENING THE ADJUDICATORY PILLAR OF THE IBC: INSTITUTIONAL REFLECTIONS FROM THE NCLT

Rajasekhar V.K.

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) redefined India's resolution framework, positioning the National Company Law Tribunal (NCLT) as the Code's adjudicatory fulcrum. As the forum responsible for applying and shaping the IBC, the NCLT has contributed significantly to its development while facing persistent institutional challenges—ranging from caseload pressures to uneven procedural practices. Drawing on internal experience, this article reflects on those challenges and outlines targeted, non-legislative reforms to strengthen adjudicatory capacity. It proposes specialised benches, structured legal support, digital dashboards, and a shared repository of orders. These measures, achievable through administrative coordination, are essential for improving consistency, timeliness, and stakeholder confidence. As the IBC enters its second decade, equipping the Tribunal to deliver both efficiency and equity will be key to sustaining the Code's impact.

THE ROLE OF THE NCLT IN THE IBC FRAMEWORK

When Parliament enacted the IBC in 2016, it wasn't just passing a new law—it was building an entirely new framework to handle corporate distress. At the centre of this framework was the NCLT, responsible for supervising all key stages of corporate insolvency and liquidation.

The NCLT's transformation—from a tribunal set up for company law matters into the primary forum for insolvency resolution—has been both swift and significant. Under the IBC, the NCLT occupies a unique position: it is not a regular civil court, nor a traditional tribunal, but something in between. It applies legal principles to complex commercial situations, requiring it to act with both legal precision and commercial empathy.

This dual role has brought benefits, but also strain. The NCLT handles a wide range of cases, and the strict timelines under the IBC often clash with its other statutory responsibilities. As a result, even time-sensitive insolvency matters sometimes face delays. Despite this, the Tribunal has played a key role in developing the IBC's framework—giving shape to critical concepts like the moratorium under section 14 and the eligibility criteria under section 29A. Many of these were first interpreted at the NCLT level before being affirmed by the National Company Law Appellate Tribunal (NCLAT) or the Supreme Court in cases like *Swiss Ribbons* and *Essar Steel*.

This central role brings growing expectations. As more cases are filed, and as insolvency disputes overlap with other areas of law, the Tribunal's structure needs to evolve. Strengthening its capacity-through better staffing, infrastructure, and support systems—is essential for the IBC to deliver on its promise of timely, predictable, and commercially sound resolution.

THE PRESSURE ON ADJUDICATION: PRACTICAL CONSTRAINTS

The IBC is built on the promise of time-bound resolution. But in practice, meeting that promise depends heavily on the Adjudicating Authority (AA). "As of 30 June 2025, a total of 1,905 CIRPs are ongoing with NCLT, with 78% pending for over 270 days. A further 6% have crossed the 180-day limit."[1]

The NCLT, originally set up under the Companies Act, 2013, was later assigned the IBC's adjudicatory role under section 5(1). While the Code limits the Tribunal's involvement to legal oversight—leaving commercial decisions to creditors—the ground reality is more demanding. Several stages of the insolvency process still require careful judicial scrutiny: admission of cases under sections 7 and 9, resolution plan approvals, adjudication of avoidance applications, and the conduct of liquidation proceedings.

These are not routine approvals. Many involve complex questions about related-party transactions, group insolvency, avoidance of undervalued transfers, and jurisdictional overlaps with regulators. The Tribunal often deals with cases that sit at the edge of insolvency law, involving elements of contract, company, and securities law. These need more than quick disposal—they need close legal attention.

Structural issues add to the strain. Some benches lack adequate courtrooms, staff, or technical support. Filing and listing delays—especially in the early years—slowed proceedings. While virtual hearings and e-filing have made a difference, uneven infrastructure across cities still leads to inconsistent timelines.

Moreover, the pressure is not evenly shared. Benches like Mumbai, Delhi, and Chennai bear a disproportionately high caseload due to the concentration of large corporate debt. This causes unavoidable variation in how quickly matters are heard and disposed of.

The problem isn't the Code—it's the institutional load placed on the Tribunal. To function effectively, the NCLT needs more than jurisprudential clarity; it needs reliable systems, better case management, and the infrastructure to deliver decisions in real time.

THE ROLE OF THE BENCH: COMMERCIAL SENSE AND JUDICIAL BALANCE

The IBC operates at the crossroads of law, finance, and business strategy. This makes the NCLT's role under the Code very different from that of a conventional court. The Tribunal doesn't just resolve legal disputes—it oversees a complex process involving timelines, commercial interests, and competing stakeholder rights.

[1] IBBI Quarterly Newsletter for Apr-June 2025, available on the IBBI website.

A key feature of the NCLT's role is its limited, non-intrusive approach. The Supreme Court has made it clear that decisions on commercial viability lie with the Committee of Creditors (CoC), not the AA. The Tribunal must defer to the CoC's commercial wisdom. Yet, in practice, it must also ensure that these decisions follow due process, are not unfairly prejudicial, and are based on complete and accurate disclosures.

This balance—between non-interference and legal oversight—is difficult but necessary. The Tribunal regularly deals with challenges involving dissenting creditors, operational creditor rights, and approval of resolution plans under section 31. In each case, the Bench must ensure that the process has been fair, transparent, and within the bounds of the law.

The NCLT has also filled critical interpretive gaps in the Code. Its decisions have clarified important issues such as the treatment of corporate guarantors, procedural defaults under section 9, and the application of ineligibility under section 29A.

Just as important is the Bench's ability to grasp commercial detail. Insolvency proceedings involve reading balance sheets, valuation reports, forensic audits, and sector-specific factors. These aren't just legal disputes—they are financial restructurings that need to be decided within tight timelines. The Bench must combine legal reasoning with a working understanding of commercial realities.

In short, the Tribunal is not meant to drive the resolution process—but it must ensure the wheels stay aligned. Its job is to keep the process legal, fair, and workable without overstepping into commercial decision-making.

INFRASTRUCTURE AND CAPACITY BUILDING: THE MISSING PILLAR

Sound adjudication depends not only on clear legal standards but also on the systems that support their delivery. For the NCLT, physical infrastructure has improved in parts, but deeper institutional support remains lacking. The challenge now is not to restate deficiencies—but to fix the gaps that affect performance.

Despite handling complex, high-stakes matters, Members lack institutional support—research associates are often relegated to clerical tasks, leaving little capacity for structured legal analysis. There is a clear need to build a dedicated support system that can assist with comparative analysis, jurisprudential developments, and cross-sectoral interpretation—particularly in IBC cases that straddle multiple legal domains.

Another area of concern is docket management. Members are expected to adjudicate a wide spectrum of cases, from company disputes to shareholder issues and insolvency matters, often within the same cause list. In high-volume benches, this dilutes focus and impedes the development of deep insolvency expertise. Functional specialisation, even through internal listing protocols, could significantly enhance adjudicatory quality without requiring legislative change.

Despite Members' diverse professional backgrounds, structured systems for orientation and continuing legal education remain underdeveloped. Regular exposure to evolving

jurisprudence—both domestic and international—and collaborative learning opportunities could help build a more cohesive and future-ready Bench.

Several of these reforms do not require new legislation. Targeted administrative action—such as designating specialised insolvency lists, formalising research support, and enhancing digital workflows—can go a long way in strengthening the Tribunal's capacity. As the IBC evolves, the NCLT must not only clear dockets but also deepen its institutional memory and capability.

STRENGTHENING CONSISTENCY IN DECISION-MAKING

Predictability—the bedrock of commercial law—demands that lenders, investors, and regulators trust consistent treatment of like cases. Under the IBC, the NCLT should anchor this principle.

In the early years of the Code, outcomes at the Tribunal level varied—not just in reasoning, but also in format, listing timelines, and procedural practice. Some benches would process uncontested applications swiftly, while others faced delays due to registry backlogs or different listing protocols. Even in similar matters—such as plan approvals or liquidation orders—the style, structure, and depth of reasoning could differ substantially.

Many of these variations were not legal disagreements. They stemmed from differences in support systems, drafting formats, and procedural handling. For a time-bound framework like the IBC, such variations create uncertainty, especially for stakeholders unfamiliar with jurisdictional differences.

To its credit, the NCLAT has brought greater clarity on many issues—such as treatment of homebuyers, the scope of dissenting creditor rights, and limits of judicial review. But appellate correction cannot substitute for consistency at the first instance. With growing caseloads, the need for uniformity in NCLT processes has become more pressing.

Rather than impose uniformity across the board, a balanced approach is needed—one that distinguishes between procedural steps and interpretive questions.

STRUCTURED SOLUTIONS FOR BALANCED ADJUDICATION

Improving consistency in NCLT adjudication does not require sweeping reform—it calls for practical structuring. A two-track approach can help balance efficiency with legal nuance.

1. Tiered Standardisation

For procedural stages—such as admission orders, IRP appointments, and resolution plan approvals—a common template across benches can ensure uniformity without compromising judicial discretion. The model adopted by the Kolkata Bench, where checklists guide the approval of resolution plans, shows how standard formats can save time while preserving legal rigour.

By contrast, in complex or contested matters—such as ineligibility under section 29A or avoidance applications—Members must retain the space to exercise reasoned

judgment. Templates cannot supplant fact-specific scrutiny where rights and liabilities hang in the balance.

2. Shared Knowledge Infrastructure

A searchable repository of anonymised NCLT orders, indexed by issue and outcome, could serve as a ready reference for Members. If linked to corporate insolvency resolution process (CIRP) timelines and public data sources such as National e-Governance Services Limited (NeSL), this could assist in spotting patterns, aligning interpretation, and improving turnaround. Such a platform—jointly managed by the NCLT and Insolvency and Bankruptcy Board of India (IBBI)—would also codify institutional knowledge, creating a structured foundation for consistent decision-making.

3. Smarter Digital Case Management

A unified case dashboard—tracking filings, hearings, orders, and statutory timelines—can reduce inconsistencies and improve transparency. Over time, intelligent tools could help identify divergences in similarly placed cases, allowing timely course correction without interfering with the adjudicatory function.

These reforms do not seek to limit judicial reasoning. They aim to strengthen the adjudicatory process—automating what can be standardised, and reserving deliberation for what truly demands it.

THE PATH AHEAD: INSTITUTIONALISING THE NEXT DECADE

The first decade of the IBC was about proving its concept. The next must focus on sustaining it. For that, the strength of the Code will depend less on legislative change and more on how its institutions evolve—especially the NCLT, which remains its operational core.

The Tribunal must now build durable systems. This means ingraining institutional capacity that is scalable, predictable, and sensitive to the commercial realities of insolvency.

Four priorities stand out:

1. Specialised Benches:

Establishing dedicated IBC divisions within the NCLT, staffed by Members trained in insolvency, can improve focus and reduce delays. This does not require statutory amendment—only administrative allocation and calibrated listing practices.

2. Special Benches for high-value matters:

Special Benches should be designated for matters above a defined monetary threshold or for matters involving group insolvency, cross-border claims etc. Section 419(4) already confers such powers on the Central Government, and so no legislative change may be required in this regard.

3. **Digital-Led Case Management:**

   Implementing the unified dashboard as proposed above to reduce fragmentation. Such systems can also identify bottlenecks before they compound.

4. **Reinvestment in Human Capital:**

   Structured programmes for Members—focusing on commercial understanding, comparative insolvency frameworks, and peer learning—can build a shared institutional approach without undermining individual discretion.

These measures are not capital-intensive. They fall within the scope of administrative coordination between the NCLT, the IBBI, and the Ministry of Corporate Affairs. They are aligned with the Code's time-bound design and the IBBI's data-driven outlook. Most importantly, they offer reform without requiring legislative overhaul.

The aim is not to overburden the Bench with process, but to equip it with tools that allow for clarity, speed, and sound reasoning. Every NCLT bench must function not just as a forum for dispute resolution—but as a consistent and reliable node in the IBC's architecture.

India's insolvency law has travelled far in ten years. The challenge now is to institutionalise that journey—so that the Code delivers not only resolution, but trust in the system that enables it.

Reforming institutions does not diminish them—it affirms confidence in their role. The NCLT, as the Code's judicial backbone, must now partner with the IBBI to institutionalise these reforms—ensuring the insolvency landscape evolves with both judicial integrity, regulatory foresight, institutional strength, consistency and fairness.

04

THE 'REAL' BEHAVIOURAL CHANGE

Sumant Batra

Behavioural change has become a core issue of public policy. It is now well accepted that the effectiveness of a law can be judged by the behavioural changes it is able to bring about. Many leading economies have set up dedicated units to use behavioural insights for effective policymaking.[1] The direct effects of legal rules on individual behaviour have become a fruitful source of inquiry for analysts using the techniques of law and economics in many jurisdictions. In his Economic Survey 2018-19, then chief economic adviser Krishnamurthy Subramanian gave star billing to behavioural economics and the importance of policy 'nudges'. The survey said - India @75 is envisaged as a "New India" where every individual realises his or her full potential and looks for opportunities to contribute rather than claim entitlements, laying out a key behavioural change. The core of this idea is - Policy for Homo Sapiens, Not Homo Economicus: Leveraging Behavioural Economics of Nudge.[2] Referring to the efficacy of a new class of 'nudge' policies that lie between *laissez-faire*[3] and incentives, Subramanian advocated a "Nudge Unit" to be set up in NITI Aayog.

IBC AS A "NUDGE"

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) has been hailed as one of the most important economic legislations in recent times. One of the far-reaching spill-over effects of the IBC is stated to be the behavioural change effectuated by it - a cultural shift in the dynamics between lenders and borrowers. Economist Anuradha Guru makes a persuasive attempt to relate the principle with the architecture of the IBC to argue how the law is using the behavioural principles, taking advantage of cognitive biases of individuals, and "nudging" the stakeholder(s) to achieve the objectives of the IBC. She maintains that taking recourse to the IBC by a creditor or debtor - the parties to the insolvency process, is voluntary, it is not the State that imposes an outcome of insolvency initiation on all other players. While the option is exercised voluntary, the fallout is compulsory for all other stakeholders. This, according to her, can be viewed as one of the most powerful 'nudge' requiring all stakeholders to exhibit

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[1] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat, Law, Policy and Practice* (EBC, 2015).

[2] Policy for Homo Sapiens, Not Homo Economicus: Leveraging the Behavioural Economics of 'Nudge'", Economic Survey 2018-19, Vol. 1, Chap. 2, available at <https://www.indiabudget.gov. in/budget2019-20/economicsurvey/doc/echapter.pdf.

[3] The theory of *laissez-faire* emerged in the 18th century, advocating minimal government intervention in business affairs. Rooted in the belief that free markets operate most efficiently when left alone, *laissez-faire* emphasizes individual economic freedom and self-regulation.

their best behaviour, firstly to prevent triggering of an insolvency and if triggered, to ensure that interests of all stakeholders are taken care of.[4]

Many studies state that the IBC has nudged thousands of debtors to settle their dues even before the initiation of insolvency proceedings.[5]Recovery of ₹ 10.22 lakh crore[6] in 28,818 applications (till March 2024) which have been withdrawn before their admission into corporate insolvency resolution process (CIRP)[7] is cited by the Insolvency and Bankruptcy Board of India (IBBI) as a sign of behavioural change. Noting the amount of recovery made, Justice Rohinton Nariman famously remarked that the, "figures show that the experiment conducted in enacting the (Insolvency and Bankruptcy) Code is proving to be largely successful. The defaulters' paradise is lost."[8] It is stated by the State Bank of India that the biggest change the IBC has brought in the default is no longer a bank problem, it has now become the borrower's problem.[9] This change in attitude of promoters, according to Guru, is emphatically attributed by many studies to the nudge effect of the IBC.[10]

The impact of IBC and its outcomes are many and remarkable. It has facilitated resolution of large number of distressed enterprises in a short span of time which are now back in the economy contributing to the national productivity. The levels of NPA have come down significantly averting a crisis that was writ large in 2016. India's ranking on Ease of Doing Business (Now B-Ready[11]) has raced up many notches. A vibrant insolvency industry has come into play in a short span of time. The enhancement of creditors' rights following the implementation of the IBC has encouraged firms to mitigate bankruptcy risk. This has led to significant changes in both the quantitative and qualitative aspects of firms' financial policies. Specifically, in the post-IBC period, firms not only reduced their overall debt levels but also

[4] Anuradha Guru, *The Code: A Behavioural Perspective*, Insolvency and Bankruptcy Board of India. Accessed December 15, 2024. https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf.

[5] Government of India, Economic Survey 2022-23, Ministry of Finance, Department of Economic Affairs, economic Division. Accessed December 15,2024. https://www.indiabudget.gov.in/economicsurvey/.

[6] Government of India, Economic Survey 2022-23, Ministry of Finance, Department of Economic Affairs, Economic Division. Accessed December 15, 2024. https://www.indiabudget.gov.in/economicsurvey/.

[7] Insolvency and Bankruptcy Board of India. "Chairperson's Editorial Note." IBBI Quarterly Newsletter: July-September 2024. Accessed December 15, 2024. https://ibbi.gov.in/uploads/whatsnew/edc044b410d37f0fd22cbe07a74665f3.pdf

[8] Swiss Ribbons Pvt. Ltd. & Am: v. Union of India & Ors., (2019) 4 SCC 17.

[9] Das, Kumud, *IBC Brought Behavioural Change Among Borrowers, Says SBI MD*, BizzBuzz, September 21, 2023. Accessed December 15, 2024. https://www.bizzbuzz.news/trendz/ibc-brought-behavioural-change-among-borrowers-says-sbi-md-1249770.

[10] Guru, Anuradha, *The Code: A Behavioural Perspective*, Insolvency and Bankruptcy Board of India. Accessed December 15, 2024. https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf.

[11] The Ease of Doing Business (EoDB) index was a ranking system established by the World Bank Group. Rankings and weights on various parameters were used to develop an overall EoDB ranking. A high EoDB ranking meant the regulatory environment is more conducive for starting and operating businesses. After data irregularities on Doing Business 2018 and 2020 were reported internally in June 2020, World Bank management paused the next Doing Business Report and initiated a series of reviews and audits of the report and its methodology.' This resulted in B-Ready, a revised methodology of quantitative assessment methodology of the business environment in countries around the world. Read the full statement released by the World Bank Group on the Doing Business Report, 16-9-2021, available at <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report.

shifted towards long-term borrowing from a limited pool of sources to manage bankruptcy risk. This indicates that firms adjust their financial strategies in response to strengthened creditor protections, aiming to lower their exposure to financial distress.[12] According to a study conducted by the Indian Institute of Management, Bangalore (IIMB) to carry out an "independent validation of the behavioral impact of IBC on the ecosystem of lenders and borrowers in the Indian economy" many adjustments have resulted due to behavioral shift in creditors and borrowers. This according to IIMB could be classified into leverage, cost behaviour, cost of debt, innovation, agency costs, entrepreneurship, and others.[13] The IIMB study attributes "on a broader level", "the catalysed structural shifts in firm behaviour" post-IBC and firms becoming "more conservative in their use of leverage, especially those with tangible assets, likely responding to the threat of enforced liquidation." Much more has been achieved as spelt out in great detail in the author's recent book.[14] The achievement of the IBC including some behavioural shifts are rightfully lauded.

However, there is some difficulty in accepting that the professed recovery is result of 'nudge' and that it is a result of behavioural change in promoters. The IBC has certainly caused a profound impact on the behaviour of financial creditors. The change among bankers although slow is visible and encouraging. Insolvency professionals, another key stakeholder of the IBC continue to attract criticism for their behaviour despite manifold efforts by the IBBI. The measures taken by the IBBI have not created the expected impact in disincentivising improper behaviour by Insolvency Professionals (IPs).

The author has many arguments to make in support of this contrarian view. In this article, however, the author focusses on the behavioural change in promoters leaving those in IPs and lenders to be discussed in another paper. The author's views are based on logic and experience as a practitioner of insolvency law and a keen observer of market behaviour and industry practices. The thoughts, in summary, are set out hereinafter.

At the outset, it is important to remind that the 'nudge theory', or the IBC as a catalyst for behavioural change, was not envisaged ex-ante. This vision neither features in the reports of the Bankruptcy Law Reforms Committee (BLRC)[15] nor reflects from the report of the Joint Parliamentary Committee[16] that reviewed the Insolvency and Bankruptcy Code Bill 2015 (IBC Bill). Nor does the 'nudge' approach find reference in the debates on the IBC Bill in Lok Sabha or Rajya Sabha in 2015 or 2016. 'Nudge' was certainly not a considered or an articulated

[12] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

[13] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

[14] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat, Law, Policy and Practice* (EBC, 2015), Chapter 6.

[15] Bankruptcy Law Reforms Committee Report, November 2015, accessed on 31 July 2025, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf.

[16] Report on Joint Parliamentary Committee Report on IBC Bill 2014, April 2016, accessed on 31 July 2025, https://ibbi.gov.in/16_Joint_Committee_on_Insolvency_and_Bankruptcy_Code_2015_1.pdf.

policy approach in IBC when it was enacted in 2016. Those who plead the IBC's behavioural impact, however, argue that behavioural principles can nevertheless be seen ex-post.[17] Why not? But, for this, they rely on recoveryof large amounts by the lenders without having to initiate the process under the IBC. This they argue is because the IBC has set promoters thinking about consequences that admission of a company into insolvency invites for them. Even IIMB acknowledges in its study report (supra) that, "Finally, banks have also shown to efficiently use the new legal apparatus for debt recovery - either by resolution or by liquidation." IIMB found, "these changes in the firm and bank behaviour heartening and suggestive of the positive impact of IBC on the lender-borrower ecosystem in India", even though, in my humble understanding of IBC,recovery is not the central objective with which IBC was enacted.[18] In any case, while there is no doubt that debtors are encouraged to settle default at the earliest, preferably before an IBC process is initiated, however, there is no empirical data available (or discussed in IIMB study) to establish that this recovery is a systemic response to the underlying attitudinal problems in the creditor-debtor relationship and is acting as a prophylactic for an acute condition.

Let us for a moment accept that recovery in itself is sufficient evidence, even then, the objective of the IBC is not to collect or recover monies from defaulters; it is to resolve distressed assets. Measuring the behavioural effect of the IBC as a preventive tool to recover money without having to invoke IBC provisions has no link with the objectives of IBC. Recovery of money, at best, is a collateral benefit of the construct of IBC.

A study of behavioural effect of IBC on defaulters would be best made by analysing how many promoters have used IBC for revival of their distressed enterprise. The IBBI data shows that out of the over 8000 applications admitted under IBC as on December 2024, only 500 were initiated by the corporate debtor.[19] Even where initiation is based on section 10 petition,[20] it needs to be studied out of 500 cases how many were initiated by promoters for a bonafide purpose and not just to get rid of the creditors. Even IIMB in its study finds that, "that there is an increasing tendency to settle debts to avoid the CIRP proceedings" and not use IBC for insolvency resolution. IIMB though, interprets it as a positive sign.[21]

A study is also needed to find out how many promoters surrendered their enterprise to the IBC process without resistance or cooperated with the lenders and resolution professional by providing all information with speed and hesitation in CIRPs (section 7[22]) initiated by financial

[17] Anuradha Guru, *The Code: A Behavioural Perspective*, Insolvency and Bankruptcy Board of India. Accessed December 15, 2024. https://ibbi.gov.in/uploads/whatsnew/2456194a119394217a926e595b537437.pdf.

[18] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

[19] IBBI, Quarterly Newsletter for October-December, 2024, available at <https://ibbi.gov.in/ uploads/publication/1885c0421a20cc4173386ba9c5dc3466.pdf

[20] A corporate debtor can file a petition for initiation of its own CIRP under Section 10 of IBC.

[21] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

[22] A financial creditor can file a petition for initiation of CIRP under Section 7 of IBC.

creditors. A deeper study of section 9[23] initiated petitions may also throw some light on the bonafide of these applications and if many of these were in fact engineered by the promoters to stall recovery action by financial or statutory operational creditors. It is from such studies that one would be able to assess if there is indeed a real and meaningful behavioural shift and promoters are forthcoming and willing to make effective use of IBC and genuinely participate in the resolution process.

According to the author, the upscale in recovery from defaulters is a result of a 'threat' of potential initiation of CIRP under IBC and on account of 'fear of losing control' of management of enterprise if an insolvency petition under sections 7 or 9 is admitted. This threat is compounded by section 29A as the provision prohibits the promoters to participate in the resolution process except in some limited circumstances.[24] Pertinently, in its study report on behavioural impact of IBC, IIMB itself records that the "objective of the study" is analysis of withdrawals "due to threat of IBC". It further states that study was conducted basis "number of cases withdrawn after filing under IBC, and the cases which were not even filed and were settled to avoid IBC filing and performance analysis of firms."[25] For the business debtor, the threat of a resolution process shifting control of the company away from the promoters is real and potent is serving as an effective deterrent resulting in huge amount of recovery. However, this threat and prohibition is by no means a delicate policy shift or a 'nudge' as propounded by Professors Richard Thaler and Cass Sunstein in their 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness.* A nudge according to them is providing incentives to encourage a particular behaviour by influencing the choice of individuals in a particular direction by delicate policy shifts or "nudges", taking a cue from human psychology. For example, a legal ban on smoking in public places can motivate citizens not to smoke in certain areas even where the state has no resources invested in direct (or first-order) enforcement. These laws can have self-sanctioning (or third-order) effects to the extent that citizens internalize the legal rule and are deterred by the prospect of guilt. Such policies leverage insights from human: psychology to influence the choice architecture of people. A tax isn't a nudge. A subsidy isn't a nudge. A mandate isn't a nudge. A ban isn't a nudge. A penalty is not a nudge. A warning is however, a nudge: "If you swim at this beach, the current is high, and it might be dangerous." One is being nudged not to swim, but they can. When one is given information about the number of fat calories in a cheeseburger, that is a nudge. If a utility company sends something two days before a bill is due, saying that "You should pay now, or you are going to incur a late fee," that is a nudge. They can say no, but it's probably not in their best interest to do so. A nudge policy should interfere minimally with the available choices. This implies that no option should be forbidden or no economic incentive should be

[23] An operational creditor can file a petition for initiation of CIRP under Section 9 of IBC.

[24] Insolvency and Bankruptcy Code 2016, § 29A.

[25] Behavioral Impact of IBC - A Research Study Submitted to Insolvency and Bankruptcy Board of India, Centre for Capital Markets and Risk Management, The Indian Institute of Management, Bangalore, accessed on 25 August 2025, https://ibbi.gov.in/uploads/resources/1af62766c26f90a284c1fa996faa6e97.pdf.

altered drastically.[26] In other words, nudge theory is essentially an indirect approach, which seeks to modify situations for people, arguing that if we wish to alter people's behaviour in a particular direction, it can be more effectively done by encouraging positive choices rather than trying to restrict undesirable behaviour with some kind of sanctions or restricting freedom of choice. A threat of displacement from management on commencement of IBC orban by section 29A, by no means, qualify as a 'nudge' as professed by Thaler and Sunstein.

When IBC was enacted resulting in a policy shift from 'debtor in possession' to 'creditor in control' law, the promoters viewed the ouster from management as a temporary phase. They saw prospects of reclaiming management through CIRP as they were not qualified to present a resolution plan as when enacted in 2016, the IBC did not prohibit promoters from submitting a resolution plan. On the contrary, BLRC stated in its report that "the promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring" and there should be no "constraints on the proposals that the resolution professional can present to the creditors committee." The report further stated that "in a growing economy, firms make risky plans, of which some plans will fail, and will induce default. If default is equated to malfeasance, then this can hamper risk-taking by firms. This is an undesirable outcome, as risk-taking by firms is the wellspring of economic growth. Bankruptcy law must enshrine business failure as a normal and legitimate part of the working of the market economy." This approach is also reiterated in the notes to clauses tabled in the Parliament with the 2015 Bill. In most cases filed under IBC from December 2016 to November 2017 (before section 29A was introduced in IBC), promoters submitted resolution plan for resolution of their companies in insolvency. No one rushed to pay their dues under threat of a change of management. There was no behavioural change. It was only after section 29A was introduced in 2017,[27] when the promoter faced a disqualification to submit a resolution plan, that the promoters rushed to settle dues as they became disqualified. Differently put, it is the disqualification attracted under section 29A which has become the catalyst for recovery. The point is that if the payment is made under threat of disqualification, it cannot be said to be a nudge that would lead to behavioural change. At least not the nudge as understood in behavioural economics. The point is that the day section 29A is taken out, the threat might vanish and so will a disincentive to pay. To those who perceive section 29A as a nudge, if this nudge intervention if removed, is likely to revert the behaviour typically to pre-intervention status.[28]

There is a widespread belief in the market that many promoters are getting back control of their enterprises in CIRPs through entities (including some regulated by the Reserve Bank of India) acting as resolution applicants or acquiring debts from creditors to hold decisive vote

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[26] Badhani, Pragyan,*Behavioral Economics in Policy Making." Misra Centre for Financial Markets and Economy*, Indian Institute of Management Ahmedabad, March 27, 2024. https://www.iima.ac.in/sites/default/files/2024-04/MCFME_RPIFME_1_27.03.2024.pdf.

[27] The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 promulgated on 23 November, 2017.

[28] Best at Digital, Encouraging Behaviour Change: Nudge or Boost?, Linkedin Pulse, April 2024. https://www.linkedin.com/pulse/encouraging-behaviour-change-nudge-boost-bestatdigital/.

share in the committee of creditors, at the instance of the promoters. This is an aspect where even a study is nearly impossible as it would require many layers of transactions to be peeled to reach the bottom of the truth, each peeling hampered by confidentiality terms or innovatively camouflaged transactions. But, the point is if promoters are indeed circumventing IBC provisions by such engineering, with active support from regulated players in the market, clearly the argument of behavioural change is a bit too early to make.

Finally, the author believes that, section 29A, on the contrary, in its present form, acting an obstructor rather than a facilitator of behavioural change. This is because section 29A does not create any distinction between a bonafide debtor who may have defaulted for reasons beyond its control and is unable to service its debt to the creditors, and a dishonest promoter who may have pushed the debtor into insolvency and has no intention to pay to its creditors despite ability to pay. Both would suffer the same legal consequences in the event of default. How would the 'nudge' then apply to an honest but unfortunate defaulter?

REAL BEHAVIOUAL CHANGE

This leads us to the question how do you then bring 'real' behavioural change in IBC stakeholders? The question of behaviour change remains a fertile area for further investigation. Despite an ever-growing amount of literature, research in the area of behavioural economics has remained fragmented.[29]It is important that experts in India deploy the social sciences in service of testable hypotheses that explain the linkages between legal and normative constraints and between external and internal explanations of human behaviour. Changing human behaviour is hard and requires a bit more than just adding triggers and prompts that nudge people in or out of habits. Nudges, while an excellent and effective behaviour change tool are limited in terms of long-term learning. In many instances, nudges may change behaviour but not the reason behind the behaviour. Yet, it may be worthwhile to consider some 'nudges' that may serve as an effective catalyst for behavioural change. India has rich experience in implementing large-scale behavioural change programmes. Over the years, India has seen many behavioural change initiatives. The *Swachh Bharat Mission* is one such project.[30] The IBBI should take lead and conduct studies on the subject.

A solution to engineering behavioural change may lie in asserting our ancient value system. A person's culture arguably, exerts the broadest influence on his or her character. Culture is the learned patterns of symbolism and character that are passed from one generation to the next; it represents the totality of values that characterize a society. People live in a cultural milieu that embraces their history, values, morals, customs, art, and language.[31]

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[29] Handbook of Behavioural Change and Public Policy, Edited by Roiger Strallheim, Bielefeld University and Silke Beck, Helmholtz-Centre for Environmental Research - UFZ, Leipzig, Germany, 2019.

[30] Jaideep Sinha,*Opinion: Why Behavioural Change in This Country Is Such a Complex Task*, Mint. August 1,2019. https://www.livemint.com/news/india/opinion-why-behavioural-change-in-this-country-is-such-a-com plex-iask-1564592129319.html.

[31] Sumant Batra, *Corporate Insolvency: The Road to Viksit Bharat, Law, Policy and Practice* (EBC, 2015), Chapter 25.

A recent study in Columbia shows that behavioral messages to improve repayment performance may be especially effective on marginally delinquent borrowers, that is, borrowers that have preferences for repayment and that are of better quality within the pool of delinquent borrowers. Behaviourally motivated messages[32] can be effective when individuals have the potential to improve their behaviour;[33] they are motivated to improve their behaviour;[34] and their decisions and actions are precisely constrained by the behavioural barrier the nudges aim at mitigating.[35] In the context of debt repayment, these predictions imply that borrowers who have money to repay and whose credit score can still be 'redeemed' are expected to respond to messages encouraging repayment the most. If borrowers believe that, irrespective of their effort to repay, they will not have access to credit in the future, messages will hardly have an effect. At the same time, behavioural messages will have a greater impact on borrowers with higher preferences for repayment. Behavioural messages do not appear to have an effect on improving the behaviour of very delinquent borrowers, who possibly would need a bigger 'push' than a simple message or who are under severe financial constraints. The proposed creditor-initiated debtor-in-possession hybrid procedure in the Insolvency and Bankruptcy Code (Amendment) Bill 2025 can serve as a 'nudge', incentivising creditors and debtors to resolve the distress situation of debtor in cases where there is no trust deficit, or if there is one, bridge it by corrective measures. In such cases, both creditors and debtors would see this 'nudge' as an opportunity to resolve the distress without change in management. As the debtor would have a one year window after default to carry out resolution before section 29A sets in, it will have incentivise it also to cooperate.

Behavioural science also provides support for a distinct kind of nonfiscal and non-coercive intervention, namely, 'boosts'. Boosts differ from nudges; in that they are designed to allow individuals to build on learning in the long term. Nudges target behaviours, boosts, on the other hand, target people's cognitive and motivational competencies. Behavioural boosts have been developed by Prof. Ralf Hertwig in recent years. Boosts allow individuals the autonomy to make their own decisions, as they equip us with the tools to do so by ourselves, and on our own terms.[36] Boosts empower individuals to change or engage in behaviour by improving their decision-making capabilities. Typically, the environment acts as an information source, promoting a reflective approach to decision-making. When a boost is removed, the individual is likely to have already learned how to apply the teaching of the boost and will continue to apply it after the fact, as their competencies have expanded to include this new learning.

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[32] M. T. Damgaard and C. Gravert, *The Hidden Costs of Nudging: Experimental Evidence from Reminders in Fundraising*, Journal of Public Economics 183 (2020): 104-114, https://doi.org/10.1016/j.jpubeco.2020.104114, (https://www.sciencedirect.com/science/article/abs/pii/S0047272717301895)

[33] Hunt Allcott, *Social Norms and Energy Conservation*, Journal of Public Economics 95, no. 9-10 (201 I): I082-1095, https://eml.berkeley.edu/~saez/course131/allcott2011.pdf.

[34] Christina Gravert and Verena Kurz, *Nudging ala Carte: A Field Experiment on Climate-Friendly Food Choice*, Behavioural Public Policy 5, no. 3 (2021): 378-395, https://doi.org/10.1017/bpp.2019.11.

[35] Taryn Dinkelman and Claudia Martinez A, *Investing in Schooling in Chile: The Role of Information about Financial Aid for Higher Education*,The Review of Economics and Statistics 96, no. 2 (2014): 244-257, https://doi.org/10.1162/REST_a_00384.

[36] Ralph Hertwig,*Beyond Nudging—How Boosting Empowers Citizens to Make Good Decisions*, accessed om 25 August 2025, https://www.mpib-berlin.mpg.de/2013934/unraveling-behavior-episode5.

Finally, the author believes that perpetual prohibition on promoters as a class could lead to apprehensions among young entrepreneurs about their fate and future in the country if their business becomes NPA for reasons beyond their control and despite their staying diligent and honest. They would then be motivated to set up centres of main interest of their businesses outside India, leading to a flight of capital. Modern insolvency laws are built on the principle of granting a fresh start to the honest but unfortunate debtor. This culture of tolerance towards non-payment of debt for bonafide reasons is necessary to encourage people to continue entrepreneurial pursuits. Bona fide defaulters may feel short-changed at being dispossessed from management and assets on default in payment of even one interest instalment. The dishonest promoters must however, certainly face the wrath of law. It would be unfair to bracket honest promoters with the dishonest. After all, every person with the name Prem Chopra is not a villain![37]

[37] Financial Express, *Why Exclude Promoters from Insolvency Process? Implications Can Be Serious*, Financial Express, October 10, 2017, https://www.financialexpress.com/opinion/why-exclude-promoters-from-insolvency-process-implications-can-be-serious/933222/.

05

INSOLVENCY & BANKRUPTCY CODE, 2016: LEARNING & INSIGHT

HKP Karimi

PREFACE

Over the past eight years, the effectiveness of Insolvency and Bankruptcy Code (IBC/Code) in facilitating financial resolutions has been widely acknowledged. IBC has created an infrastructure designed to resolve loan defaults, which has contributed to increased speed and efficiency in handling insolvency cases.

IBC has also resulted in collective decision making of the creditors resulting in effective resolution outcomes. These changes are not merely procedural but have also brought about tangible economic benefits.

Furthermore, the impact of these legislative reforms can be seen in the creation of new businesses as investor confidence has grown and the revitalisation of financially distressed firms, which in turn fosters a more dynamic and resilient economy.

BACKGROUND

IBC is a comprehensive legislative framework introduced by the Government of India in 2016. It aims to consolidate and amend regulations related to the insolvency and bankruptcy of corporates and LLPs. Its primary goal is to facilitate timely resolution of insolvency cases, ensuring an efficient process for either the revival of troubled businesses or its exit from the market.Implemented in 2016, IBC has been a vital tool for streamlining the procedures surrounding insolvency and bankruptcy for various entities.

Key features of the IBC include a time-bound resolution process designed to prevent delays in insolvency proceedings and salvage its value for creditors. Through this framework, stakeholders—including creditors and debtors—are offered a clear path for resolving the debt while enhancing transparency and improving the overall business environment in India.

IMPACT OF THE IBC

Table 1, presented below, provides a comprehensive overview of the corporate insolvency resolution process (CIRP) since the implementation of the Code. This legislative framework has facilitated resolution of 1,258 corporate debtors (CDs) by approving various plans targeted at addressing their financial distress. In addition to these resolutions, 1,314 cases have been settled through various mechanisms such as appeal, review, or out of court settlement,

demonstrating the multifaceted nature of this dispute resolution process. The process has also seen 1,191 cases withdrawn under the provisions of section 12A.

On the flip side, the Code has also resulted in the referral of 2,824 CDs for liquidation, which is 43% of total cases closed, highlighting the challenges within the IBC and corporate sector and the necessity of addressing unsustainable business models. The given data underscores the Code's pivotal role in navigating the complexities of corporate insolvency in the current economic landscape.

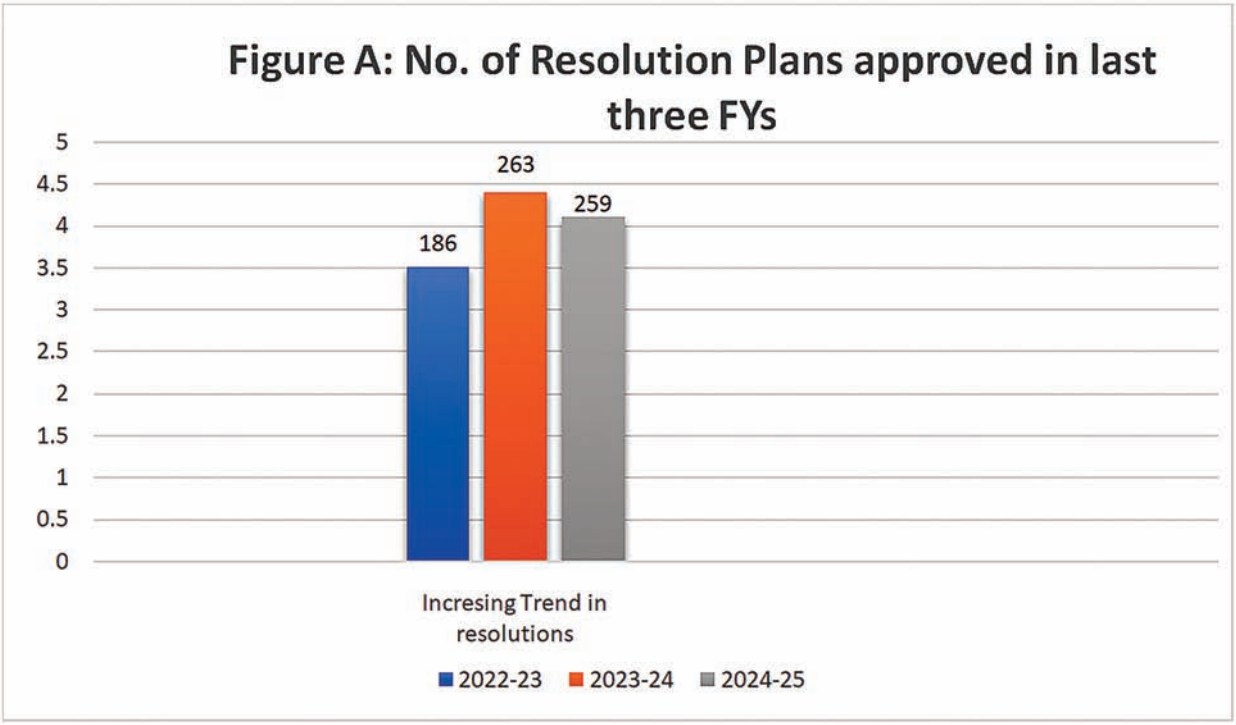
Table 1: Status of Corporate Insolvency Resolution Process

Sr. No.	Particulars	From October 2016 to March 31, 2025	During 2025-26	Total as on 31st June 2025
1	Total number of IBC cases admitted	8,308	184	8492
2	Total CIRP cases closed	6,382	205	6587
3	Closure by Appeal/Review/ Settled/Others	1,276	38	1314
4	Withdrawal u/s 12A.	1,154	37	1191
5	Approval of Resolution Plan	1,194	64	1258
6	Commencement of Liquidation	2,758	66	2824
7	Ongoing CIRPs	1,926	NA	1905

Source: The Quarterly newsletter of the Insolvency and Bankruptcy Board of India-April-June 2025-Vol-35

As of June 2025, creditors have recovered ₹ 3.96 lakh crore through resolution plans aimed at addressing financial distress among borrowers. This realization is approx. 32.60% of the admitted claim and almost 170.80% as against the liquidation value. Besides, till June 2025, creditors have also managed to recoup ₹ 9608 crores from 959 closed liquidation cases our of total 1439 corporates which have been completely liquidated.

Once cases are admitted under IBC framework, Code has demonstrated its effectiveness by successfully resolving 1,258 cases through various resolution plans. In addition, IBC has closed 2,505 cases via settlements/ voluntary withdrawals/ appeals, showcasing its flexible approach to debt resolution.



Source: Source: The Quarterly newsletter of the Insolvency and Bankruptcy Board of India-January-March 2025-Vol-34

Over the past eight years, a total of 1,194 resolution plans (till March 2025) have been approved under IBC. 60% of these resolutions, which amounts to 708 plans, have been approved in the last three years alone. This period has experienced an extraordinary acceleration in the approval rates of resolution plans, highlighting the efficiency and adaptability of the legal framework designed to facilitate resolution of the admitted cases. This surge not only underscores the robustness of the IBC but also reflects its vital role in fostering a more resilient corporate environment.

Behavioral changes influenced by IBC and its regulations

IBC and its accompanying regulations have been pivotal in transforming the financial landscape and influencing behavioural changes within the corporate ecosystem. By streamlining the insolvency resolution process, the code has encouraged them to adopt sound financial practices and risk management strategies. The provisions of the IBC facilitate timely interventions, largely addressing the issue of delayed payment to Operational Creditors as also pruning the proliferation of non-performing assets (NPAs) in the banking sector.

Since inception, the Code and its regulations has constantly evolved and stepped unexplored territory of resolution of Indian companies to address emerging challenges and ensure its effectiveness.

One of the most significant changes observed on implementation of the Code is the behavioural change in the stakeholders involved in the resolution process. The fact that a CD may change hands has changed the behaviour of debtors.

IBC has brought about behavioural changes among CDs with thousands of debtors are resolving distress in the early stages of distress, either when the default is imminent, on receipt of a notice for repayment but before filing an application, after filing the application but before its admission, and even after admission of the application, and making best effort to avoid consequences of the resolution process.

Observed behavioural shifts:

Early, Faster Resolution and Reduced Default

- The IBC has incentivized debtors to proactively address distress. Thousands of companies are now opting to resolve issues at early stages.

  As a result of the behavioural change effectuated by the Code, thousands of debtors are settling their dues before start of insolvency proceedings. As per Insolvency and Bankruptcy Board of India (IBBI), as on March 31, 2025, about 30,310 cases having underlying default worth ₹ 13.78 lakh crore have been settled pre-admission in CIRP.

- The fear of coming under the IBC, and the subsequent potential for a change in ownership, has changed the behaviour of debtors, leading to more proactive measures to avoid default. As per latest study (May 2025) conducted by IIM, Bangalore (IIMB) on Behavioural Impact of IBC it appears that there is an increasing effort by debtors to maintain loan accounts in Normal status.

  As per study, in the post-IBC period, firms not only reduced their overall debt levels but also shifted towards long-term borrowing from a limited pool of sources to manage bankruptcy risk. This indicates that firms adjust their financial strategies in response to strengthened creditor protections, aiming to lower their exposure to financial distress.

  Various studies have also found that firms have responded to increase in ease of financing by reducing their cash holding levels, increasing investments in exports and greater forex hedging by firms having higher exposure to foreign currency debt in the post IBC world.

- The IBC has significantly sped up insolvency resolution compared to the previous regime.

  The Code endeavours to close the various processes at the earliest. As per IBBI, 1,258 CIRPs, which have yielded resolution plans by the end of June, 2025 took on average 602 days (after excluding the time excluded by the AA) for conclusion of process.

  Above is a significant improvement as compared to pre-IBC regime in which it used to took around 1500 days for resolution.

- Creditors have seen higher recovery rates under the IBC. For resolution plans, the realisation to the creditors was 32.57% and 170.84% as against their admitted claims and liquidation value, respectively till June 2025.

- The IBC has helped reduce NPAs in the banking sector by enabling quicker and more effective resolution of distressed assets, strengthening the financial system.

Change in Creditor Behaviour

- Financial creditors (FCs), such as banks and financial institutions, are now more likely to initiate the IBC process as a last resort. The Code envisages collective decision making by bringing all the FCs on one table to make a decision for the resolution of the CD i.e. CoC, a creditors committee, where all FCs have votes in proportion to the magnitude of debt that they hold.

  The CoC is also entrusted with the task of protecting the interest of all the stakeholders while evaluating the feasibility and viability of a resolution plan.

- Operational creditors (OCs) (suppliers, etc.) are increasingly using the IBC as a mechanism to recover dues. Unlike the FCs, OCs have limited representation during the insolvency resolution process under the provisions of the Code. Continued cooperation of OCs is essential for running the operations of the CD on a going concern basis during the CIRP period.

  The IBC provides a more streamlined and efficient mechanism for recovery, leading to a shift in how creditors approach debt recovery.

Enhanced Creditor Rights and Access to Capital

- The IBC has strengthened creditors' rights and provided a more formal framework for debt resolution.
- This has led to a more stable and predictable financial environment, making it easier for businesses to access debt capital.

Increased Entrepreneurship and Economic Growth

- The ease of exit through the IBC can create opportunities for new entrepreneurs and businesses.
- The IBC's focus on resolution and revival can contribute to economic growth by providing a more stable and efficient framework for resolving distressed assets.
- The IBC has had a positive impact on the Indian economy by promoting entrepreneurship, improving credit discipline, and rescuing distressed companies.

Shift in Recovery Channels

- Recovery mechanisms shifted from relying on traditional methods to utilizing the IBC process.
- This shift reflects a greater reliance on the formal insolvency framework for resolving distressed assets.

Challenges and Areas for Improvement

While the IBC has demonstrated significant positive impacts, there are also areas for improvement. Low approval rates for resolution plans and concerns about delays and high costs remain.

Following are few issues, which are hampering the resolution process under IBC, and need to be addressed:

- Delay in admission of CIRP application.
- Delay in approval of Resolution Plan already voted upon by CoC.
- Very low traction of adjudication in petitions filed for Avoidance of Preferential, Undervalued, Fraudulent and Extortionate (PUFE) Transactions.
- Time taken in Pronouncement of Liquidation Order
- Personal Guarantors to CD taking undue benefit of interim moratorium.

In essence, the IBC has proven to be a valuable tool for resolving insolvency in a more efficient and timely manner, leading to improved economic outcomes and increased confidence in the financial system.

IBC has not only provided a legal framework for insolvency resolution but has also induced significant behavioural changes among debtors and creditors. This has led to a more resilient financial ecosystem, increased access to credit, and potentially greater entrepreneurship and economic growth.

However, continuous monitoring and adjustments are necessary to address ongoing challenges and ensure the long-term effectiveness of the code.

Role of the IBC in markets for distressed assets and resolution

IBC is vital in effectively managing and resolving distressed assets within the financial ecosystem. By providing a structured legal framework, IBC facilitates timely and orderly resolution of insolvency situations, enabling creditors to recover their dues while granting struggling enterprises a chance to restructure their operations. Through various provisions, IBC seeks to balance the interests of all stakeholders including creditors, debtors, and the overall economy ensuring a fair and transparent resolution process.

Here's a more detailed breakdown of the IBC's role:

Creating a Structured and Predictable Framework

- The IBC introduced a 180-day resolution period (with possible extensions), creating a more predictable environment for both creditors and investors.
- This clarity and speed have encouraged investors to consider distressed assets as a viable investment class.

- The IBC acts as a deterrent, encouraging distressed companies to resolve their financial distress early to avoid the consequences of the resolution process.
- The IBC has prompted debtors to take early action in distress situations, leading to a noticeable improvement in credit discipline.

Encouraging Market-Driven Resolutions

- The IBC allows the highest bidder to take over the distressed company, ensuring value maximization.
- This competitive bidding process attracts a wider range of investors, including foreign investors, who bring in fresh capital and expertise.
- The IBC also allows for a more streamlined and transparent process compared to previous approaches.

Enhancing Creditor Confidence

- The IBC's success in expediting insolvency resolution and maximizing value for creditors has significantly enhanced their confidence in the Indian market.
- With a reliable mechanism to address distressed assets, creditors are more willing to extend credit to entrepreneurs.
- Moreover, CIRP also represents a significant shift in control dynamics within distressed companies. It transfers decision-making power from the defaulting promoters who may have a vested interest in maintaining control despite insolvency to the creditors. This transition ensures aligning the interests of all parties involved more effectively. By establishing this balance, the insolvency framework aims to maximise recovery for all stakeholders and promote a healthier economic environment by facilitating quicker and more efficient resolutions to financial distress.

Balancing Stakeholder Interests

- The IBC balances the interests of all stakeholders, including creditors, investors, and the economy as a whole.
- It provides a mechanism for distributing proceeds, prioritizing secured creditors over unsecured creditors and equity shareholders.
- It also encourages resolution on a going concern basis, which is generally more valuable than liquidation.

Developing a Market for Distressed Assets

- The IBC has created an efficient market for resolution of distressed assets, making India's distressed asset investment landscape more robust.
- This has attracted astute investors who can seize opportunities to pick "value" assets.

- The IBC encourages distressed mergers and acquisitions (M&A), providing opportunities for investors and hope for recovery for creditors.
- As a consequence of IBC's implementation, diverse financial entities—including institutional investors, asset reconstruction companies (ARCs), Private Equity (PE) firms, and strategic corporate buyers are now actively pursuing investment opportunities in cases that fall under the auspices of the insolvency and bankruptcy legislation. This has catalysed a more vibrant and competitive marketplace, enabling distressed businesses to find potential buyers and investors equipped to revitalise them while maximising value recovery for stakeholders involved.

Promoting Effective Capital Reallocation through the IBC

- IBC plays a crucial role in enhancing the efficiency of capital allocation within the economy by facilitating exit of non-viable firms while simultaneously providing opportunities for viable businesses to recover and thrive. This legislative framework empowers creditors and stakeholders to identify and manage stressed companies that demonstrate the potential for improvement and success.
- When a financially distressed business is deemed unviable, IBC allows for its systematic exit from the market. This process eliminates inefficiencies in keeping failing enterprises afloat and opens the door for new ownership or management structures to take over these entities. By doing so, productive assets of these companies such as skilled labour, technology, and infrastructure can be reallocated to more capable hands.
- Furthermore, IBC supports a structured resolution process, ensuring that viable companies can undergo a revival. Through mechanisms such as the CIRP, stakeholders can implement strategies to rehabilitate these businesses, potentially restoring their operations and safeguarding jobs. This dynamic approach aims to mitigate losses for creditors and fosters a healthier business ecosystem where productive resources are utilised effectively, ultimately contributing to broader economic growth.

In essence, the IBC has transformed the landscape of distressed asset resolution in India, providing a structured, efficient, and market-driven approach that benefits both creditors and investors.

Impact of IBC on various sectors of the Economy

The IBC has significantly impacted various sectors of the Indian economy primarily focusing on resolving distressed assets, improving credit availability, revitalizing failing businesses and promoting financial stability. It has been credited with helping banks resolve distressed assets, revitalizing the real sector, and improving credit market conditions. While the IBC has led to increased recoveries, reducing Non-Performing Assets and strengthened bank balance sheets, it has also prompted banks to adopt more conservative lending practices, potentially impacting industries reliant on higher risk-taking by lenders.

Impact on Financial Institutions

- **Reduced NPAs**

  The IBC has been effective in resolving distressed assets, leading to a substantial reduction in NPAs and improved recovery rates for financial institutions.

- **Enhanced Recovery**

  IBC's streamlined resolution process has facilitated faster and more efficient recovery of debts owed to creditors, including banks.

- **Increased Creditor Confidence**

  By providing a clear framework for resolving insolvency, the IBC has boosted creditor confidence and encouraged lending, leading to increased access to credit for businesses, according to Juris Hour.

The table below presents a comprehensive comparative analysis of recovery outcomes achieved through three distinct channels: Debt Recovery Tribunal (DRT), SARFAESI Act, and IBC from Fiscal Year 2018 to Fiscal Year 2024 (source: Reserve Bank of India).

NPAs of Scheduled Commercial Banks Recovered through Various Channels (Amt in Rs Cr.)

FY	Recovery Channel	DRT	SARFAESI	IBC
2017-18	No. of cases referred	29345	91330	704
	Amount involved	133095	81879	9929
	Amount recovered	7235	26380	4926
	Amt recovered as % of involvement	5.4	32.2	49.6
2018-19	No. of cases referred	51679	235437	1152
	Amount involved	268413	258642	145457
	Amount recovered	10552	38905	66440
	Amt recovered as % of involvement	3.9	15.0	45.7
2019-20	No. of cases referred	33139	105523	1986
	Amount involved	205032	196582	224935
	Amount recovered	9986	34283	104117
	Amt recovered as % of involvement	4.9	17.4	46.3
2020-21	No. of cases referred	28182	57331	536
	Amount involved	225361	67510	135319
	Amount recovered	8113	27686	27311
	Amt recovered as % of involvement	3.6	41.0	20.2

2021-22	No. of cases referred	29487	249475	885
	Amount involved	47165	121642	199250
	Amount recovered	12114	27349	47421
	Amt recovered as % of involvement	25.7	22.5	23.8
2022-23	No. of cases referred	56198	187340	1262
	Amount involved	402753	111359	138715
	Amount recovered	39785	30957	54161
	Amt recovered as % of involvement	9.9	27.8	39.0
2023-24	No. of cases referred	31414	231407	1004
	Amount involved	106887	123363	163943
	Amount recovered	16202	30460	46340
	Amt recovered as % of involvement	15.2	24.7	28.3

Impact on Corporate Sector

- **Business Revival**

  The IBC emphasizes resolution over liquidation, offering distressed businesses a chance to restructure, revive operations, and continue generating value.

- **Improved Debt Structure**

  The Code has led to improved debt structures for distressed firms, resulting in better performance and increased R&D expenditure.

- **Reduced Costs**

  By streamlining the resolution process, the IBC has reduced the costs associated with resolving insolvency.

- **Entrepreneurship**

  The ease of exit provided by the IBC has fostered entrepreneurship and encouraged the creation of new ventures.

Impact on MSMEs

- **Improved Credit Access**

  Increased creditor confidence due to the IBC has led to better access to credit for MSMEs.

- **Faster Resolutions**

  The time-bound resolution process under IBC allows for quicker resolution of distressed MSMEs, containing value erosion and job losses.

- **Enhanced Recovery**

  Creditors have enjoyed better payment rates, making MSMEs more attractive to financiers and investors.

- Encouraging greater participation of MSMEs in the insolvency process, both as debtors and creditors, can strengthen the economy and create a more resilient entrepreneurial ecosystem.
- IBC has helped streamline the process of financial distress resolution. Prior to the introduction of the IBC, many MSMEs faced lengthy and cumbersome bankruptcy procedures, often resulting in prolonged uncertainty and losses.

Overall Economic Impact

- **Increased GDP**

  The IBC has the potential to contribute to GDP growth by promoting entrepreneurship, increasing credit availability, and improving the utilization of resources.

- **Improved Ease of Doing Business**

  The IBC has improved India's ranking in terms of ease of resolving insolvency.

- **Financial Stability**

  By promoting a more structured credit culture and addressing insolvency issues efficiently, the IBC contributes to overall financial stability.

- **Banking Sector**

  The IBC has significantly impacted banks by increasing recovery rates and strengthening their balance sheets, also leading to shift in lending practices. Increasing scrutiny of borrowers' financial viability, reflecting a more disciplined approach to credit risk assessment.

- **Power Sector**

  The impact of the IBC on the power sector has led to the phase-out of old activities, making room for new ones and preserving assets and projects.

  IBC facilitated the entry of new investors, who provided much-needed capital to previously stalled projects. With this influx of fresh funds, there was also an introduction of enhanced governance practices that emphasized transparency and operational efficiency. This revitalization process enabled projects to regain momentum, ultimately contributing to a stronger and more resilient energy and infrastructure landscape.

- **Real Estate**

  The IBC has provided a framework for resolving real estate projects, allowing for the completion of construction and delivery to home buyers even during insolvency proceedings. The IBC has held developers accountable for their actions, ensured project delivery, and increased transparency and accountability in the real estate sector.

  The IBC has made it more difficult for developers to delay projects or divert funds,

enhancing trust and confidence among homebuyers and investors.

The inclusion of homebuyers as financial creditors has held developers accountable for their actions and ensured project completion.

- **Manufacturing**

  The IBC has facilitated the rescue of businesses, saved jobs, and brought operational turnaround across sectors.

  IBC provides a structured and time-bound process for resolving distressed companies, allowing for the swift exit of unviable businesses and the redeployment of assets.

  Studies suggest that IBC lead to a reduction in the cost of debt for distressed firms, potentially improving their financial stability.

  A transparent and efficient insolvency process under IBC boosts investor confidence, both domestic and foreign, leading to increased investment in the manufacturing sector.

  Timely resolution of distressed assets ensures that manufacturers remain competitive in the global market, avoiding delays that can lead to operational inefficiencies. The threat of insolvency drives companies to innovate and adopt new technologies to stay competitive and improve their financial performance. The manufacturing sector relies heavily on capital investment, and IBC allows for the efficient allocation of these assets to more productive enterprises.

CONCLUSION

Behavioural shifts from implementing IBC and its accompanying regulations are distinctly observable across various sectors. This comprehensive framework fosters alternative approaches to dealing with distressed assets and encourages a more robust development of resolution plans tailored for struggling companies. IBC's profound influence can be seen in how it enhances market efficiency by instilling greater confidence among investors and creditors. As a result, industries ranging from manufacturing to services are adapting their strategies to align with new regulatory landscape, highlighting the Code's substantial effects on the overall economic environment.

In recent years, IBC and its accompanying regulations have significantly transformed landscape for resolving financial distress and recovering debts. Despite these advancements, it would be overly optimistic to declare that all aspects of the code are functioning flawlessly. Numerous challenges and systemic bottlenecks remain that require urgent attention to enhance the efficacy of the resolution process. One prominent issue is the prolonged timelines associated with insolvency proceedings, which can lead to increased costs and uncertainty for all parties involved. Moreover, the complexities surrounding the classification of claims and the priority given to different creditors are creating tensions and disputes, often resulting in protracted litigation. Addressing these challenges is crucial for ensuring that the IBC fulfils its intended purpose of facilitating the timely and efficient restructuring of financially distressed entities, leading to a more stable and resilient economic environment.

06

EMPOWERING THE FIDUCIARY ROLE OF INSOLVENCY PROFESSIONALS UNDER IBC: ALIGNING AUTONOMY AND ACCOUNTABILITY FOR BETTER OUTCOMES

Satish Sethi, Anchita Sood and Archana Sharma

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC/ Code) has fundamentally transformed the landscape of insolvency resolution in India by introducing a new class of professionals—Insolvency Professionals (IPs)—and positioning them as key pillar within its framework. Entrusted with crucial responsibilities, an IP navigates conflicting interests among stakeholders and works toward fulfilling the Code's objectives of maximizing the value of debtor assets in a time-bound manner and balancing the interests of all stakeholders. As a fiduciary agent of the Adjudicator, IPs must exercise autonomy while adhering to regulatory oversight that safeguards against misconduct and inefficiencies, fostering trust in the insolvency ecosystem.

With the advancement of digital infrastructure, sector-agnostic experience and innovative practices in the IBC landscape, there is growing potential to empower IPs with greater autonomy, which could enhance their performance and improve outcomes.

This paper provides a comprehensive analysis of the regulatory framework, jurisprudence, and the intricate relationship between autonomy and accountability for IPs. It delves into the challenges faced by IPs in managing stakeholder interactions and navigating the dynamics of their fiduciary role. A survey conducted with IPs and insolvency professional agencies (IPAs) offers insights into their perceptions and feedback on the current practices.

Additionally, a comparative analysis of international jurisdictions, including the United States, United Kingdom, Singapore, and Australia, offers insights into best practices that could inform reforms in the Indian context.

The paper proposes reforms aimed at strengthening the regulatory framework for IPs, including strategies to enhance their professional autonomy while maintaining accountability. These initiatives focus on advanced training, capacity building, and fostering collaboration among IPs, regulatory bodies, and the other stakeholders.

In conclusion, the paper contributes to the discourse on insolvency practice in India, advocating for reforms that strengthen the fiduciary role of IPs. By aligning autonomy and accountability, the proposed reforms aim to improve the integrity and effectiveness of the insolvency resolution process, leading to sustainable outcomes for distressed entities and the economy as a whole.

Keywords: Insolvency Profession, Insolvency Professionals, Regulatory Framework, Regulatory Oversight, Fiduciary Role, IP's Role Assessment, Best Practices, Professional Autonomy, Digital Transformation, Accountability, Professional Ethics, Integrated IBC Ecosystem, Emerging Jurisprudence.

INTRODUCTION

The enactment of the Code introduced the profession and regulatory framework for IPs in India. Over the last eight years, since its inception, the IBC has emerged as a significant piece of economic legislation for reorganizing and resolving distressed businesses. The jurisprudence surrounding the Code has evolved and continues to develop, contributing to its role as an effective mechanism for addressing insolvency.

One of features of Code is that it seeks to balance the rights of all stakeholders by adopting a "creditor-in-control" and professionally managed model wherein the driving force of the insolvency resolution mechanism (including interim management of the debtor) is with an independent, regulated but private IP, working under the overall supervision of a committee of creditors (CoC).[1] This approach is designed to streamline the resolution process by transferring the responsibility of supervision from the court or tribunal to the IP, thereby ensuring a more efficient and time-bound mechanism. The institution of IPs serves as a crucial intermediary in the resolution process. As noted by the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India,*[2] IPs function as the *"backbone of the corporate insolvency resolution process,"* assuming multifaceted responsibilities that demand both expertise and integrity. By placing the IP in charge of the interim management of the debtor, it also mitigates the risk of promoters engaging in delaying tactics, as the control over key operational and managerial decisions is vested in an independent professional. This shift not only reduces the burden on judicial authorities but also fosters greater accountability and transparency in the resolution process.

METHODOLOGY

In this research, the researchers have used a survey method to assess the current market position of IPs and their perceptions regarding their roles within the Indian insolvency ecosystem. Complementing the survey, informal interviews were conducted with IPs to gain deeper, qualitative insights.The survey focused on key areas such as professional autonomy, overlaps in responsibilities, stakeholder influence, and the adequacy of regulatory frameworks. The findings from the respondents revealed both systemic challenges and potential opportunities for reform, offering valuable perspectives for enhancing the current insolvency framework. Further, secondary resources like IBC, IBBI-Newsletters, reports, discussion papers etc have been referred to understand the current position of these issues and formulate recommendations.

The views expressed in this research paper are solely those of the authors based on the independent survey conducted in their personal capacity. This paper is intended for informational purposes only and should not be used as a guide for making or recommending

[1] Adv. Sahil Arora, *Analysis on Role and Responsibilities of Insolvency Professionals in the Corporate Insolvency Resolution Process*, IBC Laws Blog.
[2] (2019) 4 SCC 17.

any actions or decisions, whether commercial or otherwise. Readers are advised to conduct their own research and/or seek professional advice before taking any actions or decisions related to the topics discussed in this paper.

EVOLUTION OF IP ROLE UNDER IBC

The role of IPs has evolved significantly since the IBC's inception. The Bankruptcy Law Reforms Committee (BLRC, 2015) envisioned IPs as independent professionals who would bring efficiency and expertise to the resolution process.[3] However, as the regime has evolved, the delicate balance between professional autonomy and regulatory oversight has emerged as a critical challenge. This challenge is particularly significant given the quasi-judicial nature of IP functions, as reinforced in *Gujarat Urja Vikas Nigam Limited v. Mr. Amit*.[4]

Section 3(19) of IBC defines insolvency professional as "insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.[5]

Currently, there are over 4500+ IPs registered with the Insolvency and Bankruptcy Board of India (IBBI/Board).[6] These professionals play a pivotal role in the effective implementation of insolvency laws, exercising significant authority over debtors and their assets. They are entrusted with the responsibility of safeguarding assets, protecting the interests of creditors and employees, and ensuring impartial application of the law.

IPs undertake diverse roles depending on the stage of the insolvency process. During the resolution process, they serve as Interim Resolution Professionals (IRPs) and Resolution Professionals (RPs), while during liquidation, they fulfil the role of liquidators.

Section 208 of the Code establishes the foundational obligations of IPs, while various regulations and guidelines provide operational details.[7] Chapter IV deals with the disciplinary framework.[8] Section 235A provides punitive measures for non-compliance like monetary penalties, professional disqualification, and criminal liability in specific cases.[9]

The journey of the insolvency profession can be charted in three distinct phases; Initial Phase, Consolidation Phase and the Maturity Phase. The initial phase (2016-2018) had laid down focus on establishing basic operational framework, there were limited precedents and guidance and potential for high learning curve for professionals. This was followed with the Consolidation Phase (2019-2021) which witnessed the development of jurisprudence through landmark cases, coupled with enhanced regulatory framework and standardization of practices. The present phase (2022-present) involves sophisticated handling of complex cases, integration of technology and enhanced focus on professional development.

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[3] The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design, November, 2015.
[4] Gupta (2021) SCC Online SC 194.
[5] The Insolvency and Bankruptcy Code, 2016, §3(19).
[6] https://ibbi.gov.in/hi/ips-register/view-ip/1?page=226.
[7] The Insolvency and Bankruptcy Code, 2016, § 208.
[8] The Insolvency and Bankruptcy Code, 2016.
[9] *Id.*

THE THEORETICAL FRAMEWORK OF FIDUCIARY ROLE

The fiduciary role of IPs is grounded in established principles of insolvency law and corporate governance. Finch (2022) articulates that insolvency practitioners occupy a unique position of trust, requiring them to balance diverse stakeholder interests while maintaining professional independence. This theoretical understanding is further enhanced by Goode's (2021) analysis, which emphasizes the dual nature of IP responsibilities - both as officers of the court and as professionals managing distressed assets.

Core elements of Fiduciary Duty

The fiduciary obligations of IPs encompass several key elements including:

- *Duty of Care*: Requiring professional competence and diligence in managing the estate
- *Duty of Loyalty*: Mandating prioritization of estate interests over personal interests
- *Duty of Disclosure*: Ensuring transparent communication with stakeholders
- *Duty of Impartiality*: Maintaining fairness in dealing with competing interests

Professional autonomy and Fiduciary Duties

Autonomy is indispensable for IPs to fulfil their roles effectively. The IP exercises the powers in fiduciary capacity to protect the interest of stakeholders and as an officer of the court. He is expected to imbibe the highest standards of ethics and professionalism while conducting a fair and rule-based process. Professional autonomy in the insolvency sector can broadly be defined as the ability to take operational as well as commercial decisions without unnecessary delays or the need for prior approval, enabling IPs to act efficiently and transparently in resolving distressed assets.

The complex and dynamic nature of insolvency resolution demands that IPs exercise sound professional judgment, discretion, and flexibility in decision-making. For example, during the resolution process, IPs serve as IRPs and RPs, gaining control over the management and operations of the Corporate Debtor (CDs). They are tasked with forming CoCs, verifying claims, and preparing information memoranda, all of which require independence and impartiality. Similarly, during liquidation, IPs act as Liquidators, overseeing the sale of assets, settling claims, and ensuring the fair distribution of proceeds. Each of these functions necessitates that IPs operate without interference, allowing them to make decisions that are objective, creative, and tailored to the unique circumstances of each case.

Professional autonomy also fosters innovation in resolving distressed businesses. Given the diversity of industries and operational challenges faced by CDs, a one-size-fits-all approach is impractical. IPs need the freedom to design and implement solutions that best serve the interests of creditors and other stakeholders, while aligning with the objectives of the IBC.

In a survey conducted by researchers, registered IPs were asked –*"How do you define professional autonomy as an IP under the IBC?"*

The researchers found that there is a nuanced understanding of professional autonomy for IPs under the IBC framework. Professional autonomy, as defined by the IPs, involves taking independent commercial decisions, avoiding conflicts of interest, and acting as neutral facilitators between creditors, debtors, and other stakeholders. However, this autonomy must be exercised within the boundaries of regulatory oversight and stakeholder expectations, striking a balance that fosters trust and collaboration.

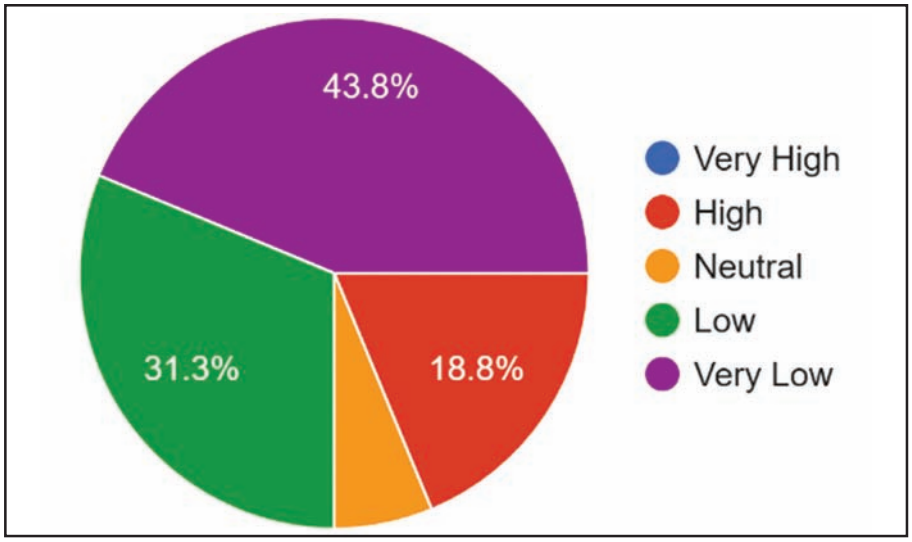
The responses suggest that while the current framework provides a foundation for professional independence, reforms such as streamlined processes, minimal but effective oversight, and stakeholder support are critical to enhancing the autonomy and effectiveness of IPs in achieving the objectives of the IBC.

Further, the need for a balanced approach where IPs can exercise independence in their decision-making while adhering to the regulatory framework has been observed during the survey.

Hon'ble Supreme Court in the *Swiss Ribbons Case*[10],established IPs as officers of the court, reinforced their quasi-judicial status and emphasized need for independence.

Autonomy is inherently tied to accountability, ensuring that all decisions are taken in the best interest of stakeholders and within the ambit of the Code.Professional autonomy involves minimizing conflicts of interest and ensuring that processes completion is timely and seamless. Researchers also noted the importance of independence from excessive influence, emphasizing that IPs should be empowered to discharge their duties as neutral facilitators of resolution without external pressures.

Moreover, there is recognition of the diverse perspectives among stakeholders, including creditors, debtors, employees, and regulators, which require the IP to navigate a complex ecosystem. Further IPs were asked – *"How would you rate the level of autonomy provided to IPs under the current IBC framework?"*



[10] 2019

The responses received suggest that while there is some recognition of the autonomy granted, there is a strong call for reforms to improve the IPs' professional independence and their ability to manage the insolvency process with minimal interference.

Stakeholder involvement vis-a-vis independence of IPs

(I) Role of Committee of Creditors (CoC)

The insolvency resolution process under the IBC mandates significant involvement of stakeholders, particularly the CoC, which holds decision-making authority. The CoC—comprising primarily financial creditors—is empowered to approve resolution plans, oversee interim financial arrangements, and replace the IP if deemed necessary.

While this collaboration aims to align the interests of all parties, it often creates challenges for the independence of IPs. To understand the influence of stakeholders during a corporate insolvency resolution professional (CIRP), IPs were asked – *"Do you believe that IPs are able to act independently when resolving insolvency proceedings, or are they overly influenced by any particular stakeholder?"*

The survey responses shed light on the challenges faced by IPs in maintaining their effectiveness while resolving insolvency cases under IBC. A key concern raised by many respondents is the intricacies involved in their role with the CoC.

The Code read with regulations made thereunder has demarcated responsibilities of an IP and of the CoC in the CIRP and also assigned certain responsibilities to them jointly. An IP is an officer of the court and while acting as an IRP or RP, IP is vested with an array of statutory and legal duties and powers. He exercises the powers of the board of directors of the CD, manages the operations as a going concern, protects the value of its property and complies with applicable laws on its behalf. On the other hand, the Code shifts the control of a CDto creditors represented by a CoC for resolving its insolvency. The CoC holds the key to the fate of the CD and its stakeholders as commercial wisdom of the CoC holds paramount status in determination of outcome of the process.[11] Several actions under the Code require approval of the CoC.

There are certain matters where both the IP and the CoC have defined roles. Various actions under section 28 are taken by the IP only with the prior approval of the CoC like vetting of resolution plan by IP and consideration by the CoC.[12] The Code does not envisage IP or CoC assuming the role of the other. In the case of *Swiss Ribbons Pvt. Ltd v. Union of India (2019) the Supreme Court*[13] clarified that the RP issimply a facilitator in the CIRP, and their administrativeduties are supervised by the CoC and the AA.

However, researchers have noted that many IPs perceive that there are overlapping responsibilities with the CoC due to their intricate roles outlined in the Code read with

[11] K. Sashidhar v. Indian Overseas Bank & Ors., Judgement dated 5thFebruary, 2019, Hon'ble Supreme Court
[12]Supra Note 3.
[13] Swiss Ribbons Pvt. Ltd v. Union of India, 2019, SCC Online SC 73 decided on 25thJanuary, 2019.

regulations. This leads to lack of clarity, ambiguity and scope for assuming other's role.Such scenarios give rise to undesirable conflictsin the conduct of the process. However, at the same time, the CoC, as primary decision-making body, provides essential inputs that IPs seek to integrate effectively while upholding the principles of fairness and impartiality outlined in the Code. Despite these complexities, IPs continue to exhibit resilience in fulfilling their fiduciary responsibilities.

Suggestion: Stakeholder involvement, especially from the CoC, is an integral part of the collaborative insolvency process. However, to ensure better outcomes, there is a need to refine the working relationship between IPs and CoC members, fostering mutual respect for roles and responsibilities. Further, the establishment of a specific code of conduct for CoC members has emerged as a critical recommendation from the survey.

The Hon'ble High Court of Delhi in the matter of *Mr. Kunwer Sachdev, ex Director of Su-Kam Power System Ltd v. CoC members*[14] sought to develop a framework toensure effective monitoring and functioning of the CoC.It observed that the CoC is entrusted with fiduciary duties as per the law passed by the Parliament. It emphasized on following the Wednesbury principle of reasonableness and proportionality as a part of executive actions as once a decision is taken, the aggrieved party is left with no remedy and therefore 'Code of Conduct' for CoC to be based on the principles of integrity, objectivity, professional competence, due care and confidentiality. It also noted the need to provide an effective grievance redressal mechanism.The IBBI has issued the *Guidelines for the Committee of Creditors*in August 2024. These guidelines outline nine key checkpoints that CoC members must follow to ensure an effective, informed, and timely decision-making process during the resolution of a CD. Designed as self-regulating measures, the guidelines aim to mitigate value erosion by reducing procedural delays and promoting transparency, coordination, and a streamlined approach to decision-making within the CoC.

A well-defined code of conduct could further strengthen the framework by ensuring they operate within the boundaries of their designated responsibilities. Such a framework would also promote fairness and transparency in CoC proceedings, ensuring that all creditors, including minority stakeholders, are heard and their interests considered.

(II) Promoter Interference

Another challenge faced by IPs is the interference of promoters, who, in some cases, attempt to misuse the insolvency process to retain informal control over the corporate debtor. The influence is often exerted through non-cooperation in transferring control and custody of the CD's assets and properties, or by engaging in frivolous applications, appeals, and other judicial processes.Such influence and interference often complicate the ability of IPs to impartially fulfill their fiduciary responsibilities and can delay the resolution process. However, promoters are not always adversaries. Many IPs view them as potential collaborators in achieving

[14] Hon'ble High Court of Delhi Order in a Writ Petition Order dated 12th February, 2024, in the matter of Mr. Kunwer Sachdev, Ex Director of Su-Kam Power System Ltd v. CoC Members - W.P.(C) 10599/2021 and CM APPLs. 32697/2021, 25107/2023, 61523/2023 and 62100/2023.

successful resolutions. By fostering open communication and building trust, IPs can work constructively with promoters to align the resolution process with the goal of maximizing value for creditors and other stakeholders. This balanced approach helps maintain the integrity of the insolvency process while leveraging the promoter's insights to facilitate smoother operations.

Suggestion: Promoter interference may be addressed by strengthening legal safeguards to prevent misuse of the insolvency process and granting IPs greater authority to ensure compliance.

Overlaps in Duties, Functions, and Powers of Insolvency Professionals

(I) Addressing Non-Cooperation: Strengthening IP Authority through Existing Provisions

From the responses received during the survey, researchers have observed that one critical issue according to IPs is the limited authority granted to IPs to enforce compliance. While the Code outlines their responsibilities, such as running the CD as a going concern, it does not equip IPs with adequate mechanisms to address non-cooperation from stakeholders like promoters or CD management. This gap restricts their ability to adhere to strict timelines and manage processes effectively.

The Hon'ble Supreme Court, in landmark cases, has reinforced the importance of IP autonomy and clarified the boundaries of stakeholder intervention. The Hon'ble Supreme Court has also in the matter of *Essar Steel Case* (2020) clarified scope of commercial decisions, established limits of stakeholder intervention and protected IP's autonomy in professional judgments.Similarly, in the matter of *Videocon Industries Case* (MA 2385/2019) the court addressed complex group insolvency, enhanced IP powers in consolidated proceedings and established coordination protocols.

Existing Provisions to Address Non-Cooperation

The legal framework already contains provisions designed to address stakeholder non-cooperation:

Section 19(2) of the Insolvency and Bankruptcy Code: This section empowers the Adjudicating Authority to compel the CD and its management to cooperate with the RP. While the section does not specify the types of orders that can be issued, its broad scope is instrumental in addressing non-cooperation. Recently, the Adjudicating Authority, in the case of *M/s Educomp Infrastructure & School Management Limited & Anr.*, held the CD liable under Section 70 of the Code for non-cooperation and non-submission of information. Section 70 provides for penal consequences for misconduct during the CIRP, further reinforcing the IP's position. Section 70 is a generalprovision penalising any parties who are liable for misconduct in the CIRP.[15]

[15] Suggestions for Strengthening Insolvency & Bankruptcy Code, IICA,https://iica.nic.in/images/Policy-Strengthening-IBC.pdf.

Regulation 30 of the CIRP Regulations:This regulation allows IPs to seek assistance from local district administrations to fulfill their duties. Such assistance can include access to crucial documents, enforcement of compliance, and mediation of disputes. However, it is observed that, in practice, the provision is not being fully relied upon as intended.[16]

Suggestion: Encouraging IPs to utilize these provisions could enhance their ability to gain cooperation from promoters and other stakeholders, particularly when faced with resistance. The local district administration could help by facilitating access to documents, ensuring compliance, and mediating disputes. To improve accountability and autonomy, IBBI and IPAs should actively promote awareness and provide guidance on its effective implementation.

Effective utilization of section 19(2) and Regulation 30 could greatly enhance the efficiency of the resolution process, ensuring prompt cooperation from stakeholders and minimizing delays.

(II) Conflicting Pressures from Dual Accountability Mechanisms

The dual accountability of IPs to both regulatory bodies, such as the IBBI and IPAs, as well as to the CoC, requires balancing diverse expectations and duties. While these mechanisms are intended to ensure transparency and accountability, the overlapping expectations can leave IPs vulnerable to both stakeholder demands and regulatory scrutiny. This dual burden often compromises their autonomy, particularly when powerful creditors or other stakeholders exert influence over their decisions.

In the 27th meeting of Financial Stability and Development Council (FSDC) held on 8th May, 2023, it was advised that regulators should adopt a focused approach to reduce the compliance burden. Accordingly, IBBI has issued a discussion paper on June 10, 2024 titled -*Discussion paper on Reducing Compliance by Review of CIRP Forms submitted by Insolvency Professionals (IPs) to IBBI*. The proposed amendment will simplify the compliance process for IPs, making it more efficient and user-friendly. It will reduce redundant submissions, streamline reporting through a centralized IBBI platform, and ensure compliance deadlines are better spaced out. Adjusting compliance deadlines will ensure that IPs can provide higher-quality information without the pressure of overlapping submissions, resulting in more accurate and insightful datasets. These changes will not only support IPs in exercising autonomy and accountability but will also create a more robust foundation for researchers to study trends, evaluate regulatory impacts, and propose further enhancements to the insolvency ecosystem.

Despite these challenges, some IPs believe they do enjoy a reasonable level of independence, though it is often curtailed by the CoC's dominance. The responses point to an urgent need for reforms to better protect IPs from undue influence, clarify the role and conduct of the CoC, and ensure that IPs can function as impartial fiduciaries. Strengthening safeguards, promoting ethical practices, and ensuring that IPs dedicate themselves fully to their role could go a long way in enhancing their independence and effectiveness.

[16] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 30.

Many IPs are committed to enhancing their skills, specializing in industry-specific resolutions, and staying updated on evolving practices under the IBC. This focus on professional development not only empowers IPs to handle cases more effectively but also strengthens the overall insolvency ecosystem.

While challenges exist, they are being met with resilience, innovation, and a commitment to professionalism. With continued reforms, enhanced safeguards for independence, and a focus on fostering collaboration among stakeholders, IPs are well on their way to becoming the cornerstone of India's insolvency resolution framework. Their growing expertise and dedication to their fiduciary role inspire confidence in the system and pave the way for better outcomes for all stakeholders.[17]

AUTONOMY AND ACCOUNTABILITY: A DELICATE EQUILIBRIUM

By dint of the process, the control of the CD is legally endowed to the CoC, which generally consists of the financial creditors. The CoC is considered as a decisive authority in the decision-making process during the insolvency resolution and is empowered with the control of the CD. Every action of the resolution professional necessitates ratification of the CoC. Nonetheless, the paramount responsibility of the CoC is to examine and approve the most appropriate resolution plan in compliance with section 30(4) of the Code. Once the resolution plan is approved by the CoC, it is submitted before the NCLT for its approval. Subsequently, when the NCLT approves the resolution plan, it operates as a formal order and is legally binding on all the stakeholders.[18]

In the case of *the Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors. (2019)*,[19] the Supreme Court ruled that the role of the RP is not that of a judicial authority. Instead, they serve as a facilitator, for gathering and verifying the creditor's claims. In addition to their other responsibilities, the responsibility of a resolution professional also includes creating the CoC, scheduling and conducting committee meetings, inviting resolution proposals, and presenting them to the committee for their consideration and approval. The court emphasised that it is essential for the resolution to ensure that the resolution plan is comprehensive in all aspects. They are required to conduct a due diligence report and submit it to the committee to ensure compliance with the requirements during the resolution process. It was made clear by the court that the resolution professional does not possess any powers; they cannot independently reject any claim or resolution plan. Their actions are limited to following the instructions given by the CoC.

This clearly highlights that the ultimate authority in the insolvency resolution process is vested in the CoC, which holds decisive control over the corporate debtor and plays a pivotal role in the decision-making process. IPs on the other hand, have a relatively restrictive role,

[17]5a329903ead7ae33c84a14f24d5c53c1.pdf.

[18]Srushti S Kekre and Akshay Shrivastava, *Autonomy to Accountability: Code of Conduct Setting Standards of Transparency,* https://www.irccl.in/post/autonomy-to-accountability-code-of-conduct-setting-standards-of-transparency.

[19]Committee Of Creditors of Essar Steel v. Satish Kumar Gupta on 15 November, 2019.

as their actions and decisions are heavily reliant on the approvals and directions of the CoC. The CoC not only evaluates and approves critical aspects such as the resolution plan but also oversees the functioning of the IP, thereby asserting its primacy in the resolution framework.

The autonomy issues encompass several dimensions in the conduct of the process like operational independence, decision-making authority, stakeholder collaboration, limited protection in operational choices and unclear boundaries of authority. Then, there are resource controls including restricted access to company records, limited financial autonomy and dependencies on CoC. There are challenges in stakeholder management due to complex stakeholder dynamics, inherent hostility by suspended board of directors, conflicting interests of management, power imbalances in decision-making. Overall, there are professional challenges due to structural issues like infrastructure limitations, inadequate technological support and limited access to professional resources. The market dynamics impact the fee structure, assignment concentration and involves competition challenges. In process execution, there are operational hurdles like timeline management difficulties, information asymmetry, coordination challenges and resource constraints.

However, despite their restricted autonomy, IPs carry the highest burden of accountability in the entire resolution process. They are responsible for ensuring that the process is conducted in a fair, transparent, and time-bound manner, while adhering to the legal framework and protecting the interests of all stakeholders involved. The significant weight of this accountability often places IPs in a challenging position, as they must navigate complex situations where the interests of various stakeholders may conflict.

NEED FOR INSOLVENCY PROFESSIONAL STANDARDS

To strike a balance between their limited autonomy and heightened accountability, IPs often exercise their professional judgment with utmost care and diligence. They operate within the boundaries defined by the CoC while ensuring that their actions uphold the sanctity of the insolvency resolution process and align with the principles and objectives of the Insolvency and Bankruptcy Code. This careful balancing act is not just about compliance but also about safeguarding the trust and confidence of stakeholders in the insolvency framework. By maintaining transparency, fairness, and strict adherence to the law, IPs play a critical role in preserving the integrity and effectiveness of the insolvency resolution process, despite the constraints imposed by their dependence on the CoC.

The Board as well as IPAs have issued facilitation documents to aid the IPs in performing their duties like handling CIRP, liquidation process, Role of IP in Avoidance Transactions, Avoidance Transactions - Red Flag Document, Role of the Government and its Agencies in the Corporate Insolvency Resolution and Liquidation Processes, Mistakes Committed by IPs, etc.[20] However, the available repository on statement of best practices formulated so far is quite limited, highlighting the necessity for a broader scope and continuous improvement.

To address this issue, it is proposed that professional standards may be introduced. These

[20] Legal Framework, Facilitation, IBBI website.

standards would offer guidance to IPs facing similar situations, promoting consistency in approach and ensuring uniformity.[21]

In professional fields, standards refer to a set of established guidelines, norms, principles, procedures, and best practices that outline the recommended methods and steps for accomplishing tasks, projects, or services in a consistent and effective manner. These standards are designed to ensure quality, efficiency, consistency, and reliability in the delivery of products or services while adhering to industry-specific norms and professional requirements. They help professionals achieve uniformity, consistency, and excellence in their work, regardless of the nature of assignment involved.[22]

While a code of conduct is available for IPs, it primarily outlines the expected standards of behaviour. Professional standards, if introduced, could provide guidance on performance through a consistent, uniform, and systematic approach, irrespective of the wide-ranging scenarios. These standards would focus on demonstrating the code of conduct in practice while adhering to the contours of established practice guidelines.

Presently, the Indian insolvency law deals primarily address the corporate sector and personal guarantors, with the Indian corporate realm placing significant emphasis on standards across various fields to ensure transparency, consistency, and the protection of investor interests. The Companies Act, 2013 establishes the framework for secretarial, accounting, auditing, and cost accounting standards, with the Central Government empowered to prescribe and update these standards. Directors confirm adherence to applicable accounting standards in their Responsibility Statement, and auditors examine the accounts in line with established standards. These standards govern major processes in the corporate sector, mirroring global practices in other economies. [23]

Therefore, professional and process standards are crucial in ensuring consistent quality, efficiency, and compliance with industry-specific laws, ultimately enhancing practitioner performance and fostering trust among clients, customers, and stakeholders.

The insolvency practice standards are expected to bring uniformity, consistency, and efficiency in the processes. This will result in multi-fold benefits to all the stakeholders involved like –

(i) Standardization and consistency

(ii) Facilitating achievement of objectives of the Code

(iii) Facilitating judiciary and reducing litigations

(iv) Enhanced compliance standards

[21] https://ibbi.gov.in/uploads/publication/c9800578f99e42c11b5573b4686fb545.pdf.
[22] *Id.*
[23] SupraNote 21

Suggestions:

(i) ***Development of Practice Standards :*** *The IBC has established a robust insolvency law architecture. While it is acknowledged that the achievement of objectives of the Code does not entirely rest upon the IP, however, the legal framework can be augmented by a systemically developed framework of practice standards formulated in view of the experience gained, prevailing conditions and the potential reforms.*

(ii) ***Peer Review Mechanism*** *: the practice standards could be supported by a peer review mechanism.Where a a committee of experienced IPs may be established to review and guide their peers. Such committees would provide constructive feedback and promote adherence to best practices, ensuring accountability while preserving the autonomy of IPs. This balanced approach would enhance both the credibility and effectiveness of the profession*

(iii) ***Pooling resources for best practices****- In insolvency cases, especially complex ones, it can be beneficial to pool resources, expertise, and skills. Researchers suggest establishing resource pooling mechanisms where IPs can collaborate with other professionals, such as legal experts, financial advisors, and auditors, to share insights and provide holistic solutions. This approach would improve the quality of decision-making and lead to more efficient resolution outcomes.*

INTEGRATION INTO THE DIGITAL ECOSYSTEM

The Report of Colloquium on Functioning and Strengthening of the IBCEcosystem had recommended for an integrated technologyplatform for the insolvency ecosystem. It had proposed for development of a standardised template for an effective case management.[24]

The Ministry of Corporate Affairs (MCA) in its consultation paper seeking comments on proposed changes to the Code had advocated the need for use of technology in the IBC ecosystem.[25] Further, The IBBI has also emphasised the need for digitalisation of IBC.[26]

While the recommendations for digitalization and integrated technology platforms align with global best practices, their successful implementation requires thoughtful adaptation to the unique challenges of the IBC ecosystem. A unified, end-to-end platform could eliminate redundant reporting processes by enabling single-entry submissions for multiple stakeholders like the NCLT and IBBI.

Suggestion: *Researchers also emphasize the need to equip IPs with advanced tools like AI for asset tracing and data analytics.*

[24] Report of Colloquium on Functioning and Strengthening of the IBC ecosystem, November, 2022.
[25] Ministry of Corporate Affairs, Notice – "Invitation of comments from the public onchanges being considered to the Insolvency and Bankruptcy Code, 2016", January 18, 2023.
[26] IBBI Quarterly Newsletter, January-March, 2023.

These technologies, if implemented with user-friendly designs and supported by training programs, would enhance the decision-making capabilities of IPs, allowing them to manage cases with greater independence. By automating routine processes, IPs can focus on their core responsibilities, reducing dependence on stakeholders like the CoC for minor procedural tasks.

At the same time, digitalization may enhance accountability by embedding transparency into the system. Features like audit trails, real-time updates, and centralized platforms can ensure actions taken by IPs are well-documented and accessible for review, building trust among stakeholders.

Thus, by empowering IPs with greater autonomy through technological tools while ensuring robust accountability mechanisms, digitalization has the potential to create a more balanced, efficient, and transparent insolvency resolution process.

Furthermore, for the development of digital infrastructure researchers suggests the following:

(i) ***Historical Case Data***: *A repository of historical insolvency cases, including outcomes, challenges, and resolutions, could be developed. It could serve as a valuable reference for best practices, offering insights to IPs and regulatory bodies on effective resolution strategies.*

(ii) ***Collaboration Tools***: *Research has shown that seamless collaboration is essential for successful insolvency resolutions. Integrating collaboration tools into technology platforms would enable CoC members, legal teams, auditors, and IPs to engage in efficient discussions, share documents, and make joint decisions in a secure environment. This would contribute to more informed, timely, and well-coordinated actions.*

(iii) ***Centralized Database***: *Researchers propose the better utilization of a centralized, accessible database that houses key documents such as financial statements, historical case data, and legal records. This repository would enable stakeholders to access standardized, reliable information in real-time, reducing data discrepancies and improving decision-making. A centralized database could significantly reduce delays caused by the manual collection of information.*

(iv) ***Public Access and Transparency***: *From a transparency standpoint, researchers emphasize the importance of making relevant information publicly available through a well-organized repository. Allowing stakeholders such as investors, creditors, and the general public to access critical insolvency case data would enhance trust in the insolvency system. Public access to such information would increase the accountability of all parties involved and foster an environment of fairness and equity.*

CONCLUSION

To enhance the effectiveness of IPs, several reforms may be considered to empower them in fulfilling their responsibilities more efficiently and effectively. First, processes under the insolvency framework may be streamlined and standardized to ensure greater consistency and efficiency. This could include simplifying procedural requirements, reducing redundancies, and leveraging technology to enable smoother operations, thereby allowing IPs to focus more on critical decision-making rather than administrative tasks.

Second, fostering a collaborative and transparent relationship between IPs and creditors may play a crucial role in improving the resolution process. By encouraging open communication, mutual trust, and active engagement between the two, decision-making can become more consensus-driven and less contentious, ultimately leading to better outcomes for all stakeholders. Mechanisms such as structured consultations and regular updates to creditors may further strengthen this collaborative environment.

The existing framework under the IBC provides a reasonable degree of independence for IPs; however, this autonomy is often constrained by the dominant role of the CoC. The significant influence exerted by the CoC over critical decisions within the resolution process underscores the urgent need for reforms to protect IPs from undue interference and ensure their ability to function as impartial fiduciaries.

To address these challenges, reforms should focus on clarifying the roles and conduct expected of the CoC. Establishing well-defined boundaries and guidelines for CoC interactions with IPs will create a more balanced and transparent resolution process. Promoting ethical standards and encouraging full-time dedication to the profession are critical steps to enhance the credibility and effectiveness of IPs.

Additionally, implementing robust safeguards, such as statutory protections for good-faith decisions, can empower IPs to act independently without fear of retaliation or excessive scrutiny. Comprehensive training, peer review mechanism, professional development and resource pooling initiatives would further equip IPs to handle the complexities of insolvency resolution effectively. Together, these measures can strengthen the autonomy and accountability of IPs, thereby fostering trust in the insolvency framework and achieving better outcomes for all stakeholders.

Finally, regulatory authorities may consider adopting a “soft-touch” oversight approach to strike a balance between accountability and autonomy for IPs. Such an approach may involve providing guidance, setting clear expectations, and monitoring adherence to the law without micromanaging or imposing excessive regulatory burdens. This would allow IPs the flexibility to exercise their professional judgment while ensuring that they operate within the legal and ethical framework of the Code. Additionally, capacity-building initiatives such as regular training and access to best practices may also enhance the competence and confidence of IPs, further contributing to the effectiveness of the insolvency resolution process.

07

RELIEFS, WAIVERS AND CONCESSIONS IN RESOLUTION PLAN

Siddharth Jain, Ajanta Gupta and Shiv Anant Shanker

ABSTRACT

This paper examines the kinds of reliefs, waivers, and concessions sought in the resolution plan submitted in the corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC/Code). It analyses judicial scrutiny of such requests made before Adjudiciating Authority (AA) in the Code, and litigation risks arising from condition precedents. Drawing insights from 75 CIRP cases, the study assesses the kinds of relief and concessions sought, manner it has been granted by AA and proposes recommendations to enhance and expedite the insolvency resolution framework under IBC in India.

INTRODUCTION

Reliefs, waivers and concessions in the resolution plan have become the important elements and can have a severe impact on the viability and success of a resolution under IBC. When submitting an application for the approval of the resolution plan before the AA, the resolution applicants (RAs) typically ask for a number of reliefs and concessions, including waivers, as part of the resolution plan. Furthermore, it's common to see that some requests for resolution plans permit the inclusion of condition precedents in the plan.

To facilitate to resolve the debtor's financial problems, creditors may consent to waive some of their claims for making the resolution plan agreeable to all parties concerned may depend on this. Further, in the context of the resolution plan, various reliefs, exemptions, and concessions have been requested in relation to certain investigations, procedures, suits, claims, disputes, etc. A resolution plan usually contains clauses waiving specific legal rights of stakeholders or creditors, such as the ability to file a lawsuit against the debtor while the plan is being implemented. The reliefs, waivers and concessions that pertain to other governmental authorities/departments are also being sought by the RA. Moreover, penalties imposed by Registrar of Companies (ROC) for non-compliance of statutory filings by the erstwhile management has also been found. Licences and benefits in the name CD to continue with Successful Resolution Applicant (SRA) without payment of any penalties thereto are also included.

Regarding the request made by the RAs for such reliefs, concessions, and waivers in the

consideration of the resolution plan, the Code is silent. Furthermore, considering that the Committee of Creditor's (CoC) wisdom is unquestionable, apart from their claims, they are not permitted to proactively suggest these concessions and reliefs beyond the contours of the existing law and thus, the RAs are fervently pleading for them in front of the AA. Similarly, during liquidation also, such waivers and concessions have been sought for sale as a going concern.

National Company Law Tribunal (NCLT) reviewed these proposals for concessions, waivers, and reliefs in the resolution plan in each and every case. While many of the reliefs, waivers, and concessions requested by the RA are under the authority and jurisdiction of various government departments or authorities, while some are explicitly covered under the Code. This has created a substantial grey area and room for litigation, which the judiciary has to make a continuous effort to fill the gap, which could result in delays in approving the resolution plan or rejecting the unfeasible resolution plan for Condition precedents. This paper comprehensively analyses reliefs, waivers, concessions and monitoring committees within the CIRP framework in India. It draws insights from orders passed in 75 CIRP cases, the research provides a nuanced examination of the efficacy and shortcomings of the existing mechanisms. By scrutinizing the practical application of reliefs sought and granted, the study aims to highlight observations and propose strategic suggestions for enhancing the CIRP landscape.

OBJECTIVE OF THE PAPER

To streamline the uncertainties with regard to reliefs, waivers and concessions in the resolution plan for timely approval of resolution plan by reducing the delays caused due to litigation in seeking such reliefs, waivers and concessions by the RAs, and suggest recommendations to expedite the approval of resolution plan effectively and efficiently.

KINDS OF RELIEFS, WAIVERS AND CONCESSIONS SOUGHT

"Relief and concessions" refer to a combination of measures utilized to alleviate a burden or hardship, typically by offering a reduction, exemption, or special privilege; in other words, giving someone a break or an advantage in a particular circumstance; "concessions" are specific benefits or allowances granted to achieve that easing, while "relief" is the act of easing a problem. This phrase may be used in corporate agreements (rent concessions, price reductions), government policies (tax relief, import concessions), or private circumstances (financial relief, special access), depending on the occasion.

The term "relief and concessions" under the Code has not been defined and further there is no explicit provision with regard to waivers/ relief or concessions. However, a corporate debtor (CD) or distressed company in lieu of elimination of past liabilities eliminated or reduction there of as the case may be, as part of a resolution plan, sought such relief or concession to essentially start over and revive their business smoothly and without any hindrances.

The goal of a resolution plan is to resolve a business debtor's assets or turn around its

operations. It has been observed that a list of around 35 to 50 reliefs and concessions have been sought in the resolution plan by SRA before the AA. These relief and concessions typically consist of debt restructuring, tax benefits, and regulatory relaxations, Continuance of licences, approvals, benefits, extinguishment of past liabilities/claims, release of encumbrances, prior non-compliances, breaches and defaults etc are placed before AA under the sections 30, 31, 32 and 32A of the IBC. The reliefs/concessions sought from various authorities are enumerated:

Relief sought from Central Board of Direct Taxes (CBDT)

a. To grant exemption from the applicability of income tax provisions (including section 41(1) or section 28 of the Income Tax Act) in respect to remission/ cessation of liability, if any, to the company, for the purpose of implementation of this resolution plan.

b. To provide relief to the company from all past litigation, up to the date of implementation of this resolution plan, pending at different levels and provide waiver from all tax dues, including interest, penalty & prosecution for all historic disclosed tax dues and undisclosed tax dues. All pending notices, assessment orders, pending summons and pending assessments towards the company would be treated as closed. Further, no action would be taken for any action/ transaction carried out before the implementation date. It is clarified that no tax (including interest and penalty) would be paid for any liability or claim raised or non-compliance for the period up to the effective date. Further, any re-assessment, revision or other proceedings under the provision of Income tax act would be deemed to be barred in relation to any period prior to the effective date by virtue of order of Hon'ble NCLT approving this resolution plan and the company or the RAs shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

c. Exempting the CD from section 79 of the Income Tax Act, 1961 (Restriction in relation to carry forward & set-off of losses).

d. To waive all demands/ interest and penalty charged against the dues of the income tax authority for the period prior to date of approval of the resolution plan.

e. To allow the company to carry forward its unabsorbed business losses / Capital Loss beyond statutory time limit of 8 assessment years under section 72 of IT Act, 1961 and set off in subsequent years; in as much as in calculation of the period of limitation of 8 years under Section 72(3) of Income Tax Act for carry forward of losses, the years during which the net worth remained negative, be excluded.

f. To allow total loss brought forward (including unabsorbed depreciation) to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act

g. To extinguish all demands/ interest and penalty charged against the dues of the statutory authorities for the period prior to date of approval of the resolution plan.

h. To extinguish all the future/subsequent demands/claims/suits etc. against the CD related to the events prior to approval of the plan by the AA.

i. "All claims made by the Income Tax Department in relation to the period prior to the CIRP commencement date, is a ""claim"" and ""debt"", as defined under the IBC, and would consequently qualify as ""operational debt"" (as defined under the IBC). Thus, the full amount of such claims shall be deemed to be owed and due as of the CIRP commencement date.

j. No further assessment / reassessment of income tax up to the effective date should be done by Income Tax Department. Further, upon approval of the Plan by NCLT, RA would not be liable to pay any income tax pertaining to period upto the CIRP date except the payment to be made as contemplated in this resolution plan, if any. Accordingly, all pending dues under the provisions of Income Tax Act, 1961 ('IT Act'), including taxes, duties, penalties, interest, fines, cesses, unpaid TDS/TCS, whether admitted or not, due or contingent, crystallised or un-crystallised, known or unknown, secured or unsecured, disputed or undisputed, shall stand extinguished by virtue of the order of the NCLT approving this Plan and the CD shall not be liable to pay any amount against such demand.

Relief sought from Central Board of Indirect Taxes & customs, Ministry of Finance of the relevant state Government

k. To provide relief to the company such that all pending litigation, notices, past and ongoing assessments, past and ongoing investigations, tax demands under all indirect tax statues towards the company would be treated as closed and no further action would be taken for any action/ transaction carried out before the effective date. It is clarified that no tax (including any interest or penalty) would be paid for any liability or claim for the period up to effective date.

l. To provide relief to the company for any non-compliances under all Indirect Tax statutes for the period up to the effective date.

m. To provide relief against any tax dues, along with interest and penalty (including all historic disclosed tax dues and undisclosed tax dues, whether assessed or not, whether a demand has been raised or not, whether claimed or unclaimed, admitted or not, crystalized or not, known or unknown, disputed or undisputed, present or future) under any Indirect tax statue up to the effective date. All such tax dues along with interest and penalty for the period up to the effective date, shall be written off in full and will be deemed to be permanently extinguished and the company or RAs shall at no point of time, be directly or indirectly, held responsible or liable in relation thereto.

n. The company or RAs shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of, arising from or in connection with, any transaction, act, omission, commission, defaults (whether

identified or unidentified) of the Company or existing promoters, directors, KMPs, subsidiary/ associate/group companies, for a period up to the effective date.

o. The company or RAs shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of any tax not paid or short paid or erroneously refunded or input credit wrongly availed or utilized, any contravention of any provision of any indirect taxes act or rules made thereunder as may be prescribed by the company or existing promoters, directors, KMPs, subsidiary/ associate/group companies, for a period up to the effective date.

p. The company shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax Laws and to utilized such amounts to set off against tax liability arising in future in accordance with the applicable laws.

q. All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the company shall not lapse pursuant to the resolution plan and shall be available post implementation date.

Relief with respect to Regulatory Framework

r. RBI to waive all past non-compliances of the Company under FEMA, Reserve Bank of India Act and the regulations, notifications, directions, guidelines, circulars, press release (hereinafter collectively referred to as "Regulatory Framework") issued thereunder and the company or RAs shall not be liable for any non-compliances under the aforesaid Regulatory Framework for the period prior to the effective date.

Relief sought under the Companies Act 2013

s. Existing equity share capital shall be written off without any implication under Income tax Act,1961 and Companies Act, 2013.

t. Waiver approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, damages, prosecution etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till effective date.

u. The Registrar of Companies to take on record upon approval of resolution plan from Hon'ble NCLT, without further compliances.

v. Waiver to maintain/ reconstruct past records of the CD, if any, till the approval of plan by NCLT.

w. Waiver to hold past Annual General Meetings of the CD.

Reliefs from the State Government

x. Liberty to change the name of the company and the approval of the State /Centre Government without any tax implications.

y. Coverage under the incentives offered by State Government for sick industrial units or any other incentives.

z. Time period of twelve months from the effective date to ensure compliance in relation to non-compliance of applicable laws by the CD to any period up to effective date without any additional interest and penalty.

aa. The relevant Government/ Statutory authorities shall not initiate any investigation, action or proceeding against the RA or the new management (upon acquisition of CD) including the Board of Directors, in relation to any non-compliance with applicable laws by the CD pertaining to any period up to effective date.

bb. "Where the corporate debtor is not in operations-The business permits of the corporate debtor which may have lapsed, expired, suspended, cancelled, revoked or terminated or where the corporate debtor has failed to comply in relation thereto.

cc. All Government authorities that have issued or granted such business permits to provide reasonable time period of at least twelve months after the effective date in order to the RA to assess the status of business permits and applicable laws without initiating any investigation, action or proceeding in relation to non- compliance, and to permit the Resolution Applicant to continue to operate the business of the corporate debtor as carried out prior to effective date.

dd. 100% extinguishment of unclaimed amount of all other Central and State Government authorities (Including dues of Land Revenue Department (if any) up to effective date). All concerned revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents executed by the Company up to the effective date.

ee. No liability towards unearned increase, processing fee, extension fee and other fee, charges, dues as may be applicable on account of transfer of leasehold rights pursuant to change in the ownership structure of the CD.

Other Reliefs

ff. There shall be no Stamp Duty implications and any other levies for transfer of assets or otherwise and the state Government shall not object to such.

gg. On approval of the resolution plan by the Hon'ble NCLT, all the litigations, proceedings of whatever nature, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the date of approval of the resolution plan by the AA, shall stand closed immediately and the CD and RAs , shall not be liable for any civil or any other consequence including penalty arising therefrom.

hh. To extinguish all the contingent liability as may arise after the approval of the resolution plan and pertaining to the period prior to CIRP and also which are not captured related to period before approval of resolution plan.

ii. The RA shall be responsible only for the liabilities specifically mentioned and undertaken

by it in the Resolution Plan. To clarify, the RA shall not be responsible for the liabilities not mentioned/ undertaken in the resolution plan.

jj. Amend the constitutional documents of the CD.

kk. Cost cutting measures including but not limited to rationalization / optimization of manpower.

ll. Liberty to change the name of the company and the State Government shall approve the same without any charges/fees.

mm. Coverage under the incentives offered by State Government for sick industrial units.

nn. All obligations, liabilities (whether contingent or crystallized) claims and proceedings in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the CD prior to the effective date and all contingent liabilities disclosed / undisclosed in the annual audited financial statements as well as financial statement as on CIRP commencement date of the CD and liabilities which are not in notice of CD or not acknowledged by the CD shall stand extinguished and discharged on and with effect from the effective date including but not limited to any form of credit support for persons that are currently affiliates, promoters or promoter group (including the existing promoters), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies and/or group companies of the CD.

oo. All enquiries, investigations, notices, causes of action, suits, claims, liabilities, demand, obligations, penalties, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings against the CD or the affairs of the CD, pending or threatened, present or future, (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office), whether or not on account of acts or omissions in breach of Applicable Law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering) and including but not limited to the proceedings specifically under this Plan in relation to any period prior to the effective date shall stand extinguished and accordingly, all such proceedings, inquires, investigations, etc shall be disposed of and all liabilities or obligations in relation thereto, whether or not set out in the Provisional Balance Sheet, the balance sheet of the CD or the profit and loss account statements of the CD or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to have been written off in full and permanently extinguished by virtue of the order of NCLT approving this Plan and the RA, shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the effective date or on account of the acquisition of control by RA over the CD pursuant to this Resolution

Plan, against the CD or any of its employees or directors who are appointed or who remain in employment or directorship after the Effective Date or pursuant to the implementation of the resolution plan;

pp. Upon approval of this Plan by the NCLT, all dues under the provisions of all the indirect Taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (service Tax), the Customs Act, 1962, the Central Sales Tax Act, 1956, the Goods and Services Tax Act, 2017, property tax, liquor tax, the various states' value added tax acts and any other indirect Tax laws, including Taxes, duty, penalties, interest, fines, cesses, charges, unpaid Tax deducted at source/ Tax collected at source (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the Tax authorities or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, shall stand extinguished and the CD will not be liable to pay any amount against such demand.

qq. After acquisition there may be receipts by the RAs over and above those recorded in books. Such receipts will solely be under the right/control/ownership of resolution Applicants and others will not have any right on such receipts (except that of Avoidance Applications, which shall be distributed in terms of Section 53 of IBC, 2016 if mentioned in the approved RFRP/ decided by COC).

TREATMENT OF ABOVE RELIEFS AND CONCESSIONS BY ADJUDICATING AUTHORITY

To comprehend the treatment of relief and concessions in the resolution plan by AA in the approval of the plan, the same is categorised in the following based on manner it has been granted:

I. Relief is Granted strictly in terms of Section 32A of the Code

II. Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC

III. Granted, subject to the provisions of IBC, 2016 and other applicable laws

IV. Granted in terms of Section 31(4) of IBC, 2016 and also in view of clean slate principle enshrined under IBC, 2016.

V. Granted

VI. Not Granted

VII. This is for the appropriate authorities to consider.

VIII. Sectoral reliefs/concessions

I. Relief is Granted strictly in terms of Section 32A of the Code

i. **Extinguishment of actions taken against the CD (including criminal actions, but not against the current promoters):** All legal actions taken against the corporate debtor (including criminal actions, but not against the current promoters), whether by the Enforcement Directorate, Central Bureau of Investigation, Serious Fraud Investigation Office, or any other governmental or regulatory body, shall be permanently and unconditionally withdrawn, abated, settled, and extinguished on and with effect from the approval date.

ii. Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a CD for any offence committed prior to the commencement of the CIRP shall cease, and the CD shall not be prosecuted for such offence from the date the resolution plan has been approved by the AA under section 31.No action shall be taken against the property of the CD in relation to an offence committed prior to the commencement of the CIRP, where such property is covered under a resolution plan approved by the AA under section 31

iii. **Any investigations, actions, or processes in connection to the Company's non-compliance with applicable law during the period preceding the Transfer Date**: The applicable Governmental Authorities will not conduct any investigations, actions, or processes in connection to the Company's noncompliance with Applicable Law during the period preceding the Transfer Date. Neither the RA, nor the company, nor their respective directors, officers, and employees appointed on and as of the Transfer Date, shall be liable for any violations, liabilities, penalties, or fines relating to or resulting from the Company's failure to obtain the necessary licenses and approvals to conduct its business in accordance with Applicable Law, or any noncompliance by the Company.

iv. Furthermore, the relevant Governmental Authorities will provide a reasonable period of time after the Transfer Date for the RA to assess the status of any non-compliances under the applicable law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits, clearances, and forest-related clearances) and to ensure that the company regularizes such non compliances under the applicable law existing prior to the Transfer Date.

v. The RA is granted the various reliefs and concessions sought, which protect the Corporate Debtor from being held accountable for any offences committed prior to the commencement of CIRP and are stipulated by Section 32A of the IBC, 2016.

II. Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC

vi. **Clause related to litigation:** After the AA approves the resolution plan, all pending judicial, regulatory, or administrative proceedings against the CD from any period prior to the Transfer will be terminated, except for continuing litigation mentioned in the plan. The CD and RA are no longer responsible or liable for any liabilities or obligations, regardless of whether they are recorded in the CD's books.

vii. **No action by creditors (FCs/OCs):** Until the Transfer Date, no creditor shall take, initiate, or continue any steps or proceedings against the company or its assets (whether by way of demand, legal proceedings, alternative determination process including arbitration/expert determination process, the levying of distress, execution of judgment, or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the purpose of placing the Company into liquidation or any analogous proceedings.

Or

The resolution plan envisages an amount for creditors for their admitted claims as full and final settlement of such claims. Any claims by any person—whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future—including dues of the Government (Central or State) against the Corporate Debtor accruing on account of the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights, entitlements, benefits, and privileges granted in favour of the Corporate Debtor, or any contractual arrangements entered into by the Corporate Debtor—shall, notwithstanding any provision to the contrary in their terms, stand extinguished without any recourse.

viii. **No claim by Tax Authorities for past dues:** Taxes of the CD, including all deductions and withholding taxes on any payment as required under Applicable Law, pertaining to the period prior to the Insolvency Commencement Date, for which no claim has been admitted, shall be treated as settled. Further, post the order of the Hon'ble NCLT, no re-assessment, revision, or any other proceedings under the provisions of any indirect tax laws shall be initiated against the CD in relation to the period prior to the acquisition of control by the RA. According to section 31(1) of the IBC, the present liabilities listed and those that continue to accrue until the Transfer Date will be waived.

ix. The Company liability for all current and future claims, liabilities, and obligations, including losses, damages, and investigations by government and statutory

agencies, related to events that occurred prior to the Insolvency Commencement Date, from any stakeholder will be written off in full and will be deemed to be permanently extinguished with effect from the Effective Date by virtue of the order of the AA approving this resolution plan even Information Memorandum, the Company's balance sheets, profit and loss account statements, and List of Creditors do not cover any type of debt, whether claimed, admitted, due, disputed, present, or future.

III. Granted, subject to the provisions of IBC, 2016 and other applicable laws

x. **Contracts with the customers of the CD**: The resolution plan terminates all customer contracts as of the Transfer Date, unless the CD notifies the counterparty in writing within 90 days that the contract will continue to operate on its terms. This includes any claims for restitution, specific performance, or damages, as well as any liabilities, damages, or claims.

xi. **Employee Contracts:** To ensure the Corporate Debtor's survival as a going concern, the RA proposes terminating all employees, except for those identified through preliminary due diligence, in accordance with applicable laws and obtaining necessary approvals from relevant authorities. For this reason, the Resolution Professional and the CD shall take all necessary or expedient procedures, including submitting an application to and obtaining approval from the applicable authorities for the termination.

xii. **Contracts for the continuation of business, subject to operations:** In Business Continuity Contracts, the resolution plan's provisions remain in full force and binding against the relevant counter party(ies) without any additional action or payment of premiums/penalties due to ownership changes, as specified in the plan.

xiii. **Licenses, approvals, rights, entitlements, benefits, and privileges**: The CD is entitled to all consents, licenses, approvals, rights, entitlements, benefits, and privileges provided by relevant law, contract, lease, or license. The CD's rights will remain valid for 12 months from the Approval Date (defined in the resolution plan) or until the period specified in the licenses, consents, or approvals, whichever is later.

xiv. **Trademarks, copyright in works, know-how, designs, patents, and domain names:** The CD retains all rights, title, interest, and property in respect of its intellectual property, including trademarks, copyright in works, know, how, designs, patents, and domain names.

xv. **Corporate social responsibility expenses:**By virtue of the NCLT's order approving this resolution plan, the Resolution Applicant will have three (3) years from the Effective Date to rectify, amend, and remedy corporate social responsibility expenses as mandated by any applicable laws or statutory documents.

xvi. After the AA approves this resolution plan, any person's right to call for the allotment, issue, sale, or transfer of shares of the Company, whether through an exchange or otherwise, will be extinguished. Employee stock options and sweat equity shares, whether granted or vested, are permanently and unconditionally cancelled and terminated without further action or consideration.

xvii. The CD will not have any rights of subrogation, indemnity, or action against them in relation to guarantees and third parties. This includes any financial liabilities incurred during the period before the Insolvency Commencement Date or as a result of transactions outlined in this resolution plan.

xviii. Since the AA is not aware of the intricacies involved in respect to the Customs Duty and other Import Licences, it is hereby clarified if any payables left pending, the same is hereby waived, but as to the payments having over riding effect upon Insolvency and Bankruptcy Code, 2016, it is left open to the Resolution Applicant to proceed in accordance with law.

IV. Granted in terms of Section 31(4) of IBC, 2016 and also in view of clean slate principle enshrined under IBC, 2016.

xix. **Licenses, approvals, clearances, rights, entitlements, benefits, and privileges etc:** Notwithstanding any clause to the contrary in any consents, licenses, approvals, clearances (including environmental clearances or other necessary clearances pertaining to plants), rights, entitlements, benefits, and privileges granted in the corporate debtor's favor or to which the corporate debtor is entitled or accustomed, whether under law, contract, lease, or license, it is stipulated that in the event that consents, licenses, approvals, rights, entitlements, benefits, and privileges have expired or lapsed, they will be deemed to continue uninterrupted for the benefit of the corporate debtor for a period of 12 months from the Effective Date or any other period required by applicable law, whichever comes later.

xx. **Extinguishment of liens, security interests, and encumbrances on the corporate debtor's assets**: All liens, security interests, and encumbrances on the corporate debtor's assets prior to the plan will be permanently extinguished on the effective date and with effect from the appointed date upon the completion of the procedures outlined in the Companies Act of 2013.

xxi. On the Effective Date, any margin assurances, encumbrances, or liens imposed by applicable law, as well as any contractual conveniences provided by the Company, will be immediately released and returned to the Company. The AA's approval of this resolution plan will result in the permanent extinguishment of all claims originating from deposits or collateral prior to the Effective Date

xxii. Any encumbrance or collateral over assets (security) created by the CD or a third party for debt owed to Financial Creditors or Operational Creditors,

regardless of whether it is enforced, crystallized, or otherwise, will be automatically revoked, released, cancelled, withdrawn, dismissed, and deemed null and void. Creditors and any parties who hold title deeds or other documents related to the Security must immediately release them to the CD. At the Effective Date, any enforcement action taken against the CD for any encumbrance, guarantee, collateral, or other debt or obligation will be automatically revoked, withdrawn, and deemed null and void. All liabilities and obligations related to such encumbrance or collateral will be permanently extinguished.

xxiii. After making the initial payment, all relevant parties, including FCs, must redeliver all Company-related documents (e.g. loan agreements, guarantees, security documents, title deeds, lease deeds, lease agreements, demand promissory notes, records, powers of attorney, post-dated cheques, and other negotiable instruments) and collateral. Creditors of the Company must provide discharge certificates, no-objection certifications, and other acts as requested by Resolution Applicants for release or modification of Encumbrances, security interests and charges

xxiv. **Compliance with regard to capital reduction:** The AA and/or the Ministry of Corporate Affairs will exempt procedural compliance with regard to capital reduction, debt conversion into equity, issuance of new equity shares, and issuance of NCDs proposed under the Plan, including but not limited to the provisions of section 66 of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013), section 42 read with section 62, and other applicable provisions of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013).

xxv. The resolution plan contemplates that the order of this Tribunal approving the Resolution Plan shall be deemed to have approved the Capital Reduction and shall not necessitate any other procedure as required by the Companies Act, 2013, including section 66 of the Companies Act, 2013, or SEBI regulations, with the exception of any corporate authorizations to be approved by the Monitoring Committee and filings with the Ministry of Corporate Affairs. Furthermore, the Resolution Plan stipulates that nothing in the SEBI Delisting Regulations shall apply to the delisting of equity shares of the CD, and that SEBI and the relevant stock exchanges shall take all necessary actions to delist the CD with effect from the Effective Date.

xxvi. **Approval of the reduction of share capital:** Furthermore, the NCLT's approval of the Resolution Plan (per Section 31 of the IBC) will constitute approval of the reduction of share capital, conversion of debt into equity, allotment of equity shares, and NCDs, and it will be binding on the Company and its stakeholders (including its creditors and shareholders). These actions will not require the consent of any of the Company's creditors, shareholders, or any other person with a security interest over such shares.

xxvii. All claims made by the suspended former directors, management, and shareholders will be permanently terminated on the effective date. All the Corporate Debtor's existing share capital will be extinguished on the effective date and with effect from the appointed date, and shareholders who own the existing share capital will not receive any payment (including the cancelled value of the aforementioned equity or preference shares). The resolution applicant would have the right to issue fresh equity share capital in line with the 2013 Companies Act's provisions as well as any rules and regulations derived from them.

xxviii. The consent of the members or shareholders is considered to have been gained for the change of the corporate debtor's name and address, and the resolution applicant must approach the relevant authorities in accordance with the Companies Act, 2013 rules to comply with the procedural aspects.

xxix. All shareholder and member approvals of the corporate debtor will be considered obtained, and they will be bound by the resolution plan's terms on the capital restructuring. According to the guidelines of the Companies Act of 2013, this order will be regarded as proof that all requirements have been completed.

xxx. All related party contractual agreements made by the corporate debtor will be considered terminated on and from the NCLT Approval Date, as per the NCLT's order approving this resolution plan. This termination will take effect on the NCLT Approval Date. On the NCLT Approval Date, all claims or liabilities resulting from such termination will be considered to be given up, cancelled, and written off.

Reason: if Resolution Plan proposes a reduction of share capital or further allotment of shares, there is no need to follow any separate procedure, as the approval of the Resolution Plan under the IBC 2016 is a single window clearance. Hence, we are inclined to grant this relief

xxxi. The Directorate of Industries will continue to provide all incentives and will be considered to have granted its approval or consent, if necessary, regarding the change in the company's ownership, constitution, or management.

xxxii. Any interest or penalty payable during the CIRP period shall be waived under any law for the time being in force. In the event of any default in making payments as specified in this Resolution Plan, a cure period of 30 days shall be provided to remedy such default or delayed payment

V. Granted in accordance with law

xxxiii. As part of the Resolution Plan, the equity shares of the CD shall be unconditionally reduced. Accordingly, all relevant authorities, including but not limited to the Ministry of Corporate Affairs, are requested to grant their approvals to the said

arrangement, if required. All procedures and applications in this regard shall be undertaken by the Resolution Applicant

xxxiv. The leasehold rights in respect of leasehold land held in the name of the CD shall be deemed reinstated to their original tenor on the Effective Date, for the purposes of revival of the Corporate Debtor.

xxxv. All counterparties, including governmental or statutory authorities to the company contracts, will be considered to have approved the change in ownership of the corporate debtor with effect from the Effective Date, by order of the NCLT sanctioning this Resolution Plan. This will happen without any further action on part of the resolution applicant or the corporate debtor, and any penalties or other financial liabilities related to this change in ownership will be considered waived. (Granted, in respect of the dues prior to CIRP period.)

xxxvi. On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all consents, licenses, approvals, clearances, rights, entitlements, benefits, and privileges granted in favor of the CD or to which the CD is entitled or accustomed to, whether under law, contract, lease, or license, shall remain valid, notwithstanding any provision to the contrary in their terms, with the caveat that in the event that consents, licenses, approvals, clearances, rights, entitlements, benefits, and privileges have expired or lapsed, be deemed to continue uninterrupted for the benefit of the corporate debtor for a period later of (i) 12 (twelve) months from the Effective Date or (ii) such other period as required by applicable law, even though they may have already lapsed or expired due to any breach, non-compliance, or efflux of time. Furthermore, after the NCLT Approval Date, neither the Resolution Applicant nor the Corporate Debtor may be subjected to coercive measures regarding the expiration of any licenses, consents, clearances, approvals, etc. under the applicable law during or before the CIRP Period. (Approach the appropriate Authorities)

VI. Not granted

xxxvii. The Department of Registration and Stamps of the relevant States (including State of Madhya Pradesh, Kerala and West Bengal) and the Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Company, from the levy of stamp duty and fees applicable in relation to this Plan and its implementation.

xxxviii. This Resolution Plan will exempt or waive any tax or stamp duty obligations resulting from the transactions it envisions. As a result of NCLT's approval of the Resolution Plan, all costs, fees, charges, and expenses (including taxes and duties) related to the merger and incidental to the amalgamation of the Transferor Company into Transferee Company, including any applicable stamp duty, shall be exempt and waived.

Reason: The Resolution Plan cannot be in violation of any law for the time being in force Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force, and no waiver can be granted in this regard

xxxix. Since the suspended management of the CD are itself the RA as the CD is registered under MSME as a medium enterprise. Hence, exemption sought under section 32A of the IBC, 2016 cannot be granted. Accordingly, prayer (d) of part V (Relief sought) of the Application is rejected.

xl. The acquisition of the CD shall be subject to the RA obtaining title to the land owned by the Corporate Debtor, as well as the title to any properties—whether movable or immovable—attached to such land, and the title to any movable properties situated on such immovable properties

This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this AA. We direct to approach the Appropriate Authority(ies).

xli. All Governmental Authorities, Local Authorities, Electricity Boards, and Industrial Boards are requested to waive the non-compliances of the Corporate Debtor prior to the Effective Date and to provide a period of 12 months after the Effective Date to complete all subsequent compliances required. All non-compliances prior to the Effective Date shall stand ratified by this order. Further, any security deposit or refundable deposit with any Governmental Authorities, Local Authorities, Electricity Boards, or Industrial Boards shall be adjusted, accounted for, and considered for new connections, licenses, or permits.

xlii. It is probable that certain Business Permits, Import Licenses, DGFT Licenses, Health & Safety Licenses, DIC approvals, Factory Licenses, or other approvals of the Corporate Debtor may have lapsed, expired, been suspended, cancelled, revoked, or terminated, or that the Corporate Debtor may have non-compliances in relation thereto. Accordingly, the RA requests all Governmental Authorities to provide a reasonable time period after the Effective Date to assess the status of these permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law, without initiating any investigations, actions, or proceedings in relation to such non-compliances. All such non-compliances shall stand ratified by this order. Further, the time period in respect of such Business Permits, Import Licenses, DGFT Licenses, Health & Safety Licenses, DIC approvals, Factory Licenses, and similar approvals shall be extended for a period of one year.

xliii. The Department of Registration and Stamps, and other State-level Governments/ Departments, and the Ministry of Corporate Affairs, as well as the authorities under various taxing statutes—including, but not limited to, Sections 50B, 50C,

50CA, 56, and 115JB of the Income-tax Act, the Central Goods and Services Tax Act, 2017 (as amended from time to time), the Indian Stamp Act, 1899 (as amended from time to time), and other applicable laws relating to payment of stamp duty in any state—are requested to exempt the Resolution Applicant and the Corporate Debtor from any tax obligations under the said statutes. All procedures and applications in this regard shall be undertaken by the RA.

xliv. The RA submits a plea to the AA to entitle the CD to carry forward unabsorbed depreciation and accumulated losses, if any, and to utilize such amounts to set off future tax obligations for the next eight years.

xlv. In relation to any alleged transfer of economic or beneficial interest by the CD in the past concerning land parcels where the title and ownership remain with the CD, the RA shall have the right to terminate or cancel such arrangements without any liability—monetary or otherwise—on Resolution Applicant. Further, any agreement, MOU, transfer of rights, or contract that adversely affects the assets or rights shall be deemed void if it has not been registered or presented before the concerned authority up to the Effective Date

xlvi. As regard to the relief prayed under various provisions of Income Tax Act, 1961, the corporate debtor/resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961. Additionally, it is alleged that GST is not due when a business is transferred as a continuing concern, as the Resolution Plan hereby contemplates.

xlvii. All Governmental Authorities are requested to waive the non-compliances of the Corporate Debtor prior to the Effective Date, including, but not limited to, non-compliances under the Companies Act, 2013, the Industrial Disputes Act, 1947, applicable Labour Laws, the Income Tax Act, 1961, RERA, VAT, Service Tax Act, GST, and the relevant Shops and Establishment Acts, along with the associated rules, circulars, and regulations under each of the aforementioned legislation.

Sectoral Reliefs/concessions

Power:

This is for the appropriate authorities to consider

xlviii. **Validity of any agreements, contracts, etc**: Following the NCLT Approval Date, the Resolution Applicant's implementation of the Resolution Plan and any changes in control resulting from it will not affect or violate the validity of any agreements, contracts, etc. (including but not limited to Existing PPA and Existing (O&M Contract) to which the Corporate Debtor is a party, applicable laws, norms, licenses, etc.) until (36) months have passed since the Effective Date, and the Corporate Debtor Resolution Applicant will not be held accountable for any claims, penalties, fines, etc. in this regard.

xlix. **Waiver of notification issued by authorities with respect tonon-compliances with the transportation of coal by road, rail etc.:** All non-compliances with the transportation of coal by road, rail, or any other operation required for the corporate debtor's business to operate successfully in accordance with any notifications issued by any of the authorities from time to time and such other norms, rules, and regulations shall be deemed waived by the relevant authorities as of the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan and the NCLT will be considered to have given the Corporate Debtor Resolution Applicant SPV an extra (24) months before the Effective Date to adhere to the aforementioned standards and to take coercive action against the Corporate Debtor and/or Resolution Applicant/SPV for non-compliance with any applicable laws, standards, licenses, etc. until the end of the (24) month period from the Effective Date. The Corporate Debtor Resolution Applicant SPV will not be responsible for any claims, penalties, fines, etc. in this respect.

l. **Environmental laws:** All non-compliances with environmental laws, including environmental clearances in accordance with Environmental Impact Assessment Notification 1994–2006, the renewal of operations consents and authorization orders under the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution Act), 1989, the Central Ground Water Authority's certification of the permit under the Plastic Waste Management Rules, 2016 and the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016, and other terms, are subject to penalties as of the NCLT's approval of this Resolution Plan.

li. Until the Effective Date, the relevant authorities, including MoEF/NGT, will be considered to have waived the rules and regulations, and the NCLT's order will be considered to have been granted to the corporate debtor. No coercive action will be taken against the CD or RA for non-compliance with any applicable laws, norms, licenses, etc. until the period of 36 thirty-six) months from the Effective Date. The Resolution Applicant will also have an additional 36 months from the Effective Date to comply with environmental standards, such as emission standards and standards for installing Flue Gas Desulphurization (FGD). The Corporate Debtor Resolution Applicant will not be held responsible for any claims, penalties, fines, etc. in this regard.

lii. Exemption of three years from the Effective Date for (i) 100% fly ash use and CSR expenses, as mandated by the Environmental Clearance granted by the appropriate Governmental Authorities. All previous non-compliances of the corporate debtor will be waived by the Ministry of Environment and Forests. The Corporate Debtor's window for installing the flue gas desulfurization system (FGD) for Units 1 and 2 will be extended to 30 and 33 months, respectively, from the Effective Date. During this time, neither the Corporate Debtor nor the Resolution Applicant will face coercion for non-compliance, and CSIDC will permit

the Corporate Debtor to change their name in accordance with the Resolution Plan's implementation, free of additional fees or costs.

liii. The Ministry of Coal will be considered to have granted an extension for long-term coal linkage under the Existing FSAs for Phase II (Unit and 4 (2*660 MW)) for a period from the CIRP Commencement Date until the Effective Date (both days inclusive), with effect from the Effective Date. The Corporate Debtor will be considered to have received an extension for Environmental Clearance and any other approval or clearance that may be necessary for the construction and development of Units 3 and 4 as well as any other related infrastructure that may be needed for the Power Plant following the Adjudicating Authority's approval of the Resolution Plan.

a. To permit coal to be transported over roads between the Tuticorin Port and the Corporate Debtor's power plant in Tuticorin, Tamil Nadu, for a minimum of 60 months.

Steel:

This is for the appropriate authorities to consider/Not Granted

liv. **Mines rights not conferred on CD**: The mine rights were not conferred on the corporate debtor, this mine should not have been included in the Resolution Plan. Furthermore, the Central Government will determine the Resolution Applicant's mine leasing and licensing rights. As a result, the Bench has not authorized the plan for any of the mines specified in it.

lv. The RA seeks specific reliefs and concessions from the Adjudicating Authority, including terminating PPAs under the Resolution Plan. Concessions and reliefs are not a prerequisite for implementing the Resolution Plan.

Metal and Chemicals:

This is for the appropriate authorities to consider/Not Granted

lvi. With regard to terms of the utility and facility sharing agreements between the Corporate Debtor and party, and the approval letter dated 07.10.2014 released by the Central Railways, Railways shall not exercise any specific termination rights available to it or take any adverse actions under the utility and facility sharing agreements based on the prior inactions or actions of the company before initiation of CIRP process, in the event the resolution plan is terminated before initiation of CIRP, the consequential action against the CD shall be waived.

lvii. Likewise, with regard to the operation of the private freight terminal dated 02.02.2013, executed by the Central Railways Administration and the CD, the Central Railways shall waive all objections/liabilities of the company arising out of the initiation of CIRP and shall not exercise any specific termination rights

available under the agreement based on some prior inaction of the company before initiation of the CIRP.

lviii. With regard to Licence Agreement dated 29.08.2008 executed between X Limited and the Corporate Debtor for the purpose of Inox allowing and permitting the Corporate Debtor to use on license basis the equipment comprised in a 200 TPD gas plant located within the manufacturing facility of the company, since the said Inox is not a party before this Bench, this Adjudicating Authority cannot give any mandatory directions to Inox with regard to the contract between the Corporate Debtor and the Inox. But it is made clear that this Resolution Applicant/ Corporate Debtor is not liable to pay any liability which is not admitted as claim against the Corporate Debtor.

FINDINGS AND TAKE-AWAYS

The analysis reveals that the integration of reliefs, waivers, and concessions into resolution plans under the IBC has become a core component in addressing the financial and operational challenges of distressed entities. However, the inherent ambiguities and overlapping regarding the treatment of these reliefs and concessions have led to judicial inconsistencies and increased litigation risks, thereby complicating the resolution plan approval.

It is to be noted that section 30 of the Code lists all of the components that must be included in a resolution plan. According to section 30(2)(e) of the IBC, among other things, the RA's resolution plan must not conflict with any presently enacted laws. The aforementioned makes it abundantly evident that no dispensations have been granted under the IBC, and the resolution plan should not contain any mechanism or modus that would circumvent or violate any other law's provisions. If the RA'sresolution plan calls for any kind of relief or concessions from any State, Central Government, or Authority, it is only limited to what is allowed by the relevant laws, statutes, or policies.

The resolution plan may incorporate a number of actions outlined in Regulation 37 of the CIRP Regulations. Any permits or permissions that may be required for the transfer of the asset must be sought from the relevant authority, such as the environmental or forest department, if such a measure is part of the resolution plan. Furthermore, if the plan calls for a merger or consolidation, it must be made sure that the combination is within the purview of the Competition Act. The applicant must make sure that the applicable sections of the Companies Act 2013 are followed if the resolution plan calls for the conversion of debt or obligations into long-term instruments or the preferential allocation of shares to creditors or a potential strategic investor. The waiver of Stamp Duty is not waived as it would be loss to public exchequer and cannot be condition precedent for approval of plan. Any relief must take place within the confines of the Stamps Act if the transfer of assets has implications for stamp duty. Result of any litigation can be an asset for the corporate debtor, and the liability gets settled based on distribution under plan. It is observed that AA has also facilitated the resolution applicants for consideration of various relief and waivers sought under plans from specific authorities (government authorities, statutory authorities) –

a. In case of *Lanco Hoskote Highway Limited*, theAAstated that the Resolution Applicant needs to approach the authorities concerned for permits, if re-quired, and the same will be considered by the authorities concerned in accordance with law. With regard to specific reliefs and waivers sought by the Resolution Applicant from National Highway Authority of India (NHAI), during the hearing of the Application, the Counsel appearing for NHAI to favourably consider the request of the Resolution Applicant on merits taking into consideration the special circumstances under which the Resolution of the CD ensued and we direct NHAI to consider the same for smooth implementation of Resolution Plan.

b. In case of *Jet Airways (India) Ltd.*, the successful resolution applicant was directed to apply to concerned authority. It was further held that the authorities concerned may favourably consider the applications as deemed proper under law, keeping in view the object of resolution of the CD as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.

c. In the case of *Panyam Cements and Mineral Industries Limited*, the AA held that:

> it is needless to say that the approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and the same have to be approved or granted only if the Corporate Debtor approaches the authorities concerned. At the same time, this Tribunal recommends Government of Andhra Pradesh and the Government of India for any concession or grants to be given to the Corporate Debtor as the place wherethe Corporate Debtor is situated in is the area where there is lot of poverty and unemployment and any effort on the part of the Successful Resolution Applicant to revive the Company at the earliest point of time would provide oxygen to the sufferings of the workmen and employees of that area.

Regarding the continuation of services, licenses, permits, registrations, quotas, concessions, clearances, or similar grants or rights granted by any authority, the MCA has proposed an amendment to the Code vide discussion paper issued in January 2023, to clarify that, under section 31, an explanation may be given to make it clear that, following approval of the resolution plan, the Central Government, State Government, local authority, or any statutory authority with which such an arrangement subsists, shall continue to honour the arrangement for the duration of its term, unless the CD fails to fulfil any obligations arising from any arrangement with regard to such grants or rights. Furthermore, unless the resolution plan specifies otherwise, no government or authority may initiate or continue proceedings relating claims that arose prior to the start of the CIRP after the resolution plan has been approved. As a result, the claims will be extinguished. Such a clarification is not meant to eliminate any liabilities of the CD's promoters, as the resolution plan only addresses the CD.

In the matter *GMT Pipes & Tubes Private Limited* (GMT) in consortium with *Invent Assets Securitisation & Reconstruction Private Limited* (Invent), NCLT Mumbai has considered all relief and concessions in general terms:

a. The approval of the Resolution Plan shall not be construed as waiver of any statutory

obligations/liabilities of the CD and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

b. This Tribunal will not deter such Authorities to deal with any of the issues arising after giving effect to the Resolution Plan.

c. As to the Reliefs sought stated in the Resolution Plan, the exemption as sought for in relation to the stamp duty or tax liability, registration charges, fees arising out of the implementation of the Resolution Plan is not granted. ix. As to Reliefs sought F(u) for waiver of any potential direct/indirect tax liability (including but not limited to any potential MAT liability, potential liability under section 56 and 50CA of Income Tax Act, 1961/interest/penalty) to be levied in future is not granted.

d. As regards the other reliefs and concessions as sought for which exempts the CD from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above. The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

e. Further, in terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, on the date of approval of the Resolution Plan by the AA, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

FEW TAKE-AWAYS

a. **Standard para for relief and concession:**

i. The resolution plan shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

ii. The resolution applicant shall, pursuant to the approval of the resolution plan obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

iii. A licence, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority,

sectoral regulator or any other authority constituted under any other law for the time being in force, associated with such resolution plan, shall not be suspended or terminated during the subsistence of the remaining period of such grants or rights, if the corporate debtor or resolution applicant complies with the obligations in respect of the remaining period of such grants or rights.

iv. On approval of the resolution plan, unless otherwise provided in the resolution plan, any claim, against the corporate debtor and its assets under any other law for the time being in force, prior to the date of approval, shall be extinguished; and no proceedings shall be continued or instituted against the corporate debtor or its assets on the basis of such claims, including proceedings for assessment of the claims.

v. The resolution plan shall not affect a claim or any proceeding in respect of a person who was a promoter or in the management or control of the corporate debtor, a guarantor of the corporate debtor or any person having a joint liability or a joint and several liability with the corporate debtor, as the case may be.

vi. The RA has additionally sought certain Reliefs and Concessions inthe Resolution Plan. It is expressly made clear that no reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.

vii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

b. **Mandatory para in Resolution plan**:

viii. The grant or non-grant of the reliefs under the Resolution Plan will not affect the implementation of the Resolution Plan and the same should not be viewed as conditionalities to the implementation of the Resolution Plan or any timelines for such implementation.

c. **Evaluation of such relief and concessions:**

The Resolution Professional must provide detailed remarks for each relief and concession sought in the resolution plan, ensuring they align with the objectives of the Code and the best interests of the creditors. RP must submit his remarks on each relief and concession sought in the resolution in terms of its necessity,

under which provision, whether the same can be granted under the Code with clear reasoning for recommendation of such relief and concessions before AA.

In view of the forgoing discussion, there can be some standard paras for facilitation for AA for speedier approval of resolution plan. Otherwise, list of relief or concessions running in 30 to 70 in numbers in legal parlance consumes the considerable time and effort of AA in approving the resolution plan. Importantly, any relief and concession contingent on the implementation of resolution plan would result in unsuccessful plan, in case non grant of such relief/concession. NCLAT held that non-grant of reliefs and concessions by AA does not have any adverse effect on the validity of the resolution plan and is not violative of the law. The Resolution Professional plays a crucial role in placing these concessions and relief in the resolution plan as they act as a neutral facilitator between the debtor and creditors, ensuring that the resolution process aligns with the objectives of the Code. Overall, the findings suggest that targeted reforms through guidelines/facilitation –clarifying the extent of reliefs and concessions and standardizing thereof could address these challenges, and policymakers and stakeholders can foster a more predictable and effective approval of resolution plan in timely manner.

08

HAS VALUATION LED THE IBC REALISATION DOWN : ROLE OF INSOLVENCY PROFESSIONAL, REGISTERED VALUER AND COMMITTEE OF CREDITORS

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INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) has now been in place for eight years, rescued around 3,500 distressed/insolvent corporate debtors (CDs). Till December 2024, over 1100 companies have been resolved resulting in realisation of around ₹ 3.6 lakh crore against the fair value of ₹ 3.4 lakh crore and liquidation value of ₹ 2.2 lakh crore. It has referred around 2700 CDs for liquidation. Nonetheless, detractors continue to criticize it for its low recovery rate, which is the amount of money collected by banks and other financial institutions as a percentage of claims admitted. The aggregate admitted claims of above referred resolved companies is around ₹ 11.4 lakh crore. The sharp contrast between the admitted claims and fair value raises concerns – where is the loss of value? Or what is not being evaluated? Delays in the process, starting with the creditors' decision to submit an application and continuing with the Adjudicating Authority (AA) in admitting the case and takeover by the appointed resolution professional (RP), all have a detrimental effect on the company's worth and cause a significant loss in value. However, it is also necessary to ensure that the aforesaid contrast is not the consequence of any valuation errors, and the appropriate valuation approach is being applied.

The credible and timely valuation of the CD's assets is one of the essential components of resolution process under IBC. Valuation plays a critical role in maximizing asset value for creditors and guarantee a just return for all stakeholders.

The IBC/Code read with regulations made thereunder assign the responsibility of valuation of corporate debtor to 'Registered Valuers' (RV). The Insolvency and Bankruptcy Board of India (IBBI)performs the functions of the Authority as per the Companies (Registered Valuers and Valuation) Rules, 2017 (Registered Valuers Rules). IBBI conducts valuation examinations for all three asset classes: Land and Building, Plant and Machinery, and Securities or Financial Assets. It also recognises Registered Valuers Organisations (RVOs) and registers valuers. Registered Valuers can be individual or entities i.e. Registered Valuers Entities (RVEs). Under IBC, registered valuers play a crucial role. They facilitate the valuation process and provide their report on the "fair" and "liquidation" value of the assets held by the CD. The

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) stipulate in Regulation 27 that the RP must appoint two registered valuers to ascertain the CD's fair value and liquidation value in compliance with Regulation 35 of the CIRP Regulations. According to Regulation 35, if the RP finds that the two estimates of a value differ significantly, he may appoint another RV to submit an estimate of the value. The average of the two closest estimates of a value will be regarded as the fair value or the Liquidation Value.

PROBLEM STATEMENT

Presently, RVs use a multiplicity of standards, approaches, techniques, and methodologies to determine value of the assets of the CD. As a result, during corporate insolvency resolution process (CIRP) of the CD, two RVs appointed by the RP may value the same assets using different standards and procedures. This variance in assessment approaches, coupled with alternate and multiple assumptions and interpretations, lead to ambiguity, erode trust in the valuation process, and disrupt decision-making. Aside from basic assessment, it has been observed that while estimating the going concern value for CD as a whole, goodwill, receivables are being overlooked or not recognized in the valuation.

The valuation under IBC is in silos for distinct assets; the valuation of "corporate debtor as a whole" i.e. the consideration of the complete corporation and its assets is not thought for. The consideration of the entire worth of the CD has been overlooked; therefore, the CD's assets are undervalued, resulting into lower resolution plan value and low realisation to creditors. Operational synergy by improving operating activities, such as cost reduction through economies of scale and positive financial synergy by leveraging tax benefits, profitability, and debt capacity have been completely ignored. A resolution under IBC may result in tax benefits by leveraging current tax provisions and sheltering profits from net operating losses to resolution applicant. If a profitable applicant purchases a loss-making company, it would reduce its tax liability by deducting the CD's net operating losses. Furthermore, a resolution applicant that increases its depreciation charges after a resolution can save taxes while boosting its value. The Disciplinary Committee of IBBI in its order dated 17.02.2023 in the matter of RBSA Valuation Advisors LLP had observed that "*The element of synergy among the different units of the CD and the value derived from such synergy has not been considered. The synergy valuation is not provided for the CD while submitting the Fair Value (FV) and Liquidation Value (LV)".* Moreover, the valuation of receivables under IBC have generally been assessed at a meagre amount without a rigorous and comprehensive evaluation of the possible realizable value including obtaining balance confirmation, limitation period, third-party payment ability etc.

LITERATURE REVIEW

There have been voices time and again which argued in favour of application of Enterprise Value (EV) in assessing the value of the assets of the CD and consequently resolution plans under the Code. Identification of the type of distress is crucial for determining resolution option. Financial restructuring is recommended for businesses with promising future but are are struggling because of their heavy debt load. When a business is insolvent, it can either -

a) liquidate by selling off its physical assets or business in pieces and giving the money back to its creditors, or b) restructure its debts to manageable amounts and carry on as a going concern. An insolvent corporation can therefore be valued based on two premises. Liquidation Value is already provided in the regulations. For going concern companies, the overall value of a company's operating assets should be measured by its enterprise value, or "EV." It is a going concern value which takes into account best use of assets. A business that is only financially distressed (i.e., one whose assets have more value if held together as an operational unit than if sold off piecemeal) is said to have a "going concern surplus."[1]

EV[2] includes consideration of the CD's workforce, operational plants, licenses and systems, customer base, and brand value, as well as the current worth of future projected revenues that one would be ready to pay to purchase it as a going concern. Resolution Value is not defined in the Indian context. The present value of the CD's projected future earnings is what the US courts have defined as reorganization value, which is the equivalent of resolution value in the US context. The sum paid under a resolution plan that gives the resolution applicant full ownership and management of a CD's assets as a going concern is known as reorganisation value. This reorganisation value can be less than or more than EV.The EV of going concerns for an operational business (as the whole) is generally larger than the sum of the value of its parts. Comparably, conventional techniques under the income and market approaches are more suited for companies in good health and must be adjusted when applied to the valuation of companies in difficulty. The risk of bankruptcy can be taken into account in a number of ways when determining the firm's enterprise value using various valuation methodologies. For market approach selecting the appropriate group of comparable companies is crucial when determining the EV of a company under distress because there may not be many businesses in the same industry experiencing identical circumstances. Furthermore, the recent past earnings and revenue of the troubled organization may not be significant. Therefore, it is necessary to choose a sustainable or normalized statistic that the multiple should be applied to. For using income approach for determining the EV of troubled enterprises with the Discounted Cash Flow (DCF) method it is normal practice to conduct scenario analysis and simulation in relation to important business characteristics like revenue growth and profitability when valuing such organizations based on projecting future cash flows

Non consideration of enterprise value contradicts and negates the fundamental goal of IBC 2016, which is to maximize the value of the insolvent company's assets[3]: Neither the regulations defined under the Code nor its provisions include the EV or going concern value that should be taken into account while estimating value of assets of the CD and subsequently for evaluating resolution plans. Finding the reasons behind default, evaluating the enterprise's techno-economic sustainability as soon as possible, and proposing resolution options within the allotted 180 days are the objectives for resolution of distress of companies. An operational corporation

[1] Deepak Panda, Vice President and Sagar Goyal, Consultant (April 10, 2018), *Enterprise Value of firms in Insolvency*, IBBI – IGIDR Insolvency and Bankruptcy, Reforms Conference.

[2] *The Art of Value Maximisation in CIRP*, IBBI Quarterly Newsletter Jan-March, 2020.

[3] Former ED, DNBS, RBI, *Irrelevance of Liquidation Value in Insolvency & Bankruptcy Code*, Times of India, December 20, 2017.

cannot be liquidated only on the basis of default; instead, a resolution plan based on EV offers a workable resolution in case of a distressed firm. The goal of the IBC would be better accomplished if the continuous usage of such assets is taken into account. This approach would change the valuation, and lenders may anticipate realizing a larger portion of the defaulted loans. Therefore, IBBI must amend the pertinent regulations and include a particular clause for the purpose of calculating the company's EV or going concern value, based on which resolution plans must be created and considered

RESEARCH OBJECTIVE

Study of feasibility of potential benefits of valuing the CD as a whole on the going concern premise, including consideration of potential assets and synergies for maximising the recoveries to creditors.

OBJECTIVE OF IBC AND ROLE OF VALUATION

The Code aims at maximisation of value through resolution of viable businesses. It envisages resolution of the distressed firm as a going concern, as closure of the firm destroys organisational capital and renders resources idle till reallocation to alternate uses. It empowers and facilitates the stakeholders to complete the resolution process in time. It envisages limitless possibilities of resolution – with or without the, existing products, technology or business model and it can be a turn-around, buy-out, merger, acquisition, takeover, and what not. It is useful to facilitate development of a market mechanism that encourages submission of many competitive resolution plans. The objective of every resolution plan is to maximise the aggregate value, which is usually expressed in monetary terms, as price. Higher the business value, higher would be the confidence of creditors and buyer and likelihood of resolution.

As discussed above, a key objective of the Code is the maximization of the value of assets of the CD, aiming to realize as much value as possible for creditors through a time-bound resolution process. A critical element in attaining this goal is transparent and reliable estimation of value that enables informed decision making. The entire CIRP is therefore based on a value representation of the CD's worth.

UNDERSTANDING VALUATION IN RESTRUCTURING

Restructuring is the process of making organizational, operational, or financial adjustments with the goal of improving capital structure, lowering debt, or increasing profitability. Valuation of assets of company under the IBC is vital for entire CIRP since it helps the committee of creditors (CoC) take a conscientious decision on the viability of a resolution plan. In essence, the CoC uses a valuation report as a yardstick when negotiating with potential resolution applicants in an attempt to maximize the value of corporate debtor's assets.

Valuation is a cornerstone of insolvency processes as determining the value of a debtor's assets, is critical for viable restructuring plans, creditor discussions, and, ultimately, the success of the bankruptcy process. The valuation process, therefore, cannot be merely

arithmetical; it should combine and reflect the market reality, expert opinions, and legal norms. For instance, when valuing during the process, several factors like the state of the market, the business operational performance, and the expected earnings must be factored in. In this sense, value serves several critical functions.

Evaluation of Financial Position

Valuation gives insight into the company's current financial situation, including the value of the CD as a whole, its core operating assets, and potential sources of liquidity. This analysis is fundamental in determining which areas require intervention and whether restructuring is feasible. Valuation guides the CoC to assess the possibility of restructuring the CD as a going concern and to compare the proposals provided by resolution applicants.

- **Negotiation and Decision-Making**: Valuation facilitates negotiation and decision-making between creditors, and potential investors.
- **Strategic Planning**: Valuation assist in strategic decisions such as capital injections, cost reductions, operational rearrangement, and asset sales. It aids in the consideration and synchronization of restructuring initiatives with long-term organizational objectives

VALUATION OF DISTRESSED COMPANIES: WHEN IS A COMPANY SAID TO BE IN DISTRESS?

Valuing a business can be hard work. Valuing a distressed business even more so.

A company is said to be in distress when the company is unable to meet, or has difficulty paying off, its financial obligations to its creditors, typically due to high fixed costs, illiquid assets, or revenues being sensitive to economic downturns. Such distress can lead to operational distress as increasing costs of borrowings take a toll on the operations of the company as well.

Distress can be broadly categorized into economic and financial distress. Economic distress is broadbased and afflicts most companies operating in the economy at some point and is normally outside the control of the company. Factors causing economic distress include – general economic recession, technological or cultural shifts, and sometimes, wars or other geo-political confrontations. Some of the factors are temporary, while others may bring a permanent change in the business landscape. Economic distress often leads to financial distress.

Businesses experiencing financial difficulties are unable to fulfil their financial obligations to their creditors or struggle to do so. Stunting or declining revenue, a shrinking margin, high leverage, skyrocketing interest costs, a blockage in working capital, high employee and customer attrition, shrinking or negative margins, asset divestitures, and a lack of trust in management are some traits of financially distressed businesses.

Distressed companies are businesses that are in risk of, or already have defaulted on their

debts. Creditors of a distressed company should know that, although a company may not be making payments on some, or all of its debt requirements, there still may be some value remaining on the instruments they hold. Just because a company cannot make payments on its debt does not mean the company is entirely worthless. Value is typically tied to the company's assets.

Distress may be

- **Potential distress:** All firms are subject to potential distress • Firms in declining industries, bad management decisions or simply bad luck will eventually lead a business to end up in distress
- **Realized distress:** • Firms already in distress may be worth less than their outstanding debt • Their equity still retains value: perhaps the firm will be bought out, it will be turned around, or there will be an equity bail-out

DISTRESSED/INSOLVENT COMPANY AND DETERMINATION OF PREMISE OF VALUE AND STANDARD OF VALUE

The "premise" valuation is an evidentiary framework, which is different from the "standard" of value. It is predicated on the specific set of transactional conditions that surround the appraisal. It is a crucial yet initial phase in the valuation process. This is due to the fact that depending on whatever premise of value is chosen for the study, the subject company or assets may have a dramatically different worth even if the standard of value is constant. In a particular valuation, "the identification of the type of value being utilized" is the standard of value. The criterion of value for businesses undergoing rehabilitation through Chapter 11 process has traditionally been known as "reorganization" value, which refers to EV following the realization of the restorative advantages envisioned under the Bankruptcy Code, for instance, rejecting onerous executory contracts.[4]

The price that a willing buyer and a willing seller would agree upon in an arms-length transaction is known as fair value. It is assumed that neither party is under any pressure to acquire or sell, and that both the buyer and the seller are informed about the asset. If the same is discounted on controls and marketability, it will result in fair market value. Further, the value of a business to a specific buyer, determined by the buyer's particular investment criteria, is known as investment value. It assumes that the buyer and the company have certain synergies, including access to exclusive technologies, distribution networks, or other tactical advantages. Intrinsic value is its actual underlying worth based on a company's operational and financial results. It assumes that the company is being valued independently, as opposed to as a component of a deal.

The Premise Value refers to underlying presumptions and circumstances that guide the valuation process. In company valuation, three main premises of value are applied: (a) Going Concern: Going concern assumes that the company will stay a going concern for the probable

[4] Collier, William Miller. Collier on Bankruptcy (2009). Albany, NY: LexisNexis

future. It makes the assumption that the company will keep making money, keeping its clientele, and running its assets. (b) Liquidation: Liquidation assumes that the company will be sold in a systematic manner, with liabilities being settled and assets being auctioned off. It is predicated on the idea that the company will cease to function as a continuing concern. (c) Value in Use: Value in use presupposes that the company will stay alive but that it will be utilized by a certain user or for a particular purpose. It assumes that the company will provide cash flows tailored to the target consumer or usage.

The main issue in valuing a business during insolvency process is whether it is considered a going concern. Experts often disregard this status without providing detailed analysis in their reports. The determination of a business's going concern status significantly affects the assumptions and valuation techniques used.

HOW IS VALUATION OF DISTRESSED COMPANIES DIFFERENT FROM FINANCIALLY SOUND COMPANIES?

The definition of value and its proper application has long been debated. The word "value" has multiple meanings. It derives its meaning in a given circumstance from the objective of the valuation. Valuation is not merely a mathematical formula. Both quantitative and qualitative factors, inputs and adjustments may be used in the valuation process. Furthermore, value may change based on the Premise of Value and the Standard of Value on which the valuation is based. For situations of distress, the Standard of Value and the Premise of Value may shift with the situation and the purpose of the valuation. Valuation of financially sound companies is based on the premise of going concern i.e. the company is expected to continue its operations in the foreseeable future.

The financial performance of the CD accepted under the IBC indicates stress. According to the IBC, CD assets have historically had a low capacity to generate cash flow. This can be attributed to a number of factors, including competitive positioning, operational performance, inherent weaknesses, a higher cost of capital, and a limited ability to provide ongoing value. As a result, the fair value will be low if the calculation is based on the assets' historical cost. The market-based approach (also known as the transaction multiple method) and the income-based approach (also known as the discounted cash flow method) can be used to determine a fair valuation by comparing the alternate businesses and projecting cash flow while taking into account the best operating performance on a going concern basis.

METHODS OF VALUATION OF DISTRESSED COMPANIES

Even though the fundamentals underlying the valuation of distressed companies remain the same. However, the methods are amended or suitable tweaked and modified to address the practical issues that may arise in the valuation of the distressed company

1. Modified Discounted Cash flow Valuation

This method is based on the underlying principles of the discounted cash flow method but adjustment for the risk of default needs to be carried out for cash flows as well as discount rate. The same can be done as follows:

A) **Estimating the cash flows**: Cash flows under each scenario (from most optimistic to most pessimistic) have to be estimated with the respective probabilities of each scenario. The expected cash flow for a particular year is: Expected cash flow = SUM (Estimated cash flow under each scenario* Probability of respective scenario).

B) **Estimating the discount rate:** The following approaches may be used for addressing the risk of distress in the discount rate: i.) The bottom-up unlevered beta should be used and Re levered using the subject company's current debt to equity ratio and the effective tax rate. Another choice is to estimate a distressed premium which is to be added to the cost of equity calculated using standard measures.

2. Relative valuation

There are two approaches available for relative valuation:

1. Compare the distressed company's valuation to that of other distressed companies.

2. Compare with healthy companies, but adjust for the distress.

In the first approach the problem may be that there may not always be available enough distressed companies at any given time to be able to make comparisons. In the second approach, it may be assumed the distressed company would probably become healthy in the future. Accordingly, an estimate is developed based on its future value which is then discounted back to arrive at a going-concern value to which the probability of distress and distress sale proceeds are added to arrive at the final value.

COMPUTING FIRM/ENTERPRISE VALUE OF DISTRESSED COMPANY

According to international standards, the valuation is used to determine the enterprise's value and to take into account its debt or debt-related liabilities less any cash or cash equivalents that may be used to pay for those obligations. Liabilities are treated differently for the insolvent companies during restructuring, nevertheless, and previous obligations do not have to transfer to the new owner. Liabilities that remain outstanding following the resolution will be indirectly written off. Accordingly, the enterprise value based on assets alone, without adjusting for liabilities, must be taken into account when valuing the corporate debtor's business under the Code. This will raise the CD's business's valuation.

INTERNATIONAL OUTLOOK

Under U.S. bankruptcy law, through Chapter 11 reorganization, an insolvent or financially challenged business can reorganize its liabilities and become a viable going concern. Following the filing of a Chapter 11 petition with the bankruptcy court, the firm often conducts a strategic evaluation of its operations, looking at potential chances to sell off assets or even business lines. Stakeholders, such as creditors and equity holders, bargain and fight to establish financial interests in the new company during the reorganization process. U.S.

bankruptcy law resolves valuation through negotiation. The reorganization plan is premised on an estimate of value for the restructured firm. Reorganization value is understood to be the value of the company that comes out of bankruptcy on the basis of value as a going concern.[5] Enterprise valuation takes into account the value of all assets as a single, combined entity. The income approach's discounted cash flow (DCF) method is the main tool used in reorganization plans to assess the emerging entity's business enterprise value. The DCF approach calculates the net present value of the anticipated future cash flows produced by the emerging business.

Whether and to what degree the business can achieve its goal of creating capital is the main focus. Theoretically, a well-designed business that functions effectively, has well-integrated parts, engages in a commercially beneficial activity, and is properly managed should provide income that, on a present value basis, exceeds the total value of its constituent parts. An assembled, well-maintained Ferrari is probably worth significantly more than the total of its disassembled parts lying on a garage floor, to use an analogy.Although Ferrari cannot be compared to distressed business, however, companies evolve during bankruptcy: they restructure their operations, get rid of failing divisions and unprofitable contracts, and can come out of bankruptcy with a stronger management team, a cleaner financial sheet, and new ownership. Additionally, the company may see changes in the overall industry environment during the debtor's bankruptcy, which could further support future profitability. Even if the new company might not be a good fit for a Ferrari, it frequently uses bankruptcy to become a much more successful and efficient commercial engine.[6]

The restorative components of bankruptcy are acknowledged by valuation standards, which dictate that the reformed debtor's future earning capability be used to establish the enterprise's valuation. In the landmark case *Consolidated Rock Products Co. v. Du Bois*, the Supreme Court declared this rule decades before the Bankruptcy Code was passed. The earning capacity criterion is crucial if the business is to be released from the burden of previous mistakes, miscalculations, or catastrophes and if the distribution of securities among the many claimants is to be just and equal.

Reorganization is based on the theory that a company is worth more as a going concern than as a liquidated business. Going concern premise of value (not a liquidation premise) must be used for a fair assessment unless the debtor was near death at the time of the transfer in question.[7]

The concept of EV is widely used in the context of mergers and acquisitions, and while the principles and criteria used in restructuring and insolvency are the same, the value that will be allocated after the reorganization process is known as the reorganization value, or the value of the reorganized debtor.[8] Three factors that are useful in determining this value are

[5] Travis W. Harms and Sujan Rajbhandary, *Valuation Expertise:Necessary Chapter 11 Process Navigation*,ABJ Journal, October 2014.

[6] Collier, William Miller. Collier on Bankruptcy (2009). Albany, NY: LexisNexis.

[7] In re Taxman Clothing Co (7th Cir. 1990). 905 F.2d 166, 170.

[8] S.C. Gilson, Creating Value through Corporate Restructuring (John Wiley and Sons, 2010, 2nd edition).

highlighted in this regard: working capital, new or fresh money, and the discount rate. Thus, the generally accepted idea of enterprise value is the foundation for the definition of reorganization value. The discounted cash flow method is usually the most accurate way to estimate the reorganization value. Even though it depends on a number of assumptions, this approach enables the inclusion of company-specific components, which is particularly important for a business undergoing restructuring, which might (for instance) call for the inclusion of backlog capital expenditures and a gradual improvement of working capital ratios over time. The comparability of the chosen transactions and/or listed companies has a significant impact on the utilization of multiples. Additionally, it is not reasonable to simply apply a multiple to the debtor firm's current, lower earnings level (which may even be negative). For this reason, using the multiples method would necessitate estimating the company's maintainable earnings in addition to correcting the initial multiple-based value for one-off items like an initial period of lower profits, restructuring costs, backlog capital expenditures, and working capital investments. In other words, this would result in a hybrid between a "simple" multiple-based valuation and a DCF valuation.

INADEQUACIES IN VALUATION UNDER IBC

- **Absence of EV for company as a whole:** The fair value defined under the CIRP Regulations provides for assessment of value for assets of the corporate debtors. There is no mention of valuation of the company as a whole based on going concern premise despite the fact that company is resolved for continued operations or probable use to generate revenues in future. Enterprise Value would yield the best price discovery[9] : IBBI agenda note dated 01.12.2017 mentions that the CoC has frequently suggested investigating the EV, as is evident from the significant cases that are presently being resolved. Nevertheless, the enterprise value computation is not required by the regulations. There is a view that the enterprise value computation is essential since it yields the best price discovery. The FCs will also find it easier to choose the viable resolution plan with the aid of the enterprise value. Allowing for EV could be helpful in facilitating the emergence of an enterprise value corridor. For the CoC, this might offer the best value. Additionally, this will probably stop the LV from being abused as a bidding floor price. Nonetheless, there needs to be clarification on how to provide the CoC with information about LV given that the CD is present there and has

[9] IBBI Government Board Meeting agenda note dated 01.12.2017 states that "It is known from the large cases currently undergoing resolution that the CoC has in many instances given the proposal of exploring the EV. Some RPs have gone a step ahead to find out distress value.

21. The regulations, however, do not mandate calculation of the enterprise value. There is a view that the calculation of enterprise value is necessary as it provides the best price discovery. The enterprise value will also help the FCs to facilitate the decision regarding selection of the resolution applicant. It may be useful to provide for EV to enable a corridor of the value of enterprise to emerge. This could provide the best possible value to the CoC. This is also likely to prevent misuse of the LV as a floor price for bidding. However, in light of the CD being present in the CoC and thus privy to this information, there must be clarity on providing information regarding LV to the CoC. The options are: computer both LV and EV and disclose both or do not disclose either." https://ibbi.gov.in/uploads/meetings/Agenda_2_01122017.pdf.

access to this data. There are two choices: either compute both LV and EV and reveal both, or neither.

IBBI issued discussion paper for Registered valuer to submit valuation report for the CD as a whole[10]: The Valuation Rules recommend that a single valuer perform the valuation as a whole, while CIRP Regulations call for the appointment of 2 Registered valuer's for each of the asset classes It is suggested that the CIRP Regulations be changed to state that the RP will assign responsibility for conducting the valuations of the CD as a whole to one RV in order to expedite the procedure, eliminate any doubts regarding the current framework of hiring valuers for the purpose of valuing the CD, and bring the regulations in sync with the valuation guidelines. If necessary, the RV may get the valuation for an asset class from another registered valuer or do the valuation in accordance with rule 8(2) of the Valuation Rules while accepting inputs for other asset classes.

- **Valuation fragmentation**: According to Registered Valuer's areas of specialization, distinct valuers usually conduct valuation for particular asset classes (such as land, buildings, machinery, plant, and financial assets). Since there isn't a single valuer that captures the CD's value as a going concern, this method results in a fragmented assessment of CD's whole worth. It becomes challenging to evaluate the company's worth as a single operating unit versus the sum of its pieces in the absence of a unified CD valuation.
- **Lack of synergies/operations**: Interdependencies among assets (such as the combined worth of land and machinery when employed together in operations) may not be taken into consideration by separate valuers of specific asset classes. Other intangibles such as goodwill, brands, and even customer relationships, might not form part of these separate valuations. The absence of a balanced appraisal might end up misrepresenting the worth of the CD as a whole.
- **Divergence in valuer opinions**: Various valuers may employ different approaches and presumptions, which could result in valuations that are at odds. This makes it difficult for the CoC and the RP to resolve the differences.
- **Lack of standardisation:** There are no consistent valuation standards across cases, and the methods utilized for valuation under IBC (such as discounted cash flow, market-based, and asset-based) frequently differ. This discrepancy results in disparities in the valuation of various businesses or resolution strategies, making it difficult for stakeholders to compare and assess resolution options.

[10] IBBI discussion paper dated May 2024: Proposal: In order to streamline the process and remove ambiguities around the present framework of appointment of valuers for the purpose of valuation of the CD and to align the regulations with the valuation rules, it is proposed that the CIRP Regulations may be amended to specify that the RP shall assign for carrying out the valuations of the CD as a whole to the RV. The RV may conduct the valuation as per rule 8(2) of the Valuation Rules taking inputs for other asset classes or get the valuation for an asset class conducted from another registered valuer, if required.

- **No prescribed report format and insufficient explanations and sources:**In the absence of standard format for report, the content and structure of report submitted by two RVs vary widely, creating difficulties for stakeholders to adequately compare and evaluate results. It is also observed that valuers fail to present clear explanations or procedures adopted for their assessments of value, leaving stakeholders with doubts regarding the credibility or reasoning for the values.

- **Nil/miniscule value to receivables:** A significant portion of a business's overall assets may consist of receivables, especially in sectors like manufacturing, services, and retail. For a business in distress, receivables are a valuable asset, and if they are valued too low, the whole value of the business may be underestimated. However, it has been observed that receivables are not valued properly or simply ignored. A poor evaluation of the company's receivables leads to an underestimation of its EV or liquidation value and misrepresentation of the company's overall financial health.

- **Non-consideration of intangible assets:**

  - ***Intellectual Property (IP):*** Trade secrets, copyrights, patents, and trademarks are examples of intellectual property that can be extremely valuable in the asset portfolio of a struggling business. If the business has distinctive, marketable intellectual property, it may be able to sell or license it and make a sizable profit. Ignoring the value of intellectual property means missing out on a potentially significant source of compensation for stakeholders and creditors. The company's hidden worth can be revealed by properly evaluating and integrating IP into the appraisal process.

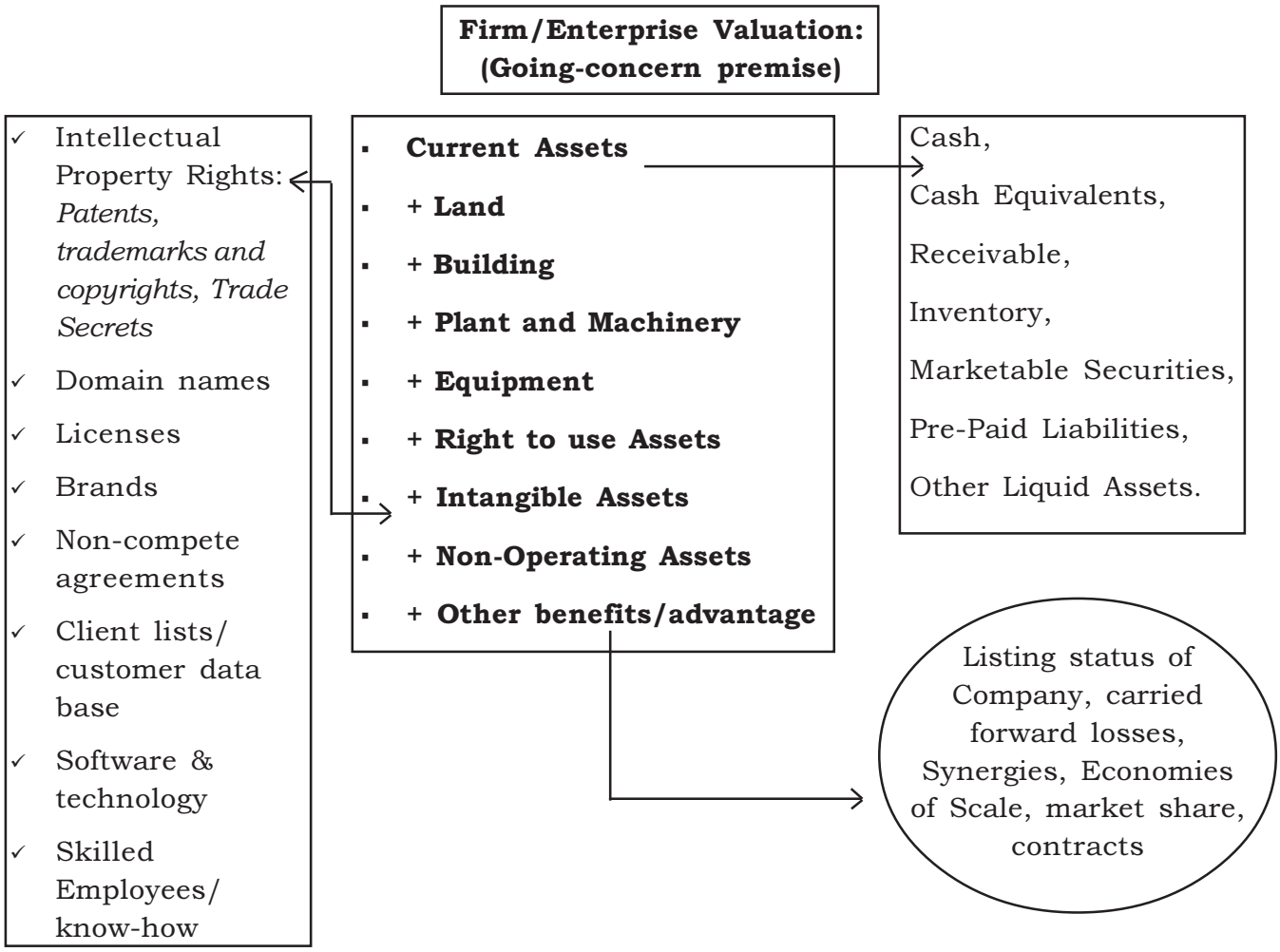
  - ***Brand value:***A strong brand linked with customer loyalty and their trust might be a critical value driver in resolution. In CDs where the firm has a big market presence, the CD's brand could be sold or transferred to another business, and this would continue its operations under new owners. The goodwill related to the brand will be advantageous to the buyer, thus becoming a valuable asset. A low brand value leads to reducing chances of business survival and value recovery.

  - ***Goodwill:*** Goodwill represents the company's reputation, longstanding commercial partnerships and loyal clientele, which are complex to imitate. Eventhough goodwillis intangible, it can have a big impact on a company's potential for long-term profits. If used properly, goodwill can be a significant asset in IBC resolution, particularly for businesses with strong customer ties and market positioning.

  - ***Contracts:*** Existing agreements a business has with clients, suppliers, or staff could be useful in the resolution process. These contracts might have advantageous clauses that a buyer or a new management group could utilize

to increase revenue in the future. Contracts may occasionally be sold, renegotiated, or transferred as part of a resolution plan. However, if these contracts are not evaluated appropriately, the prospective revenue stream from them may be lost or underestimated, which would affect the recovery of creditors.

- ***Software and proprietary technology***: Enterprises with exclusive software or cutting-edge technology might profit from these resources by selling or licensing them. Especially if the technology is rare and hard to recreate, it can frequently be worth more than tangible assets.
- ***Customer data:*** A substantially valuable asset is customer data, particularly when it is segregated and well-organized. The insights from data may benefit individualized services, targeted marketing, and even new models of companies.
- ***License and Right to use:***The licensing and usage rights of intangible assets are valuable but seem to be routinely overlooked or underestimated. Failure to properly examine these rights may result in the loss of a significant revenue source. For instance, in the event of long-term contracts with third parties or exclusive rights, licensing revenue might be an asset that would make the difference for the business to survive or continue operating within the market. The viability of the company's future operations may be compromised if the value of these usage rights is neglected, limiting creditors' potential to recoup.
- ***Other benefits and advantages:*** Merging of an entity that has accrued losses may allow the acquirer to offset those losses against its taxable income, which can reduce its tax liability. Tax benefits, economies of scale, and skilled personnel synergies are all key benefits that can boost the merged entity's efficiency and profitability**.**
- ***Listing status of Company:*** Listing status offers a backdoor listing to investors who purchase new shares in the companies along with a debt restructuring plan, gives creditors a higher return than they would have if the companies had been placed in liquidation.



ROLE OF RESOLUTION PROFESSIONAL IN VALUATION

- **Ensure objectivity and independence:** The RP has to ensure that the valuation process is fair, independent, objective, and follows laid down norms and standards.The RP should choose sector-specific valuers with the necessary experience, and technical expertise. For big projects, RP should engage RVEs having sufficient technical team for assistance.
- **Facilitating information access:** The RP provides the valuers with appropriate paperwork, asset access, and cooperation from stakeholders, including CD management, for appropriate valuations.
- **Review of valuation report:** The RP evaluates valuers' reports for conformity with scope of work and regulatory standards. If there are any differences, the RP may seek clarification or request a re-evaluation.
- **Discussion and disclosure to creditors:** Valuation reports are communicated with the CoC for informed decision-making. The IP facilitates transparency in communicating valuation outcomes.

- **Integration with the insolvency process:** Valuation reports are used to assess the feasibility of resolution proposals,assess the value for creditors in the event of liquidation, facilitate negotiations between creditors and resolution applicants.

- **Compliance with legal requirements:** The RP assures compliance with all relevant rules and regulations under IBC, IBBI guidelines, and valuation standards. Any variation or noncompliance is to be addressed and reported as necessary.

ROLE OF COC IN VALUATION PROCESS

Under the IBC, CoC has a close interface with the valuation process since it has a direct bearing on their decisions, recoveries, and the outcome of the insolvency resolution process. Here is an examination of their function:

- **Appointment of valuers:** The CoC should involve in the valuers' appointment process and authorize their remuneration. To meet the goals of the Code, the CoC should ensure that valuers receive fair compensation for providing quality services. To make sure the that a RV with appropriate experience and expertise is appointed for the particular assignment, CoC should ask RP for additional clarifications if there are any questions about the appointment of valuers and their experience**.**

- **Function in decision-making:** The CoC bases its economic decisions, such as evaluating applicants' bids for resolution and approving/rejecting resolution plans, on the basis of valuation. The CoC ought to discuss the valuation report, look into the methodology or approach employed with the RV.

- **Ensuring fairness and transparency:** The CoC should ensure that the valuation process is impartial and transparent. The CoC should express concerns if there are doubts about the independence of valuers or the credibility of findings. If there are any discrepancies or inconsistencies in the value reports, the CoC should discuss them with the RV and RP. Because different valuers may arrive at different valuations due to subjectivity in valuation caused by varied approaches, the CoC should consult with valuers to get clarifications and involve the RP.

RECOMMENDATIONS AND CONCLUSION

a) **Uniform and specific standard for valuation during insolvency**: A set of single, specific, and uniform Standards for valuation during insolvency is required to promote uniformity, transparency, and fairness. Currently, valuers rely on a variety of frameworks, including International Valuation Standards (IVS), Ind AS, RVO Standards and IBBI guidelines, which result in variances in techniques and interpretation. A uniform valuation Standard will reduce discrepancies, improve the valuation process, and give a common basis for determining value of the company, thus increasing stakeholder trust and improving decision-making in resolution and liquidation process.

b) **Provision of assessing enterprise value in CIRP Regulations:** It is recommended that a provision relating to mandatory use of Enterprise value be included in CIRP Regulations

c) **Use of going-concern premise:** Registered valuers must use going concern premise for estimation of fair value

d) **Appointment of lead valuer**: There should be one lead Valuer who would engage all other RVs for specific valuations and works as a team for valuing the CD as a whole. To precisely capture the total value of the CD on a going concern premise, the lead valuer can combine inputs from valuers with subject expertise.

e) **Receivable valuation**: Valuing receivables, such as debtors, advances, loans, and claims against third parties, needs the validation of key documents to assess their realizable worth. These include balance confirmations to validate outstanding amounts, communications demonstrating efforts made for recovery, and records of conflicts, if any that may undermine the collection prospects. Furthermore, the financial ability of third party to pay must be assessed including evaluating financial statements or credit ratings. The contracts, invoices, and proof of delivery etc. for underlying transactions that result in receivables should also be examined. Aging analysis, bad debt provisioning, and regulatory compliance all help to provide a more accurate and realistic estimate of recoverable amounts.

f) **Other recommendations:** Assessing the value of Intangible Assets, negotiating on benefits/advantages to SRA, clarifying the Role of RP in valuation, to CoC for their role in valuation

Estimation of valuation of three classes of assets on standalone basis and then aggregating these valuations as sum, does not determine the value of the CD as a whole or holistic value of the CD. In valuation theory, going concern value and liquidation value are the two operational basis of value that commonly apply to bankruptcy situations. Going concern value, which accounts for both tangible assets and intangible components like customer connections and brand reputation, represents a company's value under the assumption that it will continue to operate. The value of a business that is anticipated to continue operating into the future on the basis of a going concern assumption is known as going concern value. A skilled workforce, a functioning building, and the presence of the required licenses, processes, and procedures are some of the intangible components of going concern value. When a business is shut down and its assets are sold separately, the net amount that would be obtained is known as the liquidation value. Unless liquidation is suggested, the law assumes the newly formed post-confirmation entity in a Chapter 11 is a going concern. Under IBC, the ground norm during resolution (which is akin to reorganisation in US Bankruptcy), is maximisation of value through going concern. However, it seems that the registered valuers' valuation methodology ignores the same base.

In general, and especially when it comes to distressed businesses, valuation is a synthesis of art and science. Therefore, to arrive at the proper value that balances the theoretical and practical components, a careful combination of assumptions, framework, approach, and methodology should be applied. Arriving at a reasonable enterprise value is essential for attempting appropriate financial restructuring and to ensure appropriate pay-offs to secured, unsecured and operational creditors and to equity holders. This, in turn, is critical to achieve the best resolution for the subject business.

09

GUARDIANS OF RESOLUTION: EXAMINING THE CRUCIAL INTERFACE BETWEEN INSOLVENCY PROFESSIONALS AND ADJUDICATING AUTHORITIES

Asit Behera and Namisha Singh

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC /Code) has ushered in a paradigm shift in the country's insolvency and restructuring landscape, positioning Insolvency Professionals (IPs) and Adjudicating Authorities (AAs)—particularly the National Company Law Tribunals (NCLTs)—as key drivers in achieving efficient resolution of distressed entities. While IPs function as pivotal agents navigating corporate insolvency proceedings, the AAs provide critical judicial scrutiny, oversight, and interpretative guidance. This article explores the nuanced, symbiotic relationship between IPs and AAs, examining how judicial interventions, interpretative stances, and procedural oversight influence IP conduct, stakeholder outcomes, and the timeliness and fairness of insolvency proceedings. By analyzing statutory provisions, judicial decisions, regulatory frameworks, and qualitative insights from practice, this study seeks to highlight the importance of calibrating the IP-AA interface. It ultimately aims to suggest best practices and policy recommendations for bolstering the efficacy, fairness, and predictability of India's insolvency regime.

Keywords: Insolvency Professionals, Adjudicating Authorities, National Company Law Tribunals, Insolvency and Bankruptcy Code, Corporate Insolvency, Judicial Oversight, Resolution Process (CIRP), Committee of Creditors (CoC), Regulatory Compliance, Professional Ethics, IBBI Regulations, Disciplinary Committee, Corporate Debtor, Resolution Plans, Liquidation Process.

INTRODUCTION

"The resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority."— Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17

The enactment of the IBC rang the bell of a transformative journey for resolution of insolvency in India. The Code is a courageous effort of the government, aimed at reforming and modernizing the country's insolvency statute. The key objectives of the Code include the promotion of entrepreneurship, maximization of the value of assets, and balancing of interest

of all stakeholders. These objectives are sought to be achieved in a time-bound manner, placing significant responsibilities upon the two main key actors: the IPs and the AAs.[1]

Under the IBC, IPs play a pivotal role in resolving a corporate debtor (CD). An IP shoulders the responsibility of carrying forward the insolvency resolution process under the Code. She exercises the powers of the Board of Directors of a firm undergoing resolution, manages its operations as a going concern, and ensures compliance with all applicable laws on behalf of the firm. She arranges and collates information relating to the assets, finances and operations of a distressed firm, receives and collates the claims, prepares information memorandum, and provides access to relevant information, so that there is complete symmetry of information among the entitled stakeholders, while maintaining confidentiality. She has to meet expectations of several stakeholders, including expectations of debtors to enable recovery, resolution, sensitivity on avoidance transactions. Creditor expectations are timelines, haircut and debt settlement. AA expects the Resolution Professional (RP) to be well informed and self- sufficient. Every Resolution Applicant wants their plan to go through.[2]

AAs as one of the pillars of the Code, consist of the NCLTs at the first level and the Appellate level is a National Company Law Appellate Tribunal (NCLAT). They watch over the judicial process as gatekeepers which functions to ensure statutory safeguards, resolve legal disputes, and sometimes apply legal interpretation that affects IP conducts and stakeholder results.[3]

While many authors and practitioners have covered in depth such topics as creditor rights, the role of the Committee of Creditors (CoC), or just legal interpretation of a given section, not much has really been written on the way the dynamic, symbiotic interface between IPs and AAs. This article attempts to fill this gap by analyzing systematically how judicial interventions, regulatory oversight, and interpretative stance of AAs impact IP work, and with this, how the conduct and decision-making of IPs shape the very contours of judicial practice.

THEORETICAL FRAMEWORK AND LITERATURE REVIEW

Evolution of the Indian Insolvency Framework

Before the introduction of the Code, the legal system for handling insolvency in India was fragmented and governed by multiple laws, such as the Sick Industrial Companies (Special Provisions) Act, 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. These laws were often inefficient and slow, leading to lengthy processes and poor recovery rates for creditors.[4] The transition to the IBC aimed to address these shortcomings by creating a more unified and streamlined approach.

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[1] The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, India Code (2016).

[2] Id. §§ 5(1), 5(12); see also Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Gazette of India, Pt. III Sec. 4 (Nov. 30, 2016).

[3] See generally The Report of the Bankruptcy Law Reforms Committee, Vol. I (Nov. 2015).

[4] IBC § 23(1); see also IBBI (Insolvency Professionals) Regulations, 2016, Reg. 7.

The IBC introduced a time-bound process for resolving insolvency cases, ensuring that decisions are made promptly and efficiently. It centralized the adjudication of insolvency matters by establishing specialized tribunals known as the NCLTs. This shift provided a more focused and specialized approach to resolving financial distress.

One of the key features of the IBC is that it gives greater power to creditors, especially financial creditors, in the decision-making process. This shift in focus was designed to ensure that creditors' interests are better protected and that the resolution process is more effective, ultimately improving the chances of recovering owed debts. The Code was crafted to address the previous inefficiencies and to create a more predictable and effective insolvency resolution framework in India.

Key Actors: Insolvency Professionals and Adjudicating Authorities

In the new era of insolvency resolution in India, IPs play a critical role as the managers of the debtor's estate. Their responsibilities can range from taking control of the debtor's day-to-day operations to inviting, evaluating, and negotiating resolution plans with creditors. The core idea is that a regulated professional, who follows strict ethical standards, is best suited to manage the complex task of balancing the various interests involved in an insolvency process.[5]

On the other hand, the AAs are given the power to decide whether to accept or reject insolvency applications, oversee the progress of the corporate insolvency resolution process (CIRP), and ultimately approve or reject the resolution plans proposed. While the Code originally envisioned a limited role for the judiciary, in practice, the AAs have often entangled in detailed decision making due to certain grey areas in the Code and conflicts among the stakeholders. These ambiguities have led to the AAs being drawn into more substantive matters, which were not necessarily intended to be part of their role.

Comparative Perspectives

Comparative studies of insolvency laws in the United Kingdom and the United States have highlighted differences in the level of judicial oversight over insolvency practitioners. In the U.K., insolvency practitioners, who are licensed by recognized professional bodies, generally have a lot of independence in their work.[6] Their activities are mainly supervised by creditors, with occasional court involvement for resolving specific disputes. On the other hand, in the U.S., the role of the Bankruptcy Court is often more involved. Trustees in the U.S. are required to seek court approval for many significant decisions or transactions they make during the bankruptcy process.

Different jurisdictions adopt varying models of insolvency practice. For instance, the UK follows an administrator-led approach, while in China, insolvency professionals work closely with the courts, which exert considerable influence over restructuring decisions.

[5] See IBC § 31; Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).

[6] For insights from the UK and US, see Gerard McCormack, Corporate Rescue Law—An Anglo-American Perspective (2008); Elizabeth Warren, Bankruptcy Policymaking in an Imperfect World, 92 Mich. L. Rev. 336 (1993)

India's approach, initially designed to follow a *"creditor-in-control"* model, has shifted over time to include more judicial involvement. While the IBC was meant to empower creditors to lead the resolution process, courts and tribunals have played an active role in interpreting and clarifying the law. Key court rulings, such as *Swiss Ribbons Pvt. Ltd. v. Union of India*[7] *and*

ArcelorMittal India Private Limited v. Satish Kumar Gupta[8], have shaped the way IPs carry out the CIRP.

The following comparative framework highlights how different jurisdictions balance debtor control, creditor influence, and judicial supervision in their insolvency systems:

Key Takeaways from the International Comparison

Feature	**US (Chapter 11 - DIP)**	**UK (Scheme of Arrangement - Pro-Creditor)**	**China (Hybrid DIP/PIP)**	**India**	**Singapore (Hybrid Moving Towards DIP)**	**Hong Kong (Scheme-Based)**
Debtor (No Control	High (DIP)	Low (Administrator)	Medium (State Involvement)	Low (RP Control)	Medium-High (Hybrid)	Low formal corporate rescue)
Creditor Role	Strong	Strong	Limited (Influenced by Government)	Dominant (CoC driven)	Balanced	Strong
Judicial Oversight	Moderate	Limited	High	Medium	Medium	Low
Market-Driven	**High**	**High**	**Medium (Influenced by State)**	**High**	**High**	**Low**

Note: DIP - Debtor in possession, PIP – Promoter in possession, RP – Resolution Professional

Each model reflects the economic, legal, and institutional structures of the respective countries.

Recent discussions suggest that it is important to strike a balance in judicial involvement. Too much intervention can undermine the flexibility needed in commercial decisions, while too little may lead to a lack of accountability. Maintaining this balance is seen as crucial to the effectiveness of the IBC in promoting fair and efficient insolvency resolution.

[7] See Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).

[8] See ArcelorMittal India Private Limited v. Satish Kumar Gupta, (2019) 2 SCC 1 (India).

The Role of Regulatory Oversight

In addition to judicial scrutiny, IPs in India are also under the regulatory oversight of the Insolvency and Bankruptcy Board of India (IBBI/Board). The IBBI plays a crucial role in ensuring that IPs adhere to the standards set by the IBC.[9] The Board has the authority to conduct inspections, investigations, and even initiate disciplinary proceedings if an IP is found to be in violation of the Code or involved in any misconduct.[10] This regulatory framework aims to ensure that IPs operate with the highest level of professionalism and accountability.

The combined effect of regulatory oversight by the IBBI and judicial scrutiny creates a particularly challenging environment for IPs. They are expected to carry out the insolvency resolution process efficiently, adhering to strict timelines, while also being constantly mindful of the expectations from both regulatory bodies and the courts. Scholars have pointed out that this dual layer of oversight, while crucial for maintaining the integrity of the process, places significant pressure on IPs. They must navigate this complex landscape, balancing the need to act swiftly and decisively with the need to comply with the detailed requirements of the law and the expectations of multiple oversight authorities.[11] The ability to balance these demands is key to ensuring the success of the resolution process, and any failure to do so could lead to legal or regulatory consequences.

Open Questions and Unexplored Areas

While the existing literature has provided in-depth analysis on the overall framework and functioning of the IBC, there is relatively little focus on the dynamic interaction between IPs and AAs. Specifically, how the interpretations and interventions of AAs influence the actions of IPs, and how the decisions made by IPs impact judicial outcomes, has not been explored in detail. This article aims to fill this gap by examining recent developments in both judicial and disciplinary spheres, shedding light on this critical relationship.

The Code, introduced in 2016, marked a significant overhaul of India's insolvency laws. It was designed to foster entrepreneurship, ensure efficient asset utilization, and strike a balance between the interests of all parties involved in the insolvency process. Achieving these objectives requires a time-sensitive process, which relies on two key figures: IPs and AAs.

IPs play an essential role in the CIRP. Their duties are varied and include verifying and admitting claims from creditors, managing the operations of the CD, and facilitating the creation of resolution plans. On the other hand, AAs, which consist of the NCLTs at the first instance and the NCLAT at the appellate level, have a judicial role. They ensure the process aligns with the law, resolve disputes, and interpret legal provisions, which can have a significant impact on how IPs and other stakeholders navigate the insolvency process.

[9] Insolvency and Bankruptcy Board of India Act, 2016, §§ 218, 220.

[10] Insolvency and Bankruptcy Board of India, Handbook on Ethics for Insolvency Professionals (2019).

[11] *India's Insolvency Reforms: The Road to Realisation*, 28 Int'l Insolv. Rev. 121, 135– 39 (2019).

While much of the conversation around the IBC has focused on issues like creditor rights, the role of the CoC, or specific legal provisions, there has been less attention given to the interactions between IPs and AAs. This article aims to explore this underexamined area by analyzing how judicial decisions and regulatory oversight by AAs influence the conduct of IPs. Additionally, it will explore how the actions and decisions of IPs, in turn, can shape judicial decision-making and influence the evolution of the law.

In doing so, this study hopes to provide a deeper understanding of the complex relationship between IPs and AAs and how it impacts the broader goals of the IBC, including the timely and effective resolution of insolvency cases.

METHODOLOGY

This study employs a mixed-methods approach, encompassing: (a) qualitative examination of selected case studies involving interactions between IPs and AAs, (b) analysis of statutory instruments, regulations, and judicial decisions interpreting the IBC, and (c) reviews of secondary literature, including academic treatises and policy reports. Through these methods, the research identifies patterns of judicial intervention, key areas of contention, and strategies employed by IPs to navigate adjudicatory forums.

THE ROLE AND RESPONSIBILITIES OF INSOLVENCY PROFESSIONALS UNDER THE IBC

IPs serve as the fulcrum of India's insolvency resolution process, responsible for conducting the CIRP, managing the debtor's operations as a going concern, inviting and scrutinizing resolution plans, and liaising with creditors and other stakeholders. The IBC and the regulations framed thereunder prescribe qualifications, ethical standards, and procedural duties for IPs. However, the conduct and decisions of IPs are often influenced—or even dictated—by legal interpretations and remedial orders from AAs, impacting their ability to act efficiently.

THE ADJUDICATING AUTHORITIES: GUARDIANS OF PROCEDURAL AND SUBSTANTIVE FAIRNESS

AAs, consisting of NCLTs at the first instance and the NCLAT at the appellate level, function as judicial gatekeepers within the insolvency framework. They interpret the Code, ensure procedural compliance, resolve jurisdictional and interpretive disputes, and, in certain cases, review the reasonableness of resolution plans.[12] Though the IBC envisages minimal judicial interference in commercial decisions, AAs often find themselves addressing claims of bias, conflicts of interest, or procedural irregularities attributed to IPs.

By reviewing IP actions—ranging from admission of insolvency applications to approval or rejection of resolution plans—AAs set the contours of acceptable conduct. Their orders frequently clarify open-ended statutory provisions, thereby providing normative guidance that shapes the evolution of professional standards.

[12] IBC § 23(1); see also IBBI (Insolvency Professionals) Regulations, 2016, Reg. 7.

Orders by Adjudicating Authority & Appellate Tribunal highlighting issues in IP's conduct

Analysis of 126 orders issued by various benches of NCLT and NCLAT between 2021 and 2024 reveals significant patterns of contraventions by Insolvency Professionals (IPs). The orders highlight various lapses in professional conduct, procedural adherence, and statutory compliance. The key findings can be categorized into several critical areas:

a) **Non-Appearance and procedural lapses**: A significant number of RPs and Liquidators were cited for non-appearance before the NCLT despite explicit directions. This pattern of absenteeism was observed across multiple benches, including Delhi, Mumbai, and Chennai. The data shows this was a recurring issue throughout 2023-2024, undermining the efficiency of proceedings and causing unnecessary delays in the resolution process. In several instances, RPs failed to appear despite repeated summons, leading to adverse remarks from the adjudicating authorities.

b) **Timeline and process management issues**: Many RPs were found to have violated statutory timelines prescribed under the IBC Code. The violations ranged from delayed filing of liquidation applications to failure in seeking appropriate extensions for CIRP periods. Several cases highlighted the RPs' failure to complete processes within stipulated timeframes, with some instances showing significant delays in value maximization efforts. The orders reflected a concerning trend of timeline violations that potentially impacted the overall efficiency of the resolution process.

c) **Asset and documentation related issues**: A concerning trend emerged regarding the handling of CD's assets and documentation. Cases included improper safeguarding of company assets, failure to hand over relevant documents despite NCLT orders, and instances where assets were allegedly handed over to suspended management instead of liquidators. There were also cases of inadequate due diligence in asset valuation and sales processes, raising questions about the protection of stakeholder interests.

d) **Professional conduct and transparency**: The complaints revealed serious issues related to professional conduct, including allegations of non-transparent claim admission processes, failure to provide information to stakeholders, and instances of unprofessional behaviour. Some cases pointed to potential conflicts of interest and alleged collusion with various stakeholders, raising concerns about the integrity of the resolution process. The orders highlighted the need for greater transparency and professional accountability in the insolvency resolution process.

e) **Compliance and reporting issues**: Multiple cases highlighted failures in regulatory compliance, including non-filing of mandatory applications, inadequate reporting to authorities, and failures in following NCLT directions. These issues often resulted in adverse remarks against the professionals and highlighted systemic gaps in the compliance framework of the insolvency resolution process. The orders reflected a need for stronger adherence to reporting requirements and regulatory guidelines.

Below are illustrative rulings by the AAs that highlight recurring issues and offer critical guidance on Insolvency Professionals' conduct:

1. *Kotak Investment Advisors Ltd. v. Krishna Chamadia & Ors.*

Citation: NCLT Mumbai Bench, Company Appeal (AT) (Insolvency) No. 709 of 2021

Date: December 17, 2021

The case revolved around allegations of misconduct by the RP during the CIRP. It was found that the RP had withheld crucial information from stakeholders, including the CoCs, raising concerns about transparency and fairness in the process. Additionally, mismanagement of the debtor's assets and procedural deviations under the Code were brought to light.

Key Findings

- The RP failed to disclose critical information to stakeholders.
- Mismanagement of assets and procedural violations under the IBC were observed.

NCLT Directions:

- Ordered the Insolvency and Bankruptcy Board of India to investigate the RP's conduct.
- Emphasized that transparency and accountability are fundamental in insolvency proceedings. Any actions by RPs that undermine stakeholder trust warrant regulatory scrutiny and corrective measures.

2. *Sarvesh Kashyap v. Bank of India*

Citation: NCLT Allahabad Bench, IA No.05/ALD/2021

Date: February 02, 2022

This case addressed delays in the disbursement of professional fees and expenses to the RP, despite prior approval from the CoC. These delays disrupted the CIRP, leading to inefficiencies and hampering the RP's ability to manage operations effectively.

Key Findings

- The RP faced significant delays in receiving approved professional fees and reimbursements.
- These delays negatively impacted the CIRP, causing operational inefficiencies.

NCLT Directions

- Instructed the CoC to ensure timely disbursement of fees to the RP to prevent disruptions in the CIRP.

- Recommended standardizing approval and reimbursement processes to enhance efficiency.

3. *Shrikrishna Rail Engineers Pvt. Ltd. v. Madhucon Projects Ltd.*

Citation: NCLT Hyderabad Bench, IA No. 1163 of 2022 in CP (IB) No. 341/9/HDB/2018

Date: February 25, 2022

This case highlighted concerns over the disproportionate fees charged by the RP during the CIRP. The RP's demand for excessively high fees, which were deemed unreasonable given the scale and complexity of the case, raised ethical concerns and financial implications for the debtor's estate.

Key Findings

- The RP's fee structure was found to be excessively high and unjustified.
- The financial burden on the debtor's estate and the ethical responsibilities of RPs were called into question.

NCLT Directions

- Referred the matter to the Insolvency and Bankruptcy Board of India for disciplinary action against the RP.
- Advised Committees of Creditors to carefully evaluate and approve reasonable fee structures to prevent unnecessary financial strain on the debtor.

4. *Central Bank of India v. KSM Spinning Mills Limited*

Citation: NCLT Chennai Bench, CP (IB) No. 176/9/CB/2020

Date: November 22, 2021

This case involved allegations of misconduct and conflict of interest against the RP. It was claimed that the RP showed favouritism toward certain creditors, raising concerns about their impartiality and adherence to professional ethics. These allegations brought into question the RP's neutrality in managing the CIRP.

Key Findings

- The RP was accused of misconduct and conflict of interest.
- Favouritism toward certain creditors led to concerns about impartiality and ethical conduct.

NCLT Directions

- Held that adjudicating authorities do not have jurisdiction to decide on allegations against the RP; such matters fall under the purview of the IBBI.

- Stressed the importance of maintaining neutrality and transparency to uphold the integrity of the CIRP.

5. *Amrapali La-Residentia Case*

Citation: NCLT Principal Bench, New Delhi, CP (IB) No. 188(ND)/2020

Date: June 15, 2022

This case was centered around procedural lapses by the RP during the CIRP. Despite a settlement between the operational creditor and the CD, the RP failed to file the withdrawal application in a timely manner. Instead, the RP proceeded to constitute the CoC, which led to unnecessary escalation and an unwarranted extension of the insolvency proceedings.

Key Findings

- The RP delayed filing the withdrawal application despite a valid settlement.
- Constituting the CoC unnecessarily prolonged the insolvency process.

NCLT Directions

- Criticized the RP for actions that contradicted the IBC's objective of ensuring a swift resolution.
- Ordered the cessation of the CIRP and restored the corporate debtor's management to its board of directors.

6. *Ramchandra Dallaram Choudhary v. Anil Mega Food Park Pvt. Ltd.*

Citation: NCLT Ahmedabad Bench, CP (IB) No. 287/NCLT/AHM/2019

Date: July 6, 2022

This case highlighted concerns regarding misleading disclosures in the Information Memorandum prepared by the RP. It was found that the RP had inaccurately represented crucial details, including the existence of access roads to key assets. As a result, the CoC approved a resolution plan that was ultimately unimplementable.

Key Findings

- The RP provided misleading information in the Information Memorandum.
- The inaccurate disclosures led to the approval of an unviable resolution plan.

NCLT Directions

- Rejected the resolution plan due to inadequate and misleading disclosures.
- Stressed the importance of accuracy in the Information Memorandum to ensure informed decision-making.

- Recommended that the Board examine the RP's conduct and take necessary corrective measures.

7. *Jogma Laminates Industry Private Limited*

Citation: NCLT Mumbai Bench

Date: December 6, 2022

This case involved concerns over the conduct of the RP regarding fee charges and management of the CD during the insolvency resolution process. The RP was found to have charged the same fees during the COVID-19 period as in normal circumstances, despite significantly reduced responsibilities. Additionally, a major member of the CoC alleged that the RP had handed over interim custody of the CD to members of the suspended board—a claim that the RP did not deny. The NCLT took serious note of these issues, particularly the RP's fee structure and lack of accountability.

Key Findings

- The RP charged the same fees during the COVID-19 period despite reduced work.
- The RP failed to deny allegations of handing over interim custody of the CD to the suspended board.

NCLT Directions

- The RP is entitled only to the fees agreed upon by the CoC, along with reimbursement of actual expenses (e.g., valuation expenses) incurred for protecting the property, subject to submission of bills until the property is handed over to the liquidator as certified by the CoC.
- The CoC has the discretion to approve any additional expenses incurred by the RP as it deems fit, without being influenced by the observations made in the order.

8. *P.M. Cold Storage Pvt. Ltd. v. Goouksheer Farm Fresh Pvt. Ltd. & Anr.*

Citation: Company Appeal (AT) (Insolvency) No. 615 of 2020, NCLAT, Principal Bench, New Delhi

Date: September 14, 2022

This case involved concerns over the RP's handling of claim verification during the CIRP. The RP relied on financial documents that were questionable in authenticity, as the balance sheets for FY 2016-17, 2017-18, and 2018-19 were prepared in 2020—after the claim had already been received. Additionally, the balance sheet for FY 2015-16, which formed the basis of the claim admission, lacked the seal of the Chartered Accountant.

Further, the RP initially constituted the Committee of Creditors with a sole financial creditor (FC) holding 100% voting rights. However, after admitting a new claim, the CoC was reconstituted, reducing the sole FC's voting share to 25.07%.

Key Findings

- RP relied on questionable documents to verify a claim.
- RP initially formed the CoC with a sole financial creditor holding 100% voting rights, but later reconstituted it, reducing the said FC's voting share to 25.07%.

NCLAT Directions

- Held that the balance sheets for FY 2016-17, FY 2017-18, and FY 2018-19 could not be relied upon for debt acknowledgment since they were prepared on March 12, 2020, after the claim had been received.
- Noted that the Corporate Debtor had last made a payment to the FC in 2016, while the claim was filed in 2019, making it time-barred under the limitation period.
- Concluded that the RP failed to exercise due care and diligence in verifying claims.

DC ORDERS PURSUANT TO OBSERVATIONS BY NCLT/NCLAT

1. **Non-Appearance before NCLAT despite multiple notices**

NCLT Observation:

The Appellate Authority (NCLAT) made adverse observations against Mr. Ankit Kumar Agarwal for failing to appear despite multiple notices. The tribunal remarked: 'In such circumstances, where the scheme of the Act is such in which the RP has a pivotal role, does it behove for the RP to avoid his appearance in the Court despite various notices issued to him? We deprecate the conduct of the RP in the strongest words and direct the Registrar to send this order to the IBBI for necessary action so that this Court may not be taken for a ride by RPs in the future.

- **DC Order No. IBBI/DC/259/2025, dated 02nd January 2025**

DC Holding & Punishment:

The Disciplinary Committee found that the RP's continued failure to appear before the Appellate Authority showed gross negligence and non-cooperation. Given the strong remarks by NCLAT and his refusal to respond to multiple notices, the DC held that such conduct is unbecoming of an Insolvency Professional. Consequently, the DC cancelled the registration of Mr. Ankit Kumar Agarwal and imposed a monetary penalty of ₹ 1,00,000, payable within 15 days.

2. Failure to notify operational creditors for CoC meeting

NCLT Observation:

The Hon'ble NCLAT in its order dated 20.04.2023 made an adverse observation against Mr. Brijendra Kumar Mishra, stating that he failed to issue notices to operational creditors for CoC meetings despite their cumulative admitted claims being over 10% of total claims. The tribunal found this to be a clear violation of Section 24(3)(c) of the Code and remarked: 'Since no notice was given by the RP to the Operational Creditors, it is a dereliction of duty for which he deserves to be burdened with costs.' A penalty of ₹ 1 lakh was imposed on the RP.

- **DC Order No. IBBI/DC/244/2024, dated 14th August 2024**

DC Holding & Punishment:

The Disciplinary Committee upheld the observations of NCLAT, noting that the RP had failed to protect the rights of operational creditors by not notifying them of CoC meetings. Since operational creditors do not have voting rights, participation in these meetings is crucial for them to voice their concerns. Given that the Hon'ble NCLAT had already imposed a penalty of

₹ 1 lakh, the DC refrained from further action but directed the Board to re-examine the case post the Supreme Court's decision on the pending appeal.

3. Failure to Protect Corporate Debtor's Assets from Fraudulent Sale

NCLT Observation:

The Hon'ble NCLT Chennai observed that Mr. C Ramasubramaniam failed to take any timely action when the Corporate Debtor's property was fraudulently transferred during the stay on CIRP proceedings. The tribunal condemned his inaction and noted: 'Negligence on the Resolution Professional's part is strictly condemned by this Adjudicating Authority. As a court- appointed officer, it was his duty to bring such fraudulent acts to the attention of this Authority at the earliest.' Despite being aware of the fraudulent transaction for over a year, no immediate steps were taken to recover the asset.

- **DC Order No. IBBI/DC/213/2024, dated 02nd May 2024**

DC Holding & Punishment:

The DC found that the RP's inaction allowed further fraudulent transactions to take place, compounding the losses to the Corporate Debtor. The DC noted that while CIRP was stayed, the RP was still responsible for alerting the NCLT at the earliest instance. His failure to initiate any legal action led to irreparable damage. The DC issued a stern warning to the RP, directed him to file an application for the cancellation of fraudulent transactions, and ordered the IBBI to monitor his compliance.

4. Failure to Respond to Investigation Notices from IBBI

NCLT Observation:

Despite multiple notices from the Investigating Authority (IA), Mr. Ankit Kumar Agarwal failed to provide any response regarding his conduct during the CIRP. The Disciplinary Committee noted: 'A resolution professional is required to produce records and cooperate with the Board. The deliberate disobedience of notices by the RP and his evasive conduct is unbecoming of a professional.' Consequently, his registration was cancelled, and a fine of ₹ 1 lakh was imposed.

- **DC Order No. IBBI/DC/259/2025, dated 02nd January 2025**

DC Holding & Punishment:

The DC found that non-cooperation with the IBBI's investigation obstructed regulatory oversight. Since professional misconduct is a serious breach under Section 208(2) of the Code, the DC cancelled the registration of Mr. Ankit Kumar Agarwal and imposed a fine of ₹ 1 lakh, making it clear that such evasive behavior would not be tolerated.

5. Misinterpretation of Code Leading to Non-Compliance

NCLT Observation:

The Hon'ble NCLAT observed that Mr. Brijendra Kumar Mishra incorrectly interpreted Section 24(3)(c) of the Code to avoid sending notices to Operational Creditors, despite their collective dues exceeding the 10% threshold. The DC remarked: 'Such an erroneous interpretation has resulted in the denial of creditors' rights and has been detrimental to the insolvency process.' The tribunal held that a proper reading of the Code clearly requires aggregate dues of operational creditors to be considered.

- **DC Order No. IBBI/DC/244/2024, dated 14th August 2024**

DC Holding & Punishment:

The DC held that while the RP's interpretation of the law was incorrect, there was no evidence of malafide intent. However, his misinterpretation resulted in the denial of rights to creditors. Considering that the Supreme Court was already reviewing the NCLAT order, the DC refrained from imposing an immediate penalty but directed the IBBI to re-evaluate his actions post the Supreme Court's judgment.

6. Outsourcing Duties to a Third Party

NCLT Observation:

The Hon'ble NCLAT took note of an adverse observation against Mr. Ankit Kumar Agarwal, where he attempted to shift responsibility for verifying claims and maintaining CIRP records to an Insolvency Professional Entity (IPE). The DC observed: 'An Insolvency Professional cannot outsource his core duties. The IBBI Circular IP/003/2018 explicitly

states that outsourcing is prohibited, and the professional remains fully responsible for compliance.

- **DC Order No. IBBI/DC/259/2025, dated 02nd January 2025**

DC Holding & Punishment:

The DC found that Mr. Ankit Kumar Agarwal's reliance on an IPE to perform core CIRP duties violated established IBBI regulations. Since insolvency professionals are personally responsible for their assignments, outsourcing such responsibilities was unacceptable. The DC cancelled his registration and imposed a fine of ₹ 1 lakh, reinforcing the importance of direct accountability.

7. Non-Cooperation with Investigations and Mismanagement

NCLT Observation:

The Disciplinary Committee found that Mr. C Ramasubramaniam failed to initiate proceedings against fraudulent transactions and did not report irregularities in the Corporate Debtor's management in a timely manner. The DC noted: 'Despite being fully aware that the settlement process was fraudulent, the RP took no steps to challenge it in court, allowing further transfers of assets to take place unchecked.

- **DC Order No. IBBI/DC/213/2024, dated 02nd May 2024**

DC Holding & Punishment:

The DC found that the RP's negligence had serious consequences. However, since CIRP was ultimately reinstated, the DC issued a formal warning and directed the RP to file a petition for reversing the fraudulent transactions.

- DC order dated 29th December 2023 in the matter of IP Mr. Sanjeev Jhunjhunwala
  - o The RP submitted before the DC that as per the direction of Hon'ble NCLAT he reconstituted CoC of CD and enquired CoC regarding any proposal for replacement of the RP.
  - o The DC noted the submissions made by the RP and the compliance done by reconstituting CoC of the CD as per the order of the NCLAT.
  - o The DC was of the view that the RP should have been more careful while dealing with claims, ab-initio. The DC cautioned the RP to be more careful and vigilant while handling assignments under the Code and Regulations made thereunder.

THE IP-AA INTERFACE: INTERDEPENDENCIES AND CHALLENGES

a) Judicial Interpretation and IP Duties

Judicial pronouncements have, in many instances, influenced how IPs interpret their statutory mandates. For example, in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*[13], the Supreme Court of India provided clarity on the scope of judicial review over commercial decisions and underscored the AA's limited yet critical oversight

role. Such precedents calibrate how IPs conduct negotiations and structure resolution plans.

b) Judicial Oversight of IP Conduct and Decision-Making

Courts and tribunals have intervened when allegations of misconduct or conflict of interest arise against IPs. This oversight mechanism ensures accountability but may also induce risk-averse behavior in IPs, impacting their ability to innovate in structuring resolutions.

c) Dispute Resolution Among Stakeholders

IPs often mediate conflicting creditor interests. When deadlocks arise, AAs resolve disputes—ranging from valuation challenges to the legitimacy of certain claims—thus influencing IP strategies and timelines.

d) Time-Bound Resolution

The IBC envisages strict deadlines for completing the CIRP, and AAs are entrusted with ensuring adherence to these timelines. IPs must adapt to this procedural strictness, often seeking directions or clarifications from AAs to prevent delays.

e) Ensuring Adherence to IBC Objectives

AAs balance the IBC's objectives—value maximization, promoting entrepreneurship, and availability of credit—against the need for procedural fairness. IP actions must align with this judicially articulated vision of the Code's objectives.

BEST PRACTICES AND POLICY RECOMMENDATIONS

A clearer articulation of the roles and responsibilities of IPs, coupled with well-reasoned judicial guidance, can enhance predictability and efficiency in insolvency proceedings. Policy recommendations include:

1. Refined regulatory guidance

The IBBI could issue more detailed practice notes for IPs, incorporating lessons from judicial precedents. Currently, the Board periodically compiles *case law jurisprudence* in a "section-wise" manner, correlating judicial decisions to specific sections of the Code. While this resource helps IPs and other stakeholders navigate the statutory provisions, it can be further refined to provide clearer, more granular direction—especially in relation to the Regulations framed under the Code.

(i) Moving from 'Section-wise Jurisprudence' to 'Regulation-wise Jurisprudence'**:**

Section-wise guidance usually focuses on overarching Code. This is invaluable at the macro level. However, many day-to-day procedural and compliance issues for IPs arise directly under the *Regulations* (e.g., the CIRP Regulations, Liquidation

[13] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).

Regulations, or IP Regulations[14]). By shifting to a *"regulation-wise"* approach, the Board could offer IPs a more precise and operationally relevant digest of case law. For instance, a single regulation regarding formation of the CoC might have multiple judicial precedents addressing nuances of notice requirements, claim verification, or conflicts of interest. Collating these rulings *under each relevant regulation* would enable IPs to quickly locate precedent without having to sift through broader statutory commentary.

(ii) **Enhanced practical utility**: IPs often need immediate clarity on specific procedural steps—such as the manner of conducting CoC meetings, timelines for inviting resolution plans, or rules on professional fees. A regulation-by-regulation compilation of case law can serve as a "one-stop reference point," minimizing interpretative risks and ensuring that IPs can incorporate evolving judicial directives into their practice efficiently. This refined approach also helps *standardize professional conduct* across insolvency proceedings, as IPs gain direct insight into how tribunals have interpreted identical procedural rules.

(iii) **Streamlined updates and revisions:** As the insolvency landscape matures, new rulings from the NCLT, NCLAT, and higher courts continually shape how regulations are interpreted. A *"regulation-wise"* digital compendium, updated in near real-time, would allow the IBBI (or an authorized agency) to insert and annotate new decisions quickly and systematically.

(iv) **Role of IBBI or an authorized agency:** The IBBI could collaborate with legal experts, academic institutions, and leading insolvency practitioners to prepare and maintain this regulation-focused database of precedents. Alternatively, the Board might appoint or accredit independent agencies or professional bodies (like insolvency professional agencies, IPAs) to curate these materials under its supervisory framework, ensuring high editorial and analytical standards.

2. Capacity-building and training:

Enhancing the professional competence of IPs is vital for minimizing procedural errors, ensuring timely resolution, and meeting judicial expectations. Given the critical role IPs play in the CIRP, targeted training initiatives—particularly at the IPA (Insolvency Professional Agency) level—can significantly reduce the incidence of disputes and regulatory non-compliance.

(i) **Continuous Professional Education (CPE) at IPA Level:** IPAs are well- positioned to design and deliver CPE programs that keep IPs abreast of evolving judicial and regulatory developments. As part of this initiative, regular case-law briefings could be compiled, highlighting key judgments from NCLT, NCLAT, and the Supreme Court that interpret the Code and its Regulations. By integrating these updates into structured learning modules, IPs are better equipped to anticipate and address potential pitfalls.

(ii) **Focus on judicial expectations and common pitfalls:** Training sessions could dissect "typical errors" flagged by adjudicating authorities—such as mismanagement of claims, improper notice to stakeholders, or conflicts of

[14] IBC § 23(1); see also IBBI (Insolvency Professionals) Regulations, 2016, Reg. 7

interest. Instead of purely lecture-based methods, scenario-based simulations can recreate real-life CIRP challenges, prompting IPs to apply legal provisions in a controlled environment.

Peer-to-peer discussions and expert-led panels (including seasoned IPs, legal practitioners, and former members of AAs) can offer deeper insights into both procedural and substantive aspects of insolvency resolution.

3. Judicial consistency and predictability:

Promoting uniform interpretative approaches across the NCLTs and the NCLAT can significantly reduce uncertainty for IPs. When AAs align rulings with established precedents and Supreme Court directives, IPs gain the clarity needed to structure more innovative, value-generating resolutions-without fear of inconsistent or contradictory outcomes. Such predictability streamlines the insolvency process and bolsters stakeholder confidence, ultimately fostering a stable business environment that encourages investment, stimulates growth, and benefits the broader economy.

4. Stakeholder consultation:

Facilitating open, ongoing dialogue among IPs, AAs, regulators, and other stakeholders can significantly refine best practices and safeguard the IBC's core objectives. Regular industry roundtables, workshops, and feedback sessions help identify operational challenges, clarify procedural ambiguities, and encourage collaborative problem-solving. By keeping communication channels transparent, stakeholders can promptly adapt to new judicial or regulatory developments, ensuring that each step in the insolvency process remains aligned with the Code's ultimate aims of value maximization, timely resolution, and balanced stakeholder interests.

CONCLUSION

The intricate relationship between IPs and AAs lies at the heart of India's evolving insolvency system. IPs are responsible for guiding struggling businesses through the resolution process, while AAs play the role of overseeing the process, ensuring legal compliance, and protecting the interests of all stakeholders. Understanding and improving this relationship is essential for achieving the goals of the IBC, which aims to provide a fast, fair, and efficient resolution process that maximizes value for stakeholders.

By exploring the way IPs and AAs interact—both in terms of collaboration and the challenges that arise—this article seeks to contribute to the ongoing reform of India's insolvency framework. It highlights the need for a clearer understanding of their roles and responsibilities, as well as a balanced approach to oversight.

To strengthen the insolvency system further, it is important to refine the interface between IPs and AAs through targeted policy measures. These could include better-defined guidelines for judicial interventions, clearer protocols for IPs' decision-making, and training programs to build capacity for both IPs and AAs. This would not only enhance efficiency and clarity in the process but also build trust in the system. By addressing these areas, India can improve its insolvency process, ensuring that the IBC lives up to its promise of providing timely and effective resolutions, benefiting businesses, creditors, and the broader economy.

10

DATA PROTECTION ACT AND ROLE OF IP

Nainshree Goyal

ABSTRACT

Insolvency and Bankruptcy Code (IBC/Code) was executed in 2016 with the aim of protecting and resolving the sick units. The aim is to uplift the companies that are loss-making or sunken in the debt trap. For this purpose, it is important to have disclosures of various information related to the company (Corporate Debtor (CD)). With the new amendments in law which involve the personal guarantors as well, the assets, the whereabouts of such individuals also come into the public domain, rather country at large.

On the other hand, the new statute of Data Protection Act, 2023 (DPA) aims to protect the privacy of individuals/ persons that are in soft copy or digital version.

It is imperative to know the role of the torch-bearer Insolvency Professional (IP) to not just implement the IBC deeply but also the DPA. The impact of two laws, i.e. IBC aims at the economy at large and the corporate world, whereas the DPA aims at the individual level.

The aspect of "fiduciary use", "consent" and the "legitimate use" of the data covered under the DPA is understood with respect to the IBC. The duties of IP to protect the data that has been collected during the corporate insolvency resolution process (CIRP), claims and much more has never been dealt in detail. The DPA talks about "data principal". The issue discussed is whether IPs under the Code play the role of "data principal" under this law.

Since the precedents under DPA in India will not be available, but the roots of this statute arise from Information Technology Act in India as well as similar statutes in different jurisdictions of the world.

This paper will enable the Resolution Professionals (RPs) and the key stakeholders of insolvency law to read both the laws together and understand the duty, exemptions and rights to use, process and store the data collected during the CIRP. The mandate that the DPA has imposed on every individual has been categorically discussed in the paper for growth and better implementation of both the statutes.

Keywords: IBC, Data protection, Individual, resolution professional, Process, Digital Data

ROLE AND IMPORTANCE OF DATA

The importance of data cannot be ignored. Various studies are conducted based on data collected and analyzed, and thereafter, policies are formulated based on such results. Data is collected through online surveys and other various online sources. It indicates that exposure to traditional media like newspapers and radio and such old-age sources of information were believed strongly and lower conspiracy was identified. The reason identified behind the same is that online data can be manipulated, stolen, and cannot be easily relied upon. Therefore, the reliance on data, its source, and the mode of spread of information are all important factors.

Data is often when collected and analysed, it becomes information. Therefore, even basic data is important. It is also said that "*Data is the new Gold*".[1] The data may be structured or unstructured. However, this is not relevant to the study, since the focus is on the importance of all sorts of data and thereby its protection.

Data is required for various aspects in life as follows:

a) Having a competitive advantage;

b) Strategy and policy-making;

c) helps businesses customize offerings to meet individual preferences;

d) Data enhances governance by enabling performance measurement;

e) Reliance on data for technological advancement and scientific research;

f) Sufficient data helps in proper decision making;

g) It is important to have data for personal, economical, financial and social growth;

h) Government often preserve data for cultural and historical records.

It is also noticed that there is a direct correlation between the lack of control towards its government, feeling of trust and transparency, and feeling of social belongingness when it comes to data and reliability of the data provided. Any information, when published or circulated among the common public, there is a huge distrust of such data. It has always been seen that the increased transparency and dialogues between the government reduced anxiety and non-compliance among people, increased the feeling of social belongingness, and reduced hostility. The steps taken by government and political leaders are key in reducing data leakage and manipulation and thereby reliance on data per se. The reliability of such data also increases when such a survey is assured by the government. The data-related compliances have better answerability and compliance ratios when the government ensures proper data protection and reduced data manipulation. Studies have also demonstrated this through empirical data from various countries.

[1] Amanda Li, https://www.masterschool.com/magazine/data-is-the-new-gold/

Data protection has also been seen as a vital right after the recognition of the Right to Privacy under Article 21. Privacy is considered a fundamental human right. Data protection ensures individuals can control how their personal information is collected, used, and shared. There has been a surge of cybercrimes, cyber theft, and frauds due to data leakage. Without safeguards, personal data can be exploited for intrusive surveillance, targeted manipulation, or identity theft. Inadequate data protection exposes individuals and organizations to data breaches, hacking, and phishing attacks. This is of importance to both the individual as well as national security at large. This adds to the high importance of data protection.

Internationally, General Data Protection Regulation (GDPR) has been implemented in Europe for the same. Therefore, the Government has taken steps to ensure the privacy and protection of such data in India. Since the trend of growth is towards the digital age, the protection of data is towards the online data. The statute 'Digital Personal Data Protection (DPDP) Act, 2023 (Act)' has been implemented with the aim to protect such data, maintain privacy and reduce leakage.

INTRODUCTION TO THE DATA PROTECTION ACT, 2023

The Act has been recently given birth, looking at the speedy rise in online data and e-documentation through websites, applications, and different software. The need for this statute has been discussed earlier, depicting the urgency to implement it and spread awareness among people. Very clearly this statute is pertaining to any "data" in the "digital" version.

To understand it deeply, it is important to look at the widespread digitization. Even though computers found their place in human life in early 20s, the need for digitization was recognized when the world shifted to online life. This took a further boom in COVID-19 where the physical world was under lockdown and the online world was active more than ever.

Digitization can be understood as "the process of converting analog information into a digital format. In this format, information is organized into discrete units of data called bits that can be separately addressed, usually in multiple-bit groups called bytes."

Digitizing information or documents involves one or more than processes which are scanning, optical character recognition, recording, sampling, and audio and video digitization.

Therefore, this statute applies to anything, any data, document, or any such visual, where data is collected online or collected offline and is later converted to the online version. For the purpose of this statute, the jurisdiction of the data and/or such action of digitization is considered for Indian territory only. It is also applicable to processing digital personal data outside the territory of India, if it involves providing goods or services to the data principals within the territory of India.

The preamble is as follows

> An Act to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

The Act focuses on major 3 aspects. First is data, second is personal data and third is protection of such data in digital format.

Few terms to be looked into:

1. Processing
2. Digital
3. Personal
4. Data
5. Protect personal data
6. Process personal data

DETAILED INTERPRETATION OF THE ACT

The Act focuses on the key features. It is important to understand these.

1. **Personal:** The Act focuses on the data that is pertaining to 'personal' information/ data. "*Personal data refers to any data that can identify an individual, directly or indirectly.*" This is considered as the strength of this statute as it empowers individuals to have control over their personal data. It defines "personal data" as any data about an individual that is capable of identifying that individual. Therefore, it is imperative to know that not all data, vague or any data that is for common public is referred to as the personal data. It must have key elements like – data must be about an individual and it must be capable to identify for example phone number, address, name and others.

   Any data which is public data or public information, anonymous data, or non-personal data is not covered under the definition of "personal", and therefore, is not protected under the Act. The definition herein is dynamic, which means the kind of data is not specified in the Act and can change depending on the situation. For example, ration cards or caste ID may not be identifiable data in the current age whereas, biometric data are new age identification. Therefore, the inclusion under 'personal' data herein, for the purpose of the statute may change from time to time.

2. **Digital:** As discussed, the data covered under the Act is 'digital' only. While the Act does not explicitly define "digital", its interpretation can be derived from the overall structure and language of the legislation. As the old-age records were maintained on papers, physical files, and hard-copy versions, the new-age documents are different. The Act excludes non-digital records, such as purely physical files, unless these are converted into digital form. Data that is either already in digital form or has been digitized for processing. The digital version of data is referred to as the electronic form of the data. The definition can be referred from Information Technology Act, *S. 2(r) ¯electronic form: with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro*

fiche or similar device. For further clarity, any document in electronic version or digital version is also called an electronic record as defined under the Information Technology Act, S. 2 *(t)¯electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche*.

Digital data is considered data in a digital system, this could range from hardware to software generated data, AI or cloud computed data, social media, or mobile apps. The Act implicitly includes all types of digital media, such as emails, text messages (e.g., SMS or instant messaging apps), multimedia files, and metadata associated with digital activities (e.g., location data from apps).

3. **Data:** This definition can be taken from the Information Technology Act, of 2000.

> S. 2(o) -data: means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

Further, the definition of Information is (v) -*information: includes 2 [data, message, text,] images, sound, voice, codes, computer programs, software, and databases or micro film or computer generated micro fiche*. The Act implicitly includes: textual information (e.g., names, addresses), numeric or coded information (e.g., account numbers, encrypted data), multimedia data (e.g., photos, audio, video), metadata (e.g., timestamps, geolocation data).

4. **Processing/ Processed:** The Act implicitly includes textual information (e.g., names, addresses), numeric or coded information (e.g., account numbers, encrypted data), multimedia data (e.g., photos, audio, video), metadata (e.g., timestamps, geolocation data). The Act covers any digital personal data which has been processed. It refers to any operation or set of operations performed on digital personal data, including but not limited to a) Collection: Gathering data directly from individuals or other sources, b) Storage: Saving data in digital formats, whether temporarily or permanently, c) Use: Employing data for specific purposes, such as providing services, analytics, or marketing, d) Sharing/Disclosure: Transferring data to third parties or making it accessible to others, e) Deletion: Removing or erasing data permanently from storage systems, f) Modification: Altering data, such as updating or correcting personal information. Processing must be for a specific, lawful purpose, as outlined in the Act.

There are a few exceptions to the law: Government and law enforcement agencies for national security, public order, emergencies, research, and statistical purposes where data is anonymized or where explicit consent has been given. Data collected for delivery purposes cannot be used for marketing without explicit consent. However, it is yet unclear if publicly available data (e.g., electoral rolls, and social media profiles) qualifies as personal data under the Act. Anonymized data as well as non–personal data is also an exception to the applicability

of this Act. The Government has the power and right over such data as well where the question involves the sovereignty and integrity of India, any Government-notified exemptions, or any step by the government towards the prevention and detection of crimes. Any data received or required under the compliance or legal requirement is exempted under the Act. However, its usage, collection and protection must also be adhered as per such law. Further, any data for public protection and data can also be used for statistical or research purposes. However, in an anonymized version. There is also a requirement to balance the right to privacy and the right of expression. Data processing for journalistic, artistic, or literary purposes is exempt to the extent necessary to balance privacy rights with freedom of expression, however, the balance of interest must still be looked into. Contractual necessity is where processing required for contract performance includes data collected for employment contracts, service agreements, or customer orders. The data maybe required for vital interest such as medical or emergency. The intent and situation matters in such cases and it includes situations where consent cannot be obtained, e.g., unconscious patients.

THE ROLE OF IP AS PER THE ACT AND THE CODE

IP is an important stakeholder in the CIRP. Role of IPs: The Code envisages the following roles of IPs:

(i) As Interim Resolution Professionals (section 16) and manage the affairs of the corporate debtors (CDs) as "going concern" during the insolvency resolution process in the interim period of 30 days;

(ii) As representative of a creditor in committee of creditor (CoC) under section 21(6)(c): Where terms of financial debt extended as a part of the consortium and provide for a single trustee or agent), a creditor may appoint an IP (other than the RP) at his own cost to represent himself in the CoC to the extent of his voting share;

(iii) As RP (section 22), the creditors committee may either appoint the same "interim resolution professional" to prepare the "Resolution Plan" and manage the affairs of the CD as a "going concern" during the insolvency resolution process or may appoint other professional (CMA) in his place;

(iv) As representative of a creditor in CoC under section 24(5): Any creditor who is a member of the CoC may appoint an IP other than the RP to represent such creditor in a meeting of the CoC.

(v) As Liquidator (section 33) to be appointed by Adjudicating Authority (AA) (NCLT) on the initiation of "Liquidation Process";

(vi) As voluntary Liquidator (section 59) to be appointed by CDs;

(vii) As Insolvency Resolution Professional (section 82) by AA in case of Fresh Start Process for "Insolvency and Bankruptcy for individuals and Partnership Firms";

(viii) As Insolvency Resolution Professional (section 97) by AA for initiating the insolvency

resolution process by debtor (under section 94) or creditor/ creditors (under section 95) in case of "Insolvency and Bankruptcy for individuals and Partnership".

It is the responsibility of the RP to (a) manage the affairs of the CD as a going concern during CIRP, (b) appoint and convene meetings of the CoC, so that they may decide upon resolution plans, and (c) collect, collate and finally admit claims of all creditors, which must be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated by the CoC. The role of the RP is not adjudicatory but administrative. The prospective resolution applicant (PRA) has a right to receive complete information as to the CD, debts owed by it, and its activities as a going concern, prior to the commencement of CIRP. It has a right to receive information contained in the information memorandum as well as the evaluation matrix mentioned in Regulation 36B of the CIRP Regulations. The resolution plan submitted by the PRA must provide for measures as may be necessary for the insolvency resolution of the CD for maximisation of the value of its assets, which may include transfer or sale of assets or part thereof, whether subject to security interests or not. The plan may provide for either satisfaction or modification of any security interest of a secured creditor and may also provide for a reduction in the amount payable to different classes of creditors. Such information and comfort is provided by the RP, as part of his duty to the PRA. As the resolution plans are opened and placed before the CoC, as per Section 30(5), the Resolution Applicant(s) may be present. At this stage they may point out whether one or other person (Resolution Applicant) is ineligible in terms of section 29A or not. If one or other objection is overruled, reasons should be recorded by the CoCs. After decision of the CoCs, the RP is required to place the decision before the AA under section 31. The AA who is required to take decision as per section 31 of the Code, can go through the reasoning to accept or reject one or other objection or suggestion and may express its own opinion/decision."[2]

The IP is the sole responsible person who is the treasurer for all the data. From the date of commencement of insolvency process, the IP deals with data that involves deep and confidential financial information off the company slash CD. The IP also holds balance sheet valuation report, accountancy reports as well as various litigations that are prevalent on behalf of the CD. He has in depth information regarding the profits, liabilities as well as the detailed records of employees. All the licenses, certifications and any such compliances are also under the purview of the IP. Therefore, it becomes clear that the IP has confidential as well as sensitive information under its control. Additionally, IP also holds information regarding various claims the claims involve sensitive data of persons, institutions organizations, and such others. These claims involve liabilities, documentation and various such evidence that they are important for the CIRP. As CIRP is not just time-sensitive but also crucial for the valuation of the CD, therefore, each information is required to be preserved and maintained in such a way that it does not get leaked. Such professional is duty bound to maintain the records for 8 years as per the Code, as per the recent directions in case of electronic records. RP can be required to furnish such records as per the clause 19 of the Code of Conduct appended to Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Professionals)

[2] ANG Industries Ltd. vs. Shah Brothers Ispat Pvt. Ltd. and Ors. (24.05.2018 - NCLAT) : MANU/NL/0103/2018

Regulations, 2016. The IP, therefore, holds a very valuable position not just to collate timely information from various stakeholders but also to maintain data privacy.

The RP is the main character in CIRP. The RP comes in contact with all the information during CIRP. This data may be sensitive or personal but are integral part of the process.

The RP is the custodian of all the financial data of the CD. He verifies the financial, operational, and statutory records of the insolvent entity, including balance sheets, profit and loss accounts, ledgers, and bank statements. He further collates all the personal data received from various claimants and supporting documents, reviews and verifies creditor claims against the entity's financial data. The details of all CoCs, their stake, and sensitive information are all under the control of the RP. He further is informed about the in-depth working and information of the business of the CD. He acts as a liaison between creditors, resolution applicants, and the AA, ensuring that all stakeholders have access to relevant and accurate data.

The Supreme Court of India has affirmed that the RP is entitled to take control of the CD's assets, including data and records. This authority ensures that the RP can effectively manage and preserve the CD's estate during CIRP.[3] The National Company Law Appellate Tribunal (NCLAT) emphasized that the RP is responsible for verifying claims submitted by creditors and maintaining accurate records of such claims. The tribunal highlighted the importance of the RP's role in ensuring that all claims are properly documented and addressed during the insolvency process.[4]

THE ACT AND INTERPLAY WITH THE INSOLVENCY AND BANKRUPTCY CODE

Once a company enters CIRP, i.e. it is admitted for the resolution process, it becomes a subject of the country or public at large which means any stakeholder pertaining to this company, is subject to information details regarding litigation, different valuations and such other procedure under CIRP. IBC ensures that the value of the CD is maximized within a time frame to ensure that the CD gets its apt value. This can be achieved by keeping the important numbers and valuations secured and protected. Similarly, the aim of data protection at is to keep the data protected in digital form.

CIRP involves a public announcement where all the information about the process and the company is displayed in public. This invites the public to file its claims against such a company (called a CD). Announcements are made in widely circulated newspapers, on the website of IBBI, and on the CD's website. This implies that information/ data regarding the CD becomes information of public domain. There have been instances where valuations, admission process, claims common litigation common name of the IRP and such other information is often shared in the newspaper, social media, and such other public domain. This is the first step where the role and integration of RP and data is noticed.

Moving on to the next step, where the claims are invited, the RP is the main key person to

[3] Victory Iron Works v. Jitendra Lohia & Anr., 2023 SCC OnLine SC 260

[4] Company Appeal (AT) (Insolvency) No. 328 of 2021

receive, collate, preserve and analyze such data. Such claims are often received in online forms or e-documents. The RP after collating such data, then examines supporting documents submitted by creditors, such as invoices, loan agreements, and financial statements, and then cross-verifies claims against the CD's records and other sources. His next duty is to prepare a list of creditors based on verified claims. It is pertinent to note that excessive personal information is shared with the RP during the submission of claims. Data is often stored in digital formats using secure platforms or virtual data rooms (VDRs), minimizing unauthorized access. Personal identifiers such as PAN or Aadhaar details are usually redacted when sharing information, if sharing such information is required by law, such as through public announcements. Creditors share their information due to the requirement under the law, but the duty lies with the RP to maintain the sanctity of data, use only where required as per the Code, store in a protected digital format, and destroy when the process is over.

Creditors are obligated to submit various forms and documents as evidence to support their claims. The data shared often includes personal information like names and credentials of creditors or authorized representatives, contact details (address, email, phone number), identification details (e.g., Aadhaar, PAN in India), financial data like the amount of debt or claim, interest rates and calculations, supporting documents like invoices, agreements, or financial statements and such other records like employment records and salary slips as well. This information falls within the definition of sensitive personal data. Such information enables the identification of any stakeholder/ creditor. Accordingly, the list of creditors is prepared and a CoC is formed. The RP is herein required to disclose the percentage of the stake of the Committee. However, the RP cannot share any further information on any platform unless the law requires it. This is an instance where the Code and Act interplay and are sync with each other. Since the Code requires only certain information to be displayed, the rest information must be kept confidential and safe with the RP. Similarly, vital information of the CD is also important for the RP to keep highly safe and confidential. This is mandated by both, the Code as well as the Act. The Act aims at data privacy and protection and the Code aims at preserving the value of the assets of CD, without any diminishment of the asset value. Sensitive personal and financial data is shared only with authorized parties, for example, creditors, CoC members, and resolution applicants under confidentiality agreements. Resolution applicants and other parties receiving data must sign NDAs to prevent misuse and this is supervised by the RP. This is how the RP is able to comply with both the Act as well as the Code.

It has also been noticed that various information or data is shared commonly among the stakeholders at *Rem*. Therefore, it becomes a moral duty of the IP to protect such data from being misused or misinterpreted. The statute that protects the data ensures protection of data in digital format. Under the purview of this statute, it is now not just the moral duty of the IP to protect the data, but also the legal duty of IP to keep such data all the time protected and safeguard from any leakage or misuse.

It is important to understand that the two laws that is IBC and Data Protection Act, 2020 are

in sync with each other. The RP is under the duty to not only maintain the data, its confidentiality but also keep the records well-maintained. The RP walks on a double-edged sword by maintaining transparency as well as maintaining the data confidentiality. As all the data comes to the RP and then it is published or shared with the party as required by the Code, therefore, the RP is accountable for any data breaches or unauthorized sharing of information.

The RP, therefore, must protect such data from any unauthorized access, leakage of data, misuse of data or any such privacy risks. The resolution is an important stakeholder who is responsible for a successful resolution of the company. Along with this responsibility, RP is required to make certain information available to public, and keep other information confidential. Since RP is an experienced professional, of sanity and highly skilled acumen, this sensitivity and call for maintaining the right balance becomes the utmost responsibility. The RP can be held liable under either the Act or the Code for any breach.

To have a compliant practise, the RP must be able to identify and categorise data in different categories like personal and sensitive data processed by the insolvent company. While exceptions exist, laws generally require safeguards and RP must take into account minimizing the unnecessary data usage, limiting scope and purpose of such data, and very importantly maintaining accountability and transparency. Therefore, the two statutes as discussed are complimenting each other and have lot of similarities when it comes to data protection and privacy.

RECOMMENDATION

As the two laws have interplay in maintaining confidentiality and preserving any misuse of digital personal data, some recommendations that the RP must make it practise to ensure the best of both statutes:

1. Use secure online portals for creditors to upload claims and supporting documents; such software or portals maybe expensive, however, the cost can be included in CIRP cost, duly approved by the creditors;
2. Share personal data strictly on a need-to-know basis or with proper NDA executed;
3. Regular audit towards data stored, and collected must be made by the RPs. This can also be supervised by the regulator such as IBBI or Insolvency Professional Agencies.

Data protection will see a lot of further changes as we move forward. However, soft changes as discussed in the ecosystem to ensure privacy and protection may be implemented.

11

THE ROLE OF RESOLUTION PROFESSIONAL IN MINIMIZING THE HAIRCUT IN INSOLVENCY PROCEEDINGS

A. Sridhar and K. Rajendra

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) aims to maximize asset realization during insolvency proceedings. However, statistical trends reveal a consistent decline in recovery amounts. The increasing "haircuts" observed in resolution processes run counter to the Code's primary objective. A haircut, in this context, refers to the reduction in creditor recovery as compared to the original dues owed. This concerning trend necessitates a closer examination of the role played by Resolution Professionals (RPs), who assume control of a corporate debtor's (CD) management once the company enters the corporate insolvency resolution process (CIRP).

This paper critically evaluates the pivotal role of RPs in minimizing haircuts, thereby enhancing the financial benefits to creditors, particularly public sector banks. In the majority of CIRP cases, financial creditors (FCs), predominantly public sector banks, bear the brunt of these losses, resulting in a significant impact on public funds and the economy. As fiduciaries, RPs must adopt strategic measures to maximize returns for creditors and reduce losses. This study explores strategies that RPs can employ to uphold their fiduciary duties, focusing on maximizing asset value during CIRP. Coase Theorem is applied to determine how effective bargaining techniques and setting reservation prices can optimize benefits for both creditors and resolution applicants, ultimately reducing haircuts.

Key Words: Resolution Professional, CIRP, Haircut, Insolvency Bankruptcy Code, Theory of Private bargaining, Coase Theorem.

INTRODUCTION

This article identifies and addresses the important aspect under insolvency law in India. Maximization of assets is the major goal of insolvency law in any country.[1]Code was passed with the aim of speedy recovery of assets. The IBC gives more importance to the FCs compared with operational creditors (OCs) and shareholders.[2] Under this legislation the government created a position called as RP who is having the similar powers and responsibilities of Liquidator under the old regime. Once an RP is appointed under IBC, he is going to replace

[1] The Insolvency and Bankruptcy Code, No. 31 of 2016, Preamble, § 1, Acts of Parliament, 2016 (India).

[2] Vidushi Puri, *Distinction in Treatment of Financial Creditors vs. Operational Creditors*, IBC Laws (Jan. 9, 2023), https://www.ibclaw.in/distinction-in-treatment-of-financial-creditors-vs-operational-creditors-by-vidushi-puri/.

the Board of Director of the company and the professional shall have the fiduciary responsibility towards the stakeholders. During the process of resolution or liquidation, the RP shall have more responsibility towards creditors than the shareholders. It is the responsibility of RPs to ensure that creditors are able to recover the maximum during the resolution or liquidation process. It is his duty to get the maximum return to the stakeholder. This paper tries to analyze the role of RPs in maximizing the return to the creditors and to ensure that the haircuts in the resolution process are reduced.

LITERATURE REVIEW

The application of Coase Theorem to corporate insolvency

The research paper published by Hiteshkumar Thakkar[3] elaborates the importance of bargaining theory in the resolution process and explains how bargaining can enhance the efficiency and minimize the transaction cost in the resolution process. This research work applies the Coase Theorem to corporate insolvency and does the empirical analysis based on the interview conducted by the authors. Finally, this paper concludes that the major aim of insolvency law is to achieve the welfare of all stakeholders who have diverse interests. Though the insolvency law is more FC-centric, the legislation attempts to maintain the balance of the interest of different stakeholders.

Some economic fundamentals for an analysis of bankruptcy

J. Fred Weston's "*Some Economic Fundamentals for an Analysis of Bankruptcy*" is a critical analysis of the economic impact of bankruptcy laws. It engages with Dean Meckling's framework, and there can be no doubt that it has all but challenged the assumptions surrounding the elasticity of credit supply. He underscores the role of credit in resource allocation, explaining how financial intermediation supports economic growth through risk diversification and economies of scale. Regarding corporate bankruptcy, he suggests reforms such as modifying the absolute priority rule and promoting mergers as efficient alternatives to liquidation. While insightful and theoretically rigorous, the article calls for empirical validation and broader accessibility to make it practically relevant.[4]

Role of Resolution Professional in a corporate insolvency resolution process in the light of corporate governance

The literature on the role of RPs under the IBC, emphasizes their critical function in managing CIRPs while upholding corporate governance principles of transparency, accountability, fairness, and responsibility. The RP when appointed under the act will act as a custodian of CD and ensures that the company is maintained as a going concern whereby balancing the interests of different stakeholders. The challenges faced by RPs, such as addressing liquidity issues, maintaining workforce motivation, and managing complex stakeholder relationships, are

[3] Hitesh Kumar Thakkar and Pranay Agarwal, *Enhancing Efficiency Through Negotiation and Minimising Transaction Costs: Application of Coase Theorem to Corporate Insolvency*, Int'l J.L. & Mgmt. (forthcoming 2024), https://ssrn.com/abstract=4999494.

[4] J. Fred Weston, *Some Economic Fundamentals for an Analysis of Bankruptcy*, 41 L. & Contemp. Probs. 47 (1977).

highlighted with examples like Essar Steel India Limited, where innovative financial mechanisms were utilized during CIRP.

The integration of corporate governance principles is underscored through mechanisms like the formation of the committee of creditors (CoC), strict compliance with reporting norms, and adherence to timelines mandated by the IBC. Regulatory oversight through the Insolvency and Bankruptcy Board of India (IBBI) Code of Conduct ensures the independence and impartiality of RPs, aligning their actions with stakeholder interests.

While literature advocates a transparent and equitable insolvency resolution process, it also identifies gaps in implementation and suggests improvements, such as enhanced CoC supervision and proactive stakeholder engagement. By promoting structured resolutions over liquidation, the IBC aims to maximize asset value and strengthen corporate governance practices during insolvency.[5]

Unlikely Bedfellows: The Coase Theorem, Bankruptcy Liquidations and the Audubon String Quartet

This scholarly paper looks at the directorial fiduciary duties in cases of insolvent and distressed corporations under Delaware law. Whenever a corporation is solvent, its directors have fiduciary duties to the shareholders and creditors are protected under contract, bankruptcy laws and regulation. In the so-called "zone of insolvency" when a corporation moves to insolvency, however, the directors' duty continues to be to the corporation and its shareholders according to Gheewalla, it was clarified by the court that the directors shall act in the interest of the corporate and they cannot shift their obligations to creditors.

Once a corporation is insolvent, all residual claimants, including creditors, have derivative rights. However, creditors cannot bring direct fiduciary claims against the directors. Subsequent cases, such as *Nelson v. Emerson* (2008) and *Quadrant v. Vertin* (2015), reinforced the discretion of the directors to make decisions, such as bankruptcy filings, protected by the business judgment rule.

Courts determine insolvency through tests like the balance sheet test, cash flow test, and capital adequacy test. Courts, most of the time, determine insolvency retrospectively in the course of litigation. Creditors can bring derivative claims even after solvency is restored, and directors must be careful to avoid breaching fiduciary duties.

The article concludes by stating that the global challenges of COVID-19 may influence legal interpretations and reforms regarding creditor rights, which could reshape corporate governance and insolvency framework.[6]

[5] Aashna Bhargava, *Role of Resolution Professional in Corporate Insolvency Resolution Process in the Light of Corporate Governance* (Mar. 18, 2024), https://ssrn.com/abstract=4763623.

[6] N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla, 32 Del. J. Corp. L. 145 (2007). (Delaware Supreme Court decision on directors' fiduciary duties).

Examining the Role of Insolvency Professionals: A comparative study between India, USA, and UK

This literature provides a comparative study of the role of insolvency professionals in India, the USA, and the UK, highlighting the nuances of regulatory frameworks and procedural complexities. In the USA, the "debtor-in-possession" model allows businesses to maintain operational control during bankruptcy proceedings, emphasizing restructuring. The UK, however, follows a "creditor-in-control" approach, which is more creditor-friendly, and licensed insolvency practitioners manage the process. India's IBC, enacted in 2016, brings balance to these models but challenges the stakeholders with non-cooperation, valuation issues, and a lack of awareness on insolvency processes. Comparative studies of insolvency professionals in India, USA, and UK can be found in the literature about their roles. It discusses the intricacies of regulatory frameworks and procedural complexities. In USA, it is the "debtor-in-possession" model that allows businesses to stay in control during bankruptcy with a focus on restructuring. Conversely, the UK employs a "creditor-in-control" approach, prioritizing creditors' interests, with licensed insolvency practitioners managing the process. India's IBC, introduced in 2016, balances these models but faces challenges such as non-cooperation from stakeholders, valuation difficulties, and lack of awareness about insolvency processes.[7]

The Law and Economics of Corporate Insolvency: A Review

As reviewed by John Armour, this literature does a fine job of summarizing the way the intersection between law and economics in financial distress gets managed in the literature on corporate insolvency law. He identifies that insolvency law's ultimate aim is the common pool problem concept developed by Jackson: one that actually prevents individual creditors from attempting to dismember a debtor's assets in an economically inefficient way. Armour criticizes this narrow focus and argues that insolvency law serves broader objectives, such as economic efficiency, fairness, and the preservation of viable businesses.[8]

The review examines the costs associated with financial distress, being both *ex ante* and *ex post* (i.e, before and after financial distress scenario*)*, and underlined the necessity of insolvency frameworks that minimize these while maintaining creditor rights and sustainable economics. It discusses a balance between liquidation and corporate rescue, noting the ways in which the US, using Chapter 11, along with the UK, have sought to make restructuring more beneficial than liquidation in efforts to maximize going-concern value.

Further, Armour explores alternative solutions to formal insolvency mechanisms, such as reliance on social norms and pre-negotiated contracts, but questions their practicality in comparison with statutory solutions. The comparative analysis of creditor-driven systems in the UK and debtor-friendly frameworks in the US provides valuable insights into the strengths and limitations of different approaches.

[7] R.K. Chauhan and A. Pandey, *Examining the Role of Insolvency Professionals: A Comparative Study Between India*, USA, and UK, 21(S5) Migration Letters 70 (2024).

[8] John Armour, *Financing Innovation: The Role of Insolvency Law*, Cambridge Univ. Working Paper (2001).

Although the literature highlights the dynamic nature of insolvency law, it identifies a gap in empirical research on the long-term effects of different procedures. The review by Armour concludes with a call for interdisciplinary research to ensure that the frameworks of insolvency address both economic and social goals.[9]

The Problem of Social Cost

R.H. Coase's 'The Problem of Social Cost' redefines the economic understanding of externalities by emphasizing their reciprocal nature and the role of property rights in resolving conflicts. Coase argues that harm is not unidirectional; for instance, preventing a factory's emissions harms the factory owner just as allowing the emissions harms neighboring properties. The paper points out that, under well-defined property rights and negligible transaction costs, private bargaining can internalize externalities efficiently, regardless of who is legally liable—a principle now known as the "Coase Theorem."[10]

For example, the paper critiques traditional solutions such as Pigouvian taxes and regulatory interventions, which it identifies as ignoring this dynamic interaction between cost and benefit by each party. In doing so, Coase uses examples such as straying cattle damaging crops or legal cases such as *Sturges v. Bridgman* to demonstrate how legal liability shapes the resource allocation bargaining outcome. He engages with legal reasoning into economic analysis, arguing that, in defining rights, courts set the groundwork for effective negotiations.

At the same time, Coase himself recognizes that his model has limitations in actual practice when transaction costs—such as problems with bargaining or difficulties with enforcement—are substantial. Then, other, possibly more effective alternatives—government regulation, for instance, or centralistic approaches—may be considered. However, Coase regrets an excessive use of regulation and points to its inefficiencies, but he confirms its utility if transaction costs are large or if numerous people are affected.

It has helped present a comparative analysis of market mechanisms, regulation, and inaction to reshape the discourse on externalities, and then provide solutions that may vary based on context. The work remains at the center of environmental economics and law, emphasizing how there should be a balance of institutional arrangements to maximize social welfare.[11]

RESEARCH GAP

The literature available concentrates on the application of Coase theorem and the roles and duties of RP but in the present paper authors are concentrating on how RPs shall extend his arms instead of restricting himself merely as facilitator. The RP shall push the parties towards the optimum level through resolution plans. The resolution plan shall ensure that both parties i.e. creditor and the resolution applicant get benefit out of the transaction.

[9] John Armour, Brian R. Cheffins and David A. Skeel, Jr., *Corporate Ownership Structure and the Evolution of Bankruptcy Law: Lessons from the United Kingdom*, 55 Vand. L. Rev. 1699 (2003).

[10] R.H. Coase, *The Problem of Social Cost*, 2 J.L. & Econ. 1 (1959).

[11] Donald H. Regan, *The Problem of Social Cost Revisited*, 15 J. Law & Econ. 427 (1972).

LIMITATIONS

The present work concentrates only on the ideal role of IP and authors are suggesting ideal legal framework which enables the RP to fix the reservation price before inviting the resolution applicants to submit the resolution plan. This work does not deal with the method of valuation to arrive at the reservation price due to lack of sufficient data.

THE FIDUCIARY RESPONSIBILITY OF BOARD OF DIRECTORS IN CASE OF INSOLVENT COMPANY

The fiduciary duties of Board of Directors undergo significant transformation when a company approaching towards insolvency. In *Geyer v. Ingersoll publications co*[12] the court observed that the fact of insolvency gives rise to fiduciary duty of board of directors towards creditors of the company. Before insolvency the Board of Directors are responsible towards its shareholders whereas once the insolvency is triggered they become responsible not only to the shareholders but their responsibility extends to creditors of the company.

The fiduciary responsibility of Board of Directors are reiterated under section 66(2) of IBC, which proves that the board of directors has the fiduciary duty to ensure "*that before the insolvency commencement date, such director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such CD*". When the company is about to become insolvent, the directors are having a fiduciary duty to conduct the affairs of the company with diligence and ensure that they are minimizing the loss to the creditor. Once the CIRP is started, the RP steps into the shoes of Board of Directors and the fiduciary responsibility towards creditors continues and the RP shall ensure that he is minimizing the loss to the creditors in case of insolvency proceedings. Under the legislation the RP even has the power to avoid the transactions which are prejudicial to the interest of the CD. These provisions enable the resolution professional to ensure the maximization of realization value to the creditors in case of CIRP and also in case of liquidation.

THE RESOLUTION PROFESSIONAL AND HIS APPOINTMENT

Under the Code, the application for initiation of CIRP can be made by three categories of people namely, FCs, OCs and CD. When the application under section 7, 9 or 10 of IBC is filed with the Adjudicating Authority (AA) the applicant shall propose the name of the RP to be appointed.[13] The Interim Resolution Professional proposed by the applicant may be confirmed by the AA subject to regulations. When the application is admitted, the admission date is called the Insolvency Commencement Date (ICD). From the ICD the Interim Resolution Professional replaces the Board of Directors and he will take over the company and it is the responsibility of the RP to ensure that the going concern is maintained. Once the Interim Resolution Professional is appointed he forms the CoC and once they are appointed then the CoC may continue the Interim Resolution professional as RP or they may appoint another person as RP.

[12] Geyer v. Ingersoll publications co, 621 A.2d 784 (Del. Ch. 1992).

[13] In cases where an application is initiated by an operational creditor, the creditor has the discretion to either propose a resolution professional or refrain from making such a proposal.

REPLACING THE BOARD OF DIRECTORS WITH THE RESOLUTION PROFESSIONAL UNDER IBC

Under the Indian law when CIRP is started, the RP will step into the shoes of Board of Directors and the director's fiduciary responsibility extended to the RP as he is replacing the Board of Directors in this case. The CIRP Regulations also casts a duty on RP to take measures as may be necessary for insolvency resolution of CDs for maximization of value of assets of CDs.[14] These powers are similar to the powers of the Board of Directors when they are managing the affairs of the company.

THE POWERS AND DUTIES OF RESOLUTION PROFESSIONAL IN INSOLVENCY PROCEEDINGS

Under section 25(2)(i) all resolution plans must be placed before CoC which facilitates the negotiation between resolution applicant and CoC whereby RPs can facilitate to enhance the realization value. (*Arcelor Mittal India Private Limited v. satish kumar gupta and Ors Case*[15])

In the case of *Shri Guru Containers v. Jitendra Palande*[16] NCLAT observed that section 217 of the IBC empowers any person aggrieved by the functioning of an RP. When the OC files an application for CIRP under the Code. If the RP fails to perform his duties diligently then the OC has freedom to file a complaint before the AA.

The RP has various powers under the legislation to conduct CIRP. He has various powers under the code, like *"power to appoint accountants, legal or other professionals as may be deem fit for the purpose or resolution process".*[17] The Resolution professional also has the power to appoint the valuers to determine the fair value and liquidation value of the CD[18] for the purpose of preparing the information memorandum which needs to be circulated to all creditors and interested resolution applicants.

THE ECONOMIC ANALYSIS OF ROLE OF RESOLUTION PROFESSIONAL IN CIRP

Under the old regime once the company became insolvent, the parties used approach court, where the court initiates the liquidation process by appointing the Liquidator. The Liquidator forms the liquidation estate and the liquidation estate is realized by selling all the assets, the liquidator then distributes the realized amount to stakeholders as per the mechanism provided by the legislation. The new insolvency law regime introduced the RP, where he is responsible not only to realize the amount and distribute among the stakeholders, but before going for liquidation the RP shall go for CIRP where he shall try to maintain the company on going concern basis and he shall try to best resolution plan for restructuring the company, which ensures the maximum benefit to the creditors.

[14] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 37 (India).

[15] Swiss Ribbons Pvt. Ltd. v. Union of India, AIR 2019 SC 739, 5646 (India).

[16] Shri Guru Containers v. Jitendra Palande, Company Appeal (AT) (Insolvency) No. 106 of 2023 (NCLAT).

[17] Insolvency and Bankruptcy Code, No. 31 of 2016, § 20, Acts of Parliament, 2016 (India).

[18] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 27 (India).

APPLICATION OF COASE THEOREM IN RESOLUTION PROCESS AND ATTAINING THE OPTIMUM LEVEL

According to Ronald Coase's theorem "no matter what the law is but private bargaining leads to efficient allocation of resources" in case of insolvency we need to look at the gain and loss of creditors and at the same time the benefit received by the resolution applicant. The RP shall facilitate both parties to move towards private bargaining, which reduces court expenditure (it is an additional cost) and avoids loss of time. Generally, at the time of loss or in insolvency conditions,creditor approaches court for recovery of his money but this causes some additional cost to creditor (cost of law) so the final benefit gained by the creditor will be less. This demotivates the creditor to invest money in any business opportunity or in companies. At macroeconomic level, it causes capital scarcity and also leads to low economic growth and low employment generation. The RP has to push the resolution plan to the optimum level. There is a need to fix the process or guidelines to ensure the fixing of the optimum transaction price or which can also be called reservation price, so that the creditor and resolution applicant can bargain over the reservation price and try to get the maximum benefit. If any party is not compromising and accepting the reservation price, then the whole resolution process will and the parties are forced to approach the court. If the court process is involved the parties need to incur additional cost. According to economics, man is a rational economic man and always tries to reduce the cost and maximize the benefit. So, for both parties it is always better to go for private bargaining under the new insolvency regime. Thus, the RP by fixing the reservation price, can push both parties towards optimum solution which gives benefit to the both parties and which also retains the creditors interest in investing in credit facility, which is good to the economy at micro and macro level to move parties towards efficiency. The law shall enable us to reduce the transaction cost. The transaction cost is the combination of search cost, bargaining cost and implementation cost. search cost includes the cost to search the resolution applicant and bargaining cost includes, bargaining and fixing the reservation price. implementation cost includes legal cost for enforce.

If transaction cost is < legal cost = Then professional work is efficient and Resolution Applicant will invest
If transaction cost > legal cost = Then professional work is inefficient Resolution Applicant will not invest

Here, while undertaking the CIRP work, professionals have to follow a method in fixing the reservation price.

FIXING THE RESERVATION PRICE BY PROFESSIONAL

The professional has to consider the admitted amount in CIRP and he shall add a minimum expected additional amount from the creditor and shall fix the reservation price, based on the reservation price both parties shall bargain.

When authors look at the haircuts happening at ground level, it gives an impression that the haircuts are very huge where the legislation failed to ensure that the creditors are able to receive the maximum value. Though the legislation is giving autonomy to the CoC while

approving the resolution plan, in majority of cases the recovery rates are very low,[19] to increase the recovery rate the law should be amended to ensure that the minimum reservation price shall be recovered in the resolution plan. These measures will help in shifting the property from the person to whom its value is less to whom the value is more.

Authors analyze a few recent resolution plans approved by NCLT where the haircut amount is huge. In the case of *Labindia Instruments Private Limited v. Karkinos Healthcare Private Limited*[20]- the amount claimed by creditors is ₹ 436,04,59,347/- whereas the amount provided under resolution plan is ₹ 202,16,67,810/- where the amount recovered is 46.36% of the claimed amount by the creditors. Taking a look at another resolution plan approved by NCLT in the case of *ICICI Bank Limited v. Vinergy International Pvt. Ltd*[21]-the amount claimed by creditors is ₹ 31,254.62 lakhs whereas the amount provided under resolution plan is ₹ 1,255.00 Lakhs which is 4.015% of the claimed amount.

Looking at the above two cases: The gap between the amount proposed and recovered is very wide. This affects the credit facility in the country adversely in the long run as discussed above. In these scenarios, the RP would have fixed the reservation price as discussed above, then both parties will be able to get the optimum benefit through transaction.

THE FIDUCIARY RESPONSIBILITY OF RESOLUTION PROFESSIONAL

When the AA allows the application made under this legislation the RP will replace the Board of Directors. Section 17 of the Code provides that from the date of appointment of interim resolution professional, the RP shall vest with the power to manage the affairs of the company. In the case of *Manish Kumar v. UOI,* [22] the Supreme Court observed that "*from the date of appointment of Interim Resolution Professional the powers of the Board of Directors who are partners of the corporate debtors shall stand suspended*".[23] This clearly states that the RP will step into the shoes of the Board of Directors from the date of his appointment and he shall be in fiduciary duty towards stakeholders like the Board of Directors.[24]

In the case of *Ms. Amita Saurabh Bihani and Ors. v. E&G Global Estates Ltd. and Ors,*[25] the NCLAT observed that

> The statutory construct of IBC clearly puts the onerous responsibility of pursuing avoidance application on the resolution professional. under section 25(2)(j) of the Act, it is the duty of Resolution Professional to file appropriate applications for avoidance of transactions which fall under the ambit of preferential, fraudulent, undervalued or extortionate transactions. It is the responsibility of a Resolution professional to determine the nature of such transactions and file appropriate applications before the adjudicating authority.

[19] Economic Times, IBC Recovery Rates Higher at 32.6% in Large Firms, shows IBBI Data,https://economictimes.indiatimes.com/ (Aug. 24, 2013).

[20] I.A. (IBC) (Plan) No. 84 of 2024 (NCLT).

[21] I.A. (IBC) (Plan) No. 57 of 2024 (NCLT).

[22] Manish Kumar v. Union of India, Writ Petition (C) No. 26 of 2020, (2021) 14 SCR 895 (India).

[23] *Id.* at 73.

[24] Sandeep Khaitan v. JSVM Plywood Indus. Ltd., (2021) 4 SCR 122 (India) (holding that upon admission of the application and appointment of an IRP, management of the corporate debtor vests in the IRP).

[25] Ms. Amita Saurabh Bihani and Ors. v. E&G Global Estates Ltd. and Ors, Company Appeal (AT) (Insolvency) Nos. 1214–1215 & 1217–1218 of 2023 (NCLAT).

The RP was put in a responsible position under the IBC. The RP, during the CIRP may act as a Liquidator during the liquidation process. In the case of *Jagdish Kumar Parulkar, Liquidator for Kapil Steels Ltd. v. Indore Steel & Alloys Pvt. Ltd. and Ors,*[26] NCLAT observed that

> The Liquidator has therefore a fiduciary and legal responsibility to the Corporate Debtor, the creditors and the Court. Be that as it may, the Liquidator being an officer of the Court also has to display high level of professional maturity and a modicum of balance, fairness and restraint in the conduct of liquidation process and is not expected to show overzealousness or overreach in detecting traces of preferential/fraudulent/undervalued transactions in respect of interest in the property owned by a person who has acquired such interest from a public authority in good faith and for value. Since the Respondent No. 1 had secured the lease of the subject land from MPIDCL directly and in a transparent manner hence it cannot be said to be putting any person in a beneficial position or being prejudicial to the interests of the corporate debtor.

The RP, when appointed will replace the Board of Directors.In the case of *Umang Realtech Pvt. Ltd. v. Mrs. Daphne Reita Rajan Sharma and Anr*,[27]the Delhi High Court observed that when the application under RERA Act, 2016 needs to be filed by the promoters under RERA Act and the company is under the CIRP, then the application filed by the RP is considered to be a valid application and he shall be equated with the word promoter under RERA as he is representing the company.

THE IDEAL ROLE OF RESOLUTION PROFESSIONAL IN MAXIMIZING THE STAKEHOLDERS VALUE

The RP shall give the public announcement inviting probable resolution applicants to file the bids for resolution plan. Here, the RP has a duty to place all the resolution plans before the CoC. He shall take necessary steps to positively impact the resolution applicant to quote the higher price for acquiring the CD. The incentive system under regulations also encourages the RP to ensure that he is able to achieve maximization of assets in the resolution process as his incentives are directly related to maximization of CD's assets value. Though the decision taken by the CoC is final in approving the resolution plan, the law shall be amended in such a way where weightage shall be given to the proposals made by the RP because he is replacing the Board of Directors and he has fiduciary duty not only towards the creditors but also towards shareholders and other stakeholders. This facilitates the RP to strive for maximization of asset value in the case resolution process.

Regulation 36 of CIRP Regulations[28] provides that information memorandum shall contain "*the company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor.…*"

After considering the viability and other requirements the CoC approves the resolution plan

[26] Jagdish Kumar Parulkar, Liquidator for Kapil Steels Ltd. v. Indore Steel & Alloys Pvt. Ltd. and Ors, (2023) ibclaw.in 198 (NCLAT).

[27] Umang Realtech Pvt. Ltd. v. Mrs. Daphne Reita Rajan Sharma and Anr, (2024) ibclaw.in 1418 (HC).

[28] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 36 (India).

and submits to the AA for approval. Here, while receiving the resolution plans from the resolution applicant the RP shall ensure that the resolution plan is in the best interest of the stakeholders as he is in the fiduciary relationship and he needs to ensure that the maximization of assets is achieved in this process. Apart from above responsibility, the RP shall also ensure that the haircuts are reduced while receiving the resolution plans from the resolution applicants.

When RP can ensure the maximum realization of assets, the creditors realize the maximum amount from the resolution process. This in turn helps the FCs to reduce their NPAs. If the NPAs in general are reduced then, it helps the financial institutions to lend more money to other borrowers, which in turn benefits the market.

The RP can fix the minimum criteria to file the resolution plan with the approval of the CoC under section 25 of the Code. The RP then goes for public announcement where he invites the interested resolution applicants to give the Expression of Interest. The resolution applicant submits the resolution plan with the RP then, RP will submit the resolution plan received from various resolution applicants to the CoC.

SUGGESTIONS

Reservation Price Mechanism

The RP should fix a reservation price before initiating the public announcement, ensuring that negotiations start with a baseline that maximizes creditor returns. This mechanism reduces uncertainty and facilitates efficient bargaining between creditors and resolution applicants.

Strengthening RP Autonomy

While CoC approval remains critical, the law should give considerable importance to RP recommendations, reflecting their fiduciary responsibilities toward stakeholders.

Focus on Reducing Haircuts

Legislative amendments should aim to ensure recovery rates that minimize haircuts. Lower haircuts lead to improved creditor confidence, reduced NPAs, and enhanced credit availability in the economy.

Promoting Economic Stability

By maximizing asset realization and maintaining companies as going concerns, RPs contribute to financial stability, reduced capital scarcity, and economic growth at both micro and macro levels.

CONCLUSION

The RP plays a pivotal role in the insolvency process. The RP, when appointed replaces the Board of Directors and he has the fiduciary responsibility towards the creditors and other stakeholders. The RP's responsibilities extend beyond the realization and distribution of assets.

They include maintaining the CD as a going concern, ensuring the best resolution plan is achieved, and striving to maximize value for all stakeholders. Though the main aim of the IBC is to increase the recovery rates, from the cases discussed above we can say that the recovery rate is very low, which is leading to more haircuts in resolution plans. Amending the law to support practices like fixing reservation prices and encouraging competitive resolution plans can significantly enhance the efficacy of the IBC, which in turn increases the recovery rate resulting in reducing the haircuts.

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12

INSOLVENCY PROFESSIONAL: ROLE, RESPONSIBILITY AND CHALLENGES IN THE REAL ESTATE SECTOR

Anchal Jindal, Naveen Bali and Jayesh Sanghrajka

ABSTRACT

The real estate sector a cornerstone of economic growth, has witnessed substantial turbulence in recent years, leading to an increased incidence of insolvency cases. Insolvency Professionals (IPs) play a critical role in navigating the complexities of insolvency within the real estate sector, where homebuyers are often at significant financial risk. Handling the insolvency process in the real estate sector requires a deep understanding of both real estate project management and financial restructuring. However, the role of IPs is fraught with multiple challenges, primarily stemming from the conflicting interests of stakeholders, the intricacies of stalled real estate projects, and the need to uphold the legal framework established by the Insolvency and Bankruptcy Code,2016 (IBC/Code).

One of the prime challenges for IPs handling real estate sector distress is managing the contradictory priorities of numerous stakeholders i.e. financial creditors (FCs), developers, and homebuyers. Despite the 2018 amendment to the IBC that recognizes homebuyers as FCs, their position remains precarious, as they fall under the category of unsecuredFCs. This often creates a complex situation for IPs, to maintain equilibrium between the financial recovery expectations of the FCs and concerns of the homebuyers, who have often invested considerable sums in projects that are incomplete or stalled.

Additionally, IPs are also accountable for assessing the financial viability of such stressed projects under the IBC, determining whether they can be resolved or if liquidation is the more feasible option. Further, technical complications faced by IPs include methodologies to be employed for valuing the concerned real estate asset, which is often obscured by market volatility and regulatory constraints. Also, legal complexities are further intensified by the need for IPs to ensure timely compliance with the plethora of regulatory guidelines and regulations. Hence, IPs are often caught in the web of complexities, facing legal challenges from both FCs and homebuyers who are often dissatisfied with the slow pace of resolution.

Another challenge for IPs handling real estate projects also includes ensuring the IBC alignment with the Real Estate (Regulation and Development) Act, 2016 (RERA), dealing with multiple litigations filed across various forums against the same cause of default, dealing with issues arising while dealing with land authorities and implementing subvention schemes. Homebuyers, the most vulnerable stakeholders in such cases, expect periodic updates from

the IPs concerning the development of the project. Further, the lack of technology poses another obstacle for IPs in managing these cases efficiently. Although the use of technology in insolvency processes is on the rise, the real estate sector has been slow to adopt digital tools that could enhance better communication and project management.

Finally, collaboration between IPs, regulatory bodies, and industry associations is also critical but often lacking. Regulatory bodies such as the Insolvency and Bankruptcy Board of India (IBBI) and the Real Estate Regulatory Authority play a critical role in overseeing insolvency processes, but their interactions with IPs can sometimes be disjointed. Enhanced collaboration between the regulators of real estate space could lead to more streamlined processes and faster resolutions.

In conclusion, while IPs play an imperative role in the resolution of stress prevailing in the real estate sector, they encounter a myriad of encounters that require a nuanced understanding of the market, legal, and regulatory process. Addressing these challenges through strategic interventions, amendments in legal framework, technical assistance and capacity building is paramount for achieving effective management of real estate sector stress.

This paper is structured as follows: Firstly, the paper conceptualizes the role of the real estate sector in the Indian economy, instances of stress prevailing in the sector, and the interaction of insolvency law with the resolution of stress prevailing in the real estate sector. Secondly, it covers the key reforms introduced in the real estate sector, the role of the IBC and IPs in the real estate domain, and the role-play of regulatory and judiciary support in shaping the IBC framework to deal with insolvencies in the real estate sector and role-play of judiciary. Further, the paper goes on to analyse the challenges faced by the IPs in handling real estate sector insolvencies. Finally, the paper concludes with the recommendations for improved insolvency management in real estate.

Key Words: Real Estate Sector, Homebuyers, Insolvency Professional, Financial Creditor, Authorised Representative, IBC, RERA, Insolvency

INTRODUCTION: AN OVERVIEW OF THE REAL ESTATE SECTOR IN INDIA

The real estate sector in India stands as one of the key pillars of the nation's economic growth, offering substantial contributions to Gross Domestic Product (GDP) and employment generation. Encompassing residential, commercial, retail, and industrial segments, it plays a critical role in the development of physical and social infrastructure. The rapid growth of the real estate sector is attributable to the growth in the corporate environment, interest in wider office space, and urban and semi-urban accommodations. The real estate sector is poised for growth, with a projected compounded annual growth rate of 9.2 percent from 2023 to 2028. Growth in 2024 was anticipated to be driven by factors such as urbanization, expansion of the rental market, and property price appreciation. Private market investor Blackstone, having already invested approximately ₹ 3.8 Lakh Crore (US$ 50 billion) in the Indian real estate market, plans to further invest ₹ 1.7 Lakh Crore (US$ 22 billion) by 2030 (India Brand Equity Foundation, 2024).

As of 2023-24, the 'Financial, Real Estate & Professional Services' segment accounted for approximately 22.66 percent of India's gross value added at current prices.(MoSPI, GOI, 2024). Projections indicate that by 2025, the real estate sector alone could contribute up to 13 percent of the country's GDP, with expectations to reach a market size of US$1trillion by 2030(ICICI Direct, 2024). The government's support through policies such as affordable housing schemes, the Pradhan Mantri Awas Yojana (PMAY), and incentives for infrastructure development has been instrumental in propelling this growth trajectory.

Although the sector has experienced progression in the passing years, it has also faced a rising number of insolvencies, primarily due to economic disruptions like the pandemic, project completion delays, and financing challenges. The involvement of several stakeholders such as homebuyers, developers, and financial institutions, further complicates the resolution of real estate insolvencies, increasing the sector's vulnerability. The surge in the non-performing assets and the complexities of managing distressed assets highlight the critical need for effective insolvency management.

As per the Reserve Bank of India's (RBI's) Report on Trend and Progress of Banking in India 2023-2024, the capital market and real estate sector are categorized as sensitive sectors by RBI as their assets are prone to fluctuations in value.(RBI, 2024). Presently, the real estate sector in India is in a chronic cycle of low growth coupled with the paucity of liquidity in the market. Report of Amitabh Kant's Committee constituted by the Ministry of Housing and Urban Affairs released in July 2023(Ministry of Housing and Urban Affairs, GOI, 2023), also states that the primary reason for stress in the real estate sector in India is a lack of financial viability, which leads to cost overruns and delayed project completion.

As per the IBBI Quarterly Newsletter, as of 30th September 2024, ~22 percent of the total insolvency process admitted in India under the IBC pertains to the real estate sector. The total number of corporate insolvency resolution process (CIRP)casesin the real estate sector has increased by over 80 percent in the last four financial years from 885 as of March 2021 to 1585 as of March 2024 respectively. This trend indicates escalating financial distress in the real estate sector. Amidst the complications surrounding the insolvency resolution of the real estate sector including but not limited to prolonged legal battles, lack of funding, land title disputes, regulatory challenges, and consequent resolution delay, the average rate of real estate resolution under the IBC has been 14 percent in the preceding four financial years.(IBBI, 2024)

As per the Report "Update on IBC in Indian Real Estate" released in September 2023by ANAROCK and Khaitan & Co.(Anarock & Khaitan, 2023), the key highlights of the impact of IBC on the real estate sector are as follows:

- The real estate sector accounts for approximately 19 percent of total realizations under the IBC proceedings. This significant proportion underscores the sector's prominence in insolvency resolutions.
- The real estate sector has one of the lowest resolution rates among industries under

the IBC. Despite this, financial creditors in real estate have realized about 66 percent of their admitted claims, compared to 31 percent in other sectors.

- To address delays in insolvency resolutions, the government has appointed 21 new members to the National Company Law Tribunal (NCLT), bringing the bench strength closer to the sanctioned number of 63. This move aims to expedite the resolution process for real estate insolvencies.
- Certain significant cases have gone sub-judice following appeals to the National Company Law Appellate Tribunal (NCLAT). This development has affected the overall realization percentages for the real estate sector under the IBC.

The 2018 amendments, which recognized homebuyers as FCs, significantly enhanced their participation and influence in insolvency proceedings, paving the way for a more structured resolution process. While the IBC has provided a robust framework for managing insolvencies, challenges persistin executing resolutions tailored to the unique complexities of the real estate sector, navigating legal intricacies, and ensuring transparency among a diverse range of stakeholders.

The recent publication "*The Jaypee Infra Insolvency Saga*" (Batra, Sumant, 2024) is the current addition to the existing literature that deep dive into the intricate insolvency proceedings of Jaypee Infratech Limited, one of India's leading real estate developers. The publication highlights the critical aspects ofthe resolution process, regulatory issues, complex legal proceedings, stakeholder conflicts, and corporate mismanagement at length. The narrative examines the plight of the 20,000 homebuyers amidst the legal battle, awaiting their dream homes and also discusses the broader implications for India's real estate sector.

LITERATURE REVIEW

The Literature Review on the topic is divided into three sections. The first section examines the key reforms introduced in the real estate sector to revamp its state in India. The second section explores the integration of the IBC in addressing the insolvencies in the real estate sector. The third section discusses the roleplay of the judiciary in strengthening the IBC framework for resolving the stress prevailing in the real estate market.

CRITICAL REFORMS IN THE REAL ESTATE SECTOR

The real estate sector has undergone various legal and regulatory transformationsover the years, driven by a chain of policy, legal and regulatory reforms, aimed at developing avenues for investment and addressing the housing concerns of the stakeholders. These reforms include regulatory measures and innovative schemes intended to boost infrastructure development, housing affordability, and homebuyers' confidence in the real estate sector. Key reforms introduced to revitalize the real estate landscape in India and the fundamental aspects they addressare provided in Table 1.

Table 1: Key reforms in the real estate sector

S.No	Reform	Details
1	Real Estate Investment Trusts (SEBI, GOI, 2014)	Allowed investments in real estate through listed trusts, improving transparency and attracting investors.
2	Smart Cities Mission (Ministry of Housing and Urban Affairs, GOI, 2015)	Targeted urban infrastructure and technology integration to make cities more liveable and sustainable.
3	PMAY(Pradhan Mantri Awas Yojna, 2015)	Aimed to provide affordable housing to urban and rural poor by 2022.
4	Benami Transactions (Prohibition) Amendment Act, 2016	Strengthened the law against benami properties to curb black money in real estate.
5	RERA, 2016	Established a regulatory authority to protect homebuyers, boost investments, and ensure timely project delivery.
6	IBC, 2016	Included homebuyers as financial creditors to safeguard their rights during insolvency proceedings of real estate developers.
7	Goods and Services Tax Act, 2017	Introduced a unified tax system, replacing multiple indirect taxes on construction and real estate transactions.
8	Special Window for Affordable and Mid-Income Housing Fund (SWAMIH Fund)(Ministry of Information and Broadcasting, GoI, 2023)	Government-backed fund created to provide last-mile funding for stalled affordable and mid-income housing projects.

Source: Author's Compilations

Out of the above-mentioned initiatives introduced by the government, RERA, IBC and SWAMIH Fund have played a vital role in the recent years towards addressing the real estate sector's financial distress. RERA was introduced to address issues of accountability, transparency, and timely delivery in the real estate sector. While RERA governs the obligations of developers and the rights of homebuyers, its interaction with the IBC has posed challenges for IPs. Accordingly, IPs are required to balance the objectives of RERA, which prioritizes homebuyer rights, with the collective creditor-driven process under the IBC. The SWAMIH Fund was designed to provide last-mile funding to stalled housing projects. The SWAMIH initiative, managed by SBICAP Ventures, focuses on completing projects that are net worth positive but lack adequate funding.

Intersection of the IBC and the real estate industry

Of all the above-mentioned initiatives introduced by the Government, the IBC has emerged as a critical legal framework for addressing financial stress in India's real estate sector. The IBC provides a structured and time-bound mechanism for resolving insolvencies, protecting the interests of creditors, and ensuring the completion of delayed real estate projects. By recognizing homebuyers as financial creditors through the 2018 amendment, the IBC empowers them to initiate insolvency proceedings against defaulting developers, ensuring their grievances are addressed.

The Hon'ble Supreme Court in (*Pioneer Urban and Infrastructure Limited & Anr Vs. Union of India & Ors, 2019*) upheld the 2018 amendment to the IBC that classified homebuyers as FCs. This gave homebuyers the right to initiate insolvency proceedings against defaulting real estate developers and participate in the Committee of Creditors (CoC), where they can vote on the resolution plans. The judgment allowed homebuyers to be treated as creditors with claims arising from the allotment of units, effectively equating their investments to financial loans.

To make the IBC adaptable to dealing with real estate insolvency, several amendments have been introduced in its framework to safeguard the homebuyer's interest, to ensure their participation in the insolvency resolution process, and to inculcate financial discipline in the real estate sector. Table 2 mentions year-wise amendments introduced under the IBC to facilitate the smooth running of the insolvency resolution process in the real estate sector.

Table 2: Amendments in the IBC to deal with insolvency in the real estate sector

Notification	Amendment	Impact
IBC (Second Amendment) Act, 2018	· Classified homebuyers as "financial creditors" · Amounts paid by homebuyers to be recognized as "financial debt." · Allowed appointment of Authorized Representative (AR)	· Empowered homebuyers to initiate CIRP and vote in CoC. · Form CA enabled homebuyers to file their claims. · ARs to represent homebuyers in CoC and vote on their behalf.
IBC (Amendment) Act, 2019	· Introduction of minimum threshold for homebuyers to initiate CIRP.	Aimed at preventing filing of frivolous insolvency petitions. (Manish Kumar v. Union of India, 2021)
Introduction of Section 10A Introduction of Pre-	· Insolvency proceedings suspended for one year to mitigate the pandemic. · PIRP aimed at MSMEs, also	· Real estate developers temporarily protected from new CIRPs. · PIRP offered a debtor-in-

Notification	Amendment	Impact
Packaged Insolvency Resolution Process ("PIRP")	affected real estate developers.	possession process for small real estate developers.
IBBI (CIRP) (Second Amendment) Regulations, 2023	· Mandated AR to share the minutes of CoC meetings with the homebuyers	· Ensuring homebuyers are duly informed about the CIRP status.
IBBI (CIRP) (Amendment) Regulations, 2024	· Allowed RP to invite separate resolution plans for each real estate project.	· Allowed tailored resolutions for individual projects.
	· Mandated RP to maintain separate bank accounts for each project	· Ensuring proper allocation and monitoring of funds for each project.
IBBI (CIRP) (Second Amendment) Regulations, 2024	· Facilitated appointment of an interim AR until a permanent AR is appointed.	· Protection of homebuyer's interest since inception of the CIRP.
IBBI (Liquidation Process) (Amendment) Regulations, 2024	· Transferred or possessed properties to be excluded from the liquidation estate	· Protection of homebuyer's asset during liquidation

Source: IBBI

Navigating real estate insolvency: The judiciary's role

In addition to the legislative amendments, judiciary has also played a dominant role in backing the IBC framework to deal with real estate sector distress. Significant cases decided by various courts and tribunals, to boost the insolvency resolution process in the real estate sector are as follows:

- The Hon'ble Supreme Court in *(Chitra Sharma v. Union of India, 2018)* addressed the plight of homebuyers affected by the insolvency proceedings against Jaypee Infratech Ltd., who had failed to complete housing projects. Before this judgment came in, homebuyers were not recognized as FCs under the IBC, thus leaving them without a voice in the CoC. This landmark case prompted the 2018 amendment to the IBC, which granted homebuyers the status of FCs, enabling their participation in the CoC and strengthening their rights in insolvency cases.
- The NCLAT in the case of *(Flat Buyers Association Winter Hills-77 v. Umang Realtech Pvt. Ltd, 2020)* addressed the insolvency proceedings of Umang Realtech Private Limited,responsible for the "Winter Hills-77" project in Gurgaon. Homebuyers initiated the CIRP due to significant project delays. During the proceedings, one of the promoters,

Uppal Housing Pvt. Ltd., proposed to remain outside the CIRP but agreed to act as a lender to finance the project construction, ensuring that homebuyers receive their flats without third-party intervention. The NCLAT introduced the concept of "Reverse CIRP" allowing the promoter to infuse necessary funds and complete the project under the supervision of the RP.

- In the matter of *(Tata Consultancy Services Limited v. Vishal Ghisulal Jain, 2021)*, the Hon'ble Supreme Court held that any contractual rights arising out of Joint Development Agreements must align with the IBC's overarching objectives thereby balancing stakeholders' interests and achieving fair resolution.

- In *(Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors, 2021),* the Hon'ble Supreme Court dealt with the insolvency resolution of Jaypee Infratech Ltd., where homebuyers and financial institutions had conflicting interests. The resolution plan proposed by NBCC (India) Ltd. faced challenges, as homebuyers preferred timely delivery of their homes while lenders prioritized debt recovery. The Court upheld the resolution plan offered by NBCC (India) Ltd and reinforced the principle of equitable treatment in insolvency proceedings, ensuring that homebuyers' claims are adequately addressed along with the claims of the financial creditors.

- In the matter of *(Baljit Singh Bhatia & Ors. v. Union of India & Ors, 2022)* , the Delhi High Court examined the complexities arising from subvention schemes and highlighted the challenges faced by homebuyers when developers default on financial commitments. The Court accentuated the necessity for clear guidelines to safeguard homebuyers' rights in such contexts.

- In the matter of *(Mrs. Kanchan Taneja v. Ashiana Landcraft Realty Private Limited, 2023)* , homebuyers sought to have their delayed claims admitted and the delay condoned. NCLT, Kolkata Bench dismissed these applications as infructuous, stating that the resolution plan had already been approved. This situation emphasizesthe importance of timely submission of the claim by the homebuyers during CIRP, to ensure their interests are adequately represented and protected.

- NCLAT in the matter of *(Bhagwan Dass Arora v. Ashish Singh RP of Piyush Colonisers Ltd, 2024)*. Stated that unless there is allotment in favour of the real estate allottee, he cannot be treated as an FC in a class, Mere investment of funds without the respective allotment does not entitle the allottee to fall under the category of FC during CIRP.

- In *(M/s. Supertech Ltd. v. Union Bank of India, 2024)*, the NCLAT directed the Interim Resolution Professional (IRP) to constitute the CoC specifically for the "Eco Village II" Project (Project). The IRP was instructed to maintain separate accounts for this Project, emphasizing the RP's role in managing project-specific finances during insolvency. Further, IRP was also directed that he shall carry the Project and continue the Project as an ongoing project by taking all assistance from the ex-management, employees, workmen etc.

ROLES AND RESPONSIBILITIES OF IP

IPs play a focal role in resolving insolvency and bankruptcy cases under the IBC, particularly in the real estate sector. The role of IPs in real estate insolvency extends beyond technical and legal expertise. It requires a deep understanding of project management, stakeholder coordination, and regulatory frameworks. Given the unique challenges associated with real estate projects, their responsibilities are multidimensional and require meticulous execution. The section deals with the two-fold role of IPs under the IBC; first their role as an RP handling the CIRP and second their role as an AR representing the interest of homebuyers during the CIRP.

Role of IP as an RP handling the CIRP

Post appointment by the NCLT, IPs embark the CIRP by making a public announcement for inviting claims from creditors, including homebuyers, and thereafter constituting the CoC. They verify claims, classify creditors, and ensure that homebuyers, recognized as financial creditors under the IBC, are effectively represented during the CoC meetings. During CIRP, IPs take control of the corporate debtor's assets and management, prepare a comprehensive information memorandum and evaluate resolution plans submitted by prospective resolution applicants to ensure compliance with the provisions of the IBC and its allied regulations.Their main priority is to maximize value for all stakeholders, with a special emphasis on completing stalled real estate projects.

Further, real estate insolvencies pose unique sector-specific challenges, such as regulatory compliance with laws like RERA, resolving disputes over land ownership and titles, and maintaining the continuity of construction activities to preserve the value of projects. IPs often collaborate with contractors, architects, and vendors to ensure project timelines are adhered to and the quality of work remains uncompromised. Additionally, establishing a transparent line of communication with stakeholders particularly homebuyers, to keep them posted about the process status is essential on the part of IP for building trust and to understand the expectations of the homebuyers.

By warranting the well-timely resolution of distressed real estate projects, IPs advance trust and stability in the sector while safeguarding the interests of creditors, homebuyers, and other stakeholders. Their efforts substantially contribute towards the restoration of the real estate market. Promoting financial stability within the economy. In the event of the failure of the resolution process, IPs manage the liquidation process, prioritizing homebuyers as secured creditors while ensuring asset sale leads to the maximum recovery.

Throughout the CIRP/ Liquidation Process, IPs are mandated to submit periodic updates to the NCLT and IBBI, thereby adhering to statutory and regulatory obligations as well. The role of IP also includes representing the corporate debtor before various forums like NCLT, NCLAT, RERA, and/or higher courts. Their ethical responsibilities include upholding integrity, avoiding conflicts of interest, and maintaining transparency throughout the process. In a nutshell, IPs serve as the backbone of the insolvency resolution process in the real estate sector under the IBC.

Role of IP as an Authorised Representative of Homebuyers

Section 21(6A)(b) of the IBC read along with Regulation 16A of the IBBI (CIRP) Regulations, 2016, mandates the appointment of an AR to represent FCs in a class, such as homebuyers in the CoC. IRP is required to propose the names of three IPs, from whom the creditors select one to act as their AR. In the realm of real estate insolvency under the IBC, the role of the IP as an AR for homebuyers is decisively important. Owing to the enormous number of homebuyers, the IBC mandates the nomination of an AR to represent homebuyers as a collective class of FCs. This unique responsibility places IP in a fiduciary position, to navigate legal, financial, and interpersonal complexities while safeguarding the rights and interests of homebuyers.

Section 25A of the IBC dealing with the rights and duties of AR, implies that the IP's elementary responsibility is to act as a liaison officer between the homebuyers and the CoC. The IP must ensure that the collective voice of the homebuyers being represented is adequately represented in the CoC and allied decision-making. This requires seeking preliminary views of the homebuyers on the agendas presented before the CoC while making homebuyers understand the intricacies of the CIRP and how the ongoing process will impact their interests. Since homebuyers often lack financial or legal expertise, the IP must simplify complex information, enabling informed decision-making while fostering trust and transparency. Also, an IP acting as an AR should act in a transparent and unbiased manner towards the class of creditors he is representing, avoiding any bias towards particular groups or individuals within the homebuyer class.

The AR is fundamental in evaluating and voting on resolution plans submitted by prospective resolution applicants. They must ensure that the plans received duly include provisions for completing delayed or stalled real estate projects and prioritizing homebuyers' rights as financial creditors. This involves assessing the feasibility, viability, and financial structuring of the plans to ensure they align with homebuyers' interests and with the IBC.

Beyond their duties in the CoC, the AR is responsible for assisting homebuyers in filing their claims during the CIRP. This includes verifying documents, resolving discrepancies, and ensuring claims are admitted in line with the provisions of IBC. Given the significant emotional and financial stakes for homebuyers, many of whom are first-time investors or depend on these projects for personal housing loans, the IP's role also involves managing their expectations, alleviating anxieties, and providing regular updates on the CIRP's progress.

Additionally, AR is also cast with an implied duty of managing conflicts and disputes within the homebuyer group, ensuring decisions pertaining to them are reached through a democratic and transparent process before the CoC. Whenever dissenting or conflicting views arise, the AR must endeavor to mediate the conflicts. In liquidation scenarios also, the AR must ensure that homebuyers are treated fairly and prioritized as secured creditors under the IBC with a focus on maximizing their recoveries to the extent possible.

The role of IP as an AR needs a careful mélange of technical, legal and interpersonal skills. An AR must conduct his duty towards the homebuyers with utmost ethics and integrity,

recognizing that their every decision directly affects homebuyers who have invested their life savings in owning their dream home. By efficaciously representing homebuyers, the AR not only meets their statutory and regulatory obligations but also reinforces faith in the insolvency framework under the IBC.

INSOLVENCY PRACTITIONERS AND THE UNIQUE CHALLENGES OF THE REAL ESTATE SECTOR

The real estate sector exhibits a unique set of challenges for IPs due to its complex nature, high capital requirement, and significant stakeholder involvement. Handling real estate insolvencies under the IBC requires balancing competing interests while ensuring timely resolution. IPs navigating the challenges in real estate insolvency require a multi-disciplinary approach, effective project management skills, and interpersonal skills to sail through these challenges effectively while ensuring a win-win situation for all the stakeholders. While the IBC has provided a framework to address these challenges, real estate insolvencies often demand innovative approaches to protect stakeholder interests, to achieve timely project completion and value maximization for stakeholders as a whole.

The challenges faced by the IPs while dealing with real estate insolvencies are as follows:

- **Handling the interest of diverse stakeholders**: One of the primary issues while handling the insolvency resolution process pertaining to real estate sector is catering to the interest of diverse stakeholders viz homebuyers, financial institutions, operational creditors, developers etc. Each of such stakeholders usually has conflicting priorities like homebuyers are financially and emotionally invested in getting the allotment of their flats, financial institutions are interested in the recovery of their outstanding loans and developers are interested in getting last-mile funding to conclude the project in question. Additionally, the sheer number of homebuyers also leads to coordination difficulties, delays in decision-making, and disputes over claim verification. Hence, balancing the interests of all stakeholders is a key challenge for an IP.

- **Uncertainty in the timeframe for claim submission by homebuyers**: Timely submission of the claim by homebuyers is a pre-requisite for their admission as a FC in CoC. Delayed submission of claims often results in losing representation and decision-making rights of homebuyers. However, the timelines prescribed by the IBC for submission of claims are directory in nature *(M/s Surendra Trading Company v. J.K. Jute Mills Company Limited, 2017)*, resulting in the belated submission of claims by homebuyers even at the later stages of CIRP.

  For instance, in *(Shankar Sawant & Anr v. Mr. Arun Kapoor, 2023)*, RP denied the inclusion of homebuyer claims in the resolution plan due to delayed submission. However, NCLT held that since the resolution plan is awaiting adjudication, homebuyers' claims are still acceptable.

- **Attachment of project by statutory authority during the CIRP**: The attachment of real estate projects by statutory authorities such as the Central Bureau of Investigation,

Enforcement Directorate, State Authorities etc during the CIRP pose significant hurdles for RP. Such actions during CIRP restrict RP from freely dealing with the attached properties, thereby creating hindrances in achieving a timely resolution of the process. Attachments during CIRP create a legal impasse between the IBC and other statutory laws.

Moratorium under section 14 of the IBC prohibits actions like recovery or enforcement of security against the corporate debtor during the CIRP *(Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd, 2017)*.However, statutory authorities often argue that their dues are outside the moratorium's purview. Resolving such conflicts requires adjudication, leading to procedural delays and escalating costs *(Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited, 2020)*.

Attachments by statutory authorities during the CIRP conflict with the IBC objective to maximize asset value and maximization of the stakeholder's interest. It may also prevent the inclusion of the attached asset in the resolution plan, thereby diminishing the returns out of the process for creditors, including homebuyers.

- **Achieving balance between value preservation and time management**: Real estate insolvencies often pertain to partially completed or stalled projects where construction have been halted owing to limited working capital, operational issues or prolonged legal battles. In such a scenario while keeping a tab on the CIRP timeline, IPs are also expected to keep the project ongoing to retain the homebuyer's confidence amidst this turbulent situation.

  To prevent further value erosion of the project, IP also has to look for alternative avenues for fund mobilization into the project which itself is a time-consuming and cumbersome process. Though the Indian judiciary has always emphasized the need to prioritize homebuyers, achieving this practically within the IBC framework is a complex task.

- **Alignment with RERA objectives**: Literature suggests that IPs face challenges in aligning RERA's objectives with that of the IBC, particularly in resolving disputes related to incomplete projects and the prioritization of creditors' claims. For instance, RERA prioritizes the completion of real estate projects to protect homebuyers, whereas the IBC focuses on maximizing value for all creditors. RERA allows homebuyers to seek refunds with interest for delayed or incomplete projects. However, such claims may conflict with the waterfall mechanism under the IBC.

  Simultaneous proceedings under RERA and IBC also lead to delays in the resolution process. For instance, in the matter of *(Vishal Chelani & Ors. v. Debashis Nanda & Ors, 2023)*, the Hon'ble Supreme Court held that the homebuyers who have obtained favourable orders from RERA authorities are to be treated on par with other financial creditors under the IBC.

Additionally, IPs also face challenges in segregating and dealing with assets earmarked for specific projects, especially if such projects are registered with RERA. Real estate companies with incomplete projects are often unattractive to prospective resolution applicants owing to high risks, pending litigations, and regulatory hurdles under RERA.

- **Project-Wise Insolvency**: The judiciary explored the idea of Project-wise CIRP, where insolvency proceedings are conducted on a project-specific basis rather than encompassing the entire corporate debtor. Project Wise Insolvency aims to resolve the distress of a specific projectrather than the company as a whole, thus preserving value and managing time efficiently. NCLAT has applied this approach in cases like*(Whispering Towers Flat Owners Welfare Association v. Avighna India Ltd, 2022)*, facilitating the completion of individual projects while maintaining the overall health of the corporate debtor.

  However, IPs dealing with the insolvency resolution process of a particular project of a developer undergoing the IBC often encounter issues on account of the constitution of project-wise CoC especially when there are multiple real estate projects in one company. IPs also face accounting issues as difficulty arose toa demarcation of assets and liabilities between the concerned projects. Also, project-wise resolution limits the holistic resolution of the real estate developer where the majority of its projects are under stress.

- **Limited avenues for last mile funding**: The major reason behind landing real estate developers onthe insolvency web is the significant cash crunch being faced by them to achieve the timely completion of the project. The real estate sector is a highlabour- and capital-intensive industry with a long gestation period. The funding-related challenges being encountered by IPs include a lack of working capital to keep the construction at the project site ongoing, the limited interest of prospective resolution applicants owing to extreme delay in project completion, litigation risk, etc.

  Further, securing interim finance under the IBC is yet another challenge to overcome as lenders are generally reluctant to lend further capital for completion of stalled real estate projects or even if they agree to grant interim finance, the interest rates are alarmingly high.

- **Dealing with multiple regulatory and legal authorities**: The real estate sector is subject to various legal and regulatory authorities viz RERA, state authorities, NCLT, NCLAT, consumer courts, and other judicial forums. RERA though focused on protecting the homebuyer's interest, often overlaps with the IBC provisions thereby creating a need to read RERA Act, 2016 in conjunction with the IBC provisions.

  Further varying state authorities, land acquisition processes, and development rules and regulations of respective states also complicate the resolution process. Multiple overlapping proceedings are often being conducted against the real estate developer across various forums like RERA, Arbitration Tribunals, Consumer Court, High Court, NCLT, etc, further leading to delays in project completion and jurisdictional conflicts. Resolving these legal entanglements further adds to the burden of the IP.

- **Subvention Schemes in Builder Buyer Agreement**: Subvention schemes are tripartite agreements between developers, financial institutions, and homebuyers. Majorly used in the real estate sector wherein the developer and a financial institution agree that the developer will pay the EMIs on behalf of the homebuyers for a certain period, for instance till possession of property by the homebuyer. These schemes intend to interest the buyers to invest in the real estate project, by reducing the financial burden during the project's construction phase. Such schemes create multiple creditors for the same unit viz developers, financial institutions, and homebuyers, making it challenging to prioritize claims during the resolution process.

  When the developer enters into insolvency, there may be disputes about whether the liabilities under the subvention scheme should be classified as operational or financial debt. Often financial institutions claim outstanding amounts from the resolution process, hence asserting their rights as financial creditors.

  Additionally, liabilities under the Subvention Scheme may also result in lowering the attractiveness of the project for prospective resolution applicants, resulting in lower resolution value.In *(Bikram Chatterji & Ors. v. Union of India & Ors, 2019)*, the Hon'ble Supreme Court held that Amrapali Group's failure to fulfil obligations under the subvention schemes had led to significant financial distress for homebuyers. The Court emphasized the need to protect homebuyers' interests and directed comprehensive measures to ensure project completion.

- **Ambiguity regarding landowners' position**: Landownerswho enter into Joint Development Agreements or similar arrangements with developers, often face uncertainties when a developer undergoes insolvency proceedings. Landowners may be in the capacity of creditors or stakeholders with contingent claims, depending on the structure of their agreement. However, the IBC does not explicitly define their rights in such scenarios and therefore, the primary challenge arises is whether to classify landowners' claims as an operational or FCs. This also leads to ambiguity regarding their stand in CoC. *(Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal & Ors, 2019)*

  Further, instances where the developer creates third-party rights, like pledging the land as security with creditors, landowners oftenstrive to assert their ownership right. The resolution process further complicates such matters, as the prospective resolution applicants often prioritize turnaround and restructuring over returning landowners' property. The absence of clear statutory guidelines on the treatment of landowners under the IBC creates legal and financial uncertainties, thereby demanding legislative intervention to ensure protection of their interests.

- **Real estate projects registered under the name of proprietor or partnership firm:** Registration of land or project of the developer in the name of its proprietor or partnership firm often complicates the IBC process due to lack of demarcation between assets related to the project and personal assets of the developer, thereby limiting the assets

available for resolution or becoming part of the liquidation estate. Often, when projects are registered in the name of the proprietor or partnership firm of the developer and marketed under the business name, their resolution under the IBC becomes testing as at present there is no active framework for initiating insolvency against the proprietor/ partnership firm.

For instance, in *(Surendra Trading Company v. Juggilal Kamlapat Jute Mills Co. Ltd. and Ors., 2017)*, the Hon'ble Supreme Court underscored the need to balance the conflicting claims to avert prejudicing creditors. In the case of real estate insolvency, this issue is further amplified as creditors and homebuyers often face complications in concluding whether the assets of proprietor/partnership firmscan be utilized for recovery under the IBC.

To address these issues, the judiciary has recurrently asked for clear enforcement mechanisms, yet the absence of legislative amendments endures creating obstacles in handling resolution processes of real estate developers involving proprietor or partnership firms.

- **Limited pool of prospective resolution applicants**: Attracting prospective resolution applicants to restructure the stressed real estate projects is yet another happenstance faced by RPs as such projects involve significant capital investments with uncertain returns. Further, legal and regulatory hurdles supplementaryto the process also discourage new entrants. The scantiness of prospective resolution applicants willing to invest in distressed real estate projects often leads to prolonged insolvency proceedings. Real estate projects with land title issues and other ongoing litigations usually do not attract investors which might lead to real estate companies slipping into liquidation, resulting in continued misery for a plethora of homebuyers to seek possession of their dream homes.

  Participation by an investor who possesses the requisite financial and technical expertise coupled with risk appetite is paramount to turnaround the stalled project. This situation is exacerbated by investors seeking substantial haircuts, which may not align with the interest of creditors and may result in homebuyers in a further state of despair.

- **Conducting valuation of a distressed real estate project**: Valuing a stalled real estate project is a defying task owing to the combination of legal, financial, and market risksassociated with such projects. Choosing the right valuation methodology for valuing a real estate project is yet again a complicated task due to difficulty in ascertaining the correct asset value of a stalled project, demand-supply situation, dynamic market conditions, movement in property prices, associated legal disputes, unforeseen contingent liabilities etc.

  Furthermore, costs to resume or conclude the project, including financing, labour, and legal costs must also be factored in. Cumulatively, these considerations create a highly complex and subjective ecosystem for arriving at a fair and reliable valuation of a distressed real estate project.

- **Instances of non-cooperation from promoters**: In many cases, promoters or developers refuse to cooperate with RP, thus posing challenges such as lack of access to key project data and financial records. Lack of support and cooperation on the part of promoters further complicates the task of identifying the instances of avoidance transactions or instances of fund mismanagement, diversion, or siphoning, if any of them have existed before insolvency proceedings. On-cooperation in handing over project sites, machinery, and assets which is critical for resolution further complicates and delays the resolution process. In such scenarios, IPs often require court intervention to ensure compliance and transparency.

WAY FORWARD

A comprehensive way forward to deal with above mentioned systematic challenges and to emphasise reforms in streamlining the insolvency resolution process in the real estate sector to achieve greater stability and fair outcomes for all stakeholders are as follows:

- **Bar on multiplicity of proceedings:** Aggrieved homebuyers simultaneously approach RERA, NCLT, Civil Court, Consumer Court etc.to seek relief against the same real estate developer for the same default. This may not necessarily be beneficial for the homebuyer, as it could lead to complications, delays, conflicting judgments and turf wars between the various forums. Allowing homebuyers to tap of either of the forum to enforce their rights concerning the same default will prevent multiplicity of the proceedings, overburdening of the judicial bandwidth and may promote effective and efficient resolution. Placing such a bar may also streamline the resolution process under the IBC, ensuring all claims related to the insolvency of the developers are addressed within the IBC framework only, thereby making the IBC a unified platform for adjudication of claims related to real estate insolvency.

- **Clarity on the status of homebuyers:** The IBC and its allied regulations don't throw light on the status of homebuyers being secured or unsecured creditors. Clarity on whether homebuyers are secured FCs or unsecured FCs under the IBC would significantly aid IPs by providing a clear framework for managing claims, prioritizing distributions under a waterfall mechanism, and ensuring compliance with legal standards. Necessary clarification in this regard needs to be provided by way of amendments to the IBC.

- **Inclusion of landowners in CoC:** Landowners who are party to the Joint Development Agreements with developers, often hold substantial stakes in the projects under insolvency. By giving landowners, a voice in the CoC, IPs can develop holistic schemes that maximize value recovery for all stakeholders and expedite the project's completion.

  Participation of landowners in the CoC (IBBI, 2024) will facilitate balanced decision making during the resolution process, as they can contribute insights about the underlying regulatory issues, legal issues related to land and potential resolution scheme. Their inclusion in the CoC will also foster greater collaboration between homebuyers and other creditors and reduce the risk of litigation which in future may also derail the resolution process.

- **Reverse CIRP:** Reverse CIRP is a win-win situation for both homebuyers as well as for project developers as it will not affect other projects of developers and liquidation of the respective project will not affect the rights and interest of homebuyers which initially get impugned in many cases. It will allow resolution without the approval of the third-party resolution plan. The aim of Reverse CIRP is to get twin benefits: the first one is to save promoters from insolvency and the second one is to give possession to the allottees in the project. Since Reverse CIRP is still in the experimenting phase and dealing with various other issues of homebuyers, therefore with the test of time as more real estate insolvencies goes into reverse CIRP, its real success will be uncovered.

- **Capacity building of regulatory and judicial authorities**: Conducting continuous capacity building and refresher training programme on the IBC and amendments therein for regulatory authorities such as RERA, Slum Rehabilitation Authority, State Authorities and judicial authorities like NCLT and NCLAT judges may help them in equipping with necessary expertise to deal with complexities of real estate insolvency.

  Additionally, technical assistance may also be provided to such authorities to advance on the technology front. For instance, development of an interface comprehending details of state-wise real estate projects in default, legal history of defaulting real estate developers, list of resolved real estate projects, cases filed against same real estate developer before RERA, NCLT and other forums etc.

  Progression on the technology front can also accelerate the resolution process, thereby preventing value erosion of the assets associated with the project. By investing in capacity building and technical assistance programmes, same may result in implementation of the best practices, timely introduction of legal amendments, reduction in procedural delays, thereby fostering a more resilient real estate sector.

- **Establishing avenues for securing distress asset funding**: Setting up the channels for securing last-mile distress asset funding can prove to be a game-changer in resolving stress prevailing in the real estate industry, leading to the continuation of the stalled projects, safeguarding of stakeholder's interest and preservation of asset value. Distress funding in the form of interim finance can also provide the liquidity required to complete construction andmeet operational needs and regulatory compliance.

  For instance, in the Jaypee Infratech and Amrapali insolvency case the infusion of distress funds allowed for the continuation of the project construction, offering relief to thousands of homebuyers while improving recoveries for creditors. Similarly, the use of the government's SWAMIH Fund in India demonstrates how targeted last-mile funding can help revive delayed real estate projects under stress, ensuring timely delivery and restoring stakeholders' confidence.

- **Single Window Clearance**: At present there are a number of licensing and certification requirements mandatory for a real estate developer before handing over the possession of flats to the respective homebuyers viz Occupancy Certificate, Completion Certificate,

RERA registration, environmental clearance, utility and infrastructure approvals, land title and encumbrance clearance etc. Single window clearance for construction related approvals will help in expediting construction and avoiding delays and uncertainties. Streamlining of approvals on the basis of central and state regulations, as well as according to various departments and ministries would certainly help in consolidating and systemizing the real estate sector of India.

- **Group Insolvency:** To overcome the challenges arising duringproject-wise insolvency, group insolvency can facilitate the resolution of real estate insolvencies by enabling the unified management of assets, liabilities, and operations of the group. In the real estate industry, projects are often developed through a complex web of subsidiaries, associates, special purpose vehicles and joint ventures, making standalone insolvency proceedings inefficient and fragmented.

  Group insolvency allows for consolidated resolution strategies that consider the interdependencies between group entities, leading to better resource optimization and value recovery. For example, a holding company's financial resources can be leveraged to complete stalled projects managed by its subsidiaries, ensuring timely delivery to homebuyers and maximizing creditor recovery.(Jindal & Bali, Group Insolvency in India : Taking IBC a Step Forward, 2022)

  In the Jaypee Infratech insolvency case, the inability to include the parent company, Jaiprakash Associates Limited, in the resolution process led to delays and complications, highlighting the need for a group insolvency framework. Similarly, in the Videocon Group(Videocon Industries Limited, 2019) insolvency, where multiple group entities were brought under the common CIRP umbrella, creditors benefited from a unified plan that addressed the group's liabilities holistically.

  By reducing procedural redundancies and preventing inter-entity disputes, group insolvency fosters comprehensive and equitable resolutions, particularly crucial for large-scale real estate projects involving multiple stakeholders and overlapping financial interests.

- **Robust Pre-Insolvency Framework**: Pre-insolvency procedures can play a transformative role in resolving stress prevailing in the real estate industry where timely completion ofthe project is critical, by offering a time and cost-effective resolution in the interest of all stakeholders. The Pre-Packaged Insolvency Resolution Process though already in place, should be made more effective and the resolution of a company in the twilight zone should start at a much earlier stage. The pre-pack mechanism can be used in its true letter and spirit to overcome the challenges faced during the formal insolvency process and to safeguard the interest of homebuyers at large and at an early stage.(Jindal, Pre-Packaged Insolvency Resolution Process – Panacea for MSME's Distress, 2021)

- **Adoption of Alternate Dispute Resolution (ADR):** ADR mechanism such as mediation, negotiation, arbitration, conciliation can assist in reaching an amicable mutually agreed

solution between the homebuyers and developer. For instance, mediation can be used to resolved long pending disputes between the homebuyers and developer concerning the possession of the asset. ADR mechanism offered flexibility and tailored made solutions in a time and cost-effective manner. ADR mechanism can also act in conjunction with the IBC framework, reducing litigation cost and process timeline.

CONCLUSION

Hence, to address the challenges arising while handling real estate sector insolvencies under the IBC, a collaborative and comprehensive approach to overpowering these challenges is vital. Requisite legal amendments, enhanced judicial capacity, improved regulatory infrastructure, innovative funding models, frequent capacity-building programs for IPs and effective stakeholder collaboration are paramount to streamline the resolution process. Further, developing robust mechanisms to balance the interest of diverse stakeholders involved in the real estate insolvency resolution process is also prerequisite to restore financial stability and to promote sustainable growth in the real estate sector.

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13

AI-POWERED INSOLVENCY AGENTS

Atul Grover and Ansh Kesharwani

AI-POWERED IBC AGENTS

Corporate Insolvency Resolution and Liquidation processes are complex and involve legal, regulatory, and financial challenges. These processes are designed to streamline the resolution/liquidation of distresses companies; however, the insolvency professionals often face overwhelming workloads due to regulatory filings, legal queries, and claims management.

AI-powered "Insolvency Agents" can help all the stakeholders including Insolvency Professionals (IPs), lawyers, creditors, and other stakeholders to navigate these processes more efficiently. These agents can be designed in various formats to automate processes under the Insolvency and Bankruptcy Code, 2016 (IBC/Code), thereby, improving accuracy and timelines while reducing the burden on the professionals.

IPs are already leveraging generative AI applications like ChatGPT to enhance efficiency, accuracy, and decision-making in their day-to-day operations. However, their current use of such tools is largely limited to summarizing voluminous legal judgments and to some extend enhancing legal research by identifying relevant case laws and statutory provisions.

A considerable number of AI use cases remain unexplored, and their strategic deployment holds the potential to significantly enhance the efficiency and outcomes of insolvency processes.

STAKEHOLDER GAMES

IBC stakeholders continue to manipulate the resolution processes and engage in various 'games' in order to protect their interests.

Suspended directors of corporate debtors (CDs) often engage in various tactics to obstruct the insolvency resolution process. They continue to conceal their assets or transfer assets to diminish the value of the estate, making it harder to realise and maximise value of the CD. Filing of frivolous litigations is a common tactic in order to prolong the processes. They attempt to undermine the role of the IP, by means like non-cooperation to disrupting the resolution process.

Resolution applicants have been found to collaborate with other co-applicants in order to submit lowball offers in their resolution plans and trying to push the CD to Liquidation, with an aim to acquire control of the distressed company at minimal cost. Inclusion of ambiguous

clauses in the resolution plans is also a common practice, leaving room for interpretation to be exploited during plan implementation. They have been found to resort to unnecessary litigation after plan approval, using legal tactics to delay implementation and gain leverage in plan implementation.

Creditors have also been found to engage in 'strategic-games' in order to maximize their recoveries or influence outcomes. Such tactics include claim inflation, where penalties or exaggerated amounts are added to their claims to secure higher payouts, manipulation of their status by misrepresenting unsecured claims as secured to gain priority in the resolution process. Delay in the submission of claim documents is another strategy often used to avoid thorough scrutiny and potential rejection of inflated claims. Additionally, creditors have been found lobbing with members of the committee of creditors (CoC) to sway decisions in their favour, potentially compromising the fairness and transparency of the process.

Forensic Auditors have been found to be influenced by erstwhile management of the corporate-debtor to align their findings with professional's/management's desired outcomes. They have been found to provide selective reporting, where unfavourable information is intentionally concealed, thereby hindering informed decision-making and compromising the transparency and fairness of the process.

Registered Valuers have been found to manipulate asset valuations, undervaluing or overvaluing assets to favour creditors or resolution applicants. In some cases, the valuation process has been intentionally delayed, stalling the progress of the resolution. Additionally, asset-valuers might collude with certain stakeholder, providing appraisals that disproportionately benefitting certain stakeholders, thereby compromising the impartiality and integrity of the valuation process.

Although several safeguards have been devised by the Insolvency and Bankruptcy Board of India (IBBI) over the past several years - such as regulatory oversight by the National Company Law Tribunal (NCLT), transparency requirements, and a code of conduct for IPs and CoC members—these measures have their limitations. Despite these safeguards, stakeholders continue to exploit loopholes and game the system, employing tactics that delay or derail the insolvency resolution process.

These persistent challenges highlight the need for advanced solutions, and technologies like AI agents to address many of these inefficiencies. AI agents can enhance transparency, reduce biases, and improve the speed and accuracy of critical tasks such as data analysis, asset valuation, fraud detection, and workflow management. By leveraging these technologies, the insolvency resolution process can become more efficient, equitable, and resistant to manipulation, ensuring successful outcomes for all stakeholders involved.

AGENT CATEGORIES

AI agents can be categorized into distinct groups based on their roles and functionalities. These categories include Legal Agents, Process Agents, Planning Agents, Marketing Agents, Fraud Detection Agents, and Prediction Agents. Each type of agent brings specific capabilities to enhance efficiency, accuracy, and decision-making in the insolvency process.

Document Agents can draft key documents, significantly reducing the manual workload associated with drafting resolution plans, progress reports, and compliance filings. By ensuring adherence to statutory language and minimizing human errors, these tools save time and streamline legal documentation. Beyond document creation, generative AI can also assist in drafting responses to objections raised by stakeholders

Process Agents can be designed to monitor compliance and facilitate collaborative workflows. These agents play a crucial role in ensuring that regulatory deadlines are met by tracking timelines, ensuring that the filings are completed on schedule, and promptly alerting stakeholders to changes in laws or guidelines. By minimizing the risks of non-compliance, Process Agents ensure that all legal and procedural requirements are adhered to efficiently.

Workflow Agents can enhance coordination among teams involved in the insolvency process. These agents can assign tasks to relevant team members, send reminders about upcoming deadlines, and provide real-time updates on case progress. By automating repetitive workflow tasks, these agents help professionals stay organized and focused, ensuring that every aspect of the resolution process is handled in a timely and efficient manner.

Planning Agents can be tasked with developing and evaluating resolution plans. AI-driven tools in this category analyse creditor claims, available resources, and legal constraints to design optimal repayment schedules and restructuring plans. These agents enable resolution professionals to balance the interests of various stakeholders while adhering to legal and financial constraints.

Furthermore, Planning Agents can evaluate the viability of proposed plans by simulating different scenarios and providing data-driven insights into their potential outcomes. This allows IPs to refine plans and suggest select strategies that maximize creditor recoveries while ensuring compliance with regulatory requirements.

Marketing Agents can ease claimant outreach, investor search, and overall stakeholder communication. These agents utilize personalized, AI-driven communication strategies to provide timely updates to creditors, investors, and regulators. By automating and streamlining communication efforts, they reduce manual effort while maintaining clarity and professionalism. Marketing Agents can also be used to monitor media coverage and social platforms to gauge public and stakeholder sentiment. This can help insolvency professionals address reputational risks proactively by identifying concerns early and implementing appropriate measures to maintain trust and transparency among stakeholders.

Fraud Detection Agents can focus on identifying potential fraud, such as Preferential, Undervalued, Fraudulent, and Extortionate (PUFE) transactions, concealed assets, or other irregularities in financial records. AI tools in this category are capable of scanning extensive financial data to detect anomalies and hidden patterns that may indicate fraudulent activities.

These insights provide resolution professionals with (RPs) early warnings, allowing them to take corrective action promptly and enhancing the overall due diligence process. Furthermore, Fraud Detection Agents can assist in asset valuation by automating the assessment of asset

worth and projecting liquidation timelines. This enables professionals to make better-informed decisions regarding asset sales and resource allocation.

Insolvency Prediction Agents can be leveraged to provide decision support and can forecast recovery outcomes. Using advanced AI models, these agents analyse historical insolvency data, financial records, and case-specific variables to predict creditor recovery rates and timelines. This provides stakeholders with realistic expectations and enables RPs to plan effectively.

Additionally, Prediction Agents can model various insolvency scenarios, such as asset liquidation or restructuring/resolution plans, and evaluate their outcomes. By comparing the potential results of different strategies, these agents can recommend the most beneficial approach, helping professionals make data-driven decisions that optimize recovery for creditors and other stakeholders.

The authors have explored each AI agent in detail in order to understand their specific roles, the technologies and tools they use, and how they contribute to streamlining insolvency processes by automating tasks, improving decision-making, ensuring compliance, and enhancing the overall efficiency and transparency of resolution proceedings.

DOCUMENT AGENTS

Various stakeholders are required to prepare of a wide array of documents during the insolvency process. These documents are critical for ensuring compliance with legal and regulatory frameworks, maintaining transparency, and facilitating seamless communication among various stakeholders and regulatory authorities. Each document has a specific purpose in the process and must be meticulously drafted to meet statutory and procedural requirements.

Corporate Insolvency Resolution Process (CIRP) involves drafting numerous key documents. Among these are public announcements, which are used to notify and invite creditors to submit claims against the CD. This document serves as a formal call for all creditors to provide details of their claims, ensuring their inclusion in the resolution process. Additionally, the announcement for Expression of Interest (EOI) is issued to invite prospective resolution applicants to submit proposals for the revival of the CD. Considering the financial constraints, the public announcements are made only once in one English and one regional newspaper as per timelines but once integrated with AI, public announcement can be viewed in any of the regional languages on a portal and the link of the same can be provided on the newspaper article.

Another critical document is the Information Memorandum (IM). This comprehensive report contains all relevant details about the CD, including its assets, liabilities, operations, and overall financial position. It is a key resource provided to potential resolution applicants to help them evaluate the company and prepare viable resolution plans.

Regular documentation also includes preparation of a document/presentation to facilitate the meeting with creditors, which can be easily drafted to provide a clear picture on the progress made in the intervening period.

Another crucial documentation is minutes of CoC/meetings with creditors, which capture the discussions, resolutions passed, and decisions taken during the meetings of the CoC. These minutes are formal records that ensure transparency and accountability in the decision-making process.

Additionally, due diligence reports are prepared to assess resolution plans or asset sale proposals, ensuring their compliance with statutory requirements and their overall viability. Furthermore, Progress Reports are required to be prepared periodically to provide updates on the progress of the CIRP/Liquidation to the Adjudicating Authority (AA), ensuring that all steps are documented and compliant with regulatory requirements.

For the Corporate Liquidation Process (CLP), additional documents are required to facilitate the liquidation of the CD's assets which include *Preliminary Report*, which provides an initial assessment of the debtor's financial position, listing its assets, liabilities, and any key issues that may impact the liquidation process.

Another is the *Asset Memorandum*, which offers a detailed description of all the debtor's assets. This memorandum includes valuations and estimated liquidation values, providing a clear picture of the resources available for distribution among creditors. It serves as a foundational document for planning asset sales and liquidation timelines. Asset Sale Report is another such document which is required to be prepared and submitted before the AA which provides the whole sale process.

In cases of personal insolvency resolution process, repayment plans outline proposals for repayment schedules, which are submitted to creditors for approval, which is required to be submitted by the debtor in consultation with the RP. These plans aim to balance the debtor's financial constraints with the creditors' recovery expectations. Additionally, a statement of affairs is prepared, which details the individual debtor's financial position, including assets, liabilities, income sources, and any other relevant financial data. This document provides creditors with a clear understanding of the debtor's capacity to repay.

Besides the above-mentioned documents prepared by the IPs, several third-party professionals such as forensic auditors and registered valuers are required to prepare the following documents

Forensic and Financial Reports play a significant role in ensuring due diligence and detecting fraudulent activities. Transaction Audit Report, provides a detailed analysis of past transactions conducted by the debtor. These reports are used to identify PUFE transactions, ensuring that any malpractices are brought to light and addressed appropriately.

Asset Valuation Reports provide independent valuations of the debtor's assets, which are essential for both the resolution and liquidation processes. They help establish fair market values and guide decisions regarding sale of assets.

Legal opinions are sought at various critical scenarios wherein the RP or any other stakeholder might require legal assistance and, in such scenarios, AI can give a perspective backed by a

statute or a precedent. Each document plays a crucial role in achieving the overarching goal of balancing the interests of creditors, debtors, and other parties involved.

Document drafting agents play a pivotal role in automating the creation of critical legal documents, such as resolution plans, progress reports, and compliance filings, significantly reducing the manual workload and associated time. By leveraging natural language processing (NLP) and generative AI technologies, these agents ensure that the documents adhere to statutory language, regulatory guidelines, and formatting standards, minimizing the risk of human errors. This not only enhances the accuracy and professionalism of the documents but also ensures compliance with legal requirements. Furthermore, these agents extend their capabilities beyond basic document creation by assisting in drafting responses to objections raised by stakeholders, providing well-structured and legally sound arguments. By streamlining these time-intensive tasks, document drafting agents enable insolvency professionals to focus on strategic decision-making and case management.

WORKFLOW AGENTS

IBC processes are designed to maintain transparency, fairness, and legal adherence throughout the insolvency resolution journey, benefiting all stakeholders involved, including creditors, debtors, IPs, the CoC, and the AA (e.g., the NCLT). One of the cornerstone requirements under IBC is completing the resolution process within a fixed timeline of 180 days, extendable by an additional 90 days with requisite approvals, bringing the maximum duration to 270 days. IPs must meticulously monitor and adhere to these deadlines, reporting progress regularly to the AA. Progress reports, submitted periodically, ensure the resolution process advances without delays, promoting efficiency and safeguarding stakeholder interests. Any deviation from timelines must be promptly addressed to avoid penalties or potential setbacks in the process.

Needless to state that several processes need to run in parallel in order to maintain strict timelines and schedules which include the following

Public notices and claim verification processes - As part of the compliance requirements, IPs are mandated to issue public notices within specified timelines to inform all creditors about the initiation of insolvency proceedings. This step allows creditors sufficient time to submit their claims. Claims submitted by creditors undergo thorough verification by the IP, ensuring accuracy, validity, and priority as per the Code's provisions. Verified claims must be documented and shared with the CoC and AA for transparency.

Committee of Creditors (CoC) processes - The CoC plays a central role in the insolvency resolution process, and its compliance requirements are stringent. IPs must ensure timely issuance of meeting notices to CoC members, along with sharing detailed agendas in advance. Resolutions and decisions taken during CoC meetings must be accurately recorded in the minutes. Voting mechanisms must comply with legal thresholds, such as the requirement of a 66% majority for crucial decisions, to ensure procedural integrity.

Asset valuation and liquidation processes - Valuation of the debtor's assets is another critical compliance area. Registered valuers, as per the IBBI regulations, must determine

fair and liquidation values of assets to aid decision-making during the resolution or liquidation process. If no resolution plan is approved, the insolvency professional must file for liquidation, ensuring strict adherence to the liquidation regulations. The sale of assets during liquidation must comply with transparent bidding procedures and proper documentation.

Stakeholder communication and regulatory processes - Maintaining open communication with creditors, regulators, and other stakeholders like prospective Resolution Applicant or interested buyer in Liquidation is vital. Regular updates on key developments ensure transparency and foster accountability. Furthermore, compliance with orders or directives issued by the AA, such as the NCLT or appellate bodies, must be prompt and precise. The implementation of approved resolution plans must also be monitored to ensure adherence to the specified terms and timelines. IBBI plays a pivotal role in monitoring the conduct of IPs. IPs are required to submit compliance certificates, audit reports, and disclosures to the IBBI to demonstrate adherence to professional standards, regulations, and the provisions of the Code. This regulatory oversight ensures that the insolvency process remains transparent, fair, and aligned with legal requirements.

AI agents designed for managing the insolvency process would serve as an intelligent assistant, streamlining various stages of the resolution and liquidation processes while ensuring efficiency and compliance. This agent could integrate advanced features such as NLP for analysing legal documents, predictive analytics for forecasting recovery outcomes, and automated workflows to manage tasks like claim verification, asset valuation, and resolution plan assessment. By incorporating real-time compliance monitoring, the AI agent could track filing deadlines, regulatory updates, and mandatory communications with bodies like the IBBI. It could also automate the creation and summarization of key documents, including Information Memorandum, transaction audit reports, and creditor meeting minutes, ensuring accuracy and adherence to timelines. With its ability to provide stakeholders with real-time notifications, alerts, and insights into key milestones, the agent would reduce the risk of human error, mitigate legal risks, and improve decision-making. Additionally, its integration with legal databases and valuation models would empower insolvency professionals to make data-driven decisions, manage cases efficiently, and enhance transparency throughout the insolvency process.

PLANNING AGENTS

Preparation of a resolution plan is a critical step in the CIRP. A resolution plan outlines the strategy for reviving the financially distressed corporate debtor while maximizing value for creditors and other stakeholders. The plan must comply with the mandatory requirements of section 30(2) of the IBC, ensuring that operational creditors are paid at least the liquidation value and that it does not contravene any provisions of the law. Resolution applicants, who can be individuals or entities meeting eligibility criteria under section 29A, submit their plans to the RP. The RP evaluates the plans for compliance and feasibility, taking into account factors like repayment schedules, restructuring proposals, and operational turnaround strategies. Approved plans are then presented to the CoC, which votes on the proposals based on a 66% majority threshold. Once approved by the CoC, the resolution plan is submitted to

the AA (NCLT) for final approval. The plan's successful implementation is monitored to ensure adherence to its terms, marking the resolution of the insolvency process and enabling the corporate debtor's revival.

Plan preparation and plan evaluation agents are integral tools in the insolvency resolution process, offering both efficiency and accuracy in creating and assessing resolution plans. Plan preparation agents assist resolution applicants by guiding them through the drafting of resolution plans that are legally compliant with the provisions outlined in section 30(2) of the IBC. These agents ensure that the plans address all mandatory requirements, such as ensuring operational creditors receive at least the liquidation value and ensuring the plan does not contravene any legal stipulations. The agents leverage data analytics, AI, and predictive modelling to design strategies that include asset restructuring, debt repayment schedules, and operational turnaround proposals, enhancing the likelihood of a successful resolution. On the other hand, Plan Evaluation Agents play a critical role in objectively assessing and comparing the resolution plans submitted by resolution applicants. These agents evaluate the financial feasibility of each plan, focusing on the recovery rates for creditors, estimated asset values, and the distribution of proceeds among different classes of creditors. They also track the projected timelines for plan execution, considering potential delays, regulatory hurdles, and complexities associated with asset sales and debt restructuring. In addition, the agents ensure that each plan complies with the legal framework governing insolvency processes, cross-referencing them against relevant provisions of the IBC or applicable legislation in other jurisdictions. Moreover, these agents assess the feasibility of proposed restructuring steps by considering both quantitative aspects, such as financial projections, and qualitative factors, like the likelihood of stakeholder support and the overall potential for long-term success. They also evaluate the impact of the plan on various stakeholders, ensuring that the resolution is balanced and minimizes losses for creditors, employees, and the debtor. Plan Evaluation Agents use AI-driven predictive and prescriptive models to simulate potential outcomes of each resolution plan, estimating recovery values, timelines, and risks. These agents generate a comparative scoring and ranking system, allowing insolvency professionals to make transparent, data-driven decisions. The combination of Plan Preparation and Plan Evaluation Agents ensures that the resolution process is efficient, compliant, and optimized, helping insolvency professionals identify the most viable and equitable plan for all parties involved.

OUTREACH AND MARKETING AGENTS

Investor outreach is a critical component of the insolvency process as it ensures the engagement of a diverse pool of potential investors who can contribute to the resolution of the distressed company. By proactively reaching out to investors, the process fosters competition, encouraging higher-quality resolution plans and better recovery outcomes for creditors. Effective outreach increases transparency and inclusivity, providing opportunities for a wide range of investors—ranging from strategic buyers to financial institutions—to participate. This is particularly important for preserving asset value and facilitating timely resolutions. Tailored communication strategies, supported by data-driven insights, help match the right

investors with the most suitable opportunities, enhancing their interest and likelihood of participation. Moreover, investor outreach demonstrates the resolution professional's commitment to finding equitable solutions, building trust among stakeholders, and ensuring the resolution process adheres to legal and financial best practices.

Investor marketing agents can play a pivotal role in the insolvency resolution process, acting as a bridge between distressed companies and potential investors who can inject capital or submit resolution plans. These agents are designed to enhance the competitiveness, transparency, and efficiency of the resolution process by ensuring that a broad and diverse pool of investors is reached. By leveraging advanced technology such as AI, machine learning, and predictive analytics, Investor Outreach Agents can identify suitable investors across various sectors, expanding the reach beyond traditional investor networks and encouraging more competitive bids for distressed assets or restructuring opportunities.

The process begins with the identification of potential investors. Investor Outreach Agents utilize both internal databases and external sources, such as industry reports, financial networks, and investor registries, to locate parties that might have an interest in distressed assets or companies under insolvency proceedings. The agents sift through vast amounts of data to identify investors who are likely to have both the financial capacity and strategic interest in acquiring assets or participating in resolution plans. Predictive models and AI-powered search engines make this identification process more efficient by scanning for investor profiles that align with the distressed company's financial situation, asset class, or industry.

Once potential investors are identified, Investor Outreach Agents shift to personalized marketing and communication. These agents generate customized messages that explain the distressed company's situation, the specific assets on offer, and the benefits of submitting a resolution plan. The agents tailor the messaging to each investor's profile, highlighting aspects of the company's assets that match their investment preferences or strategies. For example, if an investor specializes in acquiring distressed real estate, the agent will emphasize the real estate holdings of the distressed company. This targeted outreach increases the likelihood of generating interest from qualified investors, ensuring that the resolution process is competitive and attracting the right kind of proposals.

In addition to marketing, these agents provide substantial guidance to potential investors throughout the resolution process. This includes explaining the mechanics of submitting a resolution plan, detailing the regulatory requirements involved, and offering assistance with necessary documentation. Many investors may be unfamiliar with the intricacies of the insolvency process, and by offering clear, accessible instructions, Investor Outreach Agents help prevent delays or errors in the submission of plans. The agents also assist in ensuring compliance with legal and regulatory standards, guiding investors on how to navigate the complex insolvency landscape.

One of the critical roles of Investor Outreach Agents is to ensure that all investors, regardless of size or reputation, are given an equal opportunity to participate in the resolution process. It is essential to prevent any bias in favour of large, well-established investors, as this could

exclude smaller, yet capable, investors from participating. To address this, the agents are equipped with impartiality protocols that ensure outreach is evenly distributed among potential investors based on objective criteria, such as past investment history, financial capacity, and relevant industry experience. Machine learning algorithms help refine this process by ensuring that investor outreach is tailored and fair, eliminating the potential for human error or bias.

Investor outreach agents also help streamline the documentation and verification process. As investors express interest in the distressed assets or resolution plans, the agents can verify their eligibility automatically, ensuring that all legal and procedural requirements are met before any formal submission of plans or bids. This functionality reduces the administrative burden on IPs and ensures that only qualified investors are involved in the process. By automating tasks such as document submission, eligibility checks, and regulatory compliance verification, Investor Outreach Agents reduce the risk of delays, errors, and non-compliance, thus improving the efficiency of the insolvency resolution process.

In conclusion, Investor Marketing and Outreach Agents serve as a critical component of the insolvency resolution ecosystem, enhancing the speed, transparency, and competitiveness of the process. By utilizing AI-driven tools for identifying potential investors, crafting personalized communications, providing regulatory guidance, and ensuring impartiality, these agents contribute to a more inclusive, efficient, and compliant resolution process. Their role not only accelerates the resolution of distressed companies but also maximizes the potential recovery for creditors, ensuring that the process is fair and beneficial to all stakeholders involved.

FRAUD DETECTION

Fraud detection is a critical component of the insolvency resolution process, designed to detect anomalies and identify fraudulent activities within financial records. These agents leverage advanced AI technologies such as anomaly detection algorithms, machine learning models, and supervised learning techniques to serve as the first line of defence against financial manipulation, fraud, and asset misrepresentation. Their role is to ensure that the insolvency process remains transparent, and free from malpractices that could undermine the integrity of the proceedings. The core function of Fraud Detection Agents is to monitor and analyse financial data in real-time to uncover any suspicious activity that could indicate fraudulent behaviour, ranging from asset manipulation to hidden transactions.

One of the key areas where Fraud Detection Process Agents come into play is in detecting manipulated asset valuations. Asset valuation is a crucial element in insolvency cases, as it determines the worth of a distressed company's assets and influences the resolution plan. A registered valuer may intentionally inflate or deflate asset values to benefit certain stakeholders, but Fraud Detection Agents are equipped with sophisticated algorithms to spot such inconsistencies. For example, if an asset valuation significantly deviates from historical trends, industry standards, or expected market values, these agents can flag such discrepancies as potential fraud. By comparing current asset valuations against historical data, the agents identify deviations and send alerts to Asset Management Agents for further

investigation. These agents help protect the interests of creditors, investors, and other stakeholders by preventing fraudulent valuations from influencing the insolvency process.

In addition to asset valuation manipulation, Fraud Detection Process Agents also focus on identifying irregular financial patterns that may point to hidden or transferred assets. Financial fraud in insolvency cases often involves the concealment or movement of assets to evade creditors or regulatory authorities. Suspicious transactions, such as large sums of money being transferred just before or during the insolvency proceedings, can be flagged by these agents. For instance, if assets or funds are being moved to related parties or to accounts with no clear justification, these agents immediately trigger alerts, prompting the Asset Management Agents to investigate further. This helps detect fraudulent transactions that may otherwise go unnoticed, ensuring that all assets are accounted for and distributed equitably among creditors.

Machine learning is a powerful tool employed by Fraud Detection Process Agents to continuously improve their detection capabilities. These agents learn from historical data and patterns of fraudulent behaviour, becoming more adept at recognizing new strategies and tactics used by fraudsters. By using supervised learning, the agents are trained on labelled datasets of known fraudulent activities, enabling them to accurately identify similar activities in real-time. The agents also adapt to new fraud schemes as they evolve, making them a dynamic tool in the fight against financial fraud. As the system processes more cases and data, it becomes increasingly effective in spotting subtle anomalies and preventing fraudulent activities that might otherwise have gone undetected.

Furthermore, these agents work in close collaboration with Asset Management Agents to provide a holistic approach to fraud detection and asset management. When fraud is detected, the Fraud Detection Agent notifies the Asset Management Agent, who can then dive deeper into the flagged activities and assess the full scope of the issue. This collaborative effort helps ensure that the insolvency process is not only efficient but also fair and transparent. Fraud Detection Process Agents are designed to enhance the integrity of insolvency proceedings by identifying fraudulent behaviours early, ensuring that the assets are accurately valued and distributed. Their ability to detect financial anomalies, track suspicious transactions, and learn from past patterns makes them an indispensable tool for safeguarding the interests of all stakeholders involved in the insolvency process.

In summary, Fraud Detection Process Agents are a crucial asset in the insolvency resolution ecosystem. Their ability to identify manipulated asset valuations, track irregular financial patterns, and utilize machine learning for pattern recognition ensures that fraudulent activities are detected and mitigated early on. By working closely with Asset Management Agents, these agents provide a comprehensive and proactive approach to detecting and preventing fraud, safeguarding the interests of creditors, investors, and other stakeholders involved in the insolvency process. Through their continuous monitoring and alerting capabilities, Fraud Detection Process Agents help maintain the integrity of insolvency proceedings, ensuring a fair and transparent resolution for all parties involved.

ASSET VALUATION

Asset Valuation plays a pivotal role in ensuring accurate valuations of various asset classes during insolvency proceedings. These agents utilize advanced technologies like predictive AI, machine learning, and statistical models to determine the true worth of assets such as financial securities, land and buildings, and plant and machinery. Their primary goal is to provide an objective and comprehensive assessment, which is critical for resolving insolvency cases in a fair and transparent manner.

Financial securities valuation - In the case of financial securities, such as stocks, bonds, and other investments, Asset Valuation Process Agents rely on market-based valuation methods. These agents assess the current market prices of these securities, factoring in market trends, interest rates, and economic indicators. Predictive models help to forecast the future potential of the securities, considering the financial health of the issuer, industry trends, and the broader economic environment. Real-time market data gathered by Data Gathering Agents ensures that the valuation is based on the most recent information, preventing discrepancies due to outdated or inaccurate data. If there are signs of price manipulation or unusual market movements, the agents cross-check these data points with historical trends and industry benchmarks to flag potential issues. This helps in providing an accurate reflection of the true value of financial securities, ensuring fairness for creditors.

Land and building valuation - When it comes to valuing land and buildings, Asset Valuation Process Agents utilize a mix of comparative market analysis and income-based approaches. By analysing recent transactions of similar properties, agents can assess the value of the land or building in question. These agents also consider factors such as location, market demand, property age, and condition. In addition, the agent takes into account any potential legal restrictions or liabilities associated with the property, including zoning laws or environmental concerns. To further refine the valuation, the agents can integrate real-time market data gathered from real estate databases, ensuring that property values reflect current market trends. The integration of predictive AI models also helps in forecasting the future value of properties based on evolving market conditions, making the valuation process more dynamic and responsive to changes.

Plant and machinery valuation - Valuing plant and machinery assets require specialized knowledge and a technical approach. Asset Valuation Process Agents use methods such as the cost approach, which takes into account the original cost of acquisition, depreciation, and any maintenance or repair costs incurred over time. The agents also assess the functional utility of the machinery, factoring in its remaining useful life and potential for generating revenue. Additionally, market trends in the manufacturing or industrial sectors are considered to estimate the resale value of machinery. By applying machine learning models, the agents can forecast depreciation rates and predict how market conditions may affect the demand for certain types of machinery. This ensures that the valuation reflects both the current state of the assets and their potential future performance.

Ensuring accurate and fair valuations - One of the primary responsibilities of Asset Valuation Process Agents is to prevent both undervaluation and overvaluation of assets. Through the use of advanced predictive and statistical models, these agents are able to cross-reference the valuations against industry standards and benchmarks, ensuring that the valuations are in line with market expectations. If an Asset Management Agent suspects that a valuation has been manipulated—whether intentionally or due to bias—the Asset Valuation Process Agents can flag discrepancies and conduct a detailed review. By analysing the historical performance of similar assets and comparing them to current valuations, the agents can adjust the asset values accordingly, ensuring that creditors are treated fairly.

Asset valuation process agents can collaborate with Real-time Data Gathering Agents, which provide up-to-date information from the market. This data is integrated into valuation models to ensure that asset values are reflective of the most recent market conditions, preventing any discrepancies or attempts to artificially inflate or deflate asset values. If any inconsistencies or irregularities are detected in the valuation reports, these agents can suggest adjustments and provide evidence-based recommendations to ensure that the valuation process remains accurate, fair, and unbiased.

In summary, Asset Valuation Process Agents are essential in accurately determining the value of different asset classes during insolvency proceedings. By using predictive AI, machine learning, real-time data, and industry benchmarks, these agents ensure that assets such as financial securities, land and buildings, and plant and machinery are valued fairly and accurately. Their role is critical in protecting the interests of all stakeholders, preventing manipulation, and providing transparent asset valuations that guide the insolvency process towards a fair resolution. Through their collaboration with other agents, such as Asset Management Agents and Real-time Data Gathering Agents, these valuation experts help safeguard the integrity of the insolvency process, ensuring that all assets are appropriately valued and distributed.

TECHNOLOGIES AND TOOLS

AI agents used in insolvency processes employ a variety of tools and technologies to efficiently address the complexities of these proceedings. These tools span across several domains, including data management, compliance, outreach, financial analysis, and decision-making, enabling a more transparent and effective resolution process.

One critical area where AI agents excel is data management. Tools like NLP assist in extracting, organizing, and classifying information from legal documents, contracts, and creditor claims. Popular NLP tools include OpenAI, spaCy, and Hugging Face. Additionally, Optical Character Recognition (OCR) technology, such as ABBYY FineReader or Tesseract, converts scanned documents or images into machine-readable formats for further analysis. To manage vast amounts of structured and unstructured data, Database Management Systems (DBMS) like MySQL, MongoDB, and Elasticsearch are employed.

Analytical tools form another core component. Predictive analytics, utilizing platforms like TensorFlow, PyTorch, and Scikit-learn, helps forecast recovery values, project asset valuations,

and identify investor interest. Anomaly detection algorithms such as Isolation Forest and Azure Anomaly Detector flag irregular patterns in financial transactions or valuations, while statistical modelling tools like MATLAB and Python's SciPy facilitate deeper financial analysis based on historical data.

In the realm of decision support, optimization algorithms like Gurobi and IBM CPLEX simulate and identify the most effective resolution plans or debt repayment schedules. Prescriptive AI models, using tools such as MATLAB Simulink and Google's AI Optimizer, predict outcomes and guide restructuring decisions. Sentiment analysis tools like VADER and Azure Text Analytics further enable monitoring of stakeholder sentiment and public perception, providing insights into reputational risks.

For compliance and legal monitoring, rule-based systems automate the tracking of compliance milestones and regulatory requirements. Tools like DocAssemble and CLIO ensure adherence to insolvency standards. AI-based document review platforms such as Kira Systems and Luminance expedite legal reviews and flag clauses that may conflict with regulations. RegTech solutions, including Compliance.ai and Trulioo, streamline regulatory compliance processes.

AI agents also excel in outreach and marketing, where personalization engines like Salesforce Einstein and ActiveCampaign enable customized messaging to creditors and investors. Email automation platforms, including Mailchimp and Zoho CRM, manage communication, while AI search engines like ElasticSearch and Quivr identify potential claimants or investors by scanning databases.

Fraud detection tools are pivotal in ensuring integrity during insolvency proceedings. Forensic accounting platforms like CaseWare IDEA analyze financial records to uncover hidden transactions or manipulated valuations. Machine learning frameworks such as PyTorch and H2O.ai recognize patterns associated with fraudulent activities. Blockchain technologies, including Hyperledger and Ethereum, provide traceability and authenticity in financial records.

In terms of valuation, AI agents utilize market data aggregators like Bloomberg Terminal and Refinitiv Eikon to access real-time market information. Asset valuation software, including CoStar for real estate and AssetWorks for physical assets, ensures accurate valuation of various asset classes. AI models like XGBoost and Prophet predict future trends in asset values by analysing historical and market data.

Collaborative workflows are streamlined through project management platforms like Asana and Trello, which facilitate communication among stakeholders. Document collaboration tools such as Google Workspace and SharePoint allow for real-time, secure sharing of documents. Interactive AI agents, such as those built with Slack Bots or Zapier, further enhance workflow coordination by assigning tasks and sending reminders.

AI agents rely on real-time data gathering tools to remain updated with market and industry-specific trends. Web scrapers like Beautiful Soup and Scrapy automate data extraction, while APIs such as Alpha Vantage and Quandl continuously collect market benchmarks and pricing

information. For monitoring physical assets, IoT tools like AWS IoT Core and Azure IoT provide real-time insights into the condition of machinery.

Finally, visualization and reporting tools play a significant role in presenting complex financial and legal data. Platforms like Tableau and Power BI provide stakeholders with clear insights into case progress, while dashboards like Google Data Studio and Domo offer real-time updates. Automated report generators such as JasperReports and Crystal Reports produce summaries, valuation reports, and resolution plans efficiently.

By integrating these tools, AI agents in insolvency processes automate repetitive tasks, offer actionable insights, and facilitate informed decision-making. This technological integration leads to a more efficient, transparent, and effective resolution process, benefiting all stakeholders involved.

CONCLUSION

Artificial intelligence has gained considerable acceptance in legal fields, including insolvency, particularly in developed nations like the United States and the European Union. Numerous firms have successfully deployed AI tools such as Data 61, DataLex AI, and ROSS, which specialize in advanced analytics, scenario modelling, and financial performance predictions, proving beneficial for insolvency law enforcement. A notable example is LDM Global, which developed the AI tool "Accelerator." This tool has significantly contributed to the firm's ability to deliver successful outcomes in insolvency proceedings.

Several countries are actively integrating artificial intelligence into their insolvency processes to enhance efficiency and accuracy. For instance, Portugal has implemented the Citius platform, which facilitates communication between parties and the court, streamlining insolvency proceedings. Similarly, Finland utilizes the KOSTI platform to improve efficiencies in insolvency cases. In Colombia, the government has approved the use of AI in the insolvency portal (MI) used by the bankruptcy court, automating non-discretionary decision-making and expediting case processing. In 2021, the Colombian government introduced a decree authorizing the use of AI in managing insolvency processes, responding to the economic challenges of the time. Similarly, the United Kingdom launched its "National AI Strategy" in the same year, aimed at establishing a comprehensive framework for AI governance. This initiative explicitly supported the use of AI in law enforcement, including insolvency-related matters.

These advancements demonstrate a global trend towards adopting AI in insolvency law enforcement, aiming to improve the speed and effectiveness of insolvency proceedings. It is time to make the use of AI agents mandatory in the IBC process and ensure their integration into insolvency proceedings for greater efficiency, transparency, and accuracy. By leveraging AI tools, India can address challenges such as delayed resolutions, fraudulent activities, and the overwhelming volume of financial data that professionals must analyse. Mandating AI adoption will enable resolution professionals to streamline compliance, automate documentation, detect anomalies, and improve stakeholder communication. Additionally, the use of AI can foster better decision-making by providing data-driven insights, enhancing

asset valuation accuracy, and forecasting recovery outcomes. This shift would not only align India with global best practices but also strengthen its insolvency framework to ensure faster, fairer, and more reliable resolutions, ultimately boosting investor confidence and economic stability.

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14

CHALLENGES TO THE INSOLVENCY PROFESSIONALS AND COMMITTEE OF CREDITORS IN DEALING PUFE TRANSACTIONS AND THE WAY FORWARD

Veerapandian Narayanasami and Chirag Rajendrakumar Shah

ABSTRACT

The law on insolvency process has been in effect since the formation of The Presidency Towns Insolvency Act, 1909. The present Insolvency law of Insolvency and Bankruptcy Code, 2016 (IBC/Code) is a comprehensive law. The IBC was introduced with a view to consolidate multiple laws dealing with insolvency, bankruptcy, revival and liquidation of various entities. Further, it shifted the focus from the debtor-centric approach of previous laws to a creditor-in-control regime. The IBC is a dynamic law which is proving its effectiveness since its introduction. The Code is being implemented through mechanism of Adjudicating Authority (AA). The role and responsibilities of Insolvency Professionals (IPs) are to protect and preserve the assets of the Corporate Debtor (CD) and to ensure that the operation of the CD is continued. The IP, upon being appointed as Resolution Professional must conduct the business as per the extant provisions of the Code. IPs must strictly follow the schedule prescribed by the Code. In conducting the corporate insolvency resolution process (CIRP), the members of the Committee of Creditors (CoC) have a vital role to play in supporting the IP in accomplishing the objectives of the Code. This article has reviewed the challenges faced by the IP and the CoC, while dealing with the preferential, under value, extortionate credit and fraudulent transactions (PUFE) described in the Code. The task of identifying the transactions which qualify the PUFE and forming opinion by the IP are challenging. Even after filing the applications (Avoidance Applications) before the AA, there are challenges to IPs as well to the CoC to address the outcome of the Avoidance Applications as there are indefinite delay happening due to various challenges in the litigation process.

INTRODUCTION

The Code has emerged as the biggest economic reform for the distressed companies. The Code has enabled revolutions in finding resolutions for companies under distress. The IBC section 43 to 51 provides for "*Avoidable Transactions*" and the section 66 provides for "*Fraudulent Transactions*" with intention to identify the transactions by the CD which are prejudice to the interest of the creditors and reversing the same through insolvency proceedings to maximise the value of assets of the corporate debtor.

It has been observed that many companies, plagued with mismanagement and diversion of funds, have ended up in a distressed situation leading to insolvency proceedings making it

imperative to identify the cause of default. Basic issues, which cause disturbance in functioning of business entity, be it a proprietorship, partnership or corporate, are the *availability of funds* and the *manner of its utilization* in the business. It is becoming the most difficult job for the promoters to get the required and timely credit from the market. The procedures to be followed to obtain credit requirements from formal credit institutions often involve complex processes. In most cases, the business projections envisaged by the promoters/business entities do not fit into the policies framed by the credit institutions/lenders. As a result, the business firms are forced to reshape their legs according to the size of shoes or trim their projections and consequent shrinking of its apparent financial requirements to suit temporarily the formulas of the credit institutions/lenders. Often, the credit policies of financial institutions (FIs) are generalist in nature without foreseeing activity/product/geography related variations. Here the challenges emerge for the business entity to keep its existence. The gestation period for revenue generation varies from business to business. Investments in intangibles, especially in the case of IT driven industries, are not often counted to assess the worth of business resulting in cutting down the maximum permissible finance. Under such situations, pressures are built to accommodate emerging needs leading to external or costly funding and resorting to divergent transactions. The whole process of sanction, our PM' once in a remark in a single sentence unveils the whole procedure. He said "bankers should rise from the role of simple loan approver to that of a partner in the business" which underlines the extent of ownership and passion required right from processing across the life of the business. This is very important as in most cases 75 to 80 % funding is from FIs and only 20 to 25% is the stake of promoters whereas the business affairs are almost 100% decided by the 25% contributor, keeping the major stake holder in dark.

There are cases of unscrupulous borrowers diverting funds with ulterior motives. Neither is the entity ready to share their situations which have compelled them to divergent activities, nor do the creditors/lenders become vigilant enough to detect the problem at the incipient stage and come forward to rescue the unit at the initial *stage* itself. It becomes more dangerous when the corporate/individuals adopt deceitful practices with intention to cheat the creditors.

There are several legal frameworks enacted in India to address the issues related distress reconstruction of Financial Assets. a) The Sick Industrial Companies (Special Provisions) Act, 1985 b) The Companies Act 1956 – under section 425, the winding up and resolution of the corporate was dealt c) Companies Act, 2013 – section 230 provides a legal framework for companies for restructuring mechanisms d) A special law, the Recovery of Debt Due to Banks and Financial Institution Act, 1993, being in place for recovery of dues from the corporate, firms and individuals e) Securitisation and Reconstruction of Financial Assets and Enforcement of Securities interests Act 2002 f) In the case of individuals, the Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 were in place. Despite several legal frameworks being in place, finding a quick resolution to the companies reeling under the stressed assets, the recovery rate and time taken to realization of idle assets have been matters of grave concern. Besides, when one studied the reasons for the default of business of the corporate, it was found that several business corporates have failed due to the

mismanagement and wrong practices adopted during the transaction's operations. Here, the role of credit providing institutions, particularly the bank and FIs, is felt very vital for successful running business of the corporates. The Banks and FIs should have the effective checks and monitoring mechanisms under the broad guidelines of Reserve Bank of India to control and to plug the loopholes that affects business operations of the corporates, ultimately lead to the default and the Bank's funds lent become non-performing assets (NPA). An analysis on top 100 bank frauds carried out by the Central Vigilance Commission, New Delhi in its Report, October 2018 has enumerated anomalies observed, the loopholes that facilitated perpetration of fraud and has suggested systemic improvements required to plug the loopholes in the system & procedures etc. A study "*Reasons of Banking Fraud – A case of Indian Public Sector Banks"* by Sukanya Kundu and Nagaraja Rao (IJISMRD volume 4, June 2014 @ TJPRC Pvt. Ltd) stated that *Bank frauds occur due to ignorance, situational pressures and permissive attitude.* Further asserted that "*In the fear of damaging the banks reputation often the fraud cases are not always brought to light."*

The complexity of issues related to financial markets has a direct impact on the economic growth of the country. Under these circumstances, the Government has felt that new legislation was required to deal with insolvency and bankruptcy. The Bankruptcy Law Committee (BLRC) was constituted under Chairmanship of Dr. T.K. Viswanathan with mandate to suggest comprehensive reform covering all aspects all aspects of insolvency and bankruptcy of both corporates and individuals. Based on the recommendations, the Code was enacted in May 2016 and came into force on December 1, 2016. The objectives of the IBC is to find resolution of corporate persons, partnership and individuals in a time bound manner for maximization of value of assets and to promote entrepreneurship and balance the interest of all the stakeholders. The Code while covering broad legal frameworks to deal with stressed assets of the corporates, focuses on the issues related to default occurring during the business operations and the corrective measures have also been prescribed to restore the assets lost during business operations. The present study focuses on the challenges faced by the IPs and the CoC while dealing with the issues on identifying the preferential transactions, undervalue transactions, extortionate credit operations and fraudulent practices and challenges to bring back the assets and monies drained out or siphoned off from the system.

METHODOLOGY

This section outlines the approach and tools used for data collection and analysis in the research:

a) **Qualitative Data:** Case law studies and analysis of tribunal rulings.

b) **Quantitative Data:** Statistical insights from insolvency reports and financial audits.

c) **Primary Sources**: IBC guidelines, Reports from the IBBI and tribunal orders.

d) **Tools Used**: Forensic audit reports, transaction audits, and data analytics were employed to assess PUFE transactions and their impact on the insolvency process.

STATEMENT OF PROBLEMS

Professional competence of IPs in managing the complex nature of business.

Commercial wisdom of CoC: The Banks and FIs who are members of the CoCs constituted under the Code were in most of the cases and are often reluctant to take part in providing further credit and support entrepreneurs. Instead of alleging the failures only on the part of CDs, the FCs being the important stakeholders should not get away from their responsibilities of continued monitoring of the funds lent to the CD's business and should stand as co-partners in supporting credit requirements, especially when the business of the CD facing financial stress. The people representing FCs and attending the CoC in the capacity of members were reluctant to exercise their voting powers on the issues placed in the CoC.

REVIEW OF LITERATURE

Credit transactions are an integral part of commercial transactions and play a vital role in the development of any type of business with a commercial nature. Credit availability is an important resource to economic growth and contributes to the growth of GDP. Schumpeter (1970) highlighted the importance of financial intermediaries in mobilizing savings, evaluating projects, diversifying risks, monitoring the management of firms in debt, and facilitating transactions which are essential for innovation and economic growth. Banks in India have traditionally been the main source of credit for various sectors of the economy and their lending operations have evolved in response to the needs of the economy. The relationship between credit and GDP growth has been studied by Mr. Charan Singh and Mr. Subhash Bharadwaj Pemmaraju and presented in working Paper No.531 (IIMB-WP N0. 531).

Mr. Abhishek Mittapally and Kokila Jayaram the authors of article "A study of Insolvency Professionals in India" have listed the challenges that "*The IP has no time to develop any understanding about the CDs business but is expected to make meaningful decisions to keep the business operational.*"

Ms. Mukulita Vijayawargiya in his article on Insolvency Professionals and the Code of Conduct in his conclusion remarks stated that *"The objectives of the Code cannot be achieved unless the resolution professional strives for excellence and follows the Code of Conduct of the process in order to inspire confidence among all the stakeholders."*

A case study on a PSU Bank (name not disclosed) conducted by Mrs. Sukanya Kundu & Nagaraja Rao in their article title *Reasons of Banking Fraud – A Case of Indian Public Sector Banks* (IJISMRD Volume 4. Issue 1, June 2014 @TJPRC P Ltd) have suggested that " *A sound banking system should possess three basic characteristics of Fraud aversion culture, Time tested Best Practices Code and in-house immediate remedial system to protect depositors' interest and public faith.*

Mr. S.Daniel Rathinaraj and Dr. C Chandrorayaperumal in their Survey study on *Financial Fraud, Cyber Scams and India* in concluding remarks stated that the latest cases of accounting fraud seems to involve aspects of stock based incentive and mark – to – market accounting. They stressed that it is more important to understand the mindset of the Indian fraudster

and bring in meaningful regulations that are not aped version of their US and European legal counterparts, as we have to take our battle against accounting fraud to the next level.

Indian Law Schol Journal (Article 5 Volume 14/Issue 1) A critical Analysis of Transaction Avoidance in Insolvencies with Special reference to Extortionate Credit Transactions under the IBC. The author Mr. Varendyam Jahnawi Tiwari has asserted that when an entity is financially distressed, it is the promoters and the directors of the company who first get alarmed at the situation and not the creditors. Thus, there exists a high probability that they may alienate the assets of the company to the detriment of creditors by reducing the liquidation estate, which is against the principle of 'anti-deprivation rule'.

ROLE OF INSOLVENCY PROFESSIONAL

In today's competitive business world success or failure depends on various factors influencing the ecosystem of business environments. No institution or industry can work without the professionals. Professionals take the drivers and set higher standards of industry or institution. In business failures are due to mismanagement by incompetent professionals or engaging not right professionals. The success of large corporates or institutions mostly depends on how the leader and his professional team accomplish the principles and objectives. It is pertinent to state that to run any business process successfully, the right people with competence to be engaged. The new legislation of IBC was required to deal effectively with the active role of professionals who have competence in handling the insolvency process of corporate persons, LLP, Partnership firms, and individuals. The IBC lays down an effective ecosystem for implementation of the provisions of the Code which provides engagement of professionals called IP (section 16 of IBC). The IPs are entrusted with wide range of functions to effectively conduct the process to maximize the value of the assets of the debtor during the resolution or liquidation process.

The role of an IP is very important in the insolvency process. The IPs who are appointed under the Code by the AA as Interim Resolution Professionals/Resolution Professionals (IRP/RP) or liquidators have to perform diligently to manage the affairs of the CD and keep the company as a going concern. His duties include protecting and preserving the assets of the CD, convening and conducting the meetings of CoC/Stakeholders etc. (Sec. 18, 20, 23 & 25 of IBC). The IPs are facing a variety of challenges during the CIRP as well as the liquidation process. Among the challenges faced, certain areas like taking control and custody of assets of the CD, obtaining information and cooperation from the suspended directors/key persons, and scrutiny of affairs of the CD for a pre-CIRP period to ascertain the avoidance transaction are very critical to the IPs. The Code has defined the duties of the IPs to act as IRP/RP or Liquidator with ethics and fearlessness. The provisions of the Code have been carefully designed to protect and preserve the dignity of the individuals who are engaged as Insolvency Resolution Professionals and expected to diligently perform the duties.

SC Civil Appeal No. 8766-67 of 2019 *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* — it clear that the resolution professional is a person who is not only to manage the affairs of the CD as a going concern from the stage of admission. A key person

who is to appoint and convene meetings of the Committee of Creditors. Another very important function of the resolution professional is to collect, collate and finally admit claims of all creditors, which must then be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated and decided by the Committee of Creditors. (Para 27).

Section 28 of the IBC outlined guidelines for the approval of the Committee of Creditors for certain actions of the IRP/RP. Sub-section (4) of section 28 states that *"Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void."*

Introduction

The IBC empowers Resolution Professionals and the CoC to scrutinize corporate transactions to detect malpractices. PUFE transactions undermine creditors' rights and distort the insolvency process. The framework under sections 43 to 51 and section 66 of the IBC lays down the provisions to reverse such transactions, but practical challenges often impede their execution.

Challenges faced by Insolvency Professionals

- **Data collection and forensic investigation:** IPs often face resistance in accessing financial records, non-cooperation in providing the details by the suspended directors result in inconclusive forensic audits which are time-consuming and costly.
- **Ambiguity in definitions:** Lack of clarity in identifying undervalued or fraudulent transactions leads to issues of interpretation.
- **Time constraints:** The resolution process's strict timelines leave limited scope for in-depth investigations.
- **Legal complexities:** Proving intent in fraudulent transactions is particularly arduous, often requiring extensive legal and evidentiary support.
- **Resistance from stakeholders:** Key stakeholders, including promoters and directors, may obstruct investigations, leading to delays.

Challenges faced by the Committee of Creditors

- **Lack of expertise:** CoC members often lack the sufficient expertise to effectively evaluate PUFE transactions.
- **Conflicts of interest:** Creditors benefiting from preferential transactions may resist their reversal.
- **Coordination issues:** Ensuring seamless communication between the IP and CoC is critical but often plagued by challenges.

Challenges faced by Adjudicating Authority

a) Overburdened caseload:

- o The NCLT faces a growing backlog of cases. As of 2023, over 14,000 cases were pending before various benches, many involving PUFE-related disputes.
- o Example: PUFE disputes in large cases like Bhushan Power and Steel added significantly to the NCLT's workload.

b) Lack of specialized expertise:

- o Judges may lack expertise in forensic accounting and corporate fraud, leading to delays in comprehending technical reports.
- o Example: In the Amtek Auto case, the bench required multiple rounds of clarification from forensic experts before delivering a ruling.

c) Prolonged hearings and adjournments:

- o Frequent procedural adjournments and insufficient preparation by parties.
- o Example: PUFE disputes in Jaypee Infratech delayed resolution for over six months.

d) Varying interpretations:

- o Different benches have provided conflicting rulings on PUFE provisions, creating uncertainty.
- o Example: Divergent views on the look-back period for preferential transactions under Section 43 in Lanco Infratech vs. Binani Cement.

e) Limited resources:

- o NCLT lacks the infrastructure and personnel required to handle complex PUFE disputes efficiently.
- o Statistical Insight: A survey of insolvency practitioners found that 72% believe NCLT delays are a major hurdle in addressing PUFE transactions.

f) Enforcement challenges:

- o Even after rulings, enforcement of orders (e.g., claw-back of preferential payments) faces resistance from stakeholders.
- o Example: Recovery of funds in the Videocon Group insolvency case remained incomplete due to logistical challenges.

CHALLENGES IN THE INVESTIGATION OF FRAUD-RELATED CASES

DFS Government of India (PTI released dt. 4th December 2024) recently organized a 'Coordination Meeting on Vigilance matters of Public Sector Banks (PSBs)' to enhance inter-departmental cooperation and expedite investigation in bank fraud-related cases. It was discussed that bank-related fraud cases are a major area of concern, and the Government has taken various measures such as the IBC and the creation of a National Asset Reconstruction Company (NARCL) for the resolution of stress in banking assets —leading to an improvement in asset quality and performance of PSBs. The meeting focused on expeditious and effective investigation in bank fraud cases that will have a salutary deterrent effect and is likely to further catalyze resolution of stressed banking assets; and all measures were discussed for expeditious investigation in bank fraud cases.

It is felt relevant to have an overview of the information of *"Loan Written off by Public Sector Banks"* in India as per the table below:

Table: 1: Loans Written Off by Public Sector Banks in India

(₹ In crores)

Fis/Banks	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25* (till September 2024)
Nationalized Banks (12 Banks count)	1,31,894	1,15,537	1,18,949	1,14,712	42,035

(News Bulletin dated 22nd December 2024 – All India Bank Employees' Association)

A sum total of ₹ 5,23,127 crores debts have been written off during the last four and half years by 12 nationalised banks. If we add to the loan written off by other banks and FIs for the same period, the sum total will be approximately Rs. 7.00 Lakhs crores.

Another information on *Top 100 Defaulters* obtained from the RBI under Right to Information Act and released by the Indian Express News daily recently is discussed below:

> The top 100 bank defaulters, which include some of the country's biggest companies from across sectors run by prominent industrialists, had a total debt of Rs. 8.44 lakh crore till March 31, 2019, and out of this, near half was declared as bad loans or NPA. Energy/Power sector tops in the list with defaulter KSK Mahanadi Power Company Limited, Prayagraj Power Generation Company Limited, and a few others. The Manufacturing, Real Estate/Construction, and Telecom followed the list with defaulters Bhushan Power & Steel Limited, Essar Steel India Limited, Videocon Industries Limited, Jayaprakash Associates Limited, Reliance Communication Limited, and others are found in the Top 100 defaulters. (Indian Express – 4th Dec, 2024, New Delhi edition)

TOP NPA ACCOUNTS RECOMMENDED FOR RESOLUTION

The Internal Advisory Committee (IAC) constituted under the advice of RBI held its first meeting on June 12, 2017. The IAC agreed to focus on large, stressed accounts and identified

12 large NPA totaling about 25 percent of the then gross NPAs of the banking system that would qualify for immediate reference under IBC. Accordingly, RBI based on the recommendation of IAC, issued directions to banks to file for insolvency proceedings under the IBC in respect of the identified accounts. Such cases will be accorded priority by the National Company Law Tribunal (NCLT). (RBI Press release dt. 13th June 2017). The RBI has prepared second list of 40 accounts to be referred to NCLT for resolution.

CODE OF CONDUCT FOR COMMITTEE OF CREDITORS

The members of the CoC in CIRP are mostly FCs who must play a key role in accomplishing the objectives of the Code. Given the responsibilities under the Code, the CoC members in their ability have to address the issues to rescue and to keep the CD as a going concern, simultaneously balancing the interest of all the stakeholders. CoC is the supreme decision-making authority in CIRP and the collective decisions taken by the CoC are treated as commercial wisdom as upheld by the Supreme Court. The CoC may approve the Resolution Plan after considering the viability and feasibility([sec 30(4)] In the matter of *K Shashidhar v. Indian Overseas Bank*). In the matter of *Arcelor Mittal India Limited v. Satish Kumar Gupta and Ors*, the SC has laid the importance of the role and responsibilities of CoC, not limiting to deciding the viability and feasibility of the Resolution Plan, but its responsibilities to safeguard the interest of the stakeholders, while the commercial wisdom of the COC is protected from judicial scrutiny.

The primary objective of the Code is to ensure the revival of the financially stressed company in a time-bound manner with value maximization of the assets of the company and put back the viable unit into operations to safeguard the interest of the stakeholders through a process of a collective decision by the CoC (Sec 30(4)). It *is the commercial wisdom of the CoC to decide whether or not to rehabilitate the CD by accepting a particular resolution plan. The* rationale *for only the FCs handling the affairs of the CD and resolving them has been deliberated upon by the BLRC, which formed the basis for the enactment of the Insolvency Code* (*CoC of Essar Steel v. Satish Kumar Gupta & ors*- SC). Recognizing the vital role with responsibilities rest on the CoC, the law in India has set the highest standard to conduct the CIRP under the Code and that decisions taken by the qualified forum are restricted to limited judicial review by the judicial system. Insolvency and Bankruptcy Board of India (IBBI) issued guidelines dated 6th August 2024 under the title “Guidelines for Committee of Creditors.” The guidelines outlined the objectivity and integrity of members of the CoC, the requirement of independence and impartiality, keeping themselves updated with the provisions of the Code to maintain professional competence and participation in the process, cooperation, supervision and timeliness, etc. The guidelines have further stressed the importance of the key role played by the CoC in deliberating on the resolution plan as received by the Resolution Professional and placed before the CoC and deciding on the feasibility and viability of the same (IBBI 6th August 2024). Under the Code of guidelines to CoC, the CoC has been advised to share the information relevant to the IP to enable efficient conduct of the process. The information relating to stock audit conducted by the creditor, transaction audit, forensic audit and similar information available with the creditors, more particularly with the FCs if provided proactively to the IP,

will be more effective in identifying the transactions that qualify under the section 43, 45, 46, 49, 50 and 66 of the Code. However, a conspicuous missing guideline to direct the CoC for self-regulated and time-bound compliance by the CoC is in tune with the schedule prescribed for various stages in the insolvency process envisaged in the IBC. In the majority of cases, the IRP/RP or the Liquidator appoints independent professionals like transaction auditors and forensic auditors to ascertain the transactions done by the erstwhile management that breached the trust of the creditors in priority and given undue gain or preference/beneficial to other creditors, mostly related parties of the CD. The Resolution Professional or the Liquidator faces a big challenge to work on this area and to approach the AA to obtain appropriate orders to revert the assets and or the money drained out, back to the system.

PREFERENTIAL TRANSACTIONS CASE STUDY

Definitions of PUFE transactions as per the Code

Section 43 (Preferential Transactions)

Features of "Financial Affairs" of the Corporate Debtor

- Financial affairs encompass the CD's dealings related to its financial health, including:
  - Debt structuring or restructuring.
  - Transactions reflecting cash flow management.
  - Financial obligations like loans, guarantees, or asset transfers impacting solvency.

Meaning of "Transferee" in the Context of Section 43

- The transferee refers to the recipient of the property or benefit from the transaction. In preferential transactions, this could be:
  - A creditor or guarantor of the corporate debtor.
  - Any party receiving an undue preference that prejudices other creditors.
- **Illustration with case law:**
  - State Bank of India vs. Ruchi Soya Industries Ltd. highlights that related-party transactions within the look-back period were identified as preferential, with amounts transferred to affiliates flagged by the RP .

Interpretation of Section 43(3)(b)

- The phrase "does not include a financial debt or operational debt substituted for existing financial debt or operational debt" ensures that transactions restructuring or substituting debt (like refinancing loans) are not treated as preferential unless proven otherwise.

Why are reduced financial or operational debts not considered preferential?

- The exclusion prevents penalizing standard refinancing or operational restructuring processes, which are part of regular financial management and benefit the debtor's business continuity.
- A preferential tag applies only if the intent to defraud creditors or create undue preference to certain parties is established *(ICICI Bank Ltd. v. Bhushan Steel Ltd).*

Preferential Transaction

- Section 43 Preferential transactions and relevant time: The CD has given at a relevant time a preference in such transactions and in such manner as laid down in sub-section (2) to any person as referred to in sub-section (4).
- *State Bank of India v. Taguda Pte. Limited* in the matter of Ushdev International Limited – CD IA No.1857 of 2023 in CP (IB) No.1790/MB/C-II/2017: The Revised Resolution Plan with conditions precedent (RBI from the pricing guidelines prescribed under the Foreign Exchange Management Act, 1999) granting of exemption by approved by the CoC with the requisite vote and thereafter approved by NCLT. The implementation of the approved plan was delayed for the conditions set out (condition precedent) in accordance with the RFRP which is also in conformity with section 31(4) of the Code. The regulatory authority RBI who was supposed to grant permission was denying the same by quoting the previous transactions held by the CD Ushdev International Limited that were found to be in contravention of FEMA Regulation. The NCLT has observed that the delay hurts the commercial decision of the financial creditors who voted in favor of the revised resolution plan. The NCLT has further directed the Resolution Applicant to implement the revised resolution plan in a time frame not later than two months from the date of its order.
- NCLAT - Company Appeal (AT) (Insolvency) No. 600 of 2018. (*Tirumala Balaji Alloys Private Limited v. Sumit Binani*) & CA No. 601 of 2018 (*M/s Excello Fin Lea Limited v. Sumit Binani & Anr*) 13th November 2019 - Justice S.J. Mukhopadhaya Chairperson.
- It was held "that the promoters of the "Corporate Debtor (Monnet Ispat & Energy Limited)" hold 99.40% shareholding in Excello Fin Lea Limited and 50 % shareholding in Tirumala Balaji Alloys Pvt. Ltd and the rest of the 50 % shareholding of Tirumala Balaji Alloys Pvt. Ltd is with the relatives of the promoters of the CD i.e Rungta Family, we are of the view that all the transactions made during two years preceding the date of Insolvency Commencement Date i.e., 18th July 2017 come within the meaning of 'preferential'. NCLAT therefore does not interfere with the impugned order dated 6th August 2018 passed by the AA, Mumbai Bench directing the Excello Fin Lea Limited and Tirumala Balaji Alloys Pvt. Ltd to restore the entire amount transferred by the Corporate debtor during the relevant period.

- NCLT Mumbai bench – MA 436/2018 in CP No.172/IBC/NCLT/MB/MAH/2017- *Mr Ram Ratan Kanoongo, Resolution Professional v. Mr. Sunil Kathuria and ors* (Corporate debtor M/s Sanaa Syntex Private Limited. – NCLT order dt. 07.05.2019. It was observed that the CD conducted the activities as job works through a related party company. The monies of were not routed through the bank account of the CD even after the commencement of insolvency process under the IBC. The job sales which resulted in receivables amounting to ₹ 3.31,56,980/- have been eventually adjusted against various fictitious expense entries. The cash balance ₹ 142.10 lakhs shown in the books of accounts of CD was wiped out over a period without payment to the lenders. Further, the amount borrowed from various lenders amounting to ₹ 135.00 lakhs has been credited to the personal account. The CD showed inflated debtors and submitted incorrect stock statements to the lender bank (SBI). The CD has availed bill discounting facilities from the bank by submitting fictitious bills and the proceeds were transferred to the personal accounts of promoters. The overall loss to the lenders aggregates to approximately ₹ 1,344.32 lakhs. It was noted by the NCLT Bench that there were no submissions produced by the Respondents. One of the respondents Mr. Anil Kathuria was present on the hearing of 04.06.2018 but chose to stay silent on this application. The Bench has observed that "The Applicant has made out its case that the respondents were indulged in preferential, fraudulent, and undervalued transactions." Further held that the transaction stated above (para 36) are not made in the ordinary course of business or financial affairs of the CD and satisfy the criteria of section 43 of the IBC to be labeled as preferential transactions. It was further held that considering the totality of facts & circumstances of this case, this MA is allowed in its entirety. The Respondents are directed to revert an equal amount of benefits received by them from the CD.

- *Mr. Atul Kumar Resolution Professional v. Mr Sandeep Sood and anr* in the matter of M/s Seitz India Private Limited (Corporate Debtor). CA(IB) No. 574/2019 in CP (IB)/252/ND/2018. The transactions carried out by the CD during the relevant period a) Mr Sandeep Sood (ex- Director of M/s Seitz India Private Limited – the CD) transferred ₹ 63.50 lakhs in the bank account of his proprietorship firm – M/s Lotus Imports. A sum of ₹ 32.75 lakhs was transferred to M/s Simran Technologies Private Limited, in which Mr. Sandeep Sood and his wife Mrs Parul Sood are the Directors and shareholders. It was placed on record before the Bench that the transactions made by the respondents during the period between February 2018 and June 2018 fall within the parameters of Section 46 (1)(2) of IBC 2016 for related parties. *Thus, the Bench directs Mr. Sandeep Sood, ex-director of the corporate debtor, to transfer the money back to the account of corporate debtor and deposit the entire money with RP within 2 weeks from the date of the order (12.01.2022).* It is stated that transactions held with the related parties within the relevant period, if it is evident from the books of account of the CD, then such transactions fall

within the meaning of avoidable transactions as defined under the Code.

A. State Bank of India v. Ruchi Soya Industries Ltd.

IA No.313 of 2020 in CP (IB) No.1011/MB/2017

Sections Covered: 43 & 45 (Preferential & Undervalued Transactions)

Summary of Case:

- This case dealt with the resolution process of Ruchi Soya Industries Ltd., where the CoC approved a resolution plan with specific provisions regarding preferential, undervalued, and fraudulent transactions.
- The CD was accused of entering into preferential transactions with related parties in the period leading up to the initiation of the insolvency proceedings, and the resolution plan proposed the recovery of amounts relating to such transactions.
- The RP identified that the CD had transferred significant amounts to its affiliates, which could potentially be classified as preferential transactions under section 43, and undervalued transactions under Section 45 of the IBC.
- The RP argued that these transactions should be reversed or recovered as part of the resolution process, as they were executed with the intent to defraud creditors.

Ruling of Case:

- Hon'ble NCLT held that transactions under section 43 (preferential), section 45 (undervalued), and section 66 (fraudulent) could have a significant impact on the Resolution Plan.
- The Tribunal observed that such transactions must be addressed in the plan to ensure fair distribution among creditors.
- However, the Tribunal also stressed that the CoC's decision to include or exclude such recoveries from the resolution plan could not be interfered with unless it was manifestly unfair or prejudicial to the creditors.

Conclusion:

The Tribunal directed the RP to investigate the PUFE transactions thoroughly and ordered that any recovery from such transactions should be incorporated into the plan, ensuring that the plan remains fair and equitable for all creditors.

B. Bank of India v. Essar Steel India Ltd. IA No.1722 of 2019 in CP (IB) No.225/AMR/2017

Sections Covered: 43, 45, & 66 (Preferential, Undervalued and Fraudulent Transactions)

Summary of Case:

- In the Essar Steel case, the CoC approved a resolution plan which did not incorporate the recovery of certain preferential and undervalued transactions that had been executed by the CD before the initiation of insolvency proceedings.
- The transactions included large payments to related parties, and the question arose whether such payments should be reversed or recovered under section 43 (preferential transactions) and section 45 (undervalued transactions).
- Hon'ble National Company Law Appellate Tribunal had to decide whether the CoC's approval of the resolution plan was valid in the absence of provisions to recover amounts from these PUFE transactions.
- The RP and FCs raised concerns that such transactions were undervalued and preferential and could lead to a significant loss of value to the creditor pool.

Rulings of Case:

- The NCLAT upheld the principle laid out in the *Supreme Court's Essar Steel judgment,* emphasizing that the CoC's commercial decision on how to deal with PUFE transactions must be respected.
- However, it was held that if such transactions could result in recoverable amounts, they should be included in the resolution process.

Conclusion:

The Tribunal also observed that under section 66 (fraudulent transactions), the RP must take all necessary steps to determine if fraudulent transactions had occurred, and the resolution plan must include provisions for recovering any assets lost due to such transactions. If the plan did not adequately deal with these issues, the NCLT could intervene to ensure compliance with the provisions of the IBC.

C. ICICI Bank Ltd. v. Bhushan Steel Ltd.

IA No.1017 of 2020 in CP (IB) No.152/ALD/2017

Sections Covered: 43 & 66 (Preferential & Fraudulent Transactions)

Summary of Case:

- In the Bhushan Steel matter, ICICI Bank, as part of the FCs, challenged the resolution plan approved by the CoC, arguing that the plan failed to address preferential and fraudulent transactions.
- The Resolution Professional had flagged multiple transactions between Bhushan Steel and its subsidiaries, which were suspected to be preferential (section 43) and fraudulent (section 66), carried out within the look-back period.

- The creditors contended that the plan should have included provisions to recover the sums paid under such transactions to ensure the fair distribution of assets and to comply with the statutory provisions under the IBC.
- The RP's failure to incorporate these provisions into the plan raised concerns about the fairness of the resolution process.

Ruling of Case:

- Hon'ble NCLT upheld the CoC's decision but highlighted that PUFE transactions could not be ignored in the resolution plan.
- The Tribunal directed the Resolution Applicant to investigate any preferential, fraudulent, or undervalued transactions and include appropriate provisions for their recovery, consistent with the objectives of the IBC.

Conclusion:

The NCLT also stressed that, under Section 66, the fraudulent intent must be established, and only then could the Tribunal order the reversal or recovery of such transactions. The CoC's commercial decisions were respected, but the Tribunal indicated that the recovery of such transactions, if proven, must form an integral part of the resolution process.

D. JM Financial ARC Ltd. v. Bhushan Power and Steel Ltd.

IA No.877 of 2020 in CP (IB) No.1262/MB/2017

Sections Covered: 43, 45, & 66 (Preferential, Undervalued and Fraudulent Transactions)

Summary of Case:

- In this case, the Resolution Plan for Bhushan Power and Steel Ltd. was challenged by JM Financial Asset Reconstruction Company, arguing that the Resolution Plan did not adequately address preferential or undervalued transactions.
- The Resolution Applicant was alleged to have conducted several transactions, particularly with related parties, that might qualify as preferential (section 43) or undervalued (section 45).
- The Resolution Professional had identified transactions that potentially involved the transfer of assets at less than market value, which could have been classified under section 45 (undervalued transactions).
- Further, the applicant argued that the fraudulent transactions (section 66) conducted during the look-back period should have been reversed under the resolution plan to ensure fair treatment of all creditors.

Ruling of Case:

- Hon'ble NCLT ruled that the CoC's approval of the resolution plan should not

preclude action against PUFE transactions.

- The Tribunal directed the Resolution Professional to look into any preferential or fraudulent transactions and ensure that such matters were dealt with appropriately.
- The Tribunal held that PUFE transactions needed to be addressed within the resolution framework, particularly under section 66, to ensure creditors' interests were protected.

Conclusion:

It emphasized that if fraudulent transactions were found, those responsible should be held accountable, and the losses should be mitigated through the recovery of those funds.

E. Axis Bank Ltd. v. Essar Power Ltd.

IA No.1285 of 2021 in CP (IB) No.497/MB/2018

Sections Covered: 43 & 66 (Preferential & Fraudulent Transactions)

Summary of Case:

- The case involved a dispute over the implementation of a resolution plan for Essar Power Ltd., which included provisions to address preferential and fraudulent transactions.
- The Resolution Professional had flagged certain transactions as potentially preferential (section 43) and fraudulent (section 66), where assets were transferred to related parties before the initiation of insolvency proceedings.
- The CoC approved a plan that did not propose any recovery of such transactions, leading to challenges by the creditors who felt the plan was insufficiently addressing the potential recoveries from PUFE transactions.

Ruling of Case:

- The NCLT observed that it is the duty of the Resolution Professional to investigate and determine if any preferential, undervalued, or fraudulent transactions have occurred.
- In this case, the Tribunal held that any undervalued or preferential transaction should be incorporated into the plan to ensure fairness and equity among creditors.

Conclusion:

The Tribunal directed the Resolution Professional to include provisions for the recovery of amount arising from these PUFE transactions within the resolution process. It was emphasized that while the CoC's commercial decision is paramount, the legal requirements under section 43, 45, 49, and 66 must still be met to ensure a fair resolution for all stakeholders.

MUTUAL CREDIT AND SET-OFF WIIL NOT AMOUNT TO A TRANSACTION FALLING WITHIN THE REALM OF SECTION 43 OF THE CODE

MA/86/2018 in CP/540/IB/CB/2017 – In the matter of *Mr. S.V. Ramkumar, RP of M/s Orchid Pharma Limited v. M/s Orchid Health Care Private Limited* (CD) Respondent 1 & 2 Ors. NCLT Special Bench Chennai order dated 04.07.2019. The promoter of the CD M/s Orchid Pharma Limited paid ₹ 30 crores on behalf of M/s Orchid Health Care Private Limited (CD) to IDBI bank on 31.03.2015 to comply with the conditions stipulated by the consortium leader IDBI Bank for the release of the property documents under CDR mechanism. As the promoters the M/s Orchid Pharma Limited (Respondents R2 & R3) were also liable to pay amount, the amount payable by M/s Orchid Pharma Limited was adjusted against the monies to come from the Respondents. In the matter, it was held that "For there being mutual dealings and obligation in between these parties, since it is an adjustment made in respect to the payments to be made against each other, will not make any difference in liabilities against the CD to say that these adjustments are made to cause benefit to these Respondents in preference to other creditors in the event of distribution of the assets being made by section 53 of the Code. Here the liquidation Regulation callus 29 was quoted.

> As per the Liquidation Process Regulation 29, where there are mutual dealings between the Corporate Debtor and another party, the sum due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the Corporate Debtor or to the third party." The NCLT held that "Since it is an admitted fact that there are mutual obligations against each other and the adjustments being made to that extent showing in the books of the corporate debtor, I am of the considered opinion that it will not amount a transaction falling within the realm of Section 43 of the Code, therefore this MA/86/IB/2018 is hereby dismissed..

MONEY SIPHONED OFF

Mr. Sasitharan Ramaswamy Resolution Professional v. George Vinci Thomas and ors. NCLT Kochi order dated 23rd April 2021 – in the matter of *M/s Capedge Consulting Private Limited v. M/s India Techs Limited*. The Resolution Professional submitted that sum of ₹ 32.80 lakhs paid to M/s Le Phonix Traders Realtors Private Limited during the period from 12.12.2018 to 24.04.2019 is within the time limit of 2 years as ICD being 25.10.2019 and were recorded as indirect expenses in the books of accounts of the CD whilst the CD has no business activity with M/s Le Phonix Traders Realtors Private Limited. Transactions stated are not made in the ordinary course of business or financial affairs of the CD and satisfy the criteria of section 43 of the IBC. In yet other transactions the CD has purchased land for the construction of the showroom, from out-of-loan funds already availed from HDFC and Central Bank of India. The said land was then mortgaged with Citi Bank and availed a loan of ₹ 5.00 crore. The mortgage land was shown as sold to M/s Le Phoenix and M/s Intechs Associates and from the proceeds of sale the mortgage loan availed from the Citi Bank Bank was settled under OTS. However, from the sale register of the CD, it was identified that the above sale transaction was done in favor of M/s Le Phoenix and M/s Intechs Associates for ₹ 17.10 lakhs. But only an amount of ₹ 4.37 lakhs were received as payment against this sale. The CD has made loan and advance

payments to related parties amounting to ₹ 608.20 lakhs and been pending for a long time. In the above matter, it was held by NCLT Kochi that "*The transactions stated above are not made in the ordinary course of business or financial affairs of the Corporate Debtor and satisfy the criteria of Section 43 & 45 of the IBC 2016 to be labeled as Preferential Transactions. The respondent is directed to return the siphoned sums.*" Simultaneously, in the matter of purported sale transactions, investment done by the CD on lease land and subsequently writing off the entire investment and the inventories shown as receivable from the related parties, the NCLT Kochi held that *"Section 66 of IBC 2016 could apply to all past transactions, it would not be subject to the restriction as to look-back period. … Therefore, the impugned transactions, are declared as fraudulent as defined under section 66 of the IBC 2016."*

OPPORTUNITIES TO THE COC FOR THE RECOVERY OF PUFE TRANSACTIONS IN THE RESOLUTION PLAN

The judgment in the case of *Allied Hi-Tech Industries Pvt Ltd v. Karvy Data Management Services Ltd* provides a notable precedent that strengthens the role of the CoC in handling PUFE transactions. As per this judgment:

Ownership of recovery process

Recoveries from applications filed under sections 43, 45, 47, 49, 50, or 66 of the IBC will belong exclusively to the FCs post the NCLT approval date. This ensures that the recoveries contribute directly to settling outstanding claims of the creditors.

Autonomy in decision-making

The FCs are granted absolute rights to decide the course of action for avoidance applications which includes authority to settle disputes or restructure agreements.

Financial responsibility

From the NCLT approval date, all costs associated with these applications, including legal counsel fees, will be borne solely by the Financial Creditors. This arrangement absolves the CD and the Resolution Applicant of any financial liabilities related to the avoidance applications.

Enhanced creditor rights

By centralizing the recovery process under the CoC's control, this framework underscores the importance of Financial Creditors' commercial wisdom in optimizing asset recovery and managing associated legal proceedings. This precedent not only delineates the responsibilities but also empowers the CoC to effectively manage PUFE recoveries while safeguarding the interests of other stakeholders involved in the resolution process.

Table 1: Data Analysis Avoidance Transactions as of Sept-2024

Metric	No. of Cases	Details
Avoidance Transaction Applications Filed	1,326	As of September 2024, 1,326 avoidance transaction applications have been filed involving a value of ₹ 3.76 lakh crore.
Avoidance Applications Approved	338	338 applications have been settled by the Adjudicating Authority (AA), with a total recovery of ₹ 7,516 crore due to clawbacks.
Recovery from Avoidance Transactions	338	₹ 7,516 crore amount recovered from the approved avoidance transactions by the AA, contributing to creditors' recoveries.
Avoidance Applications Pending	988	988 avoidance transaction cases remain pending due to evaluation complexities, contested claims, or procedural delays.
Total Value Involved in Avoidance Applications	1326	₹ 3.76 lakh crore is the total value involved in the 1,326 avoidance transaction applications as filed by the resolution professional (RP) or liquidator.
Recovery prospects from Resolution and Liquidation		₹ 3.55 lakh crore (Resolution) ₹ 10,446 crore (Liquidation)

Figure 1: No. of PUFE Cases with Avoidance Application

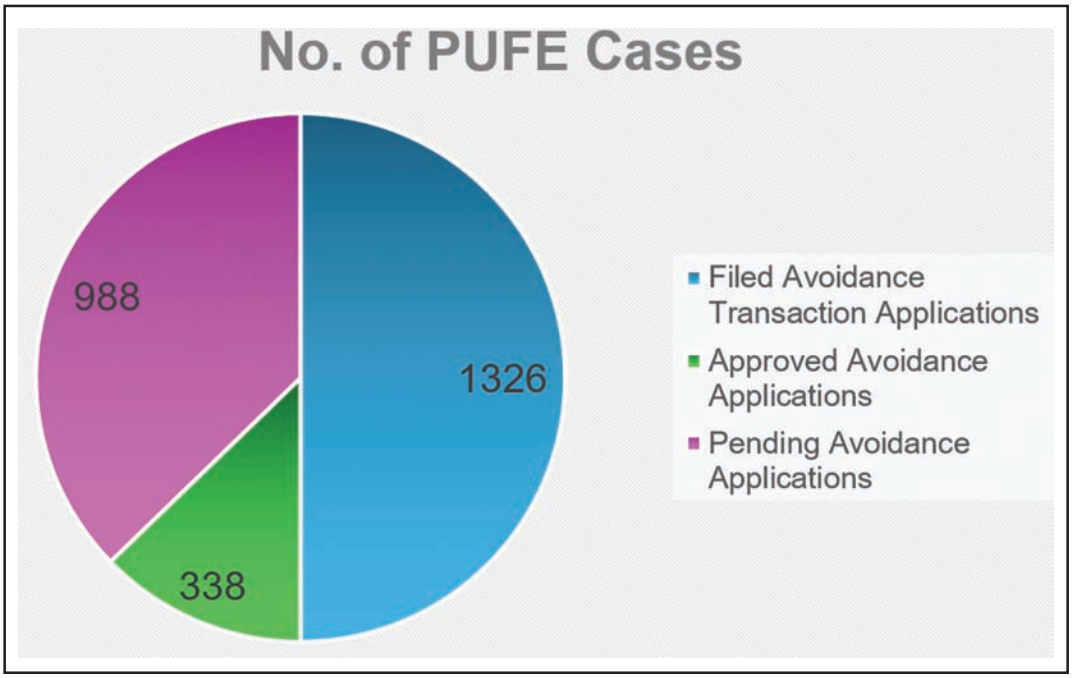
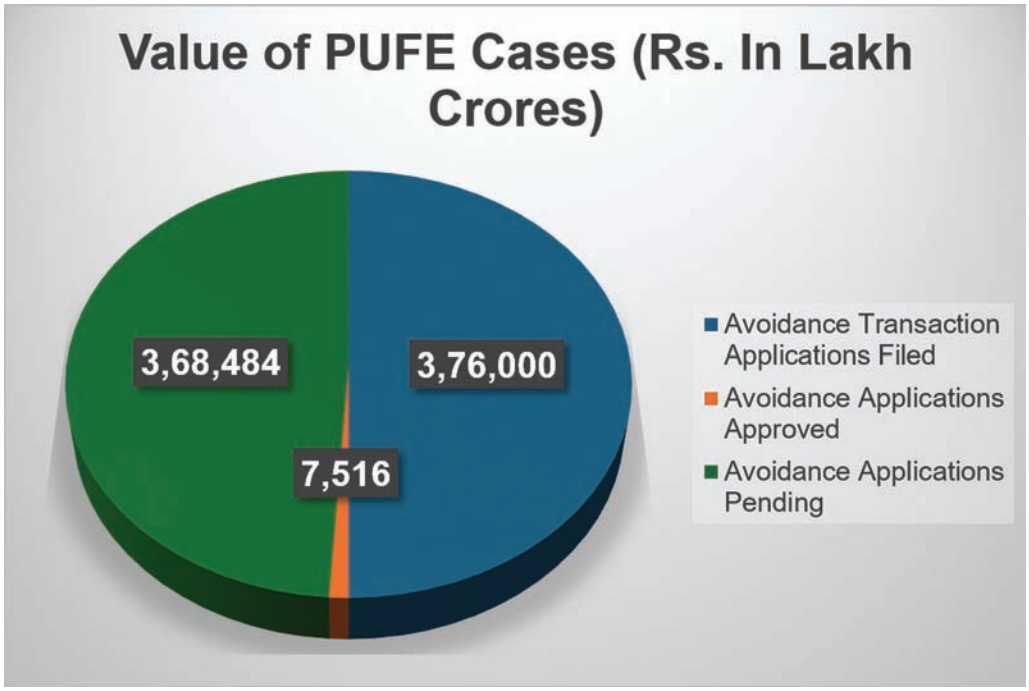


Figure 2: Value of PUFE Cases with Avoidance Application



Source: Avoidance Transactions: Protecting Creditors' Interest under IBC- IBBI Newsletter for July-September, 2024.

Table 2: Overview of PUFE Transactions Filed and Disposed

Transaction Type	Applications Filed	Amount Involved (₹ Crores)	Applications Disposed	Amount Involved in Disposed (₹ Crores)	Amount Ordered to Claw Back (₹ Crores)
Preferential	201	29,881.92	74	1,373.65	38.27
Undervalued	37	1,817.37	5	362.42	5.77
Fraudulent	372	1,15,308.93	71	5,127.63	1,319.22
Extortionate	4	75.65	1	0.09	0
Combination	712	2,29,286.92	187	51,655.91	6,152.87
Total	1,326	3,76,370.79	338	58,519.71	7,516.13

Table 3: Additional Observations on PUFE Transactions

Observation	Details
Pending Applications	- 988 applications (74.5% of total) remain pending. - Involving ₹ 3,17,851.08 crores.
Combination Transactions	- 53.7% of applications have a mix of transaction types.

Observation	Details
NCLT Bench Analysis	- New Delhi & Mumbai handle 53% of applications (63% of claims). - Kolkata: 10% - Chandigarh: 8% - Chennai: 7%
Disposal Efficiency	- Average disposal time: 323 days. - Average pending time for ongoing applications: 793 days.
Recovery Details	- Recovery in 12 cases totaling ₹ 4,549 crores. - Jaypee Infra case accounts for 98.9% of recoveries.
Transaction Sizes	*- 71% smaller cases average ₹ 21 crores per application.* *- 29% larger cases average ₹ 925 crores per application.*

Table 4: Jaypee Infra Case

Aspect	Details
Land Recovery	- Recovery of 758 out of 858 acres. - Previously valued at ₹ 5,500 crores.

ANALYSIS OF AVOIDANCE TRANSACTIONS

Figure 3: Application Filed V/s Disposed Off

This chart shows the number of transactions filed and disposed across different categories of avoidance transactions.

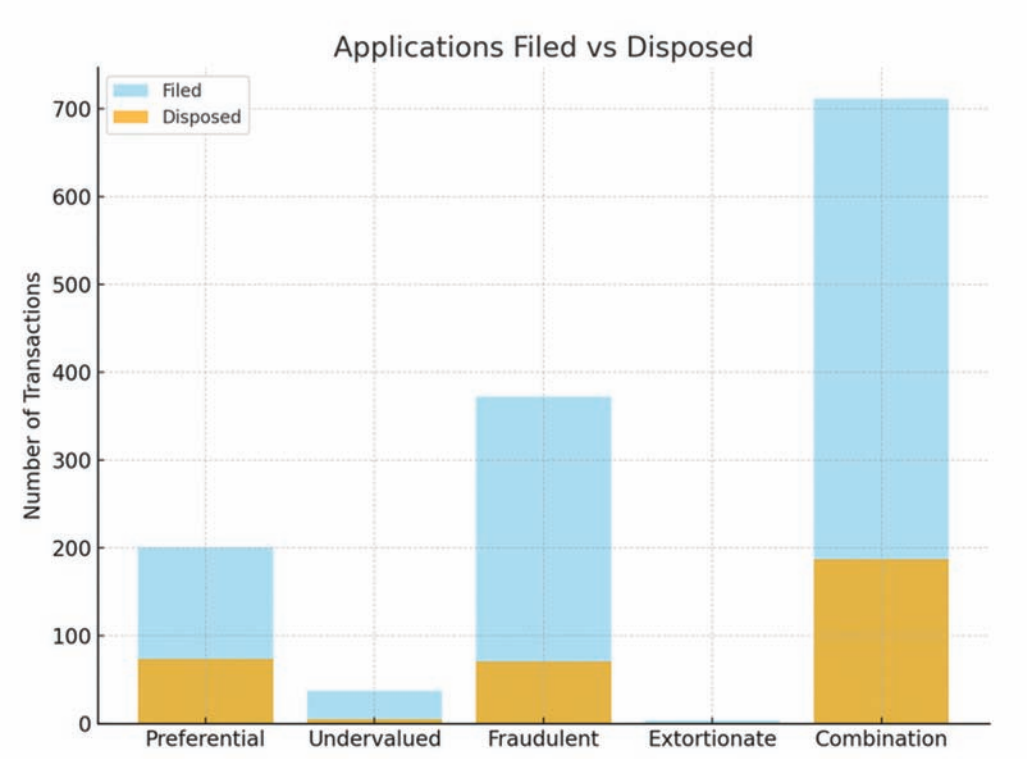


Figure 4 : Amount Involved in the PUFE Application Filed V/s Disposed Off

This chart compares the monetary value of transactions filed versus disposed.

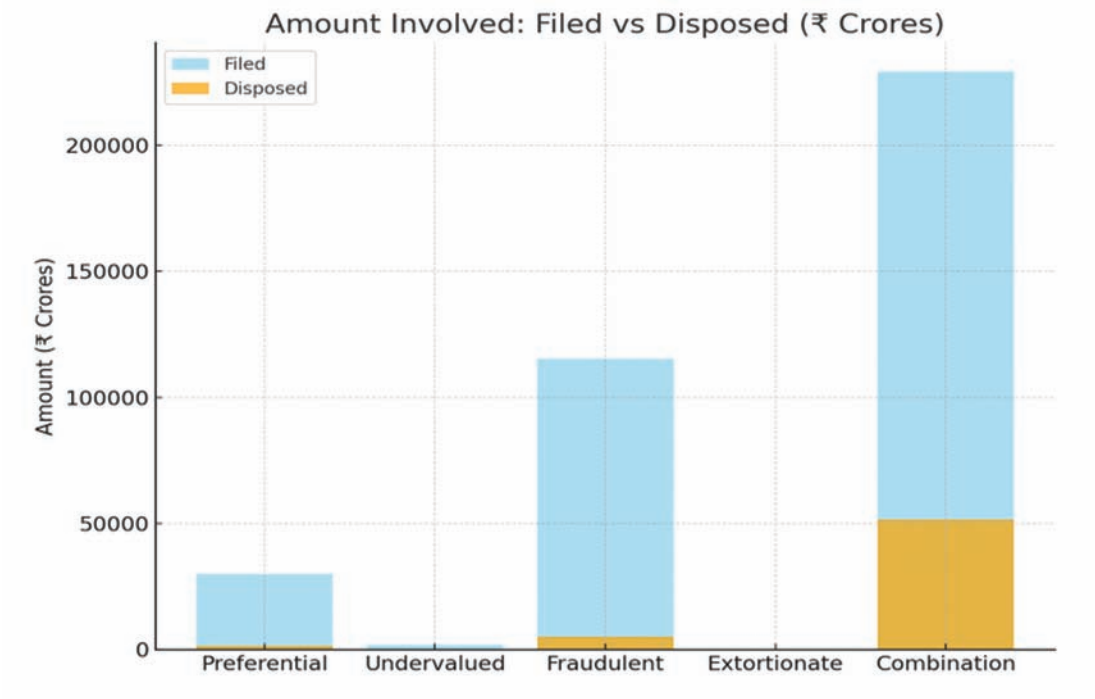


Figure 5: Amount Ordered to be Clawed Back

This chart displays the amounts ordered to be clawed back for each type of transaction.

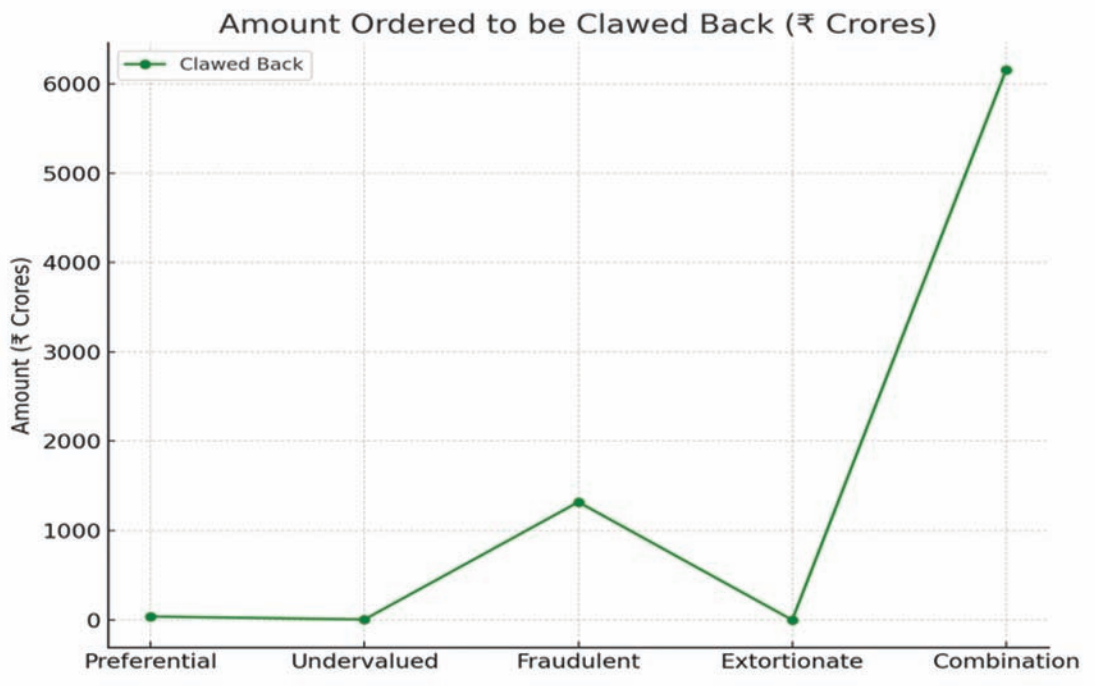
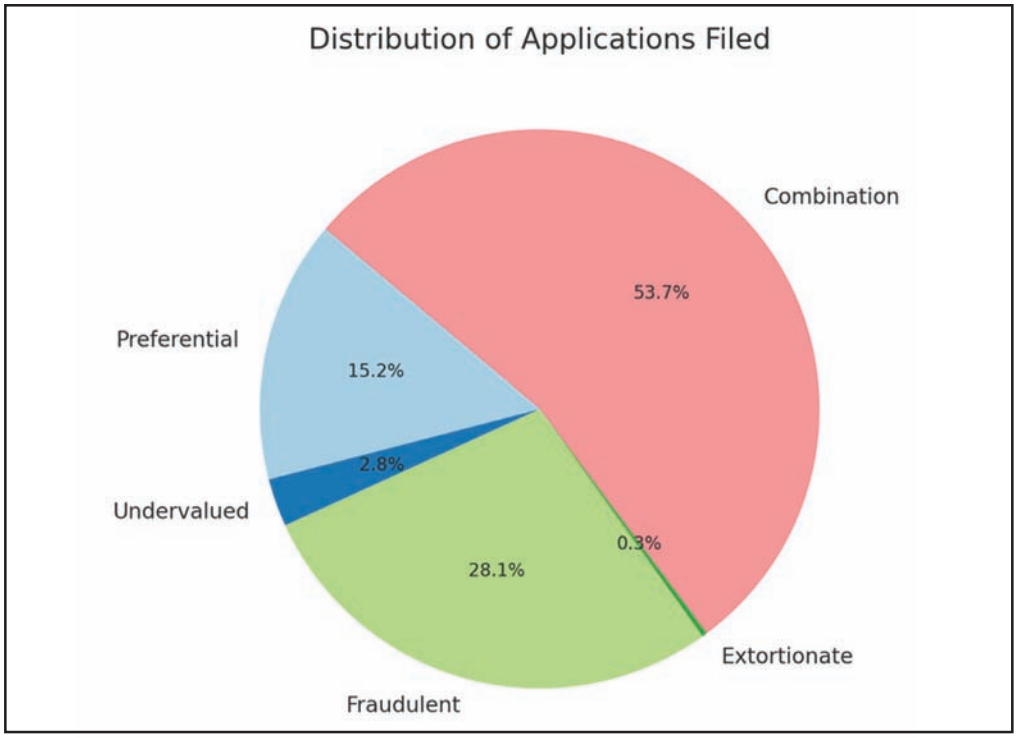


Figure 6: Distribution of Application filed

This pie chart shows the percentage distribution of filed applications by the nature of transactions.



Source: IBBI Journal July-2024 to September- 2024

PUFE Transactions and NRRA

Avoidance transactions under the Code, specifically categorized as PUFE transactions, have been pivotal in safeguarding creditors' interests.

The legal framework ensures the reversal of transactions detrimental to the CD's estate prior to insolvency commencement. Recent developments, such as treating PUFE transactions as Non-Realizable Recoverable Assets (NRRA), have evolved with practical considerations in insolvency resolution.

PUFE Transactions as NRRA

The concept of NRRA addresses transactions or assets that are recoverable but not immediately realizable within the resolution process. For instance, the sale notice for Talwalkars Healthclubs Limited (in liquidation) exemplifies the classification and auctioning of PUFE claims under the NRRA framework, ensuring compliance with Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016.

PUFE transactions fall into this category when the associated litigations extend beyond the insolvency resolution timeline. These litigations typically involve adjudicating the legitimacy of transactions and claims under sections 43, 45, and 66 of the IBC.

Key Observations

a) Classification and Recognition

- o PUFE transactions, once identified and approved by the CoC (Committee of Creditors), may be classified as NRRA.
- o This classification allows the continuation of recoveries even after resolution plan approval.

b) Sale or Auction of PUFE Claims

- o In certain cases, the RP (Resolution Professional) or the Liquidator auctions PUFE claims to third parties for immediate liquidity. The sale notice for Talwalkars Healthclubs Limited highlights this process, where PUFE claims categorized under Section 66 (Fraudulent Trading or Wrongful Trading) were offered for assignment on an "as is where is" basis, demonstrating practical implementation.
- o The auction or assignment of PUFE claims ensures creditors derive value without awaiting prolonged litigations.

c) Legal Precedents

- o Tribunals and appellate courts have endorsed treating PUFE claims as assignable assets.
- o For instance, in Jaypee Infratech Limited, land parcels reclaimed as PUFE recoveries were crucial for creditor settlements.

d) Implementation Challenges

- o Accurate valuation of PUFE claims remains complex due to uncertainties in recovery outcomes.
- o Overlapping claims between PUFE litigations and CIRP add procedural delays.

Recommendations for effective management

1. **Streamlining Processes**: Standardizing PUFE investigations and creating uniform benchmarks for NRRA classification.
2. **Third-Party Involvement**: Encouraging investment by asset reconstruction companies (ARCs) or private equity funds in PUFE claims.
3. **Timely Disposal**: Incorporating timelines for adjudication of PUFE applications to reduce delays.
4. **Regulatory Clarity**: Providing specific guidelines on auction methodologies and compliance obligations for PUFE transactions.

(Source: Auction Sale Notice dated 04.12.2024 issued by Gajesh Jain- Liquidator of Talwalkars Healthclubs Limited on IBBI Portal)

CONCLUSION

The research underscores the critical challenges faced by IPs and the CoC in addressing PUFE transactions under IBC. Effective implementation of the provisions depends on enhancing transparency, fostering cooperation among stakeholders, and streamlining adjudication processes. A structured approach to evaluating and managing PUFE transactions is paramount for preserving creditors' interests and maintaining the integrity of the insolvency framework.

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   - Bank of India vs. Essar Steel India Ltd.
   - ICICI Bank Ltd. vs. Bhushan Steel Ltd
   - JM Financial ARC Ltd. vs. Bhushan Power and Steel Ltd.
   - Axis Bank Ltd. vs. Essar Power Ltd.
   - Essar Steel Limited v, Satish Kumar Gupta
   - K Shashidhar vs Indian Overseas Bank
   - Tirumala Balaji Alloys Private Limited vs Sumit Binani
   - Capedge Consulting Private Limited vs M/s India Techs Limited
   - Lanco Infratech vs. Binani Cement
   - Talwalkars Healthclubs Limited vs. Axis Bank Limited
5. Reports by the Ministry of Corporate Affairs, Government of India.
6. PTI Release on Vigilance Matters, December 4, 2024.
7. RBI Press Releases and Reports.

15

CHALLENGES AND REGULATORY DYNAMICS FACED BY RESOLUTION PROFESSIONALS IN THE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Parineeta Goswami

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) has transformed the structure of corporate insolvency resolution in India. Resolution Professionals (RPs) being the main facilitators of the corporate insolvency resolution process (CIRP), have an exhaustive responsibility, starting from taking over the management of the corporate debtor (CD) on behalf of creditors to ensuring the continuity of operations, investigating fraudulent transactions, as well as to adhering to numerous regulatory requirements. They are central to the process and do the actual 'work for successfully implementing the IBC framework, positioning them as the backbone of India's insolvency resolution system. RPs are in the regulatory ambit of the Insolvency and Bankruptcy Board of India (IBBI) which regulates Insolvency Professional Agencies (IPAs) that manage their members. India currently has three registered IPAs.[1]

RPs face a myriad of challenges that make it difficult for them to execute their critical functions. One of the primary issues is the non-ratification of expenses, insufficient compensation, coupled with a failure by the Committee of Creditors (CoC) to provide necessary funds often, makes the financial burden of RPs more severe. This lack of support often leaves them vulnerable to legal threats, fabricated complaints, and hostile behaviour from various stakeholders, including existing employees and regulatory authorities like the income tax department. These challenges are compounded by structural issues within the regulatory framework, including competition among IPAs and the lack of a unified oversight mechanism, which risks destabilizing the insolvency ecosystem. These conflicts can negatively impact the insolvency resolution process, thus potentially threatening the IBC's success. These adversities underline the reason why better support and a more encouraging attitude are called for to empower RPs in fulfilling their duties under the IBC.

The initial appointment of RPs, based solely on their qualifications without a standardized examination, underscored the need for a robust filtration process. The IBBI has since

[1] The Indian Institute of Insolvency Professionals of the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India's Insolvency Professionals, and the Insolvency Professional Agency of the Institute of Cost Accountants of India.

established and adopted an examination system inspired by the UK and Canadian models. While this initiative has improved the standards some gaps remain there. Which requires continuous improvement in the regulatory framework to maintain high standards within the profession.[2]

This paper aims to present an analysis of the difficulty that RPs encounter and the legal frameworks governing the IBC system. By examining the existing issues and proposing potential solutions, the paper aims to address the situation and improve the effectiveness of the CIRP to support the revival of distressed businesses and promote the development of the insolvency environment in India. The research aims to contribute to the global discourse on insolvency law by offering a nuanced understanding of India's regulatory challenges and their broader implications for corporate distress resolution.

Keywords: Resolution Professionals, Corporate Insolvency Resolution Process, Insolvency and Bankruptcy Code and Insolvency Professional Agencies

INTRODUCTION

According to the Indian legal regime, the journey toward a comprehensive legal framework for corporate insolvency began when the IBC came into existence. Passed as the legal framework for regulating insolvency and bankruptcy laws, the IBC seeks to address the problems of distressed assets through speedy legal processes, optimisation of value for its stakeholders and fostering entrepreneurship. It has been acclaimed as a giant reform leap and has boosted India's position by a whole lot in the World Bank's Ease of Business Index.[3] However, as the implementation of the IBC continues to progress to its sixth year, the following shortcomings are apparent for the achievement of the formulated goals as follows. Among the various stakeholders involved in the insolvency situation, RPs occupy a unique position since they act both as agents who coordinate the process and as decision-makers as well as administrative officers within the CIRP. RPs are legal entities that are endowed with the responsibility of overseeing and running the CIRP of a CD. These duties are complex and encompass total control of the debtor's property, management of the debtor's affairs, compliance with all legal and regulatory rules and laws, and providing of a plan to settle the debtor or managing the process of debtor's liquidation is present. Since RPs form an integral part of the insolvency framework, they can be viewed as the key to achieving the proper results under the IBC. Their skills, hard work and neutrality define whether a lame corporate body can be reinvented or wound up. But this critical role comes with challenges as will be seen in the following discussion. RPs must navigate a complex regulatory environment, balance competing stakeholder interests, and ensure adherence to statutory timelines—all while operating under intense judicial scrutiny. Therefore, dependent on how the RPs will discharge their responsibilities within the provisions of this law the IBC can be seen as a successful legislative framework in addressing the problem. Although the IBC has achieved high success in the creation of NPA solutions, some challenges hinder its performance. This final step of the

[2] P. Bansal, and R. Gupta, *Insolvency Resolution and the Role of Professionals in Corporate Restructuring*. Law and Economy Review, 23(1), 58-76, (2021).

[3] World Bank,*Resolving Insolvency: A Guide for Legal and Financial Professionals*. Washington, D.C.: World Bank Group, (2021).

CIRP has challenges that increase the difficulties that RPs encounter in completing it well and on time. These are organizational factors like lack of cooperation from the stakeholders, ambiguous policies, lawsuits, dilute institutional support and conflicts of interest.[4]

Despite their centrality to the insolvency ecosystem, the challenges faced by RPs have not been systematically studied in the existing literature. Previous work on the IBC has largely been vested in a macro-logarithmic method of either assessing the economic consequences of the IBC or judicial orders to certain clauses of the IBC.[5] Literature review showed that very little research has attempted to discuss the micro-level operational issues to which RPs are exposed which is important in comprehending the working or the ground-level situation of the insolvency process. This lack of research attention to the experiences of RPs, their relations with stakeholders, and the regulations intended to facilitate their functions is this study's rationale.

Objectives of the study

This research aims to provide a comprehensive analysis of the challenges and regulatory dynamics faced by RPs in the CIRP under the IBC. The primary objectives are:

1. To identify and categorize the challenges faced by RPs in managing CIRP, including legal, operational, and stakeholder-related issues.
2. To evaluate the effectiveness of the regulatory framework in addressing these challenges, focusing on the role of the IBBI and the three IPAs.
3. To analyse the impact of stakeholder dynamics on the functioning of RPs, including conflicts between creditors, promoters, and employees.
4. To propose policy recommendations to strengthen the institutional and regulatory ecosystem for RPs, ensuring efficient and equitable insolvency resolution.

This paper aims at identifying and discussing the experiences of RPs in India in so far as the IBC framework is concerned. Both the process and the content of the CIRP are analysed, attempting to identify regulatory, legal and institutional conditions affecting the work of RPs. Further, the study uses information from other countries, including the UK, the US, and Singapore, among others, to establish the best practices that can help in the policy transformation of India. RPs encounter some factors that severely hinder the conduct of the CIRP. Regulatory uncertainty and compliance costs is one of the major factors because most of the RPs face difficulty in understanding and compliance with the provisions of the Code and related regulations. The fact that the Code and its rules are changed quite often also contributes to the creation of the setting of legal unsoundness. Another significant risk factor is the stakeholder conflicts as this process implies the participation of multiple stakeholders including financial creditors, operational creditors, shareholders, and employees

[4] R. Verma andD. Mishra,*Corporate Restructuring and Insolvency Resolution: The Role of Legal Professionals*. Journal of Corporate Law and Restructuring, 19(1), 76-91, (2022).

[5] H. Sood and P. Tiwari,*Training and Development of Resolution Professionals in India: A Critical Evaluation*. Journal of Insolvency Education, 4(3), 112-125, (2021).

who tend to have conflicting interests. These conflicts must be resolved by RPs under the time frame set down by the IBC regulations regardless of the specific conditions for one business to be considered in a conflict with the other. Another challenge is the judicial overreach and delays that appear to also form a big barrier. Here one finds that the National Company Law Tribunal and National Company Law Appellate Tribunal, for the most part, intrude into operational matters.[6] This means that it brings procedural avenues which makes its resolution a preserve of RPs and result in more work being done. Moreover, RPs have personal liabilities and professional risks because their position may make them vulnerable to litigation and sanctions for such nonadherence. There are so many professionals who are aware of this environment of insecurity, and this makes them to avoid taking up this role which in turn has worsened the shortage of skilled human capital in this line of duty.

Finally, operational and resource constraints cause inefficiency in the execution of the RPs. They are expected to handle large insolvency processes while they have inadequate control over manpower and funds and, more importantly, adequate information. Such limitations make it hard to coordinate the management of the resolution process in a way that will result in the envisioned effects within the set time frames. Altogether these problems substantiate the necessity of structural changes to provide support to RPs and improve the performance of the insolvency resolution mechanism concerning the IBC. Thus, the results of the present research will be of crucial importance to policymakers and regulatory bodies as well as insolvency practitioners.[7] Therefore, the research seeks to make a positive contribution towards solving challenges faced by RPs to enhance a more effective and efficient insolvency resolution mechanism. It also aims to enrich professionals' knowledge about the ways that could help them strengthen their abilities to accomplish the RP responsibilities. To give a systematic coverage of the topic, this paper is structured as follows: The first three sections of the present work, namely the introduction, provide the framework of the research by stating the research problem, objectives, scope and methodology. The literature review looks at the studies and the findings focusing on the IBC and the RPs to establish where the research is deficient and where the present study aims to fill this void. The research framework expands on the theoretical and methodological point of view that you will use in doing so, it helps the work remain ordered and systematic. In the analysis and findings section, the empirical outcomes are described and discussed based on primary and secondary data. The discussion highlights these findings based on the research objectives and the theoretical framework to enhance understanding of the issues affecting RPs. Lastly, the conclusion and recommendations section presents an overview of the most important results of the study, as well as specific policy suggestions to overcome the mentioned problems and improve the effectiveness of insolvency resolution.[8]

[6] S. Bhattacharya, *Legal and Regulatory Framework for Insolvency Resolution: A Comparative Study*. International Journal of Business Law, 11(4), 109-125, (2018).

[7] S. Raj andA. Yadav,*Public Perception and the Role of Resolution Professionals in Insolvency Cases*. International Journal of Financial Law, 8(4), 90-104, (2021).

[8] J. Prakash andK. Singh, *Impact of Insolvency and Bankruptcy Code on Corporate India*. Journal of Indian Law, 21(2), 57-72, (2020).

LITERATURE REVIEW

Collectively, the following literature reviews adequately address, the functions, issues, and trends of resolution professionals who engage in decision-making for firms in insolvency procedures under IBC, which form the basis for this research.

Agarwal, S., & Sharma, R. (2020). ***The Role of Resolution Professionals in Insolvency Resolution: Challenges and Opportunities.***[9]

This paper reviews the literature on the emergence of the role of resolution professionals as provided under the IBC in India and an analysis of the problems associated with the execution of the resolution process. The study also outlines what resolution professionals do includingcompliance, ethical issues and disclosure.

Bajaj, S. (2019). ***Insolvency and Bankruptcy Code: A Critical Analysis of Implementation and Challenges.***[10]

This review critically analyses how IBC has been implemented and appraises businesses therein, specifically regarding the resolution professionals. It describes both theoretical concepts and the problems with their practical implementation such as the time-consuming, shortage of qualified personnel, and the necessity of the reforms of the legislation.

Kapoor, S., & Verma, A. (2021). ***Insolvency Resolution: Professionalism and Ethical Standards.***[11]

As shall be seen in this literature review, the professional and ethical expectations of the resolution professionals are well articulated. It covers issues of professional ethics in insolvency practice, including conflict of interest, equal treatment of creditors, and corporate governance difficulty. It also discusses regulatory approaches and directions that can be adopted to improve accountability mechanisms.

Mishra, N. (2022). ***Professional Challenges and Emerging Trends in Insolvency Resolution: A Practitioner's Perspective.***[12]

This review looks at current trends and real-world issues in managing and facilitating insolvency cases. It also devotes sections to such topics as: the shifting dynamic of resolution professionals; technologies that characterise insolvency affairs; and, how these professionals are prepared for these trends. It also takes care of the systematic problems concerning the insolvency process and delays of the judicial branch as well as the requirement for more training and skill development.

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[9] S. Agarwal andR. Sharma, *The Role of Resolution Professionals in Insolvency Resolution: Challenges and Opportunities*. Journal of Corporate Law, 15(2), 45-67, (2020).

[10] S. Bajaj,*Insolvency and Bankruptcy Code: A Critical Analysis of Implementation and Challenges*. Indian Journal of Law and Business, 10(3), 134-152, (2019).

[11] S. Kapoor andA. Verma,*Insolvency Resolution: Professionalism and Ethical Standards*. Corporate Governance Review, 28(3), 200-214, (2021).

[12] N. Mishra, *Professional Challenges and Emerging Trends in Insolvency Resolution: A Practitioner's Perspective*. Indian Journal of Insolvency Law, 5(2), 14-30, (2022).

Sharma, P., & Kapoor, P. (2019). ***The Role of Resolution Professionals in Corporate Insolvency: A Study of Legal and Financial Challenges.***[13]

The implications for resolution professionals of legal and financial environments during the CIRP are brought up in this commentary. It examines the depths of how assets are evaluated, creditors are dealt with, and the possibility of a conflict of interest exists as well as getting to know how these professionals apply the Codification of laws in business failure.

RESEARCH FRAMEWORK

The conceptual basis of this investigation is going to engage the sector's complex processes to identify the pressures of RPs and assess the IBC-governed environment. Using both the qualitative and the quantitative analysis, this paper seeks to establish the overall picture of the operational, legal and regulatory challenges faced by RPs in the CIRP. The primary objectives guiding this research are as follows:

1. To identify the critical challenges faced by RPs in executing their responsibilities during the CIRP.
2. To assess the adequacy of the existing legal and regulatory framework in addressing the issues faced by RPs.
3. To propose recommendations for enhancing the efficiency of the CIRP and ensuring a supportive ecosystem for RPs.
4. To understand stakeholder dynamics and their impact on the resolution process.

Currently, the research design entails the use of both quantitative and qualitative research methodology by adapting both primary and secondary research approaches. Primary data will be collected through a structured questionnaire which will be filled up by the RPs selected across India. The questionnaireincludes questions concerning the individual professional experience working in haemophilia clinics, as well as their impressions of professional difficulties and the regulatory system. Some of the precise details that will be included include This reveals the professional background of the insolvency professional, the number of years of experience, the type of cases the has worked on, and membership with IPAs. A secondary source of data includes the research conducted regarding the legal framework of India to analyse cases relating to bankruptcy laws along with the judgments passed or newly set up guidelines of the IBBI. The study uses a purposive sampling technique to identify RPs of different professional backgrounds as well as experiences. The respondents will be selected from three out of the three registered IPAs in India to increase variance. Another component of the research design involves quantitative analysis where the scaled questions (for instance, rating challenges on a scale of 1 to 5) will undergo statistical analysis to have theories developed there. At the same time, the quantitative component of qualitative analysis includes coding the open-ended responses to get a thematic understanding of the difficulties faced by the RPs and their recommendations. The rationale and reasoning for the study are underpinned by two theoretical

[13] P. Sharma and P. Kapoor, *The Role of Resolution Professionals in Corporate Insolvency: A Study of Legal and Financial Challenges*. International Journal of Law and Finance, 12(2), 88-101, (2019).

premises. Regarding the lens of the stakeholder theory, it analyses the relationship between the different stakeholders in the CIRP process, namely creditors, employees, shareholders, regulatory authorities, and RPs. Also, an institutional theory is used to evaluate the extent to which the regulatory instruments guise the behaviour and performance of RPs. Together, these frameworks provide a robust analytical foundation for understanding the dynamics of the CIRP and the role of RPs within India's evolving insolvency ecosystem.

Key research questions include:

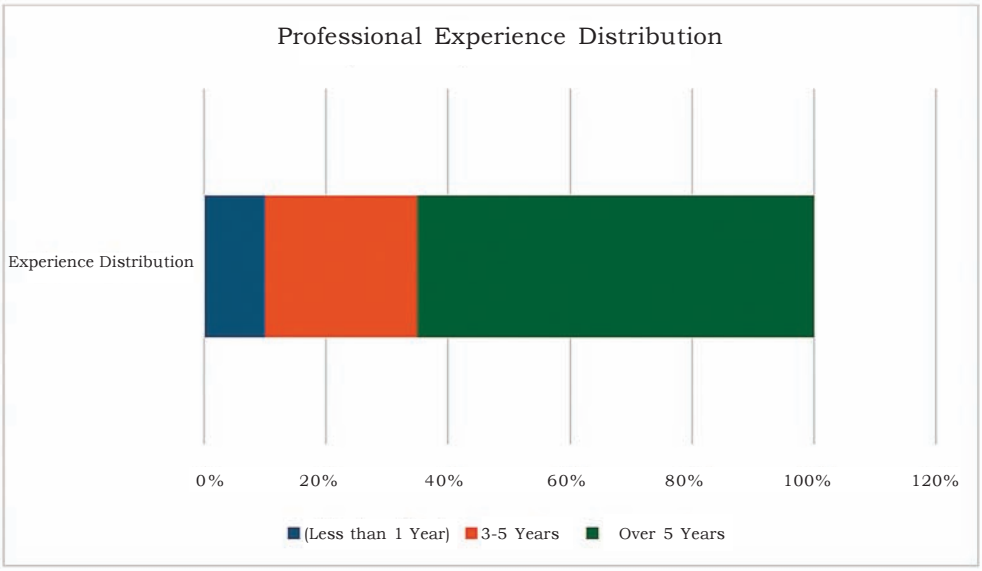
1. What are the most significant challenges faced by RPs, and how do they impact the resolution process?
2. How effective are the existing IPAs and the IBBI in supporting RPs?
3. What improvements can be made to the IBC framework to address identified issues?
4. How do stakeholder conflicts influence the CIRP, and what strategies can RPs adopt to mitigate these challenges?

The study aims to produce actionable recommendations for policymakers, regulatory bodies, and IPAs. These insights will facilitate a more robust insolvency resolution system, addressing operational inefficiencies and empowering RPs to navigate their roles effectively.

FINDINGS

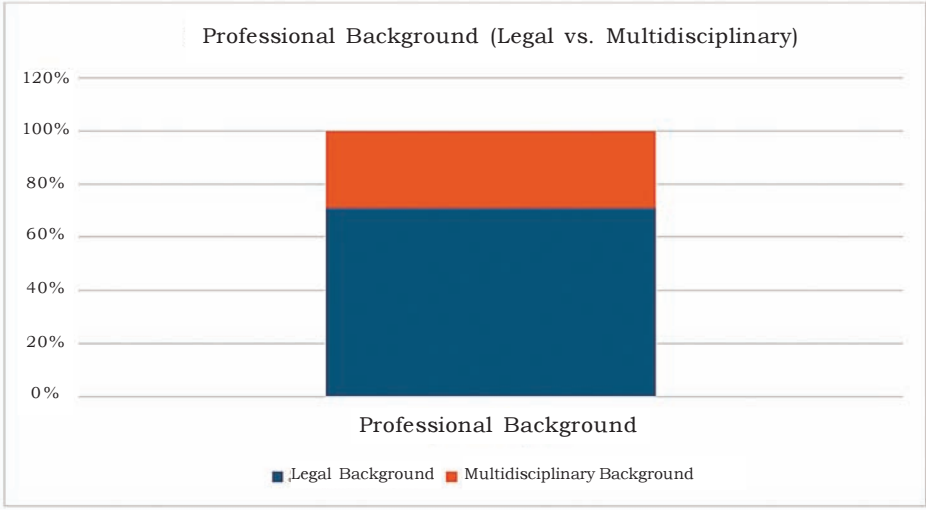
The study of resolution professionals is geographically diverse, with specialists from different cities, primarily handling start-ups' insolvency matters, and the Bar Council of Delhi, where established specialists work on small business insolvency. In terms of experience, the majority of professionals have more than five years of experience, which will demonstrate their versatility to handle complex cases, while mid-career professionals 3–5 years of experience, indicates professionals' increasing interest.

Figure 1: Professional Experience Distribution



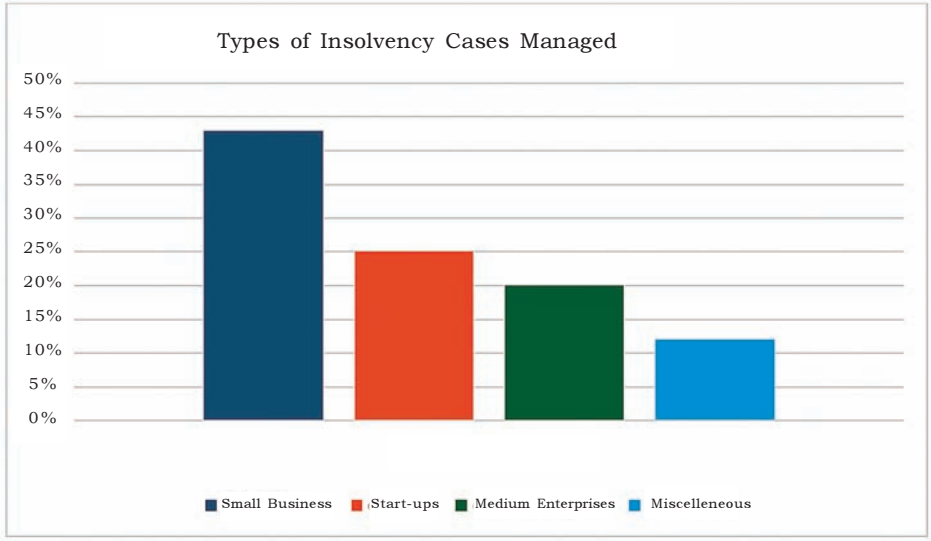
The largest proportion (71%) of the professionals is legal and it emphasizes the significance of legal experience in insolvency resolution actions; others contribute to the processes with a multidisciplinary approach. Distribution of the types of insolvency cases shows that most of them involved small businesses, followed by start-ups, medium enterprises, and miscellaneous cases, indicating the range and flexibility of work in insolvency by resolution professionals. Yet, affiliation data reveal itself to reflect that although many of these professionals are affiliated with "Other" IPAs, a few individuals are affiliated with the recognized bodies such as Insolvency Professionals of ICSI. The conclusion that one can draw from this is that there must be standardized affiliations.

Figure 2: Professional Background (Legal vs. Multidisciplinary)



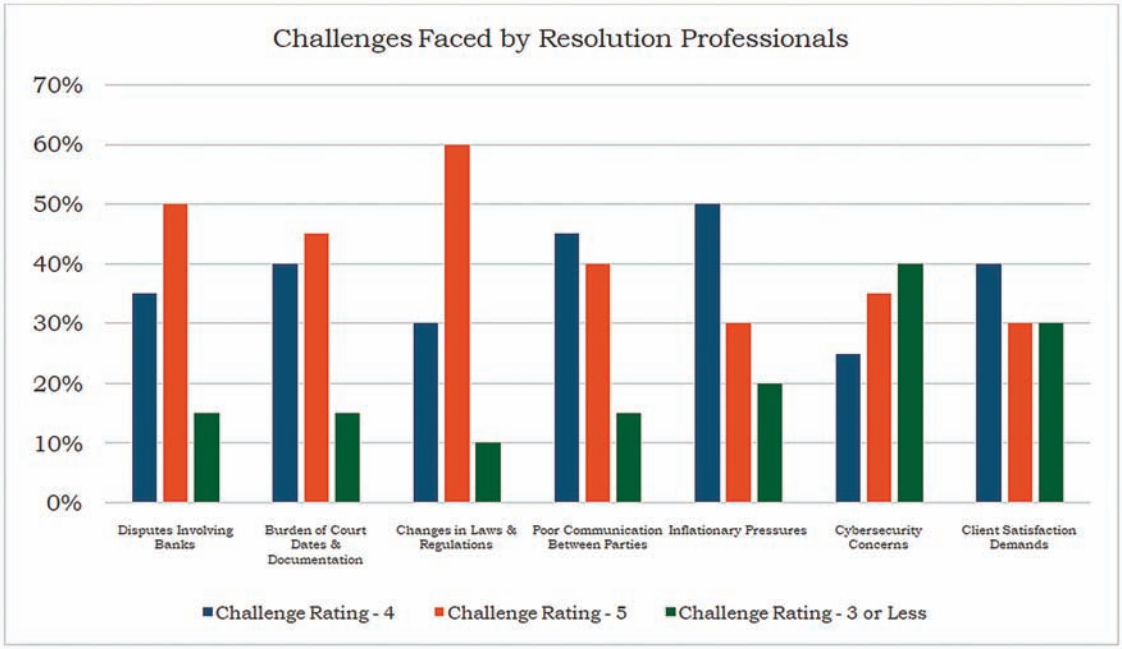
This analysis underscores the critical role of resolution professionals in managing diverse insolvency cases and highlights the growing importance of professional training and institutional recognition to enhance the efficacy of the insolvency resolution framework.

Figure 3: Types of Insolvency Cases Managed



The findings on challenges received by the RPs reveal the contemplation associated with the job. Respondents described the role and its demands as mostly 'challenging' and on a scale of 1 to 5 '4'. Of these, the problems connected with the banking system – conflicts concerning mortgagee sales, unlawful actions of the bank against dishonest parties, and absence of lawful safeguards for bona fide buyers were highlighted. In detail, some of the respondents complained of the time-consuming court hearings, paperwork and ever-changing laws and regulations which are a major setback in the whole problem-solving process. The other pressure related to it includes inadequate communication among different players, rising costs, security threats, and expectations from clients. only a handful of the respondents rated the difficulty level lower, and the other half emphasized the plurality of challenges, mainly stemming from procedural hurdles and regulatory vagueness. These findings demonstrate the pressing need for improving the organization's processes, communication, and legal frameworks that govern the work of RPs to enable them to do their job more effectively.

Figure 4: Challenges Faced by Resolution Professionals



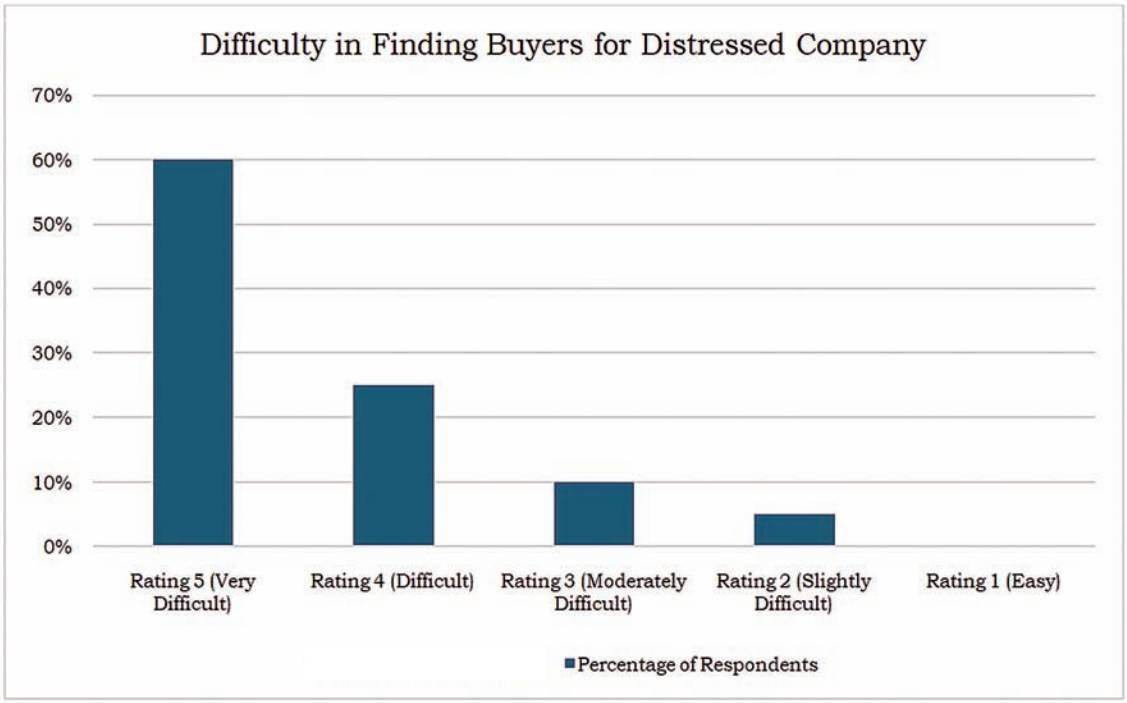
It brings out the problems faced by the RPs to gather fundamental data and handle the corporate structures of debtors. The results show that several respondents experience "frequent" challenges in obtaining reliable financial information caused by problems such as absence of responsibility, misunderstanding, and organizing failure within the company's power structure. These difficulties impair efficient decision-making and, therefore, extend the demarcation process. The level of intricate structures of corporations was also captured, and respondents reported both high and low levels of complexity. Some of the structures are easy to resolve, and this includes single operating entities or limited subsidiaries. However, most disputes are quite complex and often deal with different corporate structures that may include subsidiaries, affiliates, joint ventures, or special purpose entities, which are mostly

located in different regions. Such complexities pose major problems compared to simpler ones because expenditure/ revenue reconfigurations involve much time sorting out contentious and intricate cross-relationships between organisations and the financial implications of these, hence pushing out solution timespans. Hence the results suggest improved public reporting and simplicity in corporate structures to enable the achievement of better resolution mechanisms. However, enhanced inter-party synchronization and more accountability measures could help to ease some of these pressures. Disputes arising between creditors and shareholders are common with RPs, and they sometimes complicate the resolution work done by the RPs. Many of the conflicts reported by respondents are resolved by explaining and defining to all participants the goal and purpose of such conflict. They include practices like early identification of roles, responsibilities and expectations to create an objective, bias-free framework for resolving conflict. Another approach is also viewed as a tool, and it is suggested to be applied more extensively as a part of the CIRP. Sometimes, respondents can apply conflict management through encouraging speaking out issues in a company. Holistically, validation of stakeholder inputs and building trust requires the effective skill of active listening as well as perspectives taking. Some of the recommendations include obligation to explain all stages of the legal procedure, to keep secrecy, and to follow ethical norms of legal regulation. The last effective method is the so-called promotion of common interests where all the collisions are reoriented to the fact that all parties have certain interests in common and work towards the same goal. In general, conflicts are rather frequent but, using communication activities, ethical standards, and mediation solutions, RPs manage such problems efficiently. The reality of the current legal and regulatory provisions in the handling of issues that affect RPs is reasonably regarded. The answers range from somewhat adequate to other respondents who described the situation as neutral, and a few who indicated that they think it is very adequate. Critics who consider the framework to be only partially unsuitable note issues like banking employees' capricious actions and the absence of broad regulations in specific acts to solve controversies properly. The time-bound nature of resolutions offers major challenges as well. Sometimes neutral respondents experienced problems relating to multi-layered and in some cases, conflicting laws, this is because they faced problems in interpreting different laws like IBC and the Companies Act in trying to resolve the problems facing firms. Secondly, they found that frequent changes of regulation and lack of cooperation between authorities also affect the efficiency of operation. The needs assessment also revealed that for those who adopted the framework as very adequate, issues like data privacy compliance, particularly the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA)together with intellectual property disputes were manageable within the existing system. Such specialists stress compliance with the processes in question with the legal provisions regarding individual privacy and protection of proprietary novelties. Nonetheless, it can be concluded that the legal framework has the opportunities as well as the weaknesses concerning the issues that have been mentioned, although more attention should be paid to overcoming the following challenges to assist and enhance the status of RPs.

Thus, the identification of buyers for the assets of distressed companies is considered a 5 on a scale of difficulty in identifying buyers. This makes task complexity from multiple perspectives

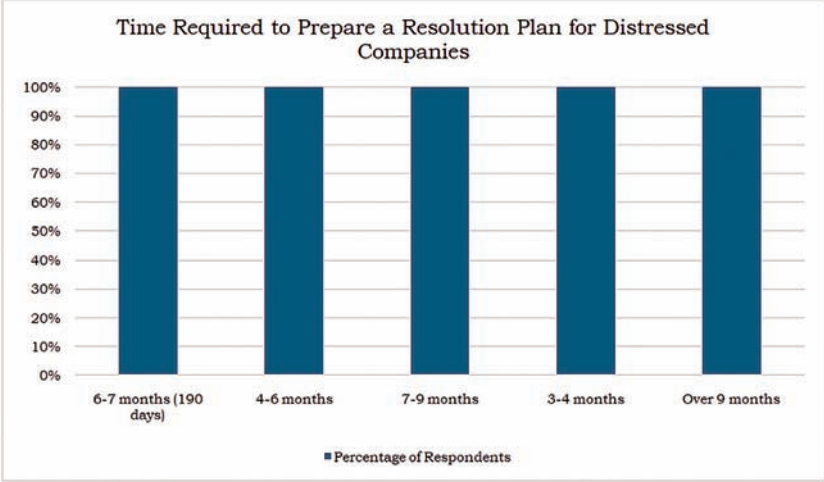
due to the following factors. Firms in difficulty are typically poor performers or experiencing some sort of financial troubles, thus lowering considerably the value of the assets. Investors interested in these companies are normally hesitant due to perceived high risk with these companies when acquiring them. Secondly, the legal and financial challenges of distressed assets add to the unhappiness of the opportunities. Another layer of difficulty is added by existing market conditions put forward as low demand for distressed assets and competition from stronger organizations. However, even when the buyers are to be identified through negotiation or specialized channels, the process remains challenging, given the differences in the rating scores provided (3 to 5).

Figure 5: Difficulty in Finding Buyers for Distressed Company



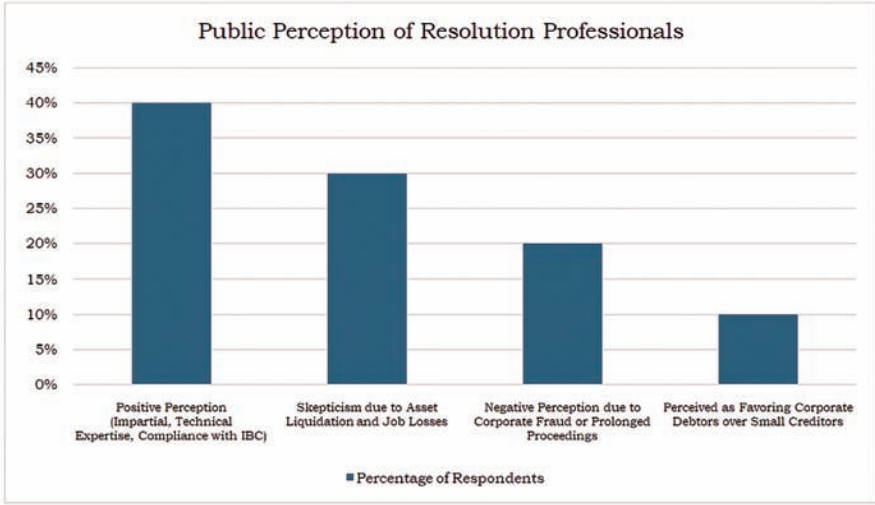
In general, it can therefore take anything between a few weeks and several months and more to prepare a resolution plan for distressed companies depending on the hierarchal structure of the debtor, the extent of the financial imbalance and the identifications of all the stakeholders. It will typically take most practitioners about 6-7 months, or about 190 days, to complete and file a robust resolution plan. Despite the IBC suggesting that it takes between 180-270 days, some of the industry stakeholders feel that the current is out of timeline is too short considering the vast outside factors including legalities, financial and valuation issues, stakeholder consultations and negotiations. Therefore, as the research findings have also illustrated when reviewing the timeline, it may be fine for solving some of the cases, however, for more complex cases, it seems as if the period is compromised that there is a need for extra time in other to ensure a healthy and fair manner of solving the cases.

Figure 6: Time Required to Prepare a Resolution Plan for Distressed Companies



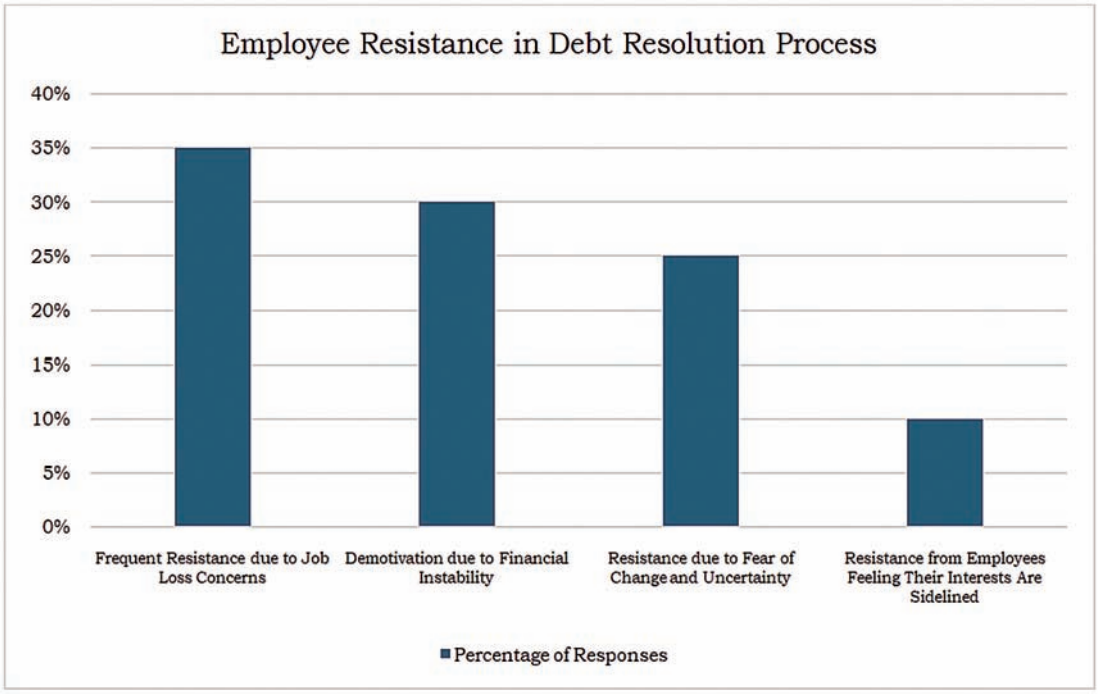
Through public opinion, RPs have received criticism in some aspects, mainly due to insufficient understanding of other aspects of insolvency resolution as well as the overall work of RP, not only in legal procedures. To most, RPs are insolvency professionals concerned with administering the IBC and ensuring the fair disposal of insolvencies; they are appreciated for their technical competence, efficiency and commitment. Yet there is a prevailing scepticism, especially when the variance entails the disposal of assets or lossof the rate bails, which clearly may have a deleterious effect on the image of RPs. Instances of corporate frauds or time-consuming insolvency proceedings can even worsen the situation though by legal provision, RPs are required to work for the benefit of the creditors only. In this regard, perceived weakness in appraising the broader effects of insolvency resolutions as well as inadequate training on the part of the public confuses. Sometimes RPs are seen more as agents aiding the corporate debtor rather than safeguarding the interests of such retail creditors or employees. This perception, therefore, messes with their impact on the job as they may encounter the difficult task of getting the public to support the call for resolution.

Figure 7: Public Perception of Resolution Professionals



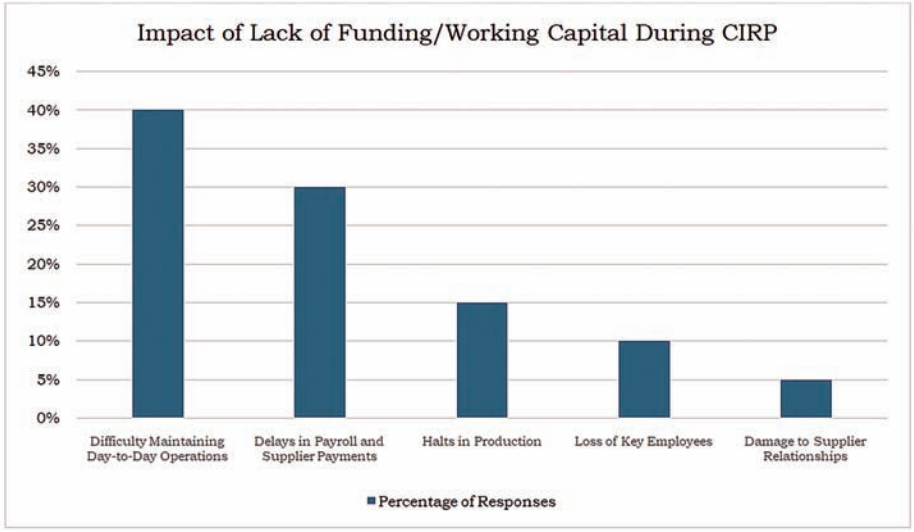
RPs have experienced difficulties in controlling a debtor company's operations that has stiff resistance from other employees. The resistance to change is usually caused by several factors including. often the staff is aware of the uncertainties facing the company, threats of job losses, and mostly due to fear. Further, there are various employees' theories that it may lead to low morale, and this is due to the financial insecurity of the company. As found in the results, on average, resistance is manifested quite often when employees voice their concerns or reluctance, more often when they believe that their concern is secondary to that of the creditors or the restructuring process. This is not an ongoing resistance, but it is a recurring one that RPs need to guard against: decisions about operations versus communication and consideration of employee opinion.

Figure 8: Employee Resistance in Debt Resolution Process



Most of the time funding or working capital delay, affects the operating cycle continuity throughout the CIRP. This challenge arises because the debtor company may have financial problems hence have a limited ability to undertake daily business operations, payable suppliers or meeting payroll expenses. As much as it is not permanent, frequency of the problem identified leads to inadequate funding frequently and when it does, effects such as delay in the resolution process and high probable costs are bound to arise frequently. At times, this lack of working capital is the reason that production comes to a standstill, employees are forced to be let go, or damage is done to the relationship between the company and its suppliers, making it even more difficult to work on the rehabilitation of the company. Nevertheless, this problem is not a rule and depends on the financial state of the debtor company, the efficiency of the decision-making actions and if there is money to provide an emergency funding.

Figure 9: Impact of Lack of Funding/Working Capital During CIRP

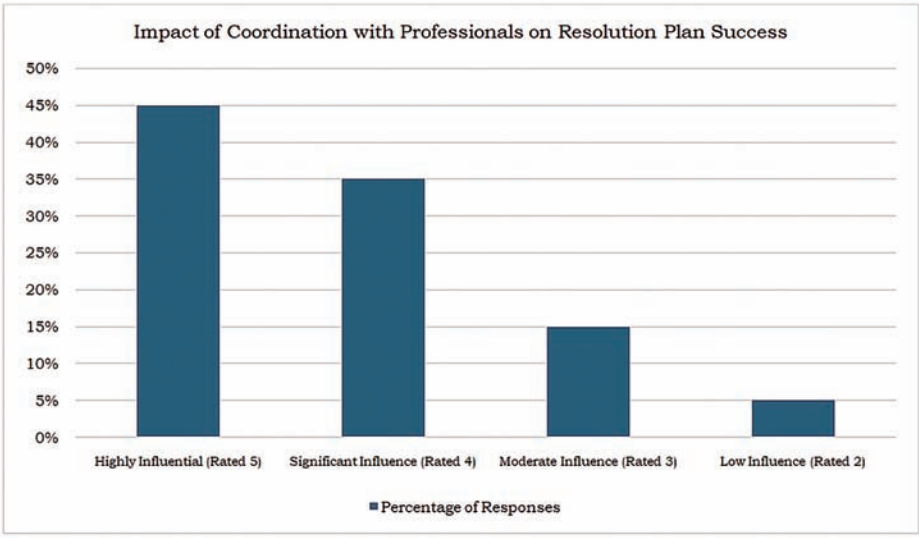


To reduce the financial burden and operational issues during the CIRP, some of the supports can be provided below. Initially, bridging finance is highly significant as it offers the purest interim funding or working capital to pay for the organization's necessary expenses including employees' wages, utilities, and most of the suppliers. Another external source of solving the CCIF short-term cash flow problems is financial support from a government or central bank, financial aid, or special subsidies. Further, vendor and supplier credit may be promoted or required, where suppliers offer trade credit during the duration of the resolution period without pressuring operations to pay on delivery. On the operational level, the forming of specific CIRP management teams involves experienced resolution professionals or other external consultants which will strengthen the day-to-day functioning and lead to more stability. Use of financial incentive or legal protection to retain highly valued employees help in preventing their resignation during or prior to the completion of the resolution. Lastly, through legal protection or mediated agreements supply chain can be preserved and goods and services to continue to flow during CIRP. It stands to reason that offering more options for getting interim financing and improving cooperation between the participants will help alleviate the financial and organizational load of CIRP. RPs are usually bounded by some strong constituencies that may prompt the RPs to take action that may be disadvantageous to other creditors. This pressure can emerge often since big creditors, together with the corporate debtors or investors demand for certain decision which favours them in a way most of the time leaving the rest of the creditors and the employees behind. Although this is not a continuous pressure, it is nevertheless cyclical, with RPs at times having to deal with challenging dynamics to achieve a balanced resolution process. The factor of compromise here is the delicate task of reconciling all the bureaucratic goals and regulations with the legal concerns, as well as with the goal of fairness in the selection process, which may be an insurmountable task. This frequent pressure can challenge and complicate the decisions made for the clients hence forcing the RPs into using their professionalism and neutrality to balance the interests of all the stakeholders involved. To have an improved and neutral view

in CIRP, the following changes can be made, increase in the number of members to make the system more efficient. To address the first issue, there must be transparency; people must understand the process and the criteria that dictate the decisions which are made. The adoption of a clear conduct framework to regulate the behaviours of the resolution professionals, combined with a workable decision-making framework on how different disputes should be handled, ensures some form of consistency in the handling of similar disputes. However, the consolidation also enhances efficiency by avoiding unnecessary lengthy timelines and clearing up goals as to how long it will take to complete certain phases of the process in the best interest of the creditors and the other stakeholders. Another important improvement includes timely integration of diversified representation. Decision makers should diversify the sources of their information – geographical, cultural, gender and disciplinary – so that bias can be prevented in that decision-making process. In addition, it would be fairly and impartially over seen perhaps through an external advisory board of neutral experts to be offered free regular reviewsthroughout the CIRP. These steps would not only enhance the overall credibility of the process but also improve its effectiveness in achieving balanced resolutions.

Regarding other professionals like lawyers and assessors, a myriad of professions therefore attributed a highly significant implication (4-5/5) to the coordination of a resolution plan. Lawyers make sure that the proposed plan corresponds to the legal provisions and regulations while the assessment of the debtor's assets by independent valuers is correct and contribute to the establishing of the correct valuation which is needed form the creditors and the stakeholders. Coordination of these professionals ensures that a reasonable and comprehensive plan is developed as it fulfills the goal of several stakeholders/clients. Nonetheless, there may be situations where additional coordination will not lead to measurable positive changes (score of 2-3) – for example, where the case is less complex, or where there are already effective frameworks for cooperation. However, there is general agreement on one issue, namely that there must be effective cooperation between different specialists in developing successful and effective resolution plans.

Figure 10: Impact of Coordination with Professionals on Resolution Plan Success

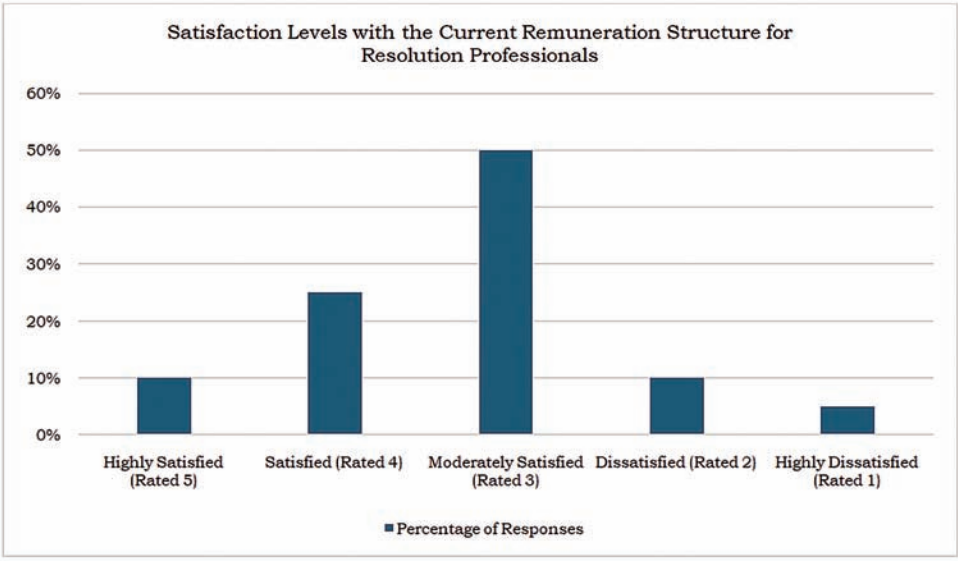


There are several challenges associated with a post-resolution plan; these includeopposition; One of the biggest challenges of implementing a post-resolution plan is resistance from various parties involved. Finances,in most business operations, finances play a critical role in determining the way things are done, and this makes it difficult for those that are implementing a post-resolution plan to get the finances which they require. Operations, it is because proceeding with a post-resolution plan always requires possible reasons for resistance can be categorized into those relating to task, personal, and organizational factors; here, lack of full support for or understanding of the plan by some of the stakeholders in implementation may be given as a reason for resistance. To overcome this, communication here is central, meaning that value and benefits of the plan must be well communicated. It also makes the sense of ownership when key stakeholders are involved in the development process; training or workshops may make all the stakeholders align to the objectives. The inability to allocate enough funds, human or technological capital also poses a large problem to the team. To overcome this, planning and carrying out of the important activities and looking for more funds or having to go for funds from other sources or to the existing funds available can work well. Other assistance can also be potentially helpful – the use of partnerships or external consultants. Moreover, the adherence to the timelines approved remains a consistent issue; something that requires well defined and detailed timelines, frequent checks and feedback to ensure that the process remains on schedule. If properly managed, these challenges do not hinder the needed implementation of the conceptof the post-resolution plan becomes more achievable.

The suggestion of using a set of national examinations to recruit RPs is highly supported since most of the professionals felt that it would improve the quality, fairness and credibility of the profession. Standardized examination would increase the quality of the results attained by students because there would be a well-established bar of competence and expertise that students would have to meet in matter of insolvency laws, financial analysis and management. This would ensure that, employees with the right skills/profile are hired to handle the conflict leading to an efficient resolution system. Further, such an examination would also ensure equality because the candidates would have no differences from one another when presenting their persons to the interviewing panel as opposed to other commonly practiced hiring methods where the human resource manager may be creating bias interviewing criteria or may have inclination towards certain candidates. In addition, they also discovered that the promotion of the establishment of a national exam would improve credibility by increasing the populace and stakeholders' confidence in the ability of RPs. It would also give creditors, debtors and other stakeholders confidence that the professionals handling cases of insolvency are well-trained. It could also help gain more youngsters into the profession to add to the band of quality and skilled RPs. Some may be discouraged while the majority shall agree that the advantages of standardizing the selection process dwarf the demerits, especially in ensuring a pool of qualified RPs is endorsed to meet the escalating demand. Averagely, it seems that most of the RP's are slightly satisfied with the current remuneration structure as the ratings given average 3 out of 5. This indicates that although there is a level of satisfaction towards the existing structure it is not perceived as the ideal. Some RPs might regard the

salary status as insufficient for the multifaceted work description and workload or they could have certain concerns about inequalities or the criteria of the pay system. The frequent rating of 3 indicates that the structure may be viewed as adequate but in need of adjustments or improvements to better align with the demands of the position and the value RPs bring to the resolution process. There's likely room for a more balanced and transparent remuneration model to ensure that RPs are adequately incentivized for their critical work in managing distressed companies.

Figure 11: Satisfaction Levels with the Current Remuneration Structure for Resolution Professionals



For the IBC framework outlook for the future evolution to meet the challenges of RPs, the sentiment appears mildly optimistic and slightly apprehensive. A handful of professionals elaborated very optimistic responses and assured confidence in the ongoing reforms and the adaptability of the framework that will enhance the improvement of the RPs. Some of these are relatively positive or even neutral, stating the possibility of progress but having possible doubts about the rate or scale of such interventions. Another reason for the optimism is based on the belief that future amendments to the IBC will respond to current problems facing the policy, including lack of resources, political and organisational opposition and an acknowledged need for a clearer and more open procedure. However, those with a neutral attitude might perceive it as changes are expected, but again there is still apprehension as to how efficient these reforms will be and if indeed, they'll eliminate all these concerns that RPs encounter in practice. In balance, there is the consensus that the IBC framework remains a work in progress, even though the optimism differs. The idea here is to augment the overall support system, resources, and the legal framework related to RPs under the IBC framework where implementation of structural betterments, cumulative enhancements in training, simplification of processes, and improved timing of the processes have been emphasized intensely. Some of the professionals insisted that there needs to be detailed, precise rules and regulatory provisions to enhance the work of RPs, their understanding of insolvency

proceeds and, therefore, cope with the situations that occurred in the considered cases. Currently, there is a demand for post-qualification courses and advanced certifications to improve the competency of RPs; nevertheless, present courses of study and training only minimally address finance restructuring, specialized sector knowledge, and conflict resolution. Also, the need for attaining professional development confers a belief that RPs need to be ongoing through continuous professional development to update them with changing policies and practice standards.

In terms of procedure, respondents mentioned the need to eliminate delays through an extent of timelines and processes and asked for the creation of SOPs for such important tasks as the valuation of the assets, the management of the creditors' committees, or auctions, to provide as examples. Other measures proposed included exploring technology solutions like the use of case management software and making claim validation automated amongst other things. In addition, concerns exist relative to the overall IBC timeline execution where some argue that several cases with time delays are on the increase, thus requiring an improvement on the legal instruments to enable compliance with the stipulated timeline. There is general agreement that there is a slow movement toward implementing strategies aimed at empowering RPs properly while acknowledging that more specific emphasis on training, resources, and method enhancement is required for RPs under IBC.

DISCUSSION

Insolvency Resolution Professionals hence come with diverse obligations, which require both legal knowledge and practice and good communication skills. Based on the results of the distribution by geography, experience, and the types of cases handled, some patterns can be identified, which are related to the evolution of the RPs profession, issues they address, and prospects for the development of the insolvency system.[14]

The task and problems affecting RPs are complex and diverse, covering issues of process, system, people, conflict, communication, and culture. When asked about the level of difficulty on the same scale 1 to 5, four out of five employees chose number '4' in response. Perhaps, one of the most notable issues that have been evidenced is that the law in this regard does not afford adequate or appropriate protection in cases of disputes arising with a bank to the bona fide purchasers.[15] This coupled with long court cases, documentation, and ever-changingrules and regulations poses a big stumbling block to a resolution of the issue. Moreover, respondents expressed concerns about the challenges in communication between different stakeholders, the existence of inflationary pressures, and cybersecurity challenges as other impediments that make the work of resolution professional's complex. Another major problem which originates with the requirement for appropriate fiscal information can be subdivided into several problems. Almost all interviewed RPs mentioned challenges related to obtaining accurate and timely financial information, which resulted from misunderstandings,

[14] The Insolvency and Bankruptcy Board of India (IBBI),*Insolvency Professional's Handbook*. Retrieved from https://www.ibbi.gov.in, (2020).

[15] M. Gupta,*The Effectiveness of the Insolvency and Bankruptcy Code: An Empirical Study*. Journal of Law and Policy, 18(1), 32-56, (2020).

embezzlement, and lack of communication between a firm's departments. This problem is further exacerbated by the fact that many debtor companies have affiliated or related companies or have subsidiaries, branches, or special-purpose vehicles in different jurisdictions. This complexity makes it take a lot of expertise to disentangle financial dependencies; in addition to the time and effort that are needed in handling cases.[16]

- **Stakeholder conflicts and mediation**

  The battle between the key players presumed to be creditors and shareholders is a common feature in the insolvency law regime. RPs working in such competitive environments often meet with organisational resistance and other stakeholders with varying objectives, which is a challenge in decision-making. To manage these conflicts, aspects such as proper communication regarding the expectations of top-level management for each project and team, including role and responsibilities delineation in addition to setting up deadlines should be brought forward. Other recommendation included mediation as it allows for discussion and airing of the concerns among the stakeholders in the disputes. These strategies assist in creating trust, minimizing misconceptions, and further assisting in maintaining the procedure of achieving resolution reasonable and impartial.

  Moreover, an emphasis is made on the fact that RPs prefer to use conflict-solving strategies that imply focusing on a common task. This also assists to reduce the possibility of conflict hindering the process of resolution of the problem since all the participants such as minor creditors and employees' interests are well-considered.

- **Legal and regulatory framework**

  Another critical finding was regarding the sufficiency of current legal and regulatory requirements; opinions regarding which were divided among the respondents. Certain professionals said that the current structure was somewhat deficient, suggesting some problems, including various actions by the bank's employees and, and the absence of proper provisions for the settlement of emergent conflicts. It was also noted that the IBC overlaps with the Companies Act of 2013, and the authors mentioned this as a great source of conflict when dealing with a legal issue. Other factors which also played a big role towards the increased negative operating environment included frequent changes in regulations and insufficient communication between the authorities. On the other end, some of the professionals observed that the legal environment was sufficient for practice, especially around compliance with the Data Privacy Act, IP law and other technical legal fields. In their discussions, they noted that insolvency resolution processes should be harmonized with the privacy regulations such as the GDPR and the CCPA which can protect proprietary innovation and bring them in conformity with consistent standards around the globe.[17]

[16] V. Chandra, *Legal Reforms in India's Insolvency and Bankruptcy Landscape*. Legal Reforms Journal, 14(2), 221-239, (2022).
[17] Indian Bankruptcy Board (IBBI), *Guidelines for Resolution Professionals in Insolvency Resolution Processes*. New Delhi: Ministry of Corporate Affairs, (2023).

- **Challenges in finding buyers and preparing resolution plans**

  Selling distressed company assets to buyers is evaluated as one of the most difficult tasks regarding insolvency resolution, which can be attributed to the underperformance and financial instability of distressed companies. Potential buyers regard such assets as high-risk investments hence the process of finding a buyer becomes a nightmare. However, legal and financial risks that are inherent in distressed assets add to the problem. The challenges posed by this task are compounded by the market conditions that include low demand for distressed assets and the existence of competition from better-off companies.

  Finding a buyer is easy, but preparing a resolution plan can take anything between weeks or even months and it is not an easy process. Some scholars opine that the time frame set out in the IBC is impracticable and too short; 180 to 270 days to affect a rescue particularly when working with large corporate structures complex legal issues, and real PATCH. Consequently, there is a rising demand for better and more extensive procedures with longer time horizons for handling the resolution plans.

- **Public perception and stakeholder resistance**

  While using the informal sources, it becomes apparent that the public has a rather limited understanding of RPs. While most people see them as independent professionals who always ensure meaningful and equitable insolvency outcomes, some havea negative perception of them especially where resolution involves liquidation or results inthe loss of jobs. It is suggested that high-profile cases of corporate fraud or prolonged insolvency proceedings may harm their reputation although they agreed to act responsibly for the best interest of the creditors. Furthermore, RPs are very likely to encounter resistance from employees of debtor companies more often. This resistance comes as a result of insecurity created by the firm's strategic change process, loss of jobs and negative attitude towards change. To overcome this form of resistance, the RPs must make operational decisions while at the same time preserving the employees' concerns so that the resolution processes are not interfered with.

- **Financial strain and operational challenges**

  One of the most common issues people face during the CIRP is the question of funding or working capital which, in many cases, affects the ability to continue the business. Debtor firms are most of the time financially challenged and cannot provide for working capital needs such as paying salaries and meeting utility bills and suppliers. This financial pressure delays the resolution process and enhances the financial pressure on the resolution professional and the challenges they resolve. To avoid or reduce these effects, bridge loans and other special financial solutions provided by the government or central banks can help organizations sustain theiroperations in the resolution period. Also, communication with the suppliers and vendors may assist in maintaining the supply chain and constantly delivering necessary goods and services.

- **Improving the corporate insolvency resolution process**

  That said, the following changes may be valuable to increase the integration and equity of the CIRP. The press release and development of the code of ethics for RPs showed that improving its paramount visibility and setting certain norms for the conduct of such officials would go far in eliminating such impressions. It was suggested that the best practice involves optimising the duration of timelines and setting proper timeframes for the major steps involved to reduce the time taken in such solutions as well as the uncertainties associated with them. Additionally, the addition of variation with people from different parts of the world and in different fields can lower one's predispositions and guarantee the investigation of all possibilities. A suggested major change for the CIRP is that there should be independent overseers, namely an external board of impartial professional auditors who would perform assessmentsregularlyto guarantee the fairness of the proceeding. The discussion of the tasks and problems faced by the RPs establishes insolvency resolution as a process that is not simple and linear. Apart from legal skills, crucial aspects that have to do with the requirement of interdisciplinary knowledge, better integration, and more readily available information are essential to the resolution process. Mitigating the areas of regulatory, stakeholder and financial issues will be critical in the building of an insolvency framework so that the persons under law dubbed RPs can accomplish the problems they encounter for efficiency and fairness to stakeholders.[18]

IMPLICATIONS

The discovery of this research work touching on the role yet to be given to and challenges faced by RPs in insolvency resolution processes has some impact on the legal, regulatory, and business frames. This section provides the major conclusion based on analysis and the further areas of discussion relating to the changes in the role of RPs, the necessity of future regulation in this sphere, the idea of further professional training and the possible consequences of the results of the work for general tendencies in the sphere of insolvency.

- **Impact on legal and regulatory frameworks**

  The issues encountered by RPs in the management of insolvency cases suggest several directions on how the legal and regulatory conditions that frame insolvency may be improved. One of the most pressing issues highlighted by the research is the complexity and inconsistency of existing regulations, particularly the overlapping nature of laws such as the IBC and the Companies Act. But that is where the divergence arises and leads to confusion and delay that hamper the efficiency of the insolvency process. The implication of this finding is clear: Insolvency law has therefore presented an urgent need for legal changes, and the need to coordinate existing legislation. Substantial reduction at the procedural level is expected to increase the efficacy of the insolvency resolution process in terms of the predictability of outcomes. This could involve re-

[18] Ministry of Corporate Affairs, *Annual Report on the Implementation of the Insolvency and Bankruptcy Code*. Government of India, (2023).

visiting the requirements of the IBC and explaining how they interact with other corporate laws, which in an analytical sense, may remove doubt. At the same time, it is also important to point out that frequent and drastic changes in the regulations and the unclear relationship between authorities can be solved through more stable and comprehensible methods of legislation making. Further, on issues that had to do with the banking sector and financial institutions, inadequacies in legal frameworks were also found regarding the protection of bona fide purchasers; concerns evident from matters connected to mortgagor's sale and other improper processes targeted at fraudulent actors. This situation implies legal frameworks that are proportional to the challenge of protecting the rights of all players in the insolvency process entails buyers of such assets.

- **Professional training and development**

  The other very significant implication of this research is the observed growing need for proper specialization in the training of Resolution Professionals. The finding suggests that most of the RPs have a legal practice, and others have been in practice for over five years. However,most RPs are young mid-career or new professionals implying heightened career prospects of insolvency resolution. This trend is so important in responding to the current call for professional training and development curricula – new professionals. As insolvency cases are very intricate including corporate structures, cross borders and other controversies with many a stakeholder, advanced training in areas like financial analysis, conflict solving and negotiation skills is quite evident. It means that, unlike formal education, training programs should not only provide the participants with the necessary legal knowledge, the proper application of which would be sufficient to solve the given problem but also help them develop communication skills, skills of effective cooperation with other business departments, as well as build their ability to take proper decisions under the condition of significant pressure. Moreover, as the findings of this work reveal the difficulties experienced by RPs in managing non-legal facets of insolvency resolution (cybersecurity threats, accountability, and value assessment), training programs should also contain interdisciplinary components that would equip RPs for situations they may face. In addition, the study reveals that the majority of the RPs are associated with "Other" IPA apart from the recognized body such as the Insolvency Professionals of ICSI, there is a significant possibility to establish some standardization in professional affiliations. Simplification of the accreditation procedure and establishment of a single system of approbation of qualified RPs could contribute to the strengthening of the overall credibility of the insolvency resolution and the increase of the quality of the staff in the field.

- **Strengthening institutional support mechanisms**

  It also goes further to recommend that support for operationalising the RPs should be enhanced especially from institutional frameworks. The research brings up a list of operation challenges; some of them are – absence or inadequate working capital to

sustain business during the CIRP. This financial burden results in slow handling of the insolvency cases and the consequences of the solution on the cases are normally adverse. Here one of the emerging implications is the increased need for a form of working capital that will help the struggling companies in the long run. Our proposal of bridge financing or subsidies will allow for sustaining many of the organizations on the brink of insolvency while going through the legal processes. Special financial facilities coordinated by the government and aimed at solving the problem of inadequate funds could ease the situation and help to overcome the liquidity constraints; cooperation within vendors and providing credit lines by the private sector during the resolution period could also be helpful. Moreover, the proposals that have emerged from the research highlighted in this paper including the formation of dedicated CIRP management teams may greatly enhance the working of insolvency resolutions. The formation of these teams, which consist of professional workers, would be to embark on the operation of the company during the periods that the resolution is being formulated and implemented. This would go a long way in ensuring that there is continuity, especially during the forthcoming negotiations, it would also enhance the possibilities of solving since the worth of the business and its assets can be preserved.

- **Enhancing transparency and accountability**

Another important implication of this research refers to the issue of increased transparency and accountability inthe insolvency resolution process. It is also evident from the study that conflicts of interest which involve creditors and shareholders are not rare to find among RPs. Prospective conflicts happen because of diverse interests and poor communication and the associated conflict may act as a delay mechanism during the conflict-solving process. In this respect, the proposed research indicates that optimising the communication among the identified SET actors is crucial. This entails the designation of roles, responsibilities and the timeframe at the inception of the process with a view of putting into place a good frameworkfor solving any dispute which may arise. Further, CIRP might also integrate mediation strategies that will allow the parties involved not to conflict with one another.

To resolve this problem, the research calls for enhanced communication between all stakeholders. However, it means that, for instance, organizational goals, objectives, roles, responsibilities, and timelines need to be set right from the start of a venture to ensure that conflicts are cleared per set principles. Besides, framework and procedures could be integrated into the CIRP to ensure efficient cooperation and avoid contradictions. In addition, transparency of decision-making and availability of information is considered important for developing confidence in the form of the resolution. This could involve offering updated information through internet-based tools, for instance on the status of insolvency cases, and increased transparency in the processes and rationale for arriving at relevant decisions. By encouraging the transparency and accountability system, the insolvency resolution process can be enhanced and minimise legal challenges.

- **Public perception and trust in the insolvency process**

  This mixed perception of the public has important implications for insolvency resolution processes – findings from the research have demonstrated this quite well. Despite an understanding that RPs have technical knowledge and no bias towards either the company or the creditors, there is concern mostly when insolvency implies that the company must sell off its assets or let go of employees. This scepticism can be disposed of by the poor image of RPs resulting from different cases of corporate fraud and lengthy legal insolvency procedures. Considering these issues, efforts must be stepped up to increase people's awareness of what insolvency practitioners do and the complexities of the insolvency process. Public awareness programs, awareness programmes and sensitization programmes, which would acquaint the public with the value of insolvency resolution and how legal and ethical rules and regulations bind RPs, should be carried out. Furthermore, RPs need to guarantee that stakeholders' best interest is taken into consideration during their decision-making process and that creditors, employees and shareholders alike would see them as fair and balanced in their decision-making process.

- **Implications for business and industry**

  This mixed perception of the public has significant implications on insolvency resolution processes – and will be illustrated by the findings of the research as follows. There is apprehension, nonetheless, primarily where insolvency means that the company has to dispose of its assets or release workers a presupposition people have that RPs has technical know-how of the situation and does not favour the company or the creditors. This scepticism can be dispositioned by the poor image of RPs due to various corporate fraud cases as well as the long time that various companies undertake to complete their legal insolvency processes. As a result, more initiative needs to be taken to let people know what insolvency practitioners do and the nature of insolvency process. A high number of public awareness programs, awareness programmes and sensitization programmes that would inform the public on the worthwhile of the insolvency resolution and how legal and ethical rules and regulation govern RPs should be conducted. In addition, RPs must ensure stakeholders 'best interest' is taken when making decisions; creditors, employees and shareholders would view them as fair when making their decisions.

16

BEHIND THE ENEMY LINES: RESOLUTION PROFESSIONAL AND NON-COOPERATION BY THE OFFICERS OF CORPORATE DEBTOR

Shaunak R. Vyas

ABSTRACT

Extracting information from the unscrupulous officers of the corporate debtor (CDs) is exceedingly similar to fighting alone behind the enemy lines. The Insolvency and Bankruptcy Code, 2016 (IBC/Code) cast a duty on Interim Insolvency Professional/ Resolution Professional (IRP/ RP) to collect all information relating to the assets, finances, and operation of the CD during the corporate insolvency resolution process (CIRP), and hence, the IRP/ RP has to heavily rely on the officers of the CD. This proposition is petrifying. Notwithstanding the legal obligation imposed upon the officers of CD to cooperate with the IRP/ RP under the Indian insolvency regime, numerous criminal complaints are filed against the officers of CDs. The present research work focuses on specific corporate insolvency crimes punishable under sections 68, 70, and 235A of the Code, and committed by the officers of CD. Out of all the corporate insolvency criminal cases registered and made publicly available 75% of registered criminal cases are alleging commission of crimes under the aforementioned provisions of the law. In the Indian insolvency regime, the insolvency professional has a crucial role in CIRP and various duties to perform in a timely manner. The duties and performance of IRP or RP can be greatly affected by these alleged corporate insolvency crimes committed during the CIRP punishable under IBC.

The present research work argues that these corporate insolvency crimes pose serious questions and issues in relation to CIRP and the functioning of the IRP/ RP as well as the Adjudicating Authority (AA). The researcher will also identify the present legal lacuna including but not limited to legal vacuum, limitations of Insolvency and Bankruptcy Board of India (IBBI/Board) as well as AA, etc.; and will argue that if these issues are not addressed swiftly with amendment and enactment of rules/ regulations then it may grow as a menace. Furthermore, due to the legal lacuna or vacuum, the existing legal framework cannot address or solve the issues. The researcher also argues that amendment to the law more particularly section 19 and provisions related to corporate insolvency crimes may change the situation and may enable the IRP/RP to perform the duties in a more efficient manner. The researcher further recommends certain changes to the code due to the possible interplay of IBC with the new criminal code i.e. Bhartiya Nagarika Suraksha Sanhita, 2023. The researcher argues that the proposed amendment to the law will deter the unscrupulous officers of CDs having different criminal intent, will enable the IRP/ RP to work efficiently, and will protect the interest of all the stakeholders. The present research paper is based on the cases reported to IBBI and available in the public domain adopting the doctrinal research methodology.

Keywords: Insolvency Crime; Corporate Crime; Insolvency Law; Non-cooperation; BNSS;Criminal Proceedings; General Principle of Criminal Prosecution.

INTRODUCTION

"No punishment has ever possessed enough power of deterrence to prevent the commission of crimes. On the contrary, whatever the punishment, once a specific crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been."[1] -Hannah Arendt

The very famous quote of Hannah Arendt, a famous and controversial writer of Eichmann in Jerusalem, turned out to be true for Indian corporate insolvency crime when the first case of willful non-cooperation punishable under the IBC[2] was registered before the Special Court, Jaipur. Thereafter, the number of cases initiated to penalise the offenders under the Code grew in subsequent years till 2023. By the end of 2024, a total of 40 criminal complaints were filed before the Special Court out of which 30 cases (nearly 75%) alleging non-cooperation by the officers of CD.[3]

The corporate insolvency crime or crime related to insolvency and the prosecution became the talk of the town when the Hon'ble Supreme Court of India[4] had to deal with the question as to which designated court may act as the special court trying the offences defined under Chapter-VII. Furthermore, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), will now govern the pending proceedings before the special court. At this moment it can be said that the apprehension of the interplay of IBC and BNSS, or the conflicting principles shall become the reality in the very near future. Therefore, in this brief context, it is very relevant and contemporary to find out the legal issues in relation to the non-cooperation by the officers of CD.

Initially, the researcher discusses the role of IRP or RP, the legal duties of the officers of CD, and the crime related to insolvency. For the present research work, the research shall focus on three offences punishable under sections 68, 70, and 235-A which deal with willful non-cooperation, disobedience, and omission on the part of the officers of the corporate debtor. Further, the researcher shall analyse the existing penal provisions, disharmony of principles, and the legal gaps or lacuna. Lastly, the researcher shall give suggestions and recommendations in relation to the aforementioned provisions as well as prescribe the legal draft to amend the code, or the regulations made thereunder.

RESOLUTION PROFESSIONAL AND INSOLVENCY CRIME

Role of resolution professional

The scheme of the Code, various rules, regulations, and guidelines made thereunder suggest that the IRP is a facilitator of the CIRP and has no adjudicatory powers.[5] The Insolvency and Bankruptcy Board of India (Insolvency Professionals), Regulations, 2016, (Insolvency Professionals' Regulations) concedes the power to the Board to grant registrations[6] to eligible persons. However, this Insolvency Professionals' Regulations, 2016 prescribes several conditions that need to be fulfilled at all times, and one of such conditions casts a duty upon

[1] Hannah Arendt, Eichmann in Jerusalem, Epilogue (1963).
[2] IBBI v. Umesh Kumar Sharma, R.P.C. 326/18, Special Judge, Jaipur.
[3] Insolvency and Bankruptcy Board of India, https://ibbi.gov.in//en/orders/other-courts (last visited on December 28, 2024).
[4] Insolvency and Bankruptcy Board of India v. Satyanarayan Bankatlal Malu & Ors., 2024 INSC 319.
[5] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

the Insolvency Professionals (IPs) to abide by the code of conduct specified in the First Schedule thereto.[7] This first schedule casts a duty upon the IP to adhere to the time limits prescribed by either the Code or the rules, regulations, or guidelines made thereunder. Hence, by analysing the regulation very carefully and the first schedule thereto, it can be concluded that it is the bounden duty of the IRP or RP to perform the duties and responsibilities in an expedient and timely manner.

The order admitting the insolvency petition and declaration of moratorium by the AA[8] is followed by the order appointing the IP as an IRP.[9] In other words, the admission order is called the commencement of the CIRP. A bare perusal of the provisions of the Code suggests that the role of the IRP or the RP is of paramount importance for the success of the resolution of the CD. Therefore, the researcher will first analyse a few sections which are very important in relation to the present research work.

In the Code, the duty is casted upon the IRP or RP to first identify the most critical goods or services which are quintessential for the protection as well as the preservation of the value of CD as a going concern .[10]

Sections 17 and 18 are the most important provisions which define the role of the IRP in managing the affairs of the CD and duties during the course of the CIRP. From the very first date of appointment, all the powers to manage the affairs of the CD are vested in the IRP or RP.[11] As the powers of the Board of Directors or the partners of the CD are suspended, these powers are also conceded to and exercised by the IRP.[12] Furthermore, the Code grants to the IRP/ RP the powers and authority to access the electronic records of CD from information utility;[13] and to access the books of account, records, and other relevant documents of CD available with government authorities, statutory auditors, accountants and such other persons.[14] The law has casted legal duties upon the officers and managers of the CD to report to an IRP or RP and to provide access to such documents and records of the CD required by him so as to perform his duty assigned by the Code.[15]

It is pertinent to note that the lawmakers, later, realise the need to frame regulation in relation to sections 17 and 18 casting the legal duties upon the officers of the CD, creditors, government authorities, and other persons. Hence, Regulation 3A[16] was inserted into the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulation). Regulation 3A casts a duty upon the officers (including but not limited to promoters or any other person associated with the management) of CD to

[6] Insolvency and Bankruptcy Board of India (Insolvency Professionals), Regulations, 2016, Regulation 7(1).
[7] Insolvency and Bankruptcy Board of India (Insolvency Professionals), Regulations, 2016, Regulation 7(2)(h).
[8] Insolvency and Bankruptcy Code, 2016, § 13 (1) r/w. §14 (1), No. 31, Acts of Parliament, 2016 (India).
[9] Insolvency and Bankruptcy Code, 2016, § 13(1)(c) r/w. § 16, No. 31, Acts of Parliament, 2016 (India).
[10] Insolvency and Bankruptcy Code, 2016, § 14(2-A), No. 31, Acts of Parliament, 2016 (India).
[11] Insolvency and Bankruptcy Code, 2016, § 17(1)(a), No. 31, Acts of Parliament, 2016 (India).
[12] Insolvency and Bankruptcy Code, 2016, § 17(1)(b), No. 31, Acts of Parliament, 2016 (India).
[13] Insolvency and Bankruptcy Code, 2016, § 17(2)(c), No. 31, Acts of Parliament, 2016 (India).
[14] Insolvency and Bankruptcy Code, 2016, § 17(2)(d), No. 31, Acts of Parliament, 2016 (India).
[15] Insolvency and Bankruptcy Code, 2016, § 17(1)(c), No. 31, Acts of Parliament, 2016 (India).
[16] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Inserted by Notification No. No. IBBI/2023-24/GN/REG106, dated 18th September, 2023 (w.e.f. 18-09-2023).

assist and cooperate by providing a list of assets and records whilst handing over their custody and control to the IRP or RP; by providing the requisite information relating to the assets, finances and operations of the CD; and by providing the requisite information in relation to the assets which are recorded in the balance sheet or in any other records but which is neither handed over nor in possession of the officers of CD. A bare perusal of section 19(2)[17] and regulation 3A(7)[18] suggests that the IRP or RP, in case of non-cooperation or disobedience or omission to either provide requisite information or record or hand over the assets or record of the CD, have a valuable right to file an application before the AA. It is pertinent to note that the officers of the CD must provide the information within the time stipulated/prescribed by the IRP or the RP.[19] In a peculiar situation, the IRP or the RP could pray for the assistance of the local district administration or police authority so as to perform the statutory duties by filing an application before the AA.[20]

Similarly, the CIRP Regulation grants power and authority, in relation to section 17(2)(d), to access the books of account, records, and other relevant documents and information, of the CD held with (a) depositories of securities; (b) professional advisors of the CD; (c) information utilities; (d) other registries or regulators. Furthermore, the creditor, in its statutory duty, has to provide the information in respect of assets and liabilities of the corporate debtor to the interim resolution professional or resolution professional.

Corporate insolvency crime

The phrase, 'Corporate Insolvency Crime', is only used to denote certain offences collectively in relation to Indian insolvency regime. This phrase means different categories of crimes in different jurisdictions, and therefore, for the sake of clarity, the researcher defines corporate insolvency related crimes or corporate insolvency crime as the crime defined and made punishable under the Code; or the crimes committed during the CIRP or twelve months before the commencement of corporate insolvency proceedings by the officers of the CD or the financial creditors (FCs) or the operational creditors (OCs) or the IP or the office bearers of IBBI. The corporate insolvency crimes are defined as the offences under Chapter VII of Part-II of the code. From section 68 to 77-A and section 235-A, a total of 12 offences are defined and made punishable under the Code.

Firstly, it is required to understand as to who are considered as the officers of CD. Section 5(19) defines the term "officer", in relation to Chapter VI as well as Chapter VII of Part-II, by incorporating the existing provision from clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), as well as the designated partners, in case of the Limited Liability Partnership firm. In other words, the officers of CD mean and include a director, whole-time director, key managerial personnel, merchant bankers or registrar of securities.

The cooperation and assistance of earlier management as well as the employees of the CD to the IRP/RP, is very crucial to keep the corporation as a going concern.[21] Therefore, non-cooperation

[17] Insolvency and Bankruptcy Code, 2016.
[18] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
[19] *Id.*, Reg. 4(2).
[20] *Id.*, Reg. 30.
[21] Abhishek Mittapally, *Insolvency And Bankruptcy Regime In India A Narrative* ((A Study of Insolvency Professionals in India) 204 (IBBI 2020).

by any person during the insolvency proceedings is made a punishable offence under the Code. Hence, in this particular research work, the researcher will only focus on three corporate insolvency crime defined under sections 68, 70 and 235-A. For the sake of ready reference, firstly, the researcher will analyse each offence. Section 68 defines specific offences committed by the officer of the CD within the twelve months immediately preceding the corporate insolvency proceedings. A bare perusal of this section suggests that there are two types of offences, (1) wilful act, and (2) fraudulent act. Both types of offences are made punishable with a minimum 3 years' imprisonment which may be extended to five years, or with a minimum fine of rupees one lakh rupees which may be extended to one crore rupees, or with both.

These wilful acts as defined under the Code mean and include the concealment of any property or part of such property of the CD; or concealment of any debt; or concealment or destruction, mutilations or falsification of any book or paper; making any false entry in any book or paper relating to the property of the corporate debtor or its affairs; or creation of any security interest over or disposing of any property of the CD. The lawmakers in their legislative wisdom made wilful hiding or concealing the knowledge of the commission of any crime defined in clauses (c), (d), or clause (e).[22] It is interesting to note that the section only speaks about the wilful act or fraudulent act or wilful concealment of commission of any such rime without supplying the word intention. On the other hand, the proviso favouring the accused persons is inserted to give them an opportunity to prove that they didn't have any intention to defraud or conceal the things mentioned in the section.

Similarly, section 70 defines and prescribes punishment for misconduct by officers of CD in the course of CIRP, on or after the commencement of insolvency proceedings. A bare perusal of this section suggests that several act or omission are made punishable with a minimum of three years or a maximum of five years' imprisonment, or with fine, or with both. Furthermore, bare perusal suggests that the RP is vitally affected due to the commission of the crime. Therefore, when officer of the CD does not disclose all the details of property and details of transactions thereof; or deliver to the RP all or part of the property; or all books and papers in his control or custody and which he is required to deliver; or does not disclose information required by the resolution professional; or prevents the production of any book or paper relating to the property or affairs of the CD; this corporate insolvency crime is made punishable thereunder. Interestingly, like the previous section, this section also has the same proviso providing the ground to urge before the trial court by the accused officers of the CD.

Lastly, section 235A prescribes punishment for the contraventions which are neither defined specifically nor specifically penalised or punished under the Code. The bare perusal of this section suggests that if for contravention of any provisions of the Code, or rules or regulations or guidelines made thereunder by any person, no penalty or punishment is prescribed in this Code, then such person shall be punished with fine of minimum rupees one lakh rupees or maximum of rupees two crore rupees. It is interesting to note that no imprisonment is prescribed for such offence.

NON-COOPERATION BY THE OFFICERS OF CORPORATE DEBTOR

At the outset, it is pertinent to note that non-cooperation or willful non-cooperation or disobedience or legal omissions are not defined under the Code; and these generic terms are

[22] Insolvency and Bankruptcy Code, 2016, § 68, No. 31, Acts of Parliament, 2016 (India).

not even used in any title or nomenclature of any legal provisions. Interestingly, in popular parlance, the professionals, the authorities and scholars have assigned 'non-cooperation' to collectively denote these acts of officers of CD. Hence, the researcher is also adopting this generic term to refer abovementioned acts.

Before the researcher analyse the legal issues and principles, it is better to understand the non-legal aspects as well as the degree of criminality and non-cooperation during CIRP. As the CIRP begins, the officers and especially the promoter realises that the management and control over the CD will be lost. Understanding this very situation, various professionals and the scholars have expressed their great concern and stated that these officers especially have very low incentives to cooperate with the IRP or RP, and have high incentive to conceal the information related to the CD as well as the information which can potentially expose them to criminal prosecution.[23]

Behind the enemy lines: Resolution Professional

The available orders and records of criminal cases arising from insolvency proceedings show some peculiar facts like the promoters concealing, withholding, and thereafter, trying to fraudulently encash the demand drafts received as the payment of settlement amount after the initiation of insolvency proceedings.[24] In some cases, we may see very scandalous facts that the registered office of CD was locked and the directors, from the commencement of insolvency proceedings till the seventh month, were not handing over any records despite several observations and orders passed by the AA.[25] In another case that arose from the same jurisdiction, the directors were not allowing the RP to access the books of accounts and records of the CD, even after providing police aid to enter into the office of CD. In this particular case, the offenders had not even respected the AA's order u/s 19(3) and other orders; and thereby leaving no option but to refer the matter to Board to initiate criminal proceedings against the directors.[26] In a similarly situated case, the promoters-offenders behaved violently, concealed the property of CD, and even after the arrest pursuant to issuance of non-bailable warrant by AA, the accused person didn't cooperate with the RP.[27] And in some case, the chapter of non-cooperation by the promoters ultimately culminated with the AA directing the central government to investigate the criminal and fraudulent acts of the accused.[28] However, in several cases, lackadaisical attitude and non-disclosure of vital information led to the filing of criminal complaint case against the officers of CD.[29]

When the promoters or directors or management of the CD is so influential, the non-cooperation or lackadaisical assistance from officers of the CD cannot be denied. But in several cases, the IRP or RP are facing a completely hostile situation and has no access to even the premises of the CD. In this peculiar situation, the IRP or RP has the right to approach the AA under section 19(2) praying for assistance of local authority and directing the officers of CD to

[23] Transcript of the XI Annual National Law School of India Review Symposium on the Insolvency and Bankruptcy Code, 30 Nat'l L. Sch. India Rev. 136 (2018).
[24] IBBI v. Prakash Kumar Singh, PCR.No.66/2020, Special Court, Banglore City.
[25] IBBI v. Sandeep Singh Madhok, Reg. No. CC/1628/2019, Special Court, Dwarka, Delhi.
[26] IBBI v. Karan A Channa & ors, Reg. No. CC/1659/2019, Special Court, Dwarka, Delhi.
[27] IBBI v. Vishesh Goyal & Anr, Reg. No. CC/964/2021, Special Court, Dwarka, Delhi.
[28] IBBI v. Vijaypal Garg & Ors., Reg. No. CC/370/2020, Special Court, Dwarka, Delhi.
[29] IBBI v. Gagan Shukla & Ors., Reg. No. CC/170/2020, Special Court, Dwarka, Delhi; IBBI v. Sweety Aggarwal, CIS No. COMA/30/2020; IBBI v. KMP of PMT Machines Ltd., SPL. Case No. 46/2021.

cooperate the IRP/ RP.[30] As a last resort, the IRP/ RP or AA may request the IBBI and the Central Government to prosecute them. It is pertinent to note that the lawmakers in their legislative wisdom have delegated some of the powers to frame rules[31] and regulation[32] to the Board; the Board has adopted the practice of prescribing and maintaining the standard format for every application to AA. Unfortunately, due to the legislative oversight, neither the rules framing powers nor any regulation making powers in relation to section 19 of the Code were given to the Board. It is also interesting to note that IRP or RPs are very reluctant to file applications under this section and only 3 % of them have filed in a given case.[33]

Flawed principle of criminal law and protection of the accused

IBC is a complete,[34] exhaustive[35] and self-contained code in relation to insolvency matters.[36] The Supreme Court of India, in *Innoventive Industries Ltd.*,[37] has also observed that the lawmakers in their legislative wisdom enacted the IBC with primary objective to bring the insolvency laws of India under one unified umbrella, and to complete the resolution process of corporate insolvency in a time bound manner. To enact the comprehensive law, the lawmakers in their legislative wisdom, inserted a very special provision i.e. section 236 prescribing a special procedure to initiate criminal prosecution against the offenders of corporate insolvency crimes.

Section 236(1) of the Code begins with a non-obstante clause overriding the jurisdictional provisions of BNSS; and prescribes that the offences under the code (including Chapter-VII) shall be tried by the Special Court which are established under the Companies Act, 2013.[38] The very important legal provision for the present research is the subsection 2 of section 236 which puts an embargo upon the initiation of criminal proceedings against the accused. The plain reading of text suggests that the special court cannot take cognizance of the offence unless and until the complaint is made by the Board or the Central Government or any authorised person. On the other hand, the code prescribes application of the provisions of the Code of Criminal Procedure, 1973 (now BNSS) to the proceedings before the Special Court.[39]

Prima facie, it appears that section 236(2) is para materia to section 215 to 222 of the Bhartiya Nagrik Suraksha Sanhita 2023. The primary of object and reason for engrafting section i.e. section 215 to 222 which were first introduced in the old Criminal Procedure Code, 1889, was to primarily protect the dignity, purity and sanctity of proceedings or institution. It is pertinent to note that all these provisions are exceptions to cardinal principle

[30] Insolvency and Bankruptcy Code, 2016, § 19(3), No. 31, Acts of Parliament, 2016 (India).
[31] Insolvency and Bankruptcy Code, 2016, § 239, No. 31, Acts of Parliament, 2016 (India).
[32] Insolvency and Bankruptcy Code, 2016, § 240, No. 31, Acts of Parliament, 2016 (India).
[33] Dr. Neeti Shikha and Urvashi Shahi, *Assessment of Corporate Insolvency and Resolution Timeline*, IBBI Research Initiative, RP-01/2021, February 2021.
[34] In catena of judgments, the Supreme Court of India has reiterated this view, i.e. Ebix Singapore Private Limited vs Committee of Creditors of Educomp Solutions Limited and another (2022) 2 SCC 401; Embassy Property Developments Private Limited vs State of Karnataka and others (2020) 13 SCC 308; Bharti Airtel Ltd. and another vs Vijaykumar V. Iyer and others 2024 INSC 15.
[35] Innoventive Industries Ltd. v. ICICI Bank and Ors. (2018) 1 SCC 407.
[36] Insolvency and Bankruptcy Board Of india v. Satyanarayan Bankatlal Malu & Ors. 2024 INSC 319.
[37] *Id.* at 38.
[38] Insolvency and Bankruptcy Code, 2016, § 236(1), No. 31, Acts of Parliament, 2016 (India).
[39] Insolvency and Bankruptcy Code, 2016, § 236(2), No. 31, Acts of Parliament, 2016 (India).

of criminal law. As per the cardinal principle of criminal law, any person having the knowledge of the commission of any crime can set the criminal machinery into the motion by lodging the private complaint; and it is not necessary that the person must be the victim of crime or is personally affected or interested. Hence, the exception was carved out in CrPC, 1889 by engrafting provisions similar to Section 215 to 222 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (which replaced CrPC,1973 that has replaced CrPC, 1889) prescribing that only an authorised person can file a complaint. The operation of these special provisions is confined to certain offences punishable under the Bhartiya Nyaay Sanhita 2023.

Similarly, the object and reason behind the and engraftment of section 236 of the Code is to bar private prosecutions where the course of justice is sought to be perverted, leaving no option but to uphold the dignity, transparency, fairness and prestige of the proceedings in the hands of the regulator, i.e. IBBI or the Central Government. Furthermore, the IP is amongst the main pillars of Indian insolvency regime and important component of CIRP; and hence, the protection against vexatious prosecution is much needed for the smooth functioning of this component and CIRP. The scheme of IBC suggests that scrupulous IP or the Liquidator or bankruptcy trustee or the IBBI officials is doing or performing statutory duties under the Code should be protected from every suits, prosecution or legal proceedings.[40] This salutary provision of law is founded on the principle of common sense. In other words, in the case of insolvency or bankruptcy wherein different parties have conflicting interest, the action of officer of the board or registered professionals performing statutory duties under the Code may affect one or more parties. If the aggrieved parties are allowed to set criminal machinery into motion to wreck vengeance and start prosecution against the officer of the board or registered professionals, then these persons may not work fearlessly and dutifully; and it would be a travesty of the legal system. It is as good as one having prosecution gratification of personal revenge and vendetta. In simple terms, the real object and reason behind such engraftment was to protect the registered professionals and the officials of Board who are performing their statutory duties, and to save the sanctity as well as purity of the institution from vexatious criminal prosecution. Secondly, the CIRP should not be stalled and questioned by any private party only on the basis of vexatious prosecution to achieve ulterior motive or to wreak vengeance against some specific party. Thirdly, it is also needed in the interest of justice to protect the purity of the process by penalising the corporate insolvency offenders for their criminal wrong and illegal practices.

Unfortunately, the scope and ambit of Section 236 (2) overreach the underlining principle behind the exception to cardinal principle of criminal law by extending the same protection to officers of CD who are not cooperating with the IRP/ RP; and/or committed grave crimes including but not limited to defrauding the creditors The application of this provision of law carries some serious implications. This is a serious impediment to prosecution, if not removed, the practice of non-cooperation by the officers of CD may grow with impunity. Moreover, due to this overly broad protection, the public money and the precious time of the courts are wasted; and on the other hand, this protection seriously impacts CIRP as the statutory duty of IRP/ RP is greatly affected due to non-cooperation by the offenders.

The overly broad principle which forms the basis of section 215 to 222 ought not have been adopted into the Code without certain modification due to several other reasons. Firstly, this

[40] Insolvency and Bankruptcy Code, 2016, § 233, No. 31, Acts of Parliament, 2016 (India).

overly broad exception to cardinal principle of criminal law is not aligned with the central theme and object of the code. As discussed in this paper, the officers of CD are aware about the insolvency proceedings much prior to its admission. The admission and other orders are also duly communicated to the CD. In this premise, if the unscrupulous officers of the CD neither perform the statutory duty nor abide by the order passed by the AA compelling them to cooperate, then it amount to contempt of court as well as non-cooperation. In this kind of situation, protecting the offender by invoking overly broad principle would defeat the primary object and legislative intention of the act itself. Hence, also such protection to the officer of the CD is unwarranted.

On the other hand, due to the existing legal provision, the Board is unnecessarily burdened with the duty to peruse the very complaint alleging a prima facie case against the officers of CD. Lastly, combine reading of 236(2) and the provisions of BNSS clearly suggests that Indian criminal justice system gives ample of opportunity to accused to be heard at different stages to defend himself and to put his version of the case to refute or negate the evidences. Hence, for the reasons mentioned hereinabove there is a great need to amend the existing legal provision.

Error of law

It is interesting to note that before the engraftment of section 235-A,[41] there was no specific penal provisions in the Code that penalise the 'non-cooperation' to the IRP or RP. Before the aforementioned amendment, the law defined two offences, namely, (1) the offence of misconduct in course of corporate insolvency resolution process,[42] and (2) concealment of property[43] that prescribes punishment to those who have failed to perform their so-called duties in course of CIRP.[44]

Nonetheless, in the majority cases of non-cooperation by the officers of CD, section 68, 70 and/ or 235-A are invoked, drawing any analogy with newly enacted Bharatiya Nyay Sanhita, 2023[45] (BNS) as well as the old Indian Penal Code[46] (IPC) will be a fallacious comparisons for two reasons. Firstly, the object of BNS or IPC is to punish the offenders who fail to perform their legal duties or disobey the orders of public servant/ police officers. Whereas, the IBC does not grant any quasi-judicial powers to IRP/ RP to order the officers of CD or any person to provide information or hand over the assets, books of accounts, etc., and therefore, the Code doesn't prescribe any punishment for the non-cooperation. Hence, it is pertinent to understand the legislative intention and the founding principle behind engraftment of provisions in the Code.

During the insolvency proceedings, it is very crucial that the officers of the CD act honestly, disclose true facts, and does not disobey or give any false information or conceal information in relation to assets or transactions as the law requires true and duly signed records in the insolvency proceedings. The IRP or RP have to heavily rely on the co-operation, support and assistance of officers of CD. Bare perusal of the scheme of Code as well as the reports including but not limited to BLRC Report suggest that the lawmakers, in their legislative wisdom, wanted to make law that prescribes a fair corporate insolvency process wherein

[41] Inserted by Act 8of 2018, s. 8 (w.r.e.f 23-11-2017).
[42] Insolvency and Bankruptcy Code, 2016, § 70, No. 31, Acts of Parliament, 2016 (India).
[43] Insolvency and Bankruptcy Code, 2016, § 68, No. 31, Acts of Parliament, 2016 (India).
[44] Insolvency and Bankruptcy Code, 2016, § 70, No. 31, Acts of Parliament, 2016 (India).
[45] Bharatiya Nyay Sanhita, 2023, § 210, No. 45, Acts of Parliament, 2023 (India).
[46] Indian Penal Code, 1860, § 175 (India).

every participants act honestly in disclosing their true affairs. This is the founding principles upon which the corporate insolvency offences ought to have been identified and engrafted in the Code. Furthermore, the BLRC Report suggests that the lawmakers in their legislative wisdom wanted to place onus on the officers of the CD who has the information advantage over other parties to the insolvency proceedings like the IRP or the RP and the creditor.

Though it was the legislative intention to create a legal duty for the officers of CD to furnish information, records, accounts and etc., and to punish the officer of CD for non-cooperating the IRP or RP, due to the legislative oversight, the act of disobedience or failure to comply itself have not been made punishable just like the general provisions[47] of BNS.

Sadly, the lawmakers in their legislative wisdom must be happy with the saying 'something is better than nothing'; or had no idea that section 235-A will be invoked to punish the offender during CIRP rather than liquidation. In the report of the Insolvency Law Committee,[48] it was opined that the cooperation of officers of CD to resolution professional of a CD is very crucial; and for non-cooperation during the course of liquidation, the offenders cannot be penalised. Therefore, the Committee noted that for better functioning of the liquidator, certain sections should be amended. If any officers of CD violate section 34(3) of the Code and Regulation 9 of the Liquidation Regulations and fail to cooperate, then the liquidator shall apply to the Adjudicating Authority for direction to such unscrupulous personnel. However, the committee felt that though any person failing to cooperate with the liquidator may be prosecuted under section 235A of the code, the penal provision prescribes for punishment for contravention of any provision of the Code and therefore, this general provision punishes the offender with fine only. However, in the absence of any specific provision prescribing the imprisonment, this provision is not sufficient to deter any personnel or the officers of the CD who disobeys or fails to cooperate with the liquidator. Hence, the lawmaker erred by not to defining and prescribing punishment for willful non-cooperation, disobedience or omission to perform legal duty; or engrafting the similar provision as inserted in the BNS.[49]

Here, before the researcher articulate as to why section 68 and 70 needs to be amended, it is important to note few provisions of the code and the rules made thereunder. In the case of FC, upon the application under section 7 filed in such form and manner as may be prescribed by the authority,[50] the adjudicating authority has to ascertain the existence of a default by the corporate debtor within 14 days;[51] and upon being satisfied that all the necessary conditions stipulated by the code, the adjudicating authority has to pass an order admitting the insolvency petition.[52] Bare perusal of section 7(7) suggests that the adjudicating authority must communicate the order of admission of insolvency petition to the FC as well as the CD.

Even otherwise, the Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016, cast a duty upon the FC to serve an advance copy of the insolvency application to the registered office of the corporate debtor as well as the board by registered post or speed post or

[47] Bharatiya Nyay Sanhita, 2023.
[48] February, 2020.
[49] Bharatiya Nyay Sanhita, 2023, § 210, No. 45, Acts of Parliament, 2023 (India).
[50] Insolvency and Bankruptcy Code, 2016, § 7 (2), No. 31, Acts of Parliament, 2016 (India).
[51] Insolvency and Bankruptcy Code, 2016, § 7(4), No. 31, Acts of Parliament, 2016 (India).
[52] Insolvency and Bankruptcy Code, 2016, § 7(5)(a), No. 31, Acts of Parliament, 2016 (India).

by electronic means.[53] Hence, the officers of the CD may know well in advance of the forthcoming insolvency proceedings against the CD. Nevertheless, ignoring the scheme of the code, the proviso to section 68 and 70 were inserted defeating the very intention of lawmakers. It is the principle of common law which says that *'ignorantia juris non excusat'*.[54] Therefore, the arguments that the officers of CD are not aware about the CIRP; or they are ignorant about their legal duties towards the IRP or resolution professional are absolutely baseless and spurious. Hence, the proviso to section 70 is actually counter effective to the primary legislative intention and object envisaged in the BLRC report. On the other hand, the same proviso inserted in section 68 creates utter chaos as it seems the draftsman completely ignored the cardinal principle of criminal law that the onus to prove the offence is on the state and this provision is not having any rebuttable presumptions. Hence, the amendment to section 68 will remove the defect in law. Hence, sections 68 and 70 in their entirety are not aligned with the principles of criminal law or object of the code for several reasons and arguments put forth.

RECOMMENDATIONS AND SUGGESTIONS

It is very easy to criticise the law than to come up with a proper solution. Hence, the researcher put forth several recommendations and suggestions. The existing law needs amendment. The researcher has, in the first two sections of the paper, substantiated the point that the existing law doesn't have a deterring effect. For the reasons mentioned under the heading 'Non-Cooperation by the Officers of Corporate Debtor', the researcher proposes amendments to both sections[55] so that the specific legal definition and provision prescribing the punishment which would create enough deterrence and penalise the offenders. Replacing the words intentionally will also serve the purpose. Secondly, the proviso to section 70 should be amended so as to make a provision similar to a general provision like section 210 of Bhartiya Nyaay Sanhita, 2023 or alternatively be amended to make a rebuttable presumption like section 138 of Negotiable Instruments Act, 1888. There is no reason to put a proviso in these sections. The very act of non-cooperation by the officers of CD should attract criminal prosecution.

As discussed under the heading 'Non-Cooperation by the Officers of Corporate Debtor', the law described under section 236(2) of the code must define offences for which the protection should be given and offences which are carved out of the protective umbrella. In other words, in the researcher's opinion, it would be conducive to clarify and engraft the provision protecting the IRP or resolution professional or liquidator or bankruptcy trustee; and removing the protective umbrella given to all the corporate insolvency offenders.

The existing section 236(2) should be amended and split up into two parts. The first part would encapsulate the exception to cardinal principle of criminal law and grant protection to the IRP/ RP as well as the officers of board. The first clause should empower the board or the Central Government or any person to whom the powers are delegated by the Central Government to file criminal case against the insolvency professional or the officers of the Board or the government

[53] Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016, Rule 4(3), substituted by the insolvency and bankruptcy (application to adjudicating authority) (amendment) rules, 2020, w.e.f. 24-09-2020.

[54] This well recognised Latin maxim means ignorance of the law is not an excuse.

[55] Insolvency and Bankruptcy Code, 2016, § 68 and 70, No. 31, Acts of Parliament, 2016 (India).

officials or creditors of CD. It is very necessary to initiate criminal proceedings for a variety of non-cognizable offences punishable under the Code only by the authorised person. Due to this proposed legal provision, the complaint needs to be sent to the board for approval and sanction. The board would peruse the complaint so as to reach a prima facie conclusion on whether it should be sent to the special court for judicial perusal and initiation of criminal prosecution against the offenders or not. This proposed mechanism will stop the false and vexatious prosecution against such aforementioned persons. The object of this proposed legal provision which carved out the exception to cardinal principle of criminal law that a criminal prosecution can be initiated at the instance of any person is to prevent an unauthorized person from intruding[56] in the corporate insolvency process by instituting a criminal prosecution and to secure that such criminal prosecution shall only be instituted after the application of mind and sanction given by the board at the instance of authorised person. The other reason for such protection is to avoid vexatious prosecution instituted solely on the basis of professional rivalry or animosity, corporate rivalry or animosity, personal enmity to wreak vengeance against such persons or to harass or pressurising such person, and ultimately to thwart the CIRP. The tertiary objective of the proposed legal provision is to save innocent professionals or the person by effectively blunting the implication of penal provisions of the code.

The second clause to section 236(2) can be amended to grant the power to AA to direct the resolution professional to file criminal complaint, or alternatively, can be amended to concede powers to the resolution professional who is the first aggrieved person to file a complaint after getting sanction from the AA. This will take away the protection and therefore, the prosecution will be launched much faster. The Board would not be unnecessarily involved in every criminal case wherein the AA whilst granting sanction have already witnessed prima facie case of non-cooperation or the IRP/ RP. Though subsection 3 of section 236 prescribes the application of Bhartiya Nagrik Suraksha Sanhita 2023, for the sake of clarity new subsection should be inserted so as to enable investigation and remand in the case on hand. Secondly, the contempt proceedings should be considered as the evidence in the trial.

CONCLUSION

From a legal perspective, the researcher has found that several provisions are not aligned with the central theme or principles enshrined in the code or the cardinal principles of law. Because of the reasons mentioned hereinabove, the law and legal provisions thereof don't reflect the same legal intent and are not aligned with it. The effectiveness of sections 68 and 70 are to some extent diminished as the proviso is counter effective. These are amongst several provisions that are inconsistent and not aligned with the primary legislative intention and object of the code. It creates a fallacious principle of criminal law. The principle of deterrence of criminology will work when the person would understand the legal duties and punished for the act of disobedience or non-cooperation. On the other hand, the amendment to section 236 as discussed at length in the previous part is also needed. Equipping the AA with the power to direct the IRP or RP to lodge a complaint or FIR against such officers of the corporate debtor will serve so many purposes. Otherwise, enabling the Resolution Professional to file a complaint before the special judge is also an alternative solution as he is the first victim of the crime. The researcher may conclude this work with this observation that though the legislative intention was very genuine, due to error and legislative oversight, the desired result couldn't be achieved.

[56] Queen Empress v. Bal Gangadhar Tilak (1897) ILR 22 Bom. 112, 125.

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