

Eight Annual Day
of
Insolvency and Bankruptcy
Board of India

01.10.2024

THE DIGNITARIES ON THE DIAS AND OTHERS;

- **Dr. V. Anatha Nageswaran**, Chief Economic Advisor, Ministry of Finance.
- **Mr. Amitabh Kant**, India's G20 Sherpa and Former CEO, NITI Aayog.
- **Mr. Ravi Mittal**, Chairperson, IBBI.
- **Members** of NCLT.
- **Senior officials** of the Government and IBBI.
- Resolution Professionals, Legal Experts and Friends.

Chief Justice (Retd.) Shri Ramalingam Sudhakar
President, NCLT

- It is my great pleasure to be part of the 8th Annual Day Celebration of IBBI and preside as a Chief Guest. As President of NCLT, I represent one pillar of the system that guides and empowers corporate governance and insolvency resolution.

- I congratulate the Chairman of IBBI, Board of Members of IBBI, Whole Time Members and his team on the great strides that they have made over the years to make this law a game changer in the financial and economic policy of India. India took to change in the insolvency law after great deliberations assessing the positive and negative aspects of insolvency in other jurisdictions. The Code endeavour to address insolvency in a more effective and in a time bound manner. When I say time bound manner, our intention is to achieve the timeline specified under the Code. Our sincere endeavour has shown great results, but the critical timeline envisage another Code is yet to be achieved and I believe it can be. This can happen only when all the three pillars join together.

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- IBC through its regulatory body has transformed and reshaped the Indian Insolvency landscape. The Code is a dynamic living entity evolving, adapting and improving to support the adjudicatory process of NCLT. This great achievement is inclusive on account of the regulator the adjudicating authority as also the active participation of Financial Creditors, Operational creditors, Banks, IPs, Members of the Legal Fraternity, Company Secretaries, Home buyers, Creditor of all class, (Corporate Debtors) etc. The Ministry of Corporate Affairs provides the platform and assistance to enable NCLT to perform. The support and co-operation of all three are critical for effective implementation of IBC.

- I recall the statement of Hon'ble President of India in her address to the Parliament appreciating IBC as one of the transformative reforms. Hon'ble President of India stated that IBC has made India's banking Sector one of the strongest in the World. Hon'ble Prime Minister of India has appreciated the landmark achievements of settlement of cases before admission due to the efficiency of the Code and the adjudicating process. Hon'ble

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Finance Minister has appreciated the Code as a better legal framework among all other similar laws. The achievement of NCLT and IBC within a short span of seven years was highlighted.

- You may wonder how this is happened. Primarily when a Code is set in motion and adjudicated it has several hurdles like challenge to the provisions of the Code. Then we had COVID 19. One may wonder as to why in a case of debt and default there is a long delay in admission and in the CIRP. Let me explain. Banks & other Financial Institutions file petitions containing 20-30 volumes of documents – Reply is filed with another 10-20 volumes- Then there is convenience compilation. A battery of stalwarts of the legal fraternity appear and argue the case interpreting the loan agreement entered over a period of time and a tripartite agreements- Eg. Highway project, Steel projects, Power projects, Port projects, Housing projects, jewellers etc. In a PG case today the document filed was 25+2+5=32 volumes. In the jeweller case it is 39 volumes. If critics can go through the various detailed orders passed by NCLT in the admission cases, interlocutory applications etc. It will make one realise the

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complex nature of the litigations, the complex nature of the case presented by the parties, the legal issues raised, the judgements of the Hon'ble Supreme Court and Hon'ble High Court relied upon. The best of the best legal luminaries appear before all NCLTs and argue the case at length. An Informed and considered decision is given by the Adjudicating Authority. This cannot be done in a matter of few days given the fact that arguments of both sides consumes more time than the time stipulated under the Code. It will not be an exaggeration to say that each one of this case is like an original Civil Suit or a Commercial suit but decided within the framework of IBC.

- One important factor for this achievement of IBC is primarily due to the enormous and continuous support given by the Hon'ble Supreme Court in its various decisions interpreting the provisions of the Code to make it a living legislation. We have to profusely thanks to the Hon'ble Supreme Court for its able guidance in this facet of law. Hon'ble High Courts have also given their share of rulings. However, one factor which troubles me is that Corporate Debtor are rushing to Hon'ble High Courts

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bypassing alternate remedy despite the fact there is an appeal provided to the Hon'ble NCLAT. Needless to state Hon'ble NCLAT has been rendering good many wonderful rulings on the interpretation of the Code which has served the cause and purpose behind the Code. The rulings of the Hon'ble Supreme Court and the High Court NCLAT on several landmark cases has enabled the march of law.

- On its part IBBI has been tweaking the Code based on discussion to enable it to address various issues, that troubles the Adjudicating Authority.

A. Tailored Approach for Real Estate Cases:

The tailored approach for Real Estate cases where amendments enables CoC to direct RPs to invite separate plans for each Real Estate project, separate bank accounts of each real estate project and also ensuring financial transparency and accountability. Needless to state a large number of stressed assets of Real Estate resolved by IBC like in the case of JP Infratech is a very good example of the robustness of the Code. Despite its initial fall it got

back on the rails by an order of the Principal Bench in which a total of 150 volumes of documents, pleading were presented.

B Issuance of Guidelines for CoC

IBBI has made its mark directing CoC to take the decision promptly and effectively. This is because time is the essence for proper and effective resolution to safeguard the value to the asset in distress.

C. Advancement in Liquidation Progress

This facilitate smoother liquidation process with the accountability and enhances stakeholders' confidence.

D. Flexible Mechanism to fix reserve price

Flexible mechanism to fix a reserve price within the framework of the CIRP process and the approval of the Stakeholders Consultation Committee (SCC). It also includes enhanced oversight of SCC during a fixed timeline and time bound meetings for effective process.

E Greater oversight over cost and valuation methodology

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One other issue taken by IBBI is the greater oversight over cost and valuation method, disclosure of the fair value Information Memorandum.

- In the budget speech of 2024 -2025 Hon'ble Finance Minister has announced an Integrated Technology Platform for achieving consistency, transparency, timely processing and better oversight for all stakeholders. I hope the same will be taken upon priority basis.
- The most important aspect of IBC is corporate discipline and the records as per our monthly report on case progress MRCP shows much greater achievement than all other courts. As on 27.09.2024 - 1128 plans have approved.
- **Some achievements of NCLT which I am highlighting are**
 - In the year 2022-23, the percentage of recovery under IBC was 40.3% which is more than 4 times that of the recovery under DRT I.e. 9.2%. In the year 2023-24, NCLT achieved a significant 37% increase in Resolutions by plan approvals, jumping from 196 cases in 2022-23 to 269 in 2023-24. In

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terms of value, the NCLT achieved a remarkable increase of 113% of approved amount under plans rising from Rs.62000 Cr. to about Rs.132,000 Cr. The NCLT has helped bring back into the system/ resolve around INR 16.50 lakh crore of debt stuck in 32,000 cases in the past 7 years.

- Further, there has been a remarkable change in the behaviour of Corporate Debtors as is evident from a large number of settlements of INR 11.60 Lakh crore in 31,000 cases spurred by the fear of losing the companies.
- Further, the IBC and the good work done by the Members of NCLT, has such deterrence that large bad loan cases are getting sorted out before reaching the gates of NCLT. The NPAs (Non performing Assets) of the Banks reduced to a 12 years low of 2.8% in March, 2024. The timeline for resolution also has shown greater improvement despite the Covid-19 setback.
- To tackle the peculiar situation emanating from Covid-19, the project of e-Courts with VC hearing has been initiated as directed by Hon'ble Supreme Court for better synchronization between offline and online litigants. Further, the Wi Fi facility

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has been provided in all the 16 NCLT Benches across the country for use of litigants/advocates to enable them to participate in other court proceedings from NCLT premises.

- After passing of judgment in case of Dilip B. Jiwrajka by Hon'ble Supreme Court regarding constitutionality of Section 95 i.e. Insolvency Resolution Process of Personal Guarantors of Corporate Debtors, NCLT benches across the country admitted large number of matters and there is a significant number of admissions of insolvency resolution proceedings against Personal Guarantors as well.

➤ NCLT has taken over the work of Company Law Board, Company Courts of the respected Hon'ble High Courts. It is also takes over little bit of Commercial Court and some of the adjudication part takes a character of the Commercial Court. Therefore, there is a need to substantially increase the strength of NCLT Courts because the Madras Bar Association case dealt with only company cases transferred to NCLT. IBC came in later on and no courts was provided for the same. This is greatly impacting the adjudicatory process. It is a complex adjudication and, therefore, the criticism of simple input output theory of debt and default

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cannot be strictly applied. However, the timeline can be achieved to a great extent provided there is enough number of courts, number of Judges, equal number of Officers and staff and with a proper court infrastructure and financial budget provision all of this is sadly missing. I only hope that in time to come it will get resolved.

- One other feature which I have imbibed in the system with the help of Chairman of IBBI is the holding of the regular Colloquium for the Hon'ble Members. This is a brainstorming session which helps us in honing our skills for better and effective adjudication and the result are evident.
- The first Colloquium organised by me was in March 2022 and thereafter taking leaf out of the page. MCA and IBBI did a major IBC Colloquium in November 2022 with high level participation and excellent result. Thereafter we have been conducting regular colloquium with the active participation of MCA and IBBI. Though there appears to be some resentment on the colloquium in some quarters. I feel that this is the best method of learning for Judges of the Tribunal to refine and define themselves and this credit also

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goes to Hon'ble Members of the NCLT. This helps in empowering the Institution.

- I once again congratulate IBBI for its wonderful support and achievement within this short span of time. It has achieved great milestones and I hope it will continue to do so.

Wish you all the very best.

Thank you.

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