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**STANDING COMMITTEE ON FINANCE
(2023-24)**

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the Observations/Recommendations contained in Thirty-second Report (17th Lok Sabha) on the subject 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions']

SIXTY-SEVENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2024 / Magha, 1945 (Saka)

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(2023-2024)

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Presented to Lok Sabha on 06 February, 2024

Laid in Rajya Sabha on 06 February, 2024



LOK SABHA SECRETARIAT
NEW DELHI

February, 2024 / Magha, 1945 (Saka)

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* Not appended in the cyclostyled copy

COMPOSITION OF STANDING COMMITTEE ON FINANCE (2023-24)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Dr. Subhash Ramrao Bhamre
6. Smt. Sunita Duggal
7. Shri Gaurav Gogoi
8. Shri Sudheer Gupta
9. Shri Manoj Kishorbhai Kotak
10. Shri Pinaki Misra
11. Shri Hemant Shriram Patil
12. Shri Ravi Shankar Prasad
13. Shri Nama Nageshwara Rao
14. Prof. Sougata Ray
15. Shri P.V. Midhun Reddy
16. Shri Gopal Chinayya Shetty
17. Shri Parvesh Sahib Singh
18. Dr. (Prof) Kirit Premjibhai Solanki
19. Shri Manish Tewari
20. Shri Balashowry Vallabbhaneni
21. Shri Rajesh Verma

RAJYA SABHA

22. Dr. Radha Mohan Das Agarwal
23. Shri Raghav Chadha
24. Shri Damodar Rao Divakonda
25. Shri Ryaga Krishnaiah
26. Shri Sushil Kumar Modi
27. Dr.Amar Patnaik
28. Dr. C.M. Ramesh
29. Shri G.V.L. Narasimha Rao
30. Shri Pramod Tiwari
31. Dr. Dinesh Sharma*

SECRETARIAT

- | | | | |
|----|------------------------------|---|-------------------|
| 1. | Shri Siddharth Mahajan | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Joint Secretary |
| 3. | Shri Puneet Bhatia | - | Deputy Secretary |
| 4. | Ms. Melody Vungthiansiam | - | Committee Officer |

* Dr. Dinesh Sharma has been nominated to the Standing Committee on Finance (2023-24) w.e.f 25th October, 2023..

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorized by the Committee, present this Sixty-Seventh Report on action taken by Government on the Observations / Recommendations contained in the Thirty-second Report of the Committee (Seventeenth Lok Sabha) on 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions'.

2. The Thirty-second Report was presented to Lok Sabha / laid on the table of Rajya Sabha on 03 August, 2021. The updated Action Taken Notes on the Observations/Recommendations were received from the Government *vide* their communication dated 26 July, 2023.

3. The Committee considered and adopted this Report at their sitting held on 22 December, 2023.

4. An analysis of the action taken by the Government on the Recommendations contained in the Thirty-second Report of the Committee is given in the Appendix.

5. For facility of reference, the Observations/Recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI
22 December, 2023
01 Pausha, 1945 (Saka)

JAYANT SINHA,
Chairperson,
Standing Committee on Finance

REPORT

CHAPTER – I

This Report of the Standing Committee on Finance deals with action taken by the Government on the recommendations/observations contained in their 32nd Report (Seventeenth Lok Sabha) on the subject 'Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions' of the Ministry of Corporate Affairs which was presented to Lok Sabha / laid in Rajya Sabha on 3 August, 2021.

2. The Action Taken Notes have been received from the Government in respect of all the 15 recommendations contained in the Report. These have been analyzed and categorized as follows:

- (i) Recommendations/Observations that have been accepted by the Government:

Recommendation Nos. 1,3,4, 5, 7, 8, 9,10, 11, 13, 14 & 15

(Total 12)
(Chapter- II)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies:

NIL

(Total NIL)
(Chapter- III)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

Recommendation Nos. 2, 6 & 12

(Total 3)
(Chapter -IV)

- (iv) Recommendations/Observations in respect of which final replies by the Government are still awaited:

NIL

(Total - NIL)
(Chapter- V)

3. The Committee desire that the replies to the observations/recommendations contained in Chapter-I may be furnished to them expeditiously.

4. The Committee will now deal with and comment upon the action taken by the Government on some of their recommendations.

Recommendation (Serial No. 2)

5. The Committee note that the Insolvency Professionals (IPs) or Resolution Professionals (RPs) form a significant part of the four pillars of the insolvency resolution ecosystem. These professionals act as intermediaries in the corporate insolvency resolution process and as such play an indispensable role in the whole process. The Committee is apprehensive about fresh graduates being appointed as Insolvency Professionals or Resolution Professionals without any experience and is doubtful about their competency in handling cases of huge and complex corporations. The Committee find that there are numerous conduct issues with regard to RPs for which the two regulators IPA and IBBI have taken disciplinary actions on 123 IPs out of a total of 203 inspections conducted till date. The rationale behind multiple IPAs overseeing the functioning of their member IPs instead of a single regulator is unclear and this current practice would lead to a conflict of interest between the regulatory and competitive goals of the IPA. The Committee believes that a professional self-regulator for RPs that functions like the Institute of Chartered Accountants of India (ICAI) should be put in place. The Committee, therefore, recommends that an Institute of Resolution Professionals may be established to oversee and regulate the functioning of RPs so that there are appropriate standards and fair self-regulation. The Committee further notes that smooth functioning of IBC depends on the functioning of entities viz. Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Committee believes that these entities have to evolve over time for which capacity enhancement programmes should be conducted from time to time.

6. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The two-tier regulatory structure or the "regulated self-regulation" model for the development of IPs was framed on the recommendation of Bankruptcy Law Reform Committee (BLRC) Report dated 04th November 2015. The extract of the BLRC report is reproduced under:

"...The Committee deliberated on the question of regulation versus development. The Indian experience on self-regulating professional bodies {such as Institute of Chartered Accountants of India (ICAI), Bar Council of India and Institute of Company Secretaries of India (ICSI)} has been reasonably positive in the development of their respective professions and professional standards. However, the experience on their role in regulating and disciplining their members has been mixed. In comparison, financial regulators (such as SEBI and RBI) have had greater success in preventing systemic market abuse and in promoting consumer protection.

Thus, the Committee believes that a new model of "regulated self-regulation" is optimal for the IP profession. This means creating a two-tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary. These actions will be within the standards that the Board will define. The Board will have oversight on the functioning of these agencies and will monitor their performance as regulatory authorities for their members under the Code. If these agencies are found lacking in this role, the Board will take away their registration to act as IP agencies."

According to the BLRC, the regulatory structure should be designed for promoting competition amongst the multiple IPAs to help achieve efficiency gains. Greater competition among the IPAs will in turn lead to better standards and rules and better enforcement. A single IPA or regulatory body like the Institute of Resolution Professionals will result in a monopoly which will be inefficient and less progressive over time.

Further, the two-tier regulatory structure, comprise of IPAs as the front-line regulator, and IBBI, as the principal regulator of IPs. They monitor disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminates the same on their respective websites. IPAs also conduct and monitor continuing professional education (CPE) of their member IPs. IBBI being principal regulator closely monitors the

performance and conduct of IPs in accordance with the mandate under the Code read with the Code of Conduct as provided in the IBBI (Insolvency Professionals) Regulations, 2016. IBBI on discovery of any deficiency related to his conduct is mandated to take appropriate action. It conducts inspection where it has reasonable grounds to believe that IP has contravened any of the provisions of the Code or rules or regulations of IPs in accordance with the policy to ensure necessary checks and balances. Further, based on examination of the inspection report or otherwise material available on record, IBBI issues show cause notice (SCN). It is also pertinent to mention that both IBBI and IPAs conduct roundtables, seminars, workshops and webinars for building capacity of IPs."

7. The Committee note that the two-tier regulatory structure for the development of Insolvency Professionals (IPs) was framed on the recommendation of the Bankruptcy Law Reform Committee (BLRC). The BLRC believed that such a model would enable the Regulator to create a competitive market for IP agencies under it unlike the current structure of professional agencies which have a legal monopoly over their respective domains. In seven years of the existence of the Insolvency and Bankruptcy Code, the Resolution Professionals (RPs) have executed the Corporate Insolvency Resolution Process (CIRP) and evolved in their understanding and implementation of the Code. Given the complexity of the resolution process and the number of penalties on RPs, the Committee continue to be apprehensive of the capability of the RPs in carrying out time bound resolution of huge companies with complex cases and believe that there is a need to revisit the rules regarding the functioning of RPs. Most penalties carried out by IBBI against RPs reveal misinformation and unawareness of the CIRP process by RPs. The IBBI in its role as principal regulator continues to tweak the norms for functioning of RPs including fixing a fee structure for RPs with performance linked incentives and enabling Insolvency Professional Entities (IPEs) to function as RPs.

The Committee hope that these amendments would augment the performance of RPs in cutting delays in the resolution process and preventing value erosion of stressed assets. The Committee further recommend that the IBBI should undertake capacity building exercise of RPs and IPEs that function as RPs, as they directly aid in swifter resolutions without compromising the value of the assets.

Recommendation (Serial No. 6)

8. With regard to staffing, the NCLT is currently functioning without a regular President and is short of 34 Members out of the total sanctioned strength of 62 Members. The Committee is deeply concerned to note that more than 50% of the sanctioned strength in NCLT is lying vacant and that the issue of vacancy has plagued the Tribunal for years. The Committee desires that an analysis of the requirement of capacity in dealing with projected cases in the next three-four years may be done so that the recruitment process can be suitably planned in advance. The Committee therefore recommends that the required sanctioned strength may be filled without any further delay. There is also a need for imparting better training to NCLT Members. The Committee also recommends that National Law Schools should be involved in the NCLT system so that they can conduct academic research, develop suitable case-based training materials, and provide appropriate support through law clerks and so on.

As the IBC cases have a direct impact on the economy and are imperative in maintaining the health of the financial sector, the Committee desire that dedicated benches of NCLT solely for IBC may be created and institutional capacity of NCLT benches be enhanced accordingly. There is also a need for having specialised benches for sectors such as MSMEs with requisite domain expertise.

9. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"Filling up of vacancies of members is a dynamic process and vacancies are filled from time to time. In 2019, 28 new Members were appointed, bringing the number of total Members to 52. After subsequent completion of term/ demitting of office by some of the Members, the number of Members had reached to 28 in the month of September, 2021. Meanwhile, the process for the appointment to the 21 vacant posts, which arose by 31st December, 2020, was completed and the Government approved appointment of 11 candidates as Judicial Members and 10 candidates as Technical Members, based on the recommendations of the Selection Committee. Out of these, 20 members (11 Judicial and 9 Technical) joined bringing the total number of Members to 47 (22 Judicial and 25 Technical) which was around 75% of total approved strength. The process of appointment for 15 vacancies, which had arisen during 2021, was also completed and the Government approved appointment of 09 candidates as Judicial Members and 06 candidates as Technical Members, based on the recommendations of the Selection Committee. Out of these, 14 candidates, (08 Judicial and 06 Technical) joined NCLT.

For 17 vacancies, including 15 vacancies arisen recently in the month of June-July, 2022, and 2 more vacancies arising by 31.12.2022, an advertisement inviting applications for 19 vacancies (08 Judicial and 11 Technical Members) was issued on 12.07.2022, and based on the recommendations of the Selection Committee, Government has approved appointment of 09 candidates to the post of Judicial Member and 12 candidates to the post of Technical Member. The Offers of appointment to these 21 candidates have been issued on 03.07.2023, and out of these 21 candidates, 16 candidates have joined as Members, NCLT (06 Judicial and 10 Technical) bringing the total number of Members to 53 (24 Judicial and 29 Technical). Out of remaining 05 candidates, 04 are expected to join soon while 01 candidate has expressed his inability to join. Upon joining of remaining 04 candidates, the strength will become more than 90% of the sanctioned strength.

The Government appointed Mr Justice Ramalingam Sudhakar, former Chief Justice of Manipur High Court as President, NCLT, on the recommendation of Hon'ble Chief Justice of India. Justice (Retd.) Ashok Bhushan, former Judge of the Supreme Court of India has been appointed as Chairperson of NCLAT. In respect of NCLAT, a vacancy circular was issued on 23.12.2022 for filling up of then existing and anticipated vacancies of 03 posts of Members (01 Judicial Member and 02 Technical Members). Based on the recommendations of the Search-cum-

Selection Committee, Government has approved appointment of 02 candidates to the post of Technical Member. The Offers of appointment to these 02 candidates have been issued on 10.07.2023 and they are expected to join NCLAT soon. Regular Colloquiums are being held for capacity building of Members to ensure speedier and uniform judicial delivery system. To inculcate and imbibe the qualities of a Member and to make a new Member aware of all the basic principles of Company law, IBC and LLP Act, the induction programme are being conducted for the newly appointed Members of NCLT and NCLAT. Members joined in September-October, 2021 in NCLT, an Induction Training Colloquium was organized from 4th to 10th October, 2021. Another Colloquium for NCLT Members was organized on 26th and 27th March, 2022 in New Delhi on the subject of "NCLT-The Road Ahead-2022". The Insolvency and Bankruptcy Board of India (IBBI) has also organised a two-day Colloquium on the theme 'Functioning and Strengthening of the IBC Ecosystem' from November 19 to 20, 2022 in New Delhi. For newly appointed Members, an Induction Training Colloquium is proposed to be organized from 19.07.2023 to 03.08.2023.

National Law University, Delhi, which is a premier law university in India established by the National Law University Act, 2007 (Delhi Act No. 1 of 2008), was involved in conducting induction Colloquium from 13th July 2019 to 27th July, 2019 for NCLT Members of 2019 batch.

As far as dedicated benches for IBC and MSME sector are concerned, it is stated that such dedicated benches have not been provided in the law, as NCLT and NCLAT themselves are specialized courts for the corporate matters."

10. The Committee note that offer of appointment of 21 Members of NCLT had been issued on 03.07.2023 out of which 16 Members have joined, 4 Members are yet to join while 1 candidate has expressed his inability to join. This would bring the total strength to 57 Members out of the sanctioned strength of 62 Members. The Committee acknowledge that for the first time since its inception, the strength of NCLT would be more than 90% of its sanctioned strength. However, the Committee feel that in order to tackle the huge pendency of more than 20000 cases in NCLT at the end of every year, the sanctioned strength of NCLT needs to be enhanced.

Further, the reply of the Ministry reveal a vicious cycle of appointment of new Members alongside retirement/completion of term of old Members thereby rendering a perpetual vacancy in the Tribunal that is plagued with inordinate delays in cases regarding both IBC and Companies Act. The Committee have, in their earlier Reports on Demands for Grants, Subject and Bill, repeatedly mentioned the need for filling up the vacancies in NCLT. The Committee find that their recommendation regarding analysis of the capacity requirement *vis a vis* projected cases in the NCLT in the next few years has not been heeded to. Apart from the human resource gaps, the Committee would like to highlight that the NCLT is functioning with poor infrastructural setup. The Committee recommend that the Ministry should prioritise addressing the requirements of the Tribunal urgently and fill the infrastructural and human capacity gaps without further delay. The Committee believe that equipping the NCLT is a crucial step in improving the implementation of IBC especially in timely resolution of cases.

Recommendation (Serial No. 12)

11. It is a matter of grave concern for the Committee that the insolvency process has been stymied by long delays far beyond the statutory limits. It is disconcerting that even admission of cases in NCLT has been taking an unduly long time, which thus defeats the very purpose of the Code. There have also been instances of frivolous appeals, which further drags the resolution/recovery process leading to severe erosion of asset value. The Committee would therefore recommend that misuse/ abuse of well-intended provisions and processes should be prevented by ensuring an element of finality within the statutorily stipulated period without protracted litigation.

12. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The Government has amended the Code vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 6.08.2019 which provides that the NCLT should record reasons in writing in case it has not ascertained the existence of default in respect of financial creditor's application for initiating corporate insolvency resolution process (CIRP) under section 7 of the Code within 14 days from the date of filing of such application, further, the CIRP should not go beyond a period of 330 days including litigation period. The 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances [*Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited &Anr.*].

Further, the timelines have to be met not just by Adjudicating Authority but also by the IP conducting the process with the cooperation of other stakeholders. Streamlining and removing bottlenecks by amending the Code and Regulations are done to speed up the process. Also, IBBI organizes workshops, seminars, conferences, webinars, etc. from time to time for capacity building of the IPs along with other stakeholders to ensure that timelines are being followed at every stage."

13. The Insolvency and Bankruptcy Code which was enacted in 2016 aimed at timely insolvency resolution and maximising the value of stressed assets through the Corporate Insolvency Resolution Process (CIRP) with the key players including the Resolution Professionals (RPs), Adjudicating Authority, Committee of Creditors (COC), Insolvency and Bankruptcy Board of India (IBBI) and Information Utility as well. The Code has gone through a number of amendments and is still evolving. The Committee observe that there are inordinate delays in the resolution process resulting in value erosion of stressed assets. The Committee during their discourse on the IBC process find that the actual recoveries on the ground are roughly between 25 to 30 per cent and some cases take as long as two years for resolution,

far beyond the time limit envisaged. In the light of the experience gathered so far, the Committee believe that the design of the Code needs to be reviewed, taking into account the lacunae and roadblocks that have surfaced in implementing the Code so far, so that the very purpose behind its enactment is not defeated. The process of admitting claims also needs to be revisited as huge delays occur at this stage creating a domino effect on the whole resolution process, most critically degeneration of asset value. The Committee may be apprised of the steps taken in this regard.

NEW DELHI
22 December, 2023
01 Pausha, 1945 (Saka)

JAYANT SINHA,
Chairperson,
Standing Committee on Finance

Minutes of the Fifth sitting of the Standing Committee on Finance (2022-23) The Committee sat on Friday, the 22nd December, 2023 from 1100 hrs. to 1300 hrs. in Committee Room '2', Parliament House Annexe Extension Block A, New Delhi.

**PRESENT
MEMBERS**

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Sudheer Gupta
7. Shri Hemant Shriram Patil
8. Shri Gopal Chinayya Shetty
9. Dr. (Prof.) Kirit Premjibhai Solanki

RAJYA SABHA

10. Dr. Radha Mohan Das Agarwal
11. Shri Ryaga Krishnaiah
12. Dr. Amar Patnaik
13. Shri G.V.L Narasimha Rao
14. Dr. Dinesh Sharma

SECRETARIAT

- | | | | |
|----|------------------------------|---|------------------|
| 1. | Shri Ramkumar Suryanarayanan | - | Joint Secretary |
| 2. | Shri Puneet Bhatia | - | Deputy Secretary |

PART I

- | | | | | | | |
|----|----|----|----|----|----|-----|
| 2. | XX | XX | XX | XX | XX | XX |
| | XX | XX | XX | XX | XX | XX. |

(The witnesses then withdrew)

PART II

3. Thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i) Draft Report on the subject 'Performance Review and Regulation of Insurance Sector' pertaining to the Ministry of Finance (Department of Financial Services).
- (ii) Draft Action Taken Report on the observations/recommendations contained in their Thirty-Second Report on the subject 'Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions' pertaining to the Ministry of Corporate Affairs.
- (iii) Draft Action Taken Report on the observations/recommendations contained in their Forty-Sixth Report on 'Strengthening Credit Flows to the MSME Sector' pertaining to the Ministry of Finance (Department of Financial Services) and Ministry of Micro, Small and Medium Enterprises.

After deliberation, the Committee adopted the above draft Reports without any change and authorised the Chairperson to finalise them and present to the Hon'ble Speaker / Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

APPENDIX

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE THIRTY SECOND REPORT OF THE STANDING COMMITTEE ON FINANCE (SEVENTEENTH LOK SABHA) ON "IMPLEMENTATION OF INSOLVENCY AND BANKRUPTCY CODE - PITFALLS AND SOLUTIONS"

	Total	% of total
(i) Total number of Recommendations	15	
(ii) Recommendations/Observations which have been accepted by the Government (vide Recommendation at Sl. Nos. 1,3,4, 5, 7, 8, 9,10, 11, 13, 14 & 15)	12	80%
(iii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies	Nil	0.00
(iv) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee (vide Recommendation at Sl. Nos. 2,6 & 12)	3	20%
(v) Recommendations/Observations in respect of which final reply of the Government are still awaited	Nil	0.00