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Protection of Creditors' Interest with Special Reference to Corporate Insolvency Law in India

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ABSTRACT

There was a ray of optimism for creditors with the advent of the IBC; for numerous eons, India had numerous laws overlying with one other, resulting in unproductive and overdue debt recovery. The IBC provided comprehensive and stable insolvency legislation that applied to all corporations, limited liability partnerships, partnership enterprises, and individuals. It permits creditors to select a "insolvency resolution process" to analyse the debtor's firm and determine whether it should be rescued or liquidated.' To support an effective and efficient bankruptcy resolution process or liquidation, the bankruptcy and Bankruptcy Code established a new framework comprised of insolvency resolution experts and a new insolvency regulator, the Insolvency and Bankruptcy Board of India." Most crucially, the Code has established a 180-day deadline for completing an insolvency resolution process. It further states that beyond the 180-day limit, only one extension of 90 days is permissible. However, the 2019 Amendment mandates that the Corporate bankruptcy Resolution Process be completed within 330 days of the bankruptcy commencement date (including all or any extensions granted, as well as any litigations and related legal actions). Furthermore, for an ongoing CIRP, if the 330-day overall deadline has already been violated at the time the Amendment takes effect, the Amendment provides for an extra 90-day relaxation as a transitional measure. Insolvency occurs when an individual or organisation is unable to meet its financial commitments to its lender or lenders when the debt comes due. Insolvency can be caused by a variety of circumstances, including inadequate cash management, increased spending, or decreasing income. Despite the fact that insolvency and bankruptcy are synonymous, "Bankruptcy is not the same as insolvency; bankruptcy occurs when a judge has determined insolvency and issued legal orders to remedy it. A bankruptcy occurs when an individual declares himself insolvent and goes to court. When a bankruptcy is declared, the court is responsible for liquidating the insolvent's assets and paying creditors. According to the studies, IBC 2016 is an appropriate action implemented by the IBBI for the resurrection or liquidation of sick enterprises. It is a timebound technique that aids in the quick recovery of debts." However, several research failed to reveal the rationale and experts' perspectives on the IBC's effective

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implementation. As a result, the current study attempted to investigate expert opinion and uncover vulnerabilities in the current Code, which is said to be a robust design.

I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016, provided new legislation for the insolvency resolution of individuals, corporations, partnerships, and limited liability businesses. This legislation is intended to stabilise and change the laws described in numerous enactments in a distinctive way. The Code intends to appoint the NCLT and DRT as adjudicating authorities for corporate persons, firms, and people, respectively, for insolvency resolution and for liquidation and bankruptcy. The Code distinguishes between the judicial and commercial parts of insolvency and bankruptcy proceedings. “The Insolvency and Bankruptcy Board of India (Board) will be established under the Code to regulate insolvency practitioners, insolvency professional organisations, and information utilities. Professionals in insolvency law will help to conclude the insolvency resolution, liquidation, and bankruptcy proceedings envisioned in the Code.” To make such proceedings easier, information utilities would gather, compile, authenticate, and communicate financial information. For the reasons outlined in the Code, the Insolvency and Bankruptcy Fund of India is another fund that the Code seeks to establish. The Insolvency and Bankruptcy Code, 2016, seeks to balance the interests of all stakeholders, including changing the priority of payment of liquidation proceeds, by combining and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a timely manner for maximisation of the value of those persons' assets. An efficient legal structure that allows for prompt insolvency and bankruptcy resolution fosters the growth of the credit markets and promotes entrepreneurship. Additionally, it makes doing business easier and encourages more investments, which boosts economic growth and development.

II. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

“The Insolvency and Bankruptcy Board of India, which regulates the IBC, is in charge of the activities of Information Utilities (IU), Insolvency Professionals (IP), and Insolvency Professional Agencies (IPA).²The IBBI is a corporate body with perpetual succession and a common seal that was founded on October 1, 2016, under the IBC. IBBI's head office is in New Delhi, and the organization's mission is to carry out tasks related to IPA, IP, and IU. IBBI's

² “Insolvency and Bankruptcy Board of India (2020) Available at: [https://ibbi.gov.in/en/about_\(visited 14 April 2023\)](https://ibbi.gov.in/en/about_(visited 14 April 2023)).”

membership consists of a chairman, 3 members appointed by the CG to represent the MCA, the Ministry of Finance, and the Ministry of Law, 1 member proposed by the RBI, and 5 more members nominated by the CG

(A) Insolvency professionals

The resolution process outlined under the IBC functions effectively and dynamically in large part because to insolvency professionals. They serve as a liquidator, verify the validity of the creditors' claims against the corporate debtor, and continue to operate the bankrupt's business during the resolution process. The IBC's terms and conditions must be followed, and insolvency practitioners are obligated to give IPA access to their archives by giving a copy of them to the “adjudicating authority.”³

III. INFORMATION UTILITIES

A central electronic database with information on debtors is known as IU. These details would be accessible to creditors, banking institutions, etc.

(A) Who can start the insolvency process?

“Insolvency resolution and liquidation provisions for corporate persons are covered in part II of the Insolvency & Bankruptcy Code, which states that where the minimum amount of default⁶⁰ is Rs. 1 lakh, the aggrieved can file an application for insolvency and liquidation of the debtor. This allows for the quick recovery of debts through the start of the Corporate Insolvency Resolution Process (CIRP). With the caveat that the CG may specify a higher minimum amount of default” that cannot be greater than Rs. 1 crore. When a corporate debtor defaults, either a financial creditor, an operational creditor, or the corporate debtor himself may initiate the CIRP. The 2016 Insolvency and Bankruptcy Code is a creditor-driven law since it places a strong emphasis on creditors' interests. There were no provisions in the older laws allowing creditors to start the insolvency procedure, therefore they were lacking in this area. However, under the IBC, both operational and financial creditors have the right to start the insolvency resolution procedure. Under this creditor can initiate: insolvency resolution process and create a committee of creditors of a individual debtor further permits the COC to designate an “Insolvency professional who can evaluate the financial standing of a business, partnership, LLP, or individual.””

(B) The insolvency resolution process

1. “A financial creditor acting jointly or individually with other financial creditors, an

³“The Insolvency and Bankruptcy code 2016 s 206. s 207.”

operational creditor, or a corporate debtor via a corporate applicant who is a corporate debtor on his own, or via an appointed member or a corporate debtor's partner, or a person who oversees and manages the corporate debtor's financial interests or initiates a corporate insolvency settlement. An application for CIRP approval will be filed with the Adjudicating Body, i.e. the NCLT. The OC is required to provide the corporate debtor with a notice of demand and a copy of an overdue debt invoice. If any or a record of a pending complaint was filed previously, the corporate debtor must provide the OC with evidence of an ongoing lawsuit within 10 days of receiving the notice, or the outstanding operating debt must be assessed. Unless the OC receives the payment or dispute notice within "10 days, the OC may activate the CIRP by submitting" a request to the NCLT."

2. "The CIRP must be completed within 330 days⁴ "from the day the application is accepted by the NCLT, i.e. the insolvency commencement date, including any extension of the period of CIRP granted and the time spent in legal proceedings in relation to the corporate debtor's" resolution process. During this time, creditors' claims will be suspended, and the NCLT will hear ideas and plans for resurrection. Until the insolvency process is completed, no suits, lawsuits, or legal processes can be filed against the corporate debtor.1"
3. "The NCLT shall appoint an interim Insolvency Resolution Professional within 14 days of the start of the resolution procedure. "The interim Insolvency Professional is only appointed for 30 days, during which time he assumes control of the corporate debtor's assets and operations and gathers financial information" from IU.
4. "The interim Insolvency Professional shall make a public statement of the start of the corporate insolvency resolution" procedure and invite creditors to submit claims."
5. After collecting and analyzing the claims received against the corporate debtor in response to the public notification, the interim IRP will constitute a committee of creditors. Except for parties affiliated to the corporate debtor, all financial creditors must participate in the committee of creditors, either directly or through a representative. If their cumulative dues exceed 10% of the debt, they will be members of the creditors committee but will not have voting rights.

⁴ "Amendment of Section 12 included in Insolvency and Bankruptcy (Amendment) Act, 2019. Earlier the timeline for CIRP was 180 days starting from the day the application is accepted by NCLT in addition with 90 days in special circumstances."

6. The committee of creditors must decide whether to replace the interim Insolvency Professional or affirm him as Resolution Professional in its first meeting, which must be held within seven days of its formation, by a majority vote of more than or equal to 66% of voting shares. Following confirmation from the Insolvency and Bankruptcy Board of India, the adjudicating authority (NCLT) appoints the Resolution Professional. The committee of creditors can alter the Resolution Professional at any time with a 66% majority vote.¹
7. All decisions concerning the bankruptcy resolution procedure must be made “by the committee of creditors with a 66% majority vote.”
8. The COC, through a resolution passed by 66% of the voting shares, may request a time extension beyond 180 days from the Adjudicating Authority; if the Adjudicating Authority (NCLT) is satisfied, it may grant a one-time extension of 90 days.
9. The Resolution Professional is responsible for managing the corporate debtor's assets and interests during the insolvency resolution process.
10. The Resolution Professional must prepare an information memorandum containing all essential information to allow the resolution applicant to establish a resolution strategy. A Resolution Applicant is anyone who presents a resolution plan to the resolution professional, either jointly or individually.
11. Following the approval of the resolution plan, the COC decides on the restructuring process, which may include a new repayment plan or liquidation. If the committee is unable to reach a decision, the corporate debtor's assets are liquidated in order to settle the loan.
12. “The resolution plan is referred to the Adjudicating Authority (NCLT) for final approval; if authorized, the Adjudicating Authority issues an order to implement the plan.”

IV. LIQUIDATION

a) the liquidation process is commenced in the ensuing circumstances:

- i. “When the settlement plan is not presented to the Adjudicating Authority (NCLT) within” the time limit of 330 days.
- ii. “When the Adjudicating Authority (NCLT) rejects the resolution proposal. When a resolution professional advises to the adjudicating authority of the decision of the committee of creditors approved by 66% voting shares to commence liquidation proceedings prior to the confirmation of the resolution plan.”

- iii. When the debt0r violates the resolution plan
- b) No suits, cases or judicial procedures can start against the corporate account holder during liquidation, besides by the vendor in the interest of the corporate borrower with consent from NCLT⁵
- c) Unless replaced, the Resolution Professional must operate as liquidator.¹²⁸
- d) 4. The liquidat0r is needed to create the liquidati0n estate, which includes all of the corp0rate debt0r's assets.
- e) Within the stipulated time frame, the liquidator must collect, verify, and admit/reject the creditor's claims against the corporate debtor.
- f) “The liquidat0r is required to divide the corporate debtor's assets in accordance with the debt priorities stated in the Insolvency and Bankruptcy Code, 2016:
 - i. The total cost of insolvency settlement and liquidation. “Workmen's dues for the last 24 months and secured creditor dues who have surrendered their security interest shall rank equally. Wages and other payments payable to employees other than labourers in the 12 months preceding the liquidation's start date. Debts payable to unsecured creditors and worker's compensation during previous periods.
 - ii. Crown debts and payments owed to secured creditors who did not give up their security interest”
 - iii. Any other obligations
 - iv. Preference is given to stockholders.
 - v. Partners or equity shareholders”
- g) All duty to any laborer or representative from the benefits reserve, the opportune asset and the tip asset will be treated as need duty.
- h) When the corporate debtor's assets have been totally liquidated, the liquidator must apply to the adjudicating body (NCLT) for dissolution.⁶⁷

V. FAST TRACK INSOLVENCY RESOLUTION PROCESS

The IBC provides for the initiation of a fast track insolvency resolution process for corporate debtors who are qualified by the CG and the code to apply for the fast track process.

⁵The insolvency and bankruptcy code, 2016. s 33(5).

⁶ “The Insolvency and Bankruptcy Code, 2016. s 54.”

⁷ Ibid.

Only the following corporate debtors will be subject to the fast track corporate bankruptcy resolution process:

- A startup that is not a partnership firm, according to the Companies Act of 2013.
- An unlisted company having total assets of less than Rs. 1 crore.⁷⁰

“A creditor or a corporate debtor can make an application for fast track corporate insolvency resolution, together with proof of default and any other documents and information requested by the adjudicating body in accordance with the IBC.”⁸

“The fast track corporate insolvency resolution process must be completed within 90 days of the start date of the insolvency. If the COC instructs the RP to do so, the RP may file an application with the adjudicating body to extend the aforementioned time beyond 90 days. If the adjudicating authority determines that such an extension is required for the completion of the process, the adjudicating authority” may issue one-time extension that may be extended for a time period 45 days for the same.

VI. AMENDMENTS IN THE ACT

When it was first enacted, the IBC enabled anybody to be a resolution applicant, which meant that anyone could propose a settlement plan for a corporate debtor against whom a corporate lawsuit has been filed bankruptcy resolution procedure had been begun. A resolution professional ("RP") was required by section 25(2)(h) of the IBC to Invite potential lenders, investors, and other stakeholders to submit resolution plans. The IBC Amendment proposes to change these provisions. The IBC Amendment requires an RP to invite only those applicants to submit a resolution plan who meet the criteria he establishes with the approval of the committee of creditors, taking into account the complexity and scale of operations of the corporate debtor's business, as well as any other conditions specified by the “Insolvency and Bankruptcy Board ("IBBI").Furthermore, a new section 29A of the IBC has been added that specifies some disqualification conditions. Notably, a person is ineligible to submit a resolution plan if the person, or any other person acting jointly or in concert with such person, has an account that has been classified as a non-performing asset ("NPA"), or if such person is a promoter or in management or control of a corporate debtor whose account has been classified as an NPA, and 1 (one) year has elapsed from the date of classification until the date of the corporate insolvency begins.”

As a result, incumbent promoters would have a difficult time bidding for their own companies.

⁸ “The Insolvency and Bankruptcy Code, 2016. s 57.”

However, such individuals may “submit a resolution plan if they pay all overdue sums with interest and charges relating to NPA accounts within the period determined by the committee of creditors (not to exceed 30 (thirty) days)” prior to the submission of the resolution plan.⁹

A person is also ineligible to be a resolution applicant if he or she, or any other person acting jointly or in concert:

“is an undischarged insolvent; falls under the Reserve Bank of India's definition of a "wilful defaulter" under the Banking Regulation Act of 1949; has been found guilty of a crime carrying a sentence of two years or more in prison; is disqualified from serving as a director under the Companies Act of 2013; is prohibited by the Securities and Exchange Board of India ("SEBI") from trading in securities or having access to the securities markets; has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction, or fraudulent transaction occurred and in respect of which an order has been made by NCLT under the IBC; has executed an enforceable guarantee in favor of a creditor .”

VII. PROTECTION OF CREDITORS’ INTEREST BY THE CODE

Companies may offer their stocks at a markdown to their creditors following the amendment to the IBC when their debts have been converted to equity in harmony with an IBC resolution plan.

As a result, enterprises that have declined to pay dues to any bank, NBFC, or secured creditor would now be required to obtain prior clearance from such lender before paying managerial salaries. The cash flow may also be monitored by the investors.

(A) “CREDITORS’ MEETING”

- Meeting of creditors refers to a meeting called by the corporation to devise a plan for reaching an agreement with the creditors. The Companies Act of 2013 specifies the company's ability to negotiate with creditors as well as the method for doing so.
- All creditors and the firm must approach the NCLT with detailed suggestions. The corporation must sue the bankruptcy court for any money needed to cover the creditors' debts. Nonetheless, the creditors seek the NCLT under the Insolvency and Bankruptcy Code of 2016. Under the IBC, 2016, creditors refer the defaulting corporation to arbitration, the creditors' committee takes over administration of the firm, and a

9RECENT DEVELOPMENTS IN THE IBC REGIME “<https://www.argus-p.com/papers-publications/thoughtpaper/recent-developments-in-the-ibc-regime/>” accessed 15 April 2023.

competent lawyer is appointed. Furthermore, in the case of IBC, a competent resolution develops a steadfastness strategy. When a corporation approaches the NCLT, a plan is established for management to settle by creditors. An informed conclusion will be made when a secure anticipates that its creditors will contact the NCLT, and the company approaches the NCLT under Section 230, allowing management to keep control over the business.

VIII. CORPORATE DEBT RESTRUCTURING

CDR is a method by which creditors of a company could come together to create a forum for debt restructuring. To determine if the problem is temporary or permanent, Lenders look at the company's business plan. In addition, banks are enlisting the aid of experts to study the market and the competitive landscape of that specific company. After conducting these forensic investigations and analysis, they alter the corporate debt that was lent to the business by delaying payments, giving it time to sort things out, or offering a top-up or additional loan to stabilize the business' operations. the business. All of these actions are part of CDR.
