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INSOLVENCY AND BANKRUPTCY CODE (IBC) HELPING BANKS RECOVER STRESSED ASSETS MORE QUICKLY

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ABSTRACT

The mounting NPA of banking segment of India become a difficult issue for the economy. However, the idea of non-performing resource is connected uniquely with the financial area, the negative impacts of its spread out to the entire economy over the long haul. Non-performing resource results decline in benefit and liquidity position of banks and in this way intensify the financial condition of the nation. It further contrarily influences the economy. Along these lines, to smooth working of the financial part government and hold bank should take satisfactory approach gauges that diminish and recuperate the non-performing resource. The Indian Parliament enacted the landmark Insolvency and Bankruptcy Code, 2016 (Code) on May 28, 2016. The Code was introduced in the midst of alarming rise in nonperforming loans (NPLs) in the Indian banking industry and to address a highly fragmented and delay-prone legal regime relating to insolvency and stressed debt resolution. The data disclosed by the Reserve Bank of India (RBI) demonstrated that the aggregate gross NPLs on the books of Government-owned banks had increased.

Keywords:- *RBI, The insolvency and Bankruptcy code , NPA , NCLT.*

Introduction

The Code is a comprehensive and rules-based legislation for insolvency resolution of Indian companies and limited liability partnerships (together Corporate Debtor(s))(other than entities engaged in providing financial services), partnership firms, and bankruptcy of 2 individuals . Part II of the Code along with the Insolvency and Bankruptcy Board of India (Insolvency Resolution for C o r p o r a t e Persons) Re g u l a t i o n s , 2 0 1 6 (C I R P Regulations) govern the conduct of the insolvency resolution process of Corporate Debtors. The Code also governs the liquidation of the Corporate Debtor and provides for a time-bound and streamlined process for liquidation with Insolvency Professionals acting as the liquidator (as opposed to liquidators in the earlier regime who were employees of the Central Government).

HYPOTHESIS:

- ❖ Whether recovery through legal mechanisms going up.

Objectives:

- ➢ To study about non-performing assets declined in 2018-19.
- ➢ To study about the bad loans recognition neared completion and the slippage ratio improved.
- ➢ To study about IBC is one of the most efficient modes of recovery.

Supreme Court up holds the constitutional validity of the Insolvency and Bankruptcy Code

The Supreme Court of India in the case of **Swiss Ribbons Private Limited and Another v. Union of India and Others** (decided on January 25, 2019) upheld the constitutional validity of the Insolvency and Bankruptcy Code, 2016 (**"Code"**)

While upholding the constitutional validity of the Code, the Supreme Court conducted an overall analysis of its provisions and looked into the economic aspects behind it as well. While noting that the bad debt problem was steadily growing, and a need for overhaul was required, burning questions, like the raise on d'être of the different treatment of operational and financial creditors have finally been put to rest by the Supreme Court. The Supreme Court has reiterated the validity of Section 12A of the Code ensuring that the central idea of maximization of value of the assets of the corporate debtor does not get lost in procedural hurdles. The court also upheld the validity Section 29A of the Code to ensure that persons responsible for driving a company into insolvency do not regain control of the company without first paying off their debts. As is evident from the ruling regarding setting up of NCLAT circuit benches within a period of 6 months from the date of the judgement, the Supreme Court also stepped in to ensure that the infrastructure required for the smooth functioning of the Code is present. Further, in stating that the Code is an economic legislation and that as far as legislation on economic matters is concerned, leeway should be given to the legislature as no economic law can be foolproof on its inception. The Supreme Court has laid down the tone and tenor for interpretation of future economic legislations by holding that *"*there may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid". This judgement is a ringing endorsement of the Code, and the statistics furnished to the Supreme Court only strengthen that assertion. Indeed, as mentioned in the judgement, the 'defaulter's paradise' is lost and the economy's rightful position has been regained in its place.

Sree Metaliks Limited v. Union of India: And ICICI Bank v. Innoventive Industries Ltd "Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in."

In the matter of "Swiss Ribbons vs. Union of India", the Hon'ble Supreme Court has upheld the constitutional validity of the Code.

The Supreme Court of India ("**SC**"), on November 15, 2019 upheld the order approving the resolution plan submitted by Aircel orMittal India Private Limited ("**Aircel orMittal**") for Essar Steel India Limited ("**Essar**") and upheld the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

The SC held that the CIRP will take place in accordance with the resolution plan of Aircel orMittal, as amended and accepted by the COC. It also upheld the constitutional validity of Sections 4 (regarding the time limit for the resolution process) and 6 (regarding the inter se treatment amongst creditors) of the Amendment Act.

While the bench has made several noteworthy observations regarding the IBC and the role and responsibilities of each stakeholder in it, the key takeaway from this decision is the importance of the COC's commercial wisdom, as the

intention of the legislature was made clear pursuant to the Amendment Act. This decision clears all hurdles to the takeover of Essar Steel by Aircel orMittal. Another knock down effect should be the clarification that operational and financial creditors cannot be given the same treatment and that the IBC mandates that they receive equitable, and not equal treatment, a move that has been welcomed by the banking industry as a flexible approach rather than one-size-fits-all approach. Further, this should significantly reduce the scope for long winding litigation under the IBC.

Recovery through legal mechanisms going up

As a percentage of claims, banks recovered on average 42.5% of the amount filed through the IBC in the financial year 2018-19, against 14.5% through the Sarfaesi resolution mechanism, 3.5% through Debt Recovery Tribunals and 5.3% through Lok Adalats, it said. Against Rs 1.66 lakh crore claims involved under IBC, the recovery was Rs 70,819 crore. Through the Sarfaesi mechanism, it stood at Rs 41,876 crore. Recoveries through DRTs and Lok Adalats were Rs 10,575 crore and Rs 2,816 crore, respectively.

Cross Border Insolvency

The Code currently has provisions relating to cross border insolvency but these are not adequate to effectively deal with cases where the corporate debtor has a global footprint. The Ministry of Corporate Affairs in India had set up an Insolvency Law Committee on November 16, 2017 to make recommendations to the Government of India in relation to adoption of the UNCITRAL Model Law on Cross Border Insolvency, 1997. The committee submitted its Report in October 2018. The committee decided to attempt to provide a comprehensive framework for this purpose based on the UNCITRAL Model Law on Cross-Border Insolvency, which will require legislative amendments to the statue. The Government of India proposes to bring about the changes by amending the Code and adding a chapter on cross-border insolvency, a report said. The amended law is aimed at giving comfort to foreign investors in India and efficient handling of assets situated in India and outside India.

Challenges to the Resolution Process

The resolution plan once approved by the NCLT, becomes binding on all the stakeholders of the company (including dissenting financial creditors and operational creditors) and assumes the nature of a binding contract framed under a statute.Section 74 of the Code provides for stringent penalties for non-implementation of the resolution plan, including a jail term. Once a resolution plan has been approved by the NCLT, if the Corporate Debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding violates any of terms of the resolution plan, they can be subjected to a monetary fine and also a jail term.In a recent case, the Creditors Committee has filed an application against the successful resolution applicant for non-compliance with the terms of the approved resolution plan. Keeping such errant resolution applicants in mind, the requirement to provide a performance bank guarantee along with the resolution plan has been made mandatory *vide* the recent amendment dated January 24, 2019 to the CIRP Regulations. During the early days of the Code, the resolution process was challenged at various stages starting from invitation of expression of interest, approval of a resolution plan by the Creditors Committee and the NCLT. For instance, in the case of *Bhushan Power*, the NCLAT allowed one of the resolution applicants to submit its bid subsequent to the last date specified in the process document and the Creditors Committee was directed to consider the same. Another aspect was Section 29A, the wide sweep of the disqualifications led to myriad litigation's and resultant delays in the resolution process in a time-bound manner, primarily due to cross-allegations by the rival resolution applicants in relation to the ineligibility of the other resolution applicant.

SUGGESTION

- ✓ The expertise of resolution professionals should be increased.
- ✓ The training should be provided to the judges of the NCLT courts.
- ✓ Speedy disposal at desirable levels is needed.

Conclusion

The entire process has also inculcated fear in the minds of promoters over defaults and delays in resolutions as whatever kingdoms they've established might be taken away. It has been a positive reinforcement of the overall credit culture as the paybacks are more efficient because these promoters don't want to be dragged into the court over defaults. Presently, the Code does not provide for simultaneous insolvency of group companies. An entity-wise approach with different members of an interconnected group undergoing separate proceedings is bound to be value destructive on account of information asymmetry and lack of coordination among different creditors and NCLT benches and also prone to delays. The IBBI has, on January 17, 2019 constituted a working group to recommend a comprehensive regulatory framework to facilitate insolvency resolution and liquidation of debtors in a corporate group under the Provisions of the Code. The stipulated time frame for resolution of stressed assets under IBC is significantly lesser than for other mechanisms. There is a distinct disincentive for delayed resolutions under the mechanism is the primary motivation for banks to now refer cases to NCLT After rising for seven consecutive years, non-performing assets declined in 2018-19 and bad loans recognition neared completion and the slippage ratio improved. Even if recoveries do not happen within the stipulated time-frame, IBC is one of the most efficient modes of recovery. One of the reasons why NPAs are coming down is because there are real repayments happening because of the introduction of IBC mechanism for resolution of stressed assets.

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