



SIGNIFICANT IBC AMENDMENTS: STREAMLINING THE BALANCE BETWEEN THE GROUND REALITIES AND MANDATE OF THE IBC

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I. ABSTRACT:

Research work studies Insolvency and Bankruptcy Code, 2016 in India which studies laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets. The research focuses on the recent amendments made to Insolvency and Bankruptcy Code, 2016 which have significantly boost the framework of insolvency resolution. It helps us to understand the amendments aim to fill critical gaps in the corporate insolvency resolution framework as enshrined in the Code, while simultaneously maximizing value from the Corporate Insolvency Resolution Process (CIRP). It helps us to study changes to the Code are being considered in relation to the admission of corporate insolvency resolution process ("CIRP") are PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PIRP), streamlining the insolvency resolution process and recasting the liquidation process under the Code.

This research helps to understand widespread economic hardship brought on by the COVID 19. It provides insights of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, Insolvency and Bankruptcy Code (Amendment) Bill 2019 and The Insolvency and Bankruptcy Code (Amendment) Bill, 2021. The research throws a light on the recent judgements of Supreme Court to understand that these recent landmark judgements of IBC have played pivotal role in providing a fast track process in solving the IBC cases which would ensure that the resolution process would completed on time and that a corporate debtor may be revived.

The research work critically analysis on Insolvency & Bankruptcy Code (Second Amendment) Act 2020 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 as these amendments would be a game changer in facilitating the smooth functioning of the corporate insolvency resolution process and would narrow balance between the purpose of IBC and ground realities.

KEYWORDS: Insolvency Resolution Process, IBBI, Corporate Debtor, Committee of Creditors, Liquidation, Moratorium, Bankruptcy.

II. RESEARCH QUESTIONS:

- 1) What are the major changes of IBC that aimed to fill gaps in the Insolvency Resolution Process in order to reduce uncertainty, bring uniformity, predictability, and delays?
- 2) How could recent amendments would be a game changer in facilitating the smooth functioning of the corporate insolvency resolution process and would narrow balance between the purpose of IBC and ground realities?
- 3) How the IBC amendments result in higher credit realization and a considerably shorter resolution process upon fulfilment of IBC's objectives which is evident from the cases?
- 4) What are the possible measures that could be taken to improve the effectiveness, transparency, and efficiency of the Insolvency resolution processes?

III. HYPOTHESIS:

A significant lacuna of the IBC code is the resolution process's efficiency and transparency. In addition, there is a lack of stringent penalties, stipulated timeline and over burned of NCLT and NCLAT.

IV. INTRODUCTION:

The IBC is an economic law that was introduced to achieve a number of goals. India's bankruptcy law, the Insolvency and Bankruptcy Code, 2016 (IBC), aims to unify the current system by establishing a unified bankruptcy and insolvency law. The government also enacted a number of other changes at the same time, with a particular emphasis on making doing business in India easier. Ease of Doing Business encompasses not only quick and simple entry as well as easy running of enterprises, but also easy exit.

In India, one advanced step toward resolving the legal position of financial failures and insolvency is the Insolvency and Bankruptcy Code, 2016. In the event that an individual or company becomes insolvent, the code offers a simple and quick departure strategy. This makes it valuable to all parties involved, including government regulators.

With the aim of unifying India's disparate insolvency laws and addressing their concerning deficiencies, the Insolvency & Bankruptcy Code 2016 (IBC) is expected to confront immense challenges and high standards.

The Code was proposed with the intention of unifying and amending the laws pertaining to the timely reorganization and resolution of corporate entities, partnership firms, and individual insolvencies in order to maximize the value of those entities' assets, encourage entrepreneurship, increase credit availability, and balance the interests of all parties involved.

The Recovery of Debts due to Banks or Financial Institutions Act, 1993 (hereinafter, "RDBFI Act") and the Securitization and Reconstruction and Enforcement of Security Interests Act, 2002 (hereinafter, "SARFESI") are two of the previous attempts by Parliament to guarantee the recovery of public debt that address specific aspects of corporate insolvency. The intended outcomes were not achieved by these.

V. IMPORTANCE OF IBC:

It is important to emphasize that the institutional framework created by the state should support a commercial entity's freedom of entry, or the ability to launch and run a business; freedom of operation, or the ability to operate a business on an even playing field; and freedom of exit, or the ability to stop operating a business. It responds to the growing demand for an all-encompassing law that would be efficient in resolving debtor insolvency, optimizing the value of assets accessible for creditors, and facilitating the closure of unprofitable enterprises¹.

Resolution is the Code's primary goal. The corporate debtor's assets are to be maximized as the second goal, and the promotion of entrepreneurship, credit availability, and interest balance are the third goals.

VI. CODE'S OBJECTIVES ARE TO:

- a) encourage entrepreneurship and credit availability;
- b) guarantee the equitable interests of all parties involved;
- c) encourage the timely resolution of insolvency in the cases of corporations, partnership firms, and individuals;
- d) Facilitate the insolvency resolution process, the IBC designates two distinct authorities. The DRT (Debt Recovery Tribunal) handles matters pertaining to partnership businesses and individuals, whereas the NCLT (National Company Law Tribunal) handles cases pertaining to companies and LLPs and;
- e) Establishes rigorous deadlines for all steps in the resolution process, including application acceptance, hiring of an interim resolution professional, filing of claims, establishment of a

creditors committee, review of the resolution plan, and submission of the plan to the adjudicating authority for approval.

The Code has separated creditors into two categories—Financial Creditors and Operational Creditors—in order to efficiently handle the concerns surrounding the participation of diverse stake holdersⁱⁱ.

There are 11 Schedules and 255 sections in the IBC. IBC is separated into four sections:

- Parts I and II deal with preliminary matters;
- Part III deals with individuals and partnership firms;
- Part IV deals with the regulation of insolvency professionals, agencies, and information utilities.

VII. IMPORTANT IBC COMPONENTS IN THE RESOLUTION PROCEDURE

Adjudicating authority

The National Company Law Tribunal (NCLT), established pursuant to section 408 of the Companies Act, 2013, is designated as the AA for the resolution and liquidation of corporate entities under section 5(1) of the IBC. The NCLT will serve as the AA for the CIRP and liquidation of corporate entities, including CDs and their personal guarantors, according to Section 60(1) of the IBC. The NCLT and DRT are specialized tribunals established by the legal system to decide cases involving bankruptcy and insolvency. The Supreme Court ruled in 2019 in the case of *Committee of Creditors of Essar Steel India Limited Through Authorized Signatory Vs. Satish Kumar Gupta & Others*ⁱⁱⁱ that section 60(5)(c) of the IBC constituted a form of "residuary jurisdiction" vested in the AA, giving the AA the authority to decide any legal or factual issues arising out of or pertaining to the resolution or liquidation of insolvency under the IBC. Therefore, a harmonious interpretation of sections 31(1) and 60(5) of the IBC would result in the conclusion that, when it comes to a resolution plan that the AA is adjudicating, the residual jurisdiction of the AA under section 60(5)(c) cannot, in any way, whittle down section 31(1) of the IBC by investing some discretionary or equity jurisdiction in the AA outside of section 30(2) of the IBC.

Committee of Creditors

According to section 21 of the Insolvency and Bankruptcy Code of 2016, the Committee of Creditors (COC) is appointed. COC is made up exclusively of monetary creditors. The resolution plan put forth by the resolution specialist in the Corporate Insolvency Resolution Process (CIRP) is subject to approval or disapproval by the COC.

Insolvency Professionals

According to section 3(19) of the IBC, an IP is a person who has registered as an IP with the IBBI under section 207 and is enrolled as a member under section 206 with an IPA.

There are two categories of insolvency experts: insolvency professionals and interim insolvency professionals. Insolvency professionals are appointed by a committee of creditors by a majority vote of 75% at the COC's first meeting, and interim insolvency professionals are appointed by the adjudicating body within 7 days of the application's acceptance.

Insolvency and Bankruptcy Board of India – The Regulator

On October 1, 2016, the IBBI was incorporated as a body corporate under section 188 of the IBC. The IBBI is a special kind of regulator because it oversees both the professionals and the transactions that are carried out^{iv}. Information utilities, professional agencies specializing in insolvency, and the insolvency resolution procedure are all governed by IBBI.

Some of these duties and authority include the following:

- Monitoring markets and service providers through surveillance, investigation, and grievance redress;
- Enforcing regulations for service providers and adjudication, if necessary, to ensure their orderly functioning;
- Managing and developing market processes and practices related to the CIRP, the liquidation process, and individual insolvency and bankruptcy;
- Registering and regulating service providers for the insolvency process, including IPs, IPAs, and IUs; and
- Developing professional expertise through education and training

A framework for adopting its own regulations has been established by the IBBI. It has released the IBBI (Mechanism for Issuing Regulations) Regulations, 2018, which mandate public consultation and economic research prior to adopting new regulations in order to guarantee openness and promote stakeholder participation.

In the case of *CA. Venkata Siva Kumar Vs. Insolvency and Bankruptcy Board of India & Others*^v contested the IBBI's authority to impose a charge in accordance with IP Regulation 7(2)(ca). The National Company Law Tribunal (NCLT), established by section 408 of the Companies Act, 2013, is designated as the AA for the resolution and liquidation of corporate persons under section 5(1) of the IBC. The NCLT will serve as the AA for the CIRP and liquidation of corporate entities, including CDs and their personal guarantors, according to Section 60(1) of the IBC.

Information Utilities

According to section 3(21) of the IBC, an IU is a "person" who has registered under section 210 with the IBBI.

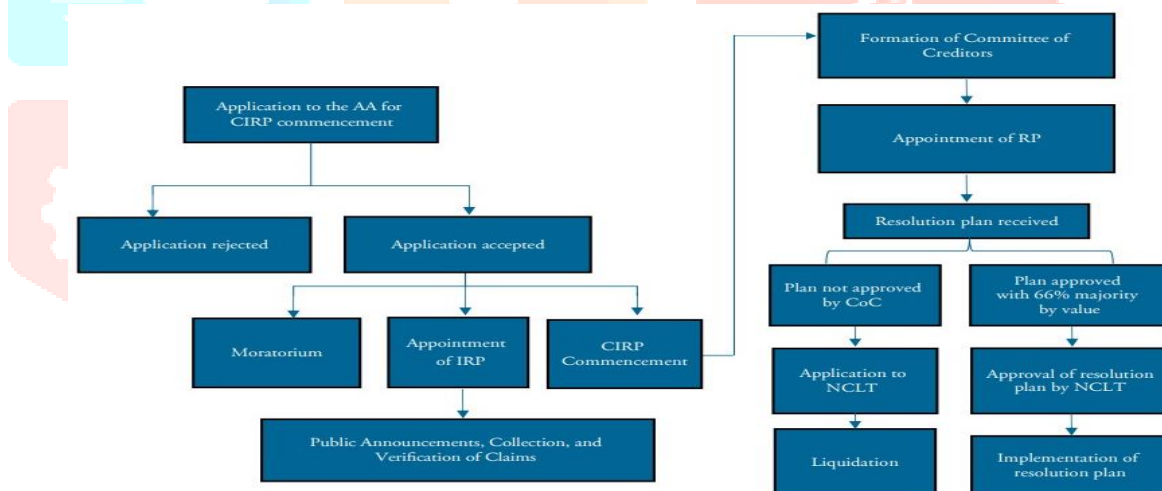
According to Section 3(9) of the IBC, an IU provides the following core services^{vi}:

- accepting electronic financial information submissions in the format and manner that may be specified;
- securely and accurately recording financial information;
- authenticating and verifying the submitted financial information;
- granting individuals as designated access to information stored with the IU.

Insolvency Professional Agencies

An IPA is defined as a person registered as such with the IBBI under section 201 by section 3(20) of the IBC. Enrolling and regulating IPs as members is the responsibility of the IPAs.

VIII. CIRP PROCESS



Source: Insolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook^{vii}

The CIRP process can be started by filing an application with the adjudicating authority in the prescribed manner if a corporate debtor (a person who has taken out a loan or amount from a creditor or bank) defaults. The CIRP can be started by a financial creditor (FC) under Section 7, an operational creditor (OC) under Section 9, or a corporate applicant of a corporate debtor under Section 10 of the Code. The two outcomes that can occur after the CIRP is started are the corporate debtor's revival or liquidation.

CIRP PROCESS Includes the following stages:

- Sections 3 to 11 of the Pre-admission Process
A person who may apply to NCLT to start the CIRP process in accordance with Sections 7 and 10, as Corporate Debtors (also known as CDs), Operational Creditors (also known as OCs), and Financial Creditors (also known as FCs) under Section 9.
- Sections 12 to 32A of the Post-Admission Process
It is up to NCLT to decide whether to approve or reject an application after it is submitted. Within 180 days of the admission date, the entire CIRP process must be finished. Only one ninety-day extension of an application is permitted by NCLT. On the other hand, CIRP must be finished no

later than 330 days following the date of the insolvency initiation. If not, the Company would enter the Liquidation procedure in accordance with Sections 33 through 54.

- Stage of Liquidation (Sections 33–42 and Sections 52–54)

A corporation would enter the liquidation process if its resolution plan was unsuccessful. When the default amount exceeds one crore rupees (10,000,000), the CIRP is triggered; previously, it was just one lakh rupees (1,00,000). Debt recovery applications are submitted to the NCLT (National Company Law Tribunal), the adjudicating body, by financial creditors, operational creditors, or corporate debtors. After receiving an application, the NCLT issues an order within 14 days, either accepting it or rejecting it and notifying the applicant to correct any defaults within 7 days after receiving the notification.

The day an application is accepted will be known as the "insolvency Commencement Date." by accepting an application in accordance with IBC Section 14. The appointment of an interim resolution professional by an adjudicating authority, followed by the interim resolution professional's public announcement in Form A of the IBBI, shall initiate the moratorium period^{viii}.

IX. FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

The Insolvency and Bankruptcy Code's objective is to complete the process in half of the default time frame allotted under the Code. The process at set-off will be the responsibility of the person or entity requesting speedy relief, and that person or entity must vouch for the suitability of the case for the speedy-track. In order to prove that a corporate debtor is eligible for a fast-track corporate insolvency resolution process, the person filing the application for the fast-track process under Chapter IV (Section 55) of the Insolvency and Bankruptcy Code must also include proof of the existence of default, as shown by records accessible through an information utility or by any other method the Board may specify^{ix}.

X. VOLUNTARY LIQUIDATION OF COPORATE PERSONS

According to the Code, a business entity that wants to liquidate itself, hasn't defaulted, and has enough cash on hand to pay off all of its debts can initiate voluntary liquidation procedures. According to the legislation, a majority of the business's directors must declare as much and add that the company is not being dissolved in order to deceive anyone. Creditors representing two thirds of the total amount of the company's debts must ratify a resolution made to this effect. When the aforementioned resolution is approved by the creditors, voluntary liquidation starts. Voluntary liquidation is subject to the provisions of the liquidation process. The NCLT issues an order for the debtor's dissolution after all assets have been liquidated and the debtor is fully wound up^x.

XI. RECENT AMENDMENTS OF IBC, 2016 :

Since its enactment, the Insolvency and Bankruptcy Code, 2016 (IBC) has undergone three amendments^{xi}.

- Section 29A of the First Amendment (November 2017) addressed the prohibition against promoters bidding for their own enterprises. The First Amendment was first introduced as The Insolvency and Bankruptcy Code (Amendment) Bill, 2017. It stopped defaulters from purchasing a lower price and taking back control of their businesses.
- Section 12A of the The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 gave creditors the opportunity to revoke their petition for insolvency within 30 days of filing. In order to allow home buyers a say in the bankruptcy proceedings because they also contribute finance for their properties. The amendment also stipulated that they would be treated as financial creditors.
- The main goal of The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 was to ensure that the resolution process was completed on time and that a corporate debtor may be revived. The modification makes sure that the National Company Law Tribunal's 14-day window for accepting or rejecting a resolution application is properly followed. The amendment further specifies the mandatory time period of 330 days to complete the corporate bankruptcy Resolution Process (CIRP) without exception. Additionally, the government reiterates its role as a facilitator in the third amendment by explicitly requiring the Central Government, State Governments, or any local body that owes money for unpaid dues to follow a settlement plan.
- On December 12, 2019, the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 was presented in the Lok Sabha. According to the Bill's Statement of Objects and Reasons, it was felt that corporate debtors should receive the highest priority when it came to repaying last-mile funding in order to avoid insolvency, prevent potential abuse of the Code by certain classes of financial creditors,

and provide immunity from prosecution and action against the debtor's property and successful resolution applicant, subject to the fulfillment of certain conditions^{xii}.

XII. THE COVID-19'S IMPACT

The following information about the number of companies that were declared bankrupt in the nation following the lockdown imposed due to the COVID-19 pandemic is based on data from the Insolvency and Bankruptcy Board of India (IBBI) and covers the period from April 1, 2020, to December 31, 2020:

- The Corporate Insolvency Resolution Process (CIRP) were accepted by 283 businesses.
- 128 CIRPs were closed as a result of withdrawal, appeal, or settlement; 189 CIRPs resulted in liquidation. 76 CIRPs were resolved.
- 30 corporate entities were subject to a liquidation process under section 230 of the Companies Act, 2013, which resulted in their dissolution, sale as a continuing concern, compromise, or arrangement. Additionally, 59 corporate entities underwent voluntary liquidation.

In a written response to a question in the Lok Sabha, Shri Anurag Singh Thakur, the Union Minister of State for Finance and Corporate Affairs, made this claim.

Owing to the widespread economic hardship brought on by the coronavirus, the government has chosen to raise the default threshold under Section 4 of the IBC 2016 from Rs 1 lakh to Rs 1 crore in order to avoid insolvency procedures being initiated against small and medium-sized businesses. The government has made the decision to halt all new insolvency cases involving any businesses. The government has placed a complete ban on any application for corporate insolvency resolution procedures of a corporate debtor for any default beginning on March 25, 2020, for a period of six months, which may be extended to a year upon the government's notification, with the addition of Section 10(A). This provision supersedes Sections 7 and 9, which specify that a financial creditor or an operational creditor may begin the process of resolving corporate insolvency against a corporate debtor. Additionally, it eliminates Section 10's authority, which grants corporate debtors the ability to start a corporate bankruptcy resolution procedure against oneself^{xiii}.

In the case of *Anand Rao Korada Resolution Professional v. Varsha Fabrics (P) Ltd. & others*^{xiv} The Supreme Court ruled that once the Code's proceedings had begun, the High Court should not have moved on with the corporate debtor's property auction. The interests of all parties involved will be gravely jeopardized if the corporate debtor's assets are changed while the actions under the Code are pending. The provisions of the Code shall apply to the sale or liquidation of the corporate debtor's assets.

In *Brilliant Alloys Private Limited v. S. Rajagopal & Others*^{xv}, the withdrawal of CIRP under Section 12A read with Regulation 30A was discussed. The regulation's requirement that withdrawals be made only after soliciting an expression of interest is merely a guideline.

In the case of *Swiss Ribbons Pvt. Ltd. And Anr. v. Union of India And Ors. (2019) 4 SCC 17*^{xvi}, the Court allowed the original applicants to withdraw the CIRP proceedings in light of the settlement reached between the parties. The Court observed that the COC is made up of 91 members, of which 70% are Flat Buyers Association members who are willing to have the CIRP proceedings set aside provided that the appellants and the Corporate Debtor company fulfill the commitments they made to the Court in accordance with the settlement plan.

XIII. THE INSOLVENCY AND BANKRUPTCY CODE AMENDMENT, 2020

The new coronavirus epidemic has wreaked havoc all throughout the world. Lockdown has had an impact on the financial sector, the economy, and firms that have temporarily ceased operations. This has reduced cash flow in the market, increased the amount of non-performing assets, and resulted in payment defaults to banks, creditors, and other financial institutions. India's government introduced two amendments to the Central Government to protect the interests of corporate borrowers and to save business entities that might default on their debt obligations^{xvii}.

1. As per a notification from the Ministry of Corporate Affairs (MCA) dated March 24, 2020, the threshold for starting the corporate insolvency resolution process ("CIRP") under Section 4 of the Code has been raised from one lakh rupees to one crore rupees.
2. The IBC, 2016's Section 10A suspends the start of the corporate insolvency resolution process. Regardless of what is stated in Sections 7, 9, and 10 of the IBC, 2016, no application for the start of a corporate debtor's insolvency resolution process may be submitted for any default that arises on or after March 25, 2020, for a period of six months, not to exceed one year, from the date that may be notified. It is now made clear that any default under the aforementioned sections occurring before to March 25, 2020, will not be subject to the provisions of this section.

In *Manish Kumar v. Union of India*^{xviii}, the Supreme Court in a lengthy 465-page ruling, the three-judge bench of Rohinton Fali Nariman, Navin Sinha, and K.M. Joseph, JJ., maintained the legality of various provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, albeit with instructions issued in the exercise of authority under Article 142 of the Indian Constitution^{xix}.

The court also declared the following while maintaining the constitutional legality of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (the "Amendment Act"), which made amendments to Sections 7, 11, and 32A of the IBC^{xx}:

- Section 7: The Amendment Act stipulates that for a real estate project to be maintainable, an insolvency petition pertaining to the project must be filed by at least 100 real estate allottees or 10% of allottees overall, whichever is lower.;
- Section 11: The Amendment Act added a clarification stating that a corporate debtor may file for bankruptcy on behalf of another corporate debtor. It was decided that this explanation, which was a clarifying revision, was retrospective in character.
- Section 32A: The Amendment Act stipulated that, in the event of a change in the entity's control, no action will be taken against the corporate debtor's assets if the new management was not in any way involved in the default.

XIV. AMENDMENT TO THE INSOLVENCY AND BANKRUPTCY CODE ACT OF 2021

On August 11, 2021, the President granted his assent to the Insolvency and Bankruptcy Code (Amendment) Act, 2021, often known as "the Act". Pre-packaged insolvency resolution procedure ["PPIRP"] for micro, small, and medium-sized enterprises ["MSME"] is one of the primary features of the Amendment Act^{xxi}.

Introduction Of Pre-Packaged Insolvency Resolution Process:

In effect, the Amendment replaced the Corporate Insolvency Resolution Process (CIRP) with the PIRP as a means of assisting MSMEs. The PIRP is covered in Chapter III-A, which is introduced by the Amendment Act. In contrast to CIRP, which permits a company's creditors to commence the bankruptcy procedure in addition to the corporate debtor, it stipulates that an application for initiation of PIRP may only be filed by the corporate debtor.

The CD is responsible for creating a resolution plan that is approved by both the Adjudicating Authority and the Committee of Creditors ["CoC"] in two stages.

Maximum for PIRP Initiation

A proviso is added to Section 4 of the IBC as a result of the Amendment. According to the proviso, the Central Government may set a minimum amount of default of higher value for concerns pertaining to the PIRP; nevertheless, this sum cannot exceed INR 1 crore. Nonetheless, the Central Government has the authority to designate a greater value minimum default amount by announcements; this maximum sum cannot exceed INR 1 crore.

Controlling the Corporate Debtor

According to Section 54H of the PIRP, the Board of Directors or the Partners shall continue to be responsible for managing the corporate debtor's affairs and shall do every reasonable effort to maintain and defend the value of the corporate debtor's assets. The Adjudicating Authority may fine an officer of the Corporate Debtor anywhere from INR 1 lakh to INR 1 crore if it discovers after PIRP is initiated that the officer administers the company's affairs with the intention of defrauding creditors. The Committee of Creditors may elect to give the Resolution Professional control over the corporate debtor and he may file an application with the Adjudicating Authority if they vote with a minimum of 66% of the voting shares during the PIRP.

Professional in Insolvency Resolution

In accordance with Section 54B, the resolution specialist is required to draft a report evaluating whether the base plan is statutorily sound and whether the corporate debtor meets the requirements for eligibility under Section 54A. Section 54F lists the second set of emergent tasks for the Resolution Professional. These consist of confirming the claims, keeping an eye on the Corporate Debtor's management, forming the Committee of Creditors, and doing other designated tasks.

Processes under PIRP

Within two days of the PIRP starting, the debtor is required to submit the base resolution plan to the RP (Section 54G). Within seven days of the PIRP commencement date, The committee must approve a resolution plan (with at least 66% of the voting shares). The adjudicating authority will review the resolution plan that the committee authorized. In the event that the committee does not adopt a resolution plan, the RP may request that PIRP be terminated (Section 54D). Within 30 days after receiving the plan, the authority must either approve it or order the termination of PIRP (Section 54N). The corporate debtor shall be liquidated upon the termination of PIRP (Section 54L and Section 54N).

Launch of CIRP

The Amendment adds Section 11A, which provides that while a Section 54C application is pending before the Tribunal, it will be admitted or rejected before any Section 7, 9, or 10 applications pertaining to the same debtor are taken into consideration. Furthermore, the Section 54C application will be handled first if it is submitted within 14 days of the CIRP initiation application.

Penalty

The Amendment amends Section 65 of the Code to criminalize anyone who starts PIRP maliciously, fraudulently, or with the intention of defrauding others. Anyone in charge of the Corporate Debtor's affairs with the intention of defrauding its creditors faces punishment of up to one crore rupees, with a minimum penalty of one lakh rupees.

Advantages:

- There is a maximum of 120 days allotted, and the stakeholders have just 90 days to provide the resolution plan before the NCLT.
- In addition to providing MSMEs with a means of restructuring their debts, the pre-pack plan has the potential to alleviate the workload on NCLT benches by providing a quicker resolution procedure compared to standard CIRPs.
- In the event that pre-packs are used instead of resolution specialists in CIRP, the current management maintains control, avoiding the expense of a company disruption and keeping hold of its staff, vendors, clients, and investors.
- PIRP will assist Corporate Debtor in reaching a mutually agreeable restructuring agreement with lenders and take care of all of the company's liabilities.

Problems:

- Lenders and distressed enterprises may find it challenging to satisfy the PIRP timeframe.
- Additionally, a company may use a PIRP to restructure its outstanding debt while maintaining control by the current management.
- Therefore, in accordance with RBI norms, the company's lender account's NPA status might not be immediately upgraded.

In the case of *Maitreya Doshi v. Anand Rathi Global Finance Ltd.*^{xxii}, it was decided that although corporate debtors who are co-borrowers may be the subject of CIRP proceedings under section 7, the same sum cannot be recovered twice from both parties.

In the case of *Amit Katyal v. Meera Ahuja*^{xxiii}, the Supreme Court invokes Article 142 of the Constitution to expedite IBC procedural requirements for the advantage of homeowners. In the best interests of the homebuyers overall, the Apex Court used its authority under Article 142 to allow the CIRP proceedings to be withdrawn and to put aside any outstanding issues between the parties. The Court said that if an applicant files an application and receives approval from 90% of the CoC voting share, Section 12A NCLT may permit withdrawal of the application permitted under Section 7.

XV. THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (SECOND AMENDMENT) REGULATIONS, 2023^{xxiv}

1. **Pre Amendment:** The CIRP Regulations, including **Regulations 2A through 2C**, specify the process and prerequisites for financial and operational creditors to submit records or proof of default.

Drawbacks: The aspect of limitation is not specifically taken into consideration by the current regulations. It is suggested that the creditor provide an affidavit, or comparable document, outlining the timeline of the debt and default and providing justification for why the application is not precluded by restriction. This would introduce the concept of limitation into the application process.

Proposed Regulation: Regulation 2D states that providing evidence and a timeline of the debt and default, which includes the date the debt became due, the date of default, any partial payments made, the date of the last acknowledgment of the debt, and any applicable limitations, the financial creditor or the operational creditor, as the case may be, must also submit u/s 7 or u/s 9.

2. **Pre Amendment:** The personnel of the CD, its promoters, or any other person connected to the management of the CD are required under **Regulation 4(2)** of the CIRP Regulations to supply the information in the format and within the time frame requested by the IRP or the RP, as applicable.

Drawback: There are times when prompt and effective delivery of such information is lacking. Furthermore, there is no mention in the regulations of how ownership and custody of assets and documents will be transferred.

Regulation proposed: Regulation 3A which deals with Handing over and taking over of assets and records.

A list of all assets and records must be provided by the corporate debtor's employees, promoters, or any other person involved in the debtor's management when control and custody of the assets and records are transferred to the interim resolution professional or resolution professional. The resolution specialist is required to compile a list of them. The parties in attendance as well as at least two witnesses to the act of assuming control and custody over the assets and records must sign the inventory of records and assets.

3. **Pre Amendment:** The process and responsibilities when a debt owed to a creditor is assigned or transferred during the insolvency resolution process period are covered by **Regulation 28** (CIRP Regulations).

Drawback: For clause (1), a timeframe does not exist. Therefore, it is necessary to include a timeline in the same.

Regulation Proposed: Regulation 28(1) of the CIRP Regulations states that in the case that a debt is assigned within the CIRP period, the assignor and assignee creditor are required to give the IRP/RP the terms of the assignment as well as the identity of the assignee/transferee within seven days after the assignment or transfer.

4. **Pre Amendment:** The structure for the filing and validation of claims by creditors is outlined in **Regulation 12** of the CIRP Regulations. According to the present agreement, creditors must file claims accompanied by supporting documentation by the deadline specified in the public notice, or by the 90th day of the day the insolvency began, if filings are received after that date.

Drawback: Often, after receiving approval from the AA, creditors wait 90 days to file their claims. The AA is burdened more as a result, which leaves them with less time to handle other pressing issues. Since the RP manages claims for a maximum of ninety days, he is qualified to handle claims that are submitted for longer periods of time. Late claim filings might cause confusion and delays in the process since they need more time and money to review and adjust the resolution plan.

Regulation proposed: Regulation 12 which deals with a creditor may submit a claim and supporting documentation up until the date the resolution plan request is issued or ninety days after the date the insolvency began, whichever comes first, if they fail to do so by the deadline specified in the public announcement. The creditor must explain why the claim was filed later than expected ninety days.

5. **Pre Amendment:** The Insolvency and Bankruptcy Code's **Section 25A** describes the responsibilities and powers of Authorized Representatives (ARs) for Financial Creditors (FCs) in a certain class. Protecting the interests of the FCs he represents during the Corporate Insolvency Resolution Process (CIRP) is the responsibility of the AR, who serves as a middleman between the CoC and the Corporate Debtor.

Drawback: An AR plays two roles: first, he has an explicit duty to safeguard the interests of the FCs he represents, and second, he has a professional responsibility to make sure the CoC carries out all of its commitments. Homebuyers, however, have consistently demanded that the AR's responsibilities be expanded.

Proposed Regulation : Reg. 16A (3A)(3B) (3C) The class's financial creditors, who account for at least 10% of the voting share, may request that the authorised representative be replaced with a different insolvency professional by submitting a request to the interim resolution professional or resolution professional. The latter will then forward the request to the class's creditors and declare a voting window open for at least 24 hours. IRP or RP shall offer financial creditors in the class the choice of at least three insolvency professionals. The resolution specialist must submit an application to the adjudicating authority for the nomination of the authorized representative who holds the largest proportion of the class's voting shares among financial creditors.

Proposed regulation: Regulation 10 deals with the additional duties and responsibilities of AR will be as follows:

- a) Help the creditors in a class he represents comprehend the talks and considerations of committee meetings and enable informed decision-making;
- b) Review the minutes prepared by the resolution professional and offer his input to the resolution professional, if any);
- c) Support the creditors in a class he represents during the consultations held by the resolution professional to prepare a strategy for marketing the corporate debtor's assets in accordance with sub-regulation (1) of regulation 36C;
- d) Collaborate with the creditors in a class he represents to improve the marketability of the corporate debtor's assets in terms of sub-regulation (3) of regulation 36C;
- e) Help the creditors in a class he represents assess the resolution plans that resolution applicants submit;
- f) guarantee that the creditors in a class he represents have access to any information or documents needed to form an opinion on issues discussed in committee meetings;
- g) Inform the creditors in a class he represents on a regular basis about the status of the corporate insolvency resolution process;
- h) Offer suggestions for changes to the resolution plan as the creditors in a class he represents may require;
- i) Record proceedings and prepare the minutes of the meeting with the creditors in a class he represents; and
- j) Represent the creditors in a class he represents in proceedings before the National Company Law Appellate Tribunal, the Adjudicating Authority, and other regulatory bodies.

6. **Proposed Regulation : Regulation 36B (1)** which deals with Requests for plans of resolution : Every resolution applicant on the final list will receive an information memorandum, an evaluation matrix, and a request for resolution plans from the resolution professional within five days of the day the final list was released in accordance with sub-regulation (12) of regulation 36A. Every potential resolution applicant listed on the provisional list may also receive these papers, if and when they become available.

Drawbacks: In order to avoid being a dissident creditor, it is observed that creditors vote in favor of all feasible conforming resolution options. In many real estate instances, this kind of

circumstance arises when the real estate allottees vote in favor of all available plans to make sure they are not dissident creditors and that the CD does not end in liquidation, which would provide the allottees with no relief. There is currently no mechanism in place for creditors to express their preferences regarding these initiatives through voting.

7. **Pre Amendment :** In accordance with **CIRP Regulations 36(1) and 36A(10)**, RP is required to provide a tentative list of potential resolution applicants by T+85 days and submit the information memorandum to the CoC by T+95 days.

Drawback: However, due to what appears to be a typographical error, the RP must provide potential applicants with the necessary documents by T+105 days before submitting them to the CoC. The timeframe would be corrected to T+90 days, the IM submission would be lowered to T+80 days, and the resolution plan reception would be changed to 45 days, all of which would maintain the overall timeline at T+135 days. It is suggested that the typographical error mentioned above be fixed.

Proposed Regulation : Reg. 40A connected to Reg. 36B which deals with Model timeline for corporate bankruptcy resolution process : Issue of RFRP with IM and the Evaluation Matrix Five days following the release of the final list T+105 Acceptance of Settlement Plans 30 days or more after the RFRP was issued (assume 30 days) T+135

In case of *RPS Infrastructure Ltd. v. Mukul Kumar*^{xxv}, The court observed that The resolution plan may be granted and reapproved, resulting in an infinite process known as the CIRP, and the successful resolution applicant may still be confronted with unresolved claims despite the adjudicating authority's failure to approve it.

In case of *M.K. Rajagopalan v Dr.Periasamy Palani Gounder*^{xxvi}, The court held that It is not possible to submit an amended resolution plan straight to the Adjudicating Authority for approval without first going via the Committee of Creditors.

In case of *Gopal Lal Baser v. Sandeep Anand*^{xxvii}, the court held that Public holidays may only be subtracted from the first thirty days allowed by Section 61(2) of the Insolvency and Bankruptcy Code, 2016 for the purposes of determining the limitation period. According to the NCLAT, the proviso to Section 61(2) gives the NCLAT the power to excuse delays up to a maximum of 15 days. The advantage of not including public holidays or holidays, however, is only applicable when figuring out the 30-day cap.

XVI. UNDERWAY CASES OF IBC

According to information published by the National Company Law Tribunal (NCLT), as of September 30, 2019, there were 19,771 cases total pending with NCLT benches, 10,860 of which were under the 2016 Insolvency and Bankruptcy Code (IBC).

Rao Inderjit Singh, minister of state for corporate affairs, responds in writing to the Lok Sabha, saying: According to data from NCLT, as of January 31, 2023, 21,205 cases were pending with NCLT benches. These comprised 7,061 other matters, 1,181 merger and amalgamation (M&A) cases, and 12,963 cases under the Insolvency and Bankruptcy Code (IBC). As of December 31, 2022, 6,199 CIRPs had been initiated since the IBC's establishment, based on data provided by IBBI.

According to government data, Essar Steel India Ltd.'s insolvency was settled for a maximum of Rs41,017.71 crore under the CIRP. Bhushan Steel Ltd., at Rs 35,571 crore, and Dewan Housing Finance Corporation Ltd., at Rs37,160.97 crore. Other notable examples are Aircel Ltd, Dishnet Wireless Ltd, and Aircel Cellular Ltd (Rs6,630 crore), Binani Cements Ltd (Rs6,469.36 crore), Electrosteel Steels Ltd (Rs5,320 crore), and Bhushan Power & Steel Ltd (Rs19,350 crore)^{xxviii}.

XVII. SUGGESTIONS :

Significant lacunae of the IBC code is the resolution process's efficiency and transparency. In addition, there is a lack of stringent penalties and overburned of NCLT and NCLAT. Significant changes to the IBC that were recently made in 2020, 2021, and 2023 would address these criticisms. A few suggestions I would like to propose to improve the effectiveness, efficiency, and transparency of the bankruptcy resolution processes are as follows:

- a) **Creating an advanced electronic platform:** It can manage several Compliance with code procedures with the least amount of human interaction. This e-platform is being explored for its potential to include a case management system, automated procedures for filing applications with the AAs, notice delivery, IP interaction with stakeholders, record storage of CDs going through the process, and incentives for other market participants to join the IBC ecosystem. With the combined data on the e-platform, it might also enable regulators and the AAs to exert more control over their respective spheres of operation.
- b) **Requirement for an official unsecured creditors committee:** As unsecured creditors' interests are safeguarded by the pre-pack plan, they are not involved in its approval. Both the creditors' committee and a resolution specialist are necessary.
- c) **Amount of penalty imposed:** By amending Section 235A, the AA becomes capable to impose penalties on anyone who violates the Code or any rules or regulations. The amount of penalty that can be imposed for the aforementioned violations should be determined by the harm that the offending party causes to others or the illegal profit they make. A minimum penalty of one lakh rupees per day, or three times the unlawful gain or damage caused, whichever is higher, shall be the minimum that the AA may impose for the above-mentioned violations.
- d) **Redesigned Fast-Track Corporate bankruptcy Resolution Process ("FIRP"):** to give FCs the chance to lead a CD's bankruptcy resolution process outside of court while keeping some AA involvement to increase the final result's legal certainty. Note that the FIRP rules might be changed to allow unconnected FCs of a CD to choose and adopt a resolution plan through a non-formal, out-of-court process, with the AA only being involved for final approval or a moratorium, if necessary.
- e) **Broadening the Pre-packaged Insolvency Resolution framework's applicability:** Section 54A be changed to stipulate that the framework also applies to MSMEs and other specified types of CDs.
- f) **Strengthen the NCLT benches' institutional capacity:** The NCLT and National Company Appellate Tribunal (NCLAT) are overworked and have 16 benches out of a total of 20 bench members. This is because court processes are taking longer than expected. The overall number of bench members must be increased.

XVIII. CONCLUSION:

India's bankruptcy law, the Insolvency and Bankruptcy Code of 2016, aims to unify the current legal framework by establishing a single bankruptcy and insolvency statute. Relieving distressed corporate debtors is the IBC's main goal. The Code stipulates a 330-day deadline for completing the entire insolvency resolution procedure, including any litigation. The instances with successful resolutions demonstrate the accomplishment of IBC's goals. The value of the assets of the 250 rescued companies is four times greater than that of the 955 companies under liquidation, despite the fact that the number of companies under liquidation is nearly four times greater than that of the rescued enterprises.

The IBC has unquestionably been very successful thus far, but timeliness compliance is still a problem. The 180-day period (+90-day extension) that was originally planned was extended to 330 days in order to address concerns. Resolution preparations continue to be delayed in spite of the extension. The resolution of resolution plans typically takes 380 days.

The Covid-19 pandemic led to the introduction of the Pre-Packaged Insolvency Resolution Process ("PPIRP"), which offers company entities classed as MSMEs an effective alternative insolvency resolution procedure. It aims to deliver results that are expedient, economical, and maximize value for all parties involved in a way that minimizes disruption to their business operations and supports job preservation.

All things considered, the government's choice to introduce PPIRP was highly appropriate, and it was desperately needed—especially in light of the financial difficulties that businesses were experiencing as a result of the pandemic.

The development of IBC has not been hampered by the lack of an Amendment bill. IBBI is actively contributing to the increased transparency and efficiency of IBC. In handling cases, the NCLT has performed remarkably well. As of June 2020, 955 companies had been sent for liquidation, while 250 enterprises have been saved. IBBI reports that the resolution plans produced, in an average of 380 days, almost 191% of the realizable value for financial creditors. This is a significant improvement over the previous regime, which required an average of 1500 days to resolve.

The purpose of this suggested modification is to avoid lengthy, subsequent litigation on the subject by addressing the question of limitation at the beginning of the insolvency procedures.

As a result, the IBC has increased credit realization and significantly shortened the settlement process. The IBC is an important structural reform that, if carried out well and on schedule, may benefit both the corporate sector and the economy at large. It did, after all, unquestionably contribute to India's Ease of Doing Business (EODB) rating rising from 130 in 2016 to 63 in 2020.

The Insolvency & Bankruptcy Code (Second Amendment) Act 2020, the Insolvency and Bankruptcy Code (Amendment) Act, 2021, and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023, therefore, represent a significant advancement in enabling the efficient operation of the corporate insolvency resolution process and would strike a narrow balance between the objectives of the IBC and current situations.

- ⁱInsolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 1, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ⁱⁱInsolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 1, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ⁱⁱⁱCommittee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531
- ^{iv}Insolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 1, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ^vCA. Venkata Siva Kumar v. Insolvency and Bankruptcy Board of India & Others W.P.No.13229 of 2020
- ^{vi}Insolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 1, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ^{vii}Insolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 2, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ^{viii}Insolvency and Bankruptcy Board of India (IBBI), Understanding the IBC Key Jurisprudence And Practical Considerations A Handbook, Module 5, 2023 <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>
- ^{ix}Fast track corporate insolvency resolution process, Chapter 6 <https://www.taxmann.com/bookstore/bookshop/bookfiles/Pages%20from%20GTIBC1-02.pdf>
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- ^{xi}ShriAnshul Nagar, The Insolvency And Bankruptcy Code (Amendment) Ordinance, 2019, February 2020 https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/03032020_160448_102120474.pdf
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- ^{xiii}Ministry of Corporate Affairs, Bankrupt Companies after lockdown was imposed due to COVID-19 pandemic, March 22 2021 4:52 PM <https://pib.gov.in/PressReleasePage.aspx?PRID=1706640#:~:text=Section%2066%20has%20been%20amended,from%2025th%20December%2C%202020>
- ^{xiv}Anand Rao Korada Resolution Professional v. Varsha Fabrics (P) Ltd. & others(2020) 157 SCL 0350
- ^{xv}Brilliant Alloys Private Limited v. S. Rajagopal& Others Special Leave to Appeal (C) No(s). 31557/2018
- ^{xvi}Swiss Ribbons Pvt. Ltd. and Anr v. Union of India And Ors(2019) 4 SCC 17
- ^{xvii}Ministry of Finance, The Insolvency And Bankruptcy Code (Amendment) Ordinance, 2020 <https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-ordinance-2020>
- ^{xviii}Manish Kumar v. Union of India, 2021 SCC OnLine SC 30
- ^{xix}By Bhumika Indulia, Upheld, albeit with directions. Why was IBC (Amendment) Act, 2020 challenged? What prompted SC to invoke Art. 142? Read comprehensive point-wise analysis of the 465-pages judgment, SCC Online Blog, January 21, 2021 <https://www.sconline.com/blog/post/2021/01/21/upheld-albeit-with-directions-why-was-ibc-amendment-act-2020-challenged-what-prompted-sc-to-invoke-art-142-read-comprehensive-point-wise-analysis-of-the-465-pages-judgment/>

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^{xxi}Ministry of Finance, The Insolvency And Bankruptcy Code (Amendment) Bill, 2021 [https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-bill-2021#:~:text=The%20Insolvency%20and%20Bankruptcy%20Code%20\(Amendment\)%20Bill%2C%202021%20was,to%20repa,y%20their%20outstanding%20debt.](https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-bill-2021#:~:text=The%20Insolvency%20and%20Bankruptcy%20Code%20(Amendment)%20Bill%2C%202021%20was,to%20repa,y%20their%20outstanding%20debt.)

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^{xxiii}Amit Katyal v. Meera Ahuja, 2022 SCC Online SC 257

^{xxiv}Insolvency and Bankruptcy Board of India (IBBI), Discussion Paper on measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution, June 07 2023 <https://ibbi.gov.in/uploads/whatsnew/c4301ca9b10c5c83724a260f4e0fc250.pdf>

^{xxv}RPS Infrastructure Ltd. v. Mukul Kumar 2023 INSC 816

^{xxvi}M.K. Rajagopalan v. Dr. Periasamy Palani Gounder 2023 LiveLaw (SC) 403

^{xxvii}Gopal Lal Baser v. Sandeep Anand Company Appeal (AT) (Insolvency) No. 1149 of 2023

^{xxviii}The Hindu, More than 21,000 cases were pending before NCLT till January end: Govt, March 13 2023 <https://www.thehindu.com/news/national/more-than-21200-cases-were-pending-before-nclt-till-january-end-govt/article66614567.ece>

