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WHETHER IBC 2016 HAS BEEN SUCCESSFUL OR NOT?

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ABSTRACT-

The Insolvency and Bankruptcy Code (IBC) of 2016 was introduced with the aim of enhancing building safety standards and promoting sustainable development practices across India. This abstract seeks to evaluate the success of the IBC, 2016 and aims to provide insights into the effectiveness of the IBC, 2016 in achieving its intended objectives, highlighting both its accomplishments and areas for potential improvement.

KEYWORDS- Insolvency and Bankruptcy Code (IBC) 2016, Corporate Insolvency Resolution Process (CIRP), Pre-Packaged Insolvency Resolution Process (PPIRP), National Company Law Tribunal (NCLT)

Since the inception of Insolvency and Bankruptcy Code (IBC) 2016, the maximum CIRP cases filed have been from the manufacturing sector i.e 38%. Thereafter, the real estate sector has seen 21% of the overall Corporate Insolvency Resolution Process (CIRP) admissions. The following table gives an idea about the CIRP status:

OUTCOME	DESCRIPTION	CIRPs INITIATED BY				
		FCs	OCs	CDs	FISPs	Total
Status of CIRPs	• Closure by appeal/review/settled	336	779	9	0	1124
	• Closure by withdrawal u/s 12A	292	735	8	0	1035
	• Closure by approval of resolution plan	511	308	69	3	891

	• Closure by commencement of liquidation	1095	1036	245	0	2376
	• Ongoing	1066	728	104	1	1899
	TOTAL	**3300**	**3586**	**435**	**4**	**7325**
CIRPs yielding resolution plans	• Realization by creditors as % of liquidation value	177.6	129.5	148.9	160.4	168.6
	• Realization by creditors as % of their claims	33.8	18.7	17.9	42.4	31.9
	• Average time taken for closure of CIRP	677	686	569	632	671
CIRPs yielding liquidations	• Liquidation value as % of claims	5.7	9.3	8.5	-	6.5
	• Average time taken for closure of CIRP	496	492	414	-	486

Of the total 7325 CIRPs initiated, only 891 have been closed by way of a resolution plan while in 2376 cases liquidation have commenced. 2259 cases have been closed due to an appeal/ review or withdrawal of the CIRP. The CIRP which has been resolved by a resolution plan has yielded very high haircuts for the creditors. The above table clearly shows that on the basis of the liquidation value, the percentage of recovery is more than 160%. Whereas, the same if compared to the admitted claims is 32%. Thus, the financial creditors could only recover 32% of their admitted claims. This value of recovery for operational creditors is approximately 19% which is very less. The less recovery by an operational creditor could further lead the operational creditors into CIRP. The matters which went into liquidation, the recovery was around 7% of the admitted claims. It is also shocking to note that though, the code provides a maximum period of 330 days for the process to be over, however at an average 671 days are been taken for completion of the CIRP and in case of liquidation further 486 days are added. Thus, making the total process period to 1157 days.

The central government had introduced the Pre-Packaged Insolvency Resolution Process (PPIRP) process to fasten up resolution of smaller companies with least interference of the judicial system. The basic idea was to reach a settlement with financial creditors and get an approval of NCLT on the same. It is shocking to know that only 1 case under Pre-Packaged Insolvency Resolution Process (PPIRP) has been approved till date. This is due to the fact that the sections of the code, are ambiguous and the National Company Law Tribunal (NCLT) also takes a very long time. The IBC 2016 has been a significant reform in India's financial scenario. While some cases have showcased the code's efficacy in resolving the process swiftly, while other cases have exposed the limitations faced by the code in resolving the concerns of the stakeholders. The code,

has improved India's position at the global stage in terms of resolving insolvency. This significant improvement of India in terms of resolving insolvency has been acknowledged by the World Bank.

However, since the introduction of IBC in 2016, the average time taken to resolve insolvency cases in India has increased significantly over the years, making the process delayed and inefficient. According to IBBI, the average timeline is nearly as long, including delays in filing lawsuits, lengthy resolution processes, frequent litigation, and challenges that dispute resolution professionals face.

At the same time, a significant number of CIRP cases further end into liquidation, resulting in the complete closure of business, resulting in job losses, and minimal compensation to the creditors. According to the IBBI March 2023 quarterly newsletter, by the end of March 2023, a total of 6,571 CIRPs had been initiated and a total of 2,030 CIRPs had been liquidated during the same period, excluding 20 cases where liquidation orders were canceled by tribunals or courts. The realization under liquidation is much more smaller, against the total outstanding claims and creditors may have to bear haircut as high as 95% of the total value. However, one of the reasons as to why liquidation has yielded so less is because more than 76% of the CIRPs ending in liquidation (1548 in 2022 for which data is available) either previously held a BIFR or no longer do. The economic value in most of these Corporate Debtors had almost completely declined even before their adoption into the CIRP. On average, the asset value of these Corporate Debtors represents 7% of outstanding liabilities.

The Parliamentary Standing Committee on Finance for the 2020-21 has released a report highlighting key observations regarding the resolution of insolvency cases in India. The report asserts that the average period it takes to deal insolvency cases has decreased from 4.3 years to 1.6 years in 2017 to 2020, following the introduction of the Insolvency. and Bankruptcy. Code (IBC). However, the committee highlighted the issue of low recovery rates as well as the frequent delays in the rehabilitation process. supply, acting as a departure from the initial goals of the Code.

Significant discounts have been observed when creditors have written off some debts during the settlement process, in some cases up to 95%. The committee recommended greater clarity and proposed setting discount criteria in line with international standards to strengthen creditors' rights.

The report further also revealed that a significant burden/ strain of the insolvency cases that are pending before the National Company Law Tribunal (NCLT), involving a total value of Rs. 900 billion rupees. Approximately 71% of these cases have been pending for more than 180 days. To address these delays, the Committee recommended the setting up of special benches in the NCLT to deal matters related to the insolvency proceedings. It was also proposed that the defaulters' application should be received within 30 days from the date of submission, thereby transferring control of the company to the resolution process, thereby minimizing the delays and changes in ownership of assets. With regard to the capacity of the NCLT, the Committee noted that more than 50 percent of the sanctioned strength of the tribunal remained vacant. It recommended conducting an analysis to determine the required competencies based on expected workload, pre-planning the recruitment and utilizing a virtual -hearings to address case backlogs, and above all,

developing trainings programs NCLT members. The report also highlights the appointment of High Court judges as judicial officers of the NCLT to ensure professionalism and efficiency.

Additionally, the Insolvency Law Committee Report for the year 2022 makes a number range of recommendations aimed at improving the insolvency resolution process in India, including effective implementation of requirements and procedural periods as well as consideration of broader aspects of the system. Firstly, it proposes mandating the use of information utilities (IUs) to set defaults, aiming to expedite the process and avoid detainments in approving CIRP applications. Secondly, the report calls for clarity on continuation of proceedings for avoidable transactions and improper trading after the completion of a CIRP, proposing a clarificatory amendment to Section 26 of the IBC. The threshold date for the look-back period of avoidable transactions must be changed to the filing date of the CIRP application, including transactions from filing until inception.

The report also highlights the need to limit unwanted settlement plans and changes by proposing mechanisms to deal with late submissions and unwanted changes. Delays in approval or rejection of resolution plans should be kept to a minimum, with a review period of 30 days for disposal by the Adjudicating Authority (AA). The report highlights the role of the Stakeholders Consultation Committee (SCC) in the liquidation process and emphasizes the mandatory consultation with the SCC by the liquidator. Secured creditors coming out of a liquidation process must contribute to employees dues and pay for security interest preservation. Amendments have been proposed to clearly indicate these contributions to the IBC. Finally, the report also suggests that the voluntary liquidation process should be allowed to conclude before a winding-up order is made, providing a simple winding-up mechanism and ensuring consistency in practice.

The data regarding realization of claims and timing cannot be said to be veritably harmonious as the performance during a particular time may depend on such circumstances which are not in one's control such as the kind of companies opting or being subjected to CIRP/Liquidation, also a fair quantum of credit has to be given to the earlier Covid situation. Still, the decrease in the realization rate both against liquidation value and the total admitted claim is a point of concern along with the situation such as balancing the rights of creditor and debtor. Although the code can be seen as superior to the previous code in terms of streamlining the procedures and time required to resolve the insolvency but it is far from achieving its purposes/ aims and matching the efficiency of its foreign counterparts. The lawmakers need to bring out proposed amendments into implementation after consulting with the various stakeholders, including bankers and lawyers in order to address the various shortcomings in the code.

All decisions of the CIRP and liquidation process are dependent on the wisdom of the COC or the stakeholders. The COC consists of officers of the banks who do not have adequate knowledge about running of businesses. Thus, it is very difficult for them to analyze whether the amount being offered under the resolution plan are good enough for them to approve the same. There have been various matters where the company could have been revived if the COC had accepted the plans instead of forcing the company into liquidation.

Despite its time bound approach, IBC has faced challenges in adjudication and litigation. Over-burdened courts and procedural complexities have contributed to delays and thus affected the overall effectiveness of the code. Shortage of both judicial and technical members is one of the reasons for the delay of the matters not been admitted. The other reason is non submission of claims within the prescribed time period by the government agencies and application for the continuation/ acceptance of such a claim. IBC 2016 may have been successful for larger cases but due to its high cost of resolution and complexity, it a deterrent for smaller business and SME's. The insolvency resolution process had led to significant haircuts for the creditors.

Another major flaws in the Insolvency and Bankruptcy Code is that it does not take care of the interest of other stakeholders and treats the interest of the Financial Creditor on priority. The Code does not provide any seat for the operational creditors in the COC except in cases, where there are no financial creditors of the Corporate Debtor. Only in case of the debt of the Operational Creditor being more than 10% of the total debt than one representative of the Operational Creditor may be allowed to participate in the meeting of the Committee of Creditors, however, there would be no voting power and thus will have no call on the decisions being made by the Financial Creditor. Such operational creditors had been supporting the Corporate Debtor to maintain as a going concern even after the financial creditors withdrew their limits and support from the Corporate Debtor. Majority of cases where a resolution plan has been approved or liquidation has taken place, the operational creditors have taken the maximum hit as it is clear from the data accumulated and published by the IBBI in its various newsletters. Such operational creditors, who receive no amounts or maybe 5% of its admitted claims suffers losses and the working capital of the operational creditor may be hit. This, would lead to defaults by the operational creditors and thus inviting initiation of IBC against it. The IBC 2016, is more focused on the revival of the Corporate Debtor with recovery of the financial creditors rather than the other stakeholders. Also, the IBC is being used as a tool of recovery by operational creditors and even by small financial creditors.

In case of a Corporate Debtor dealing with number of projects in real estate, a default in one project could lead to all the projects being taken to CIRP. It is only by the judicial interpretation of the NCLAT in the matter of Umang Realtech and Supertech that only the project against which the application for admission was filed has been put in the control of the resolution professional and the other projects are out of the CIRP. Since there has been a large number of filling in the real estate projects, the central government should look at amending the code so that only the project in distress should be admitted to CIRP.

The waterfall mechanism under section 53 of the Insolvency and Bankruptcy Code is also not clearly spelt out. This, further lacks clarity during the liquidation stage as section 53 of the Insolvency and Bankruptcy Code only deals with secured creditors and there is no distinction between the first charge holders and second charge holders. So, in case of liquidation, all are treated as secured creditors and the liquidation estate is distributed among them in the percentage of their claims. Further, under liquidation if a financial creditor has not filed its charged with the registrar of companies (ROC) then, he would not be treated as a secured creditor. This should also be clarified by bringing about required amendments. IBC has led to liquidation/ closer of a

large number of companies. Even in resolution there has been higher retrenchment thus leading to a loss of approximately 1 million jobs. The resolution professionals appointed is generally CA/ CS/ lawyers and do not have the expertise or professional knowledge to run a company and many of the companies under CIRP have lost its customers and value of assets. Thus, leading to lower resolutions.

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