ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
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VOL VII | NO. : 6 | PG. 1-52 | June 2023

INSOLVENCY AND BANKRUPTCY JOURNAL

ICSI Institute of Insolvency Professionals (ICSI IIP)

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From Chairman's Desk

"Don't be afraid to give up the good to go for the great.."

- John D. Rockefeller

We are living in the technological era. Everything around us is technology driven. The new technologies are broad based in their scope and are capable of easing the life of humans be it strenuous tasks to day-to-day basic activities. Our lives have become largely dependent on the technology whether we like it or not. The list of technologies grows every day which is actually changing the way we live, work and communicate every day. Some of the emerging technologies which will take over are Streaming technology, Robotics, Blockchain, cyber security, computerized algorithms, artificial intelligence etc. The technology has played vital role in the growth of entrepreneurship in India. The number of startups has grown from 350 in 2014 to more than 90,000 in 2023. One of the key drivers to this success is surely the technological advancements and the support of Government with the talent. The insolvency area is also experiencing eruption because of increasing dependency on technologies. Internationally, many consulting firms have started using the AI technology in the assignments which in-turn is improving their performances. The artificial intelligence can be used as a tool to automate various routine tasks during insolvency proceedings like research, due diligence, analysis of claims, evaluation of resolution plans, valuation etc. The technological advancements should not be seen as a threat to the existing jobs, they may act as a support improve the efficiency and generate more opportunities.

The Government is constantly putting efforts to strengthen the insolvency mechanism by speeding up the insolvency processes and the resolution values through constant amendments in the Code and Regulations. The Government is also sensitizing the use of technology in insolvency processes. Earlier this January, the Ministry of Corporate Affairs has issued a discussion paper wherein use of technology in the ecosystem was deliberated. The Government suggested that all the important institutions of the IBC like Adjudicating Authorities, IBBI, IUs and service providers are using different fragmented systems with no integration. The Ministry is considering to streamline their interactions and developing case management system, automated processes to file applications with the AAs, delivery of notices, enabling interaction of IPs with stakeholders, storage of records of CDs which will surely allow the regulators to have better oversight and in turn will help in effective working and eventually help in successful implementation of IBC.

I am hopeful that in near future the entire system of the insolvency will be revamped with improved systems and effective use of new technologies like AI. We should brace ourselves to use the new technologies and I strongly believe, that the new technologies will not replace the professionals but it will replace those professionals who will not educate themselves to use them.

(Mr. P.K. Malhotra)

Chairman, ICSI IIP

INSTITUTE OF INSOLVENCY PROFESSIONALS
(Subsidiary of ICSI and Insolvency Professional Agency of IBBI)

ICSI IIP'S PUBLICATIONS

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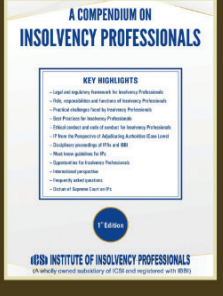
A Compendium on Insolvency Professionals

ICSI IIP has brought-out a comprehensive publication on Insolvency Professionals titled 'Compendium on Insolvency Profession', which the IBBI Chairperson Mr. Ravi Mital has himself released on 27th Oct 2022 at IBBI office.

The publication is a comprehensive document covering varied aspects like legal and regulatory framework for IPs, disciplinary proceedings against IPs (and their outcomes), ethical and code of conduct for IPs, opportunities for IPs and case laws related to IPs.



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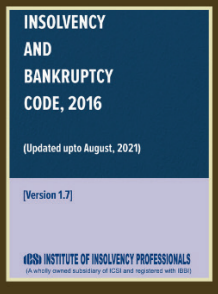
LET'S GROW WITH US



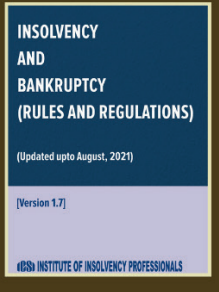
Insolvency and Bankruptcy Code, 2016 (Version 1.7)

This Publication (updated upto November, 2022) covers the provisions of Insolvency and Bankruptcy (Amendment) Act, 2021 which provides the specialised forum to oversee Insolvency and Liquidation proceedings.

INR 500/- Postage Extra

Insolvency and Bankruptcy (Rules and Regulations) (Version 1.7)

This Publication (updated upto November, 2022) covers all the Rules, Regulations and Notifications along with all the Circulars and Guidelines issued by Insolvency and Bankruptcy Board of India (IBBI).



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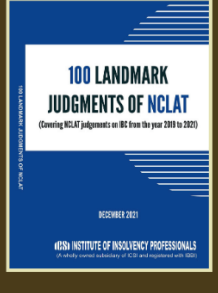

100 Landmark Judgements of NCLAT (covering NCLAT judgements on IBC from the year 2019 to 2021)

This publication is about making the legal provisions in the Insolvency & Bankruptcy Code, 2016 and the interpretations thereof easily discernible for the readers. This is approached through the analysis of 100 crucial landmark judgments delivered by Hon'ble National Company Law Appellate Tribunal (NCLAT). The landmark judgments, as delivered by Hon'ble NCLAT, have been identified and their ratios culled out in this book.

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COO's Message

"The advance of technology is based on making it fit in so that you don't really even notice it, so it's part of everyday life"

—Bill Gates, Co-founder of Microsoft

Technology is often the critical element that enables a bankrupt company to turn itself around and become a competitive business, although it is often the most overlooked transformation aspect in bankruptcy.

Technology is not a high priority during restructuring. Of key business dimensions, capital and cost take the front seat while growth, technology and talent are shown the back seat.

The Central Government, in in line with the Centre's Digital India drive, plans to develop a state-of-the-art electronic platform that can handle several processes under the Insolvency and Bankruptcy Code (IBC) that would require a minimum human interference. One of the objectives of the Code is to conclude the process of insolvency in a time specific manner. The move to introduce any technology that streamlines and speeds up the process would be a welcome relief for the over burdened Insolvency Professional as well.

Technology is used for prevention as well as cure, supporting investigations, research and analysis, by tracking companies that might fail, and providing information and insights to companies that have exposure to businesses that are at risk. Insolvency and restructuring work apply standard rules and processes to a specific set of circumstances, which are different for each company, and commonly involves managing large sets of company documents. This combination of rules and variables make it an ideal practice area for artificial intelligence (AI) to be applied to data capture and classification and process automation.

As succinctly put by Mr. Ravi Mittal, Chairperson of IBBI, the stakeholders of IBC currently work in silos and have their separate fragmented technological platforms. There is a need for a comprehensive IT platform that can ensure end-to-end integration and digitisation of the processes and serve as a single source of truth. An integrated platform would improve the outcomes of the insolvency process, including minimising delays, increased transparency, increased participation of resolution applicants, facilitation in effective decision making and maximisation of value.

It may be considered that e-platform may provide for a case management system, automated processes to file applications with the AAs, delivery of notices, enabling interaction of IPs with stakeholders, storage of records of Corporate Debtors undergoing the process, and incentivising participation of other market players in the IBC ecosystem.

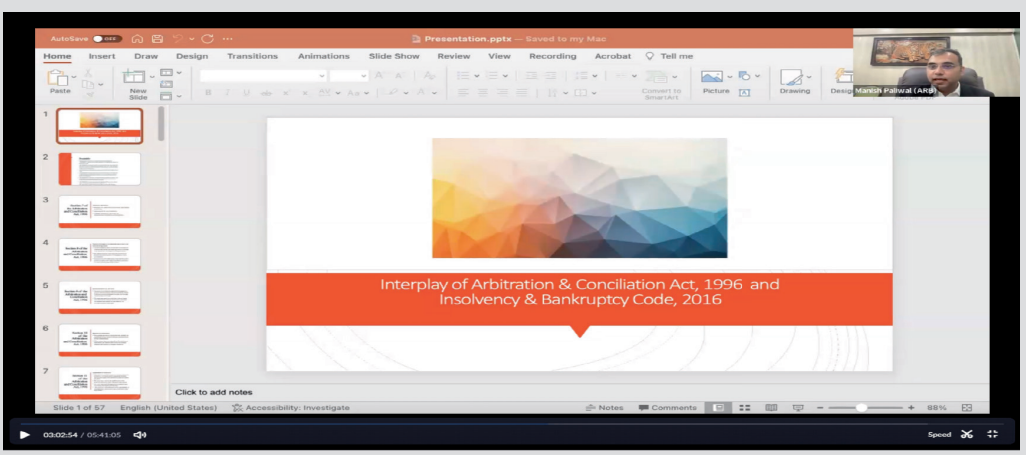
(Dr. Prasant Sarangi)

COO (Designate), ICSI IIP

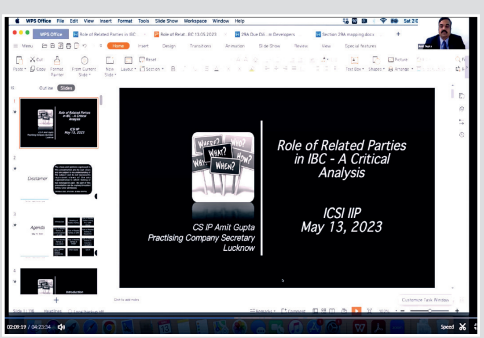
Events @ICSI IIP

(Workshops, Webinars, Round-table Discussions, Interactive Meets etc.)

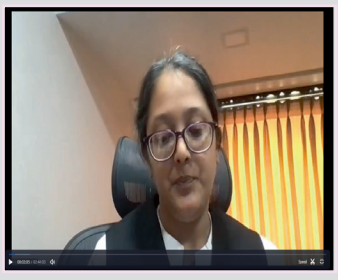
Workshop on Interplay of SARFAESI Act, 2002 and Arbitration Act, 1996 with IBC by CS and Advocate Honey Satpal and Advocate and IP Manish Paliwal on Saturday, 6th May, 2023

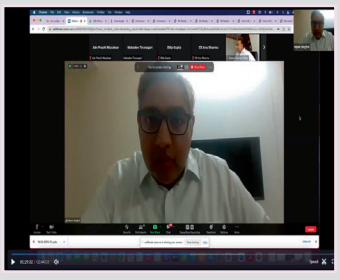


Workshop on Role of Related Parties under IBC by CS and IP Deepa Venkat Ramani and CS and IP Amit Gupta on Saturday, 13th May, 2023

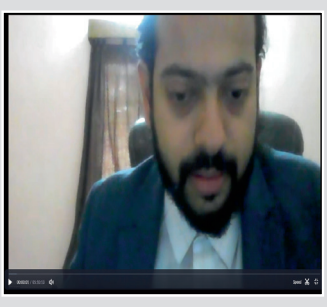


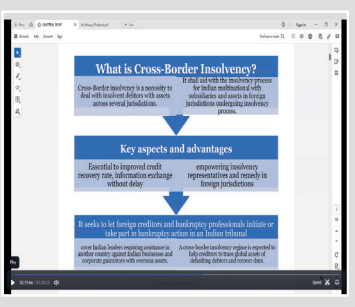
Webinar on Anatomy of IBC Cases-5 by CS and Advocate Prachi Wazalwar and CS and IP Nipun Singhvi on Friday, 19th May, 2023



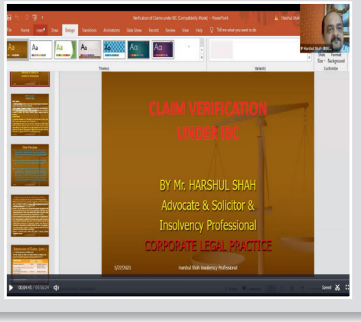


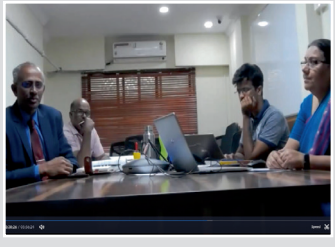
Workshop on New Avenues in IBC by CS Badri Narayanan and Professor Risham Garg on Saturday, 20th May, 2023

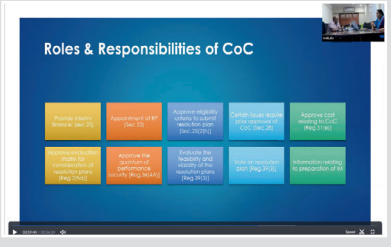




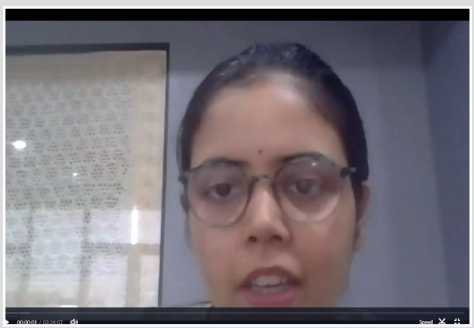
Workshop on Claim Verification and Committee of Creditors under IBC by IP Harshul Shah and IP Rajendran Shanmugam on Saturday, 27th May, 2023

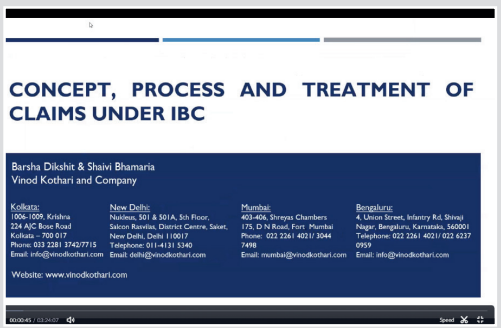


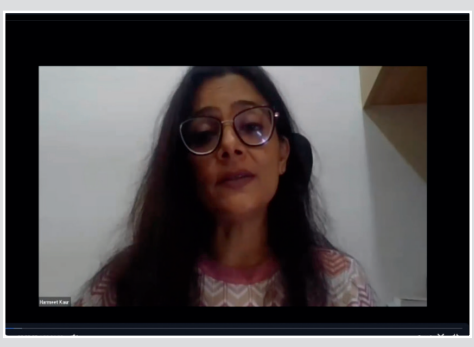


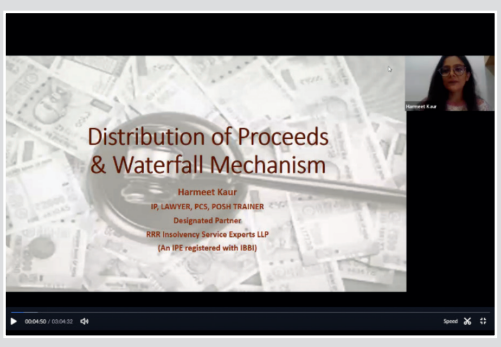


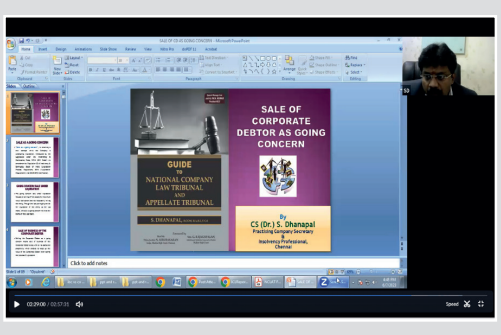
Workshop Series "PERSPECTIVES ON IBC Series V -AN ARRAY" from 5th June, 2023 to 9th June, 2023. The topics covered in the series such as concept, process, treatment of claims (including statutory & contingent) under IBC, distribution of assets and waterfall mechanism, sale of corporate debtor as going concern and related challenges with probable solutions, etc.











Interviewee:
Ms. Harmeet Kaur

Certified POSH Trainer, Practicing Company Secretary, Lawyer, and Resolution Professional

INTERVIEW

1. What do you think have been the key achievements of Insolvency and Bankruptcy law since its commencement?

The Insolvency and Bankruptcy law has a noteworthy impact on the Indian economy since its inception. The IBC has provided an effective system for resolving the indebtness, which has resulted in faster recovery of dues for creditors. The impact is significantly and visibly better than the erstwhile resolution mechanisms. The IBC has also promoted entrepreneurship by providing an opportunity to the latent and deserving contenders for resolving businesses. Interestingly, a behavioural change is witnessed on part of the debtors to ensure sound decision-making and business failures are prevented.

The IBC has also helped in resolving several high-profile cases, including the resolution of Bhushan Steel and Essar Steel, which were amongst the largest insolvency cases in India. Despite the challenges, the IBC has been a success, and the government's continued efforts to address the challenges will ensure that the IBC continues to be an effective tool for resolving insolvency and bankruptcy cases in India.

2. What are some strategies adopted by you to tackle assignments under the Code, keeping in mind the underlying reasons for which the Code was enacted?

The Code has been enacted for insolvency resolution in a time bound manner, for maximization of value of assets of such persons, to promote entrepreneurship, to promote the availability of credit and to balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues amongst

other reasons. Therefore, the first strategy that I have always adopted is to give due importance to the time value of money, thereby reducing the further deterioration of value of assets. Secondly, to balance the interest of all the stakeholders, I give due importance to transparency in running the process, which brings a confidence in the participants and they provide their best inputs for the value maximization. A robust promotion and marketing exercise is required for inviting the most suitable prospective resolution applicants or for the sale of the assets under liquidation, for unleashing the best possible value maximization. And we, at RRR Insolvency Service Experts LLP, ensure to carry out such steps which can contribute towards this primary objective of IBC.

3. Many of stakeholders particularly operational creditors perceive the IBC 2016 as a debt recovery tool. Is it a recovery tool?

I agree that the stakeholders consider the IBC as a recovery tool and use it as such. The reason being, Code does not give priority to the dues of operational creditors in the payment waterfall, and therefore, normally they do not find the amounts offered to them in the resolution plan- attractive. They should, in fact, be advised that the IBC envisages a process through which financially ailing corporate entities are put through a rehabilitation process and brought back up on their feet. This gives a lease of life to the operations and the Operational creditors shall also continue the business with the same CD. Instead for settling the dues for a less amount at once, they should rather eye for the successful resolution and continuing business relation with the CD.

At a time when India was struck with huge defaults in debt and the debt recovery laws were failing, it was realized that mere debt recovery would not address the damage being caused by the NPAs. IBC was introduced with the objective of consolidating the framework for insolvency resolution of corporations, partnership firms and individuals in a time bound manner, and the stakeholders should understand that it is not yet another debt recovery law in disguise.

4. Since you are a Company Secretary, how does it help you in handling the assignments? Is the experience of being a CS an added advantage?

Yes! Being a company secretary for a considerable portion of my professional journey has helped me manage time in the most prudent manner: By setting the right priorities, compliance with the relevant laws applicable to the CD, as well as under IBC, expertise in the convening of meetings, voting process and drafting of relevant documents be it the agenda notes, minutes, emails, or any other communication with the relevant authorities, time can be manageable and goals can be achievable.

5. While handling the assignments, what challenges are being posed by various stakeholders? How has your experience been with the Promoters of the Corporate Debtors?

Despite the success of the IBC, ease of exit, and entrepreneurial opportunities, it brings with it several challenges that need to be addressed. One of the key challenges is the non-cooperation from the promoters and resultantly the personnel of the CD. Secondly, the delays and discretion at NCLT causing damage to the value of assets and loss of interest in the potential buyers. The average time taken from the start of the proceedings to approval of resolution plans by the judiciary is 408 days.

On various occasions, the Supreme Court held that timelines prescribed by the legislation were only directory and not mandatory in nature, and provided for extension of the processes. The NCLT exercises discretion at the stage of admission of insolvency cases, and approval of the plans, in contravention to the IBC. Courts have also allowed new applicants to put in resolution plans or older applicants to revise their plans after the due date. They have passed orders that dilute the rights of secured creditors. This has undermined the procedural sanctity of the process, and added to the delays. These are just a few examples of judgments that have opened the floodgates to exactly what the drafters of the IBC wanted to prevent.

There have also been inordinate delays in the adjudication of the promoter related applications, most important being the non-cooperation, and avoidance applications. As and when the AA starts doing justice to these two applications, the promoters shall themselves refrain from a number of mischiefs.

Thankfully, the entire ecosystem as well as the government has recognized these challenges and several measures are being taken, including increasing the number of NCLT benches, increasing the number of insolvency professionals, and amending the IBC to address practical challenges.

6. **How significantly do you think the regulators i.e., IBBI and IPAs serve the profession of Insolvency Professionals? What are some changes in the regulatory framework that could benefit the professionals?**

The regulators, i.e., IBBI and IPAs are involved in a number of activities aimed at educating and developing the Insolvency Professionals. The ICSI-IIP, as one of its primary functions, safeguards the rights, privileges and interests of insolvency professionals who are its members. The constant endeavor of the Government and the Insolvency and Bankruptcy Board of India (IBBI) to urgently address the practical difficulties, has transformed IBC into a future ready legislation. The latest example being where IBBI has invited comments on the Regulations already notified under the Code till date, and ICSI IIP has organized interactive webinar series wherein all the insolvency professionals can deliberate the issues faced and the corresponding changes required under the Regulations. The IPs would like to have more such interactions with its parent organization, wherein they can share the practical difficulties or grievances being faced by them and the solutions should be provided by both, the IBBI and the IPA be given at the same time.

7. **What are some lessons learnt in your journey as an Insolvency Professional that you have emulated in your life outside the profession too?**

Being an insolvency practitioner, I have learnt to be committed towards the responsibilities and expectations, as per the requirements of the role; multitasking; meditation; not to procrastinate; thorough decision making practices; making inclusive choices, while taking everyone along!

8. **If there was any piece of advice that you could share with the prospective aspirants of the profession and new Insolvency Professionals, what would it be?**

My suggestions to the fellow insolvency professionals and the new aspirants would include primarily the knowledge of law, and up-dation thereof, time management, creating an infrastructure and delegating the work appropriately, develop clarity in communication, follow a solution oriented approach, accept the assignments in coherence of your scale of operations and last but not the least, be empathetic towards the other stakeholders.

9. **What are the key focus areas that could in your opinion that can be addressed to make IBC more effective?**

I believe that time is of the essence in the revival of an already sick entity. The Report of the Insolvency Law Committee, 2022 has made suggestions to improve timely resolution of the insolvency process. These include greater reliance on the information utility for establishing default, as well as curbing judicial interventions on issues such as acceptance of unsolicited resolution plans, or revision of resolution plans, and strict adherence to timelines for approval or rejection of resolution plans.

The judiciary perhaps finds it appropriate to intervene or to exercise its discretion, when it believes such intervention is in the interest of natural justice. Court judgments often end up going against the letter and spirit of the legislation, and the ultimate impact on the markets and economy is ignored in this process. Thus, in my view, the key focus areas should be to reduce the time involved in the admission of applications, approval of plans, and to regulate the promoters.

10. **Through various amendments, processes such as pre-pack, group insolvency, alternate dispute resolution are being introduced to Insolvency and Bankruptcy ecosystem in the country. Is this a recipe for success or disaster?**

The introduction of new processes such as pre-pack, group insolvency, ADR are enthusiastically welcomed steps, which will provide new avenues for practice to the professionals. One must note that any/all amendments are based upon well researched and much deliberated before announcement thereof in a democratic manner. I urge the fellow professionals to participate in the discussions and provide their inputs while the changes are being formulated.

11. **What is the future of Insolvency and Bankruptcy law in the country?**

The insolvency regime in India is evolving at a fast pace which brings forth opportunities and challenges. Developments include the operationalization of individual insolvency including a fresh start process, Pre-packaged insolvency resolution, cross border insolvency and group insolvency measures under the Code. IPs have been dedicated in their role and have come out as a key pillar to the Code up till now, and have always been prepared to hold the mantle into a more challenging future. I personally believe that the alternate dispute resolution mechanism is the best tempering that can be made to the Insolvency laws in India.

Interviewee:
Hasti Mal Kachhara

Insolvency Professional, FCA & FCS

INTERVIEW

1. What do you think have been the key achievements of Insolvency and Bankruptcy law since its commencement?

As an Insolvency Resolution Professional, the IBC is one of India's success stories. Since 2016, the IBC has managed to deal with a number of corporate insolvencies either through resolution or liquidation. I think that the Insolvency and Bankruptcy Code (IBC) has brought about a paradigm shift in the insolvency resolution process in India. Some of the key areas for successes of the IBC are timely resolution of stressed assets, Level playing field, Increased recovery rates. With the IBC, trust of investors including foreign institutional investors increased due to financial discipline brought by the IBC Laws, which created a time bound resolution process. Gaining confidence on financial discipline is the biggest achievement of this law. It has taken our country far ahead in various growth aspects. Now due to shifting of control in the hands of creditors and appointment of competent qualified resolution professional, we have time bound insolvency process to handle it with value addition or value maximization of the Corporate Debtor, by bringing fresh capital with new investors to revive the Corporate debtors. However, judicial discretion and delays is resulting the IBC to become less effective than what was envisaged. There is shortage of judges in NCLT across India which in-ordinate delays the whole process. The CIRP and liquidation cases/matters are pending before NCLT for more than 3 years even without hearing

the case once. The entire process of IBC, 2016 is getting futile due to judicial discretion and delays.

2. What made you pursue the field of IBC and become an Insolvency Professional considering it is relatively new and niche field?

As an Insolvency Resolution Professional, the strategies to handle the assignments under the Insolvency and Bankruptcy Code (IBC), keeping in mind the underlying reasons for which the Code was enacted are understanding the business, formulating a resolution plan, Engaging with stakeholders, Strict adherence to timelines, Transparency and accountability, Professionalism and ethical conduct. I have a rich experience of over 40 years of managing various types of industries/Projects/ Sectors. With the introduction of IBC, a new avenue opened up to put my earned knowledge to use. The responsibilities of IPs as envisaged in IBC are quite challenging in running a company in troubled times. The Insolvency professional gives their best talents to revive the sick/NPA and closed industrial units. This is the best platform for IP Professional having industrial experience to overcome the challenges during CIRP and Liquidation processes.

3. So far how was your experience as an Insolvency Professional?

As an IP, my experience has been mixed, while on one hand there is a sense of achievement in being able to restart production in companies that were shut and on the other hand there is dejection caused by judicial delays. There were lot of hurdles and pressure put up by the erstwhile promoters/directors to derail the entire CIRP/Liquidation process. The Insolvency and Bankruptcy Code (IBC) 2016 is not a debt recovery tool. It is not a litigation. It is a comprehensive legislation process that provides for a time-bound and transparent resolution process for stressed assets, the maximization of the value of assets and the resolution of stressed assets in a fair and equitable manner. I got an opportunity to understand and solve real time problems faced by all the stakeholders including promoters. It was not less than a tug of war match where promoters are trying to get rid of their liabilities using their all efforts. They know their industry and business better than the new IP who have taken charge over it. So every assignment has provided new challenges and opportunities to use my past experience and skills.

4. In reference to the assignments handled by you what practical challenges you faced as an Insolvency Professional so far?

As an Insolvency Professional, the liasioning with statutory authorities has been a challenge, as not all authorities are aware about the provisions of IBC. More often they completely disregard the moratorium applicable to companies under CIRP and take adverse steps against the Corporate Debtor. Moreover, there were personal attacks on integrity of insolvency professional by levelling false charges by erstwhile promoters/directors by filing false cases/ complaints by way of Miscellaneous Applications (MAs) / Interlocutory Applications (IAs) to NCLT and IBBI against IRP/RP. This leads to inordinate delays in CIRP cases in various Adjudicating Authorities (AA). Being a Chartered Accountant, Company Secretary and Insolvency Professional, I have a good understanding of the accounting, legal framework and procedures involved in the resolution process, which is essential tool for the effective discharge of my duties as an IRP/RP. This means knowing about business law, bankruptcy law, contract law, and other similar commercial laws. The various skills used by me which includes skills like communication, negotiation, and persuasion, which are crucial for finding an answer that works for everyone. This is important for making a workable settlement plan that maximizes the value of assets and makes sure that the money goes to creditors timely and in a fair way. The challenges can be seen as sign of growth and having space of improvement. Crucial challenge is of getting proper order on time from NCLT. Due to paucity of times NCLTs are burdened with the cases. I can observe that slowly and gradually Insolvency professionals are getting involved in more paper work due to non- cooperation of promoters, filing of various applications for directions and increase in compliance reporting which is unhealthy for its sustainability as IPs are getting busy with lots of paper work. If some powers are given to an IP to handle noncooperative promoters, auditors or creditors and also timely payment of fees to the IP, then the procedure would work faster or else NCLT/AA will be seen getting burdened with the applications of such issues. Completing many formalities and procedures and obtaining co-operation from many stake holders in the given time conditions set by the IBBI is working out well but not

able to give quality results. Some flexibilities in this will be welcomed which can give desired outputs.

5. Since, you have handled number of assignments, how has your experience been with the Promoters of the Corporate Debtors?

The experience with promoters has been varied, while some of the promoters are quite co-operative, the others are either not traceable or non-cooperative. However, in either case my approach has been to err on the side of caution when dealing with the promoters. It is very obvious for promoters to feel insecure at such situations. Promoters are very cooperative till you give them assurance that they will come out of their mess of defaults but once you enquire about the siphoning of funds and frauds detected by you, they become hostile and non-cooperative. So, I got different types of promoters and need to use our interpersonal skills to deal with them according to the requirements. Moreover, there were personal attacks on integrity of insolvency professional by levelling false charges by erstwhile promoters/directors by filing false complaints/cases by way of Miscellaneous Applications (MA) / Interlocutory Applications (IAs) to NCLT and IBBI against resolution professional. Using the IBC to handle tasks means dealing with a lot of different people who have different needs. This can lead to conflicts and inordinate delays the CIRP cases. Promoters may try to stop the entire CIRP process because they don't want to lose control of the company. These problems can be solved with clear communication, fairness, and a focus on what is best for everyone. There were more than 25 IAs / MAs filed before NCLT in one of my handled CIRP Cases. The most of the applications were filed by erstwhile promoters/ directors to derail the entire process of CIRP. I have turn-around the closed industrial units into profitable industry/venture in short span of time even in troubled times of Covid-19. I have managed to achieve more than 95% capacity utilization of the Corporate Debtor (CD). I have managed earned profits and having surplus funds at the end to the CIRP assignment inspite Covid pandemic. I have saved lot of expenditures in terms of overheads, raw material cost and stores & spares cost for the corporate Debtor (CD) by using my vast industrial experience.

6. How significantly do you think the regulators i.e., IBBI and IPAs serve the profession of Insolvency Professionals?

The IBBI is the main regulatory authority and a dynamic institution for monitoring the Insolvency Laws in the Country Both IBBI and the IPAs have been proactive to the needs of IPs bringing about swift amendments in the Code and Regulations. They are monitoring the performance of the IP and other agencies and building the confidence of stakeholders to go through the Insolvency process for maximisation of their values and give better result and timely utilisation of available resources by timely implementation of the plans or realisation of values. The joint efforts of IBBI and IPAs will go long way in developing the confidence of the all stakeholders in the Insolvency Professionals. The Regulators like the IBBI and IPAs are very important because they set standards, enforce rules, and help IPs. IPs can gain from a simplified regulatory framework, high-quality training and education programs, help and direction, and more transparency. A good regulatory system can help make sure that Insolvency Professionals do their jobs in an honest and professional way while also promoting the larger goals of the insolvency and bankruptcy process. They are monitoring the performance of the IP and other agencies and building the confidence of stakeholders to go through the Insolvency process for maximisation of their values and give better result and timely utilisation of available resources by timely implementation of the plans or realisation of values. The joint efforts of IBBI and IPAs will go long way in developing the confidence of the all stakeholders in the Insolvency Professionals. It has been my experience that the IBBI and IPA are not supportive professionally to Insolvency Professional. There are number of procedural requirements by IBBI and IPA which delays the routine work of IRP/RP during the course of CIRP/Liquidation and there are time limits set by IBBI and IPA are so tight that the IPs are unable to comply the requirements of IBBI/IPA due to their busyness in CIRP/Liquidation processes.

7. How being an Insolvency Professional shaped your professional career from the time you got yourself registered?

It's a very good platform to learn and update yourself about knowledge of all commercial/corporate laws

including IBC, Company Law etc etc. I enjoyed the working during my CIRP assignments being qualified FCA, FCS and IP Professionals apart from having more than 40 years of industrial experience. I could utilize my industrial experience of 40 years in various Industries in CIRP cases. Being an Insolvency Professional , it has given me a new identity in the market being treated as a CEO of the Corporate debtors. The Resolution Professionals are treated as a new form of professional entrepreneurs by the stakeholders who can resolve the issues and help in revival and turn around the Corporate Debtors.

8. Any advice to the prospective aspirants or Fresh Insolvency Professionals who are seeing their career in Insolvency Law?

Anyone aspiring to make a career as an IP shall enter/ approach to this profession with an insurmountable level of patience and cool-mindedness. I advise all youngsters professionals to join this profession and make very good career in the field of IBC, 2016. This is a noble profession, all the members are experienced and highly paid with High status so as a Resolution Professional, I would tell new and aspiring Insolvency Professionals to work on their communication, negotiation, and ability to change and think creatively. It's also important to keep up with changes in regulations and the market and to put respect and doing the right thing at the top of your list in all parts of the job. Lastly, look for mentoring and professional development opportunities to keep learning and getting better at your job.

9. What are the key elements in your opinion that can be addressed to make IBC more effective?

Apart from the challenges with the judiciary, supremacy of IBC over all existing laws needs to be established. Otherwise, IBC will follow the fate of its predecessor laws. Further, a Code of Conduct for Committee of Creditors should be introduced without further delay. The recent case laws of Supreme Court as well as NCLAT may lead further derail the entire purpose/process of IBC, 2016. Its need to be looked into it. As a Insolvency Professional, I think that the Insolvency and Bankruptcy Code (IBC) could be made more successful by focusing on a few key areas like use a more streamlined resolution process that takes less time and costs less money to resolve issues, Enhancing stakeholder participation which can improve the quality of choices and make it less likely that there will be disputes or lawsuits. The Whole IBC depends on the performance of IP, hence, he should be suitably protected and empowered to handle the CIRP and encourage to take innovative steps in improving the working and value of the CD. The Code of conduct for the COC to be implemented fast. IPs should be authorised to take help of statutory authorities in acquiring assets and datas while takeover of the Corporate Debtor instead of approaching to AA for directions. The government agencies like Police and Revenue departments should support IPs in performing their duties. The Responsibilities of existing and past Auditors of the Corporate Debtor should fixed towards disclosure of Fraudulent and avoidable transactions. Once CIRP started new auditors should be appointed and no NOC should be needed by new auditor. The existing auditors should assist to the new IRP/RP and provide necessary documents on which they relied for their opinion on accounts. IPA should act as a self-regulatory body for IPs registered with them and only in exceptional cases IBBI should take actions against IPs to develop the IP professional. The IPs should be represented by formation of Managing Committees in IPAs where elected representatives of IPs can take participation.

10. Lastly, according to you what are your views on the future of this law?

IBC when implemented in its true sense and spirit will help strengthening the economy of the country as it will provide a swift exit option for unsuccessful or failing businesses. It will bring India at par with the international community with the introduction of cross-border insolvency regime. As a professional in insolvency, I think the future of insolvency and bankruptcy law in this country is promising. The IBC has helped set up a more efficient and effective way to handle cases of business insolvency, and there is a lot of room for growth and development in the future. As the framework keeps changing and adapting to new market conditions, I think it will continue to be an important part of the country's economic growth and security. the main root of business Debtor and Creditor behavior will change, promotors will serious regarding the public money used in the Corporate Debtor. The future of this law is very good. Industry and other stakeholders will get confidence in the Insolvency laws, if they get value at the end.

ICSI IIP – AT A GLANCE

1. DURING THE MONTH OF MAY 2023:

S. No.	Particulars	Details
1.	Members enrolled	2
2.	Members registered	2
3.	Inspections conducted	1
4.	IPs monitored	5
5.	AFA applications received	35
6.	AFA applications approved	38
7.	Complaints/Grievances received	1
8.	Complaints/Grievances disposed off	2
9.	SCN issued	NA
10.	Disciplinary action taken	3 (*orders reserved*)

2. DURING THE MONTH OF MAY 2023, FOLLOWING PROGRAMS WERE ORGANIZED BY ICSI IIP:

WORKSHOPS

S. No	Date of Workshop	Topic
1.	06.05.2023	**Workshop on Interplay of SARFAESI Act, 2002 and Arbitration Act, 1996 with IBC**
2.	13.05.2023	**Workshop on Role of Related Parties Under IBC - A Critical Analysis**
3.	20.05.2023	**Workshop on New Avenues in IBC**
4.	27.05.2023	**Workshop on Claim Verification and Committee of Creditors Under IBC**

WEBINARS

S. No	Date of webinar	Topic
1.	19.05.2023	**Webinar on Anatomy of IBC Cases - 5**

Learner's Corner

Legal Idioms

"AN ACT OF GOD"

Meaning: an event or accident due to natural causes for which no human is responsible and which could not have been avoided by planning ahead (a storm, an earthquake, a volcano etc.)

Example: *The insurance company refused to pay the money because they said that the forest fire was an act of God.*

"BEYOND A REASONABLE DOUBT"

Meaning: a legal phrase meaning that something is almost certain and that the proposition being presented in court must be proven enough that there is no reasonable doubt in the mind of a reasonable person that the defendant is guilty of a crime.

Example: *The Judge sent the man to jail because he believed, beyond a reasonable doubt, that the man had committed the crime.*

"CAVEAT EMPTOR"

Meaning: 'let the buyer beware' (from Latin), a buyer of something is responsible to examine the goods that he or she has purchased

Example: *Caveat emptor is a good concept to remember when you are buying a used car.*

"BURDEN OF PROOF"

Meaning: the necessity to prove a disputed fact as required by the laws of evidence

Example: *The burden of proof during the trial fell on the man who had accused his employee of theft.*

Alternate Dispute Resolution/Mediation in Resolution Process under IBC Code

CA Chandrasekaran Ramadurai

Chartered Accountant,
Insolvency professional
Registered Valuer

The Insolvency and Bankruptcy Code (IBC) is a landmark legislation that was enacted in India in 2016. The IBC has introduced a number of reforms to the insolvency and bankruptcy regime in India, with the aim of improving the efficiency and effectiveness of the system. One of the key reforms introduced by the IBC is the use of alternate dispute resolution (ADR) mechanisms, such as mediation, to resolve insolvency disputes.

Mediation is a voluntary process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), attempt to reach a mutually agreeable settlement. Mediation is a confidential process, and the parties are free to walk away from the process at any time.

The IBC recognizes the importance of mediation in the insolvency process, and provides for the appointment of a mediator by the Adjudicating Authority (AA) if the parties agree to mediate the dispute. The AA can appoint a mediator at any stage of the insolvency process, and the process of mediation can continue even after the commencement of the insolvency proceedings.

There are a number of advantages to using mediation in insolvency cases. Mediation can help to save time and costs associated with a legal battle. It can also help to preserve the relationship between the parties, which may be important in cases where the parties have a long-

term business relationship. In addition, mediation can provide a more flexible and tailored solution to the dispute than a court order.

The use of mediation in insolvency cases is still in its early stages in India. However, there is a growing recognition of the potential benefits of mediation in this area. As the IBC matures, it is likely that mediation will play an increasingly important role in resolving insolvency disputes in India.

ADVANTAGES OF MEDIATION IN INSOLVENCY CASES

There are a number of advantages to using mediation in insolvency cases, including:

Speed: Mediation can be a quicker and more efficient way to resolve a dispute than litigation. This is because the parties are able to reach a mutually agreeable settlement without having to go through the lengthy and expensive process of litigation.

Cost savings: Mediation can also save the parties money. The cost of mediation is typically much lower than the cost of litigation.

Flexibility: Mediation is a flexible process that can be tailored to the specific needs of the parties. This means that the parties can reach a solution that is mutually agreeable and that meets their individual needs.

Relationship preservation: Mediation can help to preserve the relationship between the parties. This is important in cases where the parties have a long-term business relationship.

Control over the outcome: The parties have control over the outcome of the mediation process. This means that they can reach a solution that they are both comfortable with.

ALTERNATE DISPUTE RESOLUTION/ MEDIATION IN RESOLUTION PROCESS UNDER IBC CODE

The Insolvency and Bankruptcy Code (IBC) is a comprehensive legislation that provides for a time-bound and transparent process for resolving insolvency and bankruptcy matters in India. The Code has been in force since December 2016 and has been successful in resolving a large number of insolvency cases.

One of the key features of the IBC is its emphasis on alternate dispute resolution (ADR). ADR is a process whereby parties to a dispute agree to resolve their differences through negotiation, mediation, or arbitration, rather than through litigation. The IBC specifically provides for the use of mediation in insolvency matters, and the National Company Law Tribunal (NCLT) has issued several orders directing parties to mediate their disputes.

Mediation is a voluntary process, and the parties must agree to participate in it. However, there are a number of advantages to using mediation in insolvency matters. First, mediation can help to save time and money. Litigation can be a lengthy and expensive process, and mediation can provide a more cost-effective way to resolve disputes. Second, mediation can help to preserve relationships. In many insolvency cases, the parties have a long-standing business relationship, and mediation can help to ensure that the relationship is not damaged by the dispute. Third, mediation can lead to more creative solutions. In litigation, the parties are limited to the options available to them under the law. However, in mediation, the parties are free to explore all options, including options that may not be available under the law.

The use of mediation in insolvency matters is still in its early stages, but it has the potential to be a valuable tool for resolving disputes. The NCLT has been supportive of mediation, and it is likely that the use of mediation will increase in the future.

THE BENEFITS OF MEDIATION IN INSOLVENCY MATTERS

There are a number of benefits to using mediation in insolvency matters. Mediation can help to:

Save time and money

Preserve relationships

Lead to more creative solutions

HOW MEDIATION WORKS

Mediation is a voluntary process in which the parties to a dispute agree to meet with a neutral third party,

called a mediator, to try to reach a mutually agreeable settlement. The mediator does not have the power to make a decision for the parties, but they can help the parties to communicate effectively, identify their interests, and explore possible solutions.

THE ROLE OF THE MEDIATOR

The mediator's role is to facilitate communication between the parties and help them to reach a mutually agreeable settlement. The mediator does not take sides and does not make decisions for the parties. The mediator's goal is to create a safe and confidential environment where the parties can feel free to discuss their concerns and explore possible solutions.

THE IMPORTANCE OF MEDIATION IN INSOLVENCY MATTERS

Mediation can be a valuable tool for resolving insolvency matters. It can help to save time and money, preserves relationships, and lead to more creative solutions. If you are involved in an insolvency matter, you should consider whether mediation is a suitable option for you.

Sure, here is a scholarly article on the subject of "Alternate Dispute Resolution/Mediation in Resolution Process under IBC Code":

ALTERNATE DISPUTE RESOLUTION/MEDIATION IN RESOLUTION PROCESS UNDER IBC CODE

The Insolvency and Bankruptcy Code (IBC) is a comprehensive legislation that was enacted in India in 2016. The IBC aims to provide a time-bound, transparent, and effective mechanism for resolving insolvency and bankruptcy cases. The IBC provides for a number of alternate dispute resolution (ADR) mechanisms, including mediation, to resolve insolvency disputes.

Mediation is a voluntary process in which the parties to a dispute agree to use the services of a neutral third party (the mediator) to help them reach a mutually agreeable resolution. Mediation is a confidential process and the mediator does not have the power to impose a solution on the parties. The mediator's role is to facilitate communication between the parties and help them to identify and narrow their areas of disagreement. The mediator may also suggest possible solutions to the parties.

The IBC provides for the appointment of a mediator by the Adjudicating Authority (AA) if the parties agree to mediate the dispute. The AA can appoint a mediator at any stage of the insolvency process, and the process of mediation can continue even after the commencement of the insolvency proceedings.

There are a number of advantages to using mediation in insolvency cases. Mediation can help to:

Save time and costs associated with a legal battle.

Preserve the relationship between the parties, which may be important in cases where the parties have a long-term business relationship.

Reach a more creative and flexible solution than would be possible through litigation.

Allow the parties to maintain control over the outcome of the dispute.

The IBC has been successful in reducing the pendency of insolvency cases in India. However, there is still room for improvement. The use of mediation in insolvency cases could help to further reduce the pendency of cases and provide a more efficient and effective way to resolve insolvency disputes.

CONCLUSION

Mediation is an effective ADR mechanism that can be used to resolve insolvency disputes. Mediation can help to save time and costs, preserve relationships, and reach a more creative and flexible solution. The IBC provides for the appointment of a mediator by the AA if the parties agree to mediate the dispute. The use of mediation in insolvency cases could help to further reduce the pendency of cases and provide a more efficient and effective way to resolve insolvency disputes.

Mediation is a valuable tool that can be used to resolve insolvency disputes in India. It is a quicker, more efficient, and more cost-effective way to resolve a dispute than litigation. It can also help to preserve the relationship between the parties and give them control over the outcome of the dispute. As the IBC matures, it is likely that mediation will play an increasingly important role in resolving insolvency disputes in India.

Former General Manager & Adviser, Union Bank of India

Ex Senior Vice President ASREC (India) Ltd.

Insolvency Professional (IP)

Quantitative and Qualitative analysis of Corporate Insolvency Resolution cases- progress under IBC regime and way forward:

1. INTRODUCTION:

An ineffective insolvency and bankruptcy regime responsible for poor progress and inefficient development of credit markets. Our country introduced the IBC in 2016 and published in official gazette on 28th May 2016 to reform our insolvency and bankruptcy framework to reduce the NPA menace as also improve credit and GDP growth rate of the economy.

The introduction of IBC in 2016 marked a paradigm shift from the debtor-in-control to creditor- in-control regime under which creditors enjoy vast powers on the reorganization and liquidations of distressed firms. Besides recovery of bad loans, It has helped to reduce the cost of debt, improve credit supply and push firms towards long-term loans.

The Insolvency and Bankruptcy Code, 2016 (IBC) and Rules and Regulations made thereunder aims to turn around the firm in a time bound manner and protect its capital, so as to maximize the value for the benefit of all the stakeholders. Ultimate idea was to save businesses that are viable and facilitate the exit of those which are not.

The going concern approach improves chances of its resolution and preserves the economic value of the firm/business. Bankruptcy Law Reforms Committee (BLRC) has also recognised the objective of the Code with respect to value maximization.

Since inception of Insolvency and Bankruptcy code 2016, 7 years are completed and we can say that the performance is mixed i.e. there are certain mile stone achievements as well as fiascoes too. **Conclusively, the code is indeed an alleviation of the bankruptcy law in India and it will bring the country to an international level in resolving insolvency and promote entrepreneurship.**

2. BACKGROUND:

Before going into details let us understand the background as to why this legislation was needed and come into force. We can see it from 2 angles-the Banking angle and Legal angle.

2.1 Banking angle:

1. Mounting overdues and poor recovery together with inordinate delays in resolving non performing assets. Slow progress or legal impediments in the older recovery mechanism such as SARFAESI act 2002, Lok adalats and Debt Recovery Tribunals.
2. Increasing cost of debt, deterioration in credit quality.
3. In-disciplined financial behaviour of the borrowers/ borrowing company promoters and no fear of losing their enterprise or company.

2.2 Legal angle:

Prior to the IBC, the legislative framework for insolvency and restructuring was fragmented across several legislations, but apparently failed to resolve the complex bankruptcy issue. The acts existed prior to IBC 2016 were such as:

The Companies Act 2013, Presidency Towns Insolvency Act 1909, Provincial Insolvency Act 1920, Sick Industrial Companies (Special Provisions) Act, 1985(SICA, 1985), The Code of Civil Procedure, 1908 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI act 2002).

Here, we will not dealt upon the various provisions and methodology under various acts prevailing prior to enactment of IBC 2016 as that is beyond the scope of the article. However, in totality we can say that except SARFAESI act with partial success, all legislations were partly failed to stick to the very purpose for which they were established.

3. SYNOPSIS:

This article aims at:

3.1 Critical analysis of performance in quantitative as well as qualitative terms-in terms of number of cases and value

3.2 Achieving timelines stipulated for disposal of cases-delay tactics and legal hurdles/litigations

3.3 In order to achieve the timeline whether the code is favouring liquidation over resolution- whether missed its primary objective of resolution of stressed assets

3.4 Whether objective of maximization of value is accomplished and to what extent.

3.5 Percentage of claims realized by various stakeholders-discussing the 12 big cases referred by RBI in 2017.

3.1 Critical analysis of performance in quantitative as well as qualitative terms.

Now with the help of table-1 , we will see and analyse the number of Corporate Insolvency Resolution Process admitted, closed and on-going from the beginning i.e. 2016-17 till December 2022.

Table-1 Corporate Insolvency Resolution Process-Year wise Cases admitted and Closed

Year / Quarter	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period
			Appeal/ Review/ Settled	*Withdrawal under Section 12A*	*Approval of Resolution Plan*	*Commencement of Liquidation*	
2016 - 17	0	37	1	0	0	0	36
2017 - 18	36	707	94	0	19	91	539

Year / Quarter	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period
			Appeal/ Review/ Settled	*Withdrawal under Section 12A*	*Approval of Resolution Plan*	*Commencement of Liquidation*	
2018 - 19	539	1157	152	97	77	305	1065
2019 - 20	1065	1989	343	217	135	540	1819
2020 - 21	1819	536	91	162	121	350	1631
2021 - 22	1631	887	108	174	147	344	1745
Apr - Jun, 2022	1745	363	35	63	39	96	1875
Jul - Sep, 2022	1875	256	40	48	45	102	1896
Oct - Dec, 2022	1896	267	30	32	28	73	2000
Total	NA	6199	894	793	611	1901	2000

Notes: These CIRPs are in respect of 5997 CDs.This excludes 1 CD which has moved directly from BIFR to resolution. Source: Quarterly News Letter of IBBI –Oct-Dec 2022

An analysis of data from table-1 reveals that number of cases admitted from the beginning year

i.e. 2016-17 has registered a continuous increase except in the years 2020-21 and 2021-22 due to COVID pendemic. As against 1989 cases admitted in the year 2019-20 the cases admitted in the year 2021-22 and 2022-23 were 536 and 887 respectively. During the year 2022-23, in first 3 quarters 886 cases admitted. Highest number of cases 1989 were admitted in the year 2019- 20.

Though data for cases pending for admission is not available but it is the general experience that admission itself takes a lot of time which defeats the purpose of timely resolution and economic value of assets deteriorates over a period of time. One of the reasons may be inadequate number of NCLTs as well as shortage of staff in the ***NCLTs.***

Out of 6199 cases admitted, 894 closed by appeal/ review/settled, 793 were withdrawn u/s 12 A, resolution plan approved in 611 cases, liquidation order passed in 1901 cases and 2000 cases are under progress/pending.

In terms of percentage cases wherein resolution plan is approved comes to mere 9.85 % of the total admitted cases and 26.58 % of total closed/rescued. Liquidation order passed in 45% cases or we can say 45% of the ***companies liquidated.***

Now after discussing number of cases, will have a feel about CIRPs initiated by different stake holders i.e. Financial creditors (FCs), Operational creditors(CDs), Corporates debtors(CDs) as also realisation by creditors as percentage of their claims and percentage of liquidation value. The data given in Table-2.

Table-2 Outcome of CIRPs initiated with Realisation through Resolution & Liquidation

Outcome	Description	CIRPs initiated by			
		FCs	OCs	CDs	Total
Status of CIRPs	Closure by Appeal/Review/Settled	243	644	7	894
	Closure by Withdrawal u/s 12A	216	570	7	793
	Closure by Approval of Resolution Plan	340	216	54	610
	Closure by Commencement of Liquidation	851	849	201	1901
	Ongoing	1042	854	101	1997
	Total	**2692**	**3133**	**370**	**6195**

Outcome	Description	CIRPs initiated by			
		FCs	OCs	CDs	Total
CIRPs yielding Resolution Plans	Realisation by creditors as % of Liquidation Value	197.2	122.6	147.5	175.9
	Realisation by creditors as % of their Claims	32.4	16.7	18.3	30.4
	Average time taken for Closure of CIRP	588	600	530	587
CIRPs yielding Liquidations	Liquidation Value as % of Claims	6.5	9.1	9.2	7.1
	Average time taken for Closure of CIRP	457	429	388	437

Note: This excludes four cases wherein applications filed by RBI were admitted u/s 227 of the Code.

It is observed from table-2 that out of total 6195 cases admitted (excluding 4 applications filed by RBI were admitted u/s 227 of the Code) 2692 cases were initiated by FCs u/s 7 of the code as against 3133 cases initiated by OCs u/s 9 of the code. That means greater number of cases are initiated by OCs which comes to 50.57% of total as against 43.45 % by FCs. CDs has initiated 370 cases which comes to 5.97 % of total admitted. In all cases closure through resolution route is lagging behind the closure by way of liquidation. Closure through liquidation is more than 300% (311.63%) as compared to closure by approval of resolution plan. This is largely because of units were closed and chances of re-starting the operations were bleak and uneconomical.

Realisation by creditors through resolution plans:

On one side there is a success that IBC has opened doors for redressal of distressed cases but on other side **the realizations were very low. In terms of percentage it is less than 1/3rd of claim value i.e. 30.4 % in 610 cases resolved till December 2022.** Financial creditors recovered only 32.4% of their claims, which reflects the extent of value erosion by the time the companies entered the insolvency process. **That speaks about the huge haircut to the extent of 70% Banks/other stake holders have been accepting, which is an average . Cases like Alok Industries, the hair cut was around 83%. Comparing realisation amount with liquidation value makes no sense as the liquidation value is grossly lower than the original fair value. In some cases it is as low as 10% of the original fair value.**

Average time taken for closure of CIRP was 587 days is high against the stipulated time of 270/330 days, so it breached the stipulated time line. Exceptionally, it took 865 days in closure of CIRP of Essar steel India Ltd. Another case of Era Infra Engineering Ltd is pending even agfter lapse of more than 4 years time.

CIRPs resulting into Liquidations: Liquidation value as percentage of claims was as low as 6.5 % in cases CIRP filed by financial creditors and 7.1% overall for FCs, OCs and CDs. Though average time taken for closure of CIRP by way of liquidation was less (437 days) as compared to closure of CIRP by way of resolution plan(587 days), but still it has been above the stipulated time line of 330 days.

3.2 Achieving timelines stipulated for disposal of cases-delay tactics and legal hurdles/ litigations

Time line for closure of cases for Insolvency resolution is stipulated as 330 including 60 days for litigation. As per section 12(1) of the code, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of application to initiate such process. Further, in terms of section 12(2), the period of CIRP can be extended by adjudicating authority on the strength of resolution passed by vote of 66% at a meeting of committee of creditors (CoC). Further a period of 60 days added for litigation making the time limit as 330 days. However, we have seen that time lines for closure of CIRPs are not adhered in majority of cases, irrespective of whether closure is by way of resolution or even by way of liquidation.

In Table-3 status of on-going liquidations is given as of 31st Dec 2022.

Table 3: Status of Liquidation Processes as on December 31, 2022

Status of Liquidation	Number
Initiated	**1901***
Final Report submitted	**453**
Closed by Dissolution	243
Closed by Going Concern Sale	20
Closed by Compromise / Arrangement	9
Ongoing	**1448**
> Two years	736
> One year ≤ Two years	364
> 270 days ≤ 1 year	83
> 180 days ≤ 270 days	94
> 90 days ≤ 180 days	99
≤ 90 days	72

*This excludes 20 cases where liquidation order has been set aside by NCLT / NCLAT / HC / SC.

We observe from the table-3 above that out of 1448 ongoing cases more than 50% cases (736 days) have already crossed two years against stipulation of 330 days. 364 cases i.e. 25.13 % have crossed one year and are within 2 years. Thus, it can be seen that around 75% of the cases have breached the time line of resolution due to procedural inefficiencies and lack of proper infrastructure and other frolicsome issues and have exceeded the upper limit of 330 days and still pending. One of the central objective of IBC 2016 is speedy disposal of CIRP cases, which is not adhered to may be because of firstly, slackness on the part of stake holders, secondly, mismatch of filed cases with available man power and thirdly incidence of litigations.

Challenges include and meddling by erstwhile promoters. Need is that interference by erstwhile promoters, directly or indirectly must not be entertained to check the delay in the resolution process.

3.3 In order to achieve the timeline whether the code is favouring liquidation over resolution- whether missed its primary objective of resolution of stressed assets.

If we analyse the position given in table-2 above, we observe that since inception till 31st December 2022, out of total 6195 admitted cases, in 610 cases only resolution plan is approved which is mere 9.85% of total admitted cases. If we compare this 610 cases with all 2297 cases rescued by closure/withdrawn/ Resolution plan approved, the percentage comes to 26.58 %. Closure through liquidation cases were 1901 as depicted in table-2, which is more than 3 times (311.63%) as compared to closure by approval of resolution plan. This position shows 45% of the companies liquidated as against 9.85% companies rescued through resolution plan approved. Liquidation has been far exceeding the resolution. Data does not support the prime objective of saving the businesses through resolution route.

3.4 Whether objective of maximization of value is accomplished and to what extent.

An efficiently designed bankruptcy law restores the value of the asset and saves the firm from liquidation.

There are three phases for the success of a competent Insolvency and bankruptcy law.

The **first stage is before the event** stage which prevent the borrowers to take in discreet loans while the lenders should avoid giving loans that have high probability of default.

Second stage is where a bankruptcy law should not deter an entrepreneur from taking risk and the **third stage** is where an insolvency law should be able to deliver efficient outcome i.e. maximization of value of assets.

There are two ways to look at it. Firstly, we can see the extent of realization against amount of claim. Secondly, realization against liquidation value.

Value maximization objective has been partially achieved, looking to the realization percentage which is 30.4 % only against the admitted claim amount in 610 cases closed by way of resolution till December 2022. In case of closure through liquidation route though it is statistically 175%, but liquidation value itself is very low against original fair value so comparison does not have significance. Yet it is the highest among all options available to creditors for recovery.

3.5 Percentage of claims realized by various stakeholders-discussing the 12 big cases

One of the major parameters where the performance of the Insolvency and Bankruptcy code, 2016 can be judged is the status of 12 highly stressed corporate debtors having largest NPA accounts which were sent to IBBI for resolution by RBI. These 12 accounts were popularly referred to as the 'dirty dozen'. The details are shown in table-4. Collectively, these

accounts amounted to Rs 3.45 lakh crores against the liquidation value of Rs 73,220 crores. This was 25% of the total NPA amount of all Banks in India.

Out of these 12 cases, the resolution plan has been approved for nine. Amount admitted was Rs 2.49 lac crore and amount realized was Rs 1.21 lac crore. Thus the overall recovery rate was 48.61% for these 9 big cases. The recovery ranged from 100 % in case Jaypee Infra and as low as 17% in case of Alok Industries. Comparing realization with liquidation value is not a good idea for a going concern, still for the sake of comparison of realization with liquidation value was from 115% to 387% for the nine cases that were rescued through resolution plans.

In the case of Era Infra engineering Ltd. CIRP commenced on 08/05/2019. 4 years are over and is still undergoing insolvency proceedings. Liquidation has been ordered in the case of Lanco Infratech and ABG shipyard, the remaining two.

Bhushan Steel's resolution was done in under 300 days, Essar Steel's **closed in 865 days because of series of litigation.**

Table 4 : Status of 12 large NPA accounts referred by RBI

Sr No	Name of Corporate Debtor	Amount Admitted in (Rs in crores)	Amount Realizedin Rs in crores)	% realized of claims	claim % of liquidation amount	Successful bidder
			CIRP completed			
1	Electrosteel Steel ltd	13175	5320	40.38	183.45	vedanta ltd
2	Bhushan Steels	56022	35571	63.5	252.88	Banipal Steel
3	Monnet Ispat & Energy Pvt Ltd	11015	2892	26.26	123.35	JSW & AION
4	Essar Steel India ltd	49473	41018	82.91	266.65	Arcellor Mittal
5	Alok Industries	29523	5052	17.11	115.39	Relaince Industries
6	Jyoti Structures	7365	3691	50.12	387.44	Group of HNI led bySanjay San
7	Bhushan Power & Steel	47158	1935	41.03	209.12	JSW ltd
8	Jaypee Infratech	23176	23223	100.23	130.82	NBCC (ndia) ltd
9	Amtek Auto	12641	2615	20.68	169.65	Deccan Value Investors
		249548	121317	48.61		
			CIRP under process			
10	Era Infra Engineering ltd	Under resolution				Admitted on 08/05/2019.Still not resolved after lapse of 4 years
11	Lanco Infratech ltd	Under liquidation- 5 rounds of e auction failed				NCLT Hyderabad order dated 26/09/22 for implementation of acquisition plan by M/s K R S Erectors(P) ltd
12	ABG Shipyard	Under liquidation				Supreme Court order dated 26/08/22 allowed for private sale process to liquidator

Way Forward:

IBC's journey so far has been a mixed bag. In the last seven years, the debt resolution of distressed/sick companies slowed down considerably, yet it is the highest under IBC regime among all options available to creditors for recovery.

We have seen the initial bliss as several successful acquisitions by top companies as resolution applicant, including the Tatas, Reliance, and the world's largest steelmaker, ArcelorMittal. This is to be taken forward.

It has brought a new ray of hope in Bank recoveries, helped greatly in maintaining/boosting GDP growth of our country and world ranking **from 130 in 2016 to 63 in 2020** in world Bank 'Doing Business' report. ***Resolving Insolvency is one of the vital processes*** considered for ranking of countries in ease of doing business.

To speed up the process of insolvency resolution several steps will help like:

- **Piece meal amendments: Insolvency and Bankruptcy law is still evolving and very swiftly several amendments have been introduced time to time which shows its resilience. However, piecemeal approach on the issues/schemes and solving only one problem at a time, resulted in delays to achieve the overall objective. IBC as brilliant piece of legislation will be able to solve all insolvency resolution problem under current scenario over a period.**
- **To promote Entrepreneurship and balance the interest of all stake holders, IBC should be primarily looked at legislation for resolution/ revival and not as process for Auction of securities or Sale of assets or Liquidation process for recovery.**
- **Delays and haircuts: on the sixth anniversary of the Insolvency and Bankruptcy Board of India (IBBI) on 1 October 2022, Union Finance Minister Nirmala Sitharaman said that the country could not afford to lose the "sheen" of its insolvency law, the Insolvency and Bankruptcy Code (IBC).**

"She stated, we must be conscious that we can't afford IBC to lose its sheen, especially when the Prime Minister is looking at the next 25 years of India (to emerge as a developed country by 2047). We must do whatever it takes to keep IBC as sparkling as it was when it was introduced in 2016," the Minister said, at a time **when IBC numbers have shown long delays in cases and banks having taken deep haircuts on their outstanding claims.**

Addressing the issue of haircuts— the debt that banks forgo— she said it was unacceptable that banks should take a hefty haircut on loans that go through the resolution process, adding that a 95% haircut could not possibly be the "best resolution" the IBC had to offer, even if some companies came in such a bad state that only 'junk value' could be derived.

- **So, time lines need to be adhered by all concern by minimizing litigations and adopting resolution attitude. For minimizing hair cut, liquidation value should not be the bench mark. It should be fair value or enterprise vale for a going concern. The World Bank Report 2016 has recognized the time factor as a very important aspect in country ranking. It has also recognized cost, outcome and effectiveness of judicial system as other factors in determining the ranking of the countries.**
- **To protect and flourish the corporate Micro Small and Medium Enterprises/ businesses and organizations, the new Pre-packaged insolvency process (PPIRP), which gives a chance to debtor himself to retain the businesses; to be used more efficiently as not much headway is made so far.**
- **Stringent guidelines on delays, clear guidelines on Group Insolvency, Cross Border Insolvency will make the IBC more effective & efficient law on insolvency & Bankruptcy of our country.**

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Anuj Tiwari
Company Secretary, Insolvency Professional

SEC. 66 OF IBC, 2016 (FRAUDULENT TRANSACTIONS)

The Insolvency and Bankruptcy Code (IBC) provides a transparent and efficient mechanism for the resolution of insolvency cases. However, the IBC has also been subject to cases of fraudulent transactions, which can undermine the integrity of the insolvency resolution process. In this article, we will discuss fraudulent transactions in the IBC and the measures taken to address them.

Fraudulent transactions can occur at various stages of the insolvency resolution process, including during the initiation of insolvency proceedings, the appointment of the resolution professional, and the sale of assets. These fraudulent transactions can take various forms, including preferential transactions, undervalued transactions, and fraudulent trading.

Preferential transactions occur when a debtor transfers assets to a creditor before the initiation of insolvency proceedings, with the intention of giving that creditor a preferential treatment over other creditors. Undervalued transactions occur when a debtor sells assets to a buyer at a price that is significantly lower than the fair market value of the assets. Fraudulent trading occurs when a debtor continues to incur debts with the intention of defrauding creditors.

To address these fraudulent transactions, the IBC provides for the appointment of a resolution professional who is responsible for managing the affairs of the debtor during the insolvency resolution process. The resolution professional is required to investigate any fraudulent transactions that may have occurred and take appropriate action.

The IBC also provides for the setting aside of fraudulent transactions. Section 43 of the IBC provides for the avoidance of preferential transactions, undervalued transactions, and fraudulent trading. Any

transactions that fall under these categories can be set aside by the NCLT on the application of the resolution professional, the liquidator, or any creditor.

In addition to these measures, the government has also taken steps to address fraudulent transactions in the IBC. The Ministry of Corporate Affairs has set up a task force to investigate cases of fraudulent transactions in the IBC and take appropriate action.

In conclusion, fraudulent transactions can undermine the integrity of the insolvency resolution process and can have a significant impact on the outcome of the resolution process. The IBC provides for measures to address fraudulent transactions, including the appointment of a resolution professional, the setting aside of fraudulent transactions, and the establishment of a task force to investigate cases of fraudulent transactions. These measures are aimed at ensuring the transparency and fairness of the insolvency resolution process and providing a level playing field for all stakeholders involved in the process.

FRAUDULENT TRADING OR WRONGFUL TRADING (SECTION 66):

(i) If during the corporate insolvency resolution process or a liquidation process, it is found by the IRP or liquidator that any business of the corporate debtor was carried on with the intent to defraud the creditors or for any fraudulent purpose, the adjudicating authority can direct any person who was knowingly carrying out the business in such fashion, to contribute to the assets of the corporate debtor.

(ii) A director or partner of the corporate debtor can be directed to contribute to the assets of the corporate debtor:

- If before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a CIRP in respect of such corporate debtor; and
- such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.

(iii) The NCLT, Allahabad in IDBI Bank Ltd. versus Jaypee Infratech Limited1 had ruled that a transaction to secure the debt of a related party and to prevent preservation of value of the assets of the corporate debtor shall clearly be a fraudulent and wrongful transaction under Section 66 of the Code if it has been carried on with the intent to defraud the creditors of the corporate debtor. In the said case, since the corporate debtor itself was in dire need of funds for completing construction of flats and could have sold, mortgaged, unencumbered land to raise funds to complete construction of flats in a timely manner and to fulfil its obligation to its creditors, but, it chose to give away the land to secure the debt of a related party. Further, the directors were also held to be aware that they were in twilight zone and insolvency was imminent and that they did not exercise due diligence in minimizing the potential loss to the Financial Creditors, Operational Creditors, creditors (including home buyers) and other stakeholders of the Corporate Debtor. The transactions carried out by the Corporate Debtor were held to be fraudulent under Section 66, 43 and 45 of the Code. The said finding was also confirmed by the Apex Court.

(iv) Hence, Section 66 is read in consonance with Section 43, 45 and 49 of the Code.

Immunity granted to **the Corporate Debtor**

Newly introduced Section 32A2 of the Code inter-alia, provides immunity to a corporate debtor and its assets from any prosecution, action, attachment, seizure, retention or confiscation upon approval of a resolution plan if the resolution plan results in the change in the management or control of the corporate debtor. The said Section 32 A to the Code was introduced in the wake of the CIRP of Bhushan Power & Steel Limited in the *JSW Case3* and the issues pertaining to its assets being attached by the Directorate of Enforcement of Central Government.

Section 32A provided that the prior liability or the offence committed by the corporate debtor will be ceased and discharged once the resolution plan is approved by the adjudicating authority if there is change in the management and control of such corporate debtor and there is a new management in place, then such new management shall not be prosecuted for such earlier offence of the corporate

1 CA No.26/2018 in Company Petition No.(IB)77/AD/2017

2 Insolvency and Bankruptcy Code (Amendment) Act, 2020 – 13th March, 2020

3 JSW Steel Ltd. and Ors. v. Mahender Kumar Khandelwal and Ors. Company Appeal (AT) (Insolvency) No. 957 of 2019, NCLAT decided on 17th February 2020 debtor. It further provides that such

an exemption shall be given if the new management is in the control of a person who was not –

- A promoter or in the management and control of the corporate debtor or a related party of such a person; or
- A person with regard to whom the relevant investigating authority has reason to believe that he has abetted or conspired for the commission of an offense and a report or complaint has been filed against him.

The corporate debtor shall cease to be liable for any transaction of assets considered to be fraudulent if such assets form part of the resolution plan which gets approved by the Adjudicating Authority.

However, it also mentions that every person who is a designated partner as defined in the Limited Partnership Act or an officer as defined in Clause 60 of Section 2 of the Companies Act 2013 who is in charge of the business of the corporate debtor and is directly or indirectly in the commission of such offence as per report or complaint filed by the investigating authority shall continue to be liable andprosecuted for such offence committed by the corporate debtor notwithstanding that the liability of the corporate debtor has ceased.

It is pertinent to note here that there is a dichotomy of views as regards the criminal proceedings and proceedings by special authorities like CBI, EOW or Enforcement Directorate and whether Section 32A shall have an overriding effect over such proceedings as well. The decision on the same is pending before the Supreme Court of India.

The intent and purpose of the insertion of Section 32A is to provide certainty to the 'Resolution Applicant' that the assets of the 'Corporate Debtor' as represented to him and for which he proposes to pay value/ consideration in terms of the 'Resolution Plan', would be available to him in the same manner as at the time of submissions of the 'Resolution Plan'.4

II. FRAUDULENT TRANSACTIONS UNDER THE COMPANIES ACT 2013

Section 328 and 329 of the Companies Act, 2013 are similar to the provisions of preferential transaction under the Code which are not done in the ordinary course of business, with two things to be kept in mind5:

- First, the dominant motive in the mind of the company (as represented by its directors or general body of shareholders) should be to prefer a particular creditor.
- Second, the said act must be undertaken during the period of six months preceding the filing of the winding up petition of the company.

While the first requirement ensures that the dominant intention to defraud creditors is detected, the second ensures that there is a level of commercial certainty and finality of transactions for those interacting with the company.

Section 329 of the Companies Act, 2013 further lays down that if the transfer of property by a company not done in the ordinary course of business or not being an encumbrance in good faith and for valuable consideration shall be void if such transfer is made within a period of one year before filing for winding up or the passing of a resolution for voluntary winding up of the company. For both the sections fraudulent intent to defraud the creditors have to be present.

III. FRAUDULENT TRANSACTIONS UNDER THE TRANSFER OF PROPERTY ACT, 1882

Section 53 of the Transfer of Property Act, 1882 **("TOPA")** recognizes the need ***to protect the interest of the creditors*** of the transferor. The rule of equity, justice, and good conscience has been incorporated in this section. It prevents a person from defeating the legitimate claims of his creditors. Section 53 of TOPA puts a restriction on any such transaction that is not made with a bonafide intention. For the purpose of this section, a transfer is made with a fraudulent intention when it intends to defeat the interest of creditor or interest of any subsequent transferee. Where the transfer is made with a fraudulent intention, the object of the transfer would be bad in the eyes of equity and justice, even though it would be valid in law.

Under Section 53 of TOPA there must be a transfer of an immovable property. The transfer must be a real one which creates a vested title in favour of the third party and the transferor is no more the real owner of the property. The basic objective behind this section is to protect the creditors from being delayed or defeated by removing the possible security. Any transaction shall be hit by Section 53 of TOPA, if such transaction has been done with the ***fraudulent intention*** to make the property unavailable for the purpose of security

to be given to a creditor. Hence, like under the Code and the Companies Act, 2013, the intention behind the transfer must be to defeat or delay the creditors.

VARIOUS DECISIONS ON SEC66 OF IBC

- IN RAKSHA BULLION VS ROYAL REFINERY, Honble NCLT has held that:-

  "66. Fraudulent trading or wrongful trading. —

  (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

  (2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if

  a. before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

  b. such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor..."

- **In Antrix Corporation Vs Devas Multimedia Pvt Ltd. Honble Tribunal has observed that**

  The above facts clearly establish that even the idea to incorporate Devas was with fraudulent intentions coupled with mala fide objects to enter into Agreement with Antrix with no responsibility at all. It is unknown to law that such a prestigious agreement with Govt. Owned Company was got signed by a clerk, paying remuneration for the same. Therefore, the Agreement in question would become *void ab initio* and it would not create any legal rights, much civil rights to Devas.

Thus the incorporation of Devas made with fraudulent intentions is ab initio void and its name should be struck from the Register of Registrar of Companies by virtue of this winding up proceedings.

Though the validity of Agreement in question is not the subject matter in the instant case, the fraudulent and unlawful purpose behind incorporation of Devas, would be relevant factors to be taken into consideration by the Tribunal, while deciding the case.

- **IN ABG SHIPYARD CASE**

  Hon'ble Tribunal observed that

  Thus, this aspect, coupled with the conduct of the erstwhile Directors of the Respondent Company (now under resolution process) in avoiding to offer any response to the legal notices served upon them or otherwise furnishing explanation or details of steps and measures taken and adopted by them as management of the Respondent Company appear to be tainted with malice and fraudulent intent of defrauding the company and the creditors of the company. Hence, the Applicant submits that the aforesaid transactions does not appear to have been made in the ordinary course of business but appears to have made for a fraudulent purpose, including intent to divest money from the Respondent Company to erode capital/assets of the company and thereby frustrate and defeat the legitimate claims of creditors of the Respondent Company with possible eventual objective of siphoning the money by adopting circuitous route for fraudulent purpose of causing or reading personal gain as enunciated under Section 66 of the Code.

CONCLUSION

It is pertinent to note here that the intention behind any transaction with respect to transferring of assets of the company must not be of defrauding its creditors but instead for the benefit of the company and its financial health. The provisions under the Code, the Companies Act, 2013 and TOPA empowers the IRPs to set aside such transactions with the help of the powers vested with the Courts to reverse the effect of such transactions and put the company back in the position as if such transaction had not taken place.

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MAKING PRE-PACK INSOLVENCY RESOLUTION PROCESS A SUCCESSFUL ONE

The Micro, Small and Medium Enterprises (MSME) sector contribute about a third to India's gross domestic product. Both Central and State governments have many beneficial schemes in operation to support this sector's growth. On one hand when the governments are tweaking policies to benefit MSMEs growth, the stress in this sector is also growing on the other hand - contributed by many factors like Covid pandemic, geopolitical events, Ukraine war, spiralling energy prices, inflation and recession in many major economies across the world. The relief provided to the MSME sector due to Covid pandemic, in India, in the form of special financial packages by lenders will also end sooner than later. In view of these strong head winds, timely support, in the form of reliefs and rehabilitations, to the borrowers in the MSME sector who are in distress, is the need of the hour.

We are aware that to address stress in the MSME sector, Banks/FIs have various schemes under their ambit, evolved over a period which are time tested. Generally lenders examine in depth the reasons for the distress faced by MSMEs and workout suitable restructuring plans to rehabilitate and revive them, failing which only they resort to other recourses including legal / one time settlement etc.,

The Pre-pack Insolvency Resolution Process (PIRP) under the Insolvency and Bankruptcy Code (IBC) provide an alternate system for resolution of stress in the MSME sector (currently applicable to Corporate or LLP MSMEs), with well-defined operational guidelines and time norms. The main objective of PIRP resolution process is to work out a resolution plan through collaborative efforts between creditors and debtors, so that

the debt resolution of the ailing CD is done in a more scientific and efficient manner to provide a lifeline to the MSME.

Major advantages of pre-pack insolvency resolution process are:

- Operations of the business continues without interruptions. Once a resolution plan is finalised it can be submitted to the Adjudicating Authority (NCLT) for approval.
- The Promoters continue to keep control of the business unlike CIRP where the control of operations of CD gets transferred to the creditors**.** As the CD continues to run, without any disturbances, by persons familiar with the business, it's chance of survival and success is expected to be good, as it will be closely monitored also by independent resolution professional. In view of their familiarity with the business, the current management is also expected to submit a better resolution plan, even though there is a fear that they are the ones who had caused the current stress (many a time, it is observed or proven that the stress is caused beyond the control of the current management).
- There is definite timelines stipulated to complete the whole PIRP. The process has to be completed within a maximum period of 120 days as against the CIRP which can go up to a maximum of 330 days.
- The overall process cost is expected to be cheaper compared to CIRP and it has to be funded by the CD upfront.
- The base resolution plan will be prepared with full knowledge of lenders, and hence it is generally expected to protect the interest of all stakeholders. Further, the code also mandates that if the interest of the operational creditors are not protected in the plan, an option for inviting plans from the market is in-built, along with the value maximising Swiss challenge option.

NEED TO PROVIDE SUPPORT TO STRESSED MSMES:

The resolutions of corporate MSME stress, through IBC process augers well for this sector. The revival of ailing MSMEs, through PIRP is a step in the right direction. However, as of now, the acceptance of this scheme is extremely poor and there are only few cases in some stages, at NCLT. The broad reasons for poor response are lack of proper understanding, awareness and acceptance amongst the stakeholders. There are thousands of Corporate MSMEs, which are under stress to whom the PIRP is well suited, remain outside its purview. Our Finance Minister has also voiced her concern over the poor response to PIRP and desired deeper analysis and initiating actions to make it successful.

VERY LOW SUCCESS OF PIRP - THE REASONS AND SOLUTIONS:

To be eligible for resolution under PIRP, apart from being a corporate MSME, it should have committed a minimum default of Rs.10 lacs. PIRP has to be initiated by the defaulting corporate MSMEs who must complete the following steps prior to initiation of PIRP, to prevent any misuse of the scheme with collaborative efforts of both creditors and debtors.

a) Passing of a board resolution declaring that PRIP is not being initiated to defraud anyone.

b) Shareholders of the MSME must pass a special resolution consenting initiation of PIRP.

c) MSME must secure 66 per cent of its unrelated financial creditors approval.

Having understood the scheme let us try to understand some of the well-known causes for the poor response along with possible solutions to facilitate its acceptance and adoption. Here, I would like to state that the following reasons and solutions suggested are based on my own personal experience in handling the MSME sector advances for nearly three decades and also based on my interactions with many senior level bankers of various banks both in public and private sector. Further, I have also interacted with the many MSME segment industrialists and MSME association leaders after introduction of PIRP and conducted PIRP awareness programmes/seminars for bankers which were the basis for my assertions. Not the least, I myself was assigned by a Bank, as RP, to handle a PIRP case which could not take off for some of the reasons attributed in this article.

Reason 1: Lack/low level of awareness about the PIRP, amongst MSMEs and lenders at operating level.

Solution: Interactions with industry bodies and the lenders have revealed that the awareness level, about such a scheme, is either poor or rudimentary and its applicability, benefits etc., are also not well-known. Hence, creating an awareness is very important.

Firstly creating awareness and knowledge amongst the operating staff of lenders is to be accomplished. MSME loans are handled at many branches across the country unlike big corporate advances which are handled only by specified branches in major / critical centres - a major cause for the poor awareness and understanding. Subject specific trainings would disseminate knowledge and awareness at the grass root level for which lenders have to take necessary initiatives as they are going to be the beneficiaries when MSMEs stress is addressed. Secondly, IBBI/ IBA (Indian Banks Association), should take steps to create awareness amongst MSMEs through specially designed programmes.

Reason 2: Requirement of registration of MSMEs in 'Udyam' portal. Is it mandatory for entertaining a case under PIRP? Lenders and MSMEs are not clear?

Solution: To participate under PIRP, the UDYAM registration number is **"NOT"** mandatory. This has to be clearly understood by lenders and the eligible MSMEs. IBBI has made it clear on the eligibility for MSMEs in the regulations for PIRP - the requirement is ***either the MSME should have the Udyam registration number or it should furnish necessary proof to substantiate that they are a MSME (proof of investment in plant and machinery or turnover)***. Hence, Udyam registration is not a must.

Reason 3: CD needs the approval of 66% of FCs for filing the application for initiation of the PIRP – seen has an hindrance, as consensus amongst FCs may elude

Solution: Corporate MSMEs generally have maximum two or three lenders. Even though, the PIRP has to initiated by the CD, unless the lender(s) tacit consent is there, PIRP can't be initiated ab initio. Lenders who have the confidence in the CD and perceive that if timely support is provided through a resolution/rehabilitation process, the CD may come out of the stress, then they would prefer subjecting the CD to PIRP. Further, as PIRP process is executed by a Resolution Professional and the resolution plan gets approved by NCLT (legal approval), it is a desirable option for lender(s).

Some bankers express the fear of accountability under PIRP on account of a) if any hair cut given to the ailing MSME b) failure of the resolution plan. These fears, as a bankers, are unfounded as any sacrifice or concession given to the CD with necessary internal approvals of lenders and it also undergoes judicial scrutiny as well. Further, looking at the long term benefits for the lender(s), if the MSME is revived, the current loss suffered, if any, would be very marginal and would be adequately compensated over a period of time.

Reason 4: The operational control of CD continues to be with the current promoters / board of directors, who were responsible for the downfall of the CD. Over-reliance on the current promoters / board - Is it advisable?

Solution: The critics point out that the control of CD continues with the current promoters/ board, who had caused the stress, with the responsibility of revival is undesirable. Instead, it would be better if external persons (IPs) are entrusted to run the MSME like in CIRP till a resolution is arrived.

In reality, the lenders would be more comfortable to work out a resolution plan with the exiting promoters/ board provided they have the confidence in the MSME and the cause for the stress was beyond the control of the current management. Many a time, the stress is caused by external reasons like Covid pandemic, geopolitical issues, war, energy prices, global recession etc., and the CD suffered as they operate in such an environment. Hence, understanding and providing timely support is essential for these entities as the fault is not because of them. Hence, working out a resolution plan with the current management is not a bad or undesirable idea. In fact it is good only, as they who understand the business better can come out with a suitable revival/resolution plan. Hence, brushing aside entertaining PIRP on the pretext that the control of CD is not changing is a lame excuse and in fact it should be entertained.

There may be cases, where the promoters/directors are the cause for the downfall of the MSME. In such cases, if lenders are not giving the CD, the consent to undergo PIRP, they may miss the golden opportunity to change the management through the legal process of inviting better resolution plans from third parties as provided in the PIRP scheme. Hence, PIRP is a better scheme for changing the management as well in quick time. Further, the scheme also has an inbuilt mechanism to conduct a PUFE (preferential, undervalued, fraudulent and extortionate transactions) audit which could bring out any wrong doing by the current management.

Reason 5: The major attraction under CIRP is the moratorium declared by the NCLT, which is a 'calm period' for the Resolution Professional to revive

the operations of the corporate debtor without any intervention by various creditors. This advantage is totally missing under PIRP. The stress on promoters will not reduce during the PIRP period and hence some of the creditors may move against the corporate debtor, during this period, before various legal forums for recovering their dues. This could affect the effective and peaceful implementation of the PIR process.

Solution: The basic premise under which the PIRP operates is that it is a collective and collaborative effort made by both the debtors and creditors of the CD. Technically it is a consensual approach to resolve the issues faced by the CD and to run it as a going concern. Under this collaborative approach system the interest of all creditors are taken into account. The scheme is such that it has to protect the interest of operational creditors (OCs) otherwise plan will not get the approval of NCLT. In the plan if OCs interests are not protected, the scheme provides ways to invite external bids through expression of interest (EOI) to run the entity including an option to have Swiss challenge mechanism. Hence, in view of the consensual approach the probability of litigations by any creditor or others is almost 'nil' in PIRP and hence the apprehension is not fully justified.

Reason 6: Fear of promoters/directors getting the stigma of "Insolvent" "Bankrupt" etc., if their entity undergoes PIRP. Further promoters/directors also fear of difficulties in raising adequate resources for their business / expansion etc., in future:

Solution: Even though the fear of the stigma (Insolvency/Bankruptcy) is justified from the point of view of the CD and its promoters/directors, looking it from the practical angle, through the eyes of the lenders, this fear is unnecessary and does not carry much conviction. If any restructuring or resolution of CD is considered as a stigma, then the concept of revival / rehabilitation in the banking or lending system would not have evolved and matured over a period of time. In fact there are umpteen number of MSMEs which have been revived and running successfully after revival by the same promoters. Many such CDs have raised additional funds as well subsequently from multiple sources. Therefore, it is the responsibility of the lenders to allay the fears in the minds of such CDs by providing them the desired comfort. Upon revival, the same promoters who were looked down earlier will be celebrated by the same lenders by showcasing their success and the entities successful revival in multiple fora.

Reason 7: Unnecessary delays due to legal processes involved (based on current experience under IBC) against the quick internal revival/rehabilitation processes, even though PIRP scheme is a better one:

Solution: Bankers and other lenders feel that PIRP is a better resolution process. However, with their current experience of inordinate delays under IBC they wonder whether they should burden the legal system further with many MSME cases. This apprehension is fully justified taking into account the enormous delays witnessed in CIRP cases. Even though, the code stipulates that once the resolution plan under PIRP is submitted to AA, it should adjudicate within 30 days, in reality it has to be tested as there are only few cases currently. Once many PIRP cases crop up, there would definitely be a pressure on the judicial system which may result in delays not to the liking of all stakeholders, especially the lenders who will not derive the benefit of restructuring of the CD, in time, to classify the asset as per Income Recognition and Asset Classification (IRAC) norms to cut down their provisioning requirements.

Under these circumstances, an out of the box solution is to be attempted to reduce the judicial delay. Exploring the possibility of creating a structure of experts' panel (consisting of senior retired bankers/retired judicial members/other professionals like CAs/ICWAs/ACS) who can vet the resolution plan and submit it to AA for consideration/approval. For sanctity, a retired judicial member may head such panels. There can be accountability fixed on such panels as well. Initially the additional cost can be met by the FC and can recovered after CD's revival or can be made as part of PIRP cost.

CONCLUSION:

PIRP is in a very nascent stage and hence it is the responsibility of all stake holders involved in the process to work towards making it successful. If considered necessary they all should work towards carrying out necessary changes in the rules and regulations or even in the Insolvency and Bankruptcy Code after thorough analysis. The pre-pack resolution system which has proven its worth and success in many other countries should not be allowed to wither away and ultimately fail in our Country, as the PIRP scheme is considered as a boon for revival of struggling corporate MSMEs, at present. With experience it can be suitably modified and adopted for revival and rehabilitation of not only MSMEs but also other corporate entities as well going forward.

CA Chandrasekaran Ramadurai,
Chartered Accountant,
Insolvency professional
Registered Valuer

ROLE OF RESTRUCTURING PROFESSIONAL IN INDIA

Restructuring professionals in India play a vital role in helping companies to overcome financial difficulties and achieve long-term success.

They work with businesses to identify and address the root causes of their problems, and develop customized solutions that will help them to improve their financial performance and operational efficiency.

Restructuring professionals typically have a strong background in finance, accounting, and business law. They are skilled in financial analysis, modeling, and forecasting, and they have a deep understanding of the Indian corporate landscape. They are also experienced in working with creditors, shareholders, and other stakeholders to develop and implement restructuring plans.

The role of a restructuring professional can vary depending on the specific needs of the client. However, some of the common tasks that they may perform include:

- Conducting financial analysis to identify the root causes of the company's financial problems
- Developing a restructuring plan that will help the company to improve its financial performance and operational efficiency
- Negotiating with creditors and shareholders to obtain the necessary approvals for the restructuring plan
- Implementing the restructuring plan and monitoring its progress

Restructuring professionals can play a critical role in helping companies to turn around their financial performance and achieve long-term success. They are highly skilled and experienced professionals who can provide valuable advice and guidance to businesses that are facing financial difficulties.

Here are some of the benefits of hiring a restructuring professional:

- Expertise: Restructuring professionals have a deep understanding of the Indian corporate landscape and the financial markets. They are skilled in financial analysis, modeling, and forecasting, and they have a proven track record of helping companies to turn around their financial performance.
- Objectivity: Restructuring professionals are not affiliated with the company, so they can provide objective advice and guidance. They are not beholden to any particular stakeholder group, so they can focus on what is best for the company as a whole.
- Speed: Restructuring professionals can help companies to move quickly through the restructuring process. They have the experience and expertise to quickly identify the root causes of the company's problems and develop a customized solution.
- Cost-effectiveness: Restructuring professionals can help companies to save money. They can help the company to negotiate better terms with creditors and shareholders, and they can help the company to streamline its operations and reduce costs.

If you are a company that is facing financial difficulties, you should consider hiring a restructuring professional. A restructuring professional can help you to turn around your financial performance and achieve long-term success.

Restructuring professionals in India play a vital role in helping businesses overcome financial difficulties and achieve long-term success. They work with companies to identify and address the root causes of financial distress, develop and implement restructuring plans, and manage the transition to a more sustainable financial position.

Restructuring professionals typically have a background in finance, accounting, or law. They are skilled in financial analysis, business planning, and negotiation. They also have a deep understanding of the Indian legal and regulatory environment.

The role of a restructuring professional can vary depending on the specific circumstances of the company. However, some common tasks include:

- Conducting financial analysis to identify the company's financial problems
- Developing a restructuring plan that addresses the company's financial problems
- Negotiating with creditors and other stakeholders to implement the restructuring plan
- Managing the transition to a more sustainable financial position

Restructuring professionals can play a critical role in helping businesses avoid bankruptcy and emerge from financial distress stronger than ever before. They can also help businesses improve their financial performance and achieve long-term success.

Here are some of the specific roles that restructuring professionals play in India:

- Advisory: Restructuring professionals provide advice to businesses on a variety of issues, including financial planning, debt restructuring, and bankruptcy.
- Investigation: Restructuring professionals investigate the financial and operational problems of businesses in order to identify the root causes of their financial distress.
- Planning: Restructuring professionals develop restructuring plans that outline the steps that businesses need to take to overcome their financial problems.
- Implementation: Restructuring professionals implement restructuring plans and manage the transition of businesses to a more sustainable financial position.
- Resolution: Restructuring professional's help businesses resolve their financial problems through bankruptcy, debt restructuring, or other means.

Restructuring professionals are in high demand in India. The country has a large number of businesses that are struggling financially, and there is a growing need for professionals with the skills and experience to help these businesses overcome their financial problems.

If you are interested in a career in restructuring, there are a number of steps that you can take to prepare. First, you should obtain a degree in finance, accounting, or law. You should also gain experience in financial analysis, business planning, and negotiation. Finally, you should network with other restructuring professionals and stay up-to-date on the latest trends in restructuring.

Restructuring professionals in India play a vital role in helping companies navigate financial difficulties and achieve long-term success. They work with companies to identify and address the root causes of financial problems, develop and implement restructuring plans, and manage the transition to a more sustainable financial position.

Restructuring professionals typically have a background in finance, accounting, law, or business administration. They possess strong analytical and problem-solving skills, as well as the ability to communicate effectively with a variety of stakeholders, including creditors, employees, and shareholders.

The role of a restructuring professional can vary depending on the specific needs of the company. However, some of the common tasks that restructuring professionals may perform include:

- Conducting financial analysis to identify the company's financial problems
- Developing restructuring plans that address the company's financial problems
- Managing the implementation of restructuring plans
- Communicating with creditors, employees, and shareholders about the restructuring process
- Negotiating with creditors on behalf of the company
- Liquidating assets if the company is unable to restructure

Restructuring professionals play a critical role in helping companies avoid bankruptcy and achieve long-term success. They are highly skilled professionals with a deep understanding of financial markets and the restructuring process. If your company is facing financial difficulties, a restructuring professional can help you develop a plan to get back on track.

Here are some of the benefits of hiring a restructuring professional:

- Restructuring professionals can help you identify and address the root causes of your financial problems.
- Restructuring professionals can develop and implement restructuring plans that are tailored to your specific needs.
- Restructuring professionals can manage the transition to a more sustainable financial position.
- Restructuring professionals can communicate effectively with a variety of stakeholders, including creditors, employees, and shareholders.
- Restructuring professionals can negotiate with creditors on your behalf.

If you are considering hiring a restructuring professional, it is important to do your research and select a qualified professional with the experience and expertise to help you achieve your goals.

Code of Conduct

CASE NO	IBBI/DC/119/2022
DATE OF ORDER	4th August, 2022

Contravention	*Submission by IP*	*Violation of Provision*	*Findings by Disciplinary Committee*
Failure to provided crucial information, documents, requisite details as sought by the IA (Inspecting Authority)	IP submitted all the documents were shared but IA did not check them. More emphasis was laid on the process and the information shared were not considered. Further submitted that no records were handed over to the RP by CD in spite of orders of AA. An application under section 19 was pending before AA.	Regulation 4(4) of the Inspection regulations read with Clause 18 and 19 of the Code of Conduct.	It was observed that additional documents/clarifications were asked by IA and the filled in checklist was also not provided to IA. IP though submitted some documents but not all of them. It was concluded that IP could have been more active in providing documents. However, in view of constraints due to non-availability of records and application filed under section 19(2) of the Code, IP can be given benefit of doubt in this contravention.
Registered Valuers were approved by CoC with their fees but were not appointed by IP.	IP submitted that there is lack of application of mind by the IA as all the information and reasons for not appointing the Registered Valuers was submitted. No records were handed over by CD in spite of the Orders of Hon'ble AA. 19(2) application was pending even at the appointment of RP.	Section 25 (2) (d) of the Code, Regulation 27 of CIRP Regulations and Clause 3, 5 and 13 of Code of Conduct.	DC observed that in the 1st CoC meeting to RV were appointed However, as per the Form-III submitted by IP on the website of IPA it was noted that no valuers were appointed at all.

	Where there were no records or assets of the CD, the appointment of Registered Valuers would have been unreasonable and futile.		DC accepted the submission of IP and observed that the minutes also states RP informed that company was not co-operating has not given the copy of ledger, cash book etc.
Huge advance was given by CD without any agreement or investment & this transaction was noted in minutes of meeting yet no action was taken by Mr. Aggarwal.	IP submitted that the issue was raised by IA without considering the information and reasons submitted and IA failed to fully understand to consider the said minutes of meeting. IP submitted that CoC specifically denied any process audit and only asked to attempt investigation from existing records and such records never came to his possession.	Regulation 35A of CIRP Regulations read with Clause 1, 2, 3 and 14 of the Code of Conduct	DC observed that IA has metioned in the records that no section 19 application/document was available on record and that there is no exercise performed by IP to determine the PUFE transaction by IP. DC observes that neither from the records available nor from the submission of IP, any effort could be made out. Further, for avoidance transaction application, CoC's directions is not a precondition as a duty is imposed on the RP to preserve and protect the assets of CD. Therefore, submission of IP are not satisfactory.
Huge delay in submitting Relationship Disclosure on the website.	IP submitted that he was not paid by CoC or CD so getting work done was difficult and these disclosures could not have been filed without information received from those professionals. Further submitted that cooperation was not received from CD or even CoC.	Clause 1, 2, 13 and 14 of the Code of Conduct and IBBI circular no. IP/005/2018 dated January 16, 2018	It was observed that three appointments were made and the disclosure of the same were published at a delay of 416 days and 174 days. The submission of IP regarding non availability of information is untenable as the appointments were made by him and the information required in the disclosure form were readily available. Further DC submitted that, filing of disclosure form does not entail any expenses. Moreover, IP conduct shows reluctance to comply with the provision of code and perform a crucial duty of ensuring transparency.

Delay of 35 days in submitting Form III IP in Form III has mentioned the date of demitting office of the RP as 9.06.2020. It is, however observed that IP filed Form-III with the IPA on 21.07.2020	IP submitted that the delay was inadvertent and unintentionally caused due to some glitch in the IPA website and the same was informed to IA.	Circular No. IBBI/ IP/013/2018 dated 12.06.2018 and Clause 1, 2, 13 and 14 of the Code of Conduct	DC observed that as per IP, delay was unintentional but no e-mail communication/ intimation of the issue to the IPA or any record of the same was substantiated by him. Since, delay of 35 days did not have any adverse consequences on the process, lenient view was taken.

Knowledge Centre

FAQs on Information Memorandum

During the Corporate Insolvency Resolution Process, when a Resolution Professional is appointed, he has to perform various duties as per Section 29 of the Code including the preparation of Information Memorandum. IM is a document prepared by Resolution Professional which provides details of corporate debtor to assist Resolution Applicant to formulate resolution plan.

1. What is the definition of Information memorandum as per the Insolvency and Bankruptcy Code, 2016? What details the Information memorandum shall cover?

As per Section 5(10) of the Code, "Information Memorandum" means a memorandum prepared by resolution professional under sub-section (1) of Section 29;

And as per Section 29(1) of the Code, the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

As per Regulation 36(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor-

(a) assets and liabilities including contingent liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.

(b) the latest annual financial statements

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the

amount of their claims admitted and the security interest, if any, in respect of such claims

(e) particulars of a debt due from or to the corporate debtor with respect to related parties

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them;

(j) company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities.

(k) Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements

(l) other information, which the resolution professional deems relevant to the committee.

2. Can the Interim Resolution professional prepare Information memorandum?

As per Section 25 of the Code, it is the duty of the resolution professional to prepare the information memorandum. However, the cases where the interim resolution professional is working as deemed resolution professional, he shall carry out all the functions which are supposed to be of the Resolution professional.

3. What is the purpose of preparation of Information memorandum?

The purpose of an Information Memorandum is that resolution plan may be prepared based on it. It is specified in the provision relating to preparation of Resolution Plan.

As per Section 30(1) of the Code, a resolution applicant may submit a resolution plan *[along with an affidavit stating that he is eligible under section 29A]* to the resolution professional prepared on the basis of the information memorandum.

4. What is the time limit for preparation and submission of information memorandum?

As per Regulation 36(1) of CIRP Regulations, The Resolution professional shall submit the information memorandum in electronic form to each member of the committee shall submit the information on or before the ninety fifth day from the insolvency commencement date.

5. Can the Information memorandum be placed in the CoC meetings directly?

From the language of Regulation 36(1) of CIRP Regulations (*as stated above*), it may be presumed that the Information memorandum is required to be circulated to all the members electronically only that too after taking the confidentiality undertaking.

6. Who has the right to receive the Information memorandum?

The information memorandum is to be submitted to Resolution applicants and members of the committee of creditors.

As per Section 29(2), the resolution professional shall provide the information to the resolution applicants, provided that they undertake-

a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

b) to protect any intellectual property of the corporate debtor it may have access to; and

c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

As per Regulation 36(3) of CIRP Regulations, a member of the committee may request the

resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.

Further, as per Regulation 36(4) of CIRP Regulations, the resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29.

7. Which CIRP form is required to be filed by the resolution professional on submission of Information memorandum?

As per Regulation 40(B) of CIRP Regulations, Form CIRP-3 is required to be filed within 7 days of issue of information memorandum to the members of Committee of creditors.

Further, if the information memorandum is not issued within time specified in the regulations, CIRP-7 will be required to be filed within 3 days of such date and the filing will be continued every 30 days till the completion of issuance of IM.

Moreover, filing of forms after due date shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay.

8. What assistance may be sought from the creditors of the corporate debtor in preparation of information memorandum?

As per Regulation 4(3) of CIRP Regulations, the creditor shall provide to the interim resolution professional or resolution professional, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.

Further, as per Regulation 36(3A) of CIRP Regulations, the creditors shall provide to the resolution professional the latest financial statements and other relevant financial information of the corporate debtor available with them.

Policy and Regulatory Updates

❖ RESERVE BANK OF INDIA (RBI) FRAMEWORK FOR COMPROMISE SETTLEMENTS AND TECHNICAL WRITE-OFFS

The Reserve Bank of India issued various instructions to regulated entities (REs) regarding compromise settlements in respect of stressed accounts from time to time, including the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019, which recognises compromise settlements as a valid resolution plan. With a view to provide further impetus to resolution of stressed assets in the system as well as to rationalise and harmonise the instructions across all REs, as announced in the Statement on Developmental and Regulatory Policies released on June 8, 2023, it has been decided to issue a comprehensive regulatory framework governing compromise settlements and technical write-offs covering all the REs.

❖ THE INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS, LIQUIDATORS, RESOLUTION PROFESSIONALS AND BANKRUPTCY TRUSTEES (RECOMMENDATION) GUIDELINES, 2023 ISSUED ON JUNE 12, 2023.

These guidelines provide the procedure to establish a panel of eligible Insolvency Professionals (IPs) for appointment as Interim Resolution Professionals (IRPs), Liquidators, Resolution Professionals (RPs), and Bankruptcy Trustees (BTs) for a specified period. The guidelines will be effective from 1st July 2023 to 31st December 2023.

❖ NOTIFICATION UNDER SECTION 14(3)(A) OF IBC FOR CONTRACTS UNDER OILFIELDS (REGULATION AND DEVELOPMENT) ACT, 1948

The Central Government notified that the provisions of sub-section (1) of section 14 of the IBC, 2016, shall not apply where the corporate debtor has entered into the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 and rules made thereunder.

Global Arena

Saudi Arabia: Insolvency Law

To improve the ranking of Saudi Arabia in the new Ease of Doing Business Report, Saudi Arabia has delivered a new insolvency law that is both modern and transparent. The reforms focus on ensuring an efficient management of a debtor's estate, including the protection of enterprise value where possible, and the maximisation of realisable value and redistribution of capital where necessary. The New Saudi Insolvency Law and the impact it is likely to have in the region, not simply in dealing with distress but improving access to finance by ensuring more viable businesses are rescued and facilitating growth and sustainability in the overall economy.

The New Saudi Insolvency Law (Royal Decree M 50 of 1439, Resolution No 264 on 1439) was published in the Saudi Official Gazette Issue 4712 in February. The implementing legislation was enacted on 4 September 2018.

Some salient features of this new law are as under:

- The New Saudi Insolvency Law is generally available to private individuals who are involved in business and companies. In terms of jurisdictional scope, it applies to Saudi persons or foreign residents practicing commercial or professional activities, or any activity to realize profits in the Kingdom; Saudi registered companies; and Saudi branches of foreign companies.
- The New Saudi Insolvency Law introduced a range of restructuring and liquidation procedures: Protective Settlement; Financial Restructuring; Liquidation; Small debtor's procedures and Administrative Liquidation.
- This process under the new law allows the debtor to remain in possession and manage its own affairs whilst seeking a settlement with its creditors to facilitate business continuation.
- At the same time as commencing the procedure, the debtor can seek a discretionary stay against litigation and security enforcement. It can also seek to obtain rescue finance in certain circumstances to be approved by the court.
- The introduction of officeholders and creditors' committees is with a view to making the procedures under the New Saudi Insolvency Law more cost effective and efficient.

- The process of rehabilitation allows a debtor to restructure its business. The process takes place under the supervision of the court and with the assistance of an independent officeholder. There is an automatic stay preventing litigation and security enforcement.
- There is a new streamlined liquidation procedure which ensures an efficient realisation of the assets in the estate and distribution to creditors. Debtors, creditors and regulators may initiate the liquidation procedure.
- A delegated representative of the Bankruptcy Commission takes on the role of liquidator of last resort, to finalise the business and investigate the affairs of the debtor.
- The New Saudi Insolvency Law also introduces modified versions of the main restructuring and liquidation procedures aimed at enabling small debtors to be rescued or liquidated in a cost efficient and time effective manner. The court has limited involvement in these procedures.
- The New Saudi Insolvency Law introduces a Bankruptcy Register which is accessible online.
- The New Saudi Insolvency Law establishes a Bankruptcy Commission. The Commission has a wide-ranging role aimed at facilitating the practical application of the law.

CROSS BORDER INSOLVENCY IN SAUDI ARABIA

With the issuance of the Rules of Cross-Border Bankruptcy Proceedings on 16 December 2022, Saudi Arabia becomes the 56th State to have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI).

he main aim of this cooperation is to reinforce the commercial legal framework in Saudi Arabia and enhance the capacity of various stakeholders (e.g. government bodies, legal professionals) to apply and implement UNCITRAL texts. The enactment of the MLCBI follows the ratification of the United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation") by Saudi Arabia. Saudi Arabia is also finalizing a law based on the UNCITRAL Legislative Guide on Key Principles of a Business Registry and there are additional ongoing reforms involving UNCITRAL texts related to the digital economy and the international sale of goods.

Match the phrase with its correct meaning

Phrases		Meaning	
1	Acquittal	A	postponing a court hearing
2	Actus reus	B	the court's decision that a person is innocent of the crime they were charged with
3	Adjournment	C	replacing an existing agreement with a new one
4	Pari passu	D	an act which is illegal, such as theft
5	Novation	E	a record of the meetings held by members and directors of companies.
6	Minutes	F	equally.

Answers:

1 B
2 D
3 A
4 F
5 C
6 E

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