

INSTITUTE OF INSOLVENCY PROFESSIONALS

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ICSI IIP – IBC KNOWLEDGE CAPSULE 27

REPORT OF STANDING COMMITTEE ON FINANCE 2020-21 TITLED ‘IMPLEMENTATION OF INSOLVENCY AND BANKRUPTCY CODE- PITFALLS AND SOLUTIONS’:KEY HIGHLIGHTS

Background:

On 03rd August, 2021, the Parliamentary Standing Committee on Finance chaired by Mr. Jayant Sinha has issued its 32nd report titled ‘Implementation of Insolvency and Bankruptcy Code-pitfalls and solutions’ whereby it has recommended for a benchmark for the quantum of ‘haircut by financial creditor to be comparable to global standards. The committee proposed establishment of ‘Institute of Resolution Professionals’ to oversee and regulate the functioning of RPs. It also proposed more transparency in the appointment of RPs by the Committee of Creditors, among others recommendations.

Key Highlights of Recommendations:

The following table succinctly summarizes the fifteen recommendations made by the standing Committee in its report:

<u>S. No.</u>	<u>About</u>	<u>Summary of Recommendations</u>
1.	<i>Benchmark for quantum of haircuts</i>	<ul style="list-style-type: none"> Considering the disproportionate large and unsustainable haircuts taken by the financial creditors over the years, there may be an imperative to have a benchmark for the quantum of haircuts, comparable to global standards.
2.	<i>Role of Resolution Professionals</i>	<ul style="list-style-type: none"> Since RPs are the vantage point of the entire resolution

		<p>process, the committee noted that young and fresh graduates without any experience may not be well equipped in handling cases of huge corporate.</p> <ul style="list-style-type: none"> • The committee believes that a professional self-regulator for RPs that functions like the Institute of Chartered Accountants of India(ICAI) should be put in place. • The committee therefore recommends that an Institute of Resolution Professionals may be established.
3.	<i>Committee of Creditors</i>	<ul style="list-style-type: none"> • There is an urgent need to have a professional code of conduct for the CoC, which will define and circumscribe their decisions, as these have larger implication for the efficacy of the Code.
4.	<i>Guidelines for selection of RPs by CoC</i>	<ul style="list-style-type: none"> • CoC decides whether to continue with IRP as RP or to replace IRP by another RP. • The committee recommends that IBBI should frame guidelines for the selection of RPs by CoC in more transparent manner.
5.	<i>Performance Review of NCLT System</i>	<ul style="list-style-type: none"> • The committee recommended that NCLT should accept defaulters within 30 days of admission and transfer control to a resolution process within this time period. • The Committee believes that IBC needs to be amended so that no post bids are allowed during the resolution process. There should be sanctity in deadlines. • NCLT judgments are often overturned by the NCLAT demonstrating the fact that judgment quality should be improved. This can be improved by ensuring the NCLT members are highly experienced and fully trained. The Committee believes that NCLT judicial members should be atleast Hon'ble High Court Judges.

6.	<i>Functioning of NCLT</i>	<ul style="list-style-type: none"> • Dedicated benches of NCLT solely for IBC may be created and institutional capacity of NCLT benches be enhanced accordingly. There is also a need for having specialized benches for sectors such as MSMEs with requisite domain expertise. • National Law Schools should be involved in the NCLT system so that they can conduct academic research, develop suitable case based materials and provide support through law clerks etc. • Committee also recommended to fill the vacant positions of NCLT including the position of Regular President.
7.	<i>More flexible Resolution Plans</i>	<ul style="list-style-type: none"> • IBC does not offer the flexibility to dispose of different units of corporate debtor to different bidders: Regulation 37 does allow resolution professional flexibility in developing a resolution plan across multiple bidders each taking different pieces of the corporate defaulters. Committee recommends that IBC may be amended to clarify that the resolution plan can be achieved through any of the means prescribed under the Regulation 37 of CIRP regulations.
8.	<i>Deletion of regulation w.r.t. liquidation as a going concern</i>	<ul style="list-style-type: none"> • As per the committee, the Regulations that provide for liquidation as a going concern are ultra vires. • Therefore, Regulation 32(e) of the Liquidation Regulations may be deleted and Regulation 32(f) may be amended appropriately.
9.	<i>IBC Ecosystem Digitization</i>	<ul style="list-style-type: none"> • NCLT and NCLAT should digitize their operations and records for quick disposal of cases.
10.	<i>Appraisal Study on the performance of NCLT</i>	<ul style="list-style-type: none"> • It is recommended that an appraisal study on the performance of NCLT with granular data on IBC cases and

		its impact on the debt portfolio or overall credit markets should be conducted and presented to parliament and published in public domain annually. In this regard, an MoU may be signed by MCA with leading business schools or law universities to associate with them academically.
11.	<i>Streamline the operational process of NCLT/NCLAT</i>	<ul style="list-style-type: none"> • MCA should take greater responsibility to streamline the operational process of NCLT/NCLAT while constantly monitoring the workflow, disposal and outcomes with regard to resolution, recoveries, time taken etc.
12.	<i>Preventing the delay process beyond the statutory limits</i>	<ul style="list-style-type: none"> • Committee recommends that misuse/abuse of well intended provisions and processes by ensuring an element of finality within the statutory stipulated period without protracted litigations.
13.	<i>Pre Pack insolvency resolution for MSMEs</i>	<ul style="list-style-type: none"> • Applauding the Amendment Ordinance of 4th April 2021, wherein the pre-pack insolvency regime was introduced for MSMEs in India, the committee recommended that the timelines under such a system should be adhered to. • The committee is also of the view that the pre-pack resolution framework should be introduced for existing insolvency framework for quicker and effective resolution that reduces the burden on NCLT. • The committee also recommends that the process of pre-pack should be subject to timely review based on the experience gained. Further, the waterfall mechanism as envisaged for MSMEs may be reconciled with that of MSME Act.
14.	<i>Cross Border Insolvency</i>	<ul style="list-style-type: none"> • Based on the 2018 Report of the Insolvency Law Committee, an expert Committee on Cross-Border Insolvency rules and regulations (CBIRC) had been constituted for recommending

		rules and regulations for smooth implementation of proposed cross border insolvency provisions. The committee recommends that adoption of these provisions of the Cross Border insolvency framework should be expedited.
15.	<i>Strengthening Homebuyer Rights</i>	<ul style="list-style-type: none"> • Since the IBC (Second Amendment) Act, 2018 fixed a threshold for atleast 100 homebuyers or 10% of total flat purchasers to initiate insolvency against a real estate developer, the committee have noticed practical difficulties in gathering the required number of homebuyers. • Once a single homebuyer decides to initiate insolvency proceedings in NCLT, the real estate owner should be obligated in the Rules/Guidelines to provide details of other homebuyers of the project to the concerned homebuyer so that the required 10% or 100 homebuyers can be mobilized.

Notes:**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India
 IPA: Insolvency Professional Agency
 ICSI IIP: ICSI Institute of Insolvency Professionals
 IP: Insolvency Professional
 CIRP: Corporate insolvency resolution process
 IRP: Interim Resolution Professional
 AR: Authorised Representative

COC: Committee of Creditors

CD: Corporate Debtor

FC: Financial Creditor

OC: Operational Creditor

Code: Insolvency and Bankruptcy Code, 2016

PPIRP: Pre Packaged Insolvency Resolution Process

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