

RESOLUTION PLAN UNDER INDIAN INSOLVENCY LAW

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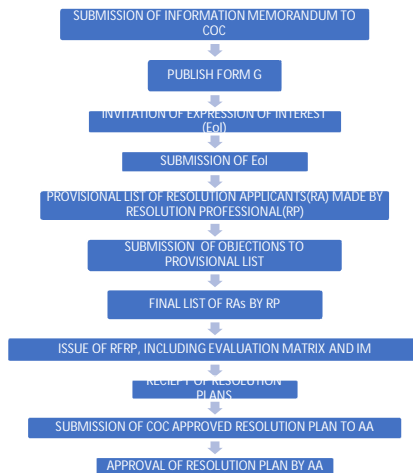
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Introduction

The Indian Insolvency Law has had a makeover with the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC). With this law, a concept of a Resolution Plan was introduced in the Indian scenario. A resolution plan is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. It needs to be approved by the committee of creditors ("COC"), and comply with mandatory requirements prescribed in IBC.¹

As per the definition under Section 5(26) of the Insolvency and Bankruptcy Code, a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern. A resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

As per IBC, the following is the process of the Plan,



Findings on Resolution Plan

The Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) along with the Apex Court (Supreme Court) of India have taken a lot of

¹<https://taxguru.in/corporate-law/resolution-plan-ibc-2016.html>

decisions and passed a lot of orders discussing the contents, implications and the implementations of the Resolution Plans in the budding Indian Insolvency jurisdiction.

The following table shows the orders passed by the decision making authorities regarding Resolution Plans since the inception of the Insolvency and Bankruptcy Code.

Date of the Order	Case Title	Finding/Ruling
04.10.2018	Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.	RP is not empowered to 'decide' whether resolution plan contravenes any provisions of the law.
25.01.2019	Swiss Ribbons Pvt. Ltd. &Anr. v. Union of India &Ors	Since the FCs are in the business of money lending, they are best equipped to assess viability and feasibility of the business of the CD. Even at the time of granting loans, they undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. They are in a good position to evaluate the contents of a resolution plan.
15.11.2019	Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors.	<ul style="list-style-type: none"> The resolution plan submitted by the prospective resolution applicant must provide for measures as may be necessary for the insolvency resolution of the CD for maximisation of the value of its assets, which may include transfer or sale of assets or part thereof, whether subject to security interests or not. The plan may provide for either satisfaction or modification of any security interest of a secured creditor and may also provide for reduction in the amount payable to different classes of creditors.
20.02.2018	Quantum Limited v. Indus Finance Corporation Ltd.	It is the duty of the AA to find out whether a suitable resolution plan is there to be approved instead of going for liquidation.
15.05.2018	Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. &Ors.	<ul style="list-style-type: none"> RP cannot hold or decide as to who is ineligible under Section 29A to submit a Resolution Plan. A Resolution Plan submitted by one or other Resolution Applicant, being confidential, cannot be disclosed to any competitor Resolution Applicant. COC should have transparency while accepting or rejecting resolution plans.
08.08.2018	Rashidbhai Ismail Tharadra&Ors. v. Raj Oil Mills Limited &Anr.	Resolution plans, fulfilling the criteria laid down under Sections 30(2) & 29A, IBC can be approved by COC and the Adjudicating Authority cannot sit in appeal over the financial implications of such a Resolution Plan.
09.08.2018	Vijay Kumar Jain v. Standard Chartered Bank Ltd. &Ors.	Resolution Plans are confidential. Hence, cannot be handed over to (suspended) Board of Directors or Operational Creditors or the competitor Resolution Applicants. Note: The members of the erstwhile Board of Directors, being vitally interested in Resolution Plans that may be discussed at meetings of the COC, they must be given a copy of such plans as part of "documents" that have to be



		furnished along with the notice of such meetings.
24.09.2018	Madhya Gujrat Vij Company Ltd. v. Kalptaru Alloys Pvt. Ltd. &Ors.	There is no requirement to issue notice to the Operational Creditors if a Resolution Plan is already approved by the Committee of Creditors. Resolution Plan is binding on the Corporate Debtors, Financial Creditors, Operational Creditors and all other stakeholders, including guarantors.
14.11.2018	Binani Industries Limited v. Bank of Baroda and Anr.	<ul style="list-style-type: none"> The approval of the Resolution Plan is in the domain of the CoC and not of the RP. If the Resolution Plan is approved by the CoC and does not provide for full satisfaction of claims of OCs, in absence of any power of the RP to reject such resolution plan, the RP cannot be blamed for the same.
04.02.2019	Tata Steel Ltd. v. Liberty House Group Pte. Ltd. &Ors.	A Resolution Applicant has no vested right or fundamental right to have its Resolution Plan considered or approved.
19.03.2019	Mr. Sharad Sanghi v. Ms. Vardana Garg &Ors	Once CoC votes in favour of a Resolution Plan, it cannot change its view subsequently.
08.04.2019	JM Financial Asset Reconstruction Company Ltd. v. Well- Do Holdings and Exports Pvt. Ltd. &Ors	Persons who are ineligible to file a Resolution Plan under Section 29A, IBC and those Resolution Applicants who did not move the AA before last date of submission of resolution plan, have no right to raise their grievance with regard to the expression of interest and that too after approval of the Resolution Plan by the Committee of Creditors.
24.04.2019	Prakash Chand Jain v. Punjab National Bank and Others	The Resolution Plan which is more suitable, feasible and viable amongst all the Resolution Plans should be the Successful Resolution Plan.
13.05.2019	Industrial Services v. Burn Standard Company Ltd. &Anr.	The resolution plan should not relate to the closure of the Corporate Debtor as it is against the scope and intent of the Code which is in violation of Section 30(2)(e), IBC.
11.06.2019	Jagmeet Singh Sabharwal &Ors. v. Rubber Products Ltd. &Ors.	Resolution Applicant should provide the same treatment in its Resolution Plan to all Operational Creditors which are similarly situated.
03.07.2019	Milind Dixit &Anr v. Elecon Engineering Company Ltd &Ors	On receipt of rejected resolution plan, NCLT is not expected to do anything more but is obligated to initiate liquidation process.
04.07.2019	Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. &Ors.	IBC does not permit the Committee of Creditors to form a Sub- Committee or a Core Committee or to even delegate its power to a Sub-Committee or Core Committee for negotiating with the Resolution Applicant(s).
31.07.2019	Kautilya Industries Pvt. Ltd. v. Parasrampuriya Synthetic Ltd. &Anr.	Liquidator can accept the resolution plans which were not accepted in CIRP as schemes or arrangements in liquidation process.
06.09.2019	ShajiPurushothaman v. Union Bank of India &Ors.	COC is required to decide whether the proposal given for settlement in terms of Section 12A is better than the Resolution Plan or not.
11.09.2019	Sreeram E. Techno School Pvt. Ltd. v. Beans and More Hospitality Pvt. Ltd.	<ul style="list-style-type: none"> COC to look at the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP AA is not required to check the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP.
20.02.2018	In the matter of Gupta Energy Pvt. Ltd.	AA neither has the jurisdiction to question the actions of the CoC nor any discretion to examine the resolution plan



02.05.2018	BrajBhushan Das &Ors. v. Mr. Vijay Kumar V Iyer (RP)	RP has to comply with the provisions of the Code in submitting the resolution plan before CoC.
04.05.2018	Sunrise Polyfilms Pvt. Ltd. v. Punjab National Bank	RP cannot file for liquidation before inviting applications for resolution plans.
03.08.2018	Punjab National Bank v. Mintri Tea Company Private Limited	After approval of resolution plan by the CoC, the RP cannot file an application for withdrawal as per Section 12A of the Code.
05.12.2018	State Bank of India v. ARGL Limited	The bidder (resolution applicant) cannot drag its feet and backtrack after getting its resolution plan approved by the COC.

Resolution Plans: Evolution

IBC has undergone a number of changes in the past three years. Some of them have been pertaining to how resolution plans are made and approved. The Insolvency and Bankruptcy (First Amendment) Act, brought with it introduction to the process of invitation for Resolution Plans to identify and finalise Resolution Applicants. Another major amendment was the introduction of Section 29A to the Code. This Section mentions the ineligibility of Resolution Applicants. The approval required from Committee of Creditors was reduced from 75% to 66%.

The Insolvency and Bankruptcy (Second Amendment) Act, brought with it clarity on the permissibility of corporate restructuring schemes to be included in the resolution plan, upholding supremacy of financial creditors regarding distribution of funds proposed by the resolution applicant, and clarifying the applicability of the resolution plan on all statutory authorities. A major win for the Corporate Debtors and Resolution Applicants was when the amendment explained that the resolution plan contemplates restructuring of the corporate debtor by way of merger, amalgamation or demerger, the corporate debtor should not be required to comply with the Merger Framework as listed in Companies Act 2013 and Rules made there under.

One of the major concerns in implementation of Resolution Plans is having to deal with dissenting financial creditors. Under Section 30(4) of the Code, a resolution plan needs approval of sixty-six percent of the voting share of the financial creditors, in order to be approved by the Adjudicating Authority. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 originally defined “dissenting financial creditors” as financial creditors who have voted against the resolution plan approved by the committee of creditors. Thereafter, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were amended to indicate that “financial creditors who...abstained from voting for the resolution plan” would be considered



dissenting financial creditors as well. The Insolvency and Bankruptcy Board of India (Vide its circular dated 14th September, 2018) clarified those financial creditors who are not members of the Committee of Creditors, do not have any voting rights and thus, they cannot be considered either dissenting or abstaining creditors when it comes to approving a resolution process.²

Conclusion

As is clear from the above, all the authorities including the Adjudicating Authorities (NCLT/NCLAT), the regulating authority (IBBI) and the participants have an aim of smooth approval and implementation of the Resolution Plan. As per latest IBBI newsletter, IBC provides for a market mechanism where the world at large competes to give the best value for the company through a resolution plan. The resolution plans have yielded about 200% of the liquidation value.³ A total of 2755 Resolution Plans have been approved by now.

Moving forward, since the amendments have plugged most of the loopholes, and the remainder issues have been decided by the NCLT/NCLAT as and when they arise, best practices need to be adopted and developed for the implementation of the plan too. A restructuring officer concept may be introduced wherein they take over the management and control of the Corporate Debtor till the plan is implemented and the stressed assets are no longer Non Performing Assets.

Resolution Plan might be the most important aspect of the whole Insolvency Process of a stressed company and all the participants in the process may be quick to intervene for its smooth implementation.

² Insolvency and Bankruptcy Board of India, Voting in the Committee of Creditors, http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Sep/Circular-Voting%20in%20the%20Committee%20of%20Creditors_2018-09-14%2018:32:15.pdf

³<https://ibbi.gov.in/uploads/publication/62a9cc46d6a96690e4c8a3c9ee3ab862.pdf>