VOLUME 4 | ISSUE 1

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

STRUCTURAL REFORMS BY INSOLVENCY AND BANKRUPTCY CODE TO FACILITATE THE EASE OF DOING BUSINESS

- Adv. Nityash Solanki[1]

ABSTRACT

The IBC is envisioned to dissuade imprudent borrowing of companies for better economic growth at large. One of the most crucial challenges posed to business in our country is realization of assets value in case of losses resulting into liquidation. The fruits of IBC are witnessed in the framework of debt recovery mechanism that safeguards legal entities from winding up. Innovative judicial interpretation of IBC eventually reformed the market mechanics and economic environment of our country. Many taboos that circled around the mala fide intentions of promoters for tremendous loss of economic value in the company have been rested. In such circumstances, creditors are placed at the board to make decision competent enough to tackle irregularities of debt obligation of the corporation. The IBC by restructuring the debt recovery regime has proposed a flexible approach to attain co-operation amongst the borrowers and lenders. Accelerating the resolution plan to reach consensus from all the stakeholders especially on stressed assets has significantly improved the procedural norms of yielding from credit facilities. A watchdog scheme incorporated with internationally accepted norms was proposed by the Bankruptcy Law Reforms Committee to safeguard interests of creditors and all the other stakeholders. The scheme aimed at concrete effort revamping debt obligations of stressed assets with an objective to provide unified legal framework for solving issues of insolvency and saving financially viable entities.The IBC forms a monitoring link by

[1] Advocate at High Court of Delhi

appointing Resolution Professional (RP), who would bring forward the remedial actions decided by committee of creditor (CoC) for adjudication on debts obligation. The object of constituting committee of creditors is to place the responsibility of consensus on reorganization of legal entities in a time bound manner. A revival plan agreed upon by committee of creditors proved worthy in capturing the intricacies of the Resolution process and ensuring a fresh start free from debt obligations. A revival plan is thus incorporated to bring the resolution process in conformity with cross-border issues

INTRODUCTION

> *"To command what cannot be done is not to make law; it is to unmake law, for a command that cannot be obeyed serves no end but confusion, fear and chaos."*[2]
>
> Lon L. Fuller

Institutional arrangement of adjudicating insolvency and bankruptcy matters before National Company Law Tribunal (NCLT) implemented a framework of viability to keep the business of legal entities a going concern. The newly adopted insolvency regime has proved successful in balancing the interests of all the stakeholders with that of a company. Securing investors from debt obligation of legal entities is madepossible through Insolvency and Bankruptcy Code (IBC). The IBChas brought structural changes for assessing the business productivity. It is pertinent to note that company's accessibility to credit market is vital for overcoming the wounds of debts caused during business transactions.The IBCproved efficient in solving problems related to liquidation and secured property rights for the creditor. The IBCis envisioned to dissuade imprudent borrowing of companies for better economic growth at large. One of the most crucial challenges posed to business in our country is realization of assets value in case of losses resulting into liquidation. The IBCinstituted effective mechanisms to safeguard borrowings over scarce resources.Introduction of the IBCresulted into maximizing productivitysince a possibility to avail the requisitevalue of assets was unlatched.The

[2] Lon L. Fuller, *Positivism and Fidelity to Law – A Reply to Professor Hart*, 71 Harv. L. Rev. 630, 663 (1958); H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 Harv. L.Rev. 593 (1958).

fruits of the IBC are witnessed in theframework of debt recovery mechanism that safeguards legal entities from winding up.

Innovative judicial interpretation of the IBC eventually reformed the market mechanics and economic environment of our country. In*Bannari Amman Spg. Mills Ltd. V. My Choice Knit & Apparels (P) Ltd.*[3] the appellant filled an application before the Adjudicating Authority for initiating a 'Corporate Insolvency Resolution Process' (CIRP) under Section 9 of the IBCagainst respondent (Corporate Debtor). In this case, the Adjudicating Authority (NCLT, Bengaluru) held that since the Corporate Debtor is a Micro, Small and Medium Enterprise (MSME), it is exempted from the purview of the IBC. The NCLAT rejecting the interpretation of Section 9 IBC given by NCLT, Bengaluru held that an application for initiating a CIRP cannot be dismissed only on the ground that Corporate Debtor is MSME. Therefore, application initiating CIRP against enterprises (including MSME) is maintainable under Section 7, 9 or 10.[4]Accordingly, the imperfection on the part of NCLT, Bengaluru was ratified by the NCLAT to subject MSME within the scope of relevant provisions under the IBC. The rational nature of the IBC puts emphasis on imposing commands or ordinances of the Parliament to achieve law and order in the business community. After the promulgation of the IBC, the business community was bound to do or not to do something. It would seem that jurists properly extended the ambit of the IBC bringing the matters of the future inconformity with the force of law.

The decision laid down by the Adjudicating Authority in the above case ensured that Parliament fairly worked out a system of rules to fully overcome previous defects in the insolvency and bankruptcy code. The zeal of Parliament to legally reform the insolvency and bankruptcy code which were previously considered to be contradictory/corrupt/archaic/cumbersome is nowanswered by spectacular laws.Considering the greatest failure of predecessors in the field of bankruptcy laws, it was propitious to announce needed reforms to succeed immediately in creating

[3]*Bannari Amman Spg. Mills Ltd. V. My Choice Knit & Apparels (P) Ltd.*, 2019 SCC OnLine NCLAT 1121.
[4] *Ibid.*

confidence when it came to deciding specific controversies. Judiciary soon recognized the assistance required to clarify the honeycombed expressions in the code. In *SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd*.,[5]the 'Operational Creditor' filed an application before the Adjudicating Authority for initiating a CIRP under Section 9 of the IBCagainst Corporate Debtor for a sum of Rs. 10,47,500/- which included interest and legal charges. The Adjudicating Authority observed that Corporate Debtor desired to settle the dispute at the earliest by issuing a Demand Draft towards full and final settlement of outstanding dues to the Operational Creditor. In any event, the Operational Creditor was reluctant to accept the settlement and alleged that they have a right to interest over the principle amount. Adjudicating Authority dismissed the application stating that Operational Creditor could approach a court of competent jurisdiction for realization or recovery of outstanding dues instead of invoking Section 9 of the IBC, which will have an adverse affect on a going concern.[6]A completely fair assessment of this judgment reveals the present position of the IBC which emphasizes on restraints that ought to exist on Adjudicating Authorities with respect to companies. The basis for doing so could be centre of all the reforms introduced by the IBC. In other words, the IBC is accompanied by the philosophy of providing central place to companies when it comes to 'what the IBC must do to save or revive companies'. In response to a belief that Creditorshave an inalienable right against the company, the judiciary has declared that companies have legal protection under the IBC to prohibit Creditors from interfering with companies business.The existence of a claimed right under IBC must be accompanied with sophisticated arguments. The term 'right' used in the above sentence could be referred to what is called a 'privilege', that is to say, to act or refrain from acting legally. As a result, most commentators would maintain that the new embodied insolvency regime has proved successful in balancing the interests of all the stakeholders with that of a company.

In India, business accounts for family dominated board members who would secure for themselves financial benefits that are acquired from exploitation of superfluity.

[5] C.P. (I.B.) No. 282/9/NCLT/AHM/2019.
[6] *Ibid.*

Many taboos that circled around the *mala fide* intentions of promoters for tremendous loss of economic value in the company have been rested. In such circumstances, creditors are placed at the board to make decision competent enough to tackle irregularities of debt obligation of the corporation. A watchdog scheme incorporated with internationally accepted norms was proposed by the Bankruptcy Law Reforms Committee to safeguard interests of creditors and all the other stakeholders. The scheme aimed at concrete effort revamping debt obligations of stressed assets with an objective to provide unified legal framework for solving issues of insolvency and saving financially viable entities.[7] In its report a suggestion for inception of creditors' committee was made to improve the struggling bankruptcy process. Unresolved financial issues were proposed to be solved with the help of Insolvency Resolution Process (IRP). A revival plan agreed upon by committee of creditors proved worthy in capturing the intricacies of the Resolution process and ensuring a fresh start free from debt obligations. A revival plan is thus incorporated to bring the resolution process in conformity with cross-border issues. Major trust is bestowed on the committee of creditor to rehabilitate and retrieve recognition of good-will.[8]*Binani Industries Limited v. Bank of Baroda &Anr*.,[9] explains the object of constituting committee of creditors. The committee of creditor is responsible for consensus on reorganization of legal entities in a time bound manner. The idea is to maximize the valuation of assets. The committee of creditors aims resolution to balance the interest of all the stakeholders. "The Purpose of Resolution is for maximization of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximization of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is "resolution". The second order objective is "maximization of value of assets of the 'Corporate Debtor" and the third order objective is "promoting

[7] The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design (November 2015).
[8] Preamble of The Insolvency and Bankruptcy Code, 2016 was enacted to "consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.
[9] CA (AT) (IB) No. 82 of 2018.

entrepreneurship, availability of credit and balancing the interests."[10]The prime feature of the IBCis to form monitoring link by appointing Resolution Professional (RP), who would bring forward the remedial actionsdecided by committee of creditor (CoC) for adjudication on debts obligation.Insolvency Professionals' support to adjudicate on issues regarding (a) loans, (b) advances over dues, (c) inadequate cash flows, (d) business infrastructure and (e) overall integrity of the business transactions,created a stabilized environment for judicial precedents. Guidelines laid down by the new Code bestow the expert Resolution professionalwith variety of recourses to recover the money of creditors. From a conspectus of the above discussions, it is clear that the IBCreforms liquidation processes for effective recovery of dues from the company by transferring the control of the business to the committee of creditors. Further, the IBC implied order to an end. As stated above, the IBC dictated practical reasons emanating from the Parliament to govern the business community transactions perfectly. Now it is evident that transactions in perfect business community demands legitimate reasons for any kind of interference and the IBC bears the character of implying laws to the end actively, in so far as it directs control of the business in the safe hands.

Corporate Debtor's obligations are assessed to place the Resolution Professionals(RP) in control of managing business affairs. Comprehensive nature of IBC provisions overshadows all the other conflicting statutes on same subject matter.[11]In *Padmaiah Vuppu v. Reliance Capital AIF Trustee Co. (P) Ltd.*,[12]the financial creditor filed an application before the Adjudicating Authority under Section 7 of the IBCagainst corporate debtor namely M/s Fortuna Projects (India) Private Limited, who stood as a guarantor for a loan. The issue involved in this case was regarding failure to comply with pre-requisites under Section 185 of the Companies Act, 2013. The corporate debtor contended that directors' guarantee for loan in the present case is violative of Section 185 because no Special Resolution was passed by the members to officially validate the

[10] Ibid.
[11] IBC, Section 238. Provisions of this Code to override other laws.--The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
[12] 2019 SCC OnLine NCLAT 610, para 5.

guarantee on the loan. The Adjudicating Authority rejected the contention stating that the matter was not challenged before the court of competent jurisdiction and the application under Section 7 of the IBCwas admitted to resolve the debt obligation.[13]The Adjudicating Authority has rested the inconsistency between provisions from the Companies Act, 2013 and the IBC.

In this article, readers would be provided with information regarding jurisprudential aspect of the IBC; recent developments that have majorly revived the bankruptcy procedure under the IBC;how the IBChas made it efficient to achieve the requisite value of assets; and some conclusive interpretation of relevant provisions under IBC given by the Supreme Court and the National Company Law Appellate Tribunal. The contents of this article would bring historical assumptions regardingrecovery of debt andinsolvency process within the subject matter of discussion. Significant contribution of Bankruptcy Law Reforms Committee to sustain economic value of the enterprise is would also be discussed at length. The readers will be able accumulate interesting insights regarding issues related to assessing viability, loss in recovery, and debt financing. Amendments made to solve prevailing issues of Corporate Insolvency Resolution Process are imbibed in this article to strengthen the unflinching foundation of IBC.

OVERHAULING REFORMS: PERTAINING TO RESTRUCTURING

In India, Presidency-Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 governed matters related to insolvency of individuals. Whereas laws such as Companies Act, 2013; Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002; Sick Industrial Companies Act (SICA), 1985; accounted for corporate insolvency matters. The Fragmented insolvency processes in the above mentioned acts were put to rest by addressing issues such as financial restructuring to avail viability, recovery of debts by banks and financial

[13]*Ibid.*

institutions, remedies available to creditors, resolving insolvency in timely manner, uncertainty in the outcomes of insolvency process, and winding-up. In the forth coming paragraph, immunities, privileges and rights secured by the IBC is discussed to make readers familiar with the achieved progression of the reforms introduced by the new code.

The Sick Industrial Companies (Special Provisions) Act, 1985 that previously regulated the conduct of corporate insolvency proved inefficient to re-organize/revive companies with sub-standards. To facilitate the 'Ease of Doing Business' it was felt that defaulting corporate debtor must be given a legitimate regulatory support to revive business output.For instance, in *Vyomit Shares Stock & Investments (P) Ltd., v. SEBI*,[14]an application under Section 10 of the IBCwas initiated by Corporate Applicant for Corporate Insolvency Resolution Process (CIRP). The Adjudicating Authority reasoned that Corporate Debtor seems financially sufficient to run business and held that there are no legitimate grounds available for initiation of CIRP.[15] The Adjudicating authority thus claimeda liberal approach towards corporate debtors who comes clean.Much influenced by 'Ease of Doing Business' the IBC has become increasingly popular since the philosophy of restoration fora business concern is highly appreciated at market place.Certainly, it would appear that the most important influence of the IBC at this stage is to put emphasis on intellectual development of business in the company. The empiricist nature of the IBC has so far revealed that Parliament's labor to dispel the controversies that prevailed in the previous legislation on insolvency and bankruptcy astonishingly rectified the reasoning of the lawful commitments of companies. Consequently, lawful obligationsenunciated in the IBC inspired judiciary in solving the mysteries of gospel promises made by companies.For example, in *Gaja Trustee Co. (P) Ltd. V. Haldia Coke and Chemicals (P) Ltd.*,[16] the Adjudicating Authority observed that the article of association of the company required consent of the shareholders to file an application under Section 10 of the IBC. The relevant portions of the article suggested that liquidation, dissolution or winding up of the company required consent of shareholders in

[14] 2019 SCC OnLine NCLAT 287.
[15] *Ibid.*
[16] 2018 SCC OnLine NCLAT 331.

the prescribed manner at "Extraordinary General Meeting". The Adjudicating Authority declared the commencement of CIRP illegal based on its finding that without the approval of shareholder, the Board of directors of the company was not competent to file an application under Section 10 of the IBCfor initiating CIRP.[17]Furthermore, in *Vandana Industries Ltd. V. IL and FS Financial Services Ltd*.,[18]it was held that an application under section 10 of the IBC will be considered arbitrary if it is introduced for adjudication without seeking consent of the shareholders at Extraordinary General Meeting. In such circumstances, the shareholders are allowed to proceed under Section 33(2) of the IBCagainst the order of admission of liquidation.[19]The pre-condition of approval by shareholders under Section 10(3) is mandatory and not directory. This enables shareholders to positively participate in the decision for initiating CIRP.[20]The Adjudicating Authority in *Chandrashekhar Export Pvt. Ltd. V. Babanraoji Shinde Sugar & Allied Industries Ltd*., decided an application under Section 9 of the IBC and held that crystallization of the Operational Debt is a must. The decision was based on an observation made by Adjudicating Authority that the Corporate Debtor had already repaid the Principle Amount of Rs. 2,04,00,000/- The findings revealed that the Operational Creditor claimed Rs. 1,70,00,000/- towards compensation paid by the Operational Creditor to its client out of the total amount of Rs. 4,42,54,918/- In any event, the Adjudicating Authority rejected the claim made by Operational Creditor and articulated that the claim of compensation is not part of Operational Debt since the liability has not yet been adjudicated by competent authority.[21] In *M/s Ven Infra Projects v. M/s Valentis Laboratories Private Limited*,[22] it was held that the Demand Notice under Section of the IBC must be in the prescribed format to successfully claim admission of an application under Section 9 of the IBC. The adjudicating Authority made its decision based on the observation that the Demand Notice by the Operational Creditor was issued in running language printed format without paying attention to Rule 5 of the Insolvency

[17]*Ibid.*
[18] 2019 SCC OnLine NCLAT 703.
[19] Ibid.
[20]*Horseshoe Entertainment &Hopitality (P) Ltd. V. Comedy Store Ltd*., 2018 SCC OnLine NCLAT; Armada Singapore Pte. Ltd. V. AshapuraMinechem Ltd., 2019 SCC OnLine NCLAT 1140.
[21] C.P. No. 3667/IBC/MB/2019.
[22] C.P. (IB) No. 54/9/HDB/2020.

& Bankruptcy Code (Application for Adjudicating Authority) Rules, 2016. The Adjudicating Authority referred to the decision laid down by NCLAT in *Uttam Galva Steels v. DF Deutsche Forfait AG and Ors.*,[23] and held that the application is not maintainable since pre-requisites of Section 8 of the IBC were completely ignored before filling an application under Section 9 of the IBC.

On the other hand, companies failing to fulfill the debt obligations are made rid of immune promoters in control of the business. Formation of Committee of Creditor played a vital role in solving problems of repaying dues on debts. The IBC, with the help of creditor, restructures debt obligations in such a manner that the valuation of the business exceeds the liabilities and dues. By negotiating the existing liabilities a reducing of debt is often seen which the committee of creditors are willing to risk for viability options. In *Mobilox Innovation (P) Ltd. V. Kirusa Software (P) Ltd*.,[24]the Apex Court explained the eligibility and composition of committee of creditors under Section 21 of the IBC. The court was of the view that factors such as amount of debt; nature of the debt (recurring or non-recurring); and whether information of debt is reflected by records maintained at all times,influence the procedure to initiate insolvency resolution process by financial creditors from that which is available to operational creditors.[25] Hence, a Committee of Creditors is constituted by the Interim Resolution Professional which acts as decision-making body in the recovery mechanism of Corporate Insolvency Resolution Process (CIRP). The object sought to be achieved by the IBCis prioritizing property rights for the creditor and breaking the chain of imprudent borrowing by companies.In a recent decision by the National Company Law Tribunal, Indore in *Motel Rahans Pvt. Ltd. v. JSM Devcons Pvt. Ltd*,[26] it was observed that an application for 'transaction audit' of the Corporate Debtor by a secured Financial Creditor of the Corporate Debtor could be allowed on a prerequisite that the audit fees has to be borne by the Financial Creditor. Furthermore, it was deciphered by the NCLT that affairs of the CIRP would be managed by Resolution Professional and the CoC has to approve the fees to benefit from the

[23] C.A. (AT) (Ins.) No. 39 of 2017.
[24] (2018) 1 SCC 353; (2018) 1 SCC (Civ) 311.
[25] *Swiss Ribbons (P) Ltd. V. Union of India*, (2019) 4 SCC 17.
[26] C.P.(IB)/56(MP)2021.

services of the Resolution Professional. The irregularities in the transactions of the Corporate Debtor were brought to the notice of the Adjudicating Authority regarding the assets of the Corporate Debtor. The Adjudicating Authority held that a forensic audit of the account of the Corporate Debtor will be conducted since an application from a secured financial creditor suspects irregularities in business transactions. It is now time to critically analyze the discipline and practical aspect of changes introduced by the reforms in insolvency and bankruptcy throughthe IBC.The basic foundation of newly introduced regimes corresponds to uplift self-preservation of Corporate Debtor. The term business transactions in trade and commerce signify every aspect of the vitality and to secure healthy position of corporations in the market place it is essential to be free from business malfunctioning. The recognition of this basic feature of the market place mechanics by the IBC has sought businesses to stay afloat. Certainly it is tempting to see such transformation of insolvency and bankruptcy laws in our country as a distant method to urge self-preservation. Hence, distinguishable cluster of legal responsibility is levied simply for the sake of cherishing and keeping a corporate entity alive until it can stand on its own.

It is evident that equality is a divine concept in law. Law, being a rule, can reach functional adherence to intelligible differentia which separates various kinds of things/articles/people so long as there is some rational creation of ideas to identify just and reasonable legislation. Implying the above to acts of legal reasoning reveals intellectual and rational considerations of temporal laws. Since reasonable classification between financial creditor and operational creditor under Section 3(10) of the IBC is achieved through the lenses of intelligent differentia, the speculative reason was concerned with secured and unsecured creditors. The difference between the two lies in the foundation of the transaction involved. Financial creditors enter into agreement for loan facilities. On the other hand, operational creditors help in the operation of business by according supply of goods and services. In addition, the stipulations governing transactions for financial and operational creditors are different.For instance, specified repayment scheme is made available for recalling loan facility to financial creditors

particularly banks and financial institution, whereas, defaults made in payment are not easily verifiable for operational creditors due to the recurring nature of the debts in such transactions.The IBC has objectively preserved the interest of corporate debtor as a going concern by ensuring the genuine difference that exists in between financial creditor and operational creditor. These peculiar determinations observed by the IBC provideda legit framework to revive business concerns andreverencedthe insolvency and bankruptcy regimesof our country. The extrinsic principle found under Section 12A easily passed the constitutional muster when it considered withdrawal of application admitted under section 7, 9, and 10 based on a threshold that approval of ninety percent (90%)from the committee of creditors is an essential prerequisite.Further, the essential prerequisite is mandated by the Adjudicating Authorities (i.e. NCLT, and thereafter NCLAT)under Section 60 of the IBC in cases where a just settlement is refused by the committee of creditors in an arbitrary manner. Chapter III of the IBC refers to the liquidation process. Under Section 41 of the IBC the board specifies the manner in which the liquidator shall determine the value of the claim admitted under Section 40 of the IBC. Now it is to be observed that determination of the valuation of claim is a quasi-judicial decision in its nature, therefore, to make this measure most certain a creditor under Section 42 of the IBC is allowed to appeal to the Adjudicating Authority within fourteen days of the receipt of the decision by the liquidator. To proceed from principles to conclusions it is relevant to take into consideration Section 29A of the IBC which identifies persons not eligible to be resolution applicant.In order to revive business, the submission of a resolution plan by resolution applicant under the IBC requires an element of transparency. A fair negotiation could be achieved only when the parties are not related to each other (as defined under Section 5(24) of the IBC). An indispensable element of relation between the parties brings with it a loop hole in law that facilitates them to acquire assets of corporate debtor at a reduced price. Hence, to encourage formulation of legitimate resolution plan it was required to address the difficulty/lacuna in the law that opened a door way to purchase assets of the corporate debtor at a discounted price. The demonstration of the term “related party” in relation to a corporate debtor is found under section 5(24) of the IBC which identifies manner in which a person is related to corporate debtor. Persons

categorized under Section 5(24A) of the IBC might be considered as connected within the meaning of Section 29A(j) for the purpose of being Resolution Applicant for the corporate debtor. In other words, it must be proved that person falls within the mentioned category of individuals specified under the provision and the said person is connected with the business activity of the resolution applicant. However, in the absence of such proof the said person cannot possibly be denied under Section 29A(j).A subsidiary rule of interpretation commonly known as 'Principle of Noscitur a sociis' was applied to uphold the constitutional validity of provisions involving discussion of 'related person'.[27]The foundation of this section is the value of sociability which in its strongest form is realized by the IBC to restrict or govern the patterns of acting for the sake of one's well-being. Although sociability is fundamentally a form of good since our culture promotes the concept of "*VasudhaivaKutumbakam*", that is to say, the entire world is one/my family. In any event, the practical reasonableness of this provision under the IBC bears an effective action of shaping Corporate Debtors character. There are two aspects of identifying the effectiveness of this provision. *Firstly*, it involves a positive form that restricts a 'related party' to act as resolution applicant and avail the backdoor entry to purchase assets of corporate debtor at a discounted price. *Secondly*, it discourages effective freedom to related partyinsubmitting a resolution plan by creating a professional environment for the creditors, to seek intelligent and reasonable order by introducing a watchdog provision in the IBC to monitor investments. The scheme of Section 29A of the IBC is to prevent persons from participating in the resolution plan especially if they are responsible for defaults or for their professional incapacities to reward creditors' investments. The IBC by gaining control over the above mentioned irregularities that existed in the previous laws on insolvency and bankruptcy has successfully safeguarded the regime of revival of the corporate debtor. The scheme of submitting a resolution plan is thus complex as far as evaluatingon the presence of 'related party' in the resolution plan is concerned. In *RBL Bank Ltd. v. MBL Infrastructure Ltd*.,[28] the issue involved discussions pertaining to whether non-defaulting promoters of the corporate debtors

[27] Ibid at 21.
[28]CA (IB) No. 54/KB/2017.

could be restricted to submit a resolution plan under Section 29A. It was observed that the CoC was of the opinion that promoters were barred. Nonetheless, to resolve the issue involved, the Adjudicating Authority settled this matter by upholding the observations of Resolution Professional that promoters of the corporate debtor were not barred under Section 29A of the IBC to submit a resolution plan since they did not fall within the ambit or criteria of being termed as defaulters.The integrity and authenticity of the resolution plans scheme strives a balance between the orientation of the corporate debtor and practical attitudes of business transactions in the market place. It is thus correct to state that the IBC through Section 29A has somehow shaped and mastered a professional environment required to intelligently grasp a reviving resolution plan for corporate debtors.

THE FOUNDATION OF IBC

Ease of doing business demands amelioration of available resources, beneficial financial system, stable market, and credit capacity of the banking system in a country.[29] To ensure productivity in market Non-Performing Assets (NPAs) must be maintained by efficient Banking regulations.[30]In India, the NPAaccounts for significant impact on corporate debtors borrowings since it intensifies supervisory controls over assets owned by corporate debtors especially on real estate. The common supervisory system often known as CAMELS[31] recognizes the maturity of the liquidation process through the lens of statutory principles that regulates credit facility offered by banking regulations/system. The probabilities of corporate debtor going into liquidation would be higher in cases

[29] In the late 1990s, the International Monetary Fund (IMF) launched an ambitious data collection effort the Financial Soundness Indicators (FSIs) to monitor the soundness of the system-wide financial sector, from a macro-prudential vantage point. The FSIs included indicators of capital adequacy, asset quality, profitability, liquidity, and market risk sensitivity. The 2006 Financial Soundness Indicators Compilation Guide (2006 Guide) provided guidance about the source supervisory statistics, consolidation options, and compilation and dissemination advice, while simultaneously aiming at cross-country comparability.

[30] The FSI guideline recommends that loans (and other assets) should be classified as NPL when (1) payments of principal and interest are past due by 90 days or more, or (2) interest payments equal to 90 days interest or more have been capitalized (reinvested into the principal amount), refinanced, or rolled over (payment delayed by agreement). or (3) evidence exists to reclassify them as nonperforming even in the absence of a 90-day past due payment, such as when the debtor files for bankruptcy (IMF 2019, pg. 59)

[31] The acronym CAMELS stands for Capital adequacy, Asset quality, Management capability, Earnings, Liquidity, and Sensitivity to market risk.

where the banking sector is found to encompass insufficient credit capital as opposed to risk sensitive financial schemes.The IBChas proved successful for corporate debtors since it alignscorporate entities business affairs tocome in tune with enhanced regulatory practices for a better financial stability.For example, the Apex Court in *Vijay Kumar Jain v. Standard Chartered Bank*,[32]observed thatif the personal guarantor is willing to discharge the liability of the corporate debtor then Section 140 of the Indian Contract Act, 1872 mandates the recognition of erstwhile directors/personal guarantor's right to become a creditor to the corporate debtor. Furthermore, the resolution plan must be provided by the Committee of Creditors or by the Resolution Professional for gathering the opinion of such erstwhile directors on the resolution plan which is binding on all the stakeholders (including guarantors under Section 31 of the IBC). However, in *Anuj Jain v. Axis Bank Ltd*.,[33]the Supreme Court observed that when a corporate debtor mortgage its property to secure debt obligations of any third party it must not be considered a "financial debt" within the ambit of Section 5(8) of the IBC[34] since a financial debt requires elements of "disbursement" against "the consideration for the time value of the money." It is pertinent to note that the decision of the court puts an embargo when furnished security leads to a mortgage debt outside the scope of being termed as a

[32] 2019 SCC OnLine SC 103.
[33] 2020 SCC OnLine SC 237.
[34] 5. In this Part, unless the context otherwise requires,—(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—
(a) money borrowed against the payment of interest;
(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

financial debt defined under Section 5(8) of the IBC. It could not be denied that the factors affecting the financial stability of State depend on strategies adopted in the monetary policies. In any event, to broaden the financial stabilitysympathetic provisions to govern aspects such as: (i) better investment objectives in the security portfolio; (ii)enhanced protection against debt recovery (iii) undervaluation of credit-control system; (iii) reforms inAsset Reconstruction Company to achieve maximization of NPAs; and (iv)committed recovery mechanism to deal with insolvency; must be managed statutorily.Misgivings of the previous laws on insolvency and bankruptcy required maintenance of proper order with respect to aspects highlighted above. It was not perhaps the case that previous provisions governing insolvency lacked means to ends. But dynamiccharacter of business transactions in the flourishing market place demanded reasonable and intelligent answers to address the ubiquity of NPAs. The recognition and concern about NPAs convinced law makers to delve into practical and workable solution for codifying laws that could preserve NPAs. Realization of NPAs and its effect on the economy demanded substratum of material conditions to secure the conditions of 'common good' for the economic welfare of our country. A comprehensive law having authority over normative arrangements of NPAs was felt. The ability to secure the effectiveness of financial debts by acknowledgingrecalcitrant nature of NPAs was the challenge posed under the circumstances.Protecting the economy from the depredation of enemies such as NPAs whichaffected creditors' legal right was achieved through directive and coercive measures. The directive measures principally adopted co-ordination of banking regulations and market irregularities. On the other hand, the less famous coercive measures proclaimed brutish egocentricity that moderated situations of threat posed by NPAs via supervising control over assets of the corporation.It is worthy to mention that not all lawful coercive methods are exposed by sanction. Sometimes coercion could enter in the system through forced sale of assets, by seizure, by distraint.

Meanwhile, rise in issues of NPA accounts became a concern for RBI, which led RBI to frame a regime trustworthy of remedial actions during debt trap of corporate

debtor.[35]The Board of Financial Supervision (BFS) through a study recommended for creating a better financial safeguards and a tactical response to counter unnecessary business setbacks in the economy. The suggestion was to initiate debt evaluationsto identify shortcomings in business projects and credit facilities availed through sub-standard corporate assets. These suggestions pointed a detailed study of corporations' financial accounts toidentify slippage, if any.The study disclosed that some proneness to slippage is observed in accounts due to reasons mentioned below:

1. Impediments in submission of financial statements on demand.
2. Dishonor of cheque.
3. Non-payment of guaranteed bank installments.
4. Excessive devolvement of banks credit letters.
5. Unstable financial performance affecting the good will and net worth of the business.

In 2001, a mechanism known as the Corporate Debt Restructuring (CDR) was introduced to restructure corporate debt obligations of rupees twenty Crores and above. Nevertheless, banks could not benefit from CDR since the mechanism was invoked on voluntary basis and statutory framework was kept out of the scope of consortium arrangement. Eventually, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 (SARFAESI Act of 2022) was enacted for banks and other financial institutions to recover from non-performing assets (NPAs). With Asset Classification Norms, banks were authorized to restructure the accounts under any one of the three categories namely, "standard", "sub-standard" and "doubtful". Any up-gradation of restructured accounts depended on satisfactory performance of assets within a specific period of time.[36]It is opined that economic growth is

[35] "Study on preventing slippage of NPA accounts", dt. 12-09-2002, Ref. DBS.CO.OSMOS/B.C./4/33.04.006/2002-2003, available at https://rbidocs.rbi.org.in/rdocs/notification/PDFs/31992.pdf; last accessed on 17th May 2023.

[36] "Prudential Guidelines on Restructuring of Advances by Banks", released on 27-08-2008, RBI/2008-09/143, DBOD.No.BP.BC.No.37/21.04.132/2008-09, available online at https://rbidocs.rbi.org.in/rdocs/notification/PDFs/86627.pdf.; last accessed on 17th May 2023.
The accounts classified as 'standard assets' should be immediately re-classified as 'sub-standard assets' upon restructuring.

inverselyproportional toharms that banking system is exposed to via NPAs. It is clear that a financial distress comes into existence when NPAs are handled without statutory norms. To make these distressed assets productive a requirement was felt to upgradeprovisions dealing with restructuring of debt obligations. Regulatory assistance provided by Resolution Plan under the IBC assuagesthe financial distress of corporate debtor by resolving it at an early stage.[37]For example, in *Numetal Ltd. v. Satish Kumar Gupta*,[38]the Adjudicating Authority observed that the expression of interest is contemplated under the igneous of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 under Regulation 36-A. Thereafter, the Adjudicating Authority reasonedits decision on the grounds that the core purposeof submission of an expression of interest is the first stage towards finalizing a successful resolution plan.[39]Regulations regarding acquisition of companies mandated fair sharing of economic distress between promoters and creditors of the company.[40]Independent future of stressed companyis exposed to classification of mandates maintained underthe sub-categories of SMAs.[41]An obligation to report SMA classification of borrowers' account was mandated on banks to monitor and rectify early signs of financial deficiencies. Corrective action plan were recommended for accounts portraying warningsespecially if the account is classified under SMA-2. Hence, corporate defaulters were made to undergo the scheme of resolution plan proposed by competent

3.2.2 The non-performing assets, upon restructuring, would continue to have the same assets classification as prior to restructuring and slip into further lower asset classification categories as per extant asset classification norms with reference to the pre-restructuring repayment schedule.
3.2.3 All restructuring accounts which have been classified as non-performing assets upon restructuring, would be eligible for up-gradation to the 'standard' category after observation of 'satisfactory performance' during the 'specified period'.

[37] "Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy" released on 30-01-2014, available online at https://rbidocs.rbi.org.in/rdocs/content/pdfs/NPA300114RFF.pdf,; last accessed on 17th May 2023.

[38] 2018 SCC OnLine NCLAT 471.

[39] *Ibid*.

[40] "RBI releases Framework for Revitalising Distressed Assets in the Economy", 30-01-2014, available online at https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/IEPR1533FR0114.pdf; last accessed on 17th May 2023.

[41] There are four types of Special Mention Accounts – SMA-NF, SMA 0, SMA1 and SMA 2. The Special Mention Accounts are usually categorized in terms of duration.
SMA-0: Principle or interest payment not overdue for more than 30 days but accounts showing signs of incipient stress. SMA-1: Principle or interest payment overdue between 31 and 60 days. the overdue period is between 31 to 60 days. SMA-2: Principle or interest payment overdue between 61 and 90 days.

authorities. For overall economic stability in the market, creditors' grievances are fairly resolved by the IBCto preserve undervalued assets. Infrastructure for rehabilitating corporate entity into market cured the outdated 'auction biddingsprocess' in which the proposed valuation of assets becomes strenuous barrier for economic dynamism.The IBC by restructuring the debt recovery regime has proposed a flexibleapproach to attainco-operation amongst theborrowers and lenders. Accelerating the resolution plan to reach consensus from all the stakeholdersespecially on stressed assetshas significantly improved the procedural norms of yielding from credit facilities.

Early Recognition of stressed assets in the economy is countered by various strategies such as (a) refinancing of project loans; (b) sale of NPAs; (c) assets management through Securitisation Companies (SCs)/Reconstruction Companies (RCs); and (d) Other regulatory measures; therefore, emphasis is on asset reconstruction instead of asset stripping for fair chance of revival.[42]Resultantly, RBI's guidelines aimed at proposing a sustainable financial restructuring of accountsby adopting the principles of viability for stressed assets revival. Subsequently, for eradicating the slowdown in economic growth following responsibilities must be articulated in the economic system:

a) regulating soundness of the unhealthy loan account;
b) funding projects that looks viable to be completed by infusing efficient credit capital market;
c) procedural reforms to favor projects blocked by debts and unnecessary financial constraints;
d) recognizing factors highlighted by insolvency regulators to create ainsolvency database;
e) gripping the judicial governance over the structure of insolvency and bankruptcy process; and

[42] "Framework for Revitalising Distressed Assets in the Economy – Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures", released on 26-02-2014, RBI/2013-14/502, DBOD.BP.BC.No. 98/21.04.13 /2013-14, available online at https://rbidocs.rbi.org.in/rdocs/notification/PDFs/CES26022014FS.PDF; last accessed on 17th May 2023.

f) cleaning up the overall mounting distress on stressed assets.[43]

From the perusal of the above mentioned criteria it is evident that a sustainable financial restructuring of corporate account is possible by *firstly*, identifying particulars of debt obligation due to the creditors and *secondly*, by restructuring the issues of corporate liabilities which are addressed at the Committee of Creditors' meetings. Accordingly, the stipulation of institutional records could revealarrangements that are viable to achieve harmony, transparency, and accountability. To lower the risk of losses following records must be investigated:

a) commencement of commercial operations; and
b) debts that qualify the test of sustainability in the eyes of JLF/banks/consortium of lenders;[44] and
c) stressed assets having aggregate exposure to debt obligations mostly on account of institutional lenders.

Undoubtedly, the operational regime of the IBC entailed in relevant portions the scheme of resolution plan for sustainable structuring of stressed assets. The object sought to be achieved by the IBC is to infuse the flow of capital back into the economy. By mandating the Resolution Planthe IBC preserves the corporate debtor as a going concern. Resultantly, a mechanism is effectively introduced in restructuring of loans on stressed assets. Therefore, the IBCsuccessfully unmasked the gravity/quantum of techno-economic viability of debts obligations of stressed assets.

CONCLUSION

Reforms introduced by the IBCliberated viable companies from losing its business integrity. The IBCregimes facilitated a multi-dimensional approach necessary

[43] "Scheme for Sustainable Structuring of Stressed Assets", released on 13-06-2016, RBI/2015-16/422, DBR.No.BP.BC.103/21.04.132/2015-16, available online at https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT422B1EE9DF2D4B5484487065B8FB94B5EC9.PDF, last accessed on 17th May 2023.

[44] The formation of JLF takes place as soon as an account is reported to CRILC as SMA-2, all lenders, including NBFCSIs, (Non-Banking Financial Companies-Systemically Important) should form a lenders' committee to be called Joint Lenders' Forum (JLF) under a convener and formulate a joint corrective action plan (CAP) for early resolution of the stress in the account.

for financial rearrangement.Reinstating sound business models have tremendous advantages since it safeguards companies' organizational capital. The IBC's focus on coherent economic strategies improved the market's capacity to maintain credit funding to viable business projects.By removing undue burden and financial constraints from the credit facilities market,the IBC has efficiently placed a legit method to procure funding to rejuvenate business entities. It is pertinent to note that the data collected from the Insolvency and Bankruptcy Board of India (IBBI), reveals that more than 600 Corporate Debtors have been revived under the provisions of the IBC; more than 100 Corporate Debtors have surrendered to the resolution plans and more than 100 Corporate Debtors have acknowledged monetary liability amount to Rs. 1,000 Crores. Hence,it would be correct to state that India now has a comprehensive regime totackle the business cycle downturns that was once feared by all. The practical reasonableness of interpreting the provision under the IBC bears an effective action of shaping Corporate Debtors character. The judicial sanctionsunder the IBC is a response to essential capital needs of the market, modeled on a framework to counter problems of financial distress in business transactions. For instance, in *Invoice Discounters of BNH Infra Projects (India) Private Limited v. BNH Infra Projects (India) Private Limited*,[45] the Adjudicating Authority highlighted instance wherein discounting of invoices of the Corporate Debtor would make the Financiers act as Operational Debtor rather than Financial Creditor. In this case, an invoice discounting arrangement managed by KredX was nudged for the purpose of entering into a Tripartite agreement dated 2nd March 2019 between the Corporate Debtor, Tata Projects Limited and KredX. The Corporate Debtor, for the purpose of discounting raised invoices worth Rs. 2 (two) Crores on a platform operated by KredX. Thereafter, agreement of transfer of rights was executed between Financiers, who showed interest in discounting the invoices; the Corporate Debtor and KredX. The Financial Creditors splurged Rs. 88,59,356/- to the Corporate Debtor towards the invoices. Terms of the agreement entered into between the parties demonstrated a breach when Tata Projects Limited dwindled to pay the outstanding amount of Rs. 91,72,726/- that was due under the invoices to the Financial Creditors. The Financial Creditors were entitled to receive

[45]C.P.(IB) No. 95/BB/2021.

the outstanding amount due under the invoices from the Corporate Debtor. The Corporate Debtor too demonstrated its inability to pay the outstanding amount due under the invoices. The Adjudicating Authority made an interesting observation that the Financial Creditors substituted for the Corporate Debtor by confiscating the invoices at a discounted price. Consequently, the discounting of invoices of the Corporate Debtor made Financiers to operate as Operational Debtor rather than Financial Creditor. Palpable incentives are accorded to law-abiding corporations especially when they appeal to the reasonableness of sustaining the activities of trade and commerce. Also, a need was felt to encourage and built on the confidence that corporation are not being abandoned by the lawmakers to the mercies of fluctuating market. Without this support and assurance corporations might deviate from its path into being someone who would enjoys ill-gotten gains from the market place. The further defining purpose of the IBC is to establish 'business hygiene' for avoiding injustice and fairness, as between members of business communities. For instance, the Resolution Planexposes multiple layers of information crucial for assessment of business viability and interest of creditors.The IBC forms a monitoring link by appointing Resolution Professional (RP), who would bring forward the remedial actions decided by committee of creditor (CoC) for adjudication on debts obligation.The IBC by restructuring the debt recovery regime has proposed a flexible approach to attain co-operation amongst the borrowers and lenders.The rational nature of the IBC puts emphasis on imposing commands of the Parliament to achieve law and order in the business community. After the promulgation of the IBC, the business community is bound to do or not to do something. It would seem that jurists properly extended the ambit of the IBC by bringing the matters of the future inconformity with the force of law. Accelerating the resolution plan to reach consensus from all the stakeholders especially on stressed assets has significantly improved the procedural norms of yielding from credit facilities. The IBC successfully implied law and order to an end. Eventually, the IBC dictated practical reasons emanating from the Parliament to govern the business community transactions perfectly. Now it is evident that transactions in perfect business community demands legitimate reasons for any kind of interference

and the IBC bears the character of implying laws to the end actively, in so far as it directs control of the business in the safe hands.

Guidelines laid down by the new Code bestow the expert Resolution professional with variety of recourses to recover the money of creditors. The provisions of the IBC received the prestigious recognition it deserved when the tools of conscientious differentiation were employed to distinguish between financial debts and operational debts. Thepractical reasonableness and importance flowed from the fact that financial debts are secured and operational debts are unsecured. The object sought to be achieved by the IBC was unambiguously bringing more and more capital into the economy. Introducing this regime to place financial debts above operational debts played a vital role in stabilizing financial institutions since institutions such as banks were now in a position to lend money to other business entrepreneurs. The scheme that was based on intelligible differentia betweenfinancial debts and operational debts reinforced the flow of capital in the economy. As a result, the challenge to Section 53 and in particular Section 53(1)(f) of the IBC relating to distribution of assets in event of liquidation under the IBC proved unsuccessful predominantly because a legitimate interest was sought to be protected in the national interest of the country. It was alleged that structural reforms introduced by Section 53 andSection 53(1)(f) of the IBC are contrary to the principle of Article 14 and must be declared arbitrary and discriminatory. For the reasons discussed above, the challenge to the constitutional validity of Section 53 of the IBC relating to distribution of assets in event of liquidation under Article 14 collapsed. From a conspectus of the above discussions, it is clear that the IBC reforms liquidation processes for effective recovery of dues from the company by transferring the control of the business to the committee of creditors. The IBC instituted effective mechanisms to safeguard borrowings over scarce resources. The IBC has maximized the productivity by capitalizing on the requisite value of assets. The fruits of IBC are witnessed in the framework of debt recovery mechanism that safeguards legal entities from winding up. For overall economic stability in the market, creditors' grievances are fairly resolved by the IBC to preserve undervalued assets. Infrastructure for rehabilitating corporate entity into market cured the outdated 'auction biddings process' in which the proposed

valuation of assets becomes strenuous barrier for economic dynamism. Major trust is bestowed on the committee of creditor to rehabilitate and retrieve recognition of good-will. A revival plan agreed upon by committee of creditors proved worthy in capturing the intricacies of the Resolution process and ensuring a fresh start free from debt obligations. A revival plan is thus incorporated to bring the resolution process in conformity with cross-border issues. Now, among all the previous legislations on insolvency, the IBC has proved itself efficient in the most excellent way. Issues that were once conceptually difficult to resolve are taken into consideration by the IBC inasmuch as they are preordained by relevant provisions on insolvency and bankruptcy.