
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**ANALYSIS OF CORPORATE INSOLVENCY RESOLUTION PROCESS
UNDER INSOLVENCY AND BANKRUPTCY CODE,2016**

- Aditya Dixit¹ & Shailja Khosla²

ABSTRACT

The enactment of the IBC in 2016 revolutionized India's corporate insolvency system, aiming to offer an immediate and effective resolution process. However, the practical execution of the Corporate Insolvency Resolution Process (CIRP) under the IBC has encountered different legal hurdles, posing challenges to its effectiveness. This juridical analysis delves into the practical legal issues surrounding the CIRP in India, shedding light on problems faced by stakeholders.

The ambiguity relating to the adjudicating authority's interpretation and application of the provisions of the IBC always leads to delays and inconsistent rulings, hampering the resolution process. The issues and challenges arise concerning the admission of operational creditor petitions, particularly regarding the sufficiency of evidence and the determination of operational debt, which impacts the initiation of the CIRP.

Despite the statutory timelines prescribed by the IBC, delays in various stages of the CIRP, such as the appointment of resolution professionals, submission of resolution plans, and approval processes, raise concerns about the expeditiousness of the resolution mechanism. Securing interim finance during the CIRP poses challenges, especially concerning the priority of such claims amidst competing creditors, leading to uncertainties and reluctance from potential financiers.

The absence of comprehensive frameworks for managing cross-border insolvency matters creates complexities in cases involving MNCs, necessitating clarity and alignment with international best practices. Practical hurdles such as stakeholder coordination, information sharing, and management of distressed assets further complicate the CIRP proceedings.

¹ Student at Amity Law School, Amity University Noida

² Assistant Professor, Amity Law School, Amity University Noida

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Identifying these practical legal issues requires concerted efforts from lawmakers, regulators, insolvency professionals, and other stakeholders. Enhancing clarity, streamlining processes, and strengthening institutional mechanisms are imperative to realize the objectives of the IBC and foster a healthy corporate insolvency resolution system in India.

INTRODUCTION

The Corporate Insolvency Resolution Process (CIRP) in India, introduced under the IBC of 2016, aimed to provide a robust mechanism for the timely resolution of corporate insolvency cases. This legislative initiative sought to address the longstanding issues of protracted legal battles, inefficiencies, and uncertainties inherent in the erstwhile insolvency regime. However, the practical implementation of the CIRP has encountered various legal challenges, impeding its effectiveness and efficiency.³

The CIRP can be initiated by either the corporate debtor or its creditor (involuntary initiation). Financial creditors, operational creditors, or the corporate debtors themselves can file applications to initiate the CIRP before the NCLT, which adjudicates the insolvency matter.

Upon receiving the application, the NCLT examines it to determine if there are grounds for initiating the CIRP. Suppose the applications are complete, and there is sufficient evidence of default. In that case, the NCLT admits the application and appoints an IRP to administer the affairs of the corporate debtors during the resolution process.

Once the application is admitted, a moratorium period is imposed, during which creditors are prohibited from initiating or continuing any legal proceedings against the corporate debtors. This period allows for the formulation and execution of the resolution plans without the threat of legal action from creditors. The IRP takes control of the corporate debtor asset and operation and works with stakeholders to formulate a resolution plan within a specified time frame. The resolution plan outlines how the corporate debtor's debts will be restructured, assets will be monetized, or new investments will be brought to revive the company.⁴

The resolution plan is submitted to the CoC, including every financial creditor of the corporate debtors. The CoC evaluates the plan and votes on its approval. A resolution plan is deemed approved if it receives the affirmative votes of a minimum of 68% of the vote share of the financial creditors present and voting. If the NCLT is pleased with the plan, it issues an

³Aditi Bhawsar, Decoding the Position of MSMEs under the IBC Regime (2020)

⁴Akshaya K. , Corporate Insolvency Resolution Laws in India (2019)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

order approving it, and the resolution process is completed. The resolution applicant (usually the successful bidder or the existing management) then implements the plan to revive corporate debtors.

If the resolution plans are not approved within the specified time frame or if the approved plan fails to revive the company, the corporate debtor may be liquidated. In such cases, this firm's asset is sold off, and the advances are delivered among creditors according to the priority of their claims, as determined by the IBC.⁵

The IBC has streamlined the insolvency resolution processes in India, providing a time-bound and creditor-friendly mechanism for addressing corporate insolvency issues and promoting the revival of financially distressed companies.⁶

INSOLVENCY RESOLUTION PROCESS IN INDIA

The IBC was enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. It introduced a comprehensive framework for dealing with insolvency and bankruptcy, aiming to promote entrepreneurship, enhance credit availability, and balance all stakeholders' interests. The introduction of the IBC has brought about a paradigm shift in India's insolvency resolution framework, emphasizing efficiency, transparency, and creditor rights protection. It aims to promote a responsible lending and borrowing culture while providing a structured mechanism for addressing insolvency and bankruptcy issues. From SICA, 1985 to “The Provincial Insolvency Act of 1920, The Presidency Towns Insolvency Act of 1909, The Code of Civil Procedure of 1908, and the SARFAESI Act of 2002, the journey has been quick and full of potholes that effusively started; however, later failed to stick to the very purpose for which they were established.”⁷

Initiation of CIRP includes:

Any creditor or the debtor of the corporate sector itself may begin the CIRP by applying with the NCLT. The applications must include relevant details about the debt owed and evidence of default. The primary goal of the CIRP is to facilitate the timely and efficient

⁵Akash Sharma, Critical Analysis on IBC Code, <https://taxguru.in/corporate-law/critical-analysis-insolvency-bankruptcy-code-2016.html/>

⁶Dipak Mondal, “How IBC helped improve India's ease of doing business rankings”, Business Today, (2019)

⁷ Ashish Pandey, The Indian Insolvency and Bankruptcy Bill: Sixty Years in the Making, IMJ, 2014

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

resolutions of corporate insolvencies while maximizing the value of assets and ensuring the revival of viable businesses.

The CIRP may begin with the financial creditors, operational creditors, or debtors themselves by filing the requests with the NCLT. This application must demonstrate the event of the defaults in debt payments by the corporate debtor. Upon receipt of the application, the NCLT examines it to verify the existence of a default and the completeness of applications. If satisfied, the NCLT admits the application and commences the CIRP.

Admission of Application:

The NCLT examines the application to ensure it meets the requirements of the IBC. The process begins when the financial creditors, operational creditors, or debtors themselves apply to initiate the CIRP with the NCLT. The application must contain relevant details regarding the defaulting in payments of debts by the corporate debtors and other necessary information. Upon receipt of the application, the NCLT examines it to ascertain its completeness and the existence of a default. The NCLT may also verify whether the application meets the requirements specified under the IBC and other applicable regulations.

Appointment of IRPs:

Upon admission of the application, the NCLT appoints an IRP to manage the affairs of the corporate debtor during the resolution process. “The IRP takes over the management of the corporate debtor's operations and assets. The primary responsibility of the IRP is to manage the affairs of the corporate debtor during the initial stages of the CIRP until the appointment of a permanent resolution professional. The IRP takes over the management and control of the corporate debtor's operations, assets, and finances to preserve the value of assets and facilitate the resolution process. The IRP is responsible for publicly announcing the initiation of the CIRP and inviting claims for terms of the corporate debtor. This announcement is published in newspapers and other appropriate media to notify stakeholders about the insolvency proceedings. The IRP verifies the claims submitted by creditors of the corporate debtor to ascertain the total outstanding debt owed by the corporate debtor. This involves examining the validity and accuracy of the claims received.”

Moratorium Period:

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Upon admission of the application, a moratorium period is declared, during which no legal action can be taken against the corporate debtor.

The primary purpose of the moratorium period is to provide a breathing space for the corporate debtor to undergo the resolution process without facing the threat of legal actions from creditors or other stakeholders.

It aims to prevent further erosion of the corporate debtor's assets and value during the resolution process, thereby facilitating the successful revival of the business. During the moratorium period, several significant effects come into play:

Legal actions, including enforcement of security interests, recovery proceedings, arbitration, and lawsuits, against the corporate debtor are stayed or suspended.

Creditors are prohibited from initiating or continuing any legal action or execution proceedings against the corporate debtor for recovery of debts or enforcement of security interests. Any existing legal actions or proceedings against the corporate debtor are halted or put on hold until the conclusion of the CIRP.

The moratorium period provides the corporate debtor with a period of relative calm to focus on restructuring, negotiation with creditors, and the resolution process.

Public Announcement:

The IRP makes a public announcement of the initiation of the CIRP, inviting claims for credit of the business debt.

Formations of CoC:

The IRP collates and verifies the claims received for credit and constitutes the CoC, comprising financial credit of the corporate debtor.

Submission of Claims:

Creditors offer their claims to the IRP within the stipulated timeframe for verification. Upon the initiation of the CIRP, the IRP or RP issues a public announcement inviting creditors to submit their claims against the corporate debtor. This announcement is published in newspapers and other relevant media to notify creditors about the insolvency proceedings. Creditors are needed to present their claim in a specified format by the IRP or RP. The

format typically includes details such as the amount and nature of the claim and supporting documents.

Creditors must provide documentary evidence to support their claims, such as invoices, contracts, agreements, promissory notes, statements of accounts, or any other relevant documents establishing the existence and amount of the debt. The IRP or RP sets a deadline by which creditors must submit their claims. This deadline is typically specified in the public announcement, and all creditors have sufficient time to complete and submit their claims. Upon receiving the claims, the IRP or RP verifies the authenticity, accuracy, and validity of each claim submitted by the creditors. This involves examining the supporting documents provided and ensuring compliance with the requirements of the IBC.

Due Diligence and Submission of Resolution Plans:

Shortlisted resolution applicants conduct due diligence of the corporate debtor and its operations.

Based on the due diligence findings, resolution applicants submit resolution plans to the CoC within the specified timeline.

Evaluation and Approval of Resolution Plans:

The CoC evaluates the resolution plans based on viability, feasibility, and other criteria. A resolution plan approved by a vote of at least 66% of the voting share of the CoC is submitted to the NCLT for final approval.

Approval or Rejection by NCLT:

The NCLT examines the resolution plan to ensure it complies with the provisions of the IBC. Upon approval, the resolution plan becomes binding on the corporate debtor and all stakeholders.

Implementation of Resolution Plan:

The successful resolution applicant implements the approved resolution plan, taking over the management and control of the corporate debtor.

Conclusion of CIRP:

The CIRP includes upon the implementation of the resolution plan. If the resolution plan fails or if no resolution plan is approved, the corporate debtor may go into liquidation.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

These steps outline the broad process of insolvency resolution under the IBC, which aims to maximize the value of assets, protect the interests of creditors, and facilitate the revival of financially distressed entities.⁸

These sections in the context of the Companies Act, 2013:

Section 433 deals with the circumstances under which the NCLT may wind up a company. It outlines various grounds for winding up, including the inability to pay debts, just and equitable grounds, and public interest.

Section 443 provides for the manner of winding up of a company by the NCLT. It specifies the procedure to be followed, including the appointment of liquidators and the conduct of liquidation proceedings.⁹

Section 444 empowers the NCLT to make rules for the winding up of companies. It grants authority to the tribunal to prescribe procedural rules and rules to be followed in the winding-up process.

Section 455 deals with the dissolution of a company after the completion of the winding-up process. It specifies the conditions under which a company may be dissolved, including the submission of a final report by the liquidator and the tribunal's approval.

Section 463 pertains to the offences and penalties under the Companies Act, 2013. It lists various offences, such as fraud, false statements, and non-compliance with statutory requirements, and specifies the penalties that may be imposed for such offences.

Section 466 provides for the punishment for false statements made in connection with the winding up of a company. It penalizes individuals who knowingly make false statements or omissions during the winding-up process.

Section 481 deals with the dissolution of companies in Companies Act 1956. It outlines the procedure for dissolution and specifies the consequences of dissolution, such as the transfer of assets and liabilities.

Section 488 provides for the repeal and savings provisions concerning the Companies Act, 1956. It specifies the transitional arrangements and the applicability of the new Companies Act, 2013, relating to pending proceedings and matters under the previous Act.

⁸ Batra Samant, *Corporate Insolvency: Law and Practice*, 36-40 (Eastern Book Company, 2017)

⁹ Ibid

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

While these sections are relevant to company law and winding-up proceedings under the Companies Act of 2013, they are distinct from the insolvency resolution process governed by IBC, 2016. The IBC provides a separate and comprehensive framework for the resolution of insolvency cases, which involves initiation of insolvency proceedings, appointment of resolution professionals, submission and approval of resolution plans, and eventual resolution or liquidation of insolvent companies.¹⁰

ISSUES AND ANALYSIS

Delay in resolving MSME Cases: MSMEs often face challenges in accessing justice promptly due to delays in the NCLT's adjudication process. The slow resolution of cases can severely impact the financial viability of MSMEs, affecting their growth and survival.

Capacity and resources: The NCLT may face resource constraints and a high volume of cases, leading to difficulties in effectively handling MSME cases. Insufficient infrastructure and human resources may hinder the efficient disposal of MSME-related matters. The rule of 10% or 100 homebuyers is quite unclear. Such creditors may or may not know the details of other creditors.

The provision of regular supplies is not accurate. The provision will lead to negotiations between the creditor and the company. The creditor may not trust the company with the supplies now as the company is already defaulting on payments.

The provision of providing supplies, even if the company pays the current dues, is void and weak. It is unfair for creditors to supply goods based only on current due payments. What about the previous payments? The creditor may not find it viable to supply goods anymore. In other countries, strong provisions are made for such cases.¹¹

IMPLICATION OF THE I.B.C AMENDMENT ORDINANCE, 2020

The immediate Ordinances look to give some reprieve to this corporate debtor who is openly influenced by the COVID-19 epidemic, which has resulted in prevalent trouble in business processes all over India. Therefore, this Ordinance mainly seeks to stop corporate individuals from experiencing suffering due to these unprecedented circumstances from being thrust into

¹⁰ Abhirup Gupta, IBC decides the fate of PPAs in insolvency, India Business Law Journal, 2021

¹¹ Devesh Sharma (2020), 2nd Amendment in Insolvency & Bankruptcy Code Bill, 2020, <https://blog.saginofotech.com/insolvency-bankruptcy-code-bill-second-amendment> (visited on 4th March 2024)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

liquidation proceedings in the IBC, 2016 for a bit, providing them a pause in which to get back and revive their business and industry.¹²

The shift to add to the defaulting threshold to Rs 1 crore by the corporate debtors might be to stop firms, particularly those within the MSMEs sector, from being dragged to the NCLT to resolve debt. This could be a respite for small-scale sector companies already stressed by business loss. On the flip side, these amendments might damage the interests of a creditor whose only hope for fast realization of debts is the IBC way.

Amendment to Section.66 of IBC 2016¹³

The special ordinance also envisions the amendment of Section 66 of the IBC, 2016. The pertinent extract of clause (3), which is recently added therein, is replicated under:

In Section 66, after sub-sec. (2) follows sub-section. Will be added:

Despite anything included in this section, no applications will be enclosed by an RP in the sub-section. (2) regarding these defaulting against which commencement of CIRP is postponed for Section 10A.

The provisions reduce illegal trading provisions; specifically, RPs would be barred from starting illegal trade applications against directors of firms where the IBC processes are postponed. This is an issue of concern.

Postponement of fresh IBC proceeding

Suspension of CIRP against the corporate debtor for any default arising on or after 25th March 2020 for six months or such further period, not exceeding one year. Further, the Resolution professional is also prohibited from filing any application under section 66(2) fraudulent trading or wrongful trading, *i.e.*, transactions which were committed to defraud the operational creditors or the corporate debtor and to identify and hold liable such persons who were responsible for such fraudulent transactions, in respect of such default arising on or after 25th March 2020 for six months.¹⁴

Past position (Section.29A)

The I&B Code was sanctioned in 2016 to combine legislation regarding Indian insolvencies and bankruptcies. The 2018 revisions to IBC Section.29A were added, fundamentally giving

¹² Merathia A. and Poornima, I.B.C Amendment Ordinance 2020, New India Express, 8 June 2020

¹³ Neetha K., Lockdown trigger amendment to I&B Code, The Week, April 09, 2020

¹⁴ Economic Times, Special insolvency resolution framework for MSMEs at advanced stage, July 26, 2020

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

up provisos regarding persons not qualified to propose resolution plans. Though these recently added provisions resulted in much inspection and analysis on the ground that Section.29A has exceptionally broadened the scope of ineligibility if considerably dropping the potential resolution aspirants relating what can be labeled as a general criterion for ineligibility wherein it does not distinguish among authentic applicants and one with the antecedent. The addition also rooted many problems for MSME sector firms since there were more workers concentrated in SMEs, which could not draw much concern from tenders, thus causing insolvency.¹⁵

Security Undermine in IBC

In IBC, MSMEs are provided the position of “Operational creditor,” they could summon Section 9 and pull debtors to NCLT by conveying an order in the case of a default.¹⁶ However, the problem is that there is no distinction between MSMEs and additional operational creditors. An operational creditor is assured of an insolvency rate only. Still, in truth, the resolution tactics in different NCLTs recommend that scarcely any amounts are gotten back by the operational creditor. In addition, many other motives are related to bias being made to MSMEs in the I&B Code.

Therefore, the bias is being made toward an operational creditor in different methods -

1. No say in Committees of Creditors-

Even if the Insolvency and Bankruptcy Board of India (IBBI) has recognized the significance of taking in Operational Creditors in the Committee of Creditors (CoC), which grants the resolution plans of the corporate debtors, currently, committees of creditors include only financial creditor.¹⁷, which absconds operational creditors beyond the involvement in resolution plans. The whole decision would be obtained by the financial controllers (FCs) only. CoC has the utmost accountability in granting resolution plans for revitalizing commercial debtors related to viability and practicability and presents them to the Authority for final sanction. The same is related to the CoC's doctrine of business insight.¹⁸

The distinction between the privileges of FCs and occupancy certificates (OCs) has been validated by Bankruptcy Committees by explaining that the Operational creditor is usually

¹⁵ Mukhijia Ashish, *Insolvency And Bankruptcy Code Of India*, (Lexis Nexis Publications 112-119 (2018)

¹⁶ See section.8, of the Insolvency & Bankruptcy Code, 2016.

¹⁷ See section 21(2), of the Insolvency & Bankruptcy Code, 2016.

¹⁸ K. Shashidhar v. Indian Overseas Bank &Or's., 2019 SCC 257.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

unconcerned with the revitalization of an enterprise; instead, they are concerned about insolvency.¹⁹ In addition, Section 24(3) means that OCs may take part in CoC if the debts be obliged to them surpass ten percent. Despite this, they do not have voting rights. Although OCs are provided voting rights in the CoC, as they are not concerned with the firm as a leaving apprehension, their objective is merely to get back outstanding payments. In this case, they would often choose to favor insolvency, which is beside the interests of the business debtors. As a result, the complete revival of MSMEs in IBC will be rooted in the caution of financial creditors who grant the resolution plans.

2. Fewer priorities in waterfall mechanisms

The operational creditor is graded highly less in the waterfall mechanisms given in Section.53²⁰. In insolvency, reimbursements would be made to OCs after the reimbursement has been made to protected and unprotected creditors.

In the Essar Steel Judgment, the Supreme Court of India (SCI) declared that for the allocation of finances beyond the liquidation proceeding, the right of the monetary creditor would succeed over the operational creditor.²¹

3. No proceeding for disputed debts -

Unlike an operation creditor, a financial creditor may begin the proceeding for disputed debts. However, OCs cannot start the same if the debts are disputable by corporate debtors. According to the decisions of Hon'ble SC in Mobilex Innovation Pvt. Ltd., the Adjudicating Authorities seek the subsequent queries while concluding applications in Section.9 -

In case operational debts are above Rs.1,00,000.

In this case, documentary evidence adduced by Operational Creditors demonstrates the debts are due and have not been disbursed.

In case there are any clashes among individuals or any pendency of suit or arbitration proceeding before receipting of claim notices.²²

If some of the aspects are absent, NCLT will discard the applications. Therefore, if corporate debtors show that disputes subsisted before the petitions are disclosed, the same can be

¹⁹ https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (visited on 4th March 2024)

²⁰ Section.53 of Insolvency and Bankruptcy Code, 2016

²¹ Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, 2019 SCC Online SC 1478.

²² Mobil ox Innovations Private Limited v. Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017 (Supreme Court, 21/09/2017).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

discarded. As a result, it is not often essential that petitions of operational creditors will be acknowledged.

The Hon'ble Court has also declared insolvency and bankruptcy Board of India (IBBI) Regulation, 2016 and Section.30(2) by seizing 'impartial treatments of every class of creditor does not make pay operational creditor equivalent amount into the corporate insolvency resolution process (CIRP). The Supreme Court of India (SCI) also declared that the right of FCs would succeed over the OCs in the fund allocation accepted from the liquidation carried on due to the reality that FCs are the chief depositors for corporate debtors. In addition, SCI has declared that IBC will be applied to carry corporate debtors on their feet, and it is not just revival legislation.²³

CONCLUSION

The CIRP in India, governed by the IBC, has been a significant legal mechanism for addressing corporate insolvency issues. However, the practical implementation of the CIRP has encountered several challenges, leading to various legal problems and conclusions. Here are some practical issues and legal findings associated with the CIRP:

One of the primary practical issues in the CIRP has been the timely resolution of insolvency cases. Delays in the resolution process have often resulted in asset value erosion, increased costs, and loss of confidence among stakeholders. Courts have emphasized the importance of adhering to strict timelines prescribed under the IBC to ensure expeditious resolution.

Another practical issue revolves around determining creditor hierarchy and the distribution of proceeds in the resolution process. There have been disputes regarding the priority of various forms of creditors, like financial, operational, and secured creditors, leading to legal challenges and court interventions to clarify the hierarchy.

Operational creditors, particularly smaller suppliers and vendors, have raised concerns about their rights and representation in the CIRP. Legal conclusions have emphasized the need for equitable treatment of operational creditor and their participation in the resolution processes.

The evaluations and approval of resolution plans submitted by resolution applicants have posed practical challenges. Courts have intervened to ensure that resolution plans are compliant with statutory requirements, commercially viable, and maximize the value of assets while balancing the interest of every stakeholder.

²³ Swiss Ribbons Private Limited v. Union of India, W.P. 99/2018

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

A significant legal conclusion has been promoting consensual resolutions and avoiding unnecessary litigation during the CIRP. Courts have encouraged stakeholders to negotiate and settle disputes amicably to expedite the resolution process and minimize costs. Securing interim finance during the CIRP has been a practical challenge for corporate debtors. Legal conclusions have recognized the importance of providing access to interim finance to maintain operations and preserve asset value during the resolution period.

The effectiveness and independence of resolution professionals (RPs) have been crucial in the CIRP. Legal conclusions have underscored the need for RPs to act impartially, professionally, and in the best interests of creditors and the corporate debtor.

In conclusion, while the CIRP under the IBC has provided a structured framework for corporate insolvency resolution in India, its practical implementation has encountered various challenges, leading to legal issues and conclusions.

REFERENCES

ACTS AND CONSTITUTION

Companies Act 2013

Sick Industrial Companies Act of 1985

Insolvency & Bankruptcy Code 2016

insolvency & bankruptcy (Second Amendment) Bill, 2020

Tandon Committee of 1975

Rai Committee of 1976

Tiwari Committee of 1981.

United Nation commission on international trade law (UNCITRAL) Model Law