

# IBC BRIEF

**POWERING WITH INFORMATION**

Released from the Desk of IBBI Research Chair



**Volume 2, Oct-Dec 2023**

## **1. Resolutions under insolvency law likely to touch 300 this year: IBBI chief**

**Economic Times, 1<sup>st</sup> October 2023**

The number of resolutions of stressed assets under the insolvency law is expected to reach 300 this year, according to Mr. Ravi Mital, Chairperson of the Insolvency and Bankruptcy Board of India (IBBI). Mr. Ravi Mittal, Chairman, IBBI was speaking on the occasion of the 7<sup>th</sup> Annual Day Celebrations of IBBI. The number of resolutions of stressed assets cases under the insolvency law is likely to touch 300 in the year ending March 2024. He urged insolvency resolution professionals to speed up their efforts in resolving the cases. IBC Law has caused substantial reduction of non-performing assets of commercial banks in the country.

Speaking on the occasion, Shri Manoj Govil, Secretary, Ministry of Corporate Affairs said that the ministry is closely looking at the law and processes. Necessary amendment of the law would be made to speed up the process. The government is also considering signing the United Nations Commission on International Trade Law (UNCITRAL) for resolving cross border solvency. Significant achievement of the IBC Code is that creditors have recovered around Rs 3 lakh crores. Shri Ramalingam Sudhakar, president of the National Company Law Tribunal (NCLT), said that there was a need to fine-tune the pre-packaged insolvency process and the personal insolvency code. This is required to reduce stress in the micro, small and medium enterprises (MSME) sector. The existing systems need to be upgraded to handle data and case management with the use of artificial intelligence (AI). IT systems of the IBC have to be integrated with other platforms such as goods and services tax (GST) so that the data can move seamlessly, he said. Ashok Bhushan, chairman of NCLAT, said that there was a need to enhance the infrastructure of the NCLT and NCLAT. Ensuring upskilling of the people involved in the process with tailored training modules for different stakeholders is also required.

## 2. IBBI Annual Day Celebrations

Newsdesk, IBBI 1<sup>st</sup> Oct 2023

The Insolvency and Bankruptcy Board of India (IBBI) has celebrated its Seventh Annual Day on 1<sup>st</sup> October 2023 at New Delhi. In a function held at VygyanBhawan, in the presence of various stakeholders and public, the presence of dignitaries viz. Justice Shri Ashok Bhushan, Chairperson, National Company Law Appellate Tribunal, Chief Justice (Retd) Shri



RamalingamSudhakar, Dr Manoj Govil, Secretary, Ministry of Corporate Affairs (MCA), Shri Ravi Mital, Chairperson, IBBI, ShriSudhaker Shukla and Shri Jayanti Prasad, Whole Time

Members, IBBI, made the occasion noteworthy.

In his keynote address, Justice Shri Ashok Bhushannarrated the transformative journey of India's corporate insolvency landscape after the advent of Insolvency and Bankruptcy Code and its far-reaching impact. IBC has been a game changer legislation and the speed with which IBBI geared up the entire ecosystem has been astounding.

Justice Bhushan congratulated IBBI for being a pro-active regulator constantly learning through interactions with stakeholders and appreciated IBBI for making efforts to encourage research in insolvency law to help make better and informed policy decisions.

Chief Justice (Retd) Shri RamalingamSudhakardelivered the Annual Day Lecture and applauded IBBI for the noteworthy achievements of the IBC in the short span of 7 years. He appreciated the efforts by the Government and IBBI in conducting the review exercise of the provisions of the IBC resulting in organisation of a Colloquium on the theme

Dr. Manoj Govil, Secretary, Ministry of Corporate Affairs (MCA), acknowledged that the highest number of resolutions since the enactment of IBC were witnessed in the year 2022-23 with 186 corporate debtors (CDs) being resolved. The establishment of the IBBI has brought expertise and efficiency to insolvency proceedings and congratulated IBBI for seven years of successfully countering challenges through proactive and dynamic regulatory measures in the insolvency space.

Shri Ravi Mital, Chairperson, IBBI, while delivering welcome address, noted the achievements during journey of last seven years of IBC and highlighted that there has been a recovery of three lakh crore through IBC which enables creditors to lend multiple times more in the market. He further highlighted the analysis in the IIM Ahmedabad Report that IBC market capitalisation of the companies resolved under IBC have increased from two lakh crore to six lakh crore.

As part of the Annual Day celebrations, IBBI released annual publication, "IBC: Evolution, Learnings and Innovation". This publication offers a multifaceted perspective on the origin of the IBC, judicial interpretations, practical implementation, institutions under the IBC, technological improvements, learnings from real word case studies and potential next

generation reforms. It is a collection of 31 thought-provoking articles. A research publication, “*Navdrishti: Emerging Ideas on IBC*” was also released. This publication is a compact collection of research papers from leading academicians and practitioners in the field of insolvency and bankruptcy, presented at the 2<sup>nd</sup> International Research Conference on Insolvency and Bankruptcy held in association with IIM Bangalore (IIMB) at their campus from 23<sup>rd</sup> to 25<sup>th</sup> February, 2023.

Shri Sudhaker Shukla, Whole Time Member, IBBI proposed a hearty vote of thanks at the conclusion of the event. Shri Jayanti Prasad, Whole Time Member, IBBI, was also present on the occasion.

### **3. Ways to make IBC more effective**

#### **The Hindu Business Line, October 12, 2023**

The news focuses on the delay experienced in recovery of dues by banks through insolvency proceedings, and a good realization is possible if the firm is sold as going concern.

Achieving a high recovery rate is about identifying and combating the sources of delay. The delay in resolution can cause the employees trying to leave the organizations, the suppliers tightening their credit terms as realization is not certain, and customers defaulting payments to take advantage of the situations. Hence to avoid the situation quicker resolution is required to save the company as a going concern.

Promoters are to be kept away from the management of the company during the time of resolution process as well as liquidation process. There is a possibility that the promoters may initiate litigation to scuttle the resolution and liquidation process. Another major impediment in almost all CIRP cases is the non-availability of key records like audited accounts and fixed asset register for many years. Absence of these key records affects the determination of the claims of the Creditors & the Valuation of the Company.

### **4. IBBI seeks public inputs to simplify compliance, reduce cost**

#### **The Hindu Business Line, October 13, 2023.**

The Insolvency and Bankruptcy Board of India (IBBI) has invited suggestions from public and regulated entities on measures needed to simplify, ease and reduce cost of compliance of its regulations. This move is in line with this year’s budget announcement where Finance and Corporate Affairs Minister Nirmala Sitharaman had said that financial regulators would be requested to carry out comprehensive review of existing regulations so as to simplify, ease and reduce cost of compliance. The last date for submission of comments and suggestions for the annual review is December 31, 2023. The comments are being received and examined, by IBBI.

The public inputs are expected to provide the Board with the necessary feedback based on which changes in the regulation are possible.

## **5. How India's bankruptcy code framework is undergoing a quiet makeover**

**Business Standard, October 22, 2023**

In January, 2023, the Ministry of Corporate Affairs (MCA) floated a discussion paper on an overhaul of the code with 30 amendments. The IBC Amendment Bill, which aimed for a complete overhaul, went through months of inter-ministerial consultations. However, it has yet to be tabled in Parliament. This, though, has not come in the way of the Insolvency and Bankruptcy Board of India (IBBI) making the code clearer and more efficient. The tribunal expects to have successful resolutions of 300 cases this financial year, compared to 180 in FY23.

Efforts are made to remove the hurdles in the smooth implementation of the IBC law. The MCA has managed to fill most of the vacant positions in the NCLT — 57 of the 63 sanctioned posts are taken, compared to 43, two years ago providing more capacity to deal with the increasing cases. The IBBI, in order to reduce the number of applications for delayed claims and help NCLT concentrate on more pressing matters, increased the timeline for creditors to file their claims till the date of issue of request for resolution plans or 90 days from the insolvency commencement date, whichever is later.

The insolvency regulator has in fact sought public comments on all the regulations it has notified under the code. Calling the exercise a “crowdsourcing of ideas”, the IBBI has given a window of eight months ending December 31 to all stakeholders to share their views. On cross-border insolvency, there are concerns that it would prolong the pendency of the ongoing cases. The draft proposal to amend the IBC has sought more technology, transparency, and speed. It gives more power to the adjudicating authority (AA), allows mandatory admission of insolvency applications filed by financial creditors, seeks specialised framework for real estate to provide relief allottees, and looks at expanding the scope of pre-packaged insolvency schemes beyond micro, small and medium enterprises.

## **6. IBBI moots new measures to increase efficiency of insolvency professional entity as an IP**

**The Hindu Business Line, October 24, 2023**

Insolvency regulator Insolvency and Bankruptcy Board of India (IBBI) has proposed a slew of measures to enhance the effectiveness of Insolvency Professional Entities (IPEs) in the Insolvency Resolution Process. The proposals outlined in a new discussion paper are aimed at rationalising the framework of IPEs commensurate to achieve the expected outcomes of their expanded role as Insolvency Professionals (IPs). The discussion paper covers four main issues — monitoring of IPE acting as IP; related party definition for an IPE acting as IP; restriction on number of assignments by an IP, and minimum fee structure of an IPE acting as IP. The public comments on the discussion paper have to be sent in by November 11, IBBI has said.

The proposals in the discussion paper are expected to provide clarity and flexibility to the IPEs to perform their functions within the purview of regulatory framework. As of September 30, 2023 there are 113 active recognised IPEs. Of these 64 entities have also been registered as IPs. For an IP which is an entity, overall limit has been pegged at five assignments per

partner or director who are IPs, at any point of time (excluding the assignments taken by an IP in his individual capacity). However, number of assignments for an IPE acting as IP at any point of time should not be more than 15 assignments having admitted claims exceeding ₹ 1,000 crore each. The overall limit includes all the assignments of an IPE acting as IP, the discussion paper said. This was a big policy shift as earlier only individuals were permitted to register as function as an IP in India.

## **7. How Insolvency and Bankruptcy Code is being strengthened**

**Economic Times, October 25, 2023**

The Insolvency and Bankruptcy Code (IBC) is undergoing a remarkable transformation, with various stakeholders and regulatory bodies actively working to make the insolvency resolution processes more efficient, transparent, and effective. The IBC underwent a significant transformation when the Ministry of Corporate Affairs (MCA) initiated a discussion paper in January, proposing a comprehensive overhaul of the code. This discussion paper presented a total of 30 significant amendments, signaling a commitment to enhancing the efficiency and effectiveness of the IBC.

Despite extensive inter-ministerial consultations and a strong emphasis on comprehensive reform, the proposed IBC Amendment Bill, intended to completely revamp the code, has not yet been presented in Parliament. However, Insolvency and Bankruptcy Board of India (IBBI) has taken a proactive role in making the IBC more transparent and efficient. Record resolution is expected during the year 2023-24. This success can be attributed to an intuitive approach, effectively aligning the insolvency regime with real-world challenges. Vacant positions within the NCLT have been filled, increasing the workforce from 43 to 57, providing the tribunal with more resources to handle a growing number of insolvency cases. In an effort to alleviate the burden on the NCLT and reduce the number of applications for delayed claims, the IBBI has extended the timeline for creditors to file their claims. Creditors can now submit their claims until the date of the issue of the request for resolution plans or 90 days from the insolvency commencement date, whichever is later.

## **8. NCLT admits personal insolvency application against Kishore Biyani**

**Economic Times, October 30, 2023**

Mumbai's bankruptcy court has admitted Axis Trustee Services' application to initiate a personal insolvency process against Future Group promoter, Mr. Kishore Biyani, said people aware of the development. The admission of the application by the National Company Law Tribunal (NCLT) ensures moratorium on transactions of personal assets of the guarantor. But it does not give the resolution professional (RP) the right to take control of the personal assets of the guarantor. Following the ruling, the RP will invite claims from lenders and also validate them.

Future Retail, Future Enterprises, Future Supply Chain Solutions, and Future Lifestyle Fashions are among the key companies promoted by Biyani that are undergoing a corporate insolvency process. Any creditor or debtor himself can approach the NCLT for initiation of personal insolvency resolution process. If a creditor files, then either it can file it on its own

or through a resolution professional. On filing of the application, the interim moratorium starts which put a restriction on continuation of legal action and creditors cannot initiate any legal action.

## **9. ‘Group insolvency’ approach makes sense**

**The Hindu Business Line, November 02, 2023**

Consolidating resolution of insolvent companies in a group will reduce costs and enhance value, but there are legal hurdles. The operations of companies under the same umbrella are crucial to each other’s business in a variety of ways: service providers; operations and maintenance providers; raw material suppliers or consumer of the final goods; distribution channel companies; company handling the financing requirements or logistics of the group etc. When the primary company starts facing financial challenges; the ripple effects are usually seen in the group companies also especially because they are corporate guarantors of one another.

While the new corporate insolvency regime under Insolvency and Bankruptcy Code, 2016 (IBC) has evolved fairly well in the last about six to seven years, it has to be borne in mind that comprehensive resolution of all the companies in financial trouble in a group could be the ultimate long-lasting solution. A fragmented or a compartmentalised approach won’t work here. However, a situation involving group insolvency was not envisaged when the IBC was enacted. It has been interesting to observe that where insolvency processes have been initiated against a set of companies under the same group, NCLTs have been open to the idea of consolidation of these different insolvency proceedings to facilitate a comprehensive solution. However, there are no regulations governing group insolvencies as on date. Necessary amendments are expected to realise this proposal.

## **10. Insolvency board seeks to expedite resolution process**

**Financial Express, November 03, 2023**

In a bid to streamline the Corporate Insolvency Resolution Process (CIRP) and prevent delays in the execution of the resolution plans, the Insolvency and Bankruptcy Board of India (IBBI) has floated a discussion paper and proposed amendments to the existing regulations. The proposed amendments suggest to structure the resolution plan in two parts – Part A will deal with inflow, that is, payments under the resolution plan, payment of insolvency resolution process cost etc.; and Part B will deal with distribution to the various stakeholders.

This will enable the Adjudicating Authority (AA) to first approve the resolution plan effectuating control by the resolution applicant so that inflow can take place and the Corporate Debtor (CD) may start functioning again. The second part shall deal with distribution amongst the various stakeholders. The discussion paper also proposes to amend regulations dealing with: the approval of committee of creditors (CoC) for insolvency resolution process cost; monthly CoC meetings; valuation methodology; disclosure of valuation reports; continuation of process activities pending disposal of extension application by the (AA); and clarity in minimum entitlement to dissenting financial creditors. Despite several amendments in the Insolvency and Bankruptcy Code (IBC) since its inception in 2016, the existing corporate resolution process is still beset with undue delays, protected

litigations and a lack of transparency and clarity on several issues, say experts. The changes sought are expected to bring about comprehensive changes to make the mechanism robust, more effective and efficient while removing the existing shortcomings in the system.

## **11. IBC: Banks worried over SC's ruling to place govt dues at par with secured creditors.**

**Economic Times, November 04, 2023**

The recent judgment of the Supreme Court comes as a major drawback to lenders as the Court dismissed the Review Petitions filed by the Lenders seeking review of earlier judgment passed by the Court. In the said judgment, the Supreme Court considered tax authorities as secured creditors. The Court took into consideration the waterfall mechanism and other provisions of the Insolvency and Bankruptcy Code, 2016, (IBC) while concluding at its judgment to decide the priority of distribution of sale proceeds of assets, etc.

The legislative intent behind the IBC was to reduce the priority of government dues, making the ruling a source of confusion for the industry. The banking community believes that the interests of financial lenders have been compromised as a result of the judgment. Despite the concerns, the recovery rate improved to 33% of admitted claims in the September quarter, reflecting growing investor interest in various small and medium enterprises. However, the Supreme Court's ruling places the amount due to central and state governments below that of unsecured creditors, raising questions about the IBC's fundamental structure. The Supreme Court's decision is expected to impact the strategies of financial creditors dealing with insolvent companies, as it places greater importance on government dues in the insolvency resolution process. Companies facing insolvency will likely face increased pressure to settle their statutory dues, as overlooking them in an insolvency resolution plan could lead to plan rejection.

## **12. Reverse Insolvency for realty yet to take shape**

**Livemint, 4<sup>th</sup> November 2023**

The need for a home owner friendly insolvency process in real estate sector is much talked one. The reverse bankruptcy framework was first proposed by the ministry of company affairs in a discussion paper in January 2023. It would apply the insolvency law to the stalled project and not the entire company. Creditors can ask the promoter to bring in funds and finish the project, or assign the project to another developer to complete. This is quite different from the CIRP process where promoters are kept an arm's length in the resolution process stage. Another key peculiarity arises from the fact that under regular IBC, existing promoters are ineligible to bid, but in reverse IBC, there is no such restriction. The principle of the reverse corporate insolvency resolution mechanism stands contrary to the principles on which the CIRP process is based. In reverse CIRP, the promoter itself is responsible for infusing the funds in the project and acts as a lender to the concerned project/real estate company.

In a reverse insolvency, the promoters come forward to lend funds for completion of the real estate project, wherein home buyers get a relief in getting the project completed and

ownership transferred soon. It is expected that with necessary amendments, the reverse real estate insolvency would become a reality.

### **13. Insolvency and Bankruptcy Board of India proposes changes in bankruptcy proceedings**

**The Telegraph, 4<sup>th</sup> November 2023**

The Insolvency and Bankruptcy Board of India (IBBI) has proposed changes in the insolvency proceedings. The following changes are sought.

1. The IBBI has proposed that before the finalization of valuation report, the valuers should explain the valuation methodology to the committee of creditors (CoC). At present, the valuation report is disseminated to the CoC only after the receipt of resolution plans.
2. The IBBI has proposed the resolution plan be structured in two parts — one that would deal with the payments or inflows under the plan while the second part would deal with the distribution to the various stakeholders.
3. the insolvency professional (IP) should seek approval of all components of the insolvency resolution process cost, including the expenditure incurred for ongoing operations of the debtor.
4. To ensure that the resolution process remains time-bound, even if not within the 180-day timeline, it has been suggested that the RP should hold regular meetings of the Committee of Creditors (CoC) every month.

### **14. IBC: NCLT approved record resolutions, more than doubled in September quarter**

**The Hindu Business Line, 5<sup>th</sup> November 2023**

The performance of implementation of IBC during the quarter July-September 2023 registered a big jump. The NCLT approved a record 85 corporate insolvency cases in the just ended July-September 2023 quarter, as per IBBI data. This is more than double the 38 corporate insolvency resolutions approved by the NCLT in the April-June 2023 quarter.

NCLT is well on course to process the IBBI indicated level of 300 resolutions this fiscal year. In the July-September 2023 quarter, the total value of claims admitted touched ₹65,247 crore, of which the total realisable value stood at ₹20,771 crore, IBBI data showed. Likewise the data on liquidation also shows improvement. For the September 2023 quarter, the realisable value as a percentage of liquidation value stood at 219 per cent (much above the 168 per cent levels since commencement of IBC). It was 133 per cent of the fair value of assets resolved, much higher than the overall average of 86 per cent since the commencement of IBC.



There still exist a huge gap between the demand on the system and the current NCLT processing capacity. About 5,000 new cases are filed with NCLT every financial year. Currently, NCLT has 57 working members out of the sanctioned limit of 63.

## **15. Banks must focus on loan recovery**

**The New Indian Express, 7<sup>th</sup> November 2023**

The Indian banking industry has witnessed a good turnaround in terms of operational efficiency. The sector posted a record net profit of Rs 2.4 lakh crore in 2022-23, a 38.4 percent growth in a year. The most satisfactory performance came from public sector banks (PSBs), whose aggregate net profit stood at about Rs 1.05 lakh crore. If in 2018-19, nine state-run banks reported losses owing to high provisions, they all turned in profits five years later in 2022-23. PSBs have fared well across financial metrics, including profitability, margins and asset quality. Following are the statistics.

1. The ratio of gross non-performing assets (NPAs) or bad loans of scheduled commercial banks, fell to a ten-year low of 3.9 percent in 2022-23 from a peak of 11.5 percent in 2017-18.
2. The gross NPAs of PSBs, which reached a peak of 14.6 percent in 2017-18, fell to 4.97 percent in 2022-23.
3. The banks had written off Rs14.56 lakh crore in the last nine years. In the years between 2017-18 and 2021-22, PSBs alone wrote off Rs 7.34 lakh crore and managed to recover just 14 percent of the written off loans. In 2022-23, banks wrote off another Rs 2.09 lakh crore, prompting the regulator RBI to direct banks to redouble efforts on loan recoveries.
4. The overall recovery via the insolvency regime stood at Rs 3.16 lakh crore, or 32 percent of the admitted claims. One of the reasons for low recoveries is that 46 percent of the closed claims ended in liquidation.
5. The fact remains that the average bankruptcy resolution takes much longer than the statutory limit of 330 days. What we need is a time-effective resolution process that can avoid value erosion.

## **16. Go First lenders seek to recover up to 30%**

**Financial Express, 8<sup>th</sup> November 2023**

Lending institutions of Go First airlines are expecting to recover around 25%-30% or Rs 1,600-1,900 crore of their exposure to the airline, as per reports. The airline, which stopped flying from May 3,2023 is undergoing an insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). The airlines owe Rs 6,521 crore to the lenders. The lenders include Central Bank of India, Bank of Baroda, Deutsche Bank, and IDBI Bank.

## **17. Relief for lenders. Supreme Court clears the path for personal guarantor insolvency**

**The Hindu Business Line, 9<sup>th</sup> November, 2023**

The Supreme Court has upheld the constitutionality of IBC provisions on Personal Guarantors' Insolvency Resolution, dismissing over 200 petitions that challenged their legal validity. The judgement was delivered on 9<sup>th</sup> November 2023. A Bench of Chief Justice of India (CJI) D Y Chandrachud with Justices J B Pardiwala and Manoj Misra held that IBC provisions on personal guarantors' insolvency process did not suffer from arbitrariness as contended by petitioners. The latest apex court move is expected to give a fillip to the lenders' efforts to recover dues of corporate debtors from personal guarantors, who are mostly promoters of companies. The provisions relating to personal guarantors were introduced under the Insolvency and Bankruptcy Code (IBC) in 2019, but were subsequently challenged before various Courts and the matter reached to the Supreme Court. The Supreme Court upheld the constitutionality of Sections 95, 96, 97, 99, and 100 of the Insolvency and Bankruptcy Code, 2016. These provisions allow loan creditors to initiate insolvency proceedings against individual and partnership firm debtors. The decision came after the Bench heard 391 petitions challenging the constitutional validity of these provisions over two days.

Thus, the obstacles on enforcement of personal guarantors' obligations were removed with this landmark judgement. As of end September, 2023, as many as 2289 insolvency applications involving corporate debt amount of ₹1,63,916 crore has been filed since the year 2019 against personal guarantors under the IBC. Some of the corporate names include Anil Ambani, Sanjay and ArtiSinghal, AtulPunj, Lalit Jain, Ajay Mehra, YogeshMehra, and Mahendra Kumar Rajpal. The details are Anil Ambani (guarantees worth ₹1,400 crore), Kapil and DheerajWadhwan of DHFL (₹79,344 crore); Venugopal and Rajkumar Dhoot (₹22,076 crore); Madhusudhan Rao and family (₹5,253 crore); IVRCL's Sudhir Reddy (₹7,058 crore); and Jatin Mehta of Winsome Diamonds (₹6,185 crore). The Finance Ministry had in 2020 asked public sector banks to up their game in initiating insolvency process against personal guarantors. The judgment brings great relief to the lenders as it allows them to recover the portion of debt which had not been recovered in the CIRP of the principal debtor through the insolvency resolution of the personal guarantor. The banks would now feel more secure to take personal guarantees as securities towards the loan as they know that they can initiate insolvency against guarantors. The Apex Court judgment upholds the constitutional validity of provisions relating to the imposition of a moratorium on personal guarantors' assets at the initial stage without hearing the personal guarantor.

## **18. IIM Ahmedabad study finds significant improvement in firms post IBC**

**Business Standard, 13<sup>th</sup> November 2023**

Indian Institute of Management, Ahmedabad carried out a study where companies that have undergone insolvency under IBC Code have been studied to ascertain the extent of outcome. The study could reveal that average sales of companies, three years post-resolution rose 76 per cent, while the build-up of tangible assets surged 50 per cent. The study found that hotels and restaurants have had the highest recovery rate for creditors under the IBC while

electricity, gas, and water supply firms have the lowest recovery rates. The average recovery rate in IBC, according to the study, is about 33.2 per cent. The study found that while the net margins continue to be negative, these resolved firms have operationally broken even in the post-resolution period. There was also a 50 per cent increase in the average employee expenses, which the study said showed higher employment intensity in the resolved firms in the listed category, post resolution. Overall the results suggest that the market has priced and acknowledged the potential of these firms in the post-resolution period.

## **19. Personal assets at risk, promoters to rush to settle dues**

**Financial Express, 15<sup>th</sup> November 2023**

The recent Supreme Court ruling in favour of financial creditors under IBC that personal guarantors' obligations can be enforced has its repercussion in the industry. Fearing the loss of their personal assets, promoters of companies under insolvency proceedings are expected to rush to settle their pending dues with banks. Lenders can now liquidate personal assets such as residential properties, shares and bonds, gold and jewellery, of these promoters. This will force such promoters and directors to come forward voluntarily to settle dues, which in turn will boost the recovery from bad loans.

Earlier banks were asked by the promoters to recover their dues by liquidating the company's assets, which is a time-consuming process. Now the lenders can immediately recover their dues by liquidating the promoters' personal assets. Lenders are engaged in legal battles with many high-profile names, such as Anil Ambani, Venugopal Dhoot, Kishore Biyani, Kapil and Dheeraj Wadhwan, to recover their dues. Around 2,289 cases related to personal guarantees involving corporate debt of Rs 1.64 trillion have been filed at the National Company Law Tribunal. Previously, the ambiguity in the legal framework allowed them to evade liabilities, but the SC ruling has reduced this scope.

## **20. Liquidation share in insolvency cases on the decline, shows IBBI data**

**Business Standard, 20<sup>th</sup> November 2023**

The number of IBC cases that has reached liquidation stage has started coming down. From almost 60 per cent as of December 2019, the share of liquidations in the mode of closure of total Insolvency and Bankruptcy Code (IBC) cases came down to 44 per cent till September 2023, data by the Insolvency and Bankruptcy Board of India (IBBI) shows.

Experts pointed out that a significant number of the companies that went into IBC had their asset values heavily eroded before entering CIRP, with assets often valued at just around 7 per cent of the outstanding debt. This pre-existing deterioration made restructuring or revival unfeasible, leading to liquidation. This highlights the importance of timely and efficient resolution mechanisms in maximising stakeholder value and underlines the evolving nature of insolvency resolution in India. IBC is a resolution-oriented law where liquidation is considered as a last resort. If the resolution stage fails, it is natural that it won't fetch much value during liquidation. As of September 2021, September 2022 and September 2023,

around 45 per cent of the total cases admitted into insolvency ended in liquidation. In contrast, the proportion of cases resolved by way of approval of resolution plans in the same year has been in the range of 10 to 14 per cent. The remaining cases were closed by way of settlement, appeal or withdrawal.

## **21. Recovery rate from personal guarantors may rise: CareEdge Ratings**

**Business Standard, 20<sup>th</sup> November 2023**

A Study report undertaken by CareEdge Ratings says the recovery rate from personal guarantors under the Insolvency Bankruptcy Code (IBC), which currently stands at 5.22 per cent, is likely to rise after the Supreme Court's (SC) ruling affirming the constitutionality of the IBC provisions regarding Personal Guarantors' Insolvency Resolution. This ruling implies that the personal assets of guarantors can now be utilised to settle outstanding debts owed to creditors. The rating agency also observed an increase in delays for Corporate Insolvency Resolution Process (CIRP). As per the data, there has been a delay of more than 270 days for the completion of process in 67 per cent of the ongoing CIRPs in September 2023 as compared to 63 per cent in September 2022. In September 2021, it was 73 per cent. The second largest segment is the 'more than 180 but less than 270 days' section which has moved up to 13 per cent of the cases in September 2023 from 11 per cent in September 2022. On the other hand, the segment with more than 90 days but less than 180 days' has seen 10 per cent of the cases being pending in September 2023, down from 15 per cent in September 2022.

The report reveals that IBC has continued to gain in popularity, with nearly 7,058 companies being admitted. Of these, 3,141 are filed by financial creditors on a cumulative basis and 3,491 are filed by operational creditors. Among the overall cases, the manufacturing sector accounts for the highest share at 38 per cent of the overall cases, followed by the real estate at 21 per cent, construction at 11 per cent and trade (wholesale & retail) sectors at 10 per cent.

The recovery rate in the April-September quarter (Q2FY24) stood at 33.01 per cent, whereas the overall recovery rate reached 31.85 per cent. Consequently, for the cases that have been resolved, the creditors have continued to face a haircut of approximately 68 per cent on admitted claims. Some of the cases being disposed of are several years old. Thus, there is a huge amount of interest and overdue charges admitted to such cases, inflating the overall figures, as per the report.

## **22. IBC recovery rates have fallen, even as average resolution time has increased: CRISIL Ratings**

**The Hindu Business Line, 24<sup>th</sup> November 2023**

The CRISIL, the largest credit rating institution in India in its study observed that recovery rates under the Insolvency and Bankruptcy Code (IBC) has fallen from 43 per cent to 32 per cent between March 2019 and September 2023, even as the average resolution time has increased from 324 to 653 days versus the stipulated 330 days.

The credit rating agency attributed two reasons for the decline in recovery rates viz. limited judicial bench strength and delays in identification and acknowledgement of default. Further delay in pre-admission stage has led to a decrease in asset value, resulting in lesser recoveries. The agency assessed that IBC has helped resolve Rs 3.16 lakh crore of debt stuck in 808 cases in the past seven years, with creditors, on an average, realising 32 per cent of the admitted claims and 169 per cent of the liquidation value. Other mechanisms such as the Debt Recovery Tribunal (DRT), the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002), and LokAdalat had an average recovery rate of 5-20 per cent, which underscores IBC as the one with higher recovery for lenders, a statement by the credit rating agency said. The agency observed that some of the other measures such as facilitation of cross-border insolvency processes, standardisation of valuation methodologies, and introduction of specialised resolution frameworks for specific sectors (such as project specific resolution for real estate) where IBC's success has been elusive, will also help enhance the effectiveness of IBC.

## **23. Good Reputation & Character Very Important For Appointment of Insolvency Professional: Delhi High Court**

**Law Beat, 25<sup>th</sup> November 2023**

The Delhi High Court has recently rejected a petition filed by a banker who challenged the denial of registration by the Insolvency and Bankruptcy Board of India to be registered as an insolvency professional, observing that good character and reputation are important qualifications for being an insolvency professional. The decision to determine as to whether a person is fit and proper to be appointed as Insolvency Professional is based on the subjective satisfaction of the Board, the order reads. The single-judge bench of the high court presided over by Justice Subramaniam Prasad, considered the plea of a banker who was denied registration by IBBI. The denial was based on the banker's penalty by SEBI for violating Insider Trading Regulations, leading to an order to pay Rs. 1 crore.

The banker had appealed this decision to the Securities Appellate Tribunal and the Supreme Court, but both appeals were rejected. The IBBI cited this penalty as a reason for rejecting the banker's application for registration as an insolvency professional. The high court, in dismissing the appeal, stated that the decision of the Board not to permit the petitioner to function as an Insolvency Professional cannot be considered arbitrary. The bench also said that it is for the experts to decide as to who is best and most qualified for a particular job. The question of adjudging, as to whether a person is suitable for a particular job or not should be left to the appointing authority, and more particularly when the appointing authority consists of experts. It is for the experts to decide as to who is best and most qualified for a particular job. "The antecedents of a person is an important criterion to decide as to whether the said person is suitable for the post or not," the order states.

## **24. Why Insolvency and Bankruptcy Code remains a work in progress**

**The Week, 26<sup>th</sup> November 2023**

Under the IBC, the settlement had to be completed within 180 days, with the option of 90 days extension. The timeline was later extended to 330 days. According to the IBBI, as on June 30, the average time taken for closure of a corporate insolvency resolution process (CIRP) was 643 days for financial creditors, 635 days for operational creditors and 541 days for corporate debtors. This is significantly more than the average time taken for closure of CIRP a year ago (552 days for financial creditors, 555 days for operational creditors and 518 days for corporate debtors).

According to the IBBI, financial creditors could realise only 34 per cent of their total claims as of June 30, 2023. The realisations for operational creditors and corporate debtors were far lower at 17.7 per cent and 18.3 per cent, respectively. Judicial delay is one of the most significant reasons for the delays in resolution. Multiplicity of litigations and the time taken by the courts in resolving them have pushed up the resolution timelines. These cases often have many legal complexities, and there could be many rounds of litigation and bureaucratic delays. With chronic delays in resolution, often a large part of the value is lost, resulting in reduced real recoveries by the creditors. Many cases have ended in liquidation. In such cases, stakeholders barely realise 6 to 9 per cent of their claims. Like any institutional framework, IBC is also maturing with constant evolution. Encouraging out-of-court settlements before resorting to formal IBC procedures can also improve recoveries and reduce the time for resolution. Strengthening the bankruptcy courts will be instrumental in realising the full potential of the IBC, and bolstering the information utilities will reduce the time spent in establishing default, leading to quicker initiation of the process.

## **25. Key IBBI tweaks may be finalised in December**

**Time of India, 27<sup>th</sup> November 2023**

The IBBI is expected to finalise crucial amendments to regulations and seeks to improve the seven-year old regime and improve its overall functioning. Draft regulations on certain issues have been circulated and public comments on some of the proposed changes in the rules have been received, while the consultation process for some others is still underway. While the changes in regulations regarding corporate insolvency are more procedural, in case of real estate, the amendments are meant to usher in several changes that will benefit home buyers the most. The most critical among them is the push for registering property in cases where insolvency proceedings are underway. Besides, the proposal involves a plan to allow resolution professionals to break up a company into projects and seek bids-an exercise meant to make the process more attractive for both home buyers as well as resolution applicants.

## **26. IBC roadblock cleared**

**The Hindu Business Line, 27<sup>th</sup> November 2023**

In the *Dilip B Jiwrajka vs Union of India* judgment, the apex court has struck down persistent pleas by personal guarantors (384 petitions) that the IBC process does not give them the right to be heard. Personal guarantors, largely the promoters of entities under IBC, had challenged Sections 95-100 of the IBC law in particular as being violative of Articles 14 and 21 of the Constitution. These sections lay down the process of admitting or rejecting claims with

respect to individual insolvencies. The apex court has upheld these IBC provisions as being constitutionally sound.

The apex court has now ruled that, under Section 100, the debtors can, and indeed must, be adequately heard by the NCLT or any other forum, as it is the adjudicating authority. The RP, the SC has clarified, is merely a facilitator with an administrative role — of expediting the process, making the task of the NCLT easier.

The present ruling, along with the apex court order in *Lalit Kumar Jain vs Union of India* (2021), comes as a shot in the arm for creditors to act upon their claims. In the latter, the court has said that personal guarantors' dues do not vanish simply because the corporate debt has been resolved. The IBC process can become smoother now. As a result of a legal challenge, proceedings against personal guarantors in about 2,000 cases were stalled. Now, recoveries may improve. Creditors can lend with the assurance that personal guarantees can be easily invoked. Promoters will think twice before inflating personal assets to bag a big loan. A systemic correction in the lending scene will help all stakeholders.

## **27. IBC has been revolutionary, but it's time for improvement and tweaks**

**Business Standard, 3<sup>rd</sup> December 2023**

IBC as a big ticket reform has completed seven years in India. A key intent is to attain value maximisation coupled with early resolution for the stakeholders of distressed entities. There are certain areas that, if worked upon, would lead to a robust and mature IBC ecosystem. Timely support from the judicial system is now the need of the hour. Increasing the number of Benches, coupled with the relevant selection of members for the National Company Law Tribunal, would prove highly beneficial. The threat of prolonged litigation and the resultant depreciation of value of the underlying assets of corporate debtors is a challenge. Very often, despite the law being established and further backed up by judicial precedents, cases remain pending for months and even years on end, leading to overall delays in all aspects such as admissions, plan approvals, liquidation, dissolution/closure and avoidance matters. Accepting the letter and spirit of Section 238 of the IBC [overriding provision] would help ease out the conduct of the processes and lead to less litigation. Digitisation and introduction of technology into the IBC environment would go a long way in making it self-sustaining.

The role of Insolvency Professionals (IPs) and their support entities along with the legal fraternity is very important. The IPs are crucial to the IBC process and their selection must be undertaken with great care. Sectoral knowledge combined with experienced and sophisticated teams is the need of the hour. The introduction of cross-border insolvency would also go a long way in strengthening the rights of creditors and opting for IBC as an effective recovery mechanism. IBC has been revolutionary in many ways and is a formidable instrument for stress resolution. And despite the room for improvement, the overall effectiveness of IBC in the distress space is unmatched.

## **28. SC asks runaway guarantors to pay. Will this change the corporate borrower-lender equation?**

**Economic Times, 6<sup>th</sup> December 2023**

It is seen that lenders have spent substantial amounts on legal expenses but failed to make any meaningful recovery through the DRT route against the personal guarantors. In 2019, the insolvency law was amended to allow lenders to proceed against personal guarantors of corporate debtors (PGCD) — disappointing several borrowers. The Supreme Court ruling upholding constitutional validity gained importance in the backdrop of another case, Lalit Kumar Jain vs. Union of India. Here, the apex court held that the liability of a guarantor is not discharged merely on the discharge of the corporate debtor.

The court also clarified that lenders can pursue insolvency for personal guarantees issued before November 2019, when the IBC was amended. Lenders are hopeful that the Supreme Court order will compel promoters to give up personal wealth to meet their guarantee obligations. The recovery process may get a push since there is a dedicated person — the resolution professional (RP) and his team — with a mandate to recover money, while banks have limited management bandwidth to pursue it after a loan is written off.

## **29. Cross-Border Insolvency Framework Should Consider Country-Specific Issues: IBBI Whole-Time Member**

**Business.outlookindia.com, 7<sup>th</sup> December 2023**

Addressing the Insolvency Professionals (IPs) on the occasion of the 7th Foundation Day of the Indian Institute of Insolvency Professionals of ICAI (IIPI), held at New Delhi, Shri Sudhakar Shukla, Whole Time Member, IBBI said recent studies have shown that cross-border insolvency may not yield the desired results without a group insolvency framework. He emphasised on the need for learning from the best practices of foreign countries and the same to be contextualised on India. "Best practices of one country can't exactly be implemented in another. There have been large deviations from the UNCITRAL (United Nations Commission on International Trade Law) model in implementing Cross-Border Insolvency Framework from one regime to another wherein each and every regime has carved out exceptions as per their requirements," Shukla said. He asked Insolvency Professionals to be ready for various upcoming challenges like digital assets, and cryptocurrencies to ensure that the Indian insolvency ecosystem continues to excel. The IPs should use their expertise in recommending appropriate measures for vulnerable corporate in expediting the resolution process.

The frameworks on group insolvency, cross-border insolvency, individual insolvency, and other areas are expected to come soon.

## **30. Pre-pack scheme under IBC likely for large companies too**

**Economic Times, 11<sup>th</sup> December 2023**

Corporate Affairs Ministry, Govt of India is seriously thinking to extend the pre-packaged insolvency framework to large firms. The government is preparing an enabling provision for a compact and largely informal bankruptcy settlement process for faster resolution for large firms under the over-arching Insolvency and Bankruptcy Code (IBC), on the lines of the one



available for micro, small, and medium enterprises (MSMEs), said people with knowledge of the matter.

There is demand for such a move from the industry. Under the extant pre-pack scheme for MSMEs, creditors and debtors can first reach an informal agreement on resolution and then approach the National Company Law Tribunal (NCLT) to admit and resolve bankruptcy cases quickly. However, the pre-pack scheme has not been a success for MSMEs, but that may work better for bigger companies. The move comes as 67% of the insolvency cases, where resolution process was on until September 2023, exceeded the 270-day time frame stipulated for resolution under the IBC, according to the data by the insolvency regulator.

### **31. Top 20 IBC cases must be reviewed monthly by PSBs, said DFS Secretary**

**Money Control, 22<sup>nd</sup> December, 2023**

An instruction has been given to public sector banks by Ministry of Finance, Govt of India to review the top 20 IBC cases of each bank every month. There are delays in admission of cases. He also said that the Union Finance Minister will do a review of NARCL, the bad bank soon. The Code aimed to expedite and simplify the process of bankruptcy proceedings alongside facilitating fair negotiations between the borrower and creditors. Timely resolution of stressed assets that could ensure maximum recovery from these assets was a key element of the Code. Thus, IBC helped in the creation of a mechanism to resolve the deadlock between stressed borrowers and lenders, made defaulting companies more conscious about debt, and gave lenders a tool to maximise their recoveries.

Latest IBBI data showed that 67% of the cases have gone beyond the 270 day deadline. Banks and government officials have also been counting improved repayment culture, including creditors clearing the dues the moment a case is filed, as major gains. The review by the department of financial services will also help the government identify the key pain points for the creditors that can then be taken up with the ministry of corporate affairs and the Insolvency and Bankruptcy Board of India. Both the agencies have been working to improve the functioning of tribunals and push cases, including by reworking rules and amending the law. Bankers have been complaining of excessive delays during the resolution process, whether it is in the admission stage or during the finalisation of the resolution plan, some of which have been pending for several months as the promoter, who is being ousted often raises objections. Besides, authorities are also scrutinising the roles of bankers and resolution professionals to see how the process can be made more transparent and efficient.

### **32. IBBI prepares list of 787 insolvency professionals to expedite resolution process**

**Economic Times, 27<sup>th</sup> December 2023**

The Insolvency and Bankruptcy Board of India has firmed up a provisional list of 787 insolvency professionals (IPs) that it will share with the adjudicating authority to choose from to oversee various cases of resolution or liquidation. The move is aimed at avoiding administrative delays in the appointment of IPs to expedite insolvency resolution and prevent

further erosion of stressed asset value. Separately, the Insolvency and Bankruptcy Board of India (IBBI) has also picked up 31 Insolvency Professional Entities (IPEs)--usually comprising a group of such professionals--that have also registered themselves as IPs to oversee resolution. The lists are provisional and will be updated periodically.

IPs are seen as the backbone of any insolvency ecosystem, as they take on the important roles of resolution professionals or liquidators or bankruptcy trustees. Prior to this move, the regulator was required to recommend the IP's name only after receiving reference from the National Company Law Tribunal (NCLT) in a corporate insolvency resolution process (CIRP), which was contributing to the delay in resolution and resultant erosion of stressed asset value. Analysts have often blamed delay in insolvency resolution for the erosion of stressed asset value and resultant spike in haircut for lenders. Creditors recovered a total of Rs 3.16 lakh crore, or 31.85% of their admitted claims from the resolution of 808 cases under the IBC. The data pertains to the period between late 2016, when the IBC was adopted, and September 2023.

### **33. IBC in 2024: Lawyers hope for stringent guidelines, better infra at tribunals to avoid delays**

**Moneycontrol, 28<sup>th</sup> December 2023**

To dispose of the cases on time under the Insolvency and Bankruptcy Code, legal experts are of the view that stringent guidelines and better infrastructure are to be introduced. Ajay Monga, partner at SNG & Partners, Advocates & Solicitors of the view that robust infrastructure and more NCLT benches are required and the year 2024 will surely see more stringent and effective steps by the government. As of January 2023, the 15-bench NCLT had over 21,000 pending cases, of these, close to 13,000 pertain to the IBC. Mukesh Chand, senior counsel at Economic Laws Practice, comments that persistent delays in the process still remain a major challenge and delays significantly escalate costs, diminish enterprise value, and impede recovery. Addressing the challenge of delays in the judicial process would not only set a commendable example but also showcase India as a serious and efficient player in the business world.

The year 2024 is going to witness the enforcement of the constitutional validity of personal guarantees. Sumant Nayak, senior partner at Desai and Diwanji, feels the court judgment, has paved the way for creditors to proceed robustly against the personal guarantors, which were pending adjudication and were kept in abeyance for a long time before the NCLT. The creditors, including banks, are likely to aggressively pursue action against ousted promoters of several companies that underwent insolvency resolution.

In July 2023, the Supreme Court held that when a company under insolvency resolution process goes into liquidation, its dues to the government takes last priority. As per the judgement, the priority of disposal of various dues are as follows. Firstly, the insolvency resolution process costs and the liquidation costs. Secondly, workmen's dues for a period of 24 months preceding the liquidation commencement. Thirdly, wages and any unpaid dues owed to employees other than workmen for a period of 12 months. Fourthly, financial debts owed to unsecured creditors. Fifthly, any amount due to the central government and the state government.

In May 2023, the Supreme Court held that the NCLT has very limited discretion when it comes to admitting an insolvency plea filed by financial creditors, such as banks. According to the judgment, NCLT must satisfy itself whether debt exists or not and admit the plea if default of debt exists. This ruling will provide the necessary ammunition to the NCLTs to expeditiously adjudicate the Section 7 applications before it.

On real estate insolvency, project specific insolvency is expected to be introduced soon to ensure that not all projects of a real-estate developer are admitted to insolvency when the company runs into trouble. This would ensure that projects that have been completed and are ready for occupancy do not get admitted to insolvency, causing an adverse situation to its buyers/occupants. While courts have started using project-wise insolvency, a law to this effect is yet to be made.

### **34. Insolvency Resolution Proceedings: Missed timelines, manpower crunch pose challenges for insolvency resolution**

**Economic Times, 30<sup>th</sup> December 2023**

As the Insolvency and Bankruptcy Code (IBC) timelines stretched well beyond their specified limits, the companies undergoing the resolution process saw an erosion in the value of their assets. As of September this year, creditors have realised Rs 3.16 lakh crore by way of resolutions under the IBC since it came into force in December 2016, as per data from the Insolvency and Bankruptcy Board of India (IBBI). In 2024, NCLT and the National Company Law Appellate Tribunal (NCLAT) are expected to conclude important Corporate Insolvency Resolution Processes (CIRPs), including that of Future Retail, Go First and Reliance Capital.

The average time for a CIRP yielding resolution plans has increased to 662 days for operational creditors and 659 days for financial creditors as per the IBBI Quarterly Newsletter for June-September, 2023, exceeding the 270-day limit set by the IBC. Currently, NCLT has 55 members as against the sanctioned strength of 63 members. In August 2023, the government had appointed 17 new members. Filling up the remaining vacancies would further help in increasing the disposal rate. In fact, given the increasing volume of cases the sanctioned strength of NCLT members ought to be further increased to ensure higher disposal rates. The legal practitioners are of the view that despite facing challenges such as limited members in NCLT, it has practically achieved much more than it could have with the efforts put in by its members. It is expected that with improved infrastructure and more members in the year 2024, IBC will take further strides.

### **35. FM directs PSBs to pre-empt corporate frauds and wilful defaults**

**Hindustan Times, 31<sup>st</sup> December 2023**

Union finance minister Nirmala Sitharaman on Saturday chaired a meeting to review the performance of public sector banks on various parameters in New Delhi which was also attended by minister of state for finance Bhagwat Kishanrao Karad, banking secretary Vivek

Joshi, heads of public sector banks and senior officials of the Department of Financial Services (DFS).

The finance minister directed public sector banks (PSBs) to adopt advanced fraud detection and prevention mechanisms to prevent large corporate frauds, check wilful defaults and protect individual customers from being duped by unscrupulous elements. The minister asked banks and National Asset Reconstruction Company Ltd (NARCL) to take all necessary measures for the acquisition of stressed accounts by the asset reconstruction company for expeditious resolution and advised them to hold regular meetings to expedite the on-boarding of stressed accounts. On banking frauds, the finance minister said the menace poses a critical threat to the security of both individual customers and financial institutions, which could lead to financial losses and reduced public trust in the banking system. She instructed the banks to adopt advanced fraud prevention and detection mechanisms and ensure that the customers are further educated about safe banking practices. On wilful defaults, she commented that it not only strain the banks' financial health but also hamper the flow of credit in the economy and urged the banks to adopt responsible lending practices across the board.

---