

IBC BRIEF

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1. IBC yet to address resolution for insolvencies of group companies

Business Standard, Jan 01 2024

The Insolvency and Bankruptcy Code (IBC) is yet to address a significant concern – group insolvencies of companies. While the IBC lags in accommodating the consolidation of resolution processes for group companies, courts have frequently intervened to take up group insolvency matters. The absence of a dedicated provision for group insolvency within the IBC has led to notable cases of judicial consolidation. Among these are the consolidation of 13 Videocon group companies, Lavasacorporation and its subsidiaries, and the procedural consolidation of Srei Equipment Finance and Srei Infra Finance Ltd. On January 8, 2019, the National Company Law Tribunal (NCLT) Mumbai had, for the first time, recognised the principle of “consolidation”, drawing from legal precedents in the UK and USA, to consolidate 13 out of 15 corporate insolvency resolution processes of Videocon Industries Ltd group companies. The NCLT recognised the interlinked operations and financial interdependencies within corporate groups. It enabled a holistic and efficient resolution process, considering the interconnected assets and liabilities, leading to potentially higher recoveries and more viable resolution plans. The logic behind group insolvency lies in situations where the operations and supply chains among group members are interconnected. In such scenarios, enabling resolution applicants to bid for multiple group companies in a single offering could maximise the overall value.

Recognising the need for a framework addressing group insolvency, the Insolvency and Bankruptcy Board of India (IBBI) had set up a working committee that gave recommendations on this crucial aspect of insolvency proceedings. In two reports, the IBBI proposed a phased implementation of a group insolvency regime in India, recommending a voluntary and flexible process to be incorporated into the Code. Experts feel that without a legal framework in place, challenges will persist — such as conflicts of jurisdiction, defining the parameters of a group, ensuring the solvency of group companies, aligning insolvency proceedings among the group, and determining the approach towards managing foreign subsidiaries, among others. To address these gaps and ensure fair valuation of stressed assets within group companies, clearly defined laws are essential.

2. Companies Fail, But Promoters Don't: The NCLT's Continuing Tradition

www.thewire.in, January 04, 2024

The Corporate Insolvency Resolution Process determines whether a defaulter can repay or not, by evaluating assets and liabilities. If a corporate becomes insolvent, a financial creditor, or an operational creditor, or the defaulting corporate itself may initiate CIRP by filing an application with the National Company Law Tribunal (NCLT). The NCLT is an adjudicating authority responsible for resolving disputes related to company law, mergers, amalgamations and the winding up of companies. The insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016 comes under NCLT. Resolution professionals submit a resolution plan as approved by the committee of creditors to the NCLT. The Committee of Creditors (CoC) may approve it with at least 66% voting for it. The plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders.

However, the realization value of the assets in the case of resolved companies appears to be very low. Eventhough guarantees have been given by promoters of companies, enforcement of such guarantees have been a problem due to litigation initiated by guarantors. In many cases NCLT could not protect the creditors. Lenders to debt-ridden Videocon Industries agreed to take a haircut of nearly 96 per cent. In the case of Jet Airways, the haircut was 92.14 per cent. For too long, India has seen a corporate history where companies have failed but promoters have not. The promoters cannot and should not have a free ride or continue to master control over their company fraudulently.

3. US bankruptcy case counts expected to continue climbing in 2024: Report

Livemint, 04 January 2024

US bankruptcy filings rose 18% in 2023 due to higher interest rates, tougher lending standards, and the continued end of pandemic-era support measures, according to data from bankruptcy data provider Epiq AACER. According to the data published on Wednesday, the total bankruptcy filings rose to 445,186 in 2023 from 378,390 in 2022.

Though still below pre-pandemic figures, bankruptcies in all filing categories climbed last year amid the evaporation of pandemic emergency responses, increased interest rates, and tougher lending standards. As interest rates remain elevated, increasing geopolitical tensions weigh on global supply chains and debt loads continue to grow, struggling businesses and families turn to the proven process of bankruptcy for a financial fresh start. The total bankruptcy filings were 34,447 in December 2023, a 16 percent increase from the December 2022 total of 29,654. The consumer bankruptcy filing total of 32,390 also represented a 16 percent increase from the 27,917 consumer filings in December 2022. Overall commercial filings increased 18 percent in December 2023, as the 2,057 filings were up from the 1,737 commercial filings registered in December 2022.

4. US bankruptcy case counts expected to continue climbing in 2024: Report

Livemint, 4th January 2024

US bankruptcy filings rose 18% in 2023 due to higher interest rates, tougher lending standards, and the continued end of pandemic-era support measures, according to data from bankruptcy provider Epiq AACER. According to the data, the total bankruptcy filings rose to 445,186 in 2023 from 378,390 in 2022. The report said commercial Chapter 11 business reorganisation filings increased by 72% in 2023, while consumer filings rose by 18%. Bankruptcy case counts are expected to continue rising in 2024, driven by the end of pandemic stimulus, higher interest rates, and rising delinquency rates. As interest rates remain elevated, increasing geopolitical tensions weigh on global supply chains and debt loads continue to grow, struggling businesses and families can turn to the proven process of bankruptcy for a financial fresh start.

Total bankruptcy filings were 34,447 in December 2023, a 16 percent increase from the December 2022 total of 29,654. The consumer bankruptcy filing total of 32,390 also represented a 16 percent increase from the 27,917 consumer filings in December 2022. Overall commercial filings increased 18 percent in December 2023, as the 2,057 filings were up from the 1,737 commercial filings registered in December 2022.

5. It is time for a full-scale overhaul of the Insolvency and Bankruptcy Code

The Hindu, January 09, 2024

The Financial Stability Report 2023 released by Reserve Bank of India says that during the resolution plan approval, only about 15% is paid by the purchaser and the repayment takes years without any further interest collected by the banks. In the case of Reliance Communications, it took 4 years to complete the resolution plan as against the stipulated period of 330 days. Also against the admitted claims of Rs 47,251 crore, the settlement was for Rs 455.92 crore, the realization being 0.96 per cent. In the case of Essar Power MP Ltd, the realization was 12.37 per cent, the unit taken over by Adani Power. In the case of Videocon, taken over by the Vedanta group, the realization was 5 per cent. As per the RBI report, out of 597 liquidations, against the claim of ₹1,32,888 crore, the amount realised was ₹5,251 crore or 3% of the claims admitted. According to the 32nd report of the Parliamentary Standing Committee on Finance, submitted to Parliament on August 3, 2021, “The Committee found that the low recovery rates with haircuts as much as 95% and the delay in resolution process with more than 71% cases pending (for) more than 180 days clearly points towards a deviation from the original objective of the code intended by the Parliament.”

6. Delays in IBC erode value of assets, says RBI governor Shaktikanta Das

Business Standard, 11th January 2024

Reserve Bank of India (RBI) Governor Shaktikanta Das flagged the issue of inordinate delays in resolution of stressed assets through bankruptcy courts that erodes the value of assets. “As of September 2023, 67 per cent of the ongoing corporate insolvency resolution process (CIRP) cases have already crossed the total timeline of 270 days, including possible extension period of 90 days,” Das said while speaking at the Conference on Resolution of Stressed Assets and Insolvency and Bankruptcy Code (IBC) organised by the Centre for Advanced Financial Learning. The average time taken for admission of a case during FY21 and FY22 stood at 468 days and 650 days, respectively. Such a long degree of delays will substantially erode the value of the assets, he said.

The IBC requires the completion of CIRP within 180 days, with a one-time extension by up to 90 days in exceptional circumstances. Das said the recovery rate from IBC processes, which was enacted in 2016, was 32 per cent. “Creditors have realised Rs 3.16 trillion out of the admitted claims of Rs 9.92 trillion as of September 2023, which works out to a recovery rate of 32 per cent,” he said. He said it needs to be emphasised that significant value destruction would have already happened in these assets prior to their admission under the IBC. While commenting that there appears to be a trend in recent years towards balancing the rights of operational creditors with those of financial creditors under the Code, Das said financial creditors risks need to be commensurately compensated, on priority basis.

7. IBC has been unfairly criticised

Business Standard, 11th January 2024

It is often seen that any discussion around the success or failure of the Insolvency and Bankruptcy Code, 2016 (IBC) at a macro level either largely hinges on the rate of recovery for the financial institutions and the banks or eventually boils down to that. Various relevant aspects and parameters seem to be entirely overlooked.

IBC, 2016 is one legislation for which the data is readily available and accessible for everyone to pass their respective verdicts. In effect, what happens is that the regulator established under this law, namely the Insolvency and Bankruptcy Board of India (IBBI), systematically publishes quarterly newsletters from time to time where all relevant data in terms of the number of companies for which resolution plans have been approved, liquidations ordered, initiation of the corporate insolvency resolution processes (CIRP), recovery percentages, timelines to complete the process of resolution and liquidation and a lot more such data points are transparently made available. Before criticising that IBC seems to have failed because the targeted timelines of resolution of 330 days and liquidation of one year don't seem to be met, one also needs to see the timelines taken in the legal proceedings under the above-mentioned laws. From whatever little data is available, research reports indicate timelines ranging between 2.5 years on average under the SARFAESI Act to about 20 years under the winding-up regime and cases before the civil courts. It was only the failure of all these legislation that ultimately led the present government to come up with a gritty law which has shown results. Unfortunately, we are in a situation where we seem to be criticising the team of doctors who are doing their best to salvage a set of patients who have landed up in dire health situations as a result of multiple factors. Of course, quite a few of them are genuinely sick corporate patients; but at the same time, many are a result of indiscriminate lending, overvaluation of assets, lack of due diligence. Isn't it easiest to just blame the team of doctors?

8. Record 273 stressed cases resolved via IBC

MSN, 15th January 2024

A record 273 stressed firms were rescued through the insolvency law in 2023 and the resolutions fetched their creditors more than three times the amount raised through 160 such debt resolutions in 2022, a senior official told ET, citing data compiled by the bankruptcy regulator. The realisation proceeds were to the tune of ₹67,000 crore in 2023 against ₹20,860 crore in 2022, according to the Insolvency and Bankruptcy Board of India (IBBI) data yet to be made public. The jump indicates a "robust upward trajectory" in the IBC's (Insolvency and Bankruptcy Code's) effectiveness, the official said. The appointment of about three dozen members to the National Company Law Tribunal (NCLT) over a year through September 2023 expedited the resolutions process in 2023. Cumulatively, 887 insolvent firms saw resolution between late 2016, when the IBC was adopted, and December 2023. The total realisation for creditors stood at about ₹3.2 lakh crore, or nearly 32% of their admitted claims, the official said, citing preliminary IBBI data.

The IBBI data showed creditors had withdrawn 27,514 insolvency cases, covering defaults of as much as ₹9.74 lakh crore, before their applications were admitted by the adjudicating authority since IBC's adoption in 2016 until October 2023. It essentially suggests creditors have either recovered money from debtors or forced them to settle dues just by posing the IBC threat, experts said, adding the regime has fostered greater credit discipline among borrowers. Defaulting promoters run the risk of losing control of companies once insolvency cases are admitted by the National Company Law Tribunal (NCLT).

9. Building soon, a technology backbone for the bankruptcy regime

Livemint, 16th January 2024

The Centre is planning to build a common information technology (IT) backbone linking various stakeholders of the corporate turnaround ecosystem to improve the efficacy of debt resolution, two people aware of the matter said, reports Livemint.

The entities to be connected include the National Company Law Tribunal (NCLT), the Insolvency and Bankruptcy Board of India (IBBI), credit information providers, lenders, distressed businesses ending up in tribunals, and insolvency professionals. National E-Governance Services Ltd (NeSL), India's first agency registered under IBBI to provide legal evidence on debt to creditors and tribunals, will also be part of this IT network. The project, which is expected to eliminate information asymmetry among the different agencies, is likely to be announced in Union Budget 2024. The proposed integrated IT platform for case management under IBC (Insolvency and Bankruptcy Code) will help in better monitoring of cases and reducing the delays. Once implemented, the system will also improve the ease of doing business for insolvency practitioners," said this person, adding that all data will be available in this common system. Linking of the tribunals, the institutions and the regulator on an IT platform will result in seamless coordination between participants and would also allow government to evaluate the performance of the bankruptcy code and the efficiency of the tribunals, and detect any bottlenecks in processes.

10. Centre, judiciary must invest in IBC capacity building: RBI Deputy Governor

Financial Express, 18th January 2024

There is a pressing need on the part of the government and the judiciary to invest in building capacities for authorities such as the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) to handle the increasing resolution case load, Reserve Bank of India (RBI) deputy governor (DG) Swaminathan J said at a conference organised by CAFRAL.

“Timely resolution, a crucial goal of the IBC (Insolvency and Bankruptcy code), faces obstacles may be due to certain operational inefficiencies, leading to delays in the resolution process,” the DG said, adding that concerns have been raised about the infrastructure, staffing, and overall capacity of the NCLT and NCLAT. RBI governor Shaktikanta Das recently said the delay in resolution proceedings under the IBC is a major cause for concern as 67% of ongoing cases have breached the 270-day deadline set for completion. More concerning is the fact that the average time taken for admission of a case during FY21 and FY22 stood at 468 days and 650 days, respectively. Das said such long delays will substantially erode the value of assets. Swaminathan observed that while there is no objection to any party seeking legitimate legal recourse, these proceedings have often been used as delaying tactics by defaulting borrowers and have significantly contributed to delays in the resolution timeline. “One hopes that as the law matures, judicial interpretation and precedents would emerge to help navigate the nuances, ultimately reducing delays in future,” he said.

11. Record 225 resolution plans approved till now: NCLT President

Financial Express 22nd January 2024

A total of 225 resolution plans have been approved under the Insolvency and Bankruptcy Code (IBC) in the current financial year till January 19, 2024 said Ramalingam Sudhakar, president, National Company Law Tribunal (NCLT). This is much higher than 197 resolution plans approved in FY23 – the year which has seen the highest number of resolutions since the inception of the code. Between January 2017 – January 17, 2024 – 942 resolution plans were approved by the NCLT, Sudhakar said while applauding the Insolvency and Bankruptcy Board of India (IBBI) for rolling out a meticulous regulatory regime in consideration with the larger economic narrative of the nation, at an event in the national capital. At the same event, Ministry of Corporate Affairs Secretary Manoj Govil said that the performance of IBC has been significantly better than other regimes available for dispute resolution. “The success of the Code can be measured by drastic reduction in gross non-performing assets; increase in resolutions; behavioural change and change in relationship of debtors and creditors,” he said. Ravi Mital, chairperson, IBBI, meanwhile mentioned the need for continuous innovation in the ecosystem by all the stakeholders. He highlighted that it is critical to consider second generation reforms like group Insolvency, pre-packaged insolvency resolution process and resolution involving multiple plans.

12. New NCLT rules to set up admission benches soon

Financial Express 26th January 2024

The much-awaited new rules governing the functioning of the National Company Law Tribunal (NCLT) would be notified soon, paving the way for the setting up of admission benches, which are designed to put the Corporate Insolvency Resolution Process (CIRP) on the fast track, a government official aware of the matter told FE. The admission benches would have the responsibility of admitting/rejecting the application of initiating a CIRP within 14 days of receiving it. They will also prioritise the cases for hearing by the tribunal. "The government is in the advanced stage of finalising the rules.. these will be notified soon," the official said. The current delays in admitting resolution plans are attributable to NCLT benches questioning the company's default, even after it is established by the Committee of Creditors (CoC). Earlier this month, the Reserve Bank of India Governor Shaktikanta Das had flagged the inordinate delays in completion of the CIRP, and had said that it leads to erosion in asset value.

Despite the law stipulating a 14-day period for admitting the application, in practice, the admission process often takes considerably longer. This delay is primarily attributed to the insufficient staffing of benches in the NCLT, resulting in prolonged processing times. Currently, the NCLT has a strength of 63 members, which experts say are inadequate to complete CIRP in the mandated 330 days. As per IBBI data, the average time taken for the completion of the resolution process takes more than 600 days.

13. Sitharaman vows to extend reforms, focus on IBC and PSB professionalisation

Money Control, 3rd February 2024

Union Finance Minister, Nirmala Sitharaman on February 2 said the government will continue with key reforms such as the Insolvency and Bankruptcy Code (IBC) and professionalisation of public sector banks (PSBs). "Despite the odds, we are doing a lot of reforms which are baring results. Systematic reforms have continued, whether it was pre covid GST or IBC and professionalisation of public sector banks and so on, " Finance Minister Nirmala Sitharaman told Editor-in-Chief Network18 Rahul Joshi in an exclusive interview. "Macroeconomic stability has been very well kept up. Rating agencies should look at all things comprehensively rather than looking at one thing," the FM added. The Insolvency and Bankruptcy Code (IBC), brought forth in 2016 was proposed as a one-stop solution for efficiently resolving claims regarding insolvent companies and to combat the bad loan problem that encumbers banks and other financial institutions.

14. IBBI rationalises regulatory framework for insolvency professional entities

Devdiscourse 3rd February 2024

Regulator IBBI has taken measures to rationalise the regulatory framework for insolvency professional entities as well as facilitate efficient implementation of processes by insolvency professionals. The Insolvency and Bankruptcy Board of India (IBBI) has provided clarity on disciplinary proceedings, applicability limit on number of assignments and fee structure with respect to an Insolvency Professional which is an Insolvency Professional Entity (IPE). An IPE can be a company, limited liability partnership or a registered partnership firm. IBBI said that since an IPE acting as an IP would have multiple individuals as its partners or directors, a need is felt to clarify on the initiation of disciplinary proceeding in case of contraventions. In a circular issued on Thursday, the regulator said for contraventions, the show cause notice can be issued to the IPE's partner or director who is an IP and was authorised to act on behalf of it for the respective assignment. Further, the circular said that if there are either repeated instances of contravention against one or more partners or directors, then the show cause notice can be served to the IPE. According to IBBI, the norms that provide for restrictions on the number of assignments that can be undertaken by an IP will not be applicable for IPEs. Regarding the fee structure, the regulator said that with the introduction of provisions allowing IPE to act as IP, it is considered prudent that IPEs have an expanded role, and their fee should be market-determined at this juncture.

15. IBBI Amends Regulations Relating To Insolvency Resolution Process & Bankruptcy Process For Personal Guarantors To Corporate Debtors w.e.f. 31st January 2024

Livelaw, 4th February 2024

The Insolvency and Bankruptcy Board of India (“IBBI”) has amended the 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019' and 'Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019', with effect from 31.01.2024.

The amendment removes the restrictions on an Insolvency Professional (IP) to be appointed as Resolution Professional (RP) or Bankruptcy Trustee (BT) in the insolvency resolution process or bankruptcy process of Personal Guarantors (PGs) to Corporate Debtors (CDs) respectively, if she has acted or is acting as interim resolution professional, RP or liquidator during the Corporate Insolvency Resolution Process (CIRP) or liquidation process of the CD. Removal of this restriction will allow the appointment of same IP in both the corporate process as well as the insolvency and bankruptcy proceeding of the PGs to the CDs for better harmonization and effective coordination of both the processes. The PG submits a repayment plan to the RP, who then evaluates its viability and submits a report to the Adjudicating Authority with a recommendation on whether to call a meeting of the creditors. If the RP deems such a meeting unnecessary, he provides reasons for the same.

16. Professional entities can now handle any number of insolvency cases

Financial Express, 5th February 2024

IPEs now have a broader scope to act in the capacity of IPs without the limitations on the number of assignments. The Insolvency and Bankruptcy Board of India's (IBBI) has taken a host of steps to rationalise the regulatory framework for the insolvency professional entities (IPEs). This will remove ambiguities in the roles and responsibilities of IPEs, and subsequently enhance the efficiency of the Corporate Insolvency Resolution Process (CIRP), say experts. An IPE can be a company, a limited liability partnership or a registered partnership firm, allowed to carry on the activities of an insolvency professional (IP). The Insolvency and Bankruptcy Code (IBC) authorises the IP to act as an interim resolution professional, resolution professional, liquidator, or bankruptcy trustee, etc. in any insolvency case. On February 1, the IBBI clarified that the restrictions imposed on the number of assignments that an IP can take shall apply only on IPs who are individuals and not on IPEs. This means, IPEs now have a broader scope to act in the capacity of IPs without the limitations on the number of assignments.

17. IBC needs systemic rather than legal reforms

The Hindu Business Line, 12th February 2024

The recently tabled Standing Committee 'action taken' report on the working of the Insolvency and Bankruptcy Code makes suggestions at two levels: first, on the functioning of the agencies involved in the process such as the National Company Law Tribunal (NCLT), the resolution professionals, the Insolvency and Bankruptcy Board of India; and second, on the need to review the "design of the code" itself. The latter finds a brief and almost cryptic mention towards the end. Indeed, it is worth wondering whether the problems that beset the IBC process — delays in resolution and poor value realisation — require changes in the Code itself.

The IBC has been amended on many occasions since its inception in 2016, and the necessary provisions would appear to be in place to achieve the desired improvement. For now, the priority should lie in fixing the governance aspects. The report makes pertinent points on the bench strength of the NCLT. It credits the Centre with plugging vacancies at the NCLT, saying that the bench strength today is over 90 per cent of its sanctioned strength of 62 members. But since there are "perpetual vacancies" on account of retirement and completion of members' terms, the sanctioned strength needs to be raised — to address "the huge pendency of more than 20,000 cases in NCLT at the end of every year". However, the NCLT is hobbled not just by bench strength issues, but also by its style of working. Its members, judicial and technical, could do with more domain knowledge of bankruptcy matters in an evolving business landscape — such as the metrics of valuing service-sector companies. In the US, for instance, there is just one judge on every bankruptcy bench. India can move towards that set-up so that cases can be dealt with swiftly and correctly. Appeals for appellate review can come down; delays at the admission stage can be addressed. The report says that the competence of resolution professionals, who are expected to run the affairs of the 'sick' company till it is revived or liquidated, prepare an 'information memorandum' on its status and scout for buyers, leaves much to be desired. While the IBBI does crack down on RP malpractices, a capacity-building body that assesses them periodically is needed. These steps could bring down resolution time from over 650 days (against the legal limit of 330 days), improve valuations and raise revival prospects of concerns vis-a-vis liquidation.

18. The slow burn of bankruptcy filings may be about to end

Livemint 12th February 2024

Bankruptcy filings and admission may speed up in the near future with the government planning to issue rules on when creditors should initiate the process and how. Financial services secretary Vivek Joshi said the government is working on a standard operating protocol (SOP) for creditors to speed up admission, as existing procedures lead to delays sometimes stretching to years. "We are in the process of finalizing guidelines that will provide a template to bankers in which the bankers are supposed to file their bankruptcy application. A template already exists for such applications where less number of documents are required, but banks make lengthy applications, with the application often running into 2,500 pages or more. This delays the process of admission of cases in NCLT (National Company Law Tribunal) as the court also needs to study all documents before admitting a case under IBC (Insolvency and Bankruptcy Code). This is not required. We are preparing an SOP in terms of what needs to be filed and also provide timelines for completing each step," Joshi said in an interview.

Delays in admission of cases of loan default result in banks losing the opportunity to resolve these bad debts and make some recoveries. According to official figures, public sector banks (PSBs) had to write off ₹7 trillion worth of bad debt in five years between 2019 and 2023 in the absence of resolution. Joshi said banks will be asked to move NCLT first, even if they are talking to borrowers for a one-time settlement (OTS), which often delays NCLT filings and admission. Also, sometimes bankers do not submit all the required information in their insolvency application, delaying admission. The Department of Financial Services (DFS) has already directed heads of PSBs to conduct monthly reviews of their top 20 cases awaiting bankruptcy admission. According to official figures, against ₹6.5 trillion worth of stuck assets, ₹94,000 crore, or a mere 15%, was recovered in 2023, with more than half of the recovered amount coming through the IBC route. The finance ministry's concerns on rising cases of pendency under IBC comes after the Reserve Bank of India pitched for early settlement of bad loans and directed banks to tighten their lending norms and avoid any exuberance to make lending sustainable and prevent build-up of bad loans. Till September, of the over 7,058 cases admitted to NCLT, 808 cases have seen resolution under IBC, while 2,249 cases went into liquidation. Much of these are legacy cases. However, the bankruptcy code has led to the settlement of many payment defaults prior to their admission to tribunals. According to the Insolvency and Bankruptcy Board of India, till August, over 26,500 applications to NCLT involving default of ₹9.3 trillion have been withdrawn.

19. Delhi High Court directs Insolvency and Bankruptcy Board of India to finalise CoC guidelines in three months

Economic Times, 13th February 2024

The Delhi High Court has asked the Insolvency and Bankruptcy Board of India to finalise the code of conduct or guidelines preferably in three months for the effective functioning of the committee of creditors (CoC). The finalisation of the guidelines should be done without diluting the sanctity of the "commercial wisdom" of the committee of creditors and the legislative intent of Insolvency and Bankruptcy Code, 2016, it observed. Expressing displeasure over how the board hasn't yet framed the guidelines, Justice Purushendra Kumar Kaurav noted that the board had notified a discussion paper in 2021 on various issues, including the code of conduct for the CoC. Comments were invited on that discussion paper and the insolvency board was still in the process of framing guidelines, the judgment said.

However, till date, no code of conduct or guidelines have been framed by IBBI for the effective functioning of the committee of creditors. "The need for a code of conduct assumes greater importance in light of the fact that once a decision is taken by the CoC, the aggrieved party is deprived of the legal remedies, except to a limited extent," the judge said. Therefore, what attains significance is that the decision-making process should itself be infused with sufficient safeguards of reasonableness, fair-play, proportionality and adherence to the principles of natural justice, he added. Considering the significant role which the CoC plays in the entire CIRP and the sanctity of the its "commercial wisdom" which is protected by the legislative mandate from unnecessary interference, there is a compelling need for the code of conduct/guidelines for the effective working of the CoC in order to fulfil the bonafide objectives of the Code, the HC said. The CoC's commercial wisdom is placed on the highest pedestal in a sense that even the NCLT is not empowered to lift the veil on the merits of the decision, it said. The high court was hearing a petition by Kunwer Sachdev, ex-director of Su-Kam Power Systems against the functioning of its CoC comprising 11 banks and financial institutions. The company had already gone through the insolvency process in 2021, but the value of its assets diminished considerably during the period these were in the custody of the lenders and the insolvency resolution professional. The consortium of lenders including IDBI and SBI on the contrary argued that the relief sought by Sachdev were in the realm of policy matters and not amenable to writ jurisdiction.

20. IBBI expert panel bats for specialised insolvency mediation in IBC

The Hindu Business Line, 15th February 2024

An IBBI-appointed expert committee headed by former Law Secretary TK Viswanathan has recommended a voluntary mediation framework under the Insolvency and Bankruptcy Code (IBC). Currently, mediation does not exist as a legislative mandate under IBC. Mediation is the use of a neutral third party to facilitate the negotiated settlement of a dispute and resolve conflicts between two or more parties. The Committee has, in its 129-pages report, taken a cautious approach and endeavoured to balance the fundamental objectives of the Code, i.e., "time-bound reorganisation" and "maximisation of value", with autonomy to parties to voluntarily opt for the 'out-of-court' mediation process to enhance the efficiency of the insolvency resolution process.

The report of the expert panel was handed over by Viswanathan to the IBBI Chairman Ravi Mital on January 31 at the Insolvency and Bankruptcy Board of India (IBBI) office in the capital. In consonance with the Mediation Act, 2023, the Committee has recommended a "voluntary" mediation framework under the Code. This expert panel was constituted to look into the use of mediation under the Code and suggest a framework for effective implementation. The Committee has recommended a "stage based" and phased introduction of voluntary mediation as a dispute resolution mechanism under the Code, while maintaining the sanctity of the timelines for various existing insolvency resolution processes. The core essence of the framework is its independence and flexibility to provide room for quick incorporation of implementational learning. objectives of the Code are met without compromising or diluting the basic structure of the Code in terms of timelines, public rights, etc, according to Viswanathan.

21. IBBI amends resolution rules: Realty insolvency to be project-wise

Business Standard, 16th February 2024

In a boost to stressed real estate companies, the bankruptcy board has amended the Corporate Insolvency Resolution Process (CIRP) to allow project-wise insolvency in the sector. “The resolution professional (RP), after the approval of the committee, may invite a resolution plan for each real estate project or group of projects of the corporate debtor,” the latest Insolvency and Bankruptcy Board of India (IBBI) notification said. To further ease the processes, the notification has said that if a company undergoing insolvency has any real estate project, the RP should operate a separate bank account for each project. Resolution of individual projects would pave the way for better price discovery, competitive bidding, and early resolution in comparison to group project resolution. Various projects of the same corporate debtor have different stages of completion and even have varied requirements of funds, and the existing rules were insufficient to accommodate the diversity of such project-specific needs. Real estate accounts for 21 per cent of the total CIRPs initiated in September 2023. Further study of data indicates that the proportion of realty companies heading for liquidation is 18 per cent, which is higher than those which could be resolved -- 15 per cent -- under the Code.

22. IBBI amends norms to increase transparency in insolvency resolution process

The Business Standard, 16th February 2024

The regulator IBBI has amended corporate insolvency resolution process norms, including making it compulsory to have separate accounts for each real estate project undergoing resolution and enabling the creditors' committee to constitute a monitoring panel to oversee implementation of the resolution plan. With an aim to increase transparency and reduce disputes over valuation-related issues, the amendment provide for explaining the valuation methodology to the members of the CoC (Committee of Creditors) before the computation of estimates. The Insolvency and Bankruptcy Board of India (IBBI) also said that fair value may be made part of the information memorandum to foster informed participation in the process. The CoC will also have the freedom to decide not to share such information where such disclosure is not beneficial for the resolution.

With respect to real estate projects, the regulator said the CoC can ask for separate resolution plans for each project. Each project in a real estate case may need different treatment in terms of resolution and therefore may need different treatment in terms of resolution. After due examination, the CoC may direct the resolution professional to invite a separate plan for each project, as per the regulations.

23. Out-of-court insolvency fix for larger firms soon

Financial Express, 20th February 2024

The proposed creditor-led resolution process (CLRP) is expected to put the insolvency process on the fast track in many cases, and cut the workload of the tribunals, the sources

said. Large corporates will soon have a facility for “out-of-court” insolvency resolution that will hinge on informal discussions among the stakeholders and may not even require open bidding for selection of resolution applicants, official sources said. The scheme envisages minimal discretionary involvement by the National Company Law Board (NCLT), but will differ from the extant “prepackaged scheme” for MSMEs in retaining the creditors as the initiators of the process. Under the pre-pack scheme, launched in April 2021, the debtor MSMEs are allowed to trigger their own bankruptcy processes, and the promoters can retain control of the firms during the resolution period.

There was a plan to extend the debtor-led pre-pack scheme to larger companies as well, but this has been dropped as the lenders’ community found it impractical. As such, the pre-pack scheme for MSMEs hasn’t gained much traction among lenders as they apprehend that a decision to admit a case initiated by the debtor or voluntary haircut by them could later bring them under the scrutiny of investigation agencies. The proposed creditor-led resolution process (CLRP) is expected to put the insolvency process on the fast track in many cases, and cut the workload of the tribunals, the sources said. Currently, the pre-pack scheme exists for resolving financial stress among MSMEs – where default amount ranges between Rs 10 lakh and Rs 1 crore, but it has failed in ensuring out-of-court settlements, with only six cases being admitted under the scheme so far.

24. A third of withdrawn insolvency processes fully settled, says IBBI

The Business Standard, 20th February 2024

Over one-third of the corporate insolvency resolution processes that were withdrawn after admission resulted in full settlement with the creditor who filed the insolvency application, the latest data by the Insolvency and Bankruptcy Board of India (IBBI) shows. A total of 1,035 applications have been withdrawn under the Insolvency and Bankruptcy Code (IBC) process after admission till December 2023.

IBC impact

Cases withdrawn from corporate insolvency resolution process (CIRP)

369	Full settlement with the applicant
56	Full settlement with other creditors
49	Agreement to settle in future
304	Other settlements with creditors
244	Other

Realisations by creditors as % of admitted claims



Source: IBBI; data as of December 2023

IBBI said that the credible threat of the code that a company may change hands has changed the behaviour of debtors.

“Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is imminent...making best efforts to avoid consequences of the resolution process,” IBBI said in its newsletter. The IBBI newsletter for the October-December 2023 period said that more than three-fourths of the Corporate Insolvency Resolution Processes (CIRPs) withdrawn

after admission had claims of less than Rs 10 crore. One per cent had claims of over Rs 1,000 crore.

25. Personal guarantors face more insolvency heat

Times of India, 20th February 2024

Insolvency & Bankruptcy Board of India (IBBI) said a recent Supreme Court ruling will help improve the recovery of creditors from personal guarantors (PGs) and cautioned them against prolonging cases, as it will only "amplify their liabilities". The judgment has cleared roadblocks for the insolvencies involving PGs, providing relief for lenders whose petitions for insolvency proceedings against PGs were getting stuck in various legal forums due to challenge of various provisions. This facilitates a more holistic resolution of the corporate debtor (company) and its PGs aligning with the IBC's mandate for value maximisation," he said.

2,467 CASES: OVER ₹1.7L CR DEBT

Insolvency resolution of personal guarantors

	No. of cases	Adjudicating authority		Debt* (Rs cr)
		NCLT	DRT	
2019-20	25	24	1	3,340
2020-21	262	256	6	40,119
2021-22	970	955	15	67,761
2022-23	787	786	1	47,826
April-June, 2023	122	122	0	4,603
July-Sept, 2023	190	163	27	3,341
Oct-Dec, 2023	111	111	0	4,255

*Debt data not available in 490 cases
NCLT: National Company Law Tribunal; DRT: Debt Recovery Tribunal Source: IBBI

List of PGs facing proceedings includes several well-known names - from Anil Ambani to Venugopal Dhoot, Ruias of Essar Group and Bhushans of Bhushan Steel. At the end of Dec, there were nearly 2,500 such insolvency applications, involving debt of over Rs 1.7 lakh crore. Of these, 87 applications have been withdrawn or rejected before the appointment of a resolution professional (RP), while RPs have been appointed in 1,096 cases. After appointment of a RP, 296 cases have been admitted in NCLT. So far, only 21 cases have resulted in approval of a

repayment plan, with the amount realised adding up to just Rs 91 crore - or 5.2% of the claims. Cases have dragged for 724 days, 2.7 times of deadline of 270 days. Mittal, IBBI Chairman pointed to "excessing litigation" delaying cases, which results in value erosion of the company and in turn increases the burden on the guarantors. Citing IBC, he argued that process for PGs prioritises debt restructuring over outright bankruptcy, which is the last resort in case the repayment plan falters. "By cooperating in the process and submitting a repayment plan for approval by creditors, debtors can effectively discharge their debt liabilities instead of initiation of their bankruptcy process," Mittal wrote in a message to PGs.

26. IBC resolves 891 cases involving Rs 10 lakh crore loan defaults till Dec '23

The New Indian Express 20th February 2024

The Insolvency and Bankruptcy Code (IBC) has resolved 891 cases of defaults involving banks loans worth R10 lakh crore till December 2023. The resolution of these cases led to the recovery of R 3.2 lakh crore, or 32% of the total admitted claims by banks and financial institutions. During the same time 2,376 defaulting companies were ordered to be liquidated. Under IBC, resolution means acquisition of an insolvent company by another as a going concern. In case when, the resolution process fails to find a buyer for the company it is

liquidated where assets of the company are sold to recover money by the creditors. While the recovery rate under IBC is poor when compared to the total admitted claims of the banks, experts have pointed out that the new insolvency regime has instilled fear among willful defaulters, resulting in thousands of cases being resolved even before reaching the NCLT. According to IBBI's (Insolvency and Bankruptcy Board of India) quarterly report, 27,500 applications for initiation of corporate insolvency resolution process against companies involving defaults of R9.74 lakh crore were withdrawn before admission. As many as 79 corporate insolvency cases were resolved in the December quarter with creditors recovering 26% of the total admitted claims. The 79 cases that saw resolution during the quarter involved R16,517 crore of default, out of which the lenders could recover R4,300 crore. The total fair value of these companies was R5,735 crore, while the liquidation value of these companies was R3,330 crore. The large cases that saw resolution during the quarter include Mittal Corp (involving R1,767 crore default) and AMW Autocomponent (R1,663 crore). Mittal Corp was acquired by Shyam Sel and Power Limited, which offered R350 crore to the creditors of the company. As many as 79 corporate insolvency cases were resolved in the December quarter with creditors recovering 26% of the total admitted claims, according to the quarterly report

27. Large stressed companies fetch higher recovery rate through IBC

Economic Times 21st February 2024

Lenders to large stressed firms, with a default of at least ₹ 1,000 crore each, have taken smaller haircuts under the Insolvency and Bankruptcy Code (IBC) than those with exposure to smaller firms, showed the data sourced from the bankruptcy regulator. Creditors recovered 32.9% of their admitted claims from 138 large stressed firms until December 2023 since the IBC came into being in late 2016, as per the Insolvency and Bankruptcy Board of India data. However, the recovery from all the 891 bankrupt companies that saw resolution until December 2023 stood at 31.9%, indicating that lenders to smaller firms had to take larger haircuts. Most of the larger firms are "asset-heavy", which pushes up the recovery rate, according to experts. However, they said, what influences the recovery rate the most is when the IBC is invoked to rescue the bankrupt firm - the longer the delay, the lower the chances of a good recovery. To be sure, the difference in the recovery rates between large and small companies isn't substantial, they said, adding that robust realisation, or lack of it, in a few key cases can distort the broader picture given the large amount of default involved.

28. A third of withdrawn insolvency processes fully settled, says IBBI

Business Standard 21st February 2024

Over one-third of the corporate insolvency resolution processes that were withdrawn after admission resulted in full settlement with the creditor who filed the insolvency application, the latest data by the Insolvency and Bankruptcy Board of India (IBBI) shows. A total of 1,035 applications have been withdrawn under the Insolvency and Bankruptcy Code (IBC) process after admission till December 2023. IBBI said that the credible threat of the code that a company may change hands has changed the behaviour of debtors. "Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is

imminent...making best efforts to avoid consequences of the resolution process,” IBBI said in its newsletter. The IBBI newsletter for the October-December 2023 period said that more than three-fourths of the Corporate Insolvency Resolution Processes (CIRPs) withdrawn after admission had claims of less than Rs 10 crore. One per cent had claims of over Rs 1,000 crore.

29. Relief for biz as bankruptcy cases by vendors decline

Livemint, 22nd February 2024

Information available from the Insolvency and Bankruptcy Board of India (IBBI), the rule maker, showed that there is a 33% fall in the admission of bankruptcy petitions filed by operational creditors in the December quarter compared with the previous three months, while there is a matching increase in the admission of cases filed by financial creditors like banks. The shift in the trend comes after both tribunals and the Supreme Court drove home the point in various cases that in spite of payment defaults, businesses could otherwise be solvent, a factor they said ought to be kept in mind while admitting cases. Data shows there's been a sharp decline in the number of bankruptcy petitions initiated by operational creditors and admitted by National Company Law Tribunal (NCLT) – from 123 in the September quarter to 84 in the December quarter. At the same time, those initiated by financial creditors have risen from 112 to 148 in the same period. Operational creditors – typically vendors and suppliers – accounted for 34% of the cases admitted in tribunals in the December quarter, down from nearly half of all cases admitted in the previous quarter. In the June quarter, operational creditors accounted for 43% of all cases admitted by NCLT. In FY23, 42% all bankruptcy petitions admitted were initiated by vendors and suppliers. The figure was 53% in FY22. In the five years from FY18 to FY22, bankruptcy cases brought by operational creditors and admitted in tribunals were more than those initiated by financial creditors.

30. Mediation to lower burden for NCLTs & speed up resolutions, say lawyers

Economic Times 23rd February 2024

Mediation will help to reduce the burden on National Company Law Tribunals (NCLTs) and especially disputes between operational creditors and defaulting companies will get resolved faster, feel lawyers. They added that the manufacturing and real estate sectors stand to gain most. For faster out-of-court settlement of disputes between creditors and defaulting companies, an expert committee appointed by the Insolvency and Bankruptcy Board of India (IBBI) recently recommended the introduction of a voluntary mediation framework as a dispute resolution mechanism under the Insolvency & Bankruptcy Code (IBC), 2016. Mediation can provide parties a last serious chance to settle the dispute without getting into the long and unpredictable process of Corporate Insolvency Resolution Process (CIRP).

31. IBC amendments to be pursued by new govt after Lok Sabha elections

Business Today 28th February 2024

Amendments to the Insolvency and Bankruptcy Code (IBC) will now be pursued by the new government after the general elections, according to an official in the Ministry of Finance. The list of amendments proposed includes 'pre-packaged' insolvency for larger firms in the future and a separate framework for real estate insolvency. A total of six amendments have been made to the IBC since its inception in 2016 to enhance its efficiency.

Among other changes suggested by the Ministry of Corporate Affairs (MCA) in its discussion paper are proposals to grant greater authority to the adjudicating authority and mandate the admission of insolvency applications filed by financial creditors. According to officials, various consultations took place, and inter-ministerial discussions concluded in January, covering a range of topics from the consultation paper, including cross-border insolvency, group insolvency, and faster, smoother resolution. Some of the suggestions made were also aimed at strengthening the powers of the committee of creditors or financial creditors to maintain transparency and expedite proceedings. The MCA is also aiming to introduce an integrated portal in the form of a single platform to facilitate the seamless flow of information on cases.

32. Insolvency & Bankruptcy Code: Regulations for IBC's Objective of 'Maximisation of Value of Assets' Are Serving Almost No Purpose

Money Life, 29th February 2024

Insolvency and Bankruptcy Code, 2016 (IBC) in India has been a game changer for resolution-driven credit recovery from insolvent companies in several ways. For the first time, we have a law which enshrines the maximisation of the valuation of assets in its preamble and seeks to back it up by way of sections 29 and 30 and several corporate insolvency resolution process (CIRP) regulations. In terms of CIRP regulation 36, the resolution professional (RP), as an insider, is required to prepare a comprehensive information memorandum for the use of bidders (called resolution applicants in IBC). The information memorandum is designed to provide critical inputs and catalyse focussed and speedy due diligence by the bidders for submitting bids, i.e., resolution plans for taking over the insolvent entity.

While CIRP regulations 36A and 36C seek to maximise competition among the bidders, CIRP regulation 36B is designed to induce transparency in the bid evaluation. The CIRP resolution 37 permits unrestricted equity, debt, asset and business restructuring. Intense competition in bidding and transparency in bid evaluation is crucial lest the unrestricted freedom to restructure is misused by muted competition. In other words, IBC seeks the maximisation of the valuation of assets by unleashing competitive market forces. In any asset restructuring, which includes asset divestment, before the value discovery in the market and deal execution, the sellers undertake rigorous in-house valuation and often engage investment bankers to arrive at a possible deal value.

33. Don't Junk CDR Learnings, Can Strengthen IBC

Business World, 4th March 2024

When the Insolvency and Bankruptcy Code (IBC) was enacted in 2016 in India, which replaced all other previous schemes including the widely used corporate debt restructuring (CDR) scheme, there were heightened expectations that India's infamously long and unwieldy corporate dispute resolution processes will undergo a significant transformation. While CDR emphasised restructuring and negotiation, the IBC emphasises resolution through mechanisms such as insolvency resolution processes and liquidation, with a focus on protecting the interests of all stakeholders, including creditors, shareholders, and employees. It was expected to ensure reorganisation for commercial entities as an alternative to liquidation or other mechanisms of debt enforcement, reshaping the way insolvent firms could restore their financial well-being or close down. Nearly eight years later, the reality is somewhere in between harsh reality and the narrative of the aggregate recoveries. While there is no gain in saying that there have been some good resolutions, mainly of large operating assets and high-profile crises, the recovery rate has been significantly below expectations.

In 2023, the average recovery process under IBC was 36 per cent, implying that about only three of every 10 cases brought under the IBC have recovered following resolution. This is a very low recovery rate of a law that sets a cap of resolving with an outer limit of 270 days or nine months. This often results in a worsening in the value of the assets leading to an even lower recovery for non-operating assets under IBC. CDR has been used as a crucial mechanism for addressing financial distress faced by companies. It involved the renegotiation of terms related to debt obligations between a distressed company and its creditors, aiming to provide relief and facilitate the revival of the company's operations. The structured framework provided by CDR allowed for orderly debt resolution and prevented the chaotic liquidation of assets that can occur in the absence of a formal restructuring process. Furthermore, CDR helped stop contagion effects and systemic risks by containing the fallout from a distressed company's failure.

34. IBBI Slaps Rs2 Lakh Penalty on Insolvency Professional Shashi Agarwal for Failing To Follow IBC Regulations in 5 Cases

Moneylife, 5th March 2024

The Insolvency and Bankruptcy Board of India (IBBI) has imposed a penalty of Rs 2 lakh on Kolkata-based Shashi Agarwal, an insolvency professional (IP), on finding that he failed to act as per the provisions of the Insolvency and Bankruptcy Code (IBC) and Regulations, while handling five assignments under the Code.

The disciplinary committee, in the exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby imposed a penalty of Rs2 lakh on Mr Agarwal and directs him to deposit the penalty amount directly to the Consolidated Fund of India (CFI) under the head of 'penalty imposed by IBBI' within 45 days from the date of issue of the order and submit a copy of the transaction receipt to IBBI.

35. Unlocking investment opportunities: Leveraging IBC to enhance India's global appeal

Economic Times, 5th March 2024

The Insolvency and Bankruptcy Code (IBC) has emerged as a pivotal tool in India's quest to bolster its attractiveness to global investors. By streamlining the process of resolving insolvency cases, the IBC not only facilitates the efficient allocation of capital but also instills confidence in investors regarding the robustness of India's legal and regulatory framework. The Supreme Court recently noted that the principle aims of the IBC are to promote investment, and resolution of insolvencies of corporate persons, firms, and individuals in a time bound manner. The IBC consolidated and amended a web of laws which had led to an ineffective and inefficient mechanism for resolution of insolvencies marked with significant delays.

One of the key aspects that enhances India's global appeal is the IBC's provision for cross-border insolvency cases. The Insolvency and Bankruptcy Code contains provisions enabling cross-border insolvency cases through bilateral agreements and the issuance of letters of request to foreign courts by Adjudicating Authorities (AAs) under section 234 and section 235. Through bilateral agreements and the issuance of letters of request to foreign courts, the IBC enables seamless resolution of insolvency cases involving international stakeholders. This aspect is particularly significant in today's interconnected global economy, where businesses operate across borders, and investment flows transcend geographical boundaries. Moreover, the adoption of the UNCITRAL Model Law, with necessary modifications to suit the Indian context, further strengthens India's position as an attractive investment destination. The Model Law provides a well-established legal framework for handling cross-border insolvency issues, offering clarity and predictability to investors and creditors alike. By aligning with international best practices, India demonstrates its commitment to creating a conducive environment for investment and fostering economic growth.

36. IBBI Amends CIRP Regulations w.e.f.15th February 2024

Livewlaw, 10th March 2024

The Insolvency and Bankruptcy Board of India (“IBBI”) has issued a notification dated 15.02.2024, whereby amendments have been made to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”). The key amendments are:

- a) **Operating separate bank accounts for real estate projects:** To ensure financial transparency and accountability, the amendment makes it mandatory to have a separate bank account for each real estate project under a corporate debtor.
- b) **Monthly meetings of the committee of creditors (CoC):** Under the amended dispensation, the resolution professional (RP) is mandated to convene a CoC meeting at least once in every thirty days, with a provision to extend the interval between meetings to a maximum of one meeting per quarter, if CoC so decides.
- c) **Voting procedures:** In place of provision of minimum period specified for the opening of the voting window with no upper limit, the amended regulation empowers the CoC to decide the period of opening of electronic voting window with a minimum of twenty-four hours and a maximum of seven days with further increments of twenty-four hours each. Further, to streamline the voting process, the amendment

mandates that where the matters listed for voting have already received requisite majority vote, the RP shall provide one last opportunity to vote by extending the voting window by a maximum period of twenty-four hours.

- d) **Approval of insolvency resolution process costs:** With a view to enhance the oversight of the CoC over going concern costs, the amendment provides that the RP to seek approval from the CoC for all costs including going concern costs related to the insolvency resolution process.
- e) **Disclosure of valuation methodology:** With an aim to increase transparency and reduce disputes over valuation related issues, the amendment provide for explaining the valuation methodology to the members of the CoC before the computation of estimates.
- f) **Disclosure of fair value in the information memorandum:** For fostering informed participation in the process, the amendment provides that the fair value may be made part of the information memorandum (IM). However, the CoC, after recording the reasons, can decide not to share such an information where in it's considered view such a disclosure is not beneficial for the resolution.
- g) **Flexibility in inviting resolution plans in real-estate cases:** With a view that each project in a real estate case may need different treatment in terms of resolution, the amendment clarifies that after due examination, the CoC may direct the RP to invite separate plan for each project.
- h) **Monitoring committee for implementation of resolution plan:** The amendment enables the CoC to decide for constitution of a monitoring committee for overseeing the implementation of the resolution plan. The committee may include the RP, any other insolvency professional or any other person as its member. In case the RP is made part of the committee, the monthly fee payable to him shall not exceed the monthly fee received by him during the corporate insolvency resolution process.

37. Improved vision. Mediation, the future of insolvency resolution?

The Hindu Business Line 12th March 2024

The Insolvency and Bankruptcy Board of India (IBBI) has constituted an expert committee to examine the feasibility of resolution of disputes by way of mediation and the scope of its use under the Insolvency and Bankruptcy Code (IBC). The IBBI expert committee released an extensive report of its recommendations, positively advocating and proposing a discrete mediation framework under IBC aligned with its fundamental objectives — time bound reorganisation and maximisation of value. This gave autonomy to parties to voluntarily opt for the “out-of-court” mediation process to enhance the efficiency of the insolvency resolution process.

A glance at the recommendations indicates that the Committee aims at increasing awareness and building confidence of stakeholders and users in the resolution of disputes by encouraging the use of mediation, especially in bilateral issues. The mediation process envisaged under the Mediation Act of 2023, based on a ‘one-size-fits-all’ approach, may not be made applicable to the insolvency processes under IBC. Thus, the report suggests that the proceedings under IBC be specifically excluded from the ambit of the Mediation Act and provide for a bespoke adoption of mediation in insolvency disputes or lay out tailored

application to specific aspects of IBC. The proposed mediation framework is aimed at expediting resolution of insolvency cases and would best operate as a self-contained blueprint within IBC, with independent infrastructure to ensure that the objectives of IBC are met without compromising or diluting its basic structure. The committee has proposed enabling provisions for introduction of mediation as an Alternative Dispute Resolution (ADR) method under IBC. The proposed mediation framework provides for a specialist mechanism and infrastructure including specialist mediators for resolving insolvency disputes. Mediation aims to reduce the caseload in the NCLT docket and will be implemented in a phased manner under a regulatory sandbox space, to address bottlenecks in current regime of IBC and the Mediation Act, with room for incorporation of implementation learnings.

38. IBC should build on the positives

The Hindu Business Line, 21st March 2024

The Insolvency and Bankruptcy Code has matured fairly well over the last 7-8 years due to active involvement from the government and many judicial precedents shaping the law. Non-performing assets have been a problem for the banking sector for quite some time now. To curb this financial stress on the economy, Insolvency and Bankruptcy Code, 2016 (IBC) has been an island of hope for banks and financial lenders to realise their dues.

Even though the Code has had its own problems in its short run due to litigations and haircuts, it appears to be the most effective mechanism as on date to resolve the stressed assets in the system as per IBBI data as on December 31, 2023. Here it is also not out of point to mention that IBC, though intended to be a resolution mechanism, has remained a dominant law with a recovery of 40.3 per cent in 2022-23 for banks. The period 2000-2008 saw tremendous growth in terms of expansion of industries due to the availability of credit. The tremors of 2008 recession along with several other challenges started showing up around 2014-15 and that led to a host of bank loans turning into NPAs.

We assess the stories of one of the successful resolutions of a dirty dozen case i.e., Electrosteel Steels Ltd. The case presents a unique solution through resolution plan by the successful resolution applicant, Vedanta Star, by division of debt into sustainable and unsustainable debt, respectively. The resolution plan carved out sustainable debt by making an upfront payment for the same. The unsustainable debt was transformed into equity shares in Electrosteel at a value of ₹10 per share (referred to as the “New Equity Shares”). These newly issued equity shares were distributed to the financial creditors in proportion to their respective portions of the unsustainable debt, serving as consideration. The recorded value of these new equity shares in the books of accounts matched the carrying value of the unsustainable debt. This plan was approved by the Committee of Creditors (CoC) with 100 per cent majority which shows that during deliberations of the plan, the successful resolution applicant and the financial creditors were able to carve out a mutually beneficial solution to diversify the risks and capitalise on it with a resolution applicant of strong track record. This was one of the rare cases in which the banks did take up a part of the equity which in the long run would help them realise gains when the equity appreciated under a successful new management. Results indicate that the value per share from going into negative in the year 2018 came back to positive and has done significantly well. IBC has matured fairly well over the last 7-8 years due to active involvement from the government and many judicial precedents shaping the law, which now is not merely for recovery but for revival of the company in distress.

39. Operational creditors may get relief

Financial Express, 26th March 2024

Insolvency experts are making a fresh pitch for changes to the Insolvency and Bankruptcy Code (IBC) to address one of the glaring shortfalls of the current regime — absence of a mechanism to ensure a fair share of realised proceeds of resolution for operational creditors. Operational creditors have been muted with abysmally low recoveries (under the IBC), and now they understand that the IBC cannot shield their rights as its provisions seem to be predominantly financial creditor-centric. Under the IBC, enacted in 2016, FCs have a primary claim on the assets during distribution while OCs have a secondary claim. Home buyers, too, have acquired FC status after an amendment to the code, and the general discourse on apportioning of the realised values under the code centred around FCs' rights.

According to the latest Insolvency and Bankruptcy Board of India (IBBI) newsletter, the amount distributed to OCs under liquidation stands at a mere 0.8% of the total amount recovered.. To quote a few cases, under the resolution of Srei companies, FCs recovered 45% of their claims, while OCs received zero value. OCs, in this case small enterprises, who were suppliers of goods, had raised a claim of Rs 150 crore. Similarly in the Indu Projects case, trade creditors realised only 2.8% of their outstanding claims of over Rs 178 crore, whereas FCs recovered a far higher share; and in the Birla Tyres matter, OCs recovered 2.23% in comparison to FCs who recovered almost 30%. The kind of impact the haircut leaves on small businesses is “unimaginable”, say experts while pointing out that the IBC is majorly supporting ease of exit to medium and large corporations.

40. IBBI amends insolvency resolution rules

India Business Law Journal, 27th March 2024

The Insolvency and Bankruptcy Board of India (IBBI) enacted amendments to the Insolvency Resolution Process for Corporate Persons (CIRP) Regulations, 2016. The changes are outlined in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024. According to the IBBI, the amendments address operational issues, especially in real estate insolvencies. One significant amendment mandates separate bank accounts for each real estate project, ensuring transparent financial management. Additionally, the interval between committee of creditors (CoC) meetings has been reduced to 30 days, allowing for quicker decision making. The voting period now spans one to seven days, with provisions for extensions on creditor requests. Another crucial change involves stricter oversight by the CoC on insolvency resolution process costs. The information memorandum shared with potential resolution applicants will now include the fair value of the corporate debtor, enhancing transparency. The amendments allow for project- specific resolution plans, aimed at tailoring solutions to individual circumstances. They also require resolution plans to detail a monitoring committee's role, ensuring effective plan implementation. The amendments also clarify the responsibilities of the resolution professional during the extension application process before the adjudicating authority, emphasising continuity in the resolution process.

41. Bankruptcy rescues have soared this year. Here is why

Livemint, 27th March 2024

By the end of February, various tribunal benches had approved 250 resolution plans, compared to 185 in all of FY23. By the end of March, this fiscal's count could rise to around 275, two people aware of the matter said, marking a near-50% jump over the previous year. The pace of resolutions rose sharply as vacancies in benches of National Company Law Tribunal (NCLT) were filled up, and rule changes by regulator Insolvency and Bankruptcy Board of India (IBBI) improved the efficiency of the resolution processes under the Insolvency and Bankruptcy Code (IBC). Quick revival of distressed businesses under IBC is a priority for policymakers as it cleans up corporate and bank balance sheets, and enables a fresh cycle of private investments—critical for adding momentum to economic growth—to kick in. Data available from IBBI showed that from 2016 (when IBC became operational) to December 2023, bankruptcy resolution plans were approved for 891 companies. From these cases, creditors realized ₹3.2 trillion, which is more than the fair value of the assets of ₹2.97 trillion, although it is less than their total claims of ₹10 trillion. Further, Supreme Court, has upheld the constitutional validity of insolvency resolution of personal guarantors. Meanwhile, the number of corporate turnaround plans approved so far this year has gone up from about 42 in the June quarter to more than 80 in each of the September and December quarters, data available from IBBI showed. Utilizing IBC solely for debt recovery could potentially worsen issues within both banking and corporate sectors. The essence of the IBC lies in rescuing viable companies in distress and facilitating the closure of unviable ones. Thus, it's paramount that lenders view it through this lens and refrain from prematurely resorting to it as a recovery tool. Experts also pointed out that in the initial years of IBBI, many legacy cases under the erstwhile Board of Industrial and Financial Reconstruction (BIFR), with limited assets to attempt a restructure, were transferred to NCLT, leading to a high number of liquidations. As of December, liquidation orders were passed in the case of over 2,370 companies.