(FOR LIMITED CIRCULATION ONLY)
Volume 3, No. 2, Pages 104, April 2021

THE RESOLUTION PROFESSIONAL

RESEARCH JOURNAL OF THE INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI (IIIPI)

(A Section 8 Company & Wholly Owned Subsidiary of ICAI and Registered as an IPA with IBBI)

RESCUING THE CORPORATE LIVES

ABOUT IIIPI

The Insolvency and Bankruptcy Code, 2016 (Code) provides that no entity shall carry on its business as an Insolvency Professional Agency (IPA) under this Code and enrol Insolvency Professionals (IPs) as its members except under and in accordance with a certificate of registration issued in this behalf by the Insolvency and Bankruptcy Board of India (IBBI).

Against this backdrop of the Code and the IBBI (Insolvency Professional Agencies) Regulation, 2016 (IPA Regulation), The Institute of Chartered Accountants of India (ICAI) formed the Indian Institute of Insolvency Professionals of ICAI (IIIPI), a section 8 company to enrol and regulate IPs as its members in accordance with the Code read with its regulations.

IIIPI is the first Insolvency Professional Agency (IPA) of India registered with IBBI. The certificate of registration was handed over to the agency by the then Hon'ble Minister of Finance Shri Arun Jaitley on 28th November 2016.

OUR VISION

To be a leading institution for development of an independent, ethical and world-class insolvency profession responding to needs and expectations of the stakeholders.

STRATEGIC PRIORITIES

- Capacity building of members by enhancing their all-round competency for their professional development in global context.
- Capacity building of other stakeholders for facilitating efficient and cost effective insolvency resolution proceedings.
- Deploying an independent regulatory framework with focus on ethical code of conduct by the members.
- Working closely with the regulator and contributing to policy formulation including with respect to the best practices in the insolvency domain.
- Conducting research on areas considered critical for development of a robust insolvency resolution framework.

CONTENTS

Printed and published by Rahul Madan on behalf of Indian Institute of Insolvency Professionals of ICAI (IIIPI) and printed at VIBA Press Pvt. Ltd., C-66/3, Okhla Industrial Area, Phase-II, New Delhi - 110020 and published at ICAI Bhawan, P.O. Box No. 7100, Indraprastha Marg, New Delhi – 110002.

Editor: Rahul Madan

TYPE OF JOURNAL: PEER REVIEWED REFEREED

Total No. of Pages: 104 including Covers

FREQUENCY: QUARTERLY

Images sourced from free sites.

APRIL 2021
IN THIS ISSUE...

CONTENTS

New President & Vice President of ICAI

CA. Nihar N Jambusaria is President, The Institute of Chartered Accountants of India (ICAI) for 2021-22.

CA. (Dr.) Debashis Mitra is Vice President, The Institute of Chartered Accountants of India (ICAI) for 2021-22

Message from Chairman, Editorial Board

CA. Nihar N. Jambusaria
President, ICAI
Chairman, Editorial Board-IIIPI

Dear Member,

With the assent of the Hon'ble President of India on 28th May 2016 the Insolvency and Bankruptcy Code (IBC), 2016 came into effect and soon we are going to complete five years of operation of the IBC regime in India. However, five years duration may not be considered sufficient to decide the fate of a multi-dimensional law like IBC, 2016 but it seems sufficient enough to learn from the past experiences and plan better for the future.

In the pre-IBC regime, there was no single window resolution available, and the resolution and jurisdiction were with multiple agencies with overlapping powers leading to delays and complexities in the process. The various applicable laws, predominantly focussed on recoveries, included Companies Act 2013, SARFAESI Act 2002, Recovery of Debts Due to Banks and Financial Institutions (RDDBFI Act), 1993 etc. Besides, there were multiple contradictory factors in their respective legal dispensations. Given these conditions, the recovery rates in India were among the lowest in the world. In this backdrop, the Ministry of Corporate Affairs, Government of India constituted Bankruptcy Law Reforms Committee with a mandate to draft a comprehensive reform, covering all aspects of insolvency of corporate and bankruptcy of individuals and firms.

Accordingly, the recommendations of the committee were focussed on improved handling of conflicts between creditors and debtors, avoid destruction and maximizing value of the assets of the corporate debtor, drawing the line between malfeasance and business failure and allocating resources most efficiently and effectively. Thus, the IBC, 2016 was envisioned to usher India into a 'mature market economy' by consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals. Therefore, any effort to reshape the Code in future, should be done in the framework of these objectives.

Progress so far

In a short period of five years, the Code has witnessed several ups and downs, of which the disruptions posed by COVID-19 pandemic has been the most challenging. However, the on-ground performance and the cumulative achievements under the Code have been remarkable despite all odds.

A total of 4,139 CIRP cases were commenced from December 01, 2016 (the date CIRP came into force) to December 2020. Out of these, 601 were closed on appeal or review or settled; 378 were withdrawn; 1126 have ended in orders for liquidation and 317 have ended in approval of resolution plans. Further analysis shows Operational Creditors triggered 50.54% of the CIRPs, followed by about 43.01% by FCs and remaining by the CDs. It also shows that the share of CIRPs initiated by CD is declining over time. The outcomes of these cases could be summarized as follows:

a) The Code has rescued 277 CDs till September 2020 through resolution plans, one third of which

were in deep distress. The CDs rescued had assets valued at Rs 1.02 lakh crore, while the CDs referred for liquidation had assets valued at Rs 0.42 lakh crore when they were admitted to CIRP. Thus, in value terms, around three fourth of distressed assets were rescued. Moreover, the recovery rate under the IBC regime has been ~44% of the claims' value.

b) The realisable value of the assets available with the 277 CDs rescued, when they entered the CIRP, was only Rs. 1.02 lakh crore, though they owed Rs. 4.89 lakh crore to creditors. The resolution plans recovered Rs. 1.97 lakh crore, which is about 193 per cent of the realisable value of these CDs. Any other option of recovery or liquidation would have recovered at best Rs. 100 minus the cost of recovery/liquidation, while the creditors recovered Rs. 193 under the Code. The excess recovery of Rs 93 is a bonus from the Code.

c) Till September 2020, 14,884 applications for initiation of CIRPs of CDs having underlying default of Rs 5,15,170 crore were resolved before their admission, indicating lasting behavioural change among the defaulting corporate debtors, which only establishes IBC as a significant deterrent.

d) The 277 CIRPs, which have yielded resolution plans by the end of September 2020, took on average 384 days (after excluding the time excluded by the AA) for conclusion of process. Similarly, the 1025 CIRPs, which ended up in orders for liquidation, took on average 318 days for conclusion. Further, 132 liquidation processes, which have closed by submission of final reports took on average 332 days for closure. Similarly, 295 voluntary liquidation processes, which have closed by submission of final reports, took on average 359 days for closure.

e) The implementation of the Code got reflected in the Global innovation Index. The 2020 edition released on September 2, 2020 indicates improvement of India's rank in 'Ease of Resolving Insolvency' to 47 from 95 in the last year.

The Way Ahead

We have travelled thus far, but have miles to go in direction of developing a world class, inclusive and robust insolvency ecosystem. The President of India on April 04, 2021 promulgated an ordinance for pre-packaged insolvency resolution process for corporate persons classified as micro, small and medium enterprises (MSMEs). This framework shall provide much needed succour to the MSME sector reeling under the covid-induced distress, rescuing businesses and sustaining employment. With the completion of DHFL's CIRP, the current regime also has experience of conducting insolvency of Financial Service Provider (FSP). We may soon witness the dawn of insolvency framework for Individual insolvency, Group Insolvency and Cross Border Insolvency, which will be helpful in making the Code more comprehensive and inclusive. The provisions related to Insolvency and Bankruptcy of Personal Guarantors (PGs) to Corporate Debtors (CDs) came into force on December 01, 2019 and by December 2020 at least 31 applications were filed under these provisions.

The Code recognizes Insolvency Professionals, CoCs, Insolvency Professional Agencies (IPAs), Information Utilities (IUs), IBBI and Adjudicating Authority (AA) as six important pillars of IBC Ecosystem. As we have a well-placed system of legal discipline in the country under the supervision of the Hon'ble Supreme Court, the provisions of non-interference by civil and other courts into the matters of IBC has been largely implemented. However, the unfortunate criminal proceedings against IRPs/RPs are still a concern that need to be addressed to

ensure that IPs perform their professional responsibilities independently without any undue pressure or fear. Besides, best practices need to evolve around grey areas including avoidance transactions, COC conduct and IRP/RP's fee, among others.

Despite all the challenges, the IBC has opened new avenues for creditors and also a safe exit route for the promoters in case they suffer from a genuine business failure. Moreover, the Corporate Debtor also gets a lease of new life under the leadership of IPs under the able supervision of IBBI and IPAs. The IBC Ecosystem also provides a sustained training and updating of IPs through various knowledge programs organized by IBBI and IPAs. This mechanism of sustained capacity building of IPs equip them to manage CD as a Going Concern (GC) to maximize its value before change of the management through resolution process. IBBI and SEBI agreeing upon making a Panel of IPs for appointment as Administrators under SEBI norms, is another welcome step.

Going forward, with emerging jurisprudence including on 'Prepack framework for MSMEs', IIIPI is committed to gear up its members and stakeholders including bankers, and contribute policy inputs to improve the efficacy of ever-evolving insolvency law and practice.

Wish you all the best.

CA. Nihar N. Jambusaria

President, ICAI

Chairman, Editorial Board-IIIPI

Message from Chairman, IIIPI-Board

Dr. Ashok Haldia
Chairman, Governing Board
IIIPI, New Delhi

Dear Member,

The IBC regime in India is going to celebrate fifth anniversary on 28th May and six months down the line, IIIP of ICAI (IIIPI), the largest Insolvency Professional Agency (IPA) of the country, will also complete five years of its inception on 28th November 2021.

In these years, the IBC regime in India has witnessed number of challenges. While some of these were teething troubles; others were related to infrastructure, legal and systematic factors. These were accentuated by black swan event of COVID-19 pandemic. However, we as a whole have not only waded through these crises but also established landmarks in IBC ecosystem by adding newer dimensions to IBC regime in India. The insolvency professionals successfully completed resolution of Corporate Debtors (CDs) that had several inter-linked companies or related parties with operations spread in several countries.

Though there is long way to go, yet there are many achievements to celebrate. From inception till Dec. 2020, a total of 4,139 CIRP cases were commenced, of which 601 were closed on appeal or review or settled; 378 were withdrawn; 1126 have ended in orders for liquidation and 317 have ended in approval of resolution plans. Till December 2020, realisation by FCs under resolution plans in comparison to liquidation value, was 181.70%, while the realisation by them in comparison to their claims was 39.80%. Majority of the applications (14884 till September 2020) for initiation of CIRPs of CDs having underlying default of Rs.5,15,170 crore was resolved before their admission, indicating behavioural change among the defaulting corporate debtors.

As a result of effective implementation of IBC, India's global ranking in the World Bank's Ease of Doing Business (EoDB) Report has improved from 130 in 2016 to 63 in 2020 among 200 economies of the world. Besides, India has earned a place among the world's top 10 'improvers' in ease of doing business, for the third consecutive year.

On IIIPI front, it has matured as an institution and is further evolving and progressing aligned with the IBC regime in country. It is cognizant of recent developments regarding introduction of Prepack Insolvency framework of MSMEs with lower threshold. As the expectations from the insolvency professionals are rising in the evolving ecosystem, preparing the professionals and their continuous capacity building, have become integral part of IIIPI's operational strategy.

Resolution under the IBC regime is not just about finding a suitable buyer for the CD, but emphasis is also on running the CD as a Going Concern thereby maximising its market value. Thus, the job of an Insolvency Professional in his/her capacity of IRP/RP or Liquidator requires multidisciplinary and trans-disciplinary approaches. Furthermore, the changing economic scenario, technological innovations, and emerging challenges in the field of insolvency profession have put the knowledge creation at the core. At IIIPI, we have been focussing on research initiatives to better equip our members, as briefed in the following paras.

Enhancing Focus on Research

In its endeavour to provide the research inputs to our professional members, IIIPI has constituted various Study Groups involving experienced insolvency professionals and experts drawn from various professional backgrounds. As such two Study Groups, as mentioned

below, have submitted their reports to IIIPI while others are in progress. The Study Group on "Procedural and Substantive Aspects of Group Insolvency: Learnings from Practical Experiences" has provided a holistic perspective to group insolvency and have presented recommendations for a legal framework of Group Insolvency suitable to the Indian conditions. In this research, the Study Group has also studied the group insolvency frameworks in Asian countries and recent experience and jurisprudence in India.

Similarly, the Study Group on "COC's Role in CIRP under IBC: Recommendations on Best Practices" has presented its recommendations on various aspects of the functioning of COC to ensure a better coordination among IRP/RP, CD and Members of the COC. The copies of both these studies have been disseminated to the Insolvency professionals and various stakeholders. Besides, the soft copies are also available on IIIPI website. Earlier, IIIPI had conducted study on 'Timeliness and Effectiveness on Litigation under IBC" which was published in the October 2020 edition of the Resolution Professional.

Engagement with Stakeholders

We are increasingly involving various stakeholders in our knowledge-based programs and other events to provide better exposure, national and international, to our members and other stakeholders. Some of the recent programs were:

- Webinars on 'Capacity Building of Insolvency Professional on Legal Skills and Case Management' and on 'Prepack Insolvency Resolution Process: Report of the Subcommittee of the LLC' is association with British High Commission.
- Insolvency and Bankruptcy Code Series of 4 Sessions' in partnership with Confederation of Indian Industry (CII) and National Foundation for Corporate Governance (NGCG).
- Series of webinars on 'Information Utility Services' in association with NeSL.
- Program on 'The way forward for IBC 2.0', was organized with ETCFO vertical of *The Economic Times*.
- Webinar on 'Successful CIRP Case Studies' was organized involving concerned Rps.
- Workshop on 'IT/Infrastructure: Issues faced by IPs including documentation'.

What's Next

Lifting of IBC's suspension coupled with second wave of pandemic will lead to surge in insolvencies. Therefore, the insolvency professionals need to gear them up for the challenges, supported by technology, among other enablers. The operation of IBC regime in India, so far, has experienced several bottlenecks in the legal framework due to multiple litigations by the competing parties. There is need to remove these bottlenecks and develop holistic frameworks for Group Insolvency, Cross-Border Insolvency and Individual. Besides, we also need to develop industry specific expertise across professionals. IIIPI will continue to push these initiatives and reforms backed by research, involving various stakeholders.

In the new financial year, IIIPI's focus would also be to sustain the past efforts and strengthen the systems and processes to provide quality services to members and stakeholders. In this direction, one of the proposed steps is to create a web-based discussion-forum for members' usage for addressing their queries from professional colleagues.

We are very thankful for our members for reposing trust in us and reiterate our commitment to continue this legacy of excellence to provide professional edge to our professional members. We as professionals should continue to remember our duty towards the noble cause of insolvency profession, keep raising our competence and live up to expectations from us.

Wish you all the best for your future endeavours.

Dr. Ashok Haldia

Chairman, Governing Board

IIIPI

From Editor's Desk

Dear Member,

At the outset, I would like to express my gratitude to all the authors and reviewers of this edition as it's due to their efforts that we are able to bring the April 2021 edition of **The Resolution Professional** in its present form. This edition also becomes important as we are going to celebrate the 5th anniversary of the IBC regime on 28th May 2021.

The experiences under the IBC, 2016 so far are testimony to the fact that insolvency profession has been emerging as the one of most challenging and inter-disciplinary one. The professionals need to keep themselves abreast of latest developments and to equip themselves with right skills and attitudes in order to meet the expectations by various stakeholders. During difficult times as these, triggered by the pandemic, one should seek opportunity in adversity while upholding the noble cause of our profession. In this backdrop, the research journal initiative by IIIPI should be seen as a capacity building measure for the professionals and other stakeholders as well. Many enriching addresses, articles, interviews and updates, I am sure, will go a long way in enhancing the knowledge and skills of our readers.

Lenders as COC members being one of the important pillars under IBC, understanding their perspective can be crucial in the direction of smooth delivery of results. We are pleased to bring to you, perspective on many contemporary issues by Sh. Swaminathan Janakiraman, Managing Director (Risk, Compliance, Stressed Assets Resolution Group), State Bank of India (SBI), as an exclusive interview for *The Resolution Professional.* Under the 'Interview of the Edition' section, he has brilliantly and candidly shared thoughts and opinions on a range of issues related to IBC regime.

Besides, in this edition you will get five research articles and two successful CIRP Case Studies – "*CIRP of Amtek Auto Ltd.*" by Mr. Dinkar Venkatasubramanian and "*Insolvency Resolution Process of JEKPL"* by Mr. Bhuvan Madan.

Though presently applicable only for MSMEs, Pre-Packaged Insolvency framework has potential to transform the insolvency process in India. To keep our members in sync with the changing insolvency ambience, we have been conducting Webinars on Pre-Pack Insolvency in collaboration with the UK High Commission. In the previous edition we had published an article on Pre-Packs by Mr. David A. Kerr, IP from UK. In this edition, you will find an analysis on "*Pre-Packaged Insolvency Resolution Process for MSMEs*". In another article "*Insolvency Profession, A Noble Profession: Success, Challenges & Way Forward*" the authors have suggested different ways to realise the noble objectives of the insolvency profession.

On the question whether 'mediation' is possible under IBC, the author has probed into in his article "*Pre-Insolvency Mediation: Viable option for FC and CD*". In another article "*Project Land under Development Agreement–whether financial debt*?" the author after analyzing the present scenario, has strongly recommended that the landowner in a Real Estate Project should be considered as 'Financial Creditor' under the IBC. In the article "Corporate Resolution in Time Bound Manner", the author has focussed on development of law and jurisprudence in the direction of expediting the delivery in a CIRP.

Furthermore, the write up on 'Common Issues Identified by IIIPI during Inspection' is aimed at helping the IPs to avoid mistakes in conducting and compliances related to CIRPs. Besides, the journal also has its regular features, i.e., Legal Framework, IBC Case Laws, IBC News, IIIPI News, Services and Crossword.

Please feel free to share your candid feedback to help us improve the quality of the journal, by writing to us on iiipi.journal@icai.in

Wish you a very healthy and happy year ahead.

Editor

Settlement will always remain the first resort, but we also need Pre-Pack and CIRP as options on the table: Swaminathan J., MD, SBI

A transparent, amicable, and bilateral settlement is what we pursue in the first go, but there are cases where people are not cooperative enough. There, we need Pre-Pack and CIRP because in certain cases it may be necessary for us to have a legal process carried out so that we can demonstrate to the rest of the world that the settlement that has been reached is fair, that there is no moral hazard and no haircut agreed on beyond a point.

Shri Swaminathan Janakiraman
Managing Director, State Bank of India (SBI)
Risk, Compliance and Stressed Assets Resolution Group (SARG)

Shri Swaminathan is presently serving as Managing Director (Risk, Compliance and Stressed Assets Resolution Group - SARG), State Bank of India, from January 27, 2021. Prior to this appointment, he served as Deputy MD (Finance) and Dy. MD (Strategy & Chief Digital Officer) in the SBI. His over 30 years of banking carrier, includes five years of overseas experience in SBI, New York Branch. As a carrier Banker, his experience spans across the domains of Retail and Corporate Banking, Digital Banking, International Banking, Trade Finance, Correspondent Banking & FI products, and Transaction Banking products. He has also been a nominee Director of SBI on the Boards of Yes Bank and SBI Payments. He has also served on the Board of NPCI.

In an Exclusive Interview with IIIPI for ***The Resolution Professional***, in his interaction with by **Dr. Ashok Haldia**, Chairman, IIIPI-Board, **Shri Swaminathan** shared his experiences and views as a banker on a wide range of issues related to IBC regime. ***Read on to know more***....

Dr. Haldia: As you know, we are going to celebrate the fifth anniversary of the IBC, 2016. While everyone claims the successes of IBC, there are certain grey areas as well. What is your perspective as the largest lender of country and how SBI sees its role in shaping the IBC?

Shri Swaminathan: Thanks for this opportunity. It is proud privilege for me to be interacting with you and through this forum. It is always a pleasure for me to interact with professionals and learn from them. As a large market participant and as a bank, having the relevant experience across sectors, I think, it is our duty to be part of any such development and play the role we are required to do. However, such a system is possible only if everyone in the ecosystem works together. We are very thankful to the professionals who have been working with us closely. It is not just one or two players but the entire ecosystem that came together and worked in a coordinated manner – whether it is government, professionals, or judiciary.

Undoubtedly these past five years have been quite defining in terms of the way in which the stress of the Indian corporate sector has been addressed. I think IBC came at the right time and more importantly the stake holders rallied around the opportunity and converted it into a success story. Though more work is needed, but I think we should be proud of the success that we have achieved. This is because legislations take decades to evolve and produce success. The 4-5 years' period is a very small-time frame for the IBC to produce results. Yet, it has done tremendously well for three reasons - *firstly*, the way the legislation has been brought about by taking all the stakeholders' inputs into account and creating a solution-oriented process. *Secondly*, all the stakeholders have worked in a collaborative manner. The Government has responded to every single feedback. The number of amendments carried out so far indicate the intention of the Government in making the IBC a success. Furthermore, the way the judiciary has come forward to interpret some of the tricky issues and provide timely judgements, is also

a testimony of this cooperative approach. *Thirdly*, it is the resolution-oriented approach of the IBC. All the past attempts focused more on recovery than resolution. Even we as a lender were interested only in recovery. We were unifocal on that because options before us were limited.

Today, IBC being a resolution-oriented process is helping in maximizing value of business, preserving jobs, and helping in continuity of business in many cases, if not in all, with a better realization possible to all the stakeholders. In my view, if not a resounding, IBC has been a reasonably success model.

Dr. Haldia: How do you recall SBI's initial experiences in dealing with the IBC in terms of resistance by the promoters going to the Appellate Authority and the Supreme Court, etc. Have the hiccups of initial days reduced in terms of numbers and intensity or they remain, and new set of hiccups are emerging?

Shri Swaminathan: Very good question. See, this is the evolving legislation. Therefore, a complete mindset change is required on part of everyone – the Lenders, Corporate Debtors, Resolution Professionals and Resolution Applicants. They all come with different mindsets and at times balancing them is not easy. In the first couple of years, we have seen maximum challenges what we can call as teething troubles.

> **"Undoubtedly past five years have been quite defining in terms of the way in which the stress of the Indian corporate sector has been addressed. In my view, if not a resounding, IBC has been a reasonably success model."**

While all possible scenarios were emerging, inputs were taken and legislation was put in place, to be tested and matured with time. So, the process related challenges that we experienced in the first couple of years included the corporate debtors trying to retain control through various means by resorting to appeals to different forums. In some of the 'celebrity cases', the promoters made all out efforts to thwart the process of IBC. But finally, the IBC prevailed through the collective efforts of all the stakeholders.

Regarding the question, whether the intensity has come down, yes, definitely! I believe so because now borrowers have understood that owning businesses is not a birthright. In case they do not run their business efficiently, they stand to lose control of it. The mindset has been changed for the better now. The challenges that come from the corporate borrowers are now limited. On the other side, with the kind of amendments and pronouncements of the judiciary as well over last 2 -3 years, like who all can bid as resolution applicant, whether defaulters must be given a chance, whether owners and related entities should be given a chance, or whether criminal proceedings should impact the new owners which came in December 2020, etc. I think, the law has evolved step by step and most of the sections are now matured enough to be interpreted by court in a particular way. Besides, many ambiguities have been removed through amendments as well as judicial pronouncements. Therefore, the intensity has come down.

Yet, new challenges are also visible. Currently we have another celebrity case in front of the Hon'ble Supreme Court. We will get to hear the ruling very soon. I think, though the law will evolve more in next few years, the way it has moved so far, is quite encouraging.

Dr. Haldia: You mentioned change of mindset. Whether this change of mindset is appropriate for Pre-Pack framework? Should we launch the Pre-Pack for high value cases? Besides, I always believe that CIRP should be the last resort and before that there should be Pre-Pack. The voices are now being raised that before the Pre-Pack, there should be preference to amicable, trustworthy, and transparent settlement between the lender(s) and borrower(s). Your thoughts?

Shri Swaminathan: On Pre-Pack, it is indeed a welcome addition in the toolkit that we have for resolving the stress. As we know it has come after industry-wide consultations. The Ordinance has come, and the rules and regulations have also been notified. We will now start making use of this, though we will take two to three quarters to assess its efficacy. Even before lenders start making use of this, the Corporate Debtors need to see value in it so that they can

come with a viable Base Resolution Plan.

Regarding your question, whether it could resolve several cases and whether it will be the most preferred option? I do not think so. As you rightly said the first option must be settlement especially in the MSME sector, to which Pre-Packaged Insolvency Resolution Process (PPIRP) is targeted. This is because in case of MSMEs, there are not many multiple banking arrangements in place. Mostly they have sole banking arrangement or may be a couple of banks. So bilateral discussions in the form of one-time settlement, are undertaken if relationship with borrower is sought to be terminated. However, in case of continuing such relationship, the borrowers are normally offered financial restructuring or regulation-driven restructuring like COVID induced one or under MSME scheme, etc. I think that is what we would prefer as a first option. This is also because, CIRP or PPIRP, howsoever the cost or time effective it may be, is still an external process.

How many of MSMEs are ready to go through the pre-pack process is not yet known. We expect a small segment of borrowers will be able to make use of it. But having said that and based on our experience, I still believe that a bilateral discussion, settlement, or restructuring is the first preference. I do not think there will be any change in that.

Coming to the choice between CIRP and Pre-Pack, let me tell you how we handle the process within the bank. We have segmented the customers into three parts: small borrowers, mid-size borrowers and large borrowers. We typically go for a Board approved non-discretionary and non-discriminatory settlement scheme for first category. For mid-Size borrowers, we have an internal committee to scrutinize the cases in a fair manner. In case of large borrowers, we have an external expert committee deciding upon the restructuring of the debts, as the first preference. However, we need CIRP and pre-pack mechanisms as it may be necessary to have a legal sanctity, in all its fairness and to ensure that there is no moral hazard and there is no haircut agreed on beyond a point. Also, in the case of multiple banking arrangements, reaching consensus becomes difficult unless you have a formal forum in place. In such cases as well, we prefer to make use of CIRP or Pre-Pack.

On whether Pre-Pack should be applied to large-value cases, it is certainly possible. Presently, the target group is MSME with default threshold at Rs 10 lakhs. This being a new initiative, we needed to start somewhere. Based on experience, we can finetune the legislation, before expanding it to larger cases at the second stage, say, in a year or two. Besides, we would like to keep CIRP as on option on our table where borrowers are not cooperative, due to complexities or where there are multiple stakeholders involved. In such cases it is better to go in for a transparent price discovery under a formal legal framework.

“Based on our experience, I still believe that a bilateral discussion, settlement, or restructuring is the first preference.”

Dr. Haldia: In one of the research studies conducted by IIIPI, we found that each CIRP takes on an average about 113 days in litigation, costing about Rs 18 lakh. For 3000 cases, the amount works out to about Rs 540 crores. We also conducted studies on best practices of CoC members and one on Group Insolvency. The bankers are integral and an important stakeholder in a CIRP, as CoC member or otherwise. What has been your experience regarding CoCs? How have the CoC systems matured over time and what were the challenges so far? Sharing some responses of IPs, they feel the CoC systems and interface needs to be more streamlined. What more can be done to make the COC-IPs engagement more fruitful? **Shri Swaminathan:** CoC is a like a fulcrum around which the whole process revolves. Hence the need for CoC to be efficient because every stakeholder that is part of the resolution process is impacted by the decision-making of the CoC. Regarding our experience in handling CoC matters, it has been a mixed bag. There have been some great moments in terms of mutual understanding and coordination that helped us in resolving some of the trickiest issues. Yet there have been moments of frustration when we felt that the things were not moving as they should have.

Our expectations were also not different. This is because CoC is a kind of lenders' forum, not a regulated body and it should not be so. It is a kind of the self-regulatory forum, requiring self-discipline or best practices. IBBI is working on this and we also have a group of bankers engaged in developing and drafting a kind of Standard Operating Procedure (SOP) that could govern or cover FAQs for the members of CoC. But from SBI's perspective, we have put a clearly laid down methodology for the SBI nominees. Depending on the complexity and size of the debt, we have laid down the criteria of internal engagement on CoC matters. Besides, we endeavor to bring industry experience to the forum of CoC and our stakeholders.

Most importantly, and something our present Chairman Mr Dinesh Khara is very keen on, as an industry leader we are working with a group of COC members, under the umbrella of Indian Banks Association (IBA), through multiple webinars, etc. where stakeholders like IBBI, IIIPI, IPs, lenders, and others can come and share their expectations and what the COC can do to make the process efficient. I think it is our duty to strengthen the CoC forum by providing the right skill sets. Few lenders do not understand some of the intricacies that can delay the decision-making. Moreover, IPs need to deliver through this forum. We look up to industry experts like you and other stakeholders to debate and deliberate on how CoC can mature over time.

Dr. Haldia: Well said Mr. Swaminathan. We are also conscious about these challenges and have taken several initiatives. We wrote to all the banks about a capacity building programs for all the bankers particularly smaller banking institutions and we were able to organize one program attended by several bankers/FIs. We also approached IBA to jointly hold webinars for the bankers at different levels – the senior management, COC members, and others to create awareness and capacity building. We will be happy to work with you in this endeavor to empower the COC. This will also be helpful in addressing several doubts and misconceptions about the lenders in the minds of debtors.

Shri Swaminathan: We will be very happy to work with you and IBA to support this kind of skill-building initiative. Any investment we make on this, in terms of time and money will be worthwhile, resulting in the benefits from a mature CoC forum.

Dr. Haldia: Tell us about your expectations from IPs. As per one extreme view, IPs lack transparency and requisite competence to manage the CIRP as a CEO of the Corporate Debtor (CD) and balance the interests of the stakeholders, as often argued by the promoters of CD. On the other side, the IPs feel that they are considered akin to an employee of the CoC, the lenders not understanding their issues and not communicating their decisions in time, lenders not paying them reasonably and not releasing payments on time, etc. The bankers, at times, ask them to get temporary borrowings from the market for the professional fee to be reimbursed later. Sometimes IPs are even asked to arrange funds from their own sources to the fund cost of CIRP and liquidation. In what perspective do

you see these two extremes? And, what as a banker you can do to resolve some of these issues?

Shri Swaminathan: I think you have articulated the feedback of both the sides very well. I want to say, the truth lies somewhere in between. There are points in both the sides i.e., Bankers' feeling towards IPs and vice versa. Experience says, we need to bridge this gap. As senior management, when these feedbacks reach us, we try to sensitize our officials about the role of IP as a professional engaged by the ecosystem to ensure resolution. And that, though replacement of IP is an option, but there is no guarantee that the next IP will be any different.

Our guidance to our officials participating in COCs, is to segregate issues in terms of intent or integrity on one hand and lack of skill sets in resolution because of inadequate understanding of the process etc., on the other. In case of latter, we engage with concerned IP and equip him to understand those issues better. However, if it is the matter of integrity, we make a small group of COC to examine and make an impartial decision. About 90-95% of the issues are on account of inadequate understanding and experience. Of course, we have some of the excellent IPs with a lot of positive feedback. We must acknowledge the industry's efforts in terms of training IPs and giving them a professional touch.

We have some seen some of the most complex cases being handled by IPs. Though as a professional IPs have a responsibility to undertake, we have seen IPs going beyond their call of duty, wanting to work with us, and keep trying different solutions to an issue. The last 5% of the issues could be on account of the inadequate conduct of the IP. In that case we try and take quick action and if required, replace the IP. The inadequate conduct constitutes a small portion and I think in any system you have a few members who may not be competent enough

for their role. This is something we will have to live with.

Regarding the perception of IPs, I would like to advise the IPs that being a resolution professional you need to live up to the expectation of facilitating an orderly resolution. As an IP, you have enormous responsibilities while assuming role of managing CD. That calls for deeper engagement, complete understanding of the whole process, clarity of thoughts in terms of various options, and a solution-oriented approach rather than getting demoralized by the challenges. Finally, we expect and would like IPs to be completely transparent, honest, and committed to their cause. And only then they are cut out for this job. Inadequate capacity is not a problem as we can handle that by building the skills through sharing our experience and allowing them time to mature.

Dr. Haldia: Well. You have rightly said. That is why our focus in our Webinars for IPs is always on ethics – ethical conduct and ethical spirt. Because if they are not ethical from within then the ethical conduct will be superficial. We are also working on a Code of Ethics in which we will also address to the grey areas so that there is a consistency and transparency across the profession in those matters.

Now, let me come to another area i.e., Bad Bank. Based on over 20 years of my experience while working with various Development Financial Institutions (DFIs), and as expressed through some of my published articles on Bad Banks and Development Banks, theoretically, the Bad Bank is considered helpful in resolution of stressed assets. Do you think so? If yes, what essential ingredients a Bad Bank should have to make it happen so that it really serves to the purpose?

Shri Swaminathan: At the outset, the Bad Bank in our view is a good idea. Its time has come which we must pursue. We feel that it will improve the dispensation as compared to the past. This is because of setting up of NARC (National Asset Reconstruction Company) and AMC (Asset Management Company) presupposes an aggregation of debts as an essential ingredient. The lenders join and agree to transfer the entire or majority of debt to NARC. So far, the ARCs were facing the challenge that in most cases they used to acquire a part of the debt not giving them a majority and say in the decision making, among diverse set of participants. So, getting a consensus and value realization has been a challenge.

Now, the lenders shall come forward and there shall be a designated and targeted transfer to NARC. So, the aggregation is going to be a key differentiator compared to the earlier ARC process. That is what gives us confidence that with this, a resolution could be superior and faster. The second aspect is this will have an AMC (Asset Management Company) structure which can engage with stakeholders better to maximize the value. Currently, the ARCs have limitations in terms of business model. In fact, SBI's former chairman Sh. Rajnish Kumar has been a big exponent of this idea, having articulated this at various forums. So, the aggregation and better management structure is going to make the key difference and as a game changer.

Dr. Haldia: What next you think IBC should address? Do you think IBC mechanism is still not comprehensive in terms of Group Insolvency, Cross-Border Insolvency, and Individual Insolvency? What hurdles do you face in efficient handling the stress of large groups? What changes do you want in Group Insolvency and Cross Border Insolvency and how fast would you like that to happen?

> **"I would like to advise the IPs that being a resolution professional you need to live up to the expectation of facilitating an orderly resolution."**

Shri Swaminathan: The issue has two aspects – legislative and then implementation including judiciary. On legislation as pointed out by you, we need to expand the scope of IBC to handle the Group and Cross Border Insolvency. A group has been working on that and my predecessor, Mr. Setty has been part of that process. We look forward to getting the same formalized soon so that we can pursue group level and cross-border cases effectively.

Another challenge that we face, pertains to post-CIRP Cash flows and up to implementation. There are divergent views – some lenders hold the view that Post-CIRP cash flows should belong to the lenders whereas the other view is that it belongs to the Corporate Debtor (CD) that is to be taken over by the Resolution Applicant. Since the matter is sub judice at this point of time, I would not give any

recommendation. However, legislative clarification could remove the ambiguity around post-CIRP cash accruals considering the time lapse between the approval and implementation of plan in certain cases.

Coming to implementation part, I would like a lot of improvements to take place. Over last one year, we all have been seriously impacted by the COVID-19 pandemic and that includes various judicial forums. We expect Covid pandemic to ease out soon with normalcy restored. However, even after normalcy is restored, there is an urgent requirement to augment bench strength to handle the large number of admitted cases and cases pending for admission.

This is important to carry the momentum of first phase of IBC forward, which has been reasonably successful with some big-ticket resolutions. Of course, capacity building is needed here too, but that is not something I want to highlight now. Rather, the manpower issue in the courts should be addressed first, for faster disposal of the applications pending at various stages.

We expect Covid pandemic to ease out soon with normalcy restored. However, even after normalcy is restored, there is an urgent requirement to augment bench strength to handle the large number of admitted cases and cases pending for admission.

In nutshell, I would expect more done on legislative side with augmentation of capabilities on implementation side to unlock the value at stake, faster.

Dr. Haldia: How do you visualize the IBC or distress resolution in next 3 to 5 years taking the shape in terms of law, systems, and processes?

Shri Swaminathan: Taking a time frame of 3 to 5 years, I would imagine, and I am reasonably confident that IBC will evolve into a comprehensive legislative framework covering all forms of insolvencies whether it is corporate or individual or group or cross border, encompassing all possible facets. On the other hand, we expect a better delivery and response mechanism to ensure value maximization for all the stakeholders. We expect that the lenders' nightmare of pursing lengthy and complex legal process goes away sooner.

In next five years, I imagine a comprehensive IBC legislative process with adequate support structure and a well-developed ecosystem of Information Utilities (IUs) as well as Resolution Professionals, all coming together.

In next five years, I imagine a comprehensive IBC legislative process with adequate support structure and a well-developed ecosystem of Information Utilities (IUs) as well as Resolution Professionals, all coming together. I visualize a situation, for example, they meet over the weekend, take a proposal to NCLT which is approved in a week before getting implemented. Thus, value maximization of businesses can be achieved while preserving jobs.

Dr. Haldia: I at times get baffled by the fact that the same banker deals with the liquidation, pre-pack, CIRP and settlement. Now, all of them require different mindsets, different ecosystem, and culture. How as a banker, you expect them to switch on and switch off moving from one mindset to another? Is that not very difficult?

Shri Swaminathan: You said it right. That is what segregates men from the boys (in lighter mode). Every day, we need to wear different hats. We get to work across different verticals like marketing, under-writing, resolution, recovery, and rest of the ecosystems within a financial institution. Officials require maturity while playing different roles and doing so effectively determines the success or failure of an initiative. An individual's skill sets play a crucial role, which are acquired over a period. Not just resolution but in the context of any initiative, it is only when stakeholders can understand their role and play it effectively, success is achieved. And wearing different hats come naturally to us as bankers. At the end, it is the attitude that matters. If one has the commitment and attitude, it is not very difficult to realize one's goals.

Dr. Haldia: Thank you Mr. Swaminathan, for your comprehensive coverage of the subject and sharing your vision as a professional banker. This could not have been better.

Pre-Packaged Insolvency Resolution Process for MSMEs

The much-awaited Pre-Packaged insolvency under the IBC regime has been introduced through an ordinance in the form of Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs. This newly inducted Chapter IIIA of the IBC is in line the concept of debtor-in-possession. The minimum threshold debt to initiative PPIRP of MSMEs has been kept at Rs 10 lakh. Besides, the PPIRP Rule 2021, makes it mandatory to have Udyam Registration Certificate, among other eligibility criteria. In this backdrop, the author presents an analysis of the newly enacted PPIRP. ***Read on to know more…***

Devendra Mehta
The author is a professional member of IIIPI. He can be reached at devendra.mehta@gmail.com

Introduction

In the budget speech of FY 2021-22, the Finance Minister Ms. Nirmala Sitharaman, had made two major policy announcements that had an impact on the larger insolvency ecosystem in the country. The first was creation of an Asset Reconstruction Company (Bad Bank) and an Asset Management Company, that was to consolidate and take over the existing stressed debt and then manage and dispose of the assets to Alternate Investment Funds and other potential investors for eventual value realization[1]. The second was the introduction of an alternate methods of debt resolution and special framework for Micro Small and Medium Enterprises (MSMEs)[2].

In the post budget press briefings, several comments were made by senior members of the Government on the Bad Bank, though we still do not have its final contours. On the other hand, without much fanfare, the Ministry of Law and Justice, Government of India, efficiently and quietly,

[1] Budget 2021-22, Speech of Nirmala Sitharaman, Minister of Finance, February 1, 2021 – Para 75

[2] Idem – Para 82

rolled out the framework for MSMEs by way of an Ordinance[3] on 4th April 2021. The Regulation[4] and Rules[5] too were notified on 9th April 2021.

Common law countries tend to have creditor centric insolvency systems. India, being a common law country, was no exception and thus veered its Insolvency and Bankruptcy Code, 2016 (IBC) as a creditor-in-possession system. Nevertheless, jurisdictions that have aggressively moved from a creditor-in-possession system to a debtor-in-possession system have been receiving rave reviews from the global investor and financial community for ease of restructuring. As an example, Singapore's Insolvency, Restructuring and Dissolution Act[6] 2018, has been modelled on the lines of Chapter 11 of the US Bankruptcy Code and the country has successfully positioned itself as a restructuring hub in Asia.

"Thus, clearly Chapter III-A of IBC will be dealing with bulk of the enterprises in the country of which some may be listed on stock exchanges. It is to be noted that section 54A(2)(g) requires a special resolution by corporate debtor for initiating PPIRP."

Thus, the first steps by IBBI are in the right direction by introducing Chapter III-A i.e., Pre-Packaged Insolvency Resolution Process (PPIRP) in the IBC that internalizes the concept of debtor-in-possession. However, at several places the creditor-in-possession legacy flows into the concepts articulated in Chapter III-A, which may limit its widespread adoption. IBBI has been very proactive in incorporating feedback from the insolvency ecosystem and it is hoped that when the ordinance makes its journey to Parliament in the form of Bill some of these minor aberrations would be removed.

What is MSME?

Before discussing PPIRP, let us define MSMEs. According to section 54A (1) of IBC it is a corporate debtor classified as a Micro, Small and Medium Enterprise under sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006. The aforesaid section in-turn, vests power in Central Government to notify the criterion for classifying a MSME. The criterion was recently revised by the Government of India in its *Atmanirbhar* package on 13th May 2020 and the Gazette[7] notification was made for the same on 26th June 2020. Reserve Bank of India (RBI) too came up with detailed guidelines[8] based on the Gazette notification on 2nd July 2020. Accordingly, MSME as per definition, at the upper end, are enterprises with plant & machinery up to 50 crores and turnover up to 250 crores. It is to be noted that written down value of plant and machinery at the end of previous year is to be considered (not original cost) and definition excludes land, buildings, furniture & fittings. As a rough rule of thumb, if we consider value of land, building, furniture, and fixtures to be equivalent to that of plant & machinery, MSMEs at the upper limit will have an asset base of about 100 crores. Also, more than 99% of companies in India have a turnover of 250 crores[9] or less and in case of MSMEs the turnover criterion does not include export sales.

Thus, clearly Chapter III-A of IBC will be dealing with bulk of the enterprises in the country of which some may be listed on stock exchanges. It is to be noted that section 54A(2)(g) requires a special resolution by corporate debtor for initiating PPIRP. Thus, the minority shareholders of the corporate debtor will be fully aware of the PPIRP. To obviate any price volatility, that may be detrimental to minority shareholders, it would be ideal if a mechanism can be worked in conjunction with Securities and Exchange Board of India (SEBI) for securities that may be subject to PPIRP.

As per the PPIRP Rules 2021, an application for initiating the process may be made in respect of a corporate debtor classified as a MSME under sub-section (1) of section 7 of

[3] The Gazette of India, CG-DL-E-04042021-226365, The Insolvency and Bankruptcy Code (Amendment) Ordinance 2021
[4] The Gazette of India, CG-DL-E-10042021-226500, The Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021
[5] The Gazette of India, CG-DL-E-09042021-226474, The Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021
[6] Republic of Singapore, Government Gazette, Acts Supplement No 38, Friday, November 9, 2018
[7] The Gazette of India, CG-DL-E-26062020-220191, Ministry of Micro, Small and Medium Enterprises Notification
[8] RBI/2020-2021/10, FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21
[9] Ministry of Finance, Press Release, Release ID 1518550, https://pib.gov.in/PressReleasePage.aspx?PRID=1518550

the MSMEs Development Act, 2006. The law also mandates MSMEs to attach a copy of the latest Udyam Registration Certificate with the application form among others. Furthermore, the applicant MSME should be a Company or Limited Liability Partnerships (LLP). The law does not include Sole Proprietorship, Partnerships and Hindu Undivided Family forms of MSMEs under PPIRP.

What are Prepacks?

Prepack is a colloquial term and jurisdictions thus define the concept differently in their own special context. Broadly, a pre-pack is a reorganization plan that corporate debtor prepares with the assistance of an insolvency professional/administrator/advisors and has a buy-in of its creditors for preparation of plan. The plan may be put in place either before or after declaration of insolvency. The basic idea is to simplify the process and minimize the costs of insolvency.

"Given the litigation prone history of IBC, Government, should act in a magnanimous and bold manner and allow applications to be filed under Section 54C irrespective of the fact that an application under section 7, 9 or 10 is pending on the date of ordinance."

The PPIRP has been detailed in Figure 1. Appended is an analysis of certain aspects of PPIRP that either require further deliberation and clarity or aspects that insolvency professionals may encounter in a practical context.

Who can initiate[10]

PPIRP can be initiated by a corporate debtor who has not undergone either PPIRP or insolvency resolution process for a corporate debtor (CIRP) in three years preceding the PPIRP initiation date, is not currently undergoing CIRP, no order for liquidation is passed under section 33 of IBC and is eligible to submit plan under section 29A. Also, financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six percent in value of the financial debt due to such creditors, must have approved such an initiation proposal. In case the corporate debtor does not have any financial creditors, not being its related parties, under Regulation 14(8) the applicant shall convene a meeting of operational creditors, who are not related parties of the corporate debtor.

The criterion for initiation is fair and mirror the ones of most advanced insolvency jurisdictions. The requirement of eligibility under section 29A too are lenient as corresponding amendment has been made to section 240A of IBC. Section 240A now reads that the provisions of clause (c) and (h) of Section 29A shall not apply to the resolution applicant in respect of corporate insolvency process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.

However, in case a meeting is called under Regulation 14(8) it will be difficult to muster requisite strength and thus a lower threshold, of say fifty-one percent, present and voting should be provided for. Currently, it is not clear from regulation as to what the threshold is, in case of operational creditors, under Regulation 14(8).

Admission of application

According to section 11A, if an application under section 54C is pending, or is filed within 14 days of filing an application under section 7,9 or 10, the adjudicating authority will give priority to application under section 54C.

However, if an application under section 7, 9 or 10 is pending on the date of Ordinance or an application under section 54C is filed after 14 days of an application under section 7,9 or 10 the adjudicating authority will first dispose of applications under section 7, 9 or 10. The aforesaid clause has a potential for endless litigation. What happens if corporate debtor agrees to a settlement with an operational creditor pending admission on the date of ordinance and thereafter files under section 54C – it will waste precious time of National Company Law Tribunal (NCLT). Pleas would be made before adjudicating authority that a special resolution cannot be passed in 14 days. Article 14 applications will be filed in Supreme Court claiming inequality before law.

Given the litigation prone history of IBC, Government, should act in a magnanimous and bold manner and allow applications to be filed under Section 54C irrespective of

[10] Chapter IIIA IBC, Section 54A

the fact that an application under section 7, 9 or 10 is pending on the date of ordinance. Similarly, it should extend the 14 days period suitably to say 60 days. The other organs of the Government are taking similar steps in light of the second wave of Covid; recently Ministry of Finance extended the emergency credit line guarantee scheme (ECLGS) yet again, this time to SMA1 category borrowers[11].

Such a change would also read harmoniously with the Preamble of the Ordinance, "Whereas it is considered expedient to provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises under the Insolvency and Bankruptcy Code, 2016, ensuring quicker, cost effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to continuity of their businesses and which preserve jobs". In the current second wave of Covid-19, with a dearth of resolution applicants, Section 7 and 9 application if pursued are a sure path to liquidation for MSMEs. Even in normal times, normalised for defunct companies, liquidations far exceeded resolutions under CIRP, and we continue to be in exceptional times.

Debtor in possession

Section 54H states that management of the corporate debtor shall vest in Board of Directors and the corporate debtor shall exercise and discharge their contractual or statutory rights. However, Regulation 50 provides that corporate debtor shall not undertake transactions above a threshold and any other matters decided by the committee of creditors (COC) and not covered under section 28.

Several clauses under section 28 should ideally be kept outside the purview of COC in a debtor in possession scenario, namely, delegation of authority to any other person, make any change in management of corporate debtor, make changes in appointment or terms of contract of personnel, make changes in appointment and terms of statutory auditor or internal auditor. It is also hoped that COC will not impose restrictive conditions that may go against the spirit of debtor in possession.

[11] Finance Ministry widens emergency credit line guarantee scheme scope to SMA-1 loans- The New Indian Express dated 17th April 2021.

Avoidance, fraudulent or wrongful trading

Chapter III-A delves into avoidance, fraudulent or wrongful trading transactions at number of places. Section 54C(3) (c) for initiation of PPIRP requires a declaration from corporate debtor of the aforesaid transactions. Section 54F(2)(h) requires the resolution professional to file application for such transactions and section 54F(3)(f) requires resolution professional to collect information on them. In case PPIRP is terminated under section 54N or PPIRP is converted to CIRP under section 54O, the proceedings initiated for such transactions continue.

> **"Avoidance and fraudulent transactions should only be applicable under section 54J (2) where during PPIRP, the affairs of corporate debtor have been conducted in fraudulent manner, or there has been gross mismanagement and the management is vested in the resolution professional."**

In an ideal world for a debtor in possession framework, avoidance and fraudulent transactions should not be considered as one allows debtor-in-possession with some degree of implicit trust. Singapore's Insolvency, Restructuring and Dissolution Act 2018 have two rehabilitative procedures namely the "supercharged scheme" which is debtor in possession and "judicial management" which is creditor in possession. The provisions relating to impeachable transactions are not applicable to supercharged scheme. In similar vein, thus the avoidance and fraudulent transactions should only be applicable under section 54J (2) where during PPIRP, the affairs of corporate debtor have been conducted in fraudulent manner, or there has been gross mismanagement and the management is vested in the resolution professional.

Nevertheless, considering the exigencies of India, if we want to persist with avoidance and fraudulent transactions, the time prescribed is too short to arrive at a meaningful conclusion. Regulation 41 prescribes thirty days to form an opinion on transactions covered under section 43, 45, 50 or 66, forty-five days to decide and sixty days for application to adjudicating authority. Any detailed study

of financials, including a forensic audit, in such tight timelines will not do any justice to the assignment and impose extra costs.

An alternate could be to let financial creditors decide which corporate debtor should be investigated for such impeachable transactions. Financial creditors usually have a wealth of data about corporate debtor gleamed from monthly and quarterly reports. In case of delinquent debtors, they may have a "forensic" report irrespective of the nomenclature given to such a report. Where the financial creditors identify such a corporate debtor, the exercise for impeachable transaction should be started by resolution professional pre-admission to PPRIP. This would give enough time to reach a fair and just conclusion on such transactions.

Section 54B (3) states that the fee payable to the insolvency professional in relation to the duties performed under the section shall form part of the PPIRP costs if the application for initiation of PPIRP is admitted.

Resolution Plan

The corporate debtor submits the base resolution plan under section 54K, which may be revised on request of committee of creditors (COC). If the plan does not impair operational creditors and is in conformity with subsections (1) and (2) of section 30, the COC may approve the base resolution plan.

In case the aforesaid base plan is not approved by COC, the resolution professional will invite new plans from prospective resolution applicants and lay down criterion and basis for evaluation. The resolution professional will present to COC such plans that meet the criterion and confirm to requirements of section 30(2). Regulation 48 prescribe mechanism to better competing plans and is based on a Swiss challenge. The COC may choose the plan if it is significantly better than the base plan and in case none of the plans is chosen the resolution professional shall file for termination of PPRIP.

It is pertinent to note that under section 54K (14), if the resolution plan provides for impairment of any claims owed by corporate debtor, the COC may require the promoters of corporate debtor to dilute their shareholding or voting or control in corporate debtor. In case the resolution plan does not provide for such dilution, the COC must record reasons for the same. The aspect of equality before law will rear its head again vis-à-vis the resolution plans. Whereas plan of corporate debtor is not required to impair operational creditors, no such requirement exists for plan from any other resolution applicant. Thus, for an apple-to-apple comparison the resolution professional may have to specify a criterion for invitation of plans, of not impairing operational creditors. Moreover, COC will be cagey in recording a reason for non-dilution of promoter. As we are dealing with a smaller asset base, and thus as a corollary with limited number of lenders for each corporate debtor, such a condition may result in increase in one-time settlement outside of PPRIP.

Fees of Insolvency Professional

Lastly, I will be failing in my duty to my fellow brethren if I do not mention the peculiar way clauses related to fee have been prescribed.

Section 54B (3) states that the fee payable to the insolvency professional in relation to the duties performed under the section shall form part of the PPIRP costs, if the application for initiation of PPIRP is admitted. Regulation 8 specifies that corporate debtor shall maintain a separate bank account with such amount to meet the fee of resolution professional and expenses incurred by him for conducting the process. Section 54(4) (c) provides that in case of rejection of resolution plan by AA, the PPIRP costs, if any, shall be included as part of liquidation costs.

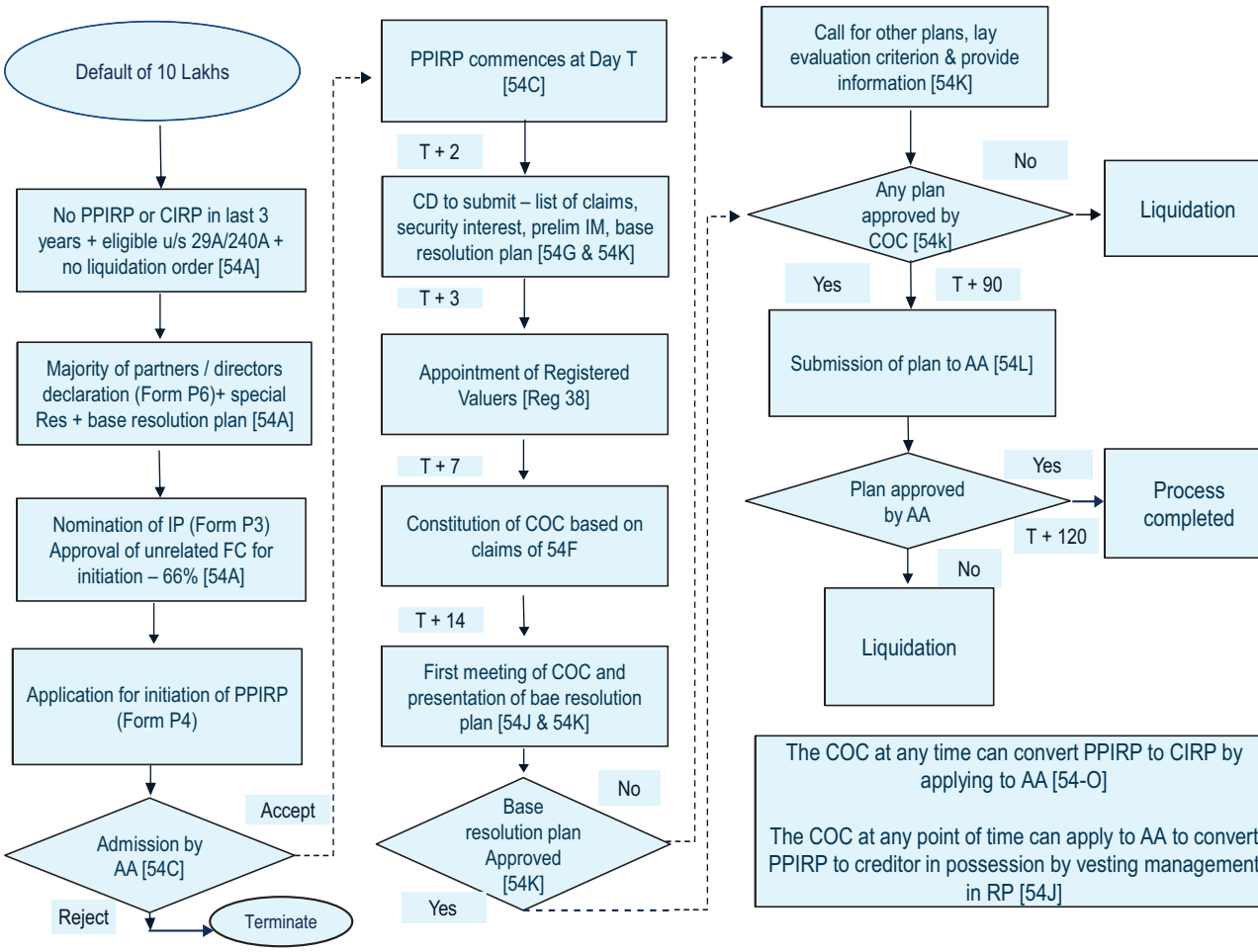
Section 54N(4)(b) provides that in case of termination of PPIRP, the PPIRP costs, if any, shall be included as part of liquidation costs. Section 54-O(2)(c) provides that in case of initiation of CIRP, the PPIRP costs shall be included as part of insolvency resolution process costs for CIRP. Unlike section 54B (3), for other fee related sections, no separate bank account is prescribed. In certain situations, thus the fee may become extremely backend. It is to be noted that due to the inherent definition of MSMEs, the insolvency professionals with large set-up may not be

inclined to take up such assignments. Thus, back ended fee would be a burden for insolvency professionals with a small set-up.

Conclusion

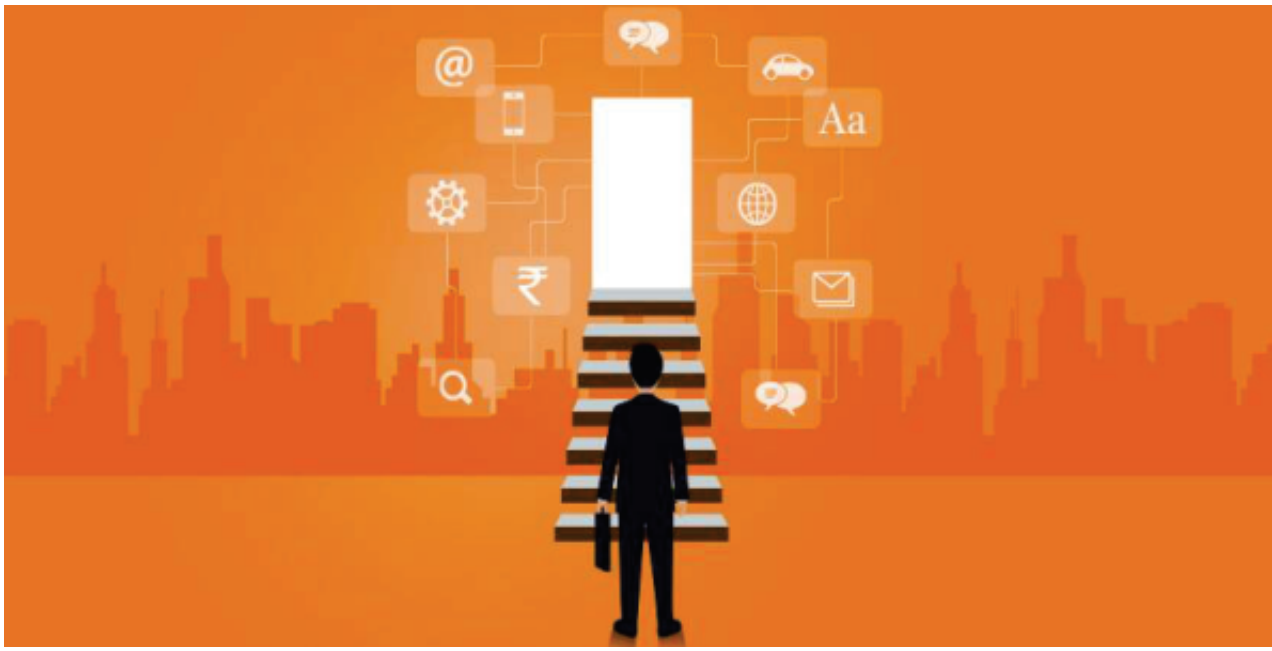
The initiative by IBBI to move to a debtor in possession model with creditor oversight is to be commended. Simple eligibility requirements, structured duties of resolution professional pre and post admission, fair timelines, availability of moratorium, and just & fair approach to resolution plan considering that operational creditors will in-turn be MSMEs too are concepts that will make PPIRP a success. If the anomalies detailed above are clarified, these baby steps will enable IBBI to roll out pre-packs for all corporates irrespective of their size.

PPIRP Process



Square Brackets denote relevant sections of the Insolvency and Bankruptcy Code 2016

Insolvency Profession, A Noble Profession: Success, Challenges & Way Forward



The role of an Insolvency Professional (IP) is very crucial in successful resolution of a Corporate Debtor (CD) under the IBC. Therefore, the Code itself has set up high standards of professional ethics for the IPs in their various capacities i.e., IRP/RP/Administrator etc., which has also been emphasized and deliberated in individual cases by IBBI and Judiciary. In the light of those standards and precedents, the present article provides a practical approach to IPs on how to ensure implementation of high standards of professionalism while conducting their assignments thereby contributing their bit in making insolvency a noble profession. ***Read on to know more...***

Vijaykumar V. Iyer and Sonal Singhal
(The author is a professional member of IIIPI and Co-author is a Company Secretary. He can be reached at viyer@deloitte.com)

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC/Code), since its enactment, has led to a paradigm shift in approach towards dealing with the problems of accumulating non-performing assets (NPA) and helping the financial sector with measures of early detection of stressed assets, recovery and restructuring. Being an effective legal framework for timely resolution of insolvency and bankruptcy, the Code encourages not only entrepreneurship but also improves ease of doing business, and facilitates more investments leading to higher economic growth and development.

The IBC endeavors to save the life of a company in distress. *It is a beneficial legislation which puts the company back on its feet, not being a mere recovery legislation for creditor*[1]*. If there is a resolution applicant, who can continue to run the company as a going concern, every effort must be made to try and see that this is made*

[1] *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*, (2019) 4 SCC 17 (hereinafter 'Swiss Ribbons')
[2] *Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.*, (2019) 2 SCC 1.

possible, which is the ultimate object of this legislation before the death of the company which is liquidation through sale of its assets[2]**.**

Dr. MS Sahoo, Chairperson of Insolvency and Bankruptcy Board of India (IBBI) in one of his articles[3] has said that *"..., default typically reflects relative under-utilisation of resources at the disposal of the firm as compared to other firms in the industry. The Code ensures optimum utilisation of resources at all times by preventing use of resources below the optimum potential, ensuring efficient use of resources within the firm through a resolution plan; or releasing unutilised or under-utilised resources through closure of the firm and thereby maximising the value of the firm and in turn. The resources, that are currently unutilised or underutilised or rusting for whatever reason, can be put to more efficient uses, enabling the growth rate to move up by a few percentage points."*

"A high level of professional responsibility with all its nuances of expert knowledge, technical know-how, financial, operational and management expertise are all important contributors for being the desired Insolvency Professional (IP) capable of effectively managing a company in stress and ensuring its revival."

Ultimately, a company is an "artificial legal person", business of which, is controlled, managed and carried out by its members in their capacity as promoters /directors and other personnel/its management contribute and nurture its growth from its infancy stage. Therefore, growth and health of a company depends on various business decisions taken by its management, market demand and supply, various economic policy decisions and such other factors which influences the growth and fate of particular company.

When the Corporate Insolvency Resolution Process (CIRP) commences, the Interim Resolution Professional/ Resolution Professional (IRP/RP) takes custody of the company and is *de facto*, in charge of its management. One wrong or slip in a business decision or one change is economic policy can impact the future of the company resulting into further loss and reducing the chances of revival. A high level of professional responsibility with all its nuances of expert knowledge, technical know-how, financial, operational and management expertise are all important contributors for being the desired Insolvency Professional (IP) capable of effectively managing a company in stress and ensuring its revival.

Who is a 'noble' Insolvency Professional?

The Code defines the term 'Insolvency Professional' (IP). The question which comes in mind is that why an administrator of the insolvency proceedings is termed as a 'professional'? It is important to understand what makes a person a professional. A professional is defined as a person who identifies himself as having expertise in a field of activity and considers issues placed before him in an objective and impartial manner, subject nevertheless, to code of conduct[4]. Thus professionals are expected to have both domain knowledge and practical experience. They lay down the benchmark for their quality, efficiency and good governance.

The practice of any profession creates awareness in the public mind and as the practice grows unabated in providing service to society, it creates an instant confidence in the public and an abiding faith in the ability of a professional to provide flawless service. This creates an enduring bond which deserves to be cherished. The Disciplinary Committee of the IBBI in Vijay Kumar Garg's Order[5] identifies the insolvency profession as a noble profession. This is particularly because the primary question an IP should be putting to himself/herself is 'how do we serve' rather than 'what do we sell!'; as many societal causes are associated with the insolvency resolution

[3] Sahoo, M. S. (2019), A Journey of Endless Hope, *Insolvency and Bankruptcy Code: A Miscellany of Perspectives, Available at https://www.ibbi.gov.in/uploads/publication/2019-10-11-191135-wv5q0-2456194a119394217a926e595b537437.pdf*

[4] Rao, Prahlado, D. K. (2017): Role and Responsibility of Insolvency Professionals under the Code, March 2017, *ICSI Chartered Secretary*.

[5] IBBI, Disciplinary Committee in Mr. Vijay Kumar Garg Order, June 08, 2020, *Available at* https://www.ibbi.gov.in/uploads/order/2edd5a8a324c763b8e5ba42b354278aa.pdf

process. A revival of a company through a successful resolution plan under IBC with expert management enables a company to resolve its debts, avail new credit facility, sustain employment, create more work force opportunities and to remain relevant in the market and contribute to the growth of GDP of the country. Unlike the earlier recovery / restructuring mechanisms which permitted creditors to have negotiations only with its existing promoters/ management or to enforce its security interest through sale of assets of the company, IBC as a procedural law lays down a time bound process enabling the creditors, through its appointed resolution professional, to explore and seek the best resolution plan from other potential business players/ industry experts in the market.

The role of an IP as we see, is to act as a catalyst to maintain and revive a company by resolution of its debt in the best interest of all the stakeholders including the company which contributes to the overall growth of the economy. As rightly mentioned in The UNCITRAL[6], Legislative Guide on Insolvency Law *"..., The insolvency law must be complementary to, and compatible with, the legal and social values of the society in which it is based and which it must ultimately sustain."* All professions have a fiduciary role in that they are social trustees. With a societal cause firmly impressed in it, an insolvency profession is rightly upheld as a noble profession.

However, nobility of a profession relies on the deeds of its professionals. A profession, *per se*, can never be noble, unless its members make it so through their behaviour, professional competence and service to society. Uncompromising integrity, high technical competence, strength of character, and unflinching commitment are key hallmarks of a noble professional. And for the insolvency profession to be seen as a noble profession, its professionals must exercise any discretionary judgments that are evidenced by their factual accuracy (i.e. truth), pragmatic effectiveness and with a fundamental moral soundness. Therefore, the legal profession (as upholder and protector of law), the medical profession (for upholding by the best of human virtues such as altruism, compassion and the desire to alleviate human suffering – and as repeatedly seen through the recent pandemic times) and the Teaching profession are considered among Noble Professions.

The Supreme Court in the matter of *Sanjeev Datta (1995) 3 SCC 619: (1995 AIR SCW 2203)* has stated, *"The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. ...The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practise it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible."*

"The primary question an IP should be putting to himself/herself is 'how do we serve' rather than 'what do we sell!', as many societal causes are associated with the insolvency resolution process."

In *V.C. Rangadurai vs. D. Gopalan and Others* (1978), a majority judgment in an appeal filed under Section 38 of the Advocates Act 1961 Act speaking through V.R. Krishna Iyer, J. observed as follows and set out the expectations from a noble profession: *" When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a human tomorrow".*

As we are aware, an IP is a vital constituent of a process under the Code who has been assigned with a wide array of

[6] UNICTRAL Legislative Guide on Insolvency Law published by United Commissions on International Trade Law, July 2019, *Available at* https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law

functions so as to effectively strive to maximise the value of assets of debtor. Since the insolvency profession is still at a nascent stage it is in the hands of the insolvency professionals to set and demonstrate the quality of service they render and to enhance their level of professionalism and services in the society. The credibility of the whole process under the Code hinges upon the conduct and professional competence of Insolvency Professional who is required to unconditionally observe the Code of Conduct, both in form and in spirit. A profession is known by the practices its members professes and visibly demonstrate and the code of conduct that they adhere to. A profession is therefore also identified by the collective behaviour of its members and that is consistently repeated at least by a majority, if not by all its members.

> **A profession is therefore also identified by the collective behavior of its members and that is consistently repeated at least by a majority, if not by all.**

Role of the IBC ecosystem to enable and promote professionalism

The IBBI has set up a robust ecosystem through the Code, the regulations there under and the various circulars issued from time to time to guide and support the IPs. A comprehensive framework is enumerated by the Code read with the regulations defining the expectations and role of an IP.

Firstly, the Code of Conduct outlines the ethical principles which govern the decisions and behaviour of an individual IP and sets a benchmark of right actions at a given point of time. The Code of Conduct set out for insolvency professionals have laid down the principles or restrictions which would be germane to the high standards of a noble profession. Secondly, the Code has in-built checks and balances. A resolution professional is not given decisive power in respect of certain matters and is required to seek approval of the Committee of Creditors (CoC) for acts such as, to raise interim finance, to change the capital structure of the corporate debtor, to create security interest over the assets of the corporate debtor, to make any change in the management of the corporate debtor and its subsidiary and others[7]. CoC has been empowered to decide on commercial viability and feasibility of resolution plans received. To be a fair and successful professional, it is prudent for an Insolvency Professional to run a transparent consultative process with the CoC without compromising on his independence.

Thirdly, IBBI, the various insolvency professional agencies (IPAs) and some of the professional study circles have been conducting regular knowledge sharing exercises that have provided guidance to insolvency professionals and helped them to improve the quality of the professionalism in their acts.

Fourthly, section 60(5) of the Code enumerates the situations where a matter may be referred to the Adjudicating Authority wherein it passes an order for delivery of justice. Therefore, while performing his duties whenever a need is felt a resolution professional can also reach out to adjudicating authorities for necessary guidance and orders in the interest of the process. Besides, various judicial pronouncements and the orders passed by the Disciplinary Committee of IBBI have also provided clear guidance for insolvency professionals.

The institution of Insolvency Profession stands on the conduct and capability of its professionals. The capability needs to be enhanced continuously because of the evolving legal and regulatory framework as also the jurisprudence and evolution of best practices, including the use of technology. The objectives of the Code cannot be achieved unless the resolution professional strives for excellence and demonstrates fairness in the conduct of the processes in order to inspire confidence among all the stakeholders.

Challenges of an Insolvency Professional

The role of an Insolvency Professional is crucial as he/she must manage the business of the corporate debtor as a going concern, navigate various legal and regulatory issues, address the needs of multiple stakeholders and proactively seek a successful resolution of the corporate

[7] Section 28, IBC, 2016

debtor. At every phase of CIRP, the Insolvency Professional faces different types of challenges that vary from the nature of industry, size of corporate debtor, geographical location etc. Some of the challenges looked at from the lens of perception that assesses the excellence of the professional and consequentially the nobility of the profession, are discussed below.

Firstly, there are several practical challenges which are faced by a resolution professional on the operations front. An Insolvency Professional somehow faces the heat of inactions of the corporate debtor during the previous years and is made answerable for sins of the past. Statutory/revenue authorities actively send notices for outstanding dues for the pre insolvency period and the authorities tend to accelerate hearings of pending assessments. The resolution professional is expected to be responsive, extend all help and support, provide details of information that could extend to several years in the past, and to ensure that all this is done in the midst of all his responsibilities of running the CIRP. Any lacunae or delay by the corporate debtor in providing such support called for by the authorities is seen, more often than not, as a limitation on the professional competence of the resolution professional.

"To be a fair and successful professional, it is prudent for an Insolvency Professional to run a transparent consultative process with the CoC without compromising on his independence."

Secondly, there are many corporate debtors who have not cleared the dues of their employees due to the deteriorating health of companies. These companies have also not fulfilled their statutory obligations to provide employment benefits, which creates significant pent-up dissatisfaction among employees. As soon as a resolution professional comes in, the employees refresh their demands for their dues/incentives, demonstrate a higher level of aggression in behaviour and approach and could also cause severe disruption to the operations. Some of the officers and personnel of the corporate debtor erroneously and at times, intentionally, convey the blame of such non-payment as being that of the IRP/RP. The IP is often perceived as the 'wrong-doer' who is withholding payments of employees.

One of the other challenges faced by any Insolvency Professional is to deal with multiple stakeholders who have differing interests and tends to see the resolution professional as being in cahoots with the promoters and *vice versa*! Within the CoC itself, the financial creditors could have differing interests, and each again believing that the Insolvency Professional is unfairly favouring someone else. Another major area of conflict for an Insolvency Professional is the area around claims by creditors. In the matter of *Swiss Ribbons Pvt. Ltd. v. Union of India*[8], the Apex Court had observed that '*the resolution professional has a duty under the Code to receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made*... .'Any and all such interactions with different stakeholders and claimants impact the perception of third parties on the professionalism of Insolvency Professionals. Quite often, the Insolvency Professional is seen as the culprit, unless he is able to prove otherwise. An Insolvency Professional is nobody's friend ……..and everybody's enemy!

One of the other challenges of perception faced by the insolvency professionals are the complaints against them at various fora. Most of these complaints are frivolous and such complaints continue against the resolution professionals even when they demit office. The subject of the applications vary and includes status and verification of claims, complaints by employees for payment of employment related benefits, allegations against the CIRP, proceedings by authorities and many others. As the society at large, in general, is not aware of the facts of the cases, these complaints tend to create a negative perception in the society about the insolvency profession. It is not to say that some of the complaints are not genuine; they are and quite correctly, require appropriate redressal. But, the irregular acts of a few that are highlighted in the public arena are sadly perceived as the collective behaviour of many.

Due to the aforesaid challenges faced by an IP in the insolvency process an unpleasant and cynical image is perceived by creditors, statutory authorities and even by society at large. An Insolvency Professional is at times, not generally considered as being associated with a noble

[8] Swiss Ribbons, supra, ibid, 1.

profession carrying out a public service. And we, insolvency professionals must realise that it is society, and not us insolvency professionals of an aspiring profession, who will finally determine whether a profession is a noble profession serving its purpose to society, or not.

Way Forward

Regardless of the challenges faced by the resolution professional it is his duty to adapt and survive in a tough environment to ensure that the process is competently run, so that any challenges faced do not put their culture of professionalism at risk.

Primarily, insolvency professionals need to uphold the professional standards and enhance the general morality of the profession. The fact that one is an Insolvency Professional must be synonymous with the fact that one is a person with integrity. And one key behavioural characteristic to adopt is that an Insolvency Professional must be transparent in his/her actions. There is no persuasiveness more effectual than transparency; and transparency primarily requires clear and continuous communication with all stakeholders. An Insolvency Professional should be approachable and be actively willing to enter into a transparent dialogue with each and every stakeholder including employees of corporate debtor, service providers, operational creditors etc and shall keep them updated of the progress of the CIRP. S/he should be a person who can be approached by all the stakeholders, irrespective of their hierarchy in the corporate debtor without any hindrance created basis their position.

Besides, an IP must also strive to upgrade his skill set in view of the evolving law and must *"re-skill and upskill"* in the continuous pursuit of excellence. For example, for implementing a successful resolution under the proposed pre-pack regime, insolvency professionals would need to know how to 'sell a company' so as to be able to obtain more than one scheme of resolution. This will require an IP to acquire skills of an investment banker who knows how to highlight the positives while mitigating the negatives of the company he is 'selling'. Secondly, the pandemic has accelerated the adoption of digitization across multiple streams of work, acts and activities. Furthermore, IPs will need to be at the forefront of adoption of technological tools that run a CIRP, cheaper, faster and/or better.

And finally, there is the question of mindset. Borrowing the words (from Harvard Business Review) of Patrick Doyle, CEO of Domino's Pizza– two of the great ills of executive (IP) life are what he calls, borrowing from behavioral economics, "omission bias" and "loss aversion[9]."

(i) Omission bias is the tendency to worry more about doing something than not doing something, because everyone sees the results of a move gone bad, and few see the costs of moves not made.

(ii) Loss aversion describes the tendency to play not to lose rather than play to win. "The pain of loss is double the pleasure of winning," he argues, so the natural inclination is to be cautious, even in situations that demand creativity.

Insolvency professionals need to be bold, master acceptance, and take ownership for what he is responsible for. Yes, it is a tough job and to repeat the old cliché – when the going gets tough, the tough get going! Insolvency professionals will be well served by being alert to the above two great ills and to instead demonstrate faith in the Code, faith in the Judiciary, faith in the Regulator and above all, faith in one's conscientious actions. As our national motto states it best, [Ultimately] Truth alone Triumphs!

Conclusion

Insolvency professionals need to re-affirm their allegiance to the Code of Conduct, not just in form of protocol, but in the spirit of substance, instilling and demonstrating every act with its core elements. Swami Vivekananda has said words of wisdom, "*A person should not be judged by the nature of his duties, but by the manner in which he does them"*. This equally applies to an Insolvency Professional. It is only when we insolvency professionals engage in our activity with a spirit of purpose of serving society, giving our best and still with an urge to do better, that society will respect us, and that we could, and then would, be seen as truly being part of a noble profession.

[9] Taylor, Bill (2016), How Domino's Pizza Reinvented itself, *Harvard Business Review* (2016), November 28, *Available at* (https://hbr.org/2016/11/how-dominos-pizza-reinvented-itself)

Pre-Insolvency Mediation: Viable option for FC and CD

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) has been amended several times including regular legislative process and through ordinance by the President. It has been the most dynamic legislation from time of inception and has been facing judicial scrutiny which has led to provisions being upheld, read down and sometimes struck down. One such interesting instance has been a recent welcome judgement by NCLAT wherein the mediation amongst the parties was permitted even after initiation of insolvency and thereafter the insolvency was set aside. In the present article, the author investigates into various aspects of Pre-Insolvency Mediation in the IBC regime in India. ***Read on to know more…***

Nipun Singhvi
The author is a practicing lawyer.
He can be reached at
canipunsinghvi@gmail.com

Triggering and powers of FC

It has been time and again held by the Supreme Court, most recently in the matter of *COC of Essar Steel* Vs *Satish Kumar Gupta*[1] that the IBC has focussed on Financial Creditors (FC) as that class who are ranked highest in pedestal due to their intelligent class who actually pump blood in the company by infusing finance and therefore the *intelligible differentia* exists.

The Code allows FCs to trigger insolvency and the Adjudicating Authority (AA) has to be satisfied only on two grounds mainly on debt has been due and default has occurred Rs.1 Crore or more. The defence of dispute as in the case of Operational creditor does not find place in case of FCs.

FC is the decision maker and therefore the complete Corporate Insolvency Resolution Process (CIRP) is in hands of FCs. Even the decision of resolution or liquidation depends on the majority decision of FCs collectively.

[1] Civil Appeal No. 8766-67 OF 2019

Inherent Powers

NCLT has been exercising inherent powers from time to time in case the FCs and suspended board members wants to settle the matter after initiation. The Supreme Court in the landmark judgment of *Swiss Ribbons Pvt. Ltd. & Anr Vs. Union of India & Ors*. reads as under:

> "We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case."

Therefore, now AAs which are NCLTs have been allowed to exercise the powers under Companies Act, 2013 which is the parent legislation.

Central Government by way of Amendment Act introduced Section 12A wherein the applicant could settle the matter after initiation of insolvency with the suspended board by paying the CIRP expense and approval of 90% COC.

Previously in the matter of *Uttara Foods v. Mona Parachem*[2] the SC had directed to amend rules for settlement. Thereafter, the Central Government by way of Amendment Act introduced Section 12A wherein the applicant could settle the matter after initiation of insolvency with the suspended board by paying the CIRP expense and approval of 90% COC. Further, regulation 30A was also amended to include the settlement even before formation of COC by applicant in case of CIRP fee is borne by the applicant and paid through the corporate debtor.

It is imperative that the inherent powers of NCLT can be invoked in the case wherein it is deemed fit. Even the NCLT had been invoking the inherent powers when there was no explicit provision under the Code to allow the settlement. Hence, the concept of inherent powers is to do justice and equity. It becomes all the more important to use this power in this pandemic situation wherein the economy is going through a depression and also wherein the government themselves are accepting in the IBC Ordinance, 2020 that there are no resolution applicants in the market and therefore the Code is suspended. Further, taking lieu from international commercial disputes it will be in the interest of all to go for mediation procedure.

Concept of Mediation

Mediation or term mediate is derived from Latin word 'mediare' which means 'to be in the middle' and as per Black's Law Dictionary mediation is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties to reach a mutually agreeable solution. Today mediation has been recognised as a useful alternate tool for dispute resolution also for reduction of pendency in court.

The concept of mediation in general refers to process of meetings and negotiations in the presence of mediator. Similar to this concept of mediation, it has been introduced in Companies Act, 2013. As discussed above, the concept of "mediation" can be exercised by the NCLT under Rule 11 as the same is beneficial piece of legislation and amicable option for the parties.

NCLAT allowed Mediation

The NCLAT in the matter of *Parvinder Singh Vs Intec Capital Ltd. & Anr., December 06, 2019* allowed mediation plea by the Corporate Debtor and appointed Hon'ble Justice (Retd) A. K. Sikri as mediator, further the matter got settled by the parties and the Mediation report was submitted wherein the parties settled amicably by paying post-dated cheques. The case was filed by Intec Capital as FC under Section 7 and the mediation was permitted before formation of COC. This pragmatic approach shall prove to be forward looking for corporate debtor which otherwise are not able to defend in case of shortage of liquid funds.

In another matter of *Andal Bonumalla Vs Tomato Trading LLP & Ors.* on March 05, 2020, NCLAT allowed

[2] Uttara Foods and Feeds Pvt. Ltd. v. Mona Parachem,Civil Appeal No. 18520 of 2017. Decision date- 13.11.2017

settlement. In this case, CIRP was admitted on June 03, 2019 against Smart Login Solution Pvt. Ltd. and that insolvency admission was challenged before NCLAT and appellant pleaded before NCLAT that they have taken initiative and put up a proposal for settlement. The NCLAT in its interim order dated March 05, 2020 directed appellant to schedule meeting with Respondent and exchange proposals manifests into settlement and it will be open for parties to even as for appointment of mediator or facilitator for arriving at a settlement. The NCLAT recognised the need of mediation under the Code however, till date NCLT appears to be reluctant to refer matters for mediation as an alternate option. Though the NCLAT did not refer to Section 442 Companies Act, 2013 but the intent of the same has been upheld.

In similar case, NCLT Bangalore bench in the matter of *Harish P. Vs. Chemizol Additives Pvt Limited*[3] held that even the NCLT can invoke the power under Section 442 of the Companies Act, 2013 and refer the matter for mediation. It advised the petitioner to resolve the issue and comeback to court in case they fail to do so. The case was filed by an operational creditor wherein the tribunal advised for arbitration as the employment agreement has the clause for the same. However, Court took pragmatic approach and also held that the Section 442 can also be used suo moto by NCLT. In yet another case filed by financial creditor *Kotak India Venture Fund-I Vs Indus Biotech Private Limited* [4], NCLT Mumbai allowed arbitration to happen and rejected insolvency application considering it to be better even when the case for appointment of Arbitrator was pending with Hon'ble Supreme Court. There were dispute with regard to default on payment of Optionally Convertible Redeemable Preference Shares.

Further, the matter has now reached finality, the Supreme Court in the *Indus Biotech Private Limited Vs Kotak India Venture (Offshore) Fund & Ors*[5]. has held that the Arbitration proceeding has to be conducted before initiation of insolvency as the same are not maintainable after initiation of insolvency. The Apex Court has held that the arbitration proceeding is *in personam* that is amongst the parties and since after initiation of insolvency it shall become proceedings in rem and therefore even the petitioner shall lose control of the proceedings. Hence, SC has paved way for Arbitration and also appointed Former Chief Justice of India (CJI) as Arbitrators and directed nomination of the third Arbitrator for Arbitral Tribunal.

Supreme Court in the *Indus Biotech Private Limited Vs Kotak India Venture (Offshore) Fund & Ors.* has held that the Arbitration proceeding must be conducted before initiation of insolvency as the same are not maintainable after initiation of insolvency.

The Supreme Court also referred to for basic principles wherein arbitration cannot be invoked:

1. When cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate *rights in personam* that arise from *rights in rem*. If multiple applications for insolvency commencement are pending before a company and the company wants to settle dispute regarding one case only through arbitration, then will it be considered a right in rem or rights in personam.
2. When cause of action and subject matter of the dispute affects third party rights; have ergaomnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
3. When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and
4. When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law

[3] Order dated 08.06.2020 in CP (IB) 62/2020
[4] Order dated 09.06.2020 in CP (IB) 3077/2019
[5] Order dated 26.03.21 in Arbitration No. 48/2019 and CA No.1070/2021

in India, a dispute or subject matter is non-arbitrable. Only when the answer is affirmative that the subject matter of the dispute would be non-arbitrable.

Contrary View

Some of the orders wherein mediation plea has been rejected by NCLT. The NCLT Ahmedabad in the matter of *Bank of India Vs Jyoti Power Corporation Pvt. Ltd* [6]. rejected the prayer to refer the matter before mediation and conciliation panel on the ground of no consent from petitioner advocate. The Court had taken a view that the consent is pre-requisite for reference to mediation.

NCLT Ahmedabad in the matter of *Bank of India Vs Jyoti Power Corporation Pvt. Ltd.*, rejected the prayer to refer the matter before mediation and conciliation panel on the ground of no consent from petitioner advocate.

Statutory Provisions

The relevant provision is Section 442 of the Companies Act 2013:

Mediation and Conciliation

(1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo-motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

It is clear from the above provisions that the law has been clearly spelled the requirements and procedure. It has made sufficient safeguards and time bound procedure has been prescribed. Further, the application for insolvency can be kept in abeyance or deferred until the mediation happens so that in case of failure same can be proceeded in accordance with law. This will also offload much burden on NCLT and also the procedure shall have judicial backing which otherwise was not available to parties.

Conclusion

The Central government has maintained mediation panel with Regional Director which have list of eminent professionals as Mediators. The process has been defined

[6] Order dated 05.02.2020 in CP 345/2018 and IA 620/2019

in Companies (Mediation and Conciliation) Rules, 2016 wherein the Form MDC-2 has to be filed with the Tribunal. It is also important to mention that the process is time bound and the same has to be completed in period of three months.

SC in the matter of *Essar Steel (2019)* held that the timelines are directory and not mandatory for the purpose of adjudication of matters. This gives us hope that the chances of revival shall be ground for extension of timeline in 12 (3) of IBC.

Each Regional Director has been maintaining the Mediation and Conciliation Panel comprising of CA, CS, Advocates who are competent and qualified to deal with the situation. This provision of Section 442 has been used often in the case of oppression and mismanagement cases. It is a successful provision which has helped to put an end to dispute in a time bound manner.

It is also important to understand that the Code is in evolving stage and there have been many concepts which did not find place in initial stage but with the passage of time the law has evolved including the same. It shall be welcome move to include the mediation procedure being a time bound mechanism and it shall always be open for the creditor to invoke insolvency in case the mediation fails.

The resolution of the debt has evolved over the years by introduction of settlement pre-admission, pre-COC and post-COC formation. The settlement has been facilitated by introduction of Section 12A however it has also been allowed by using inherent powers under Rule 11. It has also been in few cases that the parties have settled by getting into scheme of compromise and withdrawing the insolvency proceedings. Hence, with passage of time and evolution of law the proceedings have been improvised. Such an approach is also needed in mediation and conciliation process.

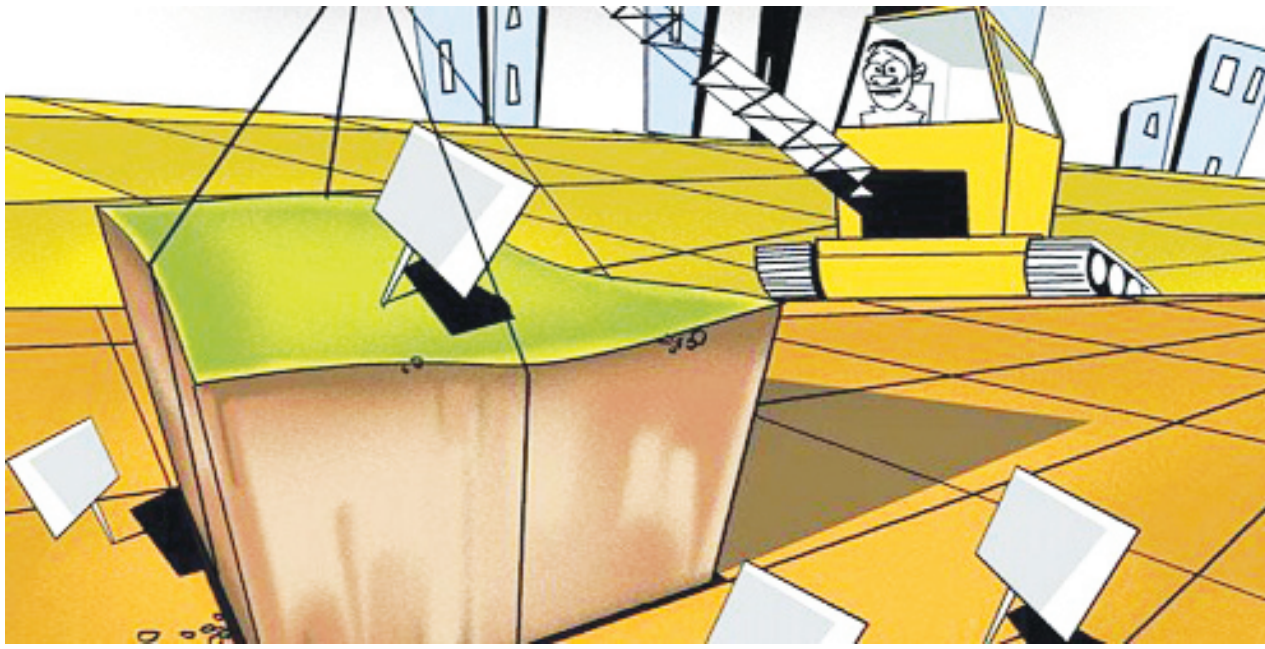
Recently, SC in the matter of "*CoC of Essar Steel*[7] *Vs. Satish Kumar Gupta*" has also held that the period of 330 days prescribed by the Code can be extended by the AA in specific case depending on the circumstances. It also held that the timelines are directory and not mandatory for the purpose of adjudication of matters. This gives us hope that the chances of revival shall be ground for extension of the Insolvency resolution process as the timelines should not hurt the overall intent of the Code which is wealth maximisation.

However, the Code does not provide the option of mediation, but the above stated judgments can be treated as Path-breaking judgments and the same will bring a new era of mediation.

Recently the Supreme Court in the matter of *Arun Kumar Jagatramka. Vs. Jindal Steel and Power Ltd. & Anr* (SCA 9664/2019) has rejected the promoter's plea for submitting the scheme under Section 230 of the Companies Act, 2013 and therefore the pre-mediation option shall be viable in case the promoters want to continue with the company.

[7]CoC of Essar Steel India Ltd. Vs. Satish Kumar Gupta and Ors, Civil Appeal No. 8766-67 of 2019 Diary No.24417 Of 2019, pp.132, Date of Order: November 15, 2019.

Project Land under Development Agreement– whether financial debt?



In the present scenario under the IBC regime, the status of a 'landowner' who holds a Joint Development Agreement (JDA) for a Real Estate project is unclear in the law and no judicial precedents have made any clear progress on this front. However, the related definition of terms used in the law such as – claim, debt, allottee, and amount etc. indicate that the central idea of the IBC is not against considering land owner as a financial creditor. In this backdrop, the article makes an attempt to substantiate that the land owner in such cases should be classified as financial creditor. ***Read on to know more...***

Kamal Garg
The author is a professional member of IIIPI. He can be reached at cakamalgarg@gmail.com

Introduction

The real estate market has evolved over times with new dynamics and mechanisms. Such evolution had a long history of being tested by multi facets of various laws of the nation, be it VAT and Service Tax Laws in past, GST Law at present, Income Tax Act, 1961, Companies Act, 2013, SARFAESI Act, 2002 and so on.

However, the Insolvency and Bankruptcy Code, 2016 (IBC or Code) has evolved over years since its enactment in 2016 but is yet to become ripened, has further put to acid test one of the integral elements of 'development agreements' i.e. as to whether the project land under Development Agreement contributed by the land owner for development by the Corporate Debtor (i.e. the developer) can be considered as financial debt in terms of the Code, in case the Corporate Debtor (CD) goes into Corporate Insolvency Resolution Process (CIRP) and corporate debtor has also defaulted to complete the project. The present write-up is a modest attempt to analyse this burning question with the help of provisions of IBC and various case laws.

Present Scenario: An Analysis of existing Laws and Jurisprudence

Let us consider a situation where one of the covenants in the development agreement stipulated that the land owner will contribute the land and the entire development was to be carried out by the CD as its own cost and to this extent the land owner also gave the CD exclusive rights of development of the project. Assuming that the CD goes into CIRP and has also defaulted to complete the project, the question as to whether the project land under Development Agreement contributed by the land owner for development by the CD (i.e., the developer) can be considered as financial debt in terms of IBC, could be analysed in the following paragraphs.

Section 3(6) of the Code[1] defines "claim" to mean-(*a*) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; *(b) right to remedy for breach of contract* under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, non-matured, disputed, undisputed, secured or unsecured.

Section 3(11) defines "debt" to mean a liability or *obligation* in respect of a claim which is due from any person and includes a financial debt and operational debt.

Section 5(7) defines "financial creditor" to mean any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Section 5(8) defines "financial debt" to mean a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes —(*a*) money borrowed against the payment of interest;(*b*) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;(*c*) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;(*d*) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;(*e*) receivables sold or discounted other than any receivables sold on non-recourse basis;(*f*) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing [Explanation.—*For the purposes of this sub-clause,—(*i*) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (*ii*) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (*d*) and (*zn*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)*];(*g*) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;(*h*) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;(*i*) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (*a*) to (*h*) of this clause;

It is pertinent to mention that the word used in section 5(8) (f)[2] is "amount" and not "sum" or "money". The legislature has made this subtle distinction which is apparent from clause (a) and clauses (b) to (i), where respectively the words "money" and "amount" have been used for the definition. The word "amount" signifies "a quantity of something, especially the total of a thing or things in number, size, value, or extent." On the other hand, the word "money" signifies "a current medium of exchange in the form of coins and banknotes; coins and banknotes collectively."

Now the question under the subject matter of this write up can be analysed on clause-by-clause basis with the following discussion:

[1] The Insolvency And Bankruptcy Code, 2016, p.2 https://ibbi.gov.in//uploads/legalframwork/2020-09-23-232605-8ldhg-e942e8ee824aa2c4ba4767b93aad0e5d.pdf

[2] Ibid, p. 7.

S. No.	Ingredients of Section 5(8) – question – For the corporate debtor whether such land is:	Comments
a.	money borrowed against the payment of interest	No
b.	any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent	No
c.	any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument	No
d.	the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed	No
e.	receivables sold or discounted other than any receivables sold on non-recourse basis	No
f.	any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing	Yes*
g.	any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;	No
h.	any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution	No
i.	the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (*a*) to (*h*) of this clause	No

	Ingredients of Section 3(11) read with 3(6)	Comments
	Section 3(11) defines "debt" to mean a liability or obligation in respect of a *claim* which is due from any person and includes a financial debt and operational debt.	For an event to be an obligating event, it is necessary that the entity has no realistic alternative to settling the obligation created by the event. This is the case only: (*a*) where the settlement of the obligation can be enforced by law; or (*b*) in the case of a constructive obligation, where the event (which may be an action of the entity) creates valid expectations in other parties that the entity will discharge the obligation. In terms of section 3(6)(b), "claim" means right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.**

Note : *The amount raised here is represented by "the Project Land". It does have the commercial effect of borrowing in the sense that had this land not been arranged or caused to occur (i.e. raised) then the corporate debtor would have to purchase such land by arranging funds from various sources. By imputation thus there is assignment of a value to such land by inference from the opportunity cost element saved by not arranging loan to acquire such or similar land for the project.

Moreover, a plain look at the definition of 'financial debt' brings it to fore that the debt alongwith interest, if any, should have been disbursed against the consideration for the time value of money. Use of expression 'if any' as suffix to 'interest' leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of 'financial debt'. The amount disbursed as debt against the consideration for time value of money may or may not be interest bearing.

It is manifestly clear that the land is provided by the land owner as a stakeholder to boost the economic prospects and hence has the commercial effect of borrowing on the part of Corporate Debtor notwithstanding the fact that "no money is borrowed" but the "amount is raised". Further, due to fluctuations in market and the risks to which it is exposed, it cannot be said that the debt has not been disbursed against the consideration for the time value of the money. Enhancement of assets, increase in production and the growth in profits, share value or equity enures to the benefit of such stakeholders and that is the time value of the money constituting the consideration for disbursement of such amount raised as debt with obligation on the part of Company to discharge the same. Viewed thus, it can be said that in such cases the amount raised by the corporate debtor in the form of 'land" is in the nature of a 'financial debt'.

In *CIT* v. *Kasturi & Sons Ltd.* [1999] 103 Taxman 342 (SC), the Court held that the word 'money' has to be interpreted only as actual money or cash and not as any other thing which could be evaluated in terms of money. The Court further ruled that 'money' cannot be interpreted as 'money's worth'. In *H.H. Sri Rama Verma* v. *CIT* [1991] 187 ITR 308 (SC) observed donations may be made by supplying goods of various kinds including building, vehicle, or any other tangible property.

So, what follows is that one of the major differences between 'donation' and 'loan' is that the former is never refunded. In *Dr. Fredie Ardeshir Mehta v. Union of India* [1991] 70 Comp. Cas. 210 (Bom.) at para 9, the Court stated that the essential requirement of a loan is the advance of money *(or of some article)* upon the understanding that it shall be returned, and it may or may not carry interest. Hence loan can be in kind as well.

In *ITO* v. *Komal Kumar Bader* [2009] 33 SOT 58 (Jp.), ITAT held that money cannot be understood in a wider sense to include wealth or 'total value of property' as held by the AO. The ITAT cited with approval the following definition of 'money' in *Random House Unabridged Dictionary*:(1) any circulating medium of exchange, including coins, paper money, and demand deposits.(2) paper money.(3) gold, silver, or other metal in pieces of convenient form stamped by public authority and issued as a medium of exchange and measure of value.(4) any article or substance used as a medium of exchange, measure of wealth, or means of payment, as checks on demand deposit or cowrie.(5) a particular form or denomination of currency. Relying upon the above dictionary definition and Supreme Court decisions in *Kasturi & Sons Ltd. (Supra)* and *H.H. Sri Rama Verma (supra)*, the ITAT held that what is meant by money in simple sense is that it is a medium of exchange in a particular form or denominated in currency. It cannot be of the nature where value has to be derived. Thus, the term 'sum of money' shall include cash, cheques, drafts, etc. Money does not include stocks (Shelmer Gilb, In re Eq. Rep 202), jewellery, immovable properties.Thus, 'land' falls within the ambit of 'amount raised..having commercial effect of borrowing'.

Coming to the other element viz. “time value of money”, Section 55 of the Indian Contract Act, 1872,uses the phrase 'time is essence of contract' and provides that where parties agree to perform a certain act on specified time and parties fail to perform the said act at the said time then the contract becomes voidable at the option of the promisee if it was intension of the parties to make time an essence contract. The Section further provides that in case where parties to contract do not intend to make time an essence of contract then promisee is entitled to claim compensation for any loss occasioned to him as a result of such default. Section 46 of Indian contract act further provides that where no time is specified in the contract for the performance of contract then it is to be performed within reasonable time period.

The Apex court in *A. K. Lakshmipathi and Ors v. Rai Saheb Pannalal H Lahoti Charitable Trust and Ors* in (2010) 1 SCC 287 also dealt with the same question as to when time is essence of a contract. The clauses in the agreement had provided that time was to be the essence of contract and provided that under all circumstance, the purchaser/buyer was to make deposit of the balance amount of consideration by the date specified in the agreement. The agreement had also stipulated that buyer was to obtain clearance/ permission from the Endowment department. The Court observed that as a general presumption of law time is not essence of contract in case of sale of immovable property unless parties intend to make it essence of contract or a contrary intention is expressed. The court looked at the various clauses of the agreement and observed that parties intended to and were aware from beginning that time was essence of contract. Further, in *Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Limited others*[3] in (2011) 9 SCC 147 it was held by the Honourable Supreme Court that time is essence of contract because the prices of real estate property have steeply arisen in last decades and there is change in economic situation which has resulted in inflation. Hence, it can also be said that project land contributed under the development arrangement with the Corporate Debtor has the commercial effect of a borrowing and against the consideration for the time value of money.

**Claim means a demand for something due or to seek or ask for on the ground of a right - *Hameedia Hardware Stores* v. *Mohan Lal Sowcar* AIR 1988 SC 1060. Thus, what follows is that in terms of the 'Development Agreement', the corporate debtor has no realistic alternative but to completion the construction on the project land granted to it and then on corporate debtor being under default to complete the project has also committed breach of the contract giving rise to payments as envisaged in the development agreement. Hence, the land granted to the corporate debtor also falls within the definition of 'debt' as well.

[3] Further, In *Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Limited others* in (2011) 9 SCC 147

Conclusion

The discussion made above could further be sensitised in light of the words *"any transaction"* used in section 5(8)(f). Section 3(33) and (34) of the IBC respectively provide that:(*33*) *"transaction"* includes *agreement or arrangement in writing for the transfer of assets*, or funds, goods or services, from or to the corporate debtor;(*34*) *"transfer"* includes sale, purchase, exchange, mortgage, pledge, gift, *loan or any other form of transfer of right*, title, possession or lien;The expression "transaction" as noted above includes "transfer" and the expression "transfer" includes even "loan". It is quite apparent that such loan nowhere is qualified to be in monetary form and it can include even non-monetary arrangements like "providing of project land for development" under the present subject matter of this write up.

Moreover, in context of "time value of money" which forms one of the essential ingredients for a debt to be classified as financial debt, the author would also like to draw the attention of readers to *Saradamani Kandappan v. S. Rajalakshmi and Ors*[4] (2011) 12 SCC 18, wherein the Supreme Court had called upon the courts to revisit the principles laid down by the court in various preceding judgments on same issue and observed that as a general preposition of law time is not essence of contract unless the parties to the contract intend to make time an essential condition for the performance of contract. The court said that parties to a contract may intend to make time an essence of contract by expressly providing so or it can be inferred by necessary implication from the conduct of parties or circumstance surrounding the performance of contract. The court also said the general presumption of law that time is not essence of a contract that is for sale of immovable properties needs to be revisited as time forms an essential condition for the performance of contract in circumstance of ever-increasing prices of real-estate property which are bound to affect transactions of sale of immovable property.

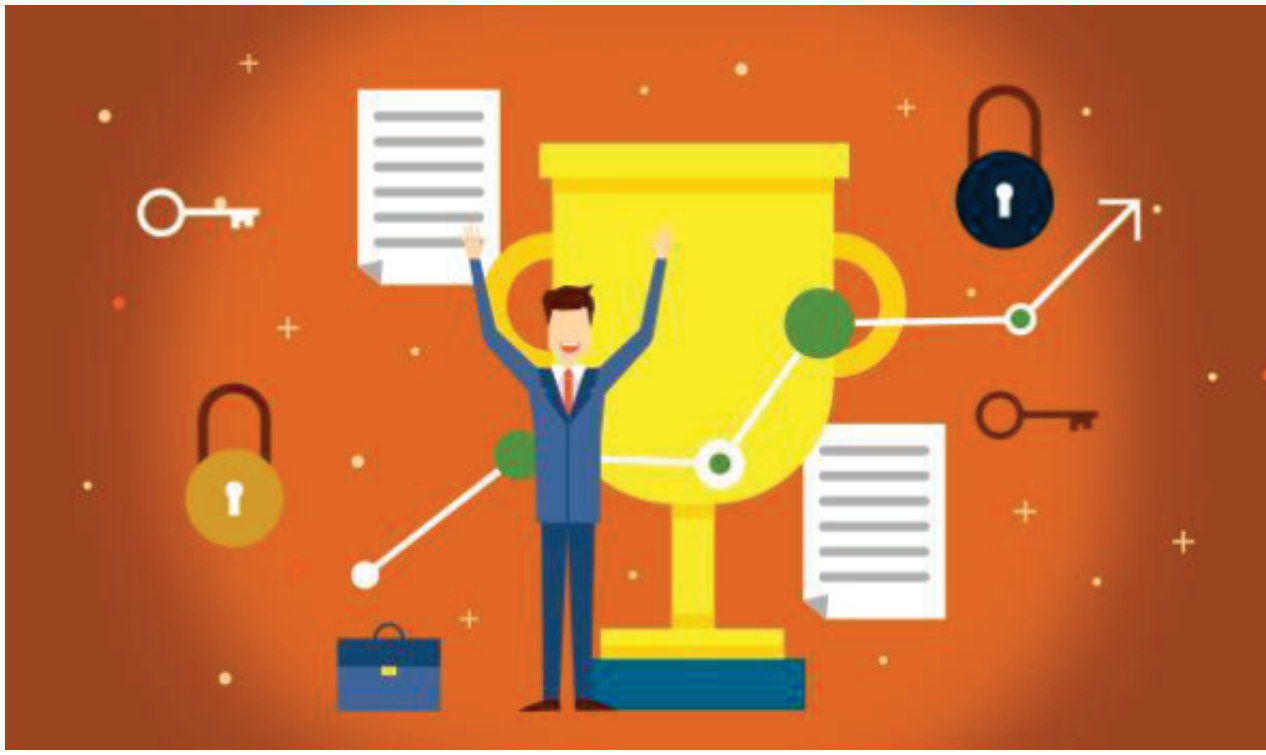
"Considering the magnitude of CIRP matters especially pertaining to home buyers and real estate developers as pending before the Adjudicating Authority, the consideration of landowner as financial creditor could have a significant impact on the mechanisms and dynamics provided under IBC."

The issue discussed in this article is purely industry specific and not the general issue of Financial Debt or the Home Buyers. Besides, the Real Estate (Regulation and Development) Act, 2016 (RERA) also has no connection for the matter discussed in this article. In the present scenario under the IBC regime, the status of a 'landowner' who holds a Joint Development Agreement (JDA) for a Real Estate project is unclear in the law and no judicial precedents have made any clear progress on this front.

Considering the magnitude of CIRP matters especially pertaining to home buyers and real estate developers as pending before the Adjudicating Authority, the consideration of landowner as financial creditor could have a significant impact on the mechanisms and dynamics provided under IBC. To name few areas that could be impacted may include constitution of committee of creditors, voting rights, waterfall mechanism, etc. Therefore, it's high time that the decision makers seriously consider to classify the landowner as financial creditor under the IBC regime in the CIRP of Real Estate sector. This is because several land owning government agencies e.g. Delhi Development Authority (DDA), have either launched or are in the process of launching Land Pooling projects for Real Estate sector.

[4] *Saradamani Kandappan v. S. Rajalakshmi and Ors* (2011) 12 SCC 18

Corporate Resolution in Time Bound Manner



Timely completion of the Corporate Insolvency Resolution Process (CIRP) and value maximisation of the Corporate has been two main objectives of the IBC regime. However, in some cases the options of value maximisation come at the eleventh hour which put the otherwise successful CIRP at stake due to the deadline set up by the IBC. This stage is very crucial for a Resolution Professional because if s/he focusses on completing the CIRP in time bound manner, either the value of the CD is compromised, or the otherwise successful insolvency process is aborted, and the CD is forced to liquidation. However, in its operation since 2016, the IBC ecosystem has developed to address these issues up to some extent. ***Read on to know more….***

Pratim Bayal
The author is a professional member of IPA-ICAI. He can be reached at pratimbayal@gmail.com

Introduction

In Corporate Insolvency, there have been numerous discussions in favour of corporate value maximisation, but the right connotation would be corporate value maximisation in a time bound manner. In this article the author has made an attempt to explain the interlinking balance. The importance of time in insolvency process has been a top priority since very beginning of the idea of insolvency regime in India.

In this context, the Bankruptcy Law Reform Committee[1], November 2015, reads ,"The Code will ensure a time-bound process to better preserve economic value. The law must ensure that time value of money is preserved, and that delaying tactics in these negotiations will not extend the time set for negotiations at the start,". Furthermore, the preamble of the Insolvency and Bankruptcy Act (IBC/ Code), 2016 has highlighted the timeliness with a great

[1] Bankruptcy Law Reform Committee, 3..4.2, III (https://ibbi.gov.in/BLRCReportVol1_04112015.pdf)

emphasis wherein it says "…in a time- bound manner for maximization of value of assets of such persons,". So, time bound precedes the value maximisation. In straight reading, it could be interpreted as something like that the CIRP needs to be completed within prescribed 180 days or the in the permitted extended period of 270 days or 330 days.

On a factual ground, as per the Economic survey in January 2020 tabled by Parliamentary Committee, the average time taken for a CIRP is 340 days which is much lower compared to average 4.3 years taken under earlier Acts.

On a factual ground, as per the Economic survey in January 2020 tabled by Parliamentary Committee[2], the average time taken for a CIRP is 340 days which is much lower compared to average 4.3 years taken under earlier Acts. So, a considerable betterment has been achieved in terms of duration for resolution. However, in practical scenario, different circumstances arise which mixes up these priorities and we may fail to take a decision considering both the objectives.

Timeliness of CIRP: Law and Jurisprudence

One such situation is delay in completion of CIRP for delay in deciding over the successful resolution applicant by the Committee of Creditors (CoC). This could generally be the normal procedural delay by the creditors and Financial Institutions for their inbuilt hierarchy of approvals. The Resolution Professionals often submit petitions to the Adjudicating Authority (AA) that some resolution plan is in advanced stage of consideration, as such further time is requested keeping in mind the objective of value maximisation. However, the AA's hands are tied up for extension for more than once because Section 12 (3)[3] of IBC 2016, limits extension only for a single time. But situation often arises where a RP may need to apply for more time to conclude the CIRP if there are resolution plans under consideration.

In relation to this issue, the NCLAT in the matter of *Quinn Logistics*[4] *India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.*, on May 08, 2018 opined that "if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Tribunal to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances,". The Appellate Tribunal also provided a list of the circumstances under which the exclusion could be granted. The Union Government through an Ordinance[5] in 2019 inserted para-3 in Section 12 (3) thereby making it mandatory for the CIRP process to be "completed within a period of 330 days from the insolvency commencement date, including any extension of the period of CIRP granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor". However, the Supreme Court in the matter of *Essar Steel*[6] on November 15, 2109 allowed the AA to exercise discretion to exceed this time limit of 330 days in the interest of the Corporate

[2] Business Standard (2021), Economic Survey: IBC reduces resolution time to 340 days from 4.3 years, January 31 (https://www.business-standard.com/article/pti-stories/ibc-reduces-resolution-time-to-340-days-from-4-3-years-earlier-eco-survey-120013101463_1.html)

[3] Ins.by Act No. 26 of 2018, Sec. 9 (w.e.f. 06.06.2018), IBC, 2016.

[4] Company Appeal (AT) (Insolvency) No. 185 of 2018, NCLAT, May 08, 2018 (file:///C:/Users/User/Downloads/Quinn%20Logistics%20Page%20no%209.pdf)

[5] Ins. By Act No. 26 of 2019, sec. 4(w.e.f. 16.08.2019)

[6] "However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate 132 Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation," said the Supreme Court. *CoC of Essar Steel India Ltd. Vs. Satish Kumar Gupta and Ors*, Civil Appeal No. 8766-67 of 2019 Diary No.24417 Of 2019, pp.132, Date of Order: November 15, 2019.

Debtor (CD). This precedence of the SC judgement has become ground for AAs to provide exclusion. It is pertinent to mention that the legislative has always used the word 'extension' in the IBC, 2016 and in successive amendments while judiciary has used the term 'exclusion'[7].

"Supreme Court in the matter of *Essar Steel* on November 15, 2109 allowed the AA to exercise discretion to exceed this time limit of 330 days in the interest of the Corporate Debtor (CD)."

For instance, NCLT, Kolkata in the matter of *Borojolinga Tea Company Vs Imeco Ltd*, granted two exclusions – firstly on the ground of COVID-19 pandemic related restrictions and secondly on the ground of delay in handover from IRP to RP. While granting the second exclusion the AA observed[8], "We have perused the application and the documents attached thereby and heard the Ld. Counsel for the RP. We are satisfied that the prayer made in the IA should be allowed. Therefore, 21 days shall stand excluded from the CIRP period". Thus, it is clear in such cases, the AA generally considers allowing time exclusion, on some valid reasons, unlike extension, so that more time is available with the RP to conclude the process with successful resolution. It may be noted there is no bar in allowing exclusion multiple time for obvious reasons. In general, where the probability of resolution is high and the process is in advanced stage, the AA grants exclusion even if for simple reasons, keeping the objective of value maximisation in mind.

Procedural Hurdles on the Last Leg

Many times, the options of a better resolution plan come at the eleventh hour. In such circumstances, the Resolution Professional (RP) is stuck between two primary objectives of the IBC regime – timely completion of the CIRP and value maximisation of the Corporate Debtor (CD). In this regard, there could be two situations:

A. After a plan has been voted as the successful plan, then a new resolution applicant comes in and proposes to offer a higher bid:

Firstly, wherein, the basic or extended CIRP period is not over. In that case, it will be entirely upon the CoC to decide upon the course of actions. If CoC approves, the RP can admit a new plan, even if the voting on resolution plan has been completed or the due date of submission of plan is over. Provided the time U/s 12 of the code is available. If the voting has already been completed, all the applicants need to be given a chance to revise their plan. This goes with the common objective of value maximisation in a time bound manner as the CIRP is still not over. In that case these irregularities[9], if any, that voting has been completed or due date for submission of resolution plan has been over, could be ratified by the RP with favourable CoC voting. These has been well settled in the recent judgement of the honourable Supreme Court in the matter of *Kalpraj Dharamshi*[10] *& Anr vs. Kotak Investment Advisors Ltd. & Anr*. The RP allowed 2 resolution plans, including the one by Kalparaj -the successful resolution applicant, to be submitted on January 13, 2019 and January 27, 2019 beyond the last date of submission of plan of January 08, 2019. Bids for plan submitted within the last date was also already opened. On a meeting on January 30, 2019, the CoC resolved to ask all the applicants including the new ones to file revised bid. Then all the prospective resolution applicant filed their revised bid by February 12, 2019. And one of the new applicants was declared as the final successful resolution applicant by the CoC and subsequently by the Mumbai NCLT. The respondent Kotak Investment was the successful bidder in the first instant before new applicant could participate and his plan was approved. Accordingly, being aggrieved by the order of the NCLT, they appealed before the NCLAT. NCLAT

[7] The attempts were made by the Legislature to fix a time duration for the CIRP under the IBC, 2016 and provide authority to the judiciary (AA) to extend it but within the maximum time limit mentioned in Section 12 (3) of the IBC. However, judiciary has been of the view that the maximum time limit fixed in Section 12 (3) can be exceeded by AA by excluding the time taken in the judicial process, but this is to be done in the very interest of the CD to ensure that a nearly completed resolution plan is not aborted and CD is prevented from liquidation.

[8] IA/1504(KB)2020, C.P. (IB)/892(KB)2019, NCLT, Kolkata, Date of Order 11.01.2021.

[9] Ibid. The term 'irregularity' has been used here.

[10] *Kalpraj Dharamshivs Kotak Investment Advisors,* CIVIL APPEAL NOS.29432944 OF 2020, March 10, 2021.

decided in favour of the Kotak Investment and directed to disregard the new resolution applicant and consider the plan submitted by Kotak Investment which was submitted with in the due date and declared as H1. However, when this appeal was referred before the Supreme court, the apex court, in above mentioned matter of Kalpraj Dharamshi & Anr …...CA no 2943-2944 of 2020, while validating the decision of the CoC and Mumbai NCLT, observed. "*it has been the consistent stand of RP as well as CoC, that all actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. .....We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of `commercial wisdom', NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.*"

What it specifies that though the irregularities were ratified by CoC, all those was done "before the expiry of the timeline specified by the I&B Code ". CoC can ratify the procedural lapses in bidding process if the basic time frame is adhered to. So, value maximisation needs to be in time bound manner. So, the two situations of new resolution applicant or new resolution plan, if addressed with in the valid CIRP period, can be accommodated.

B. The last date for submission of resolution plan, as per the CoC approved due date is already over but resolution applicant comes with a proposal for fresh plan

If any new resolution applicant comes in, when the CIRP period is over and a CoC approved resolution plan is pending before the AA for final approval, the same cannot be allowed to participate even at the consideration of value maximisation as there is a failure to time adherence.

A reference can be made to the NCLAT decision in *Kalinga Allied Industries India Pvt Ltd vs. Hindustan Coils Ltd & Othrs* where the court observed[11], *"We are of the view that when the Application for approval of Resolution Plan is pending before the Adjudicating Authority at that time the Adjudicating Authority cannot entertain an Application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful Resolution Applicant. If a Resolution Plan is considered beyond the time limit, then it will make a never-ending process. Thus, impugned order is not sustainable in law as well as in fact. The impugned order is hereby set aside."*

"Thus, the new resolution applicant was not allowed to place a plan before the CoC, vide order of the NCLAT, after completion of CIRP period when already a CoC approved plan was pending before the AA for approval."

In this case, pursuant to the expression of interest issued by RP on August 24, 2018, the Appellant submitted a Resolution Plan in time. After several rounds of deliberations by the CoC, revised Resolution Plan was submitted by the Appellant on December 19, 2018. The same was approved by the CoC by requisite majority in the 13th meeting on December 12, 2018. Thereafter, the RP filed an Application under Section 30(6) of the Code for approval of Resolution Plan in the month of January 2019. Thereafter, various objections were filed before the AA which were heard and disposed of. Sometime in the month of February 2020, the Respondent No. 1, Hindustan Coils Ltd filed an application[12] seeking direction for consideration of its Resolution Plan which is 12% more than the offer of the successful Resolution Applicant. It is also held that the object of the IBC encourages maximization of the value of assets of the corporate debtor, which is also advantageous to all the stakeholders. Therefore, it is directed that the proposed plan of the Respondent No.1 be placed before the COC for consideration. Against this order of the AA, the successful resolution applicant as approved by CoC within CIRP period, preferred an appeal.

Thus, the new resolution applicant was not allowed to place a plan before the CoC, vide order of the NCLAT,

[11] CA (AT) (Insolvency) No 518 of 2020 "where the hon'ble NCLAT.

[12] I.A. No. 1513 (PB) of 2020, NCLT Kolkata

after completion of CIRP period when already a CoC approved plan was pending before the AA for approval. Similarly, the NCLAT[13] in the case of *Chhattisgarh Distilleries Ltd. vs. Dushyant Dave & Ors*. in the light of the pronouncement of Supreme Court in the case of Essar Steel[14] held that "*Adjudicating Authority cannot suo moto direct the CoC to consider new resolution plan and reconsider already approved Resolution plan. The Hon'ble Supreme Court in the above referred judgment held that under Section 30(2) of I&B Code, decision of Committee of Creditor is purely commercial and cannot be adjudicated by the Adjudicating Authority".*

Thus, the value maximisation, in the form of better plan value did not get priority at the sacrifice of time bound resolution. However, in the likely situation of corporate death where the corporate debtor is going into liquidation, the AA might allow the existing applicant and CoC to reconsider the resolution plan which have already been rejected by the CoC. A reference may be made to the CIRP of *Kohinoor Paper and Newsprint Pvt Ltd* heard before the NCLT Kolkata. Here the sole resolution plan placed before the CoC was rejected. The RP filed liquidation petition under Section 33 of IBC, 2016 before the NCLT Kolkata as the CIRP period was over. In the meantime, the resolution applicant filed an application before the NCLT Kolkata seeking a direction upon the CoC and RP to consider the revised offer in terms of the Resolution Plan which was submitted earlier and despite which decision has been taken to reject the same. The NCLT, in the matter of *Sendoz Commercial Pvt Ltd Vs. Kohinoor Paper* and *Newsprint Paper Ltd*, while allowing this petition observed[15] that, "*We direct that the meeting of the CoC be convened on November 20, 2020 for consideration of the revised offer. The applicant is hereby directed to place the same by way of formal document for consideration of the CoC. Results of the meeting shall be communicated by way of an affidavit to be filed by the RP on or before November 27, 2020. ……. In the meantime, the application under Section 33 filed by the RP for liquidation of the Corporate Debtor shall be kept in abeyance*."

Under the various circumstances discussed above, it was demonstrated that IBC is now evolving to accommodate the time bound aspect of the value maximization, depending upon the circumstances in each case, in line with the preamble of the IBC, 2016.

But here again the no new applicant could be allowed once the CIRP period is over. There are number of similar instances where, to prevent liquidation, the AA directed the CoC, on a request filed by the RA, to re consider the only resolution plans, where CoC has not approved any resolution plan submitted by the prospective resolution applicant during CIRP.

Conclusion

Before concluding , it would be pertinent to mention the dictum of the Apex Court in "*Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*, that the Adjudicating Authority has been empowered with the discretion to extend time in exceptional circumstances where it can be shown that only a short period would be required for completing the CIRP beyond 330 days and that grant of such extension would promote the interest of all stakeholders by preventing Corporate Debtor to be pushed into liquidation".

Under the various circumstances discussed above, it was demonstrated that IBC is now evolving to accommodate the time bound aspect of the value maximisation, depending upon the circumstances in each case, in line with the preamble of the IBC, 2016. As a concern has been already raised in various forums that IBC is losing its shine due to the delay caused by elongated legal battle, typical to the Indian Scenario, this is another crucial aspect of time management. All said, IBC is much quicker process, till date, compared the option existed in the pre-IBC era. Thus, all the stakeholders should keep in mind the time factor apart from value maximisation of a corporate debtor in corporate insolvency resolution process.

[13] Company Appeal (AT) (Ins) No. 461 of 2019

[14] Committee of Creditors Essar Steel India Ltd. vs. Satish Gupta & Ors. 2019 SCC Online Sc1478

[15] LA 1104/KB/2020, NCLT Kolkata

CIRP of Amtek Auto Limited

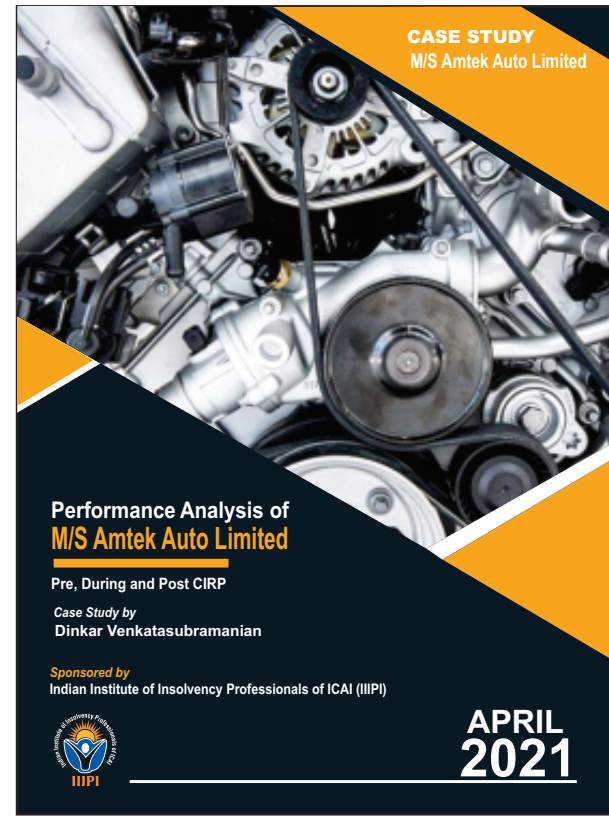
The biggest challenge in running the Corporate Debtor (CD) - Amtek Auto as a Going Concern (GC) was its complex group structure. In addition to having plants in various states of India, the company had under its direct holding, multiple operational units across the globe including Japan, Thailand, Spain, and Germany amongst others. These overseas units operated as independent companies with little to no operational control of the CD. Besides, there was lack of a uniform Management Information System (MIS) to track metrics at the company level and most of the plants had their own format for business reporting, resulting in 15+ excel sheets in as many different formats to be tracked to gauge daily performance. This had resulted in some of the units operating in silos resulting in lack of uniformity across major organizational metrics.

The Committee of Creditors (CoC) had over 90 plus members including almost all the major lenders. Furthermore, the operations had to shut down from March 2020 to May 2020 due to nationwide lockdown caused by the COVID-19 pandemic leading to nil or very low sales in the Q1FY21. However, it recorded a V-shaped recovery in its sales thereafter. In the present case study, ***Dinkar Venkatasubramanian, the Resolution Professional of Amtek Auto Ltd. And his colleagues Mukul Dalmia and Riya Goel*** *have presented a descriptive analysis of the CIRP of the Corporate Debtor and stepwise solutions to the problems faced during the process to run it as GC which culminated into final resolution.* ***Read on to know more...***

1. Introduction

The National Company Law Tribunal (NCLT) vide order dated 24th July 2017 initiated the Corporate Insolvency Resolution Process (CIRP) of Amtek Auto Limited (Amtek) under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 and appointed Mr. Dinkar Venkatasubramanian as Interim Resolution Professional (IRP) in this case who was later confirmed as Resolution Professional (RP).

In addition to the domestic operations spread across 15 plants, panning through Haryana, Himachal Pradesh, Maharashtra, Madhya Pradesh and Tamil Nadu, the Corporate Debtor (CD) under its direct and indirect holding was also operating multiple operational units across the globe including Japan, Thailand, Spain, Germany amongst others at the time of initiation of CIRP. This Case Study is divided into three stages – Pre-CIRP Performance, CIRP and Post-CIRP. Each stage had its own set of challenges which required out-of-the-box approach



Dinkar Venkatasubramanian
The author is a professional member of IIIPI. He can be reached at dinkar.venkatasubramanian@in.ey.com

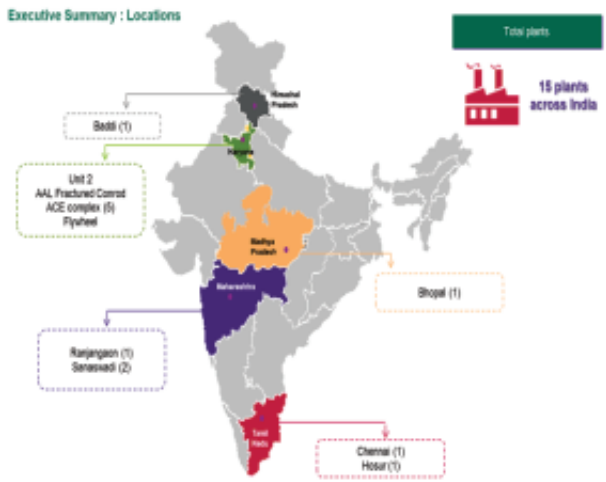
*The Case Study is also available on IIIPI website, www.iiipicai.in (Resources – Success Stories of IP https://www.iiipicai.in/success-story-of-ip/).

to resolve them. This case study seeks to enumerate the various stages of the Resolution Process of Amtek Auto, the challenges surmounted during the process to finally arrive at a successful resolution in July 2020.

2. Profile of the Corporate Debtor/ Company

Established in 1985, Amtek specializes in forging, aluminium casting and machining for applications in the engine, transmission driveline and chassis segments. Amtek caters to sizeable wallet shares of major Original Equipment Manufacturer (OEMs) in India namely, Maruti Suzuki India (MSIL), Honda Motorcycle and Scooters (HMSI), Tata Motors, Ford Motors, J.C. Bamford Excavators (JCB), Ashok Leyland, Eicher etc. and the world's top Tier 1 customers namely, Sriram Pistons, Hitech Gears, Unimotion, Valeo etc.

The group has developed a strong engineering and manufacturing know-how spread across 15 operational plants, panning through Haryana, Himachal Pradesh, Maharashtra, Madhya Pradesh and Tamil Nadu. A brief on various manufacturing facilities in India is given below:



SOURCE: Company Management; As on Dec'2020; the above are the locations only in India for Amtek Auto Limited. In addition to the Domestic Operations, the Company under its direct/indirect holding also operates multiple operational units across the globe including Japan, Thailand, Spain, Germany amongst others.

Diversified and de-risked business model:

Manufactures products that cater to the PV, 2W, CV, Tractor and Non-Auto Segments, for both Domestic and International markets

Has long lasting relationships with leading OEM and Tier-1 suppliers: Marquee and diversified customer base of leading OEM's and Tier-1 suppliers across India and Overseas with associations of 20+ years

State of the art engineering and manufacturing capabilities including continuous heat treatment technology, Machining iron castings, aluminium castings as well as forgings and precision laser fracturing technology.

One of the biggest complexities of the resolution of Amtek Auto's process was its group structure, which is spread across Japan, Spain, Germany, Thailand amongst others, which added to the challenges with respect to establishing communication channels across geographies:

3. Pre-CIRP Performance

3.1. Performance During Past Three Years: The CD was stuck in multiple financial distress wherein revenue were declining and liabilities increasing:

a. The company sales declined from FY 2015 to FY2017 due to macroeconomic factors.

b. Also, PAT declined due to large interest cost and restructuring with lenders failed.

c. The lenders were then forced to take Corporate Debtor to CIRP process.

3.2. Reasons of Financial Stress

Major reasons for Financial stress were as following:

a. Aggressive mis-timed ambitions of inorganic growth resulted in poor utilization of funds and capital expenditures with long gestation period returns were incurred.

b. For further Acquisitions and Capital expenditures, Amtek continued to pile on Debt onto its Balance Sheet, which after a point in time became unsustainable as the International Operations started stagnating and at the same time the Domestic Operations could not sustain the y-o-y debt obligations;

c. In FY17, the Debt to EBITDA level rose to ~32x, which was way higher than the automotive component industry average.

d. Frequent Misses in payment of debt obligations

led to trust deficit between the erstwhile management and the lenders.

e. Acute Working Capital challenge led to poor schedule adherence and business losses and added to the trust deficit with the customers.

f. Complete breakdown of MIS and financial controls worsened the situation further.

4. Corporate Insolvency Resolution Process (CIRP)

4.1. Appointment of IRP/RP

National Company Law Tribunal (NCLT), vide order[1] dated 24th July 2017 initiated the Corporate Insolvency Resolution Process (CIRP) of Amtek Auto Limited under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016. The Adjudicating Authority (AA) appointed Mr. Dinkar T. Venkatasubramanian as the Interim Resolution Professional (IRP) of the Corporate Debtor (CD) vide order dated 27th July 2017. He was later confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in its meeting held on 22nd August 2017 under provisions of the code.

4.2. Initial Assessment

Post receipt of the order form the NCLT, the IRP along with authorized representatives from EY (the firm providing support services to the IRP) met with the incumbent management team of the corporate debtor, to take charge of its assets.

The IRP along with his team met the key executives of the company and took a download of the existing business operations and the organization structure. The IRP also informed the management regarding the provisions of the IBC, 2016 and laid down the roadmap for maintaining the going concern of the business during CIRP and for future co-ordination and expectations from the incumbent management.

The meeting also helped in identifying key Point of Contacts for critical functions and enabled creation of shadow teams within IRP's team to monitor and own these critical functions, including treasury, HR, plant operations, sales & marketing etc.

> **"The teams deployed at operational locations established contact with the operations team on ground and laid the action plan to win the confidence of all the local stakeholders to ensure the CD continues as Going Concern (GC)."**

locations spread across the country –09 in National Capital Region (NCR), 03 near Pune and 01 each in Bhopal, Hosur, Chennai, Rudrapur and Baddi. These teams established contact with the operations team on ground and laid the action plan to win the confidence of all the local stakeholders including but not limited to employees, suppliers, customers, statutory bodies etc, to ensure going concern of the business. Additionally, the company had under its direct holding, multiple operational units across the globe including Japan, Thailand, Spain, and Germany amongst others. These units operated as independent companies with little to no operational control of the corporate debtor. One of the bigger challenges initially for the RP was to establish ongoing communication channel with these entities and establish informational and operational control over them.

During these meetings and visits, the IRP and team managed to understand the key intricacies of the business and potential concerns/ risks in maintain the going concern of the business, some of which have been highlighted here:

a. **Massive scale of operations with 15+ operational domestic plants in 7 locations across the country:** The Company had strategically built plants around the major automotive belts across India to be able to cater to all major OEMs. While this enabled the company to be a major supply source for top OEMs, it also resulted in some of these units operating in silos resulting in lack of uniformity across major organisational metrics.

[1] C.P. (IB) No. 42/Chd/Hry/2017), (NCLT Chandigarh Bench).

b. **Large employee base with salary delays for both on-roll and contractual employees:** With over 6000+ employees (on-rolls + contractual), the company was a major source of employment and livelihood in the country. Working capital constraints and cash crunch had resulted in salary delays of 2-3 months across locations and as such, a lot of uncertainty among the employees; the uncertainty further increased on account of insolvency commencement resulting in further unrest among the workforce.

c. **Working capital challenges and cash crunch:** In the immediate 12-15 months preceding the commencement of insolvency, the company faced severe cash crunch due to reducing business operations which eventually resulted in payment delays across stakeholders including employees, suppliers, statutory agencies and of course financial creditors. Maintaining going concern of such a massive company with limited availability of cash was going to be an uphill task for all involved.

d. **Trust deficit with customers and risk of business loss:** The Company was a major supply source for most of the large OEMs in the country. The automotive industry works on a JIT model with minimal inventory being stocked at the OEM end and rather relying on steady supply of parts form ancillary suppliers daily to enable production. The business performance of the company was on the downturn and the schedule adherence levels of top customers had been low resulting in a panic situation amongst OEMs. The news of insolvency commencement further elevated concerns of these OEMs on the ability of the company to be able to supply material to keep their line operational. Some high-level assessment estimated OEM line stoppage risk estimated @ INR 30 bn/day (400mn USD/day), a threat which grew larger with the commencement of insolvency. The threat of key customers pulling out, making the business unviable was ever-increasing. Moreover, given the current financial condition of the company, most of the OEMs had barred the company from consideration for new product development. This could have a substantial impact on the going concern of the business in the medium to long term as a lot of components being produced by the corporate debtor were in the last leg of their product life-cycle and not being empaneled for new product development would effectively result in business loss for the next 8-10 years, depending on the platform (average platform life for OEMs ranges from 6-10 years and as such loss of a platform would result in business loss for the entire life cycle of the business).

e. **Complex group structure marred with related party linkages across the supply chain:** The components being machined by the company underwent several processes and assemblies before being supplied to the OEMs as finished product. While the company supplied the final machined product, key predecessor processes in the value cycle like casting, forging and supply of critical assembly elements were stationed in other group companies, all with their own sets of problems and majority of them eventually getting admitted into their respective CIRPs. This complex structure provided the promoters with considerable leverage and the possible threat of business disruption by withholding supplies from feeder units housed in other promoter-controlled entities.

f. **Cash stuck in inventory and receivables:** assessment of balance sheet and financials indicated substantial amounts locked up in inventory, majority of which was found to be slow-moving / non-moving. Considerable amounts of receivables were due from related entities as well which seemed non-recoverable. Exports accounted for a substantial portion of the company's sales and had long collection cycles of

between 90-135 days. This further increased the pressure on the cash cycle of the company with more than 3 months' worth of export sales outstanding at any given point, but minimal credit period with the part suppliers for these components.

g. **Large creditor base with substantial overdue across suppliers:** On account of the working capital challenges and the cash crunch faced by the company for at-least 12 to 24 months prior to the CIRP initiation, the overdue to all suppliers and transporters were piling up to multiples of crores. Additionally as Amtek was amongst the First Big 12 mandates on which CIRP was initiated, there was no precedent with respect to the process for the stakeholders, which increased the risk perception in the eyes of the vendor base and made them jittery, making it that much more difficult to maintain the business as a going concern.

h. **Non-uniformity between different plants / verticals and lack of inter-departmental co-operation:** Given the large scale of operations, having a uniform enterprise resource planning system was a necessity for the company. However, the company continued to follow old / archaic systems with individual locations running their preferred ERPs for collating, tracking and presenting information. No uniform MIS existed to track metrics at the company level and most of the plants had their own format for business reporting, resulting in 15+ excel sheets in as many different formats to be tracked to gauge daily performance. While the company strived to take a professional approach in running its business, lack of apt and uniform technical support resulted in co-ordination lacunae between key functions, often impacting the overall business growth and sensibility.

i. **Procurement of key consumables and spares through a potentially promoter-controlled entity:** All the consumable and spares, lubes etc were procured through a single entity which acted as an aggregator from different original part suppliers. Investigation revealed instances of over-valued purchases, no adherence to supply schedules resulting in production outages, and monopo lisation resulting in inferior quality of products being supplied. At the outset, it became a challenge to overhaul the entire procurement function to address this risk and ensure that all business dealings were at arm's length and for the benefit of the company.

"Because of the working capital challenges and the cash crunch faced by the company for at least 12 to 24 months prior to the CIRP initiation, the overdue to all suppliers and transporters were piling up to multiples of crores."

j. **Poor upkeep of plant and machinery resulting in quality complaints from the customers:** One of the first areas to get impacted in any cash downturn cycle is the maintenance of plant and machinery, which gets neglected until it gets to the point of no return. The company was no different with preventive maintenance having been disposed off a long time before insolvency commencement. This resulted in rapid deterioration of the industry-leading equipment which enabled the company to gain the business of the top OEMs in the country. Poor quality had become an incessant and unacceptable issue for customers, thereby increasing the threat of business loss from key customers.

k. **Predatory pricing strategy to gain business resulted in poor margins which became unsustainable in some components:** In their bid to out-compete competitors and win majority of the market share to aid growth, the company

booked orders at low margins and at break-even levels in some cases. However, as OEMs started diverting part orders to secondary suppliers, the scale of operations came down, making supply of some components a loss-making affair, while majority of the other components continued to be low margin. Getting price increases from customers thus was imperative for successful operations, which was further made difficult due to lack of trust in customers.

In their bid to out-compete competitors and win majority of the market share to aid growth, the company booked orders at low margins and at break-even levels in some cases.

l. **Managing 90+ members in one of the largest committee of creditors in a CIRP:** Given the debt size and the varied debt profile, the company's lender base included almost all major lenders, NBFCs, ARCs, investment agencies and quite a few trusts and debenture holders. Efficiently managing the expectations and addressing the queries and concerns of such a large and diverse base of stakeholders was a never-before challenge for everyone involved.

4.3. Concerns/challenges faced by the IRP/RP

a. The complex business structure of Amtek required involvement of multiple related parties for completing a single order from a Customer. These inter-linkages worked back both ways with the supplier entities also majorly dependent on the corporate debtor for ~60-80% of their sales. As such, the ongoing stress at the corporate debtor was also evident in the back-end entities, hampering their operations and further impacting the operations of the corporate debtor, thus turning into a vicious circle. Subsequently most of these back-end entities were also dragged into their respective insolvencies shortly.

b. Also, the company had warehouses and factories in different geographies including outside India, which added a layer of complexity in under standing and operating the business of the corporate debtor.

c. RP and his team had to understand this complex structure quickly and then build trust and relation with multiple stakeholders, which required:

i. Converting the hostile working environment to a more constructive environment at all the plants and for continuation of business during CIRP process.

ii. Maintaining the morale of employees during this transition period and retain good employees while letting go some other on account of non-performance.

iii. Managingcustomers and suppliers to continue business during CIRP period.

iv. Managing day to day operations despite huge outstanding dues of suppliers and various statutory bodies.

v. Maintaining sustainable operations and keep the Company afloat as a going concern amidst the above challenges

d. Large lender base further added to the complexity in swift decision making as the CIRP process progressed

4.4. Measures taken to address Challenges, Improve the Financial Position, Maintain Sustainable Operations and achieve Optimal Resolution

The measures taken by the IRP/RP and the team were for meeting these challenges and maintain sustainable operations for an optimal resolution at the earliest.

These measures were undertaken to ensure protection and security of the Corporate Debtor andcontinue plant operations and generate positive cash flows to achieve sustainability of the company as a going concern.

Table 1 : Measures taken to address Challenges, Improve the Financial Position, Maintain Sustainable Operations and achieve Optimal Resolution

Measures Taken	Process Followed	Key Values achieved
Takeover and secure assets of the Corporate Debtor	ü Plant visit across locations and taking charge ü Communiques to all stakeholders including employees, customers, suppliers, lenders and requisite public announcements ü Taking charge of bank accounts and initiating the change in signatories across operative accounts ü Appointment of relevant legal advisors to guide the RP in the CIRP process and ensure compliance ü Taking possession of all company related documents including cheque books, company seals, letter heads, public websites, backup of data servers etc.	ü In accordance with the law, IRP took control of and secured Assets and initiated the CIRP
Making all stakeholders familiar with process and mapping expectations/ way forward	ü Informing all stakeholders of the various relevant provisions of IBC and defining the new normal for smooth operations ü Ongoing process with multiple meetings across hierarchies and stakeholder universe viz employees, vendors, transporters, customers etc ü Motivate the employees and win their trust to provide the requisite support ü Re-establishing trust with customers /suppliers to ensure business continuity and going concern	ü A sense of ownership amongst employees with a zeal to turn the company's fortunes around ü Increased level of trust in suppliers / customers based on promises of professionalism and transparency
Uniformity of processes across plants and locations	ü Establishment of uniform MIS formats across locations to better track business metrics ü started tracking production numbers, procurement, expenses, break-down levels on a daily basis followed by weekly calls with individual plants to analyse and discuss the performance	ü Sense of ownership with defined individual responsibilities; Plant heads made responsible for their plants' financial performance and not just operational metrics ü Pro-active and efficient tracking of issues including machine breakdown

Interim funding and customer advances: Liquidity Management	ü Interim Finance proposal was pursued with the CoC multiple times, highlighting the need of cash for sustenance and to enable a quick resolution; CoC approved the same after 3 rounds of rejections in CoC voting ü Identified optimal usage of funds ü Built customer confidence and cultivated trust to provide advances secured against future supplies to maintain and improve operations ü Optimized working capital by rationalizing inventory and negotiating with creditors and debtors ü Implement 13-week rolling cash flow forecast to optimize cash utilization	ü Raised INR 165cr+ (20mn USD) as interim finance from financial institutions and as customer advances; the same was successfully repaid from the cash flows of the company ü Reduced inventory levels by improved collection terms with major customers ü Improved cash reserve coverage to satisfactory levels
Focus on machine maintenance and quality improvement; creation of production plans	ü Real time tracking of machine health on the back of improved Management Information Systems; undertook time-study to identify issues and created an action plan for improving quality including machine maintenance and implementation of standard tooling ü Creation of a short-term production priority plan, in line with the working capital availability and the objective of retaining business of top OEMs	ü Increased uptime resulting in increased production and better schedule adherence ü Substantial decrease in rejection rates internally and at customer end
Continued engagement with customers	ü Built customer confidence and cultivated trust on the back of improved supply performance and quality metrics ü Regular update meetings with key customers to keep them abreast of the ongoing of the process and alleviate concerns if any	ü Increased customer confidence resulting in minimal loss of business ü Creation of buffer stock as stipulated where possible

Price increase negotiations with OEMs	ü Undertook margin analysis at the product level which aided in the identification of low, medium and high margin product categories, thus enabling a tailor-made approach for each product / customer ü Basis the margin analysis study, created a targeted list of customers to approach for price increases on the back of the confidence build-up by reducing quality issues and improving schedule adherences	ü Price increases received from multiple customers, as high as 40% for certain components ü Resulted in an addition of margin and cash inflow on a monthly basis
Engagement with suppliers and customers to ease working capital cycle	ü Two-pronged approach – engaged with vendors and negotiated payment terms and received cash discounts where payment terms not available; approached customers to crash payment terms for a short-term basis to improve liquidity and advances where available	ü Regained payment terms with multiple suppliers and reduced collection terms with 4 large OEMs ü Working capital requirement reduced by ~ INR 10 Cr on a monthly basis
Revamping of the procurement function	ü Using the available resources, a strategic sourcing team was created to take care of procurement needs of all plants ü Multiple redundancies identified in the procurement function and resources were reassigned to build a healthy base of vendor universe thereby resulting in reduced reliance on potentially promoter-controlled entity used for procuring all consumables	ü Improved availability of material, more cost-effective ü Standardisation of spares and consumables to the extent possible across facilities, resulting in fungibility between plants and lower inventory levels ü Created common order/stock pool by cluster
Workforce optimization	ü Workforce optimization in prolonged CIRP proceedings phase ü Did a root cause analysis and addressed the issue of employee attrition by implementing an incentive based payroll structure ü Reassignment of workforce in-turn realigning people to functions and departments in compliance with their skill set	ü The per month workforce CTC optimized during CIRP ü Right man for the right job – increased employee morale

Cost Optimization and Production Planning and Ramp up	ü Understand process leakages like wastages, rejections etc monitoring the same to bring it into acceptable range as per industry benchmarks ü Implement SOPs across the organization ü Pricing negotiation with customers and suppliers ü Plant wise cost budgeting and resource planning ü Invested in Capex to meet customer requirements and to meet new business regulations	ü Steady & sustained improvement ü Production ramped up across locations, which led to higher schedule adherence

4.5. Operational Performance of CD during CIRP

a. **Turnaround of the operations by bringing in the right expertise and strong project management:** Achieved higher schedule adherence and reduction in breakeven levels during CIRP period.

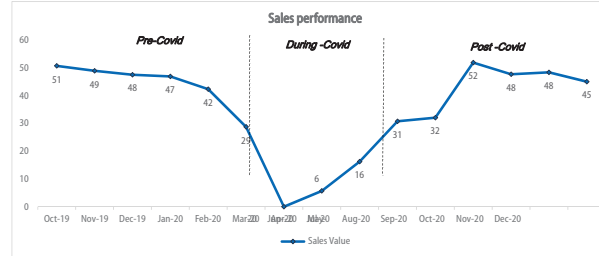
b. **Regular maintenance & repair activities fuelled growth and increased the value of the asset for achieving resolution:** Managed capex investments from internal accruals and achieved no line stoppages.

c. In Q1 FY21 as the Government imposed a nationwide lockdown amidst the COVID-19 pandemic, the plants were closed from March'20 to May'20 thereby leading to Nil/ very low sales in the quarter.

d. During this time, RP and his team worked with the company for cost optimization measures to reduce various costs and come out with safety manuals and be prepared for a smooth re-start of operations.

e. Post COVID, the Company has seen a V-shaped recovery in its sales has a sustainable order book and has improved its schedule adherence across OEMs.

Chart-1 : Sale Monthly (In Cr) showing a V-shaped Recovery in the Company's performance



Source: Monthly Results; Management Information
Note:

1. All sales numbers include component sale and scrap sale and excluding ARGL which was under a separate CIRP process and sold in Dec'19 after which ARGL business with Amtek was stopped.
2. Pre-CIRP data has not been shared as the RO had no control over the reported financials prior to CIRP.
3. The growth depicted above is mirroring that of the two-wheeler and tractor segment across the industry.

4.6. Resolution Process of the CD

The RP published an advertisement for inviting expression of interest for the corporate debtor on 30th August 2017 and subsequently received interests from several applicants. Out of the several interest and plans received the CoC approved the resolution plan by Applicant 1 in April 2018 and the RP filed an application with the AA for approval of the Resolution Plan by Applicant 1.

The NCLT upon an application filed under Section 30(6) of the IBC approved the resolution plan submitted by

Applicant 1 vide order[2] dated 25th July 2018 which was later permitted to be withdrawn by the NCLT vide order dated 13th February 2019 on default in implementation by Applicant 1. The NCLT advised that the H2 bidder from the previous bidding process be given the first chance, with respect to the resolution and granted additional 55 days for the purpose of calculating CIRP of 270 days and a further period of 10 days for serving notice to H2 bidder.

In May 2019 in order to maximise the value of the corporate debtor for all stakeholders, the CoC submitted to the NCLAT that several interests have been received for resolution of the corporate debtor and prayed for them to be considered. Accordingly, the NCLAT permitted[3] the CoC to consider plans if filed by one or more persons. On requests by the CoC to grant additional time, the NCLAT did not consider extending/ excluding the period for starting a fresh process and directed NCLT to pass appropriate liquidation orders in the matter of the corporate debtor on 16th August 2019.

However, on appeal by the CoC, the Supreme Court stayed the liquidation proceedings pursuant to order[4] passed by NCLAT vide order dated 6th September 2019. Subsequently, the Supreme Court vide several orders from September 2019 to February 2020 permitted the RP to invite fresh offers from prospective resolution applicants. The Resolution Plan by Applicant 2 was approved by the CoC on 11th February 2020 and the same was filed by the RP with NCLT for approval in June 2020. Subsequently after due process, vide order dated 09th July 2020, the NCLT approved the resolution plan of Applicant 2 for Amtek Auto Limited (AAL) under Section 31 of the IBC.

5. Post CIRP period

The Company is continuing to run as a going Concern by the Implementation and Monitoring Committee as per the

terms of the Approved Resolution Plan with sustainable Business. The company has a positive outlook for the next quarter and beyond and has been able to increase its share of business from some customers especially in the Tractor and two wheeler industry, which has contributed to the V-shaped recovery in the Post-COVID period.

a. The recovery in the auto segment and the Company has been fuelled by tractor segment, heavy industrial equipment segment, two-wheeler and personal vehicle segment.

b. The Company has been able to capitalize on the growth potential and has high schedules for fourth quarter of Fy21

c. Continuous efforts are being made to optimise workforce leading to reduction in monthly CTC

d. Cash coverage continues to improve from as low as 2 days at the initiation of the CIRP to ~30 days currently

e. Amtek has managed to improve confidence across stakeholders and continues to have a sustainable order book from all marquee OEMs.

[2] (C.A. No. 114 of 2018 in C.P (IB) No. 42/Chd/Hry/2017), (NCLT Chandigarh Bench).

[3] Company Appeal No. 219 of 2019 & Ors, NCLAT.

[4] Civil Appeal No. 6707 of 2019, SC.

Graph 4: CIRP / Key Operational Milestones Timeline

24-Jul-17	**24-Jul-17:** Initiation of CIRP
Jul'17	**27-Jul-17:** Appointment of Mr. Dinkar Venkatasubramanian as IRP and declaration of moratorium by NCLT **29-Jul-17:** Public Announcement inviting claims in terms of IBC
Aug'17	Constitution of the CoC and continuation of Mr. Dinkar Venkatasubramanian as RP by CoC **30-Aug-17:** Issuance of advertisement for inviting expression of interest for the corporate debtor with last date of submission as 11-Sep-17
Sep'17-Dec'17	Engagement with Prospective Resolution Applicants and submission of resolution plans (Last date for submission of plans 28-Dec-17)
Jan'18-Mar'18	Consideration of plans received and negotiation with Prospective Resolution Applicant(s)
Apr'18	Approval accorded by the CoC on Resolution Plan submitted by Applicant 1 and submission of the same for NCLT's approval by RP
Jul'18	**25-Jul-18:** Order passed by Hon'ble NCLT approving the Resolution Plan submitted by Applicant 1
Nov'18-Dec'18	Default by Applicant 1 in implementation of the Approved Resolution Plan. CoC sought directions from Hon'ble NCLT for next steps
Feb'19	**13-Feb-19:** NCLT advised that H2 bidder from the previous bidding process be given the first chance for resolution and granted additional 55 days for the purpose of calculating CIRP of 270 days and a further period of 10 days for serving notice to H2 bidder
May'19-Jul'19	Hon'ble NCLAT permitted the CoC to consider plans if filed by one or more persons. RP and CoC complied with the directions received
Aug'19	**16-Aug-19:** NCLAT did not consider extending/ excluding the period for starting a fresh process and directed NCLT to pass appropriate liquidation orders

Sep'19	**6-Sep-19:** Hon'ble Supreme Court stayed the liquidation proceedings pursuant to order passed by Hon'ble NCLAT **24-Sep-19:** Supreme court permitted the RP to invite fresh offers within 21 days and directed the CoC to take a final call within 2 weeks thereafter. RP and CoC complied with the order and invited plans.
Dec'19	**2-Dec-19:** Pursuant to the clarification application filed, Supreme Court recalled the order dated 13-Nov-19 & directed that the resolution plan must be submitted by PRAs within 30 days of the order and CoC to evaluate the plans within 3 weeks thereafter and place the same before Supreme Court. RP and CoC complied with the order and invited plans for consideration.
Jan'20	Consideration of plans received and negotiation with Prospective Resolution Applicant(s)
Feb'20	Resolution plan by Applicant 2 approved by CoC
Jun'20	**8-Jun-20:** Hon'ble Supreme Court relegated the matter to the NCLT to consider the same and pass appropriate orders within fifteen days from that day. Resolution Professional submitted the Application before Hon'ble NCLT for approval of the Resolution Plan. Hearings before Hon'ble NCLT conducted and concluded on 30-Jun-20
Jul'20	**9-Jul-20:** Resolution Plan by Applicant 2 approved by Hon'ble NCLT. Consequently, steps were taken for formation of Implementation and Monitoring Committee in terms of the Approved Resolution Plan comprising of one nominee from each of the 3 Key Lenders, nominee of the Resolution Applicant and the Insolvency Professional.

Insolvency Process of Jubiliant Energy Kharsang Pvt Limited (JEKPL)

There were no employees, no directors and no promoters/shareholder representatives from Dec'17 to Sept'20 therefore status of Corporate Debtor was marked as "Active Non-Compliant" at website of the Ministry of Corporate Affairs (MCA), Government of India. One of the major hurdles faced during the CIRP of the Corporate Debtor was this classification of the Corporate Debtor as an Active Non-Compliant company and structuring the manner in which the new management of the Corporate Debtor shall take over the management of the Corporate Debtor.

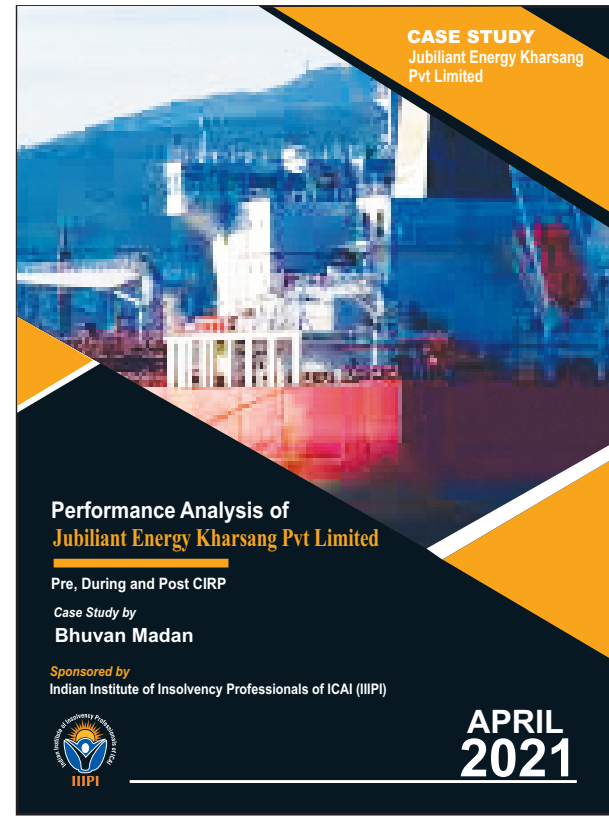
Furthermore, where all directors of the company have resigned of their office under Section 167 of Companies Act, the promoters or Central Govt shall appoint the required number of directors. Accordingly, RP requested promoter company, JE Energy B.V (holding company which holds 100% share of Corporate Debtor) to appoint directors in JEKPL as per statutory requirement however since the JE Energy B.V itself is into liquidation under Netherland Laws, the Bankruptcy trustee of promoter company expressed its inability to appoint any director/s on the board of Corporate Debtor. Besides, almost every stakeholder filed petitions in various courts of law from NCLT to NCLAT to the Supreme Court. Some of which were dismissed on the grounds that the petitioner had 'no locus' in the case.

Finally, the Resolution Plan of H-1 was voted by the COC after H-2 failed to outbid the H-1. But the implementation of the Resolution Plan had its own set of challenges. ***Read on to know more...***

1. Introduction

The resolution of JEKPL involves several aspects of insolvency such as guarantors obligation for payment of debts, legal loopholes, multiple litigations, plan implementation hurdles , locus standi of unsuccessful resolution applicant and role of MA to facilitate implementation of plan. However, for the sake of presentation, the entire case study has been divided into three main stages i.e. CIRP – Phase 1, CIRP-Phase 2, and Implementation of the Resolution Plan. Each stage brought its own set of challenges.

The main reason for financial stress was declining production and oil prices of produce from Kharasang oil field and problem further aggravated due to governmental policies and regulations pertaining to licenses. This led to severe financial crunch and has delay in debt servicing. Consequently, account of Corporate Debtor (CD) was classified as NPA. After attempts of revival could not materialise, the CD filed an application with NCLT for



Bhuvan Madan
The author is a professional member of IIIPI.
He can be reached at madan.bhuvan@gmail.com

*The Case Study is also available on IIIPI website, www.iiipicai.in (Resources – Success Stories of IP https://www.iiipicai.in/success-story-of-ip/).

initiation of Corporate Insolvency Resolution Process (CIRP) against itself under section 10 of the Insolvency and Bankruptcy Code (IBC or Code), 2016.

The NCLT vide order dated 17 March 2017 ordered commencement of CIRP and appointed an Insolvency Professional (IP) as Interim Resolution Professional (IRP) for the Corporate Debtor. However, the IRP was replaced with another RP (RP-1) by the Committee of Creditors (COC). Subsequently, Bhuvan Madan, IP was appointed as the Resolution Professional (RP-2) by the Committee of Creditors (CoC) of the Corporate Debtor and the same was confirmed by the NCLT vide order dated 8 March 2019. It was due to pre-existing legal disputes the RP-2 could took over the process after a gap of about 15 months from the RP-1 demitting the office. Wading through a several litigations filed by various stakeholders, the RP-2 not only completed the CIRP of the CD but also successfully discharged the responsibilities as MA for implementation of the Resolution Plan.

2. Company Profile

2.1. About the Kharsang Project

Kharsang field covering an area of 9.94 sq. km is located in a reserve forest in Changlang district in the state of Arunachal Pradesh (North East India), about 50 km east of Digboi Refinery. The Kharsang field was discovered in 1976 by Oil India Ltd. (OIL). A total of 36 wells were drilled by OIL in the Kharsang field by 1995. It has oil producing wells (high wax and low wax) with API ranging from 16 to 36 deg. Kharsang field aggregates to 70 wells comprising of 36 wells of legacy Oil India and 34 wells of PSC consortium.

The Government of India (GoI) desired that petroleum resources be exploited with utmost expedition in the overall interest of India in accordance with good international petroleum industry practice and invited bids from interested person having requisite credentials to undertake exploration and development of the petroleum resources. In the exercise of its powers, the GoI granted mining lease for such oil contract area and entered a contract with certain Parties with respect to the petroleum operations in the contract area and pursuant to the production sharing contract (Production Sharing Contract or PSC).

The Production Sharing Contract was executed on 16 June 1995 among following parties

Oil India Limited	40%
Geopetrol International Inc	25%
Enpro India Limited (now JEKPL Corporate Debtor)	25%
GeoEnpro Petroleum Limited	10%

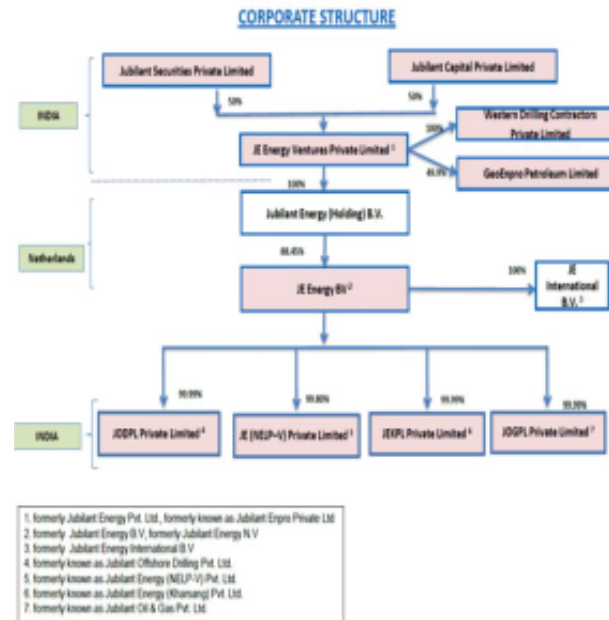
The PSC has a term of 25 years which can be extended for another 10 years.

In addition to the PSC, a Joint Operating Agreement (JOA) was also executed between the aforesaid parties.

2.2. JEKPL: The Corporate Debtor

The name of Enpro India ltd was changed to Jubilant Enpro Ltd. Subsequently Jubilant Enpro assigned its entire 25% PI to its affiliate company Enpro Commercials Pvt Limited whose name changed to Jubilant Energy (Kharsang) Pvt. Limited and thereafter to JEKPL (Corporate Debtor).

Graph 1: Corporate Structure of the Corporate Debtor



1. formerly Jubilant Energy Pvt. Ltd., formerly known as Jubilant Enpro Private Ltd
2. formerly Jubilant Energy B.V, formerly Jubilant Energy N.V
3. formerly Jubilant Energy International B.V
4. formerly known as Jubilant Offshore Drilling Pvt. Ltd.
5. formerly known as Jubilant Energy (NELP-V) Pvt. Ltd.
6. formerly known as Jubilant Energy (Kharsang) Pvt. Ltd.
7. formerly known as Jubilant Oil & Gas Pvt. Ltd.

In addition, Corporate Debtor has participating interest in Manipur Blocks (Manipur I and Manipur II) which have been relinquished under force-majeure conditions. The PSCs were executed on June 30, 2010 and July 19, 2010 with GoI which were tendered under the New Exploration Licensing Policy, Eighth Round and the Petroleum Exploration License was issued by the State Government of Manipur on Nov 15, 2010. After completion of initial G&G activities, preparation for the next round of obligations, i.e., drilling of exploration wells was commenced. However, it was found that the roads were in a deplorable condition and major repair work on portions of the access roads and bridges was underway. Even after four and a half years, there was no sign from the government as to when the roads would become functional. Hence, DGH agreed to grant force majeure on March 10, 2015 w.e.f. August 2, 2013 under the terms of the PSCs for both the blocks.

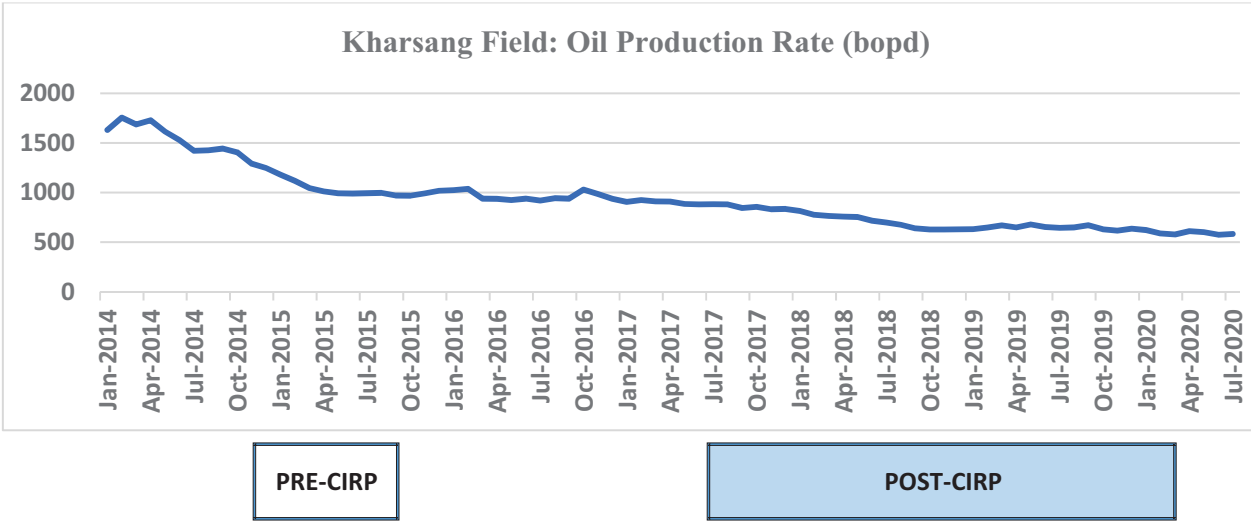
3. Pre-CIRP Performance

3.1. Production Capacity: Pre-CIRP Vs. Post-CIRP

Oil and gas reservoirs lose the pressure as oil and gas is produced from them. This results in decline in production over a period of time unless pressure management technology is implemented, or enhanced oil or gas recovery technology is implemented. In Kharsang, neither pressure management nor enhanced oil recovery technology is implemented to arrest the decline.

Further, it is understood that drilling of new wells has not been taken up due to lack of various regulatory approvals. This has resulted into decline in production level over period which has been tabulated as hereunder:

Chart 1: Oil Production Rate in Kharsang Field

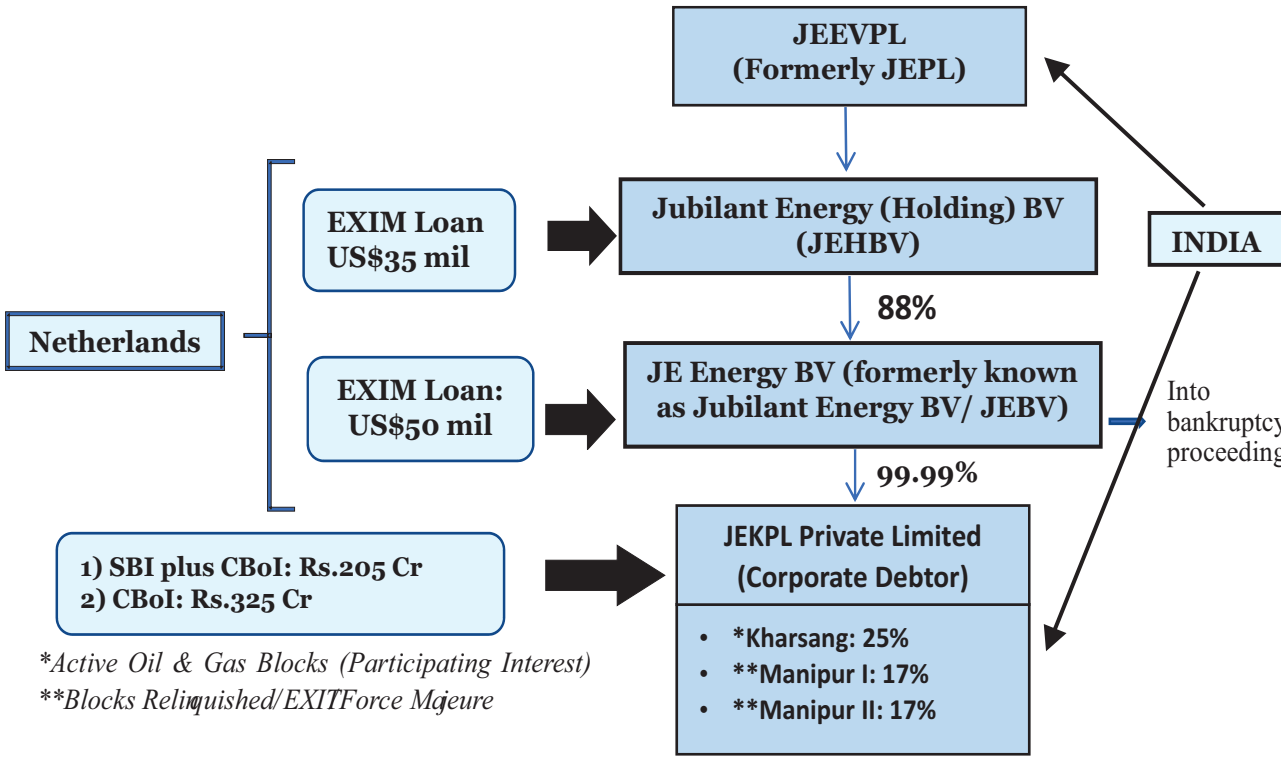


3.2. Financial facilities availed by JEKPL

a. Financing facilities of Corporate Debtor and corresponding security in Rupees

Name of Bank	Claims admitted (Rs. In Crores)	Secured by
State Bank of India	104	First charge on movable and immovable assets of Corporate Debtor Present and future receivables from Kharsang or any other field Mortgage of Corporate Debtor's PI in kharsang field Pledge of 51% shares of Corporate Debtor.
Central Bank of India	501	

Graph 2: Group Structure of the Corporate Debtor



b. Counter Corporate Guarantee provided by Corporate Debtor for Dollar Loan facilities availed in step-up holding companies:

EXIM bank sanctioned a Foreign Currency Term Loan of USD 50 Million during FY 2011-12 to Jubilant Energy N.V.(JENV) and USD 45 Million to Jubilant Energy (Holding) B.V.(JEHBV) formerly known as Jubilant Energy N.V, the Netherland).

JEPL being the ultimate Indian holding company of the prime borrowers has offered the corporate guarantee for both above loans. In addition, Corporate Debtor being an Indian subsidiary of prime borrowers has offered counter corporate guarantee for the performance of above guarantee by JEPL to EXIM bank.

In March'16 above Loan facilities extended by EXIM Bank were classified as NPA

3.3. Reason for Financial stress

The performance of kharsang field has declined considerably with both production and prices declined significantly which has been further aggravated due to governmental policies and license issues. The decline in production and lower crude prices have led to severe financial crunch and has led to delay in debt servicing. Consequently, account of Corporate debtor has been classified as NPA.

Corporate Debtor claimed that they made attempts to restructure its petroleum production in consultation with financial lenders, but it yielded not many results. Pursuant to continuation of such financial stress, Corporate Debtor filed an application under Section 10 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process (CIRP) against itself. The NCLT approved[1] the commencement of CIRP vide order dated 17 March 2017 and appointed an Insolvency Professional (IP) as Interim Resolution Professional (IRP) for the Corporate Debtor. However, the IRP was replaced with another RP (RP-1) by the Committee of Creditors (COC). Subsequently, the RP-

1 was also replaced by Mr. Bhuvan Madan (RP-2), who is the author of this case study.

3.4. Issues related to Management/Labour/Employees

Under Joint Operating Agreement (JOA) one of PI holder GeoEnpro Petroleum Limited was designated as Operator and entrusted with job of exploration, develop and operate the Contract Area in order to discover, develop and produce commercial accumulation of petroleum in accordance with policies, work programmes, budgets approved in accordance with Contract, and direction issued by Operating Committee and Management Committee.

4. Corporate Insolvency Resolution Process (CIRP)

Pursuant to approval of Resolution Plan by NCLT vide order dated 15 Dec 2017, erstwhile all directors of the Corporate Debtor resigned w.e.f 15th Dec 2017 by filing DIR-11 (However, entire process was severely marred by litigations at all forums and hence final resolution approved by NCLT in Feb 20 and plan got fully implemented in Sept 20 (explained in following paras). As all directors vacated office since 15 Dec'17, none of compliances with regard to e-filing of any form could be completed.

> **"RP requested promoter company, JE Energy B., to appoint directors in the board of CD as per statutory requirement. However, since the JE Energy B.V itself undergoing liquidation under Netherland Laws the Bankruptcy trustee expressed inability to appoint any director."**

There were no employees, no directors and no promoters/ shareholder representatives from Dec'17 to Sept'20 therefore status of Corporate Debtor was marked as "Active Non-Compliant" at website of the Ministry of Corporate Affairs (MCA), Government of India. One of the major hurdles faced during the CIRP of the Corporate Debtor was this classification of the Corporate Debtor as an Active Non-Compliant company and structuring the manner in which the new management of the Corporate Debtor shall take over the management of the Corporate Debtor.

Where all directors of the company have resigned of their office under sec 167 of companies Act, the promoters or Central Govt shall appoint the required number of directors. Accordingly, RP requested promoter company, JE Energy B.V (holding company which holds 100% share of Corporate Debtor) to appoint directors in JEKPL as per statutory requirement however since the JE Energy B.V itself is into liquidation under Netherlands laws therefore, the Bankruptcy trustee of promoter company expressed its inability to appoint any directors on the board of Corporate Debtor.

4.1. CIRP: Phase-1

The statutorily prescribed period of one-hundred and eighty (180) days from the insolvency commencement date was expiring on 17 September 2017, accordingly, upon an application filed by the erstwhile Resolution Professional (RP in CIRP-1 or RP-1) under Section 12 of the Code, the said period of the CIRP was extended by the Adjudicating Authority (AA) by another 90 days vide its order dated 3 August 2017. Accordingly, the CIRP of the Corporate Debtor was due to expire on 12 December 2017. Pursuant to the advertisement, the creditors - 'Financial Creditors' including EXIM Bank and 'Operational Creditors' filed their respective claims.

Pursuant to invitation for EOI for submission of resolution plans, 13 EOIs were received by the RP-1 out of which 5 EOI were found to be qualified, however final resolution plan were submitted by two potential Resolution Applicant's namely Atyant Capital India Fund -1 ("Atyant") and Hindustan oil Exploration Company Limited (HOEC).

The Resolution Plan of Atyant (Highest bidder) was recommended by RP-1 and COC voted in its favour except Exim bank. The same was approved by AA vide its order dated 15 Dec 2017. It is worthwhile to note that RP-1 had not recognized Exim Bank debt as "Financial Debt" and ignored to include the Exim Bank in the COC with voting share proportionate to its amount of claim.

[1]NCLT, Allahabad, CP No. 24/ALD/2017, March 17, 2017.

4.2. Brief Background of Atyant Capital: The Resolution Applicant

Atyant Capital India Fund-1 ('Atyant Capital/Fund'), the Resolution Applicant, was incorporated in the Republic of Mauritius as a public company limited by shares in accordance with the Mauritius Companies Act, 2001 Republic of Mauritius. It has been granted a category - I global business licence by the Financial Services Commission and authorised as a collective investment scheme under the Securities Act, 2005. Atyant Capital Family of Funds have assets under management in excess of USD 500 million. Limited partners (LPs) to the Funds include university endowment funds, institutional investors, pension funds, and large family offices, all from North Americas. Further, the Fund has committed but unutilised capital of USD 500 million for investment. Typical to a Private Equity investor, the Fund's investment objectives are to achieve consistent absolute rate of return which exceed the emerging market indexes and long-term capital appreciation by investing in shares and securities – both private or listed equities in defined sectors like oil and gas, technology and health sciences.

4.3. Meanwhile, two appeals fere filed before Hon'ble NCLT, details of which are as hereunder:

a. EXIM Bank challenged the NCLT order dated 15 dec '17 as Claim of Exim bank as a financial Creditor rejected by Erstwhile Resolution Professional (RP-1)

The EXIM Bank declared the amount of loan advanced to Principal Borrower as NPA. Therefore, the EXIM Bank recalled the loan facilities advanced to JENV and JEHBV. Consequently, Exim Bank initiated recovery actions against the Prime Borrowers i.e JENV and JEHBV and invoked its 'Corporate Guarantee' as well as the 'Counter Corporate Guarantee' against the JEPL and Corporate Debtor.

According to EXIM Bank Principal Borrower having defaulted and the liability of Corporate Guarantee as 'Counter Corporate Guarantee' being joint and co-extensive with Principal Borrower, the EXIM Bank comes within the meaning of 'Financial Creditor' of Corporate Debtor (Corporate Debtor), in terms of Section 5(7) r/w Section 5(8)(h) of I&B Code. However, Exim Bank's claim to treat it as a 'Financial Creditor' has not been accepted by the RP-1, which led to Exim Bank filing an application before AA challenging the said rejection of claim and the same finally resulted in an Order dated 27 November 2017 passed by this AA whereby the decision of the RP-1 rejecting the claim of Exim Bank as a financial creditor of the Corporate Debtor was upheld.

The aforesaid order was challenged by Exim Bank before the NCLAT and consequently, NCLAT pronounced order[2] on dated 8th dec 2017 directing RP-1 to consider the claim of appellant and request the COC to notice the same and also bring to the notice of AA.

However, the said order dated 15 Dec 2017 passed by NCLT is subject to outcome of EXIM Bank's application before the NCLAT challenging the order of NCLT dated 27th Nov 2017 to consider them as financial creditor to the CIRP of Corporate Debtor.

Therefore, EXIM bank filed an appeal to NCLAT of setting aside 15th Dec'17 order of NCLT and also its order dated 27th Nov 17 and the decision dated 4th Aug'17 of the RP rejecting the claim of EXIM.

b. Challenging of NCLT order dated 15th Dec 2017 by HOEC ("Unsuccessful Resolution Applicant")

HOEC alleged that bidding process was not conducted by RP-1 and COC in accordance with defined process laid out in process documents. HOEC alleged despite that bids submitted by each resolution applicant being treated as final offer, suddenly the goal post was changed by RP-1 and COC from written binding bidding to verbal auctioning mode towards upward revision in price consideration with both potential resolution applicants. Atyant("Successful Resolution Applicant") participated in verbal auctioning and submitted revised resolution plan on 6th Dec 2017. HOEC claimed that they being listed company couldn't participate in verbal auctioning however, submitted revised resolution plan on 6th Dec 2017.Post evaluation of resolution plans by RP-1 and COC, resolution plan of Atyant was approved by COC and rejected the resolution plan of HOEC on the ground -

[2] NCLT, Allahabad, CA.No.159/2017, November 27, 2017.

HOEC submitted conditional plan and HOEC opted out of bidding process on dated 4th Dec'17.

HOEC alleged that purported conditions under which HOEC's plan was rejected is illegal and motivated. Aggrieved by the order of NCLT dated 15 Dec 2017, HOEC filed an application before the NCLAT on 20th January 2018 to consider the resolution plan submitted by HOEC on dated 6th December 2017 which was higher han that of Atyant.

c. NCLAT passed stay order on 1st Feb 2018 and a final Order on 14th August 18

Pursuant to above two appeals NCLAT passed stay order on dated 1st Feb 2018 directing the AA NCLT Allahabad Bench not to give effect to the Resolution Plan which was passed during vide order dated 15 Dec 2017. Finally, the above issue was settled by judgment dated 14 August 2018 whereby the NCLAT recognised the status of Exim Bank as a "Financial Creditor". NCLAT also recognised that resolution plan has been approved by the COC which was not competent in the absence of Exim Bank and taking into consideration that the claim of one of the resolution applicants Viz HOEC was wrongly not been considered and hence order dated 15Dec 2017 was set aside and directed to reconstitute the COC after including Exim Bank and further directed to reconsider of the resolution plans already submitted with respect to the Corporate Debtor. It was made clear by the NCLAT that COC cannot go in for "rebidding" on account of the resolution plans having already been opened.

d. NCLAT order dated 14th August 2018 was challenged by Atyant

Meanwhile, the decision of the NCLAT dated 14 August 2018 was challenged before the Supreme Court by Atyant as it is prejudicially affecting the rights and interest of the Appellant as a successful resolution applicant by setting aside approved Resolution Plan of Appellant which was approved by the NCLT vide its order dated 15 Dec 17.

The basic premises of appeal filed by Atyant was that although EXIM bank was participating in CIRP throughout and attended all COC meetings and never objected to the resolution plan submitted by Atyant. In addition, NCLT observed that Atyant's Plan is bonafide and beneficial to the interest of Corporate Debtor. Therefore, Atyant preyed that NCLAT's dated 14 Aug'18 order for setting aside NCLT order dated 15 Dec 17 would alter the status of Atyant as successful Resolution Applicant, merely because EXIM Bank being declared as "Financial Creditor" although the rights of EXIM Bank are fully protected under the resolution plan of Appellant and EXIM Bank was always part of all COC meetings.

Supreme Court vide order dated 7 September 2018 (i.e. the next day after the direction to Exim Bank to call for a meeting of the Committee of Creditors), while issuing notice directed for maintenance of status quo as on the said date. Also, in the matter of HOEC's appeal, NCLAT passed an order on dated 28th Jan 2019 to follow the direction given in the NCLAT order dated 14th August 2018.

The aforesaid said civil appeal was thereafter taken up and dismissed[3] by the Supreme Court vide its order dated 23 January 2019.

4.4. CIRP Phase- 2: Re initiation of CIRP after gap of 15 months

Subsequently, Bhuvan Madan was appointed as the Resolution Professional (RP-2) by the Committee of Creditors of the Corporate Debtor and the same was confirmed by the NCLT vide order dated 8 March 2019.

Thereafter, RP-2, his authorised representatives and his legal advisor Shradhul Amarchand Mangaldas (SAM) reconstituted the COC, along with EXIM Bank and held a meeting on 29th March 2019 to discuss the future course of action and to evaluate/consider/reconsider the resolution plans already submitted by existing resolution applicants only in line with NCLAT order dated 14 August 2018. While the statutorily prescribed period for conducting the of the CIRP has already expired, the members of the Committee of Creditors inter alia authorized the RP-2 to file the following applications:

a. Application before the NCLT seeking exclusion of time period consumed in litigation in calculating the total time period available for conducting the CIRP of the Corporate Debtor; and

b. Application before the NCLAT seeking clarification of the Order dated 14 August 2018 with respect to

[3] NCLAT, CA (AT) (Insolvency) No. 304/2017, December 08, 2017.

whether the existing resolution applicants could be asked to submit revised resolution plans to maximize the value of assets or if the CoC was bound to consider the original plans such resolution applicants had submitted.

Thereafter, on 10 April 2019, the RP-2 Invited to both the resolution applicants seeking confirmation on their interest to participate in the resolution process of the Corporate Debtor. In response, both resolution applicants reconfirmed their interest.

While NCLT granted requisite exclusion, the application filed before the NCLAT was disposed vide Order dated 14 May 2019 whereby the AA stated that there was no need for clarification and granted liberty to the CoC to negotiate with the resolution applicants in accordance with the Code to maximise the value of assets of the Corporate Debtor.

On 24 May 2019, the 18th COC meeting took place wherein the members of the COC decided the future course of action and unanimously agreed to issue a process document (Process Document) containing the detailed terms and conditions of the process to be conducted by the COC for negotiation with both the resolution applicants. Accordingly, on 1 June 2019 the RP-2, on behalf of the COC, circulated the Process Document and the due date for submission of revised resolution plan was decided as 10 June 2019. In terms of the Process Document, an out-bidding process had been envisaged where each resolution applicant had one chance to outbid the highest evaluated plan.

In pursuance of the above invitation, both the resolution applicants submitted their revised resolution plans and post evaluation, Atyant was declared as the H1 bidder and HOEC was declared as the H2 bidder.

Thereafter the H2 bidder was given the opportunity to outbid the H1 bidder, in accordance with the process for outbidding stipulated under the Process Document. However, the H2 bidder i.e. HOEC declined to outbid the H1 bidder and consequently, H1 bidder i.e. Atyant was declared the highest evaluated Resolution Applicant (RA).

The members of CoC participated in the scheduled e-voting and the same resulted in approval of Final Resolution Plan submitted by Atyant by 100% voting in favour of approval of plan. NCLT found Resolution Plan of Atyant in conformity of section 30(2) of code and an approval in respect of the same was pronounced on17th January 2020. However, RP-2 observed some error that had crept in the order and filed an application for modification order. Subsequently, NCLT passed order dated 4th Feb 20 and corrected/modified[4] the order dated 17th Jan 20.

Upon NCLT's approval of the resolution plan, Atyant appointed the RP-2 as Monitoring Agency (MA) in terms of the approved resolution plan for effective monitoring and supervising the implementation of resolution plan approved by the NCLT.

5. Implementation of Resolution Plan

5.1. Hurdles in Implementing Resolution Plan

It appeared that all things ended happily and now RA is to implement the plan. However, many aspects unfolded one by one including Covid-19 Pandemic that kept delaying implementation of the Resolution Plan. Hurdles in implementation of the resolution plan by Successful Resolution Applicant, Atyant Capital India Fund- I ("RA") are as follows:

a. The NCLT order dated 4th Feb'20 approving the resolution plan was challenged by Geopetrol International Inc ("GPI") (a wholly owned step-down subsidiary of HOEC) on account of an alleged Pre-emption Right.

b. Geopetrol International Inc. (GPI) challenged the NCLT order dated 4th Feb'20 while claiming pre-emption rights on the Participating Interest ("PI") held by JEKPL Pvt. Ltd. in the Kharsang Field. GPI sought a recall of the corporate insolvency

[4] NCLT, Allahabad, CA No. 223/ 2017 in CP No. 24/ALD/2017, December 15, 2017.

resolution process until a notice of pre-emption is issued in terms of Clause 12.3 of the Joint Operating Agreement for enabling parties to the JOA to exercise their pre-emptive rights. It was argued by GPI that the principal assets of the 'Corporate Debtor' was its 25% Participating Interest in kharsang oil field and any direct or indirect sale of the said participating interest to be strictly governed by the provisions of the Production Sharing Contract and the Joint Operating Agreement. Accordingly, GPI claimed a first charge over the participating interest of the 'Corporate Debtor' and pre-emptive right under Article 12.3 of the Agreement. However, the NCLAT was pleased to dismiss the appeals vide its order dated 13th March 2020 on account of the resolution plan having been approved and it being presently binding on all stakeholders under Section 31 of the Code.

c. On account of the aforesaid appeal, Atyant changed its implementation strategy to wait and gauge the situation. This was also exacerbated by the outbreak of the pandemic. Atyant feared appeals to the NCLAT order and was apprehensive that GPI may raise an issue with respect to exercise of its alleged pre-emption rights. Therefore, keeping this in mind, Atyant issued a letter dated 14 March 2020 to the lenders as well as the MA seeking extension of 90 days extension for implementation of the resolution plan for the following reasons:

   I. Possibility of filing of appeal by GPI before Supreme Court;

   ii. Pandemic outbreak of COVID-19 which has been declared as force majeure event.

   iii. the pandemic has caused a steep fall in oil and gas prices worldwide which is also the primary business of the Company thereby potentially affecting the cash flows of the Company.

d. The letter was responded to the MA inter alia stating that in view of the unequivocal terms of the Approved Resolution Plan, the Atyant is stopped from taking any contrary position and delaying or seeking any extension for the implementation of the Approved Resolution Plan. Further, the MA also objected to the RA's contention of occurrence of event of force majeure and emphasized that the COVID outbreak had absolutely no bearing whatsoever in respect of the requirement to implement an Approved Resolution Plan by payment of the consideration provided therein and secondly, the Approved Resolution Plan does not have any provision which provides the liberty or right to renege or delay in the implementation of the Approved Resolution Plan even upon the occurrence of a force majeure event.

e. Finally, the MA along with the financial creditors of the Company called upon the Atyant to immediately implement the terms of the approved Resolution Plan without any further delay by making the payment of the total consideration to the financial creditors.

f. By this time, the Atyant had already filed an application before the NCLT Allahabad Bench seeking directions for extension of 90 days' time period for implementation of the resolution plan stating the lockdown imposed by the government of India as one of the reasons for the same.

g. Atyant deliberated with the MA and lenders on finally on 22 April 2020 it was agreed that Atyant would be permitted an extension of 90 days to implement the approved resolution plan subject to the following terms and conditions:

   i. INR 10 crores should be infused by Atyant in JEKPL by way of issuance of demand draft immediately, to display their commitment towards implementation of plan;

   ii. Application/Affidavit to be filed with Adjudicating Authority to seek necessary direction for extension of time as requested by the RA, along with the withdrawal of application filed by RA;

   iii. The balance resolution amount to be paid to the financial creditors within 90 days from lifting of lockdown issued by Central Government.

Finally, Atyant agreed to implement the resolution plan in line with the extension granted and fulfil the conditions. Furthermore, Atyant clarified that the reason for seeking

90 days is to gauge the situation vis-à-vis GPI and any challenges that it may raise with respect to the resolution plan and exercise of its pre-emption rights. Atyant further clarified that in case the anticipated litigation filed by HOEC/GPI before the Supreme Court of India[5] is disposed-off sooner thereby attaining finality on the issue of pre-emption right, they shall make the payment even before the completion of 90 days.

5.2. Fresh operational issues raised by Atyant

Subsequently, Atyant raised another two operational issues on account of which they expressed their apprehension towards their implementation of the Resolution Plan now stating that the same had material bearing on the business and financial affairs of JEKPL: -

a. Demand notice dated 04.06.2020 issued by MoPNG, Government of India seeking payment of USD 24.8million.

b. Letter dated 08.06.2020 issued by MoPNG, giving three months period for continuing petroleum operations (instead of 10 years extension, consistent with the Government's Extension Policy 2016, to the PSC tenure).

5.3. Invocation of Performance Bank Guarantee by lenders

This is last thing which any Resolution Professional would like to avoid but there was no option but to scrap the entire resolution process.

Lenders expressed their discomfort over the observations made by the Atyant and apprehension that the Atyant may not be willing to file the application in accordance with the decision taken in meeting dated 22 April 2020. Unhappy with the issue raised by the Atyant and attempt by Atyant to delay the implementation, the lenders invoked the performance bank guarantee submitted by Atyant.

5.4. Authorisation to MA

By this time Lenders had made up their mind Atyant was just buying time and delaying the plan implementation. There was a deadlock between the resolution applicant and the lenders, and it almost seemed as if liquidation would be the only option left in respect of the Corporate Debtor. In fact, the possibility of liquidation was also contemplated by the lenders. Pursuant to such deadlock, the MA was authorised to negotiate with the resolution applicants.

Accordingly, the MA and his legal counsel were able to act as a bridge between the lenders and the resolution applicant by nurturing trust and faith between the parties and mediating the deadlock to explore all possibilities of implementation of plan and develop an implementation model, which can be mutually acceptable. This mature and professional endeavour was in line to the objectives underlying the IBC, namely that of revival of the corporate debtor and avoid liquidation. This is also indicative of the importance of sensible and practical negotiations in salvaging situations that may be detrimental to all parties involved in a transaction. It was crucial to create an ambience of faith and confidence among all the stakeholders and mediate for effective closure.

5.5. Finally, after a lot of deliberation and back and forth between the Atyant and the lenders, the following decisions were taken in the meeting held on 30 July 2020:

a. The RA shall provide the demand draft for INR 5.77 crores to the MA by August 5, 2020 and

b. simultaneously, lenders shall withdraw notice of invocation of PBG and the unconditional discharge of the PBG which was earlier submitted.

c. RA shall mandatorily and unconditionally implement the approved Resolution Plan on or before 30 September 2020.

d. Reversal of entire implementation of Plan in the event GPI/HOEC challenges the resolution plan in view of pre-emptive rights in respect of PI of JEKPL and the Supreme Court decides in favour of GPI/HOEC. In this event, money paid by RA shall be returned back by lenders within 30 days.

e. Filing of joint application to Adjudicating Authority on the decision taken by the erstwhile COC/lenders with regard to extension of timelines and seek direction from them.

[5] NCLAT, CA (AT) (Insolvency) No. 304/2017, February 01, 2018.

A joint application was filed by the MA (post authorisation from lenders) and Atyant seeking directions on the extended timeline for implementation of the Resolution Plan and fresh agreed position, specifically confirming for implementation of Resolution Plan unconditionally by 30th Sept'20. Such application filed with a confirmation that receipt of consolidated demand drafts of INR 15.77 crores by the MA.

Vide order dated 9th Sept 2020, NCLT[6] while declining to accede to the prayer for reversal of money to the Successful Resolution Applicant in the event of dismissal of order from Supreme Court (being speculative), directed the implementation of the approved Resolution Plan on revised commercial agreement between lenders and Atyant by 30 September 2020.

Table 1: Sequence of events since approval of resolution plan by NCLT

Date	Event
04.02.2020	NCLT approved resolution plan of Atyant Capital India Fund-I (RA) to be implemented within 30 days.
06.02.2020	Geopetrol International Inc. ("GPI") issued notice claiming pre-emption rights on participating interest held by JEKPL Pvt. Ltd. in the Kharsang Field
03.03.2020	MA responded to GPI's notice objecting to their right.
13.03.2020	GPI approached the Hon'ble ("NCLAT") challenging the NCLT order dated 4 February 2020 approving the resolution plan. The Hon'ble NCLAT was pleased to dismiss the appeal.
14.03.2020	Atyant issued letter to monitoring agency seeking 90 days extension on account of outbreak of COVID-19 and possibility of GPI filing an appeal before SC.
16.03.2020	A meeting was held with the Atyant to deliberate on the issues raised by the Atyant in his letter dated 14.03.2020
17.03.2020	Atyant issued another letter requesting for extension of 90 days, seeking to file a joint application before the Hon'ble NCLT for the same.
18.3.2020	Ayant filed application before NCLT seeking extension of 90 days for implementation of resolution plan.
19.03.2020	The MA responded to both the letters of the Atyant dated 14.3 and 17.3 inter alia stating that in view of the unequivocal terms of the Approved Resolution Plan, the RA is estopped from taking any contrary position and delaying or seeking any extension for the implementation of the Approved Resolution Plan
19.3.2020	Atyant responded to MA's letter stating their willingness to implement the plan within 90 days.
17.4.2020	Discussion with Atyant on implementation of plan and requesting them for renewal of PBG which was expired
22.4.2020	Meeting between Atyant, lenders and MA regarding implementation of plan where - by extension of timeline for implementation was approved by lenders.
20.6.2020	Atyant issued another letter to the MA and the lenders requesting for a meeting to deliberate on certain operational matters

[6] Ibid, 5.

1.7.2020	MA sent email to Atyant informing that the request for meeting to discuss operational matters rejected by lenders who rather insist on compliance of decisions taken in 22 April meeting and submission of INR 10 crore DD.
4.7.2020	In response to this, Atyant again requested lenders to hold a meeting.
9.7.2020	PBG submitted by Atyant invoked by SBI
13.7.2020, 16.7.2020	The lenders had a meeting with MA to deliberate on the way forward on account of non-implementation of the plan by RA.
17.7.2020	Atyant finally handed over the fresh DD for INR 10crore to the MA which was to expire on 15 Aug 2020.
22.7.2020, 27.7.2020	Another meeting happened with RA to discuss the next steps towards implementation of plan.
30.7.2020	Final meeting with RA whereby it was agreed to implement resolution plan latest by 30 September 2020.
13.8.2020	The notice for invocation of PBG withdrawn by SBI upon submission of DD aggregating to INR 15.77 crores in total.
25.8.2020	Joint application on behalf of RA and lenders filed seeking extension of period for implementing the resolution plan.
9.9.2020	The NCLT allowed the application for extension of timeline for implementation of resolution plan up to 30 Sep 2020.

5.6. Final Implementation of Resolution Plan

Following the extended timeline for implementation of the resolution plan, Atyant implemented the resolution plan in its entirety. The money payable to the financial creditors was infused in the Corporate Debtor and accordingly, the following resolutions were passed in the board meeting conducted by the" Reconstituted Board" for the purpose of effective change of management pursuant to approved resolution plan:

1. To take a note of NCLT order dated Feb 4, 2020 approving the resolution plan and to take on record the appointment of reconstituted board in terms of NCLT order (along with the general disclosure as received under sec 164(2) and sec 184 (1) of Companies Act.
2. To take a note of cessation of the erstwhile directors of the company.
3. Authorising the reconstituted board to file E- Form INC-28 for submission of NCLT order approving the plan.
4. On the same day, the infusion of funds required to make payment to the financial creditors was infused in the Company and thereafter, these sums were distributed to all financial creditors.

5.7. HOEC challenged NCLT order dated 9th September 2020 in NCLAT

HOEC filed application, before NCLT Allahabad Bench against NCLT order dated 9th Sept 2020, under Section 33(3) and 74(3) of the Code sought initiation of the liquidation process on account of purported failure on part of Atyant to implement the resolution plan within the stipulated timeline.

Strangely, while appeal is pending in NCLT Allahabad Bench, Later, HOEC filed another appeal to NCLAT against the order of the NCLT dated 9th September 2020 allowing delayed implementation of the resolution plan on the ground that the erstwhile Committee of Creditors, in connivance with the Successful Resolution Applicant, accepted a re-negotiated fresh Resolution Plan and the application of the Committee of Creditors under Section 60(5) of the Code was not maintainable and shouldn't have been entertained by the Adjudicating Authority.

MA and Atyant, both pleaded that Applicant herein is in no manner impacted by the implementation of the Resolution Plan by the Successful Resolution Applicant. The Applicant, during the CIR Process of

the Corporate Debtor, was given a fair opportunity of participation and it is ultimately the commercial decision of the members of the COC which is paramount. The members of the erstwhile COC had, in exercise of their commercial wisdom, approved the Resolution Plan of Atyant and the same thereafter received a stamp of approval from NCLT as well in terms of Section 31 of the Code. The NCLAT vide its order[7] dated 17th Nov'20 held that HOEC had no locus to maintain that the change in terms of the approved Resolution Plan in regard to the extension of time for induction of upfront amount as also the implementation of the Resolution Plan jeopardized its legal rights qua consideration of its Resolution Plan which had been rejected. It was also held that an unsuccessful resolution applicant has no vested rights and upon finding no merit in the present appeal; it was dismissed.

Evidently, the NCLAT has rightly recognised the established position of law that once a particular resolution applicant is declared unsuccessful and is out of the resolution process, it has no right to then challenge any decisions taken by any stakeholder and/or implementation of the resolution plan by the successful resolution applicant. Keeping in light of aforesaid NCLAT order, later NCLT Allahabad bench also dismissed application.

5.8. HOEC challenged NCLAT Order in the Supreme Court

HOEC aggrieved with the order NCLAT filed appeal in Supreme Court under section 61 of Code. Counsel for HOEC submitted that they are aggrieved by the extension granted to the successful resolution application for plan implementation. He submitted there was a 30-day time period stipulated for plan implementation, however a period of 8 months have been granted by the committee of creditors for plan implementation, despite the fact that the committee of creditors had become functus officio. He also submitted that the entire resolution plan, as approved by the NCLT has been changed and the Corporate Debtor is now handed over to some third party.

The Supreme Court after hearing the submissions passed an order[8] dismissing the captioned appeal at the outset.

5.9. Recovery of Financial Creditors/ Operational Creditors

There were no operational creditors and resolution plan has been fully implemented in accordance with approved resolution plan. Recovery for financial creditors is around 10% of admitted claim which was fully paid by Atyant and distributed among the financial creditors in proportionate to admitted claim.

5.10. Avoidance Proceedings

Sections 43, 45, 49, 50 and 66 of the Code mandate the RP and the Liquidator to file applications with the Adjudicating Authority (AA) seeking appropriate reliefs and directions permissible under the Code where the RP and Liquidator comes across any transactions that can be classified in the said provisions. Erstwhile RP didn't observe any such transactions which may be classified in the said provisions and hence didn't file any application with the Adjudicating Authority.

6. Learning/ Jurisprudence

a. At first place excluding decision by RP-1 to exclude EXIM Bank as financial creditor with voting share was not correct. In accordance with executed guarantee deed by JEPL and counter guarantee deed executed by JEKPL for the financial facilities extended by EXIM Bank to JENV, Netherland, both entities are liable jointly and severally as "Principal Debtor". Corporate Counter Guarantee in respect of due performance and discharge of obligations and liabilities of JEPL to EXIM Bank, essentially comes within ambit of Supplementary/Additional guarantee

There is admitted payment default by the Principal Borrower i.e JENV, Netherland. EXIM Bank has declared account of JENV as NPA in May '2016. Such Counter guarantee given by JEKPL has been acknowledged by JELPL in the financial accounts. Therefore, for all purpose Counter Corporate Guarantee given by JEKPL amounts to Guarantee and entitled to be covered under Financial Debt.

b. Secondly, 'Unsuccessful Resolution Applicant' whose Resolution Plan was rejected by the Committee of Creditors has no locus to question the implementation of the approved Resolution Plan of the Successful Resolution Applicant. Once the Unsuccessful Resolution Applicant is out of the fray,

it has neither locus to call in question any action of any of the stakeholders qua implementation of the approved Resolution Plan nor can it claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan of Successful Resolution Applicant in regard to its implementation has affected its prospects of being a Successful Resolution Applicant. If the terms of the approved Resolution Plan of Successful Resolution Applicant have been varied or time extended to facilitate its implementation and the creditors have not claimed any prejudice on that count and the Committee of Creditors comprising of the creditors as stakeholders has not objected to same rather been privy to it on account of hardship due to prevailing circumstances, the Unsuccessful Resolution Applicant cannot be permitted to cry foul.

Both above matters have been duly given acknowledged and approved by NCLAT.

7. Success mantra-engagement/negotiation etc

"When learning is purposeful, creativity blossoms. When creativity blossoms, thinking emanates. When thinking emanates, knowledge is fully lit. When knowledge is lit, economy flourishes." ~Dr. A.P.J. Abdul Kalam, *Indomitable Spirit*. The learnings from the successful resolution of JEKPL could be summarised as follows:

a. Insolvency Professional should be thorough professional and have meticulous approach. In my view, ability of quick grasping of the ongoing business, operational and regulatory issues along with handling CIRP process, litigations arising of CIRP must go hand in hand. There is no fit for all formula for dealing with a business in this situation; a careful commercial judgement must be made in each case. The IP has no time to develop any understanding about the CDs business but is expected to make meaningful decisions to keep the business operational. The RP should demonstrate deep understanding of industry operations, banking credit knowledge, commercial expertise and legal clarity from commercial perspective to enable an IP to take over the company's reins, reverse its decline and bring the company back on track and continue trading to increase returns to creditors; or, in cases where the company is extremely weak and cannot survive, close it down.

In aforesaid case history, resolution of JEKPL has truly lived up to expectation and to large extent matched up to the challenge of reinvigorating the insolvency regime in India.

b. Pro-activeness of RP: While CIRP regulations provide timelines for RP but generally it is often observed that there is considerable delay in RP's response thereby leading to initiation of multiple suits. Therefore, RPs need to ensure timely decisions and actions, effective communication with all stakeholders.

"While CIRP regulations provide timelines for RP but it is often observed that there is considerable delay in RP's response thereby leading to multiple suits. Therefore, RPs need to ensure timely decisions and actions, effective communication with all stakeholders."

c. Ability to handle conflicts among creditors. Creditors need to show more maturity in changing their mindset and viewing IBC as an avenue for resolution rather than merely for recovery. The very object of the Code is to revive a company under the CIRP and not to liquidate it.

d. Even after approval from resolution plan, Resolution Applicant might face many hurdles and challenges while doing implementation (in JEKPL apart from pandemic, multiple issues cropped up as explained above). RP (who presume the role of Monitoring Agency "MA" till implementation of plan) should have ability to resolve all implementation issues. RP/MA should attempt to resolve the conflict by identifying a solution that is partially satisfactory to Resolution Applicant and Lenders but completely satisfactory to neither. RP/MA should cooperate with the RA to understand their concerns in an effort to find a mutually satisfying solution. This requires considerable freedom from lenders to RP/MA and trust and reliance placed upon him and fortunately all lenders of JEKPL supported fully.

[7] NCLAT, CA (AT) (Insolvency) No. 304/2017, August 14, 2018.

[8] Supreme Court, CA No. 9090-9091/2018, January 23, 2019.

e. **Timeliness still a major issue under IBC regime:** To do justice to this landmark legislation, it is critical that it does not go the way of cases in Indian courts, mired in delays. Because a reform like IBC, no matter how revolutionary it is, is only as good as its implementa-tion allows it to be. Equally important is increasing the number of NCLT benches initially to ensure there are no capacity limitations towards resolutions.

f. **Continued support from judiciary in settling the law:** Given that the insolvency jurisprudence in India is constantly evolving, it is imperative that Courts continue to be pro-active in settling debated legal positions and its associated interpretational issues. For instance, the uncertainty looming over the assets of the Corporate Debtor on account of unwarranted litigation initiated by Geopetrol and possibility of an appeal getting filed in the Supreme Court against the order dated 13 March 2020 passed by the NCLAT. In addition,

8. Conclusion

Rescuing a viable firm is far more important than failing to liquidate an unviable company in the current COVID-19 pandemic crisis. The only issue that needs to be addressed is the change in mindset that accepts the realty and allows the market forces to play out and accepts the market outcome. All the stakeholders - creditors, RPs, Resolution Applicants, AA need to act fully in conformity with spirit of the Code. This may result huge haircut but, certainly, bonus as compared to liquidation value.

"All the stakeholders - creditors, RPs, Resolution Applicants, AA need to act fully in conformity with spirit of the Code. This may result huge haircut but, certainly, bonus as compared to liquidation value."

Having stated the above, the IBC has certainly matched up to the challenge of reinvigorating the insolvency regime in India. Not only has it been able to tackle the menace of non-performing assets, but it also has been effective in contributing to the economy in various indirect ways such as improving credit discipline in the market owing to the fear instilled in the minds of promoters of losing their control in the companies, creating foreign investment opportunities in light of increased confidence on account of the structured and time bound approach and saving jobs by preventing companies from going into liquidation.

दुर्लभान्यपि कार्याणि सिद्यन्ति प्रोद्यमेन हि।
शिलापि तनुतां याति प्रपातेनार्णसो मुहुः।।

The Impossible things can be accomplished with efforts. Like a hard rock gets thinner with repeated fall of water

Legal Framework

Here are some important amendments, rules, regulations, circulars and notifications recently issued by the Insolvency and Bankruptcy Board of India (IBBI). Please submit your feedback and suggestions on the column at iiipi.pub@icai.in

ACT

President Promulgates Ordinance on Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs under IBC to rescue distressed units and save jobs

The ordinance - IBC (Amendment) Ordinance, 2021 dated 4th April 2021 is aimed at providing an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses, and which preserves jobs.

The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens, and the company remains with them. It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Furthermore, a corrigendum was issued on April 05 to clarify some issues on pages 3, 22 and 27.

Source: *Gazette Notification CG-DL-E-04042021-226365 dated April 4, 2021*

https://www.mca.gov.in/Ministry/pdf/IBCAmedOrdinanceBill_06042021.pdf

Corrigenda-Insolvency and Bankruptcy Code (Amendment) Ordinances, 2021

In relation to the Gazette Notification CG-DL-E-04042021-226365 dated April 4, 2021 titled "Insolvency

and Bankruptcy Code (Amendment) Ordinance, 2021", the Central Government via a Gazette Notification dated 05 April, 2021 issued a Corrigenda clarifying on certain terms like preliminary information and insolvency date etc.

Source: *Gazette Notification CG-DL-E-06042021-226372 dated April 4, 2021*

https://www.mca.gov.in/Ministry/pdf/CorrigendaIBCAmedOrdinances_06042021.pdf

RULES

MCA made Pre-Packaged rules (PPIRP-2021) on MSMEs

The Ministry of Corporate Affairs through a Gazette Notification bearing number CG-DL-E-09042021-226474 dated 09th April 2021 has made public the rules on Pre-Package Insolvency Process of MSMEs titled "Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021" (PPIRP-2021). The rule has been made by the Central Government in exercise of the powers conferred by sub-section (1) and clause (fd) of sub-section (2) of section 239 read with sub-section (2) of section 54C of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (3 of 2021).

As per the rules an application for initiating PPIRP may be made in respect of a corporate debtor classified as a MSME under sub-section (1) of section 7 of the MSMEs Development Act, 2006. The law mandates MSMEs to attach a copy of the latest Udyam Registration Certificate with the application form. Furthermore, the applicant MSME should be a Company or Limited Liability Partnerships (LLP). The law does not include Sole Proprietorship, Partnerships and Hindu Undivided Family forms of MSMEs out of the ambit of the PPIRP. The rule includes eligibility criteria, Performa of application form, affidavits and list of certificates etc., required to be submitted by MSMEs to avail the benefits of pre-packaged insolvency of eligible MSMEs.

Source: *Gazette Notification* CG-DL-E-09042021-226474 dated 09th April 2021

https://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules_12042021.pdf

CIRCULARS

Reporting of status of ongoing corporate insolvency resolution processes (CIRPs) through Form CIRP 7

Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP regulations') provides a model timeline for carrying out various activities envisaged in a corporate insolvency resolution process (CIRP).

Regulation 40B of the CIRP regulations require an interim resolution professional (IRP) / resolution professional (RP) to file a set of forms (CIRP 1 to CIRP 6) within seven days of completion of specific activities to enable monitoring progress of CIRP. This implies that a Form (CIRP 1 to CIRP 6) would not be filed until the related activity is not completed for whatever reason. This makes monitoring of progress difficult. Regulation 40B of CIRP regulations require filing of Form CIRP 7 within three days of due date of completion of any activity stated in column (2) of the table below is delayed, and continue to file Form CIRP 7 every 30 days, until the said activity remains incomplete.

Source: *IBBI Circular No. IBBI/CIRP/41/2021 dated 18th March, 2021*

Filing of list of stakeholders under clause (d) of sub-regulation (5) of regulation 31 of the IBBI (Liquidation Process) Regulations, 2016

The IBC read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) require that the liquidator shall verify every claim as on the liquidation commencement date, and thereupon prepare a list of stakeholders, with specified details. The list of stakeholders shall be filed with the Adjudicating Authority and the same may be modified, with its approval. The list of stakeholders shall, inter-alia, be displayed on the website, if any, of the corporate debtor.

Clause (d) of sub-regulation (5) of regulation 31 of the Liquidation Process Regulations inserted vide Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021 requires that the liquidator shall file the list of stakeholders on the electronic platform of the Board for dissemination on its website. The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform. This requirement is applicable to every liquidation process (a) ongoing as on the date of notification of Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021, and (b) commencing on or after the said date.

In pursuance of the above, the Board has made available an electronic platform at www.ibbi.gov.in for filing of list of stakeholders as well as updating it thereof. The platform permits multiple filings by the liquidator as and when the list of stakeholders is updated by him.

The insolvency professionals are directed to file the list of stakeholders of the respective corporate debtor under liquidation and modification thereof, within three days of the preparation of the list or modification thereof, as the case may be. The filings due as on the date of circular shall be filed within 15 days of this circular.

The Insolvency Professionals are further advised to use the aforesaid format for filing the list of stakeholders with the Adjudicating Authority under sub-regulation (2) of regulation 31 of the Liquidation Process Regulations.

Source: *IBBI Circular No. IBBI/LIQ/40/2021 dated 04th March, 2021*

Providing copy of application to the Board, as mandated under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules,

The above mentioned rule mandates an applicant to provide a copy of the application filed under sub-section (1) of section 94 or sub-section (1) of section 95 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiation for insolvency resolution process of a personal guarantor to a corporate debtor, inter alia, to the Board for its record.

For convenience of applicants, the Board has made available a facility on its website at https://ibbi.gov.in/intimation-applications/iaaa-personal-one for providing a copy of the application online to the Board. IBBI has also provided the format and the step-by step guide for submission of the application.

Source: *IBBI Circular No. IBBI/II/39/2021/ dated 02nd February 2021*

IBBI has made available an electronic platform on its website for filing the list of stakeholders to every liquidation process and updating it thereof

The platform permits multiple filings by the liquidator as and when the list of stakeholders is updated by him. The format of list of stakeholders, as finalised in consultation with the insolvency professional agencies, is placed as an Annexure.

The insolvency professionals are directed to file the list of stakeholders of the respective corporate debtor under liquidation and modification thereof, in the aforesaid format, within three days of the preparation of the list or modification thereof. Further, the insolvency professionals are further advised to use the aforesaid format for filing the list of stakeholders with the Adjudicating Authority under sub-regulation (2) of regulation 31 of the Liquidation Process Regulations. The above circular has been issued in pursuant to the provisions of "Filing of list of stakeholders under clause (d) of sub-regulation (5) of regulation 31 of the IBBI (Liquidation Process) Regulations, 2016".

Source: *IBBI Circular No. IBBI/LIQ/40/2021/ dated 04th March 2021*

IBBI issues Circular for reporting of status of ongoing CIRPs through Form CIRP 7

Regulation 40B of the CIRP regulations require an Interim Resolution Professional (IRP) / Resolution Professional (RP) to file a set of forms (CIRP 1 to CIRP 6) within seven days of completion of specific activities to enable monitoring progress of CIRP. This implies that a Form (CIRP 1 to CIRP 6) would not be filed until the related activity is not completed for whatever reason. This makes monitoring of progress difficult. Regulation 40B of CIRP regulations require filing of Form CIRP 7 within three days of due date of completion of any activity stated in column (2) of the table below is delayed and continue to file Form CIRP 7 every 30 days, until the said activity remains incomplete.

Subsequent filing of Form CIRP 7 shall not be made until thirty days have lapsed from the filing of an earlier Form CIRP 7. Only one Form shall be filed at any time whether one or more activity as prescribed in the table given in the circular is not completed by the specified date. The Form CIRP 7 shall be available for filing three days prior to the due date. The format for Form CIRP 7 is also provided as an Annexure.

Source: *IBBI Circular No.* IBBI/CIRP/41/2021 *dated 18th March 2021*

NOTIFICATIONS

IPAs cannot hold decision on 'Authorisation for Assignment' beyond 30 days

IBBI via IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 dated 27th April 2021 has amended Section 12 A (5) and inserted ""Provided further that, for an application received on and from the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 and ending on the 31st October 2021, if the authorisation for assignment is not issued, renewed or rejected by the Agency within thirty days of the date of receipt of application, the authorisation shall be deemed to have been issued or renewed, as the case may be, by the Agency."

However, if the IPA rejects the Authorization for

Assignment, the aggrieved IP 'may appeal to the Membership Committee within thirty days from the date of receipt of order', reads amended 12A (7) (b).

Source: *Gazette of India, Notification No. IBBI/2021-22/GN/REG074 dated 27th April 2021*

https://www.ibbi.gov.in/uploads/legalframwork/cc46284330f773a4c2e4515c03d78d6d.pdf

Order of NCLT on Physical hearing of all NCLT Benches

NCLT vide its order stated that all NCLT Benches shall start Physical hearing w.e.f 01.03.2021. In case any counsel/representative of party expresses difficulty in physical hearing, he/she may be permitted for virtual hearing. However, the benched mentioned in the Order shall remain attending the matters through video conference. The Benches shall sit as per Rule 09 of NCLT Rules, 2016.

Source: *Oder, File No. 10/03/2021-NCLT*

https://ibbi.gov.in//uploads/legalframwork/7e308ebbefee982c9895a8df0d540097.pdf

Chennai Bench of NCLAT to start functioning through virtual mode

National Company Law Appellate Tribunal (NCLAT) vide it order stated that the Chennai Bench of NCLAT will start its functioning from 25.01.2021 through Virtual Mode.

Therefore, the filing of Fresh Appeals against the orders of the Benches of the National Company Law Tribunal having jurisdiction in respect of States of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh and Telangana and Union Territories of Lakshadweep and Puducherry shall have to be made before the Chennai Bench of NCLAT w.e.f. 25.01.2021.

Further, the filing of Interlocutory Applications / Reply / Rejoinder etc. in respect of aforementioned appeals will also be made before the Chennai Bench of NCLAT as per NCLAT Rules, 2016 and SOP.

Source: *Notice No. 025/2021 dated 23rd January 2021*

https://ibbi.gov.in//uploads/legalframwork/179db15deac33d4e223a82f4d943d325.pdf

Extension of term of office of Justice (Retd.) Shri Bansi Lal Bhat and Justice (Retd.) Shri A.I.S. Cheema as Member (Judicial), NCLAT

The Ministry of Corporate Affairs (MCA), Government of India through a Gazette Notification on January 05, 2021 revised the tenure of Justice (Retd.) Shri Bansi Lal Bhat and Justice (Retd.) Shri A.I.S. Cheema as Judicial Member, National Company Law Appellate Tribunal (NCLAT) for a period till their attaining the age of 67 years, or until further orders, whichever is earlier.

Source: *Gazette Notification S.O.96 (E) [F. No. A-40012/1/2020-Ad.IV]*

https://ibbi.gov.in//uploads/legalframwork/ee5c8fdd90f1d960bcb2fa94d83fe461.pdf

Central Government sets ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process

In exercise of the powers conferred by the second proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (3 of 2021), the Central Government through a Gazette Notification on 09th April, 2021 specifief ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

Source: *Gazette Notification* S.O. 1543(E) [F. No. 30/20/2020-Insolvency] dated 09th April, 2021

https://www.mca.gov.in/Ministry/pdf/Notification_1204021.pdf

GUIDELINES

IBBI (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020

IBBI in exercise of powers under section 196(1)(aa) of the Code read with regulation 5(b) and clause (ba) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses (a) and (e) of sub-rule (2) of rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017, extended the validity

of the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 30th September, 2021.

Source: *https://ibbi.gov.in//uploads/legalframwork/af68aec6a9ff864bb2ea1a13ec1ac66f.pdf*

IBBI's Guidelines for Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018

IBBI on March 09, 2021 issued guidelines or Appointment of Insolvency Professionals as Administrators under the Securities and Exchange Board of India (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018. These Guidelines have been prepared in consultation with SEBI to facilitate appointment of IPs as Administrators and has come into effect from April 01, 2021.

The IBBI and the SEBI have mutually agreed upon to use a Panel of IPs for appointment as Administrators for effective implementation of the Regulations. The IBBI shall prepare a Panel of IPs keeping in view the requirements of SEBI and the Regulations and the SEBI shall appoint the IPs from the Panel as Administrators, as per its requirement in accordance with the Regulations. A Panel shall be valid for six months and a new Panel will replace the earlier Panel every six months..

An IP will be eligible to be included in the Panel of the IPs if:-

a) there is no disciplinary proceeding, whether initiated by the IBBI or the IPA of which he is a member, pending against him;

b) he has not been convicted at any time in the last three years by a court of competent jurisdiction;

c) he expresses his interest to be included in the Panel for the relevant period; and

d) he undertakes to discharge the responsibility as an Administrator, as and when he may be appointed by the SEBI.

e) he has made the compliance under Regulation 7(2) (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 for the year 2019-20.

f) he holds an Authorisation for Assignment (AFA), which is valid on the date of expression of interest.

The Panel shall have Zone wise list of IPs. An IP will be included in the Panel against the Zone where his registered office (address as registered with the IBBI) is located.

IBBI shall invite expression of interest from IPs in 'Form A' to act as Administrator by sending an e-mail to IPs at their email addresses registered with it and hosting the guidelines on its website. The expression of interest must be received by the IBBI in Form A in the manner and date as specified.

The IBBI shall include the IPs, who have expressed their interest, in the Panel based on the three parameters the weights of which are as under:

- Number of Ongoing Processes - 40%
- Number of Completed Processes as IRP / RP – 20%
- Number of Completed Processes as Liquidator / Bankruptcy Trustee – 40%

Source: *https://ibbi.gov.in//uploads/legalframwork/9642e8fe2457fb437fc7b754ed60b8b2.pdf*

Press Releases

Revision of fees applicable for Limited Insolvency Examination and Valuation Examinations.

The IBBI, in exercise of the powers conferred under the provisions of section 196(1)(a) of the Insolvency and Bankruptcy Board Code to register insolvency professionals and as an 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 to register valuer professionals, has been conducting Limited Insolvency Examination from 31st December 2016 and Valuation Examinations from 31st March 2018 respectively.

A fee of Rs. 1,500 per enrolment is currently being charged for each of these examinations. It has been decided that the fee applicable for each enrolment on or after 1st April 2021 will be Rs. 1,500 + applicable GST, i.e., Rs. 1,770 for the Limited Insolvency Examination or Valuation Examinations.

Source: *IBBI Press Release No. IBBI/PR/2021/05 dated February 25, 2021*

IBBI released publication "Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework"

Dr. Navrang Saini, Whole Time Member, IBBI , in presence of Ms. Natalie Toms, Chief Economist and Counsellor, British High Commission, released a publication titled "Handbook on Ethics for Insolvency Professionals: Ethical and Regulatory Framework", in a webinar organized on March 19, 2021.

The Handbook details several aspects of professional ethics, including conflict of interest, independence, impartiality, objectivity and timelines, etc. in a comprehensive manner, and is expected to serve as an important knowledge product for development and percolation of standards of professional and ethical conduct for IPs enabling proactive compliances with utmost care and diligence.

Source: *IBBI Press Release No.* IBBI/PR/2021/07 *dated* March 19, 2021

IBBI notifies the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

In pursuant to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 promulgated on 4th April 2021 the Insolvency and Bankruptcy Board of India (IBBI) on 09th April 2021 notified the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (PPIRP Regulations) to enable operationalisation of PPIRP with effect from 09th April 2021.

The PPIRP Regulations detail the Forms that stakeholders are required to use, and the manner of carrying out various tasks by them as part of the PPIRP. These provide details and manner relating to: (a) Eligibility to act as resolution professional, and his terms of appointment; (b) Eligibility of registered valuers and other professionals; (c) Identification and selection of authorised representative; (d) Public announcement and claims of stakeholders; (e) Information memorandum; (f) Meetings of the creditors and committee of creditors; (g) Invitation for resolution plans; (h) Competition between the base resolution plan and the best resolution plan; (i) Evaluation and consideration of resolution plans; (j) Vesting management of corporate debtor with resolution professional; (k) Termination of PPIRP.

Source: *IBBI Press Release No.* No. IBBI/PR/2021/08 *dated 09th March 2021*

IBC Case Laws

Supreme Court of India

If the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposited by the judgments.

Jaypee Kensington Boulevard Apartments Welfare Asso. & Ors. Vs. NBCC (INDIA) Ltd. & Ors. Civil Appeal No. 3395 of 2020 and a bunch of petitions in SC, *Date of Order: March 24, 2021*

Background of Case

NCLAT in an interim order in the case of CIRP of Jaypee Infratech Limited (JIL) dated 22nd April 2020 said that the approved resolution plan may be implemented subject to the outcome of appeal but at the same time, also provided that IRP may constitute an 'Interim Monitoring Committee' comprising of the successful resolution applicant (NBCC) and three major institutional financial creditors, who were the members of CoC. Against the order, six associations of homebuyers in the real estate development projects of the corporate debtor and a few individual homebuyers approached the Supreme Court seeking permission to maintain their appeals under Section 62 of the IBC. Subsequently, some more aggrieved stakeholders filed petitions seeking various reliefs.

SC Observations

It is noteworthy that there has not been any prohibition in the scheme of IBC and CIRP Regulations that CoC could not simultaneously consider and vote upon more than one resolution plan at the same time for electing one of the available options. The allottees, like the homebuyers of JIL, falling within clause (f) of sub-section (8) of Section 5, do carry the status of financial creditors but they would be falling in a class collectively; and the voting share of that class would be in terms of the financial debt owed to that class as a whole.

SC Judgement

Having regard to the circumstances, we deem it just and proper to provide further time of 45 days from the date of this judgment for submission of the modified/fresh resolution plans by the resolution applicants, for their consideration by CoC and for submission of report by IRP to the Adjudicating Authority. The IRP is directed to complete the CIRP within the extended time of 45 days from the date of judgment. However, this extension shall not be treated as a precedent.

The amount of INR 750 crores, which was deposited by JAL pursuant to the orders passed by this Court, and accrued interest thereupon, is the property of JAL; and stipulation in the resolution plan concerning its usage by the resolution applicant of JIL cannot be approved. The part of the impugned order of AA dated 03.03.2020 placing this amount in the asset pool of JIL is set aside.

Case Review: *NCLAT order is set aside, and all the petitions disposed of.*

The purpose of the ineligibility under Section 29A is to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution.

Arun Kumar Jagatramka Vs Jindal Steel and Power Ltd. & Anr. Civil Appeal No. 9664 OF 2019 with Writ Petition (C) No. 269 of 2020 and with Civil Appeal No. 2719 of 2020, SC, *Date of Judgment: March 15, 2021*

Background of Case

The issue for determination in this appeal wasthat on one hand, Appellant submitted that the ineligibility under Section 29A of the IBC, 2016 attaches to the proceedings under the IBC alone, involving the submission of a resolution plan. On the other hand, Respondent submitted that when an order of liquidation has been passed under and in pursuance of proceedings which were initiated under the IBC, Section 230 of the Companies Act, 2013 expressly contemplates that the liquidator appointed under the IBC may move the AA where a compromise or arrangement is proposed. Hence, the proposal for a compromise or arrangement under Section 230, where a company is in liquidation under the IBC, is in continuation of that liquidation process. Hence, according to respondent, a person who is ineligible under Section 29A of IBC cannot propose a scheme for revival under Section 230 of the Companies Act, 2013.

SC Observations

The Supreme court observed that IBC has made a provision for ineligibility under Section 29A which operates during the CIRP. A similar provision is engrafted in Section 35(1)(f) which forms a part of the liquidation provisions contained in Chapter III as well. In the context of the statutory linkage provided by the provisions of Section 230 of the Act of 2013 with Chapter III of the IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be far-fetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

SC Judgement

The Supreme Court dismissed the appeal stating that no merit was found in appeal. It further stated thatthe prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the IBC must also attach itself to a scheme of compromise or arrangement under Section 230 of the Companies Act of 2013, when the company is undergoing liquidation under the auspices of the IBC. As such, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B (1), is also constitutionally valid.

Case Review: *Appeal Dismissed*

While interpreting the provisions of the IBC, care must be taken to ensure that the regime which Parliament found deficient, and which was the basic reason for the enactment of the new legislation is not brought in through the backdoor by a process of disingenuous legal interpretation.

Gujarat Urja Vikas Nigam Limited Vs Mr. Amit Gupta & Ors. Civil Appeal No. 9241 oF 2019, SC, *Date of Order: March 08, 2021*

Background of Case

The AA by its judgment had stayed the termination by the appellant of Power Purchase Agreement "PPA" with Corporate Debtor. The order of the AA was passed in applications moved by the RP of the CD under Section 60(5) of the IBC, 2016. Further, the NCLAT dismissed the appeal by the appellant under Section 61 of the IBC, 2016. The decision by the NCLAT was called into question in this appeal. The appellant assailed the order of the NCLAT. The two issues for determination in the appeal were, firstly whether the AA/NCLAT can exercise jurisdiction under the IBC over disputes arising from contracts such as the PPA; and secondly whether the appellant's right to terminate the PPA in terms of its Articles is regulated by the IBC.

SC Observations

The Supreme court was of the view that the dispute in the present case has arisen solely on the ground of the insolvency of the Corporate Debtor and AA is empowered to adjudicate the dispute under Section 60(5)(c) of the IBC and further the apex court agreed with the view taken by the AA as Section 238 is prefaced by a non-obstante clause. The court held that Section 238 does not state that the instrument must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. NCLT's jurisdiction could be invoked in the

present case because the termination of the PPA was sought solely on the ground that the Corporate Debtor had become subject to an insolvency resolution process under the IBC.

SC Judgement

The Supreme Court dismissed the appeal stating that no merit was found in appeal. The honorable court stated AA /NCLAT could have exercised jurisdiction under section 60(5)(c) of the IBC to stay the termination of the PPA by the appellant, since the appellant sought to terminate the PPA under Article only on account of the CIRP being initiated against the Corporate Debtor. The court further held that AA/NCLAT correctly stayed the termination of the PPA by the appellant, since allowing it to terminate the PPA would certainly result in the corporate death of the Corporate Debtor due to the PPA being its sole contract. The broader question of the validity/ invalidity of ipso facto clauses in contracts for legislative intervention was left open.

Case Review: *Appeal Dismissed*

The moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act, 1881.

Mohanraj & Ors. Vs M/S. Shah Brothers Ispat Pvt. Ltd Civil Appeal No.10355 oF 2018 with Criminal Appeal No. 239 of 2021 & Ors. SC*, Date of Order: March 01, 2021*

Background of Case

The Adjudicating Authority (AA) while admitting the application under Section 9 of the IBC also ordered a moratorium in terms of Section 14 of the IBC. Pursuant thereto, the AA stayed further proceedings in the two criminal complaints pending against the applicants. In an appeal filed to the NCLAT, the NCLAT set aside this order, holding that Section 138, being a criminal law provision, cannot be held to be a "proceeding" within the meaning of Section 14 of IBC. Besides, several criminal petitions and civil petitions related to this case were also heard with the main petition.

SC Observations

In this case, the Supreme Court relied on judgement in Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661. The court observed that as far as the Directors/persons in management or control of the corporate debtor are concerned, Section 138/141 proceeding against them cannot be initiated or continued without the corporate debtor. This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company.

In conclusion, the Court held that a Section 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) of the IBC.

SC Judgement

Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Section 138/141 proceedings in this case will continue both against the company as well as the appellants for the reason given above with the fact that the insolvency resolution process does not involve a new management taking over and the moratorium period has come to an end in this case.

Cheque bounce cases filed against the Corporate Debtor by the Operational Creditor under Section 482 of the CrPC after AA admitted CIRP application under Section 9 of IBC and moratorium ordered under section 14 of IBC, were quashed. However, the criminal cases filed against the erstwhile Directors of the company before initiation of CIRP would proceed.

Case Review: *Appeal is partially allowed.*

Correct interpretation of Section 10A of IBC, 2016 cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated.

Ramesh Kymal. Vs. Ms. Siemens Gamesa Renewable *Power Pvt. Ltd. Civil Appeal No. 4050 of 2020,* SC*, Date of Judgement: 09th February 2021*

Background of Case

The appellant invoked the appellate jurisdiction of the

Court under Section 62 of the IBC, 2016 to challenge the judgment and order of the NCLAT. The NCLAT had affirmed the decision of the AA, stating that in view of the provisions of Section 10A, which have been inserted by Amendment with retrospective effect, the application filed by the appellant as an operational creditor under Section 9 was not maintainable.

The appellant filed an application under Section 9 of the IBC on the ground that there was a default in the payment of his operational dues but during the pendency of the application, an Ordinance was promulgated by the President of India by which Section 10A was inserted into the IBC. The issue involved raised a question of law. In this appeal the issue which had to be determined was whether the provisions of Section 10A stand attracted to an application under Section 9 which was filed before 5 June 2020 (the date on which the provision came into force) in respect of a default which has occurred after 25 March 2020.

SC Observations

The Hon'ble Supreme Court stated that, Section 10A does not contain any requirement that the AA must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic. Parliament has stepped in legislatively because of the widespread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies, which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. Hence, the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. Therefore, the Court was unable to accept the contention of the appellant.

SC Judgement

The Court affirmed the conclusion of the NCLAT.

Case Review: *Appeal Dismissed.*

If the borrower is not obligated to return the money or its equivalent along with the consideration for a time value of the money to the creditor, such a debt will be considered 'collusive in nature' and the creditor cannot be granted the status of a Financial Creditor under IBC, 2016.

Phoenix Arc Private Limited Vs. Spade Financial Services Limited & Ors, Civil Appeal No. 2842 of 2020 with Civil Appeal No. 3063 of 2020, SC, Date of Order: 01 February 2021.

Background of Case

The Adjudicating Authority in a judgement on July 19, 2019 held that AAA and Spade have to be excluded from the CoC formed in relation to the CIRP initiated against AKME Projects Limited as they were related to the Debtor. The appeal against the NCLT order was dismissed by NCLAT on January 27, 2020. In the Supreme Court, the Appellant (Phoenix) argued that though the NCLAT correctly dismissed the appeal filed by Spade and AAA, holding that they are related parties of the Corporate Debtor and are hence to be excluded from the CoC, there is an erroneous finding that they are financial creditors.

SC Observations

Financial Debt: Citing various previous judgements, the SC held that the borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period for which the money is lent.

Related Party under Section 5(24) and 5(29) of the IBC: The objects and purposes of the Code are best served when CIRP is driven by external creditors, so as to ensure that the CoC is not sabotaged by related parties of the Corporate Debtor. This is the intent behind the first proviso to Section 21(2) which disqualifies a financial creditor or the authorized representative of the financial creditor under sub-section (6) or sub-section (6A) or subsection (5) of section 24, if it is a related party of the corporate debtor, from having any right of representation, participation or voting in a meeting of the committee of creditors.

SC Judgement

Due to the collusive nature of their transactions alleged to be a financial debt under Section 5(8), Spade and AAA cannot be labelled as financial creditors under Section 5(7).

The decision of the NCLAT, in as much as it excluded Spade and AAA from the CoC in accordance with the first proviso of Section 21(2), is affirmed with reasons.

Case Review: *Appeal is disposed of with reasons.*

National Company Law Appellate Tribunal (NCLAT)

The provision of the Code cannot be invoked for recovery of outstanding amount as well as it cannot be misused to drop the curtain on a healthy organization.

Aparna Enterprise Ltd. Vs. SJR Prime Corporation Pvt. Ltd. Company Appeal (AT) (Insolvency) NO. 632 of 2020, NCLAT, Date of Judgement: 15th February 2021

Background of Case

The Appellant filed this appeal under Section 61 of the IBC, 2016 against the order passed by the AA. The AA had decided the case on the reason that the Company Petition has been filed with an intention to recover the disputed outstanding amount in question under arbitration proceeding. The Appellant raised the issue of creation of false disputes by the respondent.

NCLAT Observations

The Hon'ble NCLAT was of the view that OC had issued a Demand Notice which was duly received by the CD and replied within the stipulated period and further proved that there was an existence of dispute over quality of work and goods supplied etc. and had also raised issue to initiate arbitration proceedings for excess sum paid to the Appellant etc. The above meets the criteria of genuine dispute raised within stipulated period. Accordingly, under Section 9(5)(ii)(d) of the Code the Application was rejected. The Tribunal further stated that the Objective of the Code is to consolidate and amend the laws relating to reorganization and Insolvency Resolution of Corporate Persons. Using the platform of the Code and threatening the vendor to release disputed amount is not fair and equitable.

***Case Review*:** *Appeals Dismissed.*

Adjudicating Authority has no jurisdiction to examine the documents annexed with the application under Section 10 of IBC. Besides, pendency of any action against corporate debtor under SARFAESI Act 2002 or/and under Section 19 of DRT ACT cannot be a ground to reject an application under Section 10 of IBC.

Pondicherry Extraction Industries Pvt. Ltd. Vs. Bank of Baroda Company Appeal (AT) (Insolvency) No. 471 of 2020 (NCLAT) Date of Order: 20 January 2021

Background of Case

The Financial Creditor (FC) i.e Bank of Baroda issued a demand notice under section 13(2) of the SARFAESI Act 2002 against the borrower, the appellant (Guarantor), and another Guarantor. The shareholders of the Corporate Applicant at the Extraordinary General Meeting (EGM) approved initiation of CIRP. The FC argued that the CIRP was initiated to defeat the SARFAESI measure, and the application was incomplete. The applicant was aggrieved by the order of NCLT Chennai (AA) which rejected the CIRP.

NCLAT Observations

The question for our consideration is that whether Rule 7 of Adjudicating Authority Rules empowers the Adjudicating Authority (AA) to examine the documents filed with the application under section 10 of IBC. In this matter the NCLAT relied on judgement in Unigreen Global Pvt Ltd. (supra). Besides, Section 10 of IBC does not empower the AA to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of AA Rules. Aforesaid Rule 7 provides the procedure for filing the application under Section 10 of IBC. It does not empower the AA to examine the financial statements annexed with the application. Further, as in Unigreen Global Pvt. Ltd. (supra) that if any action has been taken by the financial creditor under SARFAESI Act 2002, against the Corporate Debtor or a suit is pending against the corporate debtor

under Section 19 of DRT ACT before a Debt Recovery Tribunal or appeal pending before the Debt Recovery AT cannot be a ground to reject an application under Section 10 of I&B Code.

Case Review: *NCLT order was set aside. Appeal disposed of.*

Adjudicating Authority has no power to impose Resolution Professional & Authorized Representative (AR) of its choice and has to respect the CoC decision.

Prakash Shankar Mishra & Ors. Vs. Ashok Kriplani & Anr. (No. 34) With Sampoorna Owners Welfare Association Vs. Ashok Kriplani & Anr. (No. 166) Company Appeal (AT) (Insolvency) No. 34 & 166 of 2020 (NCLAT) Date of order: 13th January 2021

Background of Case

In CIRP of M/s. Dreamz Infra India Ltd, the CoC with 90% voting approved the Mr. Konduru Prasanth Raju as RP and Mr. Hari T. Devadiga as AR. However, the NCLT Bengaluru Bench, Adjudicating Authority (AA) vide its order December 17, 2019, set aside the decision of CoC and appointed other professionals (Respondents 1 & 2) as RP and AR. For CoC, the order of AA was in complete violation of Section 22 of the IBC.

NCLAT Observations

The NCLAT observed that the AA was required to strictly follow the procedure provided under IBC and cannot appoint RP as per its choice. NCLAT holds that under Section 22 of IBC discretion lies with CoC to confirm or reject the appointment of IRP. If CoC decides to replace the IRP, it has to file an application before AA to appoint the proposed RP. In such a situation, AA shall forward the name of RP to IBBI (Board) for confirmation and such appointment will be made after the confirmation by the Board. However, in case the Board does not confirm the name of the proposed RP within 10 days, AA can only direct the IRP to continue, till confirmation. Further, section 21(6-A) of the IBC read with Regulation 16A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that resolution passed by CoC with respect to the appointment of AR should be respected by AA.

Case Review: *NCLT order was set aside. Appeal disposed of.*

Demand notice delivered by an Advocate duly instructed by the Operational Creditor would be a valid demand notice for initiation of CIRP.

Mohit Minerals Ltd Vs. Nidhi Impotrade Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 905 of 2020 (NCLAT) Date of Order: 08th January2021

Background of Case

The Operational Creditor (Appellant) had filed an application under Section 9 of IBC before the NCLT, Ahmedabad. The said application was dismissed by the AA by holding the application not maintainable because the demand notice for initiation of CIRP was issued by Advocate without any authority. The appellant challenged the order of AA in NCLAT.

NCLAT Observations

The NCLAT observed that the delivery of notice is to be effected in the prescribed form which must emanate from the Operational Creditor or any authorized person on its behalf. Relying on the pronouncement of Supreme Court in "Macquaire Bank Limited v. Shilpi Cable Technologies Limited- [(2018) 2 SCC 674] wherein it was held that a demand notice delivered by an Advocate duly instructed by the Operational Creditor would be a valid demand notice for purposes of initiation of CIRP. Hence in view of the same, notice delivered could not be held to be bad in law unless it was shown that the lawyer was not duly instructed. Further, from the facts the NCLAT observed that the AA was aware of the legal proposition but in the opinion of the AA there was no due authorization backed by Board Resolution of the Operational Creditor. NCLAT opined that this view was unsustainable as in case of a person other than an Advocate, the Board Resolution would be required but in the event of a demand notice being issued by an Advocate duly instructed by his client (Operational Creditor), there is no need of requirement of authority being backed by the Board Resolution.

Case Review: *NCLT order was set aside, and* matter was remitted back.

National Company Law Tribunals (NCLTs)

The role of the Operational Creditors in CIRP is very limited and is essentially confined to the satisfaction of their claims, says Mumbai Bench of NCLT while rejecting the demands of various workers' unions of Jet Airways for a copy of the Resolution Plan.

Jet Airways India Ltd. IA No. 1862, 2125, 2248 & 2449/MB/2020 in CP (IB) No.2205/MB/2019 (NCLT, Mumbai) Date of Order: February 22, 2021

Background of Case

Five Workers' Unions of Jet Airways i.e., National Aviators' Guild, Jet Aircraft Maintenance Engineers Welfare Association, Bhartiya Kamgar Sena, Jet Airways Cabin Crew Association, and All India Jet Airways Officers & Staff Association and the Corporate Debtor (Jet Airways India Ltd.) through different petitions had demanded the AA to order the Resolution Professional Mr. Ashish Chhawchharia and CoC to provide them a copy of the Resolution Plan and to permit the Applicant to participate in the hearings and proceedings to be held by the AA in Tribunal for approval (or otherwise) of the Resolution Plan.

NCLT Observations

The parties / entities in these Applications being not members of the CoC, would thus be not entitled to the copy of the Resolution Plan nor would be eligible to a peek into it. Besides several judgements of the Supreme Court, the AA also cited the Joint Parliamentary Committee Report on Insolvency and Bankruptcy Code of 2016. "Whereas operational creditor has right to make application for initiation of corporate insolvency resolution process, operational creditors like workmen, employees, suppliers have not been given any representation in the committee of creditors…While appreciating that the operational creditors are important stakeholders in a company, the Committee took note of the rationale of not including operational creditors in the committee of creditors as indicated in notes on Clause 21…. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern…Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the committee of creditors only to the extent of their financial debts".

Case Review: *All Appeals Dismissed.*

For More Updates, please visit IBC Case Law Capsules (https://www.iiipicai.in/case-snippets/)

IBC News

NCLAT stops constitution of COC in Subsidiary of OYO Hotels after it cleared dues of Rs 16 lakh

"The NCLAT provided a stay for the formation of COC in IBC proceedings against OHHPL, subsidiary of OYO. OHHPL appealed the order in front of NCLAT and explained that a demand draft of INR 16L was issued to the claimant under protest and the claimant has willingly banked the DD," OYO Hotels and Homes Private Limited (OHHPL) said in a statement. The relief to the Corporate Debtor (CD) came from NCLAT where the company had challenged the order of the Adjudicating Authority (AA). In its appeal the CD has submitted that that the said dispute was not even with this subsidiary and the same was already paid to the claimant by the entity with whom the dispute was raised other than OHHPL. The NCLT order had asked OHHPL's creditors to submit their claims with proof by April 15, 2021, to the interim resolution professional.

Source: *The Financial Express, April 08, 2021*
https://www.financialexpress.com/industry/sme/relief-for-oyosubsidiary-in-bankruptcy-case-as-nclat-stays-insolvency-proceeding/2229384/

Timely completion of CIRP still a big challenge, over 86% of cases crossed upper limit of 270 days

As per the latest data released by the Insolvency and Bankruptcy Board of India (IBBI), 1717 CIRP cases were pending by the end of December 2020 out of which 1481 had crossed the time limit of 270 days. The IBC mandates to complete the process of CIRP within 180 with a possible extension of 90 days provided by the Adjudicating Authority. However, the cases linger primarily due to litigations in different courts. The data further suggest that till December 2020, a total of 378 CIRPs have been withdrawn under section 12A of the Code. IBBI chairman M S Sahoo had recently said that 16,000 of the applications had been resolved even before the admission. Besides, out of the one dozen high profile cases nine have yielded results under IBC. Of these, resolution plan in respect of nine CDs were approved and orders for

liquidation were issued in respect of two CDs. Thus, CIRP in respect of two CDs and liquidation in respect of another two CDs are ongoing, at different stages of the process.

Source: *The Times of India, April 06, 2021*
https://timesofindia.indiatimes.com/business/india -business/86-insolvency-cases-pending-over-270- days/articleshow/81922510.cms

IBC suspension lapsed on March 24, 2021

The Union Ministry of Corporate Affairs (MCA) has not provided further extension to the suspension of IBC which was due to lapse on March 24, 2021. Therefore, the IBC has come into force w.e.f. March 25, 2021.

In view of the COVID-19 pandemic in 2020 and pan-India lockdown which adversely affected the businesses, the Central Government had suspended initiation of fresh insolvency proceedings against the Corporate Debtors with effect from March 25, 2020. The suspension was further extended thrice by three months till March 24, 2021. During this period of suspension of the IBC, the Section 7, 9 and 10 of the IBC, 2016 which deal with the initiation of corporate insolvency resolution process by a financial creditor, operational creditor and corporate debtor respectively were made ineffective to provide relief to the business from the crisis.

Source: *The Hindu Business Line, March 24, 2021*
https://www.thehindubusinessline.com/economy/policy/ibc-will-be-back-in-full-force-from-today/article 34153863.ece

India's quick response to limit the impact of the pandemic and to undertake massive vaccination drives are resulting in a 'V shape recovery': Finance Minister

Union Minister of Finance & Corporate Affairs and India's Governor in New Development Bank (NDB) Smt. Nirmala Sitharaman has said that India's quick response to limit the impact of the COVID-19 pandemic and to undertake massive vaccination drives are resulting in a 'V shape recovery'. She was speaking in 6th Annual Meeting of Board of Governors of the NDB on March 30, 2021 which was also attended by Governors/Alternate Governors of Brazil, China, Russia and South Africa. The Finance Minister stressed the need for NDB to maintain and improve upon the ratings assigned by international rating agencies through adequate capitalization, high quality governance and prudent management. She also encouraged the NDB to facilitate private sector participation, explore more innovative financing structures, discover co-financing opportunities with other MDBs, develop a pipeline of bankable projects, and promote environmental and social safeguards to enhance the sustainability of infrastructure, etc. Highlighting the role of Development Financial Institutions (DFIs) in infrastructure financing, she mentioned that India is going to set up a new DFI with initial paid-up capital of around $3 billion with a lending target of $69 billion in next three years.

Source: *Press Information Bureau (PIB), March 30, 2021*

https://pib.gov.in/PressReleseDetailm.aspx?PRID=1708547

NCLT admits Noida City Center's developer 'Wave Group's petition for CIRP

Wave Group, the real company that was engaged in developing flagship project – Wave Noida City Center in sector 25 A and sector 32 will now undergo through CIRP after NCLT admitted the application filed by the company under section 10 of IBC. In the petition, the company submitted that it failed to pay Rs 1,222.64 crore dues to Noida Authority. Earlier this month, the Noida Authority had taken over possession of 1.08 lakh sq metres commercial land due to unpaid dues.

Source: *The Economic Times, March 26, 2021*

https://realty.economictimes.indiatimes.com/news/regulatory/nclt-admits-insolvency-application-by-wave-group/81709353

USA's Entrust Energy 3rd electricity major to file for Bankruptcy after Texas 'winter storm' disaster sent electricity prices soaring

The company listed assets of $100 million to $500 million and liabilities of $50 million to $100 million, according to a Chapter 11 petition filed in the Southern District of Texas on Tuesday. Entrust says it has a $270 million disputed claim with the Electric Reliability Council of Texas, the operator of the state's power grid, related to supply obligations. Earlier, Brazos Electric Power Cooperative Inc. and Griddy Energy LLC had filed for bankruptcy as wholesale electricity prices to $9,000 a megawatt-hour due to diaster caused by a Winter Storm in Texas in February.

Source: *Bloomberg Quint, March 30, 2021*

https://www.bloombergquint.com/onweb/entrust-energy-files-for-bankruptcy-in-texas-amid-power-fallout

Piramal Group raised Rs 4,050 Cr. to fund Resolution of DHFL

Piramal Capital & Housing Finance of Piramal Group, successful Resolution Applicant of DHFL, has raised Rs 4,050 cr in two tranches through nonconvertible debentures (NCDs) to fulfill the obligations of the resolution plan. "We do not have to infuse any more equity into the business . even with merged DHFL. We have a debt-equity ratio of around two in the financial services business," said Rajesh Laddha, Executive Director of Piraml Enterprises to media. The Rs 4,050-crore bond issue was subscribed largely by SBI, Union Bank and Indian Bank. The bonds, which have a rating of AA, have a tenure of five years and offer 9.25%.

The housing finance company had issued secured non-convertible debentures (NCDs) with a base issue size of ₹2,000 crore and a green shoe option of ₹1,000 crore. These bonds were offered for 9.25% with a five-year maturity. The bonds are rated AA by CARE agency and come with the assurance that, should the rating fall by even one notch by AA (-), the coupon rate would stand increased by 0.50%. For every notch of rating downgrade thereafter, the coupon would be increased by 0.50% per

notch. If the long-term credit rating of the NCDs is downgraded to A (-) or below, the holders would reserve the right to recall the outstanding principal amount. PCHFL, with a rating of AA, recently raised ₹2,000 crore from a group of public sector banks in a bond sale. After winning the bid to acquire DHFL through CIRP, the group is seeking to expand its Indian lending operations by winning over more individual customers and diversifying its real estate loan book.

Source: *Times of India, March 23, 2021*
https://timesofindia.indiatimes.com/business/indiabusiness/piramal-raises-rs-4k-crto-reverse-mergedhfl/ articleshow/81639557.cms

Supreme Court provides 45 days extension to CIRP of Jaypee Infratech Ltd (JIL), allows NBCC and Suraksha to submit Resolution Plans

Directing the IRP to complete the corporate insolvency resolution process (CIRP) within the extended time, the three-judge bench said that it will be open to the IRP to invite modified or fresh resolution plans only from Suraksha Realty and NBCC, giving them time to submit the same within the next 2 weeks. "The matter regarding approval of the resolution plan stands remitted to the Committee of Creditors of JIL and the time for completion of the process relating to CIRP of JIL is extended by another period of 45 days, from the date of this judgement," the court said in its order. In a setback for NBCC, the apex court also said the Rs 750 crore deposited by Jaypee Associates would not go to JIL and that NBCC would not be allowed to utilise it for construction. The Supreme Court had reserved its judgment on October 8, 2020 over a batch of petitions and appeals filed in the matter.

Source: *NDTV, March 25, 2021*
https://www.ndtv.com/business/supreme-court-remits-jaypee-infratechsresolution-plan-to-creditors-for-approval-2398595

Insolvency Australia, the first of its Insolvency Comparison site launched

The comparison site only lists specialists who are registered with the Australian Securities and Investments Commission (ASIC) and the Australian Financial Security Authority (AFSA). "The independent platform was created in a bid to make it easier for business owners navigate "the maze" of insolvency solutions available to them," said a company director to media.

Source: Accountants Daily, March 25, 2021
https://www.accountantsdaily.com.au/business/15493insolvency-comparison-site-launched

Overdoze victims to get ~ $48,000 in US based Purdue Pharma's bankruptcy plan

These claims were filed against Purdue Pharma LP for opioid addiction or overdose deaths against OxyContin made by the company. As per the bankruptacy plan of the firm, victims who qualify for the most severe injuries will receive between $16,000 and $48,000, less severe cases would likely get between $5,000 and $31,000, and the least severe cases would likely get $3,500, according to court papers.

Source: *The Wall Street Journal, March 16, 2021*

https://www.wsj.com/articles/opioid-victimscould-get-up-to-48-000-under-purdues-bankruptcy-11615936372

Supreme Court Ordered immediate release of IRP Mr. Anuj Jain arrested in a case of accident on Yamuna Expressway

The Supreme Court on March 2 ordered immediate release of IRP Mr. Anuj Jain who was arrested by Uttar Pradesh police in the case of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. Nbcc (India) Ltd & Ors.

"Copy of this order be forwarded to the office of the concerned Judge and Police Station Beta-II, District Greater Noida, Uttar Pradesh through e-mail and the Registrar (Judl.) of this Court shall personally intimate the office of the concerned Judge on telephone to ensure immediate release of the applicant, Mr. Anuj Jain, without imposing any conditions," ordered a Bench of Justice A. M. Khanwilkar and Justice Dinesh Maheshwari.

Mr. Jain was arrested from Mumbai in pursuant to an FIR related to an accident filed against caretakers of Yamuna Expressway to which he has been appointed as insolvency resolution professional (IRP). In this accident seven members of a family were killed on Yamuna Expressway

in last week of February. The counsel of the Uttar Pradesh government argued that the investigating officer was of the view that Mr. Jain 'may leave India at any time to avoid the prosecution'. Though the court agreed to examine this aspect in detail, it observed that the police official dealing with the case was not familiar with the provision of privilege of IRP appointed by the Court, in terms of Section 233 of the IBC. The court also directed the investigating officer to file his personal affidavit explaining the position within two weeks.

Source: *The Wall Street Journal, March 16, 2021*
https://www.livelaw.in/top-stories/appalled-up-police-arresting-interim-resolution-professional-supreme-court-issues-show-cause-notice-170648

Liquidation or rescue is an outcome of the market forces: Dr. M. S. Sahoo

In a recent article in The Indian Express, IBBI Chairman Dr. M. S. Sahoo said that the liquidation or rescue is an outcome of the market forces; the law is only an enabler giving choices and nudging a company towards value maximising outcomes. The stakeholders decide whether to seek resolution and, if so, the mode of resolution. Comparing a financially stressed company with a patient, Dr. Sahoo highlighted that as different patients recover at different stages of treatment i.e., OPD, IPD, ICU etc. stressed companies are also recovered in various stages of the resolution depending on their financial health and other factors affecting the operations of the corporate debtor. Some companies reach settlements, some face resolutions while only a few of them go through the process of liquidation. The liquidation is, however, the last option under the IBC, 2016. So far, only 5% of companies seeking resolution through IBC end up in liquidation i.e., could not be saved.

Source: *Indian Express, March 10, 2021*
https://www.business-standard.com/article/economypolicy/liquidation-an-outcome-of-market-forces-ibbi-chairperson-m-s-sahoo-121031000046_1.html

For more updates on IBC News, please visit weekly IIIPI Newsletter (https://www.iiipicai.in/newsletter/)

Common Issues Identified by IIIPI during Inspection

The IIIPI while conducting inspection of Insolvency Professionals (IPs) has witnessed various defaults committed by IPs during conduct of Corporate Insolvency Resolution Process (CIRP). Here we are presenting the common issues found in the records of IPs so that the IPs could avoid them in their future assignments and crosscheck their documents before submission.

Background

Insolvency Professional Agencies (IPAs) are self-regulated professional bodies that focus on developing the profession of insolvency professionals. The Insolvency and Bankruptcy Board of India (IBBI) has oversight over the functioning of IPAs who in turn regulate the functioning of Insolvency Professionals and monitors their performance and conduct as per the provisions of Insolvency and Bankruptcy Code (IBC), 2016. IPAs carry out functions in furtherance of their powers as envisaged by the Code, including:

Regulatory functions, such as drafting of detailed standards and code of conduct that are made public and are binding on all the members of IPA;

Executive functions, such as monitoring, inspecting and investigating members, gathering information on the performance of insolvency professionals;

Quasi-judicial functions, such as addressing grievances of aggrieved parties, hearing complaints against members and taking appropriate action.

The Model Bye-Laws of an IPA requires the IPA to continuously improve upon its internal regulations and guidelines to ensure that high standards of professional and ethical conduct are maintained by its professional members.

IPAs develop professional standards and code of ethics under the Code and audit the functioning of their members, discipline them and take actions against them if necessary.

The Code mandates monitoring of the performance of IPs with respect to legal compliance and empowers IPAs to call for information and records. Provisions of Section 208(2)(c) of the Insolvency & Bankruptcy Code,2016 ("Code") read with Clause 18 of the Code of Conduct provided under First Schedule of IBBI (Insolvency Professional) Regulations,2016 and adopted by Indian Institute of Insolvency Professionals of ICAI (IIIPI) is authorised to conduct the inspection of IPs enrolled with it.

> **These deficiencies in concurrence often put the Corporate Debtors at risk and renders loss to the corporate debtor and Indian economy. In some cases, misinterpretation, or non-compliance of the provisions of the Code may lead to the different outcome of the resolution process.**

The objective of Inspection of IPs is to ascertain whether the conduct of IPs is in overall interest of the stakeholders, corporate debtor as going concern and to ensure that the position of trust held by IPs is not abused by them and in cases where it is, to ensure appropriate action is taken. The purpose of inspection is to gather sufficient & relevant information on the conduct and performance of the IPs.

The IIIPI while conducting inspection of IPs have witnessed various deficiencies in the Insolvency

Resolution Process of Corporates undertaken by IPs. In general, the Insolvency Professionals do not comply with the provisions of the Code or does not exercise due diligence and reasonable care while discharge of his duties or powers. These deficiencies in concurrence often put the Corporate Debtors at risk and renders loss to the corporate debtor and Indian economy. In some cases, misinterpretation, or non-compliance of the provisions of the Code may lead to the different outcome of the resolution process. The lapses may be due to lack of clarity of the Laws and its provisions and amounts to inadvertent mistakes. These may be escaped with reasonable care and exercising due diligence while performing duties by the IPs and thereby preventing the IPA to initiate any disciplinary action.

"It is observed that list of claimants is not maintained properly, as many important fields like date of receipt of claim, type of claim, date of verification of claim, security interest (if any) are missing."

I. Claims of Creditors.

As per the Section 25(2)(e) of the Code read with Regulation 13 of the IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the IRP/RP should verify all claims and update the list of claimants on structured basis, as and when any claim is received and should duly record the date of acceptance and verification of claim, reason of rejection of claim, type of claimant, form pursuant to which the claim is received, mode of receipt of claim, security interest (if any) and any other important field (if any). It shall form an agenda item in the notice of the meeting of committee of creditors (CoC) and the list of creditors shall be available for inspection by the members meeting of committee of creditors It is observed that list of claimants is not maintained properly, as many important fields like date of receipt of claim, type of claim, date of verification of claim, security interest (if any) are missing. Further, it is observed that the IPs do not intimate the reasons in writing for rejection or part admission of claim amount to the claimants.

II. Sharing of Information Memorandum (IM)

As per the Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the resolution professional shall share the Information Memorandum (IM) after receiving an undertaking from a members of the committee of creditors to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or advantage to itself or any other person and comply with the requirements given under section 29(2) of the Code. It is observed that the Information Memorandum have been placed before the CoC without obtaining confidentiality undertaking from the recipients of IM. Further, it is suggested that the IPs shall minutise the fact that Information Memorandum have been shared with the members of committee of creditors or prospective resolution applicants, as the case may be and declaration of confidentiality has been received from the recipients prior to sharing of the aforementioned document. Disclosure required to be submitted by IPs with IBBI after sharing of Information Memorandum with the CoC members in the prescribed format (CIRP 3) shall contain all the relevant facts and information, and the IPs shall attach the support documents while filing the form.

III. Disclosure of Costs of the Interim Resolution Professional/Resolution Professional

As per the Regulation 33, 34 and 34A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with the circular No. No. IBBI/IP/013 dated 12th June, 2018 states that the expenses incurred or to be incurred by IP shall be ratified or approved by the committee of creditors with the requisite voting percentage as directed by the Code, as only the ratified or approved costs or expenses shall form part of the insolvency resolution process costs.

It is generally observed that the costs disclosed in Form II, Form III, CIRP 2 and CIRP 5 are mismatched with respect to the costs appearing in the minutes of the meetings of CoC. Further, the bifurcation of out-of-pocket expenses or other expenses are not provided in minutes of the CoC meetings. The costs ratified/ approved by the COC members should be properly disclosed in the minutes and the percentage (%) of voting by which it was approved shall also form part of the minutes. It is the duty of an IP to disclose the fee payable to him as well as the fee payable to professionals engaged by him while performing the duties as an IP. This ensures conduct of the CIRP process in a transparent manner.

In event of 12A withdrawal before constitution of CoC it has been observed that the IPs does not submit cost details as required by Form II to be submitted with IIIPI.

IV. Appointment of Registered Valuers

As per the Regulation 27 IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that IPs should ensure that the engagement letter (in writing) is issued to either IBBI Registered Valuer/Registered Valuers Entity specifying their name, address, IBBI registration number, class of asset to be valued, their scope of work, fees and timeline within which report to be provided. It has been observed that IPs has issued the engagement letters in the name of firms/ LLPs/ companies which are not IBBI registered valuer/ registered valuer entity and later on have disclosed the relationship disclosures on the website of the IPA in the name of individual registered valuer registered with IBBI, being partners of the firms so appointed by the IPs. The minutes of the CoC meeting, disclosures with IIIPI, forms submitted with IBBI shall contain the details of registered valuer , its IBBI registration number and class of asset for which it is appointed, in an uniform manner.

V. Outsourcing of Duties/ Appointment of Insolvency Professional Entity During CIRP

As per the Section 18 and 25 of the Code read with IBBI Circular No. IP/003/2018 dated 3rd January 2018 states that the insolvency professional shall not outsource any of his core duties and responsibilities. It is observed that the scope specified in the engagement letter issued by the insolvency professional to the professionals appointed contains the scope of work which reflects delegation of duties rather than assistance.

IPs can engage insolvency professional entity (IPE) to obtain their support services during corporate insolvency resolution process (CIRP). However, it is noted that in some cases IPs have made appointment of IPE at multiple times with varied scope and additional fees for tasks which shall be included in the scope of support services itself.

> **In some cases, IPs have made appointment of IPE at multiple times with varied scope and additional fees for tasks which shall be included in the scope of support services itself.**

VI. Payment to Creditors during CIRP

As per the Section 14 of the Code prohibits settlement of any such claim during CIR process and requires the resolution plan to deal with them together in the manner decided by the Committee of Creditors subject to the provisions of section 30(2) of the Code. Section 53 of the Code provides a waterfall mechanism for distribution of liquidation proceeds to the stakeholders if the corporate debtor goes into liquidation. It is observed that the resolution professional has allowed payment of dues outstanding as on the insolvency commencement date to some creditors during CIRP. This not only impacts the interests of remaining creditors but also put a question to the independence and integrity of the insolvency professional.

VII. Consent to act as a Resolution Professional

As per the Regulation 3(1A) of the IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that interim resolution professional (IRP) before continuing as resolution professional (RP) shall ensure to submit consent to be appointed as resolution professional in the prescribed Form AA as provided in Section 22(3)(a) of IBC, 2016. It has been observed that in many cases that where IRP is appointed as RP, the IRP has not given consent to act as the RP in the prescribed manner as provided by the Code.

VIII. Shortcomings while Preparing/Maintaining Records of the Committee of Creditors' (COC) Meetings

Referring Section 24, 25 of the Code and Regulation 18 to 26 of IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

a) Notice

- With reference to the provisions of Regulation 21 of IBBI (Insolvency Resolution Process for corporate persons) Regulations, 2016, the notice for the meeting of committee of creditors should enclose agendas to be discussed and items to be voted upon in a distinguished manner for better understanding. It is observed that notice enclosing agenda do not provide segregation of the item to be discussed at the meeting and the issues to be voted upon in the meeting of committee of creditors.
- The first meeting of the committee of creditors shall be held within 7 days of filing of the report certifying constitution of the committee of creditors, by giving prior notice for at least five days. It has been observed in many cases that the IP has not convened the first COC meeting within the timeline prescribed under regulation 40A read with regulation 19(2) of IBBI (Insolvency resolution process for corporate persons) Regulations, 2016 and section 22(1) of the IB Code. Further, it has been noticed that the first meeting has convened without giving five days' notice or at a shorter notice to the CoC members. The copy of correspondence serving notice to every participant which evidences the delivery of notice giving 5 days should be preserved and maintained as record for future reference.

> **Subject line in e-mail sharing notice of meeting of creditors shall state the name of the corporate debtor, the place (if any), the time and the date on which the meeting is scheduled.**

- Subject line in e-mail sharing notice of meeting of creditors shall state the name of the corporate debtor, the place (if any), the time and the date on which the meeting is scheduled. It has been observed that the contents of the notice are deficient in line with the provisions of the regulation 20(2) of IBBI (Insolvency resolution process for corporate persons) Regulations,2016 such as the place, time and the date on which the meeting is scheduled are not mentioned in the subject line.
- The resolution professional shall give notice of each meeting of the CoC to the members of suspended board of directors or the partners of the corporate debtor in compliance of the provisions of section 24(3)(b) of the IB Code, 2016. It has been observed that copy of communication is not preserved as record serving the notice of CoC to the of suspended board of the directors or the partners of corporate debtor.
- In light of regulation 21(4) and 26(1) of IBBI (Insolvency resolution process of corporate persons) regulations, 2016; it has been observed that the notice of the meeting did not contain the information which state the process and manner of voting by electronic means and the time schedule , including the time period during which the votes may be cast, does not provide the login ID and the details of a facility for generating password and for

keeping security and casting of vote in a secure manner and does not provide contact details of person who will address the queries connected with the electronic voting.

- The notice for convening the meeting of the committee does not provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with the regulation 21(2) of IBBI (Insolvency resolution process of corporate persons) regulations, 2016.
- It is generally observed that the voting item contains the discussion and details but the resolution put to vote does not form part of the notice.

b) Minutes

The resolution professional shall keep and preserve the minutes of all meetings of CoC. It has been observed that IPs are not maintaining the records related to correspondences pertaining to notices and minutes of the CoC meetings. In pursuance to above, below are the instances which have been observed during inspection.

- Circulation of the minutes of the meeting of committee of creditors is not done within 48 hours (including Holidays) from the conclusion of meeting of CoC.
- The minutes do not disclose the particulars of the participants who attended the meeting in person, through video conferencing or other audio and visual means or through authorised representatives.
- The minutes of meeting does not contain information stating the voting share of each member of committee of creditors.

c) Voting by COC Members

- IRP/RP should give his/her independent deliberations on each voting item, based on the which the CoC members shall vote. The deliberations of the chairperson of the CoC

meeting should form part of the minutes/records of the meeting. This will ensure recording of the justification for the decisions taken by the CoC members, along with related records. Since decisions under CIRP are based on the deliberations of the chairperson and commercial wisdom of the members; therefore, these decisions should be well reasoned and should be recorded in the minutes in a detailed manner. Hence, the minutes should be such that are self-explanatory in nature.

- In many cases, the IPs have sought voting through email in place of the electronic voting through secured system as provided in regulation 26 of IBBI (Insolvency resolution process for corporate persons) Regulations, 2016.
- It has been observed that the minutes of the meeting do not contain the outcome of the physical voting citing the names of the members of committee, their voting share and their voting decision (voted for/ against/ abstained from voting).

IX. Retention of records relating to Corporate Insolvency Resolution Process (CIRP)

As per Regulation 39A of of IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 The interim resolution professional or the resolution professional shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate

debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies. It is commonly seen that the records pertaining to CIRP are not being maintained and preserved or maintained in an incomplete manner.

"It has been observed that the minutes of the meeting do not contain the outcome of the physical voting citing the names of the members of committee, their voting share and their voting decision (voted for/ against/ abstained from voting)."

IBBI issued a circular IBBI/CIRP/38/2021 dated January 06, 2021: An IP shall preserve - (a) an electronic copy of all records (physical and electronic) for a minimum period of eight years, and (b) a physical copy of physical records for minimum period of three years, from the date of completion of the CIRP or the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later. However, it is advised that IPs shall **maintain and preserve all records.**

X. Non-Compliance with timelines as per regulations

As per the Regulation 40 A of IBBI (Insolvency (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the IP must strictly adhere to the timelines prescribed under the provisions of the Code and the regulations made thereunder. He should act with professional skepticism and must not be culpably careless while performing his duties during insolvency resolution. It has been observed that the IPs do not adhere with the timelines prescribed under the Code and regulations. For example: publication of public announcement, circulation of notices, minutes, invitation for expression of interest by prospective resolution applicants, appointment of valuers, determination of preferential, undervalued, fraudulent, and extortionate transactions, preparation and submission of IM to CoC etc. are largely being delayed by the Ips.

XI. Disclosure of Relationship to IPA

As per IBBI circular No. IP/005/2018 dated 16th January 2018, the IRP/RP is to disclose his/her relationship with (i) the corporate debtor, (ii) other professional(s) engaged by him, (iii) financial creditor(s), (iv) interim finance provider(s), and (v) supply of IM to prospective resolution applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified. It is also his duty to disclose the relationship he has with the professionals engaged by him.

It has been observed that the disclosures are not filed on timely basis or disclosed with wrong or incomplete information. While submitting relationship disclosures for registered valuers, disclosures are made in the joint names of valuers appointed, it is required to file disclosure for each valuer separately.

"While submitting relationship disclosures for registered valuers, disclosures are made in the joint names of valuers appointed, it is required to file disclosure for each valuer separately."

Further, it has been observed that IPs do not disclose the complete particulars such as name of registered valuer or professional appointed or prospective resolution applicant, date, professional membership number, class of asset for which valuer has been appointed, etc. in the disclosure. The correct disclosure purpose should be selected from the drop-down menu available while submitting disclosures.

XII. Non-Compliance with Orders

The Adjudicating Authority (AA) issues directions from time to time to facilitate smooth conduct of CIRP for the applications filed with AA by the parties. The proceedings before the AA are judicial proceedings and its directions are orders of the Court. Any non-compliance with any of their orders amounts to contempt of court.

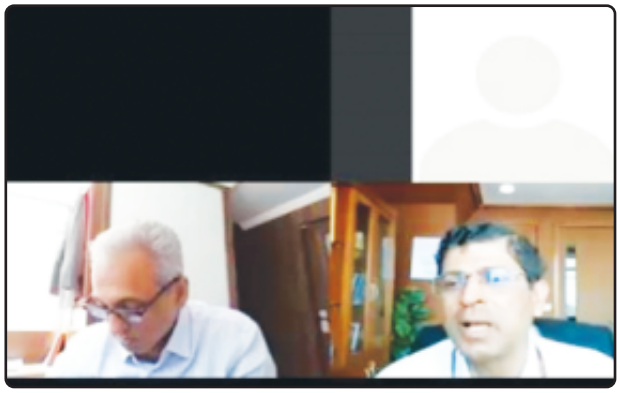
> **"In many cases, it has been observed that the IP has failed to comply with the directions of the AA. Such disregard of the order of the Adjudicating Authority may lead to jeopardize the CIRP and consequently impact the interests of stakeholders."**

In many cases, it has been observed that the IP has failed to comply with the directions of the AA. Such disregard of the order of the Adjudicating Authority may lead to jeopardize the CIRP and consequently impact the interests of stakeholders.

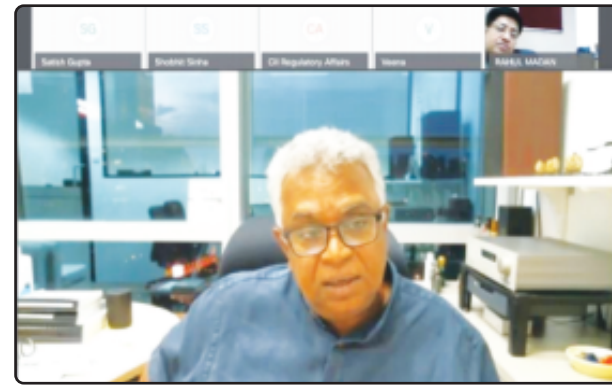
XIII. Assignment/s undertaken without holding valid Authorisation For Assignment (AFA)

Regulation 7A of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) requires that an IP shall not accept or undertake any assignment, including CIRP, unless he holds an authorization for assignment (AFA) on the date of such acceptance or commencement of such assignment. The IBBI has made available through its website to apply for the issuance or renewal of AFA and the IPAs to issue or renew AFAs in a time bound manner. There are, however, instances where an IP has undertaken assignments including voluntary liquidation without having an AFA which is in contravention of the provisions of law.

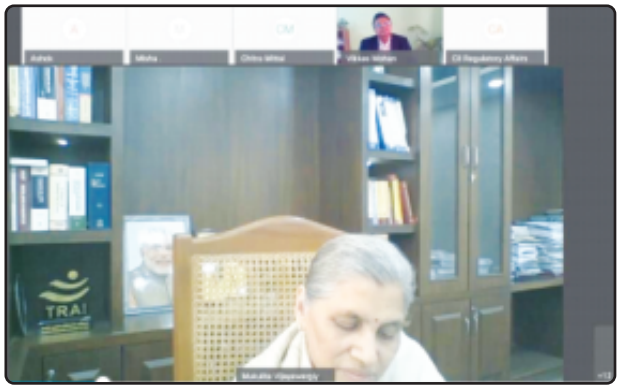
IIIPI News



Dr. M. S. Sahoo, Chairman, IBBI and Mr. S. Ramann, MD & CEO, NeSL addressed the Webinar on 'Information Utility Services for IPs' on Feb. 5, 2021 organised by NeSL and IBBI in association with the 3 IPAs.



Mr Ashok Kumar, Director BlackOak LLC, Singapore, addressing the 2nd Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled 'Encouraging foreign and domestic investments in the stressed assets sector in India including MSMEs' on March 16, 2021organized by CII in collaboration with NFCG, SAM, and IIIPI.

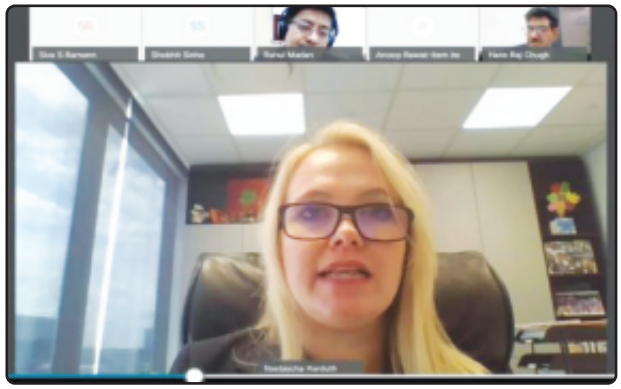


Dr. Mukulita Vijayawargiya, WTM (ALW), IBBI, addressing the 1st Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled 'Impact of Covid 19 on Proceedings under IBC; Cross border insolvency; Group insolvency' on March 10, 2021 organised by CII in collaboration with NFCG, SAM, and IIIPI.

Mr. David Kerr, Insolvency Professional, United Kingdom, addressing 3rd Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled "IBC & Pre-pack Global Experience and proposed Indian Framework" on March 23, 2021 organized by CII in collaboration with NFCG, SAM and IIIPI.

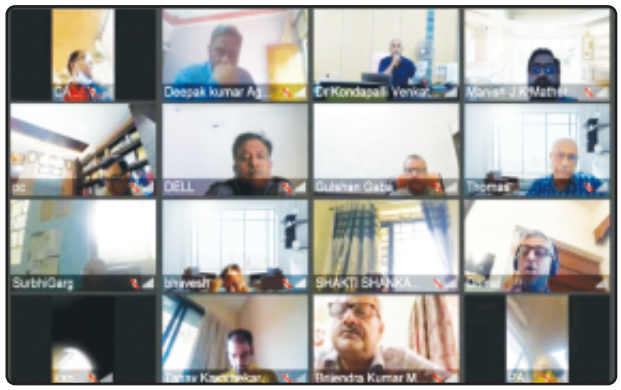
CA. Durgesh K. Kabra, Director, IIIPI-Board and Chairman- IBC Committee ICAI, addressing the 2nd Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled 'Encouraging foreign and domestic investments in the stressed assets sector in India including MSMEs' on March 16, 2021 organised by CII in collaboration with NFCG, SAM and IIIPI.

CA. Prafulla P. Chhajed, Director, IIIPI-Board, Past President and Council Member - ICAI presenting 'Introductory Remark' in the 4th Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled "Digitization and Use of Technology in the IBC process" on March 31, 2021 organised by CII in collaboration with NFCG, SAM and IIIPI.

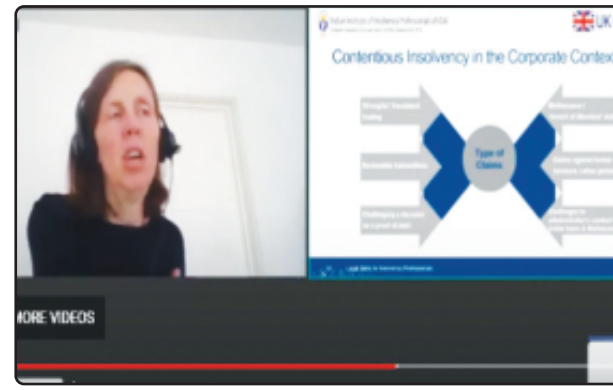


Ms. Nastascha Harduth, Business Rescue Practitioner, South Africa, addressing the last Session of the 'Insolvency and Bankruptcy Code Series of 4 Sessions' titled "Digitization and Use of Technology in the IBC process" on March 31, 2021 organised by CII in collaboration with NFCG, SAM and IIIPI.

Mr. Saji Kumar, Joint Secretary and Legislative Counsel, Ministry of Law and Justice addressing participants in the 'Training program on IBC for Bank Officials' on 20th February 2021 organised by IIIPI.

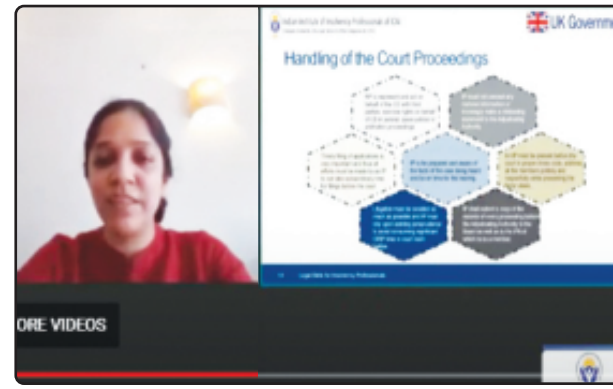


A snapshot of the 3rd Executive Development Program (EDP) conducted by IIIPI from 26th to 30th December 2020.



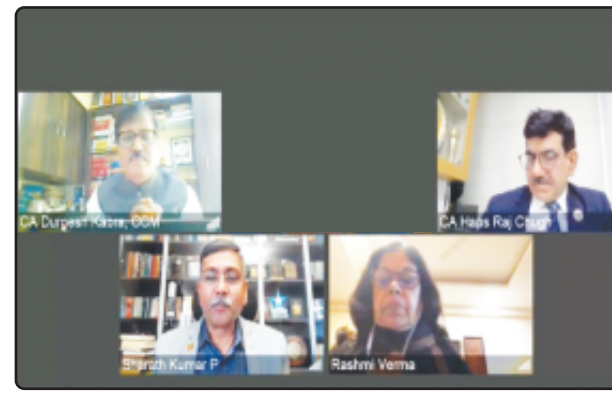
Ms. Clare Tanner, Special Counsel, K&L Gates LLP, London, UK addressing Webinar on "Capacity Building of Insolvency Professional on Legal Skills and Case Management" organised by IIIPI in association with the British High Commission on 27th March 2021.

Mr. Deepak Maini and Ms. Anju Agarwal answering the quarries of participants in 'Query Session' in the 'Training program on IBC for Bank Officials' on 20th February 2021 organised by IIIPI.



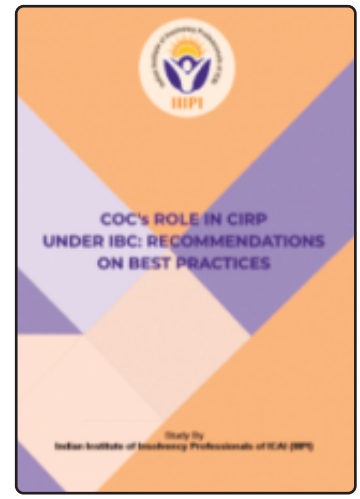
Ms. Pooja Mahajan, Managing Partner at Chandhiok & Mahajan, Advocates and Solicitors addressing Webinar on "Capacity Building of Insolvency Professional on Legal Skills and Case Management" organised by IIIPI in association with the British High Commission on 27th March 2021.

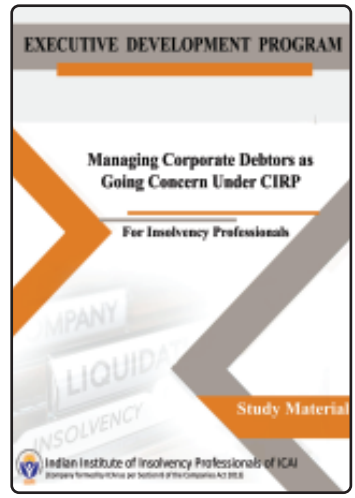
Mr. Sudhaker Shukla, WTM/ED, IBBI addressing the IIIPI Workshop on 'IT/Infrastructure Issues Faced by IPs' on February 18, 2021 organised by IIIPI.



CA. Durgesh Kabra, Director- IIIPI, CA. Hans Raj Chugh, Director-IIIPI, Ms. Rashmi Verma, Independent Director-IIIPI and Mr. P. Sharath Kumar, addressed the IIIPI Webinar on "Insolvency Resolution: Public Interest & Ethics" on 27th January 2021.

IIIPI's PUBLICATIONS





Research Cum Study on Timeliness & Effectiveness of Litigation under IBC

Services

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62,
NOIDA, UP – 201309

Office Hours: 09:30 AM to 06:00 PM (Monday to Friday), except closed holiday.
(Presently the office is following staggered timing due to COVID19, which are;
I. 9:00 am to 5:30 pm, ii. 9:30 am to 6:00 pm, iii. 10:00 am to 6:30 pm)

Contact Details

Kindly reach us on the provided cell phone numbers/Email ID in place of landline for time being to avoid any delay in the communication

0120-2975680/81/82/83

Sl No	Department	Email Id	Mobile Number
1	General Inquiry	ipa@icai.in	
2	Enrolment/ Registration	ipenroll@icai.in	+91 8178995143(Reg.) +91 8178995144 (Enr.)
3	Grievance/ Complaint	ipgrievance@icai.in	
4	Program	ipprogram@icai.in	+91 8178995141
5	Monitoring	ip_monitoring@icai.in iiipi_monitoring@icai.in	+91 8178995137 +91 8178995138
6	Publication	iiipi.pub@icai.in	
7	Authorization for Assignment	ip.afa@icai.in	
8	CPE	iiipi.cpe@icai.in	
9	Change of Address/ e-mail/contact number/any other required changes	iiipi.updation@icai.in	

FEEDBACK

Dear Reader,

The Resolution Professional is aimed at providing a platform for dissemination of information and knowledge on evolving ecosystem of insolvency and bankruptcy profession and developing a global world view among practicing and aspiring insolvency professionals in India.

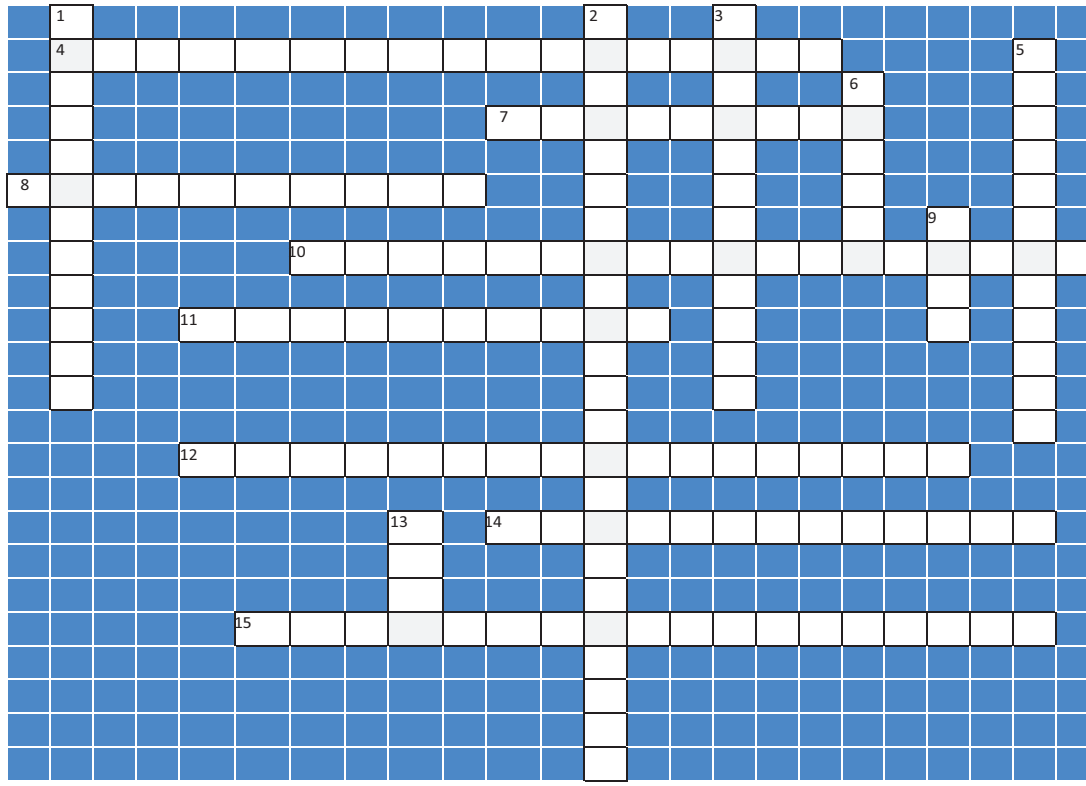
We firmly believe in innovations in communication approaches and strategies to present complicated information of insolvency ecosystem in a highly simplified and interesting manner to our readers.

We welcome your feedback on the current issue and the suggestions for further improvement. Please write to us at iiipi.journal@icai.in

Editor

The Resolution Professional

IBC Crossword



Across

4. Innoventive Industries Ltd. Vs ICICI Bank Ltd. case relates to _____ of IBC, 2016.
7. IRP shall compile business and financial operations of Corporate Debtor in how much time?
8. The Supreme Court in the case of *P. Mohanraj & Ors. Vs. M/S Shah Brothers Ispat Pvt. Ltd*, under which provision held that the cheque bounce cases can neither be initiated nor continued against companies which are facing insolvency proceedings under IBC, 2016?
10. PNB initiated Corporate Insolvency Resolution Process against Nirav Modi Pvt. Ltd. for the default in which capacity?
11. What is the minimum voting requirement for approval of resolution plan by creditors?
12. The duration of notice period for calling the meeting of the committee of creditors can be reduced to not less than___.
14. A debtor shall not be eligible to apply for initiating CIRP to the adjudicating authority if an application has been admitted in respect of debtor during the period of____ preceding the date of submission of the application.
15. Which members of the Insolvency and Bankruptcy Board of India may be included as Members of its Disciplinary Committee?

Down

1. The notice of proof of debt shall be given by bankruptcy trustee to each of the creditors within_____.
2. Under a fresh start process a creditor can file application for an objection on incorrect details of qualifying debt to_____.
3. To pass a resolution in the meeting of committee of creditors for extending the period of the fast-track corporate insolvency resolution, what shall be the percentage for voting share?
5. How much fee shall be paid by an operational creditor along with an application for initiation of CIRP?
6. A bankruptcy trustee charges fees in proportion to the value of the_____.
9. An officer of corporate debtor shall not be punishable for transactions defrauding creditors if the crime were committed_____ years before insolvency commencement date.
13. Which is the first Financial Services Provider (FSP) to undergo CIRP under the IBC, 2016?

Answers: IBC Crossword, January 2021

1. Fast-track 2. Innoventive Industries Ltd. 3. Ninety days 4. England. 5. Uday Kotak. 6. Directory. 7. Liberty.
8. Pre-pack. 9. Synergies-Dooray Automotive Ltd 10. Eight years 11. Jet Airways. 12. Section 29A
13. Part-time member. 14. Prudential framework. 15. Disclaimer

GUIDELINES FOR ARTICLE SUBMISSION

THE RESOLUTION PROFESSIONAL, the quarterly peer-reviewed referred research journal of the Indian Institute of Insolvency Professionals of ICAI (IIIPI), an RNI verified Title (DELENG19833/ F. No.: 1364856/08.04.2021), invites research-based articles for its upcoming editions on a rolling stock basis. The contributors/authors can send their article/s manuscripts for publications in The Resolution Professional as per your convenience at iiipi.journal@icai.in. The same will be considered for publication in the upcoming edition of THE RESOLUTION PROFESSIONAL, subject to approval by the Editorial Board. The articles sent for publication in the journal should conform to the following parameters:

The articles sent for publication in the journal should conform to the following parameters:

- The article should be of 2,500-3,000 words and cover a subject with relevance to IBC and the practice of insolvency.
- The article should be original, i.e., not published/broadcast/hosted elsewhere including on any website.
- The article should:
  - Contribute towards development of practice of Insolvency Professionals and enhance their ability to meet the challenges of competition, globalisation, or technology, etc.
  - Be helpful to professionals as a guide in new initiatives and procedures, etc.
  - Should be topical and should discuss a matter of current interest to the professionals/readers.
  - Should have the potential to stimulate a healthy debate among professionals.
  - Should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of. It may also preferably highlight the emerging professional areas of relevance.
  - Should be technically correct and sound.
  - Headline of the article should be clear, short, catchy and interesting, written with the purpose of drawing attention of the readers. The sub-headings should preferably within 20 words.
  - Should be accompanied with abstract of 150-200 words. The tables and graphs should be properly numbered with headlines, and referred with their numbers in the text. The use of words such as below table, above table or following graph etc., should be avoided.
  - Authors may use citations as per need but one citation/ quote should have about 40 words only. Lengthy citations and copy paste must be avoided.
  - The authors must provide the list of references at the end of article.
  - A brief profile of the author, e-mail ID, postal address and contact number along with his passport size photograph and declaration confirming the originality of the article as mentioned above should be enclosed along with the article.
  - The article can be sent by e-mail at **iiipi.journal@icai.in**
  - In case the article is found suitable for publication, the same shall be communicated to the author/s at the earliest.

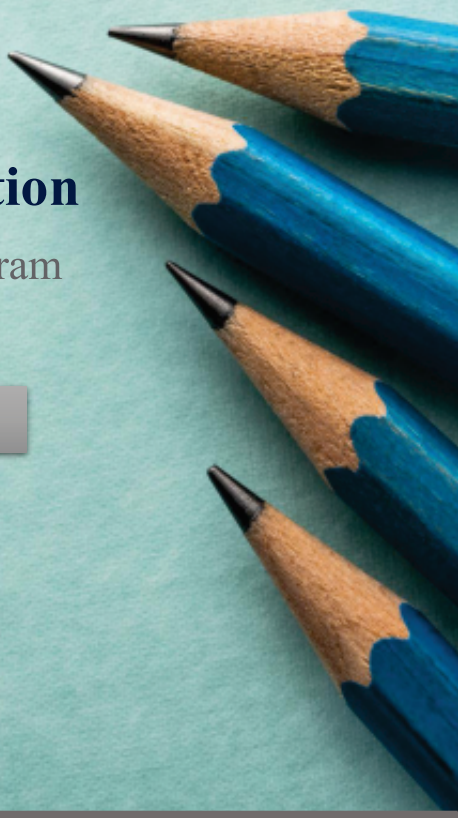
NOTE: IIIPI has the sole discretion to accept, reject, modify, amend and edit the article before publication in the Journal. The copy right for the article(s) published in the Journal will vest with IIIPI.

For further details, please contact:

THE RESOLUTION PROFESSIONAL
Indian Institute of Insolvency Professionals of ICAI
ICAI Bhawan, 8th Floor, Hostel Block,
A-29, Sector 62, NOIDA– 201309

Indian Institute of Insolvency Professionals of ICAI

(Company formed by ICAI as per Section 8 of the Companies Act 2013)



Limited Insolvency Examination

Preparatory Classroom (virtual) Program

23rd January, 2021 Onwards

ONLINE MODE

Fee: Rs 15,000/- + Taxes I Duration : 40 Hrs over 5 weekends – 10 Days (Sat & Sun)

To register, click : **https://www.iiipicai.in/regpayments/**

New Syllabus

Email: ipprogram@icai.in **Website:** www.iiipicai.in **Follow Us :**

Indian Institute of Insolvency Professionals of ICAI (IIIPI)

(A Section 8 Company & Wholly Owned Subsidiary of ICAI and Registered as an IPA with IBBI)

Regd. Office: Post Box No: 7100, ICAI Bhawan, Indraprastha Marg, New Delhi-110002

Admin. Office: ICAI Bhawan, 8th Floor, Hostel Block, A-29, Sector-62, Noida-201309

Phone: +91 0120-2975680/81/82/83, Email: ipa@icai.in, Website: www.iiipicai.in