

## Perspective: Inaugural Address by Shri Sameer Kakar, Member, NCLT in Webinar on Landmark Judgements Under IBC

*Shri Sameer Kakar, Hon'ble Member (Technical), National Company Law Tribunal (NCLT), Chennai Bench, addressed the Inaugural Session of Webinar on "Landmark Judgements Under IBC" organized by the Indian Institute of Insolvency Professionals of ICAI (IIPI). Here we present a brief version of his views: **Read on to know more...***

### Shri Sameer Kakar

Hon'ble Member  
NCLT Chennai Bench



I take this opportunity to share the practical experience that we come across during judicial proceedings pertaining to insolvency cases. I would also link this with my earlier experience as practicing Insolvency Professional (IP). Before joining the Bench at Hon'ble NCLT, I had been practicing as a member of IIPI, my alma-matter.

Though IBC related jurisprudence has evolved a lot, more needs to be achieved on the fronts of Personal Insolvency, PUF (Preferential, Undervalued, Fraudulent, and Extortionate) transactions and Liquidation. Only a few orders are available on Section 100 in respect of individual resolution process. In the days to come, jurisprudence shall evolve around some of these areas. The insolvency of the Personal Guarantors to Corporate Debtors (PG to CD) shall also be tested in the courts. Therefore, it is imperative for IPs to keep themselves abreast and updated.

A well informed and well-read Resolution Professional (RP) can solve many challenges through dialogue. With constant dialogue between an RP and various stakeholders including Committee of Creditors (CoC), issues can be managed and resolved outside the court, avoiding an otherwise time-consuming and costly affair.

Regarding expectations of the judiciary from the IPs and various stakeholders, one issue that gets escalated quite often, is regarding admission/rejection of claims. It is observed that claimants whose claims get rejected, do not appeal timely. Many a times, appeals are filed post-approval of the Resolution Plan. I remember a case in Chennai, wherein about 40-50 such applications were filed just after approval of the Resolution Plan. While going through these applications, it transpired that RP and

claimants could have resolved the issue with active dialogue. RPs should not need instructions from the Bench to start the dialogue with the claimants. A proactive RP can certainly resolve these issues out of court since litigation is costly and time-consuming for both the parties.

I would like to share my earlier experience as an RP as well. In one case, Income Tax Return was filed by the company and an assessment was carried out under Section 143(1). A huge refund was due to the company which was appropriated towards the past dues. In this case an application (IA) was to be filed. Instead of approaching Hon'ble NCLT, I wrote to the Assessing Officer stating that since moratorium under Section 14 was in place, he ought not to have carried out the assessment. And that, if funds were not returned, a 'contempt of court' plea shall be filed before Hon'ble NCLT for violating the moratorium. On the eighth day of this letter, the Commissioner called me and requested not to prefer the plea and that funds would be refunded. In another case, I received a notice from Commercial Taxes Department stating that "Since the company has not paid the past dues, we are referring this matter to the Collector for sale of the assets of the company and recovery of the pending sales tax dues". We wrote to the authorities that they were violating moratorium ordered by the NCLT under Section 14 of the IBC. This was not responded. Finally, we submitted a letter at the counter of the Department. On receipt of the letter, instructions were passed to the Collector not to proceed for recovery of dues by way of sale but to file a claim before the RP. A proactive and persuasive RP can avoid these kinds of litigations. The RP is an officer appointed by the court, and s/he should assert authority wherever necessitated.

Another important issue is regarding the pleadings being filed by the professionals which at times are not up to the mark. What RPs try to argue at times, is not captured in the pleadings. Sometimes small matters like replacement of the RP, which should not take more than five minutes, remain undecided due to lack of requisite/supporting documents.

The third issue, I would like to delve upon is, public interest. Though RP needs to stress his authority, he should act as a trustee of the company. Sometimes situation is not perfect, the management is non-cooperative, CoC is not cooperative enough for payment of fees, or authorities do not listen. etc. In such circumstances, the RP should keep his personal issues at bay while dealing with situations professionally. In a case of a shipping company before Hon'ble NCLT, Chennai Bench, the RP did a good job and took some innovative decisions as well. As a result, the Resolution Plan was approved. However, later it came to light that he had not released salary of a senior employee because of an altercation with him. This should not have been done.

The fourth issue I would highlight is regarding admission matters and approval of the Resolution Plan. I have already emphasized the importance of pleadings and drafting; these ideas apply here as well. Many RPs utilize the services of specialized agencies for carrying out due diligence on Section 29A. But when it comes to filing for approval of the Resolution Plan such due diligence reports do not form part of the IA, which should be ensured invariably. Besides, voting pattern along with ballot or e-voting report should always be attached along with the IA

while seeking approval of the Resolution Plan.

The next issue worth attention is 'haircuts', which is a matter of concern for the entire ecosystem. We have seen a lot of narratives on this issue in media or otherwise. My advice to RPs is that whenever they file a Resolution Plan, they should provide relevant additional information. For instance, a table can be provided about details of the principal outstanding, interest (normal), interest (penal), damages etc., separately. While approving the Resolution Plan, it matters as to how much of the principal amount is to be recovered as part of total claim. This may change the mindset of the Hon'ble Bench and may bring about clarity resulting in expeditious approval of the Resolution Plan. Likewise, it is helpful if RPs provide reasons for taking decisions about having second or third valuation report. The IBBI has also amended Regulations in this regard wherein the RPs would now be required to provide previous valuation report(s) to valuer.

Lastly, more need to be done by RPs in respect of PUFÉ applications. The quality of PUFÉ applications, at times, leaves much to be desired. In some applications, we found that RPs focused on credit side and ignored the debit side in the ledger. For instance, in one case, the RP reported PUFÉ transaction amounting to ₹ 500 crores. However, on examination of debit side of the ledger we noticed that ₹495 cores were returned in the account of the Corporate Debtor. Therefore, RP must improve the overall quality of PUFÉ applications.

With these words, I would like to close my comments. Thank you all.

