

## Address By Hon'ble Shri Justice Dipak Misra, Former Chief Justice of India

*Chief Guest on the occasion of the 8<sup>th</sup> Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIPI) organised on the theme "Improving Engagement Across Stakeholders" on November 26, 2024.*



**Shri Dipak Misra**

Hon'ble Chief Justice (Retd.)  
Supreme Court of India

*Shri Dipak Misra, Hon'ble Chief Justice (Retd.), Supreme Court of India is an Indian jurist who served as the 45<sup>th</sup> Chief Justice of India (CJI) from 28<sup>th</sup> August 2017 to 02<sup>nd</sup> October 2018.*

*His Lordship was born on 03<sup>rd</sup> October 1953. He was enrolled as an Advocate on 14<sup>th</sup> February 1977 and Practiced in Constitutional, Civil, Criminal, Revenue, Service and Sales Tax matters in the Orissa High Court and the Service Tribunal. He was appointed as an Additional Judge of the Orissa High Court on 17<sup>th</sup> January 1996 and transferred to the Madhya Pradesh High Court on 03<sup>rd</sup> March 1997. He became permanent Judge on 19<sup>th</sup> December 1997. Justice Misra assumed charge of the office of Chief Justice, Patna High Court on 23<sup>rd</sup> December 2009 and charge of the office of the Chief Justice of Delhi High Court on 24<sup>th</sup> May 2010. He was elevated as a Judge, Supreme Court of India w.e.f. 10<sup>th</sup> October 2011.*

*Speaking as the Chief Guest on the occasion of the 8<sup>th</sup> Foundation Day of IIPI organised on the theme "Improving Engagement Across Stakeholders" on November 26, 2024, Shri Misra shared his vision for further strengthening the IBC ecosystem.*

***Read on to know more...***

At the very outset, I must confess that it is a matter of immense delight to be the chief participant on the occasion of the 8<sup>th</sup> Foundation Day of Indian Institute of Insolvency Professionals of ICAI (IIPI). On this day, the protagonists are required to scrutinize the steps taken in the past and success achieved and further, think of ways to enhance the vision and accentuate the realisation of future pedestal where they would like to stand.

Having expressed my pleasure, let me proceed to share my thoughts. In a civilized and highly economically developing country, the legislative concern has always been that businesses initiated by individuals, in whatever form and frame they may be, should pave the path of progress. It is because the attempt of the law is to see a constructively affirmative business that grows progressively. To quote a statement from Benjamin Cardozo - "A business never stands still. It either grows or decays". And, at present, after decades of economic liberalisation and globalization, regard being had to growth, the law was required to be changed, and the legislature did change it with intent and purpose.

Law, fundamentally, as Edmund Burke would put it, is "the noblest of human sciences". It has to be understood while making law for the growth of business that, in a new economic atmosphere, the same engulfs and encompasses ethicality, fiscal morality and avoidance of debts and their realisation, and they have gained primacy.

Consequently, one witnessed the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993, and the SARFAESI Act, 2002. These frameworks proved inadequate. The processes were lengthy, and recovery rates remained disappointingly low. Law cannot afford to remain static. With the passage of time, experiments do take place, modifications ensue and that is the manifestation of the spirit of growth.

In the year 2014, the Bankruptcy Legislative Reforms Committee was constituted. In November 2015, the committee submitted its report. It highlighted that:

*“India is one of the youngest republics in the world, with a high concentration of the most dynamic entrepreneurs. Yet these game changers and growth drivers are crippled by an environment that takes some of the longest times and highest costs by world standards to resolve any problems that arise while repaying dues on debt. This problem leads to grave consequences: India has some of the lowest credit compared to the size of the economy...”*

In the Report of the Joint Committee on the Insolvency and Bankruptcy Code, 2015 (IBC) presented to the Lok Sabha on 28 April 2016, the primary objective behind the Code was set out in the following words:

*“It has been mentioned in Statement of Objects and Reasons that the Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business and facilitate more investments leading to higher economic growth and development.”*

**The Insolvency and Bankruptcy Code is a landmark legislation marking India's first comprehensive law regulating insolvency of individuals and Corporate Persons.**

Eventually, IBC came into existence on 28 May 2016. The Insolvency and Bankruptcy Code is a landmark legislation marking India's first comprehensive law regulating insolvency of individuals and Corporate Persons. The Preamble of the Code reads as under:

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”*

At this juncture, it is necessary to understand the judicial perspective of this legislation. In **Swiss Ribbons (P) Ltd.**

**v. Union of India, (2019) 4 SCC 17**, the Supreme Court, while upholding the constitutional validity of several provisions of the Code, observed:

*“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors...”*

The entire process of Corporate Insolvency Resolution, or Liquidation, involves multiple stakeholders who play critical roles in the process. The key stakeholders are:

- (i) **Corporate Debtor** - which includes its employees, management and shareholders. They provide all necessary information to the Resolution Professional (RP) and co-operate with the RP during the resolution process.
- (ii) **Financial and Operational Creditors** - who play a critical role in identifying defaults and triggering the insolvency process by filing applications before the Adjudicating Authority.
- (iii) Then comes the significant stakeholder, namely, **Resolution Professional** - who takes custody of the corporate debtor's assets and records and facilitates the claims process by inviting and verifying the creditors' claims, conducts meetings of the Committee of Creditors (CoC) and implements their decisions, and prepares an information memorandum and assists in drafting the resolution plan.
- (iv) **Committee of Creditors (CoC)** - which, primarily comprising of financial creditors, evaluates and approves resolution plans, ensuring that these plans maximize the value of the corporate debtor's assets and serves all stakeholders' interests.
- (v) **Resolution Applicants** - who submit plans to revive the Corporate Debtor, and ensure that their plans comply with the IBC guidelines, including fairness to all stakeholders and legal requirements.
- (vi) **Adjudicating Authorities** - who ensure legal compliance and exercise legal supervision at every stage, from admitting applications to approving resolution or liquidation plans.

(vii) **The Regulatory Authority, that is, Insolvency and Bankruptcy Board of India (IBBI)** - which ensures that all stakeholders comply with the regulations, monitors the process, and penalizes misconduct. It frames rules and guidelines for effective implementation of the code.

**“The success of the Code depends on the collective roles and coordinated actions of its stakeholders.”**

While each of the aforesaid stakeholder plays an independent role under the Act, the cumulative role of stakeholders under the Code is to ensure a time-bound, transparent, and efficient resolution of insolvency. The success of the Code depends on the collective roles and coordinated actions of its stakeholders. Together, they enable a structured process for resolving insolvency while balancing the interests of creditors, debtors, and other affected parties, ensuring economic growth and stability. It is expected from them that they must focus on substantial essentiality and pragmatic philosophy of implementation of the Code.

Presently, I shall advert to the role of **Chartered Accountants (CAs)** who play a crucial role in the effective implementation of the Insolvency and Bankruptcy Code (IBC), given their expertise in financial analysis, auditing, taxation, and regulatory compliance. Their contributions are essential throughout various stages of the insolvency resolution process.

Their role in various stages of the insolvency process can be succinctly summarised having regard to their special ability which is further cultivated by experience.

- (i) CAs conduct detailed audits of the corporate debtor's accounts. They verify financial claims submitted by creditors to the Resolution Professional and analyse mismanagement or fraudulent transactions that may have contributed to the default.
- (ii) CAs also play a key role in assisting RAs for the preparation of the Resolution plan by structuring financial proposals, ensuring compliance with applicable tax laws, and conducting feasibility and viability assessments. They advise on the tax implications of resolution plans, asset sales, and write-offs.

iii) In addition, CAs investigate transactions that may be fraudulent, undervalued, or preferential under Sections 43, 45, and 66 of the IBC.

Chartered Accountants bring a wealth of financial expertise to the IBC process. Whether acting as Insolvency Professionals, advisors, or auditors, their role is critical in ensuring compliance, transparency, and the successful resolution of insolvency cases. Their contribution helps balance the interests of all stakeholders and strengthens the credibility of the insolvency ecosystem.

The engagement between Chartered Accountants (CAs) and Resolution Professionals (RPs) is essential for the effective and efficient implementation of the Insolvency and Bankruptcy Code (IBC). Given their complementary skill sets, collaboration between these two professionals can streamline the insolvency process and maximize value for all stakeholders.

The synergy between Chartered Accountants and Resolution Professionals strengthens the insolvency resolution process under the IBC. Their combined expertise ensures compliance with legal, financial, and procedural requirements, enhancing efficiency and transparency. This engagement is seminal for achieving the IBC's primary objectives: timely resolution, maximization of asset value, and balancing stakeholder interests.

**“The synergy between Chartered Accountants and Resolution Professionals strengthens the insolvency resolution process under the IBC.”**

Given the important roles played by Chartered Accountants in all stages of insolvency resolution, and the significance of quality engagement between them and Resolution Professionals, it is categorically imperative, for the continued success of IBC, to devise more strategies to further improve and foster collaboration between them.

The following methods may be used to achieve the said purpose:

- (i) Regular joint training sessions on IBC provisions, financial restructuring, valuation, and forensic auditing can be conducted. This would promote interactions between CAs and RPs and enable them

### THE RESOLUTION PROFESSIONAL

to utilize their skills jointly for a more efficient resolution under IBC.

- (ii) There can be creation of forums where RPs and CAs can share best practices, challenges, and innovative approaches from previous insolvency cases.
- (iii) CAs be encouraged to develop expertise in insolvency specific fields such as forensic accounting, business valuations and restructuring plans. Such specialization will further improve collaboration between CAs and RPs.
- (iv) Institutes such as the Institute of Chartered Accountants of India (ICAI), Indian Institute of Insolvency Professionals of ICAI (IIPI), and Insolvency and Bankruptcy Board of India (IBBI) can issue joint guidelines to promote collaboration and offer incentives for successful resolution cases where RPs and CAs work in harmony to maximize value of assets or revive businesses.

By fostering transparency, inclusivity, and collaboration, these measures can significantly improve engagement among stakeholders in the IBC process, assuring smoother and more effective insolvency resolutions.

In conclusion, I must say with emphasis that IBC, as a piece of legislation, meets the vision of progress and development. But the words of law need to be activated. That should be the pledge of the day. I remember an old saying and I quote:

*“Iron rusts from disuse; stagnant water loses its purity and in cold weather becomes frozen; even so does inaction sap the vigour of the mind.”*

The suggestion today is to act with vibrance and vigour to achieve constructive economic stability with the purpose of saving and growing.

Thank you very much for your courtesy and patience.

