



CIRP process of insolvency Law

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Abstract

The Corporate bankruptcy Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) is one of India's most significant corporate bankruptcy reforms. The IBC, the most extreme reform, consolidates and modifies corporate, partnership, and individual reorganisation and insolvency legislation within a set timeframe. This research paper's topic is well-documented in terms of CIRP method, legal framework, and court decision. This framework evaluates whether it accomplishes its aims, problems it faces, and potential course corrections to enhance the process. This article analyses the CIRP to better understand it and its implications on the Indian insolvency procedure.

Keywords: Corporate Bankruptcy Resolution Process (CIRP), legal framework, court decisions, aims of CIRP

Introduction

India's government overhaul of economic law, the IBC, replaces stagnating and disorganised legal bankruptcy processes. India had insolvency and bankruptcy laws and courts before the IBC. This fragmented technique delayed dues collection, hindered business and economic advancement, and hindered structure-solving.

The IBC wanted to immediately develop and update all corporate, partnership, and individual rehabilitation and restructuring laws. It seeks effective asset usage, business promotion, loan availability, and creditor/debtor fairness. The IBC aims to streamline bankruptcy resolution over the former system. The systematic and time-bound Corporate Insolvency Resolution procedure (CIRP) underpins the IBC. The CIRP is limited in its structure and processes to resolve insolvency systematically, transparently, and promptly to streamline business and restore credit and investor faith in India. Financial creditors, operational creditors, and corporate debtors file this with the NCLT. From bankruptcy proceedings to resolution plan preparation and approval, the CIRP framework encompasses multiple stages. Passing a Resolution Application, choosing an IRP, authorising a CoC, and administering the debtor's company are examples. Financial lenders evaluate debtor business restructuring proposals. Courts have interpreted and developed CIRP provisions, affecting its practice and development. Many high courts including the Supreme Court have considered cases on claim priority, operational creditor rights, and procedural timeframes. These court rulings have influenced and clarified IBC goals and execution. Several factors hinder CIRP implementation^[1]. These difficulties include case resolution time, legal and administrative formalities, insolvency professionals' duties, judges' challenges, and legislative integration. Address the challenges to boost the CIRP's efficiency and achieve its purpose.

Research questions

- How has the implementation of the IBC 2016 transformed the corporate insolvency landscape in India?
- What are the procedural steps involved in the CIRP, and how do they ensure a time-bound resolution?

- How have judicial interpretations and case laws shaped the CIRP under the IBC?
- What are the primary challenges faced in the CIRP, and what reforms could address these challenges?

Objectives

- To analyze the procedural framework of the CIRP under the IBC.
- To study the impact of judicial pronouncements on the interpretation and application of the CIRP.
- To identify the challenges and bottlenecks in the CIRP.
- To suggest reforms for enhancing the efficacy of the CIRP in India.

Hypothesis

The CIRP under the IBC, 2016, has significantly improved the efficiency of insolvency resolution in India, but certain procedural and operational challenges hinder its optimal implementation

Research problem

Despite the structured framework provided by the IBC for the CIRP, the process faces practical challenges that affect its efficiency and effectiveness. These challenges include delays in resolution, issues with the insolvency professionals, and judicial bottlenecks. This paper seeks to explore these challenges in detail and suggest potential reforms to address them.

Detailed analysis of CIRP

Initiation of CIRP

The CIRP can be initiated by three types of entities: the financial creditors, the operational creditors as well as the corporate debtor in question. This initiation process is very well delineated to try to make insolvency proceedings start only when there is a necessity to sort that situation out and thus avoid unmeritorious or vexatious petitions^[2].

Financial creditors

Financial creditors are those to whom money is owed in exchange for financial assets such as money-secured creditors are those to whom debt securities are owed such as bonds. They can start the CIRP and submit an application in

accordance with section 7 of the IBC. The application must be accompanied by evidence of default like loan documentation, balance sheets, or other financial records as the case may be. The NCLT is expected to confirm whether there is a default in giving notice of a meeting within 14 days from the time the application is filed. If satisfied, the tribunal annexes the application and passes an order to appoint an Interim Resolution Professional (IRP).

Operational creditors

The operational creditors who are those creditors who entered into an operational contract with the corporate debtor to provide goods and services can file an application for the CIRP under section 9 of the IBC. An operational creditor has to issue a demand notice to the corporate debtor before approaching the NCLT for a direction to pay the operational demand. Where the debtor gives no reply or the demand is not in actual invocation, the operational creditor can present an application to the NCLT. On its part, the tribunal upon checking affirms the application then makes an appointment of an Independent Reviewing Officer^[3].

Corporate debtor

An amendment in the section states that a corporate debtor can file CIRP on its own under section 10 of IBC. This provision enables a company that anticipates that it is going to be insolvent to apply for insolvency resolution. The application is to be submitted together with a special resolution of the shareholders and such other documents as maybe required. Where the NCLT is convinced with such documentation, it registers the application and passes orders appointing an IRP. This self-initiated strategy is sought to help companies which are in financial difficulties or stress mostly on its balance sheet to re-float them and sort their debts.

Role of Interim Resolution Professional (IRP)

When the CIRP application is admitted, the NCLT empowers an Interim IRP who then administers the corporate debtor. The power of board of directors becomes limited and the control of the company is handed over to IRP^[4].

- The power to seize and control of the assets, management and the operations of the debtor.
- The debtor analysis focused on gathering data about their financial situation.
- Formation of the Committee of Creditors (CoC).
- The act of doing all the collections and record keepings on all claims from creditors.
- continuation of the debtor's business while the legal process is ongoing.

Based on the findings of this study, the IRP has the important responsibility of keeping the operations of the debtor going while preserving the value of the assets for the benefit of all the stakeholders. During the insolvency resolution process, the IRP should make sure that things are running smoothly and effectively.

Committee of Creditors (CoC)

CoC is one of the most critical entities in the CIRP, consisting of at least one financial creditor of the corporate debtor.

- Condoning or not condoning the resolution plan.

- Referring to the IRP and the RP as either a replacement or a continuation decision.
- Making decisions with respect to the management of the corporate debtor during the Corporate Insolvency Resolution Process.

All the decisions regarding the CoC are made through voting and at least 66% of the votes should be in its favor. The role of the CoC is instrumental in the achievement of the outcome of the CIRP because it assesses and ratifies resolution plans seeking to restore the debtor firm and optimise the value of the assets.

Resolution Professional (RP) and Resolution Plan

The RP usually replaces the IRP, although the CoC may affirm or replace it. Any resolution applicant may submit a proposal to the RP. Plans are evaluated for appropriateness, feasibility, and IBC compliance. The CoC must adopt the resolution plan with 66% of the vote. After all stakeholders agree, the NCLT ratifies the proposal. If no plan is approved in time, the corporate debtor liquidates. This requires the RP to actively participate in the debtor's affairs to resolve concerns and develop the best resolution plan. After all parties agree to follow the resolution plan, it becomes a legal remedy to insolvency.

Adjudication and appeals

A primary functional of the NCLT relates to hearing and determination of the issues in connection with the CIRP. It possesses the powers to accept or decline applications; accept or reject the resolution plans; pass the orders for liquidation. For the decisions made by the NCLT, there exists the National Company Law Appellate Tribunal commonly referred to as NCLAT and finally to the Supreme Court of India. It is thus evident that an understanding of the insolvency laws as well as fair and justified outcome from the provisions of the IBC is central to the judiciary's responsibility to facilitate a successful insolvency resolution process^[5].

Key judicial interpretations and case laws

1. Innoventive Industries Ltd. v. ICICI Bank Ltd^[6]

Facts:

ICICI Bank Ltd. (ICICI) had filed a petition against Innoventive Industries Ltd. (Innoventive) in the Bombay High Court where Innoventive had taken a loan from ICICI but failed to pay the loan amount as agreed. According to the circulation of a National Company Law Tribunal (NCLT) order, ICICI applied with Section 7 of the IBC to launch CIRP against Innoventive. Innoventive challenged the application and considered that it received a notification by the Maharashtra government under the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 which offered it term protection with the actions of creditors.

Issues:

- Whether the IBC application can be admitted when state law grants protection against creditors.
- Interpretation of the "existence of a dispute" in rejecting the application by operational creditors.

Judgment

The Supreme Court opined that whenever there is a clash between the IBC and state laws, the former prevails since the IBC has been enacted as a central legislation that seeks

to conform a unified procedure for insolvency resolution. The Court ensured the importance of Section 7 of the IBC where, the existence of a default ascertained by an adjudicating authority is enough to allow a Section 7 application. The Court held that once a default is admitted, the financial creditor has the mechanism of CIRP and it cannot be restrained by state laws.

2. Swiss Ribbons Pvt. Ltd. v. UOI^[7]

Facts:

In other cases, some provisions of the IBC have been held unconstitutional, on the grounds that it infringes with basic rights of the individuals. Petitioners argued that the split between operational and financial creditors was unjustified and prejudicial; they claimed the power vested in the Committee of Creditors (CoC) was unfair.

Issues

- Constitutionality of the distinction between operational and financial creditors.
- Powers and functions of the CoC.
- The role of the Insolvency and Bankruptcy Board of India (IBBI).

Judgment

The Constitutional validity of IBC was affirmed by the Supreme Court of India. Therefore it said that the distinction between financial and operational creditors on the ground of intelligible differentia having a rational nexus to the goal set before the IBC by the legislators. The financial creditors contribute to the evaluation of the business possibility and possibility, thus are provided favorable treatment. The Court also supported the powers of the CoC and stated that it is essential for dealing with all the interests of the conflict since the decisions were made by CoC to achieve the best outcome.

3. ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta^[8]

Facts

The two prominent global buyers of Essar Steel's assets submitted their resolution plans including ArcelorMittal India Pvt. Ltd. (ArcelorMittal) and Numetal Ltd. (Numetal). Both the bidders were disqualified under section 29A of the IBC law that stipulates that any party with a related party in default shall be disqualified.

Issues

- Interpretation and applicability of Section 29A regarding disqualification.
- Eligibility of resolution applicants with connected defaults.

Judgment

While exercising its jurisdiction with respect to Section 29A, the Supreme Court applied a conservative construction and thus, supported the objectives of the statute in not permitting the defaulter to regain control over the debtor. Originally, it assessed the corporate organizations and affiliations of both bidders as to qualification; therefore, decided that ArcelorMittal qualified after removing the defaults by paying the arrears. The Court pointed out that the above provision was introduced with an intention not to

allow unscrupulous promoters to take advantage of the solvent company.

Challenges in CIRP

Delays in resolution^[9]

However, the issue of delay has been a major concern in the process of the CIRP which is under the time-bound IBC. These issues lessen the efficacy of the CIRP by prolonging the time firms take to recover financially, a time that may see their assets' value decline and stakeholders suffer.

- **Litigation:** Lawsuits at different CIRP phases are regular delays. Contentious topics addressed by the guidelines include claim validity, applicant admittance, and resolution plan acceptance. Legal proceedings and appeals impede insolvency case progress. Section 29A's challenge of the resolution applicant's eligibility results in legal compliances that take longer than 180 days.
- **Lack of Information:** One of the main issues with the CIRP process is that informants are frequently inadequate or contain insufficient and/or incorrect information about the financial state of the debtor. Creditors may have a problem in ascertaining the validity of the debtor's claims because of distorted information. The absence of these clear records presents potential for disagreement and additional time, as the IRP and RP try to reconstruct the debtor's financial situation.
- **Procedural inefficiencies:** The CIRP includes several procedures that must be done within certain timeframes, which are also considered as steps of the CIRP. However, there are challenges in implementing the timelines as well as a rather complicated regulatory framework, which result in the process taking more time than expected. For instance, the steps that involve reviewing and assessing the claims can be affected by procedural issues in the submission and handling of papers.
- **Judicial delays:** The provisions of the Companies (Compromises and Reversal of Civil Rights) Act, 2016 are implemented through the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) which are overloaded with cases and therefore get time bound in disposal of CIRP related matters. This heavy caseload leads to delays in the time that is taken to conduct hearings and reach a decision, which in turn, contributes to the delays in the resolution of cases.

Role of insolvency professionals

Insolvency professionals are central to the CIRP, but their role has been fraught with challenges^[10]:

- **Competence:** The CIRP is all the more dependent on the skills of the insolvency professionals involved in the process. Some problems emerge when professionals do not have enough knowledge and experience to work with complicated cases of insolvency. Lack of proper standards and deviation practices by the insolvency professionals lead to ineffectiveness in attaining the best results possible for stakeholders. For instance, some of the professionals involved may not properly

balance the debtor's business affairs hence causing the value of the assets to decline.

- **Accountability:** Use of insolvency professionals in CIRP requires that they be held accountable to avoid compromise of the integrity of CIRP. However, there has been a number of cases where professionals have been accused of embezzlement or lack of exercise of appropriate standards of care to the creditors. There are no strong controls when it comes to accountability hence; the conflicts of interest and the general resolutions are likely to be compromised.
- **Conflicts of interest:** CIRP has conflict of interest issues which practitioners need to deal with; this is because the practitioners may have working relations with the stakeholders of the company. For instance, insolvency professional, who is likely to have some relation or business association with a certain creditor will have a conflict of interest if he has to make some decisions that will affect all the creditors.
- **Regulatory framework:** Currently, there is a requirement for enhancing the regulation of insolvency professionals in order to have a better conduct and performance. It is imperative that there is specific rules in Regulation on the appointment, fitness, and assessment of insolvency professionals. Further, there is a need to strengthen the oversight mechanisms by the Insolvency and Bankruptcy Board of India (IBBI) for the proper resolution of such problems.

Judicial bottlenecks

The NCLT and NCLAT play crucial roles in the CIRP, but they face several challenges that impact the efficiency of the adjudication process ^[11]:

- **Heavy caseload:** The current caseload of the NCLT and NCLAT is overwhelming which causes a lot of time to be spent on the handling of cases, thus, case determination is affected. Such a situation can lead to an increased time frame of the insolvency proceedings, which may in turn hamper the effectiveness of the CIRP.
- **Infrastructure and capacity:** Thus, there is a need for strengthening and developing the NCLT and NCLAT in order to deal with the increased caseload. There are often inadequate resources, for instance, poorly equipped courtroom, lack of adequate support staff, and poor technological resources for these tribunals.
- **Timely appointments and training:** Tribunal members' timely appointment and continuous training are essential for sustaining favorable quality and speed of the decision-making process. This situation means that some members of the tribunal have appointment hitches or have not undergone through rigorous training to enable them to deal with intricate insolvency cases.

Coordination with other laws

Effective insolvency resolution requires seamless coordination between the IBC and other relevant laws: Effective insolvency resolution requires seamless coordination between the IBC and other relevant laws:

- **Overlapping jurisdictions:** Issues arise when the IBC is in conflict with other industries' laws such as the Companies Act, 2013 and SEBI regulations to the execution of CIRP. When several agencies share jurisdiction it becomes difficult to handle the issue because there will be different interpretations and implementation of provisions.
- **Conflicting provisions:** Such cases can create legal conflicts as there are cases where the IBC has provisions that are in contrast to the other legal frameworks. For instance, there can be conflict of sections of the Companies Act dealing with liquidation of company and the insolvency resolution procedure under the IBC resulting in procedural overlaps.

Stakeholder awareness and participation

Active stakeholder participation is crucial for the success of the CIRP:

- **Limited understanding:** It is likely that many of the stakeholders such as creditors and debtors may not be conversant with CIRP process and its consequences. Such ignorance results in general lack of effective participation, misaligned incentives, and consequently, poor performance.
- **Engagement and collaboration:** It is therefore agreed that engagement and stakeholders' participation is core to the determination of insolvency cases. Specifically, reduced participation from the stakeholders of the troubled firms can lead to slow progression and unsuitable development of resolution plans.

Suggested reforms

Strengthening the Capacity of NCLT and NCLAT

- **Infrastructure improvement:** Investing in the development of the NCLT and NCLAT such as in courtroom amenities and technology can help better the management of cases. To increase the efficiency of the adjudication process, it is necessary to invest in the modern technology and support systems.
- **Training and development:** It is therefore important to provide continuing education and training to the members of the tribunals as such issues are complex in nature. Offering specialized training of the judges in insolvency and bankruptcy issues can enhance the quality of adjudication.

Enhancing the role of insolvency professionals

- **Training and certification:** Overcoming the limitations of the current training and certification of insolvency professionals and creating new training and certification systems will increase the competence of insolvency practitioners. Certification should be done according to the laid down standards and one should be in a continuous process of updating their skills.
- **Regulatory framework:** This paper reveals that there is a need to enhance the existing regulation of insolvency professionals so as to obtain better ethical behavior. This include performance measurement and feedback system, 'key performance indicators', 'benchmarking', 'performance contract', and 'code of

ethics', 'ethical standards and measures of responsibility and behaviors.

- **Performance evaluation:** It is proposed that the establishment of the performance evaluation measures for the insolvency professionals is necessary to ensure that they produce quality work and also to encourage professionalism and accountability. In this way, rewarding high performance and combating underperformance within the scope of regulation can contribute to the increase in the effectiveness of insolvency professionals.

Streamlining the CIRP process

- **Simplifying procedures:** This can best be attained through a repeal of many procedural rules that slow down the determination of cases as well as the limitation of prospects for case lawsuits. This comprises such measures as minimizing the number of documents needed, cutting the number of procedural steps to completion, and defining the procedure for each step of CIRP clearly.
- **Technological solutions:** Use of technology in filing and tracking of cases would help both the parties in the administration of justice. This area encompasses the real-time updating of information and technology-supported task automation as well as improved communication with the interested parties.
- **Clear timelines:** The CIRP, therefore, needs to have well-defined parameters outlining the expected time span of each decision-making stage in order to avoid time hitches. This includes creating time horizons within which resolution plans and their approval should be submitted and taken respectively, and ways of making decisions faster.

Promoting Out-of-Court restructuring

- **Encouraging mediation:** To lessen the load on the CIRP process, there should be enhancement of out of court measures including mediation and negotiations. Compromise usually takes less time and is rather more elastic to manage as compared to other insolvency processes and can affect dispute resolution without going through the conventional insolvency proceedings.
- **Pre-Packaged insolvency:** Possibilities of forming a doctrine for the pre-packaged insolvency can be viewed as a different range compared to the formal CIRP procedure. Pre-packaged resolutions entail putting in place a resolution plan with creditor before applying for insolvency thus cutting down the time taken in the process of resolution.

Conclusion

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) has also improved insolvency resolution. They have implemented a more defined, methodical, and time-bound approach to value optimisation, mediating stakeholder interests. However, significant obstacles that might delay this strategy remain. Time to settle an insolvency procedure, inconsistency in insolvency professionals' performance,

court backlog, integration with other laws, and interested parties' lack of understanding about the new legislation must be addressed. These problems influence the CIRP's efficiency and efficacy depending on the nation where it is implemented and need a compromise. Effective reforms, such as strengthening the NCLT/NCLAT, increasing IP involvement, improving the CIRP framework, and promoting out-of-court restructuring, can address challenges like legal complexity, lack of capacity in the NCLT/NCLAT, inadequacy of IP roles, inefficiency of the CIRP process, and low stakeholder awareness. With these improvements, the CIRP can resolve bankruptcy timely and efficiently. To address evolving insolvency needs, further efforts and reforms are needed. In interpreting and developing the CIRP framework for success, the judiciary is important. Thus, by continuously reforming and improving, the CIRP can provide a strong and effective insolvency resolution system in India. This shows that policymakers, regulatory organisations, bankruptcy specialists, and courts all contribute to the CIRP's success. Taking on the difficulties and implementing the changes will enhance the CIRP and improve India's insolvency resolution framework.

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