International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 03-03-2026, Accepted: 02-04-2026, Published: 17-04-2026
Volume 12, Issue 2, 2026, Page No. 109-117

Corporate insolvency resolution process in India under the Insolvency and Bankruptcy Code 2016

Deeksha Chettri, Dr. Suneel Kumar
ICFAI Law School, Telangana, India

Abstract
This study critically examines the functioning of the Corporate Insolvency Resolution Process in practice, with a focus on contemporary issues and emerging trends that influence its outcomes.The abstract begins by explaining the objectives of the CIRP, which include the revival of financially distressed companies, protection of stakeholder interests, promotion of credit discipline, and maximization of the value of assets. While the legal framework of CIRP is designed to ensure efficiency and transparency, its implementation often faces delays due to judicial backlogs, frequent litigation, and procedural complexities. These delays undermine the core principle of time-bound resolution and often lead to liquidation instead of revival, defeating the purpose of insolvency resolution. Overall, this abstract emphasizes that while the Corporate Insolvency Resolution Process has significantly transformed the insolvency landscape and improved credit culture, its practical implementation requires continuous reform and judicial clarity.

Keywords: IBC 2016, CIRP, corporate insolvency, resolution professional, insolvency litigation, time-bound settlement, liquidation, financial distress, Indian insolvency law, creditor rights

Introduction

The economic growth of a nation is positively correlated with the expansion of its business activities. The business sector plays a crucial role in regulating the economic development of a nation, since it facilitates many economic activities that are essential for the growth and strength of the economy.

Banks play a crucial role in facilitating economic development through the provision of loans to corporate firms for investment in diverse initiatives. Non-performing assets (NPAs) provide a significant risk to investments and are documented on the balance sheet of banks and other financial institutions during an extended period of non-payment by borrowers, typically exceeding 90 days. Consequently, these assets impose a financial burden on the lenders. The lack of money experienced by banks due to this situation has a direct impact on the lender's cash flow. In due course, financial institutions may find themselves unable to extend credit or may choose to do so at an elevated rate through the implementation of higher interest rates. Consequently, this restricts the flow of money within the economy. Furthermore, the banks have reduced the deposit interest rates in order to mitigate the financial losses incurred by depositors. The decrease in borrowers' confidence presents a hindrance to investment. Ultimately, this leads to a deceleration of the national economy. Since 2008, the non-performing assets (NPAs) of banks have experienced a significant and concerning increase. Therefore, it has become imperative to address and mitigate non-performing assets (NPAs).

Entrepreneurs play a pivotal role in driving businesses, necessitating a favourable business environment that allows for unrestricted entry and exit. The Indian economy facilitated unrestricted entry and fair competition, while it imposed restrictions on leave, resulting in the presence of numerous nonviable businesses within the economic system. Creditors are individuals or institutions that extend loans to entrepreneurs with the purpose of facilitating the establishment and operation of a firm. The outcomes of the discussions on the forums resulted in a meagre 10-20% of the total worth of assets, leaving the unsecured creditors in a significantly unfavorable position. The unsecured creditors were unable to recover any assets from the preceding procedures. The creditors' position was characterized by a lack of certainty regarding the recovery of their outstanding debts and a lack of representation in the liquidation and winding up proceedings. During the liquidation and winding up proceedings, the defaulting companies and their erring promoters-maintained ownership and control over the assets and management of the company. Despite the occurrence of default, the delinquent promoters were able to reclaim control of the company at a significantly reduced price using a covert means of entry. The remaining stakeholders, including employees and workmen, had the most severe consequences as they did not receive any benefits from these activities.

India has a number of regulations pertaining to the insolvency and bankruptcy of companies, which often overlapped with one another. Over time, the jurisdiction of District Courts, High Courts, the Board for Industrial and Financial Reconstruction (BIFR), and Debt Recovery Tribunals (DRTs) were involved at different levels, resulting in increased complexity and unwarranted delays in the process. The existing legal structure failed to facilitate lenders and investors in promptly and efficiently recovering their defaulted assets and investments, hence imposing excessive burden on the Indian credit and economic system. The assets saw a decline in value and were unable to be recovered due to the unresolved legal proceedings in various forums, including BIFR, DRTs, District Courts, Lok Adalats, High Courts, AAIFR, DRATs, and others. In several instances, it has been seen that the worth of the assets reached zero due to the prolonged duration of the proceedings, spanning over a period of ten years.

The presence of numerous and intersecting insolvency and liquidation laws, varying jurisdictions, increasing non-performing assets, unfavorable financial situation of debtors, obstacles to business exit, low Ease of Doing

Business index ranking for India, devaluation of assets, and inadequate circulation of funds in the economy collectively demonstrated the urgent requirement for a comprehensive and streamlined legislation addressing insolvency and bankruptcy issues. Several committees, including the Tandon Committee (1974) [1], Tiwari Committee (1981) [2], First Narasimham Committee (1991) [3], Narasimham Committee II (1998) [4], Eradi Committee (1999) [5], N.L. Mitra Committee (2001) [6], and J J Irani Committee (2004) [7], were established periodically by the Government and the Reserve Bank of India. These committees were tasked with examining and addressing concerns related to financially distressed and insolvent companies, the increasing volume of non-performing assets (NPAs), and implementing reforms in insolvency legislation, among other objectives.

Hence, the highly anticipated and significant legislation known as the Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016, hereinafter referred to as "IBC" or "Code") was granted the Presidential Assent on May 28, 2016. This legislation adopts a creditor-centric approach and aims to establish a comprehensive framework for expeditiously resolving insolvency and bankruptcy issues. Its objectives include fostering entrepreneurship, enhancing access to credit, improving the business environment, and facilitating increased investments, ultimately contributing to higher economic growth. The Bill pertaining to the Insolvency and Bankruptcy Code, 2015 was presented in the Lok Sabha on December 21, 2015. Subsequently, the Bill was directed to a Joint Parliamentary Committee, with 30 members from both houses, for thorough scrutiny and analysis.

The complete implementation of several rules related to the Corporate Insolvency Resolution Process (CIRP), Insolvency Professionals (IPs), Insolvency Professional Agencies, and Liquidation proceedings took effect on December 1, 2016. The enactment occurred during a period of economic challenges in India, characterized by a significant increase in non-performing assets (NPAs), a decline in GDP, a negative credit outlook, and the domestic banking sector's difficulties in managing a substantial number of bad loans. Additionally, the Mallya Saga added to the complexities faced by the banking industry. The enactment of this legislation has fundamentally transformed the existing Insolvency Resolution mechanism within the nation.

Corporate Insolvency Resolution Process: A Conceptual Connotation

When a company is formed it is assumed that the company is meant to go on forever, this is called the concept of “Going Concern ". But there may be a situation where the company is going through complete losses and the company is not financially stable anymore, the company may go bankrupt and could be marked insolvent. The Insolvency and Bankruptcy Code [IBC], 2016, was passed with the intention of combining and amending the laws governing the restructuring and insolvency resolution of corporations, partnership firms, and individuals in a time-bound manner in a way to increase the value of such person, corporation, partnership or the firm’s assets and to promote entrepreneurship, and increase credit availability while balancing the interests of all stakeholders, including creditors.

A firm may be deemed insolvent/bankrupt if it is unable to pay its debts or maintain its financial responsibilities. In certain situations, the process of Corporate Insolvency Resolution Process (CIRP) is activated, the National Company Law Tribunal (NCLT) appoints an Insolvency Professional (IP) to take control of the company. The Insolvency and Bankruptcy Code (IBC) of India contains a legal provision known as the Corporate Insolvency Resolution Process (CIRP) that permits the restructuring and/or liquidation of a corporate debtor (a corporation).

The insolvency and liquidation procedures for all corporate debtors are given in Part II of the IBC. It sets a 180-day deadline that may be extended by additional 90 days, which is about 3 months to complete the procedure. To maximize the value of the company's assets and pay off the creditors, the IP (mainly known as insolvency professional) takes over the control of the business and performs a transparent and time-limited resolution process. Selling of the company's assets or restructuring of its business operations to restore profitability are frequently part of the resolution process. Duties of IP are given under Section 18 of IBC.

Before the Code took effect, corporations and firms were governed by the 2013 Companies Act and matters and aspects relating to corporate sickness had to be resolved by the High courts. Under the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920, the industrial disease of non-corporate entities such as partnership firms, individuals, HUFs, and so on is still dealt with. However, when the Code is extended to them, these shall be given to the Debt Recovery Tribunals (DRTs). The IBC had to take the place of these outdated regulations because they were no longer necessary.

The formation of a new forum to hear insolvency cases, the establishment of a specific regulator, the creation of a new category of insolvency professionals, and the creation of a new category of information utility providers are just a few of the novel features of the IBC in terms of corporate insolvency. The 2016 IBC was written in a way that prevents corporations from having to file for liquidation. The only time a settlement is not achieved is when the company goes into liquidation.

The availability of experienced resolution Professionals, the collaboration of all parties, and the proper working of the judicial system in managing insolvency cases are just a few of the variables that might affect how effective the CIRP process could be. The ability of the resolution professionals to find and implement workable resolution plans that can save financially troubled companies will also be a determining factor in the CIRP's success.

The company's management is suspended during the CIRP, and it is shielded from any legal action or debt collection efforts by its creditors. The CIRP's goal is to make sure that the assets of the firm are distributed to its creditors in a fair and open way so that the business can survive and go forward.

The CIRP is an important legislative framework that guarantees the efficient settlement of corporate insolvency cases in India and has played a key role in advancing the ease of doing business there.

Insolvency and Bankruptcy: A Legal Framework

The English legal system served as the basis for the development of the Indian insolvency law. In the time before the British colonial rule, India did not have a law governing insolvency. The Government of India Act of 1800 is seen as the source of India's early insolvency rules.

Under this act, the Apex court was granted the authority to handle matters pertaining to insolvency. It is possible that the passage of Statute 9 in 1828 can be seen as the first attempt in India to deal with insolvency through the application of a specific piece of legislation [8]. Another key step forward was taken when, in 1848, the Indian Insolvency statute was passed into law. This statute remained in effect until 1909, when it was replaced by the Presidency Towns Insolvency Act. After that, the concepts of individual and corporate insolvency and bankruptcy were split apart and addressed in a number of other pieces of Indian legislation. While the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 dealt with individual bankruptcies, provisions relating to the winding up of companies were first found in the Indian Companies Act 1913 [9]. These provisions were subsequently found in the Indian Companies Act 1956 and in the Companies Act 2013 [10]. The measures for winding up firms that were included in the 1956 Act did not guarantee a quick winding up of companies, and the processes involved in winding up companies took an average of eight to ten years to complete [11]. According to the findings of a study that was carried out on a representative sample of 1857 businesses, the process of winding up a company took 10 years in 42% of the cases, 10-20 years in 27% of the cases, 20-30 years in 19% of the cases, and more than 30 years in 12% of the cases [12].

During this same period, there was also a significant increase in the number of industrial diseases reported in India. The Reserve Bank of India (RBI) established the Tandon Committee in 1975 [13], and the government established the Tiwari Committee in 1981. These committees were charged with the responsibility of investigating the rise in the prevalence of industrial disease and developing measures for the early detection of industrial sickness and the rehabilitation of sick industries. This resulted in the passage of the SICA in 1985, with the purpose of finding industrial enterprises that were handicapped by financial difficulties and the establishment of BIFR for the purpose of rehabilitating such industries [14]. Although the failure of SICA was caused by challenges in recognizing early industrial sickness, delays in procedures, the quasi-judicial structure of BIFR, a priority given to the rehabilitation of enterprises rather than the winding up of operations, and a low number of completed cases [15], The report from the Goswami committee also found that there were delays in the disposal of cases, which lasted for up to 749 days, as well as delays in taking decisions, which took more than three years to complete.

Another issue that required attention was the steadily growing debts as well as the protracted process of recovering payments for creditors. There was no successful debt recovery because bankers took a careless approach, and the procedure of recovering the debt was laborious and time-consuming [16]. During this time period corporates owed a total of more than 5622 crores to public sector banks and 391 crores to other financial institutions. The amount of non-performing assets (NPA) that was recorded was 4.3 percent of the total loans.

In 1991, a committee that Shri Narasimhan was in charge of made the recommendation to establish special tribunals and pass legislation on debt recovery. This resulted in the passage of the RDDBFI Act in 1993, which made it easier for banks and other financial institutions to recoup their losses. Unscrupulous debtors, on the other hand, prolonged the entire procedure, which resulted in a restricted amount of relief for the financial institutions and banks. The overall number of cases that were brought before DRTs was 1,50,503, and the total sum that was at stake was $2,601 billion [17]. The fact that just 427 billion (16.43%) of this total sum had been collected as of March 2014 [18] is an unmistakable indication of the failure of DRTs. This ultimately resulted in the passage of SARFAESI in the year 2002. Even though the new legislation provided banks with significant additional rights to adjudicate for their debts even in the absence of an order from the tribunal, it only safeguarded secured creditors and led to piece meal litigation. As a result, new legislation had to be enacted, and in the year 2000, the Eradi committee was established to make recommendations regarding how to improve the insolvency process and speed up the liquidation of enterprises. It proposed the need to establish a national tribunal to particularly deal with industrial sickness and winding up of companies, to abolish BIFR and AAIFR created under SICA, to establish a debt default criterion, and it suggested a series of reforms in dealing with winding up of companies. Additionally, it indicated the necessity to establish a national tribunal to specifically deal with industrial sickness andedrftg" winding up of companies [19].

Because of this, a new piece of legislation needed to be enacted, and the Mitra committee was established so that substantial changes could be made to the rules governing insolvency. In 2001, the Committee delivered its report, which emphasized the necessity of creating a separate Code for bankruptcy, setting up special bankruptcy benches in High Courts, forming a trustee, and adhering to international norms when adopting a national insolvency framework in India. These recommendations were included in the Committee's report [20]. Because of this, the Irani Committee was established, and it handed in its findings in 2005. The report emphasized the necessity of a complete liquidation process in India that protected the value of organizations and avoided delays.

Since the RBI is the market regulator, it moved quickly to provide guidance to banks on how to deal with their rising NPAs. In 2002, the Board of Financial Supervision was given the mandate to carry out research and make recommendations for a system that would prevent NPA accounts from falling into delinquency [21]. In 2013, the RBI issued a framework for the revitalization of troubled assets [22] and ordered that the banks classify the non-performing accounts into one of three categories based on the level of risk involved. Additionally, the RBI required that the banks disclose to CRILC any borrowers whose debt exposure was more than 50 million rupees or higher. In addition, the Reserve Bank of India (RBI) introduced penal sanctions for banks and borrowers in the year 2014 for not complying with standards [23].

In 2015, the RBI introduced a number of different schemes [24], such as the Joint Lender's Forum (JLF) and the S4 A schemes, in order to speed up the process of debt restructuring [25]. Unfortunately, none of these initiatives were successful, and the amount of non-performing assets (NPAs) held

Corporate Insolvency Resolution Process: An Analysis

Following the initiation of the Corporate Insolvency Resolution Process (CIRP) under Sections 7, 8, 9, or 10 of

the Insolvency Code of 2016, the Adjudicating Authority, also known as the National Company Law Tribunal (NCLT), will proceed with further measures.

According to Section 12(1)[2] of the Insolvency Code, 2016, it is required that the Corporate Insolvency Resolution Process (CIRP) be completed within 180 days from the date the National Company Law Tribunal (NCLT) applies to start the process. However, if the resolution professional files the application to the Adjudicating Authority, the aforementioned time frame might be extended and launched.

If directed by a resolution passed with a 66% majority vote of the voting shares of the Committee of Creditors at a meeting. Upon obtaining such approval, the application to the adjudicating Authority must be submitted by a resolution expert. Upon receiving such application, the Adjudicating Authority has the power to approve a single extension, with a maximum duration of 90 days. The Corporate Insolvency Resolution Process (CIRP) must be concluded within 330 days from the commencement of insolvency, including any extension granted under the Code, as well as the time spent in legal proceedings linked to the resolution of the corporate debtor.

- **Submission to National company law Tribunal:** In the event that a firm is unable to fulfill its financial obligations, the creditors involved possess the entitlement to submit a petition for Corporate Insolvency Resolution Process (CIRP) to the Adjudicating Authority, specifically the National Company Law Tribunal (NCLT). The competent authority for adjudication in cases where the firm is the corporate debtor is widely recognized. The merits of the filed petition are evaluated, and upon submission, it is assessed whether the petition has legal standing before the National Company Law Tribunal (NCLT). The National Company Law Tribunal (NCLT) has the authority to dismiss the petition if the requirements of the case are not met.For example, if the defaulted amount is not equal to or greater than the minimum sum of INR 1,00,000. If the Tribunal concludes that the petition is valid, it will be filed under sections 7[8], 9[9], or 10[10] of the Insolvency Code, initiating the subsequent procedure. The tribunal will convene a hearing within a 14-day period following the receipt of the petition.

- **Application for Interim Resolution Process:** A resolution professional is a licensed insolvency professional who is selected and appointed by the Committee of creditors (CoC)[11] in order for the Tribunal to appoint the Interim Resolution Professional temporarily. During the second stage of the process, the bankruptcy Resolution Professional (IRP) must make a decision between completing the next steps of the bankruptcy procedure or ensuring that the corporate debtor's activities are relevant and appropriate.

- **Moratorium:** Upon approval of the petition by the Tribunal, the moratorium period commences. Once the moratorium is issued, financial creditors are unable to withdraw any funds from the corporate debtor's account.

- **The Tribunal is prohibited as long as this is declared:** Initiation of fresh legal proceedings or continuation of ongoing legal proceedings against the corporate debtor pertaining to financial debt. The act of removing the corporate debtor from any responsibilities related to operations, finances, legal matters, or management; Any subsequent seizure of assets or collection of debts against the company debtor under the SARFAESI Act of 2002; and Any property possessed by the corporate debtor under the SARFAESI Act of 2002. The moratorium will last until the completion of the CIRP proceedings. The duration of this term can extend for a maximum of 180 days, and in extreme cases, it can be extended for an additional 90 days.

- **Fact collation and analysis:** The IRP is responsible for identifying and assessing the allegations put forth by the petitioner. The Code allows for IRP to conduct a meeting with the petitioner in order to obtain any necessary clarification if IRP requests an explanation of the claim made by the petitioner. . Within a period of 30 days from the commencement of the Corporate Insolvency Resolution Process (CIRP), the Insolvency Resolution Professional (IRP) is required to designate a Committee of Creditors (CoC). Following the establishment of the CoC, the Committee appoints a Resolution professional (RP). Within a week of the Committee's establishment, the CoC must make a decision about the appointment of a temporary RP as a resolution professional or the appointment of a different RP to replace the interim resolution professional.

- **Verification and Analysis of Claims:** At this stage, IPRs will summon and authenticate the creditor's claims, as well as categorize them. Subsequently, a Committee of Creditors (CoC) will be formed, comprising all the financial creditors of the corporate debtor, within 30 days of its acceptance into the Corporate Insolvency Resolution Process (CIRP).

- **Resolution Plan:** The Committee of Creditors (CoC) is required to publicly announce their decision after reviewing the Insolvency Resolution Plan (IRP) or any other related plans, and after verifying the claims made by the petitioner. The insolvency notice declares that the corporate debtor is now undergoing insolvency proceedings and invites any interested parties or potential buyers to submit a resolution plan for consideration. Bidders may include potential investors, creditors, and other interested parties. The CoC evaluates the proposed resolution plans based on the quantity of recommendations received. The proposal that garners a support of over 75% from the CoC will be submitted to the NCLT without any further inquiry.

- **Resolution:** The Committee of Creditors (CoC) will develop a strategy for resolving the issue, which will then be brought to the National Company Law Tribunal (NCLT). Once authorized by the NCLT, the resolution plan is put into effect and legally binding on the corporate debtor and all other parties. If the National Company Law Tribunal (NCLT) does not approve the resolution plan or if the Committee of Creditors (CoC)

fails to finalize a resolution plan within the specified timeframe, the Tribunal has the authority to order the liquidation of the corporate debtor.

Fast Tract Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 (IBC) established a comprehensive framework to deal with corporate insolvencies in India. The Fast Track Corporate Insolvency Resolution Process (CIRP) was established under this framework to expedite the resolution of smaller firms with relatively uncomplicated financial structures. This blog post provides a succinct overview of the Fast Track Corporate Insolvency Resolution Process (CIRP) as described in the Insolvency and Bankruptcy Code (IBC). It highlights the distinctive features and benefits of this procedure for the corporate sector [26].

- **Eligibility criteria**

The Fast Track Corporate Insolvency Resolution Process (CIRP) is available to some qualifying corporate debtors. The debtor must meet the following criteria to qualify for this procedure: a. The debtor shall be classified as a small enterprise, as per the definition outlined in the Companies Act, 2013. b. The debtor's total outstanding debt, which encompasses all creditors, must not surpass INR 1 crore as stipulated by the central government. c. The debtor must not have undergone any previous Corporate Insolvency Resolution Process (CIRP) or completed a Fast Track CIRP within the past two years.

- **Solution with a specified time limit**

The Fast Track CIRP is characterized by strict time limits, aiming to accelerate the resolution of insolvency cases. The bankruptcy proceedings must be completed within a maximum period of 90 days from the commencement of insolvency, as opposed to the usual 180-day timeline for regular cases of Corporate bankruptcy Resolution Process (CIRP). The accelerated timeline streamlines the issue resolution procedure and reduces the overall financial repercussions for all parties concerned.

- **Simplified Process**

The Fast Track Corporate Insolvency Resolution Process (CIRP) utilizes a more efficient approach compared to the regular CIRP. The obligor is required to provide the following documents within a period of 10 days from the commencement of the procedure: a. A collection of creditors, along with the specifics of their claims. b. A disclosure of its assets and liabilities. c. A certificate provided by the financial institutions overseeing the debtor's accounts, confirming the debtor's qualification for the Fast Track Corporate Insolvency Resolution Process (CIRP).

- **Limited jurisdiction of the Resolution Professional**

The role of the resolution professional (RP) in the Fast Track Corporate Insolvency and Resolution Process (CIRP) is rather limited. The primary responsibility of the RP is to verify and confirm the debtor's eligibility for the Fast Track CIRP, maintain a publicly accessible record of claims, and supervise the debtor's assets during the process. The reduced involvement of the RP ensures a more cost-effective and efficient method to addressing difficulties.

- **Endorsement of the reorganization proposal**

Within the Fast Track Corporate Insolvency Resolution Process (CIRP), the debtor collaborates with the Resolution Professional (RP) to design a restructuring plan that will undergo evaluation and approval by the committee of creditors (CoC). The Committee of Creditors (CoC) comprises financial creditors who evaluate the plan and vote on its approval. The proposal necessitates the endorsement of a two-thirds majority of the voting share of the CoC, ensuring a fair and transparent decision-making procedure.

Pre Pack Resolution Process

The pre-pack method has evolved as a novel corporate rescue approach that combines the advantages of both informal (out-of-court) and official (judicial) bankruptcy proceedings. The hybrid structure appears to be the favored choice, as it enables stakeholders to address the financial strain of a running firm with minimal reliance on government aid. The approach is seen as rapid, economical, and successful in addressing stress, well in advance of any decline in value, with minimal disruptions to corporate operations and without incurring the negative perception associated with official insolvency procedures. The process begins with an informal agreement, involves the relevant parties throughout, and concludes with a legal approval of the result, but the specific details may vary according on the jurisdiction. Insolvency laws globally offer a form of pre-pack, alongside the standard resolution procedure. The objective is to achieve expedited, cost-efficient, and value-optimized resolution while minimizing disruption to business continuity. The entire resolution process must be concluded within 120 days from the date of beginning.

The pre-packaged insolvency process is triggered when the default amounts fall within the range of Rs 10 lakh to Rs 1 crore. If the default amounts above the specified threshold, a corporate insolvency resolution process will be commenced under the Insolvency and Bankruptcy Code (IBC).

In contrast to the corporate insolvency process, the pre-packaged insolvency process permits an informal agreement between creditors and debtors. Informal understanding refers to the process of resolving the debts of financially troubled organizations prior to the beginning of insolvency proceedings. The pre-packaged insolvency resolution process commences after a majority of 66% of creditors give their approval to the informal proposal [27].

Corporate Insolvency Resolution Process: Issues and Challenges

a. Difficulties in complying with the time limit established by the code

For the completion of the CIRP, Section 12 (2) of the IBC prescribes a rigorous timeframe of 180 days, with a 90-day extension in required instances. However, this is not followed in many cases. In the case of Quinn Logistics India Pvt. Ltd. vs Mack Soft Technology Pvt. Ltd. & Ors [28]., the National Company Law Appellate Tribunal (NCLAT) further extended the time restriction of 270 days.

As a consequence of this, the asset worth of the debtor decreased, as did the creditor's chances of recovering the money owed to them. It is important to keep in mind that the Essar Steel Case lasted for more than five years, calling into question the relevance of having a timetable to finish the resolution process. In Innoventive Industries [29] and in Surendra Trading Company v. Juggilal Kamlapet Jute Mills

company Ltd [30]., the apex court held that " time is the essence of the Code, that helps in putting the debtor back to its position as a going concern, and the timelines given in It typically used to extend from three to eight years, which caused a decline in the value of assets and irreparable damage to creditor's interests. This was the primary criticism leveled against winding provisions under the Indian Companies Act 1956, as it was a slow process and took a long time to liquidate companies. This also resulted in Inda's reduced rankings in the Ease of doing Business index of the World Bank [31].

In the current system for the resolution of bankruptcy issues, the admission stage itself is characterized by an excessive amount of lag time. This results in alienation of assets and prevents value maximization of assets, even before the case gets admitted in the NCLT, defeating the purpose of the moratorium after admission. Therefore, it is submitted that the delays at all stages must be prevented, and an interim moratorium should be imposed immediately after a case is admitted. Data from IBBI shows that on average, NCLTs take 280 days to admit an application, despite the 14-day mandate given under the Code. This results in alienation of Difficulties that arise in following the 270-day time line due to practical considerations

b. Practical difficulties in following the 270 days time line

The present timeframe of ending the process within 270 days as defined by legislation is too short and is realistically difficult to comply with for major corporate organizations that have various complicated issues to deal with. It is vital to reexamine the existing timeline of 330 days imposed by the Code [32].The current pace of concluding the process within 270 days as stipulated by statute is too short. Even in countries such as the United States and the United Kingdom, the amount of time that is granted is one and a half years, and one year, respectively [33]. Because of this, an immediate review is required. It is advisable, rather than having a rule that is practically hard to follow, to define a timeline that is different for micro, medium, small, and large business organizations and guarantee that they are strictly adhered to. Instead of having a provision that is practically impossible to follow.

c. The difficulty in approving resolution plans, which leads to a delay in the collection of debts

It is a huge problem that seriously compromises the rights of creditors if the Committee of Creditors is unable to provide its approval to the rescue plan within the allotted time frame of 180 days (which can be subsequently extended to 270-330 days). Due to the fact that some of the earlier instances ended in abysmally low recoveries for creditors, it became necessary to disregard the time frame that was set by the Code.

The IBC became law in the year 2016. In the case of Bhushan Steel, the bid amount offered by the resolution applicant was Rs.35,200 crore [34], resulting in a 37% loss to lenders. The creditor's fear that debt recovery will be lower if the company goes for liquidation can be justified by observing some of the liquidations that were carried out under the Code. Regarding the matter of Kamini Steel [35], the resolution value that was suggested was lower than the liquidation value. Resolution plan proposed was Rs.600 crore, which was less than the liquidation value of Rs.635 crores, which resulted in the NCLAT staying the order passed by the NCLT. An important consequence of this short period of time, which was 270 days, is the unwanted hurry in arriving at a resolution plan, which resulted in huge shortfall for creditors because the creditors had a short amount of time to devise a resolution plan (so as to avoid the value of the assets from declining), they are compelled to accept enormous shortfall in the resolution recovery amount, which will have a negative impact on their rights and will lead to a low level of recovery.

d. Promoters delaying payments to financial creditors

Even if there are a number of reasons for the delay in arriving at a resolution plan, there were a number of instances in which unscrupulous promoters were delaying the process and requesting the intervention of the courts. A decrease in the amount of court intervention that is required is critical for accelerating the CIRP and reaching the deadlines that are outlined in the statute. But the corporate debtors in Essar Steel, Arcelor Mittal, Ultratech, Liberty house and many other cases have challenged the decisions of the National Company Law Tribunal in courts through multiple petitions. This has resulted in a delay in the resolution process, which has caused irreparable damage to the interests of the financial creditors Furthermore, the Supreme Court judgment in Brilliant Alloys Pvt. Ltd [36]. to reinterpret S12A of the Code, which infringes the rights of financial creditors by permitting the withdrawal of insolvency proceedings against a firm after the process has begun, could be misused by promoters who may block and postpone the process, as was the case with Essar Steel. This would be an example of an infraction of the rights of financial creditors.

A recent decision made by the Supreme Court [37] that gave the adjudicating authority the discretion to admit or reject a section 7 application, holding that temporary defaults in payment of financial debts by corporates, if the company is solvent does not warrant a CIRP, could be misused by promoters and can cause inconvenience to financial creditors. The decision was made in light of the fact that the Supreme Court had previously decided that temporary defaults in payment of financial debts by corporates do not warrant a CIRP.

e. Laxity on the part of the professionals in the field of insolvency

Another key problem is that the Code places an unnecessary burden on insolvency experts by requiring them to perform the highest amount of due diligence before accepting a resolution plan. The specialists who work in insolvency are under a lot of pressure to complete their tasks within the allotted amount of time, manage the valuation process effectively, and determine a fair value and a liquidation value by compiling a list of the CD's assets. "Resolution preserves the going concern surplus, while liquidation destroys it" [38]. "Therefore, the resolution professional and the committee of creditors must prefer resolution wherever fair value exceeds liquidation value and if such fair value exceeds the net liquidation value (liquidation value minus the cost of liquidation), it must avoid liquidation" [39]. "The going concern surplus is the excess of fair value over the liquidation value". "The going concern surplus is the excess of fair value over the liquidation value" But if the insolvency professional makes a mistake or if the valuer

makes a mistake, there is no mechanism to discover or alter it, and this could seriously impact the recovery of financial creditors.Fair value and liquidation value provides for creating an evaluation matrix at the time of formulating and accepting resolution plans. It is not realistic to believe that all insolvency professionals or valuers will be equally effective in executing their duties with the same degree of diligence and accuracy. In addition, although if the above-mentioned directions are required to be fulfilled as of February 2018, as a result of a recent amendment to Regulation 2 of the CIRP Regulations 2016, this is not the case in the majority of instances [40].

Conclusion

The primary objective of this study is to investigate whether the procedures outlined in the Insolvency and Bankruptcy Code (IBC) guarantee a prompt and efficient debt recovery process for financial creditors. To gather relevant data, structured interviews were conducted with key stakeholders, including resolution professionals, bankers, and corporate debtors. The findings from these interviews indicate that financial creditors do experience successful debt recovery under the IBC. The findings of the analysis indicate that the ability of financial creditors to recover debts under the Insolvency and Bankruptcy Code (IBC) is a prominent theme. It is observed that the IBC is a legislation that favors the interests of creditors. The existing model of creditor control proves to be beneficial in facilitating debt recovery. Financial creditors primarily utilize the IBC as a means to recover debts, and this practice is both permissible and lawful. The established timelines for completing the insolvency process are deemed satisfactory, and the realizations obtained under the IBC surpass those achieved under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI).

Moreover, the analysis additionally demonstrates that the process of debt recovery for financial creditors is not prompt under the Insolvency and Bankruptcy Code (IBC). This conclusion is supported by several themes that have emerged, including the absence of expedited debt recovery mechanisms under the IBC, the existence of various factors causing delays, the necessity for modifying the timelines stipulated in the code according to the debt size of the entity, and the absence of time constraints in the process governed by the IBC.

The interviews also revealed significant factors contributing to the delay in the debt recovery procedure. The delays in the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) can be attributed to several factors. These include a shortage of benches and vacancies within these benches, inadequate manpower, interference from high courts, delays caused by the adjudicating body in admitting cases and issuing orders, frequent amendments to the Code leading to confusion, the existence of multiple appellate bodies resulting in a lack of finality in orders, the presence of numerous frivolous litigations, limited awareness about the provisions of the Code, lawyers seeking multiple adjournments, and promoters intentionally prolonging the process.

In relation to the subsequent sub-question regarding whether the procedures outlined in the Insolvency and Bankruptcy Code (IBC) ensure prompt debt recovery for operational creditors, a qualitative analysis of the gathered data reveals that operational creditors are unable to retrieve any funds through the IBC procedures. Several themes emerged to support this finding, including the notion that operational creditors are consistently subject to the discretion of financial creditors, the presence of power abuse by the Committee of Creditors (CoC) without due consideration of the interests of operational creditors in the resolution plan, the ineffectiveness of the Section 53 waterfall mechanism in providing relief to operational creditors due to their placement at the bottom of the distribution order, and the exhaustion of available funds for operational creditors after satisfying the financial creditors in accordance with the waterfall mechanism. According to reports, the practical implementation of the Amendment Act 2019, namely the inclusion of section 30(2)(a)(b) which stipulates the provision of minimum liquidation value to operational creditors, has been found to be lacking. The amendment's failure to provide a specific percentage or minimum amount for operational creditors renders it ineffective in achieving its intended objective. The expeditious nature of the Amendment Act of 2019 and the subsequent inclusion of section 30(2)(a)(b) is posited for consideration. An inherent flaw exists in the execution of the procedures outlined in section 53 pertaining to distribution, which were established for the purpose of facilitating the liquidation process in a resolution. The primary objective of a resolution pertaining to a viable enterprise is to guarantee the continued operation of the company as a going concern. Conversely, in the case of liquidation, the objective is to expedite the process of winding up the corporation in order to avoid any further depletion of its assets. In conclusion, it is observed that a significant number of operational creditors are resorting to the filing of applications under section 9 in order to subject defaulting debtors to insolvency proceedings. Hence, it is imperative to make appropriate modifications to the Code in order to ensure that operational creditors are provided with a predetermined percentage of recovery throughout the resolution process, voting rights in the Committee of Creditors (CoC), and a proportionate weighting of their votes in the approval of the resolution plan. The waterfall mechanism could be restructured by establishing a predetermined minimum percentage for each category of operational creditors or by introducing a distinct provision for distribution within a settlement process.

Suggestions

The importance of time in the Code necessitates that the efficacy of a Corporate Insolvency Resolution Process (CIRP) is contingent upon its adherence to specified time constraints. In order to mitigate procedural delays, it is imperative to implement certain steps. These measures include the establishment of additional National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) benches in accordance with the caseload in each state. Furthermore, it is crucial to address the issue of vacant positions in these benches and to enforce timeframes for the adjudicating body. By completing these actions, the occurrence of procedural delays may be effectively minimized. The occurrence of delays in the admission of an application might impede the overall process, resulting in the wastage of valuable time during the admission procedure. The implementation of a temporary moratorium can be beneficial in safeguarding the company's assets due to the significant time lapse between

the submission of the application and its approval. Additional measures involve mitigating the potential influence of superior courts and curbing the initiation of spurious lawsuits, which have the potential to impede the progression of the proceedings. Implementing strategies such as enhancing understanding of the Code, minimizing the frequency of revisions, reducing the occurrence of adjournments, and enhancing transparency in the process will effectively safeguard the interests of the involved parties.

An essential change that should be implemented in conjunction with responsible lending practices is the establishment of alternative debt financing choices aimed at mitigating enterprises' loan risk. Presently, there exists a significant dependence on bank loans as a means of credit financing within the Indian context. In established markets, it is advisable for enterprises to consider utilizing bonds as a means of obtaining credit. Developing a robust bond market in India has the potential to yield several advantages, such as mitigating overdependence on bank loans, facilitating improved risk sharing, and enabling more effective regulation of the banking industry.

The adoption of a hybrid model, combining elements of debtor in possession and creditor in control, inside the Corporate Insolvency and Resolution Process (CIRP), has the potential to enhance debtor cooperation throughout the process. The promotion of voluntary proceedings among directors, with the provision of absolution from wrongful trading, might be advocated, as exemplified in the British context. It is imperative to have provisions for the modification of mortgage agreements, following the American model. This is necessary because mortgage defaults can arise not only from a breach of contractual obligations, but also from unforeseen contingencies that were not anticipated by the parties during the drafting of the contracts. In the context of an incomplete contract, it is imperative that the corporate debtor be exempt from punitive measures or undue burdens. The inclusion of particular terms in contracts between creditors and debtors might also encompass measures to address unforeseen circumstances.

In the context of a heterogeneous market such as India, it becomes imperative to cultivate a range of alternatives for debt resolution, encompassing both legal and informal mechanisms, in order to expedite the process of resolution. There is a need to consider the expansion of the current prepack resolution procedure to encompass all enterprises in order to address pre-insolvency situations. Additionally, it is crucial to study the inclusion of informal methods such as mediation and arbitration. It is imperative to establish clear and unequivocal regulations and frameworks in order to effectively enable the mediation process within firms.The use of Fast Track insolvency process should be promoted to speed up the insolvency process.

In the current period characterized by rapid technological progress, it is imperative for organizations to successfully harness the potential of Research & Development. Specifically, enterprises should focus on developing and integrating artificial intelligence systems capable of accurately forecasting instances of bankruptcy.

The federal government has a crucial role in establishing a comprehensive framework for effectively addressing insolvency issues. To accomplish this objective, it is crucial to establish effective coordination between the Ministry of Corporate Affairs and the Insolvency and Bankruptcy Board of India (IBBI). It is recommended, as stated in the OECD report [41], that the IBBI should be required to undergo a yearly performance audit conducted by a private agency. This measure would serve to assess the IBBI's performance and enhance its regulatory control. This fosters enhanced responsibility and accountability for its overall success.

Moreover, it is crucial for a developing economy such as India to acknowledge that "all rescue regimes should aim to achieve two objectives simultaneously: facilitating recoveries and ensuring rehabilitation in appropriate proportions, without impeding one another." This approach would guarantee a harmonious equilibrium and enhanced safeguarding of debtor-creditor rights within the framework of the Insolvency and Bankruptcy Code (IBC). In the future, via the implementation of suitable reforms and timely adjustments driven by market forces, India has the potential to experience remarkable transformations in the social, political, and economic aspects of its insolvency and bankruptcy system. Therefore, the objective should be to convert the current challenges inherent in the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) into a transformative force that can significantly impact a prosperous future.

An effective bankruptcy law should generate a net increase in value relative to the value it diminishes, and it should be prepared to consider both the immediate and long-term repercussions within and outside the scope of bankruptcy proceedings. In order to fully appreciate the advantages of the law, it is imperative that efforts be made to achieve uniformity, consistency, and market predictability.

References

1. https://byjusexamprep.com/upsc-exam/what-is-the-tandon-committee
2. https://environmentalpollutiondefense.blogspot.com/2020/06/committee-1980-tiwari-committee-was-set.html
3. https://testbook.com/ias-preparation/narasimham-committee#:~:text=The%20Narasimham%20Committee%20was%20established,Narasimham%2C%20a%20former%20RBI%20Governor.
4. https://byjus.com/free-ias-prep/narasimham-committee/
5. https://www.tclindia.in/insight-to-national-company-law-tribunal-legalupdates/
6. https://enterslice.com/learning/insolvency-and-bankruptcy-board-of-india/
7. https://www.oreilly.com/library/view/business-ethics-and/9789332511255/xhtml/c15s26.xhtml
8. S.23 & 24 of the Government of India Act,1800 Acts of Parliament, (India)
9. S.19 of the Indian Companies Act, 1913, Act No.7 , Acts of Parliament, 1913 (India)
10. Companies Act 2013, Act No.18, Acts of Parliament, 2013 (India)
11. Ashish Pandey, The Indian Insolvency and Bankruptcy Bill: Sixty Years in the Making, 2016.
12. Ajeet N. Mathur, Industrial Restructuring in India and the National Renewal Fund, 1993.
13. https://www.rbi.org.in/CommonPerson/english/history/scripts/Brief_Chro1968to1985.aspx
14. Sick Industrial Companies (Special Provisions) Act, 1985, Act No1 , Acts of Parliament (India)
15. O Goswami, Report of the Committee on Industrial Sickness and Corporate Restructuring, Indian Statistical Institute, 1993.

16. https://economictimes.indiatimes.com/industry/banking /finance/the-new-insolvency-and-bankruptcy-code-willmake-it- impossible-for-indian-banks-to-lend-with-compassion/articleshow/59241108.cms
17. Ibid
18. Ibid
19. V.B Eradi, Report of the High level Committee on Law Relating to Insolvency and Winding up of Companies, 2000.
20. N L Mitra, Report of the Advisory Group on Bankruptcy Laws
21. https://www.rbi.org.in/.
22. Notification No.120/2014, https://www.rbi.org.in/.
23. RBI, Framework for Revitalizing Distressed Assets in the Economy-Refinancing of Project loans, Sale of NPA and Other Regulatory Measures, RBI Circular
24. Corporate Debt Restructuring, Strategic Debt Restructuring schemes.
25. Scheme for Sustainable Structuring of Stressed Assets.
26. https://getswipe.in/blog/post/fast-track-corporate-insolvency-resolution-process-under-ibc-2016-a-swift-path-to-corporate-restructuring
27. https://www.business-standard.com/podcast/current-affairs/what-is-a-pre-packaged-insolvency-resolution-process-122101100057_1.html
28. 2018 SCC OnLine SC 233
29. Innoventive Industries Ltd. v. ICCI Bank (2018) 1 SCC 407
30. (2017) 16 SCC 143
31. Akaant Mittal, Issues Under The Insolvency and Bankruptcy Code Prior to Admission
32. S.12 of the Code prescribes that a CIRP shall be completed at 180 days followed by an extension of 90 days and maximum by 330 days
33. Vivek Tyagi, Corporate Insolvency Resolution Procedure under Indian Insolvency and Bankruptcy Code, 2016: A Comparative Perspective, 66, CHART. ACCT,1 49-56(2018)
34. Abhishek Dafria , One Year of Resolving Big Defaults-Post RBI Diktat, Glass Half full, ECONOMIC TIMES
35. Kamini Steel and Power India Pvt. Ltd v. Indian Overseas Bank & Ors, 2018 SCC OnLine NCLAT 654
36. 2018 SCC Online SC 3154
37. Vidarbha Industries Power Ltd v. Axis Bank Ltd (2022) 8 SCC 352
38. M.S. Sahoo, CoC Dharma: Maximisation with Fairnes
39. Ibid
40. PWC, Decoding the Code: Survey on Twenty One Months of IBC in India
41. https://www.oecd.org/gov/regulatory-policy/Scoping-note-on-institutional-setting.