International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)
An International Open Access, Peer-Reviewed Refereed Journal
Impact Factor: 7.2 Website: https://ijarmt.com ISSN No.: 3048-9458

The Corporate Insolvency Resolution Process under Indian Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016.

Dr. Sanjay Jadhav
(Professor) and Umesh B. Sonkar, Ph.D. (Scholar, Department of Law, University of Mumbai)

"Historic jump in 'Ease of Doing Business' ranking is the outcome of all-round and multi-sectorial reforms push of Team India"
- Prime Minister, Narendra Modi[1].

ABSTRACT:
India's ranking by the world bank in terms of "Ease of Doing Business (EDO) was at 130th position amongst 189 countries and is a cause of concern for the Indian fast growing economy and to overcome the said situation "The Bankruptcy Law Reform Committee" was formed to harmonize and establish a process in accordance with UNCITRAL (United Nation Commission on International Trade Law) to like that of the Insolvency models of developed countries like United States and United Kingdom. The Insolvency and Bankruptcy Code, 2016 (the Code) is projected as a game changer, which will facilitate easy exit of the corporates and Individuals from the unviable business. The Code introduced creditor -in- control model replacing the Debtor-in-Possession regime and therefore in the corporate insolvency resolution process, Creditors are given control on the process in terms of "Committee of Creditor". The entire process under IBC, 2016 right from, running the Corporate Insolvency Resolution, Liquidation and Bankruptcy proceeding, the mechanism including approval of resolution plant and liquidation or withdrawal of Corporate Insolvency Resolution Process (CIRP) under section 12(A) is a creditor driven process and the provision of Creditors-in- Control is actually reflects in the commercial wisdom of the Committee of Creditor. The Hon'ble Supreme Court of India undisputedly awarded and upheld the Commercial wisdom of the Committee of Creditor (COC) and factually confirmed the will of legislature to put a "Creditor- in – Control". This absolute autonomy gives the CoC immense power. However, with absolute power comes absolute responsibility to drive the process efficiently and is a key for successful implementation of Insolvency and Bankruptcy Code, 2016 in India.

INTRODUCTION:

ENACTMENT OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 IN INDIA.

[1] https://cfo.economictimes.indiatimes.com/news/in-quotes-ease-of-doing-business/61375342 (last visited on 01.01.2024).

International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)
An International Open Access, Peer-Reviewed Refereed Journal
Impact Factor: 7.2 Website: https://ijarmt.com ISSN No.: 3048-9458

The World Bank [2] had Ranked India in terms of **"Ease of Doing Business" (EDO)** at 130th position amongst 189 Countries in the World and it was an urgent need to come with such a robust legislature which will permit easy exit from the unviable business in same manner that of easy entry. The Indian business legislatures were such that they allowed easy entry in to a business, however exit from the unviable and loss-making business was so difficult that it was taking years together, that the values of the assets of the Corporate Debtors erodes /deteriorating to large extent and not providing any lease line to individual to start afresh. Therefore, adopting the UNCITRAL (United Nation commission On International Trade Law Model) and Owing to the existing circumstances, The Government of India set up a **Bankruptcy Law Reforms Committee (BLRC)** under the Chairmanship of **Dr. T. K. Vishwanathan.** The objectives of the Committee were to frame such an insolvency regime which will be in accordance with international trade laws and which will harmonize the process of Insolvency, Restructuring and Rehabilitation of the insolvent companies and individuals in time bound manner without affecting valuation of the underlying assets[3].

The Insolvency and Bankruptcy Code, 2016 [4] in India has been enacted to achieve following objectives:

- To protect the interests of Corporate Debtor, Creditors and other stakeholders in holistic manner.
- To make the process of insolvency and bankruptcy proceedings efficient and Productive.
- To consolidate all the existing insolvency laws and to amend allied Laws in India to support the Corporate Insolvency and Bankruptcy Resolution Process.

The Insolvency and Bankruptcy Code, 2016 (IBC) is set to accept UNCITRAL Model and to marked a paradigm shift in India's credit culture, moving from a debtor-in-possession model to a creditor-controlled regime by accepting internationally accepted norms and harmonizes trade law. At the heart of this economic legislation sits the Committee of Creditors (CoC). Armed with supreme commercial wisdom, the CoC is tasked with a dual responsibility, maximization of the value of the corporate debtor's assets and ensuring a swift, time-bound resolution. As the statutory timelines of the Corporate Insolvency Resolution Process (CIRP) and subsequent liquidation proceedings face real-world friction, the "commercial wisdom" of the CoC is no longer just about choosing the highest bid it is about understanding that value is inherently tied to time. The Code has given specified time line for every activity, that of 180 days for completing total corporate Insolvency Resolution Process, which provision was never reflect in any Indian Insolvency Law and despite specific timeline given the process is now extending for more than 330 days or even more than that and therefore besides commercial

[2] Available at https://tradingeconomics.com/india/ease-of-doing-business#:~:text (last visited on 23.03.2026)
[3] Available at https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited on 23.03.2026)
[4] Insolvency and Bankruptcy Code-2016 (IB Code -2016)

International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)
An International Open Access, Peer-Reviewed Refereed Journal
Impact Factor: 7.2 Website: https://ijarmt.com ISSN No.: 3048-9458

wisdom, quick decision making by COC are also becoming an important aspect in timely resolution and to achieve the objective set by the code.

INDIAN INSOLVENCY RESOLUTION PROCESS:

In the Indian Insolvency Resolution process, the Resolution Professionals are under dual regulatory mechanism that of Insolvency and Bankruptcy Board of India (IBBI) and Insolvency Professional Agencies (IPA) and person registered with these two agencies play any role that of RP/ Liquidator / Bankruptcy Trusty. The key role of Resolution Professional is a process facilitator, asset custodian and compliance administrator, who is primarily responsible to maintain the Corporate Debtor as going concern and to maximize the value of the assets by timely resolution. Being Creditor-in-Control regime is accepted in Indian Insolvency system; entire decision making is vested in the Committee of Creditor (CoC). Therefore, the role of Resolution Professional is highly dependent of the timely decision and wisdom of the CoC in running a CIRP process in terms of maintain the Corporate Debtor as going concern, raising interim finance and approval of CIRP cost or any other decision the IRP/RP to take in timely resolution or liquidation and dissolution and maintain the value of assets of the corporate debtor.

In Indian system, the Corporate Insolvency Resolution Process (CIRP) starts with filing application before National Company Law Tribunal (NCLT), the Adjudicating Authority (AA) under the code and application to be filed under Section 7 by the Financial Creditor , Section 9 by Operational creditor and Section 10 by the Corporate Debtor himself, under IBC, 2016 and therefore the CoC constituted may not have financial creditor, who are having financial expertise and the CoC is constituted may be with operational creditor (OC) who may not have financial expert and may not willing to contribute to the CIRP cost as most of the Operational Creditor are having concern for recovery and not for the resolution and in such situation the depth/ lack of understanding about the process, this puts the IRP/RP/ Liquidator in awkward position in obtaining decision of the CoC. The non receipt of timely voting/ decision derails the process and resulted in inordinate delay in taking the process to a logical conclusion and result in exceeding the timeline given by the Code.

COMMERCIAL WISDOM OF THE COMMITTEE OF CREDITOR:

The Concept of Commercial Wisdom of Committee of Creditor (CoC) under the Insolvency and Bankruptcy Code, 2016, is a major shift in Indian Insolvency Laws. The Supreme Court of India, through landmark judgments starting from K. Sashidhar v. Indian Overseas Bank[5] and solidified in Essar Steel, has consistently held that the commercial wisdom of the CoC is paramount and non-justiciable. The adjudicating authority (NCLT /NCLAT) cannot second-guess the business decisions of the financial creditors regarding the viability of a resolution plan. Thus, in Indian insolvency laws, the absolute autonomy gives the CoC. However, various

[5]https://corporate.cyrilamarchandblogs.com/2019/03/k-sashidhar-v-indian-overseas-bank-and-ors-corporate-insolvency-process/

International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)
An International Open Access, Peer-Reviewed Refereed Journal
Impact Factor: 7.2 Website: https://ijarmt.com ISSN No.: 3048-9458

judgment has further clarified that the absolute power comes with absolute responsibility to act in terms of written rules without imposing moral or external consideration. Therefore, the CoC is not a merely a collection of claimants seeking recovery, it is a fiduciary body acting in the interest of all stakeholders to resurrect an enterprise.

VALUE MAXIMIZATION AND TIMELY RESOLUTION:

In Indian context no earlier insolvency Laws had defined timeline for Insolvency Resolution, however Insolvency and Bankruptcy Code, 2016 has specified a timeline for every process. The IBC, 2016 initially mandated a strict 180-day timeline for completion of CIRP, extendable by further 90 days, with a subsequent extended to 330 days or even more that that including legal proceedings. Looking at procedural drawback, filing practices, litigious delays often push these timelines beyond set time line and therefore the wisdom of the CoC is an important aspect in timely resolution.

The Banks and Financial Institutions often enter the CoC with a traditional recovery mindset, looking out for their specific security interest. Commercial wisdom requires looking at the going-concern value of the company. The Indian financial system is majorly predominated by the Government Banks / Nationalized Bank and when such Banks represent in COC, always need an approval from the Board/ Higher Authorities and therefore the voting on approval or rejection of resolution plan or relinquishment of security interest and approval of CIRP expenses or haircut. Whereas when the COC is comprises of the operational creditor, they have only concern for the recovery of their dues and not the fulfilment of objective of Insolvency and Bankruptcy Code and when the Operational Creditor represent the COC, conflict of interest between financial creditor and operational creditor derail the process some time and get prolonged. The Prolonged CIRP has various effect on Corporate Insolvency Resolution that of the value reduction by way of diminishing operational capacity, key persons exit and value erodes, further the cost due to CIRP costs including interim finance, Resolution Professional (RP) fees, and plant maintenance drain the remaining liquid capital. Therefore, the CoC's wisdom lies in recognizing the **Economic Opportunity Cost**. As when CIRP fails, or when the CoC decides that corporate revival is impossible, the transition to liquidation must be seamless. The CoC's role during the CIRP directly impacts the efficiency of the liquidation phase.

The IBC, 2016 provide voting rights to the members of COC on the prorate basis in proportion to the claim accepted by the Resolution Professional and therefore the voting role of COC in the process is paramount, the withdrawal of CIRP under Section 12(A) of the IBC, 2016 needs 90% voting and other major resolution required 66% of voting by the CoC. The collective wisdom of the CoC can occasionally be bottlenecked by institutional rigidities. Financial creditors, bound by internal risk policies and external audit fears, sometimes hesitate to vote in favor of commercial haircuts, leading to structural delays, while the law grants supreme status to the CoC's wisdom, the practical execution faces several structural bottlenecks:

International Journal of Advanced Research and Multidisciplinary Trends (IJARMT)
An International Open Access, Peer-Reviewed Refereed Journal
Impact Factor: 7.2 Website: https://ijarmt.com ISSN No.: 3048-9458

- Dissenting financial creditors or differences between secured and unsecured financial creditors often stall voting. Commercial wisdom requires finding a middle ground rather than pushing the corporate debtor into a legal gridlock.
- Sometimes, the CoC opts for liquidation simply because it represents an easier, structured payout timeline, ignoring the larger mandate of value maximization and employment preservation.
- The Resolution Professional acts as the guiding force. While the RP cannot vote, their administrative wisdom in providing accurate valuation reports, transaction audits and crisp information memorandums is what enables the CoC to exercise *its* commercial wisdom effectively.

  In Indian IBC, the IRP/RP is empowered to appoint a support service or industrial expert to run the CIRP process. However, when the CoC is comprises of the Private Financer or the Operational Creditors and there's no expertise with CoC to act and understand the process and objective of IBC, such CoC has objective of recovery and not resolution of the Corporate Debtor and many time actions of such CoC can turn detrimental to the interest of corporate debtor and other stake holders. Even many times the representative of FC attending CoC meeting are also not equipped with a knowledge of IBC and in such cases if such CoC appoint an Insolvency Professional as process advisor shall enable the CoC to take timely decision, as that that of the representative to the home buyers in India appoints their representative.

  Requiring a 66% majority for key decisions in passing resolution plan or 90% voting to set the corporate debtor free from CIRP under section 12(A) of IBC, 2016 by way of withdrawal of CIRP is a statutory requirement, it means large institutional creditors can inadvertently stall progress through abstentions or delayed internal approvals. Therefore, the True CoC wisdom requires breaking free from the "recovery mindset" and adopting an "investment mindset." The faster capital is unblocked from a stressed asset and redeployed into the productive economy, the higher the macro-economic yield.

CONCLUSION

In the Indian context, the Insolvency and Bankruptcy Code, 2016 brought in in the year 2016 is undergoing amendments to overcome the practical issues faced by various stakeholders and therefore can be said that it is still in the stabilization process. The maturity of India's insolvency ecosystem depends heavily on the evolution of the CoC from a reactive committee of lenders into a proactive board of strategic turnaround directors. Timeliness must not be viewed as a mere statutory compliance box to tick, but as the fundamental cornerstone of asset value maximization.

When the Committee of Creditors exercises its commercial wisdom with agility, decisiveness, and an acute awareness of the clock, the IBC achieves its true purpose: preserving economic

entities, safeguarding jobs, and recycling capital efficiently back into the nation's growth engine and will truly justify the statement of our Hon'ble Pri minister of India in terms of "Ease of Doing Business". The commercial wisdom of the CoC cannot be a passive tool. It must be dynamic, forward-looking, and rooted in corporate finance rather than rigid bureaucratic box-checking.

The entire success of IBC, 2016 is depend on the wisdom of the CoC, the CoC is conferred with control over the entire process by way of Creditor in Control regime and failure of CoC in taking timely decision or utilizing its commercial wisdom in the spirit of the Code, it will be failure of the Code in achieving its objective.

It is further felt necessary to improve an infrastructure available to the Adjudicating Authority so as to meet the international standards of Insolvency resolution and cross border insolvency can be handled in effective manner.

References / Webliography: Available at

- https://cfo.economictimes.indiatimes.com/news/in-quotes-ease-of-doing-business/61375342 (last visited on 01.01.2024).
- https://tradingeconomics.com/india/ease-of-doing-business#:~:text (last visited on 23.03.2023)
- https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (last visited on 23.03.2023)
- Insolvency and Bankruptcy Code-2016 (IB Code -2016)
- https://corporate.cyrilamarchandblogs.com/2019/03/k-sashidhar-v-indian-overseas-bank-and-ors-corporate-insolvency-process/