INSOLVENCY AND BANKRUPTCY CODE KEY ECONOMIC REFORMS FOR INDIA

By Dr. Samit Kumar Maity Datta

Associate Professor, Haldia Law College, Vidyasagar University, West Bengal, India

ABSTRACT

The Insolvency and Bankruptcy Code (IBC) 2016 is regarded as India's most significant structural legislation reform. By reducing the amount of non-performing assets and raising the ease of doing business rankings, it is creating a strong Indian economy. To offer a single, cohesive, and essential platform for the revival and/or liquidation of corporate and non-corporate organizations as well as sole proprietorships, the Code aims to integrate multiple legislations on the subject. To safeguard the interests of not only creditors but also those of employees, workers, and other parties involved, the main and significant policy and procedural changes envisioned in the Code aim to recover the movable and immovable assets involved in distressed organizations promptly. Due to factors like smaller resolution times, which reduce the risk of losing investments, and flexible exit policies, the IBC has attracted investors from abroad. Even when a company becomes insolvent, the IBC works to maximize asset value realization. It has given the Indian economy a fresh look on the international stage. The paper evaluates the effects of restructuring under IBC on the Indian economy and describes IBC as a key tool in the development of the Indian economy. The study also found that IBC could have a beneficial effect; however, it still has to be endowed with the ability to be enforced and needs to be complemented by an effective auxiliary system. Since IBC has only been in place for six years, its long-term effects will also depend on how well the legislature and courts carry out their respective responsibilities.

***Keywords*:** Board for Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT), Bankruptcy Legislative Reforms Committee (BLRC), Corporate Debtors (CD), Resolution Professional (RP), Committee of Creditors (COC), National Company Law Tribunal (NCLT).

INTRODUCTION

Law of insolvency is a social legislation which has been created to give relief to the honest but unfortunate debtors who are not able to pay back debts due to certain unfortunate circumstances. It also protects creditors' interests by ensuring the allocation of the debtor's assets. The law of Insolvency in India is based on English law.[i] Sections 23 and 24 of the Government of India Act 1800 are the first insolvency legislation in India.[ii] The Supreme Courts in Fort William and Madras, in addition to the Recorder's Court in Bombay, are given exclusive jurisdiction over bankruptcy issues under this Act.[iii] The Lord's Act, passed by the British Parliament in 1759, authorized and empowered these Courts to make Rules and Orders for giving relief to bankrupt debtors. In 1828, India's first insolvency courts were established in three Presidency towns: Calcutta, Bombay, and Madras, to provide relief to insolvent debtors. The Indian Insolvency Act of 1848 took another step forward in the evolution of insolvency law.[iv] The Presidency Towns Insolvency Act 1909, which covers the insolvency of individuals, partnerships, and associations of individuals, replaced the Act of 1848. The abovementioned insolvency laws only applied to Presidency towns like Calcutta, Bombay, and Madras, and not to Mofussil regions.

The first insolvency legislation for Mofussil regions was enacted in 1877 by putting some Rules into Chapter 20 of the Civil Procedure Code, which provided the District Court power to hear insolvency applications and issue discharge orders. Furthermore, these Rules were re-enacted in 1882 with certain modifications. In 1907, the first Provincial Insolvency Act was enacted, with about fifty-six sections. It will take effect on the first of January, 1908. This Act establishes a comprehensive insolvency procedure that is tailored to the needs of provincial courts. The Provincial Insolvency Act of 1920 replaced the Act of 1907. It continues as the insolvency law in areas other than the Presidency towns. This Act deals with insolvency of individuals, including individuals as proprietors.

In Entry 9 of List III - Concurrent List of the Seventh Schedule of the Indian Constitution, the term "bankruptcy and insolvency" was defined (under Article 246). Both the central and state governments have power to enact legislation on this area. The Companies Act of 1956 was the only piece of legislation dealing with the legal framework of corporate insolvency until 1985.[v] Growing industrial sickness has become an alarming concern in India by the early 1980s. As a

result, the government formed a Committee under the chairmanship of TT Tiwari to investigate the issues and recommend solutions, and the government of India enacted the Sick Industrial Companies (Special Provision) Act, 1985, to revive sick industrial companies based on the Committee's recommendations. Under the Act, the Board for Industrial and Financial Reconstruction (BIFR) was established in January 1987,[vi] as a statutory body to prescribe measures for revival through rehabilitation schemes. The Appellate Authority for Industrial and Financial Reconstruction was formed in April 1987 as an appellate authority for the BIFR's decisions.

Because the Act was initially only applicable to private sector units, it was later amended in 1991 to include central and public sector units. Certain amendments to the Act were made again in 1993, including the criteria for determining industrial sickness. Dr. Manmohan Sing, the then Finance Minister, established a high-level Committee in August 1991, chaired by Shri M. Narasimham (ex-Governor of the RBI), to review all major aspects of the financial sector.[vii] The Committee presented its report in 20th Nov 1991, to the Finance Minister.[viii] The government responded by enacting the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act 1993. This Act created the Debt Recovery Tribunal (DRT) and the Debt Recovery Appellate Tribunals (DRAT) to help banking industry and financial institutions recover debts from defaulters more quickly. P. Chidambaram, the Finance Minister of the Government of India, appointed a Committee to strengthen the banking system (the Narasimham Committee-11) in December 1997, and the Committee submitted its report to the Government in April 1998, with some recommendations for further strengthening India's financial system.

In 1999, the Indian government formed a Committee under the chairmanship of T.R. Andhyarujina, a distinguished Supreme Court advocate and former Solicitor General of India, to recommend amendments to the nation's securities interest legislation. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was passed in 2002, based on the Committee's recommendations, to assist banks and financial institutions in enforcing securitization of their assets. This Act was passed to allow banks and financial institutions to realize long-term assets, deal with liquidity issues, and manage asset-liability mismatches.

In 1999, the Government of India decided to form a Committee under the supervision of Justice V. Balakrishna Eradi, retired Judge of the Supreme Court of India, to examine and make recommendations for reshaping the existing law relating to insolvency and winding up of companies in order to achieve more confidence in the minds of investors, creditors, labor, and shareholders in order to recover a large amount of assets blocked in liquidation and restructuring proceedings. In 2000, the Committee submitted a report to the Central Government recommending that the NCLT be given jurisdiction, power, and authority over company winding up instead of the High Court. The Companies (Second Amendment) Act, 2002 was accepted by the Indian Parliament in December 2002 to significantly reform the Companies Act, 1956, including the formation of the NCLT and NCLAT.[ix]

On February 8, 2000, RBI established an advisory group on "Bankruptcy Laws," chaired by Dr. N. L. Mitra, director, National Law School of India, Bangalore. In 2001, the Committee released a report that included several recommendations for bankruptcy reform. The first recommendation was to make a complete Bankruptcy Code that included provisions for corporate winding up and liquidation, reorganization, and the resolution of all other related issues, including cross-border insolvency.

This group also suggested for repeal of SICA and BIFR.[x] However, a time-bound comprehensive insolvency framework is necessary to address the rising cross-border investment, trade, and commerce problem, in addition to cross-border insolvency problem, but the Second amendment fails to contain the required roadmap for bankruptcy proceedings.[xi] On the 2nd of December 2004, the Government of India appointed an expert Committee on Corporate Law under the leadership of Dr. Jamshed, J. Irani to address the Second Amendment's shortcomings and bring the law up to international standards.[xii] On May 31, 2005,[xiii] the Committee presented report to the Government of India which included several significant recommendations in the insolvency legislation to make the restructuring and liquidation process faster, more efficient, and effective.

Thus it is apparent that a single, comprehensive framework is required to effectively address delays in insolvency and bankruptcy cases. The Ministry of Finance formed a Bankruptcy Legislative Reforms Committee (BLRC) in August 2014, chaired by Dr. T. K. Viswanathan (Former Union Law Secretary and Secretary General, Lok Sabha), to study the legal framework

for corporate bankruptcy in India.[xiv] The BLRC suggested an omnibus Bill named the "Insolvency and Bankruptcy Code" to cover both personal and corporate insolvencies, and issued a report with a draft "Insolvency and Bankruptcy Bill" in 2015. The Bill was produced in the Lok Sabha in December 2015, with a few changes. The Bill was passed by both Houses of Parliament and got the President's assent on May 28, 2016.[xv] Finally, in December 2016, the Insolvency and Bankruptcy Code went into force.[xvi] As a result, by providing a single law for insolvency and bankruptcy, the Code consolidates multiple laws and adjudicating agencies dealing with insolvency and bankruptcy for debt recovery.

MERGERS AND ACQUISITIONS UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

Lenders, shareholders, creditors, suppliers, consumers, workers, and the government are all affected when a business fails. Unprofitable businesses, on the other hand, must be reorganized as soon as possible. IBC has paved the way for a new type of investment, one that has undoubtedly added new and appealing aspects to the Indian merger and acquisition market. Several domestic and foreign investors got opportunity to take over valuable assets at attractive price in post-IBC period. The major goal of IBC 2016 is to identify solutions for company revival, and if that is not feasible, the firm must be put into liquidation mode, and the assets must be sold in a time bound manner to maximize asset value. The IBC is also started to assist banks in resolving their increasing number of bad loans.[xvii]

The IBC also empowers Debt Recovery Tribunals (DRTs) to hear bankruptcy cases involving individuals and unlimited partnerships.[xviii] When a corporate debtor fails, the Corporate Insolvency Resolution Process (CIRP) can be initiated by a financial creditor, an operational creditor, or the corporate debtor itself,[xix] by filing an application with the adjudicating body (NCLT) that has territorial jurisdiction over the place of the corporate person's registered office. IBC 2016 is divided into five parts, comprising 255 sections and 11 schedules.

Insolvency Resolution for Corporate Persons: Sections 4 to 32 of Chapters I and II of Part II of the IBC deal with the CIRP.[xx]

- This procedure is only applicable in the case of Corporate Debtors (CD). CD includes a company as defined in clause (20) of section 2 of the Companies Act, 2013, a Limited Liability Partnership (LLP), or any other person incorporated with limited liability under any law for the time being in force, but excludes financial service providers.[xxi]
- For the purpose of triggering insolvency, there must be a debt for which the CD has defaulted, with the default amount being at least one crore, according to section 4(1) of the Code.[xxii]
- When a CD defaults, CIRP can be initiated by a financial creditor, either alone or in conjunction with an operational creditor, or by the CD itself, by filing an application with NCLT. Delivery of a demand notice to the CD on non-payment of dues is a pre-requisite in the event of an operating creditor.[xxiii]In case of a financial creditor, it is mandatory to propose the name of a Resolution Professional (RP),[xxiv] but for an operational creditor, it is optional.[xxv]
- Within fourteen days after receiving the application, the adjudicating authority must either admit or reject the application.[xxvi] This time constraint sends a strong message that the Code's core is time. In *P.T. Rajan Vs. T.P.M. Sahir and Ors,*[xxvii]The Supreme Court held that NCLT must perform a statutory duty in accepting or rejecting the application for CIRP initiation within a specified time period, but that is only a directory and not a mandatory.

After the CIRP accepts the application, it must be completed within three hundred and thirty days from the day the insolvency petition was filed, including time for any extensions granted under section 12 of the Code and time spent in legal proceedings related to the resolution process.

Supreme Court struck out the word 'mandatorily' from Section 12 of the Code in the case of *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta &Ors,*[xxviii] and decided that the length of time spent in court should not affect the litigant's interests. The court further said that the CIRP must be completed within three hundred thirty days of the insolvency commencement date. However, if the delay is in the legal proceeding, of the NCLT and/or the NCLAT the time could be extended beyond three hundred thirty days in exceptional cases.[xxix] The general rule being those three hundred thirty days is

the outer limit within which resolution of the stressed assets of the CD must take place beyond which it is to be driven into liquidation.

The moratorium begins on the date of commencement of CIRP.[xxx] The NCLT appoints the Interim Resolution Professional (IRP) within fourteen days of the CIRP date,[xxxi] and public announcement of the CIRP is made.[xxxii]

- From the date of his appointment, the IRP takes charge of the management of the affairs of CD, [xxxiii] and takes custody and control of the assets, including the CD's business records.[xxxiv]IRP formed a Committee of Creditors (COC) comprised of CD's financial creditors.[xxxv]
- In a COC meeting, a financial creditor who is a "related party" to the CD has no right of representation, participation, or vote.[xxxvi] The COC may accept the IRP as a Resolution Professional appointed by NCLT or appoint a new IRP at the first meeting. NCLT is required to be communicated for any option.
- The RP must create an information memorandum containing relevant CD's information. [xxxvii] The information memo serves as the basis for formulating a resolution strategy.
- The RP receives and examines the resolution plans compliant with section 30(2) of the Code.
- The RP must present resolution plans that comply with Section 30(2) of the Code to the COC for approval.[xxxviii] By a vote of minimum 66 percent of the voting share of the financial creditors, the abovementioned Committee may approve a resolution plan.[xxxix] after considering its feasibility and viability, the proposed approach of distribution, taking into account the order of priority among creditors as set out in section 53(1), as well as the priority and value of a secured creditor's security interest[xl] any other requirements that the IBBI may impose.
- Before the NCLT, the RP must put forward the resolution plan as approved by the COC.[xli] If the NCLTis satisfied, it will approve the resolution plan by order, which will bind the CD, its employees, members, creditors, guarantors, and other stakeholders in the resolution plan together. [xlii] If the NCLT is satisfied that the resolution plan does not meet the condition's referred to in sub-section (1) of section 31, NCLT may reject it by passing a

order.[xliii] Any person who is aggrieved by the NCLT order has thirty days time from the date of the order to appeal to the NCLAT.[xliv]

IBC 2016 not only provides a mechanism for a CD who is unable to pay its debts to initiate insolvency proceedings in a timely manner, but it also provides a mechanism for a corporate person who has not committed any default to initiate insolvency proceedings voluntarily after fulfilling certain conditions under the Code. A corporation who intends to dissolve it voluntarily and has not committed any default may file a voluntary liquidation petition under Chapter V Part II of the IBC, 2016. A Company can also liquidate itself voluntarily after a defined period or event for its dissolution specified in the Articles. The Voluntary Liquidation of a corporate person shall comply with the Board's criteria and procedural requirements.[xlv]

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2019

Ms. Nirmala Sitharaman, Minister of Finance, introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 in the Rajya Sabha on July 24, 2019. The President signed the Amendment Act on August 5, 2019, and finally, on August 16, 2019, the Insolvency and Bankruptcy Code (Amendment) Act, 2019 notified. The following are some of the most significant changes made under the 2019 Amendment Act.

Resolution may include merger/demerger- Section 5(26): The Amending Act introduced an explanation to clause 26 of Section 5 of the Code, which defines the term "resolution plan." A resolution plan proposing the insolvency resolution of a CD as a going concern may include provisions for corporate restructuring, including mergers, amalgamations, and demergers, as per the Amendment Act. As a result, the span of the definition, not to be restricted only to a select number of proposed solutions of commercial insolvency presently cover all possible solutions.

Accountability of NCLT in timely determination of the existence of default- Section 7(4): The NCLT must determine the existence of default within fourteen days of receiving an application from a financial creditor to start a CIRP with respect to a CD, according to Section 7(4) of the Code. Furthermore, Section 7 sub-section (5) of the Code mandates that the NCLT issue an order admitting or rejecting an application to begin insolvency proceedings. The Amendment

Act of 2019 seeks to highlight the significance of timely resolution of financial creditors' applications by mandating the NCLT to pass a decision admitting or rejecting a resolution application within fourteen days of receipt. In the event that this is not performed, the NCLT now records its reasons for the delay in writing under section 7(5). Before to this Amendment, the fourteen days restriction was directory rather than mandatory, and the NCLT had inherent powers to extend the fourteen-day limit on a case-by-case basis in the interests of fairness and justice.

CIRP mandatorily is completed within Three Hundred Thirty days-(Section 12): The IBC Amendment Act of 2019 introduced section 12(3) to the Code to provide an overall time restriction to guarantee that the CIRP is completed within the stipulated time frame. According to the newly established provision of the Code, the CIRP must be completed within a maximum of three hundred thirty days from the day the insolvency procedure began (inclusive of all or any extensions granted in addition to the time taken in legal proceedings in relation to such resolution process). Prior to the amendment, section 12 of the Code stated that the maximum time limit for CIRP was one hundred eighty days from the date of admittance of the application resolution process, which may be extended by a maximum of ninety days but could not be granted more than once. Earlier, the deadline for resolutions was two hundred and seventy days (one hundred eighty days plus ninety days).

As a result, the amending Act adds a sixty days term (three hundred thirty days minus two hundred seventy days) to the time allotted for legal proceedings.

Voting by an authorized representative on behalf of certain classes of financial creditors-Section 25A (3A): By inserting sub-section (3A) in section 25, this Amendment Act simplifies the voting procedure for CIRPs while not contradicting of section 25A (3) of the Code. An authorized person representing financial creditors under section 21 sub-sections (6A) shall vote on behalf of all financial creditors, according to this modification. He represents the financial creditors who have cast their votes corresponding to the decision reached by a vote of more than half of the voting share of the financial creditors who have cast their vote. The provisions of section 25A, sub-section (3A), of the Code also states that the authorised representative shall cast his vote.

Distribution of funds under the Resolution Plan- Section 30: The Amendment Act of 2019 makes the most significant change in terms of inter-creditor payment allocation during CIRP. Prior to the passing of the Amendment Act 2019, the Code stated that payments to operational creditors under a resolution plan must not be less than what they would have received in a liquidation scenario. However, the 2019 Amendment added a new condition to Section 30(2) (b) of the principal Code, stating that the payment to an operational creditor cannot be less than the higher of:

(i) the amount that would have been paid to such operational creditors if the CD had been liquidated in accordance with section 53 of the Code; or

(ii) the amount that would have been paid to such operational creditors if the amount distributed under the resolution plan had been distributed in keeping the order of priority under section 53(1).

Payment of debt to financial creditors who do not vote in favor of a resolution plan will be determined in accordance with IBBI Regulations, but will not be less than the amount that would have been paid to such creditors in the event of the CD's liquidation.

The first explanation of Section 30(2) (b) of the Code specifies that the allocation of funds in accordance with the instant provisions must be fair and equitable to such creditors, reducing the scope for court intervention and associated litigation at this stage. The second explanation to Section 30(2) (b) also allows the above-mentioned scheme of distribution to the CIRP of a CD to be used retrospectively.

(a) where the NCLT has not approved or rejected the resolution plan; or
(b) where an appeal has been filed with the NCLT under section 61 or the Supreme Court under section 62, and such an appeal is not time barred under any provision of law currently in force; or
(c) where a legal proceeding has been initiated in any court against the NCLT's decision.

The Amendment clarifies that the COC must consider the proposed manner of distribution when approving the resolution plan under Section 30(4), which may consider the order of priority among creditors as specified under Section 53(1) of the Code, including the priority and value of a secured creditor's security interest.

Resolution Plan binding on Governments Section 31: A resolution plan authorized by the NCLT is binding on the CD and its workers, members, creditors, guarantors, and other stakeholders engaged in the resolution plan before the Amendment Act 2019. After the amendment, this clause now encompasses the central government, state governments, and any municipal government.

Liquidation by the COC before Resolution Plan-Section 33(2): The Amendment Act 2019 states that the COC may decide to liquidate the CD at any time after it is constituted under Section 21(1) and prior to the resolution plan is confirmed, including previous to the information memorandum is prepared under Section 29 of the Code. Thus, this amendment has had a significant impact on the CIRP because it empowers the COC to make the ultimate decision whether to keep the entity alive or to liquidate it, and the COC can make this decision at any time but before confirmation of the resolution plan, including before the information memorandum is prepared.

Substitution- section 240(2): The Amendment Act of 2019 substitutes the words "repayment of debts of operational creditors" with the words "payment of debts" in clause (w) of section 240(2) of the principal Act. As a result, it is now available to all debts, not only those of Operational Creditors.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2020

On the 13th of March 2020, the Ministry of Law and Justice notifies the Insolvency and Bankruptcy Code (Amendment) Act, 2020, which further amends the Insolvency and Bankruptcy Code, 2016. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, is repealed by this amendment Act, which will take effect on December 28, 2019. This Amendment Act makes a number of significant amendments to the IBC's provisions. Some of the most notable amendments are:

1. The provision of clause (12) of section 5 of the Code is not included in this amendment Act. Following the passing of this Amendment Act, the insolvency commencement date is the date on which NCLT accepts application for initiating CIRP under sections 7, 9 or 10 of the Code as

the case may be regardless of whether or not an Insolvency Resolution Professional (IRP) is appointed on that date.

2. Before this amendment, section 7(1) of the Code allowed a financial creditor, either by himself or in concert with other financial creditors, may file an application with the NCLT to initiate CRIP against a CD where a default has occurred.

Three provisos have been included in consequence of Amendment Act 2020. When a default occurs, the first proviso states that a financial creditor, as defined in clauses (a) and (b) of section 21(6A), must file a joint petition with not less than 100 other financial creditors in the same class, or not less than 10 percent of the whole number of financial creditors in the same class, whichever is less, before the NCLT

The second proviso states that for financial creditors who are allottees of real estate projects, the application for CIRP against the CD must be made jointly by at least 100 allottees under the same real estate project or at least 10 percent of the total number of allottees under the same real estate project, whichever is less.

The third proviso states that if a financial creditor referred to in the first and second proviso files an application for CIRP against a CD that is not admitted by the NCLT before the initiation of this Amendment Act, 2020, such application must be modified to comply with the proposed first or second proviso within thirty days of the said Amendment Act's commencement. If the application is not changed, it will be considered withdrawn before being admitted.

3. Section 11 of the IBC prohibits the following individuals from applying for CIRP initiation.

(a) CD who is undergoing a CRIP, or
(b) CD who has completed CIRP, twelve months prior to the date of making such an application; or
(c) CD or financial creditor who has violated the terms of a resolution plan that was approved twelve months prior to making such an application under this Chapter; or
(d) CD for whom a liquidation order has been issued.

CD includes a corporate applicant in respect of such CD, according to the Explanation of Section 11.The Amendment Act numbered the aforesaid Explanation as Explanation 1 and

placed Explanation II after it. Explanation II specifies that a corporate debtor shall not be barred from making an application for the start of CIRP against other CD's as described in paragraphs (a) to (d) of this section.

4. By introducing an explanation to sub-section (1) of Section 14 of the Code, the Amendment Act clarified that any license, permit, registration, quota, concession, clearance, or other similar grant issued by the Central Government, the State Government, any local authority, any sectoral regulator, or any other authority shall not be suspended or terminated on the basis of insolvency, provided that there is no default in payment.

Section 14(2A) of the Code has been introduced by the Amendment Act, which states that during the delivery of goods and services, the IRP or RP, as the case may be, plays a critical role in protecting and preserving the CD's value as well as managing the operations of the CD as a going concern. Except if the CD has not paid dues resulting from such supply during the moratorium period or in such conditions as may be specified, the provision of such goods or services must not be terminated, suspended, or interrupted throughout the period of moratorium.

The Amendment Act amended Section 14 subsection (3) clause (a) of the Code. It now safeguards not only transactions but also agreements or other arrangements notified by the central government in consultation with any financial sector regulator or other authority from a moratorium.

5. Before the enactment of this Amendment Act, Section 16(1) of the IBC stated that the NCLT must appoint an IRP within fourteen days from the insolvency initiation date. Now as per the Amendment Act, NCLT must appoint an IRP on the insolvency initiation date.

6. Previously, Section 23(1) of the Act specified that the RP would oversee the whole CIRP and manage the CD's affairs during the CIRP period. The Amendment Act amends Section 23(1) to make sure that the RP shall continue to manage the business of the CD after the CIRP period expires until the NCLT issues an order by accepting the resolution plan under Section 31(1) or appoints a liquidator under Section 34 of the Code.

7. Section 32A of the Code was introduced by this Amendment Act, which deals with the accountability of the CD for past offenses. Section 32A(1) of the Code, which was recently

introduced, states that a CD is not responsible for an offense committed before to the start of CIRP, and that the CD will not be prosecuted for such an offense from the day the NCLT approves the resolution plan under section 31. However, the immunity will only apply if the resolution plan has resulted in a change in the CD's management or control. The same clause also states that if a prosecution was brought against a CD during the CIRP, he will be released on the date the resolution plan is approved. However, in the event of a business, the defaulting officer and every individual who was a designated partner in the case of an LLP (Limited Liability Partnership) would continue to be prosecuted and punished for the CD's crime. Furthermore, section 32A (2) of the Amendment Act protects the property of the CD against actions such as attachment, seizure, detention, or confiscation. Section 32A (3), which was introduced, imposes an obligation on the CD or any other person who may be required to provide help and cooperation to any authority in the investigation of an offence committed earlier to the beginning of the CIRP.

8. In addition, this Amendment Act included an explanation to section 227 of the Code, clarifying that insolvency and liquidation procedures for financial service providers or groups of financial service providers may be performed with such changes and in such a manner as may be prescribed.

9. Section 239 of the Amendment Act added three more clauses under which the central government may make rules for any of the following: (a) transactions under the second proviso of section 21(2) of the Code; (b) transactions covered by Explanation I to clause (c) of section 29A of the Code. (c) transactions covered by section 29A of the Code's second proviso to clause (j).

NCLT alone had jurisdiction to entertain applications and proceedings by or against a corporate applicant covered under the IBC. Thus, no other forum has jurisdiction to hear or decide any application or case by or against a CD according to the Code, and doing so would introduce manipulations into the resolution process.[xlvi]

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT)ACT 2021.[xlvii]

The Lok Sabha received the Insolvency and Bankruptcy Code (Amendment) Bill, 2021, which is intended to replace the Ordinance and be brought up for discussion. The Lok Sabha passed the Bill on July 28, 2021. The Bill was passed by the Rajya Sabha on August 3, 2021. The Insolvency and Bankruptcy (Amendment) Act, 2021 was enacted after receiving the President's assent on August 11th, 2021, and come into force on April 4th, 2021.

(1) As an alternative to the CIRP, this Amendment introduces the "Pre-packaged Insolvency Resolution Process" (PIRP) to deal with businesses under stress. To support this, the Act inserts Chapter III A, which is composed of Sections 54A to 54P, into the IBC.

(2) PIRP may be initiated in the incident of a default by a CD classified as an MSME under the MSME Development Act, 2006. For initiating PIRP, CD himself is required to apply to the NCLT. The adjudicating authority must approve or reject the application for PIRP within 14 days of its receipt.

(3) For applying for PIRP, the CD requires to obtain approval of at least 66% of its FC who are not related parties of the CD. Before seeking approval, the CD must provide creditors with a base resolution plan.

(4) Within two days after the commencement of the PIRP, the CD will submit the basic resolution plan to the RP. Within seven days of the PIRP's commencement, a COC will be formed and will take the base resolution plan into consideration. The COC must approve a resolution plan within 90 days of the PIRP's commencement date. The NCLT will scrutinize the resolution plan that was approved by the COC. The RP can apply for PIRP termination if the COC does not approve any resolution plans.

(5) A moratorium will be provided to the CD during the PIRP period, preventing certain activities against the debtor. These acts include the filing or continuation of suits, executing court orders, or recovering property. The debtor's board of directors or partners will continue managing its operations.

(6) The COC can choose to terminate the PIRP and commencement the CIRP with respect to the debtor at any time after the initiation date of the PIRP but before the resolution plan is approved by a vote of at least 66% of the voting shares.

IBC has undergone numerous changes in a very short span of its life. With the aim of bringing transparency, maximizing value, reducing timelines, and bridging information gaps in the processes, several regulatory amendments pertaining to Insolvency Professionals, Information Utilities, CIRP, Liquidation Process, and Voluntary Liquidation Process were notified in 2022.[xlviii] Some of the significant regulatory amendments included,

(1) Depending on the number of claims approved the minimum fee for an Interim Resolution Professional or Resolution Professional ranges from INR. 1 lakh to INR. 5 lakh.

(2) Resolution Professionals are given a performance-linked incentive fee to ensure prompt resolution and maximize value.

(3) The operational creditor must also submit copies of relevant GST return extracts as proof of default together with the application under Section 9 of the CIRP.

(4)Until the Consultation Committee is formed within 60 days of the liquidation commencement date, the COC formed during the CIRP will function as the Stakeholders Consultation Committee (SCC).

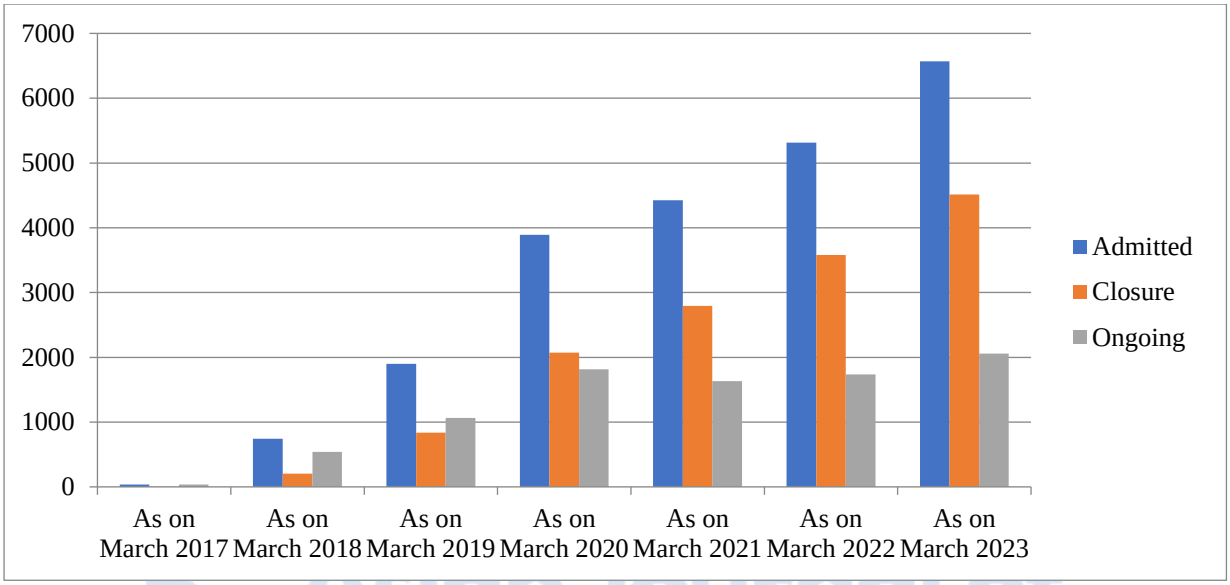
(5) The Stakeholders Consultation Committee (SCC) may recommend replacing the liquidator with a vote of at least 66% of the Committee members and must file an application with the Adjudicating Authority for liquidator replacement.

(6) A member of an Insolvency Professional Agency who has been enrolled as an Insolvency Professional Entity (IPE) is now regarded as a professional member.

INSOLVENCY RESOLUTION IMPACT SO FAR

The Provisions relating to CIRP come into force on 1st December, 2016. A total of 6571 CIRPs have commenced by the end of March 2023 of these, 4515 CIRPs or 69 percent have been

closed. CD was rescued in 2485 cases, of which 959 have been closed on Appeal or Review or settled; 848 have been withdrawn; and 678 cases have ended in approval of resolution plans as presented in Figure.



CONCLUSION AND SUGGESTIONS

In spite of the difficulties, which are mainly caused by delays and haircuts, the legal situation is gradually becoming clearer. To assure prompt admission and plan approval, though, a lot must be done. Delays at this stage effectively defeat the entire purpose of the Code because they reduce the enterprise's value and also the number of potential resolutions because resolution applicants have moved their applications to exit the process whenever there are excessive delays in the approval of plans.

The addition section 29A provided a notion that, in order to maximize the value of the debtor to society as a whole, an insolvent debtor must be protected from its own management, if necessary. The real "threat of insolvency" is another facet of the Code's effects that is sometimes overlooked.

Of course, there are still some difficulties. For instance, the real length of time required for the resolution is substantially greater than what the Code specifies. The number of NCLT benches and the sanctioned strength of judges should be raised in order to accelerate the resolution of

bankruptcy. Another issue is the need to implement elements that will make the process focus more on resolution than liquidation.

Moreover, group insolvency and cross-border insolvency are two areas where the insolvency regime still has room for improvement. It has been observed that when a parent firm in a group defaults, it has an impact on the entire group and has caused all associated concerns within the group to go bankrupt. The typical business structure of a group is such that it functions as a single entity and as a result requires a common resolution. Although NCLTs/NCLAT have attempted to find a solution by combining several proceedings in the absence of explicit provisions, it is up to the adjudicating authority's discretion how to handle the situation. Unless there is coordination and cooperation among the courts in multiple jurisdictions, which could facilitate the smooth conduct of the process and its smooth implementation, no single court can resolve the issue in a complex business mechanism where an entity's assets and business operations may be scattered across many countries and jurisdictions.

The IBC is still in a nascent stage and new problems continue to crop up. Even yet, the government has always been quite proactive in amending the Code as needed. It is progressing in the correct direction, and by increasing the interest as well as the willingness of creditors to lend, it will undoubtedly provide a significant improvement in economic efficiency and better economic development over time.

ENDNOTES

[i]Amit Kashyap, *Corporate Insolvency Law and Bankruptcy Reforms in the Global Economy* 44 (IGI Global, USA, 2018).
[ii]Law Commission of India, 26th Report, Report on Insolvency Laws, *Government of India Ministry of Law*, February 1964, 1, retrieved from https://lawcommissionofindia.nic.in/1-50/Report26.pdf, Accessed on 8th February, 2020 at 11pm.
[iii]Ibid.
[iv]*Id* 2.
[v]S 390, 390A and 391 Company Act 1956.
[vi]Poornima M. Charantimath, *Entrepreneurship Development and Small Business Enterprises* 289, (Pearson Education India, Noida, UP, 3rd edn., 2019).
[vii]Uday Kumar Lal Das, *Banking Reforms and Lead Bank Scheme* 168 (Deep and Deep Publications, New Delhi, 2002).
[viii]Ibid.
[ix]Organization for Economic Co-Operation and Development, (OECD), *Asian Insolvency Systems: Closing the Implementation Gap* 77 (OECD Publishing, 2007).

[x]Perminder Khanna, *Advanced Study in Money and Banking: Theory and Policy Relevance in the Indian Economy* 415 (Atlantic Publishers & Distributors, New Delhi, Volume-1, 2005).
[xi]OECD Publishing, 2007, 99.
[xii]Government of India MCA, "Report of the Expert Committee on Company Law by Dr. J.J. Irani, Chairman of the Expert Committee" Press Note – 03/2005, F. No. 1/4/2005/CL.V/F. No. 7/9/2005/RC.
[xiii]Ibid.
[xiv]Amit Kashyap (ed.), 45, 2018.
[xv]FR. Oswald A. J. Mascarenhas, S. J, *Corporate Ethics for Turbulent Markets: The Market Context of Executive Decisions* 195 (Emerald Group Publishing, UK, 2018).
[xvi]Ibid.
[xvii] Devesh Kapur and Madhav Khosla (eds.), *Regulation in India: Design, Capacity, Performance* 127 (Bloomsbury Publishing, Oxford, UK, 2019).
[xviii]Ibid.
[xix]Section 6 of Insolvency Bankruptcy Code 2016.
[xx]Amit Kashyap, 46, 2018.
[xxi]S 3 (7), IBC 2016.
[xxii]Notification F. No. 30/09/2020 dated 24th March 2020.
[xxiii]S 8 (1) of IBC 2016.
[xxiv]S 7 (3) (b) IBC 2016.
[xxv]S 9 (4), IBC 2016.
[xxvi]S 9 (5), IBC 2016.
[xxvii]2 (2003) 8 SCC 498.
[xxviii]Civil Appeal No. 8766-67 Of 2019.

[xxix]Committee of Creditors of Essar Steel India Vs. Satish Kumar Gupta & Ors. Civil appeal no. 8766-67 of 2019

[xxx]S 14 (1).IBC 2016.
[xxxi]S16(1).IBC 2016.
[xxxii]S 15(1).IBC 2016.
[xxxiii]S 17 (1) (a).IBC 2016.
[xxxiv] S 25 (2).IBC 2016.
[xxxv]S 18(c) & Sec 21 (2) IBC 2016.

[xxxvi]S 21(2) IBC 2016.

[xxxvii] S 29(1) IBC 2016.
[xxxviii] S 30 (3).IBC 2016.
[xxxix]Substituted by the IBC (Second Amendment) Act, 2018, for the word "seventy-five" in sub-section (4) of section 30 (w.e.f. 6 June, 2018).
[xl]Inserted by Insolvency & Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16 August, 2019).
[xli]S 30 (6) IBC 2016.
[xlii]S 31 (1) IBC 2016.
[xliii]S 31(2) IBC 2016.
[xliv]S 62 (1) IBC 2016.
[xlv]S 59 (2) IBC 2016.
[xlvi]*Arcelormittal India Pvt. Ltd,. Vs. Satish Kumar Gupta & Ors*. (2019) 2 SCC 1.
[xlvii] The Insolvency and Bankruptcy Code (Amendment) Act,2020, No. 26 of 2021.

[xlviii] Insolvency and Bankruptcy Board of India No. IBBI/PR/2022/36 17th September, 2022.