

POWERS OF ADJUDICATING AUTHORITY AND COMMITTEE OF CREDITORS UNDER IBC 2016: A CRITICAL ANALYSIS

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ABSTRACT

The Banking sector in India has endured many changes and brought regulatory reforms since the post-liberalization. The Insolvency Bankruptcy Code, 2016 (Code) is one of the major economic reforms made under the current government. It is one of the crucial reforms as it creates a framework by constructing single law dealing with insolvency in India. The provisions relating to insolvency and bankruptcy for companies was found in Sick Industrial Companies (Special Provisions) Act 1985, the Recovery of Debt due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. It was noticed that the laws and regulations set out in these legislations overlapped each other and thus, created confusion regarding the insolvency regimes in India. The framework that existed failed in securing a resolution for the corporate debtor. This led to the failure of business, finance and management by the promoters of the company. Therefore, the then provisions for insolvency and bankruptcy were inadequate, ineffective and unaligned with the market realities. The main objective of the Code is to bring about a mechanism that would consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to speed up the insolvency process. The Insolvency Bankruptcy Board of India (IBBI) was formed under the code to take due steps to make the code effective for the Corporate Debtor (CD) under the Corporate Insolvency Resolution Process (CIRP) and other creditors by

making necessary amendments in the code over the years. The paper will mainly focus on the powers conferred on the Committee of Creditors and the high dependence on the Resolution Professional and COC during CIRP. COC must set aside their personal interest and agree on a resolution plan that would be more beneficial to the CD. In the insolvency resolution process, the powers conferred on the Adjudicating Authority is merely restricted to the extent of ensuring that due process has been followed by the resolution professional. This gives more discretionary powers to the Resolution Professional and the Committee of Creditors and further fails to provide adequate safeguards to the Promoters of the Company. It is also pertinent to note that though the powers of the Adjudicating Authority have been restricted, there has been excessive judicial activism by the Adjudicating Authority in deciding cases and creating a dilemma with respect to its powers. Therefore, this paper will discuss such cases and bring clarity in the powers conferred upon the Adjudicating Authority. The conclusion of the research paper will include recommendations after analysing the present provisions and precedents set by the Adjudicating Authority.

Keywords: Insolvency, Banking, Adjudicating Authority, Promoters, Resolution Professional.

INTRODUCTION

In India, before Insolvency and Bankruptcy Code (IBC), 2016 there were several statutory instruments governing insolvency and bankruptcy such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks, and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013 dealing with insolvency and bankruptcy of companies, limited liability partnerships, partnerships firms, individuals and other legal entities in India. As a result, the High Courts, the District Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR), and the Debt Recovery Tribunals (DRTs), conferred jurisdiction at various stages, giving rise to the impending systemic delays in timely recovery of defaults in insolvency and debt recovery cases. The liquidation of companies was handled by the high courts, individual cases were dealt with under the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920.ⁱ

Hence, prevailing laws turned to be derisory and incompetent, which caused undue strain on the Indian credit system and/or market realities. The inefficient dealing with insolvency and liquidation led to immense confusion in the legal system, and there was an increased necessity to modify the insolvency process. These multiple legal procedures and a court system led to India witnessing a huge piling up of nonperforming assets, and creditors waiting for years to recover their money.ⁱⁱ Therefore, to resolve this issue, the Indian policymakers introduced the Insolvency and Bankruptcy Code, 2016 with the intention of the legislation to make a unified Code concerning insolvency laws.

The act has streamlined the winding-up process in reverence of companies, which was earlier scrapped due to an array of forums and statues established. The IBC is brought by the legislation to propose a system for the insolvency resolution of debtors in a time-bound manner, with an aim to protect the business from liquidation and to safeguard the value of the assets. The code is set up to settle and financially restructure the companies by providing control to creditors over decision making and empowering them to impose penalties in case the debtor fails to pay. Any creditor including financial and operational creditor as well as a corporation have a remedy to file for insolvency when the corporation defaults to make payment and take control over the company. The Code divides the commercial aspects of insolvency and bankruptcy proceedings from judicial aspects, it authorizes and enables the stakeholders and Adjudicating Authority to decide matters within their respective domain expeditiously.ⁱⁱⁱ The Code has unified the law relating to the enforcement of the statutory rights of creditors and modified the way a debtor company can be revived to sustain its debt without suppressing the rights of creditors.^{iv}

PROCEDURE UNDER THE CODE

Who can initiate CIRP under the IBC?

For the faster resolution of debt disputes and to consolidate the insolvency law, the code introduced the corporate insolvency resolution process (CIRP). The Adjudicating Authority or NCLT is an appropriate authority under which the application to initiate CIRP is presented.^v

As per the code, the proceedings on behalf of the juristic entities such as companies, LLP's or corporate persons, can be initiated by a financial creditor, operational creditor, and the corporate debtor himself.^{vi} The primary condition to initiate CIRP is to claim debt^{vii} and minimum default or debt should not be less than Rs. 1 lakh. However, after the amendment in 2020 due to COVID, the debt amount has been increased to a minimum of Rs. 1 crore.^{viii}

Application by Financial Creditor

Under section 7 of the Code, the financial creditor^{ix} may file a CIRP application against a corporate debtor in case of unpaid financial debt^x before the Adjudicating Authority. The amount of default should not be less than rupees one lakh. However, the threshold limit of one lakh rupees can be increased to one crore rupee.

- i. The corporate insolvency resolution process shall commence from the date of admission of the application. A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process to the AA under section 7 of the Code, as per form-1 with an application fee of Rs. 25000.^{xi} Also, in the case where the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.
- ii. The Adjudicating Authority within fourteen days of the receipt of the application shall ascertain the existence of a default from the records of an information utility or based on other evidence furnished by the financial creditor.
- iii. The Adjudicating Authority accepts the application if, default has occurred and the application is complete, and no disciplinary proceedings are pending against the proposed resolution professional. In such a situation, it may, by order, admit such application and further appoint a resolution professional.^{xii}
- iv. The adjudicating authority is also empowered to reject an application under section-7 if,
 - there is no default or
 - the application is incomplete under sub-section (2) or
 - any disciplinary proceeding is pending against the proposed resolution professional.

Application by Operational Creditor

Under **Section 8 of the Code**, an operational creditor in case of default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in the manner prescribed.^{xiii} The corporate debtor shall within ten days of the receipt of the demand notice bring to the notice of the operational creditor:

- (a) if there is any existence of a dispute or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice.
- (b) the payment of an unpaid operational debt.

Under **Section 9 of the code**, an operational creditor^{xiv} can initiate a proceeding in case of an unpaid operational debt^{xv} against the corporate debtor.

- i. An operational creditor before initiating CIRP on the account of default, the operational creditor shall deliver a demand notice to the corporate debtor demanding the outstanding payment. Demand notice must be served according to the Form-3 and a copy of an invoice under Form- 4 to the corporate debtor.
- ii. The corporate debtor should reply to the demand notice invoice demanding payment under sub-section (1) of section 8 within ten days of the receipt of the Demand Notice. After the expiry of a period of ten days, if the payment is not received then the operational creditor can file an application for initiation of corporate insolvency resolution process before the Adjudicating Authority. And if the corporate debtor makes the payment, then he must attach the scope of the record of encash cheques and record of the bank account with its reply.
- iii. The Adjudicating Authority shall admit or reject the application within 14 days of the filing of the application. The adjudicating authority may also provide 7 days to rectify or amend the application and issue a notice to the applicant for the same.

Application by Corporate Debtor:

In terms of the provisions of **Section 10 of the code**, when a corporate debtor has committed a default, a corporate applicant himself files an application by initiating the corporate insolvency resolution process with the Adjudicating Authority.

For the commencement of CIRP:

- i. The Corporate applicant shall make an application against the corporate debtor under section 10 in form-6 along with a prescribed fee of Rs. 25000 before the Adjudicating Authority.
- ii. The application must be accompanied with all the information and documents which includes:
 - particulars of financial and operational debt, books of accounts, financial statements, statement of affairs including a list of directors, shareholders, assets and liabilities, debts owed to related parties, etc.
 - the information relating to the resolution professional proposed to be appointed as an interim resolution professional.
 - the special resolution passed by shareholders of the corporate debtor and If Corporate Debtor is a Partnership Firm, then resolution must be passed by at least three-fourth of the total number of partners of Corporate Debtor.
- iii. The Adjudicating Authority then within 14 days of the receipt of the application, shall admit or reject the application. If the application is rejected, a time period of 7 days must be given by the Adjudicating Authority to rectify or amend the application.
- iv. The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

(It is mandatory to obtain approval of shareholders of the Corporate Debtor before applying u/s 10 of IBC).

Functionaries under the Code

The Code (IBC) is a fixed-term process for streamlining and recovery of a Debtor Company, which contains the Committee of Creditors (CoC), Interim Resolution Professional (IRP)/Resolution Professional (RP) and the Adjudicating Authority (AA).

Role of Committee of Creditors (CoC)

‘Committee of Creditors’ (CoC) is a committee involving financial creditors. The committee is accountable for giving the approval to IRP and RP for carrying out the resolution process. It is formed after collection of all the claims against the corporate debtor and it is the duty of the Interim Resolution Professional (IRP) to constitute the committee.^{xvixvii} Primarily, all the financial creditors are members of the CoC, provided that such a financial creditor is not a related party.^{xviii} On the other hand, the operational creditors are eliminated from being a part of CoC and further not allowed to vote in favour or against the resolution plan.

According to the Regulation 16 of the Insolvency and Bankruptcy Board of India (IBBI), CIRP Regulations, a circumstance may arise that the corporate debtor has no financial debt or where all the financial creditors are associated or related parties of the corporate debtor.^{xix} In such a situation, the regulation states that CoC shall include eighteen largest operational creditors by value. Also, where the total number of operational creditors are less than eighteen, in that case, all the operational creditors will form CoC.

Powers of COC

The Committee of creditors consists of only financial creditors and in an insolvency proceeding, all the major decisions related to the company are taken by the committee formed and even the decisions pertaining to day-to-day activities are done with the approval of the committee. The committee also lay the power to ratify the managerial decision taken by the RP. The committee has the authority to approve or reject the Resolution Plan under section 30 (4), to determine the liquidation of the corporate debtor and has a discretionary power to decide upon the extension of CIRP.^{xx}

A resolution plan is carried out by the committee, and it is accepted only if there is a majority of at least 66% of the voting share of the financial creditors after considering its feasibility and

viability.^{xxi} CoC also has the authority to decide as to how the resolution plan proceeds must be distributed between different classes of creditors. Hence, all the decisions and resolutions related to the corporate debtor are first approved by the COC.

Role of Adjudicating Authority

The IBC code comprises two adjudicating authorities National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) in case of appeals.

Under the Companies Act 2013, the NCLT is an appropriate judiciary authority and was given jurisdiction over the liquidation process and winding up of companies. NCLT plays a significant role in the insolvency resolution process right from the initiation of the insolvency process until the discharge of the corporate debtor against whom the charges were levied. NCLT is the adjudicating authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors.^{xxii} If any of the aggrieved party is not satisfied with the decision and files the case against NCLT, the matter is appealable before NCLAT and further may be appealed to the Supreme court of India. The NCLAT is the appellate authority to hear appeals arising out of the orders passed by the Board in respect of Insolvency Professional Agency or Insolvency Professional or Information Utilities.^{xxiii}

The Adjudicating Authority's foremost power lies in approval or rejection of the resolution plan submitted by the Resolution Applicant. Section 31 of the code states that if the Adjudicating Authority is satisfied that the resolution plan as approved by the Committee of Creditors and such resolution plan meets the requisites of section 30, it shall by order approves the Resolution Plan. As per the Code, the Adjudicating Authority has limited powers that are restricted to the extent confide in Section 30 and 31. However, in many precedents, it has expanded its scope while examining the resolution plan in the interest of the creditors affecting the Corporate Debtor.

Resolution Professional (RP)

Insolvency professionals are governed by special provisions under the code and play a central role in efficient working of the insolvency process. An insolvency professional is a person who

is registered under the Insolvency and Bankruptcy Board of India (IBBI) and is enrolled as a member under section 206 with an insolvency professional agency.^{xxiv} The Adjudicating Authority appoints the Insolvency Professional when the CIRP begins against a Corporate Debtor. The duration of this Insolvency Professional is for 30 days from the date of commencement of CIRP and during this period it is called the Interim Resolution Professional (IRP). The following functions are performed by IRP such as:

- a. Calls for claims against the Corporate Debtor.
- b. Verifies the claims against the Corporate Debtor.
- c. Constitutes Committee of Creditors.
- d. Runs the business of the Corporate Debtor.
- e. Helps the creditors in reaching a consensus for a revival plan.

If the COC is satisfied by the IRP, it may in its first meeting (held within seven days) can appoint the IRP as the Resolution Professional (RP) for the remaining duration of the CIRP. However, the COC may also make an application with the Adjudicating Authority to change the Resolution Professional.

During the CIRP, the board members of the Corporate Debtor are suspended, and it is the RP who gets into their shoe. While performing his duties, the RP is required to act on behalf of the board and take all the necessary steps and actions to keep the corporate debtor as a going concern. It is the duty of RP to manage the properties and to carry out operations, to ensure that the value of the Corporate Debtor does not depreciate while abiding by the laws. In the matter of *Asset Reconstruction Company (India) Pvt. Ltd. vs. Shivam Water Treaters Pvt. Ltd.*,^{xxv} the Adjudicating Authority held, “Resolution Professional is acting as an officer of the court and any hindrance in the working of the CIRP will amount to contempt of court.” It also clarified that the RP discharges his duties as court officer and any non-compliance of the court officer will be deemed as contempt of court.^{xxvi} However, there are certain actions that can be taken only with the approval of the COC under Section 28 of the Code. The RP may also be appointed as a liquidator again by the NCLT by his/her consent if the company goes for liquidation later on.^{xxvii}

CRITICAL ANALYSIS: POWERS OF COC AND ADJUDICATING AUTHORITY ON RESOLUTION PLAN

The IBC has brought a major shift from “Debtor in possession” to “Creditor in control” while dealing in the insolvency of a corporate debtor. The aim of the Committee of Creditors is to assess the commercial viability of the Corporate Debtor (CD) and bring modifications in the debt contracts to help the CD to resolve the insolvency and keep the CD as a going concern. It is the COC that receives the resolution plan from the resolution applicant to determine whether to approve the same or go for liquidation. The COC has been given the power to decide on the Resolution plan based on the assumption that the creditors would be in a better position to decide on the commercial viability and decide on a remedy that would be beneficial for all the stakeholders. Commercial wisdom of COC was upheld by the Hon’ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors.*^{xxviii}, wherein it was held that the COC has the ultimate power to accept or reject a resolution plan to rehabilitate the Corporate Debtor as their commercial wisdom is of utmost priority under the Code. The COC must take into account the “feasibility and viability” of a resolution plan, taking into consideration the manner of distribution of funds among the different class of creditors. The legislature and the precedents set by the apex court are clear on the fact that the decision concerning accepting a resolution plan is a commercial decision, taken by the COC. The Code is incorporated to give creditors the power to decide on the bad debt given to the corporate debtor as it is the creditor who suffers when a corporation goes for liquidation.

The role of the Adjudicating Authority is to ensure that the approved resolution plan is supported by not less than 66% of members in the COC and the resolution plan meets all the requirements of Section 30(2) of the Code. The jurisdiction of the Adjudicating Authority concerning the resolution plan is restricted to Section 30 of the Code and has no authority beyond that. The Adjudicating Authority cannot make amendments to a resolution passed by the COC which is in conformity with section 30(2), nor can it reject such a resolution plan passed by the COC unless it is inconsistent with the provisions under the Code.

The apex court in the case of *K. Sashidhar v. Indian Overseas Bank*,^{xxix} laid down that the commercial wisdom of the COC cannot be examined by the Adjudicating Authority and gave the commercial wisdom of COC the paramount status, without any judicial intervention. Also, the adjudicating authority or the appellant authority cannot inquire about the rejection of the resolution plan by the committee of creditors as per the judgment of *Rai Bahadur Shree Ram and Company Pvt. Ltd. v. Mr. Bhuvan Madan RP of Ferro Alloys Corporation Ltd*^{xxx}. In the latest judgment by the NCLAT, in the case *Santosh Wasantrao Walokar v. Vijay Kumar Iyer and others*^{xxxi}, while deciding the scope of jurisdiction of the AA and while approving the resolution plan held that the AA cannot go into feasibility and viability of the resolution plan which requires commercial wisdom of the COC and per se cannot be involved in commercial wisdom of the COC. It is also pertinent to note that, there is no power given to the Adjudicating Authority, Resolution Professional, or the Corporate Debtor to challenge the commercial wisdom of the COC. Also, the dissenting creditors who do not support the resolution plan are not empowered by the legislature to reverse the decision made by the COC. The intent of the Code is clear that the Adjudicating Authority has limited powers in respect of resolution plans and can only accept or reject the resolution plan passed by the COC on some occasions. This intent of the legislature can be seen in the BLRC report of 2015 which states that the appropriate disposition of a defaulting firm is a business decision, and only the creditors should make it.^{xxxii} In the matter of *ICIC Bank Limited v. Unimark Remedies Ltd.*^{xxxiii} along with many other precedents, it was held that the spirit of the Code is of paramount importance.

The introduction of IBC is recent in the insolvency regime and is evolving over time. This evolution and development in the Code can also be seen from the precedents set by the Adjudicating Authority. Though the AA has limited powers with respect to resolution plans, in many cases we can see that the AA keeping in mind the objective of the Code has pronounced orders which are beyond its powers conferred and has experimented while adjudicating upon new dilemmas in the CIRP process and the apex court has upheld various such adjudications in plethora of cases. In the landmark case of *Swiss Ribbons Pvt Ltd v. Union of India*,^{xxxiv} the apex court upheld the decision of NCLAT and recognized that modification of resolution plan can be brought under the purview of AA if such a plan discriminates against the Operational creditors. The NCLAT modifies the resolution plans passed by the Committee of Creditors

when there is a discrimination against the operational creditors. However, it did not discuss if such modifications can be done only when there is discrimination or on general grounds that are not stated under section 30(2) of the code. The case of *Binani Industries Limited v. Bank of Baroda & Anr*^{xxxv} and the connected matter of *Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Co*^{xxxvi}. are exceptional cases where the revised resolution plan submitted by Ultra Tech Cement Ltd. was approved by NCLAT and rejected the resolution plan of the rival applicant, Rajputana Properties Pvt. Ltd., stating the resolution plan to be “unbalanced and discriminatory” in nature. This decision of the NCLAT was upheld by the apex court. In this case, the AA believed that discrimination between the resolution applicants in the revised resolution plan was not even considered by the COC which was offered much before the resolution plan that was approved by the COC. The NCLT also opined that the COC had failed to safeguard the interest of all the stakeholders and had ignored the resolution plan that preserved the interest of all the creditors and maximized the assets of the Corporate Debtor. This established that there was no application of mind by the COC and the intervention of the AA was required to safeguard the interest of all the stakeholders of the Corporate Debtor.

Though there have been precedents stating that the COC based on its commercial wisdom has the final say on the approval of resolution plan, it is observed that the AA in some cases have intervened in the approval of resolution plans to uphold the objectives of the Code. In *Arcelor Mittal India Private Limited v. Satish Kumar Gupta*^{xxxvii}, where while examining the power of the

AA the apex court observed that once the COC approves a resolution plan and submits it to the AA, the AA need not only check the conformity of resolution plan with section 30 (2) but also needs to be satisfied that the approved resolution plan does not violate any provision of the Code. Thus, the AA has the responsibility to check that the spirit of the Code is not compromised during the CIRP process.

In *Pratik Ramesh Chirana v. Trinity Auto Components Ltd.*^{xxxviii} as well, the NCLT Mumbai bench emphasized on the word ‘satisfaction’ in section 31 of the Code, the AA went further and opined that the word ‘satisfaction’ has a broader ambit and includes satisfaction which can be either objective, subjective, or both. The NCLT, by objective satisfaction, meant that before

approving a resolution plan, the objective of the Code must be kept in mind, and on the other hand, subjective satisfaction is the scrutiny of the resolution plan from a financial point of view. Though the legislature is of the view that the approval of the resolution plans is essentially the undertakings of the COC, the precedents by the apex court and AA have made it clear that the AA should also examine the resolution plans so that the approved resolution plans are non-discriminatory and endorses the spirit of the code.

It can be seen from the above-cited cases that the Code intends to empower the Creditors and has placed reliance on their prudence while approving or rejecting a resolution plan for the revival of the Corporate Debtor. Therefore, this method of resolving the financial crisis of the corporate debtor is highly based on the commercial wisdom of the COC. The Code was brought into force to ensure that the Corporate Debtor can continue as a going concern, and it becomes the duty of the COC to keep their personal interest aside and approve a resolution plan that is beneficial for the Corporate Debtor. This process should not be used by the COC as a recovery mechanism but to revive the Corporate Debtor by resolving the distressed corporations in. The Code also aims to reorganize such sick companies and aims to reduce the NPAs of banks which would help in growth of the economy. Hence, the author is of the view that AA in some cases has been correct in experimenting with the powers conferred by the code to resolve the contemporary issues during the CIRP process and to uphold the objective of the code.

CONCLUSION

After analysing the precedents set by the AA, an ambiguity in the powers between the COC and the AA while deciding on the resolution plans can be noticed. It is pertinent that the creditors are impacted the most when the Corporate Debtor goes into liquidation as the credit given by the creditors is at stake which may or may not be recovered from the Corporate Debtor. So, it is imperative for the COC to decide on the resolution plan, keeping in mind the credit given to the corporate debtor while protecting them from liquidation. The Code was brought into force to ensure that the Corporate Debtor can continue as a going concern, hence, the COC must keep its personal interest aside and approve a resolution plan that is beneficial for the Corporate Debtor. Therefore, this process should not be used by the COC as a recovery

mechanism but as an approach to resolve the distressed corporations in reorganizing and reducing the NPA's in the economy. The

Resolution Professional also plays a significant role in the CIRP, and it is important that the appointed Resolution Professional, is rational, and keeps a fair mind while conducting CIRP. The Code recognizes this concern and hence, provides for disciplinary actions that can be taken as a recourse against the Resolution Professional. In such a situation, there is always a scope for the creditors to collude with the Resolution Professional during the CIRP, which may not be in the interest of the Corporate Debtor. Hence, it is vital that the working of COC is monitored by AA while approving or rejecting a resolution plan, to seek the fair resolution process of the Corporate Debtor and to uphold the objectives of the Code.

ENDNOTES

ⁱRakesh Wadhwa, *Insolvency and Bankruptcy Code, 2016*. Vol 46 I No. 09, Pg. 23 Chartered Secretary ISSN No.

0972-1983 ICSI (Sep. 2016).

ⁱⁱ Reddy Shreya, *Understanding of the IBC*, (July 2019). Available at <http://dx.doi.org/10.2139/ssrn.3425370>

ⁱⁱⁱ *Understanding the Insolvency and Bankruptcy Code, 2016*

https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jun/190609,UnderstandingtheIBC_Final_2019-0609%2018:20:22.pdf

^{iv} *Ibid.*

^v Section 5 (1) of the *Insolvency and Bankruptcy Code, 2016*.

^{vi} Section 6 of the *Insolvency and Bankruptcy Code, 2016*.

^{vii} Debt is the amount which is due and which is to be claimed.

^{viii} Section 4 of the *Insolvency and Bankruptcy Code, 2016*.

^{ix} Any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

^x A debt along with interest, if any, which is disbursed against the consideration for the time value of money and include certain type of debts provided in clause (a) to (i) of this section.

^{xi} Rule 4 of the *Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*.

^{xii} Section 7(2) of the *Insolvency and Bankruptcy Code, 2016*.

^{xiii} Section 8 (1) of the *Insolvency and Bankruptcy Code, 2016*

^{xiv} It is a person who provides any services or produce and supply any goods to the (Corporate Debtor) for consideration but did not receive any consideration from the (Corporate Debtor).

^{xv} Debt which arises from goods, services, employment and statutory debts.

^{xvi} Section 21 of the *Insolvency and Bankruptcy Code, 2016*

^{xvii} Section 18 of the *Insolvency and Bankruptcy Code, 2016*

^{xviii} End of the Road for CIRP: An Impasse at the COC, *The Indian Review of Corporate and Commercial Laws* (Aug 2019) <https://www.ircl.in/single-post/2019/08/29/End-of-the-Road-for-CIRP-An-Impasse-at-the-COC>

^{xix} Vide Notification No. IBBI/2016-17/GN/REG004, published in the Gazette of India, Extraordinary, Part III, Sec.4, vide No. 432, dated 30th November, 2016 (w.e.f.01.12.2016).

^{xx} https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Mar/Charter%20IP-CoC_2019-03-01%2021:55:28.pdf

^{xxi} Section 30 (4) of the Insolvency and Bankruptcy Code, 2016.

^{xxii} Section 60 of the Insolvency and Bankruptcy Code, 2016

^{xxiii} Rakesh Wadhwa, Insolvency and Bankruptcy Code, 2016. Vol 46 I No. 09, Pg. 23 Chartered Secretary ISSN No. 0972-1983 ICSI (Sep. 2016),

https://www.icsi.edu/media/webmodules/linksofweeks/ICSI_CS_SEP2016.pdf

^{xxiv} Section 3 (19) of IBC, 2016

^{xxv} *Asset Reconstruction Company (India) Pvt. Ltd. vs. Shivam Water Treaters Pvt. Ltd.*, CP (IB)-1882/MB/2018

^{xxvi} Charter IP-CoC_2019-03-01, Insolvency and Bankruptcy Board of India

https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Mar/Charter%20IP-CoC_2019-03-01%2021:55:28.pdf

^{xxvii} Dr. Binoy J. Kattadiyi, Swati, 'A ROLE OF INSOLVENCY PROFESSIONALS UNDER INDIAN INSOLVENCY REGIME of IBBI,' INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH, ISSN:2277-7881; VOL:9, ISSUE:3(3), (March 2020)

^{xxviii} *Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors.*, 2019 SCC Online SC

1478.

^{xxix} *K. Sashidhar v. Indian Overseas Bank*, 2019 SCC Online SC 257.

^{xxx} National Company Law Appellate Tribunal, New Delhi Company Appeal (Insolvency) No. 207-208 of 2020.

^{xxxi} *Wasantrao Walokar v. Vijay Kumar Iyer and others*, MANU/NL/0039/2020

^{xxxii} The Report of the Bankruptcy Law Reforms Committee Vo I: Rationale and Design, (Nov. 2015),

https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

^{xxxiii} *ICIC Bank Limited v. Unimark Remedies Ltd.*, MA No. 1529 OF 2018 IN CP No. 197 OF 2018.

^{xxxiv} *Swiss Ribbons Pvt Ltd v. Union of India*, (2019) 4 SCC 17.

^{xxxv} *Binani Industries Limited vs. Bank of Baroda & Anr.* Company Appeal (AT) (Insolvency) No. 82 of 2018 .

^{xxxvi} *Rajputana Properties Pvt. Ltd. v. Ultra Tech Cement Ltd. & Co.*, MANU/NL/0108/2018 144 CLA 490

^{xxxvii} *Arcelor Mittal India Private Limited v. Satish Kumar Gupta*, Civil Appeal Nos. 9402 – 9405 /2018

^{xxxviii} *Pratik Ramesh Chirana v. Trinity Auto Components Ltd.*, CP No. 1032/I&BC/MB/MAH/2017