



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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**"What we think we become"**

## ➤ **Better Insolvency and Bankruptcy Code grooming to fix bad haircuts**

Banks are reportedly continuing to take steep haircuts in the resolution of bad loans. This is disconcerting. Latest data by the Insolvency and Bankruptcy Board of India (IBBI) for the end of June 30 showed that of the total claims of Rs 7.67 lakh crore in about 517 cases, creditors have realised around Rs 2.35 lakh crore through resolution plans. The haircuts that banks have to take relative to their admitted claims is 69%. This implies an average of Rs 69 going towards losses for every Rs 100 of their claims admitted for resolution under the bankruptcy code. This should improve, as the public policy goal of the insolvency resolution is to maximise the value of the asset being resolved, minimise the haircuts that banks have to take, and reduce the burden on taxpayers.

A key reason for recoveries plummeting is the delay in the process of insolvency. That must change. The legal infrastructure should be more robust to prevent any attempts to block insolvency resolution through stays. There should be no delay either in setting up multiple benches for the adjudicating authority. Banks must report defaults as soon as they happen, and the National Company Law Tribunal (NCLT) must admit the petitions swiftly. The resolution must also be time-bound. Delays could dissuade prospective resolution applicants and also lenders from taking the Insolvency and Bankruptcy Code (IBC) route.

Easing regulation to allow asset reconstruction companies (ARC) to participate as resolution applicants makes sense. The National Asset Reconstruction Co Ltd (NARCL) to acquire bad loans from banks and the India Debt Resolution Co Ltd (IDRCL) to manage and dispose of the assets are in place. There are 28 other ARCs too. Competition among ARCs will also help businesses revive, and protect protective assets of the economy. Any course corrections, if required, in the law to ensure faster progress in resolving the bad loan problem are in order.

**Source: Economic Times**

**Read Full news at:** <https://economictimes.indiatimes.com/opinion/et-editorial/better-insolvency-and-bankruptcy-code-grooming-to-fix-bad-haircuts/articleshow/93785031.cms>

## ➤ **Unilateral Constitution Of A Narrow Panel Of Arbitrators Violates Impartiality : Delhi High Court**

The High Court of Delhi has held that the power conferred on one party to unilaterally choose names from a panel of arbitrators and forwarding it to the other party to select its arbitrator from those names is violative of principle of impartiality in arbitration. The Bench of Justice Neena Bansal Krishna held that such a unilateral exercise of power creates space for suspicion regardless of the merit of the selected arbitrators who happens to be retired District Judges.

The Court took a divergent view of its judgment in *IWorld Business Solutions v. DMRC*, wherein similar panel of five Members who were all retired District Judges was considered and it was held that considering that they were all retired Addl. District Judges/ District Judges, their impartiality and neutrality could not be questioned and the panel was held to be valid for nomination of any one as an Arbitrator.

The parties entered into four license agreements dated 25.04.2019 wherein the respondent licensed few commercial spaces to the petitioner on 'as is where is' basis. A dispute arose between the parties due to the condition and area of the licensed premises. Accordingly, the petitioner issued the notice of arbitration and suggested the name of the sole arbitrator. However, the respondent did not agree with the proposal of the petitioner and stated that in view of the agreement between the parties, the petitioner can nominate its arbitrator from a panel of 5 arbitrators to be chosen by the respondent. Thereafter, the petitioner filed an application for appointment of the sole arbitrator.

### *The contention of the parties*

The petitioner sought appointment of the sole independent arbitrator on the following grounds:

- The procedure for appointment of arbitrator as provided under the agreement is contrary to the provision of the A&C Act as the unilateral power on the respondent to handpick arbitrators for the petitioner to choose impairs the principles of impartiality and independence of arbitrator.
- Respondent being an interested party cannot nominate or constitute a narrow panel of arbitrator and restrict the power of the petitioner to choose from that panel only.
- The clause between the parties is one sided and gives undue advantage to the respondent in the appointment of arbitrator, therefore, it is against the principle of natural justice.

The respondent objected to the maintainability of the petition on the following grounds:

- An application under Section 7 of the IBC was admitted by NCLT against the petitioner and the moratorium was declared and IRP was appointed, however, the parties reached a settlement and the NCLAT directed IRP not to constitute CoC.
- In terms of the arbitration clause between the parties, the arbitrator(s) are to be appointed from the five names which are to be chosen by the respondent from its panel of arbitrators, therefore, the sole arbitrator as contended by the petitioner is not possible.

### Analysis by the Court

The Court held that the power conferred on one party to unilaterally choose names from a panel of arbitrators and forwarding it to the other party to select its arbitrator from those names is violative of principle of impartiality in arbitration. The Court relied on the judgment of the Hon'ble Supreme Court in *Voestelpine v. DMRC*, (2017) 4 SCC 665 to hold that such a unilateral exercise of power creates space for suspicion regardless of the merit of the selected arbitrators who happen to be retired District Judges in the present case.

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Accordingly, the Court allowed the petition and appointed an independent arbitrator.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/high-court-of-delhi-arbitrator-section-7-of-the-ibc-sole-arbitrator-207467>

## ➤ **IBC cases still below FY20 levels – report says this shows India Inc is ‘comfortably placed’**

Corporate insolvency cases admitted through the Insolvency and Bankruptcy Code (IBC) route are still below FY20 levels, according to a new report by research firm Kotak Institutional Equities – and this suggests that India Inc is ‘comfortably placed’, the report added. According to the report, 332 cases were admitted to the insolvency process in Q1 FY23 – up from 139 cases admitted in the same period last year. However, the annual run rate is still below the nearly 2,000 cases admitted in FY20.

Kotak’s findings and IBC data match findings of ratings agency S&P, which noted that four out of five companies in its portfolio have enough liquidity and that their credit profiles are strong. The Indian government came up with IBC in 2016 to streamline and fast track

the corporate insolvency resolution process. According to data from the insolvency board, IBBI, as of June 2022, there were 2,000 active insolvency cases.

Liquidation remained the most popular option for creditors enforcing the insolvency process. According to the Kotak report, 47% of IBC's 3,600 cases went into liquidation, while only 14% were resolved. However, while the IBC mandates insolvency proceedings to be wound up in a maximum of 180 days, with an extension of 90 days, the report notes that this does not reflect reality. "As of 1QFY23, 61% of ongoing cases have passed 270 days since admission, with another 10% crossing 180 days. Hence, the number of cases facing liquidation is likely to stay high," it stated.

Overall, the total debt resolved through IBC stood at ₹7.7 lakh crore, despite a 70% haircut taken by financial creditors. "As we are working through some of the weaker assets where there are incomplete projects or sectors with very poor demand from buyers, the realisation values have declined," the report stated.

**Source: Business Insider**

**Read Full news at:** <https://www.businessinsider.in/business/corporates/news/ibc-cases-still-below-fy20-levels-report-says-this-shows-india-inc-is-comfortably-placed/articleshow/93793663.cms>



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