NOVEMBER'2021

THE INSOLVENCY PROFESSIONAL

Your Insight Journal

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI) is a Section 8 Company incorporated under the Companies Act -2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enrol and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhere to fair, just and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavour to disseminate information in aspect of Insolvency and Bankruptcy Code to Insolvency Professionals by conducting round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

INDEX

CHAIRMAN MESSAGE

The Year 2021 has been full of challenges for the Global Economy especially due to continued surge of Covid 19 pandemic. The aggregate impact of Corona virus for the last two years has left the global economy in complete disarray. The Indian Economy was no exception. India has a huge presence of MSME units and they also suffered severely due to impact of global pandemic. The fact that MSMEs are characterised by the limited investment and smaller amount of working capital makes them more vulnerable to financial distress caused by the Pandemic. Under these circumstances, it was natural for the Government to come out with Fiscal Support/Stimulus to mitigate the hardship and help them strive to tide over the impact of the Global Pandemic of the given magnitude and severity. Our economy witnessed a negative growth close to 25% but is bouncing back with IMF projecting growth of 9.5% for India as against 6% global growth. The growth of Indian Economy @ 8.4% in the last quarter has revived the confidence that India may surpass even the IMF forecast. It shows the strength and resilience of Indian Economy. The reducing NPAs of Banking System in the recent days also serve as another indicator of Revival of the Economy.

On Professional Front, we have witnessed the entry of more Insolvency Professionals into the system indicating the prospects and success potential. The number of Insolvency Professionals is close to 4000. Our share out of this number is significantly low and calls for enhanced efforts on our part to mobilize more number of professionals to enrol with our IPA.

The Insolvency & Bankruptcy Board of India has recently celebrated completion of five years of its purposeful existence and so have the IPA. We have witnessed the effectiveness and growing success of the Insolvency and Bankruptcy Code 2016 as an efficient remedial framework in the field of Corporate Insolvency Resolution Process. The Government is also committed to support the IBBI in its endeavours to enhance the practicability of the Code. This is quite evident from the fact that the IBC has seen six amendments in the last five years of which three amendments have been brought out during the Corona period itself. From the suspension of the operation of Sections 7, 8 & 10 to raising the amount of default from Rs. 1 lakh to Rs. 1 crore as a threshold to invoke the provisions of IBC are only a few of the instances to quote as the proactive initiatives on the part of Government and IBBI. The interventions by the Hon'ble Supreme Court have also supported the cause.

The year under review shall be remembered as the year of Disruptions caused by the Pandemic. The impact of lockdown and containment measures has been quite severe and took its toll not only on the humanity but also on the entire eco-system of Healthcare infrastructure. The overall impact of pandemic on the economy notwithstanding , certain sectors like IT/ITES, Healthcare, Pharmaceuticals, Infrastructure have shown their resilience. Our country has proved to be a source of supply of medicines and vaccine to various countries of the world reflecting a concern for humanity in the spirit of Vasudhaiv Kutumbkam even at the cost of criticism from domestic quarters. India has in the process gained the reputation of being a pharmacy to the world. The huge domestic vaccination programme of our Government with 144 crore of doses having been already administered is a great feat by the scientists and healthcare personnel. The adaptation of the vaccine to cope up with different variants only goes to prove the agility and skills of our talent- pool in the country. Let the humanity strive, thrive and survive to prove that we are the masters.

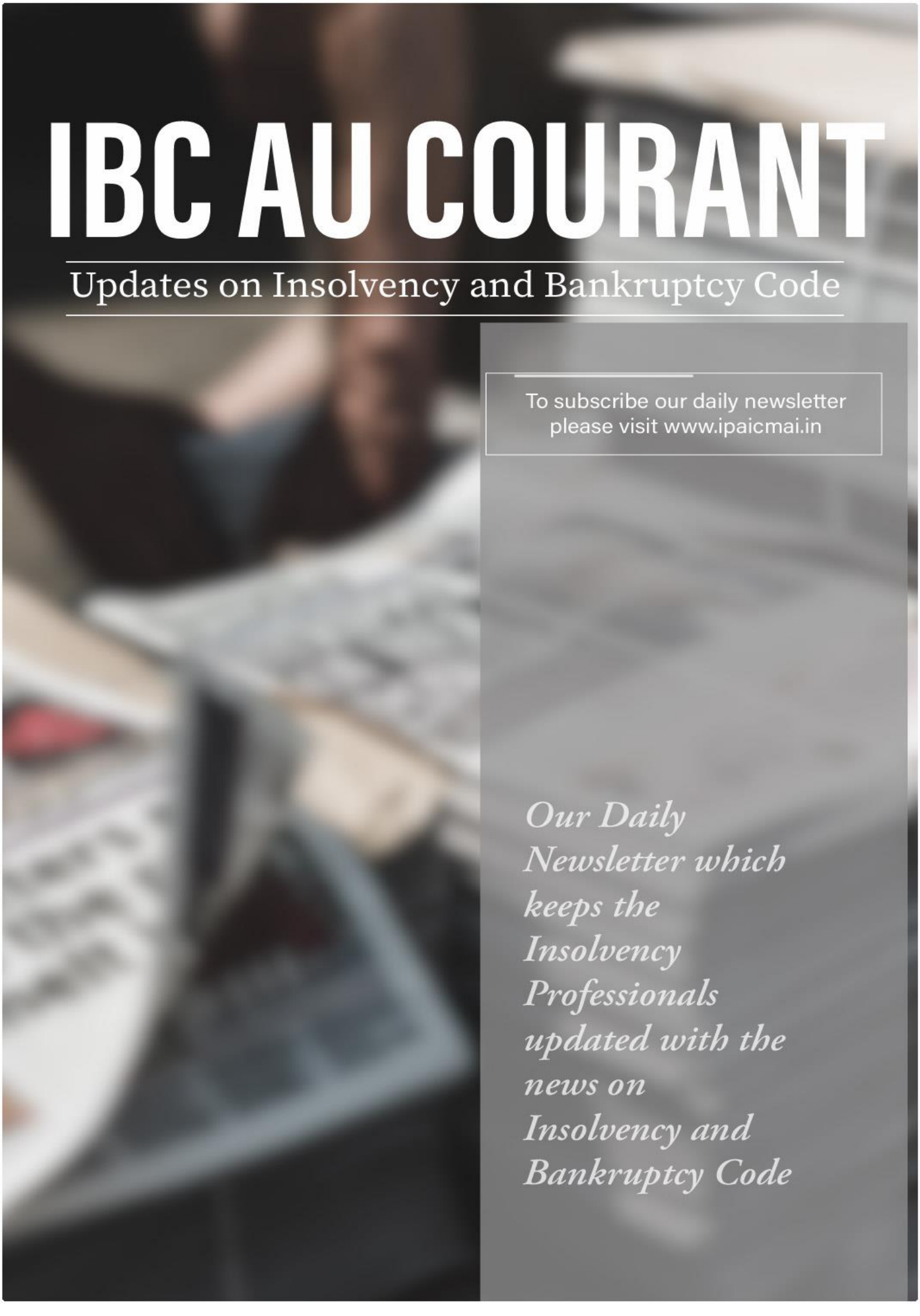
Warm regards,
Dr. Jai Deo Sharma

Professional Development Initiatives

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

EVENTS

NOVEMBER'21	
09th Nov 2021	Webinar On Digitalization of Insolvency Process
12th Nov 2021	Learning Session on Committee of Creditors
12th Nov 2021	Webinar on Digitalization of Insolvency Process
17th - 23rd Nov 2021	49th Batch of Pre - Registration Educational Course
19th Nov 2021	Master Class on PUFE Transactions
20th Nov 2021	Orientation Program on IBC and its Emerging Frameworks
24th Nov 2021	EDP on IBC
26th Nov 2021	CMA Conclave - Goa 2021 - Unconventional Opportunities Under IBC, 2016.



IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

To subscribe our daily newsletter
please visit www.ipaicmai.in

Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

ARTICLES

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

COMMON MISTAKES COMMITTED BY AN INSOLVENCY PROFESSIONALS

Mr Lakkaraju Srinivas

Advocate & Insolvency Professional

In order to achieve the objective of the Code, four Pillars have been established. Out of the four, Insolvency Professional is the most important pillar in the ecosystem of IBC. The Code as well regulations prescribed certain guidelines on the code of conduct of IPs. In spite of providing adequate guidelines for code of conduct of IP, certain IPs are committing mistakes unintentionally thereby causing loss to the CD as well as to other stake holders. Hence IP should strictly adhere to the guidelines prescribed under the code of conduct.

As you are all aware that the basic objective of the Insolvency and Bankruptcy code 2016 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of Corporate persons, Partnership firms ,Limited liability partnerships and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of Credit, and balance the interest of all the stakeholders including alteration in the priority of payment of government dues and to establish an insolvency and Bankruptcy fund and related matters connected thereto . In order to achieve these objectives, an effective legal framework for timely resolution of insolvency and bankruptcy was established in the form of National Company Law Tribunals along with Appellate Tribunals as Adjudicating authorities and an effective information system was required for timely resolution of insolvency and hence an institution of Information system in the form of Information Utility has been established for providing timely and accurate information about insolvency. For achieving these objectives, there are four pillars are established such as Information Utilities, Insolvency Professionals, Adjudicating Authorities and Insolvency and Bankruptcy Board of India. Out of all the four pillars, the most important pillar is Insolvency Professional. Insolvency Professional has to play pivotal role in the IBC ecosystem. So Insolvency Professional while performing his duties may commit certain mistakes which will jeopardise the entire system of Insolvency resolution process Hence it is very important that every insolvency Professional while performing his duties should keep in his mind certain important activities. Though the Insolvency Professionals unintentionally commit certain mistakes, which will cause cost to the CD as well as economy of the country. Hence Insolvency Professionals have to take utmost care and caution while performing his duties to ensure there should not be any mistake in the duties. Some of the mistakes committed by Insolvency Resolution Professional are summarised hereunder for the benefit of the professionals.

Undertaking assignment without obtaining authorisation of assignment from IPA

As per regulation 7 A of IBBI Insolvency Regulations, every Resolution Professional should carry valid authorisation for assignment from IPA as on date of commencement or acceptance of assignment. If the Insolvency Professional accept/commence any assignment without carrying valid authorisation from IPA is against the principles of law and it contravenes the Provision of law. The window for renewal of authorisation will open before 45 days of expiry of authorisation. If the Insolvency Professional has applied for authorisation of assignment and if the IPA has not provided for issue/renew/reject the application for authorisation of assignment within 15 days, in such cases, it is deemed that the IPA has issued /renewed authorisation of assignment as the case may be. But it is observed that in some cases, the Insolvency Professional carry the assignment of CIRP without holding /applying for renewal of assignment from IPA. This is against the principles of law and justice and it is to be avoided.

Amount of Fees charged by Insolvency Professionals

As per IP regulations, the IP should charge fees for their Professional services. But this fee should be commensurate with the nature of work performed and also it should be reasonable and not disproportionate to the nature of work performed The Fees of IRP will be fixed by the Applicant in case of CIRP as per CIRP regulation of 33 and the fees of RP will be fixed by the COC as per CIRP regulation no.34 and in case of liquidation, the fees of liquidator will be fixed by the COC as per regulation no.39D. But it is observed in few cases, the fees of IRP/RP is not fixed by the Competent authorities concerned beforehand and IRP/RP charging fees on their own and it is not reasonable and quiet disproportionate to the nature of work performed by the IRP/RP.

Application for Co-operation

The Directors/Promoters and suspended Directors should co-operate with the IRP/RP for smooth conduct of CIRP Process, otherwise it is a loss to the CD as well as to the economy of the country. Hence Co-operation of suspended board of Directors is of paramount importance for proper and smooth conduct of CIRP. As per Section 19 of Code provides that IRP/RP can file an application with Adjudicating authority for issuance of directions to the suspended Board of Directors for their co-operation to comply the directions of IRP/RP and to cooperate with him. But it is observed that IRP/RP are not filing the application under section 19 for directions from Adjudicating authority for co-operation, in spite of the fact they are not co-operating with IRP/RP and IRP/RP making inordinate delay in filing this application and postponing the process of filing an application for one reason or other, as a result the influence of the CD over the IRP/RP will increase and entire process of CIRP will be in jeopardy. Since the time is the essence of the CIRP, the IP should file the application under section 19 immediately if the suspended Board of director's co-operation is not forthcoming.

Public Announcement

The IRP immediately on his appointment should make public announcement within three days of his appointment as per section 15 of the Code read with regulation 6 of CIRP regulation. This public announcement should be made two newspapers which are having wide circulation in the locality of the Principle office and Registered Office of the CD. Out of two newspapers, one is in English and other is in vernacular newspaper. The objective of Public announcement is to make aware of the Public at large about the commencement of CIRP of the CD and enable them to file their claims with IRP and in turn IRP should verify claims and constitute COC as per the claims. The COC will play very important role in the CIRP Process. Hence the Public announcement is very important and it is to be published within three days of appointment of IRP. But in few cases, it is observed that IRP is publishing with inordinate delay and also it is published at a place other than the principle place/Office of Registered office of the CD and also publishing English version of public announcement in vernacular language newspaper. All this will cause IRP will unable to verify claims and cannot constitute proper COC.

Updating the claims of the Creditor

As per Section 25(2) (e) read with regulation 13 of the CIRP regulation mandates that IRP has to verify every claim received and prepares list of Creditors containing their name ,amount of claim and amount of claim admitted and Security interest if any in respect of such claim and display the list of Creditors in the website of the CD if any. It is observed that some of the IRPs are not displaying the list of Creditors in the website of the CD or not updating the claims of the Creditors. Due to non-display of the claims of the Creditors in the website of the CD results in lack of transparency of submission of the claims by the Creditors results in generation of complaints about the status of the claims

Authority of the COC

The Code has lays down several responsibilities on the part of COC. The COC will take several decisions basing on the majority of voting share. All requisite major decisions will be taken by COC basing on majority of voting share. No individual Creditor with majority voting share can exercise any supremacy in the decision-making process. Hence RP/IRP should abide by the decisions taken by COC with majority voting share. But it is observed that some of the IRP/RP will abide by the decisions taken by sole creditor or pool of creditors thereby it will impair the independency of the IRP and it is against the Principles of the law

Appointment of Professionals

It is the duty of the RP to preserve and protect the assets of the CD and also to ensure that the business of the CD will continue as a going concern. To achieve this object, the Code empower the RP to appoint Professionals such as accountants, legal and other Professionals as per section 25 (d) of the Code in relation to the work in connection with his assignment. But for appointment of Professional, the following conditions must be fulfilled. Appointed person must be Professional for rendering certain professional service. Such Professional service is not available with the CD. The Professional to be appointed is suitable for the service. The fees payable to such Professional should be reasonable. Such Professional should not be his relative or related party as per 23 B of code of conduct of IP regulations. The invoice for fees of such Professional should be raised in the name of the Professional and it should be credited directly to his bank account. Hence the IP should be very cautious and keep in mind the above aspects while appointing Professionals. But it is observed that some of the IPs are appointing Persons who are not Professional and also appointing such Professional for the services of the stakeholder and who is a relative or related party which are against the principles of the Code of conduct and it will impair the independence of the RP and also cause avoidable cost to the CD and other stakeholders.

Appointment of Registered Values

As per CIRP regulation 27, the insolvency Professional within 7 days of his appointment but not later than 47 th day from the commencement of CIRP, appoint two registered valuers to assess the fair value and liquidation value of the assets of the CD in accordance with regulation 35. These values are very important to decide the fate of the CD. A wrong evaluation of assets of CD will cause liquidation but otherwise viable unit. Hence these values are very important. Hence to determine the fair value and liquidation value of the assets of the CD, CIRP regulation require the RP to appoint two registered valuers. But it is observed that RP appointing valuer not registered with IBBI. Instead of two valuers, appointing only one valuer. All these factors indicate the lack of sincerity and due diligence on the part of IPs which would cause loss to the CD as well as economy of the country.

Disclosure of fee and relationship

It is the duty of the RP as per code of conduct to disclose the amount of fees charged by him and also the Professionals appointed by him in relation to the work in connection with his assignment. It is the duty of the IP to disclose the relationship with Professionals appointed by

him. This ensures transparency and also enable the stakeholders to take informed decisions. Failure to disclose these details will cause lack of transparency and cause conflict of interest.

Fees payable to the Authorised Representative

As per regulation 16 A of CIRP regulation, the Insolvency Professional will select IP who is the choice of highest number of financial creditors in form CA to act as authorised Representative whenever there is a class of Creditors. The fees payable to such authorised representative depends upon the number of Creditors ranges from Rs. 15,000/- to 25,000/-. But it is observed that IP appointing the Person other than Insolvency Professional as authorised Representative and the fees payable to such persons are not in conformity with the amount prescribed under the regulations.

Representation in Judicial Proceedings

As per Section 25(2)(b) of the Code, every RP has to represent and act on behalf of the CD with third Parties and exercise rights for the benefit of the CD in judicial, Quasi-Judicial or arbitration proceedings in order to protect and preserve the assets of the corporate debtor and also to achieve the objective of maximisation of the value of the assets of the CD. But there are instances, that the RP is not representing CD in judicial proceedings resulting in defeating the objective of the Code.

Disclosure regarding related party transactions

It is the duty of the RP to disclose to the COC and take their approval whenever he undertakes the related party transactions. If RP takes up the related party transaction without the approval of the COC is void and unlawful and against the spirit of the Code. But some of the RPs are not taking the approval of COC before undertaking related party transaction which is highly objectionable.

Payment to Creditors during CIRP

It is the duty of the RP to receive and collate the claims submitted by the Creditors and it is to be dealt in the manner stipulated as per Section 30(2) of the Code i.e. it is to be dealt only through resolution plan submitted by the resolution applicant and also in the manner of water fall mechanism prescribed as per Section 53 of the Code. As per Section 14 of the Code, prohibits RP to settle any claim during CIRP and he should not deal the payments to Creditors in any other manner. If RP pays the amount to any Creditor it amounts to providing Preferential

treatment to the creditors over other Creditors thereby alters the priority provided by the Code and it will defeat the very purpose of the Code. Similarly, RP should not allow the Creditor who is in custody of the funds to adjust his own dues.

Avoidance transactions

It is the duty of the RP to form an Opinion about the avoidance transactions on or before 75 th day and make a determination on or before 115th day and file an application to the Adjudicating authority on or before 135th day for proper directions in these transactions in order to claw back the value lost in the transactions. Instances have been found that RP is not sticking to the timelines prescribed and follow the directions issued by the COC instead of taking decisions independently thereby resulting in dereliction of duty and breach of trust in addition to depriving the stakeholders of their legitimate dues

Supply of information to stakeholders and Resolution applicant

It is the duty of the RP to provide all important information about the CIRP to the Stakeholders particularly to COC in electronic form. Similarly, the section 29 casts a duty on the RP to provide all relevant information in physical as well as electronic form to the prospective resolution applicants in the form of information memorandum. It is observed that RP does not provide all the relevant information to the stakeholders as well as Prospective resolution applicants thereby resulting in revival of the business of the CD not as per the provisions of the Code.

To obtain Confidentiality Undertaking

It is the duty of the RP to provide all vital, important information of the CD to all Prospective resolution applicants in order to take informed decision. But the Code imposes responsibility on the RP to maintain confidentiality of the information of the CD in order to avoid insider trading and to ensure maximization of the value of the assets. So, RP has to obtain undertaking of confidentiality from every member of the COC before providing information memorandum as well as valuation reports submitted by Registered Valuers to them. Similarly obtain confidentiality undertaking from every Prospective resolution applicant before providing all vital information of the CD. But there are instances where RP providing information of the CD without obtaining confidentiality undertaking from the members of the COC as well as from the Prospective resolution applicants. This results in defeating the objective of maximization of the value of the assets and providing privileged access to some of the members over the other members.

Disclosure of information

It is the duty of the RP to provide certain information in the Public domain and does not provide certain information in the Public domain. The information like commencement of the CIRP and also list of Creditors should be displayed on the Public domain in order to obtain claims from the Creditors. This enables the RP to provide information like information memorandum, evaluation matrix, agenda of the COC meeting and minutes of the meeting to the members of the COC after obtaining confidentiality undertaking from them. RP has to provide the information memorandum in electronic format to the members of the COC after obtaining confidentiality undertaking. It is the duty of the RP to provide information and documents to the entitled persons in specified manner and in specified format at specified time after meeting specified requirements. But it is observed in few instances, that the RP is not displaying the information necessary to be displayed in the public domain. Similarly the information not to be displayed in the public domain are displaying in the public domain which defeats the basic objective of the Code.

Window for views

As per CIRP regulation 16A (9) requires the Authorised Representative appointed by the RP to maintain certain timelines. He should circulate the agenda of the meeting of the Creditors in a class and seek their opinion on every item of the agenda. This window for seeking opinion should open at least 24 hours after seeking opinion by the AR. It should open at least for 12 hours for expressing their opinion. Similarly as per regulation 25 (6) of CIRP, every AR should circulate the minutes to the Creditors in a class and seek their voting on the item of the agenda of meeting. This voting window should open at least 24 hours after making announcement of voting and the window of voting should open at least for 12 hours. These timelines are not followed by some of the RP and they may either keep the window open for longer or shorter time than the prescribed timeline and thereby preventing the members of the COC to vote.

Circulation of the minutes of the meeting

The Code and regulations impose obligation on the RP to circulate the minutes of the meeting of the COC to the members in electronic form within 48 hours of conclusion of the meeting. COC is the important body in the IBC and it will take certain important decisions like approval of resolution process or rejection of resolution process etc through its meeting and the decisions taken in the meeting will be reduced to minutes, hence minutes of the meeting are very important. Hence RP has to circulate the minutes to members of COC as well to ARs within 48

hours. But it is observed that certain RP are not circulate the minutes within 48 hours thereby causing delay in taking decisions in the COC.

Insolvency Resolution Process costs

As per Section 5 (13) read with regulation 31 suggests that only certain costs relating to CIRP which will increase the value of assets of the CD only to be included in the IRPC. No other cost is to be included in the cost. But certain RP s are allowing certain costs like travelling expenses of COC members to attend COC meeting, cost related to engagement of Professionals, cost relating to obtaining legal advice or costs incurred by the CD prior to commencement of CIRP etc in the CIRP costs . Hence RPs must be very careful in this regard. But some of the RPs are not adhering to the rules prescribed in this regard thereby liable to pay penalties for not adhering the rules.

Compliances to various laws

As per Section 17(2) (e) of the Code, it is the duty of the RP to report compliances with different laws of the country. If the RP does not comply with these laws, it cause cost to the CD as well as to the other Stakeholders. In case of listed companies, RP has to report compliance with various provisions of the Security law. If he does not report compliance, it cause cost to the investors of the Company. So it the bounden duty of the RP to report compliance to various provisions of law. But it is observed that some of the RPs are not complying with provisions of the law resulting in defeating the objective of the Code i.e maximization of the value of the assets.

Adhering to the timelines

The Code prescribed certain timelines for every task . It is the responsibility of the RP to strictly adhering to the timelines prescribed by the Code. If RP does not adhering to the timelines, it cause cost to the CD as well as to the other stakeholders. Hence RP has to complete each task within the time schedule and also the entire task within the time prescribed in order to achieve the objective of the Code. Some of the RP's are not adhering to the timelines resulting in diminution in the value of the assets of the CD.

Compliance to the Orders of Adjudicating authority

The Adjudicating Authority will issue various directions to the RP while conducting CIRP. It is the duty of the RP to report compliance with the directions issued by the AA otherwise the objective of the code will be defeated. Hence RP has to report compliances with various directions issued by the AA. It is observed that some of the RP are not adhering to the directions

issued by the AA resulting in loss of income as well as drain on scarce resources of the CD resulting in defeating the basic objective of the code.

Maintenance of Records

As per the regulation 39 A of the CIRP regulation, every RP has to maintain the record of the CIRP and produce it before the inspecting officials as and when demanded. As per IP regulation 7 (2) (g) ,every RP has to maintain the record of all the assignments conducted by him at least for a period of three years from the date of completion of the assignment. There are instances, that some of the RP are not maintaining the records of all his assignments resulting in lack of transparency as well as competency on the part of RPs.

Co-operation with inspecting authorities

It is the duty of the IBBI as well as IPA to monitor the conduct of the RPs by means of inspection. IBBI appoint inspecting officials to conduct inspection of the RP to assess the conduct of the RP. It is the duty of the RP to report compliance with inspecting Officials. It is observed that some of the RPs are not maintaining the record of assignments and co-operating with IA for their smooth conduct of inspection thereby creates hindrance to the functioning of the IBBI as well as IPA

Hence IP/RP strictly complies with code of conduct of the IP regulations as well as various provisions of the code and also various other laws in order to smooth completion of the assignments entrusted under the code.

WHETHER THE ADJUDICATING AUTHORITY IS HAVING POWER TO DISPOSE THE PETITION AT A PRE-ADMISSION STAGE?

CS. DR. M. GOVINDARAJAN
Practising Company Secretary &
Insolvency Professional

In corporate insolvency resolution process settlement is possible. The Adjudicating Authority may permit withdrawal of an application for initiation of corporate insolvency process before admission of the application. After admission the Adjudicating Authority may admit the application for withdrawal if there is a settlement arrived between the corporate debtor and the creditors for the payment of dues as agreed to between the parties within the time as accepted by them. The issued to be discussed in this article is whether the Adjudicating Authority may direct the parties to settle the dues and intimate the compliance with reference to decided case law.

Introduction

Corporate Insolvency Resolution Process ('CIRP' for short) may be initiated by a Financial Sector under section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code' for short). Section 7(1) enables the financial creditor to file an application for initiation of CIRP against the corporate debtor before the Adjudicating Authority when a default has occurred. Section 7 is comprised in two parts-

- In the first part the Adjudicating Authority is to admit the application where it is satisfied that:
  - a default has occurred;
  - the application under sub-Section (2) is complete; and
  - no disciplinary proceeding is pending against the proposed resolution professional.
- The second part, empowers the Adjudicating Authority to reject the application where it is satisfied that:
  - default has not occurred; or
  - the application under sub-Section (2) is incomplete; or
  - a disciplinary proceeding is pending against the proposed resolution professional.

The two courses of action are available to the Adjudicating Authority in a petition under Section 7 - the Adjudicating Authority must either admit the application under Clause (a) of sub-Section (5) or it must reject the application under Clause (b) of sub-Section (5). The statute does not provide for the Adjudicating Authority to undertake any other action. If the Adjudicating Authority is of the opinion that a 'default' has occurred, it has to admit the application unless it is incomplete.

Settlement

Even after filing the application for initiation of CIRP the corporate debtor may come forward settling the matter with the creditors immediately or with the timelines for settlement. If any agreement for settlement reaches then the application may be withdrawn. Section 12A of the Code provides that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of 90% voting share of the committee of creditors, in such manner as may be specified.

Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides that an application for withdrawal under section 12A may be made to the Adjudicating Authority –

- before the constitution of the committee, by the applicant through the interim resolution professional;
- after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional.

Issue

The issue to be discussed in this article is whether the Adjudicating Authority can dispose the application with the direction to the corporate debtor to settle the dues of the creditors within the prescribed time with reference to decided case law. The Code provides only for the admission of the application or rejection of the application. Once the application is admitted the CIRP will be commenced on the date of admission. If the application is rejected the Adjudicating Authority is to state reasons for such rejections. However there is no explicit provision for the Adjudicating Authority to dispose the application without adopting the options available either to admit or reject the application.

Case law

In **'E.S. Krishnamurthy & Others v. Bharat Hi Tech Builders Private Limited' – Supreme Court – Civil Appeal No. 3325 of 2020 – decided on 14.12.2021**, a Master Agreement to Sell was entered into between the respondents and IDBI Trusteeship Limited and Karvy Realty (India) Limited on 22.06.2014 to raise an amount of Rs.50 crores for the development of 100 acres of agricultural land. According to this agreement the Facility Agent was to sell the plots to the prospective purchases against the payment of a lump sum amount and the respondent will pay interest @ 25% compounded annually to the purchaser. The ninth appellant was

allotted a plot developed by the respondent on the payment of Rs.12.50 lakhs. The respondent was to register the plot within 21 months from the date of agreement i.e. 21.03.2016.

A syndicate loan agreement was signed by the respondent with IDBI Trusteeship Limited and Facility Agent on 22.11.2014 to avail a term loan of Rs.18 crores from prospective lenders. According to this agreement the respondent would use this sum for the development of the residential plots. The respondent is to pay an assured return of 20% on the principal amount for 24 months. In the event of default the respondent is to pay additional interest @ 1% per month.

Based on the advice of the Facility Agent and its sister concern the appellant excepting the ninth appellant extended loans to the respondent. On 29.02.2016 one was allotted a plot under the Master Agreement. The respondent sought an extension of time till 31.10.2016 for conveying the plot. If he fails to do the same the respondent would refund the entire amount with interest. But the respondent did not refund the amount with interest. Instead against sought an extension for 12 months with an assurance that he would repay the entire amount in three months after the expiry of due period.

On 26.04.2019, 11 appellants out of 17 appellants filed an application before the Adjudicating Authority under section 7of the Code for initiating corporate insolvency resolution process against the respondent for the default of payment of Rs.33.84 crores. The Adjudicating Authority adjourned the hearing held on 11.09.2019 since the parties were attempting to settle the issue. Further adjournments were given by the Adjudicating Authority to pave the way for settlement.

The Adjudicating Authority disposed the application on the following factors-

- The respondent's efforts to settle the dispute were *bona fide*, as evinced by the fact that they had already settled with 140 investors, including 13 petitioners before it.
- The settlement process was underway with 40 other petitioners.
- The procedure under the Code was summary in nature, and could not be used to individually manage the case of each of the 83 petitioners before it.
- Initiation of CIRP in respect of the respondent would put in jeopardy the interests of home buyers and creditors, who have invested in the respondent's project, which was in advanced stages of completion.

The Adjudicating Authority directed the respondent to settle the remaining claims within 3 months. If any person is aggrieved by the settlement process they will be at liberty to approach the Adjudicating Authority again.

Against the order of Adjudicating Authority, 7 of the original petitioners before the Adjudicating Authority filed appeal before National Company Law Appellate Tribunal ('NCLAT' for short). Certain other allottees, who are not the petitioners before Adjudicating Authority, also joined in the appeal along with the appellants. Vide their order dated 30.07.2020 the NCLAT dismissed the appeal upholding the order of the Adjudicating Authority. The NCLAT considered the following for its arriving at the dismissal order-

- The Adjudicating Authority decided to dismiss the petition under Section 7 at the 'pre-admission stage' itself, since the settlement process was underway.
- The Adjudicating Authority protected the rights of all the appellants/petitioners by setting a time-frame for settlement by the respondent, and leaving them open the option of approaching it in case their claims remained un-settled.
- While the timeframe for settlement had elapsed, the respondent had to be shown leniency due to the effects of the COVID-19 pandemic on businesses.
- In disputes of this nature, the claims of the home buyers have to be given priority, and the respondent should not be pushed into liquidation, until as the last resort.

The appellants before NCLAT, along with other certain parties, filed the present appeal before the Supreme Court challenging the order of NCLAT.

The appellants submitted the following before the Supreme Court-

- The Appellate Authority as well as the Adjudicating Authority have acted beyond the scope of their jurisdiction under the Code, and thus their orders are liable to be set aside since they were *coram non judice*.
- The impugned orders are contrary to the mandate of Section 7 of the Code.
- Section 7(5) only provides the Adjudicating Authority with two options – to pass an admission order under Section 7(5)(a) or reject the petition under Section 7(5)(b).
- Unless the debt has not become due or is interdicted by some law, the Adjudicating Authority must admit a petition under Section 7.
- The respondent has committed an act of default as understood in the provisions of Section 3(12) of the Code.
- The Appellate Authority has also erred in observing that the petition under Section 7 was disposed of at a 'pre-admission stage' by the Adjudicating Authority.

- The Adjudicating Authority and Appellate Authority have acted beyond the scope of their jurisdiction in 'directing' the parties to settle with the respondent.
- The Adjudicating Authority as well as the Appellate Authority are creatures of the statute – the Code – and are bound by its provisions. Thus, their jurisdiction is limited by the provisions of the Code.
- The Adjudicating Authority has acted patently beyond its jurisdiction in not entertaining it on the ground that there was a possibility of a settlement.
- The Adjudicating Authority and Appellate Authority have acted as courts of equity, which is not prescribed by the IBC.
- The direction by the Adjudicating Authority to the respondent to settle all individual claims is beyond its jurisdiction, as a judicial authority cannot dispose of a petition with a *direction* to settle a dispute.

The appellants have prayed that the orders of the NCLAT and NCLT be set aside, and the original petition under Section 7 of the Code be restored for a decision on its admissibility under Section 7(5) of the Code.

The respondent submitted the following before the Supreme Court-

- The present appeal has been filed by the appellants to obviate the procedural requirements of Section 7 of the Code.
- Out of these 83 petitioners, only 7 of the original petitioners (including the first appellant) approached the NCLAT in appeal.
- The Code requires (10 % or 100 home buyers) for filing a petition under Section 7, with the objective of protecting a corporate debtor from being dragged into insolvency proceedings by an isolated set of creditors.
- If the appellants have to file a fresh proceeding before the Adjudicating Authority or if their proceedings are restored before the Adjudicating Authority at this stage, they would still have to fulfill the mandatory requirement of bringing together 100 creditors in the same class or 10 per cent of the total number of such creditors.
- Even after the disposal of the proceedings by the Adjudicating Authority, the respondent has continued to settle with proposed purchasers. However, while numerous efforts have been made to arrive at a settlement with the appellants, none of the options offered were agreeable to them;
- The respondent should not be pushed to insolvency merely because a few of its alleged creditors are not willing to settle.
- The appellants are merely speculative investors and are not allottees within the meaning of Section 5(8)(12) of the Code, and thus they have no claim under Section 7 of the Code.

- The appellants are utilizing the process to facilitate recovery whereas the primary focus of Code is to ensure revival and continuation of the corporate debtor, and to protect it from corporate death by liquidation.

The Supreme Court considered the arguments by the parties to the present appeal.

The Supreme Court considered the question to be decided in the present appeal is whether the Adjudicating Authority and the NCLAT were correct in their approach of rejecting the appellants' petition under Section 7 of the Code at the 'pre-admission stage', and directing them to settle with the respondent within 3 months.

The Supreme Court analyzed the provisions relating to admission/rejection of the application filed for initiation of CIRP and also the provisions for withdrawal of application by means of settlement reached between the creditor and the corporate debtor.

The Supreme Court observed that the Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute. Therefore, the Supreme Court held that the Adjudicating Authority has clearly acted outside the terms of its jurisdiction under Section 7(5) of the Code. What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by the Code. While the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as courts of equity. In this case a settlement has admittedly not been arrived at by the respondent with all the appellants.

The Supreme Court held that the order of the Adjudicating Authority, and the directions which eventually came to be issued, suffered from an abdication of jurisdiction. The Appellate Authority sought to make a distinction by observing that the directions of the Adjudicating Authority were at the 'pre-admission stage', and that the order was not of such a nature which was prejudicial to the rights and interest of the stakeholders. The Supreme Court allowed the appeal and set aside the order of Adjudicating Authority which was confirmed by the NCLAT and directed to restore the application to the Adjudicating Authority for disposal afresh.

A STUDY OF IMPACT OF IBC ON THE BANKING ECOSYSTEM IN INDIA

Dr. S K Gupta
Managing Director
ICMAI Registered Valuers Organization

Hitesh Mundra, Advocate
Graduate Insolvency Program, IICA

The growth and development of any country depend on the economy of the country. Various sector contributes to it. One of the major contribution and economy of country grow through banking sector. Without an effective banking system, no country can have a healthy economy. while lending money to public, bank is usually at great risk as there is always an uncertainty of getting back that money and if they do not repay then bank will end up having non-performing asset or stressed asset. Non-performing asset affects the profitability and the financial health of the bank. The paper attempts to assess the impact of Insolvency and Bankruptcy Code on the Banking ecosystem in India.

The Perspective

Banking sector plays a very significant role in the growth and development of nation and it is considered as the backbone of any industry. The financial sector reforms as led by Shree M. Narasimhan Committee in 1991, the banking system of India has undergone significant transformation with a vision and mission to boost the banking sector and its operations in the economy.

The Indian Banking System comprises of Scheduled and Non- Scheduled banks. Schedules banks are included under the 2nd Schedule of Reserve Bank of India, Act 1934, where it is further classified into nationalized banks; State Bank of India and its associates; Regional Rural Banks ("**RRBs**"); foreign banks; and other Indian private sector banks. The term commercial banks refer to both scheduled and non-scheduled commercial banks regulated under the Banking Regulation Act, 1949.

The banking industry is critical to the country's development and is regarded as the backbone of a country's economy. The primary tasks of banks are to take public deposits and to lend the money for investment or loan purposes. Scheduled and non-scheduled commercial banks are governed under the Banking Regulation Act of 1949, and are referred to as commercial banks. However, over the previous decade, the Indian banking sector has faced several challenges. A large percentage of nonperforming assets ('**NPAs**"), have caused problems for banks, businesses, and individuals. The financial system has a significant impact on the country's economic growth. The Reserve Bank of India ("**RBI**") maintains control over the banks through

monitoring the Cash Reserve Ratio ("**CRR**"), Statutory Liquidity Ratio ("**SLR**"), and Repurchase Obligation Rate ("**Repo Rate**"), among other things.

NPAs are the strongest indicator of a country's banking sector's viability. The Indian banking industry has been facing the prospect of rising NPAs, which is impacting bank profitability as well as liquidity. The Insolvency and Bankruptcy Code ("**IBC**"/" **Code**") was implemented in 2016 as an instrument to address the issue of NPAs. The goal of this article is to understand the effect the Code has had on the Banking Ecosystem in India.

Concept of Non-Performing Assets

NPAs are assets that do not generate a profit for the lender. When a borrower does not repay a debt for more than 90 days, it is regarded as non-performing. The entire value of all loan assets, referred to as gross NPAs, reflects the quality of the bank's loans. Net NPAs are those for which the bank has created a provision, indicating the true burden on the lenders. Several studies have been undertaken to determine the trajectory of NPAs.

The NPAs of the bank can be classified into following categories:

1. **Gross NPA:** It is the amount of all the NPAs which are shown on a given date. Gross NPA includes all the assets which could be sub-standard, doubtful and loss assets.

2. Net NPA: It is the amount of NPAs for which bank has provided provisions for it. It is the real burden of any bank. The difference between Gross NPA and Net NPA is on the account of the provisions made by the bank.

Evolution and Objectives of IBC

Efficient allocation of resources requires strong insolvency laws that allow failing businesses to close efficiently and encourage new ventures. Business failures in a market-driven economic system cannot be avoided. However, they need to be managed in a way that causes the least disruption to the affected stakeholders and the economy. Strong insolvency laws are also important for ensuring the availability of credit for households and businesses.

Despite being an essential requirement for a well-functioning economy, India lacked a robust insolvency regime until 2016. This led to several inefficiencies and contributed to the worsening of the 'non-performing loans crisis' or the 'NPA crisis' in the Indian banking sector. The NPA crisis exerted significant pressure on bank lending, increased the cost of capital and made it considerably difficult for small businesses and individuals to obtain loans. Given this gap, the need to reform the insolvency regime in India was of paramount importance.

Pre-IBC regime was the one where the creditors' rights were dispersed across different legislations. The creditors' authority to control the process and use it to prolong debt recovery while continuing to control the company's management was an obvious flaw in this system. A glaring fallacy of this regime was debtors' power to control the process and using it to delaying the recovery of debt and at the same time continuing over the management of the company. The consequence was the loss to creditors and the Bank's rising NPAs.

IBC, in that regard has a very surgical approach in terms of enforcing the creditors rights and also facilitating a fundamental change in the organization of a corporate debtor by curing the basic reason that led to the corporate debtor not being able to repay its debts. While IBC covers the mechanism for the creditors to bring to light debt defaults, it also gives a chance to the ailing corporates to maintain their economic value through the Corporate Insolvency Resolution Process ("**CIRP**") which provides a breathing space to the Corporate Debtor ("**CD**") in the form of the moratorium which in turn gives it a chance of continuing its operations as a going concern. An opportunity is given for the transfer of economic resources of the CD in more efficient hands.

One of the major concerns on the debtor's side is the discontinuity of the incumbent board over the management of the corporate entity. However, one basic rationale that emanates from IBC is that the corporate entity for its economic value deserves a second chance, but the board might not. Therefore, a scrutiny of the corporate debtor's books of accounts is entailed by the Insolvency Professional during the CIRP process. In that regard, section 29A of IBC also restricts the corporate debtor or related parties to propose a resolution plan. A recent change in the IBC has attempted to move away from this 'strict' approach towards the management of the corporate entity undergoing resolution process. This is in the form of 'pre-packaged' insolvency resolution process for Medium and Small Enterprises in which the board of the corporate debtor is not suspended and remains in control of the management subject to the supervision of Insolvency Professionals.

These changes depict that the IBC is striving to strike a balance between the creditors as well as debtors, something that was much needed and was also the call of prudence considering the burgeoning non-performing assets that have affected the economy of the country.

Impact of IBC on the Banking ecosystem

During the global meltdown in 2008, Indian banks believed that they are the strongest and are not subjected to risks. The truth is that in level playing fields, globally all the institutions are prone to the same risks and are expected to address similar challenges. Banks in India including branches of foreign banks have lost significant money for reasons owed to bad credit decisions; low level of enforceable security and no easy resolution coming from the then existing laws. On

one hand, the banking industry has the gigantic problem of NPAs and potential NPAs while on the other hand there are challenges on the capital

Since, the resources are limited, they must be used where they will have the most impact on economic growth. This allocative role is performed by the market, as long as exit is not stymied or the artificial hurdles to exit do not obstruct dynamic efficiency of the market. IBC aims to achieve the same by paving an alternative route and reducing the burden it has.

One of the key drivers of economic progress in India will be the efficient movement of capital from inefficient firms to efficient ones. The economic downturn caused by the coronavirus pandemic has been severe, and India's economy was severely affected in 2020–2021. Though the economy is recovering faster than initial estimates, sustained economic recovery will not take place if stressed businesses cannot restructure their debts properly or if failing firms cannot be resolved efficiently. India's bankruptcy law is key to solving these challenges.

India historically suffered from a patchwork framework of insolvency laws that either did not give lenders adequate powers to recover their debts upon default or only catered to the interests of certain kinds of lenders—to the exclusion of others. The IBC is a modern and comprehensive bankruptcy law that since its enactment has had a significant role in reducing the problem of NPAs, or "bad loans," in India's financial system and has also brought about significant changes in the Banking ecosystem in India.

Change in Credit Culture in India

A credit ecosystem that effectively balances the rights of creditors and debtors lies at the heart of the development process of capital markets and increase in entrepreneurial activities. In this respect, bankruptcy procedures must ensure not only the rescue of viable businesses, but also the preservation of borrowers' repayment incentives. The aggregate of a lending institution's credit ideals, attitudes, and actions is referred to as credit culture. A financial institution's lending and credit risk management systems and processes are heavily influenced by its credit culture. The ultimate goal of a credit culture is to create a risk management environment that promotes efficient financing.

Prior to the enactment of the IBC, India's Credit had a concern of justice and fairness, since the debtor's repaid loan primarily out of moral compulsion, further the time-consuming legal process and other complexities has made it difficult for creditor to realize the money. The IBC has contributed to the country's credit culture in becoming more disciplined by bringing in a sense of fairness. It has been successful in establishing a credit culture that discourages defaults and assuring timely resolution of debts settlement. The IBC has been able to bring in this paradigm shift to the country's credit culture by introducing a creditor in control model and an associated risk to all the debtor's of losing control of their firm has not only acted as a

deterrent to the debtor's but has also encouraged credit culture. The creditor in control model grants an additional right to creditors on the failure by debtors to meet with its obligation, this right has been able to create a risk management climate that fosters entrepreneurship and start-up culture.

IBC has strengthened creditors' roles and evolved India's corporate credit culture. It has also influenced the behaviour of corporate debtors by ingraining credit discipline. The impact of the IBC has been exacerbated by the notification of regulations pertaining to the initiation of insolvency of personal guarantors to corporate debtors.

One of the major changes that the IBC has brought about is with respect to the strengthening the creditors rights. The last legislative action in this regard was enactment of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 ("**SARFAESI**") that enabled secured creditors to take possession of collateral without requiring the involvement of a court or tribunal. However, the creditors also can be divided into further categories and majorly the secured and unsecured creditors. While SARFAESI took into account the plight of the secured creditors the unsecured creditors like the suppliers, decree holders and other parties that extend credit in the process of operations were majorly neglected and had no streamlined process to recover their debt. IBC, in that regards takes into account the plight of the same and has divided creditors into Financial Creditors and Operational Creditors wherein the Financial Creditors are largely the creditors who have their debt secured. However, what is imperative to be considered is that the primary objective of IBC is not recovery and is the reorganization of a corporate debtor who is not able to meet its debt obligations. In that light it the 'recovery' part of the debt resolution process naturally takes a side stand.

While IBC includes Operational creditors under its ambit, it is important to note that the Financial Creditors and Operational Creditors cannot be considered to be on the same footing. This difference of balance between the two forms of creditors is also to be seen through the spectrum of the objective of the IBC which is to reorganize the debt in a way so as to retrieve a failing corporate that is not able to repay its debts and to keep it as a going concern. In that light the recovery of the debt tends to take a side stand.

According to the Economic Survey 2020-2021, debtors have opted to settle numerous cases even before they were admitted to the National Company Law Tribunal ("**NCLT**"). Unscrupulous elements changing the debtor-creditor relationship are being deterred by the fear of losing their businesses permanently. Furthermore, about 83 percent of cases were settled voluntarily by the parties, before the formal start of the corporate insolvency resolution plan under the code. The Code has brought about a paradigm shift in the Creditors and Debtors relationship.

IBC and its impact on NPAs.

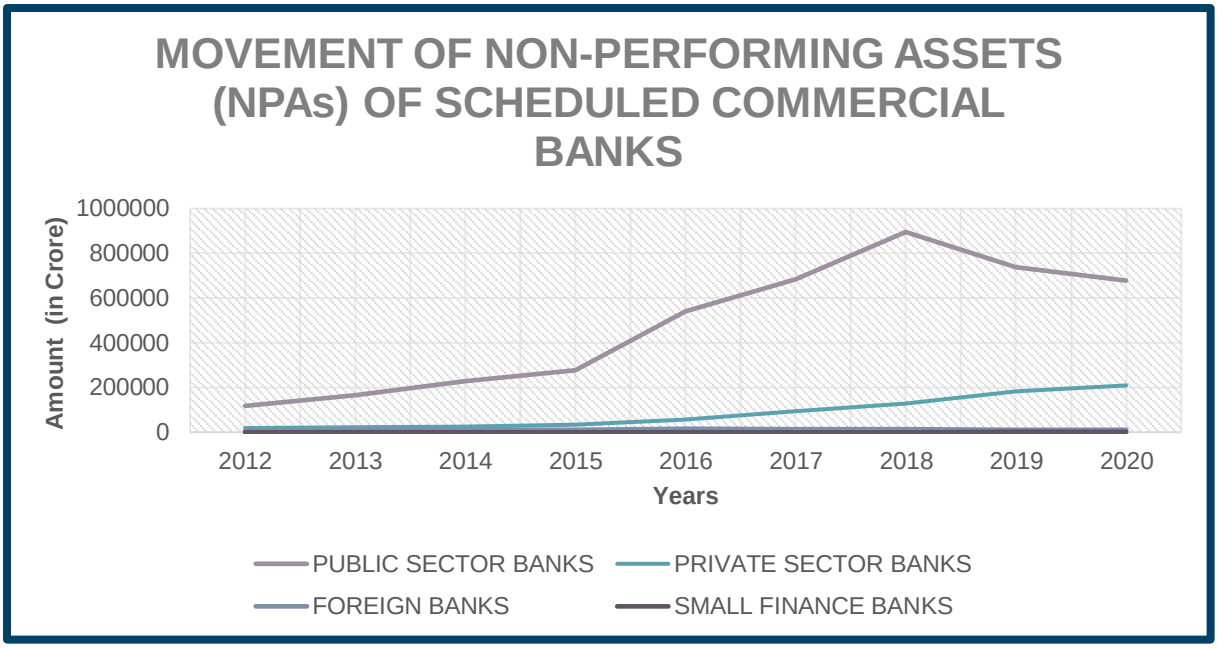
Earlier process of resolving NPA's were ineffective as they were tailor made for Financial Institution and were inefficient in resolving the debts of other creditors. Existing mechanisms for resolving NPAs were suboptimal. These mechanisms were created mostly by the RBI and thus excluded other creditors who were not banks. RBI mechanisms that tried to co-opt other creditors did not work, and other mechanisms allowed certain creditors to walk away with secured assets but provided nothing for unsecured creditors. There was no mechanism that brought together different kinds of creditors into the same forum and gave them equal places at the bargaining table. In addition, existing mechanisms left debtors' owners and management in charge of the firms. This made it harder for creditors to get adequate information to resolve NPAs efficiently.

The IBC was introduced as a critical element of the solution to India's long-standing NPA problem. Following its enactment, and amendments to banking regulation legislation, the RBI issued a circular directing banks to mandatorily take all nonperforming loans through the bankruptcy framework within stipulated time frames.

IBC has been successful in lowering the bank's nonperforming assets (NPAs). As of now, the IBC remains the finest mechanism for resolving bad debts in India's financial sector, with debt recovery rates much above those of other resolution processes in the country.[1] "Recovery of stressed assets increased from 2018 onwards, pushed by resolutions under the IBC, which contributed more than half of the total amount recovered," according to the RBI's 2020 Report on Trend and Progress of Banking in India.

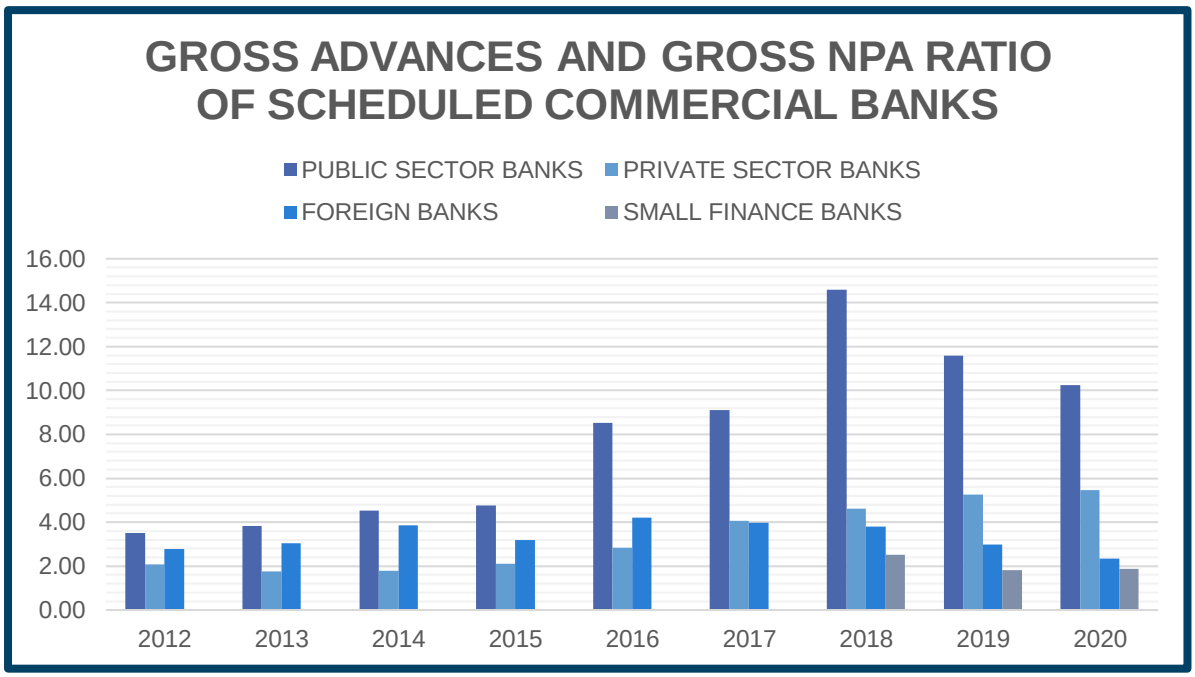
If a creditor defaults, the IBC permits any creditor to initiate an insolvency process. Cases have also been resolved significantly more quickly under the IBC than under alternative resolution regimes. The IBC takes 394 days on average to complete a case, compared to 4.3 years in non-IBC settings. However, it is pertinent to note that the IBC is not a fix for the NPA issue of the banking sector.

[1] *Standing Committee on Finance, Sixth Report of the Standing Committee on Finance, Seventeenth Lok Sabha: The Insolvency and Bankruptcy (Second Amendment) Bill, 2019 (New Delhi: Lok Sabha Secretar- iat,, March 2020), http://164.100.47.193/lsscommittee/Finance/17_Finance_6.pdf, para. 2.6.*



Source: *"Database on Indian Economy" by the RBI.*

This graph is a clear representation of the problem faced by Scheduled Commercial Banks. They have the heaviest burden of NPAs. The NPAs climbed steeply from 2015 and peaked in 2018. This graph demonstrates the aftereffect of the promulgation of IBC.



Source : *"Database on Indian Economy" by the RBI.*

Gross NPAs of Public Sector Banks dropped by around INR 61224 crores from INR 739541 to INR 678317 crores as of March 31st, 2020, indicating considerable alleviation in the preceding financial year. Furthermore, from the previous year to end-March 2020, the banking sector's Gross NPAs decreased by 3.91 percent.

The majority of the Corporate Debtors on the Reserve Bank of India's initial list of bankrupt companies have been resolved or are in the process of being resolved. Only Lanco Infratech and ABG Shipyard are in dire straits liquidation. Five of the above Corporate Debtors have undergone change in management control and three are on their way to resolution merely three years after the RBI submitted the list of 12 Corporate Debtor for initiating the proceedings under Code.

The IBC was designed to overcome the challenges the banks experienced with prior plans to handle the NPA crisis in a set period of time. Secured lenders might take over the company's administration under the SARFAESI. For honest businessmen, the CIRP simply helped provide the borrower a longer time period to pay up. But, despite the concessions, too many CIRP instances did not benefit the banks since the firms remained sick and in-debt. The most significant benefit of the IBC is that it follows a very transparent procedure and the takeaway for banks is that they must be significantly more cautious and conduct far more due diligence when making loans.

The Code ensure a check not only on promoters but also on banks, Bankers had always shown a tendency in avoiding recognition of non-performing accounts and schemes like Strategic Debt Restructuring ("**SDR**") were used for avoiding downgrade opposite to the actual intent of resolving the distress. The IBC ensures that banks should refer specific cases of default against big borrowers for resolution and information symmetry as provided by the Information Utility makes it difficult for banks to neglect defaulters.

Lending money for acquisition of distressed assets

The banks today do not seem to be proactive to lend money for the acquisition of distressed assets. The Non-Banking Financial Companies ("**NBFCs**") have their own challenges. For the complete success of IBC and for the companies to revive, it is important that the entire marketplace and infrastructure is built which is complementary and paves way for the revival of the company on one hand and return on capital to the investors on the other hand while addressing the concerns of the creditors. It is important to understand that in such marketplace, the interest of each stakeholder which includes promoter, creditor, investor and shareholder is taken care of. The regulatory hurdles which deny or delay the infusion of capital need to be addressed. The interest of the investor, who is willing to invest in stressed asset opportunity must be protected by consistency in the government policies, particularly in infrastructure projects which include power, renewable energy and concession agreements around it. The sanctity of the contract and honouring the commitment on a long term basis especially by the government-owned institutions is non-negotiable. The trust of the investor cannot be broken which requires a strong commitment from the policymakers as well.

In developed countries where insolvency laws are matured, bank funding is available with a prior charge to meet the litigation costs as well as any urgent money required to revive the company. In India, there is scepticism around this and banks will take time to fund till their risk is mitigated. The banking industry is and is likely to agree to haircuts, restructuring of debt, etc., as per the sanctioned resolution plan. Where sound corporates are acquiring the businesses/companies under IBC, the said investors shall definitely get bank funding based on their credentials.

Overall, two main points can be highlighted. First, there is an increase in both long-term and short-term debt, and a reduction in the cost of debt for distressed firms after the IBC reform as opposed to non-distressed firms. Second, there is a notable improvement in the financial performance of distressed firms as highlighted by the return on assets after the IBC policy relative to non-distressed firms.

Conclusions and way forward

It has been only 5 years since IBC, 2016 has been implemented and it is considered to a revolutionary not only in India but globally. IMF and world bank has also reacted positively to the implementation of IBC, 2016 in India and it has resulted in the improvement of ranking of India, in terms of ease of doing business. IBC, 2016 does not comes with a magic wand where the problems of NPAs which existed since year, can be solved by a wand. This is definitely beginning of a new era in the whole economy where there is shift from debtors to creditors and creditor is given supremacy and he takes control of debtor’s assets

The Code has established a far stronger sense of credit discipline, as well as a feeling of urge ncy and seriousness among defaulting borrowers, who are well aware that losing their assets is a distinct possibility if the resolution procedure fails. Differential therapy is required when dealing with large amounts of NPAs. Higher NPAs, for example, should be addressed differently than lower NPAs. It's about time to start putting the Sunil Mehta Committee's recommendations into action. Furthermore, the time restriction for bringing the resolution plan to fruition should be proportional to the quantum of NPAs.

We conclude that the results of the paper are relevant to the current academic and policy debates on safeguarding and preserving businesses in the midst of the current Covid-19 crisis, which is likely to drive many businesses into bankruptcies. Given the profound implications of this Covid-19-induced pandemic, fostering a deep understanding of the provisions is paramount to avoid bankruptcy. A strong bankruptcy system can not only support financially distressed companies to benefit from a quick and long-lasting revival process, but also it can make lenders more confident to lend to enable better credit access by firms under stressed scenarios. Covid-19 induced global lockdowns increased bankruptcies, the primary objective of the IBC post pandemic has been to build faith in credit markets in India. Confidence in the system to resolve

bankruptcies enhances willingness of lenders to lend more with lower risk premiums for credit. From a lenders point of view the ease of resolving credit issues will encourage them to lend more at lower rates. Stressed credit markets are exactly where credit redressal mechanisms like IBC shine and deliver real value thereby contributing to the economy of the country.

The government should definitely come out with changes in the law for cross border insolvency and group insolvency as these two areas need a priority in amendment of the code. The government will have to recognise that the top of the pyramid cases have already come into the IBC, now the middle and bottom of the pyramid cases are the most challenging ones because you won't find investors interested in these small companies. Lessons from the current credit markets and it's due incorporation into the IBC will further benefit the economy of our country in the future years.

End Note:

1. *Government of India, Insolvency and Bankruptcy Code, 2016*
2. *Government of India, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*
3. *Government of India, Banking Regulation Act, 1949.*
4. *Government of India, Recovery of Debts and Bankruptcy Act, 1993*
5. *Bankruptcy Law Reforms Committee, Report of the Bankruptcy Law Reforms Committee, Volume I and II, November 4, 2015*
6. *Reserve Bank of India, Resolution of Stressed Assets—Revised Framework, RBI/2017-18/131, February 12, 2018 (Mumbai: Reserve Bank of India, 2018).*
7. *Standing Committee on Finance, Sixth Report of the Standing Committee on Finance, Seventeenth Lok Sabha: The Insolvency and Bankruptcy (Second Amendment) Bill, 2019 (New Delhi: Lok Sabha Secretariat,, March 2020),*
8. *Reserve Bank of India, Database on Indian Economy, 2011-2020*
9. *Reserve Bank of India, Report on Trend and Progress, December 29, 2020*
10. *Reserve Bank of India, Financial Stability Report, July 01, 2021.*
11. *Reserve Bank of India (2019), Notification on "Prudential Framework for Resolution of Stressed Assets", RBI/2018-19/203, June 07, 2019,*
12. *Reserve Bank of India (2019), Notification on "Resolution Framework for COVID-19-related Stress", RBI/2020-21/16, August 6, 2020.*
13. *Arpan Chaturvedi, "RBI Can't Issue Umbrella Directions to Banks to Initiate Insolvency, Says Supreme Court," Bloomberg Quint, April 2, 2019, Site: https://www.bloombergquint.com/law-and-policy/rbi-cant-issue-umbrella-directions-to-banks-to -initiate-insolvency-says-supreme-court.*
14. *Dr. M.S. Sahoo, "Freedom to Exit; IBC 2016 builds the third pillar of Economic freedom", Insolvency and Bankruptcy Board of India Site: https://ibbi.gov.in/uploads/resources/the%20Insolvency%20and%20Bankruptcy%20Code,%202016%20builds%20the%20third%20Pillar%20of%20Economic%20Freedom%20in%20IBBI%20Newsletter%20October-December%202016.pdf.*
15. *N.S. Vishwanathan, "Some Thoughts on Credit Risk and Bank Capital Regulation" speech delivered at XLRI, Jamshedpur, Reserve Bank of India, October 29, 2018, Site: https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/FSXLRI39E59EDBC6BA4EB0983EB02B785C797E.PDF.*
16. *N.S. Vishwanathan, "It is not Business as Usual for Lenders and Borrowers", Speech delivered at National Institute of Bank Management, Reserve Bank of India, April 18, 2018, Site: https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/ITBUSINESSB9255A493C264AF8AAB2F5D5430F41A4.PDF*.
17. Pronab Sen, "What ails the Indian banking sector?", Livemint, 20 September, 2018, Site: *https://www.livemint.com/Opinion/g5TJdUlkCx1bhq5vZ7bbFI/Opinion--What-ails-the-Indian-banking-sector.html.*

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

- **Jagdish Prasad Sarada v. Allahabad Bank [2020] 119 taxmann.com 244 (NCL-AT)**

Where appellant's account was declared as NPA by bank on 30-9-2015, insolvency proceedings initiated on 31-12-2018, i.e., three years after declaring account as a non-performing asset, were to be set aside.

Held that provisions of Limitation Act, 1963 vide section 238A of the IBC will be applicable to all NPA cases provided they meet criteria of article 137 of Schedule to Limitation Act. Further extension for period of Limitation can only be done by way of application of section 5 of the Limitation Act, if any case for condonation of delay is made out. Date of default is computed from date of declaration of account as a NPA (Non Performing Asset) and determining factor is three years period from date of default/NPA. Therefore, where appellant's account was declared as NPA by bank on 30-9-2015, insolvency proceedings initiated on 31-12-2018, i.e., three years after declaring account as a NPA were to be set aside.

Case Review : Allahabad Bank v. Sarda Agro Oils Ltd. [2020] 119 taxmann.com 243 (NCLT - Hyd.) set aside.

SECTION 5(8) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- **Vipul Ltd. v. Solitaire Buildmart (P.) Ltd. [2020] 119 taxmann.com 246/[2021] 163 SCL 160 (NCL-AT)**

Application seeking CIRP by one partner of Joint Development Agreement against another for any breach of terms of contract was not maintainable as amount due under such agreement could not be construed as a financial debt.

Parties with a specific purpose of developing an integrated township entered into various agreements. As per the Master Development agreement, sharing ratio of appellant and respondent was 75 percent and 25 percent respectively. The appellant alleged to have incurred an amount of Rs. 1.37 crore towards respondent's share of cost in project and respondent had made part payment of Rs. 26 lakh only and balance amount of Rs. 1.11 crore was due and payable. The appellant admitted that there was joint partnership agreement which emphasized that parties had mutual right to control enterprise involving mutual duties and obligations.

Held that amount due under said agreement could not be construed as a financial debt and for any breach of terms of such agreement, CIRP application was not maintainable.

Case Review : Solitaire Buildmart (P.) Ltd. v. Vipul Ltd. [2020] 119 taxmann.com 245 (NCLT - New Delhi), affirmed.

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- **Allied Silica Ltd. v. Tata Chemicals Ltd. [2020] 119 taxmann.com 248 (NCL-AT)**

Where dispute was raised by corporate debtor even prior to receipt of demand notice, regarding non-compliance of business transfer agreement by operational creditor, CIRP application was to be dismissed.

Parties entered into a Business Transfer Agreement (BTA) for transfer of undertaking on a slump sale basis at a lump sum amount of Rs. 123 crores. The applicant contended that slump sale was consummated and possession of undertaking was handed over by the applicant to the corporate debtor, but the corporate debtor had transferred only a sum of Rs. 65 crores and balance amount along with interest remained outstanding. The corporate debtor however disputed that applicant was in non-compliance of said BTA and, therefore, was not liable to receive further payments under BTA. E-mail communications between the applicant and the corporate debtor reflected that dispute existed between parties regarding alterations in BTA even prior to receipt of demand notice. Also, on demand notice issued by the applicant, the corporate debtor replied to same within statutory period raising dispute with regard to claim of applicant and non-compliance.

Held that CIRP application filed by the applicant against the corporate debtor was to be dismissed .

Case Review : Allied Silica Ltd. v. Tata Chemicals Ltd. [2020] 119 taxmann.com 247 (NCLT - Mum.), affirmed.

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

- **Invent Assets Securitization and Reconstruction (P.) Ltd. v. Xylon Electrotechnic (P.) Ltd. [2020] 119 taxmann.com 250 (NCL-AT)**

Determination of claim of proceedings before DRT could not extend time or exclude period of limitation neither it could be a continuance of cause of action as proceedings taken before DRT was not pursued before a wrong forum, and CIRP application filed against corporate debtor for default in 2010 was barred by limitation.

Cash credit facility was sanctioned by Union Bank in favour of the corporate debtor in January, 2008. Union Bank classified account of the corporate debtor as NPA in February, 2010. Debt was assigned to the appellant reconstruction company by Union Bank. CIRP application filed by the appellant was rejected by NCLT on ground that claim of the appellant was barred by limitation. The appellant-financial creditor contended that debt had been acknowledged by the corporate debtor in its balance sheet of financial years from 2010 to 2016. Further, Union Bank had filed for recovery of outstanding financial debt before DRT in February, 2011 which was allowed and appeal against Judgment of DRT was pending before DRAT. It was noted that no acknowledgement had been made in writing by the corporate debtor.

Held that determination of claim of proceedings before DRT could neither extend time nor exclude period of limitation. Proceedings taken before DRT could not be a proceeding being pursued before a wrong forum nor could that be a continuance of cause of action. Ground of limitation being extended on account of financial debt being reflected in balance sheet of the corporate debtor was also to be repelled and CIRP application for default of debt which occurred in February, 2010 was barred by limitation.

Case Review : Invent Assets Securitization and Reconstruction (P.) Ltd. v. Xylon Electronic (P.) Ltd. [2020] 119 taxmann.com 249 (NCLT - Ahmedabad), affirmed.

SECTION 3(12) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEFAULT

- **Park Energy (P.) Ltd. v. Syndicate Bank [2020] 119 taxmann.com 252 (NCL-AT)**

Default could not be attributed to corporate debtor where money deposited with trust and retention account was already available for release to financial creditors but same was not released due to inter-se dispute among financial creditors.

The corporate debtor which operated and developed power generation assets in India, set up a thermal power plant. In order to meet working capital requirement of project, the corporate debtor entered into a Working Capital Consortium Agreement ('WCCA') with Punjab National Bank (as lead Bank), Indian Bank, Vijaya Bank, State Bank of Hyderabad and Syndicate Bank

(respondent No. 1). Since the corporate debtor failed to repay loan, respondent no. 1 declared account of the corporate debtor as NPA and thereafter filed an application under section 7. It was found that lenders (both Working Capital and term loan) and the corporate debtor entered into a Trust and Retention Account ('TRA') and in terms of TRA, all of the corporate debtor's revenues were to flow into TRA and only PNB had authority to disburse funds from this account to other lenders. Further, Lead Bank had conveyed to respondent no. 1 that it shall have to issue a Letter of Credit before release of payment by the corporate debtor but respondent no. 1 did not comply.

Held that the corporate debtor having performed his part of contract by placing its entire collection in TRA in accordance with terms of agreement could not be said to be in default. Release of amount due to respondent no. 1 in terms of 'Punjab National Bank Consortium Inter-se Agreement' read together with TRA Agreement was an in house contractual arrangement inter-se creditors for which the corporate debtor could not be blamed. Therefore initiation of CIRP proceedings in facts and circumstances of the case could not be appreciated as same fell foul of mandate of section 7.

Case Review : Syndicate Bank v. Bhadreshwar Vidyut (P.) Ltd. [2020] 119 taxmann.com 251(NCLT- Chennai), set aside.

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

- **Rajendra Kumar Tekriwal v. Bank of Baroda [2020] 119 taxmann.com 254 /[2021] 163 SCL 261 (NCL-AT)**

Right to sue accrues when a default occurs and if such default has occurred over three years prior to date of filing of application, application would be barred by limitation except in cases where on facts of case such delay is condoned.

Held that right to sue accrues when a default occurs and if such default has occurred over three years prior to date of filing of application, application would be barred by limitation except in cases where on facts of case such delay is condoned. Filing of recovery proceeding before Debts Recovery Tribunal and claim being subsequently decreed would not shift date of default. Any acknowledgement of liability made subsequent to occurrence of default and beyond period of limitation reckoned from such date of default leading to classification of account of 'corporate debtor' as NPA in any form including floating of an OTS proposal by 'corporate debtor' in recognition of liability would not in any manner affect occurrence of default for purposes of

triggering of 'corporate insolvency resolution process'. Therefore, initiation of 'Corporate Insolvency Resolution Process' beyond period of three years from the date the account of 'Corporate Debtor' was classified as NPA would be impermissible in view of application of Article 137 of Limitation Act, 1963.

Case Review : Bank of Baroda v. Pithampur Poly Products Ltd. [2020] 119 taxmann.com 253 (NCLT-Ahd.), set aside.

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM -

- **Sandip Kumar Bajaj v. State Bank of India [2020] 119 taxmann.com 301(Calcutta)**

When a default is made in making repayment by principal debtor, banker will be able to proceed against guarantor/surety even without exhausting remedies against principal debtor.

Held that as per provisions of section 14(3)(b), prohibition on institution or continuation of suits and other proceedings against the corporate debtor do not extend to a surety, however, liability of surety is co-extensive with that of the principal debtor unless it is otherwise provided by contract. Therefore, when a default is made in making repayment by principal debtor, banker will be able to proceed against guarantor/surety even without exhausting remedies against principal debtor. Further, argument that section 29A or 31 would provide a shield against operation of section 14(3)(b) and that petitioners would come under immunity-blanket of section 14 was contrary to law governing insolvency resolution process and RBI guidelines for dealing with wilful defaults of corporate entities.

SECTION 208 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - INSOLVENCY PROFESSIONALS - FUNCTIONS AND OBLIGATIONS OF

- **Vachaspati v. Insolvency and Bankruptcy Board of India [2020] 119 taxmann.com 304 /[2021] 163 SCL 257 (Delhi)**

Where petitioner-complainant had filed complaint before IBBI against Insolvency Professional, complainant had to be informed as to whether IBBI had formed a prima facie opinion in favour of complainant or against it.

The petitioner had filed a complaint before IBBI against Insolvency Professional under Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017.

Held that complainant has to be informed as to whether IBBI has formed a prima facie opinion in favour of the complainant or against it. Since IBBI had already formed an opinion in favour of the petitioner/complainant and further action thereon in terms of Regulation 7(7) was under its consideration, IBBI was directed to expedite decision under Regulation 7(7) and communicate such decision to the petitioner as well.

SECTION 33 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 - CORPORATE LIQUIDATION PROCESS - INITIATION OF

- **Dr. Vandana Parvez v. IVRCL Ltd. [2020] 119 taxmann.com 307 /[2020] 162 SCL 630 (NCL-AT)**

Where appellant alleged fraud committed by corporate debtor under liquidation with regard to SPV incorporated by it, proceedings under Code being summary in nature, appeal was to be dismissed as investigation about other entity (i.e., SPV) was not relevant.

The appellant alleged that the corporate debtor and associate entities incorporated SPV company and various illegal acts were committed by the corporate debtor in collective connivance to strip SPV company. It was noted that the corporate debtor was already in liquidation and same was pending.

Held that since liquidation proceedings are time bound proceedings, investigation with regard to transaction relating to some other entity referred as SPV could not be said to be relevant. Proceedings under Code are summary in nature and it was not possible to decide what appellant claimed to be fraud, however appropriate legal recourse before appropriate forum was always open for the appellant.

Case Review : Dr. Vandana Parvez v. IVRCL Ltd. [2020] 119 taxmann.com 238 (NCLT - Hyd.) (para 4) affirmed.

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- **State Bank of India v. Accord Life Spec (P.) Ltd. [2020] 119 taxmann.com 329 /[2021] 163 SCL 230 (SC)**

There is no provision in Code or Regulations under which bid of any Resolution Applicant has to match liquidation value.

NCLAT by impugned order held that under section 30(2) together with principle of maximization of assets of the corporate debtor, a resolution plan which is lesser than liquidation value cannot be accepted. However, in Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh [2020] 113 taxmann.com 421/158 SCL 567 (SC), it was held that there is no provision in Code or Regulations under which bid of any Resolution Applicant has to match liquidation value arrived at in manner provided in clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Held that in view of said decision, order of NCLAT was to be set aside.

Case Review : Accord LIfe Spec (P.) Ltd. v. Orchid Pharma Ltd. [2019] 112 taxmann.com 149/[2020] 157 SCL 122 (NCLAT - New Delhi), set aside.

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- **Committee of Creditors of Amtex Auto Ltd. v. Dinkar T. Venkatsubramanian [2020] 119 taxmann.com 410 /[2021] 163 SCL 294 (SC)**

Where only one offer was received within time limit pursuant to advertisement issued by Resolution Professional for inviting offers, fresh offers were to be invited and time limit for inviting offers was to be extended.

An order dated 24-9-2019 was passed by the Supreme Court to effect that fresh offers be invited by Resolution Professional within 21 days and offers were invited as per that order. When matter was taken up on 13-11-2019, it was held that consideration of CoC was to be confined to five offers received within time specified in advertisement inviting offers and a decision taken by CoC as to offers be placed before Court.- However, it was found that only one offer was received within time - Whether order dated 13-11-2019 was to be recalled insofar as decision be taken by CoC as to offers which were received within time limit - Held, yes - Whether fresh offers were to be invited after due advertisement in accordance with procedure prescribed for purpose - Held, yes - Whether time fixed by Court vide order dated 24-9-2019 was, hence, extended - Held, yes [Paras 4 and 5]

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- **Mohit Minerals Ltd. v. Shree Rama Newsprint Ltd. [2020] 119 taxmann.com 411 /[2020] 162 SCL 375 (NCL-AT)**

Where operational creditor failed to supply agreed amount of coal and corporate debtor purchased same from third party and issued a debit note for non-supply, petition for initiation of corporate insolvency resolution process was rightly rejected by NCLT on ground of pre-existing dispute.

The respondent-corporate debtor placed a purchase order for supply of coal of Indonesian origin on the appellant/operational creditor but the appellant failed to supply agreed amount of same. The appellant issued a demand notice demanding an amount stated to be defaulted by the corporate debtor basing upon certain invoices. The respondent stated that it had raised debit note against non-supply of coal as the same had to be procured by it from other parties at a differential price. The appellant filed application before NCLT under section 9 to trigger Insolvency Resolution Process against the respondent. The NCLT dismissed application filed by the appellant by impugned order holding that there was existence of dispute prior to issuance of demand notice. It was an admitted fact that the appellant failed to supply coal as per purchase order and respondent had purchased coal from 'T' and raised a debit note on the appellant.

Held that since it was a case of pre-existence of dispute prior to issuance of demand notice, the NCLT rightly rejected application with a reasoned order and no interference was called for.

Case Review : Mohit Minerals Ltd. v. Shree Rama Newsprint Ltd. [2019] 107 taxmann.com 40/154 SCL 100 (NCLT - Ahd.), affirmed.

SECTION 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- **K. Sailendra, In re [2020] 119 taxmann.com 447 /[2021] 163 SCL 4 (TELANGANA)**

Where petitioner filed writ petition challenging order of NCLT admitting petition for initiation of CIRP of corporate debtor on ground that respondents had manipulated and falsified accounts and misappropriated funds apart from committing fraud, said aspects could be considered by NCLAT in appeal under section 61 and, therefore, writ petition was to be dismissed as petitioner had effective alternative remedy of filing appeal before NCLAT under section 61.

The NCLT had admitted company application filed by the respondent-financial creditors under section 7 in matter of the corporate debtor and ordered commencement of Corporate Insolvency Resolution Process by appointing an Insolvency Resolution Professional (IRP) proposed by the financial creditor of the corporate debtor. Petitioners who held 63 per cent of majority shares of the corporate debtor, filed writ petition challenging order passed by NCLT stating same to be legally unsustainable. Petitioners contended that respondents had manipulated and falsified accounts and misappropriated funds apart from committing fraud.

Held that said aspects could be considered by NCLAT, if appeals were preferred by petitioners under section 61 to it. Instant writ petition was not to be entertained as petitioners had an effective alternative remedy before NCLAT under section 61.

SECTION 238A - CORPORATE INSOLVENCY RESOLUTION PROCESS - LIMITATION PERIOD

- **Gouri Prasad Goenka v. Punjab National Bank [2020] 119 taxmann.com 452 /[2020] 162 SCL 462 (NCL-AT)**

Where corporate debtor acknowledged debt by making offer for one time settlement, debt claimed in CIRP petition could not be said to be time-barred.

The corporate debtor company availed various credit facilities from the financial creditor bank on 23-2-2005. The corporate debtor did not maintain financial discipline. Loan facilities were restructured on 10-3-2008. The operational creditor filed CIRP petition in May 2018 which was admitted by the Adjudicating Authority. On appeal the corporate debtor raised a plea that debt claimed by the financial creditor was barred by limitation.

Held that since in 2018 the corporate debtor itself agreed to settle its dues on OTS basis in a letter written to financial creditor which was not accepted by the financial creditor, it could be considered as clear acknowledgement of debt and, therefore, debt claimed by the financial creditor was not barred by limitation, and therefore appeal was to be dismissed.

Case Review: Punjab National Bank v. NRC Ltd. [2019] 102 taxmann.com 352 (NCLT - Mum.), affirmed.

GUIDELINES FOR ARTICLES

The articles sent for publication in the journal "The Insolvency Professional" should conform to the following parameters, which are crucial in selection of the article for publication:

- ✓ *The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA ICAI in writing at the time of submission of article.*
- ✓ *The article should be topical and should discuss a matter of current interest to the professionals/readers.*
- ✓ *It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.*
- ✓ *The length of the article should be 2500-3000 words.*
- ✓ *The article should also have an executive summary of around 100 words.*
- ✓ *The article should contain headings, which should be clear, short, catchy and interesting.*
- ✓ *The authors must provide the list of references, if any at the end of article.*
- ✓ *A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.*
- ✓ *In case the article is found not suitable for publication, the same shall not be published.*

***Disclaimer**: The information contained in this document is intended for informational purposes only and does not constitute legal opinion, advice or any advertisement. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.*

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.