

Impact of Insolvency and Bankruptcy Code on Insolvency Resolution

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Introduction

The Insolvency and Bankruptcy Code was enacted from 2016 and marks a complete shift in corporate insolvency resolution processes in India. The idea was to assume that an arrangement in the company survives so that the best interest of all stakeholders was served rather than the liquidation of the company itself. Liquidation may be a suitable option in some cases, if the business is viable and has the potential for revival, ensuring the survival of the company becomes the preferred goal. This vision is reflected in the preamble of the IBC¹:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms 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 interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

As noted by Dr. M. S. Sahoo², the former chairman of the Insolvency and Bankruptcy Board of India (IBBI), “The soul of the Code is resolution of insolvency of a firm by (a) a collective effort (b) to keep it going (c) to maximise the value of its assets, and (d) to balance the interests of all stakeholders.” This does indicate that IBC is not merely about recovery; it is about reviving businesses, optimizing the use of scarce capital, and ensuring an equitable balance between all the parties involved.

The importance of resolution is also reinforced by judicial decisions, such as the Binani Industries case (2018), where the NCLAT emphasized that the primary objective of the IBC is the "resolution" of insolvency to maximize the value of the assets of the corporate debtor, benefiting all creditors, rather than focusing on maximizing value for just one set of stakeholders.

This article explores the profound impact of the Insolvency and Bankruptcy Code on the insolvency resolution process, focusing on its objectives, challenges, and achievements in facilitating corporate recovery, ensuring efficient asset utilization, and balancing the interests of all stakeholders involved.

Resolution Plan under the IBC, 2016.

The Resolution Plan is a key component of the Insolvency and Bankruptcy Code (IBC), 2016, as defined under Section 5(26)³ of the Code. - It means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern. A resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

In the case of Dinesh Gupta Vs. Vikram Bajaj Liquidator M/s Best Foods Ltd⁴, Hon'ble NCLAT has specifically pointed out the concept of resolution plan as “A ‘resolution plan’ is not a recovery / sale / auction / liquidation. Through a resolution plan no individual is purchasing or selling the CD.”

² Dr. M.S. Sahoo, Resolution: The Soul of IBC, IBBI Newsletter, Oct-Dec 2017.

³(26) “resolution plan” means a plan proposed by 2 [resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

⁴ CA (AT) (Ins.) No.276 of 2021

Here a Resolution Applicant is someone who submits a proposal for the resolution of a corporate debtor. As per the code "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25⁵. The Resolution plan must be designed in a manner that meets the legal, financial, managerial requirements and technical viability of the company post-resolution. For the resolution plan to be feasible, it should gain the approval of the Committee of Creditors (COC) and also deserve to bear with it the prerequisite conditions under the IBC and its regulations.

In the case of Bank of Baroda Vs. Sisir Kumar Appikatla Resolution & Ors⁶ the Hon'ble NCLAT elaborated on definition of resolution plan and stated that The restructuring plan projected as a resolution plan approved by the CoC could not be termed as a resolution plan within the ambit of section 30 of the Code. In the case of Superna Dhawan & Anr. Vs. Bharti Defence and Infrastructure Ltd. & Ors⁷ the Hon'ble NCLAT concurred with the observation of the AA that resolution plan should be planned for insolvency resolution of the CD as a going concern and not for addition of value with intent to sell the CD. The purpose to take up the company with the intent to sell the CD is against the basic object of the Code.

Non-Eligibility of a Resolution Applicant

Disqualifying Criteria for a Resolution Applicant Under Section 29A of the IBC, 2016, a resolution applicant is rendered ineligible to submit a resolution plan for certain reasons or conditions. The reasons for this condition include the fact that the interested person, resolver, or entity does not have anything to do with a corrupt history in financial management and criminal acts that weigh on the path of insolvency resolution processes. A resolution applicant is disqualified if, according to Section 6 of the Provincial Insolvency Act, 1920, he or she is an undischarged insolvent or has not duly settled his or her liabilities pertaining to personal debts. Besides this, if the applicant is a wilful defaulter as per Banking Regulation Act, 1949, the applicant is not granted a hearing if the applicant has an account that was declared an NPA at the time of the application for submission. The latter includes accounts that fall under his or her circumscription or are connected to a corporate debtor with which he or she presides over

⁵ 1 Subs. by Act 8 of 2018, sec. 4, for clause (h) (w.r.e.f. 23-11-2017). Clause (h), before substitution, stood as under: “(h) invite prospective lenders, investors, and any other persons to put forward resolution plans;”.

⁶ CA (AT) (Ins.) No. 579 of 2020

⁷ CA (AT) (Ins.) No. 195 of 2019

or holds nourishing interest as promoters. The applicant must at least wait for the completion of one year from its classification as NPA to submit a resolution plan, unless it clears all dues w.r.t. NPA account including interest and costs before that. However, financial entities that are uninvolved with corporate debtors are exempted from this law so long as they are cognizant of the requisite rules and regulations.

There are further disqualifications under the IBC where a resolution applicant is not eligible if he has been convicted of any offense which has led to his imprisonment under any of the acts listed in the

12th Schedule of the IBC or for a period of seven years or more under any relevant law; provided that this disqualification will not apply if more than two years have passed since his release from such imprisonment. A Financial entity regulated by a financial regulator will also be exempt where it has converted or replaced debt or some other instrument with equity shares or equity-linked instruments before the commencement of the bankruptcy proceedings and is not otherwise directly connected with the corporate debtor. This relates to a resolution applicant that holds an NPA account acquired through a previous resolution plan under the IBC; regarding this, the disqualification does not apply for a period of three years counted those from the date the Adjudicating Authority approves that resolution plan. A resolution applicant is also disqualified if he is barred by the Securities and Exchange Board of India regulations or the Companies Act, 2013, or having previously promoted, managed or controlled a corporate debtor that has been involved in transactions which were fraudulent, undervalued or preferential, with an order being made which placed the corporate debtor under supervision by the adjudicating authority under the IBC. A resolution applicant shall also be disqualified if he has given a guarantee in favour of a creditor for a corporate debtor that has been ordered into original insolvency proceedings before the IBC and such guarantee has been invoked by the creditor but remains unpaid partially or wholly or any legal impediment exists in that respect.

Mandatory Contents of the Resolution Plan

The Resolution Applicant is responsible for preparing the Resolution Plan in compliance with the IBC, the CIRP Regulations (as amended to date), and this RFRP. According to Section 30 of the IBC, 2016 and Regulations 38 and 39 of the CIRP Regulations, the Resolution Applicant must include the following in the plan:

- **Information and Details of the Resolution Applicant:** This includes an affidavit from the applicant and the details of all "connected persons" (as defined in Section 29A of the IBC).
- Sources of Funds:** The plan should specify the funds that will be used for the payment of Insolvency Resolution Process (CIRP) costs, ensuring these are paid before the repayment of any other debts, including operational creditors and financial creditors.
- **Priority Payment for Operational Creditors:** The Resolution Plan should outline specific sources of funds for paying operational creditors before financial creditors, as required by the Code. In the case of *J.R. Agro Industries P Ltd. Vs. Swadisht Oils P Ltd.*⁸, the Hon'ble NCLT, Allahabad bench stated that "All OCs are ranked equal. Therefore, resolution plan should not create classes of OCs and treat them differently."
- **Plan Term and Implementation Schedule:** The Resolution Plan must include the duration of the resolution and a clear timeline for its implementation.
- **Management and Control Post-Resolution:** The plan should specify the mechanism for managing the affairs of the company after the approval of the plan by the Adjudicating Authority, and the post-transfer date management.
- **Implementation and Supervision Mechanisms:** The plan must outline how the transaction will be implemented and supervised, ensuring compliance with the proposed measures.
- **Compliance with Applicable Law:** The applicant must declare that the resolution plan is not in contravention of any provisions of the applicable law.
- **Conformance to IBBI Requirements:** The Resolution Plan must meet all conditions stated under Section 30 of the IBC, 2016 and Regulation 38 of the CIRP Regulations.

The Applicant shall provide, in the plan, in accordance with the IBC and the CIRP Regulations, in particular Regulation 38 of there, all details, including, but not limited to, those set forth in this RFRP document, necessary for the assessment of the viability and feasibility of the Resolution Plan by the Committee of Creditors. This was established in the case of the *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*⁹ Where Hon'ble Supreme court held that "The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking

into account all available information as well as to evaluate all

⁸ CA No. 59 of 2018 in CP No. (IB) 13/ALD/2017

⁹ [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]

alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.”

After considering the feasibility and practicality of the resolution plan and additional conditions imposed by the Regulations, the CoC may approve the plan upon voting by at least **66%** of the financial creditors with voting rights. It is within the powers of authority of the CoC that it takes a call on anything with a majority vote. In the Rave Scans Pvt. Ltd.¹⁰, the Hon’ble NCLT, New delhi bench has stated that the “Section 30(2) nowhere provides that each FC must get proportionately equivalent share with other FCs. The only condition for approving the resolution plan by the CoC is by voting share of 75% as per the requirements of section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018).”

As per Section 31(1) of the IBC, once the resolution plan is approved by the CoC, it attains binding force against all the parties, including the guarantor(s). With such a provision in hand, the successful resolution applicant revives the corporate debtor's business.

Submission of Resolution Plan

In the CIRP under the Insolvency and Bankruptcy Code (IBC), the submission of a resolution plan marks a critical phase aimed at reviving the financially distressed corporate debtor. A resolution applicant, who may be a prospective investor, strategic partner, or any person meeting the eligibility criteria under Section 29A of the IBC, submits a resolution plan to the RP within the timeline prescribed by the Committee of Creditors. The plan must address key aspects such as the payment of insolvency resolution process costs, repayment to creditors, management of the affairs of the corporate debtor, and measures for its restructuring. Upon receipt, the RP evaluates the plan's compliance with Section 30(2) of the IBC and presents it to the CoC for consideration. If approved by at least 66% of the voting share of the CoC, the resolution plan is then submitted to the National Company Law Tribunal for final approval, thereby paving the way for either the revival or liquidation of the corporate debtor based on the plan’s feasibility and viability.

In the case of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors,¹¹ the Hon’ble Supreme Court of India clarified the role of CoC and stated that The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking into

¹⁰ Rave Scans Pvt. Ltd. [(IB)-01(PB)-2017]

¹¹ [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]

account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability. In the case of *Dinesh Gupta Vs. Vikram Bajaj Liquidator M/s Best Foods Ltd*¹², the Hon'ble NCLAT elaborate that the 'resolution plan' is not a recovery / sale / auction / liquidation. Through a resolution plan no individual is purchasing or selling the CD.

A 'Resolution Plan' submitted by a Resolution Applicant during the CIRP is considered confidential and cannot be shared with competing Resolution Applicants. No objections or views can be invited from other applicants regarding any specific plan, as this could compromise the fairness and integrity of the process. This principle was upheld by the Hon'ble NCLAT in the case *Committee of Creditors of Meenakshi Energy Ltd. vs. Consortium of Prudent ARC Ltd. & Vizaag Minerals and Logistics Pvt. Ltd*¹³

The resolution applicant is obligated to comply with the mandate under Section 30(2)(f) of the Insolvency and Bankruptcy Code and must ensure that the resolution plan does not contravene any existing laws.

Approval of Resolution Plan

Upon approval of the resolution plan under Section 31 of the Insolvency and Bankruptcy Code, all assets and contractual benefits of the Corporate Debtor are unconditionally transferred, assigned, and vested in the Successful Resolution Applicant, free from any encumbrances. This order is binding on all parties, including the Central and State Governments as well as Local Authorities.

In *K. Sashidhar v. Indian Overseas Bank & Others*¹⁴, the Hon'ble Supreme Court held that the Adjudicating Authority (AA) does not have the jurisdiction to examine the commercial wisdom of the Committee of Creditors, nor can it question the fairness or reasonableness of a resolution plan's rejection by dissenting financial creditors. The Court clarified that under Section 31 of the Insolvency and Bankruptcy Code, the AA's role is limited to verifying whether the resolution plan, as approved by the requisite majority of financial creditors, meets the statutory requirements, and it cannot interfere with the merits of the CoC's commercial decision.

¹² CA (AT) (Ins.) No.276 of 2021

¹³ [CA (AT) (CH) (Ins.) No.166 of 2021]

¹⁴ [Civil Appeal No. 10673 of 2018 and other connected appeals]

However in the *Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors*¹⁵, the Hon'ble NCLT, New Delhi Bench has clarified that - Though it is in the realm of the CoC to approve or reject a plan and of the liquidator to determine the value of the assets, such huge variations in values call for enquiry. Considering the fact that the CoC failed to approve a resolution plan valued double the liquidation value and the Liquidator set very low reserve price, the AA directed IBBI to enquire into as to why valuation has become so low after liquidation is ordered and the FCs to enquire as to whether its representatives acted to maximise the value of the CD.

Once a resolution plan is approved by the CoC, there remains no scope for further negotiations or discussions. Allowing such post-approval deliberations would directly contradict the framework and intent of the Insolvency and Bankruptcy Code, which aims to ensure a time- bound and decisive resolution process. The Code envisions finality upon CoC's approval, subject only to the adjudication by the Adjudicating Authority, and any deviation from this would undermine the certainty and discipline embedded in the insolvency resolution mechanism.

In *Deewan Housing Finance Corporation Ltd. v. Union of India*¹⁶, the HC held that in light of the facts that (i) a resolution plan concerning CD has been approved by the Adjudicating Authority, (ii) this approval has resulted in a change of management of the CD, and (iii) the new management is not

connected to the previous promoters of the CD, the immunities granted under Section 32A of the Insolvency and Bankruptcy Code cannot be denied to the CD. The decision emphasized that the protections under Section 32A apply in such circumstances, ensuring the CD is shielded from certain legal actions post-resolution.

Conclusion

The Insolvency and Bankruptcy Code (IBC) has completely altered the landscape of India's corporate insolvency framework; instead of defaulting to liquidation of distressed businesses, it aims to rehabilitate businesses that have future viability and allow them to continue as going concerns. The IBC's priority is to rehabilitate troubled businesses, maintain business continuity, and maximize asset value so creditors, employees and stakeholders experience limited disruption and the economy continues to operate in as little disruption as possible.

¹⁵ IB-31(PB)/2018

¹⁶ [Writ Petition No. 3157 of 2021]

First, the IBC's is a time-bound process that is designed to manage insolvency cases to be resolved in a fixed timeline. This time-bound aspect creates a predictable transaction, leads to efficiency, provides clarity, and reduces delays for stakeholders include creditor parties and businesses going through the insolvency process. Second, the IBC is collaborative process that engages and includes all stakeholders to participate in making decisions including the creditors, resolution professionals, and management of the corporate debtor. The collaborative framework assists in developing resolution plans that meet three requirements: are practical, maximize value and will support sustained recovery. In conclusion, the IBC establishes a balanced and efficient insolvency resolution process, emphasizes the goal of rehabilitation, and protects the interests of stakeholders and promotes cooperation.

Reference:

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