FOREWORD

Enactment of the Insolvency and Bankruptcy Code in 2016 ('IBC') has been one of the most significant structural reforms introduced in India's corporate law landscape in the 21st century, which has been instrumental in reducing non-performing asset levels in the banking sector and increasing not just recoveries for banks, but also boosted the investor confidence in the Indian economy. As Justice Nariman observed most aptly in *Swiss Ribbons v. Union of India* (2019), '*the defaulter's paradise is lost. In its place, the economy's rightful position has been regained.*'

It is worth highlighting that since its inception, 8175 corporate debtors have been admitted into corporate insolvency resolution processes ('CIRPs'), of which 6192 cases have been closed and 1983 corporate debtors are under various stages of resolution.* In terms of the break-up between resolutions and liquidations, it is noted that around 13.69% CIRPs have resulted in approved resolution plans by the adjudicating authority, 13.82% CIRPs have been withdrawn under Sec 12A of IBC and in 33.11% of the cases, liquidation orders have been passed. It is pertinent to highlight that while a significant number of cases may have resulted in liquidation, but a large majority of these cases were inherited from the earlier Board for Industrial and Financial Reconstruction ('BIFR') regime or were already defunct units where substantial value erosion had taken place before admission under IBC.

The IBC has become the most preferred route for creditors to maximise their recoveries from distressed companies. It is also a great avenue for strategic and financial investors to acquire valuable companies in an expeditious legal process, with the benefit of cramdown of dissenting creditors

* The Quarterly Newsletter of the Insolvency and Bankruptcy Board of India, October-December 2024.

and whitewashing of the past dues. One of the most significant outcomes of the IBC has been the substantial behavioural shift ushered in by the IBC, due to the credible 'threat of insolvency' leading to the promoter losing control over his company. This has strengthened the negotiating power of the creditors, in the absence of which it is most likely that the debtors’ defaults would have lingered longer, resulting in value destruction. IBC has not just led to huge recoveries but has facilitated preservation of economic value of assets through effective resolution or unlocking of capital which is stuck in unviable businesses.

The practical working of the law has, over the years, thrown up various unique issues and challenges. The government, the regulator IBBI as well as the judiciary have shown great alacrity and deftness in addressing such issues, ironing out the creases to streamline the law and the jurisprudence around it.

A fundamental question that has arisen time and again is whether there is a need for sectoral insolvency laws. While originally the operation of the IBC was contemplated only to resolve the insolvency of non-financial firms, however, its operation has now been extended under a special set of rules to the financial service providers as well, leading to successful resolutions of several financial service providers under the IBC. There have been demands for special sectoral considerations in several sectors, such as airlines, power, roads and other strategic sectors. From time to time, several alterations have been introduced in the IBC to address certain gaps where required to meet the policy considerations. Even the judiciary has come up with several innovative approaches to address the complex issues with the ultimate aim of meeting the objectives of the IBC.

Consider for example the real estate sector, one of the most sensitive sectors in the Indian economy. Various factors have led to distress within real estate entities, impacting allottees, investors and developers alike. This sector, having been plagued by a high quantum of debt, has attracted attention of the judiciary as well as the legislature, spurring innovative home-grown policy solutions. Some of the innovations introduced through judicial intervention include resolution approach limited to the affected project(s) and the introduction of reverse CIRP. Some of these solutions have also been introduced into the IBC. Insolvency scholars should closely analyse the implications of these innovative policy measures on real estate insolvencies, to suggest future reforms to further enhance the efficacy of real estate insolvencies.

A promising feature of the IBC was the promise of quick admission into the corporate insolvency resolution process. Section 7(4) requires the Adjudicating Authority to ascertain the existence of a default from the records of an IU or on the basis of other evidence furnished by a financial creditor within 14 days of receipt of such application. However, as per IBBI's own data, the average time taken for admission from date of filing was 468 days in 2020-21 and 650 days in 2021-22. Such significant delay at admission stage itself is one of the biggest drawbacks of IBC.

A critical reason for this unwarranted delay at admission stage is the low reliance on information utilities ('IUs'). The BLRC had suggested 14 days as the outer limit for admission on the assumption that the admission process will be based on the IU data on default and the evidentiary standards attached to that data by law. However, the uptake of IUs has left a lot to be desired and even today, significant time is expended at the admission stage by the adjudicating authority dealing with the objections from the corporate debtors on their admission into CIRP. Over time, this has become the Achilles Heel of the entire IBC framework.

Delays associated with IBC resolutions extend post-admission too. CIRPs have been marred with delays, especially on account of multifarious litigations. As on December 31, 2024, the average time taken for closure of corporate insolvency resolution processes under IBC was 701 days. This delay is closely related to the incentive misalignment inherent within IBC when the existing promoter/management is replaced by an insolvency professional at the time of commencement of CIRP. An expert committee constituted by the IBBI has recommended a new framework for a Creditor-Led Resolution Process (CLRP) to address this challenge. This suggested framework has some unique advantages which holds much promise. The CLRP is proposed to be a light touch framework, with limited role of the adjudicating authority and will allow for the debtor to remain in possession, in sharp contrast to the creditor in control regime under the CIRP.

Another subject which has drawn the attention of scholars and practitioners alike is cross-border insolvency. Although the IBC provides only enabling provisions for cross-border insolvencies, judicial innovation has come to the rescue to iron out the creases in practical matters involving cross-border insolvencies. For instance, in the *Jet Airways* case, the NCLAT facilitated the development of a consensual cooperation protocol between the Dutch Trustee and the Indian resolution professional for the harmonious running of the parallel processes. The Delhi High Court in *Toshiaki Aiba v. Vipan Kumar Sharma (2022)* has recognized the liquidation order passed in Japan and provided asset restoration remedies to the Japanese Trustee.

Corporate insolvency remains a dynamic space and the jurisprudence around it is evolving at a fast pace to respond to newer challenges. The insightful articles in this RGNUL-SAM Conclave Special Edition address many such new and upcoming questions ranging from emerging technologies to crypto exchanges, and environmental claims to personal guarantees. Insolvency law scholarship must play an active role in debating and exploring such contemporary issues so that policymakers and practitioners both may benefit from fresh insights on the subject. With this hope, I invite all of you to actively engage with all the articles in this special issue.

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