
DELAY IN THE CIRP PROCEDURE UNDER IBC

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ABSTRACT

The IBC Code refers to the Insolvency and Bankruptcy Code, which is a comprehensive legislation enacted by the Government of India in 2016 to address issues related to insolvency, bankruptcy, and the reorganization of distressed companies and individuals. The IBC aims to provide a time-bound and efficient process for resolving insolvency cases, promoting the maximization of asset value, and balancing the interests of all stakeholders involved, including creditors, debtors, and investors. However, on the basis of an analysis of the Official Data released by the Insolvency and Bankruptcy Board of India in April 2023 which showcases **63% cases¹ this year have faced delay** in the Corporate Insolvency Resolution Process (CIRP). In this paper we have tried to address this issue and analyse the possible reasons for delay in the CIRP process with a special focus on how the discretionary power of the NCLAT might have acted against the legislative intention of IBC 2016.

Keywords - Corporate Insolvency Resolution Process (CIRP), NCLAT, Insolvency and Bankruptcy Board of India, Delay, IBC Code, discretionary power

¹ECONOMIC TIMES, <https://ibbi.gov.in/uploads/whatsnew/c4301ca9b10c5c83724a260f4e0fc250.pdf>, (last visited Aug. 30, 2023)

Introduction

The Insolvency and Bankruptcy Code (IBC) which came into being in the year 2016, was formulated with the aim to protect the interest of investors and make the process of doing business less burdensome and complicated. In the words of **Justice A.K. Sikri** –

"I believe the Insolvency and Bankruptcy Code (IBC) is a landmark legislation that has infused a new economic discipline, revived entrepreneurship, and instilled a sense of credibility in India's business ecosystem."

The Code establishes a 'time bound' procedure to tackle the economic crisis faced by the companies to save the company from going bankrupt. The Corporate Insolvency Resolution Process (CIRP) is a significant aspect of the Insolvency and Bankruptcy Code (IBC) in India. The CIRP involves a structured process to ensure the timely and efficient resolution of a financially distressed company. After 2019 amendment the time restriction on completing the CIRP was increased to 330 days with discretionary powers to judiciary to expand the time restriction when needed.

However, currently the IBC ecosystem is facing heavy burden of delay in cases which force us to look whether there are flaws within the ecosystem which is attracting delay in the procedure.

Hypothesis/ Research Question

- Whether there exists a delay in the procedure of CIRP beating the legislative intent of the IBC Code 2016 due to the discretionary powers given to the Judiciary?
- Whether there exists other reasons which push towards delay in CIRP procedure?

Literature Review

1) Delay Under Insolvency and Bankruptcy Code, 2016 (India) – Dhaval Vyas²

The paper provides a holistic understanding of the situation which backed the evolution of the Code. It highlights the importance of the Code in current time and the challenges

² Dhaval Vyas, *Delay Under Insolvency and Bankruptcy Code, 2016 (India)*, SSRN, 246, 246-252, (2021)

that it has faced.

2) Curbing Rampant Delays plaguing IBC – Misha³

This paper provides a brief view on the current rising rate of delays under IBC. It provides possible solutions to curb the challenges faced in the CIRP procedure under IBC.

3) Condonation of delay in submission of resolution plan – Kushagra Sharma⁴

In this paper the author delves into the winding up and debt recovery process under IBC. The paper highlights the post covid situation in IBC laws and the effect it has left on the economy of the country. The author points out the procedural issues regarding NCLT and NCLAT which results in affecting the IBC ecosystem and the economy of the country.

The CIRP Procedure and Time Limit

The Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) in India is designed to provide a time-bound and structured framework for the resolution of financially distressed companies. As per the code, the CIRP process should be completed within 180 days but can be extended to a period of 90 days. However, this extension has to be completed within 330 days, failing to which the adjudicating authority will initiate the procedure of liquidation.

Section 12 of IBC Code⁵

Section 12(1) of the Code mentions the stipulated time cap of 180 days from date of application as maximum time period for completing the whole procedure. However, the Proviso clause of 12(2) and (3) mentions that the Resolution Professionals can move application for extension which can be passed by the adjudicating authority. This has to be done by a resolution passed by the Committee of Creditors (COC) through a 66% voting. This resolution can be passed on any day within the stipulated cap of 180 days.

³ Mishra, *Curbing Rampant Delays plaguing IBC*, Lexiloggy, 1, 1-2, (2023)

⁴ Kushagra Sharma, *Condonation of delay in submission of resolution plan*, IJCLP, 2, 2-3, (2021)

⁵ Section 12, The Insolvency and Bankruptcy Code, No. 31 of 2016

Judicial Discretion or Reason for Judicial Delay ?

The IBC code holds the vision of achieving the goal of corporate debt revival through time bound procedure. The main issue of creating a time cap was to ensure there exists maximization of assets as well as entrepreneur stability in the economy. However, the discretionary power of the adjudicating body through applications filed by RPs has created delay in judicial delay.

According to the booklet published by IBBI namely **Quinquennial of Insolvency and Bankruptcy Code, 2016**⁶, the report highlights in the year 2021, around 1,30,158 underwent more than 330 days to complete the entire process of CIRP. This accounts for 50% of the total number of cases per year. Thus, showing a massive delay and beating the purpose of the Code.

To tackle the same issue, the 2019 amendment was brought forward to create a mandatory stipulated time cap for completing the entire process. However, the same has faced multiple challenges in succeeding to create a timely completion of the CIRP procedure due to various reasons.

Analysis of Cases where NCLAT extended CIRP time limit beyond 330 days

In the case of *Essar Steel Limited v. Satish Kumar Gupta & Ors*⁷, the SC pointed out the need of fulfilling the ultimate time limit of completion of CIRP process which is mentioned to be 330 days. However, in the case of *Vidarbha Industries Power Ltd. v. Axis Bank*⁸, the SC recognized the discretionary power of the NCLT in considering any additional ground for corporate debtor at the early stage of filing insolvency application which opened the gates for the entire process to take longer than the ultimate time limit of 330 days.

Moreover, in the landmark case *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors*⁹, court struck down the term 'mandatorily' for the time bound purpose for completion as arbitrary under Article 14.

⁶ Insolvency and Bankruptcy Board of India, *Quinquennial of Insolvency and Bankruptcy Code, 2016*, ibbi.gov.in, (2021), <https://www.ibbi.gov.in/uploads/whatsnew/1d8b31fc65f7ac6f09a973be8f12f868.pdf>

⁷ *Essar Steel Limited v. Satish Kumar Gupta & Ors*, AIR 2019 SC 876

⁸ *Vidarbha Industries Power Ltd. v. Axis Bank*, AIR 2021 SC 463

⁹ *Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors*, (2019) ibclaw.in 876 NCLAT

The NCLT through its *Ritu Rastogi RP of Benlon India Ltd. Vs. Riyal Packers*¹⁰, the court showed its discretionary powers as being an "exceptional case" thus allowing extension on the time limit of 330 days for completion of CIRP process. Similar situation was seen in the case of *Mr. Ravi Sankar Deverakonda Vs. Committee of Creditors of Meenakshi Energy Limited* where court exercised its discretionary power under section 12(3) of the IBC Code and awarded extension period as under exceptional circumstances.

Other Reasons for Delay in CIRP Process

The delays faced under the IBC Code is a result from both internal as well as external issues. Some of the issues are listed below –

Ambiguities in the Eligibility Criteria of Insolvency Professionals

The NCLT has the power to appoint an Interim Resolution Professional (IRP) or reject an application for such appointment. This decision is made based on Sec 3(1) of IBC¹¹ where the applicant is required to establish that they are "independent of corporate debtor" and consequently had to make disclosure proving the same in accordance with Section 3(2)¹² of the Code. This means that the eligibility criteria, which has a direct bearing on the independence and impartial functioning of the entire process, only cater to the independence vis-à-vis corporate debtor and not to financial/operational creditors. Interestingly, in order to meet the ends of justice, even though both NCLT and NCLAT have inherent powers to fill in this legislative vacuum, have abstained from doing so. The Supreme Court has provided that in order to establish the element of Bias, it is pertinent to show the "availability of positive and cognitive evidence" and the "existence of a real danger of bias".¹³ NCLAT in *SBI vs Metenere Ltd*¹⁴, deviated from both these settled principles when it did not disqualify a former SBI employee with 39-year of service experience, still drawing pension from the organization, to serve as an IRP where SBI itself was one of the contending parties. Also, Resolution professionals (RP), in parallelly empanelled positions as Advocate, CS, CA etc in creditors company, are not to be subjected to rejection for their appointment as RP. This postulates that

¹⁰ Ritu Rastogi RP of Benlon India Ltd. Vs. Riyal Packers, (2020) ibclaw.in 371 NCLAT.

¹¹ Section 3(1), The Insolvency and Bankruptcy Code, No. 31 of 2016

¹² Section 3(2), The Insolvency and Bankruptcy Code, No. 31 of 2016

¹³ A.K. Kraipak vs Union of India, AIR 1970 SC 150

¹⁴ State Bank of India vs. M/s Metenere Limited, (2020) ibclaw.in 17 SC

if the IRP or RP sides with one of the parties, either for pecuniary or other benefits, it will be in contravention to the Code and also attracts delay in procedure.

Constraints due to “Period of Limitations” – IBC overrides Limitation Act?

Section 61 of IBC¹⁵ requires parties, if aggrieved, to file an appeal against the NCLT decisions within 30 days from the date of such order. The said period can be extended further 15 days if the appellate body is satisfied there was sufficient cause for delay in filing. Two problems are highlighted by the aggrieved in filing an appeal – first practical difficulty in availing the certified copies of the order. Second, absence of judicial benevolence to address the expeditious nature of the code amidst these practical difficulties¹⁶. While interpreting the prescribed period given under **Section 4 of the Limitation Act (1963)**, the apex court opined. that “discretionary powers can go beyond statutorily prescribed period”¹⁷. The same liberal approach is not extended while interpreting **Section 61 of IBC**. Furthermore, while pondering upon the interplay between **Section 4 of the Limitation Act¹⁸** and **Section 61 of the IBC**, the court has opined that the extension of the statutory period i.e., 30 days can only be considered if the court is closed on the last day of such prescribed period¹⁹. As far as the availability of certified copies is concerned, the court has drawn literal distinguishment from the verbatim **Section 421 (3) of the Company Act**, stating it is not a pre-condition for commencement of appeal under IBC.²⁰

Island Adjudicating Authority with Multiple Exclusive Jurisdiction

NCLT is the only adjudicatory authority under IBC. It also has exclusive jurisdiction under other statutory forums e.g. – NFRA and CCI. This creates problems of Lack of operational benches and vacancy vis-à-vis sanctioned strength. This delays the process further. The quarterly **newsletter published by the IBBI in it’s January-March volume of 2022²¹**, highlighted the issue of vacancies that are faced by NCLT which creates less number of adjudicators and hamper the infrastructure as well.

¹⁵ Section 61, The Insolvency and Bankruptcy Code, No. 31 of 2016

¹⁶ Gaurav Aggarwal vs CA Devang P. Sampat, (2022) ibclaw.in 611 NCLT

¹⁷ Sagufa Ahmed vs Upper Assam Plywood, (2021) 2 SCC 317

¹⁸ Section 4, The Limitation Act, No. 36 of 1963

¹⁹ Isolux Carson India Engineering and Construction Pvt Ltd vs Shailesh Verma, (2022) 11 NCLAT CK 0022

²⁰ V. Nagarajan vs SKS Ispat & Power Ltd, (2022) 2 SCC 244.

²¹ IBBI Newsletter, *Insolvency and Bankruptcy News*, 22, The Quarterly Newsletter of IBBI, 1, 24-25, (2022), <https://ibbi.gov.in/uploads/publication/7d78e821aee9191e8a9f863669492a9.pdf>

Recommendation

In order to achieve the goal of recovering the corporate debtor time bound procedure as established by IBC is of utmost necessity. However, the judicial discretion of extending the limitation period poses a threat to the fulfillment of IBC goals. The recent **Discussion Paper published by IBBI on 7th June 2023**²² recognized this issue. Thus, understanding the current dynamics, certain recommendations which might negate the delays are stated below-

Firstly, categorization of cases based on the subject matter, socio-economic effect and creation of time limit on the basis of the same can be implemented. This can target the issue of arbitrary use of judicial discretion and result in curbing the delays.

Secondly, Out of Court Settlement processes and ADR mechanism like Mediation should be introduced as a valid grounds of settlement of issue. Thus, lessening the burden of the NCLT and NCLAT.

Thirdly, merging all the pillars of IBC under one singular e-portal would help the stakeholders in going through the procedure more smoothly and achieve faster result.

Fourthly, government should increase the number of judges and infrastructure for quick disposal of cases.

Conclusion

Insolvency and Bankruptcy is still a new law and is growing continuously. The Code was developed with the goal of resolving troubled organisations in a fair amount of time. As a result, the Code imposes some stringent rules for concluding the bankruptcy procedure quickly. The **Law Committee Report on Insolvency**²³ published by **Ministry of Corporate Affairs and Government of India in the year 2022**, points out that excessive delays in the procedure of insolvency would lead to burden on judiciary. More than 70% of cases have already gone over the original 180-day limit (now 330), which is longer than what the Code intended. As a result,

²² IBBI Discussion Paper, Discussion Paper on measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution, [ibbi.gov.in](https://ibbi.gov.in/uploads/whatsnew/c4301ca9b10c5c83724a260f4e0fc250.pdf), (2023), <https://ibbi.gov.in/uploads/whatsnew/c4301ca9b10c5c83724a260f4e0fc250.pdf>

²³ Report of the Insolvency Law Committee, (2020)

the schedule for the bankruptcy procedure seldom ever sees rigorous adherence to it. Thus, it is the need of the hour that we focus on resolving this issue at hand.

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