
EVALUATION OF THE RESOLUTION'S TIMELINE AND EFFECTIVENESS AS SPECIFIED IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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ABSTRACT

The debt recovery model or approach has not worked for the Indian Economy which is evident from the failure of the previous experiments under the SICA, the RDDBFI Act and other applicable insolvency laws, the same has been analysed and relevant literature is available on the failure of the old laws. The birth of the present Insolvency and Bankruptcy regime is the result of this failure which was mostly to avoid the long-drawn legal battles and the delays in disposal of cases. So, it is imperative that the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC" or "the Code") is effectively implemented in a time bound manner. There are procedural provisions and prescriptions in the Act which guide the resolution process itself but the implementation is yet to be seen. The resolution process has greater negative repercussions the longer it takes. The backlog of cases admitted under the Code and the protracted timescales are currently causing concern. This essay aims to assess the timeline of resolution in India under the new regime and how the delays can be mitigated using various case laws to reflect upon the jurisdictional view.

Keywords: time bound manner, delay, mitigation, corporate insolvency resolution process, factors responsible for delay, way-forward.

RESEARCH OBJECTIVE

The study primarily focuses on the effective implementation of fast-track resolution process in India focusing on minimal erosion of time value of money. It analyses the impact caused by the newly introduced time bound resolution process. The study has been taken up with the following specific objectives:

- To analyse the current and the long-term impact of the time bound structure
- To examine the stand of the Judiciary in relation the resolution process in India
- To suggest possibilities to mitigate the delays.

RESEARCH PROBLEM

The Code possesses multiple facets to its regulation and exploitation that demands quick action from the government for the effective implementation especially with regards to the eligible corporate debtors, creditors and corporate applicants. Assessing the Efficiency of the Code in India and investigating Government Initiatives to expedite the Resolution Process

HYPOTHESIS

A fast-track resolution process streamlines legal proceedings, increasing efficiency and reducing litigation duration while upholding due process and equitable access to justice, balancing prompt resolution with just and fair decisions.

RESEARCH METHODOLOGY

The study uses a doctrinal mode of research, utilizing analytical and comparative methods. Materials are sourced from primary and secondary sources, including books, magazines, journals, articles, case commentaries, and reports. Internet and web materials are also used for supplementation and up-to-date information.

INTRODUCTION

“It is the duty of the doctor to prolong life and it is not his duty to prolong the act of dying”

-Horder

Insolvency encompasses a situation wherein a legal person (including corporate persons) cannot meet their obligation to pay their creditors. It is a situation wherein a legal person cannot pay their debts when they become due and outstanding. Various insolvency laws worldwide allow the creditors of certain specific debtors to realize the debt due to them by seizing off the debtor's means and dealing them off. The Code consolidated and refined existing framework to help the legal person revive and relaunch thereby maximising the wealth of the legal person.

The end goal of the Code was to keep the Corporate Persons as a going concern and prolong the life of such Corporate Persons and not to prolong the act of dying, which, now seems to be the ground reality. This is unachievable when the passage of time is eroding the value of the assets of the Corporate Persons which will eventually end up in liquidation. The Code offers a time-bound process for debtors to resolve their insolvency and maximize the value of their assets in order to support entrepreneurship, make credit available, and balance the interests of all parties involved. However, it is always unclear if this goal has actually been met.

A few empirical studies have been conducted on the delay, but they only address the wait owing to the Adjudicatory Authority here are roughly eighteen steps in the entire CIRP under the IBC, many of which do not involve the Adjudicating Authority, or NCLT. The IBBI has also conducted such an empirical study on the same topic¹.

This paper aims to study the effectiveness in implementation of the new regime while discussing the recent case laws to draw a conclusion with an objective to resolve the lacunae (i.e., the time taking process in the Code) in the execution of the Code.

ANALYSIS

Procedures and prescriptions under the Act which aim at the timely resolution

¹ <https://ibbi.gov.in/uploads/publication/2021-02-12-154823-p3xwo-8b78d9548a60a756e4c71d49368def03.pdf>

mechanism-

The Act prescribes certain prescriptions and provision for timely resolution which is evident from the very first statement that is the preamble of the Code—

"An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner,"

The Code specifies specific timescales in order to facilitate this. When an application for the initiation of insolvency proceedings is admitted, the NCLT has 14 days under the Code to decide whether to accept it or reject it. The NCLT is obligated to give the applicant seven days to correct any errors in the application before rejecting it. The question of whether this was required or optional was not made clear. The NCLAT ruled in *JK Jute Mills Company Ltd. v. M/s Surendra Trading Company*² that, under the Code, time is of the essence and that, barring extraordinary circumstances, the NCLT and other stakeholders must complete their work within the allotted time frames. The NCLAT ruled, however, that the 14-day deadline is just a directive and that it is within its inherent authority to extend the deadline in the interest of justice and fairness on an individual basis. It further stated that there would be no exceptions made to the mandatory seven-day window for defect correction and that compliance would be mandatory. Following an appeal, the Hon'ble Apex Court upheld the ruling that the 14-day period would be directory and invalidated a portion of this decree, ruling that the 7-day period would likewise be directory, given that ***"it is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would-be directory and not mandatory."***³

The Adjudicating Authority, Appellate Authority, and judiciary have been instrumental in implementing major economic laws, resolving conceptual and contentious issues quickly and delivering landmark orders. This has provided clarity on permissible and unpermissible practices, streamlining the process for the future and ensuring stakeholders have a clear understanding of the law's implications.

A resolution process may in some circumstances be completed before the maximum amount of

² 2017 Scc OnLine NCLAT 3

³ (2017) 16 SCC 143

time allowed. In *Prowess International Pvt. Ltd. v. Parker Hannifin India Pvt. Ltd.*⁴, the NCLAT observed that, the process of submitting a resolution plan under section 30 or approving it under section 31 must be accelerated in the event that all creditors have been paid and there is no default with any other creditors. The adjudicating authority can approve a resolution plan under section 31 if all creditors have been paid or satisfied and no other creditor has made a claim without default. This allows the insolvency resolution process to be closed, but legal proceedings will occur if the plan is rejected by the authority.

Time value of money and the importance of the expedition of such cases-

Maximising the value of the corporate debtor's assets is one of the objectives of insolvency laws. There are worries that a postponement would impede reorganisation and result in liquidation, which might destroy value. Furthermore, delays reduce recoveries even in liquidations.

Concerns are raised that, in cases where the bankruptcy regime permits a restructuring through talks with creditors, employing delay strategies may result in an extension of the initial negotiation period in addition to delays in adjudicatory mechanisms and the issuance of orders that are necessary for the insolvency resolution.

This is especially relevant in the Indian context because of the Sick Industrial Companies Act of 1985's experience. As a result, it is necessary to examine the Code's rules and jurisprudence that are meant to enhance the timeliness of legal procedures.

Time-consuming procedure: excluding the period excluded by the NCLT, the 611 bankruptcy cases settled under the IBC to December 2022 took, on average, 482 days, according to IBBI data. A corporate bankruptcy can be resolved in a maximum of 270 days, according to the IBC. In these 611 cases, creditors were able to recover Rs 2.53 lakh crore, or 30.4% of their acknowledged claims. To be fair, the realisation for 516 enterprises was 84% lower than the estimated fair value at the time of their CIRP admission.

The government is considering a creditor-led insolvency resolution process under the bankruptcy statute to expedite settlements and reduce workload for the National Company

⁴ Company Appeal (AT) (Insol.) No. 89 of 2017

Statute Tribunal (NCLT). This method allows creditors and debtors to reach informal agreements before admitting cases to the NCLT.

In order to provide a "regulatory approach" for the new fast-track resolution process under the Insolvency and Bankruptcy Board of India (IBBI), the board has assembled a panel led by *Sudhaker Shukla*, a full-time member. Senior bankers, a former central bank official, and an expert in insolvency make up the panel. A lack of NCLT benches and an increase in legal challenges have resulted in longer delays for the Insolvency and Bankruptcy Code's (IBC) Corporate Insolvency Resolution Process (CIRP). The new framework and the CIRP will coexist under the IBC umbrella. Companies that are under stress can be allowed to retain their present management until the problem is fixed. This is expected to reduce the volume of litigation in the insolvency admission and resolution process and ease the workload for the adjudicating body. The Ministry of Corporate Affairs (MCA) submitted draught code modifications in January to get comment from interested parties, but the proposal, which asks for changes to the IBC, was left out. The creditor-led resolution method would differ from the pre-packaged scheme, which also comprises an informal agreement between the lender and the defaulter for the insolvency admission procedure. All companies would be protected under the creditors-led resolution, only micro, small, and medium-sized businesses are now covered under the pre-pack framework.

The proposed framework could maintain legitimate limitations on defaulting promoters' bid on assets, allowing for clear communication and problem-solving among all parties involved in the CIRP, unlike pre-pack.

Partner in charge of bankruptcy and insolvency at *Shardul Amarchand Mangaldas Anoop Rawat* stated: "*The new framework recognises the need for a speedier resolution procedure. The goal of the pre-pack resolution procedure (for MSMEs) and the fast-track resolution process is to eliminate resolution delays.*"

CASE STUDIES

The IBC aims to ensure the sustainability of a Corporate Person by maximizing resource usage without depleting existing resources. The Supreme Court of India and the Appellate Tribunal have reinforced this objective, addressing criticisms about the time-bound nature of the Code. There was some worry that the courts may also decide to prolong this maximum schedule, even

though the Code specifies that no additional extensions may be granted beyond this point. But in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*⁵, the Supreme Court categorically ruled that the corporate insolvency resolution procedure must be completed within the allotted time frame, which is strictly necessary and cannot be prolonged. It held, citing principles of statutory interpretation and the Code's primary objective of facilitating a speedy resolution process for a corporate debtor, that strict adherence to the time frame stipulated in section 12 is required by the code's literal wording. The court further held that in order to facilitate this adherence to the outer time limit specified in the Code, the model timeline provided in Regulation 40A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 should be followed "as closely as possible."

More recently very aptly the Supreme court of India this year has reaffirmed the object of the Code in *RPS Infrastructure Ltd. Vs Mukul Kumar & Anr.*⁶ The challenge by the respondent before the NCLAT was primarily based on the potential consequences of allowing a belated claim when the COC had already approved the Resolution Plan. It was urged that allowing such claims would set the clock back on the CIRP and set a precedent, thereby making CIRP prolonged and inefficacious and hence the Supreme Court asserted the mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. The exact dictum of the decision is stated hereinbelow for ready reference—

"We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."

Thus, the judiciary has been instrumental in reinforcing the time bound nature of the Code but still this has not yet been achieved owing to the limitations of the Code as discussed.

THE WAY FORWARD AND CONCLUSION

The challenges in insolvency that can hamper its effectiveness in the time-bound resolution

⁵ (2020) 8 SCC 531

⁶2023 SCC Online SC 1147

process are as follows:

- Complexity of cases: Some insolvency cases are inherently complex and involve multiple stakeholders, intricate financial structures, or legal disputes. These complexities can prolong the resolution process and make it difficult to adhere to the time limits.
- Valuation and pricing challenges: Determining the value of the company's assets and liabilities is crucial for the resolution process. However, valuation and pricing challenges, such as disagreements over the value of assets or conflicting opinions among experts, can extend the time required for resolution.
- Delays in initiating the process: One common problem is the delay in initiating the Corporate Insolvency Resolution Process (CIRP) after default occurs. This delay can be due to factors such as lack of awareness, coordination issues between parties involved, or disputes.
- Difficulty in gathering information: Insolvency resolution requires the gathering and analysis of extensive financial and operational information from the company. However, in many cases, it is challenging and time-consuming to collect this information from various sources, especially when the company's records are incomplete or inaccurate.
- Legal proceedings and litigation: Insolvency cases often involve legal proceedings and litigation, which can significantly delay the resolution process. Disputes, appeals, and court hearings can extend the overall timeline of the insolvency resolution.
- Lack of cooperation from stakeholders: The success of the insolvency resolution process depends on the cooperation of various stakeholders, including the debtor, creditors, and resolution professionals. However, the lack of cooperation from any party can hinder progress and lead to delays in the resolution process.
- Insufficient infrastructure and resources: Inadequate infrastructure and resources for insolvency resolution can also contribute to delays. This includes a shortage of skilled professionals, a lack of technological capabilities, and limited infrastructure for conducting meetings, hearings, and negotiations.

SUGGESTIONS FOR REFORMS

To address these challenges, effective coordination, streamlined processes, and enhanced infrastructure for insolvency resolution are necessary. Improving awareness and understanding of the insolvency process, enhancing access to accurate and complete information, and promoting stakeholder cooperation are crucial steps towards a smoother and more time efficient resolution process. Likewise, effective implementation of fast-track resolution process can be widened for all eligible corporates to mitigate the devastating consequences of delayed resolution process in insolvency.

Additionally, there's a need for a stronger emphasis on striking a balance of interest between the rights of the debtors and creditors without impeding their individual rights in possession. The erosion of value of assets must be mitigated to extract maximum wealth out of a sick industry to allow them to stand on their feet again.

An effort must be made to strengthen the NCLT and IBBI's capacity through bench expansion, a larger pool of competent judges, and the involvement of insolvency professionals should also be prioritised. It is also imperative to have sufficient resources that are necessary for effective caseload management. There is also scope for promoting an expeditious process by offering incentives to stakeholders who may then cooperate and further works towards early resolution.

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