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STANDING COMMITTEE ON FINANCE
(2023-24)

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the Observations/Recommendations contained in Thirty-second Report (17th Lok Sabha) on the subject ''Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions']

SIXTY-SEVENTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

February, 2024 / Magha, 1945 (Saka)

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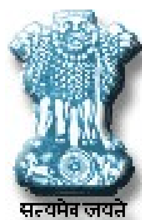
Presented to Lok Sabha on 06 February, 2024

Laid in Rajya Sabha on 06 February, 2024



LOK SABHA SECRETARIAT
NEW DELHI

February, 2024 / Magha, 1945 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE (2023-24)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Dr. Subhash Ramrao Bhamre
6. Smt. Sunita Duggal
7. Shri Gaurav Gogoi
8. Shri Sudheer Gupta
9. Shri Manoj Kishorbhai Kotak
10. Shri Pinaki Misra
11. Shri Hemant Shriram Patil
12. Shri Ravi Shankar Prasad
13. Shri Nama Nageshwara Rao
14. Prof. Sougata Ray
15. Shri P.V. Midhun Reddy
16. Shri Gopal Chinayya Shetty
17. Shri Parvesh Sahib Singh
18. Dr. (Prof) Kirit Premjibhai Solanki
19. Shri Manish Tewari
20. Shri Balashowry Vallabhaneni
21. Shri Rajesh Verma

RAJYA SABHA

22. Dr. Radha Mohan Das Agarwal
23. Shri Raghav Chadha
24. Shri Damodar Rao Divakonda
25. Shri Ryaga Krishnaiah
26. Shri Sushil Kumar Modi
27. Dr.Amar Patnaik
28. Dr. C.M. Ramesh
29. Shri G.V.L. Narasimha Rao
30. Shri Pramod Tiwari
31. Dr. Dinesh Sharma*

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Joint Secretary
3. Shri Puneet Bhatia - Deputy Secretary
4. Ms. Melody Vungthiansiam - Committee Officer

** Dr. Dinesh Sharma has been nominated to the Standing Committee on Finance (2023-24) w.e.f 25th October, 2023..*

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorized by the Committee, present this Sixty-Seventh Report on action taken by Government on the Observations / Recommendations contained in the Thirty-second Report of the Committee (Seventeenth Lok Sabha) on 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions'.

2. The Thirty-second Report was presented to Lok Sabha / laid on the table of Rajya Sabha on 03 August, 2021. The updated Action Taken Notes on the Observations/Recommendations were received from the Government *vide* their communication dated 26 July, 2023.

3. The Committee considered and adopted this Report at their sitting held on 22 December, 2023.

4. An analysis of the action taken by the Government on the Recommendations contained in the Thirty-second Report of the Committee is given in the Appendix.

5. For facility of reference, the Observations/Recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI	**JAYANT SINHA,**
22 December, 2023	**Chairperson,**
01 Pausha, 1945 (Saka)	**Standing Committee on Finance**

REPORT

CHAPTER – I

This Report of the Standing Committee on Finance deals with action taken by the Government on the recommendations/observations contained in their 32nd Report (Seventeenth Lok Sabha) on the subject 'Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions' of the Ministry of Corporate Affairs which was presented to Lok Sabha / laid in Rajya Sabha on 3 August, 2021.

2. The Action Taken Notes have been received from the Government in respect of all the 15 recommendations contained in the Report. These have been analyzed and categorized as follows:

(i) Recommendations/Observations that have been accepted by the Government:

Recommendation Nos. 1,3,4, 5, 7, 8, 9,10, 11, 13, 14 & 15

(Total 12)
(Chapter- II)

(ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies:

NIL

(Total NIL)
(Chapter- III)

(iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

Recommendation Nos. 2, 6 & 12

(Total 3)
(Chapter -IV)

(iv) Recommendations/Observations in respect of which final replies by the Government are still awaited:

NIL

(Total - NIL)
(Chapter- V)

3. The Committee desire that the replies to the observations/recommendations contained in Chapter-I may be furnished to them expeditiously.

4. The Committee will now deal with and comment upon the action taken by the Government on some of their recommendations.

Recommendation (Serial No. 2)

5. The Committee note that the Insolvency Professionals (IPs) or Resolution Professionals (RPs) form a significant part of the four pillars of the insolvency resolution ecosystem. These professionals act as intermediaries in the corporate insolvency resolution process and as such play an indispensable role in the whole process. The Committee is apprehensive about fresh graduates being appointed as Insolvency Professionals or Resolution Professionals without any experience and is doubtful about their competency in handling cases of huge and complex corporations. The Committee find that there are numerous conduct issues with regard to RPs for which the two regulators IPA and IBBI have taken disciplinary actions on 123 IPs out of a total of 203 inspections conducted till date. The rationale behind multiple IPAs overseeing the functioning of their member IPs instead of a single regulator is unclear and this current practice would lead to a conflict of interest between the regulatory and competitive goals of the IPA. The Committee believes that a professional self-regulator for RPs that functions like the Institute of Chartered Accountants of India (ICAI) should be put in place. The Committee, therefore, recommends that an Institute of Resolution Professionals may be established to oversee and regulate the functioning of RPs so that there are appropriate standards and fair self-regulation. The Committee further notes that smooth functioning of IBC depends on the functioning of entities viz. Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Committee believes that these entities have to evolve over time for which capacity enhancement programmes should be conducted from time to time.

6. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The two-tier regulatory structure or the "regulated self-regulation" model for the development of IPs was framed on the recommendation of Bankruptcy Law Reform Committee (BLRC) Report dated 04th November 2015. The extract of the BLRC report is reproduced under:

"…*The Committee deliberated on the question of regulation versus development*. *The Indian experience on self-regulating professional bodies {such as Institute of Chartered Accountants of India (ICAI), Bar Council of India and Institute of Company Secretaries of India (ICSI)} has been reasonably positive in the development of their respective professions and professional standards. However, the experience on their role in regulating and disciplining their members has been mixed. In comparison, financial regulators (such as SEBI and RBI) have had greater success in preventing systemic market abuse and in promoting consumer protection.*

Thus, the Committee believes that a new model of "regulated self-regulation" is optimal for the IP profession. This means creating a two-tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary. These actions will be within the standards that the Board will define. The Board will have oversight on the functioning of these agencies and will monitor their performance as regulatory authorities for their members under the Code. If these agencies are found lacking in this role, the Board will take away their registration to act as IP agencies."

According to the BLRC, the regulatory structure should be designed for promoting competition amongst the multiple IPAs to help achieve efficiency gains. Greater competition among the IPAs will in turn lead to better standards and rules and better enforcement. A single IPA or regulatory body like the Institute of Resolution Professionals will result in a monopoly which will be inefficient and less progressive over time.

Further, the two-tier regulatory structure, comprise of IPAs as the front-line regulator, and IBBI, as the principal regulator of IPs. They monitor disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminates the same on their respective websites. IPAs also conduct and monitor continuing professional education (CPE) of their member IPs. IBBI being principal regulator closely monitors the

performance and conduct of IPs in accordance with the mandate under the Code read with the Code of Conduct as provided in the IBBI (Insolvency Professionals) Regulations, 2016. IBBI on discovery of any deficiency related to his conduct is mandated to take appropriate action. It conducts inspection where it has reasonable grounds to believe that IP has contravened any of the provisions of the Code or rules or regulations of IPs in accordance with the policy to ensure necessary checks and balances. Further, based on examination of the inspection report or otherwise material available on record, IBBI issues show cause notice (SCN).It is also pertinent to mention that both IBBI and IPAs conduct roundtables, seminars, workshops and webinars for building capacity of IPs."

7. The Committee note that the two-tier regulatory structure for the development of Insolvency Professionals (IPs) was framed on the recommendation of the Bankruptcy Law Reform Committee (BLRC). The BLRC believed that such a model would enable the Regulator to create a competitive market for IP agencies under it unlike the current structure of professional agencies which have a legal monopoly over their respective domains. In seven years of the existence of the Insolvency and Bankruptcy Code, the Resolution Professionals (RPs) have executed the Corporate Insolvency Resolution Process (CIRP) and evolved in their understanding and implementation of the Code. Given the complexity of the resolution process and the number of penalties on RPs, the Committee continue to be apprehensive of the capability of the RPs in carrying out time bound resolution of huge companies with complex cases and believe that there is a need to revisit the rules regarding the functioning of RPs. Most penalties carried out by IBBI against RPs reveal misinformation and unawareness of the CIRP process by RPs. The IBBI in its role as principal regulator continues to tweak the norms for functioning of RPs including fixing a fee structure for RPs with performance linked incentives and enabling Insolvency Professional Entities (IPEs) to function as RPs.

The Committee hope that these amendments would augment the performance of RPs in cutting delays in the resolution process and preventing value erosion of stressed assets. The Committee further recommend that the IBBI should undertake capacity building exercise of RPs and IPEs that function as RPs, as they directly aid in swifter resolutions without compromising the value of the assets.

Recommendation (Serial No. 6)

8. With regard to staffing, the NCLT is currently functioning without a regular President and is short of 34 Members out of the total sanctioned strength of 62 Members. The Committee is deeply concerned to note that more than 50% of the sanctioned strength in NCLT is lying vacant and that the issue of vacancy has plagued the Tribunal for years. The Committee desires that an analysis of the requirement of capacity in dealing with projected cases in the next three-four years may be done so that the recruitment process can be suitably planned in advance. The Committee therefore recommends that the required sanctioned strength may be filled without any further delay. There is also a need for imparting better training to NCLT Members. The Committee also recommends that National Law Schools should be involved in the NCLT system so that they can conduct academic research, develop suitable case-based training materials, and provide appropriate support through law clerks and so on.

As the IBC cases have a direct impact on the economy and are imperative in maintaining the health of the financial sector, the Committee desire that dedicated benches of NCLT solely for IBC may be created and institutional capacity of NCLT benches be enhanced accordingly. There is also a need for having specialised benches for sectors such as MSMEs with requisite domain expertise.

9. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

> "Filling up of vacancies of members is a dynamic process and vacancies are filled from time to time. In 2019, 28 new Members were appointed, bringing the number of total Members to 52. After subsequent completion of term/ demitting of office by some of the Members, the number of Members had reached to 28 in the month of September, 2021. Meanwhile, the process for the appointment to the 21 vacant posts, which arose by 31st December, 2020, was completed and the Government approved appointment of 11 candidates as Judicial Members and 10 candidates as Technical Members, based on the recommendations of the Selection Committee. Out of these, 20 members (11 Judicial and 9 Technical) joined bringing the total number of Members to 47 (22 Judicial and 25 Technical) which was around 75% of total approved strength. The process of appointment for 15 vacancies, which had arisen during 2021, was also completed and the Government approved appointment of 09 candidates as Judicial Members and 06 candidates as Technical Members, based on the recommendations of the Selection Committee. Out of these, 14 candidates, (08 Judicial and 06 Technical) joined NCLT.
>
> For 17 vacancies, including 15 vacancies arisen recently in the month of June-July, 2022, and 2 more vacancies arising by 31.12.2022, an advertisement inviting applications for 19 vacancies (08 Judicial and 11 Technical Members) was issued on 12.07.2022, and based on the recommendations of the Selection Committee, Government has approved appointment of 09 candidates to the post of Judicial Member and 12 candidates to the post of Technical Member. The Offers of appointment to these 21 candidates have been issued on 03.07.2023, and out of these 21 candidates, 16 candidates have joined as Members, NCLT (06 Judicial and 10 Technical) bringing the total number of Members to 53 (24 Judicial and 29 Technical). Out of remaining 05 candidates, 04 are expected to join soon while 01 candidate has expressed his inability to join. Upon joining of remaining 04 candidates, the strength will become more than 90% of the sanctioned strength.
>
> The Government appointed Mr Justice Ramalingam Sudhakar, former Chief Justice of Manipur High Court as President, NCLT, on the recommendation of Hon’ble Chief Justice of India. Justice (Retd.) Ashok Bhushan, former Judge of the Supreme Court of India has been appointed as Chairperson of NCLAT. In respect of NCLAT, a vacancy circular was issued on 23.12.2022 for filling up of then existing and anticipated vacancies of 03 posts of Members (01 Judicial Member and 02 Technical Members). Based on the recommendations of the Search-cum-Selection

Committee, Government has approved appointment of 02 candidates to the post of Technical Member. The Offers of appointment to these 02 candidates have been issued on 10.07.2023 and they are expected to join NCLAT soon. Regular Colloquiums are being held for capacity building of Members to ensure speedier and uniform judicial delivery system. To inculcate and imbibe the qualities of a Member and to make a new Member aware of all the basic principles of Company law, IBC and LLP Act, the induction programme are being conducted for the newly appointed Members of NCLT and NCLAT. Members joined in September-October, 2021 in NCLT, an Induction Training Colloquium was organized from 4th to 10th October, 2021. Another Colloquium for NCLT Members was organized on 26th and 27th March, 2022 in New Delhi on the subject of "NCLT-The Road Ahead-2022". The Insolvency and Bankruptcy Board of India (IBBI) has also organised a two-day Colloquium on the theme 'Functioning and Strengthening of the IBC Ecosystem' from November 19 to 20, 2022 in New Delhi. For newly appointed Members, an Induction Training Colloquium is proposed to be organized from 19.07.2023 to 03.08.2023.

National Law University, Delhi, which is a premier law university in India established by the National Law University Act, 2007 (Delhi Act No. 1 of 2008), was involved in conducting induction Colloquium from 13th July 2019 to 27th July, 2019 for NCLT Members of 2019 batch.

As far as dedicated benches for IBC and MSME sector are concerned, it is stated that such dedicated benches have not been provided in the law, as NCLT and NCLAT themselves are specialized courts for the corporate matters."

10. The Committee note that offer of appointment of 21 Members of NCLT had been issued on 03.07.2023 out of which 16 Members have joined, 4 Members are yet to join while 1 candidate has expressed his inability to join. This would bring the total strength to 57 Members out of the sanctioned strength of 62 Members. The Committee acknowledge that for the first time since its inception, the strength of NCLT would be more than 90% of its sanctioned strength. However, the Committee feel that in order to tackle the huge pendency of more than 20000 cases in NCLT at the end of every year, the sanctioned strength of NCLT needs to be enhanced.

Further, the reply of the Ministry reveal a vicious cycle of appointment of new Members alongside retirement/completion of term of old Members thereby rendering a perpetual vacancy in the Tribunal that is plagued with inordinate delays in cases regarding both IBC and Companies Act. The Committee have, in their earlier Reports on Demands for Grants, Subject and Bill, repeatedly mentioned the need for filling up the vacancies in NCLT. The Committee find that their recommendation regarding analysis of the capacity requirement *vis a vis* projected cases in the NCLT in the next few years has not been heeded to. Apart from the human resource gaps, the Committee would like to highlight that the NCLT is functioning with poor infrastructural setup. The Committee recommend that the Ministry should prioritise addressing the requirements of the Tribunal urgently and fill the infrastructural and human capacity gaps without further delay. The Committee believe that equipping the NCLT is a crucial step in improving the implementation of IBC especially in timely resolution of cases.

Recommendation (Serial No. 12)

11. It is a matter of grave concern for the Committee that the insolvency process has been stymied by long delays far beyond the statutory limits. It is disconcerting that even admission of cases in NCLT has been taking an unduly long time, which thus defeats the very purpose of the Code. There have also been instances of frivolous appeals, which further drags the resolution/recovery process leading to severe erosion of asset value. The Committee would therefore recommend that misuse/ abuse of well-intended provisions and processes should be prevented by ensuring an element of finality within the statutorily stipulated period without protracted litigation.

12. In their action taken reply the Ministry of Corporate Affairs have submitted as follows:-

"The Government has amended the Code vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 6.08.2019 which provides that the NCLT should record reasons in writing in case it has not ascertained the existence of default in respect of financial creditor's application for initiating corporate insolvency resolution process (CIRP) under section 7 of the Code within 14 days from the date of filing of such application, further, the CIRP should not go beyond a period of 330 days including litigation period. The 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances *[Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited &Anr.].*

Further, the timelines have to be met not just by Adjudicating Authority but also by the IP conducting the process with the cooperation of other stakeholders. Streamlining and removing bottlenecks by amending the Code and Regulations are done to speed up the process. Also, IBBI organizes workshops, seminars, conferences, webinars, etc. from time to time for capacity building of the IPs along with other stakeholders to ensure that timelines are being followed at every stage."

13. The Insolvency and Bankruptcy Code which was enacted in 2016 aimed at timely insolvency resolution and maximising the value of stressed assets through the Corporate Insolvency Resolution Process (CIRP) with the key players including the Resolution Professionals (RPs), Adjudicating Authority, Committee of Creditors (COC), Insolvency and Bankruptcy Board of India (IBBI) and Information Utility as well. The Code has gone through a number of amendments and is still evolving. The Committee observe that there are inordinate delays in the resolution process resulting in value erosion of stressed assets. The Committee during their discourse on the IBC process find that the actual recoveries on the ground are roughly between 25 to 30 per cent and some cases take as long as two years for resolution,

far beyond the time limit envisaged. In the light of the experience gathered so far, the Committee believe that the design of the Code needs to be reviewed, taking into account the lacunae and roadblocks that have surfaced in implementing the Code so far, so that the very purpose behind its enactment is not defeated. The process of admitting claims also needs to be revisited as huge delays occur at this stage creating a domino effect on the whole resolution process, most critically degeneration of asset value. The Committee may be apprised of the steps taken in this regard.

CHAPTER - II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Serial No. 1)

The Insolvency and Bankruptcy Code, 2016 was enacted on May 28,2016 with the twin objectives of time bound insolvency resolution and value maximisation of assets and aims to promote entrepreneurship and availability of credit. The enactment of the Code has been considered a landmark legislation and the biggest economic reform next to GST. A comparison of the World Bank Ease of Doing Business Report 2017 and 2020 clearly indicates a shift in India's 'doing business' rankings pre and post IBC enactment. The information furnished by the Ministry of Corporate Affairs reveal that while India's resolving insolvency rank improved from 136 in 2017 to 52 in 2020, the average time taken for resolution was reduced from 4.3 years in 2017 to 1.6 years in 2020; India's rank in ease of doing business improved from 155 in 2017 to 63 in 2020, getting credit rank improved from 62 in 2017 to 25 in 2020 and starting a business rank improved from 151 in 2017 to 136 in 2020. The Committee notes that the Code has undergone six amendments since its enactment. While any legislative enactment and implementation needs to constantly evolve to meet the challenges in the ever changing ecosystem, the Committee are of the opinion that the actual operationalisation of amendments made so far may have altered and even digressed from the basic design of the statute and given a different orientation to the Code not originally envisioned. While taking into consideration the impact of the pandemic on the implementation of the Code, the Committee find that the low recovery rates with haircuts as much as 95% and the delay in resolution process with more than 71% cases pending for more than 180 days clearly point towards a deviation from the original objectives of the Code intended by Parliament. The Committee therefore feels that the design and the implementation of the Code as it has evolved needs to be revisited, particularly in the light of its original aims and objects. We therefore need a thorough evaluation of the extent of fulfillment of these aims and objects in the course of implementation of the Code over the years.

It needs to be kept in mind that the fundamental aim of this statute is to secure creditor rights which would lower borrowing costs as the risks decline. Therefore, greater clarity in purpose is needed with regard to strengthening creditor rights through the mechanism devised in the Code, particularly considering the disproportionately large and unsustainable "hair-cuts" taken by the financial creditors over the years. As the insolvency process has fairly matured now, there may be an imperative to have a benchmark for the quantum of "hair-cut", comparable to global standards.

Reply of the Government

The objective of the Insolvency and Bankruptcy Code, 2016 (the Code/IBC) is timely resolution of the corporate debtor (CD). During the corporate insolvency resolution process (CIRP), the Committee of Creditors (CoC) is entrusted to take the commercial decision for resolving insolvency of CD. The Code prescribes a limited role to the Adjudicating Authority (NCLT) i.e., it cannot go into the commercial reasons for approval of a resolution plan. This principle is well recognised as settled law based on several judgments of Hon'ble Supreme Court [*Sashidhar v. Indian Overseas Bank & Ors., Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors*]. The provisions of the Code and applicable IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [CIRP Regulations], impose reasonable restrictions on the power of the CoC to approve a resolution plan and lay down certain guiding principles that are required to be considered by the CoC while approving a resolution plan i.e., a plan is to be approved by the CoC after considering the feasibility and viability of the resolution plan which balances the interest of all stakeholders as provided under section 30(4) of the Code. Moreover, to minimise information asymmetry for the CoC, the CIRP Regulations inter alia provide for sharing of relevant information regarding the CD and determination of its fair value and liquidation value. In this background the CoC assesses the resolution plan and takes the commercial decision to approve or reject the resolution plan.

As regards the reduction in value of the CD or impairment of rights of the creditors is concerned, it is noted that realisation for creditors depends on several factors, including

firm specific factors like nature of business, business cycles, market sentiments, etc; sector specific factors and larger economic conditions. Also, the stage at which IBC process is initiated is very crucial, for example, if a company has been sick for years, and the value of assets have depleted significantly, initiation of CIRP under the Code may result in resolution with huge value reduction or even in liquidation. Value preservation is easier and maximisation higher when insolvency proceedings are initiated at an early stage of stress when the business continues as a going concern. Further, the decision of approval of the resolution plan which may result in value reduction/impairment of rights of creditors is based on the financial status of CD and resolution plans received from the market. This determination requires commercial wisdom and it cannot be prescribed in law through ex-ante determination.

It may also be noted that one of the key reasons for the failure of the erstwhile SICA regime was its ‘command approach’, where the BIFR was entrusted with taking commercial calls in relation to the resolution of a sick enterprise. Prescribing a ‘benchmark’ for resolution would mean that we are returning back to the ‘command approach’. Even if a benchmark for quantum of reduction in value were to be prescribed, it would be difficult to arrive at a range that could be uniformly applied across all kinds of CDs. Further, if the Adjudicating Authority is to monitor the implementation of such a benchmark, they would invariably be called upon to opine on the commercial wisdom of the CoC, which would undermine the basic market-driven feature of the Code.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 3)

According to the Ministry of Corporate Affairs, "the commercial wisdom of COC is supreme". In the Committee's view, keeping in mind the experience gathered so far, there is an urgent need to have a professional code of conduct for the COC, which will define and circumscribe their decisions, as these have larger implications for the efficacy of the Code.

<u>Reply of the Government</u>

The Code assigns the responsibility of reorganization to the CoC. The CoC decides the fate of the company - rescue viable companies and close unviable ones. Over a period of time, the role of CoC has been defined clearly by Courts and has assumed importance. This immense responsibility on the shoulders of the CoC to decide the future of the CD and other stakeholders associated with the CD imposes a fiduciary duty on the members of the CoC to balance the interests of all stakeholders. The wide powers of the CoC in resolution process should come with accountability. Therefore, the Insolvency Law Committee (ILC) in its 2020 Report discussed the issue of regulating the conduct of financial creditors and recommended that this may be developed in the form of Best Practices, by industry bodies such as the IBA. The issue was further deliberated inthe ILC in February 2021 and as stated in its May, 2022 Report "*the Committee agreed that it would be suitable for the IBBI to issue guidelines providing the standard of conduct of the CoC while acting under the provisions governing the corporate insolvency resolution process, pre-packaged insolvency resolution process and fast track insolvency resolution process. This may be in the form of guidance that provides a normative framework for conducting these processes".*

Pursuant to the deliberation in ILC, IBBI issued a discussion paper on the standard of conduct of CoC. Consequently, CIRP Regulations were amended on 30thSeptember, 2021 to provide that the CoC and members of the committee shall comply with the guidelines as may be issued by IBBI.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 4)

The Committee also note that during the Corporate Insolvency Resolution Process (CIRP), the Committee of Creditors (COC) decide whether to continue with the interim Resolution Professional as the Resolution Professional or to replace the interim Resolution Professional by another Resolution Professional without any guidelines. The Committee desires that IBBI should frame guidelines for the selection of RPs by the Committee of Creditors in a more transparent manner.

Reply of the Government

Regulation 3(1) of the CIRP Regulations provides that an IP is required to be independent of the corporate debtor for being eligible to be appointed as an IRP or RP. Also, IP proposed for replacement or appointment as RP should comply with the IBBI (Insolvency Professionals) Regulations, 2016 [IP Regulations] and abide by its code of conduct as given in the first schedule of the IP Regulations which includes requirement of independence and impartiality. An IP cannot accept an assignment unless she holds a valid authorisation for assignment. During CIRP, IRP can be appointed as RP or replaced by a new RP under Section 22 of the Code and RP can be replaced under Section 27 of the Code. Under both the provisions i.e., section 22 and 27 of the Code, IBBI is required to confirm the appointment. CoC is required to make an application to NCLT for appointment of RP and NCLT seeks confirmation from IBBI (for which IBBI has already provided a list of eligible IPs). In practise, to save time, IBBI shares a database of all the registered IPs with NCLTs, disclosing whether any disciplinary proceeding is pending against any of them and the status of their authorisation.

Further, it is also noted that IBBI has made available information regarding IPs, and their educational qualifications and experience in electronic mode. Information on past and present assignments and the outcomes in these assignments and details of disciplinary actions against them are also made available on the electronic platform which helps creditors conduct their due diligence before making their choice for an IP.Also, the IBBI has recently provided an online criteria-based search tool (*https://ibbi.gov.in/en/insolvency-professional/search-ipsbycriteria-basic*) to aid selection of IPs in a more transparent manner.

Hence, appointment or replacement of the RP is being done in a transparent manner facilitated by regulations, and information made available by IBBI in public domain with an overall supervision of NCLT.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 5)

The Committee notes that the IBC Code has had great success in changing the credit culture of the country. The “defaulters paradise” is no more, enabling much higher recoveries in default cases and bringing down the cost of borrowing. Many defaults are now avoided because business owners are much more disciplined about servicing their loans. Moreover, insolvency cases are often settled before the formal resolution process begins. This is reflected in lower NPAs and better ease of doing business rankings. Nonetheless, during the Committee’s performance audit, many jurisdictional, procedural, and execution issues related to the NCLT system emerged that need to be resolved. These issues will become even more important and urgent during the Covid-19 recovery period.

NCLT is the Adjudicating Authority for insolvency resolution and liquidation of corporate persons. The Committee during the course of examination found that the main reasons for delay in the insolvency resolution process are delays in admission of cases in NCLT and delays in approval of resolution plans by the NCLT. The Committee also note that 13,170 IBC cases pending with the NCLT involve an approximate amount of Rs. 9,00,000 crore and that 71% of these cases have been pending for more than 180 days. The Committee is concerned that resolution period delays result in rapid value erosion, thereby reducing the realization value. There are several procedural reasons that lead to these delays.

In the first instance, NCLT itself takes considerable time to admit cases. During this time the company remains under the control of the defaulting owner enabling value shifting, funds diversion, and asset transfers. NCLT should accept defaulters within 30 days and transfer control to a resolution process within this time period.

Second, it should be noted that invited bidders are asked to submit their respective resolution plans within the specified deadlines. These resolution plans are then evaluated by the CoC. In the meanwhile, other bidders may suddenly emerge and submit their own resolution plans. These bidders typically wait for the H1 bidder to become public, and they

then seek to exceed this bid through an unsolicited offer that is submitted after the specified deadline. Currently, the CoCs have significant discretion in accepting late and unsolicited resolution plans.

These unsolicited, late bids create tremendous procedural uncertainty. As a result, genuine bidders are discouraged from bidding at the right time. The overall process is vitiated and there are significant delays leading to further value erosion. The Committee believes that the IBC needs to be amended so that no post hoc bids are allowed during the resolution process. There should be sanctity in deadlines, so that value is protected and the process moves smoothly.

Finally, NCLT judgments are litigated continuously in the NCLAT and Supreme Court further delaying resolution and recovery. Oftentimes, NCLT judgments are overturned demonstrating that judgment quality has to be improved at the NCLT level. This can be improved by ensuring that NCLT Members are highly experienced and fully trained. The Committee believes that NCLT judicial Members should be at least Hon'ble High Court judges so that the country can benefit from their judicial and procedural experience and wisdom.

Reply of the Government

The Code provides for a maximum period of fourteen days for consideration of an application for initiation of CIRP in respect of a CD. The Supreme Court in *Surendra Trading Company v. JuggilalKamlapat Jute Mills Company Ltd* held that the timelines are procedural in nature, a tool in aid for expeditious dispensation of justice and are directory. Therefore, prescription of any time-period for adjudication by the NCLT may be interpreted as directory by the courts and tribunals.

As regards the delay in submission of bids is concerned, it is stated that the CIRP Regulations provides last date for submission of expression of interest (EoI) from prospective resolution applicants (RAs). On failure to do so, the EoI shall be rejected. Thereafter, the RP shall prepare provisional list of eligible prospective RAs and *inter alia* issues a request for resolution plans ("RFRP") and shall allow them a minimum 30

days to submit the resolution plan. However, the CoC in exercise of its commercial wisdom can consider resolution plans received after expiry of the deadline [*Kalpraj Dharamshi & Anr. vs Kotak Investment Advisors Ltd. & Anr.].* IBBI vide notification dated 30th September, 2021 amended the CIRP Regulations to address delays in CIRP due to repeated issuance ofEoI, numerous modifications in RFRP and iterations in the resolution plan and consideration of unsolicited resolution plans and placed a cap onthe number of times such modifications may be made.

The basic feature of Indian judiciary system is its hierarchical structure of courts. The hierarchical structure of court is being endorsed by the Constitution of India with the level of power exercised by the different level of courts. The judgments can be challenged in the higher courts if the parties to the cases are not satisfied. The process of escalation is systematic and thus the system of providing maximum level of satisfaction to the parties is sincerely tried by the hierarchical judiciary system.

As regards, quality of judgments of NCLT Member and their qualifications and capacity building is concerned, it is stated that the selection of Members in NCLT is done on the recommendation of a Selection Committee which is constituted under the Chairmanship of Hon'ble Chief Justice of India, or his nominee, and have another Judge of Supreme Court/ Chief Justice of a High Court, Law Secretary and Corporate Affairs Secretary as Members. High Court Judges, District Court Judges and Advocates are eligible to be appointed as Judicial Members and the Selection Committee after giving due consideration to the qualifications and experience of the candidates applied for the post, recommends the name of the suitable candidates for appointment. Post appointment, regular Colloquiums are being held for capacity building of Members to ensure speedier and uniform judicial delivery system. To inculcate and imbibe the qualities of a Member and to make a new Member aware of all the basic principles of Company law, IBC and LLP Act, the induction programme are being conducted for the newly appointed Members of NCLT and NCLAT. For recently appointment Members of NCLT, an Induction Training Colloquium was organized from 4th to 10th October, 2021.Another Colloquium for NCLT Members was organized on 26th and 27thMarch, 2022 in New Delhi on the subject of "NCLT-The Road Ahead-2022".

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 7)

Section 5(26) of the IBC defines a resolution plan as a plan proposed by resolution applicant for insolvency resolution of the corporate defaulter as a going concern. Resolution Professionals, CoCs and certain orders of the NCLT indicate that the term 'going concern' implies that the resolution plan must result in the disposal of the entire business and operations of the CD under one plan.

Actual experience has shown that bidders may be interested in selected business units or assets, rather than the entire business. A combination of bidders taking different business units or assets may well be far superior to one bidder acquiring the entire business from the CoC. However, the resolution professional does not currently have the flexibility within the IBC to dispose of the corporate defaulter across multiple bidders.

The CIRP Regulation 37 does allow the resolution professional much more flexibility in developing a resolution plan across multiple bidders each taking different pieces of the corporate defaulters. Regulation 37 of the CIRP Regulations permits transfer of all or part of the assets to one or more persons and sale of all or part of the assets as part of a resolution plan.

IBC is clearly the Parliamentary Statute while the CIRP Regulations are delegated subordinate legislation. Accordingly, the Committee recommends that the IBC be amended to clarify that the resolution plan can be achieved through any of the means prescribed under Regulation 37 of the CIRP Regulations.

Reply of the Government

BLRC deliberated on the importance of keeping the entity as a going concern and stated that *"The Code will be open to all forms of solutions for keeping the entity going without prejudice, within the rest of the constraints of the IRP. Therefore, how the*

insolvency is to be resolved will not be prescribed in the Code. There will be no restriction in the Code on possible ways in which the business model of the entity, or its financial model, or both, can be changed so as to keep the entity as a going concern."

The intent of the Code is to allow all possible forms of solution for insolvency resolution of the corporate debtor which is clearly reflected under section 5(26) of the Code and to further clarify this intent an explanation was inserted vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 06.08.2019 thereby providing that *a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger*. Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides flexibility to the resolution professional in developing resolution plan is in sync with Section 5(26) and section 30(2) of the Code. The Code gives the broader legislative guidelines and delegated legislation through regulations give further details. As an example, the resolution plan in Jet Airways submitted by consortium of Murari Lal Jalan and Florian Fritsch (Resolution Applicant) was approved by NCLT. In addition to this IBBI in its discussion paper dated 27th June, 2022 proposed that resolution professional and the creditor may explore to resolve the corporate debtorby inviting plans for resolution of parts of the assets and businesses logically grouped together . Amendment in the Regulation may be made after following the due process including public consultations.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 8)

Similarly, while liquidation under Section 54 of the IBC requires dissolution of the corporate defaulter, Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") inter-alia provides for sale of the assets of the CD during liquidation. The NCLT, Principal bench in the matter of Invest Asset Securitisations & Reconstruction Pvt. Ltd vs. Mohan Gems & Jewels Pvt. Ltd.; CP No. 590 (PB) of 2018 has also taken a view that liquidation requires dissolution under the IBC and hence regulations that provide for liquidation as a going concern are ultra-vires and that the legislation has created further uncertainty.

Therefore, Regulation 32 (e) of the Liquidation Regulations maybe deleted. Additionally, Regulation 32 (f) of the Liquidation Regulations maybe amended appropriately

Reply of the Government

The ILC Report, February 2020 recommended that though such going concern sales should not be mandated during liquidation, however, the liquidator, in consultation with the relevant stakeholders of the corporate debtor, should be permitted to decide if a going concern sale should be attempted.

Further, the order of NCLT has been set aside (*M/s. Mohan Gems & Jewels Private Limited v. Vijay Verma & IBBI, CA (AT)(Ins) N0. 849/2020, August 24, 2021*). While setting aside the impugned order, the NCLAT held that the legality and propriety of any regulation cannot be considered by Tribunals. Also, the Hon'ble Supreme Court has reiterated that the Code envisages three modes of revival, one of which is sale of the corporate debtor as a going concern (*Arun Kumar Jagatramka. v. Jindal Steel and Power Ltd. &Anr., CA No. 9664/2019, March 15, 2021*).

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 9)

Given that the IBC Code has been operational since the last five years, the Committee recommends that the NCLT and NCLAT should completely digitize their records and operations with provision for virtual hearings to get through the backlog and deal with the pending cases swiftly.

Reply of the Government

E-Courts, digitalisation of records and other e-governance solutions are already being implemented in NCLT and NCLAT through the NIC. E-court project hasbeen implemented in all benches of NCLT. Provision for virtual hearing is already in place and

during the Covid-19 pandemic, benches of both NCLT and NCLAT have been functioning through virtual hearing.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 10)

The Committee also recommends that an appraisal study on the performance of NCLT with granular data on IBC cases and its impact on the debt portfolio or overall credit markets in India should be conducted and presented to Parliament and published in public domain annually, which would benefit researchers and analysts. In this regard, the Committee also suggests that an MoU may be signed by the Ministry of Corporate Affairs with leading business schools or law universities to associate them academically in this exercise and benchmarking the outcomes against the rest of the world. Further, all data available should be in machine-readable format. There should also be a broader built-in consultation mechanism and an ecosystem for regular feedback on the performance of NCLT.

Reply of the Government

The ILC constituted by this Ministry reviews and monitors the working of the Code on a continuous basis. ILC comprises of representatives from the government, regulators, professional institutes, industry and subject-matter experts which takes into consideration the international best practices and make recommendations to the Government on issues arising from implementation of the Code as well as on the recommendations/ representations received from various stakeholders to further, strengthen the Code. Based on the recommendations of the ILC, the Government takes remedial measures and required amendment in the Code for smooth implementation of the Code.

IBBI publishes relevant information and data relating to various processes and service providers under the Code on its website in the interest of transparency and to enable the stakeholders to make informed decisions. IBBI makes it mandatory for Insolvency Professionals to submit forms constituting critical data in an electronic mode.

Also, IBBI in collaboration with various institutes and organisations like IICA, IGIDR, IFC etc. conducts conclaves, workshops, conferences and seminars for capacity building, identifying issues of stakeholders and in-depth research on the Code. IBBI and National Stock Exchange of India Limited (NSE) has signed a Memorandum of Understanding (MoU) on 06.08.2021 for a research collaboration with the objective of creating rich research ecosystem in the area of insolvency and bankruptcy in India. IBBI has also partnered with National Law Institute University, Bhopal for conduct of the Graduate Insolvency Programme (GIP) from the academic session 2021-2022. Further, the first International Research Conference on Insolvency and Bankruptcy was organised by the IBBI, jointly with the Indian Institute of Management, Ahmedabad (IIMA), Gujarat on 30th April, 2022 – 1st May, 2022.During the conference, research papers in the insolvency domain were presented by over 40 scholars of economics, law, finance, banking and management. International experience in insolvency was shared and discussed by international scholars from countries like UK, US, Mauritius, and Argentina, as part of the Conference.

Further, in pursuance of Section 461 the Companies Act, 2013 the Ministry is required to prepare an annual report on the working and administration of this Act and to lay before each House of Parliament within one year of the close of the year to which the report relates. This report, inter-alia, contains data on institution and disposal of cases in NCLT and NCLAT.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 11)

The Ministry of Corporate Affairs, as the nodal Ministry, should take greater responsibility to streamline the operational processes in NCLT/ NCLAT, while constantly monitoring and analysing the work flow, disposal and outcomes with regard to resolution, recoveries, time taken etc. Prompt remedial measures must be accordingly initiated by way of guidelines, rules or administrative orders.

Reply of the Government

The Government is continuously facilitating the functioning of the NCLT and NCLAT and with a view to streamline the operational processes, the Ministry has put in place detailed framework through the Companies Act, IBC and various rules framed thereunder. The acts and rules are amended from time to time as per emerging needs. The Government has amended the Code vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 06.08.2019 which provides that the NCLT should record reasons in writing in case it has not ascertained the existence of default in respect of financial creditor's application for initiating corporate insolvency resolution process under section 7 of the Code within 14 days from the date of filing of such application. Further, the process of corporate insolvency resolution should not go beyond a period of 330 days including litigation period. Hon'ble Supreme Court in the matter of Ebix Singapore Pvt. Ltd. Vs Committee of Creditors of Educomp Solutions Ltd. &Anr. has observed that a period of 330 days can exceed only in exceptional circumstance.

Further, the Government is constantly taking all necessary steps to strengthen the NCLT and NCLAT in terms of number of Benches, number of courts at heavily loaded benches, number of Members, provision of infrastructure and capacity building, etc. Five new Benches of NCLT have been announced during year 2018 and 2019 at Jaipur, Cuttack, Kochi, Indore and Amaravati, bringing the total number of Benches to 16 (including the Principal Bench). Similarly, one more bench of NCLAT at Chennai has been made operational in the month on 25th January, 2021.

As regards filling up of vacancies of members of NCLT/NCLAT, may kindly refer to response to recommendation no. 6 above.

Regular Colloquiums are being held for capacity building of Members to ensure speedier and uniform judicial delivery system. To inculcate and imbibe the qualities of a Member and to make a new Member aware of all the basic principles of Company law, IBC and LLP Act, the induction programme are being conducted for the newly appointed

Members of NCLT and NCLAT. For recently appointment Members of NCLT, an Induction Training Colloquium was organized from 4th to 10th October,2021. Another Colloquium for NCLT Members was organized on 26th and 27thMarch, 2022 in New Delhi on the subject of "NCLT-The Road Ahead-2022".

NIC is implementing e-courts and other e-governance solution in NCLT/ NCLAT, which is in advanced stage of implementation. E-court project has been implemented in all benches of NCLT,. Government has sanctioned 320 posts at various levels in NCLT and 59 posts in NCLAT. Recruitment Rules for these posts have been notified. Till the regular posts are filled up, approval has been granted to NCLT and NCLAT for engaging sufficient officers/ staff on contractual basis to carry on their functions. To assist the benches, approval has been granted for engagement of Law Research Associates (LRA) in NCLT, which are being engaged progressively upon joining of Members. Adequate infrastructure has been provided to NCLT and NCLAT benches. Incremental requirement is being taken care of as per request received from these bodies from time to time. Considering the constraints at some benches such as Mumbai and Allahabad, new and larger space has been provided. New premises for Mumbai bench of NCLT and new premises of NCLAT at New Delhi have also been provided. Additional space has been provided to NCLT, Delhi Bench.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 13)

The Committee note that the MSME sector, a driving force behind the country's vision of Aatmanirbhar Bharat or a self-reliant nation are presently facing acute financial distress and liquidity crunch owing to the Covid-19 pandemic. In order to prevent MSMEs from being pushed into insolvency proceedings, the Government had increased the threshold amount of default from Rs.1 lakh to Rs. 1 crore for initiating insolvency proceedings. Under the IBC Code, a special insolvency framework for MSMEs has been introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance notified on 4th April, 2021 which envisages debtor-in-possession model and aims at causing minimal disruption to MSME debtors' business activities to ensure job preservation with a timeline of 120 days for completion. The Committee desire that this Pre-pack framework

may be gainfully employed while strictly adhering to timelines to achieve swift and cost effective resolutions as the survival of MSMEs are indispensable for the revival of the economy. The Committee further recommend that a pre-pack resolution framework for corporates may be rolled out to aid the existing insolvency framework in facilitating quicker and more effective resolutions and in reducing the burden of NCLTs in the after-math of the Covid-19 pandemic, while adhering to the core principles of value maximisation and timely resolutions. This pre-pack mechanism may however be subject to suitable review based on experience gained in due course, as the process may be prone to abuse.

Currently, MSMEs are considered as Operational Creditors and come after Secured Creditors in the 'waterfall' mechanism. This will need to be reconciled with the MSME Act and the additional protection that MSMEs may require in these economic circumstances.

Reply of the Government

ILC deliberated extensively on the issue of applicability of pre-packaged insolvency resolution process (prepack) framework for corporate debtors and recommended that "*the pre-pack process should only be available to corporate debtors that are MSMEs. It felt that the pre-pack process would undoubtedly go a long way in alleviating the distress that MSMEs are facing due to the pandemic. Likewise, it will provide such MSMEs access to a flexible, quick and cost-effective process, allowing them to be more stable and innovative in the long term. Thus, it decided to review the recommendations of the proposed pre-pack process made by the Sub-committee and accordingly, recommend the design of a suitable framework for pre-packaged insolvency resolution of corporate MSMEs…….One of the members stated the importance of pre-pack process for non-MSME corporate debtors. On this, the Committee agreed that in due course of time, it may be considered if the pre-pack process should be made available for non-MSME corporate debtors based on the experience gained in its implementation.*"

As prepack framework is in its nascent stage being a new legislation for Indian economy there needs to be a review of the experience before extending it to non-MSME corporate debtors. Further, for gainful employment of this prepack framework advocacy to

create awareness about this option/ route available under the Code, IBBI has conducted series of webinars. So far, two applications under prepack have been admitted.

As regards the waterfall mechanism is concerned, it is noted that on admission of application under the Code, there are two possible outcomes i.e., resolution or liquidation of the corporate debtor. In the event of resolution, the Code provides for enough safeguards in respect of payment of dues to Operational Creditors. Further, in the event of liquidation, creditors receive their share/ claims as per the waterfall mechanism provided under section 53 of the Code. This waterfall mechanism is in line with the recommendations of the Bankruptcy Law Reform Committee Report, 2015.

Also, Hon'ble Supreme Court in the matter of *Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors.* while observing that *"repayment of financial debts infuses capital into the economy in as much as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses This rationale creates an intelligible differentia between financial debts and operational debts which are unsecured"* upheld the constitutional validity of Section 53 of the Code. Further, Section 238 of the Code gives the Code an overriding effect over other laws for the time being in force i.e., IBC would prevail over other laws.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No.14)

The Committee note that the Insolvency Law Committee on cross border insolvency (2018) had suggested the incorporation of UNCITRAL Model Law on Cross Border Insolvency into the Insolvency and Bankruptcy Code. The Committee also note that an expert Committee on Cross-Border Insolvency Rules/Regulations Committee (CBIRC) had been constituted for recommending rules and regulations for smooth implementation of proposed cross border insolvency provisions, which are under consideration. Once the recommendations are adopted, the Committee hope that the cross-border insolvency framework would go a long way in ensuring coordination and communication between

jurisdictions to successfully address the resolution of cross border insolvency cases. The Committee, therefore, recommends that the adoption of the provisions of the Cross-border Insolvency framework should be expedited.

Reply of the Government

The Ministry invited further public comments on the cross-border insolvency framework under the Code vide notice dated 24thNovember 2021.The Ministry is further examining the implementation of cross border framework under the Code.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

Recommendation (Serial No. 15)

The Committee note that the IBC (Second Amendment) Act, 2018 aimed to balance the interest of stakeholders, especially homebuyers and MSMEs had fixed a threshold of at least 100 homebuyers or 10% of the total flat purchasers in a real estate project for initiation of a resolution plan before the NCLT. The Committee has found that the homebuyers are facing practical difficulties in gathering the required number of homebuyers to initiate insolvency proceedings against the real estate owner. The Committee, therefore, recommend that once a single homebuyer decides to initiate insolvency proceedings in NCLT, the real estate owner should be obligated in the Rules/ Guidelines to provide details of other homebuyers of the project to the concerned homebuyer so that the required 10% or 100 homebuyers can be mobilised, which will thus ensure that the interest of the distressed homebuyers is duly safeguarded while enabling effective operationalisation of the amended provision.

Reply of the Government

The minimum threshold for filing of applications for the purpose of initiating CIRP under the Code was introduced vide IBC (Second Amendment) Act, 2018 w.e.f. 06.06.2018 to resolve the issue of single homebuyer/allottee initiating insolvency proceedings in NCLT based on minor or frivolous disputes, thereby impacting the entire project and other homebuyers/allottees. The concern related to the non-availability of

information of allottees in respect of real estate projects in public domain, which makes it difficult for an allottee to file an application for initiation of CIRP was considered in the matter of *Manish Kumar Vs. Union of India and Another (WP(C) No. 26 of 2020 with 40 other writ petitions* inter-alia observed that section 11(1)(b) of the RERA makes it mandatory for the promoter to make available information regarding the bookings. Also, the regulations require, the promoter to open a webpage for the project and post and update information relating to allotments. Further, there is a mechanism, namely, the association of allottees through which the allottees are expected to gather information about the status of the allotments, including the names and addresses of the allottees. Thus, there exists mechanism outside the purview of the Code to enable initiating CIRP through RERA and allottee specific action.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency Dated. 12.08.2022]

CHAPTER - III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT’S REPLIES

NIL

CHAPTER - IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Serial No. 2)

The Committee notes that the Insolvency Professionals (IPs) or Resolution Professionals (RPs) form a significant part of the four pillars of the insolvency resolution ecosystem. These professionals act as intermediaries in the corporate insolvency resolution process and as such play an indispensable role in the whole process. The Committee is apprehensive about fresh graduates being appointed as Insolvency Professionals or Resolution Professionals without any experience and is doubtful about their competency in handling cases of huge and complex corporations. The Committee find that there are numerous conduct issues with regard to RPs for which the two regulators IPA and IBBI have taken disciplinary actions on 123 IPs out of a total of 203 inspections conducted till date. The rationale behind multiple IPAs overseeing the functioning of their member IPs instead of a single regulator is unclear and this current practice would lead to a conflict of interest between the regulatory and competitive goals of the IPA. The Committee believes that a professional self-regulator for RPs that functions like the Institute of Chartered Accountants of India (ICAI) should be put in place. The Committee, therefore, recommends that an Institute of Resolution Professionals may be established to oversee and regulate the functioning of RPs so that there are appropriate standards and fair self-regulation. The Committee further notes that smooth functioning of IBC depends on the functioning of entities viz. Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Committee believes that these entities have to evolve over time for which capacity enhancement programmes should be conducted from time to time.

Reply of the Government

The two-tier regulatory structure or the “regulated self-regulation” model for the development of IPs was framed on the recommendation of Bankruptcy Law Reform

Committee (BLRC) Report dated 04th November 2015. The extract of the BLRC report is reproduced under:

"…*The Committee deliberated on the question of regulation versus development*. *The Indian experience on self-regulating professional bodies {such as Institute of Chartered Accountants of India (ICAI), Bar Council of India and Institute of Company Secretaries of India (ICSI)} has been reasonably positive in the development of their respective professions and professional standards. However, the experience on their role in regulating and disciplining their members has been mixed. In comparison, financial regulators (such as SEBI and RBI) have had greater success in preventing systemic market abuse and in promoting consumer protection.*

Thus, the Committee believes that a new model of "regulated self-regulation" is optimal for the IP profession. This means creating a two-tier structure of regulation. The Regulator will enable the creation of a competitive market for IP agencies under it. This is unlike the current structure of professional agencies which have a legal monopoly over their respective domains. The IP agencies under the Board will, within the regulatory framework defined, act as self-regulating professional bodies that will focus on developing the IP profession for their role under the Code. They will induct IPs as their members, develop professional standards and code of ethics under the Code, audit the functioning of their members, discipline them and take actions against them if necessary. These actions will be within the standards that the Board will define. The Board will have oversight on the functioning of these agencies and will monitor their performance as regulatory authorities for their members under the Code. If these agencies are found lacking in this role, the Board will take away their registration to act as IP agencies."

According to the BLRC, the regulatory structure should be designed for promoting competition amongst the multiple IPAs to help achieve efficiency gains. Greater competition among the IPAs will in turn lead to better standards and rules and better enforcement. A single IPA or regulatory body like the Institute of Resolution Professionals will result in a monopoly which will be inefficient and less progressive over time.

Further, the two-tier regulatory structure, comprise of IPAs as the front-line regulator, and IBBI, as the principal regulator of IPs. They monitor disclosures by IPs in respect of relationship and fee and expenses of CIRPs and disseminates the same on their respective websites. IPAs also conduct and monitor continuing professional education (CPE) of their member IPs. IBBI being principal regulator closely monitors the performance and conduct of IPs in accordance with the mandate under the Code read with the Code of Conduct as provided in the IBBI (Insolvency Professionals) Regulations, 2016. IBBI on discovery of any deficiency related to his conduct is mandated to take appropriate action. It conducts inspection where it has reasonable grounds to believe that IP has contravened any of the provisions of the Code or rules or regulations of IPs in accordance with the policy to ensure necessary checks and balances. Further, based on examination of the inspection report or otherwise material available on record, IBBI issues show cause notice (SCN).It is also pertinent to mention that both IBBI and IPAs conduct roundtables, seminars, workshops and webinars for building capacity of IPs.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency dated. 12.08.2022]

Comments of the Committee

(Please see Para No. 7 of Chapter I)

Recommendation (Serial No. 6)

With regard to staffing, the NCLT is currently functioning without a regular President and is short of 34 Members out of the total sanctioned strength of 62 Members. The Committee is deeply concerned to note that more than 50% of the sanctioned strength in NCLT is lying vacant and that the issue of vacancy has plagued the Tribunal for years. The Committee desires that an analysis of the requirement of capacity in dealing with projected cases in the next three-four years may be done so that the recruitment process can be suitably planned in advance. The Committee therefore recommends that the required sanctioned strength may be filled without any further delay. There is also a need for imparting better training to NCLT Members. The Committee also recommends that National Law Schools should be involved in the NCLT system so that they can conduct

academic research, develop suitable case-based training materials, and provide appropriate support through law clerks and so on.

As the IBC cases have a direct impact on the economy and are imperative in maintaining the health of the financial sector, the Committee desire that dedicated benches of NCLT solely for IBC may be created and institutional capacity of NCLT benches be enhanced accordingly. There is also a need for having specialised benches for sectors such as MSMEs with requisite domain expertise.

Reply of the Government

Filling up of vacancies of members is a dynamic process and vacancies are filled from time to time. In 2019, 28 new Members were appointed, bringing the number of total Members to 52. After subsequent completion of term/ demitting of office by some of the Members, the number of Members had reached to 28 in the month of September, 2021. Meanwhile, the process for the appointment to the 21 vacant posts, which arose by 31st December, 2020, was completed and the Government approved appointment of 11 candidates as Judicial Members and 10 candidates as Technical Members, based on the recommendations of the Selection Committee. Out of these, 20 members (11 Judicial and 9 Technical) joined bringing the total number of Members to 47 (22 Judicial and 25 Technical) which was around 75% of total approved strength. For 15 vacancies, which had arisen during 2021, the Selection Committee constituted under Section 412 of the Companies Act, 2013 under the Chairmanship of Hon'ble Chief Justice of India or his nominee has conducted the personal interactions with the shortlisted candidates on 20, 21stand 22ndJune, 2022. Further process is underway. For 17 vacancies, including 15 vacancies arisen recently in the month of June-July, 2022, and 2 more vacancies arising by 31.12.2022, an advertisement inviting applications for 19 vacancies (08 Judicial and 11 Technical Members) has been issued on 12.07.2022, as decided by the Selection Committee in its meeting held on 08.07.2022.

The Government appointed Mr Justice Ramalingam Sudhakar, former Chief Justice of Manipur High Court as President, NCLT, on the recommendation of Hon'ble Chief Justice of India. Justice (Retd.) Ashok Bhushan, former Judge of the Supreme Court of India has been appointed as Chairperson of NCLAT.Presently, all five Judicial and six Technical Members are in position in NCLAT and there is no vacancy of Members.

Regular Colloquiums are being held for capacity building of Members to ensure speedier and uniform judicial delivery system. To inculcate and imbibe the qualities of a Member and to make a new Member aware of all the basic principles of Company law, IBC and LLP Act, the induction programme are being conducted for the newly appointed Members of NCLT and NCLAT. For recently appointment Members of NCLT, an Induction Training Colloquium was organized from 4th to 10th October, 2021. Another Colloquium for NCLT Members was organized on 26th and 27thMarch, 2022 in New Delhi on the subject of "NCLT-The Road Ahead-2022".

National Law University, Delhi, which is a premier law university in India established by the National Law University Act, 2007 (Delhi Act No. 1 of 2008), was involved in conducting induction Colloquium from 13th July 2019 to 27th July, 2019 for NCLT Members of 2019 batch.

As far as dedicated benches for IBC and MSME sector are concerned, it is stated that such dedicated benches have not been provided in the law, as NCLT and NCLAT themselves are specialized courts for the corporate matters.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency dated. 12.08.2022]

Comments of the Committee

(Please see Para No. 10 of Chapter I)

Recommendation (Serial No. 12)

It is a matter of grave concern for the Committee that the insolvency process has been stymied by long delays far beyond the statutory limits. It is disconcerting that even admission of cases in NCLT has been taking an unduly long time, which thus defeats the very purpose of the Code. There have also been instances of frivolous appeals, which further drags the resolution/recovery process leading to severe erosion of asset value. The Committee would therefore recommend that misuse/ abuse of well-intended provisions and processes should be prevented by ensuring an element of finality within the statutorily stipulated period without protracted litigation.

Reply of the Government

The Government has amended the Code vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 6.08.2019 which provides that the NCLT should record reasons in writing in case it has not ascertained the existence of default in respect of financial creditor's application for initiating corporate insolvency resolution process (CIRP) under section 7 of the Code within 14 days from the date of filing of such application, further, the CIRP should not go beyond a period of 330 days including litigation period. The 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances *[Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited &Anr.].*

Further, the timelines have to be met not just by Adjudicating Authority but also by the IP conducting the process with the cooperation of other stakeholders. Streamlining and removing bottlenecks by amending the Code and Regulations are done to speed up the process. Also, IBBI organizes workshops, seminars, conferences, webinars, etc. from time to time for capacity building of the IPs along with other stakeholders to ensure that timelines are being followed at every stage.

[Ministry of Corporate Affairs O.M. No. 30/66/2020-Insolvency dated. 12.08.2022]

Comments of the Committee

(Please see Para No. 13 of Chapter I)

CHAPTER - V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL REPLIES BY THE GOVERNMENT ARE STILL AWAITED

NIL

NEW DELHI
22 December, 2023
01 Pausha, 1945 (Saka)

JAYANT SINHA,
Chairperson,
Standing Committee on Finance

Annexure

Minutes of the Fifth sitting of the Standing Committee on Finance (2023-24) The Committee sat on Friday, the 22nd December, 2023 from 1100 hrs. to 1300 hrs. in Committee Room '2', Parliament House Annexe Extension Block A, New Delhi.

PRESENT
MEMBERS

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Sudheer Gupta
7. Shri Hemant Shriram Patil
8. Shri Gopal Chinayya Shetty
9. Dr. (Prof.) Kirit Premjibhai Solanki

RAJYA SABHA

10. Dr. Radha Mohan Das Agarwal
11. Shri Ryaga Krishnaiah
12. Dr. Amar Patnaik
13. Shri G.V.L Narasimha Rao
14. Dr. Dinesh Sharma

SECRETARIAT

1. Shri Ramkumar Suryanarayanan - Joint Secretary
2. Shri Puneet Bhatia - Deputy Secretary

PART I

2. XX XX XX XX XX XX

XX XX XX XX XX XX.

(The witnesses then withdrew)

PART II

3. Thereafter, the Committee took up the following draft reports for consideration and adoption:

(i) Draft Report on the subject 'Performance Review and Regulation of Insurance Sector' pertaining to the Ministry of Finance (Department of Financial Services).

(ii) Draft Action Taken Report on the observations/recommendations contained in their Thirty-Second Report on the subject 'Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions' pertaining to the Ministry of Corporate Affairs.

(iii) Draft Action Taken Report on the observations/recommendations contained in their Forty-Sixth Report on 'Strengthening Credit Flows to the MSME Sector' pertaining to the Ministry of Finance (Department of Financial Services) and Ministry of Micro, Small and Medium Enterprises.

After deliberation, the Committee adopted the above draft Reports without any change and authorised the Chairperson to finalise them and present to the Hon'ble Speaker / Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

X – matter not related to this Report

APPENDIX

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE THIRTY SECOND REPORT OF THE STANDING COMMITTEE ON FINANCE (SEVENTEENTH LOK SABHA) ON "IMPLEMENTATION OF INSOLVENCY AND BANKRUPTCY CODE - PITFALLS AND SOLUTIONS"

		Total	% of total
(i)	Total number of Recommendations	15	
(ii)	Recommendations/Observations which have been accepted by the Government (vide Recommendation at Sl. Nos. 1,3,4, 5, 7, 8, 9,10, 11, 13, 14 & 15)	12	80%
(iii)	Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies	Nil	0.00
(iv)	Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee (vide Recommendation at Sl. Nos. 2,6 & 12)	3	20%
(v)	Recommendations/Observations in respect of which final reply of the Government are still awaited	Nil	0.00