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A WAY TO RESOLVE THE CORPORATE INSOLVENCY UNDER THE IBC

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I. ABSTRACT

The IBC represents a major overhaul, unifying and revising laws related to corporate, partnership, and individual insolvency and restructuring under a defined timeline. The Corporate Insolvency Resolution Process (CIRP), introduced under the Insolvency and Bankruptcy Code (IBC) of 2016, is designed to assist financially troubled companies by promoting both equitable distribution of assets and potential business revival. This study explores the CIRP framework as outlined in the IBC, detailing its key provisions, procedures, and the eligibility criteria for stakeholders involved in the resolution process. The paper also delves into judicial interpretations of the CIRP, assessing its strengths and limitations. Furthermore, it evaluates the extent to which the CIRP meets its intended goals. The article offers insights into the CIRP's role within India's insolvency ecosystem and concludes with recommendations for reform.

II. KEYWORDS

CIRP, Moratorium, Insolvency Resolution Professional, Committee of Creditors, Resolution Plan, Adjudicating Authority.

III. INTRODUCTION

After great thought, the Insolvency and Bankruptcy Code (IBC) was enacted in 2016 to provide a structured timeline for resolving insolvency cases through the assistance of an Insolvency Resolution Professional (IRP). As a landmark legal framework in India, the IBC facilitates the restructuring and resolution of unpaid corporate debts through a comprehensive mechanism encompassing insolvency and bankruptcy procedures. The inclusion of the Corporate Insolvency Resolution Process (CIRP) under the IBC aimed to enhance the ease of doing business by streamlining debt resolution. At the time of its introduction, the CIRP was designed to be inclusive,

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without imposing restrictions on who could initiate the process. The importance of CIRP is profound, as it plays a transformative role in redefining the relationships among debtors, creditors, and regulatory bodies. As a cornerstone of the IBC, CIRP seeks to maintain a careful balance among stakeholder interests while ensuring a fair, transparent, and time-efficient insolvency resolution process.

This in-depth study seeks to explore the complexities of the Corporate Insolvency Resolution Process (CIRP) regulations, with the goal of enriching the current dialogue on insolvency practices in India. By analysing statutory provisions, landmark judicial decisions, and real-world applications of the CIRP, the research offers meaningful perspectives on the existing regulatory framework. Ultimately, it aims to support informed discussions on possible improvements and refinements in the corporate insolvency resolution process.

This research aims to explore the development, legal framework, and functional aspects of the Corporate Insolvency Resolution Process (CIRP) to better understand its complexities and evaluate its effectiveness. By examining each phase of the CIRP from its initiation to the final approval of resolution plans, the study adopts a critical perspective to identify the system's strengths, limitations, and underlying challenges.

India's journey toward a comprehensive insolvency framework culminated in the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, addressing the longstanding need for a robust and efficient bankruptcy system. Before the IBC's introduction, the country's insolvency regime was fragmented, plagued by procedural delays, and lacked adequate legal mechanisms to effectively resolve corporate insolvency.

The number of cases being filed under the Insolvency and Bankruptcy Code (IBC) continues to rise steadily, and the Code has facilitated resolutions in numerous instances. As per a report by the Reserve Bank of India, *"approximately 4,540 cases were admitted for Corporate Insolvency Resolution Process (CIRP) under the Code up to June 30, 2021. Providing insight into the resolution outcomes, the Minister highlighted that 394 companies had been successfully resolved by that date. Financial creditors, including various*

financial institutions, had submitted claims totalling ₹6.80 lakh crore, out of which ₹2.45 lakh crore were recovered, representing around 36% of the total claims.”²

IV. CORPORATE INSOLVENCY RESOLUTION PROCESS

The Insolvency and Bankruptcy Code (IBC) introduced the Corporate Insolvency Resolution Process (CIRP) as a revival mechanism aimed at rescuing financially distressed companies. This process starts when an individual or entity takes control of the company's assets to explore options for its recovery and to prevent bankruptcy. Under CIRP, efforts are made to assess and implement strategies for the revival of the insolvent firm. The IBC consolidated various earlier frameworks such as the Sick Industrial Companies Act (SICA), Corporate Debt Restructuring (CDR), Joint Lenders' Forum (JLF), Strategic Debt Restructuring (SDR), and the S4A Scheme into a unified system.³ If no resolution plan is successfully implemented within the specified timeframe, the company proceeds toward liquidation.

Earlier, the Corporate Insolvency Resolution Process (CIRP) must be concluded within 180 days, with a possible extension of up to 90 additional days.⁴ However, through an amendment introduced on August 6, 2019, the Code was revised to impose a mandatory cap of 330 days for the completion of the entire resolution process, including any extensions and time spent in legal proceedings.⁵ If the CIRP is not finalized within this 330-day timeframe, the adjudicating authority is required to commence liquidation proceedings against the corporate debtor.

The judiciary has shown support for the time limits established under the Code, as reflected in the ruling *CoC of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*,⁶ the Supreme Court held that “*while the provision itself remained unchanged, the term "mandatorily" was struck down for being arbitrary under Article 14 of the Indian Constitution and an unreasonable restriction on a litigant's right to conduct business under Article*

² Press Information Bureau, Ministry of Corporate Affairs, (Aug. 10, 2021), available at [Press Release: Press Information Bureau](#), (Last accessed 10 June 2025).

³ National Law School of India Review Vol. 30, No. 2 (2018), pp. 136-172 (37 pages), Published By: Student Advocate Committee, available at <https://www.jstor.org/stable/26743941b> (Last accessed 26 May. 2025).

⁴ Insolvency and Bankruptcy Code, 2016, § 12, No. 31, Act of Parliament, 2016 (India).

⁵ Insolvency and Bankruptcy Code (Amendment) Act, 2019, § 12, No. 26 of 2019 (India).

⁶ Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2019) 8 SCC 531.

19(1)(g). This decision clarified that, generally, the Corporate Insolvency Resolution Process (CIRP) must be completed within a maximum of 330 days from the commencement of insolvency, including any extensions and time spent in legal proceedings. However, if significant delays are due to the inefficiency of the adjudicating authority (AA) or the National Company Law Appellate Tribunal (NCLAT), it may be permissible for them to extend the time frame beyond the 330-day limit in such cases."

The Court further clarified that if a resolution plan is upheld by the Appellate Authority, whether through allowing or dismissing an appeal, the time spent in litigation should be excluded. Additionally, the Court emphasized that in extraordinary situations where the law does not provide clear direction, it may be appropriate to exclude certain periods from the CIRP. The Supreme Court's ruling clearly indicates that extensions to the time frame are only allowed in exceptional circumstances.⁷ As a general rule, the resolution of a corporate debtor's distressed assets must be completed within 330 days. If the process is not concluded within this period, the debtor is to be sent into liquidation.

The initiation of the Corporate Insolvency Resolution Process (CIRP) is triggered by a default. When a corporate debtor fails to repay the full amount of a debt that is due, or even a portion of it, the creditor or authorized applicant can file to begin the resolution proceedings.⁸

V. INITIATION OF CIRP

Sections 6 to 10 of the Insolvency and Bankruptcy Code, 2016, govern the initiation of the Corporate Insolvency Resolution Process (CIRP). Initially, the Code permitted creditors to file for insolvency proceedings if the default exceeded ₹1 lakh.⁹ However, keeping the minimum default amount for initiating insolvency proceedings unchanged may adversely affect small vendors who have effectively leveraged the insolvency framework as a tool for debt recovery. Exercising its powers under the proviso to Section 4 of the Code, the Central Government issued a notification (MCA

⁷ *Ibid.*

⁸ Insolvency and Bankruptcy Code, 2016, § 3(12), No. 31, Act of Parliament, 2016 (India).

⁹ Insolvency and Bankruptcy Code, 2016, § 4, No. 31, Act of Parliament, 2016 (India).

Notification S.O. 1205(E)) on March 24, 2020, raising the minimum default threshold for initiating insolvency proceedings to ₹1 crore.¹⁰ This substantial increase in the threshold effectively barred many creditors whose claims fell below the new limit from accessing the adjudicating authority under the Code, thereby limiting their ability to recover debts through the insolvency process.

In the case of *Tharakan Web Innovations Pvt. Ltd. v. National Company Law Tribunal*,¹¹ The key issue was whether an application concerning a default amount below ₹1 crore could still be filed after the issuance of Notification S.O. 1205(E). The Supreme Court clarified that *"the minimum default amount is established by statute, and the government has the authority to revise this amount up to ₹1 crore. Since the government exercised this authority through the said notification by setting the new threshold at ₹1 crore, the relevant section of the law must now be interpreted as if the phrase "one lakh rupees" has been substituted with "one crore rupees."*

So, the Corporate Insolvency Resolution Process (CIRP) may be triggered by financial creditors, operational creditors, or the corporate debtor, as long as the default amount is at least one crore rupees.¹² To initiate the procedure, an application must be filed with the National Company Law Tribunal (NCLT), which serves as the Adjudicating Authority. Once the NCLT accepts the application, the CIRP formally begins.¹³ The CIRP is initiated by the three entities: Financial Creditors, Operational Creditors, and Corporate Debtor, which are as follows: -

- **Initiation by Financial Creditors-** Financial creditors are individuals or institutions to whom a company owes money due to financial investments, such as loans or debt instruments. Secured creditors, on the other hand, are those whose claims are backed by security interests like bonds.¹⁴ Creditors are entitled to start the Corporate Insolvency Resolution Process (CIRP) by submitting an application in accordance with Section 7 of the Insolvency and

¹⁰ Ministry of corporate affairs, Notification S.O. 1205(E) on March 24, 2020, available at <https://ibclaw.in/notification-no-s-o-1205e-dated-24-03-2020-ibc> (Last accessed 10 June 2025).

¹¹ *Tharakan Web Innovations Pvt. Ltd. v. National Company Law Tribunal*, W.P.(C) Nos. 27636 of 2020.

¹² Insolvency and Bankruptcy Code, 2016, § 4, No. 31, Act of Parliament, 2016 (India).

¹³ *Ibid.*

¹⁴ Insolvency and Bankruptcy Code, 2016, § 5(7), No. 31, Act of Parliament, 2016 (India).

Bankruptcy Code (IBC). The application must include proof of default, which could consist of loan agreements, financial statements, or other relevant documentation. Once the application is submitted, the National Company Law Tribunal (NCLT) must verify the occurrence of default and issue a notice for a hearing within 14 days.¹⁵ If the tribunal is convinced, it admits the application and orders the appointment of an Interim Resolution Professional (IRP).¹⁶

- **Initiation by Operational Creditors-** Operational creditors, who are those that have entered into agreements with the corporate debtor to supply goods or services,¹⁷ May initiate the Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code (IBC). Before filing with the National Company Law Tribunal (NCLT), the operational creditor must serve a demand notice to the debtor, allowing 10 days for payment.¹⁸ If the corporate debtor fails to respond or settle the dues within this period, the creditor can proceed to file an application with the NCLT. Upon reviewing the application and verifying the default, the tribunal may admit the case and appoint an Interim Resolution Professional (IRP).¹⁹
- **Initiation by Corporate Debtor-** Section 10 of the Insolvency and Bankruptcy Code, 2016, allows a corporate debtor to initiate the Corporate Insolvency Resolution Process (CIRP). According to this section, the debtor can file an application with the National Company Law Tribunal (NCLT) to begin the insolvency proceedings.

The application must be accompanied by specific documents as required by the tribunal: -

¹⁵ Insolvency and Bankruptcy Code, 2016, § 7(4), No. 31, Act of Parliament, 2016 (India).

¹⁶ Insolvency and Bankruptcy Code, 2016, § 7(5), No. 31, Act of Parliament, 2016 (India).

¹⁷ Insolvency and Bankruptcy Code, 2016, § 5(20), No. 31, Act of Parliament, 2016 (India).

¹⁸ Insolvency and Bankruptcy Code, 2016, § 8, No. 31, Act of Parliament, 2016 (India).

¹⁹ Mahapatra S, Singhania P, Chandna M. Operational Creditors in Insolvency: A Tale of Disenfranchisement. NALSAR Stud. L. Rev, 2020;14:78, available at <https://www.snrlaw.in/operational-creditors-in-insolvency-a-tale-of-disenfranchisement/>, (Last accessed 27 May. 2025).

- *“Information relating to its books of account and such other documents as may be prescribed.*
- *Name of the resolution professional who shall act as an interim resolution professional.*
- *Special resolution passed by shareholders of the corporate debtor or resolution passed by at least three-fourths of the total number of partners of the corporate debtor.”²⁰*

This provision allows a company that foresees potential insolvency to proactively initiate the insolvency resolution process. If the National Company Law Tribunal (NCLT) is satisfied with the submitted documentation, it admits the application and appoints an Interim Resolution Professional (IRP). This self-initiated process is designed to assist financially distressed companies, particularly those with balance sheet issues, in restructuring their obligations and regaining stability.

VI. MORATORIUM PERIOD

After the initiation of the corporate insolvency resolution process and the appointment of a resolution professional, a moratorium comes into effect, restricting certain actions from being taken against the corporate debtor: -

- *“The initiation or continuation of any legal suits or proceedings against the corporate debtor is prohibited, including the enforcement of judgments, decrees, or orders by any court, tribunal, arbitration panel, or other authority.*
- *The corporate debtor is restricted from transferring, burdening, selling, or otherwise dealing with any of its assets, legal rights, or beneficial interests during this period.*
- *All attempts to foreclose, reclaim, or enforce any security interest established by the corporate debtor over its assets, whether through legal means or under the SARFAESI Act, 2002, are prohibited.*
- *The owner or lessor is barred from reclaiming any property that is currently occupied or held by the corporate debtor.”²¹*

²⁰ Insolvency and Bankruptcy Code, 2016, § 10(3), No. 31, Act of Parliament, 2016 (India).

²¹ Insolvency and Bankruptcy Code, 2016, § 14(1), No. 31, Act of Parliament, 2016 (India).

The supply of essential goods or services to the corporate debtor shall not be terminated or suspended, or interrupted during the Moratorium period, except where the corporate debtor has not paid the dues arising from such supply during the moratorium period.²² The IRP or RP shall consider the supply of goods or services, and protect and preserve the value of the corporate debtor, and they will manage the operation of such corporate debtor.

The moratorium aims to protect and preserve the assets of the corporate debtor throughout the Corporate Insolvency Resolution Process (CIRP). It takes effect from the date the order is issued and continues until the CIRP concludes.²³ However, if the Adjudicating Authority approves a resolution plan or passes a liquidation order during this period, the moratorium ceases on the date of such approval or order, whichever occurs.²⁴

VII. ROLE OF INTERIM RESOLUTION PROFESSIONAL (IRP)

Section 16 of the Insolvency and Bankruptcy Code (IBC), 2016 outlines the procedure for appointing an Interim Resolution Professional (IRP) by the adjudicating authority. Upon admitting an application under Section 7, 9, or 10, the authority is required to appoint an IRP within 14 days.²⁵ If the applicant has proposed a name and the individual has no pending disciplinary actions, the adjudicating authority shall appoint that person. In cases where an operational creditor files an application under Section 9 without suggesting a name for the IRP, the adjudicating authority will request the Insolvency and Bankruptcy Board to recommend a suitable insolvency professional. The Board must provide this recommendation within 10 days.²⁶

After the Corporate Insolvency Resolution Process (CIRP) application is approved, the National Company Law Tribunal (NCLT) designates an Interim Resolution Professional (IRP) to assume control over the operations and management of the corporate debtor. At this stage, the authority of the company's board of directors is

²² Insolvency and Bankruptcy Code, 2016, § 14(2), No. 31, Act of Parliament, 2016 (India).

²³ Insolvency and Bankruptcy Code, 2016, § 14(4), No. 31, Act of Parliament, 2016 (India).

²⁴ *Ibid.*

²⁵ Insolvency and Bankruptcy Code, 2016, § 16, No. 31, Act of Parliament, 2016 (India).

²⁶ *Ibid.*

suspended, and the IRP assumes control over the management and operations of the business. The duties of the Interim Resolution Professional are as follows: -

- The authority to take possession of and oversee the debtor's assets, management, and business operations.
- The evaluation of the debtor centered on collecting information regarding their financial condition.
- Formation of the Committee of Creditors (CoC).
- The process of compiling and maintaining records of all claims submitted by creditors.
- Ongoing operation of the debtor's business during the pendency of legal proceedings.²⁷

The Interim Resolution Professional (IRP) plays a crucial role in ensuring the debtor's business operations continue without disruption, while safeguarding asset value for the benefit of all stakeholders. Throughout the insolvency resolution process, the IRP must ensure efficient and orderly management of affairs.²⁸

A. Committee of Creditors (COC)

It is one of the most important stages of Corporate Insolvency Resolution Process (CIRP), involving the formation of the Committee of Creditors (CoC), which comprises financial creditors. The Interim Resolution Professional (IRP) is responsible for constituting the CoC after completing the initial claim verification, typically following the 21-day period from their appointment.²⁹ The CoC includes all secured and unsecured financial creditors. However, any financial creditor or their representative who is a related party to the corporate debtor is barred from being part of the CoC and is not permitted to vote in its meetings. This restriction is intended to

²⁷ Insolvency and Bankruptcy Code, 2016, § 18, No. 31, Act of Parliament, 2016 (India).

²⁸ Siddharth Agarwal, Critical Analysis of Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016, JETIR March 2024, Volume 11, Issue 3, ISSN: 2349-5162, available at <https://www.jetir.org/view?paper=JETIR2403792>

²⁹ *Supra* Note 17.

prevent any undue influence by the corporate debtor over the decision-making process.³⁰

The definition of 'related party'³¹ In the context of an individual is quite broad, encompassing a wide range of individuals under the ineligibility criteria. In addition to the individual's relatives, the term 'connected persons'³² Also includes the relatives of the individual's spouse if they are married. However, the Code provides some exceptions, such as excluding financial entities from being considered related parties.³³ Furthermore, certain exemptions are available for MSMEs and their promoters, allowing them to submit a resolution plan, provided they do not fall under the category of a wilful defaulter.

All decisions by the Committee of Creditors (CoC) require the approval of at least 66% of the voting shares held by financial creditors.³⁴ The CoC is obligated to determine, within seven days of its constitution, whether to confirm the existing Interim Resolution Professional (IRP) or appoint a new resolution professional in their place.³⁵

B. Resolution Professional

The Committee of Creditors (CoC) appoints a resolution professional to supervise and handle the day-to-day affairs of the corporate debtor during the Corporate Insolvency Resolution Process (CIRP). Within seven days of its formation, the CoC must hold its initial meeting to determine whether to retain the Interim Resolution Professional (IRP) as the resolution professional or select a replacement. This decision must be approved by a minimum of 66% of the voting rights held by financial creditors.³⁶ If the IRP is confirmed, the CoC must inform the IRP, the corporate debtor, and the adjudicating authority. If a new resolution professional is selected, the CoC must

³⁰ Insolvency and Bankruptcy Code, 2016, § 21, No. 31, Act of Parliament, 2016 (India).

³¹ Insolvency and Bankruptcy Code, 2016, § 29A(1), No. 31, Act of Parliament, 2016 (India).

³² *Ibid.*

³³ *Ibid.*

³⁴ Insolvency and Bankruptcy Code, 2016, § 21(2), No. 31, Act of Parliament, 2016 (India).

³⁵ Insolvency and Bankruptcy Code, 2016, § 22, No. 31, Act of Parliament, 2016 (India).

³⁶ Insolvency and Bankruptcy Code, 2016, § 22(2), No. 31, Act of Parliament, 2016 (India).

apply to the adjudicating authority, which will seek approval from the Insolvency and Bankruptcy Board before finalizing the appointment.³⁷

The Committee of Creditors (CoC) has the authority to replace the resolution professional at any stage during the process, provided the decision is supported by a minimum of 66% of the voting rights. The resolution professional is entrusted with supervising the entire Corporate Insolvency Resolution Process (CIRP) and handling the management of the corporate debtor for the duration of the process.³⁸

Duties of the Resolution Professional are to preserve and protect the assets of the corporate debtor, including the continued business operation of the corporate debtor.³⁹ The resolution professional shall undertake the following actions, namely:-

- *“Take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*
- *Represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial, or arbitration proceedings;*
- *Raise interim finances subject to the approval of the committee of creditors under section 28;*
- *Appoint accountants, legal or other professionals in the manner as specified by the Board;*
- *Maintain an updated list of claims;*
- *Convene and attend all meetings of the committee of creditors;*
- *Prepare the information memorandum in accordance with section 29;*
- *Invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.*

³⁷ Insolvency and Bankruptcy Code, 2016, § 22(5), No. 31, Act of Parliament, 2016 (India).

³⁸ Insolvency and Bankruptcy Code, 2016, § 27, No. 31, Act of Parliament, 2016 (India).

³⁹ Insolvency and Bankruptcy Code, 2016, § 25(1), No. 31, Act of Parliament, 2016 (India).

- *Present all resolution plans at the meetings of the committee of creditors;*
- *File application for avoidance of transactions; and*
- *Such other actions as may be specified by the Board.”⁴⁰*

VIII. SUBMISSION OF RESOLUTION PLAN

Any resolution applicant is permitted to submit a resolution plan to the Resolution Professional (RP). These plans are assessed based on their viability, suitability, and adherence to the provisions of the Insolvency and Bankruptcy Code (IBC). The RP must carefully review each plan to ensure it includes provisions for covering the costs associated with the insolvency process and outlines the method of debt repayment to operational creditors, as prescribed by the Insolvency and Bankruptcy Board. Each applicant must also include an affidavit declaring their eligibility under Section 29A of the IBC, 2016.⁴¹

A. Section 29a of IBC

This provision was introduced with retrospective effect through the Insolvency and Bankruptcy (Amendment) Act, 2018, dated January 19, 2018. Its primary objective was to prevent unethical and ineligible individuals from exploiting or undermining the intent of the Code. Prior to this first amendment, it had become a common practice for promoters to attempt to regain control of the corporate debtor undergoing CIRP through indirect means, such as using affiliated entities, including holding or group companies, or other connected individuals. Under the CIRP framework, once an application is admitted, a resolution professional is appointed to assume control over the corporate debtor.

The purpose of initiating CIRP is to enable the debtor to be revived through an appropriate resolution plan. Initially, there were no restrictions on who could submit such a plan; any individual, including the promoters or their related parties, could participate in the process. This lack of specific eligibility criteria led to misuse, as promoters often tried to reclaim control of the debtor company by exploiting this gap

⁴⁰ Insolvency and Bankruptcy Code, 2016, § 25(2), No. 31, Act of Parliament, 2016 (India).

⁴¹ Insolvency and Bankruptcy Code, 2016, § 30(1), No. 31, Act of Parliament, 2016 (India).

in the law. Through its first amendment, the Code explicitly introduced Section 29A to define and identify individuals or entities disqualified from submitting a resolution plan. As per Section 29A, certain persons, along with anyone acting jointly or in collaboration with them, are deemed ineligible to propose a resolution plan, which are as follows: -

- “an *undischarged insolvent*;
- Has been classified as a *willful defaulter* as per the guidelines issued by the Reserve Bank of India under the Banking Regulation Act, 1949.
- Holds, or is associated with, an account either personally or through a corporate debtor under their control or promotion that has been *classified as a non-performing asset (NPA) in line with RBI guidelines under the Banking Regulation Act, 1949*, and where a minimum of one year has passed since such classification before the initiation of the CIRP of the corporate debtor.”⁴²

Section 29A also states that an individual may become eligible to submit a resolution plan if they clear all outstanding dues, including interest and applicable charges, related to the non-performing asset account prior to submitting the resolution plan. Furthermore, the person, or anyone associated with them, will be considered ineligible if they: -

- “Has been found guilty of an offense that carries a sentence of two years or more of imprisonment.
- *disqualified to act as a director under the CA, 2013*;
- *Is barred by SEBI from participating in securities trading or from entering the securities market*;
- *Has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction, or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code*;

⁴² Insolvency and Bankruptcy Code, 2016, § 29A, No. 31, Act of Parliament, 2016 (India).

- *Has provided a legally binding guarantee on behalf of a corporate debtor, in favour of a creditor, where the creditor's application for insolvency resolution against that corporate debtor has been accepted under the Code;*
- *Has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or"*⁴³

The Resolution Professional, with the approval of the Committee of Creditors (CoC), invites resolution applicants. Based on the nature of the corporate debtor's business, the Resolution Professional will set specific criteria that the resolution applicants must meet.⁴⁴ These applicants must satisfy the criteria established by the Resolution Professional, as well as any other conditions specified by the IBBI. The resolution applicants are then required to submit their resolution plans to the Resolution Professional.

Therefore, when reading Section 29A along with Section 25(2)(h), it becomes evident that there are multiple layers, functioning more like elimination rounds. Any individual who is listed in the negative list is ineligible to submit a resolution plan. Consequently, for a person to qualify to submit a resolution plan, they must meet specific eligibility criteria: -

- He must meet the criteria established by the resolution professional, with the approval of the Committee of Creditors (CoC), and
- must not be subject to any disqualification outlined in Section 29A.
- To safeguard the interests of creditors, Section 29A outlines four types of eligibility criteria. These include: -
- When the individual is personally ineligible;
- When the connected person is ineligible;
- When a related party or connected person is ineligible;

⁴³ *Ibid.*

⁴⁴ Insolvency and Bankruptcy Code, 2016, § 25(2), No. 31, Act of Parliament, 2016 (India).

- When an individual acts together or in collaboration with a person disqualified under any of the above conditions become ineligible.⁴⁵

In the case of *Swiss Ribbons Pvt. Ltd. and Ors. v. Union of India*⁴⁶ the validity of section 29(c) of the IBC was challenged, the Supreme Court held that 'a one-year gap, in addition to the 90-day period that must occur after a default before an asset is categorized as an NPA, allows any resolution applicant enough time to pay off their debts before proposing a resolution plan'.

In the case of *Arcellormittal Ltd. v. Satish Kumar Gupta*,⁴⁷ The Hon'ble Court rejected Arcellormittal Ltd.'s resolution plan because it was ineligible under section 29A of the IBC. In the case *Chitra Sharma v. Union of India*,⁴⁸ The Court ruled that the resolution plan was based on the ground of ineligibility.

The Hon'ble Courts use the Purposive interpretation to the underlying premise that the current management and promoters of a corporate debtor should not be permitted to reclaim control of their company is a common theme in all NCLAT and Supreme Court judgements. This idea is predicated on the idea that those who contributed to the corporate debtor's downfall should not be permitted to continue to have a part in its future.

The Committee of Creditors (CoC) can approve a resolution plan only if it receives at least 66% of the voting shares. Once accepted by the stakeholders, the plan is submitted to the National Company Law Tribunal (NCLT) for final approval. If no plan is approved within the designated timeframe, the corporate debtor enters liquidation.⁴⁹ Throughout this process, the RP plays an active role in managing the debtor's operations and addressing concerns to help formulate the most effective resolution plan. Once all parties agree, the approved resolution plan becomes a legally binding solution to the insolvency.

⁴⁵ Insolvency and Bankruptcy Code, 2016, § 29A, No. 31, Act of Parliament, 2016 (India).

⁴⁶ *Swiss Ribbons Pvt. Ltd. and Ors. v. Union of India*, MANU/SC/0079/2019.

⁴⁷ *Arcellormittal (India) Ltd. v. Satish Kumar Gupta*, 2019 (2) SCC 1.

⁴⁸ *Chitra Sharma v. Union of India*, (2018) 18 SCC 575.

⁴⁹ Insolvency and Bankruptcy Code, 2016, § 31, No. 31, Act of Parliament, 2016 (India).

B. Role of Adjudicating Authority

The National Company Law Tribunal (NCLT) plays a crucial role in handling matters related to the Corporate Insolvency Resolution Process (CIRP). It holds the authority to approve or reject applications, evaluate and decide on resolution plans, and issue orders for liquidation.⁵⁰ Appeals against the NCLT's decisions can be made to the National Company Law Appellate Tribunal (NCLAT),⁵¹ And ultimately, to the Supreme Court of India.⁵² Therefore, a thorough understanding of insolvency legislation and the delivery of fair and reasoned judgments under the Insolvency and Bankruptcy Code (IBC) are essential for the judiciary to ensure the effectiveness of the resolution process.

IX. CONCLUSION

The primary objective of any insolvency legislation is to ensure the revival of businesses as going concerns and to minimize instances of liquidation. The Insolvency and Bankruptcy Code (IBC) was established with this very aim. Since its inception, it has sparked significant discussions and debates within corporate India. Although the Code is still in its early stages and will need time to fully mature, it has already brought several complex issues to the forefront. Moreover, there are growing concerns about potential misuse of the Code by creditors and lenders, who may exploit it to exert undue pressure on corporate debtors, sometimes based on illegitimate or false claims.

The number of cases being filed under the Insolvency and Bankruptcy Code (IBC) continues to rise steadily, and the Code has facilitated resolutions in numerous instances. As per a report by the Reserve Bank of India, *“approximately 4,540 cases were admitted for Corporate Insolvency Resolution Process (CIRP) under the Code up to June 30, 2021. Providing insight into the resolution outcomes, the Minister highlighted that 394 companies had been successfully resolved by that date. Financial creditors, including various*

⁵⁰ Insolvency and Bankruptcy Code, 2016, § 60, No. 31, Act of Parliament, 2016 (India).

⁵¹ Insolvency and Bankruptcy Code, 2016, § 61, No. 31, Act of Parliament, 2016 (India).

⁵² Insolvency and Bankruptcy Code, 2016, § 62, No. 31, Act of Parliament, 2016 (India).

financial institutions, had submitted claims totalling ₹6.80 lakh crore, out of which ₹2.45 lakh crore were recovered, representing around 36% of the total claims.”⁵³

Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has been amended six times within just eight years. These amendments have largely been influenced by various landmark judgments delivered by the Supreme Court and the National Company Law Appellate Tribunal (NCLAT), which have played a crucial role in interpreting and shaping the Code. Additionally, the Insolvency and Bankruptcy Board of India (IBBI) has introduced several changes to the rules and regulations to ensure the effective implementation of the Code. Despite the meticulous efforts during its drafting, the Code, like any legislation, contains certain gaps and ambiguities that call for judicial clarification. While some uncertainties have been addressed, others still remain, and in some cases, new ambiguities have arisen as a result of the attempts to resolve existing ones.

One of the most recognized and impartial tools for evaluating economic performance is the Doing Business Report published by the World Bank Group. According to this report, India significantly improved its ranking in resolving insolvency, jumping from 136th place to 52nd. The October 2019 edition highlighted recovery rates across various countries: India at 71.6%, the United States at 81%, the United Kingdom at 85.4%, Brazil at 18.2%, Russia at 43%, China at 36.9%, and the South Asian region at 38%.⁵⁴ It's important to remember that India's insolvency framework is relatively new, having been in place for just eight years, whereas other countries have more mature and established systems.

The Insolvency and Bankruptcy Code (IBC) was initially promoted as a comprehensive solution for addressing non-performing assets (NPAs) or bad loans. In fact, *“the government even claimed in April 2018 that over ₹4 lakh crore worth of NPAs had been recovered through this mechanism. However, subsequent data released by the Reserve*

⁵³ Press Information Bureau, Ministry of Corporate Affairs, (Aug. 10, 2021), available at [Press Release: Press Information Bureau](#), (Last accessed 10 June 2025).

⁵⁴ Chairman, IBBI, moving up in 'ease of resolving insolvency', The World Bank overlooks some of IBC's successes, such as reviving firms. Fine-tuned processes will speed up resolution, available at <https://ibbi.gov.in/uploads/whatsnew/faf3af70524e6c7ccf0b6762ab70216c.pdf>, (Last accessed 10 June 2025).

Bank of India (RBI) indicated that the actual recovery figures were significantly lower. Particular attention was drawn to 40 major NPA accounts that were referred by the RBI for resolution, as these cases represented approximately 60–65% of the total bad loans in the banking sector.”⁵⁵

Recovery rates through IBC varied over the years lenders managed to recover 51.3% of their claims in 2017–18, 46.4% in 2018–19, 16.8% in 2019–20, and 28.5% in 2020–21.⁵⁶ These inconsistent recovery outcomes highlight the need for a defined benchmark or threshold regarding acceptable levels of financial loss, often termed as "haircuts." If even a minimum amount cannot be recovered, it raises concerns about the effectiveness of the resolution plan in place.

The timeframe outlined in the Insolvency and Bankruptcy Code (IBC) is generally sufficient; however, delays often occur due to procedural lags at the initial stages and during judicial processes. These delays can be addressed by enhancing the capacity of the judicial system. The Code has introduced several institutional mechanisms, such as the Insolvency and Bankruptcy Board of India (IBBI), insolvency professionals, and information utilities. Despite this, similar to earlier laws on insolvency, the Code faces significant challenges in its implementation. Ineffective execution of its provisions has led to several loopholes. Even when these gaps are addressed through amendments, new issues tend to emerge. For the Code to truly fulfil its purpose, effective implementation backed by robust infrastructure is essential.

X. SUGGESTION

A. Wilful Defaulter

The limitations outlined in Section 29A should be eased in situations where the promoter has no wrongful intent. Rather than granting full authority to the Committee

⁵⁵ Nishank, Centre for Financial Accountability, Haircut for the Lenders Under Insolvency and Bankruptcy Code!, (Sept. 1, 2018), available at <https://www.cenfa.org/blog/haircut-for-the-lenders-under-insolvency-and-bankruptcy-code/>, (Last accessed 10 June 2025).

⁵⁶ Karunjit Singh & Ashish Aryan, In five years of IBC regime, lenders took 61% haircut on claims, show data (July 27, 2021), available at <https://indianexpress.com/article/business/economy/ibc-regime-corporate-insolvency-resolution-indian-economy-7423869>, (Last accessed 10 June 2025).

of Creditors (CoC), promoters could be allowed to oversee and monitor the company's management to ensure accountability.

B. Different Monetary Benchmarks for Defaults by Financial And Operational Creditors

There is a need to revise the threshold for default under Section 4. This section could be split into two separate provisions, establishing distinct default limits for operational creditors and financial creditors. Such differentiation would help regulate the quantum of default, reducing the likelihood of frivolous claims while still safeguarding the rights of operational creditors.

C. Judicial Delay

To address judicial delays, the number of benches for the adjudicating authority should be increased. In the interim, Circuit Benches could be established until permanent adjudicating authorities are set up. This approach would help lower resolution costs by eliminating the need for insolvency professionals to travel across states, and it would also ease the workload on the current adjudicating benches.

D. Oversee the Management of Insolvency Professionals

Insolvency professionals (IPs) facilitate payments for all parties involved, but they themselves receive no remuneration. A clear payment structure for IPs should be established. Currently, the bill for the Resolution Professional (RP) lacks proper validation, and it is crucial to create designated funds for IPs. The costs associated with insolvency proceedings should be borne by the creditor or corporate debtor who initiates the Corporate Insolvency Resolution Process (CIRP). Before addressing creditor claims, a separate fund should be set up to cover CIRP-related expenses, ensuring better financial management during the process.

E. Setting a threshold limit

For the selection of any resolution plan, there should be a predetermined limit on the haircut. Creditors should not be compelled to accept significant haircuts merely for the sake of completing the process on time. Before approving any resolution plan, the

extent of the haircut to be incurred should be carefully considered. A ceiling should be set on the maximum haircut, ensuring that creditors are not forced to accept larger reductions than what is typically seen in the economy under the guise of resolution.

XI. REFERENCE

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