
AN ANALYSIS OF CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE 2016

Vaibhav Gattani, Dolly Chhabda, Amity University Chhattisgarh

ABSTRACT

The Corporate Insolvency Resolution Process (CIRP), established under the Insolvency and Bankruptcy Code (IBC) 2016, aims to provide relief to distressed businesses by striking a balance between equitable distribution of proceeds and company resurrection. This research paper examines the CIRP framework under the IBC, explaining its requirements, methods, and the eligibility of parties involved in the resolution process. It emphasises the roles and responsibilities of insolvency professionals and examines creditors' and debtors' rights and obligations under CIRP. It also investigates CIRP interpretations, weighing the benefits and drawbacks of the approach. Finally, it closes by making recommendations for areas for improvement and forecasting the future of CIRP in India in light of the changing corporate landscape.

Keywords: CIRP, IBC, Insolvency, Creditors, Corporate.

Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC 2016) is a groundbreaking legal framework that aims to simplify, accelerate, and enhance India's insolvency and bankruptcy resolution process. It is a comprehensive legal framework that oversees the insolvency resolution of individuals, partnership entities, and corporations. The IBC 2016 bill was passed by both the Lok Sabha and the Rajya Sabha in May 2016 and obtained President's assent in the same month. It came into effect on December 1, 2016, replacing India's previous rules governing insolvency and bankruptcy processes.

One of the primary reasons for the passage of the IBC 2016 was to raise India's ranking in the worldwide "ease of doing business" index. Previously, the insolvency and bankruptcy procedure were unpredictable, fragmented, and time-consuming, serving as a deterrent to enterprises. The IBC 2016 intends to solve these concerns and improve the business environment in the country. The new insolvency code proposes a time-bound insolvency settlement. The insolvency resolution procedure is planned to be completed within 180 days, extendable to 270 days, from the date the resolution process is initiated.

IBC 2016's principal goal is to foster entrepreneurship and assist banks and financial institutions in the financing process by offering a simple and effective bankruptcy resolution framework.¹ The major objectives of the IBC 2016 include asset efficiency, creditor value maximisation, quick settlement of the bankruptcy process, and resurrection of the corporate debtor whenever possible.

In contrast with prior insolvency laws in India, the IBC 2016 is efficient, clear, and cohesive, and it allows cross-border insolvency processes. The bankruptcy and Bankruptcy Code 2016 (IBC 2016) has a lengthy history in India, with a long-standing demand for a strong and effective bankruptcy system. Prior to the implementation of the IBC 2016, India's insolvency and bankruptcy law was characterised by fragmentation, delays, and insufficient legal tools for resolving corporate insolvency cases.

Historically, insolvency and bankruptcy laws in India were scattered across various legislations, leading to a fragmented and cumbersome process for debt resolution. The existing

¹ Mittal, C.U. (2023) *IBC, 2016 - objective, insolvency resolution process, challenges & way forward*, TaxGuru. Available at: <https://taxguru.in/corporate-law/ibc-2016-objective-insolvency-resolution-process-challenges-way-forward.html> (Accessed: 15 May 2023).

laws, including the Sick Industrial Companies (Special Provisions) Act, 1985 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, lacked a coherent and integrated approach to address insolvency and bankruptcy issues effectively.²

Recognizing the need for a comprehensive framework to address these shortcomings, the Indian government embarked on a significant reform initiative. The Bankruptcy Law Reforms Committee (BLRC), chaired by Dr. T.K. Viswanathan, was established in 2014 to examine the prevailing insolvency laws and recommend reforms.³

Based on the recommendations of the BLRC, the Insolvency and Bankruptcy Code was introduced in the Parliament in December 2015. After rigorous deliberations and stakeholder consultations, the IBC 2016 was enacted on 28th May 2016. The Code consolidated and replaced existing insolvency laws, providing a unified and efficient legal framework for insolvency and bankruptcy proceedings in India.

The introduction of the IBC 2016 was a significant milestone in India's efforts to improve its insolvency regime. It aimed to address several key objectives, including the timely resolution of insolvency cases, maximization of asset value, protection of creditors' rights, and the promotion of entrepreneurship and ease of doing business.

Since its enactment, the IBC 2016 has undergone several amendments and witnessed significant judicial interpretations. It has brought about transformative changes in the corporate insolvency landscape, facilitating the resolution of numerous distressed companies and encouraging a more market-oriented approach to debt resolution.

Objective of IBC 2016

The Insolvency and Bankruptcy Code 2016 (IBC 2016) was enacted in India with a set of clear and comprehensive objectives. This legal framework aimed to revolutionize the insolvency and bankruptcy landscape in the country by addressing the shortcomings of the previous regime and aligning India's insolvency framework with international best practices.⁴ The objectives of the IBC 2016 can be broadly categorized into four key areas: timely resolution, maximization

² Krishna, A. (2023) *A historical evaluation of insolvency and bankruptcy laws in India*, LawBhoomi. Available at: <https://lawbhoomi.com/a-historical-evaluation-of-insolvency-and-bankruptcy-laws-in-india/> (Last visited: 17 May 2023).

³ *The report of the Bankruptcy Law Reforms Committee Volume I* Available at: https://www.ibbi.gov.in/BLRCReportVol1_04112015.pdf (Last visited: 17 May 2023).

⁴ IBC Laws (2021) *Short note on insolvency and bankruptcy code, 2016*, IBC Laws. Available at: <https://ibclaw.in/short-note-on-insolvency-and-bankruptcy-code-2016/> (Last visited: 19 May 2023).

of asset value, protection of creditors' rights, and promotion of entrepreneurship and ease of doing business.

1. **Timely Resolution:** One of the primary objectives of the IBC 2016 is to ensure the timely resolution of insolvency cases. Under the previous framework, insolvency proceedings were notorious for their lengthy and protracted nature, leading to significant delays and value erosion. The IBC 2016 introduced strict timelines for various stages of the insolvency process, aiming to complete the resolution within a time-bound manner.⁵ The emphasis on time-bound resolution enhances the chances of a successful turnaround and preserves the value of the debtor's assets.
2. **Maximization of Asset Value:** The IBC 2016 seeks to maximize the value of assets of the corporate debtor by promoting an efficient and market-driven resolution process. It recognizes that a prompt and effective resolution leads to the preservation and realization of the debtor's assets. The Code promotes value maximization through mechanisms such as competitive bidding, the involvement of professional insolvency practitioners, and the consideration of viable resolution plans that optimize the utilization of the debtor's assets.
3. **Protection of Creditors' Rights:** The IBC 2016 prioritizes the protection of creditors' rights and interests. It aims to establish a fair and transparent system where creditors can recover their dues efficiently. The Code provides a framework for the formation of a Committee of Creditors (CoC), consisting of financial creditors, which actively participates in the decision-making process. The CoC has the power to approve or reject resolution plans, ensuring that the interests of the creditors are adequately represented.⁶
4. **Promotion of Entrepreneurship and Ease of Doing Business:** The IBC 2016 recognizes the importance of entrepreneurship and the need to foster a business-friendly environment. By providing an efficient resolution process, the Code encourages entrepreneurs to take risks without the fear of prolonged and uncertain insolvency proceedings.⁷ The IBC 2016 promotes a culture of entrepreneurship by allowing viable businesses to continue operations and facilitating the revival of distressed companies through resolution plans.

⁵ Shetty, Y. (2021) *Obscurity in insolvency and bankruptcy code*, *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-11850-obscurity-in-insolvency-and-bankruptcy-code.html> (Last visited: 21 May 2023).

⁶ *Ibid.*

⁷ *Ibid.*

Additionally, the IBC 2016 aims to enhance the ease of doing business in India. The introduction of a streamlined and consolidated insolvency framework reduces complexities, minimizes legal uncertainties, and promotes transparency. The Code provides a predictable and efficient mechanism for resolving insolvency cases, thus enhancing investor confidence and attracting domestic and foreign investment.

Overall, the objectives of the IBC 2016 reflect a comprehensive and balanced approach towards insolvency resolution. By ensuring timely resolution, maximizing asset value, protecting creditors' rights, and promoting entrepreneurship and ease of doing business, the Code strives to create a dynamic and efficient insolvency ecosystem in India. The implementation of the IBC 2016 has already witnessed significant outcomes, including the successful resolution of numerous stressed assets and a positive impact on India's business environment. However, ongoing refinements and adaptations to address emerging challenges will be crucial to further strengthen the effectiveness of the IBC 2016 and achieve its intended objectives.

Corporate Insolvency Resolution Process

The Corporate Insolvency Resolution Process (CIRP) is a key component of the Insolvency and Bankruptcy Code 2016 (IBC 2016) in India. CIRP is a legal process in India that is initiated when a company becomes insolvent or is unable to pay its debts. The CIRP is regulated by the Insolvency and Bankruptcy Code (IBC) introduced in 2016. Under the CIRP, a corporate debtor undergoes a time-bound resolution process to resolve its financial distress and maximize the value of its assets.⁸ The CIRP follows a step-by-step procedure that involves various stakeholders and is governed by specific sections of the IBC 2016. The following is a detailed explanation of the step-by-step procedure of the CIRP:

1. Initiation of CIRP (Section 7, 8, 9, and 10)

Step 1: Any financial creditor, operational creditor, or the corporate debtor itself can initiate the CIRP by filing an application before the National Company Law Tribunal (NCLT). The application must provide evidence of default, such as non-payment of debt or failure to meet payment obligations.

Step 2: The NCLT examines the application and, if satisfied, admits it. Upon admission, the NCLT declares a moratorium, which prevents any legal actions against the corporate debtor

⁸ Sneha Mahawar (2023) *Corporate insolvency resolution process under IBC, iPleaders*. Available at: <https://blog.ipleaders.in/corporate-insolvency-resolution-process-under-ibc/> (Last visited: 24 May 2023).

during the CIRP period. The NCLT also appoints an interim resolution professional (IRP) to take control of the company's affairs.⁹

2. Appointment of Interim Resolution Professional (IRP) (Section 16)

Step 3: The IRP takes over the management of the corporate debtor from the date of appointment. The IRP acts as the focal point for all communication between the corporate debtor, creditors, and the NCLT. The IRP assumes control of the company's operations, assesses its financial position, and protects its assets during the CIRP.¹⁰

3. Moratorium Period (Section 14)

Step 4: Upon admission of the application, a moratorium is imposed. The moratorium prohibits any legal actions or proceedings against the corporate debtor, including the enforcement of security interests or recovery of assets. This period provides a breathing space for the corporate debtor to evaluate its financial situation and explore potential resolution options.

4. Public Announcement and Claims (Section 13, 15, and 20)

Step 5: The IRP issues a public announcement within three days of their appointment, informing stakeholders about the initiation of the CIRP, calling for the submission of claims from creditors.¹¹

Step 6: Creditors submit their claims, providing details of the amount owed to them by the corporate debtor. The IRP verifies and maintains a list of creditors based on the submitted claims.¹²

5. Formation of Committee of Creditors (CoC) (Section 21)

Step 7: The CoC is formed and consists of financial creditors, such as banks and financial institutions. The CoC plays a crucial role in the decision-making process during the CIRP. The financial creditors' voting share is determined based on the amount of their debt.¹³

⁹ Sneha Mahawar (2023) *Corporate insolvency resolution process under IBC, iPleaders*. Available at: <https://blog.ipleaders.in/corporate-insolvency-resolution-process-under-ibc/> (Last visited: 24 May 2023).

¹⁰ Saxena, D. (2020) *Stages of corporate insolvency process, IndiaFilings*. Available at: <https://www.indiafilings.com/learn/stages-of-corporate-insolvency-process/> (Last visited: 27 May 2023).

¹¹ Shefali (2022) *CIRP process under IBC, Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://legalserviceindia.com/legal/article-7610-cirp-process-under-ibc.html> (Last visited: 29 May 2023).

¹² *Ibid.*

¹³ *Ibid.*

6. Submission of Resolution Plans (Section 25)

Step 8: Potential resolution applicants submit their resolution plans to the IRP within the specified timeframe. A resolution plan outlines the proposed measures for the revival or restructuring of the distressed company. It must include details of how creditors' claims will be addressed and how the corporate debtor's operations will be revived.

7. Evaluation and Approval of Resolution Plan (Section 30 and 31)

Step 9: The CoC evaluates the submitted resolution plans based on various factors, including viability, feasibility, and the maximization of the value of assets. The CoC approves the resolution plan that meets the requirements of the IBC 2016.¹⁴

Step 10: The approved resolution plan is submitted to the NCLT for final approval. The NCLT reviews the plan to ensure its compliance with the provisions of the IBC 2016. If satisfied, the NCLT approves the plan, making it binding on the corporate debtor, creditors, and other stakeholders.¹⁵

8. Implementation of the Resolution Plan (Section 31)

Step 11: Once the NCLT approves the resolution plan, the resolution professional takes charge of implementing the plan. The resolution professional oversees the restructuring, revival, or reorganization of the corporate debtor's operations as outlined in the plan. The resolution plan may involve changes in management, capital infusion, or debt restructuring.

9. Monitoring and Compliance (Section 208)

Step 12: The resolution professional monitors the implementation of the approved resolution plan, ensuring that it is carried out in accordance with the provisions of the IBC 2016. The resolution professional acts as a mediator between the corporate debtor and the CoC, addressing any issues or disputes that may arise during the implementation process.

10. Conclusion of CIRP (Section 32)

Step 13: The CIRP concludes when the approved resolution plan is successfully implemented, leading to the revival of the corporate debtor. The corporate debtor's operations are restored,

¹⁴ Pugalia, A. (2022) *Corporate insolvency resolution process (CIRP) under IBC, InCorp Advisory*. Available at: <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/> (Last visited: 29 May 2023).

¹⁵ *Ibid.*

and it continues to function as a going concern.

Step 14: In cases where a viable resolution plan is not approved or fails to be implemented within the specified timeframe, the CIRP may result in the liquidation of the corporate debtor. In such instances, the corporate debtor's assets are sold, and the proceeds are distributed among the creditors.¹⁶

These steps provide a comprehensive overview of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code 2016. The process is designed to facilitate the resolution of corporate insolvency cases in a transparent and time-bound manner, ensuring the protection of creditors' rights and the maximization of asset value.

The Roles and Responsibilities of Insolvency Professionals

Under the Insolvency and Bankruptcy Code 2016 (IBC 2016), insolvency professionals play a crucial part in the Corporate Insolvency Resolution Process (CIRP). They are licensed experts appointed as resolution professionals (RPs) or interim resolution professionals (IRPs) to oversee and manage the corporate debtor's affairs during the CIRP. An Insolvency Professional's primary functions and responsibilities are as follows:

1. Taking Control- Insolvency professionals, specifically the resolution professionals (RPs) or interim resolution professionals (IRPs), assume control of the management and operations of the corporate debtor once they are appointed. They step into the shoes of the board of directors and become responsible for running the company's affairs in the best interests of all stakeholders.¹⁷

They exercise decision-making powers, manage the company's day-to-day operations, and take necessary actions to protect and preserve the value of the company's assets during the CIRP.

2. Conducting Due Diligence- Insolvency professionals conduct a comprehensive assessment of the financial position, operations, and assets of the corporate debtor. This involves analyzing the company's financial statements, contracts, legal agreements, and other relevant

¹⁶ Pugalia, A. (2022) *Corporate insolvency resolution process (CIRP) under IBC, InCorp Advisory*. Available at: <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/> (Last visited: 29 May 2023).

¹⁷ Diva Rai (2020) *Role and duties of resolution professional under the IBC, 2016, iPleaders*. Available at: <https://blog.ipleaders.in/role-and-duties-of-resolution-professional-under-the-insolvency-and-bankruptcy-code-2016/> (Last visited: 30 May 2023).

documents.¹⁸

They gather information and insights necessary for formulating an effective resolution plan that addresses the financial distress of the company and maximizes the value for all stakeholders.

3. Managing Assets- During the CIRP, insolvency professionals are in charge of managing and safeguarding the corporate debtor's assets. They take the required precautions to safeguard the assets against unauthorised disposal or encumbrance.¹⁹

As part of the resolution strategy, they may also evaluate the worth of the assets, investigate monetization alternatives, and make judgements about asset utilisation or sale.

4. Collating Creditor Claims- Insolvency professionals invite creditors to submit their claims within a specified period. They verify the claims received and maintain a list of creditors and their respective claims.

The collated information on creditors and their claims serves as the basis for determining the voting rights of creditors in the Committee of Creditors (CoC).

5. Organizing CoC Meetings- Meetings of the CoC, which consists of financial creditors, are convened and led by insolvency professionals. They give CoC members with necessary information and updates, promote conversations, and seek their approval on crucial subjects.

These meetings provide a forum for creditors to participate in decision-making, review resolution plans, and make collectively significant decisions about the corporate debtor's future.²⁰

6. Managing Stakeholder Communications- Insolvency professionals act as a bridge of communication between the corporate debtor, creditors, the CoC, and the National Company Law Tribunal (NCLT).

They ensure that relevant information, decisions, and updates are effectively communicated to all parties involved, maintaining transparency and enabling efficient coordination throughout

¹⁸ *Ibid.*

¹⁹ Cleartax (2021) *Insolvency professional – meaning, eligibility and qualification* (no date) cleartax. Available at: <https://cleartax.in/s/insolvency-professional> (Last visited: 01 June 2023).

²⁰ Rajput Jains (2022) *Role, duties & responsibilities of IP under IBC: CA Rajput (2022) Rajput Jain & Associates - Chartered Accountants in Delhi | Updates on GST, Taxation and Company Laws*. Available at: <https://carajput.com/blog/role-duties-responsibilities-of-ip-under-ibc/> (Last visited: 02 June 2023).

the CIRP.

7. Facilitating Resolution Plan Evaluation- Insolvency professionals assist the CoC in evaluating the resolution plans submitted by potential resolution applicants. They provide their expertise and objective assessment of the plans, highlighting their feasibility, viability, potential impact on stakeholders' interests, and alignment with the objectives of the IBC 2016.²¹ Their inputs and analysis help the CoC in making informed decisions on the selection of a resolution plan that offers the best outcome for all stakeholders.

8. Overseeing Plan Implementation- If a resolution plan is authorised, insolvency professionals play a critical role in ensuring that it is carried out. They monitor the plan's progress, ensure compliance with the plan's terms and conditions, and take the appropriate steps to address any difficulties or disagreements that may occur throughout the implementation phase.²² Their responsibility is to guarantee that the resolution plan is carried out properly, resulting in the resurrection, restructuring, or reorganisation of the corporate debtor's operations.

9. Reporting to NCLT- Insolvency professionals are required to prepare and submit periodic progress reports to the NCLT, providing updates on the status of the CIRP, the implementation of the approved resolution plan, and any material developments. These reports help the NCLT in monitoring the progress of the CIRP, making informed decisions, and ensuring compliance with the provisions of the IBC 2016.

10. Upholding Professional Ethics- Insolvency professionals are bound by a code of conduct and ethical standards set by the Insolvency and Bankruptcy Board of India (IBBI). They are expected to maintain independence, exercise due diligence, act impartially, and avoid any conflicts of interest that may compromise the integrity and fairness of the CIRP. Upholding professional ethics is crucial to maintaining trust and confidence in the insolvency profession and ensuring the effective resolution of corporate insolvency cases under the IBC 2016.

Rights Of Different Creditors During The CIRP

Under the Corporate Insolvency Resolution Process (CIRP) governed by the Insolvency and Bankruptcy Code 2016 (IBC 2016), there are three main types of creditors: financial creditors,

²¹ Diva Rai (2020) *Role and duties of resolution professional under the IBC, 2016*, iPleaders. Available at: <https://blog.ipleaders.in/role-and-duties-of-resolution-professional-under-the-insolvency-and-bankruptcy-code-2016/> (Last visited: 04 June 2023).

²² Cleartax (2021) *Insolvency professional – meaning, eligibility and qualification* (2023) cleartax. Available at: <https://cleartax.in/s/insolvency-professional> (Last visited: 05 June 2023).

operational creditors, and government authorities.

Financial creditors are individuals, entities, or institutions that have provided financial assistance to the corporate debtor in the form of loans, credit facilities, or other forms of financial accommodation.²³ Examples of financial creditors include banks, financial institutions, debenture holders, bondholders, and other entities that have extended credit to the corporate debtor.

Operational creditors are individuals or entities that have provided goods or services to the corporate debtor in the ordinary course of its business operations.²⁴ Examples of operational creditors include suppliers, vendors, service providers, contractors, employees, and any other entity that has a claim for unpaid dues arising from the provision of goods or services to the corporate debtor.

Government authorities refer to various government entities and agencies that may have financial claims against the corporate debtor, such as tax authorities, regulatory bodies, and local authorities. Government authorities typically have claims related to unpaid taxes, fines, penalties, or any other statutory obligations owed by the corporate debtor.

During the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code 2016 (IBC 2016), each type of creditors has specific rights that govern their participation and decision-making in the process.

1. Financial Creditors

Right to Submit Claims- Financial creditors, such as banks and financial institutions, have the right to submit their claims to the insolvency professional (IP) within the specified timeframe. They must provide details of their dues, supporting documents, and any collateral or security held.

Right to Participate in the Committee of Creditors (CoC)- Financial creditors have the right to participate in the CoC. They have voting rights in the CoC meetings and can exercise their

²³ IBC Laws (2023) *Distinction in treatment of financial creditors vs. operational creditors under IBC - by Vidushi Puri, IBC Laws*. Available at: <https://ibclaw.in/distinction-in-treatment-of-financial-creditors-vs-operational-creditors-by-vidushi-puri/> (Last visited: 05 June 2023).

²⁴ *Ibid.*

voting power to approve or reject important decisions, such as the appointment of the resolution professional (RP) or the approval of a resolution plan.

Right to Be Informed- Financial creditors have the right to receive regular updates and information about the progress of the CIRP. The IP is responsible for providing relevant information, progress reports, and updates to the financial creditors, ensuring transparency and keeping them informed throughout the process.

Right to Evaluate Resolution Plans- Financial creditors have the right to evaluate and vote on the resolution plans submitted by potential resolution applicants. They can assess the feasibility, viability, and potential impact of the proposed plans on their interests before giving their approval or rejection.²⁵

Right to Receive Dues- If a resolution plan is approved and implemented, financial creditors have the right to receive their dues as per the terms and conditions specified in the plan. The plan may involve debt restructuring, repayment, or any other arrangement that maximizes the value of their claims.

2. Operational Creditors

Right to Submit Claims- Operational creditors, including suppliers and service providers, also have the right to submit their claims to the IP within the specified timeframe. They must provide details of their dues, supporting documents, and any contractual agreements.²⁶

Right to Participate in CoC- Operational creditors have the right to participate in the CoC meetings. However, they do not have voting rights and cannot directly influence the decision-making process.

Right to Be Informed- Similar to financial creditors, operational creditors have the right to receive updates and information about the progress of the CIRP from the IP. This ensures transparency and allows them to stay informed about the proceedings.

²⁵ Choudhary, S. (2020) *Rights of secured creditors under the Insolvency and Bankruptcy Code, 2016 - by advocate Sabhay Choudhary, IBC Laws*. Available at: <https://ibclaw.in/rights-of-secured-creditors-under-the-insolvency-and-bankruptcy-code-2016-by-advocate-sabhay-choudhary/> (Last visited: 07 June 2023).

²⁶ Mehta, V. (2023) *Entitlement of dissenting financial creditors under IBC, SCC Blog*. Available at: <https://www.sconline.com/blog/post/2023/05/13/entitlement-of-dissenting-financial-creditors-under-ibc/> (Last visited: 08 June 2023).

Right to Raise Concerns- Operational creditors have the right to raise concerns or objections regarding the resolution plan during the CoC meetings. Although they cannot vote on the plan, their inputs and feedback can influence the final decision.²⁷

3. Government Authorities

Right to Submit Claims- Government authorities, such as tax authorities or regulatory bodies, have the right to submit their claims for unpaid taxes, fines, or penalties owed by the corporate debtor.

Right to Participate in CoC- Government authorities have the right to participate in the CoC meetings, but they do not have voting rights.

Right to Be Informed- They have the right to receive information and updates on the progress of the CIRP, ensuring transparency and facilitating their involvement in the process.

Right to Raise Concerns: Government authorities can raise concerns or objections related to their claims, compliance issues, or any regulatory matters during the CoC meetings. Their inputs are considered while making decisions, even though they may not have direct voting rights.

The IBC 2016 provides for the classification and prioritization of creditors' claims based on their nature, i.e., financial creditors are given priority over operational creditors in the distribution of proceeds from the resolution plan. However, the rights outlined above are applicable to all creditors within their respective categories and ensure their participation and protection of interests in the CIRP.

Liquidation Process

The Insolvency and Bankruptcy Code 2016 (IBC 2016) defines the liquidation process as the orderly winding up of a corporate debtor's affairs when the Corporate Insolvency Resolution Process (CIRP) fails to result in a viable resolution plan or when the resolution plan is not implemented within the prescribed time frame. It is a procedure for maximising the value of the corporate debtor's assets and distributing the proceeds in a fair and transparent manner to

²⁷ Nehra, A. (2021) *Fundamentals of IBC: Financial Creditor v. Operational Creditor*, PSL Advocates and Solicitors. Available at: <https://www.pslchambers.com/article/fundamentals-of-ibc-financial-creditor-v-operational-creditor/> (Last visited: 10 June 2023).

the stakeholders.²⁸

The key steps involved in the liquidation process under the IBC 2016 are as follows:

1. Initiation of Liquidation- When the CIRP fails or the resolution plan is not implemented, the resolution professional or any other interested party can file an application with the National Company Law Tribunal (NCLT) seeking the initiation of liquidation proceedings.²⁹
2. Appointment of a Liquidator- Upon receipt of the application, the NCLT appoints a liquidator to take charge of the liquidation process. The liquidator is responsible for managing the affairs of the corporate debtor and maximizing the value of its assets.³⁰
3. Taking Control of Assets- The liquidator takes control and custody of all the assets, properties, books, and records of the corporate debtor. They also verify and investigate the claims submitted by creditors.
4. Valuation and Realization of Assets- The liquidator conducts a comprehensive valuation of the corporate debtor's assets to determine their fair value. The assets may include tangible assets, such as property and equipment, as well as intangible assets, such as intellectual property rights. The liquidator then proceeds to sell or liquidate these assets to generate proceeds for distribution to the stakeholders.³¹
5. Distribution of Proceeds- The proceeds generated from the sale or liquidation of assets are distributed among the stakeholders in a specific order of priority. The distribution waterfall under the IBC 2016 prioritizes the repayment of debts in the following order: (a) insolvency resolution process costs, (b) secured creditors, (c) employee dues, (d) unpaid dues to unsecured creditors, and (e) any remaining proceeds to the shareholders or partners of the corporate debtor.³²
6. Dissolution of the Corporate Debtor- Once the liquidation process is completed, the liquidator files an application with the NCLT for the dissolution of the corporate debtor.

²⁸ Sehgal, D.R. (2021) *Liquidation under the insolvency and bankruptcy code, 2016 with special focus upon the priority of claims*, iPleaders. Available at: <https://blog.ipleaders.in/liquidation-insolvency-bankruptcy-code-2016-special-focus-upon-priority-claims/> (Last visited: 11 June 2023).

²⁹ Taxmann (2021) *Liquidation process for corporate persons: IBC code*, Taxmann Blog. Available at: <https://www.taxmann.com/post/blog/liquidation-process-for-corporate-persons> (Last visited: 11 June 2023).

³⁰ Rajput Jains (2022) *Liquidation process for corporate debtor under IBC: RJA (2022) Rajput Jain & Associates - Chartered Accountants in Delhi | Updates on GST, Taxation and Company Laws*. Available at: <https://carajput.com/blog/liquidation-process-for-cd-under-ibc/> (Last visited: 12 June 2023).

³¹ *Ibid.*

³² Muskaan Aggarwal (2021), *Company liquidation process in India under IBC, InCorp Advisory*. Available at: <https://incorpadvisory.in/blog/company-liquidation-process-in-india-under-ibc/> (Last visited Jun 12, 2023).

Upon dissolution, the corporate debtor ceases to exist as a legal entity.³³

The IBC 2016 liquidation procedure seeks to achieve a balance between the interests of stakeholders and the effective use of the corporate debtor's assets. It establishes a transparent and structured framework for the liquidation procedures, ensuring that assets are realised and divided fairly and equitably among stakeholders. The appointment of a liquidator and the engagement of the NCLT aid in maintaining oversight and adherence to the IBC 2016 provisions throughout the liquidation process.

Grey Areas of IBC 2016

While the Insolvency and Bankruptcy Code 2016 (IBC 2016) is widely recognised as a substantial improvement in India's insolvency and bankruptcy regime, it is not without ambiguity. These grey regions, which have been the subject of dispute and judicial interpretation, provide obstacles and uncertainty in the practical implementation of the IBC. The following are some of the significant grey areas in the IBC 2016:

1. Treatment of Operational Creditors

One area of uncertainty concerns the handling of operational creditors during the insolvency resolution process. In the distribution of proceeds, the IBC gives operational creditors a lower priority than financial creditors.³⁴ However, the precise mechanism and scope of their participation in decision-making processes, particularly during the approval or rejection of resolution plans, have been disputed.

2. Interplay between IBC and Other Laws

Another source of misunderstanding has been the interplay between the IBC and other existing laws, such as tax laws, labour laws, and sector-specific regulations. Conflicts and contradictions between the IBC and other laws frequently develop, causing ambiguity and potential delays in the settlement process.

3. Cross-Border Insolvency

³³ *Ibid.*

³⁴ Rachit Garg (2023), *Major Grey areas in the insolvency and Bankruptcy Code, 2016, Ipleaders*. Available at: <https://blog.ipleaders.in/major-grey-areas-in-the-insolvency-and-bankruptcy-code-2016/> (Last visited Jun 13, 2023).

The IBC 2016 does not contain any explicit procedures for dealing with cross-border bankruptcy cases in which a corporate debtor has assets or creditors in various jurisdictions. Although the IBC permits the central government to enter into agreements with other nations for bankruptcy cooperation, the lack of a comprehensive framework for cross-border insolvency has posed obstacles in dealing with such situations effectively.³⁵

4. Resolution Plan Approval Criteria

The approval criteria for resolution proposals provided by potential resolution applicants have been open to interpretation. Because the IBC does not specifically describe the considerations to be considered in evaluating resolution plans, the Committee of Creditors (CoC) and adjudicating authorities make inconsistent and subjective decisions.³⁶

5. Treatment of Personal Guarantors

The treatment of personal guarantors of corporate debtors under the IBC is another grey area. The IBC does not clearly specify the process and implications for personal guarantors when the corporate debtor undergoes insolvency resolution or liquidation.

6. Timelines and Delays

While the IBC establishes strict timelines for completing the insolvency resolution process, delays in adhering to these timelines have been a challenge. The occurrence of litigation, appeals, and multiple legal interpretations has led to delays, impacting the effectiveness and efficiency of the overall resolution process.

7. Judicial Interpretation

The IBC 2016 is a relatively new legislation, and its interpretation by the courts is an ongoing process. The varied interpretations of certain provisions by different courts have resulted in uncertainties and inconsistencies in the application of the law.

To address these grey areas, the IBC framework must be reviewed and amended on a regular basis in order to improve clarity, streamline processes, and ensure the successful execution of

³⁵ K. T. Jagannathan & Sanjay Vijayakumar (2018), *Customer rights remain grey area in insolvency & bankruptcy code*, *The Hindu*. Available at: <https://www.thehindu.com/business/Industry/customer-rights-remain-grey-area-in-insolvency-bankruptcy-code/article23874380.ece> (Last visited Jun 13, 2023).

³⁶ Money Control (2017), *Decoding the grey areas of insolvency and Bankruptcy Code*, *Moneycontrol*. Available at: <https://www.moneycontrol.com/news/trends/expert-columns/decoding-the-grey-areas-of-insolvency-and-bankruptcy-code-2460979.html> (Last visited Jun 14, 2023).

the insolvency resolution regime. Through legislative revisions, recommendations, and precedents, the government, regulatory entities, and judicial authorities play critical roles in addressing these issues and giving clarification.

Conclusion and Suggestions

The analysis of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code 2016 (IBC 2016) finds both strengths and weaknesses. The IBC 2016 provides a comprehensive framework for insolvency resolution, with the goal of promoting effective and prompt resolution of business distress, maximisation of value for stakeholders, and promotion of an entrepreneurial and investment culture. As a crucial component of the IBC, the CIRP provides an organised and open mechanism for the resolution of insolvent enterprises, allowing for a fair and equitable allocation of assets among stakeholders.

The IBC 2016 objectives, which included improving the ease of doing business, protecting creditor rights, and fostering economic growth, were mostly met. In comparison to the previous legal framework, the inclusion of time-bound resolution, the presence of insolvency professionals, and the active participation of creditors has permitted a more efficient resolution process.

The roles and responsibilities of insolvency professionals in the CIRP are critical to the process's proper operation. Their knowledge, objectivity, and devotion to professional ethics are critical for attaining positive results. During the CIRP, creditors' rights and obligations were clearly established, creating a framework for their participation, protection, and distribution of proceeds.

While the IBC's liquidation process is a last choice when resolution efforts fail, it provides a structured method for maximising asset value and distributing funds in an orderly manner among stakeholders. A fair distribution of proceeds is made possible by the transparent appraisal and sale of assets, as well as the stipulated priority of debt repayment.

However, the IBC 2016 has certain grey areas that require attention. Some of the significant concerns are the treatment of operational creditors, the interaction between the IBC and other legislation, and the lack of a complete framework for cross-border bankruptcy. The criteria for approving resolution plans, the treatment of personal guarantors, and delays in meeting deadlines are all areas that need to be clarified and streamlined.

To address these ambiguities, the government, regulatory bodies, and judiciary should continue to review and enhance the IBC framework. Regular changes, clarifications, and guidelines can serve to increase the certainty and uniformity with which the legislation is applied. Coordination among many stakeholders, including insolvency professionals, creditors, and government officials, can boost the CIRP's efficiency and efficacy even further.

Overall, the IBC 2016 and CIRP have made major contributions to the transformation of India's insolvency and bankruptcy scene. The IBC framework may become even more robust with continuous attention on eliminating grey areas, delivering a more efficient and predictable resolution process that fosters economic growth and investor confidence.