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# **CORPORATE INSOLVENCY RESOLUTION PROCESS, CIRP IN INDIA: A CRITICAL ANALYSIS**

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## **ABSTRACT**

The Insolvency and Bankruptcy Code (IBC), enacted by the Indian legislature in 2016, established a legal framework to address issues related to insolvency and bankruptcy. The primary reason for introducing the legal code was to aid several organizations, including companies, people, and partnership firms. The IBC was created to resolve several challenges that persisted in the bankruptcy environment in India and attain several legal and financial objectives. The IBC was created to consolidate and update the current laws governing business restructuring and bankruptcy, as well as those managing partnerships and individuals.

## Introduction

**A significant legal framework known as the Corporate Insolvency Resolution Process (CIRP) was introduced in India under the Insolvency and Bankruptcy Code, 2016 (IBC).**

The CIRP's primary objective is to provide a quick, orderly procedure for handling the bankruptcy and insolvency of a troubled corporate organization or individual. To guarantee that the organization's assets are valued at their highest level in the market, it also encourages entrepreneurship, financing availability, and balancing the interests of all stakeholders.

## Corporate Insolvency Resolution Process

The main objective of the CIRP, as previously mentioned, is to resolve the insolvency of a corporate debtor. The CIRP process can be initiated by any one of the following parties: a financial creditor under Section 7 of the IBC code, an operational creditor under Section 9, or a corporate applicant of a corporate debtor under Section 10. Additionally, the same insolvency procedure may be initiated in the National Firm Law Tribunal (NCLT), which has jurisdiction over the location, and the adjudicating authority has a maximum of 180 days to resolve the insolvency matter from the day the insolvency application was admitted. The committee of creditors must vote 60% in favor in order for this time to be extended once for a total of 90 days. Even after taking into consideration the one-time extension of 90 days, the insolvency application should take 330 days to complete overall. A person or organization may withdraw an insolvency application from the adjudicating body in accordance with Sections 7 or 9, or 10 [1] if the committee of creditors votes 90% in favor of doing so.

The importance of a resolution expert selected by the adjudicating body as suggested under section 22 by the financial or operational complaint in the original application submitted is discussed in the preamble of the IBC code. This ensures the adjudicating authority completes the resolution procedure impartially and professionally and guarantees [2] a fair trial. The Board will recommend an interim resolution professional, someone against whom no disciplinary action is pending within ten days, and they will act in that capacity until a permanent resolution professional is appointed under Section 22. If the resolution professional's name is not suggested, the adjudicating authority may refer the matter to the Board.

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<sup>1</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

<sup>2</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

The first thing the resolution professional must do after being appointed is to make a public announcement using Form 3 of the Schedule to the Insolvency and Bankruptcy Board of India through any of the available channels of communication, such as a newspaper, a website specifically created by the Board for such announcements, or on the website of the corporate debtor, within three days of their appointment, and to call the stakeholders to submit their claims under Section 15<sup>[3]</sup>. The resolution professional then creates the information memorandum, which is indicated in Section 29(1) of the law and includes the pertinent data about the corporate debtor in the manner stipulated under Section 36(2), using which the professional crafts a resolution plan. Per Section 36(4),<sup>[4]</sup> the resolution professional is expected to provide sensitive information by delivering the information memoranda to each credit committee member within two weeks or 54 days of their appointment, whichever comes first.

The resolution plan provided here is one that is stated under Section 5(26) and would resolve the corporate debtor's bankruptcy in accordance with Part II. The plan includes clauses addressing, among other things, the corporate debtor's capacity to combine, de-merge, and amalgamate. The resolution applicant may submit the resolution plan based on the information in the information memorandum and with an affidavit stating that he is eligible for the plan under Section 29A<sup>[5]</sup>. The resolution applicant is given at least thirty days to submit their resolution plans and submit the same plan to the resolution professional, who shall examine the submitted plan to ensure that it complies with all the requirements set forth in Section 30(2). The committee of creditors will review each resolution plan once it is presented to the resolution expert, who will then present the same plan to the committee. The committee will vote, and in order for a plan to be authorized, it must obtain 60% of the votes cast. The plan that receives the most votes will be deemed the final resolution plan approved, and it will be sent to the adjudicating authority for final approval in accordance with Section 31(1). All resolution applicants have the right to attend the meeting of creditors, but they are not permitted to participate in voting; also, only financial creditors are allowed to participate in voting at the meeting of the committee of creditors. One thing to keep in mind is that the adjudicating body has the right to compel the corporate debtor to be liquidated if the resolution plan is not submitted within the required 180-day window of time or even after the one-time extension of

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<sup>3</sup> Ankita Pugalia, Corporate Insolvency Resolution Process under IBC, In Corp, Blog (Aug. 15, 2023, 7:45 PM) <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/>

<sup>4</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

<sup>5</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

90 days<sup>6</sup>. If the committee of creditors is dissatisfied with the incumbent resolution professional, a resolution may be passed with a 66% majority of the vote to replace him or her. The adjudicating authority may, after approval, designate a new resolution professional with written permission.

Once the committee of creditors has approved the resolution plan, if anyone is not satisfied with the order, an appeal can be filed before the NCLAT based on the ground that the resolution plan approved is in contravention of a provision of any law, a resolution professional's use of their authority was materially irregular, debts owed to operational creditors were not provided for in the resolution plan in the manner specified, the costs of the insolvency resolution process were Under Sections 31 and 33<sup>[7]</sup>, an appeal against the decision of liquidation based on the irregularity of material or fraud committed during the liquidation order may be made. These provisions do not allow for repayment in priority to other obligations, etc. The National Company Law Appellate Tribunal (NCLAT) has the authority to act as the appellate authority for the CIRP and liquidation process. Any appeal before the NCLAT should be filed within 30 days from the date of the NCLT admission, only in cases where there are valid reasons the NCLAT may grant a single, 15-day extension of the deadline for submitting an appeal to the tribunal. The Supreme Court of India will accept appeals against orders issued by the NCLAT within 45 days of the date the order was issued, with a one-time extension of 15 days granted for good cause. No civil court has the authority to hear any complaint or procedure brought under the IBC law, according to Section 63 of the law <sup>[8]</sup>.

Fair value and liquidation value are two crucial values that the CIRP establishes. A liquidation value is the projected realizable worth of the corporate debtor's assets if the corporate debtor were to be liquidated on the bankruptcy beginning date, as opposed to a fair value, which is just the roughly estimated value of the corporate debtor's assets. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, define fair value under regulation 2(hb) and liquidation values under regulation 2(k). If the company is asset-heavy, it will have a significant quantity of plant and machinery, land, and buildings on its balance sheet. Fair Value and Liquidation Value of Tangible Assets. When giving the job of valuing tangible assets to valuers, Resolution

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<sup>6</sup> Shefali, CIRP Process under IBC, Legal Service India E-Journal (Aug. 16, 2023, 10:00 AM) <https://www.legalserviceindia.com/legal/article-7610-cirp-process-under-ibc.html>

<sup>7</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

<sup>8</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

Professional should be very explicit about whether he wants the fair value or only the liquidation value of the assets to be established. Additionally, Resolution Professional could request that the valuer ascertain the Fair Value of Non-Operating Assets.

A corporate debtor that meets the requirements for a fast-track corporate insolvency procedure (Fast Track CIRP) under Chapter IV Part II of the law will have assets<sup>[9]</sup>, an income level below the threshold established by the federal government, a class of creditors, or both. According to the code, businesses that qualify for Fast Track CIRP must be unlisted, have financial statements from the previous fiscal year that do not exceed one crore, or be small businesses as defined by Section 2(85) of the Companies Act of 2013<sup>[10]</sup>, or be startups as determined by a government notification issued by the Government of India's Ministry of Commerce and Industry on May 23, 2017. With a one-time extension of 45 days, the Fast Track CIRP must be conclusively resolved within 90 days after the date of admission. The Fast Track CIRP is governed by the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

#### **Advantages:**

1. **Time-Bound Resolution:** Setting strict timelines for the settlement process is one of CIRP's primary advantages. This guarantees that the resolution is accomplished within a specific time period, minimizing the time and cost associated with drawn-out bankruptcy proceedings.
2. **Expert Management:** Professional insolvency resolution experts (IRPs) are employed by CIRP and are in charge of directing the operations of the problematic company during the procedure. This ensures that the company is managed by experts, which raises the possibility of a turnaround.
3. **Maximization of Asset Value:** The process aims to maximize the value of the company's assets in order to benefit all stakeholders. An open bidding process that allows interested parties to submit resolution ideas enables this.
4. **Prevention of Value Erosion:** By accelerating the resolution process, CIRP aims to prevent the decline in the company's value brought on by postponing decision-making and execution.

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<sup>9</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Act of Parliament, 2016 (India)

<sup>10</sup> The Companies Act, 2013 No. 18, Act of Parliament, 2013 (India)

### **Criticisms and Obstacles:**

1. **Operational challenges:** The effective implementation of CIRP requires close cooperation between several stakeholders, including creditors, resolution specialists, and the company's management. A lack of collaboration or disputes between different parties might hamper the settlement process.
2. **Emphasis on Infrastructure:** The Indian insolvency ecosystem initially experienced difficulties since the resolution process lacked a well-developed infrastructure. The National Company Law Tribunal's (NCLT) and insolvency specialists' capabilities were put to the test by the unexpected flood of cases.
3. **Promoters are not permitted** to bid for their own assets in order to prevent defaulting promoters from regaining control of the company after the resolution, nevertheless, opponents contend that this might discourage natural promoters from taking part in the resolution process.
4. **Liquidation as a Fallback:** If a resolution plan is not adopted within the given time limit, the company goes into liquidation. According to critics, this tactic may only seldom be in the best interests of all parties since liquidation may provide less value than a practical solution.
5. **Implementation Challenges:** The success of CIRP depends on effective execution, which requires the cooperation of creditors, adherence to deadlines, and accurate asset valuation. It's possible that delays or process aberrations may affect the outcomes.

### **Conclusion**

In conclusion, India's Corporate bankruptcy Resolution Process is a significant reform that strives to address corporate bankruptcy concerns promptly and transparently. Despite the many advantages, there are also disadvantages and complaints, mainly in the form of operational challenges, infrastructure readiness, and possibly unanticipated consequences. The framework's continuing development and the lessons discovered via its implementation will determine its effectiveness and impact on the business climate in India.