INSOLVENCY PROFESSIONALS AND COMMITTEE OF CREDITORS (COC): NEED FOR CREDENCE IN INDIA'S INSOLVENCY REGIME

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ABSTRACT

This research paper explores the critical role of Insolvency Professionals (IPs) in India's insolvency resolution process under the Insolvency and Bankruptcy Code (IBC), with a specific focus on their collaborative dynamic with the Committee of Creditors (CoC). Utilizing a mixed-methods approach, the study examines the legal and regulatory framework governing IPs, analyzes case studies of IP-CoC collaboration, and identifies the benefits and challenges associated with this relationship. Findings emphasize the importance of open communication, clear expectations, and mutual respect for successful collaboration. Challenges include information asymmetry, conflicting interests, and potential delays in the resolution process. The study concludes that effective IP-CoC collaboration is crucial for achieving successful insolvency resolution outcomes and offers recommendations to enhance this relationship and improve the overall insolvency framework in India.

Keywords: IBC, Insolvency Professionals, Financial Creditors, Committee of Creditors, Collaboration, Conflicting interests, Transparency, Efficiency.

Introduction

Prior to 2016, India's insolvency and bankruptcy regime was a labyrinth of fragmented legislation, overlapping jurisdictions, and protracted procedures. This outdated framework was characterized by a lack of a unified approach, leading to significant delays, high costs, and ultimately, low recovery rates for creditors. The pre-IBC era was marked by several key challenges namely:

- **Multiplicity of Laws:** Insolvency was governed by a patchwork of legislation, including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and the Companies Act, 1956, among others. This fragmented approach resulted in confusion, contradictions, and legal uncertainties.
- **Overlapping Jurisdictions:** Different courts and tribunals, such as the Board for Industrial and Financial Reconstruction (BIFR), the Debt Recovery Tribunals (DRTs), and High Courts, had overlapping jurisdictions in insolvency matters. This led to forum shopping, delays, and increased litigation costs.
- **Protracted Delays:** Resolving insolvency cases could take several years, if not decades, due to procedural complexities, legal challenges, and a lack of judicial capacity. These delays eroded the value of assets, discouraged investment, and hindered economic growth.
- **Low Recovery Rates:** Creditors often recovered only a small fraction of their dues due to the inefficiencies and delays inherent in the system. This discouraged lending and hampered the efficient allocation of capital.

Recognizing the urgent need for reform, the government of India embarked on a comprehensive overhaul of the insolvency regime, culminating in the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC introduced a paradigm shift in India's approach to insolvency and bankruptcy, with the following key objectives:

- **Consolidation:** To create a single, unified framework for insolvency and bankruptcy, replacing the existing fragmented legislation.
- **Time-bound Resolution:** To ensure the timely resolution of insolvency cases through strict timelines and a streamlined process.
- **Creditor-in-Control:** To shift the balance of power from the debtor to the creditors,

giving them greater control over the insolvency resolution process.

- **Value Maximization:** To maximize the value of assets through efficient insolvency resolution processes, preventing the erosion of value during the proceedings.
- **Rehabilitation and Liquidation:** To provide a framework for the rehabilitation of viable businesses and the orderly liquidation of non-viable ones.

The IBC, a watershed moment in India's economic landscape, by replacing a fragmented and inefficient framework with a consolidated and streamlined process, it has sought to foster a more favourable environment for businesses and creditors alike.

At the heart of this transformative legislation lies the relationship between Insolvency Professionals (IPs) and the Committee of Creditors (CoC), two pivotal entities that play a crucial role in determining the fate of distressed companies.

The IBC Ecosystem: Roles and Responsibilities

1. Insolvency Professionals (IPs)

The IBC lays the foundation for the insolvency profession in India, defining the role and responsibilities of IPs. Key provisions of the IBC relevant to IPs include:

- **Appointment of IPs:** The IBC outlines the process for appointing IPs to manage insolvency resolution processes, emphasizing their qualifications and experience.
- **Powers and Duties of IPs:** The IBC grants IPs a wide range of powers to manage the affairs of the Corporate Debtor (CD), including taking control of assets, conducting investigations, and facilitating the resolution process.
- **Code of Conduct:** The IBC mandates that IPs adhere to a strict code of conduct, ensuring their independence, impartiality, and ethical behaviour throughout the insolvency process.

They are appointed by the National Company Law Tribunal (NCLT) to manage the affairs of a Corporate Debtor (CD) that has been admitted into the insolvency process. IPs are required to possess the necessary qualifications, experience, and expertise to navigate the complexities of financial distress and ensure compliance with the IBC's provisions.

Their responsibilities are multifaceted, encompassing:

- **Taking control of the debtor's assets and operations:** Upon admission of an insolvency application, IPs assume control of the Corporate Debtor (CD). They take over the management of the CD's affairs, ensuring the preservation and maximization of its assets.
- **Conducting due diligence:** IPs conduct a thorough assessment of the financial position of the CD. This includes reviewing financial statements, verifying assets and liabilities, and identifying potential risks and opportunities.
- **Preparing the information memorandum:** IPs prepare a comprehensive information memorandum that provides critical information to potential resolution applicants. This document includes details about the CD's business, financials, and assets, enabling potential investors to make informed decisions.
- **Inviting and evaluating resolution plans:** IPs facilitate the process of soliciting and assessing bids for the CD. They manage the submission of resolution plans, evaluate their feasibility and viability, and present them to the CoC for consideration.
- **Managing the insolvency process:** IPs oversee the entire insolvency process, ensuring compliance with the IBC and adherence to timelines. They act as the central point of contact for all stakeholders, including the CoC, resolution applicants, and other creditors.

2. Committee of Creditors (CoC)

The Committee of Creditors (CoC) is a body comprising financial creditors of the CD. It plays a crucial role in decision-making, guiding the insolvency resolution process, and ultimately determining the future of the distressed business. The CoC's decisions are binding on the IP and other stakeholders.

Their primary role is to:

- **Approve or reject resolution plans:** The CoC holds the ultimate authority to decide the fate of the CD. They vote on the resolution plans submitted by potential investors, and their approval is required for a plan to be implemented.
- **Provide direction to the IP:** The CoC guides the IP in managing the insolvency process. They provide input on key decisions, such as the sale or liquidation of assets, and monitor the IP's performance.
- **Make decisions regarding the CD's assets:** The CoC has the power to make decisions

regarding the management and disposal of the CD's assets. This includes approving the sale of assets, securing financing, and taking other actions necessary to preserve the value of the CD's estate.

However, the IBC is still a work in progress, and challenges remain in its implementation and effectiveness. The creditor in control regime under IBC has entrusted the CoC with challenging task of giving a new life to the distress CD. The CoC practically exercises direct control over the affairs of the CD rather than supervisory role.

The diverse composition of the CoC often leads to a range of conflicting interests among its members. These conflicts can arise due to:

- **Varying Priorities:** Secured creditors often prioritize a quick recovery of their dues, even if it means liquidating the CD's assets. Unsecured creditors, on the other hand, may prefer a resolution plan that keeps the CD as a going concern, even if it means accepting a lower recovery rate in the short term.
- **Competing Agendas:** Different creditors may have competing agendas based on their individual financial interests and risk appetites. Some creditors may be willing to take a haircut to ensure the CD's survival, while others may be more aggressive in pursuing their claims.
- **Power Dynamics:** Larger creditors, due to their greater voting power, may exert more influence over the CoC's decisions. This can lead to concerns about fairness and transparency, particularly for smaller creditors.

The IP-CoC Relationship: A Collaborative Dynamic

The IP-CoC relationship is a collaborative one, requiring a balance between the IP's independent judgment and accountability to the CoC. Effective communication, transparency, and mutual respect are essential for successful collaboration, with the IP keeping the CoC informed and seeking input on key decisions, and the CoC providing timely guidance to the IP. This collaborative dynamic is crucial for effective insolvency resolution under the IBC.

Eight years into the implementation of the IBC in India, the relationship between Insolvency Professionals (IPs) and the Committee of Creditors (CoC) is constantly evolving. While the IBC has brought about significant changes, the effectiveness of the IP-CoC relationship remains under scrutiny. This research delves into the complexities of this collaboration, emphasizing that despite the time elapsed, the desired efficiency and effectiveness of the IP-CoC relationship under the IBC still remains focal point.

Literature Review:

Das et al. (2022) provide a comprehensive overview of the evolution of insolvency and bankruptcy laws in India. They trace the journey from the pre-reform era to the enactment of the IBC, 2016, highlighting the shift from a socialist hangover to a market-oriented approach. The authors also delve into the impact of the IBC on various facets of the Indian economy, including its influence on corporate governance, business practices, and capital markets.

Bhargava (2024) emphasizes the pivotal role of the Resolution Professional (RP) in India's Corporate Insolvency Resolution Process (CIRP). The RP's adherence to corporate governance principles, including transparency and accountability, is crucial for achieving the IBC's objectives of timely resolution, value maximization, and balancing stakeholder interests. The article also highlights the challenges faced by RPs in fulfilling their duties while upholding these principles, providing valuable insights into the complexities of the CIRP

Arora and Shrivastava (2023) delve into the pivotal role of the Resolution Professional (RP) within the Corporate Insolvency Resolution Process (CIRP) under India's Insolvency and Bankruptcy Code (IBC). The authors underscore the RP's multifaceted responsibilities in managing the distressed company, facilitating its resolution or liquidation, and navigating the complexities of legal procedures and stakeholder expectations. The article emphasizes the criticality of the RP's role in achieving the IBC's objectives, including maximizing asset value and balancing stakeholder interests, while also highlighting the challenges and complexities inherent in the insolvency resolution process.

Dogra (2020) highlights a critical aspect of the Indian insolvency resolution framework, arguing that the perceived "monopoly status" of Resolution Professionals (RPs) is misleading. While the RP ostensibly holds a central role in the Corporate Insolvency Resolution Process (CIRP), their autonomy is significantly constrained by the Committee of Creditors (CoC). The CoC's authority to appoint, remove, and direct the RP's actions underscores the inherent power imbalance in this relationship. This observation challenges the notion of the RP as an independent overseer of the insolvency process and emphasizes the significant influence wielded by the CoC in shaping the outcome of the CIRP

Ayilyath (2019) examines the challenges hindering the effective implementation of India's Insolvency and Bankruptcy Code (IBC), 2016. Despite its aim to streamline insolvency resolution, the IBC faces roadblocks such as delays in the resolution process, infrastructural shortfalls, and legislative gaps. The author highlights the need for capacity building, including strengthening the NCLT's infrastructure, improving the functioning of Insolvency Professionals (IPs), and addressing legislative gaps to ensure timely and effective insolvency resolution.

Sriram (2016) advocates for the establishment of a code of conduct to govern the Committee of Creditors (CoC) within India's insolvency resolution framework. The author underscores the extensive powers of the CoC, including the appointment and supervision of the Resolution Professional and decision-making authority over the distressed company's operations. Highlighting the need for transparency, objectivity, and value maximization, the author proposes guiding principles for the CoC's conduct, emphasizing the importance of acting in the best interests of all stakeholders.

The article published under IIP ICAI Journal by Gupta S in July 2024 titled "Code of Conduct for Committee of Creditors: At a Crucial Point", delves into the role and responsibilities of the Committee of Creditors (CoC) in India's insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). The author concludes by emphasizing the importance of the Code of Conduct in ensuring fairness, competence, and timely resolution in the insolvency process, especially in light of future reforms such as cross-border and group insolvency.

Insolvency and Bankruptcy Board of India (IBBI) on August 6, 2024 Issued Guideline titled as "Guidelines for Committee of Creditors". to foster more effective and time-bound decision-making by the Committee of Creditors (CoC) members under the Insolvency and Bankruptcy Code, 2016, aim to curtail procedural delays, enhance transparency, and promote a coordinated approach in decision-making by the CoC members, ultimately leading to the maximization of the distressed assets' value.

RBI Deputy Governor M Rajeshwar Rao advocated for a mandatory code of conduct for the Committee of Creditors (CoC) in insolvency resolutions. The role of the Committee of Creditors (CoC) in the CIRP is also an area that needs improvement, with instances of disproportionate prioritization of individual interests, disagreements on resolution plans, disagreements over valuation and distribution and lack of effective engagement among members. Rao suggested empowering the IBBI to enforce these norms and emphasized the deterrent role of insolvency processes.

He highlighted several issues that include:

- **Prioritization Issues**: Disproportionate emphasis on individual creditors' interests rather than the collective interests of the group.
- **Internal Disagreements**: Conflicts among members of Committee of Creditors regarding resolution plans, often stemming from concerns over undervaluation or perceived lack of viability.
- **Distribution Conflicts**: Disputes over the allocation of proceeds even after the approval of a resolution plan.
- **Non-Participation**: Instances of members not attending CoC meetings or failing to engage effectively.
- **Skill Gaps**: Insufficient expertise in areas such as corporate finance, legislation, and industry-specific knowledge.
- **Responsibility-Authority Mismatch**: Financial creditors nominated to the Committee of Creditors being assigned responsibilities that surpass their actual authority.

This literature review reveals a critical need for further research into the practical implementation and efficacy of the Insolvency and Bankruptcy Code (IBC) within India. While existing scholarship highlights the evolution of the IBC and the pivotal roles of the Resolution Professional (RP) and the Committee of Creditors (CoC), significant gaps remain. Specifically, there's a dearth of empirical studies quantifying the impact of CoC conflicts, the effects of the recently issued IBBI guidelines, and the RP's ability to mitigate internal disagreements. Furthermore, the responsibility-authority mismatch within the CoC, and the long-term impact of CoC decisions on post-CIRP business viability, require thorough investigation. Addressing these gaps will provide a more nuanced understanding of the IBC's operational challenges and inform strategies to enhance its effectiveness, leading to the development of a robust research methodology that can accurately analyze these critical areas.

Research Methodology

This research employed a mixed-methods approach to investigate the collaborative dynamics between Insolvency Professionals (IPs) and the Committee of Creditors (CoC) within India's insolvency resolution framework, with a particular focus on the role of banks as Financial Creditors (FCs) within the CoC. The study incorporated a literature review, case study analysis, and primary data collection through personal interviews and Google Form surveys. The literature review examined existing knowledge and identified research gaps, while case studies provided real-world examples of IP-CoC roles and collaboration. Personal interviews gathered in-depth insights from IPs, and Google Form surveys collected quantifiable data on specific aspects of the IP-CoC relationship. This mixed-methods approach allowed for a comprehensive understanding of the research topic by combining qualitative and quantitative data, with a specific focus on the role of CoC (banks as FCs).

1. Case Study Analysis:

1. ***Essar Steel India Limited v. Satish Kumar Gupta & Ors (2019)***: This landmark case dealt with the power of the CoC, which emphasized the commercial wisdom of the CoC reinforcing the importance of the CoC's role in guiding the IP and making key decisions.

2. ***ArcelorMittal India Private Limited v. Satish Kumar Gupta & Ors (2019):*** This case, related to the Essar Steel resolution, further clarified the role of the CoC in the insolvency process. It was upheld that the CoC has the ultimate authority to decide on the distribution of funds among creditors. This underscores the CoC's decision-making power and the IP's role in implementing those decisions.

3. ***Swiss Ribbons Pvt. Ltd. v. Union of India (2019):*** This case dealt with the IBC's framework, emphasizing the importance of a time-bound resolution process and the need to balance the interests of various stakeholders. This indirectly supports the collaborative dynamic between the IP and CoC, as they work together to achieve these goals.

4. ***K. Sashidhar v. Indian Overseas Bank & Ors (2019):*** This case highlighted the importance of the IP's independence and objectivity. The court held that the IP should act in the best interests of all stakeholders and not be influenced by any particular creditor. This emphasizes the need for a professional and unbiased approach from the IP in their interactions with the

CoC.

5. ***Binani Industries Ltd. v. Bank of Baroda & Ors (2018):*** The court emphasized the CoC's role in evaluating and approving resolution plans, highlighting the need for a transparent and fair process. This reinforces the importance of open communication and collaboration between the IP and CoC in evaluating resolution plans.

6. ***State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr (2024):*** The court emphasized the delay in implementation of resolution plan, highlighting the need for a transparent and fair process. This reinforces the importance of monitoring of implementation of plan, and also highlighted the need for effective monitoring of the resolution plan's implementation, suggesting the statutory recognition of monitoring committees.

2. Primary Data Collection:

To gather firsthand perspectives and experiences, primary data was collected through two methods:

- **Google Form Surveys:** The Google survey included a range of question types designed to gather both quantitative and qualitative data on the relationship between Insolvency Professionals (IPs) and the Committee of Creditors (CoC).

Quantitative questions used multiple choice and rating scales to collect quantifiable data on:

a) **Frequency of interaction:** How often IPs communicate with the CoC (e.g., weekly, monthly).
b) **Decision-making:** IPs' perception of the CoC's decision-making process (e.g., transparent, fair).
c) **Challenges faced:** The types of challenges IPs encounter in their interactions with the CoC (e.g., information asymmetry, conflicting interests).
d) **Understanding of the process:** How IPs rate the CoC's understanding of the insolvency resolution process.
e) **Alignment with IBC objectives:** Whether the CoC's decisions are aligned with the goals of the IBC.

Qualitative questions used open-ended formats to gather in-depth insights on:

a) **General experience:** IPs' overall experience working with the CoC.

b) **Transparency and communication:** How IPs rate the level of transparency and communication with the CoC.

c) **Additional comments and suggestions:** Any other feedback or recommendations IPs have regarding the IP-CoC relationship.

- **Personal Interviews:** Semi-structured interviews were conducted with a purposive sample of IPs involved in insolvency resolution cases. Interviews explored their roles, responsibilities, challenges faced, and perspectives on effective collaboration.

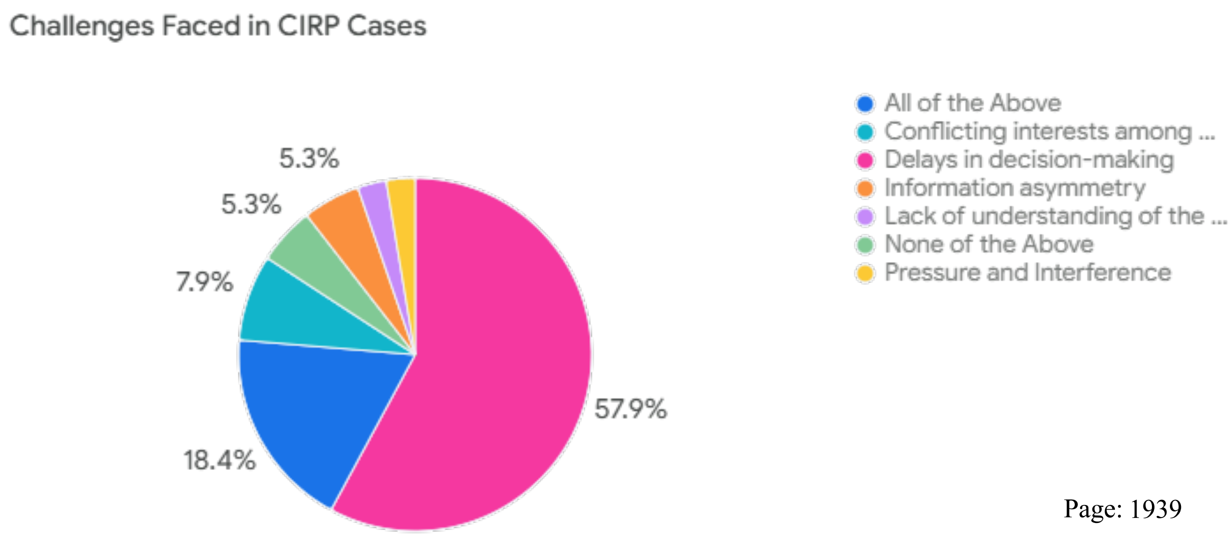
This combination of quantitative and qualitative questions allowed for a comprehensive assessment of the IP-CoC relationship, providing both breadth and depth of understanding.

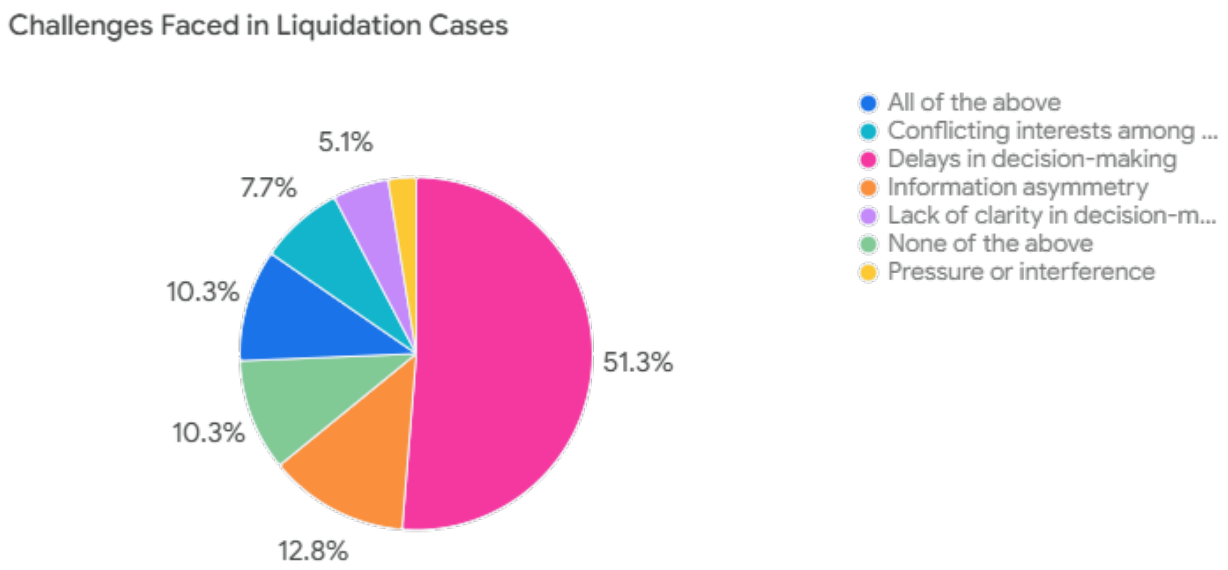
3. Data Analysis:

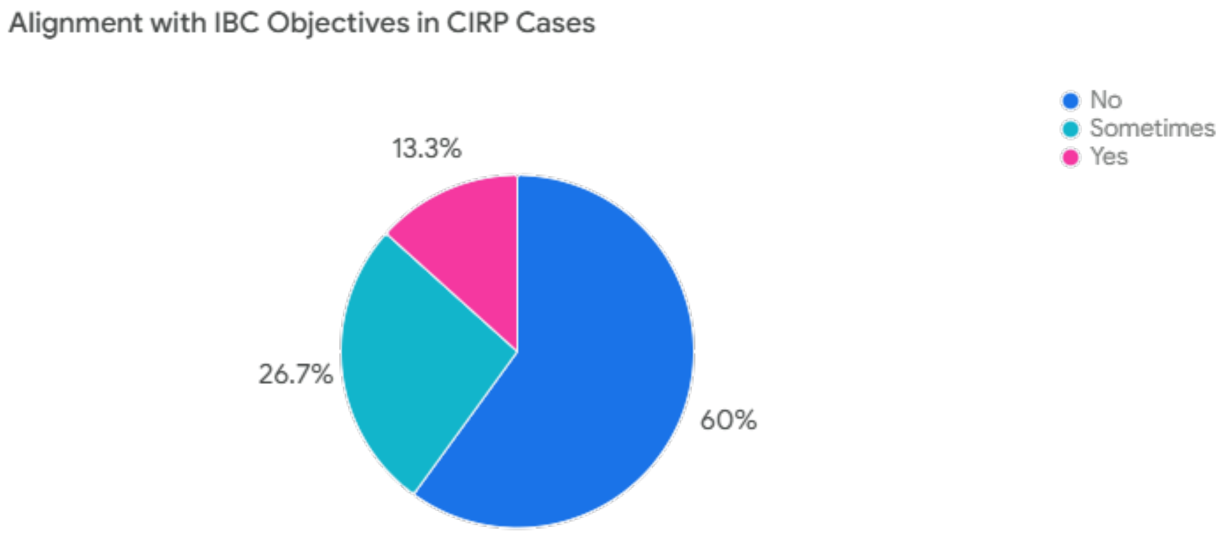
Data from all sources was triangulated to provide a comprehensive understanding of the research topic.

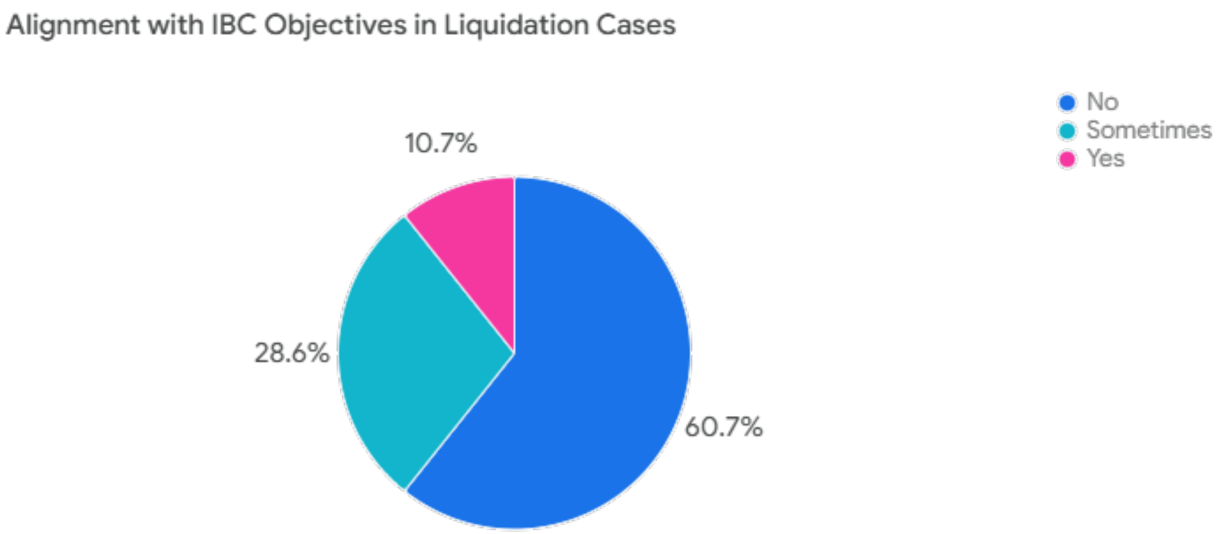
In-depth analysis of these selected case studies was performed to gain insights into real-world experiences of IP-CoC collaboration, specifically focusing on cases with significant bank involvement as FCs. Cases were chosen to illustrate both successful and challenging instances of collaboration to understand the dynamics between the IP and CoC, the strategies employed, and the outcomes achieved.

The Google survey responses provided valuable insights into the relationship between Insolvency Professionals (IPs) and the Committee of Creditors (CoC).




Challenges Faced in Liquidation Cases
5.1%
7.7%
10.3%
10.3%
12.8%
51.3%
All of the above
Conflicting interests among ...
Delays in decision-making
Information asymmetry
Lack of clarity in decision-m...
None of the above
Pressure or interference


Alignment with IBC Objectives in CIRP Cases
13.3%
26.7%
60%
No
Sometimes
Yes


Alignment with IBC Objectives in Liquidation Cases
10.7%
28.6%
60.7%
No
Sometimes
Yes

Semi-structured interviews were conducted with ten Insolvency Professionals (IPs) to gather qualitative insights into their experiences and perspectives on collaborating with the Committee of Creditors (CoC). The interviews, conducted in person or via video conferencing, explored the IPs' roles, responsibilities, challenges faced, and perspectives on effective collaboration. Thematic analysis was used to identify recurring themes and patterns.

This mixed-methods approach, combining qualitative insights from interviews with quantitative data from the survey, allowed for a robust investigation of the research topic, providing a richer and more nuanced understanding of the IP-CoC relationship in insolvency resolution, with a specific focus on the role of banks as FCs.

Results

1. Case Study Analysis:

Analysis of these cases provides valuable insights into the IP-CoC relationship, highlight their roles and responsibilities. They emphasize the importance of collaboration, communication, and mutual respect between the IP and CoC to ensure a successful insolvency resolution process.

It's important to note that jurisprudence on the IBC is still evolving. As more cases are decided, further clarity will emerge on the specific nuances of the IP-CoC relationship.

2. Survey Findings:

Key findings include:

- **CoC's Understanding:** A majority of IPs rated the CoC's understanding of the CIRP and Liquidation process as "Fair," with fewer rating it as "Good" or "Poor."
- **Alignment with IBC Objectives:** Most IPs responded with "No" when asked if the CoC's decisions are generally aligned with the IBC's objectives, indicating a potential area of concern.
- **Transparency and Communication:** The level of transparency and communication with the CoC was predominantly rated as "Fair," with a smaller proportion indicating "Good" or "Poor."
- **Challenges Faced:** The most frequently cited challenge in both CIRP and Liquidation

cases was "Delays in decision-making," followed by varying frequencies of other challenges like information asymmetry and conflicting interests.

These findings highlight potential areas for improvement in the IP-CoC relationship, particularly regarding the CoC's understanding of the insolvency resolution process, the alignment of their decisions with IBC objectives, and the need to address delays in decision-making.

3. Interview Findings:

Qualitative analysis of interview of 10 Insolvency Professionals (IPs) revealed that a majority of them shared their experiences of delays in decision-making processes and a lack of alignment with the objectives of the Insolvency and Bankruptcy Code (IBC) by the Committee of Creditors (CoC). The IPs highlighted challenges such as information asymmetry, conflicting interests among CoC members, and lack of clarity in decision-making. These delays and misalignments can hinder the insolvency resolution process, leading to erosion of value and increased costs.

These findings provide valuable insights into the dynamics of IP-CoC collaboration in India's insolvency resolution landscape. The quantitative data from the surveys and the qualitative insights from the interviews and case studies offer a comprehensive understanding of the factors that contribute to successful collaboration and the challenges that need to be addressed to enhance the effectiveness of the insolvency resolution process.

Conclusion

The IP-CoC relationship is pivotal to the success of the IBC. By fostering a collaborative and transparent environment, IPs and the CoC can work together to achieve the objectives of the IBC and contribute to a more robust and resilient economy.

Building Credence in the IP-CoC Relationship

Addressing these challenges requires a multi-pronged approach aimed at building credence in the IP-CoC relationship is crucial for the success of the insolvency resolution process under the IBC. Credence, in this context, refers to trust, confidence, and belief in the integrity and effectiveness of the relationship. Here are some key ways to foster credence:

1. Transparency and Access to Information:

Establish clear and consistent communication channels between the IP and the CoC. Regular meetings, updates, and reports are essential for keeping the CoC informed and involved.

2. Alignment of CoC with Object of the IBC:

Foster a shared understanding of the goals and objectives of the insolvency resolution process between the IP and the Coc. Encourage mutual respect and trust between the IP and the CoC. Recognize the different roles and responsibilities of each party. Promote a culture of constructive feedback and open dialogue between the IP and the CoC.

3. **CoC Capacity Building**

The CoC's decision-making process should be streamlined to ensure timely and efficient decisions. This could involve establishing clear guidelines for voting procedures and providing CoC members with access to independent expert advice. Utilizing technology platforms to facilitate secure and timely information exchange. Educating CoC members about their responsibilities and the importance of timely information provision.

4. Regulatory Oversight and Enforcement:

Apart from present guidelines which provide good foundation for regulating the behavior of the CoC, a more comprehensive and stringent approach which can be action-oriented, leaving less room for ambiguity in interpretation and implementation with Clearer provisions could address potential power imbalances or conflicts of interest within the CoC. Also, clear enforcement mechanisms and consequences for non-compliance, ensuring that CoC members are held accountable for their actions.

5. Adhere to timelines:

Ensure that all decisions and actions are taken within the timelines prescribed under the IBC. Share all relevant information with the IP to enable them to conduct the insolvency process efficiently. Carefully review and assess the information memorandum prepared by the IP. Contribute to the preparation of the marketing strategy by the IP.

6. Consider the need for a monitoring committee:

Consider the need for a monitoring committee for the implementation of the resolution plan. CoC being primary decision-making body, by leading the monitoring committee can supervise and monitor the implementation of the resolution plan, ensure statutory compliance. It will regulate oversight of the IP.

The existing framework, while robust, can be further enhanced by addressing the challenges and implementing the recommendations outlined in this paper. This will not only strengthen the IP-CoC relationship but also promote greater efficiency and transparency in insolvency resolution, ultimately benefiting all stakeholders involved.

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16 Binani Industries Ltd. v. Bank of Baroda & Ors (2018)

17 State Bank of India & Ors v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.