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**STANDING COMMITTEE ON FINANCE
(2020-2021)**

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

**IMPLEMENTATION OF INSOLVENCY AND BANKRUPTCY CODE- PITFALLS
AND SOLUTIONS**

THIRTY-SECOND REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2021 / Sravana, 1943 (Saka)

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Presented to Lok Sabha on 3rd August, 2021

Laid in Rajya Sabha on 3rd August, 2021

LOK SABHA SECRETARIAT
NEW DELHI



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COMPOSITION OF STANDING COMMITTEE ON FINANCE (2020-21)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Shri Vallabhaneni Balashowry
6. Shri Shrirang Appa Barne
7. Dr. Subhash Ramrao Bhamre
8. Smt. Sunita Duggal
9. Shri Gaurav Gogoi
10. Shri Sudheer Gupta
11. Vacant
12. Shri Manoj Kishorbhai Kotak
13. Shri Pinaki Misra
14. Shri P.V Midhun Reddy
15. Prof. Saugata Roy
16. Shri Gopal Chinayya Shetty
17. Dr. (Prof.) Kirit Premjibhai Solanki
18. Shri Manish Tewari
19. Shri Parvesh Sahib Singh Verma
20. Shri Rajesh Verma
21. Shri Giridhari Yadav

RAJYA SABHA

22. Vacant
23. Shri A. Navaneethakrishnan
24. Shri Praful Patel
25. Dr. Amar Patnaik
26. Shri Mahesh Poddar
27. Shri C.M. Ramesh
28. Shri Bikash Ranjan
29. Shri G.V.L Narasimha Rao
30. Dr. Manmohan Singh
31. Smt. Ambika Soni

SECRETARIAT

1. Shri Vinod Kumar Tripathi - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director
4. Ms. Melody Vungthiansiam - Assistant Committee Officer

INTRODUCTION

1, the Chairperson of the Parliamentary Standing Committee on Finance, having been authorized by the Committee, present this Thirty-second Report on the subject 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions'.

2. At their sitting held on 25 August, 2020, the Committee took evidence of the representatives of Indian Banks' Association, AZB & Partners, L&L Partners, Ministry of Corporate Affairs and Insolvency and Bankruptcy Board of India (IBBI). On 12 January, 2021, the Committee took evidence of the representatives of the Ministry of Corporate Affairs, IBBI and Punjab National Bank. On 28 January, 2021, the Committee took evidence of the representatives of ICICI, COSIA, FISME, an independent witness, representatives of Ministry of Micro, Small & Medium Enterprises (MSME), Department of Financial Services (Ministry of Finance), RBI and SIDBI.

3. On 12 February, 2021, the Committee heard the views of the representatives of Supreme Transport Organisation Pvt. Ltd., KASSIA, Independent witnesses and took evidence of the representatives of Indian Overseas Bank and Kotak Mahindra Bank. On 7 July 2021, the Committee took evidence of the representatives of Ministry of Corporate Affairs and Insolvency and Bankruptcy Board of India (IBBI).

4. The Committee at their sitting held on 29 July, 2021 considered and adopted the draft report and authorised the Chairperson to finalize the same and present it to the Parliament.

5. The Committee wish to express their thanks to the officials of the Ministry of Corporate Affairs, Ministry of Micro, Small & Medium Enterprises (MSME), Department of Financial Services (Ministry of Finance), IBBI, RBI, SIDBI, ICICI Bank, Punjab National Bank, Indian Overseas Bank & Kotak Mahindra Bank and representatives from AZB & Partners, L&L Partners, COSIA, FISME, Supreme Transport Organisation Pvt. Ltd., KASSIA and Independent witnesses for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the subject.

6. For facility of reference, the observations/recommendations of the Committee have been printed in bold at the end of the Report.

New Delhi
29 July, 2021
7 Shrawana, 1943(Saka)

Shri Jayant Sinha
Chairperson,
Standing Committee on Finance

PART I

A. INTRODUCTORY

The legal framework for insolvency and bankruptcy in India prior to the enactment of Insolvency and Bankruptcy Code, 2016 was fragmented and ineffective. The evolution of the economic and financial ecosystem rendered it necessary to overhaul the existing debt restructuring system. The Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 meant for personal insolvency were hardly used, while in case of corporates, the Recovery of Debts Due to Banks and Financial Institution Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interests Act, 2002, have not been very effective in terms of recovery, the Sick Industrial Companies (Special Provisions) Act, 1985 was bogged down with inordinate delays and consequent value erosion.

2. A new legislation was required to deal effectively with insolvency and bankruptcy and for development of credit markets in the country, encouraging entrepreneurship and improving ease of doing business to facilitate investments. The Bankruptcy Law Reforms Committee was constituted with a mandate to suggest comprehensive reforms covering all aspects of insolvency and bankruptcy of both corporates and individuals. Based on its recommendations, the Insolvency and Bankruptcy Code 2016 was enacted on May 28, 2016. The Code was enacted with the objective to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.
3. The Economic Survey 2016-17 describes the unique features of this regime as:
 - (i) a comprehensive regime dealing with all aspects of insolvency and bankruptcy of all kinds.

(ii) separating commercial aspects of insolvency and bankruptcy proceedings from judicial aspects and empowered stakeholders and adjudicating authorities to decide the matters within domain expeditiously.

(iii) moving away from erosion of net worth to a more objective default in payment for initiation of the insolvency process.

(iv) moving away from the 'debtor-in-possession' regime to a 'creditors-in-control' regime where creditors decide matters with the assistance of insolvency professionals.

(v) providing collective mechanism to resolve insolvency rather than recovery of loan by a creditor.

(vi) achieving insolvency resolution in a time bound manner and empowers the stakeholders to complete transactions in time.

4. The Ministry of Corporate Affairs in a written note have submitted that the Code reduces incidence of failure in two ways. First, the inevitable consequence of default in terms of insolvency proceedings prompts behavioral changes on the part of debtor to try hard to prevent business failures. Second, it reduces failure by setting in motion a process that rehabilitates failing businesses that are viable. If, however, rehabilitation is not possible, the Code facilitates its closure with the least cost and disruptions. By allowing closure of non-viable firms, wherever required, the Code enables an entrepreneur to get in and get out of business with ease, undeterred by failure (honest failure for business reasons). The Code thus addresses business failures by reducing the chances of failure, rescuing failing businesses where possible and releasing resources from businesses, where rehabilitation is not possible and thereby promotes entrepreneurship.

B. THE FOUR PILLARS OF THE CODE

5. The ecosystem for implementation of the provisions of the Code consists of four pillars viz. the Insolvency Professionals and Insolvency Professional Agencies, Information Utilities, Adjudicating Authorities (the National Company Law Tribunals and Debts Recovery Tribunals), and the Insolvency and Bankruptcy Board of India (IBBI) to

exercise regulatory oversight over insolvency professional agencies, insolvency professionals and information utilities.

1. Insolvency Professionals (IPs) or Resolution Professionals (RPs)

6. The Code provides for Insolvency Professionals (IPs), a class of regulated professionals to act as intermediaries in the insolvency resolution process. An IP before registration is required to pass Limited Insolvency Examination within twelve months before the date of his application for enrolment with the insolvency professional agency and complete a pre-registration educational course, as may be required by the Board, from an insolvency professional agency after his enrolment as a professional member. In order to strengthen IPs, IBBI as regulator conducts Workshops, IP conclave, Round table etc.

(a) Regulation of Insolvency Professional (IPs)

7. Insolvency Professional Agencies are designated to regulate Insolvency Professionals. Regarding the functions of IPAs, the Ministry of Corporate Affairs in a written note stated as under:

"The Code envisages IPAs as front-line regulators. The IPAs discharge three kinds of functions, namely, quasi-legislative, executive, and quasi-judicial. The quasi-legislative functions cover laying down standards and code of conduct through bye-laws, which are binding on all members. The executive functions include monitoring, inspection, and investigation of professional members on a regular basis, addressing grievances of aggrieved parties, gathering information about their performance, etc, with the overarching objective of preventing malicious behaviour and malfeasance by IPs. The quasi-judicial functions include dealing with complaints against members and taking suitable disciplinary actions.

An IPA broadly pursues two sets of interests. One is public interest, as enumerated in section 200 of the Code, encompassing the interests of the debtors, creditors, other stakeholders, the market and the society. An IPA also pursues the private interest, as enumerated in section 204, encompassing interests of the business, professional members, shareholders, and employees. The Code read with Regulations specify the norms to balance the public interests and private interests. Section 203 of the Code emphasises on governance of IPAs. There is limited presence of IPs in the Governing Board

which has 50% independent directors. No person can hold more than five percentage of the equity share capital in an IPA, with exceptions being provided only to certain category of institutions like stock exchange, banking company or the central and state governments and a statutory regulator. The Code also provides that if the Disciplinary Committee of the Board is satisfied that sufficient cause exists, it may suspend or cancel the registration of an IPA. Only a not-for-profit company can be registered as an IPA. While there is a possibility of conflict of interest between the regulatory and competitive goals of the IPAs, the existing checks and balances are considered sufficient to take care of this."

(b) Qualification of Insolvency Professionals

8. On the issue of competency of IPs in handling huge and complicated cases, the Chairperson, Insolvency and Bankruptcy Board of India (IBBI) during the course of evidence stated as under:

"The role IBBI has is comparable to the role of the Institute of Chartered Accountants of India or Institute of Company Secretaries of India. There is a second layer called Insolvency Professional Agency. Insolvency professionals professional members of the Insolvency Professional Agency. Thereafter, they are registered with the IBBI. To become an IP, they have to be professionally qualified. They are generally professionals like CA,CS or Advocates. There is also room for managerially experienced people to come in. But broadly, of the 3,500 insolvency professionals, 3,000 plus are professionals such as Chartered Accountants, Cost Accountants, Company Secretaries and Advocates with 10 years of experience. They take an examination conducted by the IBBI. There is a pre-registration educational course. There is also a compulsory continuing professional education programme. The IBBI organizes a large number of basic workshops and advanced workshops. Both IBBI and the IPAs together, probably conduct about 150 to 200 programmes a year. It is because we know that new work is happening and new knowledge is coming. We do several publications, including journals, particularly, case studies and best practices."

9. On the issue of capacity building and conduct of IPs, Chairperson, IBBI further stated:

" We do a large number of inspections. Probably, 150 inspections have been done. 100 plus show cause notices have been issued and we impose a variety of penalties. 5-6 registrations have been cancelled. We award suspension at times and impose monetary penalties. Various advices are given. This is a continuous process. It is a new profession. It will take time...There are conduct issues in a

few cases but we have a timeline of processing the things. In the case of show cause notices, it has to be disposed of within six months' time. Inspection has to be completed in time and varieties of actions are being taken."

10. Details of enforcement actions against Insolvency Professionals as of 31.05.2021 are as under:

ACTIVITY	IPAs	IBBI
Inspections Conducted	64	139
Show Cause Notices Issued	66	80
Show Cause Notices Disposed of	54	67
Disciplinary Actions		
Cancellation/Suspension/Debarment	5	20
Monetary Penalty	19	12
Others	32	35
Total	56	67

2. Information Utilities

11. The Code deals with Information Utilities which would store facts about lenders and terms of lending in electronic databases and will be used by the Adjudicating Authority to ascertain 'default'. National E-Governance Services Ltd. (NeSL) is the sole Information Utility registered by IBBI under the Code. The Ministry of Corporate Affairs during the course of evidence provided the following information from NeSL as on 31st May 2021

No. of creditors	1350
No. of debtors	93.02 lakh
No. of loan records	1.54 crore
Amount of underlying debt	136 lakh crore
Number of default certificates issued	41094

3. Adjudicating Authorities

12. The Code proposes two adjudicating authorities. National Company Law Tribunal (NCLT) which exercises the jurisdiction, powers and authority over insolvency cases of companies and Limited Liability Partnerships (LLPs) and Debt Recovery Tribunals (DRTs) which handle cases involving individuals and partnership firms. At present 16 benches of NCLT are functional (including the Principal Bench).

a) Performance of NCLT

13. The Ministry during the course of evidence have provided the following information regarding the performance of NCLT:

Total cases dealt from 01.06.2016 to 31.05.2021

Category	Total Cases dealt	Total Cases disposed	Total Cases pending
IBC	32,547	19,377	13,170
Merger & Acquisition	12,490	11,318	1,172
Other cases under Companies Act	31,814	25,193	6,621
Total	76,851	55,888	20,963

14. Regarding the amount involved in the cases pending with the NCLT, the Secretary, Ministry of Corporate Affairs during the course of evidence on 12 January, 2021 stated that:

"The amount involved is Rs. 9,20,000 crore. What is triggered under Section 7, which is the financial creditor is 4,365 cases. That translates to Rs. 6,77,000 crore. Financial creditors have triggered that process. Section 9 that is triggered by the Operational Creditor is 8,331 cases. That is only Rs. 78,000 crore compared to Rs. 6,77,000 of 4,365 cases. Here, the number is almost double. But the claims is only 10 or 15 per cent of that amount. Section 10, which is the Corporate debtor himself, it is 266 cases with a claim amount of Rs. 52,000 crore. There is one that is 253 with the claim amount of Rs. 1,11,000 crore."

15. The age-wise pending cases in NCLT under IBC as on 31 May, 2021 are as under:

IBC Sec	0-90 days	91-120 days	121-180 days	180+ days	Total
Sec 7	155	147	306	2,177	2,785
Sec 9	279	401	1091	4,202	5,973
Sec 10	85	17	51	455	608
Others	111	60	121	193	485
Total	630	625	1,569	7,027	9,851
Percentage	6.39%	6.34%	15.92%	71.33%	

16. Regarding the bench strength and backlog of cases in NCLT, the Secretary, Ministry of Corporate Affairs during the course of evidence stated:

"Regarding backlog of NCLT and the Bench strength, we have vacancies of 34 members, including the President, against the total of 63. Against 76,000 cases, 56,000 cases have been disposed of. There are about 20,000 cases now and 13,000 cases relate to IBC. Similarly, in NCLAT, against the sanctioned Bench strength, we have a vacancy of Chairperson and vacancy of two Members only. A lot of retirements happened in May and June. The vacancy is more than 50 per cent but active steps are being taken to fill up the vacancies."

b) Performance of NCLAT

17. The NCLAT has 2 Benches with the sanctioned strength of a Chairperson and 11 Members. Currently, the post of Chairperson and two Members are vacant. The total cases dealt by NCLAT from 01.06.2016 to 31.05.2021 are as under:

Category	Total Cases dealt	Total Cases disposed	Total Cases pending
IBC	4283	3283	1000
Companies Act	1577	1229	348
Competition Act	338	80	258
MRTTP Act	7	2	5
Total	6205	4594	1611

4. Insolvency and Bankruptcy Board of India (IBBI)

18. The Code provides for the constitution of a regulator i.e. Insolvency and Bankruptcy Board of India (IBBI) established on 1st October, 2016. It regulates service providers as well as transactions. It has regulatory oversight over Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. It lays down regulations to govern transactions, namely, Corporate Insolvency Resolution Process, Corporate Liquidation, Individual Insolvency, and Individual Bankruptcy under the Code and enforces the Code, rules and regulations made there under. The Board consists of members appointed by the Central Government, namely a Chairperson, three members from officers of the Central Government, one member nominated by the Reserve Bank of India (RBI) and five other members to be nominated by the Central Government of whom at least three are whole-time members. The term of the office of the Chairperson and Members is five years.

19. The main functions of the Board include:

(a) register insolvency professional agencies(IPA), insolvency professionals (IP) and information utilities (IU)and renew, withdraw, suspend or cancel such registrations;

(b) monitor the performance and carry out inspections and investigations on IPAs, IPs and IUs and pass orders as required for compliance of the provisions of the Code and regulations;

(c) publish such information, data, research studies and other information as may be specified by regulations;

(d) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(e) constitute such committees as may be required including in particular the committees laid down in section 197;

(f) maintain websites and other universally accessible repositories of electronic information as may be necessary;

(g) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code including mechanism for time bound disposal of the assets of the corporate debtor.

C. Corporate Insolvency Resolution Process (CIRP)

20. Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process by making an application to the Adjudicating Authority. The Adjudicating Authority admits or rejects the application within fourteen days of the receipt of the application. The resolution process commences from the date of admission of the application and the Adjudicating Authority communicates to the financial creditor or corporate debtor within seven days of admission or rejection of the application. A financial creditor needs to submit the record of the default whereas an operational creditor needs to first make a demand for his unpaid debt. On the basis of an ongoing dispute, it is open to the corporate debtor to defend the claim. When a

corporate debtor is admitted into the CIRP, it suspends the board of directors. Also, the management is placed under an independent 'interim resolution professional'. The interim resolution professional will receive and collate all the claims submitted by the creditors and constitute a committee of creditors(COC). The committee of creditors resolve whether to continue with the interim resolution professional as the resolution professional or to replace the interim resolution professional by another resolution professional. The resolution professional submits the resolution plan as approved by the committee of creditors by a vote of not less than 66% to the Adjudicating Authority. If the Adjudicating Authority is satisfied that the resolution plan meets the requirements of the Code, it shall by order approve the resolution plan which is binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Section 12 of the Code provides that the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application. The NCLT can extend this period by another 90 days. Further, to reemphasize the object of the Code, an outer timeline of 330 days to complete the resolution process including the time taken in legal proceedings has been provided by inserting a proviso to section 12 by way of IBC (Amendment) Act, 2019 w.e.f. 16th August, 2019.

World Bank: Ease of Doing Business Report (out of 190 countries)

Particulars	2017 (India)	2020	
		India	US
Rank (Resolving Insolvency)	136	52	02
Recovery Rate	26.0%	71.6%	81%
Time taken	4.3 years	1.6 years	1 year
Starting business	151	136	55
Doing Business	155	63	06
Getting Credit	62	25	04

21. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the World Bank data in 2017, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business

Index, 2015, ranked India at number 135 out of 190 countries on the ease of resolving insolvency based on various indicia. Now India has jumped to 63rd position in World Bank's Ease of Doing Business 2020 report.

22. The Ministry during the course of evidence have provided the following information regarding outcomes under the IBC Code as on 31st May, 2021.

Particulars	No. of Corporates	Amount (Rs. crore)	
		Liquidation Value	Realisable Value
Cases dealt	32,547	-	-
Cases pending for consideration	13,170	-	-
Applications withdrawn before admission	17,631	-	5,45,483
Process commenced	4,487	-	-
Process closed mid-way	1,085	-	-
Process closed by resolution plan	365	1,13,012	2,11,635
Process closed for liquidation	1,318	49,783	NA
Ongoing processes	1,719	-	-

23. On being asked about the resolution process and the low recovery rates with haircuts as high as 90-95%, the Secretary, Ministry of Corporate Affairs during the course of evidence stated as under:

"Initially, when the companies came to IBC, 33 per cent of the companies that were rescued were defunct. They virtually did not have anything, and of the companies that actually liquidated, there were 73 per cent of the companies that were defunct. It also depends as to on what stage a company comes to the IBC. If it is at a stage where it can be revived and restored and if it is resolved then the results will always be better. We can show previous cases where it has come at a proper stage and even the recovery, though incidental, has been quite good. There have been cases where recovery has been even up to 80-90 per cent also.

Nevertheless, the resolution value is almost 188 per cent of the liquidation value. So, what is the alternative available? If the companies come for resolution and the alternative is if they go for liquidation, then they will get much lesser than what they are getting now. The IBC is not designed for haircut, but the entire wisdom is lying with the Committee of Creditors. The entire resolution plan is approved by the Committee of Creditors and it is approved by the NCLT as such. If the Committee of Creditors, in their wisdom, do not agree for a 90 per cent haircut or 95 per cent haircut, then the plan will not go to the NCLT. If it does not go to the NCLT, it will not approve and then obviously the company will have to

go for liquidation or maybe other alternate modes of recovery that is available with the financial creditors.

We have provided a framework, and it is mainly for the Committee of Creditors who have a predominant role in this entire process. The code of conduct for the Committee of Creditors; the capacity building of the Committee of Creditors; the quality of decision-making for the Committee of Creditors; and their professionalism we have to work out. So, we are working with the Banks Association also."

D. Monitoring Mechanism - Insolvency Law Committee (ILC)

24. The Ministry have informed that the mechanism available to strengthen and monitor the implementation of the Code is through the Insolvency Law Committee (ILC) constituted on 16th November, 2017 (reconstituted as Standing Committee on 6th March, 2019) under the chairmanship of Secretary, MCA. The ILC makes recommendations to the Government on issues arising from implementation of the Code as well as on the recommendations received from various stakeholders.

25. So far the Committee has submitted three reports with details as under:-

- (i) 1st Report submitted in March, 2018-The Committee considered the fact that drafting a new piece of legislation, is only the start and the more significant challenge is ensuring that the law is implemented in true spirit. Keeping same in mind and to safeguard the interest of various stakeholders under the Code, the Committee made recommendations relating to certain exemptions to MSMEs, clarity on status of homebuyers as financial creditors, clarity regarding treatment assets of guarantors of corporate debtor vis-a-vis the moratorium on assets of corporate debtor, reduction in the voting threshold by committee of creditors in respect of various decisions taken during and for the approval of resolution plan etc.
- (ii) 2nd Report submitted in October, 2018-The Committee recommended adoption of UNCITRAL Model Law on Cross border insolvency in Indian context to provide internationally competitive and comprehensive insolvency framework for corporate debtors under the Code.
- (iii) 3rd Report submitted in February, 2020- Considering the need to develop robust insolvency regime and for further strengthening the corporate insolvency resolution process and liquidation based on the experience gained from implementation of the Code, the Committee recommended increasing

threshold under section 4 of the Code, minimum threshold for initiation of CIRP by class of creditors, continuation of licenses etc. granted by Government authorities during the moratorium, continuation of critical supplies during moratorium, providing protection from enforcement actions under various laws against the property of a corporate debtor acquired by resolution applicants etc.

E. Amendments to the IBC Code

26. Based on the recommendations of the ILC and examination within the Ministry, the following amendments have been carried out as detailed below:-

a) Insolvency and Bankruptcy Code (Amendment) Act, 2018

The IBC (Amendment) Act, 2018 w.e.f. 23.11.2017 was amended to strengthen the insolvency resolution process by facilitating phased implementation of the Code; providing clarity as to the persons who can submit a resolution plan; making certain persons ineligible to submit a resolution plan; casting responsibility on the Committee of Creditors for approving the resolution plan by vote of not less than 75% of voting share of financial creditors; etc.

b) Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

The IBC (Second Amendment) Act, 2018 w.e.f. 6.06.2018 was amended to balance the interest of stakeholders, specially homebuyers and MSMEs and to promote resolution over liquidation by clarifying the status of homebuyers as financial creditors; granting certain exemptions to MSMEs; clarifying the non-applicability to moratorium over personal guarantors; reducing the voting threshold from 75% to 66%; etc.

c) Insolvency and Bankruptcy Code (Amendment) Act, 2019

The IBC (Amendment) Act, 2019 w.e.f. 16.08.2019 was amended to ensure maximization of value of corporate debtor (CD) as a going concern while adhering to strict timeline by introducing the deadline of 330 days (including litigation period) for completion of corporate insolvency resolution process (CIRP); making it mandatory for Adjudicating Authority to pass speaking order in

case there is delay beyond 14 days; introducing majoritarian criteria of 50% or more for voting among a particular class of creditors (homebuyers); clarifying that merger, demerger and amalgamations are part of resolution plan; clarifying that resolution plans are binding on the government agencies; etc.

d) Insolvency and Bankruptcy Code (Amendment) Act, 2020

The IBC (Amendment) Act, 2020 w.e.f. 28.12.2019 was amended to remove certain difficulties being faced during CIRP by protecting last mile funding; minimum threshold for initiation of CIRP by class of creditors, ensuring supply of essentials for continuation of CD as a going concern during CIRP; clarifying that the licenses, etc. can't be terminated; no liability on CD for an offence committed prior to commencement of CIRP; etc.

e) Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

The IBC (Second Amendment) Act, 2020 w.e.f. 5.06.2020 was amended to provide relief to companies affected by COVID-19 pandemic and to recover from the financial stress without facing immediate threat of being pushed into insolvency proceedings by providing temporary suspension of initiation of CIRP under section 7, 9 and 10 of the Code; providing permanent carve-out for the purpose of initiation of CIRP in respect of defaults arising during the suspended period; disallowing the resolution professional from filing application for action against the directors or partners of the corporate debtor with respect to default arising during the suspended period.

Further, the Government has increased the threshold of default for filing of an insolvency petition under the Code from Rs. 1 lakh to Rs. 1 crore.

f) IBC (Amendment) Ordinance, 2021

The IBC (Amendment) Ordinance, 2021 w.e.f. 4.04.2021 was amended to provide a pre-packaged insolvency resolution process framework that aims at causing minimal disruption to MSME debtors' business activities to ensure job

preservation, by combining the efficiency, speed, cost, effectiveness, and flexibility of workouts outside the courts with the binding effect and structure of formal insolvency proceedings. The framework envisages debtor-in-possession model during the process with well-designed checks and balances.

Further, for the operationalization and effective implementation of pre-pack framework, the relevant notification, rules, and regulations have been put in place w.e.f: 9.04.2021. The Pre-pack is available for Corporate MSMEs with a minimum default of Rs.10 lakhs and no maximum limit and the timeline for completion is 120 days from the pre-pack insolvency commencement date.

27. On the issue of minimum threshold for homebuyers for approaching the National Company Law Tribunal (NCLT), the Forum for People's Collective Efforts (FPCE) during the examination of the 'The Insolvency and Bankruptcy Code (Second Amendment) Bill,2019 submitted a written note as under:

"The proposed amendment is not only unfair to the interests of homebuyers (putting us at a disadvantageous position vis-a-vis real estate developers, thereby against equity and natural justice), but is also against the future growth of the real estate sector, by distancing further its most important stakeholder. As per rough estimates, around 1800 cases have been filed against real estate developers across the country, and in none of the cases it has been proved that the allegations levelled against the builders were false. Hence the right of a home buyer to approach a court of law for succour cannot be termed as a 'potential abuse'. Further, it cannot be construed by law makers that truth and facts can only be considered as genuine when either 10% or 100 people say it together. If we start this practice of considering genuineness and authenticity of allegations based on number of complainants, then it will have unmanageable adverse ramifications. There will never be any convictions as gathering numbers will be an impossible task. Please imagine the consequences if the same formula or rationale is adopted by/ for initiating action under all other laws of the country. Hence, by putting such conditions, lawmakers will only further encourage wrong doing by real estate developers, due to which the sector is already grappling with loss of faith."

28. Regarding the need for pre-packaged insolvency framework for MSMEs, SME Chamber of India in a written note submitted as under:

"To provide an effective rescue mechanism for distressed MSMEs, a separate insolvency resolution framework should be designed by making appropriate modifications to the Code processes. The framework should envisage a simple and debtor-friendly process that results in swift and cost-effective resolutions. To achieve this, the existing management of an MSME debtor should be permitted to initiate proceedings even before a default occurs and allowed to remain in control during the process. Further, to allow the business to be run by the same management even after resolution, existing promoters may be provided a right of first refusal to retain control after completion of the regular bidding process. It should preferably be "debtor in control" instead of "creditor in control". The CIRP framework should provide for a debtor-in-possession model, wherein the existing management can retain control over the corporate debtor, during the pendency of the resolution process.

Requirement of a Pre-package Insolvency Framework. It is a preplanned process in which financially distressed company and its creditors reach an agreement with a buyer for its sale prior to initiating CIRP. It will promote early debt restructuring in a manner that best achieves the Code's objectives. Offer a chance to Debtor Company to revive the company while negotiating with creditors."

29. On the plight of the MSME sector with regard to recovery of dues, Shri Arjun Shamlal, a representative of Federation of Micro and Small & Medium Enterprises (FISME) during the course of evidence on 28 January, 2021 stated as under:

"I would just like to highlight the pain that a MSME operational creditor has to go through to recover its dues. The first point that I want to highlight is that we have been studying the recoveries of Operational Creditors (OCs) versus the financial creditors from the data that is available on the IBBI website.

The total recoveries from Operational Creditors, some time before the famous Essar Steel order, after the Benani Steel order, was 49 per cent and from financial creditors was 42 per cent.

The law has been interpreted multiple times by the Supreme Court and by the NCLAT and various other authorities. After the interpretation, the general viewpoint is that the COC is paramount and only it decides who gets what. In that situation, there is a conflict of interest which is quite clear and apparent that the

COC is only compromising with the financial creditors. I would say 0.1 per cent of scenario is looking at some OCs with literary no voting powers.

Now, the number speaks for themselves. The data as on the 30th September, 2020 on the website of IBBI shows that the recoveries of the financial creditors was still stabled at 42 per cent. However, the recoveries of the Operational Creditors which consist of micro, small, medium enterprises have crashed from 49 per cent to 14 per cent. The recoveries post Essar Steel or in the last one year, do not have to be actually 14 per cent. That can only be achieved, the recoveries are actually 0 to 5 per cent. That is a huge problem. MSMEs do not get credit in the market. Their raw material suppliers are generally larger companies like Tata Steel or someone else. So, MSMEs are expected to give credit. They cannot survive without giving credit in the market. The moment the credit comes in, the IBC takes in all the way, I mean the most resolution plans. I am affected by one of them. The recoveries are zero. As per the law, we decide who gets what.

The only way you are able to get any recovery as an operational creditor whether you are a micro or small, is if you arm twist the RP, you arm twist the COC and you hope and pray that you are an essential services supplier.

So, our proposal is that even if a small percentage of 5 per cent of the total CIRP amount, is just kept aside whether as a priority payment to small and micro companies. It would actually enable them to recover 80 to probably 90 per cent of the recoveries depending on the case to case and in some cases, it may be as good as 100 per cent also.

The second suggestion or an alternative was that these things could be considered CIRP costs, especially for micro and small companies, and may not have to be there for medium companies. That was an alternative suggestion. We have run with these suggestions from pillar to post, frankly in the Government.

So, our humble request is that something needs to be done for the MSMEs as recoveries because COC is not going to do anything. It is clear and apparent, unless you are able to arm twist anyone. In fact, there are situations in which certain creditors are able to get recoveries of 100 per cent because they were

smart enough to control them and other creditors were not. Some Resolutions Plans were very flexible. They said that outstanding up to Rs.1 crore, we will pay, let us say, 80 per cent, outstanding up to Rs.3 crore, we will pay 60 per cent. That is a Resolution Applicants' call really.

The other alternative suggestion is the RA(Resolution Applicant) could be given a soft loan to ensure that they are paid that the micro and small companies are paid. Alternatively, none of those is possible. At least, the bank should lend against the money which the MSMEs are writing off. The banks can lend to ensure that the MSMEs are returning the funds to another bank which may be seen the same rate of interest. It is a situation where the smaller companies are bearing the brunt and the larger guys like Essar Steel and Ruias are getting well. If they lose Essar Steel, they create the other one. It is a vicious cycle which comes in.

Everyone is worried about home buyers like JP. In JP what about the Operational Creditors? I think they got Rs.500 crore out of possible Rs.20,000 odd crore. So, if something can be evolved, I think it is the right time. It is quite important."

F. Cross Border Insolvency

30. Government has taken initiative to introduce a chapter on cross border insolvency within the Insolvency and Bankruptcy Code, 2016 to provide a legal comprehensive framework, considering the fact that corporates transact businesses in more than one jurisdiction and also have assets across many jurisdictions. Further cases like the Jet Airways and Videocon Industries have highlighted the need for a regime that deals with assets and creditors of the corporate debtor situated outside India.

31. The Report of the Insolvency Law Committee (2018) suggested incorporation of UNCITRAL(United Nations Commission on International Trade Law) Model Law on Cross Border Insolvency 1997 into the Code, with certain modifications and variations. The report also mentioned that globally, the UNCITRAL Model Law has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues and

legislation based on the Model Law has been adopted in 44 countries in a total of 46 jurisdictions. The Report also states that UNCITRAL Model Law ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the enacting country.

32. The preamble to the UNCITRAL Model Law provides:

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
- (b) Greater legal certainty for trade and investment;
- (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) Protection and maximization of the value of the debtor's assets; and
- (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

33. On being asked when the cross-border insolvency was expected to be rolled out, the Ministry in a written reply stated as under:

"Report of the Insolvency Law Committee (ILC) on cross border was submitted on October 16, 2018. However, it was decided that the issue should be studied further. Accordingly, Cross-Border Insolvency Rules/Regulations Committee(CBIRC), an expert committee was constituted under the chairmanship of Sh. K.P. Krishnan on January 23, 2020 for recommending rules and regulatory framework for smooth implementation of proposed cross border insolvency provisions in the Code."

34. The Ministry have further informed that the Cross-Border Insolvency Rules / Regulations Committee (CBIRC) has submitted its report to the Government and is under consideration. During the course of evidence, the Secretary, Ministry of Corporate Affairs stated as under:

"The cross-border insolvency is on the priority list and we are working on it. Very soon, we will be drafting the legislative part."

35. Regarding Cross Border Insolvency, AZB & Partners in a written note have submitted as under:

"Where multiple proceedings are on for the same corporation/corporate group in different jurisdictions, the restructuring efforts in one jurisdiction will have an impact on the other jurisdictions. This would demand cross-jurisdictional cooperation. It would help to have a robust cross border insolvency regime in India to ensure that restructuring efforts are aligned and that the such insolvencies are resolved efficaciously. Currently, India has not put such a regime in place and issues in such insolvencies are being tackled on a case by case basis. The report of the Insolvency Law Committee in October 2018 and the draft were based on the UNCITRAL Model law on Cross Border Insolvency,1996 which has been globally recognized and various countries have based their regimes on the same. Hence, the recommendations of the Committee should be considered and acted upon especially now."

PART-II

OBSERVATIONS/RECOMMENDATIONS

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

with more than 71% cases pending for more than 180 days clearly point towards a deviation from the original objectives of the Code intended by Parliament. The Committee therefore feels that the design and the implementation of the Code as it has evolved needs to be revisited, particularly in the light of its original aims and objects. We therefore need a thorough evaluation of the extent of fulfillment of these aims and objects in the course of implementation of the Code over the years.

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

Role of Resolution Professionals (RPs)

2. The Committee notes that the Insolvency Professionals (IPs) or Resolution Professionals (RPs) form a significant part of the four pillars of the insolvency resolution ecosystem. These professionals act as intermediaries in the corporate insolvency resolution process and as such play an indispensable role in the whole process. The Committee is apprehensive about fresh graduates being appointed as Insolvency Professionals or Resolution Professionals without any experience and is doubtful about their competency in handling cases of huge and

complex corporations. The Committee find that there are numerous conduct issues with regard to RPs for which the two regulators IPA and IBBI have taken disciplinary actions on 123 IPs out of a total of 203 inspections conducted till date. The rationale behind multiple IPAs overseeing the functioning of their member IPs instead of a single regulator is unclear and this current practice would lead to a conflict of interest between the regulatory and competitive goals of the IPA. The Committee believes that a professional self-regulator for RPs that functions like the Institute of Chartered Accountants of India (ICAI) should be put in place. The Committee, therefore, recommends that an Institute of Resolution Professionals may be established to oversee and regulate the functioning of RPs so that there are appropriate standards and fair self-regulation. The Committee further notes that smooth functioning of IBC depends on the functioning of entities viz. Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Committee believes that these entities have to evolve over time for which capacity enhancement programmes should be conducted from time to time.

Committee of Creditors (COC)

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

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

Performance Review of NCLT System

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

NCLT is the Adjudicating Authority for insolvency resolution and liquidation of corporate persons. The Committee during the course of examination found that the main reasons for delay in the insolvency resolution

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

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

Second, it should be noted that invited bidders are asked to submit their respective resolution plans within the specified deadlines. These resolution plans are then evaluated by the CoC. In the meanwhile, other bidders may suddenly emerge and submit their own resolution plans. These bidders typically wait for the H1 bidder to become public, and they then seek to exceed this bid through an unsolicited offer that is submitted after the specified deadline. Currently, the CoCs have significant discretion in accepting late and unsolicited resolution plans.

These unsolicited, late bids create tremendous procedural uncertainty. As a result, genuine bidders are discouraged from bidding at the right time. The overall process is vitiated and there are significant delays leading to further value erosion. The Committee believes that the IBC needs to be amended so that no

post hoc bids are allowed during the resolution process. There should be sanctity in deadlines, so that value is protected and the process moves smoothly.

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

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

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

More Flexible Resolution Plans

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

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

The CIRP Regulation 37 does allow the resolution professional much more flexibility in developing a resolution plan across multiple bidders each taking different pieces of the corporate defaulters. Regulation 37 of the CIRP

Regulations permits transfer of all or part of the assets to one or more persons and sale of all or part of the assets as part of a resolution plan.

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

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

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

IBC Ecosystem Digitisation

9. Given that the IBC Code has been operational since the last five years, the Committee recommends that the NCLT and NCLAT should completely digitize

their records and operations with provision for virtual hearings to get through the backlog and deal with the pending cases swiftly.

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

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

12. It is a matter of grave concern for the Committee that the insolvency process has been stymied by long delays far beyond the statutory limits. It is disconcerting that even admission of cases in NCLT has been taking an unduly

long time, which thus defeats the very purpose of the Code. There have also been instances of frivolous appeals, which further drags the resolution/recovery process leading to severe erosion of asset value. The Committee would therefore recommend that misuse/abuse of well-intended provisions and processes should be prevented by ensuring an element of finality within the statutorily stipulated period without protracted litigation.

Pre-pack insolvency resolution for MSMEs

13. The Committee note that the MSME sector, a driving force behind the country's vision of Aatmanirbhar Bharat or a self-reliant nation are presently facing acute financial distress and liquidity crunch owing to the Covid-19 pandemic. In order to prevent MSMEs from being pushed into insolvency proceedings, the Government had increased the threshold amount of default from Rs.1 lakh to Rs. 1 crore for initiating insolvency proceedings. Under the IBC Code, a special insolvency framework for MSMEs has been introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance notified on 4th April, 2021 which envisages debtor-in-possession model and aims at causing minimal disruption to MSME debtors' business activities to ensure job preservation with a timeline of 120 days for completion. The Committee desire that this Pre-pack framework may be gainfully employed while strictly adhering to timelines to achieve swift and cost effective resolutions as the survival of MSMEs are indispensable for the revival of the economy. The Committee further recommend that a pre-pack resolution framework for corporates may be rolled out to aid the existing insolvency framework in facilitating quicker and more

effective resolutions and in reducing the burden of NCLTs in the after-math of the Covid-19 pandemic, while adhering to the core principles of value maximisation and timely resolutions. This pre-pack mechanism may however be subject to suitable review based on experience gained in due course, as the process may be prone to abuse.

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

Cross- border Insolvency

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

Strengthening Homebuyer Rights

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

New Delhi;
29 July 2021
7 Sravana, 1943 (Saka)

SHRI JAYANT SINHA,
Chairperson,
Standing Committee on Finance

Minutes of the Fifteenth sitting of the Standing Committee on Finance (2019-20)
The Committee sat on Tuesday, the 25 August, 2020 from 1430 hrs. to 1810 hrs in
Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha - Chairperson

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Vallabhaneni Balashowry
4. Smt. Sunita Duggal
5. Shri Sudheer Gupta
6. Smt. Darshana Vikram Jardosh
7. Shri Manoj Kishorbhai Kotak
8. Shri Pinaki Misra
9. Shri P.V Midhun Reddy
10. Shri Gopal Chinayya Shetty
11. Shri Manish Tewari
12. Shri P. Velusamy
13. Shri Rajesh Verma
14. Shri Girdhari Yadav

RAJYA SABHA

14. Shri Rajeev Chandrasekhar
15. Shri Praful Patel
16. Shri Amar Patnaik
17. Shri C.M.Ramesh
18. Shri G.V.L Narasimha Rao
19. Smt. Ambika Soni

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri V.K Tripathi | - | Joint Secretary |
| 2. Shri Ramkumar Suryanarayanan | - | Director |
| 3. Shri Kulmohan Singh Arora | - | Additional Director |
| 5. Shri Kh. Ginlal Chung | - | Under Secretary |

PART I
(1430 hrs - 1600 hrs)

WITNESSES

Indian Banks' Association

1. **Shri C.S. Setty**, Managing Director, State Bank of India
2. **Shri Mallikarjun Rao**, Managing Director & CEO, Punjab National Bank
3. **Shri Sunil Mehta**, Chief Executive, Indian Banks' Association (IBA)
4. **Shri Anup Rawat**, Shardul Amarchand Mangaldas (SAM)

AZB & Partners

1. **Shri Vijayendra Pratap Singh**, Senior Partner

L&L Partners

1. **Shri Vishrut Kansal**, Counsel

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Committee took oral evidence of the representatives of Indian Banks' Association (IBA), AZB & Partners and L&L Partners on the subject 'Implementation of Insolvency and Bankruptcy Code'. The major issues discussed with the representatives include the bottlenecks faced during the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC) which were mainly infrastructural inadequacies resulting in delays at every stage including admission of cases, approval of resolution plans and the need for additional benches for faster resolutions, feasibility and need for the pre-pack, the quality of resolution, the role, integrity and selection process of the resolution professional, the issue of withdrawal of resolution professionals after bidding, the issue resolution value being lower than the liquidation value, the stage at which financial creditor should come in for value maximization, the decision making process in the Committee of Creditors (COC) etc. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

PART II
(1600 hrs onwards)

Ministry of Corporate Affairs

1. **Shri Rajesh Verma, Secretary**
2. **Shri Gyaneshwar Kumar Singh, Joint Secretary**
3. **Shri Shiv Ram Bairwa, Registrar, NCLT**

Insolvency and Bankruptcy Board of India (IBBI)

1. **Dr. M.S. Sahoo, Chairperson**
2. **Shri Ritesh Kavdia, Executive Director**
3. **Shri K R Saji Kumar, Executive Director**

3. After the customary introduction of the witnesses, the Committee took oral evidence of the representatives of Ministry of Corporate Affairs and Insolvency and Bankruptcy Board of India (IBBI) on the subject 'Implementation of Insolvency and Bankruptcy Code'. The major issues discussed include faster recovery modes under IBC, increase in voluntary liquidation process, importance of increasing the strength of NCLT, a separate resolution framework for MSMEs, arrangements for a pre-pack, work on various important matters like cross border insolvency, individual insolvency, group insolvency, the importance of keeping the basic structure of the Code intact while making amendments etc. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fourth sitting of the Standing Committee on Finance (2020-21)
The Committee sat on Tuesday, the 12th January, 2021 from 1100hrs. to 1310 hrs. in
Committee Room No. '3', Parliament House Annexe Extension Block A, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Dr. Subhash Ramrao Bhamre
3. Smt. Sunita Duggal
4. Shri Gopal Chinayya Shetty
5. Shri Rajesh Verma

RAJYA SABHA

6. Shri Rajeev Chandrasekhar
7. Shri Praful Patel
8. Shri Amar Patnaik
9. Shri C.M. Ramesh
10. Shri G.V.L Narasimha Rao
11. Smt. Ambika Soni

SECRETARIAT

1. Shri Ramkumar Suryanarayanan - Director
2. Shri Kulmohan Singh Arora - Additional Director

PART I

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PART II

WITNESSES

Ministry of Corporate Affairs

1. Shri Rajesh Verma, Secretary
2. Shri Gyaneshwar Kumar Singh, Joint Secretary
3. Shri Shiv Ram Bairwa, Registrar, NCLT

Insolvency and Bankruptcy Board of India (IBBI)

1. Dr. M.S. Sahoo, Chairperson
2. Shri Sudhakar Shukla, Whole Time Director
3. Shri Ritesh Kavdia, Executive Director

Punjab National Bank

1. Shri CH. S.S. Mallikarjuna Rao, MD & CEO
2. Shri Nasim Ahamad, Chief General Manager, Recovery
3. Shri Ashok Mishra, Deputy General Manager, Law

3. After the customary introduction of the witnesses, the Joint Secretary, Ministry of Corporate Affairs made a Power Point Presentation (PPT) before the Committee. The Committee then deliberated upon issues related to the subject 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and Solutions'. The major issues discussed with the representatives include the readiness of the ecosystem to take on the volume of cases especially post moratorium, staffing and infrastructure issues in NCLT, the pre-pack insolvency framework resolution process, quality and capacity of resolution professionals, the resolution process for financial sector firms like NBFCs and banks, cross-border insolvency resolutions etc. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fifth sitting of the Standing Committee on Finance (2020-21)
The Committee sat on Thursday, the 28th January, 2021 from 1500hrs. to 1730 hrs.
in Committee Room No. 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri Shrirang Appa Barne
3. Dr. Subhash Ramrao Bhamre
4. Smt. Sunita Duggal
5. Smt. Darshana Vikram Jardosh
6. Shri Pinaki Misra
7. Shri Gopal Chinayya Shetty
8. Shri Manish Tewari
9. Shri Parvesh Sahib Singh Verma
10. Shri Rajesh Verma

RAJYA SABHA

11. Shri Rajeev Chandrasekhar
12. Dr. Amar Patnaik
13. Shri Mahesh Poddar
14. Shri Bikash Ranjan
15. Shri G.V.L Narasimha Rao
16. Smt. Ambika Soni

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri V.K Tripathi | - | Joint Secretary |
| 2. Shri Ramkumar Suryanarayanan | - | Director |
| 3. Shri Kulmohan Singh Arora | - | Additional Director |
| 4. Shri Kh. Ginlal Chung | - | Under Secretary |

PART I

WITNESSES

Industrial Credit and Investment Corporation of India Bank (ICICI)

1. **Mr. Pankaj Gadgil**, Senior General Manager, Head of Self Employed segment
2. **Mr. Nilanjan Sinha**, General Manager, Head of Legal India and South East Asia

Chamber Of Small Industry Associations (COSIA)

1. **Mr. Sanjay Dwivedi**, Member – COSIA Sub Committee on Finance and Taxation
2. **CA Nandan G Khambete**, Member – COSIA Sub Committee on Finance and Taxation

Federation of Indian Micro and Small & Medium Enterprises (FISME)

1. **Dr. Animesh Saxena**, President
2. **Mr. Anil Bhardwaj**, Secretary General
3. **Mr. Arjun Shamlal**, Chief Executive-Consolidated Engineering Company

Independent Witness.

1. **Mr. Pradeep Jain**, Ex. MD, Runeecha Textiles Ltd.
2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subjects 'Financing the MSME sector; its growth and regulation' and 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and solutions'. The major issues discussed include the need for analysing impact of Insolvency and Bankruptcy Code (IBC) on different sections of the business community, particularly MSME sector and amending it as per their needs; alternate methods of resolution; reviewing powers of the Committee of Creditors (CoC) under IBC; lack of clarity on MSME universe; hesitancy of banks in lending to MSMEs and their insistence on lending against collaterals; need to review the process of borrowers' assessment; expanding Trade Receivables Discounting System (TReDS) platform to

include more MSMEs; degree of digitization among MSMEs including the facility of digital infrastructure for their financing; issue of delayed payments to them; credit rating issue as well as difficulty in furnishing bank guarantees and performance guarantees by MSMEs; issue of high suicide rates among small business class; need for extensive skilling of youth to promote entrepreneurial business in the country; analysing performance of mandatory 25 per cent government procurement from MSMEs and the need to reduce transaction costs for them. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

PART II

WITNESSES

Ministry of Micro, Small & Medium Enterprises (MSME)

1. **Shri Devendra Kumar Singh**, Additional Secretary & Development Commissioner (MSME)
2. **Shri Sudhir Garg**, Joint Secretary (ARI)
3. **Shri Piyush Srivastava**, Additional Development Commissioner (MSME)
4. **Shri Lalit Kumar Chandel**, Economic Advisor, Department of Financial Services, Ministry of Finance
5. **Smt. N. Mohana**, CGM, Reserve Bank of India
6. **Shri Ravi Tyagi**, General Manager (SIDBI)

3. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subjects 'Financing the MSME sector; its growth and regulation' and 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and solutions'. The major issues discussed include the manner in which MSMEs are coping with the Covid shock and the need to bridge their huge credit gap; issues

associated with the Subordinate Debt Scheme and Fund of Fund Scheme; ease of accessing and scope of improvement of the CHAMPIONS Portal; Emergency Credit Line Guarantee Scheme (ECLGS) and issues associated with it; regulatory mechanism of RBI; need for furnishing details of the disbursement rate of funds under Atmanirbhar Bharat package for MSMEs; removal of lacunae in schemes like Scheme of Fund for Regeneration of Traditional Industries (SFURTI) and Cluster Development Programme; need for greater inclusion of small businesses into the formal financial structure; the manner in which MSMEs are emerging post August 31 moratorium, their general nature of distress or lag thereof; rising NPAs in MSME sector and the role of State Governments in facilitating smooth financial flow to them. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned for tea.

A verbatim record of the proceedings has been kept.

Minutes of the Sixth sitting of the Standing Committee on Finance (2020-21)
The Committee sat on Friday, the 12th February, 2021 from 1400hrs. to 1600 hrs.
in Main Committee Room Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Vallabhaneni Balashowry
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Manoj Kishorbhai Kotak
7. Shri Pinaki Misra
8. Shri P.V Midhun Reddy
9. Shri Gopal Chinayya Shetty
10. Shri Parvesh Sahib Singh Verma
11. Shri Rajesh Verma

RAJYA SABHA

12. Shri Rajeev Chandrasekhar
13. Dr. Amar Patnaik
14. Shri Mahesh Poddar
15. Shri C.M Ramesh
16. Shri Bikash Ranjan
17. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri V.K Tripathi | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Kulmohan Singh Arora | - | Additional Director |
| 4. | Shri Kh. Ginalal Chung | - | Under Secretary |

PART I

1400 hrs – 1500 hrs

WITNESSES

Supreme Transport Organisation Pvt. Ltd

1. Shri Ameet K Agarwal, Director, President & CEO
2. Shri Anand Aggarwal, Senior Counsel, DRT

Karnataka Small Scale Industries Association

1. Shri Suresh N Sagar, Chairman-Sub Committee: Banking & Finance

Independent Witnesses

1. Shri Saurav Gulati
2. Shri Anil Gulati

At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subjects 'Financing the MSME sector; its growth and regulation' and 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and solutions'. The major issues discussed include analysing the major challenges being faced by MSME sector, particularly in the light of Covid pandemic - financing constraints, increased prices and non-availability of skilled labour; Emergency Credit Line Guarantee Scheme (ECLGS) and related issues; high NPA ratios among MSME sector and hesitancy of banks in lending them; need for expanding One Time Settlement (OTS) facility for MSMEs before undertaking legal recovery route; issues with National Company Law Tribunal (NCLT) – inadequate infrastructure, delayed timelines; need for increasing the lower limit of Rs.2 crores for initiating insolvency proceedings against MSMEs and giving them preference in NCLT settlements; simplifying SARFAESI Act; resolving trade creditor issues; analysing grievances against CIBIL score for MSMEs and emphasizing the need for national credit rating agencies and the need for developing an exclusive MSME portal for existing borrowers for timely distribution of incremental and additional loans. The witnesses responded to the queries raised by the Members on the subjects.

The witnesses then withdrew.

PART II

1500 hrs onwards

WITNESSES

INDIAN OVERSEAS BANK

1. **Shri P P Sengupta, MD & CEO**
2. **Shri S S Narang, CRM Delhi**

KOTAK MAHINDRA BANK

1. **Shri K.V.S. Manian, Whole Time Director**
2. **Shri T.V Sudhakar, President & Chief Compliance Officer**
3. **Shri Raghavendra Singh, President**

At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subjects 'Financing the MSME sector; its growth and regulation' and 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and solutions'. The major issues discussed include analysing performance of different sectors of the MSME sector particularly in the light of the Covid pandemic; significant capacity constraints at the IBC, NCLT and the courts related to insolvency cases; high NPAs in MSME sector and issues related thereto, grievances of retail traders and the need for developing some coordination between the RBI and Ministries of Commerce and MSME in order to provide them relief; need for expanding TReDS platform; need for strengthening the Ombudsman Scheme and developing an integrated platform for registration and interaction of MSMEs with the Government instead of multiple registration schemes. The witnesses responded to the queries raised by the Members on the subject. The Committee directed the witnesses to furnish written replies to the queries which could not be readily replied to them during the sitting within a week.

The witnesses then withdrew.

A verbatim record of the proceedings has been kept.

Minutes of the Twelfth sitting of the Standing Committee on Finance (2020-21)
The Committee sat on Wednesday, the 7th July, 2021 from 1500hrs. to 1645 hrs. in
Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Shrirang Appa Barne
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Gaurav Gogoi
7. Shri Sudheer Gupta
8. Smt. Darshana Vikram Jardosh
9. Shri Manoj Kishorbhai Kotak
10. Shri P.V. Midhun Reddy
11. Prof. Saugata Roy
12. Shri Gopal Chinayya Shetty
13. Shri Manish Tewari

RAJYA SABHA

14. Shri A. Navaneethkrishnan
15. Shri Praful Patel
16. Dr. Amar Patnaik
17. Shri C.M. Ramesh
18. Shri Bikash Ranjan
19. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri Ramkumar Suryanarayanan | - | Director |
| 2. | Shri Kulmohan Singh Arora | - | Additional Director |
| 3. | Shri Kh. Ginlal Chung | - | Under Secretary |

WITNESSES

Ministry of Corporate Affairs

1. **Shri Rajesh Verma**, Secretary
2. **Shri Gyaneshwar Kumar Singh**, Joint Secretary
3. **Shri Shiv Ram Bairwa**, Registrar, NCLT

Insolvency and Bankruptcy Board of India (IBBI)

1. **Dr. M.S. Sahoo**, Chairperson
2. **Shri Sudhaker Shukla**, Whole Time Member
3. **Shri Ritesh Kavdia**, Executive Director

3. After the customary introduction of the witnesses, the Secretary, Ministry of Corporate Affairs made a Power Point Presentation (PPT) before the Committee. The Committee then deliberated upon issues related to the subject 'Implementation of Insolvency and Bankruptcy Code – Pitfalls and Solutions'. The major issues discussed with the representatives include the role and responsibility of insolvency professionals, various issues relating to NCLT including the capacity, bench strength, delays in resolution and backlog of cases, implementation of the pre-pack rolled out, the need for data relating to IBC cases in granular form for researchers and analysts, the need for strengthening homebuyer rights, the issue of cross-border insolvency resolution etc. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fourteenth sitting of the Standing Committee on Finance (2020-21)
The Committee sat on Thursday, the 29th July, 2021 from 1430hrs. to 1500 hrs. in
Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Vallabhaneni Balashowry
4. Shri Shrirang Appa Barne
5. Shri Manoj Kishorbhai Kotak
6. Shri Pinaki Misra
7. Shri Gopal Chinayya Shetty
8. Dr. (Prof.) Kirit Premjibhai Solanki
9. Shri Manish Tewari
10. Shri Rajesh Verma

RAJYA SABHA

11. Shri A. Navaneethakrishnan
12. Dr. Amar Patnaik
13. Shri Mahesh Poddar
14. Shri C.M. Ramesh
15. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri Vinod Kumar Tripathi | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Kulmohan Singh Arora | - | Additional Director |
| 4. | Shri Kh. Ginalal Chung | - | Under Secretary |

3. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i) Thirty-second Report on the subject 'Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions' of the Ministry of Corporate Affairs.
- (ii) Thirty-third Report on Action Taken by the Government on Recommendations contained in 68th Report (Sixteenth Lok Sabha) on

subject 'Banking Sector in India - Issues, Challenges and the Way Forward with specific reference to NPAs/ Stressed Assets in Banks/Financial Institutions' of the Ministry of Finance (Department of Financial Services).

- (iii) Thirty-fourth Report on Action Taken by the Government on Recommendations contained in 12th Report on 'Financing the Startup Ecosystem' of the Ministry of Finance (Departments of Economic Affairs and Revenue) and Ministry of Commerce (Department for Promotion of Industry and Internal Trade).
- (iv) Thirty-fifth Report on Action taken by the Government on the recommendations contained in 25th Report on Demands for Grants (2021-22) of the Ministry of Finance (Departments of Economic Affairs, Expenditure, Financial Services, and Investment and Public Asset Management).
- (v) Thirty-sixth Report on Action taken by the Government on the recommendations contained in 26th Report on Demands for Grants (2021-22) of the Ministry of Finance (Department of Revenue).
- (vi) Thirty-seventh Report on Action taken by the Government on the recommendations contained in 27th Report on Demands for Grants (2021-22) of the Ministry of Corporate Affairs.
- (vii) Thirty-eighth Report on Action taken by the Government on the recommendations contained in 28th Report on Demands for Grants (2021-22) of the Ministry of Planning.
- (viii) Thirty-ninth Report on Action taken by the Government on the recommendations contained in 29th Report on Demands for Grants (2021-22) of the Ministry of Statistics and Programme Implementation.

After some deliberations, the Committee adopted the above draft Reports with some modifications and authorised the Chairperson to finalise them and present the Report to Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.