



सत्यमेव जयते

**Sixth Annual Day**  
**of**  
*Insolvency and Bankruptcy*  
*Board of India*

**ANNUAL DAY LECTURE SPEECH**  
**01.10.2022**

*By*

*Chief Justice (Retd.) Shri Ramalingam Sudhakar*  
*President, NCLT*

## THE DIGNITARIES ON THE DIAS AND OTHER;

- **Mrs. Nirmala Sitharaman**, Hon'ble Minister of Finance and Corporate Affairs
- **Mr. Rao Inderjit Singh**, Hon'ble Minister of State for Corporate Affairs
- **Mr. Ashok Kumar Gupta**, Chairperson, Competition Commission of India.
- **Mr. Ravi Mittal**, Chairperson, IBBI
- **Members** of NCLT and NCLAT present
- **Senior officials** of the Government and IBBI
- **Resolution Professionals, Legal Experts and Friends.**

On this 6<sup>th</sup> Annual day of IBBI, we have gathered here to look back and reflect on the significant growth in the insolvency ecosystem of India under IBC regime and reaffirm our pledge to promote, foster and enable IBC to succeed. Such success will reflect in improvement in quality of Corporate Governance and show the results that the Ministry of Finance and Corporate Affairs look forward.

### A. INTENT BEHIND BRINGING INSOLVENCY AND BANKRUPTCY CODE, 2016

Before the advent of Insolvency and Bankruptcy Code, 2016 there were several laws which provide for the restructuring of debt i.e., by seizure and sale of the debtor's assets for repayment of outstanding NPA. These include (i) Sick Industrial Companies Act, 1985, (ii) Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (DRT Act), (iii) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The RDDBFI Act, the SICA Act and the SARFAESI Act became the subject of intense legal debate on the question of "**which act has precedence over the other?**"

Similarly, laws such as the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 to regulate insolvency resolution for individuals found no remarkable change in resolution of insolvency as required.

The reasons behind this are multiple statute giving rise to various intersecting rights and liabilities as well as multiple fora for the purpose of adjudication which did not address the issue of insolvency and bankruptcy as required. The disjointed statutes, clash of jurisdiction and extra-ordinary timelines gave rise to resentment from all quarters and the need to formulate a workable bankruptcy law became imperative to overcome the cost and time consumed by the earlier laws.

#### **B. OBJECTIVE OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

The Statement of Objects and Reasons of Insolvency and Bankruptcy Code, 2016 indicates that the existing framework for insolvency and bankruptcy law was inadequate and ineffective and resulted in undue delays in resolution and erosion of value of assets. The Code was proposed with the objective of consolidating and amending the laws relating to insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets in distress.

The Code provides for designating the NCLT and the Debts Recovery Tribunal (DRT) as the Adjudicating Authorities for corporate persons, firms and individuals for resolution of insolvency, liquidation and bankruptcy.

As per the Preamble of the Code, the purpose of IBC, 2016 is as follows;

- (i) To consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

- (ii) To fix time periods for implementation of the Code in a time bound manner.
- (iii) To maximize the value of assets of stakeholders.
- (iv) To promote entrepreneurship.
- (v) To increase/stimulate availability of credit.
- (vi) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
- (vii) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for the Code.

IBC is an important reform of our Country in Corporate Governance. The effective operationalization of IBC, 2016 will improve India's ranking in the World Bank's Ease of Doing Business index.

As adjudicator of issues arising from IBC, NCLT represents one of the most significant limbs of the insolvency law. The approach of NCLT will have a far-reaching bearing on the outcome of IBC. The exigencies of the insolvency law and its economic goals require the adjudication of issues arising out of the proceedings to be resolved by NCLT not on the basis of technical questions of law, but after considering the policy intentions and unique principles on which the law is based.

### **C. 6 YEARS OF IBC, 2016 - A WAY FORWARD**

IBC places considerable responsibility on IBBI in its role as regulator as well as for carrying out other functions.

The legislature has chosen IBBI to regulate the insolvency profession. The IBBI has regulatory oversight over professionals and related institutions;

- (i) Insolvency Professionals (IPs);
- (ii) Insolvency Professional Agencies (IPAs);
- (iii) Insolvency Professional Entities (IPEs); and
- (iv) Information Utilities (IUs);

Further, the IBBI has the responsibility to make Regulations and guidelines on the matter relating to Insolvency Process;

- (i) Corporate Insolvency Resolution Process (CIRP);
- (ii) Pre - packed Insolvency Resolution Process (PPIRP);
- (iii) Corporate Liquidation Process;
- (iv) Voluntary Liquidation Process;
- (v) Fresh Start Process (FSP);
- (vi) Individual Insolvency Resolution Process; and
- (vii) Individual Bankruptcy Process;

Timeline and speed in resolution is the essence of the processes under the Code. The IBBI, being a creation of the Code, prescribes timeline from day one. It was established on October 1, 2016 and commenced Corporate Insolvency by December 1, 2016. The immediate tasks included: market volunteering to set up IPAs; individuals with right caliber to enrol with IPAs and to seek registration with the IBBI as IPs; regulations relating to IPs, IPAS, CIRP and Liquidation Process to be in place; process to spread the message of the Code and make the stakeholders aware of their role, and last but not the least IBBI to capacity build the stakeholders and work on these. With active support of the Government, IBBI delivered all these, enabling roll out of Corporate Insolvency possible on December 1, 2016. Promptitude and speed has been a part of its work culture since then and it is continuing despite all the turbulence during the long and gloomy Covid days.

The IBBI is different from other Regulators as not only does it develop and regulate the insolvency profession, it also specifies the regulations to be followed by the IPs in the market / for transactions, and regulates the market where the IPs serve. It sets standard to ensure quality of service and endeavors to provide a competitive environment.

Some examples of statutory features that make the IBBI distinct from other regulators are;

- (a) The Code requires IBBI to specify a mechanism for issuing regulations, including the conduct of public consultation process.
- (b) The Code, provides that the IBBI may constitute advisory committees in accordance with regulations.
- (c) The Code has several provisions, such as, requiring the IBBI to publish information, data, research studies and other information; maintain websites and such other universally accessible repositories of electronic information; collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases, etc.

#### **D. ACHIEVEMENTS OF IBBI**

- The Regulator IBBI has been proactively trying to reduce the delays in insolvency process and improve the Resolution value. The new introduced amendments in CIRP, Liquidation Regulations are a testament to the same.
- Information available remained a challenge for the Resolution Applicants. The Board has made changes to the contents of the Information Memorandum improving it in the process, changed

Expression of Interest format and now a copy of avoidance application is also to be made available to the Resolution Applicants.

- As regards value maximization, regulations have been amended to enable marketing efforts by formulating a strategy under CIRP. But perhaps the biggest change is the enabling of resolution of functional or operational parts of CD. It comforted stakeholders to enable resolution plans which contain measures for sale of part of the assets of the CD. The Board has been forthcoming in enabling a variety of permutations and combinations so that resolution is achieved and it must be commended for the same.
- The Board has also been proactive in improving clarity in CIRP activities. An IP is now required to communicate to all the creditors of the company regarding initiation of insolvency. This will enable the process to be more streamlined and further strengthen information availability of stakeholders regarding initiation.
- It is widely recognized that IPs are the fulcrums around which the entire processes. It was thus very important to nudge and incentivize IPs for timely resolution and also ensure value maximization. The Board has now proposed a fee structure which is like a 'performance linked incentive fee' for timely resolution and linked it to resolution value. This will be a great invisible nudge to the IPs to complete processes faster and bring value on the table.
- In liquidation, the amendments have enlarged the scope of Stakeholder's Consultation Committee and allowed COC to function as

SCC for the first 60 days of liquidation process. The amendments also provide for a provision for replacement of liquidator. As regards reducing delays, timelines have been introduced for auction events and Board has also proposed auctions through Auction Portals which will be enabled soon.

- The newly introduced amendments place greater reliance on technology. The IM now has provision for geo-tagging of assets. Going forward continued reliance should be placed on technology by stakeholders to enable faster completion of processes and prevent value destruction.

#### **E. CHALLENGES FACED BY IBBI AND ITS OUTCOME**

There have been concerns emanating from integration of powers in a regulator. Highlighting the concern, the Supreme Court in the matter of *Clariant International & Anr v. SEBI, CA No. 3183/2003* observed" that integration of power by vesting legislative, executive, and judicial powers in the same body, in future, may raise several public law concerns as the principle of control of one body over the other was the central theme underlying the doctrine of separation of powers. Recognizing the concern, the IBBI structured itself, within 100 days of its existence, into three separate wings, namely, (i) Research and Regulation Wing, (ii) Registration and Monitoring Wing and (iii) Administrative Law Wing and each of these wings is headed by a separate Whole-time Member, to minimize intra-institutional and public law concern.

The kind of pro-active engagement IBBI has with stakeholders, through hundreds of roundtables every year, has been unprecedented in many ways.

The active role that stakeholders have played is commendable, turning out to be the most valuable resource of the IBC ecosystem. IBC is a reform for all the stakeholders by the initiative of the Ministry of Finance and Corporate Affairs, Government of India. Further, the statutory process of making regulations and an organizational structure of quasi-legislative, executive, and quasi-judicial wings component under IBC helps build credibility to the regulatory body i.e., IBBI.

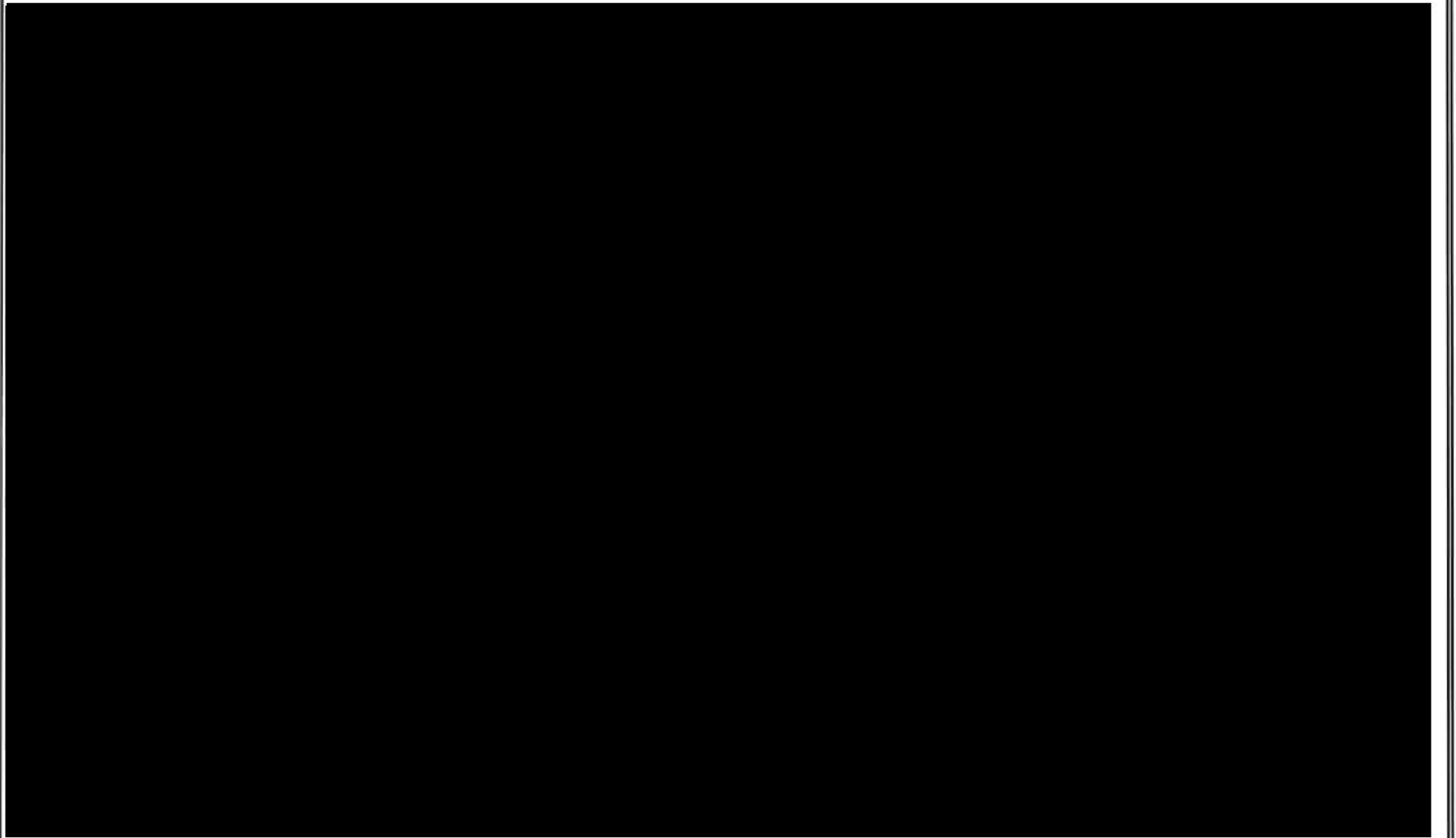
From my interaction with IBBI, its Chairperson, Executive Directors, I can say with certainty that IBBI is constantly learning and upgrading its skills. Every interaction with the stakeholders improves the insolvency ecosystem, brings new learnings and understanding. The IBBI is also making efforts to encourage research in insolvency law to help make better and informed policy decisions going forward. We at NCLT is one such prime participant in this process evolution.

#### **F. CONCLUDING REMARKS**

The achievements of IBC in this short span of 6 years have been noteworthy and considerable. It is reflected in improved ranking of our Country on ease of doing business. The Code has been heralded as a game changing legislation and rightly so.

The Code has come a long way since its enactment in 2016, meandering through myriad challenges and in the process, it has won many accolades. In the short period of its operation and functioning, the consolidation of the statute was closely synchronized with the development of the insolvency ecosystem. The speed with which the entire ecosystem was geared up has been astounding. The primary objective of the Code is rescuing firm in distress which is visible.

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The Insolvency and Bankruptcy Code, 2016 thus emerged as a life-sustaining legislation which provides a new lifeline to rescue a company in distress.

On this 6<sup>th</sup> Annual Day of IBBI, I wish the Board the very best in its endeavours to realize the true potential of the Code and commend it for its contribution towards realizing the Ministry of Corporate Affairs objective of improving Corporate Governance and ease of doing business Pan India and globally - The Dream of becoming a trillion-dollar economy envisaged by the Ministry of Finance can be achieved only if all the stakeholders show their

commitment in implementing IBC. On behalf of NCLT, we assure the Hon'ble Minister of Finance and Corporate Affairs, our commitment towards the objective of the Code and also seek the Government of India's co-operation for effective functioning of the Adjudicating body.

I convey my best wishes to the Chairman of IBBI. Thank You!

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