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भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

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Indian Institute of Insolvency Professionals of ICAI
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RESOLVE-2024

12 - 13 JULY, NEW DELHI

ENABLING RESOLUTION, MAXIMIZING VALUE

RESOLVE 2024



ISSUES AND RECOMMENDATIONS ARISING OUT OF THE DISCUSSIONS AT THE INTERNATIONAL CONVENTION ON INSOLVENCY RESOLUTION AND VALUATION RESOLVE-2024



Organised by :
Insolvency & Valuation Standards Board, ICAI

In Association with :
Insolvency and Bankruptcy Board of India (IBBI) and Indian Institute of Insolvency Professionals of ICAI and ICAI Registered Valuers Organisation

Hosted by :
The Northern India Regional Council (NIRC)

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About 2nd International Convention on Insolvency Resolution: RESOLVE 2024

The landscape of insolvency and valuation has undergone a dynamic transformation in recent years, catalyzed by the profound influence of the Insolvency and Bankruptcy Code (IBC) of 2016. The enactment of IBC in India has heralded a new era in the country's corporate and financial landscape.

Valuation assumes a critical role within the framework of insolvency, serving as a linchpin upon which the success of the entire process hinges. Accurate valuations facilitate transparent negotiations and aid in the formulation of effective resolution plans, ensuring fair treatment of all parties involved. The proliferation of Insolvency and Valuation Professionals along with other stakeholders actively engaged in the resolution process underscores their indispensable role in ensuring economic resilience, extending their influence across the intricate economic value chain.

In alignment with our vision to promote and understand global best practices and following the resounding success of the inaugural RESOLVE Convention in the year 2023, the Institute of Chartered Accountants of India (ICAI) presents its 2nd edition **RESOLVE-2024: An International Convention on Insolvency Resolution and Valuation, themed "Enabling Resolution Maximizing Value," scheduled on 12th - 13th July at BHARAT MANDAPAM, ITPO, NEW DELHI, INDIA.**

"RESOLVE 2024" promises to serve even more compelling platform for the exchange of best practices in insolvency and valuation on a global scale. It serves as a guiding light, offering an unrivalled platform to delve into sector-specific intricacies and glean invaluable lessons from diverse countries prevailing and emerging best practices in the field of insolvency and valuation.

With esteemed luminaries gracing the stage as speakers and thought leaders, "RESOLVE-2024" endeavour's to inspire innovation within the professional fraternity, urging them to transcend conventional boundaries and meticulously prepare for future challenges.

Issues and Recommendations arising Out of the discussions at the International Convention on Insolvency Resolution and Valuation RESOLVE-2024

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INSOLVENCY & VALUATION STANDARDS BOARD
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)

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PREAMBLE

The Insolvency and Bankruptcy Code (IBC) of 2016, enacted in India, has marked a transformative journey in insolvency resolution, fostering economic stability and confidence within our business ecosystem. Through various amendments, the Code has achieved significant milestones and instilled hope and optimism among stakeholders. It has proven to be a 'living law,' continuously evolving to address market dynamics and emerging challenges, making India one of the world's leading insolvency regimes.

Amidst this evolving landscape, the significance of precise valuations cannot be overstated. Valuation reports are the linchpin for successful resolution plans, crucial in maximizing value and aiding stakeholders in making informed decisions. The synergy between insolvency and valuation is undeniable, with the valuation process integral to the resolution framework. Valuations not only determine the fair value of assets but also guide the resolution process by informed decisions on asset monetization and debt restructuring.

In light of the growing significance of insolvency resolution and valuation, coupled with the urgent necessity to comprehend and implement global best practices, the Insolvency & Valuation Standards Board (I & VSB) of ICAI has embarked on an ambitious journey of providing an unparalleled platform for profound dialogues and discussions aimed at fortifying the insolvency framework and harmonizing it with global benchmarks by way of organising an International Convention on Insolvency Resolution and Valuation focussed on the theme of *"Enabling Resolutions, Maximising Value."*

The Insolvency & Valuation Standards Board (I & VSB) of ICAI organised this International Convention on Insolvency Resolution and Valuation – **RESOLVE-2024** on 12th and 13th July, 2024 at Bharat Mandapam, New Delhi. The Convention was held in association with the Insolvency and Bankruptcy Board of India and hosted by Northern India Regional Council of ICAI. This Convention was held jointly with The Indian Institute of Insolvency Professionals of ICAI and ICAI Registered Valuers Organisation.

RESOLVE 2024 poised as a landmark event in the field of insolvency and valuation, addressing critical issues and fostering international collaboration. By bringing together a diverse group of professionals and experts, the convention could help in driving advancements in the field that will support economic stability, and enhance the effectiveness of insolvency and valuation practices globally.

The Convention was inaugurated as **Chief Guest** by Hon'ble Justice Ashok Bhushan, Chairperson, National Company Law Appellate Tribunal.

The **Guest of Honour** was Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India".

Convention was graced by CA. Ranjeet Kumar Agarwal, President ICAI and CA. Charanjot Singh Nanda, Vice President, ICAI.

Chairman of the Convention	CA. Gyan Chandra Misra, Chairman, I & VSB
Vice-Chairman of the Convention	CA. Durgesh Kumar Kabra, Vice-Chairman, I & VSB
Secretary to the Convention	CA. Sarika Singhal, Secretary, I& VSB

The Convention had Nine (9) Technical Sessions and Seven (7) Panel Discussions on various topics. There were though provoking sessions herein the deliberations also mentioned about the Issues and Challenges faced and the Suggestions and Recommendations that can provide support to all the Stakeholders that are insolvency in Resolution Process to make the process more effective.

Some Suggestions also pointed towards the achieving of the Objective of the Insolvency and Bankruptcy Code, 2016. Accordingly, it has been decided to develop a White Paper based on the discussions and deliberations at the Convention which has been bifurcated into four categories:

1. Deliberations/ Highlights of the Session
2. Key Takeaways
3. Issues
4. Suggestions and Recommendations

Also, the Board decided to publish a separate document on the Issues and Recommendations arising out of the discussions held at the International Convention on Insolvency Resolution and Valuation – RESOLVE 2024.

We hope that the White Paper as well as the Issues and Recommendations arising out of the discussions held at the Convention will be insightful.

ISSUES AND RECOMMENDATIONS ARISING OUT OF THE SECOND EDITION OF RESOLVE-2024

1. Accounting, Auditing & Transparency Challenges

Isues:

- There are difficulties in managing and valuing financial elements like debtors, investments, and inventories, which complicate the process of presenting a true and fair view of the company's financial position.
- Furthermore, inadequate auditing practices make it challenging to detect preferential payments and fraudulent activities, posing risks to stakeholders' confidence.

Suggestions:

- **Strengthening Implementation Mechanisms:** To address these challenges, implement clear guidelines for managing and valuing financial elements. Enhanced coordination between different regulatory bodies and auditors should be promoted to streamline the auditing process and improve transparency.
- **Enhance Comprehensive Audits:** Ensure that auditors are equipped to handle thorough transaction audits that can uncover preferential payments and fraud. Specialized training for auditors to detect these issues should be prioritized.

2. Environmental and Ethical Considerations

Issue:

The lack of mandatory environmental and ethical considerations in insolvency and business operations means that stakeholders may not be equally considered, and businesses may neglect sustainable practices.

Suggestions:

- **Incorporating Environmental Aspects:** Amend insolvency laws to include mandatory environmental and ethical standards. This ensures that businesses comply with sustainability goals, aligning with societal well-being.
- **Incentives for ESG Compliance:** Introduce tax rebates and other incentives to encourage

businesses to adopt environmental, social, and governance (ESG) norms. This will promote ethical and sustainable practices across sectors.

3. Communication Challenges Due to Incomplete Registrations

Issues:

- Effective communication with relevant entities is difficult when parties are not properly registered on the Information Utility (IU) platform.
- Incomplete registrations and data result in inefficiencies during the insolvency process.

Suggestions:

- **Operationalizing Digital Systems:** Develop and maintain a comprehensive digital platform to ensure all relevant stakeholders are registered and that their data is up-to-date. This would improve communication flow and reduce errors.
- **Mandatory Registration and Disclosure:** Introduce mandatory registration and disclosure requirements for all parties involved in insolvency proceedings to ensure effective communication and decision-making.

4. Lack of Comprehensive Information

Issue:

Insolvency professionals often face a lack of complete information from companies during the handling of avoidance transactions. This makes it difficult to form opinions and limits the findings from transaction audits.

Suggestions:

- **Enhanced Information Sharing:** Implement legal mechanisms that enforce information sharing from companies, particularly from key individuals such as CFOs and promoters.
- **Forensic and Transaction Audits:** Encourage the use of forensic accounting tools and the engagement of forensic or transaction auditors early in the process to gather comprehensive data and conduct in-depth analysis.

5. Time and Cost Constraints

Issue:

Both insolvency professionals and adjudicating authorities face significant time and cost constraints. With tribunals burdened by other matters, avoidance transactions do not receive the necessary attention, leading to inefficiencies in the resolution process.

Suggestions:

- **Optimize Resolution Processes:** Streamline the insolvency process through the adoption of technology and improved procedural guidelines to reduce delays and lower costs.
- **Prioritize Avoidance Transactions:** Provide clear guidelines and incentives for both the Committee of Creditors (CoC) and resolution professionals to actively pursue avoidance transactions, reducing the impact of time and cost constraints.

6. Challenges in Petitioning for Fraudulent Transactions

Issue:

Resolution professionals face pressure to classify transactions as fraudulent even with insufficient data, and legal complexities often delay the adjudication process. The high burden of proof required in fraudulent transaction cases leads to significant challenges in court.

Suggestions:

- **Regulatory Framework for Data Collection:** Implement stronger legal provisions that mandate companies to provide complete and accurate information during insolvency proceedings, thereby reducing the burden on resolution professionals to prove fraudulent transactions.
- **Settlement of Avoidance Transactions:** Consider introducing settlement mechanisms for avoidance transactions to expedite recovery and reduce legal costs. This practice has been successful in other jurisdictions like the UK.

7. Litigation Funding vs. Valuation of Assets

Issues:

- Litigation funding, although a promising solution, faces significant challenges due to the difficulty in valuing assets involved in insolvency-related disputes.
- The lack of established benchmarks for asset valuation complicates the process, hindering the effectiveness of litigation funding.

Suggestions:

- **Standardized Valuation Methods:** Develop and enforce uniform valuation standards for assets involved in litigation. This would help both funders and banks make informed decisions based on more transparent and reliable valuations.
- **Introduce Litigation Funding Mechanisms:** Consider adopting different litigation funding models, such as the sharing model, where a percentage of the recovery is shared with funders. This approach, adaptable to the Indian context, can ease the burden on resolution professionals.

8. Fee Challenges for Insolvency Professionals

Issue:

Insolvency professionals (IPs) often struggle to secure fair compensation due to the discretion exercised by the Committee of Creditors (CoC), which may push for minimal fees. This discourages the pursuit of complex transactions like avoidance cases.

Suggestions:

- **Enhance Fee Structures:** Introduce standardized fee structures for IPs, ensuring that compensation is fair and reflective of the complexity of the cases. Clear benchmarks for fees, aligned with the scope of work, would ensure that IPs are adequately motivated to pursue complex matters like fraudulent or preferential transactions.
- **Incentives for Pursuing Complex Cases:** Provide additional financial incentives for IPs who

take on more challenging cases, such as those involving complex fraudulent transactions or avoidance actions. This would ensure that these cases receive the necessary attention.

9. Lack of Uniform Valuation Standards

Issue:

Multiple national approaches to valuation lead to inconsistent practices, undermining confidence in asset valuations during insolvency proceedings. This lack of uniformity across cases and jurisdictions impacts the accuracy and fairness of the insolvency process.

Suggestion:

- **Adopt Global Standards:** Harmonize valuation practices with international standards to ensure consistency and comparability. This would increase stakeholder confidence, particularly in cross-border insolvency cases.
- **Promote Continuous Training for Valuers:** Implement regular training programs for valuers to ensure they stay up-to-date with global valuation practices and methodologies. This would standardize valuation approaches and improve the quality of assessments.

10. Inconsistent Application of IBC Provisions

Issue:

The Insolvency and Bankruptcy Code (IBC) is not applied consistently across different jurisdictions, leading to variations in the interpretation and implementation of its provisions. This inconsistency causes inefficiencies and undermines the fairness of insolvency resolutions.

Suggestions:

- **Standardized Guidelines for IBC Application:** Develop and disseminate standardized guidelines that clarify the application of IBC provisions across jurisdictions. These guidelines would ensure more uniform outcomes in insolvency cases.
- **Training for Judicial Bodies:** Provide specialized training for members of adjudicating authorities, such as the National Company Law Tribunal (NCLT), to ensure consistent interpretation of IBC provisions and prevent delays caused by misinterpretation.

11. Regulatory and Ethical Challenges

Issue:

Non-compliance and misconduct, such as fund diversion and unethical business practices, continue to undermine the integrity of the insolvency framework. These actions create a lack of trust in the insolvency process and increase the burden on resolution professionals.

Suggestions:

- **Strengthening Oversight:** Enforce strict regulatory standards and codes of conduct for all insolvency professionals. Implement penalties for non-compliance to ensure that ethical standards are maintained throughout the insolvency process.
- **Promote Ethics Training:** Integrate ethics training into professional development programs for

insolvency professionals. This would help reduce instances of misconduct and foster a culture of integrity within the profession.

12. Delays in Resolution Processes

Issue:

The average duration of resolution processes under the IBC far exceeds the mandated 330-day timeline. These delays, often due to litigation and inefficiencies, reduce the value of distressed assets and lower recovery rates for creditors.

Suggestions:

- **Streamline Procedures:** Adopt digital platforms for case management and communication to reduce procedural delays. Automating parts of the process can ensure timely case filings, reduce the number of adjournments, and expedite overall case resolution.
- **Introduce Fast-Track Procedures:** Develop expedited procedures for less complex cases, allowing for quicker resolutions. Additionally, specialized tribunals could be introduced to handle cases in specific industries, reducing the burden on general tribunals.

13. Challenges in Committee of Creditors (CoC) Decision-Making

Issue:

The CoC plays a pivotal role in the insolvency resolution process, yet it faces challenges such as conflicts of interest between financial and operational creditors. These differences complicate consensus-building and often lead to delays.

Suggestions:

- **Establish Clear Decision-Making Frameworks:** Implement structured guidelines that address conflicts of interest within the CoC, particularly between financial and operational creditors. This would promote fairer and more efficient decision-making.
- **Enhanced Collaboration Between Stakeholders:** Encourage open dialogue and collaborative approaches within the CoC to build consensus faster and avoid prolonged disputes that hinder the resolution process.

14. Cross-Border Insolvency Challenges

Issue:

Jurisdictional conflicts and procedural differences make cross-border insolvency resolutions complex and inefficient. This issue is compounded by the limited integration of international practices within India's insolvency framework.

Suggestions:

- **Enhance Cross-Border Collaboration:** Promote international collaboration to harmonize insolvency practices with global standards. Engage in knowledge exchange with foreign regulatory bodies to stay updated with the best practices in cross-border insolvency.
- **Clear Guidelines for Foreign Creditors:** Develop clear regulations addressing the treatment

of foreign creditors and cross-border assets in insolvency cases. This would ensure smoother resolutions in cases involving international stakeholders.

15. Challenges in Maintaining a Going Concern During Resolution

Issue:

Maintaining a company as a going concern during the resolution process is one of the biggest challenges. Continuous operation is crucial for preserving value, but delays and lack of adequate financial support often hinder this.

Suggestions:

- **Provision of Interim Finance:** Encourage the availability of interim finance to support companies during the resolution process. This would enable them to continue operations and retain their value. Streamlined access to finance can ensure that businesses have the liquidity needed to remain operational.
- **Strengthen Monitoring Mechanisms:** Implement better monitoring systems for companies undergoing resolution to ensure that they are effectively managed as going concerns. This includes regular reviews of operational and financial health to maintain business viability.

16. Capacity Issues in NCLT Benches

Issue:

The National Company Law Tribunal (NCLT) often lacks the capacity to handle complex cases due to limited expertise and resources, leading to delays in adjudication. As a result, cases are prolonged, impacting asset value and recovery outcomes.

Suggestions:

- **Expand NCLT Capacity:** Increase the number of NCLT benches and recruit specialized judges to handle complex insolvency cases. This would reduce case backlog and ensure more timely resolutions.
- **Provide Advanced Training:** Offer specialized training to NCLT judges and staff, focusing on complex transactions, fraudulent activities, and insolvency procedures. This would help enhance their ability to adjudicate cases efficiently and accurately.

17. Inconsistent Decisions by Adjudicating Authorities

Issue:

There is often inconsistency in decisions rendered by different adjudicating authorities, leading to uncertainty and unpredictability in insolvency proceedings. This inconsistency can delay case resolutions and create confusion among stakeholders.

Suggestions:

- **Standardized Adjudication Guidelines:** Develop and disseminate clear, standardized guidelines for adjudicating insolvency cases, ensuring consistency across tribunals. This would help reduce variation in rulings and improve the predictability of outcomes.

- **Enhanced Oversight and Appeal Processes:** Implement robust oversight and clear appeal mechanisms to address inconsistent rulings and ensure that decisions are aligned with established legal standards.

18. Lack of Synchronization with Other Laws

Issue:

The insolvency process is complicated by the lack of synchronization between laws such as the Income Tax Act, Company Law, and the Insolvency and Bankruptcy Code (IBC). These discrepancies create challenges in treating losses, handling disclosures, and managing assets during insolvency proceedings.

Suggestions:

- **Harmonization of Legal Frameworks:** Synchronize the provisions of the IBC with other key laws like the Income Tax Act and Company Law to ensure smoother compliance. This will reduce legal conflicts and allow insolvency professionals to manage financial issues more effectively.
- **Regular Coordination with Regulators:** Establish regular forums for coordination between various regulatory bodies, including the Insolvency and Bankruptcy Board of India (IBBI), tax authorities, and corporate regulators, to resolve conflicts between different legal frameworks.

19. Distribution of Proceeds Among Creditors

Issue:

Disagreements often arise during Committee of Creditors (CoC) meetings regarding the distribution of proceeds from resolution plans among different categories of creditors, such as secured lenders, unsecured lenders, and operational creditors. These disagreements can stall resolution efforts.

Suggestions:

- **Develop Fair Distribution Mechanisms:** Establish clear and fair guidelines for the distribution of proceeds among different categories of creditors. These guidelines should ensure that all creditors, including operational creditors, receive equitable consideration.
- **Involve Neutral Advisors:** Engage neutral financial advisors or mediators during CoC meetings to facilitate discussions and build consensus on the distribution of proceeds. This would reduce conflicts and promote faster resolutions.

20. Limited Integration of Cross-Border Insolvency Practices

Issue:

India's insolvency framework has limited integration with global best practices, especially in terms of cross-border insolvency. Jurisdictional conflicts and procedural differences with other countries limit the effectiveness of resolving cases involving international stakeholders.

Suggestions:

- **Adopt Global Best Practices:** Integrate international insolvency standards, such as the UNCITRAL Model Law on Cross-Border Insolvency, into India's legal framework. This would

facilitate smoother cross-border resolutions and improve India's global competitiveness in handling complex insolvency cases.

- **Enhance International Collaboration:** Encourage collaboration between Indian insolvency professionals and international bodies to address jurisdictional conflicts and promote knowledge-sharing. This would help align India's practices with global trends and enhance cross-border insolvency outcomes.

21. Behavioral Shift Among Borrowers

Issue:

While there has been a shift in borrower behavior towards repaying debts to avoid IBC proceedings, this behavior does not always address underlying financial issues. Borrowers may still face challenges that lead to financial distress, even when repayments are made.

Suggestions:

- **Early Intervention and Advisory Services:** Strengthen advisory services to provide borrowers with early intervention strategies that go beyond repayment. This would help address underlying financial problems before they escalate into insolvency.
- **Incentivize Early Settlements:** Introduce incentives for borrowers who engage in early settlements or restructuring before insolvency proceedings commence. This would encourage proactive debt management and reduce the number of cases that reach formal insolvency.

22. Absence of Alternative Dispute Resolution (ADR) in Insolvency

Issue:

The Insolvency and Bankruptcy Code (IBC) does not explicitly provide for Alternative Dispute Resolution (ADR) mechanisms such as mediation, though these mechanisms could help resolve disputes more efficiently. ADR can be especially useful in cases involving complex avoidance transactions and disputes between creditors.

Suggestions:

- **Incorporate ADR Mechanisms:** Amend the IBC to include ADR provisions, allowing for mediation and arbitration to resolve disputes before formal insolvency proceedings escalate. This would help reduce the burden on courts and lead to quicker resolutions.
- **Promote ADR in Group Insolvency Cases:** Use ADR mechanisms, particularly mediation, in group insolvency cases to resolve disputes involving multiple entities. This approach would provide comprehensive solutions to complex group insolvency issues.

23. Conflicts Between Financial and Operational Creditors

Issue:

The lack of a clear framework for resolving disputes between financial and operational creditors remains a significant challenge. These conflicts often arise during the distribution of proceeds and the approval of resolution plans, leading to delays and inefficiencies.

Suggestions:

- **Establish a Dispute Resolution Framework:** Introduce a clear framework within the IBC for resolving conflicts between financial and operational creditors. This could include predefined distribution formulas and guidelines that balance the interests of all creditors.
- **Use Mediation for Disputes:** Encourage the use of mediation to resolve disputes between financial and operational creditors. This would facilitate faster consensus-building and reduce the number of cases that escalate to litigation, speeding up the resolution process.

24. Regulatory Challenges - Cash vs. Credit Pricing

Issue:

Asset Reconstruction Companies (ARCs) face challenges with the discrepancy between cash and credit pricing for security receipts. The requirement for ARCs to pay 100% cash while competing with National Asset Reconstruction Company Limited (NARCL), which issues guaranteed security receipts, distorts competition.

Suggestions:

- **Standardize Pricing Models:** Create regulatory guidelines that standardize pricing models for security receipts across all entities, including ARCs and NARCL, to ensure a level playing field.
- **Incentivize Competitive Participation:** Provide incentives for ARCs to compete more effectively, such as allowing them to use a combination of cash and security receipts, similar to NARCL. This would help balance the market and encourage broader participation in distressed asset recovery.

25. Limited Use of Pre-Packaged Insolvency Plans (PPIRP)

Issue:

Pre-packaged insolvency plans (PPIRP) have seen limited success, particularly among MSMEs. Regulatory and procedural challenges have hindered their adoption, despite their potential for quicker and more efficient resolutions.

Suggestions:

- **Strengthen PPIRP Framework:** Streamline the regulatory framework for PPIRPs, making it easier for MSMEs to access these processes. Simplify the eligibility criteria and provide clear procedural guidelines to reduce barriers to entry.
- **Introduce Mandatory Progression to CIRP:** If a pre-pack insolvency plan fails, establish a mandatory progression to Corporate Insolvency Resolution Process (CIRP) to ensure continuity in resolution efforts and avoid repeated insolvency filings.

26. Challenges in Valuation of Intangible Assets

Issue:

The valuation of intangible assets, such as intellectual property, remains a complex issue due to the lack of clear valuation methodologies and market benchmarks. This leads to disputes and inefficiencies during insolvency proceedings, particularly in industries heavily reliant on intangible assets.

Suggestions:

- **Develop Standardized Valuation Guidelines:** Introduce specific guidelines for the valuation of intangible assets, ensuring that standardized methodologies are used across cases. This would reduce disputes and improve the accuracy of valuations in sectors such as technology and pharmaceuticals.
- **Train Valuers on Intangible Asset Valuation:** Offer specialized training for valuation professionals on intangible asset valuation. This would ensure that valuers are equipped with the skills necessary to handle the complexities of modern businesses that rely on intellectual property and other intangible assets.

27. Declining Recovery Rates and Extended Resolution Timelines

Issue:

Recovery rates under the IBC have declined from 43% to 32%, and resolution timelines have significantly extended beyond the stipulated periods, with some cases lasting over 900 days. This undermines the effectiveness of the IBC and erodes the value of distressed assets.

Suggestions:

- **Strict Adherence to Timelines:** Enforce stricter adherence to the timelines outlined in the IBC to prevent prolonged proceedings. Implement monitoring mechanisms to track case progress and penalize delays where necessary.
- **Introduce Fast-Track Procedures:** For less complex cases, introduce fast-track resolution procedures to ensure that they are completed within the stipulated timeframe. This would help reduce the backlog of cases and improve overall recovery rates.

28. Lack of Advanced Technology Integration

Issue:

The insolvency framework has struggled to integrate technological advancements, such as digital case management systems, data analytics, and AI tools, which could significantly improve the efficiency of the resolution process.

Suggestions:

- **Implement Digital Platforms for Case Management:** Leverage digital platforms to automate administrative processes, track case progress, and facilitate better communication between stakeholders. This would reduce delays caused by paperwork and manual processes.
- **Utilize AI for Early Detection:** Integrate AI tools to identify early signs of financial distress and predict potential insolvency cases. This would allow for more proactive intervention and could help reduce the number of cases that escalate to full insolvency proceedings.

29. Forensic Accounting and Data Access Challenges

Issues:

- Forensic accounting plays a crucial role in identifying fraudulent and undervalued transactions in insolvency cases, but the lack of access to critical financial data hinders its effectiveness.

- Companies may be uncooperative, making it difficult for insolvency professionals to gather necessary information.

Suggestions:

- **Regulatory Framework for Data Sharing:** Establish a regulatory framework that enforces mandatory data sharing from companies undergoing insolvency. This framework should include legal penalties for companies that fail to provide required financial records to insolvency professionals.
- **Adopt Forensic Accounting Standards:** Mandate adherence to forensic accounting and investigation standards issued by regulatory bodies like ICAI. These standards would ensure consistency and reliability in the forensic investigations carried out during insolvency cases.

30. Gender Diversity in the Insolvency Profession

Issue:

The low representation of women in the insolvency profession—currently at only 10%—limits diversity and innovation in the field. Women are also underrepresented in leadership roles, further exacerbating the gender gap.

Suggestions:

- **Promote Diversity Initiatives:** Encourage diversity by introducing programs aimed at increasing female participation in the insolvency profession. These initiatives could include mentorship opportunities, gender diversity campaigns, and targeted scholarships for women pursuing careers in insolvency.
- **Create Leadership Development Programs:** Implement leadership development programs specifically designed for women in the insolvency profession. This would empower more women to take on leadership roles and contribute to decision-making in the field.

31. Inefficient Early Settlement Mechanisms

Issue:

Existing mechanisms for early settlement in insolvency proceedings are ineffective, leading to prolonged cases and reduced recovery rates. Limited incentives for early settlement further discourage stakeholders from resolving matters quickly.

Suggestions:

- **Introduce Financial Incentives for Early Settlements:** Provide financial incentives, such as reduced fees or priority in the distribution of proceeds, for parties that engage in early settlements. This would encourage faster resolutions and improve recovery rates.
- **Enhance Advisory Services:** Strengthen advisory services for companies and creditors to explore early resolution options before formal insolvency proceedings. Early intervention strategies could help mitigate financial distress and avoid the need for full-scale insolvency processes.

32. Balancing Stakeholder Interests

Issues:

- One of the recurring challenges is balancing the interests of various stakeholders, including creditors, employees, and the government, during insolvency proceedings.
- Misaligned priorities can lead to conflicts and delays in reaching resolutions.

Suggestions:

- **Create a Stakeholder Engagement Framework:** Develop a formal framework for engaging all stakeholders early in the insolvency process. This framework should prioritize transparent communication and the equitable distribution of proceeds, ensuring that the interests of all parties are considered.
- **Introduce Mediation for Stakeholder Disputes:** Use mediation to resolve disputes between different stakeholder groups, such as creditors and employees. This would reduce conflicts that delay resolutions and ensure that decisions are made in a more balanced manner.

33. Challenges in Group Insolvency and Project-Specific CIRP

Issues:

- The concept of group insolvency lacks a dedicated legal framework, leading to inconsistent treatment across cases.
- Additionally, sectors like construction often face challenges in managing project-specific Corporate Insolvency Resolution Processes (CIRP), further complicating resolution efforts.

Suggestions:

- **Create a Legal Framework for Group Insolvency:** Implement a legal framework that addresses group insolvency, ensuring that multiple entities within a corporate group are treated uniformly. This framework would provide clear guidelines for the resolution of group insolvencies, reducing inconsistencies.
- **Introduce Guidelines for Project-Specific CIRP:** Establish specific guidelines for project-based CIRP, particularly in sectors like construction, where unique challenges arise. Regulatory supervision should be enhanced to ensure that projects are resolved efficiently and fairly.

34. Contingent Creditors and Inadequate Adjudication Time

Issues:

- Contingent creditors present a challenge within the IBC framework due to the complexity of adjudicating their claims.
- The current timeframe for Corporate Insolvency Resolution Processes (CIRP) is often insufficient for proper adjudication, leading to ad hoc estimates of claims by Resolution Professionals (RPs).

Suggestions:

- **Extend Timeframes for Complex Claims:** Provide more flexibility in the adjudication time for

contingent creditors' claims, especially in complex cases. This would allow RPs to gather more accurate information and avoid estimating claims with nominal values like Rs. 1 or Rs. 0.

- **Adopt Best Practices for Contingent Claims:** Leverage best practices from other jurisdictions in dealing with contingent creditors to ensure that claims are fairly adjudicated. This would improve creditor confidence and promote fairness in the insolvency process.

35. Challenges in Interim Finance for Corporate Debtors

Issue:

Corporate debtors often struggle to secure adequate interim finance to sustain operations during the resolution process. This lack of financial support jeopardizes the company's ability to continue as a going concern and hampers resolution efforts.

Suggestions:

- **Promote Interim Finance Solutions:** Create regulatory incentives for financial institutions to provide interim finance to corporate debtors undergoing resolution. By securing interim finance, debtors can continue their operations, preserving value for creditors.
- **Enhance Access to Funding for RPs:** Streamline access to funding for Resolution Professionals (RPs) to secure necessary fees and finance during the resolution process. This would allow them to focus on managing the debtor without resource constraints.

36. Inclusion of Personal Guarantors in the Insolvency Process

Issue:

There is uncertainty regarding the inclusion of personal guarantors in the insolvency process, particularly concerning their data being included in the Information Utility (IU) system. This creates challenges in managing and communicating with all relevant parties.

Suggestions:

- Expand the IU System to Include Personal Guarantors: Ensure that the IU system includes comprehensive data on personal guarantors. This would enable better management of the insolvency process and ensure that all relevant parties are properly accounted for.
- Mandatory Registration for Personal Guarantors: Introduce mandatory registration requirements for personal guarantors to ensure their inclusion in the insolvency proceedings. This would reduce communication gaps and improve the overall efficiency of the process.

37. Operating Issues in the Secondary Market for Security Receipts (SRs)

Issue:

The secondary market for security receipts (SRs) has faced difficulties due to a lack of clarity in the listing and selling processes. This has affected liquidity and investor participation, limiting the market's functionality.

Suggestions:

- Clarify Regulations for SRs: Introduce clear regulatory guidelines for listing and selling SRs

in the secondary market. This would increase transparency, improve liquidity, and encourage broader participation from investors.

- **Enhance Market Functionality:** Develop mechanisms to make the secondary market for SRs more functional and well-known among potential investors. This could include public awareness campaigns and incentives to attract institutional investors.

38. Prolonged Timelines and Declining Recovery Rates

Issue:

Resolution timelines under the IBC have extended significantly, with some cases lasting over 900 days. This protracted duration has contributed to declining recovery rates, which have dropped from 43% to 32%, raising concerns about the effectiveness of the resolution process.

Suggestions:

- **Enforce Stricter Timelines:** Implement stricter deadlines for resolution processes and hold all parties accountable for adhering to these timelines. This would reduce delays and ensure that cases are resolved within the mandated 330-day timeframe.
- **Improve Judicial Efficiency:** Enhance judicial efficiency by increasing the capacity of the NCLT and NCLAT and providing additional training to reduce bottlenecks. This would help speed up case resolutions and improve recovery rates.

39. Absence of ADR in Insolvency Laws

Issue:

The Insolvency and Bankruptcy Code (IBC) does not explicitly provide for Alternative Dispute Resolution (ADR) mechanisms, such as mediation or arbitration. This absence limits the use of more efficient methods to resolve disputes, especially in complex cases.

Suggestions:

- **Incorporate ADR Mechanisms in the IBC:** Amend the IBC to allow for the use of ADR mechanisms in insolvency cases, particularly for avoidance transactions and disputes among creditors. This would facilitate quicker resolutions and reduce the burden on courts.
- **Establish Specialized Mediation Tribunals:** Create specialized mediation tribunals for insolvency cases to offer a structured forum for resolving disputes before they escalate into formal proceedings. This would help reduce delays and ensure smoother resolutions.

40. Settlement of Avoidance Transactions

Issue:

Insolvency practitioners face significant challenges in dealing with avoidance transactions, such as undervalued and fraudulent transactions. The lack of a settlement mechanism in the Indian insolvency framework leads to prolonged legal battles and higher costs.

Suggestions:

- **Adopt Settlement Mechanisms for Avoidance Transactions:** Incorporate settlement

mechanisms into the insolvency framework to allow insolvency practitioners to settle avoidance transactions with counterparties. This would expedite the recovery process and reduce legal costs.

- **Introduce Litigation Funding for Avoidance Transactions:** Encourage the use of litigation funding models to support the pursuit of avoidance transactions. This would provide insolvency professionals with the resources to aggressively pursue recovery, leading to higher returns for creditors.

41. Legal Ambiguity in IBC Provisions

Issue:

Certain provisions of the IBC and related regulations are seen as ambiguous, leading to diverse interpretations and inconsistent application. This ambiguity creates uncertainty and complicates the resolution process.

Suggestions:

- **Clarify Ambiguous Provisions:** Review and amend ambiguous provisions within the IBC to ensure consistency and clarity in their application. This would reduce uncertainty and help avoid disputes over interpretation during insolvency proceedings.
- **Strengthen Regulatory Frameworks:** Strengthen the regulatory framework by providing detailed guidelines for how certain provisions should be applied in different scenarios. This would ensure more uniformity across cases and jurisdictions.

42. Need for Continuous Improvement of IBC

Issue:

Despite improvements, the Insolvency and Bankruptcy Code (IBC) still requires ongoing enhancements to address emerging challenges and adapt to the evolving business environment. Delays in resolutions, declining recovery rates, and inconsistencies in application all point to the need for refinement.

Suggestions:

- **Regular Reviews and Amendments:** Conduct regular reviews of the IBC to identify areas that require improvement and introduce necessary amendments. This would ensure that the law remains responsive to the changing needs of the business and financial environment.
- **Engage Stakeholders in the Reform Process:** Involve stakeholders, including insolvency professionals, creditors, and industry experts, in the reform process to ensure that amendments address practical challenges faced in the field. This would lead to more effective solutions and a more robust insolvency framework.

43. Supremacy of Laws

Issue:

There is an ongoing debate over the superiority of the Insolvency and Bankruptcy Code (IBC) versus other laws, such as the Prevention of Money Laundering Act (PMLA). This conflict creates uncertainty, especially in cases involving asset claims by enforcement agencies.

Suggestions:

- **Clarify IBC's Supremacy:** Amend laws to explicitly state the supremacy of the IBC over other laws for insolvency resolution cases, ensuring that IBC takes precedence in cases of conflicting legislation.
- **Judicial Clarification:** Encourage judicial clarification on the hierarchy of laws, especially in cases involving overlapping claims, to avoid delays caused by conflicting rulings.

44. Implications and Role of Tax Professionals

Issue:

Tax professionals need to stay updated on legislative changes and their impact on insolvency processes. The complexity of tax implications in insolvency cases requires expert navigation to ensure compliance and maximize recovery.

Suggestions:

- **Strengthen Advisory Services:** Tax professionals should provide strategic advice that helps companies navigate legislative changes related to insolvency. This includes proactive planning for tax impacts during restructuring.
- **Regular Training for Tax Experts:** Encourage ongoing professional development for tax professionals, ensuring they are equipped to handle complex tax implications in insolvency cases.

45. Treatment of Foreign Creditors & Jurisdictional Issues

Issue:

There is ambiguity regarding the treatment of foreign creditors and jurisdictional issues under the IBC, particularly around the enforceability of foreign proceedings in India. The IBC's moratorium and clean slate provisions do not clearly apply to foreign litigation.

Suggestions:

- **Harmonize with International Laws:** Amend the IBC to explicitly define how foreign creditors are treated and clarify the moratorium's scope in cross-border insolvency cases.
- **Strengthen Reciprocal Agreements:** Build reciprocal legal agreements with foreign jurisdictions to ensure enforceability of Indian insolvency rulings abroad and vice versa.

46. Reformation Through Government Initiatives

Issue:

- Recent government initiatives to reform the NCLT and recruit additional staff have shown progress.
- However, further reforms are needed to optimize timelines and enhance the overall efficiency of the insolvency resolution framework.

Suggestions:

- **Expand NCLT Capacity:** Continue recruiting specialized staff and increasing the number of NCLT benches to handle the volume of cases more efficiently.
- **Monitor Timelines:** Introduce performance benchmarks for tribunals to ensure timely resolutions and reduce case backlogs.

47. Pre-Pack and Judicial Efficiency

Issue:

Pre-packaged insolvency plans have seen limited success, primarily due to procedural inefficiencies and the lack of mandatory progression to CIRP if the initial plan fails. This leads to delays in judicial efficiency.

Suggestions:

- **Mandate Progression to CIRP:** Introduce a mandatory progression clause that triggers CIRP when pre-packaged plans fail, ensuring that resolution efforts continue without unnecessary delays.
- **Improve Judicial Efficiency:** Enhance training for judicial staff handling pre-pack cases to improve efficiency and consistency in decision-making.

48. Quality and Transparency of Information Memorandum

Issue:

Incomplete or inaccurate Information Memoranda (IM) can hinder the decision-making process and reduce the effectiveness of resolution plans. Investors rely on the accuracy of these documents to evaluate potential investment opportunities.

Suggestions:

- **Standardize IM Formats:** Develop standardized formats for IMs to ensure consistency and completeness. Mandate the inclusion of all necessary financial and operational details.
- **Enforce Transparency Requirements:** Introduce stricter enforcement of transparency requirements for companies submitting IMs to ensure that investors receive accurate and comprehensive information.

49. Inadequate Traditional Methods

Issue:

Traditional methods of handling insolvency often follow a reactive approach, which delays resolutions and results in diminished asset values. These methods are increasingly inadequate for addressing the complexities of modern businesses.

Suggestions:

- **Adopt Proactive Approaches:** Shift from reactive to proactive approaches by introducing early intervention strategies to prevent companies from reaching full insolvency.

- **Utilize Modern Tools:** Incorporate modern valuation and financial analysis tools that can address the interconnectedness of today's global businesses and provide more nuanced solutions.

50. Regulatory Oversight in Project-Based CIRP

Issue:

Sectors like construction face unique challenges in insolvency, with the absence of clear regulatory guidelines for project-specific CIRPs. This leads to inefficiencies and ad hoc solutions.

Suggestions:

- **Develop Specific Guidelines:** Establish clear guidelines for project-based CIRPs, particularly in sectors like construction, to ensure that processes are consistent and fair.
- **Increase Regulatory Oversight:** Strengthen regulatory oversight in project-specific CIRPs to ensure adherence to established procedures and reduce inconsistencies.

51. Duration and Impact of Resolution Value

Issue:

The longer the resolution process, the more the value of the company declines. CIRPs that extend beyond 600 days tend to recover significantly lower percentages of claims.

Suggestions:

- **Enforce Resolution Timelines:** Introduce stricter monitoring and adherence to the 330-day resolution timeline. Cases that exceed this timeframe should be subject to mandatory fast-track procedures.
- **Adopt Best Practices for Speed:** Learn from jurisdictions with higher recovery rates and shorter timelines, adopting their best practices to improve the speed of the resolution process.

52. Capacity and Skill Gap Among Insolvency Professionals

Issue:

There is a significant gap in the skills and capacity of insolvency professionals, especially in handling complex cases. Many professionals lack specialized training, which affects the quality of their work.

Suggestions:

- **Promote Advanced Training Programs:** Invest in advanced training and certification programs to enhance the skills of insolvency professionals. Continuous professional development should be mandatory to maintain high standards.
- **Enhance Specialization:** Encourage specialization in areas like forensic accounting and valuation to ensure that insolvency professionals are better equipped to handle complex cases.

53. Evolving Profession

Issue:

The roles of insolvency professionals, particularly resolution professionals and valuers, have evolved

significantly due to market demands. This evolution requires continuous adaptation and expertise.

Suggestions:

- **Promote Continuous Adaptation:** Establish industry forums and training programs that focus on adapting to evolving market demands. This will ensure that professionals stay ahead of new challenges.
- **Emphasize Professional Liability:** Implement professional indemnity requirements to protect against negligence or misconduct, ensuring that insolvency professionals are held to high standards.

54. Resource Constraints

Issue:

Insolvency professionals and financial institutions often face resource constraints when managing complex cases. These limitations affect the efficiency and effectiveness of the resolution process.

Suggestions:

- Increase Funding Availability: Encourage financial institutions to provide interim finance and operational funding to support the insolvency process. Government-backed funds could be set up to bridge the gap.
- Provide Resource Support: Offer more robust logistical and administrative support to insolvency professionals to reduce their burden and improve case management.

55. Role of Financial Advisor in Informal Workouts

Issue:

During informal workouts and restructurings, disagreements between creditors can hinder progress. Financial advisors play a critical role in mediating these disputes and guiding companies through restructuring.

Suggestions:

- **Promote the Role of Financial Advisors:** Strengthen the role of independent financial advisors in facilitating informal workouts. This could involve greater use of mediation to resolve inter-creditor disagreements.
- **Provide Specialized Training for Advisors:** Offer specialized training programs for financial advisors to improve their negotiation and mediation skills, ensuring they can navigate informal workouts effectively.

56. Technology and Financing Complexity

Issue:

The increasing complexity of financial instruments and corporate structures poses challenges for traditional insolvency methods. These methods struggle to address the nuanced financial arrangements of modern businesses.

Suggestions:

- Leverage Technology for Complexity: Incorporate advanced financial technologies, such as AI and data analytics, into the insolvency framework to handle complex financial structures more effectively.
- Adopt Flexible Frameworks: Update traditional insolvency frameworks to accommodate modern financial instruments and corporate structures, ensuring that they remain effective in the current business environment.

57. Disintegrated IT Platforms

Issue:

The insolvency ecosystem is hampered by fragmented IT platforms, making coordination and case management inefficient for insolvency professionals.

Suggestions:

- Integrate IT Platforms: Develop a unified digital platform that integrates all aspects of the insolvency process, from case filing to resolution. This would improve coordination and streamline administrative processes.
- Introduce Real-Time Data Sharing: Implement real-time data-sharing capabilities across the insolvency ecosystem to ensure that all parties have access to the latest information.

58. Additional Complications in the Real Estate Sector

Issue:

Real estate insolvencies face unique challenges, particularly in disputes between contractors and owners over unapproved work or plan changes. Valuing these liabilities is difficult, adding complexity to the resolution process.

Suggestions:

- Develop Real Estate-Specific Guidelines: Introduce specific guidelines for managing real estate insolvencies, focusing on valuing contingent liabilities and resolving disputes between stakeholders.
- Improve Valuation Methods: Use industry-specific valuation methods that can accurately assess real estate assets and liabilities, ensuring fairer outcomes for creditors.

59. Scope of Preferential Transactions

Issue:

Section 43 of the IBC deals with preferential transactions but applies only to creditors, not to shareholders or other non-creditor stakeholders. This limits its effectiveness in addressing preferential treatments.

Suggestion:

- Broaden the Scope of Section 43: Amend Section 43 of the IBC to include preferential transactions

involving shareholders and other stakeholders. This would ensure that a broader range of unfair preferences is addressed in insolvency proceedings.

60. Strategic Acquisitions and Turnarounds

Issue:

Successful strategic acquisitions, such as Patanjali's acquisition of Ruchi Soya, have shown how turnarounds can address financial distress effectively. However, not all distressed companies attract buyers with the capability to execute such turnarounds.

Suggestions:

- **Promote Strategic Acquisition Models:** Encourage strategic acquisition models by providing incentives for investors to acquire and turn around distressed companies. This could include tax benefits or fast-tracking regulatory approvals.
- **Enhance Due Diligence Practices:** Strengthen due diligence practices for potential buyers of distressed companies to ensure that they have the capacity and strategy to execute successful turnarounds.

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