

सत्यमेव जयते

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

ICAI 75 YEARS OF TRUST | ७५ वर्षों का विश्वास

Indian Institute of Insolvency Professionals of ICAI
IIIPI

ICAI RVO
Registered Valuers Organisation

RESOLVE-2024

12 - 13 JULY, NEW DELHI

ENABLING RESOLUTION, MAXIMIZING VALUE

RESOLVE 2024



WHITE PAPER ON 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)

RESOLVE-2024
12 - 13 JULY, NEW DELHI
ENABLING RESOLUTION, MAXIMIZING VALUE

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.

White Paper
On
International Convention
on
Insolvency Resolution and Valuation
RESOLVE-2024
On the theme
Enabling Resolution, Maximising Value
Held on
12th and 13th July, 2024
At Bharat Mandapam, New Delhi

RESOLVE-2024
12 - 13 JULY, NEW DELHI
ENABLING RESOLUTION, MAXIMIZING VALUE

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

CONTENTS

S. No.	Particulars	Pg. No.
Background and Introduction		3
Preamble		4
I.	Inaugural Session	6
	i. Address by Chairman I & VSB	6
	ii. Special Address by Vice President ICAI	9
	iii. Presidential Address	11
	iv. Address by Guest of Honour	13
	v. Address by Chief Guest	16
	vi. Vote of Thanks by Vice- Chairman	20
II.	Panel Discussion I: Driving Policy Reforms – Perspective of Stakeholders	21
III.	Technical Session I: Building Insolvency and Restructuring Practice	25
IV.	Technical Session II: The Future Dimensions of Valuation	28
V.	Technical Session III: Innovations in Insolvency Resolution Mechanisms	30
VI.	Technical Session IV: Crystal Ball Gazing - Global Developments and Future Trends in Insolvency & Restructuring	34
VII.	Technical Session V: Avoiding Value Destruction – Importance of Timeliness	38
VIII.	Technical Session VI: Addressing Accounting Dilemma – Implementation of Resolution Plan	41
IX.	Technical Session VII: Beyond Revival: An Environmental Perspective	44
X.	Technical Session VIII: Digitalisation of the IBC Ecosystem	46
XI.	Panel Discussion II: Guide to Effective Insolvency Resolution – Voice of Creditors	48
XII.	Panel Discussion III: The Role of ADR in Insolvency Resolution	52
XIII.	Panel Discussion IV: Debt Resolution Strategies and Investment Opportunities	58
XIV.	Panel Discussion V: Deep Dive into Law and Premise of Avoidance Transactions	59
XV.	Technical Session IX: Impact of Direct Tax on Companies under Insolvency	67
XVI.	Panel Discussion VI: Towards a Vibrant Stressed Assets Market – The Role of ARCs	69
XVII.	Panel Discussion VII: Transformation of Insolvency Professionals – Setting Standards	75

BACKGROUND AND INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) has always aimed towards promoting and understanding the global best practices. The need for strengthening the insolvency resolution framework has assumed great importance recently. In the above context, it was thought to bring together all the domain experts and all the pillars of Insolvency and Bankruptcy Code to address the rising concerns faced by practitioners in the field, and to satisfy the participants' learning needs while also touching on major thematic issues such as Emerging trends in Debt Resolution arena, Role of Regulators and Policy Makers for effective ecosystem, development of global insolvency profession, leveraging technology for integration of process etc.

With a view to facilitate knowledge sharing and networking, which will help all to pave the path forward in enhancing the insolvency resolution ecosystem, The Institute of Chartered Accountants of India (ICAI) planned to organise an International Convention on Insolvency Resolution on the theme "Enabling Resolution, Maximising Value"- **RESOLVE-2023** in August, 2023 in Singapore.

The event, in its inaugural edition, provided unique learning opportunity for the Professionals across the world to learn and share the best practices and developments in the space of insolvency resolution. It also facilitated networking and deep insights and cross jurisdiction experience shared with globally diverse practitioners through interactive discussion. The Convention assumed enormous significance.

The **RESOLVE** series began with a vision to address the broader spectrum of resolution practices, and it was an honor to have Hon'ble Justice Ashok Bhushan as our Chief Guest at the inaugural RESOLVE conference in Singapore. His invaluable contributions amongst others have set a high standard for what we strive to achieve.

Taking forward the resounding success of **"RESOLVE-2023,"** and with a steadfast commitment to further elevate global best practices, the Institute of Chartered Accountants of India (ICAI), through its Insolvency & Valuation Standards Board, organised 2nd edition of International Convention on Insolvency Resolution and Valuation, **"RESOLVE 2024"** on the theme- *"Enabling Resolution, Maximising Value"* in association with the Insolvency and Bankruptcy Board of India (IBBI) on the 12th and 13th of July 2024, at Bharat Mandapam ITPO New Delhi.

PREAMBLE

In the rapidly evolving landscape of global finance, the complexities of insolvency and valuation have become increasingly significant. As businesses and economies face unprecedented challenges and opportunities, the need for a comprehensive and forward-thinking approach to insolvency and valuation is paramount. This context sets the stage for the International Convention on Insolvency and Valuation, RESOLVE 2024.

The second edition of this convention marked a significant milestone in our collective pursuit of fostering a robust and inclusive Insolvency Resolution & Valuation framework, not just in India, but also on a global stage.

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.

Carrying forward the legacy of RESOLVE-2023 and building on the momentum gained, the

RESOLVE-2024 Convention had been thoughtfully designed to provide a platform for deep insights, learning, and knowledge-sharing on the nuances of Insolvency Resolution & Valuation across the globe.

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 on the sessions of the Convention bifurcated into four categories:

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

The White Paper has been developed based on the discussions and deliberations at the Convention. We hope that this White Paper will be insightful.

I. Inaugural Session

Welcome Address:
CA. (Dr.) Jai Kumar Batra, Secretary ICAI

Opening Address:
CA. Navya Malhotra, Secretary, Northern India Regional Council of ICAI

Setting the Context Right:
CA. Gyan Chandra Misra, Chairman, I & VSB, ICAI

Special Address by:
CA. Charanjot Singh Nanda, Vice President, ICAI

Presidential Address by:
CA. Ranjeet Kumar Agarwal, President, ICAI

Address by Guest of Honour:
Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India

Address by Chief Guest:
Hon'ble Justice Ashok Bhushan, Chairperson, National Company Law Appellate Tribunal

Vote of Thanks by:
CA. Durgesh Kumar Kabra, Vice Chairman, I & VSB, ICAI

i. Address by Chairman I & VSB (CA. Gyan Chandra Misra)

A. Deliberations/ Highlights of the Address by Chairman I & VSB

RESOLVE-2024 is one of the biggest Insolvency Convention in India with participation of more than 450 Insolvency Professionals (IPs)/ Resolution Professionals (RPs) from across the country and also representatives ICAI Chapters in Bahrain, United Kingdom, Singapore, Dubai have joined **RESOLVE-2024.**

Reflecting on India's journey, it is remarkable to consider the strides we have made in India's insolvency framework. Although still in its formative years, akin to a "toddler," our progress has been notable.

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.

Introduction to the RESOLVE Series: He elaborated on the inception of the RESOLVE series, explaining that it stemmed from the need to focus on resolution rather than just insolvency.

Progress and Achievements in Insolvency Framework: He highlighted the substantial progress made in India's insolvency framework, describing it as a "toddler" with much accomplished and much still to be done. He noted the significant achievement of resolving insolvencies amounting to approximately ₹3.30 lakh crores. He mentioned the anticipated advancements, including cross-border insolvency, group insolvency, individual insolvency, and partnership insolvency.

Economic Growth and Future Opportunities: He emphasized the positive impact of economic growth on the insolvency framework. He proudly shared that RESOLVE-2024 is one of the largest insolvency seminars in India, with over 450 registrations from insolvency and valuation professionals. He also acknowledged the international participation from various countries, including Bahrain, Dubai, the UK, and Singapore.

Global Reach of Indian Insolvency Professionals: Highlighting the global village concept, he expressed confidence that Indian insolvency professionals would soon provide services worldwide. He mentioned recent successful webinars involving SAFA countries, which saw participation from 18 countries and over 4000 participants, showcasing the strength and potential of the insolvency and bankruptcy sector.

Capacity building for the RPs: The 67th Action Taken Report by the Government on the Observations/Recommendations contained in the Thirty-second Report (17th Lok Sabha) of the Standing Committee on Finance on the subject "Implementation of Insolvency and Bankruptcy Code-Pitfalls and solutions" also contains the Committee's apprehension about the capability of Resolution Professionals (RPs) in executing timely resolutions of large, complex cases given. The Committee also showed its concern about the frequent penalties on RPs, which indicate misinformation and a lack of awareness of the Corporate Insolvency Resolution Process (CIRP).

Enhancing the capabilities of Resolution Professionals (RPs) is crucial for expediting complex resolutions under the IBC. Investing in training and skill development for RPs can ensure swifter and more informed decision-making, reducing penalties and misinformation during CIRPs.

B. Key Takeaways

- *The world is a global village, and the time is rife when Indian professionals are spreading their skill sets not only in India but across the globe. So accordingly, we are very much confident that the time is not far away when the Indian insolvency professionals shall be providing the services not just across the country, but around the world.*

C. Issues

Implementation Challenges: Despite the progress, there are significant challenges in implementing the provisions under IBC. These include inconsistent application of laws, delays in case resolutions, and the need for more trained professionals.

The integration of cross-border insolvency practices remains complex, with issues related to jurisdictional conflicts and procedural differences between countries.

Lack of Uniformity in Practices: There is a noticeable lack of uniformity in insolvency practices across different regions and sectors within India. This inconsistency affects the overall effectiveness and reliability of the insolvency framework.

Capacity and Skill Gaps: There are gaps in the capacity and skills of insolvency professionals, which can hinder the efficient resolution of complex cases. This includes a need for advanced training and development programs.

D. Suggestions and Recommendations

Strengthening Implementation Mechanisms: It is suggested to develop clear, actionable guidelines for the implementation of provisions related to IBC to ensure consistency and effectiveness. Coordination between different regulatory bodies needs to be enhanced and the stakeholders are required to streamline the insolvency process and reduce delays.

Harmonizing Practices with Global Standards: There is a need to align insolvency practices in India with the international standards wherever feasible. This will facilitate smoother cross-border resolutions and attract global business. Knowledge exchange and collaboration with international insolvency professionals to be encouraged, this will in turn help to stay updated with global best practices.

Capacity Building and Training: Investment in comprehensive training programs for insolvency professionals is required to be made to build expertise and handle complex cases more effectively. Also, continuous professional development and certification to maintain high standards within the industry to be promoted.

Enhancing Economic Integration: To better address the impact of economic fluctuations on insolvency, closer ties between insolvency practices and economic policies should be enhanced. Also, with a view to devise strategies that support economic recovery through effective insolvency resolutions, collaboration between industry stakeholders and economic planners to be encouraged.

Promoting Research and Innovation: Research into innovative insolvency practices and solutions to be supported which can address emerging challenges in the field. Technology to be leveraged to enhance the efficiency and transparency of the insolvency process.

ii. Special Address by Vice President ICAI (CA. Charanjot Singh Nanda)

A. Deliberations/ Highlights of the Address

He underscored the foundational role of the Institute of Chartered Accountants of India (ICAI), established by an Act of Parliament on July 1, 1949. He highlighted that this pre-empted the adoption of the Indian Constitution in 1950, demonstrating the visionary foresight of the Constituent Assembly. The primary objective of ICAI was to instil financial discipline and nurture professionals capable of acting as "financial soldiers" for the Republic of India.

Before the advent of the Insolvency and Bankruptcy Code (IBC), foreign investors were apprehensive about investing in India however, the implementation of the IBC has significantly enhanced investor confidence, resulting in smoother investment flows across various sectors of the Indian economy.

Historical Context and Purpose of ICAI: He provided a historical perspective on the establishment of ICAI, which was set up by an act of parliament on July 1, 1949, even before the adoption of the Indian Constitution in 1950. He highlighted the foresight of the Constituent Assembly in establishing ICAI to discipline the financial sector and provide professionals who could act as "financial soldiers" for the Republic of India.

Impact of the Insolvency and Bankruptcy Code (IBC): He emphasized the transformative impact of the Insolvency and Bankruptcy Code (IBC) on India's financial landscape. He credited the IBC for creating formidable valuations and boosting investor confidence, which has led to Indian stock markets reaching all-time highs. He mentioned that the IBC provides a mechanism for resolution, giving businesses a way to recover from misfortune and attracting foreign investors by ensuring smooth asset dissolution.

Role of Chartered Accountants: He proudly asserted the pioneering role of Chartered Accountants in the success of the IBC and the financial sector at large. He recalled the success of RESOLVE-2023 in Singapore and anticipated that RESOLVE-2024 would be equally vibrant and enlightening, enhancing technical knowledge and practical insights in the field of insolvency and valuation.

Fostering Collaborations: He looked forward to even greater conferences with an increased impetus on technical knowledge and practical applications in IBC and alternate dispute resolution. He emphasized the importance of fostering collaborations and setting new benchmarks in the global insolvency resolution and valuation ecosystem.

B. Key Takeaways

- *The Institute, the ICAI, was set by an act of Parliament way back on 1st July 1949 when the most important document of democracy, the constitution was not adopted. The Constitution of this robust, vibrant, august country was promulgated on 26 January 1950. The pertinent question that arises is what prompted the constituent assembly to set up an Institute of Chartered Accountants of India when its own democratic setup was not in place. The answer is very candid, very simple, very forthcoming. They were looking for a disciplined band of soldiers to bring this country into discipline, to create value and worth, to provide professional who could act as financial soldiers to the Republic of India.*
- *Indian bourses are at an all-time height today, a lot goes to IBC. people feel safe. Misfortune can strike anybody, but when there is a way to come out of that, when there is a resolution, so that out of misfortune, whatever you come, you could go back and sit satisfied and think about your business collaborations, IBC gives this to the world.*

C. Issues

Lack of Consistency in Application of IBC: There is a need for more consistent application of the IBC provisions across different jurisdictions and cases. Variations in interpretation and implementation can lead to inefficiencies and uncertainty.

Delay in Resolutions affecting timely recovery: Despite improvements, delays in the resolution process remain a significant issue, affecting the timely recovery of assets and resolution of insolvency cases.

Capacity and Skill Gaps: There is gap in specialized training and skills among insolvency professionals. This affects the quality and efficiency of insolvency and valuation services.

Resource Constraints: Many stakeholders, including insolvency professionals and financial institutions, face resource constraints that hinder their ability to manage complex cases effectively.

Challenges in Cross-Border Insolvency: Challenges related to cross-border insolvency and the integration of international practices with local regulations were discussed. Issues include jurisdictional conflicts and procedural differences.

Legal Ambiguities: There are some provisions of the IBC and related regulations that are perceived as ambiguous or inadequately defined which leads to uncertainty and diversity in their application.

D. Suggestions and Recommendations

Standardised Guidelines: Focus should be there to develop and disseminate standardized guidelines to ensure consistent application of the IBC across different cases and jurisdictions.

Streamlined Processes: Measures to streamline the resolution process, including the adoption of technology and process improvements to reduce delays should be implemented.

Advanced Training Programs: Advanced training and certification programs to be introduced for insolvency professionals to address skill gaps and enhance their ability to manage complex cases.

Strengthening Regulatory Framework: Ambiguous provisions of the IBC and related regulations to clarify their application and reduce uncertainty to be reviewed and introduced.

Cross-Border Collaboration: It was suggested to have international collaboration to address cross-border insolvency challenges and harmonize practices with global standards.

Innovative Solutions: Research into innovative insolvency and valuation practices to be supported that can address emerging challenges and improve the effectiveness of the framework.

Technology Integration: Technology to be leveraged with a view to enhance the efficiency and transparency of insolvency processes, including the use of digital platforms for case management and valuation.

Collaborative Efforts: There is need for better collaboration among regulators, financial institutions, and insolvency professionals to address common challenges and develop effective solutions.

iii. Presidential Address (CA. Ranjeet Kumar Agarwal)

A. Deliberations/ Highlights of Address

- India has limited resources but unlimited talent, with insolvency laws designed to provide professional assistance for financially stressed corporates.
- Entrepreneurs are encouraged to step aside if they cannot manage their businesses effectively.
- The IBC has significantly contributed to reducing NPAs, with a noteworthy improvement in the banking sector.
- Chartered Accountants play a crucial role in the insolvency profession, with increasing female participation.
- ICAI is developing new valuation standards and plans to enhance the IBC framework through proposed amendments and the establishment of an ADR mechanism.

Background and Purpose of RESOLVE-2024: He recounted the success of RESOLVE-2023 held in Singapore, which prompted the decision to organize the event in India this year. He provided an overview of the genesis of the Insolvency and Bankruptcy Code (IBC) in 2016, emphasizing its role in optimizing resource utilization and fostering economic value creation in India.

Impact and Achievements of IBC: He highlighted the transformative impact of the IBC, citing the RBI report that indicates a historic low in NPAs at 2.8% in the banking sector. He attributed this success to the efficient functioning of the IBC, which has streamlined asset resolution processes, boosted investor confidence, and fostered sustainable growth in various sectors, including infrastructure and energy.

Role of Chartered Accountants: He underscored the pivotal role of chartered accountants in the success of the IBC. He noted that 55% of the 4,600 insolvency professionals in India are chartered accountants, who are dedicated to the country's growth and development. He expressed pride in the increasing interest among women in the fields of accountancy, finance, taxation, insolvency, and valuation, noting that every third Chartered Accountant in India is a woman.

Development of Valuation Standards: He also mentioned that upon the request from the IBBI to develop valuation standards for "Plant & Machinery Asset class" in-line with the valuation standards developed by ICAI for the "Securities or Financial Asset Class", ICAI has developed a draft version of valuation standards for the "Plant & Machinery Asset Class", which has been handed over to IBBI for review. Once the IBBI is satisfied with these standards, they will be exposed to the public for comments, after which the criteria for valuing plant and machinery will be defined.

Evolution and Amendments of the IBC: He discussed about the evolving nature of the IBC, which has undergone various amendments in the past seven years. He cited significant judicial decisions, such as the Amrapali Group and DHFL cases, that have redefined the law's proceedings and set new benchmarks. He further anticipated the upcoming IBC 2.0, which will introduce further amendments and enhancements to align the Code with the emerging requirements and to make it more robust and time-efficient.

B. Key Takeaways

- *In a country like India, we have limited resources but unlimited talent. If an entrepreneur is running a factory or organization inefficiently and failing to create value, the IBC law comes into play. The genesis of this law dictates that such entrepreneurs must step aside, allowing more capable and prominent individuals to take over and run the factory. The law emphasizes that in India, value must be created from every resource, harnessing the nation's vast talent despite its limited resources.*

C. Issues

Delay in Timelines impacts recovery: The IBC sets specific timelines for various stages of proceedings under IBC to ensure timely resolution and minimize disruptions for all the Stakeholders including the businesses and creditors. Prolonged CIRP can affect the viability of the corporate debtor, increase costs, and impact the chances of a successful resolution. Delays in the IBC process can have far-reaching effects on businesses and their stakeholders. Addressing these delays require a concerted effort from all parties involved in the insolvency proceedings.

Capacity of NCLT Benches: Capacity issues of NCLT Benches is crucial for ensuring that proceedings under the IBC are conducted in a timely and effective manner, ultimately benefiting all the stakeholders involved.

D. Suggestions and Recommendations

Strengthening Institutional Framework: It was proposed to increase the capacity of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal) benches by establishing additional benches and appointing more judges and insolvency professionals to manage the growing caseload.

Improving Resolution Timelines: He emphasized the need to improve resolution timelines to meet the prescribed timelines of 330 days to achieve the best possible value from assets.

Promoting ADR Mechanisms: He advocated for the promotion of mediation and arbitration as alternative dispute resolution mechanisms. In line with the Ministry of Law and Justice's directive, ICAI is establishing a Section 8 company for mediation and arbitration to settle corporate disputes.

iv. Address by Guest of Honour (Shri Ravi Mital, Chairperson, IBBI)

A. Deliberations/ Highlights of Address

Achievements of the IBC: He highlighted the substantial impact of the IBC, noting that it has facilitated the direct return of approximately 3.4 lakh crores to creditors. He provided context by referring to the peak non-performing assets (NPAs) of 12 lakh crores recorded during 2017-18 when the IBC was introduced. The recovery of 3.4 lakh crores through the IBC represented around 25-30% of this total, underscoring the Code's effectiveness in addressing the NPA crisis.

Transformation in Debtor-Creditor Relations: He cited the IBC's transformative impact on the debtor-creditor relationship, which has contributed to a record low in NPAs. A notable achievement discussed was the settlement of approximately 28,000 applications involving debts exceeding 9.5 lakh crores even before the initiation of the Corporate Insolvency Resolution Process (CIRP) or liquidation proceedings. This preemptive settlement highlighted the IBC's efficiency and effectiveness.

Behavioural Shift Among Borrowers: He also highlighted the significant behavioural shift among borrowers post-IBC, who are increasingly repaying their debts to avoid losing control of their companies under IBC provisions. He noted that this law is the first in India to allow promoters to forfeit control of their companies to creditors, marking a substantial change in the operational landscape.

Resolution of Large-Scale and Diverse Projects: Another key point highlighted by him was the resolution of various large-scale and complex projects. These included deal plans, hotels, road projects, and notably, the largest real estate project involving over 20,000 units. He emphasized that India's performance in these areas has been exceptional on an international scale. He encouraged the engagement of Indian resolution professionals for international projects, given their demonstrated capabilities, as evidenced by successful resolutions that surpass those achieved in other countries, such as China's ongoing struggles with real estate.

Increased Resolution Efficiency: Over the past eight years, the annual average of resolutions has exceeded 125. However, last year saw a record 270 resolutions, reflecting an accelerated pace. He attributed this achievement to the collective efforts of NCLT, NCLAT, and resolution professionals, expressing confidence that this record would be surpassed in the coming year.

Call for Speed, Innovation, and Transparency: He emphasized the importance of completing resolution processes swiftly and ensuring that businesses continue as going concerns, as liquidation benefits no one. He urged for the adoption of genuine innovations, such as part resolutions for complex and large projects. For example, recent cases involving multifaceted projects—such as those including real estate, hospitals, and schools—have demonstrated that selling components separately can be more effective. He emphasized that part resolution is the way forward for large projects.

He also stressed the need for improved quality in information memorandums. While promoters may not always provide comprehensive information, banks and creditors are required to share relevant data. He further mentioned that in case the RP still does not get the required information he can always come to IBBI or NCLT/NCLATs for assistance. He reemphasized that the RPs

should always endeavour to improve upon the quality of information as enhancing transparency by providing accessible information will lead to better outcomes.

Improvement in Recovery Rates: He cited that the current recovery rate stands at 32% for creditors which when measured against fair value, stands at over 80% wherein fair value is the value determined by the RPs at the point the company enters IBC. Despite this positive performance, he urged that there is room for improvement and advocated for greater transparency to improve recovery rates, noting that while the current recovery rate stands at 32%, there is potential to increase it to 40%. He highlighted that an increase of 8-10% in recovery rates would have a substantial impact on overall financial recovery, urging continued efforts to achieve this improvement.

Future Outlook: He acknowledged the positive performance of the IBC but emphasized the need for ongoing improvement. He expressed his gratitude to ICAI for organizing the conference and requested recommendations for further enhancing the effectiveness of the IBC. He invited continued collaboration and innovation to build upon the progress made and to address future challenges in insolvency and bankruptcy resolution.

B. Key Takeaways

- *Be as innovative as possible; genuine innovations will not be penalized. By "genuine innovations," I mean utilizing the legal provisions that allow for part resolutions. For large-scale projects, part resolution is the way forward.*

C. Issues

Improvement in Recovery Rates: Although the current recovery rate is 32% of admitted claims, with potential to increase to 40%, however, it is crucial to improving recovery rates for optimizing creditor returns.

Delays in Resolution Processes: The average duration of resolution processes is longer than the prescribed timeline, which impacts the value of distressed assets.

Quality and Transparency of Information Memorandums (IMs): Incomplete or inadequate information in IMs hamper the effective decision-making and resolution plan.

Transparency and Innovation in Resolution Processes: Lack of greater transparency and innovative approaches to handle complex cases also affects the entire process.

Behavioral Shift Among Borrowers: Though there is a shift in the borrower behavior towards repaying debts to avoid IBC proceedings but that may not always address underlying issues effectively.

Performance Metrics and Benchmarks: There is a need for clear metrics and benchmarks to measure progress and drive improvements in insolvency resolutions.

Engagement in International Projects: Indian resolution professionals have the opportunity to engage in international projects but they may face challenges competing on a global scale.

Overall Effectiveness and Continuous Improvement: Though there is a lot of progress in IBC over the past seven years, still there is a need for ongoing improvements in the IBC framework to address emerging challenges.

D. Suggestions and Recommendations

Importance of Accurate Accounts: As Chartered Accountants and Resolution Professionals, the importance of accurate accounts is understood. While promoters may not provide comprehensive information, the banks and creditors, holding records and forensic audit reports, are important to share this data.

Quality of Information: Endeavour to improve upon the quality of information and be as transparent as possible, the more transparent the information, the better the results will get.

Early Intervention Strategies: To explore alternative resolution mechanisms before they reach insolvency, early engagement with borrowers should be there.

Incentivize Early Settlements: Incentives for borrowers who proactively address their debt issues and engage in early settlements should be introduced.

Strengthen Advisory Services: Advisory services to be enhanced which will help borrowers understand and navigate the insolvency process better.

Establish Clear Benchmarks: Specific performance benchmarks should be set for resolution timelines, recovery rates, and other key metrics.

Regular Monitoring and Reporting: The performance should be continuously monitored against the benchmarks and also publish the regular reports to track progress.

Create Feedback Mechanisms: Feedback mechanisms to be developed to gather insights from stakeholders and also incorporate the same into the improvement process.

Mandatory Disclosure Requirements: Comprehensive disclosure requirements are required to be enforced for all the stakeholders involved in the resolution process.

Implement Technology Solutions: Digital tools and automation to be leveraged to manage the cases and also to reduce administrative delays.

Optimize Resolution Processes: Steps to be taken to implement best practices from high-performing jurisdictions to expedite the resolution processes to enhance efficiency and recovery rates.

Enhance Data Utilization: RPs to use advanced data analytics to forecast and improve recovery outcomes which will help in a more informed decision-making.

Promote Training and Development: Training programs to be provided for resolution professionals to improve their skills in negotiating and structuring resolution plans.

v. Address by Chief Guest (Hon'ble Justice Ashok Bhushan)

A. Deliberations/ Highlights of the Address

In his deliberations, he addressed the issues with the recommended measures that will improve the efficiency, transparency, and effectiveness of the insolvency and bankruptcy framework in India. He mentioned that by focusing on timely resolution, consistent valuation practices, effective early settlements, and robust professional standards, the system can better support distressed entities, maximize asset recovery, and enhance overall economic stability.

He emphasized the importance of maintaining business integrity as India aspires to become one of the world's top three economies.

He reiterated the critical role of accurate valuations in achieving successful resolutions of stressed assets. He emphasized the importance of ensuring that the discussions and experiences from the convention translate into actionable recommendations. He called for continuous improvement of the framework, underscoring the collaborative spirit of RESOLVE-2024 in enhancing the insolvency and valuation landscape.

The Crucial Role of Accurate Financial Reporting: He emphasized the foundational role of accurate financial reporting in fostering a robust investment climate. He elucidated how companies are entrusted with the responsibility of preparing reliable financial accounts, which significantly influence both financial theory and practice. He highlighted historical instances where weak accounting practices led to financial scandals, both domestically and internationally.

He also emphasized that proper record-keeping and precise financial reporting are paramount for maintaining a healthy business ecosystem. Misrepresentation of financial positions can complicate capital-raising efforts, even for large investors, underscoring the necessity for robust regulation and standardization to maintain trust in the accounting and valuation professions.

Transformation Through the Insolvency and Bankruptcy Code (IBC): He highlighted the the transformative impact of the Insolvency and Bankruptcy Code (IBC) on India's corporate and financial landscape. Enacted in 2016, the IBC was designed to reorganize distressed corporate debtors promptly, maximizing asset value while ensuring business continuity. He cited that this dynamic law, subject to periodic amendments based on practical needs and past experiences, has firmly established India on the global insolvency resolution map. He added that the IBC has played a pivotal part in maintaining economic stability and fostering confidence in the business ecosystem amidst increased global interconnectedness and financial uncertainties.

Achievements and Data Highlights Under IBC: He presented compelling data to illustrate the efficacy of the IBC, drawing from the insights compiled by the IBBI. He mentioned that the fiscal year 2023-24 saw an unprecedented surge in the approval of resolution plans, with the NCLT approving a record 269 plans, marking a significant 42% increase from the previous year.

He also added that since its inception, the IBC has facilitated the approval of 947 resolution plans, realizing 32% of admitted claims and 162% of their liquidation value. The average resolution plan now yields about 85% of the fair value of the corporate debtor (CD). Furthermore, he added that additionally, the IBC rescued 308 CDs in 2024, with 159 cases resolved through withdrawal under section 12A and 149 through NCLT orders, indicating a positive shift in debtor behavior towards early settlement.

Ongoing Challenges in the Insolvency Process: Despite these achievements, he acknowledged the persisting challenges, particularly the delayed duration of the resolution process, which averages 679 days—well beyond the standard timeline of 330 days. He further highlighted that delays, often due to litigation by multiple stakeholders with competing interests, further erode the value of distressed CDs and minimize recovery rates. He used data from the 947 resolved cases as of March 2024 to show a direct correlation between the length of the resolution process and the recovery rate. Cases resolved within shorter timeframes tended to yield higher recovery rates, while extended resolution periods coincided with lower recovery rates.

The Integral Role of Valuation Professionals: He highlighted the indispensable role of insolvency and valuation professionals in the success of the insolvency resolution ecosystem. He added that accurate valuations are crucial for maximizing value and facilitating informed decision-making throughout the resolution process. He further mentioned that valuation reports serve as the cornerstone for successful resolution plans, ensuring fair treatment for all stakeholders. He emphasized the necessity for continuous professional development, urging valuation professionals to navigate the evolving landscape of insolvency and valuation with confidence and expertise.

Regulatory Framework for Valuation Professionals: He elaborated on the robust regulatory framework governing valuation professionals under the Companies Act 2013 and the IBC. Registered valuers must adhere to stringent valuation rules and a code of conduct, being accountable for their actions and misconduct. The two-tier regulatory system, with Registered Valuers' Organisations (RVOs) acting as "Frontline Regulators" and the IBBI as the "Principal Authority", aims to establish a common regulatory framework, minimizing subjectivity and promoting uniform standards. This framework, along with the IBBI's role in promoting global best practices, lays the foundation for a standardized valuation profession.

Future Directions and Collaborative Efforts: He emphasized on the importance of collaborative efforts to address the bottlenecks in the insolvency resolution and valuation mechanisms. He highlighted the significance of conventions like RESOLVE-2024 in exploring innovative practices and rethinking the legal framework.

He requested ICAI to submit detailed recommendations stemming from the discourses that transpire at the conference to the Chairman of the IBBI to further improve the ecosystem, emphasizing that the insights and outcomes of RESOLVE-2024 will significantly contribute to the ongoing dialogue on insolvency resolution and valuation mechanisms.

B. Key Takeaways

- *Accurate valuation is highly useful for resolution of stressed assets. Valuation seems cornerstone for successful resolution plans. Because every stakeholder makes a decision based on the value of the CD.*

C. Issues

Delayed Resolution Processes: The average duration of insolvency resolution processes extends to 679 days, which is significantly longer than the mandated 330-day timeline. These delays are often caused by litigation and inefficiencies, diminishing asset values and recovery rates.

Inconsistent Valuation Practices: There are inconsistent valuation practices that are being

adopted by the Valuers which can lead to disputes and inefficiencies in the insolvency process, impacting the fairness and accuracy of asset evaluations.

Ineffective Early Settlement Mechanisms: There are ineffective early settlement mechanisms and these limited incentives for early settlement result in prolonged insolvency proceedings, reducing recovery rates and efficiency.

Limited Coordination Between Stakeholders: There is a lack of Co-ordination amongst various Stakeholders involved in IBC processes. This poor coordination between NCLT, NCLAT, IBBI, and other agencies may lead to inefficiencies and delays in insolvency processes.

Insufficient Quality of Information Memorandums (IMs): Inaccurate or incomplete information in IMs is responsible for hinderance in evaluation and decision-making by potential investors.

Limited Professional Development and Innovation: The insolvency and valuation professionals may lack continuous training and innovative practices which leads to outdated methods and reduced effectiveness.

Regulatory and Ethical Challenges: As on date there are regulatory and ethical challenges, including non-compliance and misconduct, which can undermine the integrity of the insolvency and valuation frameworks.

Limited Alignment with Global Best Practices: Due to the limited alignment with international standards, the Indian insolvency and bankruptcy framework may affect its global competitiveness.

D. Suggestions and Recommendations

Optimize Case Management: Implementation of advanced digital case management systems will help in monitoring and expediting the proceedings efficiently.

Expand NCLT Capacity: Increase in the number of NCLT benches and judges will help in achieving the objective of IBC by handling more cases promptly and also reduce backlog.

Introduce Fast-Track Processes: Development of expedited procedures for less complex cases and also establishment if specialized tribunals for specific industries or sectors will fast track the processes so as to meet the timelines.

Enhance Mediation Services: Steps to be taken to encourage and facilitate pre-resolution mediation which will address and settle disputes before they escalate into formal proceedings.

Standardize IM Formats: Standardized formats and guidelines for IMs to be developed to ensure that all necessary information is included and presented clearly.

Mandate Comprehensive Disclosure: Thorough disclosure of financial and operational details to be mandated to facilitate better evaluation and decision-making by potential investors.

Standardize Valuation Methods: To ensure consistency across cases, development and enforcement of uniform valuation standards and methodologies to be focussed.

Improve Transparency: Detailed and transparent valuation reports to be mandated and the same to made accessible to all stakeholders who are involved to build trust and ensure informed

decision-making.

Regular Training: Implementation of continuous professional development programs to be done for valuation experts so as to keep them updated on best practices and regulatory changes.

Promote Ethics Training: Ethics training to be incorporate into professional development programs and establish secure channels for reporting unethical practices or violations.

Create Incentives: Financial or procedural benefits to be introduced for early settlements or restructurings to encourage timely resolution.

Enhance Collaboration: Inter-agency coordination to be improved by establishing regular meetings and communication channels to streamline processes and resolve disputes more effectively.

Foster Global Collaboration: Engage with international insolvency and valuation organizations to stay abreast of global trends and developments. Develop frameworks to manage cross-border insolvencies effectively.

Engage Stakeholders: Involvement of insolvency professionals, creditors, and other stakeholders in discussions and decision-making to be improved to address issues collaboratively.

Encourage Innovation: Recognition to be given for innovative approaches and solutions in insolvency resolution and valuation, such as part resolutions for complex projects.

Strengthen Oversight: Enforcement of strict regulatory standards and codes of conduct for insolvency and valuation professionals. Effective mechanisms to be implemented to address and penalize misconduct.

Adopt Global Standards: Regularly review and integrate international best practices and standards to enhance the effectiveness of the insolvency framework in India.

vi. Vote of Thanks by Vice- Chairman (CA. Durgesh Kumar Kabra)

While thanking everyone, he offered gratitude to the dignitaries and the delegates and highlighted the collaborative spirit and the pivotal role of IBC in fostering a robust insolvency resolution framework in India.

He also made a special mention for the participants who have travelled from 20 states and 8 countries to participate in RESOLVE-2024. He thanked them and stated that their engagement and enthusiasm are the cornerstone of this Convention.

He highlighted the point mentioned by **Vice President ICAI** and stated that his reflections on how the IBC has brought much-needed discipline to the system and enhanced India's attractiveness as an investment destination have been truly enlightening. India has become favorable investment destination. He further noted the significant improvement in India's ease of doing business ranking, which surged from 131 to 68 post-IBC implementation as emphasized by him.

He also mentioned that **President ICAI** underscored the value creation facilitated by IBC, contributing to the reduction of Non-Performing Assets (NPAs) in the country. He reaffirmed the commitment of ICAI's ongoing support to the Insolvency and Bankruptcy Board of India (IBBI) and other regulatory authorities, highlighting the preparation of valuation standards for plant and machinery at the behest of IBBI.

He congratulated **Chairperson Insolvency and Bankruptcy Board of India** for his detailed overview of the IBC's evolving role in business resolution. He highlighted the point made by him that 38,000 applications had been withdrawn and substantial financial resolutions achieved.

He re-iterated the point made by Chairperson IBBI that do innovation but your innovation concerning the CIRP, and resolution has to be genuine and when the innovation for the resolution is genuine, definitely the maximization of value will be there to the resolution plan and the company which is under the resolution. These kinds of innovative plans are going to help in resolving the various companies at a faster pace. He was given assurance that whatever help is needed from the ICAI, we will work hand in hand with the IBBI.

He expressed his gratitude to **Chairperson, Hon'ble National Company Law Appellate Tribunal,** the Chief Guest, who described the IBC as a landmark legislation that has shifted the power dynamics in corporate resolution by empowering creditors.

He seconded Hon'ble Justice Ashok Bhushan in lauding the IBC's role in expediting the resolution of distressed assets, noting the successful completion of 968 resolutions and the significant recovery of funds. He praised the contributions of Chartered Accountants and Insolvency Professionals in the resolution process.

II. Panel Discussion I: Driving Policy Reforms – Perspective of Stakeholders

Moderator

CA. S. Badri Narayanan

Panelists

1. Shri Jithesh John, Executive Director, IBBI
2. Shri N. S. Vishwanathan, Former Deputy Governor, RBI
3. Justice Shri M. M. Kumar, Former Acg. Chief Justice Punjab & Haryana, Chief Justice Jammu and Kashmir High Court, Founder President N.C.L.T, Former Member NHRC

A. Deliberations/ Highlights of the Session

The Insolvency and Bankruptcy Code (IBC) faces several unresolved issues, notably the lack of amendments concerning cross-border insolvency. Unlike in the USA, where corporate debtors typically retain possession, the concept of "lender in possession" in India hasn't proven as effective, prompting calls for enhanced protection of entrepreneurs. Streamlining procedural reforms throughout the Corporate Insolvency Resolution Process (CIRP) is essential to improve efficiency.

The Reserve Bank of India (RBI) intervened with the IBC's introduction to alleviate the banking sector's Non-Performing Assets (NPAs), emphasizing balance sheet cleansing and capital unlocking. Proposed reforms should prioritize protecting entrepreneurs by allowing them to retain possession during resolution. Section 54A's introduction for pre-packaged insolvency resolutions aimed at MSMEs is commendable and increasing the threshold under Section 4 from one lakh to one crore rupees would further safeguard this sector. From the RBI's viewpoint, regulatory reforms should enhance investor protection by expediting processes, clarifying creditor responsibilities, and ensuring prompt tribunal decision implementation to preserve the time value of money.

These deliberations highlighted critical aspects and proposed reforms within the IBC framework, aimed at enhancing efficiency, protecting stakeholders, and strengthening the financial system's resilience against distress.

The deliberations focussed on recovery efficiency, reduce Non-Performing Assets (NPAs), further streamlining legal procedures to expedite resolution processes, comparison with international insolvency frameworks for benchmarking and improvements, advocacy for enhancing stakeholders' understanding of IBC processes to ensure effective participation.

The Major Highlights of Session:

- Faster IBC resolutions for debt recovery
- Advocacy for reducing NPAs and improving lending discipline
- Streamlining legal procedures for quicker resolutions
- Adopting global insolvency best practices
- Enhancing stakeholder IBC process awareness

Challenges with the Lender-in-Possession Model: The effectiveness of the lender-in-possession model was discussed and deliberated and it was stated that there is a growing consideration of allowing entrepreneurs to retain control during insolvency to enhance resolution outcomes. The current model

of "lender-in-possession" has not yielded satisfactory results and has not proved to be effective. The discussion is going on for a shift towards whether the Corporate Debtor (CD) should remain under the control of entrepreneurs during the insolvency process.

Effectiveness of Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs: The PPIRP has not been as effective as anticipated and also has not been able to achieve desired results. Revisiting the threshold under Section 4 of the IBC to ₹1 lakh, as it was previously, might offer better protection to MSMEs.

Role of NCLT in Reviewing Resolution Plans: Presently, the National Company Law Tribunal (NCLT) is not empowered to amend the Resolution Plan and must refer any changes to the Committee of Creditors (CoC). The NCLT's limited role in amending Resolution Plans needs rethinking. This process needs re-evaluation to enhance efficiency. Also, the CoC's focus on reducing CIRP timelines and the overall efficiency of the process is crucial.

Cross-Border Insolvency and Creditor-Led Processes: Efforts are on for on improving cross-border insolvency frameworks and exploring creditor-led resolution processes.

Natural Justice and Litigation: It was emphasized that judicial bodies must adhere to the principles of natural justice which will ensure proper hearings in all litigations.

Creditor-in-Possession vs. Debtor-in-Control: Advocated for the creditor-in-possession model as a better approach under the IBC. However, also highlighted that the debtor-in-control model could potentially speed up the resolution process and be advantageous for both creditors and borrowers.

Time Value of Money: The importance of the CoC being mindful of the time value of money was stresses, which necessitates reducing timelines in the Corporate Insolvency Resolution Process (CIRP).

Dynamic Nature of IBC: IBC has undergone significant amendments and continues to evolve. It was mentioned that the IBC is a highly dynamic piece of legislation with numerous amendments by the Parliament and over 70 changes in IBBI Regulations. The jurisprudence around IBC is also continuously evolving.

IBC's Effectiveness: Affirmed that IBC is performing well and has established itself as the preferred mechanism for banks to address Non-Performing Assets (NPAs). It balances the interests of borrowers and creditors effectively and also has been effective in balancing the stakeholder interests.

Proposed Enhancements: It was suggested that the amendments should be brought to enable allow IBC to allow for multiple resolution plans for different assets, incorporate mediation and litigation processes to improve outcomes, and accelerate the resolution process.

B. Key Takeaways

- *Creditor in possession is a better deal under the IBC*
- *With the concerted efforts of gazettement, academicians, IPs, and other stakeholders, we will transform the IBC and make it all-inclusive.*
- *NCLT members should receive training on IBC provisions and the Companies Act, proposing a "Capsule Course" by institutions like the National Judicial Academy, Bhopal.*

C. Issues

Expediting Insolvency Processes: The Insolvency and Bankruptcy Code (IBC) was introduced with a focus on expediency, yet delays persist. To mitigate litigation in this process, streamlining

procedures, enhancing judicial infrastructure, and ensuring strict adherence to timelines are the crucial steps to be taken.

Effectiveness of IBC: Despite numerous laws over the years, IBC remains a crucial mechanism for debt recovery, however, there is a need for continuous improvement in the system. Whenever things become challenging, there is a change/ amendment in every law like Companies Act, SICA Act, RDDBI Act, then SARFAESI Act and many more laws that have been introduced.

Recent Amendments and Debates: Recent amendments to the IBC and ongoing debates about creditor-in-possession versus debtor-in-control models highlight the need for a balanced approach in insolvency resolution.

Supremacy of Laws: The debate over the superiority of IBC versus other laws, like the Prevention of Money Laundering Act (PMLA), always remains pertinent. It should be made very clear that IBC is supreme and will override all other laws for the time being in force.

D. Suggestions and Recommendations

Need for Regular Amendments: The Insolvency and Bankruptcy Code (IBC) has had a significant impact, evidenced by the withdrawal of around 38,000 petitions. Its influence begins even before the petition stage, prompting corporate debtors to explore various resolution methods. Information utilities play a crucial role in expediting litigation by providing essential evidence to adjudicating authorities, thus saving time. Continuous amendments are shaping the evolving landscape of this law.

The IBC remains crucial for two primary reasons: First, it offers an effective mechanism for banks to recover debts, surpassing other traditional channels. Second, by empowering creditors through the "creditor in possession" principle, it balances the interests of borrowers and creditors better. The decrease in NPAs turning from red to green in the 2023 banking report signifies improved recovery rates in India, with IBC emerging as the preferred recovery channel.

Enhanced Frameworks: The Ministry of Corporate Affairs (MCA) has proposed amendments to the Insolvency and Bankruptcy Code (IBC) through a Discussion Paper, advocating for public consultation. The Insolvency and Bankruptcy Board of India (IBBI) has formed a committee to explore a creditors-led resolution approach, promoting a debtor-in-control model where the company continues as a going concern.

This market-driven approach aims to maximize value through bilateral negotiations, potentially reducing timelines. Additional proposals include allowing multiple plans for different assets and introducing separate mechanisms for bid approval and distribution to preserve asset value. Mediation is also suggested to expedite the implementation of resolution plans.

Borrow Loan to Pay Loan: The Delhi High Court's judgment emphasized the Insolvency and Bankruptcy Code (IBC)'s supremacy in a case where provisions of the Prevention of Money Laundering Act (PMLA) conflicted with IBC. The Resolution Professional (RP) has the right to claim assets over those confiscated by the Enforcement Directorate (ED), asserting the primacy of IBC. Despite the appellate court dismissing the appeal, the matter is now pending before the Supreme Court in so many petitions which will likely to clarify and reaffirm the overarching authority of IBC over other laws in resolving corporate insolvencies. The economic reform which was brought by IBC have taught financial discipline to all the entrepreneurs. We may have to get rid of the culture of "borrow loan to pay loan".

III. Technical Session I: Building Insolvency and Restructuring Practice

Moderator

CA. Hemant Mehta

Speaker

Dr. Shardul S. Shroff, Founder and Executive Chairman, Shardul Amarchand Mangaldas & Co.

A. Deliberations/ Highlights of the Session

The session underscored the importance of balancing technical expertise with organizational practices in building a successful insolvency and restructuring practice. It highlighted critical issues and provided actionable suggestions to enhance the efficacy of insolvency resolution processes, aligning with both national and international standards.

Organization and Technical Expertise: Development of an effective insolvency and restructuring practice require both organizational strength and technical expertise.

Correlation Between Task and Liability: The stakes for a Resolution Professional (RP) handling large-scale insolvencies (e.g., ₹10,000 crore) should be aligned with the scale of their responsibility, emphasizing the need for clear accountability.

Secured Creditor Issue: The Supreme Court's classification of the Government as a "Secured Creditor" in the Waterfall Mechanism, despite its lack of actual security, is to be contested. The Government's statutory claims should not be equated with security interests. It was suggested that there is a need to review of this judgment.

Impact of Delays: Litigation delays the resolution processes, which can be costly and complex, often go unaccounted for. The need for accountability in such delays is crucial for minimizing hidden losses.

Law Evolution: The development of insolvency law should consider stakeholder perspectives and adapt to changes in the IBC's scope, both vertically (within sectors) and horizontally (across sectors).

B. Key Takeaways

- *As per the view given, it was stated that the Supreme Court's decision in the Rainbow case, arguing that the Government's status as a "Secured Operational Creditor" is a flawed judgment.*

C. Issues

Evolving Professions: The evolving nature of professions like law, accountancy, and roles such as Resolution Professionals or Valuers are driven by specialized knowledge and evolving market demands. Over the last few decades, the expectation was for these fields to adapt significantly, but perhaps not as drastically as they have. Concerns arise, particularly regarding the organizational security and professional liability of those entrusted with substantial responsibilities, such as handling large-scale insolvencies.

Establishing Robust Practice: The issue at hand revolves around the critical importance of establishing a robust practice focused on resolution and insolvency. Historically, this area was pivotal

due to the rights of secured creditors to maintain their interests outside of liquidation proceedings, particularly in realizing their security. This concept has evolved significantly, especially with the introduction of the Insolvency and Bankruptcy Code (IBC) in India, which recognizes the priority of creditors and the mechanism of relinquishing security.

Intersection of Public Law and Resolution: The issue revolves around the intersection of public law doctrines, such as Article 12 of the Indian Constitution, with the process of resolution, particularly in the selection of resolution applicants and the role of arbitrators. The challenge lies in reconciling private contract principles with the public interest and accountability when dealing with public assets, including debts of public banks. The major issue is that the resolution of companies must be completed in a time bound manner.

Balancing Stakeholder Interests: Another concern in the statute is Balancing the interest of the stakeholders including alteration in the order of priority payments of Government dues.

D. Suggestions and Recommendations

Professional Standards and Firm Organization: To address these issues, regulators should consider implementing professional indemnity requirements to safeguard against negligence or misconduct. There's a critical need for a structured approach in the organization of firms handling insolvency and restructuring. This includes adopting robust organizational methods, digitalizing processes, and ensuring high-quality client service standards. Collaboration between individuals, firms, and regulatory bodies is essential to establish frameworks that protect stakeholders and promote professional standards.

Moreover, given the liberalization since 1991, firms must adapt to a more open economy by structuring themselves effectively, regardless of their size or legal form, to meet the demands of a competitive market. Emphasizing systematic organization and technological integration will enhance service delivery and client satisfaction, fostering a more resilient and efficient professional environment.

It's a good move that IBBI is now allowing partners of the partnership firms to be a Resolution Professional, but it must move a limited liability formulation either as an LLP or Private limited company or even a Public limited company because these tasks are not small and they involved huge values.

Aligning with Global Practices: The suggestion stems from recognizing the global best practices in insolvency, which emphasize that relinquishment of security does not extinguish the charge but rather facilitates its transfer to proceeds from the sale of the secured property. This approach not only aligns with international standards but is crucial for attracting foreign investment and facilitating efficient resolution of distressed assets in India.

To avoid potential pitfalls, it's imperative for Indian regulators and tribunals to align their practices with established international norms. This alignment ensures consistency and predictability in how distressed assets are handled, which is essential for investor confidence and the overall health of the financial ecosystem.

Implementation of clear guidelines: Implementing clear guidelines and fostering a transparent regulatory environment will support the effective resolution of insolvency cases and promote India as an attractive destination for global capital. Insolvency practices are universal, spanning across

160 nations, each with its own specialized laws. India's evolving insolvency law transcends mere formulation; it aligns with global standards, reflecting a universal approach to legal principles.

Legal Framework and Accountability: The suggestion is to ensure a disciplined legal framework that upholds constitutional norms and public accountability in insolvency resolution processes. This involves transparent selection criteria for resolution applicants and robust oversight mechanisms to safeguard public funds and assets effectively.

IV. Technical Session II: The Future Dimensions of Valuation

Moderator

CA. Pramod Jain, Central Council Member, ICAI

Speaker

Mr. Nick Talbot, CEO International Valuation Standards Council

A. Deliberations/ Highlights of the Session

The session underscores the strong need for consistency in valuation processes across jurisdictions to boost investor confidence. Familiarity with both local and international standards is crucial for valuers.

Further, the increasing importance of sustainability disclosures will enhance the role of valuers in interpreting and applying these standards to valuations. The mission to evolve international valuation standards requires global expertise and collaboration, with India playing a pivotal role in shaping these standards.

Diverse Valuation Rules and Practices in India: India employs different valuation rules for various transactions, including Valuation Standards, Income Tax Rules, and Ind AS 113. This approach is rule-based rather than method-based.

If the Insolvency and Bankruptcy Board of India (IBBI) advocates for the Ministry of Finance to mandate valuations (even outside insolvency) to be performed by registered valuers, there is a potential for significant change that could alter the current valuation landscape in India.

Comparative International Approaches: The need to understand valuation methodologies in other jurisdictions was highlighted.

Need for Global Valuation Consistency: Without a unified valuation approach, multiple conflicting standards could emerge, undermining simplicity and confidence in valuations. It was mentioned that the mission of the International Valuation Standards Council (IVSC) is to harmonize global valuation standards. International Valuation Standards (IVS) have been developed with significant input from countries like the U.S. and India.

The session highlighted the importance of international collaboration in evolving valuation standards. India's substantial input into international standards reflects its central role in the global valuation community.

India's Expertise and Professionalism: India is recognized globally for its valuation expertise and professionalism. The Institute of Chartered Accountants of India (ICAI) is seen as a significant contributor to international valuation discussions and standards.

Importance of Consistency and Sustainability: Investors and financiers seek consistency in valuation processes to build confidence. Valuers must be knowledgeable not only about local standards but also about international valuation standards.

The rise of International Sustainability Standards will further emphasize the role of valuers in helping investors understand how sustainability requirements impact valuations.

B. Key Takeaways

- *India is well known for professionalism, and ICAI deserves to be part of the top table, providing valuation support to the rest of the world.*
- *Role of Valuers: With the advent of International Sustainability Standards, the role of the valuer is becoming increasingly important in interpreting how sustainability requirements affect valuations.*

C. Issues

Lack of Uniform Valuation Standards: Multiple national approaches could lead to lack of uniformity and confidence in valuations. The need for a consistent international standard is evident to ensure reliability and comparability.

Evolving Role of Valuers: As sustainability becomes a significant factor, valuers must adapt to new standards and provide insights on how these affect valuations.

D. Suggestions and Recommendations

Need for Consistency in Valuation Process: It is crucial for valuers to be well-versed in both local and International Valuation Standards. This knowledge ensures a standardized approach, enhancing reliability and comparability of valuations across different jurisdictions.

Enhanced Role of Valuers in International Sustainability Standards: Valuers need to help investors understand how Environmental, Social, and Governance (ESG) requirements impact valuations. This involves incorporating sustainability factors into valuation processes and providing clear, insightful disclosures related to these standards.

International Collaboration on Valuation Standards: Bring together international experts to develop and refine valuation standards, ensuring they evolve in alignment with global best practices and emerging trends.

V. Technical Session III: Innovations in Insolvency Resolution Mechanisms

Moderator

CA. Snehal Arvind Kamdar

Speaker

Shri Sumant Batra, President Insolvency Law Academy

A. Deliberations/ Highlights of the Session

The session underscored the pressing need to modernize insolvency frameworks to address contemporary challenges. Emphasizing innovation, flexibility, and the involvement of younger professionals will be key to evolving India's insolvency resolution mechanisms and maintaining global leadership in this critical area.

The session highlighted the necessity for a comprehensive overhaul of India's bankruptcy laws to meet contemporary challenges and seize opportunities for leadership in the global insolvency landscape. By addressing these issues through the proposed reforms, India can enhance its competitiveness and resilience in navigating future economic uncertainties. Overall, the suggestions put forth in the passage aim to modernize India's insolvency framework, making it more adaptive, inclusive of global advancements, and responsive to the needs of a dynamic economy. These reforms, if implemented effectively, could strengthen India's position as a leading jurisdiction for restructuring and insolvency, attracting international investment and fostering economic stability and growth.

India's Progress and Achievements: Praised India's rapid progress in insolvency law, highlighting that while countries like the UK, USA, Australia, and Singapore took decades to reach their current state, India achieved significant milestones in just 6-7 years and gained global recognition.

Identifying Misses and Proposed Reforms:

i. Major Misses:

- **BLRC 2.0:** Advocated for revisiting and updating the Insolvency Law with a new BLRC 2.0 to address the broader aspects not considered in 2014.
- **Modern Challenges:** Addressed the dramatic changes since the introduction of IBC and BLRC, such as climate change and artificial intelligence, which require updates to the insolvency framework.

ii. Micro Misses:

- **Mindset Shift:** Emphasized the need for a shift from viewing IBC as adversarial to embracing it as a non-adversarial law.
- **Default Management:** Highlighted the importance of detecting valuation deterioration early to ensure timely resolution.
- **Debtor-in-Possession Model:** Suggested a gradual shift towards debtor-in-possession regimes and adjustments to Section 29A to allow bona fide promoters to retain their enterprises.

- **Flexibility and Innovation:** Stressed the need for more flexible processes and avoiding blame on NCLT, advocating for solutions relatable to young professionals.

Inclusion of Young Professionals: The views and contributions of younger Chartered Accountants, lawyers, and researchers should be integrated into the development of new laws and regulations.

Challenges with Traditional Methods: Traditional insolvency methods are increasingly inadequate for modern complexities. They tend to be reactive, often leading to prolonged resolutions and diminished asset values. Traditional frameworks may not address the interconnectedness of businesses or technological advancements adequately, creating a disconnect between legal frameworks and practical business realities.

Need for Modernization: Modern businesses rely heavily on technology and digital infrastructure, which traditional insolvency laws may not fully address.

Also, there is a need for insolvency methods that can handle complex financial arrangements and diverse creditor interests.

B. Key Takeaways

- *Innovation is the key to unlock new possibilities.*
- *What we have achieved under IBC is unprecedented.*
- *Looking backwards makes us move forward.*
- *The youth of the country should have the vision of the country.*
- *The next decade is going to be the decade of the young.*

C. Issues

Inadequacy of Traditional Methods: The traditional methods of handling insolvency, which have been relied upon for decades, are increasingly inadequate in addressing the complexities of modern businesses. These methods often follow a reactive approach, triggered only after a company has already defaulted or faced financial distress. This reactive stance leads to prolonged resolution processes, during which the value of the distressed assets may significantly diminish, further complicating the recovery process for creditors and stakeholders alike. Moreover, traditional insolvency frameworks may not effectively address the interconnectedness of businesses in today's globalized economy, where companies operate across borders and within complex corporate structures.

Alignment with Technological Advancements: Traditional insolvency frameworks struggle to integrate with technological advancements and intricate financial structures, necessitating a review and reform these laws. In addition to these operational challenges, traditional insolvency methods may not sufficiently account for technological advancements and their impact on business operations. Modern businesses rely heavily on digital infrastructure, data analytics, and artificial intelligence, which traditional insolvency laws may not adequately address. As a result, there is a growing disconnect between the legal frameworks governing insolvency and the practical realities faced by contemporary businesses. This gap can hinder efficient resolution of insolvency cases and may limit the effectiveness of restructuring efforts aimed at salvaging viable businesses.

Technological and Financial Complexity: Furthermore, the increasing complexity of financial instruments and corporate structures poses challenges for traditional insolvency methods. These

methods often struggle to provide nuanced solutions that can accommodate intricate financial arrangements, diverse creditor interests, and the varied operational contexts of modern enterprises. As a consequence, there is a pressing need to revisit and reform traditional insolvency frameworks to ensure they are equipped to handle the multifaceted challenges posed by today's business environment effectively.

Globalization and Interconnectedness: The global nature of business today requires insolvency laws that can handle cross-border and interconnected corporate structures more effectively.

D. Suggestions and Recommendations

Forming BLRC-2: It underscores the necessity of forming the Bankruptcy Law Reforms Committee-2 (BLRC-2) to address critical gaps in insolvency law that previous iterations did not sufficiently cover. Despite the successes in corporate insolvency, there remains a significant void in addressing individual and cross-border insolvency issues, which are increasingly pertinent in today's globalized economy. This comprehensive review is crucial not only for adapting to modern economic dynamics but also for enhancing the efficacy of insolvency processes, ensuring they can effectively resolve financial distress.

To address gaps in the current insolvency laws, BLRC-2 to be established, particularly for individual and cross-border insolvency issues.

There is a recognized need to revisit and rectify loopholes within the current insolvency laws. The BLRC-2 should focus on correcting these deficiencies to improve the overall integrity and efficiency of the insolvency framework. Such revisions are essential to fostering a more robust and transparent system that inspires confidence in both domestic and international stakeholders.

Proactive Insolvency Approach: India's aspiration to become a global leader in restructuring and insolvency is underscored, necessitating a shift from a narrow focus on objectives to a more comprehensive vision that aligns with global best practices. The passage also advocates for a proactive approach to insolvency resolution, moving from a reactive default-based system to one that anticipates and prevents financial distress. It calls for reforms that empower creditors with options like debtor-in-possession or creditor-in-possession models, fostering trust and maximizing value retention in distressed enterprises.

Move from a reactive to a proactive approach, enabling early intervention and preventive measures to avoid financial distress.

Flexibility and Innovation: There is a strong call for flexibility in insolvency processes, moving away from a one-size-fits-all approach dictated by the court-driven corporate insolvency resolution process (CIRP). Introducing more options, such as enhanced versions of prepacks, allows for tailored solutions that can adapt to different circumstances and expedite resolutions. This flexibility is essential in promoting efficiency and reducing the economic impact of prolonged insolvency proceedings.

Additionally, there's a push for greater flexibility in insolvency processes, including enhanced pre-packaged insolvency arrangements, to expedite resolutions and minimize economic disruptions.

Forward Thinking Approach: Evolving global landscape, characterized by rapid technological advancements and environmental challenges like climate change, necessitates a forward-thinking approach to insolvency law. It is imperative to incorporate these factors into the restructuring

frameworks to ensure they remain relevant and effective in the face of future economic disruptions. Engaging younger generations in these discussions is also crucial, as they bring fresh perspectives on integrating technologies such as artificial intelligence into insolvency processes.

Adapting to Global Standards: Align with international best practices and innovate beyond current frameworks to strengthen India's position as a global leader in restructuring and insolvency. India's ambition to emerge as a global leader in restructuring and insolvency demands a visionary approach. This includes not only aligning with international best practices but also innovating beyond the current framework established by the Insolvency and Bankruptcy Code (IBC). The goal is to create a jurisdiction that is not only attractive for restructuring activities but also leads in setting new standards and practices globally.

VI. Technical Session IV: Crystal Ball Gazing - Global Developments and Future Trends in Insolvency & Restructuring

Moderator

CA. Rajan Wadhawan, Registered Valuer

Speakers

1. Ms. Sakshi Parihar, Senior Financial Policy Advisor, British High Commission, UKFCDO
2. Adv. Anirudh Krishnan, AK Law Chambers

A. Deliberations/ Highlights of the Session

The session highlighted the transformative potential of AI in insolvency and the importance of international collaboration between the UK and India. Addressing key issues such as contingent creditor claims, foreign creditor treatment, and group insolvency through improved regulatory frameworks and ADR mechanisms will be crucial for advancing the insolvency landscape. The focus on proactive strategies and technological advancements promises a more dynamic and effective approach to insolvency and restructuring in the future.

Anticipating regulatory frameworks and leveraging technological advancements are critical as we navigate evolving economic dynamics. The trajectory ahead suggests a pivotal role for proactive strategies, underpinned by AI and alternative capital, in reshaping India's insolvency landscape.

Past Achievements and Future Trends: Over the last five to seven years, significant progress has been made since the enactment of insolvency laws. Despite challenges such as NCLT constraints and procedural delays, promising developments lie ahead.

Reflecting on past incidents like the Yes Bank situation, regulatory intervention averted insolvency, facilitating creditor and investor engagement. Professional management steered the bank's remarkable turnaround, illustrating alternative strategies beyond NCLT recourse. This trend underscores a growing preference for pre-NCLT dispute resolution, emphasizing early stress identification through technology and AI-driven analytics.

The global economic shifts suggest a more conducive environment ahead. Progress in distress asset valuation hinges on proactive steps, potentially moving towards greater adaptability.

Role of Alternative Capital: Looking forward, the role of alternative capital, particularly in India, is poised to expand. Unlike current norms dominated by insolvency resolutions, parallels can be drawn with international models where private equity and other entities revitalize distressed assets, often leading to IPOs. This shift prompts considerations for service and EPC companies, where prolonged delays correlate with heightened value degradation.

Regulatory and Technological Adaptation: Future developments should focus on regulatory adaptations and leveraging technological advancements to address evolving economic dynamics. AI and alternative capital are likely to play crucial roles in shaping India's insolvency landscape.

AI's Integration: AI's integration at early stages and during revitalization phases could redefine market intelligence and strategic foresight.

Role of AI in Early Identification and Future Scenario Analysis: AI can significantly improve early detection of insolvency issues and enhance the marketing strategies for the Corporate Debtor (CD). Also, AI tools can help Resolution Applicants (RAs) predict future scenarios for both the company and its industry sector.

Timely intervention at the onset of debtor stress appears pivotal, preventing value erosion and fostering sustainable solutions.

Strengthening Insolvency Regimes and International Collaboration: The UK and India are working together to strengthen their insolvency ecosystems. The interlinkages between their legal systems provide a foundation for continued collaboration.

Addressing Contingent Creditors: The nominal value assigned to contingent creditor claims often does not reflect their actual value. Addressing this through Alternative Dispute Resolution (ADR) mechanisms, such as expert determination, could offer a solution.

Mediation and Delay Analysis: Mediation may be challenging due to the need for party consent. Expert determination and appointing delay analysts to assess responsibility for delays can help resolve disputes.

Foreign Creditors and Jurisdiction: There is a need to clarify how foreign creditors' claims and foreign court decisions are treated under the Insolvency and Bankruptcy Code (IBC).

Group Insolvency: Clear framework for group insolvency to handle complex cases involving multiple entities needs to be established.

Project-wise CIRP: Improvement in regulatory oversight for project-specific Corporate Insolvency Resolution Processes (CIRP) to ensure consistent implementation is the need of the hour.

B. Key Takeaways

- *Artificial Intelligence (AI) can be used for early identification of insolvency and also for better marketing of the CD.*
- *The issue of contingent creditors needs to be addressed. The notional value, which is sometimes one rupee, to the claims of contingent creditors is highly disturbing as in reality they are often huge amounts.*
- *The longer the delay, higher is the destruction in value for the service company.*
- *Optimist sees the donut; pessimist sees the hole in it. But without recognising and minimising the hole of the donut, the optimist cannot make the most of it*
- *It is better to be roughly right then to be precisely wrong*

C. Issues

Treatment of Foreign Creditors and Jurisdictional Issues: One pressing issue involves foreign creditors that are involved in litigation or arbitration outside India. The IBC's moratorium and clean slate provisions apply within India, but there is ambiguity regarding their applicability to foreign proceedings. Section 12 of the IBC, similar to provisions in the erstwhile SICA, does not explicitly extend the moratorium to foreign jurisdictions. This ambiguity can affect the enforceability of foreign awards against Indian corporate debtors with assets abroad.

Group Insolvency and Project-wise CIRP: The concept of group insolvency lacks a dedicated legal framework under current regulations, leading to ad hoc practices and inconsistent treatment across cases.

Regulatory Oversight in Project-specific CIRP: In the context of project-specific Corporate Insolvency Resolution Processes, particularly prevalent in sectors like construction, regulatory supervision is essential to ensure effective implementation and adherence to prescribed procedures. Clear guidelines and oversight mechanisms can mitigate ad hoc approaches and enhance the efficiency and fairness of project specific CIRPs.

Investment Opportunities: India's rapid economic growth and infrastructure investment needs present opportunities for UK investments in fintech, manufacturing, utilities, and sustainable development.

Strengthening Insolvency Frameworks: The IBC has improved ease of doing business and investor confidence. Continued enhancement of this framework and sharing best practices will further strengthen economic ties and resilience.

The current approach to adjudicating contingent creditor claims can be problematic, often leading to undervaluation. ADR mechanisms like expert determination could provide more accurate and fair resolutions.

Contingent Creditors: A significant challenge within the IBC framework pertains to claims of contingent creditors that require adjudication, a process often complex and time-consuming. The current timeframe of Corporate Insolvency Resolution Process (CIRP) is insufficient for proper adjudication, leading Resolution Professionals (RPs) to estimate claims on an ad hoc basis. This approach, where claims are assigned nominal values like Rs. 1 or Rs. 0, despite their potential legitimacy and high value, risks injustice to creditors.

D. Suggestions and Recommendations

Enhance AI Integration: Utilize AI for early identification of insolvency issues and improving strategic planning during insolvency proceedings.

Regulatory Clarity: Establishing a regulatory framework specifically addressing group insolvency would provide clarity and uniformity in handling complex insolvency scenarios involving multiple entities within a corporate group.

Strengthen Bilateral Ties: Focus on enhancing trade relations, investment opportunities, and collaborative efforts in key sectors between the UK and India. The relationship between the UK and India, as outlined by recent data and historical ties, presents several key issues and avenues for further development. Bilateral trade, valued at nearly 39 million pounds, highlights the economic interdependence between the two nations. The presence of over 950 Indian-owned companies in the UK and 600 UK companies in India underscores the substantial job creation potential generated by these investments, approximately supporting 700 thousand jobs. Moreover, India ranks as the UK's second-largest source of investments in terms of project numbers, indicating a robust flow of capital between the countries.

Cultural and linguistic bridges: Cultural and linguistic bridges further strengthen this relationship, with 1.8 million people of Indian origin contributing significantly to both nations' societies and

economies. The facilitation of visas for interns, students, and workers fosters greater educational and professional exchange, enhancing bilateral cooperation and understanding.

Financial services play a pivotal role, with UK exports to India in this sector nearly doubling from 170 million pounds in 2015 to 340 million pounds recently. As India emerges as one of the world's fastest-growing economies, substantial investment in infrastructure—estimated at 4.5 trillion dollars by 2040—is critical. This growth presents a significant opportunity for investment across various sectors, including fintech, manufacturing, utilities, and sustainable development, driven by domestic reforms that enhance business confidence.

The implementation of India's Insolvency and Bankruptcy Code in 2016 has been instrumental in bolstering the ease of doing business, promoting investor certainty, and stimulating innovation, investment, and growth. Strengthening this regulatory framework and sharing best practices, as highlighted during the UK-India financial dialogues, will further enhance economic dynamism and resilience.

To fully capitalize on the opportunities presented by their close economic ties, the UK and India should prioritize enhancing trade relations, promoting bilateral investments, fostering cultural exchanges, and collaborating in key sectors such as financial services, infrastructure development, and innovation. Continued focus on regulatory reforms, particularly in insolvency and ease of doing business, will be crucial in sustaining and expanding this fruitful partnership to mutual benefit.

Clear guidelines or amendments are necessary to clarify the scope of moratoriums in cross-border scenarios, potentially leveraging existing provisions under Sections 234 and 235 of the IBC, which require reciprocal arrangements with foreign jurisdictions.

Adopt ADR Mechanisms: Mechanisms such as Alternative Dispute Resolution (ADR) methods like mediation or expert determination should be considered. Expert determination, widely used abroad, involves specialized analysts assessing claims based on technical standards and data analysis, providing a more informed resolution than arbitrary nominal valuations.

Explore ADR methods like expert determination to provide fair adjudication of complex claims.

Improve Legal Frameworks: The Insolvency and Bankruptcy Code has been a massive success and while there is a view that the shock treatment provided by the inception of a creditor in control regime has drastically changed the system for the better. Addressal of issues related to contingent creditors, foreign creditors, group insolvency, and project specific CIRPs will enhance the effectiveness of the IBC.

Determination of Cause of delay: Using "Expert Determination" to evaluate the claims could be useful in resolving conflicts. Additionally, a "Delay Analyst" can be assigned to determine the cause of the delay.

VII. Technical Session V: Avoiding Value Destruction – Importance of Timeliness

Moderator

CA. Ravi Gwalani

Speakers

CA. Raghav Maheshwari, IBBI

CA. Jayesh Sanghrajka, Founding Partner, Incorp Restructuring Services LLP (IPE Entity)

A. Deliberations/ Highlights of the Session

The discussions underscore the need for reforms in insolvency resolution processes to address the critical issues of delays and inefficiencies. Key recommendations include enhancing procedural transparency, appointing competent professionals, and refining the legislative framework to improve the overall efficacy of insolvency proceedings. By implementing these suggestions, stakeholders can foster a more effective and investor-friendly environment, ultimately contributing to economic stability and growth.

Duration and Impact on Resolution Value: The direct correlation between the duration of the Corporate Insolvency Resolution Process (CIRP) and the value realized from resolution plans is evident from the data. CIRPs concluded within 400 days tend to realize approximately 40% of claims, a percentage that decreases to 38% when the process extends to 400-599 days, and further drops to 26% and 21%. This trend clearly illustrates how time negatively impacts the value of assets and the recovery of claims. Several factors contribute to this diminishing value over time.

The costs associated with the insolvency process rise with delays, encompassing both administrative and operational expenses. As these costs accumulate, the net value realized from the insolvency process diminishes. Hence, the interplay of deteriorating going concern value, increasing uncertainty, and rising costs underscores the critical need for timely resolution to maximize asset recovery and stakeholder value.

Milestone Achievement: The successful resolution of insolvency cases, totalling 1000 cases to date, hinges significantly on the Resolution Professional (RP) and their management of claims.

Delays and Challenges: Discussed delays from default to application filing, with an average delay of 501 days. Highlighted the need for faster intervention under the IBC compared to previous laws like SICA.

Acknowledged ongoing reforms and government initiatives to enhance the efficiency of the National Company Law Tribunal (NCLT) and address procedural delays.

Role of RPs and COC: The RP's domain knowledge, expertise, and the effectiveness of their team are crucial factors influencing the timeliness and outcome of proceedings. However, challenges such as delays are often attributed to procedural bottlenecks and the need for meticulous documentation of reasons for any delays. To expedite resolutions, it's imperative to appoint competent Resolution Applicants (RAs) who can actively engage and drive timely decision-making processes akin to a Committee of Creditors (COC). Despite legal and infrastructure challenges inherent in any legal framework, proactive action by RPs is essential to maintain momentum and ensure efficient resolution of insolvency cases.

Identified key factors affecting value: Going concern value of a business deteriorates as the insolvency process drags on. Maintaining operational stability becomes increasingly challenging, affecting employee retention, brand value, and customer loyalty. Uncertainty surrounding the resolution timeline exacerbates the situation; potential investors and suppliers may factor in this unpredictability, leading to a reduction in the perceived value of the business.

Addressing Delays: Discussed delays caused by government interactions, such as personal appearances and insufficient facilitation. Emphasized IBBI's efforts in sensitization and coordination with government departments. Mentioned regulatory reforms, including amendments to voting processes and valuation methodologies, aimed at reducing litigation and enhancing transparency.

Role of Interim Finance: Stressed the critical role of interim finance in maintaining projects as going concerns and meeting timelines.

B. Key Takeaways

- *We should be proud as a CA if we resolve. It's not just debt which we are resolving, we are giving employment, we are giving houses, we are giving future growth for that particular project, so all that also has to be factored.*

C. Issues

Duration and Impact on Resolution Value: The value realized from resolution plans decreases as the duration of the Corporate Insolvency Resolution Process (CIRP) increases. For instance, CIRPs completed within 400 days recover about 40% of claims, while those extending beyond 600 days recover as little as 21%.

Delays in Filing and Procedural Challenges: There are several critical issues surrounding the timelines involved in the insolvency resolution process, particularly focusing on delays from the point of default to the filing of the application. It's noted that in 3634 cases, there was an average delay of 501 days from the date of default to the application filing. This delay is significant because, under previous laws like SICA (Sick Industrial Companies Act), insolvency proceedings only commenced when a company's net worth had eroded by 50% or more, using a balance sheet test. The introduction of default under the Insolvency and Bankruptcy Code (IBC) was intended to identify early signs of insolvency based on cash flow tests, enabling quicker intervention and resolution.

Streamlining Processes: Despite this framework, delays persist, impacting the value of assets and the efficiency of resolution. The complexities faced by banks and financial creditors are acknowledged, but there is a call for introspection and improvement. Issues such as adjournments due to incomplete documentation or missing records further exacerbate these delays post-application filing. This situation highlights a clear area for improvement where streamlined processes and better adherence to timelines could significantly enhance the effectiveness of insolvency resolutions.

Reforms through Government initiatives: However, there is a positive note in recent years, with successful resolutions increasing—269 in 2023-2024 and 189 in 2022-2023—indicating progress amidst ongoing reforms. Government initiatives to reform the National Company Law Tribunal (NCLT) and enhance its capacity through new appointments and staff recruitment are steps in the right direction. Ultimately, stakeholders are working towards optimizing these timelines to foster a more efficient and effective insolvency resolution framework for all parties involved.

Current Problems: A significant portion of delays in insolvency proceedings can be attributed to litigation, which often arises from procedural issues and stakeholder dissatisfaction.

Dependency on Resolution Professionals: One of the primary issues identified is the dependency on RPs for managing the complexities of insolvency proceedings.

Interim Finance: The need for adequate interim finance to sustain the corporate debtor as a going concern during the resolution process emerges as a critical concern. Without timely financial support, the viability of initiating and sustaining projects within mandated timelines becomes challenging, impacting overall resolution outcomes.

D. Suggestions and Recommendations

Due Process and Enhance Stakeholders Engagement: Ensuring due process and enhancing stakeholder engagement. Adhering strictly to due process increases transparency throughout the insolvency proceedings, thereby addressing concerns and reducing disputes. When stakeholders feel their viewpoints are properly considered and responded to, litigation stemming from grievances is likely to diminish.

Improve Documentation and Appointment: Document all decisions and reasons for delays to foster accountability and reduce disputes.

Appointment of Competent RAs: Prioritizing the appointment of competent RAs who can lead COC meetings effectively and expedite decision-making processes is crucial. Their proactive management can mitigate delays and streamline the realization of corporate debtor value.

Infrastructure Improvements: In cases where a company has minimal assets or is not a viable going concern, early dissolution can be a prudent approach. During the initial Committee of Creditors (CoC) meeting, the CoC can decide to liquidate the company if it is deemed non-viable. In such scenarios, it is beneficial for all stakeholders to expedite the liquidation process. As professionals, the CoC can be advised to follow the relevant regulations and accelerate this process to maximize the value of any remaining assets. This approach will not only streamline proceedings but will also ensure that the assets are utilized effectively for value realization.

Legislative Framework Improvements: Improving the legislative framework to facilitate ease of doing business and ease of exiting investments is paramount. This includes ensuring robust legal infrastructure and timely resolution mechanisms that attract international investments by assuring investors of a reliable exit strategy and business-friendly environment in India. By implementing these measures, stakeholders, including chartered accountants and financial professionals, can contribute to fostering a conducive environment for investment and economic growth.

VIII. Technical Session VI: Addressing Accounting Dilemma – Implementation of Resolution Plan

Moderator

CA. Atul Rajwadkar

Speaker

CA. Amarjit Chopra
Past President, ICAI

A. Deliberations/ Highlights of the Session

The session highlighted the complex accounting dilemmas faced by RPs during insolvency proceedings. Key issues include the need for legal synchronization, improved auditing practices, and better access to financial records. Addressing these challenges through legislative alignment and enhanced audit capabilities will strengthen the resolution process, improve transparency, and ensure that financial reporting remains accurate and reliable.

It was also discussed that in most of the cases, the companies gave loans to their associates and subsidiaries without disclosing that these are related parties, and when even the Auditor was not able to make out that these were related parties, then how can a RP do it. The Auditors of the company giving loans are asked to explain how the loans were used and not the Companies taking these loans.

Addressing the key issues through legislative harmonization, enhanced audit practices, and improved access to information would alleviate the burdens faced by RPs. These measures would not only strengthen the resolution process but also uphold transparency and accountability, ultimately benefiting all stakeholders involved in insolvency proceedings under the IBC.

Company's Going Concern Issues: Highlighted that companies enter into resolution under IBC often because early signs of their non-viability were not detected in time. A Company gets into resolution because at the right time no-one pointed out that it is no longer a going concern.

Challenges for Resolution Professionals (RPs): The role of a Resolution Professional (RP) in insolvency proceedings is fraught with challenges, particularly when managing accounts and financial discrepancies. The companies entering the Insolvency and Bankruptcy Code (IBC) often exhibit severe issues such as fund diversion, fraud, missing inventory, and inflated financial statements. These complications can significantly impede the resolution process and often highlight systemic issues that could have been identified earlier if the company was not a going concern.

Auditor Appointments: The kinds of Auditors which are required to be appointed for transactional audit are not appointed as the banks are not willing to pay. This gap in necessary auditing, hampers the thorough examination of financial records and related-party transactions.

Accounting Challenges: Addressed the difficulty in managing and valuing various financial elements, such as debtors, investments, and inventories. These issues complicate the process of providing a true and fair view of the company's financial situation.

Valuation and True and Fair View: One of the biggest challenges is giving an opinion on true and fair view even in case of a healthy company is challenging and when it comes to a company under

IBC, how can one give true and fair view and this is the challenge which we are going to face in future.

B. Key Takeaways

- *The kinds of Auditors that are required to be appointed for transactional audit are not appointed as the banks are not willing to pay.*

C. Issues

Challenges to RPs: The role of a Resolution Professional (RP) in managing companies under the Insolvency and Bankruptcy Code (IBC) is riddled with daunting challenges, especially concerning financial accounts. Companies entering IBC often present serious issues such as fund diversion, fraud, missing inventory, or inflated financial statements.

Early Identification: Timely identification of these problems as indicators of a company's non-viability could potentially hasten the resolution process.

Additional Complications in Real Estate Sector: Real estate companies, in particular, face contingencies such as disputes between contractors and owners. These disputes often involve unapproved work or changes to plans, posing disclosure challenges for RPs. Determining whether these contingencies constitute contingent or certain liabilities is crucial yet difficult. Moreover, accurately valuing these liabilities remains a persistent issue for RPs, further complicating the resolution process in the real estate sector.

Auditing and Transparency: The appointment of auditors for comprehensive transaction audits is critical. Without adequate auditing, uncovering preferential payments and fraudulent activities becomes difficult.

Accounting Challenges: There are difficulties in managing and valuing various financial elements, such as debtors, investments, and inventories. These issues complicate the process of providing a true and fair view of the company's financial situation.

Lack of Synchronisation of Laws: The lack of synchronization among Income Tax law, Company law, and IBC regulations compounds these challenges. The discrepancies between these laws create uncertainties regarding the treatment of losses, disclosure requirements, and other critical aspects, significantly complicating the RP's responsibilities, particularly in managing accounting issues.

D. Suggestions and Recommendations

Harmonization of Legal Frameworks: It is imperative to harmonize the various legal frameworks governing insolvency and taxation. Synchronizing Income Tax law, Company law, and IBC regulations would provide clarity and consistency in managing financial issues during insolvency proceedings. This alignment would facilitate smoother compliance, improve transparency, and streamline the resolution process for RPs.

Enhanced Transaction Audits: Enhancing the capability to conduct comprehensive transaction audits is also essential. Appointing qualified auditors capable of uncovering preferential payments, undervalued transactions, and fraudulent activities would significantly benefit creditors and stakeholders.

Access to Accurate Records: Establish mechanisms to obtain critical information, especially in cases where key individuals such as promoters or CFOs are unavailable. Access to accurate records and the ability to conduct thorough forensic audits are vital for addressing fraudulent transactions and ensuring the integrity of financial reporting during insolvency.

IX. Technical Session VII: Beyond Revival: An Environmental Perspective

Moderator

CA. Dhawal Shah

Speaker

Shri Amit Sachdeva, Gandhian, Constitutional Lawyer (known as the CSR Man of India)

A. Deliberations/ Highlights of the Session

The session emphasized the need for integrating environmental and ethical considerations into the insolvency framework. The traditional profit-centric model should evolve to include sustainability aspects. By making these elements mandatory and providing incentives, the insolvency process can better align with modern business and ethical standards, ultimately contributing to a more sustainable and equitable business environment.

Mandatory Inclusion: For effective change, including environmental and ethical considerations must be made mandatory. Without such requirements, businesses will continue to prioritize profit over sustainability.

Ethics as Substance of Governance: Ethics is not only a governance issue but also critical for the overall well-being of society. It was discussed that whether ethics should be considered as a core component of governance and if it can serve as a foundation for a more sustainable and responsible business environment.

Environmental Stakeholder Equality: Article 14 of the Constitution guarantees equality, which extends to the environment as a stakeholder. This principle implies that the environment should be considered equally in all regulatory and legal frameworks.

Integration of Sustainability: Insolvency processes should integrate sustainability principles. Currently, the Insolvency and Bankruptcy Code (IBC) focuses primarily on financial profit and lacks provisions for environmental considerations, despite its powerful position over other laws. The focus should shift from mere compliance to a broader consideration of environmental and ethical dimensions.

Extreme Weather Conditions and Lack of Response: The increasing frequency of extreme weather events such as heavy rains and severe heatwaves highlights the urgent need for environmental awareness and action. There is a significant delay in addressing these issues despite their severe impacts.

Evolving Business Doctrine: The traditional notion that "business is for profit" is outdated. There is a pressing need to incorporate environmental and social aspects into business sustainability strategies.

ESG Mandates and Disparities: While SEBI mandates listed companies to disclose Environmental, Social, and Governance (ESG) investments, this requirement does not extend to non-listed entities. The developed countries, such as the USA and UK, have adopted comprehensive ESG models, suggesting a need for similar practices globally.

Incentives for ESG Implementation: Corporates should be provided with tax rebates and other

incentives to adopt ESG norms. Stakeholders also need to be educated on the ethical dimensions of these issues.

B. Key Takeaways

- *Business is for profit" is an old doctrine. We should include environmental and social aspects in sustainability.*

C. Issues

Mandatory Considerations: There is a need to make environmental and ethical considerations mandatory in insolvency and business operations. This inclusion would ensure that all the stakeholders are equally considered, and businesses adhere to sustainable practices.

Ethics and Governance: The session discussed whether ethics should be a fundamental element of governance, rather than just an ancillary consideration. The moral aspect of business and insolvency should be integrated into legal frameworks and operational strategies.

D. Suggestions and Recommendations

Sensitize on Ethical Issues: There should be a concerted effort to sensitize stakeholders about ethical issues. Strengthening moral values is crucial for reducing insolvency cases, as many are caused by preventable issues rather than natural disasters.

Incorporate Environmental Aspects: Government need to amend Insolvency laws to include environmental and ethical considerations. This would ensure that business practices are aligned with sustainability goals and societal well-being.

Incentives for ESG Compliance: Tax rebates and other incentives to be provided to encourage businesses to adopt ESG norms. Additionally, Stakeholder education to be enhanced on the importance of ESG for ethical and sustainable business practices.

X. Technical Session VIII: Digitalisation of the IBC Ecosystem

Moderator

CA. Durgesh Kumar Kabra, Vice Chairman, I & VSB, ICAI

Speaker

Shri Sandip Garg, Whole Time Member, IBBI

A. Deliberations/ Highlights of the Session

The session underscored the critical need for an integrated digital platform to enhance the efficiency and effectiveness of the IBC ecosystem. By addressing current challenges and implementing comprehensive digital solutions, stakeholders can benefit from streamlined communication, better data management, and a more efficient insolvency resolution process. The emphasis on training and complete registration will be key to the successful adoption of the new digital system.

The Information Utility (IU) is a key component of the Insolvency and Bankruptcy Code (IBC). However, a significant challenge remains in ensuring effective communication with debtors and other stakeholders involved in the IBC process. For the IU to function effectively, it is crucial that all relevant stakeholders such as creditors, debtors, and insolvency professionals, are registered on the platform. This registration will ensure that communications are directed to the correct entities, thereby reducing errors and inefficiencies. A major issue affecting stakeholders is the management of Claims. By registering stakeholders and digitizing claim information on the IU platform, it becomes easier to track and manage claims, making communication more direct and efficient.

Information Utility: Discussed the need for effective communication through the Information Utility (IU) system. Ensuring all relevant entities are registered on the platform is crucial for accurate and efficient communication. The goal is to streamline claims and other processes to provide a clearer and faster resolution.

Digital Infrastructure: Digital infrastructure is being designed by the IBBI, consisting of a detailed web portal and an information utility system designed to support the insolvency resolution process by guaranteeing openness and effectiveness in sharing information. He stressed the importance of ensuring that all stakeholders benefit from the digitalisation of the IBC ecosystem. This involves making sure that the systems are easy to use, available to all, and able to meet the various requirements of all parties involved, such as insolvency experts, creditors, and debtors.

Electronic vs Manual: The submission or filing of complaints, applications, claims, etc. or any other record is electronic but the way it is dealt with is still manual.

Digital Information Management: It was emphasized that the transition to digital formats for all information, including claims and court filings, will improve speed and clarity, making the resolution process more efficient.

Disintegrated IT Platforms: Major challenge for insolvency professionals and the IBC ecosystem is the fragmented nature of the existing IT platforms, which hampers efficiency and coordination.

Integrated Platform Development: There is an ongoing effort to develop an integrated IT platform by IBBI to enhance communication and coordination among stakeholders and insolvency professionals.

Digital Infrastructure by IBBI: An update on IBBI's digital infrastructure was provided, including a detailed web portal and an information utility system designed to support the insolvency resolution process by ensuring transparency and effective information sharing.

Stakeholder Inclusivity: He emphasized the importance of ensuring that the digital systems are user-friendly and accessible to all stakeholders, including insolvency experts, creditors, and debtors.

Registration and Authentication: Efforts are being made to get users registered on the platform for accurate and effective communication. This includes authenticating claimants to facilitate easier and direct communication.

B. Key Takeaways

- *If we will not use technology, we will be left behind*
- *It is the beauty of the code that it has tried to balance all the stakeholders*

C. Issues

Communication Challenges due to Incomplete Registration: Effective communication with the right entities is challenging when all the relevant parties are not registered on the Information Utility (IU) platform, and when records are incomplete. Without comprehensive registration and accurate data, it is difficult to ensure that communications reach the correct individuals or entities, which can lead to inefficiencies and potential errors in the insolvency process.

Disintegrated IT Platforms: Major challenge for insolvency professionals and the IBC ecosystem is the fragmented nature of the existing IT platforms, which hampers efficiency and coordination.

Inclusion of Personal Guarantors in the System: Does the IU system also include data on personal guarantors? This is a crucial question because obtaining information on personal guarantors can be particularly difficult. If the IU system does not encompass data related to personal guarantors, it could create additional challenges in managing and communicating with all relevant parties involved in insolvency proceedings.

D. Suggestions and Recommendations

Operationalizing Digital Systems: Once the digital system is fully operational, it is expected to cover all aspects of the Corporate Insolvency Resolution Process (CIRP). This comprehensive integration will enhance efficiency and streamline operations.

Stakeholder Training: To ensure smooth implementation and adoption of the new system, training sessions should be planned for insolvency professionals, valuers, and other stakeholders. This will help in familiarizing them with the new platform and addressing any concerns.

Addressing Data Gaps: Efforts should be made to ensure that all relevant data, including that for personal guarantors, is included in the system. This will help in overcoming challenges related to data access and management.

XI. Panel Discussion II: Guide to Effective Insolvency Resolution – Voice of Creditors

Moderator

CA. Raghvendra Goel

Speakers

1. Shri Kshitij Mohan, DMD (SARG), State Bank of India
2. Shri Rakesh Grover, CGM, Punjab National Bank
3. Shri Sunil Pant, Ex CGM, Financial Control, SBI's Corporate Centre

A. Deliberations/ Highlights of the Session

The Committee of Creditors (CoC) plays a pivotal role throughout the insolvency process. Despite challenges such as extended timelines and declining recovery rates, the IBC framework has proven beneficial in many cases. Continuous review and refinement, along with improved stakeholder engagement and transparency, are essential for optimizing the insolvency resolution process and achieving better outcomes for all parties involved.

Deliberating on the role of CoC fosters a deeper understanding of its impact on the insolvency proceedings. It allows professionals to explore how CoC decisions influence the resolution process, ensuring transparency and efficiency.

For prospective investors, insights into CoC operations provide clarity on decision-making frameworks and risk assessments within distressed companies. Understanding the CoC's role can guide strategic investment decisions, enhancing due diligence and risk management practices. Ultimately, open deliberations on CoC underscore its critical importance in insolvency proceedings, promoting informed practices and fostering trust among stakeholders.

Importance of IBC: Insolvency and Bankruptcy Code (IBC) provides a robust framework/ mechanism for resolution and recovery. It facilitates the running of a Corporate Debtor (CD) as a Going Concern (GC), which benefits all the Stakeholders.

Success Story: Essar Steel and the Committee of Creditors (CoC): The resolution of Essar Steels, where SBI led the Committee of Creditors (CoC), exemplifies one of the most successful outcomes under the Insolvency and Bankruptcy Code (IBC). This case exemplifies one of the most successful outcomes under the IBC, with lenders recovering approximately 90% of the outstanding dues. This success highlights the effectiveness of the IBC in facilitating robust resolutions and recoveries.

Limitations of Pre-IBC Mechanisms: Before the IBC's introduction in 2015, mechanisms such as the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act were inadequate for selling distressed companies as going concerns. The challenge was evident when new management would acquire a company under distress, often resulting in a loss of corporate assets.

Empowering Corporate Insolvency Resolution Process (CIRP): The introduction of Corporate Insolvency Resolution Process (CIRP) empowered independent professionals to take charge, ensuring that the company continues as a going concern. This approach does not only benefit creditors but also safeguards the interests of employees, government, and the broader ecosystem associated with the company.

Ongoing Evolution of the IBC: Despite its successes, the IBC continues to evolve even after 8-9 years of implementation. Some provisions of the Code require reconsideration based on court judgments and practical experiences. This ongoing evolution presents an opportunity to enhance the effectiveness of the law further.

Continuous Improvement Required: While the IBC has proven to be a beneficial statute, continuous improvements are essential. Active consideration and deliberation are necessary to refine existing provisions and potentially rewrite certain aspects to better align with changing business landscapes and legal interpretations. This approach will ensure that the IBC continues to positively impact corporate resolution and recovery processes in India.

Role of the Committee of Creditors (CoC): The CoC is critical in the insolvency process and drives decisions, including the appointment of Resolution Professionals (RPs) and resolution plans. However, the CoC faces challenges such as conflicts of interest and varying creditor priorities.

CoC Meetings: Highlighted the challenges in CoC meetings, particularly regarding the distribution of proceeds among creditors. Suggested establishing clear policies for RP appointments and fostering open dialogue to resolve conflicts and ensure fair distribution.

Issues with Resolution Timelines: The resolution period has extended from the initial 180 days to a maximum of 330 days, with some cases extending up to 900 days. This delay impacts the efficiency of the resolution process.

Declining Recovery Rates: Recovery rates have declined from 43% to 32%, raising concerns about the effectiveness of the IBC in delivering satisfactory outcomes for creditors.

Role of Resolution Professionals (RPs): RPs need to possess not only accounting expertise but also industry knowledge and market linkages. Trust between the CoC and RP is essential for effective resolution.

Need for a Code of Conduct: A Code of Conduct for CoCs and all stakeholders is seen as beneficial, but it should be developed gradually to ensure its effectiveness.

Effective Resolution: The importance of swift resolutions within the 330-day timeframe to achieve higher valuations was emphasised. SBI's role in successful resolutions like Essar Steels, was cited, highlighting the benefits of the IBC framework while acknowledging the need for ongoing improvements.

Going Concern: Stressed the significance of keeping businesses as going concerns to benefit all stakeholders, including employees and vendors.

Joint Lenders Meetings: Advocated for effective use of Joint Lenders Meetings (JLMs) to address conflicts and build consensus among creditors.

Review of IBC: Comprehensive review of the IBC is required due to extended resolution timelines and declining recovery rates. Need for clearer guidelines for RPs and better balance among creditor interests has been emphasised.

B. Key Takeaways

- *Code of Conduct on CoC cannot be imposed, it should be developed gradually.*

- *The resolution of Essar Steels exemplifies one of the most successful outcomes under the IBC, with lenders recovering approximately 90% of the outstanding dues.*

C. Issues

Challenges in Appointing the Resolution Professional (RP): One of the primary challenges in CoC meetings is the appointment of the resolution professional (RP). Lenders often prefer an RP who aligns with their interests, which can lead to conflicts among CoC members. Disagreements over the RP's appointment can delay the resolution process and delay collective decision-making, affecting the overall efficiency of the insolvency proceedings.

Distribution of Proceeds Among Creditors: Furthermore, CoC meetings address the distribution of proceeds from resolution plans among various categories of creditors—secured lenders, unsecured lenders, and operational creditors. Each category has different priorities and expectations regarding their share of the proceeds, which can complicate negotiations and make it challenging to build consensus within the CoC.

Extended Timelines and Declining Recovery Rates: Resolution timelines under the IBC have significantly extended beyond the initially stipulated periods, with some cases extending for over 900 days. This protracted duration has raised concerns about the efficiency of the process. Furthermore, the recovery rate for creditors has declined from 43% to 32%, raising concerns about the effectiveness of the resolution process. These trends suggest that the IBC may require a comprehensive review to address these issues and refine the process.

Challenges of the Committee of Creditors (CoC): The Insolvency and Bankruptcy Code (IBC) was introduced to improve both the ease of doing business and the ease of exit for businesses in India, addressing concerns about low global ratings and inefficient business exits. Initially, the IBC aimed to restore economic value and facilitate orderly exits. However, the role of the Committee of Creditors (CoC) has proven pivotal, given its significant influence on the resolution process. Despite its importance, the CoC faces challenges, including conflicts of interest among financial and operational creditors, and differing views on resolution plans. Additionally, the evolving approach to resolution outcomes has introduced imbalances, necessitating ongoing adjustments and potential confusion.

Challenges in Maintaining Going Concern: The biggest challenge is maintaining the company as a going concern during the resolution process. CIRP provides significant empowerment in this regard, but there are ongoing issues with timelines and effectiveness.

D. Suggestions and Recommendations

Need for Comprehensive Review: The trends of delayed timelines have highlighted the need for a comprehensive review of the IBC to address the issues associated with extended timelines and declining recovery rates. Refining the process to enhance efficiency and effectiveness is crucial for improving the outcomes of insolvency proceedings and ensuring that the IBC continues to meet its objectives of facilitating business exits and restoring economic value.

Also, it is important to incorporate insights from insolvency professionals with extensive experience. This review should aim to rectify existing imbalances, clarify procedural ambiguities, and ensure that the IBC meets its objectives of efficient resolution and recovery while adapting to evolving business needs and legal standards.

Mitigating Conflicts in RP Appointments: To address conflicts over the appointment of resolution professionals (RPs), it is beneficial to establish clear policies within participating banks or consortiums. These policies could specify that the decision regarding the RP aligns with the choice of the lead bank in consortium scenarios. In cases of multiple banking arrangements, adhering to the majority lender's choice can help prevent disputes and streamline the appointment process. Implementing such structured frameworks enhances cooperation among CoC members and reduces delays in the resolution process.

Ensuring Inclusive and Equitable Discussions: During CoC meetings, it is essential to ensure that discussions are inclusive and focused on the equitable distribution of proceeds from resolution plans. Developing a transparent framework that considers the interests of all stakeholders—secured and unsecured creditors, operational creditors, employees, and government entities—is crucial. Emphasizing the importance of maintaining the company as a going concern helps safeguard the broader interests of the ecosystem. Encouraging open dialogue and collaboration among CoC members fosters trust and facilitates smoother decision-making processes.

Utilizing Joint Lenders Meetings: Utilize joint lenders meetings effectively as platforms for addressing conflicting issues and fostering consensus. Approach discussions with a spirit of transparency and mutual understanding, prioritizing collective interests over individual agendas. By aligning efforts towards preserving the company's operations and ensuring fair outcomes for all stakeholders, CoC meetings can effectively resolve complex issues and contribute to successful corporate resolutions under the insolvency framework.

Enhance Framework for Balancing Stakeholder Interests: Enhance the existing framework to better balance the interests of financial and operational creditors. This enhancement should aim to address disparities and ensure that all parties, including secured and unsecured creditors, operational creditors, employees, and government entities, receive equitable consideration.

Strict Timelines and declining recovery rates: Additionally, address the issues arising from extended resolution timelines by implementing stricter deadlines and monitoring mechanisms to prevent undue delays. Evaluate the factors contributing to the declining recovery rates and explore adjustments to improve the overall effectiveness of the resolution process.

Code of Conduct: While a Code of Conduct is seen as beneficial, it should be developed gradually for CoCs and all stakeholders, focusing on transparency, efficiency and cooperation.

Training and Senior Officials: Deploy senior-level, trained officials in CoC meetings to ensure active participation and effective decision-making.

XII. Panel Discussion III: The Role of ADR in Insolvency Resolution

Moderator

Shri Pulkit Deora

Speakers

1. Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Judicial Member National Company Law Tribunal, Hyderabad
2. Mr. Alexander Lawrence Yeo, Partner, Allen & Gledhill LLP, Singapore
3. Shri NPS Chawla, Co-Founder and Joint Managing Partner, Aekom Legal

A. Deliberations/ Highlights of the Session

The Insolvency and Bankruptcy Code (IBC) outlines clear criteria for insolvency resolution. It specifies that for an application by financial creditors, there must be evidence of both debt and default for the application to be admitted, and this decision must be made within 14 days. Similarly, for operational creditors, the existence of debt and default must be demonstrated, and any pre-existing disputes must be reviewed. However, while the IBC sets these parameters, it does not explicitly provide for the use of Alternative Dispute Resolution (ADR) mechanisms like mediation or arbitration.

The discussion underscored the potential for ADR to improve insolvency resolution processes. Although the current legal framework under the IBC lacks explicit provisions for ADR, there is a call for experimentation with mediation to address the significant backlog of cases. International examples, such as Singapore's use of ADR, demonstrate its benefits in facilitating settlements and enhancing efficiency. Suggestions included integrating ADR at various stages of insolvency, creating a structured framework, and increasing awareness among professionals. Challenges specific to India, such as government claims and the unfamiliarity with mediation, were also discussed, with recommendations for including mediation clauses in contracts and advocating for broader adoption of ADR.

The session provided valuable insights into the role of ADR in insolvency resolution and laid the groundwork for further exploration and implementation of ADR mechanisms in India's insolvency framework.

Supreme Court Decision and ADR: In a notable case involving Prajay Holdings Private Limited and White Stock Limited, two related legal proceedings were in play: one under Section 241 of the Companies Act, 2013, alleging oppression and mismanagement, and another under Section 7 of the IBC for debt recovery. Initially, mediation was suggested for the Companies Act case, while the IBC case was filed subsequently. If the application under Section 7 of the IBC is admitted, a moratorium would be imposed, potentially halting any settlement achieved through mediation. This situation was brought before the National Company Law Appellate Tribunal (NCLAT), which decided that tribunals should not compel settlements but focus on adjudication. The matter was subsequently appealed to the Supreme Court, which did not specifically address this issue, leaving the question open for further consideration by the NCLAT.

Creation of ADR Framework: Currently, there are over 23,000 cases pending in National Company Law Tribunals (NCLTs), with more than 13,000 under the IBC. With only 16 NCLTs handling

these cases, clearing the backlog is a formidable task. Countries like the U.S., UK, and Italy have successfully integrated mediation into their insolvency processes, and India has implemented pre-institution mediation in commercial courts. Given the growing number of cases and the need for timely resolution, there is a strong case for incorporating mediation into the IBC process. Recent developments, such as the Government of India's push for mandatory mediation in certain financial disputes, indicate a shift towards embracing ADR methods.

Lack of Enabling provisions in IBC: While the IBC does not currently provide for ADR explicitly, provisions related to personal guarantors suggest a potential for ADR in future reforms. Exploring and advocating for mediation could address the backlog and improve the resolution process.

Enabling Provisions for ADR in Singapore Law: Singapore is a strong advocate of mediation, employing general provisions applicable to various civil proceedings, including restructuring and insolvency. The Mediation Act in Singapore primarily defines mediation parameters, ensuring confidentiality and giving courts the authority to oversee proceedings. While mediation is encouraged, the court's stay on proceedings is limited to maintain efficiency.

Incentives to engage in ADR: The most robust rules favoring mediation are found in Singapore's Civil Procedure Rules, which mandate that parties engaged in disputes must consider Alternative Dispute Resolution (ADR), including mediation, negotiation, or neutral evaluation. Parties are required to declare at the initial case conference whether ADR has been considered. Failure to attempt ADR may result in cost consequences, providing an incentive to engage in mediation and potentially saving costs and time. This system ensures that parties are encouraged to explore mediation, which can offer innovative solutions beyond traditional court judgments.

Introduction of Section 12A: In India, the introduction of Section 12A of the Insolvency and Bankruptcy Code (IBC) marked a significant shift, allowing for the withdrawal of insolvency applications under certain conditions. This provision came after a legal debate and was influenced by the Supreme Court's direction in the Uttara Foods case, highlighting the need for such measures.

Integration of Mediation in Insolvency framework: Mediation could be integrated into various stages of the insolvency process. For example, mediation before the initiation of proceedings (pre-institution) could help resolve issues early on. Post-institution but pre-commencement scenarios, where mediation might be beneficial but faces risks, should have specific timelines and automatic termination clauses. Post-commencement mediation is more complex but could address inter-creditor disputes effectively. Finally, post-approval of resolution plans could benefit from mediation to resolve implementation issues.

Importance of Mediation and Structured Framework: Given the multinational nature of many restructurings, ADR is crucial. Informal exercise, where companies and creditors negotiate with third-party assistance, often require mediation to align all parties. For example, in cases involving cryptocurrency companies with commingled assets, ADR and substantive consolidation have been used to resolve complex disputes and achieve equitable restructuring outcomes. To facilitate this, India might need a structured framework, including IBBI rules, dedicated secretariats in NCLTs, and a pool of mediators, to effectively integrate ADR into the insolvency resolution process.

B. Key Takeaways

- *Mediation is firstly cost-effective, secondly, it consumes less time than arbitration because*

against an award of the arbitrator there lies an appeal. One can go up to the Hon'ble Supreme Court but mediation, it ends there, and it results in a form of finality rather.

- *ADR can also work in case of Government claims. The Tax Commissioners should be convinced that instead of getting zero, you should accept what is being offered.*

C. Issues

Absence of Enabling Provisions for ADR in Insolvency Cases: Although the IBC does not explicitly provide for ADR, it also does not prohibit it. In an experimental case where a matter was referred to mediation, only for the NCLAT to overturn this decision, with the Supreme Court leaving the issue unresolved. This highlighted the need for further experimentation with ADR to manage the backlog of insolvency cases, drawing on international practices and the potential benefits of mediation.

Inconsistencies in Legal and Regulatory Frameworks: Different jurisdictions have varying levels of support and frameworks for ADR. There is a lack of harmonization and consistency across legal systems that impacts broader adoption and effectiveness.

Complexity of Disputes: Insolvency cases often involve intricate financial and legal issues that may be challenging to resolve through mediation or arbitration. Specialized expertise and tailored approaches may be necessary.

Challenges and Opportunities: As on date there are challenges and issues like reluctance of the Government in using ADR as a mechanism therefore there is a need for greater awareness and understanding of mediation among professionals.

Lack of Awareness: Many stakeholders, including businesses, legal professionals, and even judges, may not fully understand the benefits and processes of ADR, leading to underutilization or skepticism.

Role of financial Advisor to navigate Informal Workouts: Restructuring processes often involve multinational elements, making Alternative Dispute Resolution (ADR) essential for managing these complexities. In international restructurings, ADR helps address the diverse legal and cultural challenges that arise. It also simplifies inter-creditor agreements, making negotiations smoother and more effective. During informal workouts, where a company negotiates with its creditors, disagreements can emerge. An independent financial advisor plays a crucial role in facilitating the process and aligning the interests of all parties. When creditors are at an impasse, a third-party mediator can bridge gaps and help achieve a mutually acceptable resolution. The key challenge for financial advisors is to navigate these informal workouts and ADR processes effectively, ensuring that all parties come to a satisfactory agreement.

D. Suggestions and Recommendations

Need for Structured Framework: There is a need for a structured ADR framework supported by training and dedicated resources.

Avoidance Transactions: Insolvency practitioners, such as liquidators, may use ADR to resolve disputes over avoidance transactions, undervalued transactions, unfair preferences, and fraudulent transactions.

Regulatory Encouragement: Regulatory bodies such as the Reserve Bank of India (RBI) or other relevant authorities could mandate mediation in certain disputes or incorporate it into loan and contract documents.

Amendment to Section 53 of the IBC: Section 53 of the Insolvency and Bankruptcy Code (IBC) outlines the waterfall mechanism for the distribution of assets. It may be beneficial to amend this section to provide incentives for parties who settle through ADR, placing them in a more favorable position within the waterfall mechanism, enhancing its role in the insolvency resolution process.

Integration with Existing Laws: Government should ensure that ADR mechanisms are seamlessly integrated with existing bankruptcy and insolvency laws without creating conflicts or confusion.

ADR Clauses in Loan Documents: Loan documents or agreements should contain clause on ADR which can pre-emptively address disputes and facilitate resolution without resorting to litigation or formal insolvency proceedings.

Group Insolvency Mediation: Mediation in group insolvency cases, where multiple entities are involved, can help in providing better and comprehensive solutions. It is crucial to convince the parties to agree to either a going concern status or an acceptable settlement.

Mediation Tribunals: Dedicated Mediation Tribunals such as independent Arbitration Tribunals should be established that could enhance the mediation process by providing specialized forums for dispute resolution.

Sensitization and Awareness: Many stakeholders may not be familiar with mediation concepts. Efforts to be made to educate stakeholders about ADR options, their advantages, and how they can be effectively integrated into legal frameworks.

Suitability of ADR at Different Stages: ADR may be more practical and effective at certain stages of insolvency proceedings (e.g., pre-institution vs. post-commencement). Challenges arise when ADR is attempted too late in the process or when court intervention is required.

Government and Regulatory Support: Government and Regulatory bodies should provide support for effective implementation of ADR in insolvency processes. Judicial systems also should create enabling environments and remove legal obstacles. Efforts should be made to provide the requisite support.

Engagement or Participation: Steps should be taken to encourage businesses and creditors to embrace ADR as a viable alternative to litigation involves building trust, promoting success stories, and providing incentives for participation.

XIII. Panel Discussion IV: Debt Resolution Strategies and Investment Opportunities

Moderator

Shri Anoop Rawat

Speakers

1. Shri Tushar Choudhary, Chief Investment and Strategy Officer, UVARCL
2. Shri Shaurya Arora, Partner & Chief Investment Officer, UTI Alternatives
3. CA. Nipun Singhvi, Managing Partner, NSA Legal, Advocates & Solicitors

A. Deliberations/ Highlights of the Session

This session provided a comprehensive overview of the challenges and opportunities in debt resolution and investment strategies wherein regulatory challenges, role of ARCs and Special Situation Funds have been emphasised. Hon'ble Gujarat High Court in the matter of SPG Petrochem, allowed NBFCs to work as ARCs. Thus, NBFCs can also participate in buying accounts. Small accounts can be easily revised through this route.

Economic Potential: India is projected to become the second-largest economy by 2031 and the largest by 2060, highlighting significant investment opportunities.

Asset Reconstruction Companies (ARCs): ARCs have issued Security Receipts worth 2.8 lakh crores, with underlying debts of 8 to 9 lakh crores. Post-IBC, ARCs have redeemed about 75% of these receipts. To improve effectiveness, ARCs should engage earlier in the non-performing loan (NPL) cycle.

Regulatory Challenges: ARCs face issues with their role under the Insolvency and Bankruptcy Code (IBC), and clearer guidelines are needed to differentiate them from Non-Banking Financial Companies (NBFCs).

Special Situation Funds (SSF): Despite their potential, SSFs have seen limited uptake due to regulatory restrictions like high minimum ticket sizes.

Judicial Efficiency: Improvements are needed in judicial efficiency and consistency to provide greater certainty and reduce delays in the insolvency resolution process.

Pre-Packaged Insolvency Resolution Plans (Pre-Packs): Pre-packs have had limited success, and it was suggested that they should automatically progress to the Corporate Insolvency Resolution Process (CIRP) if initial plans fail.

Balanced Approach: There should be a balanced approach between creditor and debtor control, with an emphasis on empowering creditors and reducing bureaucratic hurdles to make the resolution process more effective.

B. Key Takeaways:

- *Prepack should be made mandatory for all or big-ticket size cases. Here, the ARCs will have huge investment opportunities.*
- *India is expected to become the second-largest economy by 2031 and the largest by 2060. To realize this potential, robust debt resolution strategies are crucial to attract both domestic and international investment.*

- *ARCs have demonstrated considerable involvement in debt resolution, issuing Security Receipts worth ₹2.8 lakh crores with significant redemption success post-IBC. However, their impact could be further improved with earlier engagement in the NPL cycle and better regulatory support.*

C. Issues

Regulatory and Structural Challenges: The role of ARCs under the Insolvency and Bankruptcy Code (IBC) needs clearer guidelines to differentiate them from NBFCs. These regulations should be streamlined that will help address the current ambiguities and enhance ARCs' effectiveness.

Pre-Packs and Judicial Efficiency: The limited success of pre-packaged insolvency plans suggests a need for mandatory progression to CIRP if initial plans fail. Additionally, improving judicial efficiency and consistency will reduce delays and enhance the overall certainty of the insolvency process.

D. Suggestions and Recommendations

Supporting Economic Growth: With respect to the prospects for India's economic growth and investment opportunities, a sustained investment and interest rate stabilization are crucial. Implement policies that encourage investment and maintain stable interest rates to foster economic growth.

Addressing Debt Resolution Challenges: With respect to the Effective rate achievement in the current debt resolution, ARCs should engage with banks at the early stages of Non-Performing Loans (NPLs) to maximize recovery and turnaround potential. Encourage ARCs to develop early intervention strategies and work closely with banks and regulators to enhance their effectiveness.

Maximizing ARCs' Effectiveness: Encourage ARCs to engage earlier with banks and develop proactive strategies for managing NPLs. Increased collaboration with regulators and banks will enhance their effectiveness in resolving distressed assets.

Regulatory Framework for ARCs and NBFCs: Clear guidelines on ARCs and NBFCs participation in the IBC process are needed to streamline regulatory frameworks and reduce uncertainty. Regulators should provide detailed, consistent guidelines to ensure that ARCs and NBFCs can effectively participate in debt resolution.

Incentivizing Private Credit: Incentivize private credit through regulatory adjustments to lower entry barriers and improve the risk-reward balance. Favourable regulatory environment need to be created that encourages private credit participation by offering incentives and reducing restrictions.

Enhancing Judicial Efficiency: Judicial efficiency and consistency to be enhanced in insolvency cases. Regular amendment of IBC to be emphasised to address emerging challenges and improve clarity. Additional training and resources to judicial bodies to expedite the resolution process to be provided.

Improving Pre-Packs: Mandatory progression to CIRP to be introduced, if pre-pack plans fail to ensure continuous resolution efforts and prevent repeated insolvency filings. Streamlining of the pre-pack processes is required to be done and also it is to be ensured that they are supported by clear guidelines and robust legal frameworks.

Balancing Creditor and Debtor Control: Empower Creditors with more control and reduce bureaucratic impediments to decision-making. A code of conduct to be implemented for the Committee of Creditors (COC) to ensure fair and transparent decision-making. Strengthen mechanisms that enhance creditor empowerment while ensuring that debtor rights are protected.

XIV. Panel Discussion V: Deep Dive into Law and Premise of Avoidance Transactions

Moderator

CA. Pankaj Tyagee, Member Appellate Authority

Speakers

1. CA. Anuj Jain, Insolvency Professional
2. CA. (Dr.) Durgesh Pandey, Managing Partner, DKMS & Associates
3. Ms. Pooja Mahajan, Managing Partner, Chandiok & Mahajan

A. Deliberations/ Highlights of the Session

This session highlighted the complex nature of avoidance transactions and the need for a more robust framework to ensure effective recovery and enforcement. Avoidance transactions are prevalent in financial distress scenarios and are typically identified through meticulous examination of financial statements and books of accounts. As auditors, our role involves scrutinizing these transactions to uncover any that might unfairly disadvantage stakeholders.

An insolvency professional, has really do the justice with all the stakeholders involved as insolvency professional has a fiduciary relationship with all these stakeholders and he has to ensure that the interest of the stakeholders and the interest of the company is kept in mind because the key objective of this law was that the loss to the stakeholders is minimum and the companies can be revived.

Insolvency professionals play a crucial role in managing avoidance transactions and ensuring fair outcomes for all stakeholders. These transactions, which are often identified through detailed examination of financial statements and books of accounts, require careful analysis to balance stakeholder interests effectively. The fiduciary duty of insolvency professionals is to minimize losses and explore revival options for companies, while also addressing the significant challenges posed by high haircuts and delays affecting homebuyers. To improve outcomes, there is a need for enhanced audit practices, legislative reforms, and potentially integrating alternative dispute resolution mechanisms. Transparent communication and active engagement with stakeholders are essential for managing expectations and achieving equitable resolutions. This deep dive approach helps in making informed decisions and achieving just outcomes for all parties involved.

There is a crucial observation that avoidance transactions have historically received relatively low attention from Adjudicating Authorities. Initially, the focus was predominantly on Section 7 and Section 9 of the IBC, but over time, there has been a shift towards a greater emphasis on resolution plans. As a result, avoidance transactions often seem to be on a slower track.

The IP needs to deep dive to see that what kind of transactions are there on which the resolution professional should focus.

Current Landscape of Avoidance Transactions: Avoidance Transactions has been low interest area for Adjudicating Authority. There are 1237 cases of Avoidance Transactions pending in NCLT. Except IBBI and IP, nobody is interested in clawing back Avoidance Transactions.

Scope of Investigation: Instead of mandatory two years, IP needs to go deeper into accounts of

the Corporate Debtor may be of previous 7 to 8 years, especially when the loan was taken by the Corporate Debtor. IP can have the real perspective on what are the areas to go after or the areas to be focussed.

Transaction Audits: The IBC lacks a specific provision for transaction audits. Resolution Professionals (RPs) need to first analyze the accounts of the CD and then engage transaction auditors. Simply attaching the transaction audit report is insufficient; RPs must provide substantial evidence to the Adjudicating Authority (AA) to support their claims.

Post-Approval Pursuit: There is no provision for transaction audit in the IBC. Firstly, the Resolution Professional should go through the accounts of the CD, identify Avoidance Transactions, and then engage some other professionals for transaction audit. Simply attaching the "transaction audit report" is not sufficient. The RP must give sufficient evidence to the Adjudicating Authority (AA) to support their claims.

Post-Approval Challenges: After the Resolution Plan's approval by the NCLT, the RP exits, raising questions about who will pursue avoidance transactions further. The Committee of Creditors (CoC) generally does not approve additional funds for this purpose. Encourage the CoC to support asset tracing and include the costs of Avoidance Transactions as CIRP costs.

Forensic Audit Standards: Though the situation has improved significant after implementation of Standards for Forensic Audit from July 01, 2023, dealing with law enforcement agencies is altogether different.

Preference Provisions: Provision for Avoidance Transactions should apply, if preferences are given to creditors over employees and other stakeholders.

Improvements and Challenges: The implementation of Forensic Audit Standards from July 1, 2023 has improved the situation, but interactions with law enforcement remain challenging.

Alternative Approaches: Consider the creation of an Asset Reconstruction Company (ARC) for legal costs, where expenses can be shared.

Template for tracing and filing Avoidance Transactions: The Indian Institute of Insolvency Professionals of India (IIIPI) has developed a template useful for tracing and filing Avoidance Transactions.

Reference Date: The reference date for Avoidance Transactions should be the date of filing the CIRP application rather than the Insolvency Commencement Date.

Burden of Proof: The burden of proof for Avoidance Transactions should lie with the management rather than the IPs.

Auditor's Perspective: Avoidance transactions are identified through financial statements and books of accounts. As auditors, the challenge is to ensure that all stakeholder interests are considered, and a thorough analysis of past transactions is conducted.

Fiduciary Responsibility: As an IP, one must uphold fiduciary duties, ensuring that all actions are in the best interest of the stakeholders and the company.

Cost and Time Constraints: The legal system's slow pace and high costs of pursuing avoidance

transactions are significant challenges. RPs often have to prioritize resolution plans over avoidance transactions due to these constraints.

International Comparison: The Indian framework largely mirrors the UK model in terms of transaction types and proof standards. Suggestions include settlement options for avoidance transactions and litigation funding to address legal cost challenges.

B. Key Takeaways

- *The burden of proof for Avoidance Transactions should go to the management, not the IP.*
- *The importance of a more thorough review of historical financial transactions and a more robust legal and regulatory framework to support the recovery of assets involved in Avoidance Transactions.*

C. Issues

Lack of Interest from key Stakeholders: As per IBBI reports there are about 1237 cases of avoidance transactions which are pending and total amount involved is close to 3.7 lakh crores and total debt resolved was around Rs 4 lakh crores, so equal amount of money is at stake in the avoidance transactions whereas amount recovered is only 6500 crores. The current state of avoidance transactions in insolvency proceedings reveals a significant gap between the amounts at stake and the recoveries achieved. One of the biggest reasons for this gap is that other than beyond the regulators (IBBI) and the insolvency professionals (IPs), nobody else is interested. The COC is not interested, the lenders are not interested and the RAs are also not interested and as a result, the Adjudicating Authorities also display a lack of interest, contributing to the slow progress in this area.

This disparity highlights a significant issue—the lack of effective action and recovery in avoidance transactions.

Lack of comprehensive information: The challenges faced by Insolvency Professionals (IPs) in handling avoidance transactions are multifaceted and stem from several procedural and operational issues. A primary challenge is the lack of comprehensive information available from the company, which hampers the ability to form an opinion. Typically, once a transaction audit is done, the auditors may report insufficient information, limiting their findings to what is available. As a result, Resolution Professionals (RPs) often have to rely on these preliminary reports, performing basic analyses before filing applications with the National Company Law Tribunal (NCLT).

Lack of expertise of NCLT: The NCLT, operating under summary proceedings, often lacks the expertise to deeply evaluate complex evidence and transactions. This limitation, combined with the necessity of providing a hearing opportunity to all parties, complicates the adjudication process. So, it becomes very difficult to get an adjudication on a particular point. Certain types of avoidance transactions, such as preferential transactions, may be easier to explain and get an order on. But some of the other transactions like fraudulent transactions, are very difficult to prove, the standard of proof is much higher. There is a lack of enough evidence to say whether it's a fraud or not. There is a lack of understanding as to what are the kinds of transactions that can constitute fraud.

Time and Cost: The biggest constraint both from an IP perspective and an adjudicating authority perspective is the time and cost. It takes time to adjudicate these proceedings and tribunals are already heavily burdened with lot of other matters and creditors often prioritize plan approvals where financial

recovery is more immediate. Consequently, avoidance transactions may not receive the necessary attention. So, an RP also tend to prioritize that over avoidance transaction. Therefore, nobody really wants to prioritize these applications and once the matter closes, then the question comes that who will pursue them. The RP cannot be expected to keep on pursuing it.

Another issue which is being faced is cost. The RP is expected to pursue these transactions, and at the same time there are cases where on the other side, the promoters are there, them there is a need engage the best of lawyers to defend these applications but the expectation of creditors would be don't spend too much money, accordingly, the question remains now is what is really going to happen to these transactions and sometimes cost and pursuing these transactions become a big issue. These are some of the few practical issues we have seen while pursuing these applications in court.

Challenges in Petitioning for Fraudulent Transactions: When filing petitions for fraudulent transactions, legal consultants and Resolution Professionals (RPs) face significant challenges. The courts often require detailed explanations and robust evidence to substantiate claims of fraud. A common issue is the pressure to classify transactions as fraudulent, even with the availability of limited or poor information. The RP is left to explain what are the documents that he has relied on to classify it as a fraudulent transaction. Once an application is filed, RPs must provide a thorough explanation and robust documentation to justify their claims, which can be particularly challenging given the high burden of proof.

Additionally, the Hon'ble Supreme Court ruling which provides that only directors can be made parties to the application filed under section 266 of the Companies Act 2013 which really hinders the ability of an IP to even gather evidence through replies from the other side/ Stakeholders. Also, the adjudication process for these cases is often prolonged due to procedural complexities and delays. Till the matter reaches to the final stage of actual hearing, there is a lot of fatigue in everyone's mind from IP to the Councils to the others that's generally what tends to happen which increases both time and costs, further straining RPs.

In some cases, it becomes a little tricky, if there is some defect in the application, because some of the benches start questioning the RP. What kind of analysis is this? What kind of application is this? If the application is not made by the RP, then the creditors and all other stakeholders will start questioning and asking to make some application at least. The IP is stuck between rock and sea.

Forensic Accounting and Significant Data Access Challenges: Forensic accounting plays a crucial role in identifying fraudulent and undervalued transactions in insolvency proceedings, yet its effectiveness is often hindered by significant data access challenges.

In such cases, all the stakeholders believe that it is good money chasing bad money. It starts with why so much to be paid when it is almost certain that it is a sunk cost. The landscape is challenging and if it is proposed that the forensics accounting tools are there, work can be done but the problem is data and records. It is being attempted to converge a civil law and criminal law. So, IBC is a civil law where restitution and remediation and getting money is the objective and it is being tried to blend it with a criminal law where responsibility is being affixed on someone and also it is being tried to nullify and void the transaction. Collecting evidence in both the situations is very challenging, very difficult. In many cases, Resolution Professionals (RPs) face difficulties in obtaining necessary financial records, particularly when companies have become uncooperative or have moved operations abroad. This lack of cooperation can significantly impede the forensic investigation process, as essential evidence is often circumstantial and hard to gather.

Lack of a Regulatory framework: In the realm of insolvency and forensic accounting, professionals often encounter significant challenges, particularly when faced with non-cooperative entities and inadequate access to crucial records. A key issue is the lack of a regulatory framework compelling parties to provide necessary data, which hinders the effectiveness of forensic investigations. Without stringent regulations and a central repository for records, and clear repercussions for non-compliance, professionals are left struggling to obtain the required information. Forensic accountants frequently become targets for scrutiny, particularly when dealing with law enforcement, due to misconceptions about their role in verifying the authenticity of documents.

Interim Finance: The issue of interim finance and the ability of Resolution Professionals (RPs) to secure their fees remains a significant challenge, particularly in regions like NCR where many RPs struggle to obtain necessary funds.

Litigation Funding vis-à-vis Valuation of Assets: While litigation funding is a promising concept, it faces significant challenges, particularly regarding the valuation of assets. The opacity of the market makes it difficult to accurately value assets involved in litigation. Even when an agency provides a quote, bank is unable to evaluate it due to the lack of established benchmarks. This lack of transparency complicates the process and undermines the effectiveness of litigation funding in resolving insolvency-related disputes.

Real Estate Industry Project Delays: Insolvencies in the real estate sector often involve delayed or incomplete projects, which complicates the resolution process. The current framework may not fully incorporate global best practices in insolvency management.

Scope of Preferential Transactions: Section 43 of the IBC, which deals with preferential transactions, only applies to preferences given to creditors. This limitation became evident in cases where preferences were extended to shareholders or other non-creditor stakeholders, resulting in such transactions falling outside the scope of Section 43.

D. Suggestions and Recommendations

Comprehensive Review of Historical Records: An RP should thoroughly examine the financial statements, funding inflows, business performance trends, and the timing of key transactions beyond the mandatory two-year period to capture a fuller picture of avoidance transactions, i.e., to say for over the last 7-8 years, focusing on periods when loans were taken and analyzing business performance trends. This helps to identify whether issues were due to industry-wide problems, management failures, or intentional mismanagement. It also provides insight into when and how funds were used and whether there were any red flags indicating misappropriation. There is no provision for transaction audit in the IBC. Firstly, the Resolution Professional should go through the accounts of the Corporate Debtor, identify Avoidance Transactions, and then engage transaction auditor.

Understanding of the business: The RP or IRP should take the time to understand the business's operational history, financial performance, and the circumstances leading up to insolvency. This understanding is vital for making informed decisions about which transactions to investigate further. By acquainting himself with the business context, the RP/IRP can distinguish between genuine operational challenges and potential fraudulent activities or mismanagement.

Engagement of Forensic or Transaction Auditors: Forensic auditors or transaction auditors should be engaged after conducting an initial review. A well-defined scope of work and context shall be

given, rather than expecting them to perform a comprehensive analysis on limited information. The RP/IRP should identify key areas of concern and focus the auditors' work on these areas. This targeted approach helps in efficiently uncovering relevant evidence.

Comprehensive Evidence: Beyond just attaching the transaction audit reports, RPs need to provide comprehensive evidence and detailed documentation to support their claims. The evidence based on which the transaction auditor has concluded to the extent possible should also be attached and maximum information should be given to the adjudicating authority for them to help them to conclude this matter as soon as possible.

Regulatory Framework: There needs to be a regulatory framework which can enforce information sharing and provide legal remedies for non-compliance. In large cases, it has been seen that there is no regulatory framework which enforces the parties to share the information. Law enforcement has a different point of view, the objective of law enforcement is to build a fear of law and the people should not take the law for granted. And, in IBC, it is recovery of money, therefore, there has to be a legal framework like the Companies Act, 2013. If a company does not cooperate or the company does not provide information then legal remedies are available whereas no such remedies are available in IBC, except for in certain cases. Where the banker is proactive, the RP is aggressive and where he/she is interested in getting the result, only then the data may be mad eavailable. So there needs to be some regulatory intervention, some Central depository, some sort of mechanism, whereby a professional can call for records. If the records are not called for then some serious repercussions should be very much visible to the affected parties, unless there is a situation like that.

Adherence to Forensic Accounting and Investigation Standards by ICAI: Forensic Accounting Standards issued by ICAI provide a structured framework and set benchmarks that guide how forensic investigations should be conducted. These Standards ensure that the processes and methodologies used are consistent, reliable, and meet professional expectations. In the absence of these standards, there is no formal benchmark to measure the quality or comprehensiveness of the forensic work. By adhering to established standards, forensic accountants can demonstrate that their work follows best practices and meets the required professional criteria.

Settlement of Avoidance Transactions: Incorporating international practices into the Indian insolvency framework could significantly enhance its efficiency and effectiveness. One promising approach is the adoption of settlement mechanisms for avoidance transactions, as seen in other jurisdictions like the UK. By allowing insolvency practitioners to settle such transactions with counter-parties—sometimes with the approval of creditors or the court—the process can be expedited, leading to quicker recoveries and reduced legal costs.

Litigation funding: Additionally, introducing litigation funding into the insolvency process could significantly enhance the ability to pursue avoidance transactions, but the current models need refinement for effective implementation in India. This could also ensure that avoidance actions are pursued more aggressively, potentially resulting in higher recoveries.

There are two primary models for litigation funding: the outright assignment model and the sharing model. The outright assignment model, where proceeds are assigned to a funder based on a valuation, often faces challenges due to the complexities and subjectivity involved in valuing potential recoveries. Conversely, the sharing model, which involves sharing a percentage of the recovered amount, may be more practical and adaptable to the Indian context.

The challenge of securing interim finance is significant; in regions like NCR, around 40% of resolution professionals (RPs) struggle to obtain necessary funds and fees. This issue underscores the need for innovative funding solutions to support the Corporate Insolvency Resolution Process (CIRP) effectively.

Structured and Prescriptive approach to filing applications: A key aspect of improving the handling of avoidance transactions is to adopt a more structured and prescriptive approach to filing applications. The Supreme Court's ruling in the Anuj Jain case (2020) highlighted the importance of clearly defined procedures for filing avoidance and other transactions. Applications need to be drafted with precision, adhering to guidelines set by the Adjudicating Authority to facilitate prompt and informed decisions. This calls for a standardized template or framework that ensures all necessary details are included, thereby reducing ambiguity and inefficiencies in the adjudication process.

Incentives for COC and RPs: Furthermore, the current reduced focus on avoidance transactions, partly due to slow legal processes and high costs, suggests a need for reform. By prioritizing these claims and providing clear roles and incentives for the Committee of Creditors and resolution professionals to actively pursue them, the insolvency process could be made more robust and effective.

Suggestions for IBC Amendments: Broadening the scope of avoidance transactions to include transactions with shareholders and employees not just creditors. This would ensure that preferential transactions are addressed more comprehensively and equitably.

Encouragement for Creditors Participation: Creditors should be encouraged to actively participate in filing applications for avoidance transactions, particularly when the resolution professional (RP) fails to do so. Section 47 of the IBC allows creditors to file such applications, if the RP does not, but this provision is underutilized. A more proactive stance by creditors and professionals, along with a clearer framework for decision-making, would help in addressing avoidance transactions more effectively.

Shifting of Onus: Additionally, burden of proof should be shifted to the management, promoters, and shareholders, making them responsible for justifying transactions rather than placing the onus on the RP.

International Practices: Consider adopting international practices such as settlement processes and litigation funding to improve recovery outcomes. The Indian framework largely mirrors the UK model in terms of transaction types and proof standards. Suggestions include settlement options for avoidance transactions and litigation funding to address legal cost challenges.

Legal Amendments: Amendments to include broader definitions of preference and undervaluation, and support for litigation funding and asset tracing. This comprehensive approach is essential for enhancing the efficacy of the insolvency process and ensuring that avoidance transactions are adequately addressed.

Post-Approval Challenges: After the Resolution Plan's approval by the NCLT, the RP exits, raising questions about who will pursue avoidance transactions further. The Committee of Creditors (CoC) generally does not approve additional funds for this purpose.

Reference Date: The reference date for Avoidance Transactions should be the date of filing the CIRP application rather than the Insolvency Commencement Date.

Burden of Proof: The burden of proof for Avoidance Transactions should lie with the management rather than the IPs.

XV. Technical Session IX: Impact of Direct Tax on Companies under Insolvency

Moderator

CA. Avinash Gupta

Speaker

CA. (Dr.) Girish Ahuja

A. Deliberations/ Key Highlights of the Session

This session provided valuable insights into the intersection of direct tax and insolvency, highlighting the importance of proactive financial management and strategic planning in navigating financial challenges.

Role of Chartered Accountants (CAs): Chartered Accountants (CAs) play a pivotal role in ensuring the growth and financial stability of companies. The focus of CAs is generally on facilitating company growth rather than managing insolvency situations, highlighting the importance of proactive financial planning and strategy.

Overruling of Supreme Court Judgment on Section 28(4): The Parliament's recent decision to overrule the Hon'ble Supreme Court's ruling on Section 28(4) of the Income Tax Act, as seen in the Mahindra and Mahindra case, is a landmark change. Previously, benefits received in cash were taxable; however, this change means that such benefits are no longer taxable. This adjustment in tax policy offers significant relief and flexibility for companies undergoing financial restructuring.

Taxation of Waivers to Financial Creditors: Recent amendments have introduced tax implications for waivers granted to financial creditors. This shift means that debt waivers, which were previously considered a form of relief, now have tax consequences. Companies must account for these taxes in their financial planning and restructuring efforts.

Impact of Carry Forward Losses: Companies often use carry forward losses to offset future tax liabilities. While this can be a strategic move, it can also lead to financial stress and contribute to insolvency if not managed effectively. The carry forward of losses must be balanced with sustainable business practices to avoid exacerbating financial difficulties.

Case Study: Ruchi Soya: The case of Ruchi Soya underscores the complexities of managing substantial term loans, carry forward losses, and financial mismanagement. Patanjali's acquisition of Ruchi Soya was driven by the need to turnaround a company mired in financial difficulties. This case illustrates the challenges and opportunities in revitalizing distressed companies through strategic interventions.

Significance of Tax Law Changes: The recent changes in tax laws, especially regarding cash benefits and debt waivers, are critical for companies in distress. These changes will influence how companies approach financial restructuring and insolvency, impacting their overall financial strategies.

B. Key Takeaways

- *The overruling of the Hon'ble Supreme Court judgment on Section 28 (4) in the case of Mahindra and Mahindra by the Parliament is a landmark decision in the history of taxation. Now, benefit in cash is not taxable."*

C. Issues

Need for Proactive Financial Management: Effective financial management and planning are essential to prevent insolvency. Companies should adopt proactive measures to manage tax liabilities, financial obligations, and overall financial health to avoid falling into insolvency.

Strategic Acquisitions and Turnarounds: The approach taken by Patanjali with Ruchi Soya demonstrates how strategic acquisitions and turnarounds can address financial distress. Understanding the financial and operational aspects of a distressed company is crucial for successful turnaround efforts.

Implications for Tax Professionals: Tax professionals must stay informed about legislative changes and their impact on financial and insolvency matters. The ability to navigate these changes and provide strategic advice is essential for managing the financial health of companies.

D. Suggestions and Recommendations

Tax Planning and Restructuring Strategies: Companies should develop comprehensive tax planning strategies that align with their financial restructuring goals. This includes understanding the implications of tax law changes and incorporating them into their overall financial strategy.

Role of Financial Advisors: Financial advisors play a crucial role in helping companies navigate complex tax and financial issues. Their expertise is vital in devising effective strategies for managing debt, losses, and tax liabilities.

Future Trends in Taxation and Insolvency: Companies should be prepared for potential future changes in tax laws and regulations that could impact their financial and operational strategies.

Best Practices for Financial Restructuring: Implementing best practices in financial restructuring, including careful analysis of tax implications and strategic planning, can significantly improve the likelihood of a successful turnaround.

XVI. Panel Discussion VI – Towards a Vibrant Stressed Assets Market – The Role of ARCs

Moderator

CA. Gyan Chandra Misra, Chairman, I & VSB, ICAI

Speakers

1. Shri Hari Hara Mishra, CEO, Association of ARCs in India
2. Shri Pradeep Goel, MD, Prudent ARC Ltd.
3. CA. Amit Kedia, Head of Asset Management, ACRE

A. Deliberations/ Highlights of the Session

The Asset Reconstruction Companies (ARCs) have been created to strengthen the financial system of the country to manage their stress and in the growing acknowledgment of its importance in the year 2021, the Government of India created a separate NARCL under its own initiative to supplement the efforts of all the ARC's.

ARCs are playing very pivotal role as of now with respect to the stressed market as it has been witnessed that stressed assets of Rs. 10 lakh crores plus have been acquired by 27 ARCs. The market is growing and evolving and ARCs are performing well in the stressed assets market. The horizon of the asset reconstruction companies is increasing day by day.

ARCs, including the NARCL, have significantly contributed to reducing NPAs in the Indian banking sector and have attracted substantial foreign investment. However, challenges remain, such as disparities between NARCL and private ARCs, legal and operational hurdles, and the need for regulatory adjustments. Despite these issues, ARCs have demonstrated their ability to add value through successful asset resolutions and restructuring, both domestically and potentially internationally.

Role and contribution of ARCs: Asset Reconstruction Companies (ARCs) were established to enhance the financial system's ability to manage distressed assets. In 2021, recognizing their significance, the Government of India created the National Asset Reconstruction Company Limited (NARCL) to further support the efforts of existing ARCs. As of 2019, the banking system's gross Non-Performing Assets (NPAs) stood at ₹10 lakh crores. Between 2019 and 2023, banks accumulated an additional ₹15 lakh crores in NPAs. By the end of 2023, banks had managed to reduce NPAs to ₹5 lakh crores. This reduction was achieved through various measures, including NPA upgradation, legal recoveries via DRT, Lok Adalat, IBC, SARFAESI, and transfers to ARCs. From 2019 to 2023, banks transferred ₹4.3 lakh crores to ARCs.

Out of the total ₹20 lakh crores reduction, ₹10 lakh crores were written off, while the remaining ₹10 lakh crores were reduced through upgradation and recoveries. ARCs have contributed significantly by recovering ₹3 lakh crores of NPAs, thus aiding banks in reducing their NPAs by 30% from the initial ₹10 lakh crores.

Reduction in NPA: The reduction in NPAs and the expansion of ARCs' capabilities are expected to continue, with ARCs exploring more innovative ways to manage stressed assets.

Security Receipts and GDP Creation: ARCs have facilitated foreign investments in Security

Receipts (SRs), with investments increasing from ₹1,600 crores in 2019 to over ₹20,000 crores by 2023. Security Receipt is an instrument like junk bond created by ARCs and if ARCs contribution is to be documented, then the creation of a junk bond which is represented by Security Receipt is one of the major achievements of ARCs. Additionally, this influx of foreign capital has allowed domestic resources to be allocated more effectively, contributing to economic growth and GDP creation.

Creation of NARCL: The National Asset Reconstruction Company Limited (NARCL) was established by the government to enhance the efficacy of ARCs in cleaning up bad loans. The primary distinction between private ARCs and NARCL lies in the sovereign guarantee provided by the government for Security Receipts (SRs) in the NARCL model. This guarantee ensures that selling institutions recover their money equivalent to the SR value within a five-year span. This new structure has fundamentally changed the ARC landscape, compared to the previous cash SR model where returns were not guaranteed. Although this model represents progress, its success remains to be fully realized. Private ARCs face challenges in competing on a level playing field due to discrepancies between credit and cash pricing.

NARCL's SRs are priced at ₹100 with a 1585-5-year SR repayment, while ARCs are expected to compete by paying cash at 100%, which is not feasible. Addressing this imbalance could create a more equitable competitive environment for private ARCs. The IDRCL, NARCL's resolution arm, is relatively new and faces significant challenges in resolving acquired accounts. While some cases have been straightforward, others will test the effectiveness of NARCL and IDRCL in the future. The evolving dynamics of ARCs highlight the need for continued adaptation and innovation in managing stressed assets.

Consolidation and Aggregation of Debt: ARCs have played a pivotal role in the resolution of cases under the Insolvency and Bankruptcy Code (IBC). By consolidating debt from multiple lenders into a single entity, ARCs simplify the resolution process, allowing for more effective decision-making and faster resolution. Instead of having numerous lenders on the Committee of Creditors (CoC), a single ARC can actively guide the resolution process and work with resolution professionals and applicants to maximize value. This aggregation of debt under one umbrella has significantly accelerated the resolution process compared to the cases where the debt remains with original lending banks. ARCs' involvement has thus led to more efficient and quicker resolutions, contributing positively to the overall recovery outcomes under the IBC.

ARCs as Resolution Applicants: Initially, there were no specific guidelines on whether ARCs could act as resolution applicants under the Insolvency and Bankruptcy Code (IBC), though the law permitted it. Some ARCs participated in resolution processes, leading the Reserve Bank of India (RBI) to establish guidelines allowing ARCs to be resolution applicants, provided they meet a net owned fund threshold of ₹1,000 crores. Given ARCs' two decades of experience and expertise in handling distressed assets, the requirement for net owned funds could be relaxed. Instead, the criteria for participation could be determined by resolution professionals on a case-by-case basis. Allowing specialized ARCs more flexibility could enhance their participation in resolving distressed assets and improve overall outcomes.

ARCs as a tool for Enhancing Recovery Outcomes: The CRISIL report released in June highlights improvements in the recovery of stalled real estate projects due to increased demand, private credit for last-mile funding, and amendments in the IBC facilitating project-specific plans. The report anticipates a 600-basis point (6%) increase in recovery rates for stalled projects handled by ARCs.

Overall, ARCs have demonstrated significant progress, with the total redemption ratio—cumulative redemption divided by cumulative SRs issued—rising from 21% in 2019 to 43% in 2023, and reaching 49% in 2024. This improvement in recovery rates reflects a stronger economy, a shift towards faster resolutions in retail NPAs, and greater experience and learning in pricing. Despite past concerns, ARCs have made substantial strides in enhancing recovery outcomes.

Secondary Market for Security Receipts (SRs): Regulatory guidelines currently restrict ARCs from selling assets to anyone other than other ARCs. Although the idea of a secondary market for Security Receipts (SRs) was initially considered, it has faced challenges due to lack of clarity and complications in listing and selling SRs. Despite these issues, there are Qualified Buyers (QBs) who can purchase SRs with competitive yields. While the secondary market for SRs is not well-known, it offers potential for high returns. ARCs are ready to provide attractive investment opportunities for QBs both in primary and secondary markets.

Resolving Disputes: The resolution of creditor issues under the Insolvency and Bankruptcy Code (IBC) involves addressing conflicts between secured and financial creditors, as well as between financial and operational creditors. ARCs play a significant role in resolving disputes among secured and financial creditors by consolidating debt and facilitating agreements. For conflicts between financial and operational creditors, a consensus approach, similar to past practices in SARFAESI, could help resolve disputes. By fostering discussions and agreements, a more effective resolution process can be achieved.

Value Addition through Resolution: ARCs are often perceived negatively, but they have made significant contributions to the financial system and ARCs not only recover funds but also add value to distressed assets. For instance, in 2024, ARCs realized more from resolution than from asset sales for the first time, reflecting their commitment to restructuring and adding value. A notable example is the revival of a medical college in South India. After acquiring distressed debt, an ARC restructured the institution by replacing incompetent management, leading to the college's reopening and generating employment for 600 people. Similarly, in Central India, an ARC's takeover and revival of a steel plant created thousands of jobs and contributed significantly to the local economy. These success stories highlight the positive impact of ARCs on both economic recovery and job creation.

Cross-border ARC operations: During a recent interaction with World Bank officials, the potential for Indian ARCs to assist distressed assets in neighbouring countries, like Sri Lanka, was discussed. The concept of cross-border ARC operations is currently not permitted but is being considered. Additionally, interest has been expressed by Chinese Asset Management Companies (AMCs) in collaborating with Indian ARCs. This global interest in Indian ARCs reflects their successful model and expertise. The potential for cross-border operations could expand Indian ARCs' impact, providing further opportunities to address distressed assets internationally and contribute to global economic recovery.

Revival of Projects and Possession to Home Buyers: ARCs have successfully revived multiple real estate projects and ensured possession for home buyers, contributing positively to the real estate sector.

Regulatory Constraints: ARCs are restricted from selling assets to non-ARC entities, which hampers the development of a secondary market. The current regulatory framework makes the idea of a secondary market for stressed assets impractical.

B. Key Takeaways

- *The resolution of a 'Medical College' in Chennai by an ARC, which was subsequently operationalized and handed over with a functional hospital, showcased ARCs' ability to add substantial value beyond asset recovery.*
- *Indian ARCs have gained a positive reputation internationally, with interest from Sri Lanka and China, pointing towards future potential in cross-border operations.*

C. Issues

Timelines and Admission as a Constraint: Two critical issues impacting recovery under the Insolvency and Bankruptcy Code (IBC) are timeline and admission. According to the March IBBI Newsletter, delays in the resolution process led to reduced recovery rates. Cases resolved within 330 days show a recovery rate of around 48%, whereas those exceeding 600 days have a recovery rate of just 26%. This persistent issue underscores the need for timely resolutions to improve recovery rates. Additionally, the admission process often takes longer than the prescribed 14 days, leading to delays.

Regulatory Challenges-Cash vs. Credit Pricing: There is a discrepancy between cash and credit pricing for Security Receipts. ARCs are often asked to pay cash at 100% while competing with NARCL's guaranteed SRs, which distorts competition.

Operational Issues- Secondary Market for SRs: The secondary market for SRs has faced difficulties due to lack of clarity and complications in listing and selling SRs. This market is not fully functional or well-known, affecting liquidity and investor participation.

Conflicts between Financial vs. Operational Creditors: The area which helped in resolution of the creditor issue is the inter creditor agreement between the secured lenders and the financial creditors which lay down the terms as per which the creditors will agree with each other. However, Disputes between financial and operational creditors remain challenging. There's no laid down rule, but there is an agreed consensus.

International Interest and Cross-Border Operations: There is an interest in Indian ARCs assisting in distressed asset resolution in neighbouring countries and China. However, cross-border operations are currently not permitted, limiting opportunities for expanding the ARC model internationally.

Regulatory Amendments: Recent RBI guidelines have clarified ARCs' participation as resolution applicants, although some restrictions still apply hindering the performance of ARCs.

Recovery Rates: While recovery rates have improved, there is still room for enhancement, particularly in specific sectors like real estate.

D. Suggestions and Recommendations

Strengthening the ARCs Framework: The National Asset Reconstruction Company Limited (NARCL), established in 2021, plays a crucial role in the financial ecosystem. Its creation underscores the government's recognition of ARCs' importance. As of 2023, despite substantial reductions in NPAs, further efforts are needed to address regulatory and operational challenges.

ARCs have contributed significantly to reducing NPAs by purchasing stressed assets, but there is a need to enhance their operational efficiency and ensure fair competition.

Operational Creditors in Resolution Plans: On the issue of operational creditors receiving nominal or no share from resolution plans, it was suggested that there is a need for consensus among financial creditors to consider revenue sharing with operational creditors. A mechanism to be developed for fair distribution among creditors that can facilitate faster resolution and improve overall outcomes. Collaborative approaches to be encouraged to share recovery value more equitably among creditors.

Promoting Private ARCs: Private ARCs face challenges due to unequal competition with government-backed ARCs, which benefit from sovereign guarantees. Private ARCs should be provided a level playing field with equitable terms, especially regarding credit and cash transactions. To ensure fair competition, it is essential to reconcile the pricing disparities between credit and cash transactions. Regulatory changes should aim to create a more balanced competitive environment.

Encouraging Investment: Foreign investment in Security Receipts (SRs) has significantly increased, showing a growing interest in distressed assets. However, regulations need to be amended to facilitate secondary market transactions and investment in SRs to attract more foreign capital and enhance the effectiveness of ARCs. A more functional secondary market to be created for SRs by clarifying regulations, improving listing processes, and encouraging broader participation from institutional investors.

Enhancing Resolution Efficiency: ARCs have shown effectiveness in aggregating debt and streamlining the resolution process under the Insolvency and Bankruptcy Code (IBC). To further improve, it is essential to focus on enhancing the efficiency of the resolution process by addressing bottlenecks and leveraging technology.

Resolution Applicant Participation: Allowing ARCs to act as resolution applicants could be beneficial. Current restrictions based on net owned funds should be reconsidered, as ARCs have developed significant expertise in handling distressed assets.

The Government should relax the net owned fund requirements to allow more specialized ARCs to participate in the resolution process, enhancing competition and expertise in asset management.

Improving Recovery Outcomes by addressing Timeline Issues: Delays in the resolution process adversely affect recovery rates. Efforts should be made to reduce the average resolution timeline and ensure timely admission of cases. Measures to expedite the resolution process, such as leveraging technology, improving court procedures, and enforcing stricter deadlines to be introduced to avoid value depletion.

Automate Admission: Admission process based on established defaults to be automated to reduce delays and improve efficiency in the admission process.

Exploring Cross-Border Opportunities: Indian ARCs have garnered international interest, with potential opportunities in countries like Sri Lanka and China. Regulatory changes should be considered to enable cross-border ARC operations, allowing Indian ARCs to leverage their expertise globally.

International Collaboration: Indian ARCs should explore collaborations with international financial institutions and regulatory bodies to enhance their global footprint and contribute to resolving distressed assets worldwide.

Efforts for Changing Perceptions: Efforts should be made to address the misconception that ARCs only focus on interest and royalties. Publicizing success stories and the broader contributions of

ARCs can help in changing the perception and highlighting their role in economic recovery. For instance, the revival of the Medical College in Chennai and the restart of the steel plant in Central India illustrate the positive impact of ARCs on local economies and employment.

Recovery Rates and Asset Management: Focus on Sectors: Targeted strategies focusing Sector wise should be developed with historically lower recovery rates, such as real estate, by improving project-specific plans and leveraging private credit for last-mile funding.

Investment in Expertise and Resources: Investment to be made in expertise and resources to manage and resolve distressed assets more effectively, focusing on sectors with high potential for recovery.

XVII. Panel Discussion VII: Transformation of Insolvency Professionals – Setting Standards

Moderator

CA. Rahul Madan, MD IIIPI

Speakers

1. Shri Satish Sethi, Executive Director, IBBI
2. CA. Subodh Kumar Agarwal, Past President ICAI and Insolvency Professional
3. CA. Sunit Shah, Managing Partner, SKYZ Revival & Restructuring LLP
4. CA. Manoj Anand, Insolvency Professional

A. Deliberations/ Highlights of the Session:

In just seven years, the insolvency profession has rapidly evolved, with over 4,400 insolvency professionals (IPs) now active, reflecting a vibrant and diverse ecosystem. More than half of these professionals hold authorizations for assignments, with significant representation from Chartered Accountants, Company Secretaries, and individuals with management experience. However, gender diversity remains a challenge, with only 10% female representation among IPs, suggesting a potential area for transformation.

The profession is marked by rigorous entry standards and ongoing competency requirements. Entry into the profession demands substantial experience, passing a challenging insolvency examination, and completing practical training. Continued professional development is ensured through mandatory Continuing Professional Education (CPE) hours and valid Authorization for Assignment (AFA).

The regulatory framework is robust, featuring a unique two-tier system where Insolvency Professional Entities (IPEs) focus on developing the profession, while the Insolvency and Bankruptcy Board of India (IBBI) oversees both the process and profession. Recent reforms include allowing IP entities to act as IPs, establishing a minimum fee structure, introducing performance-linked incentives, and aligning AFA validity with NCLT panels. Efforts are also underway to reduce compliance burdens and enhance IT infrastructure for efficiency.

Despite these advancements, challenges remain, including the need for enhanced capacity building and addressing frequent mistakes identified during inspections. The IBBI is actively working on these issues to improve the effectiveness and efficiency of insolvency proceedings, ensuring the continued growth and professional development of IPs.

Evolution of Ethics and Public Interest: Insolvency professionals (IPs) have consistently focused on ethics and public interest, prioritizing timely resolution over mere recovery. The emphasis on ethics has strengthened the credibility of the insolvency process, ensuring it serves public and creditor interests effectively.

Value Maximization: Professionals have learned that focusing on maximizing value benefits all stakeholders and enhances the overall efficiency of the resolution process.

Jurisprudence and Professional Milestones: In the initial seven years, the insolvency framework has matured significantly. The legal landscape has become more defined, and the role of insolvency professionals has become more established and recognized.

Expectations from IPs: Expectations from IPs are exceptionally high, comparing them to a "Rambo" level of performance.

Focus on Stakeholders: The profession must remain focused on the needs of all stakeholders, including creditors, employees, and the broader economy, ensuring that resolutions serve the best interests of all parties involved.

Regulatory and Compliance Framework: While there is a push for reduced compliance burdens to streamline processes, there is also a strong focus on maintaining high standards of ethical conduct and professional outcomes. Regulatory bodies like IBBI will need to balance these aspects effectively. Further, there will be a need for ongoing monitoring and enforcement of ethical standards to ensure that the integrity of the insolvency process is upheld.

Encouragement for Innovation: IPs to pursue innovative approaches fearlessly, with assurance of support from IBBI as long as innovations are made in good faith.

Insolvency Professional Entities (IPEs): There are recent steps that have been taken to strengthen the profession, IP entities have been allowed to act as IPs and the industry has responded well to this and right now more than 60 assignments are with IPEs.

Developments of NCLT Panels: Regular NCLT panels have streamlined case management and improved the efficiency of the resolution process.

Automatic CPE Credit: IBBI has approved an automatic process for crediting Continuing Professional Education (CPE) hours.

Cross-Border and Complex Insolvencies: The profession is expected to adapt to more cross-border insolvencies and group insolvencies. This requires enhanced collaboration with international counterparts and understanding of global insolvency practices. Developing innovative solutions to handle complex insolvencies and group insolvencies will be crucial. This includes leveraging technology and international best practices.

Reimagining the Future: The insolvency profession needs to continuously reimagine its role and adapt to changing economic and regulatory landscapes. This involves embracing new technologies, improving efficiency, and enhancing value delivery.

Digitization Efforts: IPAs are working towards the complete digitization of processes to enhance efficiency and transparency.

Capacity Building and Empowerment: Looking ahead, there is a need for enhanced capacity building and empowerment of insolvency professionals. This includes streamlining compliance requirements and providing more robust support structures.

Empowerment: Strengthening the capacity of IPs through better training, resources, and reduced compliance burdens will be crucial for effective resolution.

Complaint Handling: IBBI ensured that only genuine complaints against IPs are acted upon. Of the 1,000 complaints received, only about 30 results in Show Cause Notices (SCNs).

B. Key Takeaways

- *There is a need to study the foreign best practices 360 degree before adopting it in Indian context.*

C. Issues

Gender Diversity: The participation of women in the insolvency profession is low, at only 10%, despite their significant representation in related fields like Chartered Accountancy. Additionally, despite progress, women remain underrepresented in leadership roles within the insolvency profession.

Regulatory and Compliance Challenges: The insolvency profession faces challenges related to regulatory compliance, including duplicative forms and inconsistent treatment by the Adjudicating Authorities.

Capacity Building and Professional Development: There is a need for ongoing capacity building to address common mistakes and enhance the competencies of insolvency professionals.

Pre-Packaged Insolvency Resolution Process (PPIRP): PPIRP is underutilized, particularly among MSMEs, and faces regulatory and procedural challenges.

Entry Barriers and Competence Standards: The high entry barriers and rigorous standards, while ensuring competence, also limit the influx of new professionals into the field.

Fee Challenges: IPs often face difficulties in securing fair compensation due to the discretion of the Committee of Creditors (CoC), which sometimes opts for minimal fees.

Technological Integration and Efficiency: There is a need for improved technological integration to enhance efficiency in compliance and case management.

Adjudicating Authority Consistency: Inconsistencies in decisions by adjudicating authorities creates uncertainty and affects the resolution process.

D. Suggestions and Recommendations

Amendment to IBC: Amend Section 54C(3) to stipulate that PUFE (Preferential, Undervalued, Fraudulent, and Extortionate) transactions should be considered only if they exceed 10% of the total debt. This change would simplify the declaration process for MSMEs.

Encouragement and Outreach: Launch initiatives to actively encourage the professionals to join the profession.

Streamline Compliance and Single Window Clearance: Simplify and rationalize compliance requirements by consolidating forms and reducing duplicative processes. Implement a single-window clearance system for compliance submissions. Also, implement IT solutions to simplify and automate compliance tasks.

Clear Guidelines for Adjudicating Authorities: Develop and disseminate clear, consistent guidelines for adjudicating authorities to ensure uniformity in decision-making.

Feedback Mechanism: Establish a robust feedback mechanism for insolvency professionals and valuers to report issues and suggest improvements to regulatory processes.

Enhanced Training Programs: Expand and update training programs to address emerging challenges and ensure that professionals are equipped with the latest knowledge and skills.

Regular Workshops and Seminars: Regular workshops, seminars, and webinars focused on practical aspects and recent developments in insolvency law to be organised.

Mentorship and Peer Reviews: Structured mentorship programs and peer review mechanisms to be implemented to provide guidance and feedback on professional practice.

Action Against Frivolous Complaints: System and process to be developed for taking action against individuals who file frivolous complaints.

Efficiency in Complaint Handling: IBBI should carefully review cases before forwarding them to IPs for response to avoid unnecessary expenditure of time and resources by IPs.

Regulatory Adjustments: Relevant sections of the Insolvency and Bankruptcy Code (IBC) to be amended to simplify the PPIRP process, such as adjusting mandate thresholds and clarifying declaration requirements.

Submit Resolution Plan with Application: Submission of the resolution plan along with the PPIRP application to be made mandatory to provide the Adjudicating Authority with a complete picture and facilitate more informed decision-making.

Public Disclosure of Haircuts: Ensure that any haircut to Operational Creditors (OCs) that exceeds the Financial Creditors (FCs) is disclosed publicly to maintain transparency and fairness.

Banker Awareness: Awareness and understanding of PPIRP to be encouraged and promoted among bankers through targeted education and guidelines from regulatory bodies.

Incentives for MSMEs: Government incentives and tax benefits for MSMEs opting for PPIRP to be introduced to encourage its adoption and streamline the process.

Incentives for Revival: Incentives similar to those previously offered by the BIFR (Board for Industrial and Financial Reconstruction) could be considered for company revival.

Review Entry Requirements: Entry requirements and qualification to be reviewed periodically and the same to be adjusted to balance competence with accessibility, ensuring that they remain relevant and practical.

IT Infrastructure: To streamline compliance processes and improve overall efficiency in insolvency proceedings, invest in advanced IT infrastructure to be made.

Case Management Systems: Adoption of case management systems should be encouraged to enhance transparency, tracking, and reporting in insolvency cases.

Data Analytics: Utilisation of data analytics to identify trends, common issues, and areas will help in the improvement in insolvency practice.

Guidance for Adjudicators: Comprehensive training and guidance to be provided for adjudicating authorities to ensure consistency in decision-making.

Appeals Process: Appeals process to be strengthened to address and rectify inconsistencies in adjudicating decisions.

Digitization of AFA Process: AFA process should be digitized to improve efficiency.

Ethical Standards: IBBI should establish clear ethical standards for the profession.

Composition of the Insolvency & Valuation Standards Board

CA. Gyan Chandra Misra, Chairman

CA. Durgesh Kumar Kabra, Vice-Chairperson

CA. Ranjeet Kumar Agarwal, President (Ex-officio)

CA. Charanjot Singh Nanda, Vice-President (Ex-officio)

CA. (Dr.) Rajkumar Satyanarayan Adukia

CA. Chandrashekhar Vasant Chitale

CA. Vishal Doshi

CA. Dheeraj Kumar Khandelwal

CA. Purushottamlal Khandelwal

CA. Priti Paras Savla

CA. Aniket Sunil Talati

CA. Cotha S Srinivas

CA. Sripriya Kumar

CA. Sushil Kumar Goyal

CA. (Dr.) Debashis Mitra

CA. (Dr.) Rohit Ruwatia

CA. Prakash Sharma

CA. (Dr.) Raj Chawla

CA. Hans Raj Chugh

CA. Pramod Jain

CA. (Dr.) Sanjeev Kumar Singhal

Shri Ritvik Ranjanam Pandey

Shri Vijay Kumar Jalani

Secretary to the Board

CA. Sarika Singhal



CONVENTION SECRETARIAT

Insolvency & Valuation Standards Board
The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector 62,
Noida-201309

Design & Printed at: **Viba Press Pvt. Ltd.,** 9810049515