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THE SIGNIFICANCE OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS IN SHAPING INDIA'S SOCIO-ECONOMIC DEVELOPMENT: A LEGAL AND REGULATORY REVIEW

Pradip Kumar Das [1], Devesh Kumar [2]

[1] Professor, Department of Law and Governance, Central University of South Bihar, Gaya, Bihar, India
[2] Research Scholar, Department of Law and Governance, Central University of South Bihar, Gaya, Bihar, India

Corresponding Author
Pradip Kumar Das, pradip@cub.ac.in

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ABSTRACT

This article underscores the crucial role of regulatory bodies in insolvency processes, providing the audience with a comprehensive understanding of their functions. They play a significant part in creating a conducive environment for restructuring viable businesses and rehabilitation. The Corporate Insolvency Resolution Process (CIRP) implementation under the Insolvency and Bankruptcy Code (IBC), 2016, has transformed the corporate insolvency regime of India and has affected the economic growth, wealth distribution, employment stability and ultimately socio-economic development of India. This paper evaluates the CIRP by scrutinising the legislative provisions and analysing case studies of various distressed companies to determine how far it has facilitated corporate distress resolution and protected the interests of its stakeholders. It focuses on the practical implementation of the CIRP and identifies the challenges in the CIRP, like judicial interpretation, procedural delays, and regulatory ambiguities. Ultimately, it provides suggestions for improving the efficiency and efficacy of insolvency resolution in India to promote sustainable socio-economic development, reassuring the audience of the regulatory bodies' commitment to the process.

Keywords: Corporate, Insolvency and Bankruptcy Code, Article

1. INTRODUCTION

The CIRP under the IBC is a cornerstone of modern corporate law in India. It forms a pivotal mechanism for addressing financial distress through a structured framework for resolving insolvency disputes to protect its stakeholders' interests and foster a conducive environment to attract Foreign Direct Investment (FDI). It has significantly impacted India's socio-economic development amidst business challenges. The IBC has caused a significant change in handling corporate insolvency disputes in India. As a result, India's ranking in the Ease of Doing Business Index has jumped from 130th in 2016 to 63rd in 2020. It increased FDI, contributing to India's socio-economic development. The CIRP impacts India's socio-economic dynamics by addressing critical issues like the revival of sick companies, encouraging a culture of risk-taking, promoting entrepreneurship, and creating jobs. It ensures accountability, fairness, and transparency in the insolvency resolution, essential elements that make the audience feel secure. It speeds up the resolution process and maximises asset value by balancing the stakeholders' interests. However, the CIRP framework often collides with India's complex legal and regulatory environment, leading to a dynamic environment that requires ongoing investigation. As the Indian economy grows, it encounters domestic and global problems, so examining the impacts of the CIRP remains essential.

This research paper examines the framework of the CIRP and its impact on India's socio-economic structure through an analysis of legislation, regulatory processes, case studies and judicial interpretations. The connection between the CIRP and India's socio-economic development will be explored by examining the legal and regulatory framework and its impacts. Moreover, this research seeks to identify the issues that enhance the ability of the CIRP to promote sustainable socio-economic development.

2. CORPORATE INSOLVENCY RESOLUTION PROCESS: AN OVERVIEW

2.1. DEFINITION AND OBJECTIVES OF THE CIRP

The CIRP is a legal process initiated under the IBC to resolve corporate insolvency issues. It is a structured mechanism that facilitates the timely resolution of financially distressed corporations while safeguarding the interests of all stakeholders involved. The CIRP promotes financial discipline and encourages entrepreneurship for a stable economy. Its primary objectives include reviving financially distressed corporations, maximising the value of assets, and promoting a conducive environment for economic stability and growth.

2.2. STAKEHOLDERS INVOLVED IN THE CIRP

The following diverse group of stakeholders are involved in the CIRP to play a crucial role during the resolution process:

1) Corporate Debtors: Corporate debtors are the companies that are indebted and undergoing insolvency proceedings.
2) Creditors: Creditors are entities to whom corporations owe financial obligations. It includes financial creditors and operational creditors. Financial Creditors include banks and financial institutions that lend to corporate debtors. They play a crucial role in decision-making during the resolution process. Operational creditors include suppliers, employees, etc., and corporate debtors in the form of operational debts.
3) Insolvency Professionals: Insolvency professionals are licensed professionals appointed to manage the CIRP. They manage the affairs of the corporate debtors (claims and actions of the debtors) and guide the resolution applicant during the insolvency resolution process.
4) Committee of Creditors (CoC): The CoC is a collective body representing the creditors and their interests and is responsible for making critical decisions during the CIRP. It approves resolution plans and makes crucial decisions about the future of the corporate debtor.
5) Adjudicating Authorities: The IBC has empowered courts and tribunals, namely the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), to oversee insolvency and adjudicate insolvency proceedings. The NCLT approves or disapproves the resolution plans and ensures the legality and validity of the process.

The role and involvement of each stakeholder are essential for the success of CIRP, which ensures that it is fair and transparent and maximises value for all stakeholders in the deal.

2.3. LEGAL AND REGULATORY FRAMEWORK OF THE CIRP

The legal and regulatory framework governing the CIRP in India comprises a comprehensive array of statutes, regulations, and guidelines. It facilitates efficient, transparent, and equitable insolvency resolution mechanisms. Currently, the IBC is the consolidated legal framework that governs the CIRP in India. It provides provisions for initiating, conducting, and concluding insolvency proceedings. From initiation to the conclusion of the insolvency proceedings, the CIRP includes the following steps:

1) When any corporate debtor commits a default, insolvency proceedings can be initiated by a financial creditor, operational creditor, or the corporate debtor itself.
2) The Adjudicating Authority appoints an Interim Resolution Professional (IRP) to manage the corporate debtor's affairs during the resolution process.
3) The IRP constitutes a CoC after assessing the financial position of corporate debtors, which are all financial creditors.
4) The CoC appoints the IRP as a resolution professional or another.
5) The resolution professional conducts the entire CIRP and manages the affairs of the corporate debtor during the CIRP.
6) A resolution applicant submits a resolution plan to the resolution professional, who presents it to the CoC for approval after carefully examining all plans.
7) If the Adjudicating Authority does not receive a concrete and viable resolution plan before the expiry of the insolvency resolution process period, it may issue an order for liquidation.

2.4. REGULATORY BODIES GOVERNING THE CIRP UNDER THE IBC

Regulatory bodies play a crucial role in enforcing and overseeing the legal and regulatory framework governing the CIRP in India. These are some regulatory bodies that govern the CIRP under the IBC:

1) The Insolvency and Bankruptcy Board of India (IBBI): The IBBI has been established under the provisions of the IBC. It is the apex regulatory authority under the Code to oversee and regulate insolvency professionals, professional agencies, and information utilities. The IBBI develops regulations, guidelines, and codes of conduct for various stakeholders involved in insolvency proceedings.
2) NCLT and NCLAT: The IBC empowers the adjudicating authorities to adjudicate insolvency matters, including approving resolution plans. The NCLT and NCLAT ensure the fair and timely resolution of insolvency matters by following the principles of natural justice and due process.

The regulatory framework governing the CIRP requires effective compliance mechanisms and enforcement measures to ensure conformity with legal provisions, regulations, and guidelines. Compliance mechanisms create clear and enforceable rules, procedures, and standards that govern the conduct of all stakeholders involved in insolvency proceedings. These procedures have been made to encourage transparency and accountability throughout the resolution process. It requires disclosure, periodic reporting, accountability metrics, etc. Indeed, this will enhance investor confidence, foster a favourable business environment, and facilitate socio-economic growth in India.

3. IMPACTS OF THE CIRP ON THE SOCIO-ECONOMIC DEVELOPMENT OF INDIA

Since the inception of the IBC, the CIRP has led to many socio-economic changes in the country. The CIRP aims to expedite corporate insolvency resolution, bringing efficiency and transparency into India's business environment. The CIRP has significantly impacted the socio-economic development of India in the following manners:

- Impact on Employment and Labor Market Dynamics: The CIRP has significantly impacted employment and labour market conditions in India's socio-economic framework. The primary purpose of the CIRP is to revive financially distressed companies, but it often involves restructuring and optimising measures that affect the workforce. The successful resolution plans potentially generate new employment opportunities and ensure sustained business operations, thus safeguarding existing jobs. On the other hand, an unsuccessful resolution process or liquidation proceedings adversely affect the employees and their families as there is always a fear of job loss among them. The CIRP protects and promotes employment opportunities through corporate restructuring. Therefore, it is essential to consider its impact on the labour market and take proactive steps to mitigate adverse effects.
- Impact on Creditors, Investors and Financial Markets: The CIRP significantly affects creditors, investors, and financial markets by influencing their confidence, risk perception, and investment decisions. The timely recovery of debts in the CIRP determines the risks and rewards for creditors. It improves creditors' confidence by reducing non-performing assets and attracting investment. It establishes a straightforward process for

managing troubled assets, boosting creditors' trust, and promoting more investment. This promotes a disciplined credit culture by making borrowers aware of the consequences of default. Investors (equity shareholders and future investors) closely monitor insolvency proceedings to evaluate the viability and potential returns connected with distressed assets. The resolution or liquidation of corporations under the CIRP significantly affects the valuation of assets by influencing investment decisions and market perception. Financial markets, including stock exchanges, bond markets, and other capital markets, are directly influenced by insolvency proceedings as they reflect more significant economic trends and investor mood. Successful resolution outcomes improve investment conditions in the nation by making them favourable for investors and financial markets.

- Impact on Economic Growth and Stability: The CIRP plays a crucial role in shaping economic growth and stability by easing financial distress within the corporate sector and ensuring a conducive business environment. Successful resolution outcomes boost economic growth by preserving valuable assets, ensuring business continuity, and enabling the effective use of resources. On the other hand, failure to achieve timely and effective resolutions under the CIRP badly affects economic growth by constraining investment, eroding market confidence, etc. Lengthy insolvency proceedings aggravate financial vulnerabilities, leading to systemic risks and macroeconomic imbalances.
- Resource Allocation: The CIRP has expedited the insolvency procedure and enhanced the distribution of resources. It improves economic stability by quickly resolving distressed assets, luring investment, permitting effective capital redistribution and encouraging financial discipline, lowering non-performing assets, and creating a more resilient economic climate to increase corporate confidence and aid in socio-economic growth. It facilitates optimal resource allocation by preventing capital from being tied up in unproductive firms. This reallocation may result in a more productive and growing economy by utilisation of resources more wisely throughout the board.
- Foreign Investment: The CIRP makes insolvencies transparent and protects creditors, which attracts foreign investment. A robust insolvency framework is necessary to attract foreign investors looking for a reliable legal environment for resolving commercial disputes. As a result, capital inflows increase and investor confidence is raised, supporting India's sustainable economic growth by encouraging company expansion, generating employment, and enhancing financial stability.

The CIRP impacts investor confidence, employment dynamics, and overall economic performance by intersecting with various aspects of socio-economic development. The CIRP plays a crucial role in promoting fair and balanced growth and prosperity by strengthening the flexibility and sustainability of India's socio-economic landscape through an efficient, transparent, and predictable resolution framework for treating financial hardship. Overall, the CIRP contribute substantially to India's socio-economic growth by upholding economic stability, encouraging a disciplined credit culture, protecting jobs, drawing investment, and guaranteeing effective resource allocation.

4. CASE STUDIES ON THE LEGAL AND REGULATORY IMPACT OF THE CIRP

The Indian judiciary has dealt with various aspects of the CIRP proceedings to provide valuable insights into the practical application and effectiveness of insolvency resolution mechanisms in India. This offers nuanced perspectives on the successes, challenges, and failures encountered during insolvency resolution processes. The following are some case studies that highlight these effects:

1) Vivek Bansal v. Burda Druck India Pvt. Ltd. & Anr. : A settlement agreement withdrew an application for CIRP. The problem started when the corporate debtor did not follow the terms and conditions of the settlement. The NCLAT decided that if the debtor did not follow the settlement agreement terms, the operating creditor could reopen the CIRP proceedings. This highlighted the flexibility of the insolvency framework to handle post-settlement defaults by setting a precedent for the resurrection of withdrawn CIRP applications under specific circumstances.
2) ICICI Bank Ltd. v. OPTO Circuits (India) Ltd. : A settlement agreement was breached after withdrawing a CIRP application like the above case. The NCLAT ruled that if the corporate debtor defaulted on the settlement agreement, financial creditors may request the resumption of CIRP proceedings. This decision upheld the rule

that creditors can resurrect their first CIRP application rather than filing a new one to provide a speedier remedy if a settlement is violated.

3) Vidarbha Industries Power Ltd. v. Axis Bank Ltd. : The NCLT has the discretionary power to admit or reject the CIRP applications filed by any applicant. The Supreme Court clarified that the NCLT has discretionary power under Section 7(5)(a) of the IBC to reject a CIRP application if it finds that the initiation of insolvency is not feasible or if the financial health of the corporate debtor does not support it. This decision added a substantial degree of judicial discretion by mandating that the NCLT consider the debtor's total financial status before accepting applications for insolvency.
4) Reliance Nippon Life Asset Management Ltd. v. Dewan Housing Finance Corporation Ltd. (DHFL) : An interim court order restricted the corporate debtor (Dewan Housing Finance Corporation Ltd., i.e. DHFL) from paying debt to the creditors. The Bombay High Court issued an interim order, but the CIRP was initiated against DHFL, highlighting the intricate relationship between court rulings and insolvency procedures. This situation was later influenced by the Vidarbha case, which recommended that these temporary orders be considered while deciding on the admission of a CIRP application.

5. CONCLUSION AND SUGGESTIONS

The CIRP has become a key mechanism in influencing India's socio-economic development. It has profoundly impacted the legal and regulatory landscape and the economy. The introduction of IBC has streamlined the resolution process, making it efficient and transparent. It has significantly influenced India's socio-economic development by resolving the long-standing issues of non-performing assets. The socio-economic benefits include the revival of distressed businesses, preservation of jobs, and further encouragement of entrepreneurial activities. Reintegration of viable businesses maintained economic growth by cushioning the economy from the undesirable impacts of corporate insolvencies. It has improved the effectiveness of the credit markets, creating a more stable business environment. It has increased investor confidence by offering a time-bound and structured framework for insolvency resolution, which has aided in stabilising and growing the economy.

However, there are specific challenges in implementing the CIRP. Issues that require attention have been identified, such as delays in the resolution process, judicial backlogs, etc. To enhance the effectiveness of the CIRP, the following steps are being suggested by the researchers:

1) The insolvency resolution process needs to be streamlined, and institutional capacity needs to be strengthened by boosting the NCLT's capacity and enhancing training for insolvency professionals.
2) Judicial reforms, including adopting advanced case management technology and increasing judges' strength, are essential to reduce backlogs.
3) Balancing stakeholders' interests is crucial for ensuring the fair treatment of all stakeholders, especially small creditors.
4) Regular audits shall be done to improve transparency in the insolvency resolution process.
5) Asset deterioration can be avoided by promoting early intervention and pre-insolvency plans.
6) The existing IBC should be regularly amended to consider changing market demands and corporate necessities.
7) These recommendations can strengthen India's insolvency framework, encouraging long-term socio-economic growth and creating a more resilient economic environment.

CONFLICT OF INTERESTS

None.

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The Insolvency and Bankruptcy Code, 2016, Section 3(8) defines "corporate debtor" as a corporate person who owes a debt to any person.

The Insolvency and Bankruptcy Code, 2016, Section 3(10) defines "creditor" as any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.

The Insolvency and Bankruptcy Code, 2016, Section 3(19) defines "insolvency professional" as a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

Under Section 21 of the Insolvency and Bankruptcy Code, 2016, the interim resolution professional constituted a committee of creditors comprising all financial creditors of the corporate debtor.

Ibid, Section 6.

Ibid, Section 13.

Ibid, Section 21.

Ibid, Section 22.

Ibid, Section 23.

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Ibid, Section 31 and 33.

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