

# UPDATE

This Update has been prepared by Ronodeep Dutta and Manvi Goel

## Digitalisation of Insolvency Process in India: Working towards a resilient future for India Inc.

### A. Introduction

The Insolvency and Bankruptcy Code 2016 (“Code”) is one of the most important and significant reform which has reshaped corporate India in the last decade. The IBC as noted by the Hon’ble Apex Court in the *Swiss Ribbons*<sup>1</sup> case has ensured that ‘*the defaulters paradise is lost*’<sup>2</sup>. This, the IBC achieves by separating the promoters and the management of a company from the company itself and enabling the revival of the company by replacing its management with a new management, thus having a salutary effect on the credit culture in the country through entrepreneurship, fostering economic growth and revitalization.

According to recent data from the Insolvency and Bankruptcy Board of India (“IBBI”), as reported by TOI, out of 1,005 cases valued at Rs 3.4 lakh crore, the 153 cases with claims exceeding Rs 1,000 crore represent a realisable value of Rs 3.05 lakh crore, accounting for 90% of the total recoverable value thereby demonstratively displaying 5% of insolvency cases (claims over Rs 1,000 crore), making up 90% of recoverable value<sup>3</sup>.

Equally concerning is the fact that the number of days taken for resolution have increased from 611 days in March 2023 to 680 days in March 2024 and further to 761 days in June 2024<sup>4</sup>. Similarly, for cases where the borrower has entered liquidation, the time for obtaining an order has risen from 455 days in March 2023 to 493 days a year later, and to 680 days by June 2024<sup>5</sup>.

Anxious with the growing delays in the resolution process prompted the Hon’ble Finance Minister to announce targeted reforms in her recent full budget by establishment of

<sup>1</sup> *Swiss Ribbons Pvt. Ltd. vs Union Of India*, (2019) 4 SCC 17,

<sup>2</sup> *ibid*

<sup>3</sup> ET Online, ‘Insolvency cases over Rs 1000 cr hold 90% of recoverable value despite representing just 15% of total cases’ (Aug 24, 2024, 12:12:00 PM IST), [https://economictimes.indiatimes.com/industry/banking/finance/banking/insolvency-cases-of-rs-1000-cr-hold-90-of-recoverable-value-despite-representing-just-15-of-total-cases/articleshow/112757180.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/industry/banking/finance/banking/insolvency-cases-of-rs-1000-cr-hold-90-of-recoverable-value-despite-representing-just-15-of-total-cases/articleshow/112757180.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) accessed 25 August 2024

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

specialized tribunals, creation of dedicated benches and technological enhancements in the tribunals and the appellate tribunal systems, to fast track the resolution process.

## ***B. Need for an integrated technology platform***

So far the IBC ecosystem works in silos and have their separate fragmented technological platforms. There is a need for a comprehensive end-to-end Information Technology platform to serve as a single source of information and record.

Presently, the disintegrated platforms are run and maintained individually and separately by the core institutions such as the tribunals, IBBI, IPs etc. and are restricted to their respective individual mandates. A quick look of the technology platform(s) used by the core institutions reveal the following:

1. National Company Law Tribunal (“NCLT”): The NCLT has ‘e-filing’ platform for parties to submit their petitions/ applications online and the Registry carries out scrutiny of these submissions and confirm the same before allotting the filing number. The system also shows the status of each petition/ application in a ‘Case Status Report’ for stakeholders in the public domain.
2. IBBI: The IBBI portal hosted by the National Informatics Centre (“NIC”) acts as a repository of orders, resources, compliance reporting, claims received/ admitted/ verified, publications, registered valuers, IBBI committees, IP information and performance matrix etc. for use by the public at large as well as information on public announcements and expression of interests (“EoIs”), auction etc.
3. Insolvency Professional Agency (“IPAs”): IPAs have websites and online portals for their IP members for registration and other compliance requirements such as list of assignments, fees and cost disclosures, relationship disclosures etc.
4. Ministry of Corporate Affairs (“MCA”): Debtor companies incorporated under Companies Act 2013 are a part of the MCA 21 portal which contains company information, directors information, charges, whether under insolvency process etc.
5. Information Utility (“IU”): National e-Governance Services Ltd. (“NeSL”) being the only IU registered under the Code acts as the repository of all the debt information and record of default (“RoD”) provided by creditors offering verification and authentication of debt and default as well as auction notices, IBBI public announcements etc.
6. IPs: Case management softwares.

Therefore it is seen that there is little to no technological interaction between these institutions. The information is disparate and the platforms mostly work in silos with limited exchange of information. Placed thus, there is need for these systems to be integrated and inter-linked in a structured way to streamline and bring about an uniformity of information.

### **C. *Way Forward***

Integration of the present systems starting from filing of insolvency applications based on RoD generated by the IU, online filing of replies and template based forms, communication of IPs with stakeholders, reporting of process outcomes to the IBBI, inter-creditor interreaction etc. have become the need of the hour.

One of the challenges faced by IPs is, in obtaining records/ information from the promoters of the corporate debtor. The promoters of the corporate debtor turn hostile and abstain from cooperating with the IPs which thereby delays the resolution process significantly. It also leads to disputes between the parties regarding what information has been submitted and what is pending to be submitted.

Therefore, if there is a single platform where information is to be submitted by the various stakeholders, there shall be a single source of truth which can be accessed by all parties. Not only that, it would also enable the tribunals to quickly have the facts established and curtail delays. NCLTs can quickly ascertain the violation of compliances and decide a case.

The government endeavours to set up an integrated technology platform, to provide a common information technology highway connecting all stakeholders involved in the debt resolution of distressed companies including the IBBI, lenders and tribunals, for quick, uniform and efficient rescue of companies.

Resultingly, on 23 July 2024, the the Hon'ble Finance Minister in her full budget speech, introduced a transformative proposal aimed at reforming the landscape of insolvency and bankruptcy through the establishment of an 'Integrated-Tech Platform'.

The Integrated-Tech Platform is envisioned as a centralized hub, which will consolidate and integrate a diverse assemblage of information critical to insolvency proceedings. It will bring together structured and unstructured data from multiple sources so to say the various databases, technology applications, and external datasets. The platform will leverage advanced digital tools and automation systems to manage and process this data. By automating repetitive and procedural tasks, the platform aims to significantly reduce human errors and streamline the insolvency resolution process.

The introduction of this technology-driven approach is also expected to have a positive impact on the banking sector. By accelerating the debt recovery process and improving the efficiency of insolvency proceedings, the platform will enhance the ability of banks and financial institutions to recover distressed assets. This, in turn, will contribute to a more stable and resilient financial system, as banks will be better positioned to manage and mitigate the risks associated with distressed assets. It is expected that such steps will facilitate ease of doing business.

This Update has been prepared by Ronodeep Dutta and Manvi Goel who can be reached at [ronodeep.dutta@aquilaw.com](mailto:ronodeep.dutta@aquilaw.com) and [manvi.goel@aquilaw.com](mailto:manvi.goel@aquilaw.com). This Update is only for informational purposes and is not intended for solicitation of any work. Nothing in this Update constitutes legal advice and should not be acted upon in any circumstance.