

## **IBC --- REFORMS TO IBC -- A STUDY WITH REGARD TO AVIATION SECTOR-- JET AIRWAYS ANG GO FIRST AIRLINES**

**By: Sri Madhurima Chaganti. Asst.Professor, Pendekanti Law College, Hyderabad**

### **Introduction:**

The Insolvency and Bankruptcy Code, 2016, herein referred to as IBC or The Code, is a legislation that deals with various provisions of insolvency. The aim of IBC is to consolidate and amend laws relating to reorganization and resolution of insolvency proceedings of individuals, corporate entities and partnership firms in a time bound manner. Apart from legislative intent, IBC also aims to protect the interests of lenders, investors, shareholders, secured creditors, employees and the company itself during the Corporate Insolvency and Resolution Process, known as CIRP in short.

IBC comes into play mainly during the liquidation of a company and to restructure the assets of the insolvent company. The IBC aims to consolidate and amend the laws relating to the insolvency resolution of companies, Limited Liability entities, partnerships and individuals which are contained in various enactments into a single Legislation.

### **Objectives of IBC:**

The code aims at a time bound resurrection and resolution for maximum utilization of the debtor's assets. The code guides the sick companies to either wind up their business or come up with a revival plan so that investors can exit with minimum loss.

Under IBC even the operational creditors like suppliers, workmen can initiate insolvency resolution process in the event of default. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 have been notified by the Insolvency and Bankruptcy Board of India (IBBI). However, petition under IBC can be filed only in case no other disputes exist.

---

<sup>1</sup> Dr. Kapoor. G.K.and Dr.Sanjay Dhamija, "Company Law & Practice A Comprehensive Text Book on Companies Act,2013 As amended by Companies(Amdt) Act,2020" 26 th edition, September 2022, Taxmann's Publications,para 24.2-1,p 949950

Admission to IBC leads to dissolution of the board, appointment of lenders' nominee as the resolution professional ('RP') and typically, sale of the entity to a new bidder.

The IBC has shifted the Indian insolvency regime from 'debtor-in-possession' to 'creditor-in-control'. "The Apex Court in *Swiss Ribbons Vs Union of India*, AIR (2019) 4 SCC 17 has held that the core objective of the IBC is to ensure revival and continuation of the corporate debtor". Thus, the IBC has a larger public-welfare consideration in play.

Under IBC the Corporate Insolvency Resolution Process (CIRP) can be triggered by three classes of persons-- Financial creditors (u/s 7 IBC), operational creditors (u/s 8 & 9, IBC) and corporate debtors (u/s 10, IBC). Section 7 makes appointment of IRP mandatory, while u/s 9 it is optional with party having option to apply to NCLT to appoint IRP.

While bringing out the difference between the financial and operational creditors in "*Swiss Ribbons V. Union of India*, (AIR (2019) 4 SCC 17) the Honourable Supreme Court held that both the creditors are distinct from each other under Art.14 of the Constitution of India". The court viewed that the object of the code is to preserve the corporate debtor as a going concern ensuring maximum recovery for all creditors. This judgment has created a significant impact on the way IBC is interpreted by providing clarity on the roles and responsibilities of the Resolution Professionals.

"In *Mobilox Innovations v. Kirusa Software Private Ltd.*<sup>2</sup>, the Apex Court observed that the operational debt should be free from any pre-existing dispute which cannot be dealt with summarily in insolvency proceedings".

### **Corporate Insolvency Resolution Process: (CIRP)**

Once an application for initiation of CIRP is admitted by the Adjudicating Authority, i.e., National Company Law Tribunal (NCLT), a moratorium is imposed on corporate debtor under Section 14 of IBC. The purpose of moratorium is to provide a cooling period for proper reorganization of business without disturbance by litigants. A moratorium prohibits the institution and continuation of any proceedings against the CD during the CIRP. A moratorium acts as a shield to prevent further depletion of the corporate debtor's assets, but it does not protect the key managerial personnel of the CD who was responsible for the insolvency. The moratorium shall cease to exist if at any time during CIRP, the Adjudicating Authority has

---

<sup>2</sup> AIR 2017 SC 4532

approved resolution plan u/s 31(1) or order of liquidation u/ 33. Once liquidation begins, moratorium ends.

During the process of CIRP, after submission of resolution plan by interested parties, it needs to be approved by CoC by not less than 75% of votes of financial creditors. The adjudicating authority, after being satisfied that the approval by CoC is as per IBC, approves the Resolution plan. However, IBC provides that any related party of the corporate debtor cannot claim the right to be a part of a committee of creditors (CoC). The object of such a provision is to prevent the decisions of the CoC from being sabotaged by related parties of the corporate debtor.

“Section 5(24)(j) of the IBC defines ‘related party’, in relation to a corporate debtor as inclusive of any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement”.

Further, section 21(2) and the first proviso thereunder, of the IBC, states:

“The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorized representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors”.

The Court held that “while understanding the meaning of ‘related party’ in the context of the IBC, it is important to keep in mind that it was defined to ensure that those entities which are related to the corporate debtor can be identified clearly, since their presence can often negatively affect the insolvency process”.<sup>3</sup>

### **Clean Slate Theory:**

The management of the company is expected to begin with a ‘clean slate’ which means that the business of the CD is revived and is expected to start afresh. In a landmark judgment elucidating the Clean Slate Theory the Apex Court held that “a Resolution Applicant cannot be afterwards traumatized by surprising him with undecided claims and ‘hydra head popping up subsequently’ after the Resolution Plan has been accepted”. It was also upheld the binding

---

<sup>3</sup> Phoenix ARC Vs Spade Financial Services, (2021) ibclaw.in 03 SC

nature of section 31(1) of IBC on all stakeholders. The court further upheld the supremacy of financial creditors in the CoC in cases of distribution of claims.<sup>4</sup>

Once a Resolution Plan is approved by the Adjudicating Authority under Section 31 of the IBC it is binding on all Stakeholders and no Creditor including Government Authority with respect to their Statutory Dues can initiate Legal Proceedings in respect of their claims not provided for in the Resolution Plan.<sup>5</sup>

### **CIRP Moratorium:**

"Under section 14 (1) of IBC, Adjudicating Authority imposes a moratorium prohibiting the following actions against CD:

- (a) Institution of suits or continuation of pending suits including execution of judgments
- (b) Transferring, alienating or disposing off assets
- (c) Foreclose, Recover or enforce any security interest on property or any action under the SARFAESI Act, 2002
- (d) Recovery of property in possession of CD by owner or lessor

Proviso to Section 14 (1) of IBC explains as long as there is no default in payment of fee for continuation of license, permit, registration etc., the insolvency of the CD will not affect the status of such license, permit or registration etc.

Proviso to Section 14 (2) of IBC clarifies supply of goods or services to the CD shall not be affected during moratorium

Provisions of u/s 14(1) shall not apply to (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

u/s 14(1)(4), the moratorium will be in place from the date of such order to completion of CIRP."

---

<sup>4</sup> Essar Steel India Ltd v. Satish Kumar Gupta & Ors, (2020) 8 SCC 531

<sup>5</sup> Ultratech Nathdwara Cement Ltd v. UOI, Writ Petition No.9480/2019

## **Insolvency of Go First Airlines (GoAir / Go First)**

Go First filed for voluntary insolvency under Section 10 of the IBC on May 2, 2023<sup>6</sup>. Its plea was admitted by NCLT on May 10, 2023. Go First owes its creditors around Rs 6,200 crore, with Central Bank of India, Bank of Baroda, and IDBI Bank as secured creditors with admitted claims of Rs 1,934 crore, Rs 1,744 crore, and Rs 75 crore, respectively which sum up to Rs 3,753 crore which is more than 50% of the total debt.<sup>7</sup>

In Go Air's case, the Aviation Company had taken 54 aircrafts on lease. The airline had no aircrafts of its own. Go Air defaulted in the lease rental payments, and the lessors terminated the lease and applied for deregistration of the aircraft with the DGCA. The lease was terminated before the initiation of insolvency against Go Air. The lessors were caught off-guard when Go Air filed for Voluntary Insolvency without releasing the aircrafts leased by it. The moment moratorium was imposed all the aircrafts had to be grounded as per the provisions of IBC. Following this, the DGCA rejected the deregistration applications citing the moratorium<sup>3</sup>. Therefore, the lessors invoked the writ jurisdiction of the Delhi High Court seeking directions against the DGCA to deregister the aircraft and export them.

"Section 14(1)(d) of the IBC prohibits recovery of any property by the owner or lessor where such property is 'occupied by' or 'in the possession' of the corporate debtor". The Delhi High Court ruled that on termination of the lease before the insolvency, the aircraft ceased to be the property in possession of Go Air and concluded that Section 14(1)(d) was inapplicable. This appears to be contrary to the Supreme Court's judgment in *Rajendra K Bhuta*<sup>8</sup>. The Supreme Court in this case ruled that the expression "occupied" does not refer to rights or interests created in property but only actual physical possession of the property. The physical possession of the aircraft was with Go Air. Also, if all aircraft are deregistered then the insolvency proceedings of Go Air will be a paper formality.

Following this, The Ministry of Corporate Affairs on 03 October 2023, issued a notification u/s 14(3) of the IBC excluding aircraft, aircraft engines and airframes from the moratorium. The notification is in resonance with the Cape Town Convention and Protocol which was ratified by India. According to this convention, the aircraft must be returned to the owner within 2 months of the insolvency of the lessee. The Aircraft Act and the rules therein also incorporate

---

<sup>6</sup> Company Petition No. (IB)-264(PB)/2023 ;

<sup>7</sup> <https://www.business-standard.com/companies>

<sup>8</sup> *Rajendra K Bhuta v. Maharashtra Housing and Area Development* Civil Appeal No 12248 of 2018

the terms of the convention. The airline had also exhausted all moratorium limits under IBC. The Delhi high court relied on this notification and ordered the deregistration of all 54 aircraft leased by Go First.

The company alleged that the bankruptcy of the Aircraft is due to supply of faulty engines by the US engine making Company Pratt & Whitney (P&W). The company is now engaged in ongoing arbitration proceedings in Singapore P & W where it is seeking \$1 billion from P&W, which, if awarded, will be used to distribute funds to the creditors and facilitate the liquidation process. As on 17 July, 2024 The CoC is finalising a voting proposal for the airline's liquidation as the creditors anticipate a better recovery from the arbitration proceedings against US-based engine maker Pratt & Whitney (P&W) than from selling the airline. In addition to the arbitration claims, creditors expect at least Rs 1,965 crore from auctioning a prime 94-acre land parcel in Thane near Mumbai, held as collateral. Creditors believe these recoveries are more promising than selling the airline at a low price.<sup>9</sup>

### **Liquidation Moratorium:**

Moratorium can also be imposed under Section 33 (5) of IBC, after an order of liquidation has been passed. Thus, while section 14 pertains to CIRP moratorium, section 33(5) pertains to liquidation moratorium. Literal meaning of 'moratorium' is temporary ban on an activity. This is to ensure that the assets and liabilities of the corporate debtor can be efficiently analysed by the Resolution Professional (RP) and any action by or against corporate debtor stands suspended. The RP takes charge of the business of corporate debtor and only the activities related to or required for the insolvency process are undertaken.

Section 33(5): Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority

It is thus clear from the intent of the legislature that moratorium u/s 33(5) does not apply to pending suits. The Delhi High Court held that "From the language of Section 33(5) of the IBC, it is clear that the bar/moratorium is only in respect of fresh suits or legal proceedings. Unlike the moratorium under Section 14 of the IBC, where it is clearly noted that the moratorium is in respect of institution of suits or continuation of pending suits or proceedings against corporate

---

<sup>9</sup> <https://www.business-standard.com/companies>

debtor, the words "continuation of pending suits or proceedings" are conspicuously absent in Section 33(5) of the IBC. The omission of pending suits and legal proceedings of the corporate debtor from the scope of the bar provided under u/s 33(5) seems to be an error".<sup>10</sup>

If a provision of law can be misused, it is for the legislature to amend the same and the legislative casus omissus cannot be supplied by judicial interpretative process. Even if it is assumed that there was an omission on behalf of the legislature in not applying the moratorium under Section 33(5) of the IBC to pending suits, the same cannot be supplied by the Courts. It is for the legislature to amend the statute.

### **Objectives of Liquidation:**

The objective of the liquidation process is to derive the maximum value from the assets of the corporate debtor for the benefit of various creditors and other stakeholders in the company under liquidation. The objective is not the revival of the company. Thus, it can be seen that there is a significant difference between u/s 14 and u/s 33(5). u/s 14 of IBC moratorium is applicable during the pendency of the resolution proceedings. However, once the resolution process fails, the moratorium comes to an end and the suit has to proceed as fresh suit and the provisions of u/s 33(5) of IBC may also apply.

The IBC bars certain individuals to submit a resolution plan or to participate in the insolvency resolution process. "The objective behind the bar against certain individuals is to ensure that persons responsible for the insolvency of the corporate debtor do not participate in the CIRP by means of a backdoor entry".<sup>11</sup> The Supreme Court categorically observed that the provisions of Section 29A are intended to ensure that persons responsible for insolvency of the corporate debtor do not participate in the resolution process as their participation would undermine the statutory object and purpose of the IBC. Thus, the companies which have initiated the insolvency resolution are barred from regaining control over the company.

Before Section 29A was introduced, there was no specific criteria for disqualification to participate in the bidding process. This loophole enabled any person, including key managerial personnel, director, promoter or any persons associated with them, the very persons who were responsible for the insolvency, to regain control of the insolvent company by participating in the bid. This meant the company falling back into the hands of persons who ruined it. But, in

---

<sup>10</sup> Elecon Engineering Company Ltd v. Energo Engineering Projects(2022) ibclaw.in 221 hc

<sup>11</sup> Chitra Sharma v. UOI, W.P. (C) 744 of 2017

this process the creditors had to bear the brunt of taking deep haircuts, most of the times up to 95% of the total credit amount. Thus, the companies abused the process by going for insolvency wherein they would pay only 5% of the total credit and regain control of the company by participating in the auction.

Therefore, after numerous consultations the legislature inserted this provision inserted IBC vide Amendments dated 23/11/2017 and 6/6/2018, to disqualify those persons, because of whom the corporate debtor stood on the verge of downfall, from regaining control over the company.

Under section 30(4) of IBC,2016, The Insolvency and Bankruptcy Board of India (IBBI) has also amended the norms governing liquidation of a company under the Insolvency and Bankruptcy Code, 2016 and barred promoters from participating in the process at any level.

Section 29 A of IBC,2016 reads as under:

“Section-29A of IBC,2016: Persons not eligible to be resolution applicant. – A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) [at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non performing asset accounts before submission of resolution plan:

[Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.]”



Thus, Section 29A disqualifies promoters from proposing the resolution plans. "In Jindal Steel and Power Limited vs. Arun Kumar Jagatramka & Gujarat NRE Coke Limited<sup>12</sup>, the NCLAT has held that when a scheme of arrangement is maintainable as per Section 230 of the CA, 2013 for the companies which are undergoing liquidation, the same shall not be maintainable when proposed by a person ineligible under Section 29A of IBC. On appeal the SC upheld the order of NCLAT and held that the promoter ineligible under section 29A of IBC, 2016 cannot make application for compromise and arrangement under section 230 of the Company Act, 2013. Thus, the Honourable SC observed that Section 29A of the IBC has been enacted with larger public interest in mind and to facilitate effective corporate governance. It categorically denied back-door entry to defaulting promoters in CIRP under section 29A of IBC".

Thus, as far as Scheme of Arrangement is concerned India has a robust mechanism in place to rescue and revive an ailing company while protecting the interests of all other stakeholders. A Scheme of Arrangement is a process whereby a company in financial distress reaches a binding agreement with its creditors to pay back all or part of its debts over an agreed timeline.

#### **Objective of IBC ---Time bound resolution:**

IBC was enacted to ensure a time-bound mechanism for resolution and restructuring of a bankrupt entity. Under section 12 of IBC, 2016 a 180-day deadline was stipulated for resolution, with a permitted 90-day extension. IBC (Amendment) Act, 2018, extended this period to 330 days. The law being so, cases have taken several years to be resolved. Supreme Court says Jet Airways case an eye-opener, suggests reforms to IBC. The Court suggested reforms to the IBC with respect to timelines, guidance to the Committee of Creditors (CoC) and constitution of a monitoring committee. The Supreme Court on 7 November, 2024 said that the Jet Airways case has been an eye-opener which has brought to light deficiencies in the Insolvency and Bankruptcy Code (IBC) which need to be addressed.

"In Essar Steel India Ltd v. Satish Kumar Gupta & Ors,<sup>13</sup>; The Supreme Court observed that the SICA 1985, DRT Act 1993 and the SARFAESI Act, 2002 failed in resolution of stressed assets due to the long-time taken for effective resolution of stressed industries. Therefore, in order to ensure maximum realization of value for the assets of the stressed company, the SC

---

<sup>12</sup> (2021) ibclaw.in 46 SC

<sup>13</sup> (2020) 8 SCC 531

upheld the validity of Section 4 of the IBC (Amendment) Act which provided for a mandatory timeline within which the CIRP including legal proceedings needed to be completed”.

"Section 12 of IBC,2016 --- Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 1[sixty-six] per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

2[Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.]"

"Section 55 of IBC,2016 --- Fast track corporate insolvency resolution process.

(1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process.

(2) An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:—

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government."

"Section 56 of IBC,2016 ---Time period for completion of fast track corporate insolvency resolution process.

(1) Subject to the provisions of sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent. of the voting share.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days:

Provided that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once."

"Section 57 of IBC,2016 --- Manner of initiating fast track corporate insolvency resolution process.

An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along with—

- (a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- (b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process."

### **Objective of IBC—Why Defeated:**

IBC was enacted as the earlier Acts such as the SICA, 1985, DRT Act 1993 and the SARFAESI Act, 2002 failed in resolution of stressed assets due to the long time taken for effective

resolution of stressed industries. These Acts focussed only on liquidation of sick industries and not to revive them in a time-bound manner. IBC was enacted with the purpose of reviving the insolvent industry and facilitate liquidation only as last resort.

This being the Law, it has been observed that these timelines are rarely adhered to. It is taking anywhere between 3 to 5 years, sometimes even more as in case of Kingfisher Airlines. By the time liquidation happens the assets become obsolete and rarely carry any value. The creditors are sometimes forced to take a haircut of around 95% and end up taking amount much lesser than is actually due.

In a natural scenario, prices of immovable assets like land and buildings appreciate over time. However, it has been observed that once the company goes into liquidation, the assets fetch far less price than they value because the interested buyers cannot afford such high price. It may also be because the prospective buyers want to take advantage of the sick company and grab the assets at much lower price. Both ways they are losing their money.

### **Insolvency of Jet Airways:**

Case in point being the Jet Airways. The Airline halted its operations due to heavy loans and unpaid dues in April, 2019. It was admitted by National Company Law Tribunal (NCLT) for insolvency in June, 2019. The due process as laid down under IBC was followed with the appointment of Resolution Professional (RP) seeking resolution plans. In October, 2020 the successful bidder Jalan-Kalrock Consortium (JKC) sought to revive the sick Airline. The Resolution plan was approved by CoC and subsequently NCLT approved it in June, 2021. JKC submitted a Performance Bank Guarantee (PBG) of INR 150 crore and as per the conditions

JKC was supposed to make a first instalment of RS 350 crore within 180 days. JKC paid Rs. 200 crore as deposit and sought to adjust the bank guarantee of Rs. 150 crore making it to total of Rs.350 crore. NCLT accepted this offer and allowed JKC to ownership of Jet Airways. In January 2023, the creditors appealed to National Company Law Appellate Tribunal (NCLAT) which upheld the order of NCLT. In March 2024, the creditors lead by State Bank of India (SBI) along with Punjab National Bank and JC Flowers Asset Reconstruction Private Limited, challenged the NCLAT verdict in the Supreme Court (SC) of India. The SC allowed the creditors' appeal. Delivering its verdict on 7 November, 2024, the SC ordered the liquidation of grounded Indian carrier Jet Airways, saying it "had no choice"<sup>14</sup>. The SC highlighted the lacunae in the IBC and also criticized the functioning of NCLT, NCLAT, RP, CoC etc. Exercising its extraordinary powers under Article 142 the SC set aside decision by NCLAT which upheld the resolution plan of JKC and transferred ownership to JKC without full payment to lenders. The SC ordered NCLT Mumbai to appoint a liquidator immediately to carry out the liquidation. The SC held that the Rs 200 crore infused by JKC stands forfeited and directed lenders to invoke a PBG of Rs 150 crore.

The bench of the then Chief Justice of India DY Chandrachud and Justices JB Pardiwala and Manoj Misra suggested ways to improvise and strengthen the insolvency ecosystem. The Judgment and observations of the SC as under:

"We hold that the successful resolution applicant (SRA, that is JKC) has contravened the terms of the resolution plan, and the corporate debtor is directed to be taken into liquidation. The fundamental concern is not only to do substantial justice but also to ensure speedy disposal of disputes. The resolution plan has been contravened. Since the resolution plan cannot be implemented, liquidation remains an option for the corporate creditor," the judgment said.

Before pronouncing the order, Justice Pardiwala orally noted that this case had taught "many lessons." "This litigation is an eye-opener and has taught us many lessons about the Insolvency and Bankruptcy Code (IBC) and the functioning of the National Company Law Appellate Tribunal (NCLAT)," he said.

"We have no doubt that the NCLAT acted contrary to settled legal principles. NCLAT incorrectly interpreted our order," the Court observed.

---

<sup>14</sup> SBI vs The Consortium of Murari Lal Jalan & Florian Fritsch on 7 November,2024

“Thus, we exercise plenary powers and direct that the corporate debtor (that is Jet Airways) be taken into liquidation. Appeals succeed. NCLAT order set aside. In these peculiar and alarming circumstances, five years have passed since NCLAT cleared the resolution plan. Thus, under Article 142, we direct that the corporate debtor be taken into liquidation, and Rs 200 crore stands forfeited. Lenders are permitted to encash the Performance Bank Guarantee. NCLT Mumbai to appoint a liquidator forthwith,” the court said.

NCLAT had, on March 12, upheld the resolution plan of the grounded airline and approved the transfer of its ownership to JKC. NCLAT had told JKC to obtain an Air Operator’s Certificate within 90 days. It had also given it more time to pay Rs 175 crore to SBI, as 107 days had passed since NCLAT’s order allowing the transfer of ownership.

JKC alleged that SBI had previously given loans to companies without security, leading to the current situation. SBI argued that the Performance Bank Guarantee (PBG) of Rs 150 crore should not be used, even if expressly mentioned in the resolution plan. SBI requested the court to order the liquidation of the airline, saying it was unclear as to what steps are to be taken when the resolution plan was not working.

“Respondents can adjust the PBG upon execution of the mortgage of all three Dubai properties, which the respondents have failed to do even today,” Additional Solicitor General N Venkataraman said. Further, the SC held that the PBG cannot be permitted to be adjusted against the first tranche payment, and therefore directed that INR 150 Crore be infused in cash on or before January 31, 2024.

“Beyond the confines of the aviation industry, this judgment is expected to engender a climate of circumspection and diligence among future investors, particularly within asset-intensive sectors where revival efforts are fraught with regulatory and financial complexities. The Supreme Court’s stern stance sent an unequivocal message: non-compliance with insolvency resolutions, particularly by successful resolution applicants, will be met with the full force of the law, including liquidation,” Tushar Kumar, Advocate, Supreme Court of India, said.

SC also flagged shortcomings in NCLT, NCLAT. The bench observed a growing tendency among Members of the NCLT(s) and NCLAT to ignore or defy Supreme Court orders. “We put the NCLT(s) and the NCLAT on notice that any act of contravention of this Court’s orders and the broader principle of judicial propriety will not be tolerated,” the Court said.

“Persons with high ideals and impeccable integrity should be appointed as Members of the NCLT and NCLAT. There should be no political appointments,” the Court said.

While criticising the company and appellate tribunals for delays in handling insolvency and bankruptcy matters the Court observed that “Adjudication in a time-bound manner would help prevent any further deterioration of the corporate entity’s value. The original timelines established by the Code and the resolution plan must be maintained to prevent dilution of the Code’s objective, uphold investor confidence, and support corporate restructuring efforts,” the Court said.

### **Suggestions by the Court:**

"Committee of Creditors (CoC) should record reasons while approving/ rejecting a resolution plan. This will enable the NCLT/ NCLAT to understand the rationale behind the CoC’s decision-making and avoid unwarranted interpretation.

An oversight committee should be constituted for better enforcement of standards and practices set out in the guidelines issued by the IBBI for functioning of the CoC, which are otherwise self-regulatory in nature.

NCLTs, while approving a resolution plan, should record the next steps that are to be taken by the respective parties for implementation of the approved plan, to ensure that parties are more vigilantes regards their obligations and to prevent unnecessary delay in implementation.

The NCLTs and NCLAT have also been directed to adjudicate applications under the Code in a time-bound manner, by adhering to the timelines prescribed under the Code and to not ignore requests for urgent listings and orders passed by the Supreme Court.

The Court also highlighted the need to improve the existing infrastructure in the NCLTs and appoint adequate number of members to aid the insolvency reform initiative undertaken by the Government."<sup>15</sup>

### **Conclusion and Suggestions**

The SC Judgment emphasises the importance of speedy and timely resolution under IBC. As the honourable SC rightly observed, the lacunae in IBC are due to non-application of the provisions of IBC. “The National Company Law Tribunal (NCLT) is a quasi-judicial body in India with adjudicating authority relating to Indian companies including proceedings relating

---

<sup>15</sup> <https://corporate.cyrilamarchandblogs.com/> By Dhananjay Kumar & Abhishek Mukherjee

to arbitration, compromise, arrangements, reconstructions and the winding up of companies, insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016”.<sup>16</sup>

The tribunals are already over-burdened and under staffed. The IBC has only set the timelines to be followed. IBC as code can be amended according to the guidelines of SC as held in Jet Airways case. But the larger question of machinery available to deal with insolvencies involving immense financial liabilities remains. As learnt above NCLTs have to deal with many other cases with regard to companies. Cases are listed as per priority as each of the company needs early resolution to their disputes. In this scenario the tribunals may not be able to hear Insolvency petitions on priority basis.

### **Suggestions:**

In order to clear Insolvency petitions expeditiously it is hereby suggested the establishment of separate Insolvency Tribunals and Insolvency Appellate Tribunals at each of the metro cities to deal with CIRP and liquidation of assets of insolvent companies. This will ensure time bound resolution of the insolvencies within the time specified in IBC. The assets of the insolvent company need to be reconstructed as soon as possible to maximise the recovery due to the creditors. Establishing separate tribunals for insolvency resolution may help in expediting the process.

---

<sup>16</sup> <https://efiling.nclt.gov.in/mainPage.drt>