INSOLVENCY PROFESSIONAL AS A KEY TO RESOLUTION UNDER INSOLVENCY & BANKRUPTCY CODE, 2016: A CRITICAL ANALYSIS

A thesis submitted to the

UPES

For the award of

Doctor of Philosophy

in

Law

By

Rakesh Kumar Chauhan

October, 2024

SUPERVISOR

Dr. Anju Pandey

School of Law

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DEHRADUN - 248007: UTTARAKHAND

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DECLARATION

I declare that thesis entitled, "Insolvency Professional as a Key to Resolution under Insolvency & Bankruptcy Code, 2016: A Critical Analysis" has been prepared by me under the guidance of Dr. Anju Pandey, School of Law, UPES. No part of this thesis has formed the basis for the award of any degree or fellowship previously.

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CERTIFICATE

I certify that Rakesh Kumar Chauhan has prepared his thesis entitled, "Insolvency Professional as a Key to Resolution under Insolvency & Bankruptcy Code, 2016: A Critical Analysis", for the award of PhD degree of the UPES, under my guidance. He has carried out the work at School of Law, UPES.

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ABSTRACT

The Insolvency and Bankruptcy Code of 2016, has distinguished itself as the pre-eminent economic reform law of the decade. Its central objective is to promote entrepreneurship, enhance access to credit, enable timely business closures, all while striving to maximize asset value. Remarkably, this code has become a formidable instrument for the banking sector in tackling Non-Performing Assets and improving recovery rates. It adeptly tackles various deficiencies of the prior insolvency framework, signaling a substantial change in approach. The introduction of the Insolvency and Bankruptcy Code 2016 ushered in the establishment of the profession and framework of Insolvency Professionals. They serve as Interim Resolution Professionals and Resolution Professionals during the resolution phase and as liquidators during the liquidation phase.

These professionals play a pivotal role in the efficient implementation of insolvency laws, wielding specific authority over debtors and their assets. When a company becomes insolvent, it essentially falls under the purview of the creditors. The Insolvency Professional (IP) then becomes the central entity responsible for convening the creditors, maintaining the going-concern status of the insolvent entity during the resolution process, safeguarding assets, and, when necessary, increasing asset value by contesting dubious asset transfers or obligations. Most importantly, the IP facilitates the formulation of the resolution plan.

Likewise, in the UK, administrators are endowed with the authority to undertake any actions deemed necessary or expedient for the management of the company's affairs, business, and its assets. Chapter-II of the US Bankruptcy Code, addresses reorganization, akin to insolvency resolution in India and administration in UK law. The reorganization structure outlined in the US Bankruptcy Code adopts a "debtor-in-possession" approach, in contrast to ‘Creditor’s control’ in India.

However, despite its transformative impact, the IB Code encounters numerous implementation challenges and the Insolvency professionals face practical hurdles while navigating Corporate Insolvency Resolution Process and Liquidation. The Insolvency Professionals find it very difficult to run the business as going concern in the absence of inter-alia finance, adequate power, clarity in many provisions of the Code, conflicting

judgments of various Adjudicating Authorities, controls over sundry debtors, biasness & integrity issues of the IPs and many other infrastructural issues in the Insolvency Eco-System. The study highlighted the gravity of the issues wherein 92% insolvency professional's acknowledged implementation challenges and practical difficulties, despite recognizing the positive impact of the IBC, in addressing shortcomings of the previous insolvency regime. The research also recommends various suggestions inter-alia in the form of amendments in IB Code / inclusion of specific provisions like, separate tailored resolution mechanisms to address challenge of Real Estate & others, akin to sector-specific chapters in the US bankruptcy code; Leveraging Technology in the IBC Ecosystem; Power of attachment of the property of the sundry debtors to IPs; Making Information Utility framework more robust; Development of 'full-bodied assets market in India'; More powers to Adjudicating Authorities in terms of imposing penalty for disobedience over stakeholders; More benches of NCLT/NCLAT in the country, and incorporating the best practices of developed countries regarding the roles and powers' of insolvency professionals, would significantly enhance, the effectiveness of the Indian insolvency law, potentially making it the best in the world for resolving insolvencies.

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LIST OF ABBREVIATIONS

Terms	Defined
AA	Adjudicating Authority
AAA Rules	Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AR	Authorized Representative
ARCs	Asset Reconstruction Companies
BLRC	Bankruptcy Law Reforms Committee
BIFR	Board of Industrial & Financial Reconstruction
Board	Insolvency and Bankruptcy Board of India
BR Act	Banking Regulation Act, 1949
CA 1956	Companies Act, 1956
CA 2013	Companies Act, 2013
CCI	Competition Commission of India
CD	Corporate Debtor
CEO	Chief Executive Officer
CDR	Corporate Debt Restructuring
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CoC	Committee of Creditors
Code	Insolvency and Bankruptcy Code, 2016
Deposit Rules	Companies (Acceptance of Deposit) Rules, 2014
DRAT	Debt Recovery Appellate Tribunal
DRT	Debt Recovery Tribunal
EOI	Expression of Interest
FC	Financial Creditor

F-CIRP	Fast Track Corporate Insolvency Resolution Process
F-CIRP Regulations	Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code, 2016
IBC Laws	http://www.ibclaw.in
ICD	Insolvency Commencement Date
IM	Information Memorandum
IP	Insolvency Professional
IP Regulations	Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016
IPA	Insolvency Professional Agency
IPE	Insolvency Professional Entity
IRP	Interim Resolution Professional
IRP costs	Insolvency Resolution Process Costs
IU	Information Utilities
JLF	Joint Lender's Forum
LCD	Liquidation Commencement Date
Limitation Act	Limitation Act, 1963
Liquidation Regulations	Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
LLP	Limited Liability Partnership
LLP Act	Limited Liability Partnership Act, 2008
LLP Rules	LLP (Winding-Up and Dissolution) Rules, 2012

LODR	SEBI (Listing Obligations and Disclosure Requirements) Regulations,
MCA	Ministry of Corporate Affairs, Government of India
MCGM	Municipal Corporation of Greater Mumbai
MRUA	Maharashtra Relief Undertaking (Special Provisions) Act
MSMEs	Micro, Small, And Medium Enterprises
NBFC	Non-Banking Financial Institution
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NPA	Non-Performing Asset
OC	Operational Creditor
PRA	Prospective Resolution Applicant
RBI	Reserve Bank of India
RDDBFI	Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act, 1993)
RFRP	Request for Resolution Plans
RP	Resolution Professional
Rs.	Rupees
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest
SCC	Stakeholder Consultation Committee
SEBI	Securities and Exchange Board of India
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
SDR	Strategic Debt Restructuring
UNCITRAL	The United Nations Commission on International Trade Law
VL	Insolvency and Bankruptcy Board of

Regulations	India (Voluntary Liquidation Process) Regulations, 2017

CHAPTER-I

INTRODUCTION

1.1. INTRODUCTION TO INSOLVENCY AND BANKRUPTCY CODE IN INDIA

The insolvency and bankruptcy code, 2016 is the most important economic reform legislation of the decade, aimed inter-alia encouraging entrepreneurship, ensuring accessibility of credit, timely freedom of exits from business with the objective to maximize value of assets. The code has also proved to be a powerful tool for the NPAs of banking sector in terms of recovery. Many issues/drawbacks of erstwhile Insolvency regime have been taken care of by this game changing legislation. It's crucial to recognize that the concept of ‘ease of doing businesses encompasses not just entry but also the facilitation of exiting (Nageswaranet al. 2022). Nearly seven years ago, India implemented the groundbreaking Insolvency and Bankruptcy Code of 2016, aimed at resolving what the Economic Survey of 2015-2016, termed as the 'Intriguing conundrum', the lack of exit opportunities, which had far-reaching implications for corporations and taxpayers (*Economic Survey of India,* 2016).

The bankruptcy code serves as a comprehensive solution for resolving insolvencies, streamlining what was previously a lengthy and costly process. Its objective is to safeguard the interests of small investors and simplify the business environment, making it less burdensome. As we understand, the insolvency domain is highly dynamic, particularly within a market economy, as it gains richness, depth, and maturity with each transaction. The insolvency framework in India is no different. Since its inception, the Insolvency and Bankruptcy Code, 2016 (the Code), has undergone several legislative amendments to fortify its processes and align with evolving market dynamics. Moreover, the introduction of the IBC has led to a significant shift in the debtor-creditor relationship, erasing the notion of a debtor's paradise. Nevertheless, the code has a many implementation challenges and practical difficulties encountered by professionals at ground level. The code being an empirical economic law, largely depend on trial & error method which is reinforced through judicial clarifications which provide a kind of certainty & authority to persons associated with implementation. Time to time the

Adjudicating Authorities (hereinafter mentioned as AAs) are taking up all contentious issues of the code to iron out the wrinkles, however lot is still to be done.

In the IB code, many statutory duties & responsibilities are to be undertaken by insolvency professionals (referred as IPs), who are being watched over through Insolvency Professional Agency (referred as IPE) and Insolvency & Bankruptcy Board of India (referred as IBBI), for efficacious discharging of their duties. These IPs while undertaking the task as "Interim Resolution Professional" (referred as IRP)/ "Resolution Professional" (referred as RP) "Liquidator" under the code, encounters many challenges and practical difficulties on ground while discharging their statutory functions in 'Corporate Insolvency Resolution Process' (referred as CIRP) and 'Liquidations', despite various safeguards and powers conferred on them in the IB Code.

1.2. HISTORICAL PROGRESSIONS OF INSOLVENCY LAWS IN INDIA

As far as the law of Insolvency in India goes, we are indebted for its foundation to UK law. We can trace back the origin of insolvency laws to the "greater charter of freedom" pronounced in 1215 (Levinthal, 1919) which made everyone including king himself subject to law. At that time because of Industrial Revolution, numerous socio-economic changes were taking place in the society wherein the loan per se vis-à-vis the opinion on specific debtors' prison paved the need for change. After almost 500 years down the line, the Bankruptcy Act of 1705 came into existence which was known for more humane approach wherein the law catered for release of debtors who failed to pay their debts. Till the time the British came to India, there was no law in the country dealing with the Insolvency matters. We can trace about the insolvency law when we refer to *Government of India Act*, 1800 (GoI, 1800), with specific emphasis to Section 23 & 24 of said Act. In terms of the ibid Sections the jurisdiction in insolvency matters was bestowed on Hon'ble Supreme Court. Thereafter in 1828, the *statute 9* may be referred as the Special enactment to deal in insolvency matters in India. After 20 years down the line further progress took place, when another enactment in the form of '*Indian Insolvency Act, 1848'* was passed. The statute of 1848 was found not meeting the requirement of changing socio-economic condition prevalent in the country at that time. However, the Act of 1848 continued dealing the insolvency matters in presidency town till the passing of '*Presidency-towns Insolvency Act, 1909*.' In 1920 another Act in the

form of '*Provincial Insolvency Act 1920*' was passed to deal with the insolvency matters in all the provincial states other than Bombay, Kolkata and Chennai being the presidency town governed by '*Presidency-towns Insolvency Act, 1909*.' In both these Acts had similar provisions except the jurisdiction part for personal insolvency matters. The ibid two enactments had dealt with insolvency matters pertaining to individuals as well as partnership firms for long time. After this the major enactment which dealt with the insolvency matters and winding up in relation to companies was the '*Companies Act, 1956'* along with the '*Sick Industrial Companies (Special Provisions) Act, 1985'* for revitalization of Sick Companies. In the Constitutional Scheme the insolvency is annotated in Entry 9 in concurrent list which empowers to the center as well as to the states to enact law dealing in the subject.

1.3 CONTRIBUTION OF VARIOUS COMMITTEES CONSTITUTED BY THE GOVERNMENT FOR BANKRUPTCY REFORMS

The government of India has constituted many committees to look into various aspects of insolvency reforms in India (IICSI, (n.d.)). These committees have kept pace with all facets of business credit inter-alia internal and external factors instrumental for making sure of present insolvency laws in India.

Table 1.3.1. Various committees with major contribution

S.No	Year	Committee/Commission	Recommendations/Outcome
(a)	*1964*	*Third Law Commission*	The commission headed by Justice J L Kapur in 1961, primarily advocated changes in the erstwhile *'Provincial Insolvency Act, 1920'*.
(b)	*1981*	*Tiwari Committee*	This committee was instrumental in suggesting implementation of enactments which can identify the industrial sickness timely at one hand and suggest preemptive and Corrective measures on the other hand.
(c)	*1991*	*Narasimham Committee I*	After the recommendation of this committee the *"Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993."* Came into existence.
(d)	*1998*	*Narasimham Committee II*	The *"Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002." Was the result of this committee.*

(e)	*1999*	*Justice Eradi Committee*	This committee contributed immensely in terms of setting up of '*Company Law Tribunal (NCLT)'* and also projected annul of 'Sick industrial companies act.' This was the committee which after taking clue from international practices advocated that insolvency laws should first consider all prospects of revival rather than winding up of a corporate entity.
(f)	*2001*	*N L Mitra Committee*	This group examined the inconsistent rulings made by different tribunals and recommended that certain benches in high courts to be earmarked to handle bankruptcy cases in order to provide more logical rulings. It also supported a comprehensive bankruptcy statute.
(g)	*2005*	*J JIrani Committee*	This Committee placed a strong emphasis on using a quicker and more efficient method when restructuring and closing a failing business. Proposed Modifications to the RDDBFI Act of 1993 and SARFAESI of 2002. It also suggested the Tribunal operate in a more impartial and open manner.
(h)	*2008*	*RaghuramRajan Committee*	Revamping of credit arrangement for corporate structure.
(i)	*2013*	*Financial Sect Legislative Reforms Commission*	Advocated reforms in *Indian Financial Sector.*
(j)	*2014*	*Bankruptcy Law Reforms committee (BLRC)* (IBBI, 2015)	This was the committee which finally projected the present Insolvency and Bankruptcy Code, a complete legislation on insolvency matters wherein all scattered laws on the subject were recommended to be consolidated leading to repealing to two and amending six others.

1.4. CONSOLIDATION OF MULTIPLE OVERLAPPING LAWS DEALING INSOLVENCY.

The Viswanathan Committee in 2014prepared the draft of the Insolvency Code after discussing all issues thread bear**.** It is also well known that there was no unified national law addressing insolvency and bankruptcy proceedings prior to the Insolvency and Bankruptcy Code's introduction. When it came to business and individual financial failures and insolvencies, there were numerous overlapping regulations and adjudicating

venues. The bankruptcy and insolvency framework were inadequate and ineffective, which caused unjustified delays in the resolution process. The legislative and institutional framework put undue strain on the Indian credit system and failed to assist lenders in the efficient and timely recovery or restructuring of the assets of defaulting enterprises.

Prior to the enactment of the Insolvency and Bankruptcy Code, the provisions relating to insolvency and bankruptcy for companies were available in the form of Sick Industrial Companies (Special Provisions) Act, 1985 famously called as SICA, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (DRT Act), the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI, Act) and the Companies Act, 2013 (IICAI, 2019). These statutes provided for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Individual bankruptcy and insolvencies were dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 (IICAI, 2019). The liquidation of companies was dealt under various laws and different authorities such as High Court, NCLT (National Company Law Tribunal) and Debt Recovery Tribunal had overlapping jurisdiction which was adversely affecting the debt recovery process. The Code finally repealed the "*Presidency Towns Insolvency Act, 1909* and the *Provincial Insolvency Act, 1920.*" In addition, it amended the *eleven Acts.*

1.5. OVERVIEW OF THE 'INSOLVENCY AND BANKRUPTCY CODE, 2016

Under the Ministry of Finance, specially constituted *"Bankruptcy Law Reforms Committee"* (IBBI, 2015)*(BLRC)* drafted the so called Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code, 2016 merged the existing structure by making an only law for insolvency and bankruptcy. The applicability of act includes to the companies, partnerships firms, limited liability partnerships, individuals and any other organization to which the central government may stipulate. The primary goals of the code are to facilitate speedy resolution, optimize asset value, encourage entrepreneurship, expand credit availability, and generally look out for all parties involved in payments. Both creditors and debtors are authorized by the Code to initiate

procedures under its provisions. The IB code for 2016 is broken down into four sections total. *Part II* discusses the resolution and liquidation of corporate entities, while *Part III* covers partnership businesses' and individuals' insolvency and bankruptcy proceedings. *Part IV* contains provisions governing Insolvency Professionals, Agencies, and Information Utilities, while *Part V* covers additional miscellaneous provisions.

The Code have network encompassing of four mainstays to help the stakeholders to resolve stress of business in a time bound manner (IBBI, 2024). These are called as Insolvency *Professionals (IPs) who steers the corporate resolution process, Information Utilities (IUs) for storage of important information, Adjudicating Authorities (AAs) comprising namely the National Company Law Tribunal (NCLT) in case of corporate insolvency and the Debt Recovery Tribunal (DRT)* in case of individual insolvency for approval of resolution/liquidations and further, the appeal against these lies in NCLAT. The fourth pillar is the Insolvency and Bankruptcy Board of India (IBBI), a unique regulator, responsible to regulate the profession as well as the processes under the code.

To start with the insolvency process, the sine -qua- non is the default of *Rs One Lakh* in the case of companies except MSME and this limit can be increased up to *One Crore* by the government (*Economic Survey Report*, 2022). At the same times, the individual and partnerships, the minimum default amount is Rupees one thousand only. During the Covid-19 the limit of default has been increased to One Cr with special leeway to MSME so as to protect their interest. The mechanism of the code provides two stages of exiting the business i.e. *Corporate Insolvency Resolution Process (CIRP)*, wherein all efforts are being made to rescue and revival of the business and if this is not feasible than the company goes for Liquidations and the assets of the corporate entity distributed in terms of the water fall mechanism under section 53 of the IB code giving priority to fees of insolvency professional, resolution process cost, the dues of workmen's remaining unpaid in preceding 24 months, secured creditors and employee wages etc. In case of default in repayment by the corporate debtor, a financial creditor and for an unpaid operational debt, an operational Creditor can initiate an insolvency resolution process against a corporate debtor. There is also provision in *section 11*of the Code which disentitles certain class of persons to make an application to initiate corporate insolvency resolution process. Further, Section 12 mandates that CIRP gets completed in

a time bound manner wherein the maximum time specified is 330 days including two extensions on specified grounds.

The Code also envisions two distinctive processes in case of Insolvency Resolution Process for Individuals/Unlimited Partnerships i.e. Automatic Fresh Start and Insolvency Resolution. Under the "Fresh Start Process (Hariharran, 2022)," persons who meet certain requirements might receive a debt remission of up to Rs 35,000, if they are impoverished. The procedure is straightforward in cases involving people and unlimited partnerships; it entails the debtor's deposition, repayment plan development, creditor agreement, and DRT order.The said order has the effect of binding the parties to repayment plan. The rigorous penalties for certain offences such as disguising/hiding property while or before commencement of corporate insolvency. There are also provisions for imprisonment in ibid cases which may extend up to five years, or a fine of up to one crore rupees. In the case of *'cross-border insolvency proceedings'* (Keay et al. 2012), the central government can enter into kind of arrangements with foreign countries for sharing of information so as to implement the necessities of the Code.

1.6. USAGE OF INSOLVENCY AND BANKRUPTCY CODE AS RECOVERY TOOL BY BANKING SECTOR.

Though the main objective of the Insolvency and Bankruptcy Code (IBC) is the resolution of a distressed firm however the recovery is the consequential by-product. Financial and operational creditors supposed to get its dues from companies facing insolvency proceedings, hence recovery has to be an important factor while achieving resolution of stressed assets. Needless to say, the haircut taken by lenders as part of resolution plans approved under IBC refers to the shortfall in recovery to creditors as compared to their claims submitted in the insolvency proceedings against a stressed borrower (Sinha, 2022). The various steps taken by the government over the last few years from enacting Insolvency & Bankruptcy Code (IBC) and strengthening other laws as an administrative measures to help the banks to recover as on end of financial year 2023 around Rs 8.3 lakh crore of NPA, including close to Rs 1 lakh crore from accounts that had been technically written off and with indications that the build-up of non-performing assets (NPAs) is lower than anticipated, especially among large companies. The government considers that state-run lenders are well controlled to meet the credit

requirements, given that they are adequately capitalized. Besides, government sources argued that with provision coverage ratio of 83.7%, public sector banks were adequately protected against any potential hit.

Notwithstanding the pandemic, the overall turnaround is remarkable for the public sector banks. The recent reforms and the proposed asset reconstruction company will help clean up their balance sheets further and make fresh capital available from the sale of bad assets, which will again push credit growth". "The written off of bad debts are done in accordance with the provisioning norms fixed by RBI that the potential losses are recognized in the books. Even if a loan has been written off, banks make every attempt to recover it," *The constant exertion had ensued Rs 99,996 crore being recovered from such written off loan accounts, which included some major recoveries through the IBC route inter-alia such as 'Bhushan Steel Power & Steel' , Essar Steel, among others. From March, 2018, to 31 march,2021 the combined nationalized banks and other govt. financial institution have recovered almost Rs 3.1 lakh crore*" (Sidhartha. 2021). *However total recovery in last nine years has been nearly 10 lakh crores.*

According to Reserve Bank of India data, bad loan recovery from the redesigned insolvency-resolution system has been steadily declining, with the rate falling to 24.7% at the end of September 2021. In 2020–21, loan collection rates dropped to 20% as a result of the pandemic's effects and the ban. By the end of 2020, statistics show that 46.3% of cases had been successfully recovered under the Insolvency and Bankruptcy Code (IBC) process. By the end of March 2020, banks had only recovered slightly more than Rs. 27,000 crores through the IBC method, compared to more than Rs. 1 lakh crore at the end of 2019. Banks had submitted 537 corporates with debts totalling Rs. 1.35 lakh crore to the bankruptcy courts by the end of 2021, while in 2020, there were 1,986 instances with loans totalling Rs. 2.25 lakhcrore (Shukla, 2021). The RBI stated in its Financial Stability Report that "the longer a bad loan remains on bank balance sheets, the lower is the amount banks succeed in recovering." Regarding the failures relating to Covid-19, the Indian government halted new insolvency procedures in June of 2020. The prohibition was removed in March 2021. According to RBI data, recovery under SARFAESI more than doubled in the most recent fiscal year. Until the end of FY21, banks referred about 57331 cases with credit

disbursement due of Rs. 67510 crores. But only Rs. 27686 crores could be recovered from this, representing a 41% success rate. As per the the statistics (Mital, 2023),the realization rate as a percentage of acknowledged claims by creditors for the January–March 2022 quarter was 10.21%, which was less than the 13.4% recorded in the preceding December quarter. The total amount recovered through resolution decreased to 32.9% by the end of March 2022 from 35.9% in September 2021. However, compared to the liquidation value of Rs. 13,1448 crore, the banks' collection up to March 2022 was significantly higher at Rs. 22,5294 crores. According to preliminary IBBI data, in total, 887 insolvent companies were resolved between December 2023 and late 2016, the time IBC was adopted (Pattanayak,2024) the official stated that the entire realisation for creditors was approximately ₹3.2 lakh crore, or nearly 32% of their acknowledged claims. Although the primary goal of IBC is to maximize the value of firm assets, recovery through corporate resolution plans frequently results in values that are even lower than the liquidation value, which is concerning.

1.7. VOYAGE SO FAR BY IB CODE.

The economic policies in a country are undoubtedly the most visible forms of government involvements that aims to boost the economic growth and prosperity in the country. Policy discourse in the short term is often centered on these noticeable fiscal and monetary interventions that seek to correct market failures and restore market equilibrium. However, there is growing consensus that economic legislations, particularly those that determine the quality of business regulations and are ‘enablers’ of economic activity, are vital organs that impart strength, stability and steady growth to the economy. These ‘enablers’ of economic growth helps in removing ‘various types of unfreedoms (exclusion from opportunities)’that prevent these unfreedoms reduce peoples’ capacity to exercise “their reasoned decisions” (The World Bank, 2017). One of these unfreedoms is the lack of an institutional and legal framework that allows businesses to exit in case of honest business failures. To fill this void, the insolvency and bankruptcy law of a jurisdiction comes into play.

Global bankruptcy laws have historically cantered on facilitating the quick dissolution of bankrupt businesses and arranging creditors' repayments. Modern insolvency procedures have focused on providing restructuring options to economically viable but momentarily

distressed enterprises so they can continue operating. This contemporary element has been added to bankruptcy frameworks by recent reform initiatives around the globe, which also enable the quick liquidation of unviable companies (Saksena, 2020).

More than over Seven years of historically significant economic legislation, the IBC, which has a great trip to its credit and a genuine endeavour to address today's pressing concerns, has revolutionized the reign of economic legislation. Not only were all the prerequisites for its successful implementation put in place quite quickly, but these ecosystem components have also endured and changed over time. With around4000 insolvency professionals, three Insolvency Professional Agencies (IPAs), more than 180 insolvency professional entities (IPEs), one information utility, sixteen registered Valuer organizations, over 4500 registered Valuers, and multiple benches of adjudicating authorities, the Code is a well-oiled machine today. With pan India presence and a massive volume of jurisprudence that has facilitated the cause of the Code time and again. Almost eight years into operation, the outcomes under the IBC have been more than encouraging for all stakeholders. The Code has rescued lives of corporate debtors (CDs) in distress through resolution and at the time same time has aided filtering out of unviable firms through timely liquidation. The Code has rescued 887 CDs till December, 2023 through resolution plans, one third of which were in deep distress. On the flip side, it has referred many CDs for liquidation, three-fourth of which were either sick or defunct. The CDs rescued till march 2019, had assets valued at Rs. 1.11 lakh crore, while the CDs referred for liquidation had assets valued at Rs. 0.46 lakh crore when they were admitted to corporate insolvency resolution process (CIRP) under the Code.

Thus, in value terms, around three fourth of distressed assets were rescued on account of the Code. During 2021-2022, the amount involved in the IBC was Rs, 199250/ of which only 23.8% has been recovered by the banks according to report (Suvarna, 2022) on the trend and progress of banking in India 2021-22, the Code, being preventive in nature,(Mital, 2023) is also to an extent a behavioral law, having brought about a cultural shift in the dynamics between lenders and borrowers, and promoters and creditors. It has made an impact in the way repayment of debts are being viewed and treated by promoters and management of the defaulting firms. The first signs of distress now serve as early warnings for management to take corrective actions to avoid defaults.

Thousands of debtors are resolving distress in early stages of distress when default is imminent, on receipt of a notice for repayment but before filing an application, after filing application but before its admission, and even after admission of the application, and making best effort to avoid consequences of resolution process. Most companies are rescued at these stages. Till March, 2021, 17,305 applications for initiation of CIRPs of CDs having underlying default of Rs. 5,33,145 crores were resolved before their admission (Shekar, 2021). Only a few companies, who fail to address the distress in any of earlier stages, pass through the entire resolution process. Timelines have been significantly streamlined under the Code. Unlike the previous regimes which could take as much as 4.3 years to close an insolvency proceeding (The World Bank, 2018), the Code has compressed timelines to an average of 406 days (after excluding the time exempted by the Adjudicating Authority) for resolution of 348 CIRPs and 351 days in case of 1277 CIRPs that yielded liquidation by the end of March, 2021. The Bankruptcy Law Reforms Committee, which conceptualized the Code, was of the view that under a common law in the form of the IBC, resolution can be synchronous, less costly and help more efficient recovery. Till March, 2021, resolution of about 322 CIRPs (for which data was available) cost on an average 0.92 per cent of liquidation value and 0.49 per cent of resolution value. This is a significant improvement in comparison to the erstwhile regime that entailed a cost of almost 9 per cent of estate value (The World Bank, 2018).

As prescribed by Charles Darwin, the key to survival is continuous change. This prescription is included in the Code, which is updated virtually annually. With each update, the Code gained enormous value, adapting to the changing demands of the market and self-correcting along the way to account for any obstacles. A case in point is the recent revision to the Code that was made during or shortly after COVID-19 and included provisions for MSMEs to adopt a pre-packaged insolvency resolution process, particularly in light of the financial hardship that the pandemic had created. India's standing has improved in terms of ease of resolving insolvency indicators internationally, indicating that the aforementioned outcomes of the Code have gained recognition on a global scale. According to the World Bank Group's Doing Business Reports, India's ranking improved to 63 in 2019 from 77 in 2018 in terms of "resolving insolvency" in the three years following IBC. Further, in the Global Innovation Index,

India's rank improved from 111 in 2017 to 47 in 2020 in 'Ease of Resolving Insolvency' (The World Bank, 2018).

Many important amendments are incorporated in IBC in the year 2023-2024 which includes (Chand, 2024) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, through a notification issued on February 15, 2024. It includes:-upholding financial transparency and accountability, the amendment mandates the establishment of individual bank accounts for each real estate project affiliated with a corporate debtor, IRP/RPs must now organize a CoC meeting at least once every thirty days, with the option to extend the period between meetings to a maximum of one meeting per quarter, subject to the decision of the CoC, Previously, there was a set minimum duration for opening the voting window, without any upper limit.

However, the CoC is now authorized to determine the duration of the electronic voting window, ranging from a minimum of twenty-four hours to a maximum of seven days; with additional increments of twenty-four hours as deemed necessary; if the issues slated for voting have already garnered the necessary majority, the RP will offer a final chance to cast votes by prolonging the voting window for up to twenty-four hours; the RP must obtain approval from the CoC for all expenses, including those associated with the going concern aspect of the insolvency resolution process; the Amendment necessitates providing an explanation of the valuation methodology to the members of the CoC before proceeding with the estimation calculations.

Considering that each project within a real estate case may require distinct approaches for resolution, the amendment specifies that following thorough evaluation, the CoC is empowered to instruct the RP to solicit separate plans for each project; and a clarification has been issued to ensure that the RP remains committed to fulfilling their responsibilities throughout the resolution process until a decision regarding an extension application is made by the Adjudicating Authority. *In spite of the above the code need to be constantly revamped so as to achieve its true purpose, including giving teeth to Corporate Debtors for volunteering to exit from the non-viable businesses.*

1.8. INSOLVENCY LAWS AND INSTITUTION OF INSOLVENCY PRACTITIONERS:

Historically the origin of insolvency laws and Insolvency Professionals can be traced back to the famous Magna Carta proclaimed in England in AD 1215 (Levinthal, 1919). A person being responsible for administering and managing insolvency proceedings is as old as insolvency laws itself. When insolvency/bankruptcy laws were implemented through the State machinery, officers were appointed to conduct such proceedings. Later, as laws evolved, the Courts were vested with the responsibility of these proceedings. The affairs being administered/managed by the State or the Court lead to abnormal delays and higher transaction costs in resolving matters. Such delays and costs adversely affected the outcomes of the process and went against the very objective, of rescuing the enterprise, which the laws were aimed for. Over a period of time, as an alternative the system of appointing a person whether by the State or a private individual to carry out proceedings in relation to insolvency/bankruptcy was established. Some jurisdictions provided for corporations or other separate legal entities also to be appointed. This provided for the conduct of proceedings with lesser delays but with supervision. *Insolvency laws refer to such person/entity as administrators, trustees, liquidators, supervisors, receivers, curators, official or judicial managers or commissioners etc. Such persons/ entities have clearly defined roles and functions under the laws along with ways for monitoring and supervision of their actions and performance*. Their relationship with the Courts, creditors and debtors varies with the approach of the law. Recommendations of a Committee under Chairmanship of Kenneth Cork (*Report of the Review Committee on Insolvency Law and Practice,* 1977), (famously called the Cork Committee Report, 1982) established two primary principles in insolvency matters. One, the need to rescue viable businesses and two, the need for regulation of private practitioners dealing in insolvency.

1.8.1. INSOLVENCY PROFESSIONALS IN INDIA

For all intents and purposes, the only law addressing corporate insolvencies in post-independence India was the Companies Act, 1956 (CA, 1956), which established a procedure for "winding up" a business through the appointment of a '*Official Liquidator' (OL)*(IBBI, 2024)**.**The Sick Industrial Companies Act (SICA) enacted in 1985 which was aimed at identifying sickness in industrial companies and reviving

them. In the 1990s and 2000s, the policy focus shifted to protecting creditors' rights towards which the Recovery of Debts and Bankruptcy Act, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI) came into action. This multiple of laws led to significant litigations and the legal and economic outcomes were less than desired for both corporates seeking resolution and for creditors seeking recovery.

The CA, 1956 provided for an ***'Official Liquidator' (OL).'*** The OL, appointed by the Central Government, under section 448 is under the administrative charge of the Regional Director, Ministry of Corporate Affairs and is functionally attached to the jurisdictional High Court. The OL was entrusted with conducting affairs of the companies under liquidation. The SICA established an institutional arrangement under the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction. The role of BIFR, a Board of experts, was to manage the process of timely detection of sick and potentially sick companies, determination of appropriate measures and their expeditious enforcement. An analysis of BIFR cases (Sengupta et al. 2016) between1987 to 2014 shows that a total of 5,800 cases were reported to the BIFR. 53 per cent of these cases were either dismissed or abated, 22 per cent of the cases were recommended for liquidation and in 9 per cent of the cases a rehabilitation plan was implemented. The average time taken for the closure of a case in the BIFR was around 5.8 years. During that period, the Insolvency Professionals played a big role though with different name and functions.

With the enactment of the Code and amendments to the Companies Act, 2013, *Official Liquidators* are not being entrusted with fresh matters since December 31, 2016 (Ministry of Corporate Affairs, 2022). The Bankruptcy Law Reforms Committee(BLRC) (IBBI, 2015) recommended the enactment of a single, comprehensive, and internally consistent law leading to enactment of the IB Code. As of October 31, 2018, there were 4,865 companies undergoing liquidation, 92 per cent of which were 'winding up by the Courts' cases involving appointment of OLs by the Central Government to assist the Courts. The Companies (Winding up) Rules, 2020 provides that the provisional liquidator or company liquidator appointed by the Tribunal

shall be an Insolvency Professional registered by the Insolvency and Bankruptcy Board of India (Board).

After enactment of the Code, cases pending with the BIFR were transferred to the National Company Law Tribunal (NCLT). Learning from past experiences and in line with international best practices, the BLRC recommended for ***'an industry of regulated professionals'*** who will be delegated the task of monitoring and managing matters of business by the Adjudicator, so that both creditors and the debtor are at ease and the economic value is not eroded by actions taken by the other.' BLRC envisioned the role of professionals as 'critical to ensure a robust separation of the Adjudicator's role into ensuring adherence to the process of the law rather than on matters of business, while strengthening the efficiency of the processes and hence as one of the four key pillars of the Code. The Code provided for the IP as a person enrolled under section 206 with an Insolvency Professional Agency (IPA) as its member and registered with the Insolvency and Bankruptcy Board of India (IBBI) as an IP under section 207. These professionals are presently part of corporate insolvency and bankruptcy processes (IBBI, 2019). IPs act as Interim Resolution Professional (IRP)/ Resolution Professional (RP)/ Liquidator according to the process which they are part of.

1.9. PROBLEM STATEMENT

The Insolvency and Bankruptcy Code (IBC) has shown some success; however, the majority of cases surpass the moratorium period and majorly end up in liquidation, resulting in increased costs and diminished values. The liquidity and solvency issues spurred by the COVID-19 pandemic in the year 2020-2021, have led to a surge in bankruptcy filings worldwide. Effective management of corporate insolvency regulations is linked to enhanced access to credit for companies and under improved conditions. Therefore, having optimal insolvency frameworks is crucial to facilitate the recovery of viable businesses, the efficient liquidation and exit of non-viable ones. Conversely, inadequate insolvency frameworks can push viable enterprises into insolvency through protracted and overly intricate restructuring processes or contribute to the proliferation of zombie firms, which drain productive resources from the market. Presently, the IBC in India does not encompass the entire spectrum of businesses for

insolvency resolution processes. Practical challenges faced by Insolvency Professionals (IPs) during Corporate Insolvency Resolution Process (CIRP) or liquidation result in non-compliance with timelines and implementation issues at the grassroots level under the code. The challenges encountered by IPs include–

- **Lack of Cooperation from Board of Directors: -** Insolvency Professionals play a pivotal role in the Corporate Insolvency Resolution Process (CIRP) or liquidation, where they undertake a wide range of statutory and legal responsibilities. However, they often encounter a lack of cooperation from the Board of Directors (IBBI, 2020).Typically, promoters are reluctant to provide complete sets of books of accounts, copies of bills, inward invoices, and other relevant documents. Consequently, without proper records, including books of accounts, the Interim Resolution Professional (IRP) is unable to accurately ascertain the true value of creditors' claims. Despite this, the process must be concluded by the IRP within one month, as stipulated by the provisions of the code.
- **Regarding Assets: -**The Interim Resolution Professional (IRP) must depend on the most recent Audited Balance Sheet and a Provisional Statement of accounts that illustrates transactions occurring 15 days before the application's admission. Typically, in instances of bank defaults, promoters either withhold the Audited Balance Sheets or these sheets are not prepared by the Corporate Debtor (CD). Consequently, without adequate documentation, the accurate valuation of assets becomes impossible. In several instances, another issue arises where assets, such as vehicles hypothecated to financiers, are parked outside the premises of the Corporate Debtor. Although the hypothecation is typically registered with the respective state transport agency, no charge is registered with the Registrar of Companies (ROC) (IBBI, 2020). Consequently, it becomes exceedingly challenging to include the lender in the list of secured creditors. Furthermore, the financiers often retrieve these assets even before the Interim Resolution Professional (IRP) arrives at the company's premises. Additionally, the hypothecated stocks are frequently discovered to be available at less than half of their value. Moreover, current assets like cash in hand are not handed over to the IRP.
- **The Sundry Debtors: -**The addresses of Sundry Debtors listed in the books often change or they dispute the claims, making it challenging to collect outstanding dues from them. In many instances, applications are filed to seek directions from the National

Company Law Tribunal (NCLT), and this process continues even during liquidation. Consequently, without the authority to seize assets or timely access to their locations, recovering current assets becomes significantly difficult.

- **Valuation of the Assets:** One of the primary goals is to ensure transparency and establish a credible assessment of asset value, enabling the Committee of Creditors to make informed decisions through comparison (IIIPI, 2022). The value, much like the Interim Resolution Professional (IRP), encounters similar challenges. Without sufficient asset information, valuation is typically conducted through trial and error or based on market data, neither of which is scientifically reliable. Consequently, without accurate valuation, the resolution plans put forth by applicants often fail to adequately address the revival of the Corporate Debtor (CD). Additionally, there exists a notion in India that an entity under the Insolvency and Bankruptcy Code (IBC) could be acquired for half its value, resulting in diminished valuations. Promoters typically exert influence over the valuation process, often preparing their own parties to purchase units during liquidation. Significant disparities typically exist between the valuations conducted by the banks' approved valuers and those appointed by the Interim Resolution Professional (IRP) or Resolution Professional (RP). There lacks a mechanism to oversee the valuations conducted by the banks' appointed valuers. As a result, banks frequently finance amounts exceeding borrowers' eligibility, leading to financial distress (Verma, 2020). Further it is extremely difficult for the IRP/RP to take over the assets hypothecated/pledged/mortgaged by CD with the Banks.

- **On Going Status of the Units**: - The Interim Resolution Professional (IRP) or Resolution Professional (RP) is tasked with keeping track of the ongoing status of the units. However, in practice, many units are found to be closed, with power disconnected, lacking raw materials or finished goods, and devoid of employees. Consequently, it becomes challenging for an IRP or RP to maintain the ongoing status of such units. Even for units that are operational, sourcing raw materials poses an extremely difficult task for the IRP/RP. Moreover, skilled or semi-skilled manpower tends to leave the company once they become aware that the unit is undergoing Insolvency and Bankruptcy Code (IBC) proceedings. Additionally, certain products require proper marketing plans and strategies for sale, which become difficult to implement after a company enters CIRP/Liquidation.

- **Non-availability/under financing**: - Banks typically refrain from providing financing to units undergoing Corporate Insolvency Resolution Process (CIRP). Interim financing is recognized as relevant to the successful outcome of the bankruptcy process (Baxi, A., 2023). In many cases, no advances are extended, as banks follow strictly to their established banking norms. Officials within these institutions tend to avoid risk and opt for avoidance instead. Consequently, units subject to the Insolvency and Bankruptcy Code (IBC) often experience ongoing financial difficulties, ultimately leading to liquidation. Despite interim finances, these units struggle to survive. Interim Resolution Professionals (IRPs) or Resolution Professionals (RPs) are unable to act as guarantors or provide collateral securities. The proceeds from the sale of products are negatively impacted, while basic and variable costs continue to escalate. This results in a significant gap, compelling IRPs/RPs to direct his energies towards closing/ Liquidation of the units.

- Section 12(3) of the Insolvency and Bankruptcy Code (IBC) sets a time limit of 330 days, including any litigation, from the Insolvency Commencement Date (ICD). Data collected thus far indicates that 74% of Corporate Insolvency Resolution Process (CIRP) cases have exceeded this prescribed time frame andthe importance of adhering to strict timelines has been emphasized in the Arcelor Mittal (Ghosh, 2021) case by the Honorable Supreme Court. However, in the Essar Steel case, the Honorable Supreme Court eliminated the term "mandatorily" regarding the completion of CIRP within 330 days. Therefore, the sanctity of Section 12(3) concerning the role of Insolvency Professionals (IPs) in meeting these timelines warrants consideration.

- Regulation 3(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, stipulate that, “An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he/she, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor whereas the Code of Conduct for Insolvency Professionals mandates the independence and impartial operation of an IRP/RP. Since, the eligibility criteria outlined in the provisions of the IBC and the CIRP Regulations do not specifically address the independence of the IRP/RP concerning

financial/operational creditors, leading to many litigations and non-adhering timelines of completion of the project (Singh, U. (n.d.).).

- The clarification regarding Section 14 of the Insolvency and Bankruptcy Code (IBC) explicitly states that beneficiaries of a guarantee can commence separate enforcement actions against the guarantor, including initiating a Corporate Insolvency Resolution Process (CIRP), while the CIRP of the Corporate Debtor (CD) is in progress. The application of this framework concerning guarantors and the claims against them has resulted in several ambiguities in interpretation, leading to contradictory decisions by various benches of the National Company Law Tribunal (NCLT). Additionally, there are gaps in certain areas and lingering unanswered questions regarding this matter.
- Section 12A, pertaining to the withdrawal of applications after the commencement of insolvency proceedings requires, a90%ofvotes in the Committee of Creditors (COC), and Section 29A, which prohibits promoters or interested parties from acting as Resolution Applicants (RAs), pose challenges to the resolution of a company.
- Integrity & biasness issues of IPs while performing functions under the IBC. In the present system, for removal of IP, either a complaint can be filed with the IBBI, who get it investigated through disciplinary committee, alternatively application can be filed in NCLT and in both the cases it takes months together, defeating the very purpose of the IB Code regarding timely resolution (IBBI, 2023).
- A significant portion of industries in India belongs to the Micro, Small & Medium Enterprise (MSME) sector. However, until recently, there was no effective remedy in the form of insolvency available for them, except for the recently introduced pre-packaged insolvency scheme for MSMEs, aimed at addressing the distress caused by the Covid-19 pandemic. The implementation of this scheme is yet to be fully observed.
- Real Estate sector insolvency proceedings, are facing issues because of clash of interest of various stakeholders including prospecting owners of house/plot and banks. *Additionally, insolvency professionals encounter numerous other challenges and practical difficulties while conducting insolvency proceedings under the Insolvency and Bankruptcy Code (IBC).*

1.10. REVIEW OF LITERATURE

The Report of the Bankruptcy Law Reforms Committee: Volume-1 Rationale & Design and Volume-II Draft Bankruptcy Code – under chairmanship of Dr. T. K. Viswanathan.

Review

The committee was established to supervise the creation and formulation of a fresh legal framework aimed at addressing issues of insolvency and bankruptcy. As per the report, India stands as one of the youngest republics globally, boasting a significant concentration of highly dynamic entrepreneurs (Ministry of Corporate Affairs, 2020). However, these individuals, pivotal to driving growth and innovation, face substantial challenges within an environment known for protracted resolution times and elevated costs by international standards when addressing debt repayment issues. This issue carries severe ramifications, as India currently possesses one of the lowest credit-to-economy ratios. This presents a challenging scenario, especially for a burgeoning economy like India, known for its entrepreneurial vigor. The Committee has not only gathered recommendations from domestic experts but has also sought input from various international agencies in drafting the Insolvency and Bankruptcy (IB) Code. The IB Code stands as the culmination of the committee's diligent efforts. As an outcome*though the economic law is evolving by empirical study however, the Vishwanathan report can be termed as mother document on IBC which is referred frequently by Hon'ble High Courts & Supreme Court on various occasions.*

- **Vinod Kothari & Sikha Bansal**, **"Role of Insolvency Professionals in Corporate Insolvency Resolution Process**": In corporate insolvency proceedings, the Resolution Professional (RP) carries out a multitude of responsibilities, albeit under the oversight of the committee of creditors (Carruthers et al. 2006). Assuming control of the company's business operations, the RP effectively suspends the authority of the board of directors, ensuring uninterrupted business continuity. A primary responsibility of the RP is to convene creditors and facilitate the development and acceptance of a viable resolution plan that garners consensus from all stakeholders. Acting as a facilitator throughout the negotiation process, the RP coordinates with various specialized agencies, although

shouldering the arduous task of reconciling multiple objectives within strict time constraints.

Review

The Paper has highlighted the role of IRPs/RPs in CIRP with the associated provisions of IBC and general issues confronted while discharging its responsibilities in terms of IB Code.

Literature gap

The paper has not discussed in details the problems/ difficulties faced by Insolvency Professionals while implementing the provisions of the code.

- **Tanisha Gautam, "Supreme Court Clarifies the Extent of Liability of Personal Guarantors under the IBC"**(Gautam, 2023)

  In the landmark judgement in "Omkara Assets Reconstruction Private Limited" case After the enactment of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, and Notification No. S.O. 4126 issued on 15 November 2019, individuals serving as personal guarantors are now directly liable to insolvency proceedings. This eliminates the necessity for creditors to initially initiate insolvency proceedings against the corporate debtor. Recently, the Supreme Court provided clarity on the constitutionality of these provisions within the Code, as well as the extent of liability assigned to personal guarantors under this legislation.

  Review

  The latest judgment marks a notable milestone, offering assurance about the existence of adequate safeguards to support the efficient role of resolution professionals during insolvency proceedings. Nonetheless, the level of protection afforded to personal guarantors under the Code remains minimal.

  Literature Gap

  The Code presents a paradox: while it pledges improved recoveries for creditors, it also poses significant challenges for guarantors. A pressing concern is the prospect of "multiple and concurrent insolvency proceedings." The concurrent liability of debtors and guarantors enables creditors to commence insolvency actions against both simultaneously. This raise worries about jurisdictional conflicts and operational hurdles for National Company Law Tribunals ("NCLTs").

- **Ravi Mital "Digitizing IBC. Comprehensive IT platform needed for end-to-end digitization of IBC activities."**

  Stakeholders of the Insolvency and Bankruptcy Code (IBC) operating independently have led to operational fragmentation, the chief of the Insolvency and Bankruptcy Board of India (IBBI), has advocated for significant technological reforms. He has proposed the establishment of a comprehensive IT platform that would integrate and digitize all activities within the IBC ecosystem from end to end (Srivats, 2023). An all-encompassing IT platform will enhance the efficiency of the entire system by offering a unified source of accurate information to all participants. This will significantly ease the process for NCLT benches to ascertain facts and make prompt decisions, resulting in improved outcomes in terms of time and realizations. This initiative aligns with the vision of Digital India.

  Review

  The integration scope of current systems spans from the initial filing of insolvency applications, which are based on default records generated by the IU, to the online submission of responses and template-driven forms. It extends to facilitating communication between insolvency professionals (IPs) and stakeholders, reporting process outcomes to the Insolvency and Bankruptcy Board of India (IBBI), enabling interactions among creditors, therefore bringing all stakeholder at same platform. Also, if the interactions are conducted on an integrated platform, the information can flow efficiently and quickly throughout the system,

  Literature Gap

  How to Integrate, the authenticity, responsibility & ownership of the digital ecosystem of the IBC has not been dealt with.

- "**Ways to make IBC more effective**"

  The article highlights the challenge banks face in recovering dues through insolvency proceedings, emphasizing the potential for significant returns if the firm is sold as a going concern. Maximizing recovery rates hinges on identifying and addressing the causes of delay (IICA, 2023). Delays in resolution can lead to employee attrition, suppliers imposing stricter credit terms due to uncertainty, and customers exploiting the

situation by defaulting on payments. Therefore, expediting resolution is essential to preserve the company as a going concern and prevent such scenarios.

Review

During both the resolution and liquidation processes, it's crucial to keep promoters away from managing the company. There's a risk that promoters might resort to litigation to obstruct these processes. Additionally, a significant obstacle in nearly all Corporate Insolvency Resolution Process (CIRP) cases is the unavailability of vital recordssuch as audited accounts and fixed asset registers spanning several years. The absence of these essential records impacts the assessment of creditors' claims and the valuation of the company.

Literature Gap

How to plug the loop hole, to make the system of IBC, more robust and resilient has not been discussed.

- **"How India's bankruptcy code framework is undergoing a quiet makeover**"

  In January 2023, the Ministry of Corporate Affairs (MCA) released a discussion paper proposing 30 amendments for an overhaul of the code. The IBC Amendment Bill, which aimed for a comprehensive overhaul, underwent several months of inter-ministerial consultations. However, it has not been introduced in Parliament yet. Despite this, the Insolvency and Bankruptcy Board of India (IBBI) has been working to enhance the clarity and efficiency of the code. The tribunal anticipates achieving successful resolutions in 300 cases in financial year 2024, compared to 180 in FY,2023.

  Review

  Efforts are underway to address the obstacles hindering the smooth implementation of the IBC law. The Ministry of Corporate Affairs (MCA) has successfully filled most of the vacant positions in the NCLT 57 out of the 63 sanctioned posts are now occupied, compared to 43 two years ago, providing increased capacity to handle the growing number of cases. Additionally, the IBBI has extended the timeline for creditors to file their claims until the issuance of the request for resolution plans or 90 days from the insolvency commencement date, whichever is later. This measure aims to reduce the number of applications for delayed claims and allow the NCLT to focus on more urgent matters.

Furthermore, the insolvency regulator has solicited public comments on all the regulations it has issued under the code, describing the process as a "crowd sourcing of ideas.

Literature Gap

No interim strong measures suggested taking care of insolvency matters pending at various stages of insolvency proceedings. The timelines of introduction of the amendment bill for changes in IBC in the parliament is not specified.

- **Resolution Professionals: Challenges and Need for Reforms** (Singh, U. (n.d.)).

A recent ruling by the National Company Law Appellate Tribunal (NCLAT) in the case of "*State Bank of India vs. Metenere Limited" (SBI vs. M/s Metenere Ltd.*, 2020) sheds light on a particular issue concerning Resolution Professionals (RPs) operating within the framework of the Insolvency and Bankruptcy Code (IBC). This appeal was filed by the State Bank of India in response to an order issued by the Adjudicating Authority, which directed the substitution of the originally proposed Interim Resolution Professional (IRP) in their application under Section 7 of the IBC. To begin, a 'Resolution Professional' is an insolvency professional designated to oversee the Corporate Insolvency Resolution Process (CIRP) and encompasses an IRP. Typically, an IRP is appointed by the Adjudicating Authority upon the admission of an application under Section 7 or Section 9 of the IBC. These sections also grant the Adjudicating Authority the authority to dismiss the application of any IRP if "any disciplinary proceeding is pending against the proposed resolution professional (IBBI, 2023).

Moreover, Regulation 3(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") specifies that "An insolvency professional may be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor only if both the insolvency professional and all partners and directors of the insolvency professional entity, of which the insolvency professional is a partner or director, are independent of the corporate debtor." In practice, it has been noted that in proceedings under the IBC, the appointed IRP/RP frequently exhibits bias towards one of the involved parties, often motivated by pecuniary or other interests, thus violating the Code of Conduct and compromising the fairness and impartiality of the CIRP process. This is further

evidenced by a recent ruling of the Disciplinary Committee of the Insolvency and Bankruptcy Board of India (IBBI), which imposed a penalty equivalent to 25% of the fees received by the RP (approximately Rs. 34 Lakhs).Changes to the CIRP Regulations necessitate RPs/IRPs to maintain independence in relation to both the corporate debtor and its financial/operational creditors. Additionally, expedited procedures are introduced to enable the replacement of the RP by a consortium of financial/operational creditors in specific scenarios without the need to seek approval from the Adjudicating Authority, among other modifications.

Review

The main consideration in this matter is that although the Code of Conduct for Insolvency Professionals mandates the independence and impartial operation of an IRP/RP, the eligibility criteria outlined in the provisions of the IBC and the CIRP Regulations do not specifically address the independence of the IRP/RP concerning financial/operational creditors. Conversely, Regulation 3(1) solely mandates the independence of the insolvency professional concerning the corporate debtor.

Literature Gap

The pros and con of the insufficient provisions/silent about the independence of IP in relation to financial creditors/operational creditors, is not brought out clearly.

- **Insolvency Professionals – An IBC Pillar Whose Systemic Support Needs Up gradation**

  Insolvency Professionals are supposed to form a crucial pillar on which the entire edifice of the insolvency and bankruptcy process rests (Sharma, 2022). During the CIRP, the management of the CD is vested with the IRP/RP, who then stands in the position of the board of directors of the CD. Undoubtedly, this is an onerous task, but there is sheer lack of systemic support to the IP and the so-called pillar faces multitude of problems at ground level when he commences this task. There is an urgent need to augment the support system to the IPs.

  Review

  Article very well brought out the problems faced by IPs and suggested need for police protection must be provided to the IRP/RP when he approaches the premises of a CD for

the first time in all cases; power to approach Government Authorities for assistance should lie with the IP himself; IP is expected to seek assistance from the CD's employees alone and not from the CoC constituents, whose stake in keeping the CD as a going concern is much higher. Also, this added arrangement of obtaining very limited manpower from the CoC constituents shall place some trustworthy manpower at IP's disposal and empower the IP to control the CD and its staff in a much more efficient manner; there should be a provision for a centralised pool of funds for an IP to bank upon (with prior approval of AA) in situations of extreme adversity; and a statutory provision under the IBC may be incorporated making it incumbent upon the respective Government Authorities to provide technical assistance to IPs free of cost on most priority basis so as to enable IPs to handle legal requirements in course of the resolution process, in situations where engagement of professional or legal advisers is not feasible due to shortage of funds.

Literature Gap

The author has not mentioned modus operandi or how to cater these requirements.

- **Sumant Batra**, **"Global Crisis-Setting the Agenda for Next Generation Insolvency Reforms**"

  The author suggests incorporating 'debtor in possession' provisions into the Code. The COVID-19 pandemic has triggered significant geo-political shifts and heightened tensions between the US and China (Batra, 2020). Numerous US companies have expressed their intention to withdraw from China and establish operations in India. The relocation of these global manufacturing facilities to India necessitates certain economic reforms, including amendments to the Code.

  Review

  US corporations are familiar with the 'debtor in possession' legal framework. Transitioning to a 'creditor in control' regime, where they would need to relinquish management to an Insolvency Professional (IP) following a default to any creditor, and face restrictions on bidding due to Section 29A of the Code, may pose challenges for them to accept.

Literature Gap

The Article has not dealt with the pros & con of permitting promoters as Resolution Applicants and effect of debtor- in -possession in Indian context.

- **Shubham Jain**, "**The Permissibility of Discrimination under the Insolvency Code**"

"This paper discusses the Supreme Court's affirmation of the constitutionality of the Insolvency and Bankruptcy Code (IBC) in the case of Swiss Ribbons v. Union of India"(Jain, 2020). Among the matters addressed, the Supreme Court had to determine whether the differentiation between Operational Creditors (OCs) and Financial Creditors (FCs) violates Article 14, why only FCs are allowed to be part of the Committee of Creditors (COC), and whether Section 53 of the IBC, outlining the waterfall mechanism during liquidation, infringes upon Article 14. The Supreme Court upheld the entire Code.

Review

The paper is primarily the analysis of the ibid judgment on constitutional parameters wherein the Apex Court upheld the Code in its entirety.

Literature Gap

Authors have not devolved upon the various provisions of IB code in terms of its adequacy in implementing the act perspective on various

- **Rajiv Kumar and Desh Gaurav Sekhri**, **"Evolving Role in Improving Investment Climate in India"**

Review

The Insolvency and Bankruptcy Code (IBC) stands as a significant structural reform with the capacity to fundamentally transform the insolvency resolution process in India (Jain, 2020). Additionally, India is progressing towards securing a position within the top 25 rankings in the World Bank's Doing Business Report (DBR). The IBC's substantial contribution to this accomplishment is undeniable. It will play a pivotal role in India's successful evolution into a middle-income economy.

Literature Gap

How markets will find solutions from within so as to enable seamless market functioning and at the same time allow disruption to alter the traditional way of operating or ‘business has not been specified.

- **Bibek Debroy and Aparajita Gupta**, “**Ease of Exit, the IBC Way”**

  The author draws a comparison between the Insolvency and Bankruptcy Code (IBC) and the Olympic motto of Citius, Altius, Fortius, which reflects the essence of a living organism's journey of evolution, adaptation, and self-learning to thrive in its external environment (IBBI, 2020). Similarly, a company undergoes a similar process of evolution, adaptation, and self-improvement with the aim of innovating, competing, and ultimately, surviving. The IBC has established a robust framework, marking a significant departure from the previous regime.

  Review

  The paper highlighted about the companies in India are fortunate that they do not have to meet the same fate of Abhimanyu in Mahabharata. The IBC has put in place a strong regime marking a major change from the previous regime in term of ease of exit.

  Literature Gap

  Frequent course correction and its effect on implementation of IBC.

- **Publication by Vidhi Bankruptcy Research Programme**, “**Constitutionality of the Provisions of the Code**.

  The Code was introduced in 2016 after years of suggestions for enhancing the preceding insolvency framework, which was disjointed, plagued by delays, and yielded inadequate recoveries forced itors (IBBI, 2015). The structure of the Code represented a significant departure from the previous system.

  Review

  The paper examines various judgements including *Sree Metaliks Ltd. v. Union of India (Sree Metaliks Ltd. v. UoI*, 2017), in which the constitutionality of section 7 was challenged on the ground that the provision does not provide the corporate debtor an opportunity to be heard before an application to initiate an insolvency resolution process

against it is admitted. The Court held that the Adjudicating Authority is obliged to give reasonable opportunity to be heard to the corporate debtor.

Literature Gap

Critical analysis of judgments and its ramifications on implementation of code has not been discussed.

- **Madhavi Goradia Divan**, **Transforming India's Credit Culture.**

  In India, State Governments' farm loan waivers have sparked considerable controversy in the media. Conversely, for an extended period, the redirection of government funds to rescue government-owned banks following significant defaults by corporate borrowers went largely unnoticed. The magnitude of non-performing assets (NPAs) from the corporate sector far surpassed that of farm loan waivers.

  Review

  The paper highlights about scheme of the Code in terms of keeping a check not only on promoters but also on banks. Bank's Ease of Doing Business rankings, jumping 14 places to 63 in 2019, largely courtesy IBC.

  Literature Gap

  The paper does not inter- alia discuss about the role of various stake holders and professionals in containing the bad debts.

- **Pihu Mishra and Sushanta Kumar Das**, on "**Social Ramifications of Bankruptcy Law.**

  This paper delves into the concept that bankruptcy law isn't solely economic legislation (Mishra et al. 2020); rather, it serves as social legislation that delineates the extent to which individuals should be obligated to bear burdensome responsibilities that have accumulated over time.

  Review

  The paper highlights the Code in its current form; the code not only removes the stigma associated with the status of bankrupt but also provides a dignified exit to the debtor with possibilities of dignified survival. The role of insolvency professionals in facilitating smooth resolution is also highlighted.

Literature Gap

The paper does not cover about educating the various stakeholders of the IBC like corporate sector and banking sector in respect of implementation of the code.

- **Vinod Kothari and Sikha Bans**, **"Secured Creditors under the Insolvency -** Searching for Equilibrium (Kothari et al. 2020)**.**

  Review

  The focus in this article has been to analyse the priority waterfall vis-à-vis secured creditors. The priority (position) of the debt of a secured creditor arising out of statutory compromise in favour of workmen is not entirely clear from the provisions, especially in case of creditors realising the security. The same might need some clarification akin to that under the 1956 Act.

  Literature Gap

  The paper does not cover the role of insolvency professionals for effective realization & disbursement of claims in priority water fall.

- **Aparna Ravi**, **"Treatment of Guarantors and Guarantees under the IBC**

  Evolving Jurisprudence (Ravi, 2021)

  Review

  This article explores the handling of personal and corporate guarantors within the Insolvency and Bankruptcy Code (IBC) to pinpoint areas of disagreement and uncertainty. Specifically, it examines two overarching issues that the developing jurisprudence in this domain has been addressing: (a) simultaneous proceedings and the treatment of claims against the Corporate Debtor (CD) and the guarantor, and (b) the rights of a guarantor and its creditors following the approval of a resolution plan for the CD.

  Literature Gap

  The articles have not discussed in detail, the gaps in the IB Code, regulations & Implementation issues that will come to the fore, in the context of Personal guarantors (IBBI, 2024).

- **U. K. Sinha and Saparya Sood**, **"The IBC Imbroglio"**

  The Author primarily focuses on Challenges in light of COVID-19. The International Monetary Fund (IMF) Chief Kristalina Georgieva has described the COVID-19 pandemic as 'A crisis like no other'

  Review

  The paper seeks to make certain suggestions on how the Code can adapt to deal with the crisis when the worst is over and balance the objectives of the Code while protecting companies that default on COVID-19 related debts.

- **Rajiv Mani**, **"Mediation in Insolvency Matters"**

  Alternative Dispute Resolution (ADR) stands distinct from adjudication (Mishra et al. 2020). It encompasses any method intended to resolve a legal dispute voluntarily with the assistance of a third party, typically without substantial involvement from the judiciary. Accepted forms of ADR include Arbitration, Mediation, Conciliation, and Negotiation, wherein the involvement of a third party (such as a conciliator, mediator, or negotiator) is often essential.

  Review

  The paper highlights that, in tandem with mechanisms such as Mediation, can achieve objective of resolution more efficiently and effectively. This is widely prevalent in Europe, USA and many other foreign countries.

  Literature Gap

  The Mediation vis-à-vis role of Insolvency Professionals in Alternate Dispute Redressal and legal impediments.

- **India's Bankruptcy Resolution Professionals Are Under Siege - By Shyam Ghosh**

  During the incident involving Anuj Jain, an Insolvency Professional responsible for overseeing the bankruptcy resolution of Jaypee Infratech Ltd, he was arrested amid concerns that he might attempt to leave the country (Ghosh, 2021). The Supreme Court emphasized the increasing instances of intimidation posing a threat to the bankruptcy proceedings in India. The purportedly wrongful arrest and subsequent release of a

resolution professional, prompted by the intervention of the Supreme Court, has underscored the need for urgent reforms in the Insolvency and Bankruptcy Code (IBC).

Review

The articles highlighted the mounting instances of harassment of resolution professionals and eyes on the Insolvency and Bankruptcy Board of India (IBBI), which acts as the regulator for insolvency professionals

Literature Gap

The Article has not discussed in details the other problems/ difficulties faced by Insolvency Professionals while discharging its duties as Insolvency Professional under the code.

Many other literatures in the form of Reports of various committees, world bodies, interpretation by judicial bodies and other referral material from internet have been referred, however for sake of brevity all of them are not mentioned here.

Broad Analysis of Literature Review

After literature review, researcher is of the view that in most of the literature available covers in details the pros and cons of IBC, the difference IBC made to credit culture in last five year in India wherein it is clearly discernible that "*Debtors Paradise" is over now***.** The experience from implementation of the Insolvency and Bankruptcy Code, 2016 (the Code) including evolution of the ecosystem, stabilization of the processes, growing jurisprudence and commensurate infrastructure, has prepared ground to look at new initiatives to further improve the effectiveness of the Code. The efficacy of out-of-court workouts in delivering speedier resolutions, provided regulator extend the same regulatory exemptions as available to settlements made under the IBC framework need consideration. Few Authors have also mentioned, in bits and pieces, the challenges faced by insolvency professionals while carrying out the corporate Insolvencies resolution process and Liquidations under the code.

1.11. OBJECTIVES OF THE RESEARCH

The main objectives of the research are: -

- To study the role, responsibilities, challenges & practical difficulties faced by Insolvency Professionals while adhering timelines envisaged in terms of handling the Corporate Insolvencies/Liquidations under the IB Code.

- To analyses how far Adjudicating Authorities are able to hold the hands of IPs while discharging its duties under IB code.
- To suggest amendments/ modification into IBC and way forwards for efficacious resolution/Liquidations by IPs.

1.12. SCOPE AND LIMITATIONS OF THE STUDY

The primary aim of this research is to examine the legislative and regulatory framework of Insolvency Professionals under Insolvency & Bankruptcy code in India. The resolution strategies existed pre- IB Code and more specifically comprehensive examination of the role performed and the challenges faced by Insolvency Professionals (IPs) during the Corporate Insolvency Resolution Process (CIRP) and liquidation proceedings under the Insolvency & Bankruptcy Code (IBC), 2016. The research analyze how Insolvency Professionals manage the intricate responsibilities of resolving distressed corporate entities, maintain ongoing status, the valuation of assets, negotiation with creditors & other stakeholders, and the formulation of resolution plans in terms of the IBC eco-system. The research, explored in detail the myriad obstacles that IPs encounter in CIRP & Liquidations, regulatory ambiguities, operational inefficiencies, and stakeholder conflicts, which can impede the effectiveness of insolvency processes. Additionally, the research shall also examine the important amendments into the IB Code and positive impact on NPA of the banks after the IB Code came into existence. The research shall also delve on the important judgments of Adjudicatory bodies which were helpful for resolving various contentious issues faced by IPs while discharging its duties as IRP/RP/Liquidator. Further, by analyzing the role of IPs in USA and UK insolvency laws, the research seeks to provide insights into best practices in those countries; the comparison shall help the researcher in suggesting measures and reforms that can help in overcoming difficulties in the Indian IBC framework, ultimately enhancing the overall efficacy of corporate insolvency and liquidation practices in India. And to further streamline the scope of study, the research would be looking at data collected from the Insolvency Professional about the problems faced while discharging their duties during CIRP and Liquidations, their awareness on latest provisions of IBC eco-system, Security & Integrity issues of IPs and amendments needed in IB Code.

The data for empirical research is *limited* to the information gathered on challenges and problems faced by IPs, gathered through Surveys in the form of Questionnaire primarily from Insolvency Professionals practicing under jurisdiction of NCLT Chandigarh Bench; however appear in courts all over India including National Company Law Appellate Tribunal Delhi ad Chennai. IBC, being a techno-economic subject, having uniform applicability across entire Indian Courts, NCLT Chandigarh has been chosen specifically, as the challenges encountered by insolvency professionals (IPs) within the jurisdiction of the National Company Law Tribunal (NCLT), would serve a microcosm reflecting issues faced by IPs across India, as many of these insolvency professionals also attend hearings in other NCLT jurisdictions. Further, the appeal against NCLT is filed in NCLAT (National Company Law Appellate Tribunal) in Delhi. More so under the scheme of the Insolvency and Bankruptcy Code, NCLT Chandigarh stands as the only NCLT in India out of a total of 15 NCLTs, overseeing significant regions of five states including Haryana, Punjab, Himachal Pradesh, Jammu & Kashmir, and Chandigarh. Simultaneously, multinational corporations (MNCs) filing cases in Chandigarh National Company Law Tribunal (NCLT) are engaging Insolvency Professionals from firms with nationwide reach. Furthermore, after the introduction of online hearings in all courts & Tribunals the physical appearance is giving way to online appearance from one place to all Indian court. Consequently, the empirical data obtained through them also highlights the challenges encountered by all Insolvency Professionals across India. The complexity of IBC eco-system and collection of data primarily from IPs practicing at NCLT Chandigarh may lead to biases and at times inaccurate information up to certain extent leading to imprecise and imperfect conclusions.

1.13. RESEARCH QUESTIONS

- Whether the Insolvency Professionals play central role in efficient implementation of Corporate Insolvency Resolution Process?
- Whether IBC empowers IRPs/RPs wherewithal to deal with all kinds of challenges/contingencies?
- How far judicial pronouncements provided arms to IPs & instrumental in resolving grey areas in the code?

1.14. HYPOTHESIS

The current provisions of the Insolvency and Bankruptcy Code (IBC) do not provide adequate resources to insolvency professionals, thereby hindering efficient and timely business resolution.

1.15. RESEARCH METHODOLOGY

The research utilizes a variety of approaches to meet its goal. It primarily involved analytical methods, beginning with a descriptive qualitative analysis as an initial step. However, to substantiate the qualitative findings with empirical evidence, a qualitative study was also conducted. The methodology for this study combines doctrinal and empirical elements, drawing on critical analysis of both primary and secondary sources.

The Doctrine research shall comprise analysis of the existing legal provisions, and entire framework of IB Code related to Insolvency Professionals in India. The paraphernalia for Doctrinal Research would include analysis of statutory enactments, subordinate legal materials, data, Policies, parliamentary debates, commentaries, textbooks, articles, research papers, case studies, judicial precedents, data from Regulator (IBBI) website, official website of MCA, ICSI, ICAI, ICMA, various other internet open sources, publications and Indian governmental reports. At the same times, oversea insolvency laws of USA and UK have been referred for more insight into the role & difficulties of IPs.

For empirical part, the data collection on problems faced by insolvency professionals during CIRP, Liquidations and other associated issues under IBC would includes:

Primary Data Collection:

- *Universe* – For the purpose of the study, the researcher shall select India as the universe.
- *Sample* – For this study, the researcher has chosen Chandigarh as a focal point. There are around 200 insolvency populations in Chandigarh handling matters related to insolvency issues. They practice all over India. The laws of insolvency (IBC) being a central code, apply throughout India, equally known to all insolvency professionals,

being member of one of the three Insolvency Professional Agency (IPA) in India. *The population was considered homogeneous and a simple random sample was drawn*.

- *Data Collection Method* – The data regarding the challenges and issues encountered by Insolvency Professionals (IPs) is collected through surveys utilizing questionnaires from IPs primarily practicing under the jurisdiction of NCLT Chandigarh and *'interviews questionnaire'* to IPs other than Chandigarh, designed to capture their experience and overall challenges faced while handing CIRP and Liquidations.

To give impetus to data collection and to understand the problem in deep, attended NCLT and High Court hearings primarily related to Insolvency matters and also attended many Webinar/Seminars organized by professional bodies, so as to interact with many Insolvency Professionals at one place and take their perspective to the hands-on contentious issues faced by them under the IB Code. The researcher has also obtained answers to *interview questions*, sent to the IPs, practicing in different jurisdiction other than NCLT Chandigarh, to elicit the ground realities about the problems encountered by them in CIRP/ Liquidations at other places.

- *Data Analysis* – The primary data collected through Questionnaire and interview is analyzed and interpreted to draw meaningful solutions to the study's research problem. The results of the empirical data drawn through the random sample of total 53 responses and three interviews' replies aimed to grasp the challenges encountered by Insolvency Professionals during CIRP, Liquidations and efficacy of various provisions of the Code. The empirical data gathered from Insolvency professionals is also analyzed for testing the Hypothesis. *The statistical tool in the form of 'null Hypothesis' and the 'chi-square test' were also used to arrive at various conclusions of the empirical data.*

1.16. CHAPTERISATION

The entire research is planned in the following Chapters: -

Chapter-1.

Introduction.

This chapter contains the brief introduction about the broader contents of the research encompassing Problem statements, Objectives of Research, Research Questions Research Methodology, Hypothesis, introduction to Insolvency and Bankruptcy Code in

India, historical progressions of insolvency laws in India and need for this Study, Usage of Insolvency and Bankruptcy Code as recovery tool by banking sector, voyage so far by IB Code, Players of IBC ecosystem, and Chapterization. Hence, in the first chapter the brief introduction of what all is going to be covered in all chapters are discussed.

India has grappled with insolvency reform since the 1990s, with prior attempts largely falling short until the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) (IBBI, 2024) Before the IBC, existing legal mechanisms like the Indian Contract Act, 1872, and specialized laws such as the Recovery of Debts and Bankruptcy Act, 1993, failed to effectively address financial distress. The Companies Act, 1956, primarily regulated corporate insolvencies, relying on procedures for "winding up" companies overseen by an "Official Liquidator" (OL) (IBBI, 2024). In 1985, the Sick Industrial Companies Act (SICA) aimed to revive struggling industrial firms but faced limitations. By the 1990s and 2000s, emphasis shifted towards safeguarding creditors' rights, leading to laws like the SARFAESI Act. This complex legal landscape hindered bankruptcy resolution, resulting in unsatisfactory outcomes for both companies and creditors.An examination of BIFR cases spanning from 1987 to 2014 reveals that a total of 5,800 cases were brought before the board. The average time taken for the closure of a case in the BIFR was around 5.8 years. During that period also, the Insolvency Professionals played a big role though with different name and functions (IBBI, 2024).

With the enactment of the Code and amendments to the Companies Act, 2013 *Official Liquidators* are not being entrusted with fresh matters since December 31, 2016 (Ministry of Corporate Affairs, 2020). The Bankruptcy Law Reforms Committee (BLRC) recommended the enactment of a single, comprehensive, and internally consistent law leading to enactment of the IB Code.

As of October 31, 2018, there were 4,865 companies undergoing liquidation, 92 per cent of which were ‘winding up by the Courts' cases involving appointment of OLs by the Central Government to assist the Courts. The Companies (Winding up) Rules, 2020 provides that the provisional liquidator or company liquidator appointed by the Tribunal shall be an Insolvency Professional registered by the Insolvency and Bankruptcy Board of India (Board) who is supposed to steer the entire insolvency process as per the IB Code. The topic is introduction in first chapter with brief how research will progress in subsequent chapters.

Chapter–II.

Exploring Types of Business Restructuring and Unveiling the Significance of Four Pillars of the Insolvency and Bankruptcy Code.

This chapter contains theformal restructuring and Insolvency Proceedings, four pillars of IBC**,** Information Utility (IU), Adjudicating Authorities (AA), Insolvency and Bankruptcy Board of India (IBBI)—the Regulator, Insolvency Professionals and their eligibility, qualification to discharge functions of Insolvency Professional/Resolution Professional/ Liquidator and why they at all needed.

Now the legislative framework in India provides only for formal restructuring and insolvency proceedings. For companies, the basic law dealing with their winding up or liquidation was the Companies Act, 1956. Although the Companies Act, 2013, replaced the Companies Act, 1956, the sections relating to winding up/liquidation under the 2013 act were not notified. Hence, till the enactment of the Code, provisions of the Companies Act, 1956, continued to govern winding up or liquidation of companies. Winding up could be triggered under the Companies Act, 1956, if a company was unable to pay its debt. Once winding up was triggered, liquidation would follow and there was no provision to mandatorily attempt rehabilitation or reorganization of the company prior to this. Further, liquidation itself would take several years (in the absence of any time-bound closure process). Now, with the enactment of the IBC (IBC Laws, 2017), winding-up due to an inability to pay debt cannot be triggered under the Companies Act, 1956, or the Companies Act, 2013. However, involuntary winding up of companies for non-insolvency-related reasons (for instance, if the company has defaulted on filing financial statements or annual returns for five consecutive financial years) can still be undertaken under the Companies Act, 2013 (IBBI, 2015). The Companies Act, 2013, also contains provisions for schemes of financial reconstruction, approved by the National Company Law Tribunals; these are voluntary schemes of arrangement and compromise with the creditors and/or shareholders that are typically outside the insolvency regime (though these schemes can also be made applicable during liquidation).

The first and foremost pillar being *Insolvency Professional* has been dealt with in details in third chapter. The second pillar of IBC is a new industry in the form of '*Information*

*Utilities' (IUs).*Section 3(21) of the Code defines an *"information utility"* as a person who is registered with the Board as an information utility under section 210. The IUs are controlled and licensed storehouses of information relating to the CD. IUs accumulate, organize, validate, and propagate financial information to be used in insolvency resolution, liquidation, and bankruptcy proceedings. The Insolvency professionals assist in the insolvency resolution proceedings envisaged in the Code, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information (IICSI, (n.d.)). The purpose of such collection, collation, authentication and dissemination financial information of debtors is to facilitate quick decision making in the resolution proceedings. The Insolvency and Bankruptcy Board of India (IBBI) superintends the functioning of such information utilities. The Insolvency and Bankruptcy Board of India has framed the IBBI (Information Utilities) Regulations, 2017. These regulations are amended from time to time by the Insolvency and Bankruptcy Board of India.

The *third Pillar* of IBC is the 'Adjudicating Authorities' (AAs) being the tribunals are entrusted to decide matters under the IBC**,** which are, the *National Company Law Tribunal (NCLT)* in case of corporate insolvency and the *Debt Recovery Tribunal (DRT)* in case of individual and Partnership Firms insolvencies (IICSI, (n.d.)). The IB Code in terms of Section 5(1) provides that the "Adjudicating Authorities" for insolvency resolution and liquidation for corporate persons would be NCLT constituted under section 408 of the Companies Act, 2013 (National Company Law Tribunal, (n.d.)). Further, *Chapter VI of Part 2 of the IBC* mentions that the AA for corporate persons in relation to insolvency resolution and liquidation of corporate persons, including CDs and their personal guarantors, shall be the NCLT that has territorial jurisdiction over the place where the registered office of a corporate person is located.

Regarding the role and jurisdiction of the AAs, the adjudicating authority on the basis of default and connected documents, decides whether to admit the CD to insolvency for *CIRP* at the first place. Thereafter after seeing the entire case, the resolution plans submitted by Resolution Professional (RP), the AA decides to approve or rejects the resolution plan for the CD. If the plan is not viable in terms of resolution of CD and AA reject it, then the order for the liquidation of the CD is passed.

Similarly, in liquidation cases (MBA Hub, (n.d.)), an appeal against a liquidation order passed under Section 33 of the Insolvency and Bankruptcy Code, 2016, may be filed in NCLAT on grounds that NCLT order suffers from material irregularity or fraud committed in relation to such a liquidation order. Hence, the NCLAT is an appellate authority for appeals against orders passed by AAs under the IBC and at the same times appeals against the orders of the IBBI under sections 202 & 211 of the Code. The appeal against the order of Competition Commission of India (CCI), is also filed in NCLAT. At present, the NCLAT has offices in Delhi and Chennai. However principal bench of NCLAT assembles in New Delhi.

The provisions of appeal against the order of NCLAT in terms of section 62 of the Insolvency and Bankruptcy Code, 2016 lies in Hon'ble Supreme Court, which mentioned that any person aggrieved by the order of NCLAT may prefer an appeal to the Supreme Court (SC) on a question of law arising out of such order and the said appeal shall be filed within forty-five (45 days) from the date of receipt of such order.

The fourth pillar of IBC, is the Insolvency and Bankruptcy Board of India (IBBI)—the Regulator (IICSI, (n.d.)). The IBBI is termed as main key pillar responsible for ensuring that Insolvency Professionals (IPs), Information utility (IU) and other stakeholders discharges its functions as envisaged in the IB Code; and to see that the code is implemented in true spirit. The general functions include registering, renewing, withdrawing, suspending, cancelling the registration of Insolvency Professional Agencies, Insolvency Professionals, and Information Utilities, if found to be working in contravention to the provisions of IB Code. According to section 217to 220, the IBBI is empowered to inspect and investigate service providers IPs, IPAs, and IUs as when IBBI is of the opinion and has reasonable grounds to believe that a breach has been committed, it directs any person/ authority to conduct investigation or inspection in a manner and within a time span or IU, it may direct any person to act as an inspection or investigation.

Chapter –III.

Corporate Insolvency Resolution Process and Liquidation: The Role of Insolvency Professionals

This chapter coversCorporate Insolvency Resolution Process (CIRP), Whom can start it, Steps of corporate insolvency resolution process**,** role played by Interim Resolution Professional (IRP)/ Resolution Professionals (RP) and Liquidators including code of conduct to be followed by IPs (IIBI, 2024).An order from the Adjudicating Authority (AA) admitting an application to start the CIRP of a CD submitted by a corporate applicant, an operational creditor, or a financial creditor starts the CIRP of a CD. This order's date serves as the official start of the insolvency process commencement date (ICD). Creditors who are affected by a company's failure to make payments, may file a CIRP petition with the NCLT, the Adjudicating Authority. The petition's merits are taken into account, before the NCLT. If the case does not merit, the NCLT may deny admitting the petition (IIBI, 2019).

The functions and obligations of Insolvency Professionals are mentioned in section 208 of the IBC (IIBI, 2024). According to section 208(1) whenever corporate Insolvency resolution process, fresh start, liquidation, or bankruptcy process has been initiated, the IP's function is to follow the process as mentioned in respective chapters, like for 'CIRP' procedure mentioned under Chapter II of Part II of the IBC. For *'fresh start process '*as mentioned in chapter II of Part III of the IBC; For *'individual insolvency resolution process'* under Chapter III of Part III of the IBC; For An' individual bankruptcy process' under Chapter IV of Part III of the IBC; **For** the 'liquidation of a CD' under Chapter III of Part II. The duties of the IP inter-alia include as compliance with the IBC and all related rules, regulations, and guidelines issued under it from time to time in consonance with the bylaws of his/her IPA, and maintenance of records of the assignments undertaken. The Insolvency Professional need to follow the Code of Conduct, which is also one of the most important conditions for registering as an IP, in compliance with the Code of Conduct. *The First Schedule to the IP Regulations sets out a detailed Code of Conduct that must be followed by IPs during their assignments. The Code of Conduct includes observance of complete devotion to cause of profession expected as a Insolvency Professional, inter alia Integrity and objectivity i.e. need for IPs to maintain integrity by being honest, straightforward, and forthright in all professional relationships; not to misrepresent facts or bring disrepute to the profession, and act objectively, ensuring decisions are made without bias, conflict of interest, coercion, or undue influence. IP to maintain complete independence and impartial view*

while conducting the processes under the IBC. Further, according to section 208(2) of the IBC, every IP shall abide by the code of conduct (IIBI, 2024), like exercise reasonable care and diligence while performing his/her duties; Need to Conform with all requirements and terms & conditions specified in the bylaws of the IPA of which he/she is a member; As and when asked allow the IPA (IIBI, 2024) to inspect his/her records; Submit a copy of the records of every proceeding before the AA to the IBBI and the IPA of which he/she is a member and also to comply with any other conditions as may be specified by IPA or IBBI.

Chapter: IV

Insolvency Professional's Dilemmas Under the IB Code: Judiciary's Role in Ensuring Code Efficiency.

This chapter primarily covers practical challenges faced by the Insolvency Professional during CIRP & Liquidation. Deciphering Judicial Interpretations: empowering Insolvency Professionals for effective implementation of the IBC.

In the almost eight years from its enactment, the Code has achieved immensely as envisaged. The various judicial forums decided upon matters under the Code with extraordinary stride, and have built in a kind of trust within the partakers while interpreting the contentious provisions of the code. The regulator IBBI and the government have also been extremely alert in making requisite alterations in the code to ensure that the Code is implemented the way it is needed. Being a vibrant and progressive economic legislation, the Code has been interpreted by the judiciary with reverence to legislative intent in economic matters. Judicial pronouncements in relation to the Code are very important resources to implement this ever-evolving law, keeping in view the nuances of CIRP, Liquidation and other processes. According to judicial decisions the IPs and other stakeholders are able to forecast the likely legal outcome vis-à-vis the potential disputes and differences. There are various governmental and legal developments on important issues that have been profoundly contested in the past few years and settled to great extent which are quite helpful from the points of view of Insolvency Professionals for taking apt decisions during CIRP/Liquidations (Swiss Ribbons Pvt. Ltd. & Another vs. Union of India & Others, 2019). Important of them are

worth mentioning: - Constitutionality of the provisions of the Code (Akshay Jhunjhunwala and Anr. v. Union of India, 2018), Hand Holding by Judiciary in Maintaining Timelines by IPs as mandated in the Code, Non-Cooperation by CD vis-à-vis Compulsion to Cooperate, Supply of Essential Goods and Services during the CIRP, Home Buyers' Cure (Nikhil Mehta and Sons v. AMR Infrastructure Ltd., 2017) in the CIRP, Payment of Government Levies under the IB Code, Priority Payment to Dissenting Financial Creditor, Necessity of section 29A in IB Code and many others.

Chapter-V

Examining the Role of Insolvency Professionals: A Comparative Study between India, USA, and UK.

This chapter includesglobal perspectives on IBC and the involvement of Insolvency Professionals**,** key aspects of insolvency legislation in UK and role of *monitor*, insolvency professionals, key aspects of insolvency legislation in the United States and the role of trustees (IPs)**,** differences in various provisions including creditor rights and fee to insolvency professionals in USA, UK and India**,** key take away from USA and UK insolvency regime (Hariharran, 2022).

When we talk about International Experience in IBC, and Role of Insolvency Professionals, the Chapter 11 of the Bankruptcy Code in the United States (US) can be said to be the origin of the corporate resolution and reorganization process. It is understandably considered extremely company friendly, especially because of its automatic stay provisions and clarity in terms of role played by insolvency professionals in various kinds of insolvencies. The US bankruptcy laws, in fact, are said to help companies to continue to the furthest extent possible during the process. On the other hand, The *United Kingdom's* insolvency laws are mostly considered to be creditor's friendly, wherein the Insolvency is a regulated profession under the Insolvency Act 1986. Only a licensed insolvency practitioner can be appointed in relation to formal insolvency procedures for individuals and other businesses. Insolvency practitioners are subject to oversight and inspection by their recognized professional body similar to IBBI as in case of India. Similarly, in USA insolvency regime, the *trustee* performs the functions of Insolvency Professionals. However, it is not mandatorily unlike in India, to

appoint a trustee in all the cases which comes up for insolvency process. The trustee in USA does not requires any specific qualifications to discharge the functions in relation to insolvency matters. Any person who is eligible to acquire or hold the property with a clear title for his or her own benefit and also has the ability to accept the property can be appointed as a trustee. Unlike in India, no other qualification is needed in USA to discharge the duties of IP by the Trustee.

According to analysis by the World Bank in the research conducted on insolvency resolution across the world (The World Bank. (n.d.)), about insolvency laws and procedures being followed therein, it has emerged that the insolvency reforms that encouraged debt restructuring & reorganization reduced both failure rates among small and medium-size enterprises and the liquidation of profitable businesses(Ministry of Finance, 2023). If the Insolvency Professionals, regulator and courts cannot be used effectively in a case of default, creditors and debtors are likely to engage in informal negotiations outside of court, which often enhances uncertainty in the resolution process and would be expectedly inclined in favor of the comparatively 'stronger party', thereby discouraging new ventures and start-ups. In Brazil, differences in court enforcement of the same bankruptcy law, affected the impact of financial reforms on firm access to finance and investment.

Even when the bankruptcy laws are similar across economies, the use of bankruptcy procedures can vary because of differences in the efficiency of debt enforcement. Insolvency regime in India is evolving at a fast pace which brings forth opportunities and challenges. Developments include the operationalization of individual insolvency including a fresh start process, and a separate track for dealing with insolvency resolution of MSMEs. Insolvency Professionals have been fully committed in their role as a crucial support to the Code so far, however there is a need to be equipped with more powers to hold more responsibility for a more perplexing future. It is pertinent to mention that key support in the form of professional services had always been present in resolution or liquidation processes in the erstwhile laws on insolvency including company Act 1956, however, still there has been a steady upturn in inclination to increase more domain oriented professional approach in the corporate insolvency from CLB to NCLT (Srivastava, 2021). Needless to say, that the necessity of an expert professionals focused solely in the areas of insolvency law & practice was always felt

because of the expertise involved, beside requirement of overhauling the old laws. In India the passing of IB Code, 2016 taken care of this requirement by introducing Insolvency Professionals, playing key role in corporate insolvency resolution processes and Liquidations including individual bankruptcy processes as well. Pointless to say that Insolvency Professional are key to resolution under the IB Code, nevertheless they are facing many implementation issues/challenges at ground level. There are also many reasons for delays in proceedings under IBC, such as non-filling of vacancies at the Tribunal, rise in the backlog of cases before the Tribunal, insufficient knowledge and training of various stakeholders, etc." Absence of distressed Assets market is additional reason for value erosion of business entities. It is pertinent to mentioned that the code being an empirical economic law largely depend on trial & error method which is reinforced through jurisprudential clarifications. The government need to take immediate actions to respond to deficiencies/irregularities before the situation becomes alarming and IBC fails to serve its purpose(Srivats,2022). The Insolvency Professionals under due supervision of regulator (IBBI) and other stakeholders are working together constantly, to ensure plugging enforcement gaps. The features of the IBC with immediate course correction as and when needed also assertive, the promise for making the Indian insolvency law an exemplary for other countries. The role of insolvency professionals in insolvency laws of developed countries like UK and USA also has intrinsic worth which may be prolific for better implementation of the insolvency processes in India.

Due to the diversity of legal systems and economic frameworks, insolvency rules differ greatly among nations. By balancing the interests of creditors and debtors, these laws often seek to establish a framework for handling financially distressed organizations. Restructuring, liquidation, and debt recovery procedures are frequently important elements. Prioritizing business rescue is one thing in certain regimes, but creditor protection is another. Organizations on a worldwide scale that strive to standardize bankruptcy rules include the United Nations Commission on International Trade Law (UNCITRAL). In order to support economic stability across all economies in the world, recent movements have centered on advancing efficiency, transparency, and the turnaround of fiscally flawed companies.

Similar to this, the insolvency rules of the *United States and the United Kingdom* guarantee that the interests of creditors and debtors will be balanced while promoting a vibrant economic climate. For people and companies in financial difficulties, the *USA's Bankruptcy Code* offers a thorough structure with multiple chapters to handle a range of circumstances. Similar procedures, such as administration and liquidation procedures, are integrated into the *UK's Insolvency Act* with the goal of resolving distress and maximizing returns to creditors. The work of insolvency professional is essential to the efficient operation of insolvency legislation in the *United States* and the *United Kingdom* (The Insolvency Service, 2023). Experts in insolvency, sometimes referred to as "*Bankruptcy Trustees*," are crucial to the administration of bankruptcy in the United States. On the other hand, "*Licensed Insolvency Practitioners*" *(IPs)* in the *UK* oversee the insolvency process, aiming to achieve the best outcome while balancing the interests of all parties involved. Controlling insolvency procedures, looking into the company's problems, and, when feasible, suggesting restructuring solutions are the responsibilities of insolvency professionals. All things considered, insolvency experts in both nations act as absolute prerequisite '*mediators'* to guarantee the impartiality and competence of bankruptcy procedures.

Key take away like possessing specific domain expertise by Insolvency Professional, more focus on practical knowledge, case studies as a pre-requisite for the IP Licence unlike India objective paper and more emphasis on theory. In UK(The Insolvency Service, 2020),the government has assigned 'Monitor' the duty of ensuring that only businesses with a reasonable possibility of success are granted access to the moratorium and that the company is not merely abusing the process to postpone entering a formal insolvency proceeding. In USA, a trustee is appointed, only if requires, who handles the insolvency matters in debtor in possession system. The appointment of a trustee may be ordered by the court at any point following the start of the action but before to the confirmation of a plan, upon request from a party in interest or the United States trustee.

Chapter-VI.

Analysis of Empirical Data Regarding Problems faced by Insolvency Professionals.

This chapter will includequantitative data analysis and its interpretation, administration of the questionnaire**,** limitation of data gathered**,** data analysis and conclusion drawn including Hypothesis Testing.

When overseeing the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor, IPs are entrusted with a comprehensive range of statutory and legal responsibilities. He will oversee the management of the affairs of the Corporate Debtor (CD), exercises the authority of its Board of Directors, and ensures compliance with relevant laws on behalf of the CD. His responsibility includes safeguarding and maintaining the value of CD's assets, managing its operations to ensure continuity, and aiding the Committee of Creditors (CoC) in making informed decisions for insolvency resolution. Furthermore, the First Schedule to the IP Regulations sets out a detailed Code of Conduct that must be followed by IPs during their assignments. The Code of Conduct includes observance of complete devotion to cause of profession, expected as an Insolvency Professional, inter alia Integrity and objectivity.

Chapter VII

Conclusion and Suggestions.

The last chapter will finally focus on the theoretical finding as well as findings based on empirical study/data, Analysis of the problem statements with the theoretical and empirical data, Key take away from Insolvency Laws of USA and UK, Suggestions for making changes into the IB code, so as to strengthen the entire insolvency eco-system, giving arms to insolvency professional to make Indian insolvency laws more resilient and best in the developed economies of the world.

CHAPTER-II

EXPLORING TYPES OF BUSINESS RESTRUCTURING AND UNVEILING THE SIGNIFICANCE OF FOUR PILLARS OF THE INSOLVENCY AND BANKRUPTCY CODE

2.1. Introduction

The Olympic motto, "Citius, Altius, Fortius," finds resonance in the lifecycle of a living organism, which adapts, acclimatizes, and self-improves to thrive in its external environment. This analogy aptly applies to the journey of a company, which similarly evolves, adjusts, and learns autonomously in pursuit of innovation, competition, and ultimately, survive (Debroy et al. 2020). It goes without saying that the State bears the responsibility of fostering a conducive environment for competition and modernization. However, it's the individual company, as a distinct legal entity, that ultimately engages in competition. Competition not only entails excelling but also entails the freedom for businesses to enter and exit the market. In the Indian context, while the freedom to enter the market existed, the process of exiting for corporate entities and firms was bleak. During the 1960s and 1970s, a significant number of financially distressed private sector enterprises were nationalized into public sector enterprises due to the lack of a streamlined exit mechanism. Over time, these public sector enterprises also faced financial challenges. Even for unincorporated enterprises, the provisions for exit were governed by legislation dating back to 1926. Thus, there was a pressing need for modern and comprehensive legislation in India to establish a mechanism for facilitating "ease of exit" in cases were running the business profitably was not feasible.

Over the past nearly seven years, numerous significant cases have been resolved, while others are progressing towards resolution in advanced stages. The provisions outlined in the Code ensure a time-bound process for resolving insolvency matters. Upon default in repayment, control over the debtor's assets shifts to the creditors, who are then responsible for making decisions to address the insolvency. Both debtors and creditors have the option to initiate 'recovery' proceedings against each other under the IBC. Companies are mandated to conclude the entire insolvency procedure within 180 days under the IBC framework. However, this deadline may be extended under specific

circumstances outlined in Section 12(3) of the IB Code, with a maximum cap of 330 days, inclusive of any litigations, from the Insolvency Commencement Date (ICD), as clarified by the Hon'ble Supreme Court in the case of "*Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and others"* (ArcelorMittal India Private Limited v. Satish Kumar Gupta and Others 2019).

The insolvency process for smaller businesses, including startups with an annual revenue of Rs 1 crore, must be concluded within 90 days, with the possibility of extending this limit by an additional 45 days. Failure to resolve the company's debt within this timeframe will lead to liquidation. While the primary aim of the IBC is resolution, it also tackles the challenge of non-performing assets prevalent in the banking system. Robust insolvency laws serve two purposes: preserving viable enterprises and facilitating the closure of non-viable ones.

The IBC also provides an avenue for a corporate entity, even if it hasn't defaulted, to exit via a voluntary liquidation process. Within the IBC framework, the mechanism for rescuing a corporate debtor (CD) is executed through a corporate insolvency resolution process (CIRP), while the process for exiting is managed through a liquidation procedure. Consequently, the insolvency proceedings for a CD under the IBC unfold in two phases: initially, efforts are made to address the CD's default through a CIRP; if resolution proves unattainable, liquidation follows in the second phase (IBBI, 2024). The provisions concerning corporate entities under the IBC came into effect on December 1, 2016. The personal guarantors to corporate debtors for which insolvency proceedings can be initiated implemented subsequently in terms of the amendment to IB Code.

2.2. FORMAL / INFORMAL INSOLVENCY PROCEDURES.

When a firm faces insolvency, stakeholders have two pathways to resolve its financial challenges. They can either opt for informal out-of-court arrangements such as pre-packaged restructuring or alternative dispute resolution mechanisms, or they can pursue formal insolvency proceedings overseen by the Court or Tribunal (Shekar et al. 2020). Scholars have extensively analyzed the advantages and disadvantages of each approach. However, due to the inherent conflict of interest among the different stakeholders of the corporate debtor (CD), particularly the promoters/managers and creditors, specific issues

arise that are best addressed through formal insolvency procedures. Indeed, integrating informal insolvency procedures with formal insolvency processes supported by legislation can help alleviate some of the negative consequences. Information disparities, conflicts of interest, and skewed incentive systems between CD managers and creditors are effectively addressed through formal insolvency and bankruptcy procedures like the IBC. The types of formal restructuring in India include:

2.3. RESOLUTION STRATEGIES OF CORPORATE ENTITIES

Corporate Restructuring is a business strategy where one or more aspects of a business are restructured to improve its commercial efficiency, manage competition effectively, drive faster pace of growth, ensure effective utilization of resources, and fulfilment of stakeholders' expectations (Porte Brown Accountant and Advisor, (n.d.)). It serves different purposes for different companies at different points of time and may take up various forms. Restructuring typically occurs to address challenges or it can be driven by the necessity to make financial adjustments to its assets and liabilities. Mergers, amalgamations, acquisitions, compromises, arrangement or reconstruction are various forms of corporate restructuring exercises. The purpose of each of these restructuring exercises may be different but each of these exercises attempts to bring in more efficiency in the system.

Corporate Restructuring process in India is governed by the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and various other regulatory laws such as the Income Tax Act, 1961, the Competition Act, 2002, the Foreign Exchange Management Act, 1999, the Indian State Stamp Acts and Insolvency and Bankruptcy Code, 2016. Chapter XV of the Companies Act, 2013 (comprising sections 230 to 240 regulates compromises, arrangement and amalgamations. Primarily the Corporate restructuring may be broadly categorized as: -

2.3.1. ORGANIZATIONAL RESTRUCTURING.

Organizational Restructuring may involve creation of new departments to serve growing markets or downsizing or eliminating departments to conserve overheads. A company may undertake restructuring (Jerab, 2023) to focus on a particular market segment leveraging its core competencies or may undertake restructuring to make the

organization lean and efficient. This type of restructuring affects employees and involves layoffs or collaboration with third parties to upgrade skills and technical know-how.

2.3.2. FINANCIAL RESTRUCTURING.

Financial restructuring involves the reorganization of a company's financial setup, typically encompassing its equity and debt capital components. Various factors, both financial and non-financial, can prompt the need for financial restructuring. It may be necessitated either by compulsion, such as recovering from financial distress, or as part of the company's financial strategy. Financial restructuring serves multiple business objectives, including addressing poor financial performance, expanding market share, or capitalizing on emerging market opportunities. Financial restructuring aimed at overcoming financial distress entails engaging in negotiations with a range of stakeholders, including banks, financial institutions, and creditors, with the objective of reducing liabilities. Corporate financial restructuring, which involves significant alterations to a company's financial framework, is pursued for diverse business motives. This process encompasses Debt Restructuring, which involves restructuring secured long-term borrowings, long-term unsecured borrowings, and short-term borrowings. Conversely, Equity Restructuring encompasses actions such as capital alteration or reduction and share buybacks.

2.4. FORMAL RESTRUCTURING AND INSOLVENCY PROCEEDINGS.

In India, the current legislative framework exclusively addresses formal restructuring and insolvency proceedings. Historically, the Companies Act of 1956 governed the winding up or liquidation of companies. Although the Companies Act of 2013 replaced its predecessor, the sections pertaining to winding up/liquidation under the 2013 act remained unnotified. Consequently, until the enactment of the Code, the provisions of the Companies Act of 1956 continued to govern the winding up or liquidation of companies (Porte Brown Accountant and Advisor. (n.d.)). Winding up could be initiated under the Companies Act of 1956, if a company failed to meet its debt obligations. Subsequently, liquidation would ensue without any mandatory attempt at rehabilitating or reorganizing the company beforehand. Furthermore, liquidation itself often extended

over several years in the absence of any time-bound closure process.Following the enactment of the IBC (IBC Laws, 2017), the initiation of winding-up proceedings due to debt default is no longer possible under either the Companies Act of 1956 or the Companies Act of 2013. However, involuntary winding-up of companies for reasons unrelated to insolvency, such as repeated defaults in filing financial statements or annual returns over five consecutive financial years, remains permissible under the Companies Act of 2013. Additionally, the Companies Act of 2013 includes provisions for schemes of financial reconstruction (IICSI, (n.d.)), which, upon approval by the National Company Law Tribunals, facilitate voluntary arrangements and compromises with creditors and/or shareholders. These schemes typically operate outside the insolvency regime, though they can also be applicable during liquidation proceedings. Sick Industrial Companies (Special Provisions) Act, 1985, was the primary rehabilitative statute that allowed a "sick" industrial firm to voluntarily initiate a rescue and rehabilitation process if its net worth had eroded. *Two of the main reasons for its failure were the unending moratorium protection (which was sometimes abused by the debtors in possession) and the absence of a time-bound resolution process*. Various voluntary mechanisms for debt restructuring were also formulated by the Indian banking regulator, the Reserve Bank of India (RBI), in the form of instructions or circulars to the banks: corporate debt restructuring, the joint lenders' forum mechanism, strategic debt restructuring, outside strategic debt restructuring, and the Scheme for Strategic Structuring of Stressed Assets.

Following the enactment of the IB Code, the RBI issued a revised framework for the resolution of stressed assets in its circular dated February 12, 2018, which led to the withdrawal of all previous mechanisms. Many cases were referred to and admitted for corporate insolvency resolution processes (CIRPs) subsequent to the circular. On April 2, 2019, the Supreme Court, in its judgment on *Dharani Sugars & Chemicals Ltd. Vs. Union of India & Others [Transferred Case (Civil)No. 66 of 2018 in Transfer Petition (Civil)No. 1399 of 2018 with several Writ Petitions and Transferred Cases and an SLP],*declared this circular *ultra vires* of section 35AA of the Banking Regulation Act, 1949, on the grounds that the law permits the RBI to give directions to banks on stressed assets, only on the Central Government's authorization and in case of a specific default. There are various debt and security enforcement mechanisms in India. The individual

debt and security enforcement mechanisms continue to exist; however, their applicability, once insolvency resolution or liquidation under IBC commences, is restricted. Specifically, for banks and financial institutions, the two key laws are the Recovery of Debts Due to Banks and Financial Institutions Act and the SARFAESI Act (Ministry of Corporate Affairs, 2020).

The Chapter XV of the Companies Act, 2013 (comprising sections 230 to 240 lay down provisions to regulate compromises, arrangement and amalgamations. Barring few exceptions, these provisions are mostly used for the purposes of corporate restructuring (mergers, demergers, amalgamations) and have rarely been employed as a tool for debt restructuring whereas Part II of the Insolvency and Bankruptcy Code, 2016 deals with the insolvency resolution and liquidation for corporate persons. Section 4 of the Insolvency and Bankruptcy Code, 2016 provides that Part II of the Code shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees. The proviso to section 4 empowers the Central Government to specify, by notification, the minimum amount of default of higher value but it shall not be more than *one crore rupees***.** *In the wake of Covid-19 now the limit for default has been raised one crore rupees* (Government of India, 2020).

In Part II of the Insolvency and Bankruptcy Code, 2016, two distinct stages are delineated as follows Corporate Insolvency Resolution Process [Sections 4 and 6 to 32]; Liquidation [Sections 33 to 54 and Section 59]; Chapter II of Part II pertains to the corporate insolvency resolution process, while Chapter III, along with Chapter V of Part II, oversees the liquidation process for corporate entities.

2.4.1. WINDING-UP AS PER THE COMPANIES ACT, 2013 AND THE INSOLVENCY AND BANKRUPTCY CODE OF 2016.

Winding up refers to the process through which a company is terminated. This involves disposing of assets, settling liabilities, and distributing any surplus among shareholders or members based on their respective shareholdings. Winding up procedures are regulated by both the Companies Act of 2013 and the Insolvency and Bankruptcy Code of 2016. The methods for closing a company include:

2.4.2.THE REMOVAL OR STRIKING-OFF A COMPANY'S NAME UNDER SECTION 248(2) OF THE COMPANIES ACT, 2013, IN CONJUNCTION WITH THE COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) RULES, 2016.

Removal by the Registrar of Companies (ROC) on a Suo-moto basis, if there is reasonable cause to believe that the company has either: Failed to commence its business within one year of its incorporation, or not conducted any business or operations for a continuous period of two years immediately preceding the financial years, and has not applied within such period to obtain the status of a dormant company under Section 455(Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016). In such cases, the ROC, after issuing due notice to the company and all its directors, may remove the company's name.

The name of the company can also be removed, if the subscribers to 2024the memorandum have not paid the subscription amount, they committed to pay at the time of the company's incorporation, or the company is found not to be engaged in any business or operations after a physical verification of its registered office.

Alternatively, a company may choose to file an application with the Registrar based on any of the grounds mentioned above. If a company decides to remove its name Suo-motu as described in option 2, it must fulfill certain requirements, including settling all its liabilities, passing a special resolution, or obtaining consent from seventy-five percent of its members in terms of paid-up share capital. Subsequently, it should submit an application for the removal of the company's name using the prescribed documents in e-Form STK-2, along with the requisite fee of Rs. 5,000.

2.4.3. WINDING UP UNDER THE COMPANIES ACT, 2013 BY THE TRIBUNAL.

Section 271 of the Companies Act, 2013 outlines the circumstances under which a company may be wound up by the tribunal: If the company, by special resolution, resolves that it be wound up by the Tribunal; If the company has engaged in actions detrimental to the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality; If, upon application by

the Registrar or another person authorized by the Central Government, the Tribunal finds that the company's affairs have been conducted fraudulently, or that it was formed for fraudulent or unlawful purposes, or if those involved in its formation or management have committed fraud, misfeasance, or misconduct; If the company has defaulted in filing its financial statements or annual returns with the Registrar for five consecutive financial years. If the Tribunal deems it just and equitable to wind up the company. Additionally, Section 272 of the Companies Act, 2013 specifies the individuals entitled to file a petition for the winding up of a company.

2.4.4. THE PROCESS OF LIQUIDATION OF A COMPANY ACCORDING TO THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

Voluntary Liquidation of a Corporate Person (Section 59 of the IBC, 2016A corporate entity that seeks to voluntarily liquidate itself without defaulting on any obligations may commence voluntary liquidation proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBBI, 2024). Section 59 of Chapter V, Part II of the Code outlines the procedure for initiating voluntary liquidation by a corporate debtor without any outstanding debts. The Insolvency and Bankruptcy Board of India has formulated the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, to govern such voluntary liquidation processes (IBBI, 2024). According to subsection (1) of section 59, the sole prerequisite for commencing voluntary liquidation under Chapter V, Part II of the Code is that the corporate entity seeking voluntary liquidation must not have defaulted on any obligations. Subsections (2) and (3) of section 59 detail the necessary conditions and procedures for the voluntary liquidation of a corporate entity.2.4.2.2. Liquidation process (Kumar, (n.d.) in case of company has made default in payment of debts. Chapters III of Part II of the Insolvency and Bankruptcy Code, 2016, specifically Sections 33 to 54, delineate the legal framework governing the liquidation process for corporate entities. Initially, efforts are directed towards resolving a corporate debtor's insolvency through the corporate insolvency resolution process outlined in Chapter II of Part II of the Code. If these attempts prove unsuccessful, the provisions outlined in Chapter III of Part II of the Code come into effect to facilitate the liquidation process (IBBI, 2024). The Insolvency and Bankruptcy Board of India has established the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, to govern this liquidation process, which

are periodically revised by the board. It's important to note that the provisions pertaining to insolvency and liquidation of corporate debtors are applicable only if the default amount is equal to or exceeds 1 lakh rupees. However, the Central Government has the authority to specify, through notification, a higher minimum default amount, which shall not exceed 1 crore rupees. Currently, this threshold stands at 1 crore rupees. According to the Insolvency and Bankruptcy Code, a financial creditor, either individually or jointly with other financial creditors, may initiate proceedings under section 7, whereas an operational creditor must first issue a demand notice for repayment of operational debt in accordance with section 8 before filing an application under section 9. Upon admission and compliance with the provisions of the code, rules, and regulations, the Resolution Professional (RP) is obligated to submit a resolution plan. Failure to submit the plan within the prescribed timeline or if the plan is rejected by the Tribunal may result in an order for the liquidation of the company.

2.5. FOUR PILLARS OF IBC

The Code establishes a framework consisting of four essential components to assist stakeholders in addressing business distress. The first pillar encompasses a group of regulated professionals known as Insolvency Professionals (IPs) (Sharma, 2022), who play a pivotal role in facilitating the effective functioning of insolvency, liquidation, and bankruptcy procedures outlined in the code. The second pillar introduces a novel sector known as Information Utilities (IUs) (IBBI, 2022), which maintain electronic databases of financial information pertaining to debtors, thereby streamlining the resolution process and minimizing disputes and delays. The third pillar comprises the Adjudicating Authority (AA), represented by entities such as the National Company Law Tribunal (NCLT) for corporate insolvency and the Debt Recovery Tribunal (DRT) for individual insolvency cases. The fourth pillar consists of the regulator, the Insolvency and Bankruptcy Board of India (IBBI), established as a unique regulatory body overseeing both the profession and processes. IBBI ensures compliance by monitoring the activities of IPs, Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs), and IUs to uphold the standards prescribed in the code. Detailed information regarding the roles, functions, powers, and responsibilities of these four pillars is elaborated as follows:

2.5.1. INFORMATION UTILITY (IU).

The second pillar of the Insolvency and Bankruptcy Code (IBC) introduces a novel sector known as Information Utilities (IUs). As per Section 3(21) of the Code, an "information utility" is defined as an entity registered with the Board under Section 210. IUs serve as controlled and licensed repositories of information concerning corporate debtors (CDs). They gather, organize, validate, and disseminate financial data to facilitate insolvency resolution, liquidation, and bankruptcy proceedings. While Insolvency Professionals aid in the resolution process outlined in the Code, Information Utilities are responsible for collecting, collating, authenticating, and distributing financial information (IICSI, (n.d.)).This process aims to expedite decision-making during resolution proceedings. The functioning of these information utilities is overseen by the Insolvency and Bankruptcy Board of India, which has established the IBBI (Information Utilities) Regulations, 2017. These regulations are subject to periodic amendments by the Insolvency and Bankruptcy Board of India.

Information Utilities (IUs) serve as repositories of financial data, acquiring, validating, safeguarding, and furnishing pertinent financial information related to debtors. Their primary objective is to expedite the insolvency resolution process by ensuring timely access to essential financial information. IUs maintain crucial data such as borrowing details, instances of default, and security interests of debtors, which they provide to businesses, financial institutions, adjudicating authorities, insolvency professionals, and other stakeholders. As per Section 3(21) of the Insolvency and Bankruptcy Code (IBC), an "Information Utility" is defined as an entity registered with the Insolvency and Bankruptcy Board of India (IBBI) under Section 210. Moreover, in accordance with Section 209 of the IBC, an entity becomes eligible to operate as an IU only after fulfilling all technical requirements specified in Section 210 and obtaining a registration certificate from the IBBI.

2.5.1.1. HISTORICAL STANDPOINT OF ‘INFORMATION UTILITIES’

Prior to the establishment of Information Utilities (IUs), the landscape included Credit Information Companies (CICs) (Mathew, 2020) and the Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) established under section 20 of the SARFAESI Act (Mathew, 2020). These entities offered services related

to credit, encompassing details of security interests. In a Budget speech delivered in Parliament on February 28, 1994, the Finance Minister of India announced the Reserve Bank of India (RBI) would implement a system for publishing the names of borrowers who failed to repay banks and financial institutions (FIs), aiming to enhance vigilance among lenders regarding defaulting borrowers. Following this announcement, a working group chaired by Mr. N.H. Siddiqui (chief general manager, RBI) was convened, which submitted its report in 1999 recommending the establishment of CICs (RBI, 2015). Consequently, Credit Information Bureau (India) Ltd. (CIBIL) was incorporated in August 2000.

Later, pursuant to the enactment of the Credit Information Companies (Regulation) Act, 2005, three other CICs have also been set up in India. Additionally, in 2013, the RBI established another committee, chaired by Mr. Aditya Puri (Managing Director, HDFC Bank), tasked with evaluating the reporting formats utilized by Credit Information Companies (CICs) and addressing related issues. The findings of this committee's report led to the standardization of data formats for reporting and transmitting corporate, consumer, and MFI (Monetary Financial Institutions) data by all credit institutions. This also prompted reforms in the method of data submission by credit institutions to CICs. Subsequently, in 2015, the RBI mandated that all credit institutions must become members of all CICs and compulsorily submit current and historical data regarding specified borrowers to them, ensuring regular updates at prescribed intervals. Subsequently, in 2011, during his budget speech, the then Finance Minister announced the establishment of a central registry for equitable mortgages. Following this declaration, the Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) was tasked with maintaining and operating a registration system to register transactions involving securitization, asset reconstruction of financial assets, and the creation of security interests over property, as envisaged under the SARFAESI Act. CERSAI has established a platform for banks and financial institutions (FIs) to file registrations, while also offering access to other moneylenders and the public to search its database. It is noteworthy that the concept of Information Utilities (IUs) seems to have evolved from research and efforts aimed at creating a unique hybrid model in India. This model incorporates the most effective features of Credit Information Companies

(CICs), CERSAI, and similar agencies worldwide engaged in providing financial information services.

2.5.1.2. FORMATION OFAN 'INFORMATION UTILITY' UNDER IBC.

As per section 196 of the Insolvency and Bankruptcy Code (IBC), the Insolvency and Bankruptcy Board of India (IBBI) is authorized to grant, renew, withdraw, suspend, or cancel the registration of Information Utilities (IUs). This section also empowers the IBBI to formulate regulations pertaining to registration and related matters. Exercising this authority, the IBBI has issued the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (referred to as "the IU Regulations"), which serve as the foundational documents outlining the detailed procedures for the registration and operations of IUs. Regulation 3 of the IU Regulations stipulates that registration may be sought by any public company with a minimum net worth of fifty crore rupees, whose primary objective is to offer core services and other services specified under the IU Regulations. Additionally, such an IU must fulfill other conditions specified in the IU Regulations to carry out its functions effectively.

2.5.1.3. SIGNIFICANCE AND USEFULNESS OF INFORMATION UTILITIES.

The Bankruptcy Law Reforms Committee (BLRC), chaired by Mr. T. K. Viswanathan (Vishwanathan, 2015), which formulated the IBC, recognized the pivotal role of Information Utilities (IUs) as a crucial pillar supporting the institutional infrastructure necessary for the efficient and time-sensitive functioning of processes under the IBC (Ministry of Corporate Affairs, 2017). One of the objectives of the IBC is to maximize the value of assets, with IUs playing an integral role in achieving this goal by facilitating effective contribution to the Corporate Insolvency Resolution Process (CIRP) of a corporate debtor (CD), ensuring its conclusion within 330days from the insolvency commencement date. This ambitious time limit set for concluding the CIRP seems to be predicated on the assumption that relevant information required for the process will be readily accessible to all involved parties, including creditors, adjudicating authorities, insolvency resolution professionals, etc. This assumption reflects the confidence of the legislators in the envisioned role of IUs under the IBC. The stringent deadlines specified by the IBC for timely resolution can only be met if IUs are prepared to promptly furnish all relevant information.

The Information Utility (IU) furnishes pertinent financial details, encompassing liabilities during solvency, instances of default, any ongoing disputes, records of corporate debtor (CD) debts, encumbered assets over which debtor has created security interests, and timely financial statements from previous years (NCLT, 2023). Moreover, it is imperative for the adjudicating authority to confirm the alleged default's existence, as this determines the outcome of the Corporate Insolvency Resolution Process (CIRP) application. Under the IBC framework, once CIRP is initiated against a corporate debtor, the Interim Resolution Professional (IRP) assumes control over its affairs, leading to the suspension of all powers held by the Board of Directors, which are then wielded by the IRP. In many instances, Resolution Professionals encounter resistance from management, resulting in a lack of cooperation and denial of access to pertinent financial information. In such scenarios, the IU, serving as an independent repository of validated debt and default-related data, can swiftly provide the necessary information, significantly enhancing the efficiency of the process. Moreover, the IBBI has recently bolstered the role of Information Utilities (IUs) by granting them access to data from the MCA-21 database and CERSAI portals. This measure aims to expedite the authentication (IBC Laws, 2019) of debtor defaults, a critical initial step in the Corporate Insolvency Resolution Process (CIRP). By facilitating access to MCA-21 and CERSAI portal data, the IBBI is establishing a mechanism for the swift and reliable provision of data to all stakeholders involved in processes governed by the IBC. It is worth noting that the RBI has mandated the implementation of appropriate systems and procedures for the submission of financial information to IUs by all Scheduled Commercial Banks (including RRBs), small finance banks, local area banks, non-banking financial companies, and all cooperative banks across the country.

2.5.1.4. FUNCTIONS OF ‘INFORMATION UTILITY’ AS CONTEMPLATED UNDER THE IBC.

According to Section 213 of IBC, IUs shall provide services which include core services including accepting electronic submission of financial information; safe and accurate recording of financial information; authenticating and verifying financial information submitted by person; and providing access to information stored with IUs to persons as

may be specified. Further, Section 214 of the IBC provides about accepting/ obligation to accept info in digital form as specified under the IU Regulations. Thereafter Verifying, Publication and storing it in easily accessible format and providing the information available to all the parties in terms of IU Regulations. The IUs also need to be inter-operable with other IUs for sharing the data. Section 215 also makes it mandatory for the financial creditors to submit financial information and information relating to assets in relation to which any security interest has been created; however, it is optional as of now for operational creditor, Insolvency Professionals and Liquidators to furnish information regarding resolution, liquidation or bankruptcy proceedings to IU for. There are also provisions wherein different stakeholders can obtain/access data from different IUs. There are procedures established in case of default wherein IU undertake correspondence thrice to verify, giving 3 days' time to debtor. On confirmation green colour is assigned to the debt and incase no response from debtor, the default is taken as deemed authenticated & verified and colour coded as yellow and the status is forwarded to registered users.

As per Section 213 of the IBC, Information Utilities (IUs) are mandated to provide core services, which include accepting electronic submission of financial information, securely and accurately recording financial data, authenticating and verifying submitted financial information, and granting access to stored information to specified individuals. Additionally, Section 214 of the IBC outlines the obligation of IUs to accept information in digital form as specified under the IU Regulations. Subsequently, the IU is responsible for verifying, publishing, and storing the information in easily accessible formats (IBBI, 2022), as per the IU Regulations, and providing access to all parties involved. Interoperability with other IUs for data sharing is also a requirement, as specified in Section 215. Financial creditors are obligated to submit financial information and details regarding assets with security interests created, while it remains optional for operational creditors, Insolvency Professionals, and Liquidators to provide information regarding resolution, liquidation, or bankruptcy proceedings for storage by the IU. Procedures are established in cases of default, wherein the IU initiates correspondence three times to verify, allowing the debtor three days to respond. Upon confirmation, the debt is labeled with a green color, whereas if there is no response from

the debtor, the default is deemed authenticated and verified, coded as yellow, and the status is communicated to registered users.

The Information Utilities (IUs) securely store the received information within India and grant access to various stakeholders (IBBI, 2024). These stakeholders include the user who provided the information, all parties involved in the debt, the hosting bank (if applicable), auditors in specific cases, insolvency professionals, adjudicating authorities, the Insolvency and Bankruptcy Board of India (IBBI), and any other person authorized to access the information under prevailing laws.

2.5.1.5. MEASURES TO SAFEGUARD THE DATA HELD BY INFORMATION UTILITIES AND ITS EVIDENTIAL SIGNIFICANCE.

As per IU regulations, Information Utilities (IUs) are obligated to ensure the protection of data against unauthorized access and loss, along with implementing adequate safeguards against cyber threats such as malware, phishing, hacking, and other related issues. The Insolvency and Bankruptcy Board of India (IBBI) conducts inspections periodically to ensure the safety and security of data maintained by IUs (IBBI, 2022). Any breach of information protection by an IU is subject to disciplinary action and penalties. The data stored by IUs serves as evidence of debt and default between the parties involved. These electronic records are considered documents and are admissible in a court of law under Section 65 of the Indian Evidence Act, 1872. Adjudicating Authorities have the discretion to accept IU records as proof or evidence of defaults due to estoppel under Section 115 of the Indian Evidence Act, as affirmed in the case of Swiss Ribbons Pvt. Ltd. v. Union of India (Swiss Ribbons Pvt. Ltd. v. UoI, 2019), where the Supreme Court of India upheld the constitutional validity of various provisions of the IBC, including the evidentiary value of information provided by IUs.

For the seamless functioning of the Insolvency and Bankruptcy Code (IBC), verified financial debt information of debtors, accessible at any time and from any location, is crucial to adhere to strict timelines. Recognizing this necessity, the Insolvency and Bankruptcy Board of India (IBBI) registered National E-Governance Services Limited (a Union Government company) as the first Information Utility (IU) on September 25, 2017. With the data available to IUs expected to grow in quantity and quality over time, they are becoming increasingly vital pillars in the overall resolution process.

The objective of the Information Utilities (IUs) framework was to mitigate information asymmetry. IUs not only address this asymmetry but also play a crucial role in enhancing credit risk assessment and streamlining the recovery processes. While the importance of IUs is undeniable, it may take some time before they fully realize their expected significance. This marks the initial phase in their development.

2.5.2. ADJUDICATING AUTHORITIES (AA).

The third pillar of the Insolvency and Bankruptcy Code (IBC) consists of the Adjudicating Authorities (AAs), which are tribunals responsible for deciding matters under the IBC. These include the National Company Law Tribunal (NCLT) for corporate insolvency cases and the Debt Recovery Tribunal (DRT) for individual and partnership firm insolvencies. As per Section 5(1) of the IBC, the "Adjudicating Authorities" for insolvency resolution and liquidation of corporate entities are constituted under section 408 of the Companies Act, 2013, and are primarily the NCLT. Chapter VI of Part 2 of the IBC specifies that the AA for corporate entities, including corporate debtors (CDs) and their personal guarantors, shall be the NCLT with territorial jurisdiction over the registered office of the corporate entity.

Regarding the role and jurisdiction of the Adjudicating Authorities (AAs), they determine whether to admit the Corporate Debtor (CD) to insolvency for Corporate Insolvency Resolution Process (CIRP) based on the default and associated documents. Upon reviewing the entire case and the resolution plans submitted by the Resolution Professional (RP), the AA decides to approve or reject the resolution plan for the CD. If the plan is deemed unviable for the resolution of the CD and is rejected by the AA, an order for the liquidation of the CD is issued, leading to its dissolution.

The AA also handles various Interlocutory Applications (IAs), including requests for extending the period of CIRP from the initial 180 days to 270 days and further to 330 days in extreme circumstances. Additionally, the AA considers applications from the Interim Resolution Professional (IRP)/RP for cooperation from the management of Corporate Debtors (CD) and applications related to avoidance transactions. Moreover, the AA adjudicates upon applications filed by various stakeholders against the rejection of claims by the liquidator and other incidental matters. Notwithstanding any provisions to the contrary in other prevailing laws, the National Company Law Tribunal possesses

jurisdiction, as conferred under Section 60(5) of the Code, to entertain or dispose of any application pertaining to proceedings involving the corporate debtor or corporate person, claims against its subsidiaries, priority of claims, and any other legal or factual matters arising in relation to insolvency.

Additionally, pursuant to Section 63 of the Code, civil courts lack jurisdiction to entertain any suit or proceedings concerning matters falling within the jurisdiction of the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) under the IB Code. Similarly, in cases involving individuals and partnership firms, excluding Limited Liability Partnerships (LLPs), for insolvency resolution, the Adjudicating Authority (AA) is the Debt Recovery Tribunal (DRT) established under subsection (1) of Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Jurisdiction is determined based on domicile or the location of the business conducted for profit by the individual or entity. Furthermore, in accordance with Section 179(2) of the Code, the Debt Recovery Tribunal is empowered to entertain or dispose of any suit or proceeding filed by or against the individual debtor, questions of priorities, or any other legal or factual matters. The National Company Law Tribunal (NCLT) operates through various benches across India, each bench holding territorial jurisdiction over the state where it is situated and, in some cases, over certain other states as well.

Therefore, for a Corporate Debtor (CD) registered in Tamil Nadu, the appropriate Adjudicating Authority (AA) would be a Chennai bench of the NCLT. Appeals against NCLT decisions are lodged in the National Company Law Appellate Tribunal (NCLAT), with its Principal Bench located in New Delhi. The NCLT comprises a total of 15 benches, with one bench in each of the following locations: Ahmedabad, Allahabad, Bengaluru, Chandigarh, Jaipur, Chennai, Guwahati, Kolkata, Mumbai, and Hyderabad, and two benches in New Delhi. These benches were established on June 1, 2016. Section 180 of the Code excludes the jurisdiction of civil courts, stipulating that no civil court or authority may entertain any suit or proceedings concerning matters falling within the jurisdiction of the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal (SARFAESI Act, 2002) under this Code.

As per Section 61 of the Insolvency and Bankruptcy Code, 2016, notwithstanding any provisions in the Companies Act 2013, individuals affected by the Adjudicating Authority's (AA) decision regarding corporate insolvency resolution or liquidation of a corporate entity may appeal to the National Company Law Appellate Tribunal(NCLAT). This appeal can stem from a ruling by the NCLT or by any individual aggrieved by an NCLT decision, and must be made within thirty days from the receipt of the order. However, if valid reasons for not filing within the initial 30 days are provided, the NCLAT may grant a one-time extension of fifteen days. An appeal against a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016, may be filed on various grounds, such as contravention of prevailing laws, irregular exercise of powers by the resolution professional, omission of operational creditors' debts from the plan, or failure to allocate funds for priority repayment of resolution process costs. Similarly, in liquidation cases, an appeal against a liquidation order issued under Section 33 of the Insolvency and Bankruptcy Code, 2016, can be filed in the NCLAT based on irregularities or fraud related to the liquidation order. Thus, the NCLAT serves as the appellate authority for appeals against AA orders under the IBC, as well as appeals against orders of the IBBI under Sections 202 and 211 of the Code. Additionally, appeals against orders of the Competition Commission of India (CCI) are also lodged in the NCLAT. Presently, the NCLAT has offices in Delhi and Chennai, with its principal bench located in New Delhi.

2.5.2.1. APPEAL TO SUPREME COURT.

Under Section 62 of the Insolvency and Bankruptcy Code, 2016, appeals against orders of the National Company Law Appellate Tribunal (NCLAT) are directed to the Honorable Supreme Court. It specifies that any individual aggrieved by an NCLAT order may appeal to the Supreme Court (SC) on a question of law arising from such order, within forty-five days from receiving the order. However, the Supreme Court may grant a one-time extension of fifteen days if sufficient cause for the delay is demonstrated. Furthermore, considering the various provisions of the IBC and other related statutory frameworks, it becomes evident that if a corporate debtor (CD) wishes to assert a right falling outside the scope of the IBC but within public law, it must address the matter before the NCLT for resolution. While the adjudicating authorities NCLT and NCLAT possess jurisdiction to investigate fraud allegations, they lack

authority to resolve disputes arising under acts like the Mines and Minerals (Development and Regulation) Act, 1957, and its associated regulations. These disputes, particularly those involving decisions of statutory or quasi-judicial bodies, are subject to judicial review of administrative action (IBBI, 2020).

2.5.3 INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)-THE REGULATOR.

The fourth pillar of IBC, is the Insolvency and Bankruptcy Board of India (IBBI)—the Regulator. The Insolvency and Bankruptcy Board of India (IBBI) stands as a pivotal pillar entrusted with the responsibility of ensuring the effective functioning of Insolvency Professionals (IPs), Information Utilities (IUs), and other stakeholders as outlined in the Insolvency and Bankruptcy Code (IBC), thereby ensuring the code's implementation in its true essence. Established on October 1, 2016, under Section 188 of the IBC, the IBBI operates as a distinct corporate entity headquartered in New Delhi (IBBI, 2023). As a proactive regulator, the IBBI oversees a spectrum of professionals and transactions involved in insolvency proceedings. It exercises regulatory oversight over Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs), and Information Utilities (IUs), ensuring their adherence to designated roles and responsibilities. Additionally, the IBBI formulates and enforces regulations governing various insolvency and bankruptcy processes, including Corporate Insolvency Resolution Process (CIRP), liquidation procedures, as well as partnership and individual insolvency resolution and bankruptcies.

The IBBI uniquely balances quasi-legislative, executive, and quasi-judicial functions, aiming to enhance professional standards and transactional efficacy within the domain. In accordance with Section 189 of the IBC regarding the formation of the IBBI, it is mandated to include a chairperson and several members, with specific representation from the Central Government and other relevant bodies. This composition entails three members from the Central Government, not below the rank of Joint Secretary, representing the Ministries of Finance, Corporate Affairs, and Law on an ex-officio basis. Additionally, the Reserve Bank of India (RBI) nominates one-member ex-officio, while the Central Government nominates five other members, of whom at least three

serve full-time. These members are required to possess notable abilities, integrity, and expertise in addressing insolvency or bankruptcy issues, with specialized knowledge in law, finance, economics, accountancy, or administration. The term of office for the chairperson and members (excluding ex-officio members) is five years. Moreover, under Section 232 of the IBC, the chairperson, members, officers, and employees of the IBBI are considered public servants while enforcing the IBC provisions. Furthermore, Section 233 provides immunity from legal proceedings against the chairperson, members, officers, or employees of the IBBI for actions taken in good faith under the IBC or its associated regulations.

2.5.3.1. POWERS AND FUNCTIONS OF THE IBBI.

According to section 196(1) of the IB Code, the exercise of functions of the IBBI are subject to the general directions of the central government (IBBI, 2023).

The general functions of the IBBI encompass various responsibilities, such as registering, renewing, withdrawing, suspending, or cancelling the registration of Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs), and Information Utilities (IUs) if they are found to be operating in violation of the provisions of the IB Code. Additionally, the IBBI delineates the minimum eligibility criteria for IPAs, IPs, and IUs to effectively oversee them, including conducting investigations and inspections as necessary. An additional sub-clause was introduced through the second Amendment Act of 2018, amending Section 196(1) of the IB Code, entrusting the IBBI with the promotion, development, and regulation of the operations and practices of IPs, IPAs, and IUs.

Furthermore, the IBBI is authorized under Section 196(2) of the IBC to formulate model bylaws to ensure minimal standards of professional competence, ethical conduct, and other related matters concerning the enrolment and resignation of service providers. The regulator exercises surveillance, investigation, and grievance redressal to oversee markets and service providers. Another function involves maintaining continuous professional development standards for service providers through educational programs, examinations, and training initiatives.

Under Section 196(3) of the Code, the IBBI possesses powers akin to those of a civil court under the Code of Civil Procedure, 1908, while adjudicating a case. This includes the authority to request the disclosure and production of financial records and other documents, summon individuals for examination under oath, and issue commissions to examine witnesses or documents.

Moreover, as per Section 230 of the IBC, the IBBI has the authority to delegate powers and functions, along with any requisite conditions, to its members or officers. The procedures and conditions for delegations are outlined by the IBBI through the Insolvency and Bankruptcy Board of India (Delegation of Powers and Functions) Order, 2017, which may be amended by the IBBI accordingly. However, certain regulatory powers under Section 240, pertaining to the making of regulations, cannot be delegated to any other entity.

Additionally, the IBBI oversees the registration, regulation, and advancement of the valuer s' profession in the country.

2.5.3.2. REGULATION-MAKING POWERS OF THE IBBI.

Under Section 240(1) of the IBC, the IBBI is empowered to establish regulations consistent with the IBC and its rules to enforce the provisions of the IBC. Concurrently, Section 240(2) encompasses a broad spectrum of matters that can be regulated, although it does not confine the scope of regulations solely to these areas. In alignment with these authorities, the IBBI has enacted numerous regulations governing its own operations, as well as those of various service providers, and addressing various aspects of insolvency and liquidation processes under the IBC.

For example, the IBBI has promulgated the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (IBBI, (n.d.)), outlining the procedural steps in the CIRP. Additionally, it has issued the IBBI (Liquidation Process) Regulations, 2016 (IBBI, (n.d.)), delineating the procedural steps in the liquidation process, and the IBBI (Voluntary Liquidation Process) Regulations, 2017, (IBBI, (n.d.)) governing the voluntary liquidation of corporate entities without default.

The IBBI has also introduced regulations governing the registration, powers, and responsibilities of various service providers. Notable among these are the IBBI

(Insolvency Professionals) Regulations,2016 (IBBI, (n.d.)), pertaining to IPs, the IBBI (Insolvency Professional Agencies) Regulations, 2016 (IBBI, (n.d.)), concerning IPAs, and the IBBI (Information Utilities) Regulations,2017(IBBI, 2019), which regulate IUs.

Recently IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (IBBI, (n.d.)) has been implemented.

2.5.3.3. INSPECTION AND INVESTIGATION BY THE IBBI.

According to Sections 217 to 220 of the IBC, the IBBI is empowered to conduct inspections and investigations into service providers such as IPs, IPAs, and IUs when it has reasonable grounds to believe that a breach has occurred. In such cases, the IBBI may direct any person or authority to carry out an investigation or inspection within a specified timeframe and manner, or appoint a person to act as an inspector or investigator. During these investigations, the appointed authority has the authority to request relevant documents, records, or information from individuals likely to possess them, and may exercise powers of entry, search, and seizure during reasonable hours. Upon completion of the inspection or investigation, if the IBBI determines that a service provider has committed a breach, it may issue a show-cause notice to the concerned party and initiate disciplinary proceedings in accordance with the relevant regulations.

Furthermore, the IBBI has the authority to establish disciplinary committees under Section 220 to address such matters and consider reports from the investigating authority. If the disciplinary committee finds sufficient cause, it may impose penalties, which could amount to three times the loss caused or likely to have been caused by the contravention, or three times the amount of unlawful gain derived from the contravention, whichever is higher. In cases where the loss or unlawful gain cannot be quantified, the total penalty should not exceed 10 million Indian rupees. Additionally, the IBBI has the power to suspend or cancel the registration of the relevant IP, IPA, or IU.Moreover, the IBBI can compel individuals who have unlawfully gained or avoided losses through activities that contravene IBC rules and regulations to repay an amount equivalent to their unlawful gain or averted loss. This amount can be used to compensate individuals who have suffered losses directly attributable to such activities, provided the individuals are identifiable.

To enforce these sections, the IBBI has notified various regulations related to Inspection and Investigation, Grievances and Complaints Handling Procedure (IBBI, 2017). The regulations also outline the procedures for addressing grievances or complaints filed with the IBBI. The IBBI is authorized to instruct the service provider to resolve the grievance. In cases of complaints, it may initiate an inspection or investigation under the Inspection and Investigation Regulations if it deems there is a prima facie case. It can also issue show-cause notices, impose penalties, and take appropriate actions accordingly.

Numerous concerns regarding the imposition of fees and other charges, including those for registering IPAs, IPs, and renewing such registrations, have been raised in various forums. The matter was examined by the High Court, which concluded that sections 196(1)(c) and 207 of the IBC, along with the IP Regulations, are designed to fulfil the objectives of the IBC concerning the operations of the IBBI. The court emphasized the significant role played by the IBBI as the primary regulator of insolvency and liquidation, and highlighted that the IBC contains sufficient safeguards to ensure parliamentary oversight of all rules and regulations, with the authority to modify or annul them if necessary. Additionally, adequate measures are in place to ensure that the IBBI's funds are utilized to fulfil its responsibilities under the IBC. The High Court also determined that there is no excessive delegation of authority to the IBBI regarding its fee structure for IPs.

2.6. INSOLVENCY PROFESSIONALS (IPs): ELIGIBILITY, QUALIFICATIONS, AND IMPORTANCE.

Insolvency professionals (IPs) form the cornerstone of the Insolvency and Bankruptcy Code (IBC) system (IBBI, 2024). They are entrusted with the pivotal role of managing and overseeing the Corporate Insolvency Resolution Process (CIRP) or liquidation procedures for corporate debtors, as well as handling resolution and bankruptcy proceedings for partnerships and individuals. Regulated and licensed, IPs hold significant authority and responsibility under the Code, subject to scrutiny from both regulatory bodies and the judiciary. Insolvency professional agencies (IPAs) provide oversight and judicial checks on IPs' activities. Recognizing the complex nature of CIRP and liquidation, insolvency professional entities (IPEs) have emerged to provide

collective expertise across various fields, including chartered accountants, cost and works accountants, company secretaries, and advocates. Additionally, IPs receive support from information utilities (IUs), the second pillar of the IBC, which furnish crucial financial information, including debt defaults, to facilitate their work effectively. "The role of Insolvency Professionals (IPs) can be likened to that of intermediaries within the insolvency resolution process, as defined in section 3(19) of the IBC. An IP, as outlined in the Code, is a person enrolled under section 206 with an Insolvency Professional Agency (IPA) as a member and registered with the Insolvency and Bankruptcy Board of India (IBBI) under section 207 (IBBI, 2024). Functionally, IPs are private practitioners subject to regulation and licensing under the IB Code, adhering to minimum standards of professional and ethical conduct (IICSI, (n.d.)). As per the relevant provisions of the IB Code, IPs can serve as interim resolution professionals (IRPs), resolution professionals (RPs), liquidators, or bankruptcy trustees, responsible for fulfilling their designated tasks. Given that the bankruptcy process for partnerships and individuals is overseen by bankruptcy trustees, IPs serving as IRPs, RPs, liquidators, or bankruptcy trustees are central figures within the IBC.

Section 206 of the IBC stipulates that individuals cannot serve as Insolvency Professionals (IPs) without membership in an Insolvency Professional Agency (IPA) and registration with the IBBI. Additionally, under section 207, aspiring IPs must first join an IPA as a member, then register with the IBBI according to specified regulations and pay the requisite fee. The IBBI has notified IP Regulations governing the registration, regulation, and oversight of IP, subject to periodic amendments such as the latest revision in September 2022 (IICSI, (n.d.)). Similarly, IPA Regulations govern the registration and oversight of IPAs, serving as the primary regulators of IPs. Only IPs are eligible for appointment as Interim Resolution Professionals (IRPs), Resolution Professionals (RPs), liquidators for Corporate Insolvency Resolution Process (CIRP)/Liquidation, or bankruptcy trustees for partnerships and individuals under the IBC. The pivotal role of IPs, whether acting as IRPs, RPs, liquidators, or bankruptcy trustees, forms the foundation of the IBC.

As per Regulation 4 & 5 of the IP Regulations, individuals are ineligible to register as IPs if they, among other criteria, are minors, lack the specified qualifications and experience, are non-residents of India, have been convicted of offenses punishable by

imprisonment exceeding six months or involving moral turpitude within the past five years, are undischarged insolvents, have been declared of unsound mind, or are deemed unfit due to issues related to integrity, reputation, character, and competence, including financial solvency and net worth. Apart from these eligibility requirements, individuals must also meet the following qualifications to register as IPs:

- Successfully passing the Limited Insolvency Examination no earlier than 12 months prior to applying for enrollment with the IPA.
- Completion of any pre-registration educational courses mandated by the IBBI through an IPA post-enrollment.
- Completion of either the National Insolvency Program or the Graduate Insolvency Program, or Possession of 15 years of management experience coupled with a Bachelor's degree from a recognized university; or
- Holding 10 years of experience as: a chartered accountant registered with the Institute of Chartered Accountants of India, or a company secretary registered with the Institute of Company Secretaries of India, or a cost accountant registered with the Institute of Cost Accountants of India, or an advocate registered with the Bar Council.(IBBI, 2023)

2.6.1. PROCESS OF REGISTRATION OF IP.

The registration process for becoming an IP involves a qualified individual who meets all requirements outlined in the IP Regulations initially enrolling with an IPA. Subsequently, the individual must apply to the IBBI for registration as per the IP Regulations. Generally, the process unfolds as follows (IICSI, (n.d.)):-

- Together with the specified fee, the applicant must submit Form A from the Second Schedule of the IP Regulations to the IBBI.
- The IBBI will acknowledge receipt of the application within seven days and may request the applicant to address any deficiencies or provide additional documents within a reasonable timeframe. The applicant may also be invited to clarify any aspects of the application before the IBBI.
- If the IBBI determines that the applicant meets the eligibility criteria, it will issue the certificate of registration (Form B of the IP Regulations) within 60 days of receiving the application (excluding the time allotted for rectifying deficiencies).

- In cases where the IBBI decides not to grant or renew registration, it will notify the applicant within 45 days of receiving the application, providing reasons for its decision. The applicant will be given an opportunity to present their case before a final decision is made.
- Upon receiving the IBBI's decision, the applicant must provide any necessary explanations within 15 days. Subsequently, the IBBI will communicate its final decision within 30 days, either approving the application and issuing a certificate of registration, or rejecting it with reasons provided in an order.

2.6.2. KEY CONSIDERATION IN REGISTRATION OF IPS.

To register as an Insolvency Professional (IP), one must first pass the Limited Insolvency Examination administered by the IBBI. This examination assesses the professional's understanding of the challenges faced by distressed companies, with the syllabus focusing on the Insolvency and Bankruptcy Code (IBC) to ensure comprehensive knowledge of the legislation (IICSI, (n.d.)). Detailed information about the examination, including its frequency, syllabus, fees, and enrolment process, can be found on the IBBI website. Additionally, the IBBI will announce the National Insolvency Program in due course. Currently, professionals with at least 10 years of experience as CA/CS/CWA/Advocates, or graduates with 15 years of managerial experience, are required to pass the exam. Following this, they must enrol with an Insolvency Professional Agency (IPA) within 12 months, complete a pre-registration educational course provided by the IPA, and then apply for registration as an IP with the IBBI. Individuals without the specified professional or managerial experience must complete the Graduate Insolvency Program offered by the IBBI, pass the Limited Insolvency Examination, enrol as professional members with an IPA within 12 months of passing the exam, complete the pre-registration educational course provided by the IPA, and subsequently apply for registration as an IP with the IBBI.

For clarification on any queries related to the registration process for IPs, individuals can refer to the frequently asked questions section available on the IBBIwebsite.

2.6.3. REGISTRATION AS AN INSOLVENCY PROFESSIONAL AGENCY (IPA) AND ELIGIBILITY.

Under section 199 of the IBC, an Insolvency Professional Agency (IPA) is required to obtain a certificate of registration from the IBBI in order to operate and enroll Insolvency Professionals (IPs) as members (IIBI, 2024). This certificate, once issued, remains valid for a period of five years. The registration process for an IPA is governed by general principles outlined in section 200 of the IBC. Additionally, section 201, in conjunction with the IPA Regulations, delineates the procedures for registration, renewal, and surrender of IPA certificates. The IPA Regulations also stipulate the eligibility criteria for IPAs and the specific requirements for their registration. It is specified in the IPA Regulations that only a company registered under section 8 of the Companies Act, 2013, is eligible to apply for registration as an IPA after meeting the prescribed criteria.

2.6.4 AUTHORIZATION FOR ASSIGNMENT TO AN IP.

The procedure and eligibility criteria for obtaining authorization are outlined in the IPA's bylaws. An "assignment" encompasses any task undertaken by an Insolvency Professional (IP) in capacities such as Interim Resolution Professional (IRP), Resolution Professional (RP), liquidator, bankruptcy trustee, authorized representative, or any other role as per regulation 2(1)(a). Additionally, regulation 2(1) (aa) defines "authorization for assignment" as the IPA's authorization for its member IP to engage in an assignment, as per its bylaws. According to regulation 7A of the IP Regulations, after December 31, 2019, an IP cannot take on an assignment under the IBC without holding a valid authorization for assignment issued by their IPA on the date of assignment acceptance or commencement. The IPA issues authorization for assignment upon application by the IP. Furthermore, regulation 10 of the IP Regulations mandates that all actions concerning the issuance, suspension, cancellation, renewal, and surrender of authorization for assignment must be promptly communicated to the IBBI by the IPA within one working day of such action.

2.6.5.Needless to say, that the passing of IBC has put in place a strong regime in the form of helping businesses to exit in a time bound manner, which can be termed as a major change from the previous set up. To be efficient, economical and for ensuring timely resolution, the IBC also envisions an associated formal set-up which creates a new regulatory ecosystem. The IBC’s institutional infrastructure inter-alia includes

famously called four pillars namely the Information Utility (IU), Adjudicating Authorities (AAs), the Insolvency and Bankruptcy Board of India (IBBI) and the Insolvency Professional (IPs). The *IU being the second pillar*, instrumental in making all information easily accessible to all stakeholders so as to complete the process in time bound manner. The *AAs discharges the judicial* functions and *IBBI being the regulator* keeps oversight over all service provider. *The most important component of the IBC ecosystem is the Insolvency Professionals (IPs) on which the complete network of the insolvency and bankruptcy process rests.* (Ghosh, 2021)

As all the elements of IBC are playing effective role, hence, IBC has been signaled as a game changing law from the points of view of recovery % of claims the banks had been able to recover wherein the statistics shows 42.5% of the amount involved through IBC for the financial year 2018-19, which was the highest as compared to recovery under other modes and legislations. However, the recovery is in the tune of 32.9% of their admitted claims from 138 large stresses firms until December 2023 since the IBC came into being in late 2016. *IBBI being most dynamic regulator* (IBBI, 2022), tries to ensure that the provisions of the code is implemented, keeping in view the global changes and development of Indian economic market, by plugging all the deficiencies in the insolvency eco-system so as to achieve its objectives including encouraging entrepreneurship by providing an effective mechanism to liberate entrepreneurs from honest failure instead of penalizing them.

CHAPTER-III

CORPORATE INSOLVENCY RESOLUTION PROCESS AND LIQUIDATION: THE ROLE OF INSOLVENCY PROFESSIONALS

3.1. INTRODUCTION

A market method known as the corporate insolvency resolution process (CIRP) is made available by the Insolvency and Bankruptcy Code, 2016 for the timely closure of unviable corporate debtors (CD) and resuscitation of viable ones. Another way to describe the Corporate Insolvency Resolution Process is as a way for a corporate debtor's creditors to reclaim their money. It seeks to keep the company operating as a going concern while resolving the defaulting companies in a timely manner. The corporate debtor's "default" serves as the catalyst for starting the CIRP. Under the rules, corporate debtors must go through the insolvency process if the minimum default amount is currently one crore rupees. When a corporate debtor exhibits early indicators of financial difficulty, early intervention is permitted through the use of a default-based test to start the insolvency resolution process. Timely resolution of insolvency is contingent upon the early identification of financial difficulty. Financial creditors evaluate the feasibility of the debtor's business and the possibilities for its resuscitation and rehabilitation throughout the corporate bankruptcy resolution procedure. The debtor's business goes through the liquidation procedure if the corporate insolvency resolution process is unsuccessful or if the financial creditors determine that the debtor's firm should be wound up because it cannot be operated profitably (IBBI, 2024), During the liquidation process, the liquidator realizes and distributes the debtor's assets in compliance with the 2016 Insolvency and Bankruptcy Code.

An IP, or insolvency professional, is a registered and regulated expert who is assigned by the Adjudicator to oversee the whole insolvency and bankruptcy procedure. The Adjudicator makes judicial decisions in a process of insolvency and bankruptcy resolution that is governed by the law. However, the IPs also handle bookkeeping, checks, and the proper execution of due process. The efficient, punctual operation and integrity of the entire bankruptcy and insolvency resolution process depend heavily on the professionalism of insolvency specialists. The effective running of the resolution

process depends on the Resolution Professional's (RP) pivotal role in executing the CIRP (IBBI, 2024). In addition to serving as a liaison between the debtor and the creditors, the RP is crucial in ensuring that the CD's interests are in line with those of the creditors. In order to oversee the resolution process, the RP is designated as an officer of the Adjudicating Authority (AA) and granted a number of statutory responsibilities and authority. On behalf of the Committee of Creditors, RP is the one who corresponds with AA. Any of the following positions could be held by an Insolvency Professional (IP): *Liquidator* in a firm under bankruptcy; *Bankruptcy Trustee* in an individual bankruptcy process; Resolution Professional (RP) to settle insolvency for a firm or an individual. The IP plays a wide range of roles in administering the resolution outcomes, including following legal procedure and performing accounting and finance-related tasks. The latter involve managing the debtor's assets and liabilities during the insolvency process and identifying their assets and liabilities. Preparing the resolution proposal, carrying out the individual resolution plan, constructing, negotiating, and mediating deals, and allocating the proceeds from real estate sales under the bankruptcy resolution process, if it is a business. An IP serves as the adjudicator's agent while carrying out these duties. In a sense, the adjudicator relies on the IPs' specific knowledge and abilities to complete these jobs in an effective and polished manner.

3.2. CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP):

It serves as a means of recouping debts owed by corporations. CIRP may be triggered even in cases of deliberate default, meaning that the corporate debtor has the ability to make payments but decides not to. Therefore, the failure to fulfil a payment obligation serves as the central theme of the IBC. Corporations may be subject to CIRP proceedings if they become bankrupt (IBBI, 2019). Although the Code has established a default number for each category, the government announces the final amount as default, the possible starting point for the process, taking into account fluctuations in the economy. (IBBI, 2024)

3.3. THE CORPORATE INSOLVENCY RESOLUTION PROCESS CAN BE STARTED BY WHOM?

As per Section 6 of the Insolvency and Bankruptcy Code, 2016, in the event of a corporate debtor's default, the corporate debtor, financial creditor, or operational creditor

may commence the corporate insolvency resolution process on their behalf, following the guidelines outlined in Chapter II of Part II of the Code. Corporate Insolvency Resolution may be started in the event that a Corporate Debtor enters a default, by submitting an application in accordance with Chapter II of Part II of the Code, to the Adjudicating Authority. CIRP may be initiated by either:

- **A financial creditor (FC) under Section 7 of the code**. When a default occurs, a financial creditor (FC) under Section 7 of the code may apply to the Adjudicating Authority to begin the corporate insolvency resolution process against a corporate debtor. The FC may do this individually, jointly with other financial creditors, or through any other person on the FC's behalf as may be notified by the Central Government. Furthermore, it is provided that in the case of financial creditors who are allottees under a real estate project, an application for the commencement of a corporate insolvency resolution process against the corporate debtor must be filed jointly by at least 100 of these allottees under the same project or by at least 10% of all the allottees under the same project, whichever is less. The “financial creditor” is defined under section 5(7), means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to include the interest, if any.
- **An Operational Creditor (OC) Under Section 9.** Pursuant to Section 9 and Section 5(20), an "*operational creditor*" is any individual to whom an operational debt is owed, including any person to whom the debt has been lawfully assigned or transferred (Prakash et al. 2024). According to section *5(21)* of the Code, "operational debt" refers to any claim pertaining to the provision of goods or services, including employment, or any debt pertaining to the payment of obligations arising under any currently enacted legislation that must be made to the Central Government, any State Government, or any local authority. These clauses align the legislation with global norms, allowing unsecured creditors such as suppliers, employees, and other parties that meet the criteria for operational creditors to petition to start the insolvency resolution process. The mechanism outlined in Section 8 of the Code makes sure that operational creditors, whose debt claims are typically lower, aren't starting the insolvency resolution process for irrelevant reasons or placing the corporate debtor into it too soon. The process outlined in section 8 also makes it easier for the corporate debtor and these creditors to

have informal discussions. These discussions could lead to a debt restructure outside of the official procedures.

- **Corporate Applicant of a Corporate Debtor Under Section 10 of the Code**.

According to Section 10 of the Insolvency and Bankruptcy Code of 2016, the corporate debtor may start the process of resolving its own insolvency (Vrinda Ispat Pvt Ltd v. Mayur Ply Industries Pvt Ltd (2024). In accordance with section 10, a corporate applicant may submit an application to the adjudicating authority to begin the corporate insolvency resolution process in the event that a corporate debtor has defaulted. The corporate applicant may not begin the procedure of corporate insolvency resolution based merely on the possibility of default or even on the possibility of not being able to pay debts. Consequently, in order to circumvent the rules of the Code, a corporate applicant cannot start the corporate bankruptcy resolution process too soon. Furthermore, corporate applicants would be discouraged from starting the insolvency resolution process for unrelated reasons because the Code envisions the management of the corporate debtor being replaced during the process (which could also be permanent, depending on the resolution process's outcome).

3.4. STEPS OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP).

3.4.1. Step- I: CIRP Initiation Through Application to the National Company Law Tribunal (NCLT):

An order from the Adjudicating Authority (AA) admitting an application to start the CIRP of a CD submitted by a corporate applicant, an operational creditor, or a financial creditor starts the CIRP of a CD (Pugalia, 2022). This order's date serves as the official start of the insolvency process commencement date (ICD). Creditors who are affected by a company's failure to make payments may file a CIRP petition with the NCLT, the adjudicating authority. In situations where the business is the corporate debtor, it is regarded as a suitable body for adjudication. The petition's merits are taken into account, and once it is filed, it is decided if it has standing before the NCLT. If the cases' merits are not met, the NCLT may deny the petition.

3.4.1.1. APPLICATION FOR APPOINTING INTERIM RESOLUTION PROFESSIONAL (IRP):

In order for the tribunal to designate the IRP temporarily, application is made to

Adjudicating Authority for the same. A resolution professional (IRP), is a licensed insolvency professional nominated and appointed by the Committee of Creditors (CoC) (Section 22, IIBC, 2016). The ***IRP*** is appointed for corporate insolvency resolution process in terms of section 16 of IB code. Where the *AA* appoints the *IRP,* depending upon whether the application for *CIRP* (IIBI, 2019) is moved by financial creditor, operational creditors or by corporate debtor himself, subject to consent by IRP and proposition of name in application for CIRP. The IRP is also mandated to give undertaking to the effect that no disciplinary proceedings are pending against him. In case default is for payment to operational creditors and they file application to AA for CIRP, the AA get the IRP appointed from a panel maintained by IBBI within 10 days. At the first meeting of COC (Section 22, IIBC, 2016) conveyed within 7 days on its composition, an IRP can be appointed as RP(Section 5(27) of IBC). The IRP has to decide whether to provide his consent to complete the further steps of the insolvency procedure or CoC may appoint another Insolvency Professional as Resolution Professional. In case the company goes for Liquidation, the appointment of liquidation is done by AA. In most of the cases the RP invariably consent to be as liquidation however in certain circumstances another IP perform the duties of liquidation (Section 5(18) of IBC). Section 17 to 21 of IB code read with *CIRP Regs* mention the power and duties of *IRP*.

3.4.2. STEP- II: MORATORIUM AND PUBLIC ANNOUNCEMENT

In accordance with section 14, the moratorium period begins once the Tribunal grants the petition. Following the declaration of the moratorium, financial creditors are prohibited from receiving any funds from the corporate debtor's account. designating a specialist in insolvency to serve as the Interim Resolution Professional (IRP) (Ministry of Corporate Affairs, 2016). The board of directors' or the corporate debtor's partners' rights will be suspended as of the start of CIRP, at which point control and custody of the debtor will be passed to the IRP, as designated.

The Interim Resolution Professional publishes a notice in *Form 'A'* inviting claims from the Corporate Debtor's creditors. It is forbidden for the Tribunal to make decisions on any cases that are outstanding during a moratorium or to ensure that no new lawsuits are filed and at the same times, ongoing lawsuits against the corporate debtor about the

financial debt are put on to status -quo. The SARFAESI Act, of 2002, prohibits the corporate debtor from being forced to fulfil operational, financial, legal, or managerial obligations (SARFAESI Act, 2002). The Tribunal further guarantees that the corporate debtor is not subjected to any further foreclosure or debt collection actions, and that the status quo is to be maintained for any property owned by the corporate debtor under the SARFAESI Act. Until the CIRP process is finished, the moratorium will be in effect. This term may be extended by an additional 90 days under special circumstances, but it will be not be exceeding 180 days in normal circumstances.

3.4.2.1. INTERIM RESOLUTION PROFESSIONAL (IRP) MANAGES THE AFFAIRS OF CORPORATE DEBTOR.

The interim resolution professional will oversee the management of the corporate debtor's affairs; the board of directors' or the corporate debtor's partners' powers will be suspended and will be exercised by the interim resolution professional; the corporate debtor's officers and managers will report to the interim resolution professional and grant access to any documents and records of the company as requested by the professional; the financial institutions that maintain the corporate debtor's accounts will follow the interim resolution professional's instructions regarding such accounts and provide the interim resolution professional with all information pertaining to the corporate debtor that is available with them.

3.4.2.2. “DUTIES OF INTERIM RESOLUTION PROFESSIONAL.

The Interim Resolution professional (IBBI, 2024) will carry out the following tasks, specifically: -

To ascertain the corporate debtor's financial position, he will gather all relevant data about the debtor's assets, finances, and operations. This data will include business operations records for the preceding two years, financial and operational payments for those years, an inventory of the debtor's assets and liabilities as of the initiation date, and any other matters that may be specified. In accordance with the public announcement made under sections 13 and 15, IRP shall receive and compile all claims made by creditors to him; establish a committee of creditors; oversee the corporate debtor's assets and oversee its operations until a resolution professional is appointed by the committee

of creditors; If required, file the information gathered with the information utility. You should also assume control and custody of any asset over which the corporate debtor has ownership rights, as shown by the corporate debtor's balance sheet, information utility, securities depository, or other registry that documents asset ownership.

3.4.2.3. EMPLOYEES TO CONTINUE ASSISTING THE INTERIM RESOLUTION PROFESSIONAL:

Personnel are required by Section 19 of the Code to cooperate with interim resolution professionals (Shukla 2024). The staff of the corporate debtor, its promoters, or any other individual connected to the debtor's management shall provide the interim resolution expert with all support and cooperation as he may require in order to manage the debtor's affairs. The interim resolution professional may apply to the Adjudicating Authority for the relevant directives, if any employees of the corporate debtor, its promoter, or any other person required to help in administration of the corporate debtor or cooperate with the professional, and in turn they fail to do so. Following receipt of the aforementioned application, the adjudicating authority will issue an order directing the staff or other person in question to follow the resolution professional's instructions and work with him to manage the corporate debtor and facilitate in gathering information. Though the law mandates, however practically it does not happen.

3.4.2.4. ADMINISTRATION OF CORPORATE DEBTOR'S OPERATIONS AS A GOING CONCERN.

IRP is required by Section 20 of the Code to manage corporate debtor operations as a continuing going concern (The Insolvency & Bankruptcy Code, 2016, Section 23 & 27). According to the aforementioned provision, IRP is required to manage the corporate debtor's operations as a continuous business and to use all reasonable efforts to safeguard the value of the debtor's property till CD goes for liquidation (The Insolvency & Bankruptcy Code, 2016, Section 34).

3.4.3. STEP- III: CONSTITUTION OF COMMITTEE OF CREDITORS (COC)

The interim resolution professional (IRP) shall, following the compilation of all claims received against the corporate debtor and the assessment of the corporate debtor's

financial status, constitute a committee of creditors, as required by Section 21 of the Code. Any financial information that is requested by the committee of creditors at any point during the corporate insolvency resolution process must be provided by the resolution professional within seven days of the request. The IRP makes sure that the claims are gathered, verified, and a list of creditors is prepared as a result. filing the report with the adjudicating authority, regarding the composition of the Committee of Creditors and the list of creditors. Calling the Committee of Creditors' first meeting within seven (7) days of submitting the report attesting to the group's creation. The costs of the insolvency resolution process will be determined by the committee and will be borne on or will be decided by the RP. Since the investment and interests of these creditors are at risk, the Committee of Creditors is the Corporate Debtor's decision-making body. The members of the Committee of Creditors must ratify any actions taken by the IRP or RP.

3.4.4. STEP- IV: APPOINTMENT OF RESOLUTION PROFESSIONAL (RP)

In the first meeting of the committee of creditors (CoC), Resolution Professionals (RPs) are appointed in accordance with Section 22 of the Code (India Filings. (n.d.)). The Committee of Creditors will determine whether or not to appoint the IRP in question as the Resolution Professional (RP). When CoC decides to continue IRP as a resolution professional, it must notify the adjudicating authority, the corporate debtor, and the interim resolution professional in writing, subject to the interim resolution professional's written permission in the prescribed form. In the event that CoC decides to replace the interim resolution professional, it must submit an application to the adjudicating authority for the proposed resolution professional's appointment, along with the proposed resolution professional's written permission in the prescribed format. The Adjudicating Authority shall, by order, direct the interim resolution professional to continue serving as the resolution professional until the Board confirms the appointment of the proposed resolution professional and, if the Board does not confirm the proposed resolution professional's name within ten days of receiving the proposal.

3.4.4.1. RESOLUTION PROFESSIONAL TO LEAD PROCESS OF CORPORATE INSOLVENCY RESOLUTION:

According to Section 23 of the Code, the Resolution Professional is responsible for overseeing the corporate debtor's operations over the duration of the corporate insolvency resolution process and conducting the full procedure, subject to Section 27: Furthermore, it states that until the adjudicating authority passes an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34, the resolution professional will continue to oversee the corporate debtor's operations after the corporate insolvency resolution process period has expired. In compliance with rule 35, the RP will choose two Registered Valuers to ascertain the corporate debtor's fair value as well as its liquidation worth.

3.4.4.2. COMMITTEE OF CREDITORS' MEETING:

According to Section 24 of the Code, the Resolution Professional will chair all committee of creditors meetings. According to subsection (3), the resolution professional is required to notify the following parties of each committee of creditors meeting:

- Participants in the committee of creditors, such as the authorized representatives mentioned in section 21 subsections (5) and (6) and sub section (6A);
- Members of the corporate entities' partners or the suspended board of directors, as applicable;
- Operational creditors or their agents, provided that their total outstanding balance does not fall below ten percent of the total debt. Additionally, it imposes an obligation on the Resolution Professional to ascertain the voting share allotted to each creditor in accordance with the guidelines established by the Board.

3.4.5. STEP-V: POWERS AND DUTIES OF THE IRP/RP

In addition to registered Valuers, the IRP or RP may choose any professional to assist him in carrying out his duties in overseeing the corporate insolvency resolution process (Carruthers et al. 2006). If the RP determines that selling an unencumbered asset or assets of the corporate debtor is required for a greater realization of value in given facts and circumstances, he may do so in addition to selling them in the regular course of business. The combined book value of all the assets liquidated, though, cannot be more than 10% of the total claims that the IRP has accepted. The resolution specialist will

provide an assessment regarding whether any transactions covered by Code sections 43, 45, 50, or 66 have been undertaken by the corporate debtor.

3.4.5.1. THE RIGHT OF RESOLUTION PROFESSIONAL/INTERIM RESOLUTION PROFESSIONAL (RP/IRP):

The following are the rights of an interim resolution professional (IRP) or resolution professional (RP), as stipulated in Regulation 4 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

- **Access to Books and other pertinent Information**: In accordance with section 17(2)(d), the corporate debtor held with the interim resolution professional or the resolution professional, as applicable, may access the books of account, records, and other pertinent documents and information, to the extent relevant for carrying out his duties under the Code. i.e.
- *Depositories of securities;*
- *Professional advisors of the corporate debtor;*
- *Information utilities;*
- *Other registries that record the ownership of assets;*
- *Members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and*
- *Contractual counter-parties of the corporate debtor.*

3.4.5.2. PERSONNEL HAVE AN OBLIGATION TO PASS-ON INFORMATION TO IRP/RP:

Employees of the corporate debtor, its promoters, or any other individual connected to the Corporate Debtor's management are required to give the information in the manner and time requested by the Resolution or Interim Resolution Professional, respectively (Ms. Padma Priyanka Vangala Vs. Mr. Ramaraghava Reddy Kollareddy & Ors.2015).

3.4.5.3. INFORMATION MEMORANDUM PREPARATION:

Information memorandum to be prepared by Resolution Professional: According to Section 29(1) of the Code, the Resolution Professional is required to prepare an

information memorandum in the format and style that the Board specifies, including any pertinent information that may be needed to formulate a resolution plan.

3.4.6. STEP- VI: EXPRESSION OF INTEREST PROCEDURE FOR RESOLUTION PLAN SUBMISSION BEGINS:

The Resolution Professional (RP) will make available on Form G, a summary of the call for expressions of interest. The notice to the public informs everyone that the corporate debtor is facing insolvency and invites any and all interested parties to submit a resolution plan that may be selected. The Resolution Professional shall check the eligibility of all the prospective resolution applicants and conduct due diligence. The Prospective Resolution Applicant's plan must be submitted by the deadline listed in Form G. The proposed plan must mandate that the corporate debtor's affairs be managed upon implementation of the plan, as well as the payment of operational creditors and the CIRP charges in order of priority. In addition, there are other standards outlined in the Code's provisions and the regulations enacted under it that must be followed. The Resolution Applicant (RA) will submit a proposal, and RP will verify that it satisfies the fundamental requirements of the Code. All resolution plans that adhere to the Code's standards and the rules imposed thereunder must be submitted to the committee by the Resolution Professional. Following that, the committee will assess each plan, document its discussions regarding the practicality and feasibility of each resolution plan, and concurrently vote on each of these ideas.

3.4.7. STEP- VII: APPROVAL OF RESOLUTION PLAN

In the event that the Committee of Creditors approves the resolution plan with 66% of the vote, the RP will apply to the Adjudicating Authority, to have the plan authorized. After then, the adjudicating authority has the option to accept or reject the same (SEL Manufacturing Company Ltd. v. Punjab Small Industries & Export Corporation Ltd., 2024). If approved by the NCLT, the resolution plan is put into action and becomes binding on the corporate debtor and all stakeholders. However, If the NCLT rejects the resolution plan (MBL Infrastructure Ltd. and Anr. v. Union of India and Ors., 2024) or does not receive it prior to the CIRP period ending, the Tribunal has the authority to order the corporate debtor's liquidation.

Protection of action taken in good faith.

No suit, prosecution, or other legal procedure shall be brought against an insolvency professional or liquidator for anything done or intended to be done in good faith under this Code or the rules or regulations adopted thereunder, according to Section 233 of the Code.

3.5. TIME LIMIT FOR COMPLETION OF CIRP PROCESS.

In accordance with Section 12(1) of the Code, the CIRP must be finished 180 days after the application is admitted by AA, to begin the process. A 90-day extension may be granted by the adjudicating authority. However, 330 days is the maximum amount of time that CIRP must be finished, including any extensions or litigation periods.

The aforementioned time restriction may be extended even past 330 days in extraordinary circumstances. In *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others*, the Supreme Court ruled that the Adjudicating Authority may, in extraordinary circumstances, extend the CIRP completion deadline beyond 330 days, if doing so serves the interests of all parties involved and the relevant litigants cannot be held accountable for the delay.

3.6 LIQUIDATION.

The IBC provides for two different types of liquidation procedures for corporate entities. An FC, an OC, or the corporate applicant directly may start a CIRP of a CD in the event that the CD has committed a "default." The CD goes into liquidation if the CIRP fails. Additionally, under section 59 of the IBC (IBBI, 2020), a corporate entity may elect to voluntarily begin liquidation procedures in the absence of a default, often known as solvent liquidation.

Grounds for Initiating Liquidation:

According to Section 33 of the IBC, a CD that has defaulted and so underwent a CIRP may be liquidated (IBBI, 2024). These justifications are as follows:

- Where the AA does not receive a resolution plan under section 30(6) of the IBC (section 33(1) (a)), prior to the end of the CIRP period or the maximum amount of time allowed for the CIRP's completion under section 12 of the IBC;

- Where the AA rejects the resolution plan for failing to comply with the conditions outlined in section 33(1)(b) of the IBC under section 31 of the IBC;
- When the RP notifies the AA of the CoC's decision to liquidate the CD, which has the support of at least 66 percent of the voting share, at any point during the CIRP but before the CoC approves the resolution plan. An explanation was added to this clause under the Insolvency and Bankruptcy (Amendment) Act, 2019 (which went into effect on August 16, 2019), making it clear that the CoC (The Insolvency & Bankruptcy Code, 2016, Section 23 & 27)may choose to liquidate the CD at any time after its constitution prior to the resolution plan's confirmation and, if applicable, prior to the creation of the information memorandum (section 33(2));
- Where the resolution plan, as authorized by the AA, has not been implemented as intended. Anybody whose interests are adversely impacted by the violation, other than the CD, may apply to the AA to liquidate the CD in such a situation. Upon receiving such an application, the AA is required to pass a liquidation order in the event that it finds that the CD has violated the terms of the resolution plan (section 33(3) and (4)).

In relation to the liquidation process, before the IBC was put into effect, the World Bank Group published(The World Bank, 2014) a report titled "Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises," which stated that creditors in Indian insolvency cases were usually required to write off 75% of their debts. These cases took an average of more than four years to resolve, but in the best-performing jurisdictions, the process was completed in less than a year. Promoters (owners) possessed a variety of legal protections, and creditors had limited capacity to enforce their claims. In certain instances, corporations may have been in financial difficulties for up to 15 years by the time winding up was filed in India. But when the IBC was put into place, this situation was altered, and the average time to resolve a dispute is now reduced to 415 days (The World Bank, 2014).

Providing a market mechanism to turn around and rescue failing but viable CDs while selling the failing unviable ones is the main goal of the IBC. As a result, a stakeholder cannot apply for the liquidation of a CD that has defaulted under the IBC. The sole application that stakeholders may submit is to start a CIRP. Liquidation is imposed, if a resolution plan is not produced by the resolution procedure or if the CoC determines that

the CD has no business that can be resolved. Timeline compliance is now required while performing CIRPs or liquidation procedures, according to the IBC. It is anticipated that parties involved will be motivated to collaborate positively in order to seek a solution and avert liquidation. The stakeholders who are entitled to the distribution of proceeds under section 53 of the IBC are referred to as "stakeholders" in regulation 2(1)(k) of the Liquidation Process Regulations. The current deadline set forth in the Liquidation Process Regulations is *one year* for the process's completion. In contrast, no such deadlines were specified under the winding up provisions of the Companies Act, 1956, the prior legislation pertaining to liquidation.

3.6.1. APPOINTMENT OF THE LIQUIDATOR:

According to Section 34 of the IBC, the RP designated under a CIRP will function as the liquidator in the event that the AA approves the liquidation order under Section 33 of the IBC (pending the RP's written consent to the AA in the prescribed form) (Regulation 3 of Insolvency and bankruptcy board of India (liquidation process) regulations, 2016)

3.6.2. POWER AND DUTIES OF A LIQUIDATOR:

The responsibilities and authorities of a liquidator are covered by Section 35 of the IBC and Chapter III of the Liquidation Process Regulations, 2016. According to Section 35(1), the liquidator will have the authority and responsibility, subject to the AA's directions, to: (a) verify all creditors' claims; (b) take custody of and control all of the CD's assets, property, and actionable claims; (c) evaluate the CD's assets and property in any way the IBBI may specify; and (d) prepare a report on this topic and order to facilitate the CD's beneficial liquidation,

The liquidator must take steps to safeguard its assets and properties, continue the CD's operations as he sees fit, and sell the CD's movable and immovable property as well as its actionable claims through a public auction or private contract (subject to section 52). Additionally, the liquidator is able to sell the property in pieces according to the instructions or transfer it to any individual or corporate entity. Furthermore, the liquidator may file lawsuits and defend the CD in any lawsuit, criminal investigation, or other legal action in the name of or on behalf of the CD. Additionally, the liquidator has the authority to look into the financial matters of the CD to determine undervalued or

preferential transactions. Notably, when section 29A was added to the IBC, section 34 was also changed to state that the liquidator may not sell any of the CD's movable or immovable assets or actionable claims to a third party that isn't qualified to be a Prospective Resolution Applicant (PRA) during the liquidation process. To Say another way, potential purchasers of liquidation assets will be subject to the same disqualifications as described in section 29A of the IBC regarding a PRA.

3.7 STAKEHOLDER CONSULTATION COMMITTEE (SCC):

A new regulation 31A was added to the Liquidation Process Regulations by the Liquidation Amendment Regulations, requiring the liquidator to convene a stakeholder consultation committee (SCC) (Ravi et al. 2024). In order to get advice on topics pertaining to sale under regulation 32, the liquidator must, within sixty days after the Liquidation Commencement Date (LCD), constitute an SCC based on the list of stakeholders compiled under regulation 31. The representatives in the SCC, according to the rules of the IBC and the Liquidation Process Regulations, shall have access to all pertinent records and information as may be needed to advise the liquidator. Meetings of the SCC must be called by the liquidator, either when he deems it essential or upon request from at least 51% of the SCC's representatives. The SCC meetings will be presided over by the liquidator, who will also keep minutes of the discussions and observations made during the session. For the SCC's knowledge, the liquidator must present the CoC's recommendation issued in accordance with sub regulation (1) of regulation 39C of the CIRP Regulations (the CoC's assessment of the sale as a going concern). By a majority of at least 66 percent of the representatives present and voting, the SCC will advise the liquidator. The liquidator is not required to follow the SCC's recommendations. In the event that the liquidator deviates from the SCC's advice, he must document the reasoning in writing.

Validation of Statements The liquidator's verification of the claims follows submission of the claims (IBBI, 2024). Within thirty days following the deadline for receiving claims, the liquidator must verify the claims presented. Based on this verification, the liquidator may accept, reject, or accept the claim in whole or in part (regulation 30). In order to verify or substantiate all or part of the claim, the liquidator may demand any creditor, the CD, or any other person to furnish any additional documentation, evidence,

or clarifications as deemed necessary (section 39(2) read with rule 23). The claimant is responsible for covering the costs of substantiating its claim, according to Regulation 24 of the Liquidation Process Regulations. Moreover, the expenses incurred by the liquidator in order to verify and evaluate a claim would be included in the liquidation costs. With the caveat that in the event that a claim or a portion of a claim is determined to be false, the liquidator will make an effort to recoup these expenses from the claimant and will forward the claimant's information to the IBBI (IBBI, 2024).

ASSET REALIZATION AND SALE:

Section 35 of the IBC grants the liquidator the authority and responsibility to manage the CD's business for the benefit of its beneficial liquidation as he sees fit. He can also sell the *CD's* moveable and immovable property as well as its actionable claims through a private contractor public auction, and he can transfer the property to any individual or corporate entity or sell it in pieces according to predetermined guidelines. The Liquidation Process Regulations specify the way and mode of such realization and sale. Saving the CD and its company from extinction is explored at all stages, since closing a viable CD affects its stakeholders' daily revenue and cannot be undone, being a very serious business decision. As a result, the IBC has taken a very cautious stance and believes that the market should try to save the CD first, only liquidating it, if that doesn't work. In the event that the market proceeds to liquidate a legitimate CD in error, it also provides for a course correction. The law gives the market the freedom to change its direction if it so chooses, but it does not envision the state becoming involved in cases of incorrect identification. Liquidation is a last option in cases where there is no resolution plan or the filed resolution plans are not workable. The Supreme Court noted in the '*Swiss Ribbons' case* that the preamble in the IBC does not mention liquidation in any way.

The CD's business may be sold by the liquidator even while it is in liquidation. The NCLAT noted in the '*Binani case'* that resolution is the IBC's primary goal. Maximizing the value of the CD's assets is the second order goal. *The third* order goals are to balance interests, encourage entrepreneurship, and make credit available. This is the indisputable order of objectives. Even after a liquidation order has been issued, saving the CD or its operations, is the better option according to the law, the authorities, and the stakeholders.

It also provides some advantages. It aids in preserving value, realizing better value, and saving a successful firm. It reduces business interruption and keeps jobs from being lost. Taking note of this, the AA and NCLAT in numerous rulings have instructed the liquidators to try to sell the CD as a going concern. In light of this, on April 27, 2019 (IBBI, 2019), IBBI released a discussion paper requesting feedback on suggested modifications to the Liquidation Process Regulations, specifically pertaining to the preservation of CDs during the liquidation process. It was discussed that there are two general choices available under the legislation in this regard: a going concern sale under regulation 32 of the regulations, and the *section 230* scheme. With effect from July 25, 2019, the Liquidation Amendment Regulations alter the Liquidation Process Regulations in response to the opinions submitted.

According to *Regulation 42* of the *Liquidation Process Regulations* (IBBI, 2024), the asset memorandum and the list of stakeholders cannot be distributed by the liquidator until they have been submitted with the AA. Prior to now, the liquidator may provide the stakeholders their share of the realization proceeds within six months after receiving them. This deadline has been changed to 90 days by the Liquidation Amendment Regulations. According to Regulation 42(3), before making any such distribution, the costs of the liquidation and the insolvency resolution process, if any, must be subtracted.

THE MECHANISM OF WATERFALL

A waterfall mechanism that outlines the priority and order of distribution of proceeds from the sale of liquidation assets among a corporate person's stakeholders is provided by Section *53 of the IBC*. The IBC's waterfall mechanism supersedes any other federal or state government statutes, through the "*non-obstante clause*" at the beginning of section 53. The proceeds from the sale of the liquidation assets are to be allocated in the following priority order as per section 53 of the IBC:

- The charges of the insolvency resolution process and the liquidation paid in full;
- The debts that will be arranged in descending order of the following:Labour obligations for the 24 months prior to the start of the liquidation; andObligations payable to a secured creditor in the event that the creditor has surrendered security in accordance with section 52;

- Pay and any outstanding debts payable to workers and other employees for the 12 months prior to the liquidation start date;
- Monetary obligations owed to creditors who are not secured parties;
- The following obligations shall be ranked equally among themselves: (i). government obligations for the entire or any portion of the two years prior to the liquidation start date; and (ii). obligations owed to a secured creditor for any sum not paid after the security interest was enforced. (a) any unpaid bills; (b) any preference shareholders; and (c) equity investors or partners, if applicable. Government dues were formerly accorded a high priority in respect to all of the CD's outstanding debts under the liquidation system that preceded the IBC; however now, under the IBC, government dues payment has a far lower priority.

It is noteworthy that under the IBC, all secured FCs are treated identically in the liquidation waterfall, regardless of whether they have superior or subordinate rights over secured assets. If, as per section 52 of the IBC, these creditors give up the right to enforce their security, they will rank pari passu (equally) with workers' dues for 24 months prior to the LCD and will be paid second in priority when all of their dues are paid after the CIRP costs are paid. It should be noted that section 52 of the IBC does not define "secured creditor" in terms of the hierarchy of charges among secured creditors.

This allows for a potential conflict between the holders of a second or "subservient" charge over the assets and the secured creditors with superior charge. The Insolvency Law Committee, which the Ministry of Corporate Affairs established to undertake a thorough review of the IBC in cooperation with the major stakeholders, deliberated on this matter. According to the (March 2018) (Ministry of Corporate Affairs, 2018) *Insolvency Law Committee Report*, the '*ICICI Vs. SIDCO'*(ICICI Bank Ltd. V SIDCO Leathers Ltd. & Ors., 2006) case guiding principles apply to the current situation under section 53 of the IBC. According to the Committee, even though in this particular case the creditors had not given up their security, the principles still apply under the IBC even in cases where the creditors have given up their security. This is because, in contrast to the Companies Act of 1956, the IBC specifically recognizes secured creditors who have given up their security as a distinct category in section 53(1)(b)(ii), setting them apart from unsecured creditors. The IBC also explicitly gives secured creditors who have given up security a higher priority than unsecured creditors in an effort to promote

relinquishment. Since the IBC went into effect, secured creditors have been faced with a difficult decision: give up their security and receive a higher priority, or realize their security and select a lower priority in the liquidation waterfall. According to Regulation 43, any money received in distribution that the stakeholders were not entitled to or to which they have lost their entitlement must be promptly returned by them.

3.7.1 APPLICATION FOR DISSOLUTION OR CLOSURE TO THE AA:

In accordance with regulation 45, the liquidator of a Corporate Debtor (CD) shall provide an account of the liquidation, demonstrating its management and the process by which its assets were sold. The completed report is attached. The liquidator is required to provide an explanation if the liquidation costs above the preliminary report's projected cost. The CD would dissolve to complete the liquidation process, unless there was a section 230 scheme or the CD was sold as a going concern. When a CD's assets have been fully liquidated, the liquidator is required by section 54 of the IBC to apply to the AA for the CD's dissolution. In accordance with rule 45(3), the liquidator must submit this application to the AA together with the final report and the compliance certificate in Form H. Upon receiving the application, the AA is required by section 54(2) of the IBC to order the CD to be dissolved starting on the date of the order, and the CD will be dissolved in accordance with that order. Within seven days after the order passed, a copy of the dissolution order must be sent to the organization that the CD is registered with. According to regulation 45(3), in the event that the CD is sold as a continuing concern, the liquidator must submit an application to the AA for the conclusion of the liquidation procedure, along with the final report and a completed Form H.

3.8. TIMELINES UNDER THE LIQUIDATION REGULATIONS:

The Liquidation Amendment Regulations modified the Liquidation procedure (Chitravanshi,2022) by reducing the two-year period (as specified by Regulation 44 of the Liquidation Process Regulation) for carrying out the liquidation procedure to *one year*. According to the amended regulation 44, the liquidator must apply to the AA for a timeline extension, if they are unable to liquidate the CD within a year. The application must include a report outlining the reason for the delay and the extra time needed to complete the liquidation process. The IBBI has made it clear that the modifications to

the Liquidation Process Regulations will not be retrospective in this sense; rather, they will only be applicable to the liquidations commencing after July 25, 2019 (IBBI, (n.d.)).

In other words, the two-year deadline applies to liquidation procedures that began prior to July 25, 2019, while the one-year timeline applies to liquidation proceedings that began after July 25, 2019. A sample timeline for finishing the liquidation process, commencing from the *Liquidation Commencement Date (LCD),* is also provided under Regulation 47 of the *Liquidation Process Regulations*, presuming that the process does not involve compromise or arrangement under Section 230 of the Companies Act, 2013 or purchase under regulation 32A. The Liquidation Process Regulations were amended by the IBBI on April 20, 2020, adding section 47A. This section states that, subject to the provisions of the IBC, the time period of lockdown that the Central government imposed following the COVID-19 outbreak shall not be counted for the purposes of computing the timeline for any task related to any liquidation process that could not be completed due to the lockdown (IBBI, (n.d.)).

APPLICATION TO THE ADJUDICATING AUTHORITY:

The liquidator must apply to the AA for the dissolution of such a corporate entity when the company's affairs have been fully wound up and its assets have been fully liquidated, in accordance with section 59(7) of IB Code. According to Section 59(8), the AA must issue an order directing the CD to be dissolved as of the order's issuance date in compliance with the instructions provided in that order upon request made by the liquidator under Section 59(7). Within 14 days of the date of the order, a copy of the order issued by the AA under section 59(7) must be sent to the organization that the corporate person is registered with.

Provisions for the assessment and registration of insolvency professionals with the *Insolvency and Bankruptcy Board of India* are outlined in the *IBBI (Insolvency Professionals) Regulations*, 2016. Along with prescribing the '***code of conduct'*** for insolvency professionals, these regulations also include procedures for disciplinary processes against insolvency practitioners. The Regulation contains the following two schedules: -

- Regulation 7(2)(h) of the First Schedule establishes the Code of Conduct for Insolvency Professionals.
- The Second Schedule lists the applicable *FORMS* for professionals in insolvency process.

According to Regulation 7(2) of the IP Regulations, an IP must always follow by the code, rules, regulations, and guidelines there under as well as the bye-laws of the IPA, in which he is enrolled in order for his registration to be approved; The Code of Conduct for Insolvency Professionals is outlined in the first schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 in order to guarantee best practices in the field of insolvency.

Being truthful and straightforward in all professional interactions is essential for insolvency professional (IP) to uphold their integrity. Being direct and truthful in all commercial and professional interactions is what integrity entails (IBBI, 2024). It suggests honesty and fair play. Integrity in behavior and character is a professional's most crucial quality for which he is responsible. According to regulation 4 of the IP Regulations, integrity, reputation, and character are additional requirements for being deemed *"fit and proper"* for registration as Insolvency Professional. An occupation is only as excellent as its practitioners. Therefore, it is vital to guarantee that only a clean-handed individual may pursue this line of work in order to oversee the corporate debtor's operations and carry out the insolvency resolution procedure.

3.8.1 OBJECTIVITY:

Objectivity demands that IP not be used to undermine commercial or professional decisions owing to prejudice, pressure, conflicts of interest, or undue influence from other parties, either directly or indirectly. By being open and honest in all of his interactions and decisions, working cooperatively and consultatively with all Committee of Creditors members, and making sure that all decisions are reached by active consensus rather than being bullied by the IP or a dominant participant, the IP must clearly demonstrate his objectivity and lack of bias. The objectivity principle is threatened when there is a conflict of interest. A conflict of interest shouldn't be able to affect an IP's ability to make professional or business decisions. The ties that IPs build in both their personal and professional life, as well as the environments in which they

work, might pose a danger to the essential value of impartiality. Threats to objectivity can also occur if: anyone who works for the company, anyone who is close to or directly related to someone who works there, or the company itself, has or has had a link, either personal or professional, with the insolvency professional's appointment under consideration.

An Insolvency Professional (IP) is not allowed to falsify any circumstances or facts, and they should also avoid taking any part in any activity that could damage the reputation of their profession. Whether or not the decisions are directly related to the bankruptcy proceedings, a bankruptcy Professional (IP) is required to operate impartially in all professional interactions by making sure that no bias, conflict of interest, coercion, or undue influence comes into play. When an insolvency specialist discovers a conflict of interest while working on an assignment, he is required to notify the relevant parties. This is necessary to prevent a threat to objectivity compliance or other core values of the Code of Conduct. It is imperative that any conflict be promptly disclosed to all relevant parties, regardless of whether it was discovered before the appointment or while carrying out the obligations under it. In order to proceed with the appointment, the Committee of Creditors' approval may also be needed. When designated as an interim resolution professional (IRP), resolution professional (RP), liquidator, or bankruptcy trustee, an insolvency professional is not allowed to directly or indirectly acquire any of the debtor's assets for themselves, nor should they knowingly allow a relative to do so.

3.8.2. INDEPENDENCE AND IMPARTIALITY

An individual specializing in insolvency resolution, liquidation, or bankruptcy must uphold total independence in their professional connections and manage the process free from outside interference. When an insolvency professional handles a debtor's assets during the liquidation or bankruptcy process, he or his relatives must make sure they don't unintentionally acquire any of these assets, directly or indirectly, unless it can be demonstrated that the process did not compromise the insolvency professional's independence, impartiality, or objectivity, and the board has given their approval.

If an insolvency professional, a member of his family, a partner or director of an insolvency professional entity, or the insolvency professional entity of which he is a partner or director is not independent with regard to the corporate person/debtor and its

related parties as defined by the regulations pertaining to the processes under the Code, then the insolvency professional shall not accept an assignment under the Code.

As soon as an insolvency professional learns of any financial or personal relationship with any stakeholder entitled to distribution under sections 53 or 178 of the Code, he must notify the concerned corporate person or debtor by making a declaration to the applicant, committee of creditors, and, if relevant, the person proposing appointment.

An insolvency professional is required to disclose to the committee of creditors, the insolvency professional agency of which he is a professional member, and the agency itself, whether he was employed by or on the panel of any financial creditor of the corporate debtor. The disclosure will be posted on the agency's website.

Within the time frame given below, an insolvency professional must notify the insolvency professional agency of which he is a member of any relationships it may have with the corporate debtor, other professionals it has hired, financial creditors, interim finance providers, and potential resolution applicants.

3.8.3. REMUNERATION AND COSTS

An insolvency professional is required to render services for compensation that is priced in an open and transparent manner, fairly represents the work that has to be done and is done correctly, and does not conflict with any applicable laws (Taxmann, 2022).An insolvency professional is required to notify the insolvency professional agency (IPA) of which he is a professional member, of the fees payable to it, the fees payable to the insolvency professional entity, and the fees payable to professionals engaged by it. The agency will then post the disclosure on its website. An insolvency professional will issue bills or invoices on its behalf for fees, which must be paid to it via a bank account and an insolvency professional will see to it that the professional hired by the insolvency professional entity or the entity itself raises bills or invoices in their own names for fees, and that these payments are paid to them via a banking channel.

An insolvency expert is not permitted to take on any fees or charges that aren't revealed to and authorized by the individuals setting its compensation. Any fees or charges from professionals or support service providers appointed under the processes may not be accepted or shared by an insolvency professional. Any charges related to the bankruptcy

process, liquidation process, or insolvency resolution process, as appropriate, must be disclosed by an insolvency professional to all pertinent parties. They also have an obligation to make sure that these fees are reasonable. An insolvency professional is required to take all necessary precautions to ensure that the corporate entity complies with applicable laws, as well as to exercise reasonable care and diligence when undertaking assignments or conducting processes. When calculating the costs of an insolvency resolution process, fast track insolvency resolution process, liquidation process, or voluntary liquidation process under the Code, an insolvency professional is not permitted to deduct any amount for any loss, including any applicable penalties, incurred due to non-compliance with any legal provision that applies to the corporate person. In light of the aforementioned, the IBBI issued Circular No. IBBI/IP/013/2018 on June 12, 2018, instructing the IPs to make sure that: the fees he must pay, the fees he must pay to an insolvency professional entity, the fees he must pay to registered valuers and other professionals, and any other expenses he incurs during the CIRP are reasonable; the fees or other expenses he incurs are directly related to and necessary for the CIRP;

The Committee of Creditors (CoC) approval for the fee or other expense is obtained, where were approval is required, and all CIRP-related fees and other expenses are paid through banking channels. The fee or other expenses are determined by him on an arms' length basis, in accordance with the requirements of integrity and independence. Written contemporaneous records for incurring or agreeing to incur any fee or other expense are maintained. Supporting records of fee and other expenses incurred are maintained for at least three years after the completion of the CIRP.

3.8.4. INSOLVENCY PROFESSIONAL AS A LIQUIDATOR:

According to Section 34(8) of the Code, an insolvency professional who is recommended to be appointed as a liquidator must charge a fee for conducting the liquidation procedures that is commensurate with the value of the assets in the liquidation estate, as determined by the Board." According to Regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the CoC, in consultation with the resolution professional, shall fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, while approving a

resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33. Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016 (IBBI, 2024) will apply if the CoC does not set the compensation. Under this regulation, the liquidator will be entitled to a fee at the same rate as the RP for the first ninety days during which they attempt to enter into a scheme of compromise or arrangement. The liquidator's fee for the remaining portion of the liquidation will be calculated as a percentage of the amount realized after deducting and distributed (IBBI,2024) other liquidation expenses.

3.8.5. TIMELINES ADHERENCE BY THE IPS:

According to the First Schedule of the IP Regulations, an IP must follow the deadlines set forth in the Code as well as the rules, regulations, and guidelines pertaining to the insolvency resolution, liquidation, or bankruptcy process. He must also carefully plan his course of action and promptly communicate with all parties involved in order to fulfil his duties on time, and he must refrain from acting negligently or with malice in his actions. The Code was passed in order to address insolvency and bankruptcy in an efficient manner, as well as to promote the growth of the nation's credit markets and enhance corporate accessibility to encourage investment. When results are calculated, time, value and money, is of the essence, in the procedures outlined in the Code.

A 2014 World Bank report, states that while assessing how easy it is to do business anywhere, the length of time it takes to collect debts, and the rate at which they do so should be seriously considered. The Code, which considers a separate class of insolvency professionals from various streams of professions, to form an effective pillar in realizing goal envisaged in the code. The IP institution is based on the professionalism and behavior of its members. Because of the constantly changing legal and regulatory landscape, jurisprudence, and best practices which increasingly include the use of technology the competence must be improved on a constant basis. Every task that an IP must complete in accordance with the Code demands the greatest caliber of professional competence, including value-maximizing management and financial engineering. IBBI has said on multiple occasions that adhering to the law after the deadline set by the Code does not qualify as "compliance" with the law. An IP isn't just another kind of expert.

They have to go above and beyond the call of duty to address the distress of a corporate debtor with which they are dealing.

IPs should work to uphold the profession's reputation, which should be respected by the public and instill confidence in all parties involved. Thus, the CIRP of a CD is required by Section 12 of the Code to be completed within max 330 days from the day the insolvency began. These 330 days, are calculated the following ways: (a) The standard 180-day CIRP timeframe (b) The Adjudicating Authority's one-time extension, if any, of the CIRP period for up to ninety days; and (c) the length of time required for legal proceedings pertaining to the CIRP of the CD. In addition to establishing a general timeframe for the process, the Code also stipulates a timeline for a number of sub processes, including posting a notice of bankruptcy in the public domain, valuing the corporate debtor, and performing a transaction audit of the corporate debtor. According to the IBBI under the Schedule to the Insolvency and Bankruptcy Board of India (Model Bye Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, wherein Bye-law 13 of the Model Bye-laws of an IPA specifies that an IP, is required to carry out their duties as quickly and efficiently as reasonably possible, while adhering to the deadlines set forth in the Code. A tight timeline might make it difficult to reach agreement amongst a number of players in the resolution process, including creditors, the resolution applicant, and the adjudicating authority. An IP must manage a strict process with sufficient preparation and handholding at all levels to guarantee timeliness and ensure that the asset value is maximized and conserved. Any duty neglect jeopardizes the running concern, which diminishes the integrity and value and integrity of the IP.

3.8.6. THREATS FOR NON-COMPLIANCE:

Although time is seen as the essence of the Code, it has been noted that in the seven years following the Code's enactment, there have been instances where it has been difficult to fulfill the established deadlines. Following the enactment of a new legislation, interested parties have often approached the courts to request rulings and explanations regarding different facets of the Code. Although these legal disputes have resulted in more precise interpretations of several Code articles, they have also caused some delays in the approval of resolution plans. Delays in admission have also arisen

from the extension of the CIRP timeline under the Code, which was brought about by the exclusion of time spent in litigation and the consideration of the timeframe as a directory requirement. The Apex Court's ruling that the deadlines specified in sections *7, 9, and 10* of the Code for resolving disputes within *14* days and for fixing defects *within 7 days* are advisory rather than obligatory and not mandatory(M/s Surendra Trading Company Vs. M/s Juggilal Kamlapat Jute Mills Company Ltd. & Ors., 2017). This has resulted in a significant change in the timeliness of compliance with the Code. Although litigation has been the cause of delays more than 450 days in a number of high-profile instances, it should be highlighted that litigation is not the only factor contributing to the CIRP's delay. Sometimes, as has been observed in a number of cases, the IP's failure to plan properly and deploy sufficient resources on time may also make it more unlikely that a resolution would be reached. Any delay brought about by even a small act of carelessness on the part of the IP can have a negative cascading effect on the CIRP's timeliness. Hence, professional competence, honesty, and intent in the IP, along with ignorance of the Code standards, are all necessary conditions for the Code's objectives to remain unfulfilled.

3.8.7. PROFESSIONAL COMPETENCE:

In order to effectively handle a particular case, an IP must evaluate his own suitability for the assignment in terms of infrastructure, people, technology, skill set, professional bandwidth, and sectoral knowledge in which corporate debtor is operating. In the event that the infrastructure is insufficient, an IP will not accept an assignment. In addition to the aforementioned, an IP must uphold his professional competence by staying informed on changes in the insolvency system, current pressing concerns, and the best ways to resolve them. To provide good professional service, an insolvency professional needs to uphold and improve his professional knowledge and abilities. As the regulator's "eyes and ears" on the operations of the assignments, insolvency professionals bear a great deal of responsibility and are answerable to a larger stakeholder group that includes regulators and the general public in addition to the immediate client.

3.8.8. ATTRIBUTES OF INSOLVENCY PROFESSIONALS:

The requirements for certification and continued status as a professional have an impact on the caliber of any insolvency profession and its members. Anyone who is not '*fit and*

decent' should not be allowed to join any IPA. *'State-of-the-art'* tools are another expectation placed on a professional when providing his services. It is his responsibility to provide his services in an effective and efficient manner. This would entail using the most recent and superior management expertise to stay up to date with emerging trends. In addition, he ought to be *"literate" in technology, steer clear of becoming "technology myopic,"* and recognize that technology has the potential to seriously disrupt his line of work. A professional should only take on as many assignments as necessary to enable him to provide his skills in an efficient manner. He would be less able to provide high-quality services, if he took on more jobs than he could handle.

It is imperative for all professions to implement steps aimed at enhancing their ability in order to fulfil the demands of their clientele. In addition to increasing capacity, steps must be done to guarantee that a profession's users have more options by fostering healthy competition within it. Since consumers of professional services would have the option to choose the best service provider rather than compromising with a limited selection, competition both promotes and maintains quality. Put simply, each professional needs to possess the necessary "*Toolset, Skill set, and Mindset*." He should have a top-notch service mentality, empathy, and a grasp of his clients' demands. He should also have the modern skills needed for his line of work, as well as a toolkit to deliver his services quickly and effectively.

3.8.9. ROLE OF THE INSOLVENCY PROFESSIONAL DURING ASSET MANAGEMENT:

When managing an insolvent business, IP takes on the role of the manager of the business to guarantee the insolvent's ability to continue as a going concern throughout the resolution process (Shristi Infrastructure Development Corporation Ltd. v. Mr. Avishek Gupta (RP) and Ors. 2022). It also protects and increases the value of the company's assets by opposing dubious asset transfers or obligation creation. "According to the UNCITRAL Legislative Guide on Insolvency Law, the insolvency representative plays a central role in the effective and efficient implementation of an insolvency law, with certain powers over debtors and their assets and a duty to protect those assets and their value, as well as the interests of creditors and employees, and to ensure that the law is applied effectively and impartially," As a result, it is crucial that the insolvency

representative be suitably qualified and have the skills, background, and character traits necessary to guarantee both the smooth and efficient running of the proceedings and the public's faith in the insolvency regime." (United Nations, 2021)

In accordance with Sections 18 and 20, the interim resolution professional (IRP) must assume custody and control of any asset over which the corporate debtor has ownership rights and must use all reasonable efforts to safeguard and maintain the value of the corporate debtor's property. Section 25 further specifies that it is the resolution professional's responsibility to maintain and safeguard the corporate debtor's assets, including the debtor's ongoing business operations. Section *429 (1)of the Companies Act, 2013* has also been revised by the Code, giving the NCLT the authority to direct executor authorities to take control and custody of assets in the event that the RP is unable to do so.

Suggested Best Practices for Asset Management by Insolvency Professionals includes following the appointment of an Interim Resolution Professional, Resolution Professional, or Liquidator, the asset class ought to be examined, potential threats to the assets ought to be recognized, and protective actions ought to be implemented. In order to ensure that the size of the asset is confirmed in comparison to the company's books of accounts, IP should, through the appointment of registered valuer (s), physically verify the corporate debtor's assets and obtain exceptional reporting from the registered valuer(s). If the asset is of a nature that necessitates additional protection, IP should contact the appropriate security agencies, or local police assistance may also be obtained by contacting the Adjudicating Authority. If a factory is operating and there is a perceived risk of illicit products movement, a CCTV camera can be placed, if one hasn't already, and the footage can be viewed on a regular basis. Further, in order to guarantee efficient cash and bank balance management, IP should implement the procedure for altering the authorized signatories of the corporate debtor's bank account or accounts. IP should also carefully examine the corporate debtor's current assets, as shown in the company's audited balance sheet, and determine whether any legal action is required to realize them. At the same times, as soon as possible, IP should finish the registers and data referring to the corporate debtor's assets in order to comprehend the true status of the assets of corporate debtor (if not completed).(IIP, (n.d.)).

The adjudicating authority, or NCLT, is the person the IRP/RP may approach while carrying out his duties, if he needs any assistance during the CIRP. The IRP attempted to seize control of the corporate debtor's assets in *Central Bank of India and the State Bank of India v. M/S. Ashok Magnetics Ltd*., but the corporate debtor resisted vehemently. As such, he prayed for police support to carry out his duties as IRP. The NCLT ordered the Superintendent of Police, whose territory included the Corporate Debtor's factory and Registered Office, to provide the IRP with adequate police support and personal security, so he could assume control of the corporate debtor's assets and carry out his duties in accordance with the Code. The case of *Divyajyoti Sponge Iron Pvt. Ltd*. (Divyajyoti Sponge Iron Pvt. Ltd. v. Punjab National Bank, 2017). In order to visit the corporate debtor's factory and fulfil his legal responsibilities in a calm manner, the RP requested the support and security he needed. The NCLT directed the Superintendent of Police and the head of the relevant police station to give the resolution professional appropriate and efficient support in light of the threats made by the corporate debtor.

3.8.10. CONFIDENTIALITY

An insolvency professional is required by law to guarantee the secrecy of any information pertaining to the insolvency resolution process, liquidation process, or bankruptcy process, as applicable, at all times. This is the fundamental principle of confidentiality. This will not stop him from sharing any information, though, if it is necessary by law or with the relevant parties' approval. In addition to keeping information private, the principle of confidentiality requires that all appropriate measures be taken to protect it. Depending on its nature, information may or may not be confidential. Unless it is expected that the information is not confidential, any personal information obtained by the insolvency professional, both before and during an appointment, that is not directly related to the insolvency or commercial information pertaining to the affairs of third parties, should be kept private. Regarding the restructuring, company's resolution plan and the conversations that led to the resolution plan, confidentiality should be upheld. A successful restructuring depends on maintaining confidentiality, particularly since the resolution plan specifies whether all or some of the reorganized company's assets and/or personnel will be retained. Any information about the Corporate Debtor that the Debtor itself would have been entitled to, and from anyone who possesses such information, is granted to the Insolvency

Professional. The insolvency professional or other parties should not utilize confidential information obtained via commercial or professional contacts for their own personal gain.

Any use of such confidential information must be carefully considered by the insolvency professional and must only be used in accordance with law. The information relating to the Corporate Debtor and its affairs during the CIRP may be commercially sensitive, confidential, or subject to obligations owed to third parties, such as trade secrets, research and development information, and customer information. Any resolution plans that the IP receives from various parties should be kept private and distributed only to the Committee of Creditors. Maintaining secrecy will be crucial in cases or circumstances involving conflicts of interest; as a result, strong information barriers should often be employed as one of the protections.

3.8.11. OCCUPATION, EMPLOYABILITY AND RESTRICTIONS

A professional in insolvency cannot concurrently fulfill the tasks of "employment" and "profession" (IBBI, 2024). It is comparable to the rule that states an advocate cannot practice while they are employed and vice versa. Such a condition has only one goal in mind: a professional need to provide his professional responsibilities his whole attention and dedication. Accepting cases where a member cannot provide them with the amount of attention or technical skill required to provide the best outcome for stakeholders may bring such a member and the profession into disrepute, in accordance with the ethical principle of Professional / Technical Competence accepted in the UK. Furthermore, the current legal framework addresses potential future dangers in addition to addressing conflicts of interest resulting from past and present interactions with intellectual property. This is due to the possibility that an IP could jeopardize his status in exchange for a future return, process completion, or termination as an IP. He might, for instance, start working for the corporate debtor, be in a professional relationship with the successful resolution applicant, or have ties to the creditors and their affiliates. The prohibition against an IP and his family members seeking employment or assignment with the parties involved in the processes he manages aims to counteract attempts by parties involved to entice the IP with the promise of employment or assignment after

processes are completed, which could result in, leading to non-realization of the objectives of the Code.

3.8.12. AN INSOLVENCY PROFESSIONAL IS PROHIBITED FROM PARTICIPATING IN THE ASSIGNMENT IN TERMS OF THE CODE OF CONDUCT:

If he is not likely to be able to dedicate enough time to each work, or take on too many tasks. Engage in any kind of employment while he is on an assignment or has a valid authorization for assignment. Until one year has passed since the date of his termination from the CIRP under him, he and his relatives are not permitted to accept any employment (other than employment obtained through open competitive recruitment) with, or provide professional services, other than services under the Code, to a creditor having more than 10% voting power, the successful resolution applicant, the corporate debtor, or any of their related parties**.** Engage or designate any of his family members or affiliated entities for any task related to any of his assignments. Offer any assistance for or in relation to the project that any of his family members or affiliated parties are working on.

The role of IRP/RP is critical to the entire CIRP process (Read Law, (n.d.)).The IBC system has established extensive protections to guarantee that the CIRP is carried out by an impartial and fair IRP/RP, as their role is very important and crucial to the overall CIRP and Liquidation process. An important factor in the smooth running of the bankruptcy procedure is also the *Resolution professional*. RP is responsible to various stakeholders including CoC and regulator while maintaining ongoing status of CD in the CIRP. In addition, the Insolvency Professional must have the necessary abilities, know-how, and proficiency to guarantee that the procedures are carried out efficiently and fulfill all the obligations entrusted upon him. Cross-border insolvencies would also require, IP to brush up international laws to discharge his functions efficiently (Keay et al. 2008).

Regarding the first research questions, from the ibid discussion on the role of IP in CIRP and Liquidation, it can be adequately inferred that the Insolvency Professionals play central role in efficient conduct of CIRP and Liquidation.

CHAPTER-IV

INSOLVENCY PROFESSIONAL'S DILEMMAS UNDER THE IB CODE: JUDICIARY'S ROLE IN ENSURING CODE EFFICIENCY

4.1. Introduction.

The Insolvency and Bankruptcy Code of 2016 stands out as the paramount economic reform legislation of the decade, with a primary aim to foster entrepreneurship, ensure credit accessibility, facilitate timely business exits, all with the overarching goal of asset value maximization. Notably, the code has emerged as a potent tool for the banking sector in addressing Non-Performing Assets (NPAs) and enhancing recovery rates. It effectively addresses numerous shortcomings of the previous insolvency regime, marking a significant shift in approach.

However, despite its transformative impact, the code encounters numerous implementation challenges and practical hurdles faced by professionals on the ground. Given its empirical nature, the code relies heavily on a trial-and-error method, which is supplemented by judicial clarifications, offering a sense of certainty and authority to those involved in its implementation. Adjudicating Authorities (referred to as AAs) periodically address contentious issues within the code to smoothen out complexities and ambiguities.

In the IB code, the Insolvency Professional are regulated and licensed to perform various duties under the Codewherein many statutory duties & responsibilities are entrusted on insolvency professionals(Section 3(19) of IBC), who are being controlled through insolvency professional agency and Insolvency and bankruptcy board of India (Herein after mentioned as IBBI) (Mittapally et al. 2020).The *IPs* while undertaking the task as *"Interim Resolution Professional"* / "*Resolution Professional"*/ *"Liquidator"* under the code, encounters many challenges and practical difficulties on ground.

4.2 CHALLENGES ENCOUNTERED BY THE INSOLVENCY PROFESSIONAL DURING CIRP & LIQUIDATION.

Non-Cooperation by the management:

After the admission of application for CIRP by the AA, the entire business responsibility, its management shifts on the IP, off course under the supervision of COC. On change of guard from board of directors to IP, the executives, staff employees, labour and other stakeholders have innumerable apprehensions about this changed set up (The Insolvency & Bankruptcy Code, 2016, Section 23 & 27). In most of the cases, the erstwhile management is not willing to cooperate with IP. They do not share the business information with him. To know many facts about business operation of CD, the IP depends on board of directors for various information. The RP is also interested to know the 'related transactions and many other important information in relation to company so as to arrive at the correct claims due against the company. As the code mandates, certain timelines in CIRP/Liquidations to be followed but in the absence of information, non-cooperative by management is major reason for delay in the entire process. The provision of IB code in terms of section 19 is not a potent tool to force cooperation as it does not prescribe any Penal action. That is the reason only few IPs approach NCLT for non-cooperation. The research by one of the major reasons for delay in the entire CIRP is that the CD does not fully cooperate with the RP, less than 3% IPs knocked the door of courts for compelling cooperation from old management of CD speak volume about effectiveness of section 19(2) of this code. Hence, the penal provisions for *non-cooperation on part of the corporate debtor with the RP is the need of the hour.* (Shikha et al. 2021)

Regarding assets:

The IRP has to rely upon the latest Audited Balance Sheet as well as Provisional Statement of accounts depicting transactions of 15 days before the admission of the application for CIRP. Usually, in case of Bank defaults, the promoters either do not part with the audited balance Sheets or the Balance Sheet is not prepared by CD. Therefore, in the absence of sufficient documents, true value of assets can't be determined. In many cases, the assets are parked outside the premises of the Corporate Debtor like vehicles which are **hypothecated** in favour of the financers and the said hypothecation is usually registered with respective state transport agency, but no charge is registered with Registrar of Companies (ROC). In that case, it becomes very difficult to place the lender

in the position of secured creditors list, moreover the financers take away the said assets even before IRP reaches the premises of the company. The hypothecated stocks are usually found available in less than half of the value in the books of accounts. The current assets in the form of cash in hand etc., is also not handed over to IRP. In the absence of above documents, the task of IP becomes very difficult.

The sundry debtors:

The other difficulty faced about Sundry Debtors shown in the books usually change their addresses/challenge the claim in various court wherein it becomes difficult to recover the dues from them (Dushyant Dave Liquidator v. Bijaya Kushasan Behera and Ors., 2024). In most of the cases, the applications are filed for seeking directions of the NCLT and the said process goes on even during liquidation**.** *Therefore, in the absence of powers to seize or to have timely access to the asset's location, the recovery of the current assets becomes quite difficult.*

Maintaining ongoing status of the units: The IRP/RP are required to maintain the on-going status of the unit. Practically in many cases the units were closed, power was dis-connected, no raw material or finished goods, no employees. Therefore, how could an IRP or RP maintain the on-going status of the unit? Even the units which are in operations, it is extremely difficult for the IRP /RP to source the raw material and take care of day-to-day expenses. Regarding the skilled /semi-skilled manpower, once it comes to their notice that the Unit is under IBC, the workers/staff start leaving the company due uncertainty. Also, there are certain products which could not be sold unless a proper marketing plans and strategies are in place which is difficult after a company goes to CIRP/Liquidation (Ajay Kumar Vs. Shree Sai Industries Private Limited and Another, 2019).

Valuation of CD assets:

The valuer again being an outsider like IRP also faces same difficulties with respect to lack of information. In the absence of proper information of the assets, the valuation is usually done either by trial & error method or based on the information collected from the market. Both these methods are not the scientific methods. Therefore, in the absence of proper valuation, the resolution plans proposed by the applicants do not address the

revival of CD properly. There is also a concept in India that a unit under IBC could be acquired half of its value entails lowering values**.** Practically the promoters usually influence the valuations process. Many a times, the promoters typically keep their own parties ready to buy out the units in liquidations. There is always a large difference in the valuation done by the Bank's approved valuers and the valuers appointed by IRP/RP. Due to this reason, the Banks finances much more than the eligibility of the borrowers and hence the same results in financial sickness (Varma, 2020).

Lack of understanding: IB code being a new legislation, there are widespread lack of understanding by participants. Banks and other stakeholders will send the reminder for claim to CD; send demand notices even when the moratorium is in force. At times the creditors also resort to many tactics to see they get the money back pending insolvency proceedings (Joseph et al. 2023). Operational creditors' lacks compete understanding. The government agencies also send reminders for statutory dues even after moratorium.The IP may not be able to open a new bank account because bankers may have a different understanding of this process and still require a board resolution in their required formats to authorize the opening of the account. Sometimes the infrastructure of the relevant authorities (online or offline) may not allow accounts to be opened. All such issues arise on account of lack of understanding of the CIRP process and it is often left to the IRP and his team to educate various stakeholders on the implications of the CIRP commencement.

Protection and security challenges:

Every day we get to know about this most disturbing news wherein the IP after being appointed by AA to discharge the statutory duties as envisaged in the IB code, has been facing the risk of security to his life and his family. The cases have also come to light wherein even the family member of IPs is being threatened, taken as hostage/kidnapped and attacked after the IP has been appointed to conduct the CIRP/Liquidations. Even at the time of his taking over the company from Board of directors, he has faced hostile environment including pelting of stones by trade unions/Labour. In these circumstances how we can expect IP to complete the CIRP within Max period stipulated in terms of Section 12 of IB code. Even IP contact the local police authorities for assistance however many a times things do not work out favorably.

Shortage of finance/under financing:

This is one of the major practical problems faced by IP on ground wherein he doesn't have the finance to manage the company as going concern. In almost all cases of insolvency the CD would be stressed of funds and will not be even position to cater for insolvency cost, payment to professionals and even to various agencies instrumental in ensuring transient of company from erstwhile management to IP. More so no financial institutions are ready to extend further loan to CD. Many a times even IP does not get the fee leads to lack of motivation and timely completion of CIRP/Liquidation. (Tungekar, 2021)

Non-Compliance with the Statutory Provisions:

Before the company goes for insolvency, in many cases it might have defaulted in compliance of various statutory provisions under the different enactments. After the IP takes over the company from erstwhile management, the Onus of ensuring the legal compliances shift on him. Due to lack of requisite documents, in many cases, he is not in a position to know the complete status of compliances leading to non-compliances in future also. In many cases the government agencies may insist on the IP completing or rectifying past compliancesand insist payment of dues in relation to previous years, before allowing payment for the period IP is responsible, hence leading to uncomfortable situation for him. Even in many cases the CoC will not approve these payments.There may also be instances where the cash flows of the CD are not enough to engage professional or legal advisers or to pay the requisite fees to the legal and statutory authorities. (Tungekar, 2021)

Rarely invoking of provisions for fraudulent or malicious initiation of proceedings:

To avoid misuse of provision of IB code and to prevent fraudulent or malicious initiation of proceedings, a safeguard in the form of section 65 has been incorporated in IB code which contains Penal provisions for imposing a penalty of Rs 100,000 to 1 Cr.However, in practice (as a grey area) the AA does not go into the motive behind but looks only at the default of non-payment of debt being the statutory requirements leading to filing of malicious / fraudulent initiations of proceedings.

Discretion in Admission of Initial Application by AA:

The initial admission or rejection of application by AA takes lot of time which is one of the reasons for non-completion of the CIRP within overall limits of 330 days including extension in terms of section 12 of IB Code. The uncertainty regarding initial admission by AA, on account of consideration of facts extraneous to IBC, is a much-debated legal subject matter today. Many a times, the AA uses its pleasure in admitting application within 14 days of its receipt. In case of bonafide mistake in application the same is to be rectified within seven days. This was discussed threadbare in the case of "*M/s. Unigreen Global Private Limited Vs. Punjab National Bank and Others."* (M/s. Unigreen Global Private Limited v. Punjab National Bank and Others, 2017) Wherein national company law appellate tribunal ordered that the AA must admit an application within stipulated period, on fulfillment of the requisite conditions such as default has occurred, application is complete, and the CD is not barred under section 11 of the IBC. It is axiomatic to mention that where the facts are not in consonance or unrelated to or not related in the scheme of IBC or not in the forms prescribed cannot amount to suppression of facts and cannot be looked at by the AA for denying admission of application. According to section 9 of the Code, within 14 days' time has been recommended for admission of application. However, it is pertinent to mentioned that the average number of times taken for admission of applications under *CIRP* is 133 days (Ministry of Corporate Affairs, 2020), which is contributory and one of the factors of non-meeting the timelines under the IBC.

Withdrawal from the CIRP with higher percentage of voting in COC:

An application for CIRP can be withdrawn by *Financial Creditors or Operation Creditors* before admission. Frequently this is resorted to when applicant and CD reaches some kind of settlement while the proceedings are pending. This is generally more common with applications filed by Operational Creditors or where the stake is not very huge. However, if an application for a *CIRP* is to be withdrawn after its admission, in that case it can only be withdrawn by 90% or more voting share(IBBI, (n.d.)). *The 90% of voting by COC for withdrawal is on higher side, keeping in view the object of IBC being resolution.*

Lack of Market for Stressed Assets:

There is lack of full-bodied *stressed assets market* in India. Lots of companies goes into *CIRP* and not able to get a good resolution plan because of Indian business culture wherein people are less interested to buy old stuff even in *Liquidations*. There is system in vogue in India wherein even the good business will not be able to fetch more than half of its value. Due to lack of market (Insolvency Tracker, 2024) for stressed assets only very few buyers show some interest leading to delays in resolution of companies. Seeing the size of stressed assets in India, there are huge potential for growth of the secondary stress market. It is pertinent to mention and evident from the research that considerable delay happens at the stages of the issuance of EOI and RFRP. Further, marketability of assets is one of the critical causes contributing to delays in resolution of companies.

Timeline under the Code:

Section 12(3) of IBC plugged the time limits at *330 days* including litigation, if any from the Insolvency Commencement Date (ICD). The data so far collected shows two third of the CIRP cases ended up exceeding the stipulated time frame. *Supreme Court in* "*Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and others"* Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and others, 2018) *has paid lots of stress on mandatorily completion of CIRP in stipulated time frame however in "CoC of Essar Steel India Limited Vs Satish Kumar Gupta"*(Essar Steel India Limited Vs Satish Kumar Gupta, 2019)*case has removed the word* ***mandatorily*** for completion of *CIRP* in 330 days hence sanctity of *section 12(3*) vis-a-vis the role of IPs in achieving the times lines has become difficult which need strict reviewing.

Regarding second Research Question "whether IBC empowers IRPs/RPs wherewithal to deal with all kinds of challenges/contingencies"?

From the foregoing, the problems faced by IPs during CIRP & Liquidation and commensurate provisions in IB Code, it is clearly discernible that in spite of the existing provisions in IBC, the, IRPs/RPs does not have adequate wherewithal to deal with all kinds of challenges/contingencies under the IB Code.

4.3 DECIPHERING JUDICIAL INTERPRETATIONS: EMPOWERING INSOLVENCY PROFESSIONALS FOR EFFECTIVE IMPLEMENTATION OF THE IBC

In the almost seven years from its enactment, the Code has achieved immensely as envisaged. The various judicial forums decided upon matters under the Code with extraordinary stride, and have built in a kind of trust within the partakers while interpreting the contentious provisions of the code. The regulator IBBI and the government have also been extremely alert in making requisite alterations in the code to ensure that the Code is implemented the way it is needed. Being a vibrant and progressive economic legislation, the Code has been interpreted by the judiciary with reverence to legislative intent in economic matters. Judicial pronouncements in relation to the Code are very important resources to implement this ever-evolving law (Gupta et al. 2022), keeping in view the nuances of CIRP, Liquidation and other processes. According to judicial decisions the IPs and other stakeholders are able to forecast the likely legal outcome vis-à-vis the potential disputes and differences. *There are various governmental and legal developments on important issues that have been profoundly contested in the past few years and settled to great extent which are quite helpful from the points of view of Insolvency Professionals for taking apt decisions during CIRP/Liquidations. Important of them are worth mentioning: -*

Constitutionality of the provisions of the Code:

The statutory validity of various provisions of the Code has been challenged wherein the Supreme Court in "*Swiss Ribbons Pvt. Ltd. v. Union of India*,"(Swiss Ribbons Pvt. Lmt. V. Union of India, 2019) held that in complex economic matters all decisions are taken on the basis of 'trial and error' method and observance over a period of time and therefore, its validity cannot be tested on any strait jacket formula." and the Court upheld the constitutional validity of all the provisions challenged before it. The validity of *section 12Aregarding Withdrawal of application and numerous other provisions of the Code in relation to beginning of the CIRP, voting in the CoC, liquidation proceeds distributions, withdrawal of the corporate insolvency resolution process, disqualification from submitting a resolution plan, information utilities and powers of the resolution professional have been held to be valid. In many other court various other provisions of IBC were challenged. In the case of* ***Akshay Jhunjhunwala and Anr. v. Union of India***[7] (Akshay Jhunjhunwala and Anr. v. Union of India, 2018) *the Calcutta High Court also delved into constitutionality of sections 7, 8 and 9 of the Code on the ground the differentiation made between the operational and financial creditors by these*

provisions does not have a rational or intelligible basis and is therefore, liable to be struck down. In ***Shivam Water Treaters Pvt. Limited v. Union of India*** (Shivam Water Treaters Pvt. Ltd. v. Union of India, 2018), *the Supreme Court requested the Gujarat High Court to desist from entering the debate relating to the "validity of the Insolvency and Bankruptcy Code, 2016 or the Constitutional validity of the National Company Law Tribunal."*

While examining the validity of ***section 12A*** being challenged on the ground as violative of Article 14 wherein the approval of ninety per cent of the Committee of Creditors are required for the withdrawal of a petition. The Court highlighted that an insolvency proceeding is a proceeding *in rem* and not a *list* between parties. Consequently, and the explanation in the report of the Insolvency Law Committee, the backbone of 12A of mentioning that "*all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditor sought, ideally, to be entered into. This explains why ninety per cent, which is substantially"*

Hand Holding by Judiciary for Maintaining Timelines by IPs as mandated in the Code: *Boosting of the value of assets of the CD is one of the aims of code*. The value erodes over a period, if company remains in insolvency for quite sometimes. *The uncertainty regarding initial admission by AA, on account of consideration of facts extraneous to IBC, is a much-debated legal subject matter today. Many a times, the AA uses its pleasure in admitting application within 14 days of its receipt*. In case of bonafide mistake in application the same is to be rectified within seven days. "*Whether period of 14 days for admission and further 7 days for rectification of defects was mandatory or discretionary? And there was no transparency on it*. *The Supreme Court* (M/s Surendra Trading Company Vs. M/s Juggilal Kamlapat Jute Mills Company Ltd. & Ors., 2017)*ordered that the 14/7 days' period would be discretionary*." Further, NCLAT in "*Quinn Logistics v. Mack Soft Tech*" (Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd., 2017) gave a descriptive list of time-gaps that may be excluded for the purpose of counting the total period of 270/330 days. In another case "*Velamur Varadan Anand v. Union Bank of India &Anr"* (Velamur Varadan Anand v. Union Bank of India, 2018)wherein the NCLAT allowed the exclusion of time from calculation of the maximum time limit wherein the RP was not allowed to enter the premises and take

charge. The Supreme Court in "*Arcelor Mittal v. Satish Kumar Gupta &Ors"* (Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and others, 2018) re-emphasized the need for adherence to strict timelines however in "*Essar Steel Vs. Satish Kumar Gupta*" (Essar Steel India Limited Vs Satish Kumar Gupta, 2019) has removed the word mandatorily for completion of CIRP in 330 days hence now, sanctity of section 12(3) and role of IPs in achieving the times lines has achieved some clarity.

Non-Cooperation by CD vis-à-vis Compulsion to Cooperate:

In many cases, the management and executives of the CD are unwilling to cooperate with the RP where in many cases IPs were not allowed to enter the corporate entity and denied information. *This may lead to a hostile environment for the IRP/RP to work in. In these circumstances section 19 is a significant provision in the hands of the IRP and RP which sets out a legislative dictate for cooperation with the IRP and RP. In case of non-cooperation the IRP/RP can make an application to AA and in turn AA in terms of section 19(3) order the former management and all others persons connected therewith to management of the CD to cooperate with the IRP/RP in providing requisite information.* However, in spite of provisions under section 19(2) & 236 of the IBC read with Regs 30 of the CIRP Regs and section 429 of the Companies Act, 2013 the Insolvency Professional handling the cases, faces lots of resistance. To enforce the same, in "*Ajay Kumar Vs. Shree Sai Industries Pvt. Ltd. and Another"*(Ajay Kumar Vs. Shree Sai Industries Private Limited and Anr.,2019) *and* in "*Syndicate Bank Vs. Him Steel Private Limited"*(Syndicate Bank Vs. Him Steel Pvt Ltd., 2019), The AA, taking note of the same in terms of section 429 of the Companies Act, 2013, ordered the concerned police officer to ensure RP gets the requisite books of accounts and records of the CD so he can proceed further with the case.

Recovery from Sundry Debtor:

In the "*Dushyant Dave Liquidator v. Bijaya Kushasan Behera and Ors*." (Dushyant Dave Liquidator v. Bijaya Kushasan Behera and Ors., 2024)the NCLT Mumbai ordered that the Resolution Professional is requesting cooperation from the Sundry Debtors and the Suspended Directors to recover debts owed by the Sundry Debtors to the Corporate Debtor for goods previously sold to them. However, the NCLT Mumbai Bench has ruled that such directions are not allowed under section 19(2), and the bench cannot compel

them to cooperate. The RP has a lien over these goods as an "Unpaid Seller" as per the provisions of Section 47 of the Sale of Goods Act, 1930. Therefore, specific directions from the NCLT regarding Sundry Debtors are deemed unnecessary.

Supreme Court on Roles of a RP and a Liquidator:

In "*Swiss Ribbons Pvt. Ltd. & Another vs. Union of India & Others"*(Swiss Ribbons Pvt. Ltd. & Another vs. UoI & Ors., 2019)**,** the Supreme Court discussed the role of the Resolution Professional and Liquidator wherein it was held that in terms of CIRP Regulations, the RP ensure vetting and verification of claims leading to determination of value in terms of regs 10-14 and at the same time the '*Resolution Professional' has administrative as opposed to quasi-judicial powers however a 'Liquidator's power is quasi-judicial in nature as he consolidates, verify, and either admit or reject the claims in term of sections 38 - 40 of the IB Code and also determine claims value*.

Supply of Essential Goods and Services during the CIRP:

In CIRP after the issuance of moratorium, the CD gets the leeway to reconsolidate its position in terms of sale of assets, produced /manufactured goods marketing and maintaining ongoing production activities and restructuring of the debts (IBBI, 2015). In terms of section 14(2) of IB Code, after the issuance of Moratorium the supply of essential goods and services to a *corporate debtor* will continue and shall not be suspended or terminated as held in *"ICICI Bank vs Innoventive Industries"*(ICICI Bank vs Innoventive Industries, 2017) and "*Canara Bank vs Deccan Chronicle"*(Canara Bank vs Deccan Chronicle, 2017). Further, regarding payment for supply of essential goods and services required has been explained in *"Dakshin Gujarat Co. Ltd. Vs ABG Shipyard Ltd."*(Dakshin Gujarat Co. Ltd. Vs ABG Shipyard Ltd, 2017). *Hence 'essential supply' has now been settled upto an extant wherein code ensure continuation of critical supplies to businesses during the Corporate insolvency resolution process and further enables the resolution professional to negotiate for the continuation of other critical supplies during the corporate resolution process and mandates the supply of the enumerated 'essential goods and services'.*

Home Buyers' Cure in the CIRP:

Initially, in plethora of cases, the Adjudicating Authorities treated home buyers neither 'Financial nor Operational creditor'(Col. Vinod Awasthy v AMR Infrastructure Ltd., 2017).In those cases, only where home buyers were promised certain return, they were considered financial creditors (Nikhil Mehta and Sons v. AMR Infrastructure, 2017). Initially there were procedural hic-ups for inclusion of claims pertaining to home buyers as the procedure used to admit claims only on behalf of Financial Creditors and Operational Creditors. However, after various landmark judgments wherein the home buyers were included in the definition of FCs, thereafter, 'IBBI 'amended the regulations to allow other creditors also to file claims with the RPs (Regulation 9A, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016). By the landmark judgement of "Supreme Court wherein the representative of home buyers was allowed to participate in CoC meetings and 'RPs' was further directed to look after the interest of home buyers (Chitra Sharma & Ors. v. Union of India & Ors.,2017). In many similar cases such as Bikram Chatterji (Bikram Chatterji v. Union of India, 2019) the Supreme Court also directed Real Estates developers to complete the construction of the houses stopped in between due to reasons beyond their control. Subsequently the definition of 'financial debt' was amended in IB Code vide second amendment, Act, 2018, to bring the "Allottees of houses" under its ambit being the financial creditors. (IBBI, 2018)

Payment of Government Levies under the IB Code:

The provision of goods, services including employment and payment/fee/lives due to central government or any state government is part of operational debt in terms of section 5(21) of the IB Code. However, because of the ambiguity and any clear demarcation whether the statutory dues are part of it or not was always had been a matter of litigation. In the case of "*Akshay Jhunjhunwala vs UoI*," and in one another case, the statutory dues were considered as part and parcel (Sree Metaliks Ltd. v. Union of India, 2017) of operational debt. Correspondingly in another case of "*DG Income Tax vs Synergies Dooray Automotive Ltd."* (Principal Director General of Income Tax Vs Synergies Dooray Automotive Ltd, 2019) same stand was taken regarding the state dues. Treatment of Statutory Dues in case of ***'Liquidation'*** has been dealt with as part of the '*Water fall mechanism' in terms of section 53(1)(e) of IB Code which cater*

for all central and state dues and also dues on account of operations including salary of employee/workmen etc.

Priority Payment to Dissenting Financial Creditor:

The Insolvency Law committee in 2018 report (Ministry of Corporate Affairs, 2018 discussed priority payment issue in thread bear details to prevent its abuse in the garb of taking priority payment by creditors. Also the *"Supreme Court in K Sashidhar v. Indian Overseas Bank and Ors.*(Sashidhar v. Indian Overseas Bank, 2019).*Clarified that the consideration and calculation of only members present and voting is not correct and that this system can be used only for meeting the threshold of voting."* After this judgement many changes were incorporated in regulation and IB Code so as to include both category of creditors i.e. who voted for rejection of *Resolution Plan (RP)* and also who abstained from the meeting where 'resolution applicant' was considered.

Necessity of section 29A in IB Code:

This section has been added (Section 29 A of IBC) primarily to ensure that the persons who are responsible to bring the company to a stage wherein it has been pushed for CIRP, do not use it as a back door entry to acquire the same corporate entity with a substantial hair cut to the creditor. In one of the cases (IBBI 2015) "*Supreme Court while deciding the Resolution Applicant's eligibility, held that 29 A is in the public interest and also take care of Corporate Governance."* The constitutional validity (IBBI, 2015) of the said section has been upheld by the Supreme Court. Further MSME does not fall under the ambit of Section 29 A which was held to be valid as decided in Arcelor Mittal India case (Batra, 2020).

Distributions under a Resolution Plan:

A company goes for insolvency inter- alia primarily for insufficient of capital. All the creditors whether Financial or operational are not going to get full amount due to them from a CD, in case it goes for insolvency. The IB code provide for a system of Priority payment depending upon the kind of debt, type of creditors, the CIRP cost and other factors and the Resolution plan must cater for it. The Supreme Court has upheld the judgement of *NCLAT* in "*Central Bank of India Vs Sirpur Paper Mills Ltd"* (Central Bank of India Vs. Resolution Professional of the Sirpur Paper Mills Ltd. & Ors., 2018)

in which the similarly situated financial creditors were treated at par on fair & equitable principles. The same has been upheld by the Supreme Court (Rajputana Properties Pvt. Ltd. v. Ultra tech Cement Ltd. & Ors., 2018). Throughout the Corporate Insolvency Resolution Process (CIRP), numerous disputes emerge concerning the allocation of proceeds, raising apprehensions about unfair distributions among creditors. To address these concerns, a transparent and impartial formula could be developed for distributing proceeds during the CIRP, ensuring fairness and equity for all creditors involved.Further, the distribution of assets in terms of liquidation value comes at the stage of liquidation according to water fall mechanism envisioned in *Section 53A*of IB code.Any surplus beyond this liquidation value will be distributed proportionally among all creditors based on the ratio of their unsettled claims. Subsequently, any remaining funds or additional surplus will be allocated to the shareholders and partners of the corporate debtor, depending on the circumstances.

Integrity & biasness issues of IPs while performing functions under the IBC:

In the present system, for removal of IP either a complaint can be filed with the IBBI, who get it investigated through disciplinary committee, alternatively application filed in NCLT and in both the cases it takes, months together defeating the very purpose of the IB Code regarding timely resolution. Many applications are filed in the NCLT challenging the independence of the Insolvency Professionals'/biasness while discharging duties in CIRP/Liquidations as mandated in the IB code like "State Bank of India vs. Metenere Limited"(State Bank of India vs. M/s Metenere Ltd., 2018). Though there are many landmark judgements of the Hon'ble Supreme Court that in order to establish biasness, "the requirement is availability of positive and cogent evidence" and that there must be "existing a real danger of bias" to hold an administrative action unsustainable (Kumoan Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant & Ors., 2001), however unambiguous, clear provisions would be detrimental to speedy resolution of insolvency cases.

Furthermore, there was no clarity that if an entity gets resolution plans when it is under liquidation should it be allowed or permitted after the resolution failed during stage of CIRP. This has been settled now along with many other issues inter-alia related to priority of distribution regarding taxation and other related issues has been dealt in a

case of "*Leo Edibles & Fats Limited vs. Tax Recovery Officer (Central)"*Leo Edibles & Fats Limited vs. Tax Recovery Officer (Central). (2018). *After various judgments of Supreme Court and in a sense removing obstacles in the way of compromise at the stage of liquidation, the regulations were amended by incorporating reg. so that the compromise, if feasible can be entered at any time during liquidation as in the case of CIRP.*

- In conducting CIRP/Liquidation, many statutory, administrative and legal duties are to be undertaken by IP wherein at one hand he takes care of the administration of CD as a going concern, exercises the powers of top-notch board of directors, sell the assets during '*liquidation'* and on the other hand ensures compliances of all applicable statutory laws on behalf of CD. In doing so the IP faces multiple implementation challenges. Many glaring issues have been resolved by the judiciary however many still left. In the absence or clarity of the provisions, the different interpretations, poses serious challenge to Insolvency Professional. "*Code being an empirical economic law largely depend on trial & error method which is reinforced through jurisprudential clarifications."* Plugging loop holes by Adjudicating Authorities as and when it comes up, would continue to strengthen the foundations of India's insolvency framework, would enhance the confidence of IPs and all other participants for better implementation of the code. The Regulator in the form of Insolvency and Bankruptcy Board of India and the government is open in incorporating suggestions in the form of quick amendments, to ensure that the Code is implemented in its right spirit.

About third Research Question that whether judicial pronouncements provided arms to IPs & instrumental in resolving grey areas in the code?

From the foregoing, it is clearly discernible that problems faced by IPs during CIRP & Liquidation and many other ambiguous contentious issues related with IB Code, have been resolved up to certain extent by judicial pronouncements, in turn resolved few grey areas in the code. However, many time consuming, conflicting judicial pronouncements and lack of adequate commensurate provisions in the code, have created confusion and affected the spirit of the code about timely resolution.

CHAPTER- V

EXAMINING THE ROLE OF INSOLVENCY PROFESSIONALS: A COMPARATIVE STUDY BETWEEN INDIA, USA, AND UK

5.1 INTRODUCTION

Due to the diversity of legal systems and economic frameworks, insolvency rules differ greatly among nations. By balancing the interests of creditors and debtors, these laws often seek to establish a framework for handling financially distressed organizations. Restructuring, liquidation, and debt recovery procedures are frequently important elements. Prioritizing business rescue is one thing in certain regimes, but creditor protection is another. Organizations on a worldwide scale that strive to standardize bankruptcy rules include the *United Nations Commission on International Trade Law* (UNCITRAL, 1966). In order to support economic stability across all economies in the world, recent movements have centered on advancing efficiency, transparency, and the turnaround of fiscally flawed companies.

The Indian historical *Insolvency and Bankruptcy Code, 2016*, which was envisioned as the country's response to the US Bankruptcy Act of 1978 (Kowalewski, 1981), has had a tortuous and protracted legal journey. It goes without saying that its main purpose was to give the owners of failing enterprises a simple way out when things got hard at work for a variety of reasons. Assisting banks in recovering (with haircuts, of course) their exposure to failing enterprises was one of IBC's other key responsibilities. As of December 31, 2021, banks had 9.6% of their loans classified as non-performing assets and 2% as stressed assets on their books. It was expected that the IBC would improve the banks' financial standing. As per the ministry of finance, "*Report on scheduled commercial banks, published on 27 Dec 23"*, *the NPAs has been reduced from Rs. 9,33,779 crores in March 2019 to Rs. 5,71,515 crores in March 2023*(Ministry of Finance, 2023). But as time went on, the IBC's shortcomings became obvious. Promoters extended their hold and delayed the legal procedure by taking advantage of holes in the Code. It goes without saying that ***insolvency professionals in India*** are essential to the entire resolution process carried out under the Insolvency & Bankruptcy

Code. In addition to taking part in the CIPR/liquidation process, they also carry out responsibilities as administrators, supervisors, or nominees in bankruptcy proceedings under the Insolvency & Bankruptcy Code 2016; however, they encounter many obstacles in carrying out their duties mandated in the code.

Similar to this, the insolvency rules of the ***United States and the United Kingdom*** guarantee that the interests of creditors and debtors will be balanced while promoting a vibrant economic climate. For people and companies in financial difficulties, the ***USA's Bankruptcy Code*** offers a thorough structure with multiple chapters to handle a range of circumstances. Similar procedures, such as administration and liquidation procedures, are integrated into the ***UK's Insolvency Act,1986(***Gov.UK. (n.d.)) with the goal of resolving distress and maximizing returns to creditors. The work of an insolvency professional is essential to the efficient operation of insolvency legislation in the *United States* and the *United Kingdom*. Experts in insolvency, sometimes referred to as "***Bankruptcy Trustees***," are crucial to the administration of bankruptcy in the United States. On the other hand, "***Licensed Insolvency Practitioners***" *(IPs)* in the *UK* oversee the insolvency process, aiming to achieve the best outcome while balancing the interests of all parties involved. Controlling insolvency procedures, looking into the company's problems, and, when feasible, suggesting restructuring solutions are the responsibilities of insolvency professionals. All things considered, insolvency experts in both nations act as absolute prerequisite '*mediators'* to guarantee the impartiality and competence of bankruptcy procedures.

The *objective* of *the chapter is to examine the role of insolvency professionals in insolvency laws of developed countries like the UK and the USA, so as to reveal valuable insights that could be suggested for implementation into the insolvency processes under the IBC in India.*

5.2. GLOBAL PERSPECTIVES ON IBC AND THE INVOLVEMENT OF INSOLVENCY PROFESSIONALS.

Based on a *World Bank analysis* of research on insolvency resolution worldwide, including the laws and procedures pertaining to it, it has been determined that insolvency reforms that promoted debt restructuring and reorganization decreased the number of small and medium-sized business failures as well as the liquidation of profitable companies. The aforementioned study, which used '***Italy****'* as an example, also made it quite evident that the changes that expedited the liquidation process not only reduced the cost of financing for businesses but also loosened credit restrictions. Research from the ibid has also demonstrated that bankruptcy reform can help an economy emerge from a recession more quickly.

The corporate resolution and restructuring processes originated in the ***United States under Chapter 11*** *of the Bankruptcy Code* (Kowalewsky, 1981).Understandably, it is regarded as being very business-friendly, particularly in light of its '*Automatic Stay*' provisions and clarity on the role of *insolvency specialists* in different types of insolvencies. In actuality, it's thought that US bankruptcy regulations assist businesses in staying open as long as possible throughout the process. However, most people agree that the bankruptcy regulations in the ***United Kingdom*** are creditor-friendly. The efficiency of insolvency laws in any nation is largely dependent on the bankruptcy procedures that incorporate the needs of all parties involved. The usage of bankruptcy processes can differ even in economies with equivalent bankruptcy rules due to variations in the effectiveness of debt enforcement. Creditors and debtors are likely to engage in informal negotiations outside of court, if the insolvency professionals, regulator, and courts cannot be used effectively in a case of default by the corporate entity. This often increases uncertainty in the resolution process and would be expectedly biased in favor of the relatively "*stronger party*," discouraging new ventures and startups. In ***'Brazil'***, variations in the judicial enforcement of the same bankruptcy law have influenced the impact of financial reforms on firm access to finance and investment.

In ***India***, the implementation of the Insolvency and Bankruptcy Code (IBC) faces several challenges at the grassroots level, *like Non-Cooperation by the management, maintaining ongoing status of the units, valuation of Corporate Debtor's assets, widespread lack of understanding by participants e.g. banks and other stakeholders, risk of security to life and family of IPs, shortage of finance/under financing, non-*

*Compliance with the statutory provisions by CD before the insolvency proceedings, fraudulent or malicious initiation of proceedings, lack of market for stressed assets, timeline under the code and many others***.** Despite this, Insolvency Professionals, under the vigilant supervision of the regulator IBBI (Insolvency and Bankruptcy Board of India) and other stakeholders, are collaboratively addressing and rectifying the enforcement gaps.

5.3. CRITICAL NEED FOR DOMAIN EXPERTISE IN INSOLVENCY AND BANKRUPTCY PROCESSES.

Due to the specialized nature of insolvency and bankruptcy processes, it is essential for Insolvency Professionals and other stakeholders to possess specific domain expertise. Therefore, professionals in this field should undergo specialization. The examination and registration system must adapt to accommodate such specialization, ensuring that individuals selected possess the most suitable skills for handling processes under the Code. In ***'India'***, aspiring Insolvency Professionals are required to successfully complete the IBBI's *'Limited Insolvency Examination'* to register. This examination evaluates a professional's understanding of the challenges faced by distressed companies, with a particular emphasis on a comprehensive understanding of the Insolvency and Bankruptcy Code (IBC). Currently, individuals with a decade of professional experience or graduates boasting 15 years of managerial experience must successfully complete an exam. Following the exam, they are required to join as professional members with an '*Insolvency Professional Agency' (IPA)* within a year, undertake a pre-registration educational course facilitated by the IPA, and subsequently submit an application to the IBBI for registration as an Insolvency Professional. On the other hand, those lacking the specified professional or managerial experience must fulfil the requirements of the Graduate Insolvency Program offered by the IBBI, pass the Limited Insolvency Examination, become professional members with an IPA within a year of exam success, complete a pre-registration educational course through the IPA, and then apply to the IBBI for registration as an IP.

Notably, this unified registration process as an IP eliminates the need for distinct examinations or licenses/certificates to handle various types of insolvencies, a departure

from certain countries like the ***UK****, where separate licenses are mandated for personal and corporate insolvencies, each with its own evaluation criteria*. To become an IP in the *United Kingdom*, one must pass the '*Joint Insolvency Examination Board (JIEB)* exams', which consist of three exam papers. Similarly, in the ***United States*** **(**Pioneer Bankruptcy. (n.d.)), also to becomes an insolvency professional typically involves meeting certain educational and professional requirements, as well as obtaining relevant certifications or licenses.

The examinations in ***UK*** take place once a year and run for about three and a half hours each whereas exams in ***India*** are based on objective questions that prioritize the evaluation of theoretical knowledge alone; in contrast, exams in ***UK*** *and* ***USA*** are open-book and involve case analysis. The examination of candidates' situational awareness in real-world scenarios is negatively impacted by India's case studies' given low weightage.

5.3.1. ROLE OFINSOLVENCY PROFESSIONALS IN UK INSOLVENCY LAWS.

In UK, Insolvency is a regulated profession under the Insolvency Act 1986. Regarding formal insolvency procedures for individuals and other businesses, only a licensed insolvency practitioner may be appointed. Professionals in insolvency are authorized to provide advice and schedule appointments for all official insolvency procedures. The recognized professional body, similar as the Insolvency & Bankruptcy Board in India, supervises and inspects insolvency practitioners. A license to become an insolvency professional can only be granted upon passing the exams and meeting the licensing body's standards for insolvency experience. The Association of Chartered Certified Accountants, Insolvency Practitioners Association, Institute of Chartered Accountants in England & Wales, Institute of Chartered Accountants in Ireland, Institute of Chartered Accountants of Scotland, Law Society of Scotland, and Solicitors Regulation Authority are just a few of the reputable professional organizations that issue licenses. ***We can say that the process used in India is similar to that used in the UK with regard to insolvency practitioners passing exams and being supervised by regulatory bodies.***

In the United Kingdom, amendments to the insolvency act were introduced during the Covid-19 period, with significant changes taking effect on 26 June 2020 through the

Corporate Insolvency and Governance Act, 2020*(**Legislation.gov.uk., 2023). This legislation introduced a novel aspect, the role of a ***'Monitor,' similar to an Insolvency Resolution Professional/Restructuring Professional, responsible for overseeing corporate *moratoriums*. The newly established moratorium, outlined in the amended Part A1 of 1986, operates as a *'Debtor in possession process*,' managed by a licensed insolvency practitioner acting as a monitor. Notably, while directors retain control over business operations, the Monitor, mandated by the new Act, must be a licensed insolvency practitioner. The Insolvency Service provides guidelines outlining their role and responsibilities (The Insolvency Service et al., 2020). As per its statutory mandate, the Monitor's principal duty was to terminate the moratorium in the event that the company's rescue appears improbable or if the company in bankruptcy is not fulfilling its obligation to pay mandatory dues during the process. It is important to note that the monitor serves as a *court officer* and is responsible for acting honorably and honestly. The government has assigned Monitor the duty of ensuring that only businesses with a reasonable possibility of success are granted access to the moratorium and that the company is not merely abusing the process to postpone entering a formal insolvency proceeding. The monitor is responsible for protecting the integrity of the moratorium procedure and making sure the interests of the creditors are protected. The director doing business has the right to provide the Monitor with all information. The Monitor may file a notice in court to end the moratorium if the director refuses to provide the requested information. Effective May 1, 2020, the monitor must also abide by the Code of Ethics and ethical regulatory norms. According to clause A40, two or more people may also function jointly as Monitors. Section A11 provides provisions for extensions up to 40 working days without the consent of creditors and up to several extensions beyond 40 days with the consent of creditors, provided that the total extension does not exceed *one year from commencement.*

5.3.2. ROLE OFINSOLVENCY PROFESSIONALS IN USA INSOLVENCY LAWS.

The ***'trustee'*** handles the duties of insolvency professionals under the USA insolvency regime unlike in India, however, the appointment of a trustee is not required in every case involving the insolvency process. In general, a person can serve as a trustee if they are both capable of receiving the property and of acquiring or holding title to it for their

own benefit. Furthermore, the trustee must be able to manage the trust, which means that children and people with mental disabilities cannot serve as trustees. The US Insolvency Code's '***Chapter 3****'* lists the ***eligibility and qualifications of trustees*** in Sections 321 and 322, respectively. However, *neither* ***India nor the UK*** *list* any particular "qualifying exams" as prerequisites for holding the position of trustee. According to section 307 of the US Code, the U.S. trustee is a government person appointed for a specific term who is tasked with overseeing the administration of '*chapter 11'* proceedings and keeping tabs on their progress. The oversight of the '***debtor-in-possessions'*** business operations and the filing of operating reports and fees falls under the purview of the U.S. trustee. The Administrator offices in the six court districts of ***Alabama and North Carolina*** are another agency that handles bankruptcy matters. They manage the administration of bankruptcy proceedings, keep an oversight panel of private trustees, and keep an eye on the acts and dealings of bankruptcy parties. In order to educate different stakeholders, bankruptcy administrators additionally authorize and keep up a list of credit counseling services and debtor education providers that are permitted to operate in their districts.

The appointment of a trustee may be ordered by the court at any point following the start of the action but before to the confirmation of a plan, upon request from a party in interest or the United States trustee, following notice and a hearing, mainly in situations where the debtor's affairs are being grossly mismanaged by the current management due to fraud, dishonesty, incompetence, or other issues. This could be used either before or after the case starts. Section *323* of the US Code outlines the role and authority of the trustee, stating that they will act as the estate's representative and have the legal right to file and receive lawsuits.

5.4. KEY ASPECTS OF INSOLVENCY LEGISLATION IN THE UNITED STATES AND THE RESPONSIBILITIES/ ROLE OF TRUSTEES.

The United States Code's implementation procedures are governed by 'nine parts' in the Bankruptcy Rules & Forms and '*fifteen chapters'* in the codified insolvency law (Office of the Law Revision Counsel. (n.d.)). The court and the parties will interpret, implement, and use these guidelines to ensure that every case and procedure is decided in a fair, timely, and economical manner. In the US, the most common types of bankruptcy are:

- *Trustee-administered liquidation (Chapter 7);*
- *Municipality bankruptcy (Chapter 9);*
- *Debtor-in-possession (DIP) managed reorganization or liquidation (Chapter 11);*
- *Family farmer and fisherman bankruptcies (Chapter 12);*
- *Individual bankruptcies (Chapter 13); and*
- *Cross-border cases (Chapter 15).*

Title 11 (Chapter 11) of the United States Code (the Bankruptcy Code) now outlines the pre-eminent US bankruptcy framework. Businesses file the great majority of Chapter 11 cases. The debtor develops a plan of reorganization to pay off all or a portion of its debts, frequently with the assistance of creditors. The filing of a petition with the bankruptcy court that handles the debtor's primary place of business or domicile starts the chapter 11 case. A voluntary petition is one that is submitted by the debtor; an involuntary petition is one that is submitted by creditors who satisfy specific criteria. Reorganizing a business which could be a corporation, sole proprietorship, or partnership usually involves using Chapter 11(United States Court. (n.d.)). A proposed plan of reorganization is put to a vote by concerned creditors, and if it receives the necessary votes and complies with legal requirements, the plan may be confirmed by the court other than the value of their investment in the company's shares, investors' personal assets are not at danger in a corporation's chapter 11 bankruptcy case (the corporation is the debtor). On the other hand, a '**sole proprietorship'** (owner as debtor) lacks a distinctive identity from its owner or owners. As a result, in a bankruptcy proceeding involving a sole proprietorship, the owners-debtors' personal and commercial assets are included. A partnership is an entity that operates independently of its participants, just like a corporation. However, in a '***partnership bankruptcy'*** case (a partnership acting as a debtor), the partners themselves can be compelled to file for bankruptcy protection, or their personal assets might occasionally be utilized to settle debts owed to creditors.

According to *Section 1107* of the Bankruptcy Code, the debtor-in-possession is required to carry out all trustee responsibilities, with the exception of conducting investigations, and is placed in the role of a fiduciary, with all the rights and powers of a chapter 11 trustee. The '*Bankruptcy Code and Federal Rules of Bankruptcy Procedure'* outline

these responsibilities, which also include accounting for assets, reviewing and disputing claims, and submitting informational reports as requested by the court, the U.S. trustee, or the bankruptcy administrator. Many other rights and responsibilities of a trustee are also available to the debtor in possession, such as the ability to hire accountants, attorneys, appraisers, auctioneers, and other professionals to help the debtor with its bankruptcy case, provided that the court gives its approval. Filing tax returns and reports that are required by law or that the court orders after verification like a final accounting are among the other duties. The U.S. trustee bears the responsibility of overseeing the debtor-in-possession's adherence to the reporting obligations.

US bankruptcy law (Corporate Finance Institute. (n.d.)) allows for the appointment of a trustee under specific conditions, it offers a significant safeguard against the misuse of the debtor-in-possession regime. Under Section 1104(a) of the Bankruptcy Code, a trustee may be appointed to assume control of the debtor company's management, if the current management has engaged in fraud, dishonesty, incompetence, or gross mismanagement of the company's affairs, either prior to or following the start of the Chapter 11 case. In addition, a trustee will be chosen if it is required to protect the interests of the estate, any equity shareholders, and creditors of the debtor company. Under certain circumstances, the US Bankruptcy Code permits the ***"cram down"*** of disputing creditors.

Chapter 12 of the United States Code permits a family farmer or fisherman who meets the eligibility requirements to file for bankruptcy or reorganize their business. Regarding certain clauses, they can work with the creditor to settle all or some of the company's debts, following which they can carry on with business as usual. As per *Section 586(b) of the 28 US Code*, the United States Trustee appoints a "***standing trustee***" who typically acts as the trustee of the debtor's business until the debtor's settlement obligations to creditors are fulfilled in accordance with the plan approved by the U.S. Bankruptcy Court having jurisdiction over the case.

The Chapter 13 of US Code deals in **Wage-earner" reorganization proceedings** process, sometimes known as wage-earner bankruptcy, is a tactic used by certain customers to reorganize their financial situations. The repayment plan under this

bankruptcy is designed to be finished within a set amount of time, say three or five years. In order to qualify for Chapter 13 benefits, an individual must meet specific income requirements on a regular basis and not have debt that exceeds the restrictions specified by the Bankruptcy Code. As per Section 586(b) of the 28 US Code, the United States Trustee appoints a "***standing trustee***" who typically acts as the trustee of the debtor's business until the debtor's settlement obligations to creditors are fulfilled in accordance with the plan approved by the U.S. Bankruptcy Court with jurisdiction over the filed case.

The United States' bankruptcy law offers two different procedures for plenary corporate bankruptcies: *Chapter 7* trustee-controlled liquidations and *Chapter 11 DIP-controlled* reorganizations or structured liquidations. With the exception of those debts that the Bankruptcy Code forbids from being discharged, an eligible debtor may get a "*discharge*" from their obligations under Chapter 7. The United States trustee shall designate one impartial party who is a member of the panel of private trustees established under section 586(a)(1) of title 28 or who is serving as trustee in the case immediately prior to the order for relief under this chapter to serve as ***Interim Trustee*** in the case as soon as possible following the order for relief under this chapter. The United States trustee may act as an interim trustee in a case if none of the panel members are willing to do so. The services of an interim trustee end when a trustee chosen or appointed under section 702 of this title to act as trustee in the case meets the requirements of section 322 of this title.

5.4.1. THE DUTIES OF TRUSTEE IN LIQUIDATION PROCEEDINGS IN USA CODE.

According to Chapter 7, the trustee has a duty to, among other things, collect and reduce to money the estate's property while keeping the parties' best interests in mind, be accountable for all property received, look into the debtor's financial affairs, review claim proofs and reject erroneous ones, and provide any information about the estate and its administration that a party in interest requests and if the debtor's business is permitted to operate, submit to the court all periodic reports and summaries of that business's operations, including a statement of receipts and disbursements, as well as any other

information that the court or the United States trustee may require. Additionally, submit a final report and file a final account of the estate's administration to both the court and the United States trustee.

5.5. DISPARITIES IN CREDITOR RIGHTS AND INSOLVENCY PROFESSIONALS' FEES ACROSS DIFFERENT SERVICES UNDER INSOLVENCY LAWS.

When comparing the treatment of creditor's rights under the IB Code India to other developed bankruptcy economies such as the US and UK, there are several variances. A few variations are as follows: - How financial creditors are treated in relation to operational creditors. Under the *US Code*, voting rights are used to determine whether a creditor is a financial creditor or an operation creditor. Furthermore, when it comes to receiving payments, secured creditors are given preference over unsecured creditors. In the *UK*, the situation is comparable. In India, however, the rules of the IB Code treat Financial Creditors and Operational Creditors as two entirely distinct classes. The Supreme Court made a clear distinction between operational and financial creditors with regard to their rights under the IB Code, as demonstrated in the case of *"Switzerland Ribbon."* This type of discrepancy between FC and OC is likely to result in a less-than-ideal resolution process by a financial creditors committee headed by the Committee of Creditors in the case of relatively high operational creditor coverage. In addition, IBC expressly specifies the order for repayment to FCs and OCs in terms of the *water fall mechanism under section 53A* of the IB Code in the event of liquidation proceeds. *There is no stated rule regarding the distribution order of priority in situations involving the corporate insolvency resolution process (CIRP). In order to provide clarification and prevent legal disputes resulting from varying interpretations, the IBC in India need modification.*

5.5.1. THE INTER-SE RIGHTS OF CREDITORS WITH DIFFERENTIAL SECURITY RANKING.

The US common law and insolvency laws recognize distinct security positions, and it goes without saying that higher-ranked debt is paid off before less-secured debt. The situation is the same in the UK. Nevertheless, notwithstanding the UNCITRAL guide's

recommendations and the bankruptcy Law Committee's report acknowledging the inter-se rights in a bankruptcy scenario, there is no such distinction in the case of India with the IB Code. Due to the IB Code's silence about inter-se rights in both instances under resolution and liquidation, courts have had to interpret it in various ways. *the latest ruling by the Supreme Court in the "**Jyoti Structures**" case. In this instance, the Hon'ble Supreme Court denied DBS Bank's request to be granted priority over subordinate debt while considering the bank's application for dispersal based on its initial asset charge against Ruchi Soya. Recognizing creditors' inter-se rights and amending the IB Code are necessary for a healthier and more successful credit culture India.*

5.5.2 TREATMENT OF HOME BUYER AS FINANCIAL CREDITORS.

There is no such distinct class of creditors in the US and UK as "*home buyers*" or any other type of creditors, unlike in India. Nevertheless, there were changes made to the IB Code in 2018, changing the definition of "financial debt" to include *"Allottees of houses"* under the purview of financial creditors and allowing at least 10% or 100% of home buyers to file for bankruptcy against the builder or developer (Insolvency and Bankruptcy Board of India (Second Amendment) Act. (2018).Furthermore, a necessary amendment has been incorporated into the IBC regulations so that the representative of home buyers can form part of the COC. This eliminates the operational difficulty of consensus building that arises from many home buyers as creditors the voting threshold for resolution in cases where CoC consists of a large proportion of home buyers and entailing difficulty during voting. *But the insolvency rules of the US and the UK don't contain any such clauses.*

5.5.3. TREATMENT OF OCS / FCS DUES TO RELATED PARTIES.

Payment of obligations to connected or related parties and other creditors is unaffected by US bankruptcy laws. The voting rights of the connected parties are the same as those of the unconnected creditors. Similar provisions exist in UK insolvency rules (UK Parliament. (n.d.)) granting related or connected parties the same voting rights as other creditors. In the case of a company voluntary administration (CVA), consent is required from at least half of the connected creditors. *Regarding the situation in India*, it is important to note that it is unclear whether a linked or related party creditor *should be*

granted or denied the ability to vote in the Court of Creditors (CoC) and how the resolution/liquidation profits should be distributed among related parties.

5.5.4. LACK OF CLARITY OVER TREATMENT OF CREDITOR'S DUES IN SURETY'S BOOKS ONCE GUARANTEE IS INVOKED.

According to the US IB code, in the event of an overdue debt default, creditors may file for bankruptcy on behalf of both the debtor and the surety. Surety's liability coexists and is not eliminated by the debtor's settlement or liquidation on its own. The creditors may potentially file for parallel insolvency proceedings against the surety and the debtor. If, following the settlement or liquidation, any sum not fully recovered is left, the creditor in the UK may take legal action against the Surety. Furthermore, until the guarantee is triggered, the surety cannot bring claims against the debtor. Nevertheless, in the *instance of India*, following modifications, bankruptcy procedures can now be brought in tandem against the corporate debtor and guarantor, following a ruling by the Supreme Court.

5.6. INTERNATIONAL PRACTICE REGARDING FEE PAYABLE TO IPs VIS-À-VIS INDIA.

From a global standpoint, distinct protocols and guidelines regarding the fees to be paid to Insolvency Professionals (IPs), also known by various names like Trustees, Administrators, and Liquidators, are observed. In *Canada*, the creditors typically vote on an ordinary resolution during their meeting to determine the trustee's (an insolvency professional) fee. Nevertheless, in cases where the trustee's remuneration is not set by the creditors, Canadian insolvency laws have established a maximum of 7.5 percent of the residual proceeds from the debtor's property realization following the payment of secured creditors' claims. It goes without saying that the court, upon application, has unrestricted authority to alter the Fee/Remunerations under section 39 of the Canadian Bankruptcy and Insolvency Act, 1985. Regarding the *USA*, the court has the discretion to grant payment to an insolvency professional (trustee) in situations where Chapter 11 or 7 insolvency or liquidation proceedings are ongoing. However, a cap has been placed on the compensation based on the amount that the insolvency professional distributes to different stakeholders on a rotating basis. Additionally, "quarterly fees" were stipulated in Section 6 of the U.S. Code. These fees accumulate over the course of the Chapter 11

bankruptcy case or until it concludes with the filing of a new chapter. Quarterly fees are computed based on the payments disbursed, which include regular operating costs related to the debtor.

In *the case of UK*, the "***Insolvency (England and Wales) Rules 2016"*** are the primary documents governing the Fee/Remuneration payable to Bankruptcy (Insolvency Professionals/Trustees)" (UK Parliament. (n.d.)). The Fee/Remuneration is determined by taking into account a number of factors, including the time required to handle the case at hand, a fixed amount in the event that the administrator is set free with its amount duly justified to creditors, and a percentage of the total value of the property the administrator must deal with or the assets that are realized or distributed. Upon a court application, all costs and fees/remuneration are open to challenge on grounds of excessiveness or injustice. The court also has the authority to alter the computation technique, lower the fee, and make adjustments to previously granted set-free amounts. Additionally, there are policies and processes in place that allow the Administrator, Liquidator, or Trustee to request a raise in compensation.

In India there were no statutory provisions *till September, 2022* with respect to amount/percentage of remuneration/ fee to be paid to IRP/RP in the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor (CD). Notwithstanding the expenses on account of the remuneration/ fee to IRP/RP had priority in payment as CIRP cost in the Corporate Insolvency Resolution Process. When it comes to *liquidation*, provisions are already in place under *section 53,* which grants the insolvency professional appointed as a liquidator the right to charge a fee based on the value of the liquidation assets. This fee must be paid out of the liquidation estate's proceeds using the water fall mechanism. There are several issues and arguments before the adjudicating authorities at the moment pertaining to non-payment of fees to *IRP/RP* for the duration of *CIRP*. In many cases like "*M/s Rachna Sarees Vs. Charming Apparels Pvt. Ltd.* (M/s Rachna Sarees Vs. Charming Apparels Pvt. Ltd., 2018)*,'M/s Jindal Saxena Financial Services Pvt. Ltd. Vs. M/s. Mayfair Capital Pvt. Ltd.; ICICI Bank Ltd. Vs. Gitanjali Gems Ltd.*(*ICICI Bank Ltd. Vs. Gitanjali Gems Ltd.,* 2018)*; M/s. AyamWeldmesh Pvt. Ltd. Vs. M/s. Nice Projects Ltd.; and M/s. EonnPlast Pvt. Ltd. Vs.*

M/s. HS Power Projects Pvt. Ltd.," In response to the IBBI's petition, the AA instructed the Committee of Creditors (CoC) to fulfill the obligations of faith and trust outlined in the Code. In addition, the IBBI established Expert Committees with three members two market experts and one IBBI officer to guarantee that the Adjudicating Authority's directives are followed in all matters that are brought to them.

It appeared necessary to examine whether it was necessary to specify fees for IRP/RP during CIRP, similar to that of liquidator in the Liquidation Regulations, as well as the cases where the CoC does not ratify/fix their fee and, if so, the parameters to fix such fees, given that the IBBI was plagued by recurring issues, including the failure to pay adequate fees to IP/RP or the raising of extraordinary bills by IPs/RPs. Modifications to the CIRP Regulations were adopted on *September 13, 2022,* taking inspiration from the above-mentioned foreign practices as well as popular practices among insolvency professionals. According to the aforementioned regulation 34B (price to be paid to interim resolution professional and resolution professional), which has been included to the CIRP Regulations' *Chapter IX (Insolvency Resolution Process Cost)* along with a matching Schedule II.

First, the amended regulations stipulate that any IRP or RP appointed on or after October 1, 2022, will receive a monthly minimum fee based on the amount of admitted claims, with the fee payable being directly proportionate to the claim amount. Secondly, the amended regulations give the CoC or Applicant the option to fix a higher fee based on the size, scale/sector, level, and complexity of operating economic activity of the corporate debtor's business operations. Thirdly, it offered a performance-linked reward that would be paid to a resolution specialist following the adjudicating authority's approval of the resolution plan. The following improvements would encourage prompt resolution in addition to being advantageous to all parties involved. It will separate the position of a resolution professional as an "individual appointee" of the corporate debtor from that of a professional/support service provider and standardize the charge paid to the RPs for the CIRP cost (Srivastava, 2022).

Traditionally, the goal of insolvency laws and role of Insolvency Professionals has been the immediate liquidation of bankrupt businesses in order to distribute any liquidation proceeds to creditors. Modern insolvency regimes, however, are centered on giving

reorganization options to economically sustainable businesses that have short-term financial difficulties in order to keep their operations running. Globally, insolvency frameworks have been adjusted to facilitate the quick liquidation of non-viable business entities while simultaneously reorganizing the operations of viable business entities. Looking around the world, a number of nations, including *'France'* and other developing or underdeveloped nations like '*Slovenia and Thailand*,' have also enacted insolvency reforms, bringing them closer to globally acknowledged best practices for court procedures and restructuring, making them a more popular and viable option for businesses experiencing financial distress. (The World Bank Group, 2014)

The bankruptcy frameworks created in various countries differ with regard to the international adoption of insolvency proceedings. As an illustration, the *UK and India adhere to the "creditor in control"* approach under the Code, whereas the US uses the *"debtor in possession"* model. As a result, '*insolvency practitioners'* in those countries and in India have different duties, responsibilities, and compensation. The USA's insolvency laws are regarded as being incredibly business-friendly, which makes sense given its automatic stay provisions and clarity regarding the role that insolvency experts play in different types of insolvencies. In fact, it's stated that US bankruptcy regulations assist businesses in continuing as much as possible throughout the process. *The trustee's ability to look into the affairs of different types of insolvencies gives him the capability to complete restructuring and liquidation as quickly as possible. However, the bankruptcy laws of the United Kingdom are largely seen as being in the best interests of creditors. In UK, after passing the exams focused on practical experience, unlike India wherein more focus is on theoretical concepts, an insolvency professional license is granted. Under the "Corporate Insolvency and Governance Act, 2020," insolvency professionals similar to IRP/RP in India have been given the new responsibility of "Monitor,"* which is to supervise the corporate moratorium and to ensure that only businesses with a reasonable possibility of success are granted access to the moratorium and that the company is not only utilizing the process to postpone starting a formal insolvency case.

Navigating the complex terrain of bankruptcy and insolvency processes presents a number of obstacles for insolvency experts in the *United States and the United Kingdom as in the cases of India*. The complex inter web of federal and state regulations in the USA adds another level of complexity, frequently necessitating that experts traverse

numerous jurisdictions and conform to a variety of regulatory systems. Insolvency Professionals faces constant challenge because of the dynamic nature of insolvency laws and court interpretations all over the world. The procedure is made more difficult by the onerous administrative requirements and the obligation to weigh the interests of multiple parties, including shareholders, creditors, and debtors.

In a similar vein, insolvency practitioners in the *UK* face difficulties brought on by the ever-changing legal landscape (GOV.UK., 2023). A high degree of flexibility is required because to the frequent changes made to insolvency rules and regulations, which creates a situation where knowing the most recent advancements is essential. Furthermore, a careful balancing act is required due to the demand to maximize returns for creditors while guaranteeing equitable treatment for debtors.

The COVID-19 pandemic has presented both jurisdictions with hitherto unseen difficulties, including a surge in instances involving insolvency and the requirement for creative measures to deal with the financial impact all over the world. Overall, the complicated and demanding nature of the Insolvency profession is shown by the diverse nature of bankruptcy processes in the UK (Legislation.gov.uk., 2023) and the USA, which surely need the specialists in the form of Insolvency Professional to skilfully negotiate both legal and economic complications.In India, while discharging its duties under IB Code, the *Insolvency Professionals* faces multiple implementation challenges. Needless to say, incorporating the best practices from USA and UK insolvency Law, regarding the authority, functions, duties, compensation and obligations of Insolvency Professionals, into the Indian insolvency framework throughout the insolvency process and liquidations, will significantly contribute to the better implementation of the Indian Insolvency & Bankruptcy code. The dynamic features of the IBC, with prompt adjustments as necessary, hold the potential to position the Indian insolvency law as a benchmark for other nations.

CHAPTER-VI

ANALYSIS OF EMPIRICAL DATA REGARDING PROBLEMS FACED BY INSOLVENCY PROFESSIONALS

6.1 QUANTITATIVE DATA ANALYSIS AND ITS INTERPRETATION

This chapter brings out the results of the empirical study conducted for this research. The results of the present study are represented with the help of tables and figures, which is developed on the basis of collected data through questionnaire with various options, prepared to collect the primary data from the respondents so as to solicit response in the scale of agreement or disagreement on the number of statements and questions. The responses are primarily in the form of Strongly Agree, Agree, Don't Know, Disagree, Strongly Disagree, Yes, No and Don't know.

Further, the questionnaire was primarily prepared to collect data related to the Insolvency Professionals and problems faced by them, while undertaking Corporate Insolvency Resolution Process (CIRP) and Liquidation under the Insolvency & Bankruptcy Code (IBC). And also, few questions were to know, the general awareness of other stakeholders associated in the insolvency process in relation to the provisions of the code, knowledge about the effectiveness of moratorium and to analyze the efficacy of existing provisions of Insolvency legislation in India.

To identify the gap in the IB Code, Google form questionnaire were forwarded through digital media to the Insolvency Professionals based in Chandigarh however practicing all over India and few have responded. The Interview was also conducted in the form of sending questions to IPs working at places other than Chandigarh. The collection of data is a herculean task as the Insolvency Professional is governed by the confidentiality obligations in terms of insolvency professionals' code of conduct and fiduciary duties.

A. SAMPLE SIZE ESTIMATION

There are around 200 professionals in Chandigarh related to insolvency issues. They practice all over India. Since the laws of insolvency are equally known to professionals from all backgrounds, the population was considered homogeneous and a simple random sample was drawn with the following standards:

The estimated proportion agreeing and disagreeing to a statement was taken to be ½ as this gives the maximum possible sample size.

Thus, p = q = 0.5 (where p is the proportion agreeing and q is the proportion not agreeing.

The confidence level was taken as 90%, for which t =1.64

The relative error was taken as 0.1 (10%)

Following the formula for estimating proportions given in Cochran, the initial sample size was determined to be:

$No=t^2pq/r^2$

= (1.64 x 1.64 x 0.5 x 0.5)/ (0.1 x 0.1) = 67.24 or 68.

The sampling intensity = 68/200 = 34%, thus the population cannot be considered infinite (for which sampling intensity < 5%). Applying finite population correction the final sample size was determined as

n = no/(1+no/N) = 68/ (1 + 68/200) = 45.33 or say 46.

Allowing for a possible non-response of 10%, the final sample size was taken as 55, out of which 2 did not respond. Thus the final sample comprised of 53 primary sampling units (individuals) which was sufficient to estimate the proportions.

B. COLLECTION OF EMPIRICAL DATA

The respondents were recognized through IBBI site and the Chapter of the Institute of Company Secretaries of India at Chandigarh. For empirical research, data regarding the challenges and issues encountered by Insolvency Professionals (IPs) is collected through surveys utilizing questionnaires from IPs primarily practicing under the jurisdiction of NCLT Chandigarh; however appears in other court proceedings in India, in the matters related in insolvency. NCLT Chandigarh is specifically chosen so as to target five states NCLT jurisdiction coverage and for quick collection of data. The challenges faced by IPs in this region can serve as a microcosm reflecting the broader issues encountered by IPs across India. Given that the Insolvency and Bankruptcy Code operates uniformly across jurisdictions and more so, NCLT Chandigarh is the sole NCLT overseeing significant regions of five states including Haryana, Punjab, Himachal Pradesh, Jammu & Kashmir, and Chandigarh out of a total of 15 NCLTs in India. Additionally,

multinational corporations (MNCs) are filing cases in Chandigarh NCLT, often engage Insolvency Professionals from firms with a Pan-India presence, further amplifying the relevance of data collected in this region to the broader Indian context. The researcher has also obtained answers to interview questions, sent to the IPs, practicing in different jurisdiction other than NCLT Chandigarh, to elicit the ground realities about the problems encountered by them in CIRP/ Liquidations. In order to extract genuine data about the prevailing issues, researchers actively attended NCLT and High Court hearings. The Researcher exploited online mode to collect the data.

To give impetus to data collection and to understand the problem in deep, attended many Webinar/Seminars organized by professional bodies, primarily related to Insolvency matters, so as to interact with many Insolvency Professionals, took their perspective on various hands-on contentious issues faced by the IPs during CIRP and Liquidations proceedings. I also witnessed various insolvency proceedings in National Company Law Tribunal (NCLT) and High Court, Chandigarh.

The social media was used effectively to nudge, identify the respondents, communicate, and collect the data. The Google form questionnaires were sent to the respondents through Digital media and the responses were received through their emails, collected and further processed for generating the conclusions. Exploited the digital media including connecting Insolvency Professionals on LinkedIn, and meeting in various online webinars, Seminars to motivate the respondents to fill up the details. The respondents were explained the nature and importance of the study, the purpose of the survey, the importance of their response and above all assurance of strict confidentiality of the responses and the name of the respondents and the company. A copy of the questionnaire is annexed as Appendix.

C. LIMITATIONS OF THE EMPIRICAL STUDY

All efforts are made to collect the data from the respondents, but certain limitations can be noticed as:

- Though Researcher actively participated to gather authentic data on various problems faced by the IPs. However, some respondents refrained from participating due

to various concerns including misuse of data, reservations about the research and potential apprehension of matter going to statutory authorities. As this study is about the Role of Insolvency Professionals and problems faced by IPs during CIRP and Liquidations, being a policy matters, not all IPs were willing and forth coming to point out lacunae with the existing procedures, Laws/ Rules/ Regulations/Circulars issued by the IB Code.

- The casual approach by answering respondents while replying to questionnaires can't be ruled out, which might lead to variations in the data collected and inferences drawn.
- Personal and Industrial biases may lead to incorrect data and affect actual outcome of the empirical result up to certain extent.
- The researcher conducted interviews of IPs practicing in other NCLT than Chandigarh, and approached to Insolvency Professionals for the same. Tried for Live interviews also, however none agreed, due reason best known to them. Therefore, interview questions were sent to few Insolvency professionals than Chandigarh, to elicit the answer about problems faced by them in CIRP/Liquidations under IB Code. I could get answer to interview questions only from three Insolvency Professional outside jurisdiction of NCLT Chandigarh which may have some affect on the conclusions drawn.

C. DATA ANALYSIS

The primary data collected through Questionnaire and interview is analyzed and interpreted to draw meaningful solutions to the study's research problem. The results of the empirical data drawn through the random sample of total 53 responses received from Insolvency Professionals. The collected data was converted to percentages to draw valid meaningful conclusions. The data was also segregated on the basis of experience of insolvency professionals in terms of number of Corporate Insolvency Resolution Process and Liquidation cases handled by the respective IPs. The empirical data gathered from Insolvency professionals is also analyzed for testing the Hypothesis. In the null hypothesis the differences in proportions/percentages was attributed to chance which was tested using the chi-square test. The results of questionnaire and interview are as follows:-

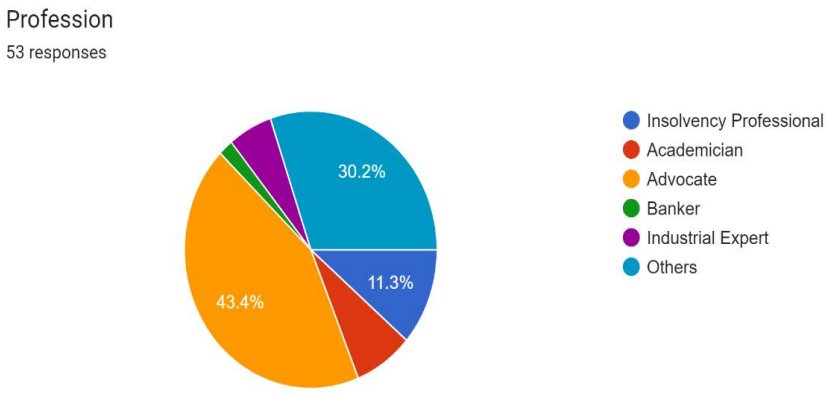

Figure- 6.1.1. Represents the data about Insolvency Professionals who are also associated with Advocacy, Academic, Banking, Industry Consultancy Matters.

6.1.2. The interpretation of the data in term of the responses: ***How many cases of CIRP/Liquidation have been handled by the target audience as insolvency professional*?** This question was framed to gauge the experience level of the Insolvency Professionals and other stakeholders**.** The pie chart in table below 6.1.3. shows the following result: -

1. **One to Three (23%)**: Approximately 23% of respondents indicated that they have handled between one to three cases of Corporate Insolvency Resolution Process (CIRP) or liquidation.

2. **Four to Seven (8%)**: About 8% of respondents reported handling between four to seven cases of CIRP or liquidation.

3. **Eight or More (2%)**: Only 2% of respondents stated that they have handled eight or more cases of CIRP or liquidation.

4. **Not Applicable (28.8%)**: Around 28.8% of respondents indicated that the question is not applicable to them. This could mean they are not insolvency professionals however; they were associated in other capacities in CIRP/Liquidation.

5. **Nil (40%)**: The majority, approximately 40% of respondents, reported handling no cases of CIRP or liquidation.

Overall, the data suggests that while a smaller percentage have handled a few cases, and even fewer have dealt with a higher number of casesof CIRP/ liquidation. A significant portion of respondents have not handled any cases of CIRP or liquidation, as the personal experience of attending court hearings since last 20 years, the banks generally take the services of the incumbent associated with bank since long,on the other hand, the industry expert, Academician, Bankers and other stakeholders, can opine only on the general issues about the Insolvency matters due to the knowledge they acquire in the process.

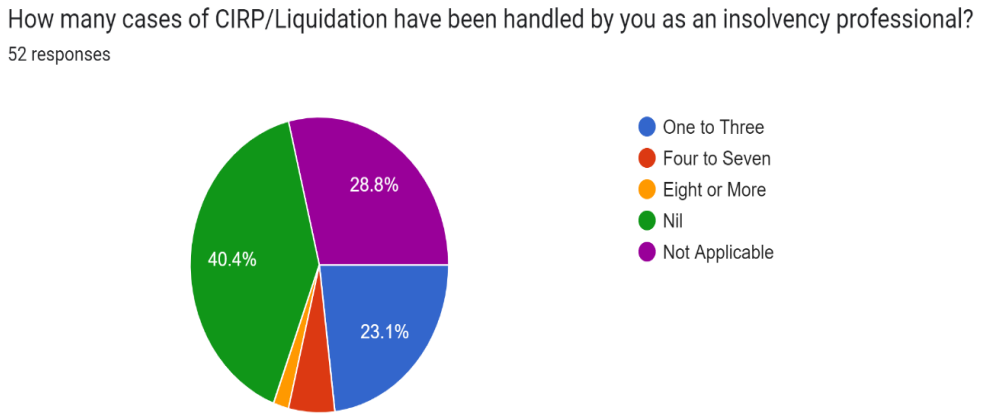

Figure- 6.1.3. Represents how many cases of CIRP/Liquidation have been handled by an insolvency professional?

6.1.4. Interpreting the response data in terms of the statement regarding the ***Insolvency and Bankruptcy Code (IBC) 2016 as the most important economic reform legislation of the decade, aimed at encouraging entrepreneurship, ensuring accessibility of credit, timely freedom of exit from business, and maximizing the value of assets?*** The pie chart in table below 6.1.5. shows the following result: -

Strongly Agree (45.3%): Nearly half (45.3%) of respondents strongly agree that the IBC 2016 is indeed the most important economic reform legislation of the decade. This group likely perceives the IBC as instrumental in achieving its stated objectives and recognizes its significant impact on entrepreneurship, credit accessibility, timely exit mechanisms, and asset value maximization.

1. **Agree (47.2%):** A slightly larger portion (47.2%) of respondents agree with the statement, though not as emphatically as those who strongly agree. This group acknowledges the importance of the IBC in economic reform and agrees that it plays a pivotal role in encouraging entrepreneurship, facilitating credit accessibility, ensuring timely exits, and maximizing asset values.

2. **Strongly Disagree (nil):** There were no respondents who strongly disagree with the statement, indicating a lack of individuals who outright reject the notion that the IBC is the most important economic reform legislation of the decade.

3. **Disagree (4%):** A small percentage (4%) of respondents disagree with the statement, suggesting that they do not believe the IBC holds the primary significance among economic reform legislations of the decade. They may have reservations about its effectiveness or prioritize other legislative initiatives.

4. **Don't Know (4%):** Similarly, a small portion (4%) of respondents expressed uncertainty regarding the statement. They may lack sufficient knowledge or have not formed a strong opinion about the significance of the IBC in comparison to other economic reform measures.

Overall, the majority of respondents either strongly agree or agree that the IBC 2016 is the most important economic reform legislation of the decade, highlighting its perceived importance in fostering entrepreneurship, improving credit accessibility, facilitating timely exits from business, and maximizing asset values.

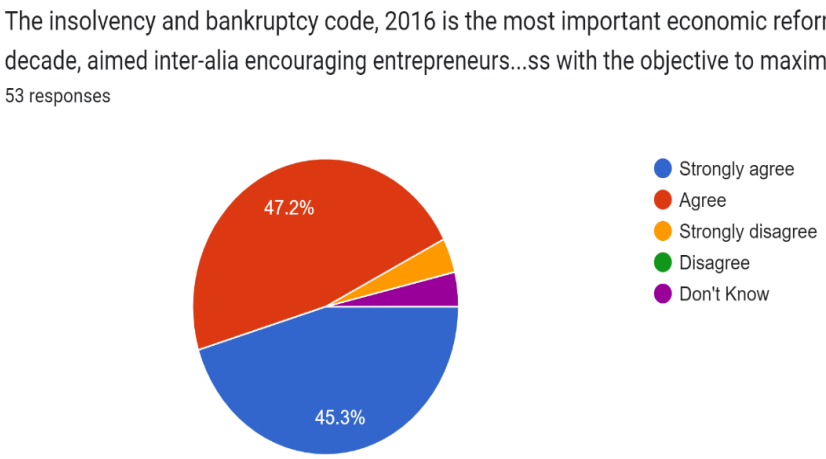

Figure- 6.1.5. Represents the of knowledge of stakeholders about IB Code

6.1.6. Interpreting the data in terms of the statement *regarding* ***Many issues/drawbacks of erstwhile Insolvency regime have been taken care of by this game changing legislation in the form of IB Code. Nevertheless, the code has many implementation challenges and practical difficulties encountered by Insolvency Professionals (IPs) at ground level.*** The pie chart in table below 6.1.7. Shows the following result: -

Strongly Agree (37.7%): A significant proportion (37.7%) of respondents strongly agree that the IBC has indeed addressed many issues and drawbacks of the previous insolvency regime. However, they also acknowledge the existence of significant implementation challenges and practical difficulties faced by IPs in executing the provisions of the code. This group likely believes that while the IBC is transformative, its successful implementation requires overcoming various hurdles.

1. **Agree (54.7%)**: The majority (54.7%) of respondents agree with the statement, though not as emphatically as those who strongly agree. They recognize the positive impact of the IBC in addressing shortcomings of the erstwhile insolvency regime, but they also acknowledge the presence of implementation challenges and practical difficulties faced by IPs. This group likely believes that while the IBC is a significant improvement, there are still areas that need to be addressed for smoother implementation.

2. **Strongly Disagree (2%)**: A very small percentage (2%) of respondents strongly disagree with the statement, indicating that they do not believe the IBC has effectively addressed issues or drawbacks of the previous insolvency regime. However, this group also acknowledges that implementation challenges and practical difficulties exist for IPs.

3. **Disagree (nil)**: There were no respondents who simply disagreed with the statement, suggesting a consensus that the IBC has indeed addressed some issues of the previous insolvency regime.

4. **Don't Know (6%)**: A small portion (6%) of respondents expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the effectiveness of the IBC or the challenges faced by IPs.

Overall, the data indicates general agreement that the IBC has addressed many issues and drawbacks of the previous insolvency regime, while also acknowledging the presence of implementation challenges and practical difficulties faced by IPs. This suggests a nuanced understanding of the strengths and limitations of the IBC among respondents.

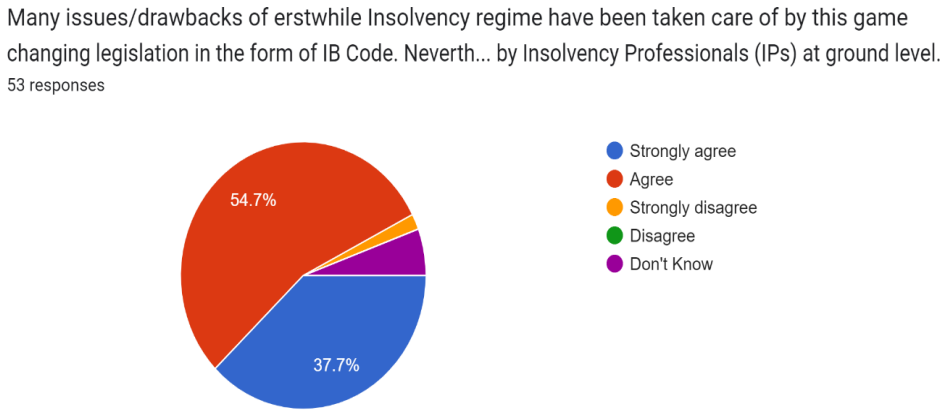

Figure- 6.1.7. Represents *implementation challenges and practical difficulties encountered by Insolvency Professionals (IPs) at ground level.*

6.1.8. Interpreting the data in terms of the statement about ***Market for distressed assets in India is the need of the hour. As the participation would increase, there would be electronic platforms which would provide every detail of company undergoing CIRP and enable prospective Resolution Applicants to submit resolution plans, making the***

market liquid in the days ahead. The pie chart in table below 6.1.9. shows the following result: -

Strongly Agree (35.8%): A significant portion (35.8%) of respondents strongly agree that establishing a market for distressed assets in India is indeed crucial. They recognize the need for such a market to address the challenges of dealing with distressed companies effectively. Moreover, they strongly believe that electronic platforms providing detailed information about companies undergoing Corporate Insolvency Resolution Process (CIRP) can significantly enhance transparency and enable prospective Resolution Applicants to submit resolution plans. This group likely sees a liquid market for distressed assets as essential for promoting economic efficiency and resolving financial distress effectively.

1. **Agree (52.8%)**: The majority (52.8%) of respondents agree with the statement, albeit not as emphatically as those who strongly agree. They acknowledge the importance of establishing a market for distressed assets and see the potential benefits of electronic platforms in providing transparency and facilitating participation. This group likely believes that such initiatives can indeed improve the efficiency of the resolution process and enhance investor confidence in distressed asset transactions.

2. **Strongly Disagree (4%)**: A small percentage (4%) of respondents strongly disagree with the statement, indicating that they do not believe establishing a market for distressed assets is a pressing need. However, they may still recognize the potential benefits of electronic platforms in enhancing transparency and participation.

3. **Disagree (nil)**: There were no respondents who simply disagreed with the statement, suggesting a consensus that establishing a market for distressed assets and utilizing electronic platforms for transparency are generally seen as positive steps.

4. **Don't Know (7%)**: A small portion (7%) of respondents expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the necessity of a market for distressed assets or the potential role of electronic platforms.

Overall, the data indicates a widespread recognition among respondents of the importance of establishing a market for distressed assets in India and the potential

benefits of electronic platforms in enhancing transparency and participation in the resolution process. The majority either strongly agree or agree with the statement, suggesting a consensus on the need for such initiatives to address financial distress effectively.

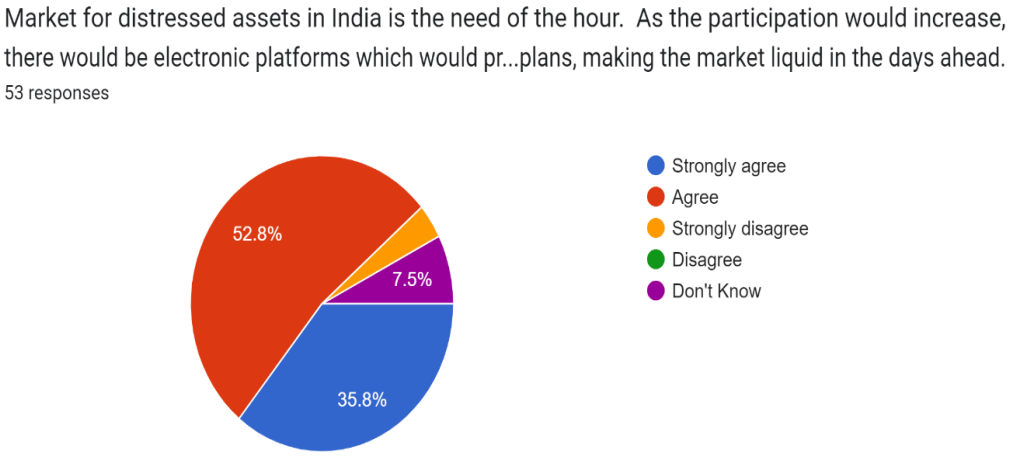

Figure- 6.1.9. Represents the views about *Market for distressed assets in India is the need of the hour.*

6.1.10. Interpreting the data in terms of the statement ***Insolvency Professionals (IPs) are a class of regulated professionals, who play a key role in the efficient conducting of the insolvency, liquidation and bankruptcy processes.*** The pie chart in table below 6.1.11. shows the following result: -

1. True (88.7%): The vast majority (88.7%) of respondents agree with the statement that Insolvency Professionals (IPs) are indeed a class of regulated professionals who play a key role in efficiently conducting the insolvency, liquidation, and bankruptcy processes. This group likely recognizes the critical importance of IPs in managing the resolution process, ensuring compliance with legal requirements, and maximizing value for stakeholders involved.

2. False (2%): Only a small percentage (2%) of respondents believe the statement is false. They may hold the opinion that IPs do not play a significant role in the insolvency process or that their impact is overstated. Alternatively, they may have misunderstood the role of IPs in insolvency proceedings.

3. Don't Know (9.4%): A portion (9.4%) of respondents expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to confirm or refute the role of IPs in insolvency proceedings.

Overall, the overwhelming majority of respondents affirm the statement, indicating a widespread understanding and acknowledgment of the crucial role that Insolvency Professionals (IPs) play in efficiently conducting insolvency, liquidation, and bankruptcy processes. The small percentage of respondents who either disagree or express uncertainty suggests a minority perspective or a lack of familiarity with the role of IPs in insolvency proceedings.

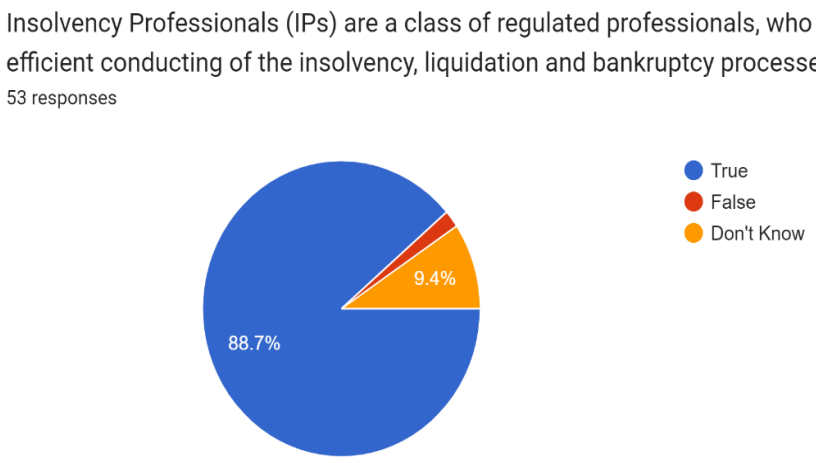

Figure- 6.1.11. Represents the knowledge of Stakeholders about role played by Insolvency Professional

6.1.12 Interpreting the data in terms of the statement regarding ***the impact of delay in transferring ownership and control of Corporate Debtor (CD) on the resolution process, specifically the likelihood of the entity moving towards liquidation rather than resolution, resulting in low-value liquidation due to higher economic rates of depreciation:*** The pie chart in table below 6.1.13. shows the following result: -

Strongly Agree (22.6%): A significant portion (22.6%) of respondents strongly agree with the statement. They strongly believe that delays in transferring ownership and control of CD can indeed hinder the resolution process significantly. They recognize that

prolonged delays increase the likelihood of the entity moving towards liquidation instead of resolution, resulting in low-value liquidation due to depreciation. This group likely sees timely decision-making by Insolvency Professionals (IPs) as crucial for maximizing value in the resolution process.

1. **Agree (60.4%)**: The majority (60.4%) of respondents agree with the statement, though not as emphatically as those who strongly agree. They acknowledge the adverse impact of delays in transferring ownership and control of CD on the resolution process. They agree that such delays increase the likelihood of liquidation rather than resolution, leading to low-value liquidation due to economic depreciation. This group likely believes that addressing delays in ownership transfer is essential for improving the efficiency and effectiveness of the resolution process.

2. **Strongly Disagree (2%)**: A small percentage (2%) of respondents strongly disagree with the statement, indicating that they do not believe delays in transferring ownership and control significantly affect the resolution process or the likelihood of liquidation. They may hold the opinion that other factors have a more substantial impact on the outcome of insolvency proceedings.

3. **Disagree (11.3%)**: Another portion (11.3%) of respondents disagree with the statement, though not as strongly as those who strongly disagree. They may acknowledge the impact of delays to some extent but do not believe it is as significant as suggested. They may also believe that liquidation is not necessarily a consequence of delays in ownership transfer.

4. **Don't Know (3%)**: A small proportion (3%) of respondents expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the relationship between delays in ownership transfer and the outcome of insolvency proceedings.

Overall, the data indicates general agreement among respondents regarding the adverse impact of delays in transferring ownership and control of CD on the resolution process, leading to a higher likelihood of liquidation and low-value liquidation due to economic depreciation. While there are varying degrees of agreement, the majority sees

addressing delays as essential for improving the efficiency and outcomes of insolvency proceedings.

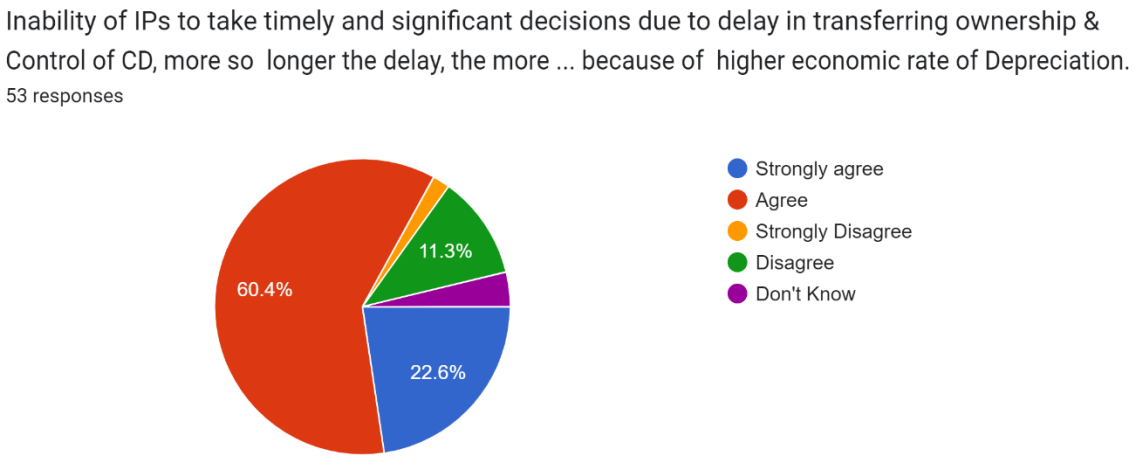

Figure- 6.1.13. Represents the *impact of delay in transferring ownership and control of Corporate Debtor (CD) on the resolution process,*

6.1.14. Interpreting the data in terms of the ***effectiveness of Section 29A in achieving its intended purpose of barring certain groups of individuals, particularly promoters and their relatives, from submitting resolution plans to prevent defaulters from regaining control over their companies at a cheaper value***:The pie chart in table below 6.1.15. shows the following result:

1. **Yes (52.9%)**: A majority of respondents (52.9%) believe that Section 29A is meeting its practical purpose. They agree that the provision effectively prevents promoters and their relatives from bidding for their own companies and helps in keeping defaulters from regaining control over their companies at a reduced value. This group likely perceives Section 29A as an essential safeguard in promoting transparency and integrity in the insolvency resolution process.

2. No (13.7%): A smaller percentage of respondents (13.7%) believe that Section 29A is not meeting its practical purpose. They may argue that despite the provision, loopholes or challenges exist that allow defaulters or related parties to bypass the restrictions, thereby undermining the intended objectives of the section. This group may advocate for further reforms or stricter enforcement to address shortcomings.

3. May be (33.3%): A significant proportion (33.3%) of respondent's express uncertainty regarding whether Section 29A is meeting its practical purpose. They may recognize the intention behind the provision but are unsure about its actual effectiveness in practice. This group may acknowledge that while Section 29A aims to prevent certain individuals from regaining control over distressed companies, its implementation or enforcement may vary, leading to mixed outcomes.

Overall, the data suggests a mixed perception regarding the effectiveness of Section 29A in achieving its intended purpose. While a majority of respondents believe that the provision is meeting its practical purpose, a notable proportion express uncertainty or skepticism about its effectiveness. This indicates a need for ongoing evaluation and potential adjustments to ensure that Section 29A effectively serves its intended objectives in promoting transparency and fairness in insolvency proceedings.

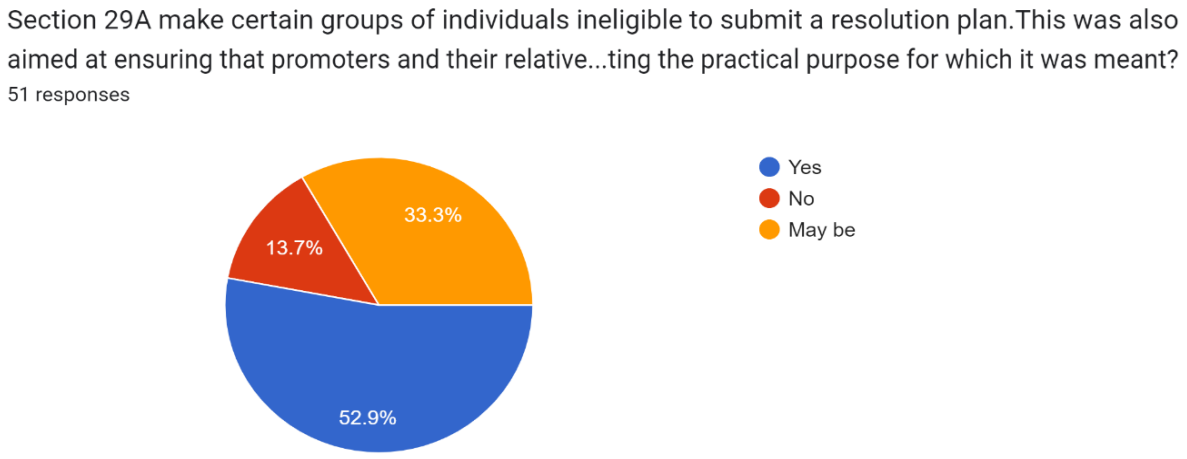

Figure- 6.1.15. Represents about utility of section 29A

6.1.16. Interpreting the data in terms of the ***effectiveness of Section 12A, which allows for the withdrawal of an application after it has been admitted by the National Company Law Tribunal (NCLT) for Corporate Insolvency Resolution Process (CIRP) upon the approval of 90% of the voting share of the committee of creditors (CoC), and the perceived impact of the high threshold of 90%.*** *The pie chart in table below 6.1.17. shows the following result:* **Strongly Agree (15.4%)**: A small percentage of respondents (15.4%) strongly agree that the higher threshold of 90% for withdrawal under Section 12A can be detrimental to the resolution process. They strongly believe that lowering

this threshold would facilitate smoother resolution processes and potentially prevent unnecessary delays or obstacles.

1. **Agree (51.9%)**: The majority of respondents (51.9%) agree with the statement, though not as strongly as those who strongly agree. They acknowledge that the high threshold of 90% for withdrawal under Section 12A can pose challenges to the resolution process. However, they also recognize that lowering the threshold may improve the flexibility of the process and enhance the prospects of successful resolutions.

2. **Strongly Disagree (2%)**: A very small percentage of respondents (2%) strongly disagree with the statement, indicating that they believe the current threshold of 90% is appropriate and lowering it would not be beneficial. They may argue that maintaining a high threshold ensures that withdrawal decisions are made with sufficient consensus among creditors and preserves the integrity of the resolution process.

3. **Disagree (19.2%)**: Another portion of respondents (19.2%) disagree with the statement, though not as strongly as those who strongly disagree. They may acknowledge the potential challenges posed by the high threshold but believe that lowering it may introduce risks such as increased uncertainty or abuse of the withdrawal mechanism.

4. **Don't Know (11.5%)**: A notable proportion of respondents (11.5%) expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the impact of the threshold of 90% under Section 12A on the resolution process.

Overall, the data suggests a mixed perception regarding the impact of the high threshold of 90% under Section 12A on the resolution process. While a significant proportion of respondents agree that lowering the threshold could be beneficial, there are also voices of disagreement and uncertainty, indicating differing views on the matter. This suggests that further discussion and analysis may be needed to evaluate the potential implications of adjusting the threshold.

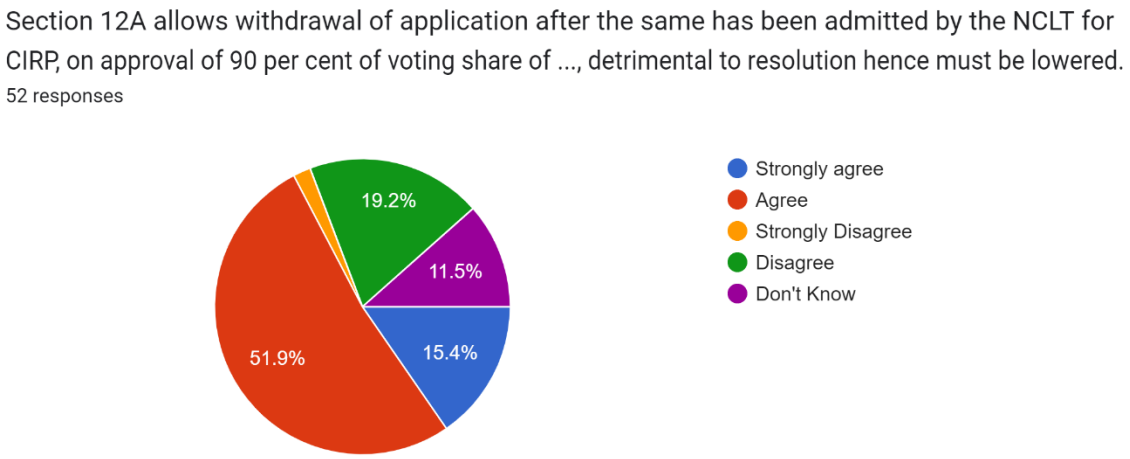

Figure- 6.1.17. Represents the Opinion on Section 12 A Withdrawal of Application after Admission

6.1.18. Interpreting the data in terms of the perceived ***effectiveness and adherence to the timelines set forth in Section 12 of the Insolvency and Bankruptcy (IB) Code, which initially provided for a resolution period of 180 days with a one-time extension of 90 days, but has been increased to a total of 330 days, including litigation***. *The pie chart in table below 6.1.19. Shows the following: -*

1. **Strongly Agree (36.5%)**: A significant portion of respondents (36.5%) strongly agree that in practice, many cases exceed the timelines set by Section 12 of the IB Code. This group firmly believes that despite the extension to 330 days, a large number of cases still fail to adhere to these timelines due to various reasons. They likely perceive this as a significant issue affecting the efficiency and effectiveness of the insolvency resolution process.

2. Agree (46.2%): The majority of respondents (46.2%) agree with the statement, though not as emphatically as those who strongly agree. They acknowledge that many cases indeed exceed the prescribed timelines under Section 12 of the IB Code. This group recognizes the challenges and complexities involved in resolving insolvency cases and sees a need for addressing the factors contributing to delays.

3. Strongly Disagree (4%): A small percentage of respondents (4%) strongly disagree with the statement, indicating that they believe cases generally adhere to the timelines set by Section 12 of the IB Code. They may argue that while delays occur in

some cases, it is not a widespread issue that significantly affects the overall efficiency of the resolution process.

4. **Disagree (2%)**: Another portion of respondents (2%) disagree with the statement, though not as strongly as those who strongly disagree. They may acknowledge that delays occur in some cases but believe that the majority of cases still adhere to the prescribed timelines reasonably well.

5. **Don't Know (11.5%)**: A notable proportion of respondents (11.5%) expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the extent to which cases exceed the timelines set by Section 12 of the IB Code.

Overall, the data suggests a widespread acknowledgment that many cases exceed the timelines prescribed under Section 12 of the IB Code. While there are differing degrees of agreement, the majority of respondents recognize the issue of delays in insolvency resolution and the need for addressing the underlying reasons contributing to these delays.

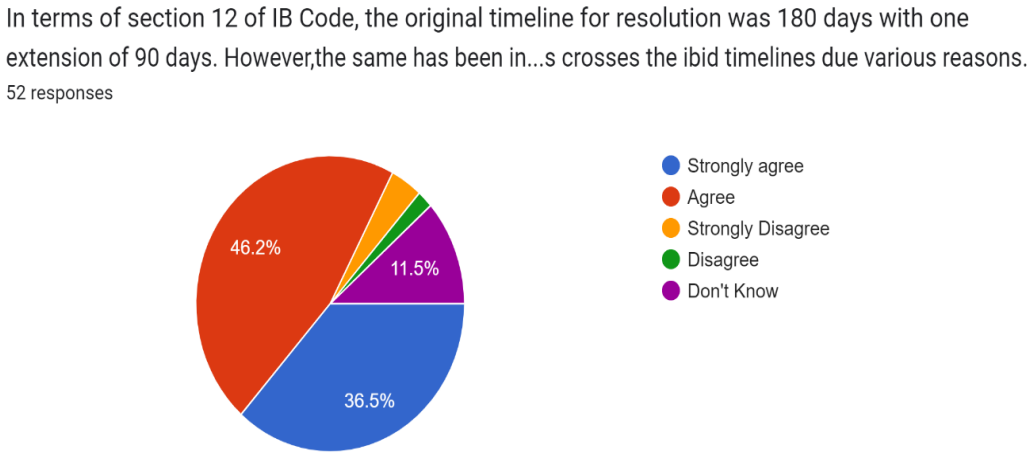

Figure- 6.1.19. Represents the *effectiveness and adherence to the timelines set forth in Section 12 of the Insolvency and Bankruptcy (IB) Code*

6.1.20. Interpreting the data in terms of the ***perceived success of Insolvency Professional Agencies (IPAs) and the Insolvency and Bankruptcy Board of India (IBBI) in protecting the rights, duties, privileges, and interests of their members and***

ensuring compliance with professional conduct and ethics standards. *The pie chart in table below 6.1.21. shows the following: -*

1. Up to a Large Extent (26.5%): A notable proportion of respondents (26.5%) believe that IPAs and IBBI have been successful in safeguarding the rights, duties, privileges, and interests of their members and in framing and enforcing standards of professional conduct and ethics. This group likely perceives the existing mechanisms and regulations as effective in addressing the needs and concerns of Insolvency Professionals (IPs) to a significant degree.

2. Only up to a Certain Extent (35.3%): The largest portion of respondents (35.3%) indicate that while IPAs and IBBI have achieved some level of success in protecting the rights, duties, privileges, and interests of their members and in framing professional conduct and ethics standards, there are limitations to their effectiveness. This group acknowledges that further improvements or enhancements may be necessary to fully meet the needs and expectations of IPs.

3. Still Requires Robust Rules and Regulations (17.6%): A notable proportion of respondents (17.6%) believe that the existing framework for protecting the rights, duties, privileges, and interests of IPs and ensuring compliance with professional standards is insufficient. They advocate for the establishment of more robust rules and regulations to address gaps or shortcomings in the current system.

4. Options 1 and 3 (19.6%): A subset of respondents (19.6%) selected both "Up to a Large Extent" and "Still Requires Robust Rules and Regulations" as their responses. This indicates that they perceive some level of success in the existing mechanisms but also see a need for further improvements or enhancements through the establishment of more robust rules and regulations.

5. Options 2 and 3 (2%): A very small percentage of respondents selected both "Only up to a Certain Extent" and "Still Requires Robust Rules and Regulations" as their responses. This suggests a pessimistic view regarding the effectiveness of the current framework and a belief that significant improvements are needed to adequately protect the rights and interests of IPs.

Overall, the data indicates a mixed perception of the success of IPAs and IBBI in protecting the rights, duties, privileges, and interests of Insolvency Professionals. While

some respondents believe that existing mechanisms have been successful to some extent, others advocate for further improvements or the establishment of more robust rules and regulations to address existing gaps or shortcomings.

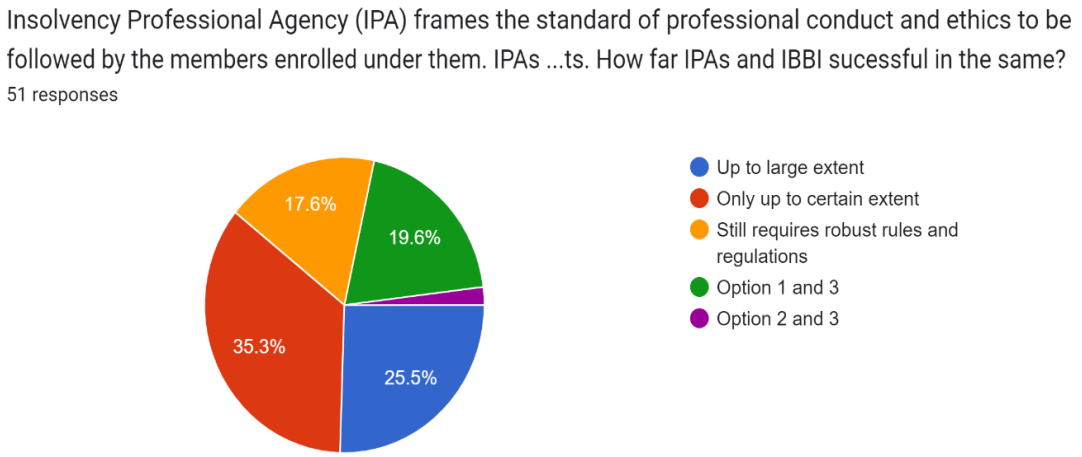

Figure- 6.1.21 Represents the opinion about how far *Insolvency Professional Agencies (IPAs) and the Insolvency and Bankruptcy Board of India (IBBI)able to implement the Code of Conduct*

6.1.22. Interpreting the data in terms of ***the priority of distribution of sale proceeds of liquidation estates in a liquidation process, as perceived by the respondents***: *The pie chart below in table 6.1.23. shows: -*

1. **Workmen (49%)**: The highest percentage of respondents (49%) believe that workmen have the highest priority in the distribution of sale proceeds of liquidation estates during a liquidation process. This suggests a recognition of the importance of protecting the interests of workers and ensuring that they receive their due compensation from the proceeds of liquidation.

2. **Employee (13.7%)**: A smaller percentage of respondents (13.7%) consider employees to have the highest priority in the distribution of sale proceeds. While this group also prioritizes the welfare of employees, their proportion is significantly lower compared to those who prioritize workmen.

3. **Government (17.6%)**: A notable portion of respondents (17.6%) believe that the government has the highest priority in the distribution of sale proceeds of liquidation

estates. This suggests an understanding that certain taxes and dues owed to the government may take precedence in the distribution process.

4. **Tax Dues (19.6%)**: Another substantial proportion of respondents (19.6%) prioritize tax dues in the distribution of sale proceeds. This group likely emphasizes the importance of fulfilling tax obligations and ensuring that tax dues are settled from the proceeds of liquidation before other claims are addressed.

Overall, the data suggests a nuanced understanding among respondents regarding the priority of distribution of sale proceeds in a liquidation process. While workmen are perceived to have the highest priority by the majority of respondents, there is also recognition of the importance of employees, government dues, and tax obligations in the distribution process. This highlights the complexity of balancing various stakeholders' interests in insolvency proceedings. The outcome also suggests the lack of understanding about the legal provisions by various sta1keholders.

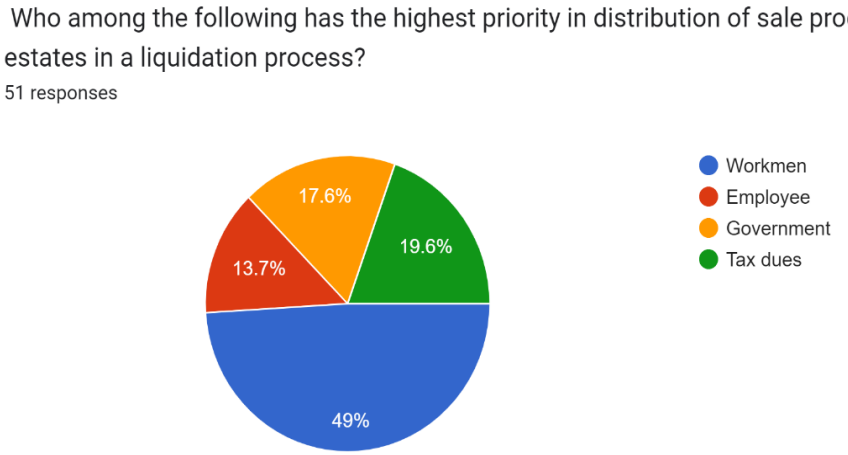

Figure- 6.1.23. Represents the knowledge of Priority of Distribution in Water Fall Mechanism

6.1.24. Interpreting the data in terms of ***the type of liquidation process a company may initiate if it wishes to exit a business and can pay off all its debts in full from the sale proceeds of its assets, as perceived by the respondents***: *The pie chart below in table 6.1.25. shows:*

1. **Compulsory Liquidation Process (22%)**: A notable portion of respondents (22%) believe that if a company wishes to exit a business and can pay off all its debts in full, it may initiate a compulsory liquidation process. Compulsory liquidation typically occurs when a company is forced into liquidation by court order due to insolvency or failure to pay its debts.

2. **Voluntary Liquidation Process (50%)**: The majority of respondents (50%) believe that a company in this scenario may initiate a voluntary liquidation process. Voluntary liquidation, also known as members' voluntary liquidation, occurs when a solvent company chooses to wind up its affairs voluntarily and distribute its assets among creditors.

3. **Corporate Liquidation Process (12%)**: A smaller percentage of respondents (12%) believe that a company may initiate a corporate liquidation process in this scenario. It's unclear what exactly "corporate liquidation process" refers to, but it could potentially encompass various types of liquidation processes specific to corporate entities.

4. **Fast Track Liquidation Process (16%)**: Another portion of respondents (16%) believe that a company may initiate a fast-track liquidation process if it wishes to exit a business and can pay off all its debts in full. "Fast track liquidation process" may refer to an expedited or streamlined liquidation procedure designed to facilitate quick resolution of solvent companies' affairs.

Overall, the data suggests a range of interpretations regarding the type of liquidation process a company may initiate if it wishes to exit a business and can pay off all its debts in full. While voluntary liquidation is the most commonly selected option, respondents also consider compulsory liquidation, corporate liquidation, and fast track liquidation processes as potential alternatives depending on the circumstances.

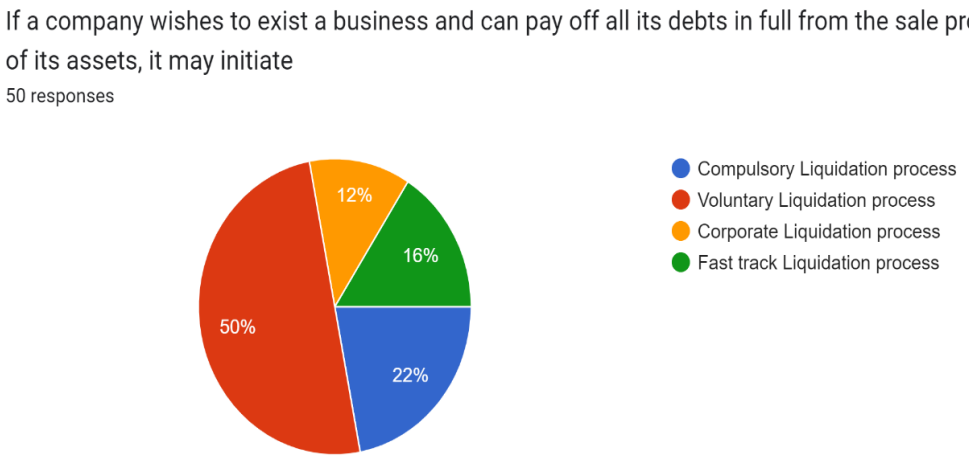

Figure- 6.1.25. Represents the knowledge on *type of liquidation process*

6.1.26. Interpreting the data in terms of ***the perceived challenges faced by Insolvency Professionals (IPs) in discharging their duties effectively during Corporate Insolvency Resolution Process (CIRP) proceedings, specifically regarding the burden of dealing with FIRs (First Information Reports) and multiple litigations initiated by promoters***: *The pie chart below in table 6.1.27. shows:*

1. **Strongly Agree (72%)**: The vast majority of respondents (72%) strongly agree that burdening an IP with filing of FIRs and multiple litigations is the easiest way for promoters to derail the CIRP proceedings. This indicates a widespread acknowledgment of the challenges and obstacles faced by IPs when confronted with such tactics by promoters. Respondents strongly believe that providing adequate safeguards is crucial to create an environment where IPs can effectively carry out their duties without undue interference or obstruction.

2. **Disagree (8%)**: A small percentage of respondents (8%) disagree with the statement. They may hold the opinion that FIRs and multiple litigations initiated by promoters do not significantly impede the effectiveness of IPs in discharging their duties during CIRP proceedings. Alternatively, they may believe that existing safeguards are already sufficient to address such challenges.

3. **Neutral (19.6%)**: A notable proportion of respondents (19.6%) express a neutral stance regarding the statement. They neither strongly agree nor disagree with the notion

that burdening IPs with FIRs and multiple litigations is the easiest way for promoters to derail CIRP proceedings. This group may lack sufficient information or experience to form a decisive opinion on the matter.

Overall, the overwhelming majority of respondents strongly agree that burdening IPs with FIRs and multiple litigations poses significant challenges to the effective discharge of their duties during CIRP proceedings. This highlights the importance of implementing adequate safeguards to protect IPs from such tactics and ensure the integrity and efficiency of the insolvency resolution process.

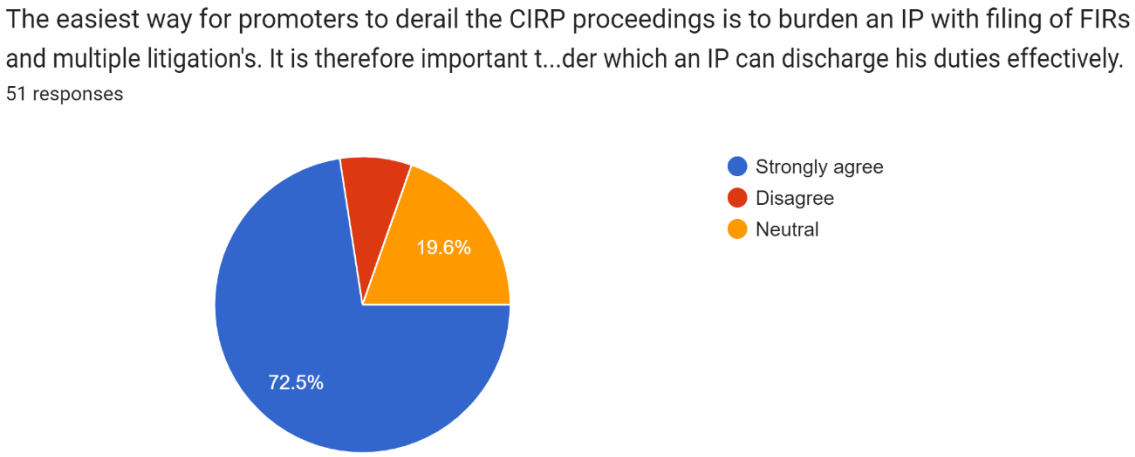

Figure- 6.1.27. Represents the knowledge on *challenges faced by Insolvency Professionals (IPs) in discharging their duties*

6.1.28. Interpreting the data in terms of the ***perceived empowerment of Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators under the Insolvency and Bankruptcy Code (IBC) to effectively deal with various challenges and contingencies***: *The pie chart below in table 6.1.29 shows:*

1. **Yes (51%)**: A slight majority of respondents (51%) believe that the IBC does empower IRPs, RPs, and Liquidators with the necessary tools and authority to handle all kinds of challenges and contingencies that may arise during insolvency proceedings. This indicates a level of confidence among respondents in the effectiveness and adequacy of the provisions within the IBC to equip professionals with the means to navigate complex situations.

2. **No (15.7%)**: A smaller percentage of respondents (15.7%) express the opinion that the IBC does not provide sufficient empowerment to IRPs, RPs, and Liquidators to address all types of challenges and contingencies. This suggests a belief among some respondents that there are limitations or gaps in the provisions of the IBC, which may hinder the ability of professionals to effectively handle certain situations that may arise during insolvency proceedings.

3. **Not Sure (33.3%)**: A significant proportion of respondents (33.3%) indicate that they are not sure whether the IBC empowers IRPs, RPs, and Liquidators to deal with all kinds of challenges and contingencies. This suggests a level of uncertainty or lack of clarity among respondents regarding the extent to which the IBC adequately equips professionals with the necessary tools and authority to address various complexities in insolvency cases.

Overall, the data reflects mixed perceptions among respondents regarding the empowerment of IRPs, RPs, and Liquidators under the IBC. While some express confidence in the IBC's provisions to handle challenges effectively, others harbour doubts or uncertainties about its sufficiency in this regard. This highlights the importance of ongoing evaluation and potential reforms to ensure that insolvency professionals are adequately equipped to address the diverse range of challenges they may encounter during insolvency proceedings.

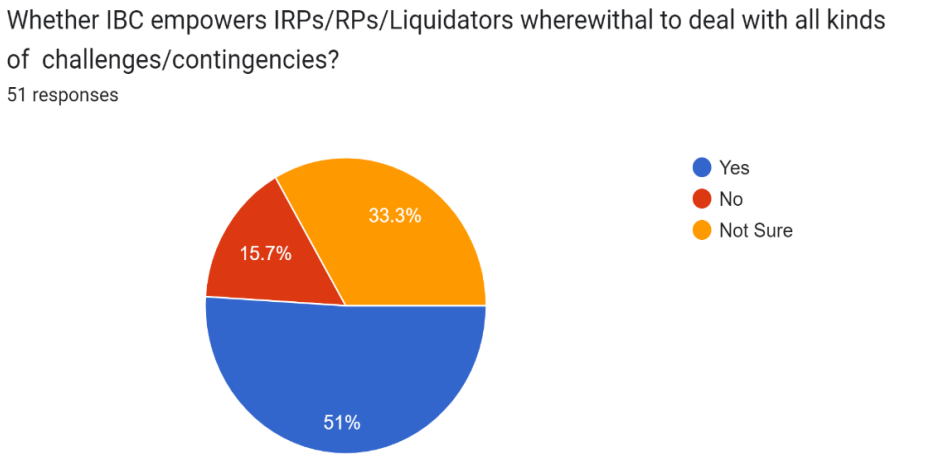

Figure- 6.1.29. Represents the *perceived empowerment of Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators*

6.1.30. Interpreting the data in terms of ***the perceived difficulty in maintaining the ongoing status of a corporate debtor, particularly due to factors such as non-cooperation of the workforce, non-availability of raw materials, lack of finance, essential services, and absence of marketing plans and strategies for finished goods*****.** *The pie chart below in table 6.1.31. shows:*

1. **Strongly Agree (27.5%)**: A significant portion of respondents (27.5%) strongly agree that maintaining the ongoing status of a corporate debtor is extremely difficult due to the various challenges mentioned. This indicates a firm belief among respondents in the severity of the obstacles faced by businesses in continuing their operations, which can be exacerbated by factors like non-cooperation of the workforce and lack of essential resources.

2. **Agree (51%)**: The majority of respondents (51%) agree that maintaining the ongoing status of a corporate debtor is indeed extremely difficult due to the mentioned challenges. This suggests a widespread acknowledgment among respondents of the complexities and hurdles involved in sustaining business operations, especially when faced with issues like financial constraints and logistical difficulties.

3. **Strongly Disagree (5%)**: A small percentage of respondents (5%) strongly disagree with the statement. They hold the opinion that maintaining the ongoing status of a corporate debtor is not extremely difficult despite the challenges mentioned. This viewpoint suggests a belief that businesses can effectively navigate and overcome such obstacles without significant detriment to their ongoing operations.

4. **Disagree (nil)**: There were no respondents who simply disagreed with the statement, indicating a general consensus that the challenges mentioned do indeed contribute to the difficulty of maintaining the ongoing status of a corporate debtor.

5. **Don't Know (17.6%)**: A notable proportion of respondents (17.6%) expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience to form a strong opinion about the specific challenges faced by businesses in maintaining their ongoing status.

Overall, the data underscores the widespread recognition among respondents of the significant challenges faced by businesses in maintaining their ongoing status,

particularly due to factors such as workforce issues, resource shortages, financial constraints, and strategic deficiencies. This highlights the importance of addressing these challenges effectively to support the resilience and continuity of corporate debtors.

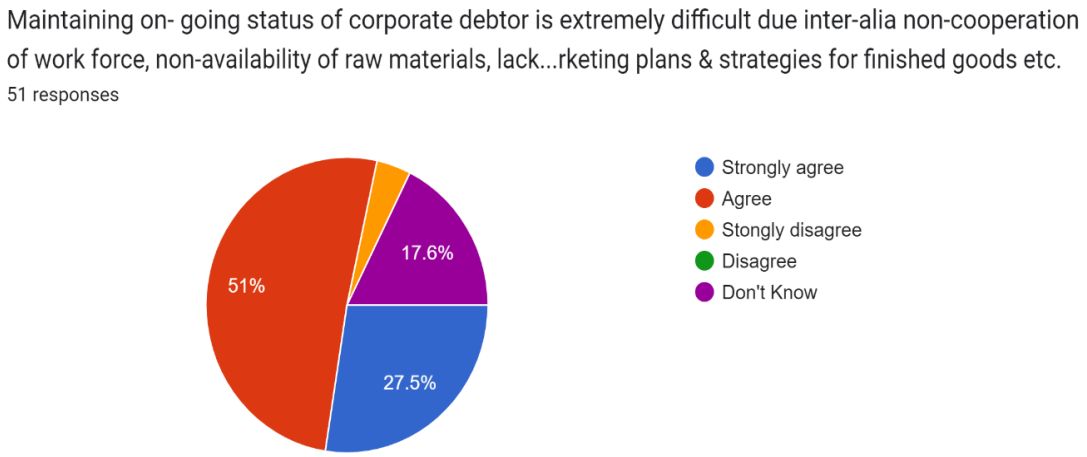

Figure- 6.1.31. Represents the data on *perceived difficulty in maintaining the ongoing status of a corporate debtor,*

6.1.32. Interpreting the data in terms of the ***perceived biases in the appointment of Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators by Financial Creditors, Operational Creditors, and Adjudicating Authorities.*** *The pie chart below in table 6.1.33 shows: -*

1. **Strongly Agree (19.6%)**: A notable portion of respondents (19.6%) strongly agree that the appointment process of IRPs/RPs/Liquidators suffers from various biases. This indicates a strong belief among respondents that there are inherent biases or unfair practices influencing the selection of professionals to oversee insolvency proceedings. These biases could potentially undermine the integrity and effectiveness of the insolvency resolution process.

2. **Agree (45.1%)**: The majority of respondents (45.1%) agree that there are biases in the appointment process. While not as strong as those who strongly agree, this group still perceives significant issues with biases in the selection of IRPs/RPs/Liquidators.

They recognize the potential for partiality or favouritism in the appointment decisions made by Financial Creditors, Operational Creditors, and Adjudicating Authorities.

3. **Strongly Disagree (4%)**: A small percentage of respondents (4%) strongly disagree with the statement, indicating that they do not believe biases exist in the appointment process of IRPs/RPs/Liquidators. They may hold the view that the appointment process is fair, transparent, and free from undue influence or favoritism.

4. **Disagree (9.8%)**: Another portion of respondents (9.8%) disagree with the statement, though not as strongly as those who strongly disagree. They may acknowledge the possibility of biases but believe that they are not prevalent or significant enough to undermine the overall integrity of the appointment process.

5. **Don't Know (21.6%)**: A notable proportion of respondents (21.6%) expressed uncertainty regarding the existence of biases in the appointment process. They may lack sufficient knowledge or experience to form a definitive opinion about the prevalence of biases in the selection of IRPs/RPs/Liquidators.

Overall, the data suggests a significant perception among respondents that biases exist in the appointment process of IRPs/RPs/Liquidators by Financial Creditors, Operational Creditors, and Adjudicating Authorities. While there is some variation in the degree of agreement, a substantial portion of respondents believe that biases are a notable issue that warrants attention in order to ensure the fairness and effectiveness of insolvency proceedings.

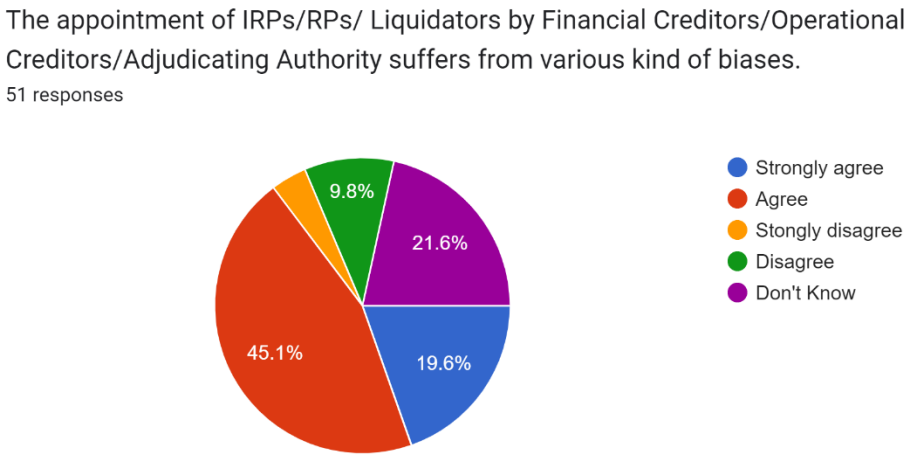

Figure- 6.1.33. Represents the data on *perceived biases in the appointment of Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators*

6.1.34. Interpreting the data in terms of ***the perceived difficulty in recovering current assets in the form of Sundry Debtors by Resolution Professionals (RPs) or Liquidators after a company enters Corporate Insolvency Resolution Process (CIRP).*** *The pie chart below in table 6.1.35. shows:*

1. **Strongly Agree (25.5%)**: A significant portion of respondents (25.5%) strongly agree that recovering current assets, specifically in the form of Sundry Debtors, is very difficult for RPs or Liquidators after a company goes into CIRP. This suggests a strong consensus among respondents regarding the challenges and complexities involved in recovering such assets under the insolvency resolution process.

2. **Agree (51%)**: The majority of respondents (51%) agree that recovering current assets, particularly in the form of Sundry Debtors, is indeed very difficult for RPs or Liquidators post-CIRP. This further reinforces the prevailing sentiment among respondents that the task of recovering these assets poses significant hurdles and may not be easily achievable within the context of insolvency proceedings.

3. **Strongly Disagree (3%)**: A small percentage of respondents (3%) strongly disagree with the statement, indicating that they believe recovering current assets such as Sundry Debtors is not very difficult for RPs or Liquidators after a company enters CIRP. This dissenting opinion may stem from experiences or perspectives suggesting that such recoveries are feasible or relatively straightforward in practice.

4. **Disagree (4%)**: Another minor portion of respondents (4%) disagree with the statement, though not as strongly as those who strongly disagree. They hold the view that while there may be challenges, recovering current assets like Sundry Debtors is not necessarily very difficult for RPs or Liquidators during CIRP. This suggests a nuanced perspective on the difficulty of such recoveries.

5. **Don't Know (17%)**: A notable proportion of respondents (17%) expressed uncertainty regarding the statement. They may lack sufficient knowledge or experience

to confidently assess the difficulty of recovering current assets, such as Sundry Debtors, by RPs or Liquidators post-CIRP.

Overall, the data indicates a widespread perception among respondents that recovering current assets, especially in the form of Sundry Debtors, is indeed very difficult for RPs or Liquidators after a company undergoes CIRP. While there are differing degrees of agreement and some uncertainty, the majority acknowledge the significant challenges associated with such recoveries within the insolvency resolution process.

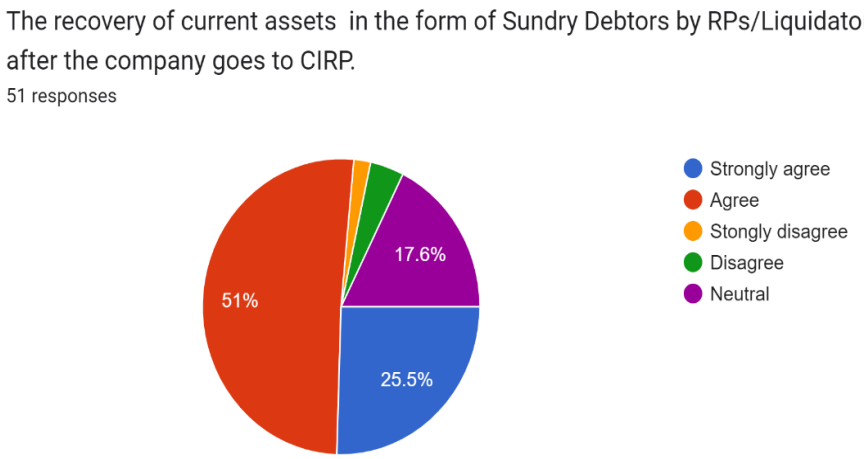

Figure- 6.1.35. Represents the *perceived difficulty in recovering current assets in the form of Sundry Debtors by Resolution Professionals (RPs) or Liquidators*

6.1.36. Interpreting the data in terms of ***the perceived difficulty in accurately valuing the assets of a Corporate Debtor (CD) by Insolvency Professionals (IPs) or Valuers due to lack of authenticated information***. *The pie chart below in table 6.1.37. shows:*

1. **Strongly Agree (27.5%) and Agree (51%)**: The majority of respondents (27.5% strongly agree, and 51% agree) believe that IPs or Valuers often struggle to arrive at the true value of assets of a CD due to a lack of authenticated information. This indicates a widespread perception among respondents that the valuation process is challenging and often relies on incomplete or unreliable data. They acknowledge that the valuation may be conducted through trial-and-error methods based on market information, rather than precise or authenticated data.

2. **Strongly Disagree (0%) and Disagree (2%)**: No respondents strongly disagree, and only a small percentage (2%) disagrees with the statement. This suggests that very few respondents out rightly reject the idea that IPs or Valuers face challenges in valuing CD assets due to lack of authenticated information. Those who disagree might believe that there are sufficient mechanisms or procedures in place to ensure the availability of accurate and authenticated information for valuation purposes.

3. **Neutral (19.6%)**: A notable proportion of respondents (19.6%) express a neutral stance on the statement. They neither strongly agree nor disagree, indicating a level of uncertainty or lack of definitive opinion regarding the difficulties faced by IPs or Valuers in valuing CD assets due to information authenticity issues. This group may require more information or context to form a decisive opinion on the matter.

Overall, the data suggests a significant perception among respondents that IPs or Valuers encounter challenges in accurately valuing CD assets due to a lack of authenticated information. While some respondents' express uncertainty or neutrality, the majority believe that this issue poses a substantial obstacle to the valuation process in insolvency proceedings.

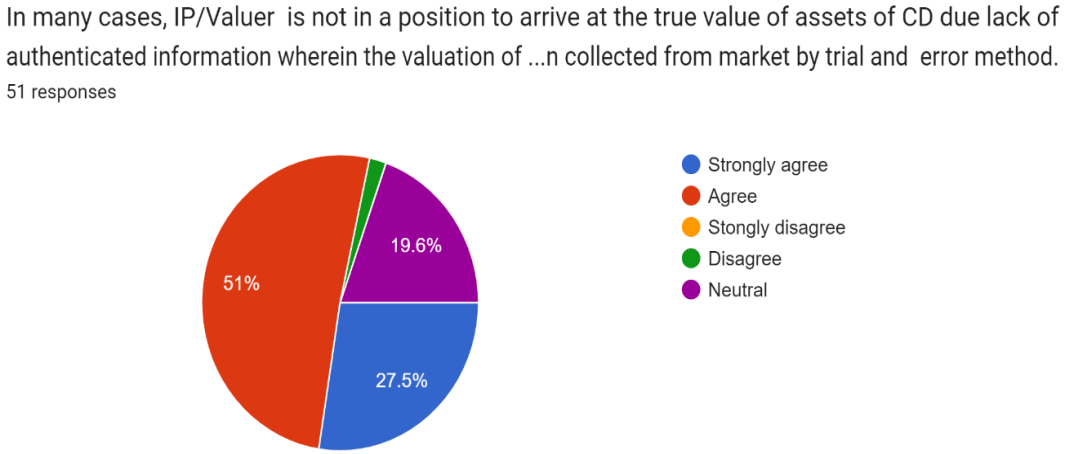

Figure- 6.1.37. Represents the *perceived difficulty in accurately valuing the assets of a Corporate Debtor (CD) by Insolvency Professionals (IPs) or Valuers*

6.1.38. Interpreting the data in terms of ***the preference for a debtor-in-possession (DIP) model over the existing creditor-in-possession (CIP) system in Corporate Insolvency Resolution Process (CIRP) or Liquidation.*** *The pie chart below in table 6.1.38. shows:*

1. **Strongly Agree (18%) and Agree (40%)**: A combined 58% of respondents either strongly agree or agree that adopting a debtor-in-possession (DIP) model, similar to that in the USA, would be better and more beneficial for timely resolution than the current creditor-in-possession (CIP) system. This indicates a significant portion of respondents who believe that giving the debtor more control and decision-making authority during insolvency proceedings could lead to more efficient and timely resolutions.

2. **Strongly Disagree (8%) and Disagree (12%)**: A combined 20% of respondents either strongly disagree or disagree with the statement, suggesting that they do not support transitioning to a debtor-in-possession (DIP) model. These respondents may believe that the current creditor-in-possession (CIP) system is more effective or that implementing a DIP model could have adverse consequences for the resolution process.

3. **Don't Know (22%)**: A notable proportion of respondents (22%) expressed uncertainty or lack of knowledge regarding whether adopting a debtor-in-possession (DIP) model would be better than the existing creditor-in-possession (CIP) system. These respondents may require more information or further analysis to form a decisive opinion on the matter.

Overall, the data indicates a mixed perception among respondents regarding the potential benefits of transitioning to a debtor-in-possession (DIP) model in CIRP or Liquidation processes. While a significant portion supports the idea, a notable percentage remains uncertain or skeptical, suggesting the need for further examination and discussion on the topic.

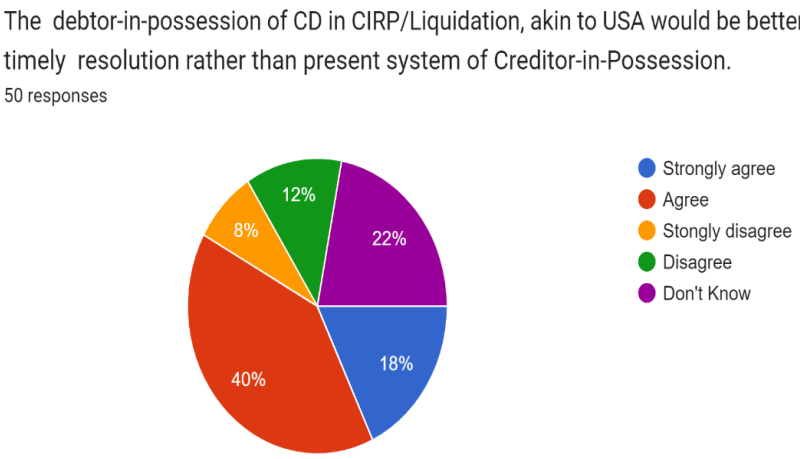

Figure- 6.1.38. Represents the *the preference for a debtor-in-possession (DIP) model over the existing creditor-in-possession (CIP) system*

6.1.39. Interpreting the data in terms of ***the effectiveness of the Insolvency and Bankruptcy (IB) Code as a recovery tool for the banking sector, despite not being its primary objective.*** *The pie chart below in table 6.1.40. shows:*

1. **Been Extremely Effective (29.4%)**: A significant portion of respondents (29.4%) believe that the IB Code has been extremely effective as a recovery tool for the banking sector, surpassing expectations despite recovery not being its primary objective. This suggests a strong perception among respondents that the IB Code has significantly improved the recovery process for banks and financial institutions by providing a more robust framework for resolving insolvency cases.

2. **Effective to Certain Extent Only (51%)**: The majority of respondents (51%) believe that the IB Code has been effective to a certain extent as a recovery tool for the banking sector. While acknowledging its effectiveness, this group also recognizes that there may be limitations or areas where improvements could be made to further enhance its impact on recovery efforts.

3. **Not Effective at All (Nil%)**: No respondents indicated that the IB Code has not been effective at all as a recovery tool for the banking sector. This suggests a consensus among respondents that, to some degree, the IB Code has contributed positively to the recovery of debts owed to banks, even if it was not its primary objective.

4. **Not Sure (3%) and Neutral (15.7%)**: A small proportion of respondents expressed uncertainty (3%) or neutrality (15.7%) regarding the effectiveness of the IB Code as a recovery tool for the banking sector. They may lack sufficient information or experience to form a decisive opinion on the matter or may have mixed views about its effectiveness.

Overall, the data indicates a generally positive perception among respondents regarding the effectiveness of the IB Code as a recovery tool for the banking sector, with a significant portion considering it effective to varying degrees. This suggests that the IB Code has had a notable impact on improving debt recovery processes for banks and financial institutions, despite not being its primary objective.

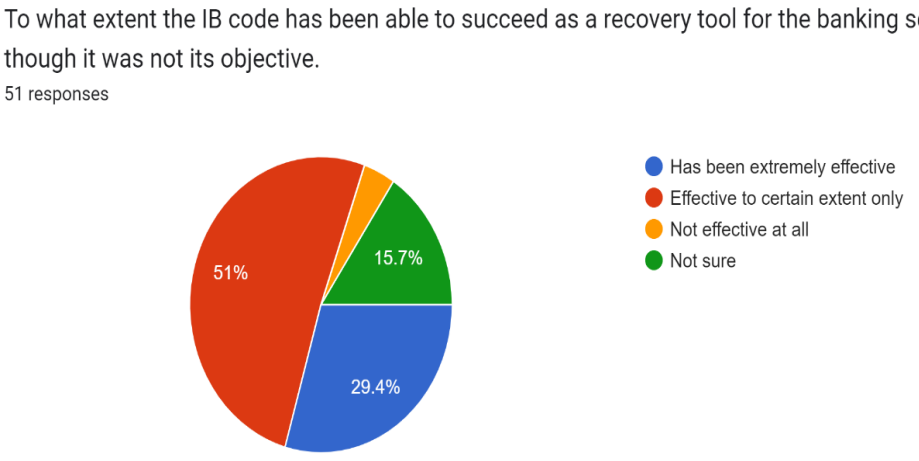

Figure- 6.1.40. Represents the *effectiveness of the Insolvency and Bankruptcy (IB) Code as a recovery tool for the banking sector.*

6.1.41. Interpreting the data ***regarding security threats faced by Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), or Liquidators and their family members after their appointment***. *The pie chart below in table 6.1.42. shows:*

1. **Once (10%)**: A small portion of respondents (10%) reported experiencing security threats either to themselves or their family members on one occasion after their appointment as IRP/RP/Liquidator. This suggests that there are instances where stakeholders may resort to threatening behavior in response to insolvency proceedings.

2. **Twice (8%)**: Another fraction of respondents (8%) reported encountering security threats twice after their appointment. This indicates a recurring pattern of security concerns, although less frequent than those who experienced threats only once.

3. **Many Times (10%)**: Similar to the percentage of respondents who experienced threats once, 10% reported facing security threats multiple times. This indicates a significant subset of respondents who have had to deal with persistent security issues in the course of their duties as insolvency professionals.

4. **Didn't Receive Threats (72%)**: The majority of respondents (72%) stated that they or their family members did not receive any kind of security threat from stakeholders after their appointment. This suggests that while security threats are a concern for some insolvency professionals, a significant portion have not encountered such issues.

Overall, the data indicates that while security threats are a reality for some insolvency professionals and their families, the majority have not experienced such threats. However, the presence of threats reported by a notable minority highlights the importance of ensuring the safety and security of individuals involved in insolvency proceedings.

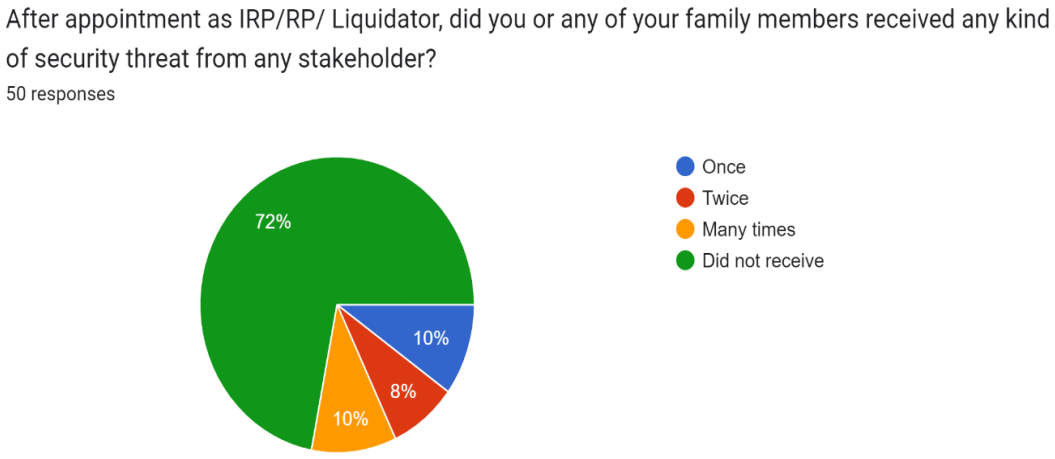

Figure- 6.1.42. Represents the *regarding security threats faced by Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), or Liquidators and their family members after their appointment.*

6.1.43. Interpreting the data ***regarding suggestions for empowering insolvency professionals for better execution of their duties:*** *The pie chart below in table 6.1.44. shows:*

1. **To Attach Bank Account of Corporate Debtor (14%)**: A small percentage of respondents (14%) suggest attaching the bank accounts of the corporate debtor as a measure to empower insolvency professionals. This suggestion likely aims to facilitate better control over the debtor's financial resources and ensure that funds are managed more effectively during the insolvency process.

2. **Allowing IRPs/RPs/Liquidators to Take Independent Decisions Independent of CoC (12%)**: Another subset of respondents (12%) proposes allowing Insolvency Resolution Professionals (IRPs), Resolution Professionals (RPs), and Liquidators to make independent decisions, regardless of the Committee of Creditors (CoC). This suggestion likely aims to streamline decision-making processes and empower insolvency professionals to act in the best interests of the insolvency proceedings without being overly constrained by creditor interests.

3. **Strict Procedure System for Valuation (4%)**: A small percentage of respondents (4%) suggest implementing a strict procedure system for valuation. This suggestion likely aims to enhance the accuracy and reliability of asset valuations, which is crucial for determining creditor claims and maximizing the value of assets during insolvency proceedings.

4. **Development of Distressed Assets Market (4%)**: Similarly, another subset of respondents (4%) suggests the development of a distressed assets market. This suggestion likely aims to create more liquidity in the market for distressed assets, providing better opportunities for resolution and maximizing returns for creditors.

5. **All of the Above (66%)**: The majority of respondents (66%) support for implementing all of the suggested measures. This indicates strong support for a comprehensive approach to empowering insolvency professionals, encompassing measures such as attaching bank accounts, allowing independent decision-making, implementing strict valuation procedures, and developing distressed assets markets.

Respondents who choose this option likely believe that a combination of these measures would significantly improve the effectiveness of insolvency proceedings.

Overall, the data suggests a consensus among respondents on the importance of empowering insolvency professionals through various measures to enhance the implementation of their duties. The majority support a multi-faceted approach that addresses different aspects of the insolvency process.

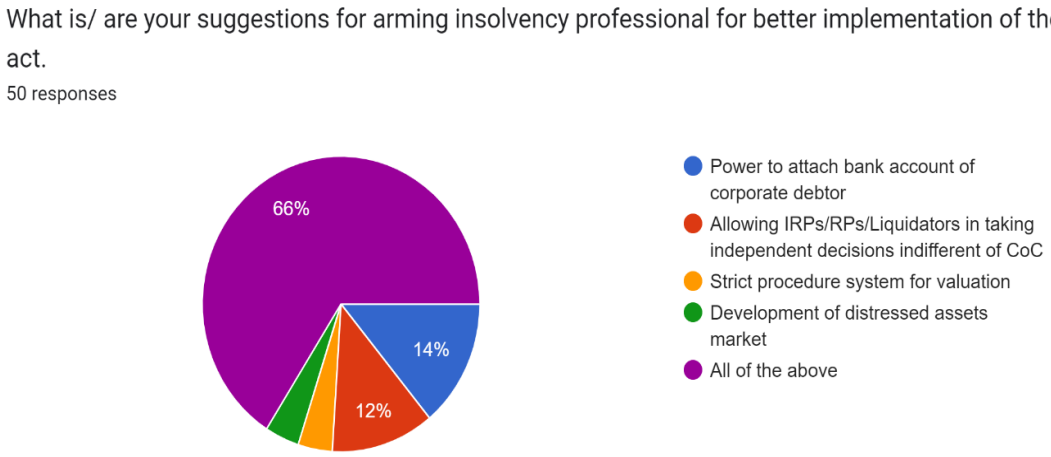

Figure- 6.1.44. Represents the *regarding suggestions for empowering insolvency professionals for better implementation of their duties*

6.1.45. Interpreting the data regarding ***integrity and objectivity issues concerning Insolvency Professionals (IPs) while discharging their duties under the code***. *The pie chart below in table 6.1.46 shows:*

1. **True (49%)**: A significant portion of respondents (49%) believe that there are indeed integrity and objectivity issues related to IPs in their professional dealings under the code. This suggests a widespread perception among respondents that some IPs may not consistently demonstrate honesty, straightforwardness, or impartiality in their decision-making processes. These concerns may include biases, conflicts of interest, coercion, or undue influence affecting their professional conduct.

2. **False (4%)**: A small percentage of respondents (4%) believe that there are no integrity and objectivity issues concerning IPs in their professional dealings under the code. This suggests a minority viewpoint that disputes the existence of such issues, indicating a belief that IPs generally uphold high standards of integrity and objectivity in their work.

3. **May Be (31.4%)**: A significant proportion of respondents (31.4%) express uncertainty or ambiguity regarding whether integrity and objectivity issues exist concerning IPs in their professional dealings under the code. This suggests a lack of definitive opinion among these respondents, who may require more information or evidence to form a decisive stance on the matter.

4. **Don't Know (15.7%)**: Another notable proportion of respondents (15.7%) indicate that they don't know whether integrity and objectivity issues exist concerning IPs under the code. This suggests a lack of awareness or understanding of the specific challenges or issues related to the professional conduct of IPs in the context of insolvency proceedings.

Overall, the data highlights a significant perception among respondents that integrity and objectivity issues may indeed exist concerning IPs while discharging their duties under the code. While some respondents hold differing views or express uncertainty, a notable portion believes that such issues warrant attention and consideration within the insolvency framework. This underscores the importance of maintaining high ethical standards and ensuring impartiality in the conduct of IPs to uphold the integrity and effectiveness of the insolvency process.

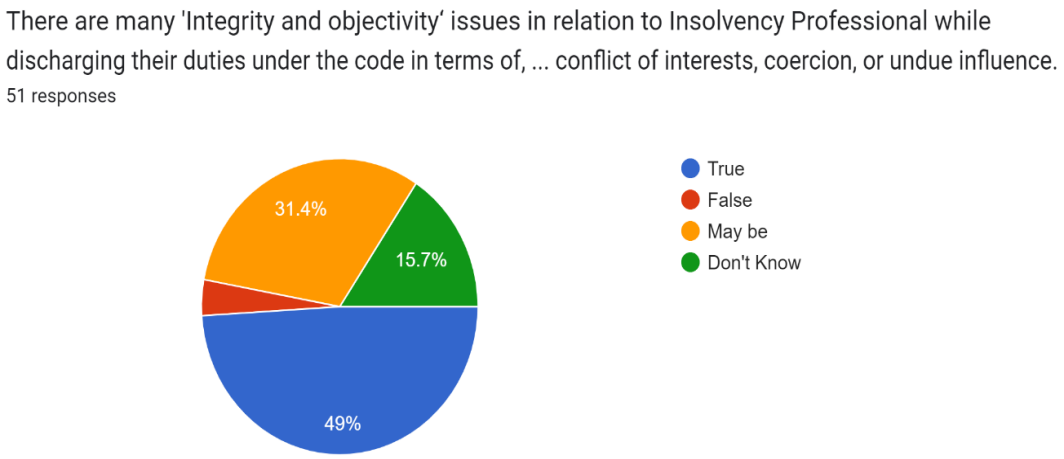

Figure- 6.1.46. Represents the regarding *integrity and objectivity issues concerning Insolvency Professionals (IPs) while discharging their duties under the code*.

6.1.47. Interpreting the data ***regarding the importance of issues contested and settled by the judiciary in recent years, and their helpfulness to Insolvency Professionals (IPs) in making appropriate decisions during Corporate Insolvency Resolution Process (CIRP) or Liquidations***. *The pie chart below in table 6.1.48 shows:*

1. **Strongly Agree (28%) and Agree (44%)**: A combined 72% of respondents either strongly agree or agree that issues contested and settled by the judiciary in recent years have been helpful for IPs in making apt decisions during CIRP or Liquidations. This indicates a significant portion of respondents who believe that judicial precedents and clarifications on contested issues provide valuable guidance and clarity to IPs, enabling them to make more informed and appropriate decisions during insolvency proceedings.

2. **Strongly Disagree (3%) and Disagree (3%)**: Only a small percentage (6%) of respondents either strongly disagree or disagree with the statement. This suggests that there are some who do not believe that judicial resolutions of contested issues have been particularly helpful for IPs in decision-making during insolvency processes. They may perceive limitations or shortcomings in how judicial decisions translate into practical guidance for IPs.

3. **Don't Know (22%)**: A notable proportion of respondents (22%) express uncertainty regarding the helpfulness of issues contested and settled by the judiciary for IPs in making apt decisions during CIRP or Liquidations. This indicates a lack of definitive opinion or awareness among these respondents, who may require more information or experience to form a decisive stance on the matter.

Overall, the data suggests a considerable level of support among respondents for the proposition that judicial resolutions of contested issues have been beneficial for IPs in their decision-making processes during insolvency proceedings. While a small minority hold differing views or express uncertainty, the majority believe that judicial clarity and precedents play a significant role in guiding IPs towards apt decision-making in the complex landscape of insolvency resolution.

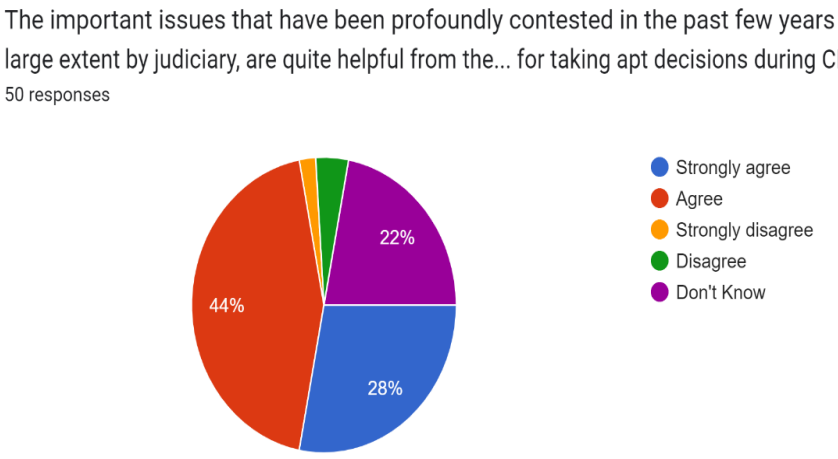

Figure-6.1.48. *Data regarding Importance of issues contested and settled by the judiciary in recent years, and their helpfulness to Insolvency Professionals (IPs) in making appropriate decisions during Corporate Insolvency Resolution Process (CIRP).*

6.2. Analysis of Research Questions on Empirical Data

The analysis of empirical data shows that the Insolvency Professionals (IPs) are crucial in efficient and timely navigating the insolvency and liquidation process. It is also evident that despite the provisions of the Insolvency and Bankruptcy Code (IBC), the IPs lack sufficient authority to address all types of challenges and contingencies under the Code, hence has not sufficiently empowered the Insolvency professionals and AAs

to execute the true intent of the code. As per the empirical data 72% of respondents either strongly agree or agree that issues contested and settled by the judiciary in recent years have been helpful for IPs in making apt decisions during CIRP or Liquidations hence, can be inferred that, the Judicial decisions by Adjudicating Authorities have removed many grey areas in the code, however, many a times, the time-consuming judicial proceedings have undermined the true intent of the IBC of timely resolution. The Judicial pronouncements can interpret the law, only if adequate provisions are made in the code by the legislature. Hence, commensurate changes in Insolvency eco-system are paramount in resolving all grey areas in the code.

6.3. **Hypothesis Testing**

The hypothesis was formulated on the basis of review of the literature and the observational study of the researcher. To test the hypotheses, the researcher applied the methods of inferential analysis upon the collected data, documented facts and observing real time scenario while attending hearings in National Company Law Tribunal (NCLT) and P& H High Court Chandigarh. Along with the inferential statistics, the researcher also used content analysis of the relevant Legal documents including the Insolvency Code, Rules, Regulations, Circulars, Government reports, notifications and judicial interpretation to test the below mentioned hypothesis: -

"The current provisions of the Insolvency and Bankruptcy Code (IBC) do not provide adequate resources to insolvency professionals, thereby hindering efficient and timely business resolution".

It goes without saying that Insolvency Professionals (IPs) are pivotal in effectively steering the insolvency, liquidation, and bankruptcy procedures for distressed corporate entities, aiming to optimize asset value. When overseeing the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor, they are entrusted with a comprehensive range of statutory and legal responsibilities. He oversees the management of the affairs of the Corporate Debtor (CD), exercises the authority of its Board of Directors, and ensures compliance with relevant laws on behalf of the CD. His responsibility includes safeguarding and maintaining the value of CD assets, managing

its operations to ensure continuity, and aiding the Committee of Creditors (CoC) in making informed decisions for insolvency resolution. Additionally, the Insolvency Professional (IP) is entrusted with various essential tasks such as issuing public announcements, verifying claims, preparing information memoranda, arranging interim financing, appointing valuers, and inviting prospective resolution applicants to submit their plans. The Code authorizes the IP to appoint other professionals, *Access to books of accounts'*, right to pass instructions to banks regarding accounts of the corporate debtor engage with CD personnel, and seek orders from the Adjudicating Authority (AA) in cases of preferential, undervalued, extortionate, or fraudulent transactions. Acting as a liaison between the AA, CoC, and other stakeholders, the IP plays a pivotal role in facilitating the Corporate Insolvency Resolution Process (CIRP) while endeavoring to address and harmonize the interests of all parties involved. At the same times, according to Section 233 of the Code, no suit, prosecution, or other legal procedure shall be brought against an insolvency professional or liquidator for anything done or intended to be done in good faith under this Code or the rules or regulations adopted there under. *Section 19 is a significant provision in the hands of the IRP and RP which sets out a legislative dictate for cooperation of CD with the IRP and RP.*

Furthermore, the First Schedule to the IP Regulations sets out a detailed Code of Conduct that must be followed by IPs during their assignments. The Code of Conduct includes observance of complete devotion to cause of profession expected as an Insolvency Professional, inter alia Integrity and objectivity i.e. need for IPs to maintain integrity by being honest, straightforward, and forthright in all professional relationships; not to misrepresent facts or bring disrepute to the profession, and act objectively, ensuring decisions are made without bias, conflict of interest, coercion, or undue influence.

The above happens to be the rule position however; the ground realities are different when it comes to implementation of IB Code. The ***Chapter-4 of my thesis*** *clearly brought out the grey areas in implementation of the code while discharging the statutory duties by the IRP/RP/Liquidator. This includes Non-Cooperation by the management, non-recovery from sundry debtors, difficulty in maintaining ongoing status of the units, valuation of assets of CD, Lack of understanding of the code, Protection and security challenges to IPs, Shortage of finance/under financing, Non-Compliance with the*

Statutory Provisions, Rarely invoking of provisions for fraudulent or malicious initiation of proceedings by the court, discretion in admission of initial application by AA, withdrawal from the CIRP with 90% voting in COC being higher percentage, lack of Market for Stressed Assets, Integrity & Biasness, non-adherence to timeline under the Code and many other issues like fee to IPs, threat to his own and his family's life, makes the life of the IRP/RP undertaking CIRP/ Liquidations miserable. The various case laws substantiate the facts stated above.

The empirical data gathered from Insolvency professionals is analyzed for testing the Hypothesis. In the null hypothesis the differences in proportions/percentages can be attributed to chance was tested using the chi-square test.

The insolvency and bankruptcy code, 2016 is the most important economic reform legislation of the decade, aimed inter-alia encouraging entrepreneurship, ensuring accessibility of credit, timely freedom of exit from business with the objective to maximise value of assets.							
Agree	Disagree	Don't Know	Strongly agree	Strongly disagree	Chi-sq	p	S/NS
46.296	1.852	3.704	44.444	3.704	58.04	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't. Thus, we infer that the insolvency and bankruptcy code, 2016 is an important economic reform.

Many issues/drawbacks of erstwhile Insolvency regime have been taken care of by this game changing legislation in the form of IB Code. Nevertheless the code has many implementation challenges and practical difficulties encountered by Insolvency Professionals (IPs) at ground level.						
Agree	Don't Know	Strongly agree	Strongly disagree	Chi-sq	p	S/NS
55.556	5.556	37.037	1.852	43.04	<0.001	S

The strength of opinion of the professional's w.r.t. the statements are significantly different with a significant higher proportion agreeing, signifying the code has many implementation challenges and practical difficulties encountered by Insolvency Professionals (IPs) at ground level.

Market for distressed assets in India is the need of the hour. As the participation would increase, there would be electronic platforms which would provide every detail of company undergoing CIRP and enable prospective Resolution Applicants to submit resolution plans, making the market liquid in the days ahead.							
Agree	Disagree	Don't	Strongly	Strongly	Chi-	p	S/NS

		Know	agree		sq		
				disagree			
51.852	1.852	7.407	35.185	3.704	53.96	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't and disagree, hence signifying the market for distressed assets in India is the need of the hour.

Insolvency Professionals (IPs) are a class of regulated professionals, who play a key role in the efficient conducting of the insolvency, liquidation and bankruptcy processes.						
FALSE	TRUE	Don't Know	chi-sq	p	S/NS	
3.704	87.037	9.259	70.33	<0.001	S	

The percentage clearly shows that Insolvency Professionals (IPs) are a class of regulated professionals, who play a key role in the efficient conducting of the insolvency, liquidation and bankruptcy processes

Inability of IPs to take timely and significant decisions due to delay in transferring ownership & Control of CD, more so longer the delay, the more likely that the entity in question would move towards Liquidation rather than resolution, and that too a low value liquidation because of higher economic rate of Depreciation.							
Agree	Disagree	Don't Know	Strongly Disagree	Strongly agree	CHI-SQ	P	S/NS
61.111	11.111	3.704	1.852	22.222	63.96	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't and disagree, hence signifying the higher economic rate of Depreciation on delay in transferring ownership to IP.

Section 29A make certain groups of individuals ineligible to submit a resolution plan. This was also aimed at ensuring that promoters and their relatives' are barred from bidding for their own companies and prevent defaulters from getting back control over their companies at a cheaper value. Is this section meeting the practical purpose for which it was meant?					
May be	No	Yes	Chi-sq	p	S/NS
32.692	15.385	51.923	100	0.005	S

The percentage of professionals who agreed and may be category to the statement are significantly more that those who says No, hence signifying the validity of the statement.

Section 12A allows withdrawal of application after the same has been admitted by the NCLT for CIRP, on approval of 90 per cent of voting share of committee of creditors. The higher % of 90, at times is a stumbling block, detrimental to resolution hence must be lowered.

Agree	Disagree	Don't Know	Strongly Disagree	Strongly agree	chi-sq	p	S/NS
52.83	18.868	11.321	1.887	15.094	39.93	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't and disagree, hence signifying lowering % would be beneficial.

In terms of section 12 of IB Code, the original timeline for resolution was 180 days with one extension of 90 days. However, the same has been increased to total 330 days including litigation but in practice, it is seen that maximum cases crosses the ibid timelines due various reasons.

Agree	Disagree	Don't Know	Strongly Disagree	Strongly agree	chi-sq	p	S/NS
47.17	1.887	11.321	3.774	35.849	43.89	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't and disagree, hence signifying the non-adherence to the timelines of resolution envisioned in the Code.

Insolvency Professional Agency (IPA) frames the standard of professional conduct and ethics to be followed by the members enrolled under them. IPAs along with IBBI protect the rights, Duties and privileges of the members and safeguard their interests. How far IPAs and IBBI successful in the same?

Only up to certain extent	Option 1 and 3	Option 2 and 3	Still requires robustness	Up to large extent	chi-sq	p	S/NS
34.615	19.231	1.923	19.231	25	14.73	0.005	S

The percentage of professionals signifying towards more robustness.

Who among the following has the highest priority in distribution of sale proceeds of liquidation estates in a liquidation process?

Employee	Government	Tax dues	Workmen	chi-sq	p	S/NS
15.385	17.308	19.231	48.077	14.92	0.002	S

The percentage of professionals signifies the kind of awareness the professional have about the Code.

If a company wishes to exist a business and can pay off all its debts in full from the sale proceeds of its assets, it may initiate

Compulsory Liquidation p	Corporate Liquidation pr	Fast track Liquidation p	Voluntary Liquidation pr	chi-sq	p	S/NS
21.569	11.765	15.686	50.98	19.353	<0.001	S

More than half of the percentage of professionals have moderate understanding of the provisions of the Code.

The easiest way for promoters to derail the CIRP proceedings is to burden an IP with filing of FIRs and multiple litigation's. It is therefore important to provide adequate safeguards that create an environment under which an IP can discharge his duties effectively.

Disagree	Neutral	Strongly agree	chi-sq	p	S/NS	
7.692	21.154	71.154	34.89	<0.001	S	

The percentage of professionals who strongly agree to the statement are significantly more that those who disagree and Neutral, hence signifying the inadequacies of safeguard for IPs.

Whether IBC empowers IRPs/RPs/Liquidators wherewithal to deal with all kinds of challenges/contingencies?

No	Not Sure	Yes	chi-sq	p	S/NS	
15.385	34.615	50	9.385	0.009	S	

The percentage of professionals are equally divided on the questions of wherewithal under IBC to deal with all kinds of challenges/contingencies by the IPs.

Maintaining on- going status of corporate debtor is extremely difficult due inter-alia non-cooperation of work force, non-availability of raw materials, lack of finance, essential services, lack of marketing plans & strategies for finished goods etc.						
Agree	Don't Know	Stongly disagree	Strongly agree	chi-sq	p	S/NS
51.923	17.308	3.846	26.923	25.69	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more than that those who don't know and disagree, hence signifying the difficulty faced by IPs in maintaining the on- going structure of the CDs.

The appointment of IRPs/RPs/ Liquidators by Financial Creditors/Operational Creditors/Adjudicating Authority suffers from various kind of biases.							
Agree	Disagree	Don't Know	Stongly disagree	Strongly agree	chi-sq	p	S/NS
46.154	9.615	21.154	3.846	19.231	27.42	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who don't and disagree, hence signifying that the appointment of IRPs/RPs/ Liquidators by the Financial Creditors/Operational Creditors/Adjudicating Authority suffers from various kind of biases.

The recovery of current assets in the form of Sundry Debtors by RPs/Liquidators are very difficult after the company goes to CIRP.							
Agree	Disagree	Neutral	Stongly disagree	Strongly agree	chi-sq	p	S/NS
51.923	3.846	17.308	1.923	25	42.62	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more than those who don't and disagree, hence signifying the difficulty faced by IPs in recovery.

In many cases, IP/Valuer is not in a position to arrive at the true value of assets of CD due lack of authenticated information wherein the valuation of CD in many cases are based on information collected from market by trial and error method.							
Agree	Disagree	Neutral	Strongly agree	chi-sq	p	S/NS	
51.923	1.923	19.231	26.923	26.92	<0.001	S	

The percentage of professionals who agreed and strongly agreed to the statement are significantly more than those who disagree and Neutral, hence signifying the inadequacy of valuation method of CD.

The debtor-in-possession of CD in CIRP/Liquidation, akin to USA would be better and detrimental to timely resolution rather than present system of Creditor-in-Possession.							
Agree	Disagree	Don't Know	Stongly disagree	Strongly agree	chi-sq	p	S/NS
39.216	11.765	23.529	7.843	17.647	15.37	0.004	S

The provision of IBC as Creditor in possession as envisioned in IBC, is preferred by IPs.

To what extent the IB code has been able to succeed as a recovery tool for the banking sector though it was not its objective.						
Effective to certain extent	Has been extremely effective	Not effective at all	Not sure	Chi-sq	p	S/NS
50	30.769	3.846	15.385	24.92	<0.001	S

The 80% of professionals agreed about the effectiveness of the code as a recovery tool.

After appointment as IRP/RP/ Liquidator, did you or any of your family members received any kind of security threat from any stakeholder?						
Did not receive	Many times	Once	Twice	chi-sq	p	S/NS
72.549	9.804	9.804	7.843	61.55	<0.001	S

The percentage of professionals who did not receive threat is significantly more than that those who did receive call, signifying no such threat to IPs.

There are many 'Integrity and objectivity‘ issues in relation to Insolvency Professional while discharging their duties under the code in terms of, being not honest and straightforward, in all professional dealings, entailing decisions are being made with biasness, involving conflict of interests, coercion, or undue influence.						
FALSE	TRUE	Don't Know	May be	chi-sq	p	S/NS
3.846	50	15.385	30.769	24.92	<0.001	S

The 80% of professionals of the view that there are 'Integrity and objectivity ‘issues in relation to Insolvency Professional while discharging their duties.

The important issues that have been profoundly contested in the past few years and settled to a large extent by judiciary, are quite helpful from the points of view of Insolvency Professionals for taking apt decisions during CIRP/Liquidations.							
Agree	Disagree	Don't Know	Strongly agree	Strongly disagree	chi-sq	p	S/NS
43.137	5.882	21.569	27.451	1.961	28.51	<0.001	S

The percentage of professionals who agreed and strongly agreed to the statement are significantly more that those who agree and strongly disagree, hence signifying the effectiveness of Judicial decisions.

Hypothesis tested through analysis of data using *null hypothesis* with the *chi-square test.*

The empirical data clearly brought out that 92% clearly acknowledged the presence of implementation challenges and practical difficulties faced by Insolvency Professionals, *82% highlighted the adverse impact of delays in transferring ownership and control of CD to the Resolution Professional (IRP/RP), leading to a higher likelihood of liquidation and low-value liquidation due to economic depreciation. The empirical data further mention that 70% also suggests significant biases exist in the appointment process of IRPs/RPs/Liquidators by Financial Creditors, Operational Creditors, and Adjudicating Authorities. The 70% of the stakeholders also mentioned the adverse impact of the high threshold of 90% for withdrawal of Resolution Proposal in terms of Section 12A and that respondents agreed to lowering the threshold could be beneficial. The 90% of the data of Insolvency Professionals reflects that there is requirement to give more empowerment to IRPs, RPs, and Liquidators under the IBC.*

On the basis of above analysis, it is justified to say that the current provisions of the Insolvency and Bankruptcy Code (IBC) do not provide adequate resources to insolvency professionals, thereby hindering efficient and timely business resolution, hence the Hypothesis is proved.

CHAPTER-VII

CONCLUSION AND SUGGESTIONS

7. This chapter presents the main findings of the entire research work, which have been discussed theoretically and analyzed critically in previous chapters. The results of both the doctrinal and non-doctrinal research are presented in a summarized way. The researcher has also made an attempt to provide the suggestions based on the findings of this study.

In recent decades, the Indian corporate sector has grappled with upheaval, as numerous industries faced challenges securing credit. Consequently, there arose a pressing need for a substantial overhaul of the Indian financial system, aimed at establishing an efficient, diversified, and accessible financial market. The objective is to extend financial support across all strata of businesses, thereby nurturing overall economic growth in the nation. Nearly eight years ago, India introduced the ground breaking Insolvency and Bankruptcy Code of 2016. This legislation was designed to address the predicament of Corporate Debtors (CDs) unable to settle their debts, functioning not only as a mechanism for creditors' recovery but also as a vehicle for resolving or rejuvenating the CD. The implications of this resolution process are substantial, encompassing the preservation of employment chains associated with the CD, securing future cash flows, promoting entrepreneurship, and catalyzing economic expansion. In the event of timely debt repayment, shareholders maintain control; however, if debts remain unsettled, control shifts to creditors. Ideally, creditors assume control upon default; however, in practice, promoters often manage to retain control even post-default, exacerbating the challenge of timely completion of insolvency procedures, a problem persisting to this day.

The Resolution Professional's (RP) plays pivotal role for executing the Corporate Insolvency Resolution Process (CIRP). Apart from facilitating communication between the debtor and creditors, the RP ensures alignment of the CD's interests with those of the creditors. As an officer of the Adjudicating Authority (AA), the RP holds statutory responsibilities and authority to oversee the resolution process. Representing the

Committee of Creditors, the RP corresponds with the AA. IPs performs a variety of tasks including legal procedures.

g, finance management, asset and liability identification, proposal preparation, individual resolution plan execution, negotiation, mediation, and asset distribution. IP act as agents of the adjudicator, utilizing their expertise to efficiently carry out these duties. However, there is no smooth sailing for the IPs, leading to multiple litigations, surpassing the timelines and hitting at the very purpose of the code of timely resolutions so as to avoid value erosion.

7.1 MAIN FINDINGS

In the previous six chapters, an attempt has been made to analyze the entire spectrum of role of Insolvency Professionals, in terms of the Insolvency & Bankruptcy Code with an emphasis on the critical analysis of the task performed, duties, right, and challenges faced. Discussions made in all previous chapters including literature reviewed, the grey areas vis-à-vis the judicial interpretation of various issues, case laws, presented a detailed account, of the implementation challenges of Insolvency and Bankruptcy Code of 2016 and the issues faced by the IPs including threat and integrity.

- As it stands out to be the foremost important economic reform legislation of the decade. It's progressing to its primary objectives of fostering entrepreneurship, ensuring credit accessibility, and facilitating timely business exits to maximize asset value. Moreover, up to certain extent, it has emerged as a potent tool for addressing Non-Performing Assets (NPAs) issues, within the banking sector, leading significantly enhancement in recovery prospects. Needless to mention, this transformative legislation effectively addresses numerous shortcomings inherent in the previous insolvency regime.
- It is established that under the scheme of Insolvency and Bankruptcy (IB) Code, Insolvency Professionals performs numerous statutory duties and responsibilities while being closely monitored by the Insolvency Professional Agency (IPA) and the Insolvency & Bankruptcy Board of India (IBBI), so as to ensure the effective fulfillment of their obligations and task envisioned. The doctrinal research and the judicial pronouncements clearly brought out the implementation challenge faced by IPs in CIRP and Liquidations. The research has also revealed integrity issues with IPs, and action

taken by IBBI against insolvency professionals for breach of duty and misconduct wherein IPs have been penalized including leading to suspension of License, fines, debarring from particular or all projects for a particular duration. Further, due to its empirical essence, the code relies significantly on a trial-and-error approach, a reality substantiated by, more than ten legislative interventions and further clarifications through judicial interpretations.

- *Discovery of new facts / examination of new Theory / Fresh Interpretation of known facts:* The research also found out that in many cases the management of the Corporate Debtor undergoing Insolvency proceedings involves in a threat to life not only of Interim Resolution Professional/ Resolution Professionals and Liquidators but also to their family members as well. To derail the process of CIRP/Liquidation many frivolous FIRs being filed against IRP/RP and Liquidators. Lack of provisions of penal action in IB Code against the erring promoters for non-cooperation with the IRP/RP is another big handicap for timely resolution. During research biases in the appointment process of IRPs/RPs/Liquidators by Financial Creditors, Operational Creditors, and Adjudicating Authorities (AA) also surfaced.

7.2. FINDINGS BASED ON EMPIRICAL STUDY/DATA

Data collected from insolvency professional's reveals that 92% acknowledged implementation challenges and practical difficulties, despite recognizing the positive impact of the IBC in addressing shortcomings of the previous insolvency regime.

Additionally, 82% highlighted the negative effects of delays in transferring ownership and control of CD on the resolution process, leading to a higher likelihood of liquidation and diminished value due to economic depreciation.

The data also indicates that 70% perceive significant biases in the appointment process of IRPs/RPs/Liquidators by Financial Creditors, Operational Creditors, and Adjudicating Authorities.

Moreover, 70% of stakeholders expressed concerns regarding the high 90% threshold for withdrawal of Resolution Proposals under Section 12A, suggesting that lowering the threshold could be advantageous.

Overall, 90% of insolvency professionals agree that there is a need to empower IRPs, RPs, and Liquidators under the IBC.

The 90% IPs further indicates the importance of establishing a market for distressed assets in India and the potential benefits of electronic platforms in enhancing transparency and participation in the resolution process.

The 90% of the data also acknowledged the crucial role that Insolvency Professionals (IPs) play in efficiently conducting insolvency, liquidation, and bankruptcy processes.

A notable 52% proportion of respondents believe that the existing framework for protecting the rights, duties, privileges, and interests of IPs and ensuring compliance with professional standards is insufficient.

The vast majority of respondents (72%) strongly agree that burdening an IP with filing of FIRs and multiple litigations is the easiest way for promoters to derail the CIRP proceedings. This indicates a widespread acknowledgment of the challenges and obstacles faced by IPs when confronted with such tactics by promoters.

A significant portion of respondents (78.5%) strongly agree/agree that maintaining the ongoing status of a corporate debtor is extremely difficult due to the various challenges mentioned.

The 76% strongly agree/ agree that recovering current assets, specifically in the form of Sundry Debtors, is very difficult for RPs or Liquidators after the company goes into CIRP.

A significant portion of respondents (80%) believe that the IB Code has been extremely effective as a recovery tool for the banking sector, surpassing expectations despite recovery not being its primary objective.

The 30% respondents reported experiencing security threats multiple times either to themselves or to their family members on multiple occasion after their appointment as IRP/RP/Liquidator.

A significant portion of respondents (49%) believe that there are indeed integrity and objectivity issues related to IPs in their professional dealings under the code. *This suggests a widespread perception among respondents that some IPs may not*

consistently demonstrate honesty, straightforwardness, or impartiality in their decision-making processes. These concerns may include biases, conflicts of interest, coercion, or undue influence affecting their professional conduct.

A combined 72% of respondents either strongly agree or agree that issues contested and settled by the judiciary in recent years have been helpful for IPs in making apt decisions during CIRP or Liquidations. This indicates a significant portion of respondents who believe that judicial precedents and clarifications on contested issues provide valuable guidance and clarity to IPs, enabling them to make more informed and appropriate decisions during insolvency proceedings.

A majority of respondents (52.9%) believe that Section 29A is meeting its practical purpose. They agree that the provision effectively prevents promoters and their relatives from bidding for their own companies and helps in keeping defaulters from regaining control over their companies at a reduced value. They perceive Section 29A as an essential safeguard in promoting transparency and integrity in the insolvency resolution process.

7.3. SPECIFIC FINDINGS ON VARIOUS IMPORTANT CONTENTIOUS ISSUES AS FOLLOWS:

It is pertinent to mention that the few problem areas and changes highlighted in this research study, are also being under consideration by the corporate ministry as vide File No. 30/38/2021-Insolvency, Government of India Ministry of Corporate Affairs Dated 18.01.2023, invited the comments from the public on 30 changes being considered in the Insolvency and Bankruptcy Code, 2016. Hence, evident that changes in IB code is need of the hour to make it more resilient and ensure fulfillment of the purpose for which it has been implemented. *Furthermore, the Insolvency Panel guidelines, 2023 issued by IBBI for smooth discharge of responsibilities by IPs, are testament that constant changes in IBC are paramount.*

- ***Non-Cooperation by the Management:*** When IP takes over the duties of the Board as a going- concern in terms of section 17 of the code: many a case, he faces complete resistant from promoters wherein there is always non-cooperation by the

management in all sphere of business activities including handing over the books of accounts and other important documents the executives, staff employees, labour and other stakeholders have innumerable apprehensions about this changed set up. To enforce the same, at times IP need to knock the door of the court, and in many cases the hon'ble court ordered corporate debtor to cooperate with the IPs. in "*Ajay Kumar Vs. Shree Sai Industries Pvt. Ltd. and Another"*(Ajay Kumar Vs. Shree Sai Industries Private Limited and Another, 2019) *and* in "*Syndicate Bank Vs. Him Steel Private Limited"*(Syndicate Bank Vs. Him Steel Private Limited, 2019), The AA, taking note of the same in terms of section 429 of the Companies Act, 2013, ordered the concerned police officer to ensure RP gets the requisite books of accounts and records of the CD so he can proceed further with the case. In another legal matter, namely Mr. Rahul Gupta Vs. Chandra Prakash (Mr. Rahul Gupta Vs. Chandra Prakash, 2023), the NCLT levied a penalty of Rs. 10,00,000/- on each member of the Suspended Board of Directors under Section 70 of the Code for failing to cooperate with the Liquidator. However, the Hon'ble NCLAT, after examining six prior judgments, determined that the Adjudicating Authority had made a mistake in issuing the challenged order by disregarding the provisions of the law (the Code). Further, the empirical analysis by 82% also highlighted the negative effects of delays in transferring ownership, control and information related to CD on the resolution process, leading to a higher likelihood of liquidation and diminished value due to economic depreciation. Similar problem is also faced by the valuer, much like the IRP, due to lack of information. Without proper asset details, valuation often relies on trial-and-error method or market data, which aren't scientific. Inaccurate valuation hampers revival plans, Hence, speak volume about existence of the problem and effectiveness of section in spite of provisions under section 19,70 & 236 of the IBC read with Regs 30 of the CIRP Regs and section 429 of the Companies Act, 2013.

- ***Recovery from Sundry Debtors****:* Another challenge arises with regards to recovery from *Sundry Debtors* listed in the books: as they often change their addresses or dispute the claims in various courts, making it challenging to recover dues from them. In many instances, applications are filed to seek directions from the NCLT, and this process continues even during liquidation. In the "*Dushyant Dave Liquidator v. Bijaya*

Kushasa Behera and Ors. (Dushyant Dave Liquidator v. Bijaya Kushasan Behera and Ors., 2024). The Resolution Professional is requesting cooperation from the Sundry Debtors and the Suspended Directors to recover debts owed by the Sundry Debtors to the Corporate Debtor for goods previously sold to them. However, the NCLT Mumbai Bench has ruled that such directions are not allowed under section 19(2), and the bench cannot compel them to cooperate. The RP has a lien over these goods as an "Unpaid Seller" as per the provisions of Section 47 of the Sale of Goods Act, 1930. Therefore, specific directions from the NCLT regarding Sundry Debtors are deemed unnecessary. There are many such cases in relation to sundry debtors at various courts leading to loss of money as well as wastage of time & effort.

Regarding provisions in IB code, Section 11 doesn't permit an application to initiate corporate insolvency resolution process by a corporate debtor undergoing a corporate insolvency resolution process. So even if CD is owed money from Sundry debtor, they still can't proceed against sundry debtors because of the bar under section 11. At the same time Section 25(2)(b) of the IB Code, regarding the responsibilities of the resolution professional, states that they shall "represent and act on behalf of the corporate debtor with third parties, and exercise rights on behalf of the corporate debtor in judicial, quasi-judicial, or arbitration proceedings. Also, RP has to keep the company running as a going concern during the CIRP and at the same times preserve the value of the assets of the Company. Further, the Current Assets, being the assets of the company, many a times exceed 50% in comparison to Fixed Assets (Ruia, 2018). Especially in an Engineering, procurement and construction (EPC) Company. The ratio of Fixed Assets to Current Assets in the Corporate Insolvency Resolution Process (CIRP) stands at 1:9. Therefore, any recovery from Sundry Debtors will enhance the liquidation value of the company. If the Resolution Professional is empowered by making specific provisions in the code by amendment, so IP can move an application to AA on the basis of evidence in the books of account, for attachment of property of the sundry debtors for recouping funds owed to corporate debtor. It is pertinent to mention that in the present Corporate Insolvency Resolution Process (CIRP), could essentially provide a free pass to these debtors.

- ***Difficulty in maintaining ongoing status of the units and ensuring the continuity of operations:*** Research brought out in chapter-3 above, wherein section 23 of the Code mandates, that the Resolution Professional is responsible for overseeing the corporate debtor's operations over the duration of the corporate insolvency resolution process and conducting the full procedure, subject to Section 27: furthermore, it states that until the adjudicating authority passes an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34, the resolution professional will continue to oversee the corporate debtor's operations even after the corporate insolvency resolution process period has expired.

The difficulty faced by IP in many cases, wherein manufacturing units'/ service units are non-operational, with disconnected power and no inventory or staff. It's difficult for the IRP/RP to maintain operations, even for functioning units, due to sourcing raw materials and managing expenses. Skilled workers tend to leave upon learning of the unit's IBC status. Additionally, marketing products becomes challenging during CIRP/Liquidation. A significant practical challenge for IPs is the lack of finances to sustain the company as a going concern. In insolvency cases, CDs are typically financially strained, unable to cover insolvency costs, professional fees, or expenses for transitioning management to the IP. Financial institutions refuse further loans, and IPs may go unpaid, leading to demotivation and delays in completing CIRP/Liquidation. This fact is substantiated by various court judgements mentioned in chapter-4 of my research like in terms of section 14(2) of IB Code, after the issuance of Moratorium the supply of essential goods and services to a *corporate debtor* will continue and shall not be suspended or terminated as held in *"ICICI Bank vs Innoventive Industries"* (ICICI Bank vs Innoventive Industries, 2017) and "*Canara Bank vs Deccan Chronicle"*(Canara Bank vs Deccan Chronicle, 2017). Further, regarding payment for supply of essential goods and services required has been explained in *"Dakshin Gujarat Co. Ltd. Vs ABG Shipyard Ltd.* (Dakshin Gujarat Co. Ltd. Vs ABG Shipyard Ltd (2017). *This show existence of the problem and intervention by the court for ensuring supply of critical supplies to businesses during the corporate insolvency resolution process and further enables the resolution professional to negotiate for the continuation of other critical supplies during the corporate resolution process. Further, the empirical analysis byA significant portion of*

respondents (78.5%) strongly agree/agree that maintaining the ongoing status of a corporate debtor is extremely difficult due to the various challenges mentioned.

- ***Regarding Real Estate Projects:*** It has been noted that resolving insolvency cases involving Corporate Debtors (CDs) who are promoters of Real Estate projects presents significant challenges due to the unique characteristics of this sector. While the law has clarified the status of allottees in real estate projects as Financial Creditors (FCs) and integrated them into the Committee of Creditors (CoC), their interests sometimes diverge from the objectives of the Corporate Insolvency Resolution Process (CIRP). Unlike other FCs, allottees typically prioritize obtaining ownership and possession of the plot, apartment, or building over receiving repayments with potential reductions or initiating the liquidation process. Consequently, there exists an inherent conflict between the preferences of other FCs, such as banks, who may be willing to accept repayments, even with reductions, or consent to the liquidation of the Corporate Debtor, and the preferences of allottees. There is plethora of cases at various level of judicial set-up, as few discussed in chapter-4, a new resolution system catering requirements of real estate, like in USA wherein there are five chapters dealing with different kinds of insolvencies like farming, fisheries etc., need to be invoked for real estate sector in India.

- ***The Code of Conduct for Insolvency Professionals*** mandates the independence and impartial operation of an IRP/RP, however, the eligibility criteria outlined in the provisions of the IBC and the CIRP Regulations do not specifically address the independence of the IRP/RP concerning financial/operational creditors. Conversely, *Regulation 3(1)* solely mandates the independence of the insolvency professional concerning the *corporate debtor* and *regulation 3(2)* of the CIRP Regulations also require an IRP/RP to make disclosures in accordance with the Code of Conduct for Insolvency Professionals. As regulation 3(1) mentions only in relation to corporate debtor, leading to ambiguous situations (Singh, (n.d)). The change has to be incorporated in regulation 3(1) as to independence of IP, not only in relation to corporate debtor but even in dealing with CoC and other stakeholders.

- Many applications are filed in the NCLT challenging the ***independence of the 'Insolvency Professionals'/biasness or Integrity issues'***, while discharging duties in

CIRP/Liquidations as mandated in the IB code like "State Bank of India vs. Metenere Limited" (State Bank of India vs. M/s Metenere Limited, 2020). Though there are many landmark judgements of the Hon'ble Supreme Court that in order to establish biasness, "the requirement is availability of positive and cogent evidence" and that there must be "existing a real danger of bias" to hold an administrative action unsustainable. *In the present system, for removal of IP either a complaint can be filed with the regulator, IBBI, who get it investigated through disciplinary committee, alternatively application filed in NCLT and in both the cases it takes months together defeating the purpose of the IB Code.* There is plethora of cases wherein the integrity of the IP was questionable and they were debarred from undertaking further assignment/ licenses were cancelled by IBBI (Burgula, 2022). The list of action taken by the regulator (IBBI) against the erring Insolvency Professional are available on the IBBI website. Further, the empirical analysis shows, a significant portion of respondents (49%) believe that there are indeed integrity and objectivity issues related to IPs in their professional dealings under the code. This suggests a widespread perception among respondents that some IPs may not consistently demonstrate honesty, straightforwardness, or impartiality in their decision-making processes. These concerns may include biases, conflicts of interest, coercion, or undue influence affecting their professional conduct. As the provisions for discipline action against IP are already in place, however, the power of change of IPs in disciplinary cases may be given to CoC with majority voting approval, so as prevent value erosion and maintain the timelines under IB Code.

- ***Lack of understanding of the code:*** Due to the newness of the IB Code, participants often lack understanding. Banks and stakeholders send reminders and demand notices to the CD during moratorium. Creditors resort to collection tactics even pending insolvency proceedings. Operational creditors also lack understanding. Government agencies send reminders for dues during moratorium. IPs may face difficulties opening bank accounts due to differing interpretations and infrastructure limitations. These issues stem from a lack of understanding of the CIRP process, leaving the IRP and team responsible for educating stakeholders.

- ***Protection and security challenges to IPs***: Disturbing reports reveal that IPs appointed by the AA to fulfill statutory duties under the IB Code face life-threatening

risks, with instances of threats, hostage situations, and attacks on them and their families. Hostile environments, including union-led aggression, further hinder their work. These challenges raise concerns about meeting the CIRP deadline outlined in Section 12 of the IB Code, despite efforts to seek police assistance, which may not always prove effective. The Institute of Company Secretaries of India has also floated policy to protect the interests and rights of the Insolvency Professionals (ICSI, IIP. (n.d.)). The vast majority of respondents (72%) strongly agree that burdening an IP with filing of FIRs and multiple litigations is the easiest way for promoters to derail the CIRP proceedings. This indicates a widespread acknowledgment of the challenges and obstacles faced by IPs when confronted with such tactics by promoters. Further, the 30% respondents reported experiencing security threats multiple times either to themselves or to their family members on multiple occasion after their appointment as IRP/RP/Liquidator.

- ***Discretion in admission of initial application by AA****:* The initial admission or rejection of application by AA takes lot of time which is one of the reasons for non-completion of the CIRP within overall limits of 330 days including extension in terms of section 12 of IB Code. *The uncertainty regarding initial admission by AA, on account of consideration of facts extraneous to IBC, is a much-debated legal subject matter today. In the case of Vidarbha Industries Power Limited v. Axis Bank Limited*(*Vidarbha Industries Power Limited v. Axis Bank Limited,* 2021)*, the Supreme Court interpreted the use of 'may' in section 7(5) to imply that the Adjudicating Authority (AA) possesses the discretion to either admit or reject an application, even if a default exists. Consequently, it has been observed that AAs often delve into intricate details concerning the solvency and financial condition of the corporate debtor, which goes beyond the original intent of the law. This situation has led to uncertainty in the market regarding the extent of the AA's discretion during the admission stage. Many a times, the AA uses its pleasure in admitting application within 14 days of its receipt*. In case of bonafide mistake in application the same is to be rectified within seven days. "*Whether period of 14 days for admission and further 7 days for rectification of defects was mandatory or discretionary? And there was no transparency on it*. *The Supreme Court* (M/s Surendra Trading Company Vs. M/s Juggilal Kamlapat Jute Mills Company Ltd. & Ors., 2017) *ordered that the 14/7 days' period would be discretionary*." Further, NCLAT in "*Quinn*

Logistics v. Mack Soft Tech" (Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd., 2017) gave a descriptive list of time-gaps that may be excluded for the purpose of counting the total period of 270/330 days. In another case "*VelamurVaradan Anand v. Union Bank of India &Anr"* wherein the NCLAT allowed the exclusion of time from calculation of the maximum time limit wherein the RP was not allowed to enter the premises and take charge. Hence, the conflicting views need to be rested by making amendment in the form of specific provision in IB Code to deal with the issue of initial admission by the AA on account of financial default under section 7 of IB code,

The Study Group Report from IIIPI's (Indian Institute of Insolvency Professional of ICAI) in its report on "Contribution of Insolvency Professionals in Resolution Under the IBC" also mentioned that on an average Adjudicating Authorities take 138 days to approve a Resolution Plan from the date an application is submitted by the Resolution Professional, against the model timeline of 15 days provided in the regulations. The report highlights various bottlenecks faced during the resolution processes and also makes recommendations to address the same. The recommendations are primarily in the context of improving resolution/liquidation processes, adjudication process, coordination with CoC and stakeholders.

- Presently, if ***withdrawal is sought after admission in terms of section 12A read with Regulation 30A*** of the Corporate Insolvency Resolution Process (CIRP) Regulations, 2016, it requires approval by 90% or more of the voting share. This high threshold for withdrawal by the COC, at 90%, is difficult to be mustered with. After the commencement of insolvency proceedings against a CD, many a times, the CD comes to a short of settlement with at least many creditors, if not with all creditors. The so-called agreed creditors want to withdraw the application, however not able to do so because of 90% threshold of voting. It is axiomatic to mention that almost all other decisions in IBC resolution process are taken with 66% voting of CoC. The Supreme Court in "*Anuj Tejpal v. Rakesh Yadav"* (Anuj Tejpal v. Rakesh Yadav, 2021) the NCLAT held that Rule 11 of the NCLAT Rules, 2016 allows the Appellate Tribunal to make necessary orders for the ends of justice or to prevent the abuse of its process. Section 261 of the *UK Insolvency Act of 1986* additionally states, that a debtor has the option to submit a proposal for a voluntary arrangement and if creditors consent to this arrangement, the

court holds the authority to revoke the bankruptcy order. Similarly, *Section 706(a) of the US Bankruptcy Code grants the debtor a singular, unconditional right to convert a liquidation case into a reorganization or individual repayment plan case*. Supreme Court, in "*Lokhandwala Kataria Construction Private Limited v. Nisus Finance and Investment Managers LLP*" (Saraf, 2019) in this case, a scenario wherein, the Supreme Court had to utilize its comprehensive authority under Article 142 of the Constitution of India to authorize withdrawal subsequent to the admission of the resolution process. Following this judgment, there has been a surge in withdrawals under Section 12A. According to data from IBBI, out of the 142 cases concluded in 2018, 63 have been withdrawn under Section 12A. Empirical study also shows, 70% of stakeholders expressed concerns regarding the high 90% threshold for withdrawal of Resolution Proposals under Section 12A, suggesting that lowering the threshold could be advantageous as the main focus of IBC is resolution.

- ***Leveraging Technology in the IBC Ecosystem:*** The key institutions of the Insolvency and Bankruptcy Code (IBC), so called pillars, the Adjudicating Authority (AA), the Insolvency and Bankruptcy Board of India (IBBI), Information Utilities (IUs), and Insolvency Professionals, operate on separate technological platforms, leading to challenges due to disintegration. Consolidating their interactions, taking Ministry of corporate affairs also on board, through a streamlined electronic platform can enhance transparency, reduce delays, and facilitate more effective decision-making. There is a compelling need for a cutting-edge electronic platform capable of managing various processes under the Code with minimal human intervention. This platform could include features such as Information accessible by citizen, Online grievance redressal system related to IBC, case management system, automated application filing with the AAs, delivery of notices, interaction facilitation between IPs and stakeholders, storage of records of companies undergoing the process, and encouraging participation of other market players in the IBC ecosystem. Additionally, it may enable MCA, IBBI and AAs to exercise better oversight by consolidating information on the e-platform.
- ***Making Information Utility (IU) framework more robust to reduce information asymmetry****:* Presently the National E-Governance Services Limited, is the only Information Utility (IU) available in India, registered in terms of the IB Code. According

to Section 215 (2) of the Code, Financial Creditors (FCs) are required to furnish financial information to the Information Utilities (IUs). In case of default, this record, along with other, can be presented to the Adjudicating Authority (AA) to ascertain the occurrence of the default. IU safeguard data from unauthorized access and loss, and combat cyber threats like malware and hacking. The Insolvency and Bankruptcy Board of India (IBBI) conducts regular inspections to ensure IU data security, with breaches subject to penalties. IU-stored data acts as evidence for debt and defaults, admissible in court under the Indian Evidence Act. Adjudicating Authorities may accept IU records as proof, supported by the Supreme Court's ruling in Swiss Ribbons Pvt. Ltd. v. Union of India, affirming the evidentiary value of IU information. Currently, sections 7 and 9 stipulate that apart from the default record maintained by the Information Utilities (IUs), supplementary evidence can also be presented to prove the occurrence of a default, this also entail loss of time. For smooth Insolvency and Bankruptcy Code (IBC) operation, the timely access to correct debtor's financial data is crucial.

The IU framework aims to reduce information asymmetry, aiding credit risk assessment and recovery. Though their importance is evident, optimum utilisation in the IBC ecosystem, is still lacking. As IU data grows, they will become pivotal in the resolution process. Hence, proactively, the government can establish two to three more IUs, with demarcation on the basis of storing sector specific information, and enforcing that the only financial data available with the IUs will be admissible to show the default on the part of the Corporate Debtor (CD). This will lead to available of more authentic information with the AA to analyse for reaching early conclusion on default. This will also contribute to lowering the average time of resolution.

- **There is lack of full-bodied *stressed assets market* in India**. Lots of companies goes into *CIRP* and not able to get a good resolution plan because of Indian business culture wherein people are less interested to buy old stuff even in *Liquidations*. There is system in vogue in India wherein even the good business will not be able to fetch more than half of its value. Due to lack of market for stressed assets only very few buyers show some interest leading to delays in resolution of companies (Insolvency Tracker, 2024). Seeing the size of stressed assets in India, there are huge potential for growth of the secondary stress market. Further, marketability of assets is one of the critical causes

contributing to delays in resolution of companies. RBI has released a discussion paper in January 2023. For developing a framework for securitizing stressed assets. RBI governor listed out a few measures the regulator took in order to develop a secondary market for stressed assets. The RBI has assembled a core group of major banks to establish a Self-Regulatory Body called the Secondary Loan Market Association (SLMA). This body is anticipated to have a significant impact on standardizing documentation and market practices, establishing market infrastructure, and fostering liquidity, efficiency, and growth in the secondary market, aligning with overarching regulatory goalsThe stressed asset market in India, valued at over USD 150 billion, offers substantial opportunities for investors to engage through various avenues, including the Indian Insolvency and Bankruptcy Code and alternative out-of-court mechanisms. With Indian lenders encountering capital limitations and heightened scrutiny from the Reserve Bank of India (RBI) regarding asset quality, there exists a significant demand for capital influxes from international sources (Shah et al, 2019). The 90% of the IPs further indicates the importance of establishing a market for distressed assets in India and the potential benefits of electronic platforms in enhancing transparency and participation in the resolution process.

- A company goes for insolvency inter- alia primarily for insufficient of capital. All the creditors whether Financial or operational are not going to get full amount due to them from a CD, in case it goes for insolvency. The IB code provide for a system of Priority payment depending upon the kind of debt, type of creditors, the CIRP cost and other factors and the Resolution plan must cater for it. Section 30(2) encompasses two distinct sets of requirements: those pertaining to the distribution process and the minimum entitlement for operational creditors (OCs) and dissenting financial creditors (FCs), as well as other stipulations related to implementation. However, it is not clear as section 53A. Throughout the Corporate Insolvency Resolution Process (CIRP), numerous disputes emerge concerning the allocation of proceeds, raising apprehensions about unfair distributions among creditors. To address these concerns, a transparent and impartial formula could be developed for distributing proceeds during the CIRP, ensuring fairness and equity for all creditors involved. Currently, there are no explicit provisions outlining the priority order for distributing proceeds between financial creditors and operational creditors in the corporate insolvency resolution process

(CIRP), akin to the waterfall mechanism stipulated in section 53A of the Insolvency and Bankruptcy Code for liquidation proceedings. This absence of clarity is leading to avoidable legal disputes, arising from differing interpretations. Therefore, an amendment to the IB Code is necessary to provide clarification and mitigate potential conflicts.

7.4. KEY TAKE AWAY FROM INSOLVENCY LAWS OF USA AND UK

In the US and UK, creditor rights with varying security rankings are recognized, prioritizing higher-ranked debt repayment. However, India's IB Code lacks such distinctions, leading to judicial interpretation, as seen in the recent "Jyoti Structures" case. The Supreme Court denied DBS Bank's priority request over subordinate debt, highlighting the need to recognize creditors' inter-se rights and amend the IB Code for a healthier credit culture in India.

Treatment of home buyer as Financial Creditors. There is no such distinct class of creditors in the US and UK as "*home buyers*" or any other type of creditors, unlike in India.

Treatment of dues to related parties by Operational Creditors / FCs: US bankruptcy laws do not affect payment obligations to connected parties, with their voting rights equal to those of unconnected creditors. Similar rules exist in UK insolvency regulations. In India, it's unclear whether related party creditors should have voting rights in the CoC or how profits should be distributed in resolution/liquidation. Hence, requires changes in the law.

International Practice Regarding fee payable to IPs vis-à-vis India. From a global standpoint, distinct protocols and guidelines regarding the fees to be paid to Insolvency Professionals (IPs), In ***Canada***, the creditors typically vote on an ordinary resolution during their meeting to determine the trustee's (an insolvency professional) fee. Nevertheless, in cases where the trustee's remuneration is not set by the creditors, Canadian insolvency laws have established a maximum of 7.5 percent of the residual proceeds from the debtor's property realization following the payment of secured creditors' claims.In the ***USA***, the court has the discretion to grant payment to an insolvency professional (trustee) in situations where Chapter 11 or 7 insolvency or liquidation proceedings are ongoing. However, a cap has been placed on the

compensation based on the amount that the insolvency professional distributes to different stakeholders on a rotating basis. Additionally, "quarterly fees" were stipulated in Section 6 of the U.S. Code. In UK, the Fee/Remuneration is determined by taking into account a number of factors, including the time required to handle the case at hand, a fixed amount in the event that the administrator is set free with its amount duly justified to creditors, and a percentage of the total value of the property the administrator must deal with or the assets that are realized or distributed. Upon a court application, all costs and fees/remuneration are open to challenge on grounds of excessiveness or injustice. **In *India*** there were no statutory provisions ***till September, 2022*** with respect to amount/percentage of remuneration/ fee to be paid to IRP/RP in the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor (CD). Notwithstanding the expenses on account of the remuneration/ fee to IRP/RP had priority in payment as CIRP cost in the Corporate Insolvency Resolution Process. When it comes to ***liquidation***, provisions are already in place under **section 53,** which grants the insolvency professional appointed as a liquidator the right to charge a fee based on the value of the liquidation assets.

Regarding Lack of clarity over treatment of creditor's dues in surety's books once guarantee is invoked. As per the US IB code, when a debt goes into default, creditors have the option to file for bankruptcy on behalf of both the debtor and the surety. The surety's liability persists and isn't extinguished solely by the debtor's settlement or liquidation. Creditors may initiate parallel insolvency proceedings against both the surety and the debtor. If, after settlement or liquidation, there remains an unrecovered amount, UK creditors can pursue legal action against the surety. Nevertheless, in the *instance of India*, following modifications, bankruptcy procedures can now be brought in tandem against the corporate debtor and guarantor, following a ruling by the Supreme Court.

7.5. SUGGESTIONS

The Insolvency Professionals under due supervision of regulator (IBBI), Adjudicating Authorities and other stakeholders are working together constantly, to ensure plugging enforcement gaps. The features of the IBC with immediate course correction as and when needed are also assertive, the promise, for making the Indian insolvency law an

exemplary for other countries. The role of insolvency professionals in insolvency laws of developed countries like UK and USA also has intrinsic worth which may be prolific for better implementation of the insolvency processes in India. Following *amendments* in the IB Code are worth mentioning which will go a long way better insolvency platform for Insolvency Professional in India: -

- Separate tailored resolution mechanisms to address ***challenge of real estate,*** akin to sector-specific chapters in the US bankruptcy code, is must. Resolving insolvency for real estate Corporate Debtor is extremely difficult due to unique sector traits. While allottees are classified as financial creditors, their focus on property ownership clashes with financial creditors, repayment-oriented approaches, posing conflicts with other stakeholders.

- The provision of IB code in terms of section 235A is not a potent tool to force cooperation from the management, as it does not prescribe/ empower any Penal action. Hence, provisions have to be made in the IB Code, empowering Adjudicating Authorities for taking penal action for non-cooperation by the Corporate Debtor and any other stakeholders who don't abide by the order of the AAs.

- Leveraging Technology in the IBC Ecosystem: The key institutions of the Insolvency and Bankruptcy Code (IBC) includes the Adjudicating Authority (AA), the Insolvency and Bankruptcy Board of India (IBBI), Information Utilities (IUs), and Insolvency Professionals, operate on separate technological platforms, leading to challenges due to disintegration. Consolidating their interactions, taking Ministry of corporate affairs also on board, through a streamlined electronic platform, can enhance transparency, reduce delays, facilitate more effective decision-making and to exercise better oversight by consolidating information on the e-platform.

- The change has to be incorporated in regulation 3(1) as to independence of IP, not only in relation to Corporate Debtor (CD) but even in dealing with CoC and other stakeholders in IBC ecosystem.

- Attachment of the Property of Sundry Debtors: Introducing provisions in the Insolvency and Bankruptcy Code (IBC), to enable the attachment of the property of sundry debtors, upon application by an insolvency professional to the Adjudicating Authority, in all the

cases where sundry debtors have failed to pay dues owed to a corporate debtor undergoing insolvency proceedings.

- The power of replacement of IRP/ RPs engaged in Corporate Insolvency Resolution Process/ Liquidation may be given to the CoC in the cases of biasness / integrity issues of Insolvency professional which will be independent of disciplinary action by the Insolvency & Bankruptcy Board of India (BBI) / NCLT, so as to save on time in turn preventing value erosion of the CD and to ensure the timelines under IB Code.

- Insolvency Professional should be given, Power of '*Recovery Officer'* as are provided under the SARFASI Act, wherein they should be authorized to approach District Magistrate for taking over the properties of corporate debtor and Sundry debtor, in the case of resistance from erstwhile management/ Sundry Debtor.

- Making Information Utility (IU) framework more robust by establishing two or more IUs/branches with demarcation on the basis of sector specific information, so as to prevent information asymmetry. As IU data will grows in terms of section 215, it will become pivotal in the resolution process. This will lead to availability of more authentic information with the AA to analyze, and reaching out an early conclusion on default by CD. In turn, lowering the average time of resolution.

- Withdrawal of application after admission should be with less voting percentage which is presently kept at 90% of the voting of CoC, keeping in view the object of IBC being resolution and taking clues from USA & UK insolvency laws.

- Making provisions in the code for providing police protection to IPs, on an application to Adjudicating Authority, in the cases where he or his family members get threatened. Adequate safeguards for IP are crucial to create a motivated environment where IPs can independently and effectively carry out their duties without undue influence, threat or obstruction to himself and his family.

- Development of '*full-bodied stressed assets market in India'* is need of the hour. Due to lack of buyer of stressed assets in India, the companies into CIRP are not able to get a good Resolution Plan. Because of Indian business culture, wherein people are less interested to buy old stuff even in Liquidations, the RP is not able to muster good

resolution plan. The RBI has taken few steps, however government need to incentivize the foreign player to invest in Indian Stressed market, so as to inculcate culture of buying distressed asset in India in a time to come.

- Incorporating a priority system for allocating resolution proceeds among financial creditors and operational creditors during the corporate insolvency resolution process (CIRP), similar to the 'waterfall mechanism' outlined in section 53A of the Insolvency and Bankruptcy Code for liquidation proceedings. The lack of clarity in this regard is causing unnecessary legal disputes due to varying interpretations. Hence, an amendment to the IB Code is required to offer clarity on the order of distribution of resolution proceeds and to minimize potential conflicts.

- Proposed revisions to Section 7 regarding the Adjudicating Authority's discretion in admitting initial applications. The suggested amendment proposes that Section 7 of IBC, be amended to clearly specify that when reviewing a financial creditor's application to commence the Corporate Insolvency Resolution Process (CIRP) against the CD, the Adjudicating Authority (AA) is to only verify the existence of a default and adherence to procedural prerequisites without additional considerations such as financial viability, etc. Once the default is confirmed, it should be mandatory for the AA to approve the application and initiate the CIRP.

- *Miscellaneous:* Levy of penalty for Frivolous / Vexatious / False complaint against the Insolvency Professional; to implement a strict procedure system for valuation of CD including the Current Assets, Some kind of distressed fund to provide financial assistance to CD in CIRP and Liquidation in extreme emergency; To cut on delay and expeditious disposal of cases, Set up at least one NCLT bench in each state; Broadening the scope of prepackaged insolvency schemes beyond micro, small, and medium enterprises (MSME). During CIRP/Liquidations, the corporate debtor (CD) should be exempted from payment of Court Fee for any filing etc. and other statutory dues.

7.6. Future Research

Insolvency law being economic law, need to evolves continuously to meet emerging challenges in the insolvency landscape. The future research can be on issues like recovery mechanism from debtors of the Corporate Debtor (CD) undergoing the

insolvency proceedings, Cross-border insolvencies, business specific insolvencies and research on to implement a more robust insolvency ecosystem in India.

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Section 5(18) of IBC "liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.

Section 5(27) of IBC "resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution

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Appendix A

EMPIRICAL SURVEY ON

"INSOLVENCY PROFESSIONAL AS AKEY TO RESOLUTION UNDER INSOLVENCY& BANKRUPTCY CODE, 2016: A CRITICAL ANALYSIS"

Dear Professional Friends,

My name is Rakesh Kumar Chauhan, Doctoral Research Scholar at the School of Law, University of Petroleum and Energy Studies, Dehradun. Your valuable input, in completing the online questionnaire, would be immensely appreciated.

This study is primarily aimed to find out the grey areas in terms of various practical problems and challenges faced by Insolvency professionals vis-à-vis the efficacy of existing provisions in the IB Code, rules and regulations in India. This will help us understand, identify and recommend the areas for improvement in the code and related regulations.

You are part of a selected sample of professionals' whose view on the research topic is very important. Therefore, it is respectfully requested to complete the questionnaire. The questionnaire should not take more than 5-7minutes to complete.

Please note that there are no correct or incorrect answers. Select the option that best describes your experience or perception of each statement. Request fill up the basic details before marking your option. I also assure that all the information will be handled with the STRICT CONFIDENTIALITY.

Thank You in Advance.

1. Name: _____

2. Email ID: _____

3. You being Insolvency Professional also specialises in (*Mark only one option).*
    a. Insolvency Professional as CS/CA/CWA
    b. Advocate
    c. Banker
    d. Academician
    e. Industrial Expert

4. How many cases of CIRP/Liquidation have been handled by you as insolvency professional?
    a. One to Three
    b. Four to Seven
    c. Eight or More
    d. Nil
    e. Not Applicable

5. The insolvency and bankruptcy code, 2016 is the most important economic reform legislation of the decade, aimed inter-alia encouraging entrepreneurship, ensuring accessibility of credit, timely freedom of exits from business with the objective to maximize value of assets.
    a. Strongly Agree
    b. Agree
    c. Strongly Disagree
    d. Disagree
    e. Don't Know

6. Many issues/drawbacks of erstwhile Insolvency regime have been taken care of by this game changing legislation in the form of IB Code. Nevertheless, the code has many implementation challenges and practical difficulties encountered by Insolvency

Professionals (IPs) at ground level.

a. Strongly Agree
b. Agree
c. Strongly Disagree
d. Disagree
e. Don’t Know

7. Market for distressed assets in India is the need of the hour. As the participation would increase, there would be electronic platforms which would provide every detail of company undergoing CIRP and enable prospective Resolution Applicants to submit resolution plans, making the market liquid in the days ahead.

a. Strongly Agree
b. Agree
c. Strongly Disagree
d. Disagree
e. Don’t Know

8. Insolvency Professionals (IPs) are a class of regulated professionals, who play a key role in the efficient conducting of the insolvency, liquidation and bankruptcy processes.

a. True
b. False
c. Don’t Know

9. Inability of IPs to take timely and significant decisions due to delay in transferring ownership & Control of CD, more so longer the delay, the more likely that the entity in question would move towards Liquidation rather than resolution, and that too a low value liquidation because of higher economic rate of Depreciation.

a. Strongly Agree
b. Agree
c. Strongly Disagree
d. Disagree

e. Don’t Know

10. Section 29A makes certain groups of individuals’ ineligible to submit a resolution plan. This was also aimed at ensuring that promoters and their relatives’ are barred from bidding for their own companies and prevent defaulters from getting back control over their companies at a cheaper value. Is this section meeting the practical purpose for which it was meant?

    a. Yes

    b. No

    c. May be

11. Section 12A allows withdrawal of application after the same has been admitted by the NCLT for CIRP, on approval of 90percentofvotingshareofcommitteeofcreditors. The higher % of 90, at times is a stumbling block, detrimental to resolution hence must be lowered.

    a. Strongly Agree

    b. Agree

    c. Strongly Disagree

    d. Disagree

    e. Don’t Know

12. In terms of Section 12 of IB Code, the original timeline for resolution was 180 days with one extension of 90 days. However, the same has been increased to total 330 days including litigation but in practice, it is seen that maximum cases crosses the ibid timelines due various reasons.

    a. Strongly Agree

    b. Agree

    c. Strongly Disagree

    d. Disagree

    e. Don’t Know

13. Insolvency Professional Agency (IPA) frames the standard of professional conduct and ethics to be followed by the members enrolled under them. IPAs along with IBBI protect the rights, Duties and privileges of the members and safeguard their interests. How far IPA sand IBBI successful in the same?
    a. Up to large extent
    b. Only up to certain extent
    c. Still requires robust rules and regulations
    d. Option ‘a’ & ‘c’
    e. Option ‘b’ & ‘c’
14. Who among the following has the highest priority in distribution of sale proceeds of liquidation estates in a liquidation process?
    a. Workmen
    b. Employee
    c. Government
    d. Tax dues
15. If a company wishes to exist a business and can pay off all its debts in full from the sale proceeds of its assets, it may initiate
    a. Compulsory Liquidation process
    b. Voluntary Liquidation process
    c. Corporate Liquidation process
    d. Fast track Liquidation process
16. The easiest way for promoters to derail the CIRP proceedings is to burden an IP with filing of FIRs and multiple litigations. It is therefore important to provide adequate safeguards that create an environment under which an IP can discharge his duties effectively.
    a. Strongly agree
    b. Disagree
    c. Neutral

17. Whether IBC empowers IRPs/RPs/Liquidators wherewithal to deal with all kinds of challenges/contingencies?
    a. Yes
    b. No
    c. Not Sure

18. Maintainingon-goingstatusofcorporatedebtorisextremelydifficultdueinter-alia non-cooperation of work force, non-availability of raw materials, lack of finance, essential services, lack of marketing plans & strategies for finished goods etc.
    a. Strongly Agree
    b. Agree
    c. Strongly Disagree
    d. Disagree
    e. Don't Know

19. The appointment of IRPs/RPs/ Liquidators by Financial Creditors/Operational Creditors/Adjudicating Authority suffers from various kind of biases.
    a. Strongly Agree
    b. Agree
    c. Strongly Disagree
    d. Disagree
    e. Don't Know

20. The recovery of current assets in the form of Sundry Debtors by RPs/Liquidators is very difficult after the company goes to CIRP.
    a. Strongly Agree
    b. Agree
    c. Strongly Disagree

d. Disagree

e. Don’t Know

21. In many cases, IP/Valuer is not in a position to arrive at the true value of assets of CD due lack of authenticated information wherein the valuation of CD in many cases are based on information collected from market by trial and error method

a. Strongly Agree

b. Agree

c. Strongly Disagree

d. Disagree

e. Don’t Know

22. The Debtor-in-Possession of CD in CIRP/Liquidation proceedings in USA would be better and detrimental to timely resolution rather than present system of Creditor-in-Possession.

a. Strongly Agree

b. Agree

c. Strongly Disagree

d. Disagree

e. Don’t Know

23. To what extent the IB code has been able to succeed as a recovery tool for the banking sector though it was not its objective.

a. Has been extremely effective

b. Effective to certain extent only.

c. Not effective at all.

d. Not Sure.

24. After appointment as IRP/RP/Liquidator, did you or any of your family members received any kind of security threat from any stakeholder?
    a. Once
    b. Twice
    c. Many times
    d. Did not receive

25. What is/ are your suggestions for arming insolvency professional for better implementation of the act.

    _____

26. There are many 'Integrity and objectivity ‘issues in relation to Insolvency Professional while discharging their duties under the code in terms of, being not honest and straightforward, in all professional dealings, entailing decisions are being made with biasness, involving conflict of interests, coercion, or undue influence
    a. True
    b. False
    c. May be
    d. Don’t Know

27. The important issues that have been profoundly contested in the past few years and settled to a large extent by judiciary, are quite helpful from the points of view of Insolvency Professionals for taking apt decisions during CIRP/Liquidations.
    a. Strongly Agree
    b. Agree
    c. Strongly Disagree
    d. Disagree
    e. Don’t Know

28. AnyadditionalcommentsforeffectivedischargingofIPsfunctionsunder the code_____

Appendix B

INTERVIEW QUESTIONS FOR EMPIRICAL SURVEY

ON

"INSOLVENCY PROFESSIONAL AS A KEY TO RESOLUTION UNDER INSOLVENCY & BANKRUPTCY CODE, 2016: A CRITICAL ANALYSIS"

Dear Professional Friends,

My name is Rakesh Kumar Chauhan, Doctoral Research Scholar at the School of Law, University of Petroleum and Energy Studies Dehradun. Your valuable insight in giving your views, would be immensely appreciated.

This study is primarily aimed to find out the grey areas in terms of various practical problems and challenges faced by Insolvency professionals, Integrity issues vis-à-vis the efficacy of existing provisions in the IB Code, rules and regulations in India. This will help us understand, identify and recommend the areas for improvement in the IB code.

You are part of a selected sample of professionals' whose view on the research topic is very important. Therefore, it is respectfully requested to answer the interview questions as you feel convenient and revert me through email.

I also assure that all the information will be handled with the STRICT CONFIDENTIALITY.

Thank You in Advance.

Please fill the details

- Name:
- Profession:
- In which NCLT you are practicing

Name: Advocate Harsh Garg, Insolvency Professional

Profession: Advocate, dealing in Insolvency Matters

In which NCLT you are Practicing- Delhi, Chennai, Mumbai

Q.1. Many issues/drawbacks of erstwhile Insolvency regime have been taken care of by this game changing legislation in the form of IB Code. Nevertheless, the code has many implementation challenges and practical difficulties encountered by Insolvency Professionals (IPs) at ground level.

Ans. Yes, the statement is correct. IBC has led to a significant shift in the debtor-creditor relationship, erasing the notion of a debtor's paradise. Nevertheless, the code has a many implementation challenges and practical difficulties encountered by professionals at ground level like non-cooperation by the Board of directors, lack of finance to run business and many others.

Q.2. Market for distressed assets in India is the need of the hour. As the participation would increase, there would be more prospective Resolution?

Ans. Absolutely agrees. Due to lack of buyer of stressed assets in India, the companies into CIRP, are not able to get a good Resolution Plan. Because of Indian business culture, wherein people are less interested to buy old stuff even in Liquidations, the RP is not able to muster good resolution plan.

Q.3. Insolvency Professionals (IPs) are a class of regulated professionals, who play a key role in the efficient conducting of the insolvency, liquidation and bankruptcy processes.

Ans. After the admission of application for CIRP by the AA, the entire business responsibility, its management shifts on the IP, off course under the supervision of COC.

Q.4. What is the behaviour of Corporate Debtor in transferring the ownership of CD to IRP after the CD has been admitted in CIRP?

Ans. The erstwhile management is not willing to cooperate with IP. They do not share the business information with him. To know many facts about business operation of CD,

the IP depends on board of directors for various information however, the board of director avoids parting info, leading to lots of delay.

Q.5. Section 12A allows withdrawal of application after the same has been admitted by the NCLT for CIRP, on approval of 90 per cent of voting share of committee of creditors. The higher % of 90, at times is a stumbling block, detrimental to resolution hence must be lowered. What are your views?

Ans. The lowering of percentage to 66% of CoC voting would be appropriate as most of the decisions are taken with this percentage only.

Name: Adv. Pulkit Goyal

Profession: Advocate, dealing in corporate matters including Insolvency Matters

In which NCLT you are Practicing-Kolkata, Chennai, Delhi, Mumbai

1. The easiest way for promoters to derail the CIRP proceedings is to burden an IP with filing of FIRs, threatening, and file multiple litigations. It is therefore important to provide adequate safeguards that create an environment under which an IP can discharge his duties effectively?

Ans. I fully agree with the statement. There is an absolute requirement to provide conducive environment for IP wherein he can independently discharge his duties.

2. Whether IBC empowers IRPs/RPs/Liquidators adequate resources to deal with all kinds of challenges/contingencies?

Ans. No. The IBC doesn't provide adequate resources to IPs to deal with all kinds of challenges/contingencies, he/she faces while performing duties under IB Code.

3. Maintaining on-going status of corporate debtor is extremely difficult due inter-alia non-cooperation of work force, non-availability of raw materials, lack of finance, essential services, lack of marketing plans & strategies for finished goods etc.

Ans. I fully endorse the view that in the absence of adequate funds, wherein bank doesn't finance after unit goes to CIRP, lack of resources, nonpayment of statutory dues, employees start leaving the organization and many other issues makes it very difficult in Maintaining on-going status of corporate debtor.

4. The appointment of IRPs/RPs/ Liquidators by Financial Creditors/Operational Creditors/Adjudicating Authority suffers from various kind of biases?

Ans. The allotments of cases to IRPs/RPs/ Liquidators by Financial Creditors/Operational Creditors/Adjudicating Authority, at times suffers from biasness.

5. The recovery of current assets in the form of Sundry Debtors by RPs/Liquidators are very difficult after the company goes to CIRP.

Ans. The complication emerges in the process of recovering debts from Sundry Debtors recorded in the books. This arises due to frequent changes in their addresses or disputes

regarding the claims in different courts, rendering the recovery of dues from them quite challenging. Often, applications are submitted to request guidance from the NCLT, and this procedural aspect persists even during liquidation.

Name: Adv. Srikant Rao

Profession: Advocate, dealing in Insolvency Matters

In which NCLT you are practicing: Hyderabad, Chennai

1. In many cases, IP/Valuer is not in a position to arrive at the true value of assets of CD due lack of authenticated information wherein the valuation of CD in many cases are based on information collected from market by trial-and-error method?

Ans. The erstwhile management is not willing to cooperate with IP. They do not share the business information with him. To know many facts about business operation of CD, the Valuer also depends on board of directors for various information however, the board of director avoids parting info, leading to lots of delay.

2. The debtor-in-possession of CD in CIRP/Liquidation, akin to USA would be better and detrimental to timely resolution rather than present system of Creditor-in-Possession.

Ans. The debtor in possession, would definitely avoid all hurdles of non-cooperation by the previous management, however it may lead to other issues like, many CDs would resort to insolvency because of benefits of moratorium.

3. After appointment as IRP/RP/ Liquidator, did you or any of your family members received or heard about any kind of security threat from any stakeholder?

Ans. Yes, I have heard many Resolutions Professional got threatening call from various stakeholders. Hence, they should be considered for some sort of protection during CIRP/Liquidations.

4. What is/ are your suggestions for arming insolvency professional for better implementation of the act?

Ans. Penal provision in IB Code for non-cooperation by board of director of CD, attachment of property of corporate debtor, power of taking possession of property as in SARFESI act are few immediate suggestions.

5. Few Insolvencies Professional (IPs) while discharging their duties under the code in terms of, being not honest and straightforward, in all professional dealings, entailing

decisions are being made with biasness, involving conflict of interests, coercion, or undue influence?

Ans. There are many cases wherein the integrity of the IP was questionable and they were debarred from undertaking further assignment and in many cases the licenses were cancelled by IBBI. The list of action taken is available on the IBBI website.

PUBLICATIONS

1. Paper on: *Practical problems and challenges faced by insolvency professionals during CIRP/ Liquidations and how far judicial interpretation been able to give arms to insolvency professionals for effective implementations of the code.*

   Published in NIU International Journal of Human Rights ISSN: 2394 – 0298 Volume 10 (III) :2023 138

2. Paper on: *Examining the Role of Insolvency Professionals: A Comparative Study between India, USA, And UK*

   Published in Migration Letters Volume: 21, No: S5 (2024), pp. 70-80ISSN: 1741-8984 (Print) ISSN: 1741-8992 (Online) available on www.migrationletters.com

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