Navigating Financial Haircuts: Understanding The Complexities in Corporate Insolvency Resolution Processes

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Abstract*— In the current landscape of insolvency and bankruptcy procedures, a noteworthy strategy employed by corporate lenders is commonly referred to as "haircuts". In the realm of finance, a haircut denotes a deliberate reduction negotiated by lenders on the outstanding loan amount. This reduction typically falls within a predefined range, and it plays a pivotal role in the procedure of corporate insolvency resolution. Recent instances within the domain of insolvency have brought to light a prevalent trend where the Corporations actively pursue substantial haircuts. Unfortunately, this trend has led to a noticeable rise in non-performing debts for lenders. In response to this, the authors in this paper had endeavour not only to illuminate the intricacies of the haircut mechanism but also to put forward a set of regulatory proposals aimed at addressing these significant disparities. Moreover, the authors have to contribute valuable insights and recommendations concerning the intricacies of executing the haircut procedure under the Insolvency and Bankruptcy Code. To exemplify and underscore these points, they draw upon contemporary case studies featuring prominent companies like Videocon Industries and Jet Airways. Through this paper, the authors have adopted both doctrinal and non-doctrinal methods by conducting a survey regarding the decision making of insolvency professionals in cases of haircuts through a questionnaire sent across in our country and include the received insights in further understanding of the haircut process.

Indexed Terms- Insolvency and Bankruptcy, Haircuts, Corporate insolvency resolution, Non performing debts, Insolvency Professionals.

I. INTRODUCTION

Since liberalisation, privatisation, and globalisation, India has diligently pursued broad economic reforms to establish itself in the business environment for the betterment of economic policies. India is striving to set in place modern insolvency law to assist struggling companies, to encourage innovation and healthy competition in the marketplace and entrepreneurship and also to let the credit available for the economy. Consequently, India's rank moved up from 136 in 2016 to 52 in 2019 in terms of 'resolving insolvency' in the World Bank Group's, Doing Business Reports. In the Global Innovation Index, India's rank improved from 111 in 2017 to 47 in 2020 in 'Ease of Resolving Insolvency', even in 2021 it maintained the same status of 47th rank in 2021.[1] The Government is continuing its drive to improve 'resolving insolvency' and 'ease of doing business' further by enriching the insolvency regime with innovative options and features, with primary focus on time bound rescue of businesses as going concerns.[2] In 2022[3] out of 132 economies India stood at 40th rank as per the Global Innovation Index and the same was retained in 2023 as well.[4] India's rank improved to 39 in the Global Innovation Index in 2024.[5] According to the Quarterly Report of IBBI, IBC which came into effect since December 1st, 2016 shows the status on the Corporate Insolvency Resolution Process (CIRP) as the total admitted cases of Rs.8.3 lakh crores, initiated by the operational creditors (Goods and Service Suppliers), financial creditors (Banks and Financial Institutions) and the Corporate Debtors, there was a recoverable value of Rs.2.53 lakh crores with an average recovery of 30% till 31 December 2022. In the Insolvency and Bankruptcy News published by the IBBI reported the Quarterly Newsletter of IBBI, in this the data shows that the Corporate Debtors realised 32% as against the admitted claims and 162% as against the liquidation value.[6]

In India, Insolvency laws are divided into corporate and individual legal procedures. Individual insolvency refers to the procedure of Bankruptcy whereas for the

corporate it is the insolvency resolution process. This paper is confined only with the corporate insolvency, where its process is found in the legal framework of Insolvency and Bankruptcy Code, 2016. Corporate insolvency laws were initially developed from the Common Laws, and as business is getting globalised, the concepts like extra-territorial and cross border has great effect on the cross border insolvency laws as well, though well-established laws are yet to see the light of the day.

In reference to the Corporate Insolvency Resolution Process in India, primacy is given to the interests of financial creditors over that of other stakeholders[7]. Bankruptcy Law Reforms Committee has suggested "Creditor in control" as against that of "Debtor in possession" keeping in view the primary object of resolving insolvency of the corporate debtor. As a part of resolving insolvency, it also becomes important to ensure the availability of credit in the market. It is to be noted that Flessner states that the Corporate Insolvency procedure is a drastic remedy and at the outset, the debtor will be dispossessed or be placed under supervision and the creditors will be denied their right to enforce their claims. At the end of the procedure, there may be expropriation of the debtor through liquidation of his assets, and of the creditors through the extinction or reduction of their claims.[8] In India, the Corporate Insolvency laws are aim to revive the corporate debtor back to normalcy by selling it as a going concern. In this process, a Resolution Professional is appointed and he in turn forms the Committee of Creditors for resolving their claims. During such process Creditors bargain their claims and go through the Haircuts[9].

The resolution plan approved during the Corporate Insolvency Resolution Process may include a variety of techniques to revive the company and repay its liabilities, such as capital infusion, debt restructure, asset sales or sold as going concern. High rate of haircuts occurs when a company's financial situation is extremely distressed and the resolution plan includes significant write-offs for creditors. As a result, creditors may be forced to 'take a haircut' of accepting a lesser amount of recovery or write-offs on their outstanding debts. Further, it is relevant to mention that the haircuts occur in order to resolve and revive a financially distressed organisation. It's equally important to seek a balance between maximising creditor value and protecting the company's long-term viability. The size of the haircut is normally assessed by the company's financial health, the value of its assets, the viability of the resolution plan, and the negotiations with creditors throughout the insolvency process.

Increased haircuts can be caused by a variety of reasons such as huge outstanding debt and company unable to survive, if the company's assets are of poor quality or insufficient to cover its loans, if no viable resolution plans being received during CIRP that provide creditors a large recovery, complexity in insolvency resolution may result in increased costs and also reducing the amount available for distribution among creditors. It becomes important to highlight that the huge haircuts are usually the outcome of the company's troubled financial state, and the resolution process strives to find a balance between maximising value for creditors while restoring the company's operations or effectively selling its assets.

1.1. SCOPE OF THE STUDY

As we have seen that, there have been multiple laws governing the laws of insolvency before Insolvency and Bankruptcy Code came into existence, which were not effective or efficient, it was imperative for a new economic law which could answer all the gaps. There were lacunas like, there were multiple authorities before whom the matters were being presented, with the provisions mostly overlapping each other, causing much chaotic situation. To add on, there were multiplicity of proceedings being initiated before various forums causing enormous delay in resolving the insolvency disputes, thereby the companies were led into liquidation. All this resulted in reduction of the asset value and the value of the business. Insolvency and Bankruptcy Code was the ray of hope to overcome the previous difficulties and to fill up all the lacunas. The Code consolidates all the previous existing insolvency laws, for the benefit of individuals, corporations, firms and limited liability partnerships with the aim of resolving insolvency in a time-bound manner. Taking all these into consideration, it is now to analyse how far IBC is successful in achieving its aims and objectives listed in the code, for which it has been codified.

Since the enactment of the IBC what is the state of the implementation of the resolution plans for the companies, are they sold as going concerns or are they being liquidated? Even if the resolution plan is being implemented, are the creditors getting maximum recovery or are there any haircuts in the implementation of the resolution plan, resulting in low recovery? The said questions can be answered by analysing the implementation of the Corporate Insolvency Process and its recovery, based on the statistics of cases of NCLT, Hyderabad.

1.2 RESEARCH PROBLEM

This study focuses mainly on the problem of high haircuts being authorized by the creditors and the motive behind the acceptance of such huge value reductions.

1.3 OBJECTIVE OF THE STUDY

To investigate the reasons leading to creditor's acceptance of huge reduction in the value of the debt with special reference to NCLT, Hyderabad

1.4 LIMITATIONS:

Researchers have restricted the data collection to NCLT, Hyderabad, as the researchers want to avoid vastness in the research which might deviate the topic. Researchers are taking into consideration, the data of all cases that are filed in NCLT Hyderabad, but are not taking into consideration their methods of resolution through restructure plan or liquidation as the topic gets diverted and becomes lengthy.

1.5 HYPOTHESIS

1. Identifying the stressed assets at the earliest by the creditors may protect the depletion of asset value and helps smoothen the CIRP.
2. Monitoring the loan sanctioning authority in the public banks may reduce the high haircuts during CIRP.

1.6. METHODOLOGY OF THE DATA

The methods used for this research paper is both doctrinal, wherein the relevant data has been collected from both primary and secondary sources and non-doctrinal, wherein a field research has been conducted, and the data has been collected through questionnaire wherein it was submitted to the Insolvency professionals and an interview schedule was also employed to understand the intricacies of the haircuts, to identify the difficulties encountered in the corporate insolvency resolution process and also to get the guidance on the future prospects. Under sampling methods, simple random sampling has been preferred under the study and the response has been sought as the sample of six insolvency professionals have been preferred, out of the total universe of 58 professionals from the panel of January 1, 2024 to June 30, 2024 list.[10] The study provides the details of the difficulties in the resolution process and reasons for high haircuts during the process, which has been analysed

1.7 LITERATURE REVIEW:

1. The Parliamentary Standing Committee in its report in 2021 has commented on low recovery rates, and haircuts as high as having 90-95%.[11] IBC aims for high recovery, but the low recovery is a concern. The wisdom of the Committee of Creditors in dealing with the Resolution Plan becomes essential, it was commented in the report that there definitely is a need for the code of conduct for the Committee of Creditors.
2. Akaant Kumar Mittal, in his book 'Insolvency and Bankruptcy Code- Law and Practice' talks about the IBC and has elaborately explained about the meeting of the Committee of Creditors, under section 24.[12]
3. Omar, Dr, & Gant, Dr Jennifer in their book 'Corporate Rescue in the United Kingdom: Ten Years after the Enterprise Act 2002 Reforms', discusses about in-depth information relating to evolution of the insolvency laws in UK with an analysis of the Cork Committee Report, Insolvency Act 1986 and also the Enterprise Act of 2002.
4. Prof. M.P. Ram Mohan & Prof. Balagopal Gopalkrishnan, Report of study on Effectiveness of the Resolution process: Firm outcomes in the resolution process post-IBC period[13], makes analysis that total 542 firms recovery rate has been analysed, which has an average recovery rate of 33.2% for the combined creditors, whereas for Financial creditors it is 38.5% and for Operational creditors it is 23.8%.[14]
5. K.R.Srivats, in the Hindu business line, news article it stated that out of the total loan of Rs.100 there is a haircut of Rs.69 incurred by the creditors.

Which implicates that the average haircut stands at 69%.[15]

6. In case of *Bank of Maharashtra vs Videocon Industries Ltd.,*[16] , NCLT has approved the resolution plan with about 96% haircut which was submitted by the Twin Star Technologies Limited and based on the plan the Steering Committee was to be constituted with Mr. Abhijith Guhatahkurta, erstwhile RP appointed as the interim manager of the Videocon Group Entities. It is noteworthy that the Twin Star Technologies have offered Rs.2962 crores of amount against the total creditor's claim of Rs. 64,938 crores. The valuers of the Corporate debtor had estimated liquidation value at Rs. 2568 crores which was similar to the bid value, which is quite surprising. There is a need to maintain confidentiality of the valuation price or liquidity price of the CD, valued by the Registered Valuers. Further, Bank of Maharashtra and IFCI Ltd. filed an appeal before NCLAT, which passed the order of "*status quo ante*" against the order of NCLT and asked the RP to continue to manage the CD. On 5th January 2022 NCLAT passed orders setting aside the approval order of NCLT.

Twin Star Technologies Ltd. challenged the NCLAT Order in the Supreme Court which is yet to be decided.

7. In another case, *Jet airways (India) Ltd. v. State Bank of India & Anr* [17] CIRP has been filed against the Jet airways and an IRP has been appointed to take control of the affairs of the company. Operational related problems like the fleet maintenance, relations with the employees and consumer confidence plays a vital role in the success of the resolution plan implementation. The outbreak of Covid19 has disrupted the global aviation operations with no flights operating has ultimately worsened the financial situation of Jet Airways. This has hindered the revival prospects and making the implementation of resolution process even more difficult. A Resolution Plan was submitted by the Jalan Fritsch Consortium, which is made up of Mr. Florian Fritsch (Kalrock Capital Partners Ltd., Cayman) and Mr. Murari Lal Jalan (a non-resident Indian based in the United Arab Emirates), hence an application was filed by the Resolution Professional, Ashish Chhawchharia seeking approval of the Resolution Plan. Mumbai NCLT, has given approval to the Jalan Fritsch Consortium for the resolution plan to be implemented and revival of the Jet airways to be done within 90 days. As the CoC has approved the Jalan-Kalrock consortium's resolution plan, in which in the first two years consortium proposed to pay Rs. 600 crore and acquire 89.79% stake. Subsequently it proposed to pay Rs. 131 crore, Rs. 193 crore and Rs. 259 crore at the end of third, fourth and fifth years respectively. At the outset creditors are to get the recovery upto RS. 1183 crores by the end of fifth year which amounts to 95% haircut. The Hon'ble Supreme court is yet to decide on payments to be made to the workmen. The Supreme Court responded towards the claim of workmen, who asked JKC to pay about ₹470 crore for 24 months, which includes provident fund and gratuity amount.

II. GLOBAL SCENARIO OF FINANCIAL HAIRCUTS - A COMPARATIVE ANALYSIS:

During corporate reorganization, companies want to come out of insolvency with a restructured financial status that better fits their cash flows, both now and in the future.[17] In order to achieve this, debtors and creditors typically negotiate an agreement that involves payment deferrals and debt forgiveness, often referred to as haircuts in insolvency terminology".[18] In recent years, there has been significant variation in debt restructuring deals, with some experiencing haircuts as high as 90% and others as low as 5%. Interestingly, the three largest restructurings in various nations of Argentina- 2005, Russia-2000, and Iraq-2006 and all are involved haircuts exceeding 50%. Additionally, the Brady deals in the mid-1990s also had substantial haircuts and dealt with large debt volumes.[18] However, according to Moody's 2006 statistics, the average haircut for US corporate bond and loan restructurings between 1982 and 2005 was 64%. This is surprisingly over twice as big as the average haircut for sovereign debt that has been observed. This disparity is still noticeable even though US corporate debt is enforceable in courts and there are structured bankruptcy procedures in place.

Further, it is observed that over the years, the size of haircuts has changed. The typical haircut in comparison to the 1970s and 1980s was raised by

around 25 percentage points. During the 1980s, most deals only extended the maturity of debt payments. This delayed the day when debtor countries faced their underlying solvency issues. The Brady agreements, which settled 17 debtor nations' debt crises in the 1980s, had an average haircut of 45%. In summary, as time passed, haircuts increased, and the way debt was restructured evolved. Coming to the tax considerations of the haircuts and how they affect the restructuring model; in the United States, haircuts are typically considered taxable income. Unlike the general rule, there is an exception for haircuts agreed upon during Chapter 11 reorganization proceedings. Taking cues from the US Chapter 11 reorganization process, Singapore's novel restructuring framework grants debtors the authority to impose a reorganization plan on dissenting creditor groups—a practice commonly known as "cram down" or "cross-class cram down."[19]

While dissenting creditors still benefit from several protective measures",[20] This strategy should make debt restructurings easier by cutting down on negotiation expenses and taking care of any potential holdout issues raised by particular minority creditors. This technically means that debtors emerging from corporate reorganizations won't be taxed on potential haircuts specified in the reorganization agreement, allowing them to exit bankruptcy in a stronger financial position. Evidence of this lies in the fact that "many countries worldwide, including Singapore, the European Union, and the UK, have adopted or plan to adopt features similar to those found in the US Chapter 11*[21]".* These nations success in the restructuring arena is a product of both their strong legal systems and their efficient execution. *"The sophisticated judiciary in both the UK and the US has played a crucial role. The IRDA will now allow for an out of court commencement of judicial management and permit judicial managers to assign proceeds arising from certain insolvency related claims."*[22]

Additionally, these countries have taken an interdisciplinary approach to corporate reorganization, addressing not only insolvency laws but also other rules that impact the success of such restructurings. Furthermore, Singapore has actively positioned itself as an international hub for debt restructuring. A number of instruments were created by the Insolvency, Restructuring, and Dissolution Act, 2018 (IRDA) to help sustainable businesses suffering financial difficulties successfully restructure their debt. Improved moratoriums against creditor enforcement proceedings, the availability of rescue finance, limitations on contract termination clauses (ipso facto clauses), and the power to impose reorganization plans on classes of disputing creditors (known as "cross-class cram down") are some of these measures.[23] The IRDA has broadened the scope for companies to utilize Singapore's new restructuring framework.

The employment of an insolvency practitioner by debtors is not required under the Singapore scheme of arrangement, in contrast to formal insolvency procedures like winding up and judicial administration. Consequently, debtors can continue operating their company throughout the procedure. This innovative debtor-in-possession model combines features from formal insolvency processes while allowing debtors to retain control. The anticipated benefits include encouraging early restructuring initiatives.[24] Further, it is pertinent to mention that India still needs to have its cross-border insolvency laws framed, relying on the UNCITRAL Model. The emergence of the insolvency laws in India are rooted back to the Britishers rule, which is much ancient and few of those laws are still prevalent in India.

III. NATIONAL SCENARIO OF FINANICAL HAIRCUTS

3.1 STATUTORY SAFEGUARDS FOR ASSET VALUATION

One of the reasons for asset maximization given by the Insolvency Professionals is that it was due to the application of sections 43, 45 & 66 of the IBC Code respectively. The essence of each of those provisions is that section 43 of the IBC Code, grants the corporate debtors to apply for preferential treatment during the liquidation procedure, thus when a liquidator or resolution professional believes that a corporate debtor has given a preference in certain transactions, they must apply to the Adjudicating Authority for the avoidance of such preferential transactions. A corporate debtor is deemed to have given a preference if there is a transfer of property or interest for the benefit of a creditor, surety, or guarantor, resulting in

a better position than under asset distribution rules. However, certain transfers, such as those made in the ordinary course of business or those securing new value, are excluded from being considered preferences. Transfers under a court order are also exempt.[25] In summary, this section aims to identify and address preferential transactions in insolvency cases.

Furthermore, Section 45 bars all those transactions that are under-valued. If the liquidator or resolution professional determines that certain transactions made during the relevant period were undervalued (e.g., gifts or asset transfers with significantly lower consideration), they can apply to the Adjudicating Authority to declare these transactions void and reverse their effects according to the applicable Chapter. Such undervalued transactions typically fall outside the ordinary course of business for the corporate debtor, and thus the valuation of the assets is protected and is only encouraged when done at a non-prejudicial rate.[26]

On the other hand, there are safeguards to protect the creditors during the CIRP process by not allowing any defrauding in the system. This is done by applying section 66 of the IBC Code, 2016. Section 66 comes into aid by saying that, the Corporate Insolvency Resolution Process (CIRP), governed by the Insolvency and Bankruptcy Code, 2016 (IBC), allows creditors to recover debts from insolvent companies or Limited Liability Partnerships (LLPs). The following are key features of Insolvency and Bankruptcy Code, 2016:

1) If during the CIRP or liquidation process, any business of the corporate debtor is found to have been conducted with intent to defraud creditors or for fraudulent purposes, the Adjudicating Authority may order those involved to contribute to the corporate debtor's assets. A resolution professional can apply to the Adjudicating Authority.
2) Directors or partners may be liable to contribute to the corporate debtor's assets if:

a)Before the insolvency commencement date, they knew or should have known that insolvency was likely.

b)They failed to exercise due diligence in minimizing potential losses to the creditors of the corporate debtor.[27]

While this is the idea of some IPs others believe that, the market for supply and demand of corporate assets is always an ongoing one, and there is always a good buy for the corporate assets given its ongoing nature. They say that the market is very small and intelligent that the demand and supply of various assets maximize the asset value, and they believe that improving the certainty of the asset realization timeline allows and incentivizes more people of people be part of the asset maximization ecosystem. The deciding factor is the efficiency of the resolution timeline which results in more players joining the CIRP process.

Another factor they consider for asset maximization is resolution at sustainable debt levels. Debt is sustainable when a borrower is expected to be able to continue servicing its debts without an unrealistically large correction to its income and expenditure. Sustainability is related to solvency as well as to liquidity.[28] The IPs believe that the asset maximization of a corporate debtor is done by keeping in mind the debt sustainability index of the corporate debtor. If the asset valuation of the corporate debtor exceeds the sustainable debt limit then the valuation is carried out by converting the debt into equity because the main objective of the CIRP is to revive the corporate debtor. The negative paradox to reduced asset valuation as said by the IPs is because of the delay in initiating the CIRP process, because the CIRP process is initiated by the NCLT, the assets are depleted even more and that results in reduced asset valuation, which in turn is a burden as the corporate debtors liability remains the same the asset is depleted drastically.

From the point of above, we understand the reasons behind asset valuation, and determine the techniques the registered valuers use to determine the worth of corporate debtor's assets. Some of the methods used as said by the IPs are that of asset valuation on a standalone basis, keeping in mind the future cash-flows and the current market rates. Furthermore, the IPs also bring out a difference in how the valuation of the assets is done based on their nature of being operating or non-operating assets. They say that the operating assets are valued as per the total business

valuation in terms of revenue generation, while the non-operating assets are valued as per the market value of those assets depending on the demand and supply forces of the market.

3.2. UNDERSTANDING ACCEPTANCE OF HAIRCUTS:

Now moving on to the next section, where we understand the reason for the acceptance of haircuts, though there are multiple reasons for accepting haircuts by the committee of creditors, the main reason as pointed out by the IPs is the timely resolution of the CIRP. They say that even the committee of creditors aim for the revival of the corporate debtor, and thus, timely resolution of the CIRP not only increases the valuation of the corporate assets but also incentivizes the committee of creditors to accept the haircuts for the faster revival of the corporate debtor.

The IPs state that the main parameter for calculating the recovery amount of corporate debtors depends on the revenue-generating potential of the corporate debtor. This is ascertained by assessing the liquidation value of the assets held by the corporate debtor, further like, as mentioned above, the liquidation of the assets is different for both operating and non-operating assets. The parameter for the recovery amount of the corporate debtor is liquefied by assessing the business valuation of the corporate debtor for the operating assets and by assessing the actual value of the assets for the non-operating assets. Another important parameter for recovery amount as said by the IP is that, the market price of the assets along with the list of potential buyers in the auction has to be assessed to match the recovery amount and not fall below the sustainable debt at the same time.

At this juncture, it also becomes important to understand the waterfall mechanism, for the liquidation of the CD under the IBC Code, 2016 to assess the order of resolution preference of the creditors, if the resolution plan is failed to be implemented beyond 330 days. This is explained under section 53 of the IBC Code, 2016. The provision states that the priority order for distributing proceeds from the sale of liquidation assets is as follows:

First, insolvency resolution process costs and liquidation costs are paid in full. Further, work men's dues for the 24 months preceding the liquidation commencement date. Debts owed to secured creditors (if they have relinquished security as per section 52) rank equally. Then, wages and unpaid dues owed to employees (other than workmen) for the 12 months preceding the liquidation commencement date are addressed. After that, financial debts owed to unsecured creditors come into play.

Following this, dues to the Central Government and State Government, including amounts from the Consolidated Fund of India and a State, for the 2 years preceding the liquidation commencement date are considered. Debts owed to secured creditors for any unpaid amounts following the enforcement of security interest. Remaining debts and dues are then addressed, followed by preference shareholders (if any) and equity shareholders or partners, as applicable. Any contractual arrangements that disrupt this order of priority are disregarded by the liquidator, and the liquidator's fees are deducted proportionately from the proceeds before distribution to each class of recipients. By this water-fall mechanism, the wisdom of the creditors is lost and section 53 of IBC prevails, this could also be the reason for the CoC to accept the high haircuts.

3.3. REASONS FOR ACCEPTING HIGH HAIRCUTS:

The following reasons were identified for accepting the huge haircuts under IBC:

1. For quicker resolution based on economic factors, market dynamics and industry trends could influence the creditors to accept high haircuts.
2. The corporate debtor aims for a sustainable debt while initiating the process of corporate insolvency, this sustainable debt also encourages the creditors to take the haircuts as the main goal is to revive the company and not to satisfy the claims of the creditors.
3. Circumstances for accepting high haircuts are based on considering the time value of the asset of the corporate debtor in reviving and selling it as a going concern.
4. Managing the asset by the CoC may be burdensome, as compared to accepting the reduced value.

5. Identifying the stressed asset at the earliest can actually avoid the depletion and irreparable loss of the asset value.
6. Compliance with the regulatory framework and guidelines by following the due deligence by the banks in sanctioning the loans to the corporates can minimise the risk of accepting the high haircuts.
7. Lastly the acceptance of the resolution plan may incentivise the creditors to accept the haircuts as being part of CoC, otherwise liquidation will have the waterfall mechanism which may not prioritize the creditor's wisdom in the distribution of the assets.

3.4 CHALLENGES FACED IN RECOVERING LIABILITIES THROUGH THE IBC PROCESS

As stated by the IPs multiple reasons act as hurdles during recovering liabilities through the IBC process, some of them are:

- Delay in filing cases by financial Creditors, (mostly public sector banks) delays in admission by NCLT, stalling the CIRP process by indulging unnecessary litigation by debtors.
- The IPs expressed that, sometimes the objective of the corporate debtor and the Committee of the creditors doesn't go hand in hand and this leads to non-cooperation among them.
- The next big factor that affects the recovery process under the IBC is that sometimes, the creditors siphon the assets and divert them resulting in asset minimization during the valuation process.
- The next factor is the deterioration of asset value because of the delay in the initiation of the CIRP process and identifying the stressed asset at the earliest.
- Delay in the resolution process due to several Interlocutory Applications further delayed the initiation of CIRP and in turn, delayed the asset valuation. Some of the IPs also suggest that sometimes it's difficult to identify the assets that can be liquefied to realize their value.

3.5. IMPROVEMENTS OF THE RESOLUTION PROCESS AND THE IBC CODE, 2016

When asked about the emerging trends that could improve the resolution process, the IPs have stated that the Government of India is contemplating changing the waterfall mechanism to clarify that Government dues are not secured debt to enable the financial creditors to get priority in distribution. Furthermore, they also state that there is a need to improve the efficiency of the already existing resolution process by reducing the unnecessary delays and stalling under the system but encouraging a faster resolution process to prevent asset diversion and encourage a formal legal channel where the asset value can be maximized and also the corporate debtors can be revived within a short time. For this, they suggest that the system needs to imbibe a separate performance evaluation for the committee of creditors, resolution professional, liquidator, and even NCLT.

Additionally, the resolution processes under the IBC have to be streamlined and be more transparent, having code of conduct for the CoC, so that, every stakeholder who is involved in the process gets a clear and wider idea of the corporate debtor's revival through the resolution process. Some of them also comment that the banks who are the financial creditors in most of the cases have to follow a similar procedure of resolution and assess the asset value of the corporate debtor before advancing any loan, this would at later stages help to prevent a lot of NPA's.

3.6 ADDRESSING THE LEGAL GAPS: POTENTIAL REFORMS TO THE IBC

In light of the difficulties and deterrents experienced, while carrying out the Insolvency and Bankruptcy Code (IBC), a progression of changes and revisions have been proposed and executed. These actions mean to address the extraordinary difficulties looked by organizations and guarantee the strength of the bankruptcy structure. The critical changes and corrections incorporate are:

a. To suggest a Code of Conduct for the Committee of Creditors.
b. Banks are to follow due diligence and a proper verification of the documents and physical property to be inspected before advancing the corporate loans. They should not abide to the relationships or political pressure for advancing loans as it makes the banks to face the risk of NPAs.

c. There is a need for the regulating mechanism over the loan sanctioning authority of the public banks, to have the checks and balances.
d. There is no gap in the legislation but the proper implementation and avoidance of the CIRP being filed by the creditors and acceptance of the same by the AA must be avoided.
e. Empowering the Insolvency Profession: Also, steps have to be taken to fortify the bankruptcy profession in India. This includes giving upgraded preparing and backing to indebtedness experts and improving guidelines and oversight of the bankruptcy resolution process. By furnishing experts with the fundamental mastery and assets, these drives plan to work on their capacity to explore the complicated difficulties presented.[29]
f. The total number of NCLTs in India are 16 with an addition of Principal Benches at New Delhi and Chennai. It is noteworthy that with reference to the staffing, out of a total sanctioned strength of 62 members to be recruited less than 50% have been recruited, which is a vacancy still not filled.[30] This is a report as on February 2024. Prompt acceptance and approvals from the AA will help in removing the delay, and delay results in value reduction of the asset.
g. Negotiations between the creditors and CD should be held and a binding agreement to be executed to resolve the issues at the earliest.

Together, these changes show the public authority's devotion towards handling insolvency cases. The point is to support financial steadiness and safeguard the interests of all the parties.[31]

3.7.. RECOVERY RATES OF IBC

Based on the recent data, insolvency and bankruptcy cases had an intricate mixture of both lacunas and difficulties. The actual recovery rate for the insolvency and bankruptcy cases is about 25 to 30 percent and the average time take for the resolution of the corporate insolvency resolution is about two years. The assets of the Corporate Debtor are assessed based on Land and Building, Plant and Machinery and Securities or Financial Assets. Further it is pertinent to mention that as the main objective of the IBC is to resolve the insolvency of the distressed Corporation on a timely resolution, it becomes a challenge for the Committee of Creditors (CoC) to resolve the insolvency as based on their wisdom the whole process will run. As we have seen that the Tribunal plays a nominal role in the resolution as it has a restricted role of approving the resolutions passed by the CoC. It is quite challenging for the Resolution Professional to conduct and convene the meetings for the CoC as there is lot of conflict and disagreement between the creditors, who have different opinions regarding their claims. Since the wisdom of the CoC is final[32] there is highly a requirement of mandatory implementation of the code of conduct for the CoC to ensure the feasibility of enforcing the resolution plan for the viability of the corporate debtor, as against the directory code of conduct which is given by the regulator[33].

One of the major task before the IBC is to increase the recovery rates for the creditors and get the company be sold as going concern, for this, it becomes imperative for the protection of creditors rights and at the same time, protect the investors rights as well. As far as the approval of the Resolution Plans are concerned, it becomes crucial for their approval for resolving the insolvency of distressed companies and reinstating them back to normalcy. But the statistics are quite different in case of approval of the Resolutions Plans as well.

The NCLT approved 147 Resolution Plans in Financial Years 2022, 121 in 2021 and 134 in 2020, in which the creditors had realized 23% 17% and 26% of their admitted claims respectively.[34]

Insolvency Resolution Status in India as on 31th March 2024[35]

DETAILS OF CIRP CASES AS ON 31st MARCH 2024	
CIRP CASES	NUMBER
ADMITTED CASES	7567
WITHDRAWN CASES	1070
SETTLED CASES	1154
RESOLUTION PLAN APPROVED CASES	947
LIQUIDATION APPROVED CASES	2476
PENDING CIRP CASES	1920

This above data has been collected from the IBBI website for the purpose of understanding the CIRPs being filed and disposed of, and how many are

resolved with the implementation of the resolution plan.

There are various factors which determine the approval of the resolution plan or the recovery rate for the creditors such as the operations and role of business in the market, economic fluctuations, market sentiments in relation to investors measures based on technical indicators, etc. or it can be the sector specific factors and larger economic conditions.

Concluding from the above, there are important factors contributing for major haircuts, like the depletion in the value of the assets of the CD (Corporate Debtor). There are certain observations to be noted hereunder:

1. How long that the CD has been in the distressed stage before initiating the CIRP and how much of asset depletion occurred?

It is very pivotal to understand when the CIRP is being initiated and how long it takes to get admitted in the Tribunal. During this time the defaulting owner can easily manipulate the CD by siphoning the funds or engage in preferential and undervalued transactions.

2. Further, the Resolution Plan approval generally exceeds 180 days which may further depreciate the value of the asset resulting in impairment of creditors rights.

The liquidation value determined by the Registered valuers also plays a crucial role. If the assets are undervalued and if the confidentiality of liquidation value is compromised, then the resolution applicants bid for high haircuts.

The above factors, also be taken into considerations which result in higher haircuts during the CIRP process.

IV. OVERVIEW OF THE RESEARCH QUESTIONNAIRE

As part of this research study, the authors have built a questionnaire that had questions to understand the intricacies of the haircut mechanism and also the asset valuation process. We circulated the questionnaire to the present panel of January 1, 2024 to June 30, 2024 list, who gave their insights and thoughts about the haircuts and the insolvency procedure as a whole.

To summarise the responses, 50% of the RPs have accepted that the public bankers are required to follow due diligence while sanctioning the loans to the corporates, 90% of the IPs expressed their opinion to have monitoring authority over corporate loan sanctioning authority, especially for public banks. 70% of the IPs were of the opinion that when CD fails in repayment there was a lack of prompt action taken by the creditors. 100% of the IPs are of the opinion that the stressed assets are to be identified at the earliest, and 80% of the IPs are of the opinion that CIRP is not able to identify stressed assets at the earliest. 80% of the IPs opine that creditors delay in filing the CIRP, which results in value depletion. 90% of the IPs divulged that there is a delay in accepting CIRP at the NCLT. 90% of the IPs opine that there was no need to reappraise the loan of the CD if there is no Resolution applicants. 70% of the IPs expressed their opinion that there can be no standardisation of haircuts be suggested. 60% of the IPs answered that the CIRP cannot ensure accountability when CoC heavily relies on its commercial wisdom. 100% of the IPs opine that there is justification in the fair and liquidation value. 70% of the IPs opine that considering the time value of the CD revival and 60% of them opine assessing the actual value of the assets of the CD are the conditions determining the haircuts.

4.1.. ANALYSIS

From the Hypotheses framed by the authors, it becomes very clear to analyze that the hypotheses is proved by the fact that, identifying the stressed asset at the earliest becomes utmost important by the creditors in order to reduce the high haircuts as this may protect the depletion of the asset value and helps smoothen the CIRP. Secondly the public sector banks to follow due diligence in sanctioning the corporate loans should not fall for the relationships or political power but definitely a regulating mechanism is needed for the checks and balances as it will definitely reduce the high haircuts in CIRP.

Here are few points of analysis.

1. It is quite clear that the banks, especially public banks need to follow due diligence and abide by the guidelines issued by RBI while sanctioning loans to the corporates, it has been understood that the sanctioning authorities verify the paper documents but inspecting physical properties

needs to be mandated before sanctioning the corporate loans.
2. There is a need to have a monitoring mechanism over the sanctioning authorities to have checks and balances while giving corporate loans.
3. There is a need for the creditors to have more prompt action taken in filling the CIRP, once the CD fails to pay.
4. The most important factor is to identify the stressed asset of the CD at the earliest, as this avoids the value reduction/ depletion of the stressed asset. Due to failure in identifying the stressed asset at the earliest during CIRP process, the maximum recovery of the stressed asset is not possible.
5. Next important factor is delay of filing CIRP by the creditors and also NCLT delaying in accepting the CIRP once filed. This results in value depletion of the asset, due to which the maximum recovery becomes impossible.
6. It is not possible to have a straight jacket definition to be implemented in the CIRP of all the companies to be judged uniformly, as the companies differ in various sectors and segments. So it becomes impossible to suggest to have a standardization of haircuts for the CD.
7. If the CD does not have any Resolution applicants, then not all companies can be considered for the loan reappraisal. Example, if it is a power sector which relies on gas being sanctioned by the Government, and lost its license, it becomes impossible to run the company or find any resolution applicants, the only solution will be to liquidate it. But if it is a pharma company and one of the patent can be evolved with further research, there a loan reappraisal can actually save the CD from going into liquidation.
8. There exists a hierarchy between the entities involved in the CIRP process, Committee of creditors subjected to the Insolvency Resolution professional who is in turn subjected to the NCLT which will be accountable to the IBBI, this ensures the required checks and balances within the CIRP process.
9. Though as seen in Videocon case, the valuation amount might be leaked in a way, the bidders amount how much ever less they bid will be accepted or rejected at the discretion of the committee of creditors thus, the process of CIRP or the objective to revive the company doesn't fail.
10. We can analyze the factors which cause the CoC to accept the high haircuts, is due to that they considering the time value of the asset of the corporate debtor in reviving and selling it as a going concern.

V. CONCLUSION AND SUGGESTIONS

The researchers have set out to explore the concept of 'haircuts' during the insolvency process and examined various factors influencing the determination of these haircuts. They hypothesize that the substantial increase in haircuts experienced by creditors is primarily due to delays in asset maximization, which subsequently diminishes asset value during liquidation, compelling creditors to accept greater haircuts. Additionally, the authors propose that inadequate oversight by sanctioning authorities, particularly during the lending process, contributes to increased haircuts. Specifically, the failure of these authorities to assess the creditworthiness and repayment capacity of corporate debtors leads to financial creditors incurring losses in the form of haircuts as a result of oversight in lending practices.

The authors validate their hypothesis through a survey conducted among practicing Insolvency Resolution Professionals. The findings reveal that 50% of the IRP's affirm the need for public bankers to conduct due diligence when sanctioning loans to corporate entities. Moreover, 90% of the IRPs advocate for the establishment of a monitoring authority to oversee corporate loan sanctioning, particularly in public sector banks. Notably, 100% of the IRP's emphasize the importance of early identification of stressed assets, while 80% believe that the Corporate Insolvency Resolution Process fails to achieve this objective promptly. Additionally, 80% of the IRPs contend that delays by creditors in initiating the CIRP contribute to asset value depreciation.

The results suggest that early-stage asset maximization plays a pivotal role in determining the extent of haircuts creditors might face during liquidation. While the authors acknowledge that market forces such as demand and supply influence asset value, the IRPs stress the importance of assigning accurate asset valuations to corporate debtors while maintaining sustainable debt levels. The negative

paradox to reduced asset valuation as said by the IPs is because of the delay in initiating the CIRP process, because the CIRP process is initiated by the NCLT, the assets are depleted even more and that results in reduced asset valuation, which in turn is a burden as the corporate debtors liability remains the same the asset is depleted drastically. Thus, asset maximization at an early stage as posed by the authors and also confirmed by the IP's is one of the main factors of higher haircuts.

The IP's also opine that, the committee of creditors aim for the revival of the corporate debtor, and thus, timely resolution of the CIRP not only increases the valuation of the corporate assets but also incentivizes the committee of creditors to accept the haircuts for the faster revival of the corporate debtor.

Additionally, 90% of the IRPs highlight the importance of supervision by a monitoring authority during loan sanctioning as a crucial factor in the acceptance of larger haircuts during liquidation. Thus, adherence to regulatory frameworks and ensuring due diligence in loan sanctioning by banks can mitigate the risk of creditors being forced to accept substantial haircuts.

The hypotheses advanced by the authors are validated through the survey of IRPs, demonstrating that early-stage asset maximization and strict regulatory oversight during loan sanctioning significantly influence the extent of haircuts faced by creditors.

It is to be noted that the point of the Insolvency and Bankruptcy Code (IBC) is to address the current difficulties and legitimate gaps in carrying out resolution plans successfully. One significant issue is the defects in the insolvency and bankruptcy resolution process. To handle this, it is proposed to present dedicated insolvency and bankruptcy Tribunals committed to dealing with the expanded caseload and decreasing postponements. Also, smoothing out the indebtedness resolution process through the execution of quick track instruments for explicit cases can assist the interaction. Providing additional resources and support to insolvency professionals is also essential to improve their proficiency and viability in overseeing cases.

Another basic viewpoint is upgrading admittance to supporting the distressed organizations. This can be accomplished by laying out government-upheld advance plans or credit ensure projects to help distressed organizations in acquiring support. Boosting monetary foundations to give funding through tax breaks or administrative changes can additionally uphold these organizations. Investigating elective funding choices, for example, borrower under lock and key supporting or protect supporting can likewise help bothered organizations in executing their grievances. Custom fitted answers for various businesses are urgent in tending to their one of a kind difficulties. Presenting industry-explicit rules and backing components, alongside working with more prominent joint effort between insolvency and bankruptcy experts and industry specialists, can prompt more successful resolution plans. Giving designated help and backing to organizations in vigorously affected enterprises will assist them with exploring the insolvency and bankruptcy cycle effectively.

Reinforcing the insolvency profession is fundamental to guarantee exclusive expectations of incredible skill and morals. Upgrading guidelines and oversight, offering specific preparation programs, and organising greater international collaboration among insolvency professionals will at last work on the general viability of the insolvency and bankruptcy goal process. By tending to these key regions, IBC can be strengthened to all the more likely stand up to the exceptional difficulties presented by the distressed organisations. Executing these actions will guarantee the successful execution of resolution plans for insolvent organizations.

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[22] Safeguards includes the best interest of creditors test, a requirement that any reorganisation plan has to be fair and equitable and that a majority of creditors in number representing 75% in value of the creditors present and voting agreed to the reorganisation plan. See IRDA s 70.

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