IS THE INSOLVENCY AND BANKRUPTCY CODE GOING IN THE RIGHT DIRECTION?

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Abstract

The Insolvency and Bankruptcy Code (IBC) was enacted keeping in mind the following prima facie objectives; (a) Consolidate and amend laws relating to relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner; (b) To maximize the value of assets of such persons as aforesaid; (c) To promote entrepreneurship; (d) Make available credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues; and (e) Finally to establish an Insolvency and Bankruptcy Board of India and for other matters connected therewith and incidental thereto. One must also shrewdly observe that the Bankruptcy Law Reforms Committee (BLRC) Report has very clearly and expressly stated that speed is of essence for the smooth and efficient working of the bankruptcy code, for two reasons. Firstly while the calm period can help keep an organization afloat but without the full clarity of ownership and control, significant decisions cannot be made. Therefore what could probably happen is that the organization would exist as a result only on paper as it would not be able to perform any essential functions or operations needed to add value to itself and the economy, and thus as a result the firm will tend to atrophy and fail resulting in liquidation of the firm in the near future. Secondly the liquidation value tends to go down significantly with time as many assets suffer from a high economic rate of depreciation. Another fundamental thing to understand from the BLRC report is the theory of requirement of a new bankruptcy law. The essence of the IBC can be derived from this theory of the BLRC report. A new bankruptcy law was needed in the present Indian context for the sake of avoiding destruction of value of the assets, improving the handling of conflicts between creditors and debtors and lastly and most importantly drawing the line between malfeasance and business failure so that certain disgruntled stakeholders cannot bring the downfall of a going concern. Now further it is essential for us to analyse the trends in the precedents laid down by the respectable courts and adjudicating authorities of our country in order to understand whether the raison d'être and objects of the code are being adhered to or not from the time of its inception till date. They are Neelkanth Township & Construction Pvt. Ltd vs Urban Infrastructure Trustees Ltd & Surendra Trading Company vs. J.K. Jute Mills Company Limited and others. There are many more cases pertaining to the IBC 2016 where in courts have given peculiarly uncanny interpretations of the code thereby disturbing other laws in force and also destructing its own enactment purposes and values. One may argue that the IBC code is still in its nascent stages and that these are teething problems faced by the code in its implementation, however what we need to note or take cognizance of in that case is that these teething problems need to be eradicated and/or prevented altogether at the earliest stage possible so that the IBC 2016 does not lose its rudimentary and unique charm of insolvency and bankruptcy resolutions and other purposes as seen in the preamble of the code.

Keywords: Insolvency and Bankruptcy Code, IBC, Bankruptcy Law Reforms

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Introduction

Prior to the enactment of this Code there were some very significant problems which were being faced by our Indian laws with respect to enforcement of Insolvency and Bankruptcy matters. To begin with we did not have one particular and consolidated law for the subject of insolvency and bankruptcy which would take care of all matters in relation to the same and hence there were plenty of ambiguous issues faced by large sections of the Indian society.

Now, the Insolvency and Bankruptcy Code 2016 has been passed, aims to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. Time is believed to be of major essence in these types of cases of insolvency and bankruptcy because the asset value declines with the passage of time and hence timely resolution of the entire insolvency and bankruptcy process is a must. The other key objectives of this code include promotion of entrepreneurship, availability of credit and balance of interests of all stakeholders.

The genesis of the Code is rooted in the long term vision of providing an effective legal framework for timely resolution of insolvency and bankruptcy, which would support development of credit markets and encourage entrepreneurship. As it exists, the Code has dovetailed judicial and commercial wisdom for the first time. On perusing the entire scheme of Code, while it is evident that time is of the essence for the entire insolvency resolution process, it is equally important that the Code be interpreted with its entire purpose and the mischief it sought to address in mind. However, the Code is still at a nascent stage and recent judicial interpretations have raised more questions than it has answered with respect to its implementation. The Principal bench of the NCLT has only taken a wider meaning and essence of the code is what it seems like. [1]

Law

If we go by the objectives of the Insolvency and Bankruptcy Code 2016 we can observe that one of the prima facie and key objective of enacting this code is to ensure consolidation and amendment of the laws relating to reorganization and insolvency resolution of all the persons mentioned in the code including individuals, partnership firms and corporate persons in a time bound manner.

Hence the recent analysis as laid down in a few recent precedents which we will see later that certain timelines are directory and not mandatory is an incorrect analysis in my

[1] Available at https:// www. khaitanco. com/PublicationsDocs/Mondaq-KCOCoverage05April17Diwakar. pdf last accessed on December 16, 2017

opinion as it defeats the purposes of enactment of the code and could be misused by future litigants of our society. One may argue that looking at the recent trends in timelines it is not a bad scenario as there isn't too much of a deviation as compared to that given in the code or that in a practical world it may not always be possible to follow the theoretical black letter of the law on account of various unanticipated practical difficulties. But what one definitely needs to keep in mind is that while laying down precedents there should not be any scope for misuse or abuse of the process of law because by giving such interpretations of directory and mandatory in nature there are high chances that people may misinterpret that and thereafter misuse it to their own advantage thereby once again leading to a failure of enactment of the Insolvency and Bankruptcy Code 2016.

Indeed and invariably timelines are given in almost every section of the Insolvency and Bankruptcy Code 2016 for the smooth and unhindered functioning of the insolvency resolution process. But we shall be focusing on the timelines under dispute as seen in the recent precedents, it focusses on timelines as given under section 7, 9 and 10 of the Insolvency and Bankruptcy Code 2016. These provide a period of 14 days for the NCLT to admit or reject an application for initiating insolvency proceedings. Before rejecting an application, the NCLT is required to provide the applicant 7 days to rectify any defects in his application. And that the operational creditor needs to send a demand notice before initiating the insolvency process under this code. These three sections talk about these three things per se respectively.

The law permits settlement of disputes by giving an inherent power to the NCLAT under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 by allowing a compromise before it among consenting parties.

The definition of disputes have been given in the code under section 5(6) which reads as dispute includes a suit or arbitration proceedings relating to- (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty;

Policy

According to chapter II of the Bankruptcy Law Reforms Committee (BLRC) Report Volume I Speed is of prime essence to any bankruptcy or insolvency process. The BLRC report is an important document in order to understand the prima facie and underlying intention of enacting the Insolvency and Bankruptcy Code 2016. It is believed according to this report that speed is of essence for the working of the bankruptcy code, for two major reasons firstly while the 'calm period' can help keep and organization afloat but again without full clarity of ownership and control significant decisions

cannot be made and therefore it may lead to a lot of chaos and destructive behaviour on the part of the participants of the organization thereby leading to a downfall of the organization. In other words without effective leadership the firm will tend to atrophy and fail. The longer the delay the more likely it is that liquidation is the only answer. Secondly with the passage of time the liquidation value tends to go down as many assets suffer from a high economic rate of depreciation.

Further from the viewpoint of creditors, a good realization of the value of the firm for recovering their dues can generally be achieved only when the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realization is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay. There are also other anticipated practical difficulties that may be faced on account of delays resulting in value destruction apart from the high economic rate of depreciation is that the debtor might try to siphon off certain assets thereby trying to escape the clutches of the bankruptcy laws of the country.

There is another important point to note that this chapter II of the code points out is the sources of delay need to be identified and addressed accordingly in order to prevent unnecessary delays. The two main anticipated sources of delay lie in firstly adjudicating mechanisms and secondly in making sure that all parties have got an undisputed set of facts about the existing credit, collateral that has been pledged etc. Disputes could take several years to resolve in adjudicating authorities and courts and hence in order to assist these authorities 'information utilities' have been developed in order to ensure timely supply of information to all necessary parties and also to assist the adjudicating authorities and courts in resolving disputes in relation to bankruptcy and insolvency processes and debts which are in dispute.

As per chapter V of the BLRC report Vol I emphasis has been laid on a time bound and efficient liquidation. Liquidation is the state the entity enters at the end of an IRP, where neither creditors nor debtors can find a commonly agreeable solution by which to keep the entity as a going concern. In India, it is widely accepted that liquidation is a weak link in the bankruptcy process and must be strengthened as part of ensuring a robust legal framework. The process flow in liquidation shares some objectives in common with that of resolving insolvency. Preservation of time value is the most important, and efficient outcomes under collective action is the next, both of which are important principles driving the design. However, this is not straightforward in implementation, particularly in an environment where different creditors

have different rights over the assets of the entity, information is asymmetric, and governance and enforcement has been traditionally weak.

According to the United Nations Commission on International Trade Laws (UNCITRAL) Legislative guide on Insolvency Laws Insolvency should be addressed and resolved in an orderly, quick and efficient manner, with a view to avoiding undue disruption to the business activities of the debtor and to minimizing the cost of the proceedings. Achieving timely and efficient administration will support the objective of maximizing asset value, while impartiality supports the goal of equitable treatment. The entire process needs to be carefully considered to ensure maximum efficiency without sacrificing flexibility. At the same time, it should be focused on the goal of liquidating non-viable and inefficient businesses and the survival of efficient, potentially viable businesses. This guide has given a summarized genesis of the provision for timely , efficient and impartial resolution of insolvency which has been explained as; quick and orderly resolution of a debtor's financial difficulties can be facilitated by an insolvency law that provides easy access to insolvency proceedings by reference to clear and objective criteria, provides a convenient means of identifying, collecting, preserving and recovering assets and rights that should be applied towards payment of the debts and liabilities of the debtor, facilitates participation of the debtor and its creditors with the least possible delay and expense, provides an appropriate structure for supervision and administration of proceedings (including both professionals and the institutions involved) and provides, as an end result, effective resolution of the debtor's financial obligations and liabilities. Although the code maybe enacted to facilitate resolution of disputes efficiently and timely but having such a provision can have adverse impacts as explained below in the Lokhandwala Kataria case in the precedents section of this research essay.

Despite having the definition of a dispute under the code there are still confusions on the same as the definition is not inclusively sufficient thereby leaving room for probable interpretations and as a result increasing vexatious litigations.

Precedents

1. J.K. Jute Mills Co. Ltd vs Surendra Trading Co.[2]

One of the key objectives of the Insolvency & Bankruptcy Code (IBC) is to provide a time bound process for insolvency resolution. In the recent case of J.K. Jute Mills Co. Ltd. v/s Surendra Trading Co., the National Company

[2] Civil Appeal No. 8400 of 2017 and http:// www. trilegal. com/index.php/publications/update/nclat-rules-on-timelines-under-the-bankruptcy-code last accessed on December 15, 2017

Law Appellate Tribunal (NCLAT) examined whether the time limits prescribed under the IBC, including those for the admission or rejection of an insolvency application by the National Company Law Tribunal (NCLT), are mandatory or directory.

NCLTs Order stated two things, firstly that the 14 days period within which NCLT must decide whether to admit or reject an application is directory and not mandatory. Secondly 7 days period for rectifying the defects in the application is mandatory and not directory.

Supreme Court further upheld the order of the NCLAT and stated firstly that Sub-section (5) of section 7 and section 9, and sub-subsection (4) of Section 10 are procedural in nature and therefore discretionary. Secondly it rejected the NCLTs order stating that the 7 days period for rectifying defects is mandatory and stated that it is directory. However the SC laid down a caveat stating that the applicant at the time of refiling the application must show sufficient cause as to why the objections could not be removed within 7 days.

The NCLAT ruling could be seen to have the effect of reading down the provisions of the IBC, which require the NCLT to adhere to a 14-day period for admission or rejection of an application. This could potentially stretch the timelines in the insolvency resolution process, particularly during the stage of preliminary admission.

However, the NCLAT has, at the same time, clearly recognized that speedy resolution is the essence of the IBC and observed that extensions should be considered only in exceptional circumstances. It remains to be seen whether this ruling will set a precedent allowing parties to use arguments of procedural fairness as a tactic for delaying insolvency proceedings under the IBC.

2. Neelkanth Township & Construction Pvt Ltd vs Urban Infrastructure Trustees Ltd. [3]

   The National Company Law Appellate Tribunal ("**NCLAT**") has recently ruled that the Limitation Act, 1963 is not applicable to the Insolvency & Bankruptcy Code, 2016 ("**IBC**"). In effect, the NCLAT has held that debts which were otherwise not recoverable due to being time barred, can now be basis for initiating insolvency proceedings. This is a stark change from the earlier position and paves way for initiation of multiple insolvency proceedings on debts which could earlier not be recovered.

   The case also dealt with other interesting issues which are generally

[3] Company Appeal (AT) (Insolvency) No. 44 of 2017

applicable to structures involving issuance of convertible and non-convertible debentures.

The NCLAT held the following:-

a. *"If there is a debt which includes interest and there is default of debt and having continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted."*

b. Compliance with section 7(3)(a) of the IBC , it provides " *The financial creditor shall, along with the application furnish—(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;"*

c. Meaning of financial creditor

"Financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

…

(c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;" (Emphasis supplied)

The ruling of NCLAT holding that debenture comes within the meaning of financial debt, irrespective of the applicable interest rate is useful for the industry. OCDs with nil or negligible interest rates were on various occasions used in structures such that the holder of the instrument would benefit from being in a position of a creditor till such time that the OCDs were converted into equity. This judgment now confirms that such structures would not imply that the subscriber to the OCDs would get the colour of an equity shareholder prior to its conversion. Further, the ruling in context of fulfilment of requirement of Section 7(3) (a) of IBC is also welcome. It reflects the NCLATs approach of ensuring due working of the IBC.[4]

Under the Companies Act, 1956, a winding up petition was considered maintainable only against a debt which was legally recoverable. Accordingly, a winding up could not be ordered where the recovery of the debt was barred by limitation. However, the current stand of NCLAT seems to completely change the position. This ruling effectively allows parties to initiate insolvency proceedings on basis of old debts which could not be recovered due to expiry of limitation period. This could open the flood gates for petitions under the IBC. Further, the NCLAT and Supreme Court left the question on repugnancy in laws open and unanswered or let's just say simply presumed it as deemed to

[4] http:// www. nishithdesai. com/information/news-storage/news-details/article/bankruptcy-code-limitation-act-not-applicable.html last accessed on December 16, 2017

be answered on account of the non-obstante clause.

3. Kiruna Software Pvt Ltd vs Mobil ox Innovations Pvt Ltd[5]

The NCLAT in a recent judgment, Kirusa Software Pvt. Ltd. ("**Kirusa**") v. Mobilox Innovations Pvt. Ltd. ("**Mobilox**") has broadly interpreted the term "*dispute*" to be of wide ambit and scope, stating that the term cannot be confined to pending proceedings or '*lis*' within the limited ambit of a "*suit or arbitration proceeding*". Accordingly, an application for corporate insolvency resolution process ("**CIRP**") would be rejected if the Corporate Debtor has communicated the existence of a "*dispute*" which emanated prior to the initiation of the CIRP by an Operational Creditor. However, the NCLAT has also stated that a mere illusory dispute, raised for the first time by the Corporate Debtor while communicating the existence of a dispute, cannot be used as a tool to get an application for CIRP rejected by the Adjudicating Authority.

Prior to this present judgement by the NCLAT there were various conflicting decisions interpreting the meaning of the term 'dispute.' In the case of Essar Projects India Ltd vs MCL Global Steel[6] it was held that dispute in existence would mean and include a dispute that is already present either in a court or an arbitral tribunal before the receipt of the Demand Notice under section 8 of the code. It further stated that if a corporate debtor raises a dispute by reply to a demand notice the same cannot be said to be said to be a dispute in existence if it is not before a court of law prior to the receipt of the demand notice. The same viewpoint was taken by the NCLT in the case of *Deutsche Forfait vs Uttam Galva Steel.*[7] Merely contesting the amount in question did not constitute a '*dispute*' within the meaning of the Code. Nevertheless the Delhi NCLT had taken the exact contradictory view by stating that a dispute raised post issuance of a demand notice could also be considered a valid dispute under the scope of section 9 of the Code.

The term dispute has been finally resolved by the NCLAT by stating the following:

- The term "*dispute*" must be interpreted in a wide an inclusive manner to mean any proceeding which had been initiated by the

[5] Civil Appeal No. 9405 of 2017 and http:// www. nishithdesai. com/information/news-storage/news-details/article/nclat-wider-definition-of-dispute-to-resist-an-action-for-insolvency-under-the-bankruptcy-cod.html last accessed on December 19, 2017

[6] CP No. 20/1 & BP/ NCLT / MAH / 2017

[7] C.P. no. 45/I&BP/NCLT/MAH/2017

Corporate Debtor before any competent court of law or authority;

- The dispute should be in respect of (a) existence of the amount of debt (b) quality of goods and services or (c) breach of representation and warranty;
- The dispute should be raised prior to the issuance of a demand notice by the Operational Creditor;
- The Corporate Debtor would have to particularize and prove the dispute in respect of the existence of the "*debt*" and the "*default*"
- The dispute cannot be a *mala fide*, moonshine defense raised to defeat the insolvency proceedings.
- The NCLT would have to *prima facie* verify the existence of the pending dispute and not judge the adequacy of the same

The initiation of CIRP by an Operational Creditor is a novel phenomenon in the Indian legal and corporate scenario and can prove to be a powerful tool in realizing operational debts even when the Corporate Debtor is not insolvent. Therefore, in light of the clarifications issued by the NCLAT and the requirements of the Code itself it has become vitally important and prudent for a Corporate Debtor to proactively take steps to raise a dispute in respect of unpaid invoices/dues of an Operational Creditor and put on record the existence of deficiency in service or goods or any breach of representation/warranty or any counter claim that the Debtor might have against the Operational Creditor so as to pre-empt any insolvency proceedings under Section 9 of the Code.[8]

If we look at section 5(6) of the code it only gives a restrictive definition of dispute and not an inclusive one as such, and definitely it cannot be extended to include a mere denial of claim. There is also one more point to note that the dispute should not be spurious, illusory, speculative and misconceived it should be real and existing in nature i.e. to say that the debtor cannot merely deny without reasonable grounds for denial.

4. Innoventive Industries vs ICICI Bank Limited[9]

   This is one of the earliest decisions of the Supreme Court in relation the Code, hence this judicial precedent analyses and studies the key provisions and the rationale behind enactment of the code, the objectives of the enactment of the code and brief comparative and strategic analysis of the insolvency and bankruptcy laws in many other jurisdictions as well.

   Innoventive had proposed to implement corporate debt restructuring as they were not able to

[8] Ibid

[9] Civil Appeal Numbers 8337-8338 of 2017

service the financial assistance provided by 19 banking entities. Subsequently, on May 23, 2014, a CDR empowered group admitted the restructuring proposal of Innoventive, which was also approved by the joint lenders forum meeting on June 24, 2014. Pursuant to the restructuring plan, a master restructuring agreement was entered into on September 9, 2014, wherein funds were to be infused by the creditors, and certain obligations were to be met by the debtors over the next two years. [10]

The NCLT held that the code prevails over any other law on account of the non-obstante clause, a parliamentary statute would prevail over a state statute and that the application by Innoventive Industries was not maintainable because no audience has to be given to corporate debtors by the Tribunal under the code and that a belated application filed beyond the stipulated timeline of 14 days to decide existence of default could not be considered permissible.

The NCLAT upheld this decision and the Supreme Court took this one step further and threw more light on the interpretations of certain essential issues for instance the importance of timelines thereby making this a landmark decision in the history of the Insolvency and Bankruptcy Code 2016. In this case as well the Supreme Court has given a lot of emphasis on the timelines given under this code and the requirement of adherence to the same and it is a welcome move to prevent unscrupulous debtors from escaping their moral and legal duties under the Code.

5. Lokhandwala Kataria Construction Pvt Ltd vs Nisus Finance and Investment Managers LLP[11]

In this case the Supreme Court allowed a settlement to take place between the parties even after the Insolvency proceedings were initiated. The Supreme Court did so in exercise of its powers under Article 142 of the Constitution of India. The Supreme Court simply took consent terms between the parties and recorded the undertaking of the parties to abide by the same and passed the order for settlement between the parties even after the insolvency proceedings had commenced. The NCLAT did not utilize its inherent power under Rule 8 of the Insolvency and Bankruptcy

[10] http:// www. nishithdesai. com/information/news-storage/news-details/article/supreme-court-chooses-to-interpret-the-insolvency-code-for-the-first-time.html last accessed on December 10 , 2017

[11] Civil Appeal No. 9279 of 2017

(Application to Adjudicating Authority) Rules 2016 to allow a compromise before it by the parties after admission of the matter.

In my view this is a good move to facilitate settlement between consenting parties to a dispute mutually. However it may be now argued on account of such a precedent that this type of judgement could give an undue edge to some creditors over others to negotiate a better deal for themselves as against others. In other words creditors could gain a better bargaining position over the debtors by virtue of this precedent as it is still a nascent insolvency process. It can also be said that this could result in opening the doors to more litigations in an already overly litigious community. Thus this entire provision is controversially infructuous as there are a few practical difficulties which the code does not seek to resolve satisfactorily and hence does not hold as good law.

Conclusion

The above precedents illustrate only a few examples of how the IBC is not a magic bullet to curing the financial disease of bad loans and banking debts in our country. Even the constitutionality of the code can be challenged on the grounds of right to be heard as laid down by the maxim 'Audi alteram partem' because there have been trends recently in the precedents which give out the message that the debtor has no ground to dispute on when the creditor enforces insolvency proceedings except that the debt was not due for some or the other reason.

As seen in Sanjeev Shriya and SBI case also there have been issues on even more fundamental concepts such as whether proceedings against guarantors of corporate debtor must be stayed in light of the ongoing proceedings against the corporate debtor at NCLT. Now these are technically and essentially incidentally fundamental aspects affecting contracts of debtors and creditors which must have been taken care of while enacting the code and shouldn't be left to the courts to decide as it increases scope of unwanted litigation once again.

In my opinion the purported non-obstante clause contained in the Insolvency and Bankruptcy Code 2016, provided in section 238 of the Code is turning out to be a draconian clause. This is because it is rendering a lot of provisions of other laws obsolete and worthless , thereby defeating the purposes of enacting these laws and as a result violating the basic principles of natural justice in many cases. On one hand one may argue that the same is necessary for recovery under this code but again if we look at the objectives of enacting this code nowhere does it mention that

recovery is its objective and hence recovery at the cost of disregarding so many other essential laws such as limitation act, companies act, etc. is definitely not in the larger interests or objectives of the society or this code respectively. The genesis and the underlying effervescence of such a clause needs to be made a little more clear in my opinion as the present state of affairs are becoming a tad glib and repugnant in terms of implementation of the Insolvency and Bankruptcy Code 2016 and applicability and validity of other essential laws as seen earlier.

Definitely it is a good thing to have such a clause in the code in the widest terms possible and the same is praiseworthy and shall not only bring more certainty but also give an impetus to the objects of the code thereby making it very difficult for the defaulting debtors to take shelter under several prior or state legislations in order to delay the insolvency process. However this cannot be kept as the only rationale for the purpose of having such a clause as it could destroy objects of other laws. Hence what can be done in my view is that one can have this tyrannically despotic clause but at the same time also make sure that there is an annexure/ schedule containing exceptions to this clause in order to accommodate important laws such as limitation act, companies act read with limitation act for the reasons as seen above in the controversial precedents. By overriding all kinds of repugnant clauses by virtue of this non-obstante clause can give a lot of undue power to the creditors as in the present scenario also the defense of the debtor are not at all vehement or even reasonably fructuous as laid down in recent precedents including the Innovative Industries case as seen above.

Since the code has been adopted from the UK Insolvency regime there are some more ways which the Indian Insolvency and Bankruptcy laws can adopt in order to improve their overall effectiveness, reliability and mitigate the present vagueness as seen in certain parts of the Indian Insolvency and Bankruptcy Code 2016. To begin with the creditor involvement should be reduced to as much as possible and kept on a 'need to know' and/or 'need to involve' basis in India. As a lot of times what happens is that the creditors with the maximum stake in the insolvency process try to manipulate and influence the working and decisions of the Insolvency Professional thereby at times side-lining the interest of the other creditors with lesser stake. In other words, like the UK Insolvency regime Insolvency Professional should be given complete autonomy in his working without much involvement of creditors and involvement should be only on very essential matters post the employment of the Insolvency Professional.

Further another point of essence which should be noted is that all creditors must be given proper voting rights in accordance i.e. in the

ratio of their amount outstanding. In UK all creditors(except secured creditors to the extent of the value of their security) including operational trade creditors have voting powers in the committee of creditors especially for approval of resolution plan in accordance with their amount outstanding unlike the scenario in India where only financial creditors(secured or unsecured) can vote in a creditor committee. Maybe we do not need to adopt the simple majority instead of 75% approval of financial creditors for approval of resolution plan so as to make sure that most of the creditors are on board with the resolution plan but we definitely need to make sure that everyone is given an equal or proportionate voting right so that every creditor is able to put forth his best interest and not just a few. This we can safely say is a right of equality as given in the constitution of India and we would be violating the same if we do not give the other creditors even a chance to be heard or put forth their opinions by way of a vote. There is no valid and significantly legal reasoning and/or backing for this discrimination between the rights of an operational creditor and a financial creditor and hence the same should be mitigated at the earliest, thus on this ground as well constitutionality of the code maybe questioned.

Every legislation faces certain interpretational issues and conflicts when it is new and in its germinating stage but what one needs to observe and understand from the recent judicial precedents is that these interpretational issues faced by the court are of a fundamental nature and hence need to be cured at the earliest in order to ensure that the correct legislative intent of the code is not only understood but also implemented at its earliest in order to strike a balance so as to make it debtor and creditor centric from the present creditor centric status.