

GNLU Centre for Law and Economics

A GLANCE OF THE SECOND ROUND OF THE PANEL DISCUSSION ON THE IMPACT ASSESSMENT OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS: FUTURE PROSPECTS AND PRACTICAL CHALLENGES

The Insolvency and Bankruptcy Code, 2016 is a legislation which creates a new model for insolvency acting as an umbrella provision dealing with corporates, partnership firms and individuals. The all-encompassing code aims to codify and consolidate the law and creates a framework for a time-bound resolution of insolvency. It tries to promote value maximization by allowing for resolution of the debts of a company such that it can be maintained as a *going-concern* instead of liquidation. Here the company is sold to the resolution applicant who pays off the various debts of the company allowing for both high recovery of debt by the creditors and survival of the company and its business operations. Thus, the Code promotes entrepreneurship and aims to balance the interests of various stakeholders, with liquidation of the company kept only as a last resort. It allows for the company's operation to continue during the resolution process through an appointed Resolution Professional and puts the power of decision making in the hands of the Committee of Creditors made up of the Financial Creditors of the Corporate Debtor. In this way, the IBC bring with it a new era of a modern insolvency ecosystem that seeks to address the interests of all the involved parties.

The GNLU Centre for Law and Economics, supported by the GNLU Faculty Seed Grant Programme since June 2022 is undertaking a research project headed by Dr. Hiteshkumar Thakkar (Asst. Professor Economics, GNLU) titled *Impact assessment of Corporate Insolvency Resolution Process (CIRP) in the State of Gujarat*. The research aims at engaging with all the relevant stakeholders including Resolution Professionals, Bankers, Lawyers, Registered Valuers and Company Secretaries through various mediums including circulation of a Questionnaire Survey, Interviews and Panel Discussions with an aim to unravel the challenges faced by stakeholders and solutions to improving efficiency in implementation of the law. On 4th January, 2023, the Second Round of the Panel Discussion was held virtually, wherein there was congruence among the various panellists that while the IBC has several positives that presents a case of improvement as compared to the previous legislations, it is not flawless. Some of the pertinent points raised on the challenges faced by the current IBC ecosystem includes the delay in timelines (voting timelines and delays in approval of resolution plans due to unnecessary litigation), cumbersome procedural issues, etc. Further, panellists

have also raised the issue of overburdening of the NCLT. One of the unique challenges discussed was also the issue that arises when the assets of the Corporate debtor can be categorised as proceeds of crime.

Various solutions were proposed in the discussion considering reforms pertaining to the NCLT, exclusive benches for IBC proceedings have been proposed. Alternatively transferring the jurisdiction to approve mergers can be transferred to regional directors.

Below are some of the highlights of the distinguished Panellists' comments:

Mr. Vishal Joishar (Partner, Ernst & Young): *"We have seen these challenges in India today as well but they are being fast overcome in the last four to five years. The law will take time to develop but we believe that it gives a good handle to the creditors."*

Mr. Anand Sonbhadra (CA, IP): *"If we look at IBC as a car, the four of its wheels would be Judiciary, Promoters/Directors/Borrowers, the COC and IPs. Except for IPs, other three wheels are not interconnected efficiently."*

Adv. Sathya Prasad (Fox Mandal): *"One of the practical challenges in the CRP process is the NCLT itself. Over a period of one year out of 62 members to be appointed there are only 34 members over there."*

Mr. RD Choudhary (CA, IP): *"The accuracy of timeline is an important pillar among the four pillars of the CIRP process."*

Adv. Arjun Sheth (Arjun Sheth & Associates): *"The IBC is a complete Code in itself and the way this law functions is that, what is not permitted cannot be done and is prohibited. This is a contrast to the common law principle wherein what is not prohibited is allowed."*