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A Critical Study of the Regulatory and Supervisory Role of the Insolvency and Bankruptcy Board of India in Strengthening Insolvency Governance

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A Critical Study of the Regulatory and Supervisory Role of the Insolvency and Bankruptcy Board of India in Strengthening Insolvency Governance

ABSTRACT

India's Insolvency and Bankruptcy Code, 2016 (IBC) is a revolutionary piece of legislation that has put in place a comprehensive and creditor-driven framework for the speedy resolution of any distressed entity or person. The Insolvency and Bankruptcy Board of India (IBBI) is at the heart of this institutional structure as it will be the single regulatory and supervisory body tasked with regulating insolvency professionals, insolvency professional agencies, information utilities, and the administration of the insolvency regime itself. The success of the IBC is largely going to rely on the capacity of IBBI to maintain strict regulation, transparency, professionalism and confidence in the insolvency process among stakeholders. The paper critically discusses the regulatory and supervisory components of IBBI that enhancing Insolvency Governance in India. It provides a detailed exposition of the powers, functions and duties given to the Board by the IBC, along with a discussion on the role played by the Board in creating a robust insolvency ecosystem. The study also examines the mechanisms of the IBBI to monitor insolvency professionals, regulations and guidelines, inspections and disciplinary action, as well as the responsibility of institutions. Board issues, such as overlapping regulations, procedural delays, capacity problems, developing legal precedents and enforcement& issues are discussed in detail. This paper also reviews the success in the implementation of the purpose of transparency, efficiency, value maximisation and protection of the stakeholders envisaged in the Code by the IBBI. The study, by analysing legislative provisions, regulatory changes, judicial decisions, annual reports, and current practices in insolvency, concludes that, although the IBBI has made tremendous strides towards stabilizing and maturing India's insolvency system, significant structural and operational reforms are still needed to promote regulatory effectiveness and improve the standards for governance. The paper finally recommends measures that strengthen supervisory, the coordination of regulators, professional responsibility, institutional independence, technology integration, and enhances the regime of insolvency resolution making it more resilient, transparent and efficient in India.

KEYWORDS

Insolvency and Bankruptcy Code, 2016, Insolvency and Bankruptcy Board of India (IBBI), Insolvency Governance, Regulatory Oversight, Insolvency Professionals, Corporate Insolvency Resolution Process, Bankruptcy Regulation, Corporate Governance.

INTRODUCTION

The integrity of an economy, confidence among investors and the efficient use of its assets depends to a large degree on the country's insolvency process.¹ Before the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) the Indian insolvency regime used to follow a number of enactments, notably the Sick Industrial Companies Act, 1985, the Recovery of Debts.² Due to Banks and Financial Institutions Act, 1993, and the Companies Act, 2013. With multiple overlapping law frameworks, there is a long history of litigation to work through, delayed asset distress settlement and considerable asset value erosion. The introduction of a time-bound and structured insolvency mechanism was needed, so the Government of India (GOI) introduced IBC with the goals of maximising asset value and balancing the interest of all stakeholders³ resulting in a better pickup of entrepreneurship and facilitating ease of doing business. The Code changed the concept of debtor in possession to creditor in control and introduced a sequential process of insolvency resolution and liquidation for corporate debtor, partnership firm and an individual.

The IBC marked some significant institutional innovations with the creation of the Insolvency and Bankruptcy Board of India (IBBI)⁴ as the primary regulator to oversee implementation and administration of the insolvency process. The IBBI is tasked to regulate insolvency professionals, insolvency professional agencies and information utilities as well as to lay down regulations, oversee compliance, inspect and take action in case of any abuses. The Board aims to achieve the necessary transparency, accountability, professionalism and consistency in insolvency proceedings through these functions. The IBBI has also been instrumental in developing insolvency governance, contributing to the ongoing reforms in the regulations, issuance of guidelines and circulars, consultations with the stakeholders⁵ and the advent of technological

¹ Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Volume I – Rationale and Design* (Ministry of Finance, Nov. 2015).

² Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

³ Insolvency and Bankruptcy Code, No. 31 of 2016, pmb. & sec 6–12 (India).

⁴ Insolvency and Bankruptcy Code, No. 31 of 2016, sec 188–196 (India).

⁵ Insolvency & Bankruptcy Bd. of India, *Annual Report 2023–2024* 24–37 (2024).

innovations in the way insolvency proceedings are being administered and managed over the years. While the institution has made strides, it still has some issues with respect to effectiveness, enforcement, lack of capacity, complexity, and the lack of coordination among different institutions participating in the insolvency system. These challenges call for a critical look at the role of the Board in regulation and supervision and how effective these are in relation to the effectiveness of the insolvency regime as a whole.

In this backdrop the present study is being undertaken for the purpose of examining critically the regulatory and supervisory role played by Insolvency and Bankruptcy Board of India in improving the insolvency governance. It examines the legal framework regulating the activities of IBBI, its role in executing IBC, the impediments and challenges faced by the insolvency regulation and supervision regime and suggests remedial measures to make the insolvency governance more efficient, transparent, and accountable in India.

LITERATURE REVIEW

1. The Bankruptcy Law Reforms Committee Report 2015 published by the BLRC

The BLRC published their Bankruptcy Law Reforms Committee Report 2015. The intellectual groundwork of the Insolvency and Bankruptcy Code, 2016 is given in the BLRC Report. The Committee highlighted the need to have a single insolvency regime and proposed to set up a specialized body which now became the Insolvency and Bankruptcy Board of India (IBBI). The emphasis in the report is laid on the requirement for regulations and supervision, on the importance of professional accountability, and on time-limited resolving of insolvencies in order to strengthen credit markets and economic growth.

2. Viswanathan, S. The Insolvency and Bankruptcy Code: A Paradigm Shift in Indian Insolvency law, International Institute of Bankruptcy Law and Practice Newsletter (2018).

Viswanathan discusses the paradigm shift in the insolvency regime brought in by the IBC. The study makes a point of the fact that the Code brought about a creditor-centric approach, along with substantial improvements to the recovery mechanisms. The author applauds the evolution of a structured insolvency ecosystem by IBBI but emphasises on the need for ongoing regulatory development of the system to address new issues coming before it.

3. Kannan, R. Conference "Regulatory Governance under the Insolvency

and Bankruptcy Code”, 2019.

Kannan discusses the governance and framework created under the IBC and the regulatory functions of IBBI. The study reveals the Board's efforts to achieve greater uniformity and professionalism in the field of insolvency and its power to regulate and discipline. But there are problem areas of efficiency in enforcement and institutional capacity are noted.

4. Amitah Sharma and Prasad Gupta (2020) Insolvency Professionals and Regulatory Accountability under the IBC.

This research provides analysis about the regulation of the insolvency professionals by IBBI. The authors note that precisely because of the key role played by insolvency professionals, they will be subject to close supervision and ethical requirements during the resolution process. The paper concludes that while the IBBI has a more effective supervisory framework in place that boosted accountability further, stronger disciplinary framework may be effective to further improve governance.

5. World Bank, Doing Business Reports (2018-2021).

In its latest update, the World Bank has found that India's ranking for the ease of bankruptcy significantly improved in the wake of the IBC. Much of this progress is attributed to the regulatory system set up under the Code and the regulation framework provided under IBBI.

7. Economic Survey of India, 1908 - 2018.

IBBI publishes annual reports that contain detailed information on regulatory developments, inspections, disciplinary action, stakeholder interactions, and initiatives on capacity building. The reports show the Board's continuous efforts to reinforce the Insolvency governance and further boost compliance level. They also highlight continuing issues concerning case backlog and on-going issues in regards to regulatory oversight.

8. Sahoo, M. S. Evolution of Insolvency Governance in India (2021).

In the post-IBC era, how insolvency regulation has evolved and the promising role played by the regulatory institutions to pave the way for effective insolvency proceedings is discussed here. The study makes a case for the IBBI having created a transparent and professional insolvency ecosystem, which still need to be technologically more integrated and institutionalised.

9. Singh, V., (2022) Corporate Insolvency Resolution Process and Regulatory Challenges.

Singh also explores the regulatory interventions by IBBI and their effectiveness as well as practical challenges that may arise in the course of corporate insolvency resolution proceedings. Although the guidelines have brought some consistency to the process, the study highlights problems with timing in proceedings, conflicts over interpretation and litigation that still impact insolvency proceedings.

10. OECD Report on Corporate Governance and Insolvency Frameworks.

The OECD puts the importance of the link between effective insolvency systems and good corporate governance at the forefront. The report recommends robust regulatory oversight, good transparency in processes and professional responsibility for effective insolvency administration. The observations underscore the importance of the supervisory function of the IBBI in the framework of Indian Insolvency.

11. Jain, N. and Mehta, S. Assessing the Regulatory Performance of Insolvency and Bankruptcy Board of India (2023), Programme on Law and Economics.

This study specifically examines the performance ratings of IBBI as a regulatory authority in a certain context. The authors argue that the Board has emerged as a key player in the process of building the insolvency governance framework via its regulatory work, inspections and disciplinary measures. The study, however, suggests a greater independence of institutions, strengthening enforcement and more synchronization with adjudicating bodies to further strengthen the insolvency ecosystem.

ANALYSIS

1. Statutory Framework and Regulatory Powers of the IBBI

The Insolvency and Bankruptcy Board of India (IBBI) was set up by Section 188⁶ of the Insolvency and Bankruptcy Code, 2016, as the top regulator of the insolvency ecosystem in the country. The responsibility of the Board is that of regulating the Insolvency professionals, Insolvency professional agency, Information utilities and all stakeholders associated with the Insolvency proceeding. In contrast to the previous single-stakeholder based crisis-driven regulators, IBBI's functioning will be predicated on a multi-stakeholder environment and its decisions will have tangible impact on the debtors, creditors, investors, insolvency professionals and adjudicating authorities.

⁶ Insolvency and Bankruptcy Code, No. 31 of 2016, sec 188 (India).

Upon a detailed analysis of the legal provision, it can be seen that IBBI has been granted wide regulatory powers such as formulation of Regulations, issuance of guidelines and circulars⁷, inspections, investigations of irregularities and disciplinary action. The powers have helped the Board to move quickly on practical issues which have occurred in insolvency situations and to ensure regulatory consistency throughout the country. The IBBI has made ad hoc changes and heard from stakeholders, continuously improving the insolvency framework⁸ to keep up with the changing commercial realities.

There has been some concern about the scope of legislation delegated to the Board. The uncertainty of stakeholders has at times been caused by regulatory changes that are frequently made to increase efficiency of the condition. There has been debate about the limits of regulation versus statutory changes, partly because regulations are becoming increasingly important as the primary means of changing policies. The increasing use of regulation instead of statutory amendment has also led to discussions about the boundaries between legislation and regulation. However, to build stakeholder confidence in its operations, there is need for more uniformity and certainty in the regulatory measures and requirements that need to be overhauled to better suit IBBI's functioning.

2. Supervisory Oversight of Insolvency Professionals and Institutional Accountability

The setting-up of a professional body for the regulation of the insolvency practitioners has been one of the most significant developments of the IBBI has made in this direction. The role of an insolvency professional is pivotal in the Corporate Insolvency Resolution Process (CIRP)⁹, where they help to run the troubled company, manage the assets, coordinate its activities with the creditors and manage the resolution processes. As an essential role, the ability to effectively supervise is crucial in ensuring the integrity of the insolvency process is ensured.

To govern insolvency professionals, IBBI has laid down extensive criteria for hiring, codes of conduct for insolvency professionals¹⁰, CPE requirements for IP s, and disciplinary provisions for the insolvency professionals. The Board's efforts toward promoting competence and professional ethical conduct are made through expectations of professionalism, inspection, investigation, and disciplinary actions. This

⁷ Insolvency & Bankruptcy Bd. of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 3-40.

⁸ Insolvency & Bankruptcy Bd. of India, *Discussion Paper on Corporate Insolvency Resolution Process* (2023).

⁹ Insolvency and Bankruptcy Code, No. 31 of 2016, ch. II (India).

¹⁰ Insolvency & Bankruptcy Bd. of India (Insolvency Professionals) Regulations, 2016, sched. I.

definitely has made the insolvency environment more transparent and accountable.

Despite these successes, examples of professional misconduct¹¹, conflicts of interest, and irregularities in procedures still arise. Some critics say that the disciplinary action can become a long process and thus lose its deterrent power. In addition, as the number of insolvencies grows, the pressure on supervisory mechanisms is also getting larger. Hence, bringing about enhanced enforcement efficiency and introducing technological monitoring systems would be conducive to further bolstering the supervision mechanism, even after IBBI has introduced and institutionalized professional accountability.

3. Building a robust compliance framework and support for stakeholders

One of the key goals of the IBC is to develop a clear and efficient insolvency process. The IBBI has significantly contributed to the goal through, among other things, digital governance frameworks¹², strengthening disclosure frameworks, and harmonizing procedures. The Board established several rules on reporting requirements, on valuations of assets and liabilities, on information disclosure to stakeholders and on informing the stakeholders on the proceedings in terms of reducing information asymmetry in insolvency proceedings.

Nevertheless, challenges remain. The time bound resolution process¹³ is continuing to be stunted due to the delays in resolution proceedings. Often litigation precedes adjudicate activity and can cost more since time is often spent beyond the statutory limits lowering asset values. While IBBI has no direct control over judicial delays, these become a hindrance to the functioning of the governance mechanism under its regulation. As a result, the Board's efforts to increase transparency and improve efficiency need to be viewed within a broader context of insolvency administration constraints in the institutions.

4. Regulatory Issues and Restrictions for IBBI Operation

Though, the IBBI has significant milestones to reach, it also has a number of challenges related to regulation and operations. The difficulty in coordinating various institutions engaged in insolvency proceedings,

¹¹ *Insolvency & Bankruptcy Bd. of India v. Anil Goel*, Disciplinary Comm. Order No. IBBI/DC/205/2024 (May 28, 2024).

¹² World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* 67–74 (2020).

¹³ Reserve Bank of India, *Report on Trend and Progress of Banking in India 2023–24* ch. 5 (2024).

such as the National Company Law Tribunal (NCLT)¹⁴, National Company Law Appellate Tribunal (NCLAT), the various agencies of the insolvency professionals, the creditors and the government authorities is one of the major concerns. These parties need to work together smoothly with a bit of luck. Integrating these parties seamlessly is an important requirement for effective insolvency governance which is often challenging in practice.

There is also limited wisdom on the constantly changing landscape of insolvency law. Judicial interpretations often shape the application of IBC¹⁵, and the IBBI will need to customize the regulations as such. This can be a very fluid environment, and sometimes, uncertainty around what it's going to look like or how to comply with regulation. Further, resource constraints, rising workloads and the requirement for specific skills can provide significant supervisory difficulties.

Likewise, the Board's record on effectiveness of enforcement actions is called into question. Disciplinary measures have been growing in severity over time, but it remains unclear whether punishment measures are strong enough to deter students from being inappropriate. Further, the centralisation of regulatory, supervisory and disciplinary powers in one institution has also triggered debates on institutional accountability and regulatory independence. The challenges presented thus far show the need for continued reform for more effective insolvency governance.

5. Assessing the effectiveness of IBBI to bolster Insolvency Governance

This can be gauged by the overall contribution to the objective of the Insolvency and Bankruptcy Code by the IBBI. The Insolvency and Bankruptcy Code (IBC) has paved the way for substantial developments in insolvency regulation, creditors' safeguards, professional accountability, and resolution methods in India. The Board has come up as a major institution in enhancing the ability to regulate and streamline the insolvency system.

The IBBI's proactive approach of regulation has paved the way for development of professional insolvency market and more transparency in insolvency proceedings. The ongoing role of regulation has been an effective way to react to practical challenges and to build stakeholders' confidence. In addition, the Board has played a role in establishing a governance-centric insolvency system, where accountability and compliance have been given priority and alongside with economic efficiency.

¹⁴ Companies Act, No. 18 of 2013, sec 408–434 (India).

¹⁵ *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

But an objective appraisal suggests that these and other systemic issues – delays in the judiciary, overlaps in regulation, complexity of cases – are limiting the Board's effectiveness. IBBI has significantly improved insolvency governance, however several institutional changes, improved coordination, better enforcement and technological connectivity are needed to realize the goals of the IBC. The Board should thus be understood as more than a regulator; it is a central governance body whose effectiveness is bound to have an impact on the overall success of the insolvency regime in India.

CONCLUSION

Since the Insolvency and Bankruptcy Code, 2016 was enacted, Insolvency and Bankruptcy Board of India (IBBI) has become one of the India's key pillars of its insolvency system. The Board, through its regulatory and supervisory role, has contributed much to transparency, accountability and professionalism in the insolvency ecosystem. The IBBI's role in regulating insolvency professionals, insolvency professional agencies, and information utilities, along with the formulation of regulations and adherence to standards has played significantly in the creation of a structured and efficient insolvency regime. Its work has contributed to build stakeholders' confidence, optimise governance and facilitate the Code's value maximisation and timely resolution targets. It is evidence that, progress due to the efforts of the Board, the experience of insolvency proceedings is changing and now the institution of insolvency governance is well on its way to become a corporate tradition of regulatory discipline.

But, the effectiveness of the IBBI can be measured only by its regulatory success, and not the whole gamut of it. The Board also has a number of hurdles: slow decision-making within the court, the growing number of complex cases, the development of new insolvency principles, restrictions, and limited capacity to impose sanctions, and a lack of institutional coordination. While IBBI has been able to put in place a good regulatory regime, further reforms are required to meet the challenges and enhance its supervisory capabilities. Further improvements to insolvency governance in India include strengthening the integration with technology, strengthening disciplinary framework and systems, enhancing coordination with Adjudicatory authorities and greater predictability in regulation. In conclusion, the future of the Insolvency and Bankruptcy Code¹⁶ is not just about the law itself, it's about how well IBBI is able to navigate the future and meet the evolving challenges of an economy that is constantly changing.

¹⁶ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

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