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Role of IBC in Corporate Governance

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ABSTRACT

India was lacking way behind in the field of bankruptcy and insolvency laws. The economy had no ease of business, banks were flooded with debts to recover, non-performing assets and an urgent need of a new legislation existed when IBC, 2016 was introduced. The paper highlights the prime changes the code invoked including the adoption of credit-in-control regime. The paper revolves around the role of this shift along with the role of resolution professionals, committee of creditors etc. in matching standards of corporate governance. The code has positively introduced numerous practices and statutory provisions to inculcate a culture of corporate governance in carrying a business along with their revival through CIRP or liquidation as the need in which the interests of both, corporate debtor and creditors is balanced. An analysis of various case laws is attempted to understand the position of the tribunal on the subject. The paper is concluded with multiple recommendations for the improvement of efficiency under the IBC on the subject.

KEYWORDS: *Insolvency and Bankruptcy Code, Corporate Governance, Regime Shift, Resolution Professional, Suspension, Board of Directors, Committee of Creditors.*

SCOPE AND OBJECTIVE OF THE STUDY

- To study the role of IBC, 2016 in light of the concept of corporate governance and establish a relationship between the two.
- To analyze the reasons and impact of the shift in approach from debtor-in-possession to creditor-in-control under IBC.
- To understand the role of Interim Resolution Professional and Resolution Professional, suspended directors, employees etc. and Committee of creditors in relation to corporate governance.
- To differentiate between suspension of board of directors from suspension of powers of directors instead under section 17 of the code with the help of various case laws.
- To highlight provisions like moratorium, prevention of wrongful trading etc. under the code ensuring the pedestal at which corporate governance is placed under this law.

RESEARCH METHODOLOGY

The methodology adopted is doctrinal. It is largely analytical and descriptive. The research carried out for this paper is an applied one where previous academic research exist and proposed research takes form of a new one on the same subject of laws of bankruptcy and insolvency when it comes to the role of IBC in corporate governance.

RESEARCH QUESTIONS

- 1) How does the adoption of creditor-in control regime from former debtor-in-possession regime contributes to corporate governance?
- 2) How does the IBC framework function as corporate governance norms vis-à-vis role of Resolution Professional/ Interim Resolution Professionals and Committee of Creditors?

HYPOTHESIS

Bankruptcy and Insolvency law has grown considerably in modern times in different areas which is difficult to examine within the limits of this short assessment. Studying the IBC, 2016 in light of the concept of corporate governance makes one examine the shift in approach, benefitting the creditors along with roles played by IRP/RP, board of directors after suspension and committee of creditors in protecting life of the company by balancing interests and maximizing value. The imposition of practises of prevention of abuse of related parties and fraudulent trading by penalizing them heavily are all

string institutional checks of corporate governance. The success is unmatched of the code with certain failures which with time can be addressed. Hence, the author analysed the IBC, 2016 in light of statutory provisions and judgments to understand its role in corporate governance so far.

LITERATURE REVIEW

A thorough reading of various articles discussing the topic of bankruptcy and insolvency makes it clear that the topic is quite significant and full of questions that can be explored. To understand the role and impact of the IBC, 2016, one needs to begin with analysing the shift in orientation from debtor-in-possession to creditor-in-control. The flailing condition of economy was only recused because of the introduction of this code which focuses much on corporate governance (**George Triantis**)¹. The shift was important for balance of interests and giving some power to the creditors which they completely lacked. In order to understand how IBC functions as corporate governance norms, the practises and various provisions of the same are to be read. The code emphasises on revival of the corporate entity via CIRP instead of directly liquidating it. To achieve this objective, maximization of asset value is reinforced which protects the assets of the debtor from depreciation value and serves interests of the creditors as well by keeping the value high even if the process results in liquidation (**Sharad Abhyankar and Nirmal Mohanty**)².

The role of Interim Resolution Professional and Resolution Professional is another significant aspect of the code that lays down the framework for corporate governance. the duties of the IRP/RP to ensure fair and equitable result, constitution of the committee of creditors, prepare resolution plan and manage affairs and operations of the company in a way which benefits it as a going concern (**M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr**)³. Further, the role of the suspended board of directors remains to cooperate in the CIRP and help the IRP/RP carry out the same. One must not get confused with the wordings of the section 17 as the board of directors and company members, partners etc. do not get suspended but their powers do which is noteworthy. To maintain corporate governance, they can participate in meetings etc. but have no right to vote. Then the role of committee of creditors is highly important as it ensures to check the power of the RP and maintain fair and just process (**Wajahat Monaf Jilani**)⁴.

The code ensures that there is a timeline for the process which has solved the issue of delays and inefficiency with the help of section 14 providing period of moratorium. The penalties are harsh for practises like abuse of 'related parties' and wrongful trading (**Sreyan Chatterjee, Gausia Shaikh and Bhargavi Zaveri**)⁵. Together, these studies highlight how IBC has been highly successful specifically in its role of encouraging corporate governance. the code is still evolving and therefore one can see amendments on a regular basis, leaving scope for improvements. The goal of this literature review is to analyse these critically and comment on the same.

1. INTRODUCTION

Insolvency & Bankruptcy Code, 2016 is a significant example of Indian legislation and policies executed with the motive of enhancing the practise of good corporate governance. Even before the code was implemented, it was stated by the ministry of finance to hold a very major impact on the structure of corporate governance of the nation⁶. The main aim of the code is to help a company by maximizing assets value, balance interest etc. when in distress and lay down pro-business governance norms in the country. As laid down by NCLAT in the case of **Binani Industries Limited v. Bank of Baroda and Anr**.⁷, that the purpose of IBC is resolution in a company. The code functions to speed up the insolvency process and set up Bankruptcy Board for the same. The process is for the revival of a company and to save it instead of its dissolution. Corporate governance on the other hand is best explained in The OECD Principles of Corporate Governance. These are principles overlooking the standards of governance and administration of a corporate entity, the three main principles addressed for corporate governance being, transparency, accountability and responsibility. It is the policy framework of an entity managing various set of relationships between management, board, and shareholders⁸. The goal of the same is to improve the company's performance and increase efficiency by reducing malpractices.

¹ George Triantis, **A Theory of the Regulation of Debtor-in-Possession Financing**, 46 Vanderbilt Law Review 901 (1993), A Theory of the Regulation of Debtor-in-Possession Financing (vanderbilt.edu).

² Sharad Abhyankar and Nirmal Mohanty, **The Insolvency and Bankruptcy Code: Implications for Corporate Governance**, NSE Centre for Excellence in Corporate Governance, https://archives.nseindia.com/research/content/res_QBApr17.pdf.

³ Company Appeal (AT) (Insolvency) No. 290 of 2017.

⁴ Wajahat Monaf Jilani, **Role of Insolvency & Bankruptcy Code in Corporate Governance: A Legal Analysis**, 1 Journal of Corporate Governance and Transparency.

⁵ Sreyan Chatterjee, Gausia Shaikh and Bhargavi Zaveri, **An Empirical Analysis of The Early Days of The Insolvency and Bankruptcy Code, 2016**, 89-110, 30 National Law School of India, <https://www.jstor.org/stable/26743938>

⁶ K R Srivats, **Bankruptcy code will have big impact on corporate governance: Jayant Sinha**, The Hindu Business Line (2016), <https://www.thehindubusinessline.com/economy/bankruptcy-code-will-have-big-impact-on-corporate-governance-jayant-sinha/article8211994.ece>.

⁷ Company Appeal (AT) (Insolvency) No. 82 of 2018.

⁸ OECD Principles of Corporate Governance, **Organisation for Economic Co-operation and Development** (2004), <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>.

1.1 RELATIONSHIP BETWEEN IBC AND CORPORATE GOVERNANCE

Normally, the board of directors have the duty to govern the company, they hold a fiduciary obligation and hence corporate governance becomes a design only of a solvent entity. But in the insolvency process as the company fails to fulfil its financial obligations of repayment, the control goes over to the creditors and corporate insolvency resolution process (CIRP) is invoked. CIRP can be invoked by either the operational /financial creditor or even by the debtor himself. The 2016 code has shifted the previous existent debtor-in-possession regime of Sick Industrial Companies Act, 1985 and other bankruptcy laws to creditor-in-control. The reason for the shift of focus being increasing good governance by protecting interests of creditor by giving a more active role to the creditors during insolvency and in the duration when company is moving in the direction of insolvency i.e., before CIRP is invoked⁹. This is to ensure that the balance of interests is maintained while earlier, there existed fraud, bad loans, banks held non-performing assets and lagging insolvency cases taking up to 4.3 years on an average which compared to other jurisdictions like the UK were remarkably long¹⁰. The case of **Government of India v. Vijay Mallya**¹¹ is a prime example of how loans were still extended to Kingfisher which was in debt and the sufferers were the small investors while the company was declared to have gone bankrupt, followed by fleeing of Mallya to the UK.

These are the issues that IBC attempts to solve by providing solutions for efficient and good governance by way of various sections like section 12 setting a time limit of 180 days with one extension of 90 days for CIRP, for instance as seen in the case of **Suraksha Asset Reconstruction Limited v. Siddharth Milk Food (India) Private Limited**¹², section 14 setting a moratorium period, section 16 providing for appointment of interim resolution professional who is responsible for forming the committee of creditors, whose powers are same as corporate debtor as laid down by section 17. It is the approval of this committee by a 60% vote along with that of the authorities that is required to implement any resolution plan and the debtor, stakeholders, creditors etc., all are bound by the same along with permanently appointing the IRP as resolution professional or a new one.

2. RATIONALE FOR SHIFT IN REGIME

In the pre-IBC times, it was the debtor-in-possession who was responsible for the management of the company at the time of CIRP and in the time period prior to it. It is one thing to control and manage a company under normal circumstances and another to carry out its operations and fiduciary obligations at the time of reorganisation or liquidation/possible liquidation due to change of interests. Thus, a debtor-in-possession model was followed¹³. In such situation, there is a clash of interests between various stakeholders and the directors and secured and unsecured creditors. For instance, the corporate debtor in such circumstances may opt for an option to overcome lack of funds instead of focusing on long term of the company, hence putting creditors at risk and a need for check for balance of interests.

Under Sick Industrial Companies Act, the provisions guided to refer the Board for Industrial and Financial Reconstruction (BIFR) when facing distress which then directed the company to either carry out a rehabilitation scheme or led to its winding up by the High Court. One of the key factors along with this debtor-in-possession regime that led to downfall of SICA law was the wide timeline of moratorium which was automatic in nature. While the proceedings stayed pending before the BIFR, the act supported the debtor in case of actions of creditors. This resulted in misuse of the provisions by the debtors in order to protect themselves by delaying the CIRP and gaining immunity in case of legal actions of creditors. Therefore, this regime for corporate governance specifically was not the most favourable or ideal approach.

The unsuitability of this regime was first time highlighted in the report of Banking Law Reforms Committee (BLRC) leading to formulation of IBC, 2016¹⁴. Now the balance of rights and powers of the shareholders is maintained under the code as the model has shifted to creditor-in-control. The main factor stated in the report for proper working of this law is the speed. A speedy CIRP is a must because the later the decisions are made in a weak leadership with ambiguous ownership status, the only available option would be liquidation. Also, there cannot be value maximization of assets when there is prolonged delay as exercised under previous laws leading to lower recovery rates, causing loss to creditors. Therefore, when an entity goes insolvent or is nearing one, the control now shifts in hands of the creditor even though the directors and corporate debtors are allowed to attend meetings of the committee of creditors but their right of voting stands ceased. The code is designed specifically for needs of Indian society keeping in mind, that the ownerships here are generally concentrated due to family businesses etc. in such a position, when these entities suffer from lack of funds, entire management is left in the hands of these owners, resulting in high doubts on how well the rights of the creditors will be addressed¹⁵. Hence, to strengthen the position of creditors at times of default, and ensuring there is no loss to the company or value depreciation of assets, control is shifted to the creditors.

⁹ Supra Note 1

¹⁰ **Insolvency law reduces resolution time for stressed assets to 340 days: Economic Survey**, The Economic Times (2020), <https://economictimes.indiatimes.com/news/economy/policy/insolvency-law-reduces-resolution-time-for-stressed-assets-to-340-days-economic-survey/articleshow/73809835.cms>.

¹¹ [2020] EWHC 924 (Admin).

¹² I.A. 2048/2020 in CP 3505 / 2018. The standard time period for resolution plan was extended in the matter as per the orders.

¹³ Supra Note 9.

¹⁴ The Bankruptcy Law Reforms Committee, **the report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design**, Government of India (2015), https://ibbi.gov.in/BLRCReportVol1_04112015.pdf.

¹⁵ George Triantis, **A Theory of the Regulation of Debtor-in-Possession Financing**, 46 Vanderbilt Law Review 901 (1993), *A Theory of the Regulation of Debtor-in-Possession Financing* (vanderbilt.edu).

The landmark case in this regard underlining the advantages of this shift in model is **Swiss Ribbons Pvt Ltd & Anr. v. Union of India and Ors.**¹⁶ The Supreme Court explained in this judgment that the code encourages the creditors-in-control model but that does not mean that it holds no benefit for the corporate debtor. The code ensures revival of the company which is beneficial for the corporate debtor to continue the company instead of merely liquidating it to pay off the creditors. It is only in the absence of such resolution plan that there are orders passed for liquidation by the NCLT as visible in **Ultratech Cement Ltd. v. Silveroak Commercial Ltd.**¹⁷ The interests of the debtor are kept at hand when under section 14 of the act, moratorium fixes a timeline which protects asset value. The timeline not only makes the process efficient for higher recovery for the creditors but also preserves assets of the debtor and makes sure that the process is fastened for a better management to take over and revive the company.

Further, the manner in which this adoption of creditors approach maintains corporate governance lies in the fact of pro-active governance. The powers of the management in the process lies with the Resolution professional, who is specialized in the field and chosen after voting by committee of creditors. He carries out CIRP with the intention of saving assets with their high value within the prescribed time period, therefore balancing corporate debtor's right as well. Given the management of the company entirely shifts to the creditors prior to CIRP in case of default, it becomes a threat to the directors and current management of the entity. In such circumstances, they might not have the right to enforce a resolution plan according to their wishes or simply, the creditors might opt for liquidation instead. This scheme under the code ensures that the objectives of the corporate debtors, shareholders etc. are in line with the needs of the company and avoids underperformance, inordinate delays and minimization of defaults¹⁸. It pushes the debtor to resolve burdening debts for want of control. So, the attempt of the company management under the code, is to carry out good governance so that it does not become insolvent and even if it does, then maintain the value in CIRP. The code separates the company from its management to ensure its revival as a company has succession rather than its liquidation. As laid down in the matter of **Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors**¹⁹, in presence of a resolution applicant who can be made responsible for leading the company as it is and save it from liquidation, such application is to be preferred as a practise of corporate governance.

3. IBC FRAMEWORK AS CORPORATE GOVERNANCE NORMS

IBC saves a company and enforce corporate governance by way of maximizing asset value and hence maximizing company value, balancing interests between the corporate debtor and the shareholders, liquidation is initiated only on account of failure of CIRP after making full efforts of reviving the entity. In addition, the shifted regime of control of management ensures pro-active governance, better and careful measures by promoters, directors etc. This is all facilitated by the framework of IBC, 2016. As per the provisions of IBC, specific role and powers are laid down on IRP/RP, board of directors, committee of creditors etc. to fulfil their duties in accordance with the timeline provided. Therefore, it becomes necessary to study this limited framework to understand main features of the code and how it functions to inculcate corporate governance regime.

3.1 CORPORATE GOVERNANCE AND INDEPENDENT ROLE OF INTERIM RESOLUTION PROFESSIONAL/ RESOLUTION PROFESSIONAL

Section 16 provides for the appointment of IRP by the adjudicating authority and the timeframe laid down for the same is 14 days from the time of insolvency proceedings commencement with the goal of reviving the company as a priority or moving on to liquidation otherwise with maximization of value either way. All the responsibilities of the corporate debtor are passed over to the IRP under section 17²⁰ and section 20 where the corporate debtor held obligations to manage the affairs and operations of the company as a going concern respectively as upheld in **M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.**²¹, that the professional is required to act in an ongoing concern while managing the company. IBC framework supports that the acts are carried out keeping in mind the business to be a going concern. The noteworthy point under section 17 is its power of suspending the powers vested in the corporate debtor, board of directors etc. while it is passed on to the IRP. This is done in order to ensure creditors interest so that without interference, a professional can initiate CIRP, promoting long lasting investment in mergers and acquisitions and the spirit of entrepreneurship. In order to enhance the corporate governance, IRP acts independently, skilfully and carefully. As per regulation 3 of the code, ensuring integrity, an IRP is appointed independent from corporate debtor²², the qualifications to be fulfilled being:

- Under section 149 of the Companies Act, 2013, he qualifies to be appointed as an independent director of the board of debtor;
- Should be an independent and not related party in relation to the debtor;

¹⁶ (2019) 4 SCC 17.

¹⁷ MA 510/2020 in CP 2823/2018.

¹⁸ MS Sahoo, **Here's How IBC 2016 Has Taken Corporate Governance to New Heights**, Financial Express, <https://www.financialexpress.com/opinion/heres-how-ibc-2016-has-taken-corporate-governance-to-new-heights/1866199/>

¹⁹ (2019) 2 SCC 1.

²⁰ The IRP under clause 2 of section 17 is further empowered to carry out any act or access any such document, record, accounts etc. of the debtor as it would have been carried out by the debtor himself.

²¹ Supra Note 3.

²² Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regulation 3, 2020-04-27-114849-uq543-ca9a1f1f849a43f3290c4b9512d0c863.pdf (ibbi.gov.in).

- Should not be an employee, proprietor or partner in the company where company is the debtor.

These provisions of the code are to ensure that there is no decision-making power with the corporate debtor and proper corporate governance is practised. Further, the IRP has to follow a code of conduct under which, complete disclosures are also to be provided by him during the process of appointment. Section 53 and 178 of the code prohibit IPR from keeping any personal or pecuniary interest with any employee, shareholder, directors etc. of the corporate entity without first disclosing the same. This is a continuing provision to maintain independency and impartiality on his part. In fact, the code extends up to the family of the IRP, prohibiting them along with the IRP from purchasing assets belonging to the debtor or accepting gifts, or in an otherwise situation, prove that the independency and objectivity remains intact²³. Thus, we can say that the code enforces a strict framework for cooperate governance and no undermining of authority of IRP once CIRP comes into the picture is allowed. Moreover, as per section 19 of the code, makes it a duty of the debtor and company employees etc. to help and fully cooperate in management by the IRP²⁴. If there is non-compliance in assistance and cooperation, then the adjudicating authority have the power to pass orders for the same as seen in **M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.**²⁵ The most crucial obligation imposed on IRP under the code is formation of committee of creditors (COC). As mentioned earlier, this is the committee that under section 22 permanently appoint the IRP as the RP or choose another RP. This RP is then responsible to entirely take over the CIRP and operations of debtor²⁶, along with coming up with a resolution plan²⁷ which is drafted by the IRP by way of conducting meetings of the COC in order to collect information for the drafting²⁸. As discussed earlier, IBC protects and preserves the assets of the debtor which is through RP only via execution of section 25 so the balance of interests is maintained. It was stated in **Innovative Industries Ltd v. ICICI Bank and Anr.**²⁹, that directors after CIRP is invoked, have no right to file an appeal regarding any management of the company as they are no longer in power. Therefore, all the duties as per the IBC framework imposed on the IRP/RP are in the manner of corporate governance norms when examined carefully.

3.2 ROLE OF THE SUSPENDED BOARD OF DIRECTORS

It is very clear under the law that as per section 17, board of directors, the management of the corporate entity entirely stands suspended while their powers are passed over to the IRP/RP. But what becomes an interesting aspect to examine is when this section is read along with section 24(3) where the RP has a duty to notify this suspended board of directors regarding the meetings of the COC. So, is the board of directors suspended in relation to their power and they exercise the same individual capacity?

On studying section 19, it is unambiguous that the board of directors and other 'personnel' are needed to help and cooperate the process carried out by the professional, and are also invited for the proceedings of the meetings even though they hold no voting rights. Hence, it is implied that the language of section 17 only suspends the powers of the board of directors and not their existence as board of directors and they continue functioning as directors in their individual capacity as registered with the registrar³⁰. This confusion has been removed earliest in **Re Rangai Goundan (M.K.)**³¹, where Madras High Court had to examine section 208A of Companies Act, 1913 and the language of the provision was such that the directors remained the same in their individual capacity but lost their powers. More elaborately, in **Steel Konnect (India) (P) Ltd. v. Hero Fincorp Ltd**³², appeal was filed by the board of directors which was contented by the creditor on the grounds that an IRP is already appointed for CIRP and thus directors cannot appeal as per section 17. NCLAT decided that the directors do not cease to exist but merely their powers are, so they hold locus of filing an appeal under section 61 of the code. The same analogy was also upheld by Delhi NCLAT in **M/s. Subasri Realty Private Limited v. Mr. N. Subramanian & Anr.**³³, that appointment of IRP/RP suspends powers of directors and other employees and not their positions as directors etc. they have to act on direction of the RP but their individual capacity cannot be taken away. Further the Supreme Court in **Vijay Kumar Jain v. Standard Chartered Bank & Ors.**³⁴ Laid down that as the directors are by law empowered to be a part of COC meetings, they should also be provided with copies of resolution plan etc. They cannot vote or make decisions but they have rights to attend and get copies for information of the same. Therefore, ensuring transparency in COC meetings with the provision of suspended board of directors as a measure of corporate governance.

²³ Insolvency Professional Agency of Institute of Cost Accountants of India, **Code of Conduct for Insolvency Professionals** (2017), <http://www.ipaicmai.in/IPA/Upload/Code-Conduct-IPs.pdf>

²⁴ The section specifies the duty on 'personnel' which is defined under section 5(23) of the Code, 2016 and includes promoters, directors, employees, and other management of the company.

²⁵ Supra Note 3

²⁶ Section 23, The Insolvency & Bankruptcy Code, 2016

²⁷ Section 29(1), The Insolvency & Bankruptcy Code, 2016

²⁸ Section 24, The Insolvency & Bankruptcy Code, 2016

²⁹ Civil Appeal Nos. 8337-8338 OF 2017

³⁰ Shikha Bansal, **Resolution Professional vis-à-vis Board of Directors: Governance of Insolvent Companies** (2018), <http://vinodkothari.com/2018/03/resolution-professional-vis-a-vis-board-of-directors/>.

³¹ AIR 1942 Mad 702.

³² Company Appeal (AT) (Insolvency) No. 51 of 2017.

³³ Supra Note 3.

³⁴ Writ Petition (Civil) No.1266 Of 2018.

3.3 ROLE OF THE COMMITTEE OF CREDITORS

The most significant provision of the 2016 code is section 21 under which the IRP is responsible to form a committee of creditors. It comprises of the financial creditors who hold the voting rights but under certain exceptions, operational creditors are also welcomed to the meetings but with no voting rights if the dues in total are not below 10%. In addition, the information of meetings, documents, resolution plans etc. are also to be given to the suspended board of directors as discussed above. In case any director is a relative to the debtor but at the same time is a financial creditor, by virtue of the law, holds no right to attend the meetings, decision making process or voting power³⁵. The importance of COC is underlined in corporate governance by its function of passing a resolution plan of RP or any other applicant³⁶ based on its practicality. The RP only prepares the plan by collecting information via meetings of COC but cannot alone implement it. A 60% vote of COC is required for the same, thus maintaining a check on the RP's powers as no decision of management or finance can be taken without the voting³⁷. Therefore, COC protects interests of both corporate debtors and the creditors by keeping the RP in check. It balances fair and equitable results financially as COC is the final authority on the extent of amount to be paid and to whom. As laid down in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.**³⁸, COC is the final authority and their decision should be based on maximization of value and balance of interests.

Apart from the roles of these specific three important bodies in IBC, there are certain other provisions also which ensure increase of corporate governance. The provision under section 14 for moratorium which gives a stringent timeline for CIRP is one of such laws. It prohibits some actions like filing or continuing a suit against debtor or prohibiting debtor from disposing, transferring, alienating his assets etc. it also sets time limit for completion of the whole process as discussed above³⁹. This ensures that the process can be taken forward without any adverse effect or unfair benefit and without delays. Further, 'related parties' are very elaborately defined in the code⁴⁰ to prevent any abuse of such transactions, for example, prohibition of financial creditor to attend meetings or vote if he is a related party. Lastly, the code lays down stringent penalties against wrong and fraudulent trading carried out while the CIRP is in progress or even before that, ensuring that such parties pay through contributing assets to debtor or penalises them with imprisonment and/or fine.

4. CONCLUSION

IBC, 2016 has been implemented by studying the needs of the Indian economy. It has improved the business structure, entrepreneurship and flexibility of doing business in the nation. The mechanism of administration before IBC was so poor that the banks were lead deep in bad loans, but IBC ensures that corporate governance is prioritized with business along with no delays or depreciation of assets. The shift of approach from debtor-in-possession to creditor-in-control has strengthen creditors power to new heights who otherwise suffered with no recovery of debts. Various roles imposed on IRP/RP, COC etc. are still a challenge to come fully to effect but they are a welcome initiative from corporate governance aspect with the institutional checks. But nevertheless, there are still falling statistics showing that the code might not seem to achieve as much as it was expected to. There are certain failures that are coming up in its efficiency as well. There is too much pressure on the framework due to high number of cases and most of the companies are now ordered for liquidation because of a specific timeline. The point to remember though is that the code is still evolving so we can expect certain amendments to resolve existing issues, for instance, the interest of shareholders to be secondary to that of creditors during CIRP and in essence, it has positively affected the Indian economy.

5. RECOMMENDATIONS

- As the code is silent on group companies' insolvency, a clarification or legislation on the same could be beneficial in order to maintain standards of corporate governance for each such entity so that in distress, the whole group does not fall at risk. The landmark case even in absence of a provision is **State Bank of India v. Videocon Industries**⁴¹ Ltd where consolidation of 13 companies was ordered.
- The ambiguity regarding suspension of board of directors or the powers of such board must be removed in the legislation and put in line with the interpretation of the tribunals.

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³⁵ Proviso to section 21(2).

³⁶ Section 30(2), The Insolvency & Bankruptcy Code, 2016.

³⁷ Section 28(1), The Insolvency & Bankruptcy Code, 2016.

³⁸ Civil Appeal Nos. 8766-67/2019.

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