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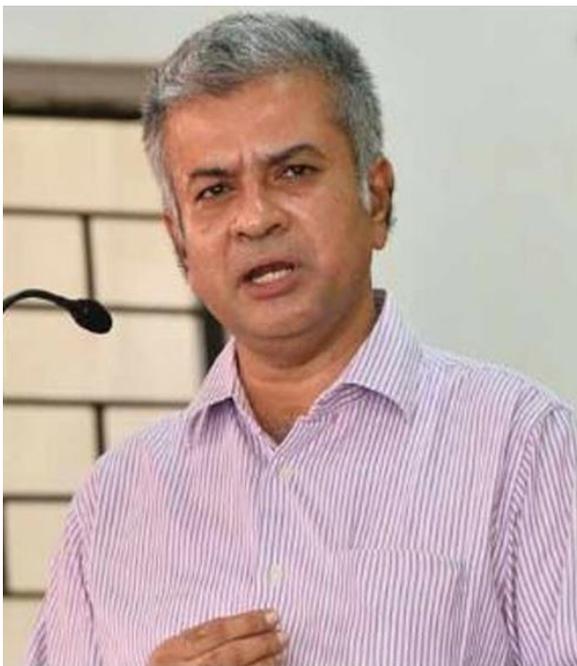
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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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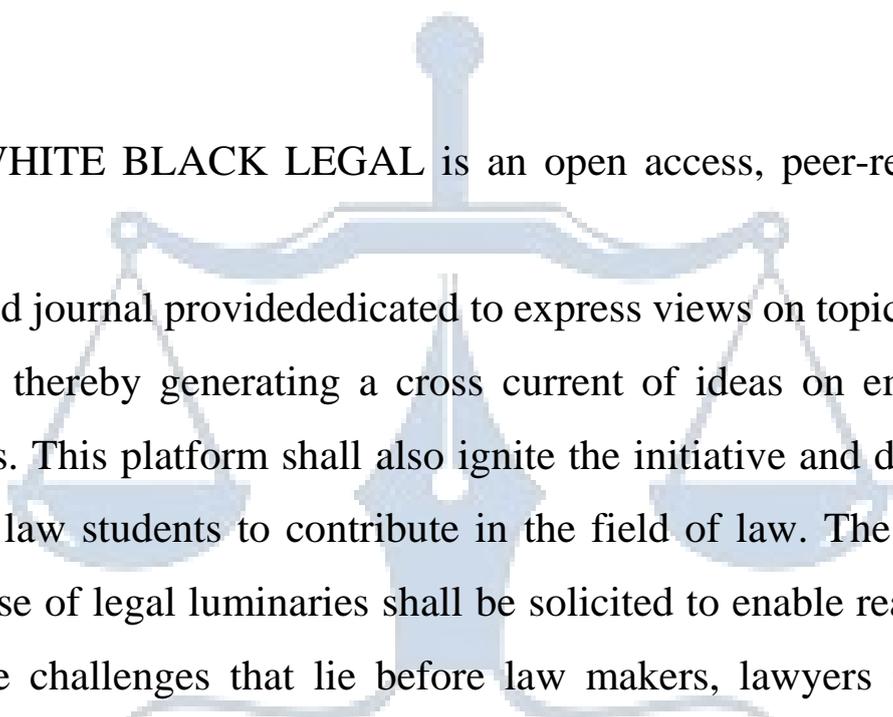


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INTERPLAY OF IBC AND COMPETITION LAW

AUTHORED BY - ARYAN SHARMA

Abstract

The essay delves into the intricate relationship between competition law and insolvency processes within India's Insolvency and Bankruptcy Code (IBC), highlighting the significant legal implications and potential conflicts that arise. Concerns revolve around the inclusion of anti-competitive clauses in resolution plans, the necessity to balance the interests of stakeholders, and the impact of evolving legal interpretations on dispute resolution. Collaboration between the Competition Commission of India (CCI) and experts in bankruptcy resolution is paramount to address these challenges effectively. Ensuring compliance with competition laws, safeguarding consumer welfare, and fostering fair market practices are essential for aligning the objectives of the IBC and competition law. By navigating these complexities thoughtfully and promoting cooperation among relevant stakeholders, India can navigate the intersection of insolvency and competition law successfully, ultimately fostering a competitive and transparent business environment that benefits all parties involved.

Introduction to the Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code 2016 is a landmark legislation that aimed at reforming the insolvency and bankruptcy framework and regulations. Before the IBC, there were several, dispersed rules about bankruptcy and insolvency, which led to excessive delays and insufficient outcomes for example- the SICA Act (1985), SARFAESI Act 2002, RDDBFI Act 1993, and Companies Act 2013. Due to ineffective implementation and conflict in the statutes, a committee was formed by the Ministry of Finance in 2014 headed by T.K. Viswanathan. The bill in Lok Sabha was presented by Late Mr Arun Jaitely and the Act was implemented in 2016.

One of the primary objectives of the act is to foster entrepreneurship, facilitate credit availability, and guarantee prompt settlement of financially troubled assets. It creates a single, logical legal framework that replaces multiple out-dated laws and unifies the insolvency resolution process. A time-bound resolution process, creditor-driven bankruptcy procedures,

the idea of a resolution professional supervising the process and provisions for the orderly disposal of assets in the event that a resolution is not possible are some of the main characteristics of the IBC.

The Insolvency and Bankruptcy Board of India (IBBI) is the apex body tasked with advancing governance and transparency in the IBC's administration; it will also be tasked with establishing the necessary infrastructure and granting accreditation to IUs (Information Utilities) and IPs (Insolvency Professionals). National Company Law Tribunal (NCLT) has the adjudicating authority over the companies and other limited liabilities, Insolvency Professionals (IPs) are the individuals who are enrolled with the Insolvency Professional Agencies (IPAs) are among the organisations and procedures established under the IBC to aid in the resolution process.

Introduction to the Competition Act, 2002

A successor to the Monopoly Restrictive Trade Practices Act 1969, the Competition Act was enforced in 2002 to fulfil the needs of post-liberalised India. Competition Act 2002 acted as a pivotal legislation aimed at promoting fair competition and preventing activities that can have an adverse effect on competition. The Raghavan Committee was created in 2000 for this act. The primary objectives of the Competition Act 2002 are to protect consumers, promote efficiency, innovation, and fair competition for businesses, and stop anti-competitive behaviours such as cartels, abuses of dominance, and mergers that could hurt the market.

That would be achieved by these key provisions- prohibiting Anti-Competitive agreements, preventing abuse of dominance, regulating the combinations, and competition advocacy.

The Competition Commission of India (CCI) was established by the Act to serve as the primary regulatory body in charge of upholding and executing competition legislation in India. When it comes to looking into complaints, asking questions, and taking necessary action against companies that engage in anti-competitive behaviour, the CCI is a key player.

Key Functions of the CCI in Insolvency

Under the IBC 2016, the Competition Commission of India (CCI) has a major role in insolvency procedures. Its responsibilities include guaranteeing market competition, stopping

monopolistic behaviours, and evaluating proposals for resolving anti-competitive issues¹. Throughout the resolution process, the CCI's examination attempts to uphold fair market practices, safeguard consumer interests, and keep the playing field level. This monitoring promotes a robust and competitive business environment by striking a balance between the goals of bankruptcy resolution and the principles of competition law.

Understanding Corporate Insolvency Resolution Process

To understand the overlapping areas first, we have to understand CIRP. The corporate Insolvency resolution process is a process aimed at solving insolvency issues in a time-bound manner. It provides a structural framework for resolving financial distress faced by companies. Its main objective is to protect the interests of its stakeholders and creditors. It has expedited the process of resolving insolvencies, enhanced openness and involvement from creditors, and prompted financially troubled firms to consider restructuring alternatives prior to liquidating. It has also given creditors and investors more confidence, which has strengthened and improved the corporate ecosystem².

CIRP can be initiated by the corporate debtor or by the creditor itself which can include both operational and financial creditors by applying to NCLT. A moratorium is put in place once the NCLT accepts the application, blocking creditors from suing the debtor while the case is being resolved³.

An Insolvency Professional (IP) is assigned to manage the corporate debtor's affairs during the CIRP upon application acceptance. Taking charge of the business's resources, management, and operations, IP acts in the best interests of all parties concerned⁴. Furthermore, the company's financial creditors are assembled into a Committee of Creditors (CoC). When it comes to approving the appointment of the IP, assessing resolution plans, and making crucial decisions about the company's future, the CoC is a crucial decision-maker during the resolution process⁵.

¹ The Insolvency and Bankruptcy Code 2016, s 7, 9, 10.

² The Insolvency and Bankruptcy Code 2016, s 16.

³ The Insolvency and Bankruptcy Code 2016, s 21.

⁴ Regulation No. 40, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

⁵ Regulation No. 27, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

CIRP is time-restricted in nature. The process takes 180 days from the date the application was accepted, though there is a 90-day extension period if needed. This stringent timeframe guarantees that the resolution process moves quickly, avoiding needless delays that could negatively affect the business's operations and financial standing⁶.

Throughout the CIRP, the designated IP is vital to the process. They verify adherence to legal and regulatory standards, carry out due diligence, create a resolution strategy, and mediate talks amongst stakeholders. The goal of the insolvency practitioner is to maximize the value of the debtor's assets while exploring viable options for settlement⁷.

Proposals from potential resolution applicants that detail their plans to bring the company back to life or end its insolvency are submitted to the CoC. Based on factors like viability, feasibility, and optimising creditor recovery, the CoC assesses these schemes. Adoption of a resolution plan necessitates the consent of at least 66% of the CoC voting share. Once the CoC and NCLT have approved a workable resolution plan, it is put into action and the company is restructured or revived following the plan's guidelines. On the other hand, the corporation may move towards liquidation if no resolution plan is authorised within the allotted period or if the plan is not implemented⁸.

Possibility of Conflicts between the Competition Law and the IBC

The confluence of competition law with insolvency processes, as outlined in India's Insolvency and Bankruptcy Code (IBC), presents significant legal implications and potential conflicts that require cautious handling. Even though the two frameworks have different goals, their convergence can provide difficulties and the need for a well-rounded strategy to guarantee adherence and just results for all parties.

1. Anti-Competitive Practices in Resolution Plans:

The possibility that resolution plans filed under the IBC will contain clauses that give rise to anti-competitive concerns is one area of worry. Such actions could negatively affect consumer welfare, impede fair competition, and cause market distortions. An essential part of assessing these plans to make sure they adhere to competition laws is the Competition

⁶ The Insolvency and Bankruptcy Code 2016, s 30 (4)

⁷ The Insolvency and Bankruptcy Code 2016, s 31.

⁸ The Insolvency and Bankruptcy Code 2016, s 31(4).

Commission of India (CCI). For example, in case of collusive bidding, the IBC's emphasis on increasing creditor value may encourage prospective bidders to band together, which would result in bids that are unnaturally low. This might discourage competition and obstruct the optimal course of action for creditors and the market at large.

2. *Market Dominance and Mergers Post-Resolution:*

The effect of post-resolution mergers and acquisitions on market dominance is an additional factor to take into account. Competition law may be concern if a troubled company uses the IBC to restructure and emerge as a dominating player in the market. To stop monopolistic practices and foster a competitive market environment, the CCI must closely monitor these mergers⁹.

3. *Cooperation Between Regulatory Authorities:*

Cooperation and coordination across regulatory agencies are essential to resolve such conflicts and guarantee that bankruptcy laws and competition laws are consistent. To evaluate the competitive effects of resolution plans and take the necessary action to protect competition and consumer interests, the CCI and experts in bankruptcy resolution must collaborate.

4. *Balancing Stakeholder Interests:*

In order to resolve problems between competition law and the IBC, it is critical to strike a balance between the interests of creditors, shareholders, and competition authorities. Resolution plans have to avoid any negative effects on market competition and efficiency by finding a balance between maximising value for stakeholders and adhering to competition norms.

5. *Evolving Legal Interpretations and Precedents:*

Legal precedents and interpretations have a big impact on how disputes are settled as the field of insolvency and competition law changes. Through judgements and decisions that define the parameters and obligations for competition compliance within the framework of bankruptcy processes, courts and regulatory agencies can offer assistance.¹⁰

⁹ The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Act No. 26 of 2018)

¹⁰ Timing of Competition Approval in Insolvency Resolutions: A Need for Greater Clarity in the IBC by SNR Law Link of the article- <https://www.snr.in/timing-of-competition-approval-in-insolvency-resolutions-a->

The 2018 Amendment to the IBC, 2016

The Indian Bankruptcy Code 2016 was amended through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 on 6 June 2018. Under the 2018 amendment, competition concerns had to be included in the resolution plans that were filed throughout the insolvency process, and the jurisdiction of the CCI was acknowledged. With this provision, anti-competitive behaviour was intended to be avoided, and healthy competition was encouraged after the settlement. A proviso under Section 31 (4) has been inducted which states:

“where the resolution plan contains a provision for combination (under section 5 of the Competition Act, 2002) the resolution applicant shall obtain the approval of the Competition Commission of India (CCI) prior to the approval of such resolution plan by the committee of creditors.”¹¹

When considering this subsection along with the proviso, it implies that the chosen resolution applicant must ensure they obtain all necessary approvals from the CCI within one year from the approval date of the resolution plan. Prior approval from the CCI is only necessary in the case of combinations.

Role of CCI in Insolvency Proceedings

Insolvency procedures under the Insolvency and Bankruptcy Code (IBC) 2016 include the Competition Commission of India (CCI), which is particularly important with regard to Section 31(4) of the Act. This section covers the committee of creditors' (CoC) adoption of a resolution plan and its subsequent submission to the National Company Law Tribunal (NCLT) for ultimate approval.

A resolution plan must be presented to the NCLT for approval after receiving approval from the CoC, in accordance with Section 31(4) of the IBC. In determining whether the resolution plan breaches any competition rules or gives rise to concerns about anti-competitive activities, the CCI's role becomes relevant. In the context of insolvency proceedings, the CCI's duty is to make sure that any resolution plan doesn't negatively impact competition in the relevant market. This is consistent with the CCI's overarching duty to uphold and encourage market competition for the benefit of consumers. When the resolution plan calls for mergers,

[need](#) for-greater-clarity-in-the-ibc/

¹¹ The Insolvency and Bankruptcy Code 2016, s 31(4) [as amended in 2018].

acquisitions, or restructuring that might affect market competition, the CCI's involvement is very crucial. Such proposals are evaluated by the Commission to see if they could impair competition, result in monopolistic behaviour, or limit consumer choice.

Here, the CCI may examine the IBC-submitted resolution plan and offer the NCLT any comments or suggestions it may have. The Competition Commission of India (CCI) may recommend changes or requirements to resolve any anti-competitive features in the proposal, if any, and yet enable the settlement process to move forward. Through cooperation, insolvency procedures under the IBC are guaranteed to adhere to competition rules and foster a lively and competitive market. In order to get fair results in bankruptcy proceedings, it also emphasises how crucial collaboration is between regulatory agencies like the CCI and court authorities like the NCLT.

Judicial Precedents and its Interpretation

1. Committee of Creditors of Essar Steel (India) Ltd. v. Satish Kumar Gupta & Ors¹².

Facts of the Case:

Essar Steel India Ltd. underwent insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) after financial creditors, including State Bank of India and Standard Chartered Bank, filed a petition for financial debts owed to them by Essar Steel India Ltd. ArcelorMittal India Private Limited (Amipl) and Numetal Ltd. submitted expressions of interest to submit resolution plans for the revival of Essar Steel India Ltd.

Judgement:

In the Essar Company Case, the judgments indicate that while CCI approval for combinations under the Competition Act is crucial, the IBC's objective of timely resolution may necessitate flexibility in the sequence of approvals. The CoC's approval of a resolution plan, even before CCI approval in certain cases, aligns with the IBC's overarching goal of maximizing value for all stakeholders. The judgments emphasize the need for a pragmatic approach to balancing the requirements of both statutes in insolvency proceedings, ensuring efficient resolution while upholding competition principles.

¹² Civil Appeal Nos. 9402 – 9405 of 2018

2. *Soneko Marketing Pvt. Ltd. vs. GirishSriramJuneja&Ors*¹³

Facts of the Case:

In *Soneko Marketing Pvt. Ltd. vs. GirishSriramJuneja&Ors.*, the National Company Law Tribunal (NCLT), Mumbai Bench, was considering an appeal against a decision that had rejected a resolution plan that Soneko Marketing Pvt. Ltd. had submitted, citing a lack of prior approval from CCI as required by Section 31(4) proviso of the IBC. Soneko had filed its resolution plan for the CIRP-eligible Corporate Debtor M/s Shree Metaliks Ltd. to be revived under the IBC. With a 100% vote share, the CoC adopted Soneko's resolution proposal. For two reasons, NCLT dismissed Soneko's resolution proposal: (i) Soneko failed to get prior clearance from CCI as mandated by the IBC's Section 31(4) proviso; (ii) Soneko failed to adhere to Section 29A.

Judgement:

On issue one, NCLAT determined that obtaining CCI approval before the CoC's approval isn't mandatory under IBC Section 31(4), noting the stringent 330-day CIRP timeline versus the flexible 210-day period under the Competition Act for CCI approval. NCLAT cautioned that making CCI approval mandatory before the CoC could harm CIRP and go against IBC's objective. It cited previous judgments to support its view that CCI approval is a directory, not mandatory, under Section 31(4) of the IBC.

In issue two, NCLAT ruled that Soneko did not breach Section 29A of IBC, which disqualifies certain individuals from being resolution applicants. NCLAT noted Soneko's submission of an affidavit and a certificate from a chartered accountant confirming its eligibility under Section 29A. Soneko also disclosed its financial details, and shareholding pattern, and declared its independence from other resolution applicants or connected persons. NCLAT found no evidence of collusion and deemed Soneko eligible as a resolution applicant. Consequently, NCLAT allowed Soneko's appeal, overturning NCLT's rejection of its resolution plan, and instructed NCLT to approve the plan within 30 days post-CCI approval.

Green Channel Approval: A way to go?

The Competition Law Committee, in its 2019 report, recommended the introduction of a "green channel" approval process by the Competition Commission of India (CCI) for

¹³ Company Appeal (AT) (Insolvency) No. 807 of 2023 & I.A. No. 2721 of 2023

combinations that do not negatively impact competition. This fast-track mechanism is also applicable to combinations arising under the Insolvency and Bankruptcy Code (IBC), aiming to expedite the resolution process. The extraordinarily high approval percentage of Corporate Insolvency Resolution Processes (CIRPs) reported to the CCI served as the foundation for this recommendation.

A green channel approval allows for the swift clearance of transactions that have no significant appreciable adverse effect on competition. Although the IBC 2016 does not explicitly provide for green channel approval, the Competition Act 2002 accommodates such provisions in the context of IBC, particularly under Section 31(1). For eligibility, parties must demonstrate that their proposed combination meets specific criteria, including the absence of horizontal, vertical, or complementary overlaps with existing market players. This involves submitting a declaration confirming that the transaction will not adversely impact competition, along with an amended Form I and a filing fee of INR 20,00,000.¹⁴

A notable example of the Green Channel's successful application is the acquisition of **Essel Mutual Fund by BAC Acquisitions Private Limited**, owned by Sachin Bansal. This transaction, approved by the CCI on October 7, 2019, marked the first combination to receive clearance through the Green Channel route. The approval demonstrated the efficiency of the mechanism, as the transaction was expedited without the lengthy waiting periods typically associated with merger reviews. This example underscores the Green Channel's ability to streamline transactions, particularly those linked to insolvency proceedings, while ensuring that market competition is not compromised.¹⁵

Since its introduction in 2019, the green channel has significantly enhanced efficiency in India's merger control framework, with over 80 combinations approved through this route.¹⁶ It enables companies to proceed with transactions without waiting for the standard review period, fostering a more business-friendly environment. In the context of IBC, this expedited

¹⁴ Assessing the CCI's Green Channel Initiative for Merger Control by Subhanshi Suman from Center of Research in Competition law and policy National Law University Bhopal- <https://crclp.nliu.ac.in/assessing-the-cciis-green-channel-initiative-for-merger-control/>

¹⁵ A look at the CCI 'Green Channel' route By- Ashima Obhan, Nishtha Jaisingh from Obhan and Associates Link for the article - <https://www.obhanandassociates.com/blog/a-look-at-the-cci-green-channelroute/>

¹⁶ Green Channel Route: Automatic Approval of Combinations under the Competition Regime of India by Jayshree Navin Chandra And Naman Dutt from Live law Link- <https://www.livelaw.in/law-firms/law-firm-articles-/green-channel-route-competition-commission-of-india-acquisition-merger-zeus-law-229150>

process lowers regulatory barriers, ensures faster turnaround times, and promotes seamless execution of resolution plans. However, even under green channel clearances, it is crucial to uphold competition principles and address any potential anti-competitive concerns to maintain a fair playing field in the market.

Conclusion

In conclusion, the intricate relationship between the Insolvency and Bankruptcy Code (IBC) and competition law in India presents multifaceted challenges that demand meticulous management and close coordination among regulatory bodies. Striking a balance between the interests of stakeholders, preventing anti-competitive behaviours, and adapting to evolving legal interpretations are pivotal factors that demand careful consideration to guarantee equitable and unbiased resolutions for all stakeholders. Proactive handling of these challenges and fostering collaboration among pertinent stakeholders can empower India to effectively navigate the convergence of insolvency and competition law, thereby fostering a competitive, transparent, and conducive business atmosphere.