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1 Overview

1.1 Where would you place your jurisdiction on the spectrum of debtor- to creditor-friendly jurisdictions?

The Indian jurisdiction has recently seen the enactment of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), and a fine-tuning of this law by various judicial precedents. Presently, the Indian jurisdiction is relatively creditor-friendly. The IBC aims to promote a creditor-friendly environment by providing priority to financial creditors in decision-making through the Committee of Creditors ("**CoC**") and a structured and time-bound resolution process for insolvent entities.

Since the IBC came into force, multiple companies underwent Corporate Insolvency Resolution Process ("**CIRP**"). Data released by the Ministry of Corporate Affairs suggests that from 1 December 2016 until 30 September 2022, 5,890 CIRPs have been initiated. Of these, 846 have been closed on appeal or review or settled, 740 have been withdrawn by invoking Section 12A IBC with 90% consent of the CoC, 1,807 have ended in liquidation (which is a logical sequitur in cases where the CIRP does not result in an approved resolution plan), and 553 have ended in approval of resolution plans (which, again, is the prerogative of the National Company Law Tribunal ("**NCLT**")).

Of the 553 matters which ended on a positive note, the realisation by all creditors in comparison to liquidation value of the Corporate Debtor ("**CD**") was 178%, and realisation by them in comparison to their admitted claims was 30.8%. These figures are indicative of banks and public institutions recovering money faster and higher as compared to the earlier regime. With time, these figures are expected to improve as the NCLTs and the appellate tribunals (National Company Law Appellate Tribunal ("**NCLAT**")) are adopting a "minimal judicial interference" approach to give primacy to decisions by the CoC and Resolution Professionals/Liquidators, unless they are outright questionable or unfair. Even banks and financial institutions increasingly prefer this route over other remedies to deal with distressed businesses and assets.

However, the sheer number of cases in India and the limited number of NCLT Benches (and tribunal members) to address those cases means that there are far too many cases and too few NCLT Benches/members to deal with them, which results in a delay in resolution.

1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

Yes, the legislative framework in India allows for both informal workouts and formal restructuring and insolvency proceedings. While the formal route for corporate debt restructuring is preferred, we have also seen an increasing trend towards finding informal solutions, given the sheer scale of distressed debts in this jurisdiction. The resolution of debt problems through non-judicial means is relatively more effective than formal insolvency procedures, as it involves changing the composition and structure of the debtor's assets and liabilities with minimal costs.

A framework of informal workouts is better equipped to deal with all these difficulties, especially since we have a legislative framework in place. Although the formal route is relatively speedy and efficient, in practice we have seen that it can take anywhere between two to four years to resolve a distressed debt. On the contrary, since informal work-outs are somewhat within the control of the creditors and debtors, it is a relatively swifter process, as this does not involve the delays inherent in the court system.

To restructure a debt, both formal restructuring and informal work-outs are followed here depending on the nature and character of the debt, the quantum involved, the duration and structure of the credit facility, the business operations of the defaulter in question, overall market intelligence on its solvency, etc.

Restructuring and insolvency can be undertaken under the IBC, the Companies Act, 2013 ("**Companies Act**"), and various Circulars of Reserve Bank of India ("**RBI**") issued for restructuring of distressed companies and assets. The IBC allows for resolution of a company in default in meeting its financial obligations through the formal process of CIRP, which can be triggered by filing an application under Section 7 IBC by a financial creditor and in case of an operation creditor, by initiating proceedings under Section 9 IBC.

If the petition for CIRP is admitted by the NCLT, it declares a moratorium for prohibiting specific acts and proceedings and appoints an Interim Resolution Professional ("**IRP**") to oversee the resolution process. The IRP acts like an administrator to protect the overall interest of the company and to ensure that it continues to run as a going concern during the resolution process. During this period, the powers of the Board of Directors of the company in CIRP are suspended.

Once the CoC is appointed, it decides if the IRP can continue to act as the Resolution Professional ("**RP**"). The RP invites eligible persons to submit resolution plans for consideration by the CoC, which are then evaluated and approved by the CoC having 66% of the voting share. IBC intends to give complete freedom to the CoC to exercise their commercial wisdom while deciding on the viability of a resolution plan. The plan is then filed with the NCLT for final approval. This entire process should take no more than 330 days, failing which the CD will have to undergo liquidation. As the data suggests, this is the most preferred option for formal restructuring and insolvency given that it is a time-bound process and has minimal scope for judicial intervention. Its other advantage is that there is a statutory recognition of a withdrawal of an application filed by an operational creditor (under Section 9 of the IBC) and by a financial creditor (under Section 7 IBC) if 90% of the CoC votes for it. This motivates genuine defaulters to arrive at an acceptable figure for restructuring its debt obligations.

A debtor can also consider a reorganisation or restructuring through a scheme of arrangement or compromise under the Companies Act. This can be done through a contractual arrangement between the debtor, its shareholders, and creditors in situations where it is in debt or otherwise wants restructuring of its finances. The process envisages an application before the NCLT in a prescribed format with supporting documents, which if approved, can be implemented. However, such approval is contingent upon the views of the creditors and shareholders of the debtor company, and government authorities and regulators. Once three-quarters of the persons representing the creditors and shareholders approve the scheme, the NCLT may consider approving it subject to the regulator's objections. However, since the IBC came into force, this route has sparingly been followed.

Regarding informal work-outs, the Reserve Bank of India through its Circular dated 7 June 2019 on "Prudential Framework for Resolution of Stressed Assets" came up with measures for financial restructuring of a debtor. In terms of this Circular, lenders (banks) first identify stressed accounts basis the debtors' defaults of its loan obligations and then prepare resolution plans to overcome the default. This is usually done through inter-creditor agreements to finalise the resolution plan. The decision regarding resolution of the stressed asset must be taken by lenders representing 75% value of total outstanding credit and 60% of lenders by numbers and the resolution plan must provide for payments over and above the liquidation value to the dissenting lenders.

The RBI has also recently published a Statement on Developmental and Regulatory Policies of 8 June 2023 proposing to issue and notify detailed guidelines on: (i) a comprehensive regulatory framework governing compromise settlements and technical write-offs covering all regulated entities; and (ii) rationalising the existing prudential norms for implementation of resolution plans in respect of exposures affected by natural calamities, drawing upon the lessons from the resolution frameworks introduced during the COVID-19 pandemic. These guidelines are also likely to be helpful in resolving distressed assets.

2 Key Issues to Consider When the Company is in Financial Difficulties

2.1 What duties and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

The IBC does not specifically set out duties of directors in managing a company with financial difficulties. These duties are derived from principles of corporate governance and the Companies Act, but even here, there are no specific additional duties of a director while managing a company with financial difficulties. In general, directors have fiduciary duties towards the company including safeguarding its assets and interests.

Under the IBC, once an application for CIRP against a CD is admitted by the NCLT, the powers of the board of directors are suspended and are exercised by the RP. Although they can participate in meetings conducted by the CoC, they cannot vote during the resolution process. Directors/managers are also expected to extend assistance and cooperation to the RP so that the CD's operations are managed efficiently, particularly when it is a going concern, to ensure that the value of the assets and properties are protected.

The IBC also provides for certain safeguards to CDs under limited circumstances. If the NCLT finds during the CIRP or liquidation process that the business of the debtor has been carried out with the intent to defraud its creditors or for any fraudulent purpose, the NCLT can hold the directors/managers responsible for the debtor's business liable and direct them to contribute to the assets of the debtor. The NCLAT in *Shri Baiju Trading and Investment Private Limited v. Mr. Arihant Nenawati and Others* (Company Appeal (AT)(Ins.) No. 699 of 2021) interpreted that "fraud" can, *inter alia*, consist of such debts which the debtor has no intention of paying or does not expect to be able to pay or such fraud may also happen by way of a false representation to pay back when there is no intention to do so. A director can also be held liable for any failure to comply with the approved resolution plan.

The IBC and Companies Act do not prescribe any specific point in time when a company must enter a restructuring or insolvency process. The trigger is financial, and it is up to the Board of Directors to take an informed decision on the need for restructuring, either through the IBC route or by way of a scheme of arrangement or even by invoking the RBI Circulars. In practice, however, we see a lot of such actions being brought by operational and financial creditors where there is a default in payment of debt of more than INR 10 million (Section 4 of the IBC read with the Notification dated 24 March 2020 being S. No. 1205(E)).

2.2 Which other stakeholders may influence the company's situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes which apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

The most important stakeholders are the lenders and creditors of the company and any breach of the terms of the facility agreements may trigger a proceeding. Similarly, all kinds of operational creditors of the company, its workmen and employees, unsecured creditors like vendors and suppliers, Government departments and agencies collecting statutory dues, shareholders, etc. are equally important as any default of any payment obligation by the company exceeding the threshold limit may also trigger a proceeding.

There are no special rules or regimes for unsecured creditors. For example, a landlord is typically not treated on a par with other operational creditors unless it can be shown that in addition to providing the premises on rent, the landlord is also providing other services such as electricity, diesel and water to the debtor. In such cases, the debt may be treated as an operational debt to trigger an action under the IBC. This is, however, still a grey area, and different Benches of the NCLT and NCLAT have divergent views on this. However, unsecured financial creditors are slightly better placed, inasmuch as they can participate in the meetings of the CoC.

The concept of a "moratorium" is recognised under Sections 13 and 14 IBC and kicks in as soon as the NCLT admits an application under Sections 7, 9 or 10 IBC, which continues until the completion of the resolution process or initiation of liquidation proceedings, as the case may be. During the moratorium, filing of new suits or continuation of pending proceedings, including any enforcement action for executing any decree, order or award or any other action to foreclose, enforce or recover a security interest created by the CD is prohibited. During this period, the debtor cannot transfer, alienate or create third-party interests over its assets and is protected against eviction in respect of any property which is in its possession. The idea of a moratorium is to ensure that the CD's assets are secure during the CIRP so that prospective resolution applicants can submit plans for its revival. If a debtor is stripped off its assets during CIRP, the chances of its revival would be next to *nil*.

2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

The following transactions of a company in financial difficulty may be at a risk of challenge.

Preferential transactions

Per Section 43 IBC, if a CD has undertaken any "preferential transaction" like transferring the debtor's property or interest in it for the benefit of a creditor, surety or even a guarantor with an oblique motive of putting them in a beneficial position than it would have received in the ordinary course of distribution of assets, such transaction can be avoided during CIRP if the transaction falls within the "look-back period", which is two years preceding the commencement of CIRP in case of a related party transaction, and one year preceding the commencement of CIRP in respect of any person other than a related party.

Undervalued transactions to defraud creditors

Section 45 IBC deals with applications to avoid undervalued transactions if they are within the "look-back period". Examples of "undervalued transactions" include transactions where a CD makes a gift or transacts with a person which involves transfer of assets by the CD at a value significantly less than the consideration provided by the debtor, or any other questionable transaction not in the ordinary course of business. If the RP or Liquidator refuses to report such transactions to the NCLT, a creditor or member of the CD may do so. The idea is to ensure that such transactions are declared void, and their effect is reversed to ensure that the value of the CD is intact.

Extortionate credit transactions

Transactions which require the CD to make exorbitant payments for any financial or operational debt may be avoided through an application by the Liquidator or RP under Section 50 IBC. If satisfied with the irrational nature of the credit arrangement, the NCLT can restore the position prior to such transaction, setting aside the credit arrangement, either wholly or in part, or even modify its terms suitably.

Fraudulent trading or wrongful trading

If the NCLT finds that during the CIRP/liquidation, the CD intended to defraud its creditors, it can hold persons responsible, including directors or partners of CD, liable for such fraudulent activity and direct them to contribute to the assets of the CD. The NCLT would consider whether the director/partner knew (or should have known) before the start of CIRP that the company is likely to go into insolvency, or whether the director/partner exercised due diligence to minimise potential loss.

3 Restructuring Options

3.1 Is it possible to implement an informal work-out in your jurisdiction?

Yes, informal work-outs for restructuring can be implemented, either through a scheme of arrangement per the procedure under the Companies Act or under the *aegis* of the RBI Circulars on Prudential Framework for Resolution of Stressed Assets and Corporate Debt Restructuring. Indian courts encourage such informal work-outs and settlement *inter se* between creditors and debtors.

3.2 What informal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies?

Besides the above, RBI allows corporate debt restructuring ("**CDR**") to revive companies in financial difficulties and securing money lent to them by banks and financial institutions. CDR could be triggered by: (i) any or more of the creditor who have minimum 20% share in either working capital or term finance; or (ii) the concerned corporate, if supported by a bank or financial institution. However, this scheme does not apply to accounts involving only one financial institution or bank and covers only multiple banking accounts, syndication or consortium accounts of corporate borrowers with outstanding exposure of above INR 100 million.

To expedite the early resolution/revival of distressed companies, the IBC also provides for the Pre-packaged Insolvency Resolution Process for smaller enterprises classified as micro, small and medium enterprises ("**MSME**"). Under this process, a debtor and creditor can negotiate a resolution plan and, if it is approved by the CoC, can apply to the NCLT for approval. Overall, it is a quicker process, transparent, less adversarial, and ensures continuity of business without the risk of impairing any asset.

3.3 Are debt-for-equity swaps and pre-packaged sales possible? In the case of a pre-packaged sale, are there any restrictions on the involvement of connected persons?

Debt-for-equity swaps are usually carried out to enable a borrower of a company to transform a loan into equity when a company is facing financial difficulties. This is permissible under Section 62(3) of the Companies Act and can be enforced only with the prior approval of 75% of shareholders in a general meeting. To exercise this option, the company can call for a Board meeting to approve the conversion of the loan into equity as originally agreed at the time of entering into the loan and thereafter, call for an extra-ordinary general meeting to approve such conversion of debt into equity.

A pre-packaged sale is permissible under Chater III-A of the IBC, presently only for MSMEs. In cases of pre-packaged sale, the usual restrictions on connected persons applying as prospective resolution applicants are not applicable, provided they were not involved in any preferential, undervalued, extortionate credit or fraudulent transaction.

3.4 To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

In cases of restructuring through the IBC route, the CoC can take all decisions concerning the company's revival in consultation with the RP. The CoC comprises all financial creditors (secured and unsecured) and decides whether to approve a resolution plan. Since the CoC is a committee, the majority's decision would be binding on any dissenting creditor, but the dissenting creditor is protected as it cannot be offered an amount lower than what it would have received in the event of liquidation.

Once the resolution plan is approved by the CoC, it is filed with the NCLT for approval and after that approval, all creditors and stakeholders, including dissenting ones and operational creditors not part of the CoC, must comply with the plan.

For a scheme of arrangement, creditor meetings are held to discuss the approval of a scheme of compromise or arrangement with creditors. Each class of creditor must agree on the scheme with simple majority in number and 75% majority by value failing which it cannot be approved. Unlike the IBC, the Companies Act does not have any specific provision regarding classification between creditors but generally, secured and unsecured creditors constitute separate classes. A cross-class cramdown is not permissible since each class of creditors are required to approve the proposal.

3.5 What are the criteria for entry into each restructuring procedure?

Under the IBC, once a payment or debt default of more than INR 10 million occurs, a financial or operational creditor can apply to the NCLT for initiating CIRP against the CD, only if it does not receive payment within 10 days of demanding payment under Section 8 IBC.

Corporate applicants (such as a CD, a member or partner of a CD; or someone in managerial control of the CD) can also apply for CIRP if a special resolution has been passed by its shareholders or a resolution passed by at least 75% of the partners of the CD, approving the initiation of CIRP.

Under the Companies Act, any creditor, shareholder or CD can apply to the NCLT for a scheme of arrangement or compromise.

3.6 Who manages each process? Is there any court involvement?

The CIRP is initially managed by the IRP appointed by the NCLT and then by the RP, appointed by the CoC and approved by the NCLT. If the CIRP fails, the CD goes into liquidation, which is overseen by a Liquidator appointed by the NCLT. Any party aggrieved by any decision of the NCLT either during CIRP or liquidation process can appeal it before the NCLAT.

3.7 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?

The IBC aims to ensure that a CD can continue its business as a going concern even during CIRP. Therefore, existing contracts continue in the ordinary course of business, even if with necessary modifications/amendments. However, a CD cannot transfer, alienate or dispose of any of its assets during the moratorium period. Even supply of essential goods and provision of services cannot be suspended or terminated, to the extent practicable. For a company undergoing restructuring, obligations under existing contracts with third parties are not automatically affected, but they can be terminated if there a clause to that effect.

The Indian Supreme Court in *Gujarat Urja Vikas Nigam v. Amit Gupta* (2021 SCC OnLine SC 194) held that any contract essential for preservation of value of the company as a going concern may not be terminated, unless the CD has not paid for such supply during the moratorium period. The rationale is that no party should be allowed to terminate a contract solely basis an insolvency event. However, a contract can be terminated on the grounds unrelated to insolvency.

The IBC does not provide for set-off but the Supreme Court in *Bharti Airtel Ltd v. Vijaykumar V. Iyer* (2024 SCC OnLine SC 4) held that set-off provisions would not be enforceable during CIRP as it might grant an unfair advantage to certain creditors.

3.8 How is each restructuring process funded? Is any protection given to rescue financing?

Each restructuring process is funded by interim or rescue financing to allow the company to meet the CIRP cost and remain operational. Interim finance is a debt raised by the RP during CIRP, but no security can be created over the CD's property without the prior consent of the creditor whose debt is secured over the said property. Under Section 30 IBC, interim finance cost is a part of the CIRP cost and must be paid as a priority.

4 Insolvency Procedures

4.1 What is/are the key insolvency procedure(s) available to wind up a company?

The key insolvency procedures available to wind up a company are as follows:

(a) Dissolution under the IBC post CIRP and liquidation proceedings.
(b) Voluntary liquidation under IBC.
(c) Winding up under the Companies Act.

4.2 On what grounds can a company be placed into each winding up procedure?

A CD faces liquidation proceedings if the CoC fails to approve a resolution plan for restructuring within 330 days (or any duly extended period) of initiation of CIRP, or if the NCLT rejects the resolution plan. Once the CD's assets are liquidated, the Liquidator can apply to the NCLT for its dissolution.

A CD can also initiate voluntary liquidation in accordance with Section 59 IBC read with any other requirements specified by the Insolvency and Bankruptcy Board of India.

Under Section 272 of the Companies Act, a company can apply to the NCLT for winding up if: it has, by special resolution, resolved that it be wound up; the NCLT finds that the affairs of the company have been carried out in a fraudulent manner; the company has defaulted in filing its financial statements or annual returns for immediately preceding five consecutive financial years; or if the NCLT finds that it is just and equitable that the company should be wound up. Even the Registrar of Companies, or any person authorised by the Government, can apply to the NCLT to this effect.

4.3 Who manages each winding up process? Is there any court involvement?

Under the IBC and Companies Act, 2013, a Liquidator manages and oversees the liquidation process until the company is dissolved.

In cases of voluntary liquidation, the Board of Directors, key managerial personnel and the partners of the CD monitors the liquidation process.

The NCLT is the designated tribunal for all company law related matters and the NCLT's approval is required to bring a closure to the liquidation (winding up) process.

4.4 How are the creditors and/or shareholders able to influence each winding up process? Are there any restrictions on the action that they can take (including the enforcement of security)?

Through the CIRP until liquidation of a CD, the creditors' decisions are of some value as they decide whether to approve a plan. During the moratorium, even creditors cannot take any action against the CD's secured assets but can realise their security interest only with the liquidator's approval. If, however, there is any resistance from either the CD or other creditors while realising such asset, the secured creditor can approach the NCLT. In winding up proceedings under the Companies Act, the NCLT usually calls for meetings of creditors or contributories to vote on matters concerning the winding-up process, which ensures a participatory and transparent decision-making process.

4.5 What impact does each winding up procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

During the CIRP, the supply of essential goods or services to the CD cannot be terminated or suspended. Even licences, grants, permits, registrations and concessions given by the Government, local authorities or regulators are not terminated or suspended provided there are no unpaid dues towards such usage. When a company is under liquidation, contracts may be terminated on the grounds of liquidation. The Supreme Court has held statutory set-off or insolvency set-off is not applicable to CIRP proceedings, but a contractual set-off is permitted if the date of such set-off is prior to the initiation of the CIRP. See our response to question 3.7 above.

4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

Payment of operational and financial debts (under CIRP) and the distribution of proceeds (in case of liquidation) is done in the following order of priority:

(a) Expenses of the insolvency resolution and liquidation process.
(b) Workmen dues for 24 months preceding liquidation commencement date and debt owed to a secured creditor in case of relinquishment of its security under Section 52 IBC.
(c) Wages and unpaid dues to the employees, other than workmen, for 12 months preceding the liquidation commencement date.
(d) Financial debts owed to unsecured creditors.
(e) Amount due to the Central Government for two years preceding the liquidation commencement date and debts owed to a secured creditor for any unpaid amount following the enforcement of security interest.
(f) Any remaining debts and dues.
(g) Preference shareholders, if any.
(h) Equity shareholders or partners.

In liquidation proceedings under the Companies Act, workmen dues and dues of a secured creditor, realised from the secured asset are *pari passu* to each other and are required to be paid in priority.

4.7 Is it possible for the company to be revived in the future?

Yes, if the NCLT approves a Resolution Plan submitted by the RP or allows withdrawal of liquidation proceedings of a CD under Section 12A IBC because of a settlement after approval of 90% of the CoC.

5 Tax

5.1 What are the key tax risks which might apply to a restructuring or insolvency procedure?

Tax risks applicable on restructuring or insolvency procedure can vary depending on the nature of the takeover and the specific provisions of the Income Tax Act, 1961. For instance, in the event a resolution plan involves restructuring of the company's debts or capital, there may be tax implications arising from debt waivers, conversion of debt into equity, or issuance of fresh equity. Resolution applicants, while preparing a Resolution Plan, assess options on the basis of the tax implications. Similarly, when companies enter into a scheme of arrangement under the Companies Act, various components of tax may be applicable under different taxing statutes depending on the nature of the scheme.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

During the CIRP of a company, the fate of its employees depends on various factors such as outcome of the resolution process and the RP's decisions in consultation with the CoC.

If the company operates as a going concern during the CIRP, employees may continue to work as usual albeit with a salary/wage cut. However, if a resolution plan involves the sale or transfer of the business to a new buyer, some or all of the employees may be transferred to the new entity depending on the nature of the business. In liquidation proceedings, services of employees are usually terminated or retrenched. However, employee dues, including severance pay and other benefits, are given priority over other claims in the event of liquidation.

Claims of employees can be divided into two broad categories: claims for wages and salaries; and claims for gratuity, provident fund, and pension (this must be paid in full out of the existing funds, and in case of any shortfall, it must be realised by sale of the assets). See answer to question 4.6 above for order of priority.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

No, foreign debtors cannot avail of restructuring under IBC, but IBC allows foreign creditors of CDs to file claims as financial or operational creditors before the RP/Liquidator. The Government is yet to enter into bilateral agreements with foreign countries for resolution of cross-border insolvency cases in India.

7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

Indian courts have recognised the validity of the insolvency process commenced against in the *Jet Airways* case in Netherlands. As two simultaneous insolvency proceedings were initiated against Jet Airways in NCLT, Mumbai and Noord-Holland District Court, Netherlands, the NCLT Mumbai had declared the proceedings in Netherlands to be invalid. NCLAT reversed this on appeal, allowed the Dutch Administrator to be inducted in the CoC as an observer without voting rights, and asked the Indian RP and the Dutch Administrator to cooperate and run both proceedings in parallel. This case is an example of recognition of cross-border insolvency proceedings.

Despite there being reports by the Insolvency Law Committee recommending amendment of IBC in line with UNCITRAL Model Law on Cross-Border Insolvency (Model Law) and the Government's statements recognising the need for a cross-border insolvency framework, India is yet to adopt a cross-border insolvency framework.

7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

It is not a common practice for companies incorporated here to restructure or enter into insolvency proceedings in other jurisdictions (save for the *Jet Airways* case discussed above).

8 Groups

8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

Currently, the IBC does not provide for group insolvency and the existing legislative framework only deals with insolvency and liquidation of corporates in their individual capacity. Unless there is any legal or contractual basis, a creditor cannot claim any right over the assets of a parent or subsidiary of the corporate debtor. However, Indian courts by way of judicial pronouncements have taken cognisance of the same and developed the framework surrounding group insolvency. In *Venugopal N. Dhoot v. State Bank of India* (2018 SCC OnLine NCLT 29551), the NCLT allowed consolidated adjudication of all issues relating to the CIRP of Videocon Industries Limited and its subsidiaries thus recognising the single economic entity argument. Similarly, in *Edelweiss Asset Reconstruction Company Limited v. Sachet Infrastructure Private Limited* (2019 SCC OnLine NCLAT), the NCLAT allowed continuation of CIRP of group companies under one common RP, who called for a consolidated Resolution Plan.

9 The Future

9.1 What, if any, proposals exist for future changes in restructuring and insolvency rules in your jurisdiction?

Although the insolvency jurisprudence is evolving here through judicial precedents, we do gain insights from other sophisticated jurisdictions such as the USA, UK and Australia. To start with, there is a significant impetus to have a more robust court system which can deal with the growing number of cases. There is also a need for a cross-border insolvency and a group insolvency framework. If the Government considers expanding the scope of pre-package insolvency to companies other than small- and medium-scale industries, it may pave the way for a swifter restructuring of debts. Sector-specific rules and regulations of insolvency would also be a welcome move to deal with unique issues and complexities arising in such sectors. Lastly, there should be a single window for all statutory and regulatory approvals once the NCLT approves a resolution plan which would ensure a smooth and speedy restructuring.

Debarshi Dutta is a Partner of Solaris Legal and focusses on litigation, arbitration and contentious advisory work. He specialises in complex high-value disputes, and undertakes a range of contentious work on behalf of domestic and foreign corporations. He acts for a range of project owners, institutional investors, project sponsors, developers, occupiers, contractors and sub-contractors, financiers, consultants and suppliers on both contentious and non-contentious projects. He also advises and represents a diverse clientele including government-owned and private insurance companies; engineering & construction firms; companies operating in energy, oil and gas & shipping sector; banks and financial institutions and public sector undertakings, both in India and overseas.

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Solaris Legal is a boutique Indian law firm focussing on dispute resolution and contentious advice. The main areas of practice of the firm are infrastructure, insolvency, insurance, energy, technology, and intellectual property. It was founded in 2021 by three partners, Trinath Tadakamalla, Debarshi Dutta and Mrinal Ojha. With a dedicated and experienced team of lawyers, Solaris offers services to a broad range of clients, both domestic and overseas, and represents clients across the country through its offices in New Delhi and Mumbai, and through its network of lawyers in various other cities. The firm's lawyers have been consistently recognised as industry-leading individuals for dispute resolution. At Solaris, our aim is to listen to our clients, understand their issues in depth, and help them with legally sound and commercially prudent solutions.

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