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# **ROLE OF NATIONAL COMPANY LAW TRIBUNAL UNDER THE INSOLVENCY AND BANKRUPTCY CODE**

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## **Introduction / Statement of Research Problem**

The Insolvency and Bankruptcy Code, 2016, has been enacted to offer a one-stop solution to the existing problems of clampdown of distressed companies. The Insolvency and Bankruptcy Code has been launched to provide a one-stop solution to the prevailing issues of distress resolution of corporations in India. Before the Code, the law relating to insolvency was framed under various legislations like the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the SARFAESI Act, 2002, the Companies Act, 2013 etc. Multiple laws and forums were in operation which caused delay, confusion and inefficiency in debt recovery and in the process of resolving insolvency. Sometimes creditors faced difficulty in getting their dues and the corporate debtors were apt to be financially distressed for a prolonged period. This thus impacted the banking and financial services sector badly with the surging Non Performing Assets (NPA) ratio.

The Insolvency and Bankruptcy Code was brought into the picture with the vision of a creating a single bankruptcy institution that will facilitate the resolution of the bankruptcy process in a time-bound fashion, maximize value of assets, save entrepreneurs and improve credit flow into the system. The Code put in place a creditor-driven mechanism of insolvency and established the institutional frameworks like the Insolvency and Bankruptcy Board of India, Insolvency Professionals, Information Utilities (IUs) and the National Company Law Tribunal (NCLT).

The National Company Law Tribunal, as an adjudicating authority under the IBC, holds a pivotal position. It gets into the running of the Corporate Insolvency Resolution Process, takes up applications for Insolvency, approves resolution plans and applies for the moratorium and liquidates the corporate debtor if revival is not possible. The NCLT has already played a significant role in building insolvency jurisprudence in India through a number of judicial interpretations and adjudications.

Nevertheless, apart from its significance, the working of the NCLT has encountered various hurdles including pendency of cases, lack in number of judicial and technical members, inadequate infrastructure, and initial delays in disposing the cases. Issues have also arisen regarding how much intervention the tribunal has in judicial actions relating to commercial resolutions by the Committee of Creditors. Thus, the need for the hour is to critique the role, powers, effectiveness and hurdles of the NCLT under the Insolvency and Bankruptcy Code, 2016.

### **Review of Literature**

Dr. M.S. Sahoo, who is the former Chairperson of Insolvency and Bankruptcy Board of India (IBBI), have said that the IBC marked the transition from debtor-in-possession to the system of creditor-in-control. The NCLT, which supervises and regulates the Corporate Insolvency Resolution Process, is the backbone of the insolvency process, he said.

In the article, Avtar Singh talks about how NCLT has been created and functions under the Companies Act, and IBC. He underscores the need of specialized tribunals pertaining to corporate and insolvency cases.

The evolution of the insolvency law in India has been critically analysed by Umakanth Varottil who has noted that the interpretation of the statutory provisions by the NCLT and the NCLAT has greatly influenced the insolvency jurisprudence.

V. Niranjan studies the challenges encountered by the NCLT, such as the delay in the admission of the insolvency applications, infrastructural issues and growing workload.

In several articles published in the “NUJS Law Review,” “Indian Journal of Corporate Law,” and Company Law Journal, the focus has been on issues of judicial rostrum, the commercial wisdom of a Committee of Creditors, operational creditors, and the efficacy of NCLT in the resolution process.

The Bankruptcy Law Reforms Committee Report highlighted the importance of having a separate adjudicatory forum for resolution of insolvency. The institutional capacity of the NCLT also needs to be strengthened as per the recommendations of the Insolvency Law Committee and Insolvency and Bankruptcy Board of India.

## Objectives of the Study

1. To study about the setting up and powers of the NCLT under the Insolvency and Bankruptcy Code, 2016.
2. To understand the role and functions of the NCLT in the CIRP.
3. To understand the powers of NCLT in the Insolvency and Liquidation proceedings.
4. To measure the performance of NCLT in fulfilling the purpose of IBC.
5. To discuss some of the relevant Supreme Court and NCLT rulings pertaining to NCLT powers and jurisdiction.
6. To gain insights on how the NCLT is functioning and what are the practical and institutional issues hampering its functioning.
7. To make recommendations on efficiency of the insolvency process.

## Research Questions

1. In what way, the NCLT is legally constituted and under which jurisdiction does it function under the Insolvency and Bankruptcy Code, 2016?
2. What is the main function of NCLT in the Corporate Insolvency Resolution Process?
3. Has the NCLT been successful in delivering timely and value maximizing insolvency resolution?
4. What are the important Judgements regarding the Powers and Jurisdiction of NCLT?
5. What are some of the problems facing the effective operation of the NCLT under the IBC?
6. Does the NCLT need reforms with the aim of enhancing the institutional efficiency?

## Research Methodology

Doctrinal and Analytical research method is employed in the present study. This study relies largely on secondary sources, including statutes and case law, books and journal articles, committee reports, and on-line legal databases.

The primary sources used for the study are the Insolvency & Bankruptcy Code, 2016, Companies Act, 2013, and the judicial decisions given by the Supreme Court, NCLAT and NCLT.

Secondary sources comprise books on company law, insolvency law, articles, Bankruptcy Law

Reforms Committee reports, Insolvency Law Committee Reports and Insolvency and Bankruptcy Board of India reports.

The research includes critical interpretation of statutory provisions and judicial interpretation pertaining the role and functioning of the NCLT under IBC.

## Discussion / Analysis

### Evolution of Insolvency Law in India

India's Insolvency Legislation has undergone various changes in line with the changes in Indian economy and legal environment from debtor-centric to a modern creditor-based system. Before the coming into the force of the Insolvency and Bankruptcy Code (IBC), 2016, the Indian laws relating to insolvency were very much scattered and multiple legislations became a bit player in each of those making the situation of delays, inefficiency, and poor recovery.<sup>1</sup>

The laws on insolvency in India were greatly influenced by the English laws during the colonial period. The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, controlled personal bankruptcy and insolvency cases while Corporate bankruptcy cases were controlled under Indian Companies act, 1913. In contrast, these laws centered on the liquidation and distributing the assets among creditors, primarily, but not to the revival of entities likely to be in financial distress.<sup>2</sup>

Upon Independence, India decided to follow a socialist system of economic growth, where industries and financial institutions were controlled by the State in large measure. In the Companies Act, 1956, there was provision about winding up of companies but the winding up was very lengthy and court interested as the High Courts had the jurisdiction of winding up of companies and the ordinary court had no specialized knowledge of commercial and financial affairs.<sup>3</sup>

Industrial sickness has grown appreciably during the 1970s and 1980s. Many firms suffered financial failure because of bad management, trouble with labor and economic inefficiencies.

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<sup>1</sup> Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee 15–20 (2015).

<sup>2</sup> Presidency Towns Insolvency Act, No. 3 of 1909, India Code (1909); Provincial Insolvency Act, No. 5 of 1920, India Code (1920).

<sup>3</sup> Companies Act, No. 1 of 1956, §§ 433–483, India Code (1956).

To address this fast-growing problem, the government enacted the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) with the purpose of reviving and identifying the sick industrial companies with the formation of the Board for Industrial and Financial Reconstruction (BIFR).

SICA was a goal to revitalize financially challenged firms but ended up being ineffective in its actual operations. The BIFR proceedings began to turn out to be too slow and companies were misusing it to delay the repayment obligations and stave off creditor action, thus the legislation came under criticism that it creates a debtor-friendly regime, which consequently leads to loss of confidence among creditors.<sup>4</sup>

In 1991, India became an economically liberalized country, reshaping the economy of the country in the financial and industrial sectors. The need for more robust mechanisms to recover debts has come to the fore in the wake of increased competition and expansion of credit markets. However the framework was oriented towards debt recovery and not towards a full-fledged resolution of the problems of insolvency.

A law named the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was enacted in 2002 to enhance the rights of secured creditors.<sup>5</sup> This allowed banks and financial institutions to enforce their security interests without getting involved into the proceedings of courts. The legislation enhanced the recovery methods, but not a one-stop insolvency resolution framework.

These reforms, however, did not help in bringing about a unified picture of Indian insolvency laws being still scattered in various acts and fora. The Companies Act, SICA, DRT framework and SARFAESI Act are the different pieces of legislation involved in corporate insolvency matters, which led to overlapping of jurisdiction and procedural confusion.

The high percentage of banks' gross non-performing loan stock was a strong indication of the need for a sweeping overhaul of the insolvency laws. Dr. T.K. Viswanathan, in his capacity as Chairman of the Bankruptcy Law Reforms Committee set up by the Government of India in

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<sup>4</sup> Umakanth Varottil, The Evolution of Insolvency Law in India, 9 NUJS L. Rev. 1, 9–11 (2016).

<sup>5</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002).

2014, discussed the inadequacy of the current code of lethal, cumbersome and arbitrary insolvency proceedings and recommended the development of a comprehensive bankruptcy law with specialized institutions and time bound procedure for resolution.<sup>6</sup>

Following the recommendations of the Committee, the Insolvency and Bankruptcy Code, 2016 was adopted which unified and streamlines laws that govern Insolvency and Bankruptcy of companies, partnership firms and individuals. It also instituted a creditor-driven insolvency process and a time-bound Corporate Insolvency Resolution Process.

The Code also established a new institutional mechanism, which comprises of the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professionals, Information Utilities and adjudicating authorities like the National Company Law Tribunal (NCLT) under Section 60 of the Code.

The IBC also underwent certain changes from previous insolvency laws as a greater focus is placed on resolution and revival, rather than recovery and/or liquidation.<sup>7</sup> Judicial resolutions issued by the Supreme Court and NCLAT also reinforced the insolvency landscape and provided clarity on certain key principles of the IBC.

While much like any other legislation the IBC has managed to create its own set of issues and challenges including delay in disposing off cases, shortage of members and increasing litigation, it has introduced significant reform in India's insolvency regime and has enhanced the ease of doing business along with increased debt recovery and confidence of creditors.<sup>8</sup>

#### Establishment and Structure of NCLT

The setting up of the National Company Law Tribunal was a red flag in terms of the institutional change in the corporate adjudicatory mechanism of India. Before the formation of NCLT, company law related cases were primarily handled by High Courts, Company Law Board and other judicial fora leading to multiplicity of proceedings and delays.<sup>9</sup> After the NCLT were established, these proceedings were allocated to a specialized body to handle company law related proceedings, restructuring proceedings, mergers and amalgamations, oppression and

<sup>6</sup> M.S. Sahoo, *Law and Practice of Insolvency and Bankruptcy in India* 20–25 (2d ed. 2020).

<sup>7</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

<sup>8</sup> *Insolvency and Bankruptcy Board of India, Annual Report 2021–22* 42–48 (2022).

<sup>9</sup> Avtar Singh, *Company Law* 856–60 (18th ed. 2022).

mismanagement cases and to initiate the proceedings of insolvency proceedings.

The idea behind the formation of NCLT was to give birth to a single forum with expertise in corporate and financial related issues – both judicial and technical, thereby empowering the NCLT to adjudicate complex corporate and insolvency related disputes.

The NCLT is the adjudicator of the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 and receives guidance and clarity on the powers it could exercise under the code at different stages, such powers include admission of applications for resolution, approving resolution plans, insertion of moratorium, liquidation of corporate debtors and more.

NCLT has benches in various States and Union Territories in the country with the aim to make them more accessible and dispense parties' of the cases at a faster pace. The Principal Bench of NCLT is located in New Delhi, with multiple regional benches operating throughout important metropolitan areas.<sup>10</sup> The functioning of the tribunal is under the Ministry of Corporate Affairs and it has played an important role in strengthening the corporate governance and the corporate insolvency framework in India.

#### Jurisdiction of NCLT under IBC

The NCLT has wide powers within the framework of the Insolvency and Bankruptcy Code, 2016 and acts as the adjudicator for corporate settlements.<sup>10</sup> The NCLT adjudicates upon applications filed by the Financial Creditors, Operational Creditors and the Corporate Applicants for the application of corporate settlement proceedings.<sup>11</sup>

Under Section 7 of the IBC, a financial creditor may commence the CIRP of a corporate debtor by filing against the corporate debtor if default exists.<sup>12</sup> Similarly, an operational creditor can file an application under Section 9 of the Code and even a corporate debtor can initiate the CIRP through Section 10 of the Code.<sup>13</sup> The NCLT does not become involved in a debate on the presence or absence of default, but focuses solely on the question of whether the application satisfies statutory requirements laid down under the Code.<sup>12</sup>

<sup>10</sup> Ministry of Corporate Affairs, Notification Constituting Benches of NCLT, Gazette of India, June 1, 2016.

<sup>11</sup> Insolvency and Bankruptcy Code §§ 7, 9, 10.

<sup>12</sup> *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

The admission of the application leads to a moratorium under the IBC, under Section 14 of the IBC, which excludes the interests of creditors, institution of any proceedings to declare a company's liquidation, transfer of assets, foreclosure proceedings or execution of security interests against the company or corporate debtor. The purpose of the moratorium is to preserve the value of assets and to allow a cooling period to enable the insolvency resolution process to proceed.<sup>13</sup>

An Interim Resolution Professional has also been appointed by NCLT who manages the affairs of the corporate debtor throughout the process of the resolution. The NCLT is also meant to oversee the activities of the insolvency professionals and ensure they are adhered to the provisions and the purpose of IBC.

Resolution plan approval is another crucial part of the powers of the tribunal. If the NCLT approves the resolution plan in accordance with the statutory requirements and after considering whether the interest of stakeholders are being protected under the plan, it would be binding on both the corporate debtor as well as creditors, employees and other stakeholders.

If a resolution plan is not approved within the given period, the NCLT can initiate the liquidation process of the corporate debtor pursuant to the “waterfall” mechanism laid down under Section 53 of the Code.<sup>14</sup>

The NCLT authorizations are critical to ensure transparency, protect the interests of creditors, and ensure proper execution of the insolvency framework in India, encompassing preferential transactions, undervalued transactions, extortionate credit transactions, and cases of fraudulent trading.

#### Role of NCLT in Corporate Insolvency Resolution Process

The National Company Law Tribunal (NCLT) is one of the key stakeholders throughout the Corporate Insolvency Resolution Process (CIRP), as it oversees each at every stage of the CIRP proceedings and helps ensure adherence to the statutory requirements.<sup>15</sup>

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<sup>13</sup> Insolvency and Bankruptcy Code § 14.

<sup>14</sup> Insolvency and Bankruptcy Code § 33.

<sup>15</sup> Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 6–32, India Code (2016).

During the admission stage the NCLT deals with an application filed under sections 7, 9 and 10 of Insolvency and bankruptcy code of matters where it does find that the matter default has occurred and all the conditions prescribed under the Code have been fulfilled, it admits the application and commences the process of insolvency resolution. In *Innoventive Industries Ltd. v. ICICI Bank*, the Supreme Court further clarified that NCLT had to admit the application once the default was made out.<sup>16</sup>

The moratorium starts after the application is admitted and renders impossible the institution or continuance of any suit, the initiation of any recovery action and also prevents the alienation of the assets and enforcement of any security interest against the corporate debtor under Section 14 of the Code. The objective of the moratorium is threefold: to preserve the value of assets, and to give it stability as part of the resolution of insolvency.<sup>17</sup>

The NCLT also appoints an Interim Resolution Professional, whom assumes control over the affairs of the corporate debtor during the CIRP period, and the NCLT has the power to keep an eye on the conduct of these professionals and ensure compliance with the provisions of the IBC.

Another crucial function that NCLT plays is supervision of the Committee of Creditors. NCLT ensures that the Committee operates as per the provisions of the Code and on the principles of fairness and transparency. While the commercial resolution plan passed by the Committee of Creditors is respected, NCLT simply checks if the process is being done as per the legal requirement or not.<sup>18</sup>

Among one of the most important role played by the tribunal is the approval of the resolution plan as per section 31 of the Code once the C of C approves of a resolution plan it is submitted before NCLT for its approval. The main goal of the process is to enable revival of the corporate debtor and not for them to be liquidated. The tribunal will assess if the plan meets statutory requirements and its proposal will safeguard the interests of stakeholders.<sup>19</sup>

The NCLT also has jurisdiction over avoidance transactions like preferential allocations, undervalued transactions, transactions involving extortionate credit and fraudulent trading,

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<sup>16</sup> *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

<sup>17</sup> Insolvency and Bankruptcy Code § 14.

<sup>18</sup> Insolvency and Bankruptcy Code § 16.

<sup>19</sup> Insolvency and Bankruptcy Code § 21.

which enables the tribunal to ensure the equitable process and adherence to the rules of the game in the case of insolvency.

#### Powers of NCLT under the IBC

The National Company Law Tribunal is vested with judicial, supervisory and inherent powers under the Insolvency and Bankruptcy Code, 2016 for regulating the process of the corporate insolvency proceedings and complying with the objective of the Code (the Code).<sup>20</sup>

The admission or rejection of the application for start of the proceedings of resolution, approval of the resolution plan, adjudication of disputes and passing of liquidation orders are part of the judicial powers of the NCLT. The tribunal also provides interpretation of the provisions of the Code to effect such powers and brings in a wealth of new judicial pronouncements to the jurisprudence of insolvency.

NCLT has the supervisory jurisdiction over the liquidation proceedings, Committee of Creditors and Insolvency Professionals and ensures that the proceedings are managed in a fair and effective manner.

The other significant authority of the NCLT is the sanctioning of resolution plans as per the requirement of the Code<sup>21</sup>, where the NCLT approves the resolution plan, if allotted to them, to ascertain that a resolution plan meets the statutory requirement and safeguards stakeholders' interests. Upon approval the plan is binding on all concerned.<sup>22</sup>

Further, the NCLT also regulates the liquidation proceedings under Chapter III of the Code in the event of a failure of the IRP. The liquidation of a corporate debtor and the distribution of assets in such a process is also guided by the waterfall mechanism laid down under Section 53 of the Code.

The tribunal's powers include statutory powers, as well as inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016 which give it the authority to issue orders the tribunal considers necessary to meet the ends of justice and to prevent abuse of this process.

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<sup>20</sup> Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee 48–52 (2015)

<sup>21</sup> Comm. of Creditors of Essar Steel India Ltd., (2020) 8 SCC at 607–10.

<sup>22</sup> Swiss Ribbons Pvt. Ltd., (2019) 4 SCC at 52–54.

These avoidable transactions and fraudulent trading also fall under the jurisdiction of the NCLT under the guidelines of IBC, which protects the interest of creditors and transparency of the subsequent proceedings of the insolvency.

### Challenges Faced by NCLT

Delay in the disposal of matters is one of the key hurdles in the functioning of the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC). Among the various challenges that have plagued the functioning of the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC), delay in the disposal of matters is one of the key challenges. While IBC mandates a timeline for completion of the process of CIRP, many of the cases take longer due to procedural delays, repeated adjournments and substantial litigation, which has a harmful effect on the value of the assets of a corporate debtor and the idea of 'resolution in time'.

The huge workload on the judiciary and NCLT also arises due to shortage of members in the tribunal, including judicial and technical members.<sup>23</sup> The number of cases of filing of applications for the purposes of obtaining a fresh start under the IBC is on the rise and adds to the burden of the existing tribunal system.

Limited infrastructure of the courtrooms, inadequate administrative staffing and lack of efficient digital systems also affect the functioning of a number of benches of the NCLT.<sup>24</sup> When there are more than one creditors (and more than one potential resolution applicants) or more than one stakeholders, it will create some procedural/administrative difficulties. (Complex Proceedings)

Stressful litigation and appeal proceedings before the NCLT and the Supreme Court are yet another factor that delays the resolution proceedings under IBC.<sup>25</sup> Party disputes before the NCLT with regard to admission orders, resolution plans and liquidation orders lead to an extension of the resolution process in IBC.<sup>25</sup>

Another challenge is regarding the level of judicial scrutiny, if any, that can be triggered in the

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<sup>23</sup> M.S. Sahoo, *Law and Practice of Insolvency and Bankruptcy in India* 70–72 (2d ed. 2020).

<sup>24</sup> Insolvency Law Committee, *Report of the Insolvency Law Committee* 31–36 (2018).

<sup>25</sup> *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

committee of creditors' commercial decisions, such as the approval of resolution plans and distribution of resolution proceeds.

Still, NCLT is vital for the implementation of the insolvency framework in India and at the heart of the mechanism of the Insolvency and Bankruptcy Code.

### **Case Laws / Case Analysis**

**Innoventive Industries Ltd. v. ICICI Bank**

The Supreme Court in the case of *Innoventive Industries Ltd. v. ICICI Bank*<sup>26</sup> had clarified the powers of the adjudicating authority under Section 7 of the Insolvency and Bankruptcy Code and the process of admittance of an application before the NCLT. The judgment highlighted that at the stage of admission, the discretion of the tribunal is not very large, and it is impossible for the court to debate in detail other than the determination of default.<sup>26</sup>

This case was important since it reinforced the power of financial creditors and paved the way for quick and swift dropping of Insolvency cases.

**Swiss Ribbons Pvt. Ltd. v. Union of India**

The Supreme Court's decision in *Swiss Ribbons Pvt. Ltd. v. Union of India* was upheld in which the constitutional validity of the Insolvency and Bankruptcy Code was questioned.<sup>27</sup> The decision confirmed that the NCLT is a specialized adjudicatory body for handling insolvency cases.

Even, the Supreme Court record that the main purpose of the IBC is revival and keeping alive the corporate debtor and not doing a "liquidation". The insolvency framework aims to balance the interests of all its stakeholders and to achieve an effective mechanism which will enable the resolution of the insolvencies, the judgment noted.

**Essar Steel India Ltd. v. Satish Kumar Gupta**

One of the most significant judgments, which involves the powers of the NCLT under the Insolvency and Bankruptcy Code, is that of *Committee of Creditors of Essar Steel India Ltd. v.*

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<sup>26</sup> *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407.

<sup>27</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

Satish Kumar Gupta,<sup>28</sup> Under this judgment, the Supreme Court formed a rule that the commercial wisdom of the Committee of Creditors should not ordinarily be interfered with by the adjudicating authority.

The Court explained that while the NCLT can review the resolution plan whether the plan is within required statutory checklists; NCLT cannot make a commercial judgment in place of the creditors. The ruling reiterated the principle of limited judicial jurisprudence and bolstered creditor autonomy under the IBC.

Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.

In this case, Supreme Court interpreted the phrases “existence of dispute” under Section 9 of the Insolvency and Bankruptcy Code, and the Court held that to admit an insolvency application by the NCLT, there cannot be a dispute between the operational creditor and the corporate debtor before the receipt of the demand notice.<sup>29</sup>

In the judgment, the court held that applications filed by the operational creditors have to be heard by the tribunal on four conditions: all the creditors must be contacted; the statement of affairs has to be included in the notice to them; at least 20 minutes should be given for them to review the notice; and the appraisal notice issued before such applications are taken up required that the creditors are not required to vote.

K. Sashidhar v. Indian Overseas Bank

In K. Sashidhar v Indian Overseas Bank, the Supreme Court has discussed the ambit of judicial scrutiny with respect to actions of the Committee of Creditors and has ruled that the NCLT and NCLAT cannot intervene in the commercial decision of the Committee of Creditors on accepting or rejecting the resolution plan.<sup>30</sup>

This decision also upheld the principle of ‘commercial wisdom’ and the minimisation of unnecessary judicial interference in the course of an Insolvency proceedings.

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<sup>28</sup> Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

<sup>29</sup> Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353.

<sup>30</sup> K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.

Embassy Property Developments Pvt. Ltd. v. State of Karnataka

In NCLT's case-sheet titled Embassy Property Developments Pvt. Ltd. v. State of Karnataka, the Supreme Court considered the territorial jurisdiction of NCLT under the Insolvency and Bankruptcy Code and ruled that it could not have jurisdiction over any matters where public law or constitutional issues are involved with the subject matter which is outside the ambit of the Insolvency proceedings.<sup>31</sup>

The judgment was made to establish that the NCLT has vast powers under IBC but, it is not unlimited.

### Findings

The study shows that in the corporate resolution mechanism, the most important institutional authority is the National Company Law Tribunal. Since the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, NCLT has been in the forefront for the implementation of Insolvency Resolution Proceedings and has significantly helped in establishing the creditor confidence and financial discipline in the corporate sector.

The study shows that NCLT has contributed towards consolidating the decision making powers in the domain of insolvencies in a specialized adjudicatory body. Before the IBC, there were several different fora and legislation for insolvency proceedings, leading to delays and minor complexities in the proceedings. The NCLT has streamlined multiplicity of proceedings by providing a common platform for all kinds of proceedings relating to corporate persons in the context of their insolvency/liquidation matters.

Another important finding is that NCLT has been instrumental in developing the jurisprudence on the ground of Insolvency in India. Judicial pronouncements by the NCLT, NCLAT and Supreme Court have made clear important principles on various aspects relating to the admission of insolvency applications, the moratorium, creditor rights, approval of resolution plans, and commercial wisdom of committee of creditors (CoC).

The study also highlights that recovery mechanism for financial creditors and banks in terms of CORPORATE INSOLVENCY RESOLUTION PROCESS, more than an improvement is

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<sup>31</sup> Embassy Prop. Devs. Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308.

going to be managed under the NCLT. The Insolvency regime has encouraged the debtors to pay their debt on time as the prospect of liquidation strikes fear in the minds of corporate debtors and has made them more accountable to pay their debts.

The research, however, pinpoints that there are certain issues causing the poor performance of NCLT. Delay in the disposal of insolvency matters is one of the problems that is the most serious one. Many CIRP cases are pending till the end of the timeline or even beyond due to procedural delays, the escalation of litigation and pendency.

The study additionally reaches a finding that the NCLT has benefitted the Indian economic climate and enhanced the debt restoration process, confidence among investors and helped in minimizing NPA. The IBC already put in place, has given a fillip to the ease of doing business and added to the credibility of the corporate and banking sectors in India.

The study notes that despite the current difficulties, the NCLT is one of the most significant institutional changes that has been brought under the IBC. It remains a key player in the country's efforts to effectively resolve the crisis and promote corporate accountability, which are essential for economic development and financial stability in India.

### **Recommendations / Suggestions**

For lessening pendency, it is necessary to increase the number of NCLT benches and members.

The court's vacancies (judicial and technical) should be filled up in a timely manner.

The technological infrastructure and e-filing systems need to be enhanced.

Special insolvency benches can be set up for complicated insolvency proceedings.

Statutory time limits must be adhered to.

Judicial, technical members and the insolvency profession should be trained regularly.

Procedural changes should be implemented to minimize adjournments and delay.

Greater coordination and synergy should be encouraged between the NCLT/ NCLAT, IBC and professionals in the resolution process.

To bring about clarity over the ambiguities in IBC provisions, legislative changes can be brought in.

An attempt to minimize litigation can be made by encouraging alternative dispute resolution mechanisms.

## Conclusion

National Company Law Tribunal (NCLT) plays a key role in the overall framework created by the Insolvency and Bankruptcy Code 2016. The tribunal is the deciding body for corporate insolvency, liquidation and administration proceedings and oversees all aspects of the process, ensuring adherence to procedural rules.

The formation of NCLT marked a paradigm shift in the system of India's insolvency regime into becoming an efficient creditor-centric system. The tribunal, both through its judicial and supervisory functions, has built confidence among creditors, enhanced financial discipline and facilitated better recovery of debts.

At the same time, several practical challenges continue to affect the effectiveness of the tribunal. Delay in disposal of cases, shortage of members, infrastructural deficiencies, and increasing litigation remain major concerns. Institutional reforms and technological modernization are necessary to improve efficiency and ensure timely insolvency resolution.

The long-term success of the Insolvency and Bankruptcy Code depends significantly upon the effectiveness and institutional strength of the NCLT. A strong and efficient tribunal is essential for promoting economic growth, corporate accountability, investor confidence, and financial stability in India.

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