MISUSE OF IB CODE PREVENTING POTENTIAL RECOVERY BY BANKS

FEW CORRUPT INSOLVENCY PROFESSIONALS & AUDITORS INDULGING IN EXTORTION DESTROYING THE INTEGRITY OF THE LEGAL SYSTEM

IB Code is directly and indirectly affecting almost every business in the country today, and thus it has a direct and major impact on our present state of economy. While India certainly needs an efficient and robust Insolvency and Bankruptcy Code, the manner in which the present one is being implemented and misinterpreted has not only added to the alarming slump in our economy, but has created a new avenue of corruption.

The backbone of IBC was the BLRC report which very clearly identified the role of promoters and management. The IB Code was drafted with an idea of a stand still period to allow the creditors to explore the best possible options to revive the business and maximize wealth whether with or without existing management. The legal control was handed over to the creditors to prevent any misuse by the promoters, but the promoters were acknowledged as a necessary party for the revival of the company. It did not envisage a discriminatory blanket ban on promoters at all. However, the sudden introduction of section 29A has debarred promoters and made them aliens in their own house, with no voice and representation. All business failures are treated as frauds and entrepreneurs as biggest criminals.

The worst part of IB Code is the high level of corruption that has crept in almost all parts of its implementation. The private sector professionals whether insolvency professionals or forensic auditors or valuers who have been entrusted with this very high level of responsibility have in some of the cases resorted to very high level of corruption and blackmail with no remedy in sight. There is no definition of fraud and No penalty for a malicious accusation for fraud. It's easy to accuse anybody of fraud but almost impossible for anybody to defend even if accused out of vengeance or for refusal to pay the extortion money. There is no accountability of RP or the Liquidator against any wrongdoing. The only toothless procedure is filing a complaint to IBBI which very few promoters or ousted management can dare to do.

The only people, who could understand and object to any such wrongs—the ousted promoters and/or shareholders, are not allowed any space by NCLT or NCLAT to even make any representation in the IB Code! **These professionals are perhaps the major source of high level of corruption that has even influenced a large portion of the judiciary including NCLT & NCLAT who are blindly supporting such corrupt professionals ignoring any sort of intervention by the affected stakeholders.** With most such professionals becoming rags to riches overnight with easy money that in fact belonged to the banks has led to the blatant misuse of IB Code to benefit few individuals at the cost of the entire country.

IB Code nowhere says that promoters or shareholders have no right to complaint or approach NCLT or NCLAT for their grievances but in actual practice they are not recognized and are thrown out without being heard by all 3 levels NCLT, NCLAT and The SUPREME COURT. This leaves the shareholders with no remedy despite facing Blatant misuse of the IB Code by the corrupt and/or incompetent professionals.

While promoters and shareholders suffer because of their emotional attachment with the Companies created by their sweat and blood, Actually the banks and financial institutions are the real victims of such corruption as their recovery takes a back seat while these corrupt professionals loot and fill their coffers both officially as well as unofficially.

In the above backdrop, it is very urgent to recognize the role of entrepreneurs and existing management in revival of sick companies and allow the genuine ones the desired level of dignity to sufficiently voice against any wrongs being done by such unscrupulous professionals which could be the only safeguard possible against such corruption.

We must also understand that such unscrupulous professionals form a very small portion of the insolvency professionals and majority of the professionals are honest and dedicated to the core, but due to general apathy and silence of the honest majority, they are successful in taking the system for a ride. **Any crackdown on them would affect the entire profession and as such the honest majority of professionals, who could identify such wrongs before anybody else, must raise the alarm before it is too late. Few major fraudulent cases breaking out in future should not be allowed to hit the entire community through draconian measures and witch hunting of the entire profession in a manner similar to the entire promoter community being labelled as fraud because of wrongs done by a few of them.**

A very senior Banker very rightly commented—
"I think most draconian part of IBC is introduction of Section 29A. Every promoter, no matter whether they are honest or dishonest, whether the NPA is due to external or internal reasons, is barred from the process once the account is NPA. This is against natural justice. They are disallowed without giving them fair chance to prove that this is a case of genuine business failure."

However, instead of learning from past mistakes and amending section 29A to draw a distinction between genuine business failures and fraudsters; IBBI recently amended the liquidation regulations to debar promoters from even reviving the company in liquidation u/s 230 of the Companies Act.

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Arun Kumar Jagatramka
Chairman, Entrepreneurship Helpline Foundation and
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The promoters were debarred during CIRP on the presumption that the company could and would be revived by any interested 3rd party but it goes for liquidation when there are no 3rd parties interested in any such revival scheme. As such, when there were no suitors for the Company during CIRP which required 66% consent of COC alone, how could one expect to have any such interest in revival u/s 230 which is highly stringent and requires 75% vote of each class of stakeholder in addition to the COC members. Debarring the promoters from this last chance to revive a company is highly disastrous.

As such, in the interest of the nation and to prevent further large-scale job losses and destruction of assets, the latest amendment to liquidation regulations, along with section 29A needs an urgent relook. Otherwise, even the last chance of reviving a company is being shut out for no fault of the various stakeholders. And without industry, there can be no economic development.

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