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A WORD TO THE WISE: THE PROPER ROLE FOR THE COMMITTEE OF CREDITORS IN INSOLVENCY RESOLUTION

AUTHORED BY - SAHIL GANGAR & PARTH CHANDAK

Abstract:-

The doctrine of commercial wisdom, though not in itself problematic,
Could, in the long term, throttle the legislative goal of the Code.
Over time, the doctrine itself as well as the wider resolution approach
Have to be developed with intent to reach the economic goal of the
Code, to assist IBC reach its intended maximum potential,
As intended. Having traced the origins and followed the development of the commercial
Wisdom doctrine in Part I, I go on to examine the BLRC Report
And also IBC and the regulatory framework anew, in an
Effort to determine the correct role of the Committee of Creditors
In the approval process of the resolution plan. Part III tries
To learn from the 'feasibility' analysis under the US Bankruptcy
Code as a good model of how deliberative and analytical the
Process should be needed to be. I attempt to envision
The resolution process anew in Part IV with a more sustainable
Process to resolution and redrafting the 'commercial wisdom'
Doctrine to its current structure.

A Word to the Wise: The Optimal Function of the Committee of Creditors in Insolvency Resolution

While the concept of commercial wisdom itself is not inherently flawed, its long-term implications could hinder the legislative objectives of the Insolvency and Bankruptcy Code (IBC). The commercial wisdom doctrine and the broader resolution mechanism must evolve to align with the Code's economic objectives, ensuring that the IBC reaches its highest potential. This paper traces the origins and development of the commercial wisdom doctrine in Part I. Part II reassesses the BLRC Report, the IBC, and the regulatory framework to determine the

Committee of Creditors' proper role in the resolution plan approval process. Part III analyzes the 'feasibility' evaluation model under the U.S. Bankruptcy Code, illustrating how a structured, deliberative approach enhances the decision-making process. Finally, Part IV envisions a refined resolution process, suggesting a more sustainable structure for the commercial wisdom doctrine in its current form.

I. Introduction

Five years is a short span in the life of a legal framework, insufficient to fully assess its impact. The Insolvency and Bankruptcy Code, 2016 (IBC), represents a complex economic reform aimed at resolving insolvencies. The core process involves soliciting bids for resolution plans, evaluated in a collective and transparent manner by the company's financial creditors. These plans must comply with IBC regulations, ensuring debt repayment while providing a roadmap for the company's future operations.

The authority to approve resolution plans rests with the Committee of Creditors (CoC), comprising financial creditors. Their approval initiates a two-tier validation process, wherein the Tribunal, acting as the Adjudicating Authority, gives the final sanction. Once the Tribunal endorses a resolution plan, it becomes legally binding on all stakeholders, including employees, members, creditors, and government agencies.

A crucial aspect of this framework is the fresh slate doctrine, which stipulates that any claims arising before the approval process cannot survive unless explicitly included in the resolution plan. The CoC wields significant influence over existing contractual and legal rights, affecting even secured creditors and government entities. The twin-stage approval process is pivotal in assessing the IBC's efficacy, ensuring insolvency resolution and asset value maximization.

The commercial wisdom doctrine governs this approval process. The Tribunal does not have the authority to scrutinize the merits of a resolution plan, as CoC's decisions are presumed to reflect financial expertise. Evaluating complex financial metrics—such as revenue projections, debt-equity ratios, and asset valuation—requires specialized knowledge, which financial creditors possess.

II. Role of the Committee of Creditors in Resolution and the Commercial Wisdom Doctrine

Evolution of the Commercial Wisdom Doctrine

The Supreme Court formally established the commercial wisdom doctrine in *K. Sashidhar v. Indian Overseas Bank*. The doctrine finds its roots in the Bankruptcy Law Reforms Committee (BLRC) Report, which confines the Tribunal's role to procedural oversight while assigning business decisions to the CoC. In subsequent cases like *Committee of Creditors v. Satish Kumar Gupta*, the Supreme Court upheld that the Tribunal could not question the commercial prudence of the CoC's decisions but could review whether the CoC had adhered to legal and procedural norms.

Several rulings illustrate the application of this doctrine. In *Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh*, the Supreme Court upheld a resolution plan that allowed the sale of assets at a value lower than liquidation price, emphasizing the CoC's commercial judgment. Similarly, in *Karad Urban Coop. Bank Ltd. v. Swapnil Bhingardevay*, the Court refrained from second-guessing the CoC's evaluation of a plan's feasibility.

Legality vs. Commercial Prudence: Issues under Section 31

Under Section 31 of the IBC, the Tribunal's jurisdiction varies depending on whether a matter concerns commercial prudence or legal compliance. Commercial prudence covers viability, feasibility, creditor classification, and operational strategies, areas where the Tribunal cannot interfere. However, when legal violations occur—such as breaches of IBC norms or infringement of third-party rights—the Tribunal possesses full authority to review the resolution plan. Landmark rulings such as *MCGM v. Abhilash Lal* and *Jaypee Kensington v. NBCC* demonstrate judicial intervention when resolution plans contravene legal mandates.

Expansion of the Commercial Wisdom Doctrine

Recent cases have seen an expansion of the doctrine's scope. In *Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.*, the Supreme Court upheld a resolution plan submitted beyond the stipulated deadline, citing the CoC's commercial wisdom. Similarly, in the *Binani Cements* case, a late-submitted plan was approved, reinforcing deference to CoC decisions. However, in *Ngaitlang Dhar v. Panna Pragati Infrastructure*, the Court acknowledged that procedural irregularities could be grounds for challenging CoC decisions.

III. The Optimal Role of the Committee of Creditors: Understanding Legislative Intent

Insights from the BLRC Report

The BLRC Report underscores the expectation that the CoC will apply economic reasoning in identifying insolvency causes and selecting viable resolution plans. It differentiates between financial failure (solvable through restructuring) and business failure (where survival is unlikely). The CoC's decision-making should prioritize economic viability, organizational capital, and long-term business prospects.

Regulatory Framework and Evaluation Criteria

The IBC and CIRP Regulations outline key resolution plan attributes:

Clear implementation and monitoring mechanisms

Strategies to address default causes

Viability and workability

Capability of the resolution applicant to execute the plan

The CoC is required to assess feasibility and viability systematically, using an evaluation matrix that incorporates both qualitative and quantitative factors. Courts have emphasized the importance of informed decision-making, as seen in *Vijay Kumar Jain v. Standard Chartered Bank*, where access to relevant data was deemed essential for effective CoC deliberations.

IV. Comparative Insights: U.S. Bankruptcy Code Feasibility Analysis

The U.S. Bankruptcy Code mandates a feasibility analysis under Section 1129(a)(11), ensuring that a reorganization plan is grounded in realistic projections. Case precedents highlight the need for objective assessments:

In Re: American Capital Equipment LLC: A speculative plan reliant on litigation proceeds was rejected.

In Re: WR Grace & Co.: A plan supported by financial projections and expert opinions was approved.

In Re: Star Ambulance Service: A plan lacking financial disclosures and viability assessments was denied.

Key feasibility factors include:

Capital structure and financial stability

Economic conditions and market prospects

Managerial competence

Future cash flow projections

These criteria provide a structured approach to insolvency resolution, offering lessons for enhancing CoC decision-making under the IBC.

V. Towards a Refined Resolution Framework

Despite its early-stage challenges, the IBC must evolve beyond a focus on quantitative parameters like resolution numbers and payouts. Economic reasoning, business viability, and market conditions should take precedence. The CoC must provide transparent justifications for their decisions, ensuring that approval processes mature over time.

While judicial intervention should remain limited, courts must act as external catalysts for reform when necessary. The Supreme Court's stance in *Committee of Creditors v. Satish Kumar Gupta* acknowledges the need for CoC accountability. Given IBC's experimental nature, its long-term success hinges on its ability to adapt and address systemic inefficiencies.

Conclusion

The IBC represents an ambitious economic experiment. However, its success depends on ensuring that CoC decisions are rooted in sound economic reasoning. A more structured and transparent approach, drawing from international best practices, will strengthen the resolution framework and safeguard stakeholder interests.

References

1. *Swiss Ribbons v Union of India* (2019) 4 SCC 17 [19], [120] (Supreme Court of India).
2. There are some mandatory requirements for effective participation. For instance, financial creditors related to the corporate debtor lack voting rights, but this does not apply to banks and financial institutions that gain related party status through enforcement of their rights: see, IBC, provisos to s 21(2).
3. IBC, s 30(4).
4. The Tribunal is empowered to reject the resolution plan too. Section 31(1) of IBC deals with approval; Section 31(2) with rejection.

5. IBC, s 31(1); Committee of Creditors v Satish Kumar Gupta (2020) 8 SCC 531 [105] – [107] (Supreme Court of India).
6. (2019) 12 SCC 150 (Supreme Court of India).
7. TK Vishwanathan and others, ‘Report of the Bankruptcy Law Reforms Committee’ (November 2015) (‘BLRC Report’).
8. The BLRC Report has been extensively relied on by the Supreme Court for interpretive guidance in a host of critical rulings on the subject: *Innoventive Industries Ltd v ICICI Bank* (2018) 1 SCC 407 [12], [13] (Supreme Court of India); *K Sashidhar* (n 8)[54], [55], [62]; *Swiss Ribbons* (n 1) [14], [15], [68]; *Arcelormittal India (P) Ltd v Satish Kumar Gupta* (2019) 2 SCC 1 [68]–[70] (Supreme Court of India); *Mobilox Innovations (P) Ltd v Kirusa Software (P) Ltd* (2018) 1 SCC 353 [18]– [21] (Supreme Court of India); *Anuj Jain v Axis Bank* (2020) SCC Online SC 237 [108] (Supreme Court of India).
9. BLRC Report, paras 2, 3.4.2, 3.4.3, 4.2, 5, 5.3.1, 5.3.3, and 5.3.4.
10. *K. Sashidhar* (n 8) [52]–[55].
11. *Committee of Creditors* (n 5).
12. *Ibid* [72], [73]
13. (2020) 11 SCC 467 [27] – [30] (Supreme Court of India).
14. The Supreme Court found no provision in IBC that would invalidate such a plan, there being no mandate in the IBC that the bid at resolution must match the liquidation value of assets.
15. (2020) 9 SCC 729 [14] – [18] (Supreme Court of India).
16. *Bhaskara Agro v Super Agri Seeds* (2018) SCC Online NCLAT 340 (National Company Law Appellate Tribunal).
17. *IMR Metallurgical Resources AG v Ferro Alloys Corp* (8th June 2020) Company Appeal (AT) (Insolvency) No 272 of 2020 [12] (National Company Law Appellate Tribunal).
18. *Santosh Walokar v Vijay Kumar V Iyer* (24th January 2020) Company Appeal (AT) (Insolvency) No 871-872 of 2019 [26] (National Company Law Appellate Tribunal).
19. *Praveen Kumar v. VSL Securities* (9th June 2020) Restoration Application No 01 of 2020 in Company Appeal (AT) (Insolvency) No 308 of 2020 (National Company Law Appellate Tribunal).

20. Sreeram E Techno School v. Beans and More Hospitality (11th September 2019) Company Appeal (AT) (Insolvency) No 936 of 2019 [5] (National Company Law Appellate Tribunal).
21. The source of this power can be traced to Section 30(2)(e) of IBC read with Section 31(1), which mandates the Tribunal to ensure that the resolution plan does not violate any law in force.
22. (2019) SCC Online SC 1479 (Supreme Court of India).
23. Committee of Creditors (n 5) [81] – [87].
24. (2021) SCC Online SC 253 [277] – [279] (Supreme Court of India).
25. (2021) 10 SCC 401 [171], [172] (Supreme Court of India).
26. CIRP Regulations.
27. Binani Industries v Bank of Baroda (2018) SCC Online NCLAT 521 (National Company Law Appellate Tribunal); this NCLAT ruling was upheld by the Supreme Court by a non-speaking order in Rajputana Properties v Ultratech Cement (2018) SCC Online SC 3596 (Supreme Court of India).
28. (2021) SCC Online SC 1276 [27] – [34] (Supreme Court of India). On facts, the Court found no “material irregularity” in the process and upheld the Committee’s approval.
29. Kalpraj Dharamshi (n 27).
30. Jaypee Kensington (n 26) [143] – [147], [273] – [275].
31. This was, of course, not without good reason. The resolution plan of the behemoth was slated to benefit a wide range of interests, including innocent home buyers, and was thus crucial for the economy. The last set of decisions in this line, viz. India Resurgence v Amit Metaliks (2021) SCC Online SC 409 [12] – [21] and Pratap Technocrats v Reliance Infratel Ltd (Monitoring Committee) (2021) 10 SCC 623 [33] – [48], simply apply the commercial wisdom doctrine to issues such as distribution of payouts to diverse classes of creditors, issues that lie in the proper realm of the doctrine, and thus pose no problem.
32. This is found in the classic formulation of the Supreme Court in Committee of Creditors (n 5).
33. BLRC Report, paras 2, 3.4.2, 3.4.3, 4.2, 5, 5.3.1, 5.3.3, and 5.3.4.
34. BLRC Report, para 3.2.
35. BLRC Report, para 3.2.1.
36. BLRC Report, para 3.2.2.

37. See, Baruch Lev, Suresh Radhakrishnan, and Peter C Evans, ‘Organisational Capital: A CEO’s Guide to Measuring and Managing Enterprise Intangibles’ (The Center for Global Enterprise, January 2016) accessed 28 November 2022; C. Meyer and others, ‘Developing and Deploying Organizational Capital in Services vs. Manufacturing’ (2014) 26(4) Journal of Managerial
38. Issues 326.
39. Section 30(2)(d) and (f) read with Section 31(1) and its proviso of IBC read together with Regulation 38(2)(c) and 38(3) of CIRP Regulations.
40. IBC, s 30(4).
41. CIRP Regulations, r 39(3) read with IBC, s 30(4).
42. (2019) 20 SCC 455 [12], [13], [15], [21] – [25] (Supreme Court of India).
43. Ibid [21]. The Court ultimately directed the Committee of Creditors in that case to conduct fresh deliberations after ensuring effective participation of all the stakeholders entitled to attend the meeting as per Section 24 of IBC inter alia (see Para 25 of the Judgment).
44. Chapter 11, Title 11 of the Code.
45. Section 1129(a)(11): “Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.”
46. 9D Am. Jur. 2d Bankruptcy § 2884.
47. 688 F.3d 145 (3rd Cir. 2012).
48. 729 F.3d 332 (3rd Cir. 2013).
49. Re: Star Ambulance Service, 540 B.R. 251 (Bankr. S.D. Tex. 2015).