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# Insolvency Resolution Plans: Right of Erstwhile Management, Corporate Debtor

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## Abstract

As the law under the Insolvency and Bankruptcy Code, 2016 progresses, many anomalies have surfaced which revolve around the resolution plans, which are meant for the survival of the corporate debtor. The National Company Law Appellate Tribunal recently held that it is permissible in law to give the opportunity to 'resolution applicants' for revising their offer before final approval.[1] Resolution plans play a key role in the corporate insolvency resolution process; therefore, the objectives of the author in the present article is, first, to analyse the importance of resolution plans, second, to examine the law regarding resolution plans in the Insolvency Code and, in the end, to analyse whether there is any necessity to maintain secrecy in reference to 'resolution plans' or whether giving a copy of the resolution plans to the corporate debtor will actually help the corporate debtor in getting necessary information for the health of their business for its benefit.

## Keywords

Resolution Plan (RP), Committee of Creditors (CoC), Insolvency Resolution Professional (IRP), Corporate Insolvency Resolution Process (CIRP)

[1] Tata Steel Ltd. v. Liberty House Group (P.) Ltd, (2019) NCL-AT (Insolvency) No. 198 of 2018 (India).

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## Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC) since its inception has created ripples in the corporate world. The Indian corporates who were facing the brunt of a number of laws[2] related to sick industries or insolvency had to suddenly face one of the strictest 'Code' which was created to check the sustainability of the corporates facing financial crunch under the single umbrella of the IBC. The IBC is meant to explore the possibility of the revival of the corporate debtor, followed by an inclusive approach, first, by trying to balance the interest of all the stakeholders and, second, by maximising the value of the assets of the corporate debtor.[3] One of the purposes of the creation of a single Code was to provide a single window to insolvency laws for insolvency resolutions. Since the inception of the IBC and the commencement of its functioning there were various grey areas, which have remained unsettled for a long time. Amongst the glitches it holds, one is whether the suspended board of directors of any corporate debtor company, whose matter has been admitted under the IBC, is only entitled to a mere participation in the committee of creditors (CoC) meeting or is it also entitled to the documents considered and deliberated upon, inclusive of the resolution plans, which are meant for the revival of the corporate debtor. Therefore, the moot question is whether it is essential to maintain secrecy with regard to the 'insolvency resolution professional' from the corporate debtors' board of directors, keeping in mind that the insolvency resolution plan is the document which provides vital information regarding the plan finalised for the purposes of revival of the corporate, or whether any secrecy in this regard may prove dangerous for the corporate debtors.

[2] The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, India Code 2016 [hereinafter 'IBC, 2016'] was introduced in view of the focus of the government that there was no single insolvency and bankruptcy provision. There were provisions relating to insolvency and bankruptcy companies governed under Schedule I of the Industries (Development and Regulation) Act, 1951, No. 65 of 1951, India Code 1951, in the Sick Industrial Companies (Special Provisions) Act, 1985, No. 1 of 1986, India Code 1986 (repealed 2016) [hereinafter 'SICA, 1985'], in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51 of 1993, India Code 1993 [hereinafter 'RDDBFI Act, 1993'] for individuals and corporate borrowings, in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, No. 54 of 2002, India Code 2002 [hereinafter 'SARFAESI Act, 2002'] for taking action against the assets, which were mortgaged to the banks/financial institutions, which in general dealt with the winding up of insolvent entities as per the provisions of Act envisaged therein. On the other hand, there also existed individual bankruptcy provisions in legislations such as the Presidency Town Insolvency Act, 1909, No. 3, Acts of Imperial Legislative Council (repealed 2016) [hereinafter 'PTI Act, 1909'], the Provincial Insolvency Act, 1920, No. 5, Acts of Imperial Legislative Council (repealed 2016) [hereinafter 'PIA Act, 1920'], the RDDBFI Act, 1993 and the SARFAESI Act, 2002. The endeavour of the government was to bring an amalgam of various provisions of the Insolvency Code especially for dealing with the Insolvencies and for timely resolution of debts. However, the chapter on individual insolvencies, which was to replace the PTI Act, 1909 and the PIA Act, 1920, as well as to deal with the individual insolvencies through the Debt Recovery Tribunals, is yet to be notified.

[3] K. Sashidhar v. Indian Overseas Bank, (2019) SCC Online SC 257 (India).

## Corporate Insolvency Resolution Process (CIRP)

The IBC in respect of the corporate persons was brought into force with effect from 1 December 2016 simultaneously with the Repeal of Sick Industrial Companies (Special Provisions) Act, 1985. Further, the law regarding the winding up of companies saw a paradigm shift as instead of filing winding petitions, the petitions henceforth were to be filed[4] under §7[5] in respect of financial creditors, §9[6] in respect of operational creditors and §10[7] in respect of the petitions being filed by the corporate debtor itself.

## Structure of the CIRP

The purpose of the IBC is to resolve the corporate insolvency in a time-bound manner, and therefore, the insolvency framework provided in the Code at various stages entails working in a watertight compartment based on time.[8] Total time limit entailed under the Code is 180 days, which could be further extended to 270 days, but not thereafter. Supreme Court though, in many cases, has deemed fit to exclude the time spent in litigation[9] for the purposes of the calculation of the time period under the resolution process.

Now it is worthwhile to mention that once the CIRP is triggered, moratorium[10] kicks in, which is applicable only in regard to the corporate debtor for any sort of recovery action against it[11] since an 'interim resolution professional' is appointed, who in turn constitutes a CoC.[12] The CoC consists of only the financial creditors who have voting rights. The representative of the operational creditors, only in cases with more than 10 per cent of total debt, is permitted to attend the CoC's

[4] As per IBC, 2016, §6, the CIRP can be initiated by a financial creditor, an operational creditor or the corporate debtor, in respect of the default caused by the corporate debtor.

[5] IBC, 2016, §7 covers CIRP by the financial creditor against the corporate debtor before the adjudicating authority in case of a default.

[6] IBC, 2016, §9 covers initiation of CIRP by the operational creditor against the corporate debtor.

[7] IBC, 2016, §10 describes the procedure to initiate CIRP by the corporate debtor itself.

[8] IBC, 2016, §12 provides the time frame within which there is a mandate of completion of CIRP.

[9] Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors, (2018) 13 SCALE 381 (India).

[10] IBC, 2016, §13(1) provides the procedure for the declaration of moratorium, issuance of a public announcement for initiating CIRP and calling for the submission of claims, and appointing an interim resolution professional by the order of the adjudication authority after admitting applications under §§7, 9 or 10.

[11] In Rajendra K. Bhuta v. Maharashtra Housing and Area Development Authority (MHADA), (2019) NCL-AT (Insolvency) No. 119 of 2018 (India), it was held that the MHADA had given the land to the builder (the corporate debtor) only for the purposes of development and it cannot be considered as formally transferred to him, hence, such land could not be treated as the asset of the builder to be covered by the moratorium on admission of its CIRP.

[12] CoC is constituted by the Interim Resolution Professional (IRP) under IBC, 2016, §18(c). Under the IBC, 2016, §18(d) the CoC is supposed to appoint the 'Resolution Professional' and until his appointment, the CoC is 'to monitor and manage the assets of the corporate debtor'.

meeting; however, he has no voting rights. Further, erstwhile management of the company is also permitted as a participant without any voting rights. This is evident from the conjoint reading of §21 with §24 of the IBC.[13] Thereafter, within this period of 180 days, which can be extendable to further 270 days, a 'resolution plan' has to be formulated. For the purpose of the formulation of a resolution plan, there is an 'information memorandum', which is prepared in terms of §29 of the IBC. It is the duty of the insolvency resolution professional (IRP)[14] to invite expression of interest (EOI) on the basis of the criteria laid down by him with the prior approval of the CoC from the interested and eligible prospective resolution applicants not beyond the 75th day from the commencement date of the insolvency. Recently, the Supreme Court considered insolvency professionals (IPs)/ IRPs and CoC as institutions of utmost importance,[15] and the Insolvency and Bankruptcy Board of India (IBBI) also recently notified that IPs/IRPs and CoC are institutions of public faith and they are the officers of the Court.[16]

## Resolution Plan (RP)

The Insolvency Resolution Plan is a document which decides the fate of the corporate debtor. It is the mandate of the insolvency resolution plan to provide viable measures to resolve the insolvency, by maximisation of the value of the assets of the corporate debtor, and therefore §37 of the IBC, 2016 has provided the list of measures to be followed by the IRP. The insolvency resolution plan must ensure for the transfer or sale of the assets of the corporate debtor, subject to security interest, cancellation or delisting of shares or acquisition of substantial shares of the corporate debtor, merger or consolidation of his shares with others, etc.[17] Lenders, many a time, take help from the 'Techno-Economic Viability Study' (TEVS), so as to assess the technical and economic feasibility of the resolution plan. This comprehensive report consists of all the risks attached with the resolution plan, along with the details of land, plant and machinery. The technical viability in effect implies the analysis of the technical soundness of the project

[13] IBC, 2016, §21 provides the mechanism for the appointment and working of the CoC, which clearly states that the CoC should comprise of all the financial creditors of the corporate debtor. IBC, 2016, §24, discusses the mode of working of the CoC, such as, how the meetings should be conducted by the CoC. This means that §21 and §24 of the Code have drawn a clear distinction between the constitution of the CoC and the meetings of the CoC.

[14] IBC, 2016, §25(2)(h); Reg. 36A(1)-(3), Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Gazette of India, pt. III sec. 4 (Nov. 30, 2016) [hereinafter 'IBBI (IRPCP) Regulations, 2016'].

[15] K. Sashidhar v. Indian Overseas Bank, (2019) SCC Online SC 257 (India).

[16] IBC, 2016—In Aid of Insolvency Professionals and Committee of Creditors involved in the CIRP (1 March 2019) (codified at Circular No. Facilitation/002/2019).

[17] IBC, 2016, §37; While discussing the object of the Resolution Plan, the Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353 (India) observed that there is a strong need to balance the liquidation process (often preferred by secured creditors) against preserving the business of the corporate debtor through reorganisation.

of the corporate debtor. Economic viability, on the other hand, is the strength of the soundness of the party, who is willing to give a resolution plan for the purpose of the acquisition. To explain it better, suppose the corporate debtor running the business of videotapes in 2019 (in the age of pen drives) becomes insolvent. The hit business of videotapes of the 1980s has seen its low, and later the business of videotapes goes for insolvency. Technically, the viability of the entity to be revived is very low because of its obsolete plant and machinery, which is feasible only to produce videotapes and has no market in 2019. In such cases, it is necessary to both technically and economically change the nature of the business altogether for the purposes of its revivability. The resolution plan in this case, therefore, will change the business line itself, which is also termed as a 'technological upgrade'. TEVS, therefore, plays a pivotal role in the revival of the insolvent entities.[18] The importance of TEVS was also recognised by the Supreme Court[19] when it observed, during the insolvency proceedings, that TEVS submitted by M/s. Atlas Financial Research & Consulting Private Limited for corporate debtor Kamineni Steel & Power India Pvt. Ltd. (KS&PIPL) was supportive of the plan and had observed the plan as technically feasible and economically viable. TEVS in its fact-finding investigated that the corporate debtor had faced the financial crisis because operations in the working loan account were unilaterally stopped abruptly. Thus, TEVS can be considered as one of the most important reports, helpful to the IRP for appropriately deciding resolution plans, as resolution plans have wide implications.

## Implications of Resolution Plans

The first step towards making of the 'resolution plan' under the CIRP is defined in §24(3) of the IBC, according to which the resolution professional has to give notice of each meeting of the CoC to the members of the suspended board of directors, and as per Regulation 20,[20] the notice of these meetings shall not only contain an agenda of the meeting but also contain all the documents relevant to the matter to be discussed and issues to be voted upon at the meeting, which in effect means that the erstwhile management of the companies can have access to the resolution plans and other relevant documents under consideration at these meetings and they must be necessarily supplied to them. However, in practice, the so-called secrecy was being maintained by the resolution professionals by

[18] In M/s Innoventive Industries Ltd v. ICICI Bank, (2017) 11 SCALE 4 (India), a Corporate Debt Restructuring (CDR) Empowered Group admitted the CDR report submitted by the appellant along with TEVS conducted by the lenders. Similarly, in K. Sashidhar v. Indian Overseas Bank, (2019) SCC Online SC 257 (India), SBI Capital Markets Ltd was appointed by the CoC to submit a TEVS, which was reviewed along with the resolution plan of the corporate debtor by them. This clearly proves the importance TEVS holds in revival plans.

[19] K. Sashidhar v. Indian Overseas Bank, (2019) SCC Online SC 257 (India).

[20] IBBI (IRPCP) Regulations, 2016, *supra* note 14.

not providing 'resolution plans' to the erstwhile management of the companies. In fact, once the 'resolution plan' is approved by the CoC, it is binding on the corporate debtor together with the guarantors and the stakeholders.[21] This being the case, the erstwhile board of directors, which consists of persons who may have given personal guarantees for the debt owed to the corporate debtor are bound by the resolution plans, and thus they have a vital stake in what ultimately gets approved by the CoC. This issue also had significance in the view of the fact that under §60(5) of the IBC, such persons have a right to challenge the terms of a proposed resolution plan before the Tribunal, which may go further against the adjudicating authority's order to the Appellate Tribunal. This also means that resolution plans have widest possible implications on the personal guarantors of the corporate debtors also. It is necessary to know that for the purposes of the formulation of the aforesaid 'resolution plan', there is a requirement of an information memorandum.

## Information Memorandum

Information memorandum means a memorandum prepared by the 'resolution professional' under §29(1) of IBC[22] in such form and manner containing such relevant information as may be specified by the IBBI for the purpose of formulation of a resolution plan. In generality, the relevant information means the information required by the resolution applicant to propose a resolution plan for the corporate debtor, which will include the financial position of the corporate debtor, all information relating to dispute by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

## Implications of Information Memorandum

On the basis of the information memorandum so provided in terms of §29, the resolution applicant, namely the people who are interested in submitting their resolution plans for the revival of a company, have to submit a resolution plan to the resolution professional, which is based principally on the basis of information memorandum. The resolution plans so submitted have to be considered by the CoC and the CoC may approve a resolution plan by a vote of not less than 66 per cent of voting share of the financial creditors as per the scheme specified. On the basis of resolution plans so approved, it is forwarded to the National Company Law Tribunal (NCLT), in its capacity as the adjudicating authority, which shall consider as to whether the insolvency resolution plan deals with the feasibility and viability. On the basis of the provisions contained in the resolution plan, if it is found to be legally tenable, the NCLT shall approve the resolution plan.

[21] IBC, 2016, §31(1).

[22] IBC, 2016, §5(10) deals with the information memorandum.

## Problems with Non-participation of Erstwhile Management of Directors in CIRP

One of the key issues in this whole process of CIRP, beginning from the admission of the insolvency petition, is the taking over of the management and control by the IRP and suspension of the board of directors of the company. Once the board of directors stands suspended, the issue which surfaced in many matters was the role of the board of directors and, especially, their 'say' in respect of the resolution plans.

The suspended board of directors being responsible for the running of the corporate entity had been pleading that they ought not to be ousted from the entire scheme of resolution process as they may significantly contribute with their know-how about the company. Moreover, they were vitally interested in the value at which a resolution plan is drawn, being the stakeholders and, especially, where they are also the guarantors. In such circumstances, if the documents pertaining to the company's revival—that is, the resolution plans—are kept secret, while they are given merely participatory rights—to be present when required or called for—in the CoC meeting, it would defeat the scope and object sought to be achieved under the Code.

It leads to a situation of an anomaly for the very purpose that there will be no meaningful input being provided by the erstwhile board of directors on the resolution plans in the absence of copies of resolution plans and relevant documents. The erstwhile board of directors may have a significant role to play in respect of the resolution plan for the very reason that they know the exact tangible and intangible value of the assets and, not only that, they are always interested in the maximisation of the value of the assets of the company, which in turn is the ultimate objective of the IBC. Further, if a resolution plan is drawn wherein the guarantees of the guarantors are not absolved, in that particular circumstances, they will have to face the recovery of debts in their capacity as guarantors for the balance amounts which could not be realised while the debts of the company were being resolved in a timely manner under the IBC. The aforesaid issues and contentions were tackled by the Supreme Court recently in *Vijay Kumar Jain* v. *Standard Chartered Bank & Ors*,[23] where the Court in detail discussed the provisions of the IBC along with various regulations passed by the IBBI from time to time such as the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.[24]

After considering the statutory scheme of the IBC, the Court had noted that a CoC—which is constituted under §21—consists only of all the financial creditors of the corporate debtor. However, under §24, all the meetings of this CoC are to be conducted by resolution professional, who, however, does not happen to be a

[23] Vijay Kumar Jain v. Standard Chartered Bank, Civ. A. No. 8430/2018 (S.C. 31 January 2019).

[24] *Id.* (the Supreme Court discussed various regulations in detail, such as Reg. 2(1)(d) dealing with the definition of 'committee', Reg. 2(1)(l) regarding the participants meeting under Reg. 24, Reg. 19 dealing with the notice for the CoC, Reg. 21 pertaining to the contents of notice of the meeting, Reg. 24 regarding the conduct of meeting, Reg. 35 regarding the fair value and liquidation value, Reg. 36 regarding the information memorandum, Reg. 37 regarding the formulation of the resolution plans, Reg. 38 regarding the mandatory contents of the resolution plan and Reg. 39 regarding the approval of the resolution plan of the IBBI (IRPCP) Regulations, 2016).

part of the said committee. It was further noticed by the Court that under §24(3)(b), the resolution professional has to give notice of each and every meeting of the CoC inter alia to the members of suspended board of directors and operational creditors, who may attend and participate in such meetings, provided the aggregate debt owed to them is not less than 10 per cent of the total debt. But such operational creditors and members of erstwhile board of directors have no right to vote. The Court also noted the interpretation of §25(2)(f) and (i) that once a resolution professional convenes a meeting of all CoC, he is to present all the resolution plans in such a meeting, and under §30, the resolution professional has to examine each resolution plan received by him in which he must confirm inter alia that such plan provides for repayment of debt of the operational creditors, which shall not be less than the amount to be paid to them in the event of liquidation of corporate debtor. It was also noticed that the adjudicating authority if satisfied that the resolution plan is in consonance with the provisions of the Code, it will approve the same.[25]

The Supreme Court further noticed that though the members of the erstwhile board of directors are not members of the CoC, yet they have to be given a right of participation in each and every meeting held by the CoC, and they have the right to discuss all the resolution plans that are presented at such meetings with the members of the CoC.[26] The Court after discussing the importance of 'information memorandum' and the effects of 'Resolution Plan' on the maximisation of the value of the assets of the company had held that the operational creditors as well as the board of directors have to be necessarily provided with the copies of the resolution plan before such meetings are held so that they may effectively comment on the same to safeguard their interests.[27] The Court has based its genesis on the ground that the people who are vitally interested in a resolution plan and are bound by the same have to be provided with a copy of the resolution plan so that they are in a position to act effectively. In this regard, they have also laid emphasis on the fact that a guarantor who may be a member of the erstwhile board of directors of the company necessarily needs a resolution plan because any resolution plan will impact the right of a guarantor. The resolution plan has to be approved or rejected by an order of the adjudicating authority and has to be thus sent to the participants, which would include the members of erstwhile board of directors.[28] In this regard, the Supreme Court was of the view that every participant is entitled to the notice of the meeting of CoC and such notice of the meeting must contain an agenda of meeting along with all relevant documents, which are to be voted

[25] *Supra* note 23, at 29.

[26] IBC, 2016, §25(2)(j).

[27] Even otherwise, as per IBC, 2016, §29(2), confidentiality has to be maintained against the third parties and the resolution applicants; whereas, the suspended board of directors are very much integral to the CIRP and not external third parties. In fact, the IBC, 2016 does not provide for any secrecy from the stakeholders and/or suspended erstwhile board of directors. It is always essential to have a transparent conduct. As per the erstwhile SICA, 1985, §18(3), the mandate was to publish the Plans (Draft Rehabilitation Schemes) widely for the information of all affected parties.

[28] IBBI (IRPCP) Regulations, 2016, *supra* note 14, at Reg. 39(5).

upon at the meeting.[29] Obviously, resolution plans are matters to be discussed at such meeting and the erstwhile board of directors are participants who will discuss these issues, and the expression 'document' is wide information and necessarily includes the resolution plans.[30] Further, the Court has also gone to the extent of holding that the combined reading of the Insolvency Code as well as the Regulations leads to a conclusion that a member of the erstwhile board of directors being vitally interested in resolution plans, that may be discussed at the CoC, must be given such a plan as part of documents that have to be furnished along with the notice and as a result thereto the participants cannot be left out from considering the resolution plans.[31] The true intent of the Insolvency Code can be gathered by reading the plain language of the provisions entailed therein. So, as far as the confidential information is concerned, an undertaking may be taken from the members of the erstwhile board of directors in order to maintain confidentiality. However, this does not imply that the documents are not to be provided.[32] The Supreme Court in this regard has also laid emphasis on the Bankruptcy Law Reforms Committee Report of November 2015 which deals with the enabling symmetry of information between creditors and debtors, and observed that it discusses that

> [T]he law must ensure that information that is essential for the insolvency and the bankruptcy resolution process, is created and made available when it is required. The law must ensure that access to this information is made available to all creditors to the enterprise, either directly or through the regulated professional. The law must enable access to this information to third parties who can participate in the resolution process, through the resolution professional.[33]

After discussing the provisions of the IBC in detail, the Supreme Court came to the conclusion that the law must enable access of information to third parties who can participate in the resolution process through the resolution professional and has accordingly come to a decisive finding that as far as the meeting of the CoC is concerned, in which the board of directors have to be duly represented, they have to be provided with all the required information which are to be deliberated upon. In short, in view of this particular judgement, the provisions of the law are further clarified and in effect it gives more clarity and transparency to the provisions

[29] *Id.* at Reg. 21(3)(2).

[30] In fact, in M/s Rajputana Properties Pvt. Ltd v. Ultra Tech Cement Ltd. & Others, (2018) NCL-AT I.A. No. 594 of 2018 (India) and ANG Industries v. Shah Brothers Ispat Pvt. Ltd, (2018) NCL-AT Com. App. No. 109 of 2018,13–17 (India), the National Company Law Appellate Tribunal (NCLAT) observed that the persons such as the erstwhile board of directors or their partners, operational creditors or their representatives and resolution applicants are not only spectators to watch the proceedings but also may express to the CoC their views on the resolution plan, helping them in coming to a conclusion, one way or the other.

[31] *Supra* note 23.

[32] *See id.* at 30.

[33] The Report of the Bankruptcy Law Reforms Committee Vol. I, at 3.4.2, 5–7 (4 November 2015) https://ibbi.gov.in/BLRCReportVol1_04112015.pdf accessed 7 May 2019.

of Insolvency Code wherein the documents which are vital for the actual and effectual revival of any company have to be duly brought to the notice of the erstwhile directors and other participants in order to put forth their stand. The transparency is essential also from the perspective of the fundamental rights which entail that nobody can be condemned unheard.

Such a decision of the Supreme Court is extremely significant in view of the fact that it is the board of directors of a company who can actually provide deeper insight into the resolution plans and can actually help in the resolution of debts and the true revival by giving the actual value of assets. If any plan is being submitted or being pushed, which lacks the revival in true sense or which does not get true value of the assets of the company, then in that case they may give material input, which will be beneficial not only in terms of the provisions of the Insolvency Code but also for the proper revival of the distressed entity and rightful payment of dues of all the creditors.

## Conclusion

The daunting task of putting corporate insolvency into the single Code was well taken by the IBC. However, various teething problems have been witnessed, which affect the rights of the corporate debtors, and the core issue amongst them was not having access to the resolution plans. The secrecy maintained in this regard was uncalled for; rather, this type of secrecy was contrary to the scope, intent and purpose of the Code. The purpose of the insolvency resolution professional is to appropriate maximum value of the assets of the corporate debtor. Supreme Court in the matter of *Vijay Kumar Jain*[34] has looked into the provisions of IBC along with other regulations with the ultimate objective of the maximisation of the value of the assets of the company and to prevent the secrecy which has been brought into the CIRP. The said secrecy is absolutely unheard of, as compared to the earlier regimes. Schemes were sanctioned under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 wherein the Draft Rehabilitation Scheme for the revival of any entity was kept open and widely published in terms of §18(3) of Sick Industrial Companies (Special Provision) Act, 1985. The companies and the creditors were given an opportunity to put forth their comments and objections to the 'insolvency resolution professional' in order to ensure that the resolution or revival takes place in a more transparent manner wherein the rights of the people were not scuttled without hearing them.

The judgement passed in the matter of *Vijay Kumar Jain*[35] has provided a new dimension to the law of insolvency in India by settling the issue that it is a must for the resolution professional to provide copies of the insolvency resolution professional submitted by various parties to the erstwhile management, so that by accessing all the documents, they shall be able to provide better insight

[34] *Supra* note 23.
[35] *Id.*

and view on the formulation of a resolution plan, which certainly will help in the maximisation of the value of the assets of the corporate debtor, as entailed under the provisions of the IBC.

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