



INSOLVENCY & BANKRUPTCY

Analysis of the Jet Airways Insolvency Case and the Shortcomings of the IBC, 2016

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The Jet Airways (India) Limited insolvency case has garnered significant attention as it highlights critical aspects of the [Insolvency and Bankruptcy Code \(IBC\)](#), 2016, and the challenges associated with corporate resolution processes in India. This article delves into the factual matrix, issue-wise analysis, shortcomings of the IBC, and the concluding observations from the court.

Factual Matrix

The recent legal deliberations stemmed from a judgment by the National Company Law Appellate Tribunal (NCLAT) concerning Jet Airways' corporate insolvency resolution process (CIRP), initiated in June 2019. The State Bank of India (SBI) led the charge, filing an application under the IBC with total claims exceeding ₹7,800 Crore from various financial creditors.

An approved resolution plan presented by a consortium was favoured overwhelmingly by the Committee of Creditors (CoC), receiving a staggering 99.22% majority approval. This plan included a Performance Bank Guarantee (PBG) of ₹150 Crore and demanded an upfront payment of ₹350 Crore within 180 days of the "Effective Date," set for May 20, 2022. However, disputes arose regarding the adjustments of the PBG against initial payments and the conditions precedent that needed to be fulfilled, leading to a series of appeals and legal scrutiny.

Issue-wise Analysis

- Adjustment of Performance Bank Guarantee (PBG):** The court ruled that invoking the PBG against the initial tranche payment was not permissible under the resolution plan's terms and relevant regulations. The PBG was intended to ensure compliance with the plan, affirming the legitimacy of its invocation due to the Strategic Resolution Applicant's (SRA) failure to meet payment obligations.
- Non-implementation of the Resolution Plan:** Attention was directed towards whether the failure of the SRA to carry out the resolution plan warranted a shift to liquidation under Section 33(3) of the IBC. The court concluded that non-payment of crucial dues—like airport and employee payments—signified a failure of the resolution initiative, justifying the path to liquidation.
- Timely Implementation:** The tribunal emphasized that swift implementation of the resolution plan is paramount within the IBC's framework. Delays not only risk asset depreciation but also undermine the resolution process, making strict adherence to timelines essential.

Shortcomings and Suggestions for the IBC, 2016

The Jet Airways judgment shone a light on several shortcomings within the IBC, alongside proposed enhancements:

- Strengthening the Ecosystem:** It is vital to continually identify and rectify limitations in the IBC to ensure favourable outcomes for all stakeholders involved in the insolvency process.
- Adherence to Provisions:** Key participants—including adjudicating authorities and resolution professionals—must rigorously follow IBC provisions to uphold its integrity and effectiveness.
- Commercial Wisdom of CoC:** The commercial decisions made by the CoC should remain non-justiciable to ensure efficiency and promptness in resolution processes.
- Monitoring Committee:** The establishment of a statutory Monitoring Committee was suggested to oversee resolution plan implementations, ensuring compliance and accountability.
- Timely Adjudication:** Timeliness in admitting and disposing of applications related to CIRP is critical to mitigate value erosion of corporate entities.
- Infrastructure and Capacity Issues:** Adequate infrastructure and expanded member capacity in the NCLT and NCLAT are necessary to handle cases efficiently, facilitating smoother resolutions.

Conclusion

The court's ultimate verdict deemed the NCLAT's earlier order as unsustainable, leading to complications in Jet Airways' resolution trajectory. Given the significant delays and a lack of resolution plan implementation, the court utilized its jurisdiction under Article 142 of the Constitution to mandate the company's liquidation. The previously infused ₹200 Crore by the SRA was forfeited, and lenders were permitted to encash the ₹150 Crore PBG.

This ruling highlights the necessity for timely resolution and strict adherence to the objectives of the IBC. Furthermore, the court urged the government to deliberate on the suggested improvements to bolster the insolvency framework, ensuring it can effectively handle complex cases like Jet Airways and safeguard the interests of all stakeholders. The Jet Airways case serves as a critical reminder of both the challenges and the imperative reforms needed within India's insolvency ecosystem.