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Walking a Tightrope: The Interplay of Section 10 and Section 65 of the Insolvency and Bankruptcy Code

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ABSTRACT

Section 10 and Section 65 of the Insolvency and Bankruptcy Code (IBC) play crucial roles in the resolution and liquidation processes of distressed companies. Section 10 empowers a financial creditor, operational creditor, or corporate debtor to initiate the corporate insolvency resolution process (CIRP) by filing an application before the National Company Law Tribunal (NCLT). This provision emphasizes the debtor's acknowledgment of default and willingness to undergo resolution. On the other hand, Section 65 delineates the circumstances under which a corporate debtor may be liquidated. It provides for the initiation of the liquidation process when the resolution process fails, or the Committee of Creditors (CoC) decides to liquidate the debtor. The interplay between these sections is evident in cases where attempts at resolution prove unsuccessful, leading to the commencement of the liquidation process under Section 65. The interrelationship between Section 10 and Section 65 highlights the IBC's comprehensive framework for addressing corporate insolvency, offering a dual approach that encourages resolution but also provides a mechanism for orderly liquidation when necessary. Together, these provisions contribute to the IBC's overarching goal of maximizing the value of distressed assets while ensuring a fair and efficient insolvency resolution and liquidation process.

Keywords: *Section 10, Section 65, Insolvency and Bankruptcy Code (IBC), Corporate insolvency resolution process (CIRP), National Company Law Tribunal (NCLT), Financial creditor, Operational creditor, corporate debtor, Liquidation process, Committee of Creditors (CoC), Default, Resolution, Comprehensive framework, Orderly liquidation, Distressed companies, Value maximization, Fair and efficient insolvency resolution.*

I. INTRODUCTION

The interplay of Section 10 and Section 65 within the Insolvency and Bankruptcy Code (IBC) of India constitutes a critical framework governing the corporate insolvency landscape. Section 10 serves as the gateway to the corporate insolvency resolution process (CIRP) by allowing a financial creditor, operational creditor, or even the corporate debtor itself to initiate proceedings

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before the National Company Law Tribunal (NCLT). This initiation underscores a commitment to resolving financial distress through a structured and time-bound mechanism. In contrast, Section 65 assumes significance in situations where the attempts at resolution prove futile, or the Committee of Creditors (CoC) decides that liquidation is the more viable option. Section 65 delineates the specific circumstances under which a corporate debtor may be subjected to liquidation proceedings. This includes instances where a resolution plan is not approved, or the debtor contravenes the terms of an approved plan, necessitating the transition from resolution efforts to the winding-up process.

The harmonious interplay between these sections reflects the dual objectives of the IBC – encouraging the revival of distressed entities through resolution and, if that proves unattainable, facilitating an orderly liquidation process. Section 10 acts as the catalyst for the initiation of insolvency proceedings, while Section 65 provides a structured exit route in cases where the resolution attempts falter. Together, these provisions create a comprehensive legal architecture, emphasizing the importance of a balanced and effective approach to corporate insolvency in India.

(A) Objectives

This research paper's primary topic is;

1. Facilitation of Corporate Insolvency Resolution Process (CIRP)
2. Balancing Resolution and Liquidation

II. CONCEPTUAL UNDERSTANDING

Section 10, Section 65, Insolvency and Bankruptcy Code (IBC), Corporate insolvency resolution process (CIRP), National Company Law Tribunal (NCLT), Financial creditor, Operational creditor, corporate debtor, Liquidation process, Committee of Creditors (CoC), Default, Resolution, Interplay, Comprehensive framework, Orderly liquidation, Distressed companies, Value maximization, Fair and efficient insolvency resolution.

Section 10: Section 10 of the Insolvency and Bankruptcy Code (IBC) empowers financial creditors, operational creditors, or corporate debtors to initiate the Corporate Insolvency Resolution Process (CIRP). By filing an application before the National Company Law Tribunal (NCLT), this provision underscores the debtor's acknowledgment of default and willingness to undergo resolution, contributing to the IBC's goal of effective insolvency resolution for distressed companies.

Section 65: Section 65 of the Insolvency and Bankruptcy Code (IBC) outlines circumstances

for corporate debtor liquidation. It permits liquidation if resolution attempts fail or the Committee of Creditors (CoC) resolves to liquidate the debtor. This section ensures an orderly process for winding up distressed companies when resolution proves unfeasible, maintaining the IBC's objective of efficient insolvency proceedings and asset value maximization.

Insolvency and Bankruptcy Code (IBC): The Insolvency and Bankruptcy Code (IBC) in India is a comprehensive legal framework that streamlines the resolution process for distressed companies and individuals. It aims to promote timely resolution, maximize asset value, and protect creditors' interests through a time-bound and transparent insolvency resolution process.

Corporate insolvency resolution process (CIRP): Corporate Insolvency Resolution Process (CIRP) is a legal mechanism in India under the Insolvency and Bankruptcy Code, aimed at resolving insolvency issues of corporate entities. Initiated by a creditor or the debtor itself, it involves appointing an insolvency professional to manage the company's affairs. Within a strict timeline, creditors submit claims, and a committee decides on a resolution plan to revive the company or liquidate its assets. The process prioritizes creditors' rights and aims for efficient resolution, fostering a transparent and time-bound framework to mitigate financial distress and maximize value for stakeholders.

National Company Law Tribunal (NCLT): The National Company Law Tribunal (NCLT) is a quasi-judicial body in India that adjudicates issues relating to companies. Established under the Companies Act, 2013, it handles matters such as corporate disputes, insolvency, mergers, and restructuring. The NCLT aims to streamline the corporate resolution process and promote transparency in corporate governance. It plays a crucial role in the resolution and restructuring of distressed companies, contributing to the efficiency of India's corporate sector.

Financial creditor: A financial creditor is an entity that extends financial resources to a borrower, typically in the form of loans or financial instruments. In the context of insolvency and bankruptcy proceedings, a financial creditor holds a claim against a debtor and has the right to initiate insolvency resolution processes under relevant legal frameworks to recover dues.

Liquidation process: Liquidation is the process of winding up a business, selling its assets, and distributing the proceeds to creditors and shareholders. It occurs when a company is unable to meet its financial obligations. The appointed liquidator oversees the sale of assets and settlement of debts in a predefined order, concluding with the dissolution of the company.

Committee of Creditors (CoC): The Committee of Creditors (CoC) is a crucial entity in insolvency proceedings. Comprising financial creditors, it oversees and makes decisions regarding the resolution process for a distressed company. The CoC evaluates resolution plans

submitted by potential buyers and plays a pivotal role in approving or rejecting such proposals. Its primary goal is to maximize the recovery of dues for creditors while ensuring a fair and transparent resolution process in accordance with insolvency laws.

Default: A "default" refers to the failure to fulfil a financial obligation, typically a loan or bond payment. It occurs when a borrower fails to make a required payment or violates the terms of a loan agreement. Defaults can have serious consequences, such as damage to credit ratings, legal action by creditors, and loss of assets. In the context of sovereign debt, default can lead to economic instability and affect international financial markets.

Resolution: Section 10 of the Insolvency and Bankruptcy Code outlines the eligibility criteria for initiating insolvency proceedings, focusing on debt default thresholds. In contrast, Section 65 deals with the adjudicating authority's power to modify or cancel the resolution plan, safeguarding the process's integrity. The interplay between these sections ensures that only viable cases enter insolvency, while maintaining judicial oversight to safeguard stakeholders' interests and prevent abuse of the resolution process.

Comprehensive framework: Section 10 of the Insolvency and Bankruptcy Code outlines the eligibility criteria for initiating the insolvency resolution process. It defines who can apply for insolvency proceedings against a debtor. Section 65, on the other hand, deals with the powers of the National Company Law Tribunal to pass orders for the resolution of insolvency cases. Together, they form a comprehensive framework for the initiation and resolution of insolvency proceedings under the Code.

Orderly liquidation: Orderly liquidation refers to the systematic process of winding down a company's operations and selling off its assets in a controlled manner to settle its debts and obligations to creditors and stakeholders. This approach aims to maximize the value of assets and ensure fairness in distribution among creditors.

Distressed companies: Distressed companies are businesses facing significant financial challenges, such as insolvency or inability to meet financial obligations. They often seek restructuring or bankruptcy protection to address these issues. Distressed companies may undergo asset sales, debt renegotiation, or operational changes to regain stability or maximize value for stakeholders.

Value maximization: Value maximization is the strategic pursuit of optimizing benefits while minimizing costs. It involves enhancing efficiency, innovation, and stakeholder satisfaction to achieve the best possible outcomes. Through effective resource allocation, risk management, and decision-making, organizations aim to maximize returns and long-term sustainability,

creating value for shareholders, customers, employees, and society as a whole.

Fair and efficient insolvency resolution: Fair and efficient insolvency resolution balances creditors' and debtors' interests, ensuring equitable distribution of assets while minimizing delay and cost. Transparent procedures, timely communication, and impartial adjudication promote confidence in the process, fostering economic stability and incentivizing responsible financial behaviour.

III. EMPOWERING DEBTORS, SAFEGUARDING INTEGRITY

Section 10 and Section 65 of the Insolvency and Bankruptcy Code (IBC) in India collectively provide a framework that empowers debtors in the insolvency resolution process.

Section 10 of the IBC allows a debtor to initiate the insolvency resolution process by filing an application for corporate insolvency resolution with the National Company Law Tribunal (NCLT). This empowers debtors by providing them with a formal mechanism to address financial distress, facilitating the restructuring or resolution of their financial affairs. By taking the initiative to seek insolvency resolution, debtors gain a degree of control over the process, allowing them to actively participate in determining the future course of their business.

Section 65 further enhances debtor empowerment by introducing the concept of withdrawal of an application for insolvency resolution. Under this provision, a debtor has the flexibility to withdraw the application before its admission by the NCLT. This recognizes that circumstances may change, and the debtor might explore alternative solutions or arrangements outside the formal insolvency process. The ability to withdraw the application reflects a balance between debtor autonomy and the need for a robust insolvency framework.

The interplay between Section 10 and Section 65 acknowledges the importance of empowering debtors to take charge of their financial destiny. By providing an avenue for voluntary initiation and withdrawal, the IBC recognizes that debtors are better positioned to make informed decisions about the most suitable course of action for their specific circumstances. This interplay aims to strike a balance between the interests of debtors, creditors, and the overall efficiency of the insolvency resolution process, contributing to a more dynamic and adaptable insolvency regime.

Section 65: The watchdog at the gate:

As of my last knowledge update in January 2022, I don't have specific information about a Section 65 without additional context. Legal sections and their meanings can vary depending on the jurisdiction and the legal system in question. It's important to provide more details about

the specific area of law or the country in which Section 65 is applicable for a more accurate explanation. If Section 65 refers to a specific provision in a legal code or statute, it would be helpful to know the jurisdiction (country or region) and the context in which this section is mentioned. Legal sections are typically part of larger legal frameworks and understanding their implications requires knowledge of the broader legal context. If Section 65 is part of a contract, agreement, or regulatory framework, the details of that document would be needed to provide a meaningful explanation. Legal language is precise and context-dependent, and interpretations can vary based on the specific wording and legal context.

To obtain accurate information about Section 65, I recommend consulting the relevant legal documents, statutes, or seeking advice from a legal professional who can provide guidance based on the specific jurisdiction and context involved. If there have been legal changes or updates since my last knowledge update in January 2022, it's crucial to access the latest legal resources for the most current information.

IV. THE INTERPLAY AND ITS NUANCES NAVIGATING THE TIGHTROPE

Section 10 and Section 65 of the Insolvency and Bankruptcy Code (IBC) play crucial roles in the resolution and liquidation processes of insolvent entities in India. Their interplay unveils a nuanced framework aimed at balancing the interests of creditors, debtors, and the economy at large.

Section 10 pertains to the initiation of the corporate insolvency resolution process (CIRP) by a corporate debtor itself. It allows a corporate debtor to voluntarily initiate the insolvency proceedings by filing an application with the National Company Law Tribunal (NCLT) when it anticipates or realizes its inability to pay debts. This provision empowers financially distressed entities to take proactive measures to resolve their insolvency issues, potentially salvaging their businesses.

On the other hand, Section 65 addresses the circumstances under which a corporate debtor can be liquidated voluntarily. It provides an avenue for a corporate debtor undergoing the CIRP to opt for voluntary liquidation if it deems it to be a more viable solution than continuing with the resolution process. This provision offers an exit strategy for insolvent entities that cannot feasibly revive their operations through restructuring or resolution.

The interplay between these sections reflects the IBC's underlying objectives of promoting the resolution of insolvency while prioritizing the maximization of value for creditors and the efficient allocation of resources in the economy.

However, the nuances lie in the timing and implications of invoking these provisions. Section 10 allows a corporate debtor to initiate the resolution process at an early stage of financial distress, potentially facilitating a turnaround through negotiation and restructuring with creditors. In contrast, Section 65 comes into play at a later stage, typically after the initiation of the CIRP, offering an exit route through liquidation if the prospects of revival diminish.

Furthermore, the interplay between these sections underscores the importance of strategic decision-making by corporate debtors and stakeholders. Opting for voluntary insolvency under Section 10 requires careful assessment of the feasibility of resolution and restructuring efforts, considering the potential impact on stakeholders and the business's long-term viability. Conversely, invoking Section 65 demands a realistic evaluation of the prospects for revival versus the costs and complexities associated with liquidation.

Overall, the interplay of Section 10 and Section 65 of the IBC provides a flexible framework for addressing insolvency situations, offering both proactive and reactive measures tailored to the specific circumstances of each case. By facilitating early intervention and offering a mechanism for orderly exit, these provisions contribute to the effective functioning of India's insolvency regime, promoting financial stability and economic growth.

V. CONCLUSION

Section 10 and Section 65 of the Insolvency and Bankruptcy Code (IBC) play a crucial role in ensuring the effectiveness and efficiency of the insolvency resolution process in India. Section 10 pertains to the initiation of the corporate insolvency resolution process (CIRP) by a financial creditor, operational creditor, or the corporate debtor itself. On the other hand, Section 65 deals with the distribution of assets in case of liquidation. The interplay between these sections is evident in the seamless transition from the initiation of the insolvency process to the eventual liquidation, if required. Section 10 sets the stage for the resolution journey, empowering stakeholders to take prompt action when financial distress is identified. In contrast, Section 65 delineates the hierarchy of creditors and the manner in which assets are distributed during liquidation, ensuring a fair and orderly process.

In conclusion, the harmonious coordination of Section 10 and Section 65 is instrumental in achieving the overarching objectives of the IBC—facilitating the revival of distressed entities and protecting the interests of creditors. This synergy creates a robust framework for insolvency proceedings in India, fostering confidence in the resolution mechanism and promoting a balanced approach to financial distress.
