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ANALYSING THE RIGHTS OF SECURED CREDITORS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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Abstract

Credit is an indispensable factor in an economy. Secured credit is of greater importance since it allows borrowers to obtain credit even if they have a cash flow problem. This flows from the fact that creditors have recourse to the lender's assets in a secured credit transaction, rather than merely relying on the ability of debtor to repay the debt. Taking into account the inherent advantage of rights over the assets of the borrower, which has a substantial impact on the creditor's credit decision, it is crucial to examine how these rights alter when the borrower goes through a corporate restructuring. This paper examines the role of such creditors in proceedings of insolvency and liquidation under India's still-developing Insolvency and Bankruptcy Code 2016. In this context, the author traces secured creditors' rights under the statute at various stages of the proceedings, and assesses evolving case law on issues such as the legitimacy of dissimilar payouts for secured and unsecured creditors, handling of competing security interests, and inter-creditor agreements proceedings of insolvency and liquidation under the Insolvency and Bankruptcy Code.

Keywords: Insolvency, Bankruptcy, Secured Creditor, Liquidation, Resolution.

Introduction

Credit is essential to the modern industrial economy's survival. It is useful for conducting and boosting a business since it allows a corporation to do more business than it could otherwise do with its own cash.[3] Secured credit becomes even more important in this situation. Secured credit is a type of financing in which creditors have recourse to physical assets or assets collateralized in favor of the borrower rather than relying solely on the borrower's ability to generate cash flows. On the other hand, secured credit allows borrowers to lower their credit

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[3] Roy Miles Goode, *Principles of Corporate Insolvency Law*, (Sweet & Maxwell 2011).

costs and ensure the stability of their credit lines.

In India, banks generally issue secured loans to businesses, which are loans secured by collateral provided by the borrower, which can be in different forms. Under India's Transfer of Property Act, 1882, conventional means of establishing collateral include mortgage on the debtor's immovable property, a pledge or hypothecation of the debtor's movable property, as well as actionable claims. Even today, it is typical to find public sector banks that are conservative by nature and only give out secured loans.

While this is true for the banking sector, there also exist various non-bank lenders in the Indian credit market, depending on the borrower's risk profile and the cost of loan that the applicant is ready to bear. There is a multitude of non-bank lenders eager to lend to businesses without the advantage of any collateral pledged by the borrower. Non-Banking Financing Companies (NBFC), Foreign Portfolio Investors (FPI), and various institutional investors are examples of non-bank lenders.

The predominant risk that unsecured creditors suffer is that, in addition to having restricted recourse against the borrower for debt recovery, they are also ranked lower than secured lenders in any payments made from the proceeds of liquidating the borrower company's assets in case of its liquidation. As a result, unsecured credit is costlier than secured credit.

Secured credit also has the advantage of requiring banks to make fewer provisions if it goes bad, which makes it more appealing to the banking industry. While provisions for unsecured debt must be made for the total debt amount in the event of default, provisions in respect of secured debt can be as little as 25% of the debt amount.[4] This frees up more cash for banks to use for advancing more loans and concentrating on their core functions and operations, encouraging credit growth, which is imperative for capital creation.

Because the risk profiles, credit costs, methods of recovery, and rights upon liquidation for these two categories of credit are so dissimilar, it is critical to theoretically establish the difference between secured and unsecured creditor rights.

We have limited our focus in this paper to secured credit in India, with a particular focus on corporate borrowers and secured creditors' rights under Indian insolvency law.

The focus of this article is limited to secured credit in India, with a particular emphasis on corporate borrowers and their secured creditors' rights under the Insolvency and Bankruptcy

[4] Reserve Bank of India, "Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advances", *Available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/101MC16B68A0EDCA9434CBC239741F5267329.PDF (Last visited on October 12, 2023).

Code, 2016.

Rights of Secured Creditors Vis- À-Vis Insolvency Law

Secured creditors' risk appetite is likely to be determined by the value of the security as well as the simplicity with which the security may be enforced in the borrower's jurisdiction, i.e., the capacity to sell and dispose of the secured asset for debt-recovery through court and out-of-court procedures. Furthermore, lenders' legal rights are especially important in the event of a borrower's insolvency because it affects their enforcement rights and likelihood of recovery.

Refusing security enforcement when it is most needed – at the time of the borrower's insolvency by imposing a moratorium or other forms of legal obstructions to security interest enforcement is a common attribute of insolvency laws across jurisdictions. This is because it is becoming increasingly clear that allowing secured creditors to easily isolate their collateral from the rest of the estate's assets will undermine the fundamental goals of insolvencyprocedures.[5]

Allowing secured creditors to detain assets of an insolvent company while its creditors attempt to restructure its debts could result in three possible consequences: (a) inability to determine the value of the assets of the company as the asset pool fluctuates due to secured creditors' enforcement actions; (b) inability to preserve the company as a going concern as vital assets are seized by secured creditors; and (c) given the smaller asset pool, the company may be forced to liquidate due to a lack of prospective bidders.

As a result, the issue for any insolvency law when faced with multiple types of creditors, particularly secured creditors, is to find the right balance between ensuring secured creditor's priority and security without jeopardizing the restructuring process's continuity and efficiency. With the adoption of the Bankruptcy and Bankruptcy Code (IBC) in 2016, India's insolvency and liquidation regime faced a watershed moment. With the goal of creating a time-bound and efficient reorganization framework for insolvent entities, the IBC integrated several laws relating to corporate reorganization and insolvency. Understanding rights of secured creditors under the IBC, as well as the problems they face during insolvency and liquidation processes, is becoming particularly crucial as economies around the world try to recover from the effects of a worldwide pandemic.

Rights of Secured Creditors during Corporate Insolvency Resolution Process

As soon as a borrower is declared insolvent, a moratorium on any legal action against it is enforced. As a result, under any other law, secured creditors cannot exercise their security

[5] International Monetary Fund, "Orderly & Effective Insolvency Procedures", *available at*: https://www.imf.org/external/pubs/ft/orderly/ (Last visited on October 12, 2023).

against the insolvent corporation during CIRP.[6]

During multiple phases of the CIRP, secured and unsecured creditors share nearly analogous rights. This is because, once IBC proceedings against a borrower are initiated, its creditors are divided into two classes:

(a) Financial creditors or creditors who have given loans to the borrower, such as banks and NBFCs, and

(b) Operational creditors, such as service providers and borrower's employees.

At this time, there is no differentiation made between creditors based on security. Secured and unsecured financial creditors, as well as operational creditors, for instance, are both permitted to start insolvency proceedings against a borrower. Additionally, all financial creditors, whether secured or unsecured, are invited to form the Committee of Creditors (CoC). Under the IBC, the CoC is responsible for making important decisions on the borrower's revival and restructuring. The CoC's decisions range from crucial decisions on the corporation's running and operation during the IBC process to selecting a bidder for acquiring the borrower corporation or opting to liquidate it. As part of the CoC, the vote percentage granted to secured and unsecured financial creditors is determined by the amount of debt owed to them. As a result, in the CoC, an unsecured creditor with a greater debt value would have a greater voting percentage than a secured creditor with a smaller debt value.[7]

While the IBC does not explicitly differentiate between secured and unsecured creditors with respect to their rights during CIRP, disparate pay-outs to secured and unsecured creditors under resolution plans became the issue of so much litigation under IBC. Lower court rulings concluded that under resolution agreements, secured and unsecured creditors should be repaid at par. This sparked a controversy. Furthermore, despite the priority of a security interest, some courts decided that all secured creditors should be treated at an equal footing. In 2019, Section 30(4) of the IBC was amended to rectify this erroneous stance.[8] According to this amendment the priority and value of a creditor's security interest may be weighed in the mode of payments under a resolution plan. Later in the paper, the landmark judicial decisions in this matter that finally led to the amendment of Section 30(4) are examined in depth.

Rights of Secured Creditors during Liquidation of the Borrower

The company is placed under liquidation if the borrower's CIRP fails or if the CoC considers

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[6] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s.14.
[7] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s.5 (28).
[8] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 14.

it appropriate with a 66 percent vote. Upon such liquidation, the hierarchy for allocation of proceeds obtained from a sale of the company's assets across creditor categories has been codified in section 53 of the IBC. "Section 53(1) states:

(1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceedsfrom the sale of the liquidation assets shall be distributed in the following orderof priority and within such period and in such manner as may be specified, namely :—*

(a) *the insolvency resolution process costs and the liquidation costs paid in full;*

(b) *the following debts which shall rank equally between and among the following:—*

(i) *workmen's dues for the period of twenty*-four months preceding the *liquidation commencement date; and*

(ii) *debts owed to a secured creditor in the event such secured creditor hasrelinquished security in the manner set out in section 52;*

(c) *wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

(d) *financial debts owed to unsecured creditors;*

(e) *the following dues shall rank equally between and among the following:—*

(i) *any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fundof India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

(ii) *debts owed to a secured creditor for any amount unpaid following theenforcement of security interest;*

(f) *any remaining debts and dues;*

(g) *preference shareholders, if any; and*

(h) *Equity shareholders or partners, as the case may be."*

A secured creditors has two alternatives if the borrower is placed under liquidation:

- Relinquishment of its security to the liquidation estate (the borrower’s asset pool that would be sold for distribution to different stakeholders during liquidation: A secured creditor may opt to relinquish its security to the liquidation estate and the proceeds from its sale are then handed out to the creditors as per the liquidation waterfall underthe IBC.
- Enforcement of its security interest: A secured creditor has the option of enforcing its security interest independently.

Under the liquidation waterfall provided in section 53 of the IBC, a secured creditor that has renounced its security interest in the liquidation estate ranks second, alongside workmen’s dues. If, on the other hand, a secured creditor chose to enforce its security interest but the proceeds are insufficient to cover its debt, it will rank fifth in the liquidation waterfall, alongside government dues, for the unrealized outstanding balance.

For creditors with a first and exclusive charge over a secured asset, the process for enforcinga security interest should be relatively simple. However, there are a few conflicting precedents regarding the procedure to be followed in the event that multiple creditors who have a charge on the same asset choose to recover their security interest during liquidation. The NCLAT decided in the liquidation of Reid and Taylor (India) Ltd that if many creditors choose to pursue their security interests on the same asset, the liquidator must determine the assets first charge holder and disburse the funds in order of charge priority.[9] Hence, in such instances, the first charge holder would be given priority.

The NCLAT used a SARFAESI principle in another ruling in the liquidation of Surana Ltd. to address another instance where many creditors held security over the same collateral.[10] While the majority of creditors chose to relinquish their security interests in the common charged property to the liquidation estate, one of them chose to realise its security interest in such property on its own. The NCLAT ruled that in such a circumstance, the SARFAESI principle, which requires permission from creditors holding at least of 60% of the borrower’stotal debt before the secured asset can be realised, must be followed. The NCLAT decided that the common security would stand relinquished to the liquidation estate because the dissenting creditor that wanted to realise its security interest did not control 60 percent of theentire debt in this case.

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[9] JM Financial Asset Reconstruction Company Ltd. v. Finquest Financial Solutions Pvt. Ltd. (2019) SCC OnLine NCLAT 918.

[10] Srikanth Dwarakanath v. Bharat Heavy Electricals Limited (2020) SCC OnLine NCLAT 997.

Assessing the Pattern of Secured Creditor Rights under IBC

While the foregoing is an assessment of secured creditors' rights as codified in law, the treatment of such creditors has not been without controversy. The three main grounds of contention have been: (a) unequal treatment of secured and unsecured creditors; (b) handling of conflicting security interests; (c) handling of pre-insolvency inter-creditor agreements under the IBC; and (d) treatment meted out to secured creditors in insolvency proceedings of firms that have provided security to the creditor for a debt issued to a third party (generally, the security provider's group/associate companies).

Secured v/s Unsecured Creditors: Equality amongst Equals

The Indian insolvency law ecosystem has long been challenged by questions over the dissimilar handling of secured and unsecured creditors of an insolvent corporation during in- court restructuring. These issues were only addressed in depth in November 2019 in the wakeof Essar Steel India's insolvency.

The SC presented a comprehensive assessment of secured creditor rights under the IBC on 15-11-2019, and outlined the legal principles that apply to security interests under law. The court first noted that one of the most essential principles of insolvency law is that pre-insolvency creditor rights and claim rankings must be recognized and protected during insolvency proceedings.[11] This provides predictability of treatment while entering into a debt contract, allowing creditors to have faith in the procedures and take necessary risk management measures.

The Supreme Court observed that if secured creditors were not given some kind of priority in the restructuring process, they would vote for liquidation more frequently (which would yield them better returns with the ability of enforcing their security interest). Finally, in light of the decision in *K. Sashidhar vs. Indian Overseas Bank and Ors.*[12] The Supreme Court upheld the creditor committee's commercial prudence.

In addition to the precedents cited above, the Supreme Court drew extensively on its January 2019 decision in the Swiss Ribbons case, wherein the validity of some provisions of the IBC was upheld.[13] The difference between secured and unsecured creditors was acknowledged by the Supreme Court as a characteristic of the earliest company laws in India the UK. It was

[11] Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531.
[12] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
[13] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

noted that if such creditors were given preferred distribution of pay-outs, they would be motivated to help the company get back on its feet rather than liquidate it.

Competing Security Interests

The insolvency of Ruchi Soya, one of India's leading manufacturers of edible oils, raised the issue of how restructuring funds should be distributed among secured creditors. The victorious bidder had entrusted the distribution of cash to be brought by it to the CoC in this case. By a required majority, the CoC had approved a specific method of distribution of funds. DBS Bank, one of the creditors, protested to the lack of distinction in the permitted structure of money distribution between superior and subordinate charge holders. In light of the decision in Essar Steel, the NCLT and NCLAT rejected DBS Bank's arguments. The case was then taken to the Supreme Court, where it is still pending. While the Supreme Court allowed funds to be distributed to the company's other creditors, it ordered that the amount owed to DBS be held in an escrow account.

If the courts follow the principle set forth in the Essar Steel case and the bare text of Section 30(4), a creditor with a first and exclusive charge on an asset who dissents to the resolution plan's mechanism of distribution (which must be treated as a dissent to the plan itself) should be entitled to the entire proceeds from the asset's enforcement. This creditor should not be forced to surrender its exclusive charge into the common pool in favor of other creditors, as this would be an unjust violation of such creditor's property rights.

The Approach of IBC towards Pre-Insolvency Inter-Creditor Agreements

Inter-creditor agreements are frequently entered into by consortium lenders, or many lenders engaged in the restructuring of a common borrower. In most cases, an ICA establishes the terms and processes for joint creditor actions. It usually contains terms determining priority and voting rights among creditors, as well as procedures for enforcing security. Standstill provisions may also be included in ICAs, which effectively limit the signatories' ability to undertake enforcement measures against the borrower for a set period of time.

ICAs undertaken in conjunction of a creditor-led restructuring process of the borrower typically include such conditions. The goal of standstill provisions is to keep an ongoing restructure involving several creditors from being derailed by a single lender's enforcement action.

Restraint on Creditors from Instituting Insolvency Proceedings under the IBC

The challenge before insolvency tribunals is whether or not an individual creditor can bring insolvency proceedings in violation of the requirements of an ICA to which it is a signatory and which prohibits such individual enforcement measures. In short, the conflict is between a creditor's contractual responsibility under the ICAs (whether it a breach of a standstill obligation or an inability to comply with the process for collective action by lenders) and its statutory entitlement to take action under the IBC.

The NCLAT held in multiple orders in 2020 (in the insolvencies of *Ruchi Global Ltd*.,[14] *Suman Agritech Ltd*.[15], and *TD Toll Road Pvt. Ltd*.[16]) that a creditor's statutory right to initiate insolvency proceedings is unaffected by any restriction imposed by a contractual agreement among a defaulting company's creditors. The appellate tribunal has also stated in each of these rulings that the borrower (not a party to the ICA) cannot use such terms in the ICA to its advantage to contest the launch of insolvency proceedings against it.

Thus, contractual terms under ICAs or identical agreements between creditors cannot limit a creditor's statutory authority to bring insolvency proceedings under the IBC. While discontent parties to ICAs may be able to pursue recourse for breach of contract by a creditor who has violated the ICA, they are unlikely to be successful in contesting the commencement of insolvency proceedings on this ground.

Approach towards Prioritizing Contractual Agreements under Liquidation Process

Section 53(2) of the IBC states that any contractual agreements between recipients who have a "equal ranking" under the liquidation waterfall would be disregarded by the liquidator if they disturb the liquidation waterfall's order of priority.

How this provision should be construed has sparked a lot of discussion. On the surface, it appears to suggest that the liquidator can overlook contractual agreements that include terms that impede equal-ranking pay-outs under the liquidation waterfall, for example, (a) assigning equal rank to workmen's dues and those of secured creditors who relinquished their security at the second level of liquidation waterfall, and (b) assigning equal rank at the 5th level of liquidation waterfall to government dues and any remaining unpaid dues of secured creditors who have enforced their security interests.

The liquidator will honour ICAs and subordination agreements that determine the sequence of priority of payments among creditors as long as the subordination provisions do not disrupt the equal ordering of pay-outs at the second and fifth levels of the liquidation waterfall in the aforesaid cases. Some, however, questioned this interpretation, claiming that there is doubt as

[14] Oriental Bank of Commerce v. Ruchi Global Limited (2020) SCC OnLine NCLAT 499.
[15] Arunkant Rai v. Allahabad Bank (2020) SCC OnLine NCLAT 939.
[16] Amitabh Kumar Jha v. Bank of India (2020) SCC OnLine NCLAT 1072.

to whether subordination arrangements (even if equal ranking pay-outs are not disrupted by them under the liquidation waterfall) should be honored during liquidation.

The Insolvency Law Committee (ILC), which is entrusted with proposing revisions to the IBC, also reviewed the treatment of subordination agreements with reference to Section 53 of the IBC (2). Given the uncertainty surrounding the applicability of Section 53(2), the ILC proposed that an explanation stating that ICAs and subordination agreements that do not disrupt pay-outs of equal ranking under the liquidation waterfall will not be disregarded be added to the provision.[17] The ILC's recommendation of adding explanatory language to Section 53(2) should put an end to discussions in India about honoring subordination arrangements among creditors during the liquidation process.

In the pre-IBC era, when liquidation was governed by the Companies Act 1956, a 2006 Supreme Court decision in *ICICI Bank v. SIDCO Leathers Limited*[18] held that pari passu treatment (equal ranking) of dues of workmen and secured creditors would not override inter-se priorities / ICAs amongst secured creditors. This decision is consistent with the International Law Commission's reading of Section 53. (2).

Remarkably, under the US Code, Chapter XI, which deals with bankruptcy, includes an explicit provision i.e., Section 510(a), affirming the enforceability of subordination agreements during the bankruptcy process. S. 510(a) reads "a subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable non-bankruptcy law." Subordination agreements often provide for payout subordination and the power to enforce collateral, and the bankruptcy courts in the US have typically upheld such conditions.

The execution of ICA provisions permitting subordinated creditors to waive or assign voting rights to senior lenders is less clear. Enforcement of voting-reassignment by minor creditors to major creditors, according to a US court ruling, overshoots subordination of pay-outs and would violate the bankruptcy code's goal.[19] At its root, the question of how voting subordination ought to be handled in bankruptcies reflects a conflict between competing values of preserving contracting parties' freedom and public policy concerns about renouncing statutory voting rights.

[17] Government of India, "Report of the Insolvency Law Committee" (Ministry of Corporate Affairs, 2020).
[18] ICICI Bank Ltd. v. SIDCO Leathers Ltd., (2006) 10 SCC 452.
[19] Bank of America v. North LaSalle St. L.P. [246] B.R. 325.

Approach towards Third-Party Secured Creditors in Cases of Insolvent Security Providers

Third-party secured creditors are another type of secured creditor whose rights have been the subject of a lot of litigation under the IBC. These are organisations that receive security from an insolvent borrower in order to secure a third-party entity's debt. For example, a subsidiary may give a creditor of its parent organization security over its land. A third-party secured creditor would be a creditor of the parent in the subsidiary's insolvency proceedings.

Creditors are usually in favour of financial creditor classification since it grants them voting rights in the CIRP and in the liquidation of a corporation. Third-party secured creditors' petitions have been treated on a case-by-case basis in different judicial forums, with little evidence of a general baseline for such decisions.

The Supreme Court noted in its order in the insolvency of Jaypee Infratech Limited that a financial creditor acquires a unique position when it is directly involved in the functional existence of a borrower, such that it may be entrusted with the task of ensuring the borrower's sustenance and growth, similar to that of a guardian.[20] The role of a creditor, on the other hand, is confined to enforcement of security under a mortgage in order to realise funds from a sale in case of default. It was decided that such creditors could not be given the power to take decision on the company's revival. Within a year of this ruling, the Supreme Court took an analogous stance in the context of a joint venture's pledge of shares to secure the debt of its parent corporation.[21]

The Supreme Court in the *Jaypee case*, as well as the NCLAT in a different ruling,[22] have confirmed that guarantees offered to secure third-party debt count as financial debt, and that the creditors who are provided such guarantees qualify as financial creditors.

The most recent ruling on the matter was made by the NCLT's Mumbai Bench in the case of Reliance Infratel Limited's insolvency.[23] Reliance Infratel had hypothecated its assets for securing the debt of Reliance Communications Ltd (RCom), the group's parent company. A 'covenant to pay' was included in the hypothecation deed, which specified that if RCom defaulted, creditors could execute their security over assets of Reliance Infratel, and Reliance Infratel would pay any deficit or shortfall in the debt amount. In interpreting this payment covenant, the tribunal took an atypical stance. It interpreted the covenant as a contract of

[20] Anuj Jain, Resolution Professional, Jaypee Infratech Ltd. v. Axis Bank Ltd. and Ors. (2020) 8 SCC 401.
[21] Phoenix ARC (P) Ltd. v. Ketulbhai Ramubhai Patel (2021) 2 SCC 799.
[22] Ascot Realty Private Limited v. Ajay Kumar Agarwal (2020) SCC OnLine NCLAT 732.
[23] Doha Bank v. Anish Nanavaty (2021) SCC OnLine NCLT 416.

guarantee, stating that because creditors were unable to enforce the security due to moratorium under the IBC, the entire amount would be considered a deficit in repayment, and Reliance Infratel would be required to cover the entire debt amount, much like a guarantor. As a result, the creditors to whom Reliance Infratel's assets were hypothecated were classed as the company's financial debtors. However, an appeal was filed against the order of NCLT, and the NCLAT put a stay on distribution among financial creditors while the matter is sub-judice.

While courts and tribunals have provided some clarification on these challenges, the answers have arguably been extremely particular to the facts of each case, adding a subjective element to the handling of third-party creditors under IBC. The most recent ruling, which is founded on whether a security document contains an explicit covenant to pay, has further added to the confusion. It is not unreasonable to conclude that such subjectivity may result in a gamble over how contracts that appear to be merely secured debt are interpreted in the concept of financial debt. On this aspect, clarity and certainty about the rights of third-party creditors is vital. Where judicial interpretation fails, legislators and regulators may be called upon to clear the air.

Conclusion

The Insolvency and Bankruptcy Code, 2016 (IBC) is an emerging legislation in India that has transformed the credit ecosystem and impacted rights of creditors and borrowers. As a result, the provisions of the IBC are expected to be put to the test in the early years, with the rights of different stakeholders in a state of variation.

However, as previously said, secured creditors play a key role in the credit market, particularly in a capital-constrained economy like India. Allowing the natural evolution of judicial precedent to guide the protection of their rights could stifle credit expansion. While secured creditors have, since the introduction of IBC, been the victims of decisions that neglected their particular rights as secured creditors, subsequent jurisprudence has taken into consideration their rights. Subsequently, the principles guiding the rights of secured creditors were reinforced in the language of the law. It is laudable that the legislature has takenthe initiative in recognizing faulty legal interpretations and rectifying them through statutory amendments.

Other challenges highlighted in this paper, however, continue to exist. Though the uncertainty regarding character and priority of secured credit may have been resolved, there are still critical issues to be addressed by the legislation, such as inter-creditor arrangements, and management of third-party security.

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