

Swiss Challenge Model: Is it Felicitous to Deal with Insolvency? - A Critical Analysis

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ABSTRACT

Public-private partnership is a prime factor for the exponential growth of an economy. Growth here assumes a holistic approach that comprises financial, technical, and environmental well-being. Of the various public procurement models – Bonus System, Swiss Challenge, Automatic Shortlisting, Direct Negotiation, and Full Competition - the Swiss Challenge Model (SCM) has come a long way with its application in various developing and developed countries even without proper regulations and robust framework. Regional laws exist but with meager detailing. Claiming an age-old history right from its inception through the Swiss government's mode of awarding contracts, the Swiss challenge had now extended its roots into its application in Insolvency proceedings under The Insolvency and Bankruptcy Code of India. Though used extensively for infrastructural development processes in many emerging global powers, SCM poses deficiencies and limitations. The article analyses the extent of the effectiveness of this concept based on the existing studies conducted so far around the globe, critically examines and compares the guidelines, rules, and practices followed, and then connects it with the logic of using the same in Insolvency proceedings in India for suggesting an ameliorated model of better public acceptance.

KEYWORDS

Unsolicited proposals, Public-Private Partnership, Swiss Challenge Model, Insolvency and Bankruptcy Code, Micro, Small and Medium Enterprises, etc.

1. Introduction

Public Private Partnership is a well-acquainted term to the world economy that fosters its overall development both in financial and technical terms. It serves as a connecting link between the government's growth prospects and the private players' interest in engaging in the public-procurement process which in turn results in the establishment of a symbiotic relationship between the two i.e., profit to the private players and timely engagement and efficiency to the government sector. According to the National Council for PPP of USA, PPP is a contractual arrangement between a public sector agency and a for-profit private sector concern, whereby resources and risks are shared for the delivery of a public service or development of public infrastructure (Akintoye et al., 2015). It is a concept that is deep-rooted and which is being engraved in golden letters in the developmental history of almost all the developed and developing economies that aim to find greater innovation and improvised techniques that can be incorporated into the growth wheel of a nation.

Better PPP practices intertwined with fair competition can build cooperative growth, reduce cost, reduce time, improve monitoring, and even contribute to innovation and creativity. It is also hailed for better development attributes in local areas, risk sharing, and elimination of budget constraints. Though profit motive is involved, it still proves to be a strong way of satisfying the taxpayers with enhanced value creation. The inclusion of private players in public projects should rather be made with caution as these procurements are naturally inflexible due to irreversibility shortly and involve elevated costs intertwined with the inherent difficulty of measuring accurately the proposed costs.

To curb the ill effects or repercussions associated with this concept, world economies adopt various public procurement bidding methods that can clear their growth trajectory towards the best means of engaging private players in the nation-building process. Of the different methods of public procurement competitive bidding, SCM has gained greater momentum around the globe. It has acquired a remarkable position, especially in the Indian

practices that involve submitting unsolicited plans by the Original Proponent in public procurement and then being challenged by opponents or competitors with counter-proposals when placed in competitive bidding. SCM exhibits various strengths: it promotes innovation, incentivizes new ideas, reduces transaction costs, creates potential viability for prioritized local projects, faster implementation, etc. On the contrary, weaknesses include inadequate competition, lack of legal validity, information asymmetry, etc (Sharma, 2021). Thus, the paper aims to analyze the practice of SCM in various countries used as public procurement means with existing literature support, examine the various guidelines and practices, and then connect and comment on the cogency of using SCM in the insolvency proceedings under IBC along with recommendations and suggestions.

2. Literature Review

2.1 Competitive Bidding Methods in Public Procurement: An Overview

Public procurement is not something that is conducted without proper thought and deliberations. The government shall consider the feasibility, economic viability, risk allocations, and business plans before giving the final nod to the project that too after multiple rounds of bidding with counter-proposals. This major process of bidding only starts after the submission and approval of the unsolicited proposal by the concerned authority appointed which can happen only if the ministry concerned is satisfied with the plan that it can serve the public interest which is the ultimate aim of the government with reduced costs. An unsolicited proposal is generally a type of process where the private players on their own will submit a proposal to the government to undertake a project that will contribute to the public good. Such proposals give opportunities to the private sector to engage in the areas or sectors specified by the policymakers with innovative ideas that will benefit society and the nation as a whole (World Economic Forum, 2020).

If rejected, then a resubmission of a renewed version is demanded. Competitive Bidding can take the following forms:

2.1.1 Direct Negotiation: Direct Negotiation is the basic method followed by the public authorities that motivate private players to engage in the PPP of the country. It involves the time and the developmental cost factors that influence the private parties to submit the plans with the expectation that they will automatically win the contract. The major advantage of this method is that it will ensure innovation and technological expertise. But lack of transparency, bribery, and weakened competition dampen its image before the public.

2.1.2 Bonus System: It is a method of public procurement where the original proponent (OP) of the proposal will be awarded a bonus in the process of bidding. The bonus percent or the value will be determined by the authority. OP's proposal will be selected only if it is within the stipulated best price quoted by the counter-proponent in the competition. The best price in the case of governmental projects will be the one that has a low tariff or which can be generally termed the lowest bid quoted. Famous examples can be quoted from Chile and Korea. The one who wins will be advised to reimburse the developmental costs back to the OP. Here the bonus allocation is subjective and can even lead to the manipulation of the process.

2.1.3 Swiss Challenge Model (SCM): It is another type of method when after publishing the details in the Official Gazette to conduct the bidding process, counter-proposals be invited for the plan of the OP, and time will be given to the OP to improve the plan within a stipulated period. If the OP can match the counter proposal with an ameliorated model of the base plan, then the project will be awarded to him. Or else the project will be awarded to the lowest price project competitive bidder. It is at the discretion of the ministry either to disclose the information about the original proposal to the counterbidders or to render a blind process of bidding. This model caters mainly to the Philippines, Taiwan, India, the US, etc.

2.1.4 Best and Final Offer/ Automatic Shortlisting: In this method, the OP is originally favored due to the concept of its inclusion in the final stage of the bidding automatically. In this case, the counter plans will be evaluated and ranked. In the first round of the bidding, two plans will be accepted that best fit the situation based on the ranks assigned and if the OP doesn't come in, he will automatically be invited or allowed to compete in the final round of the bidding. If the base plan doesn't come within the stipulated percent purview of the best offers, it will be rejected. The best two offers would then be invited for a second and final round of bidding where the best possible bid will be selected. Here too the developmental costs need to be compensated by the selected bidders.

2.1.5 Full Competition: This is said to be the most transparent method of public procurement where all the bidders are given the same amount of time to propose the plans and the information asymmetries are comparatively low. Still, the edge that caters to the OP is maintained since he is the one who is thorough with the risk factors and the resources involved. The above methods are employed across the globe to bring forth more PPP efforts for promoting innovation and grabbing the synergies associated with public-private alliances. It will help the government to widen its spectrum of growth but needs to be implemented with caution (Hodges & Dellacha, 2007).

2.2 Swiss Challenge: Process

The original proponent submits an innovative idea to the government agency which will first be evaluated by the local authority. After the preliminary study, if they approve it, will move to the Infrastructure Authority for the

final node. Through proper discussion and consultation, an evaluation of its financial, technical, and commercial viability will be conducted along with risk-sharing considerations. It will then only be given the final node. If the authority prescribes any kind of alterations, the Original Proponent is obliged to make it within the stipulated time to make it more feasible and suitable for public acceptance.

Then comes the real challenge. The infrastructural authority would then suggest to the local authority to invite counter proposals for the same to challenge the original proposal. If the opponents come up with an accentuated plan compared to the original one, the original proponent will be given stipulated time to improve it. A second round of bidding will then be accelerated. Again, if the original proponent fails to withstand such a competition of innovation, the counter-bidder will be given the chance to execute the project. As a reward to the Original Proponent for his unique contribution, the local authority will reimburse the cost involved in creating it and also acquiring the concession agreement. The original proposal will then be the property of the government agency or local authority (Sharma, 2021).

2.3 Insolvency and Bankruptcy Code of India: Voice of Resurrection

Insolvency and Bankruptcy Code (2016) has blended all laws in existence from time immemorial that cater to insolvency and restructuring of corporate entities, individuals, and also partnership firms. The time-bound resolution, value maximization of assets, more chances for entrepreneurship build-up, and serving the interests of all the stakeholders are the major merits that can be associated with this innovative idea of rejuvenating the institution rather than leading it to liquidation immediately (Taxmann 31 of 2016). Various amendments hitherto had ameliorated the same with more specifications about the power of the Committee of Creditors, Insolvency Resolution Professional duties and powers, financial charges, threshold limits, pre-pack insolvency facilities, voting charges, eligibility of creditors to submit the plans, etc. Unlike other laws that existed in India from time immemorial, this law has the provision to revive the organizations rather than straight away going to the liquidation process. The power of such a decision lies with the Insolvency Resolution Professional (IRP) on whether to revive or liquidate. If they received the affirmation for revival, then there should be someone who should agree to purchase the organization. In this case, the creditors must agree to some debt reductions called haircuts. Then comes the bidding process. This law expedited the process of insolvency and even led to higher recoveries of about 33% as per the reports in 2023 (Wikipedia, 2016).

The power of the management and board lies here with the CoC where the best resolution plan needed to be approved by not less than a 66% majority in the CoC to take over the firm. Even routine decisions require only 51% of the voting share from the committee of the financial creditors.

3. Discussion

The peculiar features of the Act have gained worldwide recognition that involves the restoration and revival of sick firms and even the provision of the Pre-Packaged Insolvency Resolution Process (PPIRP) which gives special consideration to the MSME sector when it turns out to be a corporate debtor. MSMEs, the soul of rural India, demand special attention as they are the most vulnerable group to escalating debts and liquidity crunches. The sector contributes 33% to the GDP of India helps in removing regional disparities, generates numerous employment opportunities, brings a balanced distribution of national income, and removes the after-effects of unplanned urbanization in the country. To conduct a bidding procedure, to select the best resolution plan for the rejuvenation of the stressed organization, a kind of challenge mechanism is essential. Best proposals can only lead the organization to get the best maximum value for the assets which is the real motive behind every insolvency proceeding process. In PPIRP which is solely meant for the MSMEs, the Swiss Challenge Model is being introduced (Regulation 48 (4) of IBBI (PPIRP) Regulations, 2021). However, no such mechanism is prescribed in the Corporate Insolvency Resolution Process (CIRP), which is generally used for corporate debtors. According to 39(1A) (b) of the CIRP Regulations (September 30, 2021), the following is stated:

'The resolution professional may if envisaged in the request for resolution plan –

b. use a challenge mechanism to enable resolution applicants to improve their plans.' (Borkataky, 2022)

It's clear from the above statement that the law had not given a final verdict on the use of SCM to select the best resolution plan in CIRP proceedings but in practice, it had spread its roots deep into the insolvency cases in India even without any proper law framework or legal acceptance in the same manner as it is being followed in the public procurement practices in PPP. The only condition is that said method is defined clearly in the Request for the Resolution Plan.

Now the question that looms over the corporate world and disturbs legal experts is whether the unsolicited proposal method or the SCM is pertinent to deal with cases like Insolvency which is hypersensitive and affects creditors, debtors, and even the workmen in the organization. This draws us closer to the ratiocination to enquire into the various modes of competitive bidding and suggest a pragmatic solution from the studies so far conducted. An attempt is being made to compare the various competitive bidding methods to unveil and affirm the better mode to select and approve the resolution plan in case of Insolvency proceedings, standing in the context of the various competitive bidding processes practiced worldwide for procurement evaluated through the emotions of

the experts and the studies conducted so far is being done here.

3.1 Practices of Competitive Bidding across the World: Pros and Cons

Pieces of evidence from the United States of America:

In America, on the grounds of the treatment of unsolicited proposals, the SCM is outrightly rejected on investigation among top officials. They term it as the most ludicrous method ever in unsolicited proposal consideration or public procurement due to lack of transparency, restrained competition, selection of projects with no economic feasibility, weakened competition, and lack of proper competition. Even the bonus system is being rejected stating that it involves some theoretical values that give undue advantage to the Original Proponent. The combination of the Swiss Challenge and Bonus System augmented the rejection rate, making it yet another worst procurement method. The Best and Final on the other hand received 70% of the support which states that only a justifiable advantageous position is being created by this concept that the OP will be given the node to take part in the last round of bidding after multiple bids too without any kind of bonus or incentives. But still, there is a lack of proper guidelines to treat the models within the developmental perspective of the government. Moreover, the experts in the USA are not interested in the incentive systems that exist in practice like the bonus system (Aziz & Navabi, 2014).

Malaysian Experience: Malaysian perception lays down the clear facts that the country really lacks the authoritative guidelines and laws to employ these models and is still experimenting with each model. Pieces of evidence are being collected from experts in the PPP field. The Swiss Challenge Model is labeled as a “No success Model” and expresses that the Original Proponent’s plan will always be the best in the end. Thus, it shows the undermining of the competitive factor from the process. The interviews from the experts also reveal the fact that this method is time-consuming, a waste of money to the taxpayers, unethical, and unfairer due to the advantage that is being possessed by the OP in terms of the time and rich knowledge about the plan proposed. The transparency issues can even lead to a frumpish attitude by the counter-bidders. They opt for open competitive bidding which will preserve their indigenous people, Bumiputera from the exploitation of the government, and even other models can be implemented but only in the context of its proper requirements (Zawawi, 2016).

Bangladesh Experience: A sole solution that can be drawn is from Bangladesh which speaks on a different note in the implementation of PPP. It advocates the usage of a hybrid mode of combining both SCM and Bonus system where both the increase of the bid price and bonus advantage to the OP happen simultaneously (Mahmud, 2016).

Vietnam Episode: The Vietnam testimonies propagate its inclination toward an open bidding system for ensuring transparency and competition for the bids in the limited regulatory framework. The laws to deal with unsolicited and solicited proposals are lacking and thus the other models like the full competition, SCM, Best and Final Offer, and Bonus System can only be used in combination with the open bidding process to ensure transparency. It also advocated for IP rights to be protected. Moreover, the criteria or method to evaluate the novelty of the counter proposals is still absent and needs further clarification (Cameron, 2017).

Pieces of Evidence from Australia: Australia consists of guidelines like The New Wales Guidelines for the jurisdiction. But even those laws are silent on the evaluation criteria that can talk about and affirm the uniqueness of the proposal in a standard bidding process. It also argues for the full-fledged use of open bidding or a standard bidding process. The authority will try not to disclose the full details of the proposal if requested by the proponent. In a nutshell, Australia needs a comprehensive law framework to do away with the treatment of the proposals (Cameron, 2017).

Philippines: The Swiss challenge is used by the country in its proposal selection process where there are any kind of counter-proposals suggested against the base plan. It also strongly advocates for an open bidding process and SCM will only be implemented if the counter ones argue about better options. The Philippines law covers all possibilities that can occur in dealing with unsolicited proposals. It regulates in detail the procedures to evaluate the proposal of the OP and the counter-proposals. This process enhances the transparency and competitiveness of procurement (Cameron, 2017).

Africa: African experts in these kinds of proposals suggest that the more the incentive to the proponents, the less will be competitive tension that arise in the case of the bidding process. South Africa opts for the Automatic Shortlisting or the Best and Final Offer method which will increase the competitive tension even though it discourages innovation to a certain extent. But Nigeria opts for SCM but with not much full affirmation as it renders less competitive tension. In the case of South Africa, it opts for Automatic Shortlisting or the Best and Final Offer. It is suggested that it generates the most competitive tension of all the discussed procedures but is also most unlikely to encourage innovation. The discussion of the systems above shows that the more incentive that is granted to the USP proponent under a particular system, the less the process is likely to generate competitive tension, and vice versa. In Nigeria, The Infrastructure Concession Regulatory Commission (ICRC) has issued further guidance on the submission process and Evaluating USPs in its Guidance on USPs Document (“Guidelines”). According to the guidelines, the overriding principle of dealing with USPs is that all USPs should be channeled into a transparent, competitive process where challengers have a fair chance of winning the tender. To materialize this objective, the Swiss Challenge method is favored. The policies that are outlined in the policies documents, including the USP Administration Manual, are hardly adhered to when designing or evaluating USPs.

Also, there is usually limited transparency in the process and the Swiss Challenge method adopted in the country hardly guarantees any form of economic competition (Abiru, 2021).

But in the case of Ghana, it's yet to pass the relevant laws that would regulate these types of transactions. There was also no progression for the development of the criteria where the project can be subjected to any kind of assessment to see if it does it provides value for money or even subordinates the procurement process to any form of competition. And Tanzania favors the use of the bonus system in selecting the preferred bidder. However, the cases that happened revealed that it led to a huge loss to the Tanzanian economy.

In a nutshell, African countries experience a major problem that is implied yet cunningly masqueraded - the unfettered power position of the Original Proponent - who will win the bid ultimately. The laid down rules are again not being practiced properly thus creating loopholes and a curb on transparency and competition. It can lead to a situation where the potential bidders avoid competition. A suggested model here is to award the bonus on scores based on materiality with the SCM model (Nwanguwu, 2019).

Kenya: Kenya advocates for the use of the Swiss Challenge provided it can render the process competitive and useful for the promotion of innovation (Kemunto, 2014).

Chile and Korea: The bonus system is used by countries like Korea and Chile. Under this system, the government gives the original project proponent an advantage in the form of a premium used in the bidding procedure. As long as the awarded bonus is relatively small, this system continues to promote competitive tension. The bonus is typically between 5 to 10 percent (Hodges & Dellacha, 2007).

***Other pieces of evidence:**

SCM possesses inherent positive attributes- novelty in ideas, ample amount of funds for execution, reduced costs, removal of disparities, faster implementation, etc. On the contrary, it is loaded with some negative notes like lack of transparency, lack of competition, informational and time-related asymmetries, lack of proper criteria for evaluation of counter proposals, etc (Podile & Rao, 2017).

Even, Universal frameworks like UNICITRAL, EBRD core principles, ADB PPP framework, World Bank PPP framework, Indian Procurement Laws, and US Federal procurement laws are still demanding proper information, proper time frame, no undue advantage to OP, non-entertainment of UPs when Request for Proposals announced, etc. (Verma, 2010).

3.2 Swiss Challenge Model in India: A Brief Vignette

It is believed that the Swiss Challenge Model started from the Swiss Government's practice of awarding contracts fairly to private entities during the World Wars. We can now witness an extensive use of this model in various countries as listed above for undertaking their developmental activities and to fill the gaps that can occur in the contracts mainly for road and housing projects.

It was in 2009 that the Supreme Court approved the use of Swiss Challenge in awarding the contracts. In 2011, The Draft Public-Private-Partnership Rules allowed the use of it in extremely exceptional cases. In 2015, the Cabinet sanctioned the use of SCM to redevelop 400 railway stations.

Testimonies:

In May 2009, the Supreme Court clarified the legitimacy of awarding contracts to private parties using SCM. It was dictated in the Ravi Development Vs Shree Krishna Prathishthan and Others case where Ravi developers presented an unsolicited proposal to Maharashtra Housing and Area Development Authority for the build-up of plots of land in the Mira Road. It was also decided that the project would be awarded to the top bidder. So, after the bid process, it was awarded to MHADA. But later many of the counterbidders argued that the allotment to MHADA was unfair, unethical, and not transparent with arbitrariness. And they claimed that SCM had gone invalid. So, on this ground, The Bombay High Court turned down the process. But later the Supreme Court altered the order after giving detailed guidelines on using SCM or any other method for procurement or any other growth-embedded activities. After the legislation of guidelines, various states in India started using the same for their state activities and inculcated them in the State laws.

Another typical case is with the Gujarat State. The government received an unsolicited proposal from Swan Energy Ltd. for the development of a Liquefied Natural Gas Terminal with a floating storage and regasification unit in Jafrabad. The concept was cost-effective, and time-saving and had many environmental benefits too. However, the authority did not have the standard norms to test the feasibility of the concept and thus held it due to safety and security concerns.

Rajasthan too had the experience of SCM implementation for the development of highways in association with the Construction Industry Development Board, Malaysia. The initial proposals were invited through SCM which was received in 4 packages. The whole plan consists of 36 highways of 2350km. The State Committee had given the nod and the government had accepted it due to the financial viability and innovation of the proposal to use Warm Mix Asphalt.

SCM is even introduced in the promotion, encouragement, and growth of BPO-related services by the Madhya Pradesh regime. For this purpose, 15 rural BPO centers were selected and the bidding process was done using SCM.

Andhra Pradesh had taken an innovative stand to try SCM in the development of 'Amaravati', a world-class

capital city for the bisected state as part of PPP under AIPEDA rules. The unsolicited proposal was received from the Singapore Consortium (Ascendas- Singbridge Pte. & Sembcorp Development Ltd.) and SCM was used for the selection of the consortium.

Maharashtra has experimented with the SCM for the construction of a shipyard in Jaigad Creek. The said project was approved by the Maharashtra Maritime Board, proposals were requested for the same and the bidding process was conducted through the SCM process.

The government of India is supporting the use of a rejuvenated SCM to integrate private parties to give useful inputs to farming activities making it participatory and interlinking the various government subsidies. The idea is being inculcated by NITI Aayog, India's Think Tank integrating PPP guidelines in irrigation policies for developing effective and efficient means of irrigation methods too (Singh & Wayal, 2019).

4. Result and Findings

After meticulous valuation through various resources and experiences derived from the countries' experiences that utilize various procurement models for partnerships, it is evident that SCM is not fully preferred by countries due to its inherent limitations. SCM indeed is one of the best methods to bring up innovation, creativity, entrepreneurship, and fund mobilization, its demerits are all the more crucial that we need to consider them and try to reconcile the situation.

In India, various states possess laws relating to the use of SCM in infrastructural activities, there is no proper and robust framework countrywide specifically for Swiss Challenge to be used in developmental activities. So, if this deficient system is being inculcated into sensitive and serious issues like Insolvency, then the outcome that gets generated will not comply with the very intention of the introduction of such a law in the Indian Context i.e to maximize the value of the assets and to revive a company if it possesses the potential to come back and function normally to achieve best results in future. Moreover, there will not be any prescribed platform to deal with the disputes that occur after the use of it in Insolvency proceedings. The process will again be delayed as in the case of the projects delayed in the public procurements as seen above due to lack of proper feasibility measuring rods which will make it counteractive to pragmatism in its application. A nationwide law framework is a crucial need of the hour. Better evaluation criteria are also needed. Otherwise, it will be like comparing oranges to apples.

Another serious issue that is being connoted with SCM is the advantage that accrues to the Original Proponent and the timeframe for the preparation of counter proposals. In Corporate Insolvency Resolution Process (CIRP) and Pre-Packaged Insolvency Resolution Process (PPIRP), introduced for the corporates and MSMEs, the original proponents i.e the corporate debtor or the associated persons who can be adjudged as eligible under Section 29A will always get a timeframe that is always more than enough for the preparation of the base plan. The counter-proposals that might be invited for the improvement upon the base plan are given only a limited time frame as the whole process of the proceedings needs to be completed within the stipulated time in the law (CIRP – 180 days & PPIRP – 120 days). So here automatically the base plan proponent will be given the supreme power to get back the organization without much difficulty.

The next issue that should be noted here is information asymmetry. The discussion paper articulated by IBBI and circulated on 27th August 2021 does talk about the improvements that need to be made in the Insolvency and Bankruptcy Code and public comments were sought on it. Swiss challenge is being highlighted here for the PPIRP Process and stated that it will be implemented with improvement to a hybrid mode that evolved from the influence of the Swiss Challenge. It states that the Swiss Challenge Model will be implemented with some modifications for the PPIRP. A base resolution plan will be sought from the Corporate Debtor. Third parties will be allowed to place counter-challenging plans. If the best plan is better than the base plan, the CD will be denied the Right of First Refusal. If the base plan is better than the best plan, both will be given multiple chances to bid with each other after improvements until one opts out which should be done in a limited time frame as under the law.

From the above novel idea put upfront by the discussion paper, the limitations that we can detect are two-fold. One lies in information asymmetry. Merely announcing the score of the base plan, will not give ample input to the counter-proponents. Resolution Professionals and the CoC need to agree and decide upon the extent of the information that needs to be revealed to the counterbidders or proponents that will increase the competition which will in turn lead to worthy proposals. The other issue can be traced to the simultaneous bids that might go on until one of them opts out. In reality, this is not possible as it would elongate the time frame taken to complete the proceedings straightaway destroying the very merit of IBC that it gives rise to speedy procedures and completion. Moreover, the improvement of the resolution plans each time to bid will take much time to develop as it is a case of rescuing a company from the situation of getting liquidated.

Another aspect that should be highlighted is the limitations that might occur due to the ineligibility under Section 29A of IBC. Transparency is the most important aspect that should be ensured in the law proceedings that happen anywhere and everywhere around the globe. It is evident from this section that Indian lawmakers had purposefully included the list of candidates eligible to submit the resolution plans thus making it transparent and flaw-free by including three types of ineligibility – connected persons, related parties, and persons acting in concert. But later it was found that the section had ousted even the key stakeholders from submitting the resolution plans. So those

who might come up with the counter-plans will be the ones who do not possess true knowledge about the risks and resources of the organization. Thus, information dissemination there becomes yet another pivotal factor. So, after pointing out these reasons for dereliction, the real challenge is to find a better model that can beat these deficiencies. Looking into the evidence from various countries standing in the context of public procurements in PPP addressed above we can understand that SCM has a cynical tone in various parts of the world even terming it the most ludicrous method where the OP will win with ease without much competition and rigorous preparation. The undue advantage to OP will disable the competition and innovation as the efficient bidders will become reluctant to place the counter-proposals.

Analyzing the other models that are being followed in the context of competitive bidding, each has its own merits and demerits. Most countries as depicted in the country experience prefer open bidding as the most transparent mode of bidding. But is not so easy and will never be completed within the time stipulated for the insolvency proceedings. So, the time factor becomes a constraint in this process.

In the case of the bonus system, it is giving an undue advantage to the Original Proponent i.e. the Corporate Debtor in the case of Insolvency who will be given bonus points for the plan proposed by them. It will normally discourage competition and innovation as OP will be given the unfettered power to bargain upon the proceedings in competitive bidding. If India wants to inculcate this method in the dealing of Insolvency, it can only be used in combination with the Best and Final offer as followed in the following manner by Argentina:

1. The original proponent's bid is chosen if the difference between the best bid and the bid is less than 5%. In essence, the project's proponent receives an implied fixed, pre-determined bonus of 5%.

2. The top bidder and the original proponent will be invited to resubmit the best and final bids if the gap between the best bid and the original proponent's bid is greater than 5% but less than 20%. The five percent bonus does not apply in this last round (Hodges & Dellacha, 2007).

One more thing that we can note here is that the successful models come out only in hybrid models that combine these model features as one such that is discussed above.

Comparing the three main important models of competitive bidding, the best model that can be affirmed is the Best and Final Offer from the countries' experiences. The best and Final model can be improved as follows for the implementation in Insolvency after negating the deficiencies noted in the other models. The model can be as follows: The first round of the bidding can be conducted as usual for the selection of the best two plans as against the base plan. There should be a detailed criterion present to select the best plans that would rescue the company from becoming insolvent. Then comes the final round of bidding, where the OP/CD will be allowed automatically to contest in the final bid. There we are giving just a consideration to the Original Proponent of the idea as he is the person vested with more interest in safeguarding the company. Then before the start of the final round, as consideration to the counter-bidders, the information about the base plan other than the score needs to be revealed to make the process more competitive and transparent. Both of them can revise their plans based on the information available at this stage. So, if such a provision is given, the public will become more interested in coming up with excellent plans in the first round with the expectation that they can compete and move to the final round with improvised plans. If the op fails, he needs to be reimbursed for the developmental and regulatory expenses incurred by the winner proposer. And then there starts the second and final round where the plan that emerges will be the most efficient one ever possible and the rounds need to be restricted to a minimum to adjust with the timeframe of the proceedings as prescribed in the law.

5. Conclusion

Since India has CIRP and PIRP in its Insolvency proceedings, it has to find the best means to maximize the value of its assets. It can use any means provided it is transparent and competitive in its dealings. The above two solutions would help the country to make it fairer and more competitive. However, it is based on the commercial wisdom of the Committee of Creditors to determine the best challenge to be inculcated in the proceedings. So, if they can inculcate innovative means rather than following the crowd, utmost sanctity can be ensured in Insolvency, and the law will serve its true purpose.

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