

The Insolvency and Bankruptcy Code: A Brief Review

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Abstract: *“The Insolvency and Bankruptcy Code, 2016”, has three elements which are basically meant to deal with the problems that affected the bankruptcy regime in India. The Code intends to save the industry from deterioration by way of either reviving the company in question or faster liquidation of the same. Thus the code reduced the timeline for recovery/ resolution from decades to a few years at the most. The Code aims at giving the power to the creditor in case of default by the debtor. It is exactly the opposite of the earlier acts and laws which will definitely bring a wave of positivity among the individuals and corporates. The paper focuses on the need for changes and highlights of the new code.*

Keywords: Insolvency, Bankruptcy, 2016 Code

1. Background

When a “corporation, corporate entity, an individual or any other organisation” cannot pay its debt as due upon on them or meet its financial obligations, such a condition is called as insolvency. A solution to such a situation is by modifying the repayment method or by writing the loan off. In the event such a situation is unresolved, then insolvent’s assets are sold off in order to pay off or to recover the outstanding debts. This is done by way of a legal action in Court of law. The Court appoints an official liquidator whose primary job is to liquidate all the assets of the insolvent and pay off the proceeds to the creditors. Although the term sounds similar to insolvency, Bankruptcy is a different concept. Bankruptcy is a concept which is like voluntary surrender. In this case, the person voluntarily goes to the Court and officially declares that he is unable to pay any further debts. In such a scenario, the Court takes the responsibility of liquidating a person’s assets and distributes the proceeds to his creditors. The primary difference between an insolvent and a bankrupt is that a bankrupt can post the distribution of proceeds to creditors can have a new lease of life.

The Insolvency and Bankruptcy Code, 2016 (IBC)¹ is the liquidation law of India which tries to solidify the current structure by making a solitary law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was presented in Lower House in “December 2015”. It was passed by Lower House on “5th May 2016” and by Upper House on “11th May 2016”. The Code got the consent of the President of India on “28th May 2016”. Certain arrangements of the Act have come into power from “5th August and 19th August 2016”. The bankruptcy code is a one stop answer for settling bankruptcies which recently was a long procedure that didn't offer a financially suitable game plan. The code means to ensure the premiums of little speculators and make the way toward working together less cumbersome. The IBC has 255 sections and 11 Schedules

2. Literature Review

Till 2015, it was easy to start a business than to wind it as insolvency resolution in India was a very time consuming procedure which on an average took more than four years. In developed countries like United Kingdom and United States of America, insolvency resolution takes one year and one and a half year respectively. In India the main cause of delays was overlapping jurisdictions and multiplicity of laws. In India there were around twelve different Acts for dealing with insolvency and bankruptcy of companies and individuals, namely “Presidency Towns Insolvency Act, 1909; The Provincial Insolvency Act, 1920; Sick Industrial Companies Act; The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (also known as the Sarfaesi Act); Companies Act 2013; Recovery of debts due to banks and financial Institutions Act” etc. Also there were multiple authorities for reviewing the cases namely “High Court, Company Law Board, Board for industrial and financial reconstruction (BIFR) and Debt recovery tribunal”.

The Companies Act 1956 and the Companies Act 2013 had provisions for winding up companies, but the provisions were not adequate. The Sick Industrial Companies (Special Provisions) Act 1985 (SICA) failed to achieve its objective of providing an insolvency resolution for sick industrial undertakings. The insolvency and bankruptcy regime for individuals was based on colonial legislation and needed to be revamped to be in sync with the 21st century. So an amendment in the act was necessary. And thus the Insolvency and Bankruptcy bill 2016 was considered and enacted by parliament.

3. Key Features of The Code

Insolvency Resolution: The Code draws separate bankruptcy goals forms for people, organizations and association firms. The procedure might be started by either the account holder or the creditor. A maximum time limit, for consummation of the indebtedness resolution process, has been set for corporates and people. For organizations, companies, the procedure should be finished in 180 days, which might be extended out by 90 days, if a majority of the creditors agree. For new businesses “(other than association firms)”, small companies and other companies” (with resource not more than Rs. 1 crore)”, goals procedure would be finished inside 90 days of commencement of solicitation which might be stretched out by 45 days.²

The Insolvency and Bankruptcy Code (Amendment) Act, 2019 has expanded the obligatory upper Time breaking point of 330 days incorporating time spent in legitimate procedure to complete resolution process.³

Insolvency regulator: The Code builds up the Insolvency and Bankruptcy Board of India, to manage the bankruptcy procedures in the nation and direct the elements enrolled under it. The Board will have 10 individual members, including representatives from the Ministries of Finance and Law, and the Reserve Bank of India.⁴

Insolvency professionals: The indebtedness procedure will be overseen by authorized experts. These experts will likewise control the advantages of the account holder during the bankruptcy procedure.⁵

Bankruptcy and Insolvency Adjudicator: The Code proposes two separate courts to manage the procedure of bankruptcy goals, for people and organizations:

- (i) “The National Company Law Tribunal “ for Companies and Limited Liability Partnership firms”; and
- (ii) “The Debt Recovery Tribunal for individuals and partnerships”.

Procedure

A request for bankruptcy is submitted to the mediating authority (NCLT in the event of corporate account holders) by financial or operation creditors or the corporate debtor itself. The most extreme time permitted to either acknowledge or dismiss the request is 14 days. In the event that the supplication is acknowledged, the council needs to delegate an Interim Resolution Professional (IRP) to draft a resolution plan inside 180 days (extendable by 90 days). following which the Corporate Insolvency Resolution process is started by the court. For the said period, the directorate of the organization stands suspended, and the advertisers don't have a state in the administration of the organization. The IRP, whenever required, can look for the help of the organization's administration for everyday tasks. On the off chance that the CIRP flops in restoring the organization the liquidation procedure is started.⁶

Amendments To The Insolvency And Bankruptcy Code

The most recent amendments to the Code have taken place through the Insolvency and Bankruptcy Code (Amendment) Act 2020 (the ‘Insolvency Amendment Act’) and the Insolvency and Bankruptcy Code (Second Amendment) Act 2020 (the ‘Insolvency Second Amendment Act’), which have substantially altered the dynamic of the corporate insolvency resolution process (CIRP) in India.

Also, by a notification dated 24 March 2020, section 4 of the Code has been amended, wherein the minimum amount of default for initiation of CIRP has been increased from Rs 1 lakh (INR 100,000) to Rs 1 crore (INR 10m).

The Insolvency Amendment Act was notified on 13 March 2020, with a retrospective effect, being in force with effect from 28 December 2019 and bringing about significant changes to various sections of the Code, namely Amendments to section 5 of the Code¹¹ ; Amendments to section 7 of the Code; Amendments to section 11 of the Code; Amendments to section 14 of the Code; Amendments to section 16 of the Code; Amendments to section 21 of the Code; Amendments to section 23 of the Code; Amendments to Section 29A of the Code;; Amendments to Section 32A of the Code etc

The Act forbids certain people from presenting a goals plan if there should arise an occurrence of defaults. These include:

- i. Wilful defaulters,
- ii. Advertisers or the board of the organization on the off chance that it has an extraordinary non-performing obligation for longer than a year, and
- iii. Disqualified directors, among others. Further, it bars the offer of property of a defaulter to such people during liquidation.⁸

First revision to the IBC offers capacity to home purchasers to document indebtedness and take an interest in the goals procedure.⁹

3. Discussion and Conclusion

As per the World Bank's Index on ease of resolving insolvency and bankruptcy issues India is placed at the bottom of the list. This Code makes a definite difference in the overall ease of doing business in India and thus will improve India's position. The new Code gives the power to the creditor in case of default by the debtor unlike the case of earlier acts and laws which is a welcome move. The stringent procedure if the Code will definitely bring a wave of positivity among the individuals and corporates. It will, in turn, attract foreign capital as most of the foreign firms have a set standard which shall be met with the help of such Codes.

The Code also covers provisions with regard to cross-border insolvency through various types of reciprocal and bilateral arrangements with other countries. The unified Code envisions an organized and time-bound procedure for insolvency resolution and liquidation, which should significantly improve debt recovery rates and revive the ailing Indian corporate bond markets. Although the changes are a welcome move, too many changes have also caused apprehensions. But in the end, there is no doubt it is one of the best moves by the lawmakers and a wish come true for better economy.

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