

Insolvency and Bankruptcy Code (IBC) 2016: in the area of Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code (IBC) 2016, an Act to consolidate and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals. It act in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including establish an Insolvency and Bankruptcy Board of India. IBC, 2016 was notified by the Government of India on 28th May 2016. Before the

enactment of this ACT, there was no single law dealing with insolvency and bankruptcy in India. The Code offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). There is a clear and explicit process to be followed by all stakeholders. IBC 2016 also altered the order of priority various payment dues and put the payments of workmen's dues in foremost priority over Government dues. The payments of Government dues are kept after payment of financial debts owed to unsecured creditors. IBC 2016 provides the complementary ecosystem for the insolvency law, and aims to ensure smoother settlement of insolvency cases, enable faster turnaround of businesses and provide for creating a database of creditors. The IBC provides an institutional set-up comprising of five pillars, i.e., Insolvency Professionals Agency, Insolvency Professionals, Information Utilities, Insolvency and



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Bankruptcy Board of India and Adjudicating Authority for properly implementing the Act.

At present, there are multiple overlapping of laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India, like Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013 dealing with insolvency and bankruptcy of companies, limited liability partnerships, partnerships firms, individuals and other legal entities in India. The current legal and institutional framework

does not aid lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on the Indian credit system. In this situation to facilitate easy and time bound closure of business in India and to overcome various challenges, a strong bankruptcy law was required. At this backdrop the Insolvency and Bankruptcy Code, 2016 was finally published in the Official Gazette on 28th May 2016, thus putting an end to months of anxious wait, mainly by the secured creditors and unsecured creditors, who look forward to a single law, that would replace a host of other laws governing individual and corporate bankruptcy and insolvency. The journeys of the code are shown below:

JOURNEY OF THE INSOLVENCY AND BANKRUPTCY CODE 2016

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| August 22, 2014 | Bankruptcy Law Reform committee (BLRC) was first set up under the Chairmanship of MR. T.K Vishwanathan |
| February 5, 2015 | BLRC Submitted its Interim Report to Ministry of Finance |
| February 10, 2015 | Ministry of Finance Invited Comments on the Interim Report of BLRC |
| November 4, 2015 | Volume -I Report of BLRC, Volume-II Draft Code-2015. |
| November 4, 2015 | Ministry of Finance Invited Comments on Volume-I & Volume-II Submitted by BLRC. |
| December 21, 2015 | Bankruptcy Code Introduced in the Parliament. |
| December 23, 2015 | Bankruptcy Code to a Joint Parliamentary Committee Under the Chairmanship of MR.B.Yadav |
| January 22, 2016 | Joint Committee Invited Comments on the Bankruptcy Code |
| April 28, 2016 | Joint Parliamentary Committee Submitted its Report on the Code. |
| May 5, 2016 | Bankruptcy Code Passed by Lok Sabha |
| May 11, 2016 | Bankruptcy Code Passed by Rajya Sabha |
| May 28, 2016 | Received President's assent |

Objectives of Insolvency and Bankruptcy Code 2016

The objectives of code are as follows:

- To consolidate the existing laws relating to insolvency of companies, limited liability entities, unlimited liability partnerships and individuals, which are scattered in a number of legislations, into a single legislation.
- To facilitate time bound insolvency resolution

process and liquidation.

- To improve the handling of conflicts between creditors and debtors, avoid destruction of value, distinguish malfeasance vis-à-vis business failure and clearly allocate losses in macroeconomic downturns.
- To provide greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business

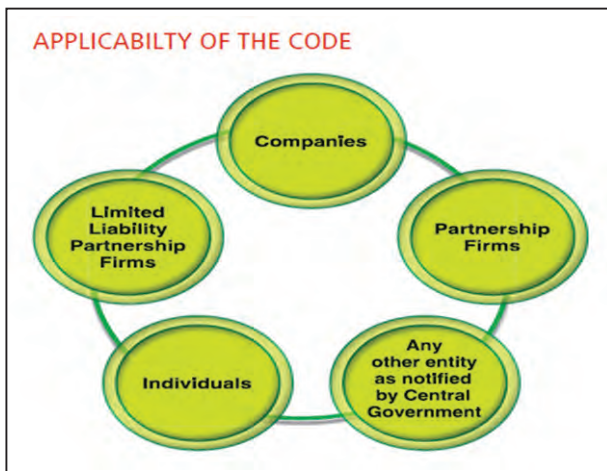
failure or inability to pay debt.

- To address the challenges being faced for swift and effective bankruptcy resolution.
- To improve ease in doing business and set up a better and faster debt recovery mechanism in India.
- To promote the growth of an economy through efficient reallocation of resources, which otherwise remain locked in unviable / closed entities.
- To offering uniform and comprehensive legislation.
- To protect the interest of the creditors by reorganizing the viable businesses to the extent possible and quickly liquidation of unviable businesses.

Applicability of the Code

The provisions of this Code shall apply to —

- (a) Any company incorporated under the Companies Act, 2013 or under any previous company law;
- (b) Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- (c) Any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;



- (d) Such other body incorporated under any law for the time being in force, as the Central Government

may, by notification, specify in this behalf; and

- (e) Partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Corporate Insolvency Resolution Process:

Part II of the Code deals with matters relating to the insolvency and liquidation of Companies and Limited Liability Partnership Firms where the minimum amount of the default is Rupees one lakh and this amount can be increased up to Rupees one crore by the Central Government.

Where any corporate debtor commits a default, a financial creditor (Financial creditor are creditors to whom corporate debtors owes financial debt) , an operational creditor (Operational creditors are the creditors to whom corporate debtor owes operational debts such as claims for goods and services, employees etc) or the corporate debtor (Corporate debtors means its shareholders, partners, management personnel, employees etc) may initiate corporate insolvency resolution process in respect of such corporate debtor by application to National Company Law Tribunal (NCLT) under section 7,8 and 10 respectively.



On receipt of an application, the Adjudicating Authority shall within fourteen days by order admit the application, if it is complete or Reject the application, if it is incomplete. But before rejecting an application, the Adjudicating Authority gives a notice to the applicant to rectify the defect from the application within seven

days of receipt of such notice from the Adjudicating Authority

CORPORATE INSOLVENCY RESOLUTION PROCESS



The Financial Creditor/Operational Creditor or Corporate Debtor can initiate the CIRP by application to National Company Law Tribunal (NCLT) under section 7 (Financial Creditor), 8 (Operational Creditor) and 10 (Corporate Applicant) respectively.



National Company Law Tribunal within 14 days of receipt of application by order acknowledge or reject application. But before rejecting they give notice to rectify the defect within 7 days of receipt of notice



Intimation of admission or rejection is to be given by National Company Law Tribunal within seven days of acknowledge or rejection to the applicant



National Company Law Tribunal declare Moratorium, appoint Interim Resolution Professional (IRP) for a period not exceeding thirty days from the date of appointment and cause public announcement



Public announcement shall include the information, such as - name and address of the corporate debtor under the Corporate Insolvency Resolution Process (CIRP), name of the authority with which corporate debtor is registered etc



Insolvency Commencement date starts from the date of admission of application and is to be completed within 180 days of commencement which can be extended by more ninety days (one time) by National Company Law Tribunal



Interim Resolution Professional (IRP) Constitute the Committee of Creditors comprising by all financial creditors



Management of affairs of corporate debtor, powers of Board of Directors or the partners of debtor shall stand suspended and it is exercised by the Interim Resolution Professional (IRP)



Committee of Creditors within 7 days of its constitution either to resolve to appoint Interim Resolution Professional as Resolution Professional (RP) or replace IRP with another RP



All decisions of committee of creditors shall be taken only by vote and there must be at least 75% of voting share of financial creditor



Preparation of information memorandum by the Resolution Professional for the formulation of Resolution Plan by the Resolution Applicant



Resolution Applicant going to prepares the Resolution plans based on information of memorandum



Submission of Resolution Plan by Resolution Applicant is to be examined by the Resolution Professional and it must be approved by the 75% of voting share of financial creditor



Resolution Professional is to submit the approved Resolution Plan to National Company Law Tribunal which shall approve or Reject for the Liquidation



The approved plan shall be binding the all corporate debtors and its employees, members, creditors, guarantors and other stakeholders who involved in the resolution plan/process.



Moratorium is to be ends on the date of approval



Appeal may be made to the National Company Law Appellate Tribunal (NCLAT) on Rejection

Strict Timelines for Completion of Insolvency Resolution Process:

The Corporate Insolvency resolution process shall be completed within one hundred and eighty days from the date the application is admitted by the National Company Law Tribunal. If the process cannot be completed within one hundred and eighty days then one time extension of ninety days subject to resolution passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares.

Conclusion

From the above, it can be seen that the Insolvency and Bankruptcy Code (IBC) -2016 aims to regulate, streamline and fast-track the process of winding up and liquidation in India. The Code promises to bring about far-reaching reforms with a thrust on creditor driven insolvency resolution. The fate of the Code rests in the change in the mindset of the creditors and the work that insolvency professionals render as creditors cannot always have the cake in full. The scope of the Code is also far reaching. Even persons with annual income of less than a lakh of rupees are covered in the Code. This will include even small and marginal farmers who are indebted and are losing their lives for not being able to repay the debt and interest thereon. The Code also has

provisions to address cross border insolvency through bilateral agreements and reciprocal arrangements with other countries. It should be noted that the Code marks a substantial change in legislative policy relating to corporate insolvency, wherein, creditors in general and financial creditors in particular are substantially empowered to obtain debts due to them. It is surely that the benefits of the Insolvency and Bankruptcy code will help in improving the stressed assets easily and speedily thereby enabling the higher flow of capital in the economy. Moreover, it will help the companies to wind up failed businesses and bring India on a par with developed nations in terms of resolving bankruptcy issues. However, the success of the IBC is dependent on its effective implementation including creation of the required Institutional Infrastructure, appointment of competent and suitable persons to implement the Code. But it is expectable that code will be able to achieve its desired objectives. **MA**

Reference

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