



## Insolvency & bankruptcycode, 2016: A paradigm shift with insolvency laws in India

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### Abstract

An effective economy plays a catalytic role in activating and sustaining growth, especially, in developing countries and India is no exception. One of the biggest insolvency reforms in the economic history of India is continuously been evolving and has undergone a paradigm shift. Approximately hundreds of cases have been witnessed under Insolvency and Bankruptcy Code, 2016 and some are still being battled. Insolvency and Bankruptcy code has invited a lot of discussions and many questions are being raised on how effective is the Code in mitigating the damage done by companies going bankrupt either due to poor corporate governance or misappropriation of funds by promoters or businesses succumbing to the unsustainable policy environment. Insolvency and Bankruptcy Code, 2016 has aimed at bringing a paradigm shift within insolvency and bankruptcy laws. This was enacted for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals. The focus of the Act was to maximum the value of assets, promoting entrepreneurship, creating mechanism for settling credit-related disputes, reducing creditor distrust and ensuring continuance of functioning of companies rather than being wound up for non-payment of debts by balancing the interests of the various shareholders. Especially the corporate sector had to face financial challenges due to wrath of the Covid-19 pandemic. Since the code is in the fledgling stage of implementation, judicial pronouncements play a vital role in clarifying the intent of the legislature regarding the code and the manner it has to be interpreted. If the accomplishment of the fledgling Code has to be determined clearly, it depends on the kind of paradigm shift Insolvency and Bankruptcy code has brought in the debtor-creditor relationship which should be considered as a benchmark.

**Keywords:** IBC 2016, economy, insolvency, bankruptcy, financial challenges, legal environment of India, wounding up, liquidation

### Introduction

India has always fallen behind in terms of the development of its corporate economy by failing to keep up with global trends. Ambit of Covid-19 made it even worst and many of the advanced countries were hit with this pandemic and faced financial challenges in spite of having effective policies. This resulted in economic downfall which went inscrutable to deal with. This when arise the need and importance of simulates of economy. Some countries, even in India, economic slowdown already prevailed before the ambit of Covid-19. In banking Sector's Nonperforming Assets Portfolio was on vertical rise. Situation after Covid and lockdown effects are unfathomable even for most of the learned economist and finance persons and all are groping in Dark. How many business units will survive in spite of moratoriums and stimulus is totally unpredictable bankers are naturally worried about their recoveries on due date. This when Insolvency and Bankruptcy Code, 2016 came into existence to govern the easy exit of businesses, it has been witnessed from time to time that India has been lacking the legal framework for the companies whose businesses have been hindered and they want to exit the market although it had also been a matter of concern to determine the order of distribution of assets at the time of liquidation of the company. Previously there were no specific provisions to govern the distribution of assets amongst the creditors. But in the present era section 53 of the Insolvency and Bankruptcy code, 2016 deals with the mechanism for the distribution of assets under liquidation.

### Objectivite of the Research Paper

The research paper's major goal is to raise awareness of the necessity of an efficient economy for growth, the achievement of various productivity trajectories, and sustainable growth. This is a key element that can significantly raise living standards. When a country faces financial difficulties, its growth is severely hampered; the primary causes of this are insolvency, bankruptcy, money laundering, banking scams, etc.

The three-year resolution procedure of Videocon Industries and 12 other group firms finished with lenders taking a massive haircut of about 96%, the largest haircut on this list, similar to the bankruptcy case that made news, VIDEOCON INDUSTRIES. After NCLT authorised Vedanta Group-led Twin Star, creditors suffered a loss of about Rs 62,000 crore.

As can be seen clearly via the landmark IBC case of ESSAR STEEL, from the worst to the best recovery, Essar Steel not only became a landmark IBC case but also earned the lenders 85% in returns on the debt of Rs. 49,000 crore owed by the steelmaker. Essar Steel was one of the original 12 businesses that the Reserve Bank of India (RBI) decided needed to be referred to NCLT for help with their increasing debts. The asset, which was admitted to NCLT in August 2017, was eventually acquired by Laxmi Mittal-led ArcelorMittal after a Supreme Court decision in November 2019. Sashi and Ravi Ruia, the company's former promoters, did everything possible to recover the asset, including placing bids through Numetal or making a settlement offer of Rs 54,000 crore. The 10 mtpa steel factory ended up being the ideal means for Mittal's entry

into India even if the courts rejected all of the Ruias' attempts. In the second round of bidding, ArcelorMittal raised their offer to Rs 42,000 crore, securing banks the best IBC deal to yet.

To handle these kinds of circumstances The Insolvency and Bankruptcy Code, 2016 was passed to establish a much-needed framework for organised dialogue between lenders and borrowers in order to protect a commercial enterprise's economic value and to offer a set of procedures for handling insolvency and bankruptcy. Despite being in its early stages of implementation, the code has proven a remarkable replacement for India's previous insolvency resolution procedure. It has given the parties involved a time-bound, one-stop solution. IBC, 2016 unifies and updates the Indian law governing the insolvency resolution process. Lenders, financial institutions, businesses, and professionals appear to be affected widely by the Code, offering them the opportunity to serve as resolution professionals. Insolvent entities are intended to be wound up more quickly, distressed entities are intended to be saved, and investors are intended to have an easier exit.

### Insolvency and Bankruptcy Code, 2016

Bankruptcy is the legal situation of a business or a person in which the debt owing to the creditors cannot be repaid. In the majority of jurisdictions, bankruptcy is imposed by judicial order. Most often, the debtor is the one to start it. It is significant to remember that bankruptcy is not the same as insolvency. It is not the only legal status that a bankrupt person or company may be able to claim. In nations like the UK, only private persons can declare bankruptcy. Entities and companies may be subject to administration, liquidation, and other similar insolvency actions.

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy

This Code has been enacted to establish a unified framework that could resolve matters related to bankruptcy and insolvency. The method adopted by IBC is the creditor-in-saddle approach, the professionals with the interim resolution take over the management of the affairs related to corporate debtors at the outset. In this process, the accounts of the people related to NPA and the wilful defaulters are debarred from the resolution process.

The Code extends to whole of India.

### Applicability of the Code

The provisions of this Code shall apply to—

- a. any company incorporated under the Companies Act, 2013 (18 of 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 (6 of 2009);
- 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
- e. personal guarantors to corporate debtors;
- f. partnership firms and proprietorship firms; and
- g. individuals, other than persons referred to in clause (e).]

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

### Objectives of Insolvency and Bankruptcy Code

- To revise and combine all of India's current insolvency rules.
- To streamline and accelerate India's bankruptcy and insolvency procedures.
- To safeguard the interests of creditors, including firm stakeholders.
- To resurrect the business in a timely manner.
- To encourage business ownership.
- To provide the required relief to the creditors and, as a result, boost the availability of credit in the economy.
- To develop a novel and efficient recovery technique that banks, financial institutions, or people can use.
- To establish an Indian Insolvency and Bankruptcy Board.
- Increasing the value of business people's assets.

### Who Facilitates the Insolvency under the Code

- **The Insolvency Professionals:** These professionals will administer the resolution process, manage the assets of the debtor, and provide information for creditors to assist them in decision making.
- **Insolvency Professional Agencies:** insolvency professionals will be registered with insolvency professional agencies. The agencies conduct examinations to certify insolvency professionals and enforce a code of conduct for their performance.
- **Information Utilities:** Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.
- **Adjudicating authorities:** The proceedings of the resolution process will be adjudicated by the National Companies Law Tribunal (NCLT), for companies; and the Debt Recovery Tribunal (DRT), for individuals. The duties of the authorities will include approval to initiate the resolution process, appoint the insolvency professional, and approve the final decision of creditors.
- The Board will regulate insolvency **Insolvency and Bankruptcy Board:** professionals, insolvency professional agencies and information utilities set up under the Code.

### Winding Up and Dissolution

The Insolvency and Bankruptcy Code, the Companies Act, and other particular acts like the Banking Regulation Act of 1949 all contain procedures for winding up and dissolving businesses (which apply to banking companies and co-operative banks as specified in Part V of the Banking Regulation Act, 1949).

- The many methods of winding down or dissolution are as follows:
  - In the event that a corporate debtor defaults
  - Closure by Tribunal
  - Liquidation process in summary
  - The ability to dissolve unregistered businesses and foreign corporations
  - Dissolving any transferring company
  - Registrar's dissolution of the Company

### ▪ **In Case of Default by Corporate Debtor**

the corporate applicant, the financial creditor, the operational creditor, under Chapter II of The Insolvency and Bankruptcy Code, 2016 may begin the Corporate Insolvency Resolution Process. The Adjudicating Authority may issue an order for liquidation under Chapter III of the Code if the resolution plan is not in compliance with the Code, the Adjudicating Authority does not receive the resolution plan within the required timeframe, the Adjudicating Authority approves the resolution plan, and the corporate debtor subsequently fails to comply with the resolution plan.

### ▪ **Winding up by Tribunal**

- The conditions under which a corporation may be dissolved by the Tribunal (under Section 271 of the Act as amended by the Code) after a petition by a specific group of people.
- Company has behaved against the interests of the security of the State, cordial relations with foreign States, public order, decency or morality; • Special resolution by the Company resolving that Company may be wound up by the Tribunal;
- The Tribunal determines that the Company should be wound up based on an application submitted by the Registrar or another person authorised by the Central Government, or that the Company was formed for fraudulent and unlawful purposes, or that any of the parties involved in its formation or management have engaged in fraud, misfeasance, or misconduct in connection therewith;
- The Company's failure to file its financial reports or annual returns for the five fiscal years that came before it in a row;
- The tribunal believes that winding up the corporation would be just and equitable. A Winding up petition filed in accordance with the applicable Section may be dismissed by the Tribunal.

### ▪ **Summary Procedure for Liquidation**

[Section of the Act]

- Central Government may order the Company to be wound up where the Company belongs to such class as may be prescribed and the book value of the assets do not exceed 1 crore rupees.
- Winding up of unregistered companies and power to wind up foreign companies [Sections 375 and 376 of the Act] which are owned directly or indirectly to the extent of at least 50% by citizen(s) of India [Ref. Section 379].
- Provisions applicable to unregistered companies shall also apply to foreign companies.
- Such unregistered company shall not be wound up voluntarily.
- May be wound up if

1. unregistered company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

1.2 is unable to pay its debts;

1.3 if the Tribunal is of opinion that it is just and equitable that the unregistered company should be wound up.

### ▪ **Dissolution of any Transferor Company**

Section 232(3)(d) of the Act provides for the dissolution, without winding up, of any transferor company in the case of the reconstruction of the firm or companies including a merger or the amalgamation of any two or more companies. In accordance with Section 248 of the Act, the Registrar may dissolve the Company if the Registrar determines that the Company failed to begin operations within one year of incorporation or that the Company has been inactive for two straight financial years without applying for dormancy status during that time.

Financial service providers are exempt from the Code's provisions. Until specific provisions are made, the Financial Service Providers shall be governed by the Act and/or applicable special laws.

Financial Service Providers are notably excluded from the Code's definition of a "corporate person."

### ▪ **CIRP Can Be Initiated**

In the case that a corporate debtor defaults, a CIRP may be started by an operational creditor, financial creditor (either individually or jointly, and with respect to a financial debt payable to any financial creditor), or corporate applicant.

When a debt becomes due and payable in full or in part and is not paid for by the debtor or the corporate debtor, as the case may be, default is defined as non-payment of the debt.

The minimal amount of default for the purposes of the Code and the application of CIRP is one lakh rupees. The minimum amount of default of a larger value may be specified by the Central Government by notification, but it may not be greater than one crore rupees.

### **Persons that are not entitled to make application for initiation of CIRP**

- A corporate debtor undergoing a CIRP; a corporate debtor who has completed a CIRP within the previous 12 months; a corporate debtor or financial creditor who has violated any of the terms of the approved resolution plan within the previous 12 months; a corporate debtor who is currently undergoing a CIRP;
- A corporate debtor who is the subject of a liquidation order.
- There is no deadline specified by the Code for submitting an application for CIRP start.

According to Section 11 of this law, a corporate debtor includes a corporate applicant with respect to such corporate debtor. It would appear that there is no restriction given the definition of corporate applicant in Section 5(5) of the Code.

### **Issues Faced by IBC, 2016**

- **Being late:** According to IBC, an insolvent asset must be remedied within 270 days. Five of the 12 large accounts that were initially submitted to IBC are still pending after more than 600 days because of ongoing litigation by one or more parties. Essar Steel's bankruptcy is one of the most notable instances of the IBC's rocky history. More than 600 days have passed since the Rs 50,000 crore account was deposited in the IBC.
- **Lack of judges and benches:** Of India's 14 NCLTs, two are yet to begin operations. A few years ago, the government announced plans to establish 24 bankruptcy courts. In comparison to the goal of appointing 60 judicial and technical members, the NCLT judge roster

reveals that 27 members have been splitting the job. The work of the benches in Jaipur, Chandigarh, Guwahati, and Cuttack is split between Delhi and Kolkata. The National Company Law Tribunal (NCLT) recently saw a rise in its bench strength from 10 to 15, according to recent government publicity. The number of members has increased by 26, bringing the total to 52.

- **Haircuts:** The amount of write-offs banks agree to as part of a resolution strategy to help the company get back on track. Financial creditors have received 43% of their claims and 188% of the liquidation value thus far. It is necessary to take action to cut back on haircuts.
- These issues raise concerns that IBC would eventually lose bank confidence and suffer the same fate as DRT and SARFAESI.
- The recent Supreme Court ruling overturning the RBI's decision to refer all power firms to the NCLT also sets a bad precedent.
- **IBC, 2016 Was Amended Time To Time By Passing Bills Issued, Recent Bill Passed Was The Insolvency And Bankruptcy Code (Amendment) Bill, 2021:**
- The Insolvency and Bankruptcy Code (Amendment) Bill, 2021 was presented in the Lok Sabha in order to change the insolvency law and offer stressed Micro, Small, and Medium Enterprises a pre-packaged resolution process.
- The ordinance that was announced on April 4 of this year will be replaced by the bill. It suggested "pre-packs" as an alternative to a public bidding procedure for resolving insolvency for MSMEs. Under this system, major players including creditors and shareholders collaborate to discover potential buyers and negotiate.

#### Provisions of the Bill

- It specifies a minimum threshold of not more than Rs 1 crore for initiating the pre-packaged insolvency resolution process
- It provides for disposal of simultaneous applications for initiation of the insolvency resolution process and pre-packaged insolvency resolution process, pending against the same corporate debtor.
- Penalty for fraudulent or malicious initiation of pre-packaged insolvency resolution process or with intent to defraud persons, and for fraudulent management of the corporate debtor during the process.
- Punishment for offences related to the pre-packaged insolvency resolution process.

#### Conclusion

Without a doubt, 2016 has been the year of reform (GST & IBC). Since quite some time, India has struggled with growing non-performing assets (NPAs), which as of 31 March 2018 totaled 10.25 lakh crores INR (roughly 150 billion US dollars). Based on the aforementioned study, it is concluded that the IBC Code 2016 has established a framework for time-bound resolution for non-performing assets with the aim of enhancing the ease of doing business in India. based on M.S. According to Sahoo, Chairperson of the Insolvency and Bankruptcy Board of India (IBBI), over 40 corporate debtor cases have been filed under the terms of the IBC, and the creditors have received over 50,000 crores,

meaning that the average realisation rate is above 50% so far.

This demonstrates the advantage of using this code. According to reports from the end of January 2018, the National Company Law Tribunal (NCLT) had received at least 2,434 new cases up through 30 November 2017 and 2,304 cases from high courts seeking to wind up corporations. Once more, this slows down the process of total resolution. Challenges have been brought on by cross-border insolvency and the rejection of Indian law in foreign jurisdictions and vice versa. The procedure for such transactions is not clear. Because IBC plays a part in the hiring, firing, and professional inspection of professionals, few observers have contended that the government interferes with it excessively. It has been noted that there is still a shortage of infrastructure to handle high value and a large number insolvencies. In addition to addressing the aforementioned issues, the IBC Code has improved India's standing in the world for business accessibility. India is now ranked among the top 100 countries in the world for the first time. Economic changes such as the IBC and GST are to blame for this increase. We can anticipate a rise in FDI and GDP as a result of this development. It has also significantly boosted India's M&A drive. Only if an environment is developed in India where the failures of business owners and financiers are handled and managed delicately on time will the "Make in India" campaign be successful. Every stakeholder will be able to successfully contribute to a nation's entrepreneurial growth if the credit market in that economy runs smoothly. One step in this direction is IBC Code. The article explores the IBC law from a variety of angles, highlighting its key problems and the effects it has had on the Indian economy both at home and abroad. Unquestionably a ground-breaking piece of legislation, the IBC is continually developing to meet new challenges.

#### Abbreviations

- IBC - INSOLVENCY AND BANKRUPTCY CODE
- NCLT- NATIONAL COMPANY LAW TRIBUNAL
- NPA - NONPERFORMING ASSETS
- CIRP - CORPORATE INSOLVENCY RESOLUTION PROCESS

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