



The insolvency and bankruptcy code, 2016: Insolvency professional agency

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Abstract

The IBC 2016 is a landmark development in the dynamic world of resolution of stressed assets laws in our country. The economy is straddled with humongous NPAs in the financial sector and the twin balance-sheet deficit problem is plaguing the banking sector no end. It's one of the largest legal move in the country's war to clean up around \$117 billion of stressed assets in the economy.

In this situation the IBC, 2016 provides for resolution in a time bound manner, promotes entrepreneurship which will lead to an improvement in credit availability and would balance interest of all stakeholders, the IBC envisages to minimize the role of Adjudicating Authority and tackles laws of 100-year vintage like the The Presidency Towns Insolvency Act, 1909 and Sick Industrial Companies (Special Provisions) Repeal Act, 2003.

The present paper is a commentary on the Insolvency Professional Agency framework that is the bulwark of the IBC in terms of the procedural and regulatory ambit of the code. The authors have endeavored to explain the concept of Insolvency Professional Agency along with the role and scope of the Insolvency and Bankruptcy Code, 2016.

Keywords: insolvency professional agency, bankruptcy, stressed assets, NPAs

Introduction

It is the bankruptcy law of India which strengthens the existing laws by developing a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code was introduced in Lok Sabha in Dec 2015. It was passed by Lok Sabha on May 05, 2016. The code received ascent of the President of India on May 28, 2016...

The code was passed by parliament in May, 2016 and became effective in Dec, 2016. It repealed The Presidency Towns Insolvency Act, 1909 and Sick Industrial Companies (Special Provisions) Repeal Act, 2003.

The first final insolvency resolution order under the Insolvency and Bankruptcy Code, 2016 was passed by National Company Law Tribunal (NCLT) in the case of Synergies-Dooray Automotive Ltd. on Aug 14, 2017.

Key Features

- The code has separate insolvency process: for individuals, companies and partnership firms. The process of insolvency can be initiated by either debtor or creditors.
- A maximum time limit for completion of the insolvency resolution process: for companies – 180 days, this may be extended by 90 days. For companies with assets of less than Rs. 1crore – 90 days, this may be extended by 45 days.
- Adjudicating Authority: The National Company Law Tribunal (NCLT) - for Companies and Limited Liability Partnership Firms. Debt Recovery Tribunal – Individuals and Partnership firms.
- Insolvency Regulator: The code establishes the Insolvency and Bankruptcy Board of India (IBBI) to control and regularize the insolvency proceedings in India and its

registered entities. Members in Board- 10 (including Ministers of Finance and Law and the Reserve Bank of India).

- Insolvency Professionals: The insolvency process is managed via licensed professionals.

What is Insolvency?

Insolvency is when an individual or organization is unable to meet its outstanding financial debt towards its lender as it become due. If it cannot be resolved, then a legal action may lie against the insolvent and its assets will be sold to pay off the outstanding debts.

What is Bankruptcy?

A bankruptcy is when a person voluntary declares himself as an insolvent and goes to the court. On declaring him as 'bankrupt', the court is responsible to liquidate the personal property of the insolvent and hand it out to its creditors. It provides a fresh lease of life to the insolvent.

Process under Insolvency and Bankruptcy Code, 2016'

A plea for insolvency is submitted to the NCLT in case of corporates by secured or unsecured creditors. The NCLT has to decide in 14 days either to accept or reject such plea for insolvency. When the plea is accepted, the tribunal appoints Insolvency Resolution Professional (IRP) to make a resolution plan within 180 days (extendable by 90 days). For this period board of directors stands suspended, and the promoters does not stay in management of the company.

For insolvency resolution of individuals and partnerships, there is no specific mandatory period within which the resolution decision has to be taken. Moreover, a corporate

person can be liquidated but an individual cannot. He has to be declared bankrupt. If the default is above Rs.1000 (may be increased up to Rs.1 lakh by the Government, by notification), the Code applies to such individuals and partnerships shall appoint resolution professional upon confirmation received from the Board. DRT shall within 14 days admit or reject the application. DRT shall issue public notice inviting claims from all creditors within 21 days of such notice. Creditors shall register claims with resolution professional. Resolution professional shall prepare a list of creditors. Approved repayment plan shall be binding on creditors and debtor. If the DRT rejects the repayment plan, then bankruptcy proceeding can be initiated.

Insolvency Professional Agency

Chapter II of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 describes the Insolvency Examination, the board either by its own or through designated agency conduct NATIONAL INSOLVENCY EXAMINATION, to test the knowledge and practical skills of individuals in the subjects of insolvency and bankruptcy.

Chapter III and V of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 describes

Eligibility

1. A person must not be a minor.
2. Should be a resident of India.
3. Should qualify as per other norms of the code.
4. Should not be convicted by any court for contempt for a punishable with imprisonment for a term exceeding 6 months or for an offence involving moral turpitude.
5. Should not be insolvent declared by any court.
6. Should be of sound mind.
7. Should be a fit and proper person (integrity, reputation and character).

Qualifications and Experience

A person is eligible for registration, if he-

1. Has cleared the National Insolvency Examination.
2. Has passed the NIE, and has 15 years of experience in management after Bachelors Degree.
3. Has passed the NIE and has 10 years of experience as-
 - a. CA
 - b. CS
 - c. Cost accountant
 - d. Advocate

Application for Certificate of Registration:

1. An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board in Form A of the Second Schedule to these Regulations, along with a non-refundable application fee of ten thousand rupees to the Board.
2. The Board shall acknowledge an application made under this Regulation within seven days of its receipt.
3. The Board may require the applicant to submit, within reasonable time, additional documents, information or clarification that it deems fit.
4. The Board may require the applicant to appear, within

reasonable time, before the Board in person, or through his authorized representative for clarifications required for processing the application.

Code of Conduct for Insolvency Professionals

1. An insolvency professional must maintain integrity by being honest, straightforward, and forthright in all professional relationships.
2. An insolvency professional must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.
3. An insolvency professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party, whether directly connected to the insolvency proceedings or not.
4. An insolvency professional appointed as an interim resolution professional, resolution professional, liquidator, or bankruptcy trustee should not himself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so. Independence and Impartiality
5. An insolvency professional must maintain complete independence in his professional relationships and should conduct the insolvency resolution, liquidation or bankruptcy process, as the case may be, independent of external influences.
6. In cases where the insolvency professional is dealing with assets of a debtor during liquidation or bankruptcy process, he must ensure that he or his relatives do not knowingly acquire any such assets, whether directly or indirectly unless it is shown that there was no impairment of objectivity, independence or impartiality in the liquidation or bankruptcy process and the approval of the Board has been obtained in the matter.
7. An insolvency professional shall not take up an assignment under the Code if he, any of his relatives, any of the partners or directors of the insolvency professional entity of which he is a partner or director, or the insolvency professional entity of which he is a partner or director is not independent, in terms of the Regulations related to the processes under the Code, in relation to the corporate person/ debtor and its related parties.
8. An insolvency professional shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under sections 53 or 178 of the Code, and the concerned corporate person/debtor as soon as he becomes aware of it, by making a declaration of the same to the applicant, committee of creditors, and the person proposing appointment, as applicable.
9. An insolvency professional shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means to achieve any malafide objectives. Professional competence.
10. An insolvency professional must maintain and upgrade his professional knowledge and skills to render competent

- professional service. Representation of correct facts and correcting misapprehensions.
11. An insolvency professional must inform such persons under the Code as may be required, of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.
 12. An insolvency professional must not conceal any material information or knowingly make a misleading statement to the Board, the Adjudicating Authority or any stakeholder, as applicable. Timeliness.
 13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines there under for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.
 14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code. Information management.
 15. An insolvency professional must make efforts to ensure that all communication to the stakeholders, whether in the form of notices, reports, updates, directions, or clarifications, is made well in advance and in a manner which is simple, clear, and easily understood by the recipients.
 16. An insolvency professional must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of his decisions and actions.
 17. An insolvency professional must not make any private communication with any of the stakeholders unless required by the Code, rules, regulations and guidelines there under, or orders of the Adjudicating Authority.
 18. An insolvency professional must appear, co-operate and be available for inspections and investigations carried out by the Board, any person authorized by the Board or the insolvency professional agency with which he is enrolled.
 19. An insolvency professional must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.
 20. An insolvency professional must be available and provide information for any periodic study, research and audit conducted by the Board. Confidentiality.
 21. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process, as the case may be, is maintained at all times. However, this shall not prevent him from disclosing any information with the consent of the relevant parties or required by law. Occupation, employability and restrictions.
 22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.
 23. An insolvency professional must not engage in any employment, except when he has temporarily surrendered his certificate of membership with the insolvency professional agency with which he is registered.
 24. An insolvency professional must not conduct business which in the opinion of the Board is inconsistent with the reputation of the profession. Remuneration and costs.
 25. An insolvency professional must provide services for remuneration which is charged in a transparent manner, is reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.
 26. An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing his remuneration.
 27. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable. Gifts and hospitality.
 28. An insolvency professional, or his relative must not accept gifts or hospitality which undermines or affects his independence as an insolvency professional.
 29. An insolvency professional shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession for himself.
- Particulars of Insolvency Professional Registered under Regulation 7 read with Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016:
- 1. Registration No.** -IBBI/IPA-002/IPN00001/2016-17/10001
Name of IP – Mr. Devendra Singh (ICSI Insolvency Professional Agency).
Place – Delhi.
 - 2. Registration No.** - IBBI/IPA-002/IPN0000/2016-17/10002
Name of IP – Mr. Satyendra Prasad Khorania (ICSI Insolvency Professional Agency).
Place – Jaipur.
 - 3. Registration No.** - IBBI/IPA-001/IPP00002/2016-17/10010
Name of IP – Mr. Anil Katia (The Indian Institute of Insolvency Professional of ICAI).
Place – Chandigarh, Haryana & Punjab.
- The Governing Body Insolvency Board**
Chairperson – Dr. M.S. Sahoo
Whole time members – Ms. Suman Saxena (WTM [Research and Regulation Wing]),
Dr. Navrang Saini (WTM [Registration and Monitoring Wing]),
Dr. Ms. Mukulita Vijayawargiya (WTM [Administrative Law Wing]).
Ex-officio members – Dr. Shashank Saksena (Adviser [capital markets], Department of Economic Affairs, Ministry of Finance),
Sh. Amardeep Singh Bhatia (Joint Secretary, Ministry of Corporate Affairs).

Conclusion

When the RBI dropped a bomb on June 13, 2017 by ordering banks to take the top-12 defaulters to bankruptcy codes, a positive outcome of this came when bank lost all hopes of business – the first time there was strong negotiations between banks and borrowers. A small step towards the great future, resolution of bad loans with the banks as it was certain that now defaulters will lose their coronal jewel as they do not cease to act irresponsible towards their debts.

The new insolvency and bankruptcy procedure which brings a procedure within a defined time to recover from defaulters unlike the past non-mandatory and translucent ways from the past and it is very laborious without the proper Insolvency Resolution Professional (Agency / Agents).

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