

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India that seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. The Government implemented the Insolvency and Bankruptcy Code to consolidate and amend all laws related to insolvency and bankruptcy and to tackle Non-Performing Assets, which is a serious problem for the Indian Economy. The Insolvency & Bankruptcy Code 2016 was enacted to address the on-going problems in existing insolvency laws in India and to bring them under one roof is a greater challenge. Insolvency and Bankruptcy Code, 2016 provides a complete process for resolving insolvency situations in companies and among the individuals within a specified time. Bankruptcy, on the other hand, is a legal course undertaken by the company to free itself from debts. This Code is different from the earlier insolvency laws as it shifts the option to the creditor to initiate the insolvency resolution process in the National Company Law Tribunal against the corporate debtor. The Prime Minister of India announced the Insolvency & Bankruptcy Code ordinance which stated temporary suspension of Article 7, 9 & 10 of IBC 2016 for defaults occurring after 25th Mar 2020.

Process of Insolvency and Bankruptcy Code in India

Corporate Insolvency Resolution Process initiates when the corporate debtor defaults minimum threshold of Rs.1 Crore^[2]. Now its mandatory for a resolution case to complete within 330 days. If the committee of creditors did not reach a resolution, the company would have to be liquidated. Now the law is moving towards its multidimensional approach in which the NCLT & DRTs are playing an important role in proceedings of the case. Earlier before the enactment of IBC 2016, there was not a specific code or courts for the insolvency process of the companies and individuals. Now under the resolution plan, it is made compulsory that operational creditors are provided the amount which is more than the liquidation value of their debt. Adjudicating authorities have been given the powers to admit or reject the application and if adjudicating authority rejects any application then they had to provide reasons why that application was not admitted. The time period for giving a reason is 14 days but the limit could be increased in exceptional cases. The Corporate Insolvency resolution process will initiate from the submission of the application. The Adjudicating Authority shall declare a moratorium after the admission of the application under Sec 7 or 9 or 10. The authority can circulate the public announcement of the initiation of the Corporate Insolvency Resolution process and appoint an Interim Resolution Professional within 14 days from commencement of the insolvency process. The IRP takes over management of corporate debtor and is in charge of day to day affairs of the corporate debtor. Under sec 59 of Insolvency & Bankruptcy Code, only a corporate person is allowed to initiate a voluntary liquidation process, which has not committed any default. Under the Insolvency & Bankruptcy Code 2016, a waterfall arrangement has also been set up which gives the distribution order and priority of the proceeds from the sale of liquidation assets. Thus, it can be seen that the Corporate Insolvency Resolution Process and subsequent liquidation process of the corporate debtor is a time-bound process aimed at the speedy dissolution of debtors.

Authorities under this Act:

The code sets out provisions for the establishment of different institutional structures of IBC:

- Insolvency and Bankruptcy Board of India[3]: The board is the apex body for the regulation of IBC in our country. It acts as a supervisor over the other authorities working under Insolvency and Bankruptcy Code.
- Insolvency Professional Agencies: The companies which are registered under Section 8 of The Companies Act, 1956 can approach the IBBI for registration as Insolvency Professional Agency.
- Insolvency Professional– To be an Insolvency professional an individual has to be:
 1. A member of the Insolvency Professional Agency, and
 2. Registered with the Insolvency & Bankruptcy Board Of India

They are involved in the dissolution process of companies, LLPs and they play an important role in the Insolvency process. India has about more than 800 insolvency professionals.

- Information Utilities: It is an entity registered under Sec 210 of code. Their primary work is to collect financial information and provide access to the insolvency resolution process.

Objectives of Insolvency Bankruptcy Code

- The IBC has really fulfilled the objective to consolidate and amend all existing insolvency laws in India. Before enactment of IBC 2016, there were many different insolvency laws but after the enactment of IBC all the insolvency laws have been placed under one roof
- The IBC 2016 has also played a remarkable part to simplify and expedite the Insolvency and Bankruptcy Proceedings in India and it has made the process easy which is beneficial to the company.
- The code also vested the laws to protect the interest of creditors including stakeholders in a company. And this has helped a lot in the development of the Company.
- The code also helped the company to revive in a time-bound & simple manner.
- The IBC also provided necessary relief to the creditors and as a result, the credit supply is increased in the economy which is beneficial for the development and growth of the economy
- The IBC also helped in speedy disposal of insolvency cases in a prescribed manner.
- The IBC also helped in the establishment of two tribunals: NCLT & DRT. This is the competent court to initiate the insolvency process

Characteristics of Insolvency Bankruptcy Code

- It provides a time-bounded & institutional framework for the insolvency process of companies.
- It also helped in simplification of the insolvency process as before the enactment of IBC, the process was too lengthy and it was complicated.

- IBC is applicable to companies, Special Act Company, LLP, notified Body Corporate, and Partnership Firms & Individuals.
- This code extends to the whole of India and is applicable to all states including Jammu & Kashmir.

Achievements:

IBC can be considered as an improvement in the two earlier laws to regulate recovery of loans—the Sick Industrial Companies Act, 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. IBC has consolidated all these laws and it accomplished different achievements:

- It led to speedy disposal of cases as before enactment it took about 4-6 years for the disposal but after enactment, the whole process gets completed in 317 days.
- It also resulted in a higher recovery rate of cases.

In the case of **JK Jute Mills Co. Ltd. Vs Surendra Ltd Trading Company** it was held that time is the essence of code and this prescribed the different timelines in the whole process of the Corporate Insolvency Resolution Process.

Sree Metallic's Ltd. Vs UOI [2017 03 HC]

It was held that NCLT is obliged to afford a reasonable opportunity to the financial debtor and the adjudicating authority should also issue notice before starting the Insolvency Process.

This was the major achievement of IBC but as there is a saying that there are always two sides of coins i.e. head & tail likewise it faced a lot of challenges.

Challenges of Insolvency and Bankruptcy Code

- There are very less operational NCLT & DRTs in India and division of these benches at various places including Delhi, Jaipur, Kochi, Mumbai and many more remains non-operational or partly operational on account of lack of proper infrastructure or adequate support staff, by which individuals and companies face a lot of problems in filing the application.
- As the code is new now, it is facing a lot of challenges in proceedings and the corporate insolvency resolution process. Nowadays many corporate scams are taking place which also puts a question mark on the functioning and working of this code. In the starting phase, it is facing a lot of challenges but day by day government is trying to take different steps to stop these scams, and in which IBC will play an important role.
- In our country nowadays there are many numbers of liquidation cases which are not a good sign of the development of our economy.
- In India, as the code is now so many persons or companies are not used to these laws so they take a lot of time and as a result, the whole process becomes lengthy and time-consuming. It also results in a lot of pending cases in the courts and the Tribunals.

Conclusion

At last, I would end by saying that the Insolvency Bankruptcy Code is simplified legislation for speedy disposal of Insolvency cases and the adjudicating authority is an essential component of the Code. Really, IBC has brought up a tremendous improvement in shortening the resolution process. It has also helped to put all the earlier insolvency laws under one code i.e. Insolvency and Bankruptcy Code. It is also facing a lot of changes but gradually it will be able to overcome all the challenges as Government is taking important steps to regulate the bye-laws and different laws related to insolvency. The government is also trying to simplify the whole insolvency resolution process and speedy disposal of cases in a time-bound manner.

Bibliography

Sites referred:

- ibc.taxmann.com
- indiainfoline.com
- outlookindia.com

Bare acts referred:

- Insolvency and Bankruptcy Code,2016
- Companies Act,2013

[1] **About Author-** Amit Anand pursuing 3rd year BBA LLB from School of Law, University of Mumbai Thane campus. I am preparing for the Company secretary and have cleared the foundation level. I have a desire to work in the Corporate Sector. I prefer doing smart work rather than hard work. I previously interned with Tata Institute of Social Science Mumbai, Orbit Law Services Mumbai, State Legal Services Authority Chandigarh & more. My areas of interest include Insolvency & Bankruptcy Law, Company Law, Corporate Laws, etc.

[2] Indian Insolvency & Bankruptcy Code of India, 2016 Sec 4

[3] Ministry Of Corporate Affairs; Govt. Of India