



**"ANALYSIS OF INSOLVENCY & BANKRUPTCY
LAWS: EMERGING TRENDS IN INDIA"**

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DECLARATION

I hereby declare that dissertation entitled. "**ANALYSIS OF INSOLVENCY & BANKRUPTCY LAWS: EMERGING TRENDS IN INDIA**" is based on original research undertaken by me and it has not been submitted within partially or fully or otherwise within any University for any degree or diploma.

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CERTIFICATE

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LIST OF ABBRIVATION

- 1. IBBI** : Insolvency and Bankruptcy Board of India
- 2. DRT** : Debt Recovery Tribunal
- 3. IRP** : Insolvency Resolution Professional
- 4. RP** : Resolution Professional
- 5. COC** : Committee of Creditors
- 6. NCLT** : National Company Law Tribunal
- 7. NCLAT** : National Company Law Appellate Tribunal
- 8. DRAT** : Debt Recovery Appellate Tribunal
- 9. IBC** : Insolvency and Bankruptcy Code
- 10. BIFR** : Board For Industrial and Financial Reconstruction
- 11. CIRP** : Corporate Insolvency Resolution Process
- 12. CD** : Corporate Debtor
- 13. LLP** : Limited Liability Partnership
- 14. CLB** : Company Law Board
- 15. MCA** : Ministry Of Corporate Affairs
- 16. IUs** : Information Utilities
- 17. IPA** : Insolvency Professional Agencies

ABSTRACT

The main objective of this dissertation is to critically analyze Insolvency and Bankruptcy laws in India and to compare the new Insolvency and Bankruptcy Code (IBC) 2016 with the old law. An important part of this dissertation is the introduction of new terms by the IBC 2016, which has led to many procedural changes in insolvency law.¹ The process of insolvency is different for individuals and corporate entities, and the adjudicating authority also differs in both cases. A key point of debate is the role of the National Company Law Tribunal (NCLT) and insolvency professionals, who are central figures in the insolvency process. The main aim of this new act is to ensure resolution within 180 days, with a possible extension of 90 more days. The Insolvency and Bankruptcy Code has been constructed by the legislature by drawing on insolvency laws from different countries, addressing the shortcomings of previous laws (repealed) that had many loopholes. The new insolvency process takes care of these. The IBC 2016 gives equal importance to secured and unsecured creditors, and the process for the committee of creditors is also different. Foreign financial investors and foreign banks are also secured under the new law, as they fall under the category of "waterfall," which was missing under the previous insolvency law. This dissertation examines the many points of difference between the IBC 2016 and the old law, and draws conclusions based on this analysis.

¹ <https://www.taxmann.com/research/company-and-sebi/top-story/10501000000013579/critical-analysis-of-insolvency-and-bankruptcy-code-2016-experts-opinion> by Udit Saraf, 4th of June 2024.

CHAPTER 1

INTRODUCTION

An overview of insolvency and bankruptcy laws in India has drastically changed over recent time giving it a new historical apex that is more structural and coordinated. One of the recent significant reforms was the initiation of the Insolvency and Bankruptcy code in 2016 which aimed at the consolidation of diverse Acts relate to insolvency and bankruptcy. This paradigm shift has played a role in helping in the ease of doing business in India fast-tracking the resolution of insolvency cases and achieving maximal realization of assets. The trends that emerged in the present topical area point to the progressive development and constant changes in the legal environment to address modern-day issues. Such trends include the rising prevalence of pre-packaged insolvency solutions creditor remedy exclusive professionals in insolvency and judicial guidelines that define the IBC'S tenets and applications. This dynamism is the hallmark of these developments and it underscores India's determination to provide a solid legal infrastructure for the strengthening of insolvency regimes as beneficial to creditor's debtors and the financial system as a whole.²

During the functioning of the IBC there were some problems by practice and changes in the development of the world economy that caused the changes in the functioning of the IBC through amendments. Thereafter the orders of National Company Law Tribunal (NCLT) National Company Law Appellate Tribunal (NCLAT) and Supreme Court of India has aided in providing some further clarity in the mechanism of enforcing the code. These interpretations have provided a clearer understanding of several questions of the IBC including the identity of parties applying for the resolution different types of creditors as well as the meaning of the concept of default.³ New development: Recently introduced pre-packaged insolvency processes to provide more efficient measures for

² <https://vidhilegalpolicy.in/blog/pre-packaged-insolvency-resolution-under-the-insolvency-and-bankruptcy-code-ibc-anoverview/>

Micro Small and Medium Enterprises (MSMEs). There is also more emphasis placed in cross border insolvency laws as the world economy is now integrated and many companies and financial exercises are more global in character. Also, insolvency professionals – the place of these individuals has been actively changing throughout the years and their skills as well as the ways of obtaining them are becoming increasingly emphasized. These trends go along the path that India has been charting out to build a robust and a progressive framework of bankruptcy laws that protect the creditors and the debtors and which also supports the stability and growth of the financial system. Such shifts and transformation processes are regarded as the preventive measures for preparing the setting more conducive to the development of business companies as well as provide an adequate financial management.

1.2 Background

A glimpse at the historical background of the insolvency and bankruptcy laws in India is important so as to underset and the need for these laws arising out of the need to protect the rights of creditors and regulate debtor's ability to discharge his liabilities especially in light of the dynamic and expanding economic structure of the nation. Before the introduction of IBC in 2016 India had complex insolvency laws that followed a sectoral approach and was governed by the SICA RDDBFI and Companies Act. Such laws sustained poor creditor recoveries legally long winding wind up hitches and low value of assets in the distress list.

However realizing the shortcomings of the old law, the Indian government in 2014 formed the Bankruptcy Law Reforms Committee (BLRC). The earlier legislation was formally called the BLRC that recommended the so-called IBC which has passed and aims at the creation of a general and detailed legal structure to address issues of insolvency and bankruptcy for company's partnerships and persons. The IBC was further planned to simplify the insolvency procedure to develop methods for efficient recovery of debts and to advance the business atmosphere.³

³ <https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2023/article/overview-of-indias-insolvency-andbankruptcy-code>

As with the CB the IBC also has features such as the imposition of time-bound resolution processes formation of the IBBI as the regulatory authority and the introduction of a new category of insolvency practitioners to manage the processes. Further the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) were finally recognized as the institutional agencies for processing corporate insolvency proceedings.

A brief on the developments of the IBC the IBC has most certainly affected the financial and business network in India since its establishment. It has established a clear and easy to follow structure that aids in the tackling of insolvency resulting to better creditors' risk and eventually foreign currency participation.

The IBC has been amended several times to apt better the new challenges that have cropped up and to make this legal instrument more effective as insolvency law is crucial to economic growth.

1.3 Need for an Effective Insolvency and Bankruptcy Regime

Failure of firm has severe negative impact on all of corporation's stakeholder's including its lenders shareholders creditors suppliers customer's employees and federal and state governments. It is therefore essential that valuable resources including capital manpower machinery and management are pulled out of failed / unviable businesses at earliest and are deployed in other profitable ventures. However, it is necessary to reorganise viable firms as soon as possible.⁴

If parties involved in corporate insolvency situation can act quickly and logically to address situation i.e. decision about continuation of business its organization or its closure law to deal with insolvency situation and intervention of courts may not be required. However, it has been observed that stakeholders fail to take such decisions to deal with situation of insolvency and therefore is need for corporate insolvency law. An economy needs an effective Bankruptcy

⁴ <https://globalrestructuringreview.com/review/asia-pacific-restructuring-review/2023/article/overview-of-indias-insolvency-andbankruptcy-code>

Law to deal with situation where in case of inability of debtor to make payment to its creditors as per payment schedule right of creditors to get control over affairs of defaulting debtor does not get effected and that debtor continues to have control over affairs of its business. Though contractually creditors may have right to get control over business of defaulting debtor however due to inefficiency of prevailing legal system they are not able to get said control without intervention of court. Involvement of courts or tribunals in these cases can be reduced if legal system provides for proper consequence and punishment for individuals who violate these contractual duties. It is often said that in absence of bankruptcy law firm's assets would be sold as scrap and value would be lost. As such law to deal with corporate insolvency / bankruptcy enables an economy to rescue viable businesses and to pull out valuable economic resources out of unviable businesses through liquidation process at earliest without further depletion in value of assets so that same can be deployed in other profitable economic activity.⁷

At present there are multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India. Current legal and institutional framework does not aid lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on Indian credit system. Recognizing that reforms in bankruptcy and insolvency regime are critical for improving business environment and alleviating distressed credit markets. Government introduced Insolvency and Bankruptcy Code bill in November 2015 drafted by specially constituted Bankruptcy Law Reforms Committee (BLRC) under Ministry of Finance. Trilegal worked with BLRC to assist with drafting of bill. After public consultation process and recommendations from joint committee of Parliament both houses of Parliament have now passed.

Insolvency and Bankruptcy Code, 2016

The Code, while legislation of Code is historical development for economic reforms in India its effect will be seen in due course when institutional infrastructure and implementing rules as envisaged under Code are formed.

In new age economy of every country is hosted by financial structure of a business and major participants within developing financial infrastructure of country are financial institutions and creditors who aid within efficient working of all financial. Requirements of an industry main goal of financial help being offered is to industries to have development of nation that can be evaluated by GDP of the country. function of such financial organizations and creditors is not only limited to furthered providing loan or credit to any industry but also to inject such equipments as needed by an industry from time-to-time Reserve Bank of India (RBI) tried to implement different routes so that Bank lender creditor may restructure or recover its stressed asset through CDC Restructuring (SDR) CDR Scheme of Arrangement Stands for Restructuring of Stressed Assets. The Insolvency and Bankruptcy Code 2016 was created with presence of next objectives are:

1. To promote entrepreneurship.
2. To provide credit.
3. Balance interests of all stakeholders by consolidating and amending provisions consistently as well as equitably existing legislation concerning solvency and bankruptcy.
4. To shorten determination periods for enhancement of asset values.

The main topic of Code is to reinforce all legislation that has something to do with companies' insolvency. Liability is capped at specific amount for limited liability entities and for unlimited liability partners and individuals through multiple laws to one confirmed legislative document.

Meanwhile SICA Repeal Act came into effect.

December 2016 and AAIFR and BIFR bands are terminated.

Background

Insolvency is state of indebtedness where individuals or companies are not able to pay back their overdue financial obligation's debt. Changing restructure of loans writing off any debt that is remarkable or making this problem may be solved with operational modifications within company management if insolvency cannot however assets of debtor may be sold within an attempt to generate money to pay repayment of outstanding debt.

There are some laws which are within place to govern and regulate Insolvency resolution for companies within India these contain

1. The Sick Industrial Companies Act of 1985 and
2. Recovery of Debt through Deposit Insurance and Credit Guarantee Corporation Act 1993 (DRT Act)
3. Security and Guarantees were addressed Reconstruction of Financial Assets and Enforcement of Security Interests Act 2002. (SARFAESI) and
4. Companies Act 2013.⁵

These laws enable restructuring of debt and seizure and sale of debtor's remaining after deducting of outstanding loans. Similar rule of law like President of Towns Insolvency Act 1909 and Provincial

Insolvency Act 1920 govern insolvency resolution for individuals. On other side these laws state procedures for resolving bankruptcy which is another way of saying insolvency creditor may also approach civil courts for debt recovery.

The Bankruptcy Law Reforms Committee within 2015 explained that there have been delays within bankruptcy process insolvency resolution. These revolve around jurisdictions of laws and judicial conflicts of clarity and their provisions. Till 2015

⁵ <https://www.legalserviceindia.com/legal/article-14407-an-overview-of-sarfaesi-act-2002.html>

bankruptcy liquidation within India took 4.3 years on average that was higher when compared with Western Countries. Moreover the performance of courts delivering judgments was inefficient because of reasons including capacity of courts. Since example 62,000 cases have been pending before Debt Recovery Tribunals December 2014 while number of cases which was treated within year was approximately 10,000. The Insolvency and Bankruptcy Code 2015 was enacted within Parliament with an aim to solve issues of these problems. It became law after both Houses approved it and it was assented by President on 28th May 2016. Implementation was done from 12th December 2016.

Importance of Effective Insolvency and Bankruptcy Regime:

Failure of company is greatly detrimental to all stakeholders of corporation comprising its lenders shareholders creditor's supplier's consumer's workers and federal and state governments. Therefore, fact that scarce resources which includes capital human resources and etc. are valuable are removed from businesses easily. Yet we must reorganize survival one's companies if it is possible. If companies involved within corporate insolvency situation act promptly and rationally to resolve it congruent of situation that is decision on whether business continues its reorganization or closure law within dealing with insolvency issue and intervention of courts is not sufficient enough. Required nevertheless other stakeholders are often reluctant to make such decisions. On other hand bequeaths matter of insolvency and is necessity of corporate insolvency law. Within word an economy must have sound Bankruptcy Law that can help to solve problem of bankruptcy case.⁶

Inability of debtor to meet obligations towards its creditors by paying according payment terms right to change within claim position of creditors to have control over affair of defaulting debtor does not get affected. However, debtor has power to make decisions about management of its business though legally creditors can have authority to steer

⁶ <https://vidhilegalpolicy.in/research/final-report-of-the-bankruptcy-law-reform-committee-and-the-insolvency-and-bankruptcycode-2016/>

business of defaulting debtor but they are not able to recover debt within an ineffective legal system. Role of courts or tribunals within resolution is therefore vital these cases can be reduced if legal system prepares for right consequence and punishment as for those who break these contractual obligations. They say it is generally known that within absence of an 'insolvency laws would mean that firm's assets would be liquidated as scrap and value would disappear'. As such law coping with corporate insolvency / bankruptcy is an important factor which helps an economy to resuscitate viable firm to shut down failing businesses and to withdraw useful economic recycle from failing businesses.⁷

By way of liquidation process at last without other further decrease of value assets such that same can be mobilized and used within other profitable economic activities. There exist many such overlapping laws and different courts dealing with issue of bankruptcy and insolvency of corporate and individuals at present within India. Existing legal and institutional systems this framework also does not help lenders within right and time confirm recovery or restructuring of defaulted loans stance and effects often have an adverse effect on Indian credit system. Understanding fact that reforms within country require bankruptcy and insolvency regime are key within ensuring improvement of business environment alleviating distressed credit markets.⁸ Government introduced Insolvency and Bankruptcy Code within November 2015 prepared by one tasked specially within Bankruptcy Law Reforms. The Ministry of Finance has established committee (BLRC) called (Committee) together with BLRC was helping within this bill that drafted. Once public consultation process was complete and recommendations by were given joint committee of Parliament both houses within Parliament have now offered INSOVENCY and BANKRUPTCY CODE 2016. Whilst legalization of Code was an important historical within course of time its effects in terms of

⁷ <https://subnational.doingbusiness.org/en/data/exploretopics/resolving-insolvency/why-matters#:~:text=Why%20does%20a%20good%20insolvency,premature%20liquidation%20of%20sustainable%20businesses>

⁸ <https://documents1.worldbank.org/curated/en/518861467086038847/pdf/106399-WP-REVISED-PUBLIC-ICR-PrincipleFinal-Hyperlinks-revised-Latest.pdf>

India's economic program will become visible institutional infrastructure and implementation of those rules apply as stipulated within Code.

The Code:

It provides uniform comprehensive legislation on subject of restructuring encompassing any entity alliances and individuals who are not financial organizations. 1. One of primal characteristics of code on other hand creditors to evaluate debtor's ability to be considered as business option and depending on result transaction may be agreed.

On scheme of its rescue of rapid dissolution regime code constitutes new institutional scheme which includes regulator insolvency professionals and information utilities an adjudication mechanism that promotes legally binding insolvency resolution within specified timeframe and liquidation.

STATEMENT OF PROBLEM

The Insolvency & Bankruptcy laws in India especially the Insolvency and Bankruptcy Code (IBC) of 2016 was passed in order to handle the emerging NPAs and formulate steps to resolve the insolvency. Nevertheless, several crucial issues and the importance of the new ones remain unnoticed and unaddressed. Some of the challenges relate to the time taken to resolve insolvency unequal application of laws across the countries and challenges in solving the problems that the insolvency resolution aims at solving. There are also questions as to how these laws will be effectively and efficiently implemented and the effects that they will create for the creditors the debtors as well as the whole economy. The purpose of this research is to outline these trends and challenges in the context of the Indian insolvency and bankruptcy laws so that the identified issues can be addressed in order to enhance the effectiveness of the existing laws in this area.

REVIEW OF LITERATURE

1. **“Yearbook on Insolvency and Bankruptcy Law”⁹** by **Mamata Biswal** provides a guide to the present and future of Insolvency and Bankruptcy regime in India with special reference to the IBC 2016. Since the book studies the IBC its provisions and judgments it also covers a comparison of the IBC with the insolvent laws of other countries. This paper provides recommendations for practice describes future policies of the IBC and discusses the organization’s effects on corporate governance and economy. It is useful to report this information to legalprofessionals scholar’s lawmakers and learners in the sphere of insolvency law.
2. **Justice L Nageswara Rao and Avinash Krishnan Ravi’s¹⁰** article **“Corporate Insolvency Resolution Process and Liquidation under the Insolvency and Bankruptcy Code 2016”** is a definitive study of the Insolvency and Bankruptcy Code (IBC) 2016¹⁵ containing insights into the corporate insolvency procedure and liquidation in India. Specifically, the book elaborates procedural part of the IBC; the legal perspective; and real-life implementation of the law. H) Summarize how the Code applies to various stakeholders’ case law and implications for corporate restructuring and liquidation. This book becomes a must for legal advisor’s company executive’s policymakers and academicians to analyze insolvency law and corporate finance.
3. The article titled **“Insolvency and Bankruptcy Code of India”¹¹** written by **Ashish Makhija** provides the reader with sophisticated analysis of the IBC 2016. This book will help the reader to gain much insight into the legal provisions of the IBC and the procedures that govern them. It explains how the Code applies to insolvency professionals as well as creditors and the role of the various

⁹ https://store.lexisnexis.in/index.php?route=product/product&product_id=2746

¹⁰ <https://www.lawmart.in/bookstore/law-books/all-law-books/justice-l-nageswara-rao-and-avinash-krishnan-ravi-s-corporateinsolvency-resolution-process-and-liquidation-under-the-insolvency-and-bankruptcy-code-2016>

¹¹ https://store.lexisnexis.in/index.php?route=product/product&product_id=2461

adjudicating authorities and then looks at some of the court rulings that have defined this Code. This book provides effective solutions with different examples in its legal framework to empower the legal practitioner's insolvency professional's students and policymakers involved in India's bankruptcy law.

- 4. Functions and responsibility of insolvency professionals under the CODE discussed: An Analysis**” penned by **K Prahlada Rao** explores the responsibility and functions that insolvency professionals perform under the IBC or the Insolvency and Bankruptcy Code of 2016. The article explains and lists the regulatory requirement ethical requirements and procedural obligations required of insolvency professionals during corporate insolvency and liquidation. They underscore their functions in dealing with the troubled assets legal requirements and the discharge of the responsibilities of the debtors and creditors. It offers clear understanding and recommendations that insolvency practitioners' lawyers and anybody interested in corporate insolvency can benefit from.
- 5. Insolvency and Bankruptcy Code (IBC) 2016 of India: Role of Insolvency Professionals in Corporate Insolvency Resolution Process** by **Vinod Kothari and Sikha Bansal** deals with the corporate insolvency with the help of IPs and their vital functions and duties. The article gives detailed information about the duties and responsibilities that IPs have to perform when assessing financial issues assessing and dealing with assets developing and implementing plans to address problems and making sure that legal requirements have been met by all involved parties. It shows the difficulties IPs have such as solving financial problems or being impartial. The authors underscore how IPs contributed toward the success of the IBC in satisfying the creditors' interests and assisting in the resurrection of moribund firms.
- 6. Article by Deepak Jain** titled **'The Insolvency and Bankruptcy Code 2016- An Analysis and Opportunities for Professionals under the Code'** offers a critical analysis of the IBC 2016 which is central to this paper. In the given article the

author focuses on the general provisions of the IBC its legislative background as well as various complications related to the procedure. The opportunities available to the participants are discussed such as lawyer's insolvency professionals and financial consultants during the IBC. The role of this article is to provide the main features of the IBC the legislation governing it and the stream of procedures. It also identifies the various practicing areas for lawyer's insolvency professionals and financial consultants that are available within this IBC. This paper by Jain focuses on how IBC has introduced change in corporate insolvency resolution and liquidation for professionals who execute these positions and their roles throughout the smooth functioning and effective insolvency processes across India.

OBJECTIVES

- i.)** Examine the Evolution of Insolvency and Bankruptcy Laws in India
- ii.)** Analyze the Effectiveness of the Insolvency and Bankruptcy Code (IBC) 2016
- iii.)** Study the Role of Various Stakeholders in the Insolvency Resolution Process
- iv.)** Identify Emerging Trends and Patterns in Insolvency and Bankruptcy Cases
- v.)** Evaluate the Impact of Insolvency and Bankruptcy Laws on the Indian Economy
- vi.)** Compare Indian Insolvency and Bankruptcy Laws with International Standards
- vii.)** Investigate the Challenges and Issues in Implementing Insolvency and Bankruptcy Laws

HYPOTHESIS

A legal measure implemented in India in 2016 The Insolvency and Bankruptcy Code (IBC) has enhanced the efficiency of insolvency resolution. Still there are certain problems like the time taken by the resolution process the random nature of court orders and the real-life issues with the proper enforcement of the law. These concerns limit the IBC's effectiveness in realizing its aim of efficiently and systematically addressing insolvency cases. Improving those legislations and practices might help India to enhance its insolvency and bankruptcy outcomes.

RESEARCH QUESTIONS

This study is on analysis of Insolvency and Bankruptcy Laws that have special attention on emerging trends within India undefined

- i.)** How have insolvency and bankruptcy laws in India evolved over the years?
- ii.)** What were the key legislative changes leading to the introduction of the Insolvency and Bankruptcy Code (IBC) 2016?

- iii.)** How effective has the IBC been in resolving insolvency cases since its implementation?
- iv.)** What are the recovery rates for creditors under the IBC compared to the pre-IBC period?
- v.)** What roles do insolvency professionals creditors and the National Company Law Tribunal (NCLT) play in the insolvency resolution process?
- vi.)** How does the interaction between different stakeholders impact the success of insolvency resolutions?
- vii.)** What are the latest trends and patterns in insolvency and bankruptcy filings in India?
- viii.)** Are there specific sectors that are more affected by insolvency proceedings under the current framework?
- ix.)** What are the broader economic implications of the insolvency and bankruptcy framework in India?
- x.)** How does effective insolvency resolution contribute to economic stability and growth?
- xi.)** How do Indian insolvency and bankruptcy laws compare with those of other major economies?
- xii.)** What best practices from international insolvency frameworks could be adopted in India?

SCOPE AND LIMITATIONS

SCOPE

This paper aims at assessing the insolvency and bankruptcy laws within the India legal framework with a focus on the IBC of 2016 and reveal the emerging trends and challenges. The study will highlight the legislation and its provisions court decisions and the practical application of the IBC. This will explore how these laws are implemented by analyzing key case laws and judgments of Supreme Court of India and National Company Law Tribunal (NCLT). The study will also examine the implications of these laws on the credit industry borrowers and the Indian economy in general.

Furthermore, the study will involve a cross-country analysis of India's insolvency laws and regulations to determine bench marks and possible enhancements.

LIMITATIONS

This research is however mainly doctrinal research meaning that it depends widely on legal texts case laws and commentaries. It does not contain other data collected by means of interviews or questionnaires. Moreover, the study does not involve the collection of primary data through surveys or interviews; hence the research is limited to public informatio and documents which may not reveal all the details and issues that stakeholders encounter in their daily operations. Insolvency laws are also still changing with remarkable speed and there are constant new judicial decisions which may also restrict the study's accuracy of analysis. Lastly the study focuses on the Indian context only and thus while comparing with a few other jurisdictions the results may not be representative of the global trends in insolvency and bankruptcy laws.

Research Methodology

This research will be using doctrinal analysis to look into the emerging trends in insolvency and bankruptcy laws in India. Doctrinal research specifically involves the critical examination of legal documents such as statutes and precedents with the intention of ascertaining the legal position. The primary data collection will also entail adopting and analyzing the Insolvency and Bankruptcy Code

(IBC) of India the code's amendments rules and regulations. It will also analyse case laws from the Supreme Court of India and the National Company Law Tribunal (NCLT) to view as to how these laws are implemented. Secondary sources like academic articles law reviews and government reports can add another view point as well as criticisms. The research will systematically identify interpret and analyze these legal materials in a view to dissect important trends and development. This approach will enable one to explain how the laws of insolvency and bankruptcy in India have developed and identify the ways in which these laws can be enhanced based on the international comparison. Concerning ethical issues, it is necessary to admit that all the sources used must be identified and cited properly. This doctrinal research shall be useful in offering a clear and detailed view of the evolving legal regime of insolvency and bankruptcy in India.

CHAPTER 2

TERMS INTRODUCED UNDER THIS ACT

2.1 Insolvency Professionals

According to section 206 of IBC 2016 they are persons enrolled with Insolvency Professional Agency as its member and registered with IBB as insolvency professionals.

Eligibility criteria for IP:

- i.) A chartered accountant enrolled as member of Institute of Chartered Accountants of India (ICAI) and who is in practice for minimum period of 15 years and who is not in employment¹².
- ii.) A Lawyer or cost accountant or company secretary in practice for fifteen years and enrolled as member of respective institute/bar council¹³.

Who Can Be Insolvency Professional

Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 issued vide Gazette³ to become Insolvency professional following qualifications and experience have been provided: Subject to other provisions of these Regulations an individual shall be eligible for registration if he.¹⁴

- i.) Has passed National Insolvency Examination;
- ii.) Has passed Limited Insolvency Examination and has fifteen years of experience in management after he received Bachelor's degree from university established or recognized by law; or

¹² "Supremacy of Committee of Creditors – A Case Study | Lawstreetindia.Com" <<https://www.lawstreetindia.com/experts/column?sid=491>> accessed March 12, 2024

¹³ Knowledge Partner, "AN ANALYSIS OF CONTINUATION BIAS UNDER THE IBC REGIME" (2024) <https://www.insolindia.com/uploads_insol/resources/files/first-research-paper-titled-an-analysis-of-continuation-bias-under-the-ibc-regime-authored-by-committee-member-gausia-shaikh-1133.pdf> accessed May 3, 2024

¹⁴ Notification IBBI/2016.17/GN/REG003, 23rd, Nov., 2016

iii.) Has passed Limited Insolvency Examination and has ten years of experience as

- a) A chartered accountant enrolled as member of Institute of Chartered Accountants of India
- b) A company secretary enrolled as member of Institute of Company Secretaries of India
- c) A cost accountant enrolled as member of Institute of Cost Accountants of India.
- d) An advocate enrolled with Bar Council¹⁵.

What Are Functions and Duties Of Insolvency Professionals Under IBC 2016?

As per provisions of Section 208

1. Where any insolvency resolution fresh start liquidation or bankruptcy process has been initiated it shall be function of an insolvency professional to take such actions as may be necessary in following matters namely:—
 - a) A fresh start order process.
 - b) Individual insolvency resolution process.
 - c) Corporate insolvency resolution process.
 - d) Individual bankruptcy process.
 - e) Liquidation of corporate debtor firm¹⁶.
2. Every insolvency professional shall abide by following code of conduct: —
 - a) To take reasonable care and diligence while performing his duties.

¹⁵IBC Laws, “Section 206 of IBC – Insolvency and Bankruptcy Code, 2016 : Enrolled and Registered Persons to Act as Insolvency Professionals” (IBC Laws, February 5, 2024) <<https://ibclaw.in/section-206-enrolled-and-registered-persons-to-act-as-insolvency-professionals/>> accessed April 3, 2024

¹⁶Team T, “Insolvency Professional Agencies Registered under IBBI” (TaxGuru, February 11, 2017) <<https://taxguru.in/corporate-law/insolvency-professional-agencies-registered-ibbi.html>> accessed April 4, 2024

- b) To comply with all requirements and terms and conditions specified in byelaws of insolvency professional agency of which he is member.
- c) To allow insolvency professional agency to inspect his records.
- d) To submit copy of records of every proceeding before Adjudicating Authority to Board as well as to insolvency professional agency of which he is member.
- e) To perform his functions in such manner and subject to such conditions as may be specified.

2.2 Information Utilities

According to section 3(21) of IBC 2016 Information Utilities (IUs) is centralized.

Repository in which financial and credit information of borrowers would be stored and would be accessible to creditors. Objective behind information utilities is to provide high quality authenticated information about debts and defaults¹⁷. Information utilities are expected to play key role as they allow storage of financial information of registered users and expeditiously process and verify information received¹⁸. Moreover, database and records maintained by them would help lenders in taking informed decisions about credit transactions¹⁹. It would also make debtors cautious as credit information is available with utility²⁰. More importantly information available with utility can be used as evidence in bankruptcy cases before National Company Law Tribunal. Moreover, it will be challenge for utility to maintain such sensitive information as it is digital platform and have high risk of data piracy and theft. ⁴

¹⁷“Section 208-Functions and Obligations of Insolvency Professionals. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-208-functions-obligations-insolvency-professionals/>> accessed March 2, 2024

¹⁸<https://ibclaw.in/section-208-functions-and-obligations-of-insolvency-professionals/>

¹⁹“Section 208-Functions and Obligations of Insolvency Professionals. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-208-functions-obligations-insolvency-professionals/>> accessed March 6, 2024

2.3 Insolvency Professional Agencies

Insolvency professional agency means any person registered with Board (IBBI) under section 201 of Insolvency Code 2016 as a insolvency professional agency – section 3(20) of Insolvency Code 2016²¹.

The Insolvency Professional Agencies will develop professional standards code of ethics and be first level regulator for Insolvency professionals members. This will lead to development of competitive industry for such professionals²².

ICAI ICSI and ICMA have already formed section 8 companies and have applied for registration with IBBI as Insolvency Professional Agency

Functions of Insolvency Professional Agency have been specified in section 204 of Insolvency Code (effective from 15.11.2016).

- i.) Granting membership to insolvency professionals.
- ii.) Lay down standards of professional conduct to its members.
- iii.) Monitor performance of members.
- iv.) Safeguard rights privileges and interests of insolvency professionals.
- v.) Suspend member or cancel membership.
- vi.) Redress grievances of members.
- vii.) Publish information about its functions list of members and performance of its members²³.

²¹<https://www.ipaicmai.in/IPANew/Default.aspx>“Section 208-Functions and Obligations of Insolvency Professionals. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-208-functions-obligations-insolvency-professionals/>> accessed March 10, 2024

²²<https://taxguru.in/corporate-law/insolvency-professional-agencies-registered-ibbi.html>
“Persons Who May Initiate CIRP against Corporate Debtor under Insolvency and Bankruptcy Code 2016 (IBC)” (IBC Laws, August 15, 2023) <<https://ibclaw.in/persons-who-may-initiate-cirp-against-corporate-debtor/>> accessed March 4, 2024

To register as a insolvency professional agency submit an application to IBBI using required form and payment.

Initially in principle approval as Insolvency Professional Agency will be granted for one year. Then during that period application of registration shall be made with IBBI²⁴.

The old and archaic provisions to deal with corporate sickness arising out of financial difficulties have been replaced by Insolvency and Bankruptcy Code 2016 (Insolvency Code 2016 for short).

As per preamble to Code purpose of this Act is as follows —

- Consolidate and amend laws relating to re organisation and insolvency resolution of corporate persons partnership firms and individuals
- In time bound manner
- For maximisation of value of assets of such persons
- To promote entrepreneurship
- Availability of credit

Balance interests of all stakeholders including alteration in order of priority of payment of Government dues Establish an Insolvency and Bankruptcy Board of India²⁵ Report of working group on information utility published by ministry of corporate affairs

2.4 Creditors

The Companies Act of 2013 just established term "creditor" without any classification whereas IBC has created new and separate notions of "Financial Creditor" and "Operational Creditor." maintainability of application depends on which category person

²⁴<https://www.indiafilings.com/learn/cirp-petitioners-corporate-debtors-financial-operational-creditors/>

²⁵<https://carajput.com/services/corporate-debtor-under-ibc.php>

<<https://carajput.com/services/corporate-debtor-under-ibc.php>> accessed March 14, 2024

falls in either in Financial Creditor or Operational Creditors under IBC. It includes secured and unsecured financial creditor.

Financial Creditor is defined under section 5(7) of IBC 2016 it means person from whom financial debt is owed or to whom such debt is legally assigned or transferred and to know whether person is financial creditor it has to been taken into account what is financial debt²⁶. Financial Debt is defined under section 5(8) of IBC 2016 according to which debt with interest if any which is given for time value of money and includes.

- a)** Money borrowed against payment of interest.
- b)** Any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent i.e. by share debentures Bonds etc.
- c)** Any amount raised pursuant to any note purchase facility or issue of bonds notes debentures loan stock or any similar instrument.
- d)** The amount of any liability in respect of any lease or hire purchase contract which is deemed as finance or capital lease under Indian Accounting Standards or such other accounting standards.
- e)** Receivables sold or discounted other than any receivables sold on nonrecourse basis.
- f)** Amount raised under any other transaction including any forward sale or purchase agreement having commercial effect of borrowing.
- g)** Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating value of any derivative transaction only such transaction's market worth must be taken into consideration.

- h)** Any counter indemnity obligation in respect of guarantee indemnity bond documentary letter of credit or any other instrument issued by bank or financial institution.
- i)** The amount of any liability in respect of any of guarantee or indemnity
- j)** For any of items referred to in sub clauses (a) to (h) of this clause²⁷.

Operational Creditor is defined under section 5(20) of IBC 2016 that means person from whom operational debt is owed and includes every person to whom such debt is legally assigned or transferred to know whether person is operational creditor it has to be taken into account what is operational debt. Operational debt is defined under section 5(21) of IBC 2016 which means any claim in respect of provision of goods or services which includes employment of any kind and debt in respect of repayment of dues under any provision of law to person or payable to Central government State government or local authority. It includes secured and unsecured operational creditor²⁸.

In order passed by NCLT Principal Bench New Delhi where tribunal interpreted definition of Operational Creditor under IBC Honorable Tribunal while dismissing Petition instituted question of whether flat buyer would fit under definition of "Operational Creditor" under Section 9 of IBC was decided at admission stage itself person is owing "Operational Debt" as described in Section 5(21) of IBC as defined under Section 5(20) of IBC.

The Honorable Tribunal observed that the framers of IBC had not intended to include within expression of an 'operation debt' debt other than financial debt. As result an operational debt would only fall under four categories of products services employment and government obligations as listed in Section 5(21) of IBC. Tribunal determined that debt owed to Petitioner (in this case flat buyer) had not resulted from any products

²⁷ <https://www.livelaw.in/amp/top-stories/supreme-court-financial-creditor-right-to-initiate-cirp-corporate-debtor-election-doctrine-application-ibc-240691>

Mishra S, "What Is IBC or the Insolvency and Bankruptcy Code?" (Housing News, September 27, 2022) <https://housing.com/news/ibc-insolvency-and-bankruptcy-code/>

²⁸<https://ca2013.com/section-5-definitions/>

services employment or dues that were due to Center/State Government or local governments under any statute. Instead Petitioner requested return that was connected to ownership of immovable property.

The Honorable Tribunal while deciding question of whether flat purchaser could be considered an operation creditor considered observations of Bankruptcy and law Reform Committee:

Operational Creditors are those whose liability from entity comes from transaction on operations. Thus, wholesale vendor of spare parts whose spark plugs are kept in inventory by car mechanics and who get paid only after spark plugs are sold is an operational creditor.

Similarly lessor that entity rents out space from is an operational creditor to whom entity owes monthly rent on three-year lease.²⁹

The Honorable Tribunal held that Petitioner had neither supplied goods nor had rendered any services to acquire status of an 'Operational Creditor'. It was further held that it was not possible to construe Section 9 read with Section 5(20) and Section 5(21) of IBC 2016 so widely to include within its scope cases where dues were on account of advance made to purchase flat or commercial site from construction company like Respondent especially when Petitioner had other remedies available under Consumer Protection Act and General Law of land.

2.5 Corporate Debtor

According to section 3(8) of IBC 2016 corporate person who owes debt to any person it can be shareholder or management of company. Corporate person is defined under section 3(9) of IBC 2016 according to which company as defined in clause (20) of section 2 of Companies Act 2013 limited liability partnership as defined in clause (n) of sub section of section 2 of Limited Liability Partnership Act 2008 or any other person

²⁹ Col. Vinod Awasthy v. AMR Infrastructure Ltd.(C.P. No. (IB)10(PB)/2017). Paragraph no. 5.2.1 of Final Report of Bankruptcy Law Reforms Committee

incorporated with limited liability under any law for time being in force but shall not include any financial service provider.

According to section 3(16) of IBC 2016 financial service includes any of given services as follows.

- i.)** Accepting of deposits.
- ii.)** Safeguarding and administering assets consisting of financial products belonging to another person or agreeing to do so.
- iii.)** Effecting contracts of insurance.
- iv.)** Offering managing or agreeing to manage assets consisting of financial products belonging to another person.
- v.)** Rendering or agreeing for consideration to render advice on or soliciting for purposes of—
 - 1.** Buying selling or subscribing to financial product;
 - 2.** Availing financial service; or
 - 3.** Exercising any right associated with financial product or
 - 4.** Financial service.
 - 5.** Establishing or operating an investment scheme.
 - 6.** Maintaining or transferring records of ownership of financial product;
 - 7.** Underwriting issuance or subscription of financial product
 - 8.** Selling providing or issuing stored value or payment instruments or providing payment service.

The old and archaic provisions to deal with corporate sickness arising out of financial difficulties have been replaced by Insolvency and Bankruptcy Code 2016 (Insolvency Code 2016 for short).

As per preamble to Code purpose of this Act is as follows —

- Consolidate and amend laws relating to re organisation and insolvency resolution of corporate persons partnership firms and individuals
- In time bound manner
- For maximisation of value of assets of such persons
- To promote entrepreneurship
- Availability of credit
- Balance interests of all stakeholders including alteration in order of priority of payment of Government dues
- Establish an Insolvency and Bankruptcy Board of India

2.6 Difference between Insolvency and Bankruptcy. Intentions are sound:

There is no doubt that intentions behind law are sound. Law is well conceived and we hope that law will be helpful in achieving purposes for which it has been conceived. **Code is applicable all over India with some exception relating to J&K.**

The Insolvency and Bankruptcy Code 2016 applies to whole of India. However, part III of code which deals with Insolvency Resolution and Bankruptcy for Individuals and partnership section 1(2) of Insolvency Code 2016.

Insolvency code is complete code:

Insolvency code is consolidating Act. It is complete and exhaustive in matters dealt with therein. Code is Parliamentary law that is an exhaustive code on subject matter of insolvency.

Progress in Implementation of Insolvency and Bankruptcy Code:

Th has been passed by Parliament and assent of President of India has been obtained on 28.5.2016.

Provisions relating to Insolvency and Bankruptcy Board of India Insolvency Professional Agency and Insolvency Professionals [section 188 to section 208 and section 221 to section 242] have been notified and brought into force by 1.11.2016.

Provisions relating to inspection and investigation [sections 217 to 220] have been brought into force on 15.11.2016.

Provisions relating to amendments to Companies Act 2013 LLP Act Securitisation Act etc. as made by Insolvency Code have also been notified effective from 15.11.2016.

NCLT and DRT are already in place.

Sick Industrial Companies (Special Provisions) Act has been repealed w.e.f. 1.12.2016.

Following provisions of Insolvency and Bankruptcy Code 2016 have been made effective from time to time —

- a) **Corporate Insolvency Resolution Process** . Section 4 to section 32 of Insolvency Code.
- b) **Sections 33 to 54** .Liquidation Process of Corporates.
- c) **Sections 55 to 58**.Fast track corporation insolvency process
- d) **Section 59. Voluntary** Liquidation of Corporate Persons.

- e) **Adjudicating Authority for corporate persons.** section 60 to section 67 of Insolvency Code.
- f) **Offences and penalties** (relating to corporate insolvency) section 68 to section 77 of Insolvency Code.
- g) **Section 209 to section 216 [except section 216(2)]** Information Utilities.
- h) **Sections 234 and 235** Agreements with foreign countries and letter of to country outside India.
- i) **Trials by Special Court** section 236 to section 238 of Insolvency Code.

Insolvency:

Insolvency means situation where an entity (debtor) cannot raise enough cash to meet its obligations or to pay debts as they become due for payment. Symptom of Insolvency may include: poor cash management increases in cash expenses or decrease in cash flow etc. Thus, Insolvency is situation where debtor is unable to meet his obligations and Bankruptcy is legal process by which a insolvent debtor seeks relief.

Bankruptcy:

Bankruptcy occurs when court has determined insolvency and has given legal orders for resolution. On declaring person as bankrupt court is responsible to liquidate personal property of insolvent and distribute property amongst creditors of insolvent debtors. Bankrupt entity is debtor who has been adjudged as bankrupt by an adjudicating authority that has passed bankruptcy order. adjudicating authority under IBC is

National Company Law Tribunal (NCLT) for Corporate Debtors (Companies & LLPs) and the Debt Recovery Tribunal (DRT) for individuals and partnership firms.

2.7 Moratorium period

It is period granted to corporate debtors by NCLT. During which there will be no institution of suits transfer of assets no foreclosure and no recovery of assets. In short it is like calm period granted to corporate debtor.

Adjudicating Authority:

At present High Courts Company Law Board (CLB) Board for Industrial and Financial Reconstruction (BIFR) and Debt Recovery Tribunal (DRT) are having overlapping jurisdiction in matter of debt recovery and restructuring. This gives rise to systemic delays and complexities in process. Code helps to overcome these challenges and aims to reduce burden on courts as all litigation will be filed under Code as under: Adjudicating Authority under Code Under Part II Chapter VI of Code National Company Law Tribunal (NCLT) would be adjudicating authority for insolvency resolution and liquidation of Companies Limited Liability Partnerships (LLPs) any entity with limited liability under any law and bankruptcy of personal guarantors thereof. An appeal can be preferred from orders of NCLT to National Company Law Appellate Tribunal (NCLAT) within 30 days (15 days extension if there is sufficient ground). Jurisdiction is territorial based on location of registered office of corporate person. Orders of NCLAT are appealable on question of law to Supreme Court within 45 days. Central Government has constituted 11 (eleven) Benches of NCLT in exercise of its powers under sub. section (1) of section 419 of new Companies Act 2013.

Of said 11 benches two shall be situated in New Delhi and one each at Ahmedabad Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati Hyderabad Kolkata and Mumbai. Under Part III Chapter VI of Code Debt Recovery Tribunal (DRT) would be adjudicating authority for insolvency resolution and bankruptcy of individuals unlimited partnerships and partner/s thereof.

Jurisdiction would be based on place of residence or works for gain or carries on business. Appeal can be made to Debt Recovery Appellate Tribunal (DRAT) within 30

days (15 days extension if there is sufficient ground). Further appeal from DRAT would be within 45 days before Supreme Court only on question of law. It is specifically provided that civil courts or authority not to have jurisdiction and also cannot grant any injunction.

According to section 5(1) Adjudicating Authority here refers to National Corporate Law Tribunal (NCLT) and it deals only with applications of corporate insolvency. It has power to approve/reject resolution plans and decides on matters of claims or matters of law of facts thereof. In case of Individuals and other persons Adjudicating Authority is Debt Recovery Appellate Tribunal (DRT) and thereafter Supreme Court.

Appellate Authorities:

For given Creditors appellate authorities are following.

- i.) Corporate Persons (Companies & LLPs). National Company Law Appellate Tribunal (NCLAT) any person aggrieved by order of NCLT May file appeal to NCLAT within 30 days of such order.
- ii.) Individuals and Partnership Firms. Debt Recovery Appellate Tribunal (DRAT) any person aggrieved by order of DRT May file appeal to DRAT within 30 days of such order.

2.8 Insolvency and Bankruptcy Board of India

This body will have regulatory oversight over Insolvency Professional Insolvency Professional Agencies and Information Utilities. Under Board's supervision these agencies will develop professional standards codes of ethics and exercise disciplinary role over errant members leading to development of competitive industry for insolvency professionals. Board is responsible for making guidelines and regulation on matters of insolvency and bankruptcy.

The Board shall consist of Chairperson three members from Central Government not below rank of Joint Secretary or equivalent – one each to represent Ministry of Finance

Ministry of Corporate Affairs and Ministry of Law ex.officio; one member to be nominated by Reserve Bank of India ex officio; five other members to be nominated by Central Government. Chairperson and other members shall be persons of ability integrity and standing who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in field of law finance economics accountancy or administration.

Provincial Insolvency Act:

The Provincial Insolvency Act 1920 was enacted on twenty fifth Gregorian calendar month 1920. The act set laws regarding insolvency administered by courts having jurisdiction outside Presidency cities. Part I of Act deals with constitution and powers of insolvency courts act provides that district court shall have jurisdiction below provisions of act unless government by notification in official gazette bestows similar jurisdiction on other court then such court shall act as tiny Causes Court. Tiny Causes court shall be subordinate to district court. Section four of act invests power to make your mind up all queries arising in matters regarding insolvency on Tiny Causes Court.choice of court with regard to tiny Causes court shall be final and binding. Courts are conferred with original civil jurisdiction below sub clause (I) section five of Act.

Section half dozen of act lays instances during which insolvency is committed anyone in India or elsewhere transfers all or substantial part of his property either to profit or cause loss to his creditors but these once person departs remains of his property outside territories to that act extends he's found missing from his place of residence closes all channels of communication against creditors or wherever someone files an application within court of law to judge himself as insolvent. Person shall run previous notice that debtor will put aside by an order of District Court.

The petition for insolvency shall be conferred either by human or person. Section 8 of act lays down that no insolvency petition shall lay against any corporation company or association. Creditors will file petition for insolvency against person as long as

combination quantity of debt is quite rupees five hundred debt is liquidated collectible at once or when it slow petition shall be filed at intervals 3 months from commission of Act.

Section 10 of Act lays conditions below that person will gift petition for insolvency in things wherever debt amounts to 5 hundred rupees person is below impendency of arrest or an order of attachment in execution of decree is created against debtor.

Insolvency petition shall be conferred solely to courts having jurisdiction below Act and set at such place during which person resides carries on his business or just in case in remission place wherever person is unbroken in custody. Section thirteen contains way during which insolvency petition shall be filed.

Petitions filed below Act shall be in consonance with Code of Civil Procedure 1908. Petition once filed can't be withdrawn except with permission of court. Act conjointly provides for consolidation of petitions in whereby 2 or additional petition of comparable nature has been filed against one person.

Where person dies whereas continuing against him are occurring proceedings shall continue below order of Court. Petitions for insolvency shall be admitted in accordance with provisions of Civil Procedure Code 1908. Once petition is admitted notice shall be served to creditors and conjointly to person wherever he's not petitioner. Court shall conjointly appoint interim receiver whereas continuing for insolvency are unfinished. Court could issue interim proceedings against person below section 21 of Act. Hearing shall be in accordance with provisions of section 24 of Act.

Petition filed by human could also be discharged by court for need of proof or just in case of galling petitions in such cases court could award compensation to person. Once petition is discharged court could order assessment below section 27 of Act instead of that person may apply for defense order under section 31 of Act. Courts could issue warrant for arrest enclose it's of opinion that person may fly when an order for assessment.

The provincial insolvency act was enacted with purpose to get hands of law on debtors and to forestall loss to creditors. But enacting laws against debtor's legislators conjointly enacted provisions wherever creditors had filed false and giddy complaints.

Sick Industrial Companies Act:

"Sick industrial division is outlined as division or an organization (breathing for not but 5 years) that is found at tip of any fiscal year to possess incurred accumulated losses up to or exceptional its entire internet value online value is calculated as aggregation of paid up capital and free reserves of an organization less provisions and expenses as could also be prescribed. an industrial unit is additionally thought to be doubt less sick or weak unit if at tip of any fiscal year it's accumulated losses up to or exceptional fifty per cent of its average internet value within at once preceding four monetary years and has didn't repay debts to its creditor(s) in 3 consecutive quarters on demand created in writing for such compensation. Two basic factors which can lead to illness of a industrial unit are”:

Internal factors i.e. Poor implementation can result to improper coming up with or social control inefficiency;

Poor inventory management in respect of finished merchandise also as inputs. Unwarranted enlargement and diversion of resources like personal extravagances excessive overheads acquisition of unproductive mounted assets etc.:

Failure to modernise the productive equipment amendment merchandise combines and alternative parts of promoting mix to suit dynamical environment;

Poor labour management relationship and associated low workers morale and low productivity strikes lockouts etc."

External factors are those that occur outside an organization. They include: "Energy crisis arising out of power cuts or shortage of coal or oil;

Failure to attain optimum capability because of shortage of raw materials as results of production set backs within provide industries poor agricultural output due to natural reasons, changes within importconditions etc.

Infrastructural issues like transport bottlenecks; Credit squeeze;

Things like market recession changes in technology etc.; International pressures or circumstances etc."

Industrial illness could also be caused by mix of all such factors it's many adverse consequences on economy as an entire number of which can be enumerated as follows: .

- i.) "It ends up in loss of considerable revenue to govt. and enhances its public expenditure;
- ii.) It locks up necessary resources and funds within sick unit. This conjointly will increase non performing assets (NPAs) of banks and monetary institutions;
- iii.) It ends up in loss of production and productivity within economy;
- iv.) It aggravates matter of stale within economy;
- v.) It vitiates commercial atmosphere and ends up in worker management disputes strikes lock outsetc.

It undermines general public confidence within functioning of unionized sector in country that successively affects general investmentclimate of economy.

"In light of consequences of illness and its growing incidence by size region and trade followed by its comprehensive adverse socio economic effects govt. has been taking several steps andremedial measures so as to tackle this downside in India. Foremost important live has been enactment of Sick Industrial Companies (Special Provisions) Act 1985 (SICA).

Sick Industrial Companies (Special Provisions) Act 1985:

"The most vital piece of legislation managing industrial illness was Sick Industrial Companies (Special Provisions) Act 1985 (SICA). It applies to industrial undertakings each within public and personal sectors. SICA pertains to industries per primary Schedule to Industries (Development and Regulation) Act 1951 (IDR Act) subject to exceptions per Act. SICA as well as any rules or schemes created under it had preponderant provisions over alternative laws except provisions of interchange Regulation Act 1973 and therefore Urban L and (Ceiling and Regulation) Act 1976. Basic explanation of enacting SICA was to see illness within industrial units. It conjointly aimed toward expediting revival of doubtless viable units so on build investments in such units profitable. At identical times to confirm closure of unviable units therefore on unleash investments latched up in such units for productive use elsewhere." Thus, broad objectives of SICA were:

"Timely detection of sick and doubtless sick firms Speedy determination by body of specialists of preventive ameliorates remedial and alternative measures which require to be gaged regard to such firms. Efficient social control of the measures therefore determined and for all matters connected with that or incidental to that. Vital provisions of SICA were. It provided for constitution of 2 quasi-judicial bodies that is Board for Industrial and monetary Reconstruction (BIFR) and proceedings Authority for Industrial and monetary Reconstruction (AAIFR). BIFR was founded as an apex board to tackle industrial illness and was entrusted with work of taking acceptable measures for revival and rehabilitation of doubtless sick undertakings and for liquidation of non viable firms. While AAIFR was established for hearing appeals against orders of BIFR.

BIFR would build a inquiry because it could view suitable crucial whether or not any industrial company had become sick below subsequent conditions:

- If Board of administrators of sick industrial company created relation to BIFR for determination of remedial measures with respect to their company. Such reference was to be created at intervals sixty days from date of mop up of punctually audited accounts of corporate for fiscal year at tip of that company had become

sick. For filing reference Board of administrators should have ample reasons to make opinion that corporate had become sick; or"

- On receiving such data (reference) with regard to sick company or upon its own information on insolvency of an organization. Such relation to board could also be created by: .
 - i.) Central Government;
 - ii.) Reserve Bank of India;
 - iii.) State Governments;
 - iv.) Public monetary institutions;
 - v.) State level institutions; or regular banks

However such reference shall not be created in respect of any industrial company by:

- i.) govt. of ally State unless all or any of commercial undertakings (belonging to such company) were set therein State;
- ii.) public institution or State level institution or regular bank unless it had by reason of any monetary help or obligation rendered by it or undertaken by it interest in such an organization.

The Board could order any in operation agency to enquire into matter and complete inquiry as with efficiency as attainable. If Board deems it suitable build a inquiry or to cause a inquiry to be created into any industrial company it should appoint one or additional persons as special director of corporate for safeguarding themonetary and alternative interests of company. Appointment of special director shall be valid and effective nevertheless something to contrary contained within firms Ac" 1956 or in other law for nonce good or within memo and articles of association or any other instrument regarding commercial company. Any special director therefore appointed shall:

- i.) hold workplace throughout pleasure of Board and will be removed or Substituted by anyone by order in writing by Board;
- ii.) not incur any obligation or liability by reason solely of his being director or for any price done or omitted to be worn out straightness within discharge of his duties as director or anything in relation thereto;
- iii.) not be vulnerable to retirement by rotation and shall not be taken into consideration for computing quantity of administrators liable to such retirement;
- iv.) not be liable to be prosecuted below any law for anything done or omitted to be worn out straightness within discharge of his duties in relevance sick industrial company."

"If when creating an inquiry Board is glad that corporate has become sick it shall when considering all relevant facts and circumstances of case could take either of subsequent decisions: If Board decides that it's practicable it shall by order in writing and subject to such restrictions or conditions as could also be per order provide such time to corporate because it could view suitable build its internet value exceed accumulated losses. If Board decides that it's not practicable for sick company to create its internet value exceed accumulated losses at intervals an affordable time which it is necessary or expedient within public interest to adopt all or any of measures in relevance aforementioned company it may presently could also be by order in writing direct any in operation agency per order to organize theme providing for such measures in relevance that company. Measures could include: monetary reconstruction of sick industrial company; right management of sick industrial company by amendment in or takeover of the management of company; integration of sick industrial company with other company (transferee company) or other company with sick industrial company (transferee company); sale or lease of an element or whole of sick industrial company; Such alternative preventive amelioratory and remedial measures as could also be appropriate; Such incidental important or supplemental measures as could also be necessary or expedient in reference to or for needs of measures fixed higher than.

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT 1985 (SICA) was repealed and replaced by "SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL ACT 2003:

The new Act diluted a number of provisions of SICA and obstructed some loopholes. It aimed not solely to combat industrial illness but also to scale back identical provisions by making certain that firms don't read declaration of sickness as a default route from legal provisions when failure of project or similar alternative reasons and thereby gain access to numerous edges or concessions from monetary establishments. Under it Board for Industrial and Monetary Reconstruction (BIFR) and Proceedings Authority for Industrial and Monetary Reconstruction (AIMR) were dissolved and replaced by National Company Law court (NCLT) and National Law Proceedings court (NCLAT) severally.

“The Securitization of Financial Assets and Enforcement of Security Interest Act”

The Securitization of Financial Assets And Enforcement of Security Interest (SARFAESI) Act 2002 could be legislation that helps monetary establishments to confirm quality in multiple ways that this implies that Act was framed to deal with matter of NPAs (Non-Performing Assets) or unhealthy assets through totally different processes and mechanisms. SARFAESI Act offers elaborated provisions for formation and activities of quality Securitization firms (SCs) and Reconstruction firms (RCs). Scope of their activities capital necessities funding etc. are given by Act run is that regulator for these establishments as legal mechanism to insulate assets. Act addresses the interests of secured creditors (like banks) many provisions of Act provide directives and powers to numerous establishments to manage the unhealthy quality downside. Following are most objectives of SARFAESI Act. The Act provides legal framework for securitization activities in India. It offers procedures for transfer of NPAs to quality reconstruction firms

for reconstruction of assets. The Act enforces safety interest while not Court's intervention³⁰.

The Act provide powers to banks and monetary establishments to require over immoveable property that's hypothecated or charged to enforce recovery of debt. Major feature of SARFAESI is that it promotes putting in of quality reconstruction (RCs) and asset securitization firms (SCs) to handle N PAs accumulated with banks and monetary establishments. Act provides 3 ways for recovery of N PAs that is Securitization; Quality Reconstruction; and Social control of Security while not intervention of Court. Act therefore brings 3 vital tools/powers into quality management of economic banks and establishments. securitization of assets reconstruction of quality's and powers for social control of security interests (means asset security interests) to know SARFAESI Act we must always underst and that means of those terms also³¹"

Securitization:

"Securitization is that method of pooling and repackaging of economic assets (like loans given) into marketable securities that may be sold to investors. Within context of unhealthy quality management securitization is that method of conversion of existing less quick assets (loans) into marketable securities. securitization company takes custody of underlying encumbered assets of loan taker³².

It will initiate subsequent steps: Acquisition of economic assets from any mastermind (bank) and Raising of funds from qualified institutional patrons by issue of security receipts (for raising money) for getting monetary assets or Raising of funds in any

³⁰ (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-33-initiation-liquidation/>> accessed March 13, 2024

³¹<https://altclasses.in/wp-content/uploads/2023/02/Lecture-44-IBC-2016-Part-V-Sec.-33-to-54.pdf>

³², "Section 33 of IBC – Insolvency and Bankruptcy Code, 2016 : Initiation of Liquidation" (IBC Laws, March 17, 2024) <<https://ibclaw.in/section-33-initiation-of-liquidation/>> accessed April 24, 2024

prescribed manner and Acquisition of economic quality could also be including taking custody of encumbered and building etc³³."

Quality Reconstruction:

Quality reconstruction is that activity of changing foul or none performing asset into playacting asset. method of quality reconstruction involves many steps as well as getting of unhealthy asset by frenzied asset reconstruction company (ARC) including underlying hypothecated asset funding of unhealthy quality conversion into sensible asset mistreatment bonds debentures securities and money realization of returns from hypothecated assets etc. Reconstruction is to be finished run rules and therefore SARFAESI Act offers subsequent elements for reconstruction of assets: .Seizing or dynamical management of business of recipient sale or lease of an element or whole of business of borrower; Rescheduling of payment of debts collectible by borrower; Social control of interest in accordance with provisions of this Act Settlement of dues collectible by borrower; Getting of secured assets in accordance with provisions of this Act³⁴."

Enforcement of Security Interests:

"The Act empowers investor (banker) once recipient defaults to issue notice to defaulting recipient and supporter business to repay debt at intervals sixty days from date of notice. If recipient fails to suits then notice bank or institution could enforce security interests (means interest of bank/creditor) by following provisions of Act a) Take possession of security; b) Sale or lease or assign proper over security c) Appoint Manager to manage security d) Raise any debtors of recipient to pay any add because of borrower. If there are

³³ "Section 52-Secured Creditor in Liquidation Proceedings. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR" (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <[https://ca2013.com/section-52-secured-creditor-liquidation-proceedings/#:~:text=\(4\)%20A%20secured%20creditor%20may,the%20debts%20due%20to%20it](https://ca2013.com/section-52-secured-creditor-liquidation-proceedings/#:~:text=(4)%20A%20secured%20creditor%20may,the%20debts%20due%20to%20it)> accessed April 12, 2024

³⁴"Section 58-Applicability of Chapter II to This Chapter. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR" (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-58-applicability-chapter-ii-chapter/#:~:text=The%20process%20for%20conducting%20a,as%20the%20context%20may%20require>> accessed April 4, 2024

quite one secured creditors choice regarding social control of SARFEASI provisions are applicable as long as seventy-five of them are agreeing³⁵.

Features of change to Sarfaesi Act In 2016:

Government has amended SARFAESI Act in August 2016 to empower ARCs (Asset Reconstruction Companies), to rejuvenate Debt Recovery Tribunals (DRTs) and to reinforce effectiveness of quality reconstruction below new bankruptcy law. Change has given additional restrictive powers to run on operating of ARCs. It absolutely was conjointly aimed to empower quality reconstruction and therefore functioning of DRTs within context of fresh enacted bankruptcy law. As per change, scope of written record that contains central information of all loans against properties given by all lenders has been widened to incorporate additional information. Run will get additional powers to audit and examine ARCs and can get liberty to get rid of Chairman or any director. It can even appoint financial organization officers into boards of ARCs. Run can get ability to impose penalties on ARCs once latter doesn't follow central bank directives. Similarly, it will regulate fees charged by ARCs from banks whereas managing NPAs. Penalty quantity has been redoubled from Rs. five hundred thousand and to Rs. one large integer. Change has brought rent purchase and monetary lease below coverage of SARFAESI Act. Concerning DRTs, change aims to hurry up DRT procedures³⁶.

Online procedures as well as electronic filing of recovery applications, documents and written statements are initiated. Amendments are important for DRTs as they will play vital role below new Bankruptcy law. DRTs are backbone of bankruptcy code and handle

³⁵“Section 59-Voluntary Liquidation of Corporate Persons. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-59-voluntary-liquidation-corporate-persons/>> accessed April 6, 2024

³⁶, “Section 55 of Mediation Act, 2023-Provisions of Act to Have Overriding Effect on Mediation or Conciliation Contained in Other Laws” (IBC Laws, February 29, 2024) <<https://ibclaw.in/section-55-of-mediation-act-2023-provisions-of-act-to-have-overriding-effect-on-mediation-or-conciliation-contained-in-other-laws/>> accessed April 26, 2024

all insolvency proceedings involving people. Defaulter should deposit fifty per cent of debt due before filing an attractiveness at DRT³⁷.

"Companies Act 1956"

Section 433 of "COMPANIES ACT 1956" provides for circumstances during which company will be wound up.

- If corporate has resolved that company be aroused by Court by passing special resolution.
- If corporate has defaulted in delivering statutory report back to Registrar or in holding statutory meeting
- "If corporate doesn't begin its business at intervals year from its incorporation, or suspends its business for an entire year
- "The quant ity of its members publicly company is reduced below seven and in camera company below two;
- "The corporate isn't able to pay debts
- "The Court is of opinion that company ought to be aroused on simply and just grounds
- The corporate has defaulted in filing record or annual come with Registrar for any five consecutive years
- If act of corporate goes against interests of sovereignty, integrity and security of India, friendly relation with foreign states, public order, decency or morality; or" Inability to Pay Debts³⁸.

³⁷ Amit Meharia and others, "Scope of Moratorium under Section 14 and 33 (5) of the Insolvency and Bankruptcy Code, 2016" (Bar And Bench - Indian Legal News, June 12, 2023) <<https://www.barandbench.com/amp/story/law-firms/view-point/scope-of-moratorium-under-section-14-and-33-5-of-the-insolvency-and-bankruptcy-code-2016>> accessed April 10, 2024

An organization shall be deemed to be unable to pay its debts once human has served on corporate requirement in writing for payment of debt that is quite Rs500 and company has at intervals.

Companies Act 2013:

Under Section 271, an organization could also be aroused by court if.

- Company is unable to pay debts;
- If corporate has, by special resolution, resolved that corporate be aroused by Tribunal;
- If corporate has acted against interests of sovereignty and integrity of India, safety of State, friendly relations with foreign States, public order;
- If court has ordered effecting of corporate below Chapter XI X ;
- If on an application created by Registrar or other person licensed by Central Government by notification below this Act, court is of opinion that affairs of corporate are conducted in very fallacious manner or company was fashioned for fraudulent or unlawful purpose or the persons involved in formation wrongdoing or misconduct in affiliation with that which it's correct that company be wound up;
- "If corporate has created default in filing with Registrar its monetary statements or annual returns for at once preceding 5 consecutive financial years;"
- "If court is of opinion that it's simply and just that corporate ought to be aroused³⁹."

³⁸ , "Live Law" Live Law (January 29, 2024) <<https://www.livelaw.in/amp/supreme-court/supreme-court-clarifies-moratorium-section-14-ibc-decree-execution-companies-directors-cirp-247918>>

³⁹ , "Section 14 of IBC – Insolvency and Bankruptcy Code, 2016 : Moratorium" (IBC Laws, April 29, 2024) <<https://ibclaw.in/section-14-moratorium-chapter-ii-corporate-insolvency-resolution-process-cirp->

Inability to Pay Debts "An organization is deemed to be unable to pay debts below Section 271 (2) Of Companies Act, 2013 if human to whom company should pay quantity Exceptional Rs. One hundred thous and has served notice at registered workplace of corporate by mail or otherwise, which needs corporate to pay due quantity and therefore company has didn't pay add at intervals twenty one days or I f an} execution or alternative method issued by decree of court or order in creditor's favour is came back unhappy in whole or partlyor if court is satisfied that company is unable to payits debts and court shall take into consideration contingent and prospective liabilities of company whereas crucial whether or not company is unable to pay its debts⁴⁰."

Insolvency Regime in India after Enactment of Code:

The Insolvency and Bankruptcy Code, 2016 has consolidated all laws related to insolvency in it. Now we have only one law dealing with insolvency in India. Insolvency and Bankruptcy Code passed by theParliament is welcome overhaul of present framework addressing insolvency of corporates, people, partnerships and alternative entities. It paves approach forabundant required reforms whereas immersion on mortal driven insolvency resolution⁴¹.

At present, there are multiple overlapping laws and adjudicating forums addressing money failure and insolvency of firms and people in India. Current legal and institutional framework doesn't aid lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on Indian system. Recognising that reforms within bankruptcy and insolvency regime are essential for rising business surroundings and assuaging distressed credit markets, Government introduced Insolvency and bankruptcy Code Bill in November 2015, written by specially implanted 'Bankruptcy Law Reforms Committee' (BLRC) below Ministry of Finance. After public consultation method and suggestions from joint committee of Parliament, each homes of Parliament have currently passed Insolvency and Bankruptcy Code 2016(Code). While legislation of

⁴⁰"About NCLAT | National Company Law Appellate Tribunal (NCLAT)" <<https://nclat.nic.in/about-NCLAT>> accessed April 2, 2024

⁴¹ <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>

Code may be historical development for economic reforms in India, its impact is seen in due course once institutional infrastructure and implementing rules as envisaged below Code are shaped⁴²."

The Code:

"The Code offers regular, comprehensive insolvency legislation encompassing all firms, partnerships and people (other than money firms). Government is proposing separate framework for bankruptcy resolution in failing banks and money sector entities. One of elemental options of Code is that it permits creditors to assess viability of soul as business call, and agree upon an inspiration for its revival or speedy liquidation. Code creates br and newinstitutional framework consisting of regulator, insolvency professionals, datautilities and judgment mechanisms that may facilitate proper and time certain insolvency resolution method and liquidation⁴³."

Main Features of Code Corporate Debtors: Two.Stage Process

To initiate associate insolvency method for company debtors, default ought to be minimum of INR100, 000 (USD 1495) (which limit could also be accrued up to INR 10,000,000 (USD 149,500) by Government). Code proposes 2 freelance stages: Insolvency Resolution Process, throughout that money creditors assess whether or not debtor's business is viable to continue and choices for its rescue and revival and Liquidation, if insolvency resolution method fails or money creditors conceive to wind down and distribute assets of soul⁴⁴."

Insolvency Resolution Process (IRP), IRP provides collective mechanism to lenders to accommodate distressed position of company soul. This may be vital departure from

⁴² Taxmann, "Adjudicating, Appeals and Penalties for Corporate Persons | IBC - Taxmann Blog" (Taxmann Blog, July 14, 2021) <<https://www.taxmann.com/post/blog/adjudicating-authority-for-corporate-persons?amp>> accessed March 21, 2024

⁴³ "Insolvency and Bankruptcy Board of India" <<https://www.ibbi.gov.in/>> accessed March 19, 2024

⁴⁴ Taxmann, "What Is Insolvency and Bankruptcy Board of India (IBBI)? - Taxmann Blog" (Taxmann Blog, June 25, 2021) <<https://www.taxmann.com/post/blog/what-is-insolvency-and-bankruptcy-board-of-india-ibbi?amp>> accessed April 14, 2024

present legal framework below that first vexation to initiate shakeup method lies with soul, and lenders could pursue distinct actions for recovery, security social control and debt restructuring. Code envisages subsequent steps within IRP

- i.)** Commencement of IRP'A money mortal (for defaulted financial debt) or an operational creditor (For an unpaid operational debt) will initiate a IRP against company soul at National Company Law Tribunal (NCLT). Defaulting company soul, its shareholders or workers, may additionally initiate voluntary insolvency proceedings.
- ii.)** Moratorium, NCLT orders moratorium on debtor's operations for amount of IRP. This operates as 'calm period' throughout that no judicial proceedings for recovery, social control of interest sale or transfer of assets, or termination of essential contracts will occur against soul.
- iii.)** Appointment of Resolution Professional. NCLT appoints associate insolvency skilled or 'Resolution Professional' to administer IRP. Resolution Professional's primary perform is to require over management of company recipient and operate its business as going concern below broad directions of committee of creditors. This is like approach below UK insolvency laws, however distinct from "debtor in possession" approach below Chapter eleven of US bankruptcy code. Under US bankruptcy code, debtor's management retains management whereas bankruptcy skilled solely oversees business so as to stop and barring on thepart of promoters. Therefore thrust of Code is to permit shift of management from defaulting debtor's management to its creditors, wherever creditors drive business of soul with Resolution Professional acting as their agent.
- iv.)** Creditors Committee and Revival Plan, The Resolution Professional identifies money creditors and constitutes creditors committee. Operational creditors higher than specific threshold are allowed to attend conferences of committee however don't have balloting power. Each call of creditors committee needs 75% majority vote. Decisions of creditors committee are binding on company soul and everyone

its creditors. The creditors committee considers proposals for revival of soul and should decide whether or not to proceed with revival set up or liquidation among amount of one hundred eighty days (subject to one-time extension by ninety days). Anyone will outside the liquidation, he should contribute any excess yield to liquidation trust. Further, just in case of any inadequacy in recovery, secured creditors are junior to unsecured creditors to extent of inadequacy⁴⁵."

Insolvency Resolution Process for Individuals/Unlimited Partnerships "For people and unlimited partnerships, Code applies altogether cases wherever minimum default quantity is INR thousand and (USD 15) and higher than the Government could later revise minimum amount of default to better threshold). Code envisages 2 distinct processes just in case of insolvencies: automatic opportunity and insolvency resolution⁴⁶."

Under automated opportunity method, eligible debtors (basis gross income) will apply to Debt Recovery Tribunal (DRT) for discharge from bound debts not surpassing mere threshold, permitting them to start out anew. The insolvency resolution method consists of preparation of compensation set up by soul, for approval of creditors. If approved, DRT passes an order binding the soul and creditors to compensation set up. If setup is rejected or fails, the soul or creditors could apply for bankruptcy order⁴⁷."

Institutional Infrastructure

- a) "The Insolvency Regulator, the Code provides for constitution of a new insolvency regulator i.e. Insolvency and Bankruptcy Board of India (Board). Its role includes: overseeing functioning of insolvency intermediaries i.e. insolvency professionals, insolvency skilled agencies and data utilities; and control insolvency method.

⁴⁵ [advocatekhoj.com, "Acts of Insolvency | Insolvency Laws | Law Commission of India Reports | Law Library | AdvocateKhoj"](https://www.advocatekhoj.com/library/lawreports/insolvencylaws/3.php?Title=Insolvency%20Laws&Title=Acts%20of%20insolvency) (Copyright 2024, advocatekhoj.com) <<https://www.advocatekhoj.com/library/lawreports/insolvencylaws/3.php?Title=Insolvency%20Laws&Title=Acts%20of%20insolvency>> accessed April 21, 2024

⁴⁶ <https://indiankanoon.org/doc/33801/>

⁴⁷ IBC Laws, "Section 206 of IBC – Insolvency and Bankruptcy Code, 2016 : Enrolled and Registered Persons to Act as Insolvency Professionals" (IBC Laws, February 5, 2024) <<https://ibclaw.in/section-206-enrolled-and-registered-persons-to-act-as-insolvency-professionals/>> accessed April 3, 2024

- b)** Insolvency Resolution Professionals, Code provides for insolvency professionals as intermediaries United Nations agency would play key role within economical operating of bankruptcy method. Code contemplates insolvency skilled as category of regulated however personal professionals having minimum standards of professional and moral conduct. In resolution method, insolvency skilled verifies claims of creditors, constitutes creditors committee, runs debtor's business throughout moratorium amount and helps creditors in reaching accord for revival set up. In liquidation, insolvency skilled acts as liquidator and bankruptcy trustee.
- c)** Data Utilities, notable feature of Code is that creation of knowledge utilities to gather, collate, attest and circulate money data of debtors in centralised electronic databases. Code needs creditors to supply money data of debtors to multiple utilities on associate current basis. Such data would be offered to creditors, resolution professionals, liquidators and alternative stakeholders' in insolvency and bankruptcy proceedings. Aim of this can be to get rid of data spatiality and dependency on debtor's management for essential information that's required to fleetly resolve insolvency.
- d)** Judgment Authorities, adjudicating authority for company insolvency and liquidation is that NCLT. Appeals from NCLT orders delude National Company Law proceedings judicature and thenceforth to Supreme Court of Asian nation. for people and alternative persons, adjudicating authority is that DRT, appeals delude Debt Recovery proceedings judicature and thenceforth to Supreme Court. In keeping with broad philosophy that insolvency resolution should be commercially and professionally driven (rather than court driven), role of adjudicating authorities is proscribed to making sure group action instead of adjudicating on the deserves of insolvency resolution⁴⁸."

⁴⁸ "Acts of Insolvency | Insolvency Laws/1000 | Law Commission of India Reports | Law Library | AdvocateKhoj" (Copyright 2024, [advocatekhoj.com](https://www.advocatekhoj.com/library/lawreports/insolvencylaws/h.php?Title=Insolvency%20Laws/1000&STitle=Acts%20of%20Insolvency))<<https://www.advocatekhoj.com/library/lawreports/insolvencylaws/h.php?Title=Insolvency%20Laws/1000&STitle=Acts%20of%20Insolvency>> accessed March 26, 2024

Conclusion

We have seen that real efforts are created to formulate laws through recommendations, enactment etc. Yet like several alternative branches of law, company insolvency and restructuring laws in India lacks development. Authorities involved would like courageousness of conviction with clear attitude and can inside so as to create this laws additional economical and effective with part of definitive and sure time frame and therefore judicial method must take industrial approach towards revival of sick firms.

All supporting pillars i.e. accounting and auditing; statutory & legal framework; observance & enforcement; education & training; have to be reinforced and disciplined. The corporate insolvency and restructuring laws ought to order versatile however clear system for disposal of assets expeditiously and at most worth. Secured creditors' claim ought to rank at an equal rate with workmen and government dues. Law ought to also give for mechanism to acknowledge and record claims of unsecured creditors also. India presently ranks 136 out of 189 countries within World Bank's index on convenience of breakdown insolvencies. India's weak insolvency regime, its vital inefficiencies and systematic abuse are number of explanations for distressed state of credit markets in Asian nation these days. Code guarantees to bring on sweeping reforms with thrust on mortal driven insolvency resolution. It aims at early identification of monetary failure and increasing and price of insolvent companies. Code conjointly has provisions to handle cross border insolvency through bilateral agreements and reciprocal arrangements with alternative countries. Unified regime envisages structured and time bound method for insolvency resolution and liquidation that ought to considerably improve debt recovery rates and revitalize sickly Indian bond markets.

CHAPTER 3

INSOLVENCY UNDER THIS ACT

3.1 When does Insolvency and Bankruptcy Code (IBC) apply?

The Insolvency and Bankruptcy code at present can only be triggered if there is minimum default of Rs 1 lakh. This process can be triggered by way of filing an application before National Company Law Tribunal (NCLT). Process can be initiated by two classes of creditors which would include financial creditors and operational creditors. But for application to be admitted, creditor will have to show that requisite default is ascertainable⁴⁹.

When default occurs, creditors or debtor may apply to tribunal (NCLT or DRT) for initiating resolution process. application can be filed either by (i) corporate person⁷ and (ii) individual or partnership firm and in second case application is being made are for matter related to fresh start and where amount of default should not be less than one thousand rupees and further central government by notification can change minimum amount and that minimum amount should not be more than one lakh rupees⁵⁰.

According to section 11 of IBC, 2016 following person are not entitled to make an application to NCLT

1. A corporate debtor undergoing corporate insolvency resolution process.
2. A corporate debtor having completed corporate insolvency resolution process twelve months preceding date of making of application.

⁴⁹ “Insolvency and Bankruptcy Code, 2016.” (May 28, 2016)

<https://www.indiacode.nic.in/handle/123456789/2154?view_type=browse> accessed April 6, 2024

⁵⁰ “Sections IBC | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/sections-ibc/>> accessed April 7, 2024

3. A corporate debtor or financial creditor who has violated any of terms of resolution plan which was approved twelve months before date of making of an application under Chapter
4. A corporate debtor in respect of whom liquidation order has been made⁵¹.

Section 3(7) of IBC, 2016. corporate person" means company as defined in clause (20) of section2 of Companies Act, 2013, limited liability partnership, as defined in clause (n) of sub.section (1) of section 2 of Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for time being in force but shall not include any financial service provider;

3.2 Procedure In Case of Corporate Person:

Section 6 of Code lays down that in case of default by Corporate Debtor, Corporate Insolvency resolution Process may be initiated by Financial Creditor or by an operational Creditor or by Corporate Debtor itself. Process for initiation of a Insolvency Resolution Proceeding by each class of creditor is different. They have been discussed in detail as below:

In case of Financial Creditor:

Section 7 of Code lays down procedure for initiation of a insolvency proceeding by financial creditor. Section 8 & 9 of IBC, 2016 defines financial creditor. financial creditor either by himself or jointly with other financial creditors file an application for corporate insolvency resolution before NCLT for purpose of this provision it is not necessary that default should be in respect of person filing application. Applicant is required to furnish following document along with application.

- i. Record of default recorded with IUs

⁵¹ <<https://ibbi.gov.in/en/legal-framework/act>> accessed April 10, 2024

- ii. Name of resolution professional proposed to act as interim resolution professional.
- iii. Any other information required to be specified by board⁵².

In case of Operational Debtor:

According to section 8 of IBC, 2016 Operational creditor needs to give dem and notice i.e. repayment of operational debt in respect of which default has occurred of 10 days to corporate debtor before approaching NCLT. If corporate debtor fails to repay dues to operational creditor or fails to show any existing dispute or arbitration, then operational creditor can approach NCLT. Applicant under section of IBC, 2016 is required to furnish

- i.) Copy of invoice demanding payment or dem and notice that is delivered to corporate debtor.
- ii.) Affidavit to affect that no notice given by corporate debtor relating to dispute.
- iii.) Copy of Certificate from financial institution maintains records. Such other information as may be asked⁵³.

After application of Financial Creditor or Operation Creditor NCLT must, within 14 days of receipt of such application, determine existence of default on basis of evidence (As aforesaid) submitted by applicant. If NCLT is convinced that there exist default and that there are no disciplinary proceedings pending against proposed resolution professional, it may admit such application⁵⁴.

An order for admission or rejection of application must be convened to party concerned within 7 days of such order. Financial creditor shall propose name of a IP in application,

⁵² , “Insolvency and Bankruptcy Code Act, 2016 | Bare Acts | Law Library | AdvocateKhoj” (Copyright 2024, [advocatekhoj.com](https://www.advocatekhoj.com))

<<https://www.advocatekhoj.com/library/bareacts/insolvencybankruptcy/index.php?Title=Insolvency%20and%20Bankruptcy%20Code%20Act,%202016>> accessed April 10, 2024

⁵³ “” (May 28, 2016) <<https://www.indiacode.nic.in/handle/123456789/2154>> accessed April 11, 2024

⁵⁴ Surana E, “Insolvency and Bankruptcy Code, 2016” (Cleartax, October 12, 2021)

<<https://cleartax.in/s/insolvency-and-bankruptcy-code-2016>> accessed April 12, 2024

It is optional for operational creditor to propose name of a interim IP and all powers of board and management shall vest with IRP/IP and IP is responsible to run Company as going concern⁸ during Corporate Insolvency Resolution Process (CIRP). According to section 16 of IBC, 2016 NCLT should appoint interim resolution professional within 10 days of commencement of process and term of such IRP shall not exceed more than 30 days after appointment⁵⁵.

The (CIRP) should be completed within 180 days from date of admission of such process and can be extended by filing an application by Resolution Professional appointed as under by creditors and such application is moved by Resolution professional only on instruction of committee of creditor (COC) by decision in majority i.e. 75% of voting shares to NCLT. Application for extension is entertained only once and after perusal of given application when NCLT is satisfied that resolution process cannot be completed without extension of time it will further extend time to at most 90 days or less but cannot exceed time of 270 days.

After admission of application under section 7, 9 and 10 Adjudicating authority should

- a) Declare moratorium for purpose referred under section 14 and public announcement of CIRP.
- b) Call for submission of claim under section 15 of IBC, 2016⁹ immediately after appointment of interim resolution professionals⁵⁶.

Under section 14 of IBC, 2016 it is given that NCLT shall by order prohibit following–

- i.) Institution of any suit or continuation of pending suits or proceedings against corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

⁵⁵ “Insolvency and Bankruptcy Code, 2016.” (May 28, 2016)

<https://www.indiacode.nic.in/handle/123456789/2154?view_type=browse> accessed April 6, 2024

⁵⁶ [advocatekhaj.com](https://www.advocatekhaj.com), “Acts of Insolvency | Insolvency Laws | Law Commission of India Reports | Law Library | AdvocateKhaj” (Copyright 2024, [advocatekhaj.com](https://www.advocatekhaj.com))

<<https://www.advocatekhaj.com/library/lawreports/insolvencylaws/3.php?Title=Insolvency%20Laws&STitle=Acts%20of%20insolvency>> accessed April 21, 2024

ii.) Transferring, encumbering, alienating or disposing of any asset or legal right or beneficial interest by corporate debtor.

iii.) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of security interest Act, 2002. **iv.** Recovery of any property by an owner or lessor where such property is occupied by or in possession of corporate debtor

The supply of goods or services to corporate person is not interrupted, terminated or suspended and order of moratorium will have effect till completion of CRIP⁵⁷.

After appointment of IRP management of corporate debtor shall vest in such IRP appointed and he has power to take key policy decisions and board of directors and partners of such corporate debtor shall stand suspended by such IRP and have following powers¹⁰

- i.** The officer and manager of corporate debtor shall provide all assistance and provide access to documents or records as required by IRP.
- ii.** The financial institution maintaining records of such corporate Debtor should work on instruction of IRP.
- iii.** Act and execute any deed or document in name of corporate debtor
- iv.** Have access to electronic records maintained to IUs.
- v.** Access records maintained by government authority, statutory auditors, accountants or any other person as specified⁵⁸.

⁵⁷ , “What Is Insolvency and Bankruptcy Code (IBC) 2016?” ETBFSI.com (February 21, 2020) <<https://bfsi.economictimes.indiatimes.com/amp/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436>>

⁵⁸ Annapoorna, “SARFAESI ACT, 2002- Applicability, Objectives, Process, Documentation” (Cleartax, February 24, 2024) <<https://cleartax.in/s/sarfaesi-act-2002>> accessed April 14, 2024

What happens once National Company Law Tribunal (NCLT) admits application against defaulting debtor?

As soon as matter is admitted by NCLT, NCLT proceeds with appointment of an Interim Resolution Professional (IRP) who takes over management of defaulting debtor. Resolution Professional may then be continued or removed, contingent on wishes of Committee of Creditors (COC). Role of Resolution Professional primarily entails making⁵⁹

3.3 Duties of IRP:

- i.)** Collect all information relating to assets, finances and operations of corporate debtor for determining financial position and any other information like
 - a)** Business operation for previous 2 years.
 - b)** Financial and operational payments of previous 2 years.
 - c)** List of assets and liabilities.
 - d)** Other information as required of CRIP.
- ii.)** Receive and collate all claim submitted by creditors.
- iii.)** Constitute committee of creditors.
- iv.)** Monitor assets and manage its operations until committee of creditors appoints permanent resolution professional.
- v.)** Take control and custody of any assets over which corporate debtor has ownership right⁶⁰.

⁵⁹ Annapoorna, "SARFAESI ACT, 2002- Applicability, Objectives, Process, Documentation" (Cleartax, February 24, 2024) <<https://cleartax.in/s/sarfaesi-act-2002>> accessed April 14, 2024

⁶⁰ Annapoorna, "SARFAESI ACT, 2002- Applicability, Objectives, Process, Documentation" (Cleartax, February 24, 2024) <<https://cleartax.in/s/sarfaesi-act-2002>> accessed April 14, 2024

3.4 Committee of Creditor (COC):

The interim resolution professional shall after collation of all claims received by against corporate debtor under section 15 of IBC, 2016 and determination of financial position of corporate debtor, constitute COC which consist of all financial creditor of corporate debtor. Where corporate debtor owes financial debts to two or more financial creditors as part of consortium or agreement, each such financial creditor shall be part of COC and their voting share shall be determined on basis of financial debts owed to them⁶¹.

In case where person is financial as well as operational creditor person is financial creditor to extent of financial debt owed by corporate debtor and to be included in COC and voting share to extent of financial debt owed to such creditor and considered to be an operational creditor to extent of operational debt owed by corporate debtor to such creditor. In case where operational debt is transferred to financial creditor transferee shall be considered as an operational creditor to extent of such assignment or legal transfer. Trustee or agent and such trustee can represent claim of any financial creditor and they are authorized by creditor to act on its behalf in voting and exercise any right given by COC. Corporate debtor does not have any financial creditors, committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by board. COC have right to require financial information from resolution professional any time has to be provided within 7 days under section 21 of IBC, 2016⁶².

Under section 22 of IBC, 2016 COC within 7 days of constitution of committee to appoint resolution professional with majority votes i.e. 75% votes of financial creditor. It can either continue or replace IRP and further communicate decision to NCLT, Corporate Debtor and proposed resolution professional appointed. NCLT will further forward name

⁶¹ Chowdhury MR and Chowdhury D, "A Walk through Sec 13 [8] of the SARFAESI Act.....Pre and Post Amendment" (Lexology, December 27, 2023) <<https://www.lexology.com/library/detail.aspx?g=b4f967b3-9447-4644-8aa7-cde3394cfeb9>> accessed April 16, 2024

⁶² Mishra P and Law L, "Live Law" Live Law (October 20, 2023) <<https://www.livelaw.in/amp/top-stories/supreme-court-financial-creditor-right-to-initiate-cirp-corporate-debtor-election-doctrine-application-ibc-240691>>

to Board for confirmation and if board does not confirm within 10 days NCLT can order IRP to act as resolution professional until confirmation of board⁶³.

According to section 27 of IBC, 2016 where COC is of opinion that resolution professional appointed under section 22 is required to be replaced it may replace it by other in meeting by voting in majority and communicating name to NCLT further on approval of Board new professional will be appointed if no disciplinary action in present against him⁶⁴.

APPROVAL OF COMMITTEE OF CREDITORS:

Under section 28 of IBC, 2016 corporate insolvency resolution process, shall not take any of following actions without prior approval of committee of creditors –

- i.)** Raise any interim finance in excess of amount as may be decided by committee of creditors in their meeting.
- ii.)** Create any security interest over assets of corporate debtor.
- iii.)** Change capital structure of corporate debtor, including by way of issuance of additional securities, creating new class of securities or buying back or redemption of issued securities in case corporate debtor is company.
- iv.)** Record any change in ownership interest of corporate debtor
- v.)** Give instructions to financial institutions maintaining accounts of corporate debtor for debit transaction from any such accounts in excess of amount as maybe decided by committee of creditors in their meeting to.
 - a)** Undertake any related party transaction;
 - b)** Amend any constitutional documents of corporate debtor.

⁶³ Lawman N, “Companies Act 1956” (Net Lawman, December 4, 2020)
<<https://www.netlawman.co.in/ia/companies-act-1956>> accessed April 18, 2024

⁶⁴ “Insolvency and Bankruptcy Code, 2016.” (May 28, 2016)
<https://www.indiacode.nic.in/handle/123456789/2154?view_type=browse> accessed April 6, 2024

- c) Delegate its authority to any other person.
- d) Dispose of or permit disposal of shares of any shareholder of corporate debtor or their nominees to third parties.
- e) Make any change in management of corporate debtor or its subsidiary.
- f) Transfer rights or financial debts or operational debts under material contracts otherwise than in ordinary course of business.
- g) Make changes in appointment or terms of contract of such personnel as specified by committee of creditors.
- h) Make changes in appointment or terms of contract of statutory auditors or internal auditors of corporate debtor

After appointment of resolution professional (RP) it has to prepare information memorandum in such form and manner specified by board and resolution applicants have access to all information electronically or physically to make resolution plan¹² and than to submit plan to RP and as there are no guidelines on what resolution plan consist of each plan should have at least¹³.

- a) Payment of costs of RP/IRP/cost of supply of essential goods/ amounts due to persons affected by moratorium and costs directly related to CIRP in priority of repayment of other debts of corporate debtors.
- b) Repayments to operational creditors, which should not be lesser than amount to be received by them in case of liquidation of corporate debtor.
- c) Provide for management of corporate debtor, implementation and supervision of resolution plan after its approval. iv. Does not contravene any of provisions of law for time being in force.

- d) The resolution plan must comply with applicable requirements as specified by Board⁶⁵.

Such plan is sent for approval of COC and to be approved by majority i.e. not less than 75% and resolution applicant can also be present in meeting but cannot vote unless he is a financial creditor and if COC rejects all corporate debtor goes into liquidation. Further if COC approves resolution plan it will then be sent for approval of NCLT and if plan meets all requirements of section 30 it will be approved by NCLT and will be implemented by RP. It is binding on corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in resolution plan. It can either reject resolution plan if requirements under section 30 are not fulfilled debtor goes into liquidation. If corporate debtor does not comply with resolution plan then also debtor goes into liquidation.¹⁴ Appeals from an order approving resolution plan shall be in manner and on grounds laid down in sub-section (3) of section **dissolve**⁶⁶

⁶⁵ “Sections IBC | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/sections-ibc/>> accessed April 7, 2024

⁶⁶ “The Insolvency and Bankruptcy Code in India | India Infoline” <<https://www.indiaonline.com/knowledge-center/financial-planning/economics-for-everyone-the-insolvency-and-bankruptcy-code-in-india-and-the-national-company-law-tribunal?amp>> accessed April 19, 2024

CHAPTER 4

LIQUIDATION AND WINDING UP

4.1 Liquidation Process:

- i. In case resolution plan is rejected by NCLT for non-compliance with requisites of section 30(4)¹⁵ or no plan is received within stipulated time frame of 180 days or 270 days, NCLT may pass orders for liquidation of corporate debtor and issue public announcement to that effect.⁶⁷
- ii. The NCLT may also direct liquidation of corporate debtor in event RP communicates to NCLT that even during pendency of CIRP, CC has decided to liquidate company, or on determination by NCLT (on an application filed by any person) that provisions of resolution plan have been contravened by corporate debtor.
- iii. Upon passing of order of liquidation of corporate debtor by NCLT RP shall act as Liquidator and shall receive and collect claims of creditors, verify them and accordingly accept or reject same and run liquidation process in accordance with provisions of IBC.
- iv. Liquidator shall receive, verify and admit or reject, as case may be, claims of creditors within prescribed time of 30 days by way of public announcement⁶⁸.

Creditor may appeal to adjudicator within 14 days.¹⁸

- v. The order of liquidation under section 33 to be deemed to be notice of discharge to officer, employee and workmen of corporate debtor except when business of corporate debtor is continued by liquidator. vi. NCLT can replace RP if⁶⁹.

⁶⁷ Section 39 and 40 of IBC, 2016

⁶⁸ Committee of creditors may approve resolution plan by vote of not less than seventy five percent of voting share of financial creditors.

⁶⁹ "" <<https://www.indiaonline.com/knowledge-center/financial-planning/economics-for-everyone-the-insolvency-and-bankruptcy-code-in-india-and-the-national-company-law-tribunal?amp>> accessed April 20, 2024

- vi. The resolution plan submitted by resolution professional under section 30 was rejected for failure to meet requirements.
- vii. The Board recommends replacement of resolution professional to Adjudicating Authority for reasons to be recorded in writing⁷⁰.
- viii. Liquidation process to be completed within two years unless extended by NCLT. No suit or other legal proceeding by or against corporate debtor, except suit or legal proceeding by liquidator with prior approval of NCLT.
- ix. The liquidator shall form an estate of all assets of corporate debtor called liquidation estate.¹⁹

4.2 Distribution of Assets in Case of Liquidation:

The Code also provides for priorities wherein proceeds from realization of assets of CD are to be distributed to its creditors in case of liquidation. Priority as envisaged in code is as follows:

- a) Insolvency Resolution Process costs and liquidation costs paid in full.
- b) The following debts which shall rank equally between and among following:
 - i.) Workmen dues for period of twenty-four months preceding liquidation commencement date; and IRP shall collate all claims received against corporate debtor and constitute CC comprising all Financial Creditors of corporate debtor (irrespective of them being differently secured).
 - ii.) Debts owed to secure creditor in event such secured creditor has relinquished security in manner set out in section 52.
- c) Wages and any unpaid dues owed to employees other than workmen for period of twelve months preceding liquidation commencement date.

⁷⁰“The Insolvency and Bankruptcy Code in India | India Infoline”
<<https://www.indiaonline.com/knowledge-center/financial-planning/economics-for-everyone-the-insolvency-and-bankruptcy-code-in-india-and-the-national-company-law-tribunal?amp>> accessed April 19, 2024

- d) Financial debts owed to unsecured creditors.
- e) The following dues shall rank equally between and among following:
 - i.) Any amount due to Central Government and State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of State, if any, in respect of whole or any part of period of two years preceding liquidation commencement date.
 - ii.) Debts owed to secured creditor for any amount unpaid following enforcement of security interest.
- f) Any remaining debts and dues.
- g) Preference shareholders, if any Equity shareholders or partners, as case may be⁷¹.

4.3 Powers and Duties of Liquidator:

The Liquidator must try to maximize value of assets in most efficient manner of disposal and create liquidation trust for distribution. The primary responsibilities of Liquidator are:

- i.) To verify claims of all creditors to take into his custody or control all assets, properties, effects and actionable claims of corporate debtor
- ii.) To evaluate assets and properties of corporate debtor in manner as may be Specified by Board and prepare report. iii. To take such measures to protect and preserve assets and properties of corporate debtor as he considers necessary.
- iii.) To carry on business of corporate debtor as he considers necessary
- iv.) To sell immovable and movable property and actionable claims of corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell same in parcels in such

⁷¹, “Section 33 of IBC – Insolvency and Bankruptcy Code, 2016 : Initiation of Liquidation” (IBC Laws, March 17, 2024) <<https://ibclaw.in/section-33-initiation-of-liquidation/>> accessed April 24, 2024

manner as may be Specified institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in name of on behalf of corporate debtor.

- v.) To investigate financial affairs of corporate debtor to determine undervalued or preferential transactions.⁷²

⁷² , “What Is Insolvency and Bankruptcy Code (IBC) 2016?” ETBFSI.com (February 21, 2020)
<<https://bfsi.economicstimes.indiatimes.com/amp/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436>>

CHAPTER 5

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

The aim of Insolvency and Bankruptcy code is to conclude procedure within half of default time period specified under Code. Person or entity seeking fast relief will have onus on process at set.off and that person or entity that sets.off Fast.track process must support that case is fit for Fast track. Therefore, whosoever fills application for fast process under Section 55 of IBC, 2016⁷³ will have to file application along with proof of existence of default as evidenced by records available with an information utility or such other means as may be specified by Board to establish that corporate debtor is eligible for fast track corporate insolvency resolution process. Fast Track Corporate Insolvency Resolution Process Code has provided for fast track insolvency resolution process in respect of corporate debtors, qualification to be notified by Government. Process shall be completed in 90 days (extendable by maximum 45 days).¹⁹ Provisions of insolvency process apply to fast track insolvency. This will be an enabler for start. ups and small and medium enterprises to complete resolution process quickly and move on⁷⁴.

Parties of contract at arm length are bound by terms of their contracts, provided contracts do not contravene rule of law or public policy. Commencement of formal Insolvency proceedings could but limit flexibility of person to perform its pre.petition contract obligations, ensuing to liabilities to creditors consequently, proper insolvency procedure ensures an orderly and economical resolution of person affairs. Increasing realisations to creditors or rescuing company debtor as going concern. To realize this purpose, understanding social control efforts and rights are replaced by compulsory regime characterized by collectivity and equality in treatment of equally located creditors. This thesis relatively evaluates impact of commencement of formal insolvency proceedings on

⁷⁴ , “What Is Insolvency and Bankruptcy Code (IBC) 2016?” ETBFSI.com (February 21, 2020)
<<https://bfsi.economicstimes.indiatimes.com/amp/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436>>

company contracts within India, United Kingdom and USA and EU countries. It examines extent to that pre.petition contract bargains are suspended, adjusted or avoided by supervening insolvency law regime within jurisdictions. Thesis adopts thematic approach to look at however legal frameworks within jurisdictions manage inevitable

Conflict between policy issues of law and people of insolvency law. Extent to that insolvency law ought to interfere with pre insolvency written agreement arrangements and entitlements has invariably been contentious and keenly debated issue. No doubt, insolvency law incorporates larger range of interests to shield outside interests of pre.petition acquiring parties. These embrace final body of creditors, employees, post.petition creditors etc. even so, withi n absence of compelling and well.articulated policy justification formula) insolvency ought to not be forum for baring of property rights or pursuit of re. Distributional goals.

5.1 Disclaimer/Rejection of Contracts

Disclaimer can usually exclude or limit liability for breach of 'implied' terms that law presumes are enclosed in an exceedingly Contract once nothing is expressly in agreement on problems concerned. Any term which may have that impact in an exceedingly client contract is especially probably to be thought about unfair.⁷⁵

Rejection could be refusal to simply accept written agreement provide. Rejection means that refusal to simply accept tendered product as written agreement performance. Underneath Uniform industrial Code, buyer's rejection of unorthodox product ought to be created at intervals an affordable time once tender or delivery, and therefore merchant ought to be notified regarding rejection. In order, rejection refers to failure of adoption or confirmation underneath jurisprudence, rejection refers to patent examiner's finding in associate degree workplace action that claim in an application isn't patentable.²¹

⁷⁵ Annapoorna, "SARFAESI ACT, 2002- Applicability, Objectives, Process, Documentation" (Cleartax, February 24, 2024) <<https://cleartax.in/s/sarfaesi-act-2002>> accessed April 14, 2024

5.2. Policy Rationale

Equality

Equality isn't perpetually regarding treating everybody identical. It's about treating individuals in such way that end result for every person may be same. This suggests putting things in situ to support individuals to attain similar outcomes. For someone who is blind it's going to involve having screen readers on your computers and removing obstacles in your way.

Building for somebody from minority background it's going to involve having affirming messages in your youth area in order that teenagers grasp that diversity and distinction is valued. Messages may be communicated in several ways in which like having workers with open and hospitable attitudes, displaying relevant posters and knowledge, celebrating special days like individual and LGBT Pride weeks or special festivals like Divali, Eid etc. By not putting supports in situ exclusion is typically associated degree unintended result.

Equality of outcome may be achieved by ensuring that everybody is supported to own access to resources and deciding and to be recognised, valued and revered. Once supports don't seem to be place in situ it always leads to exclusion whether or not this can be not supposed as result of individuals from marginalised things don't feel or grasp that they will attend bunch, whether or not mission statement says it's receptive all. By following checklists in Access All Areas you'll discover variety of supports which will be place in situ to supply service supported principal of equality of outcome.

NB outline on top of isn't supported legislative definition of equality that concentrates additional on discrimination, or denial of equality, i.e. unfair or less favorable treatment or direct exclusion from services etc. of someone from one cluster enclosed in equality

legislation compared to person from another group in relevancy product and services, education, accommodation, employment and education⁷⁶.

5.3 Power to Disclaim or Reject Contracts:

The Scope of Power to Disclaim or Reject:

The information contained during this Request for Proposal document (RFP) or after provided to candidates, whether or not verbally or in documentary or other kind by or on behalf of Authority or any of their workers or advisers, is provided to candidates on terms and conditions kicked off in RFP and such alternative terms and conditions subject to that such info is provided. RFP isn't associate degree agreement and is neither suggestion nor invite by Authority to potential candidates or another person. Aim of RFP is to produce interested parties with iluo that will be helpful to them within formulation of their Proposals consistent to RFP. Assumptions, assessments, statements and knowledge contained within RFP, might not be complete, accurate, adequate or correct.

Therefore, conduct its own investigations and analysis and may check accuracy, adequacy, correctness, responsibility and completeness of assumptions assessments and knowledge contained within RFP and procure freelance recommendation from acceptable sources. Authority conjointly accepts no liability of any nature whether or not ensuing from negligence or otherwise but caused arising from reliance of any someone upon statements contained within RFP. Authority could in its absolute discretion, however while not being underneath any obligation to try and do thus, update, amend or supplement knowledge, assessment or assumption contained within RFP. difficulty of RFP doesn't imply that Authority is certain to choose associate degree someone or to appoint chosen someone, because case could also be for practice and therefore Authority reserves proper to reject all or any of Proposals while not distribution any reasons whatever. someone shall bear all its prices related to or regarding preparation and submission of its Proposal as well as however not restricted to preparation, copying,

⁷⁶ (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-33-initiation-liquidation/>> accessed March 13, 2024

postage, delivery fees, expenses related to any demonstrations or displays which can be needed by authority or other prices incurred in reference to or regarding its Proposal all such prices and expenses can stay with someone and therefore Authority shall not be liable in any manner whatever for identical or for other costs or other expenses incurred by an someone in preparation or submission of Proposal, irrespective of conduct or outcome of choice method⁷⁷.

The Timing of Decision:

Executory contracts in bankruptcy are problem of concern among legal students thanks to their economic importance and therefore quality of their treatment. For needs of this text, executory contracts, as outlined By Jesse cooked, are those contracts within which performance apart from payment is owed by minimum of one party at time of filing of bankruptcy petition. These contracts are significantly relevant in any bankruptcy continuing as result of they're not entirely assets, nor completely liabilities; instead they imply associate degree interrelatedness between mortal and therefore non debtor party within which every of them enjoys some advantages and bears some prices. However, counting on worth of contract, it will so represent quality or liability to bankruptcy estate.

Recognizing prejudicial effects that such delay could wear none debtor. Bankruptcy Code provides that non debtor party is entitled to raise bankruptcy court to need bankruptcy trustee to determine assumption or rejection before confirmation of reorganization set up⁷⁸.

⁷⁷ Policy VC for L, "IBC and the On-Going Crisis: A Case for Allowing Going Concern Sales in Resolution" (Vidhi Centre for Legal Policy, November 11, 2021) <<https://vidhilegalpolicy.in/blog/ibc-and-the-on-going-crisis-a-case-for-allowing-going-concern-sales-in-resolution/>> accessed April 22, 2024

⁷⁸ Mukesh Jain and Mukesh Jain, "Some Emerging Trends in the Evolution of Insolvency and Bankruptcy Code (IBC), 2016....." (Outlook Business & Money, July 2, 2019) <<https://business.outlookindia.com/amp/story/talking-money/some-emerging-trends-in-the-evolution-of-insolvency-and-bankruptcy-code-ibc-2016-3177>> accessed April 23, 2024

Effects of Disclaiming or Rejecting Contracts Effects on Parties to Contract:

When contract rejected effects on opposite party thereunder contract: Are those rights still those rights are in continuation Any other way can affect those rights?

The Supreme Court of United States can tackle this question within case of "Mission Product Holdings, Inc. v. Tempnology, LLC (Case No. 17-1657) (Cert. granted, October 26, 2018) The case involves rejected trademark license. And therefore, licensee desires to continue exploitation trademark. Facts of Case: Debtor created cooling materials (e.g., towels, wraps, hoodies, and bandanas) and oversubscribed them through contract with Distributor, that agreement enclosed trademark license. Debtor filed bankruptcy, whereupon it oversubscribed all assets underneath § 363 and rejected contract. Distributor declared post-petition rights to continue exploitation Debtor's emblems, supported § 365(n) protections for holders of belongings rights. Rulings of Lower Courts: Bankruptcy Court Bankruptcy Court self addressed trademark issue and dominated in Debtor's favor: it held that trademark license rights are not afforded any protection underneath § 365(n)" which Distributor couldn't continue exploitation emblems.

Bankruptcy proceeding Panel Bankruptcy proceeding Panel for primary

Circuit ("BAP") reversed. It unheeded § 365(n) issue and targeted, instead, on general rejection rules of § 365(g), holding that Distributor's rights underneath contract continuing fully force and impact, yet rejection " Here is its rationale:

- i.) A debtor rejection of associate degree executory contract isn't a "termination" of contract. instead, rejection could be mere "breach" that "frees estate from duty to perform," whereas "the non-rejecting party's rights stay in place"; and

ii.) Debtor's rejection of Agreement didn't vaporize [Distributor's) trademark rights," and distributor 's right to continue exploitation Debtor's emblems continuing i n impact, underneath § 365(g)⁷⁹.

Effects on Third Parties:

This article is anxious with person upon whom contract purports to confer advantages. Orthodox premise of our law is that, not being celebration to contract, that person has no standing to bring proceedings to enforce performance of written agreement obligations that are helpful to him. It's solely catching parties who could have rights presented or obligations obligatory on them by contract this can be odd philosophy of privity of contract. It precludes third party social control while it had been intention of catching parties that he advantages from their agreement. Solely that part of privity philosophy that relates to conferment of advantages is that concern of this text. Third party social control of exemptions from liabilities is on far side its scope; main target is performance obligations helpful to 3rd party not exemption obligations.

Effects on Lease Licenses Bottom of Form:

The Victorian Court of attractiveness has confirmed that liquidator of landholder will disclaim lease with full impact, in order that l and isn't any longer mired by tenant's interest in Re Willmott Forests restricted (Receivers and Managers appointed) (in liquidation), The decision offers liquidators understanding of knowing that disclaimer of lease implies that tenant now not has any interest within l and or property⁸⁰.

⁷⁹ advocatekhoj.com, "Acts of Insolvency | Insolvency Laws | Law Commission of India Reports | Law Library | AdvocateKhoj" (Copyright 2024, advocatekhoj.com) <<https://www.advocatekhoj.com/library/lawreports/insolvencylaws/3.php?Title=Insolvency%20Laws&Stitle=Acts%20of%20insolvency>> accessed April 21, 2024

⁸⁰ Webmaster, "Bankruptcy Law Reforms Committee (BLRC) - S K Patodia & Associates" (SK Patodia & Associate LLP, August 18, 2023) <<https://skpatodia.in/blog/bankruptcy-law-reforms-committee-blrc/>> accessed April 23, 2024

Background:

The landholder, Willmott Forests Ltd (WFL), was accountable entity of group of agricultural managed investment schemes (MIS). The members of MIS (the "Growers") hired and closely held by WFL to grow and harvest trees consistent to lease and license agreements.

WFL went into liquidation and therefore liquidators entered into sale contracts for sale of WFL's land. Clear title couldn't be transferred underneath contract unless member's rights and entitlements under leases licenses were terminated or destroyed.

The liquidators applied to Court for directions on whether or not or not they might disclaim leases underneath section 568(1) of Firms Act 2001 (Cth) to alter them to transfer clear title to land⁸¹.

The First Decision:

The Court found that acres interest wasn't liability or encumbrance upon property of owner and, on basis had been not necessary to extinguish such associate degree interest to unharness owner or its property from liability. That's liability risk remained with liquidator.

The liquidators appealed choice. Court of Appeal.

The vital question on attractiveness was whether or not acres interest in land is destroyed by disclaimer of lease agreement by liquidator of owner. Consistent to S568 (1) of firms Act 2001.

The Court of attractiveness upset trial judge's call and comm and that liquidators were ready to disclaim leases and conjointly tenant's acres or proprietary interest within land and itself was also destroyed.

⁸¹ Dhinesh S, "Debt Recovery Tribunal as per the Insolvency and Bankruptcy Code 2016" (Enterslice, May 23, 2024) <<https://enterslice.com/learning/debt-recovery-tribunal-under-insolvency-and-bankruptcy-code-2016>> accessed May 31, 2024

In reaching its decision Court made following key findings:

- A landlord's obligation to produce leaseholder with possession associate degree quiet enjoyment is a progress liability that continues for length of lease. Therefore, for owner to be alleviated of that liability proprietary interest of leaseholder should go, not simply lease contract.
- A acres interest is regulated by lease contract and, like all alternative contract is destroyed upon termination of contract. Acres interest doesn't survive termination of contract that created it and controlled tenant's tenure.
- The aim of section 568 of Act is to permit liquidator to unharness corporate in liquidation from obligations which might otherwise stop prompt and economical ending of company's affairs⁸².

Practical Effects:

The Willmott call is vital for liquidator 's tenants and even financiers of companies operational from hired premises).

Liquidators are ready to disclaim lease with comfort of knowing that this can terminate all of tenant's acres interests. This will be of specific importance to liquidator visaged with lease which:

- Contains monetary obligations binding owner that can't be recouped or offset against income stream;
- Renders freehold interest unmarketable or reduces prospects of sale;
- Is otherwise prejudicial to worth of l and closely held by corporate (for example, tenant friendly leases which can be considerably underneath market).

⁸² India eAuctions, "What Is Difference between DRT and NCLT?" (Eauctionsindia) <<https://www.eauctionsindia.com/blogs/what-is-difference-between-drt-and-nclt>> accessed April 24, 2024

Tenants trying to secure long leases ought to think about chance that their acres interest may well be destroyed by liquidator's disclaimer⁸³.

Contract at Undervalued/ Fraudulent Transfer:

A transfer is dishonorable if created with actual intent to hinder, delay, or gyp any someone. Actual fraud sometimes involves mortal who as part of an quality protection theme donates his assets typically to associate degree "insider", and leaves himself nothing to pay his creditors.

Transfer of assets to lawfully avoid unsecured debt claims and gyp creditors round time debt incurred. Once debt incurred, once dem and created on debt, once suit filed on debt. Round same time or once judgment entered on debt. Before or perhaps after bankruptcy. Secured debt claims vs. unsecured debt claims holders have inbuilt remedies that follow property itself. May additionally assert dishonorable transfer claims however have additional direct and alternative claims legal proceeding, conversion, etc?

All assets Money/Funds holding Real property 'Soft" assets

- Membership interests shares
- Accounts, debts, contracts State law
- Uniform dishonorable Transfer Act (now referred to as Uniform rescindable Transactions Act)
- Adopted/enacted by most states
- Written otherwise in every state
- Texas, for instance, found in Chapter twenty four of Texas Business and Commerce Code.

⁸³, “[OPINION] DRT Proceedings Triggers ‘New’ Life for Limitation under IBC” (Taxmann Blog, February 9, 2024) <<https://www.taxmann.com/post/blog/opinion-drt-proceedings-triggers-new-life-for-limitation-under-ibc>> accessed April 24, 2024

• Federal Bankruptcy Code eleven USC 548

A transfer created or obligation incurred by mortal is dishonorable on someone, whether or not creditor's claim arose before or at intervals an affordable time once transfer was created or duty was incurred. If mortal created transfer or incurred obligation:

- (1) With actual intent to hinder, delay, or gyp any someone of debtor; or
- (2) While not receiving fairly equivalent worth in exchange for transfer or obligation, and therefore debtor:
- (3) Was have interactioned or was on point of engage in an exceedingly business or group action thru remaining assets of mortal were immoderately tiny in relevancy business or transaction; or
- (4) Supposed to incur, or believed or moderately ought to have believed that mortal would incur, debts on far side debtor's ability to pay as they became due. Tex. Bus. Com. Code 25.005⁸⁴

The Scope of Rules Rules against Fraudulent Transfers:

A major remedy for creditors to induce debts repaid from defaulting debtor's is to seize debtor's property. Often debtors don't have any viable property (property which will be oversubscribed by creditors to satisfy debt), however people who do, can usually try and shield their property by either concealing it or transferring property to somebody that mortal trusts. Dishonorable transfer is that transfer of associate degree quality from mortal to transferee with specific purpose of delaying, hindering or defrauding someone. Usually, transferee is associate degree business executive, which incorporates friends, relatives, and workers of business mortal. Remedy is to avoid transfer by forcing transferee either.

⁸⁴ "Corporate Debtor under IBC, IBC for Corporate Debtors, India"
<<https://carajput.com/services/corporate-debtor-under-ibc.php>>

To come back property to mortal in order that it may be levied by someone or to pay quantity adequate to worth of property.

A dishonorable transfer differs from preference therein preference could be transfer to most well liked someone instead of a business executive. However, discriminatory transfers may be avoided particularly by bankruptcy trustee if mortal filed for bankruptcy. By Allison Friedman of Allison L. Friedman, P.A. denote in dishonorable Transfers on Wednesday, June 8, 2016.

Fraudulent transfers beware! American state general assembly has revamped statute governing proceedings supplementary. Changes can go in impact July 1, 2016. Great news for creditors is that everyone identical avenues to try assortment are still viable, as well as mortal examinations and actions for dishonorable transfers. Additionally, changes clarify that statute of limitations for dishonorable transfers remains twenty years as hostile four as set forth with Uniform Dishonorable Transfer Act ("UFTA"). Revisions can contour associate degree usually confusing method each with attorneys and therefore courts in American state⁸⁵.

There is conjointly excellent news for debtors and third parties. Now rather than blanket motions for proceedings supplementary followed by fishing expedition for transfers and assets, someone should describe property being comm and by third party before impleading that party. This can need that someone have legitimate reason before dragging possible third party recipient of dishonorable transfer into court. New rules conjointly need that third party be served with notice to seem associate degree directs third party to file a instrument explaining why quality transferred shouldn't be turned over to someone. This procedure provides court with method and fast resolution of difficulty. If third party fails to follow presumptively court can enter associate degree order requiring quality be turned over.

Cross.collateralization improves prepetition lender's collateral position and is employed to induce it to increase new post.petition loans to mortal. Absent cross.collateralization,

⁸⁵, "[OPINION] DRT Proceedings Triggers 'New' Life for Limitation under IBC" (Taxmann Blog, February 9, 2024) <<https://www.taxmann.com/post/blog/opinion-drt-proceedings-triggers-new-life-for-limitation-under-ibc>> accessed April 24, 2024

post. Petition assets (except for payoff of prepetition collateral) don't seem to be subject to lender's prepetition (552(a). Bankruptcy Code).

Courts approving cross. collateralization have done thus reluctantly with bound necessities, as well as requiring notice to affected parties and showing that mortal won't survive while not planned finance. Most objections against cross. collateralization are that it is:

- Not licensed as way of DIP finance underneath Bankruptcy Code.
- Directly contrary to elemental priority theme of Bankruptcy Code. That typically needs that creditors at intervals given category are to be treated equally. Cross.collateralization leads to affirmative bound creditors at intervals identical category over others. Closely associated with cross. collateralization are roll.ups that have identical impact as cross.collateralization as result of they end in prepetition debt turning into secured with post.petition collateral. This cross. collateralization impact could be common objection to roll.ups ⁸⁶

Voluntary Liquidation of Corporate Person:

A corporate who intends to liquidate itself and have not committed default in payment may initiate proceeding under chapter V of IBC, 2016. It has to meet following condition given under section 59 of IBC, 2016:

Declaration from majority of directors of company in affidavit stating that

- i.) They have inquired into affairs of company and there is no debt due or selling of asset in voluntary liquidation can satisfy debt due.
- ii.) Company is not liquidated to defraud any person.

Following documents should also be attached to declaration –

⁸⁶ Insight L, “Debt Recovery Tribunals in an IBC-Era: A Progressive Redundancy” (WordPress.com, April 27, 2020) <<https://lexinsight.wordpress.com/2020/04/27/debt-recovery-tribunals-in-an-ibc-era-a-progressive-redundancy/>> accessed April 25, 2024

- i.)** Audited financial statements and record of business operations of company for previous two years or for period since its incorporation, whichever is later.
- ii.)** A report of valuation of assets of company, if any prepared by registered valuer.

After submitting declaration and within four weeks there shall be.

- a)** A special resolution of members of company in general meeting appointing insolvency professional to act as liquidator; or
- b)** A resolution of members in general meeting requiring company to be liquidated voluntarily as result of expiry of period of its duration, if any, fixed by its articles provided that company owes any debt to any person, creditors representing two-thirds in value of debt of company shall approve resolution passed under within 7 days of such resolution⁸⁷.

The company shall communicate or notify registrar and board about resolution passed along with approval of creditors within 7 days of such approval and provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as needed to implement resolution. Further after completion of voluntary liquidation under this chapter liquidator will make an application to NCLT to completely dissolve such corporate person and pass an order that corporate debtor shall be dissolved from date of that order and corporate debtor shall be dissolved accordingly and shall within 14 days forward copy of order to registering authority where such corporate debtor is registered⁸⁸.

⁸⁷Vidhikarya, "Personal Guarantors An Ambiguity in the Jurisdiction of NCLT and DRT under IBC" (November 7, 2022) <<https://www.vidhikarya.com/legal-blog/personal-guarantors-an-ambiguity-in-the-jurisdiction-of-nclt-and-drt-under-ibc>> accessed April 25, 2024

⁸⁸ Mishra P and Law L, "Live Law" Live Law (May 16, 2022) <<https://www.livelaw.in/amp/ibc-cases/nclat-chennai-insolvency-and-bankruptcy-code-sarfaesi-drt-cirp-prohibition-of-benami-property-transaction-act-199243>>

CHAPTER 6

PROCEDURE IN CASE OF INDIVIDUAL AND PARTNERSHIP FIRMS

There are two distinct resolution processes namely Fresh Start and Insolvency Resolution for individual and partnership firms i.e. (i) Fresh Start and (ii) Insolvency resolution.

Fresh Start Process:

The Code allows individual debtors, who are unable to pay debt, to start afresh and debtor, who is unable to pay his debt and fulfills following conditions, shall be eligible to make application for fresh start for discharge of his qualifying debt.

- a) Gross annual income not more than sixty thousand rupees.
- b) The aggregate value of asset not more than twenty thousand rupees.
- c) The aggregate value of qualifying debt – not more than thirty five thousand rupees.

He is not an undischarged bankrupt and does not own dwelling unit.⁸⁹ The application is filed under section 80 of IBC, 2016 by debtor then interim moratorium period will commence on date of filing of such application till admission or rejection of application given under During interim moratorium period: i.e Any legal action proceeding or action will be stayed. ii. No creditor shall initiate any legal action or proceeding⁹⁰.

Where debtor have filed application through RP DRT will direct board within 7 days of application to seek confirmation from board regarding appointment of RP if no disciplinary proceeding is against such RP and if application is made no through any RP board will appoint such RP within 10 days after direction issued by DRT. After

⁸⁹ Section 80 of IBC, 2016.

⁹⁰ Livemint, “Recoveries under IBC Far Better than Sarfaesi and DRT, Says Governor Das | Today News” [https://www.livemint.com \(August 7, 2021\) <https://www.livemint.com/news/india/recoveries-under-ibc-far-better-than-sarfaesi-and-drt-says-governor-das/amp-11628306992942.html>](https://www.livemint.com (August 7, 2021) <https://www.livemint.com/news/india/recoveries-under-ibc-far-better-than-sarfaesi-and-drt-says-governor-das/amp-11628306992942.html>)

appointment of RP within 10 days he has to submit his report to DRT regarding i. Qualifying debt.

d) Liabilities eligible for discharge.

Can call any information from such debtor and RP should be satisfied by reasons given by debtor and can reject application on following basis

- i.) The debtor does not satisfy conditions specified under section 80; ii. The debts disclosed in application by debtor are not qualifying debts;
- ii.) Debtor has deliberately made false representation or omission in application or with respect to documents or information submitted⁹¹

DRT within 14 days will approve or reject application on basis of report submitted by RP and after that moratorium period will start in respect of all debts and any objection by creditor mentioned in order of DRT can file its objection within 10 days to RP on following grounds.

- i. Inclusion of debt as qualifying debt.
- ii. Incorrectness of details of qualifying debt specified in order under Section 84.⁹²

During such period debtor shall not:

- i.) Not act as director of any company, or directly or indirectly take part in or be concerned in promotion, formation or management of company.
- ii.) Not dispose of or alienate any of his assets. iii. Inform his business partners that he is undergoing fresh start process.

⁹¹ IBC Laws, “IBC-Case Laws-DRT Archives” (IBC Laws, August 25, 2022)

<<https://ibclaw.in/category/ibc-and-ca-case-laws/case-laws/ibc-drt/>> accessed April 26, 2024

⁹² “Insolvency Bulletin 24th January, 2022”

<https://ibclaw.in/?mailpoet_router&endpoint=view_in_browser&action=view&data=WzE1NywiNzA2ZDljZWVmMzRhIiwuLDAsMTUyLDFd> accessed April 26, 2024

iii.) Be required to inform prior to entering into any financial or commercial Transaction of such value as may be notified by central government, either Individually or jointly, that he is undergoing fresh start process.

iv.) Disclose name under which he enters into business transactions, if it is Different from name in application admitted under section 84 IBC, 2016. vi. Not travel outside India except with permission of adjudicating Authority⁹³

Any Debtor or creditor aggrieved by action of RP under section 86 of IBC, 2016 can make application to DRT on following grounds.

i.) Creditor or debtor was not given equal opportunity to represent.

ii.) That resolution professional colluded with other party in arriving at decision.

iii.) Conditions of section 86 are not followed.

The debtor is discharged against debt included in final list discharge order under section 92 of IBC, 2016 and DRT will pass such order at end of moratorium period. debt not registered under final list are not discharged and to be paid⁹⁴.

Insolvency Resolution Process:

Insolvency resolution process shall be initiated either by debtor or creditor. In process, both parties shall negotiate and shall arrive at repayment plan under supervision of resolution professional. If resolution plan fails or cannot be implemented, bankruptcy of a individual shall be initiated.

Application made by debtor can be made personally or by RP only for debt, which is not excluded, to DRT and any partner under partnership firm cannot make application under Part II, chapter III of IBC, 2016. Debtor is not entitled to make an application if

⁹³ Goyal D, “Whether Pendency of Proceeding before DRT Is Ground of Rejection under IBC” (TaxGuru, September 25, 2017) <<https://taxguru.in/corporate-law/pendency-proceeding-drt-ground-rejection-ibc.html>> accessed April 26, 2024

⁹⁴ , “IBC Laws - Debt Recovery Module - SARFAESI & Recovery of Debt & Bankruptcy Act,1993” (IBC Laws, January 15, 2024) <<https://ibclaw.in/sarfaesi-debt-recovery/>> accessed April 26, 2024

- i.)** An undischarged bankrupt.
- ii.)** Undergoing fresh start process.
- iii.)** Undergoing a insolvency resolution process.
- iv.)** Undergoing bankruptcy process.⁹⁵

Creditor may apply either by himself, or jointly with other creditors, or through RP to DRT for initiating a insolvency resolution process under this section by submitting an application against

- (i) One or more partner of firm. (ii) Firm⁹⁶

Application against another partner in same firm shall be presented in or transferred to DRT in which first mentioned application is pending for adjudication and DRT may give such directions for consolidating proceedings under applications. Interim moratorium will commence on date of application in relation to all debts and shall cease to have effect on date of admission of such application. Process of appointment of RP is same as in case of Fresh Start. After appointment of RP report to be submitted by RP to DRT on basis of application under section 94 or 95 of IBC, 2016.

Where application has been filed under section 95, resolution professional may require debtor to prove repayment of debt claimed as unpaid by creditor by Furnishing—

- i.** Evidence of electronic transfer of unpaid amount from bank account of the debtor. ii. Evidence of encashment of cheque issued by debtor.
- ii.** a signed acknowledgment by creditor accepting receipt of dues.

Where creditor is registered with IUs debtor cannot dispute claim of creditor²⁶. DRT within 14 days from date of submission of report either approve or reject application

⁹⁵ Section 94 of IBC, 2016.

⁹⁶ Section 95 of IBC, 2016

referred to in section 94 95 of IBC, 2016 and within 7 days issue public notice regarding invitation of claim by creditors within 21 days.⁹⁷

The resolution professional shall prepare list of creditors on basis of—

- i. The information disclosed in application filed by debtor under section 94 or 95 of IBC, 2016.
- ii. Claims received by resolution professional under section 102.⁹⁸

The debtor will prepare repayment plan in consultation with RP and RP will submit repayment plan within 21 days of last date of payment of claim.

Repayment plan may authorize or require resolution professional to—

- i.) Carry on debtor's business or trade on his behalf or in his name.
- ii.) Realize assets of debtor.
- iii.) Administer or dispose of any funds of debtor⁹⁹.

The RP shall issue notice calling meeting of creditors and shall send notice to list of creditors prepared under section 104 of IBC, 2016. Creditors will be entitled to vote at every meeting of creditors in respect of repayment plan in accordance with voting share assigned by board to him. In case of secured creditor present voting he will forfeit his right to enforce security during period of repayment plan if he submits affidavit to RP at meeting of creditor stating right exercised by him is regarding unsecured part of debt. Report of meeting of creditor on repayment plan to be submitted to DRT^{and} DRT either

⁹⁷ Chowdhury MR and Chowdhury D, “A Walk through Sec 13 [8] of the SARFAESI Act.....Pre and Post Amendment” (Lexology, December 27, 2023) <<https://www.lexology.com/library/detail.aspx?g=b4f967b3-9447-4644-8aa7-cde3394cfeb9>> accessed April 16, 2024

⁹⁸ Goyal D, “Whether Pendency of Proceeding before DRT Is Ground of Rejection under IBC” (TaxGuru, September 25, 2017) <<https://taxguru.in/corporate-law/pendency-proceeding-drt-ground-rejection-ibc.html>> accessed April 26, 2024

⁹⁹, “Insolvency and Bankruptcy Code Act, 2016 | Bare Acts | Law Library | AdvocateKhoj” (Copyright 2024, advocatekhoj.com) <<https://www.advocatekhoj.com/library/bareacts/insolvencybankruptcy/index.php?Title=Insolvency%20and%20Bankruptcy%20Code%20Act,%202016>> accessed April 10, 2024

approve or reject plan on basis of report approved plan is binding on debtor and all creditors who where in meeting of creditors professional shall within fourteen days of completion of repayment plan, forward to persons who are bound by repayment plan. If repayment plan comes to an end prematurely which means not been implemented fully on all person bound by it, resolution professional shall submit report to DRT will state:

- i. The receipts and payments made in pursuance of repayment plan.
- ii. The reasons for premature end of repayment plan.
- iii. The details of creditors whose claims have not been fully satisfied¹⁰⁰.

On basis of repayment plan, resolution professional shall apply to DRT for discharge order in relation to debts mentioned in repayment plan and DRT may pass such discharge order

- i. Early discharge
- ii. Discharge on complete implementation of repayment plan¹⁰¹.

Application for bankruptcy is to be made by creditor, debtor, several or joint creditor within period of 3 months under following circumstances:

Where an order has been passed by an Adjudicating Authority under Section 100(4) of IBC, 2016; or ii. Where an Adjudicating Authority under section 115(2) of IBC, 2016, has passed an order. iii. Where an order has been passed by an Adjudicating Authority under section 118 (3) of IBC, 2016. RP will be proposed as bankruptcy trustee. If debtor files application copy of order of DRT under chapter III part III to be submitted along with necessary records.¹⁰² In case of application is filed by creditors all copy of affidavit

¹⁰⁰Laws I, “SARFAESI and DRTs Yielded Recovery Rates Comparable to the IBC Mechanism” (IBC Laws, December 29, 2022) <<https://ibclaw.in/sarfaesi-and-drts-yielded-recovery-rates-comparable-to-the-ibc-mechanism/>> accessed April 27, 2024

¹⁰¹ Aakashbatra, “IBC v. SARFAESI Act – Interplay and Overlapping” (TaxGuru, December 19, 2020) <<https://taxguru.in/corporate-law/ibc-v-sarfaesi-act-interplay-overlapping.html>> accessed April 27, 2024

¹⁰² Section 122 of IBC, 2016.

submitted by secured creditors and any claim made on unsecured debt and any order made by DRT under chapter III part III to be submitted along with necessary records.¹⁰³

After appointment of bankruptcy trustee under section 125 of IBC, 2016 DRT shall pass bankruptcy order within fourteen days and further copy of order is sent to creditors and board¹⁰⁴.

Effects of Bankruptcy order:

- i. The estate of bankrupt shall vest in bankruptcy trustee as provided in Section 154.
- ii. The estate of bankrupt shall be divided among his creditors.
- iii. Subject to provisions of sub.section creditor of bankrupt indebted in respect of any debt claimed as bankruptcy debt shall not—

Initiate any action against property of bankrupt in respect of Such debt; or commence any suit or other legal proceedings except with leave of adjudicating authority and on such terms as adjudicating authority may impose.¹⁰⁵

Public announcement regarding claim creditors is made and after registration of entire claim COC is made and after due process discharge order is made by DRT under section 138 of IBC, 2016

1. Bankruptcy trustee shall apply to Adjudicating Authority for discharge Order—
 - (a) on expiry of one year from bankruptcy commencement date; or
 - (b) Within seven days of approval of committee of creditors of completion of administration of estates of bankrupt under section 137, where such approval is obtained prior to period mentioned in clause (a).

¹⁰³ Section 123 of IBC, 2016

¹⁰⁴ “Home | National Company Law Appellate Tribunal (NCLAT)” <<https://nclat.nic.in/>> accessed April 27, 2024

¹⁰⁵ “About NCLAT | National Company Law Appellate Tribunal (NCLAT)” <<https://nclat.nic.in/about-NCLAT>> accessed April 27, 2024

2. The Adjudicating Authority shall pass discharge order on an application by bankruptcy trustee under sub. Section (1).
3. A copy of discharge order shall be provided to Board for purpose of recording an entry in register referred to in section 196.
1. Bankruptcy trustee shall apply to Adjudicating Authority for discharge Order—
 - a.) on expiry of one year from bankruptcy commencement date; or
 - b.) Within seven days of approval of committee of creditors of completion of administration of estates of bankrupt under section 137, where such approval is obtained prior to period mentioned in clause (a).
2. The Adjudicating Authority shall pass discharge order on an application by bankruptcy trustee under sub. Section (1).

JUDGMENT OF INNOVENTIVE INDUSTRIES LIMITED V. ICICI BANK LIMITED

Innoventive Industries Ltd. the corporate debtor based in Pune, Maharashtra had taken working loan, term loan and external commercial borrowing facilities from ICICI Bank Ltd. (the financial creditor). Default in repayment occurred in respect of partial debt on 30 November 2016 for total outstanding amount of Rs. 1,019,177,034/. Therefore, financial creditor initiated application under section 7 of Code, for corporate insolvency resolution process against corporate debtor. Corporate debtor claimed that, Maharashtra Government, under provisions of MRU Act has provided relief undertaking to them. According to corporate debtor, for period of one year from 22 July, 2016 to 21 July, 2017. Affairs of industrial undertaking shall be conducted to aid as measure of preventing unemployment. Moreover, it was contended by them that, as result of undertaking rights, privileges, obligations or liabilities accrued or incurred prior to 22 July, 2016 and any remedy for enforcement of same shall remain suspended, and all proceedings relating thereto pending before any Court, Tribunal, Officers or Authority shall be stayed, for said time period. Rejecting contentions of corporate debtor, NCLT admitted application of financial creditor and made an order for moratorium and public announcement as necessary under Section 13 of Code.

The main contentions raised by Innoventive in appeal against order of NCLT were:

1. The order was passed sans giving notice to Innoventive and was thus violation of principle of natural justice as provided under Section 424 of Companies Act, 2013. It was also argued that since NCLT was established under Companies Act, 2013, it is bound by section 420 of Companies Act, 2013, which mandated reasonable opportunity of being heard 'to be given to parties before delivering an order.

2. It was argued that financial creditor did not get consent of Joint Lenders Forum to initiate proceedings¹⁰⁶

Vital Observations Made In Judgment:

The Insolvency and Bankruptcy Code (IBC), 2016, is among most crucial structural reforms undertaken by this government. Yet, for IBC to be effective, principles at heart of legislation must be respected.

First, there has to be timely outcomes within 180 days (270 days for rare, complex cases), failing which there will be credible threat of liquidation. Second, commercial decisions regarding resolution and viability should be taken by Committee of Creditors (CoCs), whose money is at stake.

Third, National Company Law Tribunal's (NCLT) role should be adjudicating critical issues of justice, such as compliance with procedural requirements, overseeing Insolvency Professional (IP), and adjudicating on voidable transactions and potential penalties.

With last two principles of IBC being betrayed, core of code —early resolution — has been regularly compromised. Recent judgment in Arcelor Mittal¹⁰⁶ holds out some hope. But court's observations on time taken by NCLT and National Company Law Appellate Tribunal (NCLAT) to resolve disputes being excluded from reckoning is concern.

Delays to IBC start from very admission of a insolvency petition. IBC envisages that process of insolvency must be triggered, or disposed of, within 14 days. However, data suggests that NCLT takes an average of 24 days.

Crucially, IBC envisages that NCLT confirms existence of default, and some procedural requirements, for initiating insolvency proceedings. Code sought to aid early detection

¹⁰⁶ “About NCLAT | National Company Law Appellate Tribunal (NCLAT)” <<https://nclat.nic.in/about-NCLAT>> accessed April 27, 2024

and resolution of stress, and also avoid clogging judicial bandwidth at trigger stage. Yet, NCLT has sought to go beyond grounds set out in IBC, applying balance

sheet test in some instances and ascribing ulterior motives in others. NCLT should delimit its role and apply judicial discretion on other matters.

Once proceedings are initiated, resolution plan of debtor is left to commercial forces. These principles, and credible threat of liquidation, made 180 days timeline envisioned in IBC plausible. And yet, this hasn't resulted in resolution or liquidation in more than half even largest and most visible of cases.

The application of judiciary's bandwidth not made in manner envisaged under IBC is one reason for delays in resolution process. During arguments in Arcelor Mittal case, Supreme Court seemed to be alive to some of these issues. In some statements, it reiterated primacy of commercial role of CoCs and NCLT's role in only following acceptance of resolution plan. It emphatically stated that NCLT and NCLAT are not supervisory authority in commercial matters during insolvency resolution process.

And yet, in final judgment, court sought to strike balance between timely completion and corporate death. In doing so, it stated that time taken in litigation ought to be excluded. Court stated that NCLT and NCLAT would not be tardy in decision making. But if decision took longer than 270 days, it would preclude viable resolution plan from being implemented. It is here that court could have restated their observations regarding NCLT and NCLAT limiting their roles to adjudicating on matters of law.

The Corporate Insolvency Resolution Process Regulations, issued by Insolvency and Bankruptcy Board of India, state that where amount claimed by creditor is uncertain, resolution professional shall make its best estimate based on information available, and revise estimate of claims on additional information, if required. This would allow resolution process to continue, with such contentious claims being resolved subsequently — without adjudication by tribunal during prescribed timelines.

Much of IBC's success is based on timelines being met. Which, in turn, is predicated on tribunals performing their role. Limiting overreach of tribunals will contribute immensely to IBC's success. (*Amitabh Kant is CEO, NITI Aayog, and Richa Roy is lawyer involved with IBC's drafting*)

Adherence to principles of natural justice: While dealing with issue whether issuance of notice to corporate debtor before initiation of corporate insolvency resolution process is necessary, appellate tribunal relied on landmark judgments of *Maneka Gandhi v Union Of India*³⁶, *Union Of India v J. N. Sinha*¹⁰⁷, *Swadeshi Cotton Mills v Union Of India*¹⁰⁸, *State of Orissa v Bina Pani*¹⁰⁹, *A. K. Kraipak v Union Of India*¹¹⁰, etc. and drew out exceptions to application of principles of natural justice.

In **Maneka Gandhi v Union of India**¹¹¹, it was held by Supreme Court that *audi alteram partem rule is intended to inject justice into law and not defeat ends of justice, or to make law lifeless, absurd, stultifying, self-defeating or plainly contrary to common sense of situation*⁴

In **Union of India v J. N. Sinha** it was held by Supreme Court that principles of natural justice cannot be equated with fundamental rights. If legislature excludes application of principles of natural justice, then court cannot ignore mandate of legislature or statutory authority.

In **A. K. Kraipak v Union of India** Honorable Supreme Court held that principles of natural justice can supplement law but not supplant it.

In **Union of India v W. N. Chadha**, their Lordships, while advertent to issue of applicability of doctrine of natural justice, have ruled that rule of audi alteram partem can be excluded where rule itself leads to injustice.

¹⁰⁷ *Union Of India v J. N. Sinha*, (1970) 2 SCC 458

¹⁰⁸ *Swadeshi Cotton Mills v Union Of India*, (1981) 1 SCC 664

¹⁰⁹ *State of Orissa v Bina Pani*, AIR 1967 SC 1269.

¹¹⁰ *A. K. Kraipak v Union Of India*, (1969) 2 SCC 262

¹¹¹ *Maneka Gandhi v Union Of India*, (1978) 1 SCC 248

In *Union of India v Tulsiram Patel* Honorable Supreme Court observed that, the constitutional right of 16 equal opportunity to be heard can be excluded where nature of action taken, its objects and purpose and scheme of relevant statutory provision warrant its exclusion⁴⁹

In *D.K. Yadav v. J.M.A. Industries Limited*, Honorable Supreme Court has held as follows:.

Particular statute or statutory rules or orders having statutory flavour may also exclude application of principles of natural justice expressly or by necessary implication. In other respects principles of natural justice would apply unless employer should justify its exclusion on given special and exceptional exigencies."¹¹²

In *S.L Kapoor v. Jagmohan* Hon'ble Supreme Court was of view:

"Where on admitted or undisputed facts only one conclusion is possible and under law only one penalty is permissible, Court may not insist on observance of principles of natural justice."

In *Dharampal Satyapal v Deputy Commissioner Central Excise* , Honorable Apex court was of view that if it is felt that hearing would not change ultimate conclusion reached by decision maker, then no legal duty to supply hearing arises. From aforesaid decisions of Honorable Supreme Court, exceptions to Principle of natural justice were summarized as follows: i. Exclusion in case of emergency ii. Express statutory exclusion.

iii. Where disclosure would be prejudicial to public interest. iv. Where prompt action is needed.

v. Where it is impracticable to hold hearing or appeal. vi. Exclusion in case of purely administrative actions.

¹¹² , "Constitution of Committee of Creditors (CoC) under Section 21 of Insolvency and Bankruptcy Code 2016 (IBC)" (IBC Laws, August 15, 2023) <<https://ibclaw.in/constitution-of-committee-of-creditors-under-section-21-of-ibc/>> accessed April 27, 2024

vii. Where no right of person is infringed. viii. The procedural defect would have made no difference to outcome. ix. Exclusion on ground of ‘no fault’ decision maker.

x. Where compliance with principles of natural justice is useless formality.

The NCLAT also cited very recent Calcutta High Court decision in case of Sree Metaliks Limited & Anr v Union of India¹¹³, wherein Court held:

A proceeding for declaration of insolvency of company has drastic consequence for company. Such proceeding may end up in its liquidation. Person cannot be condemned unheard. Where statute is silent on right of hearing and it does not in express terms, oust principles of natural justice, same can and should be read into it. When NCLT receives an application under Section 7 of Code of 2016, therefore, it must afford reasonable opportunity of hearing to corporate debtor as Section 424 of Companies Act, 2013 mandates it to ascertain existence of default as claimed by financial creditor in application. NCLT is, therefore, obliged to afford reasonable opportunity to financial debtor to contest such claim of default by filing written objection or any other written document as NCLT may direct and provide reasonable opportunity of hearing to corporate debtor prior to admitting petition filed under Section 7 of Code of 2016. Section 7(4) of Code of 2016 requires NCLT to ascertain default of corporate debtor. Such ascertainment of default must necessarily involve consideration of documentary claim of financial creditor. This statutory requirement of ascertainment of default brings within its wake extension of reasonable opportunity to corporate debtor to substantiate by document or otherwise, that there does not exist default as claimed against it. Proceedings before NCLT are adversarial in nature. Both sides are, therefore, entitled to reasonable opportunity of hearing. There is no specific provision under code to provide hearing to corporate debtor in petition under section 7 or 9 of code. Section 5(1) of Code talks about adjudicating authority which refers to NCLT constituted under Section 408 of Companies Act 2013. Further, section 420(1) says that reasonable opportunity of hearing shall be given to parties before passing its orders. Tribunal

¹¹³ Sree Metaliks Limited & Anr v Union of India (Writ Petition 7144 (W) of 2017).

observed that case of Innoventive does not fall into exceptions to application of principles of natural justice and issuance of notice is mandatory. However, in this present case, though no notice was given to Appellant before admission of case, appellant intervened before admission of case and all objections and contentions raised by appellant have been heard and considered by NCLT on 17th January 2017. Hence, just on grounds of non issuance of notice matter cannot be remitted back to adjudicating authority as it would merely be useless formality

1. Insofar as Master Restructuring agreement was concerned, it was held that appellant cannot take advantage of same. Even if it is presumed that fresh agreement came into force, it does not absolve appellants from paying any previous debts due to financial creditor.
2. Distinction between Sections 7 & 9 of Code: Under Section 7, default has to be ascertained and satisfaction has to be recorded by Adjudicating Authority. Whereas, there is no similar provision under Section 9 of Code. While in Section 7 neither notice of dispute nor notice of dem and is relevant, in Sections 8 and 9 notice of dispute and notice of dem and become relevant for purposes of admission and rejection.
3. Ascertainment and Satisfaction: statute makes it compulsory for Adjudicating Authority to ascertain and record satisfaction regarding occurrence of default prior to admitting application. Mere claim made by financial creditor that default has taken place does not suffice.
4. Overriding effect of Code: Section 238 of Code vividly requires that provisions of Code shall have effect notwithstanding anything inconsistent

Therewith contained in any other law for time being in force or any instrument having effect by virtue of any such law. Appellate tribunal was of view that appellants are not 25 protected under Maharashtra Relief Undertaking Act, 1956 because Code is non

obstinate in nature. It was observed that Maharashtra Relief Undertaking Act and Insolvency and Bankruptcy Code have completely different areas of application.

The NCLAT rejected appellant's contention that respondent's insolvency application is liable to be rejected as financial creditor had not obtained consent of Joint Lenders Forum before filing insolvency application by holding that NCLT is not bound to look into this before admitting application¹¹⁴.

Criticism:

The NCLAT order states that decision of NCLT ought to have severe impacts on welfare and existence of company and hence, it is imperative for authority to adopt cautious approach while admitting a insolvency application by ensuring adherence to principles of natural justice. Evidently, order is capable of delaying and slowing down adjudication process. Another significant ruling of NCLAT in JK Jute Mills Co. Ltd. v Surendra Trading Co.⁵⁹ where it examined nature of time limits (whether mandatory or directory) prescribed under Code, including those for admission or rejection of a insolvency application by NCLT, can add to difficulties of creditors and eventually defeat purpose of speedy redressal. NCLAT in this case, held that time limit of 14 days for NCLT to admit or reject an application for initiating insolvency proceedings under sections 7, 9 and 10 is directory rather than mandatory, and that NCLT has inherent powers to extend 14 day period on case to case basis in interest of fairness and justice.²⁷ If above mentioned judgment of NCLAT is read with innovative judgment, then NCLT's will get free hand to delay proceedings and in turn be detrimental to interests of creditors. Conclusion This judgment provides great clarity regarding scope and extent of rights of corporate debtor to contest admission of insolvency applications by financial creditors and will have laid down guidelines for NCLT's across India for deciding insolvency applications filed by

¹¹⁴“Section 21-Committee of Creditors. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-21-committee-creditors/>> accessed April 27, 2024

financial creditors. However, there are is one negative aspect in respect of time period of disposal, which needs to be addressed.¹¹⁵

Challenges In Insolvency and Bankruptcy Code:

1. Shortage of NCLT Benches. NCLT has only 11 benches and limited judicial and technical members, which is inadequate compared to huge number of cases already pending at BIFR and DRT which is to be transferred to NCLT. Consequent to dissolution of Company Law Board (CLB) and repealing of SICA Act, all matters pending with CLB will be transferred to NCLT whereas all existing registered BIFR cases stands abated and such companies may file with NCLT afresh within 180 days. This shall lead to NCLT dealing with backlogs of CLB/SICA cases. NCLT should possess adequate manpower and infrastructure to deal their cases apart from responsibility of being Adjudicating Authority under this Code¹¹⁶.

A report states that total number of insolvency and bankruptcy cases pending would be around 25,000 and NCLT even with a increased number of judicial members of up to 50 would take approximately 7 years to adjudicate upon 25,000 pending cases, assuming all of them moved to NCLT. Unless there are dedicated benches to hear insolvency cases, number of benches are significantly increased and are well equipped, and transition is better managed effective disposal under this code will not take place¹¹⁷.

2. Shortage of Skilled Professionals – Code departs from framework of debtor in possession to new framework of ‘_creditor in possession’. At present three agencies i.e.-chartered accountants, cost accountants and company secretaries which are recognized and in excess of 1,000 individuals enrolled with these agencies, have been

¹¹⁵ Section 238, Insolvency and Bankruptcy Code, 2016.

¹¹⁶ Sethi R, “An Alternative Approach to a Code of Conduct for the Committee of Creditors in an IBC Process” (S&R Associates, December 22, 2023) <<https://www.snrlaw.in/an-alternative-approach-to-a-code-of-conduct-for-the-committee-of-creditors-in-an-ibc-process/>> accessed April 28, 2024

¹¹⁷ “Committee of Creditors: Functioning, Composition and Significance” <<https://www.resurgentindia.com/committee-of-creditors-functioning-composition-and-significance>> accessed April 28, 2024

given license and are able to take on appointments as insolvency professionals. These professional will have challenging task ahead as they have very limited knowledge and experience in running businesses as promoters will be forced to step back and professional will take over for setting up independent management, assessing financial viability and preparing a resolution plan or evaluating resolution plans. Until an efficient infrastructure of insolvency professionals who are efficient managers is put in place, effective implementation of Code would seriously be prejudiced and rehabilitation of such corporate person will be problem¹¹⁸.

3. Non Cooperative Management - Dilution of right of secured creditors In so far as constitution of creditors committee is concerned, Code does not distinguish between secured and an unsecured creditor as voting rights are only dependent on amount owed to creditor. Thus, an unsecured financial creditor with same levels of exposure as secured financial creditor in company will have same voting rights in COC, though position of unsecured creditor to recover dues at time of liquidation is at much weaker footing. This dilutes position of secured creditor. Further it is not clear if COC/resolution plan can be challenged if all financial creditors however insignificant do not constitute part of committee¹¹⁹.

4. Lack of Consensus Among Lenders: Resolution plan submitted by RP to COC needs to approve by vote of 75% of financial creditors. If no resolution plan is approved and submitted to NCLT within period of 180 days (or 270 days if extended), NCLT shall order liquidation of corporate borrower. Code therefore vests lot of power on lenders. Past experience demonstrates lack of willingness and consensus on part of banks at arriving at consensus in such matters. Implementation of Code is therefore

¹¹⁸ “Committee of Creditors: Role and Commercial Wisdom – PSL Advocates and Solicitors” <<https://www.pslchambers.com/article/committee-of-creditors-role-and-commercial-wisdom/>> accessed April 28, 2024

¹¹⁹ “Section 28-Approval of Committee of Creditors for Certain Actions. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-28-approval-committee-creditors-certain-actions/>> accessed April 28, 2024

dependent on lenders acting in timely manner and adopting holistic approach of turnaround and revival rather than focusing merely on minimizing provisioning¹²⁰.

- 5. Need for better management and monitoring of IRP/RP:** IBBI also needs to ensure adequate mechanism to monitor IPs is in place so as to ensure transparency and avoid unethical practices and proper code of conduct to be published¹²¹.
- 6. High cost of resolution process:** IBC adopts UK bankruptcy regime. Studies conducted in UK on their bankruptcy regime reveal that while adoption of IRP model resulted in higher realizations, they also correspondingly increased costs of bankruptcy and may not materially improve creditor recoveries.
- 7. Mindset of existing Stakeholders:** A complete transformation of banking system is needed warning mechanisms, astute credit monitoring, proactive commercial decision making with respect to way forward overhauled. Banks also need to exercise professional judgment in selection of appropriate professional and not to follow lowest cost policy without consideration of technical credentials and experience commensurate with complexity and magnitude of situation¹²².

¹²⁰Kumar R and Law L, “Live Law” Live Law (May 20, 2024) <<https://www.livelaw.in/amp/ibc-cases/ibc-nclt-record-approval-resolution-plans-258403>>

¹²¹ “Section 31-Approval of Resolution Plan. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-31-approval-resolution-plan/>> accessed April 28, 2024

¹²², “Live Law” Live Law (May 7, 2024) <<https://www.livelaw.in/amp/ibc-cases/nclt-mumbai-claim-admitted-approval-resolution-plan-coc-adjudicating-authority-257271>>

CHAPTER 7

CHALLENGES FACED UNDER ACT

ROLE OF NCLT:

The NCLT will face biggest challenge in process of transitioning existing cases to IBC. NCLT currently has 11 benches with sixteen judicial members and seven technical members among them. Its mandate includes hearing cases earlier dealt with by CLB under Companies Act 2013, in addition to cases under IBC. As of March 2015, around 4,200 pending CLB cases. All of these will be transferred to NCLT. In addition, CLB receives around 4,000 new cases every year. Now these will have to be dealt with by NCLT. All 4,500 winding up cases pending at high courts as of March 2015 are also likely to get transferred to NCLT. Corporate recovery cases at DRTs and rehabilitation cases at BIFR are eligible to be initiated as new cases IBC, 2016. Therefore, given its limited capacity, NCLT has to deal with fresh IBC cases, added to which will be case load from CLB, high courts, BIFR and potentially DRT. Unless its adjudication capacity is enhanced, NCLT will fail to hear and dispose cases in timely manner from start. For IBC cases, this could mean inability of NCLT to adhere to 180.day timeline that is duration of CIRP. This has earlier been seen in case of DRTs too. DRTs were intended to dispose of recovery cases in 180 days, but given capacity issues and pendency, often first hearing for case takes place after 180 days. 180.day timeline represents core design intent of IBC – rapid resolution of insolvency to maximize recovery. If this is compromised due to capacity constraints, effectiveness of IBC will get diluted because of burden of cases transferred and new cases initiated under act¹²³.

The concern related to NCLT is regarding case law that develops under IBC because its new law, procedures and common practices under it need to develop independently from case laws under pre.IBC regime. Since first cases that come to IBC are likely to be

¹²³ Guest, “Interpretation of Section 30(2) of the IBC: Rights over Prudence? - IndiaCorpLaw” (IndiaCorpLaw, February 14, 2024) <<https://indiacorplaw.in/2024/02/interpretation-of-section-302-of-the-ibc-rights-over-prudence.html?amp=1>> accessed April 29, 2024

existing ones, initial case law that develops under IBC will reflect context of these cases. behavior of creditors, debtors, auditors, lawyers, liquidators are all steeped in old case laws under Companies Act

1956, Sick Industrial Companies Act 1985 (SICA), Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and like. This will change only when IBC gets perfected as law and its institutional infrastructure reaches its capacity, allowing NCLT to focus on upholding design and objective of IBC over all priors that exist. For this, IPs, IUs, NCLT and IBBI all need to be properly set up and functioning in manner given under IBC.

Role of Insolvency Professionals:

IPS forms backbone of IBC. Their role requires fine balancing act, given that they are in charge of managing Debtor Company and are accountable to committee of creditors and adjudicating authority for their actions. To ensure that IPs performs their role without any problem and hindrance, well-defined entry barriers to profession must be designed and IPs must be closely regulated by IBBI. Qualification examination has been proposed to get registered as IPs. Congress left behind legacy of an anachronic system of resolving commercial insolvency. Companies Act had provision of winding up company if it is unable to pay its debt. Additionally, Congress Government had enacted SICA in decade of 1980s for rehabilitation of sick companies. This applied to companies whose net worth has become negative. Law proved to be an utter failure. Law carried out rehabilitation, several sick companies got protective iron curtain against creditors. Debt Recovery Tribunal was created to enable banks to recover every due diligently. But these have not proved to be highly efficient mechanism for recovering debt. For non corporate insolvencies Provincial Insolvency Act was applicable. This was rusted piece of legislation, ineffective and had faded away because of disuse¹²⁴.

¹²⁴ Lipsey H, “Private lenders offer personal loans for individuals with bad credit | 자유게시판” (Private Lenders Offer Personal Loans for Individuals With Bad Credit)

The NDA Government headed by Shri Atal Bihari Vajpayee has enacted SARFAESI Law which proved to be much better than earlier mechanism. In year 2000, NPAs had sky. Rocketed into double digits. Both SARFESI Law and prudent interest rate management by RBI helped in bringing NPAs down. Subsequently, between 2008 to 2014, Banks lent indiscriminately. This led to very high percentage of NPAs which was highlighted by Asset Quality Reviews of RBI. This led to prompt action by Government. An Expert Committee was appointed, which submitted its Report in 2015 recommending IBC. Immediately, Bill was introduced in Lok Sabha and referred to Joint Committee of Parliament. Parliamentary Committee displayed its wisdom and submitted report recommending some changes in Legislation. IBC was approved by both Houses of Parliament in May, 2016. This was quickest Economic legislative change that

I have seen being made by Parliament. NCLT was immediately constituted, Insolvency Bankruptcy Board of India was established and regulations were framed. By end of 2016 corporate insolvency cases were being received by NCLT¹²⁵.

The Experience So Far:

The early harvest through IBC process has been extremely satisfactory. It has changed debtor Creditor relationship. Creditor no longer chases debtor. In fact, it is otherwise. Upon constitution of NCLT and implementation of IBC its functionality had revealed need for improvements in law. Two legislative intervention since then have taken place.

The NCLT has become trusted forum of high credibility. Those who drive companies to insolvency, exit from management. Selection of new management has been an honest and transparent process. There has been no political or Governmental interference in cases. Recoveries of monies parked in insolvent companies has taken place through three methods firstly, after introduction of Section 29(A) such companies are paying up in anticipation of not crossing red line and being referred to NCLT. As result, banks have started receiving monies from potential debtors who pay in anticipation of default. The

¹²⁵ , “Conducting Corporate Insolvency Resolution Process” (Cleartax, January 10, 2022)
<<https://cleartax.in/s/conducting-corporate-insolvency-resolution-process>> accessed April 29, 2024

defaulters know well that once they get into IBC they will surely be out of management because of Section 29(A). Secondly, once petition of creditor is filed before NCLT¹²⁶

Role of Insolvency and Bankruptcy Board of India:

The IBBI, however, has now licensed first batch of IPs only on basis of their professional experience. Given speed with which law is being implemented, this seems to be only option till infrastructure for conducting examination is set up. IPS registered in first round also need to be prepared to handle complexities of existing cases. IBBI needs to have adequate capacity to monitor IPs and ensure that malpractice and fraud do not seep into profession in early days. For this, IBBI needs to ramp up its human resources and its IT capability and build far greater level of preparedness than it is at, right now.

The lack of IU infrastructure is going to be another challenge under IBC, CIRP can be triggered only when default by Debtor Company has taken place. In IBC design, IU enables quicker initiation of cases by providing access to irrefutable and transparent evidence of default. At present, winding up petitions under Companies Act, 1956 and cases under SICA take around one to two years to get admitted. The situation is marginally better at DRTs, where Bankers Books Evidence Act allows banker books to be treated as primary evidence in cases. Even then there are delays in establishing existence of debt and default. In absence of IUs, IBBI is required to specify evidence of default that can be used to trigger a IBC case. This can cause inordinate delays especially if NCLT gets involved in evaluating whether default has indeed taken place. Under IBC design, IUs also facilitate formation of creditors committee within 14 days from date of registration of case. All information regarding creditors claims needed by a IP to form committee can be easily collected from IUs. It is therefore likely that in absence of IUs, initiating case as well as forming creditors 'committee will take far longer than envisaged in IBC design. This will make it difficult to meet 180.day timeline for completing CIRP, giving rise to two possible outcomes.

¹²⁶ Ibid.

1. The delay in forming creditors' committee will reduce time available to agree on resolution plan. If committee cannot agree on resolution plan within specified time limit, NCLT will order liquidation of company.
2. The NCLT may exercise its judicial discretion and extend CIRP beyond time limit specified in law. Both these outcomes have created negative consequences. Former creates liquidation bias in CIRP while latter compromises fundamental design of time. Bound resolution in IBC.

The manner in which IBC is currently being implemented seems to focus more on expeditiously operationalizing law rather than effectively implementing it. If these concerns are not addressed suitably, will defeat purpose of enacting new insolvency law to improve recovery rate in order to promote development of credit markets and entrepreneurship. Many debtors have been paying at pre-admission stage so that declaration of insolvency does not take place. Thirdly, many major insolvency cases have already been resolved and many are on way of resolving. Those which cannot be resolved move towards liquidation and banks are receiving liquidation value¹²⁷.

The functioning of NCLT and Tribunal has led to large number of cases being filed. NCLT is over crowded, its capacity is now being further enhanced. Realizing urgency, the Supreme Court has pronounced several judgements expeditiously, laying down Law on new Legislative provisions. Law declared by Supreme Court will go long way in interpretation and clarifying ambiguity, if any. This will expedite process further in coming days.

The Data:

So far 1322 cases have been admitted by NCLT. 4452 cases have been disposed at preadmission⁴⁹ stage and 66 have been resolved after adjudication. 260 cases have been ordered for liquidation. In 66 resolution cases, realization by creditors was around Rs.

¹²⁷ , "Insolvency Resolution Process for Corporate Persons in India" (India Briefing News, October 12, 2023) <<https://www.india-briefing.com/news/faqs-on-insolvency-resolution-process-for-corporate-persons-in-india-24274.html/>> accessed May 1, 2024

80,000 crores. As per NCLT database, in 4452 cases disposed at pre-admission stage, amount apparently settled was around Rs 2.02 lakh crores. Some of big 12 cases such as Bhushan Power and Steel Ltd. and Essar Steel India Ltd. are in advanced stages of resolution and are likely to be resolved in this financial year in which realization is expected to be around Rs 70,000 crores. Increase in conversion of NPAs into standard accounts and decline in new accounts falling in NPA.

The Insolvency & Bankruptcy Code:

The Code provides for an integrated corporate insolvency resolution process. Upon default, any financial creditor, an operational creditor or corporate debtor itself may initiate an insolvency resolution process by making an application to NCLT. Upon satisfaction of existence of default and non payment of dues by defaulter, NCLT may admit application. Corporate insolvency resolution process is to be completed within one hundred and eighty days, which can be further extended to two hundred and seventy days only. NCLT, thereafter, shall declare moratorium, call for claims and appoint an insolvency professional who shall take over company. Credit committee of all creditors shall be constituted, wherein each creditor votes. If 75% of creditors approve the resolution plan, plan will be implemented for functioning of Company. In case creditors do not approve plan, Company goes into liquidation. There is waterfall mechanism in place based on order of priority for distribution of assets on liquidation.

Our bankruptcy code is world class is to continuously improve business regulation to make endeavour of every nation easier to do business. The World Bank conducts an annual examination to gauge 'Ease of Doing Business' in nearly 200 economies and ranks them on ten sets of parameters, which include 'Resolving Insolvency'. India ranked 142nd in Ease of Doing

Business for 2015. In terms of resolving insolvency, country ranked 137th. The government set an ambitious target of breaking into top 50 on this index, and initiated plethora of institutional reforms, including an overhaul of insolvency framework.

After four years, India ranks 77th, up by 65 places, in aggregate rankings, and 108th on Resolving insolvency. Indian insolvency regime has many welcome features. Its primary focus is revival of an ailing proceedings under Insolvency and Bankruptcy Code, 2016 (Code) have returned 210 per cent of liquidation value for creditors. They are realising on an average 48 per cent of their claims through reorganisation, as compared to erstwhile regime which recovered 26 per cent.

The Code provides timeline of 180 days to conclude corporate insolvency resolution process (CIRP), extendable by one.time extension up to 90 days. Probably, no other regime in world mandates timebound resolution. This push has meant that proceedings under Code take on average about 300 days, including time spent on litigation, in contrast with previous regime where processes took about 4.3 years.

The insolvency resolution process cost, which includes fee of insolvency practitioner and other professionals, and expenses related to meetings of committee of creditors (CoC), public announcements.¹²⁸

Key Differences:

- **Time:** The Code provides for time bound resolution process. References of sick companies under SICA take around one or two years to get admitted for further investigation. While Code is still new, there is barrage of cases from BIFR, Debt Recovery Tribunal and Companies Act, 1956 that will now fall under ambit of NCLT. This may lead to delay in completion of insolvency process within prescribed limit of one hundred and eighty days. On this point, National Company Law Appellate Tribunal (NCLAT) recently, ruled that time limits prescribed under sections 7, 9 and 10 of Code are merely directory and not mandatory, but however, one hundred eighty day timeline, extendable to two hundred and seventy days, is mandatory⁶⁰. ruling, thus, provides gist of Tribunal 's view of objectives of Code.

¹²⁸ "" <<https://nclt.gov.in/about-nclt>> accessed April 30, 2024

- **Trigger Point:** SICA is only triggered when there is loss of fifty per cent of company's worth. Therefore, it 's already too late, because half of company 's worth is already eroded by time BIFR decides to revive or liquidate it. However, trigger, ironically, for liquidating sick company is only default of five hundred rupees. Conversely, the trigger point under Code is one lakh rupees which can be increased up to one crore rupees, by way of notification of government.

- **Practice:** The BIFR and High Courts are reluctant in liquidating Sick Company due to fear of loss of jobs, labour unrest, etc⁶¹. Debtor company to protect itself from creditors claims also misused SICA. This is not possibility anymore, since resolution plan so voted by credit committee, ensures creditors' control over functioning of company. Corporate debtor cannot circumvent process to keep themselves safe in presence of a insolvency professional and resolution plan.

- **Distribution of assets:** The Code provides for waterfall mechanism for distribution of assets on liquidation of sick company. This provides for stronger corporate governance mechanism, wherein creditors rights are enhanced. Priority starts from securing rights of secured creditors and workmen to payment of equity, which by its very nature is high risk return. SICA, however, did not prescribe for waterfall mechanism. Distribution was based on provisions of Companies Act, 1956¹²⁹.

¹²⁹ "Home | National Company Law Appellate Tribunal (NCLAT)" <<https://nclat.nic.in/>> accessed April 30, 2024

CHAPTER 8

CONCLUSION & SUGGESSTION

The changes in the insolvency and bankruptcy laws in India have been dynamic, especially with the passing of the Insolvency and Bankruptcy Code (IBC) in 2016. This was done in order to re-enact and amend the laws dealing with the reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in an efficient and time bound manner, with an objective to realise the maximum value of the assets, to encourage entrepreneurship, and to regulate the concerns and rights of all the stakeholders.

Emerging Trends

One of the most significant trends is the decrease of the time it takes to complete the resolution process. According to the IBC, the corporate insolvency resolution process shall take at least 180 days (which can be extended by another 90 days), which is significantly shorter than the time taken in the earlier regime. This has created a culture of fast track and efficiency in the handling of insolvency cases.

Another growing phenomenon is the shift in the creditors' power, especially the financial creditors where they are now key decision makers. The constitution of the Committee of Creditors (CoC),³⁵ which consists of the financial creditors has shifted the power from the debtors to the creditors thus providing priority to the lender at the time of resolution plan. Also there has been a positive change in the creditor's recovery rates as well. This has been made possible due to the structured and transparent mechanisms of the IBC which has helped in the efficient recovery of dues as seen from the various high-profile cases. This trend is important for sustaining the confidence of investors and financial organizations in the Indian market.

Challenges

However, several challenges are still evident to date. Procedural issues still remain a cause of concern and they are most times occasioned by the congested NCLT. These

delays work against the IBC's goal of a fast solution due to the lack of benches and the large number of cases.

A major issue is the shortage of qualified and experienced insolvency professionals to meet the current demand level. These personnel are valuable in coordinating the resolution process, and if they are few, they may present a drag to the implementation of the IBC. To some extent, the legal framework of construction contracts under the IBC has also been marred by the provisions of IBC that have been the subject of varied interpretations, thereby leading to legal ambiguities that occasion uncertainties that slow down the resolution of disputes.

Suggestions for Improvement

Thus, the given proposal to improve the IBC's efficiency requires further sophisticated judicial and legislative development. This involves resolving uncertainties relating to provisions of the law and establishing that the law grows with the test in resolving pragmatic problems and in the market.

More capacities and infrastructural developments serve as a necessary support to the NCLT. This could mean the provision of more benches and recruitment of more judges since the workload would be noticed correctly in this case. Also, there is a problem of scarcity of qualified insolvency professionals, and hence more funding in the human capital in terms of training and development of such practitioners would enhance the quality of resolution.

The early resolution of disputes must not be seen as the responsibility of a single industry player, but must be a collective effort that involves all key market players such as corporate organizations, financial institutions, and regulatory agencies. This can be achieved by increasing the level of awareness and appreciation of the provisions and the gains that are embraced in the IBC.

Finally, nurturing the supportive environment for distressed assets through arching the asset reconstruction companies and specialized investment funds offers the last line exits for resolution and recovery. It has also been suggested that by encouraging innovation and flexibility in how firms approach resolution planning, organisational improves can also be realised.

To conclude, though the conceptualisation and implementation of the IBC has ushered in a paradigm shift for debtor states like India dealing with insolvency and bankruptcy, continuous endeavours to overcome its challenges efficient management are essential to sustain the benefits associated with this measure and build a strong insolvency resolution regime and implementation mechanism.

BIBLIOGRAPHY

Books:

1. Justice L Nageswara Rao & Avinash Krishnan Ravi's Corporate Insolvency Resolution Process and Liquidation under the Insolvency and Bankruptcy Code
2. Final Report of the Bankruptcy Law Reform Committee and the Insolvency and Bankruptcy Code, 2016" (Vidhi Centre for Legal Policy, July 26, 2020)
3. Yearbook on Insolvency and Bankruptcy Law
4. **Insolvency and Bankruptcy Code: Law and Practice** by Akaant Kumar Mittal
5. Guide to the **Insolvency & Bankruptcy Code** With Procedures (Set of 2 Vols.)
By Wadhwa Law Chambers The Law of insolvency in India

Reference list:

- About NCLAT | National Company Law Appellate Tribunal (NCLAT) <<https://nclat.nic.in/about-NCLAT>> accessed April 27, 2024
- About NCLT | National Company Law Tribunal" <<https://nclt.gov.in/about-nclt>> <<https://nclt.gov.in/about-nclt>> accessed April 30, 2024
- Acharya M, "Conducting Corporate Insolvency Resolution Process" (Cleartax, January 10, 2022) <<https://cleartax.in/s/conducting-corporate-insolvency-resolution-process>> ,
- "Conducting Corporate Insolvency Resolution Process" (Cleartax, January 10, 2022) <<https://cleartax.in/s/conducting-corporate-insolvency-resolution-process>> accessed April 29, 2024
- Briefing I, "Insolvency Resolution Process for Corporate Persons in India" (India Briefing News, October 12, 2023) <<https://www.india-briefing.com/news/faqs-on-insolvency-resolution-process-for-corporate-persons-in-india-24274.html/>> accessed April 29, 2024,
- "Insolvency Resolution Process for Corporate Persons in India" (India Briefing News, October 12, 2023) <<https://www.india-briefing.com/news/faqs-on-insolvency-resolution-process-for-corporate-persons-in-india-24274.html/>> accessed May 1, 2024

- Committee of Creditors: Functioning, Composition and Significance” <<https://www.resurgentindia.com/committee-of-creditors-functioning-composition-and-significance>> accessed April 28, 2024 “Committee of Creditors: Role and Commercial Wisdom
- PSL Advocates and Solicitors” <<https://www.pslchambers.com/article/committee-of-creditors-role-and-commercial-wisdom/>> accessed April 28, 2024
- Das A and others, “Insolvency and Bankruptcy Reforms: The Way Forward” (2020) 45 Vikalpa 115 <<https://doi.org/10.1177/0256090920953988>> Guest, “Interpretation of Section 30(2) of the IBC: Rights over Prudence? –
- IndiaCorpLaw” (IndiaCorpLaw, February 14, 2024) <<https://indiacorplaw.in/2024/02/interpretation-of-section-302-of-the-ibc-rights-over-prudence.html?amp=1>> accessed April 29, 2024
- “Home | National Company Law Appellate Tribunal (NCLAT)” <<https://nclat.nic.in/>> accessed April 30, 2024 Kumar R and Law L, “Live Law” Live Law (May 20, 2024) <<https://www.livelaw.in/amp/ibc-cases/ibc-nclt-record-approval-resolution-plans-258403>>
- Laws I, “Constitution of Committee of Creditors (CoC) under Section 21 of Insolvency and Bankruptcy Code 2016 (IBC)” (IBC Laws, August 15, 2023) <<https://ibclaw.in/constitution-of-committee-of-creditors-under-section-21-of-ibc/>> ,
- “Constitution of Committee of Creditors (CoC) under Section 21 of Insolvency and Bankruptcy Code 2016 (IBC)” (IBC Laws, August 15, 2023) <<https://ibclaw.in/constitution-of-committee-of-creditors-under-section-21-of-ibc/>> accessed April 27, 2024 Lipsey H, “Private lenders offer personal loans for individuals with bad credit | 자유게시판” (Private Lenders Offer Personal Loans for Individuals With Bad Credit) <https://onlyedu.kr/bbs/board.php?bo_table=free&wr_id=2971&sst=wr_hit&sod=asc&sop=and&page=5755> accessed April 29, 2024 “

- Section 21-Committee of Creditors. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-21-committee-creditors/>> accessed April 27, 2024
- “Section 28-Approval of Committee of Creditors for Certain Actions. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-28-approval-committee-creditors-certain-actions/>> accessed April 28, 2024
- “Section 31-Approval of Resolution Plan. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) <<https://ca2013.com/section-31-approval-resolution-plan/>> accessed April 28, 20224
- Sethi R, “An Alternative Approach to a Code of Conduct for the Committee of Creditors in an IBC Process” (S&R Associates, December 22, 2023) <<https://www.snrlaw.in/an-alternative-approach-to-a-code-of-conduct-for-the-committee-of-creditors-in-an-ibc-process/>> accessed April 28, 2024
- Srivastava A and Law L, “Live Law” Live Law (May 7, 2024) <<https://www.livelaw.in/amp/ibc-cases/nclt-mumbai-claim-admitted-approval-resolution-plan-coc-adjudicating-authority-257271>> , “Live Law” Live Law (May 7, 2024) <<https://www.livelaw.in/amp/ibc-cases/nclt-mumbai-claim-admitted-approval-resolution-plan-coc-adjudicating-authority-257271>>

Articles

- a. Evolution of Insolvency Bankruptcy Code 2016 Anjali Krishna, 03rd February 2023.
- b. IBC an on going Process, Debanshu Mukherjee and Oitihya Sen, 11th September 2020.
- c. Some Emerging Trends within Evolution of Insolvency Bankruptcy Code, Mukesh Jain, 3rd July 2019.
- d. report of Bankruptcy Law Reforms Committee

E.Resources:

1. <https://www.legalserviceindia.com/legal/article-13123-a-comprehensive-analysis-of-indias-insolvency-and-bankruptcy-laws.html>
2. <https://jotwani.com/time-limit-for-completion-of-insolvency-resolution-process-under-ibc/>
3. <https://www.indialaw.in/blog/commercialcorporate/summarising-insolvency-bankruptcycode-2016/>>
4. <https://doi.org/10.1177/0256090920953988>
5. “Section 117-Completion of Repayment Plan. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) [https://ca2013.com/section-117-completionrepaymentplan/#:~:text=\(b\)%20a%20copy%20of%20a,the%20meeting%20of%20the%20creditors.](https://ca2013.com/section-117-completionrepaymentplan/#:~:text=(b)%20a%20copy%20of%20a,the%20meeting%20of%20the%20creditors.)
6. “Section 112-Report of Meeting of Creditors on Repayment Plan. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR” (Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR) [https://ca2013.com/section-112-reportmeeting-creditors-repayment-plan/#:~:text=\(1\)%20The%20resolution%20professional%20shall,the%20creditors%20on%20repayment%20plan.&text=\(d\)%20such%20other%20information%20as,known%20to%20the%20Adjudicating%20Authority.](https://ca2013.com/section-112-reportmeeting-creditors-repayment-plan/#:~:text=(1)%20The%20resolution%20professional%20shall,the%20creditors%20on%20repayment%20plan.&text=(d)%20such%20other%20information%20as,known%20to%20the%20Adjudicating%20Authority.)
7. Wikipedia contributors, “Insolvency and Bankruptcy Board of India” (Wikipedia, January 8, 2024) https://en.m.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Board_of_India
8. Policy VC for L, “Pre-Packaged Insolvency Resolution under the Insolvency and Bankruptcy Code (IBC): An Overview” (Vidhi Centre for Legal Policy, November 11, 2021) <https://vidhilegalpolicy.in/blog/pre-packaged-insolvency-resolution-under-theinsolvency-and-bankruptcy-code-ibc-an-overview/>
9. “An Overview of Sarfaesi Act, 2002” <https://www.legalserviceindia.com/legal/article14407-an-overview-of-sarfaesi-act-2002.html>

10. Final Report of the Bankruptcy Law Reform Committee and the Insolvency and Bankruptcy Code, 2016” (Vidhi Centre for Legal Policy, July 26, 2020)
<https://vidhilegalpolicy.in/research/final-report-of-the-bankruptcy-law-reform-committeeand-the-insolvency-and-bankruptcy-code-2016/>
11. **"The Insolvency and Bankruptcy Code 2016: A Paradigm Shift in Corporate Insolvency Resolution in India"** by Ashish Bhalla (2017) - This article explores the key features of the IBC 2016 and its impact on corporate insolvency resolution.
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25. **Citations Focusing on Specific Sectors (Post-2016):**
26. **"Insolvency and Bankruptcy Code and its Impact on the Indian Power Sector"** by Ashwani Kumar and Praveen Kumar (2020) - This article explores the impact of the IBC on the power sector.
27. **"The IBC 2016 and its Relevance to the Indian Banking Sector"** by Alok Kumar and Vandana Jain (2019) - This article focuses on the impact of the IBC on the banking sector.
28. **Citations on Recent Developments (2021-2024):**
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30. **"The Rise of Alternative Dispute Resolution in Insolvency Proceedings under the IBC"** by Anjali Agrawal (2023) - This article discusses the growing use of ADR in insolvency cases.
31. **International and Comparative Law:**

32. **"The Influence of International Insolvency Law on the IBC 2016"** by Jyoti Arora (2018) - This article explores the international influences on the IBC

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