



Study of Insolvency and Bankruptcy Code 2016, its objectives and benefits

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Abstract : Insolvency and Bankruptcy Code 2016 is a law that was implemented through an act of Parliament. IBC got Presidential assent in May 2016 and was put into effect after that. Certain provisions of the act were imposed in August in the same year.

In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards. The recovery

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action by creditors, either through the Contract Act or through special laws such as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not had desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms. Laws dealing with individual insolvency, the Presidential Towns insolvency Act, 1909 and the Provincial Insolvency Act. 1920, are almost a century old. This has hampered the confidence of the lender. When lenders are unconfident, debt access for borrowers is diminished. This reflects in the state of the credit markets in India. Secured credit by banks is the largest component of the credit market in India. The corporate bond market is yet to develop.

Key Words : Insolvency and Bankruptcy Code 2016, corporate etc.

Introduction : The law aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation. Such consolidation will provide for a greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

Objectives of the Code :

The objective of the new law is to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to



reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto.

1. The Code highlights insolvency processes for individuals, companies and partnership firms. It may be noted that, under IBC debtor and creditor both can start 'recovery' proceedings against each other.
2. Companies have to complete the entire insolvency exercise within 180 days under IBC. The deadline may be extended if the creditors do not raise objections on the extension.
3. For smaller companies including startups with an annual turnover of Rs 1 crore the whole exercise of insolvency must be completed in 90 days and the deadline can be extended by 45 days.
4. Insolvency and Bankruptcy Board of India has been appointed as a regulator and it can oversee these proceedings. IBBI has 10 members; from Finance Ministry and Law Ministry the Reserve Bank of India.
5. IBC permits hiring services of licensed professionals who have total control over assets of debtor while the proceedings are going on at a tribunal.
6. Two tribunals have been authorised to resolve insolvency issues and pronounce their judgement on them. One is National Company Law Tribunal for companies and the other Debt Recovery Tribunal for individuals.

The essential idea of the new law is that when a firm defaults on its debt, control shifts from the shareholders / promoters to a Committee of Creditors, who have 180 days in which to evaluate proposals from various players about resuscitating the company or taking it into liquidation. When decisions are taken in a time-bound manner, there is a greater chance that the firm can be saved as a going concern, and the productive resources of the economy (the labour and the capital) can be put to the best use. This is in complete departure with the experience under the SICA regime where there were delays leading to destruction of the value of the firm.



A key innovation of the Insolvency and Bankruptcy Code is four pillars of institutional infrastructure.

- The first pillar of institutional infrastructure is a class of regulated persons, the ‘Insolvency Professionals’. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by ‘Insolvency Professional Agencies’.
- The second pillar of institutional infrastructure is a new industry of ‘Information Utilities’. These would store facts about lenders and terms of lending in electronic databases. This would eliminate delays and disputes about facts when default does take place.
- The third pillar of institutional infrastructure is in adjudication. The NCLT will be the forum where firm insolvency will be heard and DRTs will be the forum where individual insolvencies will be heard. These institutions, along with their Appellate bodies, viz., NCLAT and DRATs will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.
- The fourth pillar of institutional infrastructure is a regulator viz., ‘The Insolvency and Bankruptcy Board of India’. This body will have regulatory over-sight over the Insolvency Professional, Insolvency Professional agencies and information utilities.

The Insolvency and Bankruptcy Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes. It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future. The passing of this Code and implementation of the same will give a big boost to ease of doing business in India.

Benefits of the Code

- The law will promote entrepreneurship, availability of credit and balance the interest of all stakeholders.



- It is true that some business ventures will fail, but such failures will be handled rapidly and swiftly. Entrepreneurs and lenders will be able to move on, instead of being bogged down with decisions taken in the past.
- The Code empowers the operational creditors (workmen, suppliers etc.) also to initiate the insolvency resolution process upon non-payment of dues.
- The Insolvency and Bankruptcy Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes.
- It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future. The passing of this Code and implementation of the same will give a big boost to ease of doing business in India.

Conclusion :

The Insolvency And Bankruptcy Code 2016 thus aims to take a systematic leap of economic reforms for smooth functioning of credit market, lays foundation of development of corporate bond market, support innovation and ease of doing business in India. It aims to take India from among the relatively weak insolvency regimes to global standards. The vision of the new law is to encourage entrepreneurship and innovation. Some business ventures will always fail, but they will be handled rapidly and swiftly. Entrepreneurs and lenders will be able to move on, instead of being bogged down with decisions taken in the past.

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