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Corporate Insolvency: A Unified Code to Meet Global Standards

SAURABH RANKA¹ AND CHETAN JAIN²

ABSTRACT

In India, A multi-layered legal framework for dealing with insolvency was complicated and not in line with global standards. The insolvency and Bankruptcy code has been set up to consolidate and amend insolvency laws to simplify and expedite the insolvency proceedings. Insolvency and Bankruptcy code promote entrepreneurs, increase the credit supply and protect the interest of shareholders, this research paper provides a summary of Insolvency laws before and after the Insolvency and Bankruptcy code 2016 by focusing on Insolvency legislative framework and insolvency resolution in India.

I. INTRODUCTION

Structural change of overlaying and complex laws towards a unified code for insolvency and Bankruptcy was imposed by the ministry of corporate affairs in 2016. This code consists of changed substantive provisions of the existing law. Insolvency and Bankruptcy code is an instrument for providing organized and collective mechanisms for collective insolvency. The conflicts and multiple proceedings arise a need for unified Bankruptcy code that could be applicable to all aspects of a company in distress and for all stakeholders. Single code would provide a framework for balancing the competing interests of debtors, secured creditors and other stakeholders. The Insolvency and Bankruptcy code aims to consolidate the laws relating to insolvency of companies and limited liability entities, unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation.

II. THE INSOLVENCY AND BANKRUPTCY CODE 2016

Corporate insolvency is the state where a company is unable to pay the debts by a person or company or insufficient to settle its debts to the creditors. It is an Indian law or an act which creates a consolidated framework that governs insolvency of corporate persons, partnership firms and individuals. Insolvency and Bankruptcy Code 2016 was enacted by the government of India referred to the advisory of a joint committee by the ministry of corporate affairs. An advanced step towards settling the legal basis to financial failures and insolvency.

¹ Author is a U.G. Scholar at the Department of Legal Studies, Sangam University, Bhilwara, India.

² Author is a Data Engineer at Mavenwave Partners, Chennai, India.

“An act to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an insolvency and bankruptcy board of India, and for matters connected therewith or incidental thereto”

III. CORPORATE INSOLVENCY LEGISLATIVE FRAMEWORK IN INDIA

Corporate bankruptcy and insolvency, had been, till the recent past, covered in a complex of multiple laws, some major laws for collective action and debt recovery are:

(A) Companies act 2013

Companies act 2013 contains provisions on collective insolvency resolution by way of restructuring rehabilitation or reorganization of entities registered under the act. Adjudication is the national company law tribunal. Companies act 2013 contains provisions for rescue and rehabilitation of all registered entities in chapter XIX, and liquidation in chapter XX.

(B) Companies act 1956

Companies act 1956 deals with winding up of companies. No separate provisions for restructuring except through mergers and acquisitions and voluntary compromise. Adjudication was under the jurisdiction of the High court.

(C) Sick industrial companies act 1985–

Sick industrial companies act 1985 dealt with restructuring of distressed industrial firms. Under this act, the board of industrial and financial reconstruction assessed the viability of the industrial company, and referred an unviable company to the High court for liquidation. Sick industrial companies act 1985 stands repealed. Sick industrial companies act 1985 contained special provisions for timely detection of sick industrial companies and for undertaking preventive, ameliorative, remedial and other measures in respect of such companies.

(D) Securities and reconstruction of financial assets and enforcement of security interest act 2002 –

Securities and reconstruction of financial assets and enforcement of security interest act 2002, regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. It allows financial institutions to auction residential or commercial properties of defaulters to recover loans.

(E) Recovery of debts due to banks and financial institution act 1993 (RDDBFI) –

The RDDBFI 1993 provides for establishment of debts recovery tribunals with original jurisdiction and debts recovery appellate tribunals with appellate jurisdiction, for expeditions adjudication and recovery of debts due to banks and financial institutions, insolvency resolution and bankruptcy of individuals and partnership firms and connected matters therewith.

IV. COLLECTIVE RESOLUTION OF BANKRUPTCY AND INSOLVENCY UNDER PREVIOUS LEGAL REGIME

Sick industrial companies act as a specialized board. The board of industrial and financial reconstruction assessed the viability of the industrial company, if the company has been assessed unviable, the board refers the company to the High court for liquidation. There are out-of-court mechanisms set up for banks to restructure loans including corporate debt restructuring, the joint lending forum and the strategic debt structuring forum. The current legal framework for bankruptcy resolution continues to be the companies act 1956 including provisions in the companies act 2013.

V. SCHEME FOR SUSTAINABLE STRUCTURING OF STRESSED ASSETS

The reserve bank has put in place a scheme for sustainable structuring of stressed assets in order to provide an avenue for reworking the financial structure of entities facing genuine difficulties and requiring coordinated deep financial restructuring. This is an improvisation by the regulator RBI to address asset quality challenges at banks: structuring of project loans under the 5:25 scheme and strategic structuring and could help banks limit fresh slippages to not performing assets from large corporate exposure. The scheme allows banks and lenders to acquire equity of the stressed project which speeds up the asset recovery process. This scheme restores the credit flow, infrastructure and issues faced by real estate by providing an avenue for reworking financial structure. it saves the banks from undue security. The scheme has had their challenges which has limited their application across a larger set of stressed assets. The key challenge is that banks which structured loans under this scheme by strengthening repayment periods had to mandatory protect the net present value of loans refinanced. banks had to take majority stakes and also find a new buyer within a short span, failing which the asset is classified as a non-performing one.

VI. THE NEED FOR A UNIFIED INSOLVENCY AND BANKRUPTCY LAW

"An effective insolvency regime is a critical component of ease of doing business in India" prior to the unified law there has been a multi-layered legal framework which made the winding up,

liquidation and insolvency proceeding a burdensome task and have caused major delays. the laws we had were age old and rivalry to each other. The reluctance of courts to issue winding up orders, liquidation process post issuance were the tasks when the greatest delay occurred. Four different concerns: the high court, company law board, board for industrial and financial reconstruction and debt recovery tribunals have overlapping jurisdiction. The insolvency and bankruptcy code 2016 are a unified framework to resolve insolvency, liquidation and bankruptcy.

VII. INDIVIDUAL INSOLVENCY

The Insolvency and Bankruptcy Code, 2016, in its PART III provides for insolvency resolution and bankruptcy for individual and partnership firms. Chapter I of Part III provides the preliminary aspects that are application and definition. Chapter II provides the 'Fresh Start Process' which, Chapter III deals with the Insolvency Resolution Process which is followed by Chapter IV that deals with the Bankruptcy order for Individual and Partnership firms. Chapter V Section 214, IBC 2016 - Obligations of Information Utilities Fresh Start Process deals with the administration and distribution of the estate of the Bankrupt and chapter VI and VII relate to adjudication and offenses.

VIII. NATIONAL COMPANY LAW TRIBUNAL (NCLT)

National company law tribunal was established under the companies act 2013 and was constituted on 1 June 2016 by government of India. all proceedings under the company's act, including proceedings relating to arbitration, compromise, arrangements, reconstructions and the winding up of companies shall be disposed of by the National company law tribunal. The national company law tribunal is the adjudicating authority for the insolvency resolution process of companies and limited liability partnerships under the insolvency and bankruptcy code 2016. The national company law tribunal is a quasi-judicial body and has the power under the companies act to adjudicate proceedings:

- Initiated before the company law board under the previous act (the companies act 1956),
- Pending before the board for industrial and financial reconstruction, including those pending under the sick industrial companies act 1985,
- Pending before the Appellate authority for industrial and financial reconstruction and
- Pertaining to claims of oppression and its management of a company, winding up of companies and all other powers prescribed under the company's act.

IX. NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

National company law appellate tribunal is also the appellate tribunal for hearing appeals against the orders passed by NCLT(s) under section 61 of the insolvency and bankruptcy code 2016, with effect from 1st December 2016. NCLAT is also the appellate tribunal for hearing appeals against the orders passed by Insolvency and bankruptcy board of India under section 202 and section 211 of IBC. NCLAT is also the Appellate tribunal to hear and dispose-off appeals against any direction issued or decision made or order passed by the competition commission of India (CCI) as per the amendment brought to section 410 of the company's act, 2013 by section 172 of the finance act 2017, with effect from 26th May, 2017. NCLAT is also the appellate tribunal to hear and dispose of appeals against the orders of the National Financial Reporting Authority - as per the amendment brought to section 410 (a) of the company's act, 2013 by section 83 of the companies (amendment) act 2017, with effect from 7th May 2018.

X. CORPORATE INSOLVENCY RESOLUTION PROCESS

A corporate insolvency resolution process may be initiated under chapter II of the code in respect of a corporate debtor that has committed a default. Occurrence of default is the reason for initiating the corporate insolvency resolution process. A default occurs when the debtor fails to pay the amount of debt, fully or partly. A financial creditor is required to present a record of default before NCLT for initiation of the corporate insolvency resolution process. An operational creditor must issue a statutory notice to the corporate debtor in the manner provided. The process for initiating corporate insolvency resolution may be initiated by a financial creditor or an operational creditor or the corporate debtor itself. A financial creditor may initiate the process either by itself or jointly with other financial creditors by filing an application before the NCLT, if a default has occurred in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. NCLT ascertains the existence of a default from the records or evidence furnished by the financial creditor. If NCLT is satisfied that a default has occurred, it may, by order, admit such application. The NCLT by order, grant a moratorium mentioned in section 14 or appoint an interim resolution professional in the manner as laid down section 16 of in the code or cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims immediately after the appointment of the interim resolution professional. The resolution plan as approved by the committee of creditors must be presented by resolution professionals to the NCLT for approval.

Salient features of the Insolvency and Bankruptcy Code 2016 are as follows:

- Identification of financial distress and resolution of companies and limited liability entities has become fast, coherent and clear,
- Establishment of an insolvency and bankruptcy board of India to exercise regulatory oversight,
- Insolvency professionals would handle insolvency resolution process,
- Enabling provision to deal with cross border insolvency and
- National company law tribunal for companies and limited liability partnerships and debt recovery tribunal for individuals and partnership firms have been set up as Adjudicating authority.

XI. LIQUIDATION PROCESS

Liquidation order is passed only where the corporate insolvency resolution and no resolution plan can be passed within the time provided. Order of liquidation is passed by the NCLT and a public announcement is issued.

XII. CONCLUSION

Liquidation of a company in India is a lengthy and high-cost process. Prior to the Insolvency and Bankruptcy code the overlapping laws made it very difficult for a business owner or creditor to make it happen in a smooth way. To be more efficient, organized and productive even the laws need to get updated with time. This writing is about the procedure of Insolvency resolution and Insolvency and Bankruptcy code.

XIII. REFERENCES

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