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# Insolvency and Bankruptcy Code: Inception and Breakthrough

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## ABSTRACT

*Bad debt had been increasing at a very fast pace so the Government of India came with the idea of Insolvency and Bankruptcy Code (IBC) 2016. This article deals with how the Insolvency and Bankruptcy Code (IBC) 2016 came in to existence; Board established to manage the working of IBC; how the situation were before the commencement of IBC; this article chronicles the laws that were in existence prior to the IBC. Voluntary Liquidation Process (One of the important aspects of IBC); then comes the Amendment 2022. This article delectably presents the Judgements related to the IBC Code. Then the article is concluded with the importance, drawbacks and way forward.*

**Keywords:** *Insolvency and Bankruptcy Laws, Bad Debts, Voluntary Liquidation, IBC.*

## I. INTRODUCTION

Insolvency is a phenomenon when an individual or organization is unable to pay its debts. In the corporate sector, we often find firms getting insolvent and recurring debts and losses. The legal proceeding initiated when an individual or organisation cannot pay debts and are insolvent is termed Bankruptcy. In the Insolvency and bankruptcy code, Insolvency is referred to as a locus of a scenario where assets are inadequate to meet the liabilities. If such insolvency continues to prevail it will lead to bankruptcy and corporate insolvency for individuals and firms respectively. To govern and constrain such a situation, this code has been consolidated from all the previously enacted laws and has been introduced to deal with the framework of debt recovery, insolvency, and bankruptcy. It was drafted by a special committee BRLC (Bankruptcy Law and Reforms Committee).

### (A) Need of IBC

Before the introduction of IBC, there were multiple statutes to deal with the liquidation process, such as the Sick Industrial Companies Act 1985, Provincial Insolvency Act 1920, and Code of Civil Procedure 1908 and there were multiple statues to deal with liquidation processes, such as Sick Industrial Companies Act 1985, Provincial Insolvency Act 1920, Code of civil

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procedure 1980 and SARFAESI Act 2002. It was confusing to deal with the insolvency and bankruptcy process under the ambit of various laws. IBC was introduced to resolve insolvency and ease the bankruptcy process. It is an easy, quick, and efficient insolvency process. Before IBC's inability to pay the debt was covered under section 271 of The Companies Act, 2013 apart from the inability to pay debt there are other grounds covered under the aforesaid act. To draw attention towards the inability to pay debt this ground was placed under IBC.

## **II. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

Insolvency and bankruptcy board of India shortly known as IBBI was established under the Insolvency and Bankruptcy Code, of 2016. It was founded on 1st October 2016. It is Headquartered in New Delhi. It is a body that makes rules, regulations and procedures about the insolvency and bankruptcy process. It oversees the activities of Insolvency professionals, insolvency professional agencies, information utilities, registered Valuers and Registered valuer Organisations. It regulates both Corporate Insolvency and Individual Insolvency and makes rules relating to the same.

### *Composition of IBBI*

- Chairperson
- Three other persons
- A member of the RBI
- Five members nominated by the Union Government of which three members function as full-time members.

All these members regulate the Insolvency and Bankruptcy process and make this process efficient as it can be. the governs insolvency procedure outside the Presidency towns.

## **III. HISTORICAL ROOTS OF LEGISLATION**

The Insolvency and Bankruptcy Code was first introduced in 2015 and later enacted in 2016 Even though this is a newly adopted code, it has its overlapping genesis from a series of laws which were prevailing over decades but failed miserably.<sup>3</sup>

### **(A) The Presidency towns Insolvency Act and Provincial Insolvency Act of 1920**

There are two principal acts governing insolvency one is The Presidency towns Insolvency Act of 1909 which applied to the three Presidency towns alone while the other act of 1920 used to

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<sup>3</sup> BHATT & JOSHI ASSOCIATES NCLT LAWYERS CORPORATE LAWYERS IBC, 'HISTORICAL EVOLUTION OF IBC' <<https://bhattandjoshiassociates.com/>> accessed 10 Mar. 23

Insolvency and Bankruptcy Board of India (IBBI).

### **(B) Sick Industrial Companies Act, 1985**

Previously, there was Sick Industrial Companies Act, 1985 (SICA) which was enacted for SICK companies that possess financial risk under this act.

- According to SICA, sick companies were those industrial companies that suffered losses more than or amount to their net earnings by the end of the accounting year and are incorporated for at least five years.
- The Sick Industrial Companies (Special Provisions) Repeal Act of 2003, which softened some of the original Act's provisions and rectified other issues, repealed SICA and replaced it in 2003.
- SICA was then fully repealed in 2016, in part because some of its provisions overlapped with the requirements of IBC and the Companies Act of 2013.

### **(C) The Recovery of Debts due to the Banks and Financial Institutions Act, 1993**

The RDB Act of 1993 establishes Debts Recovery Tribunals (DRTs) with original jurisdiction and Debts Recovery Appellate Tribunals (DRATs) with appellate jurisdiction for the swift adjudication and recovery of debts owed to banks and financial institutions, as well as for the resolution of individual insolvencies, the bankruptcy of partnership firms, and related matters. While not discouraging borrowers, the Act seeks to protect the interests of banks and other financial institutions as lenders. Because the corresponding provisions have not yet come into effect, the Tribunals have not yet started taking on bankruptcy and insolvency resolution cases. The Act is applicable in situations where the total sum owed to any bank, financial institution, or group of banks or financial institutions as defined by the Act is Rs. 20 lacks or more.

### **(D) The SARFAESI ACT, 2002**

- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 allows banks to sell or auction the assets of the financial creditors in case of bad debts without any intervention of the court.
- As both IBC and SARFAESI ACT has provisions for recovery of bad debts in way of accessing the assets of financial creditors and thereafter resourcing in case of default.

### **(E) The Companies Act, 2013**

- By Section 271(1) of the Companies Act of 2013<sup>4</sup>, if a creditor to whom a company

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<sup>4</sup> The Companies Act, 2013

owes a sum greater than Rs. 1 lakh has given notice at the company's registered office by registered mail or another means requiring the company to pay the sum outstanding and the business has not made payment within 21 days or If any execution or other process issued by decree of court or order in favour of creditor is returned unsatisfied in whole or in part, or if the tribunal determines that the company is unable to pay its debts, the tribunal shall take into account the contingent and prospective liabilities of the company.

Finally, in 2016, the IBC was introduced and this code will prevail over all the overlapping laws now.

### **(F) IBBI (Voluntary Liquidation Process) Regulations (Amendment), 2022**

Voluntary liquidation is a process whereby a company wound up voluntarily at its own will without any compulsion. It is very different from the liquidation process that takes place when the company is declared insolvent. Under the Voluntary Liquidation Process company which are not in default, not declared insolvent and where assets are more than liability can easily go for Voluntary Liquidation Process. After the advent of IBC, section 255 and Schedule XI of the Insolvency and Bankruptcy code, 2016 abolished the importance of Sections 304 to 305 of the Companies Act which covers the Voluntary Liquidation Process. Subsequently the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 were notified on 1st April 2017. Eventually, Section 59 under Chapter V in IBC covers “Voluntary Liquidation procedures for Corporate Persons”.

To further streamline the voluntary liquidation process, the Insolvency and Bankruptcy Board of India introduced the IBBI (Voluntary Liquidation Process) (Amendment) Regulations<sup>5</sup>, 2022. The following are the most significant changes:

- To begin, if no claims have been received from creditors, the liquidator must create a list of stakeholders within 15 days of the last day for claim receipt; if claims have been received from creditors, the list must be created within 45 days of the last date for claim receipt. Before this amendment, whether claims from creditors were received, the liquidator was required to compile a list of stakeholders within 45 days.
- Second, instead of waiting six months, the proceeds from the sale of assets must now be distributed to those with a stake in the matter within 30 days of receipt, rather than six

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<sup>5</sup> Basil Gupta, ‘Simplification Of Voluntary Liquidation In India’ (Live Law, 31 Dec 2022) <<https://www.livelaw.in/columns/insolvency-and-bankruptcy-code-ibc-voluntary-liquidation-section-59-of-the-ibc-insolvency-and-bankruptcy-board-of-india-ibbi-217775?infinitemscroll=1>> accessed 10 March 2023

months.

- Third, if no claims from creditors are received, the deadline for submitting the final report may be set at 90 days from the date of liquidation's commencement. If, on the other hand, claims from the creditor(s) are received, the deadline for submitting the final report may be extended to 270 days from the date of liquidation's commencement.

#### **IV. ANALYSIS OF THE AMENDMENT**

This amendment introduced provisions which aim to reduce the unnecessary time used in different activities as mentioned that if the claim is not received from the creditors then the liquidators have to make the list of stakeholders within 15 days. And this provision makes the liquidation process smooth for the stakeholders by providing them with their claim within 30 days of the liquidation, they do not need to wait 6 months to get their claims. This amendment boosts the confidence of stakeholders in the voluntary liquidation process. All in all the Govt proposed this amendment to make the process smoother than before and to make the process in a way by which companies can focus on another important tasks efficiently.

According to the economic analysis of the above amendment, the proposed changes aim to reduce unnecessary time spent on various activities, speed up the voluntary liquidation process, make the business personnel's departure easier and free up resources that may be put to better use. Also, the money would be handed to stakeholders sooner because of the suggested reduction in the time it takes to distribute funds, which would encourage individuals to launch their enterprises and make credit easier to obtain. Since the delay in receiving NOCs from regulating authorities—even though the Code makes no mention of such a requirement—was the primary cause of the voluntary liquidation process's delay, and since the IBBI has resolved the problem by issuing a circular on November 15, 2021, the voluntary liquidation process may now proceed more quickly.

#### **V. LANDMARK JUDGEMENTS**

To address insolvency and bankruptcy difficulties in India, the Insolvency and Bankruptcy Code (IBC) was implemented as an important piece of law in 2016. The code has been interpreted and used differently since it was enacted as a result of several significant rulings. The following five judgements are the most important:

1. **Essar Steel India Limited v. Committee of Creditors-** In this decision, the Supreme Court determined that financial creditors had a bigger voice in the resolution process than operational creditors. Essar Steel, which had been subject to bankruptcy procedures

for more than two years, was able to be resolved thanks to this ruling.

2. **Swiss Ribbons Pvt. Ltd. vs. Indian Union of Justice**<sup>6</sup>. - The biggest decision involving the IBC is thought to have been made in his instance. In it, the Supreme Court affirmed the IBC's constitutional legitimacy and ruled that the law was an important first step in resolving India's growing bad debt issue.
3. **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta**<sup>7</sup> – The Supreme Court ruled that the costs of the insolvency resolution process, secured creditors' claims, unsecured claims, operational creditors' claims, operational creditors' claims, preference shareholders' claims, and creditors' claims would all be paid out in the following order from the proceeds of the sale of insolvent companies.
4. **Innoventive Industries Limited vs. ICICI Bank** <sup>8</sup> - In this judgement, the Supreme Court made it clear that the IBC is a creditor-driven process and that the National Company Law Tribunal (NCLT) cannot stymie the business decisions made by the committee of creditors.
5. **K. Shashidhar v. Indian Overseas Bank**<sup>9</sup> - According to the Supreme Court's ruling in this landmark judgement, a guarantor's liability is co-extensive with that of the principal borrower and is not reliant on the creditor's use of all available remedies against the principal borrower.

## VI. CONCLUSION

In conclusion, these precedent-setting decisions have given creditors, debtors, and other parties involved in insolvency and bankruptcy procedures under the IBC clarity and direction. They have also made a huge impact on the development of the insolvency scene in India and helped the nation resolve its problems with bad debts.

As a result, we can conclude that IBC was that fancy step that brought an end to the deadlock that existed in companies and the economy due to Non-performing Assets. It opened a new era for companies. Non-performing Assets hit the companies to a great extent from there a rewind step was not possible. Hence, the Government of India came with this pathbreaking step that brought a lot of change in the corporate realm. Moreover, IBC boosted the insolvency and

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<sup>6</sup> Swiss Ribbons Pvt. Ltd. v. Union of India, AIR 2019 SC 739 [90], [91].

<sup>7</sup> Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531 [62], [64].

<sup>8</sup> L. Viswanathan & Indranil Deshmukh 'Innoventive Industries Limited v. ICICI Bank Limited: Paradigm Shift in Insolvency Law in India' (September 1, 2017) <https://corporate.cyrilamarchandblogs.com/2017/09/innoventive-industries-limited-v-icici-bank-limited-paradigm-shift-insolvency-law-india/>> accessed 10 Mar. 23

<sup>9</sup> 2019 SCC Online SC 257.

bankruptcy process to the level that relieved the companies and creditors to a great margin. Although IBC was an innovative step it is also not new to delays it is not working at the pace that was envisaged at the time of its inception but the Government is working to make this process free from delays and make it more efficient. In a nutshell, IBC is not a straight jacket formula that can reduce the NPA to a zero level but it can reduce it to a great extent and can help in the growth of the economy.

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