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Overview of Insolvency and Bankruptcy Act, 2016

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ABSTRACT

The Insolvency and Bankruptcy Code was passed in 2016 with the goal of unifying the several laws pertaining to insolvency and bankruptcy under one comprehensive statute. It should be mentioned that safeguarding creditors' interests is one of the Code's main goals. The Verdict aimed to address the different "illnesses" that the previous regime's insolvency laws suffered from by moving away from the debtor-in-possession model and toward a model where creditors and debtors cooperate within a framework of equity and fairness to all stakeholders in order to protect the value of the company. The Code is still a work in progress therefore it wasn't flawless in every way.

In addition, the government's attention has switched to safeguarding corporate interests in the wake of the Covid-19 outbreak. Nonetheless, it appears that the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 has been implemented with the Covid-19 epidemic, firms and promoters were intended to be shielded from no fault liability, but the legislation's ambiguities seem to create more questions than they solve. In fact, it appears that the new ordinance will return to the previous model, which was against the creditors' interests. Consequently, the goal of this study is to examine and evaluate the problems and uncertainties with particular regard to the 2020 Ordinance.

Keywords: Bankruptcy, Insolvency, Code, Laws, Creditors.

I. INTRODUCTION

A major step forward in India's economic reforms is the Insolvency and Bankruptcy Code, 2016 (IBC), which aims to make conducting business easier. It guarantees the effective use of resources and promotes an atmosphere that is favourable to entrepreneurship by addressing the important components of insolvency and bankruptcy. India didn't have a thorough system in place to deal with company failures before the IBC, which resulted in drawn-out resolution procedures and poor creditor recovery. This hindered economic growth by discouraging investment and restricting lending markets. The IBC offers a fast-tracked, simplified insolvency procedure that encourages early settlement of financially troubled companies. It provides

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reorganization choices to save viable firms and encourages debtors to adjust their behaviour to avoid failures. In situations where restructuring is impractical, it promotes a smooth and systematic conclusion, reducing disturbances and optimizing the value of the assets. The Code unifies several laws into a single framework and applies not only to corporations but also to individuals and limited liability partnerships. However, a number of its clauses are being examined by judges, who will be scrutinizing its efficiency.

Although organizations such as the Insolvency and Bankruptcy Board of India were set up to supervise implementation, their functions still need to be made clear. New rules are meant to provide more clarity and outline these organizations' roles so that they can operate efficiently. Notwithstanding its admirable goals, there are disagreements and difficulties with the IBC's influence on Indian companies. Critics worry it could result in the early liquidation of successful businesses, despite supporters' belief that it will encourage constructive adjustments and sustain current operations. For proper implementation, judicial authorities' interpretation of specific provisions is still essential.

To sum up, the implementation of the IBC is a significant step in the right direction towards fostering entrepreneurship, guaranteeing creditor recovery, and improving business accessibility in India. Ongoing improvement and judicial interpretation are required, nonetheless, in order to overcome obstacles and reach the full potential of stimulating economic progress.

II. HISTORICAL BACKGROUND

The Government of India Act of 1800 contains the earliest rudiments of insolvency law in India, which has its origins in English law. A number of Acts, including the Provincial Insolvency Act of 1920 and the Presidency Towns Insolvency Act of 1909, were passed over time to combat insolvency. The provisions of these Acts, which addressed personal insolvency, were similar, but their respective territorial jurisdictions varied.

India had several laws pertaining to insolvency before the Insolvency and Bankruptcy Code was passed in 2016, including the Companies Act of 2013 and the Sick Industrial Companies Act of 1985. Nevertheless, the ineffective recovery of defaulted assets was hampered by the fragmented legal framework, which caused delays and complexity in the insolvency procedure.

A situation where an entity is unable to pay its debts is referred to as insolvency, whereas declaring bankruptcy voluntarily and going to court to have personal property liquidated in order to pay off debts is known as bankruptcy.

Over time, a number of commissions and committees were established to investigate flaws in the legal system, producing proposals for changes. Reforms to strengthen the insolvency system were suggested by the Tiwari Committee in 1981, the Narasimhan Committee in 1991, and the JJ Irani Committee in 2005.

Arun Jaitley, the finance minister, revealed intentions in 2014–15 to create a framework that would provide easy exit for small and medium-sized businesses and encourage entrepreneurship. This resulted in the establishment of the Bankruptcy Law Reform Committee, which wrote the 2015 Insolvency and Bankruptcy Bill under the direction of Dr. T.K. Viswanathan.

May 2016 saw the passage of the Insolvency and Bankruptcy Code following public comment and parliamentary approval. It sought to provide a single framework for handling insolvency cases in India by combining several laws and adjudicating bodies that dealt with insolvency, bankruptcy, revival, and liquidation of different organizations. This historic law is seen as a turning point in the nation's economic reforms, and as its provisions are put into practice and become operational, its effects should become apparent.

III. OBJECTIVES OF THE CODE

There is no denying the general consensus that modern culture encourages businesses to utilize credit. Actually, a lot of firms require debt in order to operate because it's necessary to pay for bills and investments. Debts are acceptable as long as it can be satisfied and reimbursed, and it falls within the corporate debtor's financial capacity to do so. However, if the corporate debtor is unable to return the loan by the due date, there's a good probability that the creditors will suffer a great deal. In addition, the Code gives the creditor additional authority to collect the outstanding amount through the Corporate Insolvency Resolution Process ("CIRP") or the debtor's liquidation.

- to reform and combine all of India's current bankruptcy laws.
- to speed and streamline India's bankruptcy and insolvency procedures.
- to safeguard the interests of lenders, including a company's stakeholders.
- to quickly bring the company back to life.
- to encourage self-employment.
- to enhance the amount of credit available in the economy by obtaining the required relief for the creditors.

- to develop a fresh, prompt recovery process that banks, other financial organizations, or individuals might use.
- to establish the India Insolvency and Bankruptcy Board.
- maximizing the worth of corporate entities' assets.
- Consequently, it may be noted, in the words of Justice Norman, that the "debtor's paradise" has been lost with the adoption of the Code, and all decisions pertaining to a business going through insolvency procedures are now made by the Committee and the Insolvency Resolution Professionals ("IRP") of Creditors (the "CoC").¹⁰ In a short amount of time, the IBC's implementation of new formats has produced excellent outcomes, despite inheriting some extremely sick "zombie" enterprises from the previous administration.

IV. LEGAL PROVISIONS OF THE CODE

The Insolvency and Bankruptcy Code (IBC) of 2016 is a comprehensive legislation in India that consolidates the existing framework for insolvency and bankruptcy resolution, which aim to expedite the resolution of insolvency cases, promote entrepreneurship, and improve the ease of doing business in India. Here are the key legal provisions of the Insolvency and Bankruptcy Code, 2016:

1. Corporate Insolvency Resolution (CIRP):

- Under this act, when the corporate debtor defaults on debts, creditors, including financial and operational creditors can initiate the Corporate Insolvency Process (CIRP) against debtor.
- CIRP administered by a licensed insolvency Professional appointed as the interim resolution professional initially and later as the resolution professional.
- CIRP aims to find a resolution plan to revive the debtor's business and repay the creditors.

2. Adjudicating Authority:

- (DRT) Debt recovery Tribunal deals with the Insolvency and Bankruptcy matters.
- (NCLT) National Company Law Tribunal is the adjudicating authority for corporate insolvency resolution proceedings.

3. Insolvency Professionals (IPs):

- The Insolvency Professionals plays the crucial role in the resolution process. They act as an intermediary between the debtor and the creditors during the resolution process. They are the licensed professionals who manages the affairs of the debtors during the CIRP and facilitating the formulation and implementation of resolution plans.
4. Committee of Creditors (COC):
 - The COC comprises financial creditors of the debtor. The committee is responsible for making key decisions during the resolution process. Including the approval of the resolution plans.
 - The COC is responsible for making key decisions, including the approval for resolution plans and appointment of liquidators in case of liquidation.
 5. Moratorium:
 - Upon the initiation of CIRP. a moratorium period is declared, during which creditors are prohibited from taking any action to recover their debts.
 - The moratorium provides breathing space from the resolution process and prevents creditors action that could disrupt it.
 6. Time- bound Process:
 - The IBC mandates strict timelines for resolution. The CIRP must be completed within 180 days, extendable by 90 days in certain against the debtor.
 7. Liquidation:
 - If the resolution plan is not approved within the specified timeline or if the process fails, the debtor's assets are liquidated to repay the creditors.
 - Liquidation is conducted in accordance with the provisions of the IBC, ensuring a fair and orderly distribution of proceeds among creditors.
 8. Cross- border Insolvency:
 - The IBC provides for cooperation with the foreign jurisdictions in insolvency matters through reciprocal arrangements.
 - It enables the coordination and cooperation between Indian insolvency authorities and foreign courts or authorities in cross border insolvency cases.
 9. Individual Insolvency:

- The IBC also provides for insolvency resolution and bankruptcy processes for individuals and partnership firms aimed at providing them with a fresh or facilitating orderly resolution of their debts.

10. Resolution Plan:

- Resolution applicants submit the plans in detailing how they propose to revive the debtor's business and repay the creditors.
- The COC evaluates and votes on the resolution plans, selecting the viable ones.

V. STATUS OF THE LAWS ON INSOLVENCY AFTER THE ENACTMENT OF THE IBC

- Moratorium

It goes without saying that the laws pertaining to the execution of creditors' statutory rights have been harmonized by the insolvency and bankruptcy codes. It has served as a way to combine all currently in effect regulations regarding the insolvency of both persons and business organizations into a single transaction. The moratorium conditions imposed on the corporate debtor once the corporate insolvency resolution process against the defaulting corporation begins are outlined in Section 14 of the Insolvency and Bankruptcy Code. The actions listed below are prohibited against the corporate debtor by Section 14(1) of the IBC:

1. the filing of lawsuits or other legal actions against the noncompliant business, as well as the enforcement of any judgments, decrees, or orders by the adjudicating authority, tribunal, or court of law.
 2. Any action taken under SARFAESI Act, 2002, to enforce any security interest against the corporate debtor.
- Thus, throughout the corporate bankruptcy resolution process of the corporations, any proceeding that is underway under the various current insolvency statutes comes to an end. Nonetheless, there have been decisions where the Supreme Court and the Honourable High Court have pursued cases including any processes that took place during the moratorium, and which seem to have been exempt from the moratorium's provisions.
 - No jurisdiction of civil courts under the code

Additionally, section 63 of the Code states that no suit or procedure pertaining to any topic on which the NCLT has jurisdiction may be heard by the civil court.

- Choice of liquidation under the IBC

The current insolvency regulations hardly interact with one another once a corporation is placed under the Corporate Insolvency Resolution Process. The corporation must adhere to the resolution plan offered by the different resolution applicants, and any prior applications made under the current insolvency legislation must be resubmitted.

Should the resolution plan fail to receive approval, the business will automatically enter liquidation. Section 52 of the Code grants the creditors the option to pursue liquidation independently or as a component of collective liquidation proceedings. In the event that the CIRP is implemented, the pre-existing SARFAESI applications will have payment priority after secured financial creditors, as per the standard "waterfall mechanism" outlined in Section 53 of the IBC.

VI. THE INSOLVENCY AND BANKRUPTCY AMENDMENT ACT 2021: UNRAVELLING THE PRE-PACKED INSOLVENCY RESOLUTION PROCESS FOR MSMEs

This has further been boosted by the Insolvency and Bankruptcy Amendment Act, 2021. The Insolvency and Bankruptcy Code received a significant amendment that was effected through the Insolvency and Bankruptcy Code Amendment Act. The Act was enacted on August 12, 2021 and aimed at offering support to MSMEs that were languishing under financial stress occasioned by the pandemic. This Act came after the Insolvency and Bankruptcy Code Ordinance 2021 on April 4, 2021, flagged off the Pre-Packs IPPs for MSMEs.

Pre-requisites for Initiating Pre-Packaged Insolvency Resolution Process (PPIRP)

The approval of unrelated financial creditors accounting for at least 66% of the debt, or the approval of operational creditors, and the consent of the debtor or its members, are essential before triggering the PPIRP.

Role of the Resolution Expert and Composition of the Committee of Creditors (CoC)

Resolution Expert and Composition of Committee of Creditors A resolution expert, if nominated by a financial creditor with not less than 10% of the debt and sanctioned by at least 66% of the debt represented by the unaffiliated financial creditors, is also appointed to supervise the PPIRP upon its commencement. The CoC, working under the authority to approve the base plan without compromising the operational creditors' claims, shall also receive a base resolution plan from the corporate debtor. Further plans shall be welcomed if the CoC declines the base plan or contravene the operational creditors' claims.

Shorter Timeline for Resolution and Debtor-in-Possession Model: The Amended IBC shortens the resolution to 120 days and inverts the power balance between creditor and debtor as

compared to the Corporate Insolvency Resolution Process, which gives the consumer more appeals opportunities. As of the last admitted PPIRP application, only two have been confirmed, with the most recent applicant being from March 31, 2022.

VII. CONCLUSION

A significant turning point in India's economic reform initiatives is the Insolvency and Bankruptcy Code, 2016, which attempts to simplify the nation's bankruptcy and insolvency procedures. This comprehensive legislation offers a uniform framework for the settlement of financial difficulties for both corporate and non-corporate entities by consolidating and streamlining current regulations. The Code aims to speed up the resolution process by defining precise protocols and deadlines, which would boost creditor trust and make doing business in India easier.

Establishing crucial institutional infrastructure, such as the Insolvency and Bankruptcy Board of India, Insolvency Professional Agencies, Insolvency Professionals, Information Utilities, and Adjudicating Authorities, is essential to the Code's efficacy. These organizations are essential in ensuring effective and transparent resolution procedures by supervising and assisting with the Code's implementation.

The Code's emphasis on timely resolution, which aims to avoid drawn-out litigation and maximize value for stakeholders, is one of its key characteristics. The Code encourages prompt resolution while protecting the interests of all parties by establishing set deadlines for different phases of the insolvency process. In order to handle matters quickly and effectively, the Code also adds procedures like voluntary liquidation and fast-track resolution.

Preliminary data indicates encouraging results, with a significant number of cases filed under the Code since it was passed. Still, there are difficulties, such as complicated legal issues and continuous judicial disputes. It is imperative to recognize that an ultimate appraisal of the Code's efficacy necessitates ongoing observation and analysis over an extended period of time.

In conclusion, the Insolvency and Bankruptcy Code, 2016 is a strong mechanism for resolving financial distress and fostering economic growth, and it marks a significant step towards improving India's insolvency regime. While first signs are encouraging, persistent difficulties highlight how crucial it is to keep an eye on and improve the Code in order to guarantee its long-term success.

(A) Suggestion

The 2016 Code stipulates a timeline for resolving insolvency. Creditors take possession of the

debtor's assets in the event of a repayment default, and they have 180 days to decide how to handle the debtor's insolvency. The Code also shields debtors from creditor resolution claims during this time to guarantee a continuous resolution process. In order to create a common platform for debtors and creditors of all classes to address insolvency, the Code also unifies several sections of the existing legislative framework.

The Insolvency and Bankruptcy Code, 2016 marks the beginning of a major economic transformation in India by enabling the establishment and closure of businesses and promoting individual economic independence. It provides a uniform framework for entities by harmonizing insolvency proceedings and replacing antiquated laws. This law guarantees expediency, strengthens the rights of creditors, and promotes economic growth.

By creating essential organizations like the Insolvency and Bankruptcy Board, the Code guarantees efficient management and supervision. Early signs point to positive results, including a significant decrease in the number of open cases. Notwithstanding, certain obstacles persist, hence requiring an ongoing assessment of its efficacy in attaining prompt remedies.

Even with early victories, continued legal challenges and unresolved cases show how important it is to continue monitoring. The Code has an impact that goes beyond its legal provisions; it has changed the economic environment and promoted a dynamic company culture.

The Insolvency and Bankruptcy Code is a key reform that reflects India's commitment to encouraging entrepreneurship, boosting investor confidence, and accelerating sustainable growth as the country moves forward with its economic development.

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