



Insolvency and Bankruptcy Code

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Why in News

The Union Cabinet has approved the proposal to make amendments in the **Insolvency and Bankruptcy Code (IBC), 2016**, through the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019. The amendments aim to remove certain difficulties being faced during insolvency resolution process to realise the objects of the code and to further ease doing of business.

Insolvency and Bankruptcy Code, 2016

Insolvency and Bankruptcy Code, 2016 provides a time-bound process for resolving insolvency in companies and among individuals.

- **Insolvency** is a situation where individuals or companies are unable to repay their outstanding debt.
- **Bankruptcy**, on the other hand, is a situation whereby a court of competent jurisdiction has declared a person or other entity insolvent, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.
- The Government implemented the Insolvency and Bankruptcy Code (IBC) to consolidate all laws related to insolvency and bankruptcy and to tackle Non-Performing Assets (NPA), a problem that has been pulling the Indian economy down for years.
- The Code is quite different from the earlier resolution systems as it shifts the responsibility to the creditor to initiate the insolvency resolution process against the corporate debtor.

- The recently proposed amendments aim to remove bottlenecks, streamline the corporate insolvency resolution process, and protect the last mile funding in order to boost investment in financially distressed sectors.

Ring-fencing the companies resolved under the IBC from regulatory actions during past management can make the IBC process attractive for investors and acquirers.

Objectives of IBC

- To consolidate and amend all existing insolvency laws in India.
- To simplify and expedite the Insolvency and Bankruptcy Proceedings in India.
- To protect the interest of creditors including stakeholders in a company.
- To revive the company in a time-bound manner.
- To promote entrepreneurship.
- To get the necessary relief to the creditors and consequently increase the credit supply in the economy.
- To work out a new and timely recovery procedure to be adopted by the banks, financial institutions or individuals.
- To set up an Insolvency and Bankruptcy Board of India.
- Maximization of the value of assets of corporate persons.

Salient features of the Insolvency and Bankruptcy Code, 2016

- Covers all individuals, companies, Limited Liability Partnerships (LLPs) and partnership firms.
- Adjudicating authority:
 - **National Company Law Tribunal (NCLT)** for companies and LLPs
 - **Debt Recovery Tribunal (DRT)** for individuals and partnership firms

Insolvency Resolution Process

- Insolvency resolution process can be initiated by any of the stakeholders of the firm: firm/debtors/creditors/employees.
- If the adjudicating authority accepts, an **Insolvency resolution professional (IP)** is appointed.
- The power of the management and the board of the firm is transferred to the **committee of creditors (CoC)**. They act through the IP.
- The IP has to decide whether to revive the company (insolvency resolution) or liquidate it (liquidation).
- If they decide to revive, they have to find someone willing to buy the firm.
- The creditors also have to accept a significant reduction in debt. The reduction is known as a haircut.
- They invite open bids from the interested parties to buy the firm.

- They choose the party with the best resolution plan, that is acceptable to the majority of the creditors (75 % in CoC), to take over the management of the firm.
- Establishment of an **Insolvency and Bankruptcy Board of India** to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- **Insolvency professionals** handle the commercial aspects of insolvency resolution process.
- **Insolvency professional agencies** develop professional standards, code of ethics and be first level regulator for insolvency professionals members leading to development of a competitive industry for such professionals.
- **Information utilities** collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- Enabling provisions to deal with **cross border insolvency**.

Achievements of the IBC

- IBC is a vast improvement on the two earlier laws legislated to recover bad loans —the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB).
- **Speedier Resolution:** Before IBC, resolution processes took an average of 4-6 years, after the enactment of IBC, they came down to 317 days.
- **Higher Recoveries:** Recoveries are also higher: 43% after the IBC, against 22% before it.
- Due to the institution of IBC, we have seen that many business entities are paying up front before being declared insolvent. The success of the Act lies in the fact that many cases have been resolved even before it was referred to NCLT.
- A steady increase in the number of admitted corporate insolvency resolution process (CIRP) cases.

By the end of March 2019, a total of 1858 cases were admitted for resolution – of which 152 have been appealed/reviewed/settled, 91 have been withdrawn, 378 ended in liquidation and 94 have ended in approval of resolution plans.

Challenges for IBC

- **Lack of operational NCLT benches:** Though the government had, in July 2019, announced setting up of 25 additional single and division benches of NCLT at various places including Delhi, Jaipur, Kochi, Chandigarh, and Amravati, most of these remain non-operational or partly operational on account of lack of proper infrastructure or adequate support staff.

- **low approval rate of resolution plans:** According to the data from the Insolvency and Bankruptcy Board of India (IBBI), of the 2,542 corporate insolvency cases filed between December 1, 2016 and September 30, 2019, about 156 have ended in approval of resolution plans — a mere 15%.
- High number of liquidations is a cause for major worry as it violates IBC's principal objective of resolving bankruptcy.
- **Slow judicial process** in India allows the resolution processes to drag on, this was the same reason for slow recovery under SICA or RBBD.

Conclusion

Operationalisation of IBC, till now, has been spoiled by myriad factors ranging from frivolous challenges posed by operational creditors and promoters to shortage of judges in tribunals. As a result, an important piece of legislation like IBC, which was expected to usher in a new era of ease of doing business, may fall into the trap of implementation failure. Timely amendments, which provide more teeth to the Code, can only rescue the process. New amendments of 2019 in IBC should be closely watched and observed in that light.

For Mind Map