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Amendment in IBBI Regulations 2016

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Why in News

Recently, the **Insolvency and Bankruptcy Board of India (IBBI)** has amended the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**.

- The amendments are aimed at **enhancing the discipline, transparency, and accountability** in corporate insolvency proceedings.
- In March 2021 a sub-committee of the **Insolvency Law Committee (ILC)** **recommended a pre-pack framework** within the basic structure of the **Insolvency and Bankruptcy Code (IBC), 2016**.

Key Points

- **Revealing Former Names & Address:**
 - The amendment **requires an Insolvency Professional (IP) conducting Corporate Insolvency Resolution Process (CIRP) to disclose all former names and registered office address(es)** so changed in the two years preceding the commencement of insolvency along with the current name and registered office address of the Corporate Debtor (CD), in all its communications and records.
 - **CIRP** includes **necessary steps to revive the company** such as raising fresh funds for operation, looking for a new buyer to sell the company as a going concern, etc.
 - **CD is any corporate organization** which owes a debt to any person.
 - A CD **may have changed its name or registered office** address prior to commencement of insolvency. Therefore the **stakeholders may find it difficult to relate to the new** name or registered office address and consequently fail to participate in the **CIRP**.

- **Appointment of Professionals:**
 - The amendment provides that the **Interim Resolution Professional (IRP)** or **Resolution Professional (RP)** **may appoint a professional, other than registered valuers**, if he is of the opinion that the services of such professional are required and such services are not available with the CD.
 - Such appointments shall be made on an **arm's length basis** following an objective and **transparent process**.
- **Avoidance of Transactions:**

The **RP is duty bound to find out if a CD has been subject to avoidance transactions**, namely, preferential transactions, undervalued transactions, extortionate credit transactions, fraudulent trading and wrongful trading, **and file applications with the Adjudicating Authority seeking appropriate relief**.
- **Significance:**

It would **allow stakeholders to claw back lost value** and would **disincentive stakeholders** from entering into such transactions.

Note

- **Insolvency:** It is a situation where **individuals or companies are unable to repay their outstanding debt**.
- **Bankruptcy:** It 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.

Insolvency and Bankruptcy Code

- **Enactment:**

The IBC was **enacted in 2016**.
- **Objective:**
 - To **streamline and speed up the resolution process** of failed businesses.
 - To **consolidate provisions of the existing legislative framework** to form a common forum for debtors and creditors of all classes to resolve insolvency.
 - To **stipulate that the resolution process** of a stressed company will **have to be completed in a maximum of 270 days**.

- **Institutions to Facilitate Resolution of Insolvency:**
 - **Insolvency Professionals:**

These professionals **administer the resolution process, manage the assets of the debtor, and provide information for creditors** to assist them in decision making.
 - **Insolvency Professional Agencies:**

The agencies **conduct examinations to certify the insolvency professionals and enforce a code of conduct** for their performance.
 - **Information Utilities:**

Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.
 - **Adjudicating Authorities:**
 - The proceedings of the resolution process are adjudicated by the **National Company Law Tribunal (NCLT)**, for companies; and the **Debt Recovery Tribunal (DRT)**, for individuals.
 - The **duties of the authorities** will include approval to initiate the resolution process, appoint the insolvency professional, and approve the final decision of creditors.
 - **Insolvency and Bankruptcy Board:**
 - It is a **key pillar of the ecosystem** responsible for implementation of the Code.
 - It **regulates insolvency professionals, insolvency professional agencies and information utilities** set up under the Code.
 - The Board consists of representatives of the **Reserve Bank of India**, and the Ministries of Finance, Corporate Affairs and Law.
- **Insolvency Resolution Process**
 - It can be **initiated by any of the stakeholders** of the firm (debtors/creditors/employees). If the adjudicating authority accepts, an **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.

Source: PIB