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In Depth - Insolvency and Bankruptcy Code Act

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The Central government introduced the Insolvency and Bankruptcy Code (IBC) in 2016 to resolve claims involving insolvent companies. This was intended to tackle the bad loan problems that were affecting the banking system. Two years on the IBC has succeeded in a large measure in preventing corporates from defaulting on their loans. The IBC process has changed the debtor-creditor relationship. A number of major cases have been resolved in two years, while some others are in advanced stages of resolution.

What is IBC?

- Insolvency and Bankruptcy Code, 2016 is considered as one of the biggest insolvency reforms in the economic history of India.
- This was enacted for reorganization and insolvency resolution of corporate persons,

partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons.

Background

- The era before IBC had various scattered laws relating to insolvency and bankruptcy which caused inadequate and ineffective results with undue delays. For example,
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act SARFAESI –for security enforcement.
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) for debt recovery by banks and financial institutions.
- Companies Act for liquidation and winding up of the company.
- Ineffective implementation, conflict in one of these laws and the time-consuming procedure in the aforementioned laws, made the Bankruptcy Law Reform Committee draft and introduce Insolvency and Bankruptcy Law bill.

Objectives of IBC

- 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.

The Insolvency and Bankruptcy Code ecosystem

- National Company Law Tribunal (NCLT) – The adjudicating authority (AA), has jurisdiction over companies, other limited liability entities.
- Debt Recovery Tribunal (DRT) has jurisdiction over individuals and partnership firms other than Limited Liability Partnerships.
- The Insolvency and Bankruptcy Board of India (IBBI) – apex body for promoting transparency & governance in the administration of the IBC; will be involved in setting up the infrastructure and accrediting IPs (Insolvency Professionals (IPs) & IUs (Information Utilities).
- It has 10 members from Ministry of Finance, Law, and RBI.
- Information Utilities (IUs) - a centralized repository of financial and credit information

of borrowers; would accept, store, authenticate and provide access to financial data provided by creditors.

- IPs- persons enrolled with IPA (Insolvency professional agency (IPA) and regulated by Board and IPA will conduct resolution process; it will act as Liquidator/ bankruptcy trustee; they are appointed by creditors and override the powers of the board of directors.
- IPs have the power to furnish performance bonds equal to assets of the company under insolvency resolutions
- Adjudicating authority (AA) - would be the NCLT for corporate insolvency; to entertain or dispose of any insolvency application, approve/ reject resolution plans, decide in respect of claims or matters of law/ facts thereof.

Key aspects of the Insolvency and Bankruptcy Code

- IBC proposes a paradigm shift from the existing 'Debtor in possession' to a 'Creditor in control' regime.
- IBC aims at consolidating all existing insolvency related laws as well as amending multiple legislation including the Companies Act.
- The code aims to resolve insolvencies in a strict time-bound manner - the evaluation and viability determination must be completed within 180 days.
- Moratorium period of 180 days (extendable up to 270 days) for the Company. For startups and small companies the resolution time period is 90 days which can be extended by 45 days.
- Introduce a qualified insolvency professional (IP) as intermediaries to oversee the Process
- Establishment of Insolvency and Bankruptcy board as an independent body for the administration and governance of Insolvency & bankruptcy Law; and Information Utilities as a depository of financial information.

The success of IBC

Burgeoning NPAs

21 PSU banks had combined gross NPAs of Rs 7.3 lakh crore at the end of September 2017 quarter. This was a growth of 27% as compared to 2016 quarter.

How has IBC helped?

- 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.
- 4452 cases were dismissed at the pre-admission stage. Hence, it shows the effectiveness of IBC.

- Presently, there are 1332 cases before NCLT.
- Realization by creditors around Rs 80,000cr in resolution cases.
- Banks recovered Rs 5.28 lakh crore in 2017-18, compared to just Rs 38500 cr in 2016-17.
- The maximum amount recovered was Rs 4, 92,500 cr from 21 companies.
- 12 big cases are likely to be resolved this year, and the realization in these cases is expected to be around Rs 70000 Cr.

Amendments in IBC

- The President has assented to the promulgation of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 on June 6, 2018. The two key amendments would help both the real estate sector and the MSMEs
- Homebuyers Recognized as Financial Creditors- giving them due to representation in the Committee of Creditors (CoC). Thus, now home buyers will be an integral part of the decision making process.
- Special Provisions for MSME- now, the promoters of MSMEs are allowed to bid for their companies as long as they are not willful defaulters and don't attract any other related disqualification. This has corrected the anomaly in the section 29A of the existing act which had barred promoters of defaulting assets from bidding for their assets.