



INSOLVENCY AND BANKRUPTCY CODE: AN ANALYSIS OF ITS SHORT LIVED TIME

By *Nipun Bansal and Prabhat Tyagi*
From *Amity Law School, Noida*

Abstract

The Insolvency and Bankruptcy Code, 2016 was brought forward by the Government of India to hasten the process of insolvency resolution in India which in past took about an average of 4.3 years. This act was also implemented to deal with the massive amount of cases of non-performing loans of bank. Recently the Indian Government has decided that the act should be suspended till the next year. This research might not be the Alpha to Omega of the Insolvency and Bankruptcy Code, but it will attempt to answer the following prominent questions- How this Code came into force? What is the structure and framework of the code? What are the responsibilities of the various parties involved? What were the various landmark Judgments under the Act? Is there a future for this Code in The Indian Legal fraternity after the Covid-19 Pandemic? This paper shall also discuss the important amendments made to the act throughout the years.

Keywords: Insolvency, Judgments, Bankruptcy, Amendments, Pandemic.

❖ **Introduction**

Now if you ask someone who went bankrupt that how happened it is most probable he will tell you that “at first it started happening

slowly and then suddenly I was in a position from where there was no way out for me other than declaring bankruptcy”¹. The insolvency reforms in India also took place in the same style as even after years of discussion and debating over the topic the Insolvency and Bankruptcy Code was not passed but it seemed so sudden when on 5th May the bill for the same was passed and on 5th August, 2016 the Insolvency and Bankruptcy Code came into force. The fight for bringing a consolidated code for all insolvency and bankruptcy related laws was a prolonged one, but in the end the battle for it was won on 28th May, 2016 when the President of India gave his assent to pass the bill.

The Insolvency and Bankruptcy Code came into force at a time when the Government of India was trying to bring in a reform of “Ease of Doing Business in India”, now this reform was just not all about bringing reform which will focus on making life of entrepreneurs and their businesses workings easy, but also to provide a seemingly efficient exit strategy if their business goes under.²

The agenda was on the backburner for over 50 years, considering that the 26th Law Commission in 1964 had recommended rewriting of insolvency laws, this wait for arrival of this code makes it even more landmark and huge for the Indian economy. The Code has been amended from time to time since its authorization to expel bottlenecks and to smooth out the Corporate Insolvency Resolution Process (“CIRP”)

¹ Insolvency and Bankruptcy Code a Miscellany of Perspectives, Insolvency and Bankruptcy Board of India (Nov.10, 2019) - <https://ibbi.gov.in/uploads/publication/2019-10-11->

[191135-wv5q0-2456194a119394217a926e595b537437.pdf](https://ibbi.gov.in/uploads/publication/2019-10-11-191135-wv5q0-2456194a119394217a926e595b537437.pdf).

² Megha Mittal, IBC Ushering in New Era, - <http://vinodkothari.com/wp-content/uploads/2019/06/Booklet-IBC-Final.pdf>



under the Code. Various landmark judgments have also been passed by the National Company Law Tribunal in the life span of the code.

❖ **Brief Background**

Before the formation of the IBC, 2016 the individual insolvency issues were administered through Presidency Towns Insolvency Act, 1090 (for residents of Kolkata, Chennai and Mumbai) and Provincial Insolvency Act, 1920 (for other residents) whereas, for the Corporate and Firm insolvency regulation, the acts such as Indian Partnership Act, 1932, Companies Act, 1956, Sick Industrial Companies Act, 1985 etc. were applied.

Since these laws are almost a century old, they suffered from many loopholes, contradictory provisions and mainly none of them stated the fixed or specified time duration for the resolution process, due to which insolvency resolution process in India takes about 4.3 years on average³. Compared with UK's (1 year) and USA's (1.3 years), India's numbers were really bad which in turn had made it more cumbersome and inefficient for the investors doing business and also hampered the confidence of lenders over time, therefore a more consolidated regulatory framework needs to be established.

As in the present day scenario where the market activities are operating on a fast pace, the regulations for the same are also in vital need to be fast and advanced as compared to the previous century. In order to overcome the laggy process, strengthen the framework

and to address the shortcomings in the existing insolvency laws, the Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. It got passed by both Lok Sabha and Rajya Sabha on 5 and 11 May, 2016 respectively and got the President's assent on 28 May, 2016. The Insolvency and Bankruptcy Code, 2016 was formed repealing SICA (Sick Industrial Companies Act) which failed to provide the required results.

The code is designed in such a way that it fulfills almost every loophole and lacking provisions which were there in the previous laws. It also provides for an effective resolution process in a time bound manner and aims to protect small investor's interest by making the process of doing business efficient and less complex.

The significant features of the code are;

- Comprehensive in nature – The code regulated the process of insolvency and bankruptcy of all persons including corporate, partnership and individuals as well.
- Time bound resolution – The code provides for a low time frame for the resolution and defines a fixed time for insolvency process of companies (180 + 90 days) and individuals (90 + 45 days)
- Single law – The code provides a singular platform for all the relief's related to insolvency and recovery of debts making the process less cumbersome.
- Promotes entrepreneurial activity – With the help of its fast resolution process and revival mechanism the

³ ETBFSI, What is Insolvency and Bankruptcy Code (IBC) 2016?, ET Times, (Feb. 21, 2020) - <https://bfsi.economicstimes.indiatimes.com/news/bank>

[ing/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436](http://www.supremoamicus.org/ing/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436).



code promotes entrepreneurial activity in India.

The code was formed with a view to consolidate and foster the laws relating to the reorganizing and insolvency resolution in a time bound and an efficient manner so that it maximizes the value of assets of such persons, to promote entrepreneurial activities, availability of credit and to balance the interests of all stakeholders. It provides a better procedure for restructuring and reorganizing of a firm's debt and also fastens the liquidation of a falling business and efficient recovery of creditor's investment.

The new code comprises of the following components;

- IBBI – Insolvency and Bankruptcy Code of India – the board shall act as a regulator
- IP's – Insolvency Professionals – the insolvency process will be managed by these licensed professionals to provide a more masterful functioning of the act.
- Adjudicating Authority – for the insolvency resolution process of companies; National Company law Tribunal (NCLT) and of Individuals; Debt Recovery Tribunal (DRT) were established.

❖ **Unexpected Turn of Events**

A virus named corona outbreaks in Wuhan, China affecting wellbeing of many people and economies worldwide. Along with health hazards, the economies across the globe got hit badly and got affected in such a way that

it got pushed into recession, wherein the prospectus growth of respective economies of countries stopped. Due to losses and recession in the business various industries and companies got affected so bad that some even came on the verge of insolvency and total bankruptcy. According to an analysis by IMF (International Monetary Fund), the global economy is expected to shrink by over 3% in 2020 as most businesses have shut down and manufacturing output in most of the countries have drastically gone down causing a recession in the global economy⁴.

The situation for India is also very grim, as the businesses are drowning in losses and incurring heavy debts, due which the corporates and firms are moving towards a state of insolvency and bankruptcy. Keeping the condition of these business doers and corporate borrowers in mind the government took a decision to provide relief to them by amending the insolvency law by suspending up to one year provisions that initiate insolvency proceedings against such persons and defaulters along with increased threshold for insolvency under IBC from Rs.1 lakh to Rs.1 crore and to prevent initiation of insolvency proceedings against MSMEs under the government's 'Atma Nirbhar Bharat' scheme⁵. This step by government proves to be a blessing for the business doers as it will facilitate them in reviving work for their respective companies. It will also encourage them in getting past through these difficult times with the support provided by the government.

⁴ Explained Desk, Explained: How Covid-19 has affected the global economy, The Indian Express, (may 16, 2020) - <https://indianexpress.com/article/explained/explained-how-has-covid-19-affected-the-global-economy-6410494/>

⁵ PTI, Govt decides to suspend up to 1-year IBC provisions that trigger fresh insolvency proceedings: Report, The Economic Times, (Apr. 23, 2020) - <https://economictimes.indiatimes.com/news/economy/policy/govt-decides-to-suspend-up-to-1-year-ibc-provisions-that-trigger-fresh-insolvency-proceedings/articleshow/75323344.cms?from=mdr>



Finance Minister Nirmala Sitharaman, in her statement says that if the situation of the current pandemic continued beyond April 30, then the ministry would be suspending section 7, 9 and 10 of the Insolvency and Bankruptcy Code (IBC) for duration of six months in order to prevent the forced insolvency proceedings against the companies. Wherein section 7, 9 deals with the initiation of corporate insolvency proceedings by a financial and an operational creditor respectively, and section 10 relates to filing of an application for insolvency resolution by a corporate. The decision amidst the coronavirus pandemic would provide a major relief and prove to be a boon for many fatally impacted businesses and economic activities in the country and would provide a more convenient way for the corporate borrowers in repayment and restructuring their loans too.

❖ Landmark Case Laws

The life span of The Insolvency and Bankruptcy Code might have been a short one but even in its bite sized life span, The Supreme Court of India and National Companies Law Appellate Tribunal gave some landmark judgments which helped the act to grow further. Some of these judgments will be discussed below:-

I. Innoventive Industries Ltd. (Corporate Debtor) Vs. ICICI Bank & Another (2017) (SC):-

⁶ IBC Laws, Landmark Judgements in Insolvency and Bankruptcy Code(IBC), 2016, (May 9, 2020) - <https://ibclaw.in/landmark-judgements-in-insolvency-and-bankruptcy-codeibc-2016/>.

⁷ IBC Laws, The time limit prescribed in IBC, 2016 for admitting or rejecting a petition or initiation of CIRP under proviso to sub-sec. (5) of Sec. 9, is directory- Surendra Trading Company Vs. Juggilal

In this case the Supreme Court came up with various directions which further aged the Insolvency and Bankruptcy Code, 2016. One of which was that once the proceedings for insolvency against a company is initiated and an insolvency professional is responsible for managing the company then the board of directors have no power to initiate an appeal on behalf of the company⁶. Secondly the Supreme Court quoting section 238 of the act was austere in directing that Insolvency and Bankruptcy Code is a parliamentary act and hence it has overriding powers over any other law made by the state as the matters under insolvency come under the purview of Central Government. Lastly Supreme Court of India through various remarks made during the proceedings emphasized that the time is of essence in the cases related to insolvency, hence time period of the proceedings cannot be extended so that valuation of certain assets will go up later.

II. Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Others, 2017(SC):

In this case the Supreme Court decided that the condition of time limit provided under IBC, 2016 under section 9(5) and its proviso is only directly and not mandatory. Which lead to show that the Adjudicating Authority can reject an application without giving prior notice to the appellant of 7 days to make rectifications in the plaint. This further cemented the powers of the adjudication body.⁷

Kamlapat Jute Mills Company Ltd. & Others-Supreme Court, (Sep. 18, 2017) - <https://ibclaw.in/whether-the-time-limit-prescribed-in-ibc-2016-for-admitting-or-rejecting-a-petition-or-initiation-of-insolvency-resolution-process-is-mandatory-surendra-trading-company-vs-juggilal-kamlapat-jute-m/>.



III. Brilliant alloys private limited vs Mr. S. Rajagopal & Others, 2018(SC);

There was an amendment made to the IBC with effect from 06.06.2018 which introduced section 12A to the act which lets the cooperate debtor to settle the dispute with the creditors outside the IBC procedure. This section allows the adjudicating body to wave off the case against the corporate debtor if 90% of the appellants are satisfied with the new arrangement offered by the corporate debtor to clear his debts.⁸ Now section 12A of the Insolvency Bankruptcy Code, 2016 is to be read with regulation 30A of the CIRP which states that to dissolve a proceeding against a corporate debtor the appellants must give such withdrawal in writing to the IRP or RP at the time. Now In this judgment the Supreme Court gave judgment that regulation 30A is only directory and not mandatory. Regulations are to be read with the main section and the main section does not contain any such stipulation⁹

IV. Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors and Cables Limited, 2018(SC);

In this case the judgment given by NCLAT was rescinded by the Supreme Court directing that IBC cannot be brought forward

⁸ Singh and Associates, India: NCLT And NCLAT Allow Withdrawal Of Applications Under Section 12A Of IBC Deviating From Regulation 30A, A Better Chance At A Settlement Between Parties Given More Importance, Mondaq, (Mar. 24, 2020) - <https://www.mondaq.com/india/insolvencybankruptcy/905760/nclt-and-nclat-allow-withdrawal-of-applications-under-section-12a-of-ibc-deviating-from-regulation-30a-a-better-chance-at-a-settlement-between-parties-given-more-importance>.

⁹ Discussion Paper on Corporate Insolvency Resolution Process along with Draft Regulations, IBBI, (May 8,

where there is an actual dispute going on already. The judgment viably guarantees that the insolvency procedure, especially corresponding to operational creditors, can't be utilized to sidestep the other adjudicatory and requirement systems under different statutes. It likewise has an impact that the operational creditors having a case of an altogether lesser sum don't rashly place the corporate account holders into the resolution process.¹⁰

V. Black Pearl Hotels Pvt. Ltd. v. Planet M. Retail Ltd, 2017(SC);

In this case the Supreme Court decided that the duty of assurance of an instrument or, to elucidate, to decide when there is a challenge a specific document to be of explicit nature, the adjudication must be finished by the judge in the wake of hearing the advice of the parties involved It is a piece of legal capacity and henceforth, the same duties cannot be delegated.

❖ Conclusion

The early days of The Insolvency and Bankruptcy Code, 2016 can be perfectly summarized in these 5 words which are "glass half empty half full". IBC was still at a stage of infancy when it was called off earlier this year due to the unexpected events

2019)..https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/May/CIRP%20Discussion%20Paper%20revised%201_2019-05-08%2019:10:29.pdf

¹⁰ By Guest, Supreme Court on Insolvency Resolution by Operational Creditors, IndiaCorpLaw, (Nov. 13, 2018) - <https://indiacorplaw.in/2018/11/supreme-court-insolvency-resolution-operational-creditors.html#:~:text=The%20Transmission%20Corporation%20of%20Andhra,Equipment%20Conductors%20and%20Cables%20Limited.&text=It%20was%20held%20that%20the,favour%20of%20the%20Equipment%20Conductors.>



caused by COVID-19 throughout the world, which meant that the codified law was unable to achieve its full potential. With the law growing each day by various progressive interpretations given by the Judiciary in the past on this subject, in future IBC was on the course of becoming a highly dynamic and progressive law for debt resolution in India.

Now the glass was half- empty regarding IBC according to many jurists was because of the shortcomings the code had in its early years and still had, on this Late Mr. Arun Jaitley said in 2019 “that the act is doing exponential and needs time to become the mammoth everyone expects it to become for India”.

Now the progress of this act has been halted by coming of this Global Pandemic as the Central Government of India had to suspend the functioning of this act because of the humungous number of cases being filed on account of insolvency because people were unable to pay their debts simply due to the nonfunctioning of factories and companies during the lockdown period in India.

It would be amazing to see IBC making a comeback in the coming years after the spread of this virus is controlled by the Indian Government, but it is safe to say that this code is going to be kept in a safe closet somewhere in the Finance Ministry’s office until the situation outside improves.
