

INSOLVENCY AND BANKRUPTCY LAW

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Author Note

Insolvency and Bankruptcy Law has grown into one of the most important areas of law in India, yet many students find it difficult to understand because it touches so many fields — corporate law, banking, finance, and court procedure. This outline was created to give students a clear and simple starting point, beginning with the basics and slowly moving toward more complex topics under the Insolvency and Bankruptcy Code, 2016. It is not a replacement for the actual law — readers should read the IBC alongside this guide and refer to judgments of the NCLT, NCLAT, and the Supreme Court as they progress. Whether you are a law student, a moot court participant, or a researcher, this outline is simply meant to make your journey through the subject a little easier.

Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) represents a transformative reform in India's insolvency framework, consolidating previously fragmented laws into a comprehensive and time-bound mechanism for insolvency resolution and liquidation. Enacted with the objective of maximizing the value of assets, promoting entrepreneurship, ensuring the availability of credit, and balancing the interests of all stakeholders, the Code has significantly altered the landscape of corporate insolvency in India. Prior to the IBC, insolvency proceedings were characterized by procedural delays, multiple adjudicatory forums, and low recovery rates, which adversely affected economic growth and investor confidence. This study examines the conceptual foundations, institutional framework, and operational mechanisms of the Insolvency and Bankruptcy Code, 2016. It explores the roles of key stakeholders, including financial creditors, operational creditors, insolvency professionals, adjudicating authorities, and the Committee of Creditors, while analyzing the Corporate Insolvency Resolution Process (CIRP) as the central pillar of the insolvency regime. The research further evaluates significant judicial pronouncements that have shaped the interpretation and implementation of the Code, particularly concerning the principles of value maximization, creditor autonomy, and corporate revival. Additionally, the study highlights emerging challenges within the insolvency ecosystem, including delays in resolution, treatment of operational creditors, cross-border insolvency issues, and the effectiveness of the liquidation framework. Through a doctrinal analysis of statutory provisions, case law, and regulatory developments, the paper assesses the extent to which the IBC has achieved its intended objectives and identifies areas requiring further reform. The study concludes that while the IBC has substantially improved India's insolvency resolution framework and strengthened credit discipline, continuous legislative refinement and institutional strengthening remain essential to ensure efficiency, predictability, and long-term economic stability. The Code thus stands as one of the

most significant legal and economic reforms in contemporary India, with far-reaching implications for corporate governance, financial markets, and commercial jurisprudence.

Keywords: Insolvency and Bankruptcy Code, Corporate Insolvency Resolution Process, Creditors, Corporate Debtor, Liquidation, Resolution Plan, NCLT, Insolvency Law, Commercial Jurisprudence, Corporate Governance.



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The Insolvency and Bankruptcy Code, 2016 (IBC) is a landmark legislation enacted to provide a unified and time-bound framework for resolving insolvency and bankruptcy matters in India¹. It aims to maximize the value of assets, promote entrepreneurship, and balance the interests of creditors and debtors. By replacing the previously fragmented insolvency regime, the IBC has strengthened credit discipline and improved the ease of doing business in India². The Code plays a crucial role in ensuring economic stability through efficient resolution and liquidation processes.

INTRODUCTION

The growth of a nation's economy largely depends upon the stability and efficiency of its financial and corporate sectors. In a developing economy such as India, businesses frequently rely on credit and external financing for expansion and operations. However, when a company becomes unable to meet its financial obligations, a legal framework is required to address the interests of creditors, employees, investors, and other stakeholders. This situation gives rise to insolvency and bankruptcy proceedings. Insolvency refers to the financial condition in which an individual or entity is unable to repay its debts as they become due, whereas bankruptcy is the legal process through which such insolvency is resolved under the law. Prior to 2016, India's insolvency regime was fragmented across multiple statutes and adjudicatory forums³, resulting in delays, inefficiencies, and poor recovery rates. The absence of a unified mechanism adversely affected credit availability and investor confidence. To address these challenges, the Parliament enacted the Insolvency and Bankruptcy Code, 2016, which consolidated existing insolvency laws into a comprehensive and time-bound framework. The Code seeks to maximize the value of assets,

¹ Insolvency and Bankruptcy Code, 2016, Preamble.

² *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

³ Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee* (2015).

promote entrepreneurship, ensure the availability of credit, and balance the interests of all stakeholders⁴. It has emerged as one of the most significant economic reforms in contemporary India and has substantially transformed the country's insolvency resolution process. The present research paper examines the evolution, framework, objectives, and practical functioning of the Insolvency and Bankruptcy Code, 2016, while also analyzing its achievements, challenges, and future prospects in strengthening India's insolvency ecosystem

1.1 Research Methodology

The present study adopts a doctrinal method of legal research. The research is primarily based on an analysis of statutory provisions, judicial decisions, committee reports, and regulatory materials relating to insolvency and bankruptcy law in India. Primary sources include the Insolvency and Bankruptcy Code, 2016, relevant judgments of the Supreme Court of India, the National Company Law Tribunal (NCLT), and the National Company Law Appellate Tribunal (NCLAT). Secondary sources such as books, journal articles, research papers, reports of the Bankruptcy Law Reforms Committee, and publications of the Insolvency and Bankruptcy Board of India have also been consulted. The study is analytical and descriptive in nature and seeks to examine the evolution, framework, challenges, and future prospects of the Insolvency and Bankruptcy Code, 2016.

1.2 Objectives of the Study

1. To examine the evolution of insolvency laws in India.
2. To analyse the objectives and salient features of the Insolvency and Bankruptcy Code, 2016.
3. To study the institutional framework established under the Code.
4. To examine the Corporate Insolvency Resolution Process and liquidation mechanism.
5. To analyse important judicial decisions interpreting the provisions of the Code.

⁴ Insolvency and Bankruptcy Code, 2016, Preamble.

6. To evaluate the challenges and future prospects of the insolvency regime in India

1.3 Research Questions

1. Why was a comprehensive insolvency framework required in India?
2. How has the Insolvency and Bankruptcy Code transformed the insolvency resolution process?
3. What role do institutions such as the IBBI, NCLT, and Committee of Creditors play under the Code?
4. What are the major challenges affecting the effective implementation of the IBC?
5. What reforms are required to strengthen India's insolvency framework?

2. Evolution of Insolvency Laws in India

The development of insolvency laws in India reflects the country's continuous efforts to establish an efficient mechanism for dealing with financial distress and debt recovery. Before the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC), the legal framework governing insolvency and bankruptcy was fragmented across multiple statutes and institutions. The existence of several overlapping laws often resulted in procedural delays, jurisdictional conflicts, and low recovery rates for creditors. Consequently, the need for a comprehensive and unified insolvency regime became increasingly apparent.

2.1 Pre-IBC Insolvency Framework

Prior to the IBC, insolvency and debt recovery matters were governed by a number of separate legislations. The SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 (SICA) was enacted to identify and revive financially distressed industrial companies. Under

SICA⁵, the BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION (BIFR) was established to determine whether a company had become sick and to formulate revival schemes. However, proceedings before BIFR⁶ were often lengthy and ineffective, resulting in prolonged delays in the resolution of distressed companies.

The RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 established Debt Recovery Tribunals (DRTs) for the recovery of debts owed to banks and financial institutions. While DRTs were intended to expedite debt recovery, they eventually became burdened with a large backlog of cases, reducing their effectiveness.

Another significant legislation was the SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT). This Act empowered secured creditors to enforce their security interests without requiring court intervention. Although SARFAESI⁷ improved the recovery powers of banks, it primarily focused on secured creditors and did not provide a comprehensive insolvency resolution mechanism.

2.2 Challenges of the Earlier Regime

The pre-IBC insolvency framework suffered from several shortcomings. Multiple laws and adjudicatory forums created confusion and inconsistency in insolvency proceedings. Creditors were often required to approach different authorities for different remedies, resulting in increased costs and prolonged litigation. Resolution of distressed companies frequently took several years, causing a significant decline in asset value and reducing the possibility of successful business revival.

⁵ SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

⁶ BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

⁷ SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT)

Additionally, India's debt recovery rates were comparatively low when measured against global standards⁸. Delays in insolvency proceedings adversely affected the availability of credit, discouraged investment, and weakened confidence in the financial system. The absence of a time-bound insolvency process also encouraged strategic defaults and inefficient utilization of economic resources.

2.3 Bankruptcy Law Reforms Committee and the Need for Change

Recognizing these deficiencies, the Government of India constituted the BANKRUPTCY LAW REFORMS COMMITTEE (BLRC) in 2014 under the chairmanship of T. K. VISWANATHAN.

The Committee examined the existing insolvency framework and recommended the creation of a unified insolvency law that would provide a creditor-driven and time-bound resolution process.

The BLRC emphasized that insolvency law should focus on preserving economic value and facilitating the revival of viable businesses wherever possible. It also recommended the establishment of specialized institutions and professionals to manage insolvency proceedings efficiently.

2.4 Enactment of the Insolvency and Bankruptcy Code, 2016

Acting upon the recommendations of the BLRC, Parliament enacted the INSOLVENCY AND BANKRUPTCY CODE, 2016. The Code consolidated various insolvency and bankruptcy laws into a single comprehensive framework applicable to companies, limited liability partnerships, partnership firms, and individuals.

The IBC introduced a time-bound Corporate Insolvency Resolution Process (CIRP), established the INSOLVENCY AND BANKRUPTCY BOARD OF INDIA as the regulatory authority, and designated the NATIONAL COMPANY LAW TRIBUNAL and NATIONAL COMPANY LAW

⁸ Bankruptcy Law Reforms Committee (n 4).

APPELLATE TRIBUNAL as specialized adjudicatory bodies for corporate insolvency matters. By prioritizing resolution over liquidation and empowering creditors to take timely action against defaulting debtors, the Code significantly transformed India's insolvency landscape.

The enactment of the IBC marked a major shift from a debtor-in-possession model to a creditor-in-control model and has been widely recognized as one of the most significant economic reforms in India⁹. It has improved recovery rates, strengthened credit discipline, and enhanced investor confidence in the Indian economy.

3. OBJECTIVE AND FEATURES OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with the objective of creating a consolidated, efficient, and time-bound framework for resolving insolvency and bankruptcy matters in India. Prior to its enactment, insolvency proceedings were governed by multiple laws and institutions, leading to delays and uncertainty. The IBC seeks to address these shortcomings by establishing a modern insolvency regime that promotes economic growth, protects stakeholder interests, and enhances confidence in the financial system.

3.1 Objectives of the Insolvency and Bankruptcy Code, 2016

3.1.1 Time-Bound Resolution of Insolvency.

One of the primary objectives of the IBC is to ensure the speedy resolution of insolvency cases. Delays in insolvency proceedings often result in a significant decline in the value of assets and reduce the chances of reviving a distressed business. The Code therefore prescribes strict timelines for the completion of the Corporate Insolvency Resolution Process¹⁰ (CIRP), enabling faster decision-making and efficient resolution of financial distress.

3.1.2 Maximization of Asset Value.

⁹ Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17.

¹⁰ Insolvency and Bankruptcy Code 2016, section 12.

The IBC aims to preserve and maximize the value of the assets of a financially distressed entity. Instead of allowing assets to deteriorate through prolonged litigation, the Code focuses on finding viable resolution plans that can revive the business and generate greater returns for stakeholders.

3.1.3 Promotion of Entrepreneurship and Credit Availability.

An effective insolvency framework encourages lending and investment by assuring creditors that there is a legal mechanism for recovering dues in the event of default. By improving recovery rates and reducing uncertainty, the IBC promotes entrepreneurship, facilitates access to credit, and contributes to economic development.

3.1.4 Balancing the Interests of Stakeholders.

¹¹The Code seeks to balance the interests of all stakeholders involved in insolvency proceedings, including financial creditors, operational creditors, employees, shareholders, investors, and the government. It provides a transparent process that ensures equitable treatment and fair distribution of value.

3.1.5 Strengthening Credit Discipline.

The existence of a robust insolvency mechanism encourages borrowers to fulfil their financial obligations in a timely manner. The IBC discourages wilful defaults and promotes responsible borrowing and lending practices, thereby strengthening credit discipline within the economy.

3.2 Salient Features of the Insolvency and Bankruptcy Code, 2016

3.2.1 Unified Legal Framework.

¹¹ Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta (2020) 8 SCC 531.

The IBC consolidated various insolvency-related laws into a single comprehensive statute. This eliminated the complexities arising from multiple legislations and created a uniform mechanism for dealing with insolvency and bankruptcy matters.

3.2.2 Creditor-in-Control Model.

A significant feature of the IBC is the shift from a debtor-in-possession system to a creditor-in-control system. Once insolvency proceedings commence, the management of the corporate debtor is transferred to an Insolvency Resolution Professional, while major decisions are taken by the Committee of Creditors (CoC). This ensures greater accountability and creditor participation in the resolution process.

3.2.3 Moratorium on Legal Proceedings.

Upon admission of an insolvency application¹², the Code imposes a moratorium that temporarily suspends legal proceedings, debt recovery actions, and enforcement measures against the corporate debtor. The moratorium provides a calm period during which efforts can be made to formulate an effective resolution plan.

3.2.4 Corporate Insolvency Resolution Process (CIRP).

The Corporate Insolvency Resolution Process forms the cornerstone of the IBC¹³. It provides a structured mechanism through which creditors may initiate insolvency proceedings, evaluate resolution plans, and determine whether the distressed entity can be revived or should proceed to liquidation.

3.2.5 Establishment of Specialized Institutions.

¹² Insolvency and Bankruptcy Code 2016, section 14.

¹³ Insolvency and Bankruptcy Code 2016, Part II.

The Code established a specialized institutional framework for insolvency administration¹⁴. The Insolvency and Bankruptcy Board of India (IBBI) regulates insolvency professionals and insolvency professional agencies, while the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) act as adjudicatory authorities for corporate insolvency matters.

3.2.6 Priority-Based Distribution Mechanism.

The IBC provides a clear and transparent order of priority for distributing proceeds during liquidation through the waterfall mechanism. This mechanism reduces uncertainty and ensures that claims are satisfied in accordance with a predetermined legal hierarchy.

3.2.7 Emphasis on Resolution Over Liquidation.

Unlike earlier insolvency laws that often focused on recovery and winding up, the IBC prioritizes the revival and rehabilitation of viable businesses. Liquidation is treated as a last resort and is pursued only when a successful resolution plan cannot be achieved.

3.3 Significance of the IBC.

The Insolvency and Bankruptcy Code, 2016 has transformed India's insolvency regime by introducing efficiency, transparency, and predictability into insolvency proceedings. It has strengthened creditor confidence, improved India's business environment, and contributed to the development of a more robust financial system. By prioritizing value maximization and business rescue, the Code plays a crucial role in promoting economic stability and sustainable growth.

Conclusion.

¹⁴ Insolvency and Bankruptcy Code 2016, ss 188–196

The objectives and features of the IBC demonstrate its importance as a modern insolvency framework designed to address financial distress in a structured and efficient manner. Through its emphasis on timely resolution, stakeholder protection, and business revival, the Code has emerged as a cornerstone of India's economic and corporate legal framework.

4. Institutional Framework Under the Insolvency and Bankruptcy Code, 2016

The effectiveness of the Insolvency and Bankruptcy Code, 2016 (IBC) largely depends upon the institutions responsible for its implementation and administration. To ensure a transparent, efficient, and time-bound insolvency resolution process, the Code establishes a specialized institutional framework consisting of regulatory authorities, adjudicatory bodies, insolvency professionals, and information utilities. These institutions collectively facilitate the resolution of insolvency cases while safeguarding the interests of creditors, debtors, and other stakeholders.

4.1 Insolvency and Bankruptcy Board of India (IBBI).

The Insolvency and Bankruptcy Board of India (IBBI) was established under the provisions of the IBC as the primary regulatory authority responsible for overseeing the implementation of the Code. The Board regulates insolvency professionals, insolvency professional agencies, and information utilities operating within the insolvency ecosystem. The IBBI performs various functions, including framing regulations, monitoring insolvency proceedings, conducting inspections and investigations, and ensuring compliance with statutory requirements. Through its regulatory role, the Board seeks to maintain transparency, accountability, and professional standards in insolvency administration. It also undertakes awareness initiatives and policy reforms to strengthen the insolvency framework in India.

4.2 National Company Law Tribunal (NCLT).

The National Company Law Tribunal (NCLT) serves as the adjudicating authority for corporate insolvency resolution and liquidation proceedings under the IBC. It possesses jurisdiction over insolvency matters involving companies and limited liability partnerships. The NCLT is empowered to admit or reject insolvency applications, declare moratoriums, appoint insolvency professionals, approve resolution plans, and order liquidation where necessary. It plays a crucial role in ensuring that insolvency proceedings are conducted in accordance with the provisions of the Code. The Tribunal's specialized nature enables it to handle complex corporate insolvency matters efficiently and consistently.

4.3 National Company Law Appellate Tribunal (NCLAT).

The National Company Law Appellate Tribunal (NCLAT) functions as the appellate authority for decisions rendered by the NCLT. Any person aggrieved by an order of the NCLT may prefer an appeal before the NCLAT within the prescribed period. The NCLAT reviews the legality and correctness of decisions passed by the NCLT and ensures uniform interpretation of insolvency laws across the country. Appeals from the NCLAT may subsequently be filed before the Supreme Court of India on questions of law. Thus, the NCLAT serves as an important mechanism for judicial scrutiny and consistency within the insolvency framework.

4.4 Insolvency Professionals (IPs).

Insolvency Professionals constitute one of the most significant pillars of the insolvency regime. They are licensed professionals authorized to manage insolvency proceedings and perform various functions assigned under the Code. Upon initiation of the Corporate Insolvency Resolution Process (CIRP), an Insolvency Professional may be appointed as an Interim Resolution Professional (IRP) or Resolution Professional (RP). The professional assumes control of the corporate debtor's management, verifies claims submitted by creditors, constitutes the Committee of Creditors, manages the debtor as a going concern, and supervises the entire resolution

process. The role of Insolvency Professionals is crucial because they act as independent facilitators who ensure fairness, transparency, and efficiency throughout insolvency proceedings.

4.5 Insolvency Professional Agencies (IPAs).

Insolvency Professional Agencies are organizations responsible for enrolling, regulating, and monitoring Insolvency Professionals. These agencies establish professional standards, enforce codes of conduct, and provide training and education to their members. The primary objective of IPAs is to promote competence, ethical behavior, and accountability among Insolvency Professionals. By maintaining high professional standards, these agencies contribute to the integrity and credibility of the insolvency resolution process.

4.6 Information Utilities (IUs).

Information Utilities are specialized entities established under the IBC to collect, authenticate, maintain, and provide financial information relating to debt transactions. They serve as reliable repositories of financial records and facilitate the verification of claims during insolvency proceedings. The availability of authenticated financial information reduces disputes regarding the existence of debt and default, thereby expediting insolvency proceedings. Information Utilities enhance transparency and improve the efficiency of the insolvency resolution process by ensuring easy access to accurate financial data.

4.7 Committee of Creditors (CoC).

The Committee of Creditors (CoC) is a decision-making body constituted during the Corporate Insolvency Resolution Process. It primarily comprises financial creditors of the corporate debtor and is entrusted with significant powers regarding the future of the distressed entity. The CoC evaluates and approves resolution plans, determines key aspects of the insolvency process, and exercises commercial judgment in deciding whether the company should be revived or liquidated. The decisions of the CoC play a decisive role in the success of insolvency resolution under the IBC.

4.8 Importance of the Institutional Framework.

The institutional framework established under the IBC represents a comprehensive and coordinated mechanism for addressing insolvency and bankruptcy matters. Each institution performs a distinct yet interconnected role that contributes to the overall effectiveness of the insolvency regime. The regulatory oversight of the IBBI, judicial supervision by the NCLT and NCLAT, professional management by Insolvency Professionals, and reliable financial information provided by Information Utilities collectively ensure the efficient functioning of the insolvency process.

Conclusion.

The institutional framework under the Insolvency and Bankruptcy Code, 2016 forms the backbone of India's insolvency regime. Through the coordinated functioning of specialized regulators, tribunals, professionals, and information repositories, the Code seeks to achieve its objectives of timely resolution, value maximization, and stakeholder protection. The establishment of these institutions has significantly strengthened the insolvency ecosystem and contributed to the success of insolvency reforms in India. ()

5. Corporate Insolvency Resolution Process (CIRP).

The Corporate Insolvency Resolution Process (CIRP) constitutes the cornerstone of the Insolvency and Bankruptcy Code, 2016 (IBC). It is a structured and time-bound mechanism designed to resolve the insolvency of a corporate debtor while maximizing the value of its assets and balancing the interests of all stakeholders. The primary objective of CIRP is to revive financially distressed companies wherever possible and ensure efficient resolution rather than immediate liquidation. Through this process, creditors are provided with an opportunity to recover their dues while preserving viable business enterprises.

5.1 Initiation of the Corporate Insolvency Resolution Process.

The CIRP may be initiated when a corporate debtor commits a default in the repayment of its financial obligations. Under the IBC, insolvency proceedings may be commenced by a Financial Creditor, an Operational Creditor, or the Corporate Debtor itself. A Financial Creditor may file an application before the National Company Law Tribunal (NCLT) under Section 7 of the Code. Similarly, an Operational Creditor may initiate proceedings under Section 9 after serving a demand notice upon the debtor. The Corporate Debtor may also voluntarily seek insolvency resolution under Section 10 when it becomes incapable of meeting its financial obligations. The initiation mechanism ensures that insolvency proceedings commence at an early stage of financial distress, thereby increasing the possibility of successful business rescue and value preservation.

5.2 Admission of the Application by the NCLT.

Upon receiving an insolvency application, the National Company Law Tribunal examines whether a debt exists and whether a default has occurred. If satisfied that the statutory requirements have been fulfilled, the Tribunal admits the application and formally commences the Corporate Insolvency Resolution Process. The admission order is a significant stage in insolvency proceedings as it triggers several legal consequences, including the declaration of a moratorium and the appointment of an Interim Resolution Professional. The admission process reflects the Code's emphasis on speed and efficiency in resolving insolvency disputes.

5.3 Declaration of Moratorium.

One of the most important features of the CIRP is the declaration of a moratorium under Section 14 of the IBC. Upon admission of the insolvency application, the NCLT imposes a temporary prohibition on legal proceedings and recovery actions against the corporate debtor. During the moratorium period: No suits or legal proceedings may be instituted or continued against the corporate debtor. Creditors cannot enforce security interests against the debtor's assets. Recovery proceedings are suspended. The transfer or disposal of assets by the corporate debtor is restricted. The purpose of the moratorium is to provide a calm period during which the

debtor's assets can be preserved and efforts can be directed towards formulating a viable resolution plan without external interference.

5.4 Appointment of Interim Resolution Professional (IRP).

Following the commencement of CIRP, the NCLT appoints an Interim Resolution Professional (IRP) to take charge of the insolvency process. Upon appointment, the powers of the Board of Directors of the corporate debtor are suspended and transferred to the IRP. The IRP assumes responsibility for managing the affairs of the company as a going concern and protecting its assets. The professional also collects financial information, verifies claims submitted by creditors, and facilitates the formation of the Committee of Creditors. The appointment of an independent professional ensures transparency and impartiality throughout the insolvency resolution process.

5.5 Constitution of the Committee of Creditors (CoC)

One of the most innovative aspects of the IBC is the establishment of the Committee of Creditors (CoC). The CoC primarily consists of financial creditors of the corporate debtor and serves as the principal decision-making body during CIRP. The Committee exercises significant powers, including: Confirming or replacing the Resolution Professional. Evaluating and approving resolution plans. Supervising the conduct of insolvency proceedings. Determining the future course of action regarding the corporate debtor. The IBC adopts a creditor-in-control model, thereby granting creditors a central role in insolvency resolution and business restructuring.

5.6 Appointment of Resolution Professional (RP)

After the constitution of the CoC, the Interim Resolution Professional may either continue as the Resolution Professional (RP) or be replaced by another professional selected by the Committee. The Resolution Professional is responsible for conducting the entire resolution process. The RP manages the affairs of the corporate debtor, invites prospective resolution applicants, evaluates submitted plans, and presents eligible plans before the Committee of Creditors for

consideration. The effectiveness of the CIRP largely depends upon the competence and independence of the Resolution Professional.

5.7 Submission and Evaluation of Resolution Plans

Prospective investors and resolution applicants may submit resolution plans proposing methods for reviving the corporate debtor. These plans may include restructuring of debt, infusion of capital, changes in management, or acquisition of the distressed company. The Resolution Professional examines each plan to ensure compliance with the requirements of the IBC before placing it before the Committee of Creditors. The CoC evaluates the feasibility and viability of the proposed plans and votes on their approval. The objective of this stage is to identify a solution that maximizes the value of the debtor's assets while ensuring fair treatment of stakeholders.

5.8 Approval of Resolution Plan

A resolution plan approved by the Committee of Creditors is submitted to the NCLT for final approval. The Tribunal examines whether the plan complies with the provisions of the IBC and protects the interests of stakeholders. Upon approval by the NCLT, the resolution plan becomes binding upon the corporate debtor, creditors, employees, shareholders, and other stakeholders. The successful implementation of the resolution plan enables the company to continue operations and emerge from financial distress.

5.9 Liquidation in the Absence of Resolution

Where no viable resolution plan is approved within the prescribed period, or where the Committee of Creditors decides that revival is not feasible, the corporate debtor may be ordered to undergo liquidation. Liquidation involves the sale of the company's assets and distribution of the proceeds among creditors according to the statutory priority established under Section 53 of the IBC. Although liquidation serves as a final remedy, the Code treats it as a last resort and prioritizes business rescue wherever possible.

Conclusion

The Corporate Insolvency Resolution Process represents the foundation of the Insolvency and Bankruptcy Code, 2016. By introducing a creditor-driven, transparent, and time-bound mechanism for resolving financial distress, the CIRP has transformed India's insolvency framework. Through the coordinated efforts of creditors, insolvency professionals, adjudicatory authorities, and potential investors, the process seeks to preserve economic value, revive viable businesses, and strengthen confidence in the financial system. Consequently, CIRP remains one of the most significant innovations introduced by the IBC in achieving efficient insolvency resolution and promoting economic stability. ()

6. Liquidation Process under the Insolvency and Bankruptcy Code, 2016

Liquidation is the final stage of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). It is initiated when the Corporate Insolvency Resolution Process (CIRP) fails to produce a viable resolution plan or when the Committee of Creditors (CoC) determines that revival of the corporate debtor is not feasible. The objective of liquidation is to realize the value of the debtor's assets and distribute the proceeds among creditors in accordance with the statutory priority prescribed under the Code.

6.1 Commencement of Liquidation

The National Company Law Tribunal (NCLT) may order liquidation if no resolution plan is approved within the prescribed time period or if the approved resolution plan contravenes the provisions of the Code. The Committee of Creditors may also decide to liquidate the corporate debtor before the completion of the CIRP.

6.2 Appointment of Liquidator

Upon the commencement of liquidation, a Liquidator is appointed to manage the process. Generally, the Resolution Professional appointed during the CIRP acts as the Liquidator unless

replaced by the NCLT. The Liquidator takes custody of all assets, verifies claims submitted by creditors, and oversees the sale of assets.

6.3 Powers and Duties of the Liquidator

The Liquidator is responsible for:

- Taking control of the assets and records of the corporate debtor.
- Verifying and admitting claims of creditors.
- Conducting valuation and sale of assets.
- Recovering money owed to the debtor.
- Distributing proceeds among stakeholders according to the statutory priority.

6.4 Waterfall Mechanism

Section 53 of the IBC establishes a priority-based distribution system known as the Waterfall Mechanism. Under this framework, insolvency resolution and liquidation costs are paid first, followed by secured creditors and workmen's dues, employees' wages, unsecured creditors, government dues, and finally shareholders. The mechanism ensures transparency and predictability in the distribution process.

6.5 Significance of Liquidation

Although liquidation marks the end of a corporate entity, it serves an important economic function by ensuring an orderly realization of assets and maximizing recovery for creditors. The IBC treats liquidation as a last resort and prioritizes business rescue wherever possible.

Conclusion

The liquidation process under the IBC provides a structured mechanism for winding up insolvent entities and distributing assets fairly among stakeholders. By ensuring transparency and legal certainty, the process contributes to the overall effectiveness of India's insolvency regime.

7. Landmark Judicial Decisions under the IBC

Judicial interpretation has played a vital role in shaping the implementation and development of the Insolvency and Bankruptcy Code, 2016. Several landmark judgments delivered by the Supreme Court of India have clarified the objectives, scope, and operational framework of the Code. These decisions have strengthened the insolvency regime by providing certainty and consistency in the interpretation of insolvency laws.

7.1 Innoventive Industries Ltd. v. ICICI Bank (2018)

This was one of the earliest and most significant judgments under the IBC. The Supreme Court emphasized that once the existence of debt and default is established, the adjudicating authority must admit the insolvency application. The judgment reinforced the creditor-driven nature of the insolvency framework and clarified the admission process under Section 7 of the Code.

7.2 Swiss Ribbons Pvt. Ltd. v. Union of India (2019)

In this landmark case, the constitutional validity of the IBC was challenged. The Supreme Court upheld the validity of the Code and recognized that its primary objective is the revival and continuation of the corporate debtor rather than mere recovery of debts. The Court also acknowledged the importance of balancing the interests of all stakeholders involved in insolvency proceedings.

7.3 Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)

The Supreme Court affirmed the principle of the "commercial wisdom" of the Committee of Creditors. It held that courts and tribunals should not interfere with commercial decisions taken by the CoC unless they violate statutory provisions. This judgment significantly strengthened creditor autonomy and enhanced the efficiency of the resolution process.

7.4 ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2018)

This judgment clarified the interpretation of Section 29A of the IBC, which disqualifies certain persons from submitting resolution plans. The Court emphasized that defaulting promoters should

not regain control of their companies through the insolvency process unless they comply with statutory requirements.

7.5 Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018)

In this important judgment, the Supreme Court clarified the meaning of a "pre-existing dispute" under Section 9 of the IBC. The Court held that an insolvency application filed by an operational creditor cannot be admitted where a genuine dispute exists prior to the demand notice. The decision prevents misuse of insolvency proceedings as a debt recovery mechanism and ensures that only genuine insolvency cases proceed under the Code¹⁵.

7.6 K. Sashidhar v. Indian Overseas Bank (2019)

The Supreme Court reaffirmed the principle that the commercial decisions of the Committee of Creditors are generally not subject to judicial review. The Court held that adjudicating authorities cannot substitute their own commercial assessment for that of creditors. This judgment strengthened the creditor-in-control model and reinforced certainty within the insolvency resolution process¹⁶.

7.7 Importance of Judicial Precedents

These judgments have played a crucial role in interpreting the provisions of the IBC and ensuring consistency in insolvency proceedings. They have strengthened creditor confidence, promoted transparency, and facilitated the successful implementation of the insolvency framework.

Conclusion

The jurisprudence developed by Indian courts has significantly contributed to the success of the Insolvency and Bankruptcy Code. Through landmark judgments, the judiciary has clarified

¹⁵ Mobilox Innovations Pvt Ltd v Kirusa Software Pvt Ltd (2018) 1 SCC 353.

¹⁶ K. Sashidhar v Indian Overseas Bank (2019) 12 SCC 150.

legislative intent, resolved ambiguities, and reinforced the objectives of insolvency resolution and value maximization.

8. Challenges and Criticisms of the Insolvency and Bankruptcy Code, 2016

Despite its transformative impact on India's insolvency framework, the Insolvency and Bankruptcy Code is not free from challenges and criticisms. Various practical and procedural issues continue to affect the efficiency of insolvency proceedings and hinder the realization of the Code's objectives.

8.1 Delays in Resolution Proceedings

One of the most significant challenges is the delay in completing insolvency proceedings within the prescribed timelines. Although the Code envisages a time-bound process, many cases remain pending for extended periods due to litigation, procedural complexities, and capacity constraints within adjudicatory institutions.

8.2 Overburdened Adjudicatory Authorities

The National Company Law Tribunals frequently face heavy caseloads, resulting in delays in the admission and disposal of insolvency applications. The shortage of judicial members and infrastructure further contributes to procedural inefficiencies.

8.3 Haircuts and Low Recovery in Certain Cases

Several high-profile insolvency cases have resulted in substantial reductions in creditor claims, commonly referred to as "haircuts." Critics argue that excessive haircuts may undermine creditor confidence and raise concerns regarding value maximization.

8.4 Concerns of Operational Creditors

Operational creditors often possess limited voting rights within the Committee of Creditors, which primarily consists of financial creditors. As a result, operational creditors may feel inadequately represented in decisions affecting their interests.

8.5 Cross-Border Insolvency Issues

The increasing globalization of business operations necessitates an effective framework for handling cross-border insolvency matters. India currently lacks a comprehensive statutory mechanism comparable to internationally accepted standards such as the UNCITRAL Model Law on Cross-Border Insolvency.

8.6 Frequent Amendments and Regulatory Changes

While amendments are necessary to address practical difficulties, frequent legislative and regulatory modifications may create uncertainty and increase compliance burdens for stakeholders.

Conclusion

Although the IBC has significantly improved India's insolvency regime, several challenges continue to impede its full effectiveness. Addressing these issues through institutional strengthening, procedural reforms, and legislative refinement is essential for ensuring a more efficient and predictable insolvency framework.

9. Recent Developments and Future Prospects of the IBC.

Since its enactment in 2016, the Insolvency and Bankruptcy Code has undergone continuous evolution through legislative amendments, regulatory reforms, and judicial interpretations. These developments reflect the dynamic nature of insolvency law and the need to adapt to emerging economic realities.

9.1 Legislative and Regulatory Reforms

The Government and the Insolvency and Bankruptcy Board of India have introduced various amendments aimed at improving procedural efficiency, reducing delays, and enhancing transparency. These reforms seek to strengthen stakeholder confidence and improve recovery outcomes.

9.2 Strengthening Institutional Capacity

Efforts are being made to increase the capacity of the National Company Law Tribunals by appointing additional members and improving infrastructure. Enhanced institutional efficiency is expected to facilitate faster resolution of insolvency cases.

9.3 Cross-Border Insolvency Framework

India is considering the adoption of internationally recognized principles relating to cross-border insolvency. The implementation of a comprehensive cross-border insolvency framework would improve coordination with foreign jurisdictions and facilitate the resolution of multinational insolvency cases.

9.4 Technological Advancements

Digital filing systems, electronic records, and improved information-sharing mechanisms are increasingly being integrated into insolvency administration. Technology can significantly enhance transparency, reduce procedural delays, and improve overall efficiency.

9.5 Future Outlook

The future of India's insolvency regime depends upon continued reforms, effective implementation, and institutional development. As the economy expands and business structures become more complex, insolvency law will play an increasingly important role in maintaining financial stability and investor confidence.

Conclusion

Recent developments demonstrate India's commitment to strengthening its insolvency framework. Through continuous reforms and modernization, the IBC is expected to evolve into a more efficient, transparent, and globally competitive insolvency regime.

10. Critical Evaluation of the Insolvency and Bankruptcy Code, 2016

10.1 Achievements of the IBC

The Insolvency and Bankruptcy Code, 2016 has fundamentally transformed India's insolvency framework by introducing a unified and creditor-driven resolution mechanism. Prior to the enactment of the Code, insolvency proceedings were governed by multiple statutes and adjudicatory forums, resulting in delays and uncertainty. The IBC has significantly improved credit discipline, enhanced investor confidence, and strengthened the overall business environment. The emphasis on time-bound resolution and value maximization has contributed to greater efficiency in dealing with financial distress.

10.2 Persistent Delays and Institutional Challenges

Despite its success, the implementation of the IBC continues to face several practical challenges. A large number of cases remain pending before the National Company Law Tribunal due to increasing caseloads and infrastructural limitations. Although the Code prescribes strict timelines for completion of the Corporate Insolvency Resolution Process, many cases exceed the statutory period because of prolonged litigation and procedural complexities. Such delays adversely affect asset values and reduce recovery prospects for creditors.

10.3 Commercial Wisdom of the Committee of Creditors

The Supreme Court has consistently recognized the commercial wisdom of the Committee of Creditors as the cornerstone of the insolvency resolution process. Decisions such as *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* and *K. Sashidhar v. Indian Overseas Bank* emphasize limited judicial interference in commercial decisions taken by creditors. While

this approach promotes efficiency and certainty, critics argue that excessive deference may reduce transparency and limit scrutiny of decisions that significantly affect stakeholders¹⁷.

10.4 Position of Operational Creditors

The treatment of operational creditors remains one of the most debated aspects of the IBC. Although the Supreme Court upheld the distinction between financial and operational creditors in *Swiss Ribbons Pvt. Ltd. v. Union of India*, concerns continue regarding the comparatively limited participation of operational creditors in the decision-making process. Ensuring equitable treatment of all stakeholders remains essential for maintaining confidence in the insolvency framework.

10.5 Need for a Comprehensive Cross-Border Insolvency Framework

The increasing globalization of business transactions necessitates an effective mechanism for dealing with cross-border insolvency cases. While the IBC contains limited provisions relating to foreign assets and proceedings, India has not yet adopted a comprehensive framework based on the UNCITRAL Model Law on Cross-Border Insolvency. Adoption of internationally recognized standards would improve cooperation with foreign jurisdictions and facilitate efficient resolution of multinational insolvency proceedings¹⁸.

Conclusion

The Insolvency and Bankruptcy Code, 2016 represents a significant advancement in India's commercial jurisprudence. Nevertheless, continued institutional strengthening, reduction of procedural delays, greater stakeholder participation, and adoption of a comprehensive cross-border insolvency framework are necessary to ensure that the objectives of the Code are fully realized.

¹⁷ Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta (2020) 8 SCC 531

¹⁸ UNCITRAL Model Law on Cross-Border Insolvency 1997

11. Conclusion

The Insolvency and Bankruptcy Code, 2016 represents a paradigm shift in India's insolvency jurisprudence by replacing a fragmented and recovery-oriented framework with a unified, creditor-driven, and time-bound resolution mechanism. Through the introduction of the Corporate Insolvency Resolution Process, specialized institutions, and professional insolvency administration, the Code has significantly improved credit discipline, investor confidence, and recovery outcomes.

At the same time, persistent challenges such as judicial delays, capacity constraints within adjudicatory authorities, concerns regarding stakeholder participation, and the absence of a comprehensive cross-border insolvency framework continue to affect the effectiveness of the insolvency regime. The long-term success of the IBC will depend upon sustained legislative refinement, institutional strengthening, technological modernization, and consistent judicial interpretation. With continued reforms, the Code is well-positioned to remain one of the most significant pillars of India's corporate and commercial legal framework.

Nevertheless, challenges such as procedural delays, institutional constraints, concerns regarding creditor recoveries, and the absence of a comprehensive cross-border insolvency mechanism continue to require attention. Addressing these issues through legislative refinement and institutional strengthening is essential for achieving the full potential of the Code.

In conclusion, the Insolvency and Bankruptcy Code, 2016 has fundamentally reshaped India's insolvency landscape and established a modern framework capable of supporting economic growth and financial stability. With continued reforms and effective implementation, the IBC is poised to remain a cornerstone of India's commercial and corporate legal system for years to come.

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