

# Insolvency and Bankruptcy Code, 2016: A Critical Study

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## **Abstract:-**

*Ours is a developing nation, because of which many a things in our country is experimented with time and implemented. One such law is the “Insolvency and Bankruptcy Code of 2016”. The terms “insolvency” and “bankruptcy” are not synonyms to each other, but are used together. Insolvency basically defines ‘a state of being insolvent’ or rather we can say a state of being an economic distress, whereas bankruptcy is a scenario where the court gives the order that how the insolvent situation will be dealt further. These orders basically consist of the ideas that how to erase the debts, and how to pay the unpaid creditors. The view of this is very simple; this is formulated to deal with situations of failure, which is very natural when any investor/people step into the commercial world. The vision of this law basically encourages various small scale industries and start ups to function swiftly and handle their financial issues in their own sweet very ways. One more aspect of the formulation of this law is to create a huge umbrella and bring all the other statutes dealing with the same issues, and to bring them under one entire head and function. This simplification of laws will not only help the new players to enter into the market but will also help the existing entrepreneurs to move on, rather than blogging off with old legislations and decisions. Hopefully, the implication of this law can move India little ahead in the ease of doing business index ranking and can attract more investors from far. This article is basically going to focus on the very ground root aspects of this legislation i.e., even after having so many commercial laws why do we need one such law on Insolvency and Bankruptcy? How is this helpful at our current situation, moreover what is the objective of this act to get formulated with some illustrations. At higher level various commercial and corporate laws are formulated for us, but because of the lack of understanding we are not able to understand and use it where required. This article will try and fill up those lacunas about this newly constructed law in further discussions.*

**Keywords:-** *Insolvency, Bankruptcy, Insolvency and Bankruptcy Code, 2016, Entrepreneurs.*

## **I. Introduction:-**

The Insolvency and Bankruptcy Code 2016, is one of the newly enacted legislation on debt recovery mechanism. It was introduced in the Lok Sabha in December 2015, and was passed on May 5<sup>th</sup>, 2016 , further it got

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the assent of the President and became effective in December 2016. IBC, 2016 [1] is now considered as the one stop process for all the NPA (Non Performing Assets, which were due in India from a long passage of time. IBC 2016, is not only acting as a recovery mechanism but is also trying to protect the interest of the investors by protecting them to go through a long cumbersome process. This code also provides us with the provision to deal with the cross border insolvency issues, by entering into various treaties and reciprocal agreements. Before the IBC came into picture, we had several government reforms and committees to form such legislation, for instance, if we try and trace back the history we can see it started from the 24<sup>th</sup> Law Commission report in 1964, which actually provided with certain amendments in the Provincial Insolvency Act, 1920. Further we had, Tiwari committee which spoke about SICA Legislation in 1985, which treated the sick companies. Later, in the year 1991 Narasimham Committee came up with RDBFI Act, the same committee later on brings about the SARFASI Act 2002, which was challenged thrice in the court of law for giving so much power to the banks. In the continuation Eradicommittee , L.N Mitra committee tried to bring about some changes via amendments in the already executed legislations.

We can say that the first fruitful step was taken in the year 2013, where the financial sector of the legislative reforms (MoF), drafted Indian Financial Code which consist of certain measures which speaks about resolving distress in financial management. Later, in the year 2014, Dr. T K Vishwanatham chaired Bankruptcy Law Reform Committee (DEA, MoF) and Insolvency and Bankruptcy Code, 2016 was notified. This code further covered the interest of the companies, LLP's, partnerships and other investors. It tried to show them a way via providing them an insolvency resolution process, which was difficult to establish during earlier time. It was considered as one of the important reforms in India which was lately established, because earlier the investors were solely dependent on the laws and legislations of the other countries such as UK and US, which also had the execution issues. But now, their own legislation is trying to maximize the assets of the interested people.

### **IBC: An Overview:-**

As compared to other countries, India took a little longer time to establish such legislation within its jurisdiction. The main reason which we can consider behind this is the delay which took place to resolve the already pending cases within various courts, forums and in deficient of having knowledge about the insolvency framework. Further, once this code was established and accepted another issue which came about the implementation, because it's little effortless to frame the laws, but at times it is intricate to implement them with the same thought process, as it was prescribed.

The 2016 code basically applies to the companies and individuals. As, stated earlier the Code received the assent of the President on 28<sup>th</sup> May, 2016, however some of its section came into force from 5<sup>th</sup> August and 19<sup>th</sup> August 2016. The code total has 255 sections and 11 schedules. So far, so forth the IBC has been amended thrice, the latest amendment took place in the year 2020, The Insolvency and Bankruptcy Code (Amendment) Bill, 2020 [2] was passed by the voice vote in Rajya Sabha, however this amendment was questioned in the Parliament by the MP's stating that "why are we having so many amendments in this newly made law"? To which our now, Finance

Minister Nirmala Sitharaman answered that the amendments which are made are good for the society to function commercially and is not done “unthinkingly”.

This code basically outlines a separate provision of resolution process for the companies, individuals, and partnership firms within a fixed time frame. For the companies the time frame is stipulated to 180 days; however it can be extended to 90 days. For small companies, a time frame of 90 days is allotted which can be extended to 45 days. The initiation of this process can be done both by the creditors and debtors. However, now the latest amendments which took place in the year 2019 [3] have increased the time frame of such resolution process to get completed. The resolution process can be initiated either in the NCLT (National Company Law Tribunal) for companies and limited liability partnerships or in the DRT (Debt Recovery Tribunal) for the individuals and partners. The first resolution process was filed by the Synergies- Dooray Automobile Ltd [4], in the NCLT, this was conducted under the stipulated time frame, and the final orders were uploaded on the NCLT website on 14<sup>th</sup> August, 2017.

#### **IBC: The Process:-**

After the implementation of the Insolvency and Bankruptcy code, the economic scenario has taken up a toll, the creditors and debtors now exactly know where to go. At times there are also workshops organized by the IBBI (Insolvency and Bankruptcy Board of India) in order to give the people a better outlook about things.

The working of the code, i.e the implementation done under the code is actually much unadorned, in this the NCLT initiates, the Corporate Insolvency Process. This process is started after the NCLT receives an application by any of the financial creditor or even operational creditor of the company. Now, after the amendments even the homebuyers can approach the NCLT for constituting the Resolution Process. Under this the NCLT appoints an interim resolution professional who takes in charge of the defaulted company. The professional tries to raise the fund and takes all necessary steps which he thinks fit to revive the company back. Initially this revival and rehabilitation of the company was done by the SICA legislation under the BIFR, but now everything is done under one head i.e. IBC. The IRP, works under the stipulated time frame, makes the resolution plan, get it approved, tries to execute it within 180 days, which can be extended to 90 days. Further, if the IRP fails then the company goes into liquidation in which they need to pay their creditors and other concerned people.

#### **Important Amendments Discussed:-**

The IBC since operating from the year 2016 is a new law but has also gone through some significant amendments as well. These amendments have tried to strengthen up the Code henceforth. The first important change which was brought about was including the homebuyers as the financial creditors. It was stated earlier that “homebuyers” was one category which was left high and dry in case of any default by the builders, the ordinance passed in the year 2018, brought the homebuyers into the ambit of the financial creditors, by which they can easily approach the NCLT in case of any default. The another important amendment which was considered was initiation of Insolvency Resolution process by the operational creditors, earlier it was just the financial creditors who could go

with the process and operational creditors have to go through certain procedures, but after the amendments even they can initiate with the resolution process.

Furthermore, another important aspect was the voting “threshold” limit. Initially in order to pass any resolution plan 75% of the votes were required, which at times if not present led to the failure for succeeding those plans. This limit, was then been reduced to 66%. The main motto behind this amendment was to prefer rehabilitation over liquidation. “Moratorium” is a term used under the IBC 2016, which basically means not to initiate any judicial proceedings, against any corporate debtor in default, however this aspect was not accepted under the amendments done under the IBC, 2016 .Another important aspect was the inclusion of section 29A in the code, also by bringing more clarity to it, which actually speaks about the “actual person entitled to present the resolution plan”. The Act initially allowed any “any person”, who actually was contributing to certain malpractices; this amendment now exempted certain categories of people to bid for the process. The amendment has also brought about the application of “Limitation Act 1963” into the Code. Henceforth, the Limitation Act will be applicable to the matters related or filed under the Code.

## **II. Conclusion:-**

This whole legislation is been established with a view to bring about a positive change in the economy of our country and to bring about a positive aspect in ease of doing business for the people and the investors. Furthermore, this code has also tried to help the homebuyers which was one category untouched from all the laws and legislations. This is one of the major steps taken by our government to reduce the burden from the Judiciary. They are trying to tackle the growing problems of the bad loans under one major umbrella. The Code is formulated looking into account some basic aspects or some natural problems which was faced by the corporate debtors such as all the critical gaps , which companies faces when it comes to a talk on resolution process. Another aspect is our ranking of ease of doing business is in such slip because of too much of legislation on one aspect, and the people don't know where to find their way, no directions at all..!

Another important focus was on the “time”, our judiciary is burdened because of not keeping time track of any pending work, so the matters go on and on and on. This code has from the very start given a time frame to work upon, along with their extensions. Furthermore, the Code after the amendments has also applied the “Limitation Act” on the proceedings of the Code in order to keep a time track on everything. The formation and implication of the Code has provided us with lot of flexibility to the applicants, the statics shows that the matters are getting sorted using the code, however there are situations where everyone faces a deadlock, so as this newly formulated law, but accordingly this should be accepted with an open arms.

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