

## Setting up Stage for implementation of the Insolvency and Bankruptcy Code, 2016



*Insolvency and Bankruptcy Code, 2016 that received the Presidential assent on 28<sup>th</sup> May 2016, aims to override other existing laws on the matters pertaining to insolvency and bankruptcy. Being the bankruptcy law of India, this Code seeks to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals. The article explains how the Bankruptcy Law Reforms Committee was responsible towards formation of a strong bankruptcy law in form of this Code. The article also deals with the applicability of Code, eligibility criteria for becoming insolvency professionals, etc., and introduces the readers to the Indian Institute of Insolvency Professionals of ICAI. Read on...*

The Bankruptcy Law Reforms Committee was formed to study the corporate bankruptcy legal framework in India and submit a report to the Government for reforming the system. It was felt that there was a need for creation of a uniform framework for the matters of insolvency and bankruptcy of all legal entities and individuals, save those entities with a dominantly financial function.

This Committee had the mandate of comprehensive reform, covering all aspects of bankruptcy of individuals and non-financial firms, i.e. the reforms are not restricted to limited liability corporations. It evaluated the working of present

arrangements in India, and the difficulties faced with these present arrangements.

The objectives of the Committee were to resolve insolvency with: (i) lesser time involved, (ii) lesser loss in recovery, and (iii) higher levels of debt financing across instruments.

The question was, what can a sound bankruptcy law achieve? A sound legal framework of bankruptcy law can achieve

- **Improved handling of conflicts between creditors and debtors:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.
- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most

Contributed by the Corporate Laws and Corporate Governance Committee of ICAI. Comments can be sent to the committee at [clcg@icai.in](mailto:clcg@icai.in).

efficient solution to maximise value during negotiations. The bankruptcy law will create a platform for negotiation between creditors and external financiers which can create the possibility of such rearrangements.

- **Drawing the line between malfeasance and business failure:** Under a weak insolvency regime, the stereotype of “rich promoters of defaulting entities” generates two strands of thinking:
  - a) the idea that all default involves malfeasance and
  - b) The idea that promoters should be held personally financially responsible for defaults of the firms that they control.
- **Clearly allocate losses in macroeconomic downturns:** With a sound bankruptcy framework, these losses are clearly allocated to some people. Loss allocation could take place through taxes, inflation, currency depreciation, expropriation, or wage or consumption suppression. These could fall upon foreign creditors, small business owners, savers, workers, owners of financial and non-financial assets, importers, exporters.

As stated by the Chairman of the Banking Law Reforms Committee, Mr T. K. Viswanathan, “It was a mission to usher in sweeping changes to the country's bankruptcy law and the New Bankruptcy Law was Necessary for Reviving Economy”.

The existing laws were not aligned with the market realities and had several problems and were inadequate. There was no single window resolution available and the resolution and jurisdiction was with multiple agencies with overlapping powers that was leading to delays and complexities in the process. The Companies Act deals with the corporate insolvency law and the individual insolvency laws were being dealt by a century old two Acts, i.e., The Provincial Towns Insolvency Act and the Presidency Towns Insolvency Act.

  
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To overcome these challenges, a strong bankruptcy law could help.

Therefore, The Insolvency and Bankruptcy Code, 2016 was enacted with the intention to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor does not have to bear the losses on account of default. Further, it does not make any distinction between the rights of international and domestic creditors or between classes of financial institutions. The Code is now in the implementation Stage.

### Purpose behind enactment of Insolvency and Bankruptcy Code, 2016

- a) To consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals;
- b) To fix time periods for execution of the law in a time bound manner;
- c) To maximise the value of assets of interested persons;
- d) To promote entrepreneurship;
- e) To increase availability of credit;
- f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues; and
- g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

### Distinguishing features of the Code

- Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLPs and individuals.
- The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.
- The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable by maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency

# Insolvency

**With a view to improve Ease of doing business in India, the Code provides for a time bound process for speedy disposal and also the manner for maximisation of value of assets. It will create a win-win situation not only for the creditor and debtor companies, but it will also benefit the overall economy.**

within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

- It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for winding up and liquidation has to be initiated under separate laws governed by separate authorities.
- There is a clear and unambiguous process to be followed by all stakeholders. Also, there is Shift of control from shareholders and promoters to creditors.
- There is one chain of authority under the Code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.
- It provides for constitution of a new regulatory authority 'Insolvency and Bankruptcy Board of India' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and started functioning.
- A unique feature of code is establishment of Information Utilities (IUs) which are intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution. It is envisioned

that in the long run IUs will have data on debts and credits of all the business houses and it will be able to create an automatic trigger in case of default by any debtor and the authority may initiate the insolvency process as required. Such a system will reduce the risk of credit in the economy.

## Applicability of the Code

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:

- a) Any company incorporated under the Companies Act, 2013 or under any previous law.
- b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
- c) Any Limited Liability Partnership under the LLP Act 2008.
- d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
- e) Partnership firms and individuals.

There is an exception to the applicability of the Code that it shall not apply to Corporate persons who are regulated financial service providers like Banks, Financial Institutions, Insurance companies.

## Institutional Set up under the Code

With a view to improve Ease of doing business in India, the Code provides for a time bound process for speedy disposal and also the manner for maximisation of value of assets. It will create a win-win situation not only for the creditor and debtor companies, but it will also benefit the overall economy.

The IBC provides an institutional set-up comprising of the following five pillars:

- Insolvency Professionals- To conduct the corporate insolvency resolution process and includes an interim resolution professional; The role of the IP encompasses a wide range of functions, which includes adhering to procedure of the law, as well as accounting and finance related functions.
- Insolvency Professional Agencies- To enrol and regulate insolvency professionals as its

members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

- Information Utilities- to collect, collate and disseminate financial information to facilitate insolvency resolution
- Insolvency and Bankruptcy Board of India- A Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions with respect to the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.
- Adjudicating Authority- The National Company Law Tribunal (NCLT), established under the Companies Act, 2013 would function as an adjudicator on insolvency matters under the Code.

The Implementation of any system does not only depend on the law, but also on the institutions involved in administration and execution of the same. It depends on the effective functioning of all the institutions but the Insolvency Professionals have a vital role to play in the insolvency and bankruptcy resolution process.

### Key Roles of an interim resolution professional

The key roles of an interim resolution professional are:

1. Issuance of public notice of the Corporate Insolvency Resolution process
2. Collation of claims received
3. Constitution of the Committee of Creditors
4. Conduct of the first meeting of the Committee of Creditors

### Who can become an Insolvency Professional?

- Category-I- Chartered Accountant, Company Secretary, Cost Accountant and Advocate who has passed the Limited Insolvency Examination and has ten years of experience and enrolled as a member of respective Institute/Bar Council; or a Graduate who has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognised by law;  
The Insolvency and Bankruptcy Board of India has notified the syllabus for Limited Insolvency Examination. For syllabus, enrolment process

for the examination, etc., please visit: <http://www.ibbi.gov.in/limited-insolvency.html> or [www.iiipicai.in](http://www.iiipicai.in).

- Category-II- Any other individual on passing the National Insolvency Examination. Although The Insolvency and Bankruptcy Board of India is yet to notify the syllabus for National Insolvency Examination.

### Insolvency Professional Agency formed by ICAI

Indian Institute of Insolvency Professionals of ICAI (IIPI) is the first Insolvency Professionals Agency in India which has been formed by the Institute of Chartered Accountants of ICAI to enrol insolvency professionals. The process for registration is as follows:

- Application is required to be submitted for registration online (available at [www.iiipicai.in](http://www.iiipicai.in)) and in hard copy with the relevant documents in Form A of the Second Schedule of the IBBI (Insolvency Professionals) Regulations, 2016 to Indian Institute of Insolvency Professionals of ICAI (IIPI)
- Enclose all the relevant documents as per Form A including the provisional certificate of qualifying Limited Insolvency Examination
- A non-refundable application fees to be paid as follows:
  - ✓ Fees of IBBI- ₹10,000/- (Ten Thousand only)
  - ✓ Fees of IIPI- ₹10,000/- (Ten Thousand only) for each financial year (which needs to be paid before 30 April of every year)
  - ✓ Half fees would be charged for enrolment with IIPI after October of each Financial Year, i.e., ₹5000/- (Five Thousand Only)

For other details, a professional may refer the website of Indian Institute of Insolvency Professionals of ICAI. The url of website is [www.iiipicai.org](http://www.iiipicai.org)

### Conclusion

This Code is in the implementation stage and is focussed on the revival of businesses that can bring the change in lives, prospects and livelihoods of both creditors and debtors. It is one of the most challenging and equally rewarding career options. In this era of major reforms in the uncharted territories, it is a big opportunity to work as an Insolvency Professional. ■