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Analysis Of Corporate Insolvency Resolution Process Under Insolvency And Bankruptcy Code

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ABSTRACT

The Insolvency and bankruptcy code, 2016 is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy in the past insolvency regulation process included operations of simultaneous acts[3]. In this it was changed and several insolvency laws were consolidate which creating a single law. These include the Sick Industrial Companies Act, 1985. The recovery of debt due to banks and financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. This code provides a genuine rehabilitation and restructuring of the company. The IBC process gives substantial power to financial creditors, both domestic and foreign.[4]

INTRODUCTION

Sri Arun Jaitley, the Finance Minister, introduced the Insolvency and Bankruptcy Code in 2015. However, it was created in May of 2016. Since 2014, the Reserve Bank of India (RBI) has taken a hard line against the rising tide of bad loans in the banking system.The government attempted to address the issue with forward-thinking and proactive measures such as the Joint Lenders Forum (JLF), Strategic Debt Restructuring (SDR) — with and without control changes — and S4A. These systems, while not capable of dealing with all situations, are a step in the right direction toward a resolution community. The default resolution is and will always be true to of circumstance.In that regard, the Insolvency and Bankruptcy Code is timely because it focuses on a restructuring plan with a timetable that, if not reached, leads to liquidation. As a result of this Code, the economy has changed dramatically. While this Code has many benefits, it also has some drawbacks that have arisen as a result of poor management and misuse of the Code. This paper aims to examine the effect of the IBC on the Indian economy, as well as its flaws, and to provide suggestions on how to develop the Code in order to make the most of it.[5]

The Insolvency and Bankruptcy Code 2016 was introduced in the Lok Sabha by Finance Minister Sri Arun Jaitley in December 2015.The Code aims to accomplish clear goals in terms of rehabilitation and compliance, and to this end, it will be a valuable tool for creditors and investors.The Code has gained significant traction within a year of its enactment.[6] It will be of particular interest to foreign creditors and investors looking for investment opportunities in India. This Code in particular, if followed to the letter and spirit, will provide a significant boost to the Indian economy, especially in terms of timely resolution and recovery certainty.[7] As a result, the Code has played a significant role in the Indian industry since its inception.It has a major effect on businesses, banks, and real estate, as well as on young entrepreneurs. Now, in this article, we'll look at why the Code is needed and how it affects the current economy. The term "insolvency" refers to a situation in which a defaulter is unable to repay a borrower for a loan. For the current corporate company, symptoms of that condition would include a downturn in revenues, failure to make payments on time, and so on. The legal declaration of a company's insolvency is bankruptcy. It was once a financial situation, but it has now become a legal situation. This new Code follows a chronological process of insolvency, with failure resulting in bankruptcy.

The Code seeks to gain conviction in retrieval and implementation proceedings, and it will certainly be a valuable tool for "creditors and investors" on that basis. Since the Code was only recently launched and is still in the early stages of growth, it will be useful in conducting research in this area, which will help the economy better understand the booming Code and will also aid in the Code's successful implementation for a better Indian industry in the future.[8]

The preamble to the Insolvency and Bankruptcy Code, 2016 (the "Code") provides a fair indication of the goal that the Code aims to achieve: to increase the value of benefits, to promote business endeavor, to promote credit openness, and to improve the premiums of a large number of partners. Every game plan in the Code was written with these standards in mind, and the establishment of this organization was done

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with the goal of replacing the current framework for Chapter 11, which was clearly incomplete, inefficient, and planned with deferrals.Banks can develop schemes so that borrowers can meet their funding requirements.[9]
Though a few rapid revisions were made by method for an Ordinance in November 2017, which was supplanted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018 ("Amendment Act") in January 2018, the Government deemed it appropriate to form a formal council to consider the serious issues in the corporate indebtedness process in a methodical manner.[10]
Pursuant to this, the Ministry of Corporate Affairs (the "MCA") established the Insolvency Law Committee (the "Board of trustees") under the chairmanship of the Sh. Injeti Srinivas, Secretary, Ministry of Corporate Affairs vide an office request dated 16 November 2017. The Committee comprised of Sh. M.S. Sahoo, Chairperson of the IBBI, Ms. Vandita Kaul, Joint Secretary, agent of the Department of Financial Services, Sh. Sudarshan Sen, Executive Director of the Reserve Bank of India ("RBI"),[11]Sh. T. K. Vishwanathan, Former Secretary General of the Lok Sabha and Chairman of the BLRC, Sh. Shardul Shroff, Executive Chairman of Shardul Amarchand Mangaldas and Co.,Sh. Rashesh Shah, Chairman and CEO, Edelweiss Group, Sh. Sidharth Birla, past President FICCI and Chairman Xpro India Limited, Sh. B. Sriram, MD of Stressed Assets Resolution Group, State Bank of India, Sh. Naveen ND Gupta, President of the Institute of Chartered Accountants of India, Sh. Sanjay Gupta, President of the Institute of Cost Accountants of India and Sh. Makarand Lele, President of the Institute of Company Secretaries of India. Sh. Amardeep Singh Bhatia, Joint Secretary in-control for the usage of the Code since its warning was the Member Secretary of the Committee till January, 2018 and in accordance with his exchange, Sh. Gyaneshwar Kumar Singh, Joint Secretary assumed control over the charge of Member Secretary of the Committee. Duplicate of theconstitution request of Committee is at Annexure I. The Committee coopted Sh. Shashank Saksena, Adviser (FSRL), delegate of Department of Economic Affairs, Ministry of Finance; Sh. Amarjeet Singh, Executive Director, delegate of Securities and Exchange Board of India ("SEBI"); Sh. Piyush Srivastava, Addl. Improvement Commissioner, delegate from the Ministry of Micro, Small and Medium Enterprises, Sh. Ashwini Kumar, Addl. Monetary Advisor, agent from Ministry of Housing and Urban Affairs and Sh. Rajesh Kumar Bhoot, Joint Secretary, TPL-II, agent of Central Board of Direct Taxes.
The Committee was tasked with making recommendations on (a) issues arising from the Code's operation and implementation, (b) issues that which affect the efficiency of the Code's corporate indebtedness goals and liquidation structure, and (c) other significant issues that it deems important.
The Committee incorporated insights and ideas from a wide range of stakeholders in order to promote its order. The Committee deliberated on relevant topics and took into account business trends as well as legal principles, including international law. In light of this detailed review, the Committee drafted a report that prescribes and proposes a few changes to the Code and related enactments that are essential for the Code's smooth operation.[12]

Objectives of the study in IBC, 2016

In 2016, the Insolvency and Bankruptcy Code (IBC) was passed, with the aim of ensuring quick settlements while signaling a departure from the past. Wide macroeconomic goals were at stake, including resolving the twin balance crisis, developing a strong corporate bond market, improving the credit climate, and boosting India's competitiveness as a business destination. Under the Insolvency and Bankruptcy Code, 2016, asset valuation is one of the most critical aspects of the corporate insolvency resolution process (Code).[13]The new code was created to simplify the corporate insolvency resolution process, which includes preventing asset loss in the event of corporate distress, among other items.The settlement mechanism is a joint action on behalf of all creditors, not a court action to recover money from a single creditor.
The IBC has received recognition from the World Bank and IMF for being a time-bound mechanism that addresses cases within 180 days, extendable to 270 days, and has contributed significantly to India's 30 position jump in the 2018 'Ease of Doing Business' ranking.
International investors have been paying close attention to the Code.[14]

Procedure

Financial or service creditors, as well as the corporate debtor itself, file an insolvency petition with the adjudicating authority (NCLT in the case of corporate debtors). The time limit for accepting or rejecting the plea is 14 days. The tribunal must select an Insolvency Resolution Professional (IRP) to draught a

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resolution plan within 180 days if the plea is approved (extendable by 90 days). Following that, the court will begin the Corporate Insolvency Resolution process. The company's board of directors has been dissolved for the time being, and the promoters have no say in the company's management. If the CIRP fails to revive the business, the IRP can seek the help of the company's management for day-to-day operations. If the liquidation process is started, the IRP can seek the support of the company's management for day-to-day operations.[15]

BACKGROUND

Bad loans recovery mechanism prior to IBC. :

Sick Industrial Companies Act, 1985 (SICA)

SICA was enacted with the aim of detecting industrial illness and implementing fast remedial steps. Its aim was to speed up the revival of potentially viable units while also ensuring the closure of unviable units to free up the invested funds. The Board for Industrial and Financial Reconstruction was established to speed up the revival of potentially viable units in preparation for the closure of unviable units.

Recovery of debts due to banks and financial institution Act, 1993

It was passed to establish a Debt Recovery Tribunal and an Appeal Tribunal for the quick adjudication and recovery of debts owed to banks and financial institutions.

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

It gives financial institutions a way to recover money from their nonperforming assets (NPAs) without having to go to court, as long as the NPAs are backed by securities paid to the bank by hypothecation, mortgage, or assignment. If the asset in question is an unsecured asset, the bank would have to take the defaulters to court to file a civil lawsuit.

Companies Act, 2013

It offers detailed guidelines for company insolvency, including company revival and reconstruction under Chapter XIX of the Companies Act, 2013 and company liquidation under Chapter XX of the Companies Act, 2013.The Companies Act of 2013 in India developed tougher requirements for audit committees, auditor independence, and disclosure practices in order to ensure information integrity and prevent managers from exploiting the financial reporting process for personal benefit.[16]

When a corporation is unable to pay its obligations to its creditors, the law provides for the liquidation of the company, as well as the winding up of a company by the NCLT.

ANALYSIS OF THE PROBLEM

Role of committee of creditor

During a bankruptcy, a creditors committee is a group of individuals who represent a company's creditors. A creditors committee's job is to ensure that unsecured creditors are treated fairly.

In bankruptcy court cases and in agreements between the debtor and other parties, a creditor's committee represents the interests of unsecured creditors.

A trustee is in charge of nominating an odd number of committee members who will serve as fiduciaries for all creditors, not just those who are on the list.

Creditors' committees may obtain professional assistance from accountants, legal counsel, appraisers, or other experts as part of their work. And the debtor's estate, not the creditors, pays for this professional assistance.

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Role of Insolvency Professional

A registered insolvency professional is one who is licenced by the Indian Insolvency and Bankruptcy Board (IBBI). They are registered with an insolvency agency and are interested in the breakup of insolvent individuals, businesses, limited liability corporations, or partnerships. These practitioners have the right to operate on behalf of insolvent individuals, corporations, and other organisations. Insolvency practitioners play a critical role in the liquidation of entity properties and other settlement proceedings during a bankruptcy case. The government's implementation of strict norms through the Insolvency and Bankruptcy Code has intensified this process.

An insolvency professional's main job is to determine a company's, partnership's, LLP's, or individual's financial situation and ensure a smooth dissolution phase. In some cases, these experts search for ways to help companies get back on their feet. Aside from that, an insolvency professional's key responsibilities are to:

- Analyze the company's financial statements and understand the situation,
- Make plans to sell all of the liquidating Individual's or company's properties,
- Recognize the company's/receivables individual's status and oversee the collection method.
- Hold formal meetings with debtors and creditors and oversee the settlement process.
- Review and settle on the creditors' claims based on the funds available. One of the core roles of insolvency practitioners is to undertake this role.
- Participate in the fund allocation process after putting money away to cover liquidation costs.
- Address any other conflicting interests that may exist.
- Insolvency practitioners must prepare and send reports to the National Company Law Tribunal on the following topics:
    - Liquidation plan and procedure: This must be submitted by the insolvency practitioner within 75 days of the start of the process.
    - A detailed briefing on the asset memorandum
    - Periodic interim reports on how the liquidation process is going.
    - Information on the disposition of all properties.
    - Debtors and creditors were interviewed, and conclusions were drawn.
    - Final report prior to the corporation, relationship, or other entity's dissolution.[17]

Initiation of CIRP by the Corporate Applicant

According to area 10 of the Code, a corporate candidate can file an application with the NCLT to initiate a CIRP against the corporate borrower. A 'corporate nominee,' according to Section 5(5) of the Law, is either (a) a corporate account holder; (b) a part or accomplice of the corporate creditor authorized to make the application under the sacred record of the corporate indebted person; (c) a person responsible for managing the corporate indebted person's tasks and assets; or (d) an entity who has control and oversight over monetary unpaid bills.

1. The Committee believed that, in the end, investors or partners should be able to confirm the launch of CIRP by a corporate nominee, and that an agreement requiring their approval should be included.[18] Because initiating CIRP is a significant decision for the corporate account holder and can have a significant impact on its operations or even lead to its liquidation, an unusual target or a goal supported by at least three-fourths of the corporate borrower's total number of associates may be provided in this manner. In this vein, the Committee recommended that Section 10 of the Code be amended to include the requirement to obtain investor approval by unusual targets or an approval of roughly three-quarters of the total number of partners.
2. One of the reasons for a monetary or organizational loan boss's acceptance or dismissal of a CIRP application is the absence or nearness of pending disciplinary proceedings against the proposed goals proficient. In section 10, a comparative ground isn't stated in the sense of a corporate candidate's

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application.From all accounts, this seems to be a drafting error, and the Committee decided that the equivalent should be updated.[19]

3. In addition, rule 7 of the CIRP Rules specifies that a corporate applicant submit an application in compliance with the configuration in Form 6 of the CIRP Rules, along with important records and suggested charges. There is currently no provision for a corporate nominee to hold or serve a notice to its investors, loan bosses, or other controllers in connection with the documentation of an application for, or the launch of, CIRP. Investors will be aware of this action to the extent that the Committee has prescribed an investor endorsement to be taken for recording a corporate candidate's application for CIRP. Committee has received representations that the Code should require the corporate applicant to notify all stakeholders, especially its shareholders and financial creditors, regarding the filing of CIRP by itself and the start of CIRP.
4. The Committee noted that the issue of notification to key stakeholders is crucial because the general public declaration is made within three days of the IRP's arrangement, which may take up to fourteen days from the date of affirmation, but the ban begins on the date of affirmation. [20]As a result, there is an untruthful data asymmetry between investors and various groups of partners, such as lenders, who have no knowledge of how the corporate nominee is performing in CIRP under the Code.
5. As a result, the Committee took note of the BLRC Report's statement that the Code recognizes that an indebtedness submission entails a final retreat after the corporate candidate has negotiated with its loan bosses. Furthermore, certain views agree that the majority of banks are aware of the corporate candidate's financial condition. [21]
6. However, to avoid data asymmetry, it was decided that all associates, including money-related banks and operational loan bosses of the corporate candidate, should be informed if the corporate candidate files an application to start a CIRP under Area 10 of the Code, or if a CIRP has already begun. Meanwhile, it was observed that such a determination to offer an inference should not be difficult for a corporate candidate who appears to be attempting to touch base at objectives. Furthermore, although a hint may be offered, it must be understood that such a suggestion would not add up to, or be the basis for, a CIRP mediation. Similarly, since the NCLT is a synopsis court, it lacks natural powers to engage any outsider intercession to the CIRP in terms of mediation under the Code.
7. As a result, the Committee agreed that a corporate candidate's notice of the start of CIRP by method for an application under area 10 of the Code must be provided to all stakeholders by posting a notice on its official site or on a site designated by the IBBI for this purpose, or by using other electronic methods.[22]
8. In addition, the CIRP will be announced by posting a notice on its official website or on a site designated by the IBBI for this purpose. To promote the abovementioned, the Committee noted that appropriate revisions to regulate 7 of the CIRP Rules and direction 6 of the CIRP Regulations will be needed.

Effect or value of moratorium

Section 14 of the Code forbids, among other things, "the institution of suits or continuation of pending suits or procedures against the corporate creditor, including execution of any judgement, declaration, or appeal in any official courtroom, committee, assertion board, or other expert" from the indebtedness initiation date. The ban is more extensive than the one in the revoked Sick Industrial Companies (Special Provisions) Act, 1986 ("SICA") in two ways: first, under SICA, the activities banned could be organized or carried out with the approval of the Board for Industrial and Financial Reconstruction, and second, the language used in SICA's area 22 illuminated that procedures that influence the Board for Industrial and Financial Reconstruction could be organized or carried out. In this way, the courts interpreted that criminal procedures could continue as long as there was a possibility of injury, and that the application of a legally enforceable levy was not prohibited.On first glance, segment 14 appears to be more expansive in scope, as any suit or procedure can't be arranged or carried out without the NCLT's approval, and second, the prohibition on "the establishment of suits or continuation of pending suits or procedures against the corporate creditor" has become flushed, unrelated to the benefits of the corporate account holder.[23]

Moratorium on proceedings against surety to corporate debtor

Section 14 provides for a prohibition or a stay on the foundation or continuity of practices, suits, and other proceedings against a corporate indebted individual and its benefits. There have been varying

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opinions on the nature of the ban's application to outsiders affected by the corporate indebted person's duty, such as underwriters or sureties.While some courts have interpreted area 14 to mean that it only extends to actions that are detrimental to the corporate account holder, others have interpreted it to mean that the stay applies to credential implementation as well if a CIRP is being pursued against the corporate indebted individual.[24]

IBC Ordinance 2020

In the IBC ordinance 2020, this amendment issued considered for COVID-19 pandemic which has inevitably caused economic activities to slow down causing disruption in demand and supply due to which many companies are facing severe financial crunch. And among these Micro Small and Medium Enterprises are the worst impacted. To protect such companies from being forced into insolvency proceedings, the Government of India amended section 4 of the IBC, 2016 by notification dated March 24, 2020, increasing the minimum amount of default to Rs. 1 crore.
In the ordinance dated June 5, 2020 it suspended section 7,9 and 10 of the code by introducing section 10A to the code. Section 10A of the code provides for the following as reliefs to borrowers:

a. For defaults occurring on or after March 25, 2020, financial creditors, operating creditors, and the company itself must initiate the Corporate Insolvency Resolution Process (hereinafter CIRP).
b. Section 10A is applicable for a period of 6 months w.e.f March 25, 2020 and extendable upto 1 year.
c. The proviso to section 10A further absolutely bars the start of the CIRP against a corporate debtor who has gone into default arising for a period of 6 months w.e.f March 25, 2020 and 1 year, if and when notified.
d. The explanation clarifies that it is not applicable to defaults that have occurred before March 25, 2020.

Furthermore, by adding section 66(3) to the law, the Government of India made it illegal for resolution professionals to file applications in respect of defaults for which CIRP is suspended under section 10A of the code. However, the suspension of the IBC would impede the debt reduction process. IBC is the most viable choice for stressed companies' debt restructuring.[25]
However, the ordinance has taken away the control from the creditors to recover admitted liabilities from companies that are capable of paying their dues completely for a period of 6 months that is March 25, 2020 which may be extended upto 1 year.
To conclude, even though the creditors may not be able to initiate CIRP against the debtors, they will still be able to initiate bankruptcy proceedings against the promoters who have provided personable guarantees to the borrowings under Part III of the Code. However, adapting any other remedy will not be as efficient as the remedies available to the creditors under sections 7, 9 and 10 of the Code, which provided certainty of process, time and outcome for recovery of admitted liability.

IV. CONCLUSION

By enacting the IBC, 2016, India has developed a corporate and individual insolvency regime. The Companies Act of 2013 has been significantly amended and consolidated under the International Business Code. Prior to forcing businesses into liquidation, the IBC has made it mandatory to bring the insolvency resolution process under the IBC.

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Ilkogretim Online - Elementary Education Online, 2020; Vol 19 (Issue 3): pp. 3135-3141
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