

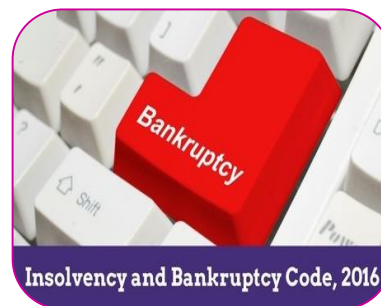


INSOLVENCY AND BANKRUPTCY CODE 2016

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ABSTRACT

The main aim of the research was to have a descriptive understanding of the Insolvency and Bankruptcy Code 2016. Insolvency means a state or a position where a person's liabilities exceed his/her net realisable assets. In simple words, when the assets are insufficient to pay off the liabilities it is termed as Insolvency. Whereas Bankruptcy is a situation or a legal proceeding where in the application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharged.

KEYWORDS: Insolvency, bankruptcy, Legal proceedings and Liquidation.

INTRODUCTION

Insolvency is the inability of a person or corporation to pay their bills as and when they become due and payable. Whereas, Bankruptcy is a legal declaration of one's inability to pay off the debts. When one files for bankruptcy, one obliges to pay off what is owed with help from the government.

A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically insolvency situations have two options- Resolution plan and Liquidation

For example, Mr. X has identified himself as an insolvent and now to improve such a situation he has two options, either treating or not treating the situation. If insolvency is treated accordingly, the outcome will lead to either internal reconstruction or external reconstruction. Internal reconstruction is a process in which the financial structure of the company is reorganized without dissolving the existing company whereas External reconstruction involves the liquidation of the existing company to form a new company in which the new company will take over the business of the liquidated company. Likewise, if it is untreated, the outcome will be bankruptcy for non-corporates and liquidation of corporates.

The Indian banking industry is facing financial crisis as the Bad debts are piling up. A lot of money is stuck in the form of Bad debts. Freeing up this money is very important for the banks to carry out their operations. In India, there are nearly around 60,000 cases pending on bankruptcy and as per the Work Bank report, India takes about average 4.3 years to wind up a company. So, it is easier to start up a business in India rather than winding it up. Another statistics states that India is ranked 100 in the 'Ease of doing business' index and 40th in global competitive index. These two criteria's have a common parameter i.e. resolving insolvency.

There can be different reasons for a delay in resolving insolvencies and bankruptcy cases but the main problem is the existence of overlapping legislation and adjudicating authorities dealing with financial failure. So, the Government of India formulated a new law called Insolvency and Bankruptcy Code 2016, which aimed at speedy winding up insolvent companies, lowering Non-performing Assets and deployment of capital productively.

The Insolvency and Bankruptcy Code was introduced in the Lok Sabha on 21st December 2015. And subsequently it was passed by both the Houses of Parliament and received the assent of the President of India on May 28th 2016. It focuses on two objectives, namely; equal, expeditious and economic distribution of the debtors' assets and liberation of the person from the creditors demand. This code extends to the whole of India except the state of Jammu and Kashmir.

FEATURES OF THE CODE:

The distinguishing features of the code include; it is a comprehensive law covering individuals, corporate, partnership firms, Limited Liability Partnerships, proceedings can be initiated upon a default of more than one lakh rupees, the adjudicating authority is National Company Law Tribunal for corporate and LLPs and Debt Recovery Tribunals for individuals and partnership firms, Withering away of the Multiplicity of laws, It advocates the setting up of the Insolvency and Bankruptcy Board that will regulate insolvency professionals and information utilities, laws relating to insolvency is consolidated into a single legislation, the process of resolution plan will be approved within 180 days only.

RESOLUTION PROCESS:

The resolution process consists of five stages in all;

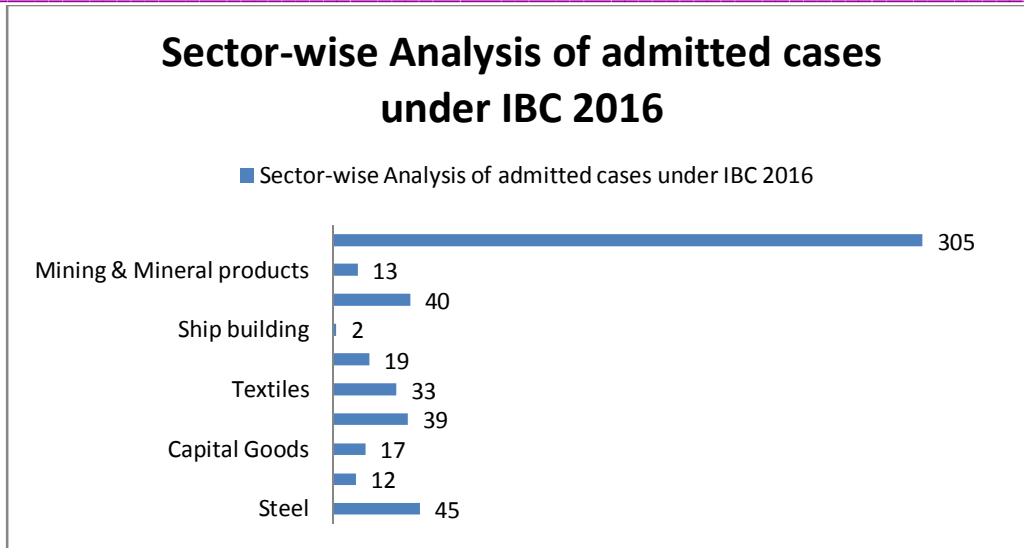
- i) The borrower or the lender will approach the NCLT or DRT to initiate the resolution plan when there is defaulting of loans.
- ii) In the second stage, the creditors will appoint an Insolvency Professional to take control of debtors company's operations and assets, collect financial information from the information utilities to constitute the creditors committee.
- iii) The creditors committee will then take a decision regarding insolvency resolution by a 75% majority.
- iv) In the fourth stage, the committee will decide on the restructuring process. If the committee fails to make any decision, the debtors' assets will be liquidated to repay the creditors.
- v) For the final approval, the resolution plan will be sent to the tribunal and will be implemented once it is approved by the tribunal.

BENEFITS OF THE CODE:

The various benefits of the Insolvency and Bankruptcy Code 2016 are; it will resolve India's problems of bad debts and reduce cases like Kingfisher Airlines, it will promote investment and entrepreneurship in the economy, free up banks resources and increase credit availability by timely resolution of companies, it will definitely improve India's ranking in the World Bank's 'Ease of doing business' index and will help to balance the interest of all the stakeholders.

CASES REFERRED:

According to the economic survey conducted in 2017-18, there are a total of 525 corporate who have filed cases for corporate insolvency. Sector wise analysis of admitted cases has been listed below;



Source: Insolvency and Bankruptcy Board of India. (IBBI)

The following are the top five defaulters notified by the Reserve Bank of India. It has been listed in the form of a table below;

Sr. No	Company	Sector	Claims admitted (In Crores)
1.	Bhushan Steel Ltd.	Steel	55,989
2.	Lanco Infratech Ltd.	Power Generation	51,505
3.	Essar Steel Ltd.	Steel	50,778
4.	Bhushan Power and Steel Ltd.	Steel	48,524
5.	Alok Industries Ltd.	Textiles	29,912

Source: Economic survey 2017-18.

From the information presented above, it can be concluded that the Steel sector is the single biggest defaulter in terms of both the number of defaulting corporate and total underlying default. Bhushan Steel Ltd has been topping the charts for the being the highest defaulting corporate with Rs 55,989 crores followed by Lanco Infratech Ltd.

The Government passed an ordinance in November 2017 to debar the wilful defaulters and the people associated with defaulting firms from participating in the insolvency process. It means that the promoters of the defaulting firms are not allowed to buy back its own firm. But there are concerns that the new amendment may be counter-productive for the creditors. There will be lesser people to participate in the resolution process to buy the company, resulting in reduced competition and the Insolvency professionals will have to accept a lesser price. This will lead to a huge reduction in debts for the creditors. Another ordinance was passed in May 2018, which had three major amendments. Firstly, the homebuyer will be given the status of financial creditors on par with the banks. The homebuyers will get priority in recovering the dues in the case of bankruptcy of the builder. Secondly, the voting requirement of financial creditors have been reduced from 75% to 66% for critical decision and 51% for routine decisions. This has been done to encourage resolution instead of liquidation. Thirdly, the promoter of MSMEs is allowed to bid for his own firm only if the two conditions are fulfilled i.e. the firm/ person is not a wilful defaulter and shall not be disqualified for any other reasons.

CONCLUSION:

The idea behind the code is to rationalize the procedures for insolvency and bankruptcy, improving the recovery of debt and increasing the confidence of creditors, boosting up India's Foreign Direct investment which will help India improve its ranking in the 'Ease of doing Business' Index. The results of implementing the IBC 2016 has been tremendous because of a few reasons; Firstly India's historic jump in the 'Ease of doing business' ranking. Secondly, the establishment of the debt recovery tribunals have reduced the non performing loans by 28%. The corporate insolvency resolution process was in progress for a few companies including Bhushan Steel Ltd, and interestingly banks could recover around Rs. 35,771 crores from Bhushan Steel Ltd. So, definitely some positive signs for the nation. Overall this legislation is a huge step towards the ease of doing business and getting India closer to more developed markets.

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