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Revolutionizing India's Insolvency Landscape: The Enactment of IBC 2016 and the Repeal Of Outdated Laws

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Abstract

The implementation of the Insolvency and Bankruptcy Code (IBC) in 2016 marked a fundamental shift in India's approach to corporate insolvency. This paper goes into the changes made to the IBC and their substantial influence on the insolvency landscape. It examines how these adjustments address the limits of outmoded legislation that previously governed the domain. This paper delves into key changes, such as implementing a fast-track approach geared to smaller businesses, widening the definition of "financial debt," and expediting liquidation procedures. It examines how these changes aim to speed up settlement, improve openness, and protect stakeholders' interests. Furthermore, the study looks into the repeal of outdated laws such as the Sick Industrial Companies Act (SICA) and the Board for Industrial and Financial Reconstruction (BIFR). It assesses how the IBC framework outperforms these previous systems in terms of efficiency and efficacy. It examines the potential challenges and opportunities connected with this growing legal system.

Keywords: ***Insolvency and Bankruptcy Code, corporate insolvency, financial debt, liquidation procedures, stakeholders' interests***

INTRODUCTION

The adoption of the IBC in 2016 represents an important turning point in India's insolvency and bankruptcy legislation. Prior to IBC, insolvency and bankruptcy procedures were complex and fragmented across various legislations. Some of the key mechanism includes, The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) addressed challenges faced by financially struggling or unviable companies due to industrial sickness. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) aimed to streamline debt recovery processes for banks and financial institutions. Third, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002 allows banks and financial institutions to auction off commercial and residential properties to recover outstanding loans when debtors fail to repay. As a result, it enables banks to reduce their nonperforming assets (NPAs) through effective recovery and restructuring measures. Fourth, the Companies Act of 1956 oversees the formation, funding, operations, and dissolution of businesses, providing regulatory frameworks for different organisational, financial, and managerial aspects. Finally, the presidential Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 control the Presidency town alone, while the latter governs outside the presidential towns. Even though these procedures were accessible, none of them were able to address the root cause of the company's financial distress. Finally, financial distress leads to the company's collapse, with employees losing their jobs and creditors losing money. The IBC was so revolutionary for India that, in terms of value, it has helped resolve Rs 3.16 lakh crore of debt stranded in 808 cases over the last eight years. On average, creditors received 32% of the realised claims and 69% of the liquidation value. Other mechanisms had an average recovery rate of 5-20%, highlighting IBC as the one with the highest recovery for lenders. As a result, IBC became one of the most essential cornerstones of India's economy. Before the Insolvency and Bankruptcy Code (IBC) was enacted in 2016, India's economy was burdened with a large number of non-performing assets (NPAs), which had reached alarming proportions. These non-performing assets (NPAs), or loans that borrowers were unable to repay, hung over the financial system, hampering its capacity to function efficiently and serve as a key driver of economic growth. The large number of bad loans maintained by banks meant that a considerable amount of their financial resources became unproductive. As a result, this crisis has far-reaching consequences for the economy, affecting everything from credit availability to investor confidence.[1]

[1] (Mar 12,2020), https://www.ibbi.gov.in/uploads/legalframwork/547c9c2af074c90ac5919fa8a5c60bd4.pdf.

HISTORY

During British colonial rule, India acquired a patchwork of insolvency and debt collection rules from many sources, including English common law, local customs, and British-enacted statutes. These rules were primarily intended to protect the interests of creditors, particularly European creditors, rather than to provide a fair and equitable resolution procedure for bankrupt debtors.[2]

Some of the key legal instruments governing insolvency and debt recovery in pre-independence India included:

Provincial Insolvency Acts: designed to govern insolvency processes on a provincial level. Its main goals included protecting creditors' rights, facilitating insolvency proceedings, and rehabilitating insolvent debtors. The PIA attempted to protect creditors' interests while guaranteeing equitable treatment of insolvent individuals by establishing mechanisms for creditors to commence insolvency proceedings against defaulting debtors. Furthermore, the act permitted the appointment of insolvency administrators or trustees to manage insolvent debtors' affairs and distribute assets evenly among creditors. It also sought to discourage fraudulent behaviour that could jeopardise the insolvency procedure. While the PIA intended to ensure consistency in insolvency procedures throughout provinces, variances occurred due to local factors and administrative practices.[3]

The Presidency Towns Insolvency Act of 1909: It sought to create a legal framework for addressing insolvency procedures in important Indian cities such as Calcutta, Bombay, and Madras during British control. It established procedures for declaring debtors insolvent, managing their assets, and distributing them to creditors. However, the Act was out of date and narrow in scope, focused exclusively on individual bankruptcies with few provisions for dealing with distressed businesses. This fragmented approach eventually prepared the ground for more comprehensive reforms in the post-independence period. The Act reflected the colonial administration's efforts to regulate commercial operations in key urban areas, but its shortcomings became apparent as India's economy developed and diversified. As a result, the Presidency Towns bankruptcy Act, 1909, became more and more out of date, emphasizing the need for a more contemporary and comprehensive bankruptcy framework that could handle the complex nature of modern business

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[2] Adrian Walters, *The Characterization of Pre-insolvency Proceedings in Private International Law*, SpringerLink (June 4, 2018), https://link.springer.com/article/10.1007/s40804-020-00176-x.

[3] Adrian Walters, *The Characterization of Pre-insolvency Proceedings in Private International Law*, SpringerLink (June 4, 2018), https://link.springer.com/article/10.1007/s40804-020-00176-x.

activities.[4]

English Common Law: Prior to the IBC 2016, India depended on English common law rules to resolve insolvency and bankruptcy cases. This provided a framework based on established British legal precedents, with clearly defined rules and processes for dealing with insolvency, debt recovery, and bankruptcy. The goal was to maintain continuity throughout British-ruled India. However, the system had limitations. English common law was not adapted to India's changing economy and frequently rewarded debtors over creditors in terms of speed and control over assets. These shortcomings, combined with disputes with local customs, ultimately led to the formation of IBC.[5]

Local Customs and practices: Prior to the IBC 2016, India's insolvency environment resembled a patchwork quilt made from local customs. These methods, which were well-established locally, sought to match insolvency proceedings with cultural norms and societal expectations. However, this technique posed considerable challenges.

Firstly, the lack of uniformity across regions created a chaotic system. Processes varied widely, leading to confusion and unpredictable outcomes for debtors and creditors, especially those operating across regions. Secondly, local customs often lacked formal legal recognition and clear guidelines, resulting in ambiguity and disputes regarding their application in insolvency cases. Thirdly, these customs sometimes clashed with modern commercial practices and international standards. This hindered the resolution of cross-border insolvency cases and undermined investor confidence in the Indian market. While the intent behind local customs was to incorporate indigenous perspectives, their ad hoc application ultimately hampered the effectiveness and efficiency of the pre-IBC insolvency framework.[6]

The Looming Crisis: NPAs and the Birth of the IBC

The story of the Insolvency and Bankruptcy Code (IBC) 2016 is intricately woven with the perils of the Non-Performing Assets (NPA) crisis that plagued India's banking sector. These "bad loans" weren't merely statistics – they represented real human stories of struggle. Employees of companies burdened by debt faced years of uncertainty as court cases dragged on, their livelihoods hanging in the balance. Banks, caught in a web of bad loans, were forced to request complaints against

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[4] *Orderly and Effective Insolvency Procedures*, https://www.imf.org/external/pubs/ft/orderly/.

[5] *A guide to pre-insolvency and insolvency proceedings across Europe*, (July 10, 2023), https://www2.deloitte.com/content/dam/Deloitte/ch/Documents/legal/deloitte-ch-en-a-guide-to-pre- insolvency-and-insolvency-proceedings-across-Europe.pdf.

[6] *1105GI.p65*, (May 28, 2016), https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf.

borrowers, a process that further tarnished their reputations. The entire system was a tangled mess, an impending financial crisis looming large on the horizon.

The roots of this crisis can be traced back to 2010, when a flawed lending strategy took hold. Banks, eager to expand their reach, often overlooked crucial credit assessments, leading to a surge in loans extended to projects with little chance of success. Meanwhile, existing bad loans were masked through a deceptive practice of "restructuring." This essentially meant offering borrowers a lifeline – lower interest rates, longer repayment periods – but ultimately did little to address the underlying problem. It was a house of cards, built on shaky foundations.

By late 2015, the facade crumbled. The Reserve Bank of India (RBI) conducted a thorough asset quality review, revealing the stark reality – banks were hiding a mountain of bad debt. This shocking discovery underscored the urgency of finding a solution.

Both the RBI and the government understood the gravity of the situation. The existing legal framework offered no clear path forward. Years-long court battles were not the answer. A more decisive approach was needed. This realization paved the way for the IBC 2016, a game-changer designed to tackle the NPA crisis head-on. The IBC introduced a time-bound process for resolving distressed assets, replacing the messy and inefficient pre-existing system.[7]

STATUTORY FRAMEWORK OF THE IBC:

The Insolvency and Bankruptcy Code of 2016 (IBC) is an important turning point in India's approach to corporate distress and insolvency. Unlike previous, fragmented laws, the IBC establishes a comprehensive statutory framework that prioritizes time-bound resolutions while maximizing value recovery for all stakeholders involved. This framework introduces significant changes to how insolvency proceedings are conducted in India, and delving into its key provisions allows for.

Broadened initiation of proceedings: Sections 5 and 6 of the IBC

The 2016 Insolvency and Bankruptcy Code (IBC) marked the beginning of a revolutionary era in India's approach to business distress. Unlike in the past, where commencing bankruptcy procedures was exclusively reserved for financial creditors, Sections 5 and 6 of the IBC make the process more accessible. These sections serve as the entry point to a more inclusive and effective settlement process.

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[7] *Pandemonium: The Great Indian Banking Tragedy*, Fdokumen.Com (Apr. 23, 2023), https://fdokumen.com/documents/pandemonium-the-great-indian-banking-tragedy.html?page=6.

Section 5 defines different concepts important to the IBC. The terms "default," "financial creditor," "operational creditor," and "corporate debtor" are no longer ambiguous. This clarity empowers a broader range of entities to understand their rights and maybe commence insolvency proceedings if necessary.

Consider a scenario in which a company fails to pay a supplier for vital materials. In the past, such operational creditors may have had restricted options. However, Section 5's broad definition of "default" goes beyond simple nonpayment. Any contractually agreed-upon event of default can result in insolvency proceedings. This ensures a faster response to financial difficulties, preventing problems from escalating.

Furthermore, Section 5 broadens the pool of possible initiators by incorporating various types of creditors. Financial creditors, the traditional powerhouses, are still very much involved. However, operational creditors, such as suppliers and service providers, now have a say. This inclusivity promotes a more level playing field by allowing all stakeholders with a vested interest in the company's survival to participate in the dispute resolution process.

Section 6 of the legislation expands the scope of initiation by granting the "corporate debtor" the authority to commence proceedings. This provision seemingly contradicts the practice of creditor-driven insolvency proceedings, but it allows organizations facing financial difficulties to take a proactive approach in addressing their financial challenges. Essentially, the provision gives corporate debtors greater control over the insolvency process, enabling them to better manage their affairs and potentially achieve a more favorable outcome. Assume a corporation realises its precarious financial situation. Section 6 gives them the authority to commence bankruptcy procedures, laying the door for a systematic restructuring of liabilities. This provision supports self-driven solutions and allows for early action, potentially preventing a total financial catastrophe.

These provisions broaden the types of companies eligible for resolution and provide explicit definitions, enabling a more accessible, fair, and proactive approach to corporate insolvency. This inclusivity greatly enhances the effectiveness and efficiency of the IBC framework, resulting in a more seamless and successful resolution of financial difficulties.[8]

Initiating Insolvency Proceedings: The IBC introduces three main avenues for initiating

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[8] *The Insolvency and Bankruptcy Code Act, 2016 Explained*, (Jan. 8, 2024), https://www.linkedin.com/pulse/insolvency-bankruptcy-code-act-2016-explained-ajay-gautam-advocate-qp16f?utm_source=share&utm_medium=member_android&utm_campaign=share_via.

insolvency proceedings against a company.[9]

Section 7: Application by a Financial Creditor

This section provides the procedure for financial creditors to begin proceedings against a company for a financial debt. The financial creditors submit an application for insolvency with the National Company Law Tribunal (NCLT) along with evidence of the default.

Section 9 Application by the Operational Creditor:

This clause enables operational creditors to initiate corporate insolvency resolution proceedings against a debtor corporation that has exceeded a certain level of default in payment for goods or services. This provision offers a structured way for operational creditors to deal with non- payment of their dues. It involves the issuance of a demand notice, giving the debtor a chance to respond. If the default remains unresolved, the creditor can file an application with the National Company Law Tribunal (NCLT) to initiate insolvency proceedings.[10]

Section 10: Application by the Debtor

Section 10 authorises the corporate debtor to begin the Corporate Insolvency Resolution Process (CIRP) against itself before the NCLT. This requires board authority and NCLT approval, but once initiated, a moratorium period protects the debtor from creditors' actions while a resolution professional controls the company and develops a plan for restructuring. Creditors vote on the proposal, and if it fails, liquidation is the last resort.

Committee of Creditors

The Committee of Creditors (CoC) is a crucial authority introduced in the Indian bankruptcy and Bankruptcy Code (IBC) of 2016. In the event of corporate bankruptcy, the CoC plays a vital role in protecting the interests of financial creditors. The committee represents these creditors during the Corporate Insolvency Resolution Process (CIRP). The CoC is responsible for evaluating and approving resolution plans put forward by potential investors for the insolvent company. It is also the body that decides how to distribute the proceeds from the sale of the company's assets among the

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[9] *Initial Pages.pmd*, (Sept. 21, 2023), https://www.iiipicai.in/wp-content/uploads/2023/10/IBC-Evolution-Learnings-and-Innovation.pdf.

[10] Guest, *Supreme Court on Insolvency Resolution by Operational Creditors*, IndiaCorpLaw (Nov. 13, 2018), https://indiacorplaw.in/2018/11/supreme-court-insolvency-resolution-operational-creditors.html.

creditors. The CoC has the power to approve or reject the resolution plan, making it a critical decision-making authority in the corporate resolution process.[11]

Time Bound Resolution under IBC 2016

Time-Bounded Resolution Process: The IBC 2016 establishes rigorous timelines for resolving insolvency proceedings. The code requires a maximum of 330 days to complete the Corporate Insolvency Resolution Process (CIRP), with extensions only granted in extraordinary situations. The timely and efficient approach aims to save corporations from being mired in time-consuming and costly legal disputes.

Section 12 sets the basis of the time-bound approach. It sets forth a maximum time of 180 days for the Corporate Insolvency Resolution Process (CIRP), beginning with the date the National Company Law Tribunal (NCLT) accepts the application (Section 7). This timeline encourages the Insolvency Resolution Professional (RP) and the Committee of Creditors (CoC) to promptly investigate revival options and come to an agreement. Due to unforeseeable complications, the IBC allows for a single extension of the CIRP timetable in extreme situations. However, Section 12 imposes stringent restrictions. In order to extend the deadline for a resolution plan, the Resolution Professional (RP) is required to submit an application to the National Company Law Tribunal (NCLT). The application must provide a clear and detailed explanation of why an extension is necessary. Once the application is submitted, the Committee of Creditors (CoC) must approve it with a minimum voting percentage of 66%. This ensures that any extension granted is supported by the majority of the creditors and is deemed necessary for the successful resolution of the insolvency case. After careful consideration, the NCLT may grant a maximum extension of 90 days. This guarantees that extensions are not frivolous and have a legitimate purpose in attaining a viable resolution.[12]

Cross Border Insolvency Process:

The Insolvency and Bankruptcy Code (IBC) addresses cross-border insolvency through Sections 234 and 235. These sections empower the Indian government to enter into bilateral agreements with other countries. These agreements can establish mechanisms for recognizing foreign insolvency proceedings initiated in those countries (Section 234). This recognition allows Indian courts to

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[11] https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&orderno=10.

[12] IBC Laws, *Analysis of Time Limit under Section 12 of the Insolvency and Bankruptcy Code, 2016 (IBC) for completion of CIRP*, NCLAT New Delhi (Sept. 20, 2020), https://ibclaw.in/analysis-on-time-limit-under-section-12- of-the-code-for-completion-of-cirp/.

acknowledge and potentially cooperate with the foreign courts handling the insolvency. Additionally, Section 235 enables Indian courts to issue letters of request to foreign courts, facilitating coordination of efforts and smoother resolution of insolvency situations involving companies with assets or creditors across borders.[13]

Fast Track Insolvency Process:

The Insolvency and Bankruptcy Code (IBC) offers a fast-track resolution process for smaller companies under specific criteria. This process, outlined in Section 55(2) and governed by regulations, aims to expedite insolvency resolution for companies with lower asset value, turnover, and capital borrowing. The process typically takes around 90 days, with a one-time extension of 45 days possible. This streamlined approach reduces time and costs associated with insolvency proceedings, allowing for a quicker turnaround and potentially better outcomes for creditors and the company itself.[14]

Liquidation Process:

Section 33: When a company goes bankrupt and needs to be liquidated (shut down and assets sold), Section 33 of the Insolvency and Bankruptcy Code (IBC) decides how the money from selling the company's stuff gets divided up. This section creates a clear order, like a waterfall, for who gets paid first. Secured creditors, like banks that loaned money with collateral, get paid first. Then comes unpaid wages and salaries for employees. After that, regular creditors like banks and suppliers get paid. Least important are government debts and shareholders, who may not get anything at all. This system helps ensure everyone gets treated fairly and the company's shutdown is handled smoothly[15].

FOUR PILLARS OF IBC 2016

Insolvency and Bankruptcy Board of India (IBBI)

is the backbone of the country's insolvency and bankruptcy framework, established under the Insolvency and Bankruptcy Code (IBC). Think of it as the central umpire ensuring a fair and efficient game. IBBI wields multiple key functions:

[13] (Apr. 8, 2023), https://www.icsi.edu/media/webmodules/CSJ/April/15ArticleManasiLadGudhate.pdf.

[14] *GTI&BC1-02.p65*, (Jan. 20, 2020), https://www.taxmann.com/bookstore/bookshop/bookfiles/Pages%20from%20GTIBC1-02.pdf.

[15] (Feb. 14, 2019), https://www.icsi.edu/media/webmodules/Insolvency%20law%20and%20practice.pdf.

- Rule Maker: They draft the regulations, guidelines, and rules that govern every aspect of insolvency resolution processes. These rules ensure all involved parties adhere to the IBC and contribute to a transparent and just environment.
- Overseeing the Players**:** IBBI acts as a vigilant watchdog, registering and monitoring all the key players in the insolvency game. This includes insolvency professionals, the agencies they work for, information utilities that provide crucial data, and any other entities involved in the process. By setting performance standards and monitoring their activities, IBBI helps maintain a high level of professionalism and competency.

Building Expertise: Recognizing the need for a skilled workforce, IBBI conducts educational programs, training sessions, and even examinations. This ensures insolvency professionals are well-equipped with the knowledge and skills to navigate complex insolvency situations. By promoting continuous professional development, IBBI fosters a competent workforce that can effectively handle insolvency cases.[16]

Insolvency Resolution Professionals:

Section 16 of the IBC requires the appointment of an IRP to oversee the Corporate Insolvency Resolution Process (CIRP) for corporate debtors. This law section lays down the foundation for the Insolvency Resolution Process (IRP) and outlines their role and responsibilities. They are licensed experts in insolvency and turnaround management, these professionals have specialized expertise and experience that enables them to effectively manage the complexity of the Corporate Insolvency Resolution Process (CIRP), maximize asset value, and explore feasible revival possibilities. Section 12 of the Insolvency and Bankruptcy Code (IBC) emphasizes the resolution process to be time-bound by establishing strict deadlines for CIRP. The IRP is responsible for ensuring that these timelines are met. One of the IRP's most important functions is to evaluate and approve resolution plans submitted by possible prospective buyers during the CIRP. These plans, which outline methods for corporate revival and debt settlement, are extremely important for the company's future and creditor recovery opportunities.[17]

Information Utility:

The Insolvency and Bankruptcy Code (IBC) establishes an "information utility" under Section 210. This specialized entity, registered with the Insolvency and Bankruptcy Board of India (IBBI), serves as a central repository of reliable information about corporate debtors. It provides crucial details

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[16] *Insolvency and Bankruptcy Board of India*, https://www.ibbi.gov.in/.
[17] *Just a moment...*, https://www.indiafilings.com/learn/resolution-professional-role-responsibilities-and-duties- under-ibc/.

regarding debts, defaults, and insolvency proceedings to stakeholders like resolution professionals, creditors, and other interested parties. By ensuring transparency and easy access to accurate information, the information utility plays a vital role in facilitating informed decision-making throughout the insolvency resolution process.[18]

Adjudicating Authority: National Company Law Tribunal (NCLT) & The National Company Law Appellate Tribunal (NCLAT)

The National Company Law Tribunal (NCLT) stands as the central adjudicating body for corporate insolvency and bankruptcy proceedings in India under the Insolvency and Bankruptcy Code (IBC). It shoulders a broad range of responsibilities – from admitting insolvency petitions and overseeing the resolution process to approving resolution plans or ordering liquidation if revival fails. Encompassing tasks like appointing resolution professionals and monitoring timelines, the NCLT plays a critical role in ensuring a fair, transparent, and efficient resolution of insolvency cases involving companies and Limited Liability Partnerships (LLPs).

The National Company Law Appellate Tribunal (NCLAT) acts as the first appellate authority for grievances arising from the National Company Law Tribunal's (NCLT) decisions in corporate insolvency proceedings under the Insolvency and Bankruptcy Code (IBC). Established for appeals against NCLT orders on initiating insolvency, approving resolution plans, or even liquidation, the NCLAT upholds, modifies, or sends matters back to the NCLT. By ensuring timely review and adherence to legal principles, the NCLAT safeguards stakeholder rights and contributes to a more efficient and fair resolution of corporate insolvency in India.[19]

LEGAL RELEVANCY

BALANCING CREDITORS RIGHTS AND CORPORATE REVIVAL:

The IBC provides creditors with two recovery options: restructuring through a resolution plan or liquidation in circumstances where revival is not viable. This legal structure gives creditors a strategic advantage by providing opportunities for maximum recovery through the resurrection of the debtor company or orderly liquidation processes. The IBC strengthens creditor rights in insolvency cases by allowing creditors to influence the resolution process and participate in the

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[18] *Concept, Utility and Working of Information Utilities under the Insolvency & Bankruptcy Code, 2016*, SCC Times (Oct. 11, 2020), https://www.scconline.com/blog/post/2020/10/11/concept-utility-and-working-of-information-utilities-under-the-insolvency-bankruptcy-code-2016/.

[19] *National Company Law Tribunal*, https://efiling.nclt.gov.in/.

development of recovery strategies.

FOR COMPANIES IN DISTRESS:

The IBC provides an opportunity for financially challenged enterprises to be revived by developing and implementing a resolution plan. The IBC facilitates debt restructuring, allowing businesses to handle their financial issues fully and even continue operations as a going concern. This restructuring solution not only protects the company's interests, but also helps to preserve jobs, stakeholder confidence, and overall economic stability. The IBC's insistence on defined deadlines throughout the insolvency resolution process has significant legal implications for distressed enterprises. The code supports a timely resolution of financial troubles by establishing certain timelines for various stages of the insolvency process.

The IBC provides a significant legal advantage to distressed enterprises by protecting them from false or unreasonable claims by creditors. The code sets procedures to prevent the filing of frivolous claims, allowing businesses to direct their resources and efforts towards actual financial recovery attempts. This provision protects companies' interests from undue harassment or hindrance, ensuring that frivolous lawsuits do not hamper their efforts to restructure and revive.[20]

INTERNATIONAL RECOGNITION AND COMPLIANCE:

Previous Framework: The absence of a modern and robust insolvency framework hampered India's capacity to attract foreign investment and effectively participate in the global economy. The lack of internationally recognised insolvency processes made cross-border insolvency matters difficult to resolve. The IBC aligns India's insolvency regime with international best practices and standards, thereby increasing the country's credibility and attractiveness as an investment destination. The code includes provisions for cross-border insolvency cooperation and recognition, which will allow for the seamless resolution of insolvency cases involving foreign creditors or assets. This worldwide alignment strengthens India's position in the global business community and allows for greater engagement in cross-border trade and investment operations. [21]

[20] *Analyzing The Impact Of The Insolvency And Bankruptcy Code On Corporate Restructuring And Debt Recovery In India*, The Amikus Qriae (June 27, 2023), https://theamikusqriae.com/analyzing-the-impact-of-the-insolvency- and-bankruptcy-code-on-corporate-restructuring-and-debt-recovery-in-india/.

[21] Sudeshna Guha Roy, *The Need for a Robust Cross-Border Insolvency Regime in India*, Lexology (Jan. 29, 2024), https://www.lexology.com/library/detail.aspx?g=b79bca9b-e993-465f-8690-6f79d549cc7a.

REGULATIONS OF AVOIDANCE TRANSACTIONS:

The IBC defines "avoidable transactions" as those made by a company before insolvency. These transactions can be reversed under particular conditions to ensure fairness and safeguard creditors. A key concept of insolvency law is to ensure that creditors are treated fairly and equally. Avoidance transactions enable creditors to challenge transactions done by a financially distressed corporation that unfairly benefit specific parties at their expense. This prevents asset stripping and other practices that may leave creditors with less to collect during insolvency procedures. By

allowing the reversal of avoidance transactions, the IBC aims to restore the company's financial position to its pre-transaction state.

To maintain good financial practices and safeguard the integrity of the insolvency procedure, it is essential to dissuade companies from engaging in activities that harm their creditors. One effective way of achieving this is by imposing legal consequences for such behaviour, thereby creating a disincentive for asset stripping and other creditor-disadvantage strategies. This approach not only protects the interests of creditors but also promotes responsible financial management within corporations. The IBC allows for the recovery of assets disposed of through avoidance transactions, making the insolvency process more effective and expedited. Recovered assets can be utilised to pay creditors a greater share of their dues, resulting in a more favourable outcome for all stakeholders.[22]

JUDICIAL PROCESS

INITIATION OF INSOLVENCY APPLICATION:

Initiation: Triggering the Process (Section 7, IBC):

- The process of filing an insolvency petition can be complex, and it involves several steps. To begin with, the petition should be submitted to the National Company Law Tribunal (NCLT). This petition can be launched by creditors who have outstanding debts above a certain threshold.
- If the corporation in question acknowledges its inability to repay its debts, the authorized government agencies may get involved. These agencies may include the Reserve Bank of India (RBI), the Ministry of Corporate Affairs, and the Insolvency and Bankruptcy Board of India (IBBI).

[22] *REEDLAW: Avoidable Transaction under IBC: Key Factors*, REEDLAW https://www.reedlaw.in/articles/avoidable-transaction-under-ibc%3A-key-factors.

- Next, the NCLT conducts a preliminary hearing, which is known as the Admissibility Hearing. During this hearing, the NCLT examines whether the petition meets the legal prerequisites for initiating insolvency proceedings. The NCLT may seek additional information from the petitioner, the debtor, or any other parties involved in the case. After considering all the relevant facts and evidence, the NCLT determines whether the petition should be admitted or rejected.
- If the petition is admitted, the NCLT appoints an Interim Resolution Professional (IRP) to manage the affairs of the debtor company during the insolvency process. The IRP takes over the management of the company and works towards developing a resolution plan that is acceptable to all stakeholders. In conclusion, filing an insolvency petition requires careful consideration and planning. The process can be lengthy and complicated, and it's essential to seek professional advice before proceeding.[23]

Adjudication: Assessment of the Situation (Section 61 of the IBC)

After a petition has been accepted, both the applicant (creditor or firm) and the responder (usually the company) will present their arguments to the National Company Law Tribunal (NCLT). The NCLT will then carefully examine all evidence provided by both parties, which may include financial records, expert opinions and witness testimonies. Based on the evidence and arguments presented, the NCLT will provide orders that dictate the next steps. These next steps may include a brief suspension of legal proceedings against the corporation, also known as a moratorium, to allow for a reorganisation attempt. Additionally, an Interim Resolution Professional (IRP) may be appointed to oversee the early stages of the insolvency procedure and evaluate the company's sustainability.

Resolution Process: Opportunity for Revival (Section 39 of the IBC): The CIRP is a time-limited process overseen by the NCLT. During this step, the IRP takes charge. The IRP identifies creditors, evaluates the company's financial health, and looks into revival potential buyers.

A permanent RP with specialised insolvency expertise is assigned to create a resolution plan. The RP collaborates with creditors and stakeholders to develop a strategy that may include debt restructuring, asset sales, or merging/acquiring another company to revive the business. The proposed resolution plan must be authorized by a specific majority of creditors before it can be

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[23] *Section 7-Initiation of corporate insolvency resolution process by financial creditor. | Companies Act Integrated Ready Reckoner|Companies Act 2013|CAIRR*, Companies Act Integrated Ready Reckoner|Companies https://ca2013.com/section-7-initiation-corporate-insolvency-resolution-process-financial-creditor/.

implemented.

The National Company Law Tribunal (NCLT) holds a significant role in the Insolvency and Bankruptcy Code (IBC) process. It is responsible for approving or rejecting the Resolution Plan submitted by the Corporate Insolvency Resolution Process (CIRP) professionals. The tribunal ensures that the plan adheres to the IBC's provisions and provides a fair settlement for all the stakeholders involved. Additionally, the NCLT monitors the CIRP's progress and intervenes whenever necessary to resolve any disputes or irregularities that may arise during the process.

Liquidation: Monetization of Assets (Section 55 of the IBC): If the CIRP cannot produce a credible resolution plan, the NCLT may order the company's liquidation. Throughout this stage: Liquidator Appointed: A professional liquidator is hired to handle the disposal of the company's assets in a transparent and orderly fashion.

Proceeds from asset sales are used to pay creditors based on the hierarchy prescribed by the IBC. When a company has paid off all of its debts to the best of its ability, it can be formally dissolved. To ensure that the liquidation process is carried out fairly and efficiently, the National Company Law Tribunal (NCLT) guarantees that creditors will receive the maximum possible recoveries while minimizing losses.

Appeals: Seeking Review (under Section 64 of the IBC):

Aggrieved parties (companies, creditors, etc.) can challenge NCLT orders in higher courts. This includes appeals to the National Company Law Appellate Tribunal (NCLAT), a specialised tribunal that hears appeals resulting from NCLT orders. Supreme Court: In some circumstances, further appeals may be brought to the Supreme Court of India. The Right to Appeal Ensures Fairness: This mechanism protects against potential errors and ensures a fair judicial procedure for all parties.

Landmark judgments and key principles under the IBC

1. Introduction to Section 29A: Synergies Dooray case Section 29A of the IBC prohibits persons such as undischarged insolvents, wilful defaulters, businesses holding NPAs for more than a year, certain convicted offenders, and others from bidding in a CIRP (even if the firm is one of which the person is a promoter). This provision was implemented in November 2017 in response to concerns that stubborn promoters were exploiting CIRP to gain an undervalued back-door admission into their firm. This issue was highlighted in the Synergies Dooray7 case, when Synergy Casting Ltd. ("SCL"), a connected party of the corporate debtor, bid for it under CIRP. SCL

also owned a major portion of the debtor's debt. Creditors who are linked to the corporate debtor are not permitted to serve on the committee of creditors ("CoC") (which is responsible for making important decisions such as voting on the plan). However, SCL transferred its debt to a third entity, which became a member of the debtor's CoC. By allocating its debt to a third party with voting powers in the CoC, SCL gained backdoor access to the debtor. Soon after this order, Section 29A was added to the IBC.[24]

2. The Swiss Ribbons Case and Differential Treatment of Creditors:

The Supreme Court of India (SC) addressed a crucial question in the landmark **Swiss Ribbons** case: Does the IBC's distinction between operational and financial creditors violate the equal protection clause enshrined in Article 14 of the Indian Constitution? This clause prohibits discrimination based on arbitrary classifications.

The SC ultimately upheld the constitutionality of the IBC provisions. They reasoned that a **justifiable difference** exists between these two types of creditors. Financial creditors, the court noted, are often involved in assessing a company's health before extending loans. This involvement allows them to participate more actively in restructuring efforts during insolvency proceedings. Operational creditors, on the other hand, typically do not have such deep insights into the debtor's financial situation and may not be well-equipped to contribute to business reorganization plans.

3. In simpler terms, the SC acknowledged that financial creditors have a deeper stake in the company's future due to the nature of their loans. This difference justifies their greater representation and voting rights within the Committee of Creditors (CoC), the body responsible for approving resolution plans.[25]

4. The Uncharted Territory of Cross-Border Insolvency: The Jet Airways Saga

India's insolvency framework, spearheaded by the IBC, has demonstrably improved domestic corporate distress resolution. However, a grey area remains in handling cross-border insolvency

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[24] Aditi Bhawsar, *Section 29A Of Insolvency And Bankruptcy Code- Explained*, SignalX AI (Oct. 4, 2020), https://signalx.ai/blog/section-29a-resolution/.

[25] *Case Analysis of Swiss Ribbons v/s Union of India*, https://www.legalserviceindia.com/legal/article-8886-case-analysis-of-swiss-ribbons-v-s-union-of-india.html.

cases – situations where a struggling company has assets or creditors scattered across multiple jurisdictions. Unlike many countries, India hasn't yet adopted the UNCITRAL Model Law on Cross-Border Insolvency, a standardized approach for navigating these complexities. This gap in legislation became evident in the high-profile case of Jet Airways. In 2019, insolvency proceedings were initiated against the airline in both the Netherlands and India, highlighting the need for coordinated action. Stepping up to address this challenge, the National Company Law Appellate Tribunal (NCLAT) played a pivotal role. The NCLAT's directive for a cross-border insolvency protocol, essentially fostering cooperation between insolvency professionals in India and the Netherlands, exemplifies how court-driven solutions can effectively bridge legal gaps and strengthen the IBC regime in the face of evolving cross-border insolvency scenarios.[26]

5. **IBC is a special law with an overriding effect** :

In a landmark decision, the National Company Law Appellate Tribunal (NCLAT) ruled in the case of **Jagmohan Bajaj vs. Shivam Fragrances Pvt. Ltd & Anr**, that internal disagreements between a company's directors cannot be used to block creditors from initiating insolvency proceedings. The NCLAT emphasized the primacy of the Insolvency and Bankruptcy Code (IBC). The IBC is a special law, meaning it takes precedence over other laws like the Companies Act's provisions on oppression and mismanagement (Sections 241 and 242). This ensures financial creditors' rights to recover their dues are not sidelined by internal company disputes. This ruling safeguards creditors' interests and promotes a more efficient system for resolving corporate insolvency in India.[27]

6. The provisions of the IBC shall prevail over the Income Tax Act, 1961 ("IT Act")

The Telangana High Court's ruling in Leo Edibles & Fats Limited (20XX) significantly impacts tax authorities during corporate insolvency under the IBC. Unlike usual scenarios, the Income Tax department loses its preferential treatment for collecting tax dues when a company undergoes IBC liquidation. Even assets previously attached by the tax department won't grant them secured creditor status within the IBC framework. Additionally, the court emphasized the IBC's moratorium provision, which effectively freezes all ongoing legal proceedings against the company, including tax disputes.

[26] CBCL https://cbcl.nliu.ac.in/insolvency-law/dealing-with-cross-border-insolvencies-an-analysis-of-the-jet- airways-saga/.

[27] *Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. Archives*, IBC Laws (Aug. 24, 2018), https://ibclaw.in/case-name/jagmohan-bajaj-vs-shivam-fragrances-private-limited/.

[28] (Dec. 8, 2018), https://tax.cyrilamarchandblogs.com/2018/08/decoded-interplay-tax-law-insolvency-bankruptcy-code/.

As a result, assets under pre-liquidation attachment orders won't be shielded and will be sold alongside other company assets during the streamlined liquidation process mandated by the IBC. This decision ensures a more efficient and predictable approach to corporate insolvency in India, even for companies facing tax liabilities.

SUGGESTIONS:

1. The IBC's implementation faces challenges due to the NCLT workload and limited insolvency professionals. Solutions include strengthening NCLT capacity with more benches, improved infrastructure, and specialized training for judges. A robust insolvency professional framework can be built through standardized training, faster certification, and a performance-based rating system. Technology can play a key role with a stronger Information Utility, online dispute resolution platforms, and virtual hearings. Addressing case backlog involves fast-track mechanisms, promoting mediation, and prioritizing critical cases. Finally, collaboration among stakeholders and public awareness campaigns can foster smoother implementation and a more informed business environment.
2. To curb IBC misuse, implement stricter criteria for initiating insolvency, impose penalties for frivolous petitions, and enhance regulatory oversight. Empowering Information Utilities (IUs) to verify claims and strengthening creditor rights through improved voting mechanisms can further deter manipulation attempts. These measures, coupled with promoting ethical practices among stakeholders, can ensure the IBC serves its intended purpose of efficient corporate revival or resolution.
3. To improve debt recovery under the IBC, explore strategies like allowing resolution plans with haircuts (partial debt repayment) for viable businesses with limited assets, fostering a robust secondary market for distressed assets to attract more buyers, and considering insolvency professionals' expertise in valuing and selling assets during the resolution process. These measures, along with addressing underlying challenges like operational inefficiencies in distressed companies, can potentially enhance creditor recoveries within the framework of the IBC.
4. To make the IBC more accessible for MSMEs, consider a simplified process with lower fees, faster timelines, and specialized courts handling MSME insolvency cases. Additionally, raising awareness through workshops and educational programs can empower MSMEs to navigate the IBC effectively. This two-pronged approach of simplifying procedures and

fostering knowledge can ensure MSMEs can benefit from the IBC's framework for timely resolution and business continuity.

CONCLUSION:

The Insolvency and Bankruptcy Code (IBC), 2016, stands as a landmark reform, fundamentally reshaping India's approach to corporate insolvency. Before the IBC, it a sluggish and uncertain.

Legal system-plagued resolution processes. The IBC addressed these shortcomings by introducing a time-bound framework with a clear creditor-centric approach. This empowers creditors by granting them control over the corporate debtor, ensuring a faster and more efficient resolution.

The IBC's effectiveness is further bolstered by its robust non-obstante clause, which prioritizes the code over any conflicting provisions in other statutes. This unwavering commitment to streamlining the process is further reflected in the unprecedented collaboration between the Indian government, the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and the judiciary. This collective effort ensures swift identification and rectification of any loopholes, fostering continuous legal evolution.

The tangible outcomes of the IBC are undeniable. India's ranking in the top 30 developing countries for retail investment by 2019 serves as a testament to the improved business environment. Moreover, insolvency resolution itself has undergone a significant transformation, becoming faster, more streamlined, and consolidated. This has instilled greater confidence in investors, both domestic and foreign, propelling India's position as a viable investment destination.

In conclusion, the IBC, 2016, has demonstrably revitalized India's insolvency landscape. Its impact extends beyond expediting resolutions; it fosters a more robust and investor-friendly business environment, paving the way for sustainable economic growth. As the IBC continues to evolve, its influence on the Indian economy and its standing in the global market is certain to be profound.

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