

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

LEGAL CHALLENGES OF CORPORATE BANKRUPTCY AND INSOLVENCY PROCEEDINGS

AUTHORED BY - AJIT RAJU KAMBLE & SHUBHAM BALASAHEB AUTE

ABSTRACT

Corporate bankruptcy and insolvency proceedings in India have undergone significant reform with the enactment of the Insolvency and bankruptcy code. 2016. So this framework aims to streamline the processes, enhance creditors recoveries, and promote resolution over liquidation. However, legal challenges persists, undermining its effectiveness and efficiency. Key issues includes delay due to judicial bottlenecks, conflicts of jurisdiction between different adjudicatory authorities like National company law tribunal, high courts, and supreme court and inconsistent interpretation of provisions. The codes application to cross-border insolvency remains limited, causing complications in multinational corporations resolutions. The prioritization of creditors claims has also led to disputes, especially with operational creditors often receiving lower recoveries compared to financial creditors. Furthermore, the lack of robust mechanisms for detecting fraudulent practices and the limited expertise of insolvency professionals exacerbate challenges. Addressing this issues requires procedural clarity, capacity building in judicial and professional domains, and the incorporation of global best practices to strengthen corporate insolvency framework in India.

Key words: Corporate, insolvency, bankruptcy, debtor, creditor, process, debt, Corporate insolvency resolution process.

INTRODUCTION

The Insolvency and bankruptcy of the corporate entities which are basically a process wherein different types of entities is going under the process of insolvency and bankruptcy, when there is a failure to pay the debt by the corporate body or entities.

In India there is law about Insolvency and bankruptcy code, 2016 this code regulate about the Insolvency and bankruptcy process of an individual, partnership firms, and corporate person in

a time bound manner for maximize value of stakeholders.¹

The Bankruptcy is an legal process wherein an individual, business, or organization that cannot repay its debts seeks relief from some or all of its financial obligations, in simple terms the the debtor approach to the court and files an petition and further court declares an entity is unable to pay any further debts, In such cases the court takes the responsibility of liquidating the debtors assets and distributes the proceeds to his creditors. This process is designed to provide a fresh financial for debtor while ensuring fair treatment of creditors.

Insolvency refers to the circumstances when a company or an individual cannot meet financial obligations or repay any outstanding financial loan to its lenders in due time. The company or an individual may prevent insolvency proceedings from being initiated against them by arranging for alternate repayment arrangement or make an any informal arrangements with the creditors for alternative payment arrangements, if the insolvency situation remains unresolved, legal action may be undertaken the company or an individual. This may lead to liquidation process by the order of court to make payment of the outstanding debts. The corporate personality is facing legal challenges while the insolvency proceedings to cure that challenges there are certain provisions in the insolvency and bankruptcy code, 2016.²

Corporate bankruptcy

Corporate bankruptcy is a legal process initiated when the company or corporate debtor becomes insolvent, that means it can not pay its debts when they fall due.

The corporate bankruptcy is also known as insolvency, it is a legal status that occurs when a company is unable to meet its financial obligations, leading to cessation of operation or restructuring of its financial affairs. Bankruptcy is a concept slightly different from insolvency, which is rather amicable. A bankruptcy is when a person voluntary declares himself as an insolvent and goes to the court. On declaring him as 'bankrupt', the court is responsible to liquidate the personal property of the insolvent and hand it out to its creditors. It provides a fresh lease of life to the insolvent.³

¹ Law of insolvency and bankruptcy – S. R. Myneni

² Insolvency and bankruptcy code, 2016

³ [The Legal Framework for Corporate Bankruptcy in India: An Analysis of IBC Amendments » LegalOnus](#)

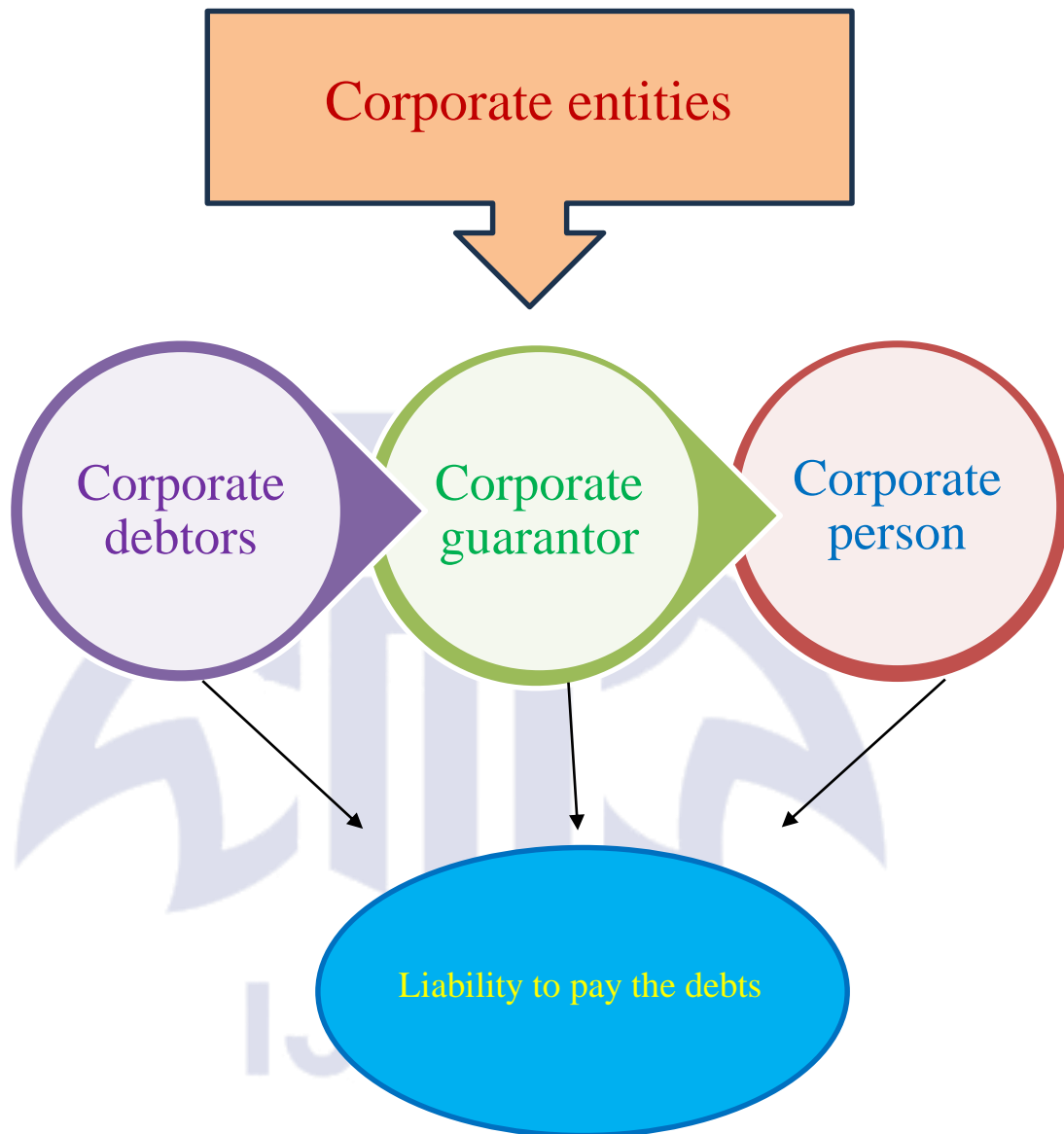
So, here are some important terms came into the corporate bankruptcy they are as follows:

- **1.1 Corporate person:** (section 3 (7) Insolvency and bankruptcy code,2016)
'corporate person' means a company as defined in section 2 (20) of company Act, 2013 – company means a company incorporated under this Act or under any previous company law,
A limited liability partnership as defined in clause (n), sub-section (1) of section 2 of limited liability partnership Act, 2008, or any other person incorporated with limited liability under any law for time being in force but shall not include any financial service provider.
- **1.2 Corporate debtor:** (section 3 (8) Insolvency and bankruptcy code,2016)
'corporate debtor' means a corporate person who owes a debt to any person.
- **1.3 Creditor:** (section 2(10) Insolvency and bankruptcy code,2016)
'creditor' means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and decree-holder.
- **1.4 Corporate guarantor:** (section 5(5A) Insolvency and bankruptcy code,2016)
'Corporate guarantor' means a corporate person who is the surety in a contract of guarantee to a corporate debtor.⁴
- **1.5 Liquidator:** (section 5(18) Insolvency and bankruptcy code,2016)
'liquidator' means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this part, as case may be.⁵

⁴ [India Code: Insolvency and Bankruptcy Code, 2016.](#)

⁵ Insolvency and bankruptcy code, 2016/liquidator/

1. Corporate entities comes under corporate bankruptcy and insolvency



▪ 2.1 Corporate debtor :

Section 3(8) Insolvency and bankruptcy code, 2016 defined as it means a corporate person who owes a debt to any person.

Here are some key features of an corporate debtor they are as follows:

(a). Debt owed:

There are two types of debts which are

i) Financial debt :-

The financial debt is taken in the form of an for example Loans, bonds, etc.

ii) Operational debt :-

The operation debt is taken for example dues for goods and services, employee salaries, or statutory dues like taxes.

(b). Legal entity:

Corporate debtor is must be registered under any Indian laws such as

- A company incorporated under The Companies Act, 2013 or earlier companies Acts.
- An LLP (Limited Liability Partnership) registered under the Limited Liability Partnerships Act, 2008.

(c). Insolvency process:

The Corporate insolvency resolution process or liquidation process can be initiated against the corporate debtor if

- An application is made by creditors or the debtors itself.

▪ **2.2 Corporate guarantor :**

Section 5(5A) Insolvency and bankruptcy code, 2016 defined as it means corporate person who is the surety in the contract of guarantee to a corporate debtor.

The guarantor is equally liable for the debt, and the creditor can choose to recover the dues from the guarantor without exhausting remedies against the borrower.

▪ **2.3 Corporate person :**

Section 3 (7) Insolvency and bankruptcy code, 2016

‘corporate person’ means a company as defined in section 2 (20) of company Act, 2013 – company means a company incorporated under this Act or under any previous company law,

A limited liability partnership as defined in clause (n), sub-section (1) of section 2 of limited liability partnership Act, 2008, or any other person incorporated with limited liability under any law for time being in force but shall not include any financial service provider.⁶

2. Case laws

2.1 M/S. Innoventive Industries Ltd. vs ICICI Bank on 31 August 2017

- Once an insolvency professional is appointed to manage the Company, the erstwhile Directors who are no longer in management, obviously cannot maintain an appeal on behalf of the Company.

⁶ [UNDERSTANDING THE INSOLVENCY & BANKRUPTCY CODE, 2016: A COMPREHENSIVE OVERVIEW » Lawful Legal](#)

- Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.
- The appellant only raised the plea of suspension of its debt under the Maharashtra Act, which, therefore, was that no debt was due in law. The adjudicating authority correctly referred to the non obstante clause in Section 238 of the 2016 Code and arrived at a conclusion that a notification under the Maharashtra Act would not stand in the way of the corporate insolvency resolution process under the Code.
- It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.
- The obligation of the corporate debtor was, therefore, unconditional and did not depend upon infusing of funds by the creditors into the appellant company. Also, the argument taken for the first time before us that no debt was in fact due under the MRA as it has not fallen due (owing to the default of the secured creditor) is not something that can be countenanced at this stage of the proceedings. In this view of the matter, we are of the considered view that the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd.⁷

3. Insolvency and Corporate insolvency

According to Cambridge Dictionary, Insolvency means a situation in which a person or a company does not have enough money to pay debts, buy goods, etc.⁸

According to Merriam Webster Dictionary, Insolvency means a fact or state of being insolvent: inability to pay debts.⁹

⁷ [M/S. Innoventive Industries Ltd vs Icici Bank & Anr on 15 May, 2017](#)

⁸ [INSOLVENCY | definition in the Cambridge English Dictionary](#)

⁹ [Insolvency Definition & Meaning - Merriam-Webster](#)

Corporate insolvency is a state where a corporate person or company fails to pay debts to the debtors.

When a debtor gives debts to a corporate person for a time specific time period then that corporate person shall have to pay that debts in that specific time period to a debtor and if that corporate person fails to pay debts to debtor then that state is known as corporate insolvency. Insolvency refers to the circumstances when a company or an individual can not meet financial obligations or repay any outstanding financial loan to its lenders in due time. The company or an individual may prevent insolvency proceedings from being initiated against them by arranging for alternate repayment arrangement or make any informal arrangements with the creditors for alternative payments arrangement, if the insolvency situation remains unresolved, a legal action may be undertaken the company or an individual. This may lead to liquidation process by the order of the court to make payment of the outstanding debts.

4. Insolvency Proceedings of Corporate

The insolvency proceedings of corporate are given in the Part II of the Insolvency and Bankruptcy Code, 2016 as, Corporate Insolvency Resolution Process.

To initiate the insolvency proceedings the default amount must be the minimum of Rs. 1 crore according to Section 4 of the Insolvency and Bankruptcy Code, 2016.

The corporate insolvency resolution process can be initiate by as follows:

- i. Financial Creditor** (Section 7)
- ii. Operational Creditor** (Section 9)
- iii. Corporate Debtor** (Section 10)

- i) Financial creditor** Section 5 (7) - means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred.

A Financial creditor under section 7 (1) may by itself or jointly with other financial creditors, may file an application before the Adjudicating Authority i.e. National Company Law Tribunal to initiate corporate insolvency resolution process against a corporate debtor.

The application for corporate insolvency resolution requires a record of default, the name of the interim resolution professional, and any relevant information specified by the board. The Adjudicating Authority may admit the application if the

application is complete and there are no discrepancy proceedings pending against the proposed resolution professional, or reject the application if the application is incomplete or disciplinary proceedings are pending. The Adjudicating Authority must give the notice to the applicant to rectify the defect within seven days of receipt of the notice. The order to the financial creditor must be communicated within seven days of admission or rejection. The corporate insolvency resolution process begins from the date of application admission by the National Company Law Tribunal.

ii) Operational Creditor Section 5 (20) means a person to whom the operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

According to the Section 8 (1) an operational creditor may, on the occurrence of the default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default of the corporate debtor in such form and manner as may be prescribed.

The operational creditor is responsible for bringing to the attention of the corporate debtor within ten days of receiving a demand notice or invoice. If the debtor does not receive payment or notice of the dispute within this time, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The application must include a copy of the invoice demanding payment or demand notice delivered to the corporate debtor, an affidavit stating that there is no notice given by the corporate debtor for the unpaid operational debt, a certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, a copy of any record with an information utility confirming that no payment of an unpaid operational debt by the corporate debtor, and any other proof confirming that no payment of an unpaid operational debt by the corporate debtor has been made. The creditor initiating a corporate insolvency resolution process may propose a resolution professional to act as an interim resolution professional. The Adjudicating Authority, such as the National Company Law Tribunal, shall ascertain the existence of default within 14 days of the receipt of the application.¹⁰

¹⁰ INSOLVENCY AND BANKRUPTCY CODE, 2016/ INSOLVENCY PROCEEDING/

The grounds for admitting the application include completeness, no repayment of the unpaid operational debt, delivery of the invoice or notice for repayment, no notice of dispute, and no disciplinary proceedings pending against any proposed resolution professional.

Grounds for rejecting the application includes, repayment of the unpaid operational debt, delivery of the invoice or notice for payment, and a record of dispute in the information utility.

The Adjudicating Authority must give notice to the applicant to rectify the defect in their application within seven days of receipt of such notice. The order will be communicated to the operational creditor and corporate debtor within seven days of admission of the application.

iii) Corporate Debtor or Applicant Section 5 (5) (c) – means an individual who is in charge of managing the operations and resources of the corporate debtor.

According to Section 10 (1), if a corporate debtor has committed a default then a corporate applicant may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The application for corporate insolvency resolution requires information about the company's books of accounts and other documents for a specified period. The information of an appointed interim resolution professional and a special resolution passed by shareholders or at least three-fourth of the total number of partners of the corporate debtor must also be provided.

a) Acceptance or Rejection of the Application:

The Adjudicating Authority must admit the complete application within fourteen days, or reject it if incomplete. The applicant must be given seven days to correct any defects before being rejected. The corporate insolvency resolution process begins from the admission of application.

b) Time limit for completion of insolvency resolution process:

According to the section 12 (1), the corporate insolvency process shall be completed within a period of 180 days from the date of admission of the application to initiate such process with one time extension (only if applicable) of 90 days. The maximum time within which corporate insolvency resolution process has to be completed is 330 days.

c) Withdrawal of Application:

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or 9 or 10, on an application made by the applicant with the approval of ninety per cent voting share of committee of creditors.

d) Moratorium and Public notification:

After an application is accepted, the procedure for establishing a moratorium is described in Section 13 of the Code. A moratorium, a public statement of the procedure, and the appointment of an expert in interim resolution are all required by the Adjudicating Authority.¹¹

The notification needs to be made right after following the appointment. The moratorium forbids recovering debtor occupied property, foreclosing security interests, transferring assets or legal rights, and instituting ongoing lawsuits against the corporate debtor. When the application for insolvency resolution is admitted, the moratorium order goes into effect, and it ends when the resolution plan or liquidation order is approved. The name and address of the debtor, as well as, the authority's name, must be included in the public notification of the corporate insolvency resolution procedure.

e) Interim Resolution Professional:

The Adjudicating Authority must appoint an interim resolution professional on the insolvency commencement date, within fourteen days if no disciplinary proceedings are pending. The interim resolution professional's duties include collecting information on the corporate debtor's assets, finances, and operations, receiving and collecting claims from creditors, forming a committee of creditors, monitoring the debtor's assets until a resolution professional is appointed and filing information with the information utility. They also take control and custody of any assets over which the debtor has ownership rights, including foreign assets, tangible assets, intangible assets, securities, and assets subject to court or authority determination. Other duties may be specified by board, but assets, cannot include assets owned by a third party, Indian or foreign subsidiaries, or assets notified by the central government in consultation with financial sector regulators.

¹¹ INSOLVENCY AND BANKRUPTCY CODE, 2016/INSOLVENCY PROCEEDING/

f) Committee of Creditors:

Section 21 the Committee of Creditors is formed by the interim resolution professional after collating all claims against the corporate debtor and determining the financial position. It comprises all financial creditors of the corporate debtor, with financial creditors who are related parties to the debtor not eligible to vote. If the debtor owed financial debt to multiple financial creditors as part of consortium agreement, each financial creditor will be part of the committee, and their voting share will be determined based on the financial debts owed to them. If a person is financial creditor and an operational creditor, they will be included in the committee with a proportionate voting share based on the extent of financial debts owed to them. The insolvency and bankruptcy board of India may specify the manner of determining the voting share for financial debts issued as securities. All decisions of the committee of creditors must be taken with a vote of not less than 75 % of the voting share of the financial creditors. Members of the committee may meet in person or electronically, and the resolution professional must attend all meetings. Creditors who are also members of the committee may appoint an insolvency professional to represent them in a meeting, with fees borne by the creditors.

g) Appointment of Resolution Professional:

The committee of creditors can appoint an interim resolution professional or replace them by another resolution professional within seven days of the committee's constitution. The Adjudicating Authority can also replace the resolution professional during the process period by filing an application for the appointment.¹²

If the board confirms the name, the interim resolution professional will continue to function until the board confirms the appointment. The resolution professional has a wider role in monitoring and supervising the entity, controlling its assets, and managing the operations of the debtor during the process period. They are responsible for negotiating between the debtor and creditors in assessing the entity's viability. The resolution professional is responsible for reserving and protecting the assets of the debtor, including the continued business operations.

¹² [Corporate-insolvency-resolution-process-an-overview.pdf](#)

Some actions to be undertaken include taking immediate custody and control of all assets, representing the debtor in judicial, quasi-judicial, or arbitration proceedings, raising interim finances, appointing accountants, legal professionals, maintaining an updated list of claims, convening and attending all committee meetings, preparing information memorandums, presenting resolution plans, filing applications for avoidance of transactions and other actions specified by the board.

a) Preparation of Information Memorandum:

Section 29 of the Code the resolution professional requires creating an information memorandum for a resolution plan. The resolution professional must provide the applicant with access to all relevant information, including the debtor's financial position, disputes, and other relevant matters. The applicant must comply with current laws regarding confidentiality and insiders trading, protect the debtor's intellectual property, and not share the information with third parties unless specified. The resolution professional must also ensure the applicant does not share the information with third parties.

b) Submission of Resolution Plan:

Section 30 of the Code states the resolution applicant requires to submit a resolution plan based on information memorandum to a resolution professional. The plan must provide the following: payment of insolvency resolution process costs, repayment of operational creditor's debts, management of the debtor's affairs, implementation and supervision, compliance with current law provisions, and confirming to other requirements.

c) Approval of Resolution Plan by Committee of Creditors:

The committee of creditors may approve the plan by a vote of at least 75% of the voting share of financial creditors. Voting share is defined as the share of voting rights of a single financial creditor in the committee of creditors based on the proportion of financial debt owed to them in relation to the debt owed by the debtor.

d) Approval of Resolution Plan by NCLT:

If the NCLT approves the resolution plan, the moratorium period ends and it becomes binding on the corporate debtor, its employees, members, creditors, guarantors, and other stakeholders involved in the plan. If the plan does not meet

these requirements, it may be ordered to reject the plan.¹³

e) Order:

Section 31 states that after the order of approval passed by NCLT the moratorium order shall cease to have effect and resolution professional shall forward all records relating to the conduct of corporate insolvency resolution process and resolution plan to the board to be recorded on its database. The appeal from the NCLT's approval of a resolution plan must be made based on the grounds outlined in Section 61 (3) of the Code. These grounds include contravention of current laws, irregular exercise of powers by the resolution professional during the insolvency period, insufficient provision for debts owed to operational creditors, insufficient insolvency resolution process costs for priority repayment, and non-compliance with other board-specified criteria. The plan must also address the debts owed to operational creditors, the insolvency resolution process costs, and other board specified criteria.

f) Fast track corporate insolvency resolution process

Complexities may come in the structure of liabilities and assets, or size of operations.

Most entities are likely to have a less complex structure in these aspects. Their insolvency is also likely to take a shorter time to resolve. These cases will be called fast track insolvency resolution process where insolvency resolution process to be carried out takes a shorter time period than the default maximum period allowed. The code has specified three types of fast track cases for entities with small scale of operations for entities with low complexity of creditors and for such other categories of corporate debtors as may be prescribed. In the first two, definitions of what constitutes such entities will be issued by the central government.

In fast track cases, the process flow of the insolvency resolution process will be the same as per provisions of chapter II of the code, in order to retain the principles of transparency and collective action. Since the resolution is expected to be done in a shorter period, there will be a greater onus on the process at trigger. The entity who triggers the fast track process must submit the documentation with the application to support the case for the fast track insolvency resolution process. The National Company Law Tribunal will seek validation from the other parties involved before

¹³https://www.icsi.edu/media/webmodules/ibc2016/CorporateBankruptcy_APrimer.pdf

issuing the order for a fast track insolvency resolution process. For example, if the creditor triggers the small entity fast track insolvency resolution process, the application must include audited statements that the entity is eligible for this process. The National Company Law Tribunal will forward these to the debtor for validation. If there is no dispute from the debtor on the eligibility documents within a specified amount of time, the National Company Law Tribunal will issue the order for the fast track insolvency resolution process.

The process is similar to that given in the Chapter II, where an interim resolution professional who is in charge of collection and collation of claims, monitoring the entity and the creation of a creditors committee. Once the committee is formed, the resolution professional will verify the submitted liabilities to the best of his/her ability. The committee recommends that this time period should be at least half the time taken for the complex cases, or within 90 days.¹⁴

Similar to the provision for insolvency resolution process, in a fast track process, if more than 75% of the creditors are of the view that more time is required to resolve the stress, they may apply to the National Company Law Tribunal for an extension. The debtor or any other creditor will not be entitled to seek an extension. The provisions relating to offences and penalties under Chapter VII shall apply to this fast track process.

5. Legal Challenges of Insolvency Proceedings

The Insolvency and Bankruptcy Code, 2016 offers a time bound resolution process aimed to provide an effective and quick ways to do corporate insolvency of a corporate person by providing a corporate insolvency resolution process through National Company Law Tribunal.

Along with this new law there comes a lot of challenges which creates problems during applying and procedure of the corporate insolvency procedure. Some of they are as follows:

a) Time limit process of corporate insolvency resolution process:

As per the section 12, of Insolvency and Bankruptcy Code, 2016 the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application. This is a speedier process in which the resolution professional has to collate the information utility of claims and to prepare information

¹⁴ INSOLVENCY AND BANKRUPTCY CODE, 2016/ INSOVENCY PROCEEDING OF CORPORATE

memorandum while taking over the management while constituting committee of creditors and to handle all its procedure. All this process has to be done by the insolvency resolution professional within a period of 180 days is a quiet challenging.

b) Inadequate quantity of infrastructure:

The Adjudicating Authority lacks in having various departments itself such as IT for the better handling of the corporate insolvency resolution process without getting overburden by the process in the time bound process.

c) Insolvency resolution professionals :

At the current situation there are only 896 insolvency resolution professionals registered in India under The Insolvency and Bankruptcy Code, 2016, the numbers itself lacks which burdens there working ability.

Having the lacking quantity of the insolvency resolution professionals there's also lacking of the skills of insolvency professionals. They have a minimum experience and qualification regarding the role as insolvency professional and by following this they address difficulties in the corporate insolvency resolution process.¹⁵

d) Lengthy processes:

The process of corporate insolvency resolution has given time period of 180 days with extension up to 90 days but from filing an application before the Adjudicating Authority till getting a final order from the Adjudicating Authority this process takes average time period of two years which slower the whole insolvency processes.

e) Shortage of Adjudicating Authority benches:

The Adjudicating Authority i.e. National Company Law Tribunal has only 11 benches in India with inadequate and limited technical and judicial member working and representing the benches. This thing only increases pendency of cases in Adjudicating Authority.

f) Cross border insolvency:

Since the Insolvency and Bankruptcy Code, 2016 does not have any provisions related to the cross border insolvency process; the cross border insolvency cannot be implemented in India which leads to the code to an incomplete version of corporate insolvency processes.

¹⁵ [Corporate-insolvency-resolution-process-an-overview.pdf](#)

Legal Provisions in India

The insolvency proceeding has given legal provisions under The Insolvency and Bankruptcy Code, 2016 by using which one can start the procedure are as follows:

1) Initiation of corporate insolvency process:

Under Section 6 of the Insolvency and Bankruptcy Code, 2016 given that a financial creditor or an operational creditor or a corporate debtor may initiate the insolvency resolution process if any corporate debtor commits a default.

- i) Section 7 a financial creditor may initiate corporate insolvency resolution process
 - ii) Section 9 an operational creditor may initiate corporate insolvency resolution process
 - iii) Section 10 a corporate debtor itself may initiate corporate insolvency resolution process
- 2) An application of corporate insolvency resolution process against corporate debtor shall be initiated before Adjudicating Authority. Section 60 of the code states that the National Company Law Tribunal shall be the Adjudicating Authority.
- 3) Section 12 states that the corporate insolvency resolution process shall be completed within a period of 180 days of the admission of the application.
- 4) Section 21 states that the interim resolution professional shall constitute a committee of creditors.¹⁶
- 5) Under section 22 the committee of creditors may appoint a resolution professional by way of voting to replace the interim resolution professional appointed by the National Company Law Tribunal.
- 6) Section 30 submission of resolution plan by the resolution applicant to the resolution professional.
- 7) Approval of resolution plan by the committee of creditors by a vote of not less than seventy five per cent.
- 8) Approval of resolution plan by NCLT only if it satisfied that the resolution plan is approved by the committee of creditors.
- 9) Section 31 the NCLT shall passed the order that the moratorium shall cease to effect.

Penalty provisions: Section 235A Punishment where no specific penalty or punishment is provided – If any person contravenes any of the provisions of this Code or the rules or

¹⁶ INSOLVENCY AND BANKRUPTCY CODE,2016

regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.¹⁷

6. Case Laws

Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. 2022

Power producer Vidarbha Industries was waiting for favourable decision from MERC and APTEL, the electrical regulators, to collect more than Rs. 1700 crores from its client, RIL. The monies were withheld, though, since the regulators orders were contested. Due to a lack of finances, Vidarbha neglected to make payments to its financial creditor, Axis Bank. Axis Bank applied to the NCLT under section 7 of the Insolvency and Bankruptcy Code to start a CIRP against Vidarbha. Citing pending regulatory orders in its favour, Vidarbha challenged the admittance and requested a postponement till the monies were released. Using the Supreme Court's ruling in Swiss Ribbons as support, NCLT and NCLAT denied Vidarbha's appeals, holding that admission under Section 7 should not be postponed because of unrelated issues. Vidarbha filed a Supreme Court petition.

The Supreme Court stated that both the previous fora as per the requirements of Section 7 of the IBC had only observed whether a debt and requisite default had occurred. It concluded that both the institutions had not entered into the merits of the matter. While not agreeing with the view taken by the previous forums, the Supreme Court held that the award of ATEPL cannot completely be disregarded, and the viability and overall financial health of Vidarbha Industries cannot be held as extraneous matters. The court concluded that the word may in Section 7 (5) (a) gives the NCLT discretion by applying the literal interpretation rules from instances. According to the Court, NCLT and NCLAT made a mistake by ignoring the sizeable amount that Vidarbha could have realized given APTEL's ruling in its favour. After taking into account pertinent facts, it granted the appeal, declaring that NCLT has the authority to reject or postpone petitions under Section 7 (5) (a).¹⁸

¹⁷ [India Code: Insolvency and Bankruptcy Code, 2016.](#)

¹⁸ [Vidarbha Industries Power Limited V. Axis Bank Limited](#)

7. Conclusion

The corporate bankruptcy and insolvency proceedings present a complex web of legal challenges, including time limit process of corporate insolvency resolution process, inadequate quantity of infrastructure, insolvency resolution professionals, lengthy processes, shortages of adjudicating authority benches, cross border insolvency. These challenges often require careful consideration of competing interest, such as preserving business continuity, safeguarding stakeholders rights, and upholding the integrity of legal process. Addressing these issues effectively necessitates a combination of robust legal expertise, strategic planning, and reforms that promote transparency, fairness and efficiency In insolvency proceedings. For that in India there is an law to handle the insolvency proceedings of corporate it deals under the insolvency and bankruptcy code, 2016. In India every insolvency and bankruptcy matter that are handle by this code wherein the for such offences penalties also provide therein the code.

BIBLIOGRAPHY

1. Law of insolvency and bankruptcy – S. R. Myneni
2. Insolvency and bankruptcy code, 2016
3. [The Legal Framework for Corporate Bankruptcy in India: An Analysis of IBC Amendments » LegalOnus](#)
4. [India Code: Insolvency and Bankruptcy Code, 2016.](#)
5. [UNDERSTANDING THE INSOLVENCY & BANKRUPTCY CODE, 2016: A COMPREHENSIVE OVERVIEW » Lawful Legal](#)
6. [M/S. Innoventive Industries Ltd vs Icici Bank & Anr on 15 May, 2017](#)
7. [INSOLVENCY | definition in the Cambridge English Dictionary](#)
8. [Insolvency Definition & Meaning - Merriam-Webster](#)
9. https://www.icsi.edu/media/webmodules/ibc2016/CorporateBankruptcy_APrime_r.pdf
10. [Corporate-insolvency-resolution-process-an-overview.pdf](#)
11. INSOLVENCY AND BANKRUPTCY CODE, 2016/ INSOVENCY PROCEEDING OF CORPORATE
12. [Vidarbha Industries Power Limited V. Axis Bank Limited](#)
13. [Compendium on the Insolvency and Bankruptcy Code, 2016 3rd Edition - Corporate Professionals](#)