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THE ROLE OF INSOLVENCY BANKRUPTCY CODE, 2016 IN BOOSTING THE DOING BUSINESS RANKING OF INDIA PUBLISHED BY THE WORLD BANK.

AUTHORED BY - MEGHNA BUCHASIA

ABSTRACT

The World Bank is a global financial organization that offers zero-interest loans to nations in the process of development. Apart from that it supports various other issues by investing in projects such as alienating poverty, development of agriculture, private sector, and environmental changes. It also draws and publishes various reports for the knowledge and improvement of the countries' economies. One such report is Doing Business where 190 countries of the world are ranked by analyzing the business environment strengths and economic performance based on twelve indicating areas. This aids not only in comparing the various economies of the world with each other but also provides insight to them individually about the regulatory performances of their economy.

The scores for individual indicators depict how far each economy is from achieving optimal regulatory performance. Scoring a good rank in such a report becomes essential for any country because it highlights the economic health and performance on a worldwide platform. It indicates whether the environment of the country is apt for doing business and investing. India has seen an enlarged improvement in its ranking in this report. It recorded a 63rd rank in the year 2021 that has been the highest from all the other years where it has improved “by 53 positions in the last two years and 65 positions in the last four years.”¹ The significant improvement can be attributed to the adoption of the Insolvency and Bankruptcy Code, 2016, which has established a robust framework for handling insolvency and bankruptcy cases involving individuals, corporations, and businesses.

For this dissertation, I intend to cover the importance of the Doing Business Rankings for the

¹ Press Information Bureau, Government of India, Ministry of Commerce and Industry, ‘India improves rank by 23 positions in Ease of Doing Business’ (<https://pib.gov.in/newsite/PrintRelease.aspx?relid=184513>) accessed on 18 April, 2023.

upliftment of the world economies and assert the fact that it can help developing countries to come to par with the developed countries if the focus is drawn on the lacunas. Further, I would draw an analysis of the ranks of India in the different years, specific focus on the data before and after 2016. It shall highlight the improvement of the business environment that was brought about by the enactment of the Insolvency and Bankruptcy Code, 2016. It intrinsically takes on all those provisions of the Code that have eased the process of doing business. It shall not only cover the importance of the code but also identify the lacunae in the code that can be rectified for better performance. The successes and failures that it brought to India shall be mentioned and finally, I shall provide recommendations that can advance and upgrade the business environment with the help of the code in India.

KEYWORDS: Doing Business Ranking, Insolvency and Bankruptcy Code, 2016, World Bank, India, Business.

1. **INTRODUCTION**

In this globalized world, every country thrives on the competition in the market by delivering the best products and services to the consumers including satisfying cross-border demands. One of the most important features of being able to survive in this rugged market is to create such an environment in their national economy that not only the national companies' lodges there but also attracts international players to set up their businesses. To enable such an economy, one needs to provide a healthy platform that captivates the enterprises. One such healthy incentive is the ease of doing business in an economy. '*Ease of doing business*' means the ability to work in an economy effortlessly and positively without much interference, regulations, and restrictions. Having said that, it is crucial to develop a healthy environment through an economy because:

- **Access to economic opportunity:** More products and services in the market shall bring with it more economic opportunities such as minimum transaction costs, opportunity costs, contract options, viable gains, incentives, etc;
- **Diversification of the market:** Products and services from all over the world shall expand the market size and innovation that shall provide a diversified course of action to undertake;
- **Attracts investments:** The wealth creation of an economy can expand by easing the business environment as more international enterprises would prefer such an economy to start their pursuit. An economy with trade barriers retracts business enterprises;

- **Exchange of cultural ideas at a macro and micro level:** Cultural ethnicity reaches from the macro level ie from the international habitat to the micro level ie the lowest markets of other national economies; and
- **Increases the entrepreneurship climate:** The competition from the international players motivates national entrepreneurs to compete and come up with innovative and better products.

The importance of creating ease of doing business environment does not stop with the above-mentioned pointers. It is a long list of creation of new supply and demand, a decrease of corruption level, removal of middlemen, increase in consumer protection, upliftment of the national economy, decrease in taxes, etc. Therefore, ease of doing business regulations builds an efficient, coherent, and productive market where all the market players wish to survive and contribute.

In 2016, India embarked on a transformative journey by enacting the Insolvency and Bankruptcy Code (IBC), a landmark legislation aimed at addressing long-standing issues related to insolvency and bankruptcy. This ambitious legal framework marked a pivotal moment in the country's efforts to improve its business climate and enhance the ease of doing business.

The IBC sought to revolutionize the insolvency landscape in India by introducing a modern and efficient insolvency resolution process, making it easier for creditors to recover their dues and for businesses to restructure and recover from financial distress. Its enactment promised to streamline the often complex and protracted insolvency proceedings that had plagued India's business environment for decades. India's performance in this global assessment was closely scrutinized, and the IBC's impact on its ranking became a subject of significant interest.

1.1. WHAT IS DOING BUSINESS RANKING BY THE WORLD BANK?

The World Bank publishes the Doing Business Ranking Index every year since 2005 for 190 countries. It was discontinued in the year 2021. But it has left a crucial impact on the major economies of the world. Basically, the Index evaluates the ramifications of the economic policies implemented by the government for their national economy to either promote or obstruct business growth. The report is published after the evaluation of all the countries under the following 12 parameters of the life of a business:

1. “Ease of starting a business;
2. Dealing with construction permits;
3. Getting electricity;
4. Registering property;
5. Getting credit;
6. Protecting minority investors;
7. Paying taxes;
8. Trading across borders;
9. Enforcing contracts;
10. Resolving insolvency;
11. Employing workers; and
12. Contracting with the government.”²

The scores for each of these parameters are determined by considering various associated factors such as “time and cost”³, which can either facilitate or hinder business activities.⁴ It is expressed on a scale ranging from 0 to 100, with a score of 100 indicating the highest level of performance.⁵ The rankings are established by arranging the combined scores of 12 parameters, and economies are positioned in terms of their “ease of doing business”⁶ on a scale from 1 to 190, with 1 signifying a favourable regulatory environment that greatly facilitates doing business.⁷ The rankings and scores have an inverse relationship, with the country holding the first rank regarded as the top-performing economy for conducting business “(The World Bank Group, 2020).”⁸

It's worth noting that the Doing Business ranking faced heavy criticism and controversy over the years, particularly regarding the accuracy of its measurements and the potential for countries to manipulate their rankings through policy changes designed solely to improve their scores. In response to these concerns, the World Bank temporarily suspended the publication of the report in 2021 and initiated an independent review of its methodology and data.

² International Bank for Reconstruction and Development, The World Bank, ‘Doing Business 2020’ (<https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>) accessed on 20 July 2023.

³ Neha Shroff, Sudesh Zingde, ‘Ease of Doing Business and its Significance in Indian Economy’ (2021) ResearchGate(https://www.researchgate.net/publication/356065783_Ease_of_Doing_Business_and_its_Significance_in_Indian_Economy) accessed 20 July 2023.

⁴ *ibid.*

⁵ *ibid.*

⁶ *Ibid.*

⁷ *ibid.*

⁸ *ibid.*

1.2. WHAT IS THE INSOLVENCY AND BANKRUPTCY CODE, 2016?

Before the implementation of the Insolvency and Bankruptcy Code, 2016 (hereinafter IBC, 2016) this arena was dealt with by various other Acts such as “The Sick Industrial Companies (Special Provisions) Act, 1985; The Companies Second Amendment Act, 2002; The Recovery of Debts due to Banks and Financial Institutions Act, 1993, etc.”⁹ The IBC, 2016 became “the umbrella legislation for insolvency resolution of all entities in India—both corporate and individuals.”¹⁰ It has unified the provisions related to stressed assets and has put the creditors in an advantageous position to smoothly conduct the entire recovery process. It aimed to create a more transparent, time-bound, and creditor-friendly system that would encourage entrepreneurship, enhance the ease of doing business, and promote economic growth by efficiently resolving distressed businesses and managing insolvency cases. Since its enactment, the IBC has played a crucial role in improving India's business environment and resolving complex insolvency issues.

CHAPTER OVERVIEW

The dissertation is divided into four parts. The first part titled ‘Analysis of the Rankings of India’ throws light on the different ranks that India has bagged before and after the implementation of the code ie 2016. It mentions the reasons why the rank rose over the years. It highlights the initiatives undertaken by the Indian Government to improve the rankings of India. It shall mention the details of the report ie what the World Bank says about the performance of India.

The second part titled ‘How the Insolvency and Bankruptcy Code, 2016 improved the rankings?’ asserts how the code improved the rankings of India. It mentions in pointers how advantageous this code has been to the Indian economy. “The Union Minister of Commerce and Industry, Consumer Affairs and Food and Public Distribution and Textiles, Shri Piyush Goyal mentioned”¹¹ “*Since the enactment of IBC, India’s rank in ‘Resolving Insolvency’ indicator in World Bank’s Ease of Doing Business Report has seen a meteoric rise of 84 places! Our recovery rate has also dramatically improved from 26 (cents on the dollar) to 71.6 (cents on the dollar).*”¹²

⁹ Rachit Garg, ‘Sick companies and the regulations governing them’ (*ipleaders*, 2nd March, 2023) (<https://blog.ipleaders.in/sick-companies-and-the-regulations-governing-them/>) accessed on 20 July 2023.

¹⁰ International Finance Corporation, The World Bank, ‘Understanding the IBC Key Jurisprudence and Practical Considerations- A Handbook’ (2020) (<https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>) accessed on 20 July 2023.

¹¹ Ministry of Commerce and Industry, ‘Insolvency and Bankruptcy Code (IBC), 2016 a “gamechanger reform” Shri Piyush Goyal’ (*PIB*, 25 November 2021) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1775096>> accessed on 19 May 2023.

¹² *ibid.*

The third part titled 'Lacunae in the Insolvency and Bankruptcy Code, 2016' throws light on some of the drawbacks of the code. It certainly does come with certain disadvantages that can sometimes be a big log in the functioning of the industries, for example, there are no voting rights for the insolvent; the waterfall mechanism is given the least priority; the amendment of the minimum threshold in 2020 has brought arduous to the defaulters. Apart from this, it shall also cover the challenges associated with the code.

In the fourth part titled 'Recommendation' I have attempted to come up with resourceful recommendations on how the code can be improved. Creative solutions specifically to the drawbacks that have been mentioned in Chap IV. It discusses how the business environment of India can be boosted with the help of other means too like improving trade policies, improving judiciary delays, promoting start-ups, and providing funding and incentives.

RESEARCH QUESTIONS

1. How has the Insolvency and Bankruptcy Code, 2016 improved the Doing Business Rank of India?
2. How the Insolvency and Bankruptcy Code, 2016 is essential for strengthening the Indian business environment?
3. Whether there is any insufficiency in the Insolvency and Bankruptcy Code, 2016?

2. ANALYSIS OF THE RANKINGS OF INDIA

India made notable improvements in its rankings after the implementation of the IBC, which aimed to streamline business-related processes, including those related to insolvency and bankruptcy. Prior to the enactment of significant economic reforms and the introduction of the Insolvency and Bankruptcy Code in 2016, India's ranking was often relatively low, indicating challenges in its business environment. While there were improvements, India's ranking has also experienced fluctuations due to various factors, including changes in methodology, policy reforms, and global economic conditions.

The rankings are discontinued from the year 2021, hence, the latest rankings that are available are of Doing Business 2020 observing the 190 economies in their 2019 performance. The below table provides an overview of India's performance in the last 10 years in the 10 parameters of the

rankings:

Documenting India's Ten-Year Evolution in The Doing Business Rankings.

PARAMETERS	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Ease of starting a business	165	166	173	179	158	155	155	156	137	136
Dealing with construction permits	177	181	182	182	184	183	185	181	52	27
Getting electricity	-	98	105	111	137	70	26	29	24	22
Registering property	94	97	94	92	121	138	138	154	166	154
Getting credit for your business	33	40	23	28	36	42	44	29	22	25
Protecting minority investors	44	46	49	34	7	8	13	4	7	13
Paying taxes	164	147	152	158	156	157	172	119	121	115
Trading across borders	100	109	127	132	126	133	143	146	80	68
Enforcing contracts	182	182	184	186	186	178	172	164	163	163
Resolving insolvency	134	128	116	121	137	136	136	103	108	52
OVERALL RANK	134	132	132	134	142	130	130	100	77	63

SOURCE: Doing Business database, World Bank.¹³

From the above table, it can be very ascertained the major progress undertaken by India in improving its rank. There are major challenges that the enterprises face in India in building their business but the improvement in the rank clearly shows the effort of the Indian government. Some of the hurdles through the year 2010 that India has faced are:

¹³ The World Bank, 'Doing Business Rank' (2023) (<https://data.worldbank.org/indicator/IC.BUS.EASE.XQ>) accessed on 20 July 2023.

1. “According to the National Restaurants Association of India (NRAI), a total of 36 approvals are required to open a restaurant in Bengaluru, Delhi requires 26, and Mumbai 22.”¹⁴ “Moreover, Delhi and Kolkata also require a ‘Police Eating House License’.”¹⁵ The Delhi Police demands a total of 45 documents for obtaining this license, which is significantly higher than the 19 documents needed for acquiring a new firearms license and the 12 documents necessary for obtaining a major fireworks license.¹⁶
2. In contrast to Bangladesh, China, and Vietnam, where over 80 per cent of the export market value is attributed to large enterprises, India relies on small enterprises for 80 per cent of its market value. Additionally, while it takes 7-10 days to reach a port in India, countries like China, Bangladesh, and Vietnam have much shorter transit times, typically less than a day. Consequently, the Indian supply chain often involves numerous small shipments that congest already inefficient logistics routes.
3. Heavy electricity shortages in India, impact the input choices, production level, and revenue earnings of the manufacturing plants. The study reveals that electrical shortages lead to a “6-8% decrease”¹⁷ in the average plant's revenue, resulting in a “10% decline in producer surplus”¹⁸, with approximately half of this reduction attributable to the expenses associated with backup generators.
4. There are stringent, restricted, and rigid labour laws in India that increase the compliance of the firm which in turn increases the unit labour costs.
5. In 2013, Ahsan conducted a study utilizing firm-level data in India to explore the interplay between the promptness of contract enforcement and tariff liberalization.¹⁹ His results indicate that the increase in productivity resulting from a reduction in input tariffs is most pronounced for firms located in economies with highly efficient court systems.²⁰ A cautious approximation indicates that an enhancement of “10% in judicial quality boosts firm sales by approximately 1% to 2%.1–2%.”²¹

India's rankings in the Doing Business report have reflected a mix of improvements and

¹⁴ Indian Government, ‘Targeting Ease of Doing Business in India.’ (Economy Survey 2020-21 Vol I) (https://www.indiabudget.gov.in/budget2020-21/economicsurvey/doc/vol1chapter/echap06_vol1.pdf) accessed on 20 July 2023.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Doing Business 2020 (n1).

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

challenges in its business environment. These rankings serve as valuable indicators for policymakers and businesses, helping to identify areas where reforms are needed to further enhance the ease of doing business. India's commitment to ongoing reforms and its ability to address challenges will continue to play a crucial role in its performance in the Doing Business report and its attractiveness to investors and entrepreneurs.

The following initiatives by the Indian Government aided in improving the ranks of India:

1. Prime Minister Narendra Modi's "Make in India" initiative centred on attracting foreign investments, promoting the private sector, with a specific emphasis on the manufacturing sector, and improving the overall competitiveness of the country.²² The government utilized the Doing Business indicators to showcase India's dedication to reform to potential investors and to illustrate tangible advancements in the country's business environment.²³
2. The "License Raj" Reform in India has come to a halt because of which the small firms increased in the industry sector with simple and smooth regulations to follow. This has also resulted in a rise in the productivity level of the economy.
3. "The Central Board of Excise and Customs (CBEC) has implemented the 'Indian Customs Single Window Project' to facilitate trade."²⁴ Importers and exporters have the option to digitally submit their Customs clearance documents through a centralized platform.
4. "The Permanent Account Number (PAN), Tax Deduction & Collection Account Number (TAN), and Director Identification Number (DIN)"²⁵ have been consolidated into a unified form called "SPICe"²⁶ for the purpose of company incorporation.
5. "The Central Board of Excise and Customs (CBEC) has introduced the 'Indian Customs Single Window Project' to streamline trade operations."²⁷ Importers and exporters now have the capability to electronically submit their Customs clearance documents through a centralized platform.

²² *ibid.*

²³ *ibid.*

²⁴ Embassy of India, The Hague, The Netherlands, 'Ease of Doing Business of India' (2023) (<https://indianembassyinthehague.nl/page/ease-of-doing-business-in-india/>) accessed on 20 July 2023.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Ease of Doing Business of India (n16).

6. Initiatives to improve access to credit for businesses, particularly small and medium-sized enterprises (SMEs), have been implemented. Credit information bureaus and collateral registries have been strengthened to facilitate lending.
7. The implementation of the GST in July 2017 was a significant milestone. It replaced a complex system of indirect taxes with a unified, nationwide tax regime. The GST has simplified tax compliance, reduced logistics costs, and improved the ease of doing business, particularly in the area of paying taxes.
8. The "Startup India" initiative, launched in 2016, focuses on fostering a conducive environment for startups. It includes various incentives, tax benefits, and simplifications in compliance procedures, making it easier for entrepreneurs to start and operate businesses.
9. Simplifying and digitizing customs procedures, reducing trade barriers, and implementing the "Single Window Interface for Trade" (SWIFT) have made it easier to trade across borders.
10. Several states in India have initiated their own reforms to improve the business environment, leading to competition among states to attract investment.

These initiatives represent a concerted effort by the Indian government to make the business environment more attractive, efficient, and competitive. Among all the initiatives undertaken by the Indian Government, the most significant initiative has been the enactment of the IBC, 2016. The effect of the code on the rankings has been explained in detail in the next chapter.

3. HOW INSOLVENCY AND BANKRUPTCY CODE, 2016 IMPROVED THE RANKINGS?

According to the IBC, 2016, it was introduced to, "consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner."²⁸ Before this Act, it caused severe distress to the secured creditors to seize the companies that defaulted. It was a long and tedious process to recover the debt. In a 2020 report on 'Business Reforms in India,' the Doing Business Index emphasized that India has taken steps to simplify the process of resolving insolvency by actively encouraging reorganization proceedings.²⁹

²⁸ The Insolvency and Bankruptcy Code, 2016.

²⁹ Doing Business 2020 (n1).

Since the introduction of the IBC, approximately “21,000 cases”³⁰ have been submitted to “the National Company Law Tribunal (NCLT), which is the adjudicating authority under the code.”³¹ “Out of these, 8,500 cases were settled before admission and 1,500 companies were ordered to be liquidated.”³² “The recovery rate has risen from 26.5% in 2018 to 71.6% in 2019.”³³ Furthermore, there has been an enhancement in the average duration required for a corporate insolvency resolution process, “decreasing from 4.3 years in 2018 to 1.6 years in 2019.”³⁴ A publication by the Reserve Bank of India (RBI) concerning the Insolvency and Bankruptcy Code and Bank Recapitalization examines the retrieval of Non-Performing Assets (NPA) and asserts that the recovery rates of banks have experienced enhancements following the implementation of the IBC.³⁵

Through the availability of reorganization procedures, companies now possess effective instruments for revitalizing their financial health, and creditors have access to improved mechanisms for productive negotiation, thereby increasing their likelihood of recovering the borrowed funds at the conclusion of insolvency proceedings. Since its enactment, “over 2,000 companies have made use of the new legislation.”³⁶ Among them, “approximately 470 have initiated liquidation proceedings, and over 120 have sanctioned reorganization plans, while the remaining cases are still awaiting resolution.”³⁷ Within India's microfinance sector, lenders have witnessed a “50% decrease in default rates alongside increased operational efficiencies.”³⁸

Hence, here's how the IBC has contributed to the improvement in India's rankings:

1. **Streamlined Insolvency Resolution Process:** The IBC introduced a structured and time-bound insolvency resolution process for both corporate entities and individuals.
2. **Transparency and Predictability:** The role of insolvency professionals and the formation of creditor committees have made the process more organized and efficient.

³⁰ Dipak Mondal, ‘How IBC helped improve India's ease of doing business rankings’ *Business Today* (India, 24 October 2019) (<https://www.businesstoday.in/current/economy/politics/how-ibc-helped-improve-india-ease-of-doing-businessrankings/story/386544.html>) accessed on 21 July 2023.

³¹ *ibid.*

³² *ibid.*

³³ ‘Govt took several steps for ease of doing biz: MCA’ *The Economic Times* (India, 16 December, 2019) (<https://economictimes.indiatimes.com/news/economy/policy/govt-took-severalsteps-for-ease-of-doing-biz-mca/articleshow/72737217.cms?from=mdr>) accessed on 21 July 2023.

³⁴ *ibid.*

³⁵ Reserve Bank of India, ‘Insolvency and Bankruptcy Code and Bank Recapitalisation’ (21 December 2017) (<https://www.rbi.org.in/scripts/PublicationsView.aspx?id=18060#FT3>) accessed on 21 July 2023.

³⁶ Doing Business 2020 (n1).

³⁷ *ibid.*

³⁸ *ibid.*

This transparency is valued by the World Bank when assessing the business environment.

3. **Cross-Border Insolvency Framework:** The IBC incorporates provisions for dealing with cross-border insolvency cases. It aligns with international best practices and enhances cooperation and coordination with foreign jurisdictions, which is viewed favourably by the World Bank.
4. **Reduction in Non-Performing Assets (NPAs):** Before the IBC, India faced a significant challenge with non-performing assets in the banking sector. The IBC has provided a mechanism to address NPAs more efficiently, contributing to a healthier banking sector and improving the overall business climate.
5. **Improved Recovery Rates:** The IBC has improved recovery rates for creditors. This is a crucial factor in the World Bank's evaluation of the ease of doing business, as it directly affects the willingness of creditors to invest in or lend to businesses in India.

Overall, the implementation of the Insolvency and Bankruptcy Code, 2016, has significantly improved India's rankings in the "Resolving Insolvency" category of the Doing Business report.

4. LACUNAE IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The IBC, 2016 being an efficient and wholesome Act for the stressed asset does lack in certain areas, discussed below:

1. One of the shortfalls of the former insolvency regime was the failure to Harmonize the Liquidation and Reorganisation process.³⁹
2. Operational creditors, such as suppliers and service providers, have often expressed concerns about their treatment under the IBC. Some argue that they should have more influence in the resolution process, especially when their dues are substantial.
3. There is a certain tendency to favour liquidation under the current IBC regime.⁴⁰ By September 2018, while 80% of the cases admitted ended up in liquidation, only 20% were successfully resolved.⁴¹
4. The Act provides the utmost control to the creditors in recovering the stressed asset which

³⁹ Sumant Batra, 'Corporate Insolvency Law and Practice' (1st edn, Eastern Book Company 2018).

⁴⁰ Pratik Datta, 'Value destruction and wealth transfers under Indian Insolvency and Bankruptcy Code, 2016' (*Oxford Business Law Blog*, 8 February 2019) (<https://www.law.ox.ac.uk/business-law-blog/blog/2019/02/value-destruction-and-wealthtransfers-under-indian-insolvency-and>) accessed on 23 July 2023.

⁴¹ *ibid.*

- could sometimes lead to a crumble of profitable business enterprises for their benefit.
5. IBC, 2016 is silent as to the instance of the non-defaulting promoters taking part in the resolution process.⁴² This remains an area of uncertainty, as highlighted in the “RBL Bank Ltd. v. MBL Infrastructure Ltd. Case”⁴³, where the non-defaulting promoters were ultimately permitted to propose a resolution plan following intervention by the NCLT.
 6. Valuation of assets can be a contentious issue in insolvency cases. There is a need for clearer guidelines on valuation methods to prevent disputes and delays.
 7. There should be a difference between economically and financially stressed companies in the IBC, 2016. Economically distressed means "When the present value of the expected profits of a company is less than the total value of the assets of the company."⁴⁴ Conversely, when a company is incapable of meeting its debt obligations due to various factors such as elevated fixed expenses, assets that are difficult to convert to cash, or revenue streams susceptible to economic downturns, it is characterized as being in a state of financial distress.⁴⁵
 8. There can be excessive regulatory overlap between the IBC and other regulatory bodies, leading to confusion and potential conflicts. Ensuring better coordination between these entities is necessary.
 9. Homebuyers who are categorized as financial creditors often face challenges in the insolvency process. Their interests may not be adequately protected, especially in cases involving real estate developers.
 10. The IBC, 2016 brought personal guarantors under its ambit through an amendment in 2019. Clarifications and refinements may be needed in this area to ensure effective implementation.

It's important to note that addressing these lacunae requires a careful and balanced approach to maintain the IBC's objectives of expeditious and efficient insolvency resolution while protecting the interests of all stakeholders. The government, regulatory bodies, and legal experts continue to work on refining the IBC to make it a more robust and effective framework for insolvency and

⁴² Raghav Pandey & Advait Govind, 'Indian Insolvency Regime: Impact on Ease of Doing Business and Investment' (2020) 7 RGNUL Fin & Mercantile L Rev 58.

⁴³ RBL Bank Ltd. v. MBL Infrastructure Ltd., (2017) SCC OnLine NCLT 12612.

⁴⁴ Nikita Kwatra, 'The IBC has an incentive problem' (*Live Mint*, 2 January 2019) (<https://www.livemint.com/Industry/nYs7QsAfNqtgGoQHZw2zBJ/The-IBC-has-anincentive-problem.html>) accessed on 23 July 2023.

⁴⁵ Raghav Pandey & Advait Govind (n33).

bankruptcy in India. Despite the above challenges that IBC, 2016 has been facing, it has changed the process of insolvency and brought a new era of dealing with stressed assets.

5. RECOMMENDATION

The IBC, 2016 has faced its fair share of challenges since its inception. It can be further improved by the following:

1. The IBC, 2016 should be made a more debtor-friendly Act “similar to chapter 11 of the US Code which gives a debtor a chance to file for bankruptcy while retaining possession of his or her firm.”⁴⁶
2. To establish precise guidelines from the Central Vigilance Commission (CVC) pertaining to the Insolvency and Bankruptcy Code (IBC) that permit more adaptable decision-making instead of mandating that government-owned banks adhere strictly to the general CVC principle of engaging solely with the highest bidder.
3. To make the IBC, 2016 work effectively, the NCLT’s (National Company Law Tribunal) needs to be made efficient. Hence, the addition of more judges to the Tribunal creates additional sources for the resolution of the defaulted enterprises, etc.
4. The central government has “raised the threshold for initiating insolvency proceedings from Rs. 1 lakh to Rs. 1 crore.”⁴⁷ This change is expected to lead to a decrease in the number of claims that can be lodged, particularly targeting small businesses. As a result, a greater proportion of judicial resources can be dedicated to handling cases of higher value. It's essential to maintain appropriately calibrated thresholds for initiating insolvency proceedings to ensure that the majority of delinquent companies are subject to the IBC, 2016, while also avoiding the inclusion of businesses in insolvency proceedings due to minimal outstanding debts.⁴⁸
5. Enhance provisions for dealing with cross-border insolvency cases to ensure better coordination with foreign jurisdictions. This can involve adopting the UNCITRAL Model Law on Cross-Border Insolvency.
6. Ensure that the IBC remains in harmony with other relevant laws and regulations, such as taxation laws and environmental regulations, to prevent conflicts and ensure a smooth resolution process.

⁴⁶Anirudh Burman, 'India's Sustained Economic Recovery Will Require Changes to Its Bankruptcy Law' (2021) Carnegie Endowment for International Peace, JSTOR 10.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

7. The movement towards the Swiss Challenge method in bidding both in resolution and liquidation.⁴⁹ In alignment with the current RBI guidelines applicable to banks for the sale of assets, the paper suggests the Swiss Challenge method to be used in processing competitive bids.⁵⁰
8. Continuously improve the quality and professionalism of insolvency professionals through training, certification, and monitoring mechanisms. This will ensure that they effectively manage the insolvency resolution process.
9. Provide further clarity on the order of priority for distributing assets during insolvency proceedings (WATERFALL MECHANISM). Ensure that secured creditors, unsecured creditors, operational creditors, and shareholders understand their rights and the expected outcomes.
10. Encourage the use of ADR mechanisms like mediation and arbitration to resolve disputes related to insolvency cases quickly and cost-effectively.

With the successful and constructive implementation of the recommendations, the IBC, 2016 can further level up the process of insolvency and bankruptcy. These recommendations, if implemented thoughtfully, can help further improve the effectiveness of the IBC, 2016, and enhance its contribution to India's business environment by facilitating efficient insolvency resolution and protecting the rights of all stakeholders.

6. CONCLUSION

In 2015, the government aimed to achieve a position among the top 50 economies in the ease of doing business ranking by the year 2020. The government's reform initiatives encompassed all the aspects evaluated by the Doing Business report, with a particular emphasis on areas such as tax payments, international trade, and insolvency resolution. The nation has achieved significant progress, ascending from a “position of 130 in the Doing Business 2016 report to rank 63 in the Doing Business 2020 report in terms of ease of doing business.”⁵¹ This tremendous progress that India achieved is quite commendable.

⁴⁹ Hari Hara Mishra, ‘Five years of IBC: Five takeaways and five suggestions to make it better’ (*Governancenow*, 31 August 2021) (<https://www.governancenow.com/views/columns/five-years-of-ibc-five-takeaways-and-five-suggestions-to-make-it-better>) accessed on 23 July 2023.

⁵⁰ *ibid.*

⁵¹ Doing Business 2020 (n1).

The ease of conducting business has a pivotal role in fostering economic growth in the region, as it affects not only foreign direct investments but also the operations of local businesses. The procedures, rules, and regulations established by governments can either create a business-friendly environment or hinder the entrepreneurial aspirations of local businesses.⁵² India has experienced notable advancements in the World Bank's Doing Business rankings in recent times, yet there are specific categories in which it falls behind, such as Initiating a Business, Property Registration, Tax Payments, and Contract Enforcement.

The efforts of the Government of India and the enactment of the IBC, 2016 had a positive effect on the improvement of the rankings of India in this index. Even though the Planning Commission ceased to exist in 2014, the pursuit of national planning is still very much active, particularly in the endeavour to elevate the country's position in the Doing Business rankings. "A national workshop was established in 2014 to come up with a 98-point reform plan, followed by smaller Business Action Plans."⁵³ In 2015, a parliamentary Ease of Doing Business Committee was formed to provide suggestions on the execution of these strategies.⁵⁴ It's evident that this ranking holds significant sway in Delhi.

As the Indian Government concentrated on improving the Doing Business Ranking, it did not only do that but also simultaneously improved the economy of India, the business environment, and the investment funds. Hence, if the country prioritizes its reform agendas then India could very well leap to being a developed country very soon. India's commitment to ongoing reforms and its adaptability to changing economic conditions will be pivotal in sustaining the positive impact of the IBC. It is crucial to strike a balance between the interests of creditors, debtors, and other stakeholders, ensuring that the IBC remains equitable and responsive to evolving challenges.

As India continues to fine-tune the IBC and reinforce its position as an attractive destination for investment and entrepreneurship, the code's role in boosting the ease of doing business will remain a key driver of economic growth and development. The IBC serves as a testament to

⁵² 'Three Reasons Why Ease of Doing Business in a Country is Important' (*Friedrich Naumann Foundation for Freedom*, 17 January 2017) (<https://www.freiheit.org/sudost-und-ostasien/3-reasons-why-ease-doing-business-country-important>) accessed on 23 July 2023.

⁵³ Aparna Gopalan, 'We've got the Ease of Doing Business-but for whom?' (*The Wire*, 26 October 2019) (<https://m.thewire.in/article/economy/weve-got-the-ease-of-doing-business-but-for-whom>) accessed on 19 May 2023.

⁵⁴ *ibid.*

India's dedication to creating a robust and competitive business environment, fostering innovation, and promoting responsible business practices.

The IBC, 2016 is not just a legal framework; it is a catalyst for change. It has not only improved the insolvency resolution process but has also sent a signal that India is committed to creating a business-friendly environment. As India's economy continues to evolve, and as the global business landscape becomes increasingly competitive, the IBC,2016 will remain a critical tool for ensuring that the ease of doing business in India continues to improve, attracting investment, promoting entrepreneurship, and driving economic growth. In the years ahead, India's commitment to refining and implementing the IBC, 2016 along with other complementary reforms and initiatives, will be key to its sustained success in improving its business environment and maintaining a favourable position in global rankings. The journey toward a more business-friendly India is ongoing, and the IBC, 2016 stands as a cornerstone of this transformation.

“The King (i.e., the State) shall promote trade and commerce by setting up trade routes by land and by water, and establishing market towns and ports”

– **Kautilya’s Arthashastra, 4th century B.C.**

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