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THE INTERPLAY OF INSOLVENCY AND BANKRUPTCY CODE (IBC) OF 2016 WITH OTHER LAWS IN INDIA

AUTHORED BY - ARYAMAN DUBEY

Abstract

The Insolvency and Bankruptcy Code (IBC) 2016 is significant and landmark legislation in India because the primary goal of the legislation is to consolidate and make necessary amendments to revive/restructure/reorganize and insolvency resolution of corporate persons, partnerships firms, and so on in a time-bound manner or within a specified given time because time is of the essence and the value of money gradually depreciates, causing enormous financial distress to stakeholder. In my paper, I have explained how IBC interplays with other legislations such as the Companies Act 2013, the Indian Contract Act 1872, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI), Labour Laws, Negotiable Instruments Act 1881, the Income Tax Act 1961, etc. and used case studies to explain how IBC functions with existing legislations.

Introduction

The Insolvency and Bankruptcy Code (IBC) 2016 is a significant and comprehensive piece of legislation that intends to reform and improve India's insolvency and bankruptcy environment. It is specialized law and it specializes in insolvency and liquidation proceedings.

Its primary goal is to consolidate and make necessary amendments to existing laws and legislations in order to revive/restructure/reorganize and insolvency resolution of corporate persons, partnerships firms to be financially capable of paying off their debts and, if not, to initiate liquidation processes, etc. in a time-bound manner or within a specified period of time.

Its main objective is to consolidate and make necessary amendments in the existing laws and legislations to restructure/reorganize and insolvency resolution of corporate persons, partnerships firms to be financially capable to pay off their debts and if not then initiate liquidation processes,

etc. in a time-bound manner or in a specified period. After its enforcement, through its interplay, the IBC has introduced significant changes in other laws such as the Companies Act 2013, the Securities and Exchange Board of India Act, etc.¹

Insolvency and Bankruptcy Code (IBC) 2016: An Overview

The Insolvency and Bankruptcy Code (IBC) was enacted and enforced with the objective of addressing and solving the problems of non-performing assets (default on home loans, vehicle loans, business loans, or credit card dues) in India, thus providing a consolidated framework for the insolvency and bankruptcy processes in a time bound manner to protect the interests of all stakeholders (creditors, employees) and also ensuring the maximization of the value of assets or to retain and maintain some threshold value of the assets.

Note - Insolvency and Bankruptcy Code (IBC) has an overriding effect against other legislations to remove any ambiguity.

1) The Interplay of IBC with Companies Act 2013

The interplay of IBC with the Companies Act 2013 displays how IBC operates alongside other existing legislations. Earlier the Widening up provisions were in company law but got removed and are provided in IBC. The existing Company Law 2013 Act aims to provide the rules and structures for different types of companies and their functioning under the law, while IBC deals with their insolvency and liquidation part. In the case of “Innoventive Industries Limited v. ICICI Bank Limited”¹²³, the apex court held that the Insolvency and Bankruptcy Code (IBC) would prevail over the Companies Act 2013 in case of any inconsistencies because Insolvency and Bankruptcy Code (IBC) is a special law enacted and enforced to deal with insolvency matters.

¹ <https://www.centrik.in/blogs/innovative-vs-icici-bank-supreme-court-settles-law-centres-insolvency-code-override-conflicting-acts/text=The%20judgement%20of%20the%20Supreme%20Court%2C%20in%20the,any%20other%20law%20with%20respect%20to%20the%20Code.>

² <https://www.barandbench.com/columns/supreme-court-ibc-innovative-vs-icici>

³ <https://corporate.cyrilamarchandblogs.com/2017/09/innovative-industries-limited-v-icici-bank-limited-paradigm-shift-insolvency-law-india/>

2) The Interplay of IBC with the Indian Contract Act 1872

In the interplay of IBC and with Indian Contract Act 1872, IBC, there too has overriding effects; in the case of “Swiss Ribbons ⁴Pvt. Ltd. Vs Union ⁱⁱⁱⁱof India” the apex court upheld the constitutional validity of Insolvency and Bankruptcy Code (IBC) the court held that IBC is not infringing on any individual or nay rights under the Contract Act 1872 because the main objective of IBC is to resolve insolvency which involves stakeholder which include creditors (FCs, OCs), employees etc. and since there is a long chain who people who are in distress then in the name of public interest IBC can override individual rights.

3) The Interplay of IBC with the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI)

The Insolvency and Bankruptcy Code (IBC) has an overriding effect against Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI) as well because the SARFAESI Act 2002 enables the banks and other financial institutions to auction commercial and residential properties in order to recover loans and prevent any possible origins of NPAs and this point was further discussed in the case of “Vashdeo R Bhojwani v. Abhyudaya Co-operative Bank Ltd. and Another” ⁵⁶ and the apex court held that the proceedings under Insolvency and Bankruptcy Code (IBC) would override the provisions of the SARFAESI Act 2002 because IBC is a specialized act for this purpose only.

4) The Interplay of IBC with Labour Laws

The Insolvency and Bankruptcy Code (IBC) has also interacted with labour laws regarding unpaid wages⁷ In the case of “JK Jute Mill Mazdoor Morcha v Juggilal Kamalpat Jute Mills Company Ltd”⁸, the apex court held that the claims related to the unpaid dues of the workmen and employees would come under the category and ambit of IBC since it is

⁴ <https://blog.ipleaders.in/constitutionality-of-ibc-code-swiss-ribbons-pvt-ltd-v-union-of-india/>

⁵ <https://www.latestlaws.com/latest-caselaw/2019/september/2019-latest-caselaw-814-sc>

⁶ <https://www.supremecourtcases.com/vashdeo-r-bhojwani-v-abhyudaya-co-operative-bank-ltd-and-another-2/>

⁷ <https://law.asia/supreme-court-labour-laws-ibc/>

⁸ https://aureuslaw.com/sc-weighs-in-on-interplay-of-labour-laws-and-ibc/?utm_source=mondaq&utm_medium=syndication&utm_term=Employment-and-HR&utm_content=articleoriginal&utm_campaign=article

considered as an “operational debt” Here the insolvency application filed under section 9 of the code by a registered trade union is considered to be an operational creditor for the purposes of the code.⁹

5) The Interplay of IBC with the Arbitration and Conciliation Act 1996

The insolvency proceedings can be initiated by operational creditors (OC) even if an arbitration agreement exists; this issue was discussed in the case of “*Alchemist Asset Reconstruction Company Limited Vs. M/s Hotel Gaudavan Private Limited & Ors*” and the apex court held that an operational creditor (OC) can initiate the insolvency proceedings under Insolvency and Bankruptcy Code (IBC) even if an arbitration agreement exists¹⁰. The reasoning behind this judgment is that arbitration is used to resolve private disputes but the insolvency proceedings under IBC has all information’s regarding all creditors and stakeholders also, thus in the name of public interest The Insolvency and Bankruptcy Code (IBC) could override some selective provisions of the Arbitration and Conciliation Act 1996.

6) The Interplay of IBC with the Negotiable Instruments Act 1881

The Insolvency and Bankruptcy Code (IBC) has also interacted with Negotiable Instruments Act regarding demand instruments such as cheques when cheques bounce due to insufficient amount in the holder’s bank account. This issue was further discussed in the case of “*P. Mohanraj & Ors*”¹¹. *Vs M/s. Shah Brothers Ispat Pvt. Ltd*”¹² and the apex court held that the insolvency proceedings initiated under the IBC can provide a corporate debtor with the immunity from prosecution for the dishonor of cheques under Section 138 in The Negotiable Instruments Act, 1881.

⁹ “*JK Jute Mill Mazdoor Morcha v Juggilal Kamalpat Jute Mills Company Ltd*, upheld the insolvency application filed under section 9 of the code by a registered trade union considering it to be an operational creditor for the purposes of the code”.

¹⁰“ <https://www.mondaq.com/india/arbitration--dispute-resolution/651648/supreme-court-clarifies-that-arbitration-proceedings-commencing-after-imposition-of-moratorium-under-section-14-of-the-insolvency-and-bankruptcy-code-2016-is-non-est-in-law>”

¹¹ <https://ibclaw.in/summary-of-landmark-judgment-p-mohanraj-ors-vs-m-s-shah-brothers-ispac-pvt-ltd/>

¹² <https://www.mondaq.com/india/insolvencybankruptcy/1112718/summarizing-the-interface-between-negotiable-instruments-act-and-the-insolvency-code-in-p-mohanraj-v-shah-brothers-ispac>

7) The Interplay of IBC with the Real Estate Regulation and Development Act 2016

The Insolvency and Bankruptcy Code (IBC) has also interacted with Real Estate Regulation and Development Act and IBC has overriding effects against Real Estate Regulation and Development Act. This issue was discussed in the case of “Pioneer Urban Land and Infrastructure Ltd. and Anr. V. Union of India” and Ors and the apex court held that the reliefs and remedies provided under RERA and IBC were concurrent¹³ and these two laws are operating in two different realms and sectors with different objective, while RERA regulates real estate project and IBC deals with insolvency and bankruptcy. But IBC, being a more recent, later, and special law would override provisions of RERA when these laws clash.

8) The Interplay of IBC with the Prevention of Money Laundering Act 2002

Now the Insolvency and Bankruptcy Code (IBC) and Prevention of Money Laundering Act 2002 have different sets of objectives but there is probability of their interaction in cases which involve financial frauds. This issue was discussed in the case of “Bank of India Vs. The Deputy Director Directorate of Enforcement” and the Delhi High Court held that the If insolvency procedures were pending under the IBC, the Enforcement Directorate could not attach properties ¹⁴engaged in money laundering”¹⁵. The Court emphasized and paid importance on the necessity of maintaining the sanctity of the bankruptcy process and allowing creditors to collect their debts.

9) The Interplay of IBC with the Income Tax Act 1961 (Taxation Laws)

It is clearly evident that the Insolvency and Bankruptcy Code (IBC) and Income Tax Act 1961 (Taxation Laws) have different sets of objectives such as IBC deals with insolvency and bankruptcy and Income Tax deals with collection of taxes from individuals of various economic classes but they two legislations do interact, particularly in the situation of tax liabilities and this issue was discussed in the case of “Pr. Commissioner of Income Tax v.

¹³ <https://www.sndlegallassociates.com/post/case-analysis-pioneer-urban-land-and-infrastructure-ltd-and-anr-v-union-of-india-and-ors>

¹⁴ <https://www.axfait.com/post/moratorium-under-ibc-vs-attachment-proceedings-under-pmla-a-struggle-for-supremacy>

¹⁵ <https://indiacorplaw.in/2022/01/delhi-high-court-on-the-overriding-effect-of-ibc-over-pmla.html>

Monnet Ispat and Energy Ltd”¹⁶ and the apex court held that the Insolvency and Bankruptcy Code (IBC) would have an overriding effects on the Tax Act 1961 (Taxation Laws) if there are any conflicting provisions. The apex court also held that the **“Income-tax dues, being like Crown debts, do not take precedence even over secured creditors, who are private persons. Given S. 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act”**¹⁷.

10) The Interplay of IBC with Cross-border Insolvency

The IBC has provisions for cross-border insolvency, but it does not yet fully incorporate the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency. This lack of a comprehensive framework can lead to complications when dealing with assets and debtors located outside India. The interplay between the IBC and the laws of other jurisdictions remains an area that requires greater harmonization and clarity to effectively handle cross-border insolvency cases.

The Role of the Judiciary in Harmonizing Laws:

The judiciary has played a pivotal role in interpreting the IBC and its relationship with other laws. Various judgments by the Supreme Court and High Courts have clarified and resolved conflicts between the IBC and other statutes. Landmark cases such as the Essar Steel and Jaypee Infratech cases ¹⁸have shaped the understanding of the IBC's overriding effect over other laws and the treatment of various stakeholders in the insolvency process.

Case Studies

The aim of the case studies is to provide a clearer picture of the topic of how IBC interplays with other legislations –

- a) “State Bank of India v. V. Ramakrishnan and others 2018” ¹⁹– In this case, apex court clarified that the Insolvency and Bankruptcy Code (IBC) being a later and comprehensive

¹⁶ <https://www.supremecourtcases.com/pr-commissioner-of-income-tax-v-monnet-ispat-and-energy-ltd/>

¹⁷ <https://itatonline.org/digest/pcit-v-monnet-ispat-and-energy-ltd-sc-www-itatonline-org/>

¹⁸ <https://www.businesstoday.in/latest/corporate/story/essar-steel-jaypee-infratech-and-7-others-insolvency-cases-163247-2019-01-29>

¹⁹ <https://www.mondaq.com/india/insolvencybankruptcy/759870/case-analysis-to-clarify-the-applicability-of-moratorium-on-personal-guarantor-under-section-14-of-the-insolvency-and-bankruptcy-code>

- code, it will prevail over the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI) in the event of any clash.
- b) “Jignesh Shah and another v. Union of India and others 2019” - The issue regarding the constitutional validity of attachment of assets was discussed by the Bombay High Court and held those provisions of Insolvency and Bankruptcy Code (IBC) are valid and would prevail over any other legislations.
 - c) Bhushan Steel ²⁰– This case addressed interplay of Insolvency and Bankruptcy Code (IBC) with the Companies Act 2013, the debt was Rs. 56,000 crore and the resolution plan were approved under IBC which resulted in acquisition of Bhushan Steel by Tata Steel which ensured the revival of the company.
 - d) Alok Industries ²¹- This case also addressed interplay of Insolvency and Bankruptcy Code (IBC) with the Companies Act 2013, the debt was around Rs.30, 000 the resolution plan was approved under IBC which resulted in acquisition of Alok Industries by Reliance Industries, hence making the resolution plan a success for all the stakeholders.
 - e) Essar Steel India Ltd ²²– It was the first cases that were resolved under Insolvency and Bankruptcy Code (IBC) and it took two years for the resolution plan to pass since the debt was of Rs. 50,000 crore and through the resolution plan the payment given to the creditors was Rs. 42,000 crores.
 - f) Jet Airways ²³– The case of Jet Airways was famous whose resolution plan was made by IBC; the total debt amount was around Rs. 8,000 crore and took one year to complete and the resolution plan was later approved by NCLT in 2020 and the payment given to the credits was of Rs. 1000 crore which was very less compared to the total amount but the resolution plan also involved revival which was more to achieve.

Recommendations –

- a) Increasing and improving the capacity of National Law Tribunal (NCLT) – Since the adjudicating authority is NCLT, if it is seating capacity and infrastructure is

²⁰ <https://www.tatasteel.com/media/newsroom/press-releases/india/2018/bhushan-steel-limited-is-tata-steel-bsl-limited-now/>

²¹“ <https://www.businesstoday.in/latest/corporate/story/reliance-acquires-377-stake-alok-industries-rs-250-crore-251054-2020-02-29>”

²² <https://www.zeebiz.com/india/news-sc-essar-steel-verdict-banks-to-get-rs-50000-crore-fund-npa-liquidity-crisis-to-go-down-114315>

²³ <https://www.bloomberg.com/news/articles/2022-12-06/jet-airways-revival-hits-new-snag-as-banks-push-back-on-funding>

improved then it can provide faster resolutions in the cases and assist in decreasing the pendency or backlog of cases.

- b) Clarity and better quality of treatment for OCs – There should be clearer and better framework with better guidelines regarding the treatment of Operational Creditors; this will help in reducing litigation and fasten the overall resolution process.
- c) Flexibility in Sale of Assets – As the existing rule, the assets need to be sold to the highest bidder but sometimes it is not possible due to economic issue and highest bidder may not be the best option to utilize the asset or maximizes the potential of the asset, hence some flexibility should be given.
- d) Increase awareness – There should be increase in general awareness to the stakeholders so that they are well informed and when well informed the stakeholders will know what is happening and maybe assist to prevent situations of bankruptcy as well because then the owners of the company will make decisions more carefully and act more vigilant.

Conclusion

There has been a big paradigm shift in the framework and functioning of India's corporate insolvency ecosystem, as we have discussed how Insolvency and Bankruptcy Code (IBC) 2016 interplays with other legislations such as Companies Act 2013, Indian Contract Act 1872, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI), Labour Laws, Negotiable Instruments Act 1881, the Income Tax Act 1961, etc and various case studies on how it functions in the real world. But due to the overriding effect of IBC over other legislations, IBC will enable to ensure a less conflicting, smooth, seamless and an efficient interplay it is functioning and processes.

ⁱ Interplay between Insolvency and Bankruptcy Code and other legislations

ⁱⁱ <https://www.legalserviceindia.com/legal/article-8886-case-analysis-of-swiss-ribbons-v-s-union-of-india.html>

ⁱⁱⁱ SWISS RIBBONS PVT. LTD. AND ANOTHER VERSUS UNION OF IND.PDF