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INSOLVENCY RESOLUTION IN INDIA: CHALLENGES AND THE WAY FORWARD

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Abstract

Corporate insolvency is a problem, in a developing economy like India, where companies rely on credit, money and financial organizations to grow. When a business can't pay its debts, the problems can go beyond the company. Hurt people who lent money, workers, investors and the whole economy. To deal with these problems India brought in the Insolvency and Bankruptcy Code 2016 (IBC) which created a plan, for handling insolvency and helping healthy businesses stay alive.

The Code has significantly changed India's insolvency framework by introducing a process, for insolvency resolution. It clearly defines the roles of creditors and insolvency professionals. It also sets up adjudicating authorities to manage insolvency cases. Despite these improvements practical challenges still exist. There are delays in proceedings. The National Company Law Tribunal or NCLT is under pressure. It struggles to keep up with the growing number of cases. Another major issue is the difficulty in getting resolution plans. Sometimes these plans do not meet the needs of creditors. There are also concerns about the recovery of creditors' claims. Often the amount recovered is much lower than expected. This article examines the framework that governs insolvency resolution, in India. It looks at decisions that have shaped the process. It identifies implementation challenges. It also suggests reforms to make the process more effective. These reforms could improve efficiency reduce delays and enhance creditor recovery. The goal is to strengthen the system so it works better for all parties involved.

Keywords

These are terms, in law: Corporate Insolvency, Insolvency and Bankruptcy Code, 2016 Corporate Insolvency Resolution Process, National Company Law Tribunal, Financial Creditors, Operational Creditors and Resolution Plan.

ISSN: 2582-6433

Introduction

Companies play a role, in development by creating jobs bringing in investment and offering goods and services. When companies face problems, they may not be able to pay what they owe. This can impact not the company itself but banks, suppliers, workers, shareholders and other people who depend on the company.

Before the Insolvency and Bankruptcy Code 2016 India's insolvency system was made up of laws and procedures. This scattered approach often led to confusion, uncertainty and long delays in solving business troubles. These issues made it difficult for lenders to get back the money they were owed. They also made it harder for companies to recover and become stable again.

The Insolvency and Bankruptcy Code 2016 was created to give a framework, for dealing with insolvency and bankruptcy. The main goals of the Insolvency and Bankruptcy Code are to maximise the value of assets, support entrepreneurship make credit more available and balance the interests of all stakeholders.

Under the Insolvency and Bankruptcy Code corporate insolvency resolution tries to decide whether a company, in distress can be saved with a resolution plan. If a resolution cannot be found the company may be liquidated according to the law. For the Insolvency and Bankruptcy Code to work well it is not enough to recover debts. It must also preserve business value quickly. It must treat all stakeholders fairly.

Legal Framework Governing Corporate Insolvency

The Insolvency and Bankruptcy Code 2016 is the law that controls how companies, in India solve problems when they cannot pay their debts. The Insolvency and Bankruptcy Board of India or IBBI looks after the people who help with insolvency the agencies that do the work and the information services. The IBBI also does duties that the Code says it should do.

Under Section 5(20) an operational creditor is a person who is owed a debt. Operational debt usually comes from the sale of goods or services from employment or from taxes or other mandatory payments. Section 5(7) says that a financial creditor is a person who is owed a debt and Section 5(8) explains what a financial debt is.

The National Company Law Tribunal or NCLT is the judge that decides insolvency cases under Section 60 of the Code. If someone wants to challenge an NCLT decision they go to the National Company Law Appellate Tribunal or NCLAT following the rules in the law. If there are still questions the case can reach the Supreme Court.

ISSN: 2582-6433

Part II of the Code contains the rules about how to solve and end the problems of companies. Sections 6 to 10 explain how to start the insolvency resolution process or CIRP. Section 12 says how long the process should take and what extensions or exceptions are allowed by law.

Section 14 says that after a CIRP application is accepted a moratorium is put in place. During this time the law stops actions against the company except for the few cases the Code allows. The moratorium is meant to keep the company's assets safe and give a chance to fix the problems without lawsuits.

Section 30 covers how resolution plans are submitted and looked at and Section 31 deals with the approval of a resolution plan, by the judge. Section 33 says when the company should start being liquidated. Together these rules give a path to solve financial trouble while keeping everyone's rights safe under the law.

Corporate Insolvency Resolution Process

The CIRP is a process designed to address a company's default and explore the possibility of its revival.

First an eligible financial creditor may apply under Section 7. An operational creditor may apply under Section 9 after complying with the demand and notice requirements. The corporate debtor may also apply under Section 10. For a creditor the existence of a qualifying -existing dispute may affect the maintainability of the application.

Second the NCLT examines the application in accordance, with the Code. Once an application is admitted the CIRP begins. An interim resolution professional is appointed. The moratorium under Section 14 takes effect.

Third the resolution professional collects and verifies claims. The resolution professional manages the process. The resolution professional facilitates the formation of a committee of creditors. Under Section 21 the committee of creditors is generally composed of creditors. This applies subject to the rules and exceptions.

Fourth the resolution professional invites eligible resolution applicants to submit plans. Under Section 30 the resolution professional examines whether the plans comply with the Code and the applicable regulations. The committee of creditors considers plans. The committee of creditors approves a plan in accordance with Section 30(4). This generally requires 66 per cent of the voting share of financial creditors.

Finally, an approved plan is submitted to the NCLT for approval under Section 31. Once approved the plan becomes binding on the stakeholders covered by the provision. If the statutory conditions for resolution are not fulfilled the company may enter liquidation under

ISSN: 2582-6433

Section 33.

The process aims to preserve the value of the business. The process aims to achieve a resolution within the legal framework. However, the effectiveness of each stage depends on adjudication. The effectiveness of each stage depends on information. The effectiveness of each stage depends on cooperation, among stakeholders. The effectiveness of each stage depends on the availability of resolution applicants.

Major Challenges in Corporate Insolvency Resolution

1. **Delay in Proceedings**

   One of the problems that Indias insolvency system is dealing with is delays. Even though Section 12 sets a time limit, for the process some cases can still take a time to finish because of fights, complicated claims, trouble getting resolution plans and slow decisions.

   The law has a set time frame, including some allowed time and exceptions in situations. The case might take longer, than the time. When things take long the value of the assets can go down the costs to handle the case can go up. Fewer people might want to invest. A slow decision can also hurt workers, suppliers and others who rely on the company to keep running.

2. **Heavy Workload of the NCLT**

   The NCLT has a role, in admitting insolvency applications. It also examines resolution plans. Decides disputes. Because the NCLT has a caseload many vacancies and limited institutional capacity the speed of proceedings can be affected.

   When insolvency applications remain pending creditors face uncertainty. Distressed businesses may lose chances, for revival. The NCLT is the body that must act quickly to avoid these losses. Therefore, improving the capacity of the NCLT is essential. This improvement helps the NCLT meet the objectives of the Code. A stronger NCLT will bring decisions.

3. **Difficulties Faced by Operational Creditors**

   Operational creditors, like suppliers and service providers may have trouble getting the money they are owed. Unlike creditors they usually do not get to join the committee of creditors just because they are creditors. Their ability to take part and vote depends on the rules in the Code.

   The resolution plan needs to meet the rules about creditors, including the minimum payment protections in Section 30(2)(b). So, the amount they actually get might be less,

ISSN: 2582-6433

than what they're owed. This can put stress on businesses, especially micro, small and medium enterprises (MSMEs) that rely on regular payments to keep running.

4. **Inadequate Resolution Plans and Liquidation**

   The primary objective of the IBC is resolution. Not every company attracts a resolution applicant. Potential investors may be discouraged by accumulated liabilities, deteriorating assets, ongoing litigation or uncertainty regarding the company's future. Where a viable resolution plan cannot be secured liquidation may follow. Liquidation is an outcome, in circumstances but frequent failure to achieve resolution can lead to the loss of productive assets, employment opportunities and business value. The challenge is to distinguish between companies that can realistically be revived and those, for which liquidation is the legal outcome.

5. **Balancing Stakeholder Interests**

   Corporate insolvency brings together interests. Financial creditors want to get their money. Operational creditors need payment, for goods and services they provided. Employees rely on their wages to live. Resolution applicants look for a chance to turn the company into a business again. Shareholders can also be impacted when a company undergoes restructuring. The committee of creditors plays a role in making business decisions. Those decisions cannot go beyond the rules set by the Code. A fair insolvency system must allow room, for business choices. At the time it must follow legal rules. It must protect all stakeholders. Stop treatment from happening.

6. **Implementation and Compliance Challenges**

   The success of the IBC also relies on records clear reporting of assets and liabilities cooperation, from company leaders and the skill of those running the IBC process. Hiding assets missing data and needless court fights can make the IBC resolution harder. Strong investigation and firm enforcement are needed to keep the IBC process honest.

Important Judicial Decisions

Judicial decisions have been very important, in making clear how the IBC works and how business choices connect with checks. These decisions have helped explain the IBC and how commercial choices interact with reviews. The IBC has benefited from these decisions. The relationship, between business decisions and legal reviews has become clearer because of these decisions. Judicial decisions have continued to shape the IBC and the way business choices are reviewed legally.

ISSN: 2582-6433

1. **Innovative Industries Ltd. v. ICICI Bank (2018)**

   In Innovative Industries Ltd. V. ICICI Bank, (2018) 1 SCC 407 the Supreme Court looked at the admission of an insolvency application, under the Code. The judgment explained the role of the adjudicating authority in checking whether the requirements, for admission were met. It emphasized how important it is to follow the statutory insolvency framework.

   The decision helped make the operation of the IBC clearer. It supported a way of handling insolvency cases. It showed that the Code must be applied according to its requirements. It should not be applied by making an assessment of the merits of a debtor's financial difficulties.

2. **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)**

   In the case of Committee of Creditors of Essar Steel India Ltd. Versus Satish Kumar Gupta decided in 2020 and recorded as 8 SCC 531 the Supreme Court looked closely at how payments were divided under a resolution plan. The Supreme Court also considered how far judicial review could go. The Supreme Court recognised that the commercial wisdom of Committee of Creditors is very important. The Supreme Court said that the power of Committee of Creditors must still follow the rules of the Code.

   The Supreme Court clarified that equitable treatment does not always mean giving every creditor the same. Equitable treatment is still allowed long as the statutory requirements are met.

   This decision is important. It seeks to balance the decision-making of Committee of Creditors with the protections that are available to all stakeholders.

3. **Swiss Ribbons Pvt. Ltd. v. Union of India (2019)**

   In Swiss Ribbons Pvt. Ltd. V. Union of India (2019) 4 SCC 17 the Supreme Court looked at challenges to parts of the IBC. The Court said the framework that was challenged was constitutional. It also saw the difference, between creditors and operational creditors.

   The decision said the IBC is mainly for dealing with insolvency and not just for getting debt. It is still a case, for knowing what the Code is meant to do. How it is set up.

Critical Analysis

The IBC is a change, in how India deals with financial distress. The IBC gives a framework that is easy to follow. The IBC gives creditors a voice in the resolution process. The IBC also makes a path from default to either resolution or liquidation.

ISSN: 2582-6433

However, a time-bound legal framework does not automatically bring results. The IBC can still suffer from delays, institutional limits, court battles and trouble in finding people who want to take over a company. The IBC also shows that operational creditors and small businesses need care. Those parties may have power to bargain. May not have enough money to survive long periods of unpaid bills.

The committee of creditors must use sense because fixing a company's finances needs business and economic judgment. At the time the committee of creditors must keep decisions clear, logical and in line with the rules. The IBC needs both choices and solid legal control to work well.

The success of the IBC should not be judged by how cases it accepts or how much money it recovers. The IBC should also be judged by how it solves cases how it keeps business value how it brings back companies how it protects creditors and how it keeps the insolvency system stable, for the long run.

The Way Forward

Reforms can make insolvency resolution, in India more effective. First we think the institutional capacity of the NCLT and NCLAT must be strengthened. This means appointments, enough staff, better infrastructure and efficient case management. Also specialised training in restructuring and insolvency law will raise the quality and speed of decisions.

Second procedural delays must be cut down. We think this requires monitoring timelines spotting disputes early and managing litigation well. Digital filing, standardised documents and clear communication among stakeholders will make the process faster.

Third protect creditors and MSMEs. We think verifying claims quickly explaining resolution plans and enforcing statutory payment protections effectively will build confidence in the system.

Fourth improve transparency. Accurate statements, asset records and timely disclosure of liabilities help resolution professionals and potential investors judge companies properly.

Fifth strengthen the insolvency profession. We think education, proper accountability and steady regulatory supervision are key. Resolution professionals must manage cases while staying independent and following the law.

Finally, insolvency policy must push for early distress identification and good restructuring options. We believe a company should not lose value when stakeholders start talks late. Reforms should keep a line, between distress and strategic misuse of insolvency proceedings.

ISSN: 2582-6433

Conclusion

The Insolvency and Bankruptcy Code 2016 has changed the rules for fixing insolvency problems in India. The Insolvency and Bankruptcy Code set up a process for dealing with defaults and, for helping businesses recover. The Insolvency and Bankruptcy Code puts an emphasis on resolution on getting the value from assets on letting creditors take part and on keeping the process within set time limits. These features show a step in the laws that govern business in India.

However, the Insolvency and Bankruptcy Code still faces delays. The Insolvency and Bankruptcy Code also puts pressure on the courts that decide these cases. Operational creditors also find it hard to follow the rules. The Insolvency and Bankruptcy Code has not yet always produced resolution plans. These problems keep the Insolvency and Bankruptcy Code from working as it could. The success of the Insolvency and Bankruptcy Code depends not on the law itself but on the banks lawyers and other parties who carry it out.

A stronger insolvency system needs judges quick case handling, clear financial data, fair treatment for everyone and good oversight, by regulators. If India fixes the problems mentioned above India will get better at fixing companies that're in trouble. India will also keep the interests of stakeholders safe. Will make people trust the business and money system more. The final goal of the Insolvency and Bankruptcy Code should be a system that fixes insolvency quickly keeps businesses alive whenever it can and makes sure that liquidation happens at the time and the right way when a business cannot recover.

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