ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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

ISSN: 2582-6433

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.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS 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.

ISSN: 2582-6433

A Study On Insolvency And Bankruptcy Code, 2016

Authored By-Adv. Koppolu Chaitra
Assistant Professor
Sathyabama School of Law, Sathyabama University
Chennai 603103
Mobile No : 7030466808
Email Id : chaitra3c@gmail.com

Abstract

The Indian insolvency framework underwent a significant transformation with the adoption of the Insolvency and Bankruptcy Code, 2016. Similar to other nations throughout the world, our nation also faced a number of economic challenges as a result of the unanticipated pandemic scenario. The insolvency regime has also been impacted by this extraordinary circumstance. In order to address the problems with the insolvency regime during this pandemic crisis, the legislature has developed regulations. The goal of the current article is to examine the concerns and challenges of corporate insolvency resolution in India during the epidemic. The goal of the study is to give a summary of the major problems in this field. The author attempts to assess the effectiveness of the ordinances and highlights any flaws.

ISSN: 2582-6433

Introduction

Any country's legal system is always crucial to its ability to thrive economically. If the nation's legal system is well-designed and well implemented, the nation's international standing will undoubtedly be solid.

The implementation of the IBC is India's second-most important legal change after the Goods and Services Tax. It's because the IBC gives India a new sense of identity and economic respect on a global scale while also making India a force to be reckoned with in the legal arena. This code has a good effect on all fronts, including the economic and non-economic ones. Since the code has been approved, India's economic standing has significantly improved due to increased FDI, more M&A transactions, and improved ease of doing business in India.

One of India's most significant economic changes, the Insolvency and Bankruptcy Code, 2016 is thought to have had a substantial impact on credit risk management. IBC, 2016 unifies and updates the Indian law governing the insolvency resolution process. Lenders, financial institutions, corporations, and professionals all seem to be affected by the Code's introduction, offering them the opportunity to work as resolution professionals. Insolvent entities are intended to be wound up more quickly, distressed entities are intended to be saved, and investors are intended to have an easier exit.

Objectives Of The Study

The study was conducted in order to further the following major goals:

1. To examine the 2016 Insolvency and Bankruptcy Code's distinctive elements and legal structure.
2. To determine how India's macroenvironment will be affected by the Insolvency and Bankruptcy Code.

Need Of The Study

This Paper main goal is to explore the 2016 Insolvency and Bankruptcy Code's key sections. This paper highlights diverse stakeholders' points of view, difficulties encountered, and multiple benefits of the reform's implementation in India. This report also demonstrates how IBC is very creative in enhancing India's reputation on the international stage.

ISSN: 2582-6433

Insolvency And Bankruptcy Code (IBC), 2016

A. Background:

Next to the GST, the "Insolvency and Bankruptcy Code, 2016" is regarded as the biggest economic change. The Insolvency and Bankruptcy Code 2016 is a significant piece of legislation that unifies the legal framework governing individual restructuring and liquidation (including incorporated and unincorporated entities).

By consolidating and amending the laws relating to the reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a timely manner and for the maximisation of value of such persons' assets and matters connected therewith or incidental thereto, the new law seeks to promote entrepreneurship, availability of credit, and to balance the interests of all stakeholders. The laws governing the insolvency of businesses and limited liability entities (including limited liability partnerships and other entities with limited liability) are intended to be consolidated.

B. CROSS - BORDER INSOLVENCY

There are various difficulties with the legal framework controlling cross-border insolvencies. The first is the lack of a thorough structure for cross-border insolvency. Resources are wasted as a result of the resulting conflicts across legal systems. Additionally, it leads to different treatment of domestic and foreign debtors. A few prominent attempts to address these issues have been made. These include the NAFTA Transnational Insolvency Project, the International Bar Association Cross-Border Insolvency Concordat, the EC Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000 of May 29, 2000), and the UNCITRAL Model Law on Cross-Border Insolvency.

C. jurisdictional Parameters

This section aims to outline the potential standards on which the jurisdiction of Courts in cross-border insolvencies may be established, without reference to any specific legal system.
The place of incorporation:

This method establishes jurisdiction based on the insolvent debtor's location of incorporation. Although predictability is undoubtedly increased, there is concern that this may frequently identify a jurisdiction that has little to no true relationship to the bankrupt company (Irit Ronen-Mevorach). European courts have frequently operated under the assumption that the location of a company's incorporation is where its primary interests are. This assumption can be refuted, though (Eurofood IFSC Ltd case).

ISSN: 2582-6433

D. The location of principal assets:

One of the least reliable criteria for choosing the venue for international insolvency proceedings is the asset-based test. The majority of the time, determining the company's international assets takes time and money. Additionally, asset-based jurisdiction cannot be established before the insolvency process has started. Because of this, the initial determination of jurisdiction is unpredictable and subject to fraud.

E. Injunction

Cross-border insolvencies allow creditors to file lawsuits in local courts rather than through centralised liquidation proceedings in order to get priority over other claims against the corporation. It is feared that this will lead to an uneven distribution of assets and the unjust prejudicial treatment of some creditors at the expense of other creditors. One strategy for resolving this issue is the use of anti-suit injunctions. The Privy Council ruled in Aerospatiale v. Lee Kui Jak that English courts have the authority to issue anti-suit injunctions to safeguard the integrity of ongoing insolvency procedures before the Court. One situation where the issuing of such an injunction is justified is to prevent someone from trying to get the sole benefit of particular foreign assets through foreign procedures.

E. UNCITRAL Model Law

The UNCITRAL Model Law makes an effort to offer a cutting-edge legal framework for the control of international insolvency. The model law is especially pertinent to India because various expert committees, including the J J Irani Committee, have advocated its implementation with appropriate amendments.

To protect the interests of all parties involved, the UNCITRAL Model Law offers a legal framework for coordinating cross-border insolvency processes. The Model Law accomplishes this goal in three ways: first, by requiring judicial cooperation; second, by giving a foreign insolvency administrator or a similar representative standing in local proceedings; and third, by guaranteeing that claims from both abroad and within the country are treated equally.

The Model Law is applicable in situations where a foreign creditor seeks to start insolvency proceedings before a local court, when a local court requests assistance from a foreign court or foreign representative, and finally when the same debtor company is involved in parallel insolvency proceedings in various jurisdictions. However, the Model Law does not compromise the sovereignty of other countries.

ISSN: 2582-6433

F. Recognition of Foreign Proceedings:

The Model Law stipulates that recognition of international insolvency proceedings is necessary (Articles 25 and 26). This is done in order to guarantee the efficient application of the other clauses pertaining to parity of treatment and access to foreign creditors. A "Foreign Main Proceeding" (FMP) or "Foreign Non-Main Proceeding" (FNP) is a foreign proceeding (FNMP). The relief that a foreign court may provide is determined by this classification. A foreign action that takes place in the debtor's home country or the location of the debtor's "centre of its principal interest" is referred to as an FMP in the Model Law.

Conclusion

The use of insolvency legislation can aid COVID-19-affected debtors who are in financial difficulties by protecting their firm's value and helping them restructure their debts28. In fact, several writers have asserted that bankruptcy law, particularly for big businesses, is not the issue; rather, it is the answer.

Concerns are raised about the circumstances of pending cases when the settlement plans have already been authorised. It becomes challenging to accomplish the true goal that the code aims to achieve in situations where the pandemic condition introduces financial constraints and makes it tough to move forward with the already approved plan. Additionally, the operational creditors of the corporate debtor may suffer as a result of the reduced threshold limit and the general prohibition on filing applications. In addition,

Furthermore, there is a higher risk of abuse of these rules because it is not stated anywhere how to tell if a default happened as a result of Covid-19 problems. While considering the legislative actions done in other nations, like as Singapore, it was decided that a panel of assessors would decide if a party's inability to fulfil the contractual obligations for which relief is requested was due to the pandemic. Similar actions can be conducted in India, where regulatory tribunals could be given this authority. Using this strategy, it will be guaranteed that only the party in need will receive relief without having to demonstrate that it is unable to fulfil its commitment.

Although bankruptcy law can other legal systems. Using these special criteria, some penalties may even be opportunistically applied to debtors. Additionally, the additional restructuring options permitted by other laws are now available due to the pandemic situations and revisions to the current insolvency system. Therefore, steps to apply other methods of restructuring or reorganising in the most effective way must also be considered.

ISSN: 2582-6433

References

1. 'Valecha, Javish & Xalxo, Ankita Anupriya. "Overview of the Insolvency and Bankruptcy Code, 2016 & the Accompanying Regulations", Journal on Contemporary Issues of Law, Vol-3, Issue-4, ISSN 2455-4782, 2017.
2. Goel, Shivam. "The Insolvency and Bankruptcy Code, 2016: Problems & Challenges", Imperial Journal of Interdisciplinary Research (IJIR), Vol-3, Issue-5, ISSN: 2454-1362, 2017.
3. Wadhwa, Rakesh. "Insolvency and Bankruptcy Code", 2016" The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.
4. Balasubramanian, N. "Insolvency and Bankruptcy Code – A look from a common man's perspective", The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016.
5. Sriram, G. "The Insolvency and Bankruptcy Code, 2016" ", The Journal of Corporate Professionals (ICSI), Vol-46, Issue- 9, ISSN 0972-1983, September 2016.
6. Chaudhary, V.K. & Kapoor, Alka. "Corporate Insolvency Resolution Process – Brief analysis and challenges", The Journal of Corporate Professionals (ICSI), Vol-46, Issue-9, ISSN 0972-1983, September 2016'.