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CRITICAL ANALYSIS OF THE IMPACT OF INSOLVENCY AND BANKRUPTCY CODE ON INDIAN ECONOMY

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Abstract - My research analyzes the implication and outcome of our country's main legislation on finance i.e. Insolvency and Bankruptcy Code (IBC) on Indian Economy by looking at debt recovery from borrowers and successful liquidation / restructuring / revival of Borrowers.

IBC was introduced to simplify and make uniform India's laws related to banking and financial sector. IBC objective was to timely deal with first resolve and revive insolvent debtors. Liquidate if insolvency is not resolved. It also protect creditor by giving a democratic setup in the form of committee of creditors where voting can be done. It gives a mechanism to recover debt which not only protects banks but also provides a framework for ethical corporate practice in the country.

India's long-standing problems with its bankruptcy and insolvency laws were addressed with the introduction of the Insolvency and Bankruptcy Code (IBC).

The main goals of the IBC were to increase creditor recovery, foster a positive business climate, and establish a more effective and timely resolution procedure for bankrupt enterprises.

I NEED OF IBC

1. Consolidation and Streamlining: Prior to the IBC, India's insolvency rules and forums were divided among many overlapping statutes, including the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI Act) and the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The goal of the IBC was to combine and simplify various regulations into a single, all-inclusive piece of legislation.

2. Time-bound and Efficient Resolution: Delays, inefficiencies, and the absence

of a time-bound resolution procedure were hallmarks of India's previous insolvency regime. To ensure a faster settlement of bankruptcy cases, the IBC incorporated time-bound resolution methods including Liquidation and the Corporate bankruptcy settlement Process(CIRP).

3. **Creditor Rights and Protection:** By giving creditors a precise and organized procedure for recovery, the IBC aimed to strengthen their operational and financial rights. It sought to strike a balance between the interests of investors, borrowers, and creditors.

4. **Encouraging Investment and Entrepreneurship:** Encouraging investment and entrepreneurship requires a strong insolvency framework. By boosting trust among lenders and investors, the IBC sought to improve the business climate.

5. **Company Rescue and rebirth:** The IBC placed more emphasis on company rescue and rebirth than on the quick liquidation of viable enterprises in trouble. The purpose of the Corporate Insolvency Resolution Process (CIRP) is to assist bankrupt enterprises with their reorganization and turnaround.

6. **International Best Practices:** The United Nations Commission on International Trade Law (UNCITRAL) guidelines and other international best practices in insolvency and bankruptcy legislation had an impact on the IBC. The objective was to harmonize India's

bankruptcy system with international norms, so increasing its appeal for international investments and transactions.

7. **Stimulating the Economy:** The general health of the economy depends on an efficient insolvency system.

The IBC attempted to enhance credit flow, promote economic growth, and lessen the burden of non-performing assets (NPAs) on banks.

8. **Legal Predictability and Certainty:** The IBC sought to give all parties participating in insolvency procedures a legal framework that is predictable and certain.

It aimed to reduce the amount of latitude and capriciousness in the settlement procedure.

9. **Debtor-in-Possession to Creditor-in-Control:** The IBC signified a change in paradigm from the debtor-in-possession to the creditor-in-control framework.

In the insolvency process, creditors were granted greater authority and influence, with the Committee of Creditors (CoC) serving as a key player.

10. **Reduction of Non-Performing Assets and Bad Loans:** Non-performing assets (NPAs) and bad loans were a major issue for the banking sector in India.

By offering a systematic process for resolving stressed assets and lessening the load on banks, the IBC sought to solve this problem.

Impact of the IBC: Since its implementation, India's insolvency

situation has significantly improved.

It has made it easier to resolve bankruptcy cases more quickly, increased creditor recovery rates, and encouraged responsible lending and borrowing.

Global investors have also shown interest in the IBC because they believe India has a more effective and predictable insolvency system.

In conclusion, the Insolvency and Bankruptcy Code (IBC) was implemented in India in order to improve creditor rights and protection,

encourage investment and entrepreneurship, harmonize with international best practices, boost the country's economy, and lessen non-performing assets (NPAs) and bad loans in the banking industry. Its influence on enhancing the general business climate and promoting a culture of fiscal responsibility has been substantial.

the Insolvency and Bankruptcy Board of India (IBBI). British system has regulators like ICAEW which makes sure the laws is implemented correctly without any violation.

Just like the Indian system focuses on revival and not liquidation of the company, there was a pivotal change after the Corona virus pandemic. Initially the British system favored creditors/ lenders/ financial institutions. However in 2020 Corona Virus Pandemic started. The approach changed

II COMPARISON WITH OTHER COUNTRIES

While understanding Insolvency and Bankruptcy Code, it is crucial and imperative to compare it with similar laws of other countries.

I chose 3 countries as they are financial capitals. They are U S A, Singapore and The U K.

A lot of aspects are common between Indian Insolvency and Bankruptcy Code and main system of laws in the United Kingdom. British System also allows borrowers and lenders to start the process of insolvency resolution. Just like Indian Insolvency and Bankruptcy Code, the British laws also have a time bound procedure to deal with insolvent and bankrupt debtors. Indian system and British system have a regulator that deals with various aspects. In India, the regulator is

from favoring creditors to favoring borrowers. In 2020 British had Corporate Insolvency and Governance Act. The new regime allows debtors to be in control of the business even after filing for bankruptcy.

This is somewhat similar to the system of United States of America. This helps the debtors time to change their business plan and prepare a strategy to come out of bankruptcy. However a professional who is expert in the field is appointed to oversee the working and management of the debt ridden company. The British system also has a system of moratorium in which no legal proceedings can be made against the debtors.

This again gives time to debtors to prepare a new strategy to deal with insolvency and bankruptcy.

Indian Insolvency and Bankruptcy Regime has a committee of creditors that vote on resolution plan. Similarly, British Regime has provisions that a restructuring plan has to be approved by all the classes of creditors. Additionally the court can enforce a restructuring plan even if some creditors don't agree on the plan. This can be done to ensure there is equity and justice in the insolvency proceedings. Similar provisions also exist in India. In India there are two types of creditors - financial and operational creditors. If financial creditors vote with a two - third majority on any resolution plan, then the operational

creditors have to abide by the plan. This is subject to the condition that equity and justice prevails.

Insolvency and Bankruptcy in the United States of America-

The main principle is debtor has right of possession rule.

In the Indian system focus is on revival and not liquidation of the company.

American system also allows the debtor to be in control of the business even

after filing for bankruptcy. This is somewhat similar to the system of British Regime . This helps the debtor to change their business plan and prepare a strategy to come out of bankruptcy. However a professional who is expert in the field is appointed to oversee the working and management of the debt ridden company. The British system also has a system of moratorium in which no legal proceedings can be made against the debtors. This again gives time to debtors to prepare a new strategy to deal with insolvency and bankruptcy.

This is based on Chapter 7 and Chapter 11 of Bankruptcy Code of the United States of America. Another interesting aspect is the priority of creditor's rule just like Indian Insolvency and Bankruptcy Code. The priority rule gives preference to the secured creditors above the unsecured creditors. Another similar concept is moratorium. The American system also has a system of moratorium in which no legal proceedings can be made against the debtors. This again gives time to debtors to prepare a new strategy to deal with insolvency and bankruptcy. Moratorium comes into effect when an application is filed / initiated for insolvency or bankruptcy.

One major difference is there between the Indian Regime of Insolvency and Bankruptcy Code and the United States of American regime. The difference is that Indian regime of Insolvency and Bankruptcy Code gives priority and importance to creditors. United States of America's regime give priority to borrowers. In the United States of America's regime the focus is on restructuring of the ailing corporation under Chapter 11 of the Bankruptcy Code. If due to a lot of excessive debt/

bad performance of the company, the restructuring of the debt ridden corporate fails Chapter 7 and Chapter 11 of the Bankruptcy Code comes into effect. The management of the debt ridden company falls into the hand of the Trustee. The trustee is appointed by the creditors or the government. The borrower remains in possession of the properties. In Indian Regime of Insolvency and Bankruptcy Code, the Interim Professional or the Resolution Professional has the right to enter into contract / transfer / only after consent of committee of creditors. In the United States of America's regime the debtor has the right over the contracts/ suits/property just like before initiation of insolvency or bankruptcy proceedings.

The Indian Insolvency and Bankruptcy Code can be called as a landmark legislation after Goods and Services Tax. It not only helped in improving stability of India's economy and financial system but also helped in improving investor confidence in Indian Economy.

India has improved its ease of doing business ranking from 143 in 2014 to 62 in 2023.

It has also improved India's FDI from 45 billion to over 70 billion. India has also become a manufacturing hub with

III Impact on economy

A country's laws impact its economic and financial growth. Having a sound legal system and judicial mechanism plays a pivotal role in its economic development. It also helps the citizens and helps in improving investor confidence. One example is the recent case of cross border insolvency of Jet Airways. It helped in including a foreign creditor in the committee of creditors while resolving insolvency of Jet Airways.

new businesses investing and setting up plants in India.

Not only businesses and investors but the financial institutions and borrowers are more confident. The Indian Insolvency and Bankruptcy Code has provisions for timely resolution of insolvency, voting of committee of creditors, transparent sharing data on Information Utilities etc.

This improved confidence has improved lending and also decreased NPAs. The NPAs which were above 14% in 2017 have now reduced to less than 4%.

The main focus of Insolvency and Bankruptcy Code is on revival and making sure the borrower is again able to work financially and economically. That is why first priority is given to revive and not to sell off the company via liquidation. Only if Committee

of creditors is not able to approve the resolution plan or the National Company Law Tribunal decide not to implement the resolution plan, the liquidator is appointed.

The Liquidator is responsible for selling off the company's assets and pay the creditors.

The creditors are paid off in the order mentioned in Section 53. The priority is as follows - workman's dues then secured creditor then wages of employees working in the corporate then unsecured creditors then dues to the Government (this includes both

central and state government) then those who are preference shareholders and in the end partners or normal equity shareholders.

If we look at the data and do a statistical analysis, we may find that Insolvency and Bankruptcy Code is successful. The Indian Insolvency and Bankruptcy Code has successfully helped in ending 72% cases initiated. After its inception in 2016 the Indian Insolvency and Bankruptcy Code majority of the cases

were resolved by giving a revival resolution plan or by liquidation. Interestingly majority or more than half of them had to result in liquidation of the debt ridden corporate debtor. said the Financial Stability Report by the Reserve Bank of India.

Reserve Bank of India came out with Financial Stability Report . It highlighted important data on liquidation / restructuring / revival of companies.

Recent data is of

2023. Till 2023 more than 6500 insolvency proceedings have been initiated either by debtors themselves or creditors. Around 4500 have been resolved.

Looking at closely at more details, 800 cases or 20% were resolved after appeal. This shows appeal is not used in majority of cases. 900 cases were resolved through simply approval of resolution plan by the committee of creditors. on 750 cases were withdrawn as the parties did not feel the need to continue due to payment of dues by the borrowers. Close to 2500 cases resulted in Liquidation of the company as the resolution plan failed to revive the company or was not approved by the committee of creditors. In liquidation the assets of the company are sold and proceeds are given to the creditors in the order specified in section 53.

Although the time prescribed by Indian Insolvency and Bankruptcy Code is 180 days and an extension of 90 days the

data says it took very long to resolve the insolvency of debt ridden debtors.

The time taken to resolve insolvency in entire Corporate Insolvency Resolution Process was more than 500 days. Close to 2500 cases resulted in Liquidation of the company as the resolution plan failed to revive the company or was not approved by the committee of creditors. In such cases it took more than 450 days on an average to liquidate the company.

Similarly, Voluntary liquidation under Section 59 provisions took around 400 days for liquidation. Voluntary liquidation enables the company itself to go for liquidation. Although the time prescribed by Indian Insolvency and Bankruptcy Code is 180 days and an extension of 90 days the data says it took very long to resolve the insolvency of debt ridden debtors. This just proves there are long delays even with specialized Insolvency Professionals /liquidators and specialized tribunal.

Another major problem is that investors are not confident if there are serious problems with the debt ridden corporate. If there is a long history of defaults / non performing asset/ wilful default , investors wont buy the corporate debtor facing liquidation. This makes the whole implementation of the Indian Insolvency and Bankruptcy Code complex and unpredictable.

We review the information carefully. We look at returns and collections data from 2019 to 2013. The return rate goes from 45% to 30%. At the same time, the resolution time in days increased from 300 days to 650 days. This comes from CRISIL's report on Indian Insolvency and Bankruptcy Law after seven years of investigation.

The power of the judiciary is limited and recognition of crimes is suspended. Also there was a significant delay in the IBC pre-approval phase (from 450 days for FY2019 to 650 days for FY2022) limited the rate of return.

This led to a decline in assets and good returns in the insolvency and bankruptcy code .Some amendments have been made to Insolvency and bankruptcy code over the last 12 months to improve performance. Three main changes are approving separate asset sale/resolution, increasing the number of seats in the National Company Law

Tribunal to 16 and extending the deadline for filing nominations.

Additionally, sector-specific amendments, provision for audit of corporate debtor, and modifications in Form-G2 will also improve the process. These amendments and their effective implementation can reduce resolution times and backlog of cases over the near to medium term, it said.

In addition, regional reforms, creditbureau audit rules and reform of the G2 form will also improve the process. He said these reforms and their effective implementation can reduce resolution times and operational delays in the short to medium term.

Improving infrastructure, including expanding the ability of judges to obtain more information, digitizing the IBC platform to connect all stakeholders to reliably eliminate unnecessary information, and expanding solutions before to condition the activities of large companies in order to avoid price erosion over time

Actions using this method will help eliminate the backlog of 13,000 patients stuck at different stages of the IBC solution.

CRISIL said that since its inception in 2016, IBC has improved the lending culture in India by addressing major non-performing assets with better rates of return compared

to earlier standards such as the Court of Appeal, SARFAESI Act and Lok Adalat.

What is important, is that relevant features

have been installed to ensure that large bad loans are tested before they reach the IBC portal.

In terms of value, IBC has helped settle ₹3.16 lakh crore of outstanding debts in 808 cases over the last seven years.

On average, lenders experience 30% of applicant approvals and 170% of referral fees.

The average rate of return for other methods ranges upto 20%, indicating

that IBC is the method providing the highest rate of return for borrowers performing assets (NPAs).

The insolvency and bankruptcy code most important law in the finance industry in India and has brought changes in the lending industry. The fear of losing the business

led to the settlement of over ₹9 crore of debts before the matter reached the IBC's doorstep.

The NPA has profound and worldwide concerns for all nations. However, it is highly dubious to what extent this concern is relevant for a developing nation like India.

Without the prosperity and modernization of the Indian banking and financial sector, the financial reforms that the Indian government has embarked upon in response to the difficulties posed by the global economy cannot be realized.

The NPA's concern for all countries is very deep and global. However, for a developing country like India, the extent of this concern is very doubtful. The financial reforms undertaken by the Indian government to respond to the challenges of the global economy cannot be achieved without the success and modernization of the Indian banking and financial sector.

Business loans past due for more than 90 days and consumer loans past due for more than 180 days are the two categories of non-

The NPA problem continues to worsen, threatening the survival of banks, reducing profits and affecting the economy as a whole. Non-performing assets refer to the inability to generate income and interest.

Business loans past due for more than 90 days and consumer loans past due for more than 180 days are the two

categories of non-performing assets (NPAs).

The following categories apply to the bank's non-performing assets (NPAs): The sum of all the NPAs that are shown on a given day is known as the gross NPA. The gross non-performing assets comprise all potentially inferior, questionable, or lost assets.

Net NPA: The entire amount of assets that the bank has set aside, or non-performing assets (NPAs). It is the true burden of a bank. What separates Gross NPA from Net NPA is covered by the bank's provisions.

According to Section 5(b) of the Banking Act, 1949, a "bank" means an institution accepting deposits from the public, repayable on demand and drawn by check, for the purpose of lending or investment, letter, order or other.

IV Analysis of Recoveries by banks

IBC yields continued to decline. Banks have received 60% reductions in 348 cases resolved so far.

Between January and March 2021, 29 pending cases were resolved with borrowers recovering Rs 4,600 crore out of a total claim of Rs 17,389 crore from bankers.

Banks are now facing a total reduction of 60% in all Insolvency and Bankruptcy Code (IBC) resolutions from March 31,

2021.

Banks and other financial institutions have recovered a total of Rs 2 billion from 348 bankruptcies as of March 31, 2021, according to data released by the Insolvency and Bankruptcy Board of India (IBBI). The total amount claimed by the bank in this case is Rs 5.16 lakh crore.

Experts continued to express concerns about liquidity and declining returns

during the insolvency process. Prior to the implementation of IBC, the average rate of return for investors in previous financial solutions was 26%, and the average time taken for the deal to close is four years.

example, 17,305 petitions for initiation of criminal cases against illegal companies with a default value of Rs 533 lakh crore were disposed of even before they were approved.

Between January and March 2021, 29 pending cases were resolved with borrowers recovering Rs 4,600 crore out of a total claim of Rs 17,389 crore from bankers. The rate of return for the quarter was only 26.41%.

During the same quarter, 149 companies were ordered into liquidation for non-compliance with the resolution plan. Of the 4,376 companies currently in bankruptcy proceedings, 1,277 have been closed.

This year marks the fifth anniversary of the founding of IBC. Despite all the amendments and landmark judgments passed by various courts to resolve the contentious issues, delays and poor recoveries continue to blight the entire IBC regime. The average time needed to resolve a case is 459 days, much longer than the stipulated 330 days.

However, one of the advantages of IBC is that the fear of losing control of the company forces many promoters to sort out their issues with creditors even before filing an application with the NCLT. For

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