

Greetings!!!

The Insolvency & Bankruptcy Code (IBC) - 2016, passed by the Parliament on 28th May 2016, and implemented from 1st December 2016, was aimed at revamping the then prevailing legal framework of insolvency and bankruptcy resolution in the country, which was very fragmented. Insolvency is a state in which financial difficulties of a company are such it is unable to run its business at its current pace. Bankruptcy is the status of a person who is legally declared as incapable of paying their dues and obligations. The Code aims to smoothen the process and to make it clear and certain. The IBC involves standard steps which is viable and understandable. So, everyone, be it creditors, debtors, companies, or shareholders etc. shall have a standard perform for any matters relating to insolvency.

Why IBC enacted?

Initially there was Presidency Towns Insolvency Acts, 1909 which was applicable in Kolkata, Chennai and Mumbai and the Provincial Insolvency Act 1920 for the rest of India, for regulating the insolvency laws. The Act applied to individuals and partnerships but exempted corporations from within its ambit.

After the Independence, bankruptcy and insolvency were specified in Entry 9 of the Concurrent List of the Seventh Schedule, under Article 246 of the Constitution. There were numerous Acts to govern Insolvency and bankruptcy issues and matters such as the Sick Industrial Companies (special provision) Act, 1985 ("SICA"), SARFAESI Act, 2002, the Recovery of Debts due to Banks and financial institutions Act, 1993 ("RDDBFI Act"), Companies Act, 1956 as well as Companies act, 2013. But these regulations have not yielded satisfactory results. These regimes are high fragmented, borne out of multiple judicial forums resulting in lack of clarity and certainty of jurisdiction. Further, there are various adjudicatory bodies/Tribunals to deal with such issues and matters under different Acts stated above.

So, this led to the unclear knowledge about the authority as to whom the parties should approach in the related matters. Hence, this resulted in overlapping of decisions. There was no common regulatory authority to regulate the rights of the secured or unsecured creditors, employees etc. or to determine the priority of their claims. There was also no adequate or credible data regarding the assets, indebtedness etc. of companies which further heighten the problems. Hence large number of legislations and non-statutory guidelines has made the recovery of debt a complex and time consuming process.

The implementation of the new Insolvency and bankruptcy code is expected to give a big push to credit growth, as international experience shows that laws to resolve bad assets have helped boost credit growth, said a report by SBI research. For instance in Germany loans jumped 10 times soon after the implementation of Bankruptcy code. China witnessed a credit growth of 30% in the third year (2009) of implementing its Bankruptcy Code. Similar trends were visible in Poland and Spain. In some of the countries like Kazakhstan and UAE, the credit growth jumped immediately in the next year of implementation of Code.

As per World Bank data, until 2016, insolvency resolution in India took 4.3 years on an average, higher than many major economies.

These delays were caused due to time taken to resolve cases in courts, and confusion due to a lack of clarity about the cumbersome process. A time-bound process to resolve insolvency is expected from the current Insolvency and Bankruptcy Code 2016. When a borrower defaults in repayment, creditors gain control over debtor's assets and must take decisions to resolve insolvency within a 180-day period (extendable by 90 days). The Code also consolidates provisions of the current legislative framework to form a common forum by creating a single law for bankruptcy and insolvency for debtors and creditors of all classes to resolve insolvency. Overall this legislation is a huge step for a country like India towards joining top 50 in the World Bank's Ease of doing Business and has a potential to bring business practices in India closer to more developed and advanced markets over a long period of time.

This issue presents a good number of articles and interview on the cover story theme 'Insolvency & Bankruptcy Code 2016' by distinguished experts and authors. We look forward to constructive feedback from our readers on the articles and overall development of the journal. Please send your mails at editor@icmai.in. We thank all the contributors to this important issue and hope our readers enjoy the articles.

