



FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016

SECTION COVERED IN THE PRESENTATION: 01 TO 5.



Insolvency

A situation where debtor is unable to pay his debt.

Bankruptcy

A person or company is legally declared incapable of paying their dues.

Liquidation

It is a process of bringing a company to an end.

Preamble:

*Insolvency and Bankruptcy code is an act enacted by the Parliament
It got presidential assent on 28 May 2016.*

*The intent of the act is to consolidate and amend the laws relating to
reorganisation and insolvency resolution of corporate persons,
partnership firms and individuals in a time bound manner.*

Insolvency And Bankruptcy – Concepts

- * Insolvency is a state when an individual, corporation, or other organization cannot meet its financial obligations for paying debts as they become due.
- * Bankruptcy is a legal declaration given by the court resulting in the liquidation of assets or reorganisation of debt repayment.
- * Bankruptcy often leads to a fresh start or a chance to rebuild financially, while insolvency requires careful financial management and strategic planning to overcome financial difficulties.
- * In case of insolvency, one cannot pay off the debts, whereas in the case of bankruptcy, a court order states as how an insolvent person or business has to pay off their debts – by way of selling their assets or erasing the debt that cannot be paid.

Background:

The era before IBC had various scattered laws relating to insolvency and bankruptcy which caused inadequate and ineffective results with undue delays. For example,

- * Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act SARFAESI –for security enforcement.
- * The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) for debt recovery by banks and financial institutions.
- * Companies Act for liquidation and winding up of the company.
- * Ineffective implementation, conflict in one of these laws and the time-consuming procedure in the above mentioned laws, made the Bankruptcy Law Reform Committee draft and introduce Insolvency and Bankruptcy Law bill.

The IBC 2016 has laid down a collective mechanism for resolution of insolvencies in the country by maintaining a delicate balance for all stakeholders to preserve the economic value of the process in a time bound manner.

Bankruptcy Law Reforms *Committee (2014)*

On 22 August 2014, the Ministry of Finance created the Bankruptcy Legislative Reforms Committee (BLRC). The committee was headed by T. K. Viswanathan, and tasked with drafting a new bankruptcy law and submit a report on the same.

- * The objectives of the Committee were to resolve insolvency with: lesser time involved, lesser loss in recovery, and higher levels of debt financing across instruments;
- * The Committee had recommended a consolidation of the existing legal framework, by repealing two laws and amending six others;
- * It had proposed to repeal the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920;

Bankruptcy Law Reforms Committee (2014)

- * In addition, it had proposed to amend 11 legislations:
- * Companies Act, 2013;
- * Sick Industrial Companies (Special Provisions) Repeal Act, 2013;
- * Limited Liability Partnership Act, 2008;
- * Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- * Recovery of Debts due to Banks and Financial Institutions Act, 1993 and;
- * Indian Partnership Act, 1932.
- * The Income Tax Act, 1961;
- * The Customs Act, 1962;
- * The Payment and Settlement Systems Act, 2007;
- * The Central Excise Act ,1944;
- * The Finance Act, 1994;

Objectives of IBC

- * Consolidate and amend all existing insolvency laws in India.
- * To simplify and expedite the Insolvency and Bankruptcy Proceedings in India.
- * To protect the interest of creditors including stakeholders in a company.
- * To revive the company in a time-bound manner.
- * To promote entrepreneurship.
- * To get the necessary relief to the creditors and consequently increase the credit supply in the economy.
- * To work out a new and timely recovery procedure to be adopted by the banks, financial institutions or individuals.
- * To set up an Insolvency and Bankruptcy Board of India.
- * Maximization of the value of assets of corporate persons.

Highlights of the Insolvency and Bankruptcy Code, 2016 in the context of Corporate Insolvency

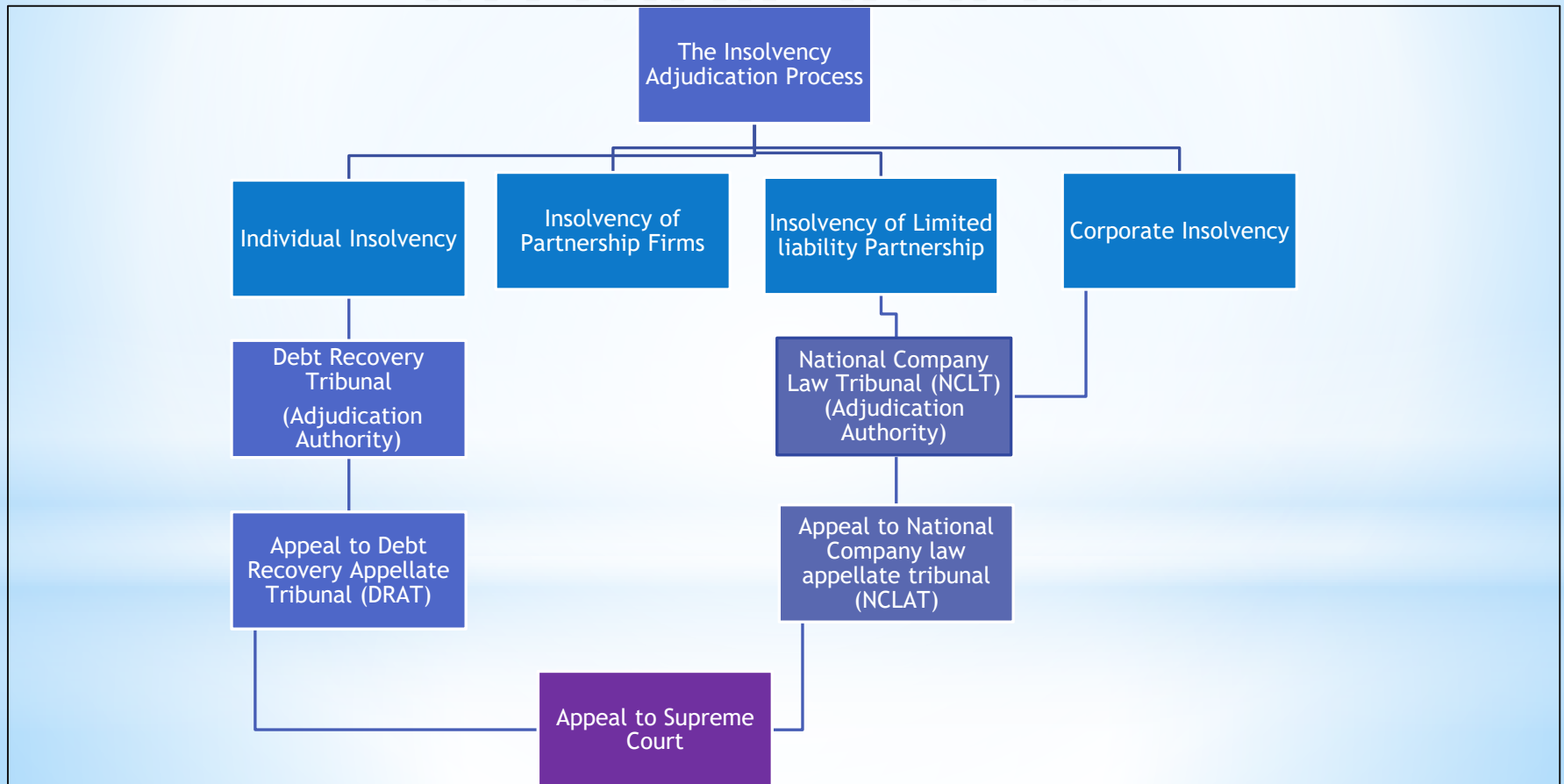
The code aims to resolve insolvencies in a strict time-bound manner - the evaluation and viability determination must be completed within 180 days.

Moratorium period of 180 days (extendable up to 270 days) for the Company.

Introduce a qualified insolvency professional (IP) as intermediaries to oversee the Process

Establishment of Insolvency and Bankruptcy board as an independent body for the administration and governance of Insolvency & bankruptcy Law; and Information Utilities as a depository of financial information.

UNDERSTANDING THE HIERARCHY OF IBC ADJUDICATION



The Insolvency & Bankruptcy Code Is Divided Into Five Parts

- *Part 1 Preliminary (Section 1 TO 3)
- *Part 2 Insolvency Resolution And Liquidation For Corporate Persons (Section 4 TO 77)
- *Part 3 Insolvency Resolution And Bankruptcy For Individuals And Partnership Firms (Section 78 to 187)
- *Part 4 Regulation Of Insolvency Professionals, Agencies And Information Utilities (Section 188 TO 223)
- *Part 5 Miscellaneous (Section 224 TO 255)

Part 1 PRELIMINARY

Section 1: Short Title, Extent and Commencement

- * This Code may be called the Insolvency and Bankruptcy Code, 2016.*
- * It extends to the whole of India*
- * It shall come into force on such date as the Central Government may, by notification in the Official Gazette, Central Government may appoint different dates for different provisions and any reference to that provision shall be taken as a reference to the commencement of that provision.*

SECTION 2: APPLICABILITY

- * Company incorporated under Companies Act 2013/1956
- * Company governed by any special Act
- * Limited Liability Partnership
- * Personal guarantors to corporate debtors
- * Proprietorship firms/ individuals
- * Partnership firms

SECTION 3: KEY DEFINITIONS UNDER PART I PRELIMINARY

- * “Corporate person” means a company defined in Clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013), a Limited Liability Partnership, as defined in clause (N) of Sub-Section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;
- * “Corporate debtor” *means a corporate person who owes a debt to any person;*
- * “Insolvency professional” *means a person enrolled under Section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under Section 207;*

SECTION 3: KEY DEFINITIONS UNDER PART I PRELIMINARY

- * *“Insolvency professional agency” means any person registered with the Board under Section 201 as an insolvency professional agency;*
- * *“Information utility” means a person who is registered with the Board as an information utility under Section 210.*
- * *“Resolution applicant” means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional according to the invitation made under Clause (H) of Sub-Section (2) of Section 25.*
- * *“Resolution plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern.*

SECTION 3: KEY DEFINITIONS UNDER PART I PRELIMINARY

- * *“Resolution professional” for this part, means an insolvency professional appointed to conduct the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may be and includes an interim resolution professional.*
- * *“Voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor concerning the financial debt owed by the corporate debtor.*

PART: 2 INSOLVENCY FOR **CORPORATE PERSONS**

SECTION: 4 APPLICATION OF THIS PART

This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees;

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one Crore rupees

SECTION: 5 KEY DEFINITIONS UNDER PART II “INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS”

* **“Financial creditor”** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred;

* **“Corporate Applicant”** means –

a) corporate debtor; or

b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process “or the pre-packaged insolvency resolution process, as the case may be

c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

d) a person who has the control and supervision over the financial affairs of the corporate debtor;

- * **“Initiation date”** means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating the corporate insolvency resolution process.
- * **“Insolvency commencement date”** *means the date of admission of an application for initiating the corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 and 10, as the case may be.*
- * **“Insolvency resolution process period”** *means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.*
- * **“Interim finance”** *means any financial debt raised by the resolution professional during the insolvency resolution process period [and such other debt as may be notified*
- * **“Operational creditor”** *means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.*

* **"Resolution applicant"** means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant the invitation made under Clause (H) of Sub-Section (2) of Section 25.

* **"Resolution plan"** means a plan proposed by 2 [resolution applicant] for insolvency resolution of the corporate debtor as a going concern following Part II;

Explanation- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

* **"Resolution professional"** means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional

Conclusion:

- * In so far as any legislative can have a transformative effect, the IBC had achieved that objective. The government has been very pro-active in ensuring that the problems are dealt with and in a time bound manner.
- * The IBC has taken its first steps to regularize the insolvency process in India. It has amended over 11 legislations in India (as mentioned above), bringing about one of the most significant change to commercial laws in India in recent times. It has also become a very important tool for banks to regularize multitudes of non-performing assets troubling the country's economy.
- * The preamble to the code emphasizes its purpose as timely corporate reorganization and insolvency resolution to maximize asset value.
- * The IBC has brought a plethora of changes to insolvency laws in India and aims to reduce the amount of bad loans that has saddled the economy over the last few years.

- * We are beginning to see this through various companies successfully concluding their insolvency process.

- * The first successful case of a CIRP was that of Bhushan Steel wherein TATA Steel agreed to purchase Bhushan Steel for Rupees Thirty-Two Thousand Five Hundred Crores

- * Section 3 and 5 of Insolvency and Bankruptcy Code, 2016 defines the important terms which will be used in further procedure and sections of Insolvency and Bankruptcy Code.

- * The Insolvency and Bankruptcy Code, 2016 consists of total 255 sections organised in five Parts. The Code also has eleven Schedules which amends various statutes. All the sections and schedules will be covered in further presentations.

A brief about the Schedules:

- * The First Schedule (see Section 245) amendment to the Indian Partnership Act, 1932;
- * The Second Schedule (see Section 246) amendment to the Central Excise Act, 1944;
- * The Third Schedule (see Section 247) amendment to the Income-Tax Act, 1961;
- * The Fourth Schedule (see Section 248) amendment to the Customs Act, 1962;
- * The Fifth Schedule (see Section 249) amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
- * The Sixth Schedule (see Section 250) amendment to the Finance Act, 1994;
- * The Seventh Schedule (see Section 251) amendment to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- * The Eighth Schedule (see Section 252) amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003;
- * The Ninth Schedule (see Section 253) amendment to the Payment and Settlement Systems Act, 2007;
- * The Tenth Schedule (see Section 254) amendment to the Limited Liability Partnership Act, 2008;
- * The Eleventh Schedule (see Section 255) amendments to the Companies Act, 2013;
- * The Twelfth Schedule (see Section 29A(d)) mentions the Acts for the purposes of clause (d) of Section 29A;



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