

Evolving Jurisprudence on Corporate Insolvency

I. Introduction

An efficient insolvency system is an important component of a nation's economy, and is needed to boost enterprise, underpin investment and economic growth and create wealth. It promotes responsible corporate behavior by encouraging higher standards of corporate governance, including financial discipline, to avoid consequences of insolvency; preserve employment through an effective system for rehabilitating financially distressed but viable enterprises, while assuring maximum play in a fair reallocation of assets to more efficient market users through efficient liquidation system. Generally speaking, it is almost impossible to conceive of a business that is completely insolvency-free. The basic objective of laws relating to corporate insolvency is multifold:

- 1) Restoration of the debtor company to profitable trading where this is practicable;
- 2) Maximization of the return to creditors as a whole where the company itself cannot be saved;
- 3) Establishment of a fair equitable system for the ranking of claims and the distribution of assets among creditors, involving a redistribution of rights
- 4) to provide a mechanism by which the causes of failure can be identified and those guilty of mismanagement brought to book, and where appropriate, deprived of the right to be involved in the management of other companies.

Corporate Insolvency in India till now has always been regulated and administered by multiple and overlapping laws as follows:

- The Companies Act 2013
- The Sick Industrial Companies (Special Provisions) Act 1985
- The Recovery of Debts Due to Banks and Financial Institutions Act 1993
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

II. Individual Insolvency

This has always been regulated and administered through the Presidency Towns Insolvency Act (for residents of Mumbai, Kolkata and Chennai) and Provincial Insolvency Act (for other residents) which are century old legislations and have now outlived their utility.

- The Presidency Towns Insolvency Act 1909
- The Provincial Insolvency Act 1920

III. Legislative History

A single piece of legislation to connect the various insolvency laws has been on the cards for some time, with recommendations from the Law Commission of India dating back to its 26th report on insolvency laws in 1964. Various committees have explored the idea of consolidating India's insolvency and bankruptcy laws which are explained hereunder: In 1964, the 26th Report of the Law Commission recommended reform of personal→ insolvency laws and suggested a new Insolvency Bill to consolidate the extant two separate insolvency laws. Different committees were involved in the making of IB Code like *the Tiwari Committee (1985)*, *The Narasimhan Committee I and II (1991 and 1998)*, *Justice Eradi Committee (1999)*, *N.L Mitra Committee (2001)* but finally *the JJ Irani Committee* implemented the Mitra Committee recommendations and thus, the Companies Act, 2013 was enacted.

The basis of insolvency was changed from “inability to pay” to “failure to pay”. In 2014, the Finance Minister announced that the government hoped to overhaul the present setup of insolvency and bankruptcy laws in the country and the code surfaced for the first time. On November 4, 2015, the Bankruptcy Law Reforms Committee (chaired by TK Viswanathan) submitted its final report recommended the passage of the Insolvency and Bankruptcy Code 2015. On December 2, 2015 Finance Minister Arun Jaitley tabled the code before the lower house of the Indian Parliament (the Lok Sabha) On May 5, 2016, The Lok Sabha passed the Insolvency and Bankruptcy code 2016→ with all the amendments proposed by the joint committee of Parliament being accepted by the government. On May 11, 2016, the Rajya Sabha passed the Insolvency and Bankruptcy Code, 2016. On May 28, 2016, the Insolvency and Bankruptcy Code, 2016 (“Code”) received President's assent.

Notification of the code has been done. However, those sections of the Companies— Act, 2013 which form counter part of the Code got notified on June 1, 2016.

The Insolvency and Bankruptcy Code, 2016 (Code), a landmark legislation consolidating the regulatory framework governing the restructuring and liquidation of persons (including incorporated and unincorporated entities) was enacted into law by the Parliament on 11 May 2016. As in the case of Companies Act 2013 (2013 Act), different provisions of the Code are being notified and operationalised in a phased manner. Part IV of the Code provides for the setting up of an insolvency regulator, the Insolvency and Bankruptcy Board of India (Board). The Board is empowered to frame regulations on matters pertaining to insolvency and bankruptcy. Provisions pertaining to the constitution and powers of the Board were notified and operationalized by the Central Government on 5 August 2016. Subsequently, the Board was constituted on 1 October 2016 under the Chairmanship of Mr MS Sahoo.

It has been two year since the Insolvency and Bankruptcy Code, 2016 ("I&B Code") came into effect. The I&B Code is one of the biggest economic reforms to have taken place recently. It consolidates the archaic insolvency laws and provides a unified single legislation extensively dealing with the insolvency regime in India. One of the highlighting features of the Insolvency and Bankruptcy Code is that it provides a time bound process of 180 days, extendable only by a further period of 90 days to conduct the insolvency resolution. During the past one year, there were many amendments that were made and significant efforts that were put in to overhaul the I&B Code.

IV. Conclusion

The I&B Code was a much needed legislation in India especially in the wake of rising NPAs. It provides a time bound process to conduct insolvency resolution, which earlier took around 3-4 years. Moreover, it aims at maximisation of value of assets by focusing on corporate rescue and promoting entrepreneurship. However, being a new law, it will take time to evolve. In the short period of time that the insolvency code has been in force, both the NCLT and the NCLAT have adapted admirably to new legal concepts and strict procedural timelines. The attempt of the code is at bringing the Indian statutory regime at par with some of the most legally advanced jurisdictions of the world.