

A Critical Analysis of the Insolvency and Bankruptcy Code, 2016

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Abstract

Under this study¹ the author had reviewed numerous papers on the insolvency and Bankruptcy code 2016 to find out the difference of opinion among the practitioners i.e. Chartered Accounts and Normal Graduate who is maintaining books of accounts in the corporates, for this purpose the author had used the sample size of 105 to know their opinion with the application of Non-probabilistic convenient sampling. In this study it had applied the chi square test and it had been noted that all the profile of practitioners have the significant difference of opinion for the Insolvency and Bankruptcy code 2016. The outcome of the study will help to understand the advantages and disadvantages that had been associated with the application of IBC 2016.

Key Words: Insolvency and Bankruptcy code 2016, Corporate Insolvency Resolution Process (CIRP), SARFAESI Act, 2002

Introduction

The 2016 Insolvency and Bankruptcy Code has significantly altered the Indian corporate environment. India lacked any efficient mechanisms, market-driven, or time-bound insolvency acts prior to the implementation of this statute. With the passage of the IBC, 2016 on May 28, 2016, which goes into effect on December 1, 2016, India's insolvency reforms underwent a rapid transformation. The first Corporate Insolvency Resolution Process (CIRP) was filled out on January 17, 2017. Every country strives to improve business regulation to make business simpler. The World Bank does an annual assessment of the "Ease of Doing Business" in around 200 countries, grading them according to 10 sets of criteria. A single one of them is "Resolving

Insolvency." For the year 2015, India's "Ease of Doing Business" ranking is 142. In terms of resolving insolvency, India is ranked 137. Following the introduction of the IBC, India has moved up 65 positions to rank 77 overall and 108 on the "Resolving Insolvency" index.

Since India's independence, a number of laws have been established to address insolvency and bankruptcy issues. In reality, several rules used to exist that governed the insolvency of various sorts of organisations in India. The insolvency of individuals was covered by the Provincial Insolvency Act of 1932, the insolvency of limited liability partnerships by the Limited Liability Partnership Act of 2008, and the insolvency and winding up of corporations were dealt with under the Indian Companies Act of 1956, which has since been replaced by the Companies Act of 2013. The Ill Economic Companies Act 1985 was also passed in 1985 during the industrial depression to help sick businesses. Additionally, after financial liberalisation, the "Recovery of Debts Due to Banks and Financial Institution Act 1993" and the "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI Act, 2002)" were passed to give banks and other secured creditors special rights for debt recovery. because there are several laws to deal with the insolvency of businesses, partnerships, and people.

The bankruptcy and insolvency process has been governed by a great number of institutions and laws. The insolvency of the organisation they oversaw was handled with by the Company Law Board, debt collection courts, and "Board of Industrial and Financial Reconstruction." The Sick Industrial Companies Act, The Debt Recovery Act, and SARFAESI Act were passed to improve the debt recovery process but did not have the desired impact. The entire framework of India's insolvency and bankruptcy structure is overlapping, intricate, and very complicated, which in turn lead to the issue of systematic dealings. The Provincial Insolvency Act of 1920, which dealt with people, has been updated to better fit the demands of the current. All of these made a centralised legal framework necessary to handle insolvency and bankruptcy and enhance the nation's debt management. IBC, 2016 is then introduced as a result of this. The law was developed with the aim of addressing structural issues that were impeding efficient capital recycling. It also seeks to rebalance creditors' rights by providing them with a much-needed remedy to take prompt and decisive action against defaulters.

Companies, Limited Liability Partnerships (LLPs), Personal Guarantors to Corporate Debtors (CDs), Partnership Firms, Individuals, and Other Body Corporate are all subject to the provisions of this act. Banks, financial institutions, and insurance companies are not covered by it. Consolidated legislation, Time, and other key elements make up IBC, 2016.

Review of Literature

Varendyam, J. T. (2018) mentioned that the current law and an assimilated Code integrating the several legal systems dealing with insolvencies and bankruptcies in India is the Insolvency and Bankruptcy Code, 2016 (hence referred to as "IBC" or "Code"). The Apex Court recently ruled in *Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.* 1 that the entire IBC is legally legitimate and is an excellent piece of law. A substantial amount of work has gone into resolving the worries of the creditors whose interests are negatively impacted by the knowledge asymmetry that exists between creditors and corporate debtors. Instead of the creditors, the promoters and directors of the firm are the ones who initially become concerned when an entity is in financial crisis. As a result, there is a good chance that they may reduce the liquidation estate by selling off the company's assets, which would go against the anti-deprivation rule idea that is quite common in England 2. Therefore, transaction avoidance laws are crucial for controlling the debtors' evasive behaviour and preventing them from engaging in transactions for a predetermined amount of time prior to or during the insolvency, which could negatively impact the rights of all creditors or just a select group of them.

Kishnani, N. (2018) examined that the country's economy is struggling, which has been made worse by the global crisis and various local policies like demonetization and the GST (Goods and Services Tax). Since a long time ago, the government has been collaborating with the RBI and Standing Committees on potential options to get back on the economic track. The Insolvency and Bankruptcy Code, which gives both operational and financial creditors the ability to declare insolvency, is a unified action for the resolution and recovery of stressed and non-performing assets. Before being formulated, the legislation undertook a thorough comparative analysis of similar laws in developed and emerging nations, in many respects imitating its predecessors from the United Kingdom and the United States of America and altering it to fit the

Indian economic and commercial climate. The study of India's IBC examines its performance, issues, and future prospects while weighing the interests of all stakeholders in order to realise the highest possible asset valuation. Along with ease of doing business, stakeholder confidence, and multiple chances for expansion, this will also.

Arora, P., & Saurabh, S. (2022) mentioned that the 2016 Insolvency and Bankruptcy Code has significantly altered the Indian corporate environment. India lacked any efficient mechanisms, market-driven, or time-bound insolvency acts prior to the implementation of this statute. With the passage of the IBC, 2016, which goes into effect on December 1 of that year and was enacted on May 28, 2016, India's insolvency reforms underwent a rapid transformation. The first Corporate Insolvency Resolution Process (CIRP) was filled out on January 17, 2017. Every country strives to improve business regulation to make business simpler. The World Bank does an annual assessment of the "Ease of Doing Business" in around 200 countries, grading them according to 10 sets of criteria. A single one of them is "Resolving Insolvency." For the year 2015, India's "Ease of Doing Business" ranking is 142. In terms of resolving insolvency, India is ranked 137. India is now ranked 108th on "Resolving Insolvency," up 65 places after the adoption of the IBC. Given the significance of IBC, the study aims to comprehend the following goals: To comprehend the IBC's conceptual foundation In order to examine the trends in cases accepted and settled under the IBC To assess the admitted cases under IBC by sector and category to learn about the recovery trend using different methods to learn the Realization of CIRPs of certain business Debtors' Trend This analysis is based on secondary data that was gathered from reports by the Insolvency and Bankruptcy Board of India, Reserve Bank of India.

Research Methodology

Objectives of the Study

- To know the conceptual framework of the IBC 2016.
- To study the profile of the practitioners for the IBC 2016.
- To identify the significant difference of opinion for the IBC 2016.

Methodology Applied

The secondary source is where the data was gathered. Information was gathered from the quarterly bulletins of the Insolvency and Bankruptcy Board of India (IBBI), Reserve Bank of India (RBI), Ministry of Corporate Affairs (MCA), National Company Law Tribunal (NCLT), etc. In order to analyse the trend of CIRP initiations, sectoral distribution of CIRPs, voluntary liquidation, etc., simple statistical methods like ratios and correlation are applied.

Limitations of the Study

The researcher was unable to obtain the precise data needed to analyse the recovery using several procedures. As a result, it has solely examined the recovery percentages in terms of filed amount.

Data Analysis and Interpretation

Table: Significant difference of opinion among the different Profiles

Demographic Profile	Chi Square	Sig Value	Null Hypothesis Accepted/ Rejected
Gender	31.453	0.000**	Null Hypothesis Rejected
Age	23.947	0.000**	Null Hypothesis Rejected
Educational Qualification	41.375	0.000**	Null Hypothesis Rejected
Occupation	33.212	0.000**	Null Hypothesis Rejected
Annual Income	44.356	0.000**	Null Hypothesis Rejected

(Sources: Research Result)

From the above table regarding the different of opinion among the practitioners of Insolvency and Bankruptcy code, 2016 it had been noted that for all the profile of the demographic there is a significant difference of opinion among the practitioners for the Insolvency and Bankruptcy code 2016.

Findings and Conclusions

Under this study the author had made a significant attempt to find out the significant difference of opinion for the success of failure for the Insolvency and Bankruptcy Code 2016, it had been found that there is a significant difference of opinion among the different profile of the practitioners for the Insolvency and Bankruptcy code 2016 by considering the numerous factors like age, gender, occupation, Annual Income etc.

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