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IBC: IMPACT AND ANALYSIS

~ *Pranathi Rampu*

INTRODUCTION

The Insolvency and Bankruptcy Code of 2016¹ stands as one of India's most significant economic reforms, serving as a crucial tool in mitigating credit risks. It consolidates and amends the laws related to the insolvency resolution process in the country. The effects of the IBC have far-reaching implications for lenders, financial institutions, corporations, and professionals, providing them with opportunities to act as resolution professionals. This bankruptcy law aims to offer a rescue mechanism for distressed entities, facilitate efficient winding up of insolvent entities, and provide a streamlined exit route for investors.

OVERVIEW OF THE INSOLVENCY AND BANKRUPTCY CODE

The Insolvency and Bankruptcy Code (IBC) aims to balance the interests of all parties involved by providing a time-bound and creditor-friendly framework for bankruptcy proceedings.² It includes two primary procedures: the Corporate Insolvency Resolution Process (CIRP) for enterprises and the Individual Insolvency Resolution Process (IRP) for individuals.

The National Company Law Tribunal (NCLT), mandated under the IBC, plays a crucial role in deciding insolvency matters for both corporate and individual entities. It approves resolution plans, appoints insolvency professionals (IPs)³, accepts or rejects insolvency petitions, and supervises the resolution procedure.

¹ Insolvency and Bankruptcy Code, 2016," Ministry of Law and Justice, <http://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>

² S. Anant & A. Mishra, A study of insolvency and bankruptcy code and its impact on macro environment of India, 7 Int'l J. Eng'g Dev. & Res. 28, 35 (2019).

³ D. Hake, An Overview of the Working of Insolvency and Bankruptcy Code, 2016 with reference to Insolvency Professionals, 12 Turcomat 2857, 2857-2872 (2021).

Insolvency professionals (IPs), licensed personnel chosen during the bankruptcy resolution process, oversee the activities of insolvent firms, coordinate with various parties, assess the debtor's financial situation, and facilitate the settlement procedure.

The Committee of Creditors (CoC), consisting of lenders to the debtor, is another significant stakeholder under the IBC. The CoC makes key decisions during the resolution process, such as accepting or rejecting resolution proposals.

Since its enactment, the IBC has undergone amendments to address emerging issues and enhance the effectiveness of the bankruptcy resolution process. Notably, the 2018 amendments streamlined the resolution framework, increased creditors' rights, and clarified various aspects of the resolution process.

ANALYZING THE IMPACT OF THE IBC ON CORPORATE RESTRUCTURING

The adoption of the Insolvency and Bankruptcy Code (IBC) in India has significantly impacted corporate restructuring practices.⁴ It has streamlined and made restructuring more effective by establishing clear and time-bound frameworks for insolvency resolution. The IBC's provision of strict deadlines has accelerated the corporate reorganization process, leading to faster creditor recovery and reduced restructuring time, increasing the likelihood of reviving bankrupt enterprises. However, practical challenges exist, such as a shortage of experienced bankruptcy professionals, hindering the swift progress of the reformation process.

Furthermore, the effectiveness of corporate restructuring under the IBC relies on the cooperation of various stakeholders, including creditors, shareholders, and management. The complexities of reaching agreements on restructuring plans due to competing interests and resistance to change can pose additional challenges.

EXAMINING THE IMPACT OF THE IBC ON DEBT RECOVERY

The implementation of the Insolvency and Bankruptcy Code (IBC) in India has brought significant changes to the resolution of non-performing assets (NPAs)⁵ and debt collection strategies. The IBC has introduced a time-limited and creditor-friendly debt collection process,

⁴ A. Gupta, *Insolvency and Bankruptcy Code, 2016: A Paradigm Shift within Insolvency Laws in India*, 36 *Copen. J. Asian Stud.* 75, 75-99 (2018).

⁵ N. Gupta, N. Desai, & E. Garg, *Impact of Insolvency and Bankruptcy Code on India's Macro Economy Focusing on Indian Commercial Banks*, 22 *Supremo Amicus* 174 (2020).

expediting the settlement of NPAs by enabling banks and financial institutions to identify and classify these assets within a legal framework. It has shifted the strategy from creditor-centric to debtor-centric.

Establishing deadlines for debt settlement procedures under the IBC has increased collection rates, as parties are compelled to move swiftly through the recovery process, thereby improving recovery rates and reducing the time needed to resolve NPAs.⁶ However, the effectiveness of the IBC is hindered by obstacles such as the overworked National Company Law Tribunal (NCLT), leading to potential delays in the settlement process.

Another challenge is building the capacity of various stakeholders involved in the debt collection process, including insolvency practitioners, resolution applicants, and court officials, through adequate training and resources. Furthermore, restrictions on debt collection may arise in specific industries or situations with complex operational or legal issues, necessitating continuous adaptation of the IBC framework to enhance efficiency in debt collection.

IMPACT OF IBC ON INDIAN ECONOMY

The Insolvency and Bankruptcy Code (IBC) of 2016 has had a significant positive impact on the economic growth of India.

Facilitating SME Rehabilitation: The IBC serves as a rehabilitation program for Small and Medium-Sized Enterprises (SMEs), providing distressed firms with the opportunity to resolve insolvency and undergo timely reorganization.

Boosting GDP Growth: Empirical studies suggest a favorable correlation between an effective bankruptcy system and GDP growth. By enabling timely resolution of insolvency, the IBC encourages investments, which in turn leads to higher GDP growth rates. This is crucial as investments and GDP growth have a strong positive relationship.

Improving Ease of Doing Business: The implementation of the IBC, along with other reforms like GST, has enhanced India's ease of doing business ranking. India has been recognized as

⁶ M. S. Gupta & J. B. Singh, *Insolvency and Bankruptcy Code (IBC) in India: Impact on Recovery of NPAs by Banks*, 17 *Bihar J. Pub. Admin.* 606, 606-614 (2020).

one of the "top 10 improvers" by the World Bank, which attracts foreign investment and fosters innovation.

Efficient Credit Market: The IBC established Information Utilities (IUs), which centralize borrowers' financial and credit information, making India's credit market more efficient and transparent.

Protecting Creditors' Rights: The IBC provides operational creditors with the right to sue in the case of default, thereby protecting both domestic and international creditors. This facilitates economic transactions and fosters India's economic relations with other countries and trading blocs.

Simplifying Business Exits: The IBC's time-bound resolution process (180+90 days) simplifies business exits, making it more attractive for foreign investors to establish businesses in India, thereby fostering innovation and economic growth.

Addressing Cross-Border Insolvency: The IBC includes provisions to address cross-border insolvency issues, aligning with global initiatives and fostering smoother business transactions between Indian and foreign entities.

Boosting Mergers and Acquisitions: The IBC has led to a surge in mergers and acquisitions in India, totaling transactions worth billions of dollars. This indicates increased business activity and investor confidence due to the transparent and efficient insolvency resolution process provided by the IBC.

CHALLENGES AND CRITICISMS

The Insolvency and Bankruptcy Code (IBC) has garnered both praise and criticism. Key concerns include lengthy resolution timelines and delays due to overburdened adjudicating authorities, capacity constraints of insolvency professionals, and legal complexities, hampering timely resolution objectives.

Disputes arise over the classification of creditors and the distribution of assets, particularly with secured creditors prioritizing their claims over unsecured ones, leading to delays and disputes. Ensuring equitable asset distribution among creditors remains challenging, necessitating clarity and consistency in legal application.

Debates surround the IBC's impact on small and medium enterprises (SMEs) and startups. While the code offers a structured framework for corporate insolvency resolution, its effectiveness for SMEs and startups, grappling with unique challenges, remains uncertain. High costs and inflexibility in the resolution process may deter smaller entities from utilizing the IBC's benefits.

CONCLUSION

The Insolvency and Bankruptcy Code of India represents a paradigm shift in the country's insolvency framework, ushering in a new era of transparency, efficiency, and accountability. Despite facing challenges, the IBC has made significant strides in addressing the issue of distressed assets and promoting a conducive environment for business and investment. With ongoing reforms and amendments, the IBC is poised to play a pivotal role in driving India's economic growth and development in the years to come.