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The Insolvency and Bankruptcy Code: Impact and Analysis

~Adhyan Rastogi

Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) brought a significant change to India's insolvency framework by replacing a fragmented and inefficient system with a unified, time-bound, and creditor-driven process. This paper examines the reasons behind the introduction of the Code, its key features, and the framework it establishes for resolving insolvency. It also discusses important Supreme Court decisions, including Swiss Ribbons Pvt. Ltd. v. Union of India and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, which have played an important role in shaping the interpretation and implementation of the IBC. Further, the paper analyses the impact of the Code on creditor recovery, credit discipline, and the resolution of stressed assets while also highlighting some of the challenges that continue to affect its effectiveness, particularly delays before the National Company Law Tribunal and the absence of a comprehensive cross-border insolvency framework. It concludes that the IBC has significantly improved India's insolvency regime, but further reforms and stronger implementation will be necessary to ensure that it continues to achieve its objectives in the years ahead.

I. Introduction

Before 2016, India's insolvency framework was fragmented and inefficient. Creditors seeking repayment from defaulting debtors had to navigate through a number of overlapping laws - the

Sick Industrial Companies 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, and the Companies Act, 2013. Since these laws operated independently of one another, they often resulted in conflicting outcomes.[1] Cases dragged on for years, sometimes decades, and in many cases the value of a company's assets declined significantly during the delay.

To address these issues, the Insolvency and Bankruptcy Code, 2016 ("the Code" or "IBC") was enacted to create a unified insolvency framework, strengthen creditor rights, and improve the efficiency of the insolvency process. The Bankruptcy Law Reforms Committee, constituted under the Ministry of Finance, provided the foundation for the Code through its 2015 report. The Committee observed that one of the key weaknesses of the existing framework was the absence of a time-bound and creditor-driven insolvency resolution mechanism.[2] The IBC therefore represented more than just another legislative amendment; it introduced a new approach to insolvency resolution in India by giving creditors greater control over decisions concerning the future of a defaulting company.

II. The Pre-IBC Landscape and the Need for Reform

Before the IBC came into force, Non-Performing Assets (NPAs) in India had increased significantly, posing a serious challenge to the banking sector. In 2009, the Raghuram Rajan Committee highlighted the need for a more effective insolvency framework and noted that weaknesses in the existing system were affecting credit markets and overall economic growth.[3] Banks were reluctant to lend to stressed sectors because recovering their dues from defaulting borrowers was often a lengthy and uncertain process. On average, insolvency proceedings in India took around 4.3 years to conclude, compared to less than a year in countries such as the United Kingdom and the United States. Recovery rates were also relatively low, with creditors recovering only about 25 cents for every dollar owed.

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[1]Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
[2]Ministry of Finance, Government of India, *Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design* (2015).
[3]Committee on Financial Sector Reforms, *A Hundred Small Steps: Report of the Committee on Financial Sector Reforms* 133 (2009) (India). Raghuram Rajan chaired this committee.

The existence of multiple forums, including the Company Law Board, Debt Recovery Tribunals, High Courts, and the Board for Industrial and Financial Reconstruction (BIFR), often resulted in confusion and delays in insolvency proceedings. To address this problem, the IBC streamlined the adjudicatory process by assigning corporate insolvency matters to the National Company Law Tribunal (NCLT) and individual insolvency matters to the Debt Recovery Tribunal (DRT), with a unified appellate mechanism before the National Company Law Appellate Tribunal (NCLAT).

III. Key Features of the Insolvency and Bankruptcy Code

The IBC establishes a clear framework for resolving insolvency. The Corporate Insolvency Resolution Process (CIRP) forms the core of this framework and may be initiated by a financial creditor,[4] an operational creditor,[5] or the corporate debtor itself,[6] once a default of at least Rupees One Crore has occurred. Upon admission of the application, Section 14 of the Code imposes a moratorium, preventing legal proceedings against the corporate debtor and preserving its assets during the resolution process.[7]

The Committee of Creditors (CoC), comprising financial creditors, assumes a central role in the resolution process. It is empowered to approve or reject resolution plans by a vote of not less than sixty-six percent in value and exercises significant control over decisions relating to the corporate debtor. The Code requires the CIRP to be completed within 330 days, including any litigation that may arise during the process. This time limit was introduced to ensure that insolvency proceedings are resolved without unnecessary delays.[8] If no resolution plan is approved within this period, the company proceeds to liquidation.

IV. Landmark Judicial Pronouncements under the IBC

[4]Insolvency and Bankruptcy Code, 2016 § 7, No. 31, Acts of Parliament, 2016 (India).
[5]Insolvency and Bankruptcy Code, 2016 § 9, No. 31, Acts of Parliament, 2016 (India).
[6] Insolvency and Bankruptcy Code, 2016 § 10, No. 31, Acts of Parliament, 2016 (India).
[7] Insolvency and Bankruptcy Code, 2016 § 14, No. 31, Acts of Parliament, 2016 (India).
[8]Insolvency and Bankruptcy Code, 2016 § 12, No. 31, Acts of Parliament, 2016 (India).

One of the most important decisions under the IBC is *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*. In this case, the Supreme Court reaffirmed the central role of the Committee of Creditors (CoC) in the insolvency resolution process. The Court held that decisions relating to the distribution of proceeds under a resolution plan should largely be left to the commercial judgment of the CoC, with only limited scope for judicial intervention. The decision strengthened the creditor-driven nature of the IBC and brought greater certainty to the resolution process.[9]

Another important decision under the IBC is *Swiss Ribbons Pvt. Ltd. v. Union of India*. In this case, the Supreme Court upheld the constitutionality of the Code and rejected challenges under Articles 14 and 19 of the Constitution. The Court also explained why financial creditors and operational creditors are treated differently under the Code, holding that this distinction was justified in light of their different roles in the insolvency process.[10] The judgment strengthened the legal foundation of the IBC and provided greater clarity regarding the interpretation of its key provisions.

V. Impact of the IBC

The impact of the IBC can be seen in the large number of insolvency cases handled under the Code. According to the Insolvency and Bankruptcy Board of India's Annual Report 2023–24, more than 7,000 CIRPs have been initiated since the Code came into force, with resolution plans approved in over 900 cases. These resolutions have resulted in the recovery of claims worth several lakh crores of rupees.[11] One of the clearest signs of the IBC's impact is the improvement in recovery rates for creditors. Financial creditors, in particular, have recovered a much higher proportion of their admitted claims than they typically could under the old winding-up process.

Beyond the statistics, the IBC has changed the way debtors and creditors behave in India. The possibility of losing control over management has pushed many promoters to pay their debts more seriously, which has also helped reduce NPAs in the banking sector. In that sense, the Code has worked not just as a way to resolve insolvency but also as a strong deterrent against wilful

[9] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).
[10] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).
[11] Insolvency and Bankruptcy Board of India, *Annual Report 2023–24* (2024).

default. Its effect on credit discipline has been just as important as the number of cases it has helped resolve.

VI. Challenges and the Road Ahead

Despite its many strengths, the IBC has faced criticism, particularly on account of delays. A number of CIRPs have exceeded the 330-day timeline, which goes against the Code's aim of providing timely resolution. These delays are often linked to the limited capacity of the NCLT, including a shortage of benches and infrastructure constraints.

The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) for Micro, Small and Medium Enterprises (MSMEs) through the 2021 amendment was a positive development. It allows the management of a company to continue running the business during the resolution process while ensuring that creditors remain involved in important decisions.[12] However, the cross-border insolvency framework proposed under the Code has still not been implemented. As a result, Indian courts do not have a formal mechanism to deal with insolvency proceedings involving foreign jurisdictions. This issue is likely to become increasingly important as more Indian businesses operate across national borders.[13]

VII. Conclusion

The Insolvency and Bankruptcy Code, 2016 has been one of the most important economic reforms in post-liberalisation India. By replacing a fragmented and debtor-friendly system with a more unified and time-bound process that gives creditors a stronger role, it has changed the way insolvency is handled in the country. Over time, decisions of the Supreme Court and the NCLT have also helped clarify how the Code should work and have balanced the interests of financial creditors, operational creditors, and corporate debtors.

As India becomes more integrated with the global economy, the IBC will need further strengthening, especially through the introduction of a cross-border insolvency framework and

[12] Insolvency and Bankruptcy Code (Amendment) Act, 2021, No. 26, Acts of Parliament, 2021 (India).
[13] Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee on Cross Border Insolvency* (2018).

greater capacity at the NCLT. These steps will be important for maintaining investor confidence and ensuring that distressed assets are resolved effectively rather than losing value over time. The Code has made significant progress, but there is still more that needs to be done.