REFORMS BROUGHT IN THE INSOLVENCY REGIME: THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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ABSTRACT

Insolvency and Bankruptcy Code (IBC), which went into effect in India in 2016, has been hailed as a major economic game-changer. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. Bankruptcy is a legal proceeding involving a person or business that is unable to repay outstanding debts. The bankruptcy process begins with a petition filed by the debtor, or by the creditors. All of the debtor's assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt. The Government implemented the Insolvency and Bankruptcy Code (IBC) to consolidate all laws related to insolvency and bankruptcy and to tackle Non-Performing Assets (NPA), a problem that has been pulling the Indian economy down for years. The Insolvency and Bankruptcy Code, 2016, is a reformist piece of legislation designed to increase the effectiveness of insolvency and bankruptcy proceedings in India. The Code was passed with the intention of lowering the nation's banks' rising NPAs and also of offering a better framework for resolving distressed businesses. The historical significance of the insolvency systems starts in the British era, but ancient Indian manuscripts point toward the existence of the debt recovery mechanisms from 200 BC involving religious aspects. A successful insolvency framework protects failed business owners, favours restructuring over liquidation, distinguishes between legitimate and fraudulent debtors, allows for time-bound resolution, minimizes value erosion, and maximizes value for all stakeholders. The National Companies Law Tribunal (NCLT), which existed as a forum for adjudication of disputes for companies, became the adjudicating authorities for corporate insolvency resolution and liquidation. A comparison of the efficiency of IBC 2016 with these elements reveals that while the law has some advantages, it is hindered by insufficient infrastructure requirements, overworked insolvency practitioners, and excessive judicial delays that lower asset values.The Insolvency and Bankruptcy Code, 2016 is considered to be one of the biggest economic reforms introduced in India and is assumed to play a significant role in limiting the risks of credit. IBC, 2016

consolidates and amends the law relating to insolvency resolution process in India. This paper empirically analyses the effectiveness of the Code in the Indian economy. The paper also studies the insolvency frameworks that existed in India, the distinguishing features, and the legal framework of the Code. The analysis of the current status of the Indian insolvency regime with time series and cross-sectional data clarifies the non-performing assets trajectory, recovery rates, and time required under different recovery mechanisms, a summary of cases under the new Code and the status of India in the international insolvency systems.

Keywords: Insolvency Bankruptcy Code, NCLT, Liquidation, IRP- Insolvency Resolution Process, BRP- Bankruptcy Resolution Process, CIRP- Corporate Insolvency Resolution Process , IBBI- Insolvency and Bankruptcy Board of India, NPA- Non Performing Assets, Provincial Insolvency Act, SARFAESI Reforms, Indian Scenario.

INTRODUCTION

The purpose of the IBC is to improve upon the previous framework[1]. Before the statute was enacted, winding down a business may take years, leading to drawn-out court battles. Existing methods under the Sick Industrial Companies Act & Companies Act have been widely criticised for their lack of effectiveness, but reform has been delayed. So, in 2014, legislators established the Bankruptcy Law Reforms Committee. The reform was fully realised in 2016 with the passage of the IBC, effectively ending the previous defaulters' paradise. The Committee stated that time was of the importance in order to lessen the likelihood of liquidation and maximise the likelihood of a successful recovery. Thus, the IBC introduced new time constraints for dispute resolution.

After five years, professionals are still debating whether or not the IBC has achieved its goals. According to the latest report from the Standing Committee investigating the IBC's implementation, inefficiencies persist. At the outset, judicial delays are rampant; the median time it took the National Company Law Tribunal to issue a ruling in a case was more than 180 days. Vacancies on the Tribunal could be a contributing factor. However, delays are caused not just by a shortage of personnel, but also by a lack of technological expertise. Although there is a learning curve associated with any new regulation, the IBC is a highly specific area of

[1]Makhija A Insolvency and Bankruptcy Code of India (1st edn, Lexis Nexis 2018)

business. Delays in financial decisions using IBC can be reduced by training the specialists who make those decisions. Liquidation usually becomes the dominating approach if professionals are unable to propose a workable plan for resolution.

The haircut is a more severe indictment of the IBC's performance. The IBC is portrayed by the Standing Committee in a pretty dismal light, with haircuts reaching as high as 90–95% in some cases. However, there are two main reasons why focusing solely on this figure isn't right. First, the average recovery rate under the IBC was 45.2% in 2019-20, according to the Reserve Bank of India's report on trends & advances in banking. While the recovery rates under the Securitisation& Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 are low (26.7%), they are higher (4.1% before the Debt Recovery Tribunal). Both sets of laws can be used by financial institutions to recoup defaulted loans. Second, a regime's effectiveness in handling insolvencies cannot be gauged solely by its recovery rates. The IMF recommends assessing recovery rates independently for secured & unsecured creditors due to the disparities in claims between the two types of creditors. The time it takes, the costs involved, macroeconomic conditions, and legal rights all play a role in the wildly varying recovery rates, for which there is no universal baseline. The drop in 2021's recovery rate to 39% demonstrates how changes in macroeconomic circumstances can affect asset valuation.

IBC was enacted in India in 2016[2] with the aim of bringing about significant reforms in the insolvency regime. The IBC introduced several key provisions and mechanisms to address the challenges associated with insolvency and bankruptcy in the country. Here are some of the key reforms brought in by the IBC:

1. Consolidated Framework: The IBC provided a consolidated and comprehensive framework for resolving insolvencies and bankruptcies in India. It replaced multiple outdated laws and regulations, streamlining the process and making it more efficient.

2. Insolvency Professionals: The IBC introduced the concept of insolvency professionals (IPs) who act as intermediaries between the debtor & creditors. IPs are licensed professionals responsible for managing the insolvency resolution process, ensuring transparency, and maximizing value for stakeholders

[2] Indian Insolvency& Bankruptcy Code of India, 2016 Sec 4

3. Insolvency Resolution Process (IRP): The IBC established a time-bound and structured process for the resolution of insolvencies. It introduced the concept of the Corporate Insolvency Resolution Process (CIRP) for companies and the Bankruptcy Resolution Process (BRP) for individuals. The processes involve the appointment of IPs, formation of committees of creditors, and the submission and evaluation of resolution plans.

4. Moratorium: The IBC provides for a moratorium period during the insolvency resolution process, wherein creditors are prohibited from taking any legal action or initiating recovery proceedings against the debtor. This helps in preserving the assets of the debtor and facilitates an orderly resolution process.

5. Fast-track Process: The IBC introduced a fast-track process for the resolution of certain categories of corporate insolvencies. This process is designed to expedite the resolution for smaller companies, reducing the time and cost involved.

6. Insolvency and Bankruptcy Board of India (IBBI): The IBC established the IBBI as a regulatory authority responsible for overseeing the implementation of the code. The IBBI sets standards for IPs, regulates insolvency professional agencies, and promotes transparency and efficiency in the insolvency resolution process.

7. Cross-Border Insolvency: The IBC incorporated provisions for dealing with cross-border insolvencies, enabling cooperation and coordination with foreign jurisdictions. It allows for the recognition of foreign insolvency proceedings and facilitates the resolution of cross-border disputes.

8. Priority of Creditors: The IBC introduced a clear order of priority for the distribution of proceeds in insolvency cases. Secured creditors and workers' dues have priority over other creditors, ensuring a fair distribution of assets.

9. Liquidation as a Last Resort: The IBC emphasizes resolution over liquidation. It encourages the revival and continuation of viable businesses through the resolution process, promoting entrepreneurship and preserving economic value[3].

[3] D Skeel, 'Bankruptcy as a Liquidity Provider' 80 U Chi L Rev 1557 (2013).

10. Promoter Exclusion: The IBC introduced a provision that allows for the exclusion of willful defaulters, undischarged insolvents, and disqualified directors from participating in the resolution process. This helps in preventing the re-entry of defaulting promoters and ensures better corporate governance.

These reforms brought in by the Insolvency and Bankruptcy Code, 2016[4] have significantly improved the insolvency regime in India. They have provided a more structured and time-bound process, increased transparency, and enhanced the rights of creditors, leading to more effective and efficient resolution of insolvency cases.

INSOLVENCY LAWS IN INDIA: A HISTORICAL ANALYSIS

Legal reform in India's corporate, insolvency, and banking spheres falls within the purview of the Ministry of Company Affairs, the Ministry of Law & Justice, & Ministry of Finance, respectively. Multiple laws, including the Sick Industrial Companies Act (Special Provisions; 1985), the Recovery of Debt Due to Banks and Financial Institutions Act (1993), the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (2002), and the Companies Act (2013), overlapped to address insolvency & bankruptcy in India[5]. In the event of company or financial institution insolvency, these Acts establish guidelines for the reorganisation, seizure, & sale of debtors' assets. However, two antiquated Acts, the Presidency Town Insolvency Act (1909) & Provincial Insolvency Act (1920), dealt with the resolution of individual & partnership insolvencies. Creditors could potentially go to civil courts, which have a backlog of cases & low rate of settlement. Due to a dearth of experienced insolvency specialists & overlap in applicability of legislation, insolvency resolution was slowed. There is now limitless doubt about the value of a company's shares due to the many venues for the settlement of insolvency that have been established as a result of these Acts. Insolvency cases in India take an average of 4.3 years to process, which is nearly three times as long as it takes in the United States (1.5 years) or the United Kingdom (1 year), according to the Bankruptcy Law Reforms Committee (2015) s. Both houses of India's parliament unanimously approved this report from the committee in May 2016. There was no central body in place to settle the precedence of claims or manage the rights of the various stakeholders (secured or unsecured creditors, employees, etc.). Distressed assets &

[4] Jain, Deepak 2017. 'The Insolvency and Bankruptcy Code, 2016 – An Analysis and Opportunities for Professionals under the Code'. Chartered Secretary 47 (3): 38–42.
[5] Edward, L 'The Early History of Bankruptcy Law' 66 (5): 223. JSTOR 3314078.

nonperforming assets (NPAs) were widespread because of the absence of a favourable environment for the enforcement of creditors' rights. According to Jain and Sheikh (2012), nonperforming loans (NPAs) are a crucial measure of how well a country's banking system is doing. The procedure of debt-recovery was also made exceedingly tedious & time-consuming by the abundance of laws and non-statutory rules. In general, India's insolvency laws were inadequate. Debt collection & security interest enforcement become a Herculean task due to inadequate regulations and the normal slowness of Indian courts handling insolvency cases. According to several studies (Goswami, 2003; Batra, 2003; Batra, 2007), it may take more than ten years to complete the winding-up procedure under such conditions. "There are a wide variety of cases flooding the civil courts. The civil justice system does not prioritise the collection of debts owed to financial institutions like banks. Banks & financial institutions, like all other litigants, must spend an inordinate amount of time in civil court as they seek to recover funds owed to them. Justice Eradi's commission issued a report in 2000. Creditor rights, insolvency, & debt markets have all been slow to reform in India (Armour 2009), if they have been reformed at all. By World Bank standards, India's insolvency law ranks near the bottom (World Bank, 2007). Company & financial institution insolvency and debt collection laws are summarised in Table 1 below.

Table 1: Legal provisions for insolvency in India

Year of enactment	Name of law
1985	The Sick Industrial Companies Act
1993	The Recovery of Debts due to Banks and Financial Institutions Act
2002	The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act
2003	The Sick Industrial Companies (Special Provisions) Repeal Act
2013	The Companies Act

In 1985, Congress passed the Sick Industrial Companies Act to improve the identification of failing businesses. The idea was to help failing businesses get back on their feet. The Board for Industrial and Financial Reconstruction (BIFR) was established by the Act & charged with reviving and rehabilitating possibly ailing enterprises & liquidating non-viable undertakings in accordance with the Act's provisions. While BIFR did better than in court, the Board's own actions caused lengthy delays & costly fees while yielding negligible recoveries. The Sick Industrial Companies (Special Provisions) Repeal Act of 2003 replaced & abolished the Sick Industrial Companies Act of 1985. The purpose of the new law was to close some of the gaps

left by the old one. Its purpose was to prevent and treat work-related illness. It was discovered that some businesses faked illness in order to get access to various perks and concessions from financial institutions after the failure of a project or for other similar reasons. The new Act established the National Company Law Tribunal (NCLT) & National Company Law Appellate Tribunal in place of the Business Disputes Resolution Board of India (BIFR). On the other hand, NCLT was established in 2016. To provide an alternate mechanism for the recovery of debts by the banks, the Recovery of Debts owed to Banks & Financial Institutions Act, 1993 established Debt-Recovery Tribunals. Before that, financial organisations& banks had to drag their feet through the civil courts to seek redress. Since banks are the backbone of any economy, it was important that any debt-recovery proceedings be resolved quickly under the Act. The Securitization and Reconstruction of Financial Assets & Enforcement of Security Interests Act of 2002 (SARFAESI) was another major creditor rights law change. SARFAESI gave financial institutions the authority to enforce security interests extrajudicially, bypassing the Indian judicial system. In particular, if a default wasn't fixed within 60 days, those creditors might seize and sell the collateral without having to go to court. SARFAESI also put up a system to govern the repackaging & sale of financial assets. Lenders might avoid having to foreclose on troubled loans by selling them instead to a company specialised in distressed debt investments. The Reserve Bank of India (RBI) gave the green light for financial institutions to sell nonperforming assets (NPA) for cash in July 2005. Bank debt and security interest enforcement saw some modest but welcome improvements with the passage of the RDDB Act & SARFAESI. However, these statutory remedies are only available to creditors who owe money to banks & financial institutions. As a result, if a creditor wants to collect on a debt, he or she must go to the conventional civil courts, which might take a very lengthy time (Kang 2004). None of these rules were effective in helping financially troubled businesses recover or in allowing banks to collect on debt claims. The increasing frequency of NPAs and open cases reflected this trend (Jain, 2007). Instead, the regulations put up roadblocks that made it difficult for creditors to collect on their obligations, and the lengthy delays rewarded the borrowers. Corporate debtors weren't worried about going bankrupt or losing their businesses. Therefore, these laws have to be repealed to avoid adding unnecessary stress to the economy.

INSOLVENCY LAW'S ROLE

The role of an insolvency law is to provide a legal framework and procedures for dealing with individuals, businesses, and organizations that are financially distressed or insolvent.

Insolvency laws aim to address the challenges and complexities that arise when entities are unable to meet their financial obligations and debts[6].

Some key roles and objectives of an insolvency law:

1. Fair and Orderly Process: Insolvency laws establish a fair and orderly process for the resolution of insolvency cases. They provide a clear framework for the initiation, administration, and conclusion of insolvency proceedings, ensuring that all parties involved are treated equitably.

2. Protection of Creditors: Insolvency laws seek to protect the rights and interests of creditors. They establish mechanisms for the orderly distribution of assets and funds among creditors, based on a predetermined order of priority. This helps ensure that creditors receive a fair share of the available assets and increases the chances of debt recovery.

3. Facilitation of Debt Recovery: Insolvency laws aim to facilitate the recovery of debts owed to creditors. They provide mechanisms for the enforcement of creditor rights, such as the ability to initiate insolvency proceedings, apply for the appointment of insolvency practitioners or trustees, and recover debts through the liquidation or restructuring of the debtor's assets.

4. Promoting Business Rescue and Rehabilitation: Insolvency laws recognize the value of preserving viable businesses and promoting their revival. They provide mechanisms for business rescue, such as debt restructuring, reorganization, or the implementation of a resolution plan, with the objective of enabling financially distressed entities to continue operating and contributing to the economy.

5. Protection of Debtors' Interests: Insolvency laws also consider the interests of debtors. They aim to provide a framework that balances the rights of creditors with the opportunity for debtors to rehabilitate their financial position. This may include provisions for the protection of the debtor's assets, the imposition of a moratorium

[6] Batra, S, Corporate Insolvency Law and Practice (2017).

period to allow for restructuring efforts, or the provision of discharge mechanisms for individuals.

6. Cross-Border Insolvency: With the increasing globalization of business and commerce, insolvency laws may address cross-border insolvency cases. They establish mechanisms for cooperation and coordination between different jurisdictions, enabling recognition of foreign insolvency proceedings, &facilitating the resolution of cross-border disputes.

7. Regulatory Oversight: Insolvency laws often establish regulatory bodies or agencies responsible for overseeing the implementation and administration of the insolvency regime. These bodies may regulate insolvency professionals, set standards and codes of conduct, monitor the effectiveness of the insolvency process, and promote transparency and accountability.

Overall, the role of an insolvency law is to provide a legal framework that balances the interests of creditors, debtors, and other stakeholders, facilitating the efficient and fair resolution of insolvency cases and promoting economic stability.

REFORMS BROUGHT IN THE INSOLVENCY REGIME

IBC of 2016 in India brought several significant reforms to the insolvency regime[7]. Here are some key reforms introduced by the IBC:

- Unified Insolvency Framework: The IBC established a unified framework for the resolution of insolvency and bankruptcy cases in India. It consolidated and replaced several existing laws and created a single law governing insolvency across different sectors.

- Time-bound Resolution Process: The IBC introduced strict timelines for the resolution process, emphasizing a time-bound approach to resolve insolvency cases. The initial timeline for completing the resolution process is 330 days, including any extensions, to ensure faster resolution and reduce delays.

[7] Ghosh, Pradip Kumar 2018. 'Evolution of Insolvency and Bankruptcy Code, 2016, Based on Judicial Interpretation and Pronouncement'. The Chartered Accountant 66 (7): 27–31.

- Insolvency Professionals (IPs): The IBC introduced the concept of insolvency professionals (IPs) who are licensed and regulated professionals responsible for managing and administering the affairs of the debtor during the insolvency process. IPs play a crucial role in the resolution and liquidation processes.

- Insolvency Resolution Process (IRP): The IBC established a structured insolvency resolution process that includes the admission of insolvency applications, appointment of IPs, formation of a Committee of Creditors (CoC), submission and evaluation of resolution plans, and final approval of a viable resolution plan by the CoC and the adjudicating authority.

- Committee of Creditors (CoC): The IBC introduced the CoC, comprising the financial creditors of the debtor. The CoC plays a crucial role in decision-making, including approving or rejecting resolution plans and monitoring the insolvency proceedings.

- Moratorium Period: The IBC imposes a moratorium period upon admission of an insolvency application. During this period, no legal action can be taken against the debtor, and the assets of the debtor are protected from enforcement actions.

- Priority of Claims: The IBC introduced a clear order of priority for the distribution of assets in the event of insolvency. Financial creditors have priority over other claimants, and within the financial creditors, secured creditors are given preference over unsecured creditors.

- Fast-track Process: The IBC provides for a fast-track process for the resolution of certain insolvency cases. This expedited process is applicable to small companies, allowing for quicker and cost-effective resolution.

- Cross-Border Insolvency: The IBC introduced provisions for dealing with cross-border insolvency cases[8]. It empowers the central government to enter into agreements with other countries to enforce provisions of the IBC and provide a framework for cooperation in cross-border insolvency matters.

[8] Das, I. "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016." Vikalpa, no. 45/2 (2020): 104–114

These reforms brought about by the IBC aimed to streamline and expedite the insolvency resolution process, protect the interests of stakeholders, enhance creditor rights, and promote a more efficient and effective insolvency regime in India[9].

Concerns about the insolvency process

Delays in the acceptance of insolvency petitions According to the Code, insolvency applications must be admitted within 14 days. But in reality, it takes far longer than that to get in. According to a consultation paper published by the IBBI on April 13, 2022, the average number of days it takes for an OC to admit an insolvency application rose from 468 in 2020-21 to 650 in 2021-22. This is much longer than the Code's required time frame for completing a CIRP. The National Company Law Tribunal (NCLT) has been notoriously slow to act on petitions, with some cases taking over two years to move past the admission stage. The NCLT frequently operates with fewer than half of its authorised strength, which is the principal cause of this delay. Delays of this nature reduce productivity. Difficulties in resolving the issue There is still cause for concern, however, because many statutory deadlines remain unmet. For instance, the average time for a CIRP to receive a liquidation order was 391 days. It takes an additional 431 days, on average, for the final findings to be submitted in the 20% of cases that have already been investigated. Even though an order for liquidation has been issued in 80% of the cases, 46% of them have been going on for more than two years, 23% for more than one but fewer than two years, and 13% for more than 270 days but fewer than a year. Even in cases of voluntary liquidation, delays are common. [10]As of December 2021, 34% of all ongoing cases for voluntary liquidation under IBC have been going on for more than two years, 18% have gone on for more than one year, and 8% have gone on for less than two years. Delays have occurred since the number of NCLT benches is small and there is not enough staff to handle the cases. In addition to hearing matters involving the IBC, the NCLT is also responsible for hearing those involving the Companies Act of 2013. For instance, as of November 2021, only 45 out of a total of 64 NCLT judgeships were filled. This causes the resolution procedure to start later than expected. Huge pendencies have been identified by NCLT and the Standing Committee on Finance 2020-21.12 Over 70% of cases have been pending with NCLT for more than 180 days as of May 31, 2021, according to the Committee's Report. The Standing Committee noted in its report that the NCLT's case admission process is lengthy. The

[9] Das, A., Agarwal, A. K., Jacob, J., Mohapatra, S., Hishikar, S., Bangar, S., Parekh, S., Basu S. and Sinha, U. K. "Insolvency and Bankruptcy Reforms: The Way Forward." Vikalpa, no. 45/2 (2020): 115–131.
[10]Insolvency and Bankruptcy Board of India, Insolvency and Bankruptcy News, Vol. 22, December 2022.

Committee took note of the fact that there were 13,740 bankruptcy cases pending with NCLTs as of August of that year. Seventy-one percent of these cases have been pending for more than 180 days.

Further, there are several minor procedural and uncontested matters requiring NCLT approval, such as - (a) replacement of Interim Resolution Professional (IRP) with RP; (b) extension of CIRP from 180 days to 270 days; (c) exclusion of time period; (d) admission of CD into liquidation and appointment of a Liquidator etc. Given the issues with sanctioned strength of the NCLT, these approvals often take very long, causing unnecessary delays in the process of admission and/or liquidation.

INSOLVENCY AND BANKRUPTCY CODE SCENARIO IN INDIA[11]

As of my knowledge cutoff in September 2021, IBC has had a significant impact on the insolvency & bankruptcy scenario in India. It has brought about substantial reforms and improvements in the resolution process, creditor rights, and the overall business environment. Here are some key aspects of the IBC scenario in India:

- Increase in Insolvency Proceedings: Since the implementation of the IBC in 2016, there has been a significant increase in the number of insolvency proceedings filed in India. The IBC provides a streamlined and time-bound process for resolving insolvencies, which has encouraged both creditors and debtors to utilize the provisions of the code.

- Successful Resolution of Large Cases: The IBC has witnessed successful resolution outcomes for several high-profile cases, including companies in the steel, power, and infrastructure sectors. The resolution process has resulted in the revival of some companies, repayment of debts to creditors, and preservation of jobs.

- Recovery of Non-performing Assets (NPAs): The IBC has played a crucial role in addressing the issue of non-performing assets in the Indian banking system. It has empowered financial creditors to initiate insolvency proceedings against defaulting borrowers, leading to increased recovery of debts and reduction of NPAs.

[11] Creditors under India's Insolvency and Bankruptcy Code, 2016: Issues and Solutions' (2020) 94 Am Bankr LJ 123.

- Institutional Framework: The establishment of the Insolvency and Bankruptcy Board of India (IBBI) as a regulatory authority has been a key development. The IBBI is responsible for regulating insolvency professionals, insolvency professional agencies, and facilitating the efficient implementation of the IBC.

- Judicial Interpretation: Over the years, the IBC has undergone judicial interpretation, with various landmark judgments shaping the interpretation and implementation of the code. These judgments have provided clarity on several provisions of the IBC and contributed to its effectiveness.

- Challenges and Bottlenecks: The IBC implementation has faced some challenges and bottlenecks. The resolution process timelines prescribed by the code have not always been met, leading to delays in resolving cases. There have also been concerns regarding the capacity and expertise of insolvency professionals, and the need for faster disposal of cases by the NCLT and NCLAT (National Company Law Tribunal and National Company Law Appellate Tribunal).

- Amendments and Evolving Landscape: The IBC has undergone amendments to address certain issues and improve the effectiveness of the code. These amendments have included changes in the thresholds for initiating insolvency proceedings, providing relief to micro, small, and medium enterprises (MSMEs), and introducing the pre-pack insolvency framework.

It's important to note that the scenario regarding the Insolvency and Bankruptcy Code may have evolved since my last knowledge update in September 2021[12]. I would recommend referring to the latest developments and updates from reliable sources for the most current information on the IBC scenario in India.

PERFORMANCE OF IBC IN INDIA

As of my knowledge cutoff in September 2021, In India, the results of implementing the IBC have been less than stellar. While the IBC has made some welcome improvements to the

[12] Branch, B., and Khizer, A. "Bankruptcy Practice in India." International Review of Financial Analysis, no. 47 (2016): 1–6.

insolvency system, it has also introduced some important revisions, there have also been challenges and areas for improvement. Here are some key aspects of the IBC's performance:

- Resolution of Large Cases: The IBC has seen successful resolutions of several large and complex insolvency cases. It has facilitated the recovery of significant amounts of money for creditors and enabled the revival of financially distressed companies in sectors such as steel, power, and infrastructure.

- Increase in Recovery Rates: The implementation of the IBC has led to higher recovery rates for creditors compared to previous insolvency frameworks in India. Creditors have been able to recover a larger portion of their outstanding dues through the resolution process, enhancing their confidence in the system.

- Timelines and Delays: One of the key objectives of the IBC was to introduce time-bound resolution processes. However, there have been challenges in adhering to the prescribed timelines, resulting in delays in the resolution of cases. The resolution process has often extended beyond the stipulated period of 180 days, leading to concerns about the effectiveness and efficiency of the system.

- Capacity and Expertise: The successful implementation of the IBC relies on the availability of skilled and competent insolvency professionals (IPs). There have been concerns about the shortage of qualified IPs and the need for capacity-building in the insolvency ecosystem. Strengthening the pool of IPs and ensuring their proficiency is crucial for the smooth functioning of the resolution process.

- NCLT and NCLAT Efficiency: The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) play a vital role in adjudicating insolvency cases. However, there have been concerns about the backlog of cases and the need for more NCLT benches to handle the increasing workload. Enhancing the efficiency and capacity of these tribunals is crucial to expedite the resolution process.

- MSMEs and Operational Creditors: Micro, Small, and Medium Enterprises (MSMEs) and operational creditors have faced challenges in the IBC process. There have been concerns about the treatment of MSMEs as operational creditors and the need to address their specific requirements and challenges within the insolvency framework.

- Pre-Pack Insolvency Framework: The IBC was amended in 2021 to introduce a pre-pack insolvency framework, aimed at providing a quicker and cost-effective resolution for stressed MSMEs. The performance and effectiveness of this framework in addressing the needs of MSMEs will need to be assessed over time.

It's important to note that the performance and effectiveness of the IBC are continually evolving, and there may have been developments and improvements since my last knowledge update in September 2021. Monitoring the latest updates and reports from reliable sources would provide a more up-to-date assessment of the IBC's performance in India[13].

DEBT RECOVERY LAWS IN THE POST-REFORM PERIOD

Debt recovery laws[14] in the post-reform period have undergone significant changes in many jurisdictions to improve the effectiveness and efficiency of the debt recovery process. These changes are aimed at strengthening the legal framework for creditors to recover outstanding debts from defaulting borrowers. While the specifics of debt recovery laws can vary between countries, here are some common trends and measures observed in the post-reform period:

- Streamlined and Time-bound Processes: Many jurisdictions have implemented streamlined and time-bound processes for debt recovery. This includes the establishment of specialized debt recovery tribunals or courts to handle such cases. These specialized bodies aim to expedite the resolution of debt recovery cases and provide a faster mechanism for creditors to recover their dues.

- Strengthened Secured Creditor Rights: The post-reform period has seen an emphasis on strengthening the rights of secured creditors. This includes providing clear and robust mechanisms for secured creditors to enforce their security interests, such as foreclosure, asset seizure, or the power to sell collateral to recover outstanding debts.

- Introduction of Alternative Dispute Resolution Mechanisms: To facilitate faster resolution of debt recovery cases, alternative dispute resolution mechanisms, such as arbitration or mediation, have been encouraged or mandated in some jurisdictions.

[13] Branch, B., and Khizer, A. "Bankruptcy Practice in India." International Review of Financial Analysis, no. 47 (2016): 1–6

[14] A. Ravi, Indian insolvency regime in practice: An analysis of insolvency and debt recovery proceedings, Econ. Polit. Wkly 50 (2015) 46–53.

These mechanisms provide a quicker and cost-effective way to resolve disputes between creditors and borrowers.

- Cross-border Debt Recovery: With the increasing global nature of business and finance, there has been a focus on improving cross-border debt recovery mechanisms. This includes the adoption of international conventions, bilateral agreements, or domestic laws that facilitate the recognition and enforcement of foreign judgments or arbitration awards.

- Enhanced Recovery Tools: Debt recovery laws in the post-reform period have often introduced or expanded the range of tools available to creditors for recovery purposes. This may include measures such as garnishment of wages, attachment of bank accounts, or the ability to recover debts from third parties.

- Protection of Debtors' Rights: While the focus is on facilitating debt recovery, post-reform debt recovery laws also aim to strike a balance by protecting debtors' rights. These laws often prescribe fair procedures and safeguards to ensure that debtors are treated fairly and have an opportunity to present their case and defend themselves against unjust or excessive claims.

- Digitalization and Technology: Many jurisdictions have embraced digitalization and technology to improve the efficiency and effectiveness of debt recovery processes. This may include the use of online platforms for filing claims, electronic service of documents, or the development of centralized databases to track debtors and their assets.

It's important to note that the specifics of debt recovery laws can vary significantly between jurisdictions, and the reforms introduced in the post-reform period will depend on the legal framework and practices in each country.

CONCLUSION

The struggling Indian banking industry received a much-needed boost from the Insolvency & Bankruptcy law of 2016. It's undeniably better than what came before it and has helped speed up the resolution of insolvency cases. However, difficulties in the form of insufficient human resources & infrastructure demands have led to a backlog of cases at the tribunals. The case

admission process has gone longer than the allotted 14 days. The code is being used more as a tool for debt recovery than for restructuring, as seen by the propensity for liquidation. However, the government has been responsive, making timely changes to the code to make it more practical. Improving the availability and skill of insolvency specialists & expanding the court system are crucial to the code's success.

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