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A Study on IBC as a Powerful Tool for Resolving Insolvency Issues of Indian Economy

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ABSTRACT:

This paper examines the relationship between the systems in Indian economy for insolvency related issues and its impact on economic development. Legal production is sufficiently high and overlapping laws have often decelerated the civil justice and increased the costs of the insolvency proceedings. For providing guarantee to creditors about safety of their business investment it is expected that bankrupts should be punished too quickly and severely. This can bring definite discouragement to entrepreneurs for taking financial risks and letting off defaulting debtors easily. Therefore, a certain degree of sophistication of the Bankruptcy Law is desirable at the least to guarantee creditors and make investments possible. This research paper provides an analysis of the development of Bankruptcy and Insolvency laws in India and its impact on net position of Non Performing Assets (NPA) of financial institutions in India. No country can be called as healthy economy without effective financial system. Present research paper focuses on insolvency laws existed in world economy as well as evolution of the regulatory framework and significant changes in regulations of the Insolvency and Bankruptcy Code 2016 (IBC).

Keywords: Bankruptcy Law, Insolvency and bankruptcy Code, Enforcement, Performance.

OBJECTIVE OF RESEARCH PAPER:

1. Several studies focus attention on the link between the evolution of legal and financial systems and economic development around the world but they do not explicitly study the connection between bankruptcy environment and economic performance especially with reference to Indian economy. The objective of the paper is to fill this gap.
2. The aim of the paper is to examine whether and to what extent cross-country differences in the Bankruptcy law and what are amendments in Indian Bankruptcy Law over a period of time for its effective implementation and improvement in economic performance of our economy.

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3. The paper finds that degree of sophistication of the Indian Bankruptcy Law and the efficiency of the insolvency proceedings of stressed assets and conductive ecosystem of Indian economy.

RESEARCH METHODOLOGY:

The study is descriptive and analytical. It is based on secondary data. The data were collected from books, journals, websites, research papers, newspapers and reports. The conclusions were drawn on the basis of the detail analysis of information available.

REVIEW OF LITERATURE:

In finance, one of the very important analyses is financial distress analysis. It is conducted in a business to analyse the financial stability (Edward, 1995). The financial distress of a business is called bankruptcy. It has shown larger impact on global economy.

Bankruptcy is described as situation where organization legally declared its inability to pay its creditors (Ohlson, 1980), (Ariel & Marcela, 2007). It is a situation where operating cash flows are not sufficient to satisfy the current obligations of a firm and so the firm is forced to take corrective action (Altman, 1968), (Deakin, 1972).

Impact of Bankruptcy has shown disastrous outcome and which can produce substantial loss to banks, suppliers, shareholders and to the whole community (Sungbin, 2010). on September 15, 2008, the largest bankruptcy occurred in U.S., when Lehman Brothers Holdings Inc. filed for protection with more than USD$639 billion in assets (Source: Marketwatch.com,2008). Corporate bankruptcy laws in many countries have seen major changes over the past century. The two alternative corporate bankruptcy structures are liquidation and reorganization. Bankruptcy laws in most countries have provision with varying accessibility for both structures.

In recent years, the legal rules for bankruptcy, reorganization and restructuring processes have been reassessed. In the United States, the proposals have been made to change the 1978 bankruptcy code to eliminate the chapter 11 reorganization entirely. However as far as India concerned, it was more towards rehabilitation and restructuring than winding up till formation of new law.

BANKRUPTCY LAWS IN DIFFERENT ECONOMIES:

Bankruptcy Laws in the U.S.A. : The U.S. Bankruptcy reforms Act 1994 deal with provision relating to financial distress. Chapter 11 provision of Bankruptcy reform Act 1994 is designed to encourage and facilitate reorganisation. The provisions of Chapter 7, are intended to implement quick liquidation. In Chapter 11 case, the debtor retains control of the property. The bankruptcy estate includes all the assets of the debtor, and certain distributions like preference payments made by the debtor prior to the filing may be avoided by the court

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and added to the bankruptcy estate. The existing management retains control during reorganisation. Moreover, the debtor obtain a 120 day "exclusive period" in which no other party in interest can file a plan of re-organisation. Chapter 11 has taken away the ability of secured creditors to force liquidation of the firm. Chapter 11 bankruptcy is too kind to a troubled company's existing managers, shareholders, and too harsh on creditors. The shareholders of distressed firms enrich at the expense of creditors and the absolute priority rule is violated. The debtor in possession gives enormous advantage to the management in bargaining with creditors. It can also lead to under investment in a healthy firm and over investment in a sick firm. Reform announced in 1994 returned some control to the creditors. The major limitations of Chapter 11, an important issue is the failure of satisfactory early assessment procedure in determining whether a firm should be continued or liquidated. There is no need for any independent assessment of restructuring plans. Firms generally prefer to spend time under Chapter11 than going for liquidation. This inherently delays the process of liquidation.

Bankruptcy Laws in France: France provides excellent opportunities for reorganisation or resuscitating a distressed firm. The law of 1985 and also the 1994 revision states that the objectives of the law, in the order of priority, are to maintain firm in operation, preserve employment 63 and, thirdly, to enforce credit contacts. The main outcome of the 1994 revision was to shift some of the balance of power back to creditors. The French Bankruptcy Law provides three alternative processors for dealing with a distressed firm.

Firstly prior to ceasing payments on its debts but facing imminent insolvency, a firm may use the negotiated settlement procedure to attempt to restructure its liabilities. Secondly, having ceased payments, a firm enters judicial arrangements in which it may attempt a re-organisation. Thirdly, reorganisation is not achieved. or is deemed not feasible or economically efficient, the firm will be moved from judicial arrangement to judicial liquidation. The French bankruptcy law is heavily biased towards employees and job preservation. The possibility of continuation for business is mainly to preserve employment. The 1985 French code attempted to adopt the best attributes of Chapter 11, while avoiding the worst attributes. The law is consistent with the well-known French propensity to sacrifice various economic goals in the interest of continued employment is apparent.

Bankruptcy Laws in Germany: German law provides for two separate forms of court proceedings, composition or compulsory liquidation. New legislation was passed in1994 which combines these two procedures into a single unified code with effect from 1999, composition is intended to provide an opportunity to reorganize the firm. As a result, most debtors with a real chance of survival will be reorganized through an out-of-court 64 workout. The debtor must make the application for composition proceedings. Only unsecured creditors are subject to the composition proceedings.

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There was no automatic stay as in Chapter 11 but in the new law (1994) automatic stay is granted for three months. By law, the debtor must inform the court within 15 days of learning of the company's insolvency. All unsecured creditors must be treated equally under the composition plan. The negative aspect of German law is that it emphasizes a reorganisation plan to be submitted by a distress firm within 15 days of learning of company's insolvency. This is practically impossible for a company of any size unless they plan in advance. The positive factor is that the bankruptcy costs are much lower than Chapter 11 proceedings. Another positive result is that virtually all reorganisation occur outside the court.

Bankruptcy Laws in the U.K.: Limited companies in UK have access to four court supervised re-organisation procedures, namely (a) receivership and administrator receivership, (b) administration, (c) company voluntary arrangement and (d) under Part 1 of Insolvency Act of 1986, or management under companies Act of 1985. The most significant fact is control of the company is transferred from its directors and given to a "Licensed Insolvency Practitioner". Though Receivership does not exclude the possibility of reorganisation and continuation of the firm, it usually results in quick sale of the business and often within days or weeks of the receiver being appointed. In addition, the employees are normally discharged prior to sale and the purchaser can re-employ those he feel necessary. While Administration and court voluntary arrangement are two separate legal procedures, they are most effective when used jointly, which is their most common usage at present.

Bankruptcy Laws in Indonesia: The Indonesian legal system closely follows the French family of legal systems. The insolvency legislation is founded on the basis of Dutch tradition. Bankruptcy Act of 1906 is aimed to give importance to creditors and does not allow debtors to continue with the original business, which is deemed insolvent.

Bankruptcy law applies to both private companies (domestic and foreign) as well as state enterprises. One of the clause of the law is that the debtor must be liable to two or more creditors in order to file for bankruptcy. Given the antiquity of the insolvency law, both creditors and debtors seldom resort to actual court proceedings at the time of distress since the judicial process is considered unpredictable. Formal bankruptcy normally results in the creation of lien over the property of the debtor. The only exceptions are personal items of the debtor and certain copyrights. During bankruptcy, a debtor company may declare a moratorium on debt owed to all creditors except secured creditors. In terms of rules regarding security for debt, the only assets that can be registered are mortgages over land and ships. The objective of these rules is to speed up the reorganization and restructuring of insolvent corporations.

Bankruptcy Laws in Korea: The Korean legal system closely follows the German family of legal systems. There are three main Acts in Korea that protects creditors and shareholders. They are the Composition Act, Corporate Reorganization Act, and the Bankruptcy Act. It is claimed that the insolvency laws generally protect foreign investors, although offshore

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creditors need to obtain permission from the Bank of Korea and the Ministry of Finance in order to provide credit and to enforce the security interest. While Composition Act is aimed to prevent bankruptcy, the Corporate Reorganization Act aims for rehabilitating sick companies.

The Bankruptcy Act provides for liquidation of the insolvent company. Under Korian insolvency laws the creditors are granted preferential claim on assets and the equity holders a secondary claim once the distribution of assets is completed among the creditors. The Bankruptcy Act allows creditors to invoke the right to liquidate the company and therefore constitutes the last stage of the insolvency process. Composition where the shareholders retain right and the management is in charge of ordinary business.

Bankruptcy Laws in Malaysia: The legal framework that governs bankruptcy and insolvency procedures in Malaysia, which is largely modelled on the British legal system. Insolvency rules for corporate entities are found in the Companies Act of 1965, which was subsequently revised in 1973. Insolvency law in Malaysia provides strong orientation toward the creditors even though at present times some initiatives are being taken to strengthen the role of debtors in the bankruptcy process along the lines of laws as specified in US Chapter 11. Companies Act provides rules & regulations for the liquidation of companies. The Act provides for asset recovery by creditors in line with international practice. However, a "compromise or arrangement" may be concluded between a company and its creditors but there are numerous hurdles while at arriving at such an arrangement. Rehabilitation provisions are not observed under bankruptcy and insolvency laws. Since 1998 "Special Administration" procedure has been introduced in Malaysia.

Bankruptcy Laws in Philippines: The Philippines has adopted French legal systems. The Philippines' insolvency law formed in 1909 although new modifications have been instituted in recent years. A provision of insolvency law allows a debtor to file a petition in order to obtain a "suspension of payments". Law states the rules as creditors have to approve the terms with a majority but they can very well disapprove of the plan whereby they can initiate insolvency proceeding. Insolvency legal proceedings, can either be initiated by the debtor (voluntary insolvency) or the creditor (involuntary insolvency), who initiates the insolvency proceedings largely depends upon the asset and liability position of the debtor can follow this suspension. If assets are not sufficient to back liabilities, then the creditor will initiate the proceedings and the court will appoint a receiver to take control of the assets. Security interests are obtained through the use of mortgage, pledge and antichrists.

Bankruptcy Laws in Taiwan province of China: Taiwanese corporate legal system is largely borrowed from the German system with a certain degree of Japanese influence. It is based on the Bankruptcy Law of 1935 and the Company Law of 1929. As per provisions of law insolvent debtor may file application in courts for composition. Secured creditors are able to retain their rights and are normally exempt from composition proceedings. Unsecured

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creditors are provided with limited rights to influence legal proceedings. Bankruptcy petition can be filed during the composition proceedings but the court will generally dismiss the petition if it feels that composition will work.

There are also re-organization procedures as part of Company Law of 1966. These procedures provide a significant delaying tactic for publicly held companies in filing for bankruptcy and sometimes lasting for 15 years. In that scenario, a secured creditor also have follow rules of the reorganization procedure. Composition often supervised by chamber of commerce where in business continues under supervision.

Bankruptcy Laws in Thailand: Thailand falls under the British family of legal systems. Thailand's Bankruptcy Act has been in existence since 1940.The possibilities of legal procedures for reorganization for companies in distress was absent from the law until March 1998. The most easy option available to insolvent companies for submission of an application for composition was liquidation initiated by the creditors. Creditor can normally sell the collateral through a public auction and this system works quite efficiently in Thailand even though there is no -fledged registration system for pledges.

BANKRUPTCY LAWS IN INDIA:

The first Indian Insolvency Act was formed in the year 1848. It was formulated on the same lines as the contemporary British Act. Thereafter, there were several attempts to amend or replace the Act but nothing happened before the Provincial Act was passed in 1907 followed by the Presidency-Town Act in 1909. The 1907 Act was replaced in 1920. Provisions of both the statutes arc similar, though the Presidency Towns Act contains provision for official assignee, procedure of the court in details and limitation provisions. Both these statutes exclude corporations from insolvency proceedings to be conducted under these statutes (Sec.8 of the Provincial Act and Scc. I07 of the Presidency-Towns Act).

An insolvent has several disqualifications like prohibition to occupy any public office, entering into a contract etc. As far as corporate sector is concerned until 1985, there was no comprehensive policy on the corporate bankruptcy system in India. Restructuring and winding up are allowed under the Companies Act, 1956, which specifies procedures for the same.

Companies Act, 1956 has some legal provision for corporate restructuring relating to i) Reduction of Share Capital ii) Compromise or Arrangement with the Creditors A Company may make a compromise or an arrangement with the creditors under Sec.391 of the Companies Act. iii) Section 394 provides for facilitating reconstruction and amalgamation of companies.

In 1975, the Reserve Bank of India has appointed a committee headed by Mr. Tandon to examine the reasons for widespread industrial sickness and in 1976, again another committee was appointed under the Chairmanship of Mr. H N Ray, which looked into causes for

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sickness. Based on the recommendation of these committee reports, the government of India has appointed another committee in 1981, headed by Mr. T.T. Tiwari and the committee was asked to suggest a comprehensive special legislation designed to deal with the problems of sickness laying down its basic objective and parameters necessary for revival of sick units. Based on the recommendation of the committee, the government has promulgated a new Act named Sick Industries Companies Act, 1985 (SICA). The Act also provides for constitution of quasi-judicial body and the government has constituted this body in 1987. This new body called Board for Industrial and Financial Reconstruction (BIFR) has started administering the powers vested under the Act.

During a period 1991 to 2013 following reforms were undertaken by government to bring uniformity in insolvency laws in India.

1991	Narasimham Committee I (RBI) RDDBFI Act
1998	Narasimham Committee II (RBI) Enactment of SARFAESI, conceptualisation of Asset Reconstruction Companies ("ARC(s)")
1999	Justice Eradi Committee (Government of India) Companies (Amendment) Act, 2002, proposed repeal of SICA
2001	A comprehensive bankruptcy code proposed by L. N. Mitra Committee (RBI)
2005	Irani Committee (RBI) Enforcement of Securities Interest and Recovery of Debts Bill, 2011 (with amendments to RDDBFI and SARFAESI)
2008	Improvements to credit infrastructure proposed by Raghuram Rajan Committee (Planning Commission)
2013	Financial Sector Legislative Reforms Commission (Ministry of Finance) Draft Indian Financial Code which includes a "Resolution Corporation" for resolving distressed financial firms

Regulatory framework of the Insolvency and Bankruptcy Code 2016 (IBC) as bankruptcy law of India:

Prior to the enactment of the Code, the insolvency landscape was highly fragmented with multiple overlapping laws - central and provincial - as well as non-statutory schemes without any coordination among them. The outcome was poor, costly and uncertain. A surge of borrowing for expansion followed by difficulties in debt servicing, a typical twin balance sheet (TBS) problem hinders growth.

The Indian economy was booming in mid-2000s with growth rates surging to 9-10% per annum. After a brief interruption in sympathy with the global financial crisis, the growth rate improved to about 8.5% from 2009 to 2011. Firms made huge investments with projected double-digit growth rate, funded mostly by credit boom. There is a two-way positive correlation between economic growth and credit growth. Non-food credit by scheduled

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commercial banks (SCBs) grew by 17% in 2011-12, 13% on average in 2012-2014 and 5 8.6% on average in 2014-2017 . Non-food credit to GDP (at constant prices) ratio has, on an average, been 55% over 2010-11 to 2016-17. The gross advances of SCBs increased from Rs.25,03,431 crore as on 31 March, 2008 to Rs.68,75,748 crore as on 31 March, 2014.

By 2013, one third of corporate debt was owed by firms with an interest coverage ratio (ICR) of less than 1. By 2015, the share of such firms reached 40%. Debts of the top 10 stressed corporate groups tripled during 2010- 11 to 2015-16.

Reserve Bank of India (RBI) conducted an asset quality review (AQR) in July, 2015 which revealed a sharp increase in the non-performing assets (NPAs) of commercial banks in both public and private sector, increasing from 3.2% of gross advances in March, 2013 to 4.3% in March 2015, and further to 9% by September, 2016. It was higher at 12% for public sector banks (PSBs). Gross NPAs of SCBs, on domestic operations, increased from Rs.2,63,015 crore as on 31 March, 2014, to Rs.7,90,268 crore as on 31 March, 2017. Thus, credit growth was followed by an increase in NPAs, which, in turn, caused significant decline in credit growth from 17% in 2011-12 to 9% in 2014-16. The primary reasons for spurt in stressed assets are aggressive lending practices, willful default/loan frauds in some cases, and economic slowdown.

The legal and institutional machinery for dealing with debt default had not kept pace with the changes in the Indian economy. The action through The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the winding-up provisions under the Companies Act, 1956 were not proving to be very helpful for either recovery by lenders or restructuring of firms. Further, the laws dealing with individual insolvency such as the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, were not capable of handling current issues of individual insolvency due to the changing needs of the time. This hampered confidence of lenders and consequently debt market. While secured credit from banks was predominant form of credit, the corporate debt market was yet to develop. Insolvency & Bankruptcy Code was decided to form as a powerful mechanism/solution for debt related issues in Indian economy.

Objectives of the Code: As stated in its long title, the Code has the following four foundational objectives:

Maximisation of value of assets: It prevents depletion of value by enabling early initiation of process for revival and expeditious conclusion of process. This exercise will not only recover lost value for the stakeholders, but also deter the management from indulging in such transactions. This will cleanse the corporate governance and improve confidence of stakeholders.

Promoting entrepreneurship: The Code reduces the incidence of failure, by incentivizing prevention of failure, rescuing failing businesses, wherever possible, and releasing resources

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from failed businesses, wherever required. It helps genuine entrepreneur for taking exit decisions

Enhances availability of credit: Code enable lenders to recover funds from either future earnings, post-resolution or sale of liquidation assets. The Code would also help address the problem of rising NPAs and enable optimum utilization of resources.

Balancing interests of all stakeholders: The Code alters and resets the priority of stakeholders in the waterfall in case of liquidation. The Code discourages liquidation and facilitates resolution. It prescribes certain minimum protection for certain stakeholders.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016 Based on the recommendations of the BLRC, a Bill relating to Insolvency and Bankruptcy Code was introduced in the Parliament in December, 2015. the After passing of the Bill by Lok Sabha on 28 April, th 2016 and Rajya Sabha on 11 May, 2016. The aim of this change in consolidation is to provide for greater clarity in law. Following table shows developments in Indian Insolvency Law.

Date	Developments up to 30th September, 2016
10.07.2014	Finance Minister declared in his budget speech declared as "Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit."
22.08.2014	Committee was formed under the Chairmanship of Dr. T. K. Viswanathan constituted to study Corporate Bankruptcy Legal Framework in India as Bankruptcy Law Reforms Committee.
11.02.2015	Interim report was submitted by BLRC.
28.02.2015	Finance Minister declared in his budget speech declared as "Sick Industrial Companies Act) and BIFR (Board for Industrial and Financial Reconstruction) have failed in providing solution to debt related issues there is need to make some reform in Bankruptcy laws which will add some speed in key areas for ease of doing business. It was further added that comprehensive Bankruptcy Code in fiscal 2015-16, will meet global standards and provide necessary judicial capacity."
04.11.2015	Interim report was submitted by BLRC.
21.12.2015	In Lok Sabha introduction was make about The Insolvency and Bankruptcy Code, 2015
28.04.2016	The report of the Joint Committee under the Chairmanship of Shri Bhupender Yadav on the Insolvency and Bankruptcy Code, 2015 presented to Parliament

ISSN PRINT 2319 1775 Online 2320 7876

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Date	Developments up to 30th September, 2016
05.05.2016	Lok Sabha passed the Insolvency and Bankruptcy Code, 2016.
11.05.2016	Rajya Sabha passed the Insolvency and Bankruptcy Code, 2016.
28.05.2016	The Insolvency and Bankruptcy Code, 2016 (Code hereafter) enacted.
01.06.2016	National Company Law Tribunals constituted.
22.07.2016	For implementation of the Code constituted Oversight Committee and Four Working Groups were constituted.
29.07.2016	Ministry of Corporate Affairs entrusted with the responsibility of administration of the Code.
05.08.2016	The provisions relating to establishment of the IBBI in the Code came into force.
19.08.2016	The provisions relating to finance of the IBBI and other matters in the Code came into force.
23.08.2016	Shri Arun Jaitley, Hon'ble Minister of Finance and Corporate Affairs directed the senior officers of the Ministry of Finance and Corporate Affairs to take suitable necessary action for implementation of Code in a time bound manner.
29.08.2016	Finally The Insolvency and Bankruptcy Board of India Rules, 2016 came into force

Insolvency & Bankruptcy Board of India

The Government of India has set up the Insolvency & Bankruptcy Board of India as the regulator under the Code. This Board also regulates three types of insolvency resolution professionals/ agencies - Interim Resolution Professional, Final Resolution Professional and Liquidator. In case of individuals and partnership firms other than Limited Liability Partnerships (LLPs) Adjudicating Authority is Debt Recovery Tribunal (DRT). And for companies and LLPs authority is National Company Law Tribunal (NCLT). Responsibilities of IBBI formed Development of process and practices related to Corporate insolvency, Corporate liquidation, Individual insolvency & Bankruptcy, Registration and regulation of service providers for the insolvency process, Surveillance, Investigation and Grievance Redresses related to insolvency & bankruptcy, Orderly functioning of duties & responsibilities of service providers and Professional development and expertise about debt related issues and their solutions.

The IBBI issued five regulations to provide for regulation of service providers and enable implementation of provisions relating to corporate insolvency resolution and liquidation which are as under:

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1. The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016: These regulations make it mandatory for an Insolvency Professional Agency (IPA) which are similar with the Model Bye Laws issued by the IBBI.

2. The IBBI (Insolvency Professional Agencies) Regulations, 2016: These regulations inter alia provide for the eligibility norms to be a Professional Member of an IPA and also for eligibility norms to be registered with the IBBI as an IPA. A company registered under section 8 of the Companies Act, 2013 with a minimum net worth of Rs.10 crore and a paid up capital of Rs.5 crore is eligible to be an Insolvency Professional Agency. At least 51% of the share capital of the IPA must be held, directly or indirectly, by persons resident in India. The IPA, its promoters, its directors and persons holding more than 10% of its share capital must be fit and proper persons.

3. The IBBI (Insolvency Professionals) Regulations, 2016: These regulations, inter alia provide for registration, regulation and oversight of insolvency professionals (IPs).

4. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016: The regulations delineate the processes and activities from initiation of Corporate Insolvency Resolution Process (CIRP) till its conclusion with approval of the resolution plan. Regulations, 2016 defines the manner and contents of public announcement, receipt and verification of claims of creditors, formation of committee of creditors, and manner of holding meetings of committee of creditors and voting in such meetings. It highlights contents of information memorandum and of resolution plan, implementation schedule and determination of liquidation values and components of resolution process costs.

The IBBI (Liquidation Process) Regulations, 2016: These regulations provide for the details of activities right from issue of liquidation order u/s 33 of the Code for dissolution order as specified under section 54. It also defines the manner and contents of public announcement receipt and identify and verification of claims of stakeholders, preparation of reports and registers, preservation of related documents and reports and documents submitted by the liquidator. It defines the process of assets realization and security interest, and distribution of final proceeds to stakeholders.

The Code specifies for information utilities for collection of information, collate, authenticate authority and circulate financial information from listed companies, financial and operational creditors of companies. An individual insolvency database is set up for the purpose of circulating information on the insolvency status of individuals.

The adjudicating authority exercises jurisdiction over cases by or against the debtor.

One of the most significant features of the Code is the grant of moratorium during which creditor action will be stayed which is based on the recommendation of Resolution Professional. After recommendation liquidation process starts. It can also proceed on the

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basis of vote of majority of the creditors incase resolution plan is not submitted by Resolution Professional within the prescribed period as defined under the code.

Decisions made by NCLT may be appealed to the National Company Law Appellate Tribunal or Supreme Court of India. Under Part IB of the legislation National Company Law Tribunal has been set up and is unique because this National Company Law Tribunal will have the combined powers of Company Law Board, BIFR and also the High Courts.

According to the definition of a Sick Company, a company can be referred to the tribunal even before 5 years and it can be referred also by the banks and other financial institutions in addition to referring by Board of Directors.

Insolvency Process under the code

Corporate Insolvency Process: The provisions relating to corporate processes came into force on 1 December, 2016. The Code provides broadly three corporate insolvency processes - CIRP, Corporate Liquidation Process, and Voluntary Liquidation Process. The Code provides for divesting the erstwhile management of its powers and vesting it in an, independent professional, to continue the business of the firm as a going concern until a resolution plan is drawn up. Then the management is handed over, under the approved resolution plan, so that the firm can get back on its feet and pay back its debts. All this is done within a period of 180 days with a one-time extension of up to 90 days or else the liquidation process begins.

Individual Insolvency Processes: The provisions in the Code relating to individual insolvency are yet to come into force. The Code provides for three individual insolvency processes.

a) Fresh Start Process: This is available only to those debtors who have an annual income of more than or equal to Rs 60,000, assets more than or equal to Rs.20,000, debts more than or equal to Rs.35,000 and do not have a residential unit. Fresh start for discharge of debt application can be filed by debtor only.

(b) Insolvency Resolution Process: IIP provides a legal framework for the debtor and creditors to to renegotiate a repayment plan under the supervision of an RP on collective basis.

(c) Bankruptcy Process: In case of failure of implementation of repayment plan under resolution process, the debtor or creditor may make an application for the initiation of bankruptcy process. This resulted in release of discharge order releases to the debtor against the bankruptcy debt.

The two enactments, namely, the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, are in force today. Over these acts in recent time several improvements/amendments are made in IBC Code.

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Some Important Provisions of CODE

1. "Operational Debt" and "Financial Debt" under the Corporate Insolvency Resolution Process

A debt would be operational debt only if it relates to the four categories: goods, services, and employment and Government dues. Debts other than these would be classified as other debts. The rights and powers of relevant creditors of each of these different categories of debts are different and thus classification of debts is key in the corporate insolvency resolution process.

2. Timelines under the Code

As per the Insolvency and Bankruptcy Code, 2016 (the Code), 14 days timeframe is provided to NCLT to make a decision regarding admission or rejection of application. Before rejecting an application, the NCLT is required to provide 7 days' time to the applicant to rectify defects, if any, in the application. However, the NCLAT has inherent powers to extend the 14-day period on a case-to-case basis in the interest of fairness and justice. As per law strict timeline is provided to authorities for completion of the entire resolution process.

As per Section 12(1), the CIRP As per Section 12(1), the CIRP shall be completed within a period of 180 days from the date of application to initiate such process. Date of admission of the application is mentioned under section 7(5), 9(5) and 10(4) for application filed Financial Creditor, Operation Creditor and Corporate Applicant respectively.

After the expiry of 180 days (or 270/(330 days being outer limit) days as the case may be), in the event a resolution plan has not been submitted, or if submitted, and rejected under the provisions of the Code or even after the dismissal of an appeal filed under section 61 contesting rejection of a plan, the Code directs that the debtor initiate a liquidation process. The time period prescribed by the Code is the maximum time provided for the completion. However this process can be completed before the maximum time period prescribed.

In Short the Code stipulates fixed timelines to ensure timely resolution for corporate debtors, for the benefit of all stakeholders. However, certain time periods may be excluded from the calculation of the total time periods for the insolvency resolution process, including time taken in litigation.

3. Decoding "Dispute" under the Corporate Insolvency Resolution Process

The Code specifically defines the term "dispute" and gives corporate debtors a chance to raise a dispute. Disputes can also be raised after filing application. The Adjudicating Authority, while assessing if there is a dispute must only analyse if the dispute exists in fact, and is not illusory.

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4. Right of Hearing on Admission of an Application under the Code

At the time of admitting an application to initiate the corporate insolvency resolution process, the Adjudicating Authority must provide a right of hearing to the corporate debtor in consonance with the principles of natural justice

5. Supply of Critical Goods and Services during the Corporate Insolvency Resolution Process

The Code enables the continuation of critical supplies to businesses during the insolvency resolution process. Law has given special power to the resolution professional to enable/start the negotiate process for the continuation of other critical supplies during the corporate resolution process and can issues directives for the supply of the specified 'essential goods and services'.

6. Provision for Mutual Settlement after the Admission of a Case under the Code

The amendment to the Code, section 12A of IBC read with regulation 30A of the CIRP Regulations specifically deals with withdrawal of CIRP after admission of application. And section 12A provides that an application for withdrawal may be make by an application after obtaining consent from the committee of creditors (CoC). Regulation 30A provides the manner in which the insolvency resolution process can be withdrawn.

7. Liability of Guarantors during the Corporate Insolvency Resolution Process

The liability of guarantors is considered to be co-extensive with, as well as distinctive from the liability of the principal corporate debtor under the Code. Accordingly, both the principal corporate debtor and the guarantor can be proceeded against under the Code. The guarantor can also be proceeded against under different forum, when the corporate debtor is being proceeded against under the Code. As per IBC provisions two corporate guarantors cannot be proceeded against simultaneously.

8. Assignment of Debts of Related Parties under the Corporate Insolvency Resolution Process

The assignment of related party debts results in the assignee having the same rights and disabilities as those of the related party assignor

9. Treatment of Home Buyers in the Corporate Insolvency Resolution Process

Home buyers were not given rights to initiate the insolvency resolution process or participate in the process as members of the committee of creditors; there was a concern that their interests would not be adequately safeguarded. Home buyers have now been deemed to be financial creditors by amendment to the Code, and are members of the committee of creditors.

ISSN PRINT 2319 1775 Online 2320 7876

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10. Treatment of Statutory Dues under the Code

Statutory dues are dues owed to the Government. It included operational debts, and the statutory creditors would be operational creditors. In liquidation, these dues would fall within section 53(1)(e), and distributions to be made to them would rank equal to debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.

11. Dissenting Financial Creditors under the Code

The Code included both creditors who had abstained and those who had voted to reject the resolution plan in dissenting financial creditors. While this definition has now been removed, the understanding will still aid in determining how the sixty-six per cent of voting shares of the committee of creditors is to be calculated.

12. Applicability of section 29A of the Code

According to the provision as specified under section 29A on a justifiable legislative policy choice, a person who is unable to service or payoff its own debt is not allowed to be a resolution applicant. Moreover, the Supreme Court has clarified that section 29A would only be applicable to those related parties of persons ineligible under section 29A who are connected to the business activity of the ineligible person. The Supreme Court in *ArcelorMittal India* has clarified that it is clear that in order to establish the eligibility of a resolution applicant in the matter of submission of a resolution plan, the same must be determined at the very moment of the submission of a plan and in accordance with the relevant parameters of Section 29A of the Code applicable at the time.

13. Distributions under a Resolution Plan

The priority of payments to be made pursuant to a resolution plan is not fixed. However, a resolution plan must balance the interests of all stakeholders. In doing this, the plan must deal with all creditors in a fair and equitable manner, including those creditors who do not have the right to vote on the resolution plan since they are not financial creditors. The plan must also not discriminate against equally situated creditors.

CONCLUSION:

“The road to success is always under-construction”, IBBI is responsible in Indian economy for implementation of Code and regulate both the profession and the process. IBC has done various amendments in present Indian Insolvency Law. As a key economic reform, the IBC has shifted the balance of power to the creditor from the borrower. It instilled a significantly better sense of credit discipline. It is very crucial to continue to invest in the development of the law by studying its impact, and investigate its strengths and weaknesses on a regular basis. Increase in conversion of NPAs into standard accounts and decline in new accounts falling in NPA category show a definite improvement in the lending and borrowing behaviour in recent time as witness by Indian economy. The Code provides a collective

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mechanism for resolving insolvency within a framework of equity and fairness to all stakeholders, while preserving the economic value of the person concerned. It provide a time bound and orderly resolution of insolvency and facilitates ease of exit also wherever required, It promote entrepreneurship and availability of credit in the economy as a whole. As on today still large no cases are outstanding under the IBC of which resolution is pending for more than 270 days. Significant delays also trigger liquidation. There are some case for which resolution has not been finalised for over 400 days. Some challenges are need to be address on priority basis such as over burden of cases on the National Company Law Tribunal, absence of clarity on priority of claims, challenges on account of limited number of information utilities, creation of a secondary asset market. The Code is establishing a legal framework which brings about a much overdue reform that is aimed at creating necessary procedures for swift resolution of insolvency and bankruptcy in India. It attempts at bringing the Indian statutory regime at par with some of the most legally advanced jurisdictions of the world.

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