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“Dharma is to protect the Needy”

Article on

DECODING THE CODE: THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 is based on the recommendations of the Bankruptcy Law Reform Committee to accommodate a single Code to settle insolvency for all corporations, limited liability, partnership, partnership firms, and individuals, etc. This Code is fundamental because no single umbrella enactment has served insolvency and bankruptcy procedures in India till now. Instead, there was a slew of legislation directing the legal framework. Non-Performing Assets (NPAs) or Non-Performing Loans are a serious issue for banks nowadays. They have badly affected the development of the Indian economy. It is very extreme which severely affects the banks and the nation's economy. This has prompted insolvency. Insolvency is a circumstance that charges the legal process of Bankruptcy. Insolvency and Bankruptcy Code (IBC), 2016 came as a silver lining which offers a great prospect of Indian economy with solid corporate lending and enterprise culture. The Code consolidates the current laws recognizing the insolvency of corporate firms and individuals into a single statute. The Bankruptcy Code is a push to change the corporate insolvency measure, to permit credit to flow easily, and impart confidence in investors for quick disposal of their cases. The article examines various aspects and the legal framework of the code. The study is descriptive. To conclude, the commencement of IBC is targeting improving India's status in the World Bank's business ranking, welcoming more foreign investors, and benefiting the different stakeholders.

Keywords- IBC 2016, Insolvency, Bankruptcy, Liquidation, Corporate.

INTRODUCTION- The Insolvency and Bankruptcy Code, 2016 is the bankruptcy law of our country which seeks to combine the present skeleton by making one single law for insolvency and bankruptcy. The legal domain of any nation always forms an essential part in its economic growth. It is one of all the foremost crucial reforms in the legal domain of India because IBC isn't solely making India powerful within the legal arena, however additionally provides a different identification and recognition at the global stage economically. On both economic and non-economic fronts, this code has a positive impact. Since the code is implemented, the international economic competence of India is drastically enhanced, through the growth of the FDI, extended M&A deals, increase India's ease of doing business ranking, etc. IBC, 2016 affiliate and amends the law concerning the economic insolvency resolution process in India. The impact of the emergence of the Code is by all accounts extensive to creditors, companies, financial institutions, and additionally for professionals, giving them a framework to function as resolution professionals. The purpose of the Bankruptcy law is to procure a rescue mechanism for bothered entities, providing quicker windup of insolvent entities and giving simpler and orderly exit route to investors

BACKGROUND- In India, the statutory and institutional mechanism for achieving debt defaults has not yet met the global standards. The recuperation of the loan givers, either through the Contract Act or through the special laws, for example, the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not had the option to get the ideal results. Essentially, activity through the Sick Industrial Companies (Special Provisions) Act, 1985 and the wrapping up arrangements of the Companies Act, 1956/Companies Act, 2013 have not had the option to help the recuperation for banks nor support in the restructuring of firms. Laws regulating individual insolvency, Presidential Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 are just about exceptionally old. This has hampered the certainty of the banks and the faith of the lenders throughout the timeframe.

To resolve all these serious issues, the 'Insolvency and Bankruptcy Code, 2016' is viewed as the most prominent economic change near to GST. The Insolvency and Bankruptcy Code 2016 is a breakthrough enactment consolidating the regulatory policy supervising the restructuring and

liquidation of people (including incorporated and unincorporated bodies). The Insolvency and Bankruptcy Code was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016 and by Rajya Sabha on 11 May 2016. The President of India gave his approval to the code on 28 May 2016. Certain provisions of the code have come into power from 5 August and 19 August 2016.

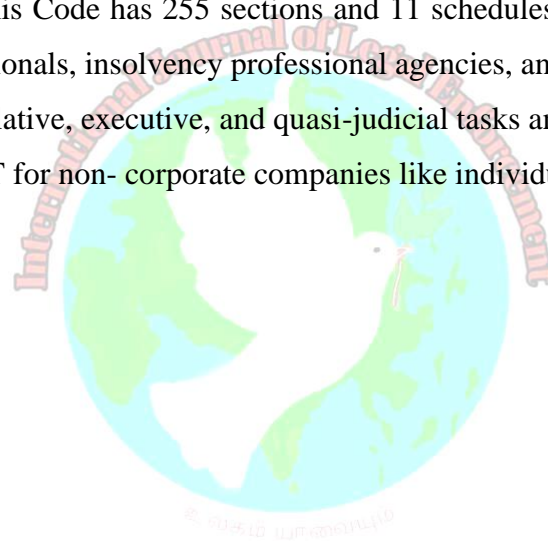
KEY ASPECTS OF THE CODE

There are the following key aspects of the code:

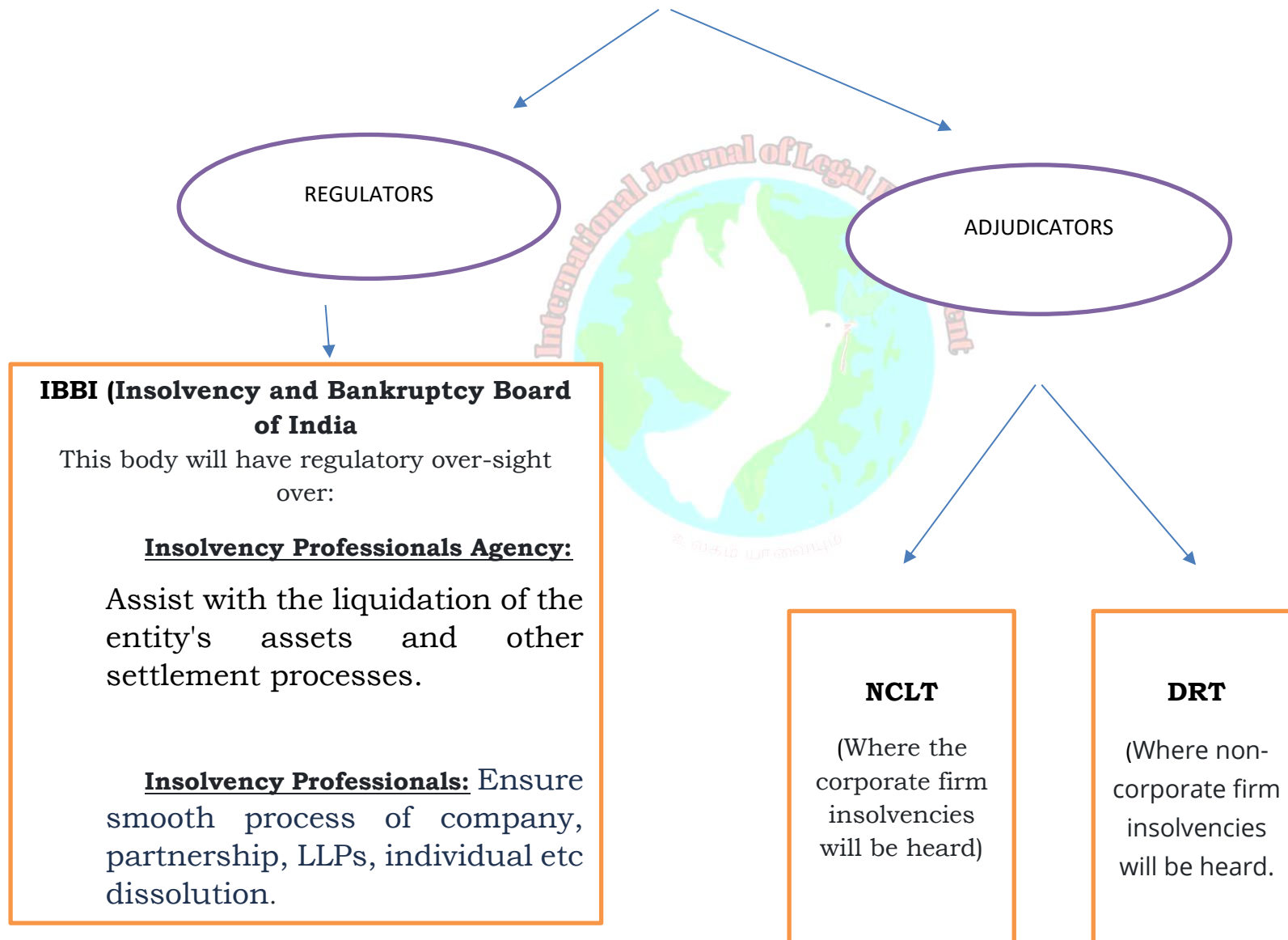
1. **Comprehensive Law:** The insolvency and bankruptcy code are known as comprehensive law because it regulates all applicants including partnership, Limited liability partnerships, corporate and individuals.
2. **No multiplicity of law:** The IBC has removed all the multiple laws that cover or give relief to the applicants of debt and liquidation process and insolvency by providing a single platform.
3. **Low time resolution:** The code provides less time resolution as it is the single platform so its resolution process is in fixed time. The resolution should be finished within one hundred and eighty days and extend to ninety days in some circumstances.
4. **Insolvency and Bankruptcy Board of India** established as regulator to exercise over IPA's, IU and insolvency professionals.
5. **Promote entrepreneurial activity:** After the IBC, the revival mechanism and fast resolution process helps the entrepreneur to promote its entrepreneur activity.
6. **Priority to the interest of workmen and employees:** The IBC gives priority and protects the interest of workmen by paying their dues under the provident fund, gratuity and pension funds.
7. **One chain authority:** Under this code there is only one chain authority because it does not allow civil courts to interfere in the pending applications as in IBC National Company Law Tribunal (NCLT) provides resolution to corporate companies and Debt Recovery Tribunal (DRT) provides resolution to non-corporate companies.

REGULATORY FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy Code, 2016 play an important role in our country. The IBC covers insolvencies of corporate persons and also firms, individuals, etc. While the legislation is apparently a code for bankrupt corporations, it also covers the liquidation of solvent firms, making it a comprehensive code on company liquidation. This Code has 255 sections and 11 schedules. The IBC is divided into two parts: Regulators and Adjudicators (**as in figure 1**). Insolvency professionals, insolvency professional agencies, and information utilities will be regulated by regulators who will monitor these firms and undertake legislative, executive, and quasi-judicial tasks and adjudicators look onto the process of resolution (i) NCLT for CORPORATE COMPANIES (ii) DRT for non- corporate companies like individuals.



REGULATORY FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016[fig 1]



TIMELINE FOR INSOLVENCY RESOLUTION PROCESS

THE PROCEDURE FOR INITIATING THE CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) UNDER [as per figure 2]:

Operational creditor/financial creditor or corporate debtor as per the case, filed an application to NCLT.

NCLT has 14 days from the date of application to either accept or reject the application (before rejecting give notice to rectify the defect within 7 days). If the NCLT accepts the application, it will declare a moratorium and appoint an IRP for a period of 30 days, not to exceed 30 days from the public notification of the reason and the date of appointment.

After appointing a Resolution Professional, the IRP convened a meeting of the creditors' committee, which included all financial creditors. All decisions made at the meeting of the committee of creditors must be approved by a majority of financial creditors, which cannot be less than 75%. In person, via video conferencing, or by any other visual or audio means, a quorum meeting of 33 percent of voting rights is required.

The Resolution Professional will provide an information note to help the resolution applicant design a resolution plan. A resolution applicant is someone who submits a resolution plan to the resolution professional, and after the resolution plan is received, the Resolution Professional will propose it to the creditors' committee for approval.

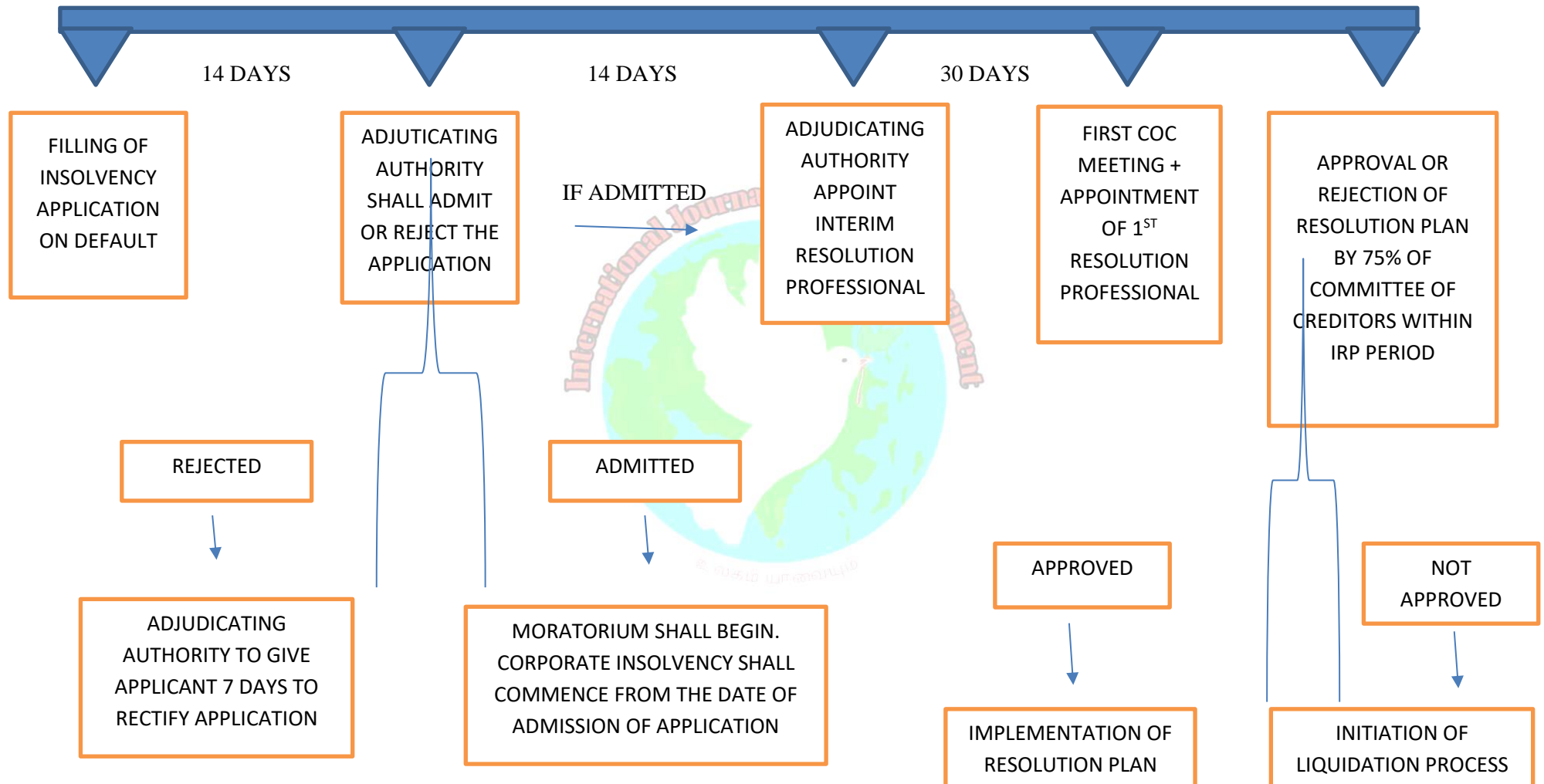
Following the passage of a resolution, the creditors' committee must vote on the restructuring process, which might include a new repayment plan for the firm or the liquidation of the business's assets. The debtor's assets will be liquidated to settle the debt if no decision is made during the resolution procedure.

The resolution plan will be submitted to NCLT for final approval, and if accepted, it will be implemented.



TIMELINE FOR INSOLVENCY RESOLUTION PROCESS [fig 2]

180 + 90 days (maximum a additional time allowed)



AMENDMENT TO THE INSOLVENCY AND BANKRUPTCY CODE-

Despite being nearly new legislation, IBC has experienced several amendments within a short period in a bid to abolish any loopholes and/or ambiguities that may impede the smooth and effective functioning of the Code. The President promulgates **the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021** on fourth April 2021. The Cabinet had approved on 31st March 2021 the proposition to make alterations in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The changes intend to give a proficient alternative insolvency arrangement for corporate people classified as micro, small and medium enterprises (MSMEs) under the Code for guaranteeing speedier, practical, and esteem magnifying results for every one of the stakeholders. Normally, the consolidation of the Pre-Packaged insolvency declaration measure for MSMEs in the Code will lighten the effort marked by MSMEs because of the effect of the pandemic and the different nature of their business, properly perceiving their significance in the economy.

CONCLUSION

The Insolvency and Bankruptcy code, 2016 is a milestone piece of enactment giving a significant facelift to the existing system by making the corporate insolvency resolution process very easy and simple. It has built up a system for time-bound resolution for unpaid debts with the target of improving the ease of doing business in India. The Insolvency and Bankruptcy Code, 2016 is instituted to resuscitate the failing companies.

After the commencement of the Insolvency and Bankruptcy code, 2016, India now has a liquidation and bankruptcy structure that is equivalent to worldwide principles, and keeping in mind that this will go a long route in bringing an element of confidence and consistency to business transactions in the country.

The IBC Code has helped in obtaining the worldwide position of India in the ease of doing business. Interestingly, for the first time, India includes a position within the top 100 in the world. India's ranking on the World Bank's Doing Business Report (DBR) of 190 countries, has improved from

142nd position in 2014 to 63rd position in 2020. This is a result of financial changes like; IBC and GST. Because of this turn of events, we can likewise anticipate development in FDI and GDP in the country. It has additionally given a tremendous push to M&A drive in India. The achievement of the 'Make in India' mission might be conceivable if a spirit is formed in India where the failures of stakeholders and lenders are taken care of and treated carefully on time. The smooth working of a credit market in an economy will guarantee that every one of the partners is altogether adding to the accomplishment of the venturesome development of a country. IBC Code is one such stage toward this path.



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