

AN OVERVIEW OF THE ROLE OF STAKEHOLDERS INVOLVED IN THE INSOLVENCY PROCESS

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ABSTRACT

Insolvency refers to the inability of a person or entity to pay its debts when they become due. When a person or organization cannot pay its debts when they become due, it is referred to as being insolvent¹. The absence of adequate assets to pay off any outstanding debts may necessitate asset liquidation, bankruptcy proceedings, or other drastic measures to get out of financial trouble. Several factors can lead to insolvency, such as mishandled finances, downturns in the economy, or unanticipated costs. In the legal and financial spheres, insolvency has significant implications. Insolvency influences creditors, workers, and other stakeholders associated with the insolvent firm, which can affect the wider economy from a financial standpoint. Job losses, overdue bills, and a decline in investor confidence are common outcomes. Along with upsetting market stability and the supply chain, it emphasizes the importance of prudent risk management and financial preparation. From a legal standpoint, being declared bankrupt starts a sequence of legal procedures overseen by rules and laws that control how fairly the bankrupt party's assets are divided among creditors. A systematic way to resolve financial hardship is provided by the procedure, which guarantees the protection of all parties' rights. Protecting the interests of different stakeholders, including creditors, employees, and investors, and upholding market order are other benefits it provides. This blog aims to provide a thorough overview of the key stakeholders in the bankruptcy process and to clarify their responsibilities. Several entities must work together to properly address financial hardship in the complicated financial and legal context of insolvency. Gaining an insight into the obligations and functions of different stakeholders will help you better manage the complexities of bankruptcy procedures and help ensure fair results. To manage bankruptcy and guarantee a just resolution for all parties concerned, this blog seeks

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¹Alicia Tuovila, 'Insolvencies: Definition, How It Works, and Contributing Factors' (*Investopedia*, 11 April 2024) <<https://www.investopedia.com/terms/i/insolvency.asp>> accessed 5 July 2024

to emphasize the crucial responsibilities that creditors, debtors, insolvency professionals, regulators, and courts perform.

Keywords: Insolvency, Bankruptcy, Debt Repayment, Financial Hardship, Stakeholder Responsibilities, Legal Procedures.

THE DEBTOR

Debtors are people or organizations who are unable to make their scheduled payments on their outstanding obligations. Debtors are vital to the bankruptcy process because they cooperate with the courts and give accurate financial disclosures, which help to either accelerate the reorganization or liquidation of their assets. To find a fair way out of their financial hardship, they must actively interact with creditors and bankruptcy experts. Debtors are characterized by specific roles and responsibilities that are integral to the bankruptcy process under the Insolvency and Bankruptcy Code, 2016 (IBC)². First, to get the resolution professional assigned under the IBC, debtors must give a detailed disclosure of their assets, obligations, income, and spending. To evaluate the severity of the financial crisis and create a workable resolution strategy, this openness is crucial. The insolvency process requires complete cooperation from the debtors, including meeting attendance, supplying required documentation, and following the resolution professional's and adjudicating authority's instructions.

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In addition, debtors must submit a resolution plan³ for restructuring their debts per the IBC, failing which they risk liquidation. To agree on the suggested resolution plan, which may include repayment schedules or other methods to clear outstanding liabilities, they play a crucial role in negotiations with creditors and other stakeholders. Debtors are greatly impacted by insolvency under the IBC in many ways. In terms of money, it represents a failure to pay debts, which results in asset freezes and limitations on company activities. This can seriously impair cash flow, making it difficult to maintain regular business operations and meet commitments to stakeholders such as suppliers, workers, and other parties. Insolvency can damage a debtor's reputation in the business world, which might harm their chances of doing business in the future and their connections with investors.

² The Insolvency and Bankruptcy Code 2016, s 25

³ The Insolvency and Bankruptcy Code 2016, s 29

CREDITORS

Creditors have a significant impact on the resolution or liquidation process during the insolvency process. To understand the bankruptcy environment in India, one must be able to distinguish between different sorts of creditors and the functions that each plays.

Financial Creditors

They are entities that lend money or give credit facilities to the debtor. Usually, banks, financial organizations, and bondholders are among them. In the Committee of Creditors (CoC)⁴, which has considerable decision-making authority over the resolution plan or liquidation procedure, financial creditors play a crucial role. They have the power to influence the overall debt recovery strategy and cast votes on important issues including the adoption of resolution plans. According to Section 7 of the IBC⁵, financial creditors may file for bankruptcy. They also have the right to active participation in CoC meetings and comprehensive financial disclosures from the debtor. Voting on resolution plans and making sure their choices are in the best interests of the group are among their responsibilities.

Operational Creditors

Those who supply the debtor with products and services are known as operational creditors. Vendors, suppliers, and employees fall within this group. Compared to financial creditors, the function of operational creditors is more constrained. Unless their dues are outstanding, they do not take part in the CoC. Nonetheless, they can still have an impact on the insolvency procedure by making claims and expressing disapproval of the resolution strategy. If their payments are not received on time, operational creditors may file for bankruptcy under Section 9 of the IBC⁶. According to the waterfall system⁷, they have the right to present their claims to the resolution professional to be eligible to receive a portion of the revenues upon liquidation. Among their responsibilities are to give truthful information on their claims and to follow the rulings imposed by the CoC.

⁴ The Insolvency and Bankruptcy Code 2016, s 21

⁵ The Insolvency and Bankruptcy Code 2016, s 7

⁶ The Insolvency and Bankruptcy Code, s 9

⁷ The Insolvency and Bankruptcy Code 2016, s 53

Secured Creditors

Secured creditors have a priority claim on the assets of the debtor because they possess collateral against the loan. Because of their secured position, secured creditors have a big advantage in the insolvency process. Their interests are normally given priority during settlement or liquidation, and they have the right to recoup their debts from the sale of secured assets. Section 52 of the IBC⁸ allows them to, in some situations, pursue their security interests outside of the insolvency procedures. In the allocation of the liquidation funds, they also have a claim to a greater priority. One of their responsibilities is to make sure that their security interests are appropriately reported and registered.

Unsecured Creditors

Unsecured creditors' claims are not backed by any collateral. These consist of service providers, trade creditors, and other organizations that have given credit without requiring any collateral. During the insolvency procedure, unsecured creditors have a lower status. When the debtor's assets are liquidated, they usually come in last place to get any money. They are obligated to attend creditor meetings and make claims. Their responsibilities include assisting the resolution professional and providing thorough and correct claims.

INSOLVENCY PROFESSIONALS

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Who Are Insolvency Professionals?

Authorized experts in India, known as insolvency Professionals (IPs), oversee the insolvency resolution process for both individuals and organizations. To ensure a just and orderly resolution of financial distress, they perform a crucial role under the Indian Bankruptcy Code, 2016 (IBC)⁹, assisting creditors and debtors through the difficulties of bankruptcy and ensuring compliance with legal standards.

Role and Function in the Insolvency Process¹⁰

Interim Resolution Professional (IRP) or Resolution Professional (RP)

⁸ The Insolvency and Bankruptcy Code 2016, s 52

⁹ The Insolvency and Bankruptcy Code 2016

¹⁰ CS Swati Agarwal, 'Role of Insolvency Professionals under Indian Insolvency Regime' [2020] PL 2

The insolvency professional serves in this capacity during the Corporate Insolvency Resolution Process (CIRP). In addition to confirming claims and assuming control of the debtor's assets and business, their duties also include assisting in the establishment of a Committee of Creditors (CoC).

Facilitator of Resolution Plans

Insolvency professionals help draft resolution plans and get them ready to submit to the CoC. They assess these plans for viability and IBC compliance before submitting them for approval to turn around the bankrupt firm.

Liquidation

If a resolution plan is rejected, the insolvency professional may assume the function of the Liquidator, overseeing the sale of the debtor's assets and allocating the proceeds to creditors per the IBC's established priority.

Adjudication

Insolvency professionals oversee making sure the insolvency procedure is completed effectively and within the IBC's designated time limitations. They guarantee that each party's rights are upheld and offer vital support throughout court procedures.

CHALLENGES AND RESPONSIBILITIES OF INSOLVENCY PROFESSIONALS

Complexity Of Circumstances

Insolvency professionals frequently deal with intricate situations that include several parties with competing interests, necessitating meticulous mediation, and negotiating abilities.

Compliance And Legal Context

Due to the constantly changing nature of bankruptcy laws, they must successfully negotiate a demanding regulatory environment, making sure that the IBC and other laws are followed in the letter.

Stakeholder Management

Among the many stakeholders are creditors, debtors, and workers. Managing their expectations and interests is a crucial task. Throughout the procedure, they must remain unbiased and open.

Time Management

Strict deadlines are required under the IBC to conclude insolvency proceedings. It is difficult for insolvency professionals to effectively manage and resolve issues under these time restrictions.

Ethical Conduct

Insolvency professionals must adhere to strict ethical guidelines, preventing conflicts of interest and making sure that everyone is treated fairly. Their decisions and actions carry consequences, both financially and legally. They are responsible for them.

REGULATORS AND GOVERNMENT AGENCIES

Regulators and Government Agencies play a crucial role in overseeing and ensuring the proper execution of the insolvency process under the Indian Bankruptcy Code, 2016 (IBC). They provide the legal and regulatory framework within which insolvency professionals, debtors, and creditors operate, ensuring that the insolvency resolution process is fair, transparent, and efficient. Key Regulatory Bodies

Insolvency and Bankruptcy Board of India (IBBI)¹¹

It is India's main regulatory authority for insolvency and bankruptcy. Information utilities, insolvency professionals, and insolvency professional agencies are all subject to its regulations. In addition to ensuring IBC compliance, the IBBI establishes the structure for the settlement process. The rules and guidelines set out by the IBBI influence how insolvency processes are conducted and guarantee that they are done so in a systematic way. It also serves as a body of appeal for complaints and disagreements about the insolvency procedure.

¹¹ Insolvency and Bankruptcy Code 2016, s 196

National Company Law Tribunal (NCLT)¹²

Insolvency procedures involving companies and limited liability partnerships are decided by the NCLT, which serves as the adjudicating authority. It can start the liquidation procedure and accept or reject strategies for resolving insolvency. Since the NCLT settles disputes and guarantees adherence to legislative requirements, its rulings have a significant influence on how insolvency cases turn out.

National Company Law Appellate Tribunal (NCLAT)¹³

The NCLAT is responsible for hearing appeals against NCLT orders. It guarantees that insolvency proceedings are handled fairly and provide a greater degree of inspection. The insolvency process is kept more honest by the NCLAT's appellate review function, which guarantees that the NCLT's rulings are just and compliant with the law.

Reserve Bank of India (RBI)¹⁴

The RBI regulates banks and other financial institutions that are part of insolvency procedures by keeping an eye on their financial stability. It offers recommendations for handling weak assets. The rules set out by the RBI contribute to ensuring the maintenance of financial stability and the efficient management of the banking industry's exposure to insolvent companies.

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Securities and Exchange Board of India (SEBI)¹⁵

SEBI oversees public companies and market intermediaries that are in liquidation. Along with safeguarding investor interests, it makes sure securities rules are followed. Stockholders' and investors' interests are protected throughout the liquidation procedure thanks to SEBI's supervision.

IMPACT ON THE INSOLVENCY PROCESS

Regulatory authorities guarantee that the insolvency procedure is carried out in compliance with the legal guidelines set out by the IBC. They guarantee the protection of all stakeholders' rights, oversee operations, and stop misconduct. They play a crucial role in ensuring the

¹² Companies Act 2013, s 420

¹³ Companies Act 2013, s 421

¹⁴ Banking Regulation Act 1949, s 21

¹⁵ Chirag Joshi, 'What is SEBI? Powers, Roles and Functions of SEBI' (Samco, 1 October 2023)

<<https://www.samco.in/knowledge-center/articles/what-is-sebi/>> accessed 6 July 2024

bankruptcy process remains transparent and efficient, which is necessary to preserve economic stability and market trust.

COURTS & JUDICIAL AUTHORITIES

As per the Indian Bankruptcy Code, 2016 (IBC), courts and judicial authorities hold an essential role in insolvency proceedings. Insolvency resolution plans must be approved, differences must be settled, and the process must be carried out without bias and lawfully.

National Company Law Tribunal (NCLT)

It is the principal arbiter in situations of insolvency involving companies and limited liability partnerships (LLPs). It can accept or reject proposals for insolvency resolution, start the Corporate Insolvency Resolution Process (CIRP), and, if required, impose liquidation¹⁶. In addition, the NCLT guarantees that the procedure complies with the IBC's rules and supervises the behaviour of insolvency experts. The results of insolvency proceedings are directly impacted by the NCLT's rulings. It promotes the restructuring or liquidation of struggling firms and offers a legal forum for debtors and creditors to settle their financial problems. To safeguard the interests of all parties involved and ensure that insolvency procedures are handled effectively, the NCLT's role is essential.

National Company Law Appellate Tribunal (NCLAT)

Decisions taken by the NCLT can be appealed to the NCLAT¹⁷. It offers a way to examine and fix mistakes made during the adjudication process and considers appeals against NCLT rulings. By reassessing the facts and the NCLT's legal interpretations, the NCLAT makes sure that justice is served. As an appellate body, the NCLAT contributes to the fairness and integrity of the insolvency procedure. It offers a greater degree of judicial examination, guaranteeing that the settlement complies with the law and that the interests of all parties are considered.

Supreme Court

Regarding the interpretation of the IBC's provisions, the Supreme Court, which is India's highest court, has the last word. Setting precedents that direct lower courts and tribunals, it

¹⁶ Insolvency and Bankruptcy Code 2016, s 60

¹⁷ Insolvency and Bankruptcy Code 2016, s 61

reviews appeals from the NCLAT and renders final decisions on major insolvency cases¹⁸. A significant influence on India's insolvency structure comes from rulings made by the Supreme Court. Justice, equity, and fairness are maintained in all insolvency procedures, and legal standards are established by its interpretations of the Insolvency and Bankruptcy Code.

OTHER STAKEHOLDERS

According to the Insolvency and Bankruptcy Code, 2016, important parties involved in the insolvency process include employees, shareholders, and suppliers/business partners. Employees are worried about their job security and making their required payments on time. To ensure that unpaid wages and benefits are taken care of during settlement or liquidation, the IBC gives priority to their claims¹⁹. The remaining interest is held by shareholders, whose profits are contingent upon a successful settlement or excess funds remaining after loan repayment. Trade creditors with an interest in recouping unpaid invoices and preserving business operations include suppliers and business partners. Their assertions have a significant impact on the feasibility and approval of the insolvency resolution plan.

CONCLUSION

The important parties engaged in the bankruptcy procedure under the 2016 Indian Bankruptcy Code (IBC) have all been thoroughly covered in this article. In addition to other stakeholders including workers, shareholders, and suppliers, it has highlighted the crucial roles and obligations of debtors, creditors, insolvency professionals, regulators, and judicial authorities. Navigating the complexity of insolvency, guaranteeing a just and efficient resolution process, and maintaining the legal and economic integrity of India's business environment all depend on an understanding of these responsibilities. It is vital to comprehend the respective roles and duties of all stakeholders involved in the bankruptcy process for several reasons. Maintaining trust in the legal and financial systems depends on ensuring that the process is fair, transparent, and efficient. To reach a fair settlement that safeguards the interests of all parties—from suppliers and shareholders to creditors and employees—stakeholder collaboration and involvement are crucial. Understanding these responsibilities also facilitates efficient stakeholder communication and expectation management, both of which are essential for the successful resolution of insolvency cases. Because of its inherent complexity, navigating the

¹⁸ Insolvency and Bankruptcy Code 2016, s 62

¹⁹ Insolvency and Bankruptcy Code 2016, s 53

insolvency process necessitates an advanced understanding of the roles and duties of many parties. To ensure that financial difficulty is addressed properly and efficiently, the Indian Bankruptcy Code of 2016 offers a fair and organized framework for resolving insolvency. The insolvency proceedings may provide results that not only address financial problems but also support the stability and expansion of the overall economy by acknowledging and appreciating the interests and efforts of all parties involved.

