NAVIGATING INSOLVENCY: A LEGAL ANALYSIS OF BANKRUPTCY PROCEEDINGS UNDER THE IBC 2016 IN INDIA

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ABSTRACT

The Insolvency and Bankruptcy Code (IBC) 2016 represents one of the most sweeping reform acts to change the entire commercial law structure for India. This article will analyze the statutory and rule-based frameworks that will define an individual's insolvency and bankruptcy as defined under parts III and IV of IBC; the infrastructure created by the establishment of National Company Law Tribunal, National Company Law Appellate Tribunal, Debt Recovery Tribunal, and Insolvency and Bankruptcy Board of India, the step by step jurisdiction of insolvency tribunal order; and the evolution of corporate bankruptcy law through important decisions of the Supreme Court and High Courts.

INTRODUCTION

Before the introduction of the Insolvency and Bankruptcy Code, 2016, there were numerous laws governing insolvency throughout India (Presidency Towns Insolvency Act, 1909, and Provincial Insolvency Act, 1920). Neither of the two laws provided a complete or efficient solution to restoring the ability of the debtor to repay their debts or to provide a mechanism for creditors to collect from a debtor, due to both laws being based on colonial law. Because there was no single law providing a comprehensive insolvency procedure, creditors and debtors often experienced delays in recovering from bankruptcy, resulting in the inefficient functioning of the credit market and slower economic growth in India.

The Bankruptcy Law Reforms Committee (BLRC) was formed in 2014 by Dr T.K. Viswanathan to report on the reform of India's bankruptcy laws. The Committee's report provided the basis for the Insolvency and Bankruptcy Code (IBC). The IBC aims to unify the various laws that apply to the insolvency of individual businesses and their owners, and also

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provide an efficient way to maximise the value of the debtor's assets for everyone involved in the case, with all the parties having a significant interest in the debtor's success, and preferably by using the least amount of time possible.

Both the parliament and state legislatures have been given authority by the Constitution of India through entry 9 of the Concurrent List in the 7th schedule to create laws regarding bankruptcy and insolvency. Because the IBC is a Central law, it will prevail over conflicting state laws under Article 254.

LEGISLATIVE FRAMEWORK

The IBC is the primary law for insolvency proceedings in India. It consists of 5 parts: Part I (Preliminary), Part II (Corporate Insolvency Resolution and Liquidation), Part III (Individual and Partnership Firm Insolvency Resolution), Part IV (Regulation of Insolvency Professionals, Agencies and Information Utilities), and Part V (Miscellaneous). Personal insolvency, which forms the basis of the present analysis, is governed mainly by Part III (Sections 78-187) of the code.

Additionally, the IBC has several underlying pieces of legislation including The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process For Personal Guarantors to Corporate Debtors) Rules, 2019, 'The Insolvency and Bankruptcy Board of India(Insolvency Resolution Process for Personal Insolvency) Regulations, and The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process Regulations, 2017), all forming part of the overall legislative framework for insolvency law in India.

IBC is not an independent act. The Debt Recovery Board is governed by the Recovery of Debts and Bankruptcy Act of 1993 (RDBA). Secured Creditors can also enforce their security interest through the SARFAESI Act of 2002 without needing to go through the courts. The Supreme Court has clarified that the Limitation Act (1963) applies to IBC proceedings as well. The Indian Contract Act (1872) and the Transfer of Property Act (1882), which govern contracts and property transfers, respectively, also remain relevant in determining rights in insolvency proceedings.

LEGAL PROCESS: STAGE-BY-STAGE ANALYSIS

Filing of the Application (Sections 94 to 100): A person can file for their own bankruptcy (Section 94) or a creditor can serve them with notice of an event of bankruptcy (Section 95). The definition of 'Debtor' in Section 3(8) includes a Personal Guarantor to a Corporate Debtor and a Partnership Firm. Section 95 applications must have a default record from an Information Utility or other evidence of Default.

The Adjudicating Authority is required under section 100 to determine if a Debtor has committed a Default, whether the Application is complete, and if there are no Disciplinary Proceedings against the Proposed Resolution Professional, and decide on whether to admit or reject the Application within 14 days of it being served to the Adjudicator by the Resolution Professional.

Moratorium (Section 101): As provided in Section 101, when a debtor's application is admitted, a moratorium (a total prohibition on continuing or commencing any further legal action against the debtor for debts incurred before the moratorium) comes into force. No legal action shall be commenced by creditors of the debtor or by any person who holds a security interest in the property or assets of the debtor. Also, no property or asset of the debtor may be transferred or disposed of until a proper procedure under the Act has taken place. The moratorium period will last 180 days from the insolvency commencement date and may be extended for an additional 90 days as provided by section 101(3).

Preparation of the Repayment Plan (Section 105): A repayment plan must be constructed with the assistance of the Resolution Professional and the debtor as required by the time requirement set forth by the Board. The repayment plan must include all of the debtor's assets and liabilities, along with how the creditors will distribute the funds from the repayment plan, how long it will take for any funds to be repaid, and any other necessary information that the company requires as part of its repayment plan. All creditors must vote to approve the repayment plan by a majority in the Creditor's Committee pursuant to Section 113 and submit that approval to the Debt Recovery Tribunal (DRT) for approval pursuant to Section 114.

Bankruptcy Order (Sections 126 to 135): If there is a failure in the insolvency resolution process due to an approved repayment plan not being implemented, or from a debtor not implementing a repayment plan, as required under Section 126, the Debtor's estate is vested with a Bankruptcy Trustee appointed in accordance with Section 125, who is responsible for realising the bankrupt's assets, adjudicating Creditor's claims, and distributing the estate in the order of priority contained within Section 178 and ultimately to apply for the bankrupt's discharge under Section 138.

Discharge (Section 138): When someone becomes bankrupt and has been declared so by a court, they can apply to have that bankruptcy status removed after three years have passed since the order was granted to them. Depending on whether an offence has been committed during these three years or not, the DRT will either fully, conditionally or refuse to grant the discharge. If granted a discharge, all of their provable debts are discharged, and the debtor will be able to commence on the path towards their economic rehabilitation as an individual debtor.

In the case of Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321, the Supreme Court confirmed that the Notification under the IBC issued in 2019 on insolvency proceedings against personal guarantors for corporate debtors is constitutionally valid because the simultaneous adjudication by NCLT (of corporate and personal insolvencies) does not violate any provision of the IBC or Part III of the Constitution.

The Supreme Court of India ruled on 29 November 2020, in the case of Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17, upholding the IBC’s constitutional validity as a whole and confirming the classification of financial creditors versus operational creditors as being constitutionally valid and meeting the intelligible differentia test under Article 14 of the Constitution. In addition, the Court reiterated that the IBC was intended to be a legislation designed for resolution rather than recovery.

CONCLUSION

There is no doubt that the Insolvency and Bankruptcy Code (IBC) has dramatically changed the insolvency landscape in India with the introduction of institutional coherence, time-bound resolutions and a creditor-led model around which to encourage lending. However, the personal insolvency system is still at the initial stages as of today; most of the provisions that govern individual debtors have been only partially notified, meaning that the only operational regime under Part III of the IBC is that of personal guarantors.

Legislators intended for economic rehabilitation of the debtor who is honest, but unfortunate, to occur in addition to protecting the rights of creditors, through timely adjudication of disputes with the oversight of the Insolvency and Bankruptcy Board of India (IBBI) and through continued judicial development of the law. As the jurisprudence of the IBC expands and as the provisions of Part III become fully operational, there is potential for the Indian bankruptcy system to provide a model bankruptcy framework for developing countries.