

The Insolvency and Bankruptcy Code, 2016---- A Primer

The insolvency and Bankruptcy Code 2016 was a watershed development in the financial system of India and filled the void in the existing resolution framework of stressed assets in the ecosystem. It consolidated and amended the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Prior to the commencement of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016 or code), the legislative framework in India dealing with the insolvency and restructuring procedures of corporate entities, partnership firms and individuals was very complex and worked across multiple legislations viz. the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), the Recovery of Debts due to Banks and Financial Institutions Act (RDDBFI Act), 1993, etc. The presence of multiple laws, forums and complexities resulted in delays in the timely resolution of the distressed entities and eventually resulting in deterioration of assets and their realizable value. The IBC 2016 laid down a collective mechanism for resolution of insolvencies in the country in a time bound manner and to preserve the economic value of assets of corporate persons, partnership firms and individuals and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders

The difference: The first and main difference in the process of resolution of stressed assets in the new regime is that it has shifted the focus from the 'Debtor in Possession' to a 'Creditor in Possession' regime, wherein the creditors of the Corporate Debtor, through their appointed Interim Resolution Professional/ Resolution Professional (IRP/RP), remain in control of the assets of the Corporate Debtor from the time the application is admitted by the Adjudicating Authority (AA). Further, until there is approval of a resolution plan by the AA, the company is operated as a going concern and controlled by the Resolution Professional. As a logical further step in this process is that the thrust of the exercise will be to find out the economic value of an enterprise unlike the recovery processes earlier where it was focused on realizing salvage value of assets.

To understand the new framework in its basic form. Let us know about its key elements:

1. The Insolvency and Bankruptcy Board of India is at the head of the entire insolvency and bankruptcy ecosystem and is responsible for writing and enforcing rules for the entire processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code
2. Adjudicating Authority”, for the purposes of corporate insolvency is National Company Law Tribunal while for individuals and partnership firms; it will be Debt Recovery Tribunal. Accordingly, Appellate Authorities will be National Company Law Appellate Tribunal (NCLAT) and Debt Recovery Appellate Tribunal (DRAT) respectively. Supreme Court will be the court of last appeal.
3. So far only insolvency process for corporate has been notified and insolvency process for individuals and partnership firms will be notified later on. Corporate includes Limited Liability Partnership (LLP). So at present only Corporate Insolvency Resolution Process (CIRP) is functional.
4. The key players in the resolution process are :
 - a. Corporate Debtor means a corporate person who owes a debt to any person; debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;
 - b. Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder
 - c. Insolvency Professional” means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207
 - d. Insolvency Professional agency” means any person registered with the Board under section 201 as an insolvency professional agency.
 - e. **Information Utility means a person who is registered with the Board as an information** utility under section 210 of the code. Basically this is an entity duly registered for creating and storing financial information in a universally accessible format. The agency will accept electronic submission of financial information from persons who are under obligation to submit the same.
 - f. Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution

professional pursuant to the invitation made. Resolution Plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern

- g. Resolution Professional” means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional.

The process of resolution: The resolution process can be initiated by the financial creditor, operational creditor and even by the corporate itself by filing an application with the Adjudicating Authority (AA) which is NCLT along with the requisite papers and fee. Once AA is satisfied about the claim, it will admit the application and order commencement of resolution process which will be from the date of admission of the application. Once the application is admitted by NCLT, the actual work is handled by Insolvency professional and to begin with interim resolution professional is appointed who will be in complete control of the affairs of the corporate debtor. He will:

a. collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to - (i) business operations for the previous two years; (ii) financial and operational payments for the previous two years; (iii) list of assets and liabilities as on the initiation date; and (iv) such other matters as may be specified;

(b) Receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) Constitute a committee of creditors;

(d) Monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) File information collected with the information utility, if necessary;

f) Take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets

The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors. The committee of creditors (COC) shall comprise all financial creditors of the corporate debtor.

Once COC is formed, it is empowered to take decisions with majority votes of not less than 66%. The COC will take a decision whether to continue with the interim resolution professional as resolution professional or appoint another person as resolution professional. Once a decision is taken the resolution professional will proceed with the task of calling resolution plans from resolution applicants and after approval by COC, the plan will be submitted to Adjudicating Authority (NCLT) for approval.

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed guarantors and other stakeholders involved in the resolution plan.

If the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements, it may, by an order, reject the resolution plan.

If the Adjudicating Authority rejects the resolution plan, it shall pass an order requiring the corporate debtor to be liquidated and issue a public announcement stating that the corporate debtor is in liquidation

This, in effect, is the journey of insolvency resolution of corporate persons. A time limit of 180 days is prescribed for completion of the entire process which can be extended to 330 days. The actual process can be more complex and challenging and the above details are only contours of the process.

The insolvency and Bankruptcy Code and its rules and regulations are still evolving and it continues to be a work in progress. These have undergone large number of amendments and additions over time and the government and IBBI are quite proactive in its efforts to make this law a success in achieving its objectives. Steps like creating Home Buyers as a class under financial creditors category, pre-packaged resolution process for MSME, empowering COCs, monitoring and control of Insolvency professionals are some of the examples. The performance, so far has been a mixed bag with some cases as good successes and some not yielding desired outcomes. But there is no denying that the process is here to stay in the ecosystem