

Insolvency and Bankruptcy code 2016: Its impact on economic growth of Country

SHILPA.L, M.Phil Scholar

Nesamony Memorial Christian College

Manonmaniam Sundaranar University, Tamil Nadu

Abstract

An effective bankruptcy system is an important pillar of the economic growth and development of India. India is an entrepreneurial economy. Insolvency and Bankruptcy Code (IBC) 2016 was implemented through an act of Parliament. It got Presidential consent in May 2016. It was introduced to resolve claims of insolvent companies. It is a one stop solution for resolving insolvencies, which previously was a long process that did not offer an economically feasible arrangement. The main intension behind the code is to maximise the value of assets of persons, promote entrepreneurship, ensure the availability of credit and balancing the interest of stakeholders including the alteration in the order of priority of the payment of government payment. IBC helps to lessen the bad loan problems that were seriously affecting the banking system. It provides for a time limit to resolve insolvency. When a default in reimbursement occurs, then creditors gain control over debtor's proceeds and take decisions to settle insolvency. Under IBC, creditor and debtor both can start 'recovery' proceedings against each other. The study was expressive in nature. In this paper we discuss about the impact of Insolvency and Bankruptcy Code 2016 on economic growth and development of a country.

Keywords : IBC 2016, NATIONAL COMPANY LAW TRIBUNAL, INTERIM IP, BANKRUPTCY

I. Introduction

The **Insolvency and Bankruptcy Code, 2016 (IBC)** is the bankruptcy law of India. It seeks to combine the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code 2016 was introduced in Lok Sabha in December 2015 and passed by Lok Sabha on 5 May 2016 and by Rajya Sabha on 11 May 2016. The Code received the permission of the President of India on 28 May 2016. Certain provisions of this Act have come into force on 5 August and 19 August 2016. The bankruptcy code is a one stop solution for resolving insolvencies that occurs in an economy, which previously was a long process that did not offer an economically expedient arrangement. The aim of the code is to make the process of doing business less complicated and to protect the interests of small investors.

The Insolvency and Bankruptcy Code (IBC) would promote ease of doing business and elevate entrepreneurship. Every business enterprise, big or small has either of two properties failure. In the case of success, the entrepreneurs and all other stakeholders, involving providers of financial capital or creditors enjoy the benefits of success in varying level. However, if the business fails, all the stakeholders have to suffer, more so the owners of financial capital. The system provides an easy exit in the event of failure so that the pain is minimised and the salvage value is optimised and quickly put to better use. The Code exit the journey of failed business was burdensome, messy and long and travelled.

Small and Medium Enterprises (SME) s troubled by emergence of bankruptcy now have a breather! The Insolvency & Bankruptcy Code 2016 (I&B Code 2016) brings a glimmer of hope to the small entrepreneurs who are constantly intimidated by economic failure.

II. Purpose behind the enactment of Insolvency and Bankruptcy Code 2016.

- It ensure smooth legal process for all the bankruptcy and insolvency cases.
- Ensure the development of Entrepreneurship by making available easy credit in the market for several activities.
- Lessen the time taken to find a solution to resolve Insolvency cases.
- Elimination of conflict and confusion of laws by a complicated legal framework.
- Develop the Credit Market

- Protect the creditors and investors confidence.
- Assists entrepreneurship in an economy.
- Increases the credit availability
- Balance the interests of all the stakeholders in accordance with the order of priority of payment of government dues.

III . Impact of Insolvency and Bankruptcy Code to Economic growth of INDIA

The enforcement of I&B Code 2016 offers hope to the distressed SMEs since it provides for the reorganization and revival of the affected business in a time bound way. The code is like a rehabilitation scheme for Small and Medium scale Enterprises. It gives an opportunity to the affected businesses for resolving insolvency . As a philosophy, it's aims was to promote the spirit of economic growth and development of country . The following are some of the importance of code towards :

- **Increases the GDP** - A number of empirical researches have also revealed that the growth of gross GDP is positively associated with an efficient bankruptcy system. The wheels of an economy cannot run without adequate investments. The higher the rate of investment, greater is the GDP growth. It believes that there is a kind of 4:1 relationship between investment and GDP growth; an investment of 40 per cent of GDP can lead to 10 per cent GDP growth Higher the rate of investment ,greater is the growth of GDP of a country .
- **Exploratory increase in FDI** -After the enactment of code the FDI had substantially increased in amount .In 2013-14 the FDI of India was 34298 US\$Million and just after the enactment of the it rose to 61963 US\$ Million in 2017-18 which is growing approximately 80%.The total cumulative FDI into INDIA 2000-2019 are 609,838 US\$ Million.
- **Increases the M&A**- Mergers and Acquisitions activity in the country was exponentially increased and deals of worth \$14.33 billion have been completed in the past two years .IBC have been credited for this flurry in mergers and acquisitions
- **Improved the" Ease of doing business"** - Improved the" ease of doing business".In addition to the introduction and implementation of GST ,which is considered to be the one of the biggest reforms in country ,IBC is next in line. The WORLD BANK had also listed the India among the "top 10 improvers" for the second time in row .India occupies the fifth place, while China is at third.
- **Development of Credit market**- The Code established an Information Utilities, it is a centralized repository of financial and credit information of borrowers .Thus through IUs ,the credit market of India developed and works more effectively.
- **Right to the Operational creditors** - In previous , no law prevented the operational creditors, but under the Code there ia provision that the operational creditors have the right to file suit against default.Thus, the code provides right to domestic as well as international creditors , as it enhances the economic transition of India with other countries .
- **Reduced duration of Liquidation and easy exit** - With the introduction of IBC, it has become easier for companies to make an easy exit (180+90days resolve).This would be beneficial in attracting foreign investors to set their business in India and finally it leads to an increase in Innovation in INDIA
- **Relation with Trade Blocks** -If the economy of a country is strong , relation of country with trade blocks such as SAARC,ASEAN,NAFTA,EU etc ,..will be fruitful .It is because IBC code had fulfilled the above stated criteria ,so that it enhances the relations of INDIA with the trading blocks.
- **Management of NPAs**- IBC code had proved to be a milestone in reducing NPA stress building upon the Indian Banking System.
- **Cross Border Insolvency** – Cross Border issues deals with the Indian firms having claims over default committing global firms or vice versa. IBC has been trying to blend in some of the efforts taken for Cross Border insolvency in the world.

IV. The Insolvency and Bankruptcy Code 2016, and Its Behavioural Outcomes

It helps to measure how the Code is influencing the behaviour of various contributors in the chain of economic growth. According to this, they are to be assembled into six broad categories they are : operational creditors, borrowers, lenders, entrepreneurs, workforce and the economy at a large.

Lenders

Any lender, whether it is an individual or entity looks at the proposition of lending from the three cannons of investment , they are safety, liquidity and return and creates an optimal mix according to its priorities. The lenders' decision is based on the measurement of risks, in accordance with the environment around the borrower. Actually, the risks are assessed in each of the three cannons and the interest rates are priced accordingly. The return of monies / safety lent along with interest is one of the most important criteria.

Operational Creditors

The suppliers of goods and services extend credit to the business enterprises . If any financial distress arises, it also adversely affect the creditors also. The financial distress of enterprises receiving resources which adversely affect the financial health of the enterprises. In fact, there are numerous number of cases, particularly amongst [Small and Medium Enterprises \(SMEs\)](#), which have turn up as a out- turn of non-recovery of receivables. In the absence of the Code, the lenders had no worthwhileness to recourse and had to write off the outstanding in most cases.

The Code provides special provisions for SMEs, which enables them to take an enterprise to NCLT for overdues of one crore rupees and above

Borrowers

The availability of credit encourages borrowing. The borrowings triggers the economy through production or purchase of goods and services, property as also taking the risk for setting up of a businesses. However, the distress adversely affect their future credit, self-image and reputation .An efficient bankruptcy system helps the borrowers to get out of the grip with ease and certainty.

Entrepreneurs

An effective bankruptcy system is an important pillar as it guides the entrepreneurial economy .India is an entrepreneurial economy. The innovations flower is an environment of success, which sway the flow of capital for new ventures, new initiatives and ideas with potential prospects of high returns with minimum risk . However, high returns also challenge high risk taking, sometimes it will lead to losses. An efficient bankruptcy system helps the entrepreneur in case of failure to go through winding up process or the resolution in a predetermined time frame. More entrepreneurs are comes forward to set up their own enterprises with greater confidence in countries where failure is acceptable.

The Hon'ble Prime Minister of India, in his solemnity to promote the faster economic development of India has given a call, 'Stand up India', with a view to promote the rise of millions of new enterprises in our country . In a transubstantiate environment of the day where fusion of multiple life-changing ideas are causing upheavals, the sustainability of success cannot be guessed and speed of failure descends like a funnel ,the efficiency of the bankruptcy system can provide a protective umbrella to entrepreneurship and formulate them to overcome the fear of failure.

Workforce

The code provides for the rejuvenation of the enterprise as its primary option. Resurgence with the change of control and ownership, in particular helps to save most of the jobs and in some cases all the jobs in the enterprises under stress; Binani Cement and Bhushan Steel are some example. Even in those cases where recovery does not become possible, winding up goes through in a predetermined time frame. Thus it spares human resources along with residual physical and financial resources to be gainfully employed elsewhere. The entire process reduces the probability of the misery of the workforce engaged in failed enterprises. If lower the misery, the lesser is the impact on the aggregate demand of the economy and on economic health of employees.

Economy

There are two apparent advantages of an efficient bankruptcy system to the economy of a country. First, it makes the financial market more efficient, especially the debt market. The pricing becomes transparent and fine and its scope enlarges to the trading of even junk bonds. Second, it reduces the friction in the movement of resources.

V. Insolvency and Bankruptcy Code –List Of Procedures to Seek Remedies:

1. The application for Corporate Insolvency Resolution Process (CIRP) to National Company Law Tribunal (NCLT) can be submitted by the Corporate Debtor, operational creditor or the financial creditors depending upon happening of a default.
2. The NCLT have accept or reject the application in 14 days. If it accept the application, it will elevate the name of Interim IP. Then Interim IP prepares a full list of creditors. The IP make the public announcement within three days from the acceptance of application and it invite claims from all creditors as prescribed under Rules.
3. Thereafter, IP will authorised to form a committee of creditors. The committee of creditors may affirm the Interim IP or appoint a new IP.
4. The IP prepares the Information Memorandum which contain all details about the corporate debtor (Company).
5. The Corporate Creditor or Debtor or any other person can submit a Resolution Proposal based on the Information Memorandum. The resolution plan are to be discussed at the meeting of the committee of creditors. The plan provide for the settlement of claims for various creditors. The corporate debtor can confer with various creditors and find an acceptable solution to all creditors.
6. If the plan is endorsed by 75% creditors in the meeting of the committee of creditors, the resolution plan will become effective upon the confirmation by NCLT.
7. The entire process is to be completed in 180 days, plus additional time of 90 days in exceptional cases.
8. If no resolution has been arrived at within stipulated time period or if resolution plan is not accepted by the committee of creditors, the NCLT will order for the liquidation of the company.
9. The order for liquidation provide for the appointment of a liquidator. The CIRP process conducted by a Resolution Professional may be appointed as the liquidator or any other Insolvency professional may also act as liquidator.
10. The Liquidator invites the claims from all creditors through public notification. Creditors like unsecured creditors, lenders, statutory creditors, suppliers of raw materials, employees etc may make their claim in accordance with Rules.
11. The Liquidator will govern the assets of the corporate debtor and distribute the proceeds in the hierarchy as prescribed in Code.
12. The local courts and the Adjudicating Authority for cases under IBC 2016 is NCLT/DRT have no jurisdiction to try the cases. The appeal against the order of NCLT/DRT may be claim in NCLAT/DRAT. Thereafter, an appeal can be made before High Court Court/ Supreme Court.

VI. CONCLUSION

The Government and the legislators are to be credited for bringing out such a thoughtful legislation. It substantially closes the rescue track. It lays down a watertight time frame for resolving the insolvency cases that are referred to NCLT. The lending scene and the business environment is undergoing a horrendous transfiguration, which will result in better utilisation of resources and higher economic growth.

The Code has been only for three years in full play. Whereas, some positive impacts on the behaviour of various actors are visible, the efficiency of court proceedings, adequacy of legal structure, speed and effectiveness of the entire range of intermediary processes are required to be strengthened and the efficiency of enforcement system. In Indian Financial Market, the economic agents are trying to game the system at every stage, as the aggregate game theory looks much deeper and wider. The impact of these are lower

recoveries and increasing costs. In a few cases, seepages of values visible and frustrations are obvious. However, the Government and IBBI are at responsible and agony to take necessary quick policy action to prevent the system from being gamed.

Bankruptcy system is known as the exploring of economics. It reallocate capital to more efficient uses and enables the economy to bloom out inefficient businesses and. In India, unfortunately it have too many valves have been spilling for too long. Rent seekers have been preventing the exploring. Fortunately, the Indian economy is balanced to benefit from a sophisticated, modern and comprehensive exit policy through its desired exercise . Once the strength of the system is ensured, the confidence of domestic and global investors will grow and it substantially increases the flow of funds ,which in turn benefitting the growth of the economy.

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