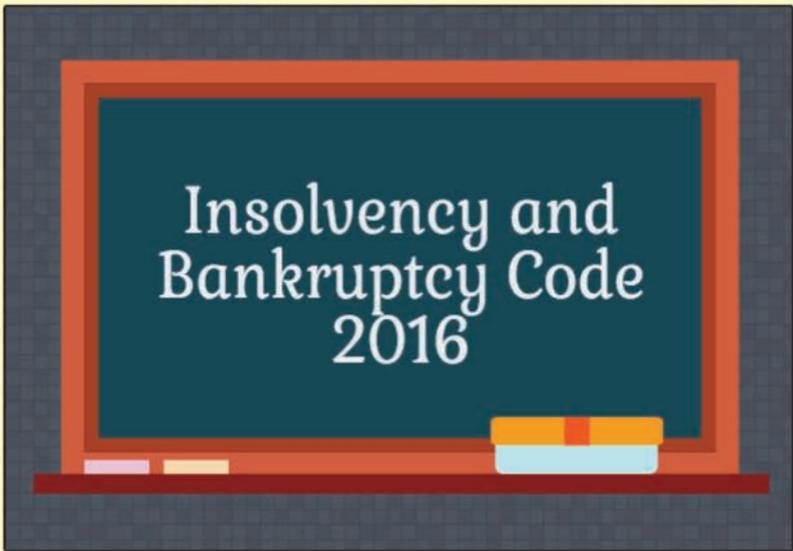


STUDENTS' ECONOMIC FORUM

A monthly publication from South Indian Bank

*To kindle interest in economic affairs...
To empower the student community...*

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Student's corner
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April 2017

Theme 305

**INSOLVENCY AND BANKRUPTCY CODE, 2016 – PART I
(INSOLVENCY RESOLUTION PROCESS FOR
INDIVIDUALS / UNLIMITED PARTNERSHIPS)**

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**Theme No: 305: Insolvency and Bankruptcy Code, 2016 – Part I
(Insolvency Resolution Process for Individuals / Unlimited Partnerships)**

A well informed customer will make the policy makers as well as organizations which produce goods and services more responsive to the customer needs. This will also result in healthy competition among organizations and improve the quality of goods and services produced.

The “SIB Students’ Economic forum” is designed to kindle interest in the minds of younger generation. We highlight one theme in every monthly meeting of the “Forum”. This month, we will discuss “Insolvency and Bankruptcy Code, 2016 – Part I (Insolvency Resolution Process for Individuals / Unlimited Partnerships)”.

In India, the legal and institutional machinery for dealing with debt default has not been in line with global standards. The recovery action by creditors, either through the Contract Act or through special laws such as The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not had desired outcomes. Similarly, action through The Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of The Companies Act, 1956 have neither been able to aid recovery for lenders nor aid restructuring of firms. Laws dealing with individual insolvency, The Presidential Towns insolvency Act, 1909 and The Provincial Insolvency Act. 1920, are almost a century old. This has hampered the confidence of the lenders. When lenders are not confident, debt access for borrowers is diminished.

Recognising that reforms in the bankruptcy and insolvency regime are critical for improving the business environment and alleviating distressed credit markets, the Government introduced The Insolvency and Bankruptcy Code Bill in November 2015, drafted by a specially constituted ‘Bankruptcy Law Reforms Committee’ (BLRC) under the Ministry of Finance. After public consultation process and recommendations from joint committee of Parliament, both houses of Parliament passed The Insolvency and Bankruptcy Code, 2016.

The provisions of this Act apply to:

- a) Companies incorporated under The Companies Act 2013 or under any previous company law.
- b) Any other company governed by any special Act.
- c) Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008.

- d) Body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification.
- e) Partnership firms and Individuals.

1. What is the objective of “Insolvency and Bankruptcy Code, 2016?”

The objective of the new law is to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of asset value of such persons and matters connected therewith or incidental thereto.

The law aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislations, into a single legislation. Such consolidation will provide for a greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

2. What are the salient features of “Insolvency and Bankruptcy Code, 2016?”

- a) Clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- b) Two distinct processes for resolution of individuals, namely- “Fresh Start” and “Insolvency Resolution”.
- c) Debt Recovery Tribunal and National Company Law Tribunal to act as Adjudicating Authority and deal with the cases related to insolvency, liquidation and bankruptcy process with respect to individuals and unlimited partnership firms and with respect to companies and limited liability entities respectively.
- d) Establishment of an Insolvency and Bankruptcy Board of India to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities.
- e) Insolvency professionals would handle the commercial aspects of insolvency resolution process. Insolvency professional agencies will develop professional standards, code of ethics and be first level regulator for insolvency professionals leading to development of a competitive industry for the same.
- f) Information utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.
- g) Enabling provisions to deal with cross border insolvency

3. Briefly explain the institutional framework of Insolvency and Bankruptcy Code.

The Insolvency and Bankruptcy Code is based on four pillars of institutional infrastructure.

- a) The First pillar of institutional infrastructure is a class of regulated persons, the “Insolvency Professionals”. Insolvency professionals as intermediaries would play a key role in the efficient working of the bankruptcy process. The Code contemplates insolvency professionals as a class of regulated but private professionals having

minimum standards of professional and ethical conduct.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business during the moratorium period and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by "Insolvency Professional Agencies".

- b) The Second pillar of institutional infrastructure is a new industry of "Information Utilities". A notable feature of the information utilities is to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases. The creditors are required to provide financial information of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency and this would eliminate delays and disputes about facts when default does take place.
- c) The Third pillar of institutional infrastructure is in adjudication. DRT (Debt Recovery Tribunal) will be the forum where individual insolvencies will be heard. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal (DRAT). The NCLT (National Company Law Tribunal) will be the forum where corporate insolvency will be heard. Appeals from the orders of NCLT lie to the NCLAT (National Company Law Appellate Tribunal)

NCLAT shall be the appellate authority to hear appeals arising out of the orders passed by the Regulators with respect to insolvency professionals or information utilities.

These institutions, along with their Appellate bodies, viz., NCLAT (National Company Law Appellate Tribunal) and DRATs (Debt Recovery Appellate Tribunal) will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.

- d) The Fourth pillar of institutional infrastructure is a regulator viz., "The Insolvency and Bankruptcy Board of India". Its role includes: (i) overseeing the functioning of insolvency intermediaries i.e., insolvency professionals, insolvency professional agencies and information utilities; and (ii) regulating the insolvency process.

4. Insolvency Resolution Process for Individuals/Unlimited Partnerships

For individuals and unlimited partnerships, the Code applies in all cases where the minimum default amount is Rs1000 and above. The Code envisages following distinct processes in case of insolvencies:

- i) In the Fresh Start process, indigent individuals with income and assets lesser than specified thresholds (annual gross income does not exceed Rs 60,000 and aggregate value of assets does not exceed Rs 20,000) shall be eligible to apply for a discharge

from their 'qualifying debts'. The resolution professional will investigate and prepare a final list of all qualifying debts within 180 days from the date of application. On the expiry of this period, the Adjudicating Authority will pass an order on discharging of the debtor from the qualifying debts and accord an opportunity to the debtor to start afresh, financially.

- ii) The insolvency resolution process consists of preparation of a repayment plan by the debtor, for approval of creditors. If approved, the DRT passes an order binding the debtor and creditors to the repayment plan. If the plan is rejected or fails, the debtor or creditors may apply for a bankruptcy order.
 - a) A debtor (majority of partners if applying for a firm), creditor (himself or jointly with other creditors), individually or through resolution professional may apply to DRT.
 - b) DRT shall appoint resolution professional.
 - c) The resolution professional shall examine insolvency application and submit his report to DRT with his recommendation to admit or reject it.
 - d) DRT shall within 14 days admit or reject the application. Upon admission, DRT may on the request of resolution professional, issue directions for conducting negotiations between debtor and creditors for arriving at a repayment plan.
 - e) DRT shall issue public notice inviting claims from all creditors within 21 days of such notice. Creditors shall register claims with resolution professional
 - f) The debtor shall prepare a repayment plan containing a proposal to the creditors for restructuring his debts. The resolution professional shall submit the repayment plan along with his report on the resolution plan to DRT within 21 days of last day of submission of claims.
 - g) The resolution professional shall summon a meeting of creditors to approve, modify or reject the repayment plan by a majority of more than 75% votes. Debtor's consent to every modification shall be taken.
 - h) Secured creditor is entitled to participate and vote in creditor's meeting if he forfeits right to enforce the security. If the secured creditor does not forfeit his right to enforce security, then his right to vote is only in respect of the unsecured part of his debt. Secured and unsecured parts of the debt are treated as separate debts.
 - i) The resolution professional prepares a report of the meeting and submits to DRT. DRT may approve or reject the repayment plan on the basis of the report. Approved repayment plan shall be binding on creditors and debtor. If the DRT rejects the repayment plan, then bankruptcy proceeding can be initiated.
- iii) The bankruptcy of an individual can be initiated only after the failure of the resolution process. The bankruptcy trustee is responsible for administration of the estate of the bankrupt and for distribution of the proceeds on the basis of priority.





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