IBC: Game Changer of Indian Economy

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Introduction

Every Law framed / implemented by the Government has some or the other impact on the economy of the Country. There were various Laws implemented in India for recovery of debts, securitisation of assets, etc the said laws were amended or changed from time to time considering the changes of the market / economic trends in the country. Thereafter, considering all these laws, Insolvency and Bankruptcy Code (hereinafter referred as IBC) came into picture. It was a big relief to the Banks and Financial Institutions because of IBC they got a security while lending the funds to Corporate considering the fact that if their funds get defaulted IBC is there to get the same recovered. Banks and Financial Institution plays a pivotal role in Indian Economy and if the Banking industry is stable ultimately it can be said that the Economy of the country is stable to some extent. The IBC was introduced in 2016 to resolve claims involving insolvent companies so as to tackle the bad loan problems that were affecting the banking system. IBC can be termed as an important reform in a string of such measures introduced by the Government of India which have acted as a pillar in acceleration of the Indian economy.

IBC has played a major role while improving the process of resolving insolvency cases in India. India has been ranked 111 in 2017 and 47 in 2021 in regard to 'Ease of Resolving Insolvency' as per the Global Innovation Index, 2021. Accordingly, IBC has augmented the 'ease of doing business in India' and has turned out to be an effective reform in the financial system of the nation.

OBJECTIVES:

The IBC is a law for insolvency resolution and its foundational objectives are as follows:

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith and incidental thereto.

The first objective of the Code is resolution. The second objective is to maximize the value of assets of the corporate debtor and the third objective is to promote entrepreneurship, availability of credit, and balancing the interests. The order of these objectives is realistic and can be corelated with the need in the economy.

FREEDOM TO EXIT:

The Insolvency and Bankruptcy Code, 2016 (IBC) is the realistic, logical and implementable legislation for insolvency resolution of all entities in India. The provisions relating to insolvency and liquidation of corporate persons came into force on 1 December 2016, while those of insolvency resolution and bankruptcy of personal guarantors to corporate debtors (CDs) came into effect on 1 December 2019.

The IBC provides for a mechanism for distressed businesses to resolve insolvency in an orderly and time-bound manner. The Code absolutely changed the legal regime for corporate distress resolution in India and linked it with a time-bound mechanism. It identified the loopholes and hurdles in existing laws in this regard, the market imperfections and plugs the information asymmetries, enabling the “freedom to exit” for commercial entities (through corporate insolvency resolution regimes) and entrepreneurs.

Exit mechanisms for businesses plays a really important role while promoting productive growth which is directly corelated with economic growth. An effective insolvency regime strengthens the market selection process by disposing of non-viable firms and facilitating the restructuring of viable firms. It increases the scope and speed at which scarce resources consumed by failing firms can be reallocated to more productive uses by other firms.

CONTRIBUTION TO ECONOMY:

IBC is the incomparable solution for mitigating insolvencies. Mitigating insolvencies was a long process that did not offer an economically viable arrangement. The code aims to protect the

interests of all investors and make the process of doing business easier. It addresses the growing need for a comprehensive law that would be effective in resolving the insolvency of debtors, maximizing the value of assets available for creditors and easing the closure of unviable businesses. IBC aims to protect the interests of everyone may it be banks and financial institutions (FIs), secured and unsecured creditors, and employees. Apart from the Secured Creditors which were also covered in the earlier laws, IBC focuses on unsecured Creditors as well and provide justice to them. IBC in a way also promotes unsecured financing as the distribution waterfall of recoveries following liquidation gives unsecured financial creditors (FCs) (apart from all secured creditors) precedence over government dues. Even asset reconstruction companies (ARCs) stand to benefit from speedy recovery, and stakeholders would gain clarity on their share of dues. Ultimately, IBC promotes economy of the country by making the process of lending and recovery much easier than what it was before the code came into force.

IBC:2016 AND AMENDMENTS:

As the code came into force considering the needs of the market. Initial laws were not able to mitigate the market needs with respect to resolving and recovery of debt cases and restructuring of assets, accordingly, IBC came into picture, therefore, it was also needed to amend the IBC from time to time after understanding the changes adopted by the market in the practice.

There were approximately six major amendments in IBC till date out of which five were through Ordinance considering the emergency to improve the resolution framework. Each amendment was made to sync the resolution process with market realities with the priority being revival of companies. The sixth amendment was prioritising the MSMEs of the Country. The said Ordinance was substituted by adoption of IBC (Amendment) Act, 2021 on August 12, 2021. Prior to the said amendment, various cases related to big size companies were resolved however, as far as the small enterprises are concerned, IBC had the limitations to resolve their cases.

With the amended Act, 2021, IBC had the focused agenda of insolvency resolution process of micro, small and medium enterprises (MSMEs). Covid 19 pandemic created multiple challenges for MSMEs, with several of them unable to continue operations. The amended Act, 2021 is a major advancement towards adopting out of court settlements as the way forward for achieving faster resolution and minimum distortion of value of assets. This not just impacts the corporate health of the country but translates into the overall growth prospects. Such major amendments in IBC from time to time played a pivotal role for greater improvements in India's economic position globally.

STATISTICS:

Since the inception of the Insolvency and Bankruptcy in December 2016, 4708 Corporate Insolvency Resolution Plans (CIRPs) have commenced (as on September 30, 2021), of which 65 per cent have been closed. Of these, 23 per cent were closed on appeal or review or settled, 17 per cent were withdrawn, 46 per cent ended in orders for liquidation and 14 per cent culminated in approval of resolution plans.

In case of the 421 CIRPs which ended in resolution, financial creditors (FCs) realised 36 per cent of their claims and 167 per cent of the liquidation value

Corporate Insolvency Resolution Process Status

(Number)

Year / Quarter	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016-17	0	37	1	0	0	0	36
2017-18	36	706	94	0	20	91	537
2018-19	537	1157	153	97	79	306	1059
2019-20	1059	1986	343	216	139	542	1805
2020-21	1805	537	83	157	122	349	1631
Apr-Jun, 2021	1631	141	9	33	45	74	1611
Jul-Sep, 2021	1611	144	18	24	16	57	1640
Total	NA	4708	701	527	421	1419	1640

Note: 1. These CIRPs are in respect of 4593 CDs.

2. This excludes 1 CD which has moved directly from BIFR to resolution.

3. This Includes Dewan Housing Finance Corporation Limited data, the application filed by Reserve Bank was admitted under section 227 read with Financial Service Provider Rules of the Code.

Source: RBI Financial Stability Report, December 2021

Outcome of CIRPs initiated Stakeholder-wise, as on September 30, 2021					
Outcome	Description	CIRPs initiated by			
		Financial Creditor	Operational Creditor	Corporate Debtor	Total
Status of CIRPs	Closure by Appeal/Review/Settled	189	507	5	701
	Closure by Withdrawal u/s 12A	152	368	7	527
	Closure by Approval of Resolution Plan#	241	135	44	420
	Closure by Commencement of Liquidation	628	628	163	1419
	Ongoing	809	759	72	1640
	Total	2019	2397	291	4707
CIRPs yielding Resolution Plans	Realisation by FCs as per cent of Liquidation Value	181.5	115.2	140.8	166.6
	Realisation by FCs as per cent of their Claims	38.5	17.2	25.5	35.9
	Average time taken for Closure of CIRP	499	484	503	495
CIRPs yielding Liquidations	Liquidation Value as per cent of Claims	6.3	8.7	9.7	7.1
	Average time taken for Closure of CIRP	395	364	341	375
Note: # - This excludes Dewan Housing Finance Corporation Limited data, the application filed by Reserve Bank was admitted under section 227 read with FSP rules, of the Code.					

Source: RBI Financial Stability Report, December 2021

IBC: A CATALYST FOR INDIAN ECONOMY:

As a key economic reform, IBC has shifted the balancing ball from the debtor/borrower to the creditor. It has instilled a significantly increased sense of credit discipline to preserve economic value.

The World Bank Group in its report 'Doing Business 2020: Comparing Business Regulation in 190 Economies' included Resolving Insolvency as a major policy reform leading to ease of doing business in India and states as below:

Prime Minister Narendra Modi's “Make in India” campaign focused on attracting foreign investment, boosting the private sector — manufacturing in particular—and enhancing the country's overall competitiveness. The government turned to the Doing Business indicators to show investors India's commitment to reform and to demonstrate tangible progress. In 2015 the government's goal was to join the 50 top economies on the ease of doing business ranking by 2020. The administration's reform efforts targeted all of the areas measured by Doing Business, with a focus on paying taxes, trading across borders, and resolving insolvency. The country has made a substantial leap upward, raising its ease of doing business ranking from 130 in Doing Business 2016 to 63 in Doing Business 2020.

In regard to resolving insolvency, the report goes on to state as below:

India made resolving insolvency easier by promoting reorganization proceedings in practice. India also made resolving insolvency more difficult by not allowing dissenting creditors to receive as much under reorganization as they would receive in liquidation.

This is really a proud to read such words in World Bank Report about India.

CONCLUDING REMARKS:

IBC has been a game changer for the Indian Economy. It has provided everything which is needed to simplify the insolvency resolution process, including ease of exit. Six years into operation, the outcomes under it have been more than encouraging. The primary objective of the Code is rescuing lives of corporate debtors (CDs) in distress. The Code has rescued several Corporate Debtors through resolution plans, out of which many were in deep distress. It is apparent that IBC is perhaps one of the most critical legislations introduced in the preceding decade impacting the 'ease of doing business in India' in a positive manner and has proved to be an effective catalyst in accelerating the Indian economy. Accordingly, IBC is going to have much more expectations going forward that what it had initially considering the constant growth of Indian economy and therefore, alongwith the expectations it will also have to face various challenges in this regard. Given the fact it has settled the system in these six years, it will definitely overcome the challenges in future and help the Indian Economy now and forever.

GOVERNANCE BEYOND COMPLIANCE!!!!

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