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# Corporate Insolvency Laws: A Critical Analysis

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## ABSTRACT

*Insolvency refers to inability of any legal person to discharge all its debts as they become due. In context of the Company's laws, the word "Insolvency" has been used or defined in India as per Section 433(e) of the Companies Act, 1956. Before introducing the Insolvency and Bankruptcy Code 2016, there was no specific single laws in India to deal with the matter of insolvency and bankruptcy. There were multiple overlapping insolvencies and laws like SICA (Sick Industries Companies Act 1985), BIFR (Board for Industrial and Financial Reconstruction Act 1987). The Insolvency And Bankruptcy Board Of India is a Regulatory Authority which regulates the law and registered entities under it and brings Rules and Regulations, amendments, and notifications in the Code. The Code provides for insolvency professionals as intermediaries who would play a key role in the efficient working of the bankruptcy process. One of the features of the Code is the creation of "IU". The IPA is any person registered with the Board under section 201 as an insolvency professional agency. NCLT is the jurisdiction and adjudicating authority for Corporate Insolvency and Liquidation of corporate persons. The Insolvency and Bankruptcy Code 2016, is a vital reform that will make it much easier to do business in India.*

**Keywords:** IBC, IU, Insolvency,

## I. INTRODUCTION

The Indian Economy for the last few decades, has witnessed several economic reforms, of which the enactment of a single unified I&B code, in 2016 can be regarded as a landmark legislature reform paving the way for ease of doing business and facilitating the insolvency resolution process of stressed debtors, individuals and partnership firms with a failed business and stressed the corporate debtors and for firms having stressed assets operating and as far as possible, to give them a chance to re-organize /revive their business.

The introduction of new laws in India is the most important concern. The I & B Code 2016 is the second to none in discussions, excitement and media interest, that it is generated since the time it has been legislated. Its farmers have professed that it would radically alter the debt

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restricting and debt recovery landscape of the country, and bring the framework of insolvency resolution on par with the developed countries. While it may be too early to gauge, whether the Code lives up to its "object and reasons", it was widely felt that the previous framework for I&B in India was inadequate and amended from time to time. The I&B code received assent from the president of India on 28th May 2016, and certain provisions of the act came into force on 5th August, 19th August 2016. The main aim of the code is to protect the interests of small investors and make the process of doing business less cumbersome. The IBC2016 was divided into Sections – 255 and Schedules – 11 and its related rules and regulations. Since the new law in India is still at the nascent stage, it is continuously evolving, and a number of contentious issues have arisen which affected the disposal of applications by Tribunals in the first few months<sup>2</sup>. However, over time, many legal issues have been resolved by the court and the corpus of jurisprudence has substantially developed. Since the enactment of the code, there has been a spate of applications filed before the Authority „Tribunal“ by the financial and operational creditors for resolution of insolvency-related disputes in a time-bound manner. The new code is unique in many ways, as for the first time, it provides a system of "creditors in possession" in place of "debtors in possession"<sup>3</sup>.

## II. INSOLVENCY

Insolvency refers to the inability of any legal person to discharge all its debts as they become due. It is the state of condition of having more debts (Liabilities) than total assets which might be available to pay them even if assets were mortgaged or sold.

Insolvency takes place when certain things happen, some of which are given here under:

- Mismanagement of Cash
- Inflation in Cash expenses, or
- Reduction in Cash flow.

In the context of the Company's laws, the word "Insolvency" has been used or defined in India as per Section 433(e) of the Companies Act, 1956 which deals with a company, which is "unable to pay its debts", and as a result of which constitutes a ground for winding up of the company. Under the Insolvency and Bankruptcy Code, 2016 - Insolvency is the resolution proceeding which can be triggered even against the financially solvent the company which has made the default in payment of its debts, since the same would fall within the ambit of "default" under

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<sup>2</sup> Binoy J. Kattadiyil, *the fastest evolving law in recent times*, 1st edition, (Bharathiar University Research and Development Center), New Delhi, 2019.

<sup>3</sup> The Insolvency and Bankruptcy Code, 2016 (No 31 of 2016), *available at*: [www.ibbi.gov.in](http://www.ibbi.gov.in). (last accessed on 18<sup>th</sup> May, 2021)

the Code.<sup>4</sup> Insolvency is only the state of financial distress, whereas bankruptcy proceedings are legal.<sup>5</sup>

### **III. HISTORICAL BACKGROUND OF CORPORATE INSOLVENCY LAWS IN INDIA**

Before introducing the Insolvency and Bankruptcy Code 2016, there were no specific single laws in India to deal with the matter of insolvency and bankruptcy. There were multiple overlapping insolvencies and laws like SICA (Sick Industries Companies Act 1985), BIFR (Board for Industrial and Financial Reconstruction Act 1987) and adjudicating forums dealing with financial dealings and any failure with the insolvency of corporate or an individual in India. The framework for bankruptcy was inadequate, and ineffective which resulted in undue delays in the resolution.<sup>9</sup> The legal and institutional framework didn't assist lenders in effective and timely recovery or restructuring of defaulted assets which caused undue strain on the Indian credit system. The objective of the IB Code 2016 is to consolidate and amend the laws relating to the re-organization and insolvency resolution of companies (corporate persons), partnership firms and individuals in a time-bound manner. Entrepreneurship but also will improve the ease of doing business, and facilitate more investments leading to higher economic growth and development of the company. The IB Code, 2016 consolidates the existing legal framework by creating a single law forum for I&B. The Code applies to corporate, firms, "LLP", individuals and any other body which the central government may specify.

### **IV. LEGAL FRAMEWORK**

#### **(A) THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**

It is a Regulatory Authority which regulates the law and registered entities under it and brings Rules and Regulations, amendments, and notifications in the Code. The Board will consist of 10 members, including representatives from the Ministry of Corporate Affairs, Finance and Law, and the "RBI".

IBBI would regulate the appointment of insolvency professionals, and information utilities and promote transparency in governance. The board will also make model bye-laws for regulating insolvency professionals.<sup>6</sup>

Its role includes:

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<sup>4</sup> Insolvency law and practice, module 3, *the company secretaries of India*, New Delhi available at: [www.icsi.edu](http://www.icsi.edu) (Last visited on 24<sup>th</sup> May, 2021 at 8.30 pm)

<sup>5</sup> *Id.* at page 14

<sup>6</sup> Willam Millar Collier, *Powers and functions of Insolvency and Bankruptcy code, 2016* available at: <https://ibbi.gov.in/about/powers-functions> (last accessed on 28th May, 2021)

- i. Overseeing the functioning of insolvency intermediaries i.e., insolvency professionals, insolvency professional agencies and information utilities; and
- ii. Regulating the insolvency process.

### **(B) INSOLVENCY RESOLUTION PROFESSIONALS**

The Code provides for insolvency professionals as intermediaries who would play a key role in the efficient working of the bankruptcy process. The Code provides that the insolvency professionals are private having minimum standards of ethical conduct.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.<sup>7</sup>

### **(C) INFORMATION UTILITIES:**

One of the features of the Code is the creation of "IU" to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases. The I&B Code has to require creditors to provide financial information of corporate debtors. All the information would be available to FC, OC, RP, liquidators and other stakeholders in insolvency proceedings.

### **(D) INSOLVENCY PROFESSIONAL AGENCIES (IPAS):**

The IPA's means any person registered with the Board under section 201 as an insolvency professional agency (Existing "ICSIIPA", "ICAIIPA", "ICMAIIPA"). These agencies are required to get registered and obtain a certificate of registration from the Board. The Board shall have regard to the following principles while registering the insolvency professional agencies, namely:<sup>8</sup>

- i. Promote the professional development of and regulation of insolvency professionals.
- ii. Promote good professional and ethical conduct amongst insolvency professionals.
- iii. Protect the interests of debtors, creditors etc.
- iv. The services of competent IPs to cater to the needs of Corporate debtors, all creditors etc.

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<sup>7</sup> Avadhesh Ojha, "Taxmann's Guide to Insolvency and Bankruptcy Code & Law Relating to SARFAESI/Debt Recovery & Winding up - As amended by Insolvency & Bankruptcy Code (Amendment) Ordinance 2019 (9th Edition 2020) available at: <https://www.amazon.in/Taxmanns-Insolvency-Bankruptcy-Relating-SARFAESI/dp/9389546524> (last accessed on 29th May, 2021)

<sup>8</sup> Insolvency Professional Agencies (IPAs) available at: <https://www.ibbi.gov.in/service-provider/professional-agencies> (last visited on 29<sup>th</sup> May, 2021 at 10.45 am)

- v. Promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.

### **(E) ADJUDICATORY AUTHORITIES**

NCLT is the jurisdiction and adjudicating authority for Corporate Insolvency and Liquidation of corporate persons. The appellate authority from NCLT is AT, and DRT is the adjudicating authority for Insolvency and Liquidation of Individuals persons. The appellate authority from “DRT is the DRAT” i.e., “Debt Recovery Appellate Tribunal” and thereafter is the “Supreme Court of India”.

The Insolvency and Bankruptcy Code, 2016 has made drastic changes about winding up of companies and the same changes were made applicable as per the Companies Act also. The Companies Act all along provided for the winding up of companies on the ground of inability to pay debts.<sup>9</sup>

So, the ground for winding up which has been available till now in the Companies Act 2013 has been deleted. It has been tagged with first compulsory resorting to corporate insolvency resolution process before going for liquidation on this ground under the Code. Such a provision shall also apply to LLP i.e., “Limited Liability Partnerships” and other entities incorporated with limited liability under any other law for the time being in force. The Code has also shifted the provisions regarding voluntary winding up of companies from the Companies Act to the IB Code 2016 with modifications, particularly doing away with member’s voluntary winding up and approval of creditors compulsory for voluntary winding up of corporate debtors.

When the Corporate Debtor defaults in making payments to Operational Creditor / Financial Creditor or any other Creditors, then an application can be filed under section 7 or 9 or 10 of IBC, 2016 as the case may be by Financial Creditor / Operational Creditor / Corporate Debtor before the Adjudicating Authority i.e., National Company Law Tribunal.

### **(F) APPOINTMENT OF IRP:**

The Appointment of Interim Resolution Professional is through the Adjudicating Authority (NCLT) or while applying by the Financial Creditor u/s 7 of IBC, 2016, he chooses the Interim Resolution Professional or the Corporate Debtor while filing the application u/s 10 of IBC, 2016 can choose the Interim Resolution Professional and the IRP has to file his consent in Form – 2. In the case of Operational Creditor, the application filed u/s 9 of IBC, 2016 it is optional to

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<sup>9</sup> *Id.* at page 36

choose the IRP or the Adjudicating Authority decides to appoint IRP.<sup>10</sup>

Within three days of the appointment of Interim Resolution Professional by the Adjudicating Authority, IRP has to issue a Public announcement through any two daily newspapers one is in English Language and the second public announcement should be in the vernacular language at the place where the corporate debtor company or where the more creditors transactions happened in that state.

That after the public announcement the Interim Resolution Professional has to collect all the Claims received from different stakeholders within 14 days of public announcement and IRP has to constitute the First Committee of Creditors meeting, send notice of the First COC meeting to the eligible stakeholders through email or post at least 7 days in advance of the date of the meeting mentioning the note of points to discuss in the meeting and date, time and place of the meeting.

After commencing the first COC meeting, IRP should prepare the minutes of the meeting which should be sent to all the Financial Creditors (Submitted Claims) with voting rights along with the corporate debtor.

#### **(G) APPOINTMENT OF RP:**

The appointment of a Resolution Professional is decided through the meeting of the First COC. The decision of the COC as per section 22 of IBC, 2016 to decide the IRP to continue as RP or the COC can also change the IRP and place a new RP to continue his duties as a Resolution Professional. Once the appointment is confirmed as a Resolution Professional, the primary duty of the RP is to appoint two Registered Valuers for the valuation of Land & Building, Plant & Machinery and Assets & Stock.

Apart from this, the RP has to prepare the Information Memorandum based on the Corporate Debtor's financial information, Assets Liabilities, Existing list of directors and shareholders, List of Banks maintained, Liabilities with Banks & Others, any court litigations filed by the company and filed against on the company etc., The Main object of appointing the Resolution Professional is to resolve the issues by inviting the Resolution plans from the resolution applicants to take over the company by changing the management.<sup>11</sup>

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<sup>10</sup> A Handbook on *Interim Resolution Professional*, published by ICSI-IIP in November 2019 edition available at: <https://icsiip.in/On-Line-Shop/Details/catid/30/eid/2198/interim-resolution-professional-a-handbook- updated-upto-november-2019> last visited on 27th may, 2021

<sup>11</sup> *Id.* at page 38

**(H) APPOINTMENT OF REGISTERED VALUERS:**

The Resolution Professional's main duty is to appoint the Registered Valuer for the valuation of assets, Plant and Machinery, Land and Buildings within 7 days from the appointment as a resolution Professional, and he has to fix the remuneration of the registered valuer and should approve through the COC. Once received the Valuation of Assets, Plant and Machinery, Land and Buildings, the liquidation value and market value and force-able value should be submitted to the COC the report should not be more than 6 months.

**(I) INFORMATION MEMORANDUM:**

That the Information Memorandum should be prepared by the Resolution Professional and presented the same before the Committee of creditors and if necessary issued the same to the Resolution applicants, most of the cases Information Memorandum contains:

- Corporate Debtors Incorporation details
- Corporate Debtors Directors Personal Profile
- Three Years Financial Statements of Corporate Debtor
- Bank account details
- Existing Assets and Liabilities of Corporate Debtor
- Existing Disputes by the C.D and with others.
- Any other information related to the Corporate Debtor which is useful to the stakeholders.

**(J) RESOLUTION PLAN:**

That the resolution Professional has to issue a public announcement in any two daily newspapers for inviting the resolution applicants for taking over the business and keep the corporate debtor into an ongoing concern. The invited resolution applicants will be presented before the Committee of Creditors to finalize the resolution Plan the successful resolution Plan will be approved before the Adjudicating Authority.<sup>12</sup>

Section 31 of IBC, 2016 which provides for the review of the resolution plan approved by the committee of creditors by the Adjudicating Authority. As per Section 31(1) of IBC, 2016 if the AA is satisfied that the resolution plan which is approved by COC u/s 30(4) which meets the requirements as per Section 30(2), then it shall by order approve the resolution plan.

The approved resolution plan will be binding on the corporate debtor and its stakeholders like

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<sup>12</sup> Mr. Virag Gupta "The Insolvency and Bankruptcy Code, 2016" Commercial Law publishers available at: <https://www.amazon.in/Insolvency-Bankruptcy-Code-2016/dp/9387983137> (last accessed on 27th may, 2021)

employees, members, creditors, guarantors and others who are involved in the resolution plan. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 added a new proviso to section 31(1) which provided that the AA before passing an order for approval of resolution plan under section 31(1), shall satisfy that the resolution plan has provisions for its effective implementation.

#### **(K) ORDER LIQUIDATION:**

In case the received resolution plans from the resolution applicants by the Resolution Professional has not been finalized or he finalized and presented before the COC, and Committee of Creditors not approved any one of the plans, or CoC approved Plan has been presented before the adjudicating authority. The adjudicating authority rejects the plan and passes an order for Liquidation.<sup>13</sup>

Rejection of plan – Where the Tribunal is satisfied that the submitted plan does not conform to the requirements referred to in subsection (1) of section 31, it may, by an order, rejects the plan. [Under Section 31(2) of the Act].

#### **(L) CIRP:**

In traditional company law, a company never dies or ceases to exist unless and until the task for which it was formed has been completed or it is specifically wound up through the procedures. Shareholders and Directors of a company may keep on changing from time to time but that in any way does not affect the life of the company. A Company has no mind it cannot act on its own; the company is always acting for its stakeholders or stockholders, having a unique objective and functions with a different set of rights and interests depending on the various level of engagement with Company or its entities. As a consequence, one stakeholder's interest may conflict with another stakeholder's interest and they may work at cross purposes or even against the interest of the company. Some stakeholders may leave the company at the earliest sign of its distress.

The exit of a major shareholder from the company leaves the company orphan. But in any way, the insolvency of a particular member or shareholder or director does not affect the existence of the company. Several disruptive forces are killing off older companies at a much faster rate and earlier than decades ago, irrespective of company's characteristic of perpetual succession, the common age of companies in recent years has resulted in shortening the lifespan of

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<sup>13</sup> ICSI IIP: *Voluntary Liquidation, Insolvency and Bankruptcy Code 2016* available at: <https://icsiip.com/-Insolvency-and-Bankruptcy-Code-2016-with-rules-and-Regulations-and-Notifications/Download-Detail/1s/2/dr/79/cl/2> (last accessed on 27<sup>th</sup> aMay, 2021)

companies restricting employees, investors and other stakeholders of the company.<sup>14</sup>

A strict regulatory framework regarding post-process following bankruptcy was always needed. Despite being a basic requirement for any well-functioning economy, India was lacking in an efficient and strict bankruptcy system. While committees appointed by the Government of India had recommended several changes to the old regime, those recommendations were never implemented in real-time. It was then after the enactment of the Insolvency and Bankruptcy Code (IB Code) in 2016, this law was hailed as one of India's biggest structural reforms in the economic sphere after the independence and it is for sure that as long as it continues to be implemented properly, the code will have a far-reaching impact on the corporate governance and the availability of credit in India. It has redefined the insolvency resolution framework in India.

#### **A. SCOPE OF CIRP:**

Section 6 of the IB Code 2016 deals with a provisions in respect of persons who can initiate the Corporate Insolvency Resolution Process. This seeks to provide that when a corporate debtor commits a default in paying a debt which has become due and payable but not repaid, then the corporate insolvency resolution process (CIRP) can be initiated in respect of such company's "corporate debtor" by a "financial creditor, an operational creditor or the corporate debtor itself".

This section permits any financial creditor to initiate the corporate insolvency resolution process where the company (corporate debtor) has defaulted in paying the debt. Financial creditors are those creditors to whom financial debt (i.e., a debt where the creditor is compensated for the time value of the money lent) is owed. The Code also permits the company "corporate debtor" itself to initiate the insolvency resolution process once the company has defaulted on any debt. The operational creditors are those creditors to whom a sum of money is owed for the purchase of goods or services. Apart from this, the Central/State Government or local authorities in respect of payments due to them can also be permitted to initiate the corporate insolvency resolution process (CIRP).<sup>15</sup>

Section 7 of Insolvency and Bankruptcy Code, 2016 provides that "the financial creditor either by itself or jointly with other financial creditors can apply for initiating the process against a

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<sup>14</sup> Sweta Gupta, *Insolvency and bankruptcy*, history and objective available at: [www.muds.co.in](http://www.muds.co.in) (Last Visited on May, 24<sup>th</sup> 2021 at 8.40 pm).

<sup>15</sup> Sir Francis Bacon, *IBC A Miscellany of Perspectives, 2019*, (Mayur Bhawan), New Delhi available at: <https://www.ibbi.gov.in/uploads/whatsnew/2020-10-01-210733-43cms-9224c9b668aac0d6149a5d866bfb4c79.pdf> (last accessed on 25<sup>th</sup> May, 2021 at 7.45 pm).

corporate debtor before the Adjudicating Authority (Tribunal) when the default has occurred”. Any financial creditor can make an application in specified form through Form – 1 along with documents and as may be prescribed in the Code. The “Adjudicating Authority “can, within 14 days from the date of receipt of the same, determine the existence of a default from the records of a regulated “IU”.

The default can also be proved in such a manner as may be specified by the “IBBI”. If the Adjudicating Authority is satisfied with the occurrence of default and the filed application is complete in all respects and also when there is no disciplinary proceeding pending against the proposed “IP”, then the Adjudicating authority may, by order, admit such application and appoint the Insolvency Professional as an Interim Resolution Professional.

The Adjudicating Authority may reject the application if the court feels that default has not occurred or if the application is incomplete or if any pending disciplinary proceeding against the proposed resolution professional. If the Adjudicating authority admits the application, it becomes that the “CIRP” has commenced.<sup>16</sup>

When the application of the financial creditor is admitted, the Adjudicating Authority shall communicate the order to the financial creditor and the corporate debtor. But in case the application is rejected, the “Adjudicating Authority” shall send the order to the “FC”, within 7 days of admission of application or rejection application.

Sec. 8 seeks to provide that a creditor (supplier or service provider) may on the occurrence of a default of payment due or an unpaid operational debt by the corporate debtor be able to initiate the process of corporate insolvency resolution in such form and manner as may be prescribed under the IB Code 2016. When default is committed, the operational creditor should deliver a demand notice or a copy of the invoice for due payment of the debt in default to the CD in such form and manner as per the Code.

The corporate debtor shall within 10 days of receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor, the existence of a dispute, if any, regarding the debt claim or of the repayment of unpaid operational debt. Where the corporate debtor claims that the debt has been repaid, then the CD must send an attested certified copy of records that the “OC” has encashed a cheque issued by them.

Section 9 Application by OC may file before the Tribunal and “Adjudicating Authority” for initiating CIRP after the expiry of the period of ten days from the date of delivery of the notice

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<sup>16</sup> *Id.* at page 20

of invoice demanding payment as per section 8(1) of the Code, if the “OC” does not receive the payment within Ten days of a demand notice from the CD or a notice of the dispute under section 8 (2), of this Code has not been received.

Section 10 clarifies the procedure for initiation of “CIRP” by the Corporate Debtor itself on the application made by a corporate applicant. Where the corporate debtor commits a default, an application may be filed by a corporate applicant to the adjudication authority along with the corporate debtor’s books of accounts and such other documents as may be specified in such form and manner as per IB Code 2016, and the name of a person proposed to be appointed as the “IRP” to run the process of “Corporate Insolvency Resolution Process”.<sup>17</sup>

The adjudicating authority shall admit within 14 days from the date of receipt of the application if it’s complete. If the application is not filled or complete, the same may be rejected by the Adjudicating Authority. The adjudicating authority (Tribunal) but before rejecting the application, a notice to the applicant to rectify the defects available in the application with a period of Seven days. The “Corporate Insolvency Resolution Process “will be initiated from the date of commencement of filing of an application before the AA.

## **V. OBJECTIVES OF CIRP:**

The Objective of the Insolvency Law is not to save all companies from failure but to provide an opportunity to the company (corporate debtor) to restore from the problems and issues related to financial and non-financial matters. The Corporate Insolvency laws are not to take up the place of markets choose functions but to give troubled companies to turn their affairs around where it is probable that will generate overall benefits or where this is not probable, to end the life of the company more efficiently, expertly, accountably and fairly.

Corporate insolvency Law has three broad objectives:

- to maximize the return to creditors;
- to establish a fair and equitable system for the ranking of claims and the distribution of assets of the corporate debtor among its creditors, involving a limited redistribution of rights; and
- to provide a mechanism to the company to know the causes of failure, identify the root causes and those guilty of mismanagement brought to book and where appropriate deprive of the right to be involved in the affairs of other company.<sup>14</sup>

The Bankruptcy Law has to satisfy divergent interests of stakeholders which are—To keep up

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<sup>17</sup> *Ibid*

the employment for Managers and employees, maximize the value to shareholders in terms of stock price, to repay dues to creditors etc., Different stakeholders have different powers and they usually bargain with each other in an attempt to agree on how to resolve the company's distress from financial matters. Insolvency needs to find a fine balance between various stakeholders. Most importantly, insolvency needs to prevent coordination problems among various creditors and the relationship between the debtor and all creditors in the continuous business sense, when the debtor is solvent and capable to pay on time and in the ex-post sense when the debtor is already insolvent.

## **VI. CONCLUSION AND SUGGESTIONS**

The Insolvency and Bankruptcy Code 2016, is a vital reform that will make it much easier to do business in India. The IBC will lead to entrepreneurship, availability of credits, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and corporate persons, firms and individuals and for maximization of value of assets of such persons. This Law promises to make it easier to wind up a failing business and facilitate a better and faster debt recovery mechanism in the country.

The IBC, 2016 is a revolutionary step as it proposes to transform the credit market in India, which hitherto was malfunctioning due to various problems and malpractices. The practice of defrauding the creditors and enjoying others' money needs to be curbed because it is ultimately detrimental to society at large. The law will implement through NCLTs and DRTs and their machinery will have to take apart to meet the new challenges. Justice V. R. Krishna Iyer observed: „Law is a practical instrument, a working tool in a work-day world and where, the affected fraction of the community is the common official, the commercial man and ordinary folk, the wiser rule of construction follows commonsense, not casuistry, context, not strictness and not subtle nuance but plain sen.“

There are no second thoughts that an economic analysis aptly reveals the glaring failure of the present bankruptcy law framework in India which has also been agreed upon by various authors and expert committees on the said matter. It is also imperative that a Bankruptcy Code for India is the need of the hour. Therefore, there must be a highly efficient corporate insolvency regime that

- i. separates feasible companies from the unviable ones, and
- ii. Reorganizes the feasible companies with minimum loss of value and in minimum cost and time. A well-designed insolvency system must address the following policy objectives

- iii. the protection of creditor interests by maximizing returns to creditors;
- iv. the promotion of economic growth through efficient reallocation of resources;
- v. the development of credit markets;
- vi. the protection of other stakeholders such as employees and shareholders; and
- vii. Enhancement of investor confidence. India, at this juncture, needs to revamp its policies and bring in a fair amount of transparency and accountability.

Delay needs to be removed and speedy disposal brought in place. Though the delay is a result of many factors like delay tactics by parties, court permissions, confused priority system, moratoriums, hold-out by certain creditors, failure of proper institutional mechanisms etc which needs to be eliminated by a robust legal enforcement.

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