

Insolvency & Bankruptcy Code, 2016 (IBC)

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by

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Agenda

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What is Insolvency & Bankruptcy

- Insolvency is a situation of not being able to pay dues
- Liabilities exceed assets
- Insufficient cash flows
- Asset liability mismatch
- Insolvency could be temporary or permanent
- Permanent insolvency leads to bankruptcy
- Bankruptcy is a legal process of resolving insolvency
- Thus bankruptcy emerges out of insolvency
- Not every insolvency need to result into bankruptcy
- Insolvency resolved in good time saves bankruptcy
- Insolvency not resolved in good time leads to bankruptcy
- IBC gives an opportunity to come out of insolvency
- Insolvency law is always superior to other laws

Position prior to IBC

- Multiple insolvency laws existed in past with multiple fora
- Special laws like SICA, MRUA causing hurdles
- Privilege to Banks and FIs by way of RDDDB, SARFAESI etc
- Long pendency of insolvency matters before courts
- No time bound mechanism
- Governmental machinery for insolvency overburdened
- Non capability of resolution & insolvency persons/ agencies
- Insolvency not useful for timely recovery
- Multiple RBI mechanisms for resolution (CDR, SDR, S4A etc)
- Failure of prior laws & mechanisms- large NPAs
- No mechanism available for non banks/ non FIs
- Economic assets locked up
- No solace- neither to lender nor to borrower

IBC- Overview

- Unified law for corporate and personal insolvency
- Insolvency as recovery tool
- Automatic liquidation if no resolution happens in good time
- Private resolution professional
- Private insolvency professional
- Time bound resolution
- Incentive for time bound resolution
- Govt. dues subordinated to secured debtors for the 1st time
- NCLT/ DRT as specified courts for corporate/ individuals
- NCLT > NCLAT > Supreme Court
- Jurisdiction of other courts taken away

IBC- Deep Down

1	Item	Particulars
2	Minimum default amount	Rs. 1 lac
3	Who can trigger	FC (for default with it or any other FC), OC as also the company itself
4	Trigger to whom	Adjudicating Authority (AA) i.e. National Company Law Tribunal (NCLT)
5	Admission by AA	Within 14 days
6	Effect of admission	Announcement of it by AA
7		Moratorium start to continues till approval/ rejection of CIR Plan by AA
8	Effect of moratorium	No suit shall lie, no alienation of propriety, no DRT/ Sarfaesi action
9	IRP's Role	Gather info on the company and feed it to IU's
10		Raise interim finance if needed. Consent of prior charge holder not needed if cover is 2x and above
11		Form creditors committee (CC)
12	CC's composition	Only FC to member CC. No seat for OC. No seat for related parties
13	CC's decision making	75% of voting share of FC. No say to OC
14		Decide whether to continue IRP as RP or appoint a new RP
15	RP's Role	Act as directed by CC
16		Prepare information memorandum (IM) for CIR
17		Receive resolution plans (Plan) from outsiders viz Resolution Applicants (RA)
18		Place the Plan) before CC and have it passed by 75% voting share.
19		To submit the Plan passed by CC to AA and have it approved by AA
20		To act as Liquidator if liquidation is ordered by AA
21	AA's Role	Pass or reject the Plan
22		Plan approved by AA would bind all like a court decree
23		If no Plan is received or approved within the prescribed time, then order liquidation
24*	Priority Ranking in liquidation	<ol style="list-style-type: none"> 1. Interim finance+ Insolvency resolution/ liquidation cost 2. (A) Secured creditor's dues with security having been relinquished; and (B) Workmen's dues for last 24 months 3. Wages/ Dues to non- workmen for 12 months. 4. Unsecured FC dues 5. (A) Government dues; and (B) Balance secured creditors' after having done security enforcement 6. Any other dues 7. Preference shareholders 8. Equity shareholders
25	Time line for completion of CIR	Normal= 180+ 90 days, Fast Track= 90+ 45 days
26	Secured FC's choice	<p>2 or 5 (under 24* above)</p> <p>-Security enforcement is time consuming. Thus, unless security is substantial and easily enforceable it is better to go for 2 under 24* above.</p> <p>-It would be good strategy to be a secured creditor with small security, relinquish it and yet get priority (see 2 under 24* above) ahead of governmental dues and unsecured creditors!</p>

Corporate Insolvency- Ecosystem Progress

- IBBI established, well capacitated, functional and proactive
- NCLTs established pan India- currently at 11 locations
- NCLAT established in Delhi
- Information Utility established and functional
- Insolvency Professionals emerging
- Insolvency Lawyers emerging
- Insolvency Valuers emerging
- Insolvency Professional Insurance emerging
- Interim Finance emerging

Corporate Insolvency- Legal & Regulatory progress

- Various rules and regulations made to operationalize IBC21
- IBC Amendment, 2018
- IBC Ordinance, 2018
- Precedents
- RBI has abolished CDR, SDR, S4A etc
- RBI has revised provisioning & IRAC norms
- RBI has ordered IBC action in certain cases
- RBI has prescribed norms for auto IBC trigger
- SEBI has granted reliefs- Takeover Code/ Delisting
- IT has granted MAT relief
- CCI relief anticipated

IBC Insolvency- Effects, Challenges and benefits

- End of evergreening and camouflaging
- NPA as in past (on 180 days past due) loses significance
- Privilege (to banks) by way of RDDB, SARFAESI diluted
- Income loss upon insolvency admitted under IBC
- Higher provisioning upon insolvency admitted under IBC
- Possibility of higher sacrifice/ hair cut in case of SME
- Fear of CVC/ criminal action on sacrifice/ hair cut
- Early resolution/ Freeing of economic value
- Positive change in borrower behavior
- Honourable and early exit for bonafide defaulters

Insolvency under IBC- Actionables

- Review credit policies, monitoring procedures
- Prefer independent small security instead of joint
- Start recovery action early i.e. on 1st default or even before (as SMA- 0 stage)
- Explore early settlement before insolvency gets admitted
- Start data deposit with Information Utility
- Build opinion to save undue CVC/ criminal actions
- Consider insolvency as preferred tool for recovery
- Establish panels of IPs, Valuers, Insolvency lawyers
- Keep abreast with developments

Insolvency under IBC- Opportunities for banks

- IP Accounts- liabilities business
- Interim finance as lending product
- Investment banking opportunity

Personal Insolvency- Progress

- Part- III of the Code (dealing with insolvency of individuals/ partnership) yet to be notified
- Jurisdiction conferred to DRT
- DRT being freed, with the advent of ISB, of recovery applications under RDB Act & appeals under SARFAESI Act and Ombudsman for NBFCs
- DRTs needed more in number with far better infrastructure

Question & Answers



Thank You

For further queries, please email on:
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