

# Resolution Measures Under IBC, 2016: A Critical Study

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## **Abstract:**

The Insolvency and Bankruptcy Code (IBC) 2016 is an important Indian law that has greatly transformed the management of insolvencies by providing a comprehensive framework for resolving problematic assets. This brief provides a comprehensive explanation of the complex procedures and rules incorporated into the IBC for managing debtors. The main goal of the IBC is to promote early resolution of insolvency, which will increase the value of troubled assets and provide a favorable environment for firm growth. This objective focuses on the various settlement procedures that are required under the IBC. These encompass a variety of methods for managing financial affairs.

## **CHAPTER I**

### **1.1 INTRODUCTION**

The establishment of a strong credit flow and the generation of new capital is of utmost importance in a developing country such as India, where enterprises that experience insolvency or financial distress begin to default on their loan obligations.<sup>1</sup> To mitigate the risk of credit becoming entrapped within the system or transforming into non-performing loans, it is imperative for banks or creditors to promptly recover a substantial amount of funds from the defaulting party. If the company remains financially feasible, it may be afforded the chance to commence anew with fresh proprietors, or its assets may be expeditiously converted into cash. By employing this approach, additional credit can be incorporated into the system, so mitigating the decline in asset value. During the period of increasing non-performing assets and debt defaults in India in 2016, it was observed that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), Lok Adalats, and Debt Recovery Tribunals, which were relatively outdated loan recovery mechanisms, exhibited suboptimal performance.<sup>2</sup> The Insolvency and Bankruptcy Code (IBC) was implemented to tackle these problems by restructuring the business distress resolution system in the country. It consolidated existing legislation into a time-limited procedure that prioritized creditor-in-control rather than debtor-in-possession. The bankruptcy code offers a comprehensive solution for managing bankruptcies, addressing the formerly protracted process that lacked a viable resolution. The primary objective of the rule is to streamline business transactions and protect the welfare of individual investors. The IBC consists of 11 Schedules and 255 parts. The Insolvency and

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<sup>1</sup> [www.ETBFSI.com](http://www.ETBFSI.com), WHAT IS INSOLVENCY AND BANKRUPTCY CODE (IBC) 2016? - ET BFSI ETBFSI.COM (2020) <https://bfsi.economicstimes.indiatimes.com/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436> (last visited Mar 8, 2024).

<sup>2</sup> Insolvency and bankruptcy code: An overview, LAKSHMIKUMARAN & SRIDHARAN: TOP LAW FIRM IN INDIA, <https://www.lakshmisri.com/insights/thought-leadership/insolvency-and-bankruptcy-code-an-overview/#> (last visited Mar 10, 2024).

Bankruptcy Code (IBC) provides for two potential outcomes in the event of insolvency: resolution or liquidation. If resolution efforts prove to be ineffective, the assets of the corporation are subject to liquidation. The resolution endeavours encompass either the restructuring of the enterprise or the formulation of a novel ownership strategy. The establishment of the Insolvency and Bankruptcy Board of India aimed to optimize the worth of company assets. The objectives of the Insolvency and Bankruptcy Code (IBC) of 2016 encompass several key aspects.<sup>3</sup> These include the consolidation and amendment of existing insolvency laws in India, the facilitation of streamlined and expedited Insolvency and Bankruptcy Proceedings in the country, the protection of the interests of creditors and stakeholders in a company, the prompt revival of businesses, the promotion of entrepreneurship, the acquisition of necessary relief for creditors, and the subsequent enhancement of credit supply within the economy.

### 1.2 AIM AND OBJECTIVES

This research aims to study the efficacy of the resolution process under IBC, 2016 in maximising the value of distressed assets, the impact of the process on the revival of insolvent firms and the preservation of employment along with analysing the challenges faced by financial creditors in the resolution process under IBC, 2016.

### 1.3 RESEARCH QUESTIONS

- How Efficacious is the resolution processes under IBC, 2016, in maximizing the value of distressed assets?
- How does the resolution mechanism under IBC, 2016, impact the revival of insolvent firms and the preservation of employment?
- What are the challenges faced by financial creditors in the resolution process under IBC, 2016?

### 1.4 RESEARCH METHODOLOGY

The doctrinal method of research (also called library or black letter methodology) has been used for this project, which is analytical in approach. This research work is purely based on secondary data which is collected by reading various articles available on the internet, the researcher has delved into some blogs and research papers on a similar topic to understand the concepts involved.

### 1.5 HYPOTHESIS

A hypothesis on resolution measures under the IBC could state that these measures significantly reduce the resolution time and improve recovery rates for creditors. By consolidating and amending laws related to reorganization and insolvency resolution, the IBC provides a timely and efficient process, potentially enhancing the ease of doing business and encouraging the confidence of investors. A hypothesis can also suggest that the implementation of the IBC positively impacts the overall economic health by ensuring quicker reallocation of resources to productive businesses.

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<sup>3</sup> [www.ETBFSI.com](http://www.ETBFSI.com), WHAT IS INSOLVENCY AND BANKRUPTCY CODE (IBC) 2016? - ET BFSI ETBFSI.COM (2020), <https://bfsi.economicstimes.indiatimes.com/news/banking/what-is-insolvency-and-bankruptcy-code-ibc-2016/74235436> (last visited Mar 8, 2024).

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## CHAPTER II

### 2.1 EFFICACY OF THE RESOLUTION PROCESSES UNDER IBC, 2016, IN MAXIMIZING THE VALUE OF DISTRESSED ASSETS-

The handling of stressed assets has undergone a significant change with the introduction of the IBC, 2016. The primary goal of this rigorous, time-bound approach to managing distressed assets is to maximize asset value for all stakeholders involved. It is clear that IBC, 2016 has the following effects on the resolution of stressed assets<sup>4</sup>:

1. **Time-bound resolution:** The implementation of a deadline-driven resolution mechanism is a significant result of the IBC of 2016. A 90-day extension is allowed for completion of the corporate insolvency resolution procedure (CIRP) within the rigorous 180-day timeline stipulated by the Code. This improvement has led to a decrease in the total amount of time needed for debt collection and has given the settlement procedure a greater feeling of urgency and accountability.
2. **Streamlined process:** As a singular entity established by the Insolvency and Bankruptcy Code (IBC), the National Company Law Tribunal (NCLT) renders decisions on all matters concerning insolvency and bankruptcy. The settlement process now involves a reduced number of courts and tribunals due to the enhanced efficacy of the procedure. The NCLT possesses enhanced capabilities to oversee the resolution process and appoint insolvency specialists, which enables it to more effectively administer distressed assets.
3. **Protection of creditors-** Creditors are shielded from taking further legal action against a corporate debtor throughout the bankruptcy process under the Insolvency and Bankruptcy Code (IBC). Because of this strong legal framework that guarantees the recovery of cash in the event of borrower default, lenders are more likely to grant loans.
4. **Promotes resolution over liquidation-** The IBC, 2016, prioritizes resolution over liquidation, protecting viable businesses from closing. The Code's main objective is to make it easier for several

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<sup>4</sup> Indian Brant Equity foundation, "INSOLVENCY AND BANKRUPTCY CODE, 2016" May edition

stakeholders to work together to find a resolution plan that maximizes asset value and benefits everyone.

5. **Inclusion of homebuyers-** Homebuyers who were formerly regarded as unsecured creditors now have protection if real estate firms file for bankruptcy thanks to the Insolvency and Bankruptcy Code (IBC) of 2016. As they are now acknowledged as creditors and have the chance to participate in the settlement process, their rights are protected.
6. **Minimising impact on the financial system-** Early settlement of stressed assets has a direct bearing on the overall health of the financial system. Because distressed assets require drawn-out and sometimes vague resolution procedures, non-performing assets (NPAs) accumulate on the bank and other lender financial statements. As a result, this would affect the flow of credit and slow down the rate of economic growth. The IBC's time-bound strategy has significantly reduced the length of time needed to resolve stressed assets, which has lessened its impact on the financial system. It is also important to remember that the Insolvency and Bankruptcy Code (IBC) establishes a moratorium period, which essentially prohibits creditors from launching recovery actions against an insolvent business during the insolvency procedure. The rational and effective implementation of the resolution process aids in the preservation of the company's asset worth. This is beneficial to the financial system since investor and credit confidence is required for the financial markets to function smoothly.

## 2.2 REVIVAL OF INSOLVENT FIRMS AND PRESERVATION OF EMPLOYMENT-

To handle the insolvency of commercial firms, the Indian government developed the Corporate Insolvency Resolution Process (CIRP) as part of the Insolvency and Bankruptcy Code, 2016 (IBC).<sup>5</sup> Sections 7 to 32 of the Insolvency and Bankruptcy Code of 2016 regulate the Corporate Insolvency Resolution Process. A financial creditor may start the corporate bankruptcy resolution procedure under Section 7 of the Bankruptcy and Bankruptcy Code, 2016, but an operational creditor may start the process under Section 9.

Sections 12 to 32 of the Insolvency and Bankruptcy Code, 2016 outline the steps that make up the Corporate Insolvency Resolution Process at the outset. The timeline for this approach is designed to expedite the settlement of insolvency using liquidation or business revitalization. The IBC gives successful businesses' rebirth a higher priority than their closure. The principal aim of the corporate insolvency resolution procedure (CIRP) is to attain a harmonious balance between the concerns of creditors and stakeholders. Under the watchful eye of the creditors' committee, a resolution specialist takes over as the company's manager. As per the guidelines found in the Insolvency and Bankruptcy Code (IBC), parties who are looking for resolution are recommended to create a thorough plan for the corporate debtor, get committee approval, and then submit the plan to the Ld. Adjudicating Authority for approval. Importantly, the person or companies responsible for the insolvency of the Corporate Debtor will not be permitted to file for bankruptcy if section 29A of the Insolvency and Bankruptcy Code (IBC) declares them ineligible. Through an open bidding procedure, the IBC promotes investor and buyer interaction while placing a high priority on asset value maximization. The heightened attention that both foreign and domestic investors have shown is due to their evaluation of the possibility of purchasing and financially reviving financially troubled businesses. The Insolvency and Bankruptcy Code (IBC) has successfully protected job prospects, eased creditors' fears, and added new financial resources to the economy by

<sup>5</sup> Diksha Munjal, EXPLAINED: THE INSOLVENCY AND BANKRUPTCY CODE (IBC)- WHERE DOES IT STAND TODAY? THE HINDU (2022), <https://www.thehindu.com/news/national/explained-what-is-the-insolvency-and-bankruptcy-code-ibc-and-where-does-it-stand-after-more-than-five-years-of-being-in-place/article65969421.ece> (last visited Mar 8, 2024).

reviving financially viable businesses. All parties involved in the company gain from the protection and enhancement of the firm's worth provided by the Insolvency and Bankruptcy Code (IBC).<sup>6</sup> First and foremost, it makes it possible to start the resolution process quickly in order to protect value, at a time when stakeholders are more likely to want to keep the business rather than close it down. The implementation of a time-bound settlement is necessary to address the possibility of a gradual decline in the dispute's value during the resolution process, as well as the consequent reduction in shareholder propensity towards liquidation. Moreover, it disregards the potential for recovery, which could force the business to file for bankruptcy by giving creditors priority according to arrival order. Because it forbids fast liquidation, the waterfall structure limits the firm's capital while also increasing value for stakeholders at higher levels. Only in the event that the settlement process is unable to bring the company back to life does liquidation begin. By making it possible to gather surplus assets, the Insolvency and Bankruptcy Code (IBC) streamlines the process of business liquidation.<sup>7</sup> An insolvency practitioner's duties include managing the business as an ongoing entity, keeping licenses, permits, and grants safe, stopping the execution of individual claims, assisting in the acquisition of temporary funds for the business's operations, and, among other things, shielding resolution applicants from the wrongdoings of the outgoing management. It offers a framework for the international market in which people fight to use a resolution approach that will increase the value of the organization. In addition, once the liquidation process has begun, the main goal is to maximize value through the sale of the company or its continuing activities. The aforementioned provisions aim to optimize the company's worth.

## CHAPTER III

### 3.1 CHALLENGES FACED BY CREDITORS IN THE RESOLUTION PROCESS

Despite the considerable influence of the Insolvency and Insolvency Code (IBC) on India's bankruptcy landscape, there remain unresolved matters that necessitate attention to sustain the code's efficacy and effectiveness.<sup>8</sup>

The **escalating workload of the Ld. Adjudicating Authority** about corporate bankruptcy procedures under the Insolvency and Bankruptcy Code (IBC) is a significant impediment. To effectively address this challenge, it is imperative to suggest an increase in the number of benches and members within the Ld. Adjudicating Authority. Financial creditors have a significant edge over operational creditors in the settlement procedure. The ruling rendered by the National Company Law Appellate Tribunal indicates the need for the Government and IBBI to collectively investigate the determination of the minimum entitlement for operational creditors. The entitlement should be based on the amount realized in the resolution plan, which should exceed the liquidation value.

**International creditors often have trouble getting reimbursed** for their outstanding debts, despite the IBC Code's broad provisions. Some common issues crop up regularly.

1. Insufficient knowledge of Indian laws and regulations: Foreign creditors may encounter difficulties navigating India's intricate legal system if they are not conversant with the IBC Code and other relevant legislation.

<sup>6</sup> Rajendra Kumar, "Commentary on insolvency and bankruptcy code" Whytes and Co. 19th Edition

<sup>7</sup> Ease of business, INSOLVENCY AND BANKRUPTCY CODE, 2016 <https://www.ibef.org/research/india-study/insolvency-and-bankruptcy-code>

<sup>8</sup> Arun Prokash Ghosh, RESOLUTION IN THE CENTRAL THEME OF IBC, 2016 LINKEDIN (2022), [https://www.linkedin.com/pulse/resolution-central-theme-ibc-2016-arunprokash-ghosh/?trk=articles\\_directory](https://www.linkedin.com/pulse/resolution-central-theme-ibc-2016-arunprokash-ghosh/?trk=articles_directory) (last visited Mar 12, 2024).



2. Language barrier: Since court documentation and proceedings in India are generally done in English, foreign creditors may have communication issues as a result of language barriers.
3. Extended process: Despite the IBC Code's intended expediency in facilitating settlements, legal obstacles and procedural complexities may cause delays, hence prolonging the time required to collect outstanding sums.
3. Exchange rate risk is the chance that fluctuations in currency exchange rates will affect the amount of debts that have been collected in their respective home currencies from overseas creditors.

**Time factor involved-** The Company Insolvency Resolution Process (CIRP) of the Insolvency and Bankruptcy Code (IBC) is a time-sensitive procedure intended to help creditors retrieve their money. Creditors may choose to refer a company to the Corporate Insolvency Resolution Process (CIRP) if it does not make timely payments on its debts. The Corporate Insolvency Resolution Process (CIRP) would then file a lawsuit against the company to recover the unpaid debts owed to the creditors. In the legal system, the Corporate Insolvency Resolution Process's timeliness is crucial. By Section 12 of the code, once the demand is admitted into the CIRP, the procedure has to be completed within 128 days. The adjudicating body may extend the duration of the resolution if the creditors who brought it before the board receive a majority vote of 66% of the total votes. Ninety-day term extensions are prohibited by the CIRP's resolution. The resolution process must be finished in three hundred and thirty days, including any approved extensions.<sup>9</sup> However, by the code paragraph, a ninety-day extension may be requested if unanticipated events are causing delays in the processes. Because of an inherent imbalance, it is impractical to allocate NCLT benches to a variety of situations.<sup>10</sup> Moreover, difficulties frequently arise when the 330-day deadline for settlement is missed. The existence of multiple creditors inside large firms impedes this process's effective operation.

**Lack of proper infrastructure-** Anurag Singh Thakur, the Minister of State for Finance and Corporate Affairs, provided information about the number of unresolved cases that the National Company Law Tribunal (NCLT) received in September 2019 in a specially written response to the Rajya Sabha, the Upper House of Parliament. The shortage of trained specialists to staff the National Company Law Tribunal (NCLT) and the increasing number of cases filed under the Insolvency and Bankruptcy Code (IBC) have weakened the fundamental purpose of rapid resolution, potentially damaging the nation.

### 3.2 ANALYSIS

This study aims to evaluate the effectiveness of the resolution process by analyzing the business consequences that follow the adoption of the IBC. A mixed methods approach was employed to conduct the impact evaluation, which included an empirical performance analysis, a survey-based analysis that brought together the viewpoints of the resolved firms, and a focused group discussion aimed at shedding light on the resolution process. The key findings of our investigation are as follows. The resolved firms that underwent the resolution process first demonstrated a noticeable improvement in their performance during the post-resolution period when compared to the period before their insolvency. Throughout the post-resolution era, these companies' profitability, liquidity, activity, and turnover ratios have all improved. By contrasting their performance with rivals in the same industry and size range, these conclusions are further reinforced. Furthermore, a propensity score matching study demonstrates that in the years after the settlement, the settled businesses have successfully reduced their differences with the comparable group of businesses, especially in terms of profitability indices. Furthermore, our survey

<sup>9</sup> Sharma, H.K. "Insolvency and Bankruptcy Code, 2016 - Fast Track Corporate Insolvency Resolution Process". ICSI 2016,

<sup>10</sup> Challenges of interpretation of Insolvency and Bankruptcy Code, 2016, By Diganth Raj Sehgal- February 7, 2021

replies frequently support the findings of our empirical research. A sizable portion of companies are satisfied with the way the problem was handled and the level of assistance received from various sources once it was remedied. The results show that profitability and productivity have increased, and these figures align with the initial goal. About half of the participants have performed to the expected level. More than thirty-three per cent of the individuals participating are creditworthy, and forty per cent can secure bank financing on favourable conditions. Moreover, a majority of the participants have allocated substantial funds towards working capital and capital expenditures (CAPEX). Furthermore, focus interviews with industry participants have shown that the implementation of the IBC has resulted in a notable improvement in the efficiency of the resolution process. Nonetheless, the participants did identify specific areas that needed to be changed to increase the procedure's level of efficiency. For instance, there are still problems with different clearances that come from government organizations like income tax, customs, and the Reserve Bank of India (RBI), even though the respondents were happy with the rulings made by the committee of creditors and the National Company Law Tribunal (NCLT). It was noted that the interactions between the Resolution Professionals (RPs) and industry participants were positive. But they also emphasized how important it is to train RPs in business and domain-specific knowledge to ensure that decisions are made correctly and on schedule. According to the analysis, the resolved firms' total performance is now again efficient and productive. Both qualitative and data-driven research demonstrate how businesses boost the economy by investing in capital projects, generating jobs, and efficiently allocating resources. Enhancement is required, particularly in terms of educating ecosystem members and enhancing their comprehension of the IBC procedure. A grievance redressal system and an integrated platform would greatly reduce the inefficiencies present in the current process. This would enable stakeholders to manage and resolve conflicts inside the workflow.

## **CONCLUSION-**

India's potential as a prosperous market for global economic development has been widely acknowledged by the world. Significant advancements were made in India by the enactment of the Insolvency and Bankruptcy Code of 2016. The comprehensive and efficient bankruptcy handling mechanism of this legislation has played a crucial role in driving economic progress, unleashing India's economic capacity, and establishing the groundwork for enduring and sustained prosperity. The introduction of the Insolvency and Bankruptcy Code (IBC) in India has resulted in significant adjustments to the World Bank's Ease of Doing Business Index. The streamlining of the bankruptcy resolution system by the Insolvency and Bankruptcy Code (IBC) offers several advantages. This strategy has led to reduced average settlement durations, enhanced creditor entitlements, and increased rates of collection. Consequently, investors currently perceive India as a more attractive location for engaging in economic activities. Moreover, the introduction of the IBC has aided India's absorption into the global corporate landscape. The Insolvency and Bankruptcy Code (IBC) has demonstrated its benefits for start-ups and Micro, Small, and Medium-Sized Enterprises (MSMEs) because of its well-defined and consistent legal framework.

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