Insolvency and Bankruptcy Code (IBC) 2016

Why in news?

Financial creditors which had high expectations that the Insolvency and Bankruptcy Code (IBC), 2016 would help resolve the non-performing asset (NPA) problem, are deeply concerned over inordinate delays.

What is IBC?

Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.

- **Year -** Enacted in 2016, against the backdrop of mounting NPAs.
- **Aim-** To establish a consolidated framework for insolvency resolution of corporations, partnership firms and individuals in a time-bound manner.
- Under IBC, the insolvency regime shifted from 'debtor-in-possession' to 'creditor-in-control' thus ensuring business continuance.
- **Time bound process**

Insolvency resolution	Applicability	Timeline
Corporate insolvency resolution	Companies (Can be applied in the event of default of at least 1 lakh rupees)	330 days
Personal insolvency resolution	Individuals and partnership firms	180 days

- If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.
- **Corporate Insolvency Resolution Process**- It can be initiated by

- **Committee of Creditors**- It comprises all the financial creditors of the corporate debtor. They have to approve a resolution plan by a vote of not less than 66% of voting share.
- **Liquidation-** If no resolution plan is approved within the specified time limit, or if the adjudicating authority rejects the resolution plan, then the corporate debtor goes into liquidation.

Liquidation means closing down the business of the corporate debtor

- **Pre-packaged Insolvency Resolution**- It is an alternate insolvency resolution

process for micro, small, and medium enterprises (MSMEs).
    - **Initiation-** Only by debtors
    - **Minimum default amount**- At least 1 lakh rupees
    - **Management-** During PIRP it will remain with the debtor.
- **Insolvency professionals**- The resolution processes will be conducted by licensed insolvency professionals (IPs) who are the members of insolvency professional agencies (IPAs).
    - IPAs will also furnish performance bonds equal to the assets of a company under insolvency resolution.
- **Information utilities -** It will be established to collect, collate and disseminate financial information to facilitate insolvency resolution.
- **Adjudication-** The insolvency resolution will be adjudicated by
    - **National Company Law Tribunal (NCLT)** - For Companies
    - **Debt Recovery Tribunal (DRT)** - For Individuals
- **Regulation-** By *Insolvency and Bankruptcy Board of India (IBBI)*

To know more about Insolvency Bankruptcy Code 2016 click here

What are the challenges of IBC?

- **Inordinate delay**- If CIRP is delayed it escalates the expenses and leads to value erosion.
- It will also affect the effectiveness of company as
    - The employees look forward to greener pastures
    - The suppliers cut their credit terms as they are not sure of getting the dues in time
- **Litigations**- Most of the litigations are initiated by the promoters to get back to the company through the backdoor at cheaper price thereby disrupting the CIRP and liquidation process.
- **Data unavailability**- Non-availability of key records like audited accounts and fixed asset register affects the determination of the claims of the creditors and the valuation of the company.

What can be done to improve IBC?

- **Timeliness –** The Standing Committee has suggested that
    - NCLT should not take more than 30 days after filing, to admit the insolvency application and transfer control of the company to a resolution process.
    - Recruitment should be in advance based on the projected number of cases as more than 50% vacancy is witnessed in the Tribunal
- **Asset maximisation**- There is need to delink the
    - Resolution process and liquidation process
    - Assets and business from determination of claim and other litigations
    - Promoters from CIRP and liquidation process
- **Distinction-** It should be recognised that “resolution and liquidation” are two distinct and separate paths, each requiring different processes, people with different expertise

and following different timelines.

- **Insulation of RPs-** Section 25 of the Code deals with the duties of resolution professional (RP).
- It is important that RP is insulated from all litigations which may be initiated by creditors or others till the resolution plan is approved.
- **Liquidation procedure-** The code mandates the formation of Stakeholders Consultative Committee (SCC).
- The disputes among SCC members for their claims and other litigations should run parallel without affecting the liquidation process.
- **Promoters-** Once a company is referred to IBC, the company must cutoff its ties completely with promoters. This would reduce time, effort and cost of all stakeholders in the IBC.
- **Freeze bank accounts**- If the company's audited accounts and fixed asset register along with IT returns are not submitted within the timeframe, the PAN and Director Identification Number (DIN) of the directors should be blocked.

References

1. Business Line- Ways to make IBC more effective
2. PRS-Key provisions of IBC code 2016

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