

2018 TEST TO INDIA'S BANKRUPTCY CODE

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INTRODUCTION TO IBC-

In ancient and medieval period the concept of insolvency and bankruptcy was not in existence. Therefore if a man who owed something to someone or a debt to someone is unable to payback, then the family members of that particular person are sold into slavery and not freed until the debt is repaid or cleared. The business is started by a person; it is natured by him and treated like a living human being and a breathing child. In case the owner of that business is ignorant about how to run it... then it is already on the edge of the insolvency

Both word bankruptcy and insolvency though sound the same and similar but have a different meaning all together, IBC law has been present since the year 1874 and before that there use to be an earlier law called as the provincial insolvency act 1920. And the parliament of India has passed the insolvency and bankruptcy code 2016².

Bankruptcy usually applies to the individuals who have been declared as bankrupt in the competent court. Usually bankruptcy happens in two situations- 1- when the assets are less than the liabilities and the person is unable to pay their debts when they become due and 2- when the incoming cash flow falls below the outgoing cash flow. This is men as the income is too low to pay the debts by any entity or person

KEY TERMS- National company law tribunal, insolvency, Insolvency Professionals, minimum alternate tax (MAT)

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² https://ibbi.gov.in/webfront/legal_framework.php

KEY FEATURES

Bankruptcy and Insolvency Adjudicator: The cases are handled by the IBBU using two tribunals – NCLT (National company law tribunal) and Debt Recovery Tribunal (DRC).

Insolvency Resolution: The maximum time as per the IBC law is provided as 180 days for the companies

Insolvency Professionals: The professionals who have been given the power to manage the insolvency process also with power of controlling the debtor's assets during the process

Prior to the 2016 law, the liquidation of assets was executed under the following laws:

- The Provincial Insolvency Act, 1920;
- Sick Industrial Companies Act, 1985;
- Recovery of debts due to banks and financial Institutions Act, 1993; and,
- The Companies Act, 2013

It thus still under the process and yet to fully demonstrate its use and effectiveness. However this year close to around 12 big cases are likely to be resolved in 2018³. Thus a test of the strengths of the bankruptcy laws

The new era of the bankruptcy code has made a big shift and changes between the balance of power between the 2 parties of the debtor and the creditors, Therefore from now on the creditors are not at the mercy of the big borrowers

However when the shareholders and lenders give capital to any business then they believe that it will succeed in future and will give them a good return. Even handling of the failure is also

³ https://ibbi.gov.in/webfront/allorder_tab.php

equally important part of the business space. A year after the first insolvency case was admitted by courts, the bankruptcy framework still remains a work in progress.

However the new code made a huge progress in the balance of power between debtors and creditors, thus the banks and other creditors are no longer need to be in fear of big borrowers.

The IBC laws set a clock of 270 days to pass a resolutions and the defaulters could no longer hide in the veil of the state law to avoid paying the dues debts which they owes to the other.

The boom of the insolvency and bankruptcy law can be seen from the data available with the govt which shows that the 2,434 fresh cases relating to the IBC have been filled and some close to 2,304 cases of the winding up of the companies have come from various state high courts and lower courts. This data is only the bit of the kind of the resolutions, recovery rates and the cost. However it is true that the law is in the early stage and yet to be fully applied practically

However the very first case that was tried under the IBC law has been a less satisfying and showed the loopholes of the legal statue⁴. The financial lenders to the doorway company only recovered the 6% of their debt which was thus challenged.

Thus the devious promoters of the company will get an entry from the backdoor to controls the affairs of the firm at a steep discount. Thus the government passed a ordinance in the hurry in the month of the November, Thus it barred the current promoters of the firms that hadn't paid their dues from participating in the process of the bidding of the distressed asserts of the company under the resolution process

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[https://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Aug/Insolvency%20and%20Bankrutpcy%20Code,%202016%20\(31%20of%202016\)%20upto%20date%20amendment%2017.08.2018_2018-08-19%2013:27:42.pdf](https://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Aug/Insolvency%20and%20Bankrutpcy%20Code,%202016%20(31%20of%202016)%20upto%20date%20amendment%2017.08.2018_2018-08-19%2013:27:42.pdf)

Indeed, concerns that devious promoters will get a backdoor entry to control firms at a steep discount prompted the government to issue an ordinance in November amending the code. It stopped the promoters of firms who still not have paid the dues and related entities from participating in the bidding for assets of a distressed company under the resolution process.

Therefore on one side it clearly laid down that the promoters have no divine right to control the firm and firm affairs if they don't repay loans, Thus on the other side banks are seeing a fall in the recovery rates because of the fewer bidders. Recently to deal with this an amendment bill has been passes earlier this month which give the promoters the powers to bid if they pay the overdue amount

The amendment bill, which was passed earlier this month, gives promoters some leeway to bid if they pay the overdue amount

Still there are so many areas where it the clarity is required relating to the law ,Specially in situation where the law comes in the conflict with other laws of relating to company,bussniess etc.Therefore government has set up a committee to look for the areas where there are clashing law so that a quick resolution can be passed

One such example can be seen in case of the MAT (minimum alternate tax) on the part of the debt written off under a resolution plan because it can been seen as a income, Recently the CBDT has granted an exemption

The main area where the IBC code⁵ has been proved as one of the best code is the operational creditors like vendors or employees or the service providers .A recent study by the IGIDR has shown that the close to near 515 case haven been successful in recovering their dues using the sward of the IBC court

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[https://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Aug/Insolvency%20and%20Bankrutpcy%20Code,%202016%20\(31%20of%202016\)%20upto%20date%20amendment%2017.08.2018_2018-08-19%2013:27:42.pdf](https://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Aug/Insolvency%20and%20Bankrutpcy%20Code,%202016%20(31%20of%202016)%20upto%20date%20amendment%2017.08.2018_2018-08-19%2013:27:42.pdf)

