

Understanding Indian Insolvency Ecosystem



Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has been evolving and addressed several problems of businesses, some of which were considered invincible six years ago. In the process, the Code has developed an ecosystem of rescuing corporate lives from financial crisis thereby bringing the stressed assets back into the economy, saving jobs and recovering NPAs of banks. In this article, the author presents a thorough analysis on how various components of the insolvency framework in India sustain one another in meeting the main objectives of the Code i.e., resolution, maximization of value of assets of the Corporate Debtor (CD), and promoting entrepreneurship, availability of credit and balancing the interests of various stakeholders. Read on to know more...



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1. Introduction

In an open economy, the insolvency process is well established to support ease of doing business and exits. With each transaction, it gains depth, maturity, and richness. India's bankruptcy law is not an exception. Since it was enacted, till 30th September 2022, the Insolvency and Bankruptcy Code, 2016 (IBC/Code) has undergone six amendments along with 84 amendments to its 18 regulations to improve the procedures and advance its goals in line with the rapidly changing market realities. To facilitate the execution of procedures under the Code, the regulatory framework has also undergone several revisions. The Adjudicating Authority, the Appellate Authority, the High Courts, and the Supreme Court have all issued landmark decisions and judgments that explain various conceptual concerns, resolve controversial situations, and address the grey areas.

2. Brief History and Rationale behind IBC, 2016

Between the early 2000s and 2008 public sector banks lent extensively to corporates. However, the profits of various organizations swindled away due to different reasons including economic slowdown. This in turn negatively

impacted the ability of these companies to pay back their loans. There was no effective mechanism to resolve such cases within a reasonable time frame.

The bankruptcy code is a one-stop solution for resolving insolvencies which previously was a long process that did not offer an economically viable arrangement. The code aims to safeguard the interests of small financial investors and make the method involved with carrying on the work less cumbersome. Beforehand, in India there were various regulations used to manage bankruptcy and liquidation, these regulations were as follows:

- (a) Presidency Towns Insolvency Act, 1909
- (b) Provincial Insolvency Act, 1920
- (c) Sick Industrial Companies (Special Provisions) Act, 1985
- (d) Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- (e) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

For the purpose of making single window clearance, some of the Acts mentioned above were repealed & some Acts were amended to get them aligned with The Insolvency and Bankruptcy Code, 2016 (IBC).

3. Genesis of the Code

IBC is the law that seeks to consolidate the laws relating to insolvency and bankruptcy resolution for corporates, Limited Liability Partnership (LLP), Partnership Firms, Individuals, and other Body Corporates as may be notified by the Central Government from time to time. The Insolvency and Bankruptcy Code, 2016 was passed –

- (a) By Lok Sabha on 5th May 2016 and,
- (b) By Rajya Sabha on 11th May 2016.

The Code received the assent of the President of India on May 28, 2016 and certain provisions of it are to come into

force on later dates. The said Code has 255 sections and 12 Schedules.

3.1. Why is it called a Code, not an Act?

IBC 2016 is a combination of existing multiple laws applicable to the subject of insolvency & bankruptcy. This is the reason; it is called a Code, not an Act.

The basic objective of IBC is “An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India (IBBI). And for matters connected therewith and incidental thereto.”

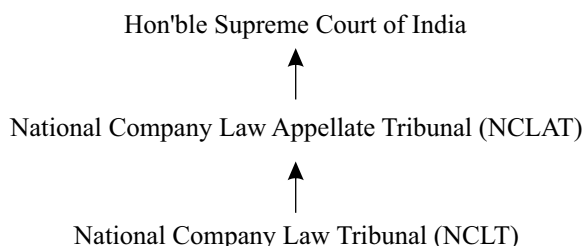
3.2. Objectives of the IBC

Under an initiative of Ease of doing business, India took many actions and IBC is one of the most influential tools used.

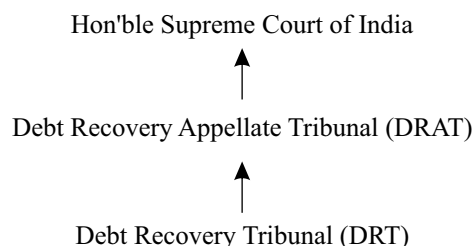
- (a) To make a single window clearance system.
- (b) To Support the corporate insolvency process in a time-bound manner.
- (c) To boost the object of competitive business culture in India.
- (d) To provide timely relief to the creditor community.
- (e) To build the trust of foreign investors & creditors.
- (f) To reduce the burden of High Courts & other civil courts.
- (g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body.
- (h) Maximization of the value of assets of corporate persons.
- (i) To revive the company in a time-bound manner.

3.3. Adjudicating Authorities (AA) after IBC, 2016

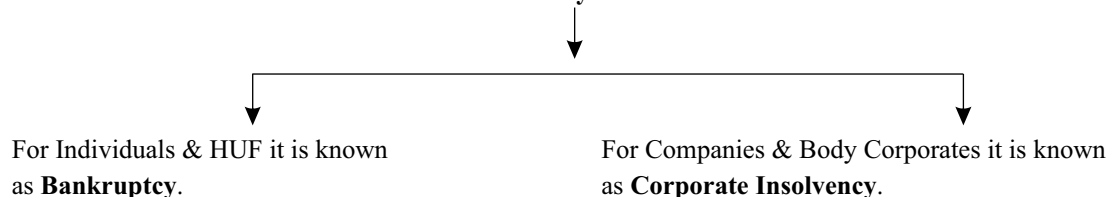
For Companies & Other Body Corporates



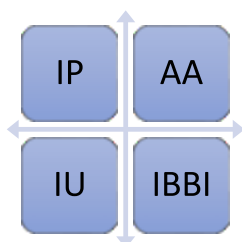
For Individuals, Firms & HUFs



Insolvency Process



4. Four Pillars of the IBC Ecosystem in India



A key pillar of the insolvency ecosystem is the sector regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). It is responsible for professionalizing insolvency services through the regulation and development of service providers, namely, insolvency professionals, insolvency professional agencies, insolvency professional entities, information utilities, registered valuers, and its organizations. The IBBI has made an effort to make sure that the service providers are technically proficient, fit and suitable, and motivated to uphold the highest standards of ethics and professionalism. The IBBI has been carrying out a variety of activities for the capacity building of service providers in order to fulfill this responsibility, as well as closely observing their behavior and output.

4.1. The time specified under the Code to complete the Corporate Insolvency & resolution process (CIRP)

Section 12 of the Code provides timelines for the completion of the CIRP within a period of 180 days plus 90

days further extension. Thus, CIRP must be completed in a maximum of 270 days from the Insolvency Commencement Date. It further provides for CIRP to be mandatorily completed within 330 days (including the extension granted and time taken in legal proceedings if any).

4.2. Recovery Rate for Lenders under IBC

While there have been substantial haircuts for lenders, generally in IBC cases also, it still compares well with the pace and amount of recovery in erstwhile legislative processes.

4.3. The minimum amount of default

Initially the threshold limit of initiating the Insolvency process was ₹ 1,00,000/- (One Lakh Indian Rupees) which was increased to ₹1,00,00,000/- (One Crore Indian Rupees) w.e.f. March 24, 2020.

Currently the threshold amount of default to apply for the corporate insolvency resolution process under the code is ₹1,00,00,000/- (One Crore Indian Rupees). For Pre-Packaged Insolvency Resolution Process (PPIRP) threshold limit default is ₹10,00,000/- (Indian Rupees Ten Lakhs Only).

5. Corporate Insolvency & Resolution Process (CIRP)

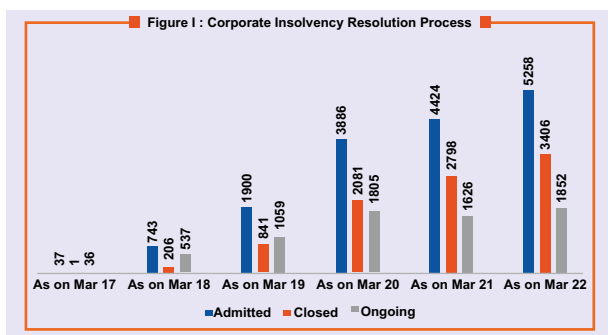
The CIRP involves following steps:

- (a) Application by corporate/operational creditors along with copy of demand notice or record of

default submitted with information utility as the case may be.

- (b) Acceptance/Rejection of application by NCLT
- (c) If accepted - NCLT will declare moratorium
- (d) Notice of Acceptance/Rejection
- (e) Public announcement
- (f) Appointment of interim resolution professional
- (g) Constitution of committee of creditors by Interim Resolution Professional (IRP)
- (h) Appointment of Resolution Professional (RP)
- (I) Preparation of Information Memorandum
- (j) Submission of resolution plan by Resolution Applicants (RAs)
- (k) Approval of Resolution Plan by CoC
- (i) Approval of resolution plan by NCLT
- (m) After approval of NCLT order of moratorium shall cease to have effect
- (n) Implementation of Resolution Plan
- (o) The following graph depicts the progress in CIRP process under IBC –

Graph 1: Progress in CIRP process under IBC till March 2022



Source: *Insolvency and Bankruptcy Board of India (ibbi.gov.in)*

6. IBBI as a Sector Regulator

The IBBI conducts its quasi-legislative, executive, and quasi-judicial functions simultaneously. It also seeks to develop the profession and the level of transactions. It is a key pillar of the ecosystem and regulator for implementing the IBC.

promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code.

Specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities.

Monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions

Specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders agencies and information utilities and pass orders

Conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals

Perform such other functions as may be prescribed

Power and Function of IBBI

7. Insolvency Professional (IP)

The Code provides for IPs to act as an intermediary in the insolvency resolution process. Insolvency professionals are a class of regulated but private professionals having minimum standards of professional and ethical conduct.

Section 3(19) of the Code defines an “insolvency professional” as an individual enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207. The IP is assigned a key role in the following processes of IBC:

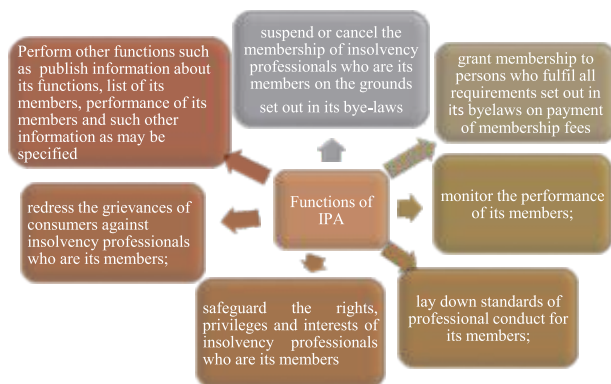
- (a) A fresh start order process under Chapter II of Part III
- (b) Individual Insolvency resolution process under Chapter III of Part III
- (c) Individual Bankruptcy process under Chapter IV of Part III, and (e) liquidation of a Corporate Debtor firm under Chapter III of Part II
- (d) CIRP under Chapter II of Part II.

As of February 2023, there are 4258 Insolvency Professionals (IP) and 149 Insolvency Professional Agencies (IPEs) registered with IBBI¹.

8. Insolvency Professional Agency (IPA)

Section 3(20) of the Code defines IPA as any person registered with the Board under Section 201 as an Insolvency Professional Agency². IPA are designated to regulate IP. These agencies enroll IPs and enforce a code of conduct for their functioning. In exercise of the powers conferred by the IBC, 2016, the IBBI has framed the following regulations to regulate the working of IPAs:

- (i) The Insolvency and Bankruptcy Board of India (Model Byelaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 and
- (ii) The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.



There are only 3 IPA in India through which the above functions are performed:

- (i) Indian Institute of Insolvency Professionals of India (IIIPICAI)
- (ii) Institute of Insolvency Professionals (ICSIIP)
- (iii) Insolvency Professional Agency of Institute of Cost Accountants of India (IPAICAI)

¹ Final Panel of IPs prepared in accordance with 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2022', for appointment as IRP, Liquidator, RP and BT, for the period January 1, 2023, to June 30, 2023 along with Corrigendum dated February 14, 2023. <https://ibbi.gov.in/uploads/whatsnew/6e91eb06da9e4799e81539432a412f76.pdf>

² The Insolvency and Bankruptcy Code, 2016 (Upto 12.08.2021) <https://ibbi.gov.in/uploads/legalframework/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf>

(a) Continuing Professional Education (CPE)

In consultation with the all three IPAs, the IBBI issued (Continuing Professional Education for Insolvency Professionals) Guidelines, 2019. Accordingly, Insolvency Professional (IP) is expected to continuously upgrade knowledge through Continuing Professional Education (CPE) to remain relevant and provide value added services. All IPEs are very strict about CPE and the same is checked while granting renewal of AUTHORISATION FOR ASSIGNMENT (AFA) for respective IP. IP Regulations accordingly provide that an IP shall undergo CPE to keep his registration valid (AFA) and unless requisite CPEs are earned, IPA are not allowing to renew AFA.

(b) Different Roles of Insolvency Professional (IP) Under IBC

- (i) **To act as an Officer of the Court/NCLT:** The Insolvency Professional when appointed by an order of NCLT, his roles become as Officer of Court. He becomes a major interface between NCLT, Corporate Debtors and other Stakeholders.
- (ii) **To act as an Interim Resolution Professional:** Section 16(3)(a) of the Code requires the Adjudicating Authority (AA) to make a reference to the Board for recommendation of an IP, who may act as an IRP where an operational creditor has made an application for corporate insolvency resolution process (CIRP) and has not proposed an IRP. The Board is required under section 16(4) of the Code to recommend the name of an IP against whom no disciplinary proceedings are pending, within ten days of the receipt of the reference from the AA.
- (iii) **To act as a Resolution Professional:** The Board is also required under the Code to recommend the name of an IP for appointment as Resolution Professional (RP) or Bankruptcy Trustee (BT) as and when a request is made by Adjudicating Authority.
- (iv) **To act as a Liquidator:** Resolution Professional can act as a Liquidator of the Company or if the company wants to appoint any other eligible person as a liquidator they can appoint. Liquidator handles the fund distribution process after setting aside money required to pay the cost of liquidation.

- (v) **To act as a consultant on Resolution Plan:** The Insolvency Professionals also act as a consultant to prepare and to proceed further with the resolution plan of the company.

9. Adjudicating Authority (AA)

Section 5(1) of the Code provides that the “Adjudicating Authority” for Insolvency resolution and liquidation for corporate persons means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.

Section 60(5) of the Code further provides that notwithstanding anything to the contrary contained in any other Law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

- (a) any application or proceeding by or against the corporate debtor or corporate person.
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Section 179(1) of the Code provides that subject to the provisions of Section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and partnership firms shall be the DRT having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person. Section 179(2) of the Code further provides that the Debt Recovery Tribunal shall, have jurisdiction to entertain or dispose of—

- (a) any suit or proceeding by or against the individual debtor;
- (b) any claim made by or against the individual debtor;
- (c) any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

10. Information Utility (IU)

There is only a single IU present in India i.e., National E-Governance Services Limited (NeSL). The primary role of NeSL is to serve as a repository of legal evidence holding the information pertaining to any debt/claim, as submitted by the financial or operational creditor and verified and authenticated by the parties to the debt.

10.1. NeSL works towards

- (a) Time-bound resolution by giving creditors and adjudicating authority verifiable information that doesn't need additional validation.
- (b) When any creditor files a default complaint against a debtor, the related debtors are notified.
- (c) Reducing the informational imbalance between the parties to a debt.
- (d) A statement of the debt's outstanding balance that both parties have agreed to.
- (e) By utilizing information technology, assist all IBC ecosystem stakeholders.

10.2. Function of IU

- (a) accepting electronic submission of financial information in such form and manner as may be specified,
- (b) safely and accurately recording financial information
- (c) authenticating and verifying the financial information submitted
- (d) When the CoC is formed, information from IUs may be used to determine all creditors of the debtor, which in turn will help to constitute the CoC.
- (e) The information can be used as evidence by creditors who file claims with the IP.
- (f) a secured creditor can realize its security interest outside the liquidation process provided the security is verified by the liquidator. The liquidator may verify the security from records in the IU.

10.3. Insolvency Professional Entity (IPE)

Regulation 12(1) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016,

provides for an IPE to be recognised as such if its primary goal is to provide support services to the insolvency professionals,

According to Section 206 of the Insolvency and Bankruptcy Code of 2016 (Code), no one may provide their services as an IP unless they are:

- (a) Registered with the Insolvency and Bankruptcy Board of India and
- (b) Enrolled as a member of an Insolvency Professional Agency (IPA) and registered with (IBBI). Therefore, no one else can provide services as an IP other than a person who has registered as an IP with the IBBI. Now an IPE can also be an IP.

11. Avoidance of Transactions

The following types of avoidance transaction are recognized by the IBC. These are collectively referred to as the PUF transactions in the scheme of the IBC.

- (a) Preferential Transactions (Section 43 to 44 of IBC)

- (b) Undervalued Transactions (Section 45 to 48 of IBC)

- (c) Extortionate Transactions (Section 50 and 51 of IBC)

- (d) Fraudulent or Wrongful Trading Transactions (Section 66 of IBC)

12. Conclusion

IBC has been a significant economic reform. IBC has gradually addressed the bottlenecks in the recovery of stressed assets and resolution timelines.

A major benefit is that it has considerably improved credit discipline and transformed the power dynamics in favour of creditors rather than borrowers. It has also served as a corrective action to the fraud incidents in the Indian corporate and banking sectors. The slower growth of new non-performing assets in the Indian banking sector is a result of this.

In addition to the above-mentioned modifications, the IBC has significantly improved the country's business environment and ease of doing business index.

