



ORIGINAL RESEARCH PAPER

Law

STUDY ON INSOLVENCY AND BANKRUPTCY CODE IN INDIA: A LITERATURE REVIEW

KEY WORDS: Insolvency, Bankruptcy, resolution

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ABSTRACT

An effective Legislative framework is one of the major contributors to successful running of a business. Ease of doing business ranking of a country is not only decided by the ease of entering but also the exit mode provided by the legislative framework of the country. Insolvency regimes not only in India but all across the world has undergone a gamut of changes. An insolvency framework of a country not only impacts the ease of doing business ranking but also in turn has a major impact on the FDI flows of a country. The piling NPAs of the banking Industry owing to the corporate defaults had been a major cause of concern for the government as it could ruin the growth of the banking industry which happens to be the back bone of the economy. The passage of the Insolvency and Bankruptcy bill has been one of the major efforts of the government in resolving the insolvency issues. This paper attempts to analyze and determine the studies undertaken by various researchers in regards to the Insolvency and Bankruptcy Code of India.

INTRODUCTION:

India has been one of the countries which has long been facing the problem of ineffective insolvency resolution framework. The Insolvency resolution regimes that existed in the past had a major flaw of several overlapping regimes governed by various Acts, like the Presidency Towns Insolvency Act, 1909, Sick Industrial Companies Act, 1985, Limited Liability Partnership Act, 2008, Companies Act, 2013, etc which in turn resulted in undue delays in resolving insolvency cases. Also, it was eventually observed that at times a case ran parallel under several jurisdictions. The code received Presidential assent on 28th May 2016 and became operational since Dec 2016.

The IBC amalgamated the dispersed and amorphous jurisprudence on insolvency prevalent within the multiple overlapping laws handling financial failures and insolvency in India which made the resolution process very lengthy and time taking. The earlier bankruptcy laws were actually a way too lengthy and resolving insolvency issues took years and years. The new framework pursued for strict time-bound initiation of corrective action. The IBC was considered a major effort in resolving the issues of NPAs which had been plaguing the Indian banking Industry and the rising corporate borrowing defaults.

The IBC lays down separate processes of insolvency resolution for Companies, individual borrowers and partnership firms. For effective functioning the code provides for 2 Adjudicating authorities namely NCLT and DRT. While resolving Insolvency cases of companies rested in the hands of NCLT, DRT handled the resolution process of Insolvency cases of individuals and partnership firms. IBC laid down strict time bound resolution process and in effect had a target of resolving insolvencies in a time span of 270 days. The code brings about 2 options in this regard: one could be restructuring of the business and another was liquidation in case the business was not found viable

RESEARCH OBJECTIVE:

- a) To Comprehend the concept of Insolvency and Bankruptcy Code as a remedial tool for Banking Industry
- b) To analyses the various research works carried out on Insolvency and Bankruptcy Code.

LIMITATIONS OF THE STUDY:

This study is limited to the number of research articles and books referred.

LITERATURE REVIEW:

- Deepak Tandon, Neelam Tandon (2019) : The researcher was of the opinion that the Banking Industry in India is plagued with asset quality deterioration issues which have resulted in potential losses owing to insufficient provisions for Non-performing assets . The immediate consequence of which has been that the sustainability of the whole of the banking system has become difficult. The researchers observed that over years, NPAs and bad loans have piled up and added to the spiraling effect of the same. The researchers further concluded that the major cause of a number of bank frauds have been the lapses on part of the banking operations, majorly being non-adherence to procedures. They also concluded that despite the fact that RBI has been taking preventive measures for the treatment of stressed assets and also prompt corrective actions to improve asset quality but still the results are not very promising ones and progress has been appearing at a very slow pace. They are of the opinion that Strength and sustainability of the credit growth is the need of the hour for improving conditions of banking system in the times to come.
- Srijan Anant, Aayushi Mishra (2019): The researcher opines that IBC is one of the major reforms brought about in the legal system in India. In the views of the author IBC is not only giving strength to the Legal system in India but is also providing a new identification and recognition to India at the global level . The author opines that the code brings about a consolidation of the existing multiple laws relating to bankruptcy into a single law. The author has analyzed the key features of the code and the legal framework of the codes. The author has also tried to analyses the impact of Insolvency and Bankruptcy code on macro environment of India.
- Renuka Sane (2019) : The researcher was of the view that government had only notified corporate insolvency part and not the personal insolvency when it passed the IBC in 2016. The author opines that the scenario of Indian credit market calls for the need for the personal insolvency law. The paper was a brief presentation of the provisions on personal insolvency in the IBC. The author makes suggestions on questions of policy which are required to be addressed prior to the meaningful implementation of Law so as to ensure proper design of the subordinate legislation as well as the evolution of the institutional infrastructure.

- Manoranjan Ayilyath (2019) :The researcher interprets that the Insolvency and Bankruptcy Code prevents the erosion of enterprise value and make it ease as solution for time bound insolvency resolution for promoting the business. The existing IBC is not able to meet the financial market and resolution process due to the Code related to the Insolvency Resolution and Bankruptcy of the Individuals and the Partnership firms is not yet made effectively operational. This paper examines the various factors and challenges faced in the system that slows down the progress and it has to be rectified as an ongoing process.
- Pratik Datta(2018) : In this study the researcher has applied theoretical concepts to analyses the major problems like value destruction and wealth transfer in new code of Insolvency and Bankruptcy. The author has identified four potential sources of wealth transfer under the Insolvency and Bankruptcy Code, 2016. The Indian policymakers has to revisit the fundamental legislative design choices embedded within the Insolvency and Bankruptcy Code, 2016 to successfully address the contemporary concerns regarding the value destruction and wealth transfer problems.
- Ms. Srilekha Eduri,Dr. N. Jayaprada,Mr. Srinivas Eduri (2018) :The researcher Lays down the basic framework of IBC. Insolvency and Bankruptcy Code was introduced in 2015 and came into existence in May, 2016 as a supplement for making progressive and constructive initiatives which will address all the situations as a forward step. The researcher has found that Insolvency and Bankruptcy Code has brought a change in the economy by focussing on turnaround plan which if does not work, then results to liquidation. It is also found that Code has limitations that occurred due to mismanagement and inappropriate usage. This paper has examined the impact and loopholes of IBC on the Indian economy that intends to provide an insight on how to improve the Code for effective implementation.
- Josiah Wamwere-Njoroge (2017): This paper infers that IBC is more efficient and promising in comparison with bankruptcy laws of the United Kingdom and France by using various indices to check. He inferred that consideration for any good insolvency and bankruptcy regime is such that it should able to balance between the rights of the creditors (both secured and unsecured) and the debtors. The researcher found that insolvency and bankruptcy proceedings in India is relatively expensive and it prevents the relevant stakeholders for using the system for their own selfish interests. The study concludes that Insolvency and Bankruptcy Code is flexible to preserve the solution of liquidation and continuation.
- Nakul Sharma,Dr. Rahul Vyas (2017): The present paper studies the Insolvency Professional Agency framework in terms of its role and scope, which is the bulwark of the IBC in terms of the procedural and regulatory ambit of the code. The IBC 2016 is a landmark development in the law of our country which provides resolution in a time bound manner, promotes entrepreneurship which will lead to an improvement in credit availability and would balance interest of all stakeholders.

Conclusion:

Resolving insolvency in a strict time bound manner is an important challenge for any country to maintain a healthy and robust economic system. This study has made an attempt to understand the major features of Insolvency and Bankruptcy Code of India and acknowledges the various challenges that lie ahead in the successful implementation of the code. The study emphasizes the fact that IBC is a big step in the direction of resolving the issues of Non-Performing Assets and hence will act to the rescue of banks which have been facing a lot of

difficulties due to corporate defaults. With all the positive intent success of IBC will be governed by the way it is being implemented as it is still in its very nascent stage.

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