The Insolvency and Bankruptcy Code, 2016.

Insolvency (state) is the situation which arise due to inability to pay off the debts due to insufficient assets. [TL > TA).

Bankruptcy (Conclusion.) is the situation wherein application is made to an authority declaring insolvency and seeking to declared as bankrupt.

The term 'Insolvency' can be Used for

- Individuals. → Known as Bankruptcy.
- Organisations / corporates → Known as Corporate Insolvency.

and Unfreat insolvency lead to —

- for non-Corporates → Bankruptcy
- for Corporates → Liquidation

(*) A bankrupt would be a conclusive insolvant whereas all insolvencies will not lead to bankruptcies.

Insolvency have two options.

Resolution and Recovery.

Initiators.

1. Financial Creditors.
2. Operational Creditors.
3. Corporate Debtors - itself

Liquidation.

Initiators.

1. Unpaid Creditors.
2. Shareholders.
3. Directors.
4. Regulatory Bodies.

Existing Law and framework.

~~Bhakter Because~~

* failed to resolve insolvency situations. because of —

① Financial faliure.

② Business failure.

③ Malfeasance and mismanagement by promoters.
wrong doing.

* Existing Law not aligned with market realities.

* No single window resolution: (Complex process)

* Resolution and juridiction was with multiple agencies with overlapping powers.

* Delayed and complexities in process.

* Multiple laws governing debt resolution and Multiple forums.

* Parallel proceedings by different parties on the same debtor in different forums.

* Conflicts b/w Laws and over jurisdictions.

* Asymmetry of information.

Main Purpose of the Code —

→ To resolve India's bad debt problem by creating a data base of defaulters.

→ To establish the "insolvency and bankruptcy board of India".

→ To facilitate easy ~~exist~~ exit of bankrupt corporates and individuals.

→ **Features** ⇒ * Comprehensive Law. — deals for all persons i.e corporates, Partnership, LLPs, & individuals.

* No multiplicity of Laws. — Single platform

* Low time resolution. — fixed time frame i.e. within 180 days. extendable to 90 days.

* One window Clearance. — winding up and liquidation by same authority.

* One chain of authority. → NCLT for Corporates. → DRT for Individuals.

* Priority to interest of workman and employees. — During liquidation exclude dues payable to workmen under PF, Pension and Gratuity from debtor's assets.

* New Regulatory authority. — 'IBBI, 'Insolvency and Bankruptcy Board of India'.

Regulatory Mechanism → five pillars of the code.

① Insolvency and Bankruptcy Board of India. (IBBI).

* Established on 01. Oct. 2016.
* Regulator – who oversee the entities.
* Perform legislative, executive and Quasi-judicial functions w.r.t. IP, IPA and IU.
* Perpectual succession & common seal.
* Having power according to code.
* Constitution → ⇒ One Chairperson.
  - ⇒ Three Members from CG. Not below joint secretary rank. each represent Ministry of finance, Min. of Corp. affairs, and Ministry of Law, ex-officio.
  - ⇒ One Member – Nominated by RBI.
  - ⇒ Five members – Nominated by CG. Out of which at least three shall be whole-time ~~dir~~members.

② Insolvency Professional Agencies [IPA]

* Established to enroll and regulate IP. as its members.
* Functions.

Regulatory functions → Drafting codes and detailed standards through bye-Laws. And made public and are binding on all members.

Executive function →

→ Monitor, inspect and investigate the members.

→ Performance evaluation of members.

→ Malfeasance in the conduct of IP duties.

Quasi-judicial functions.

Addressing greivances, hearing complaints against members. and taking suitable actions.

* **Principles governing IPA** → **Promote**
  - Professional development of and regulation of IPs.
  - Services of IPs.
  - Growth of IPA
  - Good Professional and ethical conduct
  - Int. of debtors, Creditors and Others.

3

Insolvency Professionals. [IP]

* Act as intermediaries.
* Play key role in efficient working of bankruptcy procis.
* Functions
  - → Adhering to procedure of law.
  - → Accounting | Finance related.

⇒ Verifies → the claims of creditors
→ Constitutes of Creditors Committee

⇒ Run debtor's business during moratorium period.

⇒ Helps creditors in reaching a conclusion for revival plan.

⇒ Act as liquidator and bankruptcy trustee.

4

Information Utilities. [IU]

* IU requires to collect, collate, authenticate and disseminate financial info. of debtors in centralize electronic database., at all the time.

* It removes information asymmetry.

* Obligations. of IU.
  - → Create / store in universally accessible formate.
  - → Accept financial information.
  - → Accept in specified form and manner.
  - → Maintain quality standards.
  - → Get the information received from various persons of resolution process.
  - → Publish such statistical information
  - → Have inter-connectivity with other information utilities.

5

Adjudicating Authority. [AA]

NCLT
[for. Co., LLP, Personal guarantees related to Corp. debtors.]
⇓
Appeal to **NCLAT**
⇓
Appeal to Supreme Court.

DRT
[for Individuals, Partnership.]
⇓
Appeal to **DRAT**
⇓
Appeal to Supreme court

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* No injuction shall be granted by any court, tribunal, any authority against order of "Adjucating Authority".

Sec. 7

Insolvency resolution process By 'Financial Creditor'.

⇓

Jointly or it self.

⇓

filling application with enclosure of documents.

⇓

* Record of default.
  Recorded in Utility or other evidence.
* Name of Resolution professional.
* Any other info. specified.

⇓

Adjudicating Authority
Within 14 days. of Application.

⇓

Admit application if. satisfied.

⇓

① Default occurred.

AND ② Application is complete.

AND. ③ No desciplinary action against proposed professional.

⇓

Process start from the date of application to AA.

Reject if.

⇓

→ ×

→ OR ×

→ OR ×

⇓

Notice to rectify defects with in 7 days of receipt of notice.

Sec. 8

Demand of Payment By Operational Creditor

Send demand notice to Corp. Debtors
along with Copy of invoices.

↓ With in 10 Days.
(of receipt of Notice)

Corporate Debtor

Respond

Regarding existance of dispute, pending of suit. before receipt of notice.

(*) Send attested Copy of electronic t/f of fund from bank.

OR

(*) Attested copy of cheque record encashed by creditor.

Sec. 9

Initiation of Insolvency Resolution by 'Operational Creditors'.

⇓

No reply or payment within 10 Days

⇓

Make application to AA.

⇓

with enclosures.

1. Copy of invoices or demand notice.
2. An affidavit to the effect there is no reply.
3. Certificate (copy) form financial Institution Confirming there is no payment from CD.
4. Any others as specified.
5. Proposed name of professional. (Resolution Professional).

A. A

within 14 Days of application.

⇓

Accept, if satisfied. | Reject, if

1. Application is complete. ⟶ ×
2. There is no repayment. ⟶ ×
3. Proper Invoice or notice has delevered to CD. ⟶ ×
4. No disciplinary action against proposed professional ⟶ ×

Give 7 Days to Rectify.

Process starts from the date of application to AA.

Insolvency Resolution Process completed

within.

180 Days.

Extra 90 Days.

Only if Committee of creditors (CoC) has passed resolution [75% voting]

Sec. 14

Moratorium.

Starts from Insolvency Commencement date by 'AA'.

⇓

Prohibits.

1. Institution (OR) continuation of suits.
2. Execution of decree OR judgment by court.
3. T/f, alientating, disposing of any assets (OR) legal right (OR) Interest by corporate debtors.
4. Recovery of any property by any owner, (OR) Lessor from the occupation, OR possession under corporate Debtor.
5. Any action to foreclosure, recover or enforce any security interest. Created by CD.

Period of Moratorium

⇓

Till completion of insolvency process.

Ceases.

↓

1. Resolution plan approved by 'AA'.
2. AA. passed liquation order

⊛ Supply of essential goods (OR) services to CD. not to be terminated or suspended during moratorium period.

Sec. 21

Committee of Creditors. [COC].

⇒ * Composes only financial creditors.
* RP shall conduct all the meetings of &COC.
* RP is required to file a report to AA certifying the constitution of COC.
* Report shall be filed before 30 Days from the date of appointment of RP.

⇒ If Financial Creditors does not exist. then

committee shall be formed comprising of followings:-

(i) 18 Largest operational creditors by value.
(ii) 1 representative elected by all workmen.
(iii) 1 representative elected by all employees.

* If no. of operational creditor < 18, → Committee include all such creditors.

⇒ Voting.

All decisions of COC, shall taken by vote of minimum 75% of voting share of the financial creditors.

⇓

voting share determined based on the value of the debt of creditor in proportion of total debt..

⇒ First meeting of COC. → * With in 7 days of the constitution of the COC.

* In first meeting of CoC., may resolve to (i) appoint IRP as RP (or) (ii) to replace the IRP by another RP

⇒ Notice of the Meeting. to :-

* Members of CoC.
* Members of suspended BOD | Partners of corporate person.
* Operational creditors (OR) their representatives.
  if their dues is not less than 10% of the debt.

* Operational Creditors → have not right to vote in CoC
  they may attend meeting of CoC.

* financial Creditor which is Related party of CD, shall not have right to Representation, Participation or voting in the Meeting of CoC.

⇒ Quorum of Meeting —

* Atleast 33% of the voting rights
  either in person (OR) by video/audio means.

* If Quorum not exist → Meeting adjourned at sametime and place on next day.

Appointment of Resolution Professional. (RP).

First meeting of COC.

(held with in 7 Days from formation.)

⇓

By Majority vote i.e Not less than 75% of voting share. to..

⇓

Appoint IRP as a RP.

(OR)

Replace the IRP with new RP.

⇓

Procedure.

① file application with AA. with proposed RP. → ② forward by AA to Board. → ③ If Board confirms, "AA" shall make appointment of "RP." → ④ If no response from Board.

⇓

AA pass order IRP as RP.

Sec. 15

Public Announcement.

* Immediatly after appointment of RP → within 3 Days of appointment.

Public announcement shall include:-

1. Name & Address of CD.
2. Name of authority with which CD is registered.
3. Detail of IRP
4. Penalties for false or misleading claims.
5. Last date of submision of claims.
6. End date of CIRP.

Submission of Resolution Plan.

RP prepare and submit information Memorandum to resolution applicant in order to prepare the resolution plan.

⇓

RP examin and submit it to COC for approval.

⇓

COC approve

[By vote of not less than 75% of voting shares]

⇓

After COC approval,

Submit the plan to 'AA'. for ~~approving~~ approval.

⇒ AA examine the plan and approve on following grounds :-

(i) Provide for payment of resolution process cost in priority to other debts.

(ii) Payment to "OC" shall not be less than the amount paid in case of liquidation u/s 53.

(iii) Proper implementation supervision of plan.

(iv) Does not contraven to any Law.

(v) As per specified by board.

* Consequences of approval of plan.

↓ Moratorium Ceases.

↓ Plan shall binding on CD, Employees, members, creditors, & all Stakeholders

Order of Liquidation by AA

of Corporate debtors in following Cases :- 4 Cases.

① AA does not receive resolution Plan, before

1. Expiry of Resolution Process period i.e 180 Days.
2. Max. Period. i.e. → 180 + 90 Days.
3. Fast track Corporate resolution process. (Sec. 53)

② If 'AA' reject plan bcz of non compliance.

③ Decision of CoC to liquidate before approval by RP intimate to 'AA'.

④ Application made by other than 'CD', whose interest is affected bcz of contravention of Plan other than CD to 'AA'.

⇓

If AA satisfy Pass liquidation

Priority of claims.

for distribution of liquidation proceeds :-

1. Cost and Expenses of insolvency.
   ⇓
2. Workmen's dues for period of 24 months and dues of secured Creditors.
   ⇓
3. Wages and any unpaid dues owed to employees for the Period of 12 months.
   ⇓
4. Dues of CG and SG.
   ⇓
5. Unsecured financial Creditors.
   ⇓
6. Other debts and dues.

1,n

Fast track Insolvency Resolution for Coporate Persons.

Time Period. ⇒ 90 Days from insolvency commencement date.

Extention by AA ⇒ One time extention of Maximum 45 Days.

Who may apply. ⇒ Any CD falling under any of the below category.

CD. with assets and Income below a level as may be notified by CG.

A CD, with such class of creditors OR such amount of debt as may be notified by the CG.

Other Categories of CD, as may be notified by the GG.

TIMELINE – Corporate Insolvency Resolution Process.