

# INSOLVENCY & BANKRUPTCY CODE 2016 - ANALYSIS OF AN UNIQUE & SPEEDY LEGAL PROCESS TO RESTRUCT SICK OR INSOLVENT COMPANIES IN INDIA

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## Abstract

*It plays the role of all insolvency resolution professionals, insolvency professional agencies and a governing body for information consumption. According to the Insolvency and Bankruptcy Code [1], 2016, it enforces the rules to resolve Corporate Insolvency, Corporate Liquidation, Individual Insolvency and Individual Bankruptcy. It helps in implementing the provisions of IBC and works to amend any law as per existing. Challenges it serves to resolve any insolvency for corporate, individuals and partnership firms in a timely manner to maximize the value of the insolvent unit and to refund the amount due to creditors. The Government introduced a Code to strengthen already existing laws and to provide a single legal framework for cases related to insolvency and bankruptcy. In May 2016, the Indian Parliament implemented the IB Code 2016, which went into effect in December 2016. The IB Code 2016<sup>1</sup> included the insolvency resolution process as well as the liquidation process for individuals and debtors corporate.*

**Keywords-**IB, IBBI, IBC, Insolvency Resolution, Bankruptcy Code, law etc.

## Abbreviations

IBBI- Insolvency and Bankruptcy Board of India

IPA -Insolvency Professionals Agency

IP - Insolvency Professionals

IU-Information Utilities

NCLT -National Company Law Tribunal)

DRT-Debt Recovery Tribunal

AA-Adjudicating Authority

NCLAT- National Company Law Appellate Tribunal

SC-Supreme Court

IB- Insolvency and Bankruptcy

## I. INTRODUCTION

The IBBI is the regulator overseeing the Insolvency Proceedings and Entities IPA, IP and IU in India. It was established on 1 October 2016 and granted statutory powers through the Code of Insolvency and Bankruptcy, which was passed by the Lok Sabha<sup>2</sup> on 5 May 2016. This includes individuals, companies, limited liability partnerships and partnership firms. The new code will speed up the resolution process for stressed assets of sick industrial companies in the country. It seeks to simplify the process of insolvency and bankruptcy proceedings. It handles cases using two tribunals viz; NCLT and Mrs Suman Saxena was appointed by former Deputy CAG of India as a full-time member of IBBI, appointed Mr. Navrang Saini as a full-time member of IBBI Gaya and Mrs. Mukulita Vijayagariya were also appointed as full-time members of IBBI[2]. The AA, the NCLAT and the Honorable SC are at the forefront of implementation of the code. He has given several historical orders to explain many ideological issues and to resolve controversial issues and audacious areas. These orders have provided clarity for the roles of various stakeholders in the resolution process and what is acceptable and what is not, thereby streamlining the process for the future. The insolvency regime now claims the single largest body of case laws. The Insolvency Law Committee constantly reviews the implementation of the code to identify and influence issues affecting the procedures under the code, stating that the 'path to success is always under construction'. Development plans for FCS11 have produced 188% liquidation value [3].

1. Census, 2011, Office of the Registrar General & Census Commissioner, Ministry of Home Affairs.

2. Report of Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation, January 2017, <http://mohua.gov.in/upload/uploadfiles/files/1566.pdf>.

3. Order No. 40-3/2020-DM-I (A), Ministry of Home Affairs, April 29, 2020, [https://prsindia.org/files/covid19/notifications/4233.IND\\_Movement\\_of\\_Persons\\_April\\_29.pdf](https://prsindia.org/files/covid19/notifications/4233.IND_Movement_of_Persons_April_29.pdf).

They are receiving an average of 43% of their average claims through resolution plans, which take an average of 340 days under a process and meet costs of an average of 0.5%. A far cry from the previous regime, which made 25% recovery for creditors through a process that took about 5+ years and cost 9%. It is important to note that this realization is not the purpose of the code, only a by-product of revival of failed Companies [4]. Following the companies' revival, the code entered significant behavioral changes, resulting in substantial recoveries for creditors outside the code and improved firms' performance. Therefore, it is an important to understand what is happening in the procedures under the Code and what may be causing the Code [5].

## II. KEY FEATURES

**Insolvency resolution:** The code outlines different insolvency resolution procedures for individuals, companies, and partnership firms. This process can be initiated by debtors or creditors. A maximum time limit for completing the insolvency resolution process has been set for corporates and individuals [1]. For companies, the process has to be completed in 180 days, which can be extended to 90 days, if most of the creditors agree. For start-ups (other than partnership firms), small companies and other companies (with assets of less than Rs 1 crore), [2] the resolution process will be completed within 90 days of the start of the request, which can be extended up to 45 days is. [3]

**Insolvency Regulator:** To oversee the proceedings of insolvency in the country and regulate the entities registered under it, the Code establishes the Insolvency and Bankruptcy Board of India. [4] The board will have 10 members, including representatives from the Ministry of Finance and Law and the Reserve Bank of India [5]

**Insolvency Professionals:** The bankruptcy process has been managed by licensed professionals. So that this professional can also control the debtor's property during the process of bankruptcy. One of the properties of the insolvency and bankruptcy sector is Insolvency Professional (IP). [6] He is a subject matter expert and specialist in dealing with the insolvency of individuals, partnership firms, corporate and other legal entities and provides specialized skills and services in the insolvency process. [8] An insolvency professional plays a pivotal role in restructuring and reviving an organization to the extent possible and helps an organization to move out of the shackles of indebtedness and bankruptcy. [7] They, i.e. insolvency professional, play the role of mediator between the company and creditors and helps the creditors in settling their claims and devise ways so as to create a win-win situation for both the company and its creditors. [9]

**The Insolvency and Bankruptcy Code:** The Code proposes two separate tribunals for individuals and companies to oversee the bankruptcy resolution process: (i) the National Company Law Tribunal for companies and limited liability partnership firms; And (ii) Debt Recovery Tribunals for Individuals and Partnerships. [11]

### Corporate Insolvency Resolution Procedures:

In the case of corporate debtors, the NCLT is presented with a request to the bankruptcy authority by the financial or operation creditors or the corporate debtor himself. [12] The maximum time allowed for a petition to be accepted or rejected is fourteen days. [13]

If this petition is accepted, the Tribunal has to appoint an Interim Resolution Professional (IRP) to draft a resolution plan within 180 days (extendable to 90 days), after which the Court The corporate insolvency resolution process is initiated. [14] For this period, the company's board of directors is suspended. [15] IRP can, if necessary, obtain the support of the company's management for day-to-day operations. The liquidation process is initiated when CIRP fails to revive the company [8, 11, 16].

1. <http://www.indiacode.nic.in/acts-in-pdf/2016/201631.pdf>

2. "NCLT okays first insolvency resolution scheme under IBC", Live Mint, 16 August 2017

3. "Legislative Brief of the Code" (PDF). PRS India. Retrieved 18 August 2016.

4. "India Overhauls Century-Old Bankruptcy Laws in Win for Modi", Bloomberg, 11 May 2016

5. <https://www.businesstoday.in/latest/trends/breaking-involved/story/271770.html>

6. "PRS | Bill Track | The Insolvency and Bankruptcy Code (Amendment) Bill, 2017". [www.prsindia.org](http://www.prsindia.org). Retrieved 20 February 2018.

7. "IBC changes: Want to drag realtor to NCLT? Draw in 99 homebuyers". Financial Express.

8. "Why resolution of these 10 NPA accounts will be a crucial test for IBC", The Economic Times, 14 March 2018

9. "Essar Steel: Finally bankers expect money next month". The Financial Express. 28 November 2019. Retrieved 1 December 2019.

10. <https://www.bankingsupervision.europa.eu/press/publications/annual-report/html/ssm.ar2017.en.html>

11. <https://www.globalresearch.ca/page/547?p=0Global9>

12. <https://www.financialexpress.com/opinion/deforestation-desertification-and-climate-solutions/1688074/>

13. <https://www.groupdiscussionideas.com/insolvency-and-bankruptcy-code/>

14. [https://db0nus869y26v.cloudfront.net/en/Insolvency\\_and\\_Bankruptcy\\_Code,\\_2016](https://db0nus869y26v.cloudfront.net/en/Insolvency_and_Bankruptcy_Code,_2016)

15. <https://www.iastoppers.com/rstv-the-big-picture-insolvency-bankruptcy-code-amendment-bill-2020/>

16. Order No. 40-3/2020-DM-I (A), Ministry of Home Affairs, May 1, 2020, [https://prsindia.org/files/covid19/notifications/IND\\_Special\\_Trains\\_May\\_1.jpeg](https://prsindia.org/files/covid19/notifications/IND_Special_Trains_May_1.jpeg).

5. <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1629043>.

**Table1.1:** Corporate Insolvency Resolution Processes

Quarter	CIRPs at the beginning of the quarter	Admitted	Closure by			CIRPs at the end of the Quarter
			Appeal/ Commencement Review/ of Settled Liquidation	Withdrawal under Section 12A	Approval of Resolution Plan*	
Jan-March, 2017	0	37	10	0	0	36
Apr.-Jun, 2017	129	36	80	0	0	157
July-Sept,2017	233	157	188	0	2	362
Oct-Dec, 2017	362	147	3824	0	7	440
Jan-March, 2018	440	195	2059	0	11	545
Apr.-Jun, 2018	545	247	2052	1	14	705
July-Sept,2018	705	241	2986	27	31	773
Oct-Dec, 2018	773	275	878	36	16	910
Jan-March, 2019	910	372	2081	19	17	1145
Apr.-Jun, 2019	1145	286	1287	18	22	1292
<b>Total</b>	NA	<b>2162</b>	<b>174475</b>	<b>101</b>	<b>120</b>	<b>1292</b>

\* These exclude 3 proposals that have since gone into liquidation

**Table 1.2: Recent insolvency resolution reforms with respect to regions**

Features	Economies
Introduced a new restructuring procedure	India; Benin; Brunel Darussalam; Kenya; Mali; Niger; Poland; Togo; Republic of Congo; Guinea & Chad
Improved the likelihood of successful reorganization	Brunel Darussalam; Kenya & Thailand
Improved Provisions on Treatment of contracts during Administrators	Brunel Darussalam; Kenya & Vanuatu
Regulated the profession of I solvency Administrators	Brunel Darussalam; Kenya
Strengthened Creditors' Right	Kazakhstan, India

Source: Doing Business (The World Bank, 2016)

### III. IMPORTANCE OF CODE

It provides for the establishment of a new regulatory Insolvency and Bankruptcy Board (IBBI) in India, which is governing this process, as well as a new class called Insolvency Professionals and Institutions and Information Utilities.[1] Appeals under the said Code have been made to the National Company Law Tribunal and its various benches. Amendments to the code that may or may not participate in the process.[2] This reform required promoters or related parties to escape control of their firm at a distressed price. The code provides a mechanism and platform that is quick to resolve or liquidate failing businesses.[3] Under SICA where a government board played the lead role, the major decision under the code was to decide whether to restructure / rehabilitate or liquidate by the Empowered Committee of Creditors (COC). The COC makes a commercial decision, collectively assessing whether a threatened firm can be revived or liquidated. The code's kingpin deadline is a hardcode in law.[4]

#### Insolvency & Bankruptcy Board of India Governing Board:

**Table 1.3:** Insolvency & Bankruptcy Board of India- Governing Body

Sl. No.	Position	Name and Designation
1	Chairperson	Dr. M.S. Sahoo, an acclaimed thought leader in the area of securities market and a distinguished public servant, is currently serves as Chairperson of the Insolvency & Bankruptcy Board of India.
2	Whole Time Member	Mr. Sudhakar Shukla, Whole Time Member of IBBI.
4	Whole Time Member	Mrs. Mukulita Vijayawargiya, Whole Time Member, Insolvency & Bankruptcy Board of India
5	Ex-officio Member	Dr. Shashank Saxena, Advisor, (Capital Markets), Dept. of Economics Affairs, Ministry of Finance.
6	Ex-officio Member	Sh. Gyaneshwar Kumar Singh, Joint Secretary, Ministry of Corporate Affairs
7	Ex-officio Member	Dr. Rajiv Mani, Joint Secretary & Legal Advisor, Dept. of Legal Affairs, Ministry of Law & Justice
8	Ex-officio Member	Sh. Unni Krishnan A, Legal Advisor, Reserve Bank of India
9	Part Time Member	Dr. Krishnamurthy Subramanian, Chief Economic Advisor
10	Part Time Member	Sh. B. Sriram, Former Managing Director & CEO of IDBI Bank Ltd.

Source: [https://en.wikipedia.org/wiki/Insolvency\\_and\\_Bankruptcy\\_Board\\_of\\_India](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Board_of_India)

1. "Why resolution of these 10 NPA accounts will be a crucial test for IBC", The Economic Times, 14 March 2018
2. "Essar Steel: Finally bankers expect money next month". The Financial Express. 28 November 2019. Retrieved 1 December 2019.
3. "L&T moves NCLT to be declared as secured creditor in Bhushan Steel insolvency", Live Mint, 8 March 2018
4. "Tata Steel subsidiary acquires 72% stake in Bhushan Steel". Jagranjosh.com. 19 May 2018. Retrieved 1 December 2019.

From the time an insolvency case is filed, it must have 270 days to restructure the distressed firm or be sold to a new owner, otherwise, the liquidation starts automatically on a terminal day. Creditors have inbuilt incentives if they want to extract the value. In most cases, the liquidators will attempt liquidation and avoid liquidation because it is smaller than the liquidation process. Deadlines are an extremely important part of the new law

#### **IV. ROLE OF INSOLVENCY PROFESSIONAL IN CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE, 2016**

Insolvency Professional (IP) is a virtuoso in the field of insolvency and bankruptcy [1]. He is a subject matter expert and specialist in dealing with the insolvency of individuals, partnership firms, corporate and other legal entities and provides specialized skills and services in the insolvency process. An Insolvency Professional plays a pivotal role in restructuring and reviving an organization to the extent possible and helps an organization to move out of the shackles of indebtedness and bankruptcy.[2] The Corporate Insolvency Resolution Process is envisaged under the Code, 2016, which is primarily a creditor-driven process, under which the debtor is decided to survive or equally destroy. However, during the liquidation process, there is no vesting of assets and assets in RP, but RP handles the management of the business. Therefore, the approach is similar under the UK Insolvency Act, 1986.<sup>4</sup>The assets of the corporate debtor are selected by RP by the committee of creditors and also detained by the management of corporate debtor's affairs. RP Note that prior to the appointment of RP, an IRP is appointed to perform the above functions, until a creditors' committee is formed and RP is appointed. [3] The role (including an interim resolution professional) played by RP. They, i.e. insolvency professional, play the role of mediator between the Company and Creditors and helps the creditors in settling their claims and devise ways so as to create a win-win situation for both the Company and its Creditors.[4] They also mediate between the company who is unable to repay its debts and the Regulator. An IP is an agent of the regulator appointed for reviving the insolvent company and if the revival is not possible, to shut down and liquidate the company by selling off the assets and distributing the receipts to the stakeholders, in particular the debt holders of the company. [5]

These professionals play the role of rescuers of businesses and provide the legal aid and help in resolving the insolvency of businesses and prepare a scheme for the benefit of creditors and other stakeholders of the company. They take away powers of management from the hands of management and board of directors so that the interest of the credit holders is protected and the company does not miss-utilize the funds of the public. Key roles are as follows; [6]

- Management of the affairs of the corporate debtor
- Management of the entity as “going concern”
- Custody of the assets of the corporate debtor
- Bringing the creditors together
- Conducting the Corporate Insolvency Resolution Process
- Preparation of Information Memorandum
- Facilitating Resolution Plan

#### **VI. INSOLVENCY AND BANKRUPTCY PLAYS THE ROLE OF THE GOVERNING BODY OF THE BOARD OF INDIA**

The IBBI or Insolvency and Bankruptcy Board of India came into existence on 1 October 2016 to regulate and counter various bad debt cases reported by various creditors, including banks in India in particular. IBBI comes under the Insolvency and Bankruptcy Code, 2016 and regulates the profession as well as the processes related to insolvency and bankruptcy.[7] It plays the role of governing body for all Insolvency Resolution Professionals, Insolvency Professional Agencies and Information Utilities. It enforces rules to resolve Corporate Insolvency, Corporate Liquidation, Individual Insolvency and Individual Insolvency as per Insolvency and Bankruptcy Code, 2016.[8]It helps in implementing the provision of IBC and works to amend any law under it and Current challenges. It works towards resolving any insolvency for corporates, individuals and partnership firms in a timely manner so as to maximize the value of the insolvent entity and pay back the amount due to creditors.[9]

#### **VII. POWER AND FUNCTIONS OF IBBI**

The IBBI is entrusted to manage insolvency and bankruptcy regimes in the country. It performs tasks such as registration of agencies of insolvency professionals and certifies and monitors insolvency resolution professionals. The IBBI is also responsible for creating information utilities and renewing them. The IBBI makes rules for the minimum eligibility requirements for agencies to register themselves as Insolvency Professional Agencies or Professionals and to be certified as Insolvency Resolution Professionals. It also charges fees or other fees from these agencies and professionals. It specifies the rules for their functioning in a proper and law-abiding manner.[10]

1. Vinod Kothari&Sikha Bansal, Taxmann, 2016

2. Technical Manual of Insolvency Service

3. Section 129(3), Companies Act, 2013.

4. Section 2(60), Companies Act, 2013.

5. "Contact". Insolvency and Bankruptcy Board of India. Retrieved 20 February 2018.

6. <https://currentaffairs.gktoday.in/tags/insolvency-and-bankruptcy-board-of-india>
7. "Bhushan Steel Acquisition By Tata Steel: Piyush Goyal Calls It Historic Breakthrough". NDTV.com. Retrieved 1 December 2019.
8. <https://www.livemint.com/companies/news/jet-airways1561032558259.html>
9. Reuters, Contributor Chris Thomas. "India cenbank moves to begin bankruptcy proceedings against DHFL". www.nasdaq.com. Retrieved 1 December 2019.
10. Interim Report of The Bankruptcy Law Reform Committee (February 2015); available at accessed on 24th November 2016

The IBBI also ensures and enforces that any Insolvency and Bankruptcy Code, 2016 is levied in a minimum amount of time to pay the creditors the maximum benefit from the debtor's assets. They are responsible for auditing and inspecting the debtor's assets and creditor's claims.[5] They also specify rules for collecting and storing data by various information utilities and provide fair and reasonable access to such data to various stakeholders. They also form communities, which may be necessary in one case so that information related to it can be disseminated. They are taking the lead to promote transparency among stakeholders until the matter is resolved.[6]

Section 196 of IBC 2016 describes the powers and functions of the Board.

The IBBI is constituted by a ten-member committee consisting of a Chairman, three members of the Central Government,[1] who cannot be below the rank of Joint Secretary or equivalent, a member in this committee RBI (Reserve Bank of India ), and the remaining five members are nominated by the central government, three of whom must serve as full-time members.[2]

### VIII. OBSERVATION

According to my study in past one or two years, I observed that the outlook of IBC is quite optimistic and having positive impact on the corporate and industrial development in India.[3] It is well known that the economy is moving down and it is very essential step to be taken to move grow up the economy. Hence, IBC will definitely support to the India Industries because the main goal of the said Code is, in fact to clean up the Banking, Financial Institutions and Corporate nexus from the malicious practices. After the positive impact on the economy would be realizing the need to repay the borrowed money.[4] This will help with the revival and restructuring of the bad loan/ NPAs for the banking sectors. In fact if the economy seeks improvement the industries have to be vigilant and manage their cash flow adequately. IBC is a clamor model.[5] Researchers took the sector to study the major bankrupt reforms in India. In this context, the government has proposed an array of reforms such as the NCLT and the establishment of the new Companies Act, 2013 and was subsequently introduced on IBC, 2016, which is likely to improve the liquidation process and speed up liquidation, efficient and less rigorous, which can go a long way in protecting the rights of creditors[6] To prevent companies from falling into illness and insolvency, the Companies Act, 2013 has introduced certain measures such as a class-action suit, SFIO, whistleblower, rotation of auditors and corporate criminal liability. These provisions of the Companies Act, 2013 are preventive in nature as they will make the management of the company transparent and accountable and thus prevent the company from getting sick and pushed into liquidation. For the purpose of suggesting an improvement in insolvency law in India, researchers will try to find out what part of the UNCITRAL model code on insolvency can be included in India and want to conduct a comparative study of insolvency laws of other countries with India. [7]

### IX. CONCLUSION

"The potential for reorganization agents to increase is increased when (a) it decides that the business of rescue is possible and advises on alternative courses of action (liquidation, reorganization, constructive combination); and (b) to revive/restructure the company. . . ." Such capabilities depend on an adequate supply of specialist labor. Public policy, therefore, (a) means bringing the best and brightest into the debt restructuring sector, (b) competition to reduce costs and reduce conflicts of interest. To regulate, (c) to remove financial and reputational barriers for insolvent businesses, and (d) to develop a regulatory system that is qualified and uninterrupted Saves. "The Indian Insolvency Resolution, the Government introduced a complete overhaul to consolidate several pre-existing laws and provide single law for matters related to insolvency and bankruptcy. In May 2016, the Indian Parliament implemented the Insolvency and Bankruptcy Code 2016 (IB Code),[8] which went into effect in December 2016. The IB Code 2016 included the insolvency resolution process as well as the liquidation process for individuals and debtors corporate. IBBI comes under the Insolvency and Bankruptcy Code, 2016 and regulates the profession as well as the processes related to insolvency and bankruptcy.[9] It plays the role of governing body for all insolvency resolution professionals, insolvency professional agencies and information utilities. The IBBI came into existence because the lack of a properly structured organization to care for the falling companies and their liquidation was perceived. This havoc was causing distrust among the stakeholders in the market and thus those who needed credit

suffered from it. It was also designed to support falling companies to rest on their feet by restructuring their credit so that they could easily repay loans to them and start a new one.[10]

1. [https://issuu.com/ethicalboardroom/docs/eb14\\_combinedsingles\\_autumn2018](https://issuu.com/ethicalboardroom/docs/eb14_combinedsingles_autumn2018)
2. [https://en.wikipedia.org/wiki/Insolvency\\_and\\_Bankruptcy\\_Code,\\_2016](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code,_2016)
3. <https://legalvision.com.au/directors-and-shareholders-liabilities-during-insolvency/>
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