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Restructuring of corporate entities under insolvency regime

Vishnupriya Daga[1], Sunil Asopa[2]
[1] Research scholar, Department of Law, Jai Narain Vyas University, Jodhpur, Rajasthan, India
[2] Professor, Department of Law, Jai Narain Vyas University, Jodhpur, Rajasthan, India
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Abstract
The IBC has been considered as powerful insolvency mechanism with two purposes. It safeguards those businesses that are practical or viable and help way out those businesses which are no longer important. In India, Insolvency and Bankruptcy Code (IBC 2016) is framed with the purpose to become a savior. Before IBC was introduced, India didn't have any technique to protect businesses or when and how to take exit from them. IBC aids to determine and settle insolvency wherever possible with the help of market-directed time bound mechanism or exit where necessitates. The IBC addresses corporate restructuring for all type of businesses whether it is a corporate, partnership firms and individuals. A CD is a person who has made default in payment of dues or debts. IBC furnishes an exit system for those corporate persons who have not defaulted, by way of voluntary liquidation. IBC provisions for corporate restructuring starts to apply from 1st December 2016. This article mainly deals with insolvency resolution and corporate restructuring of CDs. In IBC rescue method is attainted through CIRP while exit mechanism is done with the help of a liquidation process. Therefore, this process of insolvency resolution is done in two stages. In the first stage resolution professional tries to solve the default and reorganize the corporate through CIRP but if it is not resolved through CIRP then the CD is liquidated in the second stage. IBC proposes associated institutional infrastructure and built a new regulatory ecosystem which helps in reducing delays and transaction cost and to increase the efficiency of process. This effective working is very crucial for attaining the objectives of IBC.

Keywords: Corporate restructuring, insolvency, bankruptcy, revival and rehabilitation, resolution, corporate insolvency resolution process, resolution professional, insolvency and bankruptcy board of india, resolution plan, committee of creditor, corporate debtor

Introduction
"The life of company is as valuable as a human. The Insolvency and Bankruptcy Code give company a fresh start when it experiences struggle and faces threat to its life."

Before the enactment of the Insolvency and Bankruptcy Code, the corporate was regulated by the various laws such as Companies Act, SARFAISI, etc. and lacked the experience of modern insolvency regime that is proactive, market driven and time efficient. India's insolvency reform was regarded as landmark decision in history of insolvency regime and enacted the Insolvency and Bankruptcy Code 2016 on 28 May 2016. Within times, this reform became a stakeholder – driven revolution. The law has evolved at every step and continues to achieve the objective enshrined for it. Implementation of such law brought various challenges and IBC through frequent amendments and refinements has addressed the challenges in sync with the emerging market realities. Various changes have been made by the parliament in laws relating to banking, revenue, companies etc. to provide for smooth implementation of the code.

The Insolvency and Bankruptcy Code was enacted with the key objective of revival and rehabilitation of companies, maximizing value of assets, balancing interest of stakeholders, etc. Rescuing the life of companies and saving its life from financial distress and restructuring it is key objective of the IBC. The companies are modern engine of growth and development and its operational capital is always above their liquidation values. When we talk about companies' failure, there are mainly three enemies of life of company – firstly is within company, due to conflicting interest of the stakeholders; secondly is unfair battles at market place and thirdly is competition and innovation. The IBC has been a fruitful legislation in preventing a mechanism for reorganization and insolvency resolution of debtors, in a time bound manner.

Meaningand Concept
Insolvency and bankruptcy are usuallyemployed as interchangeable words, yet they have differentconnotations. Insolvency is when a business liability exceeds the assets and can't pay its debts or makes default in payment of loan. Bankruptcy, alternatively, is a legal order or declaration of company's inability to pay its debt, which includes a formal process against the company or individual. insolvency as the financial statuswhich is repairable and bankruptcy as the legal status.

Corporate restructuring is an action taken by the corporate entity to modify its capital structure or its operations significantly. Generally, corporate restructuring happens when a corporate entity is experiencing significant problems and is in financial jeopardy [1].

Corporate restructuring is when a company makes major changes to its business model, leadership, or finances to boost performance and shareholder value. This can mean layoffs, debt restructuring, or even bankruptcy, but ideally, it's done in a way that minimize the impact on employees as much as possible. It might also involve selling off parts of the company or merging with another company. The goal is to put the company back on track for long-term success. Sometimes, shareholders or creditors push for restructuring if they think the current strategy of business is insufficient, and they're worried about losing their investment [2].

The Corporate Insolvency Resolution Process (CIRP) is the restructuring process where a company's management is handed over to the financial and legal experts i.e. RP to uplift the business. These experts bargain and redesign agreements to change scenario of company. Restructuring can also mean a shift in ownership, which can be done by way of mergers, acquisitions, or takeovers etc. Prior to the Insolvency and Bankruptcy Code, 2016, companies underwent liquidation under the Companies Act, 2013, with a liquidator taking over the control of the company. However, at present liquidation is the last option, and companies can either go for voluntary liquidation or go through the CIRP process under theCode.The CIRP has two stages i.e. restructuring if the company can be revived or liquidation if there's no option left. To undergo CIRP, an applicationcan be filed under sections 7, 9, or 10 of the Code.

History

Global economic reforms and liberalization have greatly transformed the business landscape worldwide. A key effect is the switch from national economies to a more integrated, market-driven global economy. This has sparked anenormous corporate restructuring wave, influencing companies of all sizes and sectors, including old and new economy businesses. companies are reconsidering strategies, operations, and structures to bloom andstay competitive in a more open, global market.

In early 1970, the Reserve Bank of India (RBI) brought in guidelines for restructuring companies strike by natural disasters or financial hassles. In those guidelines, the Reserve Bankstated that if a company is tackling financial difficulties and needs to restructure, it must have approval from 75% of its creditors (by value). And all creditors are subsequently bound by the restructuring plan if 75% agree. only companies with debts of ₹100 million or more from numerous creditors arequalified for this restructuring process. these guidelines directed to assist companies uplift from financial crises and evade bankruptcy.

Financial institutions like banks can be qualified for corporate restructuring if they have a 20% share in the company's loan. In the year 2012, around 292 cases of corporate restructuring, amounting to 1.5 lakh crore rupees and which waslater increased to 401, involving over 2 lakh crores. Further, the Insolvency and Bankruptcy Code (IBC) draft was made to simplify restructuring provisions [3].

Pillars of The Code

The IBC has established a regulatory framework to make sure effective implementation of insolvency law. These regulatory bodies watch over the insolvency resolution process and safeguard the interest of all stakeholders. There are mainly 4 pillars of IBC i.e. Insolvency and Bankruptcy Board of India, Insolvency professional and Insolvency Professional agencies, Information utilities, Adjudicating Authority.

1. Insolvency and Bankruptcy Board of India (IBBI)

The IBC provides for establishment of the IBBI as one of its objectives. The IBBI is a unique regulator – it administers both the professionals handling insolvency cases and the transactions conducted. It has regulatory oversight over Insolvency Professionals (Ips), Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs) andInformation Utilities (IUs). It also creates and enforces regulations for insolvency and bankruptcy processes, namely, the CIRP, the liquidation process, partnership and individual insolvency resolution, and partnership and individual bankruptcy. The IBBI carries out its quasi-legislative, executive and quasi-judicial functions simultaneously. It also works on developing the profession and the level of transactions. It is a key pillar of the ecosystem responsible for making the IBC work effectively [4].

Section 196(1) defines the functions of the IBBI and they have to act according to the general instructions of the Central Government.

The IBBI has the following power and functions

- Provides for registration, renewal, withdrawal, suspension, cancellation of the registration of IPAs, IPs, and IUs;
- promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions [5].
- The board specifyminimum eligibility criteria for successful registration of IPAs, IPs, IUs.
- The board has power to make bye-laws which is to be adopted by IPAs, prescribing minimum standards of professional competence, professional and ethical conduct of members, enrollment of members and the manner of granting membership.
- It provides for regulations for them and monitors their performance and give necessary directions wherever required.
- The board is empowered to carry out inspection and investigation on IPAs, IPs, IUs.
- It also renders for the mechanism of grievance redressal against IPAs, IPs, IUs and pass required orders.
- It provides for enforcement of regulation and development of market processes and practices relating to the CIRP, the liquidation process, and individual insolvency and bankruptcy and its adjudication.

These are some of the functions and powers of IBBI which is to be fulfilled to achieve the objective of the IBC.

2. Information Utilities

There is lot of misuse of the information asymmetry by the corporate debtors in India. Under the IBC, it is very crucial to have the reliable and authentic financial information of the corporate debtor. The creditors and the stakeholdersdo not have sufficient information on default made by the corporate debtor and it take them very long time and efforts to prove the debt and default against debtor and ascertain the financial status of the corporate debtor. To come out of the issue, the IBC has mandate to establish information industry which shall be called as information utilities. The IUs are the persons registered with IBBI under section 210 of the IBC.

It is the prime responsibility of the IUs to maintain the highquality information about the financial structure of the corporate debtor i.e. their debts and defaults. After the appointment of the IP, he requires all the financial information relating to the corporate debtor and can seek as much information as required from the IUs. This makes the corporate insolvency resolution process speeder and helps the financial creditors in better decision making and concluding fair resolutionplan. The prime source of getting financial information about the corporate debtor is from the IUs registered with IBBI.

3. Insolvency Professional and Insolvency Professional Agency

According to section 3(19) of the IBC, an IP is a person who is registered with the IBBI as an IP under section 207 and enrolled as a member under section 206 with an IPA. Section 3(20) of the IBC defines the term IPAs, it is an entity which is registered with IBBI under section 201 of code and enroll insolvency professional. Under the IBC, only an IP may be designated as a liquidator, bankruptcy trustee, resolution professional (RP), or interim resolution professional (IRP). The AA designates a liquidator to oversee the liquidation process and an IRP or RP to oversee a CD's CIRP. For individuals and partnerships, a bankruptcy trustee oversees the insolvency and bankruptcy procedures. Thus, the IP serves as the basis for the IBC by functioning as an IPR, RP, liquidator, or bankruptcy trustee. according to Section 206 of the IBC, an individual cannot provide services as an IP under the IBC unless they are registered with the IBBI and a member of an IPA. According to section 207, in order to become an IP, a person must first register as a member of an IPA and then, after paying the necessary cost, register with the IBBI in the way outlined by the regulations. The IP Regulations, which govern the registration, regulation, and supervision of insolvency professional, and the IPA Regulations, which govern the registration, regulation, and supervision of IPAs, the first level regulators of insolvency professional, have both been notified by the IBBI [6].

4. Adjudicating Authority

Adjudicating authorities (AA) are the tribunals established under section 408 of the Companies Act [7] to adjudicate the matter pertaining to corporate insolvency resolution process or liquidation of companies. Section 5 (1) of the IBC defines National Company Law Tribunal (NCLT) as the AA. The NCLT was constituted on the recommendations of the Justice Eradi committee in June 2016. It took the place of the company law board i.e. the jurisdiction of the Board for Industrial and Financial Reconstruction, and the High Courts of company law.

After the filing of application of the corporate insolvency resolution process by creditors, the process Initiate upon the admission of the application by the AA. The AA has the power to either accept or reject the resolution plan submitted the corporate debtor. And if the AA rejects the resolution plan, the corporate debtor goes into the process of liquidation and gets dissolved. If the parties to the CIRP is aggrieved by the order of the NCLT, then they approach the appellant authority i.e. NCLAT under section 61 of the IBC. The time limit to file the appeal before NCLAT is within 30 days from the order passed by the AA.

Process of corporate restructuring under insolvency

The process of the corporate restructuring also known as corporate insolvency resolution process under insolvency law is provided under IBC to assist the corporate debtor to eliminate financial distress and protect the interest of all the stakeholders and creditors involved. The processofCIRP can be initiated by financial creditor, operational creditor or even corporate applicant himself. Under the process the committee of creditor, AA and resolution professional plays a crucial role to achieve the objective of resolution. If the financial status of company is such that it cannot be recovered and has potential losses then CIRP process further proceeds with liquidation of the company. The detailed procedure followed during CIRP is discussed herewith.

1. Filing of application by the creditors and corporate applicant

All the creditors whether its financial creditor or operational creditor and even the corporate applicant has the authority to begin the process of CIRP. As per section 7 of the code, the financial creditor can file application for initiation of the CIRP with the National Company Law Tribunal. The financial creditor can file the application alone or even in conjunction with other financial creditor and the same has to filed under form 1to the NCLT. The application shall be filed along with the proof of default obtained from the information utility and also the name of resolution professional who shall act as interim resolution professional. The NCLT upon establishment of the existence of default either decide to accept of reject the application within 14 days from filing of the application. If NCLT is satisfied regarding the existence of default and no disciplinary action is pending against the proposed resolution professional, it shall accept the application. And if NCLT is not satisfied with existence of default and any disciplinary action is awaited against the proposed resolution professional, it shall reject the application. As soon as application is admitted the procedures for CIRP is commenced and the NCLT shall inform about the admission or rejection of the application within 7 days of its decision to the financial creditor and corporate debtor.

According to section 9 of IBC, operational creditors are eligible to apply for the initiation of the CIRP against the corporate debtor before the National Company Law Tribunal. The application has to made in Form 5 along with the demand notice or bill demanding payment as per section [8] and affidavit that no reply to the notice was received from the corporate debtor and certificate obtained from financial institution maintaining accounts of the creditor regarding non, payment of the unpaid debt from debtor and default record available with information utility. The adjudicating authority may either admit or reject the application within 14 days from receipt of application. If the NCLT is satisfied that the application is complete and no disciplinary action is pending against the proposed resolution professional, the application shall be accepted and if NCLT is not satisfied and application is incomplete and disciplinary action is pending against the proposed resolution professional, application shall stand rejected. The NCLT shall communicate regarding the admission or rejection of the application within 7 days to the financial creditor and corporate debtor.

As per section 10 of the IBC, corporate applicant is eligible to file the application before NCLT for processing CIRP. The main reason behind allowing the corporate applicant to do so is their accurate knowledge about the financial status of the corporate debtor. The application can be filed only on factual ground of non-payment of debt and not justly. It is to be submitted in Form 6 along with the books of accounts, name of resolution professional and a special resolution regarding filing of application by 75% of corporate's stakeholders. After analyzing the application, the NCLT may either admit or reject the application.

In Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India & Ors [9]. It was held by the supreme court that home buyer shall be treated as the financial creditor and the amount deposited by the allotee to the construct shall be deemed to be financial debt. And validated the amendment to include the home buyer as financial creditor.

2. Moratorium and Public announcement

Section 13 of the IBC specifies that after admission of the application by the NCLT, an interim resolution professional is appointed and a moratorium is declared and public announcement is made regarding the same. The term moratorium is explained under section 14 which states that all the acts specified are barred during the process of CIRP like any suit or arbitration proceeding, sale agreement or transfer of assets or any other act of like nature. So that the assets of the corporate debtor are protected and better resolution plan can be concluded. It is also referred to as "clam period".

3. Timeline

The provisions of the IBC Prescribes that the process of the CIRP should be completed within the time frame of 180 days from the date of the commencement of the proceeding. If the procedure of CIRP is not concluded due to any of the cause then the time frame can be extended to further 90 days. Hence, the overall time period to conclude the proceeding is 330 days from the date of the commencement of the application.

4. Submission of claims and its verification

During the public announcement, the submission of claimsis invited from all the creditors. It is the responsibility of all the creditors to submit their claim within the time stipulated in public announcement. The claims should be submitted within 14 days from date of the appointment of theIRP along with the proof of claim.

After receiving the claim, the IRP or RP shall revise the claim with evidences attached therewith within 7 days from the last date of submission of claim. Further on the basis of the evidence collected, the IRP or RP shall form a list of creditors with their name and the amount claimed and the claim approved and the security interest, if any.

5. Committee of Creditors (CoC)

According to the section 21, the IRP shall constitute the committee of creditor. It is one of the prime duties of IRP to form the CoC. The committee of creditor shall consist of all the financial creditors; there can be as many financial creditors as can and each financial creditor shall have voting rights according to the proportion of the debt they owe. But the related party [defined under section 5 (24)] to the corporate debtor shall not be financial creditor and shall not participate and nor have any voting rights in the meeting of CoC. In situation, where there are no financial creditors, then CoC shall consist of the operational creditors. The IRP shall intimate about the constitution of the committeeto the AA within 2 days of verification of claims. The first meeting of the committee shall be held within 7 days of its constitution and the committee shall with 66% vote appoint the IRP as RP or appoint new RP registered with IPAs.

6. Approval of resolution plan

After the formation of the committee of creditors and receiving the expression of interest from all resolution applicants, the resolution plan shall be analyzed by the committee and IRP. The resolution plan which best serves the purpose of resolution and protects the interest of all the stakeholders and benefit the creditors with lesser haircut shall be approved by the committee and be communicated to the AA. And if no resolution plan is approved, the company shall go for liquidation process. The decision of the AA shall be binding on all the parties including corporate debtor, promoter, director, creditors and all stakeholders.

In the case of Swiss Ribbons Private Ltd and Another Vs. Union of India and others (2019), the Supreme Court validate the constitutionality of IBC by monitoring that main objective of IBC is to recognize, rehabilitate, revive, reorganize, and insolvency resolution of corporate debtor in time, oriented manner [10].

In Binani Industries Ltd Vs. Bank of Baroda &Another theNCLAT remarked that the first order intent ofthe IBC is resolution, the second order intentis asset maximization, and the third order intents are elevatingentrepreneurship, availability of credit, andbalancing the interests of stakeholders. Thisorder of intents is inviolable and unchallengeable [11].

Conclusion

Insolvency law is the great revolution in Indian history. The IBC has consolidated all the laws relating to insolvency which was spread over various enactments. Previously, the winding up or liquidation was only option to exit the market place and there was no provision for rescue or revival. The IBC has provided the method to reorganize the corporates facing financial distress. IBC provides the opportunity to the corporates to restructure itself. It provides for the timely resolution, cost-effective, maximizing the value of assets, protecting the interest of all the stakeholders as major objective to be achieved. Corporate restructuring is basically the concept to overcome companies out of financial distress and keep the company as a going concern. The IBC enables establishment of institution framework to achieve the objective in speeder and time bound manner. It established IBBI, Insolvency Professional Agencies, Insolvency Professional, and Adjudicating authority as important authorities to conduct the process of resolution and achieve the goal with its successful implementation. The IBC has been considered as the boon to the economic sector of India and has been the life savior for the companies.

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