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Development of Corporate Insolvency Resolution Process

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ABSTRACT

As per the traditional company law, a company never dies or ceases to exist unless and until the task for which it was formed has been completed or it is specifically wound up through the procedures. Membership and executives of a company may keep on changing from time to time but that in any way does not affect life of the company. A Company, having no mind of its own, always acts through its stakeholders, each having a unique objective function, with different set of rights, interests depending on the level of engagement with the company. Anyway, the insolvency of a particular member does not affect the existence of a company. However, several disruptive forces are killing off older companies at a much faster rate and earlier than decades ago, Irrespective of company's characteristic of perpetual succession, the average age of companies in recent years has resulted in shortening the lifespan of companies squeezing employees, investors and other stakeholders. The IBC has undoubtedly transformed India's insolvency and restructuring landscape, providing a streamlined, efficient and time-bound process for resolving insolvency. Despite the challenges and complexities involved, the IBC has shown significant promise in improving recovery rates for creditors and ensuring the timely resolution of distressed assets.

Keywords: Development, Corporate Insolvency, Resolution Process, Monitory Business, Bankruptcy.

INTRODUCTION

As per the traditional company law, a company never dies or ceases to exist unless and until the task for which it was formed has been completed or it is specifically wound up through the procedures. Membership and executives of a company may keep on changing from time to time but that in any way does not affect life of the company. A Company, having no mind of its own, always acts through its stakeholders, each having a unique objective function, with different set of rights, interests depending on the level of engagement with the company. As a consequence, the interest of one stakeholder may conflict with those of another and they may work at cross purposes or even against the interest of the company. Some may leave the company at the earliest sign of its distress. The departure of a major shareholder often orphans the company. Anyway, the insolvency of a particular member does not affect the existence of a company. However, several disruptive forces are killing off older companies at a much faster rate and earlier than decades ago, Irrespective of company's characteristic of perpetual succession, the average age of companies in recent years has resulted in shortening the lifespan of companies squeezing employees, investors and other stakeholders.[1]

The current Indian design for corporate liquidation objective is stacked with needs the laws, their methodologies, and their execution similarly as in the restriction of the establishments supporting them. Since the monetary change cycle of the 1990s, there has been huge advancement in the improvement of monetary business sectors and administrations in India (Thomas 2005) However, this advancement has been slanted to a great extent towards value markets.[2] In spite of significant strategy drives, the improvement of obligation marketplaces has seen some upgrading. Numerous variables have contributed to the absence of advancement of obligation marketplaces of India; one of them plainly stands apart as a huge missing piece is the shortfall of a lucid and powerful system for settling bankruptcy. The restricted responsibility organization is an agreement among value and obligation. Not at all like a value contract, where there are no guaranteed gets back to financial backers, in an obligation agreement, has the debtor or debt holder guaranteed a reoccurrence just as a reimbursement of the first cash-flow to the loan specialist (or the leaser) at a characterized time later on. All obligation agreements have likelihood to the hour of reimbursement; the indebted person may not make the installment as guaranteed and defaults. Non-installment by a borrower firm might be because of a transient income stress in any event, when the basic plan of action is producing incomes or because of a major shortcoming in the plan of action in light of which the business can't create

[1] Ashutosh Prakash, "Evolution of Corporate Insolvency Resolution Process: Journey from start to the pre-pack mechanism available at https://blog.ipleaders.in/evolution-corporate-insolvency-resolution-process-journey-pre-pack-mechanism-insolvency-bankruptcy-code/#Introduction (Last visited on September 22, 2024 at 4:50 p.m.).

[2] Rajeswari Sengupta, Anjali Sharma, *et.al.,* "Evolution of Insolvency Framework for Non- Financial Firms in India" *available at:* http://www.igidr.ac.in/pdf/publication/WP-2016-018.pdf (Last visited on September 22, 2024 at 4:52 p.m.).

adequate incomes to make installments. However long the obligation commitments are met, value proprietors have full control and the leaders of the firm have nothing to do with the running of the business. At the point when the account holder defaults on installments, the control moves to the leasers and the value proprietors ought to have no further say. The leaseholders will have control, and the worth owners will have no further said. In the event of a default, the banks have the incentive to recover their aggregates as quickly as possible. As a result, there may be a race to accumulate, with firm liquidation as an unavoidable outcome. What should ideally happen is that the lessees and the compelled individual work out a financial improvement plan to safeguard the business's financial worth and maintain the project running as a continuing concern. If the default is expected to be the consequence of a business frustration, the project should be stopped off as soon as possible.[3]

A strict regulatory framework regarding the post process following bankruptcy was always needed. In spite of being a ground requirement for any well-functioning economy, India was lacking in an efficient and strict bankruptcy system. While committees appointed by the Government of India had recommended several changes to the old regime, those recommendations were never implemented in real-time. It was then after the enactment of 'Insolvency and Bankruptcy Code (IBC) in 2016, this law was being hailed as one of India's biggest structural reforms in the economic sphere after the independence and it is for sure that as long as it continues to be implemented properly, IBC will have a far-reaching impact on the corporate governance and the availability of credit in India. It has redefined the insolvency resolution framework in India. With this article, I have tried to summarize and put some of the remarkable highlights in bullet points with respect to the major modifications that have happened since the time of the enactment of the principal code with 'pre and post Covid-19' legislative amendments and case laws.[4]

DEVELOPMENTS IN THE REGIME

The birth of Insolvency laws in India

The origins of Indian liquidation law can be traced back to English law. The most credible insolvency schemes can be traced back to the Government of India Act, 1800, sections 23 and 24. In 1849, 1869, 1883, and 1914, the English Parliament passed Bankruptcy Acts in this manner. In India, the necessity for insolvency law was first recognized during a period when the British controlled large amounts of trade, such as in Bombay, Calcutta, and Madras. When India's Statute 9 (Geo IV c. 73) was released in 1828, it was supposed to mark the start of the country's insolvency legislation. The establishment, which had wanted to go on for what seemed like an eternity, was finally freed up till 1848. The fundamental insolvency court, overseen by a Supreme Court Judge, was established in the Presidency towns under this Act for the relief of cleaned out account holders. The obligation court used to meet only when it was needed. The Indian Insolvency Act was passed in 1848, modeled after the English Bankruptcy Statutes at the time, to address the issue of insolvent debtors and provide solutions to mutually accepted goals. Following the establishment of the Indian High Court Act in 1861, all organization towns were dissolved and the current High Courts were established, with the domain of insolvency matters falling under their jurisdiction. While there were specific insolvency laws in place for the Presidency towns, there were none in place for the Mofussil areas. In 1877, an undertaking was made, and the CPC of 1877 was modified as specified rules in Chapter 20. District Court areas were established to receive liquidation applications and award discharge. The need such a meaningful framework to handle responsibilities has been realized in Bombay, Calcutta, and Madras, India's three Presidency towns, where the English administered. For the Mofussil area, the Provincial Insolvency Act of 1920 is in effect. The 1848 Act was determined to be inadequate to suit changing situations, therefore the Presidency Towns Insolvency Act, 1909 was enacted to regulate individual and corporate insolvency and bankruptcy. The Single Judge of the HC of Specific Presidency Towns, such as Bombay, Calcutta, and Madras, was allocated a region under this approval.[5]
The Presidency-towns Insolvency Act, 1909 keeps on being in power for Bombay, Calcutta and Madras and covers the indebtedness of people, organizations and relationship of people.[6]

There was no obligation statute for non-Presidency town districts until the mid-1900s. The primary obligation law for various districts was the 1907 Provincial Insolvency Act, which was eventually supplanted by the 1920 Provincial Insolvency Act. It continues to be the

[3] Ibid
[4] Ashutosh Prakash, "Evolution of Corporate Insolvency Resolution Process: Journey from start to the pre-pack mechanism available at https://blog.ipleaders.in/evolution-corporate-insolvency-resolution-process-journey-pre-pack-mechanism-insolvency-bankruptcy-code/#Introduction (Last visited on September 22, 2024 at 4:50 p.m.).

[5] Harshal Sadhwani, "The Indian Bankruptcy Law & How they are Different from UK and US" *available at:* http://www.legalserviceindia.com/legal/article-3356-the-indian-bankruptcy-laws-and-how-are-they-different-from-uk-and-us.html#:~:text=The%20Law%20of%20insolvency%20in,law%20of%20insolvency%20in%20India.&text=Under%20this%20Act%2C%20the%20first,for%20relief%20of%20insolvent%20debtors (Last visited on September 22, 2024 at 5:35 p.m.).
[6] *Supra* note 1.

insolvency legislation in force in regions other than the Presidency towns of Bombay, Calcutta, and Madras, and it monitors individual debt, which can also be consolidated as proprietors.

In 1964, The Law Commission of India recommended combining the two statutes to create a single insolvency law that would apply across the country. Regardless, it was never finished. The Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 are still in effect today as major legislation governing individual obligations and interpersonal relationships.[7]

THE FIRST LAWS FOR CORPORATE INSOLVENCY

The Companies Act, 1956

The terms "bankruptcy" and "insolvency" were defined in the Concurrent List of the Indian Constitution, which was enacted in 1950. However, the Center List included the joining, guiding, and closing down of businesses. The Companies Act was approved by Parliament in 1956 as a result of these forces. This Act governed all aspects of how organizations functioned, even how they were twisted up. The Act did not define indebtedness or insolvency, but it did regulate 'failure to pay obligations.' Regardless, it was the only statute available for handling corporate indebtedness at the time.[8]

Section 425 of the Companies Act gave a base structure to compulsory disintegration (necessary ending up as characterized in the Act) just as deliberate disintegration. Different segments including Sections 433, 443, 444, 455, 463, 466, 481' and488 contained definite methodology for the goal cycle. In spite of a few segments tending to the goal interaction, the first Act of 1956 was unequipped for managing corporate bankruptcies. The Act fail to give any plan either to the joining of insolvency cost or for super-need of obligation cost. It transferred most has an effect to courts, which along these lines, entrusted the reasonable treatment to a power outlet, all around a legal master appointed by the court with an extremely limited perception of the association's business. Unpracticed vendors, with restricted information on innovation, sell off hypothesis, authoritative conduct and monetary designing, influenced delayed goal timetables and problematic recuperation to serve banks and workers. The chance of terrible recovery in an astoundingly distant future kept impacted gatherings from beginning breaking down methodology under Companies Act (Patwari, 2014). Companies Act gave only the lawful leader (jurisdictional High Courts) the power to pick the benefits of collapsing, but the courts were not provided any authoritative framework to judge merits. The absence of a supporting definitive framework resulted in a tumultuous legal situation, with each High Court unraveling specific instances differently and issuing orders, sometimes in direct opposition to another High Court.[9]

This Act, which was passed during the early stages of India's industrialization, focused on laborers' responsibilities and contributions to the government rather than banks' fee. The Companies Act of 1956 included provisions that allowed an organization or its banks to try to reorganize it. Nonetheless, these were broad arrangements that did not refer to debts or chapter 11 situations.

In 2013, India has approximately 14 lakh enlisted entities, with just 9.5 lakh being functional. Surprisingly, between 2008 and 2010, not more than 6,500 cases of twisting up were enrolled with the High Courts on a regular basis. Each year, about 250-350 cases were added, and about 300-600 cases were completed. This is reflected in the poor use of Companies Act measures for managing company debt. It also focuses on the High Courts' inability to control case quantities due to a lack of a limit. Episodic evidence suggests that, on average, finishing under the Act takes five to eight years, and in extreme circumstances, up to 25-30 years.

The Companies (Amendment) Act of 2003 suggested major revisions to the Companies Act of 1956's debt-related provisions. Regardless, due to legitimate problems, these people were unable to be notified. The new Companies Act was passed in 2013. The vast majority of the provisions of the 2013 Act are similar to those suggested in the 2002 Second Amendment. Even with the new Companies Act of 2013, issues in terms of corporate indebtedness arrangements persist. As a result, the laws of the Companies Act of 1956 remain in effect.[10]

Sick Industrial Companies Act, (SICA) 1985

From 1956 to 1985, the Companies Act was the only piece of legislation that dealt with corporate debt. The advancement of assembling ventures in the economy, which required large investments, was one of the first arrangements made by the governmental authority after independence. As was customary in a few emerging nations, the government funded these ventures through massive improvement financing organizations (DFIs), which were established with the goal of energizing modern events. In exchange for credit, the DFIs were given a seat on these organizations' governing bodies. This was necessary to give these banks direct control over these organizations' administration. As a result, a helpless

[7] *Ibid.*
[8] *Ibid.*

[9] Ashish Pandey, "The Indian Insolvency & Bankruptcy Bill: Sixty Years in Making" Vol. 8, *IMJ* 27-28 (2016).
[10] *Supra* note 1.

distribution of financial capital resulted. There is evidence that large enterprises with banks as lenders and last on the balance sheets have more clout, engage in less speculation, and are more likely to be in financial distress. This was found to be true in India as well (Bubna and Gopalan 2012).[11]

By the mid-1980s, the problem of illness in modern businesses had spread far and wide. The number of disabled mechanical units increased from 26,758 in 1981 to 119,606.9 in 1985; an empowered advisory body (Tiwari Committee) was formed to prescribe authoritative and administrative answers to the modern infection problem. As a result, the Sick Industrial Companies Act (SICA) was created in 1985 with the goal of detecting and resuscitating "ailment" in modern businesses. The Act was upheld when the Board of Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AIFR) and Financial Reconstruction (AAIFR) were established.[12]

SICA was the primary law which zeroed in exclusively on rebuilding of organizations. In any case, its inclusion was barely characterized to incorporate just mechanical organizations" that were considered debilitated" The Act put the onus of announcing disorder on the leading group of the firm. Whenever disorder was accounted for, the Act gave a programmed stay on all suits, cases and procedures against the organization. This system varied from that in the Companies Act, where a stay was not programmed and was allowed at the attentiveness of the High Court. SICA additionally engaged the debt holder organization to control its resources and tasks even in the wake of being declared debilitated. Over the long run, the law fostered a particular restoration predisposition (Zwieten 2015).Key arrangements of the Act were deciphered and reevaluated by decided trying to save organizations that were bankrupt and consequently bound for liquidation, and to secure a few sorts of partners (particularly representatives) in the meantime time frame.

An extra test with SICA was that there was just one seat of the BIFR, in Delhi. As endeavors developed complex in number all around the country, the absence of limit at the BIFR turned into a bottleneck. Further, if the BIFR passed judgment on the organization to be wiped out, it suggested twisting up. Yet, the wrapping up request according to the Companies Act, 1956, was given by the High Court. Regularly, wrapping up proposals by the BIFR were re-opened by the High Courts a new and numerous a period, even switched, accordingly creating unreasonable setbacks and related misfortune in firm worth.[13]

[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*

An examination of BIFR cases from 1987 to 2014 found that the BIFR was responsible for 5,800 instances in total. 53 percent of these cases were excused or reduced, 22% of the cases were recommended for liquidation, 9% of the cases had a restoration plan implemented, and the remaining 15% of the cases are still pending in BIFR. The average length of time it takes to resolve a case is 5.8 years. This is due to the fact that qualifying firms frequently used BIFR as a factor in obtaining assurance from their banks. It also focuses on BIFR's case volume management limit problem.

The 2003 Amendment of the Companies Act looked to rescind SICA. In any case, because of lawful difficulties this Amendment couldn't be advised.[14]

The Recovery of Debts Due to Banks and Financial Institutions, 1993 (RDDBFI):

The recommendations of the High Level Committee on the Financial System (Narasimham Committee I, 1991) prompted the passage of the Recovery of Debts Act in 1993, thanks to the Banks and Financial Institutions Act (RDDBFI, 1993). According to the board, banks and DFIs considered that recovering their commitments from borrowers through the Civil Court system was challenging. It advocated for the creation of special courts to speed up the healing process. Similarly, the RDDBFI Act cleared the path for Debt Recovery Tribunals (DRT) and Debt Recovery Appellate Tribunals to be established (DRAT). The DRTs and DRATs were supposed to be special courts that would work with banks and a specific set of financial institutions to recover debts from defaulters quickly.

The DRTs were given the authority to arrange for repayment by offering the borrower's assets, as well as to imprison or keep the indebted person. DRTs were the primary court of appeal for distressed account holders, but any appeal to the DRT had to be lodged after the DRATs had received 75 percent of the contribution ahead of time.

While the DRTs were set up for rapid settling of issue relating to the recuperation of contribution, they experienced a few shortcomings. This incorporated the absence of assets accessible to the courts, which thusly prompted delays in choosing cases past the endorsed time period of a half year. DRT recuperation rates in 2012 and

[14] Adam Hayes, "Sick Industrial Companies Act" *available at:* https://www.investopedia.com/terms/s/sick-industrial-companies-act-sica.asp#:~:text=The%20Sick%20Industrial%20Companies%20Act%20of%201985%20(SICA)%20was%20an,could%20pose%20systematic%20financial%20risk.&text=SICA%20was%20then%20fully%20repealed,the%20Companies%20Act%20of%202013 (Last visited on September 22, 2024 at 5:45p.m.).

2013 were at 17% and 14% separately of the sums in question.[15]

Further, since this law didn't make a difference to lenders other than banks and determined monetary establishments, the DRTs made an exceptional class of leasers with more noteworthy recuperation rights. This restricted the certainty of different kinds of lenders to go into the obligation market, and restricted the size of these business sectors.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI, 2002) Act, 2002:
The 2nd Narasimham Committee on Banking Sector Reforms (Narasimham Committee II, 1998) expressed that in the banking industry, the assets which are non performing their number (NPAs) has increased. Authorization of Territorial Integrity and Securitization and Structured finance Assets (SARFAESI, 2002) Act was enacted in 2002 as a result of the Committee's recommendations.

In order to collect non-performing loans, the Act gave banks and financial institutions clearance powers. Because the DRTs had not proven to be as effective as they had planned, the SARFAESI Act created an elective course in recovery. Without the requirement for court intervention, the Act allowed banks and financial organizations to claim the guarantee security. Its purpose was to reduce the quantity of nonperforming assets (NPAs) at banks and large public financial institutions, which had been expanding rapidly. Following its implementation, the number of new cases _led by DRTs increased by about 40% (Rajan, 2008).[16]

Asset Reconstruction Companies were also suggested by the Narasimham Committees I and II (ARCs). Banks might dump their bad debts into ARCs in exchange for a rebate, with the end goal of achieving the goal. SARFAESI 2002 was designed to facilitate the creation of Securitization Companies/Asset Reconstruction Companies (SC/ARC). These financial institutions are special foundations that buy nonperforming assets (NPAs) from banks in order to recover and settle them.

SARFAESI granted unusual required powers, but only to a certain group of banks, such as banks. Furthermore, Authorization operations under the SARFAESI Act outperformed BIFR processes in the High Court’s when 60 percent of the banks agreed.

This meant that recovery under SICA or termination under the Companies Act might be postponed or even reduced if SARFAESI authorization was used. The performance of SARFAESI in aiding the recovery of banks' erroneous contributions was promising at first, but has since deteriorated. The percentage of those who recovered fell from 61% in 2008 to 21.9 percent in 2013. Nonperforming assets (NPAs) offered by banks to ARCs have remained steady.

[15] *Supra* note 1.
[16] *Ibid.*

RECOMMENDATIONS BY VARIOUS COMMITTEES

Eradi Committee: The Beginning (1999)
Indian government established a Committee in 1999, led through Justice V.B. Eradi, to scrutinize, give suggestions on attractiveness for change to already law that is presenting relation to the dissolution of organizations in order we can gain as much as we can in terms of clarity and no delays in the final liquidation of organizations; the body concluded after taking into account the precedent which was international. The NCLT, rather than the High Court, should be given jurisdiction, power, and authority over the dissolution of organizations, according to the Committee. The Committee strongly recommended naming Insolvency Professionals from the ICAI, ICSI, ICWAI, Bar Councils, or corporate administrators familiar in relation to corporate administration of the United Kingdom's Indebtedness Act. The Committee addressed and proposed the fundamental concerns that accompanied it.:–

After reviewing international patterns, the Committee concluded that bankruptcy law should allow for quick removal of assets and that in the Indian financial environment, it should first address the probable results of recovery and restoration of organizations. The Committee noted that there are three distinct offices: (I) the High Courts, which have the authority to order the dissolution of organizations under the provisions of the Companies Act, 1956; (ii) the Company Law Board, which has the authority to use its functions given to it through the Act , forces of the Center Government designated for this; and (iii) the Board for Industrial and Financial Reconstruction (BIFR), which has authority for it thus order the dissolution of organizations under the provisions of the Companies Act, 1956.

The advisory panel drew attention to the lengthy process of establishing a business in India; it may take up to 25 years on average.[17]

JJ Irani Committee
In the restoration and disposal process, the Insolvency Tribunal should have a broad, non-interfering, and

[17] The Institute of Company Secretaries of India, “Insolvency- Law & Practice” *available at:* https://www.icsi.edu/media/webmodules/ILP_Study_with_TP.pdf (Last visited on September 24, 2024 at 5:35 p.m.).

administrative role. More noteworthy mediation of the Tribunal is required distinctly to determine debates by embracing a most optimized plan of attack approach. The Tribunal ought to receive a business way to deal with question goal noticing the set up legitimate standards of decency all the while.

The Tribunal should set principles of superior grade and have the option to meet essential degree of public assumptions for decency, biasedness, straight forwardness and responsibility. The Tribunal's Chairman and Judges must be chosen in such a way that they can direct the activity of the Tribunal with a diverse set of skills.

The court will need particular ability to resolve the issues alluded to it. The law ought to recommend a sufficient capability standard for arrangement to the Tribunal just as preparing and proceeding with training for judges/individuals.

Regulations must be structured in such a way that accessibility to legal materials and hearings is ensured proceedings, indebted individuals, monetary information, and other publicly available information.

Guidelines for quantifying the Tribunal's capacity, execution, and administrations should be defined and received so that a legitimate assessment can be made and additional improvements may be advised.

The Tribunal ought to have clear position and compelling techniques for authorizing its decisions. It ought to have satisfactory forces to manage criminal behavior or harmful direct.[18]

Bankruptcy Law Reforms Committee, 2014:

When the Ministry of Finance established the Bankruptcy Law Reforms Committee (BLRC) in 2014, under the chairmanship of Dr. T. K. Viswanathan, a massive effort to completely modify section 11 was undertaken. The BLRC was given the task of recommending an Indian Bankruptcy Code that would apply to all non-financial businesses and individuals and would supersede the existing framework. In November 2015, the Committee presented the public expert with its report and a general draught of the Insolvency and Bankruptcy Code (IBC). The IBC was approved by Parliament in May 2016. This implies that India already has a new liquidation legislation in place, which would supersede the current laws for all types of debtors and banks. The public has yet to witness the new law in action.

The Committee's goals were to determine bankruptcy with less time involved, less recovery misfortune, and higher levels of obligation finance across securities. By repealing two laws and correcting six others, the Committee proposes a hybrid of the current legal structure. It proposes repealing the 1909 Presidency Towns Insolvency Act and the 1920 Provincial Insolvency Act. In addition, it has proposed a change. : (I) Companies Act, 2013, (ii) Sick Industrial Companies (Special Provisions) Repeal Act, 2013, (iii) Limited Liability Partnership Act, 2008, (iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (v) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and (vi) Indian Partnership Act, 1932.

The body has recommended the formation of a loan leaders council, in which monetary lenders will be able to vote on the magnitude of their obligations. The loan officers' council will attempt to communicate with the borrower in order to devise a restoration or repayment program.

The report traces the technique for bankruptcy goal for organizations and people. The interaction might be started by either the account holder or the loan bosses.

Currently, just got monetary banks (leasers holding insurance against credits), can document an application for proclaiming an organization debilitated. The Committee has suggested that functional lenders, for example, workers whose pay rates are expected, be permitted to start the bankruptcy goal measure (IRP).

The whole IRP will be overseen by an authorized bankruptcy proficient. During IRP, the expert will manage and monitor the debtor's assets to ensure that they are protected while the exchanges take place.

The Panel has suggested that Insolvency Professional Agencies be established.

Organizations will accept debt specialists as persons and establish an unspoken set of rules. The report suggests rapid indebtedness goal and time bound arrangements among lenders and the borrowers. To guarantee this, a multi-day time-frame for culmination of the IRP has been suggested. For cases with high intricacy, this time-frame might be stretched out by 90 days, if 75% of the loan bosses concur.

The council has proposed to set up data utilities which will keep a scope of data about firms, and hence stay away from delays in the IRP, normally brought about by an absence of information.

The Panel has recommended that the Insolvency and Bankruptcy Board of India be appointed as the controller to ensure that the country's indebtedness targets are met. The Board would be in charge of debt competent offices and data utilities, as well as establishing standards for India's bankruptcy aim.

[18] *Ibid.*

The Committee proposed two courts to settle complaints under the law: (I) the National Company Law Tribunal will keep on having locale over indebtedness goal and liquidation of organizations and restricted responsibility associations; and (ii) the Debt Recovery Tribunal will have ward over indebtedness and chapter 11 goal of people

The Ministry of Finance established the Bankruptcy Law Reforms Committee (BLRC) in 2014 as a major effort at comprehensive bankruptcy reform, chaired by Dr. T. K. Viswanathan. The BLRC was tasked with creating an Indian Bankruptcy Code that would apply to all non-monetary businesses and individuals and would replace the current system. The Committee presented its findings and a detailed draught of the Insolvency and Bankruptcy Code to the public authorities in November 2015. (IBC) Parliament adopted the IBC in May 2016.This means that India has a new indebtedness law in the works, which would replace the current regulations for all borrowers and lenders. The public authority has yet to see the new law.

The Committee's goals were to determine bankruptcy with less time involved, less recovery misfortune, and higher levels of obligation finance across securities.

The Committee has suggested a solidification of the current legitimate structure, by revoking two laws and altering six others. It has proposed to nullify the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. What's more, it has proposed to correct: (I) Companies Act, 2013, (ii) Sick Industrial Companies (Special Provisions) Repeal Act, 2013, (iii) Limited Liability Partnership Act, 2008, (iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (v) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and (vi) Indian Partnership Act, 1932.
The Committee advised to build up a loan bosses board of trustees, where the monetary lenders will have votes in relation to their greatness of obligation. The leaser's board of trustees will embrace dealings with the indebted person, to think of a restoration or reimbursement plan.

The report diagrams the methodology for bankruptcy goal for organizations and people. The interaction might be started by either the borrower or the leasers.

Presently, just got monetary lenders (leasers holding insurance against advances), can document an application for announcing an organization debilitated. The Committee has recommended that functional lenders, for example, workers whose pay rates are expected, be permitted to start the indebtedness goal measure (IRP).

The whole IRP will be overseen by an authorized bankruptcy proficient. During IRP, the expert will monitor and manage the borrower's resources to be sure that there is no danger during the exchanges is being conducted.

The body gave recommendations for establishing Agencies relating to insolvency profession. The offices can concede bankruptcy experts designated individuals, foster an implicit rules.

The report suggests quick indebtedness goal and time bound exchanges among loan bosses and the debt holders. To ensure this, a multi-day deadline for completing the IRP has been suggested. If 75 percent of the banks agree, then period frame can extend to ninety days in circumstances that are significant complexity.

Council has recommended creating data utility that will store a wide variety related to data in relation to enterprises and so escape being delayed in the IRP, reason for it is lack of information.

The body has recommended that the Insolvency and Bankruptcy Board of India be appointed to be controller and ensure that the country's indebtedness targets are met. The Board would oversee indebtedness-aware organizations and data utilities, as well as establish bankruptcy guidelines in India.

The body gave 2 courts with effect for arbitrate complaints in reference to the law: (I) the NCLT will keep on having locale over indebtedness goal and liquidation of organizations and restricted obligation associations; (ii) the Debt Recovery Tribunal for the debt recovery that shall ward indebtedness , insolvency goal that of people.[19]

The Insolvency and Bankruptcy Code, 2016: An Act of Modern India

IBC 2016 is unique in relation to the maze of surviving Indian laws managing corporate bankruptcy, both on a basic level and in the plan of the goal structure. It fuses the proposals of a few past boards of trustees that were not thought about before. It is a solitary, combined code for indebtedness goal of all substances not at all like the current laws, for example, Companies Act 1956 or SICA 1985, or SARFAESI 2002, that apply specifically to a specific gathering of account holders and loan bosses. It enables all lenders got, unstable, monetary and functional to start indebtedness procedures. This is a huge takeoff from the current system. Unstable monetary lenders and functional loan bosses including the workers of the debt holder firm reserve no privileges to look for goal of a bankrupt firm under the predominant laws.

IBC gives a gathering to aggregate recuperation and goal. It offers freedom to all vital partners to take an interest in the bankruptcy procedures and all in all survey the

[19] *Supra note* 19.

suitability of the defaulting firm. This is not quite the same as the individual recuperation rights agreed to got monetary banks by laws like the SARFAESI, to the disservice of different lenders. Dissimilar to SICA 1985 where rebuilding procedures can be started just when the firm has been accounted for debilitated" which may be past the point where it is possible to recuperate any worth, IBC 2016 empowers the goal interaction to begin at the most punctual indication of monetary misery as reflected in a solitary default.[20]

When the target cycle begins, all suits and claims against the borrower are automatically barred. This is to provide for a quiet interval during which no new procedures crash current ones. While SICA 1985 has a similar mechanism, it permits the advertiser/borrower firm's board of directors to retain control of the organization's resources even while the association is sick. This frequently resulted in pilferage and resource redirection by the advertisers/board at the cost of the lenders. Several councils have already chastised the account holder under SICA's lock and key mechanism. During bankruptcy proceedings, the IBC replaces the present administration. During the indebtedness processes, a supervised bankruptcy specialist will run and manage the company as a going concern.[21]

IBC additionally specifies limited time limits inside which the debt holder's suitability can be surveyed. In the current system, legal association in business choices regularly creates unnecessary setbacks for settling indebtedness. The adjudicator's principal responsibility under the IBC is to ensure that the cycles follow the law. Every monetary leaser will be represented on an advisory council that will make all business decisions. In the event that the indebted person firm is declared unviable and bankrupt, it will be liquidated. After the bankrupt company's assets are auctioned off, IBC sketches a reasonable cascade of needs for the payment of duty to all inquirers.

Notwithstanding, In addition to the communication improvements, the IBC proposes the development of new institutions to assist in the enforcement of the legislation and ensure successful results. A unit of directed indebtedness experts (or IPs) and IP offices, controlled data utilities, a bankruptcy and liquidation controller, and a specific council to arbitrate bankruptcy-related issues are among these. Individual bankruptcy cases will be referred to the DRTs and DRATs, while corporate indebtedness will be handled by the freshly established NCLT and NCLAT.

IBC hopes to achieve the goals of a low ideal opportunity to goal, a higher recuperation rate, and larger levels of obligation finance across many sources with this approach.[22]

Effect of the Code on different Legislations-
The Code tries to annul the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920.[23]

The Code tries to revise the accompanying 11 Legislations

I. The Indian Partnership Act, 1932
II. The Central Excise Act ,1944
III. The Income Tax Act, 1961
IV. The Customs Act, 1962
V. Recovery of Debts Due to Banks and Financial Institutions Act, 1993
VI. The Finance Act, 1994
VII. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
VIII. Sick Industrial Companies (Special Provisions) Repeal Act, 2003
IX. The payment and Settlement Systems Act, 2007
X. The Limited Liability Partnership Act, 200811. The Companies Act, 2013

Defining Characteristics of the Code:
It is protected to say that the Code has developed essentially as far as its presentation of new ideas and working on prior standards. The Code has presented the panel of banks, as talked about prior, which takes the choice either to sell the corporate indebted person or to revive it as a going concern. The council of loan bosses exclusively includes the monetary lenders. Besides, the Code has forced a ban over every one of the agreements and commitments of the corporate account holder for the whole length that the indebtedness procedures are in force.16 This guarantees that the corporate borrower doesn't secretly estrange any of the properties to the impediment of the corporate debt holders. Ultimately, it is beneficial taking note of that the Code has put forth huge attempts to join the United Nations Commission on International Trade and Law (UNCITRAL) rules that oversee bankruptcy laws inside the Code.[24] The standards give rules to guaranteeing conviction in the market to advance effectiveness and development, permit expansion of the worth of resources, find some kind of harmony among liquidation and rearrangement, guarantee

[20] IBC Laws, "Short Note on Insolvency & Bankruptcy code, 2016" *available at:* https://ibclaw.in/short-note-on-insolvency-and-bankruptcy-code-2016/ (Last visited on September 24, 2024 at 12:35 p.m).

[21] Ankeeta Gupta, "Insolvency & Bankruptcy code, 2016: A Paradigm Shift within Insolvency Laws in India" Vol. 36(2), *The Copenhagen Journal of Asian Studies* 80 (2018).

[22] *Id.* at 81.

[23] *Supra note* 19.

[24] *Supra note* 24 at 87.

evenhanded treatment of comparably arranged lenders and set up arrangements for the convenient, proficient and fair goal of bankruptcy. They additionally make arrangements for the protection of the wiped out bequest, to permit impartial circulation to loan bosses, while simultaneously guaranteeing a straightforward and unsurprising indebtedness law that contains motivators for social event and administering data (Ravi 2015). The standards make arrangements for the acknowledgment of existing lender rights and the foundation of clear guidelines to rank the need of cases. They likewise underscore the foundation of a system for cross-line bankruptcy. It is beneficial to take note of that practically this load of arrangements has been consolidated in some way inside the Code.[25]

Process of CIRP as Envisioned within the Code:
Second Part of the Code reflects the issues pertaining light on bankruptcy , dissolution of organizations and partnership with limited liability enterprises with a default value of rupees one lakh, which can be increased to rupees one crore by the central government. 18 The financial or functional leaser, as well as the business candidate himself, may document the application. Within a 14-day period, the settlement authority either accepts or rejects the application. When the application has been acknowledged a programmed ban is forced on all authoritative and judicial actions relating to the corporate indebted person. At the same time an indebtedness proficient is delegated and a public declaration with the impact is made. The indebtedness proficient then gathers a gathering of the board of loan bosses, comprising just monetary leasers, and chips away at a goal intend to be submitted to the adjudicatory authority inside a time of 180 days.[26]

Insolvency and Bankruptcy Code (Amendment) Act, 2018
The provisions of the Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, apply to –

a. Any organization formed under the Companies Act of 2013 or any prior statute,
b. Any organization governed by any exceptional Act currently in force,
c. Any Limited Liability Company registered under the Companies Act, 2013 or any previous organization law,
d. Any Limited Liability Partnership
e. Personal underwriters to corporate account holders, (f) body whichever is fused in any law in force at the time, as the Central Government may indicate for this purpose by warning,
f. Any other institute fused under any law in force at the time, as the Centre Government shall indicate for this purpose by warning,
g. Firms relating to partnership and firms relating to ownership; and
h. Individuals, other than people alluded to in clause (e) corresponding in relation for indebtedness, liquidation, willful liquidation, chapter 11, all things considered.[27]

KEY HIGHLIGHTS OF THE AMENDMENT

Eligibility of Resolution Applicants
Under the as of late presented section 29A of the Code, connected gatherings of the corporation account holder and various aspects or its advertisements whose credits had been non-performing resources (NPAs) for a period of one year were barred from consideration as goal candidates. The secret purpose of the repair was to prevent persons who had contributed to the account holder's disappointment from regaining their resources at key limitations. There was anyway expansive agreement among partners in the business that the augmentation of the preclusion to people acting together or in show had prompted potentially negative side-effects of numerous layers of people being excluded (regardless of whether distantly associated with the precluded individual).

The Ordinance currently explains that the accompanying people won't be excluded from partaking in the goal interaction:
Financial elements (characterized to incorporate resource recreation organizations, substitute speculation reserves, booked banks, abroad monetary foundations, speculation vehicles, enlisted unfamiliar portfolio financial backers and unfamiliar funding financial backers), who are not subsidiary to the corporate borrower; and

Entities who hold a NPA account compliant with the securing of a corporate indebted person under a previous bankruptcy goal measure – this exclusion is accessible for a time of a long time from the date of endorsement of the earlier goal plan.
Regulated monetary leasers who are associated to the indebted person exclusively due to their value possessions compliant with an obligation rebuilding plan carried out before the commencement of bankruptcy procedures.

Guarantors of a corporate debt holder except if the assurance has been implemented and stays neglected in full or part by the underwriter.

With regards to exclusion of people who control organizations in which a special, underestimated, false or exploitative credit exchange has occurred, the Ordinance

[25] *Ibid.*
[26] *Id.* at 88.
[27] *Supra note* 19.

has brought some lucidity by giving that this preclusion won't make a difference to true blue acquirers of such organizations under a bankruptcy goal or other comparable rebuilding measure.[28]

Operational Creditors

One of the viable worries under the Code, with regards to functional lenders, To dispute an indebtedness application made by a functional loan boss, a corporate debt holder was required to build up both the presence of a question and the pendency of a suit or discretion continuing. In this unique circumstance, the Supreme Court as of late held that a debate before the receipt of an interest notice from a functional loan boss, may exist in structures other than a forthcoming suit or discretion procedures. In accordance with the Supreme Court administering, the Ordinance currently explains that there is no double necessity to set up the presence of a question and remarkable procedures, to debate indebtedness procedures started by a functional loan boss.

Shareholder endorsement for taking step for Corporate Insolvency by the Corporate Debtor

The Ordinance requires investors or people/people in administration or control of the corporate indebted person to pass an extraordinary goal of somewhere around three-fourth of the complete number of investors or accomplices (if there should arise an occurrence of a LLP), before inception of corporate bankruptcy goal measure by the corporate borrower.
Moratorium

When the NCLT confirms a bankruptcy application filed under the Code, the lenders are prohibited from attempting to recover or implement any security premium paid by the account holder for 180 days. There have been differing opinions on whether the ban's scope includes enforcement activity against outsider resources, such as those provided as collateral to the loan manager by the advertiser or underwriter. In a recent case, the NCLAT held that a security or assurance given by an outsider and an underwriter's own property can be pursued by a monetary loan boss to recover its significant levy at any time during the ban period, as properties not claimed by the debt holder would not fall within the scope of the guidelines' ban. The Ordinance has explained that ban won't be relevant to a guarantee in an agreement of assurance - the extent of the ban is limited to the resources of the corporate borrower as it were. In this manner, there is no bar against requirement activities taken against the resources of an underwriter to a corporate account holder during the ban time frame.

Voting limit for choices of the CoC

To energize a fast goal, the Ordinance has loosened up casting a ballot limit for specific choices taken by the CoC:

- By esteem, the criterion for goal plan approval, CIRP expansion beyond 180 days, target proficient arrangement, and certain other essential choices has been reduced from 75 percent to 66 percent of monetary banks.
- Threshold for endorsement of other routine choices has been diminished from 75% to 51% of the monetary leasers by esteem.

Authorized agent for loan bosses

The Ordinance gives another instrument to debenture holders, store holders, retail lenders, (for example, huge quantities of homebuyers in land projects) and Other specified classes of monetary banks in the CoC to be handled in CoC gatherings by a different trustee, specialist, approved delegate, or indebtedness expert, who may follow up on their behalf in CoC gatherings.

Application of Limitation Act, 1963

Prior to the Ordinance, there was a weakness in the Code's application of the Limitation Act of 1963. The NCLAT specifically reviewed the question of recovering the right of leasers with time-prohibited obligations to file for insolvency and the right of inquirers to record time-prohibited claims with the obligation objective feasible in a number of cases. The NCLAT determined that the three-year mandatory period for implementing obligation procedures for all cases that existed prior to the Code would commence on the date of the occurrence, i.e. December 1, 2016. This gave loan specialists the ability to start new chapter 11 methods for obligations that were otherwise unrecoverable due to the expiration of the obstacle time period. The Committee was of the opinion that insolvency regulations should not be enacted at the price of a second chance for advance supervisors and inquirers who did not practice their fix in a fortunate manner. The Ordinance now unambiguously defines the current situation by stating that the Limitation Act would apply to systems covered by the Code.[29]

The Insolvency and Bankruptcy Code (Amendment) Act, 2019

Some changes are made with respect to the limitation of time of completion of the process, voting parameters of the authorized representatives and treatment of operational creditors just and fairly. It also clarifies the role of the

[28] Trilegal, "The Insolvency & Bankruptcy Code (Amendment) Ordinance, 2018: Key Highlights" *available at:* https://www.mondaq.com/india/insolvencybankruptcy/714484/the-insolvency-and-bankruptcy-code-amendment-ordinance-2018-key-highlights (Last visited on September 25, 2024 at 5:55 p.m.).

[29] *Ibid.*

adjudicating authorities while maintaining proper conduct throughout the whole process.

- The Time limit for the completion of CIRP under ***Section 12*** increased from 270 days to a total of 330 days.
- Voting of the authorized representatives of the financial creditors under ***Section 25A*** will be on the basis of the simple majority of the creditors which they represent.
- The amount which must be paid to the Operational Creditors should be fair and equitable as compared to the amount supposed to be distributed in the liquidation process or CIRP and the best amount shall be distributed as according to the 'Waterfall Mechanism' provided under Section 53 of the code.
- The Adjudicating authority must record in writing, the reasons for not finding the default within 14 days of submission of CIRP application.[30]

The Insolvency and Bankruptcy Code (Amendment) Act, 2020

- It amended ***Section 7*** with 3 provisos explaining the case when joint application to be filed by financial creditors and in case of real estate projects, the home buyers to whom a plot, apartment, or building has been allotted, if they want to initiate the process, application of the same should be filed with either at least 100 such creditors/allottees of the same class, or 10% of the total creditors/allottees jointly, whichever is less.
- Amended ***Section 11*** with explanation allowing initiation of CIRP by any Corporate Debtor against any other Corporate Debtor is allowed.
- Amended ***Section 23*** with provision allowing the Resolution Professional to continue with the control and management of the Corporate Debtor after the expiry of CIRP until an order of liquidation or approval of resolution plan is passed by the adjudicating authority.
- Insertion of ***Section 32A*** nullifying the liability of the corporate debtor for an offence committed prior to the commencement of CIRP and providing immunity to the Corporate Debtors from prosecution for such an offence from the date of approval of resolution plan.
- It also provided immunity to the Corporate Debtor in relation to an offence committed prior to the commencement of CIRP from any actions against its property which is covered under the resolution plan that has been approved by the adjudicating authority.[31]

The Post Pandemic Regime

The unprecedented pandemic of Covid-19 forced governments all over the world to impose lockdown throughout the globe. Prime Minister Narendra Modi also declared a nationwide lockdown from 25th March 2020 to prevent the spread of coronavirus. This led the economy of the nation to hold a pause and just two days after the lockdown, the Union Finance Minister Smt. Nirmala Sitharaman, in a press conference, announced several changes to be taken place in the threshold of default in payment of debts by companies in order to prevent the adverse effects of pandemic on the Indian Economy and following which an ordinance to suspend CIRP was passed with effect from 25th march, 2020.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 and supplementary notifications

1. Insertion of a temporary ***Section 10A*** imposing a suspension of filing an application of CIRP for defaults occurring on or after 25th March 2020 for an initial period of six months but not exceeding one year in total.
2. With another notification by IBBI, the suspension time was extended to its maximum limit of one year i.e. – up to 24th March, 2021.
3. The threshold amount limit of default for the initiation of CIRP has been increased from Rs. 1 lakh to Rs. 1 Crore.

During the period of this unprecedented time of Covid-19 pandemic, there was suspension of filing CIRP initiation applications with the implementation of the new ordinance. There have been several misunderstandings and confusion with respect to the scope and interpretation of this 2020 Ordinance that gave rise to several disputes with respect to its scope and ambit. However, the Judiciary has played a key role in true interpretation of the amendment and provided clarifications with numerous case laws to clear the confusion with respect to the said provisions of the IBC amendment ordinance, 2020 which was promulgated to

[30] Ashutosh Prakash, "Evolution of Corporate Insolvency Resolution Process: Journey from start to the pre-pack mechanism available at https://blog.ipleaders.in/evolution-corporate-insolvency-resolution-process-journey-pre-pack-mechanism-insolvency-bankruptcy-code/#Introduction (Last visited on September 25, 2024 at 4:50 p.m.).

[31] Ashutosh Prakash, "Evolution of Corporate Insolvency Resolution Process: Journey from start to the pre-pack mechanism available at https://blog.ipleaders.in/evolution-corporate-insolvency-resolution-process-journey-pre-pack-mechanism-insolvency-bankruptcy-code/#Introduction (Last visited on September 22, 2024 at 4:50 p.m.).

combat the adverse effects of lockdown and Corona Virus on the corporate debtors.

Madhusudan Tantia v Amit Choraria & Ors.[32]

This appeal arose in the National Company Law Appellate Tribunal (NCLAT), New Delhi. It was filed against an impugned order of the National Company Law Tribunal (NCLT), Kolkata Bench. The operational creditor Foseco India Limited filed an application of CIRP under ***Section 9*** which was admitted by NCLT against the Corporate Debtor, 'Om Boseco Rail Products Limited'. The main issue in the present matter was whether the March 2020 notification of increasing the threshold of default from Rs. 1 Lakh to Rs. 1 crore would apply retrospectively or prospectively. The Hon'ble NCLAT, in this case, held that unless legislation specifically mentioned a provision to be applied retrospectively, it shall be considered to be applied prospectively only. Therefore the march 2020 notification will also apply prospectively to the defaults occurring after 25th March, 2020. Following this, it was also observed that as per ***Section 4(1)*** read with ***Section 6*** of the IBC, the right to trigger CIRP against the corporate debtor arises on the date of occurrence of the default from the side of the corporate debtor. Now as per the provisions mentioned in ***Section 4(1),*** if the default has occurred before 25th March, 2020, the right to trigger the entire process of initiation of CIRP by Operational Creditor under ***Section 9*** would also have accrued before 25th March, 2020. Now the Notification is prospective in nature, therefore the minimum threshold for all defaults occurring before 25th March, 2020 remains Rs. 1 lakh only, not 1 crore.

Manish Kumar vs. Union of India & Anr.[33]

This case again brought a landmark judgment in upholding the constitutionality of several provisions of the code. Again the constitutional validity of some provisions of this code was in issue.

The petitioners have filed a writ petition in the Hon'ble Supreme Court under ***Article 32*** of the Constitution of India challenging the validity of ***Sections 3, 4*** & ***10*** of the Insolvency and Bankruptcy Code (Amendment) Act 2020 which amended the principal code by addition of three provisos to ***section 7(1)***, an additional explanation to ***section 11***, and insertion of ***section 32A*** in the IBC. The Apex court upheld their validity by disposing of the writ petition filed and set aside all apprehensions against the IBC (Amendment) Act, 2020

Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund[34]

It was a crucial judgment in a so-called case of Arbitration vs. IBC concluded by the Hon'ble Chief Justice of India. The overriding effect of IBC with respect to admission of the CIRP application was the main issue here which was in conflict with the provisions of Arbitration reference in disputes. The Apex Court in this case observed that a situation where an application under ***Section 7*** of IBC is yet to be admitted by the adjudicating authority and simultaneously another petition under ***Section 8*** of the Arbitration and Conciliation Act, 1996 is filed, The overriding effect of IBC mentioned under ***Section 238*** will prevail and the adjudicating authority would be duty-bound to first consider the application under ***Section 7*** of IBC while recording a satisfaction if there being any default or not, even in case the application under ***Section 8***of the Arbitration Act for the reference of Arbitration is kept along for consideration. The Apex Court also observed that IBC proceeding is to be considered in rem only after it is admitted following the finding of the default as it would then get itself into having '*erga omnes*' effect. However if the Adjudicating Authority is in the opinion that there being no default, it would then leave the field open for the autonomy of parties to secure the appointment of the Arbitral Tribunal.

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2021[35]

"*The Pre-Packaged Insolvency Resolution Process*"

After a wholesome period of suspension of one year, The Insolvency & Bankruptcy Code, 2016 is back in full force from 25th March 2021. Anyway, the tough task of sustaining momentum starts here, as more Corporate Debtors are anticipated to enter into the CIRP following the outcome of this pandemic. There is obviously a need to prepare the market to support resolutions for the larger number of applications supposed to get filed in upcoming days. The Government of India on 4th April 2021 issued an ordinance in IBC bringing up the 'pre pack' insolvency

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[32] Company Appeal (AT) (Insolvency) No. 557 of 2020, https://indiankanoon.org/docfragment/67243565/?formInput=557

[33] WRIT PETITION(C) NO.26 OF 2020, https://indiankanoon.org/doc/54883247/

[34] ARBITRATION PETITION (CIVIL) NO. 48/2019, https://indiankanoon.org/doc/150558872/#:~:text=Indus%20Biotech%20Private%20Limited%20vs,..%20on%2026%20March%2C%202021&text=1.,granted%20in%20Special%20Leave%20Petition.&text=(a)%20and%2011(12,behalf%20of%20th e%20respond ent%20 Nos.

[35] Ashutosh Prakash, "Evolution of Corporate Insolvency Resolution Process: Journey from start to the pre-pack mechanism available at https://blog.ipleaders.in/evolution-corporate-insolvency-resolution-process-journey-pre-pack-mechanism-insolvency-bankruptcy-code/#Introduction (Last visited on September 22, 2024 at 4:50 p.m.).

mechanism for the MSMEs in support of the revival of these corporate debtors. It is supposed to tackle the loss that occurred to them due to Covid-19. Moreover it focuses on the mechanism with autonomy of the MSMEs in which the creditors and the corporate debtor with mutual consultation brings out a plan so as to yield faster and better resolution than the CIRP. Here are some remarkable highlights on the new IBC (Amendment) Ordinance, 2021 providing a mechanism of 'pre-packaged insolvency resolution process' for MSMEs with insertion of chapter-IIIA in the principal code.

- The threshold limit for the default is up to Rs. 1 crore.
- Eligibility for submission of the resolution plan will be as per ***Section 29A*** of IBC.
- It'll be an informal plan worked out by the creditor and debtor for debt resolution subject to approval by NCLT.
- Corporate Debtor must not be undergoing or have undergone CIRP during the period of 3 years preceding the initiation of 'Pre Pack' process.
- Corporate Debtors must not be subject to liquidation under ***Section 33*** of IBC.
- Corporate Debtor shall make an application for initiation within a definite time period not exceeding 90 days of the occurrence of the default.
- Declaration by the majority of directors in such form may be specified & a special resolution must be passed by 3/4th of the members of Corporate Debtor for the application of initiation.
- 66% approval of Financial Creditors is required for initiation of the 'pre-pack' process.
- The process must be completed within 120 days from the commencement date.
- The management and control of the Corporate Debtor shall remain in the hands of current promoters during this whole period of pre-pack resolution process.
- Appeal against the resolution plan is to be filed based on the grounds mentioned under Section 61(3) of IBC.

CONCLUSION

The IBC has undoubtedly transformed India's insolvency and restructuring landscape, providing a streamlined, efficient and time-bound process for resolving insolvency. Despite the challenges and complexities involved, the IBC has shown significant promise in improving recovery rates for creditors and ensuring the timely resolution of distressed assets. Though the IBC has brought a huge relief to the debtors that seek their revivals or the companies that want to exit the market feasibly, it would be a bit tricky to anticipate where the Code will go in coming years. As it is a new and fresh law, a lot has already been modified in just 5 years and a lot more is expected in the upcoming future in order to maintain its true interpretation. The recent feature for the MSME is also expected to revolutionize the resolution process for the debtors of small markets while maintaining their ongoing business as in this Pre Packaged Insolvency Resolution Process, the participation of existing board of directors or promoters of the corporate debtors is largely encouraged. Unlike the CIRP, where there is a long process of appointment of Interim Resolution Professional, then the Resolution Professional and where the affairs of the corporate debtor also controlled by such resolution professional with the guidance from Committee of Creditors, in the pre-pack, the management remains in the control of the promoters or Board of Directors of the MSMEs creating a balance between the creditor in control and debtor in possession. However, this process can only be initiated by the corporate debtors after obtaining approval from its financial creditors with at least sixty-six percent of the total vote. Hopefully, it will help the MSMEs to enter into consensual restructuring with its creditors and sort out the entire liability pending on its side. A key point to see is whether the MSMEs would be comfortable in opting for this or not but this mechanism is definitely expected to reduce the amount of litigation and yield much faster resolution than the already existing CIRP and also will cut costs occurring in the process. Moreover, this Code has successfully become one of the success stories of recent Indian economic reform and it will continue to get perfect and develop as it gains maturity by the time. Anyway, the tough task of sustaining momentum will start now, as more debtors are coming into the Indian corporate system. There is obviously a need to prepare the market to support resolutions for the larger number of cases supposed to come in the next few years. Especially following the Covid-19 pandemic, a load full of burden is expected to come in the form of filings for resolution. The insolvency system must also keep evaluating the proper implementation of the already approved resolution plans, so that the true spirit of the code remains alive.