

A Study Of Insolvency And Bankruptcy Code And Its Impact On Macro Environment Of India

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Abstract— IBC is the second most crucial reform in the legal setting of India. It is because IBC is not only making India emphatically powerful in the field of the legal environment but also provides a new identification and recognition at the global platform economically. The Insolvency and Bankruptcy Code, 2016 is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The paper studies distinguish features and the legal framework of the code. The study is descriptive in nature. In line with that, the paper also presents the impact of Insolvency and Bankruptcy code on macro environment of India.

Keywords— IBC 2016, Macro Environment, Insolvency, Bankruptcy, Legal Environment of India, Liquidation.

I. INTRODUCTION

Legal environment of any country always play a vital role in its economic development. If the legal environment of that country is well-built and implemented then definitely the global background of the country will be strong.

After the introduction of Goods and Services Tax, IBC is the second most crucial reform in the legal setting of India. It is because IBC is not only making India emphatically powerful in the field of the legal environment but also provides a new identification and recognition at the global platform economically. On both economic and non-economic front, this code leaves a positive impact. Since the code is passed, the global economic image of India is drastically enhanced, through Enhancement of the FDI, Increased M&A deals, Improving India's Ease of doing business ranking, etc.

The Insolvency and Bankruptcy Code, 2016 is considered to be one of the biggest economic reforms introduced in India and is assumed to play a significant role in limiting the risks of credit. IBC, 2016 consolidates and amends the law relating to insolvency resolution process in India. The effects of the advent of the Code seems to be far reaching to lenders, financial institutions, corporate and also for professionals, giving them scope to act as resolution professionals. Bankruptcy law aims at providing a rescue mechanism for distressed entities, facilitating faster windup of insolvent entities and providing an easier exit route to investors.

II. OBJECTIVES OF THE STUDY

The study has been undertaken to contribute towards the following broad objectives:

1. To study the distinguish features and regulatory framework of the Insolvency and Bankruptcy Code, 2016.
2. To find out the impact of Insolvency and Bankruptcy code on macro environment of India.

III. NEED OF THE STUDY

The purpose of this paper is to examine the main provisions of The Insolvency and Bankruptcy Code, 2016. This paper highlights the perspectives of several stakeholders, various challenges faced and the numerous advantages of implementing the reform in India. This paper also highlights how IBC is highly resourceful in improving India's image on the global stand.

IV. INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016

a. Background:

In India, the legal and institutional machinery for dealing with debt defaults has not yet been in line with global standards. The recovery action of the creditors, either through the Contract Act or through the special laws such as the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has not been able to get the desired outcomes. Similarly, action through the Sick Industrial Companies (Special Provisions) Act, 1985 and the winding up provisions of the Companies Act, 1956/Companies Act, 2013 have neither been able to aid the recovery for lenders nor aided in the restructuring of firms. Laws dealing with individual insolvency, Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 are almost a century old. This has hampered the confidence of the lenders over the period of time.

The 'Insolvency and Bankruptcy Code, 2016' is considered the biggest economic reform next to GST. The Insolvency and Bankruptcy Code 2016 is landmark legislation consolidating the regulatory framework governing the restructuring and liquidation of persons (including incorporated and unincorporated entities).

The objective of the new law is to promote entrepreneurship, availability of credit, and to balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto. It aims to consolidate the laws relating to insolvency of companies and limited

liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, presently contained in a number of legislation, into a single legislation. Such consolidation will provide for greater clarity in the law and facilitate the application of consistent and coherent provisions to different stakeholders affected by the business failure or inability to pay the debt.

b. Earlier Insolvency and Bankruptcy Regimes in India:

- **Individual Insolvency:**

This has always been regulated and administered through the Presidency Towns Insolvency Act, 1909 (for residents of Mumbai, Kolkata and Chennai) and Provincial Insolvency Act, 1920 (for other residents) which are century old legislation and have now outlived their utility.

- **Corporate and Firm Insolvency:**

In India till now has always been regulated and administered by multiple and sometimes overlapping laws which are shown as follows :

INDIAN PARTNERSHIP ACT, 1932

COMPANIES ACT, 1956

SICK INDUSTRIAL COMPANIES ACT, 1985

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

SRFAESI ACT, 2002

COMPANIES ACT, 2013

The above-stated laws suffered from many loopholes, contradictory provisions and also none of them stated the time resolution or empowered the operational creditors and entrepreneurial growth and development. Due to these mentioned laws, the Insolvency and Bankruptcy Code introduced.

c. Distinguish Features of the Code:

There are the following key features of the code-

Comprehensive Law: Insolvency code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporate, partnership, LLP's and individuals.

No multiplicity of law: The code has withered away from the multiple laws covering the recovery of debt and insolvency and liquidation process and present singular platform for all the relief's relating to recovery of debts and insolvency.

Low time resolution: The code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to a maximum of 90 days. Further, for a speedier process, there is a provision for fast track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay the creditors.

One window clearance: It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for winding up and liquidation has to be initiated under separate law governed by separate authorities.

Clarity in the process: The code provides for a clear-cut process with respect to the insolvency and bankruptcy. The structure of the code is very specific and 180 days is mandated for the complete insolvency resolution process.

One chain authority: There is one chain of authority under the code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigation. The National Company Law Tribunal (NCLT) will adjudicate the insolvency resolution for companies and the Debt Recovery Tribunal (DRT) will adjudicate the insolvency resolution for individuals.

Priority to the interest of workmen and employees: The code also protects the interest of workman and employees. It excludes dues payable to workmen under the provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.

New regulatory authority: It provides for constitution of a new regulatory authority "insolvency and bankruptcy board of India" to regulate professionals, agencies and information utilities engaged in the resolution of insolvencies of companies, partnership firms and individuals. The board has already been established and has started functioning.

Promote entrepreneurial activity: The code promotes entrepreneurial activity in India because of its revival mechanism and fast resolution process.

V. REGULATORY FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy Code, 2016 is expected to play a vital role in the economic system of the country. The law is to cover insolvencies of "corporate persons" (covering companies, limited liability partnerships, and all other entities having limited liability), as also individuals, firms etc. While the law is admittedly a code for insolvent companies, it covers

liquidation of solvent companies as well, and thereby, serves as a complete code on liquidation of companies. The Code has been divided into five parts comprising 255 sections and 11 schedules (Shown in **figure 1**). The code provides for the establishment of a regulator who will oversee these entities and perform legislative, executive and quasi-judicial functions with respect to the insolvency professionals, insolvency professional agencies and information utilities.

▪ **CORPORATE INSOLVENCY RESOLUTION PROCESS**

Corporate insolvency resolution is a process during which financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival. If an insolvency resolution fails or financial creditors decide that the business of debtor cannot be carried on profitably and it should be wound up. The debtor will be undergoing liquidation process and the assets of the debtor are realized and distributed by the liquidator.

The insolvency resolution process provides a collective mechanism for lenders to deal with the overall distressed position of the corporate debtor. This is a significant departure from the existing legal framework under which the primary onus to initiate a reorganization process lies with the debtor and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

In order to above these facts the regulations regarding "**The Corporate Insolvency Resolution Process**" are as follows:

- i. **The corporate insolvency resolution process** may be initiated on application to NCLT:
 - ✓ **By a financial creditor**, either by itself or jointly with another financial creditor, meaning a creditor for the financial facility (which is a broadly worded expression including financial lease and hire purchase transactions, which are treated as financial transactions under applicable accounting standards).
 - ✓ **By an operational creditor**, meaning a creditor other than a financial creditor or a person whom an operational debt.
 - ✓ **By the corporate debtor himself**, that is the company itself.
- ii. **The occurrence of Default:** Default means non-payment of debt when whole or any part of the installment has become due and not repaid by the debtor. The minimum amount of default by the debtor is Rs 1 lakh.
- iii. **Roadmap after Admission of Application:** The insolvency resolution process, after an application has been admitted by the adjudicating authority will entail the following steps-

- **Declaration a moratorium period**-This will prohibit actions such as, institution of suits, continuation of pending suits/ proceedings against the corporate debtor including execution of any judgment, decree or order; disposal/encumbering of corporate debtor's assets or rights/interests therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor, etc.

One of the most important features of bankruptcy law is the grant of the moratorium during which creditor action will remain stayed, while the bankruptcy court takes a view on the possibility of rehabilitation. In the chapter on Sick Companies under the Companies Act 2013, there is no provision for an automatic moratorium – it merely empowers the NCLT to grant a moratorium up to 120 days.

The Code talks about a mandatory moratorium – thereby, it serves almost like the automatic moratorium under global bankruptcy laws. The moratorium will continue throughout the completion of the resolution process – which is 180 days as mentioned above. However, if in the meantime, the creditors' committee resolves to approve liquidation of the entity, then the moratorium will cease to have an effect.

Explicitly, the moratorium before liquidation applies to the enforcement of security interests under the SARFAESI Act as well. A moratorium also applies when an order for liquidation has been passed by the adjudicating authority.

- **Appointment of an Interim IP**- Issuance of the public announcement of the initiation of insolvency resolution process and call for the submission of claims. Interim IP inter alia takes over the management and powers of the board of directors of the corporate debtor, and collects all information relating to assets, finances and operations of the corporate debtor for determining its financial position; collates all claims submitted by the creditors and constitutes a Committee of Creditors ("COC").

The Committee of Creditors thereafter either resolves to appoint the interim IP as the IP or replaces the interim IP by appointing a new IP, in accordance with the prescribed procedure. This IP shall be appointed as the liquidator for the process.

The IP will then take over the management and assets of the corporate debtor, and can exercise the wide powers granted to it, in the manner prescribed under the Code. It will prepare an information memorandum in relation to the corporate debtor, on the basis of which the resolution applicant will prepare a resolution plan. IP will scrutinize the resolution plan and present it to the Committee of Creditors.

The Committee of Creditors approved plan will be submitted to the adjudicating authority, for its acceptance, and it is only when the adjudicating authority, gives it a final nod that the resolution plan becomes binding upon all the stakeholders and the insolvency resolution process of the corporate debtor is initiated. In case the adjudicating authority rejects the plan, the liquidation process of the corporate debtor will commence.

- **Timeline for the process:** As per the **figure 2**, Resolution Professional is appointed, after the Admission of an application by the adjudicating authority, to conduct the entire corporate insolvency resolution process and manage the corporate debtor during the period. Resolution Professional shall prepare information memorandum for the purpose of enabling resolution applicant to prepare a resolution plan. A resolution applicant means any person who submits a resolution plan to the resolution professional and upon receipt of resolution plans, Resolution Professional shall place it before the creditors' committee for its approval.

Once a resolution is passed, the creditors' committee has to decide on the restructuring process that could either be a revised repayment plan for the company, or liquidation of the assets of the company. If no decision is made during the resolution process, the debtor's assets will be liquidated to repay the debt.

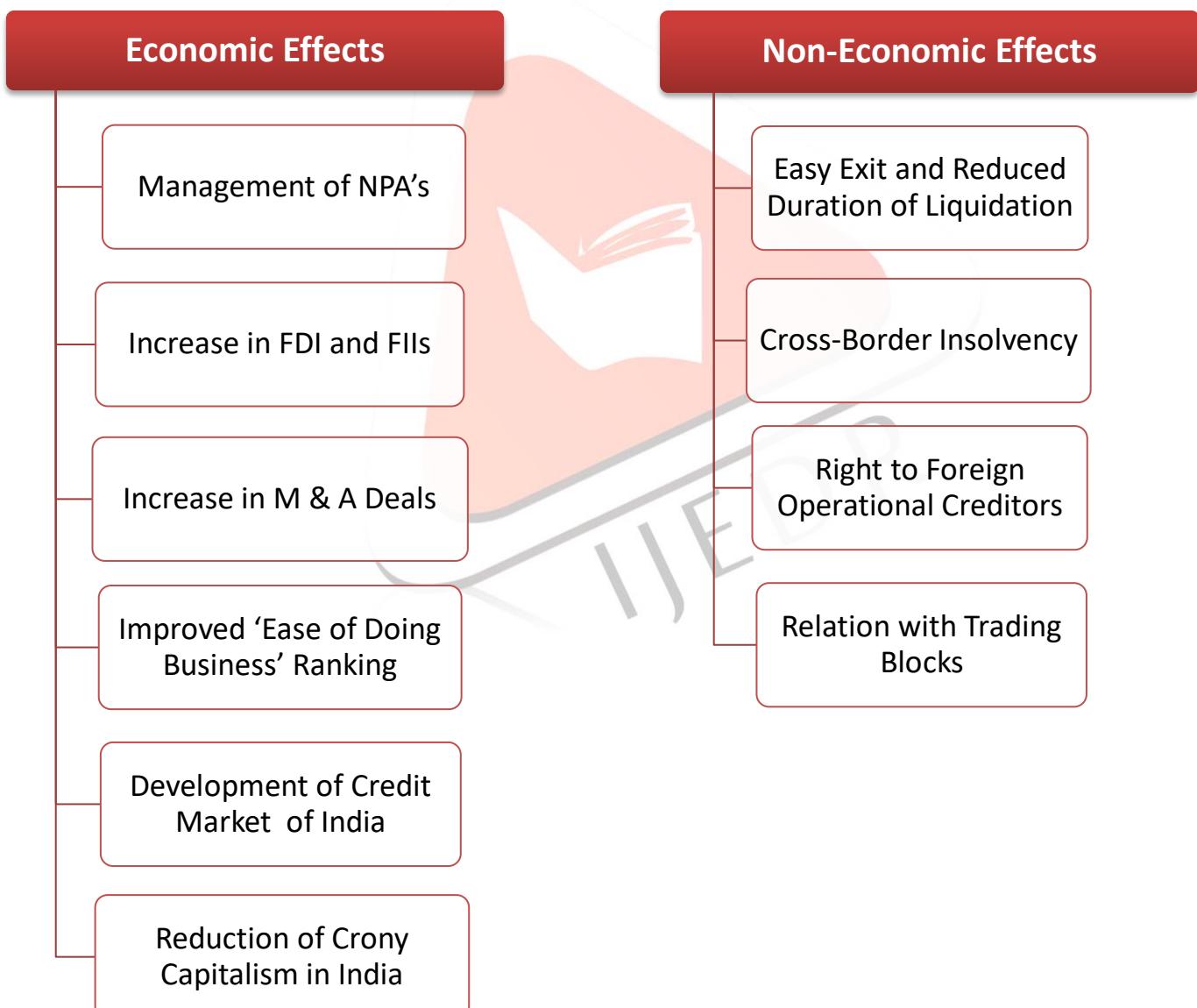
The resolution plan will be sent to NCLT for final approval and implemented once approved.

▪ **CORPORATE LIQUIDATION PROCESS**

Diagrammatic representation under **figure 3** depicts the Corporate Liquidation Procedure which commences with the appointment of a Liquidator. The process starts with winding up order involving the realization of the assets and distribution of proceeds among creditors and other stakeholders. As mentioned in figure, according to Section 14 of IBC no suit can be instituted against the Corporate Debtor. Based on the priority a security creditor may receive proceeds from the sale of assets by enforcing with the secured assets as per applicable laws. Claims of the creditor will be considered subordinate to the unsecured creditors to the extent of the deficit. All the distribution shall be done in the manner laid down in the Code. Once all the assets of the Corporate Debtor are liquidated the NCLT passes an order to finally liquefy the corporate debtor.

VI. IMPACT OF IBC ON MACRO ENVIRONMENT OF INDIA:

Insolvency and Bankruptcy Code was primarily introduced with the aim to mitigate the losses of NPAs borne by the Indian Banking System. Though it is highly doubtful that it can bring back the amount already stuck in stressed assets in the form of NPAs but it can, to a large extent help to avoid the overall crisis. Apart from its legal impact, IBC has also played a great role in macroeconomic objectives providing India a strong stand in the global platform. Following mentioned are some of the broader impacts of The Insolvency and Bankruptcy Code (IBC) of India, 2016:



- **Management of NPAs-** Indian Banking Structure is currently dealing with the chronic problem of rising NPAs and its management has been one of the key focus areas for the banks ever since. In such a case, the introduction of Insolvency and Bankruptcy Code can prove to be a major milestone in reducing NPA stress building up on the Indian Banking System. According to the Corporate Affairs Secretary Injeti Srinivas, Insolvency and Bankruptcy Code

(IBC) has, directly and indirectly, helped resolve stressed assets worth Rs 3 lakh crore and disposed of about 50 per cent (4,400 to be exact) of the 9,000-odd cases that it received in the last two years, including those transferred from the Board for Industrial and Financial Reconstruction (BIFR).

- **Increase in FDI-** As per the following table, it is shown that after the enactment of the code the FDI has substantially increased in amount. In 2012-13 the FDI of India was 34298 US\$ Million and just after enactment of the code it rose to 61463 US\$ Million in 2017-18 which is growing by approximately 80%.

Year	Total FDI Flows (Amount US\$ Million)	% Growth over the previous year (in US\$ terms)	Investment by FII's (Amount US\$ Million)
2012-13	34,298	(-) 26%	27,582
2013-14	36,046	(+) 5%	5,009
2014-15	45,148	(+) 25%	40,923
2015-16	55,559	(+) 23%	(-) 4,016
2016-17	60,220	(+) 8%	7,735
2017-18	61,963	(+) 3%	22,165

Source: RBI's Bulletin August 2018 dt.10.08.2018 (Table No. 34 – FOREIGN INVESTMENT INFLOWS)

There are so many reasons behind this growth but one of the components is IBC because the Code provides the very clear-cut process with reference to Insolvency and Bankruptcy and priority to the employees, workmen and creditors is also provide a strong legal frame to the India.

- **Increase in M & A Deals-** Mergers and Acquisition (M&A) activity in the country has increased exponentially and deals worth \$14.3 billion have been completed in the past two years, *Mint* has [reported](#). Insolvency and Bankruptcy Code (IBC) have been credited for this flurry in mergers and acquisitions.

IBC has driven massive M&A momentum in the country, led by deals involving Bhushan Steels (\$7.4 billion), Reliance Communications(\$3.7 billion), Fortis Healthcare (\$1.2 billion), India's Insolvency and Bankruptcy Code (IBC) has accelerated activity in distressed merger and acquisitions (M&As) in India with the transaction involving Indian companies reaching \$104.5 billion in 2018.

- **Improved ‘Ease of Doing Business’ Ranking-** In addition to the introduction and implementation of Goods and Services Tax, which is considered as one of the biggest economic reforms in the country, Insolvency and Bankruptcy Code is next in line. These have greatly influenced India’s “**World Bank’s Ease of Doing Business (EODB)**” that moved up 23 notches in last two years and now ranks 77 among 190 global economies. **The World Bank has also listed India among the “top 10 improvers” for the second time in a row.** It occupies the fifth spot, while China is at third.
- **Development of Credit Market of India-** The code established an Information Utilities (IUs). It is a Centralized repository of financial and credit information of borrowers; would validate the information and claims of creditor’s vis-à-vis borrowers, as needed. Thus, through the establishment of IUs credit market of India developed and works more effectively.
- **Reduction of Crony Capitalism in India-** Quoting Amitabh Kant, the CEO of NitiAayog “IBC will ensure that the world of crony capitalism comes to an end. Earlier, you could borrow and not repay. Now if you don’t pay, you lose your business.” (htt1) Crony Capitalism can be defined as an economy in which businesses thrive on the return of money accumulated through an affiliation between business houses and political class and not due to risk-taking. With stricter laws post introduction of IBC, it has become exceptionally difficult for promoters, shady or otherwise, to regain control of their companies after their firm goes into bankruptcy and also to over-leverage their balance sheet. The new states to either perform or perish.
- **Easy Exit and Reduced Duration of Liquidation-** As per statistics provided by World Bank, in comparison to other progressive nations it takes much longer time in India to resolve Insolvency issues (An average of four years). With the introduction of Insolvency and Bankruptcy Code, it has become easier for companies to make an easy exit or liquidate (180+90 days resolve-or-liquidate measure) their business which was not the case earlier in the Indian Corporate Structure (on an average of 3-4 years). This would be beneficial in attracting foreign investors to set in their business in India. It would also lead to an increase in innovation in India.
- **Cross-Border Insolvency-** Cross-Border Issues deals with Indian firms having claims over default committing global firms, or vice-versa. Given the complex nature of the issue the IBC has been trying to blend in some of the best efforts taken for Cross-Border Insolvency in the world but these are not adequate to effectively deal with the default cases. But in such a scenario where domestic insolvency laws have seen recently reformed daylight, it is prudent to take one step at a time. A draft bill is in progress and hopefully, it will soon be enacted after due diligence.
- **Right to the Operational Creditors-** In previous, no law prevented the operational creditors but under the code, there is a provision that the operational creditors (domestic as well as international) have been right to file suit against the default. Thus, the code provides right to the foreign creditors which will enhance the economic transactions of India and others.
- **Relation with Trading Blocs-** If the legal environment of any country is strong, well structured and suitable for other countries then its relation with trading blocs such as SAARC, ASEAN, EU, NAFTA, etc will be fruitful. It is because IBC is the code which has fulfilled all the above stated criteria, therefore, we can say that it will enhance the relations of India with the trading blocs.

VII. CONCLUSION

2016 has definitely been the year of reforms (GST & IBC). India has been plagued with mounting NPAs [10.25 lakh crores INR (approximately 150 billion US\$) as on 31 March 2018] since quite a few time, and from the above study, it is concluded that the IBC Code 2016 has established a framework for time-bound resolution for delinquent debts with the objective of improving the ease of doing business in India. As per M.S. Sahoo, Chairperson Insolvency and Bankruptcy Board of India (IBBI) that around 40 corporate debtors cases have been taken under the IBC terms and the creditors have got over 50,000 crores i.e. the average realization has been over 50% till date. This shows the benefit of having this code.

By the end of January 2018, it was reported that at least 2,434 fresh cases have been filed before the National Company Law Tribunal (NCLT) till 30 November 2017 and at least 2,304 cases seeking the winding-up of companies have been transferred from various high courts. This again is delaying the overall resolution process. Cross-border insolvency and non-recognition of Indian laws in overseas jurisdictions, and vice-versa, has created certain challenges. The process is unclear for such dealings. Few analysts have argued that IBC has excessive government interference due to its role in the appointment, termination and inspection of professionals. It is observed that till today, there is a lack of infrastructure to deal with high value and a large number of insolvency cases.

Apart from the above-mentioned challenges, the IBC Code has helped in improving the global rank of India in the ease of doing business. For the first time, India has a rank within the top 100 in the world. This jump is because of economic reforms like; IBC and GST. Due to this development, we can also expect a growth in FDI and GDP in the country. It has also given an immense thrust to M&A drive in India. The success of 'Make in India' campaign will only be possible if an environment is created in India where the failures of entrepreneurs and financiers are handled and treated cautiously on time. The smooth functioning of a credit market in an economy will ensure that all the stakeholders are collectively contributing to the success of the entrepreneurial growth of a country. IBC Code is one step in this direction.

The paper delves into the various perspectives of the IBC code and highlights its major issues and its impact on the Indian Economy both on the domestic and global front. IBC has been undoubtedly landmark legislation and still evolving so that it can meet with several unforeseen challenges.

FIGURES

FIGURE 1: STRUCTURE OF THE CODE

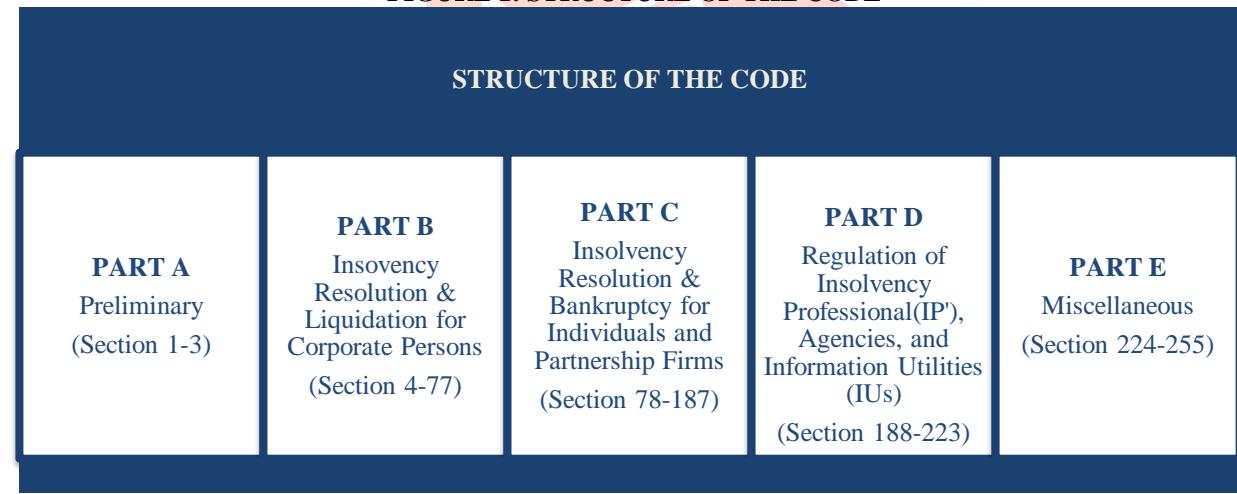
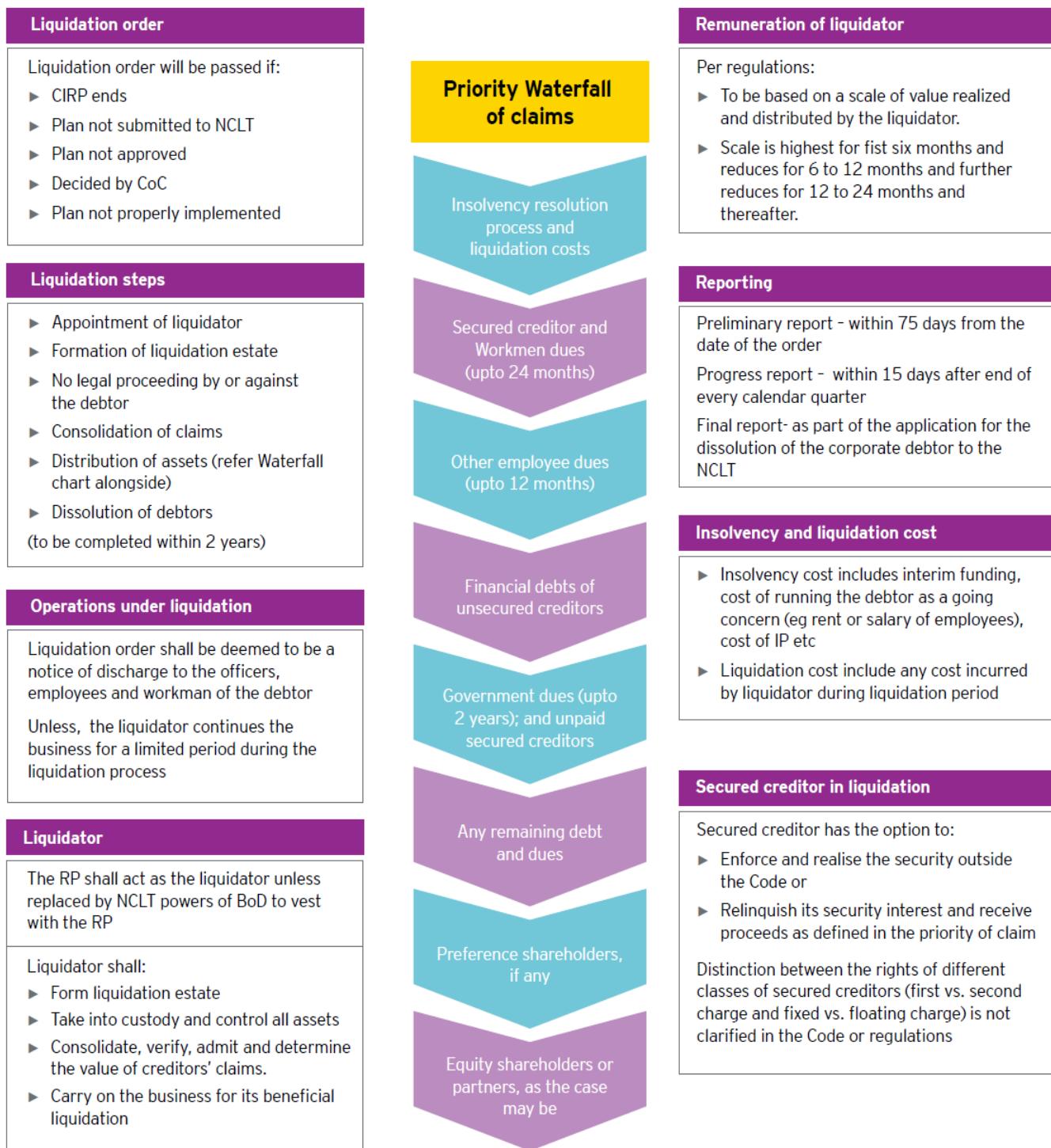


FIGURE 2: TIMELINE FOR CORPORATE INSOLVENCY RESOLUTION PROCESS

Particulars	Timelines (in days)
Filling of insolvency application	X
Adjudicating Authority- Admission or Rejection of application:	X +14
Before rejecting an application, the adjudicating authority shall give a notice to the applicant to rectify the defect in the application within 7 days.	
If admitted, adjudicating authority to declare moratorium upon admission.	
Insolvency Resolution Professional Appointment	(X +14) +14
Constitution of Committee of Creditors	(X +14) +14+10
Appointment of Final Resolution Professional	
Submission of Resolution Plan: <ul style="list-style-type: none"> • If approved- Moratorium ceases to have effect • If rejected- Initiation of Liquidation 	
Insolvency Resolution Process Completion	(X +14) +180
Insolvency Resolution Process Extension	(X +14) +180+90

Source: The Institute of Chartered Accountants of India

FIGURE 3: CORPORATE LIQUIDATION PROCESS

Source: Interpreting the Code, Corporate Insolvency in India, Ernst & Young LLP (EY)

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