



## **A STUDY ON THE NEW INSOLVENCY AND BANKRUPTCY CODE-2016**

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### **ABSTRACT**

This article deals with the new insolvency and bankruptcy code bill which was passed in the parliament on May 11 2016. A brief explanation of the bill is given along with the key highlights and the procedures to resolve insolvency.

Keywords: insolvency, bankruptcy, insolvency professionals, information utilities, Adjudicating, Authorities, bankruptcy board, liquidation

### **INTRODUCTION**

Insolvency is a situation where individuals or a company is unable to repay its outstanding debts. Bankruptcy occurs when a court has given legal orders for resolving insolvency.

### **REASONS FOR INSOLVENCY**

1. Financial constraints---Loss of long term finance, lack of cash flows and over gearing
2. Poor Management-- failure to acquire adequate skills, lack of information system.
3. Bad debts—Money owed by customers.
4. Knock on effect—from other insolvencies
5. Others ----Excessive overheads etc.

### **AIM OF INSOLVENCY LAWS**

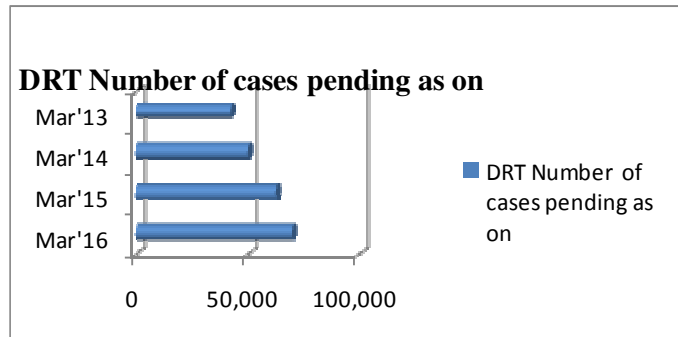
The basic objective of this law is the expeditious, equal and economical mode of distribution of the debtor's property to the demand of his creditors.

## LAWS COVERING INSOLVENCY AND BANKRUPTCY

1. Transfer of Property Act, 1882.
2. The Code of Civil Procedure, 1908,
3. The Presidency Towns Insolvency Act. 1909 (applicable to Mumbai, Kolkata and Chennai }
4. The Provincial insolvency Act 1920 (Applicable rest of india)
5. Companies Act ,2013
6. Sick industrial Companies Act 1985
7. The Recovery of Dues to Banks & Financial institution Act 1993
8. The Securitisation & Reconstruction of financial Assets & enforcement of security interest Act 2002 ( SARFEASI) Act
9. Rules, policies made by RBI

## NEED FOR THE NEW BANKRUPTCY CODE:

Amount due to banks and financial institutions are transferred to debt recovery tribunals set up under RDB Act 1993 But the number of cases pending under these tribunals are as follows



**Source:** From the reports of Ministry

of Finance

There are cases which are pending for the last 20 years. According to company law board 13,090 cases are pending till 2014-15 involving crores of money. Hence there is a need for a new bankruptcy code.

- 1) Its main aim is to create a common process for all creditors to interact with the company which has defaulted on its obligations.
- 2) To speed up the redressal process for almost 75000 cases involving 5 lakh crores.
- 3) To consolidate and amend laws relating to reorganise the resolutions of Corporates, Partnerships, individuals in a time bound manner.

- 4) To take tough actions against corporate defaulters empowering the government and its prosecution agencies.

#### **HIGHLIGHTS OF THE NEW BANKRUPTCY CODE:**

- 1) The Bill proposes to set up a regulator till that the central government will have powers of the regulator till it is set up.
- 2) The existing debt recovery tribunals will be the adjudicating authority for individuals and unlimited liability partnership.
- 3) The National Company Law tribunal would be the adjudicating authority for companies and limited liability entities.
- 4) Information utilities will be set up to collect and collate financial information from listed companies & their companies
- 5) A time bound process has been proposed in the new bill which is 180 days.
- 6) Under the New Law a debtors can be jailed up to five years for concealing the property for defaulting creditors.
- 7) The new law allows creditors to decide whether a defaulter is declared insolvent or not though legally their decision could still be challenged in higher courts.
- 8) The banks can push for resolution or recovery of money from the troubled company within a period of 180 days with a grace period of 90 days if 75% of the creditors agree to it.
- 9) If the recovery does not happen the company will be liquidated automatically.
- 10) The new code seeks to consolidate and amend the laws relating to insolvency.

#### **PROPOSED INSTITUTIONS TO FACILITATE RESOLUTION OF INSOLVENCY**

**Insolvency professionals:** A specialised cadre of licensed professionals is proposed to be created. Those professionals will administer the resolution process, manage the assets of the debtor, and provide information for creditors to assist them in decision making.

**Insolvency professional agencies:** The insolvency professionals will be registered with insolvency professional agencies. The agencies conduct examination to certify the insolvency professionals and enforce a code of conduct for their performance.

**Information utilities:** Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.

**Adjudicating authorities:** The proceedings of the resolution process will be adjudicated by National Companies Law Tribunal, for companies and Debt Recovery Tribunal for individuals. The duties of the authorities will include approval to initiate the resolution process, appoint the insolvency professional, and approve the final decision of creditors.

**Insolvency and Bankruptcy Board:** The Board will regulate the insolvency professionals, insolvency professional agencies and information utilities set up under the Bill. The Board will consist of representatives from RBI and Ministries of Finance, Corporate Affairs and Law.

**PROCEDURE TO RESOLVE INSOLVENCY UNDER THE NEW CODE;**

**INITIATION:** When a default occurs, the resolution process may be initiated by the debtor or creditor. The insolvency professional administers the process. These professionals provide financial information of the debtor from professional utilities to the creditor and manage the debtors' assets. This process lasts for 180 days and any legal action against the debtor is prohibited during this period

**DECISION TO RESOLVE INSOLVENCY:** A committee consisting of financial creditors who lent the money to the debtor will be formed by the insolvency professional. This committee will take a decision regarding the future of the outstanding debt due to them. They may revive the debt owed to them by changing the repayment schedule, or sell the assets of the debtor to repay the debts due to them. If the decision is Not taken in 180 days, the debtor's assets go to liquidation.

**LIQUIDATION:** If the debtor goes to liquidation, an insolvency professional administers the liquidation process. Proceeds from the sale of assets are distributed in the following order of precedence;

1. Insolvency resolution costs
2. Remuneration to insolvency professionals
3. Secured creditors.
4. Unsecured creditors
5. Dues to government

6. Preference shareholders

7. Equity shareholders

## **CONCLUSION**

India currently ranks 136<sup>th</sup> place out of 189 countries in World Bank Index on the ease of resolving insolvencies. The new code promises to solve the problem within a time limit and it also has provisions to address the cross border insolvencies through bilateral agreements with other countries. Definitely the new insolvency and bankruptcy code will solve the insolvency problems.

## **BIBLIOGRAPHY**

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