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INSOLVENCY & BANKRUPTCY CODE – ANALYSIS &IMPACT

-Mitali Ambre

Insolvency and Bankruptcy code is pivotal for companies, Individuals as well as Partnership Firms. Prior to this code, all matters regarding Insolvency and Bankruptcy would be dealt under various Acts such as Companies Act, 2013, Limitation Act, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Act, 1985. It also repealed British laws i.e. Presidency town Insolvency act, 1909 & Provincial Insolvency Act, 1920.

Insolvency and Bankruptcy code, 2016 is divided into 5 parts namely-

Part I - Preliminary [section 1 to section 3]

Part II - Insolvency and Liquidation matters related to corporate entities.

[section 4 - section 77]

Part III - Insolvency matters related to Individuals and firms.

[section 78 - section 187]

Part IV - Insolvency matters related to Professional, Agency & utilities

[section 188 - section 223]

Part V - Miscellaneous Provisions

[section 224 - section 225]

To do a critical study of Insolvency and Bankruptcy code, 2016 let's analyze this code from the prospective of Corporate entity.

Who is a corporate entity?

Corporate entity is any entity who have corporate personality (given in the companies Act, 2013). According to Section 2(20) of the Companies Act, 2013; A company means a company incorporated under companies Act, 2013. Corporate entities excludes Individuals, Partnership Firms, Hindu undivided Family business & sole proprietorship.

This blog will be a critical study on Part II of the Insolvency and Bankruptcy code, 2016, in which we will discuss on the following topics:

1. Corporate Insolvency Resolution Process
2. Liquidation Process
3. Fast track Process

1. Corporate Insolvency Resolution Process (CIRP):

Insolvency is a state when the corporate entity is incapable to pay the dues. Through this code, corporate entity on Insolvency can go into Corporate Insolvency Resolution Process when is a process to revive & reorganized the company.

According to section 7, sections 8-9 & section 10 of the Insolvency & Bankruptcy Code; Financial creditor, Operational Creditor and corporate debtor itself can file application for Corporate Insolvency Resolution Process to the Adjudicating Authority. Alongwith the application, required attachment also have to be filed such as Insolvency Professional's Name, Information utilities report, payment defaults proof, etc. The Adjudicating Authority will admit or reject the application within 14 days from the date of application.

On Admitting the application, the Insolvency Professional has to issue public announcement regarding corporate Insolvency Resolution Process within 3 days from the date of his appointment. Later he have to constitute committee of creditors and send notice of meetings to the members of such committee, suspended Board of Directors and a representative of operational creditors.

The Insolvency Professional will aid to the committee of creditors by inviting resolution plans from the resolution applicants. Later he will examine the received applications and select the best and present it in the meeting of committee of creditors for their 66% vote approval. If the committee of creditors approved the resolution, the Corporate Insolvency Resolution Process and the role of Insolvency Professional came to an end. If the creditors or the Adjudicating Authority reject the resolution plan then the Adjudicating Authority will issue Liquidation order.

2. Fast Track Process:

This process act as an aid to the MSME companies whose capital is above 1 crore rupees and turnover of 5 crore rupees as per Insolvency and Bankruptcy Board of India (pre-packaged Insolvency Resolution Process) Regulations 2021.

Time limitations to complete the Corporate Insolvency Resolution Process given by the Insolvency and Bankruptcy Board of India is within 330 days with extra grace period of 90 days.

3. Liquidation:

Liquidation is a process of winding up of the company. Creditors & Corporate debtor can apply for Liquidation of the company. In certain circumstances, the Adjudicating Authority can even issue Liquidation order on the corporate debtor.

Committee of creditors can file application for Liquidation order to the Adjudicating Authority not prior of 66% vote approval by the members. Corporate Debtor can also voluntarily liquidate itself by filling application for Liquidation to the Adjudicating Authority not prior of passing special resolution in the shareholders meeting.

After passing the order of Liquidation, the Adjudicating Authority will assign the liquidator to evaluate the assets & liabilities of the corporate debtor and to settled the creditors in a proportion. The liquidator will file application for Dissolution of the company after completion of his duties.

Impact of Insolvency and Bankruptcy code, 2016 in India

Impact of the law is as significant as that of analyzing and knowing the law.

This code is regulated by the Insolvency and Bankruptcy Board of India, who issues guidelines and rules to make this code impactful.

Now there is no Acts passed by the parliament for Insolvency and Bankruptcy because it is found in the form of provisions in various existing Acts. The Code is always for Punishments and Procedures. The impact of laws regarding Insolvency and Bankruptcy can be seen prior to this code and after the constitution of the code.

Prior Insolvency and Bankruptcy code,2016

1. M/S Meghal Homes Pvt. Ltd vs Shree Niwas Girni K.K.Samiti & Ors on 24 August, 2007.

In the above case, the company went into compulsory Liquidation by the Adjudicating Authority passing order under section 481 of the companies Act,2013.

2. Jitendra Nath Singh vs Official Liquidator & Ors on 21 September, 2012.

In the above case, Applicability of section 529 of the Companies Act with the section 47 of the Provincial Insolvency Act,1920.

Post Insolvency and Bankruptcy code,2016

1. Sunil Kumar Jain v. Sundaresh Bhatt, 2022.

In the above case, supreme court held that during Liquidation, only those Workmen who have worked during the corporate Insolvency Resolution Process, are entitled to receive the salary of preceding 12 months.

2. Maitreya Doshi v. Anand Rathi Global Finance Ltd, 2022

In the above case, Supreme court held that if co-corporate debtor has paid that part amount due then he is not liable for the payment of another co-debtor.

Conclusion:

To summarize this whole blog in short is that this code is very impactful due to the guidelines & rules provided by the regulatory Body (IBBI). Provisions given under other Acts helps the impact of this code alongwith the orders of Adjudicating Authority to direct the process of Resolution as well as Liquidation & Bankruptcy.

Reference:

Bare Acts:

- Insolvency and Bankruptcy Code,2016, §4-77, Act of Parliament, 2016 (India).
- Companies Act,2013, §481, §529, §47, Act of Parliament, 2013, (India).

Websites:

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- *Insolvency and Bankruptcy Board of India* www.ibbi.gov.in (2nd June 2024)
- *Taxmann* www.taxmann.com

Case laws

- *M/S Meghal Homes Pvt. Ltd v. Shree Niwas Girni K.K.Samiti & Ors*, AIR 2007 SC 3079, 2007
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