5 Years of Insolvency and Bankruptcy Code: Decoding The Code and Tracing its Track Record

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Abstract

The research paper commences by providing a basic understanding of the Insolvency and Bankruptcy Code. It provides critical analysis of the development of Insolvency and Bankruptcy laws in the pre- and post-independence period in India. It points out the critical shortcomings in these individual laws. It further discusses the insolvency resolution process and regulatory framework in the case of corporate persons. The paper summarizes, using quantitative data, the impact of insolvency and bankruptcy code on the economy of the country. It critically studies the impact of the code by taking the resolution timeline, recovery rate, and infrastructural gaps as a factor. It highlights the achievements that are triggered due to the implementation of the code. The present paper also discusses the constitutional validity of the insolvency and bankruptcy code.

The purpose of this research paper is to basically cover all the basic aspects of the Insolvency and Bankruptcy code and discuss the impact of IBC after its implementation. For this, the author uses both analytical as well as descriptive research methodology.

Keywords: *IBC, NCLT, NPA, Constitutional Validity, CIRP.*

INTRODUCTION

The Insolvency and Bankruptcy Code (2016) is a complete matured single law that deals and covers all the aspects related to financial breakdowns and insolvencies. This code

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was introduced in Lok Sabha on 21st December 2015.[1] Then this code was referred to the joint committee of parliament on 23rd December 2016 and such committee submitted its report on this code on 28 April 2016.[2] During such a referral, the committee gave its suggestions and recommendations on this code. Thereafter, it was passed from Lok Sabha on 5 May 2016 and was referred to Rajya Sabha and from there it was passed on 11 May 2016.[3] It received the assent of President of India on 28 May 2016.[4]

The main objective of this code is to consolidate and amend the existing laws which are related to the insolvency resolution of companies, firms, and individuals and to execute the insolvency resolution process in a time-bound manner. It is one of the major economic reforms which focuses on to promote the availability of credit and discourage India's bad debt problem.

The Insolvency and Bankruptcy Code 2016 has eliminated and amended various overlapping provisions codified in:

- The Presidency Town Insolvency Act,1909
- Sick Industrial Companies (Special Provisions) Act,1985
- The Recovery of Debt due to Banks and Financial Institutions Act,1993
- The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest,2002
- The companies Act,2003

Prior to the commencement of this code, there were various institutions and regulatory bodies that deal with debt, financial failures, defaulters and insolvencies related matters which sometimes lead to excessive delay and complication in the process of insolvency resolution. The present code provides for an effective mechanism to quickly dispose of the matters which come under the action of insolvency resolution.

The first case that was disposed under this code is Synergies- Dooray Automotive case where this automotive company was taken before National Company Law Tribunal by its creditors. On 2 August 2017, NCLT delivered its judgment in this case, making it the first resolution plan under Insolvency and Bankruptcy Code, 2016.[5]

1 Insolvency and Bankruptcy Board of India, Quarterly Newsletter for October- December 2016 5 (2016), https://www.ibbi.gov.in/uploads/publication/IBBI_Newsletter_Web.pdf

2 *Id.*

3 *Id.*

4 *Id.*

5 Insolvency and bankruptcy board of India. (2 August 2017). NCLT Hyderabad Bench, http://www.ibbi.gov.

SALIENT FEATURES OF INSOLVENCY AND BANKRUPTCY CODE

The below-mentioned features are the salient features of insolvency and bankruptcy code:

- Applicability of the Code: The provisions of this code apply to individuals, companies, limited liability partnership (LLP) firms and unlimited liability partnership firms. In the case of corporate persons, the minimum amount of default that is required to attract this code is one lakh rupees and on the other hand in case of individuals and partnership firms, such minimum amount is one thousand rupees.[6]

  Exceptions: This code does not apply to Banks and Insurance Companies.

- Insolvency Resolution: This code provides for separate insolvency resolution process for individuals, companies and partnership firms. The process of insolvency resolution can be initiated either by the creditor of the debtor.

- Adjudicating Authority: There are two separate adjudicating authorities.

  For corporate insolvency and liquidation, the adjudicating authority is National Company Law Tribunal. Appeals from the order of NLCT will be entertained by the National Company Law Appellate Tribunal within 30 days of the receipt of such order.[7] And appeals from the order of NCLAT will be entertained by Supreme Court within 45 days of the receipt of such order.[8]

  For individuals and partnership firms' insolvency, the adjudicating authority is Debt Recovery Tribunal. Appeals from DRT will be entertained by Debt Recovery Appellate Tribunal within 30 days of the receipt of an order from DRT.[9] And appeals from the order of DRAT will be entertained by Supreme Court will within 45 days from the receipt of such order.[10]

- Institutions to Facilitate Resolution: There are various institutions that are created under this code to facilitate the insolvency resolution process. These are licensed insolvency professionals, insolvency professional agencies, adjudicating authorities

in/2ndAug2017_in_the_matter_of_Synergies_Dooray_Automative_Limited_CP_IB_No_01_HDB_2017.pdf

6 The Insolvency and Bankruptcy Code, 2016 § 4

7 The Insolvency and Bankruptcy Code, 2016 § 61

8 The Insolvency and Bankruptcy Code, 2016 § 62

9 The Insolvency and Bankruptcy Code, 2016 § 181

10 The Insolvency and Bankruptcy Code, 2016 §182

and regulatory board.

- Regulatory Board: This code has created the Insolvency and Bankruptcy Board of India to develop, regulate and promote the insolvency professionals, insolvency professional agencies and other institutions. The Insolvency and Regulatory Board consists of a total of 10 members which includes representatives from Reserve Bank of India, Ministries of Finance, Law and Corporate Affairs.

- Time-Bound Resolution: Initially, the code provided for a time-bound resolution of 180 days in which the resolution process has to be completed.[11] It can further be extended to 90 days with the prior approval of the National Company Law Tribunal.[12] However, after the recent amendment Act of 2019, the time-bound resolution deadline is set for 330 days (including any extension of the time period) in which the resolution process has to be completed.[13]

THE PROCEDURE UNDER INSOLVENCY AND BANKRUPTCY CODE

Insolvency Resolution Process in Case of Corporate Persons

A plea for insolvency of a corporate debtor can be initiated by any of the following i.e. operational creditor, financial creditor or the corporate debtor itself. This plea has to be submitted before the National Company Law Tribunal. In such cases, the minimum amount of default has to be one lakh rupees.[14] National Company Law Tribunal has to either accept or reject such application within fourteen days of the receipt of such application. If the NCLT accepts the application, then it has to make a public announcement inviting all the creditors to file their claims against the corporate debtor. Thereafter, it has to appoint, with the prior permission of the Insolvency and Bankruptcy Board of India, an interim Insolvency Resolution Professional to draft a resolution plan within 180 days, it can also be extended by 90 days with the permission of the NCLT. During this period, the board of directors gets suspended. The promoters of the company do not involve in the management of the company. Also, within this period, no one can seek a legal claim against the corporate debtor in any other court until the formation of a resolution plan. The function of the insolvency professional is to take charge of the company and make efforts to revive the operations of the company which has defaulted. If the insolvency resolution fails to successfully draft a

11 The Insolvency and Bankruptcy Code, 2016 § 12

12 *Id.*

13 The Insolvency and Bankruptcy Code (Amendment) Act, 2019 § 4

14 The Insolvency and Bankruptcy Code, 2016 § 4

resolution plan then the last option that exits is the liquidation of the company to pay off the debts to the creditors.

Note: With the recent amendment in IBC, now the homebuyers are also categorized as financial creditors and they are also eligible to initiate an insolvency resolution process against building a company that has defaulted.[15]

Insolvency Resolution Process in Case of Partnership Firms and Individuals

Here the adjudicating authority is Debt Recovery Tribunal. A plea for insolvency of an individual or a partnership firm can be initiated either by the debtor or the creditor. The plea has to be submitted before the Debt Recovery Tribunal. The minimum amount of default to attract this resolution process is one thousand rupees.[16] At present, there are total 39 Debt Recovery Tribunals that exists in the country.[17] As of now, the provisions related to individuals and firms are not notified and hence not in force.

EVOLUTION OF INSOLVENCY AND BANKRUPTCY CODE

The present law of insolvency and bankruptcy has been evolved after repealing various acts and amending various provisions. Initially, there were only two legislations that were enacted to deal with the personal bankruptcy laws. These were **The Presidency Towns Insolvent Act, 1909** and **The Provisional Insolvency Act, 1920**. The former dealt with the partnerships, individuals or association of individuals residing in the presidency towns of Calcutta, Bombay, and Madras while the latter dealt with the rest of the country except these presidency towns. But there were some shortcomings in these acts due to which they were repealed by the present insolvency and bankruptcy law. Firstly, this legislation did not allow insolvency application against any corporate debtor which was registered under any enactment. Secondly, it did not provide the debtor an opportunity to pay off his debts by any other plan. It treated the debtor's property as the only medium to pay off the debts to the creditors.

After achieving independence, a committee known as Bhabha Committee was formed

15 Krishnadas Rajagopal, Home buyers can start bankruptcy cases against errant builders, The Hindu (Aug. 10, 2019, 2: 56 IST), https://www.thehindu.com/news/national/law-empowering-home-buyers-upheld/article28971126.ece

16 The Insolvency and Bankruptcy Code, 2016 § 78

17 DRT official website. About us. http://drt.etribunals.gov.in/drtlive/composition.php

in 1950 which submitted its report on company law in 1952.[18] Based on the recommendation of this committee, the first legislation towards the process of corporate insolvency was enacted by parliament in 1956. This legislation came to be known as **The Companies Act, 1956**. It provided provisions for both compulsory as well as voluntarily winding up of a company. Section 425 of this act provided for the modes of winding up of a company. This act also elaborated on the detailed procedure for the insolvency resolution process. This act has several drawbacks. Firstly, in spite of detailed procedures, it remained a failure in dealing with corporate insolvencies. Secondly, it failed to include provisions related to insolvency cost. Thirdly, the liquidator that was appointed by the court was inexperienced and had limited knowledge related to the company business and auction process which ultimately led to delay injustice. Moreover, there was a lack of legislative framework on the part of this act as it did not provide any strict procedure and laws to be followed by the judiciary while adjudicating cases on the merits. This led the high court to interpret individual cases differently. This resulted in different orders from one high court to others on similar facts.

During the 1980s, industrial sickness was reaching at its peak. During such period loan recovery was becoming impossible, unemployment was increasing and employees or workmen's dues were increasing. In such a scenario The Companies Act of 1956 proved to be inadequate. To address such a problem, a committee was formed in 1981 under the chairmanship of Mr. T. Tiwari. Based on the recommendations of this committee, a new legislative framework was enacted by the Parliament.[19] This legislation is known as **The Sick Industrial Companies Act, 1985 (SICA).** The aim of SICA was to find out industrial sickness and to solve such problems. It is done either by the revival of potentially feasible units or by the ceasement of infeasible industrial units. Under the SICA, a government agency known as the Board for Industrial and Financial Reconstruction (BIFR) was set up to execute the revival process. It also established an appellate authority known as the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). This act also has several drawbacks. Firstly, it only applied to industrial units provided in the first schedule of the Industrial Act, 1951. It did not cover companies having 51% or more shareholdings of government. Secondly, it only applied to industrial units that have completed 5 years of existence and have undergone losses equal to or more than the actual net worth of the company. This shows that SICA could not be applied at an early stage. Thirdly, there was a misuse of the provision of SICA which allowed the promoters to seek bar on proceedings for execution, arbitration,

18 The Institute of Company Secretaries of India, History of Companies Act in India https://www.icsi.edu/ccgrt/research/bare-acts/corporate-laws/

19 Krati Rajoria, *Insolvency and Bankruptcy Code of India: The Past, The Present and The Future,* 8(1), IBLJ 64 (2018).

and recovery suits. This act was repealed and replaced by **The Sick Industrial Companies (Special Provisions) Repeal Act of 2003** which eliminated certain provisions and loopholes. This act of 2003 came into force on 1 December 2016.

Another legal framework with respect to insolvency and bankruptcy was **Recovery of Debts due to Banks and Financial Institutions Act, 1993**. Till 1990, a number of cases were pending before the civil courts amounting to Rupees 6000 crore of default towards financial institutions and public sector banks. This was a major figure that led to the formation of this act.[20] This act was enacted on the recommendations of the Tiwari Committee of 1981 and the Narsamham Committee of 1991. It created Debt Recovery Tribunal (DRT) to dispose of the cases by adopting the summary procedure of the civil procedure code. It also created an appellate tribunal known as Debt Recovery Appellate Tribunal. This act allowed the financial institutions like banks to file an application before DRT asking to issue a 'Certificate of Recovery'. This certificate shall have the same effect as the decree of a civil court. It also has several drawbacks. Firstly, only banks and financial institutions were given an opportunity to approach DRT. Secondly, it was not capable of solving the problem of liquidity crunch and non-performing asset (NPA).

Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 also known as the SARFAESI Act was yet another legislative framework that deals with insolvency and bankruptcy. This act was based on the recommendations of the Andhyarujina Committee.[21] This act provided the creditors an option to recover their NPAs without the intervention of the court. This option is available only against secured assets and if the assets are unsecured then the creditor has to go court to recover their dues against the defaulters. This act was proved effective in solving the problem of NPA and liquidity crunch. But this act also has some loopholes. Firstly, it was limited to banks and financial institutions. Secondly, it did not provide any opportunity to unsecured creditors.

The next legislation that was enacted by the Parliament of India was **The Companies Act, 2013.** This act replaced the Companies Act of 1956. This act provided for a more comprehensive procedure to be followed while dealing with the insolvency resolution process of companies. It provided for two mechanisms: Revival and Rehabilitation of companies (codified in chapter XIX of the act) and Liquidation of companies (codified in chapter XX of the act). Here the adjudicating authority is National Company Law Tribunal (NCLT). And the appellate authority is the National Company Law Appellate Authority (NCLAT). The

20 Central Bank of India vs. State of Kerala & Ors. (2009) 4 SCC 94

21 Christoph Scherrer, Public Banks in the Age of Financialization: A Comparative Perspective 216 (2017)

provisions related to revival and rehabilitation remained omitted and the provisions related to the liquidation of companies became effective from 15 December 2016.[22]

The present law on insolvency and bankruptcy is the outcome of recommendations of various committees. The amendments that were made to the Companies Act of 1956 were based on the recommendations of committees like the Eradi Committee of 2010, Chandra Committee of 2002 and Irani Committee of 2005.[23] It was clear that a single comprehensive legislative framework was needed to deal with the insolvency and bankruptcy scenario prevailing in the country. In 2011, a reform was initiated by forming a commission known as Financial Sector Legislative Reform Commission which was headed by Justice Srikrishna. In 2014, a significant committee was formed known as Bankruptcy Legislative Reform Committee. This committee was headed by T. K. Viswanathan.[24] This committee submitted its report in 2015. Based on such a report, a bill was introduced in Lok Sabha in December 2015. Thereafter, it was referred to a joint parliamentary committee that submitted its report with a modified draft bill which was passed in the form of a current bill i.e. Insolvency and Bankruptcy Code, 2016.[25]

CONSTITUTIONAL VALIDITY OF IBC 2016

The Supreme Court upheld the constitutional validity of Insolvency and Bankruptcy Code, 2016 in a judgment delivered on 25th January 2019.[26] The two-judge bench comprising of Justice R F Nariman and Justice Navin Sinha had quashed a lot of petitions challenging the constitutional validity of the code. Renowned companies like Shivam Water Treaters and Swiss Ribbons had challenged various provisions of IBC.

The leading issues on which the validity of this code was challenged were:

- Whether the IBC provisions were unfair or discriminatory against operational creditors as compared to financial creditors or was it violative of Article 14 of the constitution?
- Whether section 12A framework was according to the constitution?
- Whether section 29A framework was according to the constitution?

22 Companies (Transfer of Pending Proceedings) Rules, 2016 § 1

23 Ashish Pandey, The Indian Insolvency and Bankruptcy Bill: Sixty Years in the Making, 8(1) IMJ 29 (2016).

24 *Id.*

25 *Id.*

26 Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors (2019) 4 SCC 17

Judgment:

The Supreme Court with respect to the first issue held that operational creditors are clearly different from financial creditors. While referring to the objects sought to be achieved by the code, the court made the following observation:

1. Financial creditors are mostly the secured creditors whereas the operational creditors are mostly unsecured creditors.

2. 'Financial Debt' is a debt accompanied with interest whereas 'Operational Debt' is a debt or a claim in respect of payment of dues which arises because of some law which is in force.

3. Financial creditors generally take account of a large sum of money as compared to operational creditors which take account of a small sum of money.

4. Financial creditors provide capital to the corporate debtor. On the other hand, operational creditors supply goods and services to the corporate debtor.

Keeping these observations in mind the bench held that because of the above-mentioned aspects, the code provides a separate insolvency resolution process for financial creditors under section 7 and for operational creditors under section 8 and section 9 of this code.

The court while dealing with the second issue upheld the validity of section 12A.[27] It stated that the withdrawal application requires 90 percent approval of the committee of creditors, but since in this situation the committee of creditors does not have the last words, therefore it can't be said to be arbitrary. In a case where the committee of creditors rejects withdrawal claim, then the NCLT or thereafter, the NCLAT always has an option to set aside the decision of the committee of creditors under section 60 of this code.

The court heard contentions of the petitioners with respect to the third issue which is based on section 29A. The foremost contentions were:

- The related party of the promoters even after within the eligibility criteria were not allowed to participate in the resolution process.
- Promoters of the defaulting company were kept away from participating in the recovery process of a corporate debtor.

27 *Id.*

The bench with respect to the first contention only made some interpretation regarding 'related party'. According to the bench, 'related person' is a person who is connected with the business activity of the resolution applicant. Unless such fact is established before the adjudicating authority, the person cannot be said to be disqualified from participating in the resolution process.

The bench with respect to the second contention observed while giving light on the object sought to be achieved under this code that the person who is responsible for the insolvency of the debtor should not participate in the resolution process. Above mentioned view of the court led to the upholding of the validity of section 29A of the code.[28]

AN ANALYSIS OF ITS 5 YEARS

The success of any law always depends on its implementation. Here is the Descriptive Analysis of the impact of Insolvency and Bankruptcy Code on the insolvency system in India. This analysis covers certain aspects such as the status of CIRP under the code, effectiveness of its time-bound resolution, and loan recovery system for resolving the NPA and liquidity crunch problem, infrastructural issues that occurred in these five years.

Status of Cirp Under IBC

After the enactment of the IBC and coming into effect of its Corporate Insolvency Resolution Process (CIRP) provisions which effect from 1 December 2016, a total of 3911 cases of corporate debtors (CDs) have been registered under IBC by June 2020 end.[29] Out of the total Cases registered, 380 cases have been closed on appeal, review or settlement. 218 cases have been withdrawn, 955 cases have resulted in liquidation, 250 cases resulted in the approval of insolvency resolution plans and 2108 cases are still pending under CIRP.[30] Of these 3911 cases, 1961 cases have been initiated by operational creditors (OCs) which accounts for 50% of the total cases registered, 1690 cases have been initiated by financial creditors (FCs) which accounts for 43.2% and the remaining 260 cases have been initiated by corporate debtors.[31] With respect to voluntary liquidation, 692 corporate people have initiated such liquidation where final reports have been submitted in 250 voluntarily liquidation cases by June 2020 end.[32] Of the total 1803 cases that are out of CIRP, only 14% have seen a resolution

28 *Id.*

29 15 Insolvency and Bankruptcy Board of India, Quarterly Newsletter for April- June 2020 17 (2020). https://www.ibbi.gov.in/uploads/publication/19f5dd1867e29b404046912df2b065f8.pdf

30 *Id.*

31 *Id.*

32 *Id.* at 19.

plan which is quite low as compared to the 955 cases which ended up in liquidation.[33]

Rate of Recovery Under IBC

Before the enactment of Insolvency and Bankruptcy resolution, the foremost recovery tools available to the creditors were Debt Recovery Tribunal and SARFAESI Act. These recovery tools resulted in a recovery of only 23 percent on an average from 2007 to 2017. During the year 2017-18, the rate of recovery by these tools were only 12.4%.[34] After the commencement of IBC, from the date of its operating to 30 June 2020, the financial creditors had filed total claims of Rupees 4.22 trillion under this code.[35] The total recovery made under this code was Rupees 1.88 trillion.[36] Therefore, this fact shows that the total rate of recovery made under this code is approximately 44.7%. The history under the old regime shows that it used to cost around 9 – 10 % of the total claims in the old regime whereas now under IBC it does not even cost 1 % in the recovery process.[37] The above facts show that with the implementation of IBC provisions the recovery rate has become twice.

The banking sector's gross NPA ratio was continuously rising from 4.3% (2015) to 11.5% (2018).[38] But now with the quick disposal of the cases filed under IBC by the banking sector, the gross NPA ratio has declined to 9.3% (March 2019).[39]

Twelve Large Accounts: According to the direction of the Reserve Bank of India, the banks have initiated insolvency resolution of 12 large accounts. These 12 accounts alone hold an outstanding debt of Rupees 3.45 lakh crore as against the liquidation value of Rupees 73,220 crore.[40] Of these twelve corporate debtors, the resolution plan has been approved of eight corporate debtors. The biggest recovery can be seen in Essar Steel India Ltd. Case where the amount admitted was Rupees 49,473 crore and the amount realized was Rupees

33 *Id.* at 16.

34 FE Bureau, Debt recovery: IBC 3 times better than other routes, Financial Express (Dec. 29, 2018, 6: 06 AM), https://www.financialexpress.com/economy/debt-recovery-ibc-3-times-better-than-other-routes/1428023/

35 *Supra* note 29.

36 *Id.*

37 FE Bureau, IBBI to commence individual insolvency process soon, Financial Express (Aug. 10, 2019, 1:05 AM), https://www.financialexpress.com/economy/ibbi-to-commence-individual-insolvency-process-soon/1671610/

38 BL Bureau, Scheduled banks healthier now as gross NPA ratio dips in FY19, The Hindu Business Line (June 09, 2019), https://www.thehindubusinessline.com/money-and-banking/scheduled-banks-healthier-now-as-gross-npa-ratio-dips-in-fy19/article27704992.ece

39 *Id.*

40 *Supra* note 29 at 19.

41,018 crore.[41] Therefore, the rate of recovery, in this case, amounts to approximately 83% of the defaulted loans.

Time-Bound Resolution

Before 2016, the average time taken in India to complete the process of insolvency resolution was 4.3 years.[42] This is higher when compared to other countries such as Pakistan (2.7 years), United Kingdom (1 year), and Brazil (4 years) and so on.[43] In India, these delays were caused because there was no legislative act that can provide for time-bound insolvency resolution. Also, there were many legislative frameworks regarding the same subject i.e. bankruptcy which created a situation of confusion and this ultimately led to delay in insolvency resolution.

After the enactment of IBC, which provided for a time-bound resolution of a maximum of 270 days, such a scenario has changed. The average time taken under IBC to resolve the cases is 1.6 years, which is far better when compared to 4.3years. But still, this is above the maximum time limit of 270 days as provided under the code. As of 30th June 2020, 1094 cases of the total 2108 CIRP pending cases, had breached the 270 days deadline.[44] This also includes the majority of the 12 large account cases.

The Gaps in Infrastructure

The absence of sufficient infrastructure may lead to an unnecessary delay or it may pave a way for ineffective mechanisms. The 12 benches of NCLT only have sixteen judicial and nine technical members which were a major reason behind causing such delays in insolvency resolution. In the 1st quarter of 2019, the government approved the appointment of 32 new members to NCLT which includes 14 judicial and 18 technical members.[45] Recently, six additional posts also have been sanctioned for NCLAT. This move should have been taken earlier but still; such an appointment will definitely lead to speed up of the IBC process.

41 *Id.*

42 Aravind Gayam, The Insolvency and Bankruptcy Code: All you need to know, PRS Legislative Research (May 10, 2016), https://www.prsindia.org/hi/theprsblog/insolvency-and-bankruptcy-code-all-you-need-know

43 *Id.*

44 *Supra* note 29.

45 K R Srivats, NCLT gets approval for appointment of 32 members, The Hindu Business Line, (May 4, 2019), https://www.thehindubusinessline.com/news/nclt-gets-approval-for-appointment-of-32-members/article27032186.ece

ACHIEVEMENTS TRIGGERED VIA IBC

- In 2016, India's rank in the World Bank's Ease of Doing Business Report was 130.[46] In 2017, it reached to the position of 100.[47] And in 2018, it made a remarkable huge step in the rank making it to 77th position.[48] In 2020, it has jumped to 63rd rank.[49] World Bank recognized India as the only country which made it to the list of top 10 improvers for the third consecutive year.[50] IBC is one of the aspects which positively tributed to India's ease of doing business rank.
- India's rank was 136 out of 189 countries in 2016 with respect to 'Resolving Insolvency'.[51] India used IBC as a tool for improving its 'Resolving Insolvency' rank and making it to 52nd position in 2020.[52]
- In 2018, IMF - World Bank's joint program of Financial Sector Assessment Program observed "India is moving towards a new state of the art bankruptcy regime".[53]
- India won the 2018's Global Restructuring Review (GRR) award for the 'most improved jurisdiction'.[54] GRR is an award that recognizes the jurisdiction which has improved its restructuring and insolvency regime the most over the last year.[55]

46 Press Trust of India, India moves up 14 spots to 63 on World Bank's ease of doing business ranking, India Today, (Oct. 24, 2019), https://www.indiatoday.in/business/story/india-moves-up-14-spots-to-63-on-world-bank-s-ease-of-doing-business-ranking-1612350-2019-10-24

47 *Id.*

48 *Id.*

49 Yogima Seth Sharma, India jumps to 63rd position in World Bank's Ease of Doing Business 2020 report, The Economic Times, (Oct. 24, 2019, 12:53 PM IST), https://economictimes.indiatimes.com/news/economy/indicators/india-jumps-to-63rd-position-in-world-banks-doing-business-2020-report/articleshow/71731589.cms?from=mdr

50 MS Sahoo, Moving up in 'ease of resolving insolvency', The Hindu Business Line (Mar. 05, 2020), https://www.thehindubusinessline.com/opinion/moving-up-in-ease-of-resolving-insolvency/article30992998.ece

51 ENS Economic Bureau, Jumping 12 places, India ranks 130 in ease of doing business: World Bank report, The Indian Express (Oct. 26, 2016, 08:36 AM), https://indianexpress.com/article/business/economy/india-ranks-130-in-ease-of-doing-business-jumps-12-places-world-bank-report/

52 PTI, World Bank's ease of doing biz: DPIIT focusing on 6 parameters to push India's ranking, The Economic Times (Jan. 05, 2020, 03:40 PM IST), https://economictimes.indiatimes.com/news/economy/policy/world-banks-ease-of-doing-biz-dpiit-focusing-on-6-parameters-to-push-indias-ranking/articleshow/73106380.cms?from=mdr

53 Timothy Taylor, India Economic Survey: Challenges Accepted, BBN Times, (July 29, 2019), https://www.bbntimes.com/global-economy/india-economic-survey-challenges-accepted#:~:text=Financial%20Sector%20Assessment%20Program%20of,cash%20and%20financial%20discipline%2C%20to

54 PTI, India wins GRR award for "most improved jurisdiction", India Today (June 28, 2018 22:05 IST), https://www.indiatoday.in/pti-feed/story/india-wins-grr-award-for-most-improved-jurisdiction-1272634-2018-06-28

55 *Id.*

- 4 lakh crore NPAs has been recovered through the Insolvency and Bankruptcy Code alone since its implementation.[56]

CONCLUSION

The Indian banking sector always has been leading in terms of economic magnification of the country. But because for various reasons, this industry has been flooded by growing NPAs and liquidity crunch problems. India's poor insolvency regime, its ineffectiveness and abuse of its provisions are some of the reasons behind such an immense problem.

With the enactment of the IBC, it has made a behavioural change between creditor, debtor and promoter relationship. Within just a short span of time, a significant change can be seen in India's resolving insolvency rank. It has been proved effective to a great extent by reducing the average time taken in insolvency resolution by more than four times. However, this provision of time-bound resolution is still being violated in various cases. One of the objectives behind the introduction of IBC was to promote and approve a resolution plan instead of going towards liquidation. But in the current working of the IBC provisions, such objective has left behind as approval of the resolution plan can be seen only in few cases as compare to liquidation cases. Infrastructural gaps are yet another challenge still prevailing in the working of IBC.

The law has already undergone various amendments in this short period of time making the code more effective and revolutionary. The Supreme Court, as well as the NCLAT, has shown the direction of fast-track mode through judicial interpretation and pronouncements. Still, the government needs to focus on certain aspects and implement them by way of amendment in the code. The growing NPA problem needs to be addressed separately as IBC can only reduce it to some extent but cannot eliminate it. For an effective time-bound resolution, the government should focus on to provide a digital platform to adjudicating authorities and to increase the number of benches for NCLT as well as the judicial members. It would be better if there is a separate adjudicating tribunal for high-value cases to ensure quick disposal of cases. The government has still not notified about the date of implementation of individuals and partnership firm insolvency provisions. Once the provisions related to individual insolvency resolution come into force, then it will add another feather to its cap.

56 PTI, Govt's NPA gameplan: Rs 4 trn recovered via IBC proceedings, says Thakur, Business Standard (Feb. 7, 2020 22:59 IST), https://www.business-standard.com/article/pti-stories/under-modi-s-rule-rs-4-lakh-cr-recovered-through-insolvency-bankruptcy-proceedings-anurag-thakur-120020701870_1.htmlf