THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (No. 31 of 2016)

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Salient features of Preamble

• It is a consolidating and amending legislation
• Covers corporate persons, partnership firms and individuals for insolvency resolution in a time bound manner
• Alteration in the order of priority of payment of Government dues
• Establish an Insolvency and Bankruptcy Board of India
Some interesting anecdotes

• Barings Bank PLC Singapore – Leeson
• Near to us, an instance of mutual fund
• How assets under liquidation are not to be kept
• Liquidation, so far a process till eternity
What is winding up, liquidation and dissolution

Process of liquidation is the collection of assets, disposing them and keeping the revenues in tact.
Liquidation and dissolution

• Dissolution is the final process of corporate nirvana – giving peace to the corporate soul
• Winding up is the totality from passing resolution either for members voluntary winding up or creditors winding up till dissolution
Features of the new law

• Why is it called a code and why not an act? Preamble uses the word “Act” and in section 2 and 3 the word is code
• Is the definition of code any different than the act?
• There are 255 sections, 11 schedules and 5 parts and 21 chapters
• Important to note that Provisions of Companies Act, 2013 relating to members’ voluntary winding up (part II of Chapter XX) and rehabilitation of sick industrial companies (Chapter XIX) have been deleted
What are the five parts in the law?

• Part I – Preliminary –Section 1 to 3
• Part II – Insolvency resolution and liquidation for corporate bodies – Section 4 to 77 with 7 chapters
• Part III – Insolvency resolution and bankruptcy for individuals and partnership firms – section 78 to 187 with 7 chapters
• Part IV – Regulation of Insolvency Professionals, agencies and information utilities – section 188 to 223 with 7 chapters
Five Parts (contd.)

• Part V – Miscellaneous
• It should be noted that Part III is not applicable to the State of Jammu and Kashmir – section 1(2)

• Interesting point to note is that this law has taken fifty six years for its birth (as per statement of Mr. Bhupendra Yadav, Chairman of Parliamentary Standing Committee)
Definition sections and Repeal

• Section 3 contains 37 general definitions
• Section 5 contains 28 definitions applicable to part II
• Section 79 contains 22 definitions related to Part III
• Repeal – section 243 repeals the Presidency Towns Insolvency Act 1909 (applicable to Chennai, Kolkata and Mumbai) and the Provincial Insolvency Act of 1920
Corporate Insolvency Resolution

• Applicability – Not applicable in respect of dues below Rs. 1.00 lac and the CG may increase it to Rs. 1.00 crore by notification

• Also this code is not applicable to financial service providers as per sub-section 17 of section 3 – For MFIs, NBFCs and financial service providers (regulated by SEBI, PFRDA, IRDA) there would be a separate legislation as per announcement of Mr J Sinha (TOI 14.6.15)
Who could be a corporate applicant?

- Section 5(5) – means corporate debtor, member or partner of the corporate debtor authorised to make an application for corporate insolvency resolution process or individual in charge of managing the operations (viz. MD/WTD/CEO) and a person who has the control and supervision over the financial affairs of the Corporate debtor (viz. CFO)
Adjudicating Authority

- National Company Law Tribunal with its branches
- Financial creditor could make an application for Corporate Insolvency Resolution Process (CIRP) – section 7
- In case of operational creditor, he has to first serve a notice of demand with a copy of invoice demanding payment under section 8 and wait for a period of 10 days and if not paid may make an application under section 9
- The Corporate debtor could also initiate CIRP under section 10 suo motu
Time Limit for completion of Insolvency Resolution Process

• To be completed within 180 days of the date of admission
• One time extension of another 90 days possible
Powers of Adjudicating Authority

• Section 14 allows AA to prohibit by order
  – Institution, continuation of proceedings of suits against the company or LLP including execution of judgment, decree or order of any court of law
  – Transferring, encumbering, alienating or disposing of by the company or LLP of its assets/legal right/beneficial interest
  – Any action under SARFAESI 2002
  – Recovery of property by owner
Public announcement of CIRP

- Section 15 provides for a public announcement of name and address of corporate debtor
- Name of authority with which corporate debtor is incorporated/registered
- Last date for submission of claims
- Details of IRP (Interim Resolution Professional) who shall be vested with management
- Penalties for misleading claims and
- The closing date of CIRP
Appointment of Interim Resolution Professional (IRP)

• The AA shall appoint an IRP within 14 days from the admission of the application – section 16 if application made by a corporate debtor or a financial creditor and IRP is proposed.

• Where application is made by an operational creditor and no IRP is proposed AA shall make reference to the Board (16(3)) and within 10 days the Board shall make reference to AA the name of IRP.

• The term of IRP shall not exceed 30 days.
Management of affairs and duties of IRP (section 17 and 18)

- Management of the affairs of Corporate Debtor shall vest in IRP and the powers of the Board shall be exercised by the IRP – Officers and Managers of C.D. shall also report to IRP
- IRP shall collect all information, collate all claims and constitute a committee of creditors and monitor the assets of C.D. and manage the operations till a Resolution professional is appointed by the Committee of Creditors
Committee of Creditors (sec.21)

• Committee shall comprise all financial creditors of the C.D. – however no related party
• All decisions of the committee shall be taken by a majority of 75% of voting share of creditors
• First meeting shall be held within 7 days of the constitution of the committee
• Committee of Creditors in first meeting with 3/4\textsuperscript{th} majority may either appoint the IRP as the RP or may appoint another Resolution Professional (section 22(2))
• Resolution professional shall conduct the CIRP
Resolution Plan

- RP shall prepare an information memorandum (section 29) in such form and manner as prescribed by the Insolvency Board
- Resolution applicant may also submit a plan to RP in accordance with section 30
- RP shall present the plan to the CoC
- If approved by CoC and subsequently ordered by AA the plan shall be binding on Corporate Debtor and its employees, creditors, members, guarantors and other stakeholders involved in the plan
Liquidation – chapter III of Part II

• Where no plan is presented or where the plan presented is not approved by AA it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III
Insolvency and Bankruptcy Board of India

• The Act provided the establishment of a Board to administer the functions as per section 196 e.g. registration of professional agencies, insolvency professionals and information utilities and minimum eligibility requirements and specify standards and also make by laws and regulations.

• Professionals registered with the board can only function as resolution professionals.
Impact for Banks – Opportunity for Professionals

• The documentation procedure in Banks shall have to be revisited in accordance with regulations to be announced. Banks would have to consult the professionals

• Speedy decision making in banks – empowered officials/committees shall have to take decisions within time bound
Fact track corporate insolvency resolution process

• As per section 55(2) an application for fast track process could be made by a corporate debtor which such assets and income below a level as may be notified or by a corporate debtor with such class of creditors or such amount of debt as may be notified.

• The process shall be completed within 90 days from commencement date.
 Appeals against order of AA

- As per section 61 an appeal lies to NCLAT within a period of 30 days (from the receipt it seems) on grounds specified in Sub section 3 thereof and not on any other grounds.

- Appeal against order of NCLAT lies to Supreme Court within a period of 45 days of the receipt of the NCLAT order.
Impact for capital markets

• The successful implementation of the code shall ensure that there shall be a well organised market for corporate bonds and shall also improve value for private banks, non banking finance companies and similar institutions

• Investors can take interest in offerings of bonds and this can ensure return of individual investors to markets

• Institutions of debenture trustees, market advisors shall thrive
Impact for overseas investors

- Improvement of confidence in Institutions
- Improvement in forex flow
- Orderly development of foreign exchange market
- Integration of Indian Economy with International Investors