

Concerns with Insolvency and Bankruptcy Code

What is the issue?

\n\n

\n

- Insolvency and bankruptcy code was introduced in 2016 to address the bad loan issues.

\n

- In practical scenario there new legal issues are arising with in Insolvency Act.

\n

\n\n

What is Insolvency and bankruptcy code?

\n\n

\n

- The Insolvency and Bankruptcy Code (IBC) was enacted in 2016 for the recovery of giant bad debt volume built up in recent years.

\n

- Under IBC, either the creditor (banks) or the loaner (defaulter) can initiate insolvency proceedings.

\n

- It is done by submitting a plea to the adjudicating authority, in this case, the National Companies Law Tribunal (NCLT).

\n

- The Insolvency and Bankruptcy Code stipulates cases should be heard within 14 days.

\n

- After admission, the insolvency resolution process has to be completed in 180 days (extendable by 90 days).

\n

- IBC provides for Insolvency Resolution Professionals (IRPs) who will take charge of a company when it's taken to the bankruptcy court.

\n

\n\n

What is the significance of Insolvency act?

\n\n

\n

- The time period prescribed under the Code was held to be procedural in nature, a tool in the expeditious dispensation of justice and is directory.
- India's Insolvency Act has been modelled on similar codes in the UK and the US.
- But one big difference from the US is that when a company there files for bankruptcy, the management stays in place.
- Here, the management is immediately replaced by the IRP, who has six months to sort out the company's affairs.
- This is because in India, top management is usually also the main shareholder and that's one reason why it can't be left in place.

\n

\n\n

What are the practical concerns with India's IBC?

\n\n

\n

- **Clogging Tribunals** - The NCLT started off well but they are clogging up now, they're taking much longer than they did earlier.
- More than 9,000 cases are before the 11 NCLT tribunals that have been set up around the country.
- National Company Law Appellate Tribunal (NCLAT) and that includes more than 2,500 insolvency cases.
- **Concerns with time stipulation** - Regarding the time stipulation, in few cases the tribunal laid down that the 14-day period is only directive and not mandatory.
- Also, the NCLAT has held that the provisions of the Limitation Act, which sets out the time-limits under which a complainant can approach the courts for redress, do not apply to proceedings under the Insolvency Code.
- **Authoritative IRPs** - The IBC's provision to throw the management out and replacing them with IRPs is consider to be draconian.

\n

- IRPs are a mix of chartered accountants, cost accountants, MBAs and retired public sector executives but there are many concerns has raised over the quality of the IRPs.
\n
- **Drafting loopholes** - Inevitably, there are loopholes in the Insolvency Act and some lawyers complain of poor drafting too.
\n
- For instance, the act has no provision for an amicable settlement once a case has been admitted.
\n

\n\n

What measures needs to be taken?

\n\n

- There is need for setting up more tribunals in different parts of the country to handle the greater-than-expected volume of cases.
\n
- IBC must consider that there are distinct advantages if the existing management is allowed to keep running the company such as knowledge, information and expertise.
\n
- India is more concerned with the recovery of NPA, not with the running of units, thus the first priority is to save the banking system.
\n
- Thus the banks also must push policy makers towards this move because they're unlikely to get more if the case comes before the NCLT.
\n

\n\n

\n\n

Source: Business Line

\n

