

# Insolvency and Bankruptcy Code

February 22, 2019

## Manifest Pedagogy

Amendment to IBC and relevant provision related to eligible persons, sections, timelines etc would be of particular importance for prelims whereas the key progress and highlights would be the focal point for mains examination.

## In news

Amendments to the IBC

## Placing it in the syllabus

Banking sector reforms (LPG)

## Static dimensions

1. Rising NPA's
2. NCLT
3. SARFAESI act

## Current dimensions

1. Insolvency and Bankruptcy Code
2. Amendment's
3. Ease of Exit

## Content

### Insolvency and Bankruptcy Code

#### Aims of the code

- The 2016 Code applies to companies and individuals.
- It provides for a time-bound process to resolve insolvency.
- When a default in repayment occurs, creditors gain control over debtor's assets and must take decisions to resolve insolvency within a 180-day period.
- To ensure an uninterrupted resolution process, the Code also provides immunity to debtors from resolution claims of creditors during this period.
- The Code also consolidates provisions of the current legislative framework to form a common forum for debtors and creditors of all classes to resolve insolvency.

### **Who facilitates the insolvency resolution under the Code?**

The Code creates various institutions to facilitate resolution of insolvency. These are as follows:

- **Insolvency Professionals:** A specialised cadre of licensed professionals is proposed to be created. These 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 examinations 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 the National Companies Law Tribunal (NCLT), for companies; and the Debt Recovery Tribunal (DRT), 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 insolvency professionals, insolvency professional agencies and information utilities set up under the Code. The Board will consist of representatives of Reserve Bank of India, and the Ministries of Finance, Corporate Affairs and Law.

### **Regulator of Insolvency:**

The Code lays down that the Insolvency and Bankruptcy Board of India shall oversee the proceedings related to insolvency in the nation and also regulate all the organizations that have been registered by the board. The Insolvency and Bankruptcy Board shall consist of ten members, which would also include the representatives of the Law and Finance ministries as well as the RBI (Reserve Bank of India).

### **IBC Review panel recommendations**

1. Reprieve for Homebuyers; they should be treated as financial creditors at par with banks.
2. All money raised under a real estate project is financial debt.
3. Promoters of MSMEs who are not wilful defaulters allowed to bid for either cos.
4. The scope of moratorium restricted to the asset of corporate debtor and not the guarantor
5. Trading of security should not be suspended during CIRP as it can give better price discovery.
6. Voting share for approval of resolution reduced from 75% to 66%.
7. Financial creditors won't become related party for conversion of debt into equity prior to the insolvency

commencement date.

## **Important changes being allowed in recent cases/ amendments**

### **▪ First IBC Amendment (Nov 2017) changes made:**

1. Introduction of Section 29 A ; as a result defaulters prevented from regaining control of their companies at a cheaper value.
2. Persons who have remained in management or control of an account that has been an NPA for more than 12 months barred from bidding.
3. Resolution plans need to be approved by 75% of creditors.

### **▪ Second IBC Amendment (June 2018)**

1. Introduction of Sec12 A (Dealing with withdrawal of insolvency proceedings against a company). : as a result promoters can offer settlement to creditors before bankruptcy proceedings start and regain control of company provided 90% of creditors agree.
2. Promoters of MSMEs allowed to bid for their companies.
3. Home buyers to be treated as financial creditors.
4. Resolution plans can be approved by 66% of creditors.
5. Financial entities who are not related parties of promoter but own equity shares in a defaulter co allowed to bid.

### **Legislation/SC Judgement:**

Brilliant Alloys v/s S Rajagopal & Others (Dec 2018): SC allows withdrawal of insolvency proceedings against a company after process has started (It is reinterpretation of Sec 12A).

### **Legislation/SC Judgement:**

**Swiss Ribbons v/s Union of India (Jan 2019)**; Easing of criteria dealing with eligibility of 'connected persons' and 'related parties' bidding for companies under insolvency

process.

- Persons defined as 'relatives' will face disqualification under Sec 29 A only if they have a business connection.