

What does the Code aim to do?

The 2016 Code provides for a time-bound process to resolve insolvency. When a default in repayment occurs, creditors gain control over the 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 Insolvency Professionals:** 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.

What is the procedure to resolve insolvency in the Code?

The Code proposes the following steps to resolve insolvency:

1. **Initiation:** When a default occurs, the resolution process may be initiated by the debtor or creditor. Decision to resolve insolvency: A committee consisting of the financial creditors will take a decision regarding the future of the outstanding debt owed to them. They may choose to revive the debt owed to them, or sell (liquidate) the assets of the debtor to repay the debts owed to them. If a decision is not taken in 180 days, the debtor's assets go into liquidation.
2. **Liquidation:** If the debtor goes into liquidation, an insolvency professional administers the liquidation process. Proceeds from the sale of the debtor's assets are distributed in the already established order of precedence.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

- The Ordinance amends the Insolvency and Bankruptcy Code, 2016 to clarify that allottees under a real estate project should be treated as financial creditors.
- The voting threshold for routine decisions taken by the committee of creditors has been reduced from 75% to 51%. For certain key decisions, this threshold has been reduced to 66%.
- The Ordinance allows the withdrawal of a resolution application submitted to the NCLT under the Code. This decision can be taken with the approval of 90% of the committee of creditors.

Issues with IBC, 2016

- **Missing the deadline:** IBC mandates that an insolvent asset must be resolved in 270 days. Out of the 12 big accounts initially referred to IBC, five cases are pending for more than 600 days due to continuous litigation by some party or the other. Among the most prominent examples of this chequered journey for the IBC is the Essar Steel insolvency. It has been more than 600 days since the Rs 50,000-crore account entered the IBC.

- **Lack of benches and judges:** India has 14 NCLTs, and two are yet to start functioning. The government had a couple of years back announced to set up 24 bankruptcy courts. The NCLT judge roster shows 27 members have been sharing the workload against the target of appointing 60 judicial and technical members. Delhi and Kolkata are sharing the workloads of Jaipur, Chandigarh, Guwahati and Cuttack benches. Recently the government highlighted that it has been taking steps to increase capacity of National Company Law Tribunal (NCLT) and increased its benches from 10 to 15. Also 26 new members have been added taking total strength to 52.
- **Haircuts:** It is the extent of write off that banks undertake as part of resolution plan to get the company back on track. So far financial creditors have got 43 per cent of their claims and 188 per cent of the liquidation value. Steps should be taken so that haircuts are reduced.
- All these factors are raising concerns that IBC will meet the same fate as DRT and SARFAESI and banks will eventually lose confidence in IBC
- The recent Supreme Court order setting aside RBI's decision to send all power companies to the NCLT has also set a wrong precedent.

Parliament has recently passed **Insolvency and Bankruptcy Code (amendment) Bill 2019** to resolve few of the issues:

Insolvency and Bankruptcy Code (amendment) Bill 2019

- The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.
- Under the Code, a financial creditor may file an application before the National Company Law Tribunal (NCLT) for initiating the insolvency resolution process. The NCLT must find the existence of default within 14 days. Thereafter, a Committee of Creditors (CoC) consisting of financial creditors will be constituted for taking decisions regarding insolvency resolution. The CoC may either decide to restructure the debtor's debt by preparing a resolution plan or liquidate the debtor's assets.
- The CoC will appoint a resolution professional who will present a resolution plan to the CoC. The CoC must approve a resolution plan, and the resolution process must be completed within 180 days. This may be extended by a period of up to 90 days if the extension is approved by NCLT.
- If the resolution plan is rejected by the CoC, the debtor will go into liquidation. The Code provides an order of priority for the distribution of assets in case of liquidation of the debtor. This order places financial creditors ahead of operational creditors (e.g., suppliers). In a 2018 Amendment, home-buyers who paid advances to a developer were to be considered as financial creditors. They would be represented by an insolvency professional appointed by NCLT.
- The Bill addresses three issues. First, it strengthens provisions related to time-limits. Second, it specifies the minimum payouts to operational creditors in any resolution plan. Third, it specifies the manner in which the representative of a group of financial creditors (such as home-buyers) should vote.

Conclusion

A lot many things have been settled through repeated amendments but still a lot needs to be done. Not only do the new amendments plug loopholes in the Insolvency and Bankruptcy Code (IBC), which some promoters had used to stall resolution of their bankrupt companies, but the changes also seek to ensure time-bound resolution of insolvency cases. There has been a marked improvement in the recovery process which is already leading to billions of dollars being invested in the country due to the protection of creditor rights. Compared to other markets, the pace at which we have achieved this is also noteworthy. In the US, for example, it took 10 years (from 1978) for the bankruptcy law to attain some stability. The progress in India has been remarkable by global standards