Critical Analysis of Corporate Insolvency Resolution Process

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ABSTRACT:

India is an emerging economy that has always embraced progress in every aspect. One must simultaneously monitor development while adhering to strict regulations. Previously, there were numerous legal provisions for resolving insolvency for various entities, similar to insolvency and bankruptcy laws, but to unify all of the rules under one body of law, the Insolvency and Bankruptcy Code, 2016, was adopted. When a debtor is unable to pay off his existing debts or fulfil the promises he made to his creditors, he is said to be insolvent. And bankruptcy is a state in which the adjudicating authority declares the debtor to be insolvent when he is unable to pay his debts. The government established this entrepreneur-friendly legislative framework in order to make the dream of moving India closer to being a developed country a reality and to make doing business easier. This law was created to safeguard and provide relief to the innocent debtor who is unable to pay his obligations due to any unforeseen circumstances, as well as to safeguard the interests of creditors who provided debt to the debtor in the hope that they would receive payment at a later date as agreed upon between the debtor and the creditor. The mechanism for resolving insolvency for corporate entities, partnership firms, individuals, single proprietorships, etc. is provided by this law. Corporate debtors, operational creditors, and financial creditors are the three categories of people who can apply for the start of the bankruptcy resolution process under the corporate insolvency resolution procedure. This law's ability to quickly resolve insolvency within 180 days is one of its benefits.

Key words- Insolvency, Bankruptcy, Corporate, Debtor, Adjudicatory.

INTRODUCTION:

The strengthening of current laws and the development of the economy in India have both been aided by insolvency and bankruptcy law. We needed a fully consolidated law on insolvency because, as India's economy grows to be a significant portion of the global economy, we must compete with other economies. Previously, we had several overlapping insolvency laws, but those laws were insufficient to address the issue of the rising levels of corporate and individual debt. There was a need for an insolvency law

that would be on par with international norms in order to draw new foreign investors and encourage them to participate in the Indian economy. India's economy is expanding, and new businesses are starting up every day, thus we require an entrepreneur-friendly framework to address one of the main issues with our economy, non-performing assets (NPA). Before the introduction of the new insolvency and bankruptcy code, two acts that were in effect in India were abolished and six other laws were amended. It amended the Indian Partnership Act of 1932, the Presidency Town Insolvency Act of 1909, the Provincial Insolvency Act of 1920, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, and the Limited Liability Partnership Act of 2008. It also repealed the Presidency Town Insolvency Act of 1909 and the Provincial Insolvency Act of 1920. M/s Innoventive Industries Ltd. v. ICICI Bank is a case in point. The newly passed Insolvency and Bankruptcy Code, 2016, which codifies and changes all Indian laws pertaining to the insolvency and bankruptcy procedure, was cited by the Supreme Court as the reason for the paradigm shift in the law for the first time. The management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional, the Supreme Court observed, would be directly hindered by giving effect to the State law to that extent. The Supreme Court has explicitly ruled that the provisions of the Insolvency and Bankruptcy Code, 2016 (Code) supersede any legislation that is in conflict with those provisions in PR. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.

Insolvency is the condition when a person is unable to pay his debt or obligations. Insolvency can be determined by two conditions firstly, when the cash flow in the company decreases and secondly, when the books of account shows that the liabilities are more than the assets of the entity. In general, this occurs when the entities cash flow in falls beneath its cash flow out. For individual debtors, this implies that their incomes are too low for them to pay off their debts. For companies, this implies that the money flow into the business and its assets are less than its liabilities.[1]

Insolvency is distinct from bankruptcy. A bankrupt debtor can obtain relief through bankruptcy as a legal process. It is the circumstance in which the person freely acknowledges his inability to pay his debts. Additionally, the person who is unable to pay their debts shows up in court to declare themselves insolvent. The adjudicatory authority will declare a person insolvent if they determine that they appear unable to pay their debt.

OBJECT OF INSOLVENCY LAW:

The primary goal of this law is to assist and benefit the innocent debtor who, due to unforeseen circumstances, is unable to pay his outstanding debts. A secondary goal is to satisfy the claims of the eligible creditors by equally dividing the debtor's assets among them in accordance with the legal process.

[1] See https://www.greenwaybankruptcy.com/articles/the-difference-between-insolvency-and-bankruptcy/

The Supreme Court of India stated in the case of Yenamulla Malludora vs. P. Seetharatna[2] that the goal of the insolvency law is to take an insolvent's property before he may waste it and distribute it among his creditors. However, not every debtor who has borrowed more than their assets are worth or even one whose property has been attached to satisfy their debts can be subject to this type of control. When specific events are known as acts of insolvency, which offer a right to his creditor to apply to the Court for his adjudication as an investment, the jurisdiction of the Court begins to exist.

HISTORICAL DEVELOPMENT OF THE INSOLVENCY AND BANKRUPTCY:

English laws served as the foundation for bankruptcy legislation. Sections 23 and 24 of the Government of India Act, 1800 stated that the Supreme Court had the authority to hear issues involving insolvency. After that, the Indian Insolvency Act of 1848 went into effect, but its protections were insufficient to meet the demands of the expanding economy. After that, the Provincial Insolvency Act of 1920 was passed alongside the Presidency Town Insolvency Act of 1909, which then went into effect. Even though the legal contents of all of these laws were the same, the jurisdictions in which they were implemented varied. Both of these laws were beneficial in resolving individual insolvency as well as insolvency involving sole proprietorships and partnerships. Only presidency towns like Madras, Bombay, and Kolkata were covered by the Presidency Town Insolvency Act of 1909; other towns were covered by the Provincial Insolvency Act. In order to resolve and reorganise bankrupt business entities through the process of winding up, the Companies Act of 1956 was enacted shortly after. Sections 42 to 56 of the Companies Act of 1956 make provisions for Part VII, which deals with the manner of winding up cases where the court may wind up the company.[3]Following that, the Sick Industrial Companies Act of 1985 was passed, bringing with it measures for corporate entity restructuring and reorganisation. Under entry 9 of list III of the Indian Constitution, the legislatures are given the authority to pass legislation pertaining to insolvency and bankruptcy.

Several committees were established by the government to provide recommendations in order to make the strict legislation linked to insolvency. The Indian government announced plans to create a framework for the resolution of insolvency and the restructuring of corporate and individual entities in its Budget Speech for the 2014–2015 fiscal year. Additionally, a committee led by Shri T.K. Viswanathan was formed to construct the framework.

RECOMMENDATIONS GIVEN BY THE COMMITTEE[4]:

The committee wants to create a code that will regulate both corporate and individual insolvency. Additionally, it suggests that the Bankruptcy and Bankruptcy Board of India,

[2] AIR 1966 SC 918

[3] Mevorach, I., 2009. Insolvency Goals in Legal Systems. In Insolvency within Multinational Enterprise Groups. pp. 105–126

[4] See https://dea.gov.in/sites/default/files/BLRCReportVol1_04112015

which would monitor the insolvency resolution process, will oversee the entire insolvency process. The post of Insolvency Resolution Professional, which will assist and play a significant role in the resolution process of insolvency, is proposed to be created by the committee. The owner of the company will relinquish control of management to an insolvency resolution professional, who will oversee all business operations until the insolvency procedure is resolved. As a member of the insolvency resolution agency, Insolvency Resolution Professional is registered. The Board's rules and regulations control bankruptcy resolution professionals and insolvency resolution agencies. For corporate entities, the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), and for individuals, the Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal, shall arbitrate the insolvency resolution process (DRAT). Additionally, it suggests creating the committee of creditors (COC), which is made up of the creditors that the debtor owes money to. The interim resolution professional or resolution professional will call a meeting of the Committee of Creditors (COC) to make decisions on the insolvency resolution. Since each creditor has a voting part proportional to the value of their claims against the debtor, each creditor must cast a ballot. The applicant will create a resolution plan for the insolvency with the assistance of the resolution specialist. This resolution plan will be presented to the committee of creditors, and if they approve it, it will be brought before the NCLT for approval.

INITIATION OF THE PROCESS OF CORPORATE INSOLVENCY RESOLUTION

STAGE-1

The application must be submitted to the National Company Law Tribunal, which serves as the adjudicating body, to begin the insolvency resolution process.
Person who can file application for the insolvency resolution process?

- Financial creditor
- Operational creditor
- Corporate debtor

The person to whom the debtor owes a financial debt, as well as anyone to whom it has been legally assigned, is referred to as the financial creditor. Operational debt holders, which includes those to whom it has been formally assigned, are referred to as operational creditors. The individual who owes the loan to anyone is the corporate debtor.

Time period for the completion of insolvency resolution process

The process of insolvency resolution began on the day the application for bankruptcy resolution was approved and is complete when NCLT accepts the resolution plan put forth

by the committee of creditors. The insolvency resolution procedure typically lasts 180 days, however it is possible to extend the time frame by an additional 90 days. For this extension, the committee of creditors must approve the resolution with a majority vote of 75%, and the NCLT will then accept their choice. The NCLT must receive proof of debt when the financial creditors, operational creditors, and corporate debtor submit their applications.

Documents required to be submitted by the financial creditor

The record of the debt that was registered with the information utility, as well as any additional documents or proof of default, must be submitted by the financial creditor. Financial creditors must also provide the name of the expert in insolvency resolution in addition to other details specified by the board.

Documents required to be submitted by the operational creditor

The corporate debtor must receive a copy of the demand notice or invoice from the operational creditor requesting payment. The Supreme Court ruled in Macquarie Bank Limited v. Shilpi Cable Technologies Ltd[5]. that Section 9(3)(c) of the Insolvency and Bankruptcy Code, 2016, is directory rather than required in nature.

On behalf of the operating creditor, the Lawyer may issue a demand notice in accordance with the Code. The Court mentioned the following in this context: the occurrence of a default; the delivery of a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved; and the operational creditor's failure to receive payment from the corporate debtor within 10 days of receiving the demand notice or copy of the invoice demanding payment or a reply from the corporate debtor. The Court decided that an application under Section 9(2) of the Code may only be made in the appropriate way and with the prescribed fee if certain conditions are satisfied. According to Section 9(3), additional information must be provided in addition to the application. If the operational creditor and the debtor disagree, the debtor must give notification of the disagreement. Additionally, if the operational creditor receives no notice of disagreement from the corporate debtor, the operational creditor must file an affidavit in that regard. A copy of the certificate from the financial institution managing the operational creditor's accounts showing that the corporate debtor has not paid any outstanding operational debt must also be submitted. Additionally, there is a copy of the information utility report saying that the corporate debtor does not pay any operational debt. The operational creditor may also present evidence before the NCLT if he has any that demonstrates there has been no payment of the operational debt[6].

Documents needs to be submitted by the corporate debtor

[5] (2018) 2 SCC 674
[6] See https://www.indiafilings.com/learn/corporate-insolvency-resolution-process/

The board may specify further documents, but the corporate debtor must give the specifics of his books of accounts and other documentation demonstrating his financial status. Another need is that the corporate debtor's shareholders pass a resolution approving the application that was submitted by the company debtor. The resolution must be approved by a majority of three-fourths of the corporate debtor's partners. Additionally, the NCLT must be given the name of the bankruptcy resolution specialist by the corporate debtor.

STAGE 2

A request for an insolvency resolution may only be made when the default exceeds Rs. 1 lakh. The application is either accepted or rejected by the adjudicating authority after submission.

After reviewing the application and any additional papers received, the adjudicatory body issues a notification regarding the application filed within 14 days after filing. If the adjudicating authority determines that the application is valid, it will approve it; otherwise, it will reject it.

The adjudicatory authority names the interim resolution professional after accepting the application. A 30-day interim resolution specialist appointment is required. An expert in interim resolution takes over administration of the business from the debtor and assists with day-to-day operations. The professional in intermediate resolution has certain responsibilities and obligations. The resolution expert will be in charge of running the business's affairs. Board of Directors and partner authority is suspended, and interim resolution specialist authority is now in effect. All managers and offices must report to the professional handling the interim resolution and give him access to all corporate debtor records as needed. Every financial institution that keeps track of corporate debtors' data must supply those records to an expert in interim resolution. They must do all of this while making sure that the law is obeyed in accordance with due process, therefore it is critical that they possess significant legal knowledge, relevant business and financial experience, and moral character.[7]

The interim resolution professional's responsibilities include gathering data on the corporate debtor's financial standing, business operations, and assets and submitting it to India's insolvency and bankruptcy board. Additionally, he must gather the debtor's creditors' claims. Up to the resolution professional is not selected by the committee of creditors, interim resolution professionals must keep an eye on the assets of the corporate debtor and oversee its operations. All information gathered must be sent to the information utility by the interim resolution professional.

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[7] International Monetary Fund Orderly and Effective Insolvency procedures

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After the adjudicatory authority receives the application for the insolvency settlement, it declares a moratorium[8]. A moratorium is a specific sort of stay action. By imposing the moratorium, the adjudicating body limits or forbids the corporate debtor from alienating, transferring, or disposing of any of his property or assets. Additionally, it limits the beginning or continuation of legal actions or proceedings as well as the enforcement of judgments or orders rendered by courts, tribunals, etc. Additionally, it limits the Securitization and Restructuring of Financial Assets and Enforcement of Security Interest Act of 2002 from being used to foreclose, reclaim property, or enforce any security interests issued in favour of corporate debtor. P. Mohanraj &Ors. v. Shah Brothers Ispat Pvt. Ltd.

STAGE-3

The allegations against the corporate debtor are made public by the interim resolution professional after his appointment. If any creditor has claims against the debtor, they may present them to an expert in interim resolution as the public announcement is valid for seven days. v. M/S. Juggilal Kamlapat Jute Mills Company Limited and Others[9], a case involving M/S. Surendra Trading Company If the time restriction set forth for admitting or rejecting a petition for the start of the insolvency resolution procedure is mandatory in this case, that was the question of law on which the NCLAT based its conclusion. The specific issue was whether the proviso to Section 9(5)'s requirement that applications be corrected of any errors within 7 days of receiving notice from the adjudicating authority constituted a rigid deadline that could never be changed. The NCLAT had ruled that the seven-day window was sacred and could not be extended, but that the adjudicating authority's decision to accept or reject the application within the fourteen-day window was advisory. The Supreme Court, on the other hand, took a different stance and declared the following: "We are unable to discern any legitimate rationale presented in coming to the judgement that the duration mentioned in the proviso is required." The NCLAT's ruling then goes on to mention the provisions of Section 12 of the Code and emphasises that the insolvency resolution procedure has a 180-day deadline, which can be extended by an additional 90 days. However, that scarcely qualifies as a defence for interpreting the proviso to subsection (5) of Section 9 in the manner that is done. Keep in mind that the 180-day window outlined in Section 12 begins as soon as the application is accepted. After the application has been filed under Section 9 (or, for that matter, under Section 7 or Section 10), any time spent prior to that point—whether it was done so by the adjudicating authority's registry in reviewing the application, by the applicant in

[8] Section 14, Insolvency and bankruptcy Code, 2016
[9] 2017 SCC OnLine SC 1208

correcting errors, or by the adjudicating authority in admitting the application—is not to be taken into consideration. Since the application must be complete in every way before it can be considered, it should not be considered to have been filed lawfully until the objections are resolved. Making the seven-day term specified in the proviso necessary in this case is not something we recommend. Treating this time as a required interval will serve no use. There may be important, legitimate, and justifiable reasons in a particular case why the faults cannot be fixed within seven days. Despite this, the application would be rejected as a result. The debtor's name and the name of the expert in interim insolvency resolution are also included in the public notification.

A committee of creditors was formed by an interim resolution professional once they had collected all the claims. By casting a vote representing at least 75% of their claims against the financial creditors, the committee of creditors makes decisions at the meeting. Within seven days, the committee of creditors met and recommended an insolvency resolution specialist to the adjudicating authority. The committee of creditors must decide whether to nominate another resolution professional or to appoint the temporary resolution professional as the resolution professional.

An information memorandum detailing the debtor's financial situation must be prepared by an insolvency resolution specialist appointed by the committee of creditors. (1) The resolution professional must create an information memorandum in the format and with the content that the Board may specify in order to develop a resolution plan. (2) The resolution expert must give the resolution applicant access to all committee of creditors approval for specific measures. Relevant information in both physical and electronic form, as long as the resolution applicant agrees to: (a) abide by confidentiality and insider trading laws currently in effect; (b) protect any corporate debtor intellectual property it may have access to; and (c) refrain from disclosing pertinent information to third parties unless clauses (a) and (b) of this subsection are followed.[10]

According to the information note given by the insolvency resolution professional, the resolution applicant will submit the resolution plan. A professional insolvency practitioner will then review the resolution plan that the resolution applicant has filed. The resolution plan is then presented to the committee of creditors, who might approve it by voting against the debtor with a share of 75% of their debt. The resolution plan will be presented to the adjudicating body for approval or disapproval if the committee of creditors approves it.

CONCLUSION:

The introduction of the Insolvency and Bankruptcy Code in India has contributed to the resolution of a significant issue involving non-performing assets for banks, the largest lenders to businesses seeking financial assistance. This insolvency rule offers a way to reduce non-performing assets and assisted banks in raising the caliber of their assets, which in turn allowed for further investment and, ultimately, economic growth. The

[10] Section 29, Insolvency and Bankruptcy Code, 2016

provision of an entrepreneur-friendly insolvency resolution system that aids newcomers to the business world in helping them escape the vicious cycle of insolvency and assist them run their businesses smoothly is another benefit it provided to the Indian economy. This code is one of the primary factors in India's score rising to 100 in 2017 from 130 in the previous year in the World Bank's Ease of Doing Business index. The introduction of this rule has also aided the Make in India initiative by drawing numerous multinational corporations to India with its quick and simple insolvency procedures. Because before this law came into effect, corporations' winding up processes took a very long time, but this code offers a quick procedure for resolving insolvency.