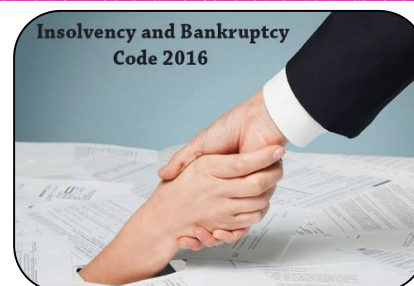




IMPACT OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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ABSTRACT

Implementation of Insolvency and Bankruptcy Code, 2016 has been a much talked about structural change in the Indian economy, both nationally and internationally. Its implementation has improved India's World Bank Doing Business Report ranking from 136 to 103. The paper discusses the theoretical background of IBC and the number of final orders passed till December 2018 from every bench of NCLT. It suggests the policymakers to improve the number of benches and the number of members in the already existing benches to improve performance of IBC implementation.

KEYWORDS: *Bankruptcy code, corporate law, Indian economy, NCLT*

INTRODUCTION :

The Insolvency and Bankruptcy Code, 2016 (IBC) is a consolidated corporate bankruptcy law of India. This structural change helped India in improving its rankings in the World Bank Group's Doing Business Report from 136 to 103 since then¹. IBC is entirely different from the then existing legal frameworks as IBC is designed to form the process that leads to resolution, rather than dictating the form of resolution outcomes. In order to aid this, four institutions² are added that ensure time bound resolution. The adjudicating authority empowered by the law is National Company Law Tribunal (NCLT). NCLT merely adjudges the fairness and compliance by the law of corporate insolvencies. It does not participate in the resolution process in any other way. National Company Law Appellate Tribunal (NCLAT) is designated as the appellate forum by the law. Both NCLT and NCLAT are established under the Companies Act 2013 and not IBC. Hence, under IBC additional powers are conferred to the NCLT to adjudicate insolvency and bankruptcy cases of corporate entities. The IBC has changed the existing regime from 'Debtor in possession' to 'Creditor in control'.

Objectives of the IBC are:

- 1) To resolve the insolvent firms in a timely manner;
- 2) To build entrepreneurship;
- 3) To regulate the corporate entities

This paper collects data of the final orders of NCLT from its website to analysis the performance of IBC and recommends further policy suggestions.

¹ See Reserve Bank of India, Financial Stability Report (Report, 2017) pp 53.

² the Insolvency Professionals (IPs), the Insolvency Professional Agencies (IPAs) and the Information Utilities (IUs)

REVIEW OF LITERATURE

Sengupta, Sharma, and Thomas (2016) explained the significance of IBC in the credit landscape of Indian economy.

Chaiterjee, Shaikh and Zaveri (2017) discussed the theoretical background of the IBC in its entirety and further suggest data management framework for IBC as it would be beneficial in future for a systematic data-backed economic analysis.

Feibelman (2017) discussed the theoretical aspects of IBC and raised good hopes of its results for the Indian markets.

Datta (2018) while lauding the speedy resolution procedure under IBC raised concern over the value creation problem and the wealth transfer problem. In his theoretical paper he suggests theoretical framework necessary to identify the sources of the two problems. A revisit to the fundamental design of the law is suggested.

STUDY FINDINGS

As per the NCLT website, under section 111-111A/ 58-59, total 188 orders are passed in all three years together in all benches.

Maximum final orders are passed in 2017 numbering 134.

The Mumbai bench has passed the maximum number of final orders in 2016, 2017 and 2018. However, every bench passed maximum final orders in 2017.

Table 1	Number of final orders passed till 22 December 2018 Under section: 111-111A/58-59		
	2016	2017	2018
Principal Bench	-	-	-
New Delhi Bench 2	-	01	-
New Delhi Bench 3	2	13	-
Ahmadabad Bench	5	14	01
Allahabad Bench	-	01	-
Bangaluru Bench	-	01	-
Chandigarh Bench	01	03	-
Chennai Bench	01	10	04
Guwahati Bench	-	-	-
Hyderabad Bench	03	34	02
Kolkata Bench	10	19	02
Mumbai Bench	16	38	07
TOTAL	38	134	16

As per table 2, under section 397-398/ 241-242, total 818 final orders are passed in all three years. In 2017 alone 477 final orders are passed.

Once again the maximum final orders passed are from Mumbai Bench. Year 2018 sees a lack of orders passed as compared to year 2017 in all benches.

Table 2	Number of final orders passed till 22 December 2018 Under section: 397-398/241-242		
	2016	2017	2018
Principal Bench	16	16	01
New Delhi Bench 2	04	18	01
New Delhi Bench 3	14	05	-
Ahmadabad Bench	12	113	12
Allahabad Bench	10	09	-
Bangaluru Bench	04	21	06
Chandigarh Bench	17	21	02
Chennai Bench	03	70	08
Guwahati Bench	03	04	-
Hyderabad Bench	33	50	02
Kolkata Bench	65	59	04
Mumbai Bench	48	91	06
TOTAL	229	477	42

In table 3, orders under all other sections are mentioned. Total 9857 orders are passed in all three years.

In 2017 a whopping number of approximately 3406 orders are passed by Mumbai Bench, followed by Chennai Bench (903) and thirdly Ahmadabad Bench (726).

Table 3	Number of final orders passed till 22 December 2018 Under OTHER SECTIONS EXCEPT THE ONES MENTIONED IN PREVIOUS TABLES.		
	2016	2017	2018
Principal Bench	-	284	55
New Delhi Bench 2	01	238	76
New Delhi Bench 3	49	496	21
Ahmadabad Bench	24	726	341
Allahabad Bench	01	88	13
Bangaluru Bench	100	476	89
Chandigarh Bench	01	359	49
Chennai Bench	11	903	233
Guwahati Bench	03	01	-
Hyderabad Bench	70	398	32
Kolkata Bench	40	694	144
Mumbai Bench	65	3406	370
TOTAL	365	8069	1423

CONCLUSION AND POLICY SUGGESTIONS

Hence, a total of 10863 orders are passed in all the sections under IBC before 22 December 2018. This is a huge number. Policy makers need to maintain a proper dataset of the number of orders and the amount of money involved in the cases in orders to discuss its economic impact on the Indian Economy. More number of benches needs to be opened in tier 2 cities. The current benches need to appoint more members and legal researchers to further improve the number of orders passed and clear the widely debated backlog of cases pending.

If these steps are taken, it would build faith of the investors in the Indian economy and further improve the currently ailing Indian economy.

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