DEEP DIVE INTO THE

INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016

What is the IBC?

The **Insolvency and Bankruptcy Code, 2016** (IBC) is India's landmark legislation aimed at reforming the framework for Insolvency resolution of individuals and business entities. Before the IBC, resolving a company's financial distress was a challenge. IBC has changed that by establishing a single, comprehensive law that promotes transparency, speed, and creditor-driven outcomes.

IBC is pivotal to India's financial system because it helps to resolve the defaults by either reviving the company or, if that's not possible, making sure its assets are sold in a way that gets the maximum value.

Why was it introduced?

There were often prolonged litigation, asset erosion, and poor recovery for creditors. With banks struggling under the weight of non-performing assets (NPAs), a mechanism was needed to ensure that the defaults are identified early, Creditors have a structured say in the resolution and Asset value is recovered efficiently.

The IBC addressed all the issues by introducing time-bound insolvency resolution, creditor-in-control mechanisms, and clear legal provisions to protect the process from abuse or manipulation.

Who all does it apply to?

- Corporate Debtors – Companies and Limited Liability Partnerships (LLPs)
- Individuals and Partnership Firms – Personal insolvency (implemented in phases)
- Financial Creditors – Lenders, banks, bondholders
- Operational Creditors – Suppliers, employees, contractors
- Investors and Resolution Applicants – Anyone bidding to revive or acquire assets of a distressed entity

The Corporate Insolvency Resolution Process (CIRP)-How It Works?

1. *Default Event:* The CIRP begins when a financial or operational creditor, or the corporate debtor itself, files an application before the National Company Law Tribunal (NCLT) following a default of **₹1 crore** or more (for corporate debtors). Once NCLT is satisfied that the default has occurred and the application is complete, it admits the case, triggering the start of the resolution process.

2. *Moratorium and Appointment of IRP:* Upon admission, the NCLT declares a moratorium under **Section 14** of the IBC. This legal standstill prevents continuation or initiation of any lawsuits or legal proceedings, enforcement of security interests, recovery of property by owners or lessors, transfer, sale, or disposal of assets by the debtor. An Interim Resolution Professional (IRP) takes control of the company and acts as the temporary administrator.

3. *Constitution of Committee of Creditors (CoC):* Within **30 days of admission**, the IRP forms the CoC, made up primarily of financial creditors. Operational creditors do not have voting rights but may attend meetings under certain conditions. The CoC is empowered to make all critical decisions, including approval of resolution plans, replacement of the IRP, or initiation of liquidation.

4. *Invitation and Evaluation of Resolution Plans:* The RP invites **expressions of interest (EOIs)** and subsequently resolution plans from potential investors or bidders (known as Resolution Applicants). Each plan must comply with **Section 30(2)**, which lays out conditions such as payment of insolvency costs, protection of operational creditors' rights, and adherence to legal obligations. The CoC evaluates them on feasibility, viability, and financial value.

5. *Outcome:* If a plan is approved by 66% of CoC votes, it is submitted to NCLT for final approval. Once approved, the plan becomes binding on all stakeholders, and the company is revived as per agreed terms. If no plan is approved within the maximum CIRP period (330 days, including extensions), or if the CoC decides so, the company is placed under liquidation. In case of liquidation, the liquidator takes over, and the process of asset valuation and **auction-based recovery** for creditors begins under the IBC's liquidation provisions. A regulated process of asset monetisation through public auctions, aimed at recovering the highest possible value is triggered.

How Auctions Work Under IBC:

1. Liquidator Appointment: A licensed Insolvency Professional becomes the Liquidator and prepares the asset list, valuations, and sale strategy for the distressed asset.

2. Valuation and Sale Strategy: Two independent registered valuers assess the assets. Based on this, the liquidator sets a reserve price for the bidding.

3. Public Auctions and E-Bidding: Auctions are typically conducted on online platforms. These could involve:

    - Going Concern Sales: Sale of entire business operations.
    - Slump Sales: Business divisions without specific asset-by-asset breakdown.
    - Piecemeal Sales: Land, plant & machinery, and other individual assets sold separately.

4. Bidding and Payment Terms: Successful bidders are required to pay the remaining purchase amount (excluding the Earnest Money Deposit) within 90 days from the date of sale confirmation. This period may be extended by an additional 30 days, provided the bidder pays interest at the rate of 12% per annum on the outstanding balance. According to Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016, if the balance payment is made within 30 days after the initial 90-day period, no interest will be charged. However, if the payment is made after the 30-day grace period, interest at 12% per annum will apply from the date the sale was confirmed. Failure to pay within the permitted timeframe may lead to cancellation of the sale and forfeiture of the deposit.

5. Clean Slate Principle – Section 32A: Buyers are protected from prior liabilities of the debtor company, provided they are not related parties or complicit in fraud. This gives investors legal certainty and clean title, a crucial incentive.

For investors and financial institutions, the IBC has unlocked a regulated and credible gateway to India's distressed asset market. Whether participating in resolution plans or engaging in liquidation auctions, stakeholders benefit from legal protections, institutional oversight, and the chance to drive economic turnaround stories.

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