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INSOLVENCY AND BANKRUPTCY CODE (IBC) IN INDIA: A COMPARATIVE CONTENT STUDY WITH RESPECT TO SELECT COUNTRIES

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Abstract
One of the essential elements in the formation of efficient financial infrastructure of a country is the resolution of insolvency and bankruptcy. Time for resolving insolvency and average recovery rate of debt are two major parameters to maintain the balance of the debt system. These two parameters are directly related with the increasing level of Non Performing Assets (NPA) of the banks. In this backdrop, The Insolvency and Bankruptcy Code, 2016 (IBC 2016) was passed by the Indian Parliament in May 2016. The IBC 2016 seeks to establish a time bound legal framework and consolidate the laws relating to insolvency and bankruptcy resolution. In global context, most of the developed countries have their own version of insolvency act to protect the interest of the investors, creditors and debtors. This descriptive cum analytical study is an attempt to evaluate the effectiveness of the new law of India in the light of select countries' experience.

Key Words: Insolvency, Bankruptcy, NPA, IBBI.

Introduction

In the recent past, several important decisions have been taken for the development of financial sector with an end to increase the inflow of investment so that India can become the premier destination global investment. But the biggest obstacle was the dismal performance of India in the 'ease of doing business ranking'. Besides, the increasing Non-Performing Assets (NPAs)[1] burden of the banking sector has been the spoil cast for Indian economy. In this backdrop, Insolvency and Bankruptcy Code 2016 (henceforth, be called IBC 2016) was introduced in 2016.

Prior to the IBC 2016, India did not have a single law dealing with all aspects of a concern in financial distress. Instead, there were multiple laws, each of which applied to a particular legal process, type of company or group of creditors. For example,

1. **Sick Industrial Companies Act, 1985 (**SICA**)** which dealt with the rescue and rehabilitation of industrial companies only.
2. **Companies Act, 1956** which provided a process for the liquidation and winding up of all types of corporate entities. There are no separate provisions for restructuring and reorganization except mergers and acquisitions.
3. **Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)** which allow banks and other financial institution to auction commercial and residential properties for the purpose of recovery of loans without intervention of court of law.
4. **Recovery of Debt Due to Banks and Financial Institutions Act, 1993** (**RDDBFI Act**) which provided avenues for security enforcement and debt recovery, respectively, by banks and financial institutions.

The result of this fragmented legal framework was delay, confusion and conflicts between these multiples laws and legal proceedings. Further, many of these laws, such as SICA, had proved to be wholly ineffective in achieving a speedy restructuring that took into account the interests of both debtors and creditors. In the World Bank's Ease of Doing Business Index 2015 India ranked 137 out of 189 countries on the ease of resolving insolvencies based on various indicators such as time, costs, recovery rate for creditors, the management of a debtor's assets during the insolvency proceedings, creditor participation and the strength of the insolvency law framework.

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[1] NPAs are those advances from which no income comes to the lender in the form of principal and interest payment.

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Efforts at insolvency law reform began in late 2014 when the Ministry of Finance constituted the Bankruptcy Law Reform Committee (BLRC) under the chairmanship of Mr T.K. Viswanathan. The BLRC submitted its report, including a draft of the Insolvency and Bankruptcy Bill, 2015 on November 4, 2015, which was introduced in the Lok Sabha in December 2015 with a few amendments. The Bill was subsequently referred to a Joint Parliamentary Committee, which submitted a detailed report, including a revised draft of the Bill. Eventually both houses of the Parliament passed the Insolvency and Bankruptcy Code, 2016 and received Presidential assent on May 28, 2016. On the same day it was notified in the Gazette of India. It came into effect from 1st December 2016. The Code offers a comprehensive and time-bound insolvency legislation encompassing all companies, partnerships and individuals so that it can ensure a robust framework to facilitate the winding up of business or engineering a turnaround.

Brief Literature Review to Identify Research Gap

Literature on IBC 2016 is limited as this is in its initial stage of operation. Nevertheless, this study is indebted to some of the reports, articles etc., from which it has tried to accumulate valuable inputs or information. Among the earlier studies, the followings are noteworthy:

1. Budhiraja (2016) properly tried to explore the rationale behind the introduction of the Code along with the insolvency resolution process.
2. ASSOCHAM–SIPI-Edelweiss (2017) highlighted the issues and challenges being faced by various stakeholders to run under the new bankruptcy regime. It also discussed the role of new insolvency professionals in the new system.
3. Guruprasad (2017) has critically examined how economic development is restricted by the poor credit control system and how the interference of law can influence the economic development.
4. RBI (2017) publication is the most effective and valuable source of understanding different aspects of the Code. It showed the parity and disparity of the law with the other economy. An idea of the progress of the Code so far can also be derived from it.
5. Das (2018) questioned about different issues of the Code with relevant case study so far e.g., creditor friendly resolution process than debtor friendly resolution process.
6. Gupta (2017) drew a thorough comparative discussion on Indian and UK bankruptcy regime.
7. Mukherjee (2017) supported introduction of insolvency and bankruptcy reform in most of the countries as it encourages foreign investment as well as promote entrepreneurship.

One of the reasons of introducing the Code was growing NPA problem in the economy. As such a large volume of literature is available on NPA issue. As our primary focus is IBC 2016, we skip referencing those studies. The present study consulted Mittal and Suneja's work (2017). It addresses the NPA problem which is directly related with the profitability and liquidity of the banks. They have discussed the different causes of growing NPA and emphasizes on controlling NPA to increase the efficiency and profitability of the banks.

As such it is imperative to have a look at the IBC 2016 in light of the cross country experience. The present study aims at fulfilling that gap.

Objectives of the Study

The present paper will explore the prospect of IBC 2016 for the Indian credit system with a cross country approach. More specifically, the objectives of the study are as follows:

1. To unveil the present reality of the Indian credit control management system specially the NPA and debt recovery problem;
2. Analyzing the strength and rank of Indian bankruptcy framework in the global context; and
3. Highlighting different aspects of IBC 2016 and comparing the same with the select countries.

Methodology of the Study

The present study is both descriptive and analytical in nature. It describes the conceptual issues and various dimensions of the IBC 2016. Alongside, it aims at analyzing and comparing various elements of the code with other similar laws of some select countries some of which are developed and some are developing nations. The content analysis is applied for the purpose. It uses secondary source of data and information for analysis and comparison.

Rationale for the Introduction of IBC2016 in India

The Insolvency and Bankruptcy Code, 2016 is a reformatory legislation intended to improve the efficiency of insolvency and bankruptcy proceedings in India which is very much associated with addressing the two major challenges of our economy. These are discussed under the following two sub-sections:

5.1 Rapid Growth NPA in the Banking Sector

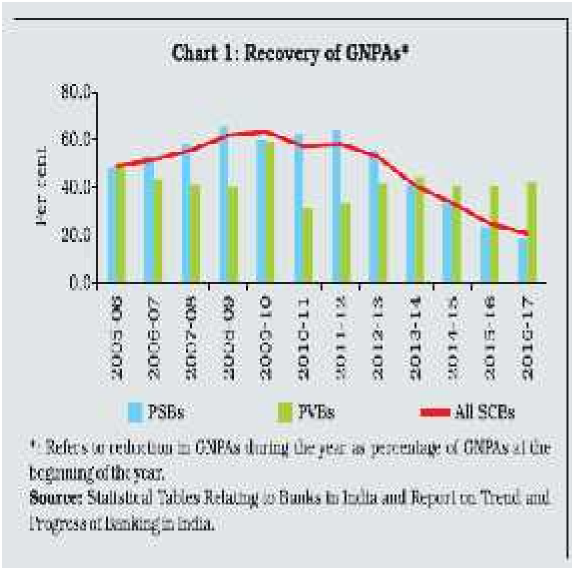
The problem of NPA has a direct impact on the growth and development of the banking sector of any economy. Increasing level of NPAs in banks not only creates liquidity crisis in their business but it has a direct impact on ROI and profitability of the bank. Scarcity of funding in the capital market is another serious outcome of increasing NPA in the economy. Currently the amount of NPA in Indian banking sector has reached to an alarming stage as can be evident from Table 1. Table 1 is showing the mounting increase in absolute NPAs for public and private sector banks over the period from 2005 to 2016. It also envisages that the ratio of gross NPAs to gross advances have risen considerably for the same period for public sector banks only. While the absolute NPA figure of public sector banks rose from Rs. 105407 crore in 2005 or 5.36% of Gross Advances to Rs. 2514814 crore in 2016 or 10.69% of Gross Advances. The rise was particularly very steep in the last three years.

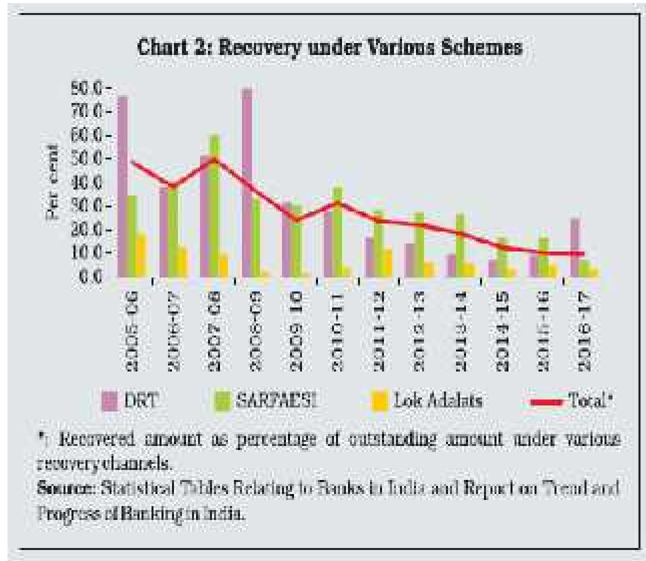
Table 1: Rising NPAs and Gross NPAs to Gross Advances Ratio in Public and Private Sector Banks in India

Year	NPA (Rs. Crore)		% of Gross NPAs to Gross Advances	
	Public Sector Banks	Private Sector Banks	Public Sector Banks	Private Sector Banks
2005	105407	42116	5.36	3.83
2006	84934	31703	3.81	2.41
2007	89657	40282	2.69	2.19
2008	93275	56469	2.06	2.47
2009	102863	74120	1.75	2.92
2010	168131	65060	2.03	2.99
2011	212640	44322	1.97	2.48
2012	389686	44012	2.67	2.09
2013	618509	59944	3.24	1.77
2014	885464	88615	4.09	1.78
2015	1226734	141283	5.26	2.10
2016	2514814	266774	10.69	2.83

Source: Compiled from Mittal and Suneja (2017)

It is true that a host of regulatory and non-regulatory measures have been available for the banks to resolve the problem of NPAs and in practice; banks have been using some of these measures to recover the sticky loan portfolio. But the recovery position is not encouraging at all as can be seen from the Chart 1 and Chart 2. Chart 1 is showing the recovery picture during the period 2005 – 06 to 2016 – 17 whereas Chart 2 depicts the year-wise recovery of NPAs under various regulatory measures such as DRTs, SARFASI Act and Lok Adalats during the same period of time. It is eminent from the Chart 1 and 2 that both the recovery of GNPAs and recovery under various debt recovery machinery are showing decreasing trend from the year 2009 – 10 and 2007 – 08 respectively. It is really disappointing to found that irrespective of different steps, only 10.3 percent of the total amount referred to is actually recovered though all the recovery channels (e.g., Lok Adalat, DRT's, SARFAESI Act) in the year 2015-16 (Mittal and Suneja, 2017).





Source:RBI, Insolvency and Bankruptcy Code and Bank Recapitalisation (2017)

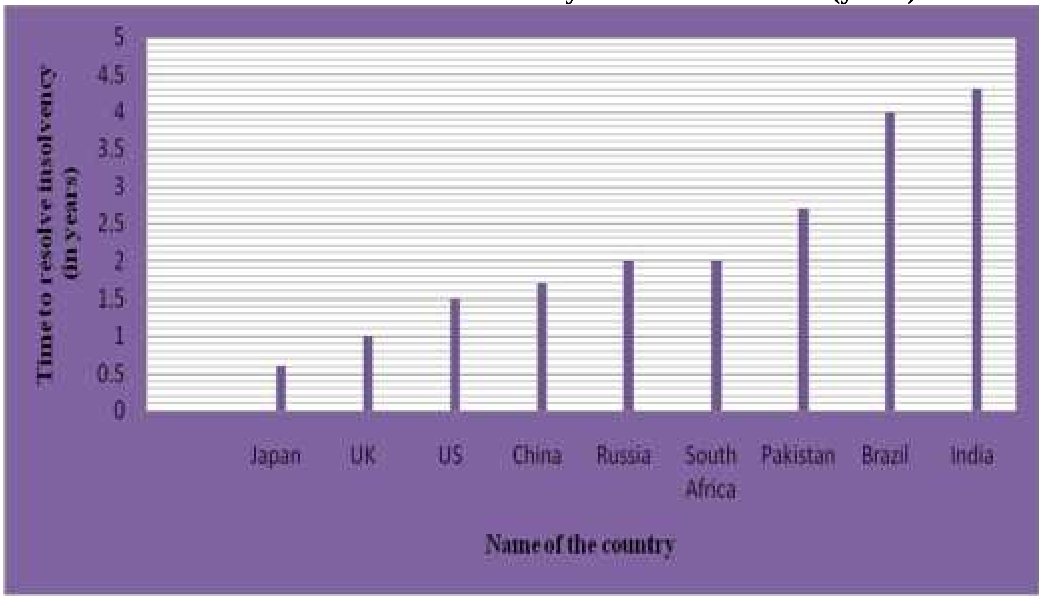
This acute problem of NPA along with dismal recovery performance of regulatory channels demands a time-bound and creditor-friendly process or legislation which can ensure fair, efficient and adequate recovery. Otherwise the stress on the banking sector may engulf the whole economy. IBC 2016 was primarily introduced to improve the prevailing situation of debt recovery and time bound resolution. As such, it can play a vital role to increase the level of bank recovery in the near future. The introduction of the Code is significant from the other angle also. It may be proved effective to curb the recent trend of becoming willful defaulter to the banks.

5.2 Improving the 'Ease of Doing Business' Rank

One of the major objectives of the present Government of India is to make India as a prime destination of the world's manufacturing business. For achieving this goal, it is very important to improve the rank of India in World Bank's 'Ease of Doing Business' report. There are ten major factors on which the rank is dependent. Resolving insolvency is one of the significant indices for determining the rank. The 'resolving insolvency' factor mainly depends on time to resolve insolvency and average recovery rate. Just before the introduction of IBC 2016, India's overall rank was 142. In the insolvency resolving ratings, it ranked 136 among 189 countries (World Bank, 2015).

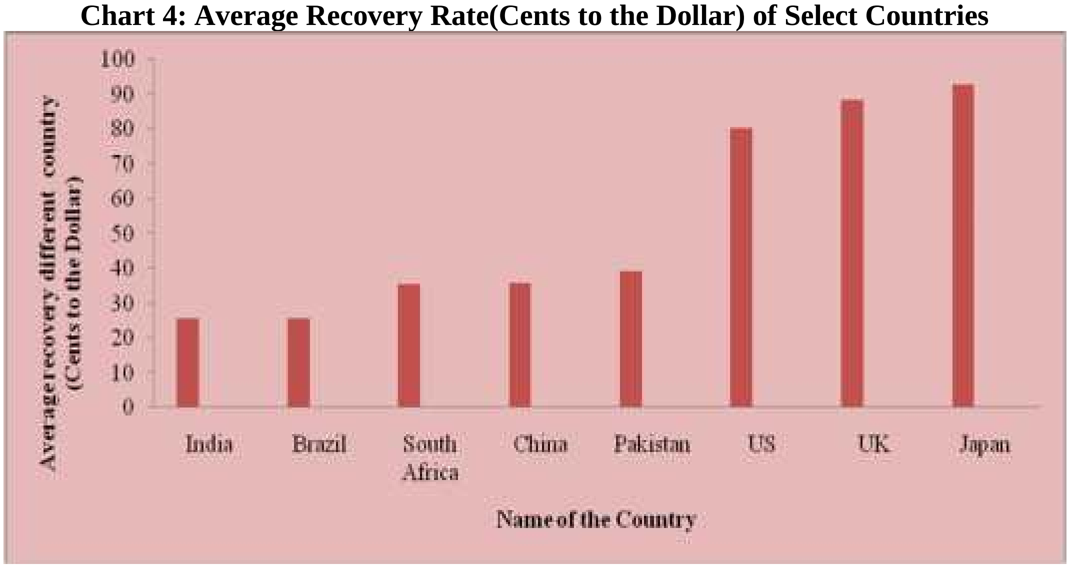
From Chart 3, it is seen that India takes more than four years compared to just one year in the UK, 1.5 years in the USA, 2 years in South Africa, 2.7 years in Pakistan and 4 years in Brazil to resolve insolvency. It is really a poor show for India. The same trend can be observed in the Chart 4 where the poor rate of recovery is reflected. The recovery rate of creditors is only 25%, compared to 80% in the UK, USA and Japan.

Chart 3: Time to Resolve Insolvency in Select Countries (years)



Source: Compiled from Doing Business 2015 (http://www.doingbusiness.org/data)

Chart 4: Average Recovery Rate(Cents to the Dollar) of Select Countries



Source: Compiled from Doing Business 2015 (http://www.doingbusiness.org/data)

All these indicators are adversely affecting the credit environment of the country which, in turn, makes India less attractive as an investment destination. Under this situation, IBC 2016 is expected to be fruitful to resolve the problem of poor performance of the country in the ease of doing business report and will glorify the image of the country's investment potentiality.

Apart from the above two major factors, other reasons for introduction of the Code are:

1. Reducing confusion caused by a complex judicial framework by creating a single unambiguous process;
2. Developing faith and confidence in the credit market;
3. Allowing a second chance to the genuine business failure;
4. Establishing a clear priority of distribution (waterfall) for liquidation and
5. Promoting insolvency professional agencies or insolvency professional for the implementation of insolvency and bankruptcy processes.

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6. Salient Features of IBC 2016

The IBC 2016 is undoubtedly a big move towards financial stability and growth of the country. The pace at which the act was formulated, enacted and then made operational has aroused a great enthusiasm in the Indian credit market. The Salient features of IBC 2016 may be summarized under the following sub-sections:

6.1 IBC Consolidates Existing Insolvency Related Laws

In the objective section of the act it has been said that "An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals………".(The Gazette of India, 2016). All the previous acts on insolvency and bankruptcy which made the process either complex or lengthy ceased to exist or amended under the era of IBC 2016. The code would have an overriding effect on all other laws relating to Insolvency & Bankruptcy.

6.2 Shifts from 'Debtor in Possession' to a 'Creditor in Control' Regime

One of the principal characteristics of the Code is that it permits creditors to measure the viability of the debtor's business and finalize upon a plan for its turnaround or a speedy liquidation. After admission of application to the National Company Law Tribunal (NCLT) for Corporate Insolvency Resolution Process (CIRP) within 44 days, Interim Resolution Professional (IRP) to constitute a Committee of Creditor (CoC) and it will start their operation within 51 days. This committee has been given charge to take different decision like appointment of Resolution Professional (RP), approval of resolution plan etc.

6.3 Time-Bound Process for Insolvency Resolution

Prior to IBC 2016, the legal and institutional framework for insolvency and bankruptcy resolution used to take huge time and for this reason it created undue strain on the Indian credit system. With a view to facilitate a better and faster debt recovery mechanism in the country the code has tried to specify strict timelines for completion of the resolution process. The CIRP must be completed within 180 days with a maximum period of extension by another 90 days under certain circumstances.

6.4 Moratorium Period during CIRP

Once Insolvency Process starts, Adjudicating Authority (NCLT) shall declare "Moratorium" on the debtor's operations for the period of the IRP i.e., 180 days with a maximum period of extension by another 90 days by the Adjudicating Authority. Then no suit or other legal proceeding shall be instituted against the debtor for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can take place. This operates as a 'calm period'.

6.5 Insolvency Professional (IP) to Take Over the Management of the Company

Within 14 days of admission of an application NCLT will appoint an IRP for the management of the corporate debtor. IRP will have the power to take control of the assets of the corporate debtor. There will be no powers of the board of directors of the corporate debtor. The IRP will constitute the CoC. The CoC will appoint a Resolution Professional (RP) which will manage the business of the debtor on behalf of the committee of creditors. RP will try to preserve the value of assets of the corporate debtor to the maximum extent possible. They can take certain decision such as interim finance, change in capital structure etc. with a prior approval of the CoC. Concept of qualified and skilled insolvency resolution professional is absolutely new in India.

6.6 Clearly Defined Order of Priority for Distribution of Assets

The Code clearly defined the priority for distribution of liquidation proceeds as given below:

1. Fees of insolvency professional and costs related to the resolution process;
2. Workmen's dues for 24 months and payments due to secured creditors who choose to relinquish their security interest;
3. Employee wages in the proceedings 12 months;
4. Unsecured creditors;
5. Government dues and payments to secured creditors for any unpaid amounts following enforcement of their security interest;

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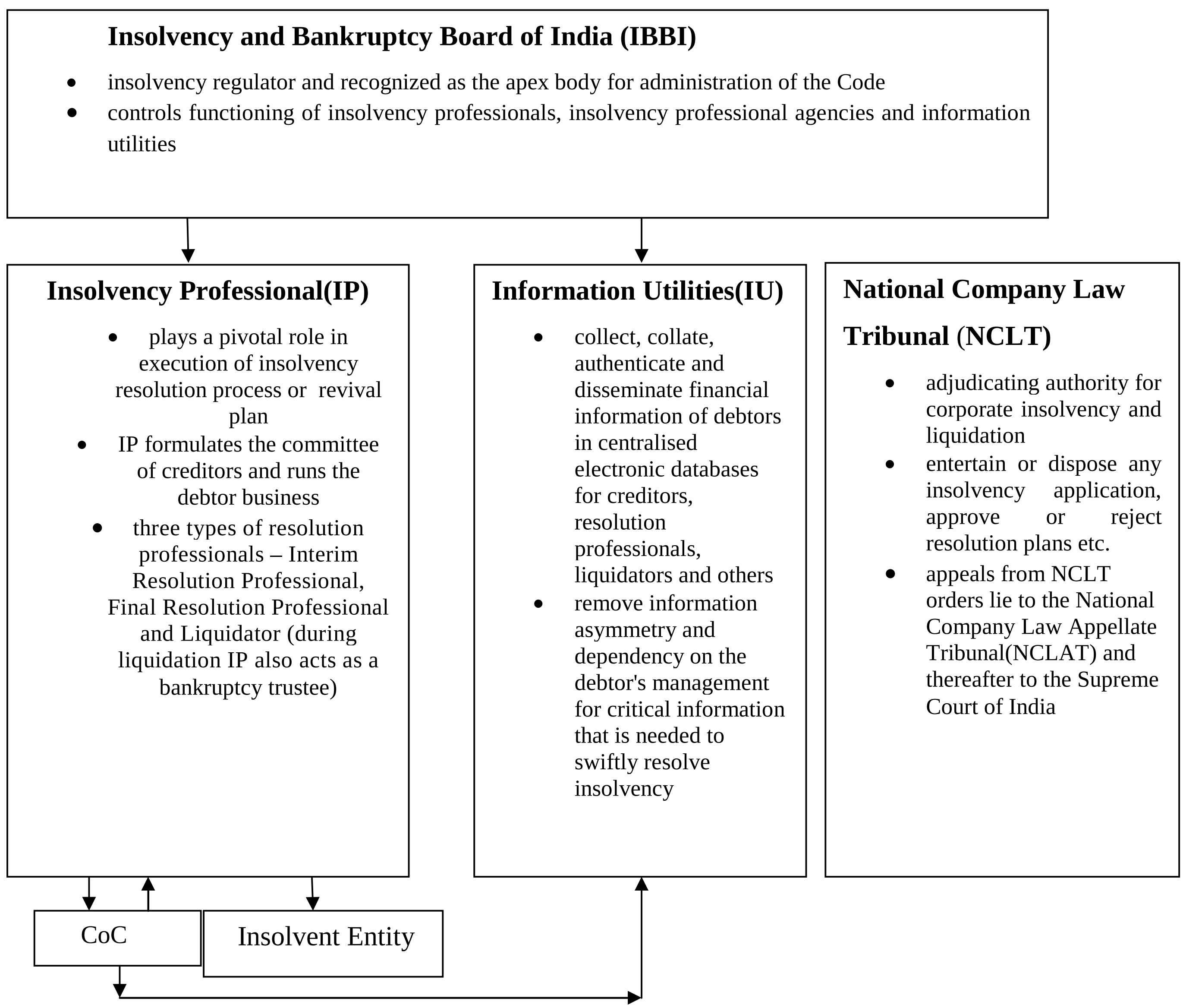
6. Any remaining debt (including debts due to operational creditors) and
7. Equity shareholders.

The significant major change in distribution sequence of assets from the Companies Act, 2013 is giving less priority to Government dues in the chain, below the claims of unsecured financial creditors. Another important feature is giving top most priority to the fees of insolvency professional and costs related to the resolution process.

6.7 Institutional Framework of IBC 2016

The institutional framework of the IBC, 2016 has been constituted by taking the following bodies except CoC and insolvent entity as presented in Chart 5 below:

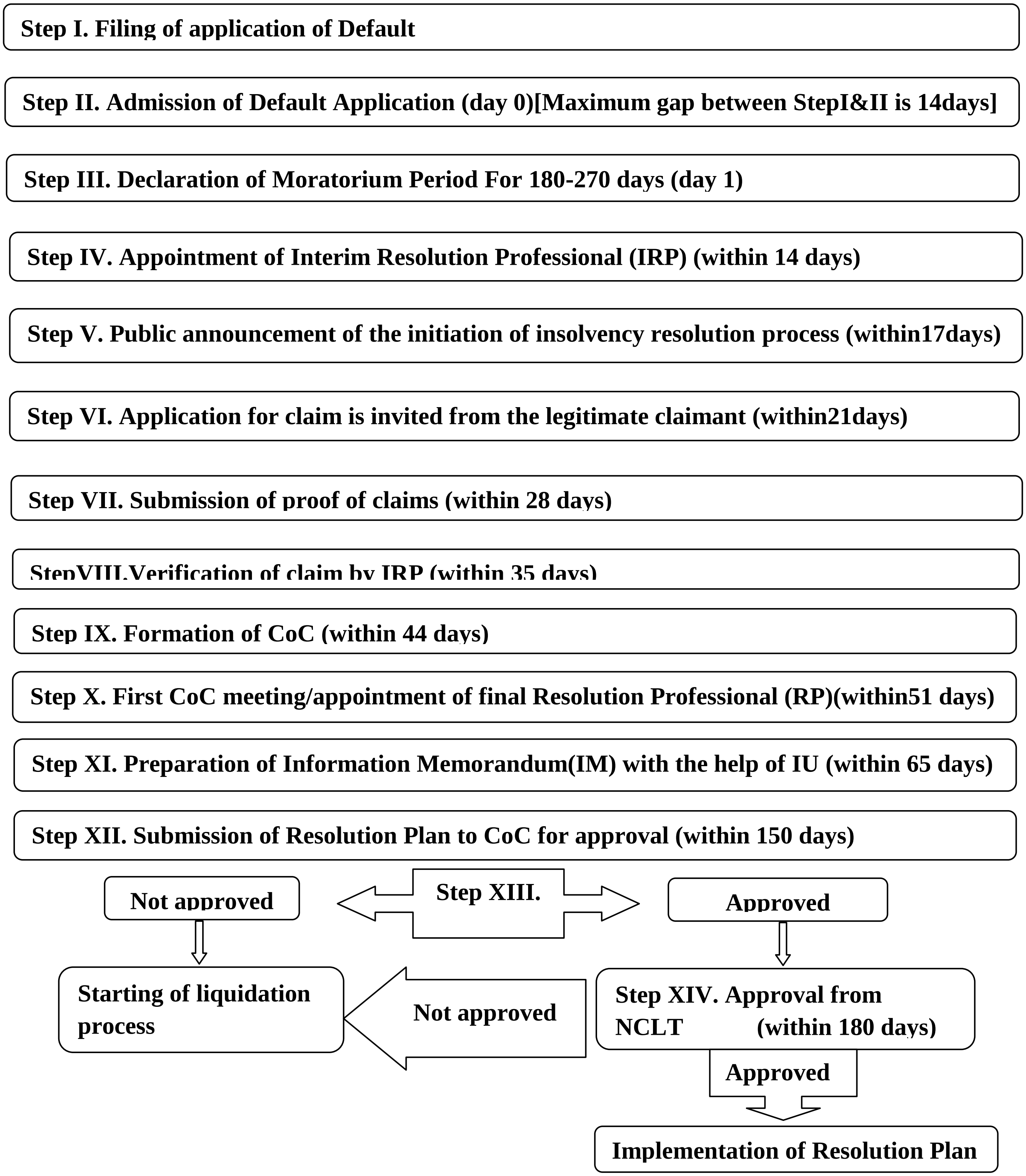
Chart 5: Institutional framework of the Code



6.8 Corporate Insolvency Resolution Process (CIRP)

Major steps of CIRP may be presented in Chart 6 below:

Chart 6: Flow Chart depicting the CIRP under IBC 2016



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6.9 Antecedent Transactions

All the Antecedent transactions up to 2 years can be investigated and in case of any illegal diversion of assets personal contribution can be ordered by court. The imposition of personal liability in relation to such matters is one of the significant features of the code.

7. Insolvency and Bankruptcy Provisions: Cross Country Perspective

Most of the developed countries have their own specific legislations to combat with the problem of insolvency and bankruptcy. IBC 2016 is that type of legislation which can be compared with the similar version of different countries such as UK, USA, Australia and Singapore. IBC 2016 has been immensely influenced by the UK Insolvency Regime. There are two reasons behind this:

1. legislation in the UK has been proved successful as the recovery rate is near about 88.6 cents per dollar and that too within a period of 1 year on average (World Bank Report on Ease of Doing Business 2015); and
2. Some of the laws which were in practice prior to the launch of the new Code were constituted during British rule in India.

The BLRC (Bankruptcy Law Reforms Committee) has tried hard to make the law suitable in Indian context. That is why we cannot say that the Code only mirrors the UK insolvency regime as IBC 2016 is globally unique in many respects as presented in Table 2 below.

In many cases the IBC differs from other countries. These are as follows:

1. In case of controlling the debtors business, IPs in India need to obtain approval from the Committee of Creditors on different matters (Section 28) during the insolvency process. Whereas, in UK they need approval only at the time of their appointment.
2. In India, the Code approves the voting right of the secured and unsecured creditors only and they need to pass the resolution plan with 75% majority. But in the UK regime, all creditors including trade creditors have voting power and a simple majority is sufficient to approve the plan of resolution.
3. The effectiveness of the code largely depends upon the skill of the insolvency professional. In India an individual or firm can act as IPs but in the UK, Australia and Singapore an Individual is permitted to act as IP. In Canada a corporate body can only work as IP. Again, in the UK an Insolvency Professional is required to provide a surety bond or professional insurance but in India the same is not required.
4. The Code also demands a licensing or examination process to become an Insolvency Professional like UK regime but the licenses obtained in UK is required to be renewed annually whereas In India it is provided as life membership like Canada.

Table 2: Comparison of Insolvency and Bankruptcy Regime of Select Countries

SL. No.	Actions	India	US	UK	Australia	Singapore
1	Pre-packaged rescue[2] prior to the insolvency proceedings	Not allowed	Allowed	Allowed	Allowed	Allowed
2	Initiation of Corporate insolvency Process starts with:	Default and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary	Default, insolvency and voluntary
3	Initiation of proceedings starts by:	Debtors or Creditors	Debtors or Creditors	Debtors or Creditors	Debtors or Creditors	Debtors or Creditors
4	Regime controlled by:	Creditor	Mix of both	Creditor	Creditor	Creditor

[2] The US and the UK allow pre-packaged rescue in which the debtor company and its creditors conclude an agreement for the sale of the company's business prior to the initiation of formal insolvency proceedings.

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5	Charge of the company during the process	Insolvency Professional (private)	United States Trustee (government employee)	Insolvency Professional (private)	Insolvency Professional (private)	Insolvency Professional (private)
6	Control of debtors assets rests with:	Insolvency Professional (IP)	Debtor	Insolvency Professional	Insolvency Professional	Insolvency Professional
7	Proposals to resolve insolvency made by:	Committee of Creditors (CoC)	Debtor and creditors	Insolvency Professional	Insolvency Professional	Insolvency Professional
8	Voting on proposal	Committee of creditors	Impaired creditors	All creditors	All creditors	All creditors
9	Reporting financial information by IP to:	Court	Not required by law	Court	Court	Creditor and Court
10	Moratorium Period	Yes (180 Days)	Yes (automatic moratorium upon filing Chapter 11)	Yes (entire period till plan is approved)	Yes	Yes (entire period till plan is approved)
11	Grant of Super priority for rescue financing[3]	Not allowed	Allowed	Not allowed	Not allowed	Allowed
12	First claim on Liquidation	Costs associated with insolvency proceedings	Costs associated with insolvency proceedings	Secured creditors	Employees' salaries	fees of the liquidator

1. Under IBC 2016, if the resolution plan is not submitted or not approved by the creditors within 180 days, the liquidation process would automatically start. However, in the UK, no such timeline has been specified under the law and liquidation process will only be initiated if the plan is rejected.
2. Significantly in India, the liquidation of assets is required to be completed within a period of two years, whereas no such requirement in the UK regime.

The deviation of the Code from the similar law of the other geographies will make the Code unique for global reference.

8. Lessons from Select Countries' Experience

Development process largely depends upon the opportunity of investment. Finance from private sector and an efficient capital market are the key forces for development. Easy access of finance to the proprietors has been remained one of the prerequisites of the developed economy. But at the same time ensuring an efficient and effective credit culture in the economy is important and a challenging job to the Government because maintaining equilibrium between debtors' and creditors' interest is an ongoing critical process. That is why the issue of

[3] Rescue financing and grant of super-priority: In most jurisdictions, the grant of super-priority for rescue financing is allowed either through specific legislative provisions or judicial interpretation. The breakup of economically valuable businesses is primarily due to the debt overhang. To address this issue, the Bankruptcy Code of the US provides for the possibility of 'super-priority' being granted to creditors who provide finance to companies in distress.

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resolving insolvency is getting priority among the emerging economies. Any reform towards establishing a robust and effective insolvency framework may result in reduction of the cost of credit. It also increases the amount of credit which is ultimately reflected in the growth of economy.

A study on the 2005 Brazilian bankruptcy reform found a reduction in the cost of debt together with a significant increase in the amount of total long-term debt. A more recent study found that the same reform led to an increase in secured loans, as well as an increase in investment and value of output in the years after the reform in Brazilian municipalities with less-congested courts. Another study shows that, across a sample of Organisations for Economic Co-operation and Development (OECD) countries, efficient bankruptcy procedures are associated with a higher proportion of new bank loans to large firms (Doing Business 2018).

Insolvency framework is not a static one. According to the Doing Business Report 2018, since 2005, 110 economies have introduced 205 changes aimed at facilitating the efficient resolution of corporate insolvency and since 2013-14, 19 economies have introduced reorganization procedures and another 9 economies have improved their existing procedures. A recent case study by the World Bank Group on strengthening insolvency framework shows a positive result between reforms in insolvency act and economic well-being. The case study uses the specific examples of France, Slovenia and Thailand.

Table: 3, Case Study Report on Insolvency Reform and its Result (France, Slovenia and Thailand)

Country	Motivation	Reform content	Outcome
France	• High number of bankruptcy cases; • No possibility for companies to reorganize prior to the reform.	• Starting in 1985, introduced restructuring procedures with focus on preventing firms economic and financial difficulties	• Increased number of initiated and successful reorganization cases
Slovenia	• High number of insolvent companies as a result of the 2008 global financial crisis; • Features of restructuring procedures not suited; • No preventive procedures available.	• Starting in 2008, introduced preventive restructuring procedure for medium and large-size companies; • Simplified reorganization procedure for micro and small-size companies; • Improved access to reorganization proceedings for creditors.	• Increased number of initiated and successful reorganization cases
Thailand	• High number of nonperforming loans in the context of the 1997 Asian financial crisis; • No possibility for companies to reorganize prior to the reform.	• Starting in 1998, introduced reorganization procedure for corporate debtors; • Created specialized bankruptcy courts.	• Increased number of initiated and successful reorganization cases

Source: Doing Business 2018

In 2005 France incorporated the ‘procédure de sauvegarde’ (safeguard procedure) in its insolvency regime for revival of viable businesses. As a result, presently out of four initiated cases three cases are successful. Since its reform in 2013, Slovenia is experiencing an impressive survival rate of viable companies. In case of Thailand reorganization procedures increased significantly from 1% of total insolvency cases in 2011 to almost 9% in 2016.

It is evident from the above study that the insolvency reform has a positive impact on the economy as the number of successful reorganization cases increased to a large extent. The developed (or developing) economy and their insolvency resolving factors are described in the Table 4 in the next page.

All the countries in the above mentioned table have their own insolvency framework. IBC 2016 is the recent addition in the list. Singapore, Australia, UK, Canada all the commonwealth countries performed well in the report and they have well structured insolvency regime. Japan, US and Slovenia are the best performer in resolving insolvency. Recently Poland has come out as one of the powerful insolvency regime in the world. Comparatively, China and India are the poor performers. But India has emerged as one of the ten economies improving most in the recent time. India ranks 100 (from 130 in 2017) in ease of doing business whereas in respect of resolving insolvency it manages to rank 103 (from 136 in 2017). Obviously there are several reasons behind this success. IBC 2016 is one of the key factors appreciated in the World Bank Group Flagship Report 2018. It has been said in the report - “India also strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and adopting a new insolvency and bankruptcy code that introduced a reorganization procedure for corporate debtors.”

Table 4: Performance of Select Countries In Different Parameters of Resolving Insolvency With Ease of Doing Business Rank (2018)

Country	Ease of doing business rank	Resolving insolvency rank	Time to resolve insolvency (yrs.)	Recovery rate(cents on the dollar)	Strength of insolvency framework index(0-16)
US	6	3	1.0	82.1	15.0
UK	7	14	1.0	85.2	11.0
Japan	34	1	0.6	92.4	14.0
Singapore	**2**	27	0.8	88.7	8.5
Australia	14	18	1.0	82.5	11.0
Canada	18	11	0.8	87.5	11.0
France	31	28	1.9	73.5	11.0
Thailand	26	26	1.5	68.0	12.5
Slovenia	37	10	0.8	88.7	11.5
India	100	103	4.3	26.4	8.5
China	78	56	1.7	36.9	11.5
Poland	27	22	3.0	63.1	14.0

Source: Compiled from Doing Business 2018.

All the commonwealth countries including India have more or less common structure of insolvency with the essential changes for the regional economic differentiation.

9. Limitations and Challenges of the Code

Irrespective of the Government endeavor to make the Code a robust one to deal with the corporate insolvency and bankruptcy, there are certain areas that the law fails to address properly. These are:

9.1 Cross-Border Insolvency

The corporate debtor may have assets in different country or jurisdiction. The creditors may be foreigner. The code does not differentiate between domestic and foreign creditors. Creditors outside India are permitted to take part in the resolution proceedings as domestic creditors. But the Code is not specific about the recovery of assets located in different countries. Here actually the Code lost the opportunity of being truly global. There was a chance to introduce the UNCITRAL Model Law on Cross-Border insolvency which is being followed by more than 41 countries. The provision of “Agreements with foreign countries (Sec 234)” and “Letter of Request to a country outside India in certain cases (Sec.235)” by the Central Government is not adequate to make the Code flawless in this regard.

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9.2 Inter-play with other legislations or institution

The interplay possibility of the Code with the other debt recovery laws has not been fully resolved. There is a lack of reconciliation between the code and other debt recovery laws such as RDDBFI and the SARFAESI. Though necessary amendments to the above mentioned laws are currently being considered by the Joint Parliamentary Committee, the Code is also silent about the relationship between the IBC and the prevailing out-of-court restructuring process like Corporate Debt Restructuring (CDR). Interaction among the different laws must be properly addressed in time.

9.3 Other shortcomings or challenges of the Code

- The existing capacity or mechanism is not adequate to take the challenge of the time bound insolvency regime as enshrined in IBC 2016. New institutional mechanisms is required to be established in due time.
- The service of IPs is new in India. They need specific professional training and knowledge to cope with the new regime. Making them skilled and operational is a big challenge to their regulatory body (IBBI).
- There is a provision of creating an Insolvency and Bankruptcy Fund in the code. But the code is not specific about the manner of usage of the fund.
- Some facts are not clear in the order of priority in distribution of assets during liquidation such as receiving entire outstanding amount instead of their collateral value. The rank of trade creditors after unsecured creditor in the distribution list is another questionable matter.

10. Concluding Observations

Undoubtedly, IBC 2016 is a landmark piece of legislation so far as resolving insolvency is concerned. It consolidates the existing laws relating to recovery and disposal of bankruptcy cases. It provides a time bound framework to resolve insolvency related cases which is crucial for creating a conducive environment for business. With the inclusion of all relevant aspects of insolvency, the code has created huge expectations among different stakeholders. But successful implementation of the Code, at the same time, is challenging for the enforcement authorities. It may take time as it is a complex area of law and depends upon the various administrative and regulatory authorities. The cross country experience suggests that revision and up-gradation of insolvency act is an ongoing process and for that regular assessment is essential to make the process effective. It is too early to say anything about the success or failure of the Code but the spirit at which it was introduced and implemented during the last one and half year is commendable.

References

1. ASSOCHAM, Edelweiss, Society of Insolvency Practitioners of India, INSOL India. (2017). Effective Implementation of Insolvency and Bankruptcy Code- A Collective Stakeholders Responsibility. Retrieved from Edelweissfin:https://www.edelweissfin.com/documents/30595/0/ARC%20Report.pdf.
2. Budhiraja, J. K. (2016). Opportunities for CMAs in Insolvency and Bankruptcy Code, 2016. Retrieved from IPAICMAI: www.ipaicmai.in/IPA/Upload/Article-Opportunities-CMAs.pdf.
3. Gupta,N. (2017). Comparative analysis of Insolvency Laws – India and the United Kingdom. Retrieved from Ipleaders: https://blog.ipleaders.in › General.
4. Guruprasad, M . (2017). Economics for Everyone: The Insolvency and Bankruptcy Code in India and the National Company Law Tribunal. Retrieved, from Indiainfoline.
5. Herbert Smith Freehills (2016). Overview of and foreign perspective on the Indian insolvency and Bankruptcy Code 2016. Retrieved from HerbertSmithFreehills
6. IBBI. (2018).Insolvency and Bankruptcy News,Vol.6. Retrieved from ibbi.gov.in/.../pdf/.../2018/.../Newsletter%20Compressed_2018-06-10%2005:52:16.p.
7. ILRC. (2013). Report of the Insolvency Law Review Committee. Retrieved from Ministry of Law: https://www.mlaw.gov.sg/.../minlaw/.../Revised%20Report%20of%20the%20Insolven.
8. Mehta, D. (2017). Insolvency and Bankruptcy Laws-a Look into Foreign Laws Perspective. Retrieved from Mehta Advisory: http://mehta-mehtaadvisory.com/wp-content/uploads/2017/04/Article-Insolvency-And-Bankruptcy-Laws-a-Look-Into-Foreign-Laws-Perspective.pdf.

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9. Mittal, R. K., and Suneja, D. (2017). The Problem of Rising Non- performing Assets in Banking Sector in India: Comparative Analysis of Public and Private Sector Banks. International Journal of Management, IT & Engineering.
10. Mukherjee, S. (2017) . Insolvency and Bankruptcy in India and other countries. Retrieved from H2 Life Foundation: https://www.h2life.in/blogs/insolvency-and-bankruptcy-in-india-and.
11. Reserve Bank of India. (2017). Insolvency and Bankruptcy Code and Bank Recapitalisation. Retrieved from Reserve Bank of India:https://www.rbi.org.in/scripts/PublicationsView.aspx?id=18060
12. Samvad Partners (2017). India: Insolvency and Bankruptcy Code. Retrieved from Mondaq: www.mondaq.com/india/.../Insolvency+Bankruptcy/The+Insolvency+And+Bankruptc.
13. Slaughter and May. (2013). The International Insolvency Review: UK Insolvency Law. Retrieved from Slaughter and May: https://www.slaughterandmay.com/.../the-international-insolvency-review-uk-insolvency-law.
14. The Bankruptcy Law Reform Committee. (2015). Interim Report of the Bankruptcy Law Reform Committee. Retrieved from Ministry of Finance.
15. The Gazette of India. (2016). The Insolvency and Bankruptcy Code, 2016 . New Delhi, India: Ministry of Law and Justice (Legislative Department).
16. TRILEGAL (2016). India: The Insolvency And Bankruptcy Code, 2016 - Key Highlights. Retrieved from Chambers and Partners: https://www.chambersandpartners.com/.../the-insolvency-and-bankruptcy-code-2016.
17. World Bank (2014). Doing Business 2015: Going Beyond Efficiency. Retrieved from Doing Business: www.doingbusiness.org/reports/global-reports/doing-business-2015.
18. World Bank. (2017). Doing Business 2018 Reforming to Create Jobs. Retrieved from Doing Business: www.doingbusiness.org/reports/global-reports/doing-business-2018.