

“Regulations of Insolvency Professionals, Agencies and Information Utilities”

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1. INTRODUCTION

On October 1, 2016, the Insolvency and Bankruptcy Code, 2016 was enacted, establishing the Insolvency and Bankruptcy Board of India. It is an essential part of the system that ensures the IBC, 2016 takes effect, which unifies and updates the rules regarding the insolvency and reorganization of individuals, partnership firms, and corporations in a timely way to maximize the value of their assets, encourages entrepreneurship, increases access to credit, and strikes a balance between the interests of all parties involved. The goal of the recently passed IBC, 2016, is to facilitate reorganization and resolution within a specified time frame.¹

The statute has only been in place for three years. Therefore, IPAs are working hard to catch up to more established professional associations throughout the world. Insolvency Professional Agencies are making strides to improve their long-term viability by providing resources to their professional members and shaping insolvency law.

2. ANALYSIS

2.1 Navigating the Insolvency Landscape

Individuals and businesses in India were subject to a patchwork of insolvency rules prior to the establishment of the IBC. An essential problem with the current legislation was that it could have offered more quick and efficient help with recovery or reorganization. As a result, the Indian credit system was under unnecessary stress. After reviewing the current system's shortcomings, the government passed the IBC. Businesses, partnerships, and individuals can all benefit from its thorough bankruptcy laws. Creditors can evaluate the situation and come up with a recovery or quick liquidation strategy as a group. The Code provides an institutional framework to facilitate a time-bound insolvency resolution procedure and liquidation.

This framework includes regulators, insolvency specialists, information utilities, and adjudicatory mechanisms. Individuals, partnerships, and corporations all have their insolvency resolution processes outlined in the Code. Company insolvency resolution processes have a maximum duration of 180 days, with a 90-day extension possible with the approval of the majority of creditors. The resolution process for start-ups, small businesses, and other entities with assets below ₹ 1 crore must be finished no later than 90 days from the date of request, with a possible extension of 45 days. With the passage of the 2019 Amendment, the maximum

¹ Pooja Chaudhary, 'Authorities governing Insolvency and Bankruptcy in India: An Analysis' (2023) 14 JSTOR 148, 159.

required time to resolve a matter has been raised to 330 days, which now includes the time it takes for the legal process to conclude.

To oversee bankruptcy processes and regulate registered firms, the Code established the IBBI. Authority, composition, and organization of the Board are addressed in Chapter 1, Part IV of the Code. The purpose and authority of the Board are defined in Section 196 of the Code. The Board's responsibilities include, among other things, making it easier for information utilities, insolvency professions, and professional agencies to register. To practice insolvency law, one must be registered and enrolled according to the Code.²

The Code claims that the “National Company Law Tribunal (NCLT)” acts as a watchdog and judge in cases of corporate liquidation and insolvency. Following a decision by the “National Company Law Appellate Tribunal”, an appeal may be made to the highest court in the land. DRT adjudicates individuals and partnerships. Your next stop after DRT is the “Debt Recovery Appellate Tribunal” and, finally, the highest court in the land. Using a centralized electronic database, the information utility is designed to gather, verify, and distribute the debtors' financial details. This is a database that contains verified and consolidated financial information on the debtor's assets, loans, and other financial matters. Because it is stored on a digital platform, the data can be accessed whenever and wherever needed.

During the Insolvency Proceedings, you can rely on the verified information at your disposal. Following the established eligibility requirements, Information Utility, a professional organization registered under “Section 210 of the IBC 2016” to supply verified information about debts and defaults of debtors, has done so. Creditors and resolution professionals involved in the insolvency process have access to the data they need to make an informed choice. Essential details for a deadline-based settlement are made public.

Following the “Insolvency and Bankruptcy Board of India (Procedure for Governing Board sessions) Regulations, 2017”, the Board holds its sessions in accordance with its stated provisions. The Board is required to have a minimum of one meeting every quarter and a maximum of four meetings per year. The Chairperson will chair the board meeting. Chairpersons present at the board meeting have the option to select another member to serve as Chairperson at an event that the Chairperson can attend.³

The IBBI headquarters in New Delhi will normally host the Board meetings. However, the Board and its Chairperson's meetings are not limited to the IBBI headquarters; they can take place anywhere in India at their discretion.

A quorum of five is required for meetings of eight or more Board members. In cases where the number of board members is less than eight, a quorum of three members is required. In the event that a question arises during a Board meeting, the decision will be made by the members

² Rajeev Babel, *Comprehensive Guide to the Insolvency Professional Examination* 185-209 (Bloomsbury Publishing 2021).

³ Ibid.

present and voting. If there is a tie for first place, the Chairperson and in his absence, the person presides will have the extra vote.

2.2 Information Exchange and Security in India's Insolvency Framework

The financial creditor is required to submit financial information and information pertaining to assets in which a security interest has been created as per Section 215(2). Providing such details is optional, optional. The party that is owed money is known as a financial creditor. The company's loaning institutions, for instance. The operational creditor is also able to furnish the information utility with financial data according to Section 215(3). One definition of an operational creditor is the business or organization that provided the goods or services to the entity in issue. According to Regulation 38(1), in relation to any “insolvency, resolution, liquidation, or bankruptcy procedures”, the insolvency practitioner may also transmit the information to IU.

The information must be reported in Form C per Regulation 20 of the “IBBI (Information Utilities) Regulations 2017”. The data that has been received is then sent to the authentication process. The NeSL notifies the user once the information is assigned a unique identifier. The user has a certain amount of time to authenticate or disapprove. The information submitted is informing you of the authentication status. After the information authorizer digitally signs or uses an Aadhar-based e-sign, the NeSL verifies the authenticator's identity.

The IBC 2016 and the “IBBI (Information Utilities) Regulations 2017” lay out the rules and laws that govern information utilities. The Insolvency and Bankruptcy Board of India oversees the registration, annulment, etc., of these entities. With an authorized paid-up capital of ₹ 30 Crores, NeSL is a Union Government Company that has been incorporated. Prominent public financial institutions hold it. India's information infrastructure was meant to be enhanced by its incorporation. It optimizes governance services and provides digital services. So far, no other information utility has come close to it. There may be a reluctance to share information, making it difficult to get information from corporate debtors, operational creditors, and financial creditors. A further significant obstacle is obtaining information authentication and verification. The data is vulnerable to data piracy and theft because it is kept in a digital database. To prevent the manipulation of such non-sensitive information, a modern, well-equipped security system is required.

The IBC was designed by the “Bankruptcy Law Reforms Committee (BLRC)”, which Mr. T. K. Viswanathan headed. The committee foresaw four pillars of supporting institutional architecture that would ensure the efficient operation of the procedures under the IBC. There is a private sector of “Insolvency Units (IUs), a private sector of insolvency professionals (IPs) supervised by private insolvency professional agencies (IPAs), an adjudication infrastructure at the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT), and a regulator, the IBBI.” As the BLRC correctly pointed out, IU is a crucial institution for the smooth running of the operations under IBC.

The purpose of the Insolvency and Bankruptcy Code (IBC) was to streamline and update the rules for the timely resolution of insolvencies involving individuals, partnership companies, and corporations in order to help these entities and their assets be as valuable as possible. Thus, according to Section 12 of the IBC, a corporate debtor's (CD) Corporate Insolvency Resolution Process (CIRP) must end no later than 330 days from the date the insolvency began. This time limit accounts for (a) the standard CIRP period of 180 days, (b) any one-time extensions granted by the adjudicating authority, up to 90 days of such CIRP period, and (c) the time spent in legal proceedings pertaining to the CD's CIRP.

The premise upon which this aggressive deadline for CIRP completion is founded is that all parties concerned, including creditors, adjudicating authorities, bankruptcy resolution specialists, etc., will have easy access to all essential information. The trust of the law's framers in the concept of IUs envisioned under IBC is the basis for this assumption. The only way to meet the tight deadlines set by IBC is for the IUs to be prepared to supply all pertinent information promptly. At this point, the relevant financial data includes the specifics of the default, any disputes surrounding the default, as well as the debtor's debt, liabilities when solvent, assets in which the debtor has created a security interest, financial statements from years past, and records of the default itself. The adjudicating body must confirm if the petitioner is in default, as this will determine the outcome of the CIRP application. The IRP becomes the de facto head of the company whenever a CIRP is launched against a corporate debtor, according to the IBC's plan. The Board of Directors' authority is subsequently vested in the IRP. At this point, the Resolution Professionals may encounter resistance from the company debtor's suspended Board and management while trying to share critical financial documents.⁴

An impartial and trustworthy third party that has a database of verified debt/default information and can supply it promptly would be a huge help in these situations. To expedite the debtor default authentication process, IBBI has now granted IUs access to data from the MCA-21 database and the CERSAI portals, thereby reinforcing their function. All parties involved in the processes under IBC will have access to fast and trustworthy data thanks to IBBI, which ensures that an IU may access the MCA-21 and CERSAI portals' data. Notably, the “Reserve Bank of India (RBI)” has mandated that all banks in the nation, including “cooperative banks, small finance banks, local area banks, non-banking financial companies, and Scheduled Commercial Banks (including RRBs)”, establish suitable protocols for reporting financial data to international units (IUs).

2.3 Regulating Insolvency Professional Agencies

An existing legal system in any particular nation is not the product of a single genius or even a single day; instead, it is the embodiment of the wisdom, insight, experience, and hard work of many people spread out over many generations.

⁴ Binoy J. Kattadiyil, 'Insolvency Professional Agencies: Front-Line Regulators under IBC' (2020) 9(4) IJME 1-6.

The foundations of the legal system and the laws of this nation are old. Truthfully, our contemporary legal system owes its very existence to the legacies of the past. No field is immune to this school of thinking; bankruptcy and insolvency law are no different. The idea of paying off debts and collecting on them was also common in Ancient India. The "IBC, 2016" is the product of a unified framework for insolvency laws that has been developed over several decades.

The law is still developing after several iterations of hiccups, including the spirit of best practices from past cases and international statutes. Organizations that have been formed as non-profit organizations with the purpose of enrolling, educating, monitoring, regulating, and guiding insolvency practitioners are known as Insolvency Professional Agencies (IPAs).

In India's bankruptcy system, they play a crucial role as first responders. A person is considered an "Insolvency Professional Agency" if they are registered with the Board under "Section 201 of the IBC, 2016", as stated in Section 3(20). The primary roles of an IPA are as follows: (i) Regulatory functions: creating public, legally binding standards and codes of conduct through bye-laws; (ii) Executive functions: conducting regular inspections and investigations into members and collecting data on their performance; (iii) Quasi-judicial functions: resolving complaints against members and addressing grievances; and (iv) Regulatory functions: drafting detailed standards and codes of conduct. The three sorts of functions laid out here provide the legislative foundation that the IP agencies need to impose their regulations on all members. Anyone who pays the membership fee and meets all the criteria outlined in the bylaws is eligible to become a member of the IPA.

Insolvency professionals are obliged to undergo a 50-hour pre-registration educational course (PREC) organized by the IPAs in order to get their professional membership. The experienced member must pay the IBBI registration fee to be registered after completing PREC. In order to ensure that its members are following the rules, regulations, guidelines, Code of conduct, and instructions given by the Governing Board, the IPA keeps tabs on their professional activities and behaviour. It reviews the professional members' information and records. The policy guarantees members' privacy and further guarantees that information obtained from IPs will be kept confidential. Members are also monitored through inspections. The IPA addresses any criticisms or complaints lodged against the IP. The Grievance Redressal Committee's policy lays forth the correct way to receive, process, remedy, and disclose grievances against IPA or any member, as well as how to dispose of them in a systematic and timely manner.⁵

When insolvency practitioners are served with a show cause notice, the agency has the authority to begin the disciplinary process. The disciplinary policy and committee of each insolvency professional agency deal with disciplinary issues. Training and education of insolvency professionals—the true backbone of an insolvency regime—is a primary responsibility of IPAs.

⁵ IMF, *Orderly and Effective Insolvency Procedures* 89 (IMF 1999).

In addition to their other responsibilities, IPAs are responsible for ensuring that insolvency professionals engage in continuous professional development through activities such as hosting seminars, webinars, conferences, workshops, a Pre-Registration Training Course, publications, and other programs aimed at enhancing knowledge. Training programs, seminars, workshops, and enrolment fees, as well as publication and sales of related materials, generate the bulk of income for India's IPAs.

3. CONCLUSION

Collecting and organizing the lender's financial records is the most challenging part of insolvency proceedings. It has come to light during the settlement process that the main obstacle is the need for more information to demonstrate the facts regarding the assets, claimants, and contracts in the force.

To help close that gap, the IBC has implemented the Information Utility. All parties involved can view the lender's financial transaction records thanks to the information utility. There must be long-term economic viability and sustainability for IPAs due to their non-profit status and the growing number of responsibilities envisioned by the Code.