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**THE IMPACT OF INSOLVENCY AND BANKRUPTCY CODE ON
INDIAN BUSINESSES**- Naisha Karir¹**ABSTRACT**

The Insolvency and Bankruptcy Code (IBC) has significantly impacted Indian businesses since its introduction. Implemented in 2016, the IBC streamlined and accelerated the resolution process for insolvent entities, providing a more predictable and time-bound framework for debt restructuring and liquidation. As a result, it enhanced creditor rights and instilled greater confidence in the lending ecosystem, encouraging increased lending to businesses. The IBC also facilitated the revival of financially distressed companies, promoting a culture of corporate discipline and accountability. However, its efficacy depends on the efficient implementation and capacity building of the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI). Overall, the IBC has emerged as a pivotal tool in transforming India's debt recovery landscape and promoting a healthier and more resilient business environment.

KEYWORDS- Insolvency and Bankruptcy, Indian business, Debt recovery

INTRODUCTION

Lok Sabha was introduced to The Insolvency and Bankruptcy Code 2016 on December 2015. He was passed by both houses of the parliament, namely Lok Sabha and Rajya Sabha, on May 5 and May 11 independently. Many portions of this Act went into effect on August 5, 2016, and August 19, 2016. The ruin legislation offers a one-stop result for dealing with profitable bankruptcies, preliminarily a drawn-out process without an economically advantageous effect. The law's objectives are to simplify commercial operations and guard

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the interests of small investors. Every business, regardless of size, is susceptible to two failure modes. In the event of success, the business possessors and all other stakeholders, including lenders of capital or creditors, benefit from it to varied degrees. The possessors of fiscal wealth will suffer the most if the company collapses, but all other stakeholders will also be affected. In the event of failure, the system offers a simple way out, minimizing pain while maximizing salvage value and allowing it to be instantly put to better use. The trip of the failed establishment, known as the Code Exit, was delicate, disorganized, and far-reaching. The Insolvency and Bankruptcy Code 2016 (I&B Code 2016) provides a shaft of light to possessors of small enterprises who are continually hovered by profitable failure.

OBJECTIVE BEHIND THE PAPER

The objective of the study is as follows:

1. Analyzing how implementing the IBC has improved the ease of business in India.
2. Conducting a comparative analysis with insolvency and bankruptcy laws in other countries to draw lessons and best practices.

BACKGROUND

The Insolvency and Bankruptcy Code (IBC) introduced in India in 2016 has had a profound and transformative impact on the Indian business landscape. Before the implementation of the IBC, the process of resolving insolvency and bankruptcy in India was marred by inefficiencies, delays, and complexities. The lack of a robust legal framework deterred foreign investments and posed significant challenges for domestic businesses, hindering their growth and productivity.

Recognizing the need for a comprehensive and effective insolvency and bankruptcy regime, the Indian government enacted the IBC to provide a time-bound and structured resolution process for distressed companies. The IBC is hailed as one of the most significant economic reforms in India's history, as it seeks to promote a culture of entrepreneurship, encourage risk-taking, and in still confidence among investors and creditors.

Since its implementation, the IBC has already started reshaping how businesses operate and has had far-reaching consequences on various stakeholders, including creditors, debtors, investors, and the overall economy. This essay delves into the multifaceted impact of the IBC on Indian businesses, exploring how it has facilitated the resolution of insolvencies, improved

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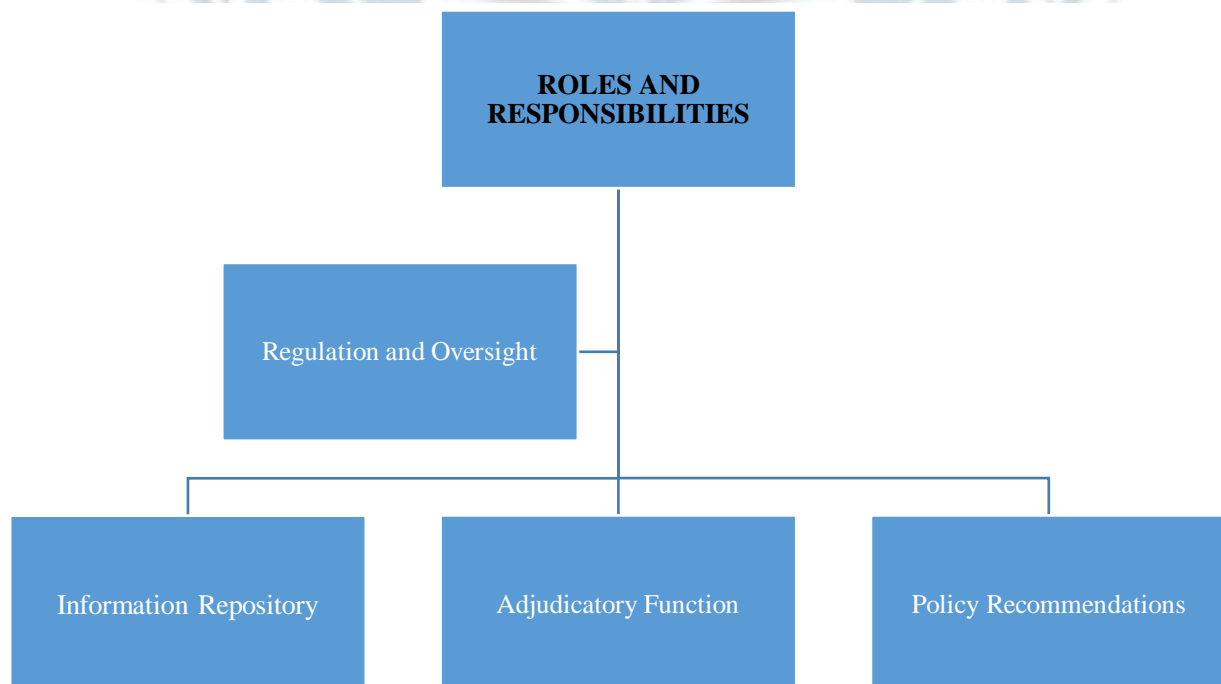
the credit culture, and contributed to a more investor-friendly environment. The essay will also discuss the challenges and criticisms faced by the IBC and potential areas of improvement that could be considered to enhance its effectiveness further.

A. ROLE OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

The Insolvency and Bankruptcy Board of India (IBBI) plays a crucial role in India's insolvency and bankruptcy ecosystem. Established in 2016 under the Insolvency and Bankruptcy Code, the IBBI is a regulatory body responsible for overseeing and regulating the insolvency resolution processes in the country. Its primary objectives are to promote a well-**organized** and efficient insolvency resolution framework, protect the interests of creditors and stakeholders, and facilitate the timely resolution of distressed businesses.

Establishing the Insolvency and Bankruptcy Board of India has significantly strengthened India's insolvency and bankruptcy regime.

Its role in regulating and monitoring insolvency proceedings ensures the process is fair, transparent, and efficient, boosting investor confidence and promoting a conducive business environment in the country.



B. CHALLENGES FACED BY NATIONAL COMPANY LAW TRIBUNAL (NCLT) CONCERNING INSOLVENCY AND BANKRUPTCY

The National Company Law Tribunal (NCLT) in India has been tasked with handling various aspects of insolvency and bankruptcy proceedings under the Insolvency and Bankruptcy Code (IBC). While the IBC was introduced to streamline and expedite the resolution process for distressed businesses, the NCLT has encountered several challenges in effectively implementing and executing the code.

- ✓ **Overburdened caseload:** The NCLT has experienced a significant increase in insolvency cases filed since the introduction of the IBC. The overwhelming caseload has strained the tribunal's resources and led to delays in resolving issues, which goes against the core objective of time-bound resolutions.
- ✓ **Lack of infrastructure and workforce:** The NCLT's infrastructure and workforce have struggled to keep up with the surge in insolvency cases. This has resulted in backlogs and prolonged proceedings, leading to frustrations for creditors, debtors, and other stakeholders.
- ✓ **Complexity of cases:** Many insolvency cases involve intricate financial and legal matters, making them challenging to assess and resolve promptly. The NCLT needs specialized judges and experts to handle such complex issues efficiently.
- ✓ **Interpretation of the law:** The IBC is a relatively new legislation that has evolved through judicial decisions. Different interpretations at different times can lead to confusion and uncertainty among stakeholders involved in the insolvency resolution process.
- ✓ **Coordination with various stakeholders:** The insolvency resolution process typically involves coordination between multiple parties, such as creditors, debtors, resolution professionals, government agencies, and regulatory authorities. Ensuring smooth communication and coordination among these stakeholders is a daunting task.
- ✓ **Resistance from stakeholders:** Some debtors or corporate entities may resist the insolvency process, leading to legal challenges and delays. This resistance could be due to various reasons, such as fear of losing control over the company, disputes over the debt amount, or disagreements with the resolution plan proposed by creditors.
- ✓ **Recovery of stressed assets:** The effective recovery of stressed assets is a crucial aspect of the insolvency resolution process. However, in many cases, the value of

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investments may have depreciated significantly, making it challenging to realize a substantial recovery for creditors.

- ✓ **Cross-border insolvency:** Handling cross-border insolvency cases requires cooperation and coordination with foreign jurisdictions, which can be complex and time-consuming.
- ✓ **Limited awareness:** Many businesses, tiny and medium-sized enterprises (SMEs), might not be fully aware of the IBC provisions and their rights and responsibilities in the insolvency process. This lack of awareness can hinder insolvency cases' efficient initiation and resolution.

C. COMPARATIVE ANALYSIS OF IBC WITH THE EARLIER LEGAL FRAMEWORK

The Insolvency and Bankruptcy Code (IBC) significantly changed India's insolvency and bankruptcy landscape compared to the earlier legal framework, which needed a more cohesive and time-bound resolution process. Here is a comparative analysis of the IBC with the earlier legal framework:

Fragmented legal framework:

Earlier: Before the IBC, the insolvency and bankruptcy framework in India was scattered across multiple laws and regulations, including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act), and the Companies Act, 1956. This fragmented system led to delays, complexity, and inefficiency in resolving insolvency cases.

IBC: The IBC introduced a unified and consolidated legal framework for insolvency and bankruptcy proceedings in India. It replaced the existing fragmented laws and established a single-window system for resolving stressed assets, making the process more streamlined and time-bound.

Time-bound resolution:

Earlier: The earlier legal framework lacked specific time-bound resolution mechanisms, resulting in prolonged and uncertain insolvency processes. This often led to a decline in the value of distressed assets and hindered the chances of successful resolution.

IBC: It mandates strict timelines for each stage of insolvency, with a maximum of 330 days for the entire process, including litigation and extensions. This time-bound approach promotes quick and efficient resolution of stressed assets, benefiting creditors and debtors.

Creditor-centric approach:

Earlier: The earlier legal framework needed to prioritize the interests of creditors more adequately. Creditors faced significant challenges in recovering their dues and often required more influence in the decision-making process.

IBC: The IBC introduced a creditor-centric approach by empowering creditors with more significant decision-making authority. Creditors' Committees are formed to approve or reject resolution plans, ensuring their interests are considered during the resolution process.

Professionalization of resolution process:

Earlier: Under the earlier legal framework, the insolvency resolution process was primarily managed by company promoters and government-appointed officials, leading to potential conflicts of interest and inadequate expertise in handling complex insolvency cases.

IBC: The IBC introduced insolvency professionals (IPs) who are licensed professionals with expertise in handling insolvency cases. These IPs play a crucial role in the resolution process, ensuring a more professional and impartial approach to insolvency proceedings.

Cross-border insolvency:

Earlier: The earlier legal framework needed comprehensive provisions to deal with cross-border insolvency cases, making resolving insolvencies involving assets or creditors in foreign jurisdictions challenging.

IBC: The IBC has provisions for dealing with cross-border insolvency, enabling better coordination and cooperation between Indian and foreign jurisdictions. It allows for the application of the code to be made concerning assets or debtors located outside India.

NCLT and NCLAT:

Earlier: The earlier legal framework had yet to have dedicated tribunals exclusively focused on insolvency and bankruptcy matters, leading to delays and backlogs in the resolution process.

IBC: The IBC established the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) as specialized forums for handling insolvency and bankruptcy cases. This has led to more efficient and effective resolution proceedings.

D. CASE STUDIES ON INSOLVENCY AND BANKRUPTCY CODE

✓ **Essar Steel Insolvency Case:**

This was one of the most high-profile cases under the IBC involving Essar Steel, a large steel manufacturing company. The case saw intense competition between ArcelorMittal and the Numetal consortium for acquiring the stressed assets of Essar Steel. It highlighted the resolution process's effectiveness and complexities, as well as the involvement of multiple stakeholders.

✓ **Bhushan Steel Insolvency Case:**

Bhushan Steel, another major steel company, was one of the early cases referred to the NCLT under the IBC. It was successfully resolved, and Tata Steel emerged as the winning bidder for acquiring Bhushan Steel. This case demonstrated how the IBC enabled the resolution of large distressed companies.

✓ **Jaypee Infratech Insolvency Case:**

Jaypee Infratech, a real estate developer, faced significant financial distress, leading to insolvency. The case highlighted the challenges of resolving real estate companies under the IBC and how the interests of homebuyers were protected during the resolution process.

✓ **Amtek Auto Insolvency Case:**

Amtek Auto, an automotive component manufacturer, was one of the early cases referred to the NCLT under the IBC. The case showcased the challenges faced by operational creditors and the need to strike a balance between various stakeholders' interests during the resolution process.

✓ **Jet Airways Insolvency Case:**

Jet Airways, a prominent airline in India, faced financial troubles and eventually went into insolvency. The case raised questions about the viability of the airline industry in India and the resolution process for the aviation sector under the IBC.

✓ **Ruchi Soya Insolvency Case:**

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Ruchi Soya, a leading edible oil manufacturer, underwent a complex resolution process, with Patanjali Ayurved acquiring a majority stake in the company. This case highlighted the involvement of strategic investors and the resolution of a large food processing company.

✓ **IL&FS (Infrastructure Leasing & Financial Services) Insolvency Case:**

IL&FS, a significant infrastructure finance company, faced severe liquidity issues, leading to defaults. The case highlighted the challenges in resolving systemically important financial institutions under the IBC.

✓ **Alok Industries Insolvency Case:**

Alok Industries, a textile company, underwent a lengthy and complex resolution process under the IBC. The case highlighted the difficulties in reviving companies with extensive debt and operational challenges.

CONCLUSION

In conclusion, the Insolvency and Bankruptcy Code (IBC) has emerged as transformative and much-needed legislation that has profoundly impacted the Indian business landscape. Since its implementation, the IBC has significantly improved the resolution framework for distressed companies, providing a transparent, time-bound, and creditor-friendly process. Through its provisions, the IBC has effectively addressed the long-standing issue of mounting Non-Performing Assets (NPAs) and has promoted a culture of credit discipline among businesses. The code's success is evident from various high-profile cases where companies were successfully resolved, salvaging their value and preserving jobs while protecting the interests of creditors and investors.

Moreover, the IBC has encouraged entrepreneurship and investment by providing a credible exit mechanism for businesses, enhancing overall confidence in the Indian business environment. It has spurred a wave of acquisitions and mergers, consolidating industries and fostering healthy competition. The code's emphasis on time-bound resolutions has also released significant capital locked up in stressed assets, providing a much-needed economic boost.

However, it is essential to acknowledge that the IBC's implementation has been challenging. Delays in the resolution process, operational bottlenecks in the National Company Law Tribunals (NCLTs), and complexities in the legal framework have been among the notable

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hurdles. Further improvements and streamlining of the process are necessary to address these issues and ensure greater efficiency.

The IBC will continue to play a critical role in shaping the Indian business landscape. Keeping the code dynamic and responsive to emerging challenges is imperative as the economy evolves. Continuous monitoring, periodic amendments, and learning from international best practices will be essential to maintain the IBC's effectiveness in the long term.

In conclusion, the Insolvency and Bankruptcy Code has been a game-changer for the Indian business ecosystem, fostering a culture of financial discipline, boosting investor confidence, and revitalizing distressed businesses. It remains a cornerstone of India's economic reforms, contributing significantly to its growth trajectory while setting new benchmarks for insolvency resolutions. As the IBC journey continues, it will be instrumental in shaping a resilient and robust business environment, strengthening India's position as a favorable destination for domestic and foreign investments.