

Insolvency and Bankruptcy Code

[UPSC Notes]

What is the Insolvency and Bankruptcy Code?

Insolvency is when a person or enterprise cannot pay debts, while bankruptcy is a legal declaration by the Court of the failure of the insolvency resolution process. The resolution of the insolvency process can be started by any of the firm's stakeholders: debtors, creditors, or employees. The Insolvency and Bankruptcy Code covers all individuals, companies, Limited Liability Partnerships (LLPs), and partnership firms. This May, the insolvency and bankruptcy code completed six years since parliament passed in 2016. The Insolvency and Bankruptcy Code of 2016 repealed all the previous laws related to the resolutions of insolvency and bankruptcy.

Objectives of Insolvency and Bankruptcy Code

The objectives of the IBC, Insolvency and Bankruptcy Code are as follows:

- To centralize and amend all existing insolvency laws in India.
- To accelerate and clarify the insolvency and bankruptcy proceedings in India.
- To safeguard the interests of the firm's stakeholders/debtors/creditors / employees.
- To encourage entrepreneurship and also renew the company in a time-bound manner.
- To set up an insolvency and bankruptcy board in India.
- To provide essential relief to the creditors and, consequently, the credit supply in the economy will increase.

Benefits of IBC Code in India

As a result of the Insolvency and Bankruptcy Code, the average time taken to resolve a bankruptcy has decreased from 4.3 years in 2017 to 1.6 years in 2020.

- The Insolvency and Bankruptcy Code assist India in doing business and obtaining credit easier. The rank of India in getting credit has improved from 62 in 2017 to 25 in 2020; India's rank in 'ease of doing business' improved from 155 in 2017 to 63 in 2020 and the 'starting a business' rank improved from 151 in 2017 to 136 in 2020.
- There is also a behavior change for the wider lending environment.
- The Insolvency and Bankruptcy Code rescued the corporate debtors in a rack that rescued 348 corporate debtors through the resolution plans.

Challenges of Insolvency and Bankruptcy Code

Below are some challenges to the Insolvency Bankruptcy Code:

- Lower recovery rates as public and private sector banks, non-banking financial institutions, and other financial lenders to the companies that undergo the Corporate Insolvency Resolution Process (CIRP) have taken an additive cut of 61.2% of their admitted claims.
- There are many pending cases in the insolvency and bankruptcy code. About 71% of the cases have been pending for more than 180 days. These are pending with National Company Law Tribunals.
- However, the main objective of the insolvency and bankruptcy codes was to encourage entrepreneurship and resolution. but they give more emphasis to liquidation.
- There is also a staffing issue where more than 50% of the strength in the National Company Law Tribunals is lying vacant.
- There is no provision for cross-border insolvency resolution.
- Lack of flexibility in resolution professionals.

What are the Pre-Packs in IBC Code?

Recently, Parliament passed the Insolvency and Bankruptcy Code Amendment Bill 2021, which allows the use of Pre-Package in resolving insolvency proceedings involving Micro, Small, and Medium Enterprises.

- Pre-packaged insolvency resolution is a mechanism in which distressed corporate debtors (CDs) and lenders agree on resolutions before filing for bankruptcy with the National Company Law Tribunals (NCLTs).
- There is also a provision of 'Swiss Challenge' to the resolution plans submitted by a corporate debtor (CDs) if creditors are not paid 100% of their outstanding dues.
- There is also the provision that it is permitted if any third party wants to offer a resolution plan for the distressed company.
- The deadline for the pre-packaged insolvency resolution is to be completed within 120 days after the commencement date.

Insolvency and Bankruptcy Code Ordinance 2018

The Insolvency and Bankruptcy Code of 2018 is to amend the Insolvency and Bankruptcy Code of 2016 to clarify that allottees will be treated as financial creditors in the real estate project.

- The voting edge of the decision, which the committee of creditors takes, has been reduced from 75% to 51%.
- The ordinance also provides the withdrawal of a resolution application submitted to the National Company Law Tribunals under the insolvency and bankruptcy

code. This decision is taken only when there is the approval of 90% of the committee of the creditors (CoCs).

IBC Amendment Bill 2019

The Insolvency and Bankruptcy Code Amendment Bill 2019 provides a time-bound process for resolving insolvency in companies and among individuals.

- Under the amendment to initiate the insolvency resolution process, a financial creditor may apply to the National Company Law Tribunals and the National Company Law Tribunals within 14 days to determine the presence of default. Therefore, the Committee of Creditors will be constituted to make decisions regarding the insolvency resolution.
- The resolution professional will be appointed by a committee of creditors (CoCs) who will present the resolution plan to the Committee of the Creditors. Then the Committee of Creditors will approve the resolution plan. The resolution process must be completed within 180 days, and there is also a provision for an extension of 90 days after the approval of the National Company Law Tribunal. If the committee of creditors rejects the resolution plan, the debtors will be liquidated.

Insolvency and Bankruptcy Code Amendment Bill 2020

The Rajya Sabha recently passed the Insolvency and Bankruptcy Code Act, 2020, which went into effect on June 5, 2020, due to the pandemic nationwide lockdown. It suspended sections 7, 9, and 10 because it created stress for businesses. Due to section 10 of the insolvency and bankruptcy code 2016, the following section shall be included:

Section 10A: Suspension of the Corporate Insolvency Resolution Process (CIRP).

IBC Amendment 2021

Recently, the IBC Amendment 2021 was introduced in the Lok Sabha to introduce the Pre-Packaged Insolvency Resolution Process (PIRP) and to amend other insolvency laws for MSME (micro, small and medium enterprises).

- The bill's provision determines the minimum threshold of not more than Rs 1 crore for the initiation of the Pre-Packaged Insolvency Resolution Process.
- There is also a provision of punishment for offenses related to the Pre-Package Insolvency Resolution Process (PIRP).

Insolvency and Bankruptcy Code- Way Forward

Adopting the United Nations Commission on International Trade Law (UNCITRAL) - a model on cross-border insolvency, helps tackle insolvency across borders.

- As per the Insolvency and Bankruptcy Amendment Act, 2021, the introduction of the Pre Packaged Insolvency Resolution Process is mainly for micro, small and medium enterprises (MSMEs). It needs time to introduce such a resolution process that has a much wider coverage of the age group in the future.
- The National Company Law Tribunal should establish specific benches of the National Company Law Tribunal to deal with pre-packaged resolution plans in a time-bound manner, and the National Company Law Tribunal should completely digitize its records and operations.
- Enhancing the rights of home buyers.

