

Corporate Insolvency and Resolution Laws In India – A Study of Selected Insolvency Companies in Tamil Nadu

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ABSTRACT

The failure of certain business plans is an inherent aspect of a market economy. In such cases, the optimal outcome for society is to facilitate prompt renegotiations among financiers, enabling the continuation of the business with a restructured arrangement of liabilities and a new management team. When this is not feasible, the next best outcome for society is a swift liquidation process. By enabling these arrangements, the market process of creative destruction can operate effectively, fostering heightened competitive dynamics and promoting overall competition within the market. Every economy shares the common goal of achieving rapid growth, and governments aspire to maximize the economic welfare of their citizens. However, the performance of different countries can vary, influenced by several factors contributing to their success or lagging behind. To enable economic prosperity, certain conditions must be in place. One crucial condition is the presence of a well-developed and expansive credit market that can adequately fund businesses. Access to credit is vital for companies to invest, expand, and innovate. Additionally, a structured mechanism is necessary to facilitate the entry and exit of businesses and entrepreneurs. This allows for market dynamism, encouraging competition and ensuring that resources are optimally utilized. Furthermore, a competitive marketplace is indispensable for economic growth. Competition drives efficiency, innovation, and the delivery of high-quality goods and services. It also prevents the concentration of market power in a few hands, promoting fairness and choice for consumers. Lastly, a well-functioning process to rescue struggling firms from premature failure is essential. This mechanism can help prevent the loss of productive assets and jobs, allowing for the restructuring and revitalization of companies. All of these conditions are founded on the principle of economic freedom. It is the role of the state to ensure that these necessary conditions are met, creating an environment conducive to economic prosperity and facilitating the growth and welfare of the economy and its citizens.

Keywords:

Competition, Consumers, Jobs, Credit, Governments, Economic Prosperity

Introduction

Insolvency law has a long history that predates modern company law by several centuries. The first insolvency legislation was enacted in 1542 during the reign of Henry VIII. This early law primarily dealt with the insolvency of individuals. In contrast, modern company law and its associated insolvency rules are commonly traced back to the Companies Act of 1862. Some elements of the insolvency provisions from the 1862 Act can still be found in today's Insolvency Act of 1986. One significant consequence of this historical development is that principles and regulations rooted in personal insolvency law also play a role in corporate insolvency law. While the subject matter of personal and corporate insolvency proceedings differs in obvious ways, the objectives of the law and the tools it provides are largely comparable. However, there is one crucial distinction: personal insolvency law must consider the fact that the individual debtor continues to exist after facing financial difficulties, whereas a company can, under appropriate circumstances, be dissolved. The growing number of corporate insolvencies in recent times underscores the importance of having commercial

bankruptcy laws that efficiently liquidate unviable firms and reorganize viable ones. This approach aims to maximize the overall value of assets distributed among creditors, shareholders, employees, and other stakeholders. (Mann, Yogendra & Mann, Kavindra. (2019).

Review of literature

Nishith Desai Associates (2019): A researcher conducted an analysis of the initial impact of the Insolvency and Bankruptcy Code (IBC) on the Indian debt market. The research highlighted several challenges in the effective implementation of the Code. However, the study suggests that many of these challenges have been addressed through constructive interpretation by the judiciary and through effective amendments to the Code. The researcher also commended the efforts of the Insolvency and Bankruptcy Board of India (IBBI), the regulatory and supervisory body, for actively promoting awareness about the Code. Throughout the year, the research noted several significant court decisions, which were thoroughly examined. The researcher views Corporate India's demonstrated commitment to reviving loss-making companies as a promising development for the economy and the banking sector, which has been burdened by the increasing non-performing assets (NPAs). In their analysis, the researcher primarily focused on three key areas: the impact of the IBC on creditors and investors, statutory and regulatory changes, and judicial developments within this domain.

Nakul Sharma, Dr. Rahul Vyas (2017): The paper under consideration explores the Insolvency Professional Agency (IPA) framework and its place within the broader framework of the Insolvency and Bankruptcy Code (IBC). This framework plays a pivotal role in governing the procedural and regulatory aspects of the IBC. Enacted in 2016, the IBC represents a notable milestone in our legal system. Its objectives include expediting the resolution of insolvency cases, promoting entrepreneurship, improving access to credit, and achieving a fair balance among the interests of the diverse stakeholders engaged in the insolvency process.

Statement of the Problem

In India, the legal and institutional mechanisms for addressing debt defaults have lagged behind global standards. The existing methods for creditors to pursue recovery actions, such as those under the Contract Act or specialized laws like the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, have fallen short of achieving desired outcomes. Similarly, the effectiveness of laws like the Sick Industrial Companies (Special Provisions) Act, 1985, and the winding up provisions of the Companies Act, 1956, in facilitating effective recovery for lenders or aiding in the restructuring of firms has been limited. Laws concerning individual insolvency, such as the Presidential Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, are nearly a century old. This lack of modernization has undermined lender confidence, resulting in reduced access to debt for borrowers. This situation is evident in the state of India's credit markets, where bank-secured credit dominates, while the corporate bond market remains underdeveloped. To address these issues, the Indian Parliament enacted the Insolvency and Bankruptcy Code (IBC) in 2016. The primary goal of the Code is to assess whether there are reasonable prospects for the revival of a business. If revival is deemed unfeasible, the Code outlines a time-bound liquidation process. Within the corporate insolvency resolution process (CIRP) specified in the Code, financial creditors assess the viability of the debtor's business and explore options for its recovery and rehabilitation. If the CIRP proves unsuccessful or if financial creditors determine that the debtor's business cannot be operated profitably, the business undergoes the liquidation process. The Code aims to streamline and expedite these procedures, ensuring the timely resolution of insolvency cases.

Importance of the Study

Within the corporate insolvency resolution process (CIRP) governed by the Insolvency and Bankruptcy Code (IBC), the challenges and issues faced can vary significantly from case to case. Identifying and addressing these challenges encountered by insolvency professionals is of utmost importance, and this can be achieved through amendments to the Code. By amending the Code, it becomes possible to alleviate these problems and issues, thus facilitating the realization of the Code's objectives. To effectively attain the Code's intended goals, conducting a comprehensive study and assessment of the efficiency of corporate insolvency and resolution processes in India is essential. This study would offer valuable insights into the effectiveness of the current framework, pinpoint areas in need of improvement, and streamline the CIRP for more favorable outcomes. By evaluating the efficiency of these

processes, necessary measures can be implemented to enhance the overall functioning of the insolvency resolution framework, ultimately contributing to the successful implementation of the Code.

Objectives of the Study

1. To study the legal provisions relating to Corporate Insolvency and Resolution Laws in India.
2. To examine the Corporate Insolvency and resolution process under Insolvency Bankruptcy 2016.
3. To identify the problems faced by the Insolvency professionals during the insolvency process of selected companies in Tamil Nadu.

Research methodology

Secondary Data

The Secondary sources of the data will be collected from sources such as orders of the National Company Law Tribunals, Orders of National Company Law Appellate Tribunal, standard text books, conference materials, newspaper, journals, magazines, publications, articles, research papers, websites, manuals, and Booklets, etc.

The Legal Provisions Relating to Corporate Insolvency and Resolution Laws in India

The legal provisions relating to Corporate Insolvency and Resolution Laws in India are primarily governed by the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC is a comprehensive legislation that consolidates and amends the laws relating to insolvency resolution of corporate entities, partnerships, and individuals in India.

Here are some key aspects of the legal provisions under the IBC:

1. **Corporate Insolvency Resolution Process (CIRP):** When a corporate debtor is unable to pay its debts, a financial creditor, operational creditor, or the corporate debtor itself can initiate the CIRP. The process involves appointing an insolvency professional as the resolution professional who takes control of the corporate debtor's assets and manages the affairs of the company during the resolution process.
2. **Committee of Creditors (CoC):** The resolution professional constitutes a CoC comprising financial creditors of the corporate debtor. The CoC takes important decisions during the resolution process, including the approval of a resolution plan.
3. **Resolution Plan:** The resolution professional invites resolution plans from interested parties, which outline how the corporate debtor's affairs will be resolved, including the repayment of debts and the restructuring of the company. The CoC evaluates the plans and approves the one that offers the best resolution for the corporate debtor.
4. **Liquidation:** If a viable resolution plan is not approved within the specified timeframe or if the CoC decides to liquidate the corporate debtor, the company's assets are sold, and the proceeds are distributed to the creditors.
5. **Insolvency and Bankruptcy Board of India (IBBI):** The IBBI is the regulatory authority responsible for overseeing and regulating insolvency proceedings and insolvency professionals in India. It sets the framework and guidelines for the smooth implementation of the IBC.
6. **Adjudicating Authority:** The National Company Law Tribunal (NCLT) is the adjudicating authority for corporate insolvency matters. It has the power to approve resolution plans, declare the corporate debtor insolvent, and initiate liquidation proceedings.
7. **Moratorium:** Once the CIRP is initiated, a moratorium comes into effect, which prohibits creditors from initiating or continuing any legal proceedings against the corporate debtor. This is to provide a breathing space for the resolution process.
8. **Cross-Border Insolvency:** The IBC also provides provisions for dealing with cross-border insolvency cases, including the recognition of foreign insolvency proceedings and cooperation with foreign courts.

It's important to note that the above summary provides a general overview of the legal provisions related to corporate insolvency and resolution laws in India. The IBC is a complex legislation, and specific details and procedures may vary depending on

the case and evolving judicial interpretations. It's advisable to consult legal professionals or refer to the latest amendments and notifications for accurate and up-to-date information.

The Corporate Insolvency and Resolution Process under Insolvency Bankruptcy 2016

Under the Insolvency and Bankruptcy Code, 2016 (IBC), the corporate insolvency and resolution process involves several key steps and parties. Here is an overview of the process:

1) INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP):

Application: The CIRP can be initiated by a financial creditor, operational creditor, or the corporate debtor itself by filing an application before the National Company Law Tribunal (NCLT). **Admission:** The NCLT examines the application and, if satisfied, admits the application and declares a moratorium on any legal actions against the corporate debtor.

2) APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL (IRP)/RESOLUTION PROFESSIONAL (RP):

On admission of the application, the NCLT appoints an Interim Resolution Professional (IRP) within 14 days. The IRP takes control of the corporate debtor's affairs and becomes the Resolution Professional (RP) upon confirmation by the committee of creditors (CoC).

3) FORMATION OF COMMITTEE OF CREDITORS (COC):

The RP forms a CoC within 30 days of their appointment. The CoC consists of financial creditors of the corporate debtor and plays a vital role in the resolution process.

4) PREPARATION OF INFORMATION MEMORANDUM (IM):

The RP collects and collates all relevant information about the corporate debtor's financial position and operations to prepare an Information Memorandum (IM). The IM is shared with prospective resolution applicants.

5) SUBMISSION OF RESOLUTION PLANS:

Prospective resolution applicants submit their resolution plans to the RP, outlining how they propose to revive the corporate debtor and repay the debts owed to creditors.

The CoC evaluates the resolution plans and may approve one or more plans that meet the requirements set out in the IBC.

6) APPROVAL AND IMPLEMENTATION OF RESOLUTION PLAN:

The resolution plan approved by the CoC is submitted to the NCLT for final approval.

The NCLT reviews the plan and, if satisfied, approves the plan. Once approved, the resolution plan is binding on all stakeholders, including the corporate debtor and creditors.

The resolution plan is implemented under the supervision of the RP, who monitors the revival of the corporate debtor and the repayment of debts as per the approved plan.

7) LIQUIDATION:

If a viable resolution plan is not approved within the specified timeframe or if the CoC decides to liquidate the corporate debtor, the RP files an application for liquidation before the NCLT.

The NCLT appoints a liquidator to sell the corporate debtor's assets, and the proceeds are distributed among the creditors as per the prescribed waterfall mechanism.

It is important to note that the IBC provides a time-bound process for resolution, and the specific timelines and procedures may vary depending on the case and judicial interpretations. The above steps provide a general framework, and detailed provisions and regulations exist to address specific aspects of the corporate insolvency and resolution process under the IBC.

Identify the problems faced by the Insolvency professionals during the insolvency process of selected companies in Tamil Nadu

These challenges may also be applicable to the insolvency process of selected companies in Tamil Nadu:

1. **Lack of cooperation from stakeholders:** Insolvency professionals often face challenges in obtaining cooperation from stakeholders, including the corporate debtor, employees, creditors, and suppliers. This lack of cooperation can hinder the smooth progress of the insolvency process.
2. **Complex financial and operational structures:** Some companies may have complex financial and operational structures, making it difficult for insolvency professionals to analyze and understand the true financial position of the company. This can complicate the decision-making process during the insolvency proceedings.
3. **Inadequate availability of information:** Insolvency professionals rely on accurate and timely information to assess the financial health of the company and make informed decisions. However, in some cases, there may be challenges in accessing complete and reliable information, which can impact the effectiveness of the insolvency process.
4. **Legal and regulatory complexities:** The insolvency process involves navigating through a complex legal and regulatory framework. Insolvency professionals may face challenges in interpreting and applying the relevant laws and regulations correctly, which can lead to delays or disputes during the process.
5. **Valuation of assets and liabilities:** Determining the accurate value of assets and liabilities of the company is crucial for assessing the feasibility of resolution plans. However, the valuation process can be challenging, especially when dealing with illiquid assets or when there is a lack of reliable market data.
6. **Disputes and litigation:** Insolvency processes may be accompanied by disputes and litigation from various stakeholders, including creditors, shareholders, or employees. These disputes can lead to delays and increased costs for the insolvency professional.
7. **Time and resource constraints:** The insolvency process has strict timelines, and insolvency professionals may face challenges in completing the necessary tasks within the prescribed timeframes. Additionally, resource constraints, both in terms of personnel and financial resources, can impact the efficiency of the process.

It's important to note that these challenges are not specific to Tamil Nadu and can be encountered in insolvency proceedings across different regions. For specific cases in Tamil Nadu, it would be necessary to refer to the details of those cases to identify the specific problems faced by insolvency professionals.

Conclusion

In India, the ratio of judges to the population is inadequate to effectively manage the substantial volume of litigation, resulting in delays in obtaining legal remedies. This situation, often referred to as the 'docket explosion,' presents a significant challenge. In response to the extensive legal framework and the substantial backlog of cases, Indian arbitration has undertaken significant efforts to bring about transformative changes. Amendments have been introduced to address issues related to the timeliness, cost-effectiveness, finality of awards, and interim relief sought by both foreign and Indian parties engaged in arbitration in India. Simultaneously, Indian courts have also taken measures to expedite the legal process and reduce delays. It can be inferred that the Corporate Insolvency Resolution Process (CIRP) is a comprehensive procedure involving multiple steps that must be diligently followed to achieve the desired outcome. The provisions and regulations governing the CIRP outline essential requirements and establish specific timeframes for each stage. Adhering to these guidelines is of utmost importance. Any delays or deviations from the prescribed stages can negatively impact the CIRP. Conducting the CIRP in strict accordance with the Code and its regulations plays a pivotal role in facilitating the revival and reconstruction of the Corporate Debtor, which is the ultimate goal of the process.

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