

### **3. Cabinet approves Amendment to IBC code**

**Prelims Level: Economy**

**Mains Level: GS-II Government Policies and Interventions for Development in Various Sectors and Issues Arising out of their design and Implementation**

#### **Why in News?**

- The Union Cabinet has recently approved certain crucial amendments to the IBC code, 2016 through Insolvency and Bankruptcy (Second Amendment) Bill, 2019.

#### **Background Information:**

##### **About Insolvency and Bankruptcy Code (IBC):**

- **Objective of IBC:** Earlier, there were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India. This led to undue delays in the recovery of the NPAs by the Banks.
- Hence, the IBC Code was introduced to consolidate all the existing laws related to Insolvency and Bankruptcy in India and to simplify the process of insolvency resolution.
- The Central government introduced the Insolvency and Bankruptcy Code (IBC) in 2016 to resolve claims involving insolvent companies. This was intended to tackle the bad loan problems that were affecting the banking system.

##### **Need for New Amendments:**

- Previously, some of the successful bidders of the stressed firms faced problems in taking over the stressed firm due to offences committed by the previous management/promoters of the stressed firms.
- **Recent Example:** JSW Steel had successfully bid for taking over Bhushan Power and Steel. However, the Enforcement Directorate filed a case against Bhushan Power and Steel's former promoter Mr. Sanjay Singhal in connection with the money laundering case. Subsequently, the ED attached assets worth Rs 4,000 crores of the Bhushan Power and steel (BPSL). Such an attachment of the assets went against the interests of the successful bidder JSW Steel.
- **Protection offered to Successful bidders through new amendment:** In this regard, the new amendment to the IBC seeks to protect the successful bidders from the criminal proceedings against the offences committed by the previous promoters of the

stressed firms. Going forward, the assets of the stressed firms bought by a successful bidder under the IBC would not be attached and hence would offer higher protection to the successful bidders.

### **Additional Info:**

#### **This is Regarding Previous Amendments passed to IBC:**

##### **1. Insolvency Proceedings against Real Estate Developers:**

- Initially, when the IBC was passed by the Indian Parliament, it did not include Home-buyers as the creditors. This made it difficult for the home buyers to initiate cases against the real estate developers for the delay in the completion of the Housing projects.
- Subsequently, this flaw was addressed by including the home-buyers as financial creditors under the amendment made to the IBC. As per the amended provision, even a single home buyer having a claim of more than Rs 1 lakh can drag a real estate developer to the National Company law tribunal.
- However, the real estate developers have raised concerns that the some of the home-buyers are misusing such a provision and a large number of cases have been filed against them. This has in turn led to undue delay in the completion of the pending housing projects.
- The new amendment approved by the cabinet is aimed to address this misuse by the home buyers. As per the amendment proposed, a single home-buyer would not be able to invoke insolvency against the real estate developer.

#### **Institutional Mechanism of IBC:**

- **Insolvency Professionals:** A specialized cadre of licensed professionals would administer the resolution process, manage the assets of the debtor, and provide information for creditors to assist them in decision making.
- **Insolvency Professional Agencies:** These agencies conduct examinations to certify the insolvency professionals and enforce a code of conduct for their performance.
- **Information Utilities:** The creditors would report financial information of the debt owed to them by the debtor.
- **Adjudicating Authorities:** The proceedings of the resolution process would be adjudicated by the National Companies Law Tribunal (NCLT), for companies; and the Debt Recovery Tribunal (DRT), for individuals. The duties of the authorities will include

- approval to initiate the resolution process, appoint the insolvency professional, and approve the final decision of creditors.
  - **Committee of Creditors (CoC)** :During the insolvency resolution process, a committee consisting of lenders would be constituted for taking decisions (by voting) on the resolution process. The CoC may either decide to restructure the debtor's debt by preparing a resolution plan or liquidate the debtor's assets. However, such a decision has to be approved by at least 66% of the votes in the committee of creditors. (Earlier, the voting threshold for the approval was 75%, but it was reduced to 66% through the IBC amendment act, 2019)
  - **Insolvency and Bankruptcy Board**: The Board would regulate insolvency professionals, insolvency professional agencies and information utilities set up under the Code. The Board would consist of representatives of Reserve Bank of India, and the Ministries of Finance, Corporate Affairs and Law.
  - **Procedure to resolve Insolvency and Bankruptcy**: The Code proposes two independent stages: Insolvency Resolution Process, during which lenders assess whether the debtor's business is viable to continue and the options for its rescue and revival; and Liquidation (Sale of Assets), if the insolvency resolution process fails.
1. **Insolvency Resolution Process (IRP)**: When a default occurs, the resolution process may be initiated either by the debtor or creditor before the adjudicating authority. The NCLT appoints an insolvency professional to administer the IRP. The Resolution Professional identifies the financial creditors and constitutes a Committee of Creditors (CoC). The CoC would prepare the resolution plan for the restructuring the loans of the defaulted borrower which may be in the form of extending the maturity period of the loan, reducing the rate of interest on loans etc. However, such a resolution plan has to be approved by at least 66% of the votes in the committee of creditors.
  2. **Liquidation (Sale of Assets)**: If the Committee of Creditors fail to come up with a resolution plan within the time limit of 330 days, then the proceeds from the sale of the debtor's assets are distributed in the following order of precedence: i) insolvency resolution costs, including the remuneration to the insolvency professional, ii) secured creditors, whose loans are backed by collateral, dues to workers, other employees, iii) unsecured creditors, iv) dues to government, v) priority shareholders and vi) equity shareholders.