

6. IBC (Amendment) Bill, 2020

Prelims Level: Economics

Mains Level: GS-III Indian Economy and Issues Relating to planning, mobilization of Resources, Growth, Development and Employment

Context:

- Recently, the Indian parliament passed amendments to the insolvency law that will help safeguard successful bidders of insolvent companies from the risk of criminal proceedings for offences committed by the previous promoters. The bill seeks to remove bottlenecks and streamline the corporate insolvency resolution process. The latest changes pertain to various sections of the IBC as well as the introduction of a new section.

About the Insolvency and Bankruptcy Code, 2016:

- The code is a comprehensive law, which covers all individuals, companies, Limited Liability Partnerships (LLPs) and partnership firms.
- It provides for a time-bound process to resolve insolvency.
- When a default in repayment occurs, creditors gain control over debtor's assets and must take decisions to resolve insolvency.
- The Code also consolidates provisions of the current legislative framework to form a common forum for debtors and creditors of all classes to resolve insolvency.
- **The Code creates various institutions to facilitate resolution of insolvency. These are as follows:**
- **Insolvency Professionals:**
 - ✓ A specialised cadre of licensed professionals who 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:**
 - ✓ The insolvency professionals must be registered with insolvency professional agencies.
 - ✓ The agencies conduct examinations to certify the insolvency professionals and enforce a code of conduct for their performance.
- **Information Utilities:**
 - ✓ Creditors will report financial information of the debt owed to them by the debtor. Such information will include records of debt, liabilities and defaults.

- **Adjudicating authorities:**

- ✓ The proceedings of the resolution process will 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.

- **Insolvency and Bankruptcy Board:**

- ✓ The Board regulates the insolvency professionals, insolvency professional agencies and information utilities set up under the Code.
- ✓ The Board consists of representatives of Reserve Bank of India, and the Ministries of Finance, Corporate Affairs and Law.

IBC (Amendment) Bill, 2020:

- **Insolvency commencement date**

- ✓ The Bill clarifies that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process (CIRP).
- ✓ Presently under the Code, the insolvency resolution process commences when the Insolvency Resolution Professional (IRP) is appointed by the adjudicating authority.

- **Threshold for initiating resolution process**

- ✓ The Bill also specifies the minimum threshold for certain classes of financial creditors for initiating insolvency resolution process.
- ✓ The Code allows the creditors to initiate an insolvency resolution process, if the amount of default by the debtor is at least one lakh rupees.
- ✓ The Bill adds an additional requirement for certain classes of financial creditors for filing application. These classes include real estate allottees and security or deposit holders represented by a trustee or agent.

- **Corporate debtors entitled to make application**

- ✓ The Bill further clarifies that a corporate debtor should not be prevented from filing an application for initiation of corporate insolvency resolution process against other Corporate Debtors.

- **Liabilities for Prior Offences**

- ✓ The bill provides safeguard for the successful bidders of insolvent companies from the risk of criminal proceedings for offences committed by the previous promoters.

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- ✓ Further, the Bill provides immunity to the company from attachment, seizure, retention, or confiscation of their property in relation to such offences.
 - **Licenses and permits not to be terminated due to Insolvency**
 - ✓ The Bill also amends the Code the effect that a licence, permit, registration, quota, concession, clearances or a similar grant or right will now not be terminated or suspended during the Moratorium period.
 - ✓ This provision will be applicable as long as the debtor does not default in the payment of current dues arising for the use or continuation of such licenses or permits.
 - **IBC and its Shortcomings:**
 - ✓ The insolvency and bankruptcy law has resulted in recovery of just 10 percent of defaulted loans in case of companies other than the seven big cases referred for resolution.
 - ✓ Of the 970 cases referred to IBC, 780 have been liquidated, indicating a mortality rate of 80 percent.
 - ✓ Experts opine that only 43 percent of the loans has been recovered, implying that banks took a haircut of 57 percent on their loans
 - ✓ There is also a concern over the MSMEs that will be compelled to supply goods to debt-ridden companies, under examination by the Resolution Professional.
 - **Though the bill is equipped to remove bottlenecks and streamline the corporate insolvency resolution process, it needs furthermore scrutiny to iron out the shortcomings and make the resolution process much more efficient and creditor friendly..**