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## CIRP RE-ENGINEERING AND RE-STRUCTURING UNDER INSOLVENCY AND BANKRUPTCY REFORMS

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**CIRP RE-ENGINEERING AND RE-STRUCTURING UNDER  
INSOLVENCY AND BANKRUPTCY REFORMS**

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**Abstract:**

**Introduction.** *This article discusses the theory of corporate restructuring and its importance in the country. Business restructuring is the redesigning of existing business strategies and aspects for various reasons. Usually a corporate's varied challenges and financial adjustments to its assets and liabilities necessitates this process. It analyses how the different avenues of business restructuring exercises such as mergers, acquisitions, amalgamations, compromises, and arrangement are processed with in respect to the process provided under the Insolvency and Bankruptcy Code 2016. Introduction followed by brief Literature Review.*

**Research methods** *are exploratory in nature, since the study has to explore the impact of IBC on Indian Economy.*

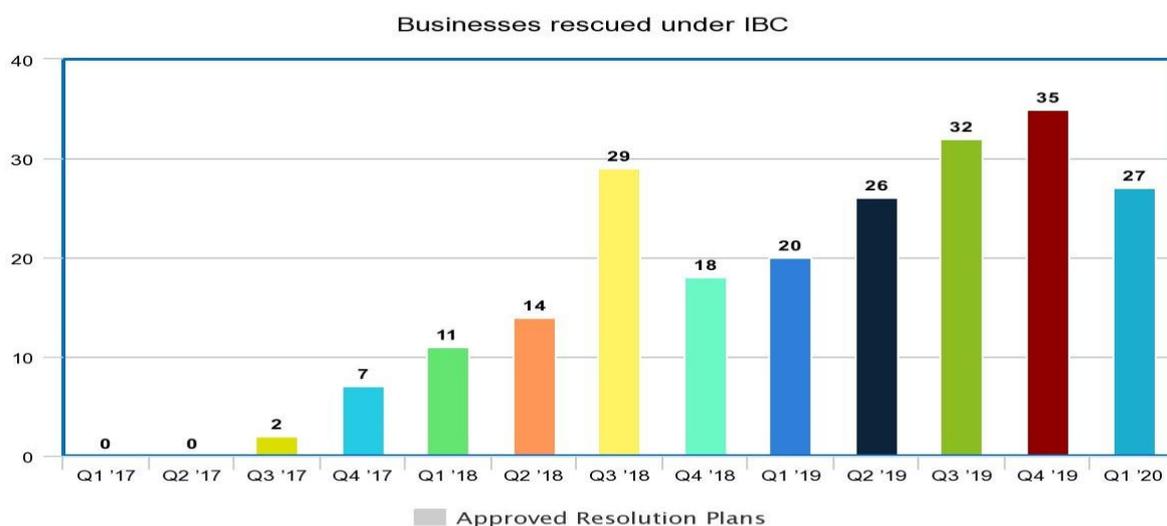
**Results and discussions.** *The Insolvency and Bankruptcy Code (IBC) is considered as the major structural legal reform in the world. It is making a robust economy by reducing the amount of Non-Performing Assets and improving Ease of Doing Business (EoDB) ranking. It has attracted investors from abroad because they now seek each developing nation as a legible place for investment owing to the reasons as, smaller timeframe for resolution reduces risk of losing investment and flexible exit policy, even when company becomes insolvent the IBC gears towards maximum realisation of value of assets. It has given a new identity to the developing economy on the International platform. It seeks to create a single unified law for insolvency and bankruptcy. IBC carries out this unique restructuring by maintaining an upper-hand on the Debtor (the business) and affirming its creditor-in-control locus. It also discusses how an IP performs the function of re-engineering with respect to sick companies that fall under the rigours of IBC.*

**Conclusions.** *The approach under the IBC towards reviving a "sick" business in a time-bound manner of 180-270 days. Till date, business re-engineering under IBC has revived 221 business, while constant updates in the legislation increase the chances of more business revivals.*

**Keywords:** *business restructuring, re-engineering, insolvency professional, organisational management, interim finance, financial restructuring*

**Introduction.** In India, corporate restructuring is governed by a multitude of legislations. The focus of this article is on the process and avenues provided under the Insolvency and Bankruptcy Code 2016. It should be noted that there exist different forms of business restructuring exercises such as mergers, acquisitions, amalgamations, compromises, and arrangement. IBC mainly deals with re-engineering the business to reach compromises, arrangements via its resolution process (CIRP). It is aimed at helping a business stay afloat as a going concern during the insolvency process, to prevent the destruction of organisational capital and protect the assets and liabilities until they can be reallocated. This is significant since it allows a higher chance of reaching a resolution at the conclusion of insolvency proceedings, as envisioned by the Code.

The IBC has admitted 3774 CIRPs, of which it facilitated the restructuring of 3617 businesses, and rescued 221 businesses from liquidation by March 2020 (Chart 1).



**Chart 1.**

The Code provides an effective formal two-fold re-engineering of the business when a CIRP is initiated, which has helped in the recovery of INR 1.7 trillion. Interestingly, this introduction in itself has sparked an active market of pre-insolvency negotiations between the debtors and creditors, and self-restructuring among businesses which has resulted in increased securitisation and secondary trading of debt of INR 4trillion (approx.) in the past 4 years.

We will discuss how an Insolvency Professional (IP) is appointed to take charge of the business operational and organisational management, who in turn carries out financial restructuring of the business to facilitate value maximisation of assets including raising interim finances.

### **Literature Review.**

#### **The Report of the Bankruptcy Law Reforms Committee –**

This Committee gathered knowledge on the economics and legal framework from many policy papers, conferences, workshops that were conducted during the period of the Committee's working. The discussions captured knowledge of the complexities and intricacies of the Insolvency and Bankruptcy processes in India

today and also engaged with Economists, Lawyers and the financial market participants. This knowledge provided a base to think about how the insolvency process should be designed properly.

### **Bankruptcy Code (2015, sixteenth Lok Sabha) –**

The report stressed on the simplified procedure so that there is quick disposal of cases of the claims of Banks and Financial Institutions before the Debt Recovery Tribunal (DRT). This report lays emphasis on the need for reforming the Insolvency, Bankruptcy and Liquidation laws so that the recovery of Loans is done quickly. It states that as on September 2015, 6.2 % of the total loans of the public sector banks have been categorized as bad loans or NPAs, another 7.9 % is restructured loans and owing to certain shortcomings in the existing laws, burden of Non Performing Assets (NPAs) continue to increase.

**The Insolvency and Bankruptcy Code, 2016: Problems and Challenges by Shivam Goel** – This Article throws light on some of the problems faced by and challenges before the Insolvency and Bankruptcy Code, 2016. This gives a lot of scope to analyse the Act deeply. A careful study and investigation is needed to look into each and every facet of the Act. It talked about the key aspects of the Code, 2016. It also talked about the predicaments of the Code, 2016.

**Ballooning Non-Performing Assets in Indian Banking and Insolvency and Bankruptcy Code: Resolution plans and cases by Deepak Tandon, Neelam Tandon-** This research work studies the phenomenal deterioration of asset quality, raising potential losses for not making enough provisions for to combat the NPAs in the Indian Banking sector. The researcher observes that over the period of time, NPAs and bad loans have been adding in a spiralling manner in Indian Banks. Despite the treatment of stressed assets and prompt corrective actions as per asset quality report by regulators, the results are appearing at a very slow pace. They are of the opinion that strength and sustainability of the credit growth is the need for robust banking in the times to come.

**Tandon, D., Tandon, D. (2019)**, the researchers opined that the Indian Banking Industry is plagued with the issue of asset quality deterioration which has resulted in potential losses owing to improper and insufficient provisions for Non performing assets (NPAs). The immediate consequence of which has been that the existence of the banking industry became difficult. The researchers noted that over years, NPAs and bad loans have piled up in the Indian economy. They further concluded that the major reason of a number of bank frauds has been the lapses on part of the banking operations, primarily being non-adherence to procedures. The study concluded that despite the fact of the preventive measures taken by the RBI for the treatment of stressed assets and also prompt corrective actions to improve asset quality, still the progress has been appearing at a very slow pace and results are not very promising ones. They further opined that strength and sustainability of the credit growth is the need of the hour for improving conditions of Indian banking system in the times to come [1].

**RBI Report (2019)**, this report has come out with the result that the ongoing processes under the Insolvency and Bankruptcy Code, 2016, have helped in boosting the credit environment in India. It mentioned that “the Gross Non-Performing Assets

(GNPAs) ratio of all the Scheduled Commercial Banks (SCBs) declined in 2018-19 after rising for seven consecutive years”. It is also mentioned by the RBI that a part of the write-offs was due to the ageing of the loans and the major part received a recovery boost from the Insolvency Code. The report shows that the GNPAs ratio of all the SCBs declined to 9.1 % in 2018-19 from 11.2 % in 2017-18. The recoveries of the stressed assets improved in 2018-19 as it was propelled by the resolutions that were being made under the Code and it contributed in the recovery of more than half of the amount [2].

**Anant, S., Mishra, A. (2019)**, this research work mentioned that the IBC is one of the major reforms brought about in the Indian legal system. In the views of the researchers the IBC is not only giving strength to the Indian Legal system but also awarding a new identification and recognition to India at the global level. They opined that the Code brings about a consolidation of the existing multiple laws relating to bankruptcy into a single window and have analysed the key features and the legal framework of the IBC. The authors have also tried to analyze the impact of Insolvency and Bankruptcy code on macro environment of India [3].

**CRISIL (2019)**, this press release by the Credit Rating Information Services of India Limited (CRISIL) evaluates that the enforcement of the Insolvency Code has led to the recoveries in the fiscal year 2019 to the tune of Rs 70,000 crore and this amount is twice (Rs 35,500 crore) the recoveries made by other bodies under other laws like, SARFAESI, DRT, Lok Adalats, etc in the fiscal 2018. It calculated that in the 94 resolved cases under the IBC there is a higher recovery rate of 43 % as compared to the recovery rate of 26.5 % under the earlier debt recovery mechanisms. It further said that the recovery made in liquidation of these cases is also twice and this underscores the maximization of the value through the processes of the Code [4].

**Renuka Sane (2019)**, the researcher was of the view that on the passage of the IBC the government had only notified corporate insolvency part and not the personal insolvency in 2016. The study mentions that the scenario of the credit market of India calls for the need for the personal insolvency law. The study makes suggestions on the questions of policy which are to be addressed prior to the meaningful implementation of Law so that the proper design of the subordinate legislation as well as the evolution of the institutional infrastructure is designed. The researcher is of the opinion that debt to GDP ratio in India is much smaller as compared to other developed or emerging economies. As per the study even though the NPAs on personal loans from the banking sector are comparatively smaller in comparison with the industrial loans still they are rising continuously and nature calls for addressal of personal insolvency issues too. The researcher raised serious concerns over agricultural lending. The lenders other than institutional credit have no recourse to legal channel of recovery. The researcher in this paper has provided a brief overview of the legal provisions. The prime motivation as per the author in drafting of the law was its potential impact on the Indian credit market in India. A brief discussion on the distinctive procedures that deal with the loan defaults has been carried out which includes the “Fresh Start” process, providing debt-waiver to debtors meeting certain eligibility conditions as far as income, assets and debts are concerned, The “Debt Recovery Tribunals” (DRTs): the adjudicating authority for corporate insolvency.

The researcher suggested that the success of the IBC hinges on the design of the subordinate legislation as well as the evolution of the institutional infrastructure [5].

**Nishith Desai Associates (2019)**, this research study has analyzed the key impact of the IBC on the Indian debt market in its early stages. It has mentioned that there are numerous challenges in the effective implementation of the Code. In the opinion of the researcher constructive interpretation by the judiciary along with the effective amendments to the IBC have helped in eliminating many of challenges. The researcher opined that the Insolvency and Bankruptcy Board of India (IBBI) which is the regulatory and supervisory body is doing a noteworthy job in proactively spreading awareness. The author has analyzed the important judgments which were pronounced during the year and opined that the intent demonstrated by the IBC in turning around loss making companies is extremely promising for the economy and the banking industry burdened by rising NPAs. The researcher has deeply focussed on 3 segments: (i) the Impact of IBC on Creditors and Investors, (ii) the Statutory and Regulatory Developments and finally (iii) the Judicial Developments that have taken place in India [6].

**Tensingh E., Dr. B.S. (2019)**, the paper has studied the impact of the IBC on India over the period of six years. It has made a comparative analysis between public and private sector banks. The study is divided into two parts: (i) analysis of the advances and NPAs and (ii) explanation of the impact of the IBC on the profitability ratios. The researchers have used secondary data and have analysed 21 public sector banks and 21 private sector banks using the statistical methods of correlation and regression. The results of the study show a significant impact of the IBC on the recovery rate, profitability and the NPA. The study has addressed variations in the policies for the improvement of the Insolvency Code [7].

**Ahuja N., Gupta D. (2019)**, the authors in this article have evaluated the noteworthy changes made in the Insolvency and Bankruptcy Code, 2016 through the Insolvency and Bankruptcy Code (Amendment) Act, 2019 with the purpose of providing greater clarity by permitting corporate restructuring schemes pursuant to resolution plans, upholding supremacy of financial creditors in the process of distribution of funds proposed by the resolution applicant and on the applicability of the resolution plan on all stakeholders and authorities. The article says that the restructuring of the corporate debtor by way of merger or consolidation or sale or transfer of assets of the corporate debtor pursuant to the resolution plan is permitted under the Corporate Insolvency Resolution Process, Regulation 37. The Amendment Act has also clarified that the resolution plan may propose restructuring of the corporate debtor by way of merger, amalgamation and demerger and hence has cleared the doubts on the restructuring under resolution plan. The authors have assessed that the amendment act will maximize the value of assets of the debtor by permitting the resolution applicants to come up with dynamic resolution plans [8].

**Singhania B.K. (2019)**, the article is written by an Insolvency Professional who professes that the primary focus of the Insolvency and Bankruptcy Code, 2016 (IBC) is ensuring revival and the continuation of the entity by protecting it from the death of liquidation. The IBC acts as a shield of the corporate debtor from the hands of its own management. The Code is a beneficial legislation which puts the corporate debtor

back on its feet and it is not merely recovery legislation for the creditors. The interests of the corporate debtor are separated from the interests of the management and the promoters. The article evaluates that the resolution process under the Code protects the interests of the corporate debtor and is not adversary to the interests of the corporate debtor. This article in the end assesses that the IBC gives the corporate debtor a chance to revive itself through the resolution plan before its corporate death (through liquidation) [9].

**Kohli H. (2020)**, the article says that the Insolvency & Bankruptcy Code, 2016 (IBC) was introduced as a reform for improving the financial health of the Indian banks. Resolution is the primary objective of the Code and its purpose is to maximize the value of the assets of the Corporate Debtor and hence for all creditors. the author of this article mentions a resolution plan as a “Jinnie in the bottle” for all the stakeholders as it revives the corporate debtor in hitting back to the mainstream, relief to the creditors and a ray of hope to the employees of the debtor. The article refers to a resolution plan as a revival plan for the insolvent company. The resolution plan is not a sale, not an auction, not recovery, it is not liquidation rather it is a revival plan of bringing back the corporate debtor out of Intensive care unit (ICU). It mentions that the resolution plan is submitted by the prospective resolution applicant and the plans may include – transfer or sale of assets or part thereof (whether subject to security interests or not), it may either provide for satisfaction or modification of any security interest or may also provide for reduction in the amount payable to any class of creditors [10].

**Gupta N., Desai N., Garg E. (2020)**, this research paper has attempted to highlight the background of the Code in the light of the applicable legal regimes before the implementation of the IBC along with the challenges that were faced in the initial stages of its implementation. The study also analyzes the impact of the Code on the macro economy of India with a detailed focus on the effectiveness of the IBC in reducing the level of NPAs in India. It has recognized that the Indian banking sector has gone through several changes over the last few years and there has been tremendous increase in the amount of the NPAs in the country which is a cause of major concern, has put the individuals and organizations under extreme pressure and raised several issues before the banks, corporate and individuals. The researchers have evaluated the introduction of IBC as one of the most effective reform and it has glorified the position of India globally [11].

**Research Methodology.** The research on the present study is a Doctrinal Research involving review of the earlier insolvency and bankruptcy laws that existed before the advent of IBC and the present insolvency and bankruptcy legislation in India and its impact on the economic development of India. The present study is Empirical and an Economic Policy Research. The research design is exploratory design is chosen for this study. Since, the study has to explore the impact of IBC on Indian Economy, therefore, it is exploratory in nature.

### **Results and Discussions.**

#### **Pre-restructuring**

#### **Moratorium**

Once the CIRP application is admitted, the first step of business restructuring under IBC calls for a halt of a few activities. The Adjudicating Authority (NCLT) declares a moratorium prohibiting any initiation of proceedings, continuation of pending suits, execution of any judgement, decree, or order of any judicial authority against the corporate debtor. To avoid the possibility of potentially conflicting outcomes of related proceedings. Furthermore, any asset, security interest, or legal right transference, disposal by the corporate debtor is barred. This ensures that the assets of the business are together during the CIRP to be able to maximise the value and reach an orderly completion of the process. The NCLT also orders a public announcement to be made for the CIRP and invites submission of claims by creditors of the business, after appointing the Interim Resolution Professional (IRP). The effect of the Moratorium lasts till the completion of the CIRP, or when liquidation order is approved by the NCLT. As of March 2020, 3774 CIRPs were admitted, and thus 3774 moratoriums were declared; Chart 2 provides a breakdown of moratoriums declared since IBC commencement.

**Supply of essential goods or services**

An important part of the business restructuring under IBC requires for the business to continue its operations and affairs during the insolvency process to protect the value of assets from deterioration. This is achieved in the pre-restructuring process by prohibiting the termination or suspension of essential goods and services to the business, as may be to keep the business running as a going concern. However, the costs for such goods or services will have to be paid in priority to other costs as part of a resolution plan or during distribution of assets, in case the corporate debtor goes into liquidation. Interestingly, in March 2020, an important update at the Lok Sabha surfaced which recommends that the supply of “critical services” to the business undergoing CIRP should not be mandatory on the supplier as it might cause an undue burden on the latter.

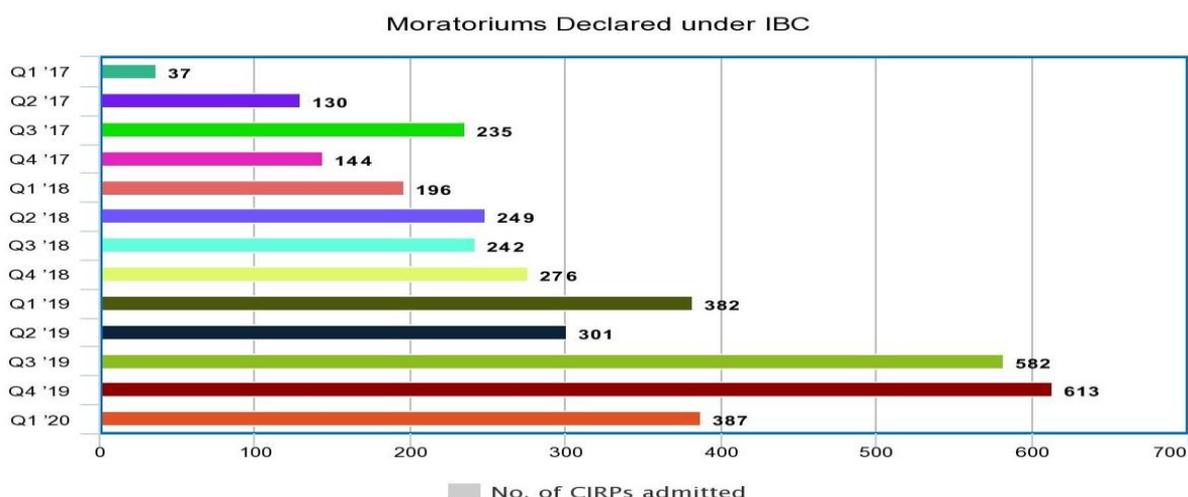


Chart 2.

**Organisational Re-engineering  
Functions of an IP**

Once the NCLT declares a moratorium and appoints the Interim Resolution Professional (IRP), the powers of the board of directors or the partners of the business in consideration are suspended, and the management of operations and affairs is vested in the IRP as the Officer of the Court, to protect and preserve the asset value of the business as a going concern. This shift in the business management structure is ensured to prevent any malpractice that might surface during the insolvency process if the corporation was to maintain its current managerial infrastructure.

The IP has the power to take any action necessary to keep the business as a going concern, and to continue to manage the business operations after the expiry of the CIRP until the Adjudicating Authority (AA) passes an order. The IP can appoint accountants, legal or other professionals as per required in the effective management of the business, and has the authority to enter into, amend/modify contracts or transactions on behalf of the corporate debtor, including the ones entered into before the commencement of CIRP. The authority extends so much so, that the IP has to represent and act on behalf of the corporate debtor with third parties, and exercise rights for the benefit of the business in judicial, quasi-judicial or arbitration proceedings. The personnel of the business and the financial institutions attached with the business are to follow the instructions given by the IP in furnishing all information related to the business.

While the IP conducts the array of business-related duties for the corporate debtor, they also have to conduct the entire insolvency process from maintaining an updated list of claims against the corporate debtor, convening and attending all meetings of the committee of creditors (CoC), preparing information memorandum, presenting all resolution plans at the CoC meetings, to most importantly, raising interim finances for covering the cost of the ongoing CIRP.

**Table 1.**

### **Number of ongoing business organisational restructuring**

<b>Status of Ongoing CIRPs</b>	<b>No. of CIRPs</b>
>270 days	738
>180 days < 270 days	494
>90 days <180 days	561
<90 days	377
<b>Total</b>	<b>2170</b>

**Source: IBBI**

Table 1 provides an overview of the number of ongoing business organisational restructuring currently facilitated by an IP under CIRP until March 2020.

### **Power of CoC**

Although the power of an IP during a CIRP is immense, the Code provides that the IRP appointed by the NCLT is subject to replacement with a different Resolution Professional (RP) if the Committee of Creditors, in its first meeting, reach a majority vote of 66 %. The CoC do not have to justify the reasons for doing such. If not, the IRP is retained as the RP for the rest of the insolvency process. The CoC suggests an RP to the Adjudicating Authority for approval. A database of all the IBBI-registered IPs is shared with the AA, so the IP to be appointed as an RP can be verified against

any pending disciplinary proceedings. Till March 31, 2020, a total of 826 IRPs have been replaced with RPs.

**Table 2.**

**Status of IP and of CIRPs**

Status of IP to function as RP	No. of CIRPs
IRP became RP	2631
IRP different from RP	826

Source: IBBI

**Business personnel co-operation**

To ensure a proper flow of managerial restructuring, the Code mandates all personnel, including promoters related to the business to cooperate with the IP and provide access to documents and records of the business as and when required by the IP to manage the affairs of the corporation. The non-compliance of this obligation causes a hindrance in the duties of the IP and as noted in the matter of *Ajay kumar. Vs. Shree Sai Industries Pvt Ltd & Anr.*, necessary steps can ensure obligation via legal enforcement authorities and, if necessary, via criminal action against such business personnel or promoters.

**Financial Restructuring**

**Interim Finance**

Financial restructuring under IBC is particularly important, as a business entering insolvency proceedings is often financially distressed for a certain period of time and finds it extremely difficult to obtain credit from hesitant lenders. The IBC addresses this issue by allowing the IP to raise “interim finance” while managing the operations and affairs of the corporate as a going concern- basically, any financial debt raised by the IP during the period of CIRP.

The IP requires prior approval of the creditors whose debt is secured over an encumbered property if the interim finance is raised by providing security of such property of the business. Such interim finance is treated as a part of the costs incurred during CIRP and is repaid in priority to other debt as part of resolution plan. Such priority also applies in distribution of assets in case the business goes into liquidation. As of March 2020, INR 6.34 crores have been raised in interim finances.

**Conclusions and Recommendation.** The approach under the IBC towards reviving a “sick” business in a time-bound manner of 180-270 days, by restructuring it organisationally and financially is unique. The importance of an Insolvency Professional in achieving this goal is immense and if a business restructuring plan is not agreed to, or implemented by the CoC, the business goes into liquidation. Till date, business re-engineering under IBC has revived 221 business, while constant updates in the legislation increase the chances of more business revivals.

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