Impact of the Insolvency and Bankruptcy Code on Non-Performing Assets

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Abstract

Purpose: This research paper aims to assess the implementation of the IBC and its impact on NPAs and the Indian banking system as a whole.

Approach/Methodology: The research adopted the approach of content analysis, where quality articles, excerpts, news articles and research papers have been thoroughly studied and documented.

Findings: The two prime findings are, firstly the IBC has the power to bring about sweeping changes in insolvency proceedings and resolution, and thisshould indirectly encourage healthy business functioning in India. Secondly, banks will be required to couple the effect of the IBC by following adequate corporate governance and lending practises to ensure such challenges, such as NPAs do not crop up again.

Research: The research methodology adopted is qualitative and secondary in nature. Based on secondary research obtained interpretations, opinions and conclusions have been drawn.

Value: The paper will aid further research and studies on topics of corporate governance and lending practises of banks.
Key words: Banking, IBC, NPA, insolvency, resolution, bankruptcy, corporate governance

Introduction

The Indian banking system has been battling a regressive force, namely a huge number of stressed assets, since a considerable time period. It had been highlighted by many experts and professionals that the country lacked adequate bankruptcy laws and they further deemed the insolvency resolution system of India to be inefficient.Previous regimes for addressing insolvency proceedings in India included the SARFAESI(Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) act , Presidency Towns Insolvency Act(PTIA) and Provincial Insolvency Act (PIA), to cite a few.

However these previous acts had certain loopholes, further they did not provide a level playing field to all the stakeholders and the main deterrent was a lack of uniform procedures to govern insolvency processes.

To cite few challenges, rights of debtors and creditors were scattered across various legislations, the PTIA and PIA defined insolvency differently; moreover the previous acts were said to be inefficient and were not time bound which delayed proceedings. The SARFAESI act, does not provide any rights to most offshore financial creditors as well as many domestic creditors,hence demonstrating the lack of equal rights to different classes of creditors.

The IBC, is a unified and comprehensive framework for resolving insolvency and bankruptcy for companies and individuals in India. It is comprehensive since all existing laws which were in practise were consolidated under this code. It received presidential assent on 28 May 2016 and has hence been in practise for more than a year now. The above issues presented are precisely what the IBC seeks to put a rest to.

Literature review

The IBC is an additional tool, in addition to existing reforms and frameworksto take a targetedapproach and deal with the major chunk of non-performing assets, which can be and need to be resolved quickly, in order to bring a degree of normalcy to the banking sector,**Dr. V. S. Kaveri (2017).**It would help to get rid of the stalemate and get the banking system to grow further by resolving bad loans. The discussed the IBC, focussing on amendment of two laws namely, the Banking Regulation (BR) Act, 1949 to tackle the menace of massive stressed assets in

The banking system yielding more specific powers to the RBI. And the Prevention of Corruption (PCA) Act, 1988 which was formulated with the intent to encourage bankers to take commercially bold decisions, especially on haircuts on distressed assets, without fear of subsequent prosecution. They continued to say that the code would help banks identify NPAs early and most importantly it would require coordination among all possible and relevant stakeholders namely banks, creditors, debtors, the IBBI, ARCs, rating agencies and PE firms.

They praised and acknowledged the government's approach towards resolving the issue of NPAs and stated that such laws form an essential part of a fine-tuning mechanism. In such dynamic business environments, laws cannot remain constant and where failure has taught lessons, existing mechanisms have been improvised and made more robust.

H JayeshandAditiBagri (2016), provided the various frameworks of the code are implemented as the legislature desires, two main changes should be anticipated, firstly business contracts and transactions will be treated with sanctity and secondly,there will be a boost to healthy and robust credit culture. They further concluded that there are various provisions and rules of the code, they need to be followed on a day-to-day and the individuals in charge of administering the code have the power to drive its success, however only time can demonstrate the effectiveness of the code.

Abhishek Saxena and AkshaySachthey(2016) discussed the likely challenges of the IBC. They stated that there lacks adequate clarity on the various institutions namely IPs (insolvency professionals), IPAs (insolvency professional agencies) etc. The Code allows for multiple IPAs but fails to clarify how various IPAs/RPs will interact. Also, the Board has been conferred with many powers to make rules andregulations in order to carry out the provisions of the Code, however the implementation will largely dependon the subordinate legislation under it.

Some provisions of the code appear to be skewed more heavily in favour of financial creditors -the absence of operational creditors from the creditors'committee could prove to be an issue. Financial creditors could misuse certain provisions/cases, since they areentitled to approach the NCLT without any notice tothe debtor.

The reciprocal system of the code enables the government of India to enter into agreements with governments of other countries; however the efficacy of this very mechanism is open to debate as it would involve lengthy negotiations with individual nations. One may argue that a uniform code of cooperation such asthe UNCITRAL Model Law on Cross-Border Insolvency is a wiser and efficient option. Further the code doesn't provide for clear transitory provisions, it could be the case that the NCLT will get cases transferred to it bodies like the Company Law Board (CLB)and the high courts , in addition to already existing cases under the IBC.

Objectives

The study aims to thoroughly study the impact of the provisions and framework of the IBC on the Indian banking system and NPAs .The study also encompasses the systems that banks will need to implement to ensure sustained health and sound lending practises of the banking system.

Significance of the study

The previously existing regulatory framework for debt recovery, insolvency resolution proceedings and liquidation procedures were fragmented in earlier laws, this provided a window to the defaulter to take advantage of the loopholes arising, since legal provisions would conflict on certain occasions. Further, it also raised disputes at various judicial forums and proceedings which delayed timely resolution of cases. Hence, the introduction of the IBC. The most recent World Bank statistics of June 2017, indicated an average time of 4.3 years for resolving insolvency in India, with a recovery rate of 26.4 cents on the US dollar.

Methodology

The approach is qualitative in nature, wherein various research papers and other sources of secondary data were studied, following which interpretations and conclusions were drawn.

Introducing the Code

The Code has four institutions established under it, which play a key role in implementation of the code

The Board - established for the purpose of governance of administrative implementation

The National Company Law Tribunal – it is the judicial forum as well as adjudicating authority for all insolvency related issues;

Insolvency resolution professionals and agencies - they resolve all insolvency processes as per the guidelines, rules and regulations prescribed in the Code and

The information utilities, which is a storehouse of important financial information which helps establish defaults and verify claims in an efficient and time bound manner.

The IBC is applicable to partnership firms, limited liability partnerships, companies and individuals.

When a corporate entity applies for insolvency / bankruptcy, the company itself or a person given authority by the company can apply for the same, whereas in case of partnership firms and individuals a resolution professional applies and initiates the insolvency proceedings.

The structure of the code, irrespective of whether the entity is a corporate or partnership, is as follows. In the first stage a resolution plan is formulated wherein the debtor is provided with a window of opportunity to repay all debts.

The second stage follows if and only if, the debtor has been unable to repay his dues, or the resolution plan between the debtor and creditor fails, this is the worst case scenario in and then liquidation/bankruptcy follows.

Once an insolvency application is put forth, from that date onward, the corporate debtor is automatically prohibited from disposing its assets until the insolvency process comes to conclusion.

The code deals with insolvency proceedings as follows:

• DRT: Under the code, the Debt Recovery Tribunal has the power and authority to deal with insolvency cases of individuals and partnership firms.

• NCLT: A very prime body, under the purview of the IBC is the NCLT (National Company Law Tribunal) which has been empowered to deal with matters relating to limited liability partnerships (LLP), companies and other incorporated bodies.

The various types of creditors are operational creditors,financial creditors, unsecured creditors, secured creditors etc. The IBC places heavy emphasis on the difference between operational creditors and financial creditors.

An operational creditor is an entity to which claims in respect of provision of goods/services are owed, they include employees and vendors. Whereas a financial creditor is an entity/person to whom financial debt namely principal and interest is owed. Financial debt is also generically defined as debts ‘disbursed against the consideration for the time value of money ’.

An important element of the code is the “committee of creditors”. Owing to this committee, financial creditors of corporates have the power to take critical decisions which ultimately decide the result of the insolvency proceedings of the company. However the committee needs to accomplish majority of votes, only then will it have the power to make such decisions.

Moving on to operational creditors, they are included as part of the committee and do participate in the discussions and deliberations but do not have any voting rights.

In case of individuals and partnership firms the DRT – debt recovery tribunal calls for a meeting of creditors.

An insolvency resolution professional (IRP) is duly appointed once an application for insolvency is admitted; the IRP directs the entire process ie; ensures resolution plan is implemented smoothly and if needed that the liquidation process is efficiently and correctly conducted. All of these processes are strictly carried out as per the guidelines falling under the ambit of the IBC.

Since the cases handled are extremely sensitive and critical, the IRP need to possess technical,legal, managerial, and most importantly sectorial knowledge and expertise.

The crux of any business is the going concern principle and owing to this principle, once a resolution plan is submitted, the IRP takes allnecessary decisions and actions part of the debtor and ensures that business functions are not compromised; in this manner an IRP proves its advantage since it successfully demarcates operations and management from promoters.

Once an IRP is duly appointed the powers of the board lay temporarily suspended, until the insolvency resolution process ends, as a matter of fact during this duration, the power of the board rests with the IRP. During this duration, the board members report to the IRP.

Lastly to ensure the principle of going concern is maintained, the IRP provides interim financing if needed, during the course of resolution.

The priority of debt:

- insolvency resolution cost and liquidation cost;
- debts to secured creditors (who have relinquished their security interest) and workmen's dues (for 12months before commencement);
- wages and unpaid dues to employees (other than workmen) for 12 months before commencement;
- financial debts to unsecured creditors and workmen's dues for earlier period;
- Crown debts and debts to secured creditors following enforcement of security interest;
- Remaining debts;
- Preference shareholders; and
- Equity shareholders or partners.

Most importantly, the code includes provisions for cross border insolvency, given the prominent trend of international business and globalisation; almost all business and firms of today have cross border transactions and business functions. As per the provision, the central government can enter into agreements with any country outside India for enforcing provisions of the Code and notify applicability of the same from time to time. In addition, assets of the debtor located outside India may also be included in resolution process and /or liquidation stages if need be.

Initiation and submission of an IRP, can be carried out by any person to whom a financial/operational debt is owed,in addition, a company or LLP can also itself initiate the IRP, provided thatsuch an entity is not already undergoing an existing resolution process, has not been subject to a liquidation order and has not already undergone and completed the IRP or violated any resolution plan within the preceding 12 months.

When a default which is in excess of 1 lakh rupees occurs, an application for initiation of IRP can be made before NCLT.

On receipt of the IRP application the NCLT is required to check and verify the existence of debt.

Once the application is admitted, the NCLT declares a 180-day moratorium period, during which existing suits or proceedings against the debtor are prohibited. And most importantly, the debtor is precluded from transferring any of its assets during the moratorium.

The NCLT is further required to publicly announce the initiation of IRP and call for submission of claims.

After the collation of claims, the RP createsa committee of all financial creditors of the debtor. The creditors' committee has the power to ratify the appointment of the interim RP or replace the RP if required. The creditors committee has the primary function of approving a resolution plan in respect of the debtor by a 75 per cent majority. A resolution plan can be submitted to the RP by any individual, and the payment of IRP costs and debts of operationalcreditors has to be provided for. Certain ancillary functions of the creditors' committee include approval of actions relating creation of security interestover the debtor's assets, raising interim finance, amendment of constitutional documents and undertaking related party transactions. The entire IRP is required to be completed within a period of 180 days from the date of the application for initiation of IRP (extendable by 90 days under certain circumstances).

Discussion and analysis:

Economy	Resolving Insolvency rank	Recovery rate (cents on the dollar)	Time (years)
Hyderabad	1	15.9	7
Ludhiana	2	15.3	7.3
Mumbai	3	15.1	7
Ahmedabad	4	15	6.8

Bhubaneshwar	5	15	7.5
Gurgaon	6	14.7	7
New Delhi	6	14.7	7
Bengaluru	8	14.1	7.3
Indore	9	14	8
Chennai	10	13.8	7.5
Kochi	10	13.8	7.5
Guwahati	12	13.5	8.3
Ranchi	13	13.2	8.5
Jaipur	14	12.3	9.1
Patna	15	12	9.3
Noida	16	11.9	8.7
Kolkata	17	9.1	10.8

The Government of India has been working in constant sync with the RBI to restore the banking sector back to normalcy. Reforms and acts like the IBC itself, the bank recapitalisation programme and asset quality review of 2015 were implemented, and have the common and crucialobjective of helping banks write down bad loans.

The amendment to the IBC,was met with complete lack of concern from bidders for most small and medium sized companies that have initiated cases under the IBC, promoters are the sole entities displaying interest in the bidding process, however the new ordinance has barred all promoters from bidding for their own companies until they settle the NPA. However, very few promoters are in financial positions strong enough to arrange for funds required to resolve the insolvency. Hypothetically if they did arrange forfunds, they would have to do so at an evenhigher cost than what they originally borrowed at, and this route would end up proving very risky in the long run.

Citing positive indicators, the RBI has asked banks and other financial institutions to share information about assets of creditors with the information utilities registered under the IBC. Earlier banks were not comfortable in parting with such information, however this directive they will need to comply. An information utility is an information network which stores data like default, security interests and borrowings. This information is provided when required to firms themselves, insolvency professionals, financial institutions, and other stake holders.

This new RBI directive is very critical because the important financial information stored in such information utilities will aid the speedof bankruptcy proceedings and liquidation processes. Most importantly, it also verifies information received from either creditor or debtor. It givesdual benefit since; the records maintained would help creditors in taking informed decisions regarding transactions and at the same time it would make debtors vigilant as credit information is available with the utility.

Moving on to the flip side. The IBC may result in banks having to take a hit in earnings.The RBI has asked banks to provide for 50 per cent of the value of assets for all cases referred to the National Company Law Tribunal (NCLT) and this has raised concerns since this directive will impact bank earnings.

The next big challenge is that of haircuts. For the big 12 accounts, that banks referred to the NCLT, there is still a considerable amount of interest from bidders. But the catch is that bidders expect the banks to take massive haircuts, for some it stands at 50%, some are targeting 70 or 80 per cent haircuts, in order to get the deals done. Lastly if a company goes into liquidation, banks have to make a 100 per cent provision for the loan. So the bank is caught in a web of challenges, assuming they do get a buyer for the asset, they will probably have to take an enormous haircut. And the worse of the two is if they don't find a buyer, the firm will have to go into liquidation and again banks will ultimately end up losing almost all the money lent.

Many professionals have also added that apart from the uncertainty pertaining to asset pricing there is also significant concern about unknown liabilities. These unknown liabilities encompass labour dues, certain tax dues, operational creditors etc. basically liabilities which are outside the control of promoters, hence banks wonder if they will get the entire price of the asset remaining after the resolution , as these extra unknown liabilities may eat into the final price.

Another key aspect is that of the shareholders, stocks of the 12 major accounts, have either fallen or have shown wide ranging price volatility, so if haircuts are enormous, creditors themselves will be left with nothing much in hand let alone shareholders, and the worst possible outcome is if the company goes into liquidation in that case shareholders will be left with nothing. The other outcome possible is expecting a long term and sustained bounce back in share price due to change in management.

The ordinance

Not even a year of the implementation of IBC was in effect, when an ordinance was promulgated. It restricted the promoters' ability to bid for stressed assets. This topic has been much debated by well-known professionals. The category of professionals in favour of the ordinance stated that it was a timely necessity since entities who have failed to use their assets wisely must be barred from bidding, the other category were against it, stating that it will hinder a healthy asset price discovery process and it goes against the very premise of the IBC which stipulates the need to maximize asset value by making the bidding process encompassing of all bidders.

The amendment bill was passed by the Lok Sabha in December 2017. The Finance Minister, Mr.ArunJaitley, stated that loan defaulters mustn't be allowed to "merrily walk away" by paying only a fraction of the amount due. However the key point is that promoters have not been entirely barred, even defaulting promoters were given a chance to bid for assets provided their dues were repaid within a month's time.

And most importantly this amendment bill has paved way for entities namely, the amendment excludes ARCs, AIFs and scheduled banks from the definition of "connected persons" thereby protecting them from becoming ineligible due to an indirect exposure of sorts. The above mentioned entities have acquired distressed assets in the past and as a consequence of this, these assets have been classified as NPA which barred them from participating in the bidding process. So had the amendment bill been as harsh as to exclude promoters irrespective of any clause, even these entities would lose the opportunity to bid for assets. Speaking of the RBI's Scheme for Sustainable Structuring of Stressed Assets, which provided equity participation in stressed projects, to banks, would inadvertently make banks promoters and had the ordinance been harsh as discussed earlier, even they would have lost out on the bidding process as they would be branded as "promoters". The amendment corrects these anomalies. It is a fine balance between punishing wilful defaulters and ensuring a more effective insolvency process.

Another element which the amendment introduces for disqualifying a resolution plan is if the account has been an NPA for more than a year, and hence the message conveyed is that sitting in inaction will be looked down upon and penalised.

Further the bill also encompasses any individual responsible for NPAs under the insolvency code. It also allows guarantors of insolvent firms to bid for other firms under the insolvency process. In addition, the law does not recognize promoters who may be facing genuine financial/operational difficulties because of external factors such as policy decisions.

In conclusion to the amendment, it has been termed as a much needed amendment by majority of the professionals. They stated that Europe, the US, the UK have had several amendments in the last three decades and no law can stay static in any business environment

The amendment has been said to be vital for the credibility of the code and it may be successful in barring wilful defaulters who made the very system unhealthy but it has also been claimed by some to be a messy fix, since it is unfair to genuine promoters, namely those of smaller and newer firms, who have been affected by global turndown,demand hits and resulting glut and non-promoters will not be very aggressive in placing their bids and banks will be pressurized for more discounts.

Another noteworthy trend is big strategic players entering the domain. As demonstrated in the case of Essar Steel, its 10 mtpa steel plant has drawn keen interest from big strategic players such as Arcelor Mittal, Nippon Steel, Vedanta and Tata Steel. Now if these players do buy out the asset, they will gain control of the firm, implying that in order to maintain healthy business, they need to have good credit rating and business policies as well.Now, while the twelve major NPA have received interest from noteworthy firms and strategic players, including large domestic and foreign investors, the case is proving to be very different and difficult for small and medium enterprises. Owing to their size, they are unable to attract quality bids; this is giving the image of an uneven playing ground or differential treatment. Considering PE funds, certain PE funds had tied up approximately 10 billion USD in Indian NPAs and subsequently may be debarred from the bidding process, as the amended section 29(A) of the insolvency code states:"It applies to bidders "under any law in a jurisdiction outside India".Hence there are chances that global equity funds having majority stakes in defaulting firmsmay not be able to place bids.There are possibilities of increasing participation by ARCs , to cite an instance, Gujarat NRE Coke Ltd's nine month period ended in January 2018, as a result of which lenders led by State bank of India considered selling stake to Asset Reconstruction Companies (ARCs) under the National Company Law Tribunal (NCLT).

A disadvantage of the amendment is that since it has filtered out many bidders in the name of promoters, resolution professionals have started seeking an extension to the 270 day deadline.

Certain cases received only single bids, which are from the promoters.

All reforms need to be given the right push and the RBI does just that, it has encouraged banks to pursue the IBC route for resolution, since resolution of stressed assets through other routes has been dismal. Data has indicated that in the period of 2015-17 the average recovery ratio of Indian banks was 26.4 per cent. Private sector banks performed much better and had a recovery ratio of 41%, state banks had a recovery ratio of 25 percent. Another harsh fact is that in the last eight years' recovery of bad loans declined steeply to 20.8 per cent, in March 2017 from 61.8 per cent in 2009.

The RBI is never behind when it comes to steering banks in the right direction, it has advised banks to file for insolvency on their own rather than waiting for directions/instructions from the regulator itself. This prompt action on part of the banks will enable them in getting best values for the stressed assets. Some banks have taken voluntary initiatives Mr. B Sriram, MD, SBI stated that they are voluntarily taking action in certain cases, like monitoring SMA accounts and have even put early warning systems to find resolutions promptly.

A very pivotal point to discuss, is the insolvency resolution professionals. Many have complained about the quality of insolvency resolution professionals, authors of the IBC have stated that this is a brand new profession and many more will be required in near future, however it is a learning process. In addition these professionals, have to now mandatorily get themselves registered under the IBBI from April 2018, in order to then be deemed to be a registered valuer. The valuer has to have a recognised educational course conducted by a Registered Valuer Organisation (RVO) and pass the valuation examination conducted by the IBBI.

Considering SMEs:

The government has placed special emphasis on SMEs and as a result of this focus, it has started formulating a less complex version of the insolvency and bankruptcy code forpartnership and proprietorship firms, the legal form that most small and mediumenterprises (SMEs) take. Although the loans are smaller in value, the number of SME firms and thereby SME borrowers greatlyoutnumber companies as a result of which their borrowings tend to exert a significantinfluence on the stability of the financial sector. The IBC focuses only on firms and notother forms of organizedeconomic activity. Since the SME sector accounts for 33% of manufacturing output and is a source of potential employment with lowcapital, and hence the government's keen interest to create an efficient andlow-cost insolvency code for the SME sector. The

Insolvency and Bankruptcy Board of India (IBBI) has started working on ablueprint for the SME bankruptcy code.

International Insolvency Laws:

Since the world today is highly interconnected and every other nation is a participant of international trade, keeping abreast of latest developments in bankruptcy and the various insolvency laws is essential.

China's new Enterprise Bankruptcy Law became effective in 2007. The law clarifiedmany provisions of the 1986 Interim Enterprise Bankruptcy Law.It providedinvestors and creditorswith more transparency, certainty and protection during a restructuring process. One may draw parallels with India's very own IBC in this regard, the IBC also seeks to provide transparency through the information utilities institution and provides a level playing field.

China's new law has drawn many concepts from the United States Bankruptcy Code, hence signifying the importance of being aware of international insolvency laws. Knowing other countries' legal framework can be utilised to shape another countries insolvency laws as well. The most sweeping change pertaining tointernational investors is that the Chinese government will cease to play a leading role in abankruptcy case.

This law also takes on an international / cross border view by considering the assets of a debtor located outside the boundaries ofChina. Similarly the IBC also gives due consideration to cross border insolvencies.The law has assimilated many internationally recognized insolvency

Concepts, it has also made bankruptcy procedures streamlined and takes the interests of creditors into due consideration, this has improved investment environment in China. It also provides an easy exit strategy for foreign investors, the strength of the same with respect to the IBC is still yet to be tested.

Bankruptcy in Russia has often been caused by illegal and negligent actions of management and shareholders; in 2016 many amendments were passed to the existing bankruptcy law. These amendments made rules even stricter, for example a clear definition of controlling person was made. This definition was also made broader to include shareholders, members of the board, actual owner etc.

Certain courts in Singapore and USA have implemented guidelines for cooperation and communication between courts, for cross border insolvency matters. Communication between courts can sometimes be non-existent and even result in delays. The guidelines will facilitate a more orderly, efficient and timely determinationof relevant issues and there's significant contemplation that it will be implemented across jurisdictions in U.S., U.K., and Australia.

In November 2016, the European Union released a newly proposed insolvency directive with an aim to provide enhanced legal certainty on insolvency and bankruptcy matters and to eliminate barriers to developing capital marketsby providing more legal certainty on insolvency and bankruptcymatters to firms and investors operating across the EU.

This newly proposed directive seeks to, create new jobs and preserve existing ones jobs, attract more investors and helpeconomies better deal with economic shocks as a key part ofthe EU's Capital Markets Union Action Plan and Single MarketStrategy.

In the EU, every year nearly 200,000 firms go bankrupt and 1.7 million people lose jobs, this fact makes it clear that insolvency resolution and restructuring needs to be more efficient.

The current recovery rates in the EU range from 30% to 90% and the length of insolvency proceedings lasts from few months to four years.

Conclusion

The core objective of the IBC as mentioned by the NCLT president, Mr. MM Kumar is to find an appropriate solution for stressed assets and liquidation would have to be considered as the last resort.

Thus while the IBC provides a good way of cleaning up the mess of companies that were in serious trouble, and it will also finally end the amount of NPAs in the bank's books, it doesn't help the banks get back much of the money that was lent out. So one can conclude that for long term benefit one needs to go through short term pain, banks will have to part with earnings to at least set up a foundation for cleaner and healthier banking practises. Banks from their end need to ensure they follow adequate and proper corporate governance and lending practises to ensure such evils of the banking system do not crop us again.

If the IBC is implemented the way the legislature plans and intends to, it will bring radical changes in businesses and insolvency in India.

Banks and businesses will experience stronger credit culture, business and financial contracts will be strongly abided by and another possible by product would possibly be enhanced corporate governance and lending practises of banks, in order to ensure fresh bad loans don't arise.

Coming purely to the business point of view, the code will expedite insolvency proceedings, which will increase investment activity and thereby it will increase ease of doing business in India. The code will aid the Government of India in achieving its goal of making India an attractive business destination.

Looking at the situation optimistically, the IBC has the power to introduce structural change in the functioning of borrowers and lenders; in addition it includes even the smallest of stakeholders like employees and operational creditors against capitalistic corporates.

The point remains, whether this is enough punishment for promoters with ill intentions and wrong business habits.For example, suppose a promoter has siphoned off thousands of crores of taxpayer funds and at the same time the company has become bankrupt, the worst outcome is him having to forfeit the company, however the act has been committed he has huge sums of money and can continue his existence for years to come, hence professionals have stated that the IBC framework should dig deeper and investigate the true root, a system of accountability is needed to strengthen and make the law more meaningful.Regimes and debt restructuring plans were previously available too, and the point remains that there are RBI directives which allow for resolution of insolvency cases outside the ambit of NCLT and IBC, which provides different guidelines to promoters and other stakeholders, as a result of this certain individuals have stated it is discriminatory for an entity going through insolvency resolution via NCLT and less harsh for entities going via non NCLT routes, however the answer to this lies in the very fact that going ahead the IBC and NCLT are going to be key and universal platforms for the same and hence there is no point arguing about the nature of this discrimination. Going forward all resolution plans will be under the ambit of the IBC.

This code also instils a sense of financial discipline, by penalising inaction on debt ie; NPA accounts for more than one year are penalised.

Limitations

The study was confined within qualitative measures only and has not captured any quantitative measures.

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