



**Insolvency and Bankruptcy Code, 2016**  
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**Brahmayya & co.**

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## Background

The Insolvency and Bankruptcy Code, 2016 (“the Code”) is the insolvency and bankruptcy law of India which received the assent of the President in May 2016. The Code also seeks to repeal the obsolete laws like Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. It also seeks to amend 11 regulations relating to Companies Act, 2013, Recovery of Debts Due to Banks and Financial Institutions Act, 1993 , and Sick Industrial Companies ( Special Provisions) Repeal Act, 2003 , SARFESI Act, 2002 etc. Different dates are appointed for enforcement of the provisions of this Code, accordingly various provisions of this Code shall come into force, as notified by the Central Government in the Official Gazette from time to time.

## Object of the Code

The main object of this Code is to consolidate and amend the existing laws which are related to reorganization and insolvency resolution process concerning corporate persons, partnership firms, and individuals in a time bound manner. It aims at balancing the interest of all the stakeholders, and provides for establishment of Insolvency and Bankruptcy Board for dealing with matters connected with the Code. The code also aims to ensure maximization of the value of assets of the Debtor and availability of credit. In other words, various banks are playing the role of financial creditors in the economy, by supplying credit for carrying out economic activities and the code is all about speedy winding up of debt related matters thus freeing up the bank resources for carrying out other productive activities.

## Application of the Code

The provisions of the Code are applicable to

- Company incorporated under the Companies Act, 2013 or under any previous law,
- Company governed under any Special Act, for time being in force, to the extent, the provisions are consistent with the provisions of Special Act.
- Limited Liability Partnership
- Body incorporated under any law for the time being in force, as specified by the Central Government by notification
- Partnership firms
- Individuals

The Code offers a uniform, comprehensive insolvency legislation covering all companies, partnership and individuals except for financial firms. Some Key terms and aspects dealt within the code are articulated.

## **Corporate Insolvency Resolution**

A financial creditor, an operational creditor or a corporate debtor can initiate corporate insolvency resolution process against a corporate debtor who has committed a default, before the Adjudicating Authority. In respect of Companies, LLP, National Company Law Tribunal (NCLT) shall act as the Adjudicating Authority. The Code provides for congregated platform for both debtors and creditors for seeking remedies against the debtors without resorting to any other laws which are available as remedy. It addresses the problem of multiplicity of laws like SARFESI, Sick Industrial Companies Act etc.

## **Insolvency Professionals**

Insolvency Professionals (IPs) are the licensed quasi-administrators responsible for carrying out the resolution process. They are certified group of professionals enrolled with IPA (Insolvency Professional Agency) and are regulated by the Insolvency and Bankruptcy Board of India and IPA. On commencement of liquidation process, they assume the role of the Liquidator unless replaced by NCLT. Insolvency Professional Agencies play a role in developing professional standards, code of ethics and act as a first level regulator of IPs. It is an institution that certifies such IPs.

## **Insolvency Regulator**

The Code provides for establishment of an Insolvency and Bankruptcy Board of India. It performs the function of 'watch dog' or a supervising authority over insolvency professionals, insolvency professional agencies and information utilities and other institutions which are established under the Code.

In respect of orders passed by the Board in insolvency and bankruptcy matters, an appeal against the same can be preferred to National Company Law Appellate Tribunal (NCLAT).

## **Insolvency Adjudicating Authority**

Under the said Code, there are two Adjudicating Authorities having judicial power to exercise control over the insolvency and liquidation process. NCLT shall entertain applications for initiating insolvency and bankruptcy. An appeal against its decisions shall lie before National Company Law Appellate Tribunal (NCLAT). Jurisdiction is to be exercised by NCLT shall be the one within whose territorial jurisdiction the registered office of such a Company is established.

While, DRT (Debt Recovery Tribunal) is the adjudicating authority having jurisdiction over individuals and unlimited liability partnership firms, appeal against the decision of DRT can be preferred to Debt Recovery Appellate Tribunal (DRAT). Finally Supreme Court of India has an appellate jurisdiction over NCLAT and DRAT.

## **Creditor's Committee**

It is constituted by the Resolution Professionals consisting of financial creditors only. It includes only financial Creditors as decision makers and decisions are required to be approved by a majority of 75%. Operational Creditors do not have a voting power, however if their percentage reaches more than 10% of aggregate they are allowed to attend the meeting as mere observers.

## **Resolution Process for Corporate Person**

In corporate matters, if any debtor commits a default, financial creditor, an operational creditor, or the corporate debtor itself can initiate the corporate insolvency resolution process. The financial creditor, either by itself or jointly with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor. The Application has to be filed before NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located at the time of occurrence of default. Along with Application, Financial Creditor shall furnish record of the default recorded with the information utility or any other record or evidence of default, name of the interim resolution professional and any other information specified by the Board. Insolvency and liquidation of corporate debtors can be initiated where the amount of default is Rs.1 Lakh. However, the minimum amount of default of higher value not exceeding Rs.1 Crore, may be specified by the Central Government.

## **Corporate Debtor**

Corporate Debtor means a Corporate Person owing debt.

## **Corporate Person**

Corporate Person means a Company defined under Companies Act 2013 or a LLP or any other body incorporate but does not include financial service provider.

## **Commencement of Process**

The Corporate Insolvency Process shall commence from the date of admitting the Application. Upon admission of such application, the Adjudicating Authority declares a moratorium, issues a public notice and appoints the interim resolution professional.

The timeline within which insolvency resolution process is to be completed is 180 days, during which NCLT will hear proposals for revival and decide on the course of action. This period can be extended to further 90 days on a resolution passed by a vote of 75% by COC (Committee of Creditors) and NCLT is satisfied with such resolution that the corporate insolvency resolution cannot be completed within the period of 180 days.

### **Liquidation**

Once the liquidation process is commenced, the Insolvency Resolution Professionals assume the role of Liquidators, however they can be replaced by the Adjudicating Authority. Once the liquidation order is passed, no legal proceedings can be commenced or continued against the debtor. A moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor vest in the liquidation estate.

### **Conclusion**

The procedure for Winding up of Sick Companies under the Sick Industrial Companies (Special Provisions) Act 1985 (SICA) resulted in unavoidable delays and also failed to provide balanced and effective framework for all the stakeholders. Inordinate lengthy procedure resulted in erosion of the asset values. The Insolvency and Bankruptcy Code, 2016 has been enacted to address this problem and thus provides for time-bound winding up of the Company, LLP and accordingly SICA stands repealed.

The Code, at best, is a plan currently awaiting execution and is definitely a big step towards cleaning the balance sheet of banks and also lays down a comprehensive insolvency code, which will go a long way in inculcating financial discipline among Debtors.

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