

RVO ESTATE MANAGERS & APPRAISERS FOUNDATION



E-Notes

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Article – 3/2021

KEY PILLARS OF SUCCESS OF INSOLVENCY & BANKRUPTCY CODE, 2016

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❖ Basic Idea

The basic idea of the Insolvency Code, 2016 is that when an enterprise (individual, firm, or corporate person) defaults in making payment of its dues within the stipulated period, the control of the defaulting enterprise shifts to Committee of Creditors (COC) i.e., financial creditors. The entire process is being handled by Insolvency Professional(IP)/ Resolution Professional (RP). There are specified time limit to evaluate proposals for rehabilitating the said financially sick enterprise or taking it to liquidation. IP has control over the debtor under the supervision of COC.

Presently the Code is not made applicable to partnership firm and individuals.

Why the Insolvency Code is not termed as an ACT ?

What is an act ?

ACT is a decision made passed into law.

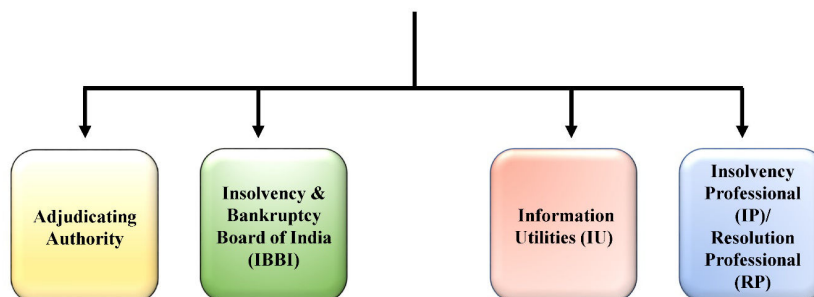
What is Code ?

CODE is a collection of ACTs already passed into law.

CODE is a collection of laws, rules and regulation that are systematically arranged.

CODE is a compilation of already existing statutes.

Pillars housing the complete infrastructure of the Insolvency & Bankruptcy Code, 2016



❖ **Adjudicating Authority (AA) :**

The Adjudicating Authorities are as follows -

- a. In case of Insolvency of companies, the AA is the National Company Law Tribunal (NCLT).
- b. The National Company Law Appellate Tribunal (NCLAT) is the appellate authority over the decisions of NCLT.
- c. But cases involving individuals and Limited Liability Partnerships (LLP) are dealt by the Debts Recovery Tribunals (DRTs).
- d. When a company makes a payment default of Rs. 1 lakh, an Insolvency application is being made either by company's secured creditors or debtors to the NCLT.
- e. NCLT appoints an interim Insolvency Resolution Professional (IRP) by declaring the company under a moratorium- after the said appointment by NCLT, the board of the company gets suspended till the completion of the resolution process

❖ **Insolvency & Bankruptcy Board of India (IBBI) :**

- ✚ IBBI is termed as a unique Regulator of the IB Code.
- ✚ Under IB code, IBBI is the responsible for key pillar of the ecosystem implementation of the code that consolidates and amends the laws relating to reorganization and insolvency resolution in a time bound manner for maximization of the value of the assets of the stressed companies.
- ✚ It has regulatory oversight over the IPs, Insolvency Professional Agencies, IP entities & Information utilities etc.
- ✚ It enforces and writes Rules for process *viz* Corporate Insolvency Resolution, Corporate Litigation, Individual Insolvency Resolution, Individual Insolvency & Individual Bankruptcy under the code.
- ✚ Regulating the activities of Registered Valuer Organization.
- ✚ IBBI has got total control over the Registered Valuers.
- ✚ That apart, IBBI has been designated as the 'Authority' under the Company (Registered Valuers and Valuation Rules) 2017 for regulation and development of the profession of valuers across the country.

❖ **Information Utilities (IU) :**

In simple terms, IU is a neutral two-way communication platform (between the creditors and debtors) acting as a custodian of debtor having evidentiary value.

Please further note that NCLT by an order dated May 12, 2020, directed the financial creditors to file mandatorily the default record from IU. No petition will be entertained without the record of default under section 7 (3(a)) of the code.

❖ **Insolvency Professional (IP)/ Resolution Professional (RP) :**

- ✚ IP plays a key role in resolution, liquidation and bankruptcy processes.
- ✚ After the appointment by the NCLT, creates a COC-the said committee finally appoints the IP in its turn.
- ✚ IP prepares a Resolution Plan that requires the approval of COC within the stipulated period of time.
- ✚ The final approval of the plan is given by the NCLT.
- ✚ In the event if the plan does not get approval within 270 days, the company goes into liquidation.

The relevant section under the Companies Act, 2013

❖ **Section 247 of the Companies Act, 2013: Valuation by the Registered Valuers :**

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (hereinafter referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer and being a member of an organization recognized in such manner, on such terms and conditions as maybe prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.
- (2) The valuer appointed under subsection(1) shall –
 - (a) Make an impartial, true and fair valuation of any assets which maybe required to be valued.
 - (b) Exercise due diligence while performing the functions as valuers.
 - (c) Make the valuation in accordance with such rules as maybe prescribed, and
 - (d) Not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of 3 years prior to his appointment as valuer or 3 years after the valuation of assets was conducted by him.
- (3) If a valuer contravenes the provision of this section or the rules made there under, the valuer shall be punishable with fine which shall not less than Rs 25,000 but which may extend to Rs 1 lakh.

Provided that if the valuer has contravened such provision with the intension to defraud the company or its members, shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than 1 lakh Rupees but which may extend to 5 lakh Rupees.

- (4) Where a valuer has been convicted under subsection(3), he shall be liable to

- (i) Refund the remuneration received by him to the company, and
- (ii) Pay for damages to the company or to any other person for loss arising out of incorrect and misleading statements of particulars made in his report.

The relevant provisions under the Insolvency Resolution Regulations, 2016

❖ Appointment of registered valuers :

Regulation 27: The resolution professionals shall within 7 to 47 days of his appointment, appoint 2 registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with the regulation 35.

❖ Fair value & liquidation value under Regulation 35 :

(1) Fair value & the liquidation value shall be determined in the following manner :

- (a) The two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtors.
- (b) If in the opinion of the resolution professional, two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner, and
- (c) The average of the 2 closest estimates of a value shall be considered the fair value or the liquidation value as the case maybe.

(2) Not relevant for the registered valuers.

(3) The resolution professional and the registered valuers shall maintain confidentiality of the fair value and the liquidation value.

Please further note well : as per the IBBI's notification dated 6th Feb, 2018 in connection with the Insolvency Resolution Process for corporate persons (Amendment) regulations 2018, the definition of 'Fair value' & 'Liquidation Value' is as follows:

(hb) Fair value means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

(k) Liquidation value means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

Insolvency Commencement date means when the application under section 7 of the code is being admitted by the adjudicating authority.

The relevant provisions under Companies (Registered Valuers & Valuation) Rules, 2017

❖ Rule-8: Conduct of valuation :

(1) The registered valuer shall while conducting a valuation, comply with the valuation standards as notified or modified under rule 18.

Provided that until the valuation standards are notified or modified by the Central Govt., a valuer shall make valuations as per.

- (a) Internationally accepted valuation standards
- (b) Valuation standards adopted by any registered value organization

Please further note that our RVO adopts the valuation standard of International Valuation Standards Council (IVSC).

❖ Rule-18: Valuation Standards :

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under Rule-19.



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