



CURRENT AFFAIRS



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INSOLVENCY AND BANKRUPTCY CODE, 2016

This article covers 'Daily Current Affairs' and the topic details of "Insolvency and Bankruptcy Code, 2016". This topic is relevant in the "Indian Economy" section of the UPSC CSE exam.

UPSC MAINS GS3 Syllabus : Indian Economy

Why in the News?

Governor of the Reserve Bank of India, Shaktikanta Das, has advocated for a clear structure for the country's group insolvency system and a thriving market for distressed assets in order to enhance the efficiency of the Insolvency and Bankruptcy Code (IBC).

What is the Insolvency and Bankruptcy Code (IBC)?

- **Insolvency vs Bankruptcy:** The difference between insolvency and bankruptcy is that the former arises when a person files an application with an official requesting being declared bankrupt, a process that will last until the obligation is discharged, while the latter happens when a person is unable to pay bills because they do not have any assets.
- **Insolvency and Bankruptcy Code (IBC) 2016 :** The Indian bankruptcy law aims to unify the current system by establishing a unified bankruptcy and insolvency law. It is a one-stop shop for insolvency resolution, which used to be a drawn-out procedure without a workable conclusion. It seeks to lessen the burdensome nature of executing commercial transactions and safeguard the interests of small investors.

Insolvency & Bankruptcy Code, 2016



To speed up resolution of stressed assets in the country



Applicable to: Individuals, partnerships, LLPs and Corporates



Authority to decide insolvency application within 180 days (90 days extension allowed)



Fast track process of 90 days available for specified entities



Adjudicating authority: NCLT for corporates, DRT for individuals & partnership firms

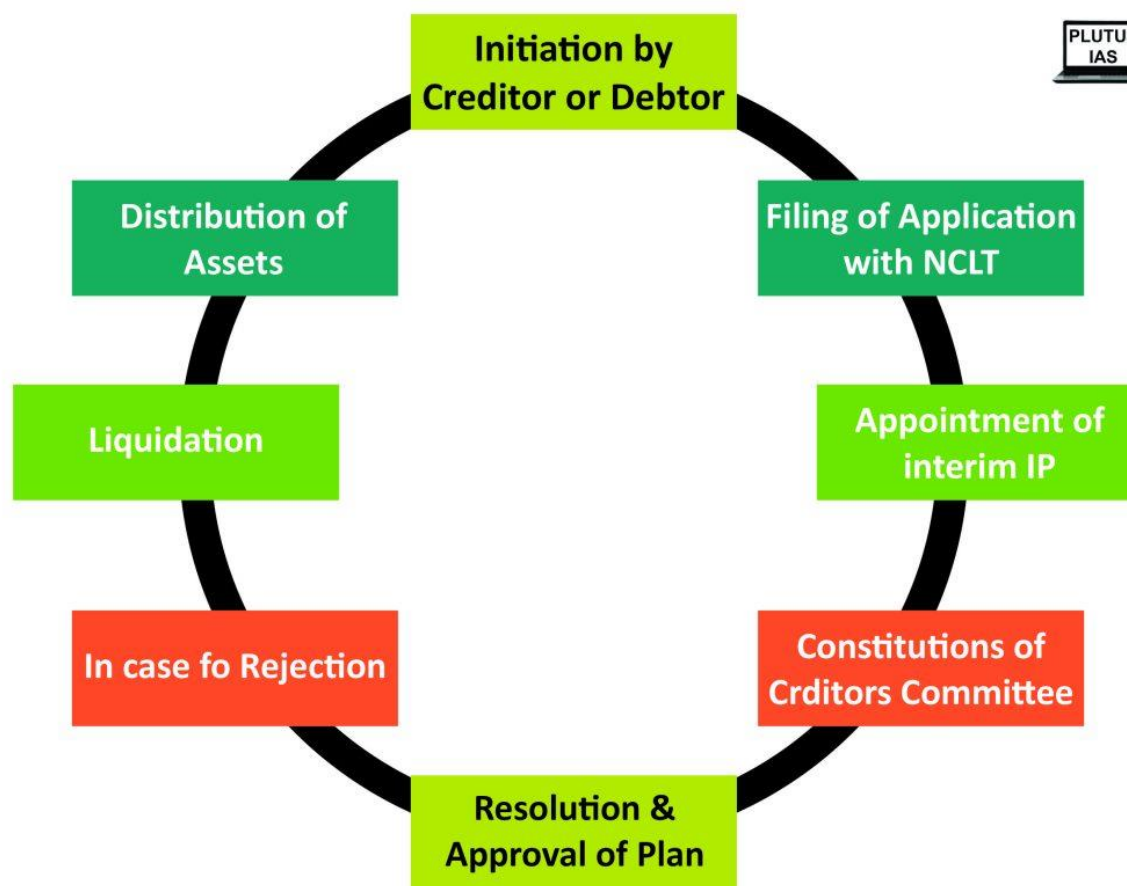
What is the need for IBC, 2016.

- Growing Non-Performing Assets have been a problem for the banking industry for a number of years for a variety of reasons.
- In India, the average time to resolve an insolvency case was 4.3 years as of 2015. In comparison to other nations like the United States of America (1.5 years) and the United Kingdom (1 year), this was higher.
- A strong, comprehensive and efficient insolvency system was therefore formed with the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC). Therefore, the intent behind the enactment of the Insolvency and Bankruptcy Code (IBC) was to expedite the process of resolving insolvency cases.

- In order to improve the formal financial condition resolution process and liquidation, the code aimed to create an entirely new institutional structure with a regulator, financial condition specialists, data utilities, and assessment procedures.

Process followed under the IBC

- IBC is applicable to individuals, partnerships, and businesses. It offers a time-limited procedure for resolving insolvency.
- Creditors take control of a debtor's assets and are forced to make choices regarding the debtor's insolvency when an insolvency in repayment occurs. IBC permits both the debtor and the creditor to initiate "recovery" actions against one another.
- Either the creditor or the debtor may request the start of a CIRP when a corporate debtor (CD), or a firm that has borrowed money to operate, fails on its loan payments. The Corporate Insolvency Resolution Process (CIRP) is governed by Section 6 of the Insolvency and Bankruptcy Code.
- Previously, a creditor or debtor had to experience a minimum amount of default of ₹1 lakh before they could file for bankruptcy. But, the government raised the minimum sum to ₹1 crore in light of the pandemic's strain on businesses.
- Applying for insolvency requires going through a designated adjudicating authority (AA) under the Indian Bankruptcy Code (IBC); these AAs are the different benches of the National Company Law Tribunal (NCLT) located throughout India.
- The Tribunal has 14 days to accept or deny the application, or if entry is delayed, to give a justification. The resolution process, also known as CIRP, starts as soon as the AA accepts an application. The resolution process must be completed within the revised, mandated time frame of 330 days.



Key Goals of the Code

- To reform and combine the legislation pertaining to corporate, partnership, and individual insolvency resolution and reorganisation.
- To establish deadlines for the law's performance in a time-bound insolvency resolution (i.e., 180 days).
- To increase the worth of interested parties' assets.
- In order to encourage entrepreneurship and startup culture.
- To make credit more widely available.
- To weigh the interests of all parties involved, including modification. The remaining amount must be paid in the order that government obligations are due.
- To create an Indian Insolvency and Bankruptcy Board to serve as the country's bankruptcy and insolvency law regulatory authority.
- To give an easy revival mechanism for entities.
- To address international insolvency.
- To build an archive of defaulters in order to address India's bad debt issue.

Group Insolvency

- Group insolvency is a legal framework that allows several corporate group entities that become insolvent to have their resolutions consolidated in a single court. This allows the group to be

revamped as a whole and to use its combined assets in a way that serves the interests of the debtor and the group corporate.

- Group insolvency has two distinct aspects on a global scale. Certain jurisdictions have opted for either substantive consolidation or procedural coordination.
- The term “substantive consolidation” refers to the combination of several entities’ operations, assets, and liabilities into one group while retaining their individual legal entity status.
- But, under procedural coordination, the strategy is restricted to coordinating procedural elements such as filing requirements, timetables, and coordination; it does not involve mixing the entities in and of themselves.
- Without a defined structure, the group insolvency procedure in India has been developing under the direction of the courts.

The necessity of the Group Insolvency Mechanism in India under IBC Process

- The length of time it takes to resolve disputes and the degree of haircuts compared to the admitted claims are the two main areas of criticism directed at the IBC.
- As of Sept 2023, 67% of the current CIRP cases have surpassed the total time period of 270 days including an extension period of 90 days.
- In FY 2020–21 and FY 2021–22, the average time it took to admit a case was 468 days and 650 days, respectively. The market value of the assets
- will be significantly diminished by such a protracted period of delays. The Committee of Creditors (CoC) determines whether a defaulting corporation is economically viable enough to be restructured and offered a fresh start, or liquidated. The AA has expressed concerns about the CoC’s actions on multiple occasions. This comprises – (a) not showing up to the CoC meetings, (b) Ineffective communication or ineffective cooperation between creditors, (c) When creating resolution plans, creditors’ individual interests are disproportionately prioritised over their group interests, which can be detrimental to the plan itself.

Prelims practice question

Q1) Which of the following statements regarding the Insolvency and Bankruptcy Code (IBC), 2016 is correct?

The IBC applies only to individual bankruptcies.

The IBC is primarily concerned with regulating banking practices.

The National Company Law Tribunal (NCLT) is the sole adjudicating authority under the IBC.

Which of the statements given above is/are incorrect?

- A) 1 only
- B) 1 and 2
- C) 2 and 3
- D) 1 and 3

Answer: C

Q2) What role does the National Company Law Tribunal (NCLT) play in the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC)?

- 1) It acts as the appellate authority for insolvency cases.
- 2) It is the adjudicating authority for corporate insolvency resolution matters.
- 3) It has no jurisdiction over matters related to insolvency.

Which of the statements given above is/are incorrect?

- A) 1 only
- B) 2 only
- C) 3 only
- D) 2 and 3

Answer: **B**

Mains practice question

Q1) Examine the role of the National Company Law Tribunal (NCLT) in the insolvency resolution process under the IBC, 2016. Analyze the challenges faced by the NCLT in adjudicating insolvency cases and suggest potential improvements.

Q2) Discuss the key features of the Insolvency and Bankruptcy Code (IBC), 2016, and how it aims to streamline the insolvency resolution process in India. Provide examples to illustrate its impact on the corporate sector.

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