

**Project Dissertation Report on**  
**Indian Bankruptcy Code: Boon or Bane?**

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## DECLARATION

I, **Suhail Khosla**, student of MBA 2016-18 of Delhi School of Management, Delhi Technological University, Bawana Road, Delhi-110042 declare that Project Dissertation Report on **Indian Bankruptcy Code 2016 : Boon or Bane?** submitted in partial fulfilment of Degree of Masters of Business Administration is the original work conducted by me.

The information and data given in the report is authentic to the best of my knowledge.

This Report is not being submitted to any other University for award of any other Degree, Diploma and Fellowship.

Suhail Khosla

Place:

Date:

## CERTIFICATE

This is to certify that the Project Dissertation Report titled “**Indian Bankruptcy Code 2016 : Boon or Bane?**” is a bonafide work carried out by **Mr. Suhail Khosla** of MBA 2016-18 and submitted to Delhi School of Management, Delhi Technological University, Bawana Road, Delhi-110042 in partial fulfilment of the requirement for the award of the Degree of Masters of Business Administration.

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## **EXECUTIVE SUMMARY**

The bankruptcy regime currently prevalent is highly fragmented, borne out of multiple judicial forums resulting in lack of clarity and certainty in jurisdiction. Often, decision are appealed, stayed, or overturned by these forums having a concurrent or overlapping jurisdiction.

The judicial systems pro-revival approach leads to delays in closure of businesses which are unviable since the standstill mechanism has been misused by corporate debtors.

Stakeholders like Secured and unsecured creditors, employees, regulatory authorities have different and often competing rights with no common regulatory process to determine the priority of claims.

Often the lack of adequate and credible data regarding the assets, indebtedness and security situation of companies further accentuates the problems.

Because of all the above reasons, the average time to resolve an insolvency case in India is 4.5 Years in comparison to 0.8 Years in Singapore and 01 Year in London. India has the lowest recovery rate in the world at about 20% of debt value as per World Bank Report – 2014.

### **Insolvency and Bankruptcy Code 2016-**

The INDIAN BANKRUPTCY CODE 2016 Code provides for a specialised forum to oversee all insolvency and liquidation proceedings for individuals, SMEs and Corporates.

The code empowers all classes of creditors (secured/unsecured lenders, employees, trade creditors, regulatory authorities) to trigger a resolution process in case of non-payment of valid claim.

It provides for immediate suspension of the Board of Directors and promoters' powers.

A 'stand-still period' is enabled which provides stakeholders time to facilitate discussions and arrive at a common resolution rather than running independent processes.

It offers a finite time limit within which the debtor's viability can be assessed and a resolution process agreed. The power of commercial decision to revive or liquidate the company is on the creditors rather than the courts.

Provides for a balanced approach between rehabilitation and recovery and provides for compulsory liquidation of corporate debtors in the event the resolution has not been agreed within 180 days of the resolution process.

Aims to develop a detailed and accessible information system to reduce information asymmetry between the various participants of the insolvency process.

It provides for a clearly defined waterfall mechanism for payment of debt in the event of liquidation.

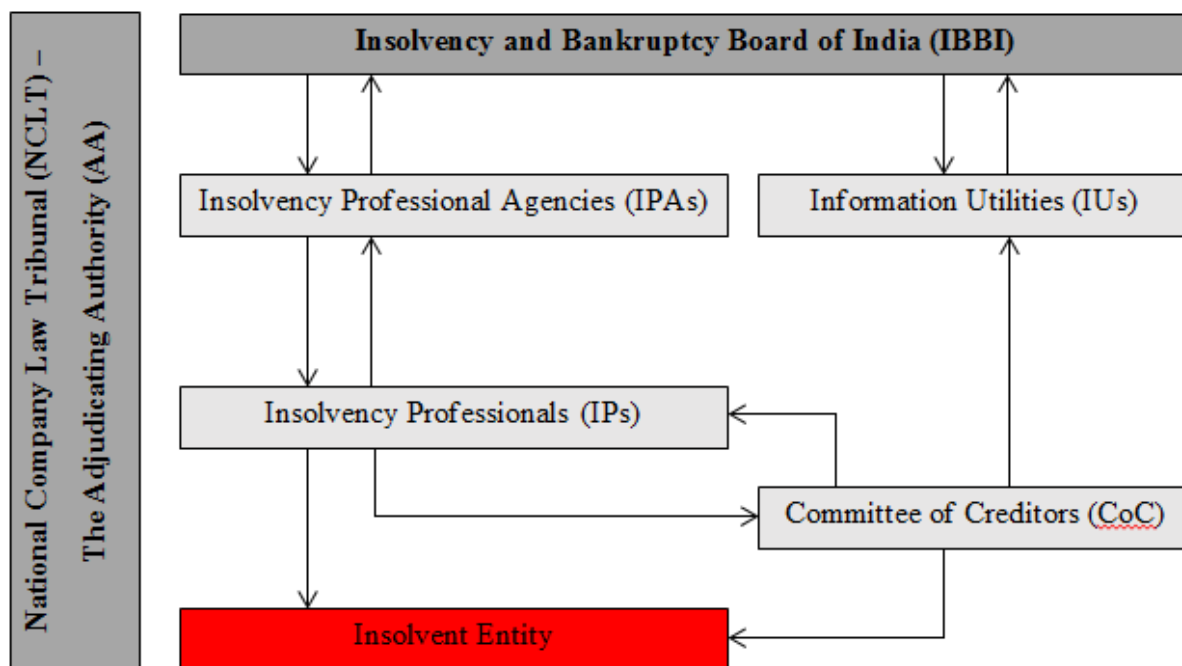
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# 1. INTRODUCTION

## 1.1 Salient Features of the Indian Bankruptcy Code

### The Insolvency and Bankruptcy Ecosystem -



**IBBI** – “The Apex Body for promoting governance and transparency in administration of Code. It will be involved in helping setting up of infrastructure and accrediting IPs and IUs.”

**IUs** – “It is a centralized repository having Financial and Credit information of borrowers. It will validate the information and creditors claims vis-à-vis the borrowers.”

**IPAs** – “IPAs are professional bodies which are registered under the INDIAN BANKRUPTCY CODE board for promotion and regulation of the insolvency profession. These bodies will have to further enrol the IPs.”

**IPs** – “Insolvency professionals are the licensed professionals which are regulated by the Insolvency and Bankruptcy Board of India. IPs are responsible for conducting the resolution process; act in the capacity of a liquidator; They shall be appointed by the CoC (Committee of Creditors) and subsequently assume the powers of BoD.”



**Adjudicating Authority (AA)** – “The Adjudicating Authority will be the National Company Law Tribunal (NCLT) for all the matters which are related to the corporate insolvency, LLP (Limited Liability Partnerships) and personal guarantees enforcement related to the debtors i.e. the corporate debtors. It shall take up or dispose off any insolvency application, it may also approve or reject resolution plan and furthermore, decide with respect to claims or matters of law/facts thereof.”

The Debt Recovery Tribunal (DRT) mostly deals with the “individual insolvency” and “partnerships”.

No injunction will be granted by any court of law, tribunal or authority with respect to any action taken, or which is to be taken, in pursuance of any power conferred on National Company Law Tribunal / Debt Recovery Tribunal.

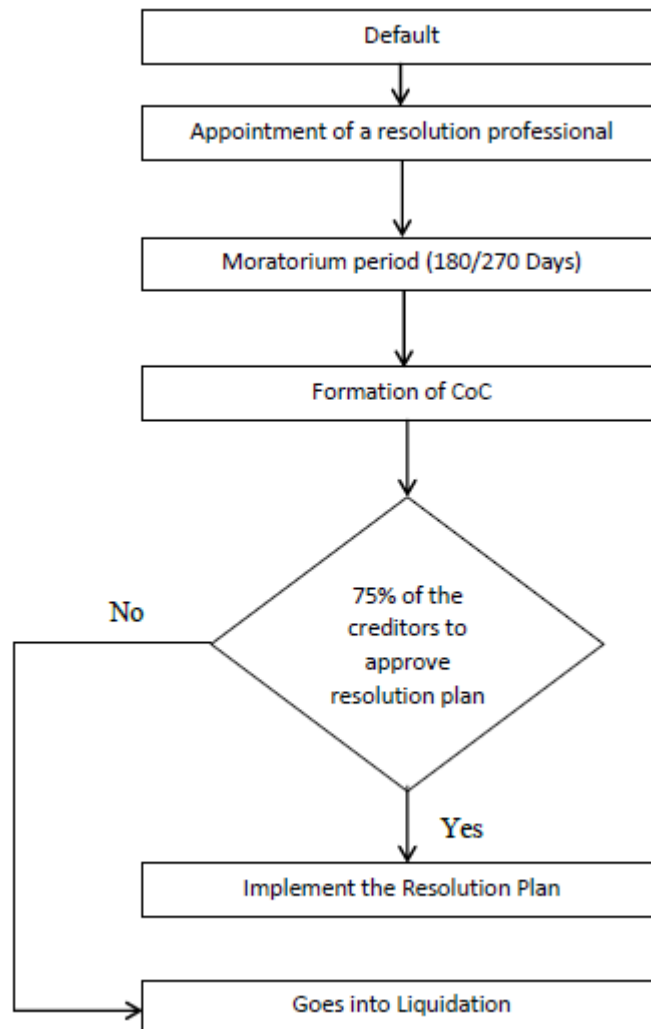
**CoC** – “Committee of Creditors shall comprise of financial creditors who will then appoint and simultaneously supervise the actions of Insolvency Professionals (IPs). They will also need to approve the resolution plan.”

It is interesting to note here that the Operational creditors and Insolvent Corporate Debtor are going to be the non-voting members on the committee of creditors and will also be invited to all meetings of the CoC.

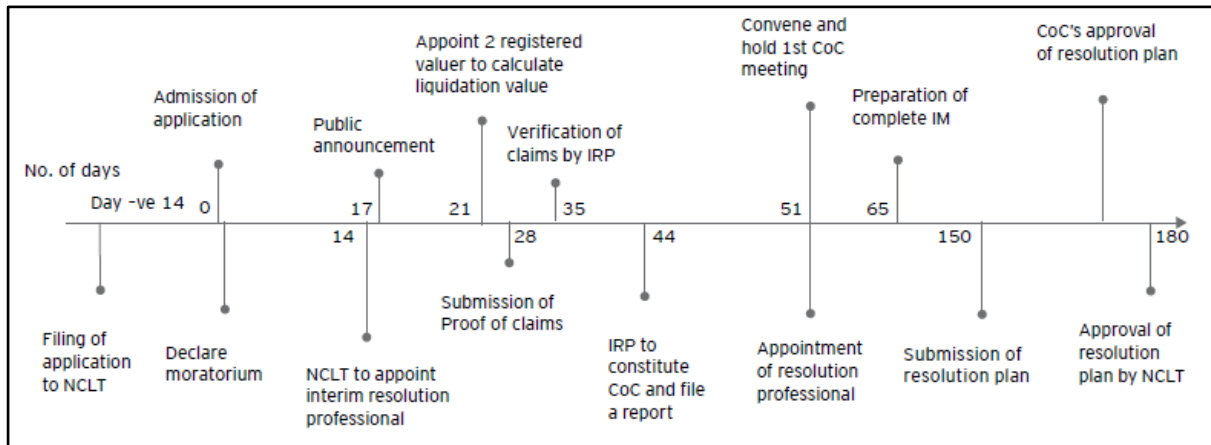
All materialistic decisions taken by the Resolution Professional such as sale of tangible assets, raising working capital, security interest creation, legal disputes settlement, etc. need to be approved by the Committee of Creditors. All the decisions taken by Committee of Creditors is going to be by the way of having a 75% majority (of the Financial Creditors) by outstanding value.

## 2. LITERATURE REVIEW

### 2.1 Corporate Insolvency Resolution Process (CIRP)



## 2.2 Corporate Resolution Process Timeline



## 2.3 Key Touch points of CIRP Regulations

### (A) Public Announcement

- The Public Announcement should be made within 03 Days of the appointment of the Insolvency Resolution Professional
- Announcement is to be made at-least in one of the English and one of the Regional language newspaper
- The announcement should mention about the creditors for submission of proof of claims (PoC) and invite them as well and give 14 days from the date the Insolvency Resolution Professional is appointed by the Tribunal and CoC.

### (B) Moratorium

- Some of the very essential goods or services will not be suspended during the period of moratorium. Specifically Electricity, Telecommunication, Water and IT services are essential in nature.
- Moratorium will not apply to any of these transactions

(C) Appointment of Valuers

- Two registered valuers are to be appointed by the Insolvency Resolution Professional (as per the Companies Act, 2013) for determining the liquidation value.
- A third valuer can be appointed by the IRP/RP if two estimated are significantly different.
- No specific time limit is specified for the report to be submitted by valuers. But the liquidation value is always a part of the final memorandum of information, which needs to be prepared within a specified timeline of 14 days of the first CoC meeting.

(D) Submission of Proof of Claims

- There are separate forms which have been constructed for submission by financial and operational creditors and employees.
- The Lenders or the Financial creditors have to submit the Proof of Claims via electronic means, however, other creditors can submit the same either by a post or electronic means.
- A Proof of Claims can be filed by any of the creditors till Committee of Creditors gives its approval of the plan if any case the creditors could not submit it within the stipulated timelines mentioned in the newspaper.

(E) CoC : In case of no No Financial creditors other than the parties which are related, the Creditors Committee may consists may go ahead with only the operational creditors with:

- The largest 18 such creditors by outstanding value
- One representative who shall be elected by all the employees other than employees included in highest 18 Operational creditors
- One representative who shall be elected by all workmen other than workmen included in the highest 18 OCs (Operational Creditors)

(F) Meeting of the Committee of Creditors

- Ab-Initio meeting – Insolvency Resolution Professional has to convene the initial meeting in 07 days of filing the report certifying constitution of the committee.
- Other meetings of the Committee of Creditors – Resolution Professional can convene a meeting of the Creditors Committee when it becomes essential or on request made by members representing 33% of the voting rights the Committee.
- Quorum – The Quorum should consist of the members of the creditors committee representing at more than 33% voting rights. It's at the discretion of the Committee of Creditors to modify the % of voting rights required.

(G) Voting by the Committee of Creditors

- Resolution Professional will take the vote of the members of the Committee of Creditors (CoC) only when all are present in the meeting. Resolution Professional can seek the vote of members electronically if all the members are not present within a time frame of 24 Hours and circulate the MOM (Minutes of the Meeting) to all the members.
- A voting of more than 75% of the creditors by voting share would be needed for all the matters listed under the section 28 (1) of the INDIAN BANKRUPTCY CODE.

(H) Approval of Resolution Plan

- The Resolution applicant will have to submit a resolution plan 30 days prior to the expiry of the maximum period for insolvency resolution i.e. 180 + 90 days, as the case may be.
- The resolution plan will have to mandatorily identify specific fund source to pay for the insolvency resolution process cost, and the liquidation value of OCs (Operational Creditors) and the dissenting FCs (Financial Creditors).
- Liquidation value is defined as the estimated realizable value of the tangible assets of the corporate debtor if it were to be liquidated on the date of insolvency commencement.
- The resolution plan should also provide for the implementation and supervision.

## **2.4 Code on Ground : As Implemented**

### **Code and its Stakeholders**

Code establishes some very basic principles of borrowing and corporate insolvency resolution -

- It is recognized by the code that all businesses cannot succeed; therefore it strongly emphasizes on a correct decisive action – on the part of all the stakeholders.
- Till now, several laws had often protected the promoters and enabled “debtor in possession” to continue the operations. The INDIAN BANKRUPTCY CODE now unifies the legal framework to deal with insolvency cases.
- The code also establishes the fact that insolvency is a commercial issue and the law should not be left to take a decision if a business should be liquidated or kept as a going concern i.e. revived - after it gets insolvent. It is the prerogative of the creditor to decide. Until this end, the code prescribes a “creditor in control” regime with the creditors exercising timely control in the event of a default in the repayment of any dues (which includes the interest component as well).

### **Lender’s Perspective**

The code without a doubt states that the initiator for any insolvency petition is a single default (> INR 01 Lakh) which, in case approved, will result in the creditors/lenders taking over the management of the corporate defaulter through an Insolvency Professional.

A key issue that still needs to be addressed by the lenders/banks is to determine when does it needs to invoke the Corporate Insolvency Resolution Process if at all required, which shall help in ascertaining the nature and cause of the default.

It also needs to be assessed by the lenders/banks if the default is on account of some temporary issues/problems or if there is any probability of a further default, and whether or not the entire outstanding debt needs to be recalled and an insolvency petition needs to be filed.

If an any case, the default is likely to be rectified, it may not be feasible to initiate the CIRP proceedings.

Most regulations, be it shutting down / winding down the company under the Companies Act 2013, SDR,SICA, or SARFAESI, are all the processes under the law to find a resolution of the debt in a systematic manner as much as the INDIAN BANKRUPTCY CODE does. However, it was misused by on the part of the debtor to make the processes as prescribed just a formality to achieve the objective desired. If this is done with the INDIAN BANKRUPTCY CODE, it will just become one more piece of mere comprehensive legislation.

## **2.5 Process of Liquidation**

The Order for Liquidation will be passed only if :

- Corporate Insolvency Resolution Process comes to an end
- Non Submission of Plans to NCLT
- Non approval of plans
- To be decided by the Committee of Creditors
- Improper implementation of Plans

Steps of Liquidation -

- Appoint a Liquidator
- Form a Estate of Liquidation
- No legal proceeding by or against the corporate or individual debtor
- Claims Consolidation
- Assets Distribution
- Debtors Dissolution (needs to be completed in 02 Years)

Operations under the process of Liquidation –

The order of Liquidation proceedings will be deemed to be a notice of discharge to the officers & employees of the corporate debtor. Unless, the liquidator i.e. the person appointed to carry out the liquidation continues run the business as usual for a limited period of time during the process of liquidation.

The Resolution Professional is going to act as a legal liquidator unless replaced by the National Company Law Tribunal (NCLT). Powers of Board of Directors to be vested with the Resolution Professional.

Liquidator will have to:

- Form the estate of liquidation
- Take into custody all the assets of the corporate debtor
- Consolidate, admit, verify and determine the value of claims by the creditor
- Carry on the business as a going concern for a liquidation which is beneficial to the firm

Liquidator's Remuneration -

As prescribed in the regulations:

Based on a scale of value realized and distributed.

The remuneration scale is highest for first 06 Months which reduces for 6 to 12 months and the further reduces for a period of 12 to 24 months and thereafter.

Report Section -

Preliminary Report to be submitted within 75 days from the order date

Progress Report to be submitted in 15 days time after the calendar quarter ends

Final Report is the part of the application for the dissolving the debtor to the National Company Law Tribunal

Cost of Insolvency proceedings and process of Liquidation –

The Insolvency proceedings cost includes working capital funding, cost involved in running the corporate debtor as an on-going business (e.g. rentals or employee salaries), Insolvency Professional's cost, etc.

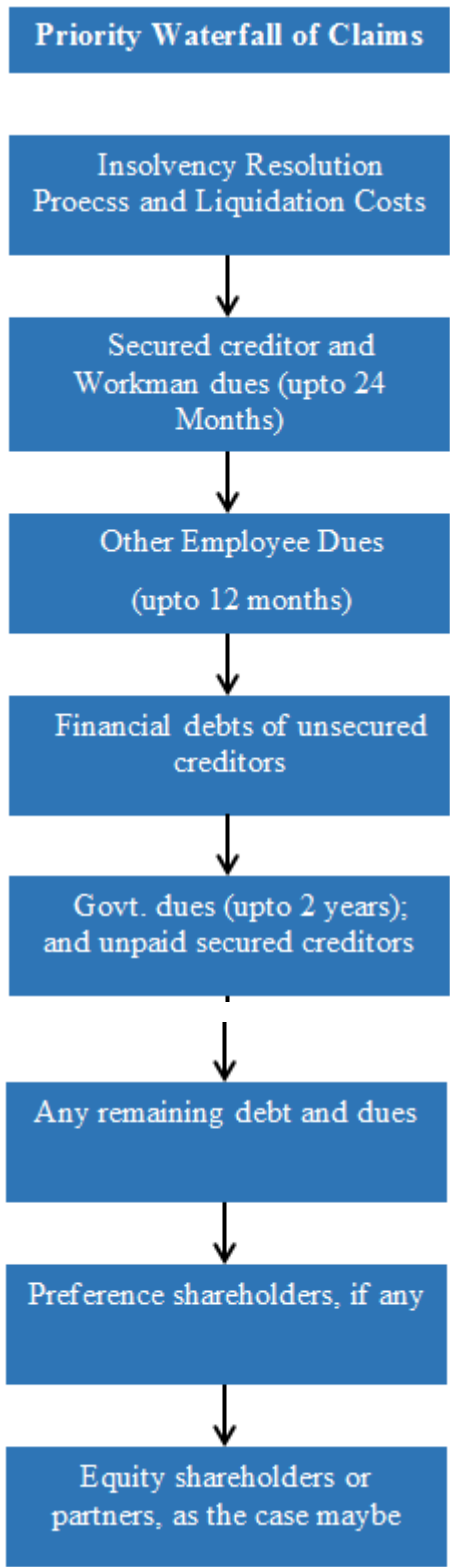
Cost of Liquidation process includes any sort of cost which is incurred by the liquidator during the process of liquidation.

Case of a Secured Creditor in the process of liquidation –

Secured creditor can -

- Enforce and liquidate the security outside the purview of the INDIAN BANKRUPTCY CODE, or
- Relinquish the security interest under him and goes on to receive the proceeds from it as mentioned in the priority of claims in the INDIAN BANKRUPTCY CODE





## **2.6 Potential Challenges for Insolvency Practitioners**

Currently, task of an IP relates to the below-mentioned categories of companies -

- All companies having a debt > INR 01 Lakh
- Industrial undertakings & large commercial enterprises
- Infrastructure projects
- MSMEs
- Individuals and partnership firms (Debt  $\geq$  INR 1,000/-)
- Individuals with annual income  $\leq$  INR 60,000/-

In some economies (such as the US), the insolvency law has the concept of “debtor in possession” and when insolvency commences, a moratorium starts operating and the corporate debtor is then allowed to remain in possession, work out a resolution plan and seeks approval from all stakeholders. The Indian law prescribes the concept of “creditor in control,” and the Insolvency Professional is mandated to take possession of all assets (Tangible) and take over the management of the corporate entity. This part of Insolvency Professional’s responsibility is the most challenging and could be eased off if the insolvent debtor extends his cooperation to the Insolvency Professional and facilitates in taking over the assets and management.

Insolvency Professionals are entrusted upon with the following tasks under the Code, either as an Insolvency Resolution Professional, Resolution Professional or a Liquidator:

- Manage the day to day affairs of the entity as a going concern
- Constitute Committee of Creditors, convene and conduct such meetings
- Conduct the Corporate Insolvency Resolution Process
- Discharge the duties which are necessary to operate and run the enterprise as a going concern as mentioned in section 25 of the code.
- Preparation of Information Memorandum
- Submission of a resolution plan to the adjudicating authority as approved by the CoC and after thorough study of the same
- Verification of claims of the stakeholders
- Carry on the business of the debtor for its beneficial liquidation
- Examine and file for avoidance of transactions that are preferential, undervalued, fraudulent to creditors and extortionate

- Conduct liquidation process in case the resolution plan is rejected or it fails after approval from CoC

One important aspect of undertaking the responsibility as an IRP is the responsibility which needs to be taken up for operating the enterprise is of the IP and not the creditors at whose instance the IP is appointed. Hence, in case there is a loss due to lack of timely sales of goods which have a limited shelf-life or an environmental damage is caused as a result of a leakage, the liability lies on the Insolvency Professional as the person in charge of the business enterprise. Therefore, there is a need to empanel/appoint managerial experts in different fields who can be entrusted with the functions of the business enterprise.

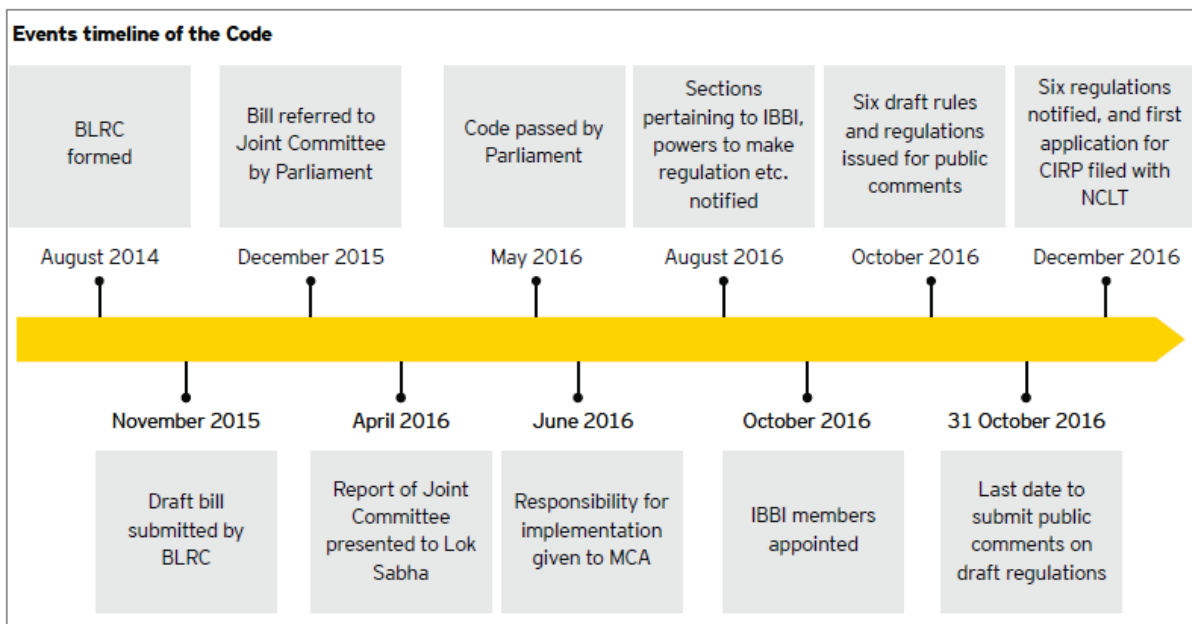
When an insolvency resolution application is admitted and subsequently an Insolvency Professional is appointed, it is necessary that a Committee of Creditors is constituted at the earliest so that the lenders providing the working capital to the firm take a view on how and to what extent working capital funds will be provided and in case they are not willing to continue lending, whether loans are need to be raised from other lenders. It would be duty of an Insolvency Professional to make a quick assessment of the business and convince the lenders to continue lending so that the option of disposal of the enterprise as a going concern is explored or otherwise a resolution plan is worked out.

Lastly, the Insolvency Professionals need to understand and note that the Indian Bankruptcy Code at every stage of the appointment of an interim or final IP or approval of change of IP requires that the IBBI certifies that there are no disciplinary proceedings pending against the Insolvency Professional and give a specific approval for appointment of Insolvency Professional. Further, disciplinary proceedings may be initiated against the liquidator or resolution professional based on an creditor's application in cases where undervalued transactions are not reported by them. These provisions indicate a concern that Insolvency Professionals may deal with assets of the business for gaining pecuniary or other advantage for themselves or for other third parties to the detriment of other claimants and stakeholders. Professionals who are planning to undertake assignments as an insolvency resolution professional need to ensure that the officials selected are independent persons with no relationship with or interest in the business enterprise and are efficient, competent and honest with good reputation and character and integrity beyond any doubt.

## 2.7 What lies ahead in the near term

The important activities that are completed which would fast-track the enactment of the code include the following –

- Notification regarding final regulation on IP, IPAs, CIRP, and liquidation process
- Notifications of the sections in the code relating to corporate insolvency and the liquidation process
- Amendments in the Companies Act, 2013 which relates to closing off / winding up provisions, and transfer of judicial proceedings
- Notification of the constitution of the NCLAT and NCLT and their locations
- Constitution of the IBBI as chairman and 04 other members in October' 2016; 03 whole time members and 02 other members are yet to be appointed.
- Protection of the Insolvency Professionals and commencing the insolvency examinations for IPs



Source: EY 2017 Report on CIRP

As the Indian Bankruptcy Code is implemented now, important activities that would be essentially needed to be undertaken to facilitate the smooth enactment are –

- Appointment of additional 05 members of the IBBI
- Regulation Framing for the functioning and formation of IUs
- National Insolvency Examination to be introduced
- Notification of the voluntary shutting down or winding up process and related regulations, which are expected to be finalized soon
- Notify fast track CIRP
- Notification of insolvency resolution and bankruptcy of individuals and partnership firms, and the related regulations

## **2.8 Objective of the Study**

The study aims at understanding the INDIAN BANKRUPTCY CODE and how is it helping the Banks/Lenders and other creditors in dealing with the corporates/companies who have defaulted on paying back the debt raised. This study further extends to analyse the average time taken for a bankruptcy case to be admitted into the NCLT and who can file the case.

Though it may be pertinent to note that since the code is in nascent stages so there is lot of qualitative and quantitative information available and no specific information holds true as it is case dependent.

### **3. RESEARCH METHODOLOGY**

#### **3.1 Research Design**

The study aims at understanding the INDIAN BANKRUPTCY CODE (Indian Bankruptcy Code' 2016) and how is it helping the Banks/Lenders and other creditors in dealing with the corporates/companies who have defaulted on paying back the debt raised. This study further extends to analyse the average time taken for a bankruptcy case to be admitted into the NCLT and who can file the case.

In this regards, an extensive secondary research have been performed. Since the topic extensively deals with matters related to courts, hence primary data could not be collected.

An exploratory secondary research was conducted to understand what are the most critical factors which are considered before filing a case under the NCLT (National Company Law Tribunal) and what is the average time for conversion of these cases into the INDIAN BANKRUPTCY CODE. Subsequently, an analysis on the functioning of the NCLT has also been done.

#### **3.2 Data Collection**

Data was primarily sought from Research Reports, various internet sites, and articles.

The information that is collected includes the insolvency resolution process, the dates of actions taken in the process of case filing, and NCLT response. Most of the information which is recorded is in categorical variable form. These categorical values can be binary, like if the insolvency case is admitted or rejected, or whether the debt/loan/credit was of secured or unsecured nature. These can have some values which are possible, like the reason behind NCLT dismissing the petition or where petition was filed. The collected data may be a numerical value like the debt/loan/credit amount which is due in records.

## 4.0 DATA ANALYSIS AND TECHNIQUES

Factual stats were considered from the research reports and articles and incorporated in the analysis.

The 23 information fields on which the dataset is based on are –

- Case Number
- Location where the case is filed i.e. Location of bench
- Who has filed the case?
- Creditor Type
- Operational Creditor type
- Financial Creditor type
- Debtor's name
- Debt Amount
- Secured/Unsecured Creditor
- Payment Due Date
- Date of Demand Notice
- Receipt date / service date of notice
- Case filing date in NCLT
- Case listing first date
- Final date of disposal
- Debt Evidence
- Admitted /Dismissed
- Category of reason for dismissal
- IP Name
- Case URL
- Was the order appealed against
- Who appealed
- Appeal admitted or rejected

In this version, the above fields are recorded in the sample period for all the cases. As the case-law emerges, the information fields in the dataset will change complimentary so as to ensure that the captured fields are capable of productive analysis of the cases under insolvency. For example, if NCLT orders reflect this information, the dataset always has the

provision to be expanded to take into account the result of the resolution process and the subsequent recovery rates.

#### **4.1 Analysis : 1 – Deviation in use by Creditors**

The dataset is applied to understand those cases which are in the process of being triggered under INDIAN BANKRUPTCY CODE. The following questions are being tried to answer through this dataset –

- (a) Is there balance change amongst creditor rights and debtor firm during insolvency process under Indian Bankruptcy Code?
- (b) Does the rights of the creditors during the insolvency process under the Indian Bankruptcy Code extends to creditors of the debtor?
- (c) Is the Indian Bankruptcy Code being used to initiate the insolvency resolution proceedings only for specific large/big size debt/credit, or are there any smaller sized debt where insolvency resolution process is triggered?

Before the implementation of the Indian Bankruptcy Code, India used to be observed as a nation with more rights to debtors in comparison to the rights of the creditors. Even amongst the creditors, unsecured and OCs (Operational Creditors) used to have a very limited legal solution to enforce upon their claims under a corporate debtor insolvency case. If a corporate debtor defaulted on an unsecured lender/creditor, the unsecured creditor/lender had 03 remedies to recover it's claim:

- Arbitration,
- Civil Suit or
- Insolvency Petition in the Court of Law (High Court) for shutting down / winding up of the company.

As per the literature evidence, the civil suits are not as efficacious in a court of law system that is riddling with case backlogs. Arbitration is an expensive affair as well. Closing down a company takes around 05 to 10 years in India.

The intent of the Indian Bankruptcy Code is to give the unsecured lenders, particularly, OC (Operational creditor), a platform to bring in the creditors and give them a chance so as to enforce their claims. Under the INDIAN BANKRUPTCY CODE, operational debt is



defined as “A claim in respect of the provision of goods /services, which includes employment or a debt in respect of statutory dues payable to the Central Government, State Government or any local authority”. Financial loan is a debt, including interest, which is disbursed in lieu of considering time value of money.

The table below shows the different applicants who filed a petition in NCLT to initiate the INDIAN BANKRUPTCY CODE. It came to the notice that of the 110 orders observed, more than 50% of the petitions were filed by OCs (operational creditors). This is in sharp contrast to the financial creditors who filed for less than 20 % of the insolvency petitions.

<b>Table -1 (December 2016 – May 2017)</b>	
Filing of petitions by Operational Creditors	61
Filing of petitions by Creditors	83
Filing of petitions by Financial Creditors	21
Filing of petitions by Debtors	26
Applicants not known	01
<b>Total</b>	<b>110</b>

There can be number of reasons for the deviation which is observed above in financial creditors behaviour. A true/real finding suggests that corporate debtors default to the financial creditors lastly. Largely, the secured creditors might be the Financial Creditors who may choose to put forward their claim by selling the security. There always lies an uncertainty on provisioning norms of the banks due to the fact of anti-corruption agencies scrutinising the records. However, if the data is not present on default, the exact reason behind the divergence of creditor behaviour to initiate the INDIAN BANKRUPTCY CODE still lies unclear.

Below, it is examined that if there is any trend in debt size that is being used to initiate the insolvency process under the Indian Bankruptcy Code. Bankruptcy Law has a threshold of INR 01 Lakh to trigger an insolvency case.

<b>Table – 2 : Debt Size in Insolvency Cases in NCLT</b>			
<b>(All values in INR)</b>			
<b>Debt Size</b>	<b>Corporate Debtors</b>	<b>Operational Creditors</b>	<b>Financial Creditors/Lenders</b>
Min. Size	92,11,106	1,09,516	30,69,000
25 <sup>th</sup> Percentile	9,81,60,525	12,76,884	1,50,85,632
50 <sup>th</sup> Percentile	43,57,47,000	33,73,191	17,20,37,926
75 <sup>th</sup> Percentile	1,28,97,93,692	2,80,27,382	77,24,48,220
Maximum Size	25,80,07,00,000	1,31,90,00,000	8,56,52,57,199
No. of Observations (in Nos.)	24	54	16

It is inferred from the above (Table - 2) that the limit specified in the Bankruptcy law does not prove to be a deterrent in triggering a resolution under the Indian Bankruptcy Code against debtor firms.

Out of the 110 cases mentioned above, 75% cases were initiated by the creditors. Out of them, 75% cases were petitioned by unsecured OCs (operational creditors). This shows that the OCs (operational creditors), who up-till now did not have strong enforcement rights, have found a solace in the Indian Bankruptcy Code to put up their claims.

Out of the 110 cases, 50% have been admitted by the National Company Law Tribunal and are undergoing a debt restructuring process which is mutually negotiated. This is an indication that the Indian Bankruptcy Code dispenses with the pro-debtor biasing shown by the judicial bodies under the existing law. The data that has been observed shows that the creditors are using new regime with increase in confidence when compared with the previous regime.

Indian Bankruptcy Code is being used by creditors on a different default size. Empirical findings show most cases that have been observed up-till now (i.e. > 75%) tends to be initiated using debt defaults approx. 10 - 100 times bigger than the minimum amount of INR 01 Lakh set in the law.

#### 4.2 Analysis – 2: Functioning of the NCLT (National Company Law Tribunal)

This research focuses on the judiciary functioning under a new law. It aims to characterise how the National Company Law Tribunal has dealt with the load of petitions under insolvency. 03 aspects are examined here-

- (a) Does the cases under NCLT reflects a PAN India spectrum of the cases under insolvency?
- (b) Functioning of NCLT under the timelines set in law

A thought that arises in the mind when a new law is implemented is “How to ensure that there is apt judicial capacity to deal with it throughout the country?”. Currently, 09 benches of National Company Law Tribunal are there, which deal with insolvency and bankruptcy cases along-with the other cases under *Companies Act, 2013*.

The Table below shows the the no. of orders that have been passed by 09 NCLT benches in 06 Months period –

<b>S. No.</b>	<b>NCLT Bench Location</b>	<b>Final Orders (Numbers)</b>
1	Mumbai	41
2	Delhi	32
3	Chandigarh	11
4	Ahmedabad	9
5	Allahabad	5
6	Kolkata	4
7	Bangalore	4
8	Hyderabad	3
9	Chennai	1
<b>Total</b>		<b>110</b>

From the above, it is observed that the Mumbai bench passed most number of orders followed subsequently by New Delhi.

The New Delhi bench constituted a special bench for 03 orders. This special bench constituted by the New Delhi bench disposed off three (03) petitions comprising of two (02)

members only, out of which only one is a member of the judiciary. The reason for constituting a special bench is un-known / unclear.

There are numerous information gaps on the orders because of the unavailability of standardized format i.e. a format specifically for writing these orders. However, each and every order mentions the date of passing the order. Many orders do not take into consideration the information that is critically required to assess the timelines for a clean disposal of petitions, like –

- Insolvency petition filing date and the date of first hearing (T1).
- The No. of times the hearing was re-scheduled before the final order was passed
- No. of interim orders that have been passed before passing the final order

Each bench of NCLT regularly publishes the list of cases scheduled for hearing which is commonly referred to as cause lists which comes with it's own lists of problems –

- (a) It's not feasible to get past/historical data on case listings from cause lists as these are not archived and are publicly available only for 48 hours.
- (b) If a petition under insolvency is already scheduled for hearing in the cause list, it doesn't necessarily mean that the hearing of the petition was held on the schedule date.

The display systems (where information is displayed) of the National Company Law Tribunal does not provide an overall perspective of entire cycle of the case and only very less information is made available. This extremely affects the ability of the court and the external researchers so that they can assess the performance of the Tribunal i.e. NCLT.

With availability of limited data, the average time that is taken for disposal of petitions under insolvency are mentioned in the table below –

<b>Table – 4 : Average time for disposal of insolvency petitions</b>		
<b>Phases</b>	<b>Number of Cases</b>	<b>Average Time (Days)</b>
<b>P0 to P1</b>	12	18
<b>P1 to P2</b>	52	16
<b>P0 to P2</b>	24	24

From the above Table - 4, it is shown that average time taken from the filing date of the petition under insolvency to the first hearing date is - 18 days (P0 to P1) and the average from the date of first hearing to the disposal date - 16 days (P1 to P2). Lastly, the average time for

disposal from the petition filing is - 24 days (P0 to P2). This timeline is higher than the 14 days timeline as mentioned in the Indian Bankruptcy Code.

#### **4.3 Admission and Dismissal of Cases under Insolvency**

The table (Table – 5) below shows the number of petitions under insolvency that have been admitted and dismissed during the period December 2016 to May 2017. Approximately 45% orders which have been observed, dismissed the petitions under insolvency before the Tribunal i.e. NCLT bench. This in turn infers that there is no bias to admit or dismiss petitions amongst the different NCLT benches.

<b>Table – 5 : Total Cases Admitted and Dismissed</b>	
<b>Admitted</b>	<b>61</b>
<b>Dismissed</b>	<b>49</b>
<b>Total</b>	<b>110</b>

#### **Reasons for Case Dismissal**

The Indian Bankruptcy Code mentions very specifically the grounds on which the Tribunal i.e. NCLT can dismiss a petition under filed for insolvency.

Petitions by OCs (Operational Creditors) can be dismissed on the following basis:

- (a) Insolvency Petition is incomplete
- (b) Corporate Debtor has already paid the outstanding debt/loan against which the petition is filed
- (c) OCs (Operational Creditors) has not given the statutory notice or invoice to the insolvent debtor
- (d) OC (Operational Creditor) received dispute notice or there is a dispute record in IU
- (e) Any disciplinary proceeding which has been pending against the Insolvency Professional who has been proposed by the OC (Operational Creditor)

Petitions under insolvency filed by the Financial Creditors might be disapproved on the following basis:

- (a) There is no default on the part of the debtor to the lender/creditor regarding the outstanding debt
- (b) Application for petition is incomplete

- (c) Any disciplinary proceeding is pending in the court of law against the Insolvency Professional proposed by operational creditor

<b>Table – 6 : Grounds of dismissal of petitions under insolvency</b>	
<b>Dismissal Ground</b>	<b>Number of petitions dismissed</b>
Dispute which is existing	8
Applicant is not a creditor as defined in the Indian Bankruptcy Code	7
Case Settled out of court	5
Recovery of Debt barred by limitation	3
Application not Complete	2
Operational creditor did not issue statutory demand notice as per notice prior to filing the insolvency petition	2
Others (Miscellaneous Reasons)	22
<b>Total</b>	<b>49</b>

When reviewed, the dismissals (sample basis) classified as “Others” in Table – 6 above shows that number of cases have been dismissed on basis which are not spelt in the Indian Bankruptcy Code. Take for example, in a petition under insolvency filed in the Mumbai bench of NCLT, the Tribunal took acceptance of the fact that all the components in Section - 9 of the Indian Bankruptcy Code were very much there to admit the petition and give a moratorium. However, the NCLT went further with it’s scope of inquiry on the balance sheet of debtor and issued in it’s opinion that since the corporate debtor has adequate assets on its balance sheet, it would be unethical if the corporate had to pay the moratorium amount.

Some of the cases coming under the ambit of NCLT has focused upon to find out the intent of the insolvency petitions filed by the petitioners. For instance, two (02) petitions were disposed off by New Delhi bench of NCLT as the applicants were pursuing concurrent remedies for debt recovery. The Tribunal i.e. NCLT said this is a mala-fide use of the Indian Bankruptcy Code framework. On similar grounds, in a petition filed by a corporate debtor, it was suspected by the Tribunal i.e. NCLT that wrong unethical motives on the part of the corporate debtor. This was on the grounds that the corporate debtor had not made an attempt to collect their receivables prior to filing the petition under insolvency.

The purpose behind these orders seems to be that a petition filed under insolvency by a creditor should be to liquidate or restructure the insolvent firm. Intention should not be restricted to just receive the claim.

### **Summary: NCLT under INDIAN BANKRUPTCY CODE**

At first, if we look at the NCLT (National Company Law Tribunal) functioning, it suggests the ability to deliver on the role of adjudication authority under the Indian Bankruptcy Code, in contrast to the concerns/issues that were raised during the planning and design stage of the INDIAN BANKRUPTCY CODE and subsequent discussions on the difficulty of implementing the adjudicating capacity rapidly.

The current evidence is quite different from the long delays and pendency that have been recorded in insolvency cases at the Debt Recovery Tribunal (DRT) in earlier regime. While the present functioning of the NCLT has countered expectations from previous insolvency cases, there are voids/gaps that are visible amongst the functioning of the NCLT under the INDIAN BANKRUPTCY CODE and what is actually expected under the law. There are voids/gaps which can be seen both in the empirical analysis on whether the Tribunal (NCLT) is able to deliver judgments within the timelines required under the law, and whether or not the judgments are in-line with the role which is visualized under the law.

While the above sections present to us the voids/gaps between what is required under the law and what is delivered by the Tribunal (NCLT), there is a common theme which runs through all of the above which should ideally become the initial and immediate stage of reforms for the insolvency and bankruptcy regime : Standardization and Improvement in data/information that is recorded in every NCLT order which is issued.

This must become a part of the rules of procedure at the Tribunal (NCLT) and the NCLAT. In part, this must also be converted into implementation of the proposal of an administrative support system for the adjudicating bodies which fall under the INDIAN BANKRUPTCY CODE and as well the Indian Judicial system as a whole, as is described in Section 4.2.4 of the Bankruptcy Law Reforms Committee 2015. Such a kind of system will try to reduce the current idiosyncrasies that have arisen across NCLT and NCLAT orders, improvement on the quality of data and feedback into improving the insolvency and bankruptcy process and enhance the efficiency of the Law.

## **5. RECOMMENDATIONS**

### **5.1 Recommendation of Policy for Data Management in INDIAN BANKRUPTCY CODE**

Adding up, the impact of Indian Bankruptcy Code on stakeholder behavior and functioning of the adjudicating institutions, this report holds insights for the organization and data management on cases under the ambit of INDIAN BANKRUPTCY CODE.

The amount of Qualitative & Quantitative information in these cases is same. These information can be made to use to understand the impact of reforms as well as how to keep a malleable framework. To access these type of information, the order in which it is organized can be enhanced or limit in accessibility. Limitations are mostly light but they do have negative extensions to some degree for the entire system. This hinders the research and productive assessments and also keeps back the institutions incapable of being monitored.

Currently, the NCLT orders are not search-able by text nor they are machine readable. This is a regressive feature in today's time when openness, transparency and easy accessibility is being demanded on an aggressive front from the public institutions globally. Hence, it becomes extremely expensive for an outside party to identify the key milestones in the life of a particular case. For instance, data regarding key milestones such as –

- When was the petition first filed;
- When did the first hearing took place i.e. when did it happen;
- If the petition it did not happen as scheduled, what was the possible reason for lapse;
- The interim orders that have been passed i.e. how many;
- How any hearing took place before the final hearing

is not presented or either it is not organised in a manner that does not yield data analysis or research work for that matter. In the present scheme, life cycle of very few cases has been observed under the Tribunal i.e. NCLT.

Such kind of issues can be resolved immediately or in a very less time if there are any standardized formats that have been adopted for basic information. It would be very beneficial if each and every order, carries some compulsory fields which are applicable



mostly in each and every type of case, and which also becomes inevitable to allow an assessment and performance of the law. Few examples are illustrated in dataset.

A standardized format works upon to lower the variation that exists in the basic and necessary quality of order. While some orders do have every basic essentially required information, others commonly suffer from typographical errors and from linguistic complexities which are so excessive that renders them incomprehensible by lay man. The work of the standardized format is not to limit down the freedom of adjudicating authority nor should impose upon the structural flow of the judgment. Howsoever, it should aim to address the notion of the basic and essential information that adds on to each and every judgment that is being published. Hence, it should always be a constant endeavor to promote the basic format which should become the norm for all institutions which come under the INDIAN BANKRUPTCY CODE, with all the published information having a common and a standardized format with the bare minimum information which should be promoted to be published by each and every institution of the Indian Bankruptcy Code.

To ensure that the research and input of data to be effectively and efficiently used in the continuous on-going and effective monitoring of public institutions under Indian Bankruptcy Code, the data management design and publication needs to be improved upon. This, in turn leads to consequences of the continuous and on-going assessment or monitoring of the INDIAN BANKRUPTCY CODE and the credit markets of the nation i.e. India.

## **6. CONCLUSION**

An enactment of plethora of laws have been witnessed in India, a continuous and on-going monitoring on the performance of these laws and public institutions themselves has been a rare case and it also becomes difficult to achieve.

Through the dissertation report, an attempt has been made to take up the assessment of one such law, i.e. the INDIAN BANKRUPTCY CODE, which focuses on the change in structure for all the stakeholders in the form of a completely new/fresh incentives. Furthermore, this law aims to provide immense scope and opportunities to gauge and factually analyse it's effectiveness. This dissertation report identifies the orders published by the Tribunal (NCLT) as the first-hand available source of factual observations that can be collected in a systematic manner in a standardized format on and about the working of the INDIAN BANKRUPTCY CODE.

There is no particular standardized format for the cases which makes it believe that there is a high disparity in the information available from the case order/s, and the absence of a research ready form of access to information which makes it opaque towards comprehensive efforts of research. As a result of this, measurement of effective working of the law, is still vulnerable to speculation and subjective analysis. As per observation, both these barriers can be effectively and easily solved for the overall benefit of the researchers, academic institutions and the society at large.

The need for this kind of a work finds it's support in initial performance measurement exercise the description of which is given in the analysis in Section - 4 . These empirical analysis, though preliminary in nature gives an indication that the INDIAN BANKRUPTCY CODE is most likely to go through a change in structure of the behaviour of economic agents, along-with the areas in which the Tribunal (NCLT) functions solely as the Adjudicating Authority under the INDIAN BANKRUPTCY CODE and where voids are cropping up which needs to be filled-up fast.

As there is a growth in insolvency cases with time, the dataset of this report is bound to increase in scope and size. This dataset will act as a fuel to many questions in the research field on the behaviour of economic actors and the public institutions with which they interact, and this will expectantly be the next set of source for the reforms which will be based on strong systematic data-backed analysis.

The INDIAN BANKRUPTCY CODE, which is still at a nascent stage, has seen everything which has not been experienced before specially with the 12 biggest NPA accounts the resolution of which is nearing completion with some firms bidding aggressively for these stressed assets and some on the brink of facing liquidation.

Till now, the code is proving to be a Boon for the Banking sector i.e. the creditors but a Bane for the large corporates/debtors undergoing insolvency.

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