Ease of Doing Business' in India through Corporate Insolvency Reforms

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Abstract

Being one of the fastest growing economies of the world with whopping potential for investment, a huge labour intensive market and favourable conditions for business; India ironically ranks 130 when it comes to the 'Ease of Business' index formulated by the World Bank. One of the eleven indicators used by World Bank to determine this position is resolving insolvency. The law on insolvency has been scattered through various statutes that led to multiplicity of forums and undue delays. The provisions relating to insolvency of corporate entities leading to winding up were contained in the Companies Act, 1956. Enactment of the Insolvency and Bankruptcy Code, 2016 proved to be a silver lining that sought to promote investments and resolve insolvency in a time bound manner. The objective was to consolidate the law of insolvency with regard to both individuals and corporate entities and substantially alter the resolution processes for "Corporate Persons". The paper focuses on the aspect of reorganization and liquidation of corporate entities due to insolvency and tries to assess its impact on ease of doing business through a comparative analysis between the old and new law. This involves deliberating upon the provisions of 1956 Act and 2016 Code along with a glimpse on the scope of improvement.

Key Words: Corporate Insolvency, Liquidation, Reforms, Creditor, Resolution, Ease of Doing Business, Winding Up

I. Introduction

Insolvency means the condition of a person unable to pay his debts as they fall due, or in the usual course of trade and business, although his inability be not so great as to compel him to stop business, and although he may be able to pay his debts at a future time, upon winding up.[i] In other words, it is a state when the value of a debtor's liabilities exceeds the value of its assets.[ii]

The nexus between a strong bankruptcy regime and economic growth is not difficult to deduce. Besides maximizing the total value of assets to be distributed amongst the stakeholders at the time of liquidation, an effective mechanism for resolving insolvency ensures better coordination and preservation of claims through fixation of a priority list.[iii] Hence, assurance of a reasonable return encourages investment and lending is one of the main ingredients that fuels the economy. Apart from this, a strong bankruptcy law has been considered to be a backbone of the recovery mechanism of any economy during financial crisis. In fact, a bankruptcy regime is known to be one of the main tools for entrepreneurship recovery.[iv]

II. India's Position

Being one of the fastest growing economies of the world with whopping potential for investment, a huge labour intensive market and favourable conditions for business; India ironically ranks 130 when it comes to the Ease of Doing Business Index formulated by the World Bank.[v] World Bank takes into account various indicators like starting a business, construction permits, taxation and so on to determine the rank of a nation with respect to ease of doing business. One such indicator is resolving insolvency. Apart from the strength of legal framework, the factors used to measure this particular indicator set are time, cost and recovery rate of a commercial insolvent[vi].

Currently, India ranks 136 on the Resolving Insolvency Index as of 2017[vii]. This rank is however expected to improve shortly in view of the recent comprehensive legal reforms, especially after the enactment of the Insolvency and Bankruptcy Code, 2016. India's poor rank is attributable to a complex legal regime that consisted of multiple statutes and adjudicatory authorities which ultimately created confusion and delays.

III. The Insolvency and Bankruptcy Code, 2016

Attempts of the Government to improve upon the situation can be witnessed in the form of various committees that have been established now and then to analyse the legal position ranging from Tiwari Committee (1981), Narasimham Committee (1991, 1998), RaghuramRajan Committee (2008) to Financial Sector Legislative Reforms Commission (2013) to name a few. The Government finally appointed a Bankruptcy Law Reforms Committee under the chairmanship of Dr. T.K. Vishwanathan, former law secretary, to look into bankruptcy related issues and draft a Bill.[viii] The Report was submitted on 4th November 2015 and the Bill was passed by the Parliament on 11th May, 2016. It then received the presidential assent and was published in the Official Gazette on 28th May, 2016 and still awaits execution of some of the provisions like those relating to individual insolvency. The Insolvency and Bankruptcy Code, 2016 ('Code') is expected to be fully operational by 31st March, 2017. The Code aims at consolidating laws relating to insolvency and resolution of corporate persons, partnership firms and individuals in a time bound manner in order to ensure maximization of value of assets and promote entrepreneurship in the long run.[ix]

It can be distinguished from the previous regime in the areas like bifurcation of laws relating to individual and corporate insolvency, forms of winding up, resolution process, liquidation provisions relating to preferential payments and so on.

IV. INDIVIDUAL INSOLVENCY

The statutory framework earlier was different for resolving individual and corporate insolvency creating multiplicity of laws and forum. As regards individual bankruptcy and insolvency, the Presidency Towns Insolvency Act, 1909 applied to the presidential towns of Chennai, Kolkata and Mumbai and the Provincial Insolvency Act, 1920 was enacted for states other than the Presidency towns. These statutes laid down the law for insolvency of individuals, association of individuals and partnerships.

The Code lays down the law on insolvency of both corporate persons[x] and individuals[xi] including partnership firms in a consolidated manner thereby solving the problem of multiplicity of laws.

V. CORPORATE INSOLVENCY

'Corporate Person' has been defined in the Code as a Company defined under Section 2(20)[xii] of the Companies Act, 2013, a limited liability partnership defined in Section 2(1)(n)[xiii] of the Limited Liability Partnership Act, 2008 or any other person incorporated with limited liability under any law but shall not include a financial service provider.[xiv]

1. RESOLUTION MECHANISM UNDER THE OLD REGIME

A major drawback of the old framework relates to the resolution mechanism.[xv] Part VIA, Part VII & Section 391 of Companies Act, 1956 was the root of corporate insolvency laws and contained the main provisions. However, this legislative framework was completed through ancillary laws like the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993[xvi], Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002[xvii] and Sick Industrial Companies (Special Provisions) Act (SICA), 1985[xviii]. Each of these laws provided for a different adjudicatory authority as summarised in Table 1.

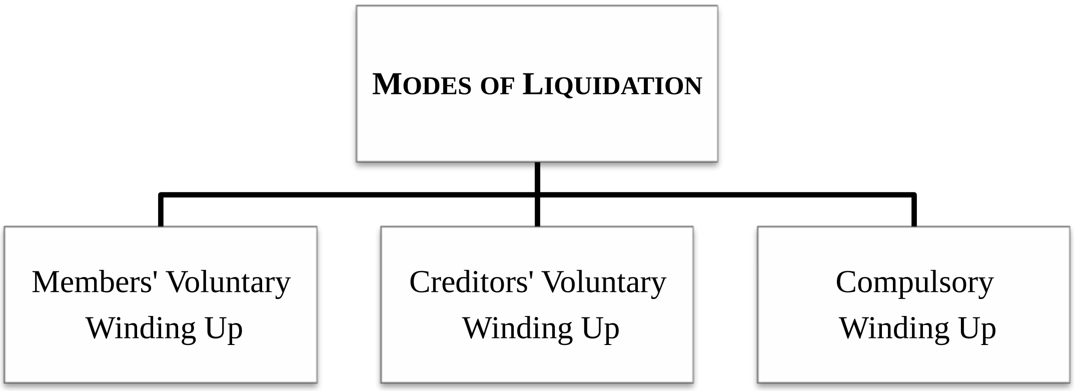
Table 1: Statutory and Adjudicatory Mechanism for Corporate Insolvency

Statutory Framework	Adjudicatory Authority	Appellate Authority
Companies Act, 1956	High Court	Supreme Court
RDDBFI Act, 1993	Debt Recovery Tribunal	Debt Recovery Appellate Tribunal
SARFAESI, 2002	No Judicial Forum	Debt Recovery Tribunal
SICA, 1985	Board of Industrial and Financial Reconstruction	High Court
Companies Act, 2013	National Company Law Tribunal (Provisions not notified)	National Company Law Appellate Tribunal (Provisions not notified)

2. Winding Up on Inability to pay Debts- Companies Act, 1956

The Companies Act, 1956 provided for members' voluntary winding up, compulsory winding up and creditor's voluntary winding up (Figure 1). There were various grounds on which a Company could be wound up by the Court which was also known as 'compulsory winding up'. One such ground was its inability to pay debts.[xix] The test was 'whether a company shall be able to meet its current liabilities and whether the existing assets would be enough to meet the future demands'.[xx] Further, a company was statutorily deemed to be unable to pay its debts in three circumstances. Firstly, when a creditor owing the company a sum more than five hundred rupees made a demand which went neglected for three weeks; or secondly, when execution issued on a decree or order in favour of the creditor was returned in whole or part; or thirdly, when the Court was satisfied, upon taking into consideration contingent and prospective liabilities, that the Company is unable to pay its debts.[xxi] It is a settled position of law that if the debt is bona-fide disputed; the deeming provision doesn't come into play as there is no 'neglect to pay' so as to incur liability.[xxii] Once the winding up order was passed, the Court was supposed to appoint an official liquidator who had to submit a Report to the Court within 6 months from the date of winding up order regarding the liabilities and assets of the Company.[xxiii]

Figure 1: Modes of Liquidation under the Old Regime



As discussed above, the Act also provided a process wherein creditors were given a say in the appointment of liquidator. The process was known as 'Creditors' Voluntary Winding Up' which in itself seems to be a contradictory term. The procedure was slightly different from that of compulsory winding up as it called for a meeting of the creditors[xxiv] wherein they may have nominated a person of their own choice to be a liquidator.[xxv] The powers of Board of Directors ceased once the liquidator was appointed who was responsible for distributing the assets as per the order of preferential payments.

3. Critical Analysis

The first difficulty created was the lack of clarity of jurisdiction. While one forum decided the rights of the debtor, another simultaneously determined the claims of creditors. This resulted in staying of proceedings that led to unnecessary delays.

The second problem was encountered in the form of multiple judicial fora as depicted in Table 1[xxvi]. The uncertainty created by overlapping jurisdictions ended up in whopping number of appeals which only made the insolvency process even more cumbersome. One such instance is the case of *Bank of Maharashtra v. PandurangKeshavGorwadkar and Ors.*[xxvii] The issue in the present case arose due to the ambiguity created by Section 19[xxviii] of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Section 529, 529A and 530 of the Companies Act, 1956 relating to preferential payments. The first question was that once the Company is in course of winding up, who will be the appropriate authority to decide upon distribution of assets. Secondly, once the claims of secured creditors have been settled under 1993 Act by the Tribunal, who shall be settled on priority. As regards the first question the Apex Court held that the 1992 Act doesn't cloth Debt Recovery Tribunal with the jurisdiction to settle workmen's claims against the debtor. With respect to the second, the Supreme Court observed that where a company is in liquidation, a statutory charge is created in favour of workmen in respect of their dues over the security of every secured creditor and this charge is *paripassu* with that of the secured creditor. Further, holding the date of winding up order to be the relevant date for arriving at the ratio of distribution, the Court also clarified that where the winding up order had been passed along with appointment of the liquidator, the disbursement of undisbursed proceeds by the Tribunal can only be done after a notice of the same has been served to the liquidator. If upon such notice there is any claim for workmen's dues, the Tribunal may either set aside the undisbursed amount or may pay the amount to the Bank or financial institution which had applied under the 1993 Act after securing an indemnity bond of restitution of the amount extending to the workmen's claims as determined by the liquidator. It is also a settled position of law that disbursements of the Debt Recovery Tribunal cannot be reopened if the debtor company subsequently goes into liquidation.

The lack of power in the hands of the bondholder is another reason why the corporate bond market has not worked well enough.[xxix] This has resulted in concentration of lenders in few major companies who are ready to take the risk despite a low rate of recovery sprouting from their weak rights. The existing complex legal framework has been criticised enough times due to reasons mentioned above so as to trigger bankruptcy reforms.

4. Key Changes brought in by the New Regime

The Code proposes a paradigm shift from 'Debtor in possession' to 'Creditor in control regime'.[xxx] This has been done by scrapping off the Creditors' Voluntary Liquidation procedure and making the role of creditors in the process indispensable through 'Corporate Insolvency Resolution Process'. In order to solve the problem of ambiguity created by multiplicity of fora with overlapping jurisdictions, it confers all powers upon one common adjudicatory authority[xxxi] i.e. the National Company Law Tribunal with a provision for appeals to the National Company Law Appellate Tribunal[xxxii]. In order to cater to the problem of delays caused by a long complex procedure, it provides for statutory mechanisms like 'Fast Track Corporate Insolvency Resolution Process'[xxxiii] and establishment of an 'Insolvency and Bankruptcy Board' to set up and supervise an infrastructure for 'Insolvency Professionals'[xxxiv] and 'Informational Utilities'[xxxv]. Through these reforms, it is aimed to lower down the time for resolution, reduce the losses incurred in recovery and improve the levels of debt financing across a wide variety of instruments.[xxxvi]

5. Corporate Insolvency Resolution-Cum Liquidation under the New Regime

The Code provides for two kinds of liquidation processes for Corporate Persons- Corporate Insolvency-cum liquidation process (Figure 2) through National Company Law Tribunal and voluntary winding up. The Code however, can only apply in cases where the minimum amount of default is one lakh rupees that can be raised upto one crore rupees by Central Government through notification.[xxxvii]

Figure 2: Resolving Insolvency under the 2016 Code

Corporate Insolvency Resolution Process

- Initiation- Financial Creditor/ Operational Creditor/ Debtor Himself
- Time Limit for Completion-180 + 90 Days

Approval of Resolution Plan

- Presented by Resoltuion Professional to Committee of Creditors
- Committee of Creditors may approve it by 75% majority

Commencement of Liquidation Process

- Must be submitted for Approval to Adjudicating Auhtority
- If not received or rejected, the Authority may proceed for liquidation

5.1. Persons Entitled to Initiate the Process

Section 6 of the Code allows three persons to initiate the process once the 'corporate debtor'[xxxviii] commits a 'default'[xxxix] (Figure 3). Firstly, the 'financial creditor' to whom a financial debt is owed or to whom such debt has been legally assigned or transferred to.[xl] Secondly, the 'operational creditor' who has a claim in respect of goods or services or repayment of dues arising under any law payable to Central or State Government or any local authority;[xli] and thirdly, it can also be initiated by the debtor itself. The procedures for making applications have been separately provided for all three of the foregoing. An important provision in the Code limits the time for completion of the process to one eighty days which can’t be extended for more than ninety days. In other words, the entire process must be completed within a maximum of two hundred and seventy days.[xlii]

Figure 3: Initiation of Corporate Insolvency Resolution Process under the 2016 Code (Summary of Procedure)

PERSONS ENTITLED TO INITIATE THE RESOLUTION PROCESS		
Financial Creditor (§7) Following must be furnished with application- 1. Record/Evidence of Default 2. Proposed Resolution Professional 3. Any other information specified by Board	**Operational Creditor (§8,9)** Step I: Delivery of Demand Notice upon occurence of default Step II: After expiry of 10 days, application may be filed along with- 1. Copy of demand notice 2. Affidavit as to no notice of an ongoing dispute 3. Proof of an unpaid operational debt	**Corporate Debtor (§10)** Where a corporate debtor has committed default, Corporate Applicant may apply. Following must be furnished with application- 1. Books of Account 2. Proposed Resolution Professional

5.2. Moratorium

The Code also provides for a period that has to be fixed by National Company Law Tribunal prohibiting institution of suits, continuation of ongoing proceedings, transfer of assets or recovery of property in possession or control of the debtor.[xliii] This is granted in order to provide a ‘calm down’ period to the debtor so as to ensure a smooth resolution process.

5.3. Resolution Plan

Within fourteen days of the commencement of insolvency, a ‘Resolution Professional’[xliv] must be appointed[xlv] who shall be responsible for the management of affairs of the corporate debtor and shall step into the shoes of the board of directors.[xlvi] The professional shall also be responsible for constituting a Committee of Creditors comprising of financial creditors after collation of all claims and determination of the actual financial position.[xlvii] A resolution plan refers to a plan proposed by any person for insolvency resolution of the corporate debtor.[xlviii] The person applying with such plan is known as the ‘resolution applicant’[xlix] who must be provided with all the relevant information in the form of ‘information memorandum’[l]. This plan must be presented by the resolution professional before the committee of creditors which may approve it by not less than seventy five percent of voting.[li]

Section 31 of the Code provides for approval of the said plan by National Company Law Tribunal after the approval of creditor’s committee is obtained. Once approved, it shall be binding on all the creditors and debtors.

5.4. Commencement of Liquidation

Once the resolution plan goes to the Court for approval as explained above, the court shall order the company to be liquidated in three cases.[lii] The first case is where no resolution plan has been received by the court within the time limit prescribed for completion of resolution process.[liii] The second case is when the Court doesn’t approve the plan for non-compliance of any of the provisions; and the third is when the creditors mutually decide to wind up and move towards liquidation. Once the order of liquidation has been passed, the resolution professional shall act as the official liquidator and all the powers of directors and other key managerial persons shall cease to have effect and shall thereafter vest in him.[liv] Section 38 of the Code provides for a time period of thirty days for collection of claims and the methods by which different categories of creditors can prove their claims. Financial creditors can prove their claims by providing the record of the information utility.[lv]

6. Preference in Payments during Liquidation- Waterfall Provisions

The liquidation provisions also include preference in which payments must be made at the time of winding up which are also known as 'preferential payments'. According to the 1956 Act, the first preference had to be given to workmen's dues and secured creditors.[lvi] The debts due to both of them had to be paid *paripassu* in full or in equal proportions where the realization of assets was not enough to meet their claims fully. Next in line included liquidation charges and remuneration of the liquidator. The third preference was given to 'preferential creditors'[lvii] which included government authorities, employees claiming any salaries, accrued holiday remuneration and compensation under various labour laws.[lviii] The last preferred included debenture holders, unsecured creditors, preference shareholders and equity shareholders in specific order of preference.

Section 53 of the new Code provides for distribution of the assets and order of priority of payment. Being substantially different from the earlier provisions as per the Companies Act, 1956 aforementioned, it prioritises liquidation expenses over workmen's dues and secured creditors. After these three, wages and unpaid dues of the employees have to be paid followed by unsecured creditors. The last is line of creditors is any amounts due to the Central or State Governments. The list ends with preferential shareholders and equity shareholders or partners in the order of preference.

VI. Comparison at a Glance

Substantial changes can be noticed if the liquidation provisions of both the regimes are compared. Where the old regime provided for separate laws for both individual and corporate insolvency, the new Code consolidates and brings both under one statutory framework with a common adjudicatory body thereby bringing forth clarity in jurisdiction. Another drastic difference relates to the forms of liquidation. While the Companies Act, 1956 provided for an option of 'creditors' voluntary winding up', the new Code shifts the scales in favour of a 'creditor control regime' and compulsorily requires a resolution plan to be passed by a Creditors' Committee. It gives precedence to resolution process before ordering of liquidation, thereby giving an option along with substantial authority to the creditors to decide the next steps. This has practically scrapped off the creditor's voluntary winding up. The third major difference lies in the priority of claims at the time of distribution of assets, especially, the substantial relegation of the preference for amounts due to the Government and preference to liquidation expenses over workmen's dues and secured creditors. Another important change caters to the urgent need of resolving the problem of indefinite delays in the insolvency resolution process. The time for completion of the resolution process is limited to a maximum of two seventy days and in case of fast track process, it is limited to a total one eighty days. These marked differences are expected to not only solve the various complexities of the old law but also improve India's position globally by making it easier to resolve insolvency which is considered to be one of the parameters of a business friendly economy. Hence, the reforms certainly paint a positive picture for the road ahead.

VII. Analysing the Adequacy of Reformatory Framework

The Code is aiming to overhaul the 60 year old framework for company liquidation.[lix] Although India's Doing Business ranking is expected to improve in the long run with the aforementioned reforms, the new Code may still not be adequate to meet the needs of the economy where creditors are presently able to recover only twenty percent of their loan value[lx] and it takes 4.3 years[lxi] on an average to resolve insolvency. The strength of an insolvency framework depends upon the ease in commencement of proceedings, management of debtor's assets, reorganization proceedings and creditor participation.[lxii] (Table 2)[lxiii]

Table 2: Strength of Insolvency Framework Index- India

	Insolvency Framework Index (0-16)	Commencement of Proceedings Index (0-3)	Management of Debtor's Assets Index (0-6)	Reorganization Proceedings Index (0-3)	Creditor Participation Index (0-4)
Delhi	6.0	2.0	3.0	0.0	1.0
Mumbai	6.0	2.0	3.0	0.0	1.0

1. Commencement of Proceedings

In India, as already explained above[lxiv], the proceedings as per the new Code can be initiated by the financial creditor, operational creditor and debtor himself. However the procedure for all three slightly varies with regard to the documents required as evidence.[lxv] However where the application has been filed by the debtor himself, he shouldn't be required to prove his insolvency. The logic is pretty simple. If the debtor wants to start afresh by reorganizing the entire business, he doesn't necessarily have to be an insolvent. He knows his interest best and may be able to anticipate his financial position way before than the actual crisis. In the U.S. regime, the debtor is simply required to convince the Court of a reasonable cause for moving the petition.[lxvi] The Indian regime surely lacks this kind of flexibility.

2. Management of Debtor's Assets

The prioritising of liquidation expenses over all the other dues reflects the weakness of the law. It is suggested that creditors are the pillars of any entrepreneurship based free economy and must be given complete assurance of their return. This will not only encourage them to invest more, but will also ensure transparency by reducing the chances of any siphoning of funds in the name of liquidation expenses. Commencement of a bankruptcy case creates an "estate".[lxvii] The US Bankruptcy Code prioritises payment of secured creditors before the administration expenses of the bankruptcy case.[lxviii] This is substantially different from the Indian Code which prioritises liquidation expenses over workmen's dues and secured creditors' claims.[lxix] Therefore, the secured creditors' claims must be taken care of before anything else. This however might create a problem in cases where the claims of the secured creditors are more than the assets available for distribution. In these scenarios it is advisable to settle the claims along with a promise of restitution of required funds if liquidation expenses remain unpaid and the insolvency waiver is not granted.

3. Reorganization Proceedings

The Indian regime although provides for Corporate Insolvency Resolution[lxx], it only gives powers to the Creditor's Committee to formulate the Plan and approve it. Hence, the debtor has no say in deciding his own fate and the creditors may often overlook the interests of a bona fide debtor. This although shifts the scales of balance in favour of creditors which is much needed in the present day scenario, it may however, prove to be disadvantageous for innocent debtors who might not be offered a fair share in the reorganization plan. This is not the case in other regimes that offer better alternatives to formulate the reorganization plan. For instance, Chapter 11 of the U.S. Bankruptcy Code provides for a procedure through which the insolvent can continue to operate by creating a reorganization plan through negotiations between the debtor and the creditors.[lxxi] This ensures that interests of both the parties are considered and the plan is formulated mutually.

4. Creditor Participation

One of the problems that can be faced by a creditor-in-control regime is that in cases of small scale businesses, creditors may be unwilling to serve on the Committee or may not be very active in the case. US Code solves this problem by classifying some of the insolvency cases into "small business cases"[lxxii].

In contrast to normal cases, a small business debtor is under additional oversight by the U.S. Trustee (an equivalent of Resolution Professional in India). This allows the debtor to manage the entire process by itself and file a plan of his own choice. This leads to a faster resolution process in cases of small businesses. Another problem with the creditor dominated regime is the undue hardships that the debtor might have to suffer in case its interests are overlooked by the creditors. To solve the problem U.S. Code provides for a one twenty days long period during which the debtor (excluding small business debtor) has the exclusive right to file a resolution plan.[lxxiii] Thereafter, the creditor is allowed to file a competing plan which actually provides an incentive to the debtor to file his plan within the exclusivity period. This acts as a check on excessive delays in the resolution process.[lxxiv]

These reforms might not prove to be very efficient for India as debtors are likely to take undue advantage especially in presence of untrained and inexperienced resolution professionals. However, they can still be considered in the long term once the implementation of these reforms has matured into a smooth and well functioning process.

VIII. Conclusion

Apart from the complexities created by the old legal framework that have been tackled to a great extent by the enactment of The Insolvency and Bankruptcy Code, 2016, there are many hurdles that still need to be crossed in order to have a strong insolvency resolution mechanism. Absence of land records coupled with the menace of '*benami*' transactions have often proved to be a lost key to the deadlock of creditors' claims. Although the Government seeks to digitalize all land records of the last 30 years in order to make them available online[lxxv], the road doesn't seem very smooth yet. Another hurdle that needs to be crossed after the reformsis setting up of the regulatory mechanism consisting of the Board and information utilities including training of professionals. Nevertheless once the entire set up gains momentum, India's ranking on the 'Ease of Doing Business' index is bound to escalate a few scales. This will improve the country's position and go a long way in preparing the economy for insolvency crisis. However, for effective implementation that brings the reforms on paper to life, we still need to keep the midnight oil burning.

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[xi] Part III- Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms, The Insolvency and Bankruptcy Code, 2016, ***Not yet notified*** (Applicable Laws- Presidency Towns Insolvency Act, 1909 applied to the presidential towns of Chennai, Kolkata and Mumbai and the Provincial Insolvency Act, 1920 for others; *supra*)

[xii] 'Company' is defined as a company incorporated under the Companies Act, 2013 or under any other previous company law.

[xiii] 'Limited Liability Partnership' means a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008
[xiv] §2(7), The Insolvency and Bankruptcy Code, 2016
[xv] "Ch 3: Economic Thinking", *The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design*, Bankruptcy Law Reforms Committee, November 2015, New Delhi, pp.25, ¶3.3.1
[xvi] It gave Banks and a specified set of financial institutions greater powers to recover collateral at default.
[xvii] It enabled the secured creditors to take possession of the collateral without direct involvement of the Court or Tribunal.
[xviii] It applied exclusively to industrial companies, which if found unviable, are referred for liquidation. Repealed in 2003.
[xix] §433(e), Companies Act, 1956
[xx] Ranbaxy Laboratories Ltd. v. MS Shoes East Ltd. (1997) 26 CLA 202 (Del), ¶209, Alliance Credit and Investments Ltd. v. KhaitanHostambeSpinels Ltd, (1997) 3 Comp LJ 200 (All)
[xxi] §434(1), Companies Act, 1956
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[xxiii] §448-458, Companies Act, 1956
[xxiv] §500, Companies Act, 1956
[xxv] §502, Companies Act, 1956
[xxvi]*Supra*
[xxvii] (2013) 7 SCC 754
[xxviii] Section 19 provides that where a certificate of recovery has been issued, the Debt Recovery Tribunal may order distribution of sale proceeds amongst secured creditors in accordance with the Companies Act, 1956
[xxix] "Ch 2: Executive Summary", *The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design*, Bankruptcy Law Reforms Committee, November 2015, New Delhi
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[xxxi] Chapter VI- Adjudicatory Authority for Corporate Persons, The Insolvency and Bankruptcy Code, 2016, Part II
[xxxii] §61, The Insolvency and Bankruptcy Code, 2016
[xxxiii] Chapter IV- Fast Track Corporate Insolvency Resolution Process, The Insolvency and Bankruptcy Code, 2016, Part II
[xxxiv]"insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207, §2(19), The Insolvency and Bankruptcy Code, 2016
[xxxv] "information utility" means a person who is registered with the Board as an information utility under section 210, §2(21), The Insolvency and Bankruptcy Code, 2016
[xxxvi] "Ch 3: Economic Thinking", *The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design*, Bankruptcy Law Reforms Committee, November 2015, New Delhi, ¶3.4.1
[xxxvii] §4(1), The Insolvency and Bankruptcy Code, 2016
[xxxviii] 'corporate debtor' means a corporate person who owes a debt to any person, §2(8), The Insolvency and Bankruptcy Code, 2016
[xxxix] 'default' means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor, §2(12), The Insolvency and Bankruptcy Code, 2016
[xl] §5(7), The Insolvency and Bankruptcy Code, 2016
[xli] §5(20), 5(21), The Insolvency and Bankruptcy Code, 2016
[xlii] §12, The Insolvency and Bankruptcy Code, 2016
[xliii] §14, The Insolvency and Bankruptcy Coe, 2016
[xliv] 'Resolution Professional' refers to a professional appointed to conduct the corporate insolvency resolution process, §5(27), The Insolvency and Bankruptcy Code, 2016
[xlv] §16, The Insolvency and Bankruptcy Code, 2016
[xlvi] §17, The Insolvency and Bankruptcy Code, 2016
[xlvii] §21, The Insolvency and Bankruptcy Code, 2016
[xlviii] §2(26), The Insolvency and Bankruptcy Code, 2016
[xlix] §2(25), The Insolvency and Bankruptcy Code, 2016
[l] §29, The Insolvency and Bankruptcy Code, 2016

[li] §30(3), The Insolvency and Bankruptcy Code, 2016
[lii] §33, The Insolvency and Bankruptcy Code, 2016
[liii] In normal cases, the time period for completion is limited to 180 days with an extension of not more than 90 days (§12); in cases of *'fast track corporate insolvency resolution process'* (Chapter IV, Part II of the Insolvency and Bankruptcy Code), this time is limited to 90 days with an extension of not more than 90 days (§56)
[liv] §34, The Insolvency and Bankruptcy Code, 2016
[lv] Comments (Based on Notes on Clauses of the Bill), §38, The Insolvency and Bankruptcy Code, 2016
[lvi] §529, 529A, Companies Act, 1956
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