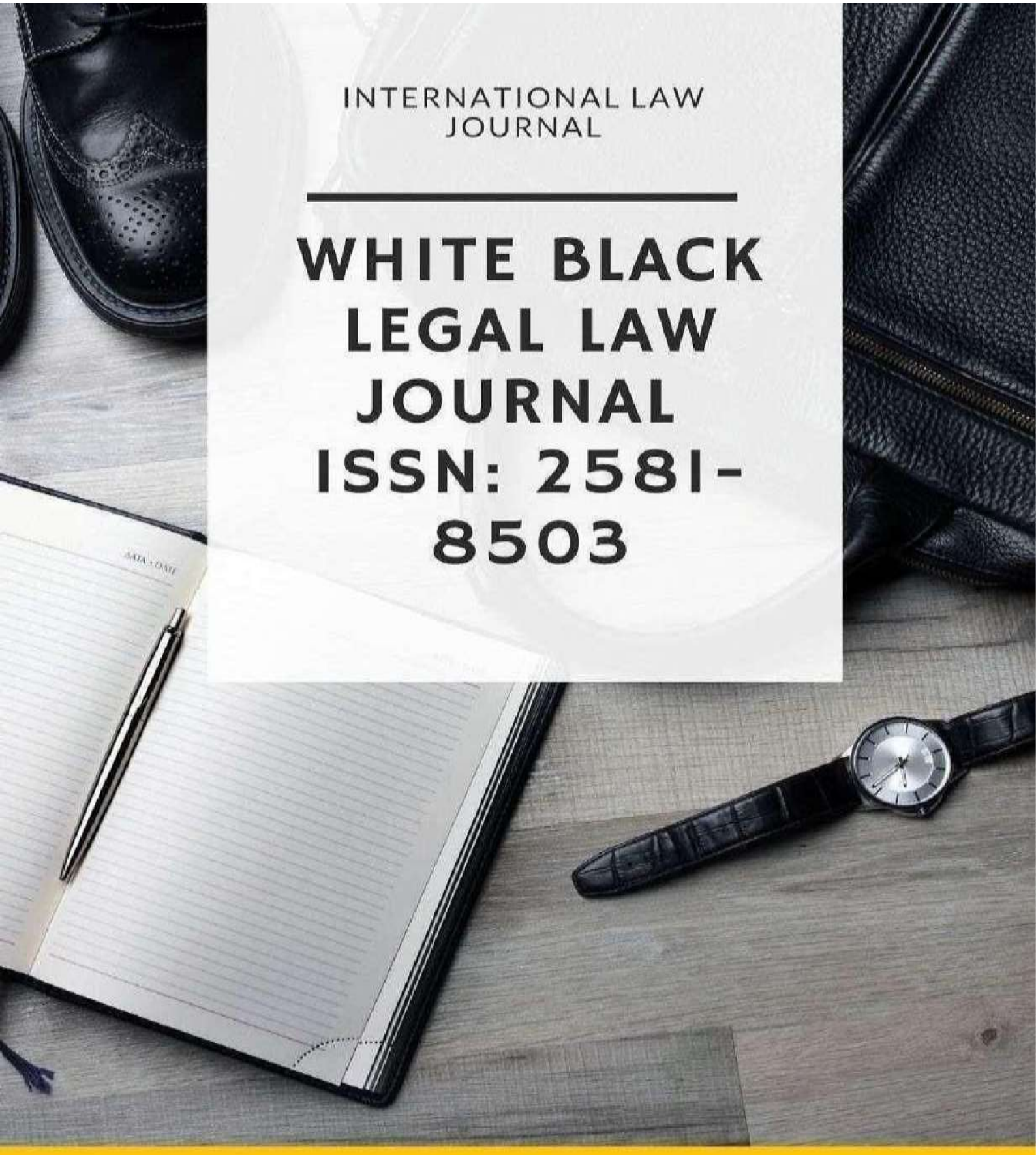

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PREREQUISITE OF INSOLVENCY AND BANKRUPTCY CODE, 2016 – A CRITICAL ANALYSIS

AUTHORED BY: SURBHI VERMA
& RADHIKA MAHAJAN

ABSTRACT:

The insolvency laws work at the instance of an imprisoned debtor whereas bankruptcy laws, at the instance of the creditor. The term "insolvency" is the term to cover all types of debts problems while bankruptcy is the term for an individual who has been declared bankrupt. Hence, bankruptcy is a type of insolvency.

The insolvency and bankruptcy regime in India has a long history since the time of Britishers. In this research work, the researchers will focus on the Recovery of Debts due to Bank and Financial Institution Act, 1993, Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (SARFAESI) and the present Insolvency and Bankruptcy Code, 2016 to deal with the situation of insolvency and bankruptcy.

1. INTRODUCTION:

India has a very long historical insolvency and bankruptcy regime. There are references for lending for interest and social- religious sanctions in the ancient text such as Manusmriti and Arthasastras.[1] "Insolvency" is defined an s a financial condition or state experience when: [2]

a) A legal entity or a person's liability exceeds their assets, commonly referred to as "balance- sheet" insolvency, or
b) When a legal entity or a person can no longer meet their debts obligation on time as they become due, commonly referred to as "cash flow" insolvency.

In lawful terminology, insolvency is "where the liabilities of an individual or firm surpasses its advantages". Mere insolvency does not afford enough ground for lenders to petition for insolvency

[1] Dr. S.R. Myneni, *Law of Insolvency and Bankruptcy*, (Allahbad Law Agency, Faridabad, 2019).
[2] Dr. S.R. Myneni, *Law of Insolvency and Bankruptcy*, (Allahbad Law Agency, Faridabad, 2019).

or bankruptcy of the borrower, force a liquidation of his or her assets.

Whereas "Bankruptcy" is defined as a successful legal procedure that results from:[3]

a) An application to the relevant court by a legal entity or a person to have themselves declared bankrupt; or
b) An application to the relevant court by the creditor of a legal entity or a person to have the legal entity or person declared bankrupt; or
c) A special resolution that a legal entity files with the Registrar of Companies (ROC) to be declared bankrupt.

"Bankruptcy" is when an individual is declared bankrupt by the Court because they are insolvent. People go Bankrupt for two reasons:

a) One; is their assets are less than their liabilities (so they owe more than they own),
b) Second; is where they are unable to pay their debts which are due

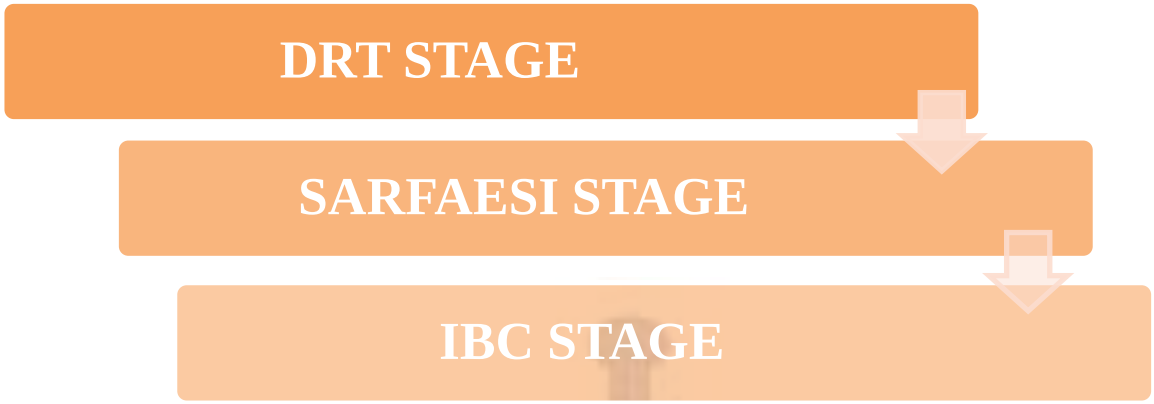
The insolvency and bankruptcy regime in India is still evolving with enactment of "Insolvency and Bankruptcy Code, 2016". This code provides for a strong framework for debt recovery and insolvency where the cost and time incurred is minimized in attaining liquidation that has been long overdue in India. This single law is overhaul of the insolvency and bankruptcy regime in India replacing all the earlier laws.

2. AN OVERVIEW AND EVOLUTION OF INSOLVENCY AND BANKRUPTCY CODE, 2016:

The idea of "Recovery of Debt" from debtors in the banking system can be divided into two stages. The First stage is called as (1) Soft Recovery, wherein the soft techniques are adopted for recovery of debts i.e. delivery of letter, official or residential visits of the recorded debtor, etc. In the Second stage (2) the creditors (banks and financial institutions) are enforcing the legal proceedings for adjudication of their dues.

[3] *Ibid.*

To examine and understand the Evolution and Framework of Debt Recovery Regime in India the researcher has divided it into three stages such as:



(2.1) DRT STAGE:

In this stage, after analyzing the situation of 15 lakh cases pending by Public Sector Banks (PSB) and 304 cases filed and pending by Financial Institutions for recovery of debts committee were set up for recommendation and getting better laws and regime for debt recovery in India. In the year 1981, Tiwari Committee was set up to suggest changes in law and order to have speedy recovery of debts to banks and financial institutions. It suggested setting up tribunals that will follow the summary procedure. Keeping in mind the international trend of helping various institutions to recover their debts, the Government of India constituted 33 Debt Recovery Tribunals (DRTs) and 5 Debt Recovery Appellate Tribunals (DRATs).

The legislation "Recovery of Debts Due to Bank and Financial Institution, Act, 1993" (RDDBFI) was passed with the objective "to provide for the establishment of tribunals for adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto"[4]

The legitimacy of "Recovery of Debts due to Bank and Financial Institution Act, 1993" (RDDBFI) was challenged. In the case of Union *of India and another* v. *Delhi Bar Association and others*[5] the Delhi High Court decided that the RDDBFI is bad on the grounds like power of Central Government to constitute the tribunals under Article 323A and Article 323B of the Constitution of India and as

[4] Recovery of Debts Due to Bank and Financial Institution, Act, 1993.
[5] *Union of India and another* v. *Delhi Bar Association and others* (2002) 4 SCC 275.

per this Act, the tribunals are placed on higher pedestal than the High Court in respect of monetary jurisdiction[6] and also there was no provision for set-off, counterclaim or transfer of cases. This decision was stayed by the Supreme Court of India on the appeal filed by the Central Government. However, the court advised the Government to rectify the Act to suit the need of the country.

In *Federal Bank Ltd.* v. *Sunmack Motor Finance Ltd.*[7] it was held that the default committed by the defendant in not returning the amount of interest which was generated by non-convertible debenture falls within the meaning of debts since investment in debentures can be construed as loans by the banks to the company.

The "Recovery of Debts due to Bank and Financial Institution Act, 1993" (RDDBFI) was beneficial but it did not receive its full potential in achieving its objective, so we could say this Act has been partially successful. But on a later stage, this act was not able to keep up the ongoing trend due to certain factors such as the long-drawn process and prolonged vacancies, etc. One of the main reasons for the slow progress in recovery is the procedural delay in DRT in disposing of cases and lack of required powers and skill on the part of the Banks and Financial Institutions to enforce the securities without approaching the Courts. With the increasing bad debts or stressed assets in the banking and financial institutions, reforms were made which lead to establishment of new laws such as SARFAESI Act 2002.

(2.2) SARFAESI STAGE:

After the wide-ranging loopholes in the RDDBFI Act 1993, there was a need for change in the legal system in the Indian debt recovery regime, new enactments were needed to look after the current situation of pending debts and for speedy and effective recovery of debts by the Banks and Financial Institutions. This lead to setting up of Narsimhan Committee I and II and Andhyarjina Committee to examine the banking sector of new legislation for securitization and empowering banks and financial institutions to take possession of these securities and sell them without the intervention of the court. This lead to the enactment of "Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (SARFAESI). This Act provided the power to Banks and Financial

[6] The Court in this case referred to the case of *D.K. Abdul Khader* v. *UOI,* (AIR 2001 Kant 176) where it was held that a tribunal could not be constituted for any matter you specified in Article 323A and 323B.
[7] *Federal Bank Ltd.* v. *Sunmack Motor Finance Ltd.* 2004 (2 BC 215(DRAT/DRT).

Institutions to recover against Non-Performing Secured it tends to be named as one of the most radical Act enacted by the parliament for guaranteeing creditors, recovery from the debtors without any obstructions. For the first time, the secured creditors have been empowered to take steps for recovery of their dues without intervention of the courts or tribunals.

However, the implementation of this Act was delayed due to several writ petitions which were questioning the validity of this Act. In the case of *Mardia Chemicals* v. *Union of India*[8] the Supreme Court of India held that the provisions of the Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (SARFAESI) are valid except Section 17 Sub- Section (2) of this Act as it is ultra vires to Article 14 of the Indian Constitution.

In *United Bank of India* v. *Satyawat Tondon and others*[9] the Supreme Court help it is a matter of serious concern that despite repeated pronouncement of the Supreme Court, the High Court continues to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under article 226 for passing orders which has a serious adverse impact on the banks and Financial Institutions it hopes and trusts that in future the High Court will exercise their discretion in such matter with greater caution, care, and circumspection.

The improvements of recuperation laws relating to Banks after the enactment of "Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (SARFAESI) increased more significantly and acknowledgment. In any case, it has certain drawbacks, one main drawback of this Act was that no right was given to creditors under this Act. It also confronted various difficulties like Arbitrary powers to Banks, No arrangements for lenders liability, Appeal provisions were just deceptive, and non-availability of adjudicatory form.
Therefore, SARFAESI Act was partially effective in the regime of debt recovery.

The procedure of recovery under "SARFAESI ACT":

There are certain steps involved in the framework of recovery under "Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (SARFAESI).
STEP 1: This step involves to classify the account as Non- Performing Asset. The banks are required

[8] *Mardia Chemicals* v. *Union of India* (2004 (D.R.T.C (1) (SC)).
[9] *United Bank of India* v. *Satyawat Tondon and others* (Civil Appeal, Special Leave Petition No. 10145 of 2010).

to classify the non-performing assets further into three categories (Sub-standard, doubtful, and loss) based on the period for which the asset has remained non-performing.

STEP 2: Under this step, Demand Notice is served by the creditor to the borrower under Section 13(2)[10] the demand notice is published in two newspapers (English and Vernacular Language).

STEP 3: In this step, the borrower is given a "Right to Representation" under Rule 3A[11] to reply to the demand notice served by the creditors.

- Examination of representation or objection raised by borrowers (if there is a need to make changes or modification in the Demand Notice, it may be examined accordingly)
- Serve a revised Demand Notice or pass such other suitable order as deemed necessary within seven days of receipt of representation or objection.
- If on examination the representation made or objection raised, the authorized officers conclude that such representation or objection is not acceptable or tenable, he shall communicate within seven days of receipt of such representation or objection to the borrower.

STEP 4: Under Section 13(4)[12] of the Act if the borrower fails to discharge his liability in full within the period specified under 13(2), the creditor may take the recourse of taking over symbolic possession of the secured assets.

STEP 5: When the Secured asset is required to be sold or transferred under the provisions of the SARFAESI Act the secured creditor takes help and file an application to the Chief Metropolitan Magistrate or District Magistrate for taking actual possession of the property/assets under Section 14[13] of the Act.

STEP 6: In this step licensing will be done with the Court Receiver and Police Authority. Notice in terms of rules will be sent to the borrowers and will be applied to the property.

STEP 7: As per Rule 8(2)[14] the said notice will be published in two leading newspapers within seven days.

STEP 8: As per Rule 8(1)[15] name of Bank and Financial Institution will be displayed on the property.

STEP 9: Under this step, the property will be valuated as per Rule 8(5)[16]

STEP 10: In this step, a notice is served to the borrower within 30 days for the sale of the property.

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[10] Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002.
[11] Securities Interest Rules, 2002.
[12] *Supra 11*.
[13] Securities and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002.
[14] Securities Interest Rules, 2002.
[15] *Ibid.*
[16] *Ibid.*

Rule 8(6)[17].

STEP 11: This step involves obtaining quotations and inviting tenders for the sale of the property under Rule 8(5)[18].

STEP 12: In this step sale of the property will be confirmed to the highest bidder.

STEP 13: No sale will be confirmed on less than the "Reserve Price"

STEP 14: In this step 25% of the sale price to be deposited on the same day and balance within 15 days as per Rule 9(3) and Rule 9(4)[19].

STEP 15: Under Rule 9(5)[20] if the balance is not deposited, all the deposit made prior by the buyer will be forfeited and the property will be resold.

STEP 16: Sale of property will be made effective from the execution of sale deed.

STEP 17: In this step, the certificate of sale should specify whether the property is free from encumbrances known to the bank.

STEP 18: In this step, in case of dues of Banks or Financial Institutions are not fully met with sale proceeds of the property. Bank or Financial institution may apply to the Debt Recovery Tribunal (DRT) for recovery of balance amount under Rule 11, Sec 13(10) of SARFAESI Act.

STEP 19: In this step under Section 18 If the aggrieved person by any order made by Debt Recovery Tribunal (DRT) can prefer appeal along with prescribed fees to the Debt Recovery Appellate Tribunal (DRAT) within 30 days from the date of receipt of the order of Debt Recovery Tribunal (DRT). No appeal can lie unless the borrower deposits 50% of the debt claimed by the creditor. The tribunal has power for a reason to be recorded to reduce this amount to 25% of the claim amount.

Therefore, this is the framework of Recovery under SARFAESI Act 2002.

(2.3) INSOLVENCY AND BANKRUPTCY STAGE:

In a layman's language, Insolvency is where the person or the entity is unable to pay dues on time and does not have enough cash flow to pay its debts on time. "Bankruptcy" is defined under Section 79 (4) of the Code. It says the *"bankruptcy means the state of being bankrupt"*[21]

There are a lot of factors that contribute to insolvency such as a company's hiring of inadequate accounting or human resource management, rising vendor's cost may also lead to or contribute to

[17] Securities Interest Rules, 2002.
[18] *Ibid.*
[19] *Supra 18.*
[20] Securities Interest Rules, 2002.
[21] Section 79(4) of Insolvency and Bankruptcy Code,2016

insolvency.[22] Lawsuits from customers or business associates may also lead a company to insolvency.[23] Sometimes, the goods or services that are provided by the company do not fit in or do not match the changing needs of the consumers. This can also lead to Insolvency.[24]

As we all know that a lot of transactions take place in the business and all these transactions must be made in a time-bound manner. In case there is any delay in making the payment, it will affect the whole chain of business, and dues would pile up. And this will further affect liquidity. This will also affect the employees, investors as well as the depositors. Hence, protecting the interests of the depositors, investors and large financial institutions becomes necessary. All this led to the enactment of the various acts such as, "RDDBFI Act, 1993", "SARFAESI Act,2002".

The Government of India enacted IBC,2016 to collate and amend different laws that were related to the company's insolvency resolution. To give a boost to the market and economy, financial restrictions in any form must be removed. This is necessary for promoting and pushing the business as well as the competition. This is necessary to create a favorable environment when an emerging economy like India is trying to sustain its high growth rate.[25]

Under the Ministry of Finance, "Bankruptcy Law Reforms Committee" (BLRC) drafted the "Insolvency and Bankruptcy Code Bill". On 21st December 2015, in Lok Sabha, the IBC was introduced. After that, this was referred to a Joint Committee of the Parliament as well. Recommendations were submitted by the Joint Committee, and on 5th May 2016, the Code after the modification was passed.

Applicability of the "IBC, 2016"

Section 2 of the "Insolvency and Bankruptcy Code, 2016" deals with the applicability of the Code. As per this section, the Code will apply to

a) any company which has been incorporated under Companies Act, 2013,

[22]Alicia Tuovila, Insolvency, Investopedia Updated July 3,2019, Available at https://www.investopedia.com, (Visited On: 26-03-2020).
[23] *Ibid.*
[24] *Ibid.*
[25] Nandakrishna M & Haiyua Anwar, "Corporate Insolvency Resolution Process- An Overview", *The Lex- Warrier: Online Law Journal* Vol.9| Issue 9, ISSN (O): 2319-8338, p.420, (November 2018) Available at http://www.lex-warrier.in, (Visited On: 26-03-2020).

b) any company which is governed by any other Specific Act,
c) any LLP which is incorporated under the Limited Partnership Act, 2008,
d) personal Guarantors,
e) partnership firms,
f) Individuals,

The code does not apply to the "entities which are engaged in providing financial services like the NBFCs, investment companies, etc."[26]

Institutional Set up under the Code:

The Regulators: Insolvency and Bankruptcy Board of India (IBBI) is the apex body that governs the "Insolvency and Bankruptcy Code". Its main function is to appoint "Insolvency Professionals" (IPs) and "Information Utilities" (IUs) and to set up the necessary infrastructure.

While Section 3(1) of IBC, 2016 defines the term "Board" that is IBBI, "Insolvency and Bankruptcy Board of India."[27] The details of its establishment are laid down in Section 188 of the Code.[28] There shall be ten members in the "Board" including a chairperson. There shall be three officers of the rank of Joint Secretary and above of Central Government, one from RBI and Five to be nominated by the Central Government.

Adjudicating Authority (AA) has the power to deal with matters that are related to Insolvency. For the Corporate Persons and Limited Liability Partnerships (LLP), NCLT that is "National Company Law Tribunal" will be "Adjudicating Authority". For Individuals or Partnership Firms, Adjudicating Authority will be DRT that is Debt Recovery Tribunal.

Insolvency Resolution Process under "IBC, 2016"

Part II of the IBC, 2016 deals with Insolvency Resolution and Liquidation for Corporate Persons. Chapter II of Part II deals with "Corporate Insolvency Resolution Process". Section 4 of Part II of

[26] Rakesh Wadhwa, FCS, Advocate, "Insolvency and Bankruptcy Code, 2016", *The Journal for Corporate Professional, The Institute of Company Secretaries of India*, pp. 23-28, (September 2016).
[27] Section 3(1) of Insolvency Bankruptcy Code, 2016 [Amended up to 18-03-2020], Available at https://ibclaw.in, (Visited On: 26-03-2020).
[28] Section 188 of Insolvency Bankruptcy Code, 2016, [Amended up to 18-03-2020], Available at https://ibclaw.in, (Visited On: 26-03-2020).

IBC,2016 provides for the applicability that is on whom this Part of IBC shall apply.[29] This Part II applies to all the matters that are relating to Insolvency and Liquidation of the Corporate Debtor and the minimum amount of the default should be ₹1 Lakh. [30]

This can be understood by the following diagram.

- **Financial Creditor** Under IBC, 2016 the 'Financial Creditor' has been defined. It states that- *"financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."*[31]
- **Operational Creditor** Section 5(20) of the IBC defines the term 'Operational Creditor'. It states that- *"operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred."*[32]
- **Corporate Creditor** Section 3(8) of the IBC defines the term 'Corporate Creditor'. It states that *"corporate debtor means a corporate person who owes a debt to any person."*[33] Section 5(5) provides for the 'Corporate Applicant'.

Adjudicatory Authority under "IBC, 2016"

Chapter VI of the Code deals with "Adjudicating Authority for Corporate Persons". As per Section 60 Sub section (1), "the National Company Law Tribunal which has territorial jurisdiction over the place where the registered office of the corporate debtor is located shall be the AA. Thus, this section specifies the AA for the corporate persons including the guarantor." The application must be filed before the NCLT if in case any CIRP or proceedings for the liquidation are pending before NCLT. The NCLT will have similar power to that of DRT.[34]The powers of the NCLT have been specified in the code." NCLT has the jurisdiction to entertain or dispose of any application by the Corporate Debtor or person. NCLT has also got the power to entertain or dispose of any claim made by the Corporate Debtor or Corporate Person, including any claim against the Corporate Debtor or Person.[35]

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[29] Section 4 of Insolvency Bankruptcy Code, 2016 [Amended up to 18-03-2020], Available at https://www.mca.gov.in, (Visited On: 28-03-2020).
[30] *Ibid.*
[31] Section 5(7) of of Insolvency Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[32] Section 5(20) of of Insolvency Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[33] Section 3(8) of of Insolvency Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[34] Section 60(4) of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[35] *Ibid.*

a. Filling of Application to NCLT

- The application for the CIRP must be filed under Section 7, 9, and 10 by Financial Creditor, Operational Creditor, and by Corporate Applicant respectively before NCLT.
- Rule 4, 5, 6 of the "Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016" has to be read with Section 7, 8, 9, and 10 of the IBC, 2016.
- Rule 4 provides for the application by the Financial Creditor (FC). It says that an application for initiation of the CIRP must be made under Section 7 of IBC, 2016 in Form 1 by FC against the Corporate Debtor (CD).[36] The application can be submitted by the financial creditor himself or jointly.[37] The application must be accompanied by the important documents as well as other essential records that are specified under the Regulations.[38]
- Rule 6 provides for application by Operational Creditor. It says that for initiating the CIRP, the application must be filed by the Operational Creditor before the NCLT under Section 9 of IBC, 2016 in Form 5.[39]
- Under Rule 7, the application shall be made by the Corporate Applicant for initiating CIRP. The application must be filed under Section 10 of the Code in Form 6 before NCLT.[40]
- The applicant can withdraw the application which he has filed under Section 7, 9, or 10 for initiation of CIRP under Section 12A of IBC.
- Section 12 A states that – *"The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety percent voting share of the committee of creditors, in such manner as may be specified."*

b. Admission of Application by Adjudicatory Authority:

Once the application for the initiation of the CIRP has been admitted/ accepted by the AA that is made under Section 7 or 9 or 10, the AA under Section 13 may declare moratorium, make public announcement and also appoint the Interim Resolution Professional.

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[36] Rule 4(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [Amended up to 19.03.2019], Available at https://www.ibbi.gov.in, (Visited On: 28-03-2020).
[37] *Ibid.*
[38] *Ibid.*
[39] Rule 6(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [Amended up to 19.03.2019]
[40] Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [Amended up to 19.03.2019]

- **Moratorium**

This order of Moratorium is also known as the calm period. During this calm period, no judicial proceedings for recovery, enforcement of security interest can take place. And even the corporate debtor will not be allowed to transfer or dispose of his property or assets and also cannot transfer any legal interest. Till the completion of CIRP, the Moratorium order will affect/ remain in operation.
Section 14 of the Code states that – "as per the provisions of subsections (2) and (3), when the proceedings for insolvency commences, the AA shall prohibit any continuation of suits or proceedings against the debtor." Also, the debtor is prohibited to dispose-off its assets whether by the means of transfer or dispose of or alienation.

- **Public Announcement**

Section 15 of the Code provides that "the public announcement shall contain the information regarding the Corporate Debtor like its name, address and also the name of the authority with which the debtor is registered, when was the claim registered (the last date). The public announcement in respect of CIRP shall also include the vital details regarding the official resolving and managing the corporate debtor. Some other details such as the penalties for false or misleading claims shall also be mentioned. The public announcement shall also contain the date of closing of this insolvency process which shall be 180 days from the date on which the application was admitted."[41]

- **Interim Resolution Professional (IRP)**

Under Section 16 of the IBC, 2016 the IPR is appointed. On the start of the insolvency proceedings, an "Interim Resolution Professional" will be appointed by the AA. The term of the IRP shall continue till a regular Resolution Professional is appointed. Section 18 provides for the duties of IRP. Some of the duties are "For determining the financial position of the Corporate Debtor, IPR has to collect all the information relating to the accounts, assets finances, etc. of the Corporate Debtor, IRP has to constitute Committee of Creditors and Any other duties which may be specified by the Board, etc.[42]

[41] Section 15 of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[42] Section 18 of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].

3. FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

Section 55 to 58 of Part II of the Chapter IV of the Insolvency Bankruptcy Code, 2016, deals with the "Fast Track Corporate Insolvency Resolution Process".

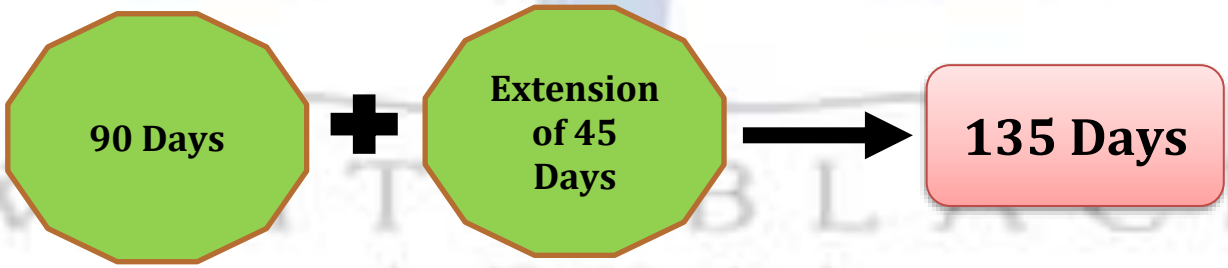
(a) Application for Fast Track CIRP

Section 55 of the Code provides for who can apply for Fast Track CIRP.

"The application for fast track corporate insolvency can be made in respect of that corporate debtor whose assets and income fall in the limit as per the notification of Central Government. The notification of the Central Government may also be categorized the on basis of the type of creditors or the basis of the amount of debt."[43]

(b) Time Frame for the Completion of Fast Track CIRP

The time limit of the Fast Track CIRP has been provided under Section 56 of the code. The Fast Track CIRP has to be completed in 90 days from the initiation of the proceedings. But this period can be further extended by a maximum of 45 days on receipt of an application by AA, to that effect, and on being satisfied concerning it.



Any person who is aggrieved by the order of AA can appeal to NCLAT ("National Company Law Appellate Tribunal")[44] within 30 days from the order of AA. The NCLAT may admit the appeal even after 30 days if it is satisfied with the genuineness of the reason for the delay.

The Code also provides that "within 45 Days from the date of the receipt of an order of NCLAT, an appeal can be made, on the question of law, to the Supreme Court by the person who is aggrieved by the order of NCLAT. The Supreme Court can allow the appeal to be filed even after the expiry of 45 days if it is satisfied that there was a reasonable cause for not filing the appeal within that period.

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[43] Section 55(2) of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].
[44] Section 61(1) of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].

Further extension can be given but it should not exceed 15 Days."[45]

4. CONCLUSION

The complete change has been brought in the framework of the Insolvency Resolution Process in India by an enactment of Insolvency and Bankruptcy Code, 2016. The earlier laws which existed in different fragments failed to provide the desired results in recovery of the debts of Banks and FIs. The recovery suits filed in the Courts took a long time before these could be decided. This led to the accumulation of the cases. With the recovery rate continuously falling and NPAs rising unabatedly, the enactment of IBC has brought in an era of great relief by bringing the paradigm shift. The RDDBFI Act 1993 partially successful which lead to the enactment of SARFESI Act.

The SARFESI Act gave the power to the Banks and Financial Institutions to, seize, take possession, and sell the properties of the debtors whether residential or commercial by auctioning them, without the interference of the Courts, for the recovery of their debts. In the initial years good results flowed but in later years much progress was not visible. This Act, too, was found to be inadequate.

This resulted in the need for effective law and paved the way for the enactment of "Insolvency and Bankruptcy Code, 2016". After bringing IBC, a time frame has been prescribed in which an insolvency petition has to be disposed of. The Code lays down a limit of 180 days plus an extension of 90 days i.e. a total of 270 days in which the case has to be settled. Before the enactment of IBC, there was multiplicity of regulators.

It can be surely said that with the enactment of the "Insolvency and Bankruptcy Code", we are on the right path. Substantial recoveries, the reduction in NPAs, as also cutting short of the time lag in liquidation/ resolution, all point towards the positivity of the Code.

[45] Section 62 of Insolvency and Bankruptcy Code, 2016 [Amended up to 18-03-2020].