Insolvency and Bankruptcy Code 2016

Karnataka State Chartered Accountants Association

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A New Ethos

The limited liability company is a contract between equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default takes place, control is supposed to transfer to the creditors; equity owners have no say"

The Banking Laws Reform Committee report – November 2015

Why a New Law

- **Multiple laws governing Debt resolution and multiple forums**
- **Parallel proceedings by different parties on the same debtor**
- **Asymmetry of information**
- **Debt market – stunted and scared**
- **Asymmetry of Information**
- **Balance Sheet Test driven and not liquidity driven**
- **Impacted Global index of Ease of doing business**
- **Recovery of debts – Too late and Too little**

Too Late . Too Little

It is pertinent to note that a World Bank study reports that the average time to resolve insolvency is four years in India, compared to 0.8 years in Singapore and 1 year in London with the Banking Laws Reform Committee report further stating that “When default takes place, broadly speaking, lenders seem to recover 20% of the value of debt, on an NPV basis”.

This meant a pressing need to provide a comprehensive solution to the issue of individual and corporate insolvency and bankruptcy in India

Global Ease of Doing Business Index	
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World Bank Index

India's efforts in making insolvency resolution easier by adopting a new Insolvency and Bankruptcy Code that introduced a reorganisation procedure for CDs and facilitated continuation of the debtor's business during insolvency proceedings have been well recognised by the EoDBR.

As a result of these reforms, India substantially improved its ranking in this parameter in 2018 from 136 to 103. In the 2019 Report, the rank declined to 108 even though the absolute score improved from 40.75 to 40.84.

Statistics on the Code

CIRP Statistics

Table 1: Corporate Insolvency Resolution Process (Number)

Quarter	CIRPs at the beginning of the Quarter	Admitted	Closure by				CIRPs at the end of the Quarter
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan*	Commence-ment of Liquidation	
Jan - Mar, 2017	0	37	1	-	-	-	36
Apr - Jun, 2017	36	129	8	-	-	-	157
July - Sept, 2017	157	232	18	-	2	8	361
Oct - Dec, 2017	361	147	38	-	7	24	439
Jan - Mar,2018	439	195	20	-	11	59	544
Apr - Jun, 2018	544	245	20	1	14	50	704
Jul - Sept, 2018	704	235	30	26	32	83	768
Oct - Dec, 2018	768	264	7	36	13	78	898
Total	**NA**	**1484**	**142**	**63**	**79**	**302**	**898**

*These exclude 3 resolutions which have since yielded into liquidation

Source: Compilation from website of the NCLT

CIRP Statistics OC / FC / CD

The distribution of stakeholders who triggered resolution process is presented in Table 3. 50% of the CIRPs were triggered by OCs, followed by 38% by FCs and remaining by CDs.

Table 3: Initiation of Corporate Insolvency Resolution Process

Quarter	No. of CIRPs Initiated by			
	Operational Creditor	Financial Creditor	Corporate Debtor	Total
Jan - Mar, 2017	7	8	22	37
Apr - Jun, 2017	58	37	34	129
Jul - Sept, 2017	101	92	39	232
Oct - Dec, 2017	69	64	14	147
Jan - Mar, 2018	89	84	22	195
Apr - Jun, 2018	128	99	18	245
Jul - Sept, 2018	136	83	16	235
Oct - Dec, 2018	154	95	15	264
Total	**742**	**562**	**180**	**1484**

CIRP Statistics

The status of CIRPs as on 31st December, 2018 is presented in Table 4.

Table 4: Status of CIRPs as on 31st December, 2018

Status of CIRPs	No. of CIRPs
Admitted	1484
Closed on Appeal / Review/ Settled	142
Closed by Withdrawal **under section 12A**	63
Closed by Resolution	79
Closed by Liquidation	302
Ongoing CIRP	898
> 270 days	275
> 180 days ≤ 270 days	166
> 90 days ≤ 180 days	202
≤ 90 days	255

CIRP Statistics

Resolution Plans

It is seen that about 51.53% of the CIRPs, which were closed, ended in liquidation, as compared to 13.48% ending with a resolution plan. In addition, 10.75% ended in withdrawal under section 12A. However, it is important to note that 75.16% of the CIRPs ending in liquidation (227 out of 302) were earlier with BIFR and or defunct (Table 5). The economic value in most of these CDs had already eroded before they were admitted into CIRP.

Table 5: CIRPs Ending with Orders for Liquidation

State of Corporate Debtor at the Commencement of CIRP	No. of CIRPs initiated by			
	FC	OC	CD	Total
Either in BIFR or Non-functional or both	77	90	60	227
Resolution Value ≤ Liquidation Value	86	102	60	248
Resolution Value > Liquidation Value	21	11	16	48

* Note: There were 26 CIRPs, where CDs were in BIFR or non-functional but had resolution value higher than liquidation value.

Insolvency Professionals

Table 12: Registered Insolvency Professionals as on 31st December, 2018

(Number)

City / Region	Indian Institute of Insolvency professional of ICAI	ICSI Institute of Insolvency Professionals	Insolvency Professional Agency of Institute of Cost Accountants of India	Total
New Delhi	284	183	45	512
Rest of Northern Region	200	114	30	344
Mumbai	263	84	23	370
Rest of Western Region	183	84	23	290
Chennai	90	49	9	148
Rest of Southern Region	228	126	33	387
Kolkata	134	30	14	178
Rest of Eastern Region	43	13	5	61
Total	1425	683	182	2290

Information Utilities

Information Utility

There is one information utility (IU), namely, the National e-Governance Service Limited (NeSL). IBBI meets the MD & CEO of IU along with the CEOs of IPAs every month to discuss the issues related to receipt and authentication of financial information. Table 18 provides details of the registered users and information with NeSL, as informed by them. It has issued 11 default certificates till 31st December, 2018.

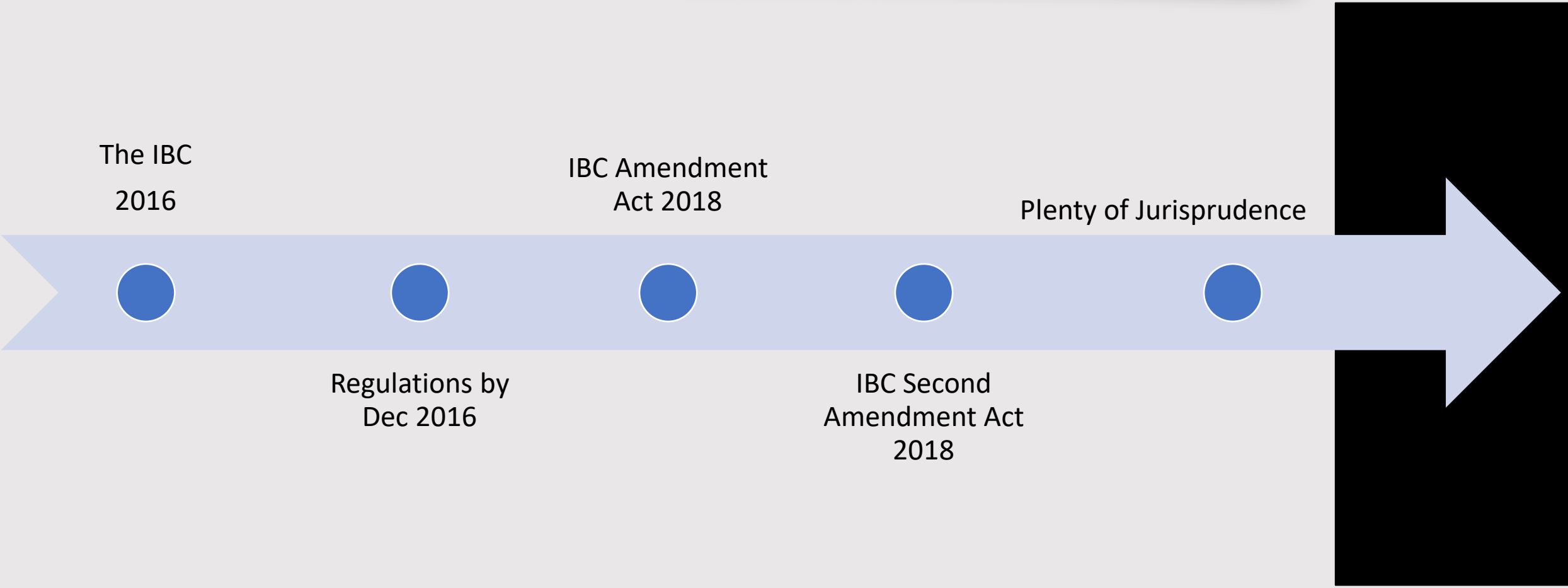
Table 18: Details of Information with NeSL

(Number except as stated)

At the end of Quarter	Creditors having Agreement with NeSL		Creditors who have Submitted information		Debtors whose information is Submitted by Creditors		Loan records on-boarded		User Registrations by Debtors		Loan records Authenticated by Debtors		Amount of Underlying Debt (Rs. crore)	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs
June, 2018	66	NA	21	105	69184	52	191247	105	1024	10	1364	05	NA	NA
Sep, 2018	85	NA	40	144	2016709	530	1222737	207	5111	10	6079	32	2016708	530
Dec, 2018	108	NA	68	140	980724	202	1438390	280	10247	44	10065	35	2732805	1094

Some Interesting Developments

THE PATH OF THE CODE



Key Changes

- Inclusion of Personal Guarantors to Corporate Debtors in terms of applicability of the Code
- Introduction of Sec 25(2)(h) as regards approval of Resolution Applicants by the Committee of Creditors
- 29A – Disqualification from submitting a Resolution Plan
- A person disqualified under Sec 29A cannot be sold the assets of the Company when in liquidation also

Key Changes

- Section 30 (4) amended at 66% majority approval for the Resolution Plan as compared to 75% earlier
- Additional Powers to make regulations with reference to 25(2)(h)
- Corporate Guarantor got defined in the Code : corporate person who is the surety in a contract of guarantee to a corporate debtor
- Inclusion of home buyers in the category of financial creditors and consequent changes to the regulations

Key Changes

- Section 5(24A) related party in the context of an individual
- Section 9 – Operational Creditor – Certificate from Financial institution, if available and not compulsory
- Section 9 – Operational creditors - information utilities , if available
- Section 10 – Initiation of CIRP process by the Corporate Debtor should be supported by a special resolution of the shareholders of the Company
- Sec 12 – Extension of CIRP process – 66% and not 75% majority of the CoC

Key Changes

- Section 12A – Withdrawal after admission is now permitted with 90% approval of the Committee of Creditors
- Section 14 – Moratorium shall not apply to a surety in a contract of guarantee to a Corporate Debtor
- Section 16 – The Term of the IRP shall continue till the RP is appointed
- Section 17 – The IRP shall be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor

Key Changes

- Section 21 – Appointment of an Authorised Representative of a Class of Creditors
- Section 22 and 27 – Replacement of an IRP / RP is 66% and not 75% majority
- Section 19 – Duties of the Authorised Representative
- Section 23 – Where a Resolution Plan has been submitted, the RP will continue even after the expiry of the CIRP period
- Section 28 – Approvals to be obtained from 66% of the CoC and not 75%
- Section 33 – Liquidation also requires 66% approval

Key Changes

Going Concern Liquidation - 32. Sale of Assets, etc.

The liquidator may sell-

(a) an asset on a standalone basis; (b) the assets in a slump sale; (c) a set of assets collectively; (d) the assets in parcels;

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

The Swiss Ribbons Judgement

Swiss Ribbons

Capacity Building

- Establishment of Circuit Benches within 6 months
- Administrative Support from the Ministry of Law and not Corporate Affairs
- Classification between Financial and Operational Creditor is not arbitrary and there is an intelligible differentia which seeks to accomplish the objects of the Code

Swiss Ribbons

Capacity Building

- Voting Rights for Operational Creditors in the CoC – CoC is entrusted with the primary objective of financial restructuring
- Sec 12A is upheld – by 90% of COC before EOI. Even after EOI is permitted and even before constitution of CoC is now permitted . The high threshold is needed
- The Resolution Professional has no adjudicatory powers – vet, verify and determine does not amount to adjudication. Whereas under Regln 35A , a determination of avoidance needs an adjudicating authority

Any Questions

Thank You