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(SRI-VIPRA)

Project Report of 2023: SVP-2350

"Title of the project-**Insolvency and Bankruptcy Code-2016: Its Impact on the Corporate sector of India**"

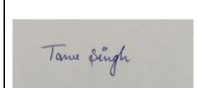
IQAC
Sri Venkateswara College
University of Delhi
Benito Juarez Road, Dhaula Kuan, New Delhi
New Delhi -110021

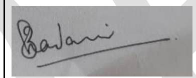
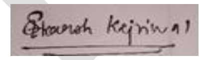
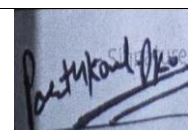
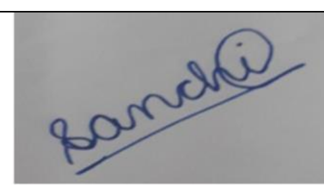
SRIVIPRA PROJECT 2023

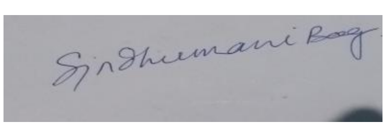
Title : Insolvency and Bankruptcy Code-2016: Its Impact on the Corporate sector of India.

Name of Mentor: Dr. Sindhu Mani Bag **Name of Department: Commerce** **Designation: Assistant Professor**	 **Photo**

List of students under the SRIVIPRA Project

S.No	Photo	Name of the student	Roll number	Course	Signature
1		Tanu Singh	0920043	B.Com(p)	

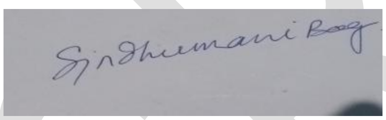
2		Bhavani Sindhu	0521010	B.A Economics (H)	
3		Utkarsh	0921083	B.Com	
4		Sadab Akhtar	0921103	B.Com	
5		Parth Koul	0921106	B.Com	
6		Priyanka Khanna	1021006	B.Com(H)	
7		Sanchi Sibal	1121082	B.Sc, Life sciences	



Signature of Mentor

Certificate of Originality

This is to certify that the aforementioned students from Sri Venkateswara College have participated in the summer project SVP-2350 titled “**Insolvency and Bankruptcy Code-2016: Its Impact on the Corporate sector of India**”.The participants have carried out the research project work under my guidance and supervision from 15 June, 2023 to 15th September 2023. The work carried out is original and carried out in an online/offline/hybrid mode.



Signature of Mentor

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Thank You

Dr. Sindhu Mani Bag

Asst. Professor

Dept. Of Commerc, SVC &

Research Team

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Code-SVP-2350

Mentor: Dr. Sindhu Mani Bag

Introduction:

The **Insolvency and Bankruptcy Code of 2016 (IBC)** is one of the most important changes to how economic matters are handled in India in recent times. It's a comprehensive law designed to deal with situations where individuals or organizations are unable to pay their debts on time due to a lack of funds. But what exactly is **Insolvency** and **Bankruptcy**, and how are they different from each other? **Insolvency,** in finance, means when a person or a business can't pay their debts on time because they don't have enough money. **Bankruptcy** is a formal legal declaration that a person can't pay their debts. It involves selling off assets to pay creditors and cancelling debts that can't be repaid. Creditors are the ones who lend money, while debtors are the ones who owe money. Before the IBC, both debtors and creditors often had to go through long and inconclusive legal battles to settle debt disputes. This process led to delays and unsatisfactory outcomes for everyone involved, causing significant economic losses.

The Insolvency and Bankruptcy Code of 2016 aims to simplify the process of handling insolvency cases and provide a more efficient and sustainable way to recover money from debtors who default on their payments. It sets up a clear procedure to handle claims from creditors and oversees the reorganization and rehabilitation of debtors. This paper will compare how things were before and after the IBC was implemented. It will explore how the IBC has changed the way insolvency and bankruptcy are dealt with in India. Additionally, it will discuss the strengths and weaknesses of the IBC and how it has influenced the economy. However, before moving forward let us understand IBC Code-2016 in Detail.

<u>What is IBC Code 2016?</u>

The **Insolvency and Bankruptcy Code (IBC) 2016** is a comprehensive legislation that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. It was enacted to address the shortcomings in existing staggered insolvency laws in India and bring them under one umbrella. The IBC aims to maximize the value of assets of insolvent entities, promote entrepreneurship, availability of credit, and balance the interests of all stakeholders.

The IBC provides a framework for insolvency resolution in India. It covers both corporate and individual entities. The provisions relating to insolvency and liquidation of corporate persons came into force on December 1, 2016. The Code establishes a time-bound mechanism for resolving insolvency cases and provides with the resolution plan. A resolution plan is a comprehensive proposal designed to address the financial crisis of a struggling company, known as the corporate debtor. This plan offers a structured approach to tackle the company's insolvency, which is its inability to repay its debts. It outlines a strategic roadmap encompassing measures such as debt restructuring, capital infusion, and operational improvements. The ultimate goal is to revive the company's financial health and enable it to meet its financial obligations. The resolution plan is subject to evaluation and approval by the Committee of Creditors, a group representing the company's lenders, before being implemented under the insolvency framework.

Significance of Resolution Plans in IBC 2016

In the realm of insolvency proceedings, a 'Resolution Plan' emerges as a ray of hope, offering a structured path to resuscitate a financially distressed company. Let's learn more about resolution plan and its profound significance within the ambit of the IBC Code 2016.A R**esolution plan** is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. It needs to be approved by the committee of creditors ("COC"), and comply with mandatory requirements prescribed in IBC . The resolution plan is proposed by a resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of IBC . The resolution plan may include provisions for restructuring of the Corporate debtor including by way of merger, amalgamation, and demerger . The significance of a resolution plan in the process of insolvency resolution is that it provides a viable solution to the problem of insolvency and helps in the revival of the corporate debtor as a going concern . The resolution plan is approved by the COC, which comprises financial creditors, operational creditors, and other stakeholders . The COC evaluates the resolution plan based on various parameters such as feasibility, viability, and maximization of value . Once approved by the COC, the resolution plan is submitted to the National Company Law Tribunal (NCLT) for its approval . If approved by NCLT, it becomes binding on all stakeholders involved in the insolvency resolution process .

In simple terms, a resolution plan <u>is like a blueprint that outlines how an insolvent company can be revived and made profitable again.</u> It is proposed by someone who wants to take over the company and turn it around. The plan needs to be approved by a committee of creditors who evaluate it based on various factors such as whether it is feasible or not. If approved, it is submitted to a court for final approval. Once approved by the court, it becomes legally binding on all parties involved in the process .

The **Insolvency and Bankruptcy Code (IBC) 2016** provides a framework for insolvency resolution in India. It aims to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. The IBC has been enacted with an objective to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders including debtors and creditors. The IBC defines various terms related to insolvency resolution such as corporate debtor, financial creditor, operational creditor, insolvency professional, etc. A corporate debtor refers to any company or limited liability partnership against which an insolvency resolution process has been initiated under IBC. A financial creditor includes any person to whom a financial debt is owed. An operational creditor refers to any person to whom an operational debt is owed . An operational debt means a claim in respect of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. The IBC provides for two main processes for insolvency resolution: **corporate insolvency resolution process (CIRP)** and **liquidation**. CIRP involves finding a suitable resolution plan for reviving an insolvent company as a going concern. Liquidation involves selling off the assets of an insolvent company and distributing the proceeds among its creditors . The objective of CIRP is to maximize the value of assets of an insolvent company and balance the interests of all stakeholders involved. It provides an opportunity for revival and rehabilitation of an insolvent company through restructuring or sale as a going concern . The process starts with initiation of CIRP by filing an application before NCLT by either the financial creditor or operational creditor or corporate debtor itself . Once CIRP is initiated, an interim resolution professional (IRP) is appointed who takes control over the management of affairs of the corporate debtor during CIRP .

The IRP invites claims from all creditors and constitutes COC comprising financial creditors who have voting rights based on their exposure to debt owed by corporate debtor. The COC evaluates various resolution plans submitted by interested parties including promoters, investors, or other potential buyers. The COC approves a resolution plan if it meets certain criteria such as feasibility, viability, maximization of value etc. Once approved by COC, the plan is submitted before NCLT for final approval. If NCLT approves it, then it becomes binding on all stakeholders involved in CIRP. The significance of a resolution plan lies in its ability to provide a viable solution for reviving an insolvent company as a going concern. It helps in preserving jobs, protecting interests of creditors including financial creditors and operational creditors, maximizing value from assets of corporate debtor etc. It also promotes entrepreneurship by providing opportunities for investors or potential buyers to acquire distressed assets at reasonable prices. Therefore, a **resolution plan** is a proposal that aims to provide a viable solution for reviving an insolvent company as a going concern. It helps in preserving jobs, protecting interests of creditors including financial creditors and operational creditors, maximizing value from assets of corporate debtor etc. It also promotes entrepreneurship by providing opportunities for investors or potential buyers to acquire distressed assets at reasonable prices. I hope this explanation helps you understand what a resolution plan is and its significance in accordance with IBC 2016.

What is Corporate Insolvency Resolution Process (CIRP)?

The **Corporate Insolvency Resolution Process (CIRP)** is a mechanism to resolve the insolvency of a debtor, through financial restructuring. This process can be initiated against any debtor who has defaulted on their payment obligations, that are above a particular threshold amount . The CIRP is defined under Chapter II of Part II of the Insolvency and Bankruptcy Code (IBC) 2016 . The objective of CIRP is to maximize the value of assets of an insolvent company and balance the interests of all stakeholders involved . It provides an opportunity for revival and rehabilitation of an insolvent company through restructuring or sale as a going concern. The process starts with initiation of CIRP by filing an application before National Company Law Tribunal (NCLT) by either the financial creditor or operational creditor or corporate debtor itself . Once CIRP is initiated, an interim resolution professional (IRP) is appointed who takes control over the management of affairs of the corporate debtor during CIRP . The IRP invites claims from all creditors and constitutes Committee of Creditors (COC) comprising financial creditors who have voting rights based on their exposure to debt owed by corporate debtor. The COC evaluates various resolution plans submitted by interested parties including promoters, investors, or other potential buyers. The COC approves a resolution plan if it meets certain criteria such as feasibility, viability, maximization of value etc. Once approved by COC, the plan is submitted before NCLT for final approval. If NCLT approves it, then it becomes binding on all stakeholders involved in CIRP. The IBC 2016 provides a framework for insolvency resolution in India. It aims to consolidate and amend laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner . The IBC has been enacted with an objective to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders including debtors and creditors. The IBC defines various terms related to insolvency resolution such as corporate debtor, financial creditor, operational creditor, insolvency professional, etc. A corporate debtor refers to any company or limited liability partnership against which an insolvency resolution process has been initiated under IBC . A financial creditor includes any person to whom a financial debt is owed . An operational creditor refers to any person to whom an operational debt is owed . An operational debt means a claim in respect of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. The significance of a resolution plan lies in its ability to provide a viable solution for reviving an insolvent company as a going concern. It helps in preserving jobs, protecting interests of creditors including financial creditors and operational creditors, maximizing value from assets of corporate debtor etc. It also promotes entrepreneurship by providing opportunities for investors or potential buyers to acquire distressed assets at reasonable prices. Additionally, CIRP provides an opportunity for revival and rehabilitation of an insolvent company through restructuring or sale as a going concern. It aims to maximize the value of assets of an insolvent company and balance the interests of all stakeholders involved. The process starts with initiation of CIRP by filing an application before NCLT by either the financial creditor or operational creditor or corporate debtor itself. Once CIRP is initiated, an interim resolution professional (IRP) is appointed who takes control over the management of affairs of the corporate debtor during CIRP. The COC evaluates various resolution plans submitted by interested parties including promoters, investors, or other potential buyers. If approved by NCLT, then it becomes binding on all stakeholders involved in CIRP.

The Appointment of an Interim Resolution Professional (IRP)

In the realm of insolvency and bankruptcy proceedings, the appointment of an Interim Resolution Professional (IRP) plays a pivotal role. For those unacquainted with the intricacies of the IBC Code 2016, lets try to understand this term and its significance in IBC 2016.

In simpler terms, an IRP is a qualified professional entrusted with the **responsibility of managing the affairs of a financially distressed company** during the early stages of insolvency proceedings. Imagine them as a seasoned captain taking the helm of a ship navigating through turbulent waters. Picture a scenario where a company finds itself struggling to meet its financial obligations, potentially facing the threat of insolvency. The IBC Code 2016 steps in as a beacon of hope, providing a structured framework to revive or, if necessary, liquidate such companies. The IRP is the linchpin, initiating this process by taking control of the company's operations and assets. The process of appointing an IRP begins when a creditor, or in certain cases the company itself, approaches the National Company Law Tribunal (NCLT- It is a quasi-judicial body established in India under the Companies Act, 2013, and is tasked with adjudicating matters related to company law. The NCLT handles a wide range of cases, including those concerning corporate disputes, mergers and acquisitions, insolvency and bankruptcy proceedings, and other issues pertaining to companies and their stakeholders.) with a petition for initiating insolvency proceedings. Upon acceptance of the petition, the NCLT swiftly designates an IRP to take charge of the company's reins. This individual acts as a neutral party, steering the ship without any vested interests, and is bestowed with immense powers to carry out their responsibilities effectively. Think of them as a diligent investigator, meticulously combing through financial records, scrutinizing assets, and engaging with stakeholders. Their primary objective is to ascertain **the true financial health of the company and present it before the Committee of Creditors** (CoC) - a group comprising the company's creditors. The CoC, in turn, evaluates the findings and collaborates with the IRP in devising a resolution plan, a blueprint for rescuing the company. Time is of the essence in this process. The IRP works **within strict timelines**, ensuring that proceedings unfold swiftly to prevent further deterioration of the company's financial health. Their role culminates in the **submission of a resolution plan to the NCLT**, which, once approved, sets the course for the company's future. The appointment of an Interim Resolution Professional under the IBC Code 2016 is, therefore, akin to summoning a skilled helmsman to navigate a storm. They bring order to financial chaos, steering distressed companies towards the path of revival or, in unfortunate cases, liquidation. Their meticulous efforts are the cornerstone of the insolvency resolution process, offering a chance at a fresh start for beleaguered companies. Moving forward let us elucidate the concept of Liquidation and its significance in IBC-2016.

The Significance of Liquidation in the IBC 2016 Framework

In the landscape of corporate insolvency, the process of liquidation stands as the final recourse when all attempts at resolution have been exhausted. Within the framework of the Insolvency and Bankruptcy Code (IBC) 2016, liquidation serves as a crucial mechanism to wind down the affairs of a financially distressed company in a systematic and equitable manner. Liquidation is the process of closing down a business or ending its operations. Under the Insolvency and Bankruptcy Code, 2016 (IBC), the process of liquidation can be initiated if the corporate debtor becomes incapable of repaying the debts or amounts owed by it to other entities. The main objective of the IBC is to revive the corporate debtor and prevent it from going through the process of liquidation. However, there are various circumstances wherein the insolvency of the corporate debtor does not get resolved through the Corporate Insolvency Resolution Process (CIRP). Therefore, the corporate debtor has to go through the process of liquidation. The liquidation process under IBC is initiated when a resolution professional appointed for the corporate debtor fails to find a suitable resolution plan **within 180 days** from the date of admission of an application for initiating CIRP. The Adjudicating Authority then passes an order for liquidation of the corporate debtor. A liquidator is appointed by the Adjudicating Authority to carry out the liquidation process. A liquidator, in the context of the Insolvency and Bankruptcy Code (IBC) of 2016, is a licensed professional appointed to oversee the liquidation process of a financially distressed company. He takes control of all assets and properties of the corporate debtor and proceeds to sell them off in order to repay its creditors. The proceeds from the sale are distributed amongst creditors, employees, shareholders, partners, etc., as per the order of priority prescribed under IBC. The priority of claims is determined by a "**waterfall mechanism**" that is prescribed under IBC. Financial creditors have a higher priority than operational creditors in terms of claims. The "waterfall mechanism" is a term used to describe the order and priority of distributing proceeds from the sale of assets during the liquidation of a company under the Insolvency and Bankruptcy Code, 2016 (IBC). Section 53 of the IBC outlines this mechanism, providing a list of stakeholders in a specific order to indicate who gets paid first from the liquidation funds. The idea is to distribute the proceeds equally among stakeholders of the same category. Financial creditors have a higher priority for payment compared to operational creditors. Any agreement that disrupts the established priority set by Section 53 of the IBC should be rejected. The interplay between the liquidation process and priority of claims is crucial in determining how much each creditor will receive from the proceeds of sale. Thus, the significance of liquidation under IBC lies in its ability to provide an efficient and effective mechanism for resolving insolvency issues. It provides a structured and time-bound process for resolving insolvency issues, which helps in reducing delays and costs associated with traditional methods of resolving insolvency issues. It also provides a level playing field for all creditors, which helps in ensuring that they are treated fairly and equitably.

<u>Amendments Made after the Introduction of Code</u>

Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has played an essential role in revitalizing India's insolvency landscape. Recognizing the evolving economic and legal environment, several significant amendments have been introduced to fine-tune the functioning of the IBC.

Amendment: The Insolvency and Bankruptcy Code (Amendment) Act, 2021

Date: 28th September 2021

The Amendment Act of 2021 introduced substantial alterations to the IBC, aiming to address emerging challenges and enhance the efficiency of the insolvency resolution process. Some key provisions include: Pre-packaged Insolvency Resolution Process (PIRP): The Amendment introduced a framework for pre-packaged insolvency resolution, a process where creditors and debtors negotiate the terms of a resolution plan before it is filed with the National Company Law Tribunal (NCLT). This mechanism expedites the resolution process, minimizing business disruptions and preserving enterprise value. Threshold for initiation of Corporate Insolvency Resolution Process (CIRP): The Amendment raised the minimum default threshold for initiating CIRP from one lakh rupees to one crore rupees, providing relief to smaller creditors and reducing the burden on the already overburdened NCLT. Inclusion of Section 32A: This section provides immunity to the successful resolution applicant from any liability arising from offences committed by the corporate debtor prior to the initiation of the insolvency process. This amendment promotes a conducive environment for genuine resolution applicants to participate in the insolvency process. Introduction of Section 66(3): This provision prohibits the application of the resolution plan to any criminal or civil liability that may be imposed on the corporate debtor.

Amendment: The Insolvency and Bankruptcy Code (Amendment) Act, 2020

Date: 23rd September 2020

The 2020 Amendment Act primarily focused on providing relief to corporate debtors adversely affected by the COVID-19 pandemic. It introduced several measures to cushion the economic impact, such as:

Suspension of Initiation of CIRP: The Amendment temporarily suspended the initiation of CIRP for defaults arising during the period of one year, starting from March 25, 2020. This provided a much-needed respite for businesses grappling with financial distress induced by the pandemic.

Insertion of Section 10A: This section ensured that any default arising during the aforementioned period would not be considered for the initiation of CIRP.

Amendment: The Insolvency and Bankruptcy Code (Amendment) Act, 2019

Date: 6th August 2019

The 2019 Amendment Act aimed at streamlining and fortifying the insolvency resolution process, primarily by:

Inclusion of Homebuyers as Financial Creditors: The Amendment elevated homebuyers to the status of financial creditors, providing them with a more substantial say in the resolution process. This was a significant move towards safeguarding the interests of a crucial stakeholder group in real estate projects.

Clarity on the Rights of Secured Creditors: The Amendment provided clarity on the rights and role of secured creditors in the insolvency resolution process, ensuring a balanced approach in dealing with both secured and unsecured creditors.

Amendment: The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Date: 17th August 2018

The Second Amendment Act of 2018 sought to address various issues that had arisen since the implementation of the IBC, including:

Specificity on Eligibility Criteria for Resolution Applicants: The Amendment provided a more defined framework for determining the eligibility of resolution applicants, ensuring that only credible and capable entities participate in the resolution process.

Inclusion of Dissolution Process for Corporate Debtors: The Amendment introduced provisions for the dissolution of corporate debtors after the successful completion of the resolution process, providing clarity on the exit mechanism.

Amendment: The Insolvency and Bankruptcy Code (Amendment) Act, 2018

Date: 18th January 2018

The 2018 Amendment Act was instrumental in ironing out initial creases in the IBC framework. It made critical changes such as:

Inclusion of Clarification on Committee of Creditors (CoC): The Amendment provided clarity on the functioning and role of the CoC, ensuring a more structured decision-making process during the resolution proceedings.

Prohibition on the Re-Promoter of Defaulting Company: The Amendment prevented the defaulting promoter from participating in the resolution process, ensuring that those responsible for the financial distress were not in a position to regain control of the company.

As all the aspects of IBC 2016 are covered, we proceed further to learn the impact of IBC 2016 on companies and economy as a whole.

<u>Before IBC 2016</u>

Prior to the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, **the Sick Industrial Company (Special Provisions) Act, 1985 (SICA)** stood as the prevailing legislation aimed at identifying and rehabilitating distressed companies, or, when necessary, facilitating their orderly closure. However, SICA exhibited certain limitations, notably its inapplicability to non-industrial enterprises and small-scale or ancillary businesses.

In response to the inadequacies inherent in the SICA framework, the Indian government took a momentous step by introducing the Insolvency and Bankruptcy Code on May 28, 2016. This visionary piece of legislation represented a paradigm shift in the resolution of corporate insolvency, aligning it with global best practices and fundamentally redefining the process.

The antecedent to the IBC can be traced back to the Companies Act of 1956, which delineated procedures for the liquidation and winding up of diverse forms of corporate entities. The period spanning the early 2000s to 2008 witnessed a remarkable economic upswing in India. During this phase of buoyancy, public sector banks extended substantial credit lines to various corporate entities. However, the subsequent global economic downturn precipitated a sharp decline in the profitability of many of these organizations. This, in turn, severely impaired their capacity to meet their debt obligations.

The legislative landscape governing the recovery of distressed loans prior to the advent of the IBC was a complex amalgamation of statutes, each addressing specific facets of the insolvency and debt recovery process. These included the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002, The Presidency Towns Insolvency Act of 1909, The Provincial Insolvency Act of 1920, the Companies Act of 2013, The Recovery of Debts due to Banks and Financial Institutions Act of 1993, The Sick Industrial Companies (Special Provisions) Act of 1985, and various debt restructuring mechanisms like Corporate Debt Restructuring (CDR), Strategic Debt Restructuring (SDR), and Scheme for Sustainable Structuring of Stressed Assets (S4A).

Furthermore, a law called IBC 2016 was introduced.

<u>After IBC 2016</u>

The **Insolvency and Bankruptcy Code, 2016 (IBC)** has been a major reform in the Indian economy. It played a crucial role in improving India's ranking for Ease of Doing Business from 130 in 2016 to 63 in 2020. As per the Global Innovation Index 2021, India’s rank has **improved** from 111 in 2017 to 47 in 2021 in regard to ‘**Ease of Resolving Insolvency**’. This comprehensive legislation has made it easier to resolve insolvency, especially in cases of honest business failure.

The introduction of the IBC heralded a new era of efficacy and expediency in the resolution of corporate insolvency. This comprehensive legislation provided a unified legal framework for the expeditious and equitable resolution of insolvency and bankruptcy proceedings across various sectors of the economy. It established specialized tribunals, the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), tasked with adjudicating and overseeing insolvency proceedings, thus consolidating decision-making authority and expediting the resolution process.

Furthermore, the IBC introduced the concept of a time-bound resolution process, setting strict deadlines for the completion of insolvency proceedings. This not only provided a clear roadmap for all stakeholders involved but also injected a sense of urgency into the process, mitigating the risk of prolonged litigation and value erosion.

One of the most revolutionary aspects of the IBC was the introduction of the concept of a 'resolution professional' who takes over the reins of the distressed company during the insolvency process. This professional, often a licensed insolvency professional, plays a pivotal role in managing the affairs of the company and ensuring a smooth transition towards resolution.

The Insolvency and Bankruptcy Code of 2016 marked a watershed moment in the evolution of India's corporate insolvency regime.

By addressing the shortcomings of its predecessor legislation and introducing a holistic framework for the resolution of insolvency, the IBC has not only streamlined the process but has also instilled confidence in both domestic and international investors. Its impact on the corporate landscape has been profound, ushering in an era of accountability, transparency, and expediency in the realm of insolvency and bankruptcy proceedings.

However, it's important to note that while the IBC has made significant progress, there are still challenges to be addressed. These include the need for more specialized benches, faster resolution timelines, and better coordination among stakeholders.

Conclusion

In conclusion, the IBC has transformed India's economic landscape, enhancing insolvency resolution, credit discipline, and the investment climate. With ongoing refinements, it is poised to continue playing a pivotal role in fostering a resilient economic ecosystem. The Insolvency and Bankruptcy Code of 2016 stands as a monumental pillar of reform within India's economic framework. Its advent marked a watershed moment, ushering in a new era of efficiency and transparency in insolvency resolution processes. This monumental shift has not only streamlined proceedings but has also replaced the protracted legal battles characteristic of the previous system with a more agile and effective mechanism. Consequently, the Indian business landscape has witnessed a commendable upswing in its Ease of Doing Business ranking, a testament to the palpable influence the IBC wields over the business environment. One of the most salient achievements of the IBC has been the empowerment of creditors. This pivotal alteration in the financial ecosystem has not only bolstered fiscal discipline but has also paved the way for a substantial reduction in non-performing assets. This shift is of paramount importance in fortifying the financial sector's stability and resilience. Additionally, the IBC has acted as a lodestar, attracting foreign investment and catalysing mergers and acquisitions. This influx of external capital and corporate restructuring has injected a new vigour into India's economic landscape, propelling it onto a trajectory of sustained growth and development. However, it would be remiss not to acknowledge that challenges persist. The need for specialized benches to adjudicate on intricate insolvency matters is one such area that necessitates attention. Swift resolutions are the bedrock of a thriving insolvency framework, and further efforts must be directed towards expediting these processes. Moreover, ensuring that the benefits of the IBC percolate down to the micro, small, and medium enterprises (MSMEs) segment is crucial for an inclusive and equitable economic resurgence. The recent amendments made to accommodate the unique dynamics of MSMEs underscore the government's steadfast dedication to refining the IBC and ensuring its relevance across the spectrum of businesses. In summation, the Insolvency and Bankruptcy Code of 2016 has orchestrated a paradigm shift in India's economic landscape. Its multifaceted impact encompasses enhanced insolvency resolution mechanisms, reinforced credit discipline, and a more attractive investment climate. This transformative legislation has already set in motion a series of positive domino effects, and with ongoing refinements and strategic interventions, it is poised to continue playing a pivotal role in nurturing a resilient economic ecosystem. The IBC is not merely a legal framework; it is a catalyst for economic rejuvenation and a testament to India's unwavering commitment to fostering a conducive environment for businesses to flourish and thrive. Its legacy is indelibly etched in the annals of India's economic history, and its influence is set to reverberate through generations to come.

CASE STUDY ON AMTEK AUTO

The insolvency case of Amtek Auto was one of the notable pre-IBC (Insolvency and Bankruptcy Code) cases in India. Amtek Auto, a prominent auto component manufacturer, faced severe financial difficulties and defaulted on its debt obligations. Here are the key details and highlights of the Amtek Auto insolvency case:

- **Background:**

Amtek Auto, headquartered in Delhi, was a part of the Amtek Group and was engaged in the manufacturing of auto components, including forgings and castings.

- **Financial Troubles**: The troubles for Amtek Auto began when reports of its mounting debt surfaced. The company had taken substantial loans from various banks and financial institutions to fund its expansion plans and acquisitions.By 2015, it was revealed that Amtek Auto had a debt of over Rs. 15,000 crore ($2.2 billion) that it was struggling to service. The company's financial woes were attributed to a combination of factors, including its aggressive expansion, liquidity issues, and a downturn in the automotive sector.

- **Default on Debt Payments**: Amtek Auto's inability to repay its loans and service its debt obligations led to credit rating downgrades, causing further financial strain.
- **Creditors and Debt:**The company's creditors included a mix of Indian and international banks, financial institutions, and bondholders.
- **Efforts to Resolve the Crisis:** In an attempt to stave off insolvency, Amtek Auto initiated discussions with its creditors to restructure its debt and seek additional funding. The company also explored the sale of non-core assets to raise capital.
- **Credit Rating Agencies and Downgrades**:Credit rating agencies downgraded Amtek Auto's credit rating significantly, which raised concerns among investors and creditors.
- **Impact on Investors**:The crisis had a substantial impact on Amtek Auto's shareholders and bondholders. The value of its shares and bonds plummeted, causing significant losses for investors. With its financial condition deteriorating and no resolution in sight, Amtek Auto was referred to the National Company Law Tribunal (NCLT) for insolvency proceedings. A resolution professional was appointed to oversee the case.
- **Sale of Assets and Resolution:** During the insolvency proceedings, Amtek Auto's assets were put up for sale. The resolution process involved identifying potential buyers for the company's assets and businesses.
- **Challenges and Legal Disputes**:The insolvency process faced its share of challenges, including legal disputes and negotiations with creditors and potential buyers.
- **Outcome:**Ultimately, some of Amtek Auto's assets were sold to various buyers, and a resolution plan was approved. However, creditors did not recover the full amount owed to them, resulting in a significant haircut. The Amtek Auto insolvency case highlighted the challenges faced by creditors, investors, and companies in financial distress under the previous legal framework in India. The case also underscored the need for a more structured and efficient insolvency resolution process, which led to the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016.

- **Sale of Non-core Assets:**To address its liquidity crisis, Amtek Auto attempted to sell non-core assets, including real estate and non-essential business divisions. These efforts were made in an attempt to raise funds to meet its debt obligations.
- **Credit Ratings:**As Amtek Auto's financial troubles deepened, several credit rating agencies, including CARE Ratings and India Ratings, downgraded its credit rating. These downgrades had a cascading effect, making it challenging for the company to raise additional capital and service its debt.
- **Bond Default:**Amtek Auto also defaulted on the repayment of its bonds. This default further eroded investor confidence and increased concerns about the company's financial stability.
- **Complex Debt Structure:**The company's debt structure was complex, involving a mix of short-term and long-term loans, foreign currency debt, and other financial instruments. This complexity added to the challenges in resolving its financial distress.
- **Appointment of a Resolution Professional**:After the insolvency proceedings were initiated, a resolution professional was appointed to oversee the affairs of Amtek Auto. The resolution professional played a crucial role in managing the company's assets and liabilities during the insolvency process.
- **Multiple Asset Sales**:During the insolvency process, Amtek Auto's various assets, including manufacturing units and subsidiaries, were put up for sale. These assets attracted interest from potential buyers, and the sale of these assets was a critical part of the resolution plan.
- **Challenges in Valuation**:Valuing Amtek Auto's assets, particularly given the complex and diverse nature of its business, was a significant challenge during the resolution process. Accurate valuation was essential to determine the recovery for creditors.
- **Impact on the Automotive Industry:**Amtek Auto's financial troubles had a broader impact on the Indian automotive industry, as it was a major supplier of auto components to leading automobile manufacturers. The disruptions in its operations affected the supply chain and production of vehicles.

- **<u>Resolution Plan Approval</u>**:The approval of a resolution plan involved negotiations with the Committee of Creditors (CoC) and the resolution professional to determine the terms and conditions that would be acceptable to all stakeholders.
- **<u>Recovery for Creditors</u>**:Creditors of Amtek Auto, including banks and financial institutions, had to accept a significant haircut on their outstanding dues. The recovery for creditors was substantially less than the total debt owed.The Amtek Auto insolvency case serves as a significant example of the complexities and challenges associated with resolving financial distress in the corporate sector. It highlighted the need for a more efficient and structured insolvency resolution process, which eventually led to the introduction of the Insolvency and Bankruptcy Code (IBC) in India in 2016.
- **CONCLUSION ALONG WITH KEY TAKEWAYS:**

- **<u>Complex Debt Structures</u>**: The case highlighted the risks associated with complex and diversified debt structures, making it challenging for companies to manage their financial obligations effectively.
- **<u>Credit Rating Downgrades</u>**: Credit rating downgrades had a significant impact on the company's ability to raise funds and maintain investor confidence. These downgrades accelerated the financial crisis.
- **<u>Sale of Non-core Assets</u>:** Amtek Auto's efforts to sell non-core assets to generate liquidity underscored the importance of having contingency plans and divestment strategies during financial distress.
- **<u>Impact on Automotive Sector</u>**: As a major supplier to the automotive industry, Amtek Auto's troubles disrupted the automotive supply chain, affecting the production of vehicles and related industries.
- **<u>Resolution Challenges</u>**: The case demonstrated the complexities involved in valuing diverse assets and developing resolution plans that satisfy creditors and other stakeholders.

- **Impact:** The Amtek Auto insolvency case had several far-reaching consequences:

- **<u>IBC Implementation</u>**: The challenges and complexities encountered in resolving the case contributed to the urgency of implementing the IBC in India. The IBC provided a structured and time-bound framework for insolvency resolution, aiming to prevent protracted cases like Amtek Auto's.

- **Improved Resolution Framework**: The introduction of the IBC brought significant changes to India's insolvency landscape. It streamlined and expedited the resolution process, providing creditors with a more efficient mechanism to recover dues.
- **Awareness of Debt Management**: The case served as a cautionary tale for companies regarding the importance of prudent debt management, risk assessment, and sustainable growth strategies.
- **Investor and Creditor Confidence**: The case underscored the importance of transparency and corporate governance in maintaining investor and creditor confidence.
- **Automotive Industry Resilience**: The disruption in the automotive supply chain prompted the industry to reevaluate its dependence on certain suppliers and explore diversification to mitigate risks.

In summary, the Amtek Auto insolvency case was a pivotal event that not only highlighted the shortcomings in India's earlier insolvency resolution framework but also catalyzed the implementation of the IBC. The case's impact has been felt across various sectors and has contributed to a more robust and efficient insolvency ecosystem in the country.

Prior to Insolvency and Bankruptcy Code 2016

1. Introduction

Prior to the Insolvency and Bankruptcy Code (IBC)'s implementation in 2016, India lacked a comprehensive and time-bound legal framework for dealing with insolvency and bankruptcy matters. Prior to the IBC, there were many errors and inefficiencies in the settlement of troubled firms and people. Here are some key aspects of the scenario before the IBC:

a) **Fragmented Legal Framework:**

The existing legal framework in India for dealing with insolvency and bankruptcy matters was fragmented, consisting of multiple laws and regulations such as the Companies Act, 1956, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), and the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (DRT Act). This fragmentation caused misunderstanding and slowed the resolving process.

b) **Lengthy and Inefficient Resolution Process:**

Insolvency and bankruptcy procedures were frequently drawn out and took years to complete. This resulted in severe asset value depreciation and raised the load on debtors, resulting in poor results for all stakeholders.

c) **Lack of a Clear Hierarchy of Claims:**

The lack of a clear and well-defined hierarchy of claims made determining the priority of creditors in the event of insolvency difficult. This resulted in disagreements and delays in the settlement process.

d) **Limited Options for Resolution:**

There were few opportunities for troubled businesses to be solved. There were few methods for restarting or rehabilitating financially ailing enterprises, and liquidation was frequently the default decision.

e) **Inefficient Recovery Mechanisms:**

Debt recovery mechanisms, such as Debt Recovery Tribunals (DRTs) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act (SARFAESI), were frequently delayed and ineffective.

f) **Inadequate Protection for Stakeholders:**

Under the previous legislative framework, the interests of different stakeholders, including creditors, borrowers, and employees, were not effectively safeguarded.

g) **Lack of a Regulatory Authority:**

Since there was no specialised regulatory authority regulating insolvency and bankruptcy issues, the resolution process was inefficient and time-consuming.

The adoption of the Insolvency and Bankruptcy Code in 2016 aims to overcome these problems and offer a more effective and simplified framework for resolving insolvency and bankruptcy issues in India. The Insolvency and Bankruptcy Code of 2016 (IBC) is a game-changing piece of legislation that has transformed India's insolvency and bankruptcy system. With its approval, India done an important step towards establishing a more efficient, transparent, and time-bound mechanism for resolving financial crisis and insolvency among enterprises and people. This code marks the turning point in India's economic and legal history, combining and streamlining the multiple insolvency and bankruptcy rules that existed previously into a single, comprehensive legal framework.

What distinguishes the Insolvency and Bankruptcy Code of 2016 from earlier legislation is its emphasis on time-bound resolution and the prioritisation of creditors' interests. It represents a significant movement away from the previous debtor-centric strategy and towards a more creditor-friendly framework. The IBC establishes a clear and organised bankruptcy resolution procedure for corporations, partnerships, and individuals, with its primary objective of maximising the value of an insolvent debtor's assets while guaranteeing a fair allocation of revenues among creditors.

The formation of the Insolvency and Bankruptcy Board of India (IBBI), an independent regulatory entity responsible for managing and regulating the country's insolvency and bankruptcy proceedings, is one of the most significant components of the IBC. The IBBI is critical in establishing regulations, regulating insolvency practitioners, and ensuring that the code is effectively implemented. Furthermore, the IBC advocates the idea of a "Resolution Professional," who is in control of the business of the insolvent organisation during the resolution process. This person is critical in enabling conversations between creditors and debtors, with the goal of reaching a settlement that benefits all parties concerned. The legislation also created the term of 'fast-track resolution' for specific kinds of corporate debtors, guaranteeing that time-sensitive issues be addressed quickly and reducing asset value degradation due to lengthy legal processes.

In essence, the Insolvency and Bankruptcy Code of 2016 marks a considerable break from India's before complexity of bankruptcy regulations. Its distinct emphasis on time-bound resolution, creditor rights, and the construction of a strong regulatory framework has the potential to revolutionise India's bankruptcy landscape, promoting a more investor-friendly climate and, as a result, contributing to the country's economic growth.

2. **Kingfisher Airlines: Case Study (Liquidated before IBC 2016 enacted)**

2.1 Background of the Company:

Kingfisher Airlines was founded in 2003 and is owned by the United Breweries Group, which is headquartered in Bengaluru. It entered the aviation business at a time when low-cost carriers were encouraging the market and making air travel accessible to every Indian. Mr Vijay Mallya, India's largest liquor mogul, was well recognised for his vibrancy, quality and elegance as the airline's promoter. At the age of 28, he continues the history of his family firm, and his luxury lifestyle earned him corporate recognition at a young age. He exploited his celebrity to boost United Breweries Group's brand and coined the tagline "King of all times" for the beer. Starting off as the Chairman of UB Group, his international blitz of purchasing and selling Berger Paints U.K., as well as spending money on fast vehicles, yachts, and various overseas houses, transformed him into the company's brand symbol.

2.2 Growth of Kingfisher Airlines (KFA):

On May 9, 2005, Kingfisher Airlines began commercial operations with four brand new Airbus A320-200s, which flew daily between Delhi and Mumbai. With fresh new planes and exceptional facilities like as hot meals, comfy seats, personalised entertainment, and treating customers as "guests," the firm intended to deliver world-class facilities and dominate the market in product and service offerings. With this method, the airline began with four flights per day between Delhi and Bangalore and extended it to 104 flights per day by introducing 17 aircrafts and linking 16 cities in one year, breaking a record for the quickest aeroplane introduction in 2005-2007.

By 2006, the airlines had earned a five-star rating and were popular among business class passengers. It also provided personalised live in-flight entertainment through a partnership with Dish TV India Limited.

On September 3, 2008, the airline launched its international operations by linking Bengaluru and London. During the year 2008, the firm earned the reputation of being India's sole five-star airline and became recognised for providing great flight services to its passengers, a position it held for the subsequent three years.

In 2009, Kingfisher received various awards from throughout the world, and it was one of just seven airlines to get a 5-star rating from Skytrax. It eventually became the largest airline in the world's second most populous country, with a 26.7% share of the aviation market. Kingfisher Airlines flew around 250 flights every day. By transporting more than 1 million passengers in May 2009, Kingfisher Airlines has the largest proportion of the Indian aviation market among all airlines.

2.3 Reasons behind the Downfall:

Kingfisher Airlines (KFA) was regarded one of India's top five passenger airlines until December 2011, when it faced large losses and heavy debts, eventually closing down in 2012. According to the data gathered, the failure of KFA is due to more business reasons than marketing ones. The primary marketing cause for the drop was the merger of KFA and Air Deccan, as well as the launch of Kingfisher Red.

2.3.1 Operational Reasons:

1. In 2012, KFA's maintenance, navigation, and landing costs were around 10.86% of total revenue earned, 3% more than Jet Airways'.
2. KFA's staff costs were also greater than those of other airlines.
3. KFA's Value Added Services (VAS) were also highly expensive, and they paid little attention to cleanliness, connection, scheduling, and inexpensive costs, which were key criteria of Indian clients.

According to the investigations and research, the status of the Indian aviation industry was so bad that it had a negative impact on the KFA. The poor state of India's aviation industry was caused by four issues.

2.3.2 Rise in Fuel Prices:

Because of increased fuel consumption and competition among airlines, the price of jet fuel has been steadily rising, and KFA has been unable to pay its fuel costs.

FUEL EXPENSES	KINGFISHER	
YEAR	2012	2011
REVENUE	582,400.00	649,560.00
FUEL EXPENSES	294,590.00	227,400.00
%	50.58%	35.01%

According to the preceding table, fuel expenditures accounted for 50.58% of their income in 2012, with fuel payments accounting for 31.78% of their revenue. Their fuel expenditures were over 70% raised, and as a result of their failure to pay fuel charges, numerous vendors filed a case with the Bangalore High Court against KFA, including BPC (Bharat Petroleum Corporation). The Government of India also imposes a high tax on aviation turbine fuel. ATF in India is around 51% more than the international benchmark. 1. Rupee depreciation 2. Expensive landing fees and airline charges 3. AIR INDIA lowers their prices

2.3.3 Worst Decision Made:

In 2007, KFA combined with Air Deccan, a low-cost carrier known for its low rates, and Kingfisher, a high-cost carrier recognised for its elegance. Kingfisher believed that because Air Deccan was in the market before it, it would improve the company's financial position. Another reason was that Kingfisher did not have 5 years of domestic experience, whereas Air Deccan did, and in order to obtain an international licence in aircraft, it must have 5 years of domestic experience, which is why it acquired Air Deccan.

In 2008, Kingfisher Red was launched after the merger with Air Deccan. However, this marketing approach produced consumer confusion because KFA passengers had grown used to the luxury given, such as meals and lounge access. KFA's brand position suffered as a result of the merger, and the firm lost its premium value.

After merging with Air Deccan, the corporation lost more than $10 billion in three years. When Kingfisher saw they had made a huge mistake by acquiring Air Deccan, they raised the pricing of Kingfisher Red. However, Kingfisher Red was not a suitable option at the time since it was losing money, which caused management to be unsure whether it was a low-cost or regular carrier.

The Income Tax Department of Mumbai froze KFA's bank accounts in December 2011 due to a Rs 70 crore debt. The company took out extra loans to pay off the debt. For debt reconstruction, loan lenders reduced interest rates and converted debts to equity. However, this was not beneficial to the business because the company afterwards had a liquidity difficulty. In February 2012, Kingfisher Red was eventually shut down. KFA now has a total debt of Rs 7057.08 crores (USD 1414 million) with losses totaling Rs 6000 crores (USD 1202 million).

2.3.4 Strategic Issues:

1. Mr. Mallya's biggest blunder was failing to make sound business judgements. He failed to recognise customer needs and made all judgements based only on luxury sales. Airlines were regarded luxury travel by him, but in India, only a select few were willing to pay extra for luxury.
2. Mallya, as a liquor tycoon, was unable to distinguish between the two businesses. Customers may pay more for alcohol, but not for travel, because transportation is more of a need than a pleasure.
3. Mr. Mallya renamed Deccan Airlines as Kingfisher Red in 2008. As a result, Kingfisher Airlines operated both business and economy class flights. This appears to be perfect, but it was not. Mr Mallya was involved in several industries at the same time. His spirits firm had authorities designated, but the planes were running on their own. Mr Mallya's attention was required for the business.
4. According to sources, KFA flew 366 domestic flights and 20 overseas flights. It also had 67 planes. This raises the cost of leasing an aeroplane. In 2011, the lease rental exceeded Rs.984 crores, resulting in the grounding of 66 aircraft.

5. There was a point in 2011 when Kingfisher was unable to pay its employees' salaries. Salaries were due within four to five months. Following this, workers began refusing to sign the required "Tech Log," which certifies that the aircraft is fit and ready to fly. The Directorate General of Civil Aviation (DGCA) became aware of this and terminated KFA's licence.

2.3.5 Lack of Proper Management:

The frequent change of CEO for more than once a year and the failure of top-level management, in which Mr. Vijay Mallya never intervened seriously in day-to-day operations. Later, Siddarth Mallya (son of Vijay Mallya) received an airline as a birthday present from his father. He lacked the maturity to manage such a large airline company, and as a result of his lack of right competency and experience in the aviation sector, Kingfisher Airlines experienced a serious decline owing to a lack of competent management.

2.3.6 Bank Dues:

Mr. Mallya lost a total of Rs 9,091.40 crore, according to a report issued by "The Indian Express" in November 2015. He obtained loans from 17 different banks. His largest debt was Rs. 1600 crore with State Bank of India. According to the foregoing information, the airline owes Rs 800 crore to both Punjab National Bank and IDBI Bank. According to records, it also owes Rs 650 crore to Bank of India, Rs 550 crore to Bank of Baroda, Rs 410 crore to Central Bank, Rs 320 crore to UCO Bank, Rs 310 crore to Corporation Bank, and Rs 430 crore to United Bank of India.

3. **Liquidation Process:-**

- **Financial Distress and Debt Accumulation:**

  Vijay Mallya's Kingfisher Airlines had major financial troubles as a result of high operational expenses, strong competition, and an inability to continue profitable operations.

- **Grounding of Flights:**

  The Directorate General of Civil Aviation (DGCA) suspended Kingfisher Airlines' flying licence in October 2012 owing to safety concerns and non-payment of employee dues. As a result, the airline's flights were cancelled.

- **Accumulated Debt and Creditor Claims:**

  Kingfisher Airlines owed a large amount of money to banks, financial institutions, suppliers, workers, and other creditors.

  Creditors and claimants filed claims with the airline for outstanding debts such as staff salaries and perks.

- **Appointment of a Liquidator:**

  The liquidator was appointed by a licenced insolvency expert to manage the company's assets and obligations throughout the liquidation process. The liquidator was important in managing the whole procedure.

- **Identification and Valuation of Assets:**

  The assets of Kingfisher Airlines were identified and evaluated by the liquidator. These assets included aeroplanes, office buildings, equipment, and other items that might be sold to pay creditors.

- **Sale of Assets:**

  The liquidator began selling Kingfisher Airlines' assets to raise money for creditor payments. Auctions, talks with purchasers, and other methods of selling may have been used.

- **Addressing Employee Claims:**

  As part of the liquidation process, employee claims, including unpaid salary and benefits, were resolved. Employees were paid according on the available cash.

- **Legal Complexities and Disputes:**

  The legal conflicts and issues surrounding Vijay Mallya, the owner of Kingfisher Airlines, complicated the liquidation process significantly.

  Mallya faced judicial procedures for financial irregularities and debt defaults, complicating the airline's financial problems.

- **Progress Reports and Updates:**

  To ensure clarity about the state of the liquidation process, the liquidator gave frequent progress updates to creditors, shareholders, and regulatory agencies.

- **Distribution of Funds:**

  The proceeds from asset sales and other recoveries were paid to creditors in accordance with the payment structure. Secured creditors were usually given first priority in repayment.

- **Dissolution of the Company:**

  The corporation was legally dissolved after all assets had been liquidated and all creditor claims had been satisfied to the greatest degree practicable.

- **Closure of the Liquidation:**

The liquidation process was formally ended after the dissolution, and any leftover assets or cash were handled in accordance with applicable laws and regulations.

4. **Conclusion**

The Indian airline industry has experienced exceptional development and transformation, which will continue in the next years. Many airlines come and go, while others establish a solid foothold in the industry. Due to poor strategic decisions and mismanagement by the firm, the large and ambitious Kingfisher Airline project had significant downtime. Instead of focusing on this great aviation business potential, Vijay Mallya concentrated on achieving a glamorous position. The airline became known for its luxurious design, meals, and atmosphere, as well as its ambitious plans to establish itself in the worldwide market, but it overlooked the fundamental economy class. Vijay Mallya's plan could not be sustained for long and proven to be a major danger to the aviation sector's long-term viability and stability. Mallya is currently the sole remaining board member who is fighting to keep the brand alive.

To be successful in company, the major focus should be on developing an efficient work-frame, making proper decisions, generating a healthy competitive atmosphere, enhancing service quality, and working together to discover the best solutions to challenges.

CASE STUDY OFMOBILOX INNOVATIONS PVT LTD VS. KIROSA SOFTWARE PVT LTD

- This case involves a dispute between two parties, an appellant and a respondent, over operational debts owed to operational creditors. Here's a summary of the key points:
- Background and Parties: The appellant was engaged by Star TV to conduct tele-voting for the "Nach Baliye" program. The appellant sub-contracted the work to the respondent and issued purchase orders. The respondent was responsible for providing toll-free telephone numbers for viewers to cast their votes.
- Dispute and NDA: The respondent provided the services and issued invoices, but a dispute arose when the appellant claimed that the respondent breached a non-disclosure agreement (NDA) by disclosing their involvement in the "Nach Baliye" program.
- Demand and Insolvency Proceedings: The appellant withheld payment and sent a demand notice under the Insolvency and Bankruptcy Code, 2016 (the Code). The respondent filed an application under Sections 8 and 9 of the Code claiming an operational debt.

- Tribunal Decisions: The National Company Law Tribunal (NCLT) initially dismissed the application, stating that the existence of a dispute prevented the admission of the application. However, the National Company Law Appellate Tribunal (NCLAT) allowed an appeal, finding that the adjudicating authority acted mechanically and should have considered the issue of dispute more comprehensively.
- Legal Arguments: The parties presented various legal arguments. The appellant argued that the respondent failed to provide a copy of a certificate from a financial institution confirming no unpaid operational debt, as required by Section 9(3)(c) of the Code. The appellant also argued that the existence of a dispute should lead to the dismissal of the application under Section 8.
- Appellate Tribunal Decision: The NCLAT ruled in favor of the appellant, stating that the NCLT had not properly considered the issue of dispute and set aside the earlier order. The NCLAT also emphasized that the existence of a dispute does not necessarily prevent the admission of the application.
- **Summary of Interim Report and Recommendations:**
- The interim report discusses the differences between Indian and UK laws regarding winding up orders for companies unable to pay debts.
- In India, courts have the discretion to give time to debtors to pay or even dismiss a winding-up petition, unlike in the UK where such petitions are usually granted.
- This has led to delays and uncertainty in the liquidation process in India.
- The report recommends that if a company fails to pay an undisputed debt of a prescribed value, the creditor should be entitled to a winding up order.
- The NCLT (National Company Law Tribunal) should have the discretion to refer the company for rehabilitation before winding up.
- The provision should specify factors to determine whether a debt is disputed or not.
- The report suggests increasing the threshold value triggering the statutory demand test for winding up.
- Differentiate between "balance sheet insolvency" and "commercial insolvency" as separate grounds.
- The report suggests imposing sanctions and costs on petitioning creditors who abuse the process.
- **Summary of Final Report's Amendments:**

- The final report distinguishes between financial and operational contracts.
- It highlights the importance of information utility (IU) records in insolvency resolution.
- For operational creditors to trigger insolvency, they must deliver a demand notice or invoice.
- Corporate debtors must respond within ten days by disputing or repaying the debt.
- The report introduces documentation requirements for triggering insolvency based on creditor type (financial/operational).
- The report defines who can trigger the insolvency resolution process (IRP).
- The Adjudicating Authority verifies the documents and triggers the IRP.
- The Committee considers the definition of "dispute" and provides insights into creditor categories and documentation requirements.
- **Insolvency and Bankruptcy Bill, 2015 Changes:**
- Section 5(4) of the Bill defines "dispute" as suits or arbitration proceedings regarding debt, quality of goods/services, or breach of representation/warranty.
- Sections 8 and 9 outline the process for insolvency resolution by operational creditors.
- Operational creditors must deliver a demand notice or invoice, and corporate debtors must respond within ten days.
- An application for initiating insolvency can be filed by operational creditors.
- The Adjudicating Authority admits the application if it meets specific conditions.
- The Authority can reject the application if certain conditions are not met.
- Operational creditors can propose a resolution professional to act as an interim resolution professional.
- Corporate insolvency resolution process begins upon admission of the application.
- Definition of Terms:
- Default: It refers to the non-payment of a debt when it becomes due and payable.
- Dispute: It includes a suit or arbitration proceedings related to the existence or amount of debt, quality of goods or services, or breach of representation or warranty.
- Operational Creditor: A person to whom an operational debt is owed, which includes claims related to the provision of goods, services, employment, or dues payable to government authorities.

- Operational Debt: A claim arising from goods/services provision, employment, or repayment of dues under applicable laws.
- Adjudicating Authority: This authority has territorial jurisdiction over the place where the registered office of the corporate person is located. In the case of the Insolvency and Bankruptcy Code with respect to corporate debtors and personal guarantors, the adjudicating authority is the National Company Law Tribunal.
- Insolvency Resolution by Operational Creditor:
- An operational creditor can initiate the insolvency resolution process when a default occurs.
- The creditor must deliver a demand notice for unpaid operational debt or a copy of an invoice demanding payment in a prescribed form and manner.
- The corporate debtor (the entity owing the debt) has ten days to respond to the demand notice.
- If the debtor disputes the claim or has initiated legal proceedings before receiving the notice, it must provide evidence of such proceedings.
- If the debtor has repaid the operational debt, it must provide evidence of the repayment, either through an electronic transfer record or proof of encashed cheque.
- A "demand notice" is a notice served by an operational creditor demanding repayment of the operational debt due to the default.
- Initiation of Corporate Insolvency Resolution Process:
- After the ten-day period, if the debtor doesn't respond to the demand notice or doesn't repay the debt or dispute it, the operational creditor can file an application for initiating the corporate insolvency resolution process.
- The application must be filed with the Adjudicating Authority.
- The operational creditor needs to provide proof of default, an affidavit confirming the absence of dispute notice, and relevant information.
- Within fourteen days of receiving the application, the Adjudicating Authority will decide to admit or reject the application.
- If the application is admitted and meets the criteria, the corporate insolvency resolution process commences.
- These provisions are part of the Insolvency and Bankruptcy Code in India and are designed to facilitate the resolution of insolvency cases involving operational creditors and their debtors. The

process aims to provide a mechanism for dealing with defaults and resolving financial distress effectively.

- Documents required as proof of repaid debt
- In case the amount or details of the unpaid debt are to be challenged or to be proved as repaid, the following documents must be submitted as proof within ten days of receipt of the letter stating the unpaid debt.
- An attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor.
- In case the above document is not available, an attested copy of any record that the operational creditor has received the payment.
- Section 8(2) of IBC 2016
- Any pre-existing dispute may cause the application submitted that complies with the rules of Section 9 of the I&B Code to be thwarted if the dispute is real or a conflict or controversy. The corporate debtor should not raise false disputes rather there has to be a real substantial dispute. The acceptable definition of dispute is given in Section 5(6) of the Code.
- Section 5(6) of IBC 2016
- This Section specifies the meaning and implication of the word "dispute" in an insolvency process.
- Dispute includes a suit or arbitration proceedings related to:-
- The existence of the amount of debt
- The quality of goods or service
- Breach of a representation or warranty
- Section 9 of IBC 2016
- Section 9 of the Insolvency and Bankruptcy Code states that if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under Section 8(2) even after 10 days of delivery of the notice, the former can file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
- It also states the requirements or documents for filing the application of corporate insolvency resolution process:

- A copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor.
- An affidavit that there is no notice given by the corporate debtor relating to a dispute over the unpaid operational debt.
- A copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor.

- The Adjudicating Authority may approve the application if the application form is complete, there is an existence of unpaid operational debt, the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor and there should be no disciplinary proceeding pending against any resolution professional. Otherwise, the application is to be rejected.
- Form 4 of IBC 2016
- Form 4 of the Insolvency and Bankruptcy Code 2016 provides notice for repayment of the unpaid amount that is in default as reflected in the invoice attached to the notice. The form also states that in case of non-repayment, the corporate insolvency resolution process will be initiated within 10 days of issuance of notice under section 9 of the code.
- **Conclusions**:
- The study discusses a legal conflict between Mobilox Innovations Private Limited vs. Kirusa Software Private Limited. Kirosa Software had filed a case against Mobilox Innovations in National Company Law Tribunal, Mumbai. The NCLT produced a verdict stating that Mobilox had already issued a notice of dispute to the operational creditor.
- Since the verdict was unsatisfactory to Kirosa, it filed a case in the National Company Law Appellate Tribunal. The verdict that NCLAT passed was in favor of Kirosa Software Pvt Ltd explaining that the reply to the Demand Notice by Mobilox cannot be considered with respect to Section 8(2) and Section 5(6).
- Since this was unacceptable to Mobilox, it filed a case in the Supreme Court where the Honorable Supreme Court ruled in favor of Mobilox stating that the violation of a Non-Disclosure Agreement was well in the purview of a dispute and that the word “and” should be read as “or” in the Section 8(2) of the Insolvency and Bankruptcy Code. A dispute shall not be restricted to arbitration

proceedings or suits but shall include any proceedings initiated before a tribunal, consumer court, labor court etc.

- Economic Significance of the IBC 2016
- The Insolvency and Bankruptcy Code, 2016 had a positive impact on the insolvency resolution process by increasing its efficiency and effectiveness and also making it less time-consuming. According to the new Code, the Corporate insolvency resolution process is to be completed within one hundred and eighty days from the initiation of the process. This has brought in more economic and corporate stability and the speedy resolution of cases will also reduce the burden on the corporate judiciary thus increasing the productivity of the system.

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Mentor: Dr. Sindhu Mani Bag

Students Working Under the Project:

(1) Sadab Akhtar-B.Com, (2) Parth Koul- B.Com, (3) Utkarsh- B.Com, (4) Bhavani Sindhu- B.A Economic (H), (5) Tanu Singh- B.Com, (6) Sanchi Sibal- B.Sc-Life Sciences, (7) Priyanka Khanna-B.Com (H).