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The Insolvency and Bankruptcy Code (IBC)

Why in news?

Speaking at the 6th anniversary of the Insolvency and Bankruptcy Board of India (IBBI), Finance Minister urged IBBI to be watchful in tackling insolvency related issues of companies facing stress.

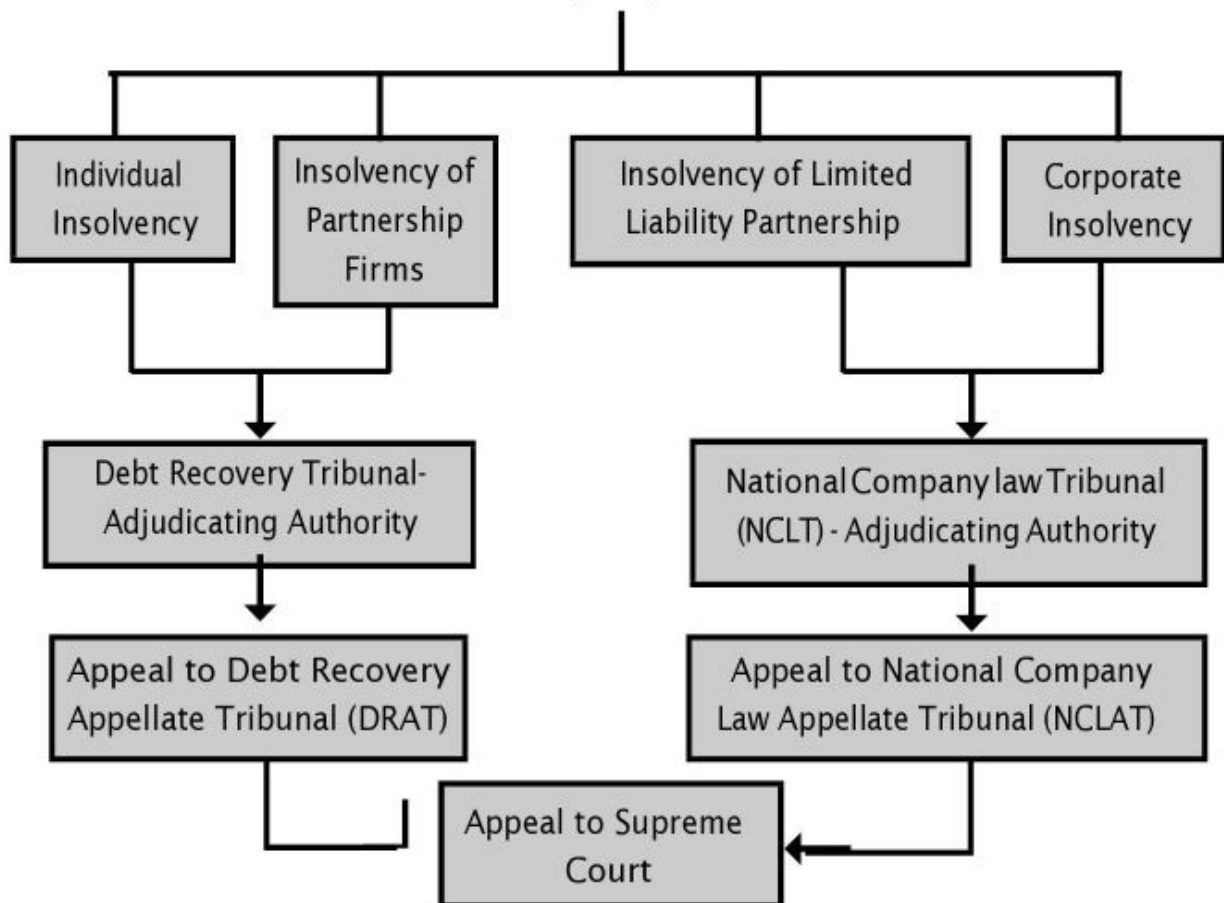
What is the Insolvency and Bankruptcy Code (IBC)?

- Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.
- The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted in 2016, against the backdrop of mounting non-performing loans.
- The poor performance of older loan recovery mechanisms such as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), Lok Adalats, and Debt Recovery Tribunals prompted the enactment of IBC.
- **Objectives**
 - To save a business as a going concern, through restructuring, change in ownership, mergers and other methods (resolution)
 - To maximize the value of assets of the corporate debtor
 - To promote entrepreneurship, availability of credit, and balancing the interests
- IBC aims to establish a consolidated framework for insolvency resolution of corporations, partnership firms and individuals in a time-bound manner.
- Under IBC, the insolvency regime shifted from 'debtor-in-possession' to 'creditor-in-control' thus ensuring business continuance.

The Insolvency and Bankruptcy Board of India (IBBI), the insolvency regulator, was established in 2016 under the Insolvency and Bankruptcy Code, 2016.

What is the process followed under the IBC?

The Insolvency Adjudication Process



- **Application**- When a corporate debtor, or a company which has taken loans, defaults on its loan repayment, either the creditor or the debtor can apply for the initiation of a Corporate Insolvency Resolution Process (CIRP) under Section 6 of the IBC.
- The minimum amount of default after which the creditor or debtor could apply for insolvency is Rs. 1 crore.
- The IBC was amended to complete the resolution process by 330 days from the earlier 180+90 days deadline.
- **Adjudicating authority**- To apply for insolvency, one has to approach a stipulated adjudicating authority (various benches of National Company Law Tribunal (NCLT)).
- The Tribunal has 14 days to admit or reject the application or has to provide a reason if the admission is delayed.
- The amended mandatory deadline for the completion of the resolution process is 330 days.
- **Interim resolution professional**- Once the application is admitted, the adjudicating authority appoints an interim resolution professional (IRP).
- The IRP takes control of the defaulter's assets, collects information about the company from Information Utilities (repositories) and coordinates the constitution of a Committee of Creditors (CoC).
- **Committee of Creditors (CoC)**- A CoC comprises all financial creditors of a defaulting company and is the most important decision-making body in every CIRP.
- It decides whether the defaulting company is viable enough to be restructured and given a fresh start, or liquidated.

- **Insolvency professional**- The CoC appoints an insolvency professional (IP), who looks after the operations of the company during the CIRP.
- The IP invites and examines proposals for a resolution plan for a company, which could include restructuring of debt, merger or demerger of the company.
- **Resolution plan**- It submits eligible plans to the CoC, which can approve a plan if it receives 66% of the voting share of committee members.
- If the CoC fails to approve any resolution plan, the company goes for liquidation.
- If a plan is approved, the CoC submits it to the Tribunal (before the maximum 330-day deadline), which then approves the plan which the debtor is bound to implement.
- The adjudicating authority can also reject a plan.

The 2021 amendment introduced pre-pack insolvency resolution process (PIRP) for MSMEs where creditors and owners of a business agree out-of-court to sell the business to an interested buyer. The current law limits the pre-pack resolution mechanism to defaults not exceeding Rs. 1 crore.

What are the challenges for the IBC?

- **Liquidation**- Among the 3,400 cases admitted under the IBC in the last 6 years, more than 50% of the cases ended in liquidation, and only 14% could find a proper resolution.
- **Time taken**- The average number of days taken to resolve cases increased rapidly over the past five years.
- In FY22, it took 772 days to resolve cases involving companies that owed more than Rs. 1,000 crore.
- **Realisation of value**- The gap between the realizable values during resolution and liquidation has been narrowing over the years.
- **Haircut**- A haircut is the debt foregone by the lender as a share of the outstanding claim.
- The Parliamentary Standing Committee on Finance in 2021 pointed out that, creditors on an average had to bear an 80% haircut in more than 70% of the cases.
- **Conduct of the CoCs**- The Standing Committee stated that the committee of creditors has significant discretion in accepting resolution plans and appointing IPs.
- **Issue with IPs**- The IBBI took disciplinary action on 61% of the 203 professionals inspected since 2016, adding that there should be a single regulator for them to ensure best practices and transparency.

What recommendations have been made in this regard?

- **For delays**- The Parliamentary Standing Committee suggested that the NCLT should not take more than 30 days after filing, to admit the insolvency application and transfer control of the company to a resolution process.
- **For vacancy**- Citing the more than 50% vacancy in the Tribunal, it suggested recruitment in advance based on the projected number of cases.
- **For specificity**- It also recommended the setting up of dedicated benches of the NCLT for IBC cases.

- **For case loads-** The Committee suggested that the pre-packs option be extended to all corporates after review.
- **For haircuts-** The IBBI has suggested that haircuts be looked as the difference between what the company brings along when it enters IBC and the value realised.

References

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