

## **BANKRUPTCY BILL 2015**

Introduction: In India, there are two statutes dealing with personal insolvency (including proprietorships and partnerships). One is Presidency Towns Insolvency Act, 1909, applicable to the erstwhile presidency towns of Bombay, Calcutta and Madras. The other one is Provincial Insolvency Act, 1920, applicable to the rest of India. The district court has the jurisdiction to try cases pertaining to insolvency under the Act.

When an order of insolvency is passed, all personal properties of the individual are vested in the Official Assignee appointed by the government of India, who then realizes it and allocates it among the creditors of the insolvent. An insolvent person is barred from enjoying several civil rights. Further, criminal proceedings can also be initiated against the insolvent.

A concept slightly different from insolvency is bankruptcy which is very popular in the western countries. A bankruptcy is when a person voluntarily declares himself as an insolvent and goes to the court. On declaring the person as 'bankrupt', the court is responsible to liquidate the personal property of the insolvent and distribute it among the creditors of the insolvent. This process is rather amicable which seeks to avoid the threatening calls and gestures of the creditors. It provides a fresh lease of life to the insolvent. However, declaration of personal bankruptcy also has its own disadvantages. Following are some prominent ones in India:

- a. Societal stigma is faced by the insolvent. In India, bankruptcy or insolvency is considered as extremely demeaning. People hesitate in declaring bankruptcy because of the fear of being ostracized by the society.
- b. The insolvent person loses credibility in the eyes of future creditors. His repaying capabilities are often questioned and he develops the image of a defaulter. He remains on the CIBIL list for 10 years during which it becomes almost impossible for him to take loans.
- c. In India, the whole process is time consuming because of slow functioning of the courts. As per the World Bank data the time to resolve insolvency in India in years is 4.3.

Considering the abovementioned reasons, the Government of India has set in motion a plan to overhaul the existing bankruptcy laws and replace them with one that will facilitate easy and time bound closure of businesses. The draft legislation is based on the report of a high level panel headed by former law secretary T.K. Viswanathan. The finance ministry has put up the Insolvency and Bankruptcy Bill, 2015 on its website for public comments till 19 November, after which it will place the bill before Parliament in the winter session for approval.

The Insolvency and Bankruptcy Bill, 2015

The proposed bankruptcy code is aimed at creating an overarching framework to make it easier for sick companies as well as individuals to either wind up their business or engineer a turnaround, and for investors to exit.

It will cover individuals, companies, limited liability partnerships, partnership firms and other legal entities registered in India as may be notified, except for those with a dominantly financial function.

## RECOMMENDATIONS OF THE BILL

a. Insolvency Regulator: The Bill proposes to establish an Insolvency Regulator to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and informational utilities.

b. Insolvency Adjudicating Authority: The Adjudicating Authority will have the jurisdiction to hear and dispose of cases by or against the debtor.

The Debt Recovery Tribunal (“DRT”) shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal (“DRAT”).

The National Company Law Tribunal (“NCLT”) shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities. Appeals from the order of NCLT shall lie to the National Company Law Appellate Tribunal (“NCLAT”).

NCLAT shall be the appellate authority to hear appeals arising out of the orders passed by the Regulator in respect of insolvency professionals or information utilities.

c. Insolvency Professionals: The draft Bill proposes to regulate insolvency professionals and insolvency professional agencies. Under Regulator’s oversight, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members leading to the development of a competitive industry for insolvency professionals.

d. Insolvency Information Utilities: The draft Bill proposes for information utilities which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.

e. Bankruptcy and Insolvency Processes for Companies and Limited Liability Entities: The draft Bill proposes to revamp the revival/reorganization regime applicable to financially distressed companies and limited liability entities; and the insolvency related liquidation regime applicable to companies and limited liability entities.

i. The draft Bill lays down a clear, coherent and speedy process for early identification of financial distress and revival of the companies and limited liability entities if the underlying business is found to be viable.

ii. The draft Bill prescribes a swift process and timeline of 180 days for dealing with applications for insolvency resolution. This can be extended for 90 days by the Adjudicating Authority only in exceptional cases. During insolvency resolution period (of 180/270 days), the management of the debtor is placed in the hands of an interim resolution professional/resolution professional.

iii. An insolvency resolution plan prepared by the resolution professional has to be approved by a majority of 75% of voting share of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.

iv. The draft Bill also provides for a fast track insolvency resolution process which may be applicable to certain categories of entities. In such a case, the insolvency resolution process has to be completed within a period of 90 days from the trigger date. However, on request from the resolution professional based on the resolution passed by the committee of creditors, a one time extension of 45 days can be granted by the Adjudicating Authority. The order of priorities in which the proceeds from the realisation of the assets of the entity are to be distributed to its creditors is also provided for.

f. Bankruptcy and Insolvency Processes for Individuals and Unlimited Liability Partnerships: The draft Bill also proposes an insolvency regime for individuals and unlimited liability partnerships also. As a precursor to a bankruptcy process, the draft Bill envisages two distinct processes under this Part, namely, Fresh Start and Insolvency Resolution.

i. In the Fresh Start process, indigent individuals with income and assets lesser than specified thresholds (annual gross income does not exceed Rs. 60,000 and aggregate value of assets does not exceed Rs.20,000) shall be eligible to apply for a discharge from their “qualifying debts” (i.e. debts which are liquidated, unsecured and not excluded debts and up to Rs.35,000). The resolution professional will investigate and prepare a final list of all qualifying debts within 180 days from the date of application. On the expiry of this period, the Adjudicating Authority will pass an order on discharging of the debtor from the qualifying debts and accord an opportunity to the debtor to start afresh, financially.

ii. In the Insolvency Resolution Process, the creditors and the debtor will engage in negotiations to arrive at an agreeable repayment plan for composition of the debts and affairs of the debtor, supervised by a resolution professional.

iii. The bankruptcy of an individual can be initiated only after the failure of the resolution process. The bankruptcy trustee is responsible for administration of the estate of the bankrupt and for distribution of the proceeds on the basis of the priority.

g. Transition Provision: The draft Bill lays down a transition provision during which the Central Government shall exercise all the powers of the Regulator till the time the Regulator is established. This transition provision will enable quick starting of the process on the ground without waiting for the proposed institutional structure to develop.

h. Transfer of proceedings: Any proceeding pending before the AAIFR or the BIFR under the SICA, 1985, immediately before the commencement of this law shall stand abated. However, a company in respect of which such proceeding stands abated may make a reference to Adjudicating Authority within 180 days from the commencement of this law.

## EVALUATION OF RECOMMENDATIONS

The objective of the bankruptcy Law is to create a specialized class of insolvency professionals who will assist companies through the bankruptcy process. Insolvency information utilities will collect, collates, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. A database will be created to provide information on the insolvency status of individuals.

The committee also proposed an insolvency adjudicating authority that will have the jurisdiction to hear and dispose of cases by or against debtors. While the Debt Recovery Tribunal will be the adjudicating authority with jurisdiction over individuals and unlimited liability partnership firms, the National Company Law Tribunal will be the authority with jurisdiction over companies and limited liability entities.

The draft bill contains provisions to speed up the process of revival/reorganization of financially distressed companies and limited liability entities and the insolvency related liquidation regime applicable to companies and limited liability entities as it lays down a process for early identification of financial distress and revival of companies and limited liability entities if the underlying business is found to be viable. It proposes a timeline of 180 days for dealing with applications for insolvency resolution with an option of extending it by 90 days.

There are no perfect laws and bankruptcy codes anywhere in the world. However, it is imperative to have a robust insolvency code and to keep improving it to suit the specific needs of the country and the existing business environment. The presence of a strong framework to deal with corporate insolvency and creditor and debtor protection is vital to unlock new avenues for funding and foster growth in credit markets. Such a law would enhance the position of lenders who have traditionally been in a weaker position, without being unfair to scrupulous borrowers.