



Bankruptcy Bill

Table of Content

1	Introduction	2
2	Why reform the Bankruptcy Process?	2
3	Proposal of the Draft Bankruptcy Code	2
4	Future Impact of Bankruptcy Code	3
5	Conclusion	3

1 Introduction

- The government introduced a bill in Parliament in last Winter Session that will make it easier for sick companies to either wind up their businesses or engineer a turnaround.
- The Insolvency and Bankruptcy Code, 2015, will replace the existing bankruptcy laws to make it easy for investors to exit within a fixed time frame, in an effort to improve the ease of doing business in India.
- Bankruptcy is a legal status usually imposed by a Court, on a firm or individual unable to meet debt obligations. India's new Bankruptcy Bill attempts to create a formal insolvency resolution process (IRP) for businesses, either by coming up with a viable survival mechanism or by ensuring their speedy liquidation.
- The proposed bankruptcy code will cover individuals, companies, limited liability partnerships and partnership firms, and proposes a time-bound framework.

2 Why reform the Bankruptcy Process?

- The failure of businesses impacts employees, shareholders, lenders, and the broader economy.
- India is a capital starved country and therefore it is essential that capital isn't frittered away on weak and unviable businesses. Quick resolution of bankruptcy can ensure this.
- Today, bankruptcy proceedings in India are governed by multiple laws — the Companies Act, SARFAESI Act, Sick Industrial Companies Act, and so on. The entire process of winding up is also very long-winded, with courts, debt recovery tribunals and the Board for Industrial and Financial Reconstruction all having a say in the process.
- The current legal infrastructure is inefficient and insufficient to deal with the complex bankruptcy process. It has hampered the investment into Indian Economy.
- The Bankruptcy Law Reforms Committee (BLRC) detailed about lacunae in the existing framework. Following are the findings of BLRC:-
 - The current state of the bankruptcy process for firms is a highly fragmented framework governed by multiple laws.
 - It is problematic that these different laws are implemented in different judicial forums. This gives rise to two types of problems in implementation of the resolution framework.
 - The first is the lack of clarity of jurisdiction.
 - A second problem is judicial forums entrusted with adjudicating on matters relating to insolvency and bankruptcy may not have the business or financial expertise, information or bandwidth to decide on such matters. This leads to delays and extensions in arriving at an outcome, and increases the vulnerability to appeals of the outcome.
 - In such an environment of legislative and judicial uncertainty, the outcomes on insolvency and bankruptcy are poor. World Bank (2014) reports that the average time to resolve insolvency is four years in India, compared to 0.8 years in Singapore and 1 year in London.
- BLRC came out with a detailed draft code which is introduced as the Bankruptcy Bill in the Parliament.

3 Proposal of the Draft Bankruptcy Code

- India's new Bankruptcy Bill attempts to create a formal insolvency resolution process (IRP) for businesses, either by coming up with a viable survival mechanism or by ensuring their speedy liquidation.
- Salient Features of the Bill:-
 - **Insolvency Regulator:** The Bill proposes to establish an Insolvency Regulator to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and informational utilities.
 - **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”).
- **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.
- **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.
- 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.
- The draft proposal achieves to three key objectives:-
 - **Low time to resolution.**
 - **Low loss in recovery.**
 - **Higher levels of debt financing across a wide variety of debt instruments.**

4 Future Impact of Bankruptcy Code

- The Code will facilitate the assessment of viability of the enterprise at a very early stage.
- The Code will enable symmetry of information between creditors and debtors.
- The Code will ensure a time-bound process to better preserve economic value.
- The new code will matter to private sector employees too. The Bill, by forcing failed firms to shut shop, can lead to a survival of the fittest in the job market too.
- **Industrial disease:** The lack of rapid resolution of corporate distress leads to slow multi-year processes of industrial disease. Bankruptcy reform would allow a faster process through which society would put capital and labour to work in a business, and rapidly change course when that business did not work.

5 Conclusion

- The failure of some business plans is integral to the process of the market economy. When business failure takes place, the best outcome for society is to have a rapid renegotiation between the financiers, to finance the going concern using a new arrangement of liabilities and with a new management team. If this cannot be done, the best outcome for society is a rapid liquidation. When such arrangements can be put into place, the market process of creative destruction will work smoothly, with greater competitive vigor and greater competition.

Copyright © by Vision IAS

All rights are reserved. No part of this document may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of Vision IAS.