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INSOLVENCY AND BANKRUPTCY CODE: A LEGAL ANALYSIS

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Abstract

The main objective of the Insolvency and Bankruptcy Code (2016) is to maximize the efficiency and recovery of valuable resources. This article examines the implementation of the Insolvency and Bankruptcy Code (IBC), 2016, at different points since its inception. The document mentions that the Law preferred to complete the decision rather than making a decision to meet the deadline. This article is contextual in nature and examines the effectiveness of IBC at different levels. The study found that the policy achieved good results in identifying the deficit of 12 major NPAs compared with other previous strategies, but there were some uncertainties in identifying the main drivers of capital in proving its feasibility, which was its main objective. And yet the main purpose is to eliminate. This article will go into details regarding the use of the rules which may have some flaws as written as these will be the current debt management rules in India.

Key words: The Insolvency and Bankruptcy Code, Insolvency, liquidation

Introduction

Bankruptcy can be defined as the inability of a natural person, legal entity or other person to pay its debts when due or the person's ability to perform duties is reduced. Bankruptcy, on the other hand, is a law decided by the courts/tribunals according to the person's business. Cross-legal action based on business decisions to resolve business problems. So, when a person goes bankrupt, he is not considered bankrupt until the court/tribunal decides. However, the bankrupt person should not have any money. According to the current law of the country, a person or creditor who has a significant debt can declare bankruptcy by applying to the court/tribunal.

Literature review

The Insolvency and Bankruptcy Code, 2016 (IBC) is India's bankruptcy code, which aims to unify existing standards by creating an insolvency and bankruptcy code. "IBC 2016 is a law

implemented by an Act of Parliament.” (Decan Chronicle, 2017). (Edwitty, 2018) Regarding the economic losses resulting from the State's inability to fulfill its financial obligations, the Law aims to create a collective solution or improvement to the problem. (teacher. M. Guruprasad, 2017) said that the IBC was introduced and passed in the Lok Sabha in 2015 and it was said that the laws would control the problems of bankruptcy and crime in an emergency. (KPMG, 2016) said that the Insolvency and Bankruptcy Code, 2016 provides an environment for individuals, businesses and small and medium enterprises to manage all insolvency and insolvency copies. All creditors have the right to initiate resolution in case of non-payment of legal documents. It provides bankruptcy professionals with the opportunity to modify the company's debt. (Mohapatra, 2016) He said that the aim of IBC 2016 is to consolidate and revise laws relating to companies, LLPs, individuals and joint ventures.

The main feature of this policy is to produce solutions and increase the value of debt assets over a period of time. The rules can help companies in trouble maintain operations or prepare recovery plans for future lawsuits. (Prof. M. Guruprasad, 2017) He said that IBC 2016 is the Indian Bankruptcy Code which aims to consolidate the existing structure by creating complaints and legislation. For international lenders and investors, the new policy will be an important tool for further growth of investments in India from a private equity perspective. (EY, 2017) discusses the difference between insolvency and insolvency. First, it means that the company cannot immediately pay off the debts it owes. Developed by the Bureau of Commercial Banking (BLRC), the system aims to generate higher returns over a certain period of time. (Trilegal, 2016) states that the Act, which covers “regulators, business experts, electronic information and decision-making processes”, creates new and existing benefits that provide legal guarantees and guarantees regarding the resolution of complaints and the deadline for cancellation. BYJUS (2016) states that bankruptcy is a legal action usually taken by a company or individuals who cannot pay their debts. (Dixit.) Describes some of the needs of IBC, 2016. In today's business world, the main need for IBCs is that work can be done easily rather than being complex, and that they support business and innovation by providing them with easy access and exit opportunities. (Narayan, 2016) stated that the banking sector in India is in trouble. Banks' bad debts are accumulating. If a company goes bankrupt, it will be difficult for shareholders to get their money. Therefore, the Act helps balance the interests of all stakeholders in the ailing company. It also changes the priority order of

government debt payments. When a company goes bankrupt, misunderstandings arise between creditors and debtors. These policies increase confidence in the business by facilitating the flow of better and more in-depth information about borrowers and borrowers. It also guarantees the rights and benefits of investors. The rule is two years old but makes a bigger difference in the current economy.

(Dubey, 2016) said that the policy has a huge impact on the way the Indian economy functions. According to him, the changes that occurred after the publication of the Law are the changes in the Bill, the invitation to the applicants for a solution, the necessary standards for the applicants for the solution, and there is no need to send or send a solution plan. a solution plan etc. Specify the punishment. (SME Times News Bureau, 2017).

While speaking on the occasion of the special bench, Justice AK Sikri said that reviving ailing businesses will not only benefit the economy but also help achieve a high GDP, create employment and eventually achieve real and rapid economic growth. The Indian economy must show willingness to explore all ways to make companies sick. The main focus of IBC 2016 is the management of the sick company.

“The Insolvency and Bankruptcy Code 2016 will be a game changer.” IBBI will fix or eliminate the distressed company. This is a limited period of time that helps in collecting the debt quickly. However, in many studies, the reasons and professional opinions regarding the effective use of IBC are not discussed. Therefore, this study examines the opinions of experts and tries to find contradictions in the current rules that are said to be good design.

Research gap:

1. The research paper aims to through a light on the insolvency and bankruptcy code
2. Lack of awareness on insolvent trading.

Research objectives

1. To analyze the progress of Insolvency and Bankruptcy Code in insolvency resolution.
2. To analyze whether the Insolvency and Bankruptcy Code is favoring liquidation over resolution.

Research methodology

This methodology adapted for the purpose of this research paper is doctrinal method involves the analysis of the statutes, case laws existing secondary information accessed from various sources such as books, articles, journals, websites etc. this is a qualitative research. Books and research papers related to topic has been heavily replied upon as secondary sources of information.

The references has been included at the end for your kind perusal

Discussion

Bankruptcy is when an individual or company cannot meet their cash related commitments to advance pros as commitments gotten to be due. A few time as of late an bankrupt company or person gets included in insolvency methods, they will may be included in casual courses of activity with banks, such as setting up elective installment courses of activity. Liquidation can rise from dejected cash organization, a diminish in cash deluge, or an increase in costs.

Insolvency works

Insolvency is a state of financial distress in which a business or person is unable to pay their bills. Insolvency can lead to bankruptcy procedures, in which legitimate activity will be taken against the wiped out individual or substance, and resources may be sold to pay off extraordinary obligations. Commerce proprietors may contact leasers specifically and rebuild obligations into more sensible installments. Lenders are regularly amiable to this approach since they need to be reimbursed and maintain a strategic distance from misfortunes, indeed in the event that the reimbursement is on a deferred schedule.

If a commerce proprietor plans on rebuilding the company's obligation, they gather a reasonable arrange appearing how they can decrease company overhead and proceed carrying out commerce operations. The proprietor makes a proposition enumerating how the obligation may be rebuilt utilizing fetched decreases or other plans for back. The proposition appears leasers how the commerce may deliver sufficient cash stream for productive operations whereas paying its obligations.

Different hypotheses have been advanced with respect to the points & the extreme reason of bankruptcy law. These speculations imagine a wide assortment of objectives & destinations for the bankruptcy handle. For the purposes of the display consider, it is basic to comprehend the reason of indebtedness procedures. The different hypotheses managing with indebtedness are talked about as take after

As per Jackson, bankruptcy procedure should aim for increase in efficiency of the debt collection process, increase in value of the debtor, and reduction of strategic cost in the debt collection process. The aim of bankruptcy procedure should not be to protect the rights of non-investors i.e., persons whose claims will be damaged by the debtor's insolvency but do not enjoy a legal claim over the assets of the debtor.² Thereby larger interests such as those of the community need not be protected by insolvency law in terms of the creditor's bargain theory.

Types of insolvency

Insolvency is the state of being unable to pay the debts, by a person or company (DEBTOR), At maturity; those in a state of insolvency are said to be insolvent. There are two forms;

A. cash-flow insolvency

The definition of "encumbrance" varies depending on whether the debtor is a corporation, partnership, or municipality. However, the business model used to measure the "fair value" of a business is the sum of its assets and liabilities. One way to calculate the fair value of assets and liabilities is to determine the cash price that the buyer is willing to pay and the cash price that the seller is willing to purchase. It is accepted if the product is sold within a reasonable time. This method is called fair market analysis.

"In the context of a going concern [i.e., assuming the company will continue its operations and generate cash flow from its operations], the cost of air is determined by the fair market value of the loan amount. Sold. As a precautionary measure, it may be procured to pay off the debt." When a company is considered a concern, its business value often includes "assets such as name, profile and reputation, as well as relationships with customers and suppliers."

By contrast, in liquidation cases such as Lamar Haddocks, the Fifth Circuit made clear that the fair value of stock was determined based on "the estimated debt owed if they were currently sold."

"How that price will be made" will be determined by the phrase "Market conditions" rather than the book value of the asset. The value of assets in liquidation is another matter of litigation. Because the pace of sales affects the purchase price of assets, the fair market value of company assets depends on factors such as the timing of sales. In most cases, courts avoid presuming that the property will be eliminated by fire sale because this auction does not increase the value.

Taxman Giyim A.Ş. again in July. provides an important example of this theory. The real problem is measuring the clothing company's stock correctly. The stock completed at auction for \$110,000, but there is strong evidence that if sold as a concern the stock would net \$215,000. The court chose the final price for the settlement, concluding that the real value of the company's shares was the profit that would be made by selling them in an ordinary market, rather than in a fast and difficult business. In each case, courts must balance conflicting issues when determining a "reasonable period" for asset disposition. As the Third Circuit noted, on the one hand there is the "desire to obtain maximum value from the assets to be sold," and on the other hand there is the "desire to sell the assets as quickly as possible to satisfy the loan applicant."

The choice to value the company in terms of business or concern is difficult because on test day most companies are "at the center of concern and worried to death." However, if the company is in operation and pays its debts at the measurement date, courts tend to prefer the going concern model. At DAK Endüstri. The bankruptcy court ruled that the company's debt was an ongoing problem at DAK's valuation date because DAK continued to operate under Chapter 11 protection for more than two years.

B.balance-sheet insolvency

Lack of income is also known as equitable bankruptcy or the "ability to pay" test. An Ohio court said in *Cellar Lumber Co. v. Holley* said the bad money "couldn't pay off its debts because it went through ordinary business." This is "a broader concept than the balance sheet, starting with merchants or merchants." According to the Criminal Code (Chapter 6), a bad debt is determined by asking whether the debtor "considers or believes that the large debt will exceed his ability to pay." The recession is essentially a test run. The company must demonstrate its ability to repay current and future debts. Tests that only consider the company's ability to pay past debts are ineffective in reflecting the impact of damage. Additionally, a business may have a weak balance sheet but have sufficient capacity to service its debt.

Moreover, the company's solvency is not equal to the company's expected revenue, nor is it equal

to the revenue measured by the outcome. Compare. A company may have a lot of financial need but a low chance of paying back its costs. Let's say Company A wants to pay off its \$1,000 debt but is currently unable to pay off its debt. However, Company A has a 25% chance of receiving \$10,000 by the deadline, but a 75% chance of receiving \$0. Therefore, there is a 75% chance that Company A will not pay its debt when it is due, because 75 is the percentage chance that Company A will have \$0 when the debt comes due. However, Company A has a 25% chance of paying the \$1,000 price. If this occurs and Company A pays off \$1,000 of debt with an expected payment of \$10,000, expected financing is \$2,500 because 25% of \$10,000 plus 75% of the \$0 equity equals \$2,500. This example shows that although there is a high probability that the company will eventually default on its debts, its revenues will exceed its debts.

Insolvency according to the uniform commercial code

Bankruptcy is also defined in the Uniform Commercial Code. UCC Section 1-201(23) includes not only one bankruptcy test but also two bankruptcy “equivalent tests.” According to Section 1-201(30), a “person,” “including any person or entity,” may become bankrupt if it “is unable to pay its debts or discharge its business debt” under the Federal Bankruptcy Code. They are growing or doing business.” UCC comment 23 to § 1-201 states that our definition of bankruptcy “is clearly an alternative test and must be considered from an economic perspective.”

Consequences of Insolvency

Bankruptcy benefits the company, its creditors, and its shareholders. As a general purpose, corporate law aims to protect the interests of creditors by preventing multiple transfers of assets of credit companies or activities that would make the debtor. Over-testing the economic crisis will harm the company's profitability by reducing business activities and restricting other financial activities. Similarly, the test does not include penalizing borrowers who are less likely to repay; creditors can steal the company's assets through free transfers, excessive purchases, and large salaries and bonuses.

In this way bankruptcy occurs very effectively in many cases. First, under Chapter 11 Section 547, payments made to creditors by a bankrupt company before it files for bankruptcy will be clawed back. Under state and federal tort reform laws, settlement also considers transactions that lack “fair judgment” or “fair value.” In bankruptcy law (Section 1102(a)(1)) the resolution determines

whether a shareholder has rights. Form a shareholders' committee during the bankruptcy process.

Factors Contributing to Insolvency

There are many things that can cause personal or business loss. A company that hires low-paid or understaffed employees could go bankrupt. For example, the finance manager may not be able to create and/or follow the company's budget, resulting in overspending. When too much money goes out and not enough goes into work, debt can build up quickly.

Rising shipping costs could be disastrous. When businesses have to pay higher prices for goods and services, companies pass the cost on to consumers. Rather than pay increased costs, many customers take their business elsewhere so they can pay less for the product or service. Losing customers causes the company to lose revenue to repay creditors.

Lawsuits from customers or business partners can cause a company to lose business. The business will pay too much money and will not be able to continue operations. When business stops, that's how much the company's income is. Insufficient income leads to bills not being paid and creditors demanding money owed to them.

Some companies fail because their products or services do not meet the changing needs of consumers. When customers start doing business with other companies with a wider range of products and services, the company loses profits if it does not adapt to the market. Debts exceed income and unpaid bills.

Insolvent trading

Language in business can be confusing, especially when it comes to money, but understanding the various financial rules is crucial to company survival and success. Ideally, successful businesses and their owners can focus on laws related to financial reporting, product marketing and financial management, but when the business has financial problems it is important to follow the rules and legal procedures.

Special rules must be followed to ensure that bankruptcy does not occur if a company can no longer pay its debts. To help you better understand the rules and consequences, we have put together this short guide explaining illegal trading and related topics such as crime and bankruptcy.

Insolvent trading claims:

For global businesses, putting shareholders first is part of business as usual. But when a company goes bankrupt, the focus is legally required to shift to the priority of creditors. When a business cannot pay its current debt, continuing to do business one day can create additional debt, making company executives vulnerable to the business. If this claim is found to be valid, the directors will be subject to civil penalties, including personal liability for debts incurred during bankruptcy.

When a company goes bankrupt, a liquidator is appointed to protect the interests of the company's creditors and assets so that the debt is paid. The authorities have a duty to investigate when a bankruptcy is reported. Most of the time they take the job seriously themselves, but debtors can also pay off their debts. The loan period is usually several years from the moment of liquidation. Unless the company's managers have reasonable grounds to believe that the company is in serious business, creditors may take legal action to collect the debt received directly from the managers.

Liquidation

In both European and American bankruptcy laws (such as Chapter 7), bankruptcy leads to the decision to liquidate a business and liquidate its assets; This is accomplished by distributing assets to various creditors or selling assets and distributing the proceeds to various parties.

Creditors. Once the transaction is completed, the business no longer exists.

U.S. Bankruptcy Laws

According to the IRS, a person or organization is declared bankrupt when its total liabilities exceed its total assets. Currently, bankruptcy is a legal tool used by the federal government to create a plan to repay creditors. Compared to the European economic system, US economic law affects debt formation. Chapter 11 bankruptcy allows the business management team to continue day-to-day operation throughout the rebuilding process.

Conclusion

Bankruptcy is not the same as insolvency, but a bankrupt company can go bankrupt. Bankruptcy is a state of inability to pay debts, while bankruptcy is a legal process to get rid of debts. Bankruptcy is a situation where a debtor is unable to pay his debts, and this can occur for many reasons. Understanding catastrophic factors, such as overspending, can help you avoid bankruptcy and its consequences. The Insolvency and Bankruptcy Code (IBC) in India has brought about significant changes and improvements in the way insolvency and bankruptcy cases are handled. It has had a transformative impact on the overall landscape of insolvency and bankruptcy in the country. The IBC has led to better protection of the rights of creditors, such as banks and financial institutions, who lend money to businesses. It has also resulted in a more efficient and streamlined process for resolving insolvency and bankruptcy cases, making it easier for businesses to recover or wind up their operations.

The implementation of the IBC has had a positive impact on the overall health of the financial sector in India, as it has helped in reducing the burden of non-performing assets and improving the recovery of bad loans. Despite its successes, the IBC still faces certain challenges and areas that need improvement. These challenges may include issues related to the interpretation and implementation of the code, delays in the resolution process, and the need for further strengthening of the institutional framework. It will be important to refine and update the code to address any emerging issues and ensure that it remains relevant and effective in the long run. This may involve making amendments to the code, providing further guidance and clarity on certain provisions, and addressing any gaps or loopholes that may arise over time.

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