

POWERS AND FUNCTIONS OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

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ABSTRACT

In the light of the newly developed legislation, the Insolvency and Bankruptcy Code which was passed by the Lok Sabha on 5th May 2016, the purpose of this paper is to discuss the various functions of the regulatory body envisaged by the code. The need for the existence of the present code in force can be traced from the crisis faced by the Indian Banking Industry where there has been a stagnant flow of cash having the Non-Performing Assets pile up. An unbalanced input and output of cash hinted the possibilities of the entire market system caving in. With this fear of collapsing in mind, the Government, in order to create an equilibrium in the economy, sought to adopt measures to recover the debts of the Companies and protect the interests

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of the financial institutions. This issue was handled with the aid of many broken statutes in which the Securitization and reconstruction of Financial Assets and Enforcement of Security Interest Act fall as one. With many fragmented statutes at hand, the need for a more comprehensive statute arose to simplify the procedures for the recovery of money in cases of default payment and subsequently the Insolvency and Bankruptcy Code, 2016 was enacted by the Central Government. The paper also addresses the various limitations faced by the statutes enacted before the enactment of IBC.

The paper chooses the functions and powers of the Insolvency and Bankruptcy Board of India, an institutional arrangement that plays a multifaceted role in maintaining the equilibrium of the market economy, for its main study. IBBI was established on October 1 2016 as incorporated under the Insolvency and Bankruptcy Code, 2016. This in itself has three faces; Firstly- it plays the role of regulator of profession, Secondly- the regulator of transactions, Thirdly- the role of consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals for the

maximisation of value of assets of such persons, for the promotion of entrepreneurship and for the promotion of availability of credit and balance of interest of all shareholders. The research aims in re-assuring the scope of the Board and its role in various business arenas.

The paper uses data on insolvency and bankruptcy to draw the reader's attention to the crisis and issues which led to the need of the establishment of a regulatory body and also observations made by commentators on the newly established regulatory body along with official papers and relating statutes. The authority of NCLAT to hear the appeals of the cases passed by the Board with respect to the insolvency professionals or information utilities will be analysed. This paper will highlight the objectives of the Board reckoned by the Bankruptcy Law Reforms Committee set up by the external affairs ministry of finance on August 22, 2014. It will also provide important views on the similar regulatory bodies under the Code.

INTRODUCTION

This paper mainly deals with the constitution, organisation, powers and functions of the regulatory body mentioned in the Insolvency and Bankruptcy Code (I & B Code) –The Insolvency and Bankruptcy Board of India (IBBI), and working and importance of National Company Law Tribunal (NCLT), the adjudicatory body of insolvency proceedings, IBBI statutorily formed under the Insolvency and Bankruptcy Code which was passed by the Lok Sabha on 5th May 2016 which formed with the purpose of reorganisation and insolvency resolution of corporate persons partnership firms and individuals for maximising value of asset of such persons, to promote entrepreneurship, and to promote the availability of credit and balance of interest of all shareholders.

As a regulatory body, the IBBI plays three roles. Firstly as the regulator of professionals, which involves the regulation of working of the Insolvency professionals (IPs) (means a person enrolled under Section 206 with an insolvency professional agency as its member and registered with the

board as an insolvency under sec.207¹), Insolvency Professional Agencies(IPAs) (means any person registered with board under sec.201 as an insolvency agency²) and Information Utilities(IUs) (means a person who is registered with the Board as information utility under Section 210³).

Secondly, as the regulator of transactions, this involves writing and enforcing rules and principles for transactions regarding corporate insolvency resolution, corporate liquidation, individual insolvency resolution, and individual bankruptcy. Regulation of transaction also includes collection and call for data and records of professionals, publishing them and forming regulations for the collection, storing and acquiring such information. Thirdly, the function of consolidating and amending laws relating to reorganisation and insolvency resolution of persons that the Act defines in sec. 3 (23), (24), (25). These amendments are done in a time bound way for the interests of insolvent persons and the creditor. The powers and functions of the I&B Board can be summarized into four heads namely:

¹ Sec.3 (19) insolvency and bankruptcy code 2016.

² Sec 3 (20) insolvency and bankruptcy code 2016.

³Sec 3 (21) insolvency and bankruptcy code 2016.

- Regulating Information Utilities, Insolvency Professionals and Insolvency Agencies
- Creating public database of Insolvency transactions.
- Making Regulations
- Powers to Govern Itself.

On the other hand, the Insolvency and Bankruptcy Code acknowledges NCLT as the adjudicatory body having the authority to look upon the insolvency resolution process and to enhance justice in corporate transaction. The tribunal came into existence from the 2002 Companies (Amendment) Act. The companies' law also provided for the creation of NCLT's appellate authority the National Company Law Appellate Tribunal. The appeal to the cases dealt under the regulatory body IBBI will be heard before the NCLT. The main function of the tribunal is to enable redressal to the aggrieved and enable speedy and smooth functioning of insolvency resolution process.

BACKGROUND

Considering the status of our country prior to the insolvency and bankruptcy code, an effective system of law to deal with the insolvency and bankruptcy was absent. Some of the

prevalent statutes that recognised the issue were the Sick Industrial Companies (Special Provisions) Act, 1985; the Recovery of Debt due to Banks and Financial Institutions Act, 1993; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act 2013.

These statutes to an extent could resolve the issues regarding corporate insolvency. For the insolvency resolution of individuals the cases were directed to civil courts and the liquidation of insolvent companies were dealt by the High Court. An effective regulatory set up that could bring the entire concept of corporate and individual insolvency resolution and to handle the liquidation process was a necessity.

As the issues were handled by different bodies, (which included the High Court, district court, the Companies Law Board (formed under the Companies Act, that dealt with the insolvency and bankruptcy of corporate persons), the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRT)), with no regulatory statute

and body to watch over the insolvency resolution function, the chances of delays and errors were more.

Having more of insolvency and bankruptcy issues piling up the need for a unified code was imminent. Moreover, booming Non-performing assets, tremendously declining GDP, poor credit view-point among the people in the country and the Vijay Mallya issue up roared the need for a Code and a body to regulate and teach the citizens. This, with the help of Bankruptcy Reforms Committee, was introduced in the Parliament the bill for a code, which finally, by the assent of Lok Sabha on 9th May and by the assent of Rajya Sabha on 11th May became an Act.

Upon the regulation of the Code Part III of the Act embodies the legal mechanism to handle the insolvency issues of individuals, partnership firms, and corporate companies by providing them a fresh start process, the insolvency resolution process and bankruptcy⁴.

For supervising and regulating the entire process of insolvency resolution and corporate reorganisation the

⁴ The insolvency and bankruptcy code, 2016 – Deepak jain , chartered secretary the journal for corporate professionals

Insolvency and Bankruptcy Board of India was set up. Such a circumstance for a board is found in Part IV of the Code, which provides for the foundation of an Insolvency Regulator that is the Insolvency and Bankruptcy Board of India (IBBI).

All the matters regarding insolvency and bankruptcy will be regulated by the Board. The regulatory management of the firm will be on Insolvency Professional, Insolvency Professional Agencies and Information Utilities. The Board has also the power to frame laws and guidelines on the subjects regarding insolvency and bankruptcy as the Code requires. The Board is also empowered to perform executive and quasi-judicial functions for speedy processes across the country.

As the adjudicatory body the Board has authorised NCLT and to hear the appeals coming out of the decisions passed by the Board and NCLT the authority is vested with NCLAT.

OBJECTIVES OF THE BOARD

According to the Bankruptcy Law Reform Committee, that had formed to set up the Act, has envisaged in following words: *“The objective of the Board is to utilise all legislative, executive and quasi-judicial functions so as to achieve a well-functioning bankruptcy process in India. This would include features of:*

- *High recovery rates in an NPV sense;*
- *Low delays from start to end;*
- *Sound coverage of the widest possible class of claims e.g. bank loans, corporate bonds etc.*
- *A perceptiveness in the minds of persons in the economy that India has a swift and competent bankruptcy process.⁵”*

SCOPE OF THE BOARD

The Board under the Code has been set up to regulate all the matters of insolvency and bankruptcy that persons defined under the Act face. They include limited liability entities, firms, companies, and individuals, including all organisations and entities other than financial service providers. The body if functioned to regulate the corporate insolvency processes which includes, Insolvency Resolution

⁵ Shardul amarchand mangaldas; Insolvency regulator- the insolvency and bankruptcy Board of India ; Misha

and Liquidation. The board within its ambit cover all the stakeholders and consolidated them to one platform so as to close all the resolution process within a fixed time frame. If failed the board initiates the process of liquidation.

COMPOSITION OF THE BOARD

According to section 189, “(1) the Board shall consist of the following members who shall be appointed by the Central Government, namely:-

- a. A Chairman
- b. Three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of finance, the Ministry of Corporate Affairs and Ministry of Law, *ex Officio*;
- c. One member to be nominated by the Reserve Bank of India; *ex officio*;
- d. Five other members to be nominated by the central Government, of whom at least three shall be the whole-time members⁶.”

⁶ Sec.189 Clause 1. insolvency and Bankruptcy Code

In short members of the board, appointed by the Central Government, consist - a chairperson; three members who are Central Government employees who work for a rank not below the rank of Joint Secretary or equivalent, the three representing one each, the Finance ministry, the Ministry of Corporate Affairs and Ministry of Law; a member be named by the RBI; and 5 members to be added by the nomination of Central Government in which any three or more member should be the whole-time members.

Upon the selection of the Chairperson, he or she being selected must be a person of, according to the Act, ability, integrity and standing⁷. He/she should have prior special knowledge and experience in handling with problems in relation to insolvency and bankruptcy. Such a person should also be proficient in the field of law, finance, economics, accountancy or administration.⁸

The members of the Board except the *ex officio*, which includes the Chairperson and the members shall be

⁷ Sec. 189 clause 2. The I & B Code

⁸ Supra 8

appointed after receiving the recommendation and approval of a selection committee consisting of –

- a. Cabinet secretary- Chairperson
- b. Secretary to the Government of India to be nominated by the Central Government – Member;
- c. Chairperson of the Insolvency and Bankruptcy board of India (in case of selection of members of the Board)- Member
- d. Three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government – Members.⁹

Term of the members

The chairperson and the members, which exclude the ex officio members, of the Board shall enjoy a term of office up to five years or till they reach the age of sixty-five years, whichever situation is presented earlier. After the term they may be reappointed.¹⁰ The salaries and other allowances may be such as further prescribed by the Board.

⁹ Sec.189 clause 3 I & B Code

¹⁰ Sec. 189 clause 4 I & B Code

Removal of member from office¹¹

A member of the Board may be removed from his office by the Central Government if he:-

- a) Is an undischarged bankrupt as defined under Part III; Under Part III a bankrupt is defined as ¹²
 - A debtor who has been adjudged as bankrupt by a bankruptcy order under sec 126 – which states that the NCLT which is the adjudicatory body shall, within fourteen days of receiving the letter of confirmation from the bankruptcy trustee, pass a bankruptcy order¹³ which will have an effect till the debtor is discharged¹⁴.
 - Each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm;

¹¹ Sec. 189 clause 5 I & B Code

¹² Sec 79 (3) Part III I & B code

¹³ Sec. 126 clause 1. I & B code

¹⁴ Sec. 127

- Any person adjudged as an undischarged insolvent.
- b) Has become physically or mentally incapable of acting as a member;
- Incapacitated person means any person who is impaired by mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.¹⁵
- c) Has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;

In the case *Parvesh v. State of Haryana*¹⁶ and others, the honourable court has envisaged that moral turpitude cannot be determined in every criminal act. Whether a crime involve moral turpitude is a question of fact and can only inferred from the

¹⁵ Definition from American Uniform Probate Code

¹⁶ CWP No. 2124 of 2009

circumstances. Thus it is difficult to classify an offence as one which involves moral turpitude. Sexual offences without doubt involves moral turpitude, while all homicides do not necessarily involve moral turpitude.

- d) Has, so abused his position as to render his continuation in office detriment to the public interest

Abuse of power or position may be attracted if the officer has been found guilty of bias or such similar acts, which is against the general interest of public i.e. an act in opposition of justice, equity and good conscience.

Provided that no member shall be removed under clause (d) unless he has been given a reasonable opportunity of being heard in the matter.

POWERS AND FUNCTIONS OF THE BOARD

The insolvency and bankruptcy board of India functioned as a unique body to regulate the profession and to act as a regulator of transactions. Its regulatory scope falls over the

ambit of Insolvency professionals, Insolvency Professional Agencies and Information utilities. The Board makes rules for insolvency related transactions, which are corporate insolvency resolution, corporate liquidation process, individual insolvency resolution and individual bankruptcy as mentioned under the code.

Besides regulation the Board is authorised to act as a consolidator and amender of the laws and regulations pertaining to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a way that is completed within the given time for the maximization of the value of assets of such persons, to promote entrepreneurship, and to increase the availability credit at the same time, to balance the interests of all the shareholders.

Section 191 of the Code mentions the power of the Chairperson of IBBI. He/she has the power of superintendence and the power to direct the events and affairs of the Board and is also authorised to exercise other similar powers as delegated to him by the Board.

The powers and functions of the Board in general is envisaged in Chapter II of the Code. All the functions the Board performs is in subject to the general direction of the Central Government.¹⁷ Section 196 clause (1) describes the functions and powers in its sub clauses as the following:

The board shall register insolvency professional agencies, insolvency professional and information utilities and renew, withdraw, suspend or cancel such registrations;

Regulation four, five and nine defined in Chapter III of Insolvency and Bankruptcy Board of India (Insolvency professionals) Regulations, 2016 describes the process, eligibility and qualification for registration with the Board as an Insolvency professional. For the purpose of the same the Board shall constitute an Examination Committee to conduct practical skill and knowledge test in the field of insolvency, bankruptcy and related subjects for the candidates seeking registration as Insolvency Professionals¹⁸. The candidate may lose his chance to be registered if he is an undischarged insolvent, minor, if he has

¹⁷ Sec. 196 (1) I & B Code,2016

¹⁸ Regulation 3 of insolvency and bankruptcy regulations 2016

been declared to be of an unsound person, if he is not fit and proper and if he is not a resident of India¹⁹. The suspension or cancellation of registration is further described under regulation 18 of the enactment. Such cancellations are made if the Board deems it fit with regard to public interest, and if such a professional is removed from the Insolvency agency under which the IP is enrolled.

An individual in accordance with regulation 9 can be registered as a IP for a limited period of time if he is in practice for 15 years as a chartered accountant enrolled under ICCA, or a company secretary enrolled as a member of ICSI, or a cost accountant enrolled under Cost Accountants of India, or an Advocate enrolled with a Bar Council.

Specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

Chartered Accountants, Company secretary, Cost accountant and An Advocate who has passed the Limited

¹⁹ Regulation 7 of Insolvency and Bankruptcy (registration of insolvency Professionals) Regulations, 2016

Insolvency Examination and has a ten years of experience and enrolled as a member of respective institute and has a 15 years of experience in management after reception of bachelors.²⁰ The insolvency and bankruptcy board of India (model byelaws and governing board of insolvency professional agencies) regulations, 2016 describes the setting, constitution, composition, duties and other committees of the agency. The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 provides the framework and describes the registration of information utilities. According to regulation 3 in Chapter II which deals with registration envisages the eligibility to register as no person shall be registers as an information utility unless it is a public company. The further sub clauses describe the eligibility criteria.

Levy fee of other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities.

The levying of charges is on the basis of percentage of recovery or on the basis of assets as the Insolvency and bankruptcy code deems. The insolvency professionals are to

²⁰ <https://www.iipicai.in/eligibility-criteria>

pay certain sum of money during the time of examination, with regard to the membership of the professionals with an IPA.

Specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities.

The duties and technical standards of information utilities is provided in Chapter IV and VI of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017. The duties of insolvency professional agencies is provided under chapter IV of Insolvency and Bankruptcy Board of India (model bye-laws and governing board of insolvency professional agencies) Regulations 2016. The code of conduct and standard of functions of insolvency professionals is embodied in First Schedule of Insolvency and Bankruptcy Board of India (Insolvency professionals) Regulations, 2016.

Lay down by regulations the minimum curriculum for the examination of the insolvency professional for their enrolment as members of insolvency professional agencies;

The Board with effect from December 31st 2016 has notified syllabus for limited Insolvency examination. The syllabus

for national insolvency examination is still pending to be notified.

Carry out inspections and investigations of professional agencies, insolvency professionals, and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

Chapter VI, Sec.218 of the code states that the Board on reception of a complaint under Sec.217 or if the Board has reasonable suspicion to believe that any kind of mischief has happened with respect to the conduct of IPA, IPs or IU may by issuing an order in writing initiate inspection of investigating of IPAs, IPs or IUs.

Monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this code and the regulations issued hereunder;

The Board is vested with the authority to monitor the functioning of the three bodies mention herein and to enact regulations and directions to ensure that they function in compliance with the provisions of the Code.

Call for any information and records from the insolvency professional agencies' insolvency professionals and information utilities;

The Board may issue a notice in writing so as to present before it information or records as to the functions of the three bodies.

Publish such information, data, research studies and other information as may be specified by the regulations;

The Board by enactment of regulations may direct IPs, IPAs or IUs to publish the impugned information, data or research studies in newspapers or in gazettes.

Specify by regulations the manner of collecting and sorting data by the information utilities and for providing access to such data;

The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, in its regulation number 22 describes the manner to store the information:

1. To store the information in a facility located in India²¹

²¹ Regulation 22; The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017,

2. The facility under sub- regulation (1) shall be governed by the laws of India.²²

The regulation prescribes in regulation number 23 , who all have the permission to access the information thus stored. Accordingly, the user who has submitted the information, all parties to the debt and host bank, the corporate person and its auditor, the insolvency professional, the adjudicatory authority, the Board, and any person so authorised to access the information by law may have access to the information.

Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information to such cases;

All the cases that arise with regard to insolvency and bankruptcy are to be collected and maintained by the Board. The code also requires that necessary information needed to conduct such cases must be provided by the Board.

Constitute such committees as may be required including in particular the committees laid down in section 197;

Section 197 has envisaged the need to constitute executive committee so as to discharge the functions effectively.

²² Supra 22.

Chapter V of insolvency and bankruptcy board of India (model bye laws of insolvency professional agencies) Regulations 2016, deems the constitution of a professional agency committees for smooth functioning.

Promote transparency and best practices in its governance;

The code requires to the Board to be just and fair in its practices. And to ensure that the principles of natural justice are followed.

Maintain websites and such other universally accessible repositories of electronic information as may be necessary;

For the purpose of enabling the public, access the information's and functioning of the board the website **www. ibbi. gov. in** is set up. As required by the code the Insolvency professionals agencies too have their website to enable transparency.

Enter into memorandum of understanding with any other statutory authorities

This is one among the Board's function that enables or creates public database. Upon the creation of the Board the entry as to the same has to be made on the memorandum

of understanding making it clear the statutory body that enabled it.

Issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

All the necessary guidelines and directions are to be provided in a timely manner through regulations or written orders.

Specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

Section 220 of the Code enables the board to create disciplinary committee so as to provide the aggrieved party who has approached the Board with complaint with regard to the misbehaviour of an IP, IPA or IU, with redressal of the grievances so caused.

Conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency

professionals and information utilities at such intervals as may be specified by the Board;

Auditors and similar professionals registered with the Board are required to conduct periodic surveys and audits as ordered by the Board. All the necessary information as required by the Board is to be submitted and if necessary is to be published.

Specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

The IBBI had set up its effective mechanisms to issues regulations as to the functioning of the IPs, IPAs and IUs as to bring the works in compliance with Code.

Make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

The code enables that the Board stipulates timely regulations and guidelines on the matters of insolvency and bankruptcy. These guidelines are made as to the maximise

value of assets of corporate persons which is controlled and coordinated by the IPs, IPAs and the IUs.

Perform such other functions as may be prescribed.

These functions may include amending of existing laws, making a systematic mechanism to promote entrepreneurship and functions that arise in the need of time. Sub-section 2 of section 196 states that the Board as it feels fit has to enact model bye-laws that have to be adopted by the IPAs.

Such a regulation passed by the Board has to include in it, according to the Code, the minimum standards of functionality, the code of conduct with respect to the ethics and other standards of profession; the provision to produce the required information as demanded by the Board; requirements of eligibility for enrolment was member with the agency, manner of granting the same, the remuneration strategy and person to whom the services shall be provided; the grounds for removal of membership and removal of registration; the fee and manner of including members to the agency; mechanism of grievance redressal; the manner

as to how to conduct the examination of professionals; the standards of disciplinary proceedings and manner as to how to treat the money received as penalty form the IPs.²³

Sec.196 clause 3 states that as to the power of the Board to conduct trials on the matters regarding insolvency and bankruptcy the Board is vested with all those powers that a civil court described in the Code of Civil Procedure enjoy. i.e. the discovery of documents with respect to the case involved, the summoning of parties, inspection of the documents presented and issuing of order to examine the witnesses.

The code specifies in Sec.197 that is the Board deems it necessary then it may discharge its functions by constituting an advisory and executive committee headed by a Chairperson. Sec. 198 has given the adjudicating authority to condone any delays that arise in case the functions of Board are not performed within the specified time limit.

²³ Sec 196 (2) I & B Code.

DUPLICATION OF POWER – FUNCTIONS OF THE BOARD IN CONFLICT WITH THE POWERS OF OTHER AUTHORITIES

There are matters of insolvency and bankruptcy that is regulated by the Reserve Bank of India. The Reserve Bank has recently set an Independent Advisory Committee to identify and refer insolvent companies in order to initiate insolvency and bankruptcy proceedings. Under the Insolvency and Bankruptcy Code, the IBBI has authorized the National Company Law Tribunal (NCLT) to initiate the insolvency resolution proceedings for companies and limited liability partnership for firms and authorized the Debt Recovery Tribunal for individuals and partnerships.

This power only vested with board was given to RBI by the cabinet on May 5, 2017. This has contributed towards the duplication of power. The lack of coordination amongst IBBI and RBI created a widespread misconception among the bankers that resorting to the Board regarding insolvency disputes will be futile, as the Board was mistakenly believed to be the consolidator for liquidation of companies which denoted very less recovery for the bankers. The bankers also

feared that liquidation through IBBI will not provide a recovery value higher than the book value of the bad assets. With these in mind from 30 applications filed under IBC only 3 banks have applied to initiate proceedings for insolvency resolutions.

Apart from RBI, other authorities at present, the High Courts, the Company Law Board(CLB), and the Board for Industrial and Financial Reconstruction (BIFR) are having overlapping jurisdiction in the matter of debt recovery and restructuring. This gives rise to systematic delays and ambiguities among corporate and individuals. These authorities are mostly limited to ensuring the due process rather than adjudicating on the merits of insolvency resolution which will create a conflict on functionality with respect to the Insolvency and Bankruptcy Board.²⁴

LIMITED JURISDICTION – ISSUES BEYOND THE TERRITORY IN QUESTION

The IBBI being the body that regulates matters on insolvency and bankruptcy across India handles and directs

²⁴ [http:// www. thecompaniesact2013. com/ uploads/ 1481524464- ibc%20Article](http://www.thecompaniesact2013.com/uploads/1481524464-ibc%20Article)

reorganization and resolution of insolvent persons. The functions of the Board are elaborately expressed in sec. 196 of the code, but the power to deal with insolvency cases when the debtor owes assets or credits beyond or extra-territory is not adequately defined. Though the Board extends its jurisdiction on matters relating to a non-resident, it shows no distinction in the proceedings between domestic and foreign creditors.

The Board does not seem to have power to access the debtor's assets that is situated in a foreign country. This affects the credibility and potential of the Board as a regulator of insolvency and bankruptcy disputes. The only other way an aboard located asset can be realized is through the Central Government's bilateral agreement with other countries in order to deal with cross boarder insolvency matters, which is a time consuming and comparatively ineffective process. The Board's power and functionality in cases where an issue of insolvency is taken up concurrently in more than two jurisdictions is also silent. An easy way to fill this gap with respect to the functionality of the Board is to adopt the guidelines given in UNCITRAL Model Law on Cross-Border Insolvency with this respect.

The UNCITRAL *legislative Guide on Insolvency Law*, 2005²⁵ in part one enumerates the key objectives for a collective insolvency regime. Para's 4- 14 states the following key objectives:

- a. Provide certainty in the market to promote economic stability and growth;
- b. Maximize value of assets;
- c. Strike a balance between liquidation and reorganization;
- d. Ensure equitable treatment of similarly situated creditors;
- e. Provide for timely, efficient and impartial resolution of insolvency;
- f. Preserve the insolvency estate to allow equitable distribution to creditors;
- g. Ensure a transparent and predictable insolvency law that contains incentives for gathering and dispensing information;
- h. Reorganize existing creditors and establish clear rules for ranking of priority claims;

²⁵ UNCITRAL Legislative Guide On Insolvency Law, 2005

- i. Establishment of a framework for cross-border insolvency.
- j. Among these objectives that is to be complied while forming an Insolvency Law in a country, the need to provide for a cross-border insolvency mechanism is deemed necessary for effective insolvency proceedings so as to originate in a foreign country. The UNICITRAL model Law on Cross Boarder Insolvency has already been adopted by 41 countries and same was recommended by the ML MITRA Committee to be adopted in the Indian Insolvency Legal Regime. But IBBI does not provide for a provision that enables proceedings in a foreign country so that the Government can have access to assets of insolvent persons who have assets vested in foreign countries. This system if adopted can solve various insolvency issues in the country.

CONCLUSION

The Code has thus provided with the objectives, composition, powers and functions of the Insolvency and Bankruptcy Board of India that has constituted to regulate

over Insolvency Professionals, Insolvency Professional Agencies and information Utilities. Section 196 envisages the powers and functions of the Board. All the functions and powers discussed above can be summed up as the power of regulating information utilities and Insolvency professionals / agencies; the power of creating public database of insolvency transactions and cases; power to make regulations – which to the date include Insolvency and bankruptcy Board of India (model bye- laws of insolvency agencies)2016, Insolvency and bankruptcy Board of India (insolvency professionals) 2016, Insolvency and bankruptcy Board of India (information Utilities)2017 , Insolvency and bankruptcy (registration of Insolvency professionals) 2016; and the powers to govern itself by way of maintaining fair and transparent governance, regulation of its members, maintenance of its website and through the functioning of entering the names in the memorandum of understanding. The Board though effectively constituted under the Code suffers from certain challenges which include poor delegation of the law making power, lack of coordination with other regulator which may include NCLT and NCLAT, RBI and SEBI, and chances of conflict between disciplinary

bodies which include the ICAC, Bar council of India which regulates lawyers, chartered accountants etc. besides the existence of these challenges the Insolvency and Bankruptcy Board Of India runs as an effective regulatory Body of all matters in relation with insolvency and bankruptcy of corporate persons.