



**Corporate
Professionals**



Insolvency & Bankruptcy Code, 2016

Capitalism without bankruptcy is like Christianity without hell.

Presented by

Pavan Kumar Vijay



An Historic Event

Ease of doing business is not only convenient entry into the market but also easy exit.

WHERE INDIA STANDS

A comparison of ease of doing business in India with other emerging economies

	Ranking	
	2015	2014
 Singapore	1	1
 New Zealand	2	2
 Hong Kong	3	3
 Brazil	120	123
 Russia	62	64
 India	142	140
 China	90	93
 South Africa	43	37

Resolving Insolvency
India Ranking @ 2015 = 137



Why the new code is required to resolve business failures

Long time taken to resolve

Bankruptcy

in Years

India : 4.3

Brazil : 4

United States : 1.5

Finland : 0.9

Japan : 0.6

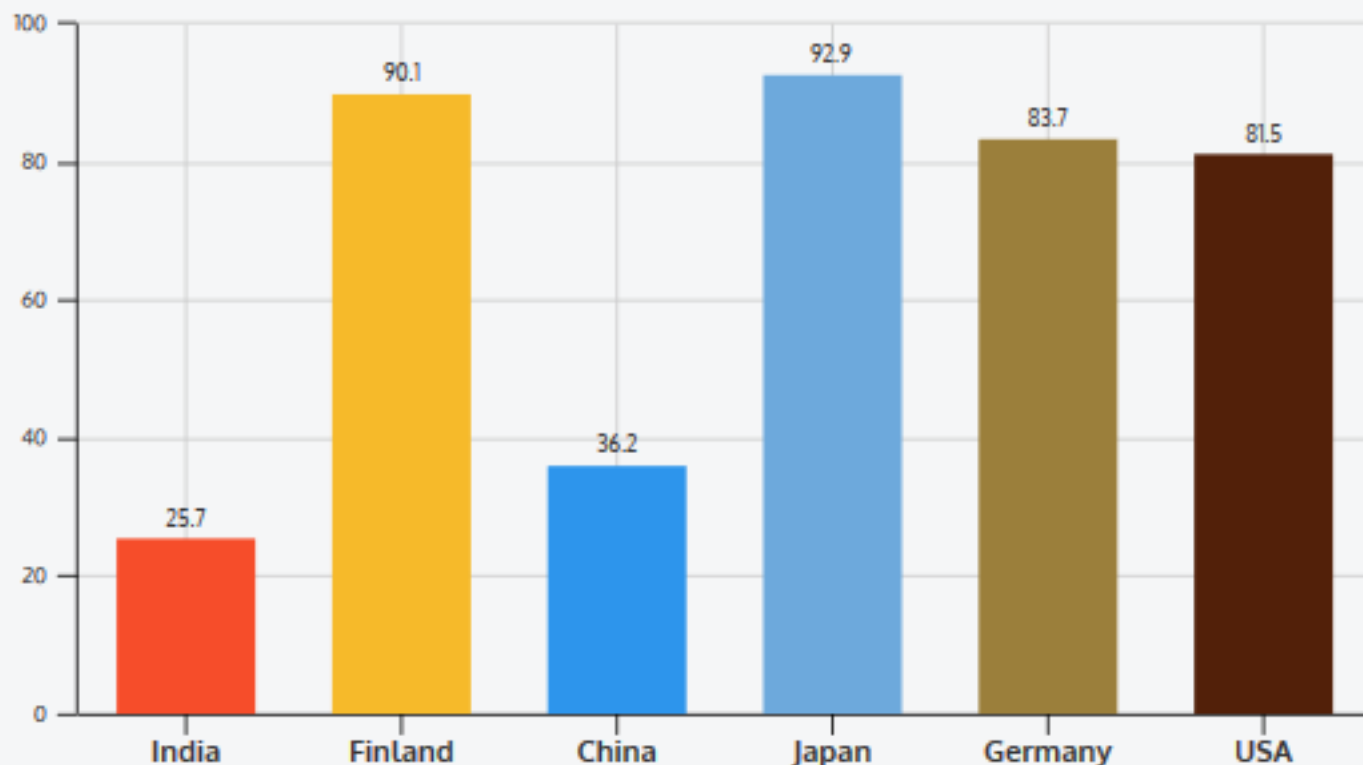
all figures in percentage



Why the new code is required to resolve business failures

Lenders get little

Recovery rate, cents to a dollar

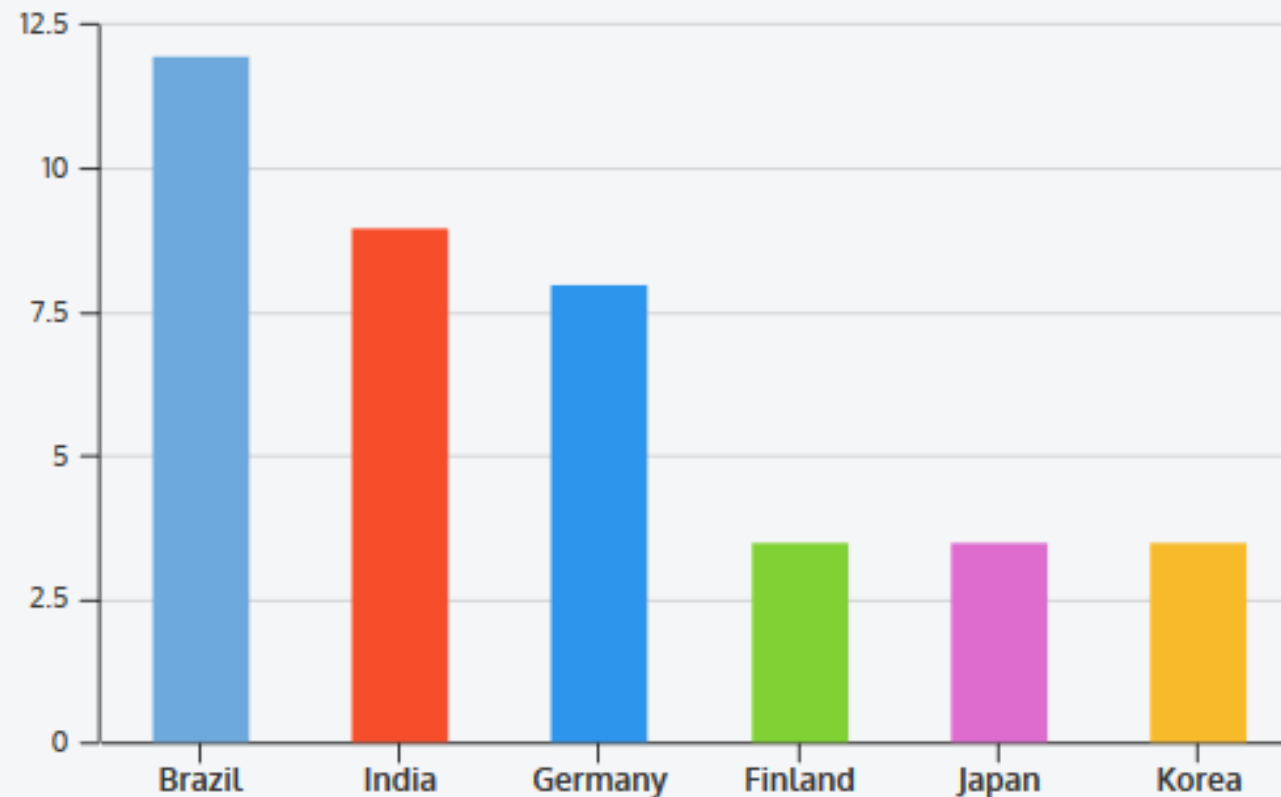




Why the new code is required to resolve business failures

High Cost of the Process

% of Estate





Limitations under the current process



Multiple authorities | Prolonged litigation | Misuse of multiple fora | No time limit



Why and How it happens ?



Liquidity Problem



Delay in Operations



Delay in Payment



Disruption in Operation



Operational Loss

Erosion of Network



Company is Sick





Kingfisher Airlines - Case Study



Kingfisher Launched in 2005



Nov 2005 : Ordered 30 Airbus Planes



Year 2006- Despite Losses - KFA ordered more 5 New Airbus



Year 2011 - Bankers agreed to lend another Rs. 8000 crores to restructure loans



Year 2009 - Despite Losses - Launched International Routes



Year 2007 - Despite Losses - Buys 26% stake in Deccan Airlines



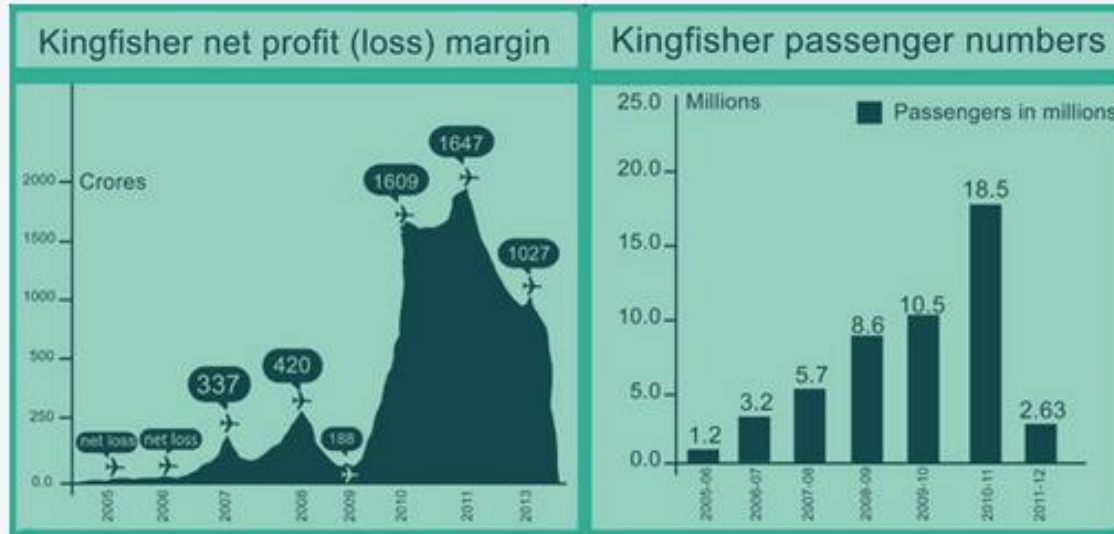
Kingfisher Airlines - Case Study



Dec 2011 - Chairman CBEC
Considering legal Action
Against KFA



Year 2012 - Kingfisher starts cancelling
flights and Service Tax Dept frozen
around 40 Bank A/Cs of KFA. And delay in
Salary to Employees of KFA



Kingfisher Airlines - Case Study





Year 2016 - IBC 2016 - An Historic Event



FEATURES



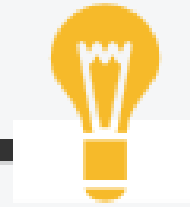
- Trigger can be immediate when symptoms of sickness start appearing
- Time lines defined
- Insolvency Professionals to hold charge of assets during resolution.



- Shift of control from equity to debt in the event the corporate is not able to service its debts
- No more playing around
- Executive and judiciary have no role in business decisions



- Operational creditors which include employees can also initiate insolvency proceedings
- Will check willful defaults and keep the managements on toes
- 10 member board to have RBI and Govt. representation.



Insolvency & Bankruptcy Code

**A milestone in Indian Economy to boost
EASE OF DOING BUSINESS process**



Key Highlights of Insolvency & Bankruptcy Code, 2016



Objective behind the code : This code seeks to consolidate and amend laws relating to reorganization / revival and insolvency resolution of Corporate Persons, Partnership Firms and Individuals in a time bound manner.



The Code seeks to amend the following 11 laws

- 🔍 Indian Partnership Act, 1932
- 🔍 Central Excise Act, 1944
- 🔍 Income Tax Act, 1961
- 🔍 Customs Act, 1962
- 🔍 Recovery of Debts due to Banks and Financial Institutions Act, 1993
- 🔍 Finance Act 1994
- 🔍 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- 🔍 Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- 🔍 Payment and Settlement System Act, 2007
- 🔍 Limited Liability Partnership Act, 2008
- 🔍 Companies Act, 2013

Repeal 2 Laws

- 🔍 Presidency Towns Insolvency Act , 1909
- 🔍 Provincial Insolvency Act, 1920



New Institutions

Insolvency and Bankruptcy Board of India

- Registration of Insolvency Professional Agencies, Insolvency Professionals and Information Utilities
- Carry out the inspections and investigations
- Vests with the powers of a Civil court under Code of Civil Procedure, 1908.



- Promote the services of competent Insolvency Professionals,
- Protect the interest of debtors, creditors, etc.
- Membership to Insolvency Professionals,
- Minimum standard and code of conduct for its members i.e. Insolvency Professionals

Insolvency Professional Agency

Information Utilities

- To collect, collate, authenticate and disseminate financial information to facilitate insolvency, liquidation and bankruptcy.
- The Information utility would thus hold an array of information about all firms at all times and make available undisputed and complete information immediately.





Adjudicating Authority

NCLT



Company /
LLPs



DRT

Individuals &
Partnership Firms



Default Amount

A Company or an LLP

- Minimum amount of Rs. 1 lakh
- The Central Government may specify higher amount which shall not be more than Rs. 1 crore

A Partnership Firm or an Individual

- Minimum amount of Rs. 1 thousand.
- The Central Government may specify higher amount which shall not be more than Rs. 1 lakh



Who may initiate Insolvency resolutions process?

Financial Creditors



Financial creditors are those whose relationship with the entity is a pure financial contract, such as a loan or a debt security – loan/debt contracts.



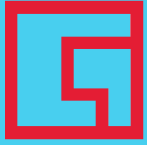
Operational Creditors

Operational creditors are those whose liability from the entity comes from a transaction on operations – trade creditors, employees, utilities.

Corporate debtor itself



Corporate debtor means a company or an LLP who owes a debt to any person.



Timeline



In Case of Fast Track Mode, Insolvency process will be completed within 90 days + 45 Days extension

180 Days
+ 90 Days Extension





1 Moratorium Order by Adjudicating Authority = Cooling Period

Prohibits/ stops

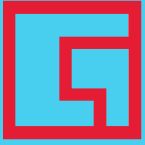


- Institution of suits or continuation of pending suits or execution of any judgment, decree or order in any court of law,
- Transferring any of its assets,
- Proceeding or action under SARFAESI Act, 2002,

2 Resolution Professional



- Manage the affairs of the corporate as a going concern,
- Collect all information relating to assets, finances and operations to determine financial position,
- Receive and collate all the claims,
- Take control and custody of any assets (whether in India or outside India) other than the assets of Indian or foreign subsidiary,
- Enter into contract for and on behalf of the Company or amend any existing contracts, etc.
- To raise interim finance.



3

Committee of Creditors

- Consist of only financial creditors.
- First meeting to be held within 3 days
- All the decisions will be decided by 75% of the financial creditors in value,
- Prior approval is required for raising of funds, Creation of security on any assets, Change of capital structure in any manner, Change of any ownership of the company, Undertaking of any related party transaction, Change in MOA or AOA, etc.





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Resolution Plan



- Approved by the committee of creditors and then, by insolvency resolution professional
- Finally, the plan will be approve the adjudicating authority
- The resolution plan will be binding on the company, its employees, members, creditors, guarantors and other stakeholders.
- If not approved, or ready, within 180 days or adjudicating authority rejects, the liquidation order will be passed.



New Professional → Insolvency Professional



- Insolvency Professional, who will conduct the insolvency resolution process, take over the management of a company, assist creditors in the collection of relevant information, and manage the liquidation process.
- Enrolled as a member of an insolvency professional agency and registered with the Insolvency and Bankruptcy Board of India.
- Every insolvency professional shall abide by the code of conduct..



Fast Track



An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:-

A corporate debtor with assets and income below a level as may be notified by the Central Government

A corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government.

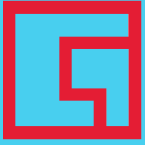
Such other category of corporate persons as may be notified by the Central Government



Time-limit for completion of fast track corporate insolvency resolution process?

A Fast track option with a 90 days limit

And a single extension of 45 days, if needed.



Recent Developments

- Notifications of coming into effect of various sections under the Code. The sections are sections **188 to 194, section 3** - clause (1), clause (5), clause (22), clause (26), clause (28), clause (37), section 221; section 222, section 225, section 226, section 230, section 232, section 233, sub-section (1) and clause (zd) of sub-section (2) of **section 239**, sub-section (1) and clause (zt) of sub-section (2) of **section 240, section 241** and **section 242**;
- NCLT Rules notified;
- Appointment of Mr. M.S.Sahoo as chairman of Insolvency and Bankruptcy Board of India
- New office at ITO, Delhi is being finalized.



CROSS BORDER INSOLVENCY

- Cross-border Insolvency is a complicated issue where internationally there is no uniformity in procedures.
- After extensive deliberations by the Joint Committee, an enabling mechanism has been provided in the Code.
- The Code empowers the Central Government to enter into reciprocal agreement with the Government of any country outside India for enforcing the provisions of this code.



Benefits



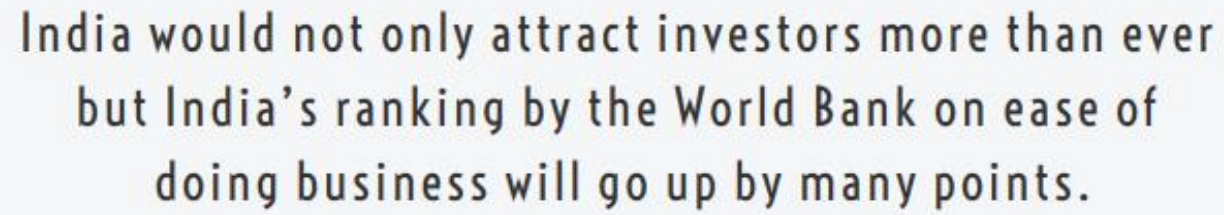
- Time bound settlement of Insolvency
- The Insolvency and Bankruptcy Board of India will keep watch.
- Banks and Asset reconstruction companies immediate gainers.
- Locked-up assets will be freed



- Comprehensive Coverage - Companies, Partnerships, LLP, Individuals and more can be added.
- Faster turnaround of Businesses
- Database of Serial Defaulters
- Shift from Equity to Debt.



- Creation of Bankruptcy Regulator
- Protect Workers
- New Class of Insolvency Professionals
- Lift lender comfort
- Significantly improve 'EASE OF DOING BUSINESS'





NOTIFICATION : The provisions of sections 188 to 194

PASSAGE OF INSOLVENCY AND BANKRUPTCY CODE, 2016



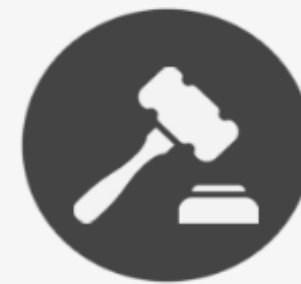
Bill on the Insolvency & Bankruptcy Code, 2016 was introduced in Lok Sabha on 21st Dec, 2015



Referred to Joint Committee of both the Houses of Parliament



Joint Committee placed its Report on 28th April, 2016 in Lok Sabha as well as Rajya Sabha



Bill on the Insolvency Bankruptcy Code, 2016 as recommended by the Joint Committee introduced in Lok Sabha, which passed in on 5th May, 2016. Thereafter the Bill was passed by Rajya Sabha on 11th May 2016. The Insolvency and Bankruptcy Code received the President's assent on May 28, 2016



The Code has 255 sections and 11 Schedules



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By Pavan Kumar Vijay

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