Insolvency, Winding-Up And Liquidation of Companies

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Insolvency, Bankruptcy and Liquidation

- **"insolvency"** notes the state of one whose assets are insufficient to pay his debts; or his general inability to pay his debts. The term "insolvency" is used in a restricted sense to express the inability of a party to pay his debts as they become due in the ordinary course of business.
- **bankruptcy"** is the condition of insolvency. It is a legal status of a person or an entity who cannot repay debts to creditors. The bankruptcy process begins with filing of a petition in a court or before an appropriate authority designated for this purpose. The debtor's assets are then evaluated and used to pay the creditors in accordance with law.
- **Liquidation,** means closure or winding up of an corporation or an incorporated entity through legal process on account of its inability to meet its obligations or to pay its debts. In order to clear the indebtedness, the assets are sold at the most reasonable rates by a competent liquidator appointed in this regard.

Historical developments in insolvency laws in India

- The Presidency Towns Insolvency Act, 1909
- Provisional Insolvency Act, 1920
- Indian Partnership Act, 1932
- The Companies Act, 1956
- The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,
- 2002 (SARFAESI Act, 2002)
- The Companies Act, 2013

Insolvency and Bankruptcy Code, 2016

- Need for Code
- Objectives
- Organization of Code
- Key Pillars

Petion for Corporate Insolvency Resolution Process

- Persons who may initiate the CIRP
- Application for CIRP by Financial creditor
- Application for CIRP by operational creditor
- Application for CIRP by corporate applicant
- Persons not entitled to make application
- Time-limit for completion of process
- Withdrawal of application

Resolution Strategies

- **Corporate Restructuring**
  - External restructuring
    - Restructuring through mergers, amalgamation and demerger
    - Restructuring through acquisition of controlling stake/ purchase of shares
    - Restructuring through conversion of debt for issuance of securities
  - Internal restructuring
    - Operational Restructuring
    - Financial Restructuring
      - Debt Restructuring
      - Equity Restructuring
- **Insolvency resolution and liquidation**
  - Corporate Insolvency Resolution Process [Sections 4 and 6 to 32] and
  - Liquidation [Sections 33 to 54] and Voluntary Liquidation [Section 59]

Procedure for Resolution

- **Convening and Conduct of Meetings of Committee of Creditors**
  - Committee of Creditors
  - Committee with only operational creditors
  - Meetings of Committee of Creditors
  - Rights and Duties of Authorised
  - Representative of Financial Creditors
  - Approval of Committee of Creditors for Certain Actions
- **Preparation and Approval of Resolution Plan**
  - Persons not eligible to be Resolution Applicant
  - Mandatory contents of Resolution Plan
  - Inviting Prospective Resolution Applicants
  - Submission of Resolution Plan
  - Approval of Resolution Plan
  - Appeal

Insolvency (Individual)

- Application by debtor for insolvency resolution
- Application by creditor for insolvency resolution
- Appointment of Resolution Professional
- Public Notice and Claims from Creditors
- Repayment plan
- Summoning of Meeting of Creditors
- Report of Meeting of Creditors on Repayment Plan
- Order of Adjudicating Authority on Repayment Plan
- Implementation and Supervision of Repayment Plan
- Discharge order

Liquidation on or after Failing of Resolution Plan

- Initiation of Liquidation
- Appointment of Liquidator
- Powers and duties of Liquidator
- Liquidation Estate
- Consolidation of claims
- Distribution of assets
- Dissolution of corporate debtor

Voluntary Liquidation

- Initiation of Voluntary Liquidation
- Effect of Voluntary Liquidation
- Power and duties of Liquidator
- Completion of Voluntary Liquidation

Winding-up by Tribunal under the Companies Act, 2013

- Winding up by Tribunal : Grounds
- Petition for the winding-up
- Powers of the Tribunal
- Directions for filing statement of affairs
- Company Liquidators and their appointments
- Removal and replacement of liquidators
- Submission of the reports by the Company Liquidator
- Advisory Committee
- Submission of periodical reports to the Tribunal
- Powers and duties of the company liquidator
- Audit of Company liquidator's accounts
- Overriding Preferential Payments
- Fraudulent preferences

Jet Airways

- **Resolution Plan**
  - **Performance Bank Guarantee (PBG):**
    - JKC provided a ₹150 crore PBG as security for implementing the plan.
  - **Conditions Precedent (CPs):**
    - The plan required JKC to fulfill specific conditions precedent (CPs) before the plan could be considered effective. These conditions included regulatory approvals and financial commitments.
  - **Financial Commitment:**
    - JKC was required to make an initial payment of ₹350 crore to creditors within 180 days of the effective date.

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- **Challenges and Legal Disputes**
  - **Failure to Fulfill CPs**
    - JKC failed to complete the required conditions precedent within the stipulated timeline.
    - The consortium argued that the CPs had been substantially complied with, but creditors, led by SBI, disagreed.
  - **Non-Payment of Full Amount**
    - JKC only deposited ₹200 crore instead of the full ₹350 crore.
    - The consortium sought to adjust the PBG (₹150 crore) towards its payment obligation, but this was challenged by creditors.
  - **Legal Battle Over Payment Obligations**
    - The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) ruled in favor of the creditors, emphasizing JKC's non-compliance.
    - JKC appealed to the Supreme Court, arguing that its commitments were met.

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- **Supreme Court Verdict (November 2024)**
  - **PBG Could Not Be Used for Payments**
    - The Supreme Court rejected JKC's claim that the ₹150 crore PBG could be adjusted against the payment requirement.
    - It ruled that the PBG was meant as a guarantee and not as a substitute for actual payments.
  - **Delays and Non-Compliance**
    - The Court noted that nearly five years had passed since the initiation of CIRP, and creditors had yet to receive their dues.
    - JKC's inability to meet CPs and financial commitments led to the loss of creditor confidence.
  - **Liquidation Ordered**
    - Using Article 142 of the Constitution, the Supreme Court directed the NCLT Mumbai to immediately commence liquidation proceedings.
    - A liquidator was to be appointed to oversee the process.
    - The ₹200 crore deposited by JKC was forfeited, and creditors were given priority in fund distribution.

Jet Airways

- **Implications of the Ruling**
  - **For Creditors:** The ruling ensures that creditors, including SBI and other lenders, receive at least partial recovery from asset liquidation.
  - **For Insolvency Law:** The case highlights gaps in the IBC, particularly concerning the timely execution of resolution plans and the enforcement of financial commitments.
  - **For Airline Industry:** Jet Airways' liquidation marks the end of any hopes for its revival, reinforcing the challenges of sustaining airlines in India.