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EFFECT OF INSOLVENCY AND BANKRUPTCY CODE ON OTHER LAWS IN INDIA

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1. Introduction

The Insolvency and Bankruptcy Code 2016 (hereafter referred as the Code) received the president's assent on May 28.05.2016. The objective of the Act is to "complete the process of reorganization and insolvency timely of the individuals, partnership firms and corporate persons by amending and consolidating the laws time to time". The Act also intends to promote availability of credit[1].

The Act has significant implications for the Indian Banking Sector. According to the World Bank Resolving Insolvency Index India ranked 136 in the insolvency rank, the recovery rate was 26 (cents on dollar) and it takes more than 4 years to wind up an ailing company. As per the Report which is the financial stability report taken out by the Reserve Bank of India (RBI) predicts that there is a possibility of an increase in the Non Performing Assets of banks from 9.6% in March 2017 to 10.2% in March 2018. Also according to the said report there has been 135% indiscriminate growth in last two years which amounts to 12% gross advances of public sector banks[2]. The Banking Regulation (Amendment) Ordinance 2017 inserting two new sections namely Section 35 AA and Section 35 AB has authorized the RBI to initiate insolvency resolution process by giving direction to the banking companies in relation to resolving stressed assets.

[1] *Banks and the Insolvency and Bankruptcy Code 2016*, retrieved from http://ibccases.com/articles/banks-insolvency-bankruptcy-code-2016/, last assessed on March 27, 2018.

[2] *Insolvency & Bankruptcy Code: Debt Restructuring & Managing NPA In India,* retrieved from http://businessworld.in/article/Insolvency-Bankruptcy-Code-Debt-Restructuring-Managing-NPA-In-India/06-07-2017-121584/, last assessed on March 27, 2018.

With non-performing assets in banks mounting and the RBI authorized to direct banks to initiate insolvency proceedings under the Insolvency and Bankruptcy Code 2016, it is worth considering the implications that the Code has in reducing non-performing assets and improving credit growth.

The World Bank Development Report 2014[3] states that "to increase productive resources from an unproductive enterprise in order to protect creditors and investors at the time of failure of the business, there is a need of Bankruptcy law". Insolvency reforms motivates lender confidence in recovery of loan at the time of default which will in turn encourage more lending and lead to enhanced financial inclusion of business.

The efficiency of insolvency laws has a direct impact in improving credit growth; this relation has been recognized and enforced as the objective of the Code[4].

There were various laws in respect of the process, type of company or group of creditors before the passing of the Insolvency Bankruptcy Code, 2016. For example, the rescue and rehabilitation of industrial companies was dealt by the Sick Industrial Companies Act, 1985 ("SICA") while the liquidation and winding up of all types of corporate entities was covered under the Companies Act, 1956. For the purpose of debt recovery there were certain laws such as the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") and the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 ("RDDBFI Act") that deals with providing avenues for security enforcement and debt recovery, respectively, by banks and financial institutions. Therefore this Chapter precisely deals with the effect on the above Indian Legislations with the incorporation of the Code and also deals with the status of UNICITRAL laws on Insolvency.

1.1 UNCITRAL Laws on Insolvency

An auxiliary body of the General Assembly of the United Nations with the objective to harmonize and unify the law of international trade is the United Nations Commission on

[3] *Ibid.*
[4] *Ibid.*

International Trade Law (UNCITRAL). Various model laws, conventions and other instruments dealing in the area of business law or any other substantial law having huge impact on international trade. The meeting of UNCITRAL conducts in once in a year mostly in summers on the alternative basis such as once in New York and once in Vienna[5].

1.1.1 UNCITRAL Model Law on Cross-Border Insolvency

Embraced by UNCITRAL on 30 May 1997, to deal more efficiently with the cases of cross-border insolvency in a fair, harmonized and modern manner, the Model Law is made to help States to update their insolvency laws. Instances of cross border insolvency could be when indebted debtor has more assets in one state and also include instances where the creditors are not from the place where the insolvency proceeding is taking place[6]. The differences among national procedural laws and a non attempt of unification of insolvency law are respected by the Model law. The most important role it plays is by giving solutions to various problems such as representative's access to courts of the enacting State; recognition of foreign proceedings; cross-border cooperation and foreign assistance for an insolvency proceeding taking place in the enacting State.

Scope of the Model Law –

It is applicable on foreign proceedings relating to insolvency where:

(a) reorganization or liquidation of the debtor is the purpose of the proceedings
(b) nature of the proceedings are collective
(c) there is court control or supervision on the assets and affairs of the debtor
(d) Exclusion of certain entities.

1.1.2 UNCITRAL Legislative Guide on Insolvency Law

To help in the establishment of an efficient and effective legal structure to deal with the financial difficulty of debtors is the purpose of the Legislative Guide of the UNCITRAL. The national authorities and legislative bodies use this as a medium of reference while preparing their own laws and regulations and also on reviewing the existing laws. The main objective of the advice

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[5] Hans Corell, "Opening Speech at UNCITRAL's 33rd session", *Secretary-General for Legal Affairs,* 12 June, 2000, New York.

[6] United Nations, "UNCITRAL Model Law on Cross-Border Insolvency", *United Nations,* 1999, New York.

provided in the Legislative Guide is to achieve a balance between solving debtor's financial quickly and efficiently and also to protect the interests of the creditors and other parties having an interest in the debtor’s business. The Legislative Guide helps the reader to ascertain the best approach available in dealing with the issues effectively and efficiently at the centre insolvency law in the national or local context[7].

1.1.3 UNCITRAL Practice Guide on Cross Border Insolvency Cooperation

To provide information for insolvency practitioners and judges the Practice Guide gives practical aspects of communication and cooperation in cross-border insolvency cases. For description of collected experience and practice, for focusing on the use and negotiation of cross- border insolvency agreements, the information is required. It helps in providing into the insight of more than 39 agreements, which range agreements approved by the court such as written agreements and agreements between the parties to the proceedings such as oral agreement. A lot of examples that depict as to how various issues could be addressed are included in the Practice Guide. Though there is no intention to incorporate such model provisions into the cross-border agreement. Cross-border agreements also include brief of cases that form the basis of the analysis were used[8].

There is a lot of difference between the standards of Indian Law which is not comparable to the standards established under international legal requirement and therefore such Indian standards stand apart and alone. Also Indian legal framework has not taken into account any cross- border relation. Therefore there is a need of law for cross border transactions for-

(a) For the inter-country debtor-creditor relations development there is a need to develop international trade;

(b) Building up trans border organisational structure through permanent establishment, branches or franchises for the development of transnational and multi- national institutions ;

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[7] United Nations Commission On International Trade Law, “Legislative Guide on Insolvency Law”, *United Nations,* 2005, New York.

[8] United Nations Commission On International Trade Law “UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation”, *United Nations,* 2005, New York.

(c) Chain organisation structure of subsidiaries and joint venture can be formed by the development of organizational relations and finally
(d) In modern business relations there must be development of complexities .

1.1.4 Issues in Cross Border relation

(a) Origin of a Company- The country where the company it is registered is the domicile of origin.

(b) Indian law on Corporate Insolvency- There is specific distinction between Indian and foreign creditors in case of winding up under Indian Companies Act. Section 582 of the Act deals with the winding up of unregistered companies also called foreign companies. Indian courts are not bound to entertain winding up proceedings where the order has been made by the court of domicile of foreign company. The court may decline to exercise jurisdiction on practical considerations[9].

(c) The foremost aim of Cross Border insolvency is to create greater legal certainty for trade and investment, to protect and maximise the value of the debtor's assets[10] and lastly promotion of co-operation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency.

(d) There is no extra-territorial jurisdiction under the Indian insolvency laws and in case foreign banks operating in India, they do not consider the jurisdiction of foreign courts.

Hence the Indian businesses of foreign companies will be considered separately in the case th liquidation proceedings have been initiated against such company outside India. The Indian business will be affected only when an application of winding up has been filed in Indian courts.

1.2 Insolvency and SARFAESI Act

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[9]***The UNICTRAL Model Law on Cross-Border Insolvency*, retrieved from** http://www.indialawjournal.org/archives/volume2/issue_1/article_by_Aryja.html**, last assessed on March 27, 2018.**

[10] *Ibid.*

To increase the creditors rights through foreclosure and enforcement of securities by the banks and financial institutions by empowering the creditors with the right to seize the secured asset and dispose of the same is the primary aim of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (The Securitization Act). The banks and Financial Institutions are empowered under the Act to move on its own against a borrower whose assets are secured, and who has made some kind of default in repayment of the same[11]. The provisions of this Act have to be complied without creating any inconsistency in any other law in force and thus banks can after complying the statutory provisions:

(a) Taking away the right of the borrower to transfer by way of lease, assignment or sale of the assets for the purpose of realization of the debt by taking away its possession from the borrower.

(b) Taking the right to transfer by way of lease, assignment or sale of the secured assets by controlling the management of the business.

(c) To manage the secured asset, appointment of any person has to be made.

Under the powers conferred by the SARFAESI Act, 2002, the RBI has issued guidelines and directions on functions of the company, prudential norms, acquisition of financial assets and registration.

1.2.1 Methods for recovery of Non-Performing Assets

There are three alternative methods for recovery of NPAs, given under the SARFAESI Act, 2002:

Securitization: Under this method a Securitisation Company (SC) or Asset Reconstruction Company (ARC) form schemes for taking financial assets by raising funds from the qualified institutional buyers. The SC/ARC are bound to keep separate accounts for each scheme for every financial asset taken out of investments made by a qualified institutional buyer and they

[11] Government of India Ministry of Finance Department of Financial Services, "Report of the Key Advisory Group on the Asset Reconstruction Companies (ARCs)", *Government of India Ministry of Finance Department of Financial Services,* December 30, 2011.

must give assurance that selling of such assets they must apply towards redemption of investments and payment of returns assured on such investments under the relevant scheme[12].

Asset Reconstruction: The SCs/ARCs for the purpose of asset reconstruction should provide for any one or more of the following measures[13]:

(a) the business of the borrower to be managed properly by change in, or takeover of, the management of the business of the borrower

(b) the business of the borrower in whole or in part to be held on lease or sale.

(c) payment of debts payable by the borrower to be rescheduled

(d) in accordance with the provisions of this Act, security interest to be inforced

(e) dues payable by the borrower to be settled

(f) according to the provisions of this Act, due possession of secured assets to be taken.

Narasimham Committee Report I, Narasimham Committee II and Anhyarujina Committee gave the recommendation on the basis of which the Act was enacted. The foremost purpose of the enactment of the Act was to regulation of financial assets by securitization and reconstruction and enforcement of security interest. Banks and financial institutions were enabled by the provisions of the Act to improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery and reconstruction[14] and to realize long term assets, manage problems of liquidity, asset liability mismatch.

Furthermore, in order to take over possession of secured assets from the defaulter and selling them off the same to recover the loan without going through a strict court procedure[15] the banks, Securitization Companies, Reconstruction Companies under the Act are empowered for the same. With the assistance of the Chief Metropolitan Magistrate/District Magistrate as per Sec 14 of the Act, the bank can after 60 days of serving the notice can take the possession. Along with

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[12] *Ibid*.

[13] *Ibid.*

[14] *The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002,* retrieved at https://www.drt.gov.in/pdf/Act-s/SARFAESI%20Act.pdf, last assessed on March 27, 2018.

[15] *Ibid.*

the order of taking possession the bank might take possession documents related to the matter and forward the same to secured creditors[16].

1.2.2 Assessment of the Act prior to the Code

(a) Delay in Recovery

The SARFAESI Act provided an opportunity for banks to avail loan recovery without the intervention of the Court. However, the operation of the Act did not result in obtaining such recovery in a faster manner. As per sec 17 of the Act, any person aggrieved by the modes of recovery adopted by the secured creditor can make application to the relevant Debt Recovery Tribunal (DRT) for passing of appropriate orders. This section is criticized to have a very wide scope and since it does not prescribe any requirement to substantiate or provide evidence of any injury for making challenge under sec 17 it results in further delay in the process of debt recovery. Sec 17 of the Act also does not impose any penalty on any person for filing of frivolous application; this could again delay the debt recovery process. Moreover, Sec 17 states the application made to the Debt Recovery Tribunal shall "as expeditiously as possible" be disposed of within 60 days and the Debt Recovery Tribunal may extend the said period and the total period of the pendency of the application with the Debt Recovery Tribunal shall not extend to four months and if the application is not disposed of within such period, any party to the application may make an application to the Debt Recovery Appellate Tribunal for directing the Debt Recovery tribunal for making expeditious disposal of the pending application. Despite the existence of such a provision to ensure that the debt recovery process is completed in a time bound manner, the Act does not provide for any accountability provision should such statutory prescriptions in relation to time period are not complied with[17].

(b) Interference by Civil Court

Sec 34 of the Act bars the jurisdiction of the Civil Court in respect of any matter which a recovery tribunal is empowered to determine. However, the legislation fails to prescribe the consequences of entertaining a suit or grant of injunction by civil courts contrary to the

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[16] *Ibid.*

[17] *Effect of Insolvency and Bankruptcy Code, 2016 on SARFAESI Act, DRT Act,* retrieved from http://www.legaleraonline.com/articles/effect-of-insolvency-and-bankruptcy-code-2016-on-sarfaesi-act-drt-act, last assessed on March 28, 2018.

provisions of the Securitization Act. Absence of provisions prescribing accountability and adverse consequences due to violations of the provisions makes the provisions of the Act ineffective[18].

(c) **Non-Applicability** to Foreign Banks

The Act only applies to Indian banks and does not extend to foreign lenders and non-banking financial institutions[19].

1.2.3 The Impact of Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2016 on SARFAESI Act 2002.

However, the operation of the Act is still not extended to regulated foreign banks, bilateral or multilateral financial institutions and other eligible External Commercial Borrowers lenders. Since foreign lenders do not have recourse to any action under the SARFAESI Act, the only option available to them for enforcing their claim is in the relevant Court which is determined by the location and monetary value of the property.

> "*The proceedings under the Civil Court are extremely lengthy and the entire process of obtaining a decree to recover a debt may take six to seven years. The dichotomy between remedies available to domestic creditors and foreign lenders creates an unwillingness to finance Indian borrowers*"[20].

1.3 The Recovery of Debts Due to Banks and Financial Institutions Act, 1993

To provide for the adjudication of matters in a speedy manner relating to recovery of debts due to banks and financial institutions, The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) was passed by the Parliament of India. The procedure given under this Act is different as that of given under Code of Civil Procedure to ensure speedy adjudication. Also to hear such matter different courts and tribunals have been established by the government such as Debt Recovery Tribunals (DRTs) which are presently thirty three in number

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[18] *Ibid.*

[19] *Ibid.*

[20] Trilegal, "Recent Changes to the Debt Recovery Regime in India", *Trilegal,* August 22, 2016.

and five appellate tribunals all over the India. Where the amount of debt is less than ten lakh rupees or such other amount, being not less than one lakh rupees[21], then the provisions of RDDBFI Act, 1993 will not apply.

The Act also established the Debt Recovery Appellate Tribunals (DRAT). Sec 19 makes provision for making an application to the Debt Recovery Tribunal for recovery of debts recoverable under the Act whereas Sec 20 lays down the procedure for filing appeals to the Debt Recovery Appellate Tribunal against orders passed by the Debt Recovery Tribunal. Sec 21 makes it mandatory to deposit at least seventy-five percent of the amount so due to the Appellate Tribunal but the Appellate Tribunal is empowered to waive or reduce the amount deposited for reasons to be recorded in writing. Section 25 of the Act empowers the recovery officer while recovering the amount of debt to either attach and sell the movable property of the defendant or arrest the defendant and put in civil prison. Sec 18 of the Act bars the jurisdiction of the courts or any other authority except that of the Supreme court and High court in exercising jurisdiction under Art 226 and 227 of the Constitution in relation to matters specified in sec 17 of the Act. Debt Recovery Tribunals are "quasi-legal" institutions and the main distinction between civil court and DRT is the fact that DRT follows a streamlined summary procedure. This procedure demands faster processing and greater accountability by the litigants[22].

Despite DRT's being specifically intended to bring faster disposal of cases pertaining to debt recovery. They weren't completely successful in achieving this mandate. In 2013-2014, the amount recovered from cases decided in DRT's was Rs. 30,950 crores while outstanding value of debt sought to be recovered was Rs 2,36,600 crore and therefore only 13 percent of the amount at stake was recovered.

The Recovery of debt due to financial institutions Act was amended in 2016, the amended Act obligates the Debt Recovery Tribunal to make every effort to complete proceedings in two hearings and shall issue recovery certificate within 30 days. Despite this positive amendment, the Act still does not extend its operation to foreign banks.

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[21] G.S. Dubey, "An introduction to the Recovery of Debts due to Banks and Financial Institutions Act, 1993- A Study", *Chartered Accountant Practice Journal*, September, 2013.

[22] *Ibid.*

1.4 Effect of Insolvency and Bankruptcy Code 2016 On Sick Industrial Companies (Special Provisions) Repeal Act 2003

The SICA Act was amended in 2003 and the name of the amended Act was Sick Industrial Companies (Special Provisions) Repeal Act 2003. The amendment dissolved BIFR and Appellate Board and the National Company Law Tribunal was authorized to administer the procedure.

The Code in Sec 252 provides that the abovementioned Act shall be amended in the manner specified in the Eighth Schedule. As per the Eighth Schedule, Sec 4 sub-clause (b) of the Sick Industrial Companies (Special Provisions) Act 2003 has been amended and any proceeding before the BIFR and the Appellate Authority stands abated and the Company in respect of such proceeding may make a reference to the National Company Law Tribunal under the Code within 180 days from the commencement of the Code[23].

1.5 Amendments made under Companies Act, 2013 through Insolvency and Bankruptcy Code with specific reference to the provision of Inability to pay Debts

Earlier there was no definition of winding up under Companies Act, 2013, now under section 2(94A) of the Act "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

Earlier there were seven conditions under section 272 for winding up but now under section 271 of the Act, for the company to wound up there are five conditions[24]-

> *"(a) the company be wound up by the Tribunal if he has the special resolution to do so;*
>
> *(b) the company be wound up by the Tribunal if it has acted against the decency or morality, public order, friendly relations with foreign States, integrity of India and interests of the sovereignty;*

[23] *Sick Industrial Companies (Special Provisions) Act, 1985 repealed and BIFR/ AIFR dissolved,* retrieved from https://www.pwc.in/assets/pdfs/news-alert-tax/2016/pwc_news_alert_1_december_2016_sick_industrial_companies_act_1985_repealed_and_bifr-aifr_dissolved.pdf, last assessed on March 28, 2018.

[24] Section 271, *Companies Act,* 2013.

(c) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;

(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."

Impact of the Amendments on the Code

There is a complete substitution of the above section in the Insolvency and Bankruptcy Code, 2016. Earlier for the winding up of a company there were seven conditions but now for filing the petition of winding up only five conditions have to be met.

Following two situations are deleted:

(a) when the company is not able to dispose off its debts ;

(d) if under Chapter XIX winding up order has been made by the tribunal;

Winding up on inability to pay debts Section 271(1)(a) of 2013 Act which dealt with the winding up by Tribunal on account of inability to pay debts has been omitted by Section 255 of the Code. The same is now dealt with in accordance with the provisions of Sections 7 to 9 of the Code, being initiation of corporate insolvency resolution process by financial and operational creditors.

An application to the adjudicating authority (being the Tribunal) for initiation of corporate insolvency resolution process can be made only when there is a "default" in payment of debt by a corporate person. In this regard, it is to be noted that the term "default" has been defined in the Code to mean non-repayment of a debt, whether whole or in part, which has become due and payable by a corporate person. This would imply that now under the Code insolvency resolution proceedings can be initiated even against a financially solvent company having made a default in payment of its debts, since the same would fall within the purview of "default" under the Code[25]. Once the application for initiation of corporate insolvency resolution process is made and the same is accepted by the Tribunal, an insolvency professional is appointed for conducting the corporate insolvency resolution process. The process is required to be completed within 180 days from the date of admission of application by the Tribunal, on failure of which, Tribunal may pass an order for liquidation of the corporate person in relation to whom the application was made.

Under the erstwhile regime, winding up applications could be made on account of "inability to pay debts". The expression "inability to pay debts" has been interpreted by Andhra Pradesh High Court in the case of *Reliance Infocomm Limited v. Sheetal Refineries Private Limited*[26], to mean a situation where a company is commercially insolvent, i.e. the existing and provable assets would be insufficient to meet the existing liabilities. Therefore, a remedy to initiate winding up proceedings against financially solvent companies that had defaulted in payment of debts was not available under the earlier regime. However, this is now feasible under the Code.

1.6 Insolvency and Bankruptcy Code (Amendment) Bill 2017

In order to remove certain unscrupulous promoters from regaining control over a distressed company, there was a need to amend the Insolvency and Bankruptcy Code, 2016 by way of a presidential ordinance in November 2017 (*Ordinance*).

The Insolvency and Bankruptcy Code (Amendment) Bill 2017[27], introduced by finance minister Arun Jaitley in the Lok Sabha, allows defaulting promoters to be part of the debt resolution process, provided they repay dues in a month[28].

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[25] Aman Parnami, "Winding Up – Legal position under Companies Act, 2013 vis-à-vis Insolvency and Bankruptcy Code, 2016", *Lakshmikumaran & Sridharan Attorneys,* New Delhi.

[26] 142 Comp. Cas 170 (AP).

[27] The *Insolvency And Bankruptcy Code (Amendment) Act*, 2017.

[28] *Highlights of the Insolvency Amendment Bill, 2017,* retrieved from https://indiacorplaw.in/2018/01/highlights-insolvency-amendment-bill-2017.html, last assessed on April 7, 2018.

In the current Bill the government has focused only on the provisions dealing with ineligibilities even though after an year of working there has been several shortcomings need to take care of.

This ordinance has retrospective effect and it will help the promoters who had submitted resolution plans before the enactment of an ordinance where they have been restrained from taking part in the resolution process of the companies.

Further, it has given the direction for asset reconstruction companies, alternative investment funds (AIFs) such as private equity funds and banks to participate in the bidding process. When the assets acquired by them are classified as non-performing assets (NPAs), in that case such entities are not qualified to participate in the bidding process.

In order to strike a balance in the trade-off between punishing willful defaulters and ensuring a more effective insolvency process there was an urgent requirement of amendments, since the banks who wished to convert their debt into equity under the RBIs Scheme that had actually converted them into the promoters of insolvent companies.

To strengthen the insolvency resolution process and to restrain certain ineligible persons from participating in the resolution process the Amendment Act and the IBC Ordinance were designed. However, the market's reaction to the Ordinance and several challenges indicate that stringent provisions of the Ordinance may be counter-productive[29].

While exclusion of Alternative Investment Funds (AIFs) from the definition of connected persons may hint at the legislature's intent of excluding financial / strategic investors, the inclusion of "Persons Acting jointly or in Concert" such as under Section 29A may have far reaching consequences on such investors.

The Bill has clearly stated only those persons will be prohibited from becoming a resolution applicant who have been currently barred by SEBI from accessing the securities market. Whereas according to earlier position anybody could be debarred at any point of time if they had

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[29] *IBC ordinance will affect pending suits,* retrieved from http://www.thehindu.com/business/Economy/ibc-ordinance-will-affect-pending-suits/article20724711.ece, last assessed on April 7, 2018.

been debarred by SEBI. Earlier the terminology employed in clause (f) in section 29A was "*has been prohibited*" and now it is replaced by the words "*is prohibited*"[30].

1.7 Conclusion

The incorporation of UNICITRAL Model on Cross Border Insolvency came in India after negotiations with more than forty countries representing different legal framework. The foremost feature of this Model Law is to achieve effective cooperation which is wholly accepted by the countries around the world and is also in compatible with their legal framework. The courts in India have the jurisdiction to wind up Indian as well as unregistered foreign companies only in situations where the assets of such foreign company are situated in India or the company is carrying out its business in India through agents.

The Bankruptcy Code achieve following objectives- (a) value of assets to be maximized; (b) restructuring or renegotiation in a time bound manner; (c) fast track liquidation in case of failure of restructuring process and Bankruptcy proceedings to be completed timely.

There is an urgent requirement of judiciary in dealing with the matters of insolvency and bankruptcy by having a uniform and unitary system.

There must be separate chapters dealing with the procedures for Banks and Financial Institutions and such chapters shall provide for the special winding provisions for liquidation as stipulated in the Banking Regulation Act, appointment of trustee on the advice of the Reserve Bank and compulsory moratorium system.

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[30] *Ibid.*