

## Personal Insolvency Procedures and Rules in India

### Introduction

Non-performing assets (NPAs) have always been a concern in the credit market. The insolvency and bankruptcy code (IBC) enacted in 2016 is one of the solutions to the issue of NPAs, which aims at insolvency resolution and reorganisation for corporates, partnership firms and individuals. The individual insolvency resolution process has been elaborated in Part III of the Code under Chapter III, while individual bankruptcy process is under Chapter IV of Part III.<sup>1</sup> Personal insolvency laws apply when a debtor, who is either an individual, a sole proprietorship or a partnership firm, becomes unable to fulfil their due debts to their creditors.<sup>2</sup> Before the enactment of the IBC, the framework for implementation of the personal insolvency was archaic and flawed. It was dependent on the pre-independence laws that were ineffective, complicated, expensive and time-consuming. The creditors had very limited roles in the debt resolution process.<sup>3</sup>

### Procedure under IBC

There are two processes provided in the statutory code in order to file for insolvency and get the resolution done. Depending on the eligibility criteria, one of these processes are chosen. Although these processes have been explicitly laid out in the code, only the provisions applicable to personal guarantors of corporate debtors have been notified, the other provisions that reconceptualize the framework of personal insolvency have not yet become functional.<sup>4</sup>

### *Insolvency Resolution Process*

In this process, the debtor or a creditor may file for an insolvency resolution process, either by himself or through a resolution professional to the appropriate DRT. Upon filing of the application, an interim-moratorium period starts, during which legal actions and proceedings shall be stayed while creditors cannot initiate new legal actions against the debtor. This period ceases only when

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<sup>1</sup> Renuka Sane, 'The way forward for personal insolvency in the Indian Insolvency and Bankruptcy Code' (2019), National Institute of Public Finance and Policy <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3309470](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3309470)> accessed on 17 January 2022

<sup>2</sup> Aishwarya Satija, 'How Personal Insolvency Laws Can Tackle COVID-19 Induced Financial Distress' (Vidhi Legal policy, 30 April 2020) <<https://vidhilegalpolicy.in/blog/how-personal-insolvency-laws-can-tackle-covid-19-induced-financial-distress/>> accessed on 17 January 2022

<sup>3</sup> Vanshika Gupta, 'Individual Insolvency Law Regime In India' (Legal Services India) <<https://www.legalserviceindia.com/legal/article-2056-individual-insolvency-law-regime-in-india.html>> accessed on 17 January 2022

<sup>4</sup> Shilpa Gannani, 'what to do when you're broke: The laws governing personal bankruptcy in India' (*The Legal 500*, 18 August 2021) <<https://www.legal500.com/developments/thought-leadership/what-to-do-when-youre-broke-the-laws-governing-personal-bankruptcy-in-india/>> accessed on 17 January 2022

the application has been admitted.<sup>5</sup> This process can be started by a debtor or a creditor who files through a resolution professional, in which case the DRT will probe into whether there is a disciplinary proceeding against the professional or files the application himself, in which case the IBBI will be obliged to nominate a resolution professional within ten days from receiving the direction from the DRT.<sup>6</sup> This resolution professional is responsible for the scrutiny of the application and the submission of the report to the DRT on whether the application is to be approved or rejected.<sup>7</sup>

Further, the DRT passes an order either admitting or rejecting the application. Along with its admission, they may provide instruction for the negotiation between the debtors and the creditors to arrive at a repayment plan.<sup>8</sup> The moratorium period begins and would only cease at the end of 180 days or when an order on repayment plan is passed by the DRT. After all the claims of the creditors are accepted by the resolution professional, a final list of all the creditors is made and the debtor along with the professional formulates the repayment plan that is essentially a proposal for restructuring the debts to the creditor.<sup>9</sup> This plan is then reported to the DRT within a period of 120 days from submission of claims. A meeting of the creditors shall be conducted where the creditors may approve, modify or reject the repayment plan, the modifications made with the consent of the debtor.<sup>10</sup> When a majority of more than three-fourth of the creditors approve the plan, the resolution professional submits a report to the DRT on the basis of which, they approve or reject the repayment plan.<sup>11</sup> This order is binding on all the creditors and the debtor. If the repayment plan fails by being rejected or the resolution professional recommends, the debtor or the creditors can file for bankruptcy.<sup>12</sup>

### *Fresh Start Process*

This is a special process applicable to debtors who fulfil the requirements of having a gross income of less than ₹60,000, qualifying debts of less than ₹35,000, assets less than ₹20,000, with no dwelling place to their name are eligible for this process and can get a complete waiver of debts on making an application.<sup>13</sup> Similar to the previous process, a resolution professional is confirmed to not have any disciplinary proceedings pending or one is nominated by the IBBI, when the debtor or creditor file themselves.<sup>14</sup>

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<sup>5</sup> Insolvency and Bankruptcy Code 2016, s 96

<sup>6</sup> Insolvency and Bankruptcy Code 2016, s 97

<sup>7</sup> Insolvency and Bankruptcy Code 2016, s 99

<sup>8</sup> Insolvency and Bankruptcy Code 2016, s 100

<sup>9</sup> Insolvency and Bankruptcy Code 2016, s 105

<sup>10</sup> Insolvency and Bankruptcy Code 2016, s 108

<sup>11</sup> Insolvency and Bankruptcy Code 2016, s 114

<sup>12</sup> Insolvency and Bankruptcy Code 2016, s 121

<sup>13</sup> Insolvency and Bankruptcy Code 2016, s 80

<sup>14</sup> Insolvency and Bankruptcy Code 2016, s 82

The resolution professional submits a report to the DRT within ten days of appointment, after examining the application of the debtor. The report recommends whether the application must be accepted or rejected based on the professional's findings, this is also accompanied by their recorded reasoning for the recommendation.<sup>15</sup> The DRT accepts or rejects the application based on these recommendations by passing an order that states the amount that has been accepted as qualifying debts and the amounts eligible for discharge.<sup>16</sup> When the application is accepted, a moratorium period of six months commences during which pending legal actions or proceedings are deemed to be stayed and creditors may only state their objections to the resolution professional following the grounds mentioned in the Code.<sup>17</sup> This is to ensure that there are facilitative circumstances for the process to take place. Finally, when the moratorium period ends, the DRT passes a discharge order for all the qualifying debts listed by the resolution professional.<sup>18</sup>

## **Conclusion**

The framework for personal insolvency under the Insolvency and Bankruptcy Code is a powerful alternative to the obsolete framework that is existing today. Even the chairperson of Insolvency and Bankruptcy Board of India (IBBI), has acknowledged the significance of implementing the individual insolvency provisions of the code.<sup>19</sup> The Special processes such as the fresh start, allow even low-income, low-asset debtors who cannot afford a regular insolvency resolution processing to waive their debts. Both these processes would be beneficial to reduce the building stress of NPAs in the credit market, in a cost-effective and time-efficient manner. Hence, it is paramount for these provisions in the Code to become functional. Only then can the drawbacks be found, addressed and the law be evolved. It is a much needed respite to both individual debtors and their creditors alike.

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<sup>15</sup> Insolvency and Bankruptcy Code 2016, s 83

<sup>16</sup> Insolvency and Bankruptcy Code 2016, s 84

<sup>17</sup> Insolvency and Bankruptcy Code 2016, s 86

<sup>18</sup> Insolvency and Bankruptcy Code 2016, s 92

<sup>19</sup> Karunjit Singh, 'Next phase of IBC implementation should be personal insolvency: Sahoo' The Indian Express (New Delhi, 3 October 2021) <<https://indianexpress.com/article/business/economy/next-phase-of-ibc-implementation-should-be-personal-insolvency-sahoo-7548629/>> accessed on 17 January 2022