Ch-1 Introduction to IBC.

overview.

- Introduction.
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⇒ Concept of insolvency, bankruptcy and liquidation.

- **Insolvency** - It is the state of one whose assets are insufficient to pay his debt.

- **Bankruptcy** - Is the condition of insolvency. It is a legal status of of a person or an entity who can not repay debts to creditors.

Therefore, while insolvency is the inability of debtor to pay their debts, the bankruptcy on the other hand is a formal decl^n of insolvency.

- **Liquidation** - means closure or winding up of a corporation or an incorporated entity through legal process on account of its inability to meet its oblig^n or to pay its debt.

⇒ Insolvency framework in UK

- In England, the Act of Parliament of 34 & 35 Henry VIII, C4 is regarded as the first legisl^n on the subject.

- It was a strict and creditor supportive legislation enacted mainly for the benefits of creditors

- This Act of 1542, was in fact akin to a criminal statue directed against men who indulged in wasteful expenditures and then refused to pay off debts.

→ Current Reg. framework in UK

- The insolv. Act 1986 deals with the insolvency of individuals and cos and is divided into ↓ 3 groups.

→ Grp-1 - Deals with co's insolv.

Grp-2 - — 〃 — individuals

Grp-3 - Misc. matters

⇒ Insolvency framework in US

- American Bankruptcy Law involved imprisonment until debts were paid or creditors agreed for the release of the debtor.

- There was no uniform law in America as bankruptcy laws differed from state to state

- The congress inacted temporary bankruptcy statues in 1800, 1841 and 1867. to deal with economic recessions.

→ Current Reg. framework in USA

- Six basic types of bankruptcy cases are provided for under the bankruptcy code.

Chapter - 7	- titled Liquidation
Chapter - 9	- Adjustment of Debts of a municipa
Chapter - 11	- Reorganization.
Chapter - 12	- Added to the bankruptcy code, in 1986.
Chapter - 13	- enable individual with Regul. income to develop plan.
Chapter - 15	- was added to the Bankruptcy code in 2005

⇒ Historical develp. of Insolv. Law in India :-

→ The Presidency Towns insolv. Act, 1909.

→ Provincial insolv. Act 1920

→ Indian partnership Act 1932

→ The co. Act 1956

→ The SICA, 1985

→ The RDBFI Act, 1993

→ The SARFAESI Act, 2002

→ The companies Act, 2013

⇒ Committees on Bankruptcy reforms.

Sr. no.	Year	Committee / Commission	Recommendation.
1.	1964	Third Law commission	• Established in 1961 • Chairman - J L Kapur. • Proposing amendments to the Provisional insolvency Act.
2.	1981	Tiwari committee.	• Govt. of India enacted the Sick Industrial companies (special provision) Act 1985 ↓ timely detection of sickness in industrial companies.
3	1991 1998	Narasimham committee I Narasimham committee II	• RDDBFI Act, 1993. • SARFAESI Act, 2002
4 *	2014	Bankruptcy Law Reforms Committee (BLRC)	• Reviewed the existing bankruptcy & insolvency Framework in the country

⇒ Need for a New Law.

- ~~Bore~~ Before the enactment of the insolvency and Bankruptcy code there was no single law in the country to deal with insolvency & bankruptcy.

- As per world Bank data in 2015, insolvency in India took 4.3 yrs on an average. which was way higher when compared to other Countries such as UK (1 year) and USA (1.5 yrs). These delays were caused due to time taken to resolve cases in courts, and confusion due to lack of clarity about the current bankruptcy framework.

- The objective of IBC is to consolidate and amend the laws relating to reorganization of and insolvency resoln of corpo. persons, partnership firms and individuals in a time bound manner.

→ Key objectives of the insolvency and Bankruptcy code, 2016.

- → To consolidate and amend the Laws relating to re-organiz^n and insolvency resolution of corpo. persons, partnership firm and individuals to provide for a time bound insolvency res. mechanism.
- → To ensure maximisation of value of assets.
- → To promote entrepreneurship
- → To increase availability of credit.
- → To balance the interests of all the stakeholders including alteration in the order of priority of payment of Govt dues.
- → To established IBC of India as a regulatory body.

→ The salient features of the Law are as follows -

- → Speedy process for early identification of fin. distress.
- → Two district process for resolution of individuals, namely fresh start and insolvency Resolution.
- → Debt Recovery Tribunal and NCLT to Act as adjudicating auth
- → Establishment of an insolvency and bankruptcy board of Indi
- → insolvency professionals would handle the commercial aspect of insolvency resol^n process.
- → Enabling provisions to deal with cross border insolvency.

⇒ Pillars of IBC, 2016.

- IBBI
- IP.
- Adjudicating Authority
- IPA
- Info. Utility.

⇒ **Section-1**

- CG may appoint diff. dates for diff. provisions of this code and any ref. in any such provision to the comm. of this code shall be construed as a ref to the comm. of that provision.
- IBC, 2016 extends to the whole of India.

→ Insolvency and Bankruptcy Board of India (IBBI)

- Board shall be a body corporate having perpetual succession and a common seal.
- Power to acquire, hold and dispose of property, both movable & immovable.
- The term of office of the chairperson and members shall be 5 yrs or till they attend the age of 65 yrs, w.e. is earlier.
- Powers and Functions of the Board -
  - → Register insolv. professional agencies, IP and IU and renew, suspend or cancel such registration.
  - → specify the minimum eligibility requirements for registration of insolvency prof. agencies, IPs and IU.
  - → call for any info. and records from the IPA, IPs and IU
  - → collect and maintain records relating to insolv. & bankruptcy cases and disseminate such info.
  - → Promote transparency and best practices in its governance
  - → specify mechanism for redressal of grievances against IPs, IPA and IU.

⇒ Insolvency professionals - covered in ch-3

⇒ Insolvency Professional Agencies.

- These agencies are designed to regulate insolvency professionals.
- Following are the IPA register under the code.
  - → The Indian institute of insolvency prof. of ICAI
  - → ICSI institute of insolvency professionals
  - → Insolvency prof. agencies of insti. of cost Accountant of India.
- Functions -
  - → grant membership to person who fulfil all requirement set out in its buy laws.
  - → lay down standard of professional conduct for its mem
  - → Monitor the performance of its member.
  - → safeguard the rights, privileges and interests of IP who are its members.

⇒ Adjudicating Authority (AA)

- Adjudicating authority for insolvency resolution and liquidation for corporate person means National company law Tribunal constituted u/s 408 of the companies Act, 2013.

- The NCLT shall have jurisdiction to entertain or dispose of -
  - → Any appⁿ or proceeding by or against the corpo. debtor or c. person
  - → Any claim made by or against the CD or CP incl. claim by or against any of its subsidiaries situated in India and.
  - → Any question of priorities or any question of law or facts arising out of insolvency resolⁿ or liq. proceeding of CD/CP.

- It provides that no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which NCLT or the NCLAT has jurisdiction under this code.

⇒ Information utility (IU)

- Information utility as a person who is registered with the board as an information utility u/s 20.

- obligation of info. utility.
  - → create and store fin. info. in a universally acceptable format
  - → Accept electronic submission of fin. info from person who are under oblignⁿ to submit fin info.
  - → Accept, in specified form and manner, electronic submission of fin info.
  - → meet such min service quality standards as may be specified
  - → publish such statistical info. as may be specified by Reg.
  - → Have inter operatability with other info. utilities.

section - 2 - IBC provides that, the provision of this code shall apply to

→ Any co inco. under co. Act or under any pre. co. law.
→ Any other co. Governed by any special Act for time being in force.
→ Any LLP inco. under LLP Act. 2008
→ personal guarantors to corpo. drs.
→ partnership firms and proprietorship firms
→ such other body inco. under any law for the time being in force