

RESOLVING INSOLVENCY IN THE IBC

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VIDHI CENTRE FOR LEGAL POLICY

THE NEED FOR A NEW LAW

Prove inability to pay debt AND an act of insolvency

Courts have 'discretion' to stay only 'pending' proceedings

Process not linear

Debtor can be arrested on vague grounds

Priority of debts (salary/wages of INR 20, INR 300!)

FRESH START PROCESS

FEATURES

- Target group – little or no money and assets
- Not automatic
- Adjudicating authority exercises discretion – admission, discharge order
- Creditors can challenge
- Discharge from only ‘qualifying debts’ – unsecured, upto INR 35,000/-
- Time period – 6 months

NEEDS MORE WORK

- Definition of ‘assets’ for eligibility
- No moratorium on actions other than legal actions (moneylenders)
- No restriction on debtor to sell/alienate property
- No grounds mentioned for filing replacement application of resolution professional
- No penalties

INSOLVENCY RESOLUTION PROCESS

FEATURES

- Negotiated repayment plan
- Only failure of IRP can lead to bankruptcy
- Maximum time period – 6 months

NEEDS MORE WORK

- No grounds mentioned for filing replacement application of resolution professional
- Unliquidated amount of debt – creditor can't vote
- Role of IUs uncertain
- Incomplete penalties

BANKRUPTCY

FEATURES

- Trigger of bankruptcy - not automatic
- Liquidation of estate of the bankrupt
- Last resort
- Discharge in a year
- Waterfall – government dues in the end

NEEDS MORE WORK

- Definition of 'bankrupt'
- Variable time period to pass bankruptcy order
- No restriction on debtor to sell/alienate property after bankruptcy order made
- Unliquidated amount of debt – creditor can't vote
- Estate of bankrupt excludes provident fund, pension fund, gratuity fund – workmen and employee
- Priority of debt