

Report Summary

Bankruptcy Law Reforms Committee

- The Bankruptcy Law Reforms Committee (Chair: Dr. T. K. Vishwanathan) submitted its report to the Finance Ministry on November 4, 2015. The objectives of the Committee were to resolve insolvency with: (i) lesser time involved, (ii) lesser loss in recovery, and (iii) higher levels of debt financing across instruments. The Committee has presented its report in two parts: Volume 1, with its rationale and design for legislation, and Volume 2, with the Draft Insolvency and Bankruptcy Bill.
- Insolvency refers to a situation where individuals or organisations are unable to meet their financial obligations. If insolvency cannot be resolved, a company proceeds towards liquidation of assets, and an individual goes in for bankruptcy resolution.
- The Committee has recommended a consolidation of the existing legal framework, by repealing two laws and amending six others. It has proposed to repeal the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. In addition, it has proposed to amend: (i) Companies Act, 2013, (ii) Sick Industrial Companies (Special Provisions) Repeal Act, 2013, (iii) Limited Liability Partnership Act, 2008, (iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (v) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and (vi) Indian Partnership Act, 1932.
- The Committee observed that currently creditors have limited power, in case the debtor defaults in making the payment. They are able to recover only 20% of the debt amount on an average, which ultimately leads to lending being restricted to a few large companies. The Committee also observed that decisions regarding the defaulting firm are business decisions, and should be taken by the creditors. Presently, laws in India bring together the legislature, executive and judiciary for insolvency resolution. The Committee has moved away from this approach, and has proposed to establish a creditors committee, where the financial creditors will have votes in proportion to their magnitude of debt. The creditors committee will undertake negotiations with the debtor, to come up with a revival or repayment plan.
- **Insolvency and Bankruptcy Resolution:** The report outlines the procedure for insolvency resolution for companies and individuals. The process may be initiated by either the debtor or the creditors.
 - Presently, only secured financial creditors (creditors holding collateral against loans), can file an application for declaring a company sick. The Committee has proposed that operational creditors, such as employees whose salaries are due, be allowed to initiate the insolvency resolution process (IRP).
 - The entire IRP will be managed by a licensed insolvency professional. During the IRP, the professional will control and manage the assets of the debtor, to ensure that they are protected, while the negotiations take place.
 - The Committee has proposed to set up Insolvency Professional Agencies. The agencies will admit insolvency professionals as members and develop a code of conduct. An environment where the agencies compete with each other, to achieve greater efficiency and better performance has been envisioned.
 - The report recommends speedy insolvency resolution and time bound negotiations between creditors and the debtors. To ensure this, a 180 day time period for completion of the IRP has been recommended. For cases with high complexity, this time period may be extended by 90 days, if 75% of the creditors agree.
 - **Information Utilities:** The committee has proposed to establish information utilities which will maintain a range of information about firms, and thus avoid delays in the IRP, typically caused by a lack of data.
 - **Insolvency regulator:** The Committee has proposed to establish the Insolvency and Bankruptcy Board of India as the regulator, to maintain oversight over insolvency resolution in the country. The Board will regulate the insolvency professional agencies and information utilities, in addition to making regulations for insolvency resolution in India.
 - **Bankruptcy and Insolvency Adjudicator:** The Committee observes that individual and company insolvency resolution has similar goals. However, the infrastructure for individual insolvency resolution has to be spread across the country. Hence, the Committee proposes two tribunals to adjudicate grievances under the law: (i) the National Company Law Tribunal will continue to have jurisdiction over insolvency resolution and liquidation of companies and limited liability partnerships; and (ii) the Debt Recovery Tribunal will have jurisdiction over insolvency and bankruptcy resolution of individuals.

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