

International Bankruptcy & Insolvency Codes and Indian Insolvency & Bankruptcy Code 2016 (IBC 2016)

Manoj K Agarwal

One of the usual question that arises in our minds is how is the Indian IBC 2016 compared to other Insolvency Codes practiced internationally. Since internationally Insolvency and bankruptcy laws have been in place for a long time, and have dealt with several cases a look into their laws may give some more insight. As we know, IBC 2016 was enacted in May 2016 and is therefore, young and evolving. It should be really appreciated how proactively and speedily the regulator (Insolvency & Bankruptcy Board of India) is reacting to every emerging situation by bringing rules and regulations to deal with various situations appropriately.

To begin, we should pick which countries to choose for such an analysis. Obviously, two countries, namely UK and USA will be quite appropriate for such a study to start with although such law is prevalent in other countries like France, Germany and Italy as well. Below, I have tried to look into some of the important points in UK & US laws compared to IBC 2016 (a bird's eye view) although deeper readings of respective laws is required for a better understanding.



	US law Chapter 11	UK Law Insolvency Act 1986	Insolvency & Bankruptcy Code 2016
General	Applicable throughout US, focusses on reorganisation or going concern over liquidation	Applicable to UK. Focusses on survival of company as a going concern rather than liquidation	Part I Sec 1 - Applicable to whole of India except Part III related to Individual & Partnership firms
Who can start the Insolvency & Bankruptcy process	Typical process starts with Debtor company files a petition in bankruptcy court. Application should have list of creditors and summary of assets & liabilities.	Creditors or Corporate debtors. Holders of qualifying floating charges may appoint an administrator out of court, once such charge holders have filed the necessary papers in the court.	Financial Creditors (S 7), Operation Creditors (S 9) & Corporate Debtor (S 10) can initiate the CIRP Insolvency professional shall have to manage the company affairs as a going concern (S 20)
Moratorium & period for insolvency process	Yes, after filing the petition. Exclusive period of 120 days - extendable upto 18 months on sound reasons	Yes after the court appoints administrator. Admn period will expire after 12 months unless creditors consents / court extends upto 06 months	Yes, as per S 14. Time limit for completion of CIRP is 180 day with a maximum 90 day one time extension (S12).

	US law Chapter 11	UK Law Insolvency Act 1986	Insolvency & Bankruptcy Code 2016
Management Control post Insolvency proceedings	Management continues. Debtor in Possession (DIP) approach is adopted	Management control passes to Insolvency practitioner or administrator	AA will appoint IRP (S 16) and mgt of corp debtor shall vest with IRP (S 17.1). IRP will become RP after approval of CoC to be convened within 07d of CoC formation with 75% voting share (S 22).
Whats happens to the contracts (old or new)	Debtor can disclaim, adopt or assign the contracts to extract the value	No power with Admn to disclaim or terminate the contracts unless contracts provides	S 28.1.k - RP can not make any changes in material contracts without the approval of CoC. S 50/51 gives power & RP can make an application to AA to void such extortionate transaction.
Resolution plan	Debtor has an exclusive period of 04 months (ext upto 18 months) to propose and seek approval from impaired creditors & shareholders within two months. Each class of creditors whose rights have been impaired to vote in favour by majority and 2/3 in amount actually voting	08 weeks of Admn appointment or extended period as court may allow. The resolution plan approval requires a simple majority in value of those creditors present & voting.	Based on the information memo (S 29), a revolution plan can be submitted (S 30). S 30.4 needs that the plan is to be approved by CoC by 75% voting share. S 31 needs that such approved Resolution plan by CoC should be approved by AA.
Sale of assets during insolvency	S 363 allows a debtor to sell substantially all of its assets free of liens. This allows assets to be sold quickly and avoids further erosion of the value due to losses	Admn is like an agent of the company has the power to contract without personal liability. They have the power to sell any of the debtor property without the permission of the court.	RP may do so after the approval of CoC (S 28).
Proceeding expenses & who bears it and finance during process	Cost is born by Debtor. Lender may provide finance to Debtor against lien (superior) over assets which are not pledged to other lenders	Cost is borne by Debtor. Debtor company continues to look from existing lenders as no priority is given to post admn lenders	S 20 stipulates that IRP may raise the interim finance with no security interest over encumbered prop without approval of creditors. S 28 covers that RP may raise the interim finance with the approval of creditors
When the process comes to an end	Resolution plan confirmation discharges debtor's pre obligation other than what is proposed in the plan. if plan is not confirmed then conversion to Bankruptcy proceeding as per Chapter 7	Admn ceases : one year or any extended time and if Administrator either applies that process objective is achieved or Administrator application saying that no purpose can be achieved hence liquidate on	180 day with a max 90 day one time extension (S 12) with the approval of Resolution plan by AA (S 31) failing which liquidation proceedings as per S 33.

	US law Chapter 11	UK Law Insolvency Act 1986	Insolvency & Bankruptcy Code 2016
Priorities of the payments - to be read from top to bottom in the order of priorities	<ul style="list-style-type: none"> -Secured creditors -Insolvency proceeding cost -Claims arising during the gap period -Employees wages & benefits - Deposit claims - Govt tax claims - Unsecured claims - Equity interest 	<ul style="list-style-type: none"> - Secured lenders - Expenses of the insolvent estate - Employees - 04 months prior to insolvency - Prescribed Part protected portion of the money to unsecured creditors - a formulae - Floating charge creditors - Unsecured creditors - Equity holders 	<ul style="list-style-type: none"> - Insolvency cost - workmen dues for 24 months - Secured creditors - Employees for preceding 12 months - Unsecured creditors - State dues or secured creditors for any amount unpaid - any remaining debts & dues - Pref shareholders - Equity holders

AA - Adjudicating Authority (NCLT), CIRP - Corporate Insolvency Resolution Process, CoC - Committee of Creditors, IRP - Interim Resolution Professional, RP - Resolution Professional

Indian Insolvency & Bankruptcy law is a progressive law and the main emphasis is on its resolution process. One of the major difference compared to the US laws is that US laws stipulate a “*Debtor in Possession*” approach (management remains in control on running the company) where as UK & Indian laws envisage the management of the company through Insolvency professional. Although both the situations have their own merits, for example, US laws believe that the management of the company is best suited for running the company for a quick reorganisation plan rather than a new person who will have own learning curve as well cost, however UK & Indian laws envisage that the company can best be run by Insolvency Professional over the previous management. All the laws look for a resolution plan on going concern basis over liquidation.

Insolvency regulator IBBI is proactively addressing the emerging situations which is remarkable. As covered in the previous article this law is going to be a game changer for ease of doing business in India.

Disclaimer: The views expressed here are personal of the author and may be biased. The sole purpose of the article is a knowledge sharing of the author. In particular, the article may not address any specific requirements, interests or circumstances; Anybody should seek the professional advice when dealing with specific issues or concerns. Author claims no responsibility for the representation or warranties as to the accuracy, completeness or reliability of the information contained in this article hence bears no liabilities from anyone.