

Fundamentals of Insolvency Law

Insolvency and Bankruptcy Code, 2016 ('IBC') envisages a legal framework for timely intervention in the working of distressed companies. IBC aims to preserve the assets of the company and enhance their value and liquidate the company only as a last resort. There are various valid viewpoints about IBC, i.e., it is a part success, its aims have been thwarted, and IBC has been turned on its head. The perspective differs depending on which facet of IBC is in focus. The legal perspective also offers various vantage points to understand and examine IBC. One possible way to understand IBC and its working is through case studies.

Case laws or case studies are a prominent part of pedagogy when instructing students about the working of a law and its implications. However, they are rarely used exclusively or rather pre-dominantly to understand and analyze the working of a law. Several provisions of IBC have been interpreted by the Supreme Court and NCLT/NCLAT that have laid bare some of the inadequacies of IBC and its provisions, especially when examined on the touchstone of the aims of IBC. Equally, some provisions of IBC have gained their strength and teeth due to judicial intervention in the form of purposive interpretation of its provisions. This course is an attempt to understand the basics and underlying principles of IBC primarily from the standpoint of decided case laws. The facts, legal issues that arose from the facts, arguments or perspectives adopted by the parties and other stakeholders, the lens adopted by the judicial body in question and the interpretive tools it deployed to resolve the case will be the focus of majority of the classes.

The overarching objective is to analyze and decode the judicial approach(es) towards IBC disputes and how they determine the path and trajectory of IBC. In this course I will handpick important case laws that revolve around crucial concepts and provisions of IBC and examine them in detail with a view to understand the underlying principles of IBC, its working, and the scope and meaning of its relevant provisions. The aims and pedagogy of this course are:

1. The pedagogy focuses on the case laws, uses them as a prompt and then examines the relevant statutory provisions to understand the working of IBC.
2. The course aims to highlight the arguments adopted by parties: their nature, relevance, and interpretation adopted by parties to examine how parties to the dispute understand IBC.
3. The aim is to understand the reason for introduction of IBC and whether judicial interpretation of its relevant provisions aligns with its original aims and if it detracts from the said aims, whether it is a valid detraction
4. Adopt a comparative perspective, especially with the provisions of the Insolvency Law of the United Kingdom, from which the provisions of IBC are originally derived and whether the comparative review of IBC helps us to better understand the laws and its functioning in a better manner.

Relevant Readings:

1. Aurelio Gurrea-Martinez, Reinventing Insolvency Law in Emerging Economies (CUP, 2024)
2. Sumant Batra, The Jaypee Infra Insolvency Saga (Om, 2024)
3. Surendra Malik, Sudeep Malik, Supreme Courts on IBC Laws (EBC, 2022)
4. Edward Bailey, Hugo Groves, Corporate Insolvency Law and Practice (LexisNexis, 2023)
5. IBBI, Understanding the IBC: Key Jurisprudence and Practical Considerations, At: <https://ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>