Syllabus subtopic: Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

News: The Bankruptcy Code will soon be the final word on matters relating to the rescue of sinking companies, even if detective agencies investigating fraud by their owners and executives are itching to take matters into their hands.

Prelims and Mains focus: about IBC, its merits and challenges in implementation, about PMLA

Context

A set of amendments to the Insolvency and Bankruptcy Code (IBC) that the ministry of corporate affairs (MCA) will move in the ongoing winter session of Parliament will make it prevail over other laws including the Prevention of Money Laundering Act (PMLA).

Reason

This is being done so that new investors putting up money to rescue bankrupt companies under the supervision of company law tribunals are protected from liability arising from the wrongdoings of previous managers and shareholders.

BPSL case

The rescue of bankrupt Bhushan Power and Steel Ltd (BPSL) by the second largest private steelmaker in the country, JSW Steel, is currently stalled on account of complications arising from a probe by the Enforcement Directorate and the attachment of BSPL’s assets. The government intends to introduce a ‘non obstante’ clause in IBC that will be sufficient to give the Code primacy notwithstanding any conflicting provisions in other statutes as IBC is a newer law, said the person, who spoke on condition of anonymity. This will give protection to new investors. “In due course, if needed, one could think of amending the Companies Act or the PMLA,” said the person.

The amendments will also make it clear that criminal liability of the previous management and shareholders will continue. There, however, will be no protection to the company in the hands of new investors and management for any contingent liability, which the new investors will anyway take into account while preparing their financial bids.

IBC is a specialized law and bankruptcy resolution is executed under the supervision of
company law tribunals. How can an eligible investor, who is not a related party, paying a consideration to take over a bankrupt company as a going concern be encumbered with actions against the wrong-doings of the previous management or promoter?

The move to ring-fence new promoters and management from prosecution and other proceedings arising from the misdeeds of erstwhile promoters and management will help incentivise more bidders to come forward and realise better value for the asset.

Investors buying stressed assets under the bankruptcy resolution process would like to have finality on the total cost and litigation, which is very important to making the investment decision. The challenge, however, lies in dealing with the assets that are suspected to form part of proceeds of crime. If the assets remain exposed to attachment under PMLA it will continue to pose challenges. This is the tough one to deal through an amendment in IBC.

The National Company Law Appellate Tribunal (NCLAT) which had approved a ₹19,700 crore bid from JSW Steel to take over BPSL, subsequently stayed the transfer of payment by the bidder to the creditors of BPSL, pending an investigation into allegations of fraud and money laundering by the former owners of the steel mill. Bhushan Power, which had accumulated a debt of ₹47,000 crore, was part of the original dirty dozen cases identified by the Reserve Bank of India to be referred to bankruptcy courts.

About Insolvency and Bankruptcy Code 2016

Some of the key highlights of the Code are as follows:

- The Code proposes to cover Insolvency of individuals, unlimited liability partnerships, Limited Liability partnerships (LLPs) and companies.
- Bankrupt individuals would be barred from contesting elections.
- Under the new law, a debtor could be jailed for up to five years for concealing property or defrauding creditors.
- It will strengthen hands of lenders to recover outstanding debts by setting a deadline of 180 days for companies to pay or face liquidation.
- Consolidate all existing laws on bankruptcy and insolvency.
- To cover individuals, companies, limited liability partnerships and partnership firms.
- To use the existing infrastructure of National Company Law tribunals and debt recovery tribunals to address corporate insolvency and individual insolvency, respectively.
- To create Insolvency Professionals who will specialize in such cases, assist creditors, manage liquidation process. These professionals will in turn be certified by a newly created Insolvency Professional Agency.
- It will also create Information Utilities who will collect, collate and disseminate financial information related to debtors.
- The entire operation of insolvency and bankruptcy through these various newly created agencies will be overseen by a regulator – Insolvency and Bankruptcy Board of India.
- Bill can resolve cross-border insolvency through bilateral agreements with other countries.
- To have shorter time frames for speedier resolution.
- Bankruptcy applications to be filed within three months from earlier six months.
- Workers’ salaries for up to 24 months will get first priority in case of liquidation of assets.
of a company, ahead of secured creditors.

- Money due to employees from PPF, gratuity fund will not be included in the estate of the bankrupt company or individual.

About PMLA

The initial money laundering law in India was enacted in 2002, but it has been amended 3 times (2005, 2009 and 2012).

The last amendment of 2012 was approved by the President on January 3, 2013 and this law has come into effect from February 15, 2013.

The Prevention of Money-laundering Act, 2002 (PMLA) aimed at combating money laundering in India with three main objectives:

1. To prevent and control money laundering
2. To confiscate and seize the property obtained from laundered money
3. To deal with any other issue connected with money laundering in India

The PMLA (Amendment) Act, 2012 has put concealment of funds, acquisition of possession, use of proceeds of crime and possession of money in criminal list.

It is worth to mention here that RBI, SEBI and Insurance Regulatory and Development Authority (IRDA) have been brought out under the purview of PMLA, 2002. Hence the provisions of this Act shall apply to all financial institutions, banks, mutual funds, insurance companies and their financial intermediaries.

Note: To know more about PMLA click on the link below.