IBBI amends the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Syllabus subtopic: Indian Economy and issues relating to planning, mobilization of resources, growth, development and employment.

Prelims and Mains focus: about the new amendment; IBBI: structure, role and functions

Context: The Insolvency and Bankruptcy Board of India (IBBI) notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020 on 6th January 2020.

Changes made by the amendment

- The amendment clarifies that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to a compromise or arrangement of the corporate debtor under section 230 of the Companies Act, 2013.

- It also clarifies that a secured creditor cannot sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.

- The amendment provides that a secured creditor, who proceeds to realise its security interest, shall contribute its share of the insolvency resolution process cost, liquidation process cost and workmen’s dues, within 90 days of the liquidation commencement date. It shall also pay excess of realised value of the asset, which is subject to security interest, over the amount of its claims admitted, within 180 days of the liquidation commencement date. Where the secured creditor fails to pay such amounts to the Liquidator within 90 days or 180 days, as the case may be, the asset shall become part of Liquidation Estate.
The amendment provides that a **Liquidator shall deposit the amount of unclaimed dividends**, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the **Corporate Liquidation Account** before he submits an application for dissolution of the corporate debtor. It also provides a process for a stakeholder to seek withdrawal from the Corporate Liquidation Account.

The amended regulations are effective from 6th January 2020.

**About IBBI**

IBBI or Insolvency and Bankruptcy Board of India came into existence on 1st of Oct 2016 to regulate and counter various bad loan cases reported by various creditors, which especially involved banks in India. The IBBI falls under Insolvency and Bankruptcy Code, 2016 and regulates the profession as well processes related to insolvency and bankruptcy.

It plays the role of governing body for all Insolvency Resolution Professionals, Insolvency Professional Agencies and Information Utilities. It enacts rules as well enforce them to resolve the corporate insolvency, corporate liquidation, individual insolvency and individual bankruptcy as per **Insolvency and Bankruptcy Code, 2016**. It helps to implement the provision of the IBC and acts to amend any law under it to suite the current challenges. It works towards resolving any insolvency for corporates, individuals and partnership firms in a time bound fashion to maximize the value of insolvent entity and give back the due amount to the creditors.

**Power and Functions of IBBI:**

IBBI is entrusted to administer the insolvency and bankruptcy regime in the country. It perform tasks like registration of insolvency professional’s agencies, and certify and monitor insolvency resolution professionals. IBBI is also
responsible to create information utilities and renew them as and when the case be. IBBI forms rules for minimum eligibility requirements for agencies to register themselves as insolvency professional agencies or professionals to get certified as insolvency resolution professionals. It also levy fee or other charges from these agencies and professionals. It specifies the regulations for their functioning in proper and law abided manner.

IBBI also ensures and enforces that any Insolvency and Bankruptcy Code, 2016 is levied in minimum time available to get maximum gain from debtor's assets to pay off the creditors. They are responsible to carry out the audits and inspections on debtor's assets and creditor's claims. They also specify the regulations for collecting and storing data by various information utilities and provide proper access to the various stakeholders to such data as and when appropriate. They also form communities as may be required in a case to disseminate the information related to it. They are headed to promote transparency amongst the stakeholders while the case is running until it is resolved.

Section 196 of IBC 2016 explains about powers and functions of the board.

**Structure of IBBI:**

IBBI is constituted by ten-member committee which includes one chairman, three members from Central Government who cannot be below the rank of Joint Secretary or equivalent, One member is nominated by RBI (Reserve Bank of India) in this committee, and rest five members are nominated by Central Government of which three should function as full time members.

**Conclusion:**

IBBI came into existence because there was deemed lack of a properly structured organization to take care of falling companies and their liquidation.
This havoc was creating mistrust amongst the stakeholders in the market and thus genuine people who needed the credit were suffering out of it. This was also framed to support the falling companies to stand again on their feet by restructuring their credits so that they can repay them easily and make a fresh start.

Insolvency and Bankruptcy Code provided the legal framework to facilitate the resolution in such cases and is dedicated to keep developing this framework and related functions and professionals to provide better resolutions.