



FRESH START PROCESS UNDER IBC - A LOOK FORWARD TO A NEW BEGINNING

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Insolvency and Bankruptcy Code has provided the biggest missing piece in the existing jigsaw of laws by establishing a framework for defaulting debts. The foundation of the law is deep-rooted while its journey will be long lasting as the code will go a long way in bringing an element of certainty and predictability to commercial transaction in the country. The Code has not only provided an easy exit route to the Corporates who found the going tough for various reasons but has provisions for individuals as well which are yet to be notified.

It is difficult to establish the amount of credit from the banking sector that is disbursed to “individuals” as opposed to limited liability companies. It is likely that agricultural loans are mostly given to individuals, as are the ones to “micro and small industry” and “personal loans”. In addition it is likely that some of the loans given for “services”, “trade” and “NBFCs” are also passed on to individuals. This suggests that about 43% of bank loans are given to households. Though personal insolvency is not yet notified in IBC, but when notified, will become operational in a credit market that has evolved over several decades in response to an environment with weak creditor rights on recovery, and weaker debtor rights on stalling creditor enforcement. The credit market is also politicised, especially when it comes to agricultural lending and loan waivers. India has a long history of loan waiver programs. The largest of these was a Rs.760 billion farm debt waiver in 2008. The scheme was aimed at providing relief to farmers through a complete debt waiver to small and marginal farmers, and a partial relief to other farmers.¹ As per Credit Information Companies (Regulation) Act, 2005, the payment history on loans taken by individuals and corporates is reported to credit information companies and reflects in the borrower’s credit report. When the loan is settled or written-off by a lender, it will show as such on the credit report and impact access to credit in the future. While providing this relief, borrowers must be made aware that this waiver may impact their credit report and score which, in turn, affects their access to credit in future²

The Code could be a remedy to this credit market of Individuals. Insolvency and Bankruptcy Code provides three insolvency procedures for individuals. While the Insolvency Resolution and Bankruptcy process are available to all, **Fresh Start, a part of IBC is one such process that applies to low-income individuals who have small debts.**

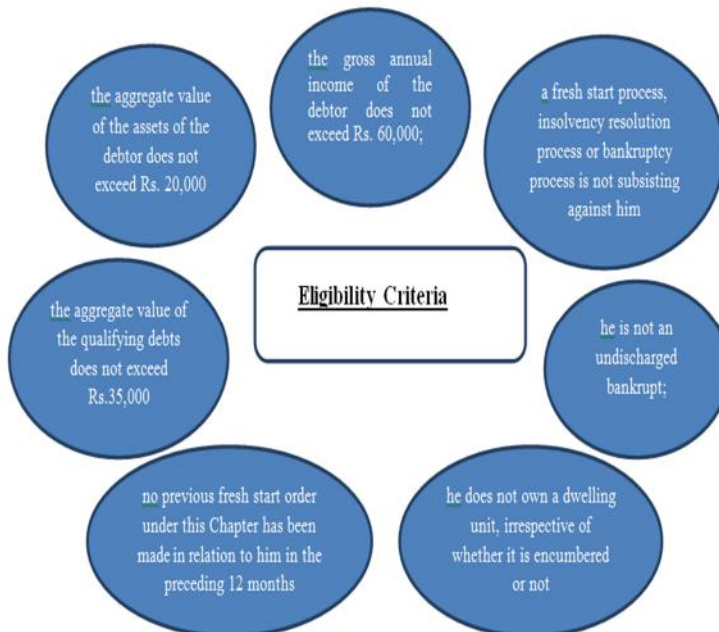
¹https://www.nipfp.org.in/media/medialibrary/2019/02/WP_251_2019.pdf;

²<https://www.livemint.com/money/personal-finance/will-fresh-start-bankruptcy-law-for-small-debts-help-borrowers-1560967082875.html>

Just like the words ‘Fresh Start’ means ‘to start something again in a completely new way.’ Similarly, fresh start process under the Insolvency and Bankruptcy Code, 2016 is envisaged as a solution for debtors to discharge their debts and start afresh without any liabilities. **The fresh start process is enshrined under Chapter II of Part III of the code which is yet to be notified.** Adjudicating Authority under Part III of the code means the Debt Recovery Tribunal.

Eligibility Criteria under Fresh Start Process³

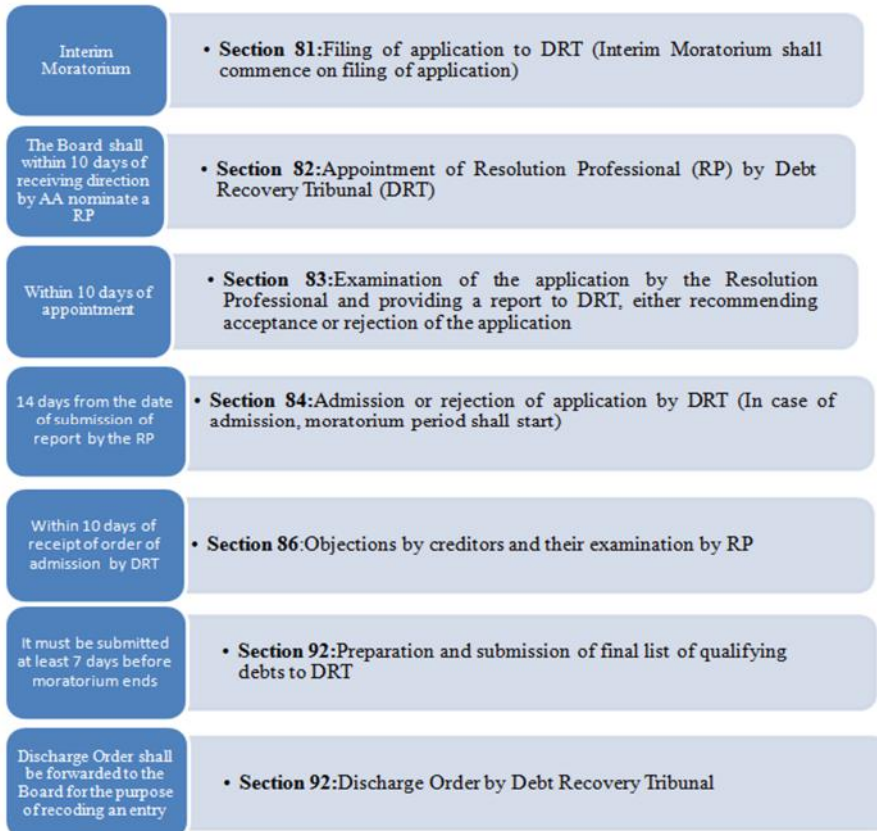
A debtor may apply either personally or through a resolution professional for fresh start to the Adjudicating Authority if he meets the criteria of eligibility stated in the Insolvency and Bankruptcy Code. The eligibility criteria for the FSP is based inter alia on ‘qualifying debts’ and not all debts. As provided in Section 79(19), qualifying debts exclude certain debts such as liabilities in relation to court or tribunal fines, student loans, maintenance, secured debts, etc



The proposed thresholds in the Code have been provided taking into account the relevant data and the Central Government shall have the power to revise the relevant assets and income test from time to time. These should ideally be increased at regular intervals in line with inflation measured by the Consumer Price Index (CPI). The homeownership clause is important, because if the debtor owns a home, then this should be available for sale, the proceeds of which can be used to repay the full (or partial) amount due to the creditor. This process is for bonafide negotiations between the debtor and the creditors for the purposes of repayment of debt by the debtor.

³ Sec 80 of the Insolvency and Bankruptcy Code, 2016

Fresh Start Process under Insolvency and Bankruptcy Code⁴



Why Fresh Start Process (FSP)?

Fresh Start Process allows an individual to restart his life afresh. This process does not restructures the debts of the debtors but discharges the debtor from qualifying debts. What makes FSP different from other insolvency process is that where debtor does not have to propose a plan to pay back his creditors. FSP tries to pull debtors from the debt trap and enables debtors to be rehabilitated in the society.

It is an institutionalised process which would safeguard debtors from coercive practices that creditors may engage in to recover the debts. The safeguards in FSP include verification of eligibility, a cooling off period for re-applying for the FSP, penalties for false information, etc. This process not only aims to waive off the debt but it also aims to balance between creditors and debtors. Creditors have an opportunity to file objections

⁴<https://ibbi.gov.in/uploads/legalframework/2020-01-29-095154-5tg663b139ff2cf941a3422946c3a1d013b.pdf>



prior discharge order passed by the Adjudicating Authority. The motivation behind the fresh start seems to be the difficulties in the transaction costs of the IRP-bankruptcy route being larger than the debt at stake for low-income, low-asset debtors. The Code provides a timely procedure for the process which is capped at 180 days. To boost the effectivity and accessibility of the said process, digitising the process will serve one of the best methods.

This Fresh Start Process under the Insolvency and Bankruptcy Code, 2016 is similar to the Debt Relief Order Process of UK allows underprivileged debtors to apply for a debt recovery order to avail a discharge from their debts.

The Process of Debt Relief Orders in United Kingdom

Debt Relief Orders (DROs) came into force on 6 April, 2009 under the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007). Part 7A of the Insolvency Act, 1986 has provisions for debt relief orders. DROs can only be used by those people with relatively low liabilities, little surplus income and few assets who are unable to pay off their debts in a reasonable time.⁵ A DRO is a way for a debtor to have his/her debts written off if they have a relatively low level of debt and few assets. It is a low-cost alternative to bankruptcy. Although a DRO is a formal debt solution, the debtor doesn't need to appear in court. To apply for a Debt Relief order a debtor has to satisfy following conditions:

- The debtor is unable to pay his/her debts;
- The debtor's total unsecured liabilities must not exceed £20,000 ;
- The debtor's total gross assets must not exceed £1000;
- The debtor's disposable income, following deduction of normal household expenses, must not exceed £50 per month;
- The debtor must be domiciled in England or Wales, or in the last 3 years have been resident or carrying on business in England or Wales; and
- The debtor must not have previously been subject to a DRO within the last 6 years.

The process flow of DROs are as follows:

- An online application is filed for DRO via an Approved Intermediary
- The application is received by an Official Receiver who investigates the affairs of the applicant.
- The Official Receiver may also refuse to make an order or can choose to delay the decision pending further information from the applicant.
- After the Official Receiver shall make Debt Relief Order and 12 months moratorium shall apply
- Notice of DRO shall be sent to creditors and creditors can file objections, if any.
- If the financial position of the creditor does not change during 12 months moratorium period, then DRO is written off.
- There is a cooling-off period of 6 years under this process.

An approved intermediary means a trained debt advisor who has been approved to act as an intermediary by a competent authority. DRO ends after the period of 12 months.

⁵<https://www.legislation.gov.uk/ukpga/1986/45/part/7A>



The Official Receiver may revoke a DRO if the debtor is found to have failed to provide a full and accurate account of their financial affairs. He can alternatively make an application to the court for a Debt Relief Restrictions Order, which will extend the restrictions placed upon a person under a DRO for a period up to 15 years. In more serious cases, the debtor could be prosecuted and fined, sent to prison or both. The most important benefit of this procedure is that it is administrative rather than court based. Basically its aim is to provide a fresh start for vulnerable people trapped in debt. Though objective of both Fresh start Process under IBC, 2016 and Debt Relief Order under UK Insolvency Act is to relieve debtor from its debts and they have a similar working model, there are certain points on the basis of which they are distinct from each other.

Comparison between Fresh Start Process and Debt Relief Order	
	<ul style="list-style-type: none"> ▪ The cooling off period between two applications for Debt Relief Order is 6 years while under Fresh Start Process is 1 year.
	<ul style="list-style-type: none"> ▪ In Debt Relief Order process an application is filed either by debtor himself or through a debt advisor while under Fresh Start application will be filed by the debtor himself or Resolution Professional.
	<ul style="list-style-type: none"> ▪ The application under Debt Relief Order is sent to the official receiver reviews the petition and verifies the financial information provided by the debtor while there is no such concept under Fresh Start, application is examined by Resolution Professional only
	<ul style="list-style-type: none"> ▪ The Debt Relief Order usually lasts for a period of 12 months. The Official Receiver informs the creditors listed in Debt Relief Order regarding the moratorium while in Fresh Start Process moratorium is imposed for 180 days till the disposal of the application. In these 180 days the creditors cannot initiate any proceedings against the debtor with regard to their claims.
	<ul style="list-style-type: none"> ▪ Debt Relief Order is added to the Individual Insolvency Register – it is removed 3 months after the Debt Relief Order ends while under Fresh Start the discharge order of the debtor is forwarded to Insolvency and Bankruptcy Board of India to be recorded in a register that is to be maintained by them. The names of the debtor, unlike in UK, will not be automatically added on admission of the application.

Conclusion

“Fresh start” is a welcome step as it will free up the debtors from the archaic laws of the colonial era such as the Presidency-Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 but the debtors need handholding and counselling to prevent



any misuse. Many in the microfinance industry as well as commercial banks which lend to such institutions apprehend that such a law in India will encourage small unsecured borrowers to default and destroy the credit culture. Frequent farm loan waivers too affect the credit culture as those who can pay up refuse to pay. It is important to know that this process does not “erase” a debt; the discharge is an injunction that makes a debt uncollectible. Though this process will provide relief to small borrowers there are various concerns in its implementation. One of the major concern is to seek a fresh start, the insolvent borrowers need to move the debt recovery tribunals (DRT) and there are less than three dozens of DRTs across the country. It will be difficult at times for small borrowers to get relief and make a “fresh start.” However, the government may consider setting up special benches or vesting jurisdiction with another judicial body. The biggest challenge for the government is to educate the borrowers about this process. The issues are being very well worked upon and the implementation of this new process would set new standards in the insolvency law of India.

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