



## Research Article

# A Study on Insolvency and Bankruptcy Code with Special Reference to GAAP and Accounting Standard Along With Reporting System

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ABSTRACT	Manuscript Information
<p>Insolvency and bankruptcy is one of most bad word for any business establishment, which is equal to death, rather we can say death of any business organization. It has been observed that in most of the cases there are so many disputes among creditors and insolvent organization. The researcher has analyzed the rules and provisions of insolvency and bankruptcy code of India and other relevant provisions along with insolvency rule of different countries for the protection of creditor for the preventions of fraud with the claimants. The famous rules for the prevention of frauds as example in America through SOX Act. But India's government has streamline the major problems in insolvency through insolvency and bankruptcy code which the researcher has analyzed properly in the light of GAAP ( Generally Accepted Accounting Principles) and accounting standards along with reasons and tried to give best possible solutions to avoid the situation of bankruptcy in the form of preventive Modal for avoiding this bad situation of insolvency and bankruptcy for any business, as it's rightly said, 'a stitch in time saves nine'</p>	<ul style="list-style-type: none"> <li>▪ <b>ISSN No:</b> 2583-7397</li> <li>▪ <b>Received:</b> 04-03-2024</li> <li>▪ <b>Accepted:</b> 02-04-2024</li> <li>▪ <b>Published:</b> 15-04-2024</li> <li>▪ <b>IJCRM:</b>3(2);2024:164-171</li> <li>▪ <b>©2024, All Rights Reserved</b></li> <li>▪ <b>Plagiarism Checked:</b> Yes</li> <li>▪ <b>Peer Review Process:</b> Yes</li> </ul>
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**KEYWORD:** Bankruptcy, Business, Insolvency, Modal.

## 1. INTRODUCTION

GAAP (Generally Accepted Accounting Principles) along with Accounting Standard Reporting System has much relevance towards the solvency and insolvency of any business entity. It has been observed that in most of the firm's mismanagement and non-obedience of GAAP and accounting standard along with poor financial reporting system is responsible for insolvency and bankruptcy. Bankruptcy is the legal status that an organization

or individual acquires when their debt to creditors is too great to be paid back. In most jurisdictions, bankruptcy is imposed by a court order. The debtor is primarily the one who starts it. It is crucial to understand that insolvency and bankruptcy are not the same thing. An insolvent person or organization may be able to claim another legal status. Bankruptcy is limited to people in nations such as the United Kingdom. For entities and companies, insolvency procedures such as liquidation, administration, and

others are applicable. India's bankruptcy law, the Insolvency and Bankruptcy Code, 2016 (IBC), aims to unify the current system by establishing a unified bankruptcy and insolvency law. The Insolvency and Bankruptcy Code's (IBC) goals are to:

Simplify and streamline India's bankruptcy and insolvency procedures and amend and combine all current insolvency legislation for safeguarding the interest of the creditors, which may include business stakeholders, to quickly bring the company back to life, to encourage self-employment, to provide creditors with the required relief so that the economy's credit supply can be raised, as a result, to develop a fresh and prompt recovery process that banks, other financial organizations, or individuals can use to establish the India Insolvency and Bankruptcy Board and Optimizing the worth of corporate entities' assets.

## 2. Literature Review

The 2016 Code stipulates a timeline for resolving insolvency. Creditors take possession of the debtor's assets in the event of a repayment default, and they have 180 days to decide how to handle the debtor's insolvency. The Code also shields debtors from the creditor resolution claims during this time to guarantee a continuous resolution process. In order to create a common platform for debtors and creditors of all classes to address insolvency, the Code also unifies several sections of the existing legislative framework, which helps the Code of insolvency resolution process.

**The Insolvency Professionals:** These experts will oversee the debtor's assets, handle the resolution procedure, and give creditors information to help them make decisions.

**Insolvency Professional Agencies:** specialists dealing with insolvency will be registered with these agencies. The organizations administer tests to certify specialists in insolvency and enforce a code of conduct for their work.

**Information Utilities:** Creditors will provide to debtors the financial details of the debt owed to them. Documents pertaining to debt, liabilities, and defaults will be included in this data.

**Adjudicating authorities:** The Debt Recovery Tribunal (DRT) for people and the National Company Law Tribunal (NCLT) for firms shall decide the resolution process. The authorities' responsibilities will comprise permission to designate the insolvency specialist, start the resolution procedure, and accept the creditors' ultimate decision.

**Insolvency and Bankruptcy Board:** The Board shall oversee information utilities established in accordance with the Code, as well as insolvency experts and professional agencies.

How does insolvency in the Code get resolved?

**The following actions are suggested by the Code to address insolvency:**

**1. Initiation:** Either the debtor or the creditor may start the settlement process after a default, Choosing how to end insolvency. The creditors will decide how to proceed with their outstanding debt in a committee made up of the creditors. In order to pay back the debts owing to them, they have two options: they can decide to sell the debtor's assets, or liquidate them. The debtor's assets are placed into liquidation if no decision is made within 180 days.

**2. Liquidation:** Liquidation procedure is managed by an expert in insolvency. The debtor's assets are sold, and the proceeds are divided according to the predetermined order of precedence.

## The 2021 Bill to Amend the Insolvency and Bankruptcy Code

- The Lok Sabha received the Insolvency and Bankruptcy Code (Amendment) Bill, 2021, which amends the bankruptcy law and establishes a prepackaged resolution mechanism for Micro, Small, and Medium-Sized Stressed Businesses. The bill will replace the ordinance that was issued on April 4 of this year, 2021. It suggested, "Pre-packs as an insolvency resolution mechanism for MSMEs." In this mechanism, shareholders and creditors collaborate to find a potential buyer and engage in negotiations rather than holding a public bidding process. The Bill's provisions are as follows:
  - It establishes a minimum threshold of Rs 1 crore or less for starting the pre-packaged bankruptcy resolution procedure.
  - It allows for the simultaneous processing of pre-packaged insolvency resolution applications for the start of the insolvency resolution procedure against the same corporate debtor.
  - Penalties for initiating a pre-packaged bankruptcy resolution process dishonestly, maliciously, or with the intention of defrauding others, as well as for manipulating the corporate debtor during the process. Penalties for transgressions pertaining to the pre-packaged insolvency resolution procedure. "pre-packs", an arrangement to settle a troubled company's debt is known as a pre-pack. It is not a public bidding procedure, rather, it is an agreement between investors and secured creditors.
  - The plan only permits the debtor, with the consent of financial creditors, to start the bankruptcy process on its own.
  - Under general bankruptcy laws, lenders gain operational control of a small corporation from the owners or large shareholders.
  - The creditors will come to terms with the promoters or a possible investor and seek approval of the resolution plan from the NCLT.
  - In a pre-pack insolvency arrangement, the proprietors or shareholders retain control over the business.
  - A resolution plan could not be submitted to the NCLT unless it has received the consent of at least 66% of unaffiliated financial creditors.

- Prior to reviewing a petition for a CIRP, the NCLT either approve or reject the application for a pre-pack insolvency process. Analysts predict that this plan will result in resolution more quickly than the corporate insolvency resolution procedure (CIRP).

### The 2018 Amendment to the Insolvency and Bankruptcy Code Ordinance

- The Ordinance clarifies that allottees under a real estate project should be considered as financial creditors, amending the Insolvency and Bankruptcy Code, 2016.
- The voting right of creditors for the decision of compulsory liquidation or winding up has been reduced from 75% to 51%. This cutoff point is now 66% for some important judgments.
- Retraction of a resolution application filed with the NCLT in accordance with the Code is permitted by the Ordinance. If 90% of the creditors' committee approves this decision, it can be made.

### Problems with IBC 2016

**Failure to meet the deadline:** According to IBC, an insolvent asset needs to be addressed within 270 days. Of the twelve large accounts that IBC was first directed to, five cases have been pending for more than 600 days as a result of ongoing litigation by one or more parties. One of the most notable instances of this rocky path for the IBC is the bankruptcy of Essar Steel. The Rs 50,000-crore account entered the IBC more than 600 days ago.

**Insufficient benches and judges:** Of India's 14 NCLTs, two have not yet begun operations. A few years ago, the government declared its intention to establish twenty-four bankruptcy courts. According to the NCLT judge roster, 27 members have been splitting the job in opposition to the goal of designating sixty members, including technical and judicial. The responsibilities of the benches in Jaipur, Chandigarh, Guwahati, and Cuttack are split between Delhi and Kolkata. The government recently announced that it has been working to expand the National Company Law Tribunal's (NCLT) bench strength from 10 to 15. In addition, 26 more members have joined, bringing the total to 52.

**Haircuts:** A resolution plan aimed at getting the company back on track involves banks writing down a certain amount of debt. Thus far, 43% of the claims made by financial creditors have been fulfilled, along with 188% of the liquidation value. It is necessary to take action to decrease haircuts.

Because of all these considerations, there is a growing fear that IBC may follow in the footsteps of DRT and SARFAESI, and that banks would eventually lose faith in IBC. The recent Supreme Court ruling that overturned the RBI's decision to refer all electricity corporations to the NCLT has set another incorrect precedent.

To address a number of the problems, the Insolvency and Bankruptcy Code (Amendment) Bill 2019 was just passed by Parliament.

### Bill 2019: Insolvency and Bankruptcy Code (Amendment)

The Code offers a deadline-driven procedure for resolving individual and corporate insolvency. A circumstance known as "insolvency" occurs when people or businesses are unable to pay back their outstanding debt.

- A financial creditor may start the insolvency resolution procedure under the Code by submitting an application to the National Company Law Tribunal (NCLT). Within 14 days, the NCLT has to determine if a default has occurred. After that, financial creditors will form a Committee of Creditors (CoC) to make judgments about the resolution of insolvency. The CoC may choose to sell the debtor's assets or restructure the debt by creating a resolution plan.
- A resolution expert appointed by the CoC will provide the CoC with a resolution plan. A resolution plan needs to be approved by the CoC, and the process needs to be finished in 180 days. If accepted by NCLT, this may be extended for a maximum of ninety days.
- The debtor will enter liquidation if the CoC rejects the resolution plan. In the event of the debtor's liquidation, the Code specifies a priority sequence for the distribution of assets. Financial creditors are ranked above operational creditors (such as suppliers) in this hierarchy. Homebuyers who made loans to developers were to be regarded as financial debtors, according to a 2018 Amendment. An expert in insolvency selected by NCLT would represent them.
- Three issues are covered by the bill. It first fortifies provisions pertaining to deadlines. Secondly, it outlines the lowest amounts that any resolution plan must pay operating creditors. Thirdly, it outlines how the representative of a class of debtors (such as homeowners) is to cast their vote.

### Act 2020: The Insolvency & Bankruptcy Code (Second Amendment)

1. The Insolvency & Bankruptcy Code (2nd Amendment) Act 2020 was just enacted by the Rajya Sabha. On June 5th, 2020, the IBC Bill 2020 went into effect.
2. The following section of the Insolvency and Bankruptcy Code, 2016 shall be introduced after section 10: Section 10 A: Delay in starting the process to resolve corporate insolvency. According to Section 10A, "No application for the initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date," notwithstanding the provisions of Sections 7, 9, and 10. In light of the COVID-19 outbreak, no new bankruptcy cases will be filed for at least six months beginning on March 25. Repayment defaults starting on March 25, the day the nationwide lockdown was implemented to reduce COVID-19 infections, would not be taken into consideration for the start of bankruptcy procedures for at least six months.
3. Changing Section 66. The following sub-section is to be introduced in section 66 of the main Act, following sub-

section (2):  
Section 3 states that "no application under sub-section (2) may be filed by a resolution professional with respect to a default against which the commencement of the corporate insolvency resolution process is suspended in accordance with section 10A, notwithstanding anything contained in this section."

4. The nationwide lockdown has further disrupted regular business operations, and the pandemic has caused uncertainty and stress for businesses for reasons beyond their control. Accordingly, the ordinance suspends sections 7, 9, and 10, on the grounds that it would be difficult to find a sufficient number of resolution applicants for a distressed or defaulting business. A senior official told ET, citing data produced by the bankruptcy regulator, that a record 273 stressed enterprises were saved through the insolvency law in 2023, and the resolutions fetched their creditors more than three times the amount raised through 160 similar debt resolutions in 2022. A piece of law known as the Sarbanes-Oxley Act went into effect in 2002. The United States Congress passed the act in order to give the public and shareholders vital protection against fraud and serious accounting errors. The measure was also intended to prevent errors and increase transparency about business disclosures. Despite being a financial rule, SOX compliance involves stakeholders from across the entire corporation. The importance of IT departments and cybersecurity teams has increased as businesses depend more and more on technological solutions to safeguard sensitive data across intricate corporate networks.

### 3. THE OBJECTIVES OF THE STUDY:

The broad objective of the study are:-

1. To examine how the insolvency and bankruptcy occur.
2. To develop modal for reasons and solution for the prevention of state of insolvency and bankruptcy vacuum.
3. To generate viable source for succeeding process and who can be responsible for occurring this situation of insolvency and bankruptcy.

### 4. RESEARCH METHODOLOGY

The present study is exploratory as well as descriptive. It is based on primary and secondary information. Comprehensive survey has been carried out before the finding of reason and solution in the form of preventive modal. Based on broad analysis of secondary source of information from e-books, e-journal, newspapers, Government gazettes, Research articles interaction with experts and study of insolvency laws and insolvency and bankruptcy code with context to especially India.

### Findings / Reason and solution for avoiding Bankruptcy

**1. Inefficient Management:-** In most of the cases it has been observed that inefficient corrupt management has been seen responsible where internal bickering gimmick among the member of management bound to occur regular losses to business. A stage will arise when it is almost difficult to survive in the market as debt could exceeds compare to the value of asset which force the firm to apply for bankruptcy.

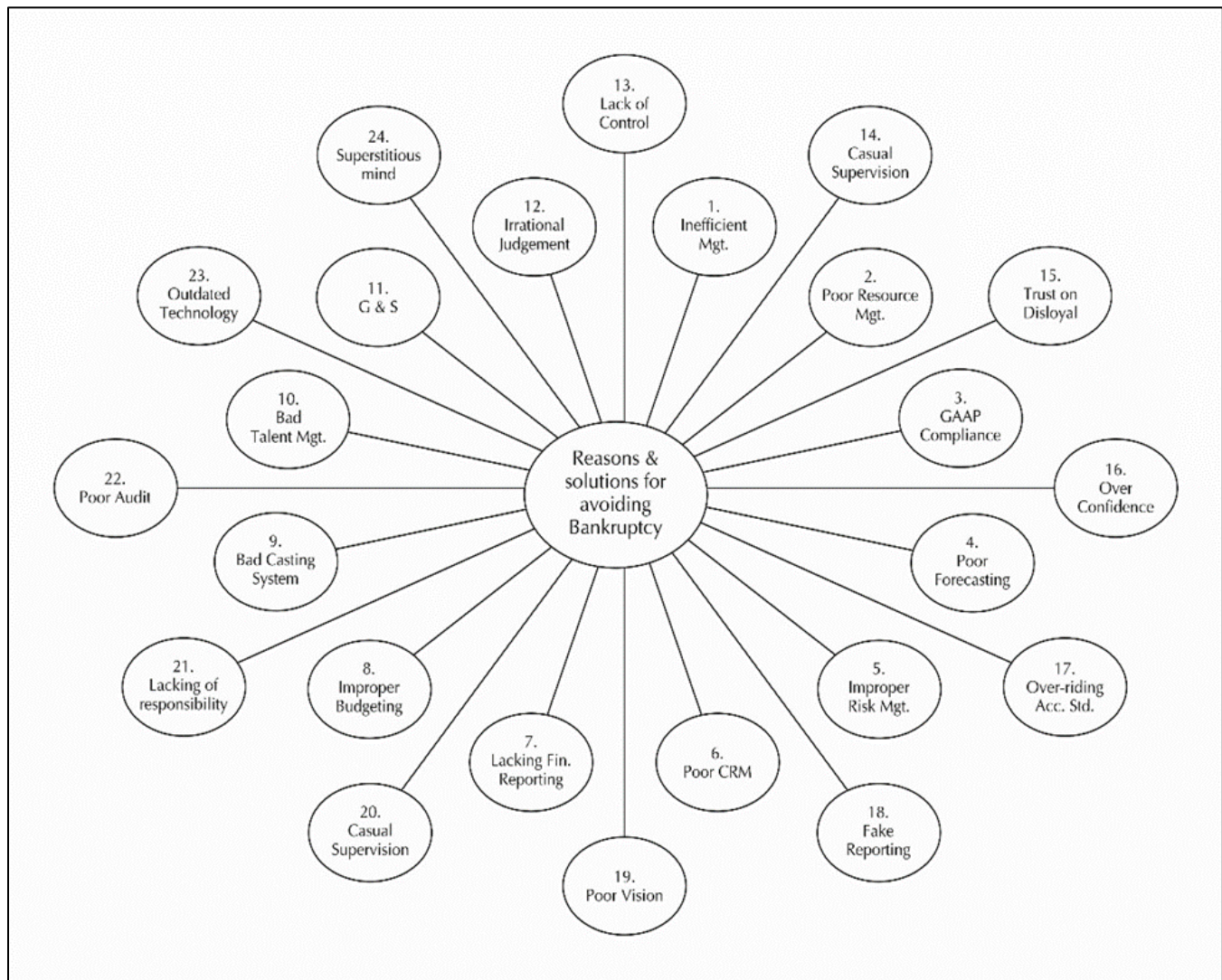
**2. Poor Resource Management:-** Ultimately, solvency of firm depends on tangible and intangible qualitative and quantitative resources. When resources are wasted and not managed properly then the survival of firm must be almost difficult just like a situation where soldiers are ready for war but there is no ammunition and arms to fight with rivals.

**3. Non-adherence of GAAP:-** Very often, the owner of the business dominate the management, abuse his power and violate the GAAP, uses funds from business in their private affair and never return back, in such a situation it seems to be difficult for management to operate in market successfully and business get bankrupt sooner or later, as in business when future of employees and creditor is insecure then business need to be closed.

**4. Poor forecasting :-** The story of success of business can be written on the basis of proper forecasting of business, where business is not properly forecasted then management loses control and when control is lost, in that situation recovery seems to be difficult. What management need to do is to forecast the market demand early and then arrange the resources, as there is one golden saying that early birds catches worm.



**Model:** Reason and solution for avoiding Bankruptcy



Source: Primary information

**5. Improper Risk Management:-** Systematic risk cannot be managed and controlled but unsystematic risk must be minimized. When management fails to manage the risk the possibility of loss increases, so early anticipation of risk and proper check can save the firm from going insolvent as stitch in time saves nine means afterwards risk is major cause of closer of firm particularly financial risk and market risk must take care and handled properly.

**6. Poor CRM:-** When customer are not given due importance, the customer will not give their intention towards the product of the concern and start searching alternatives. Then profit will start falling, therefore, customer relation matter if constantly ignored the closer of firm is imminent, being a king of market customer can choose any option.

**7. Lack of financial Reporting:-** It has been observed that in most of the dying firms, there is no reporting system and management doesn't know about the facts, which leads to misappropriation, embezzlement and fraud which become the cause for down fall of business, many time reporting is just a formality.

**8. Improper Budgeting:-** Poor planning and insufficient budget provision force the business to close down themselves because only proper funding can save the business. Many times, it has been seen, even viable business are unable to get funds from the market due to corrupt banking system where getting loan for normal businessmen is difficult but easy for Neerav Modi and Memon Choksi even Vijay Maliya with support of ruling parties and dishonest bankers.

**9. Bad costing System :-** Good costing system can save the business but arbitrary costing system destroy the entire business, as profit can be estimated only with the proper base costing, for that proper cost assignment, cost allocation, cost center is required. Almost all the shortcomings in the costing system must be removed during the operation of business, in fact, bad costing can be basic cause of closer of business.

**10. Bad Talent Management :-** Talented employees must be hired and retained, as talented employees can bring the prosperity with their contribution. In modern trend sycophant always found surrounded their boss and try to misguide for their vested interest when it is noticed then most of damage has already done.

**11. Gambling and speculation: - Both** are bad. It has been observed that the businesspersons involved themselves in share market or gambling to get windfall gain out of that. Even they use the funds from their business, many times suffer huge losses, which become the root cause for the winding up of hold all the market operation, in the process they lose money in either in gambling in casino or speculation in the share market.

**12. Irrational Judgment: -** Decision of captain matter always, bad decision can force to drone in deep see and good decision can take the ship across the shore, similarly rational judgment in every decision is required for the continuity of the business, irrational decision shall force to close their estate eventually. Therefore, all depends on manager and his managing skills how does he operate in the market.

**13. Lack of control :-** Flexi system and laissez faire policy never be fruitful therefore proper checking control and investigation is required for best operation, otherwise, closer is must due to heavy losses because over exploitation by dishonest operating force. Force of visionary and missionary mind can change the fate of business.

**14. Casual Supervision:-** Business cannot survive with casual supervision, therefore tight and active supervision in business have many advantages, as the supervisor can improve the efficiency and prevent the abuse, misuse and pilferages in the stock and operation always but operational supervision in the hands of casual and lazy supervisor can destroy the efforts and enterprise of the owner.

**15. Trust on Disloyal:-** It is better to trust animal but never trust on disloyal employees as disloyal employees can cheat any time. Many times, it has been found when the command of operation is in the hand of dishonest disloyal, it is certain that business has to close very soon, as blind faith is not good.

**16. Over confidence:-** Many times, the entrepreneur take risk and jump in business blindly having over confidence saying "Dekhjayega" which looks more dangerous like suicidal

attempt. The business started without proper planning are bound to stop their operations and disappear from the market forever.

**17. Over Riding of Accounting Standard :-** There are definite standard for the maintenance of accounting record of business. Many business over ride and lose the financial control and these business become gamble or left at the mercy of operating force, as the staff can become disloyal, the dishonest staff can eat away the solvency of the business. For the solvency of business accounting standard must be followed strictly and never try to override.

**18. Fake Reporting:-** Disloyal and corrupt staff give fake reporting to their bosses and many times, business prepare fake balance sheet and ITR to get loan by making window dress but in reality, business go into losses. A stage shall come when liabilities exceed so much and eat away all profit and assets, the businessmen has no option except to apply for closer voluntarily or forced by the creditor.

**19. Poor Vision:-** Businesses started and operated with poor planning and without proper vision has no option but to close their operation by choice or by compulsion as market is having both the controllable and uncontrollable variables. When second variable exceeds, then managing day to day operation looks dismal which force the owner to stop operation and go for liquidation or insolvency and firms get dissolve permanently, therefore, only solution lies in proper vision and planning in advance.

**20. Superficial Coordination:-** Coordination on the paper seems to be more dangerous than no coordination because internal bickering among the staff can spoil the entire efforts of management and owner. Only the best coordinated efforts in business can prevent the winding up of business operation, as due to superficial coordination, business shall have to suffer heavy losses and with losses it's difficult to survive.

**21. Lack of responsibility:-** Where Authority and responsibilities are not proper fixed, it is often found that culture of beating about the bush arise and no one work sincerely. As a result, even the efficiency of the best performer gets affected because of less motivation. When efficiency comes down then profit will also come down which can force owner to close the operation in order to prevent further losses.

**22. Poor Audit:-** As the audit is examination of books of accounts, firm going without audit or avoiding audit their books of accounts can be under risks and owner may not know the financial secret operation and there is possibility of misuse of funds. Under such condition, there could be operational losses when the losses goes out of bearing limits then firm has to be closed.

**23. Outdated Technology:-** When the business firm do not upgrade their technology, the market demand of product start

falling as no one like to buy old designed and product of low quality.

Even the efficiency, productivity and cost of product has close link, which has cascading effects on profitably and gradually firm goes into losses and bound to close. For the prevention of closer, technology must be up graded well in time.

**24. Superstitious Mind :-** Many businessmen have superstitious mind and goes for vastu and puja, this culture is in India but all the rich multinational companies are owned and controlled by non-Indians, where there is no such culture and prosperity comes through better management not by vastu or puja by priest or pundit therefore many often this type of psyche could force to close the business. It's better to trust managing skills and ability along with trust on one God.

## 5. CONCLUSION

Even though numerous revisions have resolved many issues, much work still needs to be done. The new modifications aim to enable a timely resolution of bankruptcy cases in addition to closing the loopholes in the Insolvency and Bankruptcy Code (IBC) that certain promoters have exploited to delay the resolution of their bankrupt enterprises. Due to the protection of creditors' rights, there has been a noticeable improvement in the recovery process, which has already resulted in billions of dollars being invested in the nation. The speed at which legal system have accomplished, this is especially remarkable when compared to other markets. For instance, it took ten years (starting in 1978) for the bankruptcy law in the United States to stabilize. ₹20,860 crore in 2022 and ₹67,000 crore in 2023 were the realization proceeds, according to data from the Insolvency and Bankruptcy Board of India (IBBI) that has not yet been released to the public. According to the official, the increase shows a "robust upward trajectory" in the efficiency of the Insolvency and Bankruptcy Code. The best possible solution and prevention of insolvency has been depicted in the modal as enshrined above in the findings analyzed in the paper.

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