

EARLY MARKET EXIT IN INSOLVENCY AND BANKRUPTCY ACT 2016 AND PROSPECTIVE IMPACT ON START-UP REGIME IN INDIA

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1. INTRODUCTION

With the objective of providing a certain degree of assurance to the creditors and the investors, the Bankruptcy and Insolvency Code, 2015 was passed by the NDA government which became an act on 28th of May 2016 with the purpose of helping investors and creditors in recovering investments.¹ The fact that India is a capital starved nation and is facing a major debt crisis continues to be a major impediment in its economic progress and development.² The presence of legislations like SARAFESI and Debts Recovery Act have been unsuccessful in recovery of money by the creditors and therefore the new Code aims to make recovery of debts hassle free and also ensure easy voluntary liquidation of companies. Under the aegis of Prime

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¹ Mahua Venkatesh, Jimsy Tapuria, *The new bankruptcy law will be yielding benefits in the long run*, THE HINDUSTAN TIMES, May 12, 2016, at 13.

² Remya Nair & Anil Padmanabhan, *Bankruptcy law will change how business is done: T.K. Vishwanathan* (July 13, 2016, 11:30 p.m.), <http://www.livemint.com/Politics/y2D3JhMNSPKxxS74p1KZCP/Bankruptcy-code-will-change-how-business-is-done-TK-Viswana.html>.

Minister Narendra Modi, and Department of Industries and Commerce, the Start-up India action plan was launched in January 2016.³ The policy which aims for the development of entrepreneurial culture in India aims to encourage investors from India and abroad by making both domestic and Foreign Direct Investments hassle free.⁴ In addition to that, the policy also intends to make use of the Bankruptcy and Insolvency Code and ensure that the investors can recover the money easily when the investments made do not earn the desired amount of profits.⁵ Moreover, the start-up entities are also to be provided hassle free exit from the market in case they incur losses.

Through this paper, the author will aim to draw an analogy between the new start-up policy of India and the implementation of the Bankruptcy and Insolvency Act 2016 in the policy. Considering the nature of the start-up business regime, it is important to understand that to what extent, the

³ Ruchika Chitravanshi, *PM Narendra Modi's dream project 'Start-up India' to be revamped to woo more participants*, THE ECONOMIC TIMES, June 22, 2016 at 14.

⁴ Samiksha Jain, *Eight Things, Entrepreneurs like about PM Modi's Start-Up Policy in 2016* (July 1, 2016, 5:00 p.m.), <https://www.entrepreneur.com/article/269797>.

⁵ Sohan Mishra, *Start-up India: This is the beginning of big bang start-up boom in India, says Softbank CEO*, THE HINDU, January 16, 2016, at 14.

favorable market exit options will be helpful or not.⁶ During the course of this paper, the major objective would be to discuss about the major features of the abovementioned act and the new start up policy and find out the positive and negative impacts of hassle free market exits on the start-up regime in India and whether the new bankruptcy laws will help in expanding the number of start-ups or will it prove insufficient in attracting start-up entities in the Indian market.

2. OBJECTIVES AND SALIENT FEATURES OF THE ACT

As mentioned above, the major objective behind the prospective law is to ensure that, the creditors or investors have a suitable mechanism so as to enable them to recover any investments made in the form of money or tangible assets from the creditors.⁷ It essentially aims to facilitate the ease of doing business in India, where India currently ranks at 130 as per a recent report of the World Bank.⁸ Moreover, a report of the International Monetary Fund and the World Bank released in

⁶ Snigdha Sengupta, *Fine print of India's start-up policy* (July 4, 2016, 11:30 a.m.), <http://www.livemint.com/Opinion/HxCGIWvOyVpMafvEkKZ1nI/Fine-print-of-Indias-startup-policy.html>.

⁷ Ens Economic Bureau, *Insolvency and Bankruptcy Code: A Legislation to promote investments, develop credit markets*, THE INDIAN EXPRESS, December 22, 2015, at 15.

⁸ Aastha Dass, *New Bankruptcy Law to improve ease of doing business* (June, 21, 2016, 12:45 PM), <http://indiatoday.intoday.in/story/new-bankruptcy-law-to-improve-ease-of-doing-business/1/552413.html>.

2014 says that, the total outstanding debts of India amounts to 4.7 billion U.S. dollars which is the amount of foreign debts owed by India to its investors across the world.⁹ Along with a staggering amount of foreign debts India also has a deficit of around 2.5 billion dollars in its reserves and which is attributed to the non-payment of outstanding debts to the creditors.¹⁰ The Ministry of Finance in 2014, observed that India had recorded a Government Debt of 66.40 percent in comparison to the GDP as a result of which India is among the top 20 countries in the world with a government debt to GDP ratio.¹¹

The new act is aimed at ensuring that recovery of debts and assets can happen in a hassle free manner, without causing much undue stress to the one who has invested in any form of business or has loaned out money or similar things to someone in need.¹² Before the passing of this prospective law, the biggest problem with the other legislations was that there were issues with regards to the application of legislations in the

⁹ The World Bank, *External Debt Stocks*, total (DOD, Current US\$), (June 14, 2016, 11:45 AM), <http://data.worldbank.org/indicator/DT.DOD.DECT.CD>.

¹⁰ M Allirajan, *India's External Debt Continues To Climb*, The Times of India, April 3, 2015, at 5.

¹¹ Ministry of Finance, Government of India, Government Debt, Status Paper, (June 20, 2016, 11:40 AM), http://www.finmin.nic.in/reports/GOVT_DEBT_July2013.pdf.

¹² Shaji Vikraman, *Explaining the Bankruptcy Law and the need to Have One*, THE INDIAN EXPRESS, November 5, 2015, at 12.

specific cases, i.e. under what condition what law was to be made applicable and which court would have the jurisdiction was a matter of utter confusion which further delayed the process of debt recovery in India.¹³ Therefore, the new legislation is a comprehensive attempt at not only ensuring debt recovery but it aims to provide for a single legislation under whose ambit all possible cases in relation to debt recovery can be covered and thereby jurisdiction of the courts or other tribunals can be decided which are to adjudicate the matters on a case to case basis.¹⁴ The act in question not only lays down essentially as to manner of debt-recovery, but in addition to that also facilitates the market exit of the companies or corporate houses who want to voluntarily exit the market through the winding-up process.¹⁵ Moreover, it further code states that the winding up process is to be done in a period of 180 days extendable up to 90 days, which is the period in which winding up process is to be done.¹⁶ If there is any fast track insolvency process which is supposed to take place, then

¹³ INDIA Juris, The Insolvency and Bankruptcy Bill, (June 18, 2016, 11:45 PM), <http://www.indiajuris.com/newsletter/pdf/bankruptcy-bill-2015.pdf>.

¹⁴ ENS Economic Bureau, *Debt and Redemption: Bankruptcy Bill Decoded*, THE INDIAN EXPRESS, May 15, 2016, at 13.

¹⁵ Vinod Kothari, *Ushering in a New Corporate Bankruptcy Regime in India*, (June 18, 2016, 11:45 PM), <http://indiacorplaw.blogspot.in/2015/11/ushering-in-new-corporate-bankruptcy.html>.

¹⁶ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 14 cl.4.

in such a case, the process can be done within 90 days extendable to a period of 45 days.¹⁷ It has often been observed that, in relation to debt recovery disputes are seen between the creditors and investors, however, the present law intends to formulate a process by which disputes can be resolved amicably and the actual amount for debt repayment can be decided by the creditor and investor before the company goes into the process of liquidation.¹⁸

As per a recent notification released by the Ministry of Finance, Government of India, the proposed legislation is aimed at recovery of an amount of Rs. 8 lakh crores, thereby streamlining the insolvency process in the country, which had earlier been governed by as many as eleven legislations including the presidency legislations and also the Recovery of Debts Act 1993, and aims at introducing one single legislation for recovering the debts.¹⁹ In addition to the above, the newly passed legislation, aims at establishment of National Debts Recovery Tribunal and National Company Law Tribunal for

¹⁷ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 14 cl.5.

¹⁸ Remya Nair, *Bankruptcy Law to be Rebooted*, LIVE MINT E-PAPER, July 19, 2016, at 14.

¹⁹ Arup Roychoudhury, *Rajya Sabha Passes Bankruptcy Code*, BUSINESS STANDARD, May 12, 2016, at 17.

the systematic recovery of debts.²⁰ The new law further also states that the insolvency professionals will be responsible for handling the matters pertaining to insolvency and information utilities are to receive and utilize information pertaining to insolvency processes and provisions are sought to be made for easing of cross-border insolvency.²¹ The major objective behind the newly proposed law is the facilitation of debt-recovery by virtue of reduction of procedural delays associated with it and ensuring that it happens within reasonable time.

3. MAJOR PROVISIONS AND INTENTION BEHIND INDIA'S NEW START-UP POLICY

In order to analyze effectively the effect of the new Insolvency and Bankruptcy Code 2016 on the start-up policies and start-up market in India, it is first important to mention the intentions and major provisions of the new start-up policy and the objectives intended to be achieved by it.²² The biggest impediment to the growth of the start-up culture in any country is the amount of legal formalities required to start-up a new

²⁰ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 211.

²¹ Ministry of Finance, Press Release, *Parliament Passes the Insolvency and Bankruptcy Code*, (July 19, 2016, 7:00 AM), http://finmin.nic.in/press_room/2016/InsolvencyBankruptcyCode2016.pdf

²² Sameer Kumar, *Startup India: Key Announcements In The Action Plan Unveiled By PM Modi*, THE NEW INDIAN EXPRESS, January 16, 2016, at 14.

business and the time and energy needed to do start one's company or firm.²³ Though India traditionally has been a favorable market for Foreign Direct Investment (FDI), however, the procedural formalities associated with starting-up in India has been the major reason for India's backwardness in the growth of start-up culture.²⁴ For example, to start-up a new business, the legal and procedural formalities take place within 7 days, and in Singapore, a business can be started up in 24 hours, therefore making it the most favorable destination for starting-up a new business.²⁵

The new policy under the supervision of Prime Minister Mr. Narendra Modi and the Finance Minister Mr. Arun Jaitley, intends to do away with the procedural delays and legal hassles, with the objective of making India a hub for promoting

²³ Vinay Vaish, *India: A Legal Business Guide for Start-Ups*, (July 26, 2016, 11:30 a.m.), <http://www.mondaq.com/india/x/456322/Securities/A+Legal+Business+Guide+For+Startups>,

²⁴ Ramanuj Mukherjee, *Why Indian Entrepreneurs struggle with the legal system and the bare essentials they need to know: Early-stage, pre-investment startups*, (July 23, 2016, 5:30 p.m.), <http://blog.ipleaders.in/why-indian-entrepreneurs-struggle-with-the-legal-system-and-the-bare-essentials-they-need-to-know-early-stage-pre-investment-startups/>.

²⁵ Peter Cohan, *Lessons on Start-up Commons from Hong Kong and Singapore*, (July 21, 2016, 7:00 p.m.), <http://www.forbes.com/sites/petercohan/2013/01/21/lessons-on-start-up-commons-from-hong-kong-and-singapore/#45c833296736>.

start-up culture.²⁶ As per a report of the World Bank in 2015, India improved its ranking in the ease of doing business, by moving up 12 places from 142 to 130 which is the biggest improvement among the South-East Asian economies.²⁷ Though this is considered to be a major improvement in the ease of doing business, however considering that India has always been a favorable market for Foreign Direct Investment (FDI), it is essential to take measures in order to improve the market conditions to make setting up of new business favorable for newly turned entrepreneurs.²⁸ Therefore, the aforesaid start-up policy intends to not only improve India's rank in improving the business regime in India but also provide a favorable environment i.e. a startup ecosystem to encourage new businesses and investments in the country.²⁹

The start-up India policy defines, a "Start-up" as an entity, if it has not completed five years since the date of its incorporation, or if its turnover has not exceeded 25 crores in the previous financial year and it works for innovation, development of

²⁶ Maulik Vyas, *On-Call Attorneys: Legal Support for start-ups with shoe-string budgets*, THE ECONOMIC TIMES, February 8, 2014, at 14.

²⁷ World Bank Group, *Ease of Doing Business in India* (July 8, 2016, 5:00 p.m.), <http://www.doingbusiness.org/data/exploreeconomies/india/>.

²⁸ K. George Varghese, *India moves up in 'ease of doing business' ranking*, THE HINDU, October 28, 2015, at 16.

²⁹ Economic Times Bureau, *Ease of Doing Business: India improves ranking, Singapore tops the list, says World Bank*, THE ECONOMIC TIMES, at 14.

technology and new products by making use of existing technology and intellectual property.³⁰ The new Start-up action plan has the following essential features to encourage new businessmen and angel investors in investing in Indian markets:³¹ a) Tax exemption is to be provided to the start-ups on capital gains for the first 3 years b) provided that start-ups comply with the important labour and environment law statutes, they can go for self-certification c) Support to the start-ups by provision of funds worth Rs. 10,000 crore d) Tax exemption on Investments above Fair Market Value.

In order to do away with the legal complexities of starting up, the following provisions have been incorporated in order to attract budding entrepreneurs from entering into the business arena in India:

- a) Legal Support and Fast-Tracking Patent Examination at lower costs.³²

³⁰ Department of Industrial Policy and Promotion, Notification No. GSR 180(E), (July 14, 2016, 11:30 a.m.),http://dipp.nic.in/English/Investor/startupindia/Definition_Startup_GazetteNotification.pdf.

³¹ Department of Industrial Policy and Promotion, Action-India Start-Up Policy 2016, (July 12, 2016, 2:30 p.m.),http://dipp.nic.in/English/Investor/startupindia/StartupIndia_ActionPlan_16January2016.pdf.

³² Express News Service, *Start-up India Plan on Jan 16: Modi on Mann Ki Baat*, THE NEW INDIAN EXPRESS, December 28, 2015, at 14.

- b) Simplified procedures for Procurement of Start-ups by Public Sector Undertakings, without requirement of prior experience.³³
- c) A faster market exit regime for start-ups in case of losses, considering the nature of start-up businesses.³⁴

4. EARLY MARKET EXIT AND IMPACT ON START-UPS

Considering the fact that the start-ups use innovation to expand business and are in their nascent stage, they are vulnerable to losses as due to market fluctuations or competitive pressure they may not be able to sustain themselves for a longer period of time.³⁵ A variety of reasons, such as lack of availability of capital for market investments, not getting the desired angel investors for making an investment in the start-ups and lack of resources to keep up with the requirements of a faster-growing economy are some of the innumerable factors which make it difficult for start-up entities to survive the cut-throat

³³ Tess Townsend, *What India's Narendra Modi Can Do for Indian Start-ups*, (July 15, 2016, 7:30 p.m.),<http://www.inc.com/tess-townsend/india-narendra-modi-visit-silicon-valley-facebook.html>.

³⁴ Ruchika Chitravanshi, *Start-Up India Initiative to get a rural avatar as Deen Dayal Upadhyay Rojagar Yojna*, THE ECONOMIC TIMES, March 28, 2016, at 16.

³⁵ Department of Industrial Policy and Promotion, *Start-Up India Action Plan* 2016, (July 21, 2016, 11:30 p.m.),http://dipp.nic.in/English/Investor/startupindia/StartupIndia_Action_Plan_16January2016.pdf.

competition in the market.³⁶ To start-up a new business, a certain amount of capital is invested and in case the investments do not reap the desired benefits, problems arise, as the money invested is stuck up in the market, thereby causing hardships to the start-up entities and the angel investors who have invested their money in the markets.³⁷

The process of winding-up and liquidation under the Companies Act, for example is in itself a cumbersome process which takes a lot of time irrespective of the fact as to whether it is compulsory or voluntarily done.³⁸ Even if a company was to go for a voluntary winding-up, it would require a resolution of board members in a board meeting, payment of fees to liquidator, filing of registration with the registrar of companies which in itself is a tedious process, which complicates the process of company exiting the market.³⁹ Furthermore, if a company is to undergo the process of liquidation, even then there is the requirement of the process of appointment of liquidator, who after his/her appointment is supposed to submit a report to the central government, and afterwards the

³⁶ Economics National Bureau, *Govt. for Simpler entry and exit norms for start-ups*, THE HINDU, January 16, 2016, at 22.

³⁷ Preeti Balwani, *Law and Start-up India Story*, THE ECONOMIC TIMES, January 25, 2016, at 19.

³⁸ T.V. Narayanswamy, *Reopening of Sale Confirmed On Winding-Up*, 17, Corporate Law Adviser Articles, 4, 5 (2012).

³⁹ The Companies Act, 203, No. 18, Acts of Parliament, 2013 (India), § 270.

liquidation process is to take place.⁴⁰ Start-Up entities, under the prevalent laws can either register themselves as a Limited Liability Partnerships (LLP) under the Limited Liability Partnership Act, 2008 or as a Company under the Companies Act 2013.⁴¹

Even though, LLP is a better form of registering a start-up entity, yet entities intending to raise money from the public or a large number of investors, register themselves as companies, and failure to earn profits leads to liquidation and winding-up proceedings which makes exiting the market difficult thereby causing immense financial hardship to the owners and investors.⁴²The new Bankruptcy regime, intends to bring about a change in the financial burdens that arise when either share capital or money invested gets stuck in the market, thereby facilitating the easier exit of start-up entities considering the fact that such businesses are not guaranteed to experience

⁴⁰ The Companies Act, 203, No. 18, Acts of Parliament, 2013 (India), § 361.

⁴¹ Satish Chandra, *Why LLP Is Better for Start-Up*, (July 12, 2016, 11:30 p.m.), <http://www.myonlineca.in/startup-blog/why-llp-is-better-for-startup>.

⁴² Nishith Desai Associates, *Start-Ups All You Need To Know*, (July 12, 2016, 7:00 p.m.),http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Start_-_Ups_What_You_Need_To_Know.pdf.

success after entering into the market.⁴³ The Insolvency and Bankruptcy Code intends to ensure that start-ups unable to register growth in their business can exit the market easily rather than being trapped due to the failure of their own investments or not being able to compete as per the market requirements.⁴⁴

The new Insolvency and Bankruptcy Act (2016) provides for fast-track winding-up proceedings of start-up entities within a period of 90 days pursuant to an application for the winding-up of the company and appointment of the Insolvency professional.⁴⁵ The Insolvency professional can make an application to the adjudicating authority to further extend the proceedings by 45 days, if the need arises in order to ensure efficient winding-up of the start-ups.⁴⁶ It will be the responsibility of the Insolvency Professional, to ensure that the winding-up proceedings and the payment made to the creditors and investors in the form of assets is done within a period of

⁴³ M.H. Bala Subramaniya, *New Generation Start-Ups In India, What can we learn from the past?*, 50, ECONOMIC AND POLITICAL WEEKLY, 4, 5 (2016).

⁴⁴ Rajiv Khaitan, *Government Announces Action Plan for Start-ups and RBI follows suit*, 4, SCC Online, 58 (2016).

⁴⁵ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 56(1).

⁴⁶ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 56(2).

six months.⁴⁷ After the appointment of the insolvency professional, the responsibility of the liquidator will be to ensure that there is a swift closure of business, sale of assets and repayment of creditors in accordance with the provisions of liquidation or winding-up for that purpose.⁴⁸ The liquidation process under the new law will respect the concept of limited liability, i.e. the partners or the directors would be liable only up to the extent of their individual liabilities to the shareholders or the creditors.⁴⁹

Market experts have often viewed the ultimate aim of the start-ups is to survive the tough competition that surfaces in the prevalent business regime by increasing their valuation, by decreasing the valuation of their shares for attracting angel investors or venture capitalists to invest in their business.⁵⁰ Though offering discounts in share values for attracting investors is supposedly a good step in increasing the profits in the business, however, it is also a type of a gamble and that makes start-ups more prone to losses, thereby leading to the

⁴⁷ INDUS Law, *The Start-Up Push*, (July 29, 2016, 11:30 p.m.), <http://induslaw.com/publications/pdf/alerts-2016/march-2016.pdf?src=Website&month=16March2016>.

⁴⁸ *Supra* note at 36.

⁴⁹ Diljit Tutus, Baljit Singh Kalha, *Why Your Start-up should be an LLP*, THE ECONOMIC TIMES, May 27, 2015, at 13.

⁵⁰ Rajeev Chandrasekhar, *With right set of policies, Start-Up India can change India's business landscape*, THE INDIAN EXPRESS, January 16, 2016, at 19.

requirement of easy exit routes for start-up entities.⁵¹ The Hon'ble Minister of State, for Commerce and Industry, Ms. Nirmala Sitharaman observed that, starting a start-up is as important as somebody trying to exit it, thereby it is evident, that the Governmental policies to encourage a start-up ecosystem have to be conjoined with an easy exit route for start-ups who are unable to sustain themselves for a considerable period of time in the market.⁵² Under the previous sub-topic, the rank of India with regards to the Ease of Doing Business, has been mentioned, the purpose behind which is to illustrate the fact that, it is the Governmental policies which play an important role in shaping up the manner in which the start-up culture grows or experiences a downfall during a particular period of time.⁵³ The World Bank has listed out, the following criteria for determining the ease of doing business index.⁵⁴

⁵¹ Shutapa Paul, *Top Entrepreneurs react to India's new Start-up Policy*, FORBES INDIA MAGAZINE, (July 14, 2016, 8:30 p.m.), <http://forbesindia.com/article/startup-india-2016/top-entrepreneurs-react-to-indias-new-startup-policy/41955/1>.

⁵² Ramesh Kumar, *Government working to make start, exit easy for start-ups*, THE HINDU, January 16, 2016, at 18.

⁵³ Sunil K. Goyal, *Modi Government's Policies Impacting Investments In Start-Ups*, BW BUSINESS WORLD (Jul 18, 2016, 5:30 p.m.), <http://businessworld.in/article/Modi-Government-s-Policies-Impacting-Investments-In-Start-ups/07-06-2016-98882/>.

⁵⁴ World Bank Group, *Ease of Doing Business Rankings* (July 8, 2016, 11:30 a.m.), <http://www.doingbusiness.org/rankings>.

- a) The procedures, time, cost and capital requirements for the purpose of establishing a business in a country.⁵⁵
- b) Permits with regard to construction of office space i.e. the time and cost involved with the same.⁵⁶
- c) Whether credit is easily available without legal hassles and wastage of time.⁵⁷
- d) Whether the laws of the country where favorable for investors i.e. the level to which the investors are to disclose about themselves, in case an investment failed, how could they recover the amount.⁵⁸
- e) The level of taxes paid each year to the government.
- f) The amount of hassles involved in foreign investment and cross border trading.

⁵⁵ Simeon Djankoev, "The Regulation of Entry", 27, THE QUARTERLY JOURNAL OF BUSINESS, 17 (2002).

⁵⁶ International Trade Union Confederation, *World Bank takes major step on Labour standards*, (July 19, 2016, 8:30 p.m.), <http://www.ituc-psi.org/world-bank-takes-major-step-on?lang=en>.

⁵⁷ World Bank Group, *Doing Business 2015, Going Beyond Efficiency Report* 12th Edition, (July 15, 2016, 9:30 p.m.), <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB15-Full-Report.pdf>.

⁵⁸ Remya Nair, *World Bank's ease of doing business rankings: Suspense begins for NDA*, (July 29, 2016, 6:30 p.m.), <http://www.livemint.com/Politics/FZCvAzV6qL8AZyYLREKM4K/World-Banks-ease-of-doing-business-rankings-Suspense-begin.html>.

- g) Enforceability of contracts, the time and cost involved and remedies for breach of contractual terms and obligations.⁵⁹
- h) Resolutions of insolvency, the time taken by start-ups to exit the market system, the time and cost needed to recover expenses or failed investments by the investors and the time needed for voluntary winding-up or self-market exit.⁶⁰

From the above mentioned parameters, it can be easily made out that the insolvency resolution process plays a major role in nurturing the start-up business in a country, and the fact that India has a rather complicated insolvency process is a discouraging element in its quest to become a start-up hub considering the immense amount of potential, skill and resources in the country.⁶¹ The author has earlier discussed about the fact that, Singapore is the top most country for starting up a business, with regards to the ease of doing

⁵⁹ Department of Industrial Policy and Promotion, *Initiatives on Improving 'Ease of Doing Business' in India*, (July 23, 2016, 7:45 p.m.), http://dipp.nic.in/English/Investor/Ease_DoingBusiness/EoDB_Intiatives_11December2015.pdf.

⁶⁰ Doing Business Group, *Measuring Regulatory Quality and Efficiency Economy Profile 2016*, India, (July 28, 2016, 8:30 p.m.), [http://www.doingbusiness.org/Reports/Subnational-Reports/~media/giawb/doing%20business/documents/profiles/country/IND.pdf](http://www.doingbusiness.org/Reports/Subnational-Reports/~/media/giawb/doing%20business/documents/profiles/country/IND.pdf).

⁶¹ Rajeswari Sengupta & Anjali Sengupta, *Corporate Insolvency Resolution in India: Lessons from a cross-country Comparison*, 13, *Indira Gandhi Institute of Developmental Research Review*, 15, (2015).

business rankings.⁶² To further eradicate the so-called stigma of being debtors, the threshold limit has been increased from \$10,000 to \$15,000, and the Minister of Law of Singapore, K Shanmugam, further stated that, his change seeks to encourage both debtors and creditors to resolve debts falling below the threshold, without resorting to the formal bankruptcy process. This will help such debtors avoid the inconveniences and social stigma associated with bankruptcy.”⁶³ Before the advent of the new start-up policy recently, the Indian corporate Insolvency regime was channelized by multiplicity of statutory and judicial problems, unlike the regime in Singapore, where a uniform law precedes over all insolvency regimes pertaining to start-up and corporate entities, thereby resolving Insolvency disputes in an effective manner, thereby making market exit hassle free for both the start-up and corporate entities.⁶⁴

Similarly, in New Zealand which is ranked second in the ease of doing business index, also has an insolvency regime which

⁶² World Bank Group, *Singapore Sets Global Standard in Business Regulations, Lao PDR Continues to Trail*, (July 18, 2016, 10:00 p.m.), <http://www.worldbank.org/en/news/press-release/2011/10/20/singapore-sets-global-standard-business-regulations-lao-pdr-continues-trail>.

⁶³ Singapore Business Review, *More debtors to avoid insolvency with proposed changes to bankruptcy laws*, (July 23, 2016, 8:00 p.m.), <http://sbr.com.sg/financial-services/news/more-debtors-avoid-insolvency-proposed-changes-bankruptcy-laws>.

⁶⁴ Sameer Mohan, *Start-Up in India, Stand-Up in Singapore*, (July 28, 2016, 10:30 p.m.), <http://www.rediff.com/money/report/start-up-in-india-stand-up-in-singapore/20160120.htm>.

is favorable for the start-up entities and the liquidation process in New Zealand is hassle free to the extent that, more than the stringency of the laws or the procedures, the liquidation process is carried out by the professional conduct of the lawyers, legal service professionals and the directors of the company or the start-up entities.⁶⁵ In addition to that, if one is to start-up in New Zealand then the companies can start-up with a no-asset procedure, i.e. insolvent individuals can start their business with support from the government and the governmental financial institutions without the need for having any amount of asset for establishment of a new business, after the concerned individual has turned insolvent.⁶⁶

The new Bankruptcy Law is a welcome step with regards to encouraging the start-ups and also helping them to undergo easier liquidation and exit the markets easily in the event of non-profitability in business.⁶⁷ However, before a conclusion is drawn with regards to the credibility of the said law, an analysis has to be made with regards to the provisions of the

⁶⁵ New Zealand Parliament, Insolvency Law Reform Bill- First Reading, (August 15, 2016, 10:30 p.m.), https://www.parliament.nz/en/pb/hansard-debates/rhr/document/48HansD_20060221_00001017/insolvency-law-reform-bill-first-reading.

⁶⁶ Trish Keeper, *New Zealand's No Asset Procedure: A Fresh Start At No Cost?*, 14, QUT LAW REVIEW, 8, (2014).

⁶⁷Debasish Basu, *The Flaws in the Bankruptcy Laws*, The Business Standard, February 7, 2016, at 6.

said law for the purpose of determining its credibility in laying down easier routes for market exit and liquidation for insolvent start-up entities.⁶⁸

5. **INADEQUACIES IN THE INSOLVENCY LAW AND POTENTIAL PROBLEMS FOR START-UP ENTITIES**

The biggest issue in the new laws on insolvency is the fact that, though there has an attempt which has been made herein for the unification of legal procedures associated with insolvency through a single law, yet, the existing laws, have not been repealed, which may lead to a confusion with regards to the fact as to whether the pre-existing laws could still have any effect upon the insolvency regime in the country.⁶⁹ In addition to that, as a matter of general parlance, the insolvency process is to take place within a span of 180 days⁷⁰, and is to be further

⁶⁸ Rajiv Kumar, *Start and Exit Easy for Start-Ups Easy under the Bankruptcy Act*, (August 17, 2016, 9:30 p.m.), <https://taxmantra.com/start-and-exit-easy-for-startups-with-insolvency-act/>.

⁶⁹ Shishir Mehta & Kumar Saurabh Singh, *India: The New Insolvency and Bankruptcy Code, 2016- New Road and New Challenges*, (August 11, 2016, 11:30 p.m.), <http://www.mondaq.com/india/x/495202/Insolvency+Bankruptcy/The+Insolvency+And+Bankruptcy+Code+2016+New+Road+And+New+Challenges>.

⁷⁰ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 12 cl. 1.

extended 270 days,⁷¹ which further complicates the process as start-up entities which do not have enough money or financial security, could be forced to stay inside the market, which could be inconvenient for them, considering the fact that they would aim always for an early exit from the market.⁷²

In addition to that, for insolvency applications to be made and for initiation of the said process, it is necessary for the passing of resolution by at least 75 per cent of the shareholders to carry out the insolvency process.⁷³ The mandatory requirement of 75 per-cent shareholders or members passing the resolution or bringing an interim relief could be managed by corporate entities who have been present in the market, for long to sustain themselves enough and can manage if there is a delay in the winding-up or liquidation process, however, the question arises as to how can start-up entities with less financial resources and investments, could sustain if an undue delay in the insolvency process occurs?⁷⁴

⁷¹ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 12 cl. 2.

⁷² Novo Juris, *Benefits to “Start-Ups” under the Start-up India Action Plan*, (August 15, 2016, 9:30 p.m.), <https://novojuris.com/2016/07/21/benefits-to-start-ups-under-the-startup-india-action-plan/>.

⁷³ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 21 cl. 8.

⁷⁴ ENS Economic Bureau, *Impelement Bankruptcy law in time bound manner: Arun Jaitley to officials*, THE INDIAN EXPRESS, August 24, 2016, at 5.

In addition to that, this act relies upon the professional conduct of the insolvency professionals or the insolvency boards, but the question that arises here is, how a regulatory mechanism can be imposed on them so as to ensure strict compliance with the provisions, as the insolvency laws are deemed to function as per the professional conduct of the individuals.⁷⁵

Therefore considering the ambiguities in the present laws, it can be stated that the laws in question aren't favorable for start-up entities, as they clearly do not talk about the insolvency resolution time period and also considering the fact that unnecessary financial burden is imposed upon the start-up entities, owing to the fact that there is lack of financial power vested with the start-up entities which makes them vulnerable to market changes, and the lacunas in the insolvency process further expose them to crisis considering the lack of financial resources available with them.

6. CONCLUSION

The new Insolvency Law 2016 is a welcome measure which is intended at easing out the procedural lacunas and legal hassles associated with the insolvency resolution process in India. The new law is intended at functioning as a single law or entity

⁷⁵ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), § 15 cl. 3(a).

which is aimed at making the insolvency process simpler, considering the fact that there is an existence of a number of laws whose existence complicates the insolvency process because of which it was inherently essential for having a single legislation to deal with the process. Considering the situation pertaining to the start-up entities, it can be said that though efforts have been made to ensure an easy exit route for them, however, the ambiguities in the provisions of the new law with regards to the time period and professionals who are supposed to carry out the insolvency process as it entirely depends upon their professional conduct more than the laws. Therefore, it can be concluded that though a positive step has been taken with regards to bringing an uniformity in relation to the insolvency laws, however, the lacunas in the provisions have to be addressed to ensure that the same does not cause any unnecessary legal hassles for the start-up entities.