

Comprehensive Guide to
INSOLVENCY AND
BANKRUPTCY
CODE, 2016

Law and Practice



VOLUME 1

Ayush J. Rajani, (FCA, LLB)
Khushboo Rajani, (ACA, LLB)
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B L O O M S B U R Y

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Law and Practice

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Fourth edition
(set of 2 volumes)

Volume 1

Ayush J. Rajani, (FCA, LLB)
Khushboo Rajani, (ACA, LLB)
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FIRST AND FOREMOST, WE THANK GOD
FOR BRINGING US WHERE WE ARE TODAY.

DEDICATED TO

THE STRONGEST PILLARS OF OUR LIVES

OUR PARENTS

WORDS CANNOT JUSTIFY THE SUPPORT YOU'VE GIVEN US.
A BIG THANK YOU FOR EVERY SACRIFICE YOU HAVE MADE FOR US
WHICH HAS ENABLED US TO SOAR NEW HEIGHTS!

This fourth edition is also dedicated to our parents for everything they have done and every sacrifice they have made for us and also especially to our toddler who has been supportive enough to enable us to successfully complete this edition.

Mr. Jayant D. Rajani, Mrs. Nita J Rajani, Mr. Naresh Shah (FCS, LL.B.), Mrs. Alka Shah,
Master Riyaansh Rajani

THANK YOU

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Acknowledgments

This fourth Edition has been an indication of our step-by-step journey as professionals accompanied with encouragement, hardship, trust, failure and success.

We as authors, when we find ourselves experiencing a feeling of fulfilment, realize that while only our names appear on the surface a great number of people including our family members, teachers, well-wishers and our respective professional mentors have contributed towards building “us” as professionals and to accomplish this huge task.

As far as our first edition is concerned, we were extremely fortunate to get a foreword from Ld. Hon’ble Member Shri Mohan Bhaskara Pantula from the Mumbai Bench of Hon’ble NCLT.

We are privileged and deeply obliged that Hon’ble Shri Chandra Bhan Singh Member (Technical), Hon’ble NCLT, Mumbai Bench has written a foreword for the second edition of our book.

Ayush J. Rajani: I am greatly indebted to Mr. Percy Chhapgar (Senior Partner), Mr. Samir Gandhi (Senior Partner) of Deloitte Haskins & Sells, Mumbai, where I was groomed as a Chartered Accountant from my baby steps as an article trainee. Their zeal for perfection, passion and conviction always inspired me to do more and push myself out of the “*comfort zone*”.

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We also acknowledge Miss Alka Adatia for introducing us to the Bloomsbury team in 2019 with whom we are connected till date and have got this opportunity once again to present our one more edition under the IBC laws in India.

We appreciate the support of Mr. Nipun Singhvi (B.Com, BCCD, LLB, LLM, FCA, LCS, M&A – IIM(A), Certified Forensic – IFRS Forensic– Bank Audit (ICAI)). A member of Word Bank, Insolvency Group on “Train the Trainers” jointly with IBBI for training insolvency professionals. He has been a speaker in more than 1000 seminars for ICAI, ICSI and various financial institutions. He has been involved in some of the most talked about cases in India viz. Essar, Swiss Ribbons and Citrus Check Inns to name a few. We thank him for his constant inflow of valuable inputs and technical advice not just for the first edition but throughout the last seven years, since the inception of the Code and wish him all the luck in scaling new heights!

With deep gratitude we would like to thank Mr. Toby Thomas (Business Head) and the entire Bloomsbury team for providing their excellent support during script development and we are grateful for their confidence in us.

We encourage our readers to provide any feedback at feedback@akradvisors.com so that the same can be duly considered in the next edition.

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Foreword to the second edition

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01 March 2021

FOREWORD TO THIS SECOND EDITION

In this pioneering work on the Commentary to Insolvency and Bankruptcy Code, 2016 the authors, Mrs. Khushboo Shah Rajani (A.C.A., LL.B.) and Mr. Ayush J. Rajani (F.C.A.) of AKR Advisors LLP, have put in great efforts to compile and explain the law and the procedure to be practiced before the Hon'ble NCLT and Hon'ble NCLAT while dealing with the provisions under the Insolvency and Bankruptcy Code, 2016.

NCLT and NCLAT are specialized tribunals provided under the Companies Act 2013, as a mechanism for speedy adjudication of matters under the Insolvency and Bankruptcy Code, 2016.

I feel this book has dealt with the most pertinent issues and also incorporates a chapter dedicated to understanding core issues as well as recent landmark jurisprudence on the subject matter.

This book admirably deals with each area of practice under the Insolvency and Bankruptcy Code, 2016 on conceptual basis as also its practical nuances and is up-to-date in respect of various rules and regulations that have been notified so far.

Given their professional background spanning over twelve years, Mrs. Khushboo Shah Rajani and Mr. Ayush J. Rajani are most ably placed to author this book and needs to be complimented for their efforts. I am sure this publication will prove to be a valuable companion for all stakeholders concerned with Insolvency Law including the judges, practicing professionals, lawyers and insolvency professionals.

I wish the authors, the book and the readers – all the best!

SD/-

(Chandra Bhan Singh)

Foreword to the first edition

In this pioneering work on the Guide to Insolvency and Bankruptcy Code, 2016 for professionals, the authors, Mrs. Khushboo Shah Rajani (A.C.A., LL.B.) and Mr. Ayush J. Rajani (F.C.A.) of AKR Advisors LLP, have put in great efforts to compile and explain the law and the procedure to be practiced in the Courts while dealing with the provisions under the Insolvency and Bankruptcy Code, 2016.

National Company Law Tribunal & National Company Law Appellate Tribunal are specialized tribunals provided under the Companies Act 2013, as mechanism for speedy adjudication of matters under the Insolvency and Bankruptcy Code, 2016.

I feel this book has dealt with the most pertinent issues, observations and highlights grey areas that will assist all concerned in understanding the perspective of the Insolvency and Bankruptcy Code, 2016.

This book admirably deals with each area of practice under the Insolvency and Bankruptcy Code, 2016 on conceptual basis as also its practical nuances.

Given their professional background, Mrs. Khushboo Shah Rajani and Mr. Ayush J. Rajani are most ably placed to author this book and needs to be complimented for their efforts and thought- provoking questions. I am sure this publication will prove to be a valuable companion for all those concerned with Insolvency Law including the judges, lawyers and insolvency professionals.

I wish them, the book and the readers – all the best!

SD/-

Mr. Bhaskara Pantula Mohan
Member (Judicial),
Hon'ble NCLT, Mumbai

07 January 2020

Preface

Introduction of Insolvency and Bankruptcy Code, 2016 was speedy and revolutionary and it made its mark immediately within the Indian business and financial environment. The Code ushered in sweeping changes in the financial sector and shocked many defaulting corporates by its impeccable focus and thrust on “creditor-in-charge” mechanism rather than “debtor centric”.

The insolvency legislation has seen a major overhaul, since its introduction in December 2016, with constant amendments and improvisations all the way. The legislation has made earnest attempts to keep an open mind and eye for detail which has led to such constant amendments in its attempt to iron out confusions emanating from the Code.

This book is a passionate work coupled with in-depth research on various issues and provides an insight on grey areas encountered by the authors during their professional practice as “Process Advisors” and practitioners under the insolvency law. An attempt has been made to provide clarity with purposive meaning to the complex issues involved.

This edition takes into considerations all the amendments that have been introduced, including the Insolvency and Bankruptcy Code (Amendment) Act, 2021 as also the measures which the central government have undertaken to combat the loss of business suffered by companies due to the COVID-19 pandemic thereby giving them the protection required from initiation of corporate insolvency resolution process under the Code. The book has its utility to a large section of stakeholders especially legal practitioners, insolvency professionals and lenders and could also come in handy for hon’ble judges of various courts.

We are confident that this book will provide interpretative guidance and will be a great support to law practitioners, insolvency professionals, lawyers, other professionals such as chartered accountants, company secretaries, cost accountants, corporate lawyers, financial institutions, bankers and lenders, judges, judicial officers and students.

1 May 2024

Ayush J. Rajani
Khushboo Shah Rajani
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