

Analysis of the Capital Structure in the Context of Bankruptcy Law Practices in India

Sonia Viswam¹, Dr. Mohammad Zohair²

¹PhD Scholar in Financial Management Department of Business Studies Central University of Karnataka, Gulbarga-585 367

²Assistant Professor, Central University of Karnataka
soniaviswam11@gmail.com¹

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Abstract

The Insolvency and the Bankruptcy Code 2016 lays down new methods for the liquidation of the firm. It intends to decrease the bankruptcy costs. But it is not effective to prevent the build-up of future bad debts. Also, it is combining the aspect of the Debtor oriented procedures as well as the Creditor oriented procedures. The Article 29 A ensures the exclusion of the participation of the persons with criminal and dubious background in the resolution proceedings. This may also help to attract more foreign capital and may decrease the cost of the capital. It will also help firms to be more flexible in raising debts for their investment options. But this weakens the going concern concept of the firms as it does not offer an existence after bankruptcy. The bankruptcy laws in USA are more extensive and suitable to reduce the direct costs related to the bankruptcy. There is no significant difference in the Debt to Equity ratios of the bankrupt companies in India and USA So it cannot be considered as the indicator of bankruptcy.

Keywords; *bankruptcy, leverage ratios, direct costs, going concern*

I. INTRODUCTION

The Insolvency and the Bankruptcy Code is introduced to simplify the bankruptcy proceedings in the Indian economy. The Indian economy is plagued by the proliferation of the non-performing assets which will block the availability of capital for investment. Also, the bankruptcy procedures are governed by several laws which may lead to further confusion. So, there is a dire necessity of a single law to handle all these. The promoters took advantage of the situation to regain the firm through the bankruptcy procedures before the introduction of Insolvency and Bankruptcy Code 2016. The people from the criminal and dubious backgrounds participated in the resolution procedures before. The new code has put an end to that The restructuring and the reorganisation processes related to the bankruptcy procedures can contribute to the going concern concept of the business entity. It will also

reduce the direct costs related to the bankruptcy. The Leverage Ratios of the companies in India and USA will indicate whether they can be an indicator of the bankruptcy status of the company. The study can also throw light in the areas described above. Also, the role of the reserves in relation to the debt is also analysed through the ratios. The collateralisation of assets in the context of the two countries also reveal their significance in relation to the bankruptcy laws.

II. LITERATURE REVIEW

Insolvency Procedures and Categorisation

The Insolvency procedures are different in different countries. They can be mainly categorised into two 1) Debtor oriented procedures 2) Creditor Oriented Procedures. In the Debtor Oriented procedures related to the bankruptcy the entity can declare it as bankrupt and still can go on as a going concern. So, it can reorganise from bankruptcy or can merge with

any other firm as a new entity (Shultz, 1995).

But in the creditor-oriented countries the bankruptcy procedures involve the liquidation procedures. The creditor-oriented countries include UK, Australia, and New Zealand, Germany etc (Franks et.al., 1996).

Also, those firms which are undergoing liquidation, the liquidation charges will be more than the bankruptcy charges to the individual shareholders and the other stake holders. Also, they argue that 50 percentages of the companies that re-emerge from the corporate bankruptcy also perform in the benchmark portfolios. So, in that sense filing for bankruptcy is beneficial for the companies than liquidating the companies (Alderson & Betker, 1996).

In the studies of Franks et. al. (1996), it was shown that the companies in the debtor- oriented countries will file for the bankruptcy not only due to the financial liabilities but also due to other reasons like avoiding unprofitable contracts. So, these have strategic reasons also.

In the studies of Boritz & Karlitz (1987), it was found that the going concern concept is very much essential for a company. All the accounting procedures are based upon that. The 'going concern' concept is one of the basic assumptions of the accounting procedures. If it is invalid the accrual concept and the accounting period concept also becomes invalid.

The definition of insolvency: The inability of a firm to pay off its debt is called insolvency. It is the state where the firm is declared bankrupt. The definition of insolvency will change from country to country. In the United States, the municipalities are declared insolvent. In those cases, their cash flows only are considered. In other cases, the Bankruptcy code takes into consideration the assets and the liabilities of that entity. So even if the municipality possesses assets if it cannot generate the revenue it will be considered as bankrupt. The excess of the

expenditure over the revenues may be an indicator of the financial distress. But in Colombia it is the net of operational savings. In Peru it is the share of current income including transfers. Fiscal responsibility fixes the margin beyond it should not proceed. (Liu & Waibel, 2008).

Bankruptcy Costs and Processes

There are mainly two types of costs related to the bankruptcy. They are the Direct Costs and the Indirect Costs. If the direct costs exceed a certain limit then it will affect the shareholder wealth. The recovery rates of the Assets will be changing from country to country. In France the recovery rate is about 47 %. While it is lower in UK. In the case of India, the legal proceedings will be lengthier process. And the composition of the loan also matters. When the composition is composed of bank loans then it will be leading to a lower amount of the recovery rate. At the same time the subordinated loans also work in the same way. Asquith et. al. (1994) states that the type of creditors matters more. If the creditors consist of both Private and the Public owners then there will be more conflict of Interests. This will delay the bankruptcy process. This is explained in the context of the high yield Bond Maker's Insolvency process.

The Board of Industrial and Financial Reconstruction will make the process lengthier in the context of Indian Bankruptcy proceedings. At the same time there are Indirect costs associated with the bankruptcy proceedings. And these are associated with the alternative investment opportunities available.

Gilsen et. al. (1990) states that there is more propensity to settle the debt out of the court if the asset composition of the debt- ridden firm consists more of the Intangible Assets

Before the Insolvency and the Bankruptcy Code in India there were mainly two main laws with the Bankruptcy proceedings. The first one was the Sick Industrial Companies Act. The other one was the

Securitisation and the Reconstruction of Financial Assets and the Enforcement of Security Interest Act (SARFESI). The importance of the Sick Industrial Companies Act is. such that the if the debt is more than the assets the company should file for the bankruptcy. Or if the losses are more than the net worth the company should file for the bankruptcy. But there is no scope Corporate Debt Restructuring under the purview of this law. In the case of SRAFESI Act if the notice is given to the defaulting debtor for a period of 60 days there is no need to resort to the court . This was possible in the case of the secured creditors. They can directly recover the assets. But there were a lot of cases in the Debt Recovery Tribunal against these recoveries. (mca.org)

Heinkel & Zechner (1993) in their research states that the corporate disclosures is a major element in the cause of the Insolvency of a firm. The Information Asymmetry existing between the creditors and the minor shareholders and the public about the financial position of the firm is causing the problem for the firm.

Bankruptcy laws in USA

In USA if the business person has to file for the bankruptcy under the Chapter 11 of the Bankruptcy laws then the businesses are allowed chances to restructure their debt. This will help them to reduce their debt and this will help them to restart the business once again. This will help them to decrease their debts and repay them in the meantime.

If a business goes for the bankruptcy laws under the Chapter 7, 11 and 13 involves a very lengthy process. In this process the court proceedings are very strict and it will be prevented at any point of the process.

In the Chapter 7 process a creditor the asset is given under the trustee. And the trustee will dispose the assets and repay the debtors. And the rest of the debts is written off. If the creditors try to recover the debts then they will be penalised and there are strict

actions to prevent it. Also, the owners are allowed to keep the assets which are required for their daily requirements like clothing, vehicles etc.

In the Chapter 13 process the bankruptcy laws are based on the reorganisation of the debt. The debt repayment period is allowed between 3 years to years. And in the process, they can reduce their debts. In the case of the secured debts like vehicle loans which are collateralised, the value of the loan principal of the loan can be reduced to the market value of the asset. In this way the process can be simplified. So, the bankruptcy process is categorised into two, the liquidation bankruptcy and the reorganisation bankruptcy. (hg.org)

THE TIME PERIOD TAKEN FOR EACH TYPE OF BANKRUPTCY	
CHAPTER 12 BANKRUPTCY	5 YEARS
CHAPTER 13 BANKRUPTCY	5 YEARS
CHAPTER 11 BANKRUPTCY	IMMEDIATELY AFTER COMPLETEING ALL PAYMENTS
CHAPTER 7	WITHIN 60 60 DAYS (after 341 meeting)

Table 1 (Source: US Courts. gov report)

In the case of the Chapter 7 Bankruptcy proceedings it will occur after the Bankruptcy is filed with the clerk and within 4 months after that. For all those people who have filed for the Bankruptcy there is Creditors Counselling and Debtors Educational Programme. This should be approved by the Bankruptcy Trustee. The Bankruptcy proceeding will finish only after the Instructional Programme is completed. Also, the Creditors and Debtors Education Programme need not take place at the same time. It can take place in the different times like the Creditors counselling before filing the bankruptcy and the debtors educational programme after filing for the bankruptcy. (USCourts.gov)

The Agency theory proposed by Jensen and Meckling (1976), has suggested that there are

agency costs associated with the interests of the stakeholders, shareholders and the creditors. There are mainly three costs associated with the agency costs 1) control costs 2) the remuneration costs given to the creditors for bearing the risk 3) the bankruptcy costs. But the level of the conflicts will decrease between the shareholders and the creditors when the debt of a firm is high and nearing to bankruptcy. Due to this the managers may use the conscious use of the debt to decrease the conflicts inside a firm.

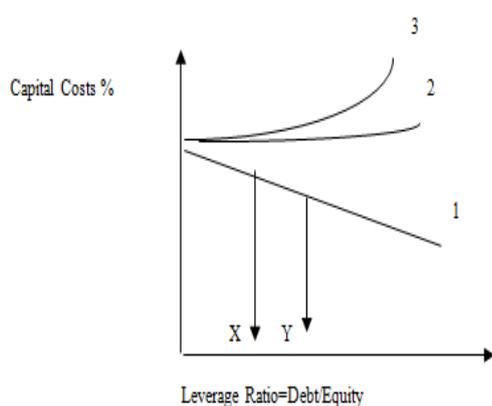


Figure 1 (Source: Jensen & Meckling,1976)

Here 1 indicates the cost of the capital when there is only fiscal costs. 2 indicates the cost of the capital when there is fiscal cost and the bankruptcy costs. The option 3 indicates when there is fiscal cost, bankruptcy costs and the agency costs. In the 3rd option the optimal capital structure is at a lower level than the 2nd option.

III. METHODOLOGY

The study is mainly based on the secondary data. The data regarding the Insolvency act is analysed on the basis of the previous researches by cross comparisons. The leverage ratios of the 2 bankrupt companies in India and 2 bankrupt companies in USA are collected. The Leverage Ratios are “Long Term Debt/ Equity, Long Term Debt/ Equity+Reserves, Total Debt/Equity, Total Debt/ Equity+Reserves, Total Debt/Total Assets, Long Term Debt/Total Assets”. They belong to different sectors. And Analysis of Variance is done with the

help of SPSS on the data. The collateralisation of the assets is also analysed on the basis of the t test and One-way ANOVA. The companies selected for the study are ‘Essar Steel’ and ‘Monnet Ispat’ belonging to Steel Industry sector in India whereas the companies selected in the USA are ‘Sears Holdings’ and ‘General Motors.’ ‘Sears Holdings’ is a retail industry whereas ‘General Motors’ is the automobile industry. The “Collateralisation of the Assets” which is the ratio of the “Tangible Assets to the Total Assets” is also collected for the company. So, the analysis is both qualitative and quantitative which is a triangulation approach.

IV. FINDINGS AND DISCUSSIONS

The majority of the bank debts fall under the category of core sectors. The amount of the bad debt is around 60-70% of the total bad debt. The traditional methods of sale are not so helpful in the case of the companies to recover their debts. In this context the insolvency and the bankruptcy code was introduced. The Essar Steel is one of the companies taken over by the insolvency and the bankruptcy code. This will also prevent those promoters who have are responsible for a major share in the non-performing assets to come and acquire the company through fraudulent means. The efficiency of the bankruptcy practices will increase the global competitiveness of every company. If there is more transparency in the system and the institutional capacity to handle the problems then there will be more foreign investment which will help the different sectors in India. Also, it will help to integrate the Indian practices with the global practices. The security of the Indian market is existent on its capacity to draw foreign invest. This will accelerate the growth of the Indian market. (economictimes.com)

The Insolvency and the Bankruptcy Code is introduced in 2016 and the National Company Law Tribunal is acting as the appellate authority for the handling of the cases. And the Insolvency Resolution Professional is acting as the agent for

resolving the cases under the resolution process. This introduces changes in the persons who can issue the demand notices. The demand notices can only be issued by the operational creditors. But the Supreme Courts resolution in the case brings about the changes in the definitions of the operational creditors. The operational creditors also include the lawyers and the authorised agent. In that respect the lawyers are also eligible for the issuance of the demand notices. In United States the recovery procedure is under the Financial Institutions Reform, Recovery and Enforcement Act 1989(FIRREA). (moneycontrol.com)

The Arcelor Mittal Industries failed as the bidder for the Essar Steel based on the new guidelines for the Insolvency and the Bankruptcy Code.

The industries under the Insolvency and Bankruptcy code provisions are the 1) Binani Cement 2) Jaypee 3) Bhushan Power and Industries 4) Videocon Industries 5) Essar Industries

Finquest has initiated the bankruptcy proceedings against Reid and Taylor. They have appointed the Insolvency Resolution Professional. Nitin Kasliwal who is the promoter of S kumar company also will not get a chance to participate in the insolvency proceedings. Reid and Taylor has defaulted a loan around 750 crore.

The plea for the insolvency is submitted to the National Company Law Tribunal for either accepting or rejecting the plea for the insolvency. The maximum time allowed is 14 days. And the whole procedure will take around 180 days which is extendable to 90 days. These are done by an Insolvency Resolution Professional.

	Before	Now
The power shift	The power lies on promoters and shareholders	The power is on a committee of creditors
The	Less opportunities	The business

insolvency chances	for a second chance	may get a second chance
Laws related	Different laws are controlling	Controlled by single law and framework

Table 2 (Source: economictimes.com)

THE LAWS WHICH ARE SUBSTITUTED BY THE INSOLVENCY AND BANKRUPTCY CODE
SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002
RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT 1993
CONTRACT ACT
SICK INDUSTRIAL COMPANIES ACT
COMPANIES ACT 1956

Table 3 (Source: economictimes.com)

The process of Insolvency and Bankruptcy Act 2016

The default amount should be 1 lakh or more -----
----The application is submitted by Operational Creditors/Financial Creditors/Corporate Debtors to the National Company Law Tribunal-----The asset recovery and transfer decisions take 180 to 270-day period-----If 75 % of the creditors agree for the revival the firm will go for a second chance of revival /not agree goes for the insolvency or bankruptcy procedures.

The Insolvency Resolution Professional who is appointed by the National Company Law Tribunal will be dealing with liquidating proceedings. They will form a liquidation trust and they take the inventory of all the assets and assess their values. After that the assets are redistributed and the debtors

are disposed off. (economicstimes.com)

THE INSOLVENCY RELATED PROBLEMS STILL NOT SOLVED BY THE ACT
THE LACK OF CAPITAL FOR THE REFINANCING BANKS
PROVISIONS TO PREVENT THE BUILD UP OF THE BAD LOANS IN A FIRM
LACK OF A FAIR MECHANISM TO ASSURE THE FAIR VALUE FOR THE ASSETS DISPOSED
EASY CHANCE FOR SOME RIVALS TO ACQUIRE THE COMPANY WITH MUCH LESS PRICE
PROTECTION FOR THE HOMEBUYERS
MORE PROVISIONS FOR THE SMES
MORE GUIDELINES FOR THE ASSETS RECOVERY PROCESS

Table 4 (Source: economicstimes.com)

THE STATISTICS OF THE CASES FILED AFTER THE IMPLEMENTATION OF THE LAW		
No. of cases originally filed in NCLT	No. of cases transferred from the High Court	Total
2434	2304	4738
Cases disposed	Cases pending	
2750	1988	

Table 5 (Source: Presented in Loksabha as on November 30 2017)

Section 29 A of the Insolvency and the Bankruptcy Code

This defines the persons who are not eligible to

submit the resolution plan

1. A purposeful defaulter according to the Banking Regulation Act 1949
2. Somebody adjudicated as insolvent
3. The promoter of the asset which is classified as the non performing asset
4. The person who is disqualified to become the director of any company under the Companies Act 2013.
5. Somebody who is punished for some offence for 2 years or more.
6. Anybody who has been the partisan of the extortionate transaction, preferential transaction or undervalued or any other kind of fraudulent transaction or the promoter of the company involved in those transactions
7. Any person disqualified by the Securities and Exchange Board of India. (ibbi.gov.in)

The Section 235 A presents the penalties for the violation of this act. If this act is violated it will lead to a penalty of 1 lakh rupees which can even extend to 2 crore rupees. This law is applicable to individuals, corporate debtors, partnership firms and other proprietorship firms and personal guarantors. (ibbi.gov.in)

There was an increase in the bankruptcy in USA in the month of July 2019 in comparison to the bankruptcy filings in June 2018.

BANKRUPT COMPANIES IN USA		
	No. of Bankruptcies	
Jun-18	62241	3 % increase
Jul-19	64283	

Table 6 (Source: nypost.com)

In India under there were mainly three Agencies for the recovery of the debt under the SRAFESI Act. They were: Lok Adalat, Debt Recovery Tribunal and the SARFESI Act proceedings. The Debt Recovery Tribunal's recovery always lay below the SARFESI Act recoveries from years 2005-06 to 2016-17. But only in the year 2008-09 the recovery

of the debt by the Debt Recovery Tribunal was almost twice the recovery by the SARFESI Act. The involvement of Lok Adalat is considerably low for the bankruptcy proceedings. (rbi.org)

ESSAR STEEL on Indian Rs. Crore						
YEAR	EQUITY	RESERVES	Equity +Reserves	LONG TERM DEBT	SHORT TERM DEBT	TOTAL ASSETS
2006	581.17	1246.18	1827.40	7355.20	650	120037
2007	1140.48	3080.95	4221.40	6533.32	410	11411.20
2008	1140.48	3447.25	4587.70	5383.11	733	10747.90
2009	1140.48	3554.28	4694.80	6317.62	994	12049.80
2010	2213.73	6838.7	9052.40	16596.35	1591	27316.80
RATIOS	LTD/Equity	LTD/Eq+Reserves	TD/EQUITY	TD/Eq+Reserves	TD/TA	LTD/TA
2006	12.66	4.03	13.78	4.38	1.06	0.06
2007	5.73	1.55	6.09	1.64	1.57	0.57
2008	4.73	1.17	5.36	1.33	1.5	0.50
2009	5.54	1.35	6.41	1.56	1.52	0.52
2010	7.50	1.83	8.22	2.01	1.61	0.61

Table 7 Leverage Ratios (Source: Compiled from Annual Report Monnet Ispat)

Here Secured Debt is considered as Long-Term Debt and the Non-Secured Debt is considered as the Short-Term Debt.

Monnet ISPAT(Consolidated) in Indian Rs. Crore						
YEAR	EQUITY	RESERVES	Equity +Reserves	LONG TERM DEBT	SHORT TERM DEBT	TA
2013	248.75	2570.7294	2819.48	6444.04	1613.421	12772.72
2014	240.84	2598.8036	2839.65	5377.26	985.0896	10687.31
2015	240.84	1176.8457	1417.69	4999.34	1645.547	11038.54
2016	20079	3.913E-05	5.9E-05	0.00047	0.000174	0.001009
2017	200.79	-1346.68	-1145.89	5247.99	1831.94	9077.11
RATIOS	LTD/Equity	LTD/Eq+Reserves	TD/EQUITY	TD/Eq+Reserves	TD/TA	
2013	25.91	2.29	32.39	2.86	0.63	
2014	22.33	1.90	26.42	2.24	0.60	
2015	20.76	3.53	27.59	4.69	0.60	
2016	23.58	8.00	32.24	10.93	0.64	
2017	26.14	-4.58	35.26	-6.18	0.78	

Table 8 Leverage Ratios (Source: Compiled from Annual Report Monnet Ispat)

Sears Holdings (Consolidated)in Million US\$							
YEAR	EQUITY	RESERVES	Equity +Reserves	Less Treasury Stocks	LONG TERM DEBT	SHORT TERM DEBT	TA
2013	9298	885	10183	-3172	8414	1177	19340
2014	9298	-480	8818	2183	2834	1415	18261
2015	9189	-2162	7027	-945	3087	689	13185
2016	9173	-3291	5882	-1963	2108	868	11337

2017	9130	-5512	3618	-3824	3573	590	9362
2018	9063	-5895	3168	-3723	2249	1883	7262
RATIOS							
	LTD/Equity	LTD/Eq+Reserves	TD/EQUITY	TD/Eq+Reserves	TD/TA		
2013	0.91	0.83	1.03	0.94	0.50		
2014	0.31	0.32	0.46	0.48	0.23		
2015	0.34	0.44	0.41	0.54	0.29		
2016	0.23	0.36	0.32	0.51	0.26		
2017	0.40	0.99	0.46	1.15	0.44		
2018	0.25	0.71	0.46	1.30	0.57		

Essar Steel In Crores			
	Property	TA	
2006	10447.54	120037.13	0.09
2007	13554.19	11411.19	1.19
2008	14688.87	10747.91	1.37
2009	15367.85	12049.75	1.28
2010	16329.22	27316.80	0.60

Table 9 Leverage Ratios (Source: Compiled from Sears Holdings)

General Motors (Consolidated) in Million US\$							
YEAR	EQUITY	RESERVES	Equity +Reserves	Less Comprehensive loss	LONG TERM DEBT	SHORT TERM DEBT	TA
2013	28795	13816	42611	42607	22025	14158	166344
In Renminbi							
2014	8803180269	21017323468	2.98E+10		0	0	4E+10
2015	8803180269	2338020279	1.11E+10		0	0	4E+10
In Million US \$							
2016	26998	26168	53166	43836	51326	23797	221690
2017	25385	17627	43012	35001	67254	26965	212482
							TD/TA
RATIOS	LTD/Equity	LTD/Eq+Rerserves	TD/EQUITY	TD/Eq+Reserves			
2013	0.76	0.52	1.27	0.85	0.22		
2014	0	0	0	0	0		
2015	0	0	0	0	0		

2016	1.90	0.97	2.78	1.41	0.34
2017	2.65	1.56	3.71	2.19	0.44

Table 10 Leverage Ratios (Source: Compiled from Annual Report Essar Steel)

COLLATERALISATION OF ASSETS

Essar Steel In Crores			
	Property	TA	
2006	10447.54	120037.13	0.09
2007	13554.19	11411.19	1.19
2008	14688.87	10747.91	1.37
2009	15367.85	12049.75	1.28
2010	16329.22	27316.80	0.60

Table 11 (Source: Annual Report Essar Steel)

Sear Holdings In Crores			
	Property	TA	
2013	1875	19340	0.10
2014	1850	18261	0.10
2015	6402	13185	0.49
2016	3967	11337	0.35
2017	770	9362	0.08

Table 12 (Source: Annual Report Sears Holdings)

Monnet Ispat In Crores			
	Property	TA	
2013	4510.19	15447.73	0.30
2014	7104.66	16486.41	0.43
2015	7075.72	13989.94	0.51
2016	6360.87	15017.38	0.45
2017	6421.39	13652.17	0.47

Table 13 (Source: Annual Report Monnet Ispa)

General Motors in Crores			
	Property	TA	
2013	25867	166344	0.16
2014	3304.10	3768.27	0.88
2015	3818.05	4239245	0.90
2016	32603	221690	0.15
2017	36253	212482	0.17

Table 14 (Source: Annual Report General Motors)

Tests of Between-Subjects Effects						
Source		Type III Sum of Squares	df	Mean Square	F	Sig.
COMP	LTD E	1768.541	3	589.514	138.435	.000
	LTD ER	11.498	3	3.833	.689	.572
	TDE	2983.578	3	994.526	142.146	.000
	TDE R	20.078	3	6.693	.665	.586
	TDT A	4.703	3	1.568	57.526	.000
	LTD TA	.421	3	.140	6.461	.005

Table 15: ANOVA Analysis Table

The “ANOVA” analysis compares the “Leverage Ratios” of the companies selected in India and USA. Here LTDE indicates the “Long-Term Debt to Equity”. LTDER indicates the “Long-Term Debt/Equity+Reserves”. TDE indicates the “Total Debt to Equity”. TDER indicates “Total Debt to Equity +Reserves”. TDTA indicates “Total Debt to Total Assets”. LTDTA indicates “Long Term Debt to Total Assets”.

Levene's Test of Equality of Error Variances ^a				
	F	df1	df2	Sig.
LTDE	3.324	3	16	.046
LTDER	2.589	3	16	.089
TDE	4.467	3	16	.018
TDER	2.851	3	16	.070
TDTA	1.746	3	16	.198
LTDTA	2.013	3	16	.153

Table 16: Levene's Test

Descriptive Statistics				
	COMP	Mean	Std. Deviation	N
LTDE	E	7.2282	3.19857	5
	GM	1.0631	1.17981	5
	MI	23.7414	2.31040	5
	SH	.4334	.27000	5
	Total	8.1165	9.83194	20
LTDER	E	1.9850	1.16658	5
	GM	.6092	.66868	5
	MI	2.2245	4.51186	5
	SH	.5866	.30097	5
	Total	1.3513	2.30012	20
TDE	E	7.9705	3.41057	5
	GM	1.5501	1.66454	5
	MI	30.7799	3.67474	5
	SH	.5360	.28222	5
	Total	10.2091	12.76410	20
TDER	E	2.1851	1.25147	5
	GM	.8905	.94217	5
	MI	2.9081	6.13580	5
	SH	.3922	.39965	5
	Total	1.5940	3.08753	20
TDTA	E	1.4533	.22304	5
	GM	.2000	.19928	5
	MI	.6499	.07522	5
	SH	.3444	.11786	5
	Total	.6619	.52008	20
LTDTA	E	.4533	.22304	5
	GM	.1361	.14028	5
	MI	.5016	.04822	5
	SH	.2784	.12338	5
	Total	.3423	.20123	20

Table 17: Descriptive Table

V. ANALYSIS AND INTERPRETATIONS

India is a creditor-oriented country since the bankruptcy proceedings are ending in the liquidation process (Shultz,1995; Franks et al,1996). The role of the new law gives the power for the insolvency proceedings on the committee of the creditors. The law also replaces a number of laws by a single law which will lead to more clarity and less ambiguity in the insolvency proceedings. Subsequently it will decrease the information asymmetry in the market. But at the same time, it will prevent several promoters who are responsible for the non-performing assets from acquiring the firm. So, this may assure a fair value for the firm. On the basis of the past researches which indicate that the 50 % of

the bankrupt firms after the revival perform better indicates the opportunity offered by the option of the committee of the creditors which agree for the revival .So in this aspect the insolvency code leads to the debtor oriented categorisation to the Insolvency and the Bankruptcy code since there is a chance for the firm to function as the 'going concern' entity 'even after the filing of the bankruptcy (Shultz,1995). The Insolvency and the Bankruptcy code is weakening the 'going concern' concept of a firm. The bankrupt firm is not considered as an existing entity. The lesser information asymmetry and the expected foreign capital availability due to the act and also the strict guidelines issued by the act under 29 A which will prevent the fraudsters from participating in the insolvency proceedings will decrease the bankruptcy costs which will further decrease the cost of the capital. And the optimal capital structure may get flexibility to move towards a higher leverage level on the basis of the Jensen and Meckling model (1976) of the leverage ratio which states that the optimal debt to equity ratio when the bankruptcy costs are more will be shifted towards a lower debt to equity ratio. The Section 29 A strictly prevents anybody from dubious background in participating with the bankruptcy proceedings which will add to the credibility and transparency in the capital market of India. The bankruptcy laws in USA are more extensive and suitable to reduce the Direct Cost related to bankruptcy. There are better chances for reorganisation.

The Analysis of Variance shows that the Leverage Ratios Long Term Debt/Equity(LTDE) Long Term Debt/Equity+ Reserves(LTDER),Total Debt/equity(TDE),Total Debt/ Equity+ Reserves(TDER),Total Debt/Total Assets(TDTA),Long Term Debt/Total Assets(LTDTA) with reference to the Independent Variable the Type of the Company (COMP) .The analysis shows that LTDTE ,TDTA and LTD TA ,TDE are significant (<.05). That means that they are different from company to company. At the same

time the ratios LTDER, TDER are insignificant (>0.05). That means these ratios will not differ from company to company. So there no requirement of the country wise analysis for the ratios which do not vary but the LTTDER and TDER requires a country based strategic approach. So, the Long-Term Debt as well as the Total Debt varies based on the Reserves of the respective companies' in the country wise context. This is further corroborated by the descriptive analysis of the Companies which shows considerable deviance in the "Long-Term Debt" and the "Total Debt" in the context of the reserves. The analysis of the Collateralisation Ratio in the context of the companies proves that Sample Mean of only Essar Steel is different from others (P value 0.21 ; <0.05). But in the case of other companies P value greater than 0.05 . So, this indicates that their means are not different from each other. So, the collateralisation of debts is not different in the context of these companies in India and USA. Here the Levene's Test for the Homogeneity of Variance value is >0.05 . That means there is no significant difference in the variance of the variables. Homogeneity is obeyed. Also, the basic assumption of normality is also followed by the sample. While analysing the value of the ratios from the Table 8 to 11 it can be found out that Total Debt to Total Assets Ratio are better for General Motors, then for Sears Holdings, then for Monnet Ispat, worst for Essar Steel even though Monnet Ispat and Essar Steel are Steel companies. But the Debt to Equity Ratios are similar for them which means the Debt should always be in proportion to equity the ideal ratio proposed to be 2:1, but for these companies it can be found normally the ratios are near to 2 for Monnet Ispat and Essar and around 0.5 for Sears Holdings and General Motors. So, on the basis of the above companies there is no generalisable pattern in the debt to equity ratio in the inter-country context. At the same time in the context of USA debt is lower than Equity. And in the context of India, Debt is higher than the Equity. Also analysing the bankruptcy polices after the implementation of

the bankruptcy code there is an increased chance of the repayment of the creditors. This will automatically reduce the cost of the capital which will be beneficial to the firm (Funchal & Clovis,2009).

VI. CONCLUSIONS

The Insolvency and Bankruptcy code has got the debtor oriented as well as the creditor-oriented aspects which may make Indian economy more attractive for investors. The debtor weakens the 'going concern' concept of the firm. The proposed benefits of lesser information asymmetry, increased availability of capital and the decreased bankruptcy costs may help firms to raise more debt for investments. Article 29 A assures of the exclusion of fraud and dubious background participants. Debt to Equity Ratio is not an indicator of bankruptcy and is not varying from sector to sector of bankrupt companies. The decrease in the bankruptcy costs will give the scope for the firm to finance more through debt and may will further help the growth of the company. There is a deviance from the ideal Debt to Equity ratio of (2:1) for the bankrupt companies in the USA. So, the description of the bankruptcy cannot be done in a generalised way an international context on the above ratio. The bankruptcy of a company requires the specific analysis of the debt financing patterns, with reference to the Reserves of the company for both the Total Debt as well as the Long-Term Debt in an inter-country analysis.

REFERENCES

- [1] Alderson, M.J. & Betker, B.L. (2012). Managerial Incentives, Net Debt and Investment Activity in all Equity Firms. *Studies in Economics and Finance*. Vol29. No4
- [2] Asquith, P., Gertner, R., Scharfstein, D. (1994). Anatomy of financial distress: an examination of junk bond issuers. *Quarterly Journal of Economics*, Vol. 109 No. 6, pp. 1055-1084
- [3] Boritz, J & Kralitz, E. (1987). Reporting on Condition: auditing the going concern assumption.

- CA Magazine , March,pp67-70
- [4] Franks,J., Nyborg,K. & Torous,W. (1996). A comparison of US, UK and German insolvency codes. ,Financial Managment,Vol 25,No 3,pp86-101.
- [5] Gilson, S., John, K. & Lang, L.H. (1990). Troubled debt restructurings: an empirical study of private reorganization of firms in default. Journal of Financial Economics, Vol. 27 No. 3, pp. 315-353
- [6] Funchal,B & Clovis,M.(2009).Firm’s Capital Structure and the Bankruptcy Law Design. Journal of Financial Economic Policy.Vol1.No3
- [7] Heinkel, R.& Zechner, J. (1993). Financial distress and optimal capital structure adjustments. Journal of Economics and Management Strategy, Vol. 2 No. 3, pp. 531-565.
- [8] Jensen,M & Meckling, W(1986). Theory of the firm: managerial behaviour, Agency costs and Ownership structure. Journal of Financial Economies pp 3-4
- [9] Liu,L.,& Waibel,M.(2008).Sub National Insolvency: Cross country Experiences and lessons. WorldBank,Economic Policy and Debt Department.
- [10] <https://economictimes.indiatimes.com/industry/banking/finance/banking/page-11-let-bankruptcy-code-evolve-but-dont-lose-sight-of-its-spirit/articleshow/63163493.cms>[Accessed 28/2/2018]
- [11] <https://www.moneycontrol.com/news/business/economy/insolvency-and-bankruptcy-code-2016-spreading-its-wings-2504589.html>[Accessed 1/3/2018]
- [12] <https://economictimes.indiatimes.com/industry/banking/finance/how-insolvency-and-bankruptcy-code-lays-down-a-robust-framework-to-deal-with-distressed-assets/articleshow/62583210.cms>[Accessed 2/3/2018]
- [13] http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Jan/182066_2018-01-20%2023:35:29.pdf[Accessed 2/3/2018]
- [14] <https://www.hg.org/bankrpt.html>[Accessed 7/08/2019]
- [15] <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>[Accessed 03/07/2019]
- [16] <https://nypost.com/2019/08/11/bankruptcy-filings-rising-across-the-country-and-it-could-get-worse/>[Accessed 21/07/2019]
- [17] <https://www.monnetispat.com>[Accessed 11/08/2019]
- [18] <https://www.essarstaeel.com>[Accessed 12/08/2019]
- [19] <https://searsholdongs.com>[Accessed 05/08/2019]
- [20] <https://generalmotors.com>[Accessed 01/09/2019]
- [21] <https://rbi.gov.in>[Accessed 05/08/2019]
- [22] <http://www.mca.gov.in/>[Accessed 07/08/2019]