

BARODA BRANCH OF WIRC OF ICAI

**Insolvency and Bankruptcy Code, 2016
- new professional opportunity**

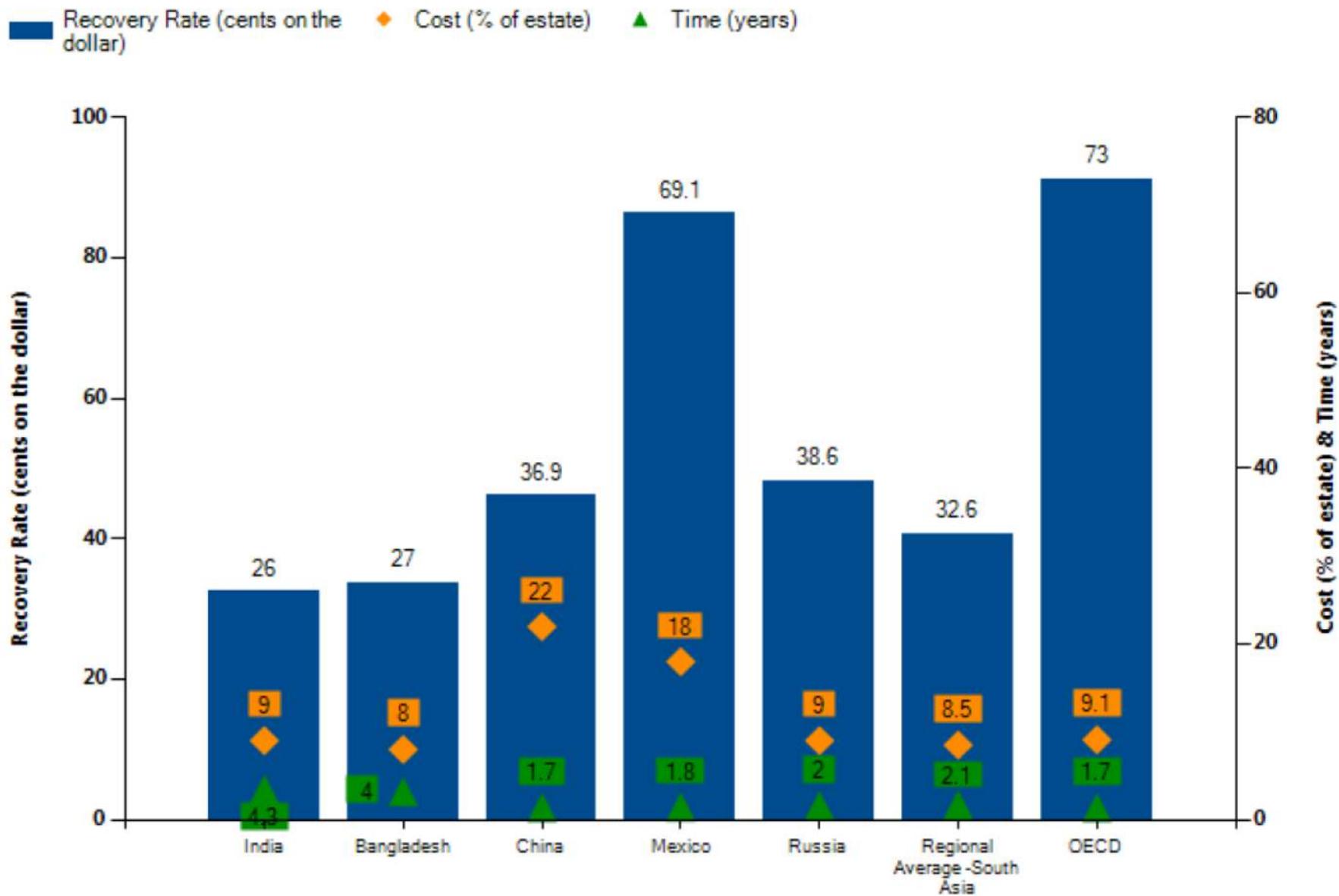
CA. Abhishek Nagori

Topics			
Overall	130	1	8
Starting a Business	155	1	51
Dealing with Construction Permits	185	1	39
Getting Electricity ✓	26	34	36
Registering Property	138	1	36
Getting Credit	44	1	2
Protecting Minority Investors	13	1	41
Paying Taxes ✓	172	11	36
Trading across Borders ✓	143	55	35
Enforcing Contracts ✓	172	13	20
Resolving Insolvency	136	34	5



Recovery of Debts

Figure 11.2 Efficiency of proceedings - time, cost and recovery rate in India and comparator economies.



Journey of the Code thus far

The Insolvency and Bankruptcy Code, 2016 (IBC) was passed by the Parliament on 11 May 2016, received Presidential assent on 28 May 2016.

It is expected to be implemented in early 2017.

Events	Date/Month
Bankruptcy Law Reform Committee (BLRC) formed	August 2014
Final report and draft bill submitted by BLRC	November 2015
First draft presented in Parliament and then referred to Joint committee	December 2015
Report of Joint committee presented to Lok Sabha	April 2016
Code passed by Parliament	May 2016
Responsibility for implementation given to MCA	June 2016
Sections pertaining to IBBI, powers to make regulation etc. notified	August 2016
IBB members appointed	October 2016
Six draft rules and regulations issued for public comments: <ul style="list-style-type: none">• registration of IPs• Registration of IPAs• model Bye- laws• Resolution process• Liquidation process• Application rules	October 2016
Last date to submit public comments on draft regulations	31 October 2016

Indian Institute of Insolvency Professionals of ICAI

- ✓ Rules, Regulations and Notifications passed in November and December 2016



THE INSOLVENCY AND BANKRUPTCY CODE, 2016

- ✓ Published in Official Gazette on 28th May 2016
- ✓ **Preamble:**
 - ❑ to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons
 - ❑ to promote entrepreneurship,
 - ❑ availability of credit
 - ❑ balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues
 - ❑ establish an Insolvency and Bankruptcy Board of India,
- ✓ It extends to the whole of India - Part III of this Code shall not extend to the State of Jammu and Kashmir.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The provisions of this Code shall apply to—

- × Company
- × Limited Liability Partnership
- × such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
- × partnership firms and individuals

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be

LEGAL FRAMEWORK

- ✘ Code
- ✘ Rules
- ✘ Regulations
- ✘ Notifications
- ✘ Circulars



PARADIGM SHIFT

The Insolvency and Bankruptcy Code, 2016 (IBC) was passed by the Parliament on 11 May 2016, received Presidential assent on 28 May 2016 and was notified in the official gazette on the same day.

Erstwhile legislative framework

Chapter XIX & Chapter XX of Companies Act, 2013
Part VIA, Part VII & Section 391 of Companies Act, 1956
RDDBFI Act, 1993
SARFAESI Act, 2002
SICA Act, 1985
The Presidency Towns Insolvency Act, 1909
The Provincial Insolvency Act, 1920
Chapter XIII of the LLP Act, 2008

Non-statutory guidelines/out-of-court mechanism:

- ▶ Bilateral restructuring
- ▶ One-time settlement
- ▶ JLF/CDR/SDR
- ▶ Sale of loan to ARC

New framework

The Insolvency and Bankruptcy code (Provisions of this Code to override other existing laws on matters pertaining to Insolvency and Bankruptcy)

“An act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

- Objective section of the Act

KEY ASPECTS OF NEW IBC 2016

1

IBC proposes a paradigm shift from the existing '**Debtor in possession**' to a '**Creditor in control**' regime.

2

IBC aims at **consolidating all existing insolvency related laws** as well as amending multiple legislation including the Companies Act.

3

The code would have an **overriding effect on all other laws** relating to Insolvency & Bankruptcy.

4

The code aims to **resolve insolvencies in a strict time-bound manner** - the evaluation and viability determination must be completed within 180 days.

5

Moratorium period of 180 days (extendable upto 270 days) for the Company.
Insolvency professional to take over the management of the Company.

KEY ASPECTS OF NEW IBC 2016

6

Clearly defined **'order of priority'** or the waterfall mechanism.

7

The waterfall to render **government dues junior** to most others is significant.

8

Antecedent transactions can be investigated and in case of any illegal diversion of assets personal contribution can be ordered by court.

9

Introduce a qualified insolvency professional (IP) as intermediaries to oversee the process

10

Establishment of Insolvency and Bankruptcy board as an independent body for the administration and governance of Insolvency & bankruptcy Law; and Information Utilities as a depository of financial information.

PARADIGM SHIFT

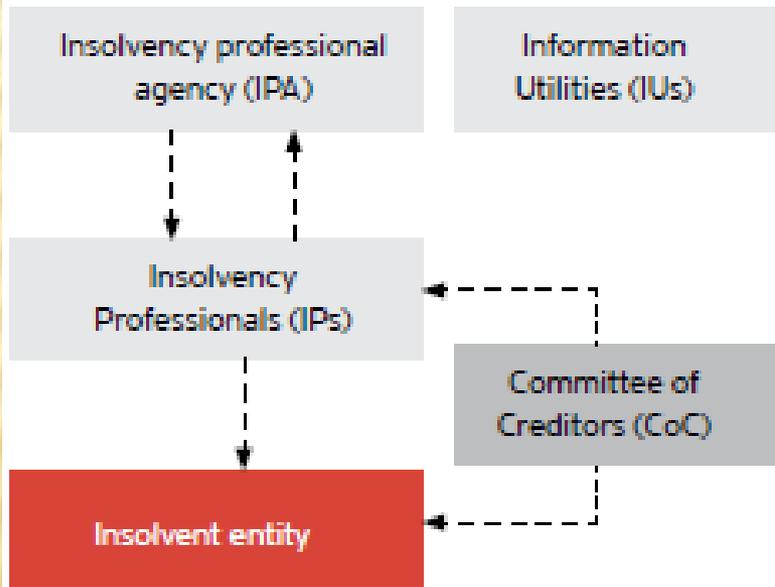
- ✓ **Single insolvency and bankruptcy framework.**
- ✓ **Replaces –**
 - ❑ **Sick Industrial Companies (Special Provisions) Repeal Act, 2003**
 - ❑ **The Presidency Town Insolvency Act, 1909**
 - ❑ **Provincial Insolvency Act, 1920**

PARADIGM SHIFT

- ✓ modifies / amends some provisions of other legislations like Companies Act, 2013, SARFAESI , RDDBFI Act, etc.
- ✓ Insolvency test moved from ‘erosion of net worth’ to ‘payment default’
- ✓ Shift of jurisdiction to NCLT and DRT

The Insolvency and Bankruptcy Code ecosystem

Insolvency and Bankruptcy Board (IBB)



NCLT - The adjudicating authority (AA)

IBB - apex body for promoting transparency & governance in the administration of the IBC; will be involved in setting up the infrastructure and accrediting IPs & IUs.

IUs - centralised repository of financial and credit information of borrowers; would accept, store, authenticate and provide access to financial data provided by creditors.

IPs- persons enrolled with IPA and regulated by Board and IPA will conduct resolution process; to act as Liquidator/ bankruptcy trustee; appointed by creditors and override the powers of board of directors.

Adjudicating authority (AA) - would be the NCLT for corporate insolvency; to entertain or dispose any insolvency application, approve/ reject resolution plans, decide in respect of claims or matters of law/ facts thereof.

IPA - registered by the board shall enroll IPs.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

ESTABLISHMENT OF IBBI

The Insolvency and Bankruptcy Board of India was established on October 1, 2016 in accordance with the provisions of The Insolvency and Bankruptcy Code, 2016.

PREAMBLE

The Preamble of the Insolvency and Bankruptcy Code describes the basic functions of the Insolvency and Bankruptcy Code as

- ❑ to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons
- ❑ to promote entrepreneurship,
- ❑ availability of credit
- ❑ balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA- FUNCTIONS

- ✓ **Regulate and Govern Register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations.**
- **Register**
- **Specify the minimum eligibility requirements**
- **Levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities.**
- **Specify by regulations standards for the functioning**
- **Lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies**
- **Carry out inspections and investigations**
- **Monitor the performance**
- **Call for any information and records**
- **Specify mechanism for redressal of grievances**
- **Conduct periodic study, research and audit the functioning and performance**

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA- FUNCTIONS

- ✓ **Publish such information, data, research studies and other information as may be specified by regulations.**
- ✓ **Specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data.**
- ✓ **Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases.**
- ✓ **Constitute such committees as may be required including in particular the committees laid down in section 197.**
- ✓ **Promote transparency and best practices in its governance**
- ✓ **Maintain websites and such other universally accessible repositories of electronic information as may be necessary.**
- ✓ **Enter into memorandum of understanding with any other statutory authorities**
- ✓ **Specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations.**
- ✓ **Make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor.**
- ✓ **Perform such other functions as may be prescribed.**

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA - FUNCTIONS

- ❑ The Board may make model bye-laws to be to adopted by insolvency professional agencies
- ❑ Vide NOTIFICATION dated the 21st November, 2016 Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016

INSOLVENCY PROFESSIONAL AGENCIES (IPAs)

Eligibility for registration.

- Company registered under section 8 of the Companies Act, 2013
- sole object is to carry on the functions of an insolvency professional agency under the Code;
- it has bye-laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India Model Bye-Laws and Governing Board of Insolvency Professional Agencies), 2016;
- it has a minimum net worth of ten crore rupees;
- it has a paid-up share capital of five crore rupees,
- it is not under the control of person(s) resident outside India,
- not more than 49% of its share capital is held, directly or indirectly, by persons resident outside India; and
- it is not a subsidiary of a body corporate through more than one layer:

Explanation: “layer” in relation to a body corporate means its subsidiary

- itself, its promoters, its directors and persons holding more than 10% of its share capital are fit and proper persons.

Explanation: For determining whether a person is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-

- × (i) integrity, reputation and character,
- × (ii) absence of convictions and restraint orders, and
- × competence including financial solvency and net worth.

INSOLVENCY PROFESSIONAL AGENCIES (IPAs)

List of IPAs

- ✘ Insolvency Professional Agency of Institute of Cost Accountants of India
- ✘ ICSI Insolvency Professionals Agency
- ✘ Indian Institute of Insolvency Professionals of ICAI

- ✘ 977 IPs registered till date (for limited period of 6 months)

INSOLVENCY PROFESSIONAL AGENCY

About IIPI

- ✘ The Indian Institute of Insolvency professionals of ICAI is a section 8 Company formed by the Institute of Chartered Accountants of India to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations.

INFORMATION UTILITIES

- ✘ will act as centralized repository of financial and credit information of borrowers
- ✘ accept, store, authenticate and provide access to financial information

INSOLVENCY PROFESSIONALS (IP_s)

Eligibility

- ✘ Not a minor
- ✘ person resident in India;
- ✘ have the qualification and experience specified in Regulation 5 or Regulation 9, as the case may be;
- ✘ has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence: (*Provided* that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered);
- ✘ he is not an un-discharged insolvent, or has not applied to be adjudicated as an insolvent;
- ✘ he has not been declared to be of unsound mind; or
- ✘ he is a fit and proper person;

Explanation: For determining whether an individual is fit and proper under these Regulations, the Board may take account of any consideration as it deems fit, including but not limited to the following criteria-

- (i) integrity, reputation and character,
- (ii) absence of convictions and restraint orders, and
- (iii) competence, including financial solvency and net worth.

INSOLVENCY PROFESSIONALS (IP_s)

× Qualifications and experience.

Subject to the other provisions of these Regulations, an individual shall be eligible for registration, if he-

- × (a) has passed the National Insolvency Examination;
- × (b) has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognized by law; or
- × (c) has passed the Limited Insolvency Examination and has ten years of experience as -
 - (i) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (ii) a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - (iii) a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
 - (iv) an advocate enrolled with a Bar Council.

INSOLVENCY PROFESSIONALS (IP_s)

Disciplinary Proceedings

- ✘ The Disciplinary Committee shall dispose of the show-cause notice assigned under sub-regulation (5) by a reasoned order in adherence to principles of natural justice, and after considering the submissions, if any, made by the insolvency professional, the relevant material facts and circumstances, and the material on record.

- ✘ (8) The order disposing of a show-cause notice may provide for-
 - (a) no action;
 - (b) warning;
 - (c) any of the actions under section 220(2) to (4); or
 - (d) a reference to the Board to take any action under section 220(5).

- ✘ Section 220(3) Penalty –three times of the loss caused or likely to be cause or unlawful gain made- (if not quantifiable maximum Rs. 1 crores)
- ✘ 220(4)- disgorge amount equivalent to unlawful gain or loss averted
- ✘ 220(5) restitution to person who suffered loss

INSOLVENCY PROFESSIONALS (IP_s)

CODE OF CONDUCT FOR INSOLVENCY PROFESSIONALS

FIRST SCHEDULE

[Under Regulation 7(2)(g)]

- × Integrity and objectivity.
- × Independence and impartiality.
- × Professional competence.
- × Representation of correct facts and correcting misapprehensions.
- × Timeliness.
- × Information management.
- × Confidentiality.
- × Occupation, employability and restrictions.
- × Remuneration and costs.
- × Gifts and hospitality.

INSOLVENCY PROFESSIONALS (IP_s)

Recognition of Insolvency Professional Entities (IPEs)

- LLP
- registered partnership firm
- company

may be recognized as an insolvency professional entity if-

- majority of the partners of LLP or registered partnership firm are IPs
- majority of the whole-time directors of the company are IPs

INSOLVENCY PROFESSIONALS (IP_s)

Practical working knowledge of :

Company law

Banking/ Finance

Cash flow management

Insolvency law

Stake holder management

Negotiation skills

Taxation

Valuation /
Sale of assets

Commercial and business

INSOLVENCY PROFESSIONALS (IP_s)

Roles

- × Resolution Professional (RP) to resolve the insolvency of the debtor
- × Bankruptcy Trustee – in a proceeding for bankruptcy initiated against a individual of unlimited liability partnership
- × Liquidator in liquidation proceedings against a corporate debtor

INSOLVENCY PROFESSIONALS (IP_s)

Power, duties of Resolution Professionals (RP)

- ✘ The appointed resolution professional IP shall exercise all the powers of the board of directors of the corporate debtor.
- ✘ The powers of the board of directors of the corporate debtor, shall stand suspended and be exercised by the IRP / RP
- ✘ The officers and managers of the corporate debtor shall report to the IRP / RP and provide access to such documents and records of the corporate debtor as may be required
- ✘ The IRP / RP shall act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents

INSOLVENCY PROFESSIONALS (IPS)

Power, duties as Resolution Professionals (RPs)

- × form Committee of creditors**
- × conduct meetings of Committee of creditors**
- × prepare the information memorandum (IM) and invite resolution plans**
- × investigate the financial affairs of the company**

INSOLVENCY PROFESSIONALS (IPS)

Power, duties of Resolution Professionals (RP)

- ❑ Section 5(23)- ‘Personnel’ includes
 - directors
 - managers
 - key managerial personnel
 - designated partners
 - employees of the corporate debtor
- ❑ Required to extend all assistance and cooperation to IRP/RP
- ❑ IRP/ RP may issue directions

INSOLVENCY PROFESSIONALS (IP_s)

Power, duties of Resolution Professionals (RP)

Access to books.

The interim resolution professional may access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Code, of the corporate debtor held with-

- × (a) depositories of securities;
- × (b) professional advisors of the corporate debtor;
- × (c) information utilities;
- × (d) other registries that records the ownership of assets;
- × (e) members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and
- × (f) contractual counterparties of the corporate debtor.

INSOLVENCY PROFESSIONALS (IPS)

Power, duties as Liquidator

- ✘ receive, verify and value claims of all the creditors, and settle such claims**
- ✘ take into his custody or control all the assets, and sell the assets**
- ✘ carry on the business of the corporate debtor for its beneficial liquidation**
- ✘ form an estate of the assets which will be called the liquidation estate**
- ✘ apply to the Adjudicating Authority for avoidance of transactions**

INSOLVENCY PROFESSIONALS (IP_s)

Eligibility for resolution professional.

IP and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

- (a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;
- (b) is not a related party of the corporate debtor; or
- (c) is not an employee or proprietor or a partner:
 - (i) of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor; or
 - (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm, in the last three financial years

INSOLVENCY PROFESSIONALS (IPS)

Eligibility and Qualification for registration of insolvency professionals

- ✘ Any person resident of India who:
- ✘ has passed National insolvency examination; or
- ✘ has passed the Limited Insolvency Examination, and has 15 years of experience in management, after graduation or
- ✘ has passed the Limited Insolvency Examination and has ten 10 years of experience as a member of ICAI; ICSI; ICAI (Cost); and Bar council

INSOLVENCY PROFESSIONALS (IPS)

Registration for a limited period (Reg9)

- an individual who has been “in practice” for 15 years as a CA, CS, CA (Cost), and advocate
- Valid for a period of 6 months
- This is notwithstanding Regulation 5 (i.e., without exams)

Registration closed on 31.12.2017

INSOLVENCY PROFESSIONALS (IPS)

EXAMINATION

Board shall conduct a-

- ✓ 'National Insolvency Examination'
- ✓ 'Limited Insolvency Examination'.

Board shall publish on website:

- Syllabus
- format
- frequency
- qualifying marks
for examination

LIMITED INSOLVENCY EXAMINATION- SYLLABUS

VALID UPTO 30.06.2017

Sl. No	Coverage	Weight (%)
a.	The Insolvency and Bankruptcy Code, 2016 (Entire Code)	30
b.	Rules and Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 30th November, 2016)	25
c.	Report of the Bankruptcy Law Reforms Committee (Entire Report)	05
d.	<p>(I) The Companies Act, 2013</p> <ul style="list-style-type: none"> • Chapter III Prospectus and Allotment of Securities • Chapter IV Share Capital and Debentures • Chapter V Acceptance of Deposits by Companies • Chapter VI Registration of Charges • Chapter VII Management and Administration • Chapter IX Accounts of Companies • Chapter XV Compromises, Arrangements and Amalgamations • Chapter XVII Registered Valuers • Chapter XVIII Removal of names of the companies from the register of companies • Chapter XX Winding-up of the companies • Chapter XXVII NCLT and NCLAT <p>(II) The Partnership Act, 1932, and (III) The Limited Liability Partnership Act, 2008</p>	10

LIMITED INSOLVENCY EXAMINATION- SYLLABUS

Sl. No	Coverage	Weight (%)
e.	(i) The Indian Contracts Act, 1872 (Void, Voidable and Contingent Contracts; Novation, Rescission and Alteration of Contracts; Damages for breach; Indemnity, Guarantee, Surety, Bailment and Pledge; Set off) (II) Transfer of Property Act, 1882; (III) The Sale of Goods Act, 1930 (Sale, Warranties, Lien and Damages).	05
f.	(I) The Recovery of Debts due to Banks and Financial Institutions Act, 1993; (II) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; and (III) Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A) (of RBI)	05
g.	General Awareness (Constitution, Economy, Finance, Code of Conduct for Insolvency Professionals, and Rights of Workmen)	05
h.	Finance and Accounts (Corporate Finance, and Financial Analysis)	05
i.	Case Study (Cases on Corporate Insolvency Resolution, Corporate Liquidation, Fresh Start, Individual Insolvency Resolution and Individual Bankruptcy)	10
Total		100

LIMITED INSOLVENCY EXAMINATION- FORMAT

- ✘ The examination will be conducted online (computer-based in a proctored environment); with objective multiple choice questions;
- ✘ The duration of the examination will be two hours;
- ✘ A candidate will be required to answer 90 questions in two hours for a total of 100 marks;
- ✘ There will be negative marking of 25% of the marks assigned for the question;

LIMITED INSOLVENCY EXAMINATION- FORMAT

- ✘ Passing mark for the examination is 60%;
- ✘ Passing candidates will be awarded a certificate by the Board;
- ✘ A candidate will be issued a temporary mark sheet on submission of test paper; and
- ✘ No workbook or study material will be provided.

LIMITED INSOLVENCY EXAMINATION- FREQUENCY

The frequency of Examination is as under:

- ✘ The examination will be available from 100 + locations in the country;
- ✘ **The** examination will be available from 31st December, 2016 between 9:30 AM and 5:30 PM;
- ✘ The enrollment for examination will be open from 15th December, 2016.
- ✘ A candidate needs to enroll for examination at www.nism.ac.in. He needs to select IBBI-Limited Insolvency Examination and enroll himself for the examination by choosing the time, the day and the examination centre for his examination;
- ✘ A candidate needs to provide PAN and Aadhaar to enroll for the examination; and
- ✘ A candidate needs to pay examination fee of Rs. 1000 (Rupees one thousand only) online on every enrollment.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Corporate Insolvency Resolution Process (CIRP) under the Code

Default

min INR 1 lakh; even a single day

Who can file the application?

- Financial & Operational creditors (including Government & employees/workmen), and Corporate debtor

Resolution Professional (IRP/ RP)

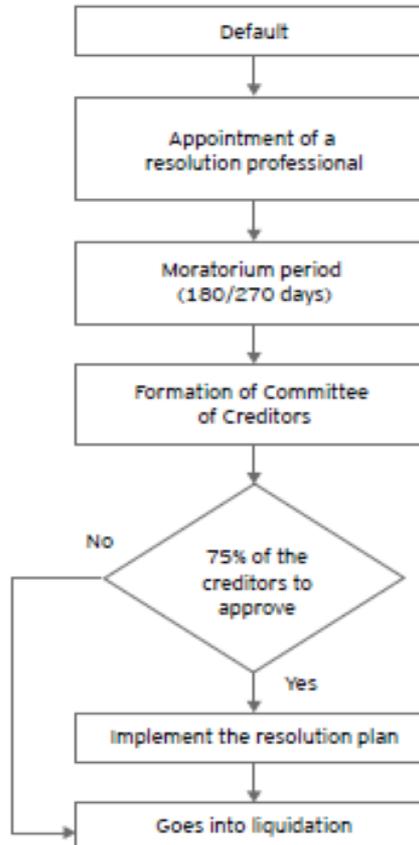
- Financial creditor and/ or corporate applicant shall propose the name of an IRP in the application
- All powers of the board and management shall vest with the IRP/ RP

Moratorium

Moratorium shall prohibit:

- Institution of suits
- Transfer of assets
- Foreclosure, recovery or enforcement under SARFAESI
- Recovery of assets

Resolution process



Committee of creditors (CoC)

- Consists of financial creditors only, excluding related parties
- To approve several actions of RP

Resolution plan

The resolution plan must provide for:

- payment of insolvency resolution process costs
- repayment of the debts of operational creditors
- management of the affairs of the borrower after the plan is approved
- implementation and supervision of the approved plan

Voting power

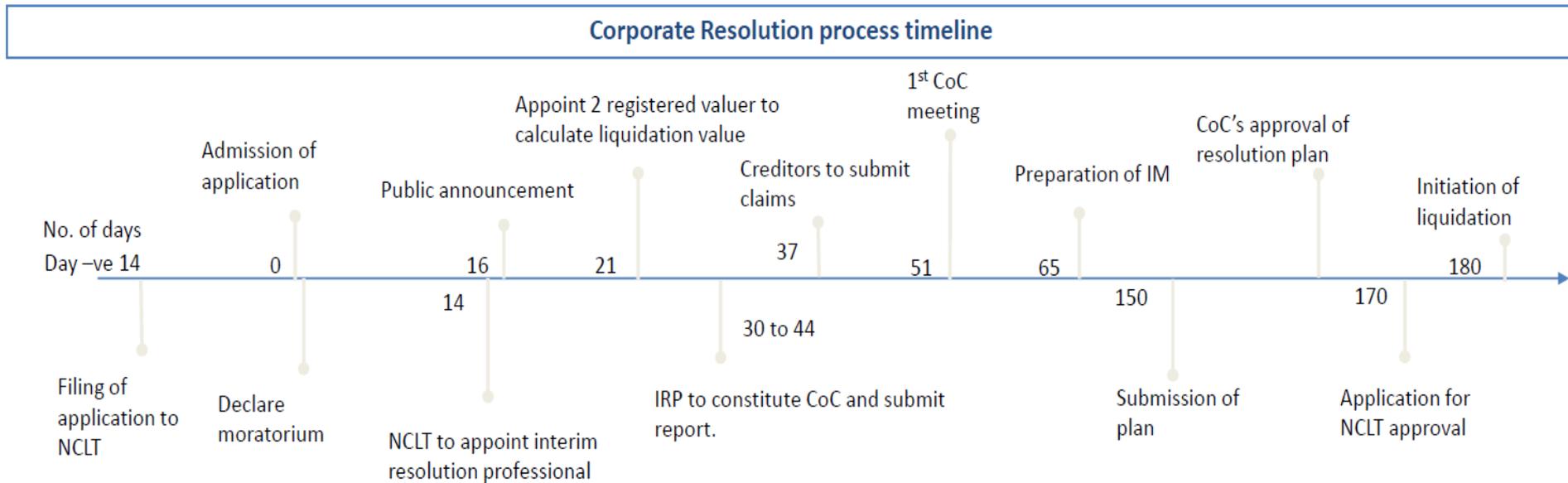
- Only financial creditors have voting power in the committee in the ratio of debt owed
- All decision of the committee shall be approved by 75% of financial creditors

Fast track insolvency

For debtors as may be notified by the central government (completed in 90 days)

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Corporate Resolution process timeline



APPLICATION TO ADJUDICATING AUTHORITY TO INITIATE CIRP

- ✘ Application by financial creditor- Form 1
- ✘ Demand notice by operational creditor- Form 3 & 4
- ✘ Application by operational creditor- Form 5
- ✘ Application by corporate applicant- Form 6
- ✘ Withdrawal of application- before admission
- ✘ Interim resolution professional- consent in Form 2

APPLICATION TO ADJUDICATING AUTHORITY TO INITIATE CIRP

- ✘ fee as specified in the Schedule.
- ✘ application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as prescribed by the Adjudicating Authority:
- ✘ Provided that till such facility is made available, the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form

APPLICATION TO ADJUDICATING AUTHORITY TO INITIATE CIRP

- × Applicant Fee payable (in `)
- × 1. Application by financial creditor (whether solely or jointly) **25000**
- × 2. Application by operational creditor **2000**
- × 3. Application by corporate debtor **25000**

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

- ✘ **Extortionate credit transaction.**
- ✘ A transaction shall be considered extortionate under section 50(2) where the terms:
 - ✘ (1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or
 - ✘ (2) are unconscionable under the principles of law relating to contracts.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) –

MORATORIUM

- × Suits
- × Transfer
- × Actions
- × Recovery

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Public announcement.

- ✘ not later than three days from the date of his appointment of IP

- ✘ The public announcement referred to in sub-regulation (1) shall:
 - (a) be in **Form A of the Schedule**;
 - (b) be published-
 - (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;
 - (ii) on the website, if any, of the corporate debtor; and
 - (iii) on the website, if any, designated by the Board for the purpose,
 - (c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

- ✘ The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them. (*Clarification*- The expenses on the public announcement shall not form part of insolvency resolution process costs.)

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

× PROOF OF CLAIMS

× Claims by operational creditors- Form B

- the records available with an information utility, if any; or
- other relevant documents, including -
 - (i) a contract for the supply of goods and services with corporate debtor;
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
 - (iv) financial accounts.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

× PROOF OF CLAIMS

× Claims by financial creditors Form C

- the records available with an information utility, if any; or
- other relevant documents, including -
 - (i) a financial contract supported by financial statements as evidence of the debt;
 - (ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
 - (iii) financial statements showing that the debt has not been repaid; or
 - (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

✘ PROOF OF CLAIMS

✘ Claims by workmen and employees (Form D and Form F for Authorized Representative)

- (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
- (ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Verification of claims.

- × within seven days from the last date of the receipt of the claims, and
- × thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.
- × The list of creditors shall be –
 - (a) available for inspection by the persons who submitted proofs of claim;
 - (b) available for inspection by members, partners, directors and guarantors of the corporate debtor;
 - (c) displayed on the website, if any, of the corporate debtor;
 - (d) filed with the Adjudicating Authority; and
 - (e) presented at the first meeting of the committee.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Determination of amount of claim.

- ✘ Where the amount claimed by a creditor is not precise due to any contingency or other reason, the IRP/IP, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.
- ✘ Revision estimates of claims made when IRP/IP comes across additional information warranting such revision.

Debt in foreign currency.

- ✘ The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.
- ✘ *Explanation* - “official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

- × **Committee with only operational creditors**
- × corporate debtor has no financial debt or where all financial creditors are related parties
- × Eighteen largest operational creditors by value:
 - × one representative elected by all workmen
 - × one representative elected by all employees
 - × have voting rights in proportion of the debt due
 - × to such creditor or debt represented by such representative, as the case may be, to the total debt.
- × *Explanation* – For the purposes of this sub-regulation, ‘total debt’ is the sum of-
 - × (a) the amount of debt due to the creditors listed in sub-regulation 2(a);
 - × (b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and
 - × (c) the amount of the aggregate debt due to employees under sub-regulation 2(c).

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

- × **Notice for meetings of the committee.**

A meeting of the committee shall be called by giving not less than seven days' notice

- × **Service of notice by electronic means.**

A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

- × **Quorum at the meeting.**

A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of total voting power

- × **Participation through video conferencing.**

The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation.

- × **Conduct of meeting.**

The resolution professional shall act as the chairperson of the meeting of the committee

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

✘ Voting through electronic means.

The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of the Regulations.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Transfer of debt due to creditors.

- ✘ In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee.
- ✘ The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee **within two days** of such change.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Sale of assets outside the ordinary course of business.

- ✘ If such a sale is necessary for a better realization of value under the facts and circumstances of the case:
- ✘ the book value of all assets sold during CIRP period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

32. Essential supplies.

- × electricity;
- × water;
- × telecommunication services; and
- × information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration- Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.

RESOLUTION PLAN

× Liquidation value.

Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.

× Information memorandum.

IRP/RP shall submit an information memorandum in electronic form to each member of the committee and any potential resolution applicant

RESOLUTION PLAN

Contents of Information memorandum.

- × assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;
- × the latest annual financial statements;
- × (audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- × a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- × particulars of a debt due from or to the corporate debtor with respect to related parties;
- × details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- × the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- × details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- × the number of workers and employees and liabilities of the corporate debtor towards them;
- × the liquidation value;
- × the liquidation value due to operational creditors; and
- × other information, which the resolution professional deems relevant to the committee.

RESOLUTION PLAN- CONTENTS

Resolution plan.

- ✘ (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
- ✘ (b) sale of all or part of the assets whether subject to any security interest or not;
- ✘ (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
- ✘ (d) satisfaction or modification of any security interest;
- ✘ (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- ✘ (f) reduction in the amount payable to the creditors;
- ✘ (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- ✘ (h) amendment of the constitutional documents of the corporate debtor;
- ✘ (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and
- ✘ (j) obtaining necessary approvals from the Central and State Governments and other authorities.

RESOLUTION PLAN- CONTENTS

- ✘ specific sources of funds that will be used to pay the -
 - (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
 - (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
 - (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favor of the resolution plan.
- ✘ the term of the plan and its implementation schedule;
- ✘ the management and control of the business of the corporate debtor during its term; and
- ✘ adequate means for supervising its implementation.

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

- ✦ The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority
- ✦ A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Key points to focus for the financial creditors:

- ✘ Approval or replacement of IRP
- ✘ Approve certain actions of IRP/RP
- ✘ Submit resolution plan based on information memorandum prepared by the RP
- ✘ It is the duty of resolution applicant and not of RP to prepare the Resolution plan; therefore creditors may have to take independent consultant's help
- ✘ It is advisable that banks constitute a panel of industry experts whose help can be sought during the insolvency resolution process

LIQUIDATION PROCESS UNDER THE CODE

Liquidation order

Liquidation order will be passed if:

- × CIRP ends
- × Plan not submitted to NCLT
- × Plan not approved
- × Decided by CoC
- × Plan not properly implemented

LIQUIDATION PROCESS UNDER THE CODE

Liquidation steps

- ✘ Appointment of liquidator
- ✘ Formation of liquidation estate
- ✘ No legal proceeding by or against the debtor
- ✘ Consolidation of claims
- ✘ Distribution of assets
- ✘ Dissolution of debtors (to be completed within 2 years)

LIQUIDATION PROCESS UNDER THE CODE

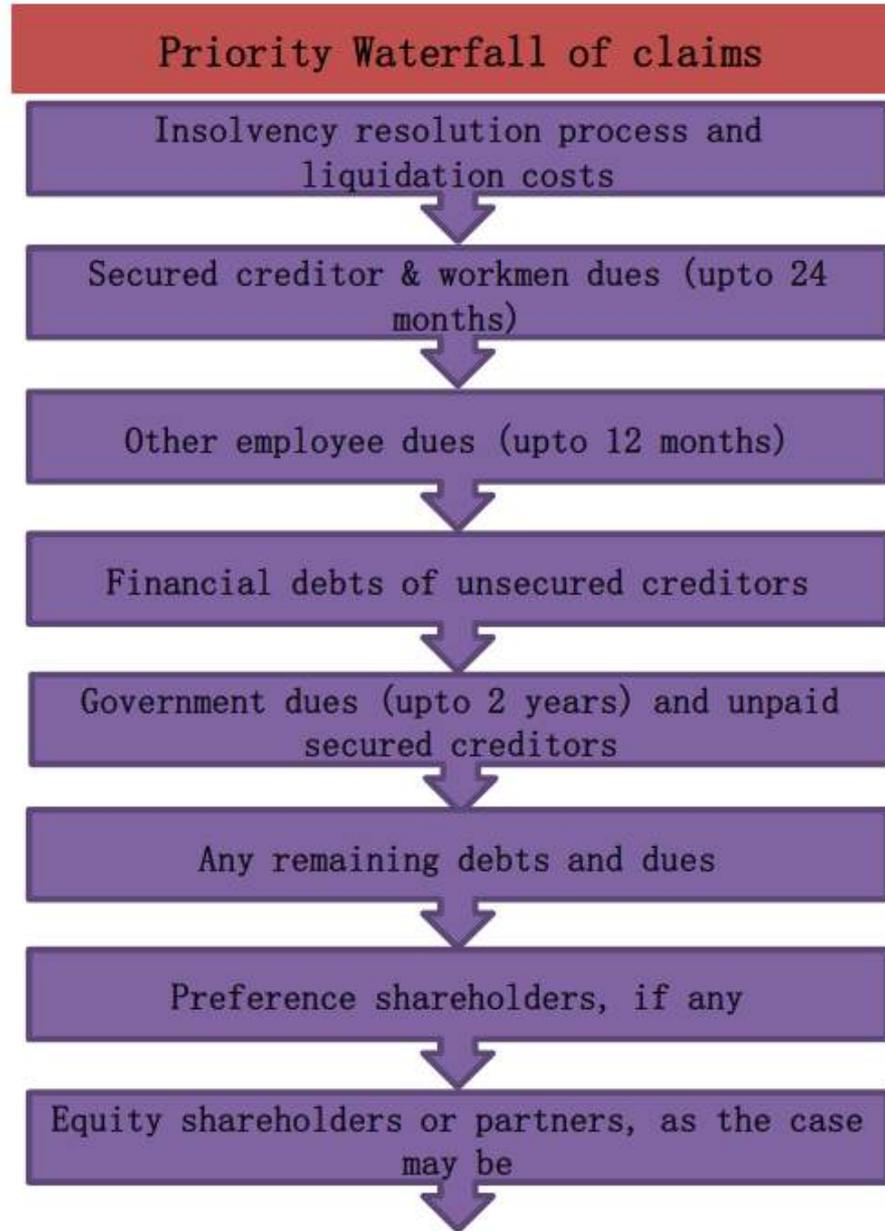
- × Liquidator shall:
- × Form liquidation estate
- × take custody & control of all assets
- × consolidate, verify, admit and determine value of creditors claims
- × Carry on the business for its beneficial liquidation

LIQUIDATION PROCESS UNDER THE CODE

Reporting

- ✘ Preliminary report –within 30 days from the date of the order;
- ✘ Progress report –within 15 days after end of every period of 3 months from the date of order

LIQUIDATION PROCESS UNDER THE CODE



LIQUIDATION PROCESS UNDER THE CODE

Insolvency and liquidation cost

- ✘ Insolvency cost include interim funding, cost of running the debtor as going concern (salary of employees), cost of IP etc
- ✘ Liquidation cost include any cost incurred by liquidator during liquidation period

LIQUIDATION PROCESS UNDER THE CODE

Secured creditor in liquidation

- ✘ Secured creditor has the option to:
- ✘ enforce and realize the security outside the Code, or
- ✘ relinquish its security interest and receive proceeds as defined in the priority of claim
- ✘ Distinction between rights of different class of secured creditors (first vs second charge, fixed vs floating charge) not clarified

CASE STUDY - I

- ✘ ICICI Bank Ltd has filed an application in the National Company Law Tribunal (NCLT) against Innoventive Industries Ltd
- ✘ Pune-based steel products maker, which had debt of Rs. 955 crore
- ✘ Application not admitted in stipulated 14 days. Further, it observed that the borrower is not at default and since it was granted protection under the Maharashtra Industrial Development Act, none can proceed against the company.
- ✘ Whether it is a technical issue on which the bank was caught on the wrong foot, or the NCLT blundered by not providing the relief or proceed in the way it was expected to, it has dented the confidence of bankers and those who hoped that the new bankruptcy law would herald a new dawn.

CASE STUDY - II

- ✘ Edelweiss Asset Reconstruction Co. (ARC) Ltd is planning to file an insolvency case against Bharati Defence and Infrastructure Ltd in the National Company Law Tribunal (NCLT) to pre-empt winding-up petitions by unsecured creditors
- ✘ Edelweiss ARC had taken control of 75% debt of Bharati (formerly known as Bharati Shipyard) after banks sold their loans in June 2014.
- ✘ The asset reconstruction firm has been making efforts to revive the shipyard with an estimated debt of Rs. 8,500 crore.

CASE STUDY - III

WHAT UBEL OWES

Total (₹ cr)	434.971
Dues to banks	378.92
Other payables	46.57
Provisions: gratuity / leave encashment / superannuation repayable after 1 yr	7.571
Other loans and advances	1.9

Liabilities as on March 31, 2016. Source: Annual Report

- ✘ The National Company Law Tribunal (NCLT) admitted on Wednesday an insolvency petition filed by UB Engineering Ltd (UBEL)
- ✘ This is the first such case the NCLT has admitted
- ✘ Following the decision, UB Holdings, which owned about 37%, loses control over the affairs of UBEL
- ✘
- ✘ Failing resolution, the company will go in for liquidation
- ✘ Though UBEL is a listed company, the stock has been suspended from BSE for penal reasons
- ✘ UBEL has classified term loans, cash credits and other facilities availed from banks as ‘other current liabilities’, which at the end of FY16 stood at Rs. 434.90 crore

CHALLENGES IN IMPLEMENTATION

NCLT Infrastructure and Efficiency

- ✘ 11 benches with 16 judicial members and 7 technical members among them.
- ✘ there were around 4,200 pending CLB cases.
- ✘ around **4,000** new cases every year under Company Law
- ✘ all the 4,500 winding-up cases pending at the high courts as of March 2015 are also likely to get transferred to the NCLT.
- ✘ corporate recovery cases at the debt recovery tribunals (DRTs) and the rehabilitation cases at the Board for Industrial and Financial Reconstruction (BIFR) are eligible to be initiated as new IBC cases

CHALLENGES IN IMPLEMENTATION

- × Concern regarding the case law that develops under the IBC.
- × IPs form the backbone of the IBC- The IBBI, however, has now licensed the first batch of IPs only on the basis of their professional experience.
- × The lack of IU infrastructure is going to be another challenge- In absence of IUs, the IBBI is required to specify the evidence of default that can be used to trigger an IBC case. This can cause inordinate delays especially if the NCLT gets involved in evaluating whether a default has indeed taken place

Thank You

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