



Insolvency & Bankruptcy Code, 2016

Gateway of Professional Opportunities

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Insolvency & Bankruptcy Code

**A milestone in Indian Economy to boost
EASE OF DOING BUSINESS process**

- IBC is **one of the biggest economic reforms** adopted by India. It is a rare example of a much-needed law which has witnessed speedy roll-out and implementation.
- IBC is a **one-stop solution** which addresses all insolvencies in a time-bound and economically viable setup
- IBC has significantly helped India in achieving the **historic jump** in the ease of doing business rankings.
- The law has brought a significant **change in the power-sharing equation** between creditors and debtors
- Things have turned smoother under the insolvency and bankruptcy code of 2016, that **rebalanced the rights of promoters, banks, vendors and employees.**

Genesis of IBC

In a VUCA world it is but natural for some of the plans of some of the businesses to fail. In that situation what is required is a law by which resources stuck in inefficient uses are pulled out and channelized into productive uses

Businesses need three kinds of freedom

Freedom of entry
Freedom to continue
Freedom to exit

IBC provided the much needed freedom to fail and exit (**Chakravyuh Challenge**) if the business plans do not work out the way they were expected.

Why IBC was required in India

- To provide a comprehensive law and single platform to deal with or resolve financial stress of business entities or otherwise
- To assure early detection of financial stress or default, any creditor can report the default now
- To provide for time bound resolution for viable businesses. Helps reorganisation and /or restructuring of business
- Creates a collective platform of the stakeholders to enable them to take decisions about the future of the distressed entity
- Sends the unviable businesses to liquidation at the earliest to arrest any substantial loss in value
- To consolidate all statutes, schemes, orders into single debt resolution process. BIFR, CDR, SDR, S4A and other debt resolution schemes were withdrawn/ repealed with the notification of IBC

IBC Code begins with - Intent

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 maximization of value of assets of such persons,
- to promote entrepreneurship, availability of credit
- and balance the interests of all the stakeholders
- to establish an Insolvency and Bankruptcy Board of India, and
- for matters connected therewith or incidental thereto.

KEY FACETS

IBC-2016 was enacted to bring-in an **umbrella law** that encompasses and accommodates the various fragmented and compartmentalized laws relating with corporate restructuring, insolvency and liquidation.

The intent was to:

- ensure easy and timely resolution/ recovery of bad debts and claims
- instill confidence in institutional investor
- provide an opportunity of revival to sick/bankrupt entities by corporate restructuring
- strengthen the Indian economy on global platform and to attract FDI and FIIs

EARLIER INSOLVENCY REGIMES IN INDIA

Prior to enactment of the Insolvency and Bankruptcy Code, 2016 (the “**Insolvency Code**”) the existing framework was governed by:-

- The Companies Act, 1956 and the Companies Act, 2013;
- The Sick Industrial Companies (Special Provisions) Act, 1985;
- The Recovery of Debts Due to Banks and Financial Institutions (“**RDDBI**”) Act, 1993;
- The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (“**SARFAESI**”) Act, 2003;
- The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920;
- Regulations, directions, circulars, rules, notifications and guidelines of the Reserve Bank of India (“**RBI**”).

Key Economic Reforms Recommended by BLRC for IBC

- As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run
- Paradigm shift from 'Debtor in Control' to 'Creditor in Control' in case of persistent failure to meet liabilities
- When default takes place, control is supposed to transfer to the creditors; equity owners should have no say
- Debtor under financial stress must be protected during resolution period
- Asset Stripping by promoters must be controlled— before or after default
- The illegitimate transfer of wealth out of companies by controlling shareholders is malfeasance
- Others in the economy can make proposals to buy the company at a certain price, alongside a certain debt restructuring

Implementation of IBC with Lightning speed

- Previous Government sworn in on 26th May, 2014
- Budget was presented by Finance Minister on 10th July, 2014 and formation of BLRC was announced
- Composition of the Bankruptcy Law Reforms Committee (BLRC) was decided on 22nd August, 2014
- BLRC was set up on 10/11/2014 under the Chairmanship of Dr. T K Vishwanathan, who was Secretary General of 15th Lok Sabha up to May, 2014
- Final BLRC report was required to be submitted within 12 months i.e. by November, 2015

Implementation of IBC with Lightning speed

- Final BLRC Report was submitted on 4th November, 2015
- The Insolvency and Bankruptcy Code, 2016 was introduced to Lok Sabha on 21st Dec, 2015
- The bill was referred to Joint Committee of both houses of Parliament on 23rd Dec, 2015, the report was supposed to be submitted by Feb, 2016, but it was extended for few months
- The report was presented to Lok Sabha on 28th April, 2016
- The insolvency and bankruptcy code, 2016 was notified on 28th May 2016
- Corporate insolvency resolution process started with effect from 1st Dec 2016

INSTITUTIONAL FRAMEWORK

- Insolvency and Bankruptcy Board of India
- Insolvency Professionals Agency – 3 IPAs
- Insolvency Professionals – 2700 Plus
- Insolvency Professional Entities – 60 Plus
- Information Utilities, for collecting information of default, - NESL
- Registered Valuers- three asset classifications- regulated by IBBI – 2300 Plus
- Registered Valuer Organisations – for first stage regulation of Valuers – 8 No.
- Registered Valuer Entities – 11 Nos

ADJUDICATORY MECHANISMS

- National Company Law Tribunals- Locations 14, Benches 28
- National Company Law Appellate Tribunal for appeals
- Debt Recovery Tribunals & DRAT for Individuals, Partnerships, HUFs, Trusts and other non-incorporated entities

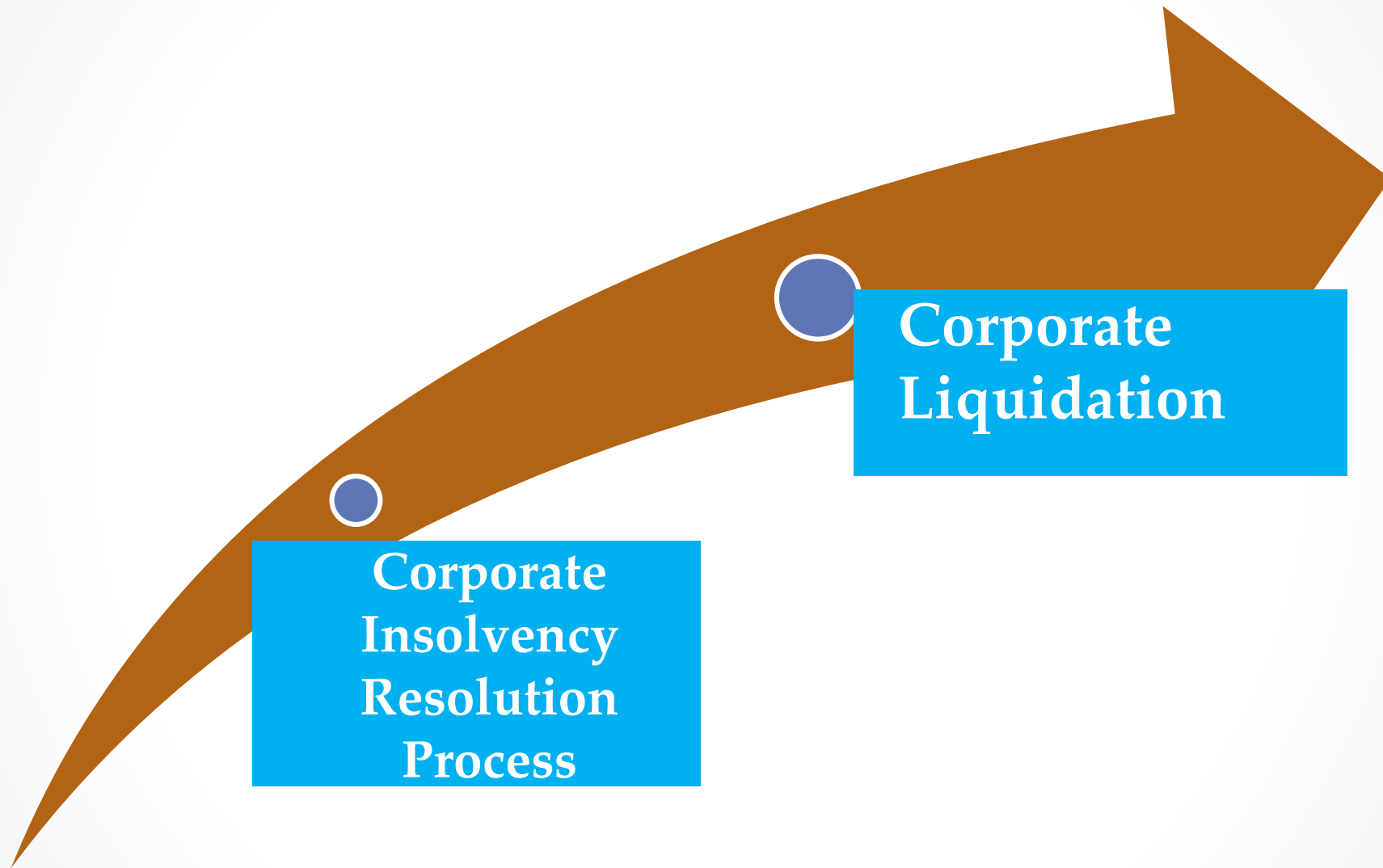


IBC a misnomer

- IBC is the short form for Insolvency and Bankruptcy Code, 2016.
- It appears that this is a law to provide for a company to be insolvent and bankrupt
- Thereby indicating the death of the company, with no chance of revival or rehabilitation
- And the remaining assets are distributed among the creditors, employees, government dues and other stake-holders

Actually, the IBC provides for an attempt to resolve the issues between the creditors and the corporate debtor

- Detailed procedure for resolution process is laid down
- Only when the resolution process fails, then the company goes into liquidation



**Corporate
Insolvency
Resolution
Process**

**Corporate
Liquidation**

BENEFITS OF THIS CODE

- The code ensures quicker resolution of NPA problems.
- Empowers all classes of creditors to trigger a resolution process in case of non payment of a valid claim
- Debtors in possession to Creditors in control
- Hopeless end to endless Hope
- Clearly defined waterfall mechanism for payment of debt in case of liquidation
- Provides for a balanced approach between rehabilitation and recovery

IBC Scorecard

As on date more than **2,700 IPs** have been registered with IBBI and more than **2,300 cases** have been admitted under corporate insolvency resolution process, around **120 corporate have landed into resolution** and more than **530 corporate into liquidation**. Besides this around **480 corporate have also filed for voluntary liquidation**

- Average realization has been around **48 %** as against around 23 % under previous laws
- Realization value is **208%** of the Liquidation value
- Average time taken to resolve the cases has been about **306** days
- More than Rs. has been realized so far from the stressed assets
- Many cases have been settled even before admission
- IBC has changed the credit culture in the country
- It has instilled a fear in the mind of promoters that if they default then they may lose the control of their companies

WhyCODE..... not an.....ACT ??

Codes of India

The Indian Penal Code 1860

The Code of Civil Procedure 1908

The Code of Criminal Procedure 1860

The insolvency and Bankruptcy Code 2016

A "Code", as per Black's law dictionary is,
"A Collection or Compendium of Laws"

Systematic and comprehensive compilation of laws, rules and regulations that are consolidated and classified for a particular subject.

Companies (excluding BSFI)

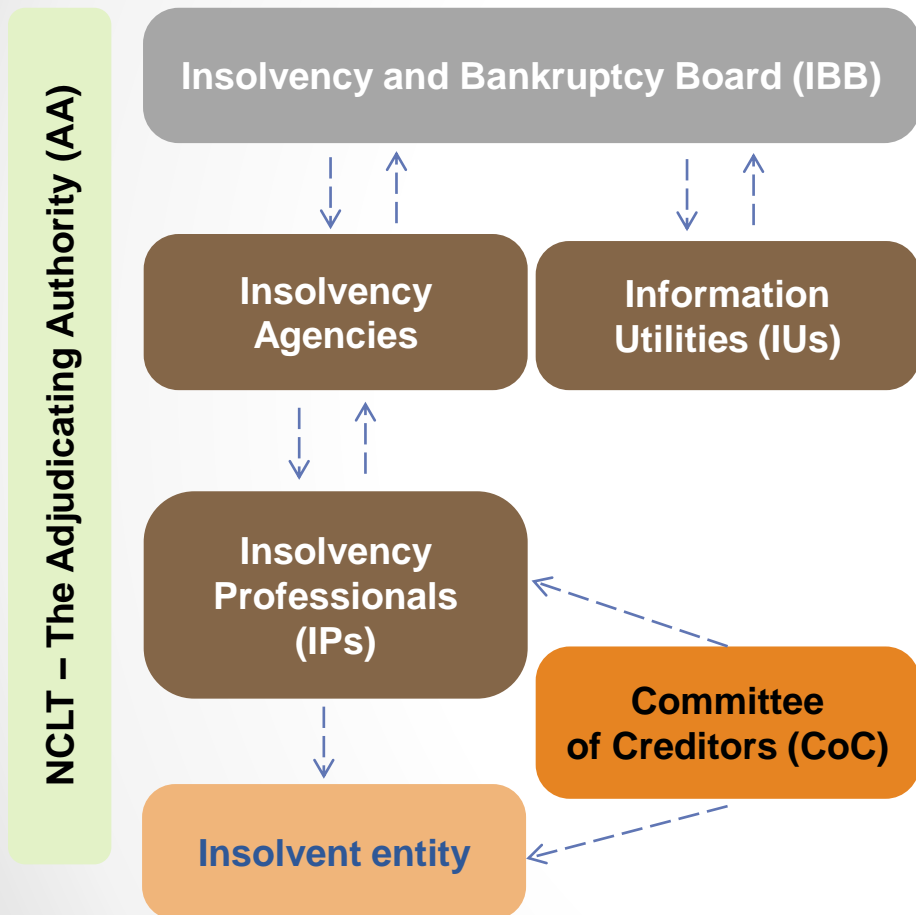
LLP

Partnership & Individual

Other body incorporated

The IBC Codes Applies to.....

INSOLVENCY AND BANKRUPTCY CODE ECOSYSTEM



IBB – apex body for promoting transparency & governance in the administration of the IBC; involved in setting up the infrastructure and accrediting IPs , IPAs & IUs.

IUs - Centralised repository of financial and credit information of borrowers; which validates the information and claims of creditors vis-à-vis borrowers,

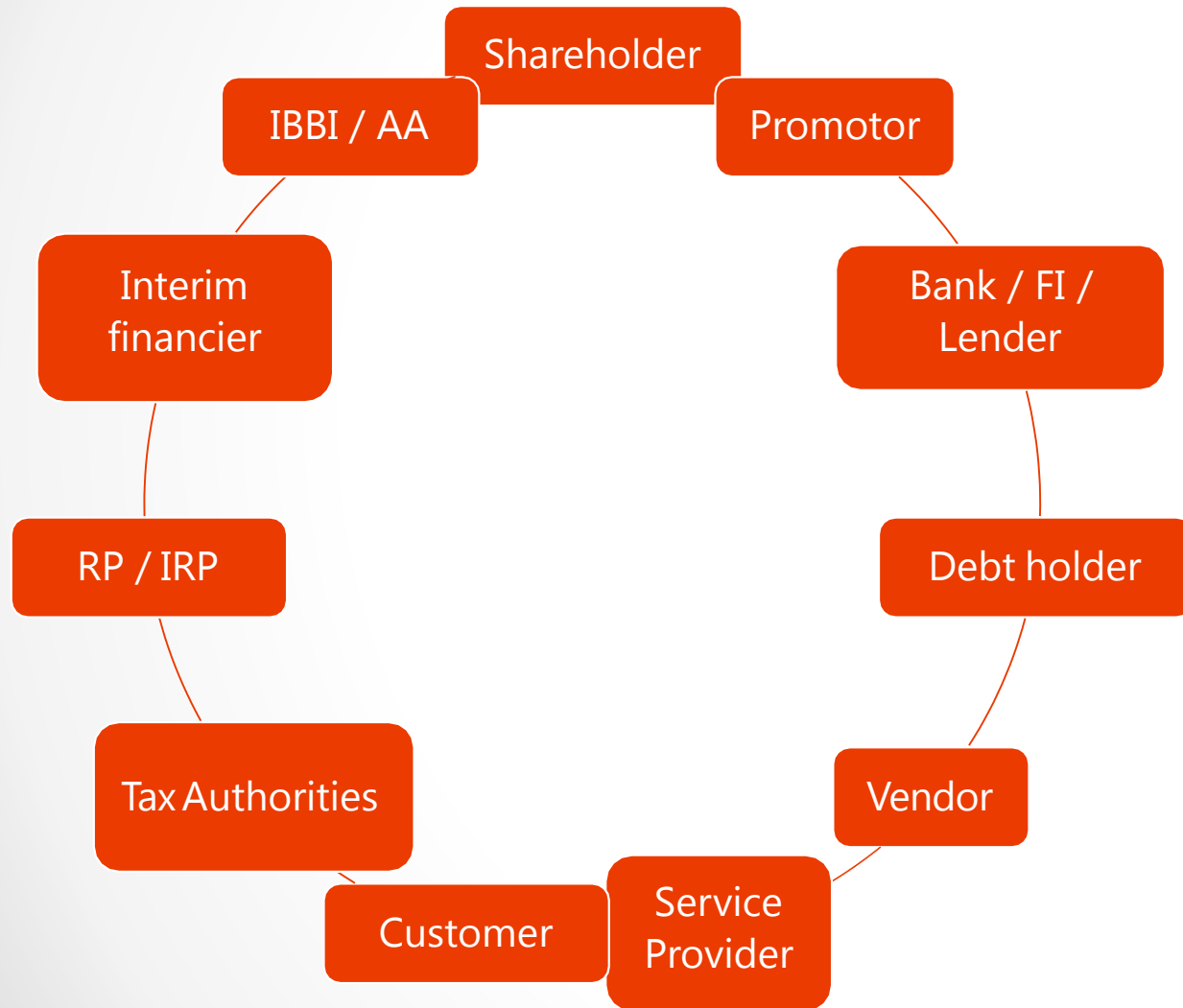
IPAs- professional bodies registered by the Board to promote and regulate the insolvency profession; these bodies enrol IPs

IPs- Registered Insolvency professionals regulated by the Board; who conduct resolution process;

Adjudicating Authority (AA) - 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.

CoC- consists of financial creditors who appoint and approve actions of IPs

Stakeholders in insolvency resolution



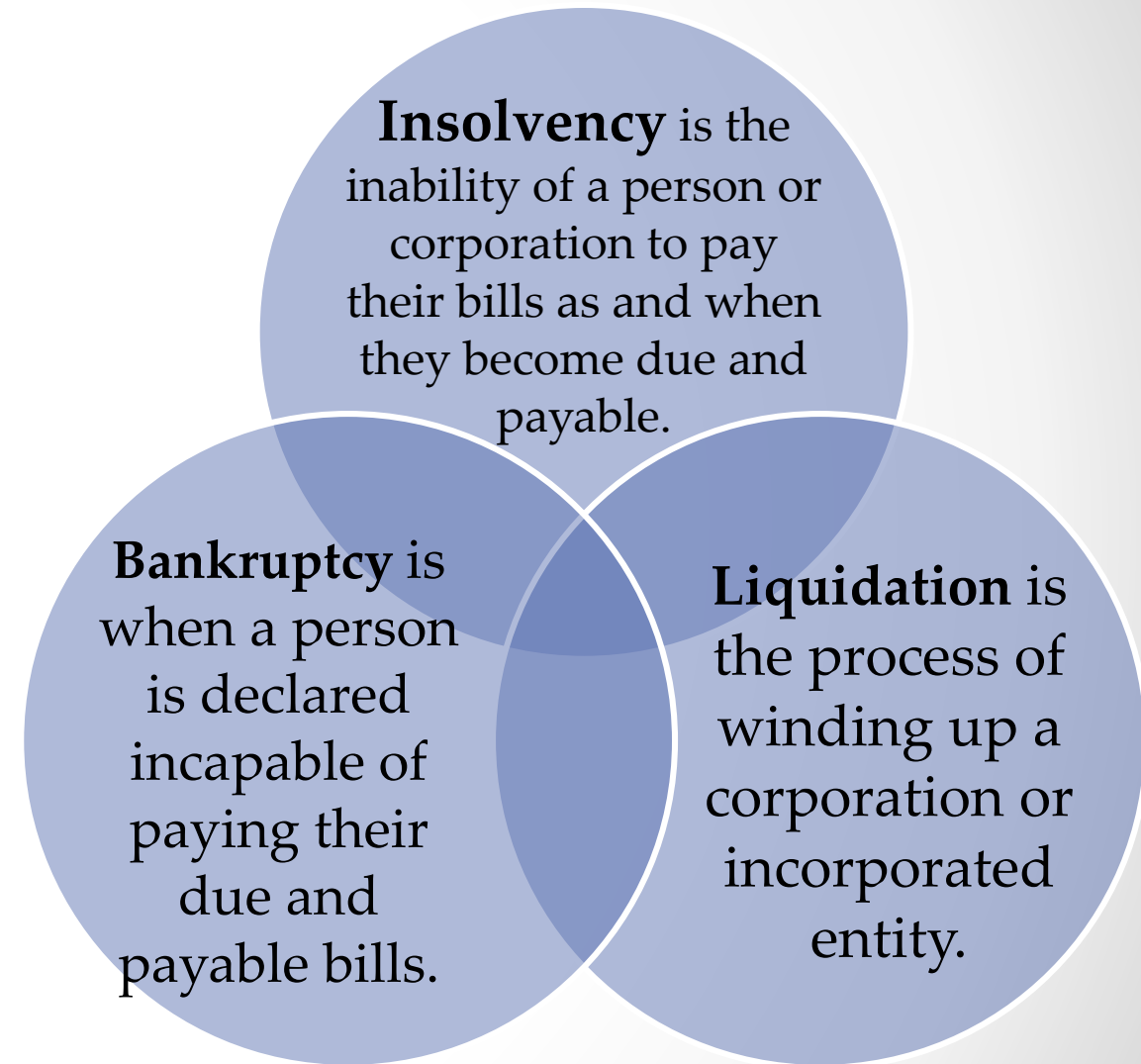
Understanding the Code

Differentiation

- Insolvency;
- Bankruptcy; and
- Liquidation

Why is it a Code?

“**Code**” is usually known as a collection or compendium of laws. It refers to a systematic and comprehensive compilation of laws, rules or regulations that are consolidated and classified according to a particular subject matter.



WHO CAN INITIATE CIRP

- Banks, NBFCs, other private financiers who have given loans, may be secured or unsecured, credit card or personal loans (Financial creditors)
- Persons who have supplied the material (vendors) or given any service and have not been paid (Operational creditors)
- Employees or workers (also called 'operational creditors')
- Central or state govt. or any local authority who have to recover any tax (also called 'Operational creditors')
- Company or person itself, who thinks that it cannot repay its debts. (Corporate Debtors)

Filing of application before NCLT

By a Financial Creditors – default of Rs. 1 Lakh and above

- Existence of Debt
- Disbursement of Debt
- Occurrence of default
- No need to give prior notice to Corporate Debtor
- Name of the Interim Resolution Professional to be proposed

AA to ascertain existence of default within 7 days and if satisfied admit the application or reject the same

Before rejection AA to give notice to the applicant to rectify the defect within 7 days

Filing of application before NCLT

By Operational Creditors – suppliers of goods or services, workman or employee, govt authorities for tax dues - default of Rs. 1 Lakh and above

- Existence of Debt
- Disbursement of Debt
- Occurrence of default
- Non Existence of dispute
- 10 days Demand Notice to be given prior notice to Corporate Debtor
- Name of the Interim Resolution Professional may be proposed, if not proposed NCLT will appoint one from the List

Filing of application before NCLT

By the Corporate Debtor - default of Rs. 1 Lakh and above

- Committed a default
- Application can be filed by Corporate Debtor, any authorised member or partner , CFO, MD or any person who is in charge of operations, resources or control and supervision of financial affairs of the Corporate Debtor
- Name of the Interim Resolution Professional must be proposed

Effects - Moratorium

1) All would be prohibited to do the following:

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act;
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Moratorium....

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

Reg 32: The essential goods and services referred to in section 14(2) shall mean-

(a) electricity; (b) water; (c) telecommunication services; and (d) information technology services,

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

Constitution of Committee of Creditors

- The IRP identifies the financial creditors and constitutes a creditors committee excluding related parties
- Operational creditors (if their aggregate debt is 10% of total debt) are allowed to attend meetings of the committee but do not have voting power
- In case there are no financial creditors, then the committee of creditors will be formed out of operational creditors
- Each decision of the creditors committee requires a 51% majority vote unless otherwise provided in the code. Most important decisions require 66%
- Decisions of the creditors committee are binding on the corporate debtor and all its creditors
- CoC in first meeting by majority vote of not less than 66% may decide to appoint IRP as RP or to replace him with their proposed RP



WHO CAN INVOKE

Financial Creditor (Sec.7)

- Any person to whom a financial debt is owed &
- Includes a person to whom such debt is legally assigned or transferred



Operational Creditor (Sec.9)

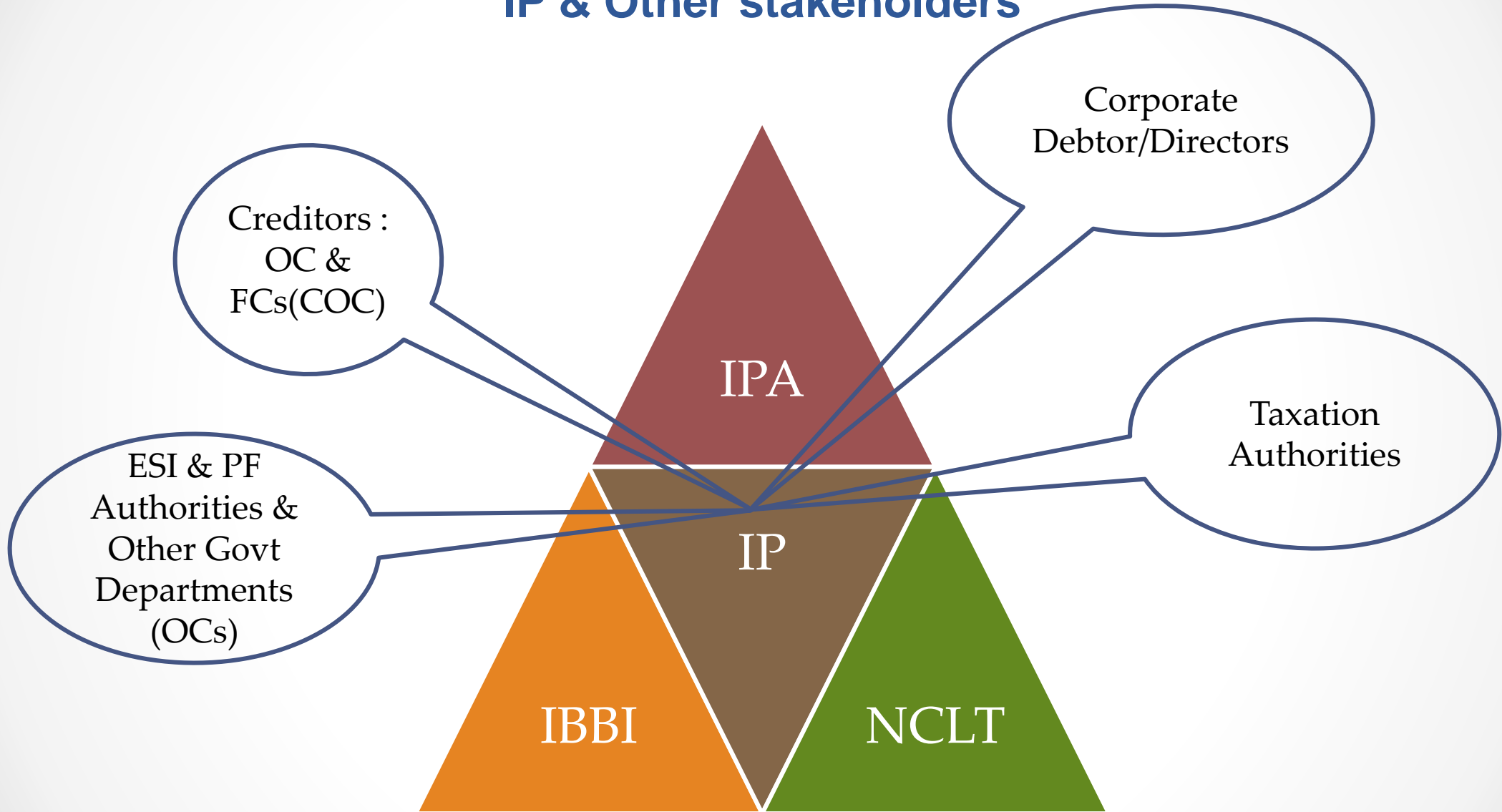
- A person to whom an operational debt is owed &
- Includes any person to whom such debt is legally assigned or transferred



Corporate Debtor (Sec.10)

- A corporate person who owes a debt to any person

IP & Other stakeholders



Broad CIRP-Process

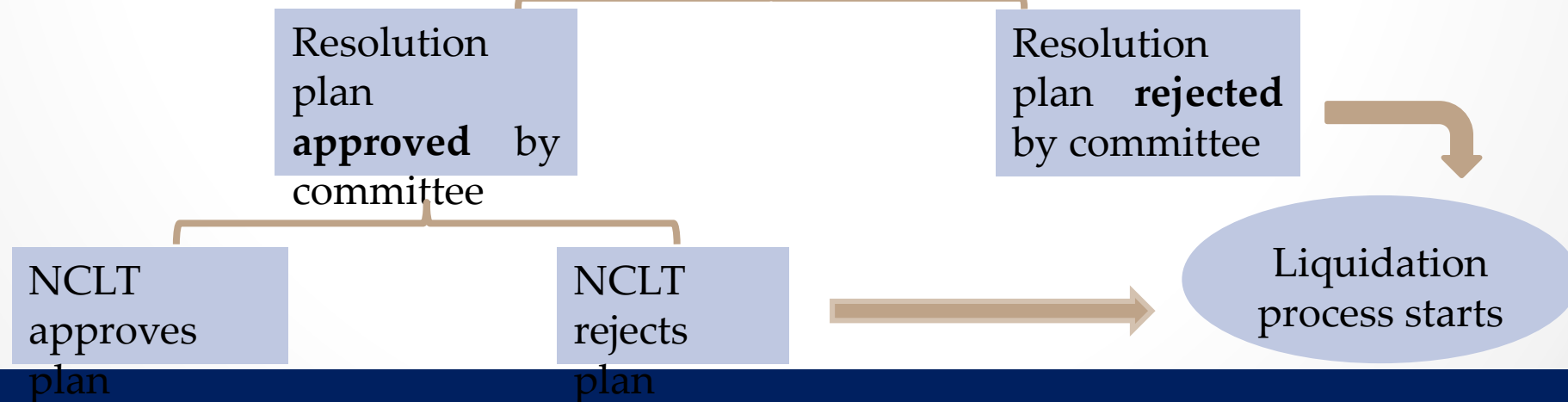
Admission of application and appointment of Interim Resolution Professional

Collation of claims and constitution of committee of creditors by Interim Resolution Professional

Appointment of Resolution Professional in the creditors meeting held within 7 days of constitution of committee of creditors

Resolution Professional to prepare Information Memorandum

Resolution Applicant to prepare (on the basis of Information Memorandum) and submit resolution plan to Resolution Professional for examination & further submission for approval of committee of creditor



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

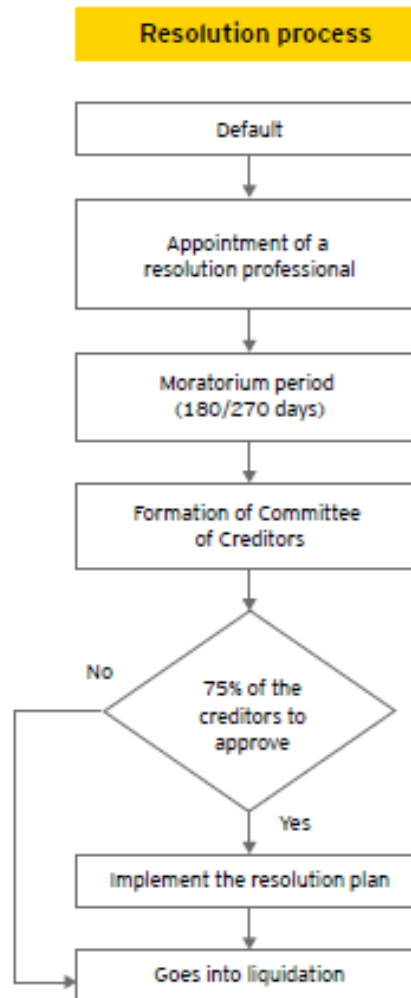
Resolution Professional (IRP/ RP)

- 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



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 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 financial creditors

Powers and Duties of Resolution Professional

RP will take over management of Corporate Debtor

Power of BOD of the CD shall be suspended

Officers and management of the CD will report to RP

Can access information from third parties to the extent relevant for CIRP e.g. depositories of securities, professional advisors of CD, IUs, other registries keeping ownership records, members, promoters, partners, directors, JV Partners, contractual counter parties of CD,

Banks, FIs maintaining accounts of CD will act as per instruction of RP – Bank account operations will be under the control of RP

Collect all information relating to assets, finances and operations of CD

Receive, collate and verify all the claims submitted by creditors and determine any contingent claims to his best estimate

Monitor the assets and manage operations until RP is appointed by CoC

Take control and custody of assets over which CD has ownership rights in India or abroad including assets not in possession of CD including business records

Powers and Duties of Resolution Professional

Manage operations of CD as a going concern

Preserve and protect the assets of the CD, including the continued business operation of the CD

Represent and act on behalf of CD with third parties

Raise interim Finance

Appoint accountant, legal or other professionals e.g. Valuers, Transactional Auditors, Auditors, etc.

Maintain updated list of all claims

Convene and Chair all meetings of CoC and circulate minutes

Prepare Information Memorandum and provide information to Prospective Resolution Applicants

Invite Lenders/Investors and other persons to put forward their resolution plan

Put resolution plans for consideration/approval of CC and submit the Resolution Plan before NCLT for approval.

Observe, find and determine avoidable transactions u/s 43, 45, 50 & 66 of the Code e.g. Preferential, undervalued, extortionate and fraudulent transactions and file appropriate application to NCLT for remedy

Voting Share required for different decisions of Committee of Creditors



90% - For withdrawal of application admitted u/s 7, 9 or 10 – approval of COC
-Sec 12A



- For Extension of CIRP Period by up to 90 days
-Sec 12(2)
- For appointment of Resolution Professional -
Sec 22(2)
- For Replacement of Resolution Professional -
sec 27(2)
- For Approval of COC for various actions u/s
28
- For approval of Resolution Plan u/s 30(4) and
allocating resources under the Plan
- For approval of resolution to liquidate the
Corporate Debtor u/s 33(2)



- Approval of Eligibility Criteria and Bid Evaluation Matrix
- Authorising any person to attend the meeting;
- Ratification of Public Announcement expenses;
- Reduction in notice period for meeting of COC,
- Modification of voting share required for quorum,
- Sale of unencumbered assets under reg. 29,
- Ratification of expenses incurred by IRP for IRP Fee, IPE
Fee, Professional charges, etc.;
- Approval of Resolution Professional fee and expenses
incurred by Resolution Professional and amount payable to
professionals appointed by Resolution Professional
- Modification of Expression of Interest and/or Bid Evaluation
Matrix and eligibility criteria.

ROLES AND RESPONSIBILITIES OF INTERIM RESOLUTION PROFESSIONAL

- Manage operation of the corporate debtor as a going concern
- Public announcement
- Appointment of registered valuers
- Collection / Collation /verification and determination of claims
- Constitute a committee of creditors
- Holding first meeting of CoC
- Preparation of partial information memorandum
- Take immediate custody and control of all the assets
- Monitor assets of the corporate debtor
- Determine financial position of corporate debtor
- Collect all information relating to the assets, finances and operations of the corporatedebtor

ROLES AND RESPONSIBILITIES OF RESOLUTION PROFESSIONAL

- Conduct entire CIRP
- Manage the operations of corporate debtor
- Preserve and protect the assets of the corporate debtor including continued business operations
- Represent and act on behalf of the corporate debtor including Court cases
- Raise interim finances subject to the approval of the CoC
- Update list of claims
- Prepare information memorandum
- Invite prospective lenders, investors, and any other person to put forward resolution plans
- Check resolution plan for compliance with the code & present to CoC.
- Submit resolution plan approved by CoC to NCLT
- Send copy of order of NCLT approving/rejecting resolution plan to participants and resolution applicants

WHO CAN PREPARE AND SUBMIT A RESOLUTION PLAN?

- Financial creditor(s)
- Operational creditor(s) including any employee of the Company
- Corporate debtor
- Committee of creditors
- Any one or more shareholders of the CD
- Any one or more employees of the CD
- Any person who is interested in buying one or more assets of the CD
- Any other person who is having any strategic interest in the corporate debtor
- Any other person who is having interest in taking over the CD as going concern
- Any other person as the RP may permit

WHO ALL ARE NOT ELIGIBLE TO SUBMIT A RESOLUTION PLAN

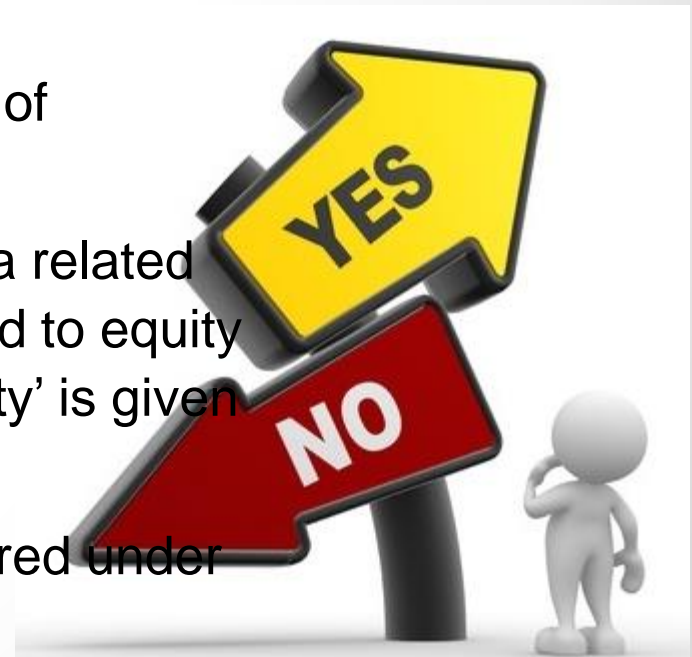


1. Any person who does not meet the eligibility criteria as released by RP after the approval of COC
2. Persons not eligible to submit a Resolution Plan – Section 29A w.e.f. 23-11-2017: if such person, person acting jointly or acting in concert is:
 - a. Is an undischarged insolvent;
 - b. Is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949)
 - c. At the time of submission of Resolution Plan:
 - Has a one-year old NPA Account from the date of CIRP
 - Has a company with one-year old NPA account under his control or promoted by him
 - Has not been able to pay the overdue amount before submission of Resolution Plan

Not applicable if Resolution Applicant is a financial entity and is not a related party (other than those shareholders whose debt has been converted to equity shares before commencement of CIRP) – definition of ‘financial entity’ is given in the section.

Not applicable to those accounts which are NPA but has been acquired under IBC

This clause is also not applicable to MSME class of enterprises (Sec 240A)



- d) Has been convicted for any offence with imprisonment – 2 years for offences under twelfth schedule or 7 years or more under any other law. (not applicable for 2 years of release from imprisonment and also not applicable to connected persons)
- e) Is disqualified to act as a director under the Companies Act, 2013 (not applicable to connected persons)
- f) Is prohibited by the SEBI from trading in securities or accessing the securities markets
- g) Has been a promoter or in the management or control of a CD in which avoidable transactions u/s 43, 45, 50 & 66 has taken place and an order has been made by the Adjudicating Authority (not applicable to any CD, if acquired under a resolution plan approved by NCLT)
- h) Is a guarantor to corporate loan and the guarantee has been invoked and remains unpaid and the CD is under CIRP
- i) Is subject to any disability as per clauses a) to h) above in any jurisdiction outside India



j) has a connection with a person not eligible under clauses a) to i) above

The 'connected persons' means: -

- I. any person who is the promoter or in the management or control of the resolution applicant
- II. any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan
- III. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

'Related Party' to corporate debtor is defined under section 5(24) of the Code and 'Related party' with regard to Individuals is defined u/s 5(24A) of the Code



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

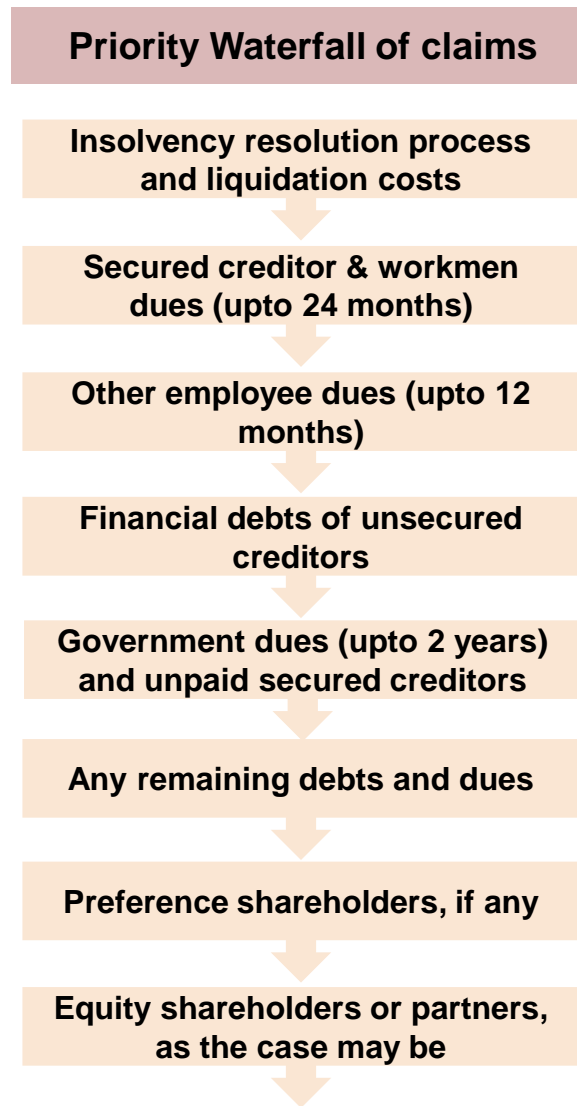
Liquidation steps

- 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)

Liquidator

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



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

Insolvency and liquidation cost

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

Secured creditor in liquidation

Secured creditor has the option to:

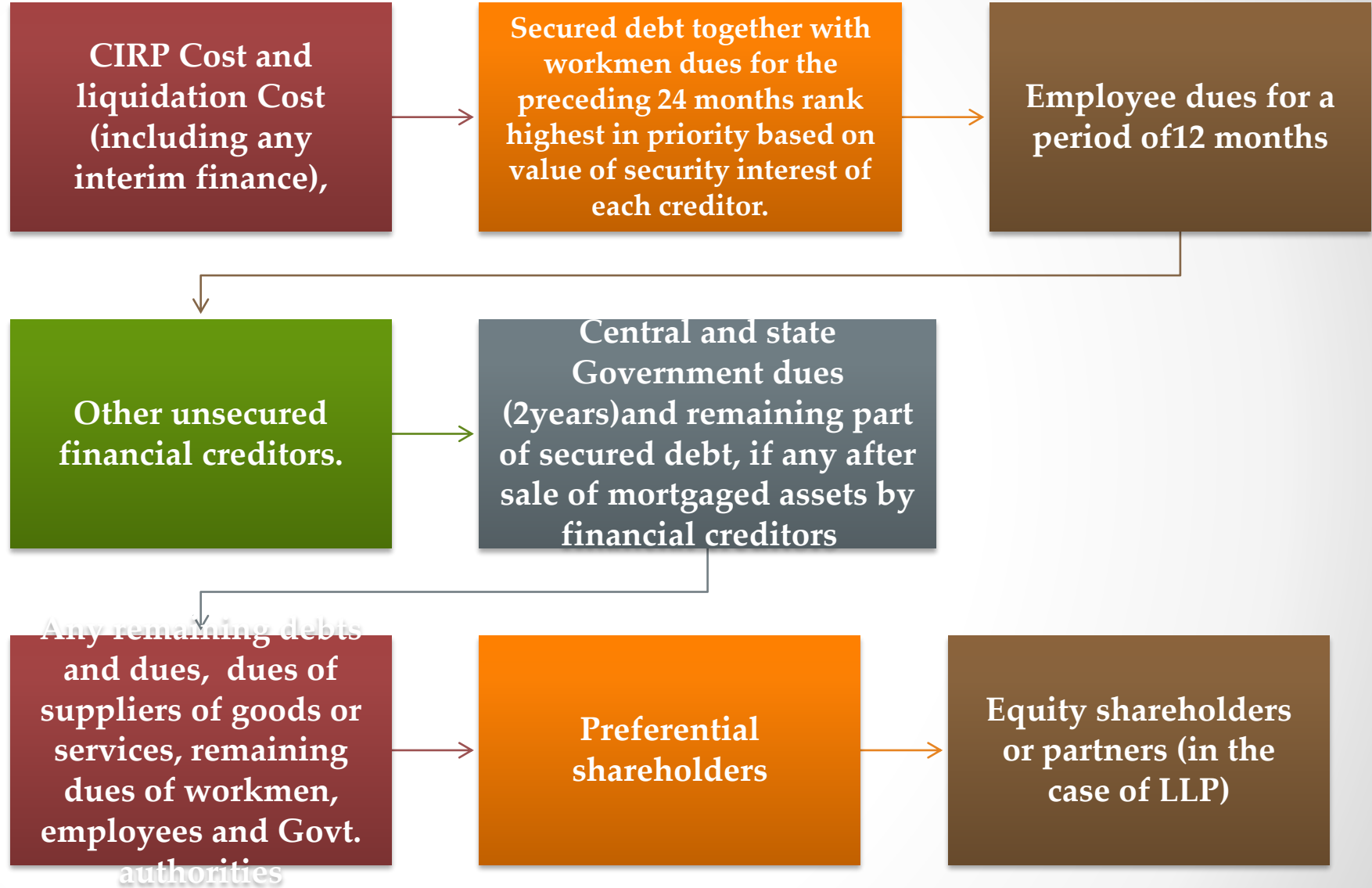
- enforce and realise the security outside the Code, or
- relinquish its security interest and receive proceeds as defined in the priority of claim
- Distinction between rights of different class of secured creditors (first vs second charge, fixed vs floating charge) not clarified

Distribution of assets

(WATERFALL

MECHANISM)

Amount available under a Resolution Plan or proceeds of sale of assets of the liquidation estate will be distributed in the manner and as per priority based on the value of security Interest of each creditor:



Dissolution of Debtor

- Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of debtor
- The AA shall on application, order that the corporate debtor shall be dissolved from the date of the order
- A copy of order shall within seven days from the date of order, be forwarded to the authority with which corporate debtor is registered

Secured Creditor in Liquidation

A secured creditor may choose to enforce and realise his security and receive proceeds from the sale of the secured assets in first priority. If the secured creditor enforces his claims outside the liquidation, he must contribute any excess proceeds to the liquidation trust. Further, in case of any shortfall in recovery, the secured creditors to approach liquidator for recovery of balance dues in terms of waterfall mechanism as set out in section 53

ROLES AND RESPONSIBILITIES OF LIQUIDATOR

- To receive , collect and verify claims of all the creditors
- To take into custody / control and evaluate all the assets, property, effects and actionable claims of the corporate debtor- protect and preserve the assets & properties.
- Form and hold liquidation estate as a fiduciary for the benefits of the creditors
- Carry on business for beneficial liquidation as necessary
- Sell movable and immovable properties by auction/private contract
- Obtain professional assistance
- To institute or defend suit
- Investigate financial affairs of CD for undervalued/ preferential transactions
- Apply to NCLT for orders and directions as required
- Prepare preliminary report, assets memorandum, sale report etc
- Maintain relevant records
- Realize and distribute

Emerging areas

Individual insolvency

- A debtor unable to pay his debt shall be entitled to a Fresh Start Mechanism where his annual income is < INR 60000, qualifying debt < 35000 and his assets < 20000.
- An application leads automatically to an interim moratorium
- Insolvency Resolution Process (IRP) allows for Repayment Plan to be prepared by Resolution Professional and submitted to the creditors for approval before Adjudicating Authority grants its approval.
- Upon repayment, there shall be a binding discharge order
- Bankruptcy will involve administration and distribution of asset proceeds by Bankruptcy Trustee subject to a waterfall mechanism
- Implementation proposed in three phases: firstly regarding personal guarantees to corporates (AA being NCLT), secondly to partnership firms and proprietary firms; and finally to other individuals (individuals without business).

Cross-border insolvency

- Enforcing the provisions of the Code outside India
- Assets or property of corporate debtor, or a personal guarantor of a corporate debtor, situated at any place in a country outside India
- Proceedings in countries where the debtor has an “establishment”.
- Framework for cooperation between domestic and foreign courts, and domestic and foreign insolvency professionals, access to foreign representatives
- Framework for coordination of two or more concurrent insolvency proceedings in different countries

Group Insolvency

Business is being increasingly viewed on an enterprise basis; accounting standards and securities regulators view the business on a “group” basis. However, corporate laws remain anchored to separation of legal entity; this is largely the case of insolvency laws too. However, given the primary object of insolvency laws to rescue an entity, an entity-focused approach mostly may fail to do justice to the needs of an ailing enterprise, where resources, operations and assets may be scattered across entities

OPPORTUNITIES FOR PROFESSIONALS

The IBC-2016 provides that CMAs, CAs, Company Secretaries & Advocates (having fulfilled certain eligibility criteria) can practice as **Insolvency Professionals**.

Becoming an Insolvency Professional is one of the greatest and brightest professional opportunity that has come to the kitty of CMAs as we are the best fit to the role and responsibilities expected out of an insolvency professional.

Let's see how ...

WHY BECOME AN INSOLVENCY PRACTITIONER ?

- Insolvency is possibly the most **demanding career** option a professional can undertake. It is certainly one of the most challenging, involving and rewarding.
- Insolvency practitioners can find themselves **running businesses, constructing and negotiating deals** or investigating and advising on the viability of a business and its restructuring
- The work of the insolvency practitioner **affects the lives, prospects and livelihoods of both creditors and debtors**. Insolvency work is as much about people as it is about figures. Insolvency practitioners need the skills to deal with creditors, anxious directors, concerned employees and a range of other stakeholders in the business.
- Insolvency practitioners need the **skills to deal with creditors, anxious directors, concerned employees and a range of other stakeholders** in the business.

WHAT MAKES A GOOD INSOLVENCY PROFESSIONALS ?

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**

OPPORTUNITIES AVAILABLE UNDER IBC-2016

- As an interim resolution professional
- As a resolution professional
- As a liquidator
- As a valuer
- As Authorized Representative
- As an consultant/ accomplice/ assisting professional to the resolution professional

SUPPORTING ROLES UNDER IBC

- **Forensic Audit** : IBC provides for look back period of 2 years in case of related parties and 1 years in case of other parties. Forensic audit might be needed to conducted in some matters .
- **Due Diligence** : As per code IRP need to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to
 - (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;

SUPPORTING ROLES UNDER IBC

- **Data processing** : As per IBC code IRP and RP are needed to collate and verify claims of the creditors. In a large operating company data could be huge. IRP/RP may avail services of professionals for data processing
- **Management of borrower** : IRP/RP are required to manage business of the borrower on a going concern basis. IRP/RP may engage professionals for assisting in management e.g. as CFO
- **Secretarial and legal work** : CIRP process requires huge amount of book keeping, holding of meeting, recording minutes, communication with stakeholders etc. IP may take help of professionals in this regard.
- **Representing lenders** : Any creditor who is part of C O C is allowed to appoint other IP (other than RP) as their representative in COC..
- **Representing before NCLT / NCLAT** : A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize one or more professionals to present his case before the Tribunal or the Appellate Tribunal.

SUPPORTING ROLES UNDER IBC

- **Stock Audit** : Most corporate Debtors enjoy working capital limits. It may be necessary to conduct periodic Stock Audit of the CD during the CIRP process.
- **Internal / Concurrent Audit** : RP can appoint Internal / Concurrent Auditors during the operation of the business under CIRP.
- **Monitoring and Supervision of Resolution Plan** : IBC requires provision of Monitoring and Supervision of Resolution Plan after its approval by NCLT. Professionals can provide services of such monitoring and supervision.
- **Valuer** : The Code mandates appointment of two valuers for ascertaining the value of the estate of the debtor. The valuers have to determine the fair value and the liquidation value of the assets of the corporate debtor.

CMA's do possess good knowledge of valuation. Further, the Institute has also been offering specialized advanced courses in valuation for creating experts in this area .

WHAT ARE THE TOP CHARACTERISTICS OF PROFESSIONALS IN INSOLVENCY PRACTICE ?

When it comes to competencies, insolvency uses client facing skills, advisory skills, maths and statistics, analysis, customer service and strategy. Here's a breakdown of the top characteristics of professionals in this industry:

- 1. Numbers** – A top insolvency professional should have good mathematic competency, as a large part of their role involves the preparation of accounting statements.
- 2. Law** – Insolvency practice requires ability to read and interpret the laws which govern the insolvency profession.
- 3. Report writing** – Insolvency professional is required to prepare various reports to a number of different stakeholders on various issues. Therefore Report writing skills are very important.

WHAT ARE THE TOP CHARACTERISTICS OF PROFESSIONALS IN INSOLVENCY PRACTICE ?

- 4. Communication** – You must be a good communicator. This is mainly because, as an insolvency professional, you work with and for a number of different stakeholders.
- 5. Discreet and personable** – You must be able to keep the information you are given confidential and use the right wording in meetings with clients. This is vital, as brash or insensitive comments made in meetings with clients who are facing debt problems can cause upset even if it's unintended; not to mention it may cause damage to your reputation.
- 6. Commerciality** – Aside from advising clients purely based on the legal ramifications, you must also be mindful that the client will often weigh up their options based on how it affects them financially. Therefore being aware of commercial aspects is imperative. .

HOW CMAS FIT IN....OUR STRENGTHS

- We are trained auditors.
- CMAs possess a unique blend of core competencies in accounting, management and strategy.
- We have expertise in the field of risk assessment, valuation, financial and corporate restructuring and financial reporting... that is what the law is all about
- We have an experience in consultancy and client management

..... CMAs are well positioned to grab the opportunities offered by IBC

IPA Institute of Cost Accountants of India

The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI), a section 8 company incorporated under the Companies Act 2013 has been promoted by the Institute of Cost Accountants of India to enroll , monitor and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder.

Eligible Criteria

Registration after passing Examination

Regulation 5 of the “Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016”, subject to the other provisions of these Regulations, an individual shall be eligible for registration, if he-

- has passed the National Insolvency Examination;
- 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
- has passed the Limited Insolvency Examination and has ten years of experience as -
 - a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - a company secretary enrolled as a member of the Institute of Company Secretaries of India,
 - a cost accountant enrolled as a member of the Institute of Cost Accountants of India, or
 - an advocate enrolled with a Bar Council.

The format of examination is as under

- a) The examination will be conducted online (computer-based in a proctored environment) with objective multiple choice questions.
- b) The duration of the examination will be two hours.
- c) A candidate will be required to answer 87 questions in two hours for a total of 100 marks.
- d) There will be negative marking of 25% of the marks assigned for the question.
- e) Passing mark for the examination is 60%.
- f) Passing candidates will be awarded a certificate by the Board.
- g) A candidate will be issued a temporary mark sheet on submission of examination paper.
- h) No workbook or study material will be provided.

Frequency of Examination

- a. The examination centers will be available from 100 + locations in the country.
- b. 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.
- d. A candidate needs to provide PAN and Aadhaar to enroll for the examination.
- e. A candidate needs to pay examination fee of Rs.1000 (One thousand rupees only) online on every enrollment.

Preparing for Insolvency Examination

Bare Acts

Mock Test Papers

E-Resources

Books - IBC code

Case Laws from IBC practical cases

General Laws

Case laws

Finance and accounts

Miscellaneous topics

Preparatory Educational Course for IP Examination

If you want to cover complete syllabus and know success mantra

If you want to learn tips for cracking the examination

If you do not get time to self study due to work commitments

IPA Offers

- 3 days Module – Friday, Saturday and Sunday
- Covering complete syllabus of Limited Insolvency examination
- Faculty – Insolvency and other professionals
- Comprehensive reading material is provided
- Strategy and tips for cracking Insolvency examination

IPA Offers

Certificate Course in IBC

- 60 hours certificate Course in IBC at Chapters / WIRC/NIRC/SIRC/EIRC/ CoE
- Comprehensive course material
- Faculty comprises of Insolvency and other professionals
- Convenient course schedule

Prepares students of CMA, CA, CS, MBA, LAW, and members with less than 10 years experience in practice for various support services sought by Insolvency Professionals

IBC ecosystem requires **CMA, CA, CS, Advocates, MBAs, Bankers, Accountants, Academicians, law graduates, students pursuing CMA,CA,CS, B.com, law, MBA**, for performing various supporting functions and assignments

- As a consultant/ accomplice/ assisting professional to the resolution professional
- Working out a detailed plan for restructuring the business from all angles.
- Drafting insolvency petitions.
- Representation before the Debt Recovery Tribunals.
- Representation before the NCLT or NCLAT
- Negotiating settlements.
- Advisory services to Insolvency professional
- Advisory services to the management on an ongoing basis.
- IT professionals / Data processing
- Accounts and Finance work
- Secretarial and legal work
- Domain experts to run the business as a going concern
- Representing lenders as Authorized representative
- Forensic audit
- Stock Audit
- Internal / Concurrent Audit
- Monitoring and Supervision of Resolution Plan

IPA Offers

- 30 Hours Certificate Course in IBC for students (in campus)
- Improves the employability / of the students
- Comprehensive reading material
- Faculty comprises of Insolvency and other professionals
- Certificate awarded to those who successfully pass the exam

Other IPA initiatives

Round tables, seminars, webinars

Au Courant – Daily IBC update

Mobile application

E Journal

For further Information

Visit

WWW.IPAICMAI.IN

Mail at

IPA@ICMAI.IN

Thank You