

**WELCOME ALL TO WEBINAR**

**26<sup>TH</sup> APRIL 2017**

**Insolvency and Bankruptcy Code & NCLT  
and Role of Cost Accountants/ Professionals**

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# ***WHY IBC 2016 [CODE] WAS REQUIRED***

- Before this Code, there was no single law dealing with insolvency and bankruptcy in India;
- Liquidation of Companies was being handled by the *High Courts*;
- Individual cases were dealt with under the *Presidency Towns Insolvency Act, 1909* and *Provincial Insolvency Act, 1920*;
- Industrial Sickness cases and their financial restructuring were being handled by *Sick Industrial Companies (Special Provisions) Act (SICA), 1985*;
- *Recovery of financial debts being handled by:*
  - (i) *Recovery of Debt Due to Banks and Financial Institution Act, 1993, and*
  - (ii) *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and*
  - (iii) *Companies Act, 2013.*

The Code consolidates overall 13 Acts in force in India and brings them under one overarching umbrella.

## ADVANTAGES 1/3

- **Shorter time frames for every step in the insolvency process—right from filing a bankruptcy application to the time available for filing claims and appeals in the National Company Law Appellate Tribunal (NCLAT), and Debt Recovery Appellate Tribunals (DRAT);**
- **Shorter period of time bound insolvency resolution and supervision by insolvency professional, which will control “Asset Stripping” by promoters before and after default.**
- **All parties know that if time bound resolution process fails the company will go into liquidation. This will help avoid delaying tactics by Debtors.**
- **Promoters and other stakeholders can make proposals to propose Resolution Plan which inter-alia includes financial/debt restructuring.**

## ADVANTAGES 2/3

- The above shall control extensive erosion of the value of assets in distressed companies and control transferring assets out of the business.
- The Code separates commercial aspects of the insolvency proceedings from judicial aspects:
  - (a) While Insolvency Professionals (IPs) will deal with commercial aspects such as management of affairs of the corporate debtor, facilitating formation of committee of creditors, organising their meetings, examination of the resolution plan, etc.,
  - (b) Judicial issues will be handled by Adjudicating Authorities (National Company Law Tribunal / Debt Recovery Tribunal).
  - (c) The role of the adjudicator will be on process issues: To ensure that all financial creditors were indeed on the creditors committee, and that 75% of the creditors do indeed support the resolution plan.
- Creates a new class of insolvency professionals that will specialize in restructuring the sick companies.
- Code creates information utilities that will collate all information about debtors, financial creditors, operational creditors and other debts to prevent serial defaulters from misusing the system.

## ADVANTAGES 3/3

- Time-bound settlement of insolvency resolution, will enable faster turnaround of businesses;
- It is single law in place of multiple laws and will remove the overlapping jurisdictions of various authorities.
- There is a paradigm shift from the existing '*Debtor in possession*' to a '*Creditor in control*' regime.
- Addresses the concerns of both creditors and debtors by creating a level playing field.
- Provides banks with much-needed muscle to deal with NPA accounts; enable them to realise the maximum value out of an asset once a firm is declared bankrupt;
- Cumulative effects of all the above will improve India's position in the World Bank's Easy of Doing Business ranking.

# ***ACTS WHICH HAVE BEEN AMENDED***

1. **Indian Partnership Act, 1932;**
2. **Central Excise Act, 1944;**
3. **Income Tax Act, 1961;**
4. **Customs Act, 1962;**
5. ***Recovery of Debt Due to Banks and Financial Institution Act, 1993;***
6. **The Finance Act, 1994;**
7. ***The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;***
8. **The Sick Industrial Companies (Special Provisions) Act, 1985;**
9. **The Payment and Settlement Systems Act, 2007;**
10. **The Limited Liability Partnership Act, 2008; and**
11. **The Companies Act, 2013.**
12. **The Presidency Towns Insolvency Act, 1909 and**
13. **The Provincial Insolvency Act, 1920.**

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



# INSOLVENCY RESOLUTION COMPARATIVE

## Insolvency Resolution Time

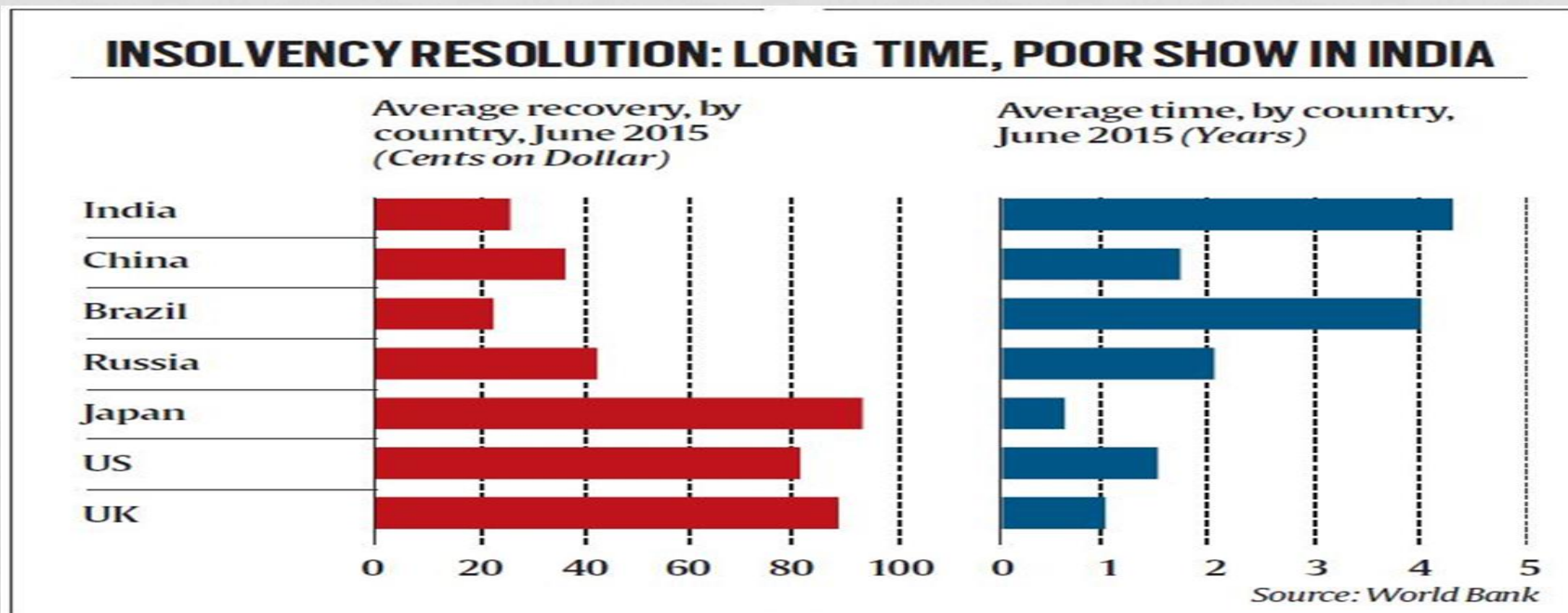
Insolvency resolution in India took 4.3 years on an average, which is higher as compared to other countries:



# INSOLVENCY RESOLUTION COMPARATIVE

## Multiplicity of laws has been a problem

Multiplicity of laws has been a problem in the way of banks failing to recover their loans. For example, DRTs are dealing with a backlog of Rupees 4 trillion worth of cases. For the last three financial years, less than 20% of cases taken up by various channels such as DRTs, Lok Adalats and SARFAESI courts.





# ECONOMIC TIMES NEWS 4.4.2017

- **Government plans a legislation that will empower the Reserve Bank of India to deal much more effectively with stressed assets than before to resolve banks' bad loans, a long-festering issue that has been holding back the economy from achieving its full potential.**
- **Bad loans rose by over Rs 1 lakh crore in the first nine months of last fiscal to Rs 6.07 lakh crore by December 31, 2016, minister of state for finance Santosh Gangwar had said in written reply to the Rajya Sabha.**
- **Public sector banks' gross bad loans stood at Rs 5.02 lakh crore at the end of March 2016, up from Rs 2.67 lakh crore at the end of March 2015.**
- **High NPAs have held back lending and prevented banks from lowering interest rates further, which has in turn discouraged private investment, badly needed to speed up growth.**
- **Banks have been reluctant to resolve NPAs through settlement schemes or sell bad loans to asset reconstruction companies for fear of being hauled up by investigation agencies.**

## Urgent Remedy

Government mulling urgent legal solution to deal with NPAs



### MORE POWERS TO RBI

Banking Regulation Act to be amended to empower RBI

RBI will be able to issue directions to banks on dealing with stressed assets

Central bank will also get power to set up overseeing committee

Committee will give comfort to banks to resolve bad loans

### FEAR FACTOR

Banks have been reluctant to take decisions with respect to bad loans

Fear vigilance action if they take action

### NPAs OF STATE-RUN BANKS

	Gross NPA*		NPA Ratio (%)	
MAR-14	2.17	<div></div>	4.72	<div></div>
MAR-15	2.67	<div></div>	5.43	<div></div>
MAR-16	5.02	<div></div>	9.83	<div></div>
DEC-16	6.07	<div></div>	12.23	<div></div>

\*(₹Lakh Crore)

# MEANING OF INSOLVENCY AND BANKRUPTCY

## Insolvency v. Bankruptcy

“**Insolvency**” means a situation where an entity (debtor) cannot raise enough cash to meet its obligations or to pay debts as they become due for payment. Symptom of Insolvency may include: poor cash management, increase in cash expenses, or decrease in cash flow etc.

“**Bankruptcy**” occurs when a court has determined insolvency, and has given legal orders for resolution. On declaring the person as bankrupt, **the court is responsible to liquidate the personal property of the insolvent and distribute the property** amongst the creditors of the insolvent debtors.

Under IBC 2016, a bankrupt entity is a debtor who has been adjudged as bankrupt by an adjudicating authority that has passed a bankruptcy order. The adjudicating authority under the IBC is “National Company Law Tribunal (NCLT)” for Corporate Debtors (Companies & LLPs) and the “Debt Recovery Tribunal (DRT)” for individuals and partnership firms.

# SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

1. **Code provides time bound insolvency resolution process—** 180 days after the process is initiated, plus a 90-day extension — for resolving insolvency.
2. **Code also provides for FAST TRACK INSOLVENCY RESOLUTION PROCESS—** 90 days after the process is initiated, plus a 45-day extension — for resolving insolvency in fast track mode.
3. **The following are authorities through which the Insolvency and Bankruptcy Process would be implemented under the Code:**
  - i. **Insolvency and Bankruptcy Board of India (IBBI)**
  - ii. **Insolvency Professional Agencies (IPAs)**
  - iii. **Insolvency Professionals (IPs)**
  - iv. **Information Utilities (IUs)**



# **SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016**

## **(v) Adjudicating Authorities**

**(a) For Corporate Persons (Companies & LLPs) - National Company Law Tribunal (NCLT) having territorial jurisdiction over the place where the registered office of the corporate person is located.**

**(b) For Individuals and Partnership Firms- Debt Recovery Tribunal (DRT) having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under IBC 2016 regarding such person.**

## **(vi) Appellate Authorities**

**(a) For Corporate Persons (Companies & LLPs) - National Company Law Appellate Tribunal (NCLAT), any person aggrieved by order of NCLT may file appeal to NCLAT within 30 days of such order.**

**(b) For Individuals and Partnership Firms- Debt Recovery Appellate Tribunal (DRAT), any person aggrieved by order of DRT may file appeal to DRAT within 30 days of such order.**

# SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

## 4. Civil court not to have jurisdiction

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which NCLT, NCLAT, DRT and DRAT has jurisdiction under this Code.

## 5. Appeal lies to Supreme Court

Any person aggrieved by an order of the National Company Law Appellate Tribunal or Debt Recovery Appellate Tribunal as the case may be, may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

## 6. Two categories of Creditors: Financial & Operational

IBC 2016 provides for two categories of Creditors: financial creditors and operational creditors. The Code provides different process for recovery of debts by these creditors from the debtors;



# SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

## 7. Corporate Insolvency, and Individual & Partnership Firms Bankruptcy

Code deals separately for Corporate Insolvency (Part II of the Code) and Individual and Partnership Bankruptcy (Part III of the Code);

## 8. Some of persons not entitled to initiate IRP 1/2

Some of the persons as per section 11 of the IBC 2016 are not entitled to initiate insolvency resolution process: These are as follows:

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

# SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

## 8. Some of persons not entitled to initiate IRP 2/2

- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of whom a liquidation order has been made.

**Explanation.**—For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor

## 9. AA to declare Moratorium

**When Insolvency Resolution Process (IRP) starts,** Adjudicating Authority (NCLT) declares “Moratorium”. Then no suit or other legal proceeding shall be instituted by or against the corporate debtor, restricts transferring the assets of corporate debtors and recovery of any property by an owner or lessor where such property is occupied or in possession of the corporate debtor. Similar process is applicable for Adjudicating Authority (DRT).

# SNAPSHOT OF INSOLVENCY AND BANKRUPTCY CODE 2016

## 10. Initiation of Liquidation Process

Where insolvency process fails, the Adjudicating Authority (NCLT) will pass an order under section 33 (***Initiation of Liquidation Process***) of the Code. Subject to section 52 (***Secured Creditors in Liquidation Proceedings***), when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.

## 11. Secured Creditors in Liquidation Proceedings

Section 52 (Secured Creditors in Liquidation Proceedings) **allows the secured creditor to relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator** in the manner specified in section 53; or realise its security interest in the manner specified in this section, ***read with Regulation 37 of IBBI (Liquidation Process) Regulations 2016 dated 15<sup>th</sup> December 2016.***

## 12. Notice of Discharge of Officers, Employees & Workmen

**Order for liquidation under section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.**

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Moratorium 1/2

**Section 14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—**

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;**
- (b) transferring, encumbering, alienating or disposing of 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;**

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Moratorium 2/2

(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.

(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. (Electricity, water, Telecom services, IT services)

## Management of affairs of corporate debtor by interim resolution professional 1/3

(1) From the date of appointment of the interim resolution professional,—

- (a) the **management of the affairs of the corporate debtor shall vest** in the interim resolution professional;
- (b) **the powers of the board of directors or the partners** of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;



# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Management of affairs of corporate debtor by interim resolution professional 1/2

- (c) the **officers and managers** of the corporate debtor **shall report to** the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;
  - (d) the **financial institutions** maintaining accounts of the corporate debtor **shall act on the instructions of the interim resolution professional** in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.
- (2) The interim resolution professional vested with the management of the corporate debtor shall—
- (a) **act and execute** in the name and on behalf of the corporate debtor **all deeds, receipts, and other documents**, if any;
  - (b) **take such actions**, in the manner and subject to such restrictions, as may be specified by the Board;

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Management of affairs of corporate debtor by interim resolution professional 3/3

(c) **have the authority to access** the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) **have the authority to access the books of account**, records and other relevant documents of corporate debtor available with **government authorities, statutory auditors, accountants** and such other persons as may be specified.

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Distribution of assets 1/4

***53. (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—***

- (a) the insolvency resolution process costs and the liquidation costs paid in full.***
- (b) the following debts which shall rank equally between and among the following :—***

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Distribution of assets 2/4

- (i) workmen's dues for the period of **twenty-four months preceding** the liquidation commencement date; and*
- (ii) debts owed to a secured creditor in the event such secured creditor **has relinquished security** in the manner set out in section 52;*
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
- (d) financial debts owed to unsecured creditors;*
- (e) the following dues shall rank equally between and among the following:—*

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Distribution of assets 3/4

- (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
- (f) any remaining debts and dues;*
- (g) preference shareholders, if any; and*
- (h) equity shareholders or partners, as the case may be.*

# PROVISIONS OF INSOLVENCY AND BANKRUPTCY CODE 2016

## Distribution of assets 4/4

*(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

*(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*



# IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS 2016

## Resolution Plan Regulation 37 1/2

### 37. Resolution plan

(1) **A resolution plan may provide for the measures required for implementing it, including but not limited to the following-**

- 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;

# IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS 2016

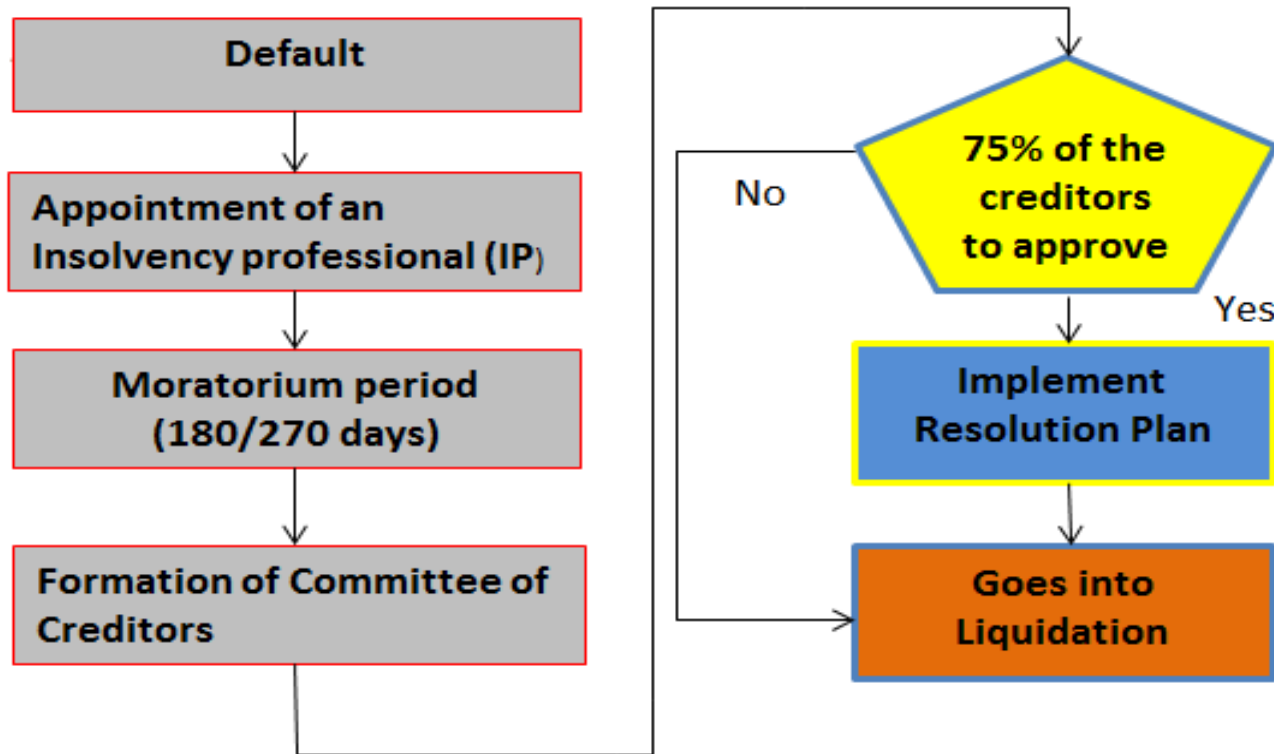
## Resolution Plan Regulation 37 2/2

- 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.**

# IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS 2016

## Corporate Insolvency Resolution and Liquidation

### Resolution timeline and process



# INSOLVENCY PROFESSIONALS

## Qualifications and experience

### Regulation 5:

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

## Recognition of Insolvency Professional Entities [Reg.12]

Regulation 12 recognizes a limited liability partnership firm, a registered partnership firm and a company as an insolvency professional entity **if majority of the partners of the limited liability partnership or registered partnership firm or majority of the whole-time directors of the company are registered as insolvency professionals under the Code.** An insolvency professional **may use the organisational resources of a recognised insolvency professional entity** subject to the condition that the entity as well as the insolvency professional shall be jointly and severally liable for all acts of omission or commission of its partners or directors as insolvency professionals.

# INSOLVENCY PROFESSIONALS

## Limited Insolvency Examination

### I. Syllabus for Examination

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 30 <sup>th</sup> November, 2016)	25
c.	Report of the Bankruptcy Law Reforms Committee (Entire Report) [Conti...next page]	05



# INSOLVENCY PROFESSIONALS

Sl. No	Syllabus (Conti...) Coverage	Weight (%)
d.	<p>(I) The Companies Act, 2013</p> <ul style="list-style-type: none"> <li>• Chapter III Prospectus and Allotment of Securities</li> <li>• Chapter IV Share Capital and Debentures</li> <li>• Chapter V Acceptance of Deposits by Companies</li> <li>• Chapter VI Registration of Charges</li> <li>• Chapter VII Management and Administration</li> <li>• Chapter IX Accounts of Companies</li> <li>• Chapter XV Compromises, Arrangements and Amalgamations</li> <li>• Chapter XVII Registered Valuers</li> <li>• Chapter XVIII Removal of names of the companies from the register of companies</li> <li>• Chapter XX Winding-up of the companies</li> <li>• Chapter XXVII NCLT and NCLAT</li> </ul> <p>(II) The Partnership Act, 1932, and</p> <p>(III) The Limited Liability Partnership Act, 2008 (Nature of LLP; Partners and their Relations; Limitation of Liability; Financial Disclosures)</p>	10

# INSOLVENCY PROFESSIONALS

Sl. No	Syllabus Conti.. Coverage	Weight (%)
e.	<p>(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)</p> <p>(II) Transfer of Property Act, 1882;</p> <p>(III) The Sale of Goods Act, 1930 (Sale, Warranties, Lien and Damages).</p>	05
f.	<p>(I) The Recovery of Debts due to Banks and Financial Institutions Act, 1993;</p> <p>(II) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; and</p> <p>(III) Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A) (of RBI)</p>	05
g.	General Awareness (Constitution, Economy, Finance, Code of Conduct for Insolvency Professionals, and Rights of Workmen)	05

# INSOLVENCY PROFESSIONALS

Sl. No	Syllabus Conti.. Coverage	Weight (%)
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
<b>Total</b>		<b>100</b>

## II. Format of Examination 1/2

- 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 90 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 examinations 60%;
- f. Passing candidates will be awarded a certificate by the Board;

# INSOLVENCY PROFESSIONALS

## II. Format of Examination 2/2

- g. A candidate will be issued a temporary mark sheet on submission of test paper; and
- h. No workbook or study material will be provided.

## III. Frequency of Examination 1/2

- a. The examination will be available from 100 + locations in the country;
- b. The examination made available from 31st December, 2016 onwards between 9:30 AM and 5:30 PM;
- c. Registration can be done without payment of fee. However, before appearing in examination the enrolment is to be made.
- d. A candidate needs to enrol for examination at [www.nism.ac.in](http://www.nism.ac.in). He needs to select IBBI-Limited Insolvency Examination and enrol himself for the examination by choosing the time, the day and the examination centre for his examination;

# INSOLVENCY PROFESSIONALS

## III. Frequency of Examination 2/2

e. A candidate needs to provide PAN and Aadhaar to enroll for the examination; and

f. A candidate needs to pay examination fee of Rs.1000 (Rupees one thousand only) online on every enrolment. [model-text paper IBBI.pdf](#)

## Conditions of the Certificate of registration 1/2

**Regulation 7(2)** of the “*Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016*”: The registration shall be subject to the conditions that the insolvency professional shall -

(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled;

(b) at all times continue to satisfy the requirements under Regulation 4;

(c) pay a fee of ten thousand rupees to the Board, every five years after the year in which the certificate is granted;



# INSOLVENCY PROFESSIONALS

## Conditions of the Certificate of registration 2/2

- (d) take prior permission of the Board for shifting his professional membership from one insolvency professional agency to another, after receiving no objection from both the concerned insolvency professional agencies;
- (f) take adequate steps for redressal of grievances;
- (g) maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment;
- (h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and
- (i) abide by such other conditions as may be imposed by the Board.

# INSOLVENCY PROFESSIONALS

## Duties of Members (Insolvency Professionals)

**Under Clause VII of Schedule- Regulation 13 of the Model Bye-Laws**, the following duties of members (Insolvency Professionals) are mentioned:

**13(1):** In the performance of his functions, a professional member shall-

- (a) act in good faith in discharge of his duties as an insolvency professional;
- (b) endeavour to maximize the value of assets of the debtor;
- (c) discharge his functions with utmost integrity and objectivity;
- (d) be independent and impartial;
- (e) discharge his functions with the highest standards of professional competence and professional ethics;
- (f) continuously upgrade his professional expertise;
- (g) perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;
- (h) comply with applicable laws in the performance of his functions; and
- (i) maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

## OPPORTUNITIES FOR CMAS UNDER INSOLVENCY AND BANKRUPTCY CODE

### Insolvency and Bankruptcy Code 2016 1/2

CMAs can act as **Insolvency professionals**:

- (a) As ***Interim Resolution Professionals (Section 16)*** and manage the affairs of the Corporate Debtors as “*going concern*” during the insolvency resolution process in interim period of 30 days;
- (b) A creditor representing in CoC under Section 21(6)(c) [where terms of financial debt extended as a part of consortium and provide for a single trustee or agent) may appoint an insolvency professional (other than the resolution professional) at his own cost **to represent himself in the committee of creditors to the extent of his voting share**;
- (c) As ***Resolution Professional (Section 22)***, the creditors committee may either appoint the same “interim resolution professional” for preparing the “*Resolution Plan*” and managing the affairs of the Corporate Debtor as “*going concern*” during the insolvency resolution process or may appoint other Professional (CMA) in his place;
- (d) **Section 24(5)** Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

# OPPORTUNITIES FOR CMAS UNDER INSOLVENCY AND BANKRUPTCY CODE

## Insolvency and Bankruptcy Code 2016 2/2

- (e) As Liquidator (Section 33) to be appointed by Adjudicating Authority (NCLT) on the initiation of “Liquidation Process”;
- (f) As Voluntary Liquidator (Section 59) to be appointed by Corporate Debtors;
- (g) Insolvency Resolution Professional (Section 82) by Adjudicating Authority in case of *“Insolvency and Bankruptcy for individuals and Partnership Firms”*;
- (h) As Insolvency Resolution Professional (Section 97) by Adjudicating Authority for initiating the insolvency resolution process by debtor in case of *“Insolvency and Bankruptcy for individuals and Partnership Firms”*
- (i) As *insolvency professional as bankruptcy trustee* (Section 125) by Adjudicating Authority in case of *“Insolvency and Bankruptcy for individuals and Partnership Firms”*
- (j) As valuer of properties and assets of liquidation estate under the Code and Regulations being framed under the Insolvency and Bankruptcy Code 2016;

# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Establishment of IPA of 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 on 30<sup>th</sup> November 2016 to enrol 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.

## Functions of Insolvency Professional Agency 1/2

As per the provisions of Section 204 of the Code, an insolvency professional agency shall perform the following functions, namely:—

*(i) grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee;*



# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Functions of Insolvency Professional Agency 2/2

- (ii) lay down standards of professional conduct for its members;*
- (iii) monitor the performance of its members;*
- (iv) safeguard the rights, privileges and interests of insolvency professionals who are its members;*
- (v) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;*
- (vi) redress the grievances of consumers against insolvency professionals who are its members; and*
- (vii) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations*

# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Duties of the Agency (Insolvency Professional Agency) 1/2

*Under Clause IV of Schedule- Regulation 6 of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the following duties of Insolvency Professional Agency are mentioned:*

*6. (1) The Agency shall maintain high ethical and professional standards in the regulation of its professional members.*

*(2) The Agency shall -*

*(a) ensure compliance with the Code and rules, regulations and guidelines issued thereunder governing the conduct of insolvency professional agencies and insolvency professionals;*

*(b) employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation of its professional members;*

# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Duties of the Agency (Insolvency Professional Agency) 2/2

- (c) be accountable to the Board in relation to all bye-laws and directions issued to its professional members;*
- (d) develop the profession of insolvency professionals;*
- (e) promote continuous professional development of its professional members;*
- (f) continuously improve upon its internal regulations and guidelines to ensure that high standards of professional and ethical conduct are maintained by its professional members; and*
- (g) provide information about its activities to the Board.*

# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Committees 1/3

*The following committees are to be constituted by the Insolvency Professional Agency, as required under the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016:*

- a) Advisory committee*
- b) Membership Committee*
- c) Monitoring Committee*
- d) Grievance Cell*
- e) Disciplinary Committee*
- f) Appellate Panel*
- g) Other Committees as per the requirements of the Companies Act, 2013 and as may be decided by Governing Board from time to time for the furtherance of its objectives.*

# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Committees 2/3

- 1. **Advisory Committee** of Professional Members to advise the Agency in (a) the development of the profession; (b) standards of professional and ethical conduct; and best practices in respect of insolvency resolution, liquidation and bankruptcy.*
- 2. **Membership Committee** for examining the applications for enrolment of professional members and granting the membership on being satisfied that the professional member meets the criteria of enrolment and matters connected with the professional members.*
- 3. **Monitoring Committee** to monitor the professional activities and conduct of professional members for their adherence to the provisions of the Code, rules, regulations, guidelines and directions issued under IBC 2016.*
- 4. **Grievance Redressal Committee** providing for the procedure for receiving, processing, redressing and disclosing grievances against the Agency or any professional member of the Agency.*



# INSOLVENCY PROFESSIONAL AGENCY (IPA)

## Committees 3/3

**5. Disciplinary Committee** providing for disciplinary mechanism, issuing show-cause notices against professional members, disposal of cases, issuing necessary orders for expulsion, suspension, admonishment of the professional members, imposition of penalty. The Agency may issue show cause notice: (a) based on a reference made by the Grievances Redressal Committee; (b) based on monitoring of professional members; (c) following the directions given by the Board or any court of law; or (d) suo moto, based on any information received by the Agency.

**6. Appellate Panel** to provide for preferring an appeal by an aggrieved person before the Appellate Panel within thirty days from the receipt of copy of the final order from the Disciplinary Committee. Appellate Panel shall dispose of appeal within thirty days of receipt of appeal.

## INFORMATION UTILITIES (IUS)

*The Code also provides for Information Utilities to collect, collate, authenticate and disseminate financial information of creditors and debtors in centralised electronic databases. The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency.*

*The Insolvency and Bankruptcy Board of India notified Regulations in respect of Information Utilities on 31st March 2017*

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Corporate Persons

**Section 3(7) "corporate person"** means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;.

## Creditors

**Section 3(10) "creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder.

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Debt

**Section 3(11) "debt"** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

## Default

**Section 3(12) "default"** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Financial Creditor

**Section 5(7) "financial creditor"** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

## Operational Creditors

**Section 5(20) (20) "operational creditor"** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

## Operational Debt

**(21) "operational debt"** means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;



# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Corporate Applicant

**Section 5(5) "corporate applicant" means—**

- a) *corporate debtor; or*
- b) *a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or*
- c) *an individual who is in charge of managing the operations and resources of the corporate debtor; or*
- d) *a person who has the control and supervision over the financial affairs of the corporate debtor;*

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Who can initiate CIRP [Section 6] Application to NCLT

a) Financial Creditor

b) Operational Creditor

c) Corporate Debtor

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Financial Creditor/Operational Creditor or Corporate Debtor as the case may be, initiate the CIRP by application to NCLT under section 7 **[Financial Creditor]**, 8 & 9 **[Operational Creditor]** and 10 **[Corporate Applicant]** respectively.

- Financial Creditor on Default and operational Creditor after ten days from the date of delivery of demand notice can initiate CIRP.
  - A Financial Creditor and Corporate Debtor shall propose the name of IRP and Operational Creditor may propose the name of IRP. **Eligibility of IRP shall be as per Reg. 3 of IBBI (IRP for Corporate Persons) Regulations 2016 dated 30.11.16**
  - NCLT within 14 days of receipt of application by order admit or reject application (before rejecting\* give notice to rectify the defect within 7 days of receipt of notice)
- \*Grounds of rejection – default has not been occurred or any disciplinary proceedings against the proposed resolution professional by financial creditor or corporate applicant as the case may be.**

# **CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

**Intimation of admission or rejection to be given by NCLT within seven days of admission or rejection.**

**NCLT to declare Moratorium, appoint Interim Resolution Professional (IRP) for a term not exceeding thirty days from the date of appointment and cause public announcement.**

**Public announcement by IRP shall be not later than 3 days from the date of his appointment. Public announcement shall contain the information, such as - name and address of the corporate debtor under the CIRP, name of the authority with which corporate debtor is registered, the last date for submission of claims, which shall be 14 days from date of appointment of IRP etc. [Refer Schedule A: Public Announcement read with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons)]**

**Insolvency Commencement date starts from the date of admission of application and is to be completed within 180 days of commencement which can be extended to ninety days(one time) by NCLT.**

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

**Interim Resolution Professional to constitute Committee of Creditors comprising all financial creditors.** Meetings of Committee of Creditors shall be as per Chapter VI of IBBI (IRP for Corporate Persons) Regulations 2016 dated 15.12.16. IRP shall file a report for constitution of committee to AA within 30 days of his appointment. The first meeting of committee shall be within 7 days of filing the report with NCLT.

**Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.**

**Management of Affairs:** Management of affairs of corporate debtor as a going concern, powers of Board of Directors or the partners of debtor shall stand suspended and exercised by the IRP or RP.

**Committee of Creditors within 7 days of its constitution either to resolve to appoint IRP as Resolution Professional(RP) or replace IRP with another RP.**



# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Proof of Claims of Financial Creditors, Operational Creditors and other Debts shall be **as per Chapter VI of IBBI (IRP for Corporate Persons) Regulations 2016 dated 30.11.16**. Verification of claims to be done by IRP within 7 days from the last date of receipt of claims. Cost of proving debts is to be borne by creditors.

All decisions of committee of creditors shall be taken by vote of not less than 75% of voting share **@**of financial creditor. Quorum of meeting shall be 33% of voting rights either in persons or by video conferencing or other audio and visual means. Modify %age for future meetings if resolved by meeting of CoC.

**@Section 5(28) defines “voting share”** means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

IRP to appoint two registered valuers within 7 days of his appointment to determine the liquidation value of corporate debtor in accordance with Reg. 35 **of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 30.11.16**.

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

Preparation of information memorandum by RP for formulation of Resolution Plan. The contents of Resolution Plan should be *as per Chapter X of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 dated 30<sup>th</sup> Nov 16.*

Submission of Resolution Plan by Resolution Applicant to be examined by RP and to be approved by 75% of voting share of financial creditor. RP should include its implementation schedule, manner of determination of liquidation values, components of resolution process costs and scope of essential supplies. CC to fix Resolution Professional cost to be incurred on or by RP, which includes resolution professional fees and other expenses including cost of engaging other professionals.

RP to submit approved Resolution Plan to NCLT which shall Approve or Reject/Order for Liquidation.

The approved plan shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Moratorium ends on the date of approval.

Appeal may be made to NCLAT on Rejection

# TRIGGERING INSOLVENCY PROVISIONS

## DEFAULT

In case of Co. & LLP

Minimum amount of ₹ 1 lakh

In case of Partnership & Individual

Minimum amount of ₹ 1 thousand

Minimum amount of ₹ 1 lakh & ₹ 1 thousand can be increased upto ₹ 1 Cr & ₹ 1 lakh respectively by CG

Where any Company or LLP commits-

A default in paying its

Financial debt

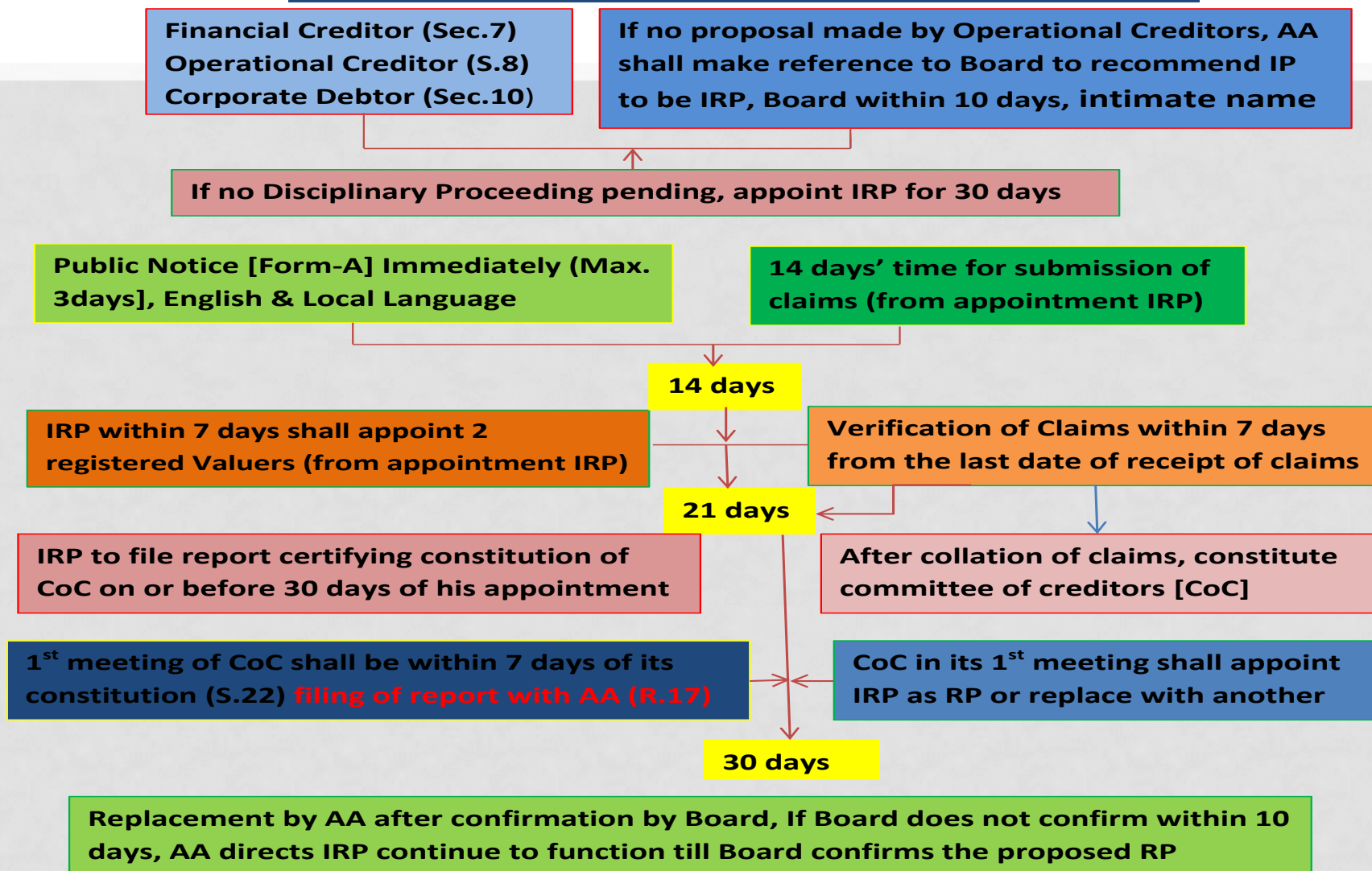
Operational debt

Then a financial creditor/ operational creditor/ Company & LLP itself

May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

# FLOW CHART OF ACTIVITIES TO BE DONE WITHIN 1<sup>ST</sup> 30 DAYS

## Flow Chart of Activities to be done within 1<sup>st</sup> 30 days



# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Repealing of BIFR

Central Government has repealed Board for Industrial and Financial Reconstruction (BIFR) on 1<sup>st</sup> December 2016 and new Profession of “Insolvency Professionals” has taken birth on 1<sup>st</sup> December 2016.

## Transfer of Pending Cases:

Ministry of Corporate Affairs vide G.S.R. 1119(E) dated December 07, 2016 has notified, Companies (Transfer of Pending Proceedings) Rules, 2016. A brief summary of these Rules are provided below:

S.No.	Particulars	Explanation
1.	Transfer of pending proceedings relating to cases other than Winding up  Effective Date: 15 <sup>th</sup> Dec16	All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up on the date of coming into force of these rules shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction:



# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Transfer of Pending Cases:

S.No.	Particulars	Explanation
1.	Transfer of pending proceedings relating to cases other than Winding up. Effective Date: 15 <sup>th</sup> Dec16	<b>Provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred.</b>
2.	Pending proceeding relating to Voluntary Winding up	All applications and petitions relating to voluntary winding up of companies <b>pending before a High Court on the date of commencement</b> of this rule, <b>shall continue with and dealt with by the High Court in accordance with provisions of the Act.</b>
3.	Transfer of pending proceedings of Winding up on the ground of <b>inability to pay debts</b>	(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts <b>pending before a High Court</b> , and where <b>the petition has not been served on the respondent</b> as required under rule 26 of the

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Transfer of Pending Cases:

S.No.	Particulars	Explanation
3.	<b>Transfer of pending proceedings of Winding up on the ground of inability to pay debts (Conti..)</b>	<p>Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and <b>such petitions shall be treated as applications under sections 7, 8 or 9 of the Code</b>, as the case may be, and dealt with in accordance with Part II of the Code:</p> <p>Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.</p>

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Transfer of Pending Cases:

S.No.	Particulars	Explanation
3.	Transfer of pending proceedings of Winding up on the ground of inability to pay debts ( <b>Conti..</b> )	(2) <b>All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction (BIFR), for winding up of a company to a High Court and <u>where no appeal is pending, the proceedings for winding up initiated under the Act</u>, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 <u>shall continue to be dealt with by such High Court</u> in accordance with the provisions of the Act.</b>
4.	Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts	<b>All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 <b>pending before a High Court and where the petition has not been served on the respondent</b> as required under rule 26 of the Companies (Court) Rules, 1959 <b>shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013</b> (18 of 2013).</b>

# CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

## Transfer of Pending Cases:

S.No.	Particulars	Explanation
5.	<b>Transfer of Records</b>	Pursuant to the transfer of cases as per these rules the relevant records shall also be transferred by the respective High Courts to the National Company Law Tribunal Benches having jurisdiction forthwith over the cases so transferred.
4.	<b>Fees not to be paid</b>	Notwithstanding anything contained in the National Company Law Tribunal Rules, 2016, <b>no fee shall be payable in respect of any proceedings transferred to the Tribunal in accordance with these rules.</b>

## NATIONAL COMPANY LAW TRIBUNAL (NCLT)

**In the first phase the Ministry of Corporate Affairs have set up eleven Benches:**

- **One Principal Bench** at New Delhi; and
- **Ten Benches** at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.
- These Benches will be headed by the President and 16 Judicial Members and 09 Technical Members at different locations.
- *National Company Law Tribunal ('NCLT') and its appellate body, the National Company Law Appellate Tribunal ('NCLAT') have been constituted under sections 408 and 410 of the Companies Act, 2013 ('Act') with effect from June 1, 2016.*
- *NCLT has all such powers as were being exercised by the erstwhile Company Law Board ('CLB'), the High Court and the Board for Industrial and Financial Reconstruction ('BIFR'). CLB and BIFR have already been dissolved.*



## NATIONAL COMPANY LAW TRIBUNAL (NCLT)

- As per Section 60 of the Code, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.
- Under Section 61 of the Code, any person aggrieved by order of NCLT can file an Appeal within thirty days before the National Company Law Appellate Tribunal (NCLAT). NCLAT may allow an appeal after 30 days on sufficient cause for not filing the appeal but such period shall not exceed 15 days.
- Any person aggrieved by an order of NCLAT may file appeal within 45 days to the Supreme Court on a question of law arising out from such order. Supreme Court may allow appeal after 45 days, if it is satisfied that a person was prevented by sufficient cause , for further period not exceeding 15 days.

## NATIONAL COMPANY LAW TRIBUNAL (NCLT)

- Corresponding to Section 10FQ of the Companies Act 1956, section 421 of Companies Act 2013. Appeal can be filed by any person aggrieved by the order of NCLT within 45 days, which may be extended for further 45 days on sufficient cause being proved.
- Section 423 of Companies Act, 2013 provides for an appeal against the order of the Appellate Tribunal to the Supreme Court within 60 days from the date of receipt of the order, on the question of law arising out of such order. The Supreme Court may extend for filing of appeal for further period of 60 days on sufficient cause being proved.

## NATIONAL COMPANY LAW TRIBUNAL BENCHES

S.N O.	Name Of Bench	Location	Territorial Jurisdiction of the Bench
1	a) National Company Law Tribunal, Principal Bench. b) National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2	a) National Company Law Tribunal, Principal Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.

## NATIONAL COMPANY LAW TRIBUNAL BENCHES

S.NO	Name Of Bench	Location	Territorial Jurisdiction of the Bench
4	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	(1) State of Karnataka.
5	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh.
6	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.

## NATIONAL COMPANY LAW TRIBUNAL BENCHES

S.NO	Name Of Bench	Location	Territorial Jurisdiction of the Bench
7	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura.
8	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.



## NATIONAL COMPANY LAW TRIBUNAL BENCHES

S.NO	Name Of Bench	Location	Territorial Jurisdiction of the Bench
9	National Company Law Tribunal, Kolkata Bench.	Kolkata Bench	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10	National Company Law Tribunal, Mumbai Bench.	Mumbai Bench	(1) State of Chhattisgarh. (2) State of Goa. (3) State of Maharashtra.

# NATIONAL COMPANY LAW TRIBUNAL BENCHES

## Interim Orders made by NCLT Kolkata Bench

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National Company Law Tribunal



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### INTERIM ORDERS

S.NO.	Description	Order Dated
1.	M/s. Gold Star.	17.01.2017
2.	M/s. Nicco Corporation.	18.01.2017
3.	M/s. T.D. Kumar.	13.01.2017
4.	M/s. Rupnarayan Vanijya.	06.01.2017
5.	M/s. Ghata Balaji.	06.01.2017
6.	M/s. Chandrima Construction.	06.01.2017
7.	M/s. Maa jaemangla.	03.01.2017

### Order of NICCO Corporation

# NATIONAL COMPANY LAW TRIBUNAL BENCHES

## FORM A PUBLIC ANNOUNCEMENT

(Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

### FOR THE ATTENTION OF THE CREDITORS OF NICCO CORPORATION LIMITED

RELEVANT PARTICULARS		
1.	NAME OF CORPORATE DEBTOR	NICCO CORPORATION LIMITED
2.	DATE OF INCORPORATION OF CORPORATE DEBTOR	31.05.1983
3.	AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	Registrar of Companies, West Bengal under Companies Act, 1956
4.	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTIFICATION NUMBER OF CORPORATE DEBTOR	L55101WB1983PLC036362
5.	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE DEBTOR	NICCO HOUSE, 2 HARE STREET, KOLKATA-700001, WEST BENGAL, INDIA
6.	INSOLVENCY COMMENCEMENT DATE IN RESPECT OF CORPORATE DEBTOR	January 18, 2017
7.	ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	July 16, 2017
8.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE INTERIM RESOLUTION PROFESSIONAL	<b>KUNAL BANERJEE</b> C/O SHOME & BANERJEE 5A, NURULLA DOCTOR LANE, 2 <sup>ND</sup> FLOOR, KOLKATA-700017 banerjee.kunal@gmail.com IBBI/IPA-03/2016-17/12  <i>Address for correspondence:</i> NICCO HOUSE 2 HARE STREET, KOLKATA-700001 kunalbanerjee.ipnicco@gmail.com
9.	LAST DATE FOR SUBMISSION OF CLAIMS	February 01, 2017

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against NICCO CORPORATION LIMITED on **January 18, 2017**.

The creditors of NICCO CORPORATION LIMITED are hereby called upon to submit a proof of their claims (in prescribed format) on or before **February 01, 2017** to the interim resolution professional at the address mentioned against item 8.

The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of Interim Resolution Professional:

NAME: **KUNAL BANERJEE**

SIGNATURE:

Date & Place: January 19, 2017, Kolkata.



# INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 were notified by MCA on 30<sup>th</sup> November 2016. Gist of Rules are as follows:

- 1. Provides for procedure to entertain applications for initiating the corporate insolvency resolution process against a corporate debtor by financial creditors; operational creditors and corporate applicant.*
- 2. **Financial Creditors** to initiate CIRP under section 7 of the Code in Form 1 and attached all supporting documents and records as per above Rules.*
- 3. **Operational Creditors** shall send demand notice in Form 3; or a copy of an invoice attached with a notice in Form 4 and **initiate CIRP under section 9 of the code in Form 5**, accompanied with documents and records required in these Rules.*
- 4. A **corporate applicant**, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required in these Rules.*

## INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

5. The applicant is required to propose appointment of an interim insolvency resolution professional, **shall obtain a written communication in Form 2** from him and enclose it with the application made under rules 4, 6 or 7, as the case may be.

6. The above application shall be **accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional** in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



# LIQUIDATION PROCESS

## Liquidation:

### (A) Initiation of Liquidation [Section 33]

### (B) Voluntary Liquidation of Corporate Persons [Section 59]

- 1. Initiation of Liquidation [Section 33]:** Failure to approve resolution plan within specified days will cause initiation of Liquidation. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were notified by IBBI on 15th December 2016
2. Debtor can also opt for **voluntary liquidation by a special resolution** in a General Meeting. The Insolvency and Bankruptcy Board of India on 31<sup>st</sup> March 2017 notified Regulations for voluntary liquidation, that will apply to a corporate person seeking to voluntarily wind up their operations.

**“A corporate person who has not committed any default may initiate voluntary liquidation subject to certain conditions”.**



# LIQUIDATION PROCESS

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 were notified by IBBI on 15<sup>th</sup> December 2016. Gist of Regulations are as follows:

1. **Prohibit** an insolvency professional from acting as a liquidator for a corporate debtor **if he is not independent** of the corporate debtor.
2. **Prohibit partners or directors of an insolvency professional entity** of which the insolvency professional is a partner or director **from representing other stakeholders in the same liquidation process.**
3. Liquidator, and also registered valuer(s) and professional(s) assisting him in liquidation are required **to make disclosures: initial and continuing** –about pecuniary or personal relationship with any of the stakeholders entitled **to distribution of assets.**

## LIQUIDATION PROCESS

4. *Specify the manner and contents of public announcement;*
5. *Specify the manner of receipt and verification of claims of stakeholders;*
6. *Reports and registers to be maintained, preserved and submitted by the liquidator;*
7. *Manner of realisation of assets and security interest, and distribution of proceeds to stakeholders;*
8. *Provide that a liquidator should ordinarily sell the assets **through auctions**. He may sell the assets through private sale only when the asset is perishable; the asset is likely to deteriorate in value significantly if not sold immediately or the asset is sold at a price higher than the reserve price of a failed auction.*

## LIQUIDATION PROCESS

9. Liquidator may sell an asset *on standalone basis, or assets in a slump sale, assets in parcels or a set of assets collectively.*
10. Liquidator to prepare and submit a preliminary report, asset memorandum, sale report, progress report, and final report prior to liquidation to the adjudicating authority, which is the NCLT.
11. Provide that the fee payable to a liquidator shall form a part of liquidation cost. These Regulations further provide that a liquidator shall be paid such fees and in such manner as has been decided by the committee of creditors during the resolution process.
12. In all other cases, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs and of the amount distributed.

# LIQUIDATION PROCESS- FEE CALCULATION

Liquidator's fee as per Insolvency and Bankruptcy Board of India ((Liquidation Process) Regulations, 2016 (Ref. Regulation 4)

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed							
	in the first six months	Fee in Rs. Lakh	in the next six months	Fee in Rs. Lakh	in the next one year	Fee in Rs. Lakh	Thereafter	Fee in Rs. Lakh
<b>Amount of Realisation (exclusive of liquidation costs)</b>								
On the first 1 crore	5	5.00	3.75	3.75	2.5	2.50	1.88	1.88
On the next 9 crore	3.75	33.75	2.8	25.20	1.88	16.92	1.41	12.69
On the next 40 crore	2.5	100.00	1.88	75.20	1.25	50.00	0.94	37.60
On the next 50 crore	1.25	62.50	0.94	47.00	0.68	34.00	0.51	25.50
On further sums realized	0.25		0.19		0.13		0.10	
<b>Total fee upto 100 crore</b>		<b>201.25</b>		<b>151.15</b>		<b>103.42</b>		<b>77.67</b>

# LIQUIDATION PROCESS- FEE CALCULATION

Liquidator's fee as per Insolvency and Bankruptcy Board of India ((Liquidation Process) Regulations, 2016 (Ref. Regulation 4)

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed							
	in the first six months	Fee in Rs. Lakh	in the next six months	Fee in Rs. Lakh	in the next one year	Fee in Rs. Lakh	Thereafter	Fee in Rs. Lakh
<b>Amount Distributed to Stakeholders</b>								
On the first 1 crore	2.5	2.50	1.88	1.88	1.25	1.25	0.94	0.94
On the next 9 crore	1.88	16.92	1.4	12.60	0.94	8.46	0.71	6.39
On the next 40 crore	1.25	50.00	0.94	37.60	0.63	25.20	0.47	18.80
On the next 50 crore	0.63	31.50	0.48	24.00	0.34	17.00	0.25	12.50
On further sums distributed	0.13		0.1		0.06		0.05	
<b>Total fee upto 100 crore</b>		<b>100.92</b>		<b>76.08</b>		<b>51.91</b>		<b>38.63</b>



## VOLUNTARY LIQUIDATION PROCESS

A corporate person may initiate a voluntary liquidation proceeding **if majority of the directors or designated partners** of the corporate person make a declaration to the effect that

- (i) The corporate person **has no debt or it will be able to pay its debts in full from the proceeds** of the assets to be sold under the proposed liquidation, and
- (ii) the corporate person is not being liquidated to defraud any person.

If the liquidator is of the opinion that the liquidation is **being done to defraud a person or the corporate person will not be able to pay its debts in full** from the proceeds of assets to be sold in the liquidation, he **shall make an application to the Adjudicating Authority to suspend** the process of liquidation and pass any such orders as it deems fit.



## VOLUNTARY LIQUIDATION PROCESS

1. *An insolvency professional who is being appointed to act as a liquidator for a corporate person, should be independent of the corporate person.*
2. *The regulations specify :*
  - (i) *the manner and content of public announcement;*
  - (ii) *receipt and verification of claims of stakeholders;*
  - (iii) *reports and registers to be maintained, preserved and submitted by the liquidator;*
  - (iv) *realisation of assets and distribution of proceeds to stakeholders;*
  - (v) *distribution of residual assets, and finally dissolution of corporate person.*

*These oblige a liquidator to preserve a physical or an electronic copy of the reports, registers and books of account for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.*

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Shri Tapan Ray, IAS, Secretary, MCA and Dr. M.S. Sahoo Chairperson- IBBI Presenting Registration Certificate of IPA of the Institute to CMA Sanjay Gupta, Vice President, CMA J.K. Budhiraja, CEO- IPA of Institute and CMA P. Raju Iyer, CCM on 30.11.2016.

## Message from President ICAI



I am pleased to inform you that the website of the IPA of the Institute has been made operational and it will be a one stop solution for all the queries and matters relating to the enrolment of IPs and knowledge repository for newly enrolled IPs. Gradually more and more relevant material will be uploaded on the website for the information of members. I urge the members

[IBBI Workshop](#)[Events](#)[Fortnightly Newsletter \(1-15 April 2017\)](#)

## Updates

Fortnightly Newsletter (1-15 April 2017) from Insolvency Professional Agency of ICAI..... **New**

[Read More...](#)

Notice for appointment of Executive Director on deputation. **New**

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## Articles

[.ppt IBC 2016- Bankers specific](#)

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## About us:

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 enrol 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.

**Functions of Insolvency Professional Agency:** As per the provisions of Section 204 of the Code, an insolvency professional agency **shall perform the following functions, namely:—**

- i. grant membership to persons who fulfil all requirements set out in its byelaws on payment of membership fee;*
- ii. lay down standards of professional conduct for its members;*
- iii. monitor the performance of its members;*
- iv. safeguard the rights, privileges and interests of insolvency professionals who are its members;*
- v. suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;*
- vi. redress the grievances of consumers against insolvency professionals who are its members; and*
- vii. publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.*

## Duties of the Agency (Insolvency Professional Agency):

Under Clause IV of Schedule- Regulation 6 of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, the following duties of Insolvency Professional Agency are mentioned:

6. (1) The Agency shall maintain high ethical and professional standards in the regulation of its professional members.

- Board of Directors
- Committees
- Key Officials
- List of Insolvency Professionals
- News in Telegraph- President ICAI
- Bye-laws of Insolvency Professional Agency of Institute of Cost Accountants of India



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## [List of Insolvency Professionals](#)

### Eligibility Criteria

#### a. For Limited Period

As per Regulation 9 of the *"Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016"*, an individual shall be eligible to be registered for a limited period as an insolvency professional if he has been **'in practice'** for a minimum period of fifteen years as:

- i. a cost accountant enrolled as a member of the Institute of Cost Accountants of India;
- ii. a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India;
- iii. a company secretary enrolled as a member of the Institute of Company Secretaries of India; or
- iv. an advocate enrolled with a Bar Council; and

He is required to submit:

- a. application for Enrolment with insolvency professional agency as its member with a **non-refundable fee of ten thousand rupees** in favour of "Insolvency Professional Agency of Institute of Cost Accountants of India"; and
- b. application for registration with Insolvency and Bankruptcy Board of India (IBBI) in Form A of the Second Schedule to the said Regulations to the Insolvency Professional Agency of Institute of Cost Accountants of India on or before December 31, 2016 along with a **non-refundable application fee of five thousand rupees** in favour of *"Insolvency and Bankruptcy Board of India"*. This application along with said cheque/ draft will be collected by the said insolvency professional agency on behalf of the Board.

## Insolvency Professionals

### I. Eligibility Criteria

- a. For Limited Period
- b. Registration after passing Examination

### II. Conditions of the Certificate of registration

### III. Recognition of Insolvency Professional Entities

### IV. Code of Conduct for Insolvency Professionals

### V. Duties of Members (Insolvency Professionals)

### VI. Duties and powers of the interim resolution professional

### VII. Powers and duties of the resolution professional

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### Professionals

- + **IBC 2016**
- + **Rules**
- + **Regulations**
- + **Circulars**
- + **Notifications**
- + **Orders**



[The Institute of Cost Accountants of India](#)



[Ministry Of Corporate Affairs](#)



[Insolvency and Bankruptcy Board of India](#)

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### Examination

[Model Question Paper for Limited Insolvency Examination](#)

[Insolvency and Bankruptcy Board of India issued FAQs on Limited insolvency Examination.....](#)

[Registration Opened for Limited Insolvency Examination](#)

[Limited Insolvency Examination](#)



[The Institute of Cost Accountants of India](#)



[Ministry Of Corporate Affairs](#)



[Insolvency and Bankruptcy Board of India](#)



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### Contact Us

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CMA Rajat Jain

011-24666149

Mr. Pranav Sharma

011-24666120

# Thank you

***J K BUDHIRAJA***

***CEO, Insolvency Professional Agency  
of Institute of Cost Accountants of India  
& Senior Director (Technical)  
The Institute of Cost Accountants of India  
New Delhi***

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***Website: [www.ipaicmai.in](http://www.ipaicmai.in)***