

Hearty Welcome to the Participants of IBC Presentation

Presentation By:

**REVATHI RAGHUNATHAN
INSOLVENCY PROFESSIONAL**

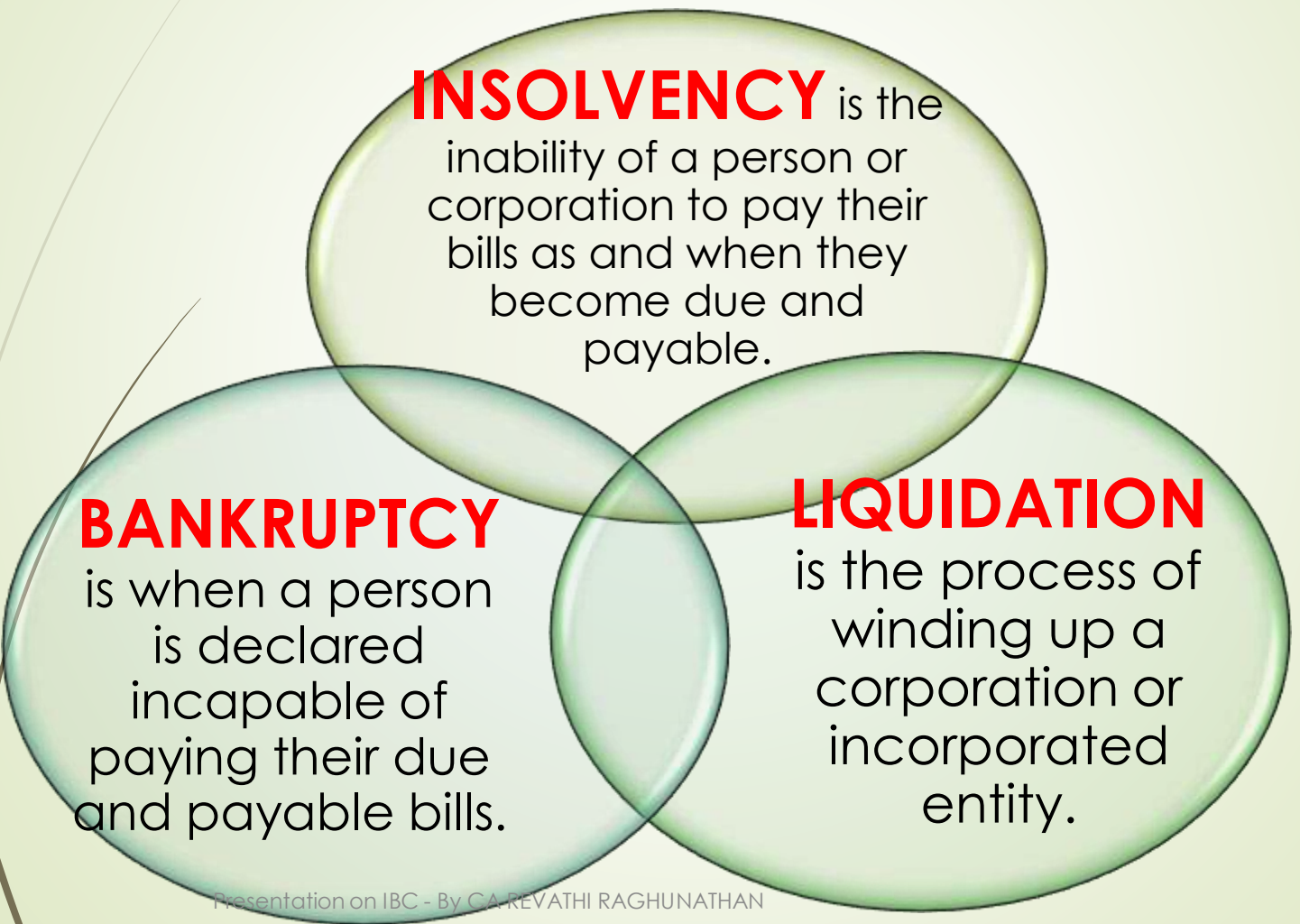
What are the questions striking into your mind?

- ➡ Is it good or bad ?
- ➡ Whether the existing rights and provisions under SARFAESI will co-exist
- ➡ What about those secured assets which had been secured with the Bank?
- ➡ Which route is better for the Bank - approaching DRT- (SARFAESI) or NCLT (IBC)?
- ➡ Are the existing NPA cases eligible to come under IBC ?
- ➡ What else ? Pl. ask

How IBC is a Game Changer for Banks & Professionals

- Secured creditors will get priority over claims
- No overlapping of laws
- No intervention of judicial system- NCLT has limited role
- Time bound mechanism
- RP acts mostly on behalf of financial creditors
- Transparent mechanism- no political pressure

What is INSOVENCY, LIQUIDATION AND BANKRUPTCY?



INSOLVENCY is the inability of a person or corporation to pay their bills as and when they become due and payable.

BANKRUPTCY is when a person is declared incapable of paying their due and payable bills.

LIQUIDATION is the process of winding up a corporation or incorporated entity.

What necessitated a new IBC Code?

- Existing Mechanism – Inadequate & Ineffective :
 - ✓ No single Law dealing with IB in India;
 - ✓ overlapping jurisdiction
- Painfully Slow Pace
- Recovery rate very low.
- Long winding Legal process and formalities
- Poor ranking in the World for effective resolution

Scenario before IBC

- Varied legislations
- relying more on archaic laws with outdated relevance
- Century old
- Loop holes in existing laws
- non- recovery of dues by creditors- (Debtors driven process)

Scenario before IBC –Contd..

- ❖ Cumbersome, long procedures in various High Courts
- ❖ Creditors rarely got the proceeds from Official Liquidators
- ❖ Asset stripping by the borrowers
- ❖ Depletion of values in assets
- ❖ immovable properties riddled with litigations

Objectives of the new Code

- ✓ **consolidate and amend the laws under one umbrella.**
- ✓ **strict time-frame for the revival or dissolution**
- ✓ **maximise the value of assets of corporates or firms or persons**
- ✓ **to promote entrepreneurship and increase availability of credit**
- ✓ **lowering down the order of priority for payment of Government dues.**

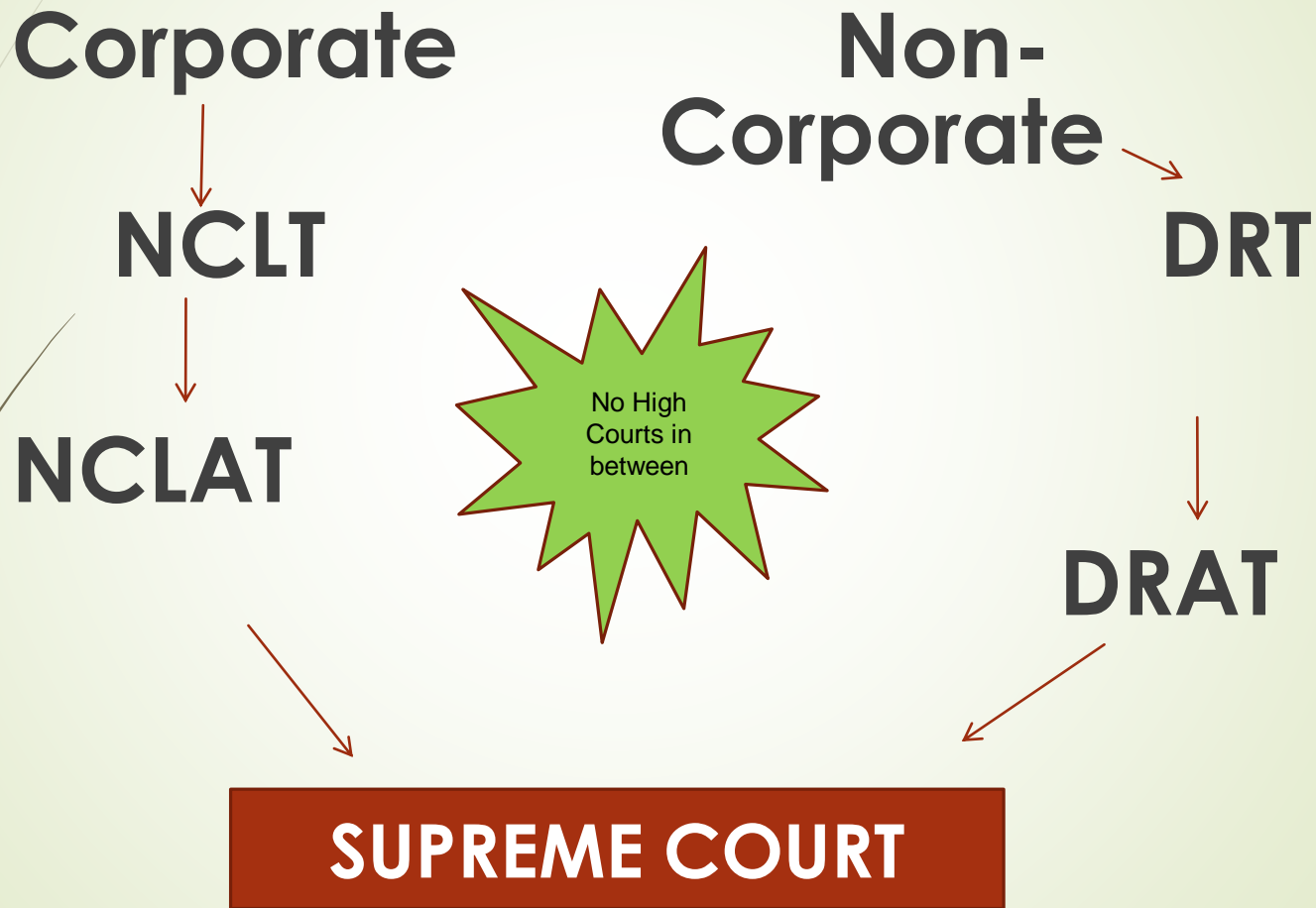
How big is IBC??

- ➡ **5 Parts**
- ➡ **255 Sections**
- ➡ **11 Schedules**
- ➡ **21 Chapters**

Presentation on IBC - By CA REVATHI RAGHUNATHAN



Legal Process



Insolvency Code – How effective?

**Provisions of
IBC to override
all other Laws**

Applicability of IBC

Applicable to:

- ✓ **Companies**
- ✓ **LLPs**
- ✓ **Individuals**
- ✓ **Partnership Firms**

Exclusion:

- **No person can initiate action against the Financial Service providers**

Time frame under IBC

- 180 days from the date of admission of the application by NCLT
- Under some circumstances – Single extension by 90 days beyond the 180 day period (if NCLT is satisfied on a petition backed by a resolution voted by more than 75% of the committee of creditors (COC))

Who is powerful?

Can SARFAESI Act override IBC ?

Who can approach NCLT?

- ✓ Financial Creditor
- ✓ Operational Creditor
- ✓ Corporate Debtor

How to start the Proceedings?

Application to be filed before NCLT by the Financial / Operational Creditor with records of default.

Minimum amount of Default to trigger the IBC- Rs. 1,00,000/- and above

Procedural aspect- Notice ?

- Financial Creditor (Banks) need not give notice, They can file an application before NCLT immediately after default.
- Operational Creditor to give 10 days' notice to the Corporate Debtor (CD). If no dispute is raised by the CD, application can be filed before NCLT if the amount is not paid within the said 10 days



Appointment of IRP

- After Admitting the application filed by the respective Creditors/Corporate Debtor, NCLT shall
 - Declare Moratorium
 - Causing of Public Announcement
 - Appointment of Interim Resolution Professional

Duties of Interim Resolution Professional

- Management of affairs of corporate borrower will be done by interim resolution professional – powers of board shall stand suspended and inform the Financial Institutions
- Collect all information relating to assets, finances and operations to determine financial position
- Receive and collate claims from creditors
- Constitute a Committee of Creditors
- Take control and custody over the assets of the Debtor. It is also important to protect and preserve the assets of the Debtor

Authority of Interim Resolution Professional

- To preserve the value of the property
- To manage the operations as a going concern
- To appoint accountants, legal or other professionals, can raise interim finance subject to certain conditions.
- To enter into contracts / amend contracts already in force
- To issue instructions to the personnel of CD for keeping the CD as a going concern

Committee of Creditors (COC)

- ❖ Interim Resolution Professional to constitute COC
- ❖ Financial creditors to take lead role
- ❖ Related party being financial creditor shall not have any right of representation, participation or voting
- ❖ In a consortium, all the participants shall form part of COC according to their share in the consortium
- ❖ Financial and Operational Creditor – dual role
- ❖ Single trustee appointed by a consortium – representation
- ❖ Joint application can be filed by the Financial creditors
- ❖ All decisions of COC by a vote of not less than 75% of voting share of the financial creditors

Banks to call the shots !!

Banks constitute the COC and they have a say in all matters involving the restructuring and administration of the debtor.

The decision of retaining with IRP as RP or appointing a new RP vests with the COC

Resolution Plan

- Resolution applicant to Prepare Resolution Plan and submit to Resolution Professional (RP) who will present it to COC for its approval
- RP to submit the Resolution Plan approved by COC to NCLT for its consideration

Approval of Resolution Plan

- If NCLT approves the Resolution plan, binding order shall be passed.
- Moratorium ceases.
- The Resolution Plan will have to be implemented.

Initiating Liquidation

- ✓ When NCLT does not receive a resolution plan
- ✓ When NCLT rejects a resolution plan
- ✓ When the CoC decides to liquidate
- ✓ When the Corporate borrower contravenes the resolution plan approved by NCLT

Liquidation

- No suit or legal proceedings can be initiated against the corporate borrower which is undergoing liquidation
- The only exception is given to the Secured Creditors of the Corporate Borrower.

Priority of Distribution of Assets

The proceeds realised from sale of liquidation assets will be applied as below:

- ✓ IRP and Liquidation Costs
- ✓ Workmen's dues for 24 months prior to liquidation commencement & Secured creditors who have relinquished security
- ✓ Wages to employees other than workmen for 12 months
- ✓ Financial debts owed to Unsecured creditors
- ✓ Dues to Government / Debts unpaid to a secured creditor
- ✓ Remaining Debts and dues
- ✓ Preference Shareholders
- ✓ Equity Shareholders

Latest Supreme Court decided cases

1. Macquarie Bank Case: With reference to Operational Creditor, whether the notice under Section 9(3)(c) is mandatory (**held only directory**) and whether a demand notice issued by the Lawyer is **Valid - Held Yes**
2. Dispute has to be true and not illusory, hypothetical or a delaying tactic. - Kirusa Software Case.
3. Whether time limit fixed for admitting or rejecting a petition is Directory - **Held only directory** in Surendra Trading case.
4. Criminal proceeding against IRP set aside in Alchemist ARC Case

Latest Amendments

After a year of it being enacted, there have been amendments brought in by the Code, which are as under:

- A Person claiming to be a creditor other than the persons who is an Operational/Financial Creditor, Workman and Employee can now make a claim to the IP/IRP.
- This category would include Persons who have booked flats with Builders and have paid advance.

Latest Amendments-Contrn...

- Existing promoters debarred from bidding for a Company and submitting a resolution plan
- Background checks mandatory for bidders who are interested in submitting proposal for take over; onus is on the Resolution Professional and COC
- The Code empowers an interim resolution professional to take control and custody of assets of a debtor that are located in foreign countries. Further, a liquidator is empowered to take custody/control of and sell the assets and property of a corporate debtor (including those situated outside India) .

Latest Amendments .. Contd

Locked Out

Person Ineligible To Submit Resolution Plan

- ① Undischarged insolvent
- ② Wilful defaulter
- ③ Person whose account has been NPA for over 1 yr
- ④ Those convicted of an offence with over 2-yr imprisonment
- ⑤ Individual disqualified as director under Cos Act
- ⑥ Person banned by Sebi from securities market
- ⑦ Those banned under IBC for fraudulent activities
- ⑧ Person who executed enforceable guarantee in favour of creditor in respect of insolvent entity
- ⑨ Any connected person who meets any of above
- ⑩ Subject to any disability under foreign law



MORE SAFEGUARDS

Scope of insolvency law extended to proprietorship

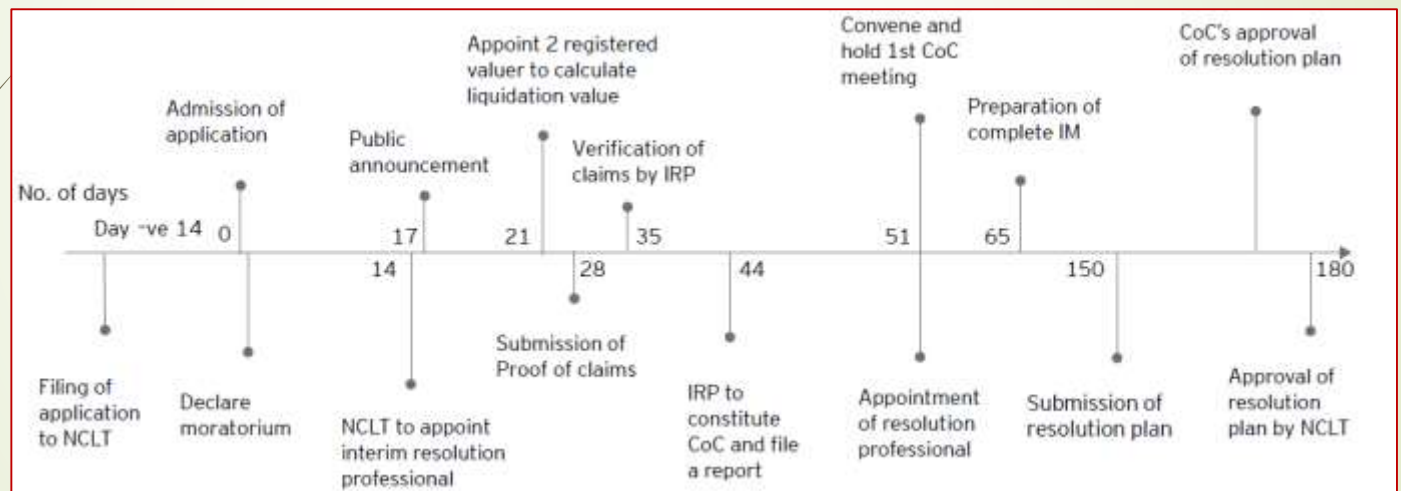
Covers personal guarantors of corporate debtors

Persons can come together to become resolution applicants

Resolution professional can impose extra conditions on applicants



Time Line Chart



Time Line Chart

DESCRIPTION	DAYS
Filing of Application	(-) 14
Admission of Application/ CIRP commencement date/ Declaration of Moratorium	0 Date
NCLT to appoint interim Resolution Professional (IRP)	14 th Day
Public Announcement	16 th Day
Appointment of Registered Valuer to calculate Liquidation value	21 st Day
Creditors to submit claims	37 th Day
IRP to constitute COC & submit Report	44 th Day
1 st COC Meeting	51 th day
Preparation of Information Memorandum	65 th Day
Submission of Resolution Plan	150 th Day
COC approval of RP	-
Application for approval by NCLT	-
Initiation of Liquidation Process if the Resolution plan is not approved	180 th Day



Our Services

- ✓ Evaluation of cases which are to be referred to NCLT.
- ✓ Feasibility study and analysis on the stressed accounts for its revival prospects.
- ✓ Rendering IRP/RP Services.
- ✓ Consulting Services for the Bank on the IBC Code.
- ✓ Assistance in filing cases with NCLT

Let me Learn



Presentation on IBC - By CA REVATHI RAGHUNATHAN



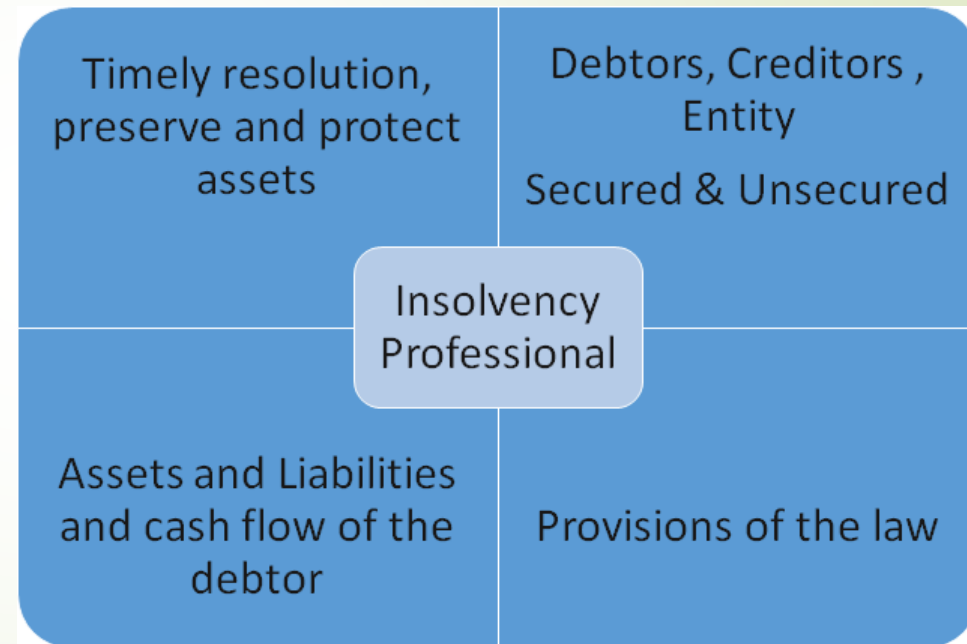
Presentation on IBC - By CA REVATHI RAGHUNATHAN

Chartered Accountants and Insolvency Professionals

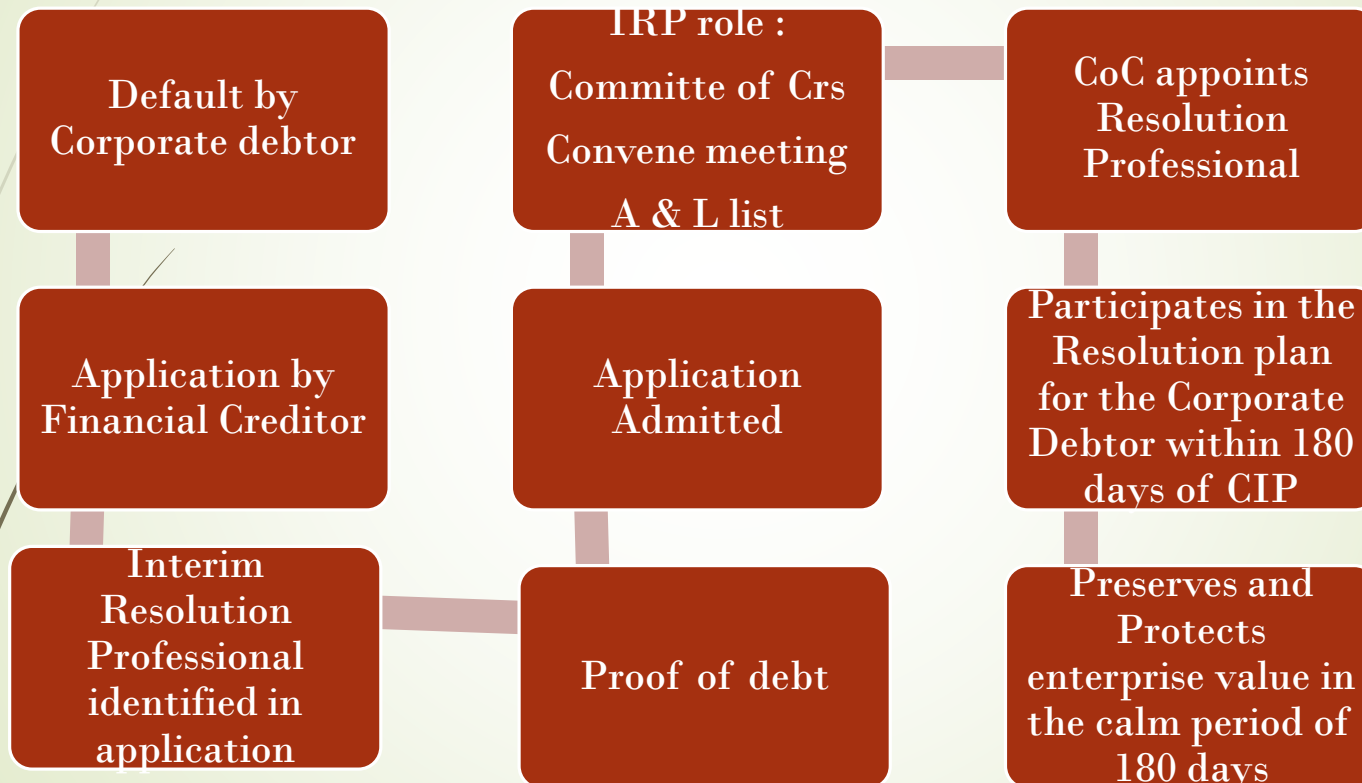


Need for IP's

- **Creditor in Possession** necessitates a “trustee” to act on behalf of the creditors and debtors. Hence the need for an insolvency professional
- The Act provides for a separate category of professionals to be registered for this purpose
- The IP can be an Interim Professional, Resolution Professional or a Liquidator depending on the circumstances and the phase of operation



Insolvency professionals





Insolvency professionals

Individuals

Fresh Start Order

Chapter III for Individuals – Part II

Individual Insolvency Resolution Process

Chapter III for Individuals – Part III

Individual Bankruptcy Process

Chapter IV – Part II

Corporate Debtors

Corporate Insolvency resolution Process

Chapter II – Part II

Liquidation of a Corporate Debtor

Chapter III – Part II

Insolvency professionals

Qualifications
and
Disqualfns

Empanelment

Appointment

Interim RP
functions

RP
functions

Liquidator
functions

IP QUALIFICATIONS

Professionals	Others
<p>Graduate (?) + 15 years experience and enrolled with the relevant professional institute</p> <p>CA CWA CS Lawyer Actuary</p>	<p>Graduate (?) + 3 out of last 10 years experience in</p> <p>Financial service provider ARC Debt Restructuring Turnaround work Liquidation Amalgamations and mergers Winding up Debt finance Monitoring / recoveries of stressed assets Etc..</p>



IP DISQUALIFICATIONS

- Convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude or any economic offence, and a period of five years has not elapsed from the date of expiry of the sentence
- undischarged insolvent, or has applied to be adjudicated as an insolvent;
- Been declared to be of unsound mind;
- Minor;
- Not a fit and proper person;
- Not qualified the Insolvency Professionals Examination
- Not enrolled with an insolvency professional agency or the insolvency professional agency with which he claims to be enrolled, has not been appropriately registered or the period of its registration has expired;
- Not a person resident in India



Insolvency professionals

Disclosing the registration number assigned to him by the Board and affirming that he is qualified to practise as an insolvency professional

Disclosing the number of cases of corporate insolvency resolution process for which he is currently serving as an interim resolution professional, resolution professional or liquidator

Disclosing any of the following situations, which may result in conflict of interest in respect of his appointment :

The existence of any pecuniary or personal relationship between him and the corporate debtor; and the persons entitled to a distribution if the corporate debtor were to be liquidated and its assets were to be distributed in accordance with section 53 of the Code, (collectively stakeholders);

If he is a relative of any of the stakeholders, or is a shareholder of such stakeholder, or is any principal or employee, or is a business partner or has a controlling interest in the business of any of the stakeholders;

If he has, at any time during the previous three years, had a professional, financial or business relation with the stakeholders

Certifying that there are no disciplinary proceedings pending against him with the Board or the insolvency professional agency he is a member of



Insolvency professionals

- 1. Enrolment with the IP Agency**
- 2. Application to the Insolvency Board (IBBI)**
- 3. Examination to be passed**
- 4. Certificate of Registration of the RP by IBBI**
- 5. Transitional registration**
- 6. Renewal of Certificate**
- 7. Provision for cancellation etc**



RP – Role as IRP – Rights (Sec 17 to 20)

- Management of the debtor from the date of appointment vests with IRP
- Powers of the BoD / partners of LLP are suspended
- Officers and managers report to the IRP
- Financial institutions act on instructions of the IRP
- IRP executes deeds and documents on behalf of the corporate debtor
- Takes actions with the specification of the BoD
- Access to all information in the Information utility



RP – Role as IRP – Duties (Sec 17 to 20)

Collect all information	List of Assets and Liabilities as at initiation date Business operations for 2 years Financial and operational payments for 2 years Other information
Collate Claims	Received in pursuance of public announcement by Adj. Authority (NCLT)

RP – Role as IRP – Duties (Sec 17 to 20)

**Constitute
Committee of
Creditors**

**All financial creditors
Care on related parties
Assignment of voting share
Provide all information to CoC
Hold first meeting within 7 days**

RP – Role as IRP – Duties (Sec 17 to 20)

Manage Debtor
entity as a going
concern

- Operating professionals report to IRP
- Appoint other professionals (CA, lawyers)
- Enter into contracts / amend / modify
- Raise interim finance with consent as required from secured creditors

Assets of the
debtor

List , Monitor , Preserve and protect
Manage Operations till RP is appointed



Roles of an RP (Sec 17 to 20)

Resolution professional

IRP = 30 days

**Confirmed or replaced by the CoC and Resolution
Professional Role comes into existence**

RP – Role as RP – Duties

Administer	Appoint relevant professionals Interim finance with consent of CoC Abide by law to ensure that certain actions are done only with the Consent of the CoC
Information memorandum	Prepare Information memorandum
Resolution Plan	Invite key stakeholders to discuss and put forth resolution plans (within 180 days)



RP – Role as IRP – Duties

Resolution Plan	Seek extension as may be necessary Submit to NCLT for approval Revise The resolution plan
------------------------	---



Roles of Liquidator

Liquidation Triggers

- **Non receipt of resolution plan within 180 days**
- **Resolution plan rejected by AA and order passed**
- **Decision of CoC (before resln plan) to liquidate**
- **Contravention of Resolution Plan**



Roles of Liquidator

Claims	Collect Collate Maintain records Update and settle
Assets	Preserve and protect Custody and Control Sell moveable and immoveable property
Operations	Carry on for beneficial liquidation Draw and accept NI, Pro notes etc Represent the entity as the official liquidator



Roles of Liquidator

Other Acts	Investigate transactions Avoid certain types of transactions Initiate and defend legal suits and proceedings Obtain professional assistance All steps for liquidation
Progress Report	Progress report to IBBI



Roles of Liquidator

Liquidation Estate	Aggregate all assets into a liquidation estate Maintain priority of payments as specified by law
Dissolution	Application for dissolution of the liquidation estate



QUESTIONS & COMMENTS