



INSOLVENCY AND BANKRUPTCY CODE, 2016

(VIRTUAL PROGRAMME ORGANISED BY SIRC OF ICAI)

Date: 15th JUNE 2023

Time: 06:00 PM To 07:00 PM

Venue: Virtual

INTRODUCTION

- The law was enacted on May 28, 2016, against the backdrop of mounting non-performing loans, with a view to establishing a consolidated framework for insolvency resolution of corporations, partnership firms and individuals in a time-bound manner.
- The provisions of the IBC relating to corporate persons came into force on December 1, 2016. Except for personal guarantors to CDs, the IBC provisions for insolvency resolution and bankruptcy of partnership firms and individuals are not in force yet. This module primarily deals with insolvency resolution and liquidation of CDs. Individual cases not being taken up based on the order of Supreme Court
- The insolvency process for a CD under the IBC proceeds in two phases—in the first phase an attempt is made to resolve the CD's default through a CIRP; if no resolution is reached, the CD is liquidated in the second phase.
- The code was amended 11 times from the date it was came into force.

ADMISSION TO CORPORATE INSOLVENCY RESOLUTION PROCESS

SECTION 7

Application filed by **Financial Creditors** of the Corporate Debtor

Threshold default for initiation of CIRP:
Rs.1 Crores

Default: Financial Debt.
Debt along with Interest, issued against
consideration of time value of money

SECTION 9

Application filed by **Operational Creditors** of the Corporate Debtor

Threshold default for initiation of CIRP:
Rs.1 Crores

Default: Operational Debt.
Claim in respect of the Provision of
goods or services

SECTION 10

Application filed by **Corporate Debtor itself**

Threshold default for initiation of CIRP:
Rs.1 Crores

Corporate Debtor has committed a
default, a corporate applicant thereof
may file an application

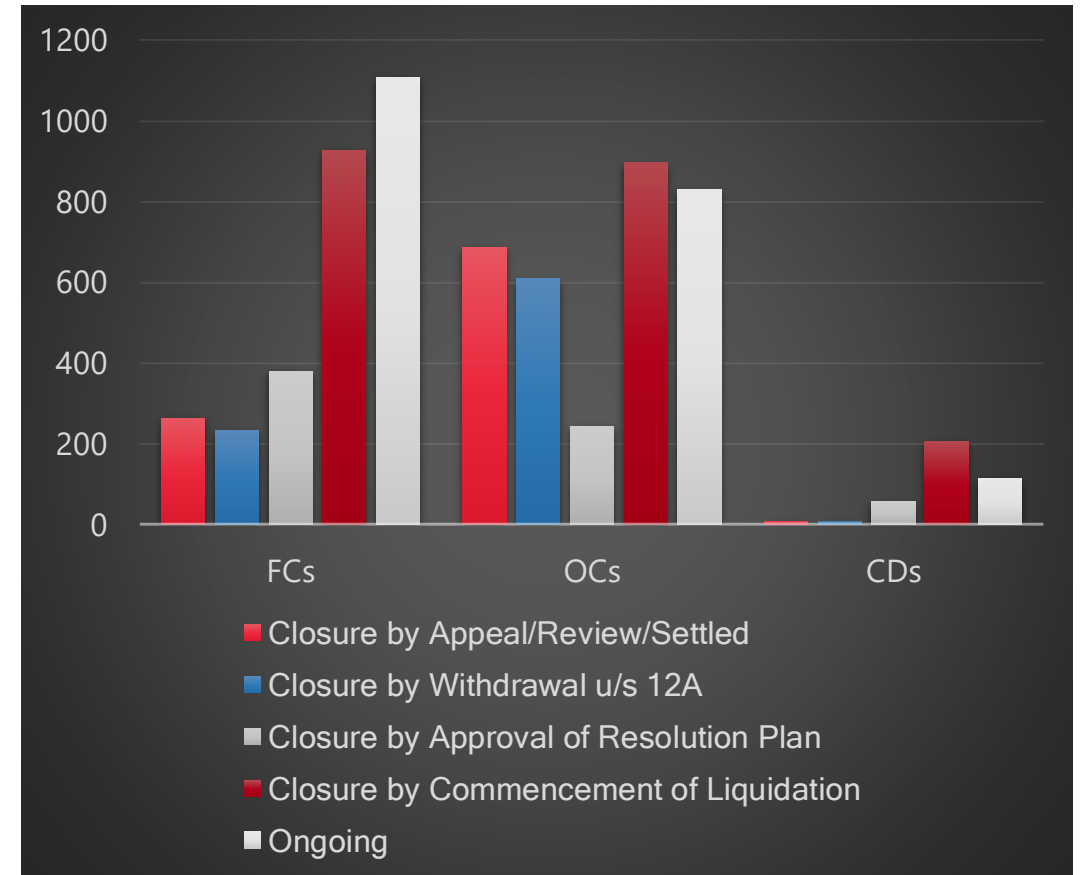
Section 10A - No application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period one year from such date.

DETAILS OF CIRP CASES

YEAR	NO. OF CIRP'S INITIATED BY			
	FCs	OCs	CDs	Total
2016 - 17	8	7	22	37
2017 - 18	286	310	111	707
2018 - 19	517	569	71	1157
2019 - 20	883	1053	51	1987
2020 - 21	197	318	22	537
2021 - 22	371	473	43	887
2022 - 23	650	535	70	1255
Total	2912	3265	390	6567

STATUS OF CIRP CASES

Outcome	Description	CIRPs initiated by		
		FCs	OCs	CDs
Status of CIRPs	Closure by Appeal/Review/Settled	264	688	7
	Closure by Withdrawal u/s 12A	232	609	7
	Closure by Approval of Resolution Plan	380	241	56
	Closure by Commencement of Liquidation	927	896	207
	Ongoing CIRP	1109	831	113
	Total	2912	3265	390



CLAIMS RAISED AND LIQUIDATION VALUE

Outcome	Description	CIRP's Initiated by		
		FC's	OC's	CD's
CIRP Yielding Resolution Plans	Realisation by creditors as (%) of Liquidation Value	182.7	125.8	147.5
	Realisation by creditors as (%) of their Claims	34.2	17.6	18.3
	Average time taken for Closure of CIRP (Days)	613	632	541
CIRP Yielding Liquidations	Liquidation Value as (%) of Claims	6.4	9.1	8.6
	Average time taken for Closure of CIRP (Days)	476	450	390

CLAIMS RAISED AND LIQUIDATION VALUE

(UNDER RESOLUTION PLAN)

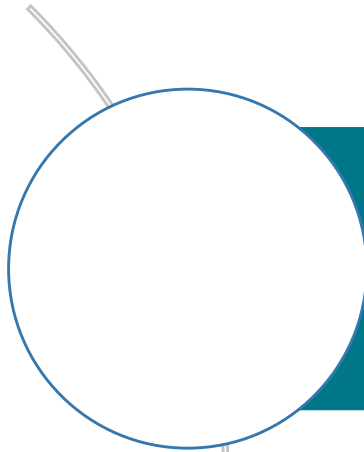
Year Wise Resolution Plans (In Crores)					
Years	No. Of Resolutions	Total Admitted Claims	Liq. Val	Tot. Real	Realisation By Creditors As A % Of Admitted Claims
2016 - 17	-	-	-	-	-
2017 - 18	19	8,198	1,894	4,458	54%
2018 - 19	77	2,06,848	48,052	1,11,467	54%
2019 - 20	134	1,64,042	25,239	41,910	26%
2020 - 21	121	1,62,887	18,342	27,591	17%
2021 - 22	147	2,14,389	37,162	49,208	23%
2022 - 23	180	1,42,544	39,110	51,425	36%
Total	678	8,98,906	1,69,799	2,86,060	32%

AVOIDANCE APPLICATIONS AND DISPOSAL

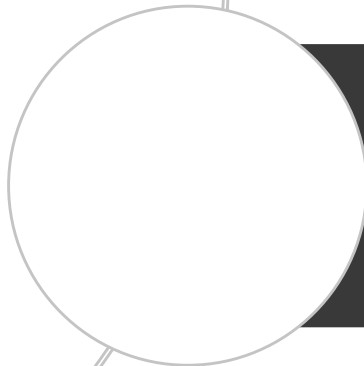
Sl. No	Nature of transactions	Applications Filed		Applications Disposed		
		Number of transactions	Amount involved	Number of transactions	Amount involved	Amount clawed back
1	Preferential	134	15,057	40	651	34
2	Undervalued	16	885	4	362	6
3	Fraudulent	176	64,235	23	1,049	6
4	Extortionate	3	71	-	-	-
5	Combination	542	2,05,121	96	40,034	5169.59*
Total		871	2,85,368	163	42,097	5215.10*

*In the matter of Jaypee Infra, possession of 758 acres out of total 858 acres of land was given back to the CD. The 858 acres of land was earlier valued at ₹5,500 crore.

CA & IBC



Role of CA, if their client is potentially to be admitted into CIRP



Role of CA, if the client's customer is admitted into CIRP/ the customer is defaulting in making payments



AVOIDANCE APPLICATIONS AND DISPOSAL

S.NO	SECTION	NATURE	REMARKS	TIME PERIOD	EXCLUSION
1	43	Preferential Transaction	Transfer of CD's Property or an interest thereof to creditor/surety/guarantor on account of CD's antecedent financial /operational debt / other liabilities and the aforesaid transfer puts such creditor/surety/guarantor in a beneficial position than it would have been in the event of distribution of assets as per waterfall mechanism under section 53 of the Code.	Related Party - 2 Years Others - 1 Year (Preceding to ICD)	Transfer made in the ordinary course of business. Any transfer creating a security interest in the property acquired by CD to the extent
2	45	Undervalued Transaction	Makes a gift to a person or, enters into a transaction with such person which involves the transfer of one or more assets of CD for a consideration the value of which is significantly less than the value of consideration provide by the CD, and such transaction has not taken place in the ordinance course of business of CD	Related Party - 2 Years Others - 1 Year (Preceding to ICD)	Transfer made in the ordinary course of business
3	50	Extortionate Credit transactions	CD has been a party to an extortionate credit transaction, involving the receipt of financial or operational debt during the period within two years preceding the ICD. Require the CD to make exorbitant payments in respect of the credit provided; or unconscionable under the principles of law relating to contracts.	Two years preceding ICD	Any debt extended by any person providing financial services which is in compliance with any law for the time being in force
4	66	Fraudulent trading or wrongful trading	Business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose. AA may on the application of the RP pass an order that " <u>any persons</u> " who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the CD as it may deem fit.	NIL	NIL

IF CLIENT IS POTENTIALLY TO BE ADMITTED INTO CIRP

AVOIDANCE TRANSACTION

- Section 43,45 & 50 - Potential Avoidance transaction in the Last one year from the ICD. (Two years in case of Related Parties)
- Section 66(1) of the IBC, 2016 - “Any Person”

FINANCIAL STATEMENTS

- Creation of appropriate Provisions
- Events occurring after the balance sheet
- Fair market value of the assets
- Overstatement/ understatement of Profits

RPT TRANSACTIONS

- Difference between Section 5(24) of IBC, 2016 and Accounting Standard - 18
- The definition in Section 5(24) of Insolvency and Bankruptcy Code, 2016 is very wide. It covers director, partners, LLP or firm having common even one common partner or director, relative of director or partner, KMP, private company where a director holds more than 2% of share capital, holding and subsidiary, person controlling more than 20% of voting rights, company having more than two directors common and even person on whose advise or directions a director or partner is accustomed to act.

IF THE CUSTOMER OF THE CLIENT IS ADMITTED INTO CIRP/THE CUSTOMER IS DEFAULTING IN MAKING PAYMENTS TO THE CLIENT

ANY DEFAULT BY THE CLIENT'S CUSTOMER

- Issue of Notice of default and filing the debt with Information Utility.
- Monitoring of Daily Cause-list of NCLT & NCLAT

CUSTOMER OF THE CLIENT (CORPORATE) ADMITTED IN CIRP

- The client has to file necessary claim form, as prescribed under the Code with the IRP within the stipulated timelines.
- Check for inclusion in the report constituting the committee of creditors to validate the claims submitted.

DIFFERENCE BETWEEN 5(24) OF THE CODE AND SECTION 2(76) OF COMPANIES ACT, 2013

- Although, both the sections are similar to each other. There are only minor differences like:
- The definition under Section 5(24) of IBC is broader in scope than Section 2(76) of the Companies Act, 2013. However, Section 3(37) that talks about the application of definition given under Section 2 (76) of the Companies Act, 2013 apply when there is a definition of a term given under the code.
- IBC only talks about the Related Parties in relation to Corporate Debtors or individuals but ignores the related parties in reaction to Body Corporate or a Company.
- Section 2(76)(iv) of the Companies Act, 2013 and section 5(24)(d) of the IBC talks about the same thing but the only difference lies in the perspective. The latter is inferred from the perspective of a corporate debtor. But section 2(76) of the Companies act is a general definition of a Related party.

QUESTIONS & ANSWER





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