

Insolvency and Bankruptcy Code 2016

Dr. Nidhi Kesari

Insolvency, Bankruptcy, Liquidation

- Insolvency is a situation where any person or an enterprise is not in a position to pay off the debts when they are due for payment.
- Insolvency may result into: Bankruptcy or liquidation.
- Bankruptcy is legal term used for a person, when court declares on the failure of insolvency resolution process which was carried out to settle the debts of a person. Bankruptcy is formal or legal declaration.
- Liquidation is the insolvency process available to any corporate entity. It's a process where the business is brought to an end and its assets are distributed amongst the claimants.

Act vs Code

- **Act:** An Act is a specific piece of legislation passed by the Parliament or a State Legislature. It addresses a particular issue or set of issues. For example, Contract Act, Company Act.
- **Code:** A Code is a comprehensive and systematic collection of laws, rules, or regulations that cover a particular area of law. Codes are intended to be exhaustive in nature, encompassing all aspects of the subject they govern.
- Codes are laws which are arranged by subject.

Background of IBC / Need

- Businesses are important
- Easy of business index
- Starting, running, and closing all should be smooth
- Revival of sick companies is equally important
- Delays in revival due to many laws and inadequate process, provisions
- Resulting into winding up of companies
- Felt need for a single law to speed up the process and to promote and support businesses
- Before 2016, no one law but many laws to deal with insolvency and bankruptcy
- Introduced in India in 2016 to revive sick companies and make them healthy again if possible otherwise windup them.
- Sick company: when accumulated losses of company becomes equal or more than profits
- M&A, Selling parts of business

Erstwhile Legislation

- a) SICA Act, 1985 (Sick Industrial Companies (Special Provisions) Act 1985)
- b) RDDBFI Act, 1993 (Recovery of Debt Due to Banks and Financial Institutions Act, 1993)
- c) SARFAESI Act, 2002 (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002)
- d) Part VIA, Part VII and Section 391 of Companies Act, 1956
- e) Chapter XIX and Chapter XX of Companies Act, 2013
- f) Chapter XIII of LLP Act, 2008
- g) BIFR and Debt Recovery Tribunals
- h) The Presidency Towns Insolvency Act, 1909
- i) The Provincial Insolvency Act, 1920
- j) Indian Partnership Act 1932

Repealed legislations

- a) SICA Act, 1985 (Sick Industrial Companies (Special Provisions) Act 1985)
- b) RDDBFI Act, 1993 (Recovery of Debt Due to Banks and Financial Institutions Act, 1993)
- c) Part VIA, Part VII and Section 391 of Companies Act, 1956
- d) Chapter XIX and Chapter XX of Companies Act, 2013
- e) Chapter XIII of LLP Act, 2008
- f) The Presidency Towns Insolvency Act, 1909
- g) The Provincial Insolvency Act, 1920

Evolution of IBC 2016

- In Union Budget 2014-2015, Finance minister announced IBC
- Code was introduced in Lok Sabha on Dec 21, 2015
- Lok Sabha passed the Code on May 5, 2016
- Rajya Sabha passed IBC, 2016 on May 11, 2016
- Code received assent of the President of India on May 28, 2016

Objectives

Main objectives:

- Revive the sick company through any possible scheme like merger.
- If not possible to revive the company then windup in speedy manner.

Other objectives:

- Consolidate and amend all existing insolvency laws in India
- To simplify and expedite the insolvency and bankruptcy proceedings in India
- To protect the interest of creditors including stakeholders in a company
- To revive the company in the time bound manner
- To promote entrepreneurship
- To get the necessary relief to the creditors and consequently increase the credit supply in the economy
- To work out a new and timely recovery procedure to be adopted by the banks, financial institutions or individuals
- To set up an Insolvency and Bankruptcy Board of India
- Maximization of the value of assets of corporate persons.

IBC Covers

- Individuals
- Partnership Firms and individuals
- Limited Liability Partnerships
- Corporates (Including Dispute of Corporate Debtors and Personal Guarantors)
- Statutory companies
- Any other body corporate notified by Central Government

IBC does not cover

The Insolvency and Bankruptcy Code 2016 is not applicable to (Financial service providers):

- NBFCs
- Investment Companies
- Bank
- Financial Institutions,
- Insurance companies,
- Assets Reconstruction company
- Mutual Funds
- Collective Investment Schemes Pension funds

Adjudicating Authorities

- Individuals
- Partnership Firms & Partners

Governed by Debt Recovery Tribunal (DRT)

Appeal - Debt Recovery Appellate Tribunal (DRAT)

- Corporates (Including Dispute of Corporate Debtors and Personal Guarantors)
- Limited Liability Partnerships

Governed by NCLT **National Company Law Tribunal**

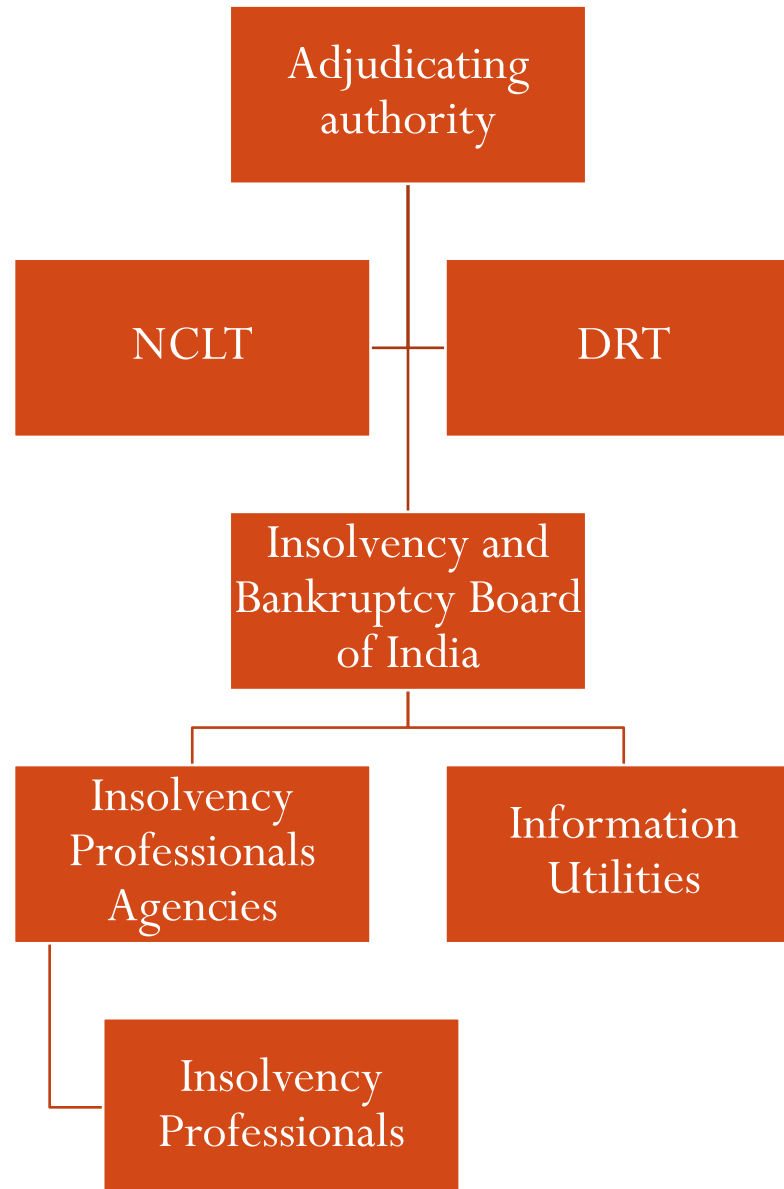
Appeal – NCLAT **National Company Law Appellate Tribunal**

Regulatory Bodies and Mechanism of IBC

Five Pillars of the IBC:

- Adjudicating authority
- Insolvency and Bankruptcy Board of India (IBBI)
- Insolvency Professionals Agencies (IPAs)
- Insolvency Professionals (IPs)
- Information Utilities(IUs)

Regulatory Bodies and Mechanism of IBC



Regulatory Mechanism

Insolvency and Bankruptcy Board of India (IBBI):

- Established by CG
- a body corporate
- A 10 member board appointed by the CG.
 - One Chairperson
 - Three members from MOF, MCA, MOLaw (ex-officio) not below joint secretary or equivalent rank
 - One RBI nominated (ex-officio)
 - Five other members out of which three are whole-time members.
- Head office in New Delhi
- 5 years term & can be reappointed
- Max age 65 years.

Role of IBBI

- Manage registration of Insolvency professionals agencies, insolvency professionals, Information Utilities
- Regulating all matters relating to I&B process
- Setting out eligibility requirements of Insolvency Intermediaries
- Regulating entry, registration and exit
- Making model bye-laws for IPAs
- Setting out regulatory standards for insolvency professionals
- Specifying manners in which Information Utilities can collect and store data.

Functions of IBBI

- Legislative: Make bye laws for IPAs, IP, & IU, levy fees and charges for registration
- Executive: Monitor their performance
- Quasi Judicial: with respect to Insolvency Professional Agency, Insolvency Professional, Information Utilities (Listen against them)

Insolvency Professional Agencies

- Registered with IBBI and obtain Certificate to work as IPA
- More than one agency can be registered with IBBI to work as IPA
- Only section 8 (NPO) can be registered as IPC
- Net worth must be Rs. 10 crores or more and paid up share capital must be Rs. 5 crores or more.
- Should not be subsidiary of subsidiary
- IBBI specify the process of its registration and its bye laws.
- Functions of IPA:
 - Grant membership to insolvency professional
 - Make bye laws for insolvency professional
 - Mention its duties
 - Safeguards rights, interests of insolvency professional
 - Suspend member or cancel membership
 - Redress grievances of members
 - Publish Information about its functions, list of members, and performance of

Insolvency Professional (IP)

- Registered under Insolvency Professional Agency
- Plays a key role in the efficient working of Insolvency and Bankruptcy Process.
- Insolvency professionals will be enrolled as a member of the Insolvency Professional Agency
- Board may specify categories of professionals or persons possessing such qualifications and experience in the field of finance, law, management, insolvency or such other field as it deems fit.
- Every insolvency professional shall abide by the following code of conduct:
 - To take reasonable care and diligence
 - To allow the insolvency professional agency to inspect the records
 - To submit a copy of the records
- Main function of IP is to make a resolution plan to revive the company.

Information Utility

- To register with IBBI and obtain certificate of registration to work as Information Utility under the code.
- Information Utility removes the information dependency on the debtors for critical information required for resolving insolvency.
- Information available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings.
- Function: to go to the sick company and check its accounts and make estimate about the financial situation of the company.

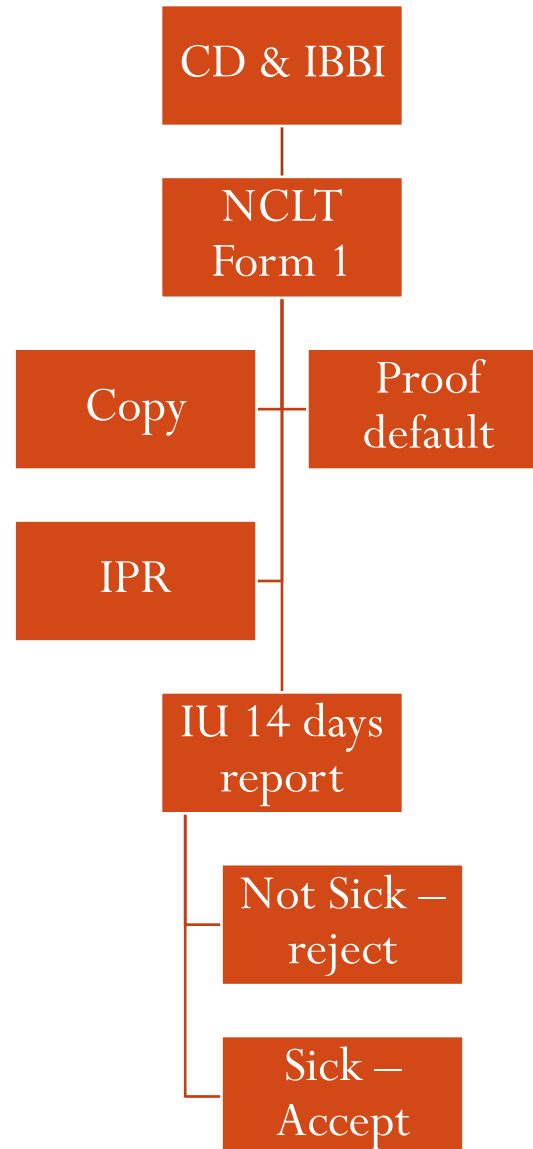
Who Can Apply to NCLT?

- Financial Creditors: creditors to whom corporate debtor owes financial debt.
- Operational Creditors: creditors to whom corporate debtor owes operational debts such as claims for goods and services, employees etc. - employee
- Corporate Debtor: Shareholders, partner, management personnel or employees.

Corporate Insolvency Resolution Process

- Initiate action against Corporate debtor
- Filing of application before NCLT: default min 1cr or more.
- Admission or rejection of application - IU
- Appointment of interim Resolution Professional
- Moratorium and public announcement
- Formation of committee of creditors
- Appointment of Resolution Professional - — revive or not
- Preparation, examination and approval of resolution plan
- Submission of Resolution plan
- If no resolution plan then liquidation

Corporate Insolvency Resolution Process Application Acceptance



Initiation of Corporate Insolvency Resolution Process

- A financial creditor can initiate action by self or jointly with other financial creditors or any other person on behalf of financial creditors to NCLT, against a corporate debtor when a default occurs.
- Application to NCLT by financial creditor must be made in form number 1 along with the fees of Rs. 25000.
- Along with the application following documents must be attached:
 - Copy of the application filed to the corporate debtor at its registered office by speed post or registered post or any other authorised courier.
 - The financial creditor shall furnish the name of the resolution professional proposed to act as an interim resolution professional with the written communication obtain in form 2 (if any)
 - Record of the default recorded with the information utility or such other record or evidence of default as may be specified;
- The adjudicating authority shall within 14 days of the receipt of the application ascertain the existence of the default from the records of an information utility or on the basis of other report furnished by the financial creditor.

Initiation of Corporate Insolvency Resolution Process

- Where the NCLT is satisfied that:
 - A default has occurred and the application is complete and there is no disciplinary process pending against the proposed resolution professional, it may, by order, admit such application.
 - Default has not occurred or the application is incomplete or any disciplinary process against the proposed resolution professional it May by order reject such application.

Note: provided that NCLT shall before rejecting the application give a notice for the rectification the rectifying the defect in its application within 7 days of the received process notice to the authority
- the corporate insolvency resolution process shall commence from the date of admission of the application.
- admission or rejection of application must be intimated to the financial creator and corporate debtor (only in the case of admission) within seven days.
- Appointment of interim Resolution Professional – appointed within 14 days for 30 days.
- Moratorium and public announcement – no action on CD, transfer of assets.
 - PA- within 3 days of appointment. CD name, address, claim, process details, penalties for misleading claim
- Formation of committee of creditors
- Appointment of Resolution Professional - – revive or not
- Preparation, examination and approval of resolution plan
- Submission of Resolution plan
- If no resolution plan then liquidation

Liquidation

- Liquidator's Appointment – Resolution professional
- Formation of Liquidation Estate
- Consolidation of claims – within 30 days of resolution procedure, within 14 days withdraw claim
- Corroboration of claims – claim verified
- Admission or dismissal of claims – fully or in part
- Determination of claims' Value
- Appeal against liquidator's decision – within 14 days
- Preferential transactions and relevant time
- Distribution of assets – dissolution application to NCLT

Fast Track – Pre packaged insolvency resolution plan

- MSMEs – speedy revival
- Two options
 - CIPR 180+90 days extension = 270 days
 - PPIRP 120 days

Distinction

Particulars	CIRP	PIRP
Min Default	1 Cr	10 Lakhs
Applicability	Co, LLP, Firm, Individual	MSME (Co, LLP)
Section	7, 9, 10	54C
Control	Transferred to creditors	Remain with promoters
Management	Resolution professionals responsible	Same management responsible unless management of co has done wrong
Time Line	180+90 days	120 day (90 implementation + 30 NCLT approval)
Liquidation	CIRP fail mandatory liquidation	PIRP fail not mandatory
Initiation requirement	Default of Rs. 1 Cr	Default of Rs. 10 lakh + Spl Resolution
Stage	NO two stage	Pre initiation and post initiation CO + Creditors appoint RP RP makes Resolution plan Submit to NCLT – CoC approve then PIRP starts Not approve then CoC+RP – new plan
Application	FC, OC, CD	CD