



Insolvency and Bankruptcy Code, 2016

By Shailen Shah
Director
Deal Advisory

May 2017

KPMG.com/in



Table of contents

1 Insolvency resolution statistics

2 Objectives of the code

3 IBC – Story so far

4 Corporate Insolvency resolution process

5 Liquidation process

6 Personal insolvencies



Insolvency resolution statistics

Developed economies

United States

Time : 1.5 years
Recovery : 78.6%

Canada

Time : 0.8 year
Recovery : 87.4%

Australia

Time : 1 year
Recovery : 82.4%

Singapore

Time : 0.8 year
Recovery : 88.7%

European Union

United Kingdom

Time : 1 year
Recovery : 88.6%

Germany

Time : 1.2 years
Recovery : 84.4%

France

Time : 1.9 years
Recovery : 78.5

Italy

Time : 1.8 years
Recovery : 63.9

Emerging economies

Brazil

Time : 4 years
Recovery : 15.8%

India

Time : 4.3 years
Recovery : 26%

China

Time : 1.7 years
Recovery : 36.9%

South Africa

Time : 2 years
Recovery : 63.9

Source : Report on ease of doing business, World bank, <http://data.worldbank.org/indicator/IC.ISV.DURS>, accessed on 7 December 2016.

Objectives of the code

1

Consolidate and amend the laws relating to reorganisation and insolvency resolution

2

Assessment of viability of the enterprise at a very early stage

3

Promote entrepreneur risk but balance the rights of debtors and creditors

4

Ensure a time-bound process to preserve the economic value of the asset

Enable symmetry of information between creditors and debtors

5

Ensure a collective process

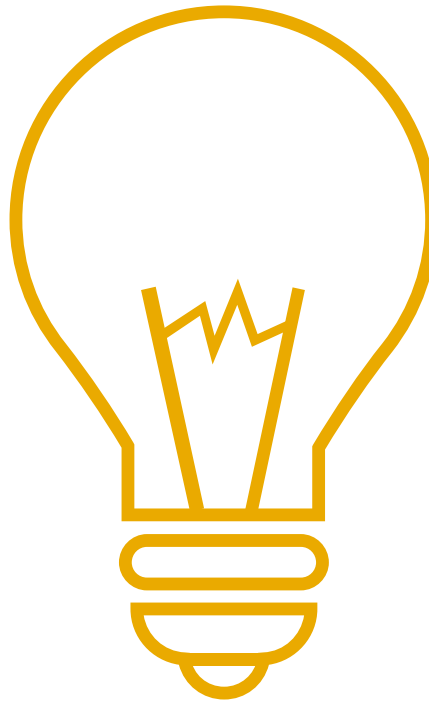
6

Respect the rights of all creditors equally

7

Development of corporate bond market in India

8



IBC story so far

Code was passed by the Parliament on 11 May 2016 and received President's assent on 28 May 2016

Insolvency and Bankruptcy Board of India (IBBI) was constituted from 1 October 2016 and Chairman appointed.

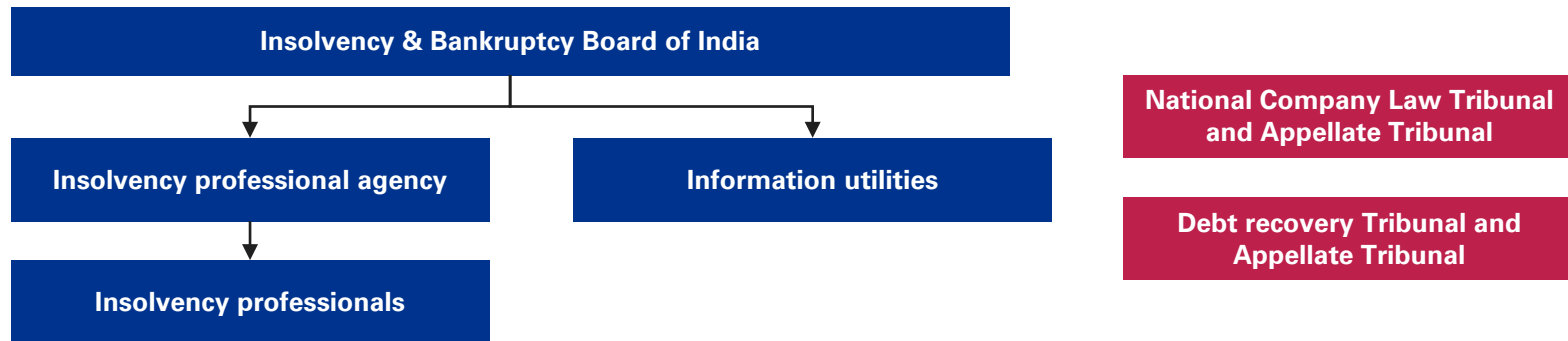
The Code was Corporate insolvency was notified and became effective from 1 December 2016

Rules and regulations under the Code were notified by IBBI during December 2016

First case under the Code was filed in December 2016 and NCLT accepted the case in January 2017

- Insolvency and Bankruptcy Board of India (**Insolvency Professional**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Insolvency Professional Agencies**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Model Bye laws and Governing Board of Insolvency Professional Agencies**) Regulations, 2016
- Insolvency and Bankruptcy of India (**Insolvency Resolution Process for Corporate Persons**) Regulations, 2016
- Insolvency and Bankruptcy of India (**Liquidation of Insolvent Corporate Persons**) Regulations, 2016
- Insolvency and Bankruptcy (**Application to Adjudicating Authority**) Rules, 2016
- Report of working group on information utilities

IBC ecosystem



Insolvency and Bankruptcy Board of India (IBBI) was constituted under the **Chairmanship of Mr. M. S. Sahoo**. The members of the board include representatives from MCA, MoF, Reserve Bank of India and would regulate the appointment of insolvency professionals, information utilities and promote transparency in governance.

Insolvency professional agency (IPA) is the body that would admit insolvency professionals as members and develop a code of conduct and promote transparency and best practices in governance.
Existing professional bodies (**ICAI, ICSI and ICAI (Cost)**) set up IPAs and have received registration certificates

Insolvency professionals (IP) are licensed professionals appointed by insolvency professional agencies who would take on the roles of resolution professional or liquidator/bankruptcy trustee in an insolvency resolution process
IBBI has **977 IPs** registered under limited registration and **12 IPs** after passing Limited insolvency exam

Information utilities (IU) are specialised licensed bodies which would collect, maintain and disseminate information relating to the indebtedness of companies.
The working group has come up with a report on set up of Information utilities

Adjudicating Authority is a body that would have exclusive jurisdiction to deal with insolvency-related matters. The Code provides for application to be made to the appellate tribunal for an appeal against the order of an Adjudicating Authority. Setting up of **11 benches** of National Company Law Tribunal (NCLT) was notified by the government in **June 2016**

Source: KPMG in India's analysis of the Insolvency and Bankruptcy Code, 2016

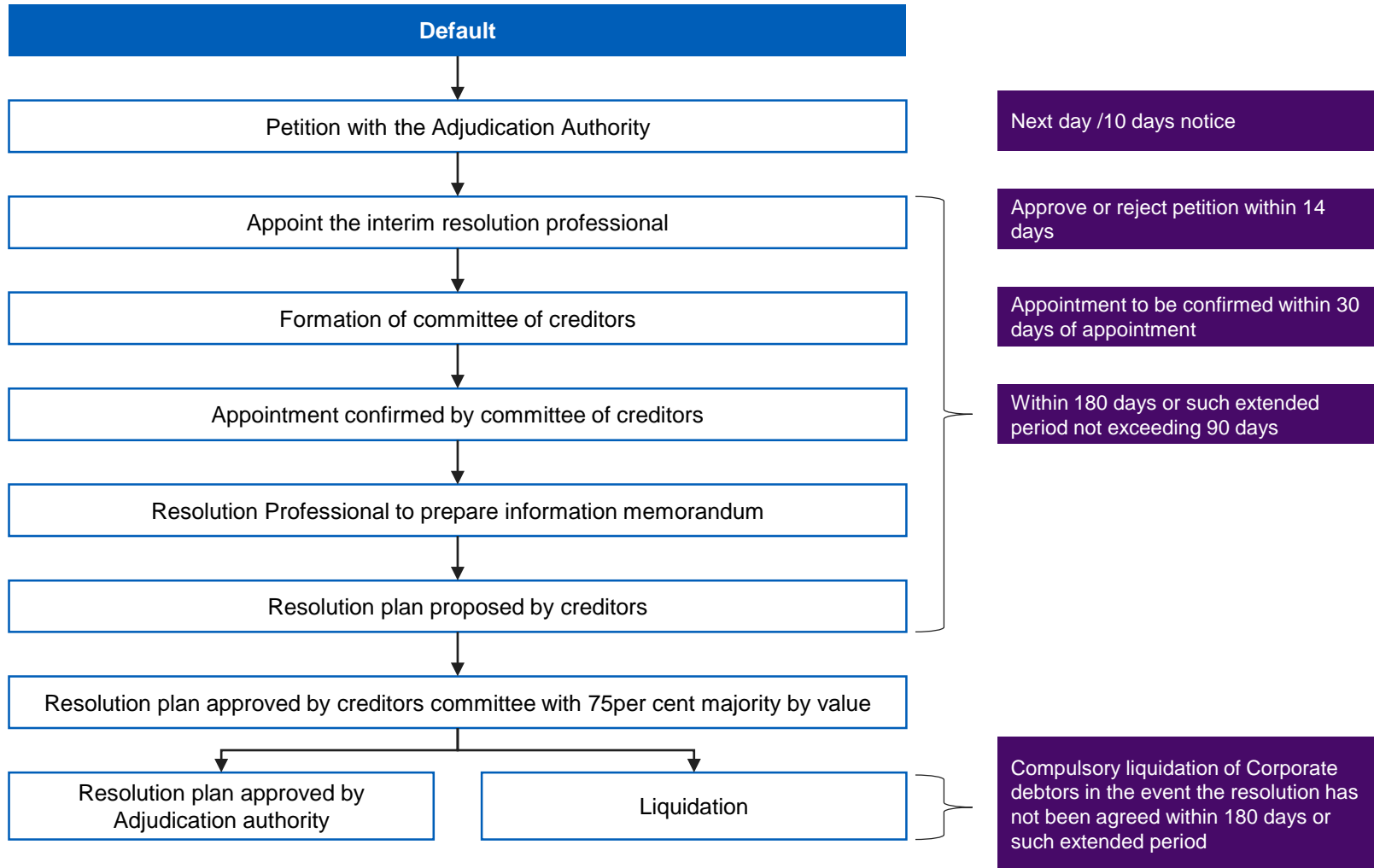
What is 'different' in the Code?

Existing framework	The Code
<p>Fragmented laws:</p> <ul style="list-style-type: none">• Fragmented and multi layered laws providing conflicting relief to debtors and creditors.• Laws providing relief to set of creditors or debtors and didn't cover the universe	<p>Unified</p> <ul style="list-style-type: none">• IBC is a unified code which deals with all set of creditors and debtors.• Secured, unsecured, foreign, domestic all are covered under IBC
<p>Control of Company:</p> <ul style="list-style-type: none">• 'Debtors-in-possession' approach leading to asset stripping and misappropriating of funds by existing management post default	<ul style="list-style-type: none">• 'Creditor-in-possession'. Power of Board of Directors are suspended on start of the IRP.• All decision taken by IP and creditors committee
<p>Timeline:</p> <ul style="list-style-type: none">• No timelines specified	<ul style="list-style-type: none">• Time bound resolution process.• 180 days timeline for resolution of insolvency process
<p>Specialised courts:</p> <ul style="list-style-type: none">• Lack of specialised bankruptcy court	<ul style="list-style-type: none">• Setting up of specialised bankruptcy court i.e. NCLT and DRT

What is 'different' in the Code?

Existing framework	The Code
Role of experts <ul style="list-style-type: none">• Lack of role of experts in the resolution process• Courts guilty of making commercial judgment on viability of Company	<ul style="list-style-type: none">• Enhanced role of Insolvency professionals• Courts to act and process managers. Decision on revival /liquidation left with creditors
Assessment of Insolvency <ul style="list-style-type: none">• Net worth based approach	<ul style="list-style-type: none">• Cash flow based assessment leading to early detection of insolvency trends
Approach to resolution <ul style="list-style-type: none">• Socialistic approach which is pro – rehabilitation	<ul style="list-style-type: none">• Balance approach between rehabilitation and liquidation.
Waterfall mechanism <ul style="list-style-type: none">• Unclear waterfall mechanism of payment of debt in case of liquidation of Company	<ul style="list-style-type: none">• Provides a well defined waterfall mechanism for payment of debt in case of liquidation of Company
Information asymmetry <ul style="list-style-type: none">• Lack of accurate and reliable information of indebtedness for decision making	<ul style="list-style-type: none">• Information utilities to maintain accurate and reliable data relating to indebtedness.
Super priority funding <ul style="list-style-type: none">• Lack of provision of super priority funding	<ul style="list-style-type: none">• Provide for super priority funding during IRP

Insolvency process overview



Source: KPMG in India's analysis of the Insolvency and Bankruptcy Code, 2016



Corporate Insolvency resolution



1. Who will be the Adjudicating authority?

- **National Company Law Tribunal (NCLT)** will deal with
 - Corporate insolvency
 - Limited liability partnership and
 - Personal guarantees related to corporate debtors
- **Debt Recovery Tribunal (DRT)** will deal with
 - Individual and
 - Partnership insolvency
- Adjudication Authority to have exclusive jurisdiction to deal with insolvency related matters
- Civil courts will not have jurisdiction over matters on which NCLT has jurisdiction
- No injunction shall be granted by any court, tribunal or authority in respect of any action taken by NCLT

2. Who is a 'financial creditor' / 'operational' creditor'?

- **Financial creditor**

- Holder of financial debt includes any debt given against consideration for interest, liability in respect of guarantee or indemnity.
- May itself or jointly initiate insolvency resolution process on default
- Independent financial creditors have voting rights in decision making by the CoC
- Dissenting financial creditor to receive 'minimum liquidation' value

- **Operational creditor**

- Holder of operational debt. Includes any debt incurred in exchange for the provision of goods or services or dues under any law. Example - vendors, employees etc.
- Initiate insolvency resolution on expiry of ten days from demand notice
- Operational creditors do not have voting rights in decision making by the CoC
- All operational creditors to receive at least minimum liquidation value

- **Creditor holding both financial and operational debt** will be considered financial creditor for portion of financial debt and operational creditor for part of operational debt

- A creditor can **assign/transfer debt** even after commencement of insolvency proceedings. No approval needed from resolution professional. This will lead to re-constitution of creditors committee.

3. What constitutes 'Default' and 'Proof of default'?

- Default means a state when debt exceeding INR one lakh is due and is not repaid
- **'Proof of default'**
 - Financial creditors - default recorded with the information utility and other information like contract, bank statement etc. indicating default.
 - Operational creditors - Expiry of 10 days from the date of delivery of the notice demanding payment from corporate debtor which is not disputed.
- Operational creditors can file CRIP only for 'Undisputed liability'

Demand Notice

- Demand Notice means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred
- As per Rule 5(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the demand notice or a copy of invoice shall be sent to corporate debtor by post, by hand or email and the copy of demand notice shall be forwarded to information utility. Demand notice shall be given in Form 3.
- Disputes if any needs to be disputed by Corporate Debtor before the filing of CRIP and cannot be at the time of demand notice.

4 a. Who can file for corporate insolvency resolution?

Any of the following persons can initiate corporate insolvency resolution on default:

- **Financial creditor**

- who's loan is in default, or
- who's loan is 'not' in default but debtors has defaulted on repayment of any financial debt.

- **Operational creditor**

- Trade creditor or workmen/employees with outstanding dues who has served demand notice and ten days have elapsed

- **Corporate debtor**

- Shareholder
 - Individual in charge of managing operations and resources of the corporate debtor
 - A person who has control and supervision over the financial affairs of the corporate debtor
- The Code also prescribes penalties for false and frivolous petitions.

4 b. Who cannot file for corporate insolvency resolution

- A corporate debtor already undergoing an insolvency resolution process; or
- A corporate debtor having completed corporate insolvency resolution process 12(twelve) months preceding the date of making of the application; or
- A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;
- A corporate debtor in respect of whom a liquidation order has been made.

5. Is moratorium available?

- The code provides for Moratorium will be for a period of 180 days from admission of application by Adjudicating Authority extendable once for a period not exceeding 90 days
- Moratorium would be for
 - 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
 - transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein
 - any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI
 - the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- Moratorium period to be excluded for calculation of limitation period

6. Who can become Insolvency Professional (IPs)?

- **Limited registration (till 31 Dec 2016)** for exiting professionals to facilitate adequate availability of IPs in the interim period.
 - CA/CS/Cost accountant/advocate who has been ‘in practice’ for 15 years.
 - Valid only for a period of six months.
- **Final registration** after appearing and passing insolvency examination
 - Limited insolvency examination
 - IPs registered under limited registration
 - An individual with a Bachelors degree and 15 years of experience in management
 - An individual who has 10 years of experience enrolled as a CA/CS/Cost accountant/advocate
 - National insolvency examination for any other person
- Foreign professional also eligible to register as an IP if he/she has spend 182 days in India in the previous year.
- Licensed IPs can form Insolvency Professional Entities (IPEs) provided majority partners/directors are IP
- A registered IP can undertake corporate as well as personal insolvency exam

7. Eligibility to be appointed as a resolution professional/liquidator?

- **Independence**

- An IP and every partner or director of the IPE he is a partner or director should be independent as per provisions of law.
 - a. he is eligible to be appointed as an independent Director on the Board of the company under section 149 of the Companies Act, 2013;
 - b. is not a related party of corporate debtor;
 - c. He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
 - d. has not been an employee or proprietor or a partner of firm of auditors or legal consultants of the corporate debtor (transaction of 10 per cent or more of gross turnover of such firm) in any of the three financial years immediately preceding the financial year.

- **Disclosure of conflict of interest**

- IP shall disclose any interest/relationship with the corporate debtor or stakeholders

8. Who appoints the Resolution Professional?

- **Appointment**

- Financial creditor
 - Operational creditor (optional)
 - Corporate debtor
 - IBBI in case no IP is appointed
- IRP appointment has to be ratified by the CoC in its first meeting
 - RP's appointment needs to be approved by majority of creditors at creditors committee
 - RP can be replaced with majority of creditors with the permission of the IBBI
 - RP fees will be decided by the creditors committee

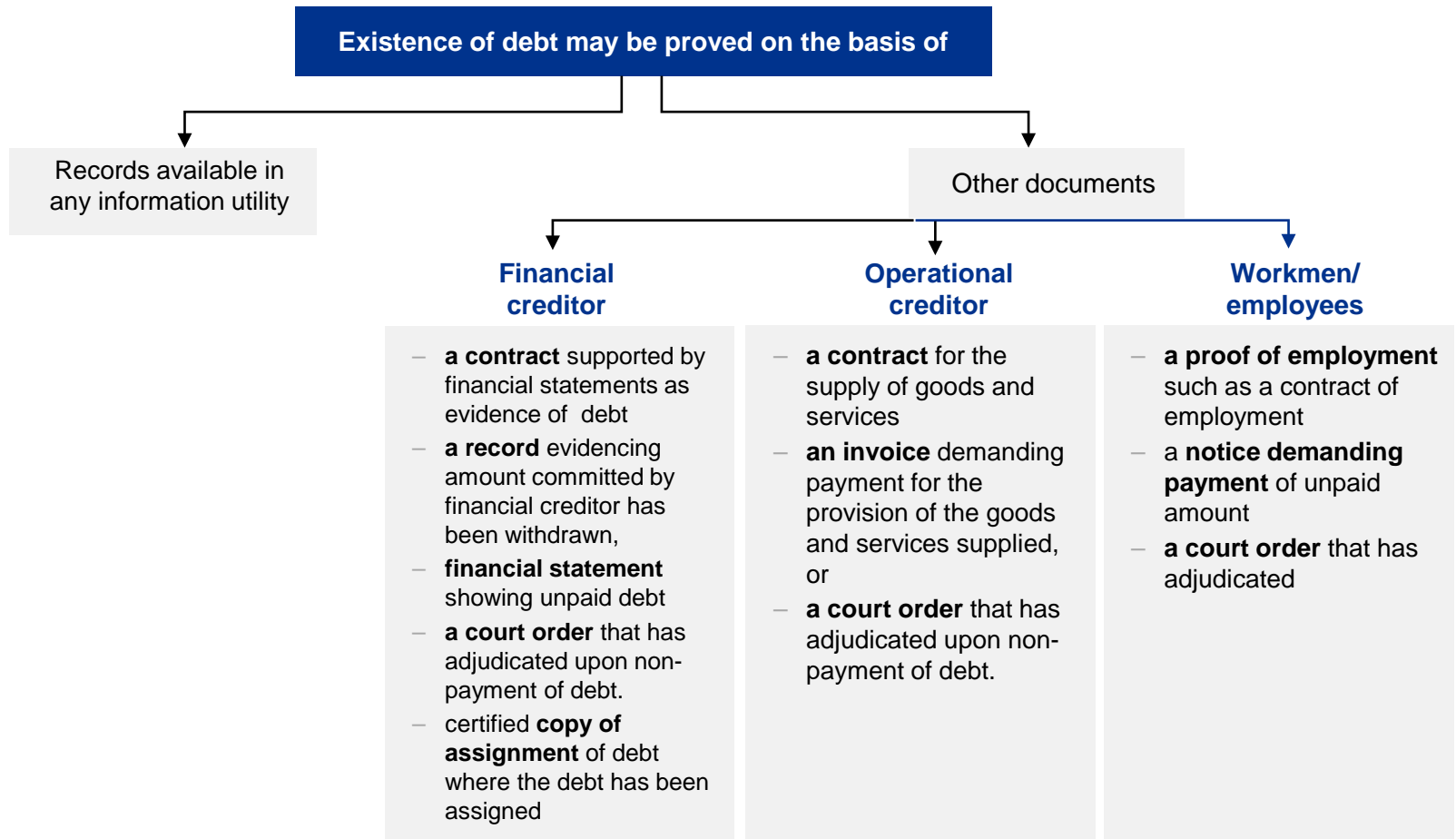
9. What are powers of Resolution Professional?

- All powers of the Board of Directors rest with the RP
- Manage affairs of the corporate debtor as 'going concern'
- Access to documents and records including bank accounts
- Appoint accountants, legal or other professionals as maybe necessary
- Enter into fresh contracts or amend existing contracts
- Raise interim funding with the consent of the CoC
- Issue instructions to personnel
- Obtain support of management

10. What are the duties of Resolution Professional?

- Take custody, protect and monitor the assets
- Collect all information relating to the assets, finances and operations
- Call for 'Proof of Claim' against the corporate debtor and verify the same.
- Receive and collate all the claims submitted by creditors
- Constitute a committee of creditors
- Prepare Information Memorandum and submit it to the CoC

11. What documents constitute a proof of claim?



The cost of proving the claim of debt is to be borne by the specific creditor.

12. Verification of proof of claims

- RP to issue public notice within three days of his appointment asking creditors to submit 'Proof of claim' within 14 days.
- The RP to verify documents submitted by the creditors as proof of claims within seven days from receipt of last claim
- The RP may call for additional evidence or clarifications over and above documents submitted by the creditor
- RP to use estimates in case the claim value is not precise due to any contingency
- Foreign debt to be converted base on the exchange rate at the date of commencement of CIRP
- RP to prepare final list of creditors based on claims accepted and respective security
- The list to be filed with the Adjudicating Authority
- In case of rejections of any claim, creditors of appeal to NCLT

13. What will be the composition of Committee of Creditors?

- CoC shall comprise of **only** financial creditors.
- Members of suspended Board of Directors have right of representation
- Operational creditors which debt in excess of 10 per cent of the debt shall have right of representation only.
- Voting rights of CoC members:
 - Financial creditors - with voting rights
 - Operational creditor – without voting right
 - Related party creditors – non voting members
 - Corporate debtor – without voting right
- In absence of independent (no related) financial creditors, CoC shall comprise of operational creditors.
 - 18 largest operational creditor by value
 - 1 representative of all workmen
 - 1 representative of all employees

14. What are provisions for conduct and voting in of creditor meetings?

- **Meetings**

- Notice - IRP to serve notice (not less than seven days) with date, time and venue of the meeting
- Attendance - May be in person or proxy. The regulations allow participation by a video conferencing or audio means
- Quorum – 33 per cent of the voting members present in person or electronic means

- **Voting**

- Voting rights -In proportion of the debt due to a creditor out of the total debt
 - Conduct of voting – When all members are present - Vote casted in the meeting. In absence of all members - Voting by electronic means
 - Option for voting - Members may vote for, against or abstain
- A resolution plan will be approved by the CoC where 75 per cent of the members (by value) have voted 'in favor' of the plan

15. What are functions of the Committee of creditors?

- Ratification of interim RP appointment and interim resolution costs
- Decide on remuneration of the resolution professional
- Decide on insolvency resolution process costs
- Consider submitted resolution plans
- Approve of the resolution plan

16. What is minimum liquidation value?

- **Objective**

- Protect rights and interest of the unsecured creditors and dissenting financial creditors

- **Independent valuer to be appointed**

- Resolution professional to appoint two 'Registered valuers'
- Valuation by internationally accepted valuation standards
- Average of two estimates to be considered
- Two significantly different valuations – RP can appoint a third valuer

- **Manner of payment of liquidation value**

- Payment of liquidation value to operational creditors within 30 days of approval of resolution plan
- Payment to dissenting financial creditors before any recoveries are made to other financial creditors

17. What is the priority of distribution of assets?

- The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority:
 - Process and liquidation costs, including interim funding
 - Claims of secured creditors (who has relinquish his security rights) and workmen dues (capped at 24 months) will be pari passu
 - Employees' salaries, other than workmen dues (capped at 12 months)
 - Financial debt owed to unsecured creditors
 - Government dues (capped at two years) and unpaid secured creditors (if security rights not relinquish)
 - Any remaining debts and dues.
 - Preference shareholders
 - Equity shareholders or partners as the case maybe.

18. What will be contents of an Information Memorandum (IM)?

A resolution professional shall submit IM to the CoC which shall contain following information:

- List of the corporate debtor's assets and liabilities
- Latest financial statements or estimated financial statements (where annual financials were filed 90 days before commencement)
- List of creditors with amounts claimed, admitted and security interest
- Any debts owed by or to the corporate debtor to or by related parties
- Guarantees given by other persons, specifying which of the guarantors is a related party
- Details of capital contributories of the corporate debtor
- List of material litigation and any ongoing investigation
- Number of employees/workmen and dues towards them
- Liquidation value

19. What will be contents of a resolution plan?

A resolution applicant can submit a resolution plan anytime 30 days before expiry of maximum period:

- **Mandatory contents**

- Specific sources of funds to pay insolvency resolution process costs and liquidation value
- Term of the plan and implementation schedule
- Manner of management of the business and adequate means for supervising

- **Other contents**

- Transfer or sale of all or any part of the assets (secured or unsecured)
- Acquisition of shares or merger or consolidation of corporate debtor
- Satisfaction or modification of any security interest
- Curing or waiving of any breach of the terms of any debt owed
- Extension of a maturity date or a change in an interest rate or other term for any debt owed
- Amendment of the constitutional documents
- Issuance of securities of the corporate debtor
- Necessary approvals from the central/state governments or any regulatory authorities

20. What are insolvency resolution costs?

- **Interim resolution process**

- Fixed by the applicant and subsequently ratified by the CoC in its first meeting
- Where the applicant does not fix expenses, the adjudicating authority shall do so.

- **Insolvency resolution cost**

- Expenses fixed by the CoC to be incurred on or by the resolution professional and includes:
 - a. Amounts due to suppliers for essential goods and services
 - b. Amounts due to person whose rights are prejudicially affected during moratorium
 - c. Costs directly attributable to insolvency resolution
 - d. Resolution professional costs

21. What triggers liquidation process?

- Resolution plan does not meet the minimum guidelines
- Non-agreement by Creditors' committee within stipulated period
- Decision of Creditors' committee for liquidation
- Corporate debtor fails to adhere to the terms of the approved resolution plan

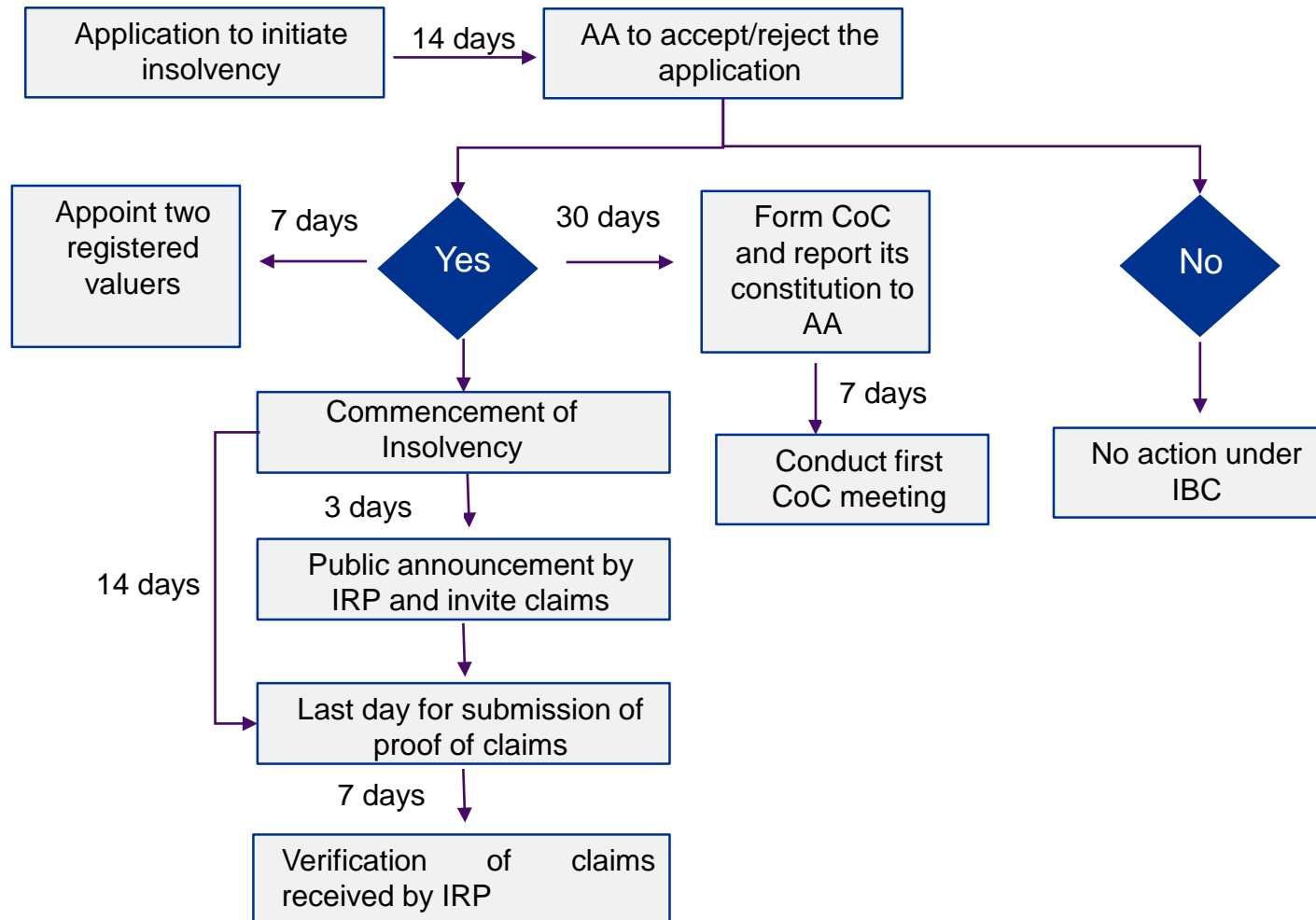


The RP will act as the liquidator and all assets of the corporate debtor will be transferred to the Liquidation Trust



- Distribution to the creditors would be as per the priority of payment set out in the Code.
- Liquidation order is non reversible

22. Insolvency resolution timelines





Liquidation process



23. What are powers and functions of a liquidator?

- Powers of board of directors, key management personnel and partners shall vest with the appointed liquidator.
- Liquidator to make public announcement of liquidation and invite proof of claims
- Liquidator may appoint professionals (auditors, valuers, agents etc.) to assist him in discharging duties
- Liquidator may consult with stakeholders for discharge of his functions
- Liquidator may require any person to provide necessary information and extend cooperation
- Liquidator may disclaim property/assets burdened with onerous covenants or unprofitable contracts by making an application to AA
- Liquidator shall open a bank account specifically for liquidation and proceeds and payments shall flow from such account

24. What are the reporting requirements for a liquidator?

- **Preliminary report**

- To be submitted to AA within 75 days of liquidation commencement date
- Details of estimated assets and liabilities and proposed plan of action
- Asset sale report for assets sold during a period to form part of progress report

- **Progress report**

- To be submitted to AA on quarterly basis
- Details of material information for relevant period including appointment of exiting professional, statement of receipts and payments, stage of liquidation, remuneration charged, status of material litigation and liquidation costs
- Progress report of fourth quarter shall be enclosed with audited accounts

- **Final report**

- To be submitted to AA post liquidation process
- Details of account of liquidation, conduct and manner of disposal of properties

25. How to determine quantum of claim?

- **Amount of debt** - as on date when order of liquidation was passed
- **No fixed value claim** – where claim is based on occurrence of an contingency, the value to be determined on the basis of financial statements
- **Foreign currency debt** - Converted into Indian Rupees at the official exchange rate prevailing on date liquidation order
- **Periodic payments** - Claim only for any amounts due and unpaid up to the date when the corporate debtor went into liquidation
- **Debt payable in future** – To be adjusted as if payable on day of distribution
- **Mutual credits** – Mutual credits/debts/dealings prior to insolvency commencement to be set off

26. What will be manner of conduct of liquidation property?

- **Asset Memorandum** – Liquidator to prepare and submit to AA an asset memorandum in respect of the liquidators estate with details of valuation, estimated price, choice and manner of sale, terms of sale etc.
- **Manner of sale** (individually or in combination)
 - Going concern
 - Slump sale
 - Parcel sale
- **Mode of sale**
 - Public auction
 - Private sale by making an application to AA for perishable assets
- **Valuation**
 - By two registered valuers for arms length valuation
 - Average of the two estimates shall form lowest price at which the asset may be sold
- **Asset sale report** – On sale of asset
- **Distribution of unsold asset** – Obtain permission of AA to distribute unsold assets amongst stakeholders

27. Secured creditors right in case of liquidation?

- A secured creditor may
 - relinquish his security interest and receive payments from proceeds of sale of the liquidation estate or
 - realise the security interest and inform the liquidator of his intention to do so.
- Liquidator on intimation from creditor on intention to realise the asset, shall inform the creditor about any person willing to buy the secured asset at a higher price.
- Creditor who has relinquished security interest shall rank equally with workmen's dues

28. What is the prescribed time-limit for completion of liquidation?

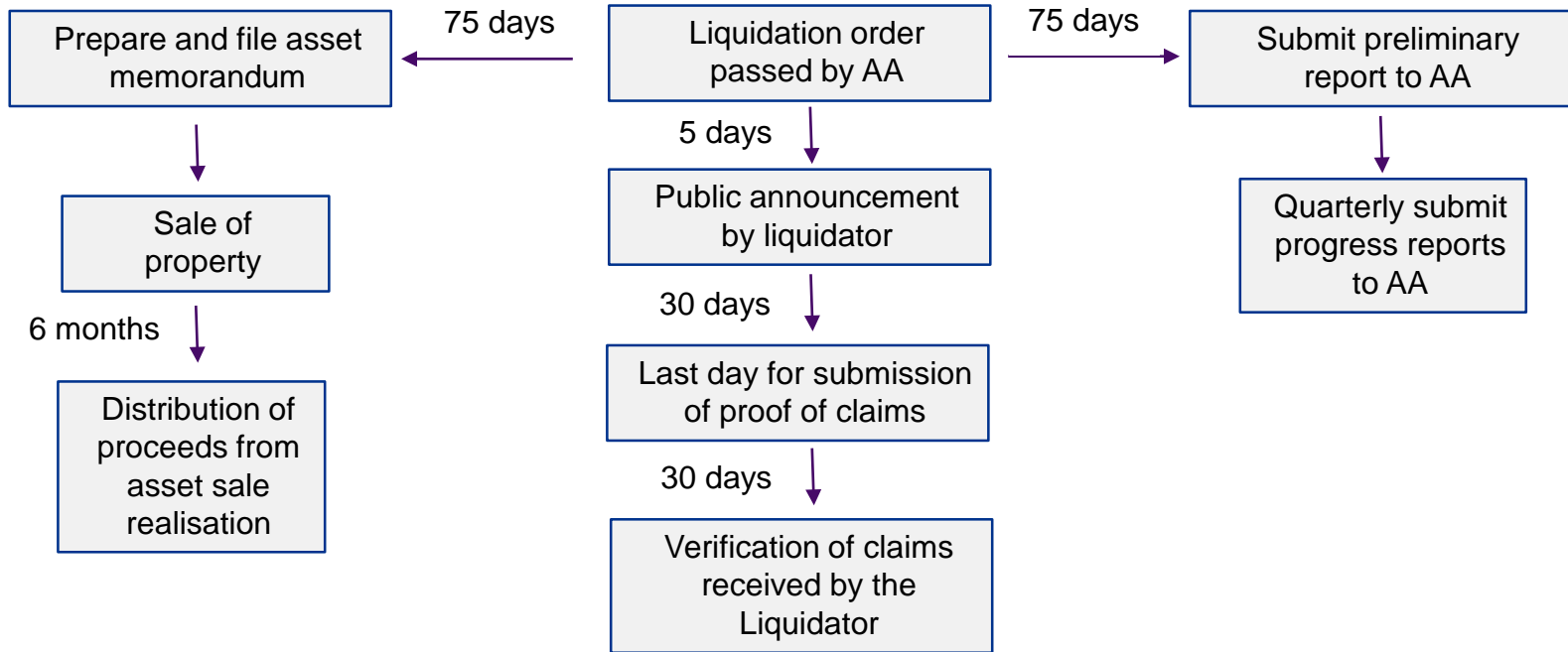
- Two years from liquidation commencement.
- **Extension** - Any delay is to be reported to AA with explanations causing such delay and taking permission for continuing the liquidation.
- **Fast-tracking provisions** – Liquidator may apply to AA for early resolution where he is of the opinion that:
 - realisable properties are insufficient to cover liquidation costs.
 - affairs of the corporate debtor do not require further investigation

29. How to determine remuneration of a liquidator ?

- The remuneration shall be fixed by CoC when:
 - Liquidation order pursuant to non submission of resolution plan
 - CoC decides to enter into liquidation
- In other cases, remuneration based on per centage of value of assets realised and amount distributed

INR	In first six months	Next six months	In next one year	thereafter	In first six months	Next six months	In next one year	thereafter
	Realisation of assets				Distribution of assets			
On first 1 crore	5%	3.75%	2.50%	1.88%	2.5%	1.88%	1.25%	0.94%
On the next 9 crore	3.75%	2.8%	1.88%	1.41%	1.88%	1.40%	0.94%	0.71%
On the next 40 crore	2.50%	1.88%	1.25%	0.94%	1.25%	0.94%	0.63%	0.47%
On the next 50 crore	1.25%	0.94%	0.68%	0.51%	0.63%	0.48%	0.34%	0.25%
On further sums realised	0.25%	0.19%	0.13%	0.10%	0.13%	0.10%	0.06%	0.05%

30. Liquidation resolution timelines





Personal insolvency



31. What are provisions for personal insolvency?

The code envisages two processes in case of individual/partnership insolvency:

- Automatic fresh start process
 - Gross income doesn't exceed INR 60,000
 - Assets don't exceed INR 20,000 and don't own a dwelling unit
 - Qualifying debt of INR 35,000
- Insolvency resolution process
 - Resolution plan
 - Bankruptcy proceeding



Forms and filing fees



Annexure : Forms under the regulations (Application)

Insolvency and Bankruptcy of India (Application to Adjudicating Authority) Rules, 2016

- Form 1 : Format of application to be filed by Financial Creditor
- Form 2 : Written consent by proposed IP
- Form 3 : Demand Notice by operational creditors
- Form 4 : Demand Notice for payment of invoice
- Form 5 : Format of application to be filed by Operational Creditors
- Form 6 : Format of application by Corporate Debtors

Annexure : Forms under the regulations (Resolution process)

Insolvency and Bankruptcy of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- Schedule Form A : Format for public announcement
- Schedule Form B : Form for proof of claim by operational creditors except workmen and employees
- Schedule Form C : Form for proof of claim by financial creditors
- Schedule Form D : Form for proof of claim by workmen or employee
- Schedule Form E : Form for proof of claim by authorised representative of workmen or employees

Annexure : Forms under the regulations (Liquidation)

Insolvency and Bankruptcy of India (Liquidation of Insolvent Corporate Persons) Regulations, 2016

- Schedule II Form A : Performa to report consultations with stakeholders
- Schedule II Form B : Format for public announcement
- Schedule II Form C : Form for proof of claim by operational creditors except workmen and employees
- Schedule II Form D : Form for proof of claim by financial creditors
- Schedule II Form E : Form for proof of claim by workmen or employee
- Schedule II Form F : Form for proof of claim by authorised representative of workmen or employees
- Schedule II Form G : Form for proof of claim by any other stakeholder
- Indicative formats for ledgers and book keeping

Annexure : Filing Fees

Insolvency and Bankruptcy of India (Application to Adjudicating Authority) Rules, 2016

Type	Amount
Application by financial creditor (whether solely or jointly)	INR 25,000
Application by operational creditor	INR 2,000
Application by corporate debtor	INR 25,000



Practical Challenges



IBC statistics

Statistics (updated till 17 April 2017)		
IBC cases	Filed	Admitted
Financial lenders	23	6
Operational creditors	241	15
Workmen/ employees	2	1
Corporate debtor	45	30
Total	311	52

Source : NCLT website, IBBI website

Key cases

- Innoventive Industries Limited
- UB Engineering Limited
- StarLog Enterprise
- Rei Agro Limited
- Ashok Alco-Chem Limited
- Uttam Galva Steels Limited
- Raipur Power and Steel Limited & Ors
- Gupta Coal India Private Limited
- Swiber Offshore (India) Private Limited

Practical challenges in implementation (1/2)

Fragile judicial system

- NCLT is overburdened with pending cases (25,000 cases). Need of exclusive IBC benches. Need for training judges to handle intricate IBC matters
- Lacks jurisprudence and precedence

Insolvency professionals

- Need for adequate indemnity and protection for IP for action done in good faith.
- Professional bonding requirements for IP to discourage non serious players

Information Utilities

- IU infrastructure not yet in place
- Lack of adequate and credible data

Mind set change

- Change in mindset from ' Debtors in possession' to 'creditors in possession' framework.
- Promoters, employees and vendors should Co operate with IP for resolution

Accounting challenges

- Lack of clarity for lenders on accounting/ impairment of account under resolution
- Accounting impact on accounts already restructured under existing schemes

Practical challenges in implementation (2/2)

Liquidation value

- Manner of calculation of liquidation value has not been clearly defined
- Payment of liquidation value to operational creditors will lead to cash drain

- Need to obtain shareholders consent on matters under applicable statutory laws may hamper the process.
- Multiplicity and overlapping approvals may delay the resolution process

Multiplicity of approvals

Tax concerns

- Lack of single window clearance for pending tax and corporate law litigations.
- Unclear treatment and tax impact of debt cancelled for the corporate debtor

- Option for creditors to abstain from voting may lead to inaction and delay
- Dissenting financial creditors are guaranteed 'liquidation value' encouraging them to dissent on the plan.

Voting

Inter-se creditors conflicts

- Lack of voting by class of creditors will lead to voting over proposed by creditors whose rights are not affected equally
- Views of all creditors may not be aligned leading to conflicts and delays

IDFC Bank Vs Ruchi Soya

The Bombay High Court dismissed the application by IDFC, ruling in favor of other consortium lenders mandating banks to follow RBI guidelines on JLF before initiating recovery/winding up under the Code stating interest of all stakeholders must be considered before invoking winding up under IBC

ICICI Bank Vs Innoventive Industries

The Bombay High Court dismissed the writ petition by the corporate debtor challenging constitution of the Code on the grounds that the company had also challenged acceptance of the application by NCLT.

With respect to petition by the company to NCLT, the tribunal observed that the company cannot seek protection under Maharashtra Industrial Development Act. It decided that non obstante clause under IBC will have overriding effect.

Nikhil Mehta vs AMR Infrastructure Ltd

NCLT observed that a debt is of financial nature where it is disbursed against consideration for time value of money. The underlying transaction must be in nature of debt and not equity. It decided that payment in the case was made for the property and not for debt and was not in the nature of financial debt.

The case will discourage use of disguised operational debt as financial debt for such classification

Essar Projects India vs MCL Global Steel Ltd.

NCLT held that where the debt is not disputed before any court of law before receipt of demand notice under IBC, any dispute raised as a reply to such notice cannot not be treated as existing dispute while considering the case for admission.

The tribunal held that the disputes raised were not sustainable and admitted the case.



Thank you

Shailen Shah

Director

Deal Advisory

+91 22 3090 2041

shailenshah@kpmg.com

Follow us on:
kpmg.com/in/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2017 KPMG India Private Limited, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.