

Certificate Course on IBC : A New Professional Opportunity

**Organized
by
Voice of CA with CA Association**

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AGENDA

- IBC.....
- Evolution, and Overview of IBC
- Building Block of Legal Framework
- Rigorous and Structured Process
- Time Bound Process
- Well Defined Roles and Responsibilities
- Recent Changes
- Supreme Court Judgements
- Opportunities for Professionals

Doing **business** has become easier in India due to Insolvency and Bankruptcy Code. The **banking system** has also got strengthened.

Mr. Narendra Modi, Hon'ble Prime Minister

at the First Uttarakhand Investors' Summit in Dehradun on 7th October, 2018.

Whether Insolvency is BAD

"Capitalism without financial failure is not capitalism at all, **but a kind of socialism for the rich"!**

Mr Uday Kotak

"Insolvency is about Financial Death and ...Financial Rebirth."

--Elizabeth Warren



Evolution and Overview of the IBC 2016

Preamble of the Code

An Act to (i) consolidate and amend the laws relating to (ii) reorganisation and insolvency resolution of corporate persons, partnership firms and individuals (iii) in a time bound manner for maximisation of value of assets of such persons, to (iv) promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including (v) alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

External Causes of Insolvency

- Global downtrend ;
- Policy Paralysis;
- Inaction by Banks;
- Approval Delays at various levels;
- Excess Capacity on global level;
- Change in Focus;
- Policy Impact;
- Credit Appraisals
- Fiscal Pressure.

CODE not an ACT

Matters Dealt With

Why is it a Code?

“Code” is usually known as an **exhaustive collection or compendium of laws on relevant subject.**

IBC **Consolidates** laws which are **currently spread over multiple laws** (statutes, notifications, etc.)

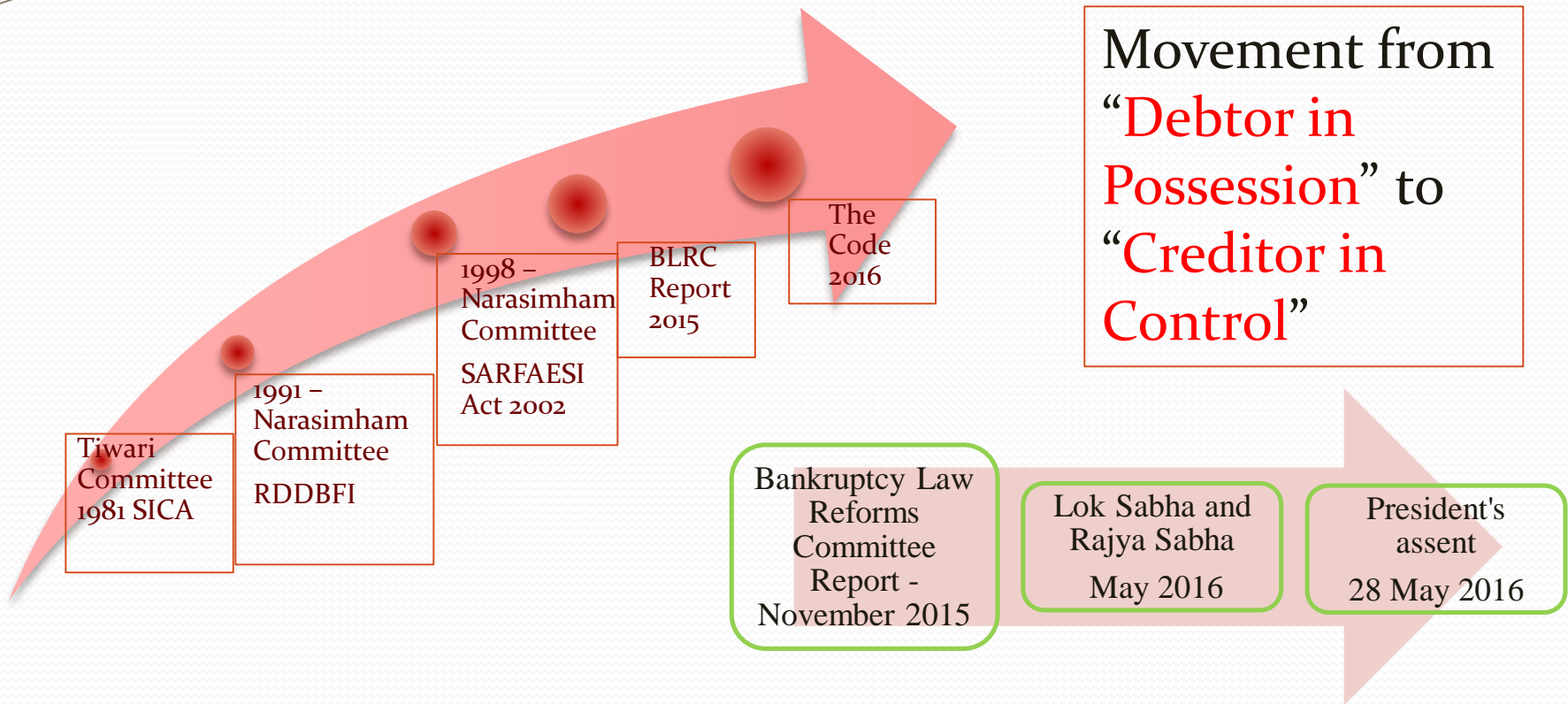
IBC-2016 **AMENDS SEVERAL OTHER STATUTES**, and even where there is **overlaps, the provisions of IBC - 2016 survives.**

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.**

Evolution of the code



The **Presidency Towns Insolvency Act, 1909**, covers the insolvency of individuals and of partnerships in **Mumbai, Chennai & Kolkata** : High Court had jurisdiction;

The **Provincial Insolvency Act, 1920**, is the insolvency law for individuals in areas other than the Presidency towns. **Subordinate Court** heard the cases and District Court as Court of Appeal.

Legal Framework So Far

Theme : Recovery vs Resolution

Long Tardy Procedure :

- Unstructured , Unverifiable, Non-standardised Information;
- No Time Limits;
- No Professional Enablers;
- Multiple Overlapping Forums and Laws ;

Coverage of Market Participants:

- Specified set of Debtors only;
- Specified set of lenders (Banks and Financial Institutions, Secured Lenders);
- No Distinction between MSME's and Large Corporates;

Brief Overview

➤ Aim/Objective:

- Early and Time-Bound Resolution of Debts;
- *Preserve, to the extent possible, Corporate Debtor as a going concern, and value of its Assets;*

➤ Defaulter Entities Covered: Can be invoked against,

- Corporate (Company, LLP) and non-corporate (Individual / Partnership)(in phased manner) ;
- Principal borrower(s) (Individual / Corporate) and its (Individual / Corporate) Guarantor(s);

➤ Who can seek recourse : All Creditors and not Just Banks :

- Other Unpaid Lenders (Bond Investors) whether secured or Unsecured;
- Unpaid Suppliers /Vendors, Utilities and Services Providers;
- Unpaid Employees, Workmen and External Consultants;

➤ Mechanism to Achieve Objectives

- Standardized & Structured Information;
- Professional entities to conduct the whole procedure;

Salient Features

➤ Time Bound Procedure:

- ✓ s. 5(26) requires *approval of resolution plan within prescribed time period;*
- ✓ s 12(3): *Outer Limit of Resolution: 330 days ;*

➤ *Easy to Invoke & seek redressal:*

- ✓ s 21(3): *Joint Application by Partners in Defaulted Syndicated Loan or by same class of creditors;*

✓ Principles' based approach

- ✓ s. 5(8)(f): *Home Buyers recognized as Financial Creditors;*

- ✓ s. 21(4): *Dual (pro-rated) representation to someone who is both Financial & Operational creditor ;*


- ✓ *Natural Justice*: *No application {filed u/ss. 7, 9 or 10} is rejected by NCLT {u/s 10(4)(b)} without being heard ;*

➤ s. 10(3): **Voluntary Liquidation** (*even without any defaulted debt*); Special Resolution needed;

➤ **Delegated Legislations:** *Enables IBBI to frame Regulations*

- ✓ *Process/Procedure/Events* – *Insolvency, Liquidation, Bankruptcy, Winding Up;*

- ✓ *Type of Information & Formats* – *For filing information with IU's, IBBI, RP, NCLT ;*



BUILDING BLOCKS OF LEGAL FRAMEWORK UNDER THE CODE

The Insolvency and Bankruptcy Ecosystem



NCLT/ DRT



IBBI



NCLAT/ DRAT =
Supreme Court



IPA



IU



IRP/RP

**Characters,
Artists &
Institutions**



Operational Creditor



**Financial Creditor/ Inc
rep of Class of Creditors**



**Committee of Creditors meeting
in progress**

The first row
represents
financial
creditors.

The second row
represents the super
ceded BOD, partners,
operational creditors
having dues greater
than 10% of total dues



Insolvent/Bankrupt

Recent Data(s) on IBC

(as on 30th June, 2020)

- **Cases Admitted 3911**; Approved 250; liquidated 955; closed on appeal or withdrawal 598 and continuing balance 2108.
- **IPs Regd. Total 3122** ; IIPICAI 1933 ; ICSI 930 ; IPAICAI 259.
- **IPs having AFA Total 2151** ; IIPICAI 1308 ; ICSI 649 ; IPAICAI 194
- **IPs as per Members of institute Total 3122**: ICAI 1703; ICSI 569; ICAI(Cost) 166; Bar Council 200; and Manager experience 484.
- **IPE 73**
- **IU: National E-Governance Service Ltd (NeSL)**

Infrastructures (as on 30th June, 2020)

IP Registered - 3122			IPs based on age group			Bench		
	IPs	(%)	Age group	IPs	(%)	Place	Bench	Member
North	1220	39	<40	298	9.55	5	9	18
West	869	28	>40<50	1066	34.14	2	7	14
South	731	23	>50<60	920	29.48	5	7	13
East	302	10	>60<70	773	24.75	3	4	8
Total	3122		>70	65	2.08	15	27	53

Recovery from Large Accounts

Particulars	Amount	Amount	(%)
Electro Steel	13,175	5,320	40.38
Bhushan Steel	56,022	35,571	63.50
Monnet Infrastructure	11,015	2,892	26.26
Binani Cement	6,469	6,469	100
Essar Steel	49,473	41,018	82.91
Alok Inds Ltd	29,523	5,052	17.11
Jyoti Structures Ltd	7,365	3,691	50.12
Bhushan Power & Steel	47,158	19,350	41.03
Jaypee Infratech Ltd	23,176	23,223	100.2

Applicability

Entities Covered

- Company incorporated under Company's Act 2013;
- Guarantors of CD;
- Limited Liability Partnerships;
- Partnerships & Proprietorships;
- Individuals;

Legal Processes Covered

- Insolvency;
- Liquidation;
- Voluntary Liquidation
(solvent insolvency);
- Bankruptcy;
- Winding Up;

Applies to whole of India

▪ Definition of Corporate Person under 3(7) does not include Financial Services Provider, however Sec 227 Proviso has been added from 28th Dec 2019 whereby now can be initiated against FSP with **Assets base of > 500 crores.**

Salient Features (1/2)

- **(i) Focus** is to try to continue a viable business as a **Going Concern** while maximizing & expediting;
 - **(ii) Encourages repayment** by defaulting debtor till the very last stage;
 - ✓ **Proviso to s. 29A(c):** *KMP of Corporate Debtor can submit Resolution Plan if dues are paid before submission of R Plan;*
 - **Proceedings against both Corporate Debtor and Guarantor** (Individual/Corporate) in **same forum** (DRT/NCLT);
- **(iii) Penalises Default:**
 - Defaulting KMP, Shareholders & Guarantor **prevented from gaining control of assets in Resolution or Liquidation;**
 - (iv) Wisdom of CoC accorded supreme stature – **NCLT cannot dictate** what to choose/do;
 - **(v) Expls to S. 30(2):** **Deemed approval of shareholders** if approved by CoC and NCLT;
 - **(vi) S. 12A:** CoC may withdraw the Resolution Plan submitted to NCLT anytime before approval by NCLT;

Salient Features (2/2)

- (vii) Tax benefits: **Allows carry-forward of loss & unabsorbed depreciation**, if shareholding changes by 51% and also 115JB benefits;
- (viii) ***Distribution Waterfall***: Order of priority for re-payment of **dues from proceeds of BOTH**:
 - Insolvency Resolution and ;
 - On Liquidation (**on failure of CIRP**);
- (ix) ***Consolidates*** related Provisions in other Legislations on the ***relevant*** issues:
 - **Chapter in Companies Act 2013, governing *Revival and Rehabilitation of Sick Companies*, *stands omitted***;
- **Prevents Abuse of Provisions** (***Moral Hazard***)
 - ✓ ***S.14(3)(b)***: Moratorium not to apply to ***Guarantors/Sureties***;
 - ✓ ***Proviso to S. 21(2)***: **No representation** to ***related*** parties financial creditor ;
 - ✓ ***S.29A (introduced on 23.11.2017)*** Defaulters & affiliates can't submit Resolution Plan; ***S 35(1)(f)***: Defaulters & affiliates can't acquire assets **under Liquidation proceedings**;
 - ✓ ***S 43, 45, 50 & 66***: Avoidance of Preferential, Undervalued, Fraudulent and Extortionist Transactions (PUFE transactions)

Harmonious Construction of Statutes (1/2)

Approvals by other Regulators and Authorities:

- **Section 31(4):** Pursuant to approval of Resolution Plan by NCLT, the Resolution Applicant to :
 - obtain approvals from other Regulator/Authorities needed for implementation of Resolution Plan, within one year of approval by NCLT, or, *the time-period specified for approvals under relevant law, whichever is earlier*
- **Second Proviso to s. 31(4):** Approval of CCI to be taken before approval of Resolution Plan by Committee of Creditors, if resolution plan would result in ‘Combination’ u/s. 5 of Competition Act, 2002 (NCLAT has held that it can be obtained after COC approval as well)

Super-seeding Power over other legislations

- **Section 238:** Provides **over-riding powers** to provisions in matters dealt with by this IBC-2016
- **Section 238A:** In proceedings u/-IBC before DRT/NCLT, provisions of *Limitation Act, 1963* shall apply

Harmonious Construction of Statutes (2/2)

Enabling Amendments to other Legislations covering related issues

➤ *INCOME TAX ACT, 1961: Tax Incentives through amendments*

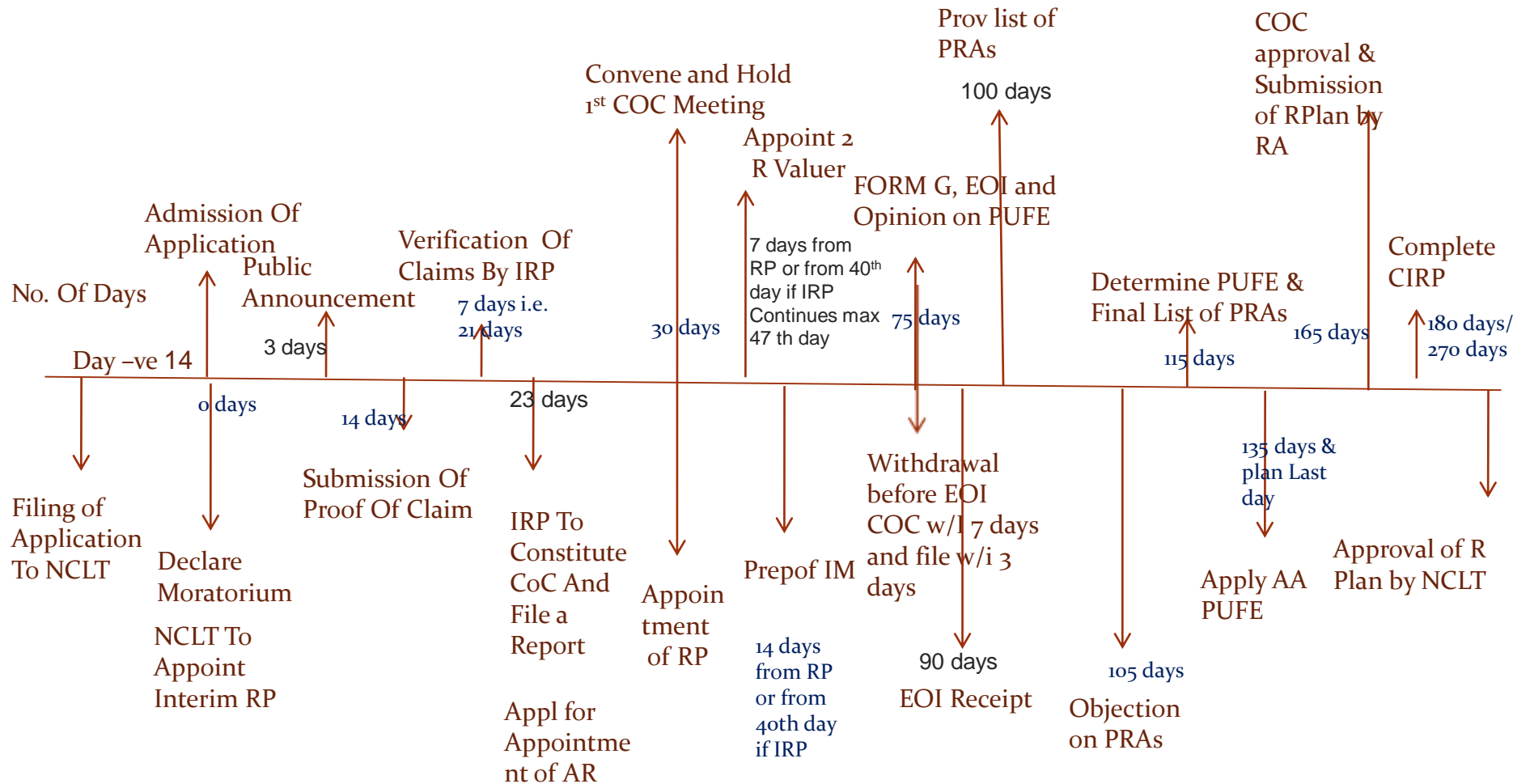
- ❖ *S.115JB*: Minimum Alternative Tax of Corporate Debtor: Both allowed
 - Carry-Forward of un-absorbed depreciation
 - Carry-forward of accumulated depreciation
- ❖ Carry-Forward of Accumulated losses by *close-affiliates of Corporate Debtor*
 - If shareholding pattern changes by $\geq 51\%$ due to CIRP/IBC

- ❖ *s. 28(V): Loan Waiver under Resolution Plan in IBC*, not to be treated as income if it was for Capital purpose.

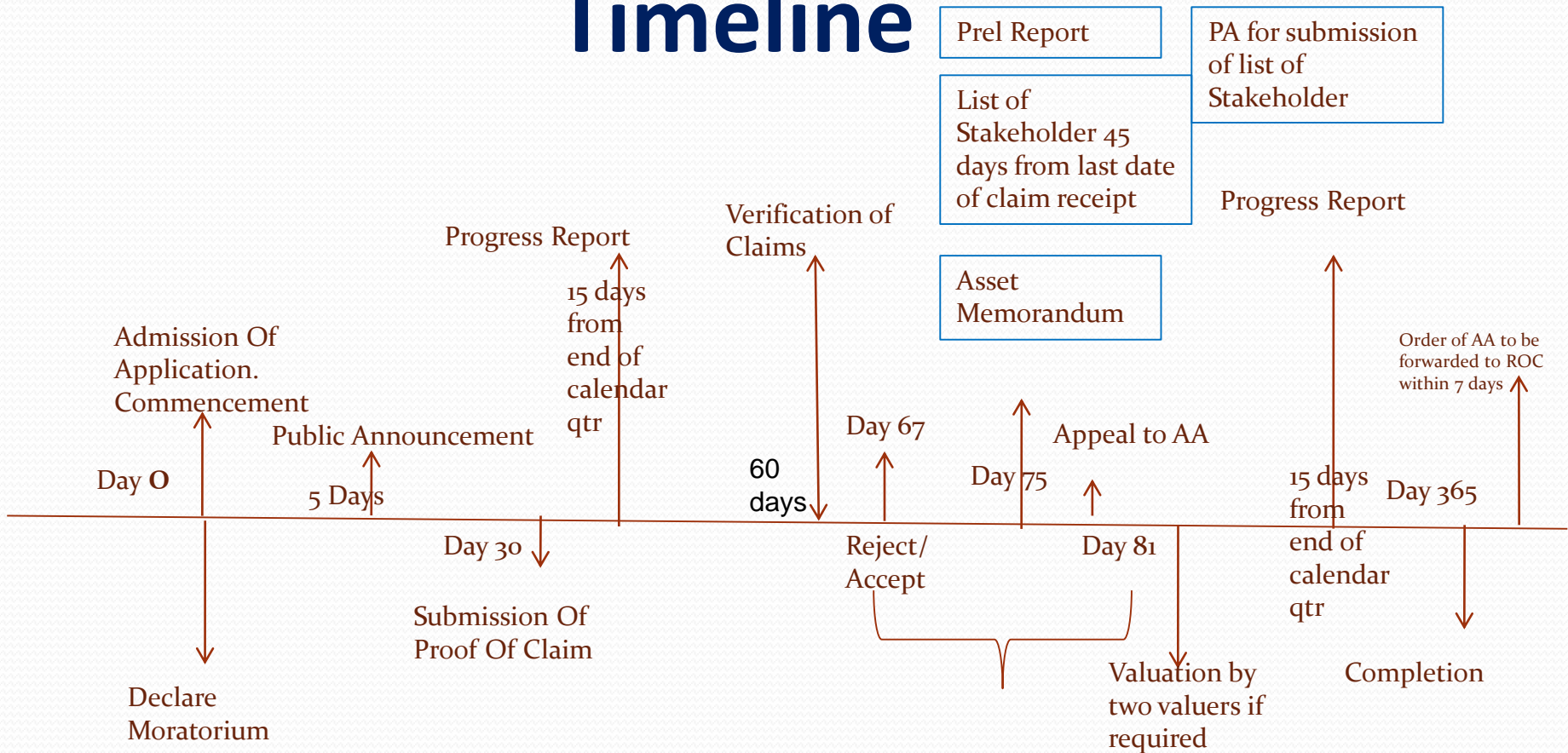


RIGOROUS AND STRUCTURED PROCEDURE

Corporate Resolution Process: Timeline



Corporate Liquidation Process Timeline

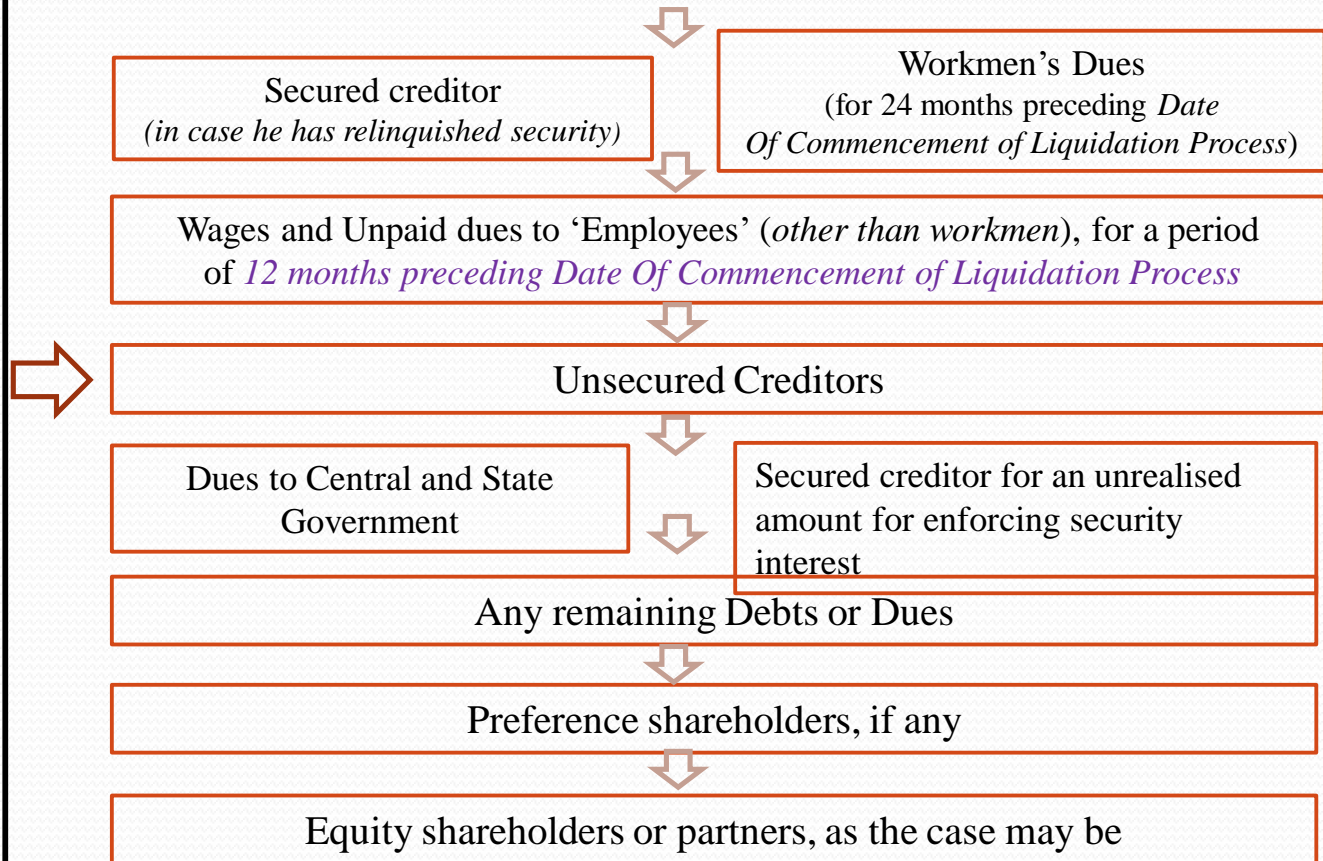


Priority Of Payment Under Waterfall Mechanism (Sec. 53)

Payment Waterfall (Insolvency Resolution and Liquidation costs)

The distribution of proceeds among the creditors placed at same level of priority u/s **53(1)(b)**, shall be **pro-rated** to **their proportionate shares**.

Any **“inter-se” seniority** among the creditors who are placed at same level, even by way of agreement among them, shall be disregarded {s.53(2)}





TIME BOUND PROCEDURE

Timeline [Sec 12, CIRP Regulations 2016]

Activity under the code	Number of days
ss. 7 / 9 / 10: Filing application with NCLT ('Initiation Date')	T-14 Days
s. 5(12): "Insolvency Commencement Date" - Admission of application by NCLT	o Days (T)
s.16(1)/s. 14(1): NCLT to appoint IRP & impose Moratorium in order of Admission of Application	T+0 days
s. 15 & CIRP Reg. 6: Public Announcement for Claims within 3 days	T+3 days
CIRP Reg. 27: RP appoint registered valuer to calculate Liquidation Value	T+7 days
CIRP Reg. 7, 8, 8A & 9A: Creditors to submit claims to RP	T+14 days
CIRP Reg. 6(2)(c): Last Date to submit proof to IRP to validate/verify claims	T+17 days
CIRP Reg. 10 & 13: IRP to verify claims within 7 days of submission of Proofs	T+24 days
CIRP Reg. 17: IRP to constitute COC and submit report	T+26 days
CIRP Reg. 17(2): 1 st COC meeting & Appointment of RP	T+33 days or
CIRP Reg. 17(3): Where RP not appointed in first CoC meeting	{T+40} days
CIRP Reg. 36(1): Submission of Information Memorandum ('IM') to CoC	{T + 33 + 14} days, or {T+ 40 + 14} days
CIRP Reg. 36A(1): Invitation of EoI from eligible Resolution Applicants	T+75 days
CIRP Reg. 35A (1): RP to form opinion on preferential transactions u/ss. 43, 45, 50, 66	
CIRP Reg. 36A(3): Last Date for submission of EoI	T+90 days

Timeline [Sec 12, CIRP Regulations 2016]

Activity under the code	Number of days
CIRP Reg. 36B(1): Issue of 'IM', Evaluation Matrix and Request for Resolution Plan	T+95 days
CIRP Reg. 35A r/w s. 20(2)(a): Transaction Audit to determine Preferential, Undervalued Fraudulent & Extortionist ('PUFE') Transactions (u/ss 43, 45, 50, 66) through Consultants appointed u/s 20(2)(a)	T+115 days
CIRP Reg. 36B(3) : Submission of Resolution Plan by Resolution Applicants to RP	T+125 days
CIRP Reg. 35A: RP to seek appropriate relief from NCLT regards PUFE Transactions	T+135 days
s. 30(4) r/w Proviso to s. 31(4): COC's approval of Resolution Plan	T+165 days
SUBMISSION OF RESOLUTION PLAN TO NCLT FOR APPROVAL	
CIRP Reg. 39(4) r/w s. 12(1): Submission of Resolution Plan to NCLT for approval	T+165 days, or,
➤ s. 12(3) r/w CIRP Reg. 39(4): <i>Outer Limit for Approval is 270 days</i>	T+ 255 days, or,
➤ Second Proviso to s. 12(3): <i>Outer Limit for approval of resolution Plan is 330 days</i>	T+ 315 days
➤ Third Proviso to s. 12(3) r/w CIRP Reg. 39(4): <i>Outer Limit for Plans pending approval of NCLT as on 16.08.2019</i>	
s. 31(1) / s. 12: Approval of Resolution Plan by NCLT	T+180 or T+270 or T+330 days



WELL DEFINED ROLES & RESPONSIBILITIES

Resolution Plan

Role of Resolution Professional

- *Prepare an Information Memorandum'*
- Prepare evaluation criteria, for assessment of Resolution Plan
- Floats invitation for Expression of Interest, and checks eligibility of those who submit EoI
- Provides access to all Reports & Records for eligible resolution applicants who have expressed interest, to prepare the resolution plan
- Verifies eligibility of the Resolution Plan, before submission to CoC for consideration
- Conducts & Chairs meetings of CoC
- Submits the Resolution Plan approved by CoC to NCLT for acceptance

Powers & Role of CoC

- *Receives & approves the Information Memorandum*
- *Decides the Evaluation Matrix, and Eligibility Criterion*
- *CoC has complete discretion in choosing the best alternative as per their collective wisdom,*
- CoC votes for each Resolution Plan. Whole block of votes of Group/Consortium transferred to majority choice
- The voting may even be on more than one plan, simultaneously
- The CoC may withdraw Resolution Plan anytime before NCLT approval, and opt for Liquidation

Powers of NCLT

- *NCLT cannot appraise the wisdom of CoC in choosing from among the Resolution Plans*
- *NCLT has to assess that all conditions for approval has been satisfied by the proposal brought before it by RP*
- *NCLT has to assess the legal implementability of the proposed Resolution Plan. If rejected, and no time is left, NCLT can order Liquidation*



RECENT CHANGES

Offences of pre CIRP

32A, IBC has been amended to insulates the SRA against liability of CD for any **offence committed prior to CIRP** if the resolution plan results in change in the management or control of the CD to an unrelated person. **However, the previous management shall continue to be responsible.**

The CD shall extend all the assistance and cooperation to any authority investigating an offence committed prior to the commencement of the CIRP.

Suspension of Application Filing under IBC

Sec 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 of six months or such further period, not exceeding one year from such date, as may be notified in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

(said period is further extended upto 24th December, 2020)

Reg 30A: **Assignment in LP** allowed.

“**37A. Assignment of not readily realisable assets.**

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, **in consultation with the stakeholders' consultation committee** in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Expl: not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and **includes contingent or disputed assets and assets underlying proceedings** for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.

Amendment to IBBI(CIRP) Reg on

13.11.2020

Reg 13

(2) The list of creditors shall be – (a) available for inspection by the persons who submitted proofs of claim; (b) available for inspection by members, partners, directors and guarantors of the corporate debtor; (c) displayed on the website, if any, of the corporate debtor;

“(ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;”.

(d) filed with the Adjudicating Authority; and (e) presented at the first meeting of the committee.

Amendment to IBBI(CIRP) Reg on 13.11.2020

Reg 39 :

“(5A) The resolution professional shall, **within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant,** the principle or formulae, as the case may be, **for payment of debts under such resolution plan:**

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;”.



Supreme Court Judgements On IBC

Laurels by Judiciary

- **Innoventive Industries Limited v. ICICI Bank SC** has held that the **IBC is an exhaustive code** on the subject matter of insolvency in relation to corporate entities and **is complete in itself**.
- To borrow the golden words of **Justice Rohinton F. Nariman** in **Swiss Ribbons Pvt. Ltd.....**. **Defaulter's paradise is lost**. In its place, the economy's rightful position has been regained and **Constitutional validity has been upheld**

Repugnancy of State Laws with the Code

The scheme of various laws enacted by Parliament as well as by State Legislatures may be found to be inconsistent with other laws.

An inconsistency between a State Law and a Central Law is dealt with pursuant to the principles in Article 254 of the Constitution which provides that :

“(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

31-08-2017

SC interpreted and upheld the principles laid down in the statement of objects and reasons of IBC.

Section 238 of the Insolvency and Bankruptcy Code, 2016 read with Section 4 of the Maharashtra Relief Undertaking (Special Provisions) Act, 1958 read with Article 254 of the Constitution of India – Provision of this Code to override other Laws.

Once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company

In the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due”

Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd.

Upholding an order of the Delhi High Court, the **Hon'ble Supreme Court** held that

in view of section 238 of the Code,

the provisions in the Code will override anything inconsistent contained in any other enactment, including Income-Tax Act.

Law of Limitation on IBC Cases (1/2)

Section 238A was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, (**w.e.f. 06.06.2018**).

Hon'ble SC in the matter of ***B.K. Educational Services (P) Ltd. Vs. Parag Gupta & Associates*** held that the **Limitation Act, 1963 is applicable** to IBC matter from the inception of the Code.

Hon'ble SC in ***Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd.*** held that the **proceedings under section 7** of the IBC are **“an application” and not “suits”**; thus they would fall within the **residuary article 137 of the Limitation Act and it will be 3 years limitation** and not 12 years as per Article 62 and the right to apply will arise from the date of default.

In case of **Claims filed with RP** : The **law of limitation would apply** equally to an applicant's claim as well as claims of other creditor who submit proof of claim before the RP/liquidator.

Law of Limitation on IBC Cases (2/2)

SC in Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited

That **intention of the Code is not to give a new lease of life** to debts which are time-barred;

That the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that **the right to apply under the Code accrues on the date when default occurs**;

The **balance sheet figure cannot be taken as acknowledgement** of debt;

Mobilox Innovations Private Limited vs. Kirusa Software 21-09-2017

Interpretation of Section 8(2)(a): "The **word "and"** occurring in Section 8(2)(a) **must be read as "or"**. According to the **earlier interpretation**, the Code provides that a dispute between operational creditor and corporate debtor **would only be valid if a suit or an arbitration proceeding with respect to the dispute has been filed prior to the receipt of demand notice.**

The Court held that the **existence of the dispute** and/or suit or arbitration proceeding **necessarily be "pre-existing"**.

All that the adjudicating authority is to see at this stage is **whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.** It is important **to separate the grain from the chaff** and to reject a spurious defence which is mere bluster.

Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Co Ltd 19-09-2017

SC ruled that **the timelines provided in Sections 7, 9 and 10** for deciding a matter **within 14 days** as well as the time to remove **a defect within 7 days** are **directory and not mandatory**.

However, the **applicant needs to submit in writing showing sufficient cause as to why the applicant could not remove the objections within 7 days**. If AA is satisfied that such cause is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application.

ArcelorMittal India Pvt Ltd Vs. Satish Kumar Gupta

The Supreme Court settled several issues relating to CIRP as under:

Section 29A is **de facto** as opposed to **de jure** position of persons mentioned therein. This is a '**typical see through** provision' so that one can see **persons who are actually in 'control'**, whether jointly or in concert with other persons.

The **non-obstante clause** in section 60(5) is to ensure that **the NCLT alone has jurisdiction** when it comes to **applications and proceedings by or against a CD covered by the Code**, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.

RA has no vested right that his resolution plan be considered. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that **no right, much less a fundamental right, is affected** at this stage.

Aggrieved **RA can approach the NCLT for relief only after a resolution plan has been considered** by the CoC via voting and not prior to that.

Assailing the constitutional validity of various provisions of IBC 2016

The Code bifurcates and separates the interests of the CD from that of its promoters / management.

The resolution process is not adversarial to the CD but, in fact, protective of its interests.

FCs have specified repayment schedules, and defaults entitle them to recall a loan in totality whereas contracts with OCs do not have any such stipulations. The financial debts made to banks and financial institutions are well-documented and defaults made are easily verifiable. FCs are from the very beginning involved with assessing the viability of the CD. Since the FCs are in the business of money lending, they are best equipped to assess viability and feasibility of the business of the CD.

Since the FCs are in the business of money lending, they are best equipped to assess viability and feasibility of the business of the CD.

RP has no adjudicatory powers. He has administrative powers as opposed to quasi-judicial powers. RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA.

A person, who is unable to service its own debt beyond the grace period, is unfit to be eligible to become a resolution applicant. This policy cannot be found fault with.

The legislature has **not endowed** the adjudicating authority (NCLT) with the **jurisdiction or authority to analyze or evaluate the commercial decision of the CoC** much less to **enquire into the justness of the rejection** of the resolution plan by the dissenting financial creditors. **CoC has been given paramount status without any judicial intervention.** That is make non-justiciable

After it is vetted and verified by the RP as being compliant with all the statutory requirements. Specified u/s. 30(2) while specifying their roles, the code does not envisage one assuming the role of the other. The **resolution professional is not required to express his opinion** on matters within the domain of the financial creditors.



OPPORTUNITIES FOR CHARTERED ACCOUNTANTS UNDER THE CODE

Becoming an Insolvency Professional

10 Years Post Qualification experience for CA, CS, Cost Accountant, Advocate from the date of membership or from the date of membership of Bar Council

Passing Limited Insolvency Examination within 12 months before the date of his application for enrolment

Completion of 50 hours Pre-registration Course conducted by IPAs

Opportunities for IP s

- A. **IRP** - (for initial appointment during CIRP) ;
- B. **RP** - (for CIRP) ;
- C. **Liquidator** - (the assignment may be for one year or till the sale of all assets) ;
- D. **Representative of a creditor in COC** - {Under Sec. 21(6)(c)};
- E. **Representative of a class of creditors** - {Under Sec. 21(6A)(b)};
- F. **Voluntary Liquidator** - (For Voluntary Liquidation of Corporate Persons under Chapter V of the Code);
- G. **Resolution Professional for Individuals, Partnership & Proprietorship Firms** - (for Insolvency resolution Process for Individuals, Proprietorship Concerns and Partnership concerns);
- H. **Bankruptcy Trustee** - (For bankruptcy Process of Individuals, Proprietorship Concerns & Partnership Firms - Just like Liquidator for Corporates);
- I. **Promote an Insolvency Professional Entity** ;
- J. **Be Administrator to be appointed by SEBI**;

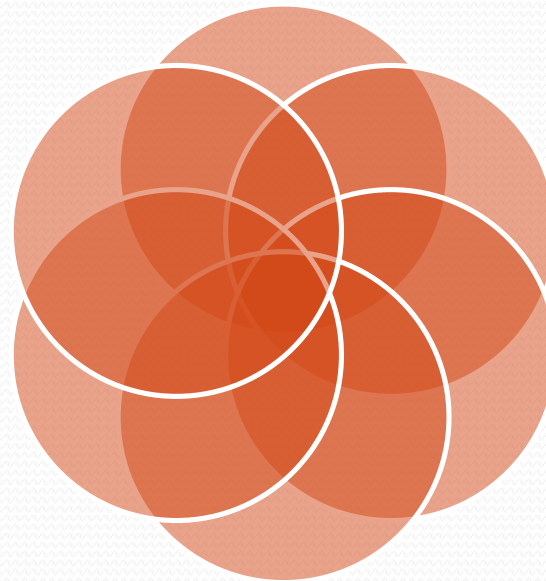
Opportunities for CAs other than IPs

Advisor to
Resolution
Applicants for
taking over
Companies

Support Services
to Insolvency
Professionals

Transactions
Audit or
Forensic Audits

Protection against
'Insolvency attacks'
and recovery of
business debtors and
advances through
IBC



Services of a
Registered Valuer
(CA + 3 years
experience)

Consultations to
Entities under
Financial Stress



Thank Q!!