



**INSOLVENCY AND BANKRUPTCY CODE- 2016**  
**OPPORTUNITIES**

**JB NAGAR CPE STUDY CIRCLE, ANDHERI, MUMBAI**

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**DMKH & CO.,**

**21th May, 2017**



## **NEW ETHOS OF DEBT RESOLUTION**

“The Limited Liability Company is a contract between equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default takes place, control is supposed to transfer to the creditors and equity owners have no say. “

**BANKING LAW REFORMS COMMITTEE, NOVEMBER 2015.**

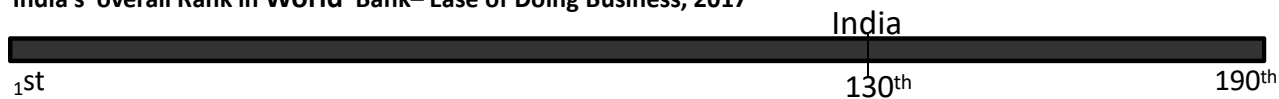
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## Background

Ease of Doing Business is an initiative of World Bank that provides objective measure of business regulations and their enforcement across 190 countries.

India's overall Rank in World Bank– Ease of Doing Business, 2017



India ranks 136<sup>th</sup> among 190 countries in resolving insolvency parameter due to low recovery rate and time consuming insolvency resolution process.

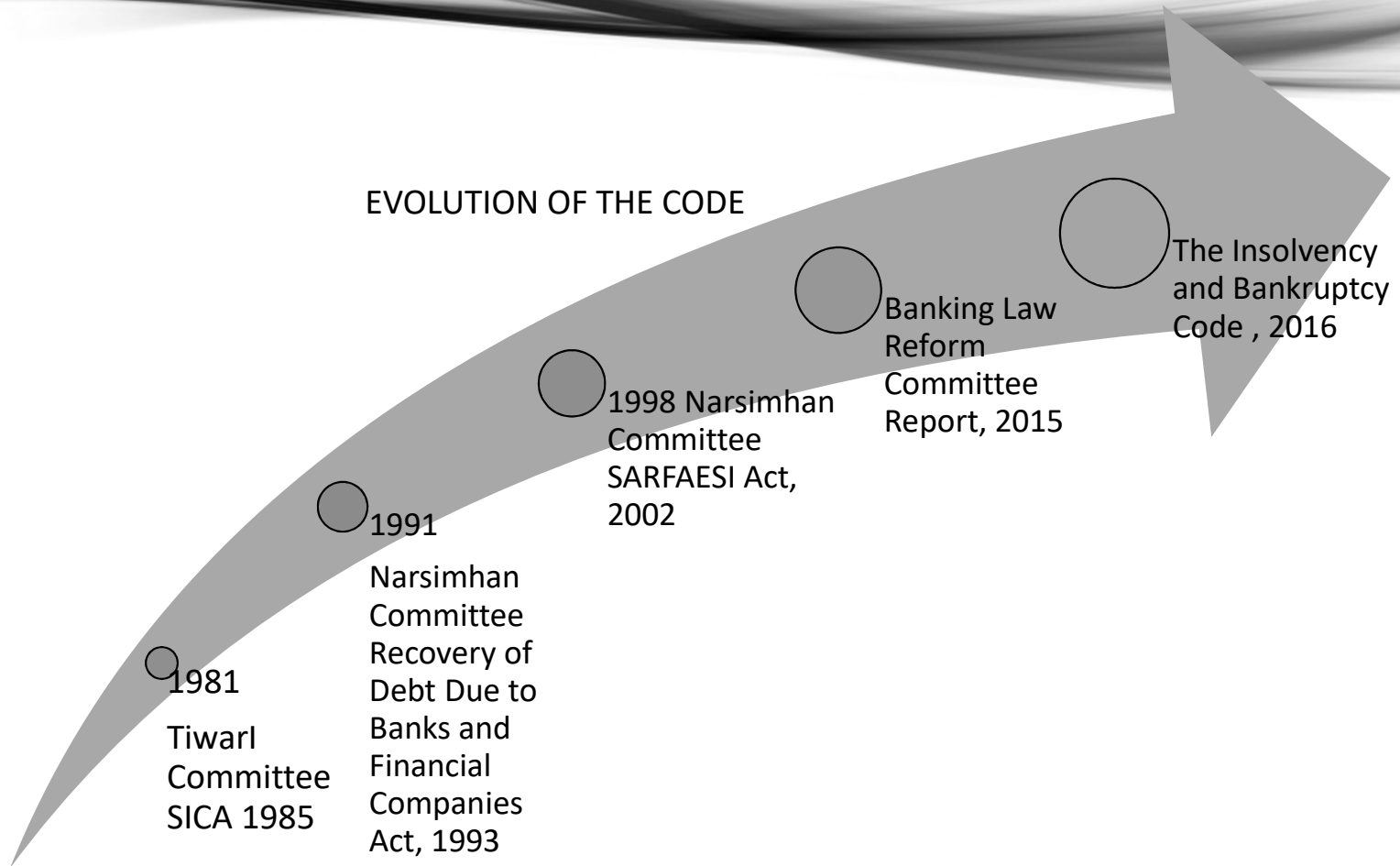
Indicators Countries	India	South Asia	OECD
Recovery Rate	26%	33%	73%
Time (Years)	4.3	2.6	1.7

World Bank uses 10 objective parameters to measure the ease of doing business in respective countries. India fares poorly in most of them

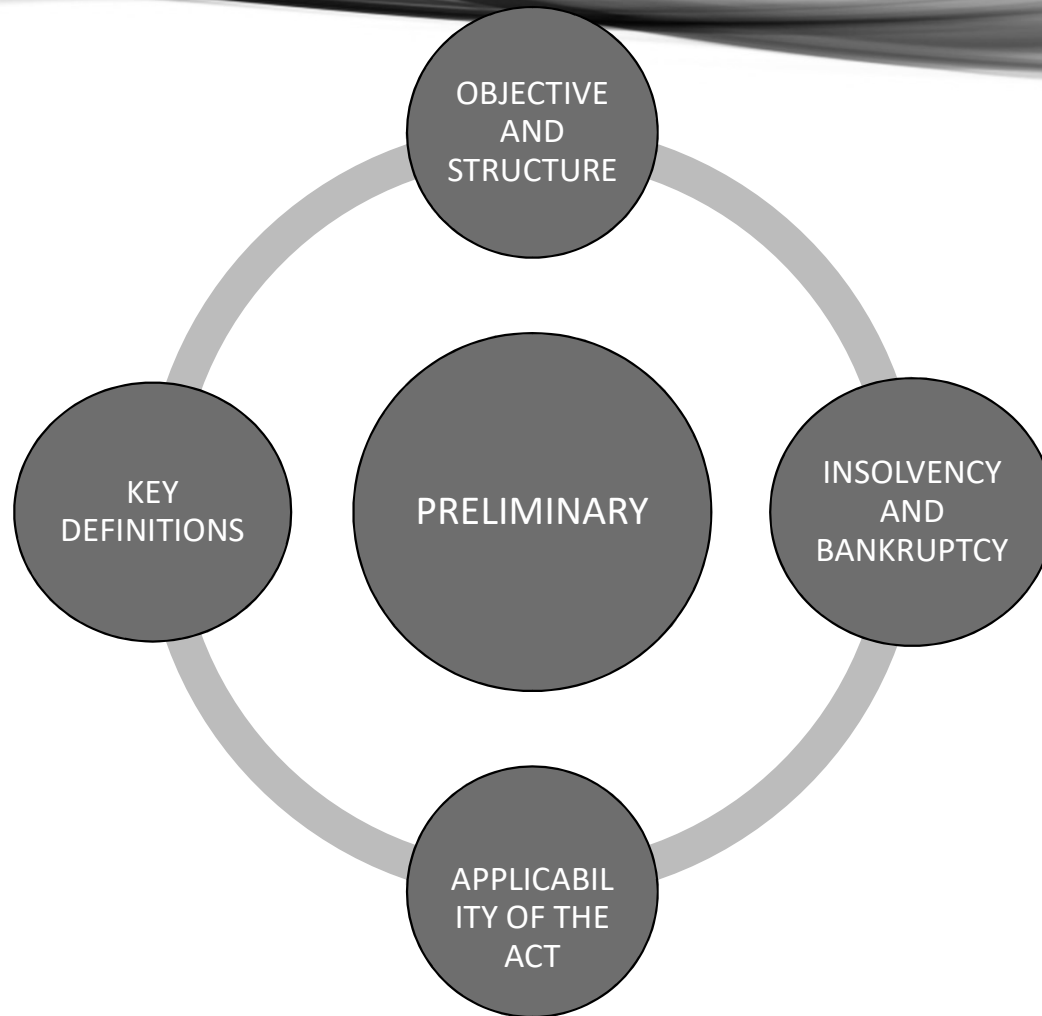
Parameters	2017 Ranking	2016 Ranking
Overall	130	131
Starting a Business	155	151
Dealing with Construction	185	184
Permits Getting Electricity	26	51
Registering Property	138	140
Getting Credit	44	42
Protecting Minority	13	10
Investors Paying Taxes	172	172
Trading across Borders	143	144
Enforcing Contracts	172	178
Resolving Insolvency	136	135

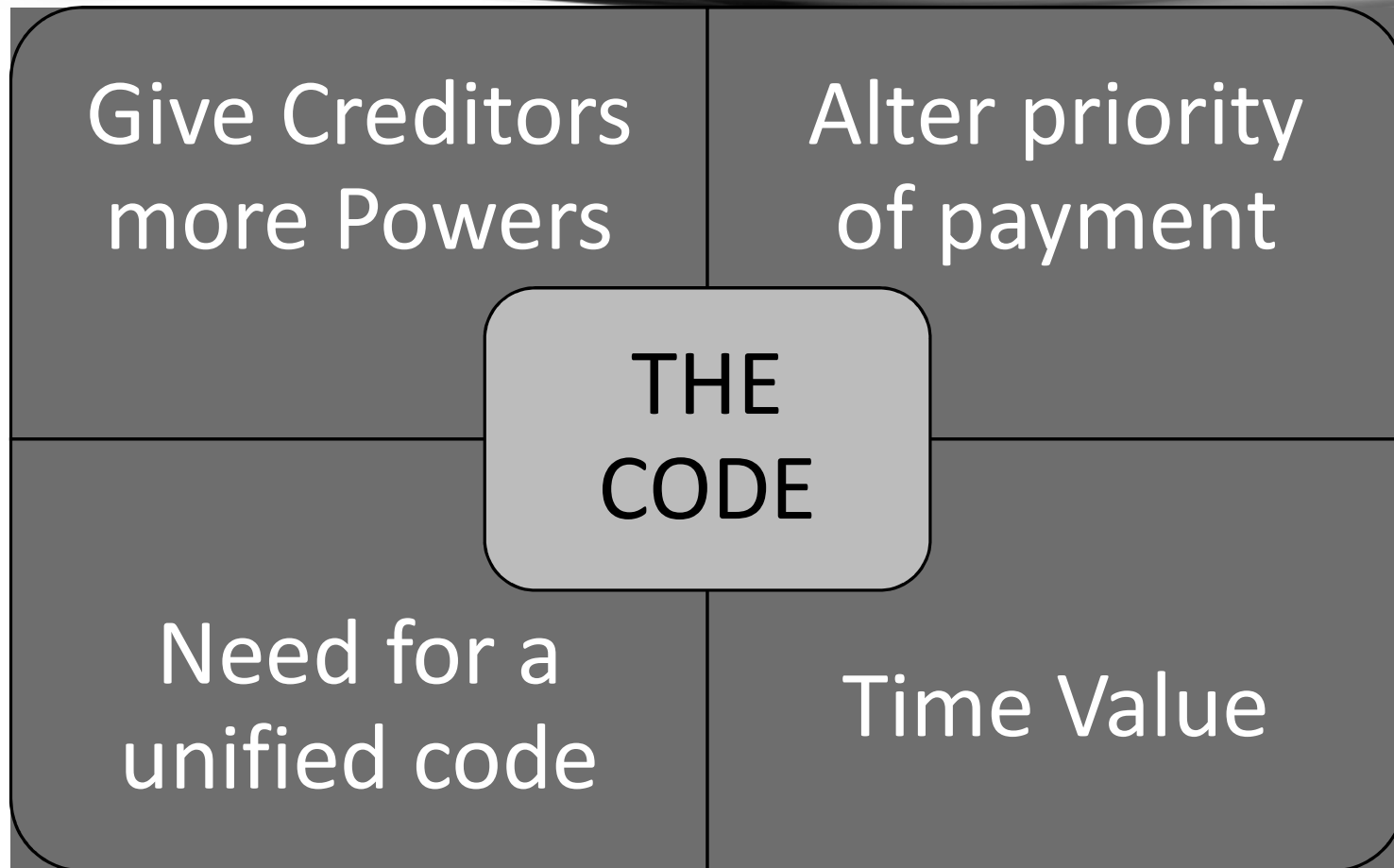
## Background

### EVOLUTION OF THE CODE

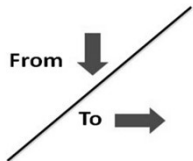


# Insolvency and Bankruptcy Ecosystem





## Salient features of the Insolvency and Bankruptcy Code



### **Exclusive Jurisdiction of Adjudicating Authority**

Adjudicating Authority (NCLT and DRT) will have exclusive jurisdiction in insolvency related matters. No injunction can be granted by any court, tribunal or authority in respect to action taken by Adjudicating Authority.

### **Moving from "Erosion of net worth" to "Payment Default"**

The Sick Industrial Companies (Special Provision) Act, 1985 relied on erosion of net worth to determine sickness, the code prescribes payment default of more than INR 1 Lakh to assess the insolvency.

- New mechanism allows early detection of insolvency trend.
- Lender can initiate the process even if the default is in respect of the debt of another lender.

### **Who can file corporate insolvency resolution?**

- Lenders
- Creditors
- Corporate Debtor: Shareholder, management of the entity

### **Creditor in Possession Approach**

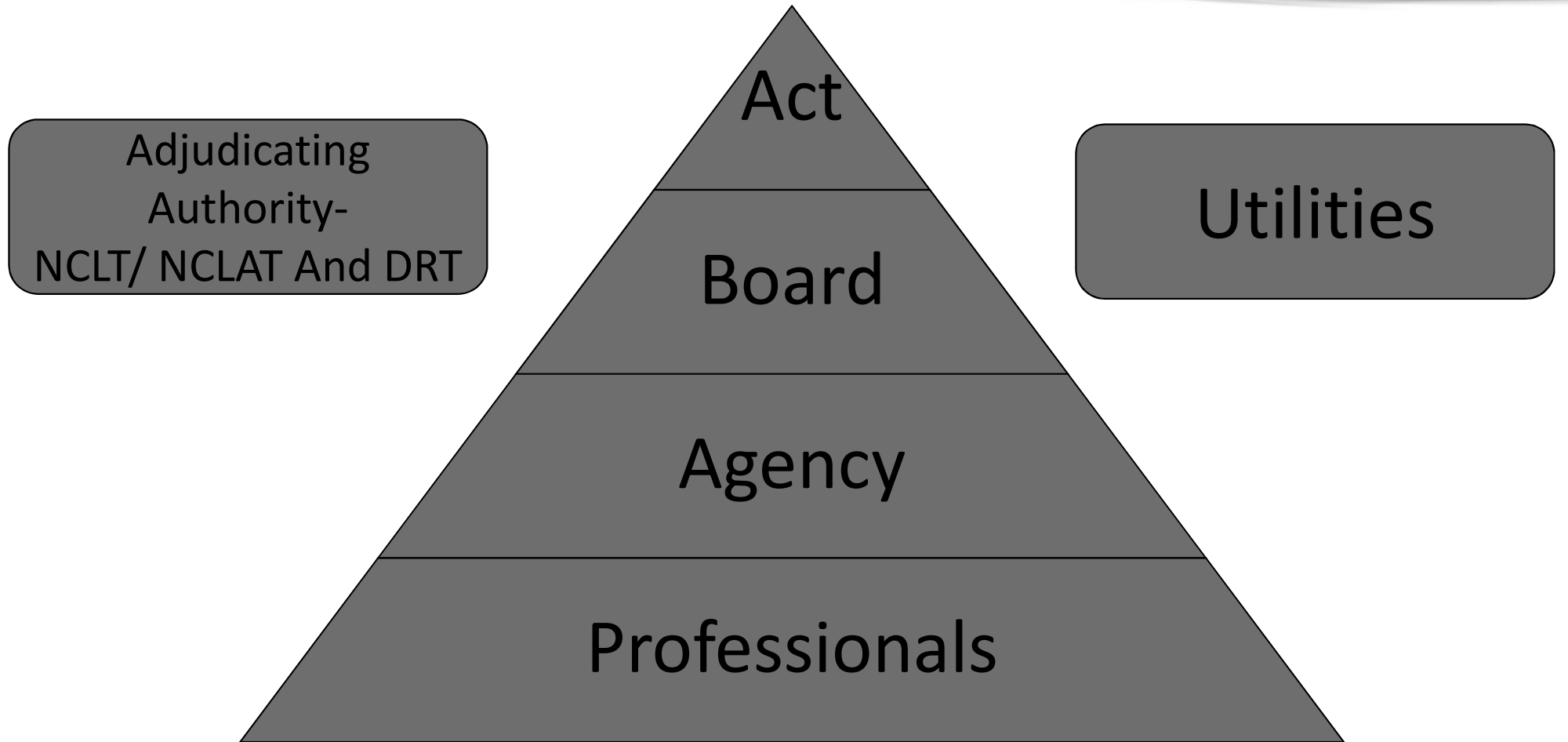
The board of directors are suspended and creditor approved resolution professional is appointed to manage the Company.

### **Time-bound Resolution Process**

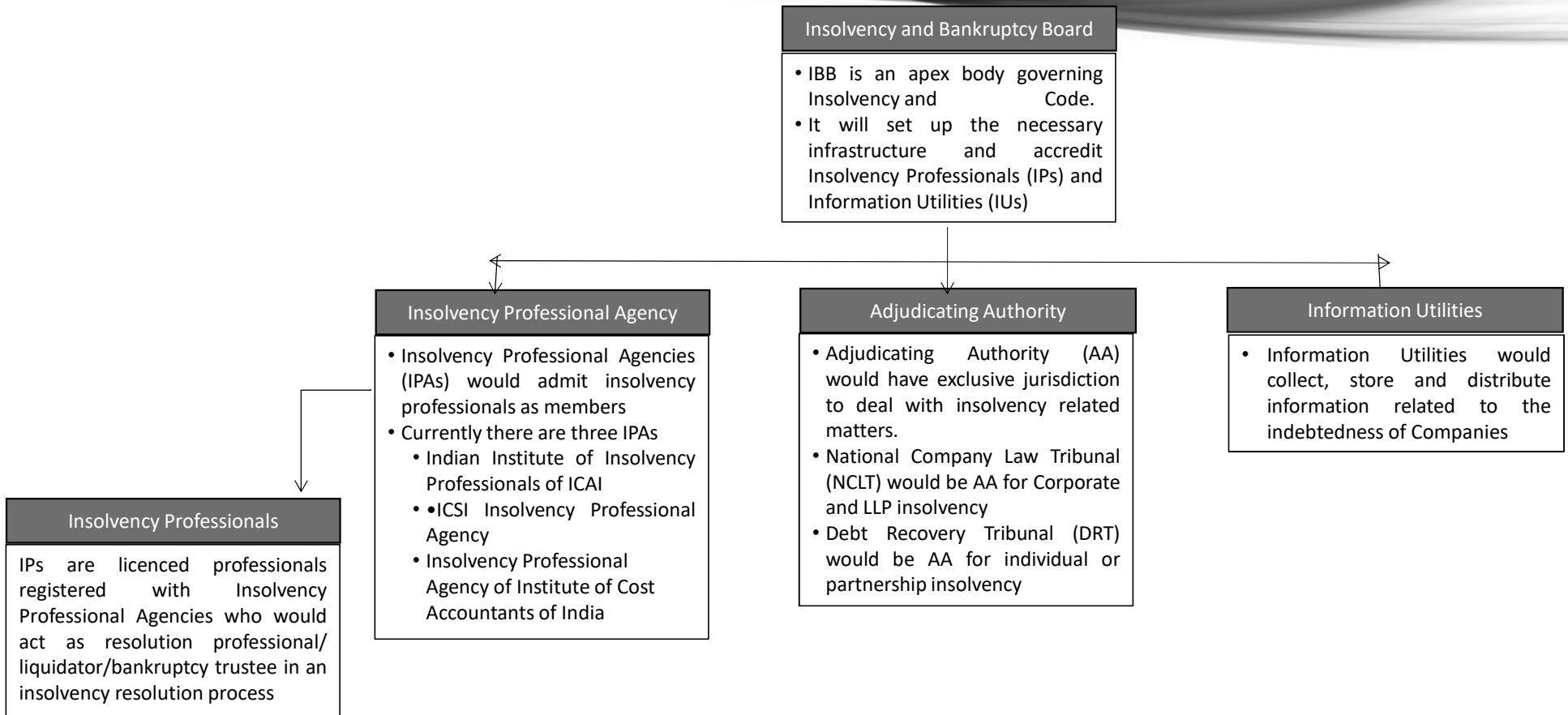
The entire process should be completed in 180 days (270 days in case of extension).



## Salient features of the Insolvency and Bankruptcy Code



## Salient features of the Insolvency and Bankruptcy Code



## Salient features of the Insolvency and Bankruptcy Code

### Structure of the Insolvency and Bankruptcy Code :-

IBC is divided into 5 Parts to administer various constituents

<u>Part I</u>	<u>Part II</u>	<u>Part III</u>	<u>Part IV</u>	<u>Part V</u>
<p>PRELIMINARY - Chapter - Section 1 -3</p> <p>Part II applies to corporate persons other than financial service providers</p> <p>Part – III applies to individuals and partnership firms except those located in state of Jammu &amp; Kashmir proviso S1(2) Section 3 definitions</p>	<p>INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS -</p> <ul style="list-style-type: none"><li>• 7 Chapters</li><li>• Sections 4 - 77</li><li>• Section- 5 definitions</li></ul>	<p>INSOLVENCY RESOLUTION FOR INDIVIDUALS AND PARTNERSHIP FIRMS -</p> <ul style="list-style-type: none"><li>• 7 Chapters</li><li>• Section 78-187</li><li>•Section 79 definitions</li></ul>	<p>REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES</p> <ul style="list-style-type: none"><li>• 7 Chapters</li><li>• Section 188-223</li><li>• Section 89 definitions</li></ul>	<p>MISCELLANEOUS</p> <ul style="list-style-type: none"><li>• Section 224-255</li><li>• (Section 245- 255 enables amendments in other statutes, 11 Schedules amending 11 legislations )</li></ul>

## Salient features of the Insolvency and Bankruptcy Code

### 11 Enactments amended by IBC 2016 and eleven new schedules are added.

1. The Indian Partnership Act, 1932 Section 245 – First Schedule

2. The Central Excise Act, 1944 - Section 246 – Second Schedule

3. The Income-tax Act, 1961- Section 247- Third Schedule

4. The Customs Act, 1962 – Section 248 – Fourth Schedule

5. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 – Section 249 – Fifth Schedule

6. The Finance Act, 1994 – Section 250 – Sixth schedule

7. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Section 251- Seventh Schedule

8. The Sick Industrial Companies (Special Provisions) Repeal Act, 2003- Section 252 – Eighth Schedule

9. The Payment and Settlement Systems Act, 2007- Section 253 – Ninth Schedule

10. The Limited Liability Partnership Act, 2008- Section 254 - Tenth Schedule

11. The Companies Act, 2013 – Section 255 – Eleventh Schedule

### Acts Repealed by the Code – Were Applicable to individuals

Presidency Towns Insolvency Act, 1909 (Sec 243)

Provincial Insolvency Act, 1920 (Sec 243)

## Salient features of the Insolvency and Bankruptcy Code



The Insolvency and Bankruptcy Code, 2016 (IBC) was passed by the Parliament on 11th May 2016, received Presidential assent on 28th May 2016 and came into effect from 28<sup>th</sup> November 2016.

Events / Regulations	Date/Months
Bankruptcy Law Reform Committee (BLRC) formed	22 Aug 2014
Final report and draft bill submitted by BLRC	4 Nov 2015
First draft presented in Parliament and then referred to Joint committee	Dec 2015
Report of Joint committee presented to Lok Sabha	Apr 2015
Insolvency and Bankruptcy Code, 2016	26 May 2016
Responsibility for implementation given to MCA	June 2016
Sections pertaining to IBBI, powers to make regulation etc. notified	5 Aug 2016
Insolvency and Bankruptcy Board Members appointed	1 Oct 2016

## Salient features of the Insolvency and Bankruptcy Code

### MILE STONES

<b>Events / Regulations</b>	<b>Date/Months</b>
The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.	21 Nov 2016
The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016	21 Nov 2016
The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.	23 Nov 2016
The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016	30 Nov 2016
The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.	15 Dec 2016
Insolvency and Bankruptcy Board of India(Engagement Of Research Associates And Consultants) Regulations, 2017.	31 Jan 2017
Insolvency and Bankruptcy Board of India( Advisory Committee) Regulations, 2017.	31 Jan 2017
Insolvency and Bankruptcy Board of India( Procedure For Governing Boards Meetings) Regulations, 2017.	31 Jan 2017
Insolvency and Bankruptcy Board of India (Voluntary Liquidation process) Regulations, 2017	31 Mar 2017
Insolvency and Bankruptcy Board of India( Information Utilities) Regulations, 2017	31 Mar 2017

Section	Definition	Meaning
2	Applicability (a) (b) (c) (d) (e)	<p>The provisions of this Code shall apply to—</p> <ul style="list-style-type: none"> <li>- any company incorporated under the Companies Act, 2013 or under any previous company law;</li> <li>- any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;</li> <li>- any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;</li> <li>- such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and</li> <li>- partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.</li> </ul> <p>- NOT APPLICABLE to individuals and partnership firms in J&amp;K.[Section 1(2) ]</p>
3(6)	Claim	<p>a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;</p> <p>b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;</p>

## Salient features of the Insolvency and Bankruptcy Code

Section	Definition	Meaning
3(8)	Corporate debtor	- a corporate person who owes a debt to any person;
3(10)	Creditor	- any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;
3(11)	Debt	- A liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt;
3(12)	Default	- Non payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.
	4(1) 78	Corporate Debtors -the minimum amount of the default is Rs. one lakh Individuals and Partnership firms – the minimum amount is Rs. One thousand



## Salient features of the Insolvency and Bankruptcy Code

Section	Definition	Meaning
5(5)	Corporate Applicant	<ul style="list-style-type: none"> <li>a. corporate debtor; or</li> <li>b. a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or</li> <li>c. an individual who is in charge of managing the operations and resources of the corporate debtor; or</li> <li>d. a person who has the control and supervision over the financial affairs of the corporate debtor;</li> </ul>
5(6)	Dispute	<p>includes a suit or arbitration proceedings relating to—</p> <ul style="list-style-type: none"> <li>a. the existence of the amount of debt;</li> <li>b. the quality of goods or service; or</li> <li>c. the breach of a representation or warranty;</li> </ul>
5(7)	Financial Creditor	- any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

## Salient features of the Insolvency and Bankruptcy Code

Section	Definition	Meaning
5(13)	Insolvency Resolution Process Costs	<ul style="list-style-type: none"> <li>a. the amount of any interim finance and the costs incurred in raising such finance;</li> <li>a. the fees payable to any person acting as a resolution professional;</li> <li>b. any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;</li> <li>c. any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and</li> <li>d. any other costs as may be specified by the Board;</li> </ul>
5(20)	Operational Creditor	- a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;
5(21)	Operational Debt	- a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

## Salient features of the Insolvency and Bankruptcy Code

### Terms used in the Code

Known As	Appointed By	Functions	Reports to
Interim Resolution Professional [IRP]	Applicant or National Company Law Tribunal [NCLT]	<ul style="list-style-type: none"> <li>• Verification of Accounts</li> <li>• Collection of Claims</li> <li>• Appointment of Valuers</li> <li>• Determine financial position of Debtors</li> <li>• Formation and conducting of meeting of creditors</li> </ul>	None
Resolution Professional [RP]	Committee of Creditors	<ul style="list-style-type: none"> <li>• Preserve and protect the Assets and run business as going concern</li> <li>• Update List of Claims</li> <li>• Convene and attend all COC meetings</li> <li>• Prepare information memorandum</li> <li>• Check resolution plan and present to COC</li> </ul>	Committee of Creditors
Liquidator	Adjudicating Authority	<ul style="list-style-type: none"> <li>• to maximise the value of the assets in the most efficient manner of disposal and create a liquidation trust for distribution.</li> <li>• Prepare preliminary report, asset memorandum, sale report.</li> <li>• Maintain relevant records</li> <li>• Realise and distribute assets</li> <li>• institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor</li> </ul>	Adjudication Authority

## Corporate Insolvency Resolution Process (CIRP)

### Default

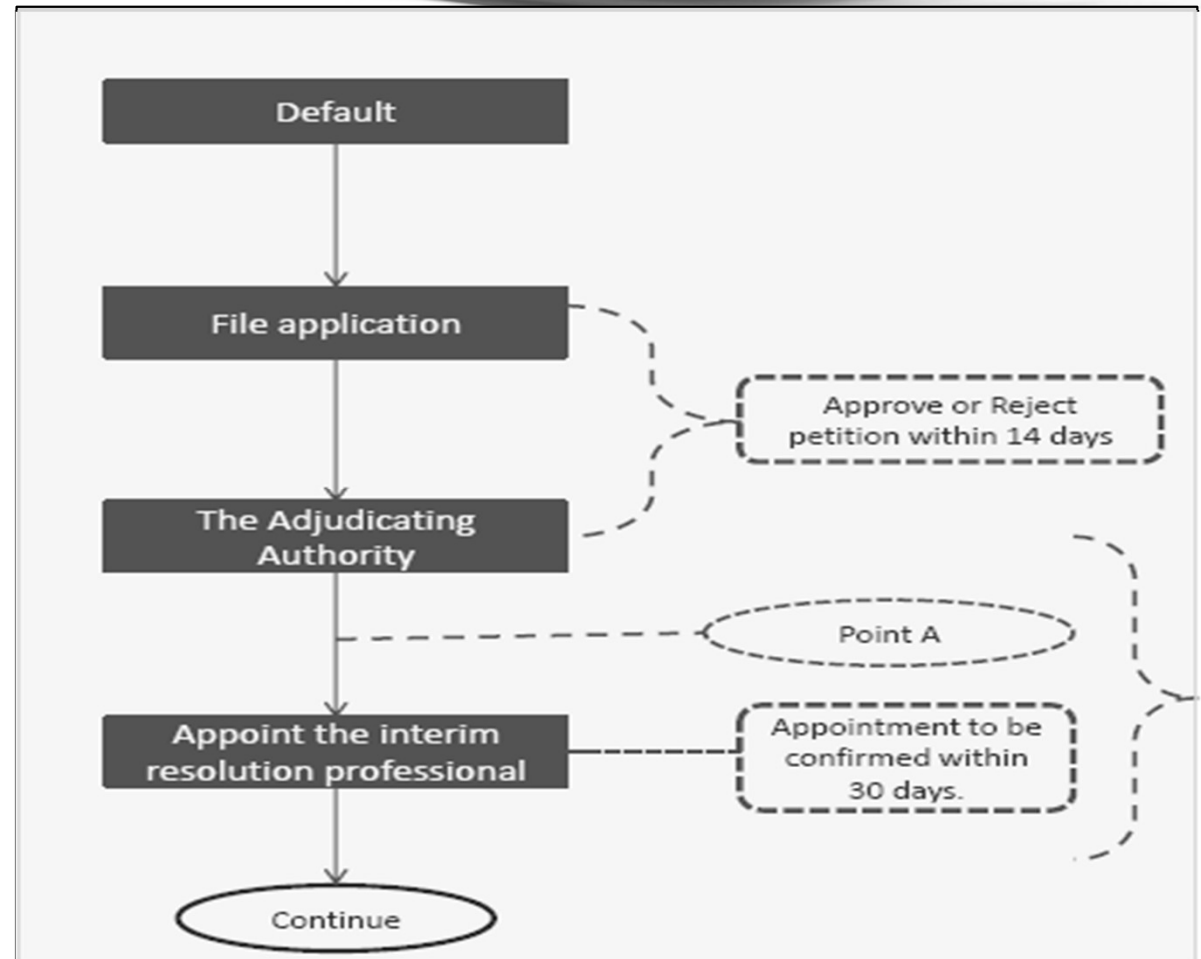
Failure to pay whole or any part or instalment of the amount of debt or interest due (min INR 1 Lakh) may be increased to one crore rupees by central government notification

### Who can file the Application

- Financial creditors
- Operational creditors including government and workmen or employees)
- Corporate debtor, member, partner, person in charge of operations or finance

### Interim Resolution Professional / Resolution Professional (IRP/RP)

- Financial creditor and/or corporate applicant shall propose the name of an IP in the application
- It is optional for the operational creditor to propose the name of an interim IP
- All powers of the board and management shall vest with the IRP/IP
- IP is responsible to run the Company as a going concern during CIRP



# Corporate Insolvency Resolution Process (CIRP)

## Committee of Creditors

- Usually consists of financial creditors
- Operational creditors to constitute committee when there are no financial creditors or all of them are related to corporate debtor
- Will confirm or replace IRP as RP
- To approve several actions of RP

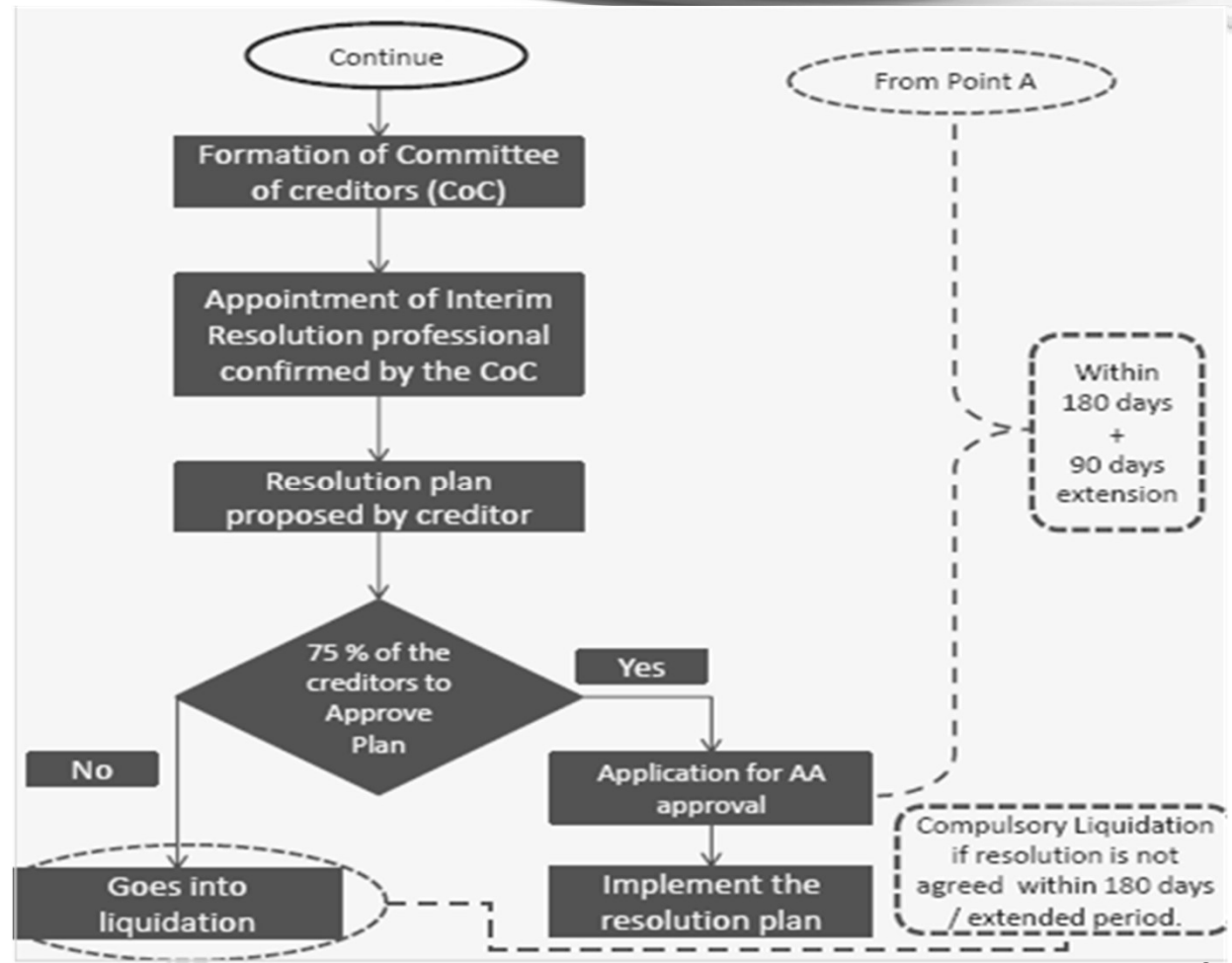
## Resolution Plan

The resolution plan must provide for Operational creditors (including government & employees or workmen)

- payment of insolvency resolution process costs
- repayment of the debts of operational creditors
- management of the affairs of the borrower after the plan is approved
- implementation and supervision of the approved plan

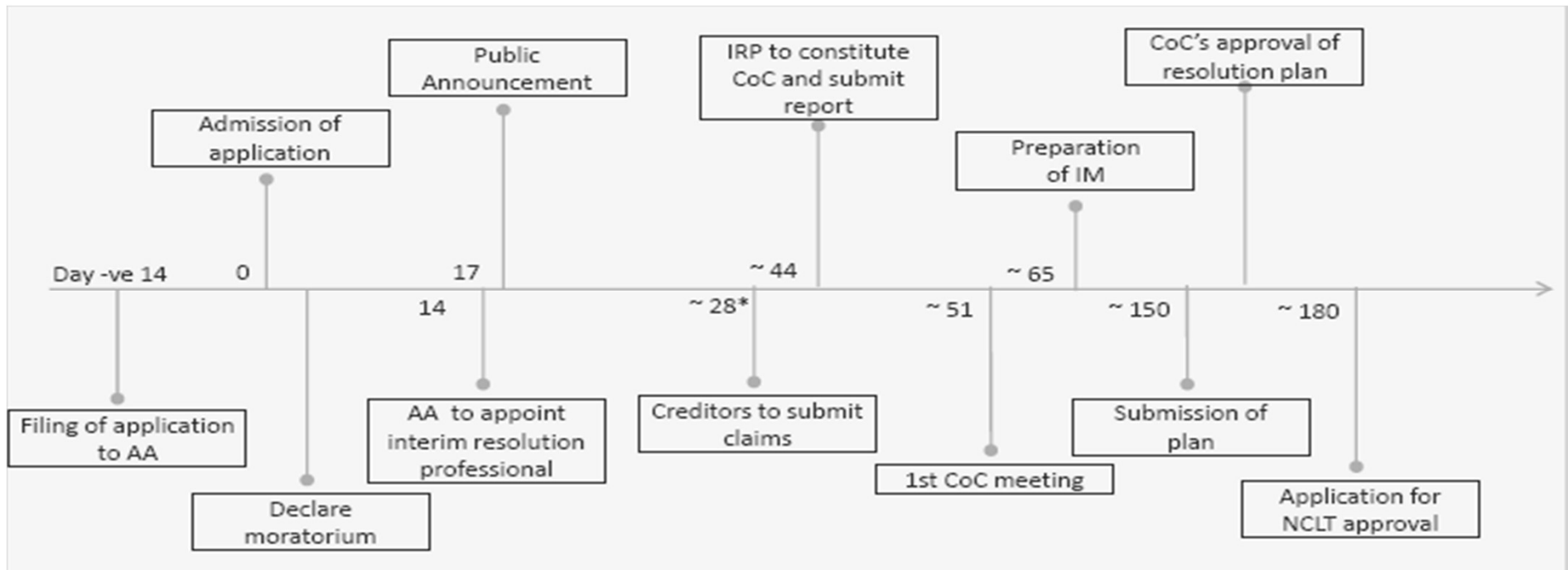
## Voting Power

- Only financial creditors have voting power in the committee in the ratio of debt owed, unless operational creditors constitute the committee
- All decisions of the committee shall be approved by 75% of financial creditors/Operational creditors, as the case may be



## Corporate Insolvency Resolution Process (CIRP )

### Corporate Resolution - Process Time



- Approximate timeline based on the Code
- If a creditor fails to submit proof on or before the last date mentioned in PA, creditor has time to submit such proof to IRP till the approval of the resolution plan by the COC, but cannot be a member of the CoC till admission of claim

## Duties of Resolution Professional (RP) & Resolution Plan



### Duties of RP

- To collect all information relating to the assets, finance and operations of the corporate debtor to determine its financial position
- To receive and collate all the claims submitted by creditor to him/ her To constitute a committee of creditors
- Take custody of assets and monitor the assets
- 

**In a Nutshell : RP has to drive the process of Insolvency as prescribed in the code.**

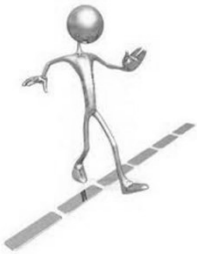


### Resolution Plan

There are no guidelines on what the Resolution plan consists of; however the resolution plan should at least consist of

- Payment of costs of RP/IRP/cost of supply of essential goods/ amounts due to persons affected by moratorium and costs directly related to CIRP in priority of repayment of other debts of corporate debtors.  
Repayments to operational creditors, which should not be lesser than the amount to be received by them in case of liquidation of the corporate debtor
- Provide for management of corporate debtor, implementation and supervision of the resolution plan after its approval
- Does not contravene any of the provisions of the law for the time being in force  
The resolution plan must comply with applicable requirements as specified by the Board

## Liquidation Process



### Initiation:

Failure to approve resolution plan within specified days will cause initiation of Liquidation. Corporate Debtor can also opt for voluntary liquidation by a special resolution in a General Meeting.



### Liquidator

- The IP may act as the liquidator and exercise all powers of the BoD
- The liquidator shall form an estate of the assets, and consolidate, verify, admit and determine value of creditor's claims



Water fall Mechanism



### Order of Priority for Distribution of Assets

1	• Insolvency resolution process and liquidation costs
2	• Secured creditors and workmen dues up to 24 months
3	• Other employees' salaries/dues up to 12 months
4	• Financial debts (unsecured creditors)
5	• Government dues (up to 2 years)/Balance amounts secured creditor
6	• Any remaining debts and dues
7	• Preference Capital
8	• Equity Capital

## Liquidation Process – Practice Example

ILLUSTRATION:-list of claims and the priorities in which the claims shall be paid in accordance with section 53 of the Code.

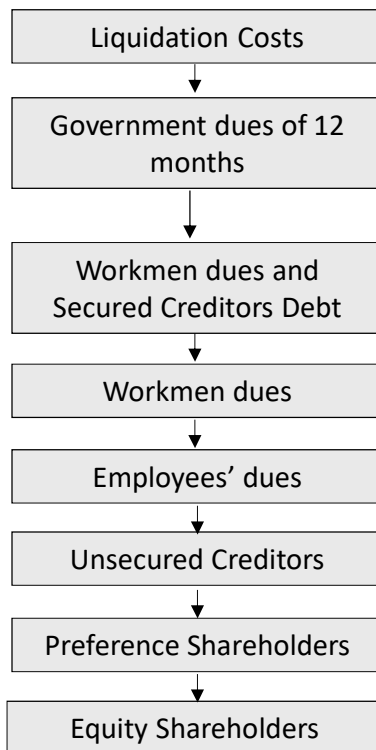
1	Insolvency resolution process costs	400
2	Workmen (for 24 months preceding the reference date)	1000
3	Workmen (for periods prior to 24 months preceding the reference date)	500
4	Employees (for 12 months preceding the reference date)	3000
5	Employees (for periods prior to 12 months preceding the reference date)	600
6	Govt. dues (for 2 years preceding the reference date)	1500
7	Govt. dues (for periods prior to 2 years preceding the reference date)	1000
8	Secured financial creditors who have relinquished security interest	800
9	Secured financial creditors whose part of the debt remains unpaid after enforcement of security interest*	300
10	Unsecured creditors in respect of financial debts	200
11	Other debts	100
12	Preference shareholders	900
13	Equity shareholders	1700
	<b>Total value of claims</b>	<b>12000</b>

DMKH & co

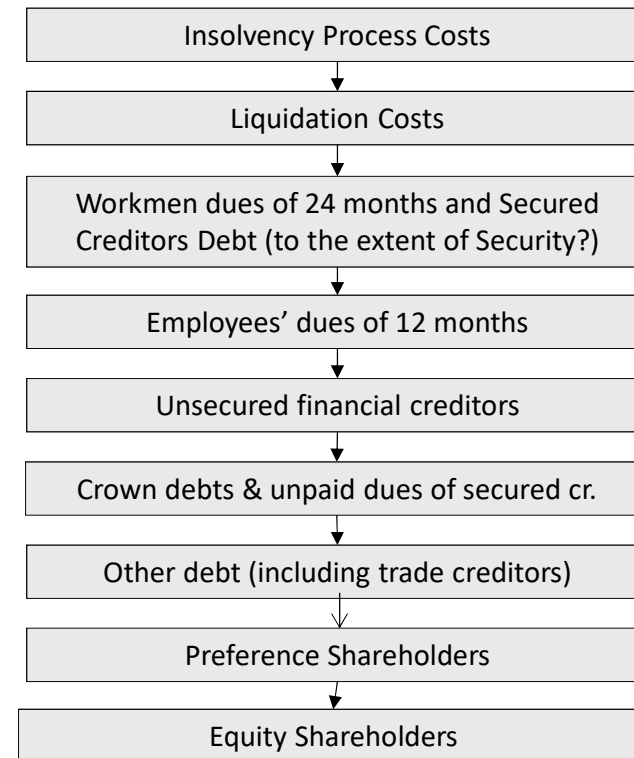
# Liquidation Process Comparison

## COMPARISON

### Companies Act, 1956



### Insolvency and Bankruptcy Code, 2016



## Power and Duties of Liquidator

The Liquidator must try to maximise the value of the assets in the most efficient manner of disposal and create a liquidation trust for distribution.

The primary responsibilities of the Liquidator are:

- to verify claims of all the creditors
- to take into his custody or control all the assets, properties, effects and actionable claims of the corporate debtor
- to evaluate the assets and properties of the corporate debtor in the manner as may be specified by the Board and prepare a report
- to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary
- to carry on the business of the corporate debtor as he considers necessary
- to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified
- institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor
- to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions



## FRESH START - ELIGIBILITY CONDITIONS

Maximum Gross  
Annual Income of  
Rs. 60000

Maximum aggregate  
value of assets Rs.  
20000

Maximum aggregate  
value of qualifying  
debt Rs. 35,000

No dwelling unit

Not an  
undischarged  
bankrupt

No Fresh Start  
Process/Bankruptcy

No Fresh Start  
Order in the last 12  
months prior to the  
date of application

## Why the code imperative today ?

### 1. CASE LAW AND OBSERVATION

2. UTTAL GALVA STEEL – Case Filed by operational Creditor- Upheld by Mumbai Bench, IBBI invited application for appointment of Resolution Professional, But matter is in NCLAT.
3. Rei Agro- Case filed by employee for recover of salary
4. Innovative industries Limited- First case filed by Financial creditor ICICI Bank in Mumbai NCLT, Still pending in NCLAT .

DISPUTED DEBT create ambiguity for insolvency professionals.

Two judgments by the National Company Law Tribunal (NCLT), Mumbai, have left insolvency professionals confused as to what constitutes disputed debt.

UTTAM GALVA CASE:- debt\_would be taken as disputed only if a suit was filed in court before insolvency\_proceedings were initiated. UTTAM GALVA CASE NCLT has mentioned that they have committed mistake in earlier case of creditor Kirusa Software against debtor Mobilox Innovations.

Essar Projects, an operational creditor, moved the NCLT\_against MCL GLOBAL STEEL The debtor challenged the insolvency proceedings on the ground that the amount of debtwas disputed even without a case being filed in a court

the NCLT\_had made it clear that such a dispute must be validated by raising the issues in dispute before a court or arbitral tribunal prior to the date of receipt of a demand notice. Merely contesting the amount in question did not constitute a “dispute” within the meaning of the code.

## Insolvency And Bankruptcy Code - NEW PROFESSIONAL OPPORTUNITES

### New Professional Opportunity under The Insolvency and Bankruptcy Code, 2016 for Chartered Accountants. **AS A CHARTERED ACCOUNTANT WITHOUT REGISTERING AS INSOLVENCY PROFESSIONAL**

1	Creating Awareness about IBC 2016.	Creating awareness among clients in line with the Developed World, that there is Paradigm shift in focus for recovery. It's now from "Net Worth Erosion" to "Default". And advising clients as to how best they can enforce the provisions of IBBI Code, 2016 in their interest.
2	Appear before NCLT	Filing of Application under IBC Code with NCLT as professional Chartered Accountant for Financial Creditors, Operational Creditors or Corporate Debtors.
3	Valuer	Immediately on approval of Application under the Code by NCLT, Valuers are appointed by Interim Resolution Professional to value the assets.
4	Information Memorandum	Help IRP in preparation of Information Memorandum [IM] of Corporate Debtor.
5	Status of Corporate Debtor as Going Concern during CIRP.	During Corporate Insolvency Resolution Process [CIRP] and Moratorium period, as the Management and control of the Corporate Debtor is with IPR. To help IRP in running the Corporate Debtor ongoing concern basis, in its area of Professional specialisation – Arranging Finance, Regulatory Compliance, study and improving Management Systems and Controls, strategy formulation and advising on improving financial and operational efficiency, adjudicating of claims of Creditors, , etc.

## INSOLVENCY AND BANKRUPTCY CODE - NEW PROFESSIONAL OPPORTUNITES

New Professional Opportunity under The Insolvency and Bankruptcy Code, 2016 for Chartered Accountants.  
**AS A CHARTERED ACCOUNTANT WITHOUT REGISTERING AS INSOLVENCY PROFESSIONAL (Con't)**

6	Resolution Plan	Help Committee of Creditors in Preparation of Resolution Plan [RP] to be submitted to Adjudication Authority on the line of viability study and its implementation and continuous monitoring.
7	Post Liquidation	Helping Liquidator in realisation of assets, M & A opportunities.

### **AS A CHARTERED ACCOUNTANT REGISTERED AS INSOLVENCY PROFESSIONAL WITH INVOLVENCY PROFESSIONAL AGENCY**

1	Insolvency Resolution Professional	To be appointed as Insolvency Resolution Professional [IRP] by Financial Creditor, Operational Creditor, Corporate Debtor, or Adjudicating Authority for Corporate Insolvency Resolution Process [CIRP]
3	Liquidator	If the CIRP fails, then to be appointed as Liquidator for distribution of the Assets of the Corporate Debtor For Voluntary Liquidation of Companies



## INSOLVENCY AND BANKRUPTCY CODE - NEW PROFESSIONAL OPPORTUNITES

- Eligibility Criteria to Register as an Insolvency professional
- **Category – I**
- Chartered Accountant, Company Secretary, Cost Accountant and Advocate who has passed the Limited insolvency Examination and has ten years of experience and enrolled as a member of respective institute /Bar Council or Graduate who has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognised by law,
- The Insolvency and Bankruptcy Board of India (IBBI) has notified syllabus for the Limited Insolvency Examination with effect from 31<sup>st</sup> December, 2016.
- **Category – II**
- Any other individual on passing the National Insolvency Examination
- The IBBI is yet to notify the syllabus for National Insolvency Examination.
- PLEASE REFER TO <http://www.ibbi.gov.in/syllabus.html> FOR SYLLABUS OF LIMITED INSOLVENCY EXAMINATION.

## Key Challenges

- **ARE 180/ 270 DAYS ENOUGH?**
- Notoriously slow legal system in India
- like the US Chapter 11 process, where the resolution plan is initially proposed by the company itself, in the India Code, any creditor can propose a resolution plan. It is, therefore, likely to be flooded with a mass of resolution plans.
- Insolvency professional would need some time to understand the company, its cash flows, essential operational creditors, etc, before it can prepare an Information Memorandum (IM), Resolution Plan
- Depends on whether a lively and robust insolvency professional's market develops in India
- Failure to adhere to 180/ 270 timeline results in commencement of liquidation process
- Currently winding up of companies vests on the wisdom of the High Court/NCLT
  
- **FINANCIAL CREDITORS VIS-À-VIS OPERATIONAL CREDITORS BARGAIN:**
- Operational creditors denied a seat at the Creditors committee table
- NCLT, when reviewing the resolution plan, needs to ensure that operational creditors are treated fairly
- Overtly benefiting operational creditors may unduly tip the delicate inter-creditor balances
- **PROVISION FOR REINSTATEMENT OF MANAGEMENT POWERS AFTER THE CONCLUSION OF RESOLUTION PLAN NOT PROVIDED**
- **CAPACITY BUILDING**

## Key Challenges

### ▪ **OPERATIONAL CHALLENGES:**

- Reaping the slew of benefits entailed by the Code warrants the setup of several new entities (in tandem with its 4 pillars – NCLT/ DRT, IBBI, Information Utilities and Insolvency Professional Agency) and addressing existing inefficiencies such as pendency and disposal rate of DRTs;
- Huge force of trained and skilled insolvency professionals;
- Robust utilities with state of the art technologies;
- Looking at the infrastructural requirements, it may be even possible that similar to the Companies Act, different provisions of the Code are notified on different dates, as and when the corresponding infrastructure is implemented.

### ▪ **SECURED CREDITORS VIS-A-VIS UNSECURED CREDITORS BARGAIN:**

- No demarcation for secured and unsecured creditors;
- Creditors Committee comprises of all financial creditors and resolution plan is to be approved by 75 percent (in value) of all financial creditors (regardless of whether secured or unsecured);
- If secured creditors constitute less than 25 percent of the financial debt, unsecured creditors could be able to “cram down” a resolution plan on such creditors;
- Statute should respect the seniority of secured creditors as a class; Re-look at the treatment of secured creditors is merited;
- While the Code does protect the rights of secured creditors at liquidation, at that stage - value of secured creditors’ collateral would get further eroded and the costs of the insolvency process would also rank ahead of the secured creditors.

## Overall Impact

- Many new age and realty cos should be in a position to access corporate bond market (which is virtually non-existent for firms below AA ratings and thin for AA categories) and see light of fresh credit lines, as the Code should repose investor's faith in the Indian markets
- Currently in debt funding route, yield hungry bond investors demand rates in high teens
- Practice of large borrowers thumbing noses at the creditors should whittle away
- Code recognises the balance required between excessive court intervention and excessive power in the hands of creditors
- Should bring in major facelift to the existing regime relating to restructuring and insolvency and bankruptcy in India
- Litmus test for its success will be in how it is implemented

ధన్యవాదాలు ధన్యవాద ఆమోదధన్యవాద ధన్యవాదగళు మణి  
ధన్యవాదగళు మణి పరిపూర్ణ ధన్యవాదలు ఆమోదధన్యవాద  
ధన్యవాద ఆమోద ధన్యవాదగళు మణి ధన్యవాదలుధన్యవాద  
ధన్యవాద ధన్యవాదలు ధన్యవాద ఆమోదధన్యవాద పరిపూర్ణ  
మణిధన్యవాద **THANK YOU** ధన్యవాదగళు  
ధన్యవాద شكري ధన్యవాదగళు మణి పరిపూర్ణ ధన్యవాద ధన్యవాద  
ధన్యవాదలు ధన్యవాద ఆమోద ధన్యవాద ధన్యవాదగళు మణి  
ధన్యవాదగళు మణి పరిపూర్ణ ధన్యవాదలు ఆమోదధన్యవాద