Insolvency and Bankruptcy Code 2016
And Regulations
Objective of the Code

The objective of this Code as stated in the preamble to the Code

“is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including 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”
Why is the Code an imperative today?

1. Improve ‘Ease of Doing Business’ ranking for India.

2. The stressed assets in the Indian banking system have peaked at US$ 150 billion or over Rs. 10 lakh crores (15% of gross advances)

3. Heightened focus on the resolution of the problem by the Reserve Bank of India (RBI) and the Supreme Court. The previous RBI Governor had stated that “Our intent is to have clean and fully-provisioned bank balance sheets by March 2017”.

4. There is a dire need of capital today – not just for stressed companies but for growth in general.

5. Long time for resolution and recovery; Doing away with a fragmented framework.

6. The average life of cases recommended for restructuring in 2002 was 7 years and the average life of cases recommended for winding up to the court was 6.5 years.

7. Improve the confidence of the International investor in the debt market.
‘Ease of Doing Business’ ranking as per World Bank

- As per the Doing business index 2016 released by World Bank, India continues to fare the worst amongst the BRICS nation.
- With 136th rank, India is far behind the developed economies such as UK, US, and others.
- Among several requisites of an effective insolvency regime, recovery is one of the most important parameters.
- At 25.7 cents per dollar, India is ahead only of Brazil amongst BRICS nation.

Source: www.doingbusiness.org
Premise the code

1. Insolvency test moved from ‘erosion of net worth’ to ‘payment default’


3. Time bound resolution process

4. Clear and unambiguous process to be followed by all stakeholders. Shift of control from shareholders and promoters to creditors

5. Provide confidence to lenders of their rights and their enforcement.

6. Better symmetry of information flow between creditors and debtors

7. Shift of jurisdiction to NCLT and DRT

8. Government dues would rank below to those of secured creditors and unsecured financial creditors

9. In case of fraudulent diversion of assets, personal contribution can be sought; imprisonment possible

10. Insolvency Professional (IP) to take over the management and operations of the borrower during the CIRP
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 28th November 2016.

<table>
<thead>
<tr>
<th>Events</th>
<th>Date/Month</th>
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<tbody>
<tr>
<td>Bankruptcy Law Reform Committee (BLRC) formed</td>
<td>August 2014</td>
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<tr>
<td>Final report and draft bill submitted by BLRC</td>
<td>November 2015</td>
</tr>
<tr>
<td>First draft presented in Parliament and then referred to Joint committee</td>
<td>December 2015</td>
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<tr>
<td>Report of Joint committee presented to Lok Sabha</td>
<td>April 2016</td>
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<tr>
<td>Code passed by Parliament</td>
<td>May 2016</td>
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<tr>
<td>Responsibility for implementation given to MCA</td>
<td>June 2016</td>
</tr>
<tr>
<td>Sections pertaining to IBBI, powers to make regulation etc. notified</td>
<td>August 2016</td>
</tr>
<tr>
<td>IBB members appointed</td>
<td>October 2016</td>
</tr>
<tr>
<td>Six draft rules and regulations issued for public comments by:</td>
<td>31st October 2016</td>
</tr>
<tr>
<td>- registration of IPs</td>
<td></td>
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<tr>
<td>- Registration of IPAs</td>
<td></td>
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<tr>
<td>- model Bye- laws</td>
<td></td>
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<tr>
<td>- Resolution process</td>
<td></td>
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<tr>
<td>- Liquidation process</td>
<td></td>
</tr>
<tr>
<td>- Application rules</td>
<td></td>
</tr>
</tbody>
</table>
Structure of the Code
Distinct Parts to administer various constituents

► Part 1 – Preliminary and Definitions
► Part 2 – Corporate Debtors
► Part 3 – Individuals and Partnerships
► Part 4 – Board, Professionals, Agencies and Utilities
► Part 5 – Miscellaneous Provisions

Section 244 – Transitional Provisions with Schedules
## Structure of the Code
Rules and Regulation as Notified

<table>
<thead>
<tr>
<th>Rules/Regulations</th>
<th>Notified on</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application to Adjudicating Authority Rules</td>
<td>December 1, 2016</td>
</tr>
<tr>
<td>Insolvency Professional Regulations</td>
<td>November 29, 2016</td>
</tr>
<tr>
<td>IBBI Model Bye Laws</td>
<td>November 21, 2016</td>
</tr>
<tr>
<td>IPA Regulations</td>
<td>November 21, 2016</td>
</tr>
<tr>
<td>IR Process for Corporate Persons</td>
<td>November 30, 2016</td>
</tr>
<tr>
<td>Liquidation Process Rules</td>
<td>December 15, 2016</td>
</tr>
</tbody>
</table>
**Insolvency and Bankruptcy Code ecosystem**

**IBBI** – Apex Body for promoting transparency & governance in the administration of the IBC; will be involved in setting up accrediting IPs & IUs.

**IUs** - Centralised repository of financial and credit information of borrowers; would validate the information and claims of borrowers, as needed.

**IPAs** - Professional bodies registered by the Board to promote and regulate the insolvency profession. These bodies will

**IPs** - Licensed private professionals regulated by the Board; will conduct resolution process; to act as appointed by creditors and override the powers of board of

**Adjudicating Authority (AA)** - would be the NCLT for corporate insolvency; to entertain or dispose any insolvency application, resolution plans, decide in respect of claims or matters of

**CoC** - consists of financial creditors to who will appoint and
Corporate Insolvency Resolution Process (CIRP) under the Code

Default
min INR 1 lakh; even a single day

Who can file the application?
• Financial & Operational creditors (including Government & employees/workmen), and Corporate debtor

Resolution Professional (IRP/ RP)
• Financial creditor and/ or corporate applicant shall propose the name of an IRP in the application
• All powers of the board and management shall vest with the IRP/ RP

Moratorium
Moratorium shall prohibit:
• Institution of suits
• Transfer of assets
• Foreclosure, recovery or enforcement under SARFAESI
• Recovery of assets

Committee of creditors (CoC)
• Consists of financial creditors only, excluding related parties
• To approve several actions of RP

Resolution plan
The resolution plan must provide for:
• 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
• All decision of the committee shall be approved by 75% of financial creditors

Fast track insolvency
For debtors as may be notified by the central government (completed in 90 days)
Corporate Resolution process timeline

Key points to focus for the financial creditors:

- Approval or replacement of IRP
- Approve certain actions of IRP/RP
- Submit resolution plan based on information memorandum prepared by the RP
- It is the duty of resolution applicant and not of RP to prepare the Resolution plan; therefore creditors may have to take independent consultant’s help.
- It is advisable that banks constitute a panel of industry experts whose help can be sought during the insolvency resolution process
Liquidation process under the Code

**Liquidation order**
Liquidation order will be passed if:
- CIRP ends
- Plan not submitted to NCLT
- Plan not approved
- Decided by CoC
- Plan not properly implemented

**Liquidation steps**
- Appointment of liquidator
- Formation of liquidation estate
- No legal proceeding by or against the debtor
- Consolidation of claims
- Distribution of assets
- Dissolution of debtors (to be completed within 2 years)

**Liquidator**
Liquidator shall:
- Form liquidation estate
- take custody & control of all assets
- consolidate, verify, admit and determine value of creditors claims
- Carry on the business for its beneficial liquidation

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**Priority Waterfall of claims**

1. Insolvency resolution process and liquidation costs
2. Secured creditor & workmen dues (upto 24 months)
3. Other employee dues (upto 12 months)
4. Financial debts of unsecured creditors
5. Government dues (upto 2 years) and unpaid secured creditors
6. Any remaining debts and dues
7. Preference shareholders, if any
8. Equity shareholders or partners, as the case may be

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**Reporting**
- Preliminary report – within 30 days from the date of the order;
- Progress report – within 15 days after end of every period of 3 months from the date of order

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**Insolvency and liquidation cost**
- Insolvency cost include interim funding, cost of running the debtor as going concern (eg rent or salary of employees), cost of IP etc
- Liquidation cost include any cost incurred by liquidator during liquidation period

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**Secured creditor in liquidation**
Secured creditor has the option to:
- enforce and realise the security outside the Code, or
- relinquish its security interest and receive proceeds as defined in the priority of claim

**Priority Waterfall of claims**
- Distinction between rights of different class of secured creditors (first vs second charge, fixed vs floating charge) not clarified
What makes a good Insolvency Professionals?

Practical working knowledge of:

- Company law
- Banking/ Finance
- Cash flow management
- Insolvency law
- Stake holder management
- Negotiation skills
- Taxation
- Valuation / Sale of assets
- Commercial and business
Key Powers, Roles & Responsibilities as envisaged under the Code

1. The appointed resolution professional IP shall exercise all the powers of the Board of Directors of the corporate debtor.
   - The powers of the board of directors of the corporate debtor, shall stand suspended and be exercised by the IRP / IP
   - The officers and managers of the corporate debtor shall report to the IRP / RP and provide access to such documents and records of the corporate debtor as may be required
   - The IRP / IP shall act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents

2. Key powers and duties of Resolution professional
   - form Committee of creditors
   - Conduct meeting of Committee of creditors
   - prepare the information memorandum (IM) and invite resolution plans
   - ensure the financial affairs of the company

3. Key powers and duties of Liquidator
   - receive, verify and value claims of all the creditors, and settle such claims
   - take into his custody or control all the assets, and sell the assets
   - carry on the business of the corporate debtor for its beneficial liquidation
   - form an estate of the assets which will be called the liquidation estate
   - apply to the Adjudicating Authority for avoidance of transactions
The IBBI had notified “Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016” on 23rd Nov 2016. Salient features of the regulations are:

| Insolvency Professionals Examination | The Board shall conduct a ‘National Insolvency Examination’ and ‘Limited Insolvency Examination’. The syllabus, format and frequency of the ‘Limited Insolvency Examination’, including qualifying marks, has been notified by the IBBI and registration for the examination has been started from 15th December 2016. The examination has been started from 31st December 2016. |
| Eligibility and Qualification for registration of insolvency professionals (Reg 5) | Any person resident of India who:  
  - has passed National insolvency examination; or  
  - has passed the Limited Insolvency Examination, and has 15 years of experience in management, after graduation or  
  - has passed the Limited Insolvency Examination and has ten 10 years of experience as a member of ICAI; ICSI; ICAI (Cost); and Bar council |
| Application for registration | An individual enrolled with an Insolvency Professional Agency may make application in to Board in Form A with application fee of Rs 10,000 to IBBI |
| Registration for a limited period (Reg 9) | An individual who has been “in practice” for 15 years and enrolled as a CA, CS, CA (Cost), and Advocate  
  - Valid for a period of 6 months  
  - This is notwithstanding Regulation 5 (i.e without exams)  
  - Registration was upto 31st December 2016 |
| Recognition of IP Entities (Reg 12) | LLP, partnership firm, or a company if:  
  - a majority of the partners of the LLP or partnership firm or a majority of whole time directors of the company are registered as insolvency professionals. |
Incorporation of the Company Indian Institute of Insolvency Professionals of ICAI (IIPI) by the Institute of Chartered Accountants of India (ICAI)

► The Indian Institute of Insolvency Professionals of ICAI (IIPI) was incorporated as a section 8 Company on November 25th, 2016 to enroll and regulate Insolvency Professionals as its members in accordance with the Insolvency and Bankruptcy Code, 2016.

► IIPI was awarded the Certificate as a First Insolvency Professional Agency (IPA) of India by the Hon’ble Union Finance Minister Shri Arun Jaitley on November 28th, 2016.

► IIPI now became authorised to enroll the individuals/professionals as Insolvency Professionals.
Directors of IIIPI nominated by ICAI

► CA. Devaraja Reddy M.
► CA. Nilesh Shivji Vikamsey
► CA. Dhinal Ashvin Shah
Independent Directors of IIIPI

- Hon’ble Mr. Justice Anil R. Dave (Retd.)
- Sh. M. Damodaran
- Sh. M.D. Mallya
- Sh. I.Y.R. Krishna Rao
- Sh. Biswamohan Mahapatra
Enrolment of Insolvency Professionals (IPs) by IIIPI

► From November 29th, 2016 the company started enrolling IPs for Limited Period registration under Regulation 9 of the IBBI (Insolvency Professionals) Regulations, 2016.

► To enroll as IP for Limited Period registration was upto December 31st, 2016.

► To facilitate the company has developed and started functioning the Website of IIIPI (www.iiipicai.in) w.e.f November 28th, 2016.

► The company charged a nominal fee of Rs. 2000/- from the applicants for registration as Limited Period IP.

► The company had received more than 1200 applications (through online & hard copy) from the professionals which includes CA, CS, CA (cost) & Advocates to enroll themselves as the Insolvency Professional with IIIPI.

► Out of these applications the company has enrolled 716 members out of 977 in total registered as Limited Period IPs with the Insolvency and Bankruptcy Board of India.

► Now the company is enrolling the permanent Insolvency Professionals who have passed the Limited Insolvency Examination conducted by the IBBI.
Fees to be charged to the Insolvency Professionals of IIIPI

As per clause 11 of the Bye-Laws of IIIPI, the professional members are required to pay a fixed sum of money as its annual membership fee. Accordingly, it has been decided by the Governing Board to charge a non-refundable fee from the members in the following manner:

► Fees of Rs. 10,000/- (Ten Thousand only) for each financial year (which needs to be paid before 30\textsuperscript{th} April of every year)
► Fees would be charged half for enrolment with IIIPI after October of each financial year, i.e. Rs. 5000/- (Five Thousand Only)

If the fee cheque(s) submitted by the applicant is returned by the bank the application will liable to be rejected.
Liquidation remuneration table

The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 specifies that remuneration of liquidator shall be determined by the Committee of creditors. However where the committee does not determine the remuneration, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, as under:

<table>
<thead>
<tr>
<th>Amount of Realisation / Distribution (In rupees)</th>
<th>Percentage of fee on the amount realized distributed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In the first six months</td>
</tr>
<tr>
<td><strong>Amount of Realisation (exclusive of liquidation costs)</strong></td>
<td></td>
</tr>
<tr>
<td>On the first 1 Crore</td>
<td>5.00</td>
</tr>
<tr>
<td>On the first 9 Crore</td>
<td>3.75</td>
</tr>
<tr>
<td>On the next 40 Crore</td>
<td>2.50</td>
</tr>
<tr>
<td>On the next 50 Crore</td>
<td>1.25</td>
</tr>
<tr>
<td>On further sums realized</td>
<td>0.25</td>
</tr>
<tr>
<td><strong>Amount Distributed to Stakeholders</strong></td>
<td></td>
</tr>
<tr>
<td>On the first 1 Crore</td>
<td>2.50</td>
</tr>
<tr>
<td>On the first 9 Crore</td>
<td>1.88</td>
</tr>
<tr>
<td>On the next 40 Crore</td>
<td>1.25</td>
</tr>
<tr>
<td>On the next 50 Crore</td>
<td>0.63</td>
</tr>
<tr>
<td>On further sums realized</td>
<td>0.13</td>
</tr>
</tbody>
</table>
Thank You