INSOLVENCY AND BANKRUPTCY CODE, 2016
MEANING OF INSOLVENCY AND BANKRUPTCY

INSOLVENCY

Insolvency means the situations where entity cannot raise enough cash to meet its obligation or to pay the debts as they become due for payment.

BANKRUPTCY

Bankruptcy means when a person voluntary declares him/its as an insolvent.
MULTIPLE LAWS DEALING WITH INSOLVENCY AND BANKRUPTCY

- Recovery of Debts Due to Banks & Financial Institutions Act, 1993
- SARFAESI Act, 2002
- Insolvency and Bankruptcy Code, 2016
- The Provincial Insolvency Act, 1920 (For individual, Partnership Firm) (Still to be effective under IBC, 2016)
- The Presidency Towns Insolvency Act, 1909 (For Individual and Partnership Firm in Chennai, Kolkata, Mumbai) (Still to be effective under IBC, 2016)
- Companies Act, 2013
**Why Insolvency and Bankruptcy Code, 2016**

To set up a single forum for bankruptcy and insolvency process for individuals, partnership firms, companies, LLPs

The present structure of bankruptcy and insolvency process in India was elaborate and multiple layers as follows.

- The Presidency Towns Insolvency Act, 1909
- The Provincial Insolvency Act, 1920
- Companies Act, 2013
- Companies Act, 1956
- SICA 1985
Derivation or Benchmark of Insolvency and Bankruptcy Code, 2016

The following insolvency framework of United Nations Commissions on International Trade Laws was found with regard to the derivation of Insolvency and Bankruptcy Code, 2016.

UNCITRAL Legislative Guide on Insolvency Law (2010)
UNCITRAL Legislative Guide on Insolvency Law (2013)

Bankruptcy Law Reforms Committee (BLRC)

Bankruptcy Law Reforms Committee (BLRC) set up by the Department of Economic Affairs, Ministry of Finance under the chairmanship of Mr. T. K. Vishwanathan (February 2015) for Bankruptcy and Insolvency Code, 2016
The Insolvency and Bankruptcy Board of India (IBBI) set up on October 1, 2016 and it has a regulatory oversight the-

- Insolvency Professionals
- Insolvency Professional Agency
- Information Utilities

IBBI writes and enforces rules for Corporate insolvency resolutions, corporate liquidation, individuals insolvency resolution and individual bankruptcy.
Administrative Authority for Insolvency and Bankruptcy Code, 2016 (Contd.....)

IBBI key pillar of the eco-system responsible for implementation of the code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time effective manner for-

- Maximization of the value of assets
- Promote entrepreneurship
- Availability of credit
- Balance the interest of all stakeholders
Applicability of Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 shall apply in relation to the insolvency, liquidations and voluntary liquidation or bankruptcy of –

- Companies incorporated under Companies Act, 2013 or Companies governed by any special Act.
- Partnership Firms and Individuals.
- Any other body specified by the Central Government.
## Special Coverage under Insolvency and Bankruptcy Code, 2016

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# Special Coverage under Insolvency and Bankruptcy Code, 2016 (Contd...)

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The presentation specifically covers.....

- Applicability of CIRP
- Applicant under CIRP
- Debt
- Application by Financial Creditor and Operational Creditor for CIRP
- Appointment of Interim Resolution Professional
- Duties of Interim Resolution Professional
- Appointment, power and duties of Resolution Professional
- Meeting of COCs and Resolution Plan
- Costs of CIRP
- Person not entitled to apply for CIRP
Corporate Insolvency Resolution Process for Corporate Person

Applicability

Matters related to the insolvency and liquidation of corporate persons where the minimum amount of the default is One Lakh Rupee.

Central Government may, by notification, provide higher value which shall not exceed more than one crore rupee.
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Applicant

Corporate Applicant/Corporate Debtor
- Member or Partner of the corporate persons in accordance with the constituent documents of the company
- An individual who is in charge of managing the operation and resources
- An individual who has control and supervision over the financial affairs of corporate debtor

Financial Creditors
- To whom a financial debt is owed
  - To whom a financial debt is legally assigned or transferred

Operational Creditors
- To whom an operational debt is owed
  - To whom an operational debt is legally assigned or transferred
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

DEBT

Financial Debt

- Debt along with interest
- Money borrowed against the payment of interest
- Amount accepted under any acceptance of credit facility
- Amount in respect of note purchase facility and issue of bond note
- Counter indemnity obligation and guarantee

Operational Debt

- Debt due arising out under any law and payable to CG, SG.
- Means a claim in respect of goods and services includes employment

- Amount in respect of lease, hire purchase, receivables, future and forward contract
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Other important aspect under CIRP

Resolution Applicant
- Who submits a resolution plan to resolution professional

Resolution plan
- Resolution plan in accordance with section 30(2) of IBC, 2016

Voting Share
- Voting rights of a single financial creditors in the meeting of COC in proportion of the financial debt owned to such financial creditors

Resolution professional
- Who is appointed to conduct the CIRP and includes Interim Resolution Professional
Initiation of Corporate Insolvency Resolution Process by FINANCIAL CREDTIORS (FC)

FC shall file an application in Form 1 prescribed in IBBI (Application to the Adjudicating Authorities) Rules, 2016 along with a fee of Rs. 25000 shall be paid by means of a bank draft drawn in favour of the “Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai/ Mumbai, as the case may be or as decided by the president of Tribunal.

On the basis of Part V of Form 1 mentioned above and records available with information utility, if the NCLT is satisfied about the completion of application, then NCLT shall communicate ORDER to the financial creditor in this behalf which shall be published on the website of the Insolvency and Bankruptcy Board of India.
The order of the NCLT shall contain inter alia, the debt of the Financial Creditor, the information about the appointment of Interim Resolution Professional and the moratorium period under section 14 of the Insolvency and Bankruptcy Code, 2016. The order shall cause the Interim Resolution professional to make the detailed public announcement to submit the proof of claims.

The Financial Creditors shall submit their claim to IRP electronically in Form C as specified in IBBI (Resolution Process for Corporate Persons) Regulation, 2016 before the last date mentioned in public announcement.
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Initiation of Corporate Insolvency Resolution Process by FINANCIAL CREDTIORS (FC) (Contd……..)

If a Financial Creditor failed to submit the proof of his claim, then one can submit his claim till the approval of resolution plan by the Committee of the Creditors.

The claim submitted by the financial creditors in foreign currency shall be valued at the official exchange rate as on the insolvency commencement date i.e. the date of an application under section 7 by financial creditor/creditors.

The amount of claim submitted by the financial creditor shall be verified and determined within seven days from the date of receipt of the claims.
Initiation of Corporate Insolvency Resolution Process by OPERATIONAL CREDITORS (OC)

OC shall deliver a demand notice to the corporate debtor in form 3 as prescribed in rule 4 of IBBI (Application to the adjudicating authority) Rules, 2016 and a copy of an invoice attached with a notice in Form 4 prescribed in such rules.

OC shall file an application in Form 5 prescribed in IBBI (Application to the Adjudicating Authorities) Rules, 2016 along with a fee of Rs. 2000 shall be paid by means of a bank draft drawn in favour of the “Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai/ Mumbai, as the case may be or as decided by the president of Tribunal. If Operational Creditor does not receive payment from the corporate debtor within 10 days of the sending of the demand notice.
Initiation of Corporate Insolvency Resolution Process by OPERATIONAL CREDITORS (FC) (Contd…….)

On the basis of Part V of Form 5 mentioned above if the NCLT is satisfied about the completion of application, then NCLT shall communicate ORDER to the financial creditor in this behalf which shall be published on the website of the Insolvency and Bankruptcy Board of India.

The order of the NCLT shall contain inter alia, the debt of the Financial Creditor, the information about the appointment of Interim Resolution Professional and the moratorium period under section 14 of the Insolvency and Bankruptcy Code, 2016. The order shall cause the Interim Resolution professional to make the detailed public announcement to submit the proof of claims.
Initiation of Corporate Insolvency Resolution Process by OPERATIONAL CREDTIORS (OC) (Contd........)

The Operational Creditors shall submit their claim to IRP electronically or by post in Form B or Form D or Form E (in case of numerous employee or workmen, as the case may be, as specified in IBBI (Resolution Process for Corporate Persons) Regulation, 2016 before the last date mentioned in public announcement.

If an operational Creditor failed to submit the proof of his claim, then one can submit his claim till the approval of resolution plan by the Committee of the Creditors.

The claim submitted by the operational creditors in foreign currency shall be valued at the official exchange rate as on the insolvency commencement date i.e. the date of an application under section 7 by financial creditor/creditors.
Initiation of Corporate Insolvency Resolution Process by OPERATIONAL CREDITORS (OC) (Contd........)

The amount of claim submitted by the operational creditor shall be verified and determined within seven days from the date of receipt of the claims.

As per the amendment dated August 16, 2017 in IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulation, 2017, the proof of claim shall be submitted by the creditors other than financial and operational creditors in form F.
Appointment of Interim Resolution Professional (IRP)

The name of the IRP shall either be proposed by the creditors while filing application before the NCLT and same approved by Tribunal or NCLT shall appoint the IRP on application tender basis within 10 days, if same was not proposed by the creditors in application.

The term of the IRP shall not exceed 30 days from the date of his appointment.

The IRP shall make a public announcement in Form A specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 not later than three days (3 days) from the date of his appointment. The Public announcement shall be published in one English and one
Appointment of Interim Resolution Professional (IRP) (Contd...)

regional language One newspaper with vide circulation at the location of the register office and principle office, if any, of the corporate debtor and any other location in the opinion of the IRP where the corporate debtor conducts material business operation and the website of the corporate debtor. The public announcement shall specify the last date of submitting the proof of claims.
Duties of Interim Resolution Professional (IRP)

The IRP shall, after collation of claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

The IRP shall file a report certifying constitution of COCs to the NCLT before the expiry of his tenure.

IRP shall conduct the first meeting of COCs within 7 days of its constitution.
Corporate Insolvency Resolution Process for Corporate Person (Contd.)

Duties of Interim Resolution Professional (IRP) (Contd.)

IRP shall collect all information relating to the assets, finance and operation of the corporate debtors to determine the financial position.

IRP shall monitor the assets of the corporate debtors and manage its operations till the appointment of resolution professional.

IRP shall take control and custody of the assets over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtors.

IRP shall make every endeavour to protect and preserve the value of property of the corporate debtor and manage the operations of the corporate debtor as a going concern.
From the date of the appointment of IRP –
- The management of affairs of the corporate debtor shall vest in IRP
- The power of the Board of Corporate Debtors shall stand suspended and the same shall be exercised by the IRP.
- The corporate debtors and managers shall report to IRP.
- The financial institutions of the corporate debtors shall act on the instruction of the IRP.

The IRP have an authority to access the books of account, records and relevant documents of corporate debtors available with government authorities, statutory auditors, accountants.

The IRP shall, within 7 days of his appointment, appoint two registered valuers to determine the liquidation value of the corporate debtor.
Corporate Insolvency Resolution Process for Corporate Person (Contd.)

Appointment of Resolution Professional (RP)

**Appointment**
The Committee of Creditors in their first meeting by majority vote not less than 75% either resolve to appoint IRP to act as RP or to replace the IRP by another RP.

The COCs shall communicate about the appointment of RP or IRP as the case may be to NCLT.

**Power and duties**
The RP shall exercise the power and perform duties as are vested and conferred on the IRP.

The RP shall not any action like raise interim finance, change the capital structure of the corporate debtor, create any security interest over the
Corporate Insolvency Resolution Process for Corporate Person (Contd.)

Appointment of Resolution Professional (RP)

Assets of the corporate debtor without the prior approval of the Committee of creditors.

RP shall prepare an information memorandum. Information memorandum shall be delivered to creditors in two part, first before the first meeting of the creditors and second within 14 days of the first meeting of the creditors.

RP can be replaced by the COC at any time by voting share of 75%.
CONSTITUTION
The IRP shall constitute the meeting of COCs after receiving the claims from the creditors.

The COCs shall comprise of Financial Creditors (Except related party) of the Corporate Debtors.

Where the Corporate Debtor has no financial debt then the committee shall consist of---

- Eighteen largest operational creditors by value.
- If less than eighteen then all such operational creditors.
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Meetings of Committee of Creditors (COCs) (Contd..)

Meeting of the Committee
The first meeting of the committee shall be convened by IRP within 7 days of filing the report under this regulation regarding the constitution of committee.

The Resolution Professional may convene a meeting of COCs if a request to that effect is made by members of the committee representing 33% of the voting rights.

Notice of Meeting
A meeting of committee shall be called by giving not less than 7 days notice in writing to every participant. The committee may reduce the notice period from seven days to other period which shall not less than 24 hours.
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Meetings of Committee of Creditors (COCs) (Contd..)

**Service of notice**
The meeting of notice shall be sent at the address it has provided to RP by-
- Hand delivery
- By post
- But in every event shall be sent by electronic means.

**Content of Notice**
- Venue, time and date of meeting
- Participant shall have an option to attend the meeting by means of Video conferencing or other audio and visual means.
- Contain the agenda of the meeting inter alia list of matters to be discussed at the meeting, list of issues to be voted at the meeting and copies of all the documents relevant to the matters to be discussed
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

Meetings of Committee of Creditors (COCs) (Contd..)

- State the process and manner for voting by electronic means
- Time schedule during the vote can be cast
- Provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in secure manner
- Provide contact details of the person who will address the queries connected with the electronic voting.

Quorum of Meeting
- Members of committee representing 33% of voting rights are present either in a person or authorized representative.
- If the required quorum does not present in the meeting then meeting shall adjourn at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of committee attending the meeting.
Meetings of Committee of Creditors (COCs) (Contd..)

Representation /voting by the creditors in the Meeting (all decision of the committee 75% of voting share)

The COCs shall be represented by Financial Creditor of the corporate debtor. Financial creditors shall exclude the related party of the corporate debtor.

Financial Creditors on the part of Consortium Finance then each financial creditor shall be the part of the COCs.

If an person is financial creditor as well as operational creditor then the voting share shall be the proportionate to the extent of financial debts owned to such creditor.

A insolvency professional (other than appointed) may represent a financial creditor.
### Meetings of Committee of Creditors (COCs) (Contd..)

<table>
<thead>
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<th>Chairperson and conduct of the Meeting</th>
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<tr>
<td>The resolution professional shall act as a chairperson of the meeting.</td>
</tr>
<tr>
<td>The resolution professional shall take a roll at the meeting and shall inform the all participants who are present at the meeting.</td>
</tr>
<tr>
<td>The resolution professional shall ensure that minutes are in relation to each meeting of the committee and such minutes shall disclose the particulars of participant.</td>
</tr>
<tr>
<td>Minutes shall be circulated to all the participants of the meeting.</td>
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</tbody>
</table>
After circulating the information memorandum with relevant information, the resolution professional shall provide access to the resolution applicant to access the financial position of the corporate debtor, all information related to dispute by or against the corporate debtor.

After considering the information provided by the resolution professional, the resolution applicant shall sketch the resolution plan for the corporate debtor on the basis of information memorandum.

Resolution plan shall be in manner which shall ensure the resolution professional about the insolvency resolution process costs, repayment of the debts of the operational creditors in accordance with section 53 of the code, the implementation and supervision of resolution plan.
Costs under CIRP

THE INSOLVENCY RESOLUTION PROCESS COSTS

- Amount due to suppliers of electricity, water, telecommunication services, information technology services.

- Expenses incurred by the IRP an RP as referred above.

- Other costs directly relating to the CIRP and approved by the committee.

- Amount due to person who is prejudicially affected on account of moratorium period.
Costs under CIRP (Contd..)

**Cost of Interim Resolution Professional**

The either applicant or NCLT shall fix the fee to be paid to IRP or other expenses, including the cost of engaging the other professional advisors.

The applicant shall bear the expenses ratified by the COCs.

**Cost of Resolution professional**

The committee shall fix the expenses of the Resolution professional.
Corporate Insolvency Resolution Process for Corporate Person (Contd..)

PESON NOT ENTITLED TO INITIATE CIRP

- A corporate debtor undergoing a CIRP or has completed CIRP 12 month preceding the date of making of an application.

- A corporate debtor or a financial creditor who has violated any terms of resolution plan.

- A corporate debtor in respect of whom a liquidation order has been made.
Thanks & Regards
Anand Chura
B.com, M.com, ACS, LL.B.