



A STRUCTURED OVERVIEW OF CORPORATE INSOLVENCY REGIME IN INDIA

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***What is the purpose
of Insolvency and
Bankruptcy Code
2016***



PURPOSE- IBC 2016

- 1. To consolidate & amend the laws relating to insolvency & bankruptcy;*
- 2. To fix the time periods for execution of the law in a time bound manner;*
- 3. To increase the availability of credit;*
- 4. To balance the interests of all stakeholders including alteration in the order of priority of payment;*
- 5. To establish an Insolvency & Bankruptcy Board of India as a regulatory body for insolvency & bankruptcy law.*

Insolvency & Bankruptcy

Code, 2016



To speed up resolution of stressed assets in the country

WHY



WHO

Applicable to:
Individuals,
partnerships, LLPs and
Corporates



Authority to decide insolvency application within 180 days (90 days extension allowed)

WHEN



WHEN

Fast track process of 90 days available for specified entities



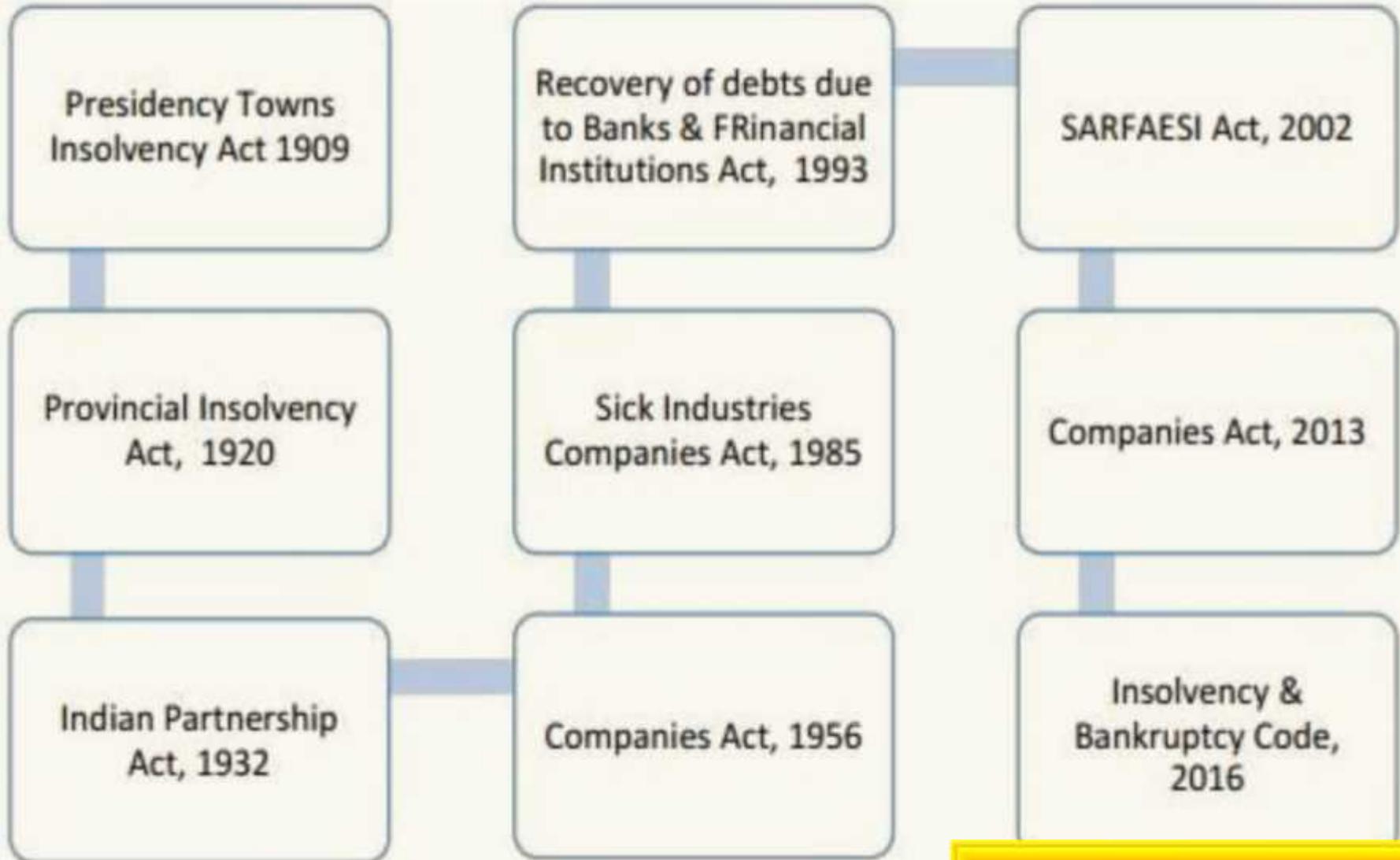
Adjudicating authority:
NCLT for corporates,
DRT for individuals &
partnership firms

HOW

With the recent changes in the legal landscape of India, the Insolvency & Bankruptcy Code, 2016 (“Code”) is the biggest and major legal reforms in the recent times, which has curtailed the earlier extensive process of debt recovery and insolvency. The Code has repealed around eleven laws and provides a comprehensive and time bound mechanism to either put a distressed entity on a firm revival path or timely liquidation of assets.

The Adjudication Authority for companies shall be National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) and Supreme Court shall be the highest order of appeal or having jurisdiction to grant any stay or injunction in respect of matters within the domain of the NCLT and NCLAT.

Legislative Journey so far.....



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 or corporation is declared incapable of paying their due & payable bills

Liquidation is the process of winding up a corporation or incorporated entity.

Parties- Who can initiate Corporate Insolvency Process

Financial Creditor

Any person to whom a financial debt is owed & includes to whom such debts has been legally assigned or transferred. Financial debt means a debt along with interest, if any which is disbursed against the consideration for the time value of money.

Corporate Debtor

Any corporate person who owes a debt any person. Corporate person means a Company as defined in S.2 (20) of the Companies Act, 2013; a limited liability partnership as defined in S. 2 (1) (n) of LLP Act, 2008 or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider by themselves can initiate the corporate insolvency process.

Operational Creditor

Any person to whom a operational debt is owed & includes to whom such debts has been legally assigned or transferred. Operational debt means 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

Admission by NCLT

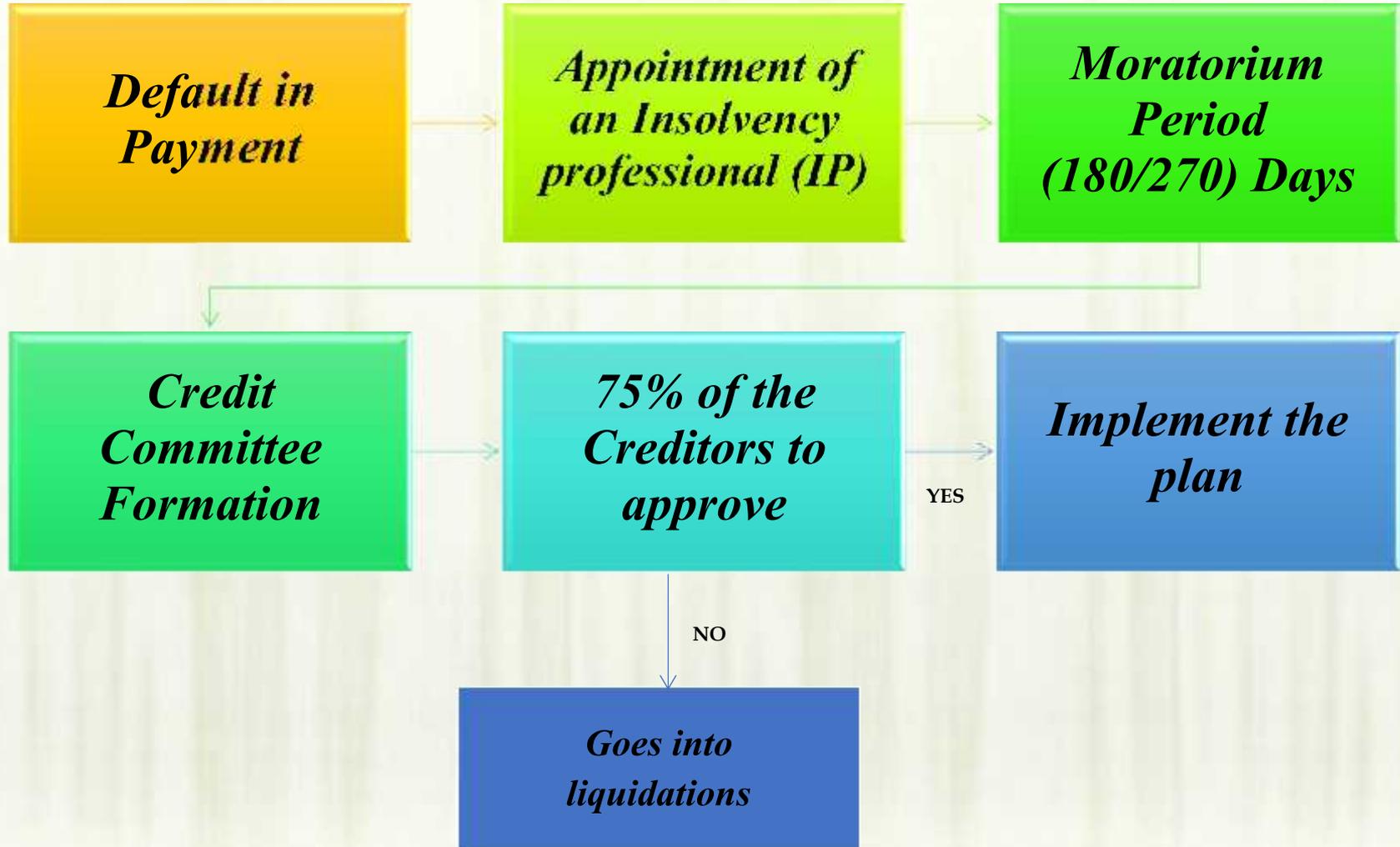
The Code provides that the insolvency resolution shall have to be completed within 180 days (maximum one-time extension of 90 days allowed) from the date of admission of application for insolvency resolution. Once the application is admitted by the NCLT, the following consequences immediately will take place in respect of the corporate debtor.

Moratorium- *The NCLT would declare a moratorium prohibiting any suits against the debtor, execution of any judgement of a court or authority, any transfer of assets by the debtor, recovery of any property against the debtor. The moratorium will continue till the resolution process is completed.*

Power to manage the affairs of the corporate debtor rest with interim resolution professional (IRP)- An interim Resolution Professional would be appointed by NCLT to manage the affairs of the corporate debtor within 14 days of the commencement of the resolution process. Board of Directors shall remain suspended and affairs of the company shall come under the control of the Resolution Professional. And, then a public announcement would be issued by the Insolvency professional giving details of the commencement of the process, asking all the creditors to submit their claims in the prescribed form along with proof of their claims.

However, erstwhile Board of Directors who are no longer in management, cannot even maintain an appeal on behalf of the corporate debtor.

Corporate Insolvency Resolution & Liquidation Process



Liquidation Process

Circumstances under which NCLT will pass liquidation order: In the event NCLT rejects the resolution plan or if a resolution plan has not been submitted to the NCLT within the maximum period of 180 days plus any extension, thereof it must order the liquidation of the corporate debtor or if the Committee of Creditors decide to liquidate the debtor, then also NCLT must pass a liquidation order.

Liquidation & Insolvency

Post Liquidation- Distribution of Proceeds

- ***Insolvency resolution process costs and the liquidation costs in full.***
- ***Workmen dues for 24 months preceding the liquidation commencement date and debt owed to a secured creditor if he has relinquished his security shall among themselves rank equally.***
- ***Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date.***
- ***Financial debts owed to unsecured creditors.***
- ***The following dues shall rank equally between themselves:***
 - Any amount due to the Central Government and the State Government for a period of 2 years preceding the liquidation commencement date, and debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.***
- ***Any remaining debts and dues.***
- ***Preference shareholders if any and***
- ***Equity Shareholders or partners, as the case may be.***

The above priority distribution should be made within 6 months from the receipt of the proceeds after deducting the associated costs. If certain assets could not be sold, it may be given to the stakeholders after getting the approval from NCLT.

The Code is a step in right direction and while there will be nuances and controversies in dealing with the process, it is appreciated that during the short span of time, various landmark and unique decisions are delivered by NCLT, NCLAT and Supreme Court. It is premature to comment whether the Insolvency professional will be able to run and manage a corporate debtor (sick company) while its promoters could not run the same. However, in the time to come, these professionals will become experts in dealing with the process, as the Code has given full power and duties are assigned to the Insolvency Professionals. Though most of the creditors, banks/financial institutions bank upon on the process of this Code, certain creditors may invoke the Insolvency and Bankruptcy Code as a last resort.



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- *Complete assistance for advising & assisting in insolvency & bankruptcy process in India.*
- *Represent your Company or protect your claim & interest against Financial & Operational Creditors in NCLT & NCLAT.*
- *Legal Strategy & follow up support at various points in time during and after the pendency of the insolvency & bankruptcy application before NCLT & NCLAT in a systematic and timely manner.*
- *To know the further details contact us at admin@equicorplegal.com / 08448824659*



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Our Presence



Our Commitment

Value

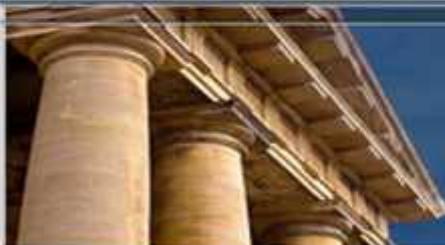
- *One stop legal boutique where assignments carried out at a fraction of the cost of client's staff*
- *Reduce client staff management time and overhead costs, and increase client's profitability*
- *Enable clients staff to concentrate on more interesting and value-added work*

Service

- *Robust management and procedures to ensure delivery on time and on budget*
- *Dedicated one-to-one communication with client, to ensure every project is right first time*
- *Full service delivery is achieved by synergies of subject matter expertise of our in-house Lawyers, Chartered Accountants, Company Secretaries and Tax Consultants*

Quality

- *Two-level file review and signoff by expert Lawyers, even for the smallest assignment*



Our Core Strengths

- ❖ *Dedicated team of legal professionals with strong deal exposure and knowledge of regulations /compliances across multi industry sectors.*
- ❖ *Proactive and structured approach.*
- ❖ *Well defined Project methodology tailored to suit the needs of clients for service delivery.*
- ❖ *Talented team with experience of working with some of the largest companies in India exposure to leading cross border transactions in India.*
- ❖ *Experience & proven capabilities to handle Diversified Multi-National Clients i.e. Information Technology, Energy, Manufacturing, Consultancy, Oil & Gas Sector, Retail Trading, Hospitality, and related sectors.*
- ❖ *Competitive advantage of costing by virtue of expertise and experienced resources.*



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