

Verve Asset Solutions LLP



|| Corporate & Structured Finance || Insolvency & Resolution Advisory ||
|| Forensic Audit || Due Diligence

Insolvency & Bankruptcy Code, 2016-

An Overview And Opportunities & Threats

14 | 12 | 2019

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Journey of the Code

August 2014	BLRC formed under the Chairmanship of Mr. TK Vishwanathan
February 2015	BLRC submitted its interim report to Ministry of Finance (MoF)
February 2015	MoF invited Public Comments
November 2015	Final report of BLRC & Draft Code
November 2015	MoF invited comments on BLRC Report & Draft Code
December 2015	Code introduced in Parliament
December 2015	Code referred to Joint Parliamentary Committee (JPC)
January 2016	JPC invited comments on the Code
May 2016	IB Code passed in Lok Sabha
May 2016	IB Code passed in Rajya Sabha
May 2016	Received President's Assent
December 2016	Became Effective

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Numerous amendments
thereafter!!



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Debt Recovery Situation – Earlier Scene

- SICA, 1985, RDDDBF Act, 1993, SARFAESI Act, 2002
- Most of the recovery mechanism was for Financial Institutions
- RECOVER instead to RESOLVE



Debt Recovery Situation – Earlier Scene

- Control of insolvent companies remained with Promoters
- No Monitoring System
- Companies - bankrupt, Promoters - survived/enriched
- Time Consuming & Complex Process



Debt Recovery Situation – Earlier Scene

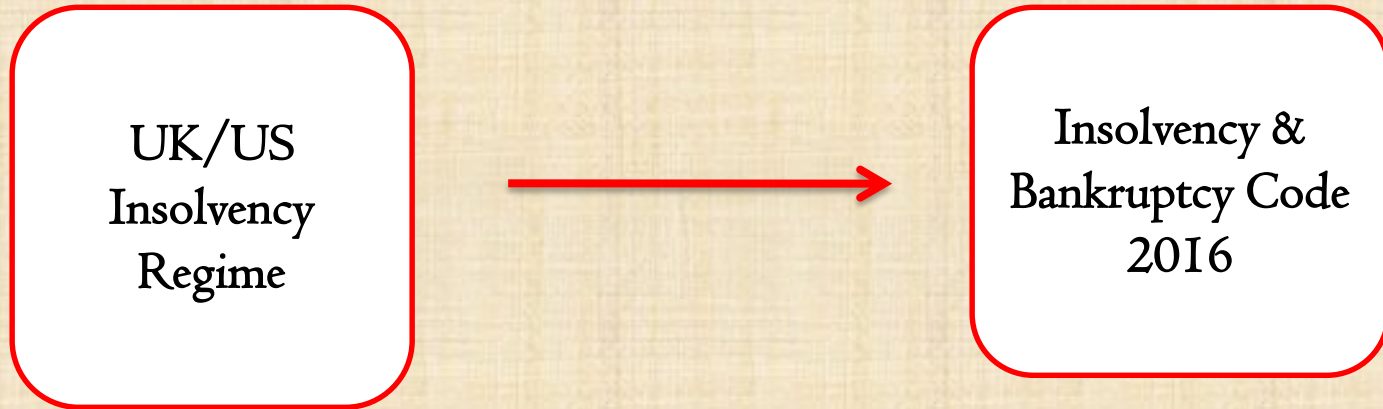
- Earlier Laws were Fragmented - SICA, SARFAESI, DRT/BIFR
- Multi Layered Process
- No strong provision for Unsecured Creditors

West is the Word



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Same is with IBC



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IBC, 2016 – Purpose

- Shift decision making to CREDITORS in case of default
- Powers of Board of Directors (BoD) gets SUSPENDED
- **Financial Creditors** have utmost importance
- Thrust to RESOLVE the Stressed Assets
- If no resolution is possible, LIQUIDATE

Impact of IBC, 2016

- Promoters **LOOSE CONTROL** over their companies
- Resolution Professional to assume all rights of BoD
- **TIME BOUND** process
- Keep a **MONITOR/SUPERVISOR**
- **Government Dues** take a **BACKSEAT** in the Process

Impact of IBC, 2016

- Company to run as a **Going Concern** during Insolvency Process
- **Operational Creditors and Promoters do not have a say** in overall Process.
- Guarantors – Personal/Corporate cannot escape

Impact of IBC, 2016

- Following Acts were Repealed

- Presidency Towns Insolvency Act, 1909

- Provincial Insolvency Act, 1920

- Sick Industrial Companies Act, 1985

- Board of Industrial & Financial Reconstruction went off

Important Terms of CIRP Process / IBC, 2016

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Corporate Debtor - CD

- Entity which may face Insolvency Proceedings.
- Currently it can be only a PVT. Ltd Company, PUBLIC Ltd. Company or a Limited Liability Partnership
- Soon will be made applicable to Proprietorships, Partnerships & Individuals



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Committee of Creditors - CoC



- Formed with Financial Creditors like Banks, FIs, NBFCs
- In rare cases Operational Creditors can become its part
- Their voting share depends on the amounts outstanding
- Decisions are with 66% or 51% depending on subject matter.

Operational Creditors - OCs



- Suppliers
- Service Providers
- Government Depts

Resolution Applicant - RA

- A Company, Fund or Individual who may be interested to takeover the Corporate Debtor
- With negotiated liabilities
- He will submit Resolution Plan
- In case of SMEs it could be existing Promoters
- In other cases it has to be an unrelated party, if existing promoters are in default



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Resolution Plan



- To be submitted by Resolution Applicant
- Each stakeholders' interest has to be addressed
- Depends on how RA values the assets
- Need not have to pay all, liabilities if the value is not sufficient.
- Plan will be verified by Resolution Professional.
- Has to be approved by CoC & NCLT
- Binding on all stakeholders on NCLT Nod

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Resolution Professional

- Qualify an exam prescribed by IBBI
- Professionals with Min 10 years of experience
- Qualify through Graduate Insolvency Program
- Initially he is proposed by Applicant
- Later CoC may continue him or replace him



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Resolution Professional

- Oversees CIRP
- Has to manage CD's business
- Reports to CoC
- Call & verify claims from creditors
- Formulate eligibility criteria for Resolution Applicant
- Design Evaluation Matrix for Resolution Plans



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Surprises & Pains for Resolution Professional

- Kidnapping
- Threats
- Punishments
- Deadlines
- Pressures from various stakeholders



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Myths & Facts about IPs



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IBC in Nutshell

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What Defaults are Covered?

IBC is not limited only to Bank/
Financial Debt Defaults



It also entertains Operational defaults

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Who can make an application under IBC?



Financial Creditor
(Bank/FI or ARC)



Operational Creditor
(Creditor for Supplies & Services)



Corporate Debtor
(Borrower or Debtor)

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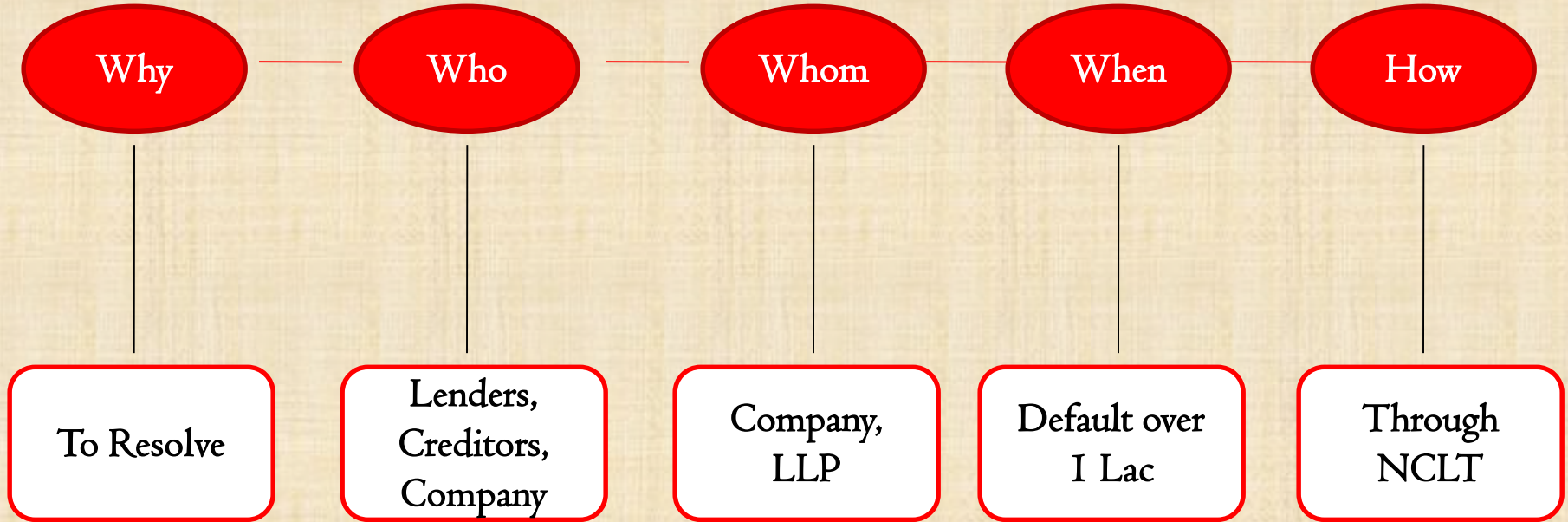
What should be the minimum amount of default?



As Low as Rs. ONE LAC, This may Change

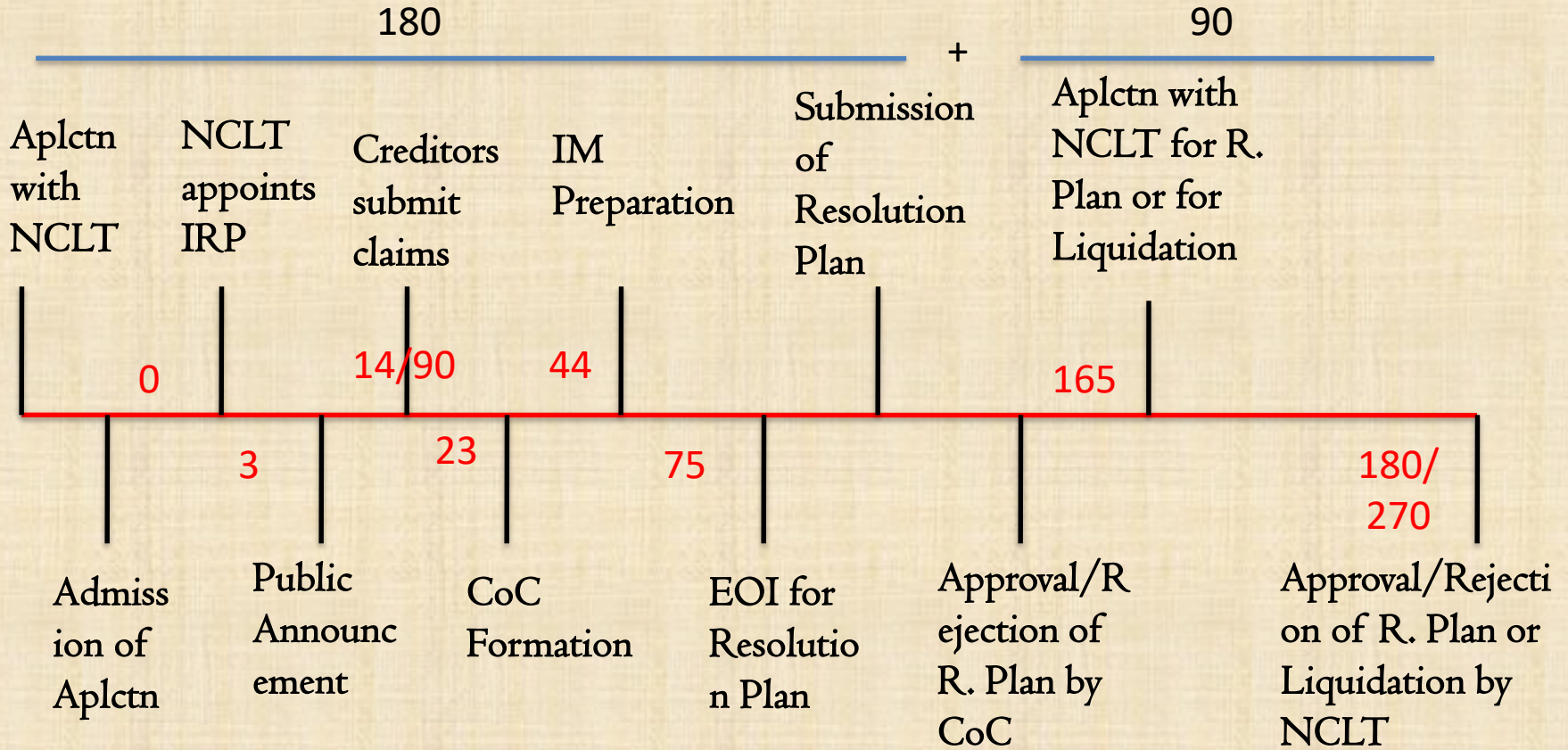
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IBC, 2016 – In Nutshell



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CIRP Process



IBC FOR OPERATIONAL CREDITORS



Operational Creditors to Establish

Existence of DEFAULT / OVERDUES



No PRIOR Disputes

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What are the precautions to be taken as a creditor?

- Make proper contract/PO
- Adhere to Terms
- Negate any false dispute
- Keep Proof of non existence of dispute



What are the precautions to be taken as a debtor?

- Make proper Contract/PO
- Adhere to Terms • Advice Clients to recover dues through IBC
- Document a dispute
- Keep Proof of dispute



What is important for us to understand?

- IBC, 2016 can be used as a recovery tool.
- It can be used as a recovery tool by your creditors, as well!!

LIQUIDATION UNDER IBC

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Attempt of
Resolution Fails



Compulsory
Liquidation

Time Bound Liquidation within 1 Year

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Glimpses about Liquidation

- RP appointed as Liquidator
- 2 years timeframe reduced to 1 year
- Assets to be sold through Auction
- One on one sale is possible after seeking NCLT Permission

Glimpses about Liquidation

- Assets can be sold individually
- Company can be sold as a Going Concern
- Business of the CD can be sold as a Going Concern
- Remuneration of Liquidation dependent on Sale of assets unless otherwise agreed with CoC.
- Most of the rights with Liquidator instead of CoC

Liquidation – Distribution of Assets

- Insolvency Resolution Process Cost
- Workmen dues & Secured Creditors
- Wages/unpaid dues to employees
- Financial debts to unsecured creditors
- Amounts to Central & State Governments & unpaid Debts to secured creditors in case of Security Enforcement
- Other Debts & Dues
- Preference Shareholders
- Equity Shareholders

Recent Amendments

- Personal Guarantors to Corporate Debtors
- NBFCs with asset size of 500 Cr or more

have been brought under the ambit of IBC

Recent Amendments

- Home buyers cannot easily bring in Developers under IBC

minimum 100 such buyers or 10% of such buyers will have to file a joint application

IBC – Threats

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Threats

Insolvency Proceedings can be initiated against a
Company for as low a default as **ONE Lac**

By

Almost Any Creditor

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Threats

With the start of the process

Promoter

Immediately loses control

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What is in there for us?

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What are the opportunities?

Recover Pending Dues



Investment Opportunities

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MULTIPLE OPPORTUNITIES FOR CAs

- As Insolvency Professional
- As counsels in NCLT, Appellate Tribunal
- As Registered Valuer for Securities & Financial Assets
- Claim verification for RPs
- Transaction Audits

MULTIPLE OPPORTUNITIES FOR CAs

- Outsourcing Accounting work of RP managed companies
- Help RPs in carrying out the process
- Resolution Plan Advisory for their clients
- Conduct Balance Sheet Hygiene for clients
- Contract drafting or Contract Audit of clients

MULTIPLE OPPORTUNITIES FOR CAs

- Advice Clients to recover dues through IBC
- Find Insolvent Companies for acquisition
- Liquidation Assets scouting
- Create and manage vulture funds

IBC, 2016 is already a part of CA Curriculum !!

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