

**THE JOURNEY OF
INSOLVENCY AND BANKRUPTCY CODE
SINCE EVOLUTION
AND
GATEWAY OF PROFESSIONAL OPPORTUNITIES
FOR CHARTERED ACCOUNTANTS**

9TH DECEMBER, 2024

- CA. AMIT C. PODDAR

WHAT IS IBC?

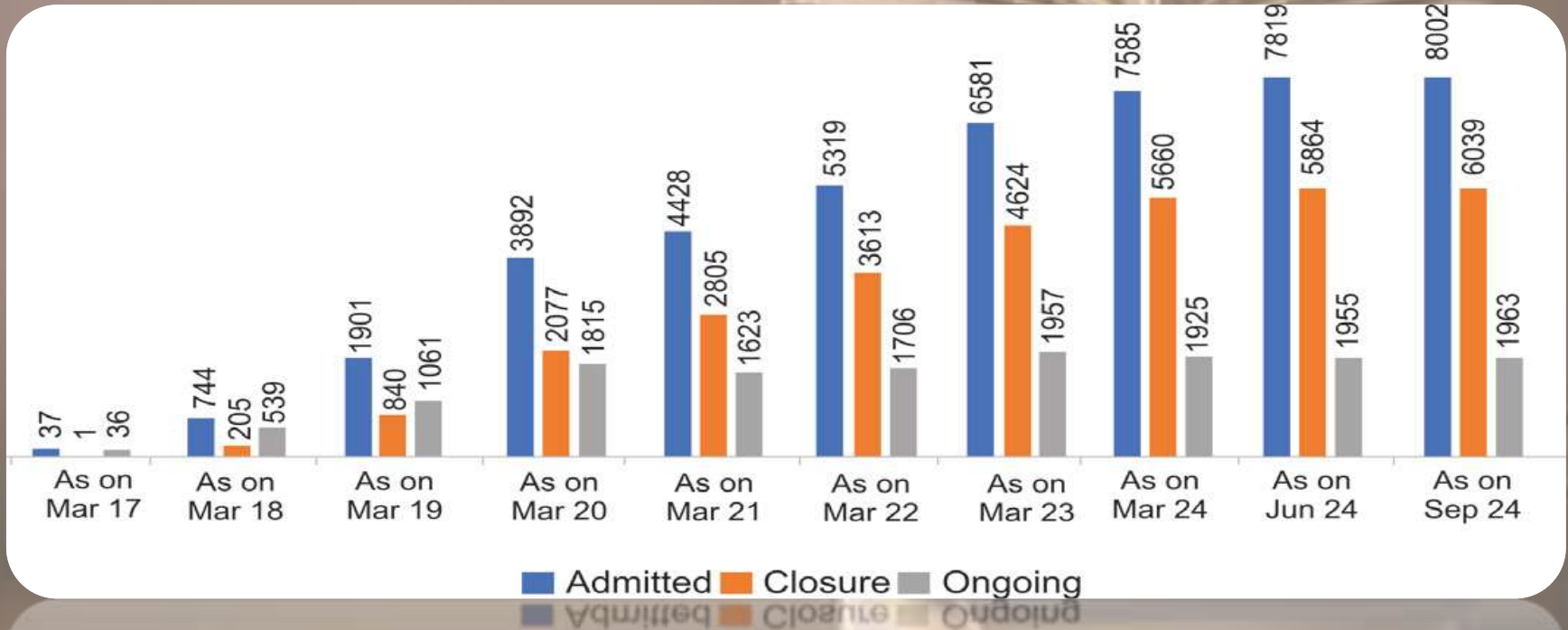
The Insolvency & Bankruptcy Code, 2016, is a comprehensive legislation in India, which was introduced to consolidate and amend laws relating to insolvency and bankruptcy for companies, partnerships and individuals in a time – bound manner. The primary objective of IBC is to promote a resolution process for stressed businesses, ensuring the best possible outcome for creditors while preserving the value of the debtor’s assets.

History of the Code

August 22, 2014	Bankruptcy Law Reforms Committee (BLRC) formed under the chairmanship of T.K. Vishwanathan
February 5, 2015	BLRC submitted its interim report to Ministry of Finance (MOF)
February 10, 2015	MOF invited public comments on interim report of BLRC
November 4, 2015	Volume 1 – Final Report of BLRC, Volume 2 - Draft Code
December 21, 2015	Code introduced in the Parliament
December 23, 2015	Code referred to Joint Parliament Committee
January 22, 2016	Joint Committee invited comments on the Code
May 5, 2016	Bankruptcy Code passed by Lok Sabha
May 11, 2016	Bankruptcy Code passed by Rajya Sabha
May 28, 2016	Received President's Assent

Year	The Journey of Insolvency and Bankruptcy Code 2016
2016	<ul style="list-style-type: none"> • IBC introduced and enacted by Parliament, effective from May 28, 2016. • National Company Law Tribunal (NCLT) was also established as Adjudicating Authority for Companies/ LLPs.
2017	<ul style="list-style-type: none"> • Starting from Essar Steel judgement passed by Hon'ble Supreme Court in the year 2017, various landmark judgments have been delivered from time to time in insolvency matters under the IBC, laying down major amendments to streamline the processes under IBC. • The RBI identified 12 large defaulting cases for resolution under the Insolvency & Bankruptcy Code. These cases were selected based on their significant contribution to the overall NPAs in the banking system accounting for about 25% of the total NPAs. The RBI directed banks to file insolvency proceedings against these companies with the NCLT.
2018	<ul style="list-style-type: none"> • Homebuyers Recognized: Amendments to give homebuyers/ allottees the status of financial creditors. • The Supreme Court of India upheld the constitutional validity of IBC.
2019	<ul style="list-style-type: none"> • The time limit for resolution extended from 270 days to 330 days. • Pre – packaged insolvency resolution process for MSMEs. • Regulations on Personal Guarantors to Corporate Debtor notified. • Cross – border insolvency framework was proposed.
2020	<ul style="list-style-type: none"> • Suspension of fresh insolvency proceedings due to COVID – 19 (Section 10A) for defaults occurring after March 25, 2020. • Threshold for default increased from Rs.1.00 lakh to Rs.1.00 crore.
2021	<ul style="list-style-type: none"> • Pre-Pack Framework for MSMEs formally introduced.
2022	<ul style="list-style-type: none"> • Proposed amendments to include a robust cross – border insolvency framework, aligning with the UNICITRAL Model Law.
2023	<ul style="list-style-type: none"> • Proposals to enhance creditor rights and introduce a Code of Conduct for Resolution Professionals (RPs)

Chart Showing Increasing Reliance on IBC



Summary of CIRP cases as on September 30, 2024



CIRP Cases	Number
Admitted	8002
Withdrawn u/s 12A	1120
Closed on appeal or review or settled	1221
Resolution plans approved	1068
Liquidation order passed	2630
Ongoing CIRP Cases	1963

BEFORE IBC

Multiple Overlapping Laws for Recovery

- SARFAESI Act, 2002
- RDBA Act, 1993
- Companies Act, 1956/2013
- Indian Contract Act, 1872

Low Recovery Rates

Prolonged Legal Processes

Disadvantageous for Creditors as the control of the business was with Debtor/ Promoters

Liquidation Focused Approach

AFTER IBC

Unified Framework for Recovery

- Insolvency and Bankruptcy Code, 2016

Improved Recovery Rates

- Recovery rates improved by 43%
- Landmark resolution like *Essar Steel* achieving highest resolution of over 85%

Moratorium protection for all legal matters against the Corporate Debtor

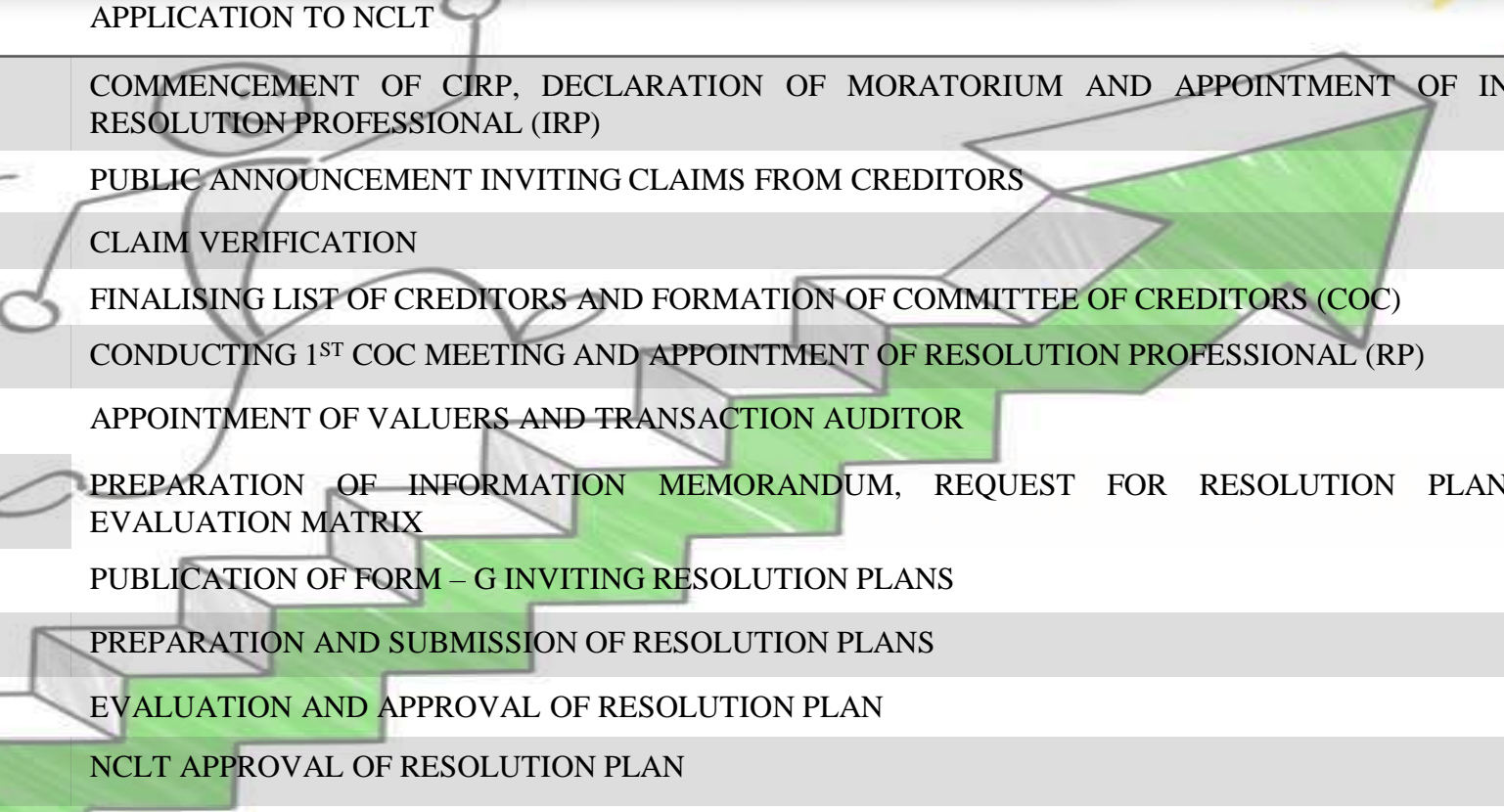
Creditor Centric Model – The business control passes to Creditors

Revival over Liquidation

IMPACT OF IBC

- I. Enhanced Recovery Rates** – Before IBC the Creditors struggled with low recovery rates (around 26%) due to inefficient mechanisms like SARFAESI, Debt Recovery Tribunals (DRT) and Lok Adalats. After IBC the recovery rates improved to 40 - 45 % as the Code prioritised structure and market – driven resolutions.
- II. Time –bound Resolution** – Before IBC the insolvency cases often dragged on for 4-5 years, causing asset value erosion. After the IBC, the law mandates resolution within 330 days, significantly reducing delays. Faster resolutions have saved asset value, enabling better recoveries for creditors.
- III. Strengthen Creditor Rights** – IBC empowered financial creditors by establishing the Committee of Creditors (CoC) as the decision making authority. It gave the operational creditors a voice in insolvency, ensuring they are not ignored during recoveries. It enabled creditors to initiate insolvency proceedings against defaulters, enforcing stricter credit discipline and ease of doing business.
- IV. Revival of Stressed Business** – The law is focused more on resolution over liquidation, ensuring viable businesses are revived under new management. Eg: **Bhushan Steel** was acquired by Tata Steel group for Rs.35,200 crores, preserving operations and employment.
- V. Reduction in NPAs** – It helped banks tackle the burden of non – performing assets (NPAs) by providing a mechanism for resolution and recovery. Nearly Rs.11.00 lakhs crores of stressed assets have been resolved since its inception. The law also enabled the banks to clean up their balance sheets and recovery of blocked funds, paving the way for fresh lending.
- VI. Promoted Foreign Investment** – Transparency and time – bound resolutions attracted foreign investors to India’s distressed asset market.
- VII. Enhanced Credit Culture** – Discouraged wilful defaults, defaulters now face risk of losing control of their businesses. Borrowers are more disciplined in servicing debt, as creditors can initiate insolvency proceedings against defaulters.
- VIII. Liquidation of non – viable entities** – IBC ensures that companies with no prospects of revival are liquidated, freeing up resources for productive use.

STEP – BY – STEP PROCESS OF CIRP



STEP 1	APPLICATION TO NCLT
STEP 2	COMMENCEMENT OF CIRP, DECLARATION OF MORATORIUM AND APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL (IRP)
STEP 3	PUBLIC ANNOUNCEMENT INVITING CLAIMS FROM CREDITORS
STEP 4	CLAIM VERIFICATION
STEP 5	FINALISING LIST OF CREDITORS AND FORMATION OF COMMITTEE OF CREDITORS (COC)
STEP 6	CONDUCTING 1 ST COC MEETING AND APPOINTMENT OF RESOLUTION PROFESSIONAL (RP)
STEP 7	APPOINTMENT OF VALUERS AND TRANSACTION AUDITOR
STEP 8	PREPARATION OF INFORMATION MEMORANDUM, REQUEST FOR RESOLUTION PLAN AND EVALUATION MATRIX
STEP 9	PUBLICATION OF FORM – G INVITING RESOLUTION PLANS
STEP 10	PREPARATION AND SUBMISSION OF RESOLUTION PLANS
STEP 11	EVALUATION AND APPROVAL OF RESOLUTION PLAN
STEP 12	NCLT APPROVAL OF RESOLUTION PLAN
STEP 13	LIQUIDATION (If no resolution plan is approved)

STEP – BY – STEP PROCESS OF LIQUIDATION

STEP 1	APPOINTMENT OF LIQUIDATOR AND DECLARATION OF MORATORIUM (Fresh moratorium declared)
STEP 2	PUBLIC ANNOUNCEMENT INVITING CLAIMS FROM STAKEHOLDERS
STEP 3	VERIFICATION AND CONSOLIDATION OF CLAIMS
STEP 4	FINALISING LIST OF STAKEHOLDERS AND FORMATION OF STAKEHOLDERS CONSULTATION COMMITTEE (SCC)
STEP 5	VALUATION OF ASSETS
STEP 6	FORMATION OF ASSET MEMORANDUM, PRELIMINARY REPORT AND LIQUIDATION ESTATE
STEP 7	SALE OF ASSETS / CORPORATE DEBTOR THROUGH AUCTION
STEP 8	DISTRIBUTION OF PROCEEDS (Waterfall Mechanism)
STEP 9	SUBMISSION OF FINAL REPORT AND COMPLIANCE CERTIFICATE IN FORM 'H'
STEP 10	CLOSURE OF LIQUIDATION PROCESS / DISSOLUTION OF CORPORATE DEBTOR

A person wearing a light blue button-down shirt is seated at a white desk. They are using a black calculator with their right hand and holding a stack of banknotes in their left hand. The desk is cluttered with various items: a white notebook with a yellow cover, a white pen, several sheets of paper, and another stack of banknotes. In the background, there is a window with a view of a bright outdoor area, and a potted plant with green leaves and yellow flowers sits on a windowsill. The overall scene suggests a professional or financial setting.

**GATEWAY OF PROFESSIONAL OPPORTUNITIES
FOR CHARTERED ACCOUNTANTS**

INSOLVENCY PROFESSIONAL

An **Insolvency Professional (IP)** is a qualified and licensed individual responsible for managing the insolvency resolution, liquidation, or bankruptcy process under the Insolvency & Bankruptcy Code (IBC), 2016. They act as neutral intermediaries to ensure that insolvency proceedings are conducted efficiently and transparently, balancing the interests of debtors and creditors.

KEY ROLES OF AN IP


1. Interim Resolution professional (IRP)
2. Resolution Professional (RP)
3. Liquidator
4. Bankruptcy Trustee

QUALIFICATIONS AND ELIGIBILITY FOR INSOLVENCY PROFESSIONAL

- ❑ 10 Years Post Qualification experience for CA, CS, Cost Accountant, Advocate from the date of membership or from the date of membership of Bar Council.

OR

- ❑ 15 years management experience after any bachelor's Degree (10 years in case of MBA).
- ❑ Passing Limited Insolvency Examination within 12 months before the date of his application for enrolment.
- ❑ Completion of 50 hours Pre-registration Course conducted by IPAs.
- ❑ Should not be in employment at the time of making application for enrolment.
- ❑ Should have a minimum CIBIL Score of 650.
- ❑ An Insolvency Professional can also continue his profession
- ❑ After passing the Graduate Insolvency Programme (GIP)



QUALIFIED

Distribution of IPs as per their Eligibility as on September 30, 2024

Eligibility	No. of IPs (Individual)		
	Male	Female	Total
Member of ICAI	2196	222	2418
Member of ICSI	600	138	738
Member of ICMAI	185	19	204
Member of Bar Council	237	36	273
Managerial Experience	711	36	747
PGIP Qualified	39	6	45
Total	3968	457	4425

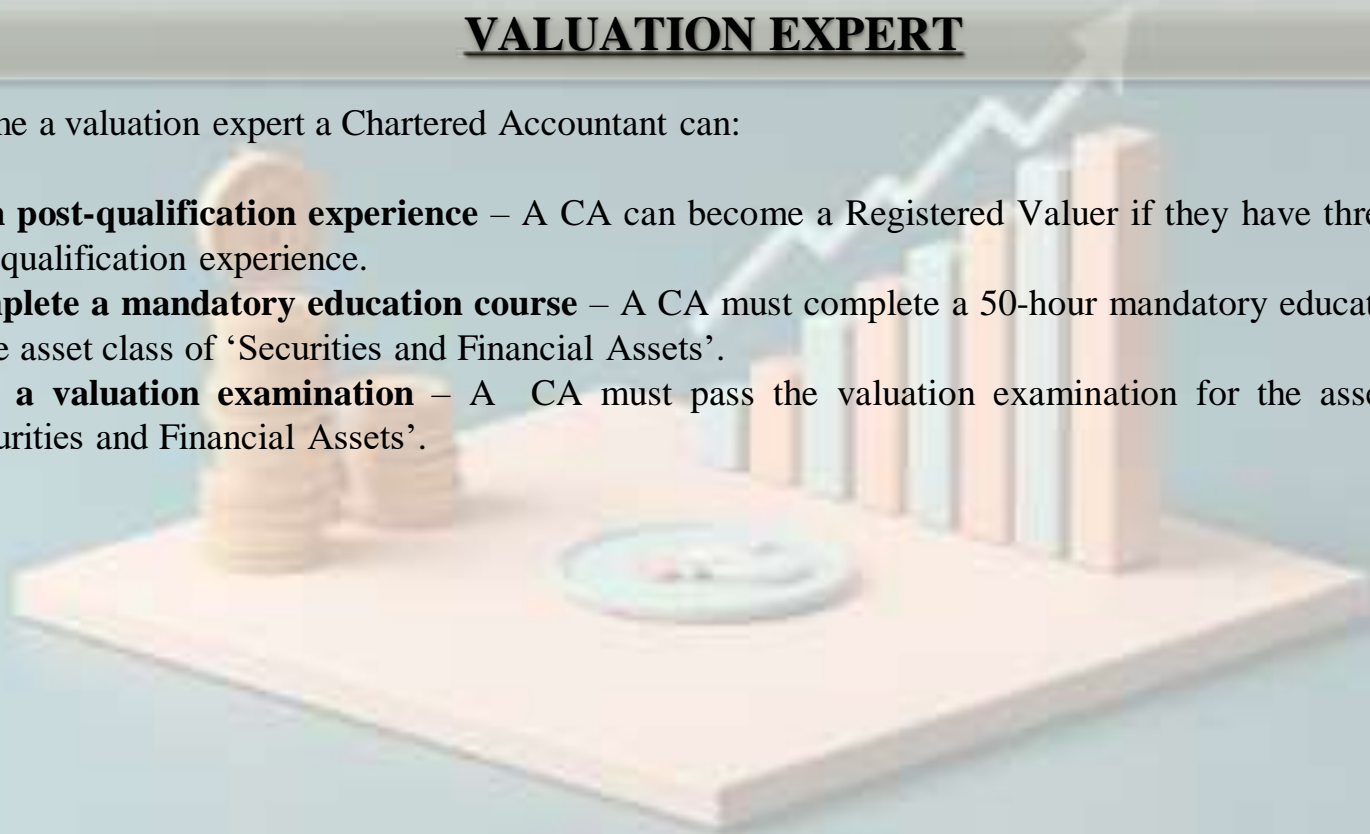
ADVISOR TO CORPORATE DEBTORS UNDERGOING CIRP

- ❑ Advise the debtor in managing operations and collaborating with the Resolution Professional (RP).
- ❑ Analyse the debtor's financial position.
- ❑ Ensure tax compliance, optimize tax liabilities and advise on tax implications.
- ❑ Provide support in operational restructuring, business continuity, and performance improvement.
- ❑ Manage stakeholder communications, including media engagement and crisis management.
- ❑ Assist in decision – making, align goals and mitigate risks during CIRP.
- ❑ To protect corporate debtor's interests, maximise asset value and facilitate a successful resolution.

VALUATION EXPERT

To become a valuation expert a Chartered Accountant can:

- **Gain post-qualification experience** – A CA can become a Registered Valuer if they have three years of post-qualification experience.
- **Complete a mandatory education course** – A CA must complete a 50-hour mandatory education course in the asset class of ‘Securities and Financial Assets’.
- **Pass a valuation examination** – A CA must pass the valuation examination for the asset class of ‘Securities and Financial Assets’.



A background image showing a business meeting with people in suits sitting around a table, looking at documents and talking. The image is faded and serves as a backdrop for the text.

CONSULTATIONS TO ENTITIES UNDER FINANCIAL STRESS **(INCLUDING OPTIONS AND THREATS UNDER IBC)**

- Identifying and evaluating distressed firms for restructuring and rescue planning.
- Formulating Risk Mitigation Strategies.
- Designing a viable Financial Structure.
- Creating Comprehensive Restructuring Plan.
- Evaluating distressed assets and feasibility turnaround.
- Optimizing Resource Utilization.
- Drafting Insolvency petitions and Representations before NCLT and NCLAT.
- Negotiating with creditors.
- Advising on mergers, acquisitions or takeovers.
- Ongoing advisory support to management.

TRANSACTION AUDITOR

- ❑ Conducting investigations and assessments of transactions falling under sections 43, 45, 50 and 66 of IBC to determine their viability.
- ❑ Identifying Preferential Transactions (section 43).
- ❑ Examining transfers or gifts of assets made at a lower value than their actual sale consideration, resulting in potential harm to creditors (section 45).
- ❑ Identifying transactions involving payment of extortionate amount (section 50)
- ❑ Identifying transactions made with the intent to defraud creditors, which are deemed fraudulent under the IBC provisions (section 66).

REPRESENTATIVE OF A MEMBER OF COMMITTEE OF CREDITORS

- ❑ Member of COC can appoint a CA as representative for attending the meetings
- ❑ The participant of meeting need not be an employee of the CoC member
- ❑ Role is to understand the proceedings and protect the interest of member
- ❑ To prepare a report on the meeting and keep the member fully appraised

SUPPORT SERVICES TO INSOLVENCY PROFESSIONALS

- ❑ Preparation of Information Memorandum
- ❑ Claim Verification Process
- ❑ Vetting of Resolution Plans submitted to Resolution Professional
- ❑ Internal audit during CIRP at the instance of RP with special focus on fund flow and leakage of funds during CIRP
- ❑ Stock audit during CIRP as RP is responsible for protection of assets while the business is being run by KMPs
- ❑ Statutory audits in case RP wants to change the auditor and COC approves it
- ❑ Audit of Income and Expenditure or Receipts and Payments of Corporate Debtor during liquidation process

ADVISOR TO RESOLUTION APPLICANTS FOR TAKING OVER COMPANIES THROUGH RESOLUTION PLANS

- ❑ Guiding clients for taking over companies under IBC
- ❑ Complete advisory services for strategy, preparation of documents, process and implementation for submission of Resolution Plan to take over a Corporate Debtor
- ❑ Preparation of Resolution Plan with sustainable debt and restructuring of debt and equity
- ❑ Arrangement of funds for taking over companies under IBC
- ❑ Consultancy for acquisition funding under IBC
- ❑ Representing the Resolution Applicant before RP and COC

THANK YOU

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