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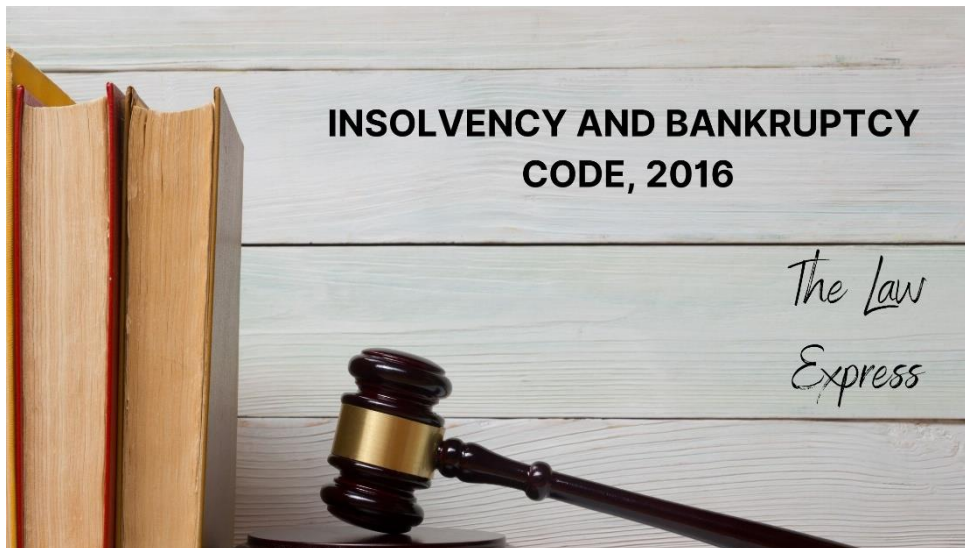
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FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016



(SECTION 1 TO 5 COVERED IN THIS ARTICLE)

• **Insolvency**

A situation where debtor is unable to pay his debt.

➤ **Bankruptcy**

A person or company is legally declared incapable of paying their dues.

➤ **Liquidation**

It is a process of bringing a company to an end.

Preamble:

- *Insolvency and Bankruptcy code is an act enacted by the Parliament.*
- *It got presidential assent on 28 May 2016.*
- *The intent of the act is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.*

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Insolvency And Bankruptcy – Concepts

Insolvency is a state when an individual, corporation, or other organization cannot meet its financial obligations for paying debts as they become due.

Bankruptcy is a legal declaration given by the court resulting in the liquidation of assets or reorganisation of debt repayment.

Bankruptcy often leads to a fresh start or a chance to rebuild financially, while insolvency requires careful financial management and strategic planning to overcome financial difficulties.

In case of insolvency, one cannot pay off the debts, whereas in the case of bankruptcy, a court order states as how an insolvent person or business has to pay off their debts – by way of selling their assets or erasing the debt that cannot be paid.

Background:

The era before IBC had various scattered laws relating to insolvency and bankruptcy which caused inadequate and ineffective results with undue delays. For example,

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act SARFAESI – for security enforcement.
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) for debt recovery by banks and financial institutions.
- Companies Act for liquidation and winding up of the company.
- Ineffective implementation, conflict in one of these laws and the time-consuming procedure in the above mentioned laws, made the Bankruptcy Law Reform Committee draft and introduce Insolvency and Bankruptcy Law bill.

The IBC 2016 has laid down a collective mechanism for resolution of insolvencies in the country by maintaining a delicate balance for all stakeholders to preserve the economic value of the process in a time bound manner.

Bankruptcy Law Reforms Committee (2014)

On 22 August 2014, the Ministry of Finance created the Bankruptcy Legislative Reforms Committee (BLRC). The committee was headed by T. K. Viswanathan, and tasked with drafting a new bankruptcy law and submit a report on the same.

- The objectives of the Committee were to resolve insolvency with: lesser time involved, lesser loss in recovery, and higher levels of debt financing across instruments;

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- The Committee had recommended a consolidation of the existing legal framework, by repealing two laws and amending six others;
- It had proposed to repeal the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920;
- In addition, it had proposed to amend 11 legislations:
 - a. Companies Act, 2013;
 - b. Sick Industrial Companies (Special Provisions) Repeal Act, 2003;
 - c. Limited Liability Partnership Act, 2008;
 - d. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - e. Recovery of Debts due to Banks and Financial Institutions Act, 1993 and;
 - f. Indian Partnership Act, 1932;
 - g. The Income Tax Act, 1961;
 - h. The Customs Act, 1962;
 - i. The Payment and Settlement Systems Act, 2007;
 - j. The Central Excise Act, 1944;
 - k. The Finance Act, 1994;
- The Committee had proposed to establish a creditors committee, where the financial creditors will have votes in proportion to their magnitude of debt.

The Timeline

- The committee brought out interim report in the month of February 2015 and the final report on November 04, 2015;
- The report of the joint committee was presented in Lok sabha and laid down in Rajya sabha on April 28, 2016;
- Ministry of Finance invited comments on Insolvency and Bankruptcy Bill in November 2015 based on the recommendation of report of Vishwanathan Committee;
- The code was passed by Lok sabha on 05 May, 2016;
- The Insolvency and Bankruptcy Code 2015 was referred to the joint committee;
- The code was passed by Rajya sabha on 11 May, 2016;
- The bill on the Insolvency and Bankruptcy Code 2015 was referred to joint committee;
- The code received President's assent on 28 May, 2016.

Objectives of IBC

- Consolidate and amend all existing insolvency laws in India.
- To simplify and expedite the Insolvency and Bankruptcy Proceedings in India.
- To protect the interest of creditors including stakeholders in a company.
- To revive the company in a time-bound manner.
- To promote entrepreneurship.
- To get the necessary relief to the creditors and consequently increase the credit supply in the economy.

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- To work out a new and timely recovery procedure to be adopted by the banks, financial institutions or individuals.
- To set up an Insolvency and Bankruptcy Board of India.
- Maximization of the value of assets of corporate persons.

Highlights of the Insolvency and Bankruptcy Code, 2016 in the context of Corporate Insolvency

- The code aims to resolve insolvencies in a strict time-bound manner - the evaluation and viability determination must be completed within 180 days.
- Moratorium period of 180 days (extendable up to 270 days) for the Company.
- Introduce a qualified insolvency professional (IP) as intermediaries to oversee the Process
- Establishment of Insolvency and Bankruptcy board as an independent body for the administration and governance of Insolvency & bankruptcy Law; and Information Utilities as a depository of financial information.

Adjudication

The Insolvency Resolution Process (IRP) for individuals and unlimited liability partnerships varies from that of companies and LLP's.

The Debt Recovery Tribunal ("DRT") shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms.

Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal ("DRAT").

The National Company Law Tribunal ("NCLT") shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities.

Appeals from the order of NCLT shall lie to the National Company Law Appellate Tribunal ("NCLAT")

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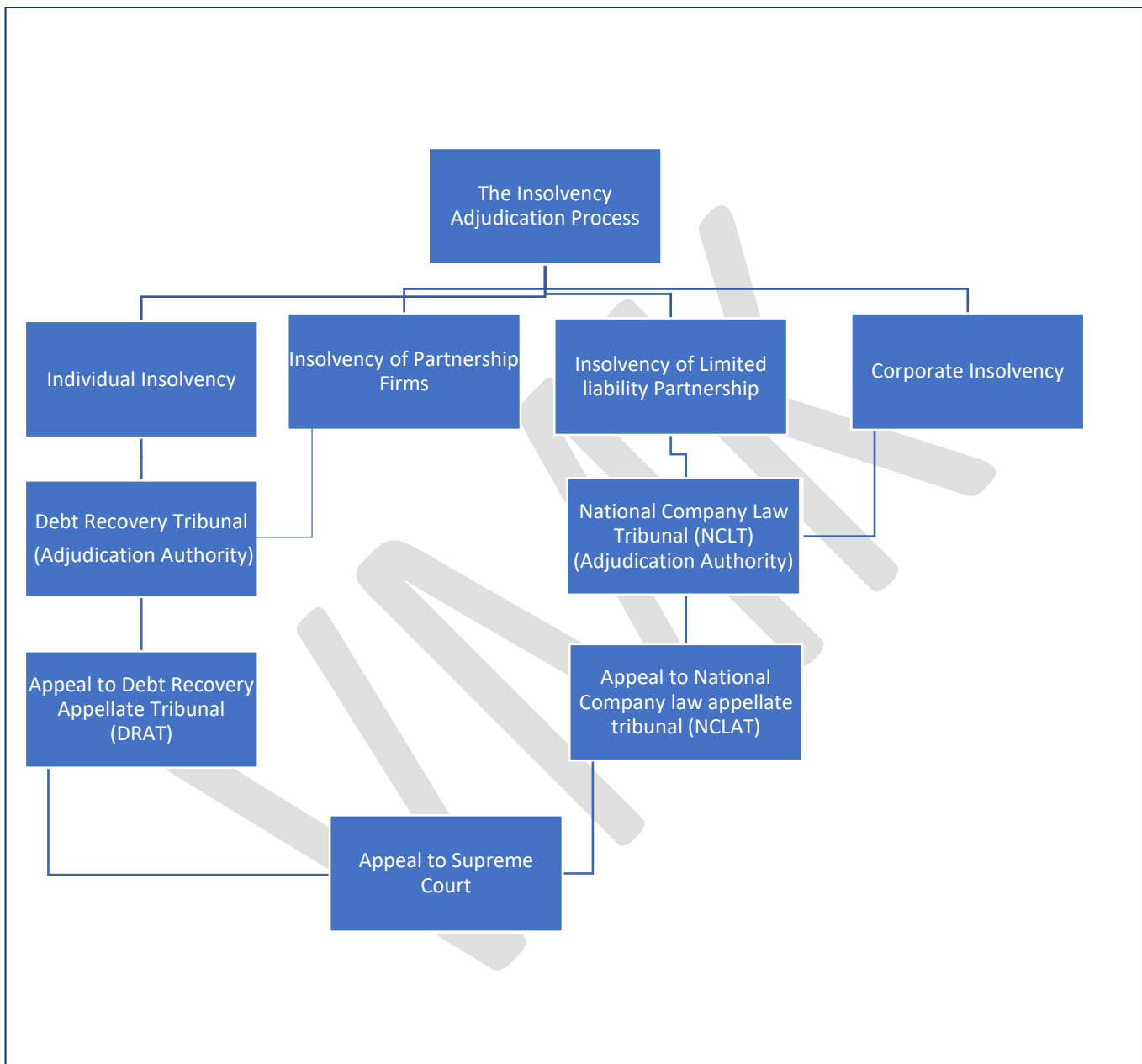
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UNDERSTANDING THE HIERARCHY OF IBC ADJUDICATION



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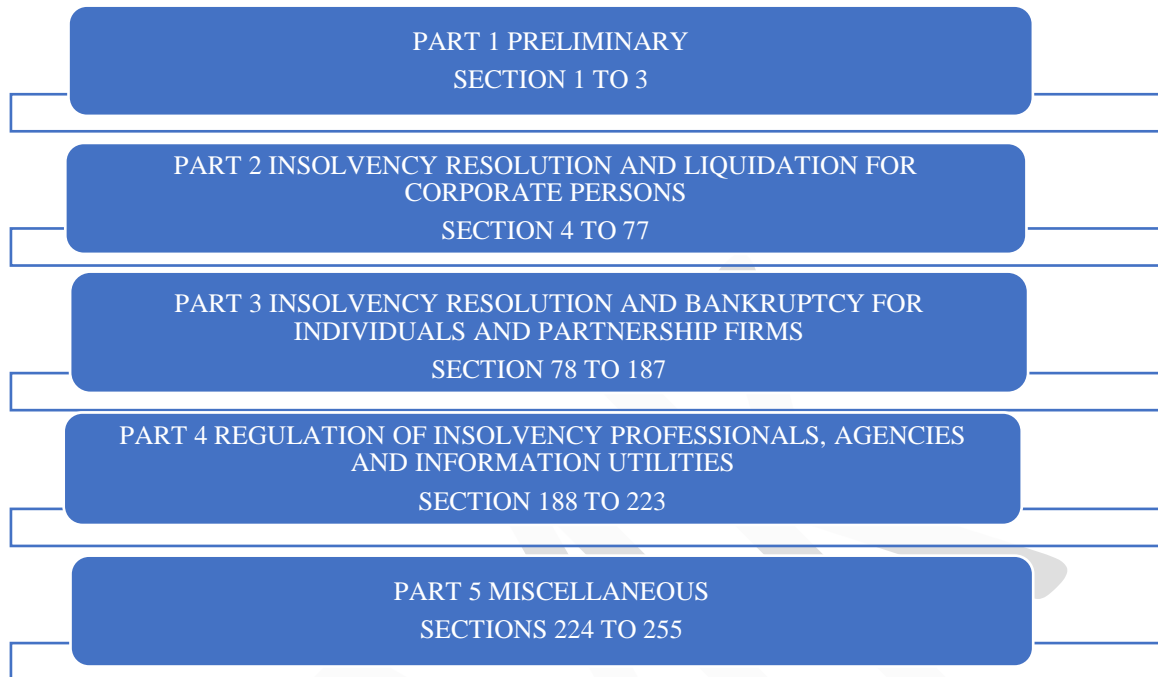
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THE INSOLVENCY AND BANKRUPTCY CODE IS DIVIDED INTO FIVE PARTS



PART: 1 PRELIMINARY

SECTION 1: SHORT TITLE, EXTENT AND COMMENCEMENT

1. *This Code may be called the Insolvency and Bankruptcy Code, 2016.*
2. *It extends to the whole of India.*
3. *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, Central Government may appoint different dates for different provisions and any reference to that provision shall be taken as a reference to the commencement of that provision.*

SECTION 2: APPLICABILITY

1. *Company incorporated under Companies Act 2013/1956;*
2. *Company governed by any special Act;*
3. *Limited Liability Partnership;*
4. *Personal guarantors to corporate debtors;*
5. *Proprietorship firms/ individuals;*
6. *Partnership firms;*

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SECTION 3: KEY DEFINITIONS UNDER PART I PRELIMINARY

(1) **“Corporate person”** means a company defined in Clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013), a Limited Liability Partnership, as defined in clause (N) of Sub-Section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), 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.

(2) **“Corporate debtor”** means a corporate person who owes a debt to any person.

(3) **“Creditor”** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

(4) **“Debt”** means a liability or obligation in respect of a claim that is due from any person and includes a financial debt and operational debt;

(5) **“Insolvency professional”** means a person enrolled under Section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under Section 207;

(6) **“Insolvency professional agency”** means any person registered with the Board under Section 201 as an insolvency professional agency;

(7) **“Information utility”** means a person who is registered with the Board as an information utility under Section 210.

(8) **“Resolution applicant”** means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional according to the invitation made under Clause (H) of Sub-Section (2) of Section 25.

(9) **“Resolution plan”** means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern.

(10) **“Resolution professional”**, for this part, means an insolvency professional appointed to conduct the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may be and includes an interim resolution professional.

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PART: II- INSOLVENCY FOR CORPORATE PERSONS

SECTION: 4 APPLICATION OF THIS PART-

To initiate an insolvency process for corporate debtors, the default should be at least INR 1 Crore.

(This limit was increased from INR 1 Lakh TO INR 1 Crore vide MCA notification dated 24th March, 2020)

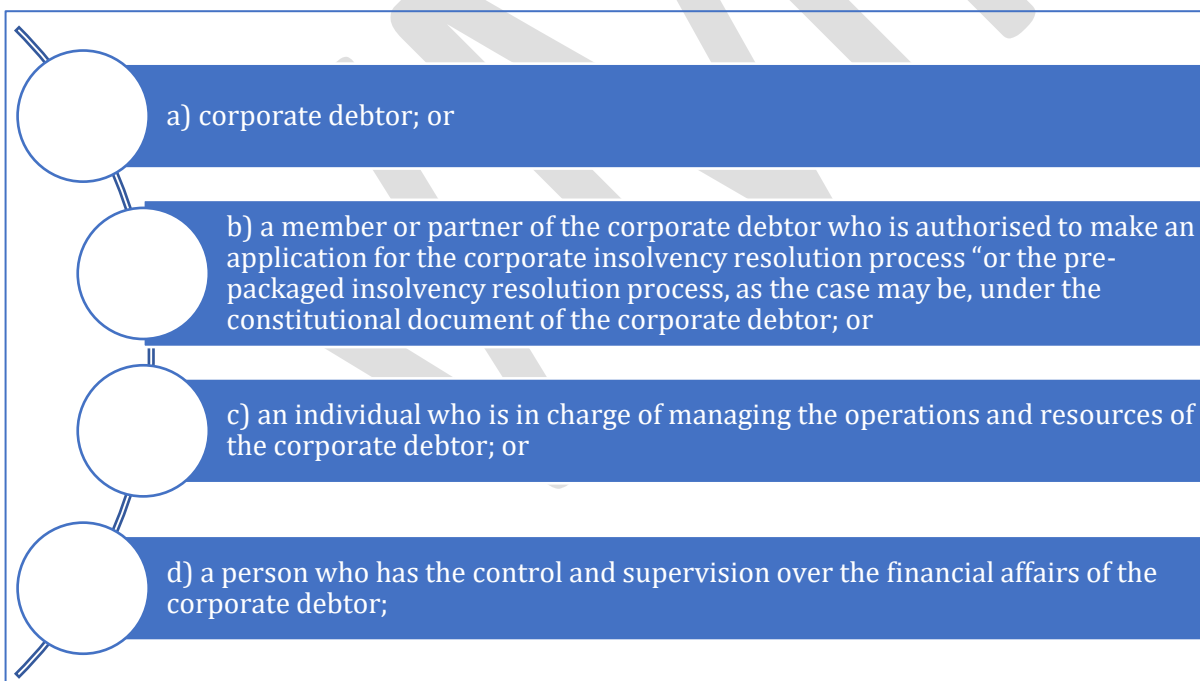
SECTION: 5 KEY DEFINITIONS UNDER PART II “INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS”

(1) “**Financial creditor**” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred;

(2) “**Financial debt**” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes

(3) “**Operational creditor**” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

(4) “**Corporate Applicant**” means –



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(5) “Interim finance” means any financial debt raised by the resolution professional during the insolvency resolution process period (and such other debt as may be notified).

Interim finance can enable the IP to ‘protect and preserve the value of the property of the corporate debtor and manage its operations as a going concern. Interim finance is allowed to form part of CIRP costs.

(6) “Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 2 [payment] of dues arising under any law;

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) amount of any liability in respect of any lease or hire purchase contracts;

(e) receivables sold or discounted other than any receivables sold on a non-recourse basis;

(f) any amount raised under any other transaction including sale or purchase agreement ;

(g) any derivative transaction or benefit from the fluctuations in any rate or price for calculative the value of such derivative transaction (only the market value will be taken);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) amount of liability in respect of guarantee or indemnity of any of the items referred above;

(7) “Initiation date” means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating the corporate insolvency resolution process.

(8) “Insolvency commencement date” means the date of admission of an application for initiating the corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 and 10, as the case may be.

(9) “Insolvency resolution process period” means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.

(The Code provides for a time bound insolvency resolution process for companies and individuals, which is required to be completed within 180 days (subject to a one-time extension by 90 days). However, the process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date)

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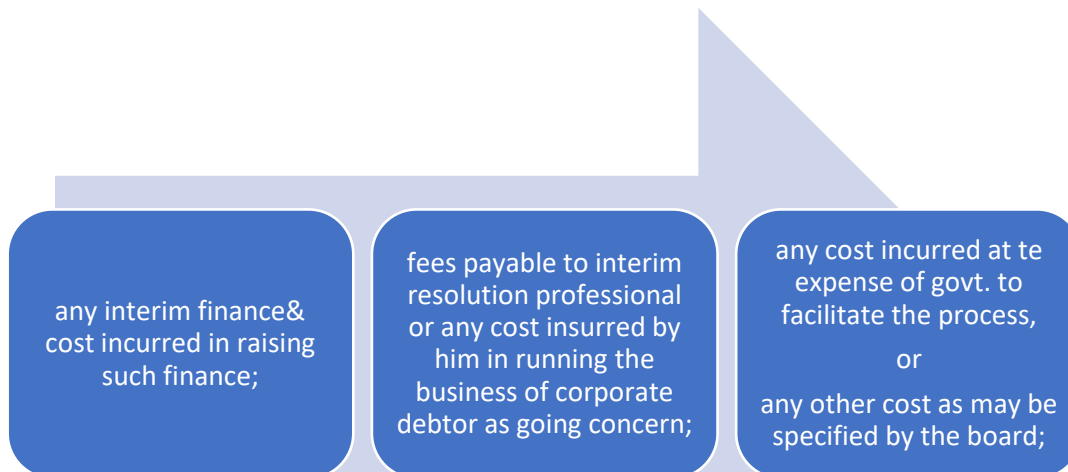
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(10) “Insolvency resolution process costs” means:



(11) “Liquidation cost” means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.

(12) “Liquidation commencement date” means the date on which proceedings for liquidation commence under Section 33 or Section 59, as the case may be.

(13) “Liquidator” means insolvency professional appointed as a liquidator by the provisions of Chapter III or Chapter V of this Part, as the case may be.

(14) “Resolution applicant” means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under Clause (H) of Sub-Section (2) of Section 25.

(15) “Resolution plan” means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern following Part II;

Explanation- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

(16) “Resolution professional”, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim-resolution professional.

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Conclusion:

In so far as any legislative can have a transformative effect, the IBC had achieved that objective. The government has been very pro-active in ensuring that the problems are dealt with and in a time bound manner.

The IBC has taken its first steps to regularize the insolvency process in India. It has amended over 11 legislations in India (as mentioned above in pg. 03), bringing about one of the most significant change to commercial laws in India in recent times. It has also become a very important tool for banks to regularize multitudes of non-performing assets troubling the country's economy.

The preamble to the code emphasizes its purpose as timely corporate reorganization and insolvency resolution to maximize asset value.

The IBC has brought a plethora of changes to insolvency laws in India and aims to reduce the amount of bad loans that has saddled the economy over the last few years.

We are beginning to see this through various companies successfully concluding their insolvency process.

The first successful case of a CIRP was that of Bhushan Steel wherein TATA Steel agreed to purchase Bhushan Steel for Rupees Thirty-Two Thousand Five Hundred Crores.

To ensure a formal and time bound insolvency resolution process, the Code creates a new institutional framework consisting of the Insolvency and Bankruptcy Board of India (IBBI), Adjudicating Authorities (AAs), Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs) and Information Utilities (IUs).

This entire Insolvency and Bankruptcy process is managed by a regulated and licensed professional namely the Insolvency Professional (IP) who is appointed by the adjudicator.

Section 3 and 5 of Insolvency and Bankruptcy Code, 2016 defines the important terms which will be used in further procedure and sections of Insolvency and Bankruptcy Code.

The Insolvency and Bankruptcy Code, 2016 consists of total 255 sections organised in five Parts. The Code also has Twelve Schedules which amends various statutes. All the sections and schedules will be covered in further articles.

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A brief about the Schedules:

- The First Schedule (see Section 245) amendment to the Indian Partnership Act, 1932;
- The Second Schedule (see Section 246) amendment to the Central Excise Act, 1944;
- The Third Schedule (see Section 247) amendment to the Income-Tax Act, 1961;
- The Fourth Schedule (see Section 248) amendment to the Customs Act, 1962;
- The Fifth Schedule (see Section 249) amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
- The Sixth Schedule (see Section 250) amendment to the Finance Act, 1994;
- The Seventh Schedule (see Section 251) amendment to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- The Eighth Schedule (see Section 252) amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003;
- The Ninth Schedule (see Section 253) amendment to the Payment and Settlement Systems Act, 2007;
- The Tenth Schedule (see Section 254) amendment to the Limited Liability Partnership Act, 2008;
- The Eleventh Schedule (see Section 255) amendments to the Companies Act, 2013;
- The Twelfth Schedule (see Section 29A(d)) mentions the Acts for the purposes of clause (d) of Section 29A;