

LESSON 14

INSOLVENCY

REGULATORY FRAMEWORK

- Insolvency and Bankruptcy Code, 2016
- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- IBBI (Liquidation Process) Regulations, 2016
- IBBI (Voluntary Liquidation Process) Regulations, 2017
- IBBI (Insolvency Professionals) Regulations, 2016

INTRODUCTION

The term “**bankruptcy**” is believed to originate from the Italian word “**bancarotta**” (“banca” = bench, “rotta” = broken). In medieval Florence, on the **Ponte Vecchio**, a banker who failed to meet his **business obligations** had his bench physically broken as a symbol of **insolvency**—an act that evolved into the modern concept of bankruptcy.

The **bankruptcy law** provides a structured **procedural framework** that channels conflicts, ensures **procedural certainty**, reduces **common property problems**, and minimises **information asymmetry** among economic participants.

The core objective of the **bankruptcy process** is to create a platform for **negotiation between creditors and external financiers**, enabling possible financial rearrangements. Creditors invest money today for fixed future cash flows, but repayment is uncertain because the debtor may default. A debtor becomes **insolvent** when he cannot meet repayment obligations.

Insolvency may arise due to:

- **Financial failure** – persistent mismatch between payments and receivables despite a viable business model.
- **Business failure** – breakdown of the business model, making it unable to generate adequate revenues.

A robust bankruptcy process helps creditors and debtors determine whether the entity suffers from **financial failure or business failure**, enabling both parties to **maximise the value** of the business during insolvency.

CONCEPT OF INSOLVENCY, BANKRUPTCY AND LIQUIDATION (*Learn the definitions*)

The terms “**insolvency**” and “**bankruptcy**” are often used interchangeably, but they are distinct and not synonymous. **Insolvency** refers to a **state of financial inability**, where a person’s or entity’s **assets are insufficient to pay debts**, or there is a **general inability to pay debts as they become due** in the ordinary course of business.

Section 79(4) of the Insolvency and Bankruptcy Code, 2016 defines the term “bankruptcy” as the state of being bankrupt.

According to Section 79(3) of the Code, “**bankrupt**” means

- (a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;
- (b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm; or
- (c) any person adjudged as an undischarged insolvent.

Bankruptcy is the **legal condition of insolvency**, declared when a person or entity cannot repay debts to creditors. It starts with filing a petition before a court or designated authority, after which the debtor’s assets are evaluated and used to repay creditors as per law. While **insolvency** is the **inability to repay debts**, **bankruptcy** is the **formal legal declaration** of that insolvency. Insolvency is a **state**, whereas bankruptcy is the **legal conclusion**, determining how debts will be settled—through asset sale or discharge of unpaid debt.

Insolvency applies to both individuals and corporates. If unresolved, insolvency results in **bankruptcy** for individuals and **liquidation** for corporates. **Liquidation** means winding up a corporation due to inability to meet obligations, where a liquidator sells the assets at reasonable rates to clear debts.

INSOLVENCY FRAMEWORK IN UK, USA AND INDIA

United Kingdom

In England, the **Act of Parliament of 34 & 35 Henry VIII, c.4 (1542)** is considered the first bankruptcy legislation. Enacted under **Henry VIII**, it was a **strict, creditor-supportive law**, treating debtors as offenders who engaged in wasteful expenditure and failed to repay debts. The **1542 Act** offered **no discharge for debtors**, and even their future earnings were not protected from execution. Early English bankruptcy laws functioned mainly as **debt-collection tools**, aimed at seizing a debtor’s assets despite Common Law protections of private property.

By the early eighteenth century, these punitive laws began to soften. Many authors consider **4 Anne, c.17 (1705)** and **10 Anne, c.15 (1711)** as the first real bankruptcy laws because they introduced the concept of **discharge** for debtors who complied with the law—unlike earlier statutes that viewed debtors as offenders. Though the **1705 Act** still favored creditors, it granted important rights to bankrupts. In contrast, **modern insolvency laws** focus not on eliminating insolvent entities but on their **rehabilitation and continuation of business**.

The Current Regulatory Framework in UK

The **Insolvency Act, 1986** and the **Insolvency Rules, 1986** regulate the insolvency framework in the **United Kingdom**. The Insolvency Act, 1986 was enacted based on the **Cork Review Committee Report on Insolvency Law and Practice (1982)**. Before this Act, UK insolvency law was **fragmented**, being spread across the **Bankruptcy Act, 1914**, the **Deeds of Arrangement Act, 1914**, the **Companies Act, 1948**, and parts of the **County Courts Act, 1959**, supplemented by **common law and equity** principles.

The Act of 1986 consolidated all

- enactments relating to company insolvency and winding up,
- enactments relating to the insolvency and bankruptcy of individuals, and
- all other enactments bearing on these two subject matters, including the functions and qualification of insolvency practitioners, the public administration of insolvency, the penalisation and redress of malpractice and wrong doing, and the avoidance of certain transactions at an under value.

The Insolvency Act, 1986 deals with the insolvency of individuals and companies and is divided into the following three groups.

- **Group 1** deals with Company Insolvency;
- **Group 2** deals with Insolvency of Individuals; and
- **Group 3** deals with Miscellaneous Matters Bearing on both Company & Individual Insolvency.

The **Insolvency Act, 1986** introduced three new procedures to support the **rescue culture** and revive financially burdened companies:

1. **Company Voluntary Arrangements (CVAs)** – A mechanism allowing a company in financial difficulty to negotiate a **binding agreement** or financial restructuring with its creditors, subject to approval by **75% of creditors** present and voting.
2. **Administration** – A court-appointed **administrator** proposes measures to address financial distress. During this period, creditors are **restricted from taking action**, giving the company time to restructure or enabling a sale of the business to secure better results than liquidation.
3. **Administrative Receivership** – Allows certain creditors, typically **floating charge holders**, to appoint a **receiver** to recover their dues.

United States of America

America, as a former **colony of the United Kingdom**, initially followed the English bankruptcy system, including **imprisonment** until debts were paid or creditors agreed to release the debtor. Bankruptcy laws **varied from State to State**, and some states became known as **debtor's havens** due to weak enforcement of commercial obligations.

This lack of **uniformity** negatively impacted interstate business and commerce. To address this, **Article I, Section 8, Clause 4** of the U.S. Constitution (1789) empowered Congress to establish **uniform bankruptcy laws**.

Congress enacted temporary bankruptcy statutes in **1800, 1841, and 1867**, mainly to manage economic recessions. These Acts vested jurisdiction in **federal district courts**, which appointed commissioners or assignees to manage and liquidate debtor assets. All these laws were later repealed once economic conditions improved.

A permanent bankruptcy law was finally established through the **National Bankruptcy Act, 1898**, later amended in **1938** to introduce debtor **rehabilitation** as an alternative to liquidation.

This Act governed U.S. bankruptcy law for 80 years until the **Bankruptcy Reform Act, 1978**, which replaced it, created **bankruptcy courts** in each district, and provided for the appointment of **bankruptcy judges**.

The Current Regulatory Framework in USA

The **Bankruptcy Code**, a uniform **federal law**, governs all bankruptcy cases in the United States. Enacted in **1978** under §101 of the **Bankruptcy Reform Act, 1978**, it is codified as **Title 11 of the U.S. Code**. The procedural aspects are regulated by the **Federal Rules of Bankruptcy Procedure**.

The Bankruptcy Code provides for **six basic types of bankruptcy cases**:

1. **Chapter 7 – Liquidation**: A court-appointed **trustee** takes possession of non-exempt assets, liquidates them, and uses the proceeds to pay creditors. The trustee investigates the debtor's financial affairs and files administration accounts with the U.S. Trustee and the Court.
2. **Chapter 9 – Adjustment of Debts of a Municipality**: Enables **municipalities** (cities, towns, counties, school districts, etc.) to reorganize debts through a **confirmed payment plan** while receiving creditor protection.
3. **Chapter 11 – Reorganization**: The **debtor remains in control** (debtor-in-possession) and operates the business while repaying creditors under a **court-approved reorganization plan**. A trustee, if appointed, must file a plan or explain why one will not be filed as per **Section 1106**.
4. **Chapter 12**: Added in **1986**, it allows **family farmers or fishermen** to continue operating their business while executing a repayment plan.
5. **Chapter 13**: Allows **individuals with regular income** to propose a structured plan to repay all or part of their debts.
6. **Chapter 15**: Added in **2005**, it provides a framework for **cross-border insolvency**, allowing representatives of foreign bankruptcy proceedings to access U.S. courts.

Historical developments of Insolvency Laws in India

The **law of Insolvency in India** has its origin in **English law**, as India, being a British colony, followed the English insolvency system. The earliest insolvency provisions appeared in **Sections 23 and 24 of the Government of India Act, 1800**, granting insolvency jurisdiction to the **Supreme Court at Fort Williams (Calcutta)**, **Madras**, and the **Recorder's Court at Bombay**, where the British conducted most of their trade. These courts could make rules and grant relief to insolvent debtors.

Special insolvency legislation began with **Statute 9 (Geo. IV c.73) of 1828**, establishing distinct insolvency courts in Presidency Towns. Though initially temporary, it was extended until **1848**, when the **Indian Insolvency Act, 1848** was enacted and remained in force until the

Presidency Towns Insolvency Act, 1909. Later, the **Provincial Insolvency Act, 1920** was introduced.

The **Presidency Towns Insolvency Act, 1909** applied to **Calcutta, Bombay, and Madras**, while the **Provincial Insolvency Act, 1920** applied to all other provinces. Both Acts governed **individuals and partnership firms**.

Insolvency law serves a **two-fold purpose**:

- (i) to **give relief to the debtor** from creditor harassment when debts cannot be paid, and
- (ii) to provide a **machinery for satisfying unsecured creditors**.

The Insolvency and Bankruptcy Code, 2016 has repealed both the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920.

Before the **Insolvency and Bankruptcy Code, 2016**, India's insolvency and bankruptcy framework was **fragmented**, with no single comprehensive law. Multiple legislations governed different aspects of insolvency and bankruptcy, including:

- **Presidency Towns Insolvency Act, 1909**
- **Provincial Insolvency Act, 1920**
- **Indian Partnership Act, 1932**
- **Companies Act, 1956**
- **Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)**
- **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)**
- **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002)**
- **Companies Act, 2013**

These scattered laws highlighted the need for a unified, comprehensive framework, which ultimately led to the enactment of the **Insolvency and Bankruptcy Code, 2016**.

Under the Constitution of India 'Bankruptcy & Insolvency' is provided in Entry 9 of List III (Concurrent List) in the Seventh Schedule to the Constitution. Hence both the Centre and State Governments are authorised to make laws on the subject.

Government Committees on Bankruptcy Reforms

Various committees were constituted by the Government to **review the existing bankruptcy and insolvency laws in India**. These committees **analysed the laws** and **recommended reforms** to keep the legal framework aligned with changing economic needs. Their work provided the foundation for significant improvements in India's **insolvency and bankruptcy system**.

S.No.	Year	Committee/ Commission	Recommendations/Outcome
1	1964	Third Law Commission	Third Law Commission was established in 1961 under the Chairmanship of Justice J L Kapur. It submitted 26th Law Commission Report in 1964 proposing amendments to the Provincial Insolvency Act, 1920.
2	1981	Tiwari Committee	Following the recommendations of the Tiwari Committee, the Government of India enacted the Sick Industrial Companies (Special Provisions) Act, 1985, (SICA) in order to provide for timely detection of sickness in industrial companies and for expeditious determination of preventive and remedial measures.
3	1991	Narasimham Committee I	The government enacted Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993.
4	1998	Narasimham Committee II	The committee's recommendations led to the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002.
5	1999	Justice Eradi Committee	Recommended setting up of a National Company Law Tribunal (NCLT) and proposed repeal of SICA.
6	2001	NL Mitra Committee	Proposed a comprehensive bankruptcy code.
7	2005	J J Irani Committee	The Committee proposed significant changes to make the restructuring and liquidation process speedier, efficient and effective and accordingly amendments were made to (RDDBFI) Act, 1993 and (SARFAESI), 2002.
8	2008	Raghuram Rajan Committee	Proposed improvements to credit infrastructure.
9	2013	Financial Sector Legislative Reforms Commission	Recommended changes in Indian Financial Sector.

10	2014	Bankruptcy Law Reforms committee (BLRC)	Reviewed the existing bankruptcy and insolvency framework in the country and proposed the enactment of Insolvency and Bankruptcy Code as a uniform and comprehensive legislation on the subject.
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Need for a New Law

Before the enactment of the **Insolvency and Bankruptcy Code (IBC)**, India had **no single law** to address insolvency and bankruptcy. Multiple **overlapping laws and adjudicating forums** governed financial failure of companies and individuals, creating an **inadequate and ineffective framework** that led to **undue delays in resolution** and weakened the **credit system**.

Corporate insolvency was handled under **SICA 1985**, **RDDBI Act 1993**, **SARFAESI Act 2002**, and the **Companies Act 2013**, resulting in multiple forums such as **BIFR**, **DRT**, and their Appellate Tribunals, while **High Courts** handled liquidation. Individual insolvency was governed by the **Presidency Towns Insolvency Act, 1909** and the **Provincial Insolvency Act, 1920**.

The objective of the Insolvency and Bankruptcy Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. An effective legal framework for timely resolution of insolvency and bankruptcy will not only encourage entrepreneurship but will also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

The Insolvency and Bankruptcy Code, 2016 – Introduction

In India, the **legal and institutional machinery** for dealing with **debt default** has long fallen short of **global standards**. Recovery actions through the **Contract Act**, **RDDBI Act, 1993**, and **SARFAESI Act, 2002** did not achieve the desired outcomes. Similarly, mechanisms under **SICA 1985** and the **Companies Act, 1956** failed to support effective **recovery or restructuring**, while individual insolvency laws—the **Presidency Towns Insolvency Act, 1909** and **Provincial Insolvency Act, 1920**—were outdated, reducing lender confidence and restricting borrower access to credit. As a result, **secured credit by banks** dominated the Indian credit market, with the **corporate bond market** still underdeveloped.

To address these issues, the **Bankruptcy Law Reforms Committee (BLRC)** drafted the **Insolvency and Bankruptcy Code (IBC)**. Introduced in the Lok Sabha on **21 December 2015**, it was examined by a Joint Parliamentary Committee, passed by the Lok Sabha on **5 May 2016**, Rajya Sabha on **11 May 2016**, and received **presidential assent on 28 May 2016**.

The IBC aims to promote **entrepreneurship**, improve **credit availability**, and balance stakeholder interests by consolidating and amending laws relating to **reorganization and**

insolvency resolution of corporate persons, partnership firms, and individuals in a **time-bound manner**, ensuring **maximization of asset value**.

Salient features: *(Direct question can be asked)*

- i. Clear, coherent and **speedy process** for early identification of **financial distress** and resolution of companies/LLPs.
- ii. Two processes for individuals: **Fresh Start** and **Insolvency Resolution**.
- iii. **DRT** and **NCLT** designated as **Adjudicating Authorities** for individuals/unlimited partnerships and companies/LLPs respectively.
- iv. Establishment of the **Insolvency and Bankruptcy Board of India (IBBI)** for regulatory oversight.
- v. **Insolvency professionals** to manage commercial aspects; **insolvency professional agencies** to set standards and ethics.
- vi. **Information utilities** to collect and authenticate financial information for use in insolvency and liquidation.
- vii. **Enabling provisions** for **cross-border insolvency**.

Section 1 of the Code provides that the Central Government may appoint different dates for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

The **Insolvency and Bankruptcy Code, 2016** consolidates the insolvency and bankruptcy framework into a **single law** applicable to companies, partnerships, LLPs, individuals, and other bodies notified by the central government.

Under **Section 2**, the Code applies to:

- (a) companies incorporated under the **Companies Act, 2013** or any previous company law,
- (b) companies governed by any **special Act**,
- (c) **LLPs** incorporated under the LLP Act, 2008,
- (d) any other body incorporated under any law as **notified by the Central Government**,
- (e) **personal guarantors to corporate debtors**,
- (f) **partnership firms and proprietorship firms**, and
- (g) **individuals** (other than personal guarantors) in matters of insolvency, liquidation, voluntary liquidation, or bankruptcy.

The Insolvency and bankruptcy Code, 2016 is one of the biggest economic reforms which provides a uniform and comprehensive insolvency legislation covering corporates, partnerships and individuals (other than financial firms). The Code gives both the creditors and debtors the power to initiate proceeding. It has helped India achieve a historic jump in the ease of doing business rankings by consolidating the law and providing for resolution of insolvencies in a time-bound manner

Key Objectives of the Insolvency and Bankruptcy Code, 2016 : *(Direct question can be asked)*

The objects clause of the Insolvency and Bankruptcy Code lays down the following **key objectives**:

1. To **consolidate and amend the laws relating to re-organisation and insolvency resolution** of corporate persons, partnership firms and individuals to provide for a time bound insolvency resolution mechanism;
2. To ensure **maximisation of value of assets**;
3. To **promote entrepreneurship**;
4. To **increase availability of credit**;
5. To **balance the interests of all the stakeholders** including alteration in the order of priority of payment of Government dues; and
6. To **establish an Insolvency and Bankruptcy Board of India** as a regulatory body; and
7. To **provide procedure for connected and incidental matters**.

HOW CODE IS ORGANISED?

The **Insolvency and Bankruptcy Code, 2016** contains **255 sections** divided into **five Parts**.

- **Part II** deals with **insolvency resolution and liquidation** for **corporate persons**.
- **Part III** provides the procedure for **insolvency resolution and bankruptcy** for **individuals and partnership firms**.
- **Part IV** covers the **regulation of Insolvency Professionals, Insolvency Professional Agencies, and Information Utilities**.
- **Part V** contains **miscellaneous provisions**.

The Code also includes **eleven Schedules** that amend various statutes.

Part I Preliminary (Sections 1 to 3)

Part II Insolvency Resolution and Liquidation for Corporate Persons

- Chapter I Preliminary (Sections 4 to 5)
- Chapter II Corporate Insolvency Resolution Process (Sections 6 to 32)
- Chapter III Liquidation Process (Sections 33 to 54)
- Chapter III A Pre-Packaged Insolvency Resolution Process (Section 54A-54P)
- Chapter IV Fast Track Corporate Insolvency Resolution Process (Sections 55 to 58)
- Chapter V Voluntary Liquidation of Corporate Persons (Section 59)
- Chapter VI Adjudicating Authority for Corporate Persons (Sections 60 to 67)
- Chapter VII Offences and Penalties (Sections 68 to 77).

Part III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

- Chapter I Preliminary (Sections 78 to 79)
- Chapter II Fresh Start Process (Sections 80 to 93)

- Chapter III Insolvency Resolution Process (Sections 94 to 120)
- Chapter IV Bankruptcy Order for Individuals and Partnership Firms (Sections 121 to 148)
- Chapter V Administration and Distribution of the Estate of the Bankrupt (Sections 149 to 178)
- Chapter VI Adjudicating Authority for Individuals and Partnership Firms (Sections 179 to 187).

Part IV Regulation of Insolvency Professionals, Agencies and Information Utilities

- Chapter I The Insolvency and Bankruptcy Board of India (Sections 188 to 195)
- Chapter II Powers and Functions of the Board (Sections 196 to 198)
- Chapter III Insolvency Professional Agencies (Sections 199 to 205)
- Chapter IV Insolvency Professionals (Sections 206 to 208)
- Chapter V Information Utilities (Sections 209 to 216)
- Chapter VI Inspection and Investigation (Sections 217 to 220)
- Chapter VII Finance, Accounts and Audit (Sections 221 to 223).

Part V Miscellaneous (Sections 224 to 255)

- 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)) Act for the purposes of clause (d) of Section 29A.

Salient Features of the Insolvency and Bankruptcy Code, 2016 (*Direct question can be asked*)

1. The Insolvency and bankruptcy Code, 2016 offers a uniform, comprehensive insolvency legislation covering all companies, partnerships and individuals. Financial service providers are not included in the ambit of the Insolvency and Bankruptcy Code, 2016.
2. 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).

3. The Code establishes **Insolvency Professionals (IPs)** as regulated private professionals with defined **professional and ethical standards** to act as intermediaries in the insolvency resolution process. **Insolvency Professional Agencies (IPAs)** are empowered to regulate IPs by enrolling them, providing **pre-registration education**, enforcing a **code of conduct**, and issuing **authorisation for assignment**. The designated IPAs under the Code are:

- **The Indian Institute of Insolvency Professionals of ICAI,**
- **ICSI Institute of Insolvency Professionals,** and
- **Insolvency Professional Agency of Institute of Cost Accountants of India.**

To regulate the working of Insolvency Professional Agencies (IPAs), the Insolvency and Bankruptcy Board of India (IBBI) has framed the following regulations in exercise of the powers conferred by the Insolvency and Bankruptcy Code, 2016:

- The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016; and
- The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.

4. The Insolvency Professionals (IPs) **control the debtor's assets** during the insolvency resolution process, **verify creditor claims**, constitute the **committee of creditors**, and run the **debtor's business as a going concern** during the **moratorium period**. They assist creditors in finalising the **revival plan** and ensure compliance with applicable laws. In liquidation, the IP acts as **liquidator** and **bankruptcy trustee**. Their functioning is regulated by the **IBBI (Insolvency Professional) Regulations, 2016**, amended periodically.
5. **Information Utilities (IUs)** collect, collate, authenticate, and disseminate **financial information** in centralised electronic databases to enable **swift decision-making** in resolution proceedings. They are governed by the **IBBI (Information Utilities) Regulations, 2017**, also amended from time to time.
6. The Code establishes the **Insolvency and Bankruptcy Board of India (IBBI)** as the insolvency regulator. It oversees **insolvency professionals, insolvency professional agencies and information utilities**, and regulates the insolvency process. The Board includes representatives from the **Central Government** and the **Reserve Bank of India**. It also acts as the **Authority** under the **Companies (Registered Valuers and Valuation) Rules, 2017**, regulating and developing the **profession of valuers** in India.
7. The Code establishes **two Tribunals** for adjudicating insolvency resolution cases. For **companies and LLPs**, the **National Company Law Tribunal (NCLT)** acts as the Adjudicating Authority. For **individuals and partnership firms**, the **Debts Recovery Tribunals (DRTs)** serve as the Adjudicating Authority.

Insolvency proceedings are initiated by the NCLT or DRT after **verification of claims**. Appeals from NCLT orders go to the **National Company Law Appellate Tribunal (NCLAT)** and then to the **Supreme Court of India**. Appeals from DRT orders go to the **Debt Recovery Appellate Tribunal (DRAT)** and thereafter to the **Supreme Court**.

To ensure that the insolvency resolution is commercially viable, the Code separates the commercial aspects from the judicial aspects and thus limits the role of adjudicating authorities to ensuring due process rather than adjudicating on the merits of the insolvency resolution.

8. To initiate an insolvency process for **corporate debtors**, the minimum **default** must be **at least INR 1,00,00,000**. The **Central Government** may specify a higher amount for defaults related to the **pre-packaged insolvency resolution process** under **Chapter III-A**, but not exceeding one crore. Through **Notification S.O. 1543(E) dated 9th April 2021**, the government specified **ten lakh rupees** as the minimum default for pre-packaged insolvency of corporate debtors under Chapter III-A.
9. For corporate persons, the Code provides two independent stages:
 - (i) **Insolvency Resolution Process** – creditors assess the viability of the debtor's business and options for rescue and revival.
 - (ii) **Liquidation** – undertaken if the resolution process fails or creditors decide to wind up and distribute assets.
10. For individuals and unlimited partnerships, the Code envisages two distinct processes under Insolvency Resolution:
 - (i) **Automatic Fresh Start**
 - (ii) **Insolvency Resolution**
11. The Code provides a **Fresh Start Process** for individuals, offering a **debt waiver up to INR 35,000**, subject to prescribed eligibility limits. Under the automatic fresh start, eligible debtors may apply to the **Debt Recovery Tribunal (DRT)** for discharge from certain debts within a specified threshold, enabling them to start afresh.
12. A **financial creditor** (for financial debt) or an **operational creditor** (for operational debt) may initiate an **Insolvency Resolution Process (IRP)** against a corporate debtor. A defaulting corporate debtor, its shareholders, or employees may also initiate **voluntary insolvency**. The **NCLT** is the adjudicating authority for corporate debtors.

For **individuals and unlimited partnerships**, IRP involves preparation of a **repayment plan** by the debtor. If creditors approve, the **DRT** orders the plan, binding all parties. If rejected or failed, the debtor or creditors may seek a **bankruptcy order**.

Section 11 of the Code disentitles the following persons to make an application to initiate corporate insolvency resolution process:

- (a) A **corporate debtor undergoing a corporate insolvency resolution process**, or (aa) a **financial creditor or operational creditor** of a corporate debtor undergoing a **prepackaged insolvency resolution process**, is not permitted to initiate another insolvency application or
- (b) A **corporate debtor** is not eligible to file an application for corporate insolvency resolution if:
it has completed a **corporate insolvency resolution process** within the **preceding twelve months**; or
- (ba) a **resolution plan** under **Chapter III-A** was approved in its case within the **preceding twelve months**; or
- (c) the **corporate debtor or financial creditor** has **violated any terms of an approved resolution plan** within the last twelve months; or
- (d) a **liquidation order** has been passed against the corporate debtor.

However, a corporate debtor falling under these clauses may still **initiate corporate insolvency resolution** against **another corporate debtor**.

13. The Code mandates a **time-bound Insolvency Resolution Process** for companies and individuals, to be completed within **180 days** (extendable once by **90 days**) and **mandatorily within 330 days** from the insolvency commencement date, including extensions and time spent in legal proceedings. If the **resolution plan** is not finalised or is rejected by the **NCLT or DRT**, the **assets of the debtor** are sold to repay outstanding dues.

14. The Code revises the **priority of claims** for distributing **liquidation proceeds**. Distribution follows this order:

- i. **insolvency professional fees and resolution costs**,
- ii. **workmen's dues (24 months)** and **secured creditors**,
- iii. **employee wages**,
- iv. **unsecured creditors**,
- v. **government dues** and remaining **secured creditors**,
- vi. **any remaining debt**, and
- vii. **shareholders**.

Before the enactment of the Insolvency and Bankruptcy Code, the Government dues were immediately below the claims of secured creditors and workmen in order of priority. Now the Central and State Government's dues stand below the claims of secured creditors, workmen dues, employee dues and other unsecured financial creditors.

15. The Code provides for the creation of an **Insolvency and Bankruptcy Fund** under **Section 224**, which will receive:

- **grants** from the Central Government,
- **contributions** deposited by persons,
- amounts received from **any other source**, and
- **interest or income** from investments of the Fund.

Section 224(3) allows a **contributing person** to apply to the **Adjudicating Authority** for withdrawal of funds (up to the amount contributed) during proceedings under the Code, to make payments to **workmen**, protect **assets**, meet **incidental costs**, or for other prescribed purposes.

16. The Code imposes **stringent penalties** for offences such as **concealing property** in corporate insolvency, with punishment of **imprisonment up to five years**, or a **fine up to one crore rupees**, or both.

17. For **cross-border insolvency**, the Central Government may enter into **bilateral agreements** and **reciprocal arrangements** with other countries to enforce the provisions of the Code.

The Code repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920.

In addition, it amends the following 11 Acts:

- The Indian Partnership Act, 1932
- The Central Excise Act, 1944
- The Income-Tax Act, 1961
- The Customs Act, 1962
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- The Finance Act, 1994
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The Payment and Settlement Systems Act, 2007
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013.

PILLARS OF INSOLVENCY AND BANKRUPTCY CODE, 2016

(A) Insolvency and Bankruptcy Board of India (IBBI)

The Insolvency and Bankruptcy Code, 2016 establishes a new insolvency regulator, the **Insolvency and Bankruptcy Board of India (IBBI)**, constituted on **1st October 2016**. It is a unique regulator overseeing both the **profession** and **processes** under the Code, including the functioning of **insolvency professionals**, **insolvency professional agencies**, and **information utilities**. The Board implements the Code relating to insolvency resolution of **corporate persons**, **partnership firms**, and **individuals** in a time-bound manner, and is

empowered to frame and enforce rules for **corporate insolvency resolution**, **corporate liquidation**, **individual insolvency resolution**, and **individual bankruptcy**.

Under **Section 188(2)**, the Board is a **body corporate** with perpetual succession, a common seal, and the power to acquire, hold, and dispose of property, enter contracts, and sue or be sued. As per **Section 189(4)**, the Chairperson and members (other than ex officio members) hold office for **years** or until **65 years of age**, whichever is earlier, and are eligible for reappointment.

Section 190 empowers the Central Government to remove a member if he:

- a) is an **undischarged bankrupt**,
- b) becomes **physically or mentally incapable**,
- c) is **convicted of an offence** involving moral turpitude, or
- d) has **abused his position** to the detriment of public interest.

No member shall be removed under clause (d) without being given a **reasonable opportunity of being heard**.

Powers and Functions of the Board

Under **Section 196(1)** of the Insolvency and Bankruptcy Code, the **Insolvency and Bankruptcy Board of India (IBBI)** is empowered—subject to Central Government directions—to perform functions such as:

- **Registering** insolvency professional agencies (IPAs), insolvency professionals (IPs) and information utilities (IUs), and **renewing, suspending, withdrawing or cancelling** such registrations.
- **Promoting, developing, and regulating** the working and practices of IPs, IPAs, IUs and other related institutions.
- **Specifying minimum eligibility requirements**, standards, and curriculum for registration and examination of IPs.
- **Levying fees and charges**, conducting **inspections, investigations**, and **monitoring** the performance of IPAs, IPs and IUs.
- **Calling for information**, publishing data, specifying data collection norms for IUs, and maintaining records of insolvency and bankruptcy cases.
- **Constituting committees** under Section 197, promoting **transparency**, maintaining **websites and repositories**, issuing **guidelines**, entering **MoUs** with statutory authorities, and specifying **grievance redressal mechanisms**.
- Conducting **research, studies, audits**, specifying mechanisms for **public consultation**, and issuing **regulations and guidelines** including those relating to **time bound disposal of assets**.
- Performing other prescribed functions.

Under **Section 196(2)**, the Board may make **model bye-laws** for IPAs covering:

- Minimum standards of **professional competence**, **professional and ethical conduct**, and **non-discriminatory enrolment** of members (no discrimination based on religion, caste, gender, place of birth, etc.).
- Grant of membership, governance structure, submission of information by members, concessional services, grounds and manner of penalties, grievance redressal mechanisms, **expulsion**, fee structure, enrolment procedures, examination process, monitoring of IPs, duties of members, disciplinary proceedings, and utilisation of penalty amounts.

Under **Section 196(3)**, the Board has powers equivalent to a **civil court** under the Code of Civil Procedure, 1908, including:

1. **Discovery and production** of books of account and documents.
2. **Summoning and enforcing attendance**, examining persons on oath.
3. **Inspection** of books and documents at any place.
4. **Issuing commissions** for examination of witnesses or documents.

(B) Insolvency Professionals (IPs)

- a) The Code establishes **Insolvency Professionals (IPs)** as regulated but private professionals who act as intermediaries in the insolvency resolution process. Under **Section 3(19)**, an “insolvency professional” is defined as a person enrolled with an **insolvency professional agency (IPA)** under Section 206 and registered with the **IBBI** under Section 207.
- b) An insolvency professional plays a crucial role under the Code by acting as:
- c) **Interim resolution professional** or **resolution professional** in the **corporate insolvency resolution process** (Part II) and the **fresh start process** or **individual insolvency resolution process** (Part III).
- d) **Liquidator** in corporate liquidation (Part II).
- e) **Bankruptcy trustee** for the estate of the bankrupt under Section 125 (Part III).
- f) **Enrolment and Registration**
- g) **Section 206** prohibits any person from acting as an IP without being enrolled as a member of an IPA and registered with IBBI.
- h) **Section 207(1)** requires an IP to register with the Board after obtaining IPA membership, within the prescribed time, manner and fee.
- i) **Section 207(2)** empowers IBBI to specify categories of professionals or qualified persons eligible to act as IPs.
- j) The **IBBI (Insolvency Professional) Regulations, 2016** govern the regulation and functioning of IPs.

Functions and Obligations (Direct question can be asked)

Under **Section 208(1)**, an insolvency professional must perform necessary actions in:

- (a) Fresh start order process (Part III, Chapter II)
- (b) Individual insolvency resolution process (Part III, Chapter III)
- (c) Corporate insolvency resolution process (Part II, Chapter II)

- (d) Individual bankruptcy process (Part III, Chapter IV)
- (e) Liquidation of a corporate debtor (Part II, Chapter III)
- (f) Under **Section 208(2)**, every IP must follow a code of conduct, including:
- (g) Taking **reasonable care and diligence** in duties.
- (h) Complying with **bye-laws** of the IPA.
- (i) Allowing the IPA to **inspect records**.
- (j) Submitting copies of records of every proceeding to the **Board** and the **IPA**.
- (k) Performing functions as per specified conditions.

(C) Insolvency Professional Agencies (IPA) *(Direct question can be asked)*

- a) Section 3(20) of the Insolvency and Bankruptcy Code (IBC), 2016 defines an **insolvency professional agency (IPA)** as any person registered with the IBBI under section 201. IPAs regulate Insolvency Professionals (IPs) by enrolling them, providing pre-registration educational courses, enforcing a code of conduct, and issuing **authorisation for assignment**. IBBI regulates IPAs through two regulations:
- b) **The IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016**, and
- c) **The IBBI (Insolvency Professional Agencies) Regulations, 2016**.

The **three IPAs registered** under the Code are: *(Direct question can be asked)*

- The Indian Institute of Insolvency Professionals of ICAI
- ICSI Institute of Insolvency Professionals
- Insolvency Professional Agency of Institute of Cost Accountants of India

Section 199 mandates that no person may operate as an IPA or enrol insolvency professionals without a certificate of registration from the Board. Under Section 204, IPAs are responsible for **granting membership, laying down standards of professional conduct, monitoring performance, safeguarding members' rights, suspending or cancelling membership, redressing consumer grievances, and publishing information relating to their functions and members**.

(D) Adjudicating Authority (AA) *(Direct question can be asked)*

Section 5(1) of the Code designates the **National Company Law Tribunal (NCLT)** as the *Adjudicating Authority* for insolvency resolution and liquidation of **corporate persons**. Under **Section 60(5)**, the NCLT has jurisdiction over:

- (a) any application or proceeding by or against the corporate debtor or corporate person;
- (b) any claim by or against the corporate debtor or its Indian subsidiaries; and
- (c) any question of priorities or any question of law or facts related to insolvency resolution or liquidation.

Section 63 excludes the jurisdiction of civil courts, stating that no civil court shall entertain matters within the jurisdiction of the NCLT or **NCLAT**.

For **individuals and partnership firms**, Section 79(1) identifies the **Debt Recovery Tribunal (DRT)** as the Adjudicating Authority. Under **Section 179(1)**, the DRT with territorial jurisdiction over the debtor's residence, business, or place of work can hear applications. **Section 179(2)** empowers the DRT to decide:

- (a) suits or proceedings by or against the individual debtor;
- (b) claims by or against the debtor;
- (c) any question of priorities or any other question of law or fact related to insolvency or bankruptcy of individuals or firms.

Section 180 similarly bars civil court jurisdiction in matters handled by the DRT or **DRAT**.

Thus, the Code establishes **two tribunals** for insolvency matters:

- **NCLT** for companies and LLPs, with appeals to **NCLAT**, then the **Supreme Court**.
- **DRT** for individuals and partnership firms, with appeals to **DRAT**, then the **Supreme Court**.

(E) Information Utility (IU)

Section 3(21) of the Code defines an **"information utility"** as a person registered with the Board under section 210. While **insolvency professionals** assist in insolvency resolution proceedings, **information utilities** collect, collate, authenticate, and disseminate **financial information** of debtors to facilitate swift decision-making in the resolution process. The **Insolvency and Bankruptcy Board of India (IBBI)** oversees the functioning of information utilities and has issued the **IBBI (Information Utilities) Regulations, 2017**, which are amended from time to time.

Obligations of information utility (Section 214) *(Direct question can be asked)*

- (a) create and store financial information in a universally accessible format;
- (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;
- (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
- (d) meet such minimum service quality standards as may be specified by regulations;
- (e) get the information received from various persons authenticated by all concerned parties before storing such information;
- (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations; (g) publish such statistical information as may be specified by regulations; (h) have inter-operability with other information utilities.

Key Definitions and Concepts

Sections 3, 5 and 79 of the Insolvency and Bankruptcy Code, 2016 define important terms used in the Code. Section 3 of the Code defines general important terms used in the Code whereas section 5 of the Code defines important terms relating to Insolvency Resolution and Liquidation for Corporate Persons covered in Part II of the Code. Similarly section 79 of the Code defines important terms relating to Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms which is discussed in Part III of the Code.

Definitions in Section 3 of the Code *(Case based question can be asked from the definition; highlighted case studies to be learnt)*

Section 3(37) provides that words and expressions used but not defined in the Insolvency and Bankruptcy Code, 2016 shall have the meanings assigned to them in the **Indian Contract Act, 1872**, **Indian Partnership Act, 1932**, **Securities Contracts (Regulation) Act, 1956**, **SEBI Act, 1992**, **Recovery of Debts Act, 1993**, **LLP Act, 2008**, and the **Companies Act, 2013**.

Under **Section 3**, unless the context otherwise requires:

Board [Section 3(1)] means the Insolvency and Bankruptcy Board of India (IBBI).

Bench [Section 3(2)] means a bench of the Adjudicating Authority.

Bye-laws [Section 3(3)] are bye-laws made by an Insolvency Professional Agency under Section 205.

Charge [Section 3(4)] means interest or lien on property/assets as security, including mortgage.

Claim [Section 3(6)] means:

- (a) right to payment (judgment or not, fixed or disputed, secured or unsecured),
- (b) right to remedy for breach of contract that gives rise to a right to payment.

Swiss Ribbons v. Union of India: Claim becomes **debt** only when due; **default** occurs when debt is due and unpaid.

Innovative Industries v. ICICI Bank: Claim includes disputed rights to payment.

Corporate Person [Section 3(7)] includes company, LLP or any incorporated entity with limited liability, but excludes financial service providers.

HCC v. Union of India: NHA is a statutory body performing governmental functions and cannot be treated as a “corporate person” under Section 3(7).

Corporate Debtor [Section 3(8)] means a corporate person who owes a debt.

Laxmi Pat Surana v. Union Bank of India: A corporate guarantor for a non-corporate principal borrower is still a **corporate debtor** under Section 3(8)

“**Core Services**” means services rendered by an information utility for –

- (a) accepting electronic submission of financial information in such form and manner as may be specified;
- (b) safe and accurate recording of financial information;
- (c) authenticating and verifying the financial information submitted by a person; and

(d) providing access to information stored with the information utility to persons as may be specified [Section 3(9)].

Creditor [Section 3(10)] includes financial creditor, operational creditor, secured creditor, unsecured creditor and decree holder.

Digamber Bhondwe v. JM Financial ARC: Inclusion of “decree holder” in Section 3(10) does **not** give a decree holder the right to file a **Section 7 or Section 9** application, as Part II has separate definitions.

Sushil Ansal v. Ashok Tripathi: A decree holder does **not** fall within the meaning of a **financial creditor**, and cannot initiate **CIRP** merely to execute a decree.

Debt [Section 3(11)] means liability or obligation in respect of a claim, including financial debt and operational debt.

Default [Section 3(12)] means non-payment of debt when due, including non-payment of part or instalment.

Innoventive Industries v. ICICI Bank: Default includes non-payment of any part of debt.

B.K. Educational Services v. Parag Gupta: Default refers to actual non-payment when debt becomes due and payable.

Financial Information [Section 3(13)] includes records of debt, liabilities, security interests, defaults, balance sheets, cash-flow and other specified information.

Financial Institution [Section 3(14)] includes scheduled banks, institutions under RBI Act, public financial institutions under Companies Act, and others notified.

Financial Product [Section 3(15)] includes securities, insurance contracts, deposits, credit arrangements, retirement benefit plans, small savings, forex contracts (excluding spot exchange), and other prescribed instruments.

Financial Service [Section 3(16)] includes accepting deposits, administering financial products, insurance, asset management, financial product advice, investment schemes, maintaining ownership records, underwriting, and payment services.

Financial Service Provider [Section 3(17)] means a person providing financial services under authorization of a financial sector regulator.

Financial Sector Regulator [Section 3(18)] includes RBI, SEBI, IRDAI, PFRDA and others notified.

Insolvency Professional [Section 3(19)] means a person enrolled with an IPA and registered with the IBBI.

Insolvency Professional Agency [Section 3(20)] means a person registered under Section 201 as an IPA.

Information Utility [Section 3(21)] means a person registered with the Board under Section 210.

Person [Section 3(23)] includes individuals, HUF, companies, trusts, partnerships, LLPs, statutory entities, and persons resident outside India.

- **R.G. Steels v. Berrys Auto**: Proprietary concern is **not** a “person” for Section 9 where dispute exists.
- **JK Jute Mill Mazdoor Morcha**: A trade union is a “person” being a statutory entity.
- **Shakti Dyeing Works v. Berawala Textiles**: Proprietorship concerns cannot file Section 9 unless represented by proprietor.

Property [Section 3(27)] includes money, goods, actionable claims, land, all types of interests, in India or abroad.

Secured Creditor [Section 3(30)] means creditor in whose favour security interest is created.

Rainbow Papers – NCLAT: State Tax Officer is not a secured creditor under Section 3(30).

Rainbow Papers – SC: State is a secured creditor under VAT Act; security interest can arise by operation of law; resolution plan cannot ignore statutory dues.

Security Interest [Section 3(31)] includes mortgage, charge, hypothecation, assignment, encumbrance or any arrangement securing payment; excludes performance guarantee.

Indian Overseas Bank v. Arvind Kumar: Performance Bank Guarantee is not a “security interest” and not covered by Section 14.

Transaction [Section 3(33)] includes any written agreement/arrangement for transfer of assets, funds, goods or services to or from the corporate debtor.

Transfer [Section 3(34)] includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other transfer of right, title, possession or lien.

Transfer of Property [Section 3(35)] includes transfer of any property or any interest therein, including creation of charge.

Definitions in Section 5 of the Code

- **Section 5** (Part II IBC) defines terms used for corporate insolvency and liquidation.

Key Definitions

- **Adjudicating Authority [Section 5(1)]** – NCLT under Section 408 of the Companies Act, 2013.

- **Constitutional Document [Section 5(4)]** – Articles, Memorandum, and LLP incorporation documents.

Corporate Applicant [Section 5(5)] includes:

- (a) corporate debtor;
- (b) member/partner authorised under constitutional documents;
- (c) individual managing operations/resources;
- (d) person controlling financial affairs.

Corporate Guarantor [Section 5(5A)] – Corporate person acting as surety to a corporate debtor.

- **SBI v. D.S. Rajender Kumar (2018)** – PG insolvency filed before same NCLT under Section 60(2).
- **Rai Bahadur Shree Ram v. REC (2019)** – CIRP can be initiated against corporate guarantor without initiating CIRP against principal borrower.
- **SBI v. Sungrowth (2019)** – Guarantor not discharged merely because CD's resolution plan is approved.
- **EXIM Bank v. CHL Ltd. (2019)** – Corporate guarantee invoked only upon borrower's default.
- **Karur Vysya Bank v. Maharaja Theme Parks (2019)** – CIRP maintainable against corporate guarantor whether borrower is individual or corporate.
- **IBBI v. Lalit Kumar Jain (2020)** – Challenges to PG notification transferred to SC; HCs barred.
- **Kiran Gupta v. SBI (2020)** – Section 14/31 do not bar action against guarantors; liability coextensive.
- **SBI v. Athena Energy (2020)** – CIRP may proceed simultaneously against borrower and guarantor.

Dispute [Section 5(6)] includes suit or arbitration on:

- (a) existence of debt;
- (b) quality of goods/services;
- (c) breach of representation or warranty.
- **Yogendra Yasupal (2017)** – Remarks on officers do not constitute a dispute.
- **Mobilox v. Kirusa (2017)** – Test of dispute: plausible contention, not feeble/frivolous.
- **Simplex Infrastructures (2017)** – Dispute must not be an eyewash.
- **Chetan Sharma (2018)** – Dispute must be between CD and OC, not inter-se shareholders.
- **Anuj Khanna (2020)** – Section 5(6) is inclusive; AA can examine broader disputes.

Financial Creditor [Section 5(7)]

- Essential criteria: financial debt owed; disbursed for time value of money (**B.V.S. Lakshmi, 2017**).
- **Pioneer Urban (2019)** – Homebuyers are FCs under Section 5(8)(f) from inception.

Financial Debt [Section 5(8)]

Includes money borrowed, credit facilities, bonds, finance leases, discounted receivables, transactions with commercial effect of borrowing, derivative transactions, counter-indemnities, and guarantees.

- **Swiss Ribbons (2019)** – Financial debt involves disbursement for time value of money.
- **Phoenix Arc v. Spade (2021)** – Collusive arrangements not financial debt; related party FCs excluded from CoC.
- **Magicon Impex (2021)** – Interest-bearing security deposit is financial debt under Section 5(8)(f).
- **Vipul Ltd. (2020)** – Joint Development Agreement not financial debt.

Other Key Terms

- **Financial Position [Section 5(9)]** – Financial information as of a date.
- **Information Memorandum [Section 5(10)]** – Prepared under Section 29(1).
- **Initiation Date [Section 5(11)]** – Date of application filing.
- **Insolvency Commencement Date [Section 5(12)]** – Date of admission of application.

Insolvency Resolution Process Costs [Section 5(13)]

Includes interim finance, RP fees, running CD as going concern, Government-incurred costs, and Board-specified costs.

- **Dakshin Gujarat VIJ (2018)** – Essential services during moratorium count as IRP costs.

IRP Period [Section 5(14)] – 180 days from CIRP commencement.

- **Quinn Logistics (2018)** – NCLAT may exclude time periods (stay orders, RP absence, reserved orders, restored CIRP, etc.) in computation of 270 days.

Interim Finance [Section 5(15)] – Financial debt raised by RP during CIRP or by CD during PPIRP.

The Ministry of Corporate Affairs vide notification dated 18th March, 2020 notified that a debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I, for the purposes of the said clause.

Explanation.– For the purposes of this notification, the expression “Special Window for Affordable and MiddleIncome Housing Investment Fund I” shall mean the fund sponsored by the Central Government for providing priority debt financing for stalled housing projects, as an alternate investment fund and registered with the Securities and Exchange Board of India, established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, to provide financing for the completion of stalled housing projects that are in the affordable and middle-income housing sector.

Liquidation Cost [Section 5(16)] – Costs incurred by the liquidator during liquidation as per Board regulations.**Liquidation Commencement Date [Section 5(17)] – Date liquidation begins under Section 33 or 59.**

Liquidator [Section 5(18)] – Insolvency professional appointed under Chapter III or V.

Officer [Section 5(19)] – Officer in default under Section 2(60) Companies Act, 2013 or designated partner under LLP Act, 2008.

Operational Creditor & Operational Debt

Operational Creditor (OC) [Section 5(20)] – **Person to whom an operational debt is owed, INCLUDING ASSIGNEES.**

- Assignment to FC still treated as OC to that extent (Cooperative Rabobank, 2019).
- Workmen fall within OC (Suresh Narayan Singh, 2018).
- Trade Unions not OCs as they render no services (JK Jute Mill Mazdoor Morcha, 2017).
- OC must be person owed debt for goods/services (Innoventive, 2017).

Operational Debt [Section 5(21)] – **Claims for goods/services, employment, or statutory dues.**

- Includes statutory dues (Swiss Ribbons, 2019).
- Municipal tax liability is operational debt (KMC v. UOI, 2021).
- Advance payments may constitute operational debt; interpretation of “in respect of” is broad (Chipsan Aviation, 2022).
- Advance payments for goods/services are operational debt (Pioneer Urban, 2019).

Other Key Definitions

Personal Guarantor [Section 5(22)] – Individual surety to a corporate debtor.

Personnel [Section 5(23)] – Directors, managers, KMP, designated partners, and employees.

Preliminary Information Memorandum [Section 5(23A)] – Submitted under Section 54G(1)(b).

Pre-Packaged Insolvency Commencement Date [Section 5(23B)] – Admission date under Section 54C(4)(a).

PPIRP Costs [Section 5(23C)] – Interim finance, RP fees/expenses, going concern costs under Section 54J(2), Government-incurred costs, and other specified costs.

PPIRP Period [Section 5(23D)] – From PPIRP commencement until orders under Section 54L(1), 54N(1) or 54O(2).

Related Party – Corporate Debtor [Section 5(24)]

Includes director/partner or relatives, KMP or relatives, LLPs or partnerships of such persons, private/public companies where such persons **HOLD >2%**, entities acting on their

advice/instruction, holding/subsidiary/associate entities, persons with **>20% VOTING RIGHTS** (ownership/voting agreement), persons controlling board composition, and persons connected through policymaking, common directors, managerial interchange or essential technical information.

Related Party – Individual [Section 5(24A)]

Includes relatives, LLP/partnership partners, trustees benefiting the individual, private/public companies where individual **HOLDS >2%**, entities acting on their instructions, LLPs/partnerships acting on their instructions, persons on whose advice the individual acts, and companies where the individual/related persons **HOLD >50% OR CONTROL THE BOARD.**

Explanation – “Relative” includes a detailed list of familial relations; spouses of son/daughter/brother/sister also included.

Swiss Ribbons (2019) – Definitions of “related party”/“relative” must be interpreted **noscitur a sociis**; only persons **connected with the business activity** of the resolution applicant fall under Section 29A(j).

Resolution Applicant & Resolution Plan

Resolution Applicant [Section 5(25)] – **Person submitting a resolution plan** under Section 25(2)(h) or Section 54K.

- **Cannot alter position after CoC approval; withdrawal/revision not allowed if detrimental** (Kundan Care, 2020).
- **Successful applicant cannot withdraw approved plan**, especially MSME promoter with full knowledge (Seroco Lighting, 2020).

Resolution Plan [Section 5(26)] – Plan for insolvency resolution of CD as a going concern; may include restructuring, merger, amalgamation, demerger.

Resolution Professional [Section 5(27)]

Includes RP and interim RP conducting CIRP or PPIRP.

Voting Share [Section 5(28)]

Voting rights of an FC in CoC based on proportion of its financial debt to total financial debt of CD.

Definitions in Section 79 of the Code

Section 79 belongs to Part III of the Code which lays down procedure for insolvency resolution and bankruptcy for **individuals and partnership firms**. Section 79 states that unless the context otherwise requires:

“Adjudicating Authority” means the Debt Recovery Tribunal constituted under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [Section 79(1)]. **“Associate”** of the debtor means –

- (a) a person who belongs to the immediate family of the debtor;
- (b) a person who is a relative of the debtor or a relative of the spouse of the debtor;
- (c) a person who is in partnership with the debtor;
- (d) a person who is a spouse or a relative of any person with whom the debtor is in partnership;
- (e) a person who is employer of the debtor or employee of the debtor;
- (f) a person who is a trustee of a trust in which the beneficiaries of the trust include a debtor, or the terms of the trust confer a power on the trustee which may be exercised for the benefit of the debtor; and
- (g) a company, where the debtor or the debtor along with his associates, own more than fifty per cent. of the share capital of the company or control the appointment of the board of directors of the company.

Explanation – For the purposes of this sub-section, “relative”, with reference to any person, means anyone who is related to another, if –

- (i) they are members of a Hindu Undivided Family;
- (ii) one person is related to the other in such manner as may be prescribed [Section 79(2)].

“Bankrupt” means –

- (a) a debtor who has been adjudged as bankrupt by a bankruptcy order under section 126;
- (b) each of the partners of a firm, where a bankruptcy order under section 126 has been made against a firm; or
- (c) any person adjudged as an undischarged insolvent [Section 79(3)].

“Bankruptcy” means the state of being bankrupt [Section 79(4)]. **“Bankruptcy Debt”** in relation to a bankrupt, means –

- (a) any debt owed by him as on the bankruptcy commencement date;
- (b) any debt for which he may become liable after bankruptcy commencement date but before his discharge by reason of any transaction entered into before the bankruptcy commencement date; and (c) any interest which is a part of the debt under section 171 [Section 79(5)].

“Bankruptcy Commencement Date” means the date on which a bankruptcy order is passed by the Adjudicating Authority under section 126 [Section 79(6)].

“Bankruptcy Order” means an order passed by an Adjudicating Authority under section 126 [Section 79(7)].

“Bankruptcy Process” means a process against a debtor under Chapters IV and V of this Part [Section 79(8)].

“Bankruptcy Trustee” means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125 [Section 79(9)].

“Committee of Creditors” means a committee constituted under section 134; [Section 79(11)].

“Debtor” includes a judgment-debtor [Section 79(12)].

“Discharge Order” means an order passed by the Adjudicating Authority discharging the debtor under sections 92, 119 and section 138, as the case may be [Section 79(13)].

“Excluded Assets” for the purposes of this part includes –

- (a) unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation;
- (b) unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;
- (c) any unencumbered personal ornaments of such value, as may be prescribed, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;
- (d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and
- (e) an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed [Section 79(14)].

“Excluded Debt” means –

- (a) liability to pay fine imposed by a court or tribunal;
- (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
- (c) liability to pay maintenance to any person under any law for the time being in force;
- (d) liability in relation to a student loan; and
- (e) any other debt as may be prescribed [Section 79(15)].

“Firm” means a body of individuals carrying on business in partnership whether or not registered under section 59 of the Indian Partnership Act, 1932 [Section 79(16)].

“Immediate Family” of the debtor means his spouse, dependent children and dependent parents [Section 79(17)].

“Partnership Debt” means a debt for which all the partners in a firm are jointly liable [Section 79(18)].

“Qualifying Debt” means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include– (a) an excluded debt; (b) a debt to the extent it is secured; and (c) any debt which has been incurred three months prior to the date of the application for fresh start process [Section 79(19)].

“Repayment Plan” means a plan prepared by the debtor in consultation with the resolution professional under section 105 containing a proposal to the committee of creditors for restructuring of his debts or affairs [Section 79(20)].

“Resolution Professional” means an insolvency professional appointed under this part as a resolution professional for conducting the fresh start process or insolvency resolution process [Section 79(21)].

“Undischarged Bankrupt” means a bankrupt who has not received a discharge order under section 138 [Section 79(22)].

CASE LAWS

1. **IBC overrides other laws:**

In *Innoventive Industries Ltd. v. ICICI Bank*, the Supreme Court clarified that the **Insolvency and Bankruptcy Code (IBC)** overrides any conflicting law due to its **non-obstante clause**. The Court held that the **MRUA** is repugnant to the IBC since both impose moratoriums, and the IBC must prevail. Similarly, in *Pr. CIT v. Monnet Ispat and Energy Ltd.*, the Court held that the **IBC overrides the Income Tax Act, 1961** where inconsistent.

2. **IBC marks a quantum change in corporate governance and rule of law:**

In *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*, the Supreme Court noted that the IBC brings a **quantum change in corporate governance**. The Code emphasizes **good corporate governance, public interest, timely resolution, creditor primacy, and separating corporate debtor interests from promoters**. The Court stressed that **IBC aims at reorganization, with liquidation as the last resort**, and must be interpreted purposively to prevent revival of problems from the earlier regime.

3. **Primary focus of the IBC is revival and continuation of the corporate debtor:**

In *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, the Supreme Court held that the **primary focus of IBC is revival and continuation of the corporate debtor**, distinct from the interests of management. The Court stated that timelines under the IBC ensure **resuscitation**, and interpretation of IBC provisions must avoid reintroducing pre-IBC inefficiencies. Past interpretations may apply only if consistent with the IBC's objectives such as **avoiding multiplicity of fora** and ensuring **timely insolvency resolution**.

4. **Foremost objective of the IBC is time-bound reorganization and insolvency resolution:**

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court observed that the IBC's primary objective is **reorganization and insolvency resolution of the corporate debtor in a time-bound manner**, to prevent asset depletion. **Maximization of asset value**, revival of the CD as a **going concern**, strengthening of **credit markets**, protection of **stakeholders**, and promotion of **entrepreneurship** are central goals. The Court emphasized that **liquidation is only a last resort**, and even then, the business may be sold as a going concern.

6 Pager Revision Chart of Chapter 14

INTRODUCTION

The term **bankruptcy** originates from the Italian word “**bancarotta**”, symbolising the failure of a banker to meet obligations. **Bankruptcy law** provides a **structured procedural framework** to resolve conflicts, ensure certainty, reduce common property problems, and minimise **information asymmetry**.

The **core objective** is to create a **platform for negotiation** between **creditors** and **external financiers** to enable **financial rearrangements**. A debtor becomes **insolvent** when unable to meet repayment obligations. **Insolvency arises due to:**

- **Financial failure** – mismatch between payments and receivables despite a viable business.
- **Business failure** – breakdown of the business model and inability to generate revenue.

A **robust bankruptcy process** helps distinguish between these failures and **maximise business value** during insolvency.

CONCEPT OF INSOLVENCY, BANKRUPTCY AND LIQUIDATION

Insolvency is a **financial state** of inability to pay debts as they become due.

Bankruptcy is the **legal declaration** of insolvency.

As per **Section 79(4)** of the **IBC, 2016**, **bankruptcy** means the state of being bankrupt.

As per **Section 79(3)**, **bankrupt** includes:

- (a) a debtor adjudged bankrupt under **section 126**;
- (b) partners of a firm against whom a bankruptcy order is passed;
- (c) an **undischarged insolvent**.

Insolvency is a condition; **bankruptcy** is its **legal consequence**. Unresolved insolvency results in **bankruptcy for individuals** and **liquidation for corporates**.

Liquidation involves winding up and sale of assets to repay debts.

INSOLVENCY FRAMEWORK IN UK, USA AND INDIA

United Kingdom

The first bankruptcy legislation was the **Act of 34 & 35 Henry VIII, c.4 (1542)**, which was **creditor-centric and punitive**, treating debtors as offenders with **no discharge** and allowing seizure of assets and future earnings. Early laws functioned mainly as **debt-collection tools**.

By the early 18th century, laws softened with **4 Anne, c.17 (1705)** and **10 Anne, c.15 (1711)** introducing **discharge for compliant debtors**, marking the shift towards **debtor protection**. Modern insolvency laws focus on **rehabilitation and business continuity** rather than elimination.

Current Regulatory Framework in UK
The **Insolvency Act, 1986** and **Insolvency Rules, 1986**, based on the **Cork Review Committee Report (1982)**, consolidated fragmented insolvency laws.

The Act covers:

- **Company insolvency and winding up**
- **Insolvency and bankruptcy of individuals**
- **Insolvency practitioners, public administration, penalisation of malpractice, and avoidance of undervalued transactions**

The Act is divided into:

- **Group 1 – Company Insolvency**
- **Group 2 – Insolvency of Individuals**
- **Group 3 – Miscellaneous matters**

Key rescue procedures introduced:

1. **Company Voluntary Arrangements (CVAs)** – creditor-approved restructuring (75% approval).
2. **Administration** – court-appointed administrator with creditor moratorium.
3. **Administrative Receivership** – receiver appointed by certain secured creditors.
 1. **Chapter 7** – Liquidation
 2. **Chapter 9** – Municipal debt adjustment
 3. **Chapter 11** – Reorganisation (debtor-in-possession)
 4. **Chapter 12** – Farmers/Fishermen
 5. **Chapter 13** – Individuals with regular income
 6. **Chapter 15** – Cross-border insolvency

India – Historical Development

Indian insolvency law originated from **English law**. Early provisions appeared in the **Government of India Act, 1800**, followed by **Statute 9 (1828)** and the **Indian Insolvency Act, 1848**. Later laws included the **Presidency Towns Insolvency Act, 1909** and **Provincial Insolvency Act, 1920**, governing individuals and partnership firms.

Objectives of insolvency law:

- (i) **Relief to debtors** from creditor harassment
- (ii) **Mechanism for satisfying unsecured creditors**

The **Insolvency and Bankruptcy Code, 2016** repealed the 1909 and 1920 Acts.

Pre-IBC framework was fragmented, governed by multiple laws such as **SICA, SARFAESI Act, RDBFI Act, and Companies Acts**, necessitating a **unified framework**, leading to the **IBC, 2016**.

Under the **Constitution of India**, **Bankruptcy & Insolvency** falls under **Entry 9, List III (Concurrent List)**, enabling both **Central and State Governments** to legislate.

United States of America
Initially followed the **English system**, including imprisonment for debt. **State-wise variations** caused lack of uniformity, affecting interstate commerce. **Article I, Section 8, Clause 4** of the **U.S. Constitution (1789)** empowered Congress to enact **uniform bankruptcy laws**.

Temporary laws (1800, 1841, 1867) addressed recessions and were later repealed. The **National Bankruptcy Act, 1898**, amended in 1938, introduced **debtor rehabilitation**. It was replaced by the **Bankruptcy Reform Act, 1978**, establishing bankruptcy courts.

Current Regulatory Framework in USA

The **Bankruptcy Code (Title 11 of the U.S. Code)** governs insolvency, supported by the **Federal Rules of Bankruptcy Procedure**.

Types of bankruptcy:

1. **Chapter 7** – Liquidation
2. **Chapter 9** – Municipal debt adjustment
3. **Chapter 11** – Reorganisation (debtor-in-possession)
4. **Chapter 12** – Farmers/Fishermen
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The **pre-IBC framework** was **fragmented**, governed by **SICA, SARFAESI Act, RDDBFI Act, and Companies Acts**, leading to the need for a **unified framework** under the **IBC, 2016**.

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Government Committees on Bankruptcy Reforms

The **Government** constituted various **committees** to review **bankruptcy and insolvency laws in India** and **recommend reforms** in line with **changing economic needs**, forming the **basis of India's modern insolvency framework**.
(Refer to the table)

Need for a New Law

Before the **Insolvency and Bankruptcy Code (IBC)**, India lacked a **single comprehensive law** for **insolvency and bankruptcy**, with **multiple overlapping laws and forums** causing **delays** and **ineffective resolution**, weakening the **credit system**. **Corporate insolvency** was governed by **SICA, RDDBFI Act, SARFAESI Act and Companies Act**, involving **BIFR, DRTs, Appellate Tribunals and High Courts**, while **individual insolvency** was governed by the **Presidency Towns Insolvency Act, 1909** and **Provincial Insolvency Act, 1920**.

The **objective of IBC** is to **consolidate and amend insolvency laws** for **corporates, partnership firms and individuals** through a **time-bound resolution framework**, promoting **entrepreneurship**, improving **Ease of Doing Business**, attracting **investment**, and supporting **economic growth**.

The Insolvency and Bankruptcy Code, 2016

Introduction

India's earlier **debt recovery and insolvency framework** under the **Contract Act, RDDBFI Act, SARFAESI Act, SICA, Companies Act** and **individual insolvency laws** was **ineffective and outdated**, leading to **delays**, **low lender confidence**, and an **underdeveloped corporate bond market**.

To address these gaps, the **Bankruptcy Law Reforms Committee (BLRC)** drafted the **Insolvency and Bankruptcy Code (IBC)**. The Code was **introduced on 21 December 2015**, passed in **May 2016**, and received **Presidential assent on 28 May 2016**.

The **IBC** aims to **promote entrepreneurship**, **improve credit availability**, **balance stakeholder interests**, and ensure **time-bound insolvency resolution** with **maximisation of asset value**.

Salient Features

- i. **Clear, coherent and speedy process** for early detection and resolution of financial distress of **companies/LLPs**.
- ii. **Two processes for individuals – Fresh Start and Insolvency Resolution**.
- iii. **NCLT and DRT as Adjudicating Authorities** for **companies/LLPs** and **individuals/unlimited partnerships** respectively.
- iv. Establishment of **Insolvency and Bankruptcy Board of India (IBBI)** for **regulatory oversight**.
- v. **Insolvency Professionals** to manage processes; **Insolvency Professional Agencies** to set **standards and ethics**.
- vi. **Information Utilities** for collection and authentication of **financial information**.
- vii. **Enabling provisions for cross-border insolvency**.

Commencement of Code
Section 1 empowers the **Central Government** to notify **different commencement dates** for different provisions.

Applicability of the Code
The **IBC, 2016** consolidates insolvency law for **companies, LLPs, partnerships and individuals**.

Under **Section 2**, it applies to:

- a) **Companies** under **Companies Act, 2013** or earlier laws;
- b) **Companies under special Acts**;
- c) **LLPs** under **LLP Act, 2008**;
- d) **Other bodies** as notified by **Central Government**;
- e) **Personal guarantors to corporate debtors**;
- f) **Partnership and proprietorship firms**;
- g) **Individuals** (other than **personal guarantors**).

The IBC, 2016 is a landmark economic reform, providing a uniform, creditor-and-debtor driven, time-bound insolvency framework, significantly improving Ease of Doing Business.

Key Objectives of the Insolvency and Bankruptcy Code, 2016

1. Consolidation and amendment of insolvency laws with a time-bound resolution mechanism;
2. Maximisation of value of assets;
3. Promotion of entrepreneurship;
4. Increased availability of credit;
5. Balancing interests of stakeholders, including priority of Government dues;
6. Establishment of IBBI as the regulatory authority;
7. Provision for connected and incidental matters.

HOW THE CODE IS ORGANISED

The Insolvency and Bankruptcy Code, 2016 consists of 255 Sections divided into five Parts, along with Schedules amending various statutes. Part I – Preliminary (Sections 1–3) Lays down short title, extent, commencement and definitions.

Part II – Insolvency Resolution and Liquidation for Corporate Persons

- Chapter I – Preliminary (Sections 4–5)
- Chapter II – Corporate Insolvency Resolution Process (CIRP) (Sections 6–32)
- Chapter III – Liquidation Process (Sections 33–54)
- Chapter III-A – Pre-Packaged Insolvency Resolution Process (Sections 54A–54P)
- Chapter IV – Fast Track CIRP (Sections 55–58)
- Chapter V – Voluntary Liquidation (Section 59)
- Chapter VI – Adjudicating Authority (Sections 60–67)
- Chapter VII – Offences and Penalties (Sections 68–77)

Part III – Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

- Chapter I – Preliminary (Sections 78–79)
- Chapter II – Fresh Start Process (Sections 80–93)
- Chapter III – Insolvency Resolution Process (Sections 94–120)
- Chapter IV – Bankruptcy Order (Sections 121–148)
- Chapter V – Administration and Distribution of Estate (Sections 149–178)
- Chapter VI – Adjudicating Authority (Sections 179–187)

Part IV – Regulation of Insolvency Professionals, Agencies and Information Utilities

- IBBI (Sections 188–195)
- Powers and Functions of Board (Sections 196–198)
- Insolvency Professional Agencies (IPAs) (Sections 199–205)
- Insolvency Professionals (IPs) (Sections 206–208)
- Information Utilities (IUs) (Sections 209–216)
- Inspection & Investigation (Sections 217–220)
- Finance, Accounts & Audit (Sections 221–223)

Part V – Miscellaneous (Sections 224–255)

Schedules

The Code contains Schedules amending multiple laws, including the Companies Act, 2013, SARFAESI Act, 2002, Income-tax Act, 1961, LLP Act, 2008, etc.

Salient Features of the Insolvency and Bankruptcy Code, 2016

1. Uniform and comprehensive insolvency law covering companies, LLPs, partnerships and individuals (excluding financial service providers).
 2. Time-bound insolvency resolution framework supported by IBBI, Adjudicating Authorities, IPs, IPAs and IUs.
 3. Insolvency Professionals (IPs) act as regulated professionals; IPAs regulate IPs.
- Recognised IPAs:
- IIPAI (ICAI)
 - ICSI IIP
 - IPA of ICAI

4. IPs manage debtor's assets, verify claims, form Committee of Creditors (CoC), run business as a going concern, and act as liquidator/bankruptcy trustee.
5. Information Utilities (IUs) maintain centralised, authenticated financial data for faster resolution.
6. IBBI functions as the insolvency regulator and also regulates registered valuers under Valuation Rules, 2017.
7. NCLT is the Adjudicating Authority for companies/LLPs; DRT for individuals and partnership firms. Appeals lie with NCLAT / DRAT, and finally the Supreme Court. The Code separates commercial decisions from judicial scrutiny.
8. Minimum default threshold: ₹1 crore for CIRP (with special threshold for pre-packaged insolvency as notified).
9. Two stages for corporate persons:
 - (i) Insolvency Resolution Process
 - (ii) Liquidation
10. Two processes for individuals and partnerships:
 - (i) Fresh Start
 - (ii) Insolvency Resolution
11. Fresh Start Process allows debt waiver up to ₹35,000, subject to eligibility.
12. Initiation of CIRP by financial creditors, operational creditors, or corporate debtor; restrictions under Section 11 apply.
13. Strict timelines – 180 days + 90 days extension, with an outer limit of 330 days.
14. Revised priority waterfall placing government dues below secured creditors, workmen and employees.
15. Creation of Insolvency and Bankruptcy Fund under Section 224.
16. Stringent penalties for offences like concealment of property (imprisonment up to 5 years or fine up to ₹1 crore).

17. Cross-border insolvency provisions through bilateral and reciprocal arrangements.

The Code repeals the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, and amends the following Acts:

- Indian Partnership Act, 1932
- Central Excise Act, 1944
- Income-Tax Act, 1961
- Customs Act, 1962
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- Finance Act, 1994
- SARFAESI Act, 2002
- Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- Payment and Settlement Systems Act, 2007
- Companies Act, 2013

PILLARS OF INSOLVENCY AND BANKRUPTCY CODE, 2016

(A) Insolvency and Bankruptcy Board of India (IBBI)

The Insolvency and Bankruptcy Code, 2016 establishes the Insolvency and Bankruptcy Board of India (IBBI) as the insolvency regulator (constituted on 1 October 2016). It regulates insolvency professionals (IPs), insolvency professional agencies (IPAs) and information utilities (IUs), and implements insolvency resolution and bankruptcy in a time-bound manner.

Under Section 188(2), IBBI is a body corporate with perpetual succession. Under Section 189(4), the Chairperson and Members hold office for 5 years or till 65 years, whichever is earlier.

Section 190 provides grounds for removal of members (bankruptcy, incapacity, conviction, abuse of position).

Powers and Functions of the Board (Section 196)

- Registration, renewal, suspension and cancellation of IPAs, IPs and IUs
- Regulation and development of insolvency ecosystem

- Eligibility, standards and examinations for IPs
- Inspection, investigation, monitoring and levy of fees
- Data collection, publication and record maintenance
- Committees, guidelines, MoUs, grievance redressal
- Research, audits, regulations and public consultation.

Under Section 196(2) – power to frame Model Bye-laws for IPAs.

Under Section 196(3) – civil court-like powers (discovery, summons, inspection, commissions).

(B) Insolvency Professionals (IPs)

(Direct question can be asked)

Insolvency Professionals (IPs) are regulated private professionals acting as intermediaries.

- Defined under Section 3(19)
- Enrolment mandatory with IPA (Section 206)
- Registration mandatory with IBBI (Section 207)
- Governed by IBBI (Insolvency Professional) Regulations, 2016

Roles of IPs

- IRP / RP in CIRP
- RP in individual insolvency
- Liquidator in liquidation
- Bankruptcy Trustee under Section 125

Functions and Obligations (Section 208)

- Conduct fresh start, individual insolvency, CIRP, bankruptcy and liquidation
- Follow code of conduct, exercise due care, comply with IPA bye-laws, allow inspections, and submit records to IBBI

(C) Insolvency Professional Agencies (IPAs) (Direct question can be asked)

Defined under Section 3(20); registered under Section 201.

IPAs enrol, regulate and discipline IPs.

Regulated through:

- IBBI (Model Bye-Laws) Regulations, 2016
- IBBI (IPA) Regulations, 2016

Registered IPAs

- IIP-ICAI
- ICSI Institute of Insolvency Professionals
- IPA of Institute of Cost Accountants of India

Section 199 – registration mandatory.

Section 204 – functions include membership, conduct standards, monitoring, grievance redressal, suspension/cancellation.

(D) Adjudicating Authority (AA)

- NCLT – for companies and LLPs (Sections 5(1), 60)
- DRT – for individuals and partnership firms (Sections 79, 179)

Civil court jurisdiction barred under Sections 63 and 180.

Appeals:

- NCLT → NCLAT → Supreme Court
- DRT → DRAT → Supreme Court

(E) Information Utility (IU)

Defined under Section 3(21); registered under Section 210. IUs collect, authenticate and store financial information to support speedy insolvency resolution.

Governed by IBBI (Information Utilities) Regulations, 2017.

Obligations (Section 214)

- Create and store financial information
- Accept electronic submissions
- Authenticate information
- Provide regulated access
- Publish statistical data
- Ensure inter-operability

Key Definitions and Concepts

Sections 3, 5 and 79 define core terms under the **Insolvency and Bankruptcy Code, 2016**.

- **Section 3:** General definitions applicable across the Code.
- **Section 5 (Part II):** Definitions for corporate insolvency resolution and liquidation.
- **Section 79 (Part III):** Definitions for individuals and partnership firms.

Definitions under Section 3 (General)

- **Interpretation Clause [Section 3(37)]:** Undefined terms derive meaning from allied laws (Contract Act, Partnership Act, Companies Act, etc.).
- **Board [Section 3(1)]:** Insolvency and Bankruptcy Board of India (IBBI).
- **Bench [Section 3(2)]:** Bench of the Adjudicating Authority.
- **Charge [Section 3(4)]:** Interest/lien on property including mortgage.
- **Claim [Section 3(6)]:**
 - i Right to payment (disputed/undisputed, secured/unsecured).
 - ii Right to remedy for breach giving rise to payment.
 - iii *Swiss Ribbons*: Claim becomes **debt** when due; **default** on non-payment.
- **Corporate Person [Section 3(7)]:** Company/LLP (excluding financial service providers).
- **Corporate Debtor [Section 3(8)]:** Corporate person owing a debt.
- **Creditor [Section 3(10)]:** Includes financial, operational, secured, unsecured creditors and decree holders.
- **Debt [Section 3(11)]:** Liability arising from a claim.
- **Default [Section 3(12)]:** Non-payment when debt becomes due.
- **Financial Information [Section 3(13)]:** Records of debt, defaults, securities, cash flows, etc.

- **Financial Service Provider [Section 3(17)]:** Entity providing financial services under regulator authorisation.
- **Insolvency Professional [Section 3(19)], IPA [Section 3(20)], Information Utility [Section 3(21)].**
- **Person [Section 3(23)]:** Individuals, companies, LLPs, trusts, statutory entities, etc.
- **Property [Section 3(27)]:** Assets and interests, movable/immovable, India or abroad.
- **Secured Creditor [Section 3(30)] & Security Interest [Section 3(31)]:** Includes statutory security (*Rainbow Papers – SC*).
- **Transaction [Section 3(33)], Transfer [Section 3(34)], Transfer of Property [Section 3(35)].**

Definitions under Section 5 (Part II – Corporate Insolvency)

- **Adjudicating Authority [Section 5(1)]:** NCLT.
- **Corporate Applicant [Section 5(5)], Corporate Guarantor [Section 5(5A)].**
- **Financial Creditor [Section 5(7)]:** Debt disbursed for **time value of money**.
- **Dispute [Section 5(6)]:** Includes suits/arbitration on debt, goods/services, breach (*Mobilox test*).
- **Financial Debt [Section 5(8)]:** Borrowings, bonds, guarantees, transactions having commercial effect of borrowing.
- **Operational Creditor [Section 5(20)] & Operational Debt [Section 5(21)]:** Claims for goods/services, employment, statutory dues.
- **Insolvency Commencement Date [Section 5(12)], IRP Period [Section 5(14)].**
- **IRP Costs [Section 5(13)], Interim Finance [Section 5(15)].**
- **Liquidation Cost [Section 5(16)], Liquidator [Section 5(18)].**
- **Related Party [Section 5(24) & 5(24A)]:** Based on control, ownership, influence (*Swiss Ribbons*).
- **Resolution Applicant [Section 5(25)] & Resolution Plan [Section 5(26)].**
- **Voting Share [Section 5(28)]:** Proportion of financial debt in CoC.

Definitions under Section 79 (Part III – Individuals & Partnership Firms)

- **Adjudicating Authority [Section 79(1)]:** Debt Recovery Tribunal (DRT) constituted under the RDDBFI Act, 1993.
- **Associate [Section 79(2)]:** Includes **immediate family**, relatives (including spouse's relatives), **partners**, spouses/relatives of partners, **employer or employee**, **trustee** of a trust benefiting the debtor, and **company** where debtor (alone or with associates) holds **>50% share capital or controls the board**.
- **Relative:** Members of HUF or as prescribed.
- **Bankrupt [Section 79(3)]:**
 - (a) Debtor adjudged bankrupt;
 - (b) Partners of a firm declared bankrupt;
 - (c) Undischarged insolvent.
- **Bankruptcy [Section 79(4)]:** State of being bankrupt.
- **Bankruptcy Debt [Section 79(5)]:**
 - (a) Debt owed on bankruptcy commencement date;
 - (b) Liability arising from pre-commencement transactions;
 - (c) Interest forming part of such debt.
- **Bankruptcy Commencement Date [Section 79(6)]:** Date of bankruptcy order under Section 126.
- **Bankruptcy Order [Section 79(7)]:** Order passed under Section 126.
- **Bankruptcy Process [Section 79(8)]:** Process under **Chapters IV and V** of Part III.
- **Bankruptcy Trustee [Section 79(9)]:** Insolvency Professional appointed under Section 125.

CASE LAWS

- **Committee of Creditors [Section 79(11)]**: Committee constituted under Section 134.
- **Debtor [Section 79(12)]**: Includes a judgment-debtor.
- **Discharge Order [Section 79(13)]**: Order discharging debtor under Sections 92, 119 or 138.
- **Excluded Assets [Section 79(14)]**: Unencumbered tools/equipment, household necessities, personal ornaments (as prescribed), life insurance/pension, and one dwelling unit (as prescribed).
- **Excluded Debt [Section 79(15)]**: Fines, damages for negligence/breach, maintenance liabilities, student loans, and other prescribed debts.
- **Firm [Section 79(16)]**: Partnership body, registered or unregistered.
- **Immediate Family [Section 79(17)]**: Spouse, dependent children and dependent parents.
- **Partnership Debt [Section 79(18)]**: Debt with joint liability of partners.
- **Qualifying Debt [Section 79(19)]**: Liquidated amount due (including interest), excluding excluded debt, secured portion, and debts incurred within 3 months before fresh start application.
- **Repayment Plan [Section 79(20)]**: Plan prepared by debtor with Resolution Professional for restructuring debts.
- **Resolution Professional [Section 79(21)]**: Insolvency professional appointed under Part III.
- **Undischarged Bankrupt [Section 79(22)]**: Bankrupt without a discharge order under Section 138.

1. IBC overrides other laws:
In **Innoventive Industries Ltd. v. ICICI Bank**, the Supreme Court held that the IBC, due to its **non-obstante clause**, prevails over conflicting laws; MRUA was held repugnant. Similarly, in **Pr. CIT v. Monnet Ispat and Energy Ltd.**, the IBC overrides the Income Tax Act, 1961 in case of inconsistency.

2. IBC marks a quantum change in corporate governance:
In **Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.**, the Court held that the IBC brings a quantum change in corporate governance, emphasizing creditor primacy, public interest, timely resolution, and separation of promoters from the corporate debtor.

Reorganization is primary; liquidation is last resort.

3. Focus on revival and continuation of corporate debtor:
In **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta**, the Court held that the primary focus of IBC is revival and continuation of the corporate debtor as a going concern, supported by strict timelines and avoidance of pre-IBC inefficiencies.

4. Objective of time-bound insolvency resolution:
In **Swiss Ribbons Pvt. Ltd. v. Union of India**, the Court held that the foremost objective of IBC is time-bound reorganization and insolvency resolution, ensuring value maximization, revival, stakeholder protection, with liquidation only as a last resort.