The Insolvency and Bankruptcy Code, 2016

Bankruptcy Services & Capability Note

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**Insolvency & Bankruptcy Code 2016**

**Overview**

**Legal Framework**
- The Act “The Insolvency and Bankruptcy Code, 2016” (IBC) was passed in Parliament on 11th May 2016 and it received Honourable President assent on 28th May 2016.
- The Insolvency and Bankruptcy Board of India (IBBI) was established on October 1, 2016 in accordance with the provisions of The Insolvency and Bankruptcy Code, 2016.
- IBBI, the apex governing body has passed regulation to govern and to create the legal framework around the Code:-
  1. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
  2. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.
  3. Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
  4. Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
  5. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016.

**Legal Infrastructure**
- IBBI has set up following infrastructure for promoting transparency & governance in the administration of the Insolvency & Bankruptcy Matters :-

![Diagram of Legal Infrastructure](image)

**Features of the Code**
- IBC provides a single window platform to oversee all insolvency & liquidation proceedings for Individual, Small & Medium Enterprise (SME), Limited Liability Partnerships (LLP) & Corporate.
- IBC empowers all classes of creditors (secured & unsecured, employees, regulatory authorities) to trigger a resolution process in case of non-payment of valid claim.
- IBC empowers Insolvency Professional to take complete control of the Corporate and to suspend all board of directors & promotors powers. IBC gives a “Limited Period” time to facilitate discussion and to arrive at common resolution process.
- As per the World Bank Report on Doing Business Index 2016, India ranks at 136th Place in “Ease of doing business”. Among several requisite, effective insolvency regime & faster recovery is one of the most important parameters. IBC will help India to improve its overall ranking in Ease of doing business and will help investors & owners in fast recovery from the pain.
- IBC is a going to be very structured & professionally managed two stage Process, (1) Insolvency Resolution Process & (2) Liquidation Process.
Insolvency Resolution Process For Corporate Persons

Who Can file the application?
- Claims by Operational Creditors (Vendors)
- Claims by Financial Creditors (Lenders)
- Claims by workmen & employees
- Corporate debtor or Party himself

What is the minimum default amount?
Minimum amount of Rs. 1 Lakh even for a single day

Who can appoint or recommend Insolvency Professional Name?
Financial Creditor / applicant need to propose name of the licensed Insolvency Professional in the application itself

Filing of Corporate insolvency Application with NCLT 0 Day

Recommend/Appointment of Interim Insolvency Professional (IP) 0 Day

NCLT assess admission of application and finalise IP appointment 0 to 14 Days

Public Announcement by IP on Appointment and Claim submission 14 to 17 Days

Claim to be submitted to IP along with evidence 17 to 28 Days

IP to assess proof of claims and determine amount of total claim 28 to 35 Days

IP to constitute Committee of Creditors (COC) and conduct first COC meeting 35 to 42 Days

COC to vote & appoint IP for further or change of IP Before 44 days

IP to submit report of first COC meeting to NCLT Before 44 days

IP to appoint two registered valuer for Valuation Before 180 Days

IP to prepare the Information Memorandum (IM) Before 180 days

Preparation & Submission of Draft Resolution Plan to COC Before 180 days

Resolution Plan approved by COC Before 180 Days

IP submits Approved Resolution Plan to NCLT for final Approval*

Implementation of Resolution Plan and Monitoring

YES

NO

Liquidation Process

*NCLT Can extend the insolvency resolution process period beyond 180 days but not exceeding 90 days. Mandatory liquidation of corporate debtor in the event the resolution has not been reached within 180 days or extended period.
## Insolvency & Bankruptcy Code 2016

### Eligibility, Criteria & Process

### Liquidation Process For Corporate Persons

#### Which events can trigger Liquidation order?

1. End of Corporate Insolvency Resolution Plan
2. Non-submission of Plan to NCLT
3. Non-Approval of Plan
4. Decision of Creditors of Committee
5. Non-Implementation of Plan
6. Delays & Exhaust of Extension Period

#### Liquidation Order

- Appointment of Insolvency Professional as Liquidator
- Custody & Control of Assets, Register, Books & Accounts

#### Appointment of Professionals for Valuation/ Liquidation/ Auction/ Disposal
- Consultation with Creditors/ Stakeholders on Liquidation Strategy & Plan

#### Public Announcement on Appointment and Claim Submission deadline
- 0 to 5 Days

#### Collection & Assessment of Proof of Claim
- 5 to 30 Days

#### Consolidation of Claim & Preparation of List of Stakeholders, Preparation of Waterfall Chart in the rank of priority

**Priority**

1. Liquidation fee & cost
2. Secured Creditors
3. Secured Lenders
4. Workmen & Employees
5. Unsecured & Others
6. Government Dues
7. Remaining Debts & Dues
8. Preference Shareholders
9. Equity Shareholder (Balance)

- 31 to 75 Days

#### Valuation of Assets by Two Registered Valuers
- 31 to 75 Days

#### Preparation & Submission of Preliminary Report to NCLT
- 31 to 75 Days

#### Standalone Sale/Auction/Slump Sale/Private Sale/ Parcel Sale for Realisation
- Within 2 Year

#### Preparation & Submission of Asset Sale Report to NCLT
- Within 2 Year

#### Preparation & Submission of Progress Report to NCLT on Quarterly Basis (within 15 days from the end of Quarter)
- Within 2 Year

#### Collection of Proceeds of Liquidation & Distribution of funds as per Priority
- Within 2 Years

#### Completion of Liquidation, Preparation & Submission of Final Report to NCLT for Dissolution
- Within 2 Years

#### Provision for Unclaimed Proceeds of liquidation or undistributed Profits
- Within 2 Years

#### Dissolution Order

**Transformation of Risk to Reward**

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HOW WE CAN HELP YOU?

- IBC empowers Creditors or Lenders to exercise its rights in the event of single default in any payment or repayment. This can be triggered without any notice whereas the Corporate under Stress or/and Default need to carefully develop & implement an efficient and accurate Cashflow Forecasting, Insolvency Resolution Plan or Turnaround Strategy Plan to handle the situation & to avoid going into liquidation.
- Corporate need Insolvency Professionals to handle, to communicate, to develop and to implement the financial restructuring & re-engineering strategy and to win confidence of all the creditors & stakeholders.

- In the time of difficulty, RiSiKo can help you to identify and select the right path to overcome the time of stress as we have worked and represented both side of the coin and hence understand the pain and emotions of the Entrepreneur at the same time understand the concern of the investors/ stakeholders.
- We have worked across all industry/sector within India and globally and we understand the Business, Operation, People, Process, System, Control & the associated pain areas.
- We can play trusted role of running the Business, handling Insolvency Professional & Liquidation as the situation demands.

- In the Year 2014-15, handled USA Bankruptcy filed Under Chapter 11 (Restructuring) & Chapter 7 (liquidation) and played the role of Strategic & Financial Advisor to the Board of Stressed Corporate.
- In the year 2016, we have handled several matters involving liquidation and compliance of Hungary (KFT), Netherlands (BVI) & Dubai (UAE) assets holding Company.
- In India, we have been involved in numerous matters of Corporate Debt Restructuring (CDR), DRT & NPA Matters, SARFAESI matters, Lenders Monitoring Audit, Official Liquidation, Lender relationship management, Enterprise Risk Management (Stress Testing) etc.

- Always worked with an objective to turnaround and handholding the client/creditors to implement the turnaround strategies. We believe in team-working and have always involved maximum existing team members to achieve the turnaround objectives.
- Quick in understanding and analysing the current business situation and develop Corporate restructuring plan.
- Efficient in identifying right team to be involved in restructuring the business environment & develop a revised Business Model for short to long term business revival and restructuring.

- Our firm is licensed holder of Insolvency Professional (IP) as per the mandatory requirement of Insolvency Professionals 2016 regulation.
- Our “Turnaround & Crisis Management Team” on Panel has experienced Chartered Accountant (CA), Lawyers (LLB), Licensed Insolvency Professionals (IP), USA Bankruptcy Attorney, Government Approved Valuer, Ex-banker, Consultants & Subject Matter Expert (SME).
- Quick and easy adaptability to work with the new team and motivate them to work for the turnaround strategies.

RiSiKo is German for “taking calculated risks to achieve extraordinary returns”.

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Quick “Stress & Financial Control Testing” for early detection & avoidance of any possible default
“Stress & Risk Mitigation Plan” to prevent from going into default, identification & disposal of bad assets/investments, Financial Cashflow & Budget forecasting & monitoring to avoid any events of defaults
Filing the Application with NCLT (AA)
Appointment and Playing role as Interim insolvency Professional (IP)

Appointment and Playing role as Insolvency Professionals (IP)
Cash Forecasting & monitoring
Claim Assessment & Consolidation of “Claim Register”
Constitute Committee of Creditors (COC)
Creditors & Lenders Relationship Management
Business & Asset Valuation
Development & submission of Information Memorandum
Development & submission of Insolvency Resolution Plan (IRP) or Turnaround Strategy Plan
Presentation to COC & NCLT, seeking final approval
Implementation & monitoring performance & compliance reporting of Insolvency Resolution Plan (IRP) to COC/NCLT

Appointment and playing role as Liquidator
Development & submission of Liquidation Plan
Stakeholders, Creditors & lenders Relationship Management
Priority of Claim & Waterfall, Proof of Claim assessment
Liquidation of Business Assets, Realisation & Recovery
Distribution of funds to pay debts/dues
Repayment & Closure of Claims
Submission of Quarterly Progress Report to NCLT (AA)
Final report submission & dissolution of entity

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