

Presentation on

INSOLVENCY AND BANKRUPTCY CODE, 2016

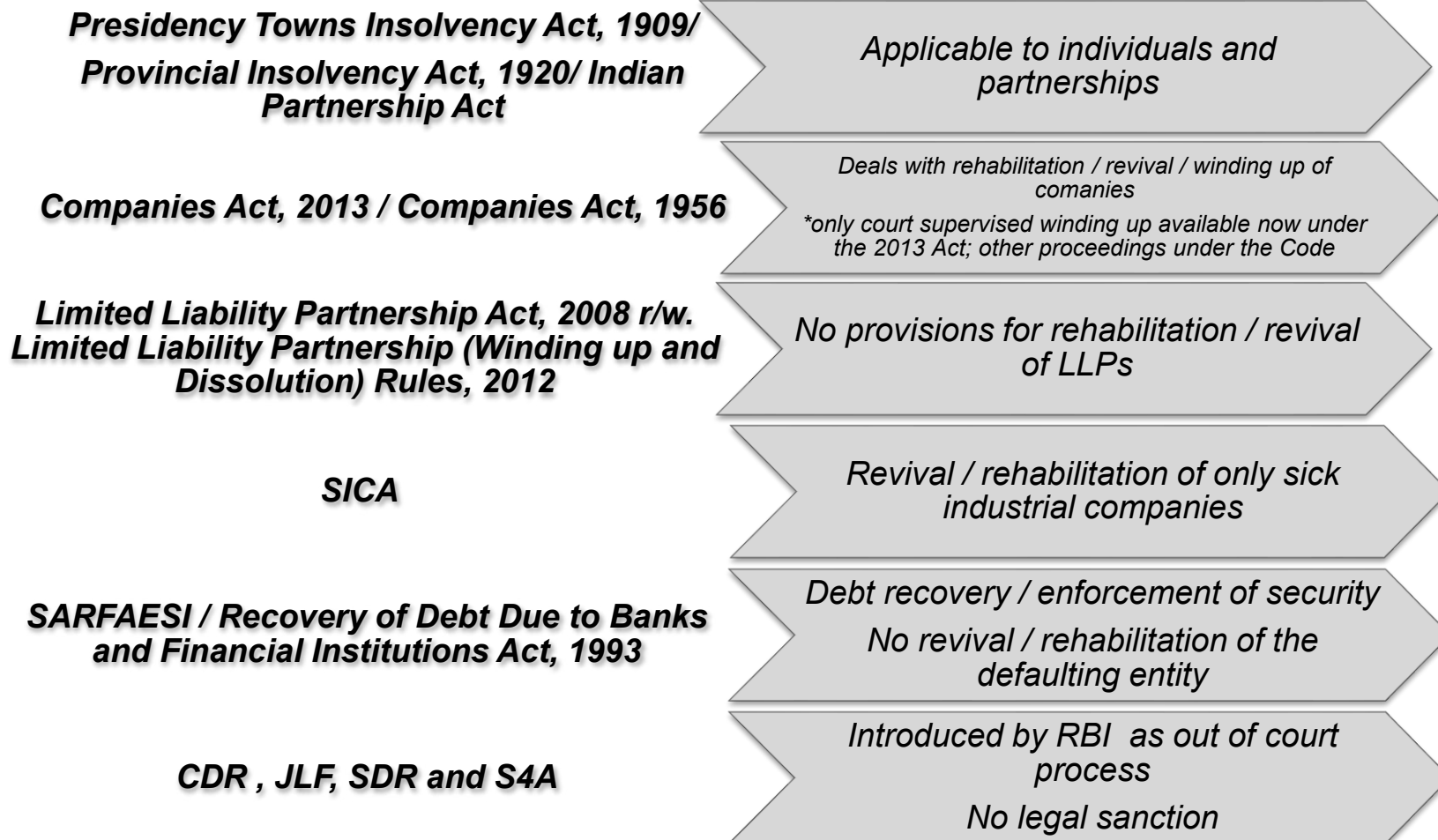
**Opportunities as an
Insolvency Professional
(under CIRP and Liquidation)**

CA Bhawani Shankar Rathi



BACKGROUND

- » Banks in India are going through unprecedented times with stressed loan portfolio touching all-time high. There is an apprehension that there could be further significant additions as many stressed loan accounts have been disguised as standard.
- » Realizing the problem, RBI has attempted to force banks to clean up balance sheets and come out with many regulatory steps aimed at improving banks' ability to deal with such stressed accounts. However, such frameworks have proved unsuccessful.
- » India currently has multiple laws to deal with insolvency, which leads the entire resolution process fragmented, expensive and time-consuming with very low recovery rate.
- » In this scenario, the Indian Government has introduced the Bankruptcy and Insolvency Code, 2016 which will consolidate the existing frameworks and create a new institutional structure.
- » The Code creates time-bound processes for insolvency resolution of companies and individuals which thereby will help India improve its World Bank insolvency ranking.
- » Code has opened a new opportunities for professionals particularly Chartered Accountants.



Due to the complexity of multiple laws, the entire resolution procedure was fragmented, expensive and time-consuming with very low recovery rate.

Current stress in the banking sector

Stressed assets in the banking system

March	2013	2014	2015	2016
	Total			
Gross NPA Ratio (%)	3.27	3.86	4.37	7.61
Net NPA Ratio (%)	1.72	2.17	2.48	4.63
Stressed Assets/advances (%)	NA	9.75	11.01	11.5
March	2013	2014	2015	2016
	Public Sector Banks			
Gross NPA Ratio (%)	3.59	4.34	4.94	9.6
Net NPA Ratio (%)	1.99	2.53	2.9	6.1
Stressed Assets/advances (%)	NA	11.04	12.68	14.5
March	2013	2014	2015	2016
	Private Sector Banks			
Gross NPA Ratio (%)	1.86	1.82	2.14	2.7
Net NPA Ratio (%)	0.52	0.63	0.87	1.3
Stressed Assets/advances (%)	NA	4.29	4.59	4.5



Our intent is to have clean and fully provisioned banks' balance sheets by March 2017

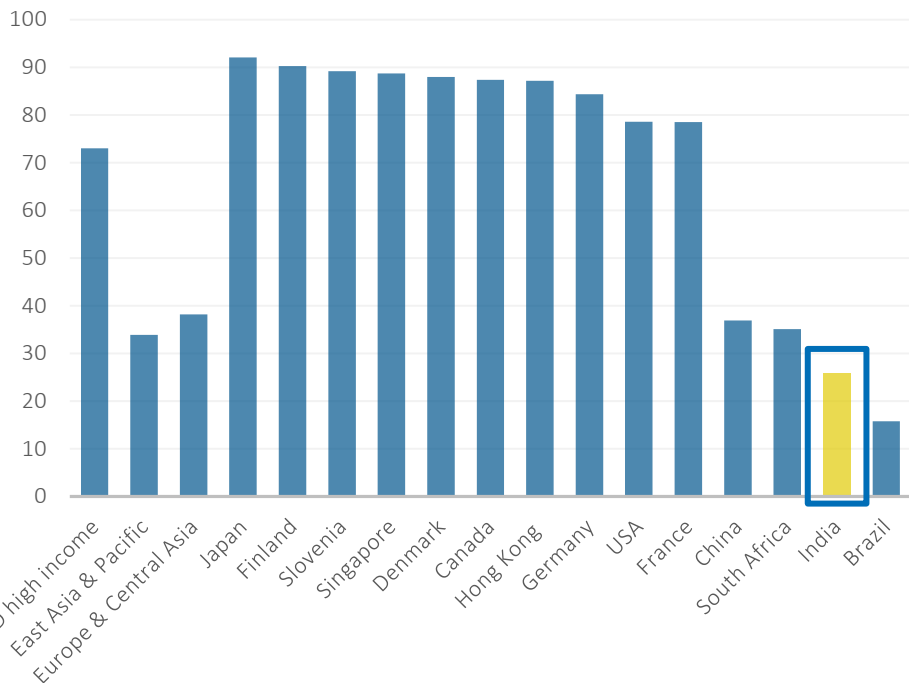
All out of the court debt restructuring processes like **CDR, SDR, S4A** and **5:25** have proved unsuccessful and **bad loans have piled up in the system after their implementation**

Source: RBI

Cont'd.

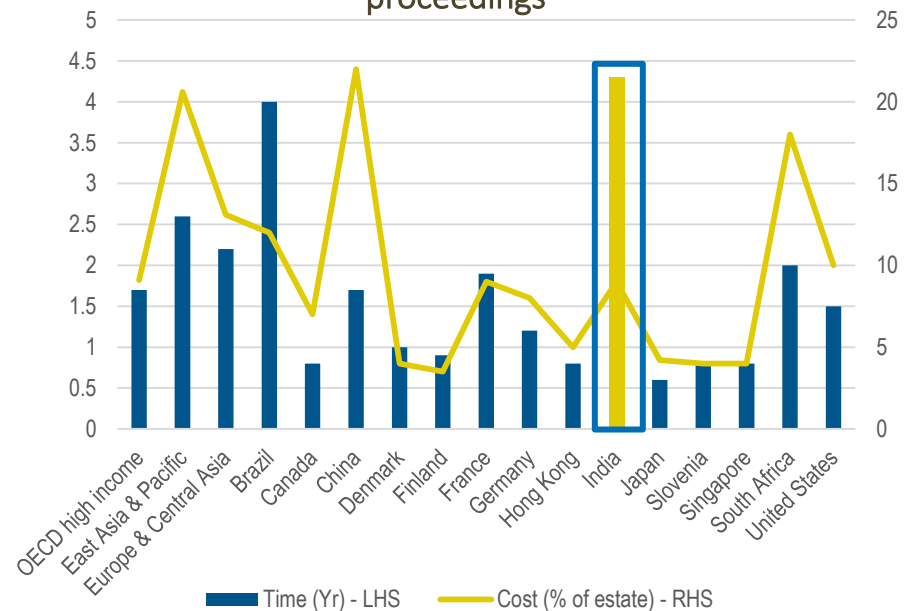
Resolving insolvency – time and cost matter

Recovery Rate (Cent/Dollar)



The **recovery rate**, in terms of cents recovered per dollar debt, is very low in **India at 26 cent/dollar**. In countries like **Finland, Japan, Germany** and the **United States** the recovery rate is extremely high at **90.3 cents, 92.1 cents, 84.4 cents** and **78.6 cents** per dollar respectively.

Time for the recovery and cost of the proceedings



In India, it takes an average of **4.3 years** to resolve bankruptcy, which is extremely high. The **cost** in term of the percentage of the value of the debtor's estate is also very high in **India (9%)**.

Source: The World Bank/Doing Business Framework

INSOLVENCY PROFESSIONAL AND IBC

(related to CIRP and Liquidation)

The Insolvency and Bankruptcy Code, 2016 has introduced the following entities for successful implementation and smooth function.

Insolvency and Bankruptcy Board of India (IBBI)	Adjudicating Authority (AA)	Insolvency Professionals Agencies (IPA)	Insolvency Professionals (IP)	Information Utilities (IU)
<ul style="list-style-type: none"> ▪ Regulatory authority of IPA, IP, and IU ▪ Empowered to make regulations in respect of all the processes, appointments, procedures, investigation, monitoring, etc. 	<ul style="list-style-type: none"> ▪ The AA will exercise jurisdiction during the insolvency and liquidation process. ▪ For corporates, LLPs – NCLT is AA ▪ For individuals and partnerships – DRT is AA. 	<ul style="list-style-type: none"> ▪ IPA are those specialized bodies/agencies that will be entrusted with the task of registration and governance of IPs. 	<ul style="list-style-type: none"> ▪ IPs are appointed by IPA, who would take on the roles of Resolution Professional/Liquidator/bankruptcy Trustee in the process of different entities. 	<ul style="list-style-type: none"> ▪ An IU is an agency that is in charge of collecting, collating, authenticating and disseminating financial information.

What makes good Insolvency Professionals?

Practical Working Knowledge of

Company Law

Banking /Finance

Cash Flow
Management

Insolvency Law

**Stake Holder
Management**

Negotiation Skills

Taxation

Valuation/sale of
Assets

Commercials and
Business

First Objective

To see that the business is kept going to preserve economic value.

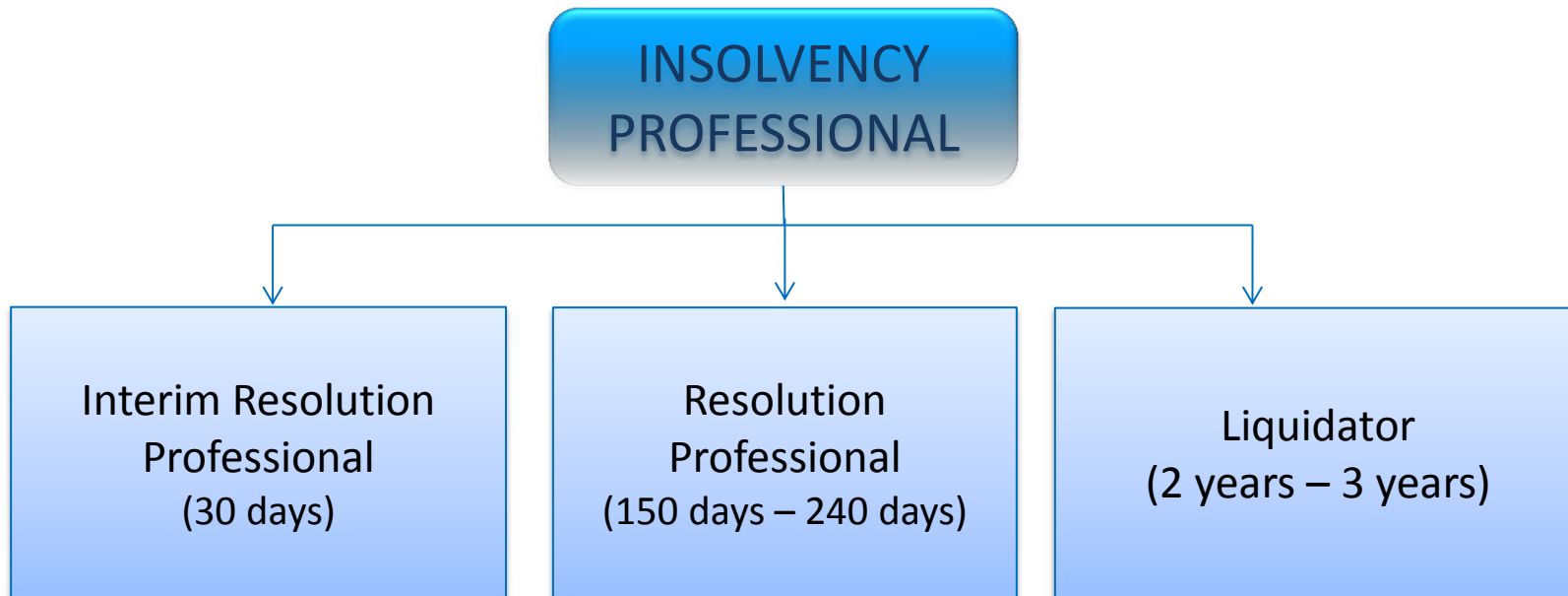


If it is not possible,
the IP aims to

- sell the assets of the person or company who owes money
- collect money due to the person or company
- collate / verify / admit creditors' claims
- distribute the money collected after paying costs

Different hats worn by Insolvency Professional

The term Insolvency Professional has been used interchangeably in the Code and its relevant regulations as Interim Resolution Professional , Resolution Professional, and Liquidator



- Manage operation of the corporate debtor as a going concern
- Public announcement
- Appointment of registered valuers
- Collection / verification and determination of claims
- Collation of claims
- Constitute a committee of creditors-
- holding first meeting of CoC
- Preparation of partial information memorandum
- Monitor assets of the corporate debtor
- Determine financial position of corporate debtor
- Collect all information relating to the assets, finances and operations of the corporate debtor

- Conduct entire CIRP
- Manage the operations of corporate debtor
- Take immediate custody and control of all the assets
- Preserve and protect the assets of the corporate debtor including continued business operations
- Represent and act on behalf of the corporate debtor including Court cases
- Raise interim finances subject to the approval of the CoC
- Update list of claims
- Prepare information memorandum
- Invite prospective lenders, investors, and any other person to put forward resolution plans
- Providing access of information to resolution applicant
- Check resolution plan for compliance with the code & present to CoC.
- Submit resolution plan approved by CoC to NCLT
- Send copy of order of NCLT approving/rejecting resolution plan to participants and resolution applicants

- To receive , collect and verify claims of all the creditors
- To take into custody / control and evaluate all the assets, property, effects and actionable claims of the corporate debtor- protect and preserve the assets & properties.
- Form and hold liquidation estate as a fiduciary for the benefits of the creditors
- Carry on business for beneficial liquidation as necessary
- Sell movable and immovable properties by auction/ private contract
- Obtain professional assistance
- To institute or defend suit
- Investigate financial affairs of CD for undervalued/ preferential transactions
- Apply to NCLT for orders and directions as required
- Prepare preliminary report, assets memorandum, sale report etc
- Maintain relevant records
- Realise and distribute

Apart from IP, CA and other professionals have following opportunities

- **As Valuer** : As per IBC code IRP need to appoint two valuers to determine liquidation value. Valuers also required for valuation of current assets (akin to stock audit) Valuer is also required for valuing the assets under liquidation. Chartered Accountants with over 10 years of practice are allowed to do valuation.
- **Preparation of Resolution Plan** : Multiple resolution plan can be submitted to IP by interested parties who are called as resolution applicant. CA can assist resolution applicants in preparation of Resolution plan.
- **Due Diligence** : As per code IRP need to collect all information relating to the **assets, finances and operations** of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
 - (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;

Professionals opportunities contd..

- **Data processing** : As per IBC code IRP and RP are needed to collate and verify claims of the creditors. In a large operating company data could be huge. IRP/RP may avail services of practicing CA for data processing
- **Management of borrower** : IRP/RP are required to manage business of the borrower on a going concern basis. IRP/RP may engage CA and other professionals for assisting in management e.g. as CFO
- **Secretarial and legal work** : CIRP process requires huge amount of book keeping, holding of meeting, recording minutes, communication with NCLT etc. IP are expected to take help of professionals in this regard.
- **Representing lenders** : Any creditor who is part of COC are allowed to appoint other IP (other than RP) as their representative in COC. FCCB and ECB holders are expected to use this facility.
- **Representing before NCLT / NCLAT** : A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more **Chartered Accountants** to present his case before the Tribunal or the Appellate Tribunal.

Professionals opportunities contd..

- **Forensic Audit** : IBC provides for look back period of 2 years in case of related parties and 1 years in case of other parties. It might be needed to conduct an forensic audit in some matters wherein Chartered Accountants can provide services.
- **Stock Audit** : Most corporate Debtors enjoy working capital limits. It may be necessary to conduct periodic Stock Audit of the CD during the CIRP process.
- **Internal / Concurrent Audit** : RP can appoint Internal / Concurrent Auditors during the business under CIRP.
- **Monitoring and Supervision of Resolution Plan** : IBC requires provision of Monitoring and Supervision of Resolution Plan after its approval by NCLT during its period. CAs can provide services of such monitoring and supervision.
- **Consultation and Strategizing** : Enjoy the fruit with less risk and legal responsibility.

IRP/ RP/ Liquidator may avail services of other Chartered Accountants in profession.

- **Insolvency Professional** can be only an individual, who is member of an **Insolvency Professional Agency** and enrolled with **Insolvency and Bankruptcy Board of India**.
- **ICAI** has formed an Insolvency Professional Agency (a section 8 company) named **Indian Institute of Insolvency Professionals of ICAI**.
- Insolvency Professionals can, however, form **Insolvency Professional Entity**, which can provide resources to the IP.
- Insolvency Professional Entity can be a **Partnership Firm, Limited Liability Firm or a Private Limited Company**. All the partners / directors of the company shall be jointly and severally liable for the acts of the individual IP taking up assignment.
- Formation and running of such businesses is subject to approval from ICAI, IIP of ICAI and IBBI.

Challenges of the new Professional opportunity

- » Only those to have appeared and cleared the Limited Insolvency Examination or National Insolvency Examination are eligible to work as Insolvency Professionals (IPs)
- » In all of the situations, the IP has to take into consideration the interests of all the stakeholders involved, and not limited to financial stakeholders
- » During the interaction the IP has an opportunity to get a view from the various stakeholders and may be able to recognise the problems that may be plaguing the business which can be brought to the notice of the lenders and may help bring about a resolution.
- » The IP may have to negotiate terms of engagement with suppliers, financial partners, employees and workmen, apart from managing the business on behalf of the Committee of Creditors (COC)
- » Due to the various responsibilities that an IP has to take on, it also provides an opportunity to look at a business from all angles, from deep within and holistically at the same time.
- » IP will also have to keep itself updated on various matters relating to accounting standards, taxation, legal issues which allows the IP to gain rich knowledge
- » IP required specialized knowledge and staff to look after the assignments. IP's present professional set up will require lot of efforts to keep up with the demands of this new professional segment.
- » Hence, the opportunity brings a lot of responsibilities on the shoulders of the IP.

Scope for Insolvency Professional

Banks' corporate NPA cases

- Those where banks have initiated legal action against the debtor for recovery of dues, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).
- Those where corporate debtor itself has sought legal action for collective resolution of insolvency, either under the Sick Industrial Companies Act, 1985 (SICA)
- Those where banks have chosen to restructure corporate debt under RBI's Corporate Debt Restructuring (CDR), Strategic Debt Restructuring (SDR) or similar mechanisms and failed.

Others

- Those cases where lenders or other non lending creditors have filed cases under the winding-up provisions of the Companies Act, 1956 (CA 56).
- Suppliers whose money are overdue. Mostly as a pressure tactic
- Corporate who are having cash flow problems and have exhausted other options

Motivating factors for lenders to use IBC

- » Creditors in control as most decision making with the lenders.
- » Time bound and quick solution for stressed and NPA accounts.
- » Change of management possible.
- » Brings financial lenders to a platform – enabling quick decision making and arriving at consensus quickly.
- » Prepare and examine resolution plan by professionals appointed by creditors ensuring fearless decision making.
- » Final approval by NCLT (a legal entity) – so less stress/fear of accountability/ vigilance.
- » Fair chance to viable and sustainable units for time bound revival.
- » In case of unviable accounts, faster, transparent and smooth liquidation process.
- » Clear and fair distribution of funds in case of liquidation. Government does not get priority.
- » Protection of assets of secured borrowers with maximisation of realisation.
- » Positive support from government for realisation and resolution of NPAs.

Ideal Cases for IBC from lenders perspective

- » When account has become irregular and Bank is of the view that borrower is taking matter casually
- » When there are multiple lenders and
 - Client is keeping account of a few lenders regular but others irregular
 - When lenders are not able to reach consensus quickly
 - When certain lenders with senior debt (1st charge holders) or other privileges are dominant and unfair to junior debt (unsecured or 2nd charge holders)
 - TRA mechanism is not benefitting some lenders in just manner.
- » When security coverage is low or very difficult to realise.
- » When lenders apprehend that the account is likely to go bad and borrower can siphon away funds or strip assets
- » Cases where SARFAESI or RDDDB can not be applied, but still the account is showing signs of stress and needs resolution within legal framework
- » When lenders doubt about integrity and/or managerial capabilities of existing promoters
- » When lenders expect genuine interest for change of management

- » Provides for time bound resolution forcing lenders to take a decisive action.
- » Resolution plan approved by NCLT has legal sanction and is binding on all stake holders.
- » Transparent process under judicial supervision removes investigation and vigilance fear from lenders perspective which is expected to improve decision making.
- » Not only loans but all type of debt including operational creditors and government dues can be restructured/realigned/reduced under the code.
- » Preempt all creditors, legal cases and other recovery actions during moratorium period.
- » Borrower has the option of applying himself under the code in which case borrowers' proposed IP would be appointed as IRP.
- » Company to work under the control of IRP/RP who are supposed to preserve economic value of the company as a going concern entity.
- » It can be used as a measure of last resort when other options like CDR, SDR, S4A have been exhausted
- » Attracting investor (financial/strategic/JV Partner) would be easier particularly in case of unlisted companies.
- » Possibility of raising additional finance as the same will have priority as it will form part of CIRP cost.

» **WHAT IS THE SCOPE FOR IP PRACTICE IN INDIA**

» **LET'S DO SOME NUMBER CRUNCHING**

CASES FILED UNDER IBC SO FAR

Applications by	Applications Made (No. of cases)	Applications accepted (No. of cases)
Financial Creditors	14	10
Operational Creditors	38	15
Corporate Debtors	22	22
Total	74	47

In the month of April alone 29 Applications have been filed

CLASS	No
Registered as IP for limited period (Validity till June 17)	977
Passed Limited insolvency exam	300
Passed Limited insolvency exam and registered as IP	165
Number of IPE registered so far	4

As per IBBI rules persons in employment cannot be granted registration as IP

CATEGORY	NO OF CASES
Winding-up Cases in Court	4500
BIFR/AAIFR Cases	1200
Failed and pending CDR Cases	460
Cases under DRT and DRAT	75000

RECENT ICRA REPORT ON SDR

- Bank loans worth Rs 22,000 crore which were recast under SDR in 2015-16 had slipped into NPA category during quarter ended March of 2016-17
- The bill for NPA provisions might expand substantially — slippages from SDR accounts are estimated to have more than doubled to Rs 49,500 crore in the April-June 2017 period
- In its sample set, 61 large borrowers having total debt of Rs 2,45,000 crore are currently undergoing a resolution through the SDR scheme

Type of Restructuring	No of Borrowers		
	CDR	SME	Debt Restructuring
Opening Restructured Accounts (As on 1 April 2015)	177	523	4463
Fresh Restructuring during FY 15-16	5	38	492
Upgradation to restructured standard category during FY 15-16	-	-	-
Downgradation of restructured account during FY 15-16	-	-	-
Write-offs of restructured accounts during FY 15-16	-24	-116	-1054
Total Restructured Accounts (As on 31 March 2016)	142	366	3755

CDR CELL – Overall Status Since Inception (As on 31.12.2016)

Rs. Crore

Total References Received by CDR Cell	No of Cases	655	
	Aggregate Debt	474002	
	Cases Rejected before Admission or Approval	Cases under consideration of CDR EG	Total Cases Approved
No of Cases	125	-	530
Aggregate Debt	70998	-	403004
	Cases Withdrawn on account of package failure	Cases exited successfully	Live cases in CDR
No of Cases	264	98	168
Aggregate Debt	125093	70851	207060

- » Opportunities in field are immense; Not only as IP but as other service providers such as valuer, service provider, consultant etc.
- » Considering immense responsibility and work load a person may not be able to take more than 4-5 assignments as IP at a time. Maybe only 1-2 at a time if the CD is of very large size.
- » Fees is being negotiated by applicant and IP. However, no benchmarking as of now. Fees for liquidator are suggested in the Code.
- » It's a new profession which is yet to set its feet. Over course of time fees should settle.
- » Everyone need to create their own niche segment. Big 4 are expected to focus on large ticket mandates.

Team Sumedha towards IBC Process

	Name of IP /Location	Registration No.	Name of IPA Enrolled with
1	Mr. Anil Birla # / Bangalore	IBBI/IPA-01/IP-00185/2016-17/1831	The Indian Institute of Insolvency Professionals of ICAI
2	Mr. Bijay Murmura * / Kolkata	IBBI/IPA-001/IP-N00007/2016-17/10026	The Indian Institute of Insolvency Professionals of ICAI
3	Mr. Vijay Maheshwari # / Kolkata	IBBI/IPA-01/IP-00149/2016-17/1236	The Indian Institute of Insolvency Professionals of ICAI
4	Mr Pradip Kumar Roy Chowdhury # / Kolkata	IBBI/IPA-01/IP-00112/2016-17/1158	The Indian Institute of Insolvency Professionals of ICAI
5	Mr Anup Singh Paliwal* / Kolkata	Passed Limited Insolvency Examination	--
6	Mr. B.S Rathi * / Mumbai	Passed Limited Insolvency Examination	--
7	Mr. Udayraj Patwardhan* / Mumbai	IBBI/IPA-001/IP-P00024/2016-17/10057	The Indian Institute of Insolvency Professionals of ICAI
8	Mr Gaurav Adukia * / Mumbai	Passed Limited Insolvency Examination	--
9	Mr Nikhil Dujari * / Mumbai	Passed Limited Insolvency Examination	--
10	Mr. Mohan Lal Jain* / New Delhi	IBBI/IPA-002/IP-N00006/2016-17/10006	ICSI Insolvency Professionals Agency

* Passed Limited Insolvency Examination # IP under automatic route



Thank You

Disclaimers

- The information contained in this report is extracted from different public sources. Reasonable care has been taken to ensure that the information contained herein is not misleading or untrue at the time of publication.
- The report is for general information only and we are not soliciting any action based on this material.
- The document is confidential and prepared for private circulation only. This is not an advertisement material.
- Facts and views expressed in the document are subject to change without any notice to the recipient.