

Professional Opportunities for Chartered Accountants under Companies Act, 2013 - Jurisprudence under Insolvency and Bankruptcy Code, 2016 and Valuations

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Mumbai

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The Companies Act 2013 - The Act

- ▶ **Common Queries :-**
 - ▶ Deposits - structuring
 - ▶ Loans and Advances
 - ▶ Interest Free Loans
- ▶ **Duties on Auditors**
- ▶ **Auditor's resigning has become an order of the day.**
 - ▶ Reasons there of ?.

The Companies Act 2013 – The Act

- ▶ Independent Director – need to be bit careful.

- ▶ National Company Law Tribunal – NCLT , NCLAT.
 - ▶ Mergers and Acquisition

- ▶ Knowledge of accounting and auditing standards along with Companies Act very much essential.

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Focus on capabilities , opportunities will follow

How to equip for Company law Consultancy ?

- ▶ Pursue Company Secretary Course, not inevitable though.

- ▶ Attend courses conducted by The Institute of Corporate Affairs – www.ica.in Few courses are online.
 - ▶ Six Months Certificate Course on Corporate Laws (Online)

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Be Focused

IICA broadly covers .

- ▶ Fundamentals of Law and Corporate Law in India · Company - incorporation,
- ▶ Organization & Structure · Corporate Finance ·
- ▶ Share Capital ·
- ▶ Initial Public Offering and Private Placement ·
- ▶ Corporate Governance ·
- ▶ Director - Role Powers and Responsibilities ·
- ▶ Independent Directors ·
- ▶ Restructuring, Mergers & Acquisition ·
- ▶ Corporate Insolvency · IB
- ▶ Capital Market - Rules and Regulations ·
- ▶ SEBI-Role, Functions and Powers ·
- ▶ Investor's Protection and Awareness ·
- ▶ Corporate Social Responsibility ·
- ▶ Corporate Liability ·
- ▶ Fundamentals of IPR



Valuation Avenues

- ▶ Companies Act
- ▶ Ind AS - huge opportunities - growing fast.
- ▶ Except Income tax. Recent amendment
- ▶ Valuation Standard Board - ICAI issued 8 Indian Valuation Standards , effective from July 1,2018



Don't to do too Many Things - You wont be able to do anything

Valuation Standards Board

- ▶ 1. Preface to the Indian Valuation Standards
- 2. Framework for the Preparation of Valuation Report in accordance with the Indian Valuation Standards
- 3. Indian Valuation Standard 101 - Definitions
- 4. Indian Valuation Standard 102 - Valuation Bases
- 5. Indian Valuation Standard 103 - Valuation Approaches and Methods
- 6. Indian Valuation Standard 201 - Scope of Work, Analyses and Evaluation
- 7. Indian Valuation Standard 202 - Reporting and Documentation
- 8. Indian Valuation Standard 301 - Business Valuation
- 9. Indian Valuation Standard 302 - Intangible Assets
- 10. Indian Valuation Standard 303 - Financial Instruments

▶ Dont just seize opportunities , create opportunities.

Who can Practice as a Valuer

- ▶ CA can of course practice as Valuer
- ▶ Pass an examination conducted by ICAI
- ▶ Fixed income money markets and derivatives association (FIMMDA) and
- ▶ Foreign exchange dealers' association of India (FEDAI) .
- ▶ The Reserve Bank of India has appointed the Financial Benchmark India Pvt. Ltd. (FBIL) for valuation of portfolios of government securities, which was earlier done by the FIMMDA

Want to become Insolvency Resolution Professional ?

Insolvency and Bankruptcy Code, 2016

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Insolvency and Bankruptcy Code, 2016

The IBC 2016 was passed by the Lok Sabha on 5th May 2016 and received the assent of the President on 28th May 2016.

Objective

- ▶ Creating single legal framework for insolvency and bankruptcy in India
- ▶ One stop solution for resolving insolvencies
- ▶ Outline separate and timebound resolution processes for Individuals, Companies and Partnership Firms.
- ▶ Reducing cost and time involved in process of liquidation
- ▶ Protect interests of small investors
- ▶ sDefault more than Rs one Lakh

The Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

- ▶ (a) Any company incorporated under the Companies Act, 2013 or under any previous law.
- ▶ (b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
- ▶ (c) Any Limited Liability Partnership under the LLP Act 2008.
- ▶ (d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf. (e) Partnership firms and individuals.

Adjudicating Authority

- ▶ The National Company Law Tribunal shall be Adjudicating Authority for the insolvency resolution and liquidation process of a corporate person.
- ▶ The tenure of the Interim resolution professional is 30 days from the date of his / her appointment

Key Roles of Interim Resolution Professional

- ▶ a) Issuance of public notice of the Corporate Insolvency Resolution process
 - ▶ b) Collation of claims received
 - ▶ c) Constitution of the Committee of Creditors
 - ▶ d) Conduct of the first meeting of the Committee of Creditors
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What is Resolution Plan ?

- ▶ A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.
 - ▶ As per Section 30, the Insolvency Resolution Professional (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority (NCLT) prepared by resolution applicant on the basis of information memorandum
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Resolution Plan should provide for

- ▶ (i) payment of insolvency resolution costs;
 - ▶ (ii) repayment of the debts to operational creditors; (iii) management of affairs of the Company after approval of the resolution plan;
 - ▶ (iv) implementation and supervision of the resolution plan;
 - ▶ (v) does not contravene provisions of the law for the time being in force; and
 - ▶ (vi) conforms to such other requirement as may be specified by the Board.
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Insolvency and Bankruptcy Board of India

- ▶ Regulatory body for overseeing insolvency proceedings and entities like Insolvency Professional Agencies, Insolvency Professionals and Information Utilities.
 - ▶ Granted statutory powers through the Insolvency and Bankruptcy Code.
 - ▶ Responsible for writing and enforcing rules and regulations under the code.
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Process involved in insolvency resolution

Plea for insolvency submitted by the creditor or the debtor himself to the NCLT (for Corporate Cases) or Debt Recovery Tribunals. The minimum amount of default for filing a plea is Rs. 1 Lakh. This plea may be accepted or rejected within 14 days



Upon acceptance of the plea, an Insolvency Resolution Professional is appointed by the tribunal to draft a resolution plan in 180 days (Further extendable by 90 days). Also, the Management of the entity stands suspended during this period.



After the resolution plan is drafted, the Corporate Insolvency Resolution Process is initiated by the Court.

Resolving the NPA Crisis

| Name of Company | Debt Involved | Referral to NCLT |
|-----------------------|-----------------------------------|------------------|
| Essar Steel | ₹490 billion (US\$7.3 billion) | June 2017 |
| Bhushan Steel | ₹440 billion (US\$6.6 billion) | 26 July 2017 |
| Electrosteel Steels | ₹130 billion (US\$1.9 billion) | July 2017 |
| Amtek Auto | ₹127.22 billion (US\$1.9 billion) | July 2017 |
| Bhushan Power & Steel | ₹492 billion (US\$7.3 billion) | June 2017 |
| Alok Industries | ₹290 billion (US\$4.3 billion) | June 2017 |
| Monnet Ispat | ₹102.37 billion (US\$1.5 billion) | June 2017 |
| Lanco Infra | ₹450 billion (US\$6.7 billion) | August 2017 |

Role of Insolvency Professionals

- ▶ The insolvency process is managed by licensed Insolvency Professionals.
- ▶ Responsibilities have expanded manifold and require expertise in finance, law, management and business administration.
- ▶ Upon appointment, the IP takes over the management along with control and custody of the assets of the Corporate Debtor.
- ▶ Manage business of the Corporate Debtor, tackle legal issues along with reporting to the NCLT and Committee of Creditors, identify, evaluate and build consensus on Resolution Proposals



Who can act as an Insolvency Professional?

- ▶ An individual enrolled as a member with an insolvency professional agency (IPA) such as
 - (a) Indian Institute of Insolvency Professionals of ICAI [IIIP-ICAI]
 - (b) ICSI Institute of Insolvency Professionals [ICIS-IIP]
 - (c) Insolvency Professional Agency of Institute of Cost Accountants of India [IPA-ICAI]
- and
- ▶ registered with “Insolvency and Bankruptcy Board of India” (IBBI) as an Insolvency Professional



How to qualify as an Insolvency Professional?

- ▶ Minimum experience required :
 - (a) For Professionals (Chartered Accountant, Company Secretary, Cost Accountant or an Advocate) - 10 years
 - (b) Graduates - 15 years of managerial experience
- ▶ Clearing the “Limited Insolvency Examination” held by the IBBI.
- ▶ National Insolvency Examination not yet announced.
- ▶ Enroll as a professional member with an IPA
- ▶ Complete Pre-registration educational course by the IPA.
- ▶ Apply to the IBBI for registration as an ‘insolvency professional (IP),’ within a period of 12 months of clearing the Limited Insolvency Examination along with application fees of Rs. 10,000/-



How to qualify as an Insolvency Professional?

- ▶ An insolvency professional shall also undergo continuing professional education, as may be required by the IBBI.
- ▶ Pay required periodic renewal fees to the IBBI and the IPA.
- ▶ An insolvency professional must not engage in any employment, except when he has temporarily surrendered his certificate of membership with the IPA with whom he is enrolled as a professional member.



Limited Insolvency Examination

- ▶ Conducted by the IBBI.
- ▶ Online exam in MCQ format having duration of 2 hours.
- ▶ 87 questions for a total of 100 marks.
- ▶ Includes 25% negative marking
- ▶ Passing mark - 60%
- ▶ Candidates may enroll at www.nism.ac.in and select the available time slot
- ▶ Fees payable per examination is Rs. 1,500/- and the candidate may appear any number of times for the examination.



Limited Insolvency Examination

- ▶ Syllabus includes :
 - (a) The Insolvency and Bankruptcy Code, 2016
 - (b) The Companies Act, 2013
 - (c) The Partnership Act, 1932
 - (d) The Limited Liability Partnership Act, 2008
 - (e) The Indian Contract Act, 1872
 - (f) The Sale of Goods Act, 1930
 - (g) The Transfer of Property Act, 1882
 - (h) Specific Relief Act, 1963
 - (i) Negotiable Instruments Act, 1881
 - (j) Case Laws relating to Corporate Insolvency Resolution, Corporate Liquidation, Voluntary Liquidation and Fast Track Resolution Process
 - (k) General Awareness (Economy, Financial Markets, Rights of Workmen under Labour Laws and fundamental concept of Valuation)
 - (l) Finance and Accounts (Corporate Finance, and Financial Analysis, Liquidity Management, Tax Planning, GST)
 - (m) Comprehensions on Transaction analysis on Corporate / Individual Insolvency Resolution
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Responsibilities of IRP

- ▶ A recent [circular No. No. IP/003/2018 dated 03.01.2018](#) by IBBI puts virtually a complete ban on outsourcing of the activities required to be done for performing his duty and responsibility by insolvency resolution professional. It states that –
 - ▶ “It is hereby directed that an insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code. He shall not require any certificate from another person certifying eligibility of a resolution applicant.
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Way Forward

- ▶ Rewards do not come without responsibilities. Of late, IBC laid down many responsibilities on IP.
 - ▶ New and unexplored area – it comes with challenge and opportunities both – Its in evolution stage.
 - ▶ You can also pursue - Three Months Certificate course in “Insolvency and Bankruptcy Laws & Procedure. By IICA.
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Any Questions ????

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