

# ROLE OF INSOLVENCY PROFESSIONAL

- CA Has Mukh Dedhia



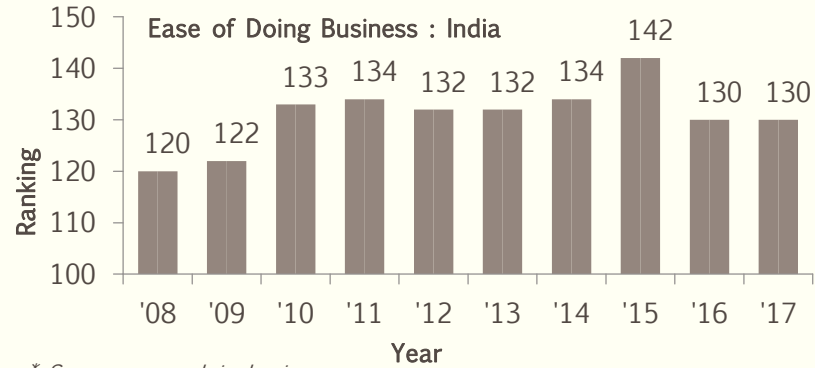
# What To Achieve from the Code

---

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a **time bound** manner for **maximisation of value** of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including **alteration in the order of priority of payment of Government dues** and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto”*

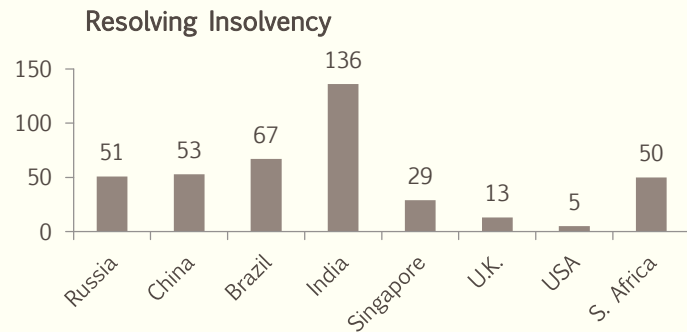
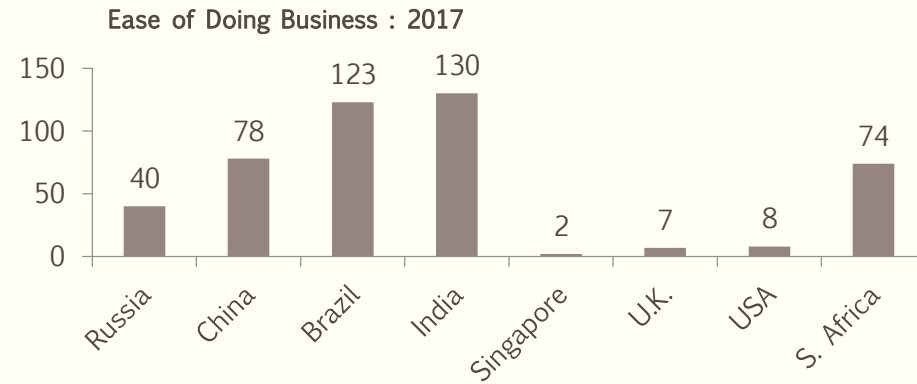
- Improve ‘Ease of Doing business’ ranking of India
- Managing stressed assets in Indian Banking system
- Clearing of backlog of cases under old legal framework
- Providing easy exit from business
- Providing efficient and regulated way for resolution and recovery
- Improving confidence of investors

# Demon to be death



\* Source : [www.doingbusiness.org](http://www.doingbusiness.org)

- Deteriorating ease of doing business in India to 130 over years



\* Source : [www.doingbusiness.org](http://www.doingbusiness.org)

- Poor ranking in resolving insolvency

# Insolvency Professional : Peek into International perspective

---

*“Insolvency process cannot be imagined without the involvement of an IP who, in many respects is the lynch pin of the process; the link between the court, creditors, and the debtor”*

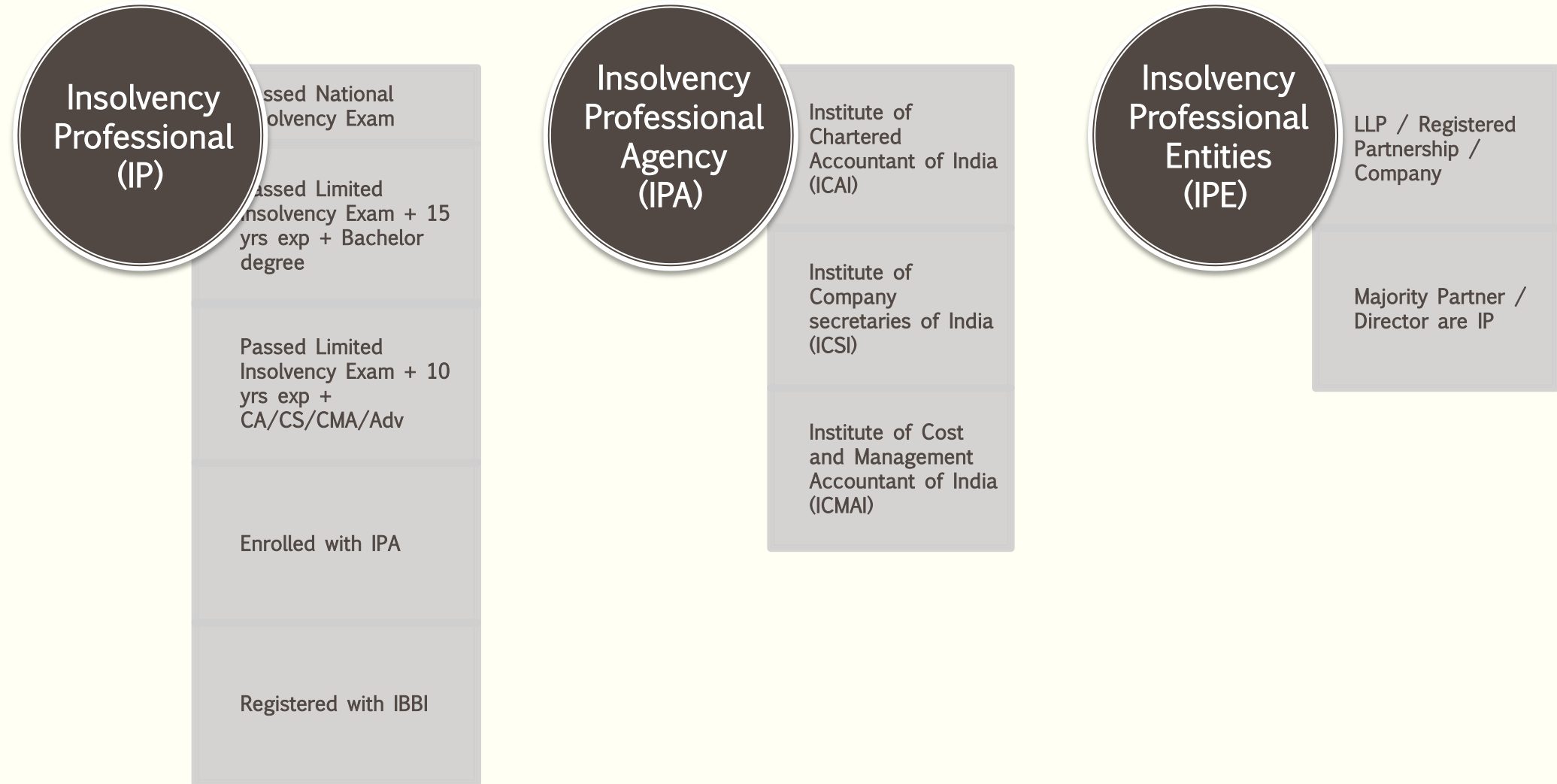
-European Bank for Reconstruction and Development (EBRD)

The Principles for IP developed by EBRD:

- **Licensing & Registration** : IP to have some official authorization to act/register
- **Regulations** : IP should be part of/subject to regulatory framework & monitoring
- **Qualification** : IP to have minimum qualifications, skills & integrity
- **Training** : IP expected to be constantly updated with regular & practical training
- **Appointment system** : Framework must have clear system of appointment
- **Ethics & Work Standards** : the work of IP to be guided by set Standards & Ethics
- **Legal Powers** : IP should possess adequate powers under the law to execute
- **Duty & Obligations** : IP subject to duty/obligation to keep all stakeholders updated
- **Remuneration** : Statutory framework to exist to regulate remuneration of IP
- **Disciplinary mechanism** : IP to be subjected to consequences of penal actions for wrongdoings

# Insolvency Professional : The Concept

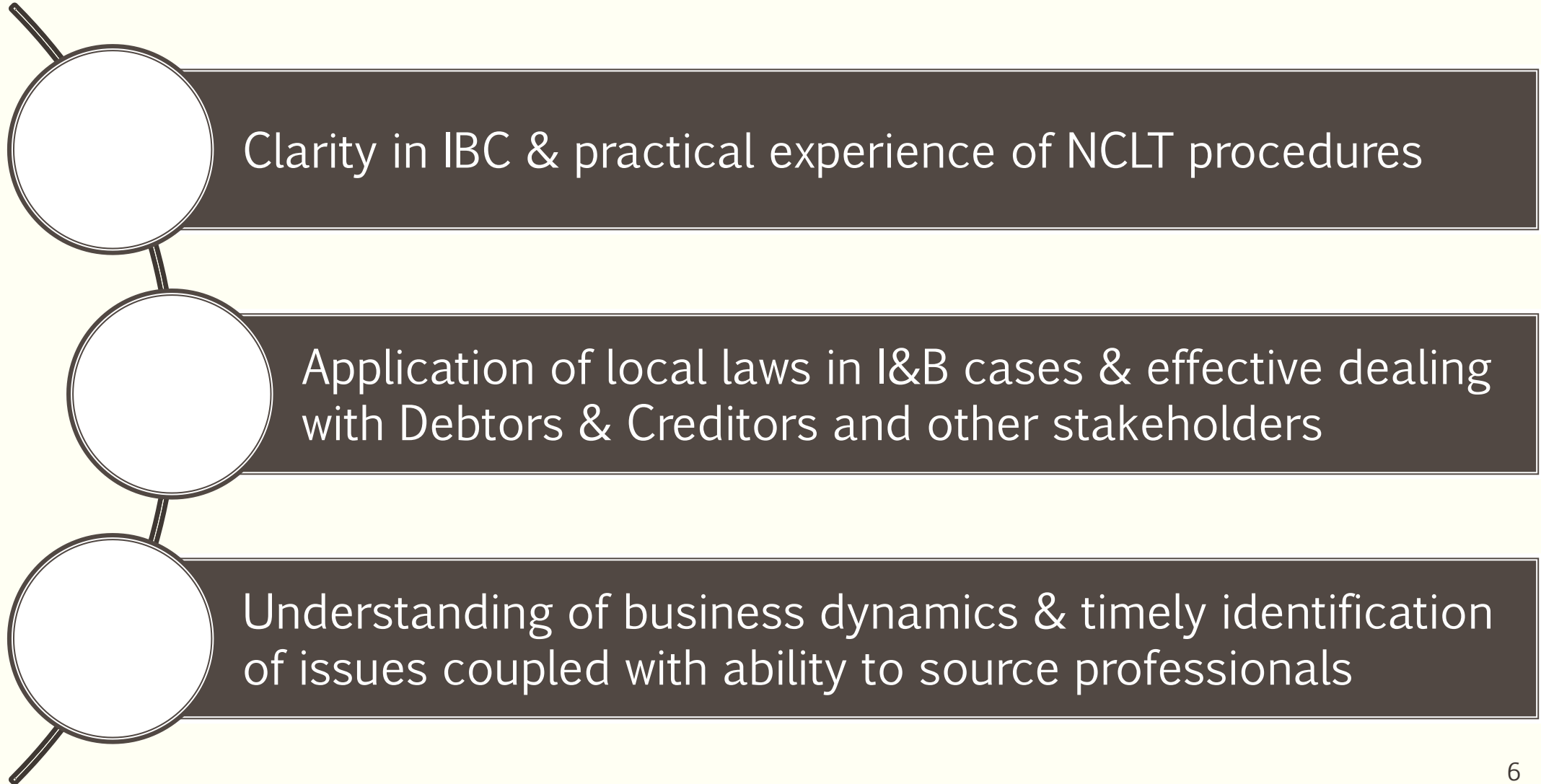
---



# Traits of successful IP

---

---



# Role of IP : Snapshot

---

## IRP

- Pre-appointment formalities
- Public Announcement
- Taking over charge of the CD, Valuer's appointment
- Consolidation and Substantiation of claim
- Forming Committee of Creditors ('CoC')
- 1<sup>st</sup> Meeting of CoC

## RP

- Preparation of Information Memorandum
- Presentation of Resolution Plan to CoC
- Submitting Resolution Plan to NCLT

## Liquidator

- Take custody or control all assets,
- Realise assets
- Settle claims & distribution of assets
- Dissolution of Corporate Debtor

# Corporate Insolvency Resolution Process (CIRP) under IBC

---

- Who can initiate the CIRP=> (a) Financial Creditor (b) Operational Creditor (c) The CD itself
- Who can't? =>
  - The CD undergoing CIRP
  - The CD having completed CIRP less than 12 months before
  - The CD or financial creditor who has violated any of the terms of Resolution plan approved 12 months before
  - The CD for whom liquidation order has been made
- FC can initiate CIRP singly or jointly with other FCs for existing default. S 7(1)
- OC has to serve a demand notice [S. 8(1)] of unpaid debt to the CD before application to NCLT u/s 9(1); the CD has to respond to demand notice within 10 days; if the CD disputes the debt demanded, evidences thereof needs to be placed
- The CD or the corporate applicant on behalf of the CD can initiate CIRP. S.10
- CIRP commences from date of admittance of petition by NCLT
- 'Dispute': includes a suit or arbitration proceedings relating to (a) the existence of amount of debt (b) the quality of goods or services (c) the breach of representation or warranty [S. 5(6)]
- u/s. 8(2)(a) the CD, upon receiving demand notice, should bring to notice of OC the "existence of dispute, if any, and record of the pendency of the suit or arbitration proceedings filed...."



## Role and duties of IRP (S. 17 to S. 20)

---

- Pre-appointment formalities
  - Assessing the applicability/admissibility of petition
  - Giving consent as per regulation (Form A)
  - Executing Letter of Engagement (LOE)
  - Deciding terms and conditions of the appointment
- Making Public announcement within **3 days** from the Order
- Appointment of 2 registered valuers for determining liquidation value within **7 days**
- Act and execute in the name and on behalf of the CD all deeds, receipts and other documents; full access to books and other records
- The management of the affairs and powers of BoD or partners of CD shall vest in IRP; officials and banking institutions of the CD shall act as per the instructions of IRP

## Role and duties of IRP (S. 17 to S. 20)

---

- Collect all information relating to the assets, finances and operations of the corporate debtor including
  - business operations for previous 2 years
  - financial and operational payments for previous 2 years
  - list of assets and liabilities as on initiation date
- Monitor the assets of the corporate debtor
- Manage operations of corporate debtor until Resolution Professional (RP) is appointed
- Take custody and control of corporate debtor as recorded in Balance Sheet, Information Utility (IU) or depository of securities
- To issue instructions to management of corporate debtor for keeping the company as going concern
- Collate all the claims submitted as per the regulations
- Verify and substantiate claims submitted by creditors within 7 days of receipt of claims

## Role and duties of IRP (S. 17 to S. 20)

---

- Form Committee of Creditors (CoC) within 30 days of order of NCLT
- Convene first meeting of CoC within 7 days of forming CoC and filing with NCLT
- Make available any financial information as required by CoC with in 7 days
- Appoint accountants, legal or other professional as necessary
- To enter into contracts or amend or modify the contracts
- To raise interim finance, if required, with approval of CoC
- Circulate the minutes of meeting within 48 hours of the said meeting
- Provide all information, documents and records of corporate debtor to Resolution Professional (RP) incase IRPs appointment as RP is not confirmed in First CoC

# Cost of the IRP and Appointment of Valuers

---

- The applicant who is initiating the CIRP shall fix the fees and expenses to be incurred by the IRP; if this is not already done by the applicant, NCLT shall fix the same
- The fees and expenses as determined between the IRP and the applicant shall be reimbursed to the applicant to the extent same are ratified by CoC
- The amount of fees and expenses, so ratified, shall be treated as insolvency resolution process cost which has priority over all other claims from the recovery

[Regu. 3 of CIRP Regulations]

- The IRP shall within 7 days of his appointment engage services of two registered valuers to determine the liquidation value of the CD
- The valuer so appointed should not be (i) relative of the IRP (ii) related party of the CD (iii) Auditor of the CD in the five years preceding the insolvency commencement date (iv) partner or Director of the IPE

[Regu. 27 of CIRP Regulations]

## Initiation by Financial Creditor (S. 7)

---

- FC may either signally or jointly with other FC file application (Form 1 of Application regulations) with fees of Rs. 25,000.
- FC may do so even if the default has occurred in case of some other FC of the CD
- The application shall be filed along with:
  - Record of default with evidence thereof or details recorded with IU
  - Name of RP proposed to act as IRP
  - If the applicant is assignee or transferee, the copy of assignment or transfer deed with other documentation to demonstrate the assignment/transfer
- The copy of such application shall be forthwith also sent to the CD
- The NCLT may accept petition if (i) default has occurred (ii) application is complete and (iii) there is no disciplinary proceedings pending against IRP named therein
- The jurisdictional bench of NCLT would be as per the registered office of the CD

# Initiation by Operational Creditor (S. 8 & 9)

---

- Before filing an application to NCLT, OC must deliver a demand notice of unpaid operational debt to the CD (form 3 of Application Regulations) and copy of the invoice demanding the payment (form 4 of Application Regulations);
- Copy of these documents should also be filed by the OC with IU, if any
- The CD shall within 10 days of receipt of notice respond and bring to the notice of the OC about (i) existence of dispute (ii) details of repayment of unpaid operational debt
- If OC does not receive the payment or notice about existence of dispute from the CD, it can make application to NCLT along with:
  - Copy of demand notice/invoice sent u/s 8 to the CD with evidence of default
  - An affidavit stating that there is no notice received from the CD about existing dispute of unpaid operational debt
  - Copy of certificate from FI maintaining the account of the OC confirming that there is no receipt of unpaid operational debt
- The OC in the application may name the RP proposed to act as IRP
- The NCLT may accept petition if (i) application is complete (ii) there is no payment or notice of existing dispute from the CD to whom invoice/demand notice is delivered and (iii) there is no disciplinary proceedings pending against IRP named therein

The application made can be withdrawn with consent of NCLT only before the order is passed 14

# Public announcement of CIRP

---

---

- Within 3 days of the order of NCLT, the IRP is to make a public announcement containing the details as under: (Form A of schedule CIRP Regulations)
  - Name /address of the CD along with its incorporation No & details
  - The last day of submission of claims
  - Full details of IRP to whom claims should be sent
  - Penalties for false or misleading claims
  - The date on which CIRP will close i.e. 180<sup>th</sup> day from the date of Order
- The public announcement shall be published in one English & one regional language newspaper with wide circulation at location of registered office of the CD and any other location where in opinion of the IRP, CD conducts material business operations
- The public announcement shall also be placed on the website of the CD, if any, and on the website designated by IBBI

# Moratorium (S. 14 & Regulation 3 of CIRP Regulations)

---

- When the petition under the IBC is admitted by NCLT, the moratorium prohibiting all of the following becomes effective:
  - Institution of suits or continuation of pending suits against the CD including execution of judgement or decree or order of any judicial forum
  - Transferring, encumbering, alienating or disposing of by the CD any of its assets or legal rights or beneficial interest therein
  - Any action to foreclose, recover, or enforce any security interest created by the CD in respect of any of its property including action under SARFAESI
  - The recovery of any property occupied or in possession of the CD by owner or lessor
- The supply of essential goods or services (Electricity, water, telcom, IT) to the CD not to be terminated / suspended
- The moratorium shall remain in effect till earlier of (i) completion of CIRP (ii) approval by NCLT to resolution plan (iii) passing of order for liquidation of the CD



## Committee of Creditors ('CoC') [S. 21 to 28]

---

- IRP, after collection of all the claims against the CD, shall constitute CoC (within 30 days from commencement of CIRP) and file a report thereof with NCLT
- The first meeting of the CoC is to be held within 7 days of constitution of CoC
- CoC shall comprise all FC provided that a related party of the CD, also being a FC, shall not have any right of representation, participation or voting in meeting of CoC
- Where there are more than one FC (consortium or multiple banking or agreement) each one of them shall be part of CoC and their voting share shall be determined based on the financial debt owed to them (proportionate to total financial debt)
- Further, if any person is both FC as well as OC then such person shall be FC to the extent of financial debt owed by the CD and shall be included in CoC with voting share proportionate only to the extent of financial debt; such person shall also be considered as OC to the extent of operational debt owed by the CD
- Assignee or transferee of operational debt shall be considered as OC to the extent of such assignment or legal transfer

# Committee of Creditors ('CoC') [S. 21 to 28]

---

- **Composition of CoC in case where there is no FC:** (Regu 16 of CIRP Regulation) : CoC will be formed comprising (i) 18 largest OC's by value or if number of OC's is lesser than 18, all such OC's (ii) one representative elected each by all workmen and employees (other than workmen and employees included in OC) – **in all such cases, no related party of the CD should be considered**
- All decisions of CoC shall be taken by vote of not less than 75% of voting share of FC's
- The meetings of CoC shall be convened and also chaired by the IRP
- The CoC shall have right to require the IRP to furnish any financial information in relation to the CD at any time during CIRP and IRP is obligated to provide such information within 7 days
- Notice of Meeting of CoC (Regu 19 & 20 of CIRP regulations)
  - The IRP shall convene the meeting of CoC by giving notice of not less than 7 days in writing (unless shorter notice is approved by CoC) to every participant (by hand delivery or by post but in any event be also served on every participant by electronic means
  - Notice of meeting of CoC shall also be served to (i) members of suspended BoD or partners of the CD (ii) OC's or their representatives if the amount of their aggregate dues is not less than 10% of total debts
  - The notice sent by electronic means to comply with Regulation 20 in all respects

# Contents of Notice of meeting of CoC

---

- The venue, the time and date of meeting
- Option available to participate through VC or audio and providing necessary links
- Option available to participation through authorized representative (with id proof and authority etc)
- Agenda items containing full details and:
  - A list of matters to be discussed at the meeting
  - List of issues to be voted upon
  - Copies of all necessary documents relevant to matters to be discussed & issues to be voted upon
- A statement that vote of the members of committee shall not be taken at meeting unless all members are present at such meeting
- Process & manner of voting by electronics means and time schedule for casting vote with details of facility and login id etc

## Matters requiring approval of CoC – S 28

---

- Raising any interim finance, creating security over assets of the CD
- Change in capital structure of the CD in any manner
- Record any change in ownership interest of the CD or amending MAA etc
- Instructions to Banks/FI's maintaining accounts of the CD to restrict debit transactions
- Undertaking related party transactions
- Making any change in management, terms of contracts etc
- Changing the auditors or internal auditors of the CD
  - ✓ The minutes of the meeting shall be prepared and circulated within 48 hours
  - ✓ At commencement of every meeting roll call to be taken / recorded by IRP
  - ✓ CoC in its first meeting to decide about appointment of RP

# Information Memorandum S. 29

---

- The IRP or IP shall prepare IM & submit all contents within 14 days of the first meeting; the IM shall contain following details of the CD:
  - Assets/Liabilities as on insolvency commencement date
  - Latest annual Financial statements
  - Audited Financial statements for last two financial years and provisional ones as at date note earlier than 14 days
  - List of creditors – name, amounts claimed, amounts admitted, security int
  - Details of Related party debts due to or from Related party
  - Details of guarantees
  - Complete details of members/shareholders with their share
  - Details of material litigations
  - The liquidation value
  - The liquidation value due to OC's
  - All other relevant information that IRP or RP deems necessary for preparation of resolution Plan

# ROLE AS RESOLUTION PROFESSIONAL (RP)

---

---

- All roles of IRP like manage operations of company, taking custody of assets, enter into contracts, raise interim finance etc.
- Maintain updated list of claims
- Convene and attend all meeting of CoC
- Prepare Information Memorandum
- Invite prospective lenders, investors or other party to put forward Resolution Plan
- File application for avoidance of undervalued transaction
- Examine each resolution plan received and presentation to CoC
- Submission of Resolution Plan to NCLT as approved by CoC

## Practical Issues

---

- The stringent Timelines in functioning of IRP or RP
- Commendable work by the NCLT but challenges remain
- The awareness amongst stakeholders about provisions of the IBC 2016
- CoC – Bankers’ role is predominant and important
- Legal or interpretational issues – precedence
- Costs to be incurred and fees of IRP or RP
- Regulations and practices evolving
- Judgmental calls to be taken by IRP/RP for several issues
- Onerous obligations

## The Way Forward

---

- Upto now 977 IP have been registered for Limited period
- 211 IP has been registered by passing Insolvency Exams
- 30 cases admitted covering amount of Rs.8941.56 crores
- Draft regulation for Fast track process for small entities
- IBBI in process of enacting major regulations
- RBI came up with amendments to Joint lender's Forum allowing quick action to prevent any faltering borrower collapse



ANY QUESTIONS ?





---

---

THANK YOU

Hasmukh Dedhia

---

---