

INSOLVENCY AND BANKRUPTCY CODE, 2016

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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.

***Presidency Towns Insolvency Act, 1909/
Provincial Insolvency Act, 1920/ Indian Partnership Act***

Applicable to individuals and partnerships

Companies Act, 2013 / Companies Act, 1956

*Deals with rehabilitation / revival / winding up of
companies*

**only court supervised winding up available now under
the 2013 Act; other proceedings under the Code*

***Limited Liability Partnership Act, 2008 r/w. Limited Liability
Partnership (Winding up and Dissolution) Rules, 2012***

No provisions for rehabilitation / revival of LLPs

SICA

*Revival / rehabilitation of only sick industrial
companies*

***SARFAESI / Recovery of Debt Due to Banks and Financial
Institutions Act, 1993***

*Debt recovery / enforcement of security
No revival / rehabilitation of the defaulting entity*

CDR , JLF, SDR and S4A

*Introduced by RBI as out of court process
No legal sanction*

Concerns of currently used options

Option	Concern
CDR Corporate Debt Restructuring	<ul style="list-style-type: none">❑ Lost charm after withdrawal of forbearance benefit by RBI from 1st April, 2015.❑ Not helped much. Too many failures post CDR implies it deferred the inevitable.
5:25	<ul style="list-style-type: none">❑ Available for large cases and a few select industries only – Infrastructure and Core Industries.
SDR Strategic Debt Restructuring	<ul style="list-style-type: none">❑ For old cases cannot be forced upon.❑ Existing management may continue in disguise.❑ Finding new promoter is always a challenge❑ Banks not comfortable towards steep discount to debt and need for refinancing
S4A Scheme for Sustainable Structuring of Stressed Assets	<ul style="list-style-type: none">❑ Current cash flows of company taken as basis to ascertain sustainable debt, so there are not enough companies which can come under its purview❑ Terms and conditions of the loan cannot be changed.

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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

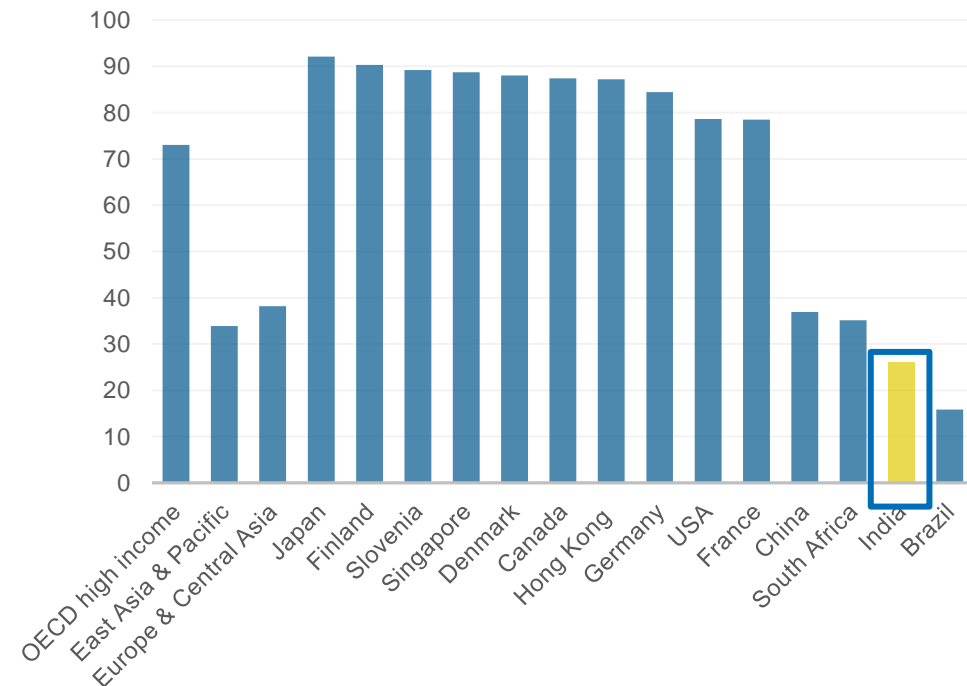
All out of the court debt restructuring processes like **CDR, SDR, S4A** and **5:25** have proved unsuccessful and **bad loans have piled up in the system after their implementation**

Source: RBI

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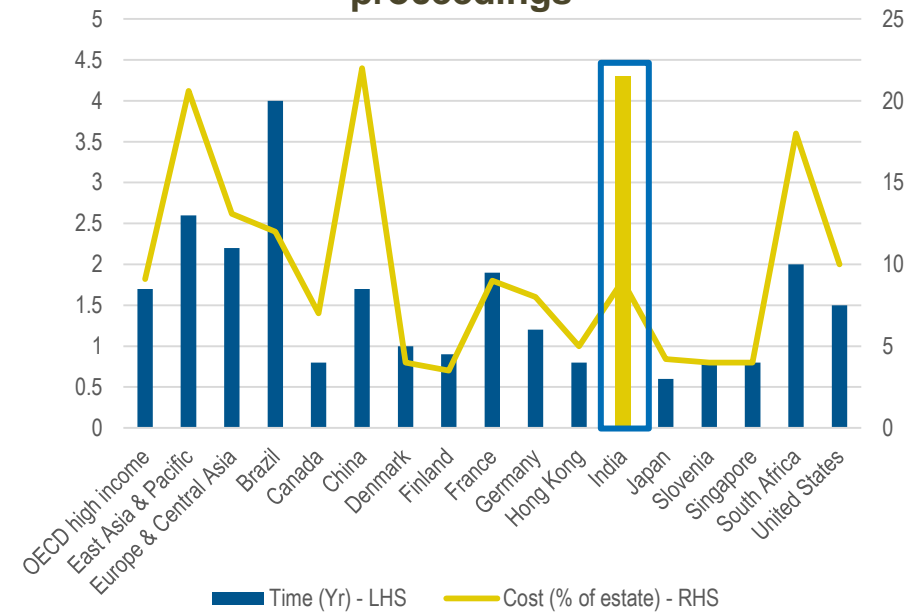
Resolving insolvency – time and cost matter

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

DECODING THE CODE

» A code, as per Black's law dictionary –

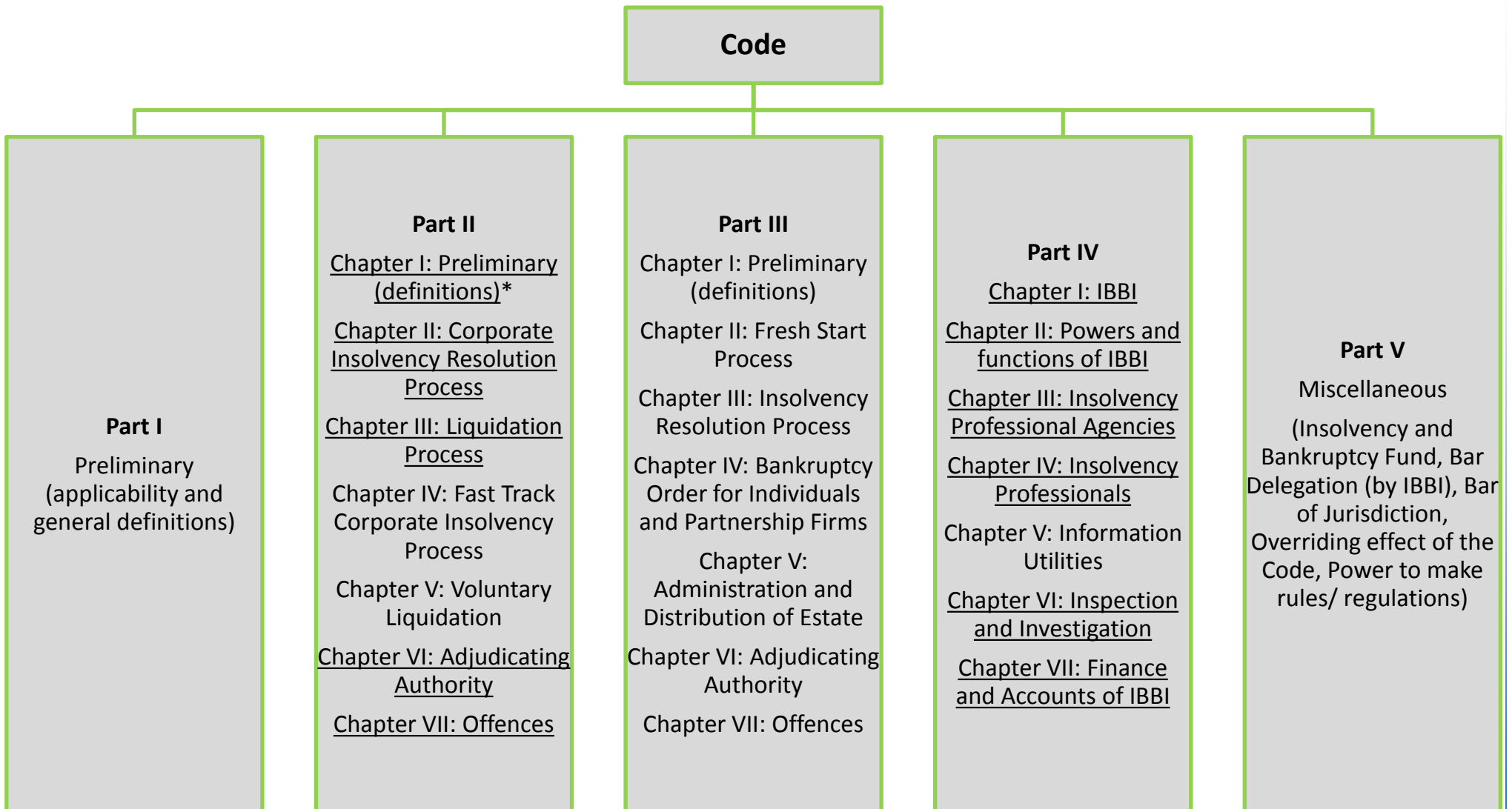
- “A Collection or Compendium of Laws”
- Systematic and comprehensive compilation of laws, rules and regulations that are consolidated and classified for a particular subject.
- A complete system of [positive law](#), scientifically arranged, and promulgated by [legislative](#) authority.

- » The Insolvency and Bankruptcy Code, 2016 has been formed with the following objectives:
 - To promote entrepreneurship;
 - To make credit available;
 - To balance the interest of all stakeholders by consolidating and amending the existing laws relating to insolvency and bankruptcy;
 - To reduce the time of resolution for maximizing the value of assets.

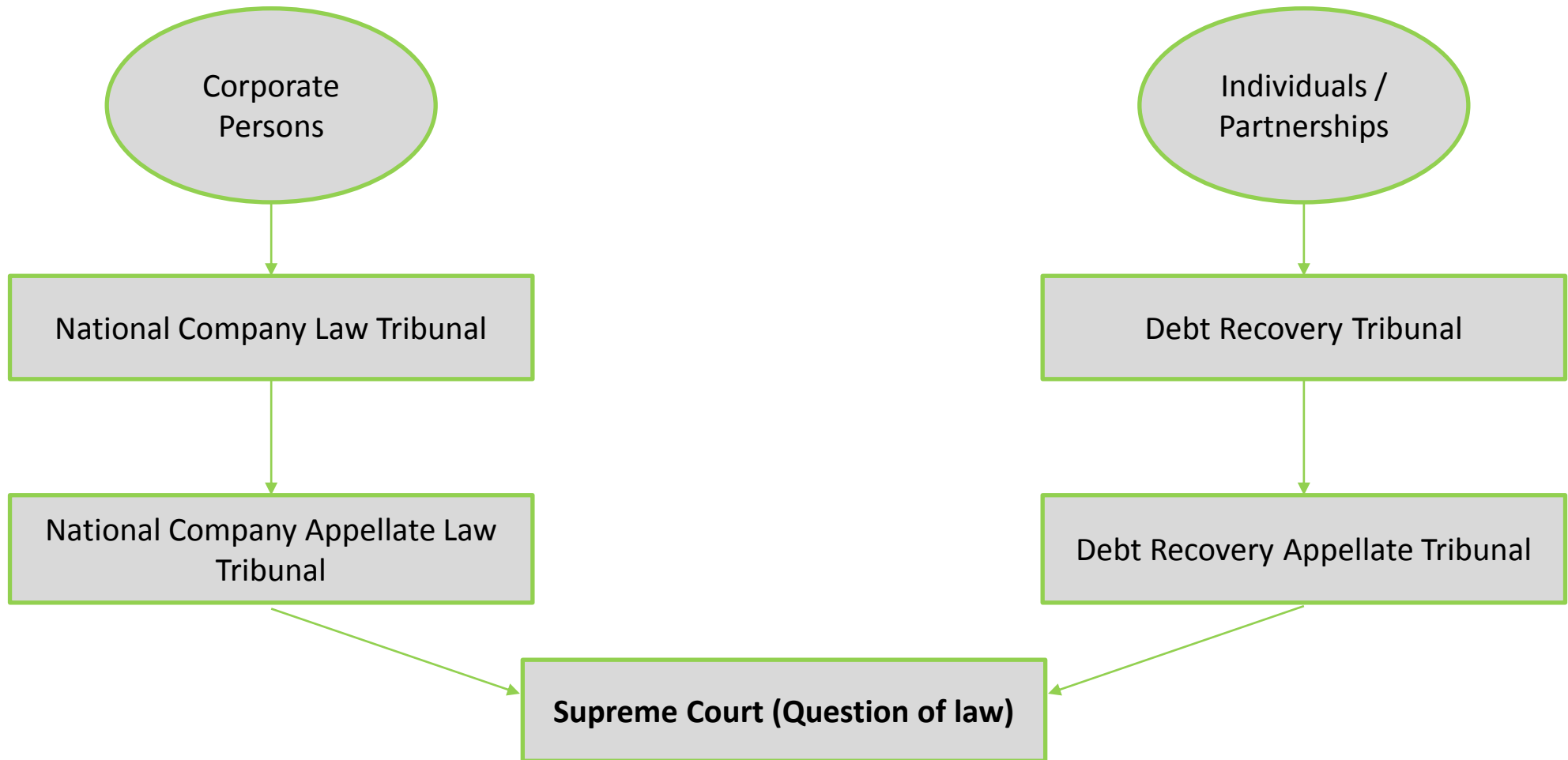
The **key theme** of the Code is to **consolidate all laws relating to insolvency of companies**, limited liability entities, unlimited liability partnership and individuals, presently governed by multiple laws, into a single legislation. **The SICA Repeal Act** came **into force** in December 2016, and the **AAIFR** and **BIFR** stands **dissolved**. Several provisions of the Code have been put out during last few weeks to streamline its operations effectively.

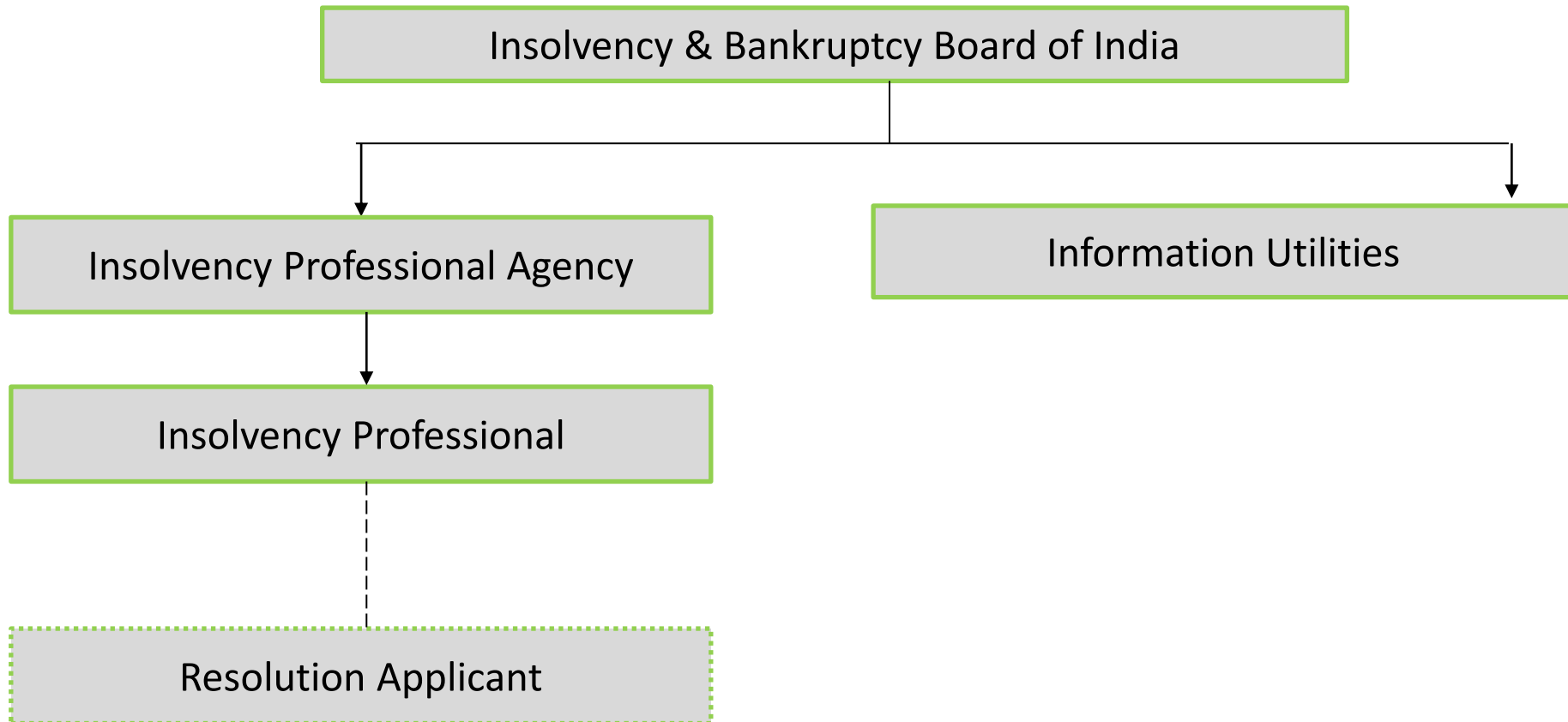
- » India is a **Capital Starved Country** – Quick Resolution of Bankruptcy can ensure efficient use of capital
- » Current system does not **address the Interest of Creditors** - (Banks / financial Institution / NBFC / Bond Holders)
- » Currently the process takes very **long time with Court/ DRT/ SARFAESI**
- » Current **laws are fragmented & multi-layered**
- » Huge amount of **NPA / Write off** for Banks – **Capital Erosion**
- » The Sick / unviable be liquidated in **time bound manner**
- » Raghuram Rajan's "**Bankrupt default**" hits the nail on the coffin
- » Currently **Liquidator system is in mess** / disaster
- » Government's initiative – "**Ease of doing business in India**" & **Easy Exit**

- » The Code brings a paradigm shift from “Debtors” in possession to “Creditors in Control”
- » Insolvency test moved from “erosion of net worth” to “payment default”
- » Single insolvency and bankruptcy framework. It replaces/modifies/amends certain existing laws.
- » Time bound resolution process at each stage
- » Establishment of Insolvency and Bankruptcy Board-a regulator as an independent body
- » A clearly defined distribution of recovery proceeds
- » Insolvency Professional to take over management and control of the Corporate Debtor
- » Government dues would rank below the claims of other creditors
- » Have provisions to deal with concealment, fraud and /or manipulation leading to fine and/or imprisonment
- » Provide confidence to Lenders and Investors in the debt market



*underlined means already in effect





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 and disseminating financial information

SOME CONCEPTS / DEFINITIONS

- » **Creditors** – means any person to whom a debt is owed and includes a financial creditor, an operational creditor, an unsecured creditor and a decree holder
- » **Debt** – means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debts



Financial Creditors

- » means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;
- » Includes Secured and Unsecured Financial Creditors

Operational Creditor

- » means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;
- » Includes Secured and Unsecured Operational Creditors

- » **Default** means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be



» **Insolvency professional** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the IBBI as an insolvency professional under section 207



Resolution professional

- » for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional;

Liquidator

- » means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;

Means a person who is registered with the Board under section 210

» **Role and Responsibility**

- **Create and store** financial information
- **Accept** electronic submission of financial information
- Get the information **authenticated** before storing
- **Provide** information
- **Publish** statistical information



Insolvency commencement date

- » means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

Insolvency resolution process period

- » means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day

» The committee of creditors shall comprise all financial creditors of the corporate debtor:

- **Related Party** excluded and no right to participate or vote.
- If **Consortium** then each financial creditor will have right
- If **financial as well as operational** then bifurcate
- If **assigned** then as original
- **FC can appoint IP** at his cost to represent himself
- **BOD of corporate debtor is suspended**; can attend the meeting but not entitled to VOTE



» **Voting Share** means the **share** of the **voting rights** of a single financial creditor in the committee of creditors which is **based on the proportion of the financial debt owed** to such financial creditor in relation to the financial debt owed by the corporate debtor



Different Roles of IPs for Corporate Debtor

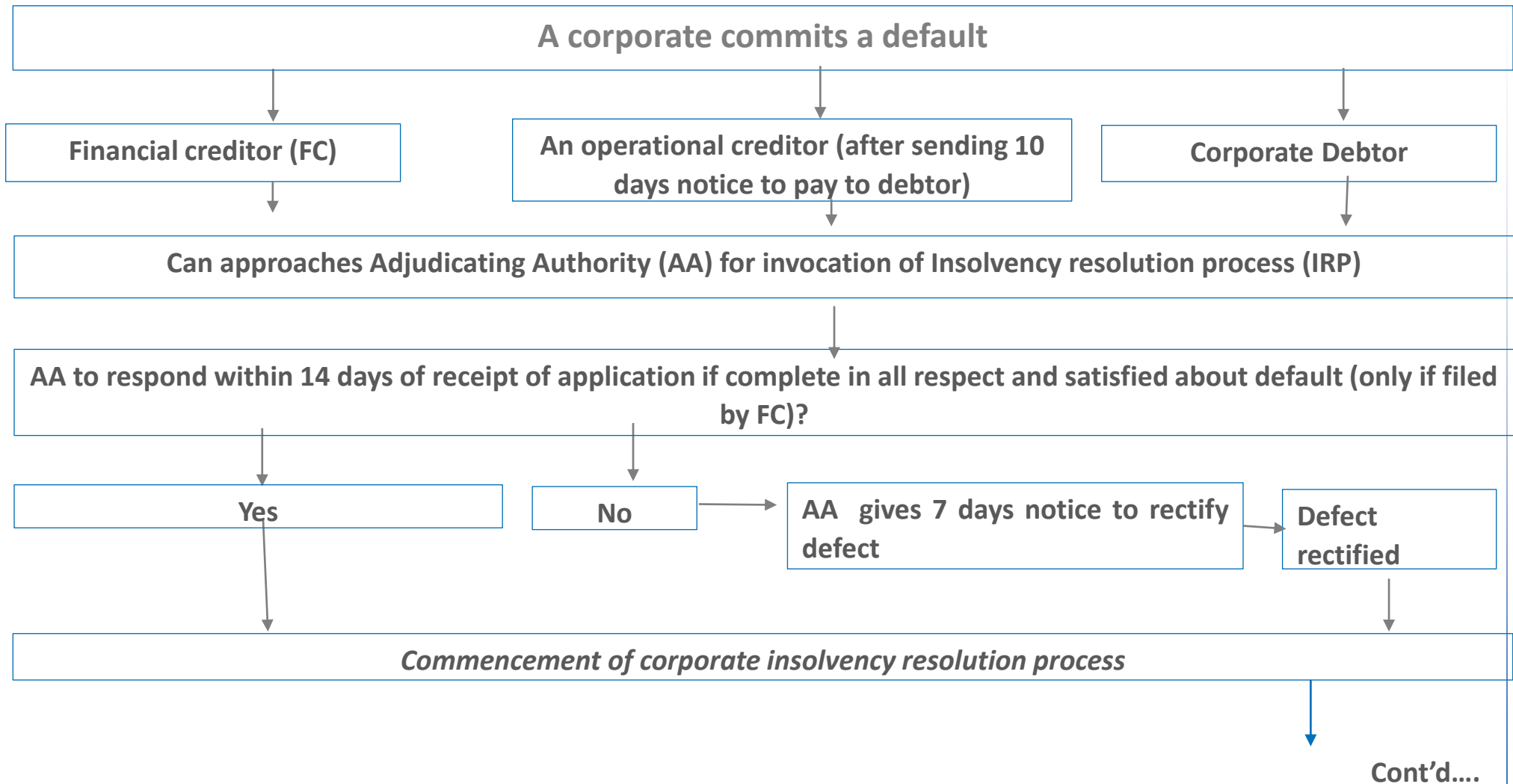
Called As	Appointed By	Role
Interim Resolution Professional	Financial / Operational Creditor or Corporate Debtor	Collation of claims Public Announcement Committee of creditors
Resolution Professional	IRP to be confirmed or replaced by Committee of financial creditors	Resolution Information Memorandum Resolution plan checking etc.
Liquidator	RP Continues unless replaced by Adjudicating Authority	Liquidation

Different Roles of IPs for Partnerships and Individuals

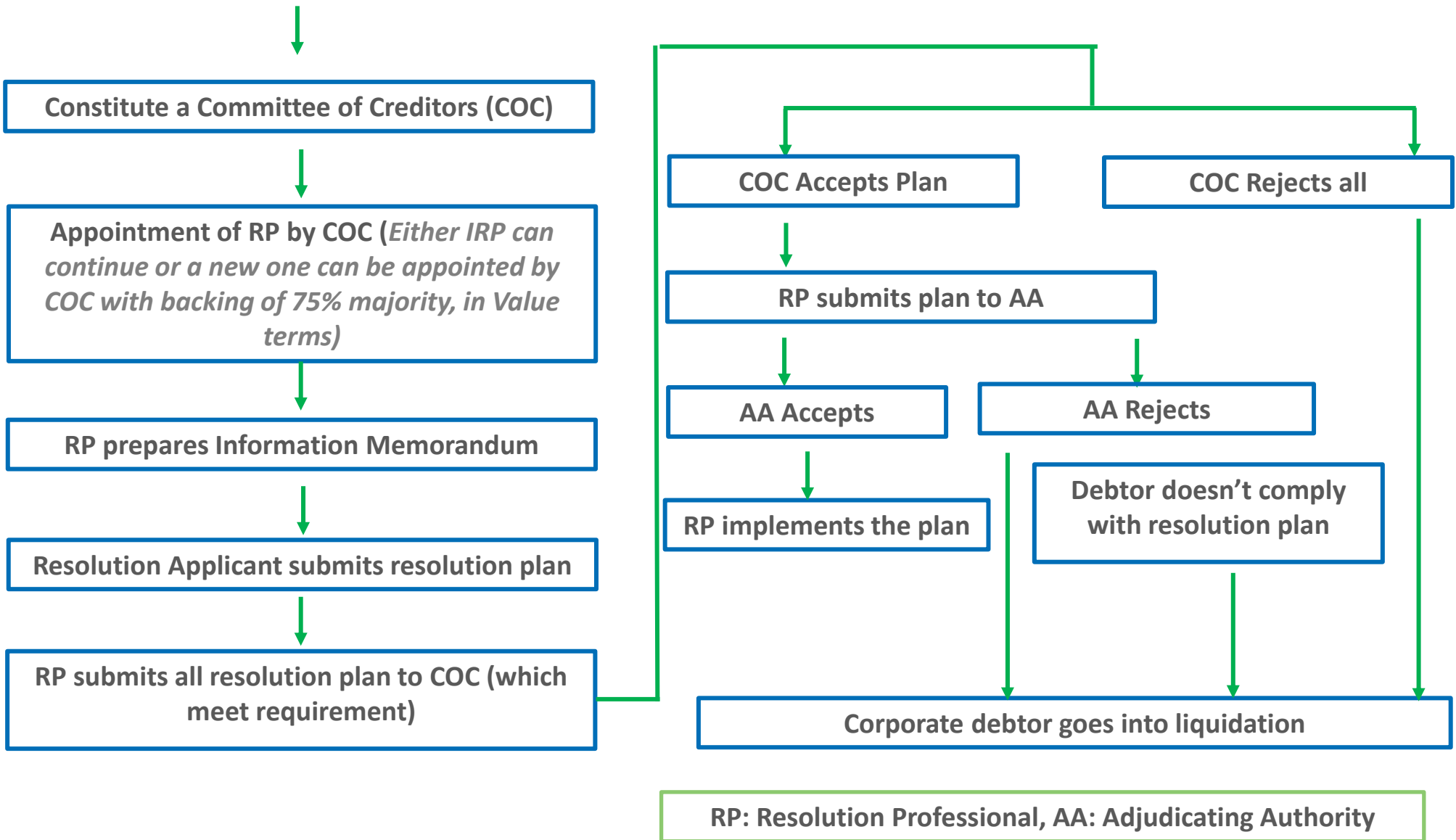
Called As	Appointed By	Role
Resolution Professional	Proposed by creditor appointed by Adjudicating authority	Preparing the repayment plan Meeting of creditors
Bankruptcy Trustee	Propose by creditor appointed by Adjudicating authority	Realizing the estate of Bankrupt and paying to creditors
Liquidator	Adjudicating Authority	Liquidation

Corporate Insolvency Resolution Process and Liquidation Process

Insolvency resolution process for corporate



insolvency resolution process for corporate (contd..)



» Initiation of Corporate IRP by Financial Creditor (FC)

Indicative Timeline	Activity
X – (~days)	Default by Corporate Debtor
X	Application by FC before the NCLT
X + 14*	Ascertaining of default by NCLT to its <u>satisfaction</u>
X + 14 = <u>Y</u>	Commencement of Corporate IRP Declaration of moratorium
Y + 14	Appointment of interim resolution professional (RP) - Term of interim RP to not exceed 30 days - Management and affairs of the Corporate Debtor to vest in the interim RP and powers of board / partners of the Corporate Debtor to be exercised by the interim RP - Manage the operations of the Corporate Debtor as a going concern
Y + 17	Public announcement by interim RP

» Moratorium:

- To have effect from date of admission order until completion of Corporate IRP or 180/270 days
- Prohibits institution of suits or continuation of pending suits including execution of judgments, orders or decrees
- Prohibits transfer, encumbrance or alienation of any assets or any legal rights
- Prohibits foreclosing, recovery or enforcement of any security interest including under SARFESI
- Supply of essential goods or services to the Corporate Debtor not prohibited

» Initiation of Corporate IRP by Financial Creditor (Indicative Timelines) (Continued)

Indicative Timeline	Activity
Y + 21	Appointment of two registered valuers to ascertain liquidation value
Y + 28	Last date for submission of claims by financial creditors / operational creditors
Y + 35	Verification of claims by interim RP
Y + 44	Submission of report by interim RP to NCLT certifying constitution of CoC
Y + 50	Submission of limited information memorandum by interim RP to CoC
Y + 51	First meeting of CoC
Y + 65	Submission of follow-up information memorandum
Z – 30	Submission resolution plan by resolution applicant to RP
(Y + 180) or (Y + 180 + 90) = Z	Completion of Corporate IRP; one time extension of the Corporate IRP (to be supported by 75% vote of the CoC)
~	Moratorium to cease after completion of Corporate IRP; all records of the Corporate IRP to be forwarded to the IBBI

» Committee of Creditors (CoC):

- To comprise only of FC
- All decisions of the CoC to be taken by a vote not less than 75% of voting share of the FC
- CoC may at any time during the IRP replace the appointed RP

- » Liquidation of Corporate Debtor
- » Order of liquidation:
 - Resolution plan is not received by AA submitted within the prescribed timeline
 - Rejection of resolution plan by AA
 - Upon decision by CoC to liquidate
 - Contravention of approved resolution plan – on application by person whose interests are prejudicially affected.
- » Liquidation process to be completed within two years unless extended by NCLT
- » No suit or other legal proceeding by or against the corporate debtor, except suit or legal proceeding by liquidator with the prior approval of the NCLT
- » Order of liquidation - Notice of discharge to the officers, employees and workmen of the corporate debtor (not applicable if liquidator continues the business of the corporate debtor during the liquidation process)

Liquidation Process

Appointment of Liquidator

To make public announcement - to call upon stakeholders to submit their claims as on liquidation commencement date and to provide last date for submission of claim (30 days from the liquidation commencement date* -Y+30)

Submission of the preliminary record to the Adjudicating Authority (Y+75)

Submission of claims by different stakeholders. Verification of stakeholders' claims and preparation of final list of stakeholders by the liquidator.

Asset memorandum by the liquidator and valuation by at least two independent valuers.

Asset sale either by auction or by private sale. Distribution of proceeds (Y+2 yrs)

*Liquidation commencement date: means the date on which proceedings for liquidation commence in accordance with section 33 or section 59 of the Code (Y)

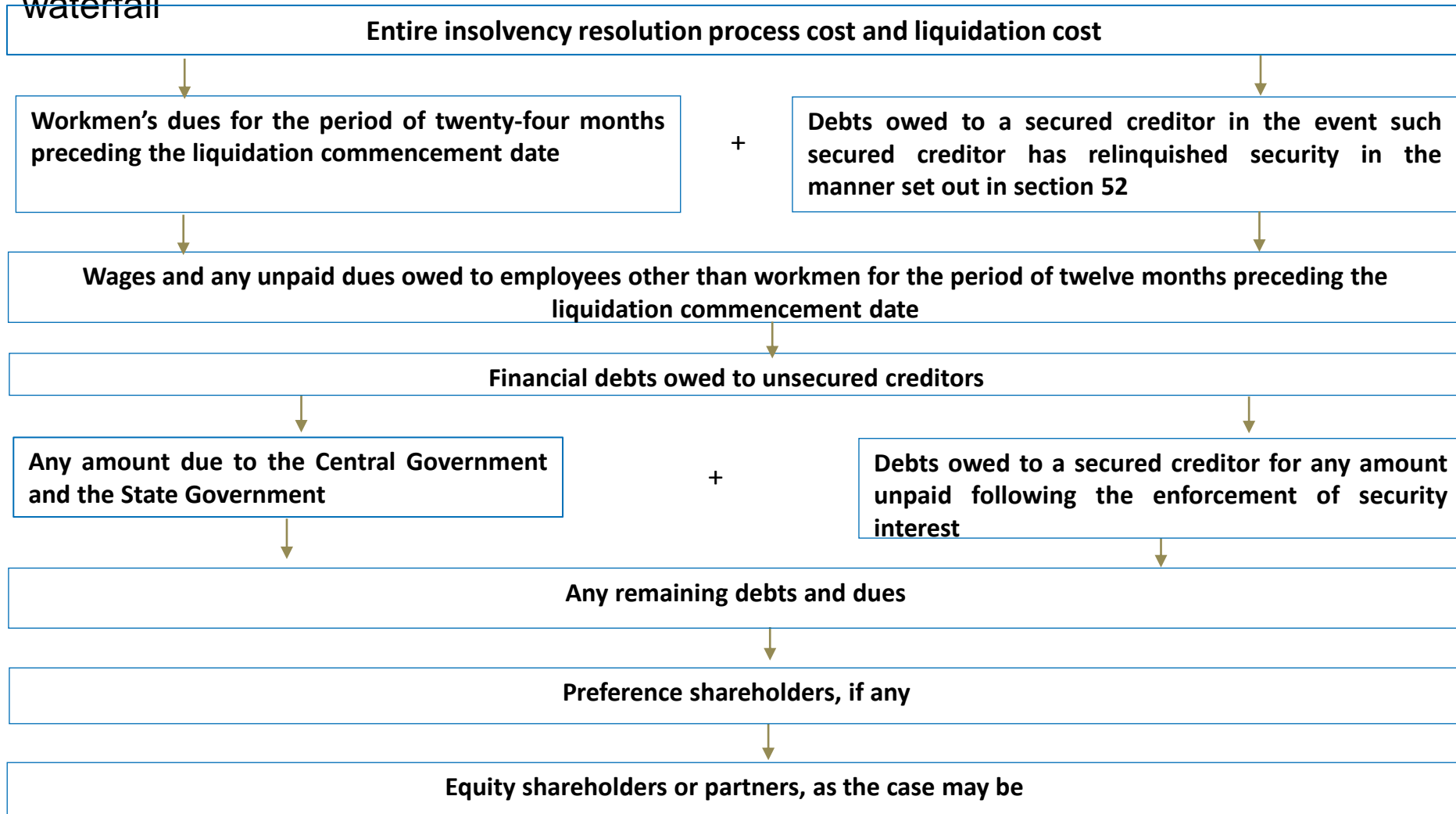
» Liquidation of Corporate Debtor (Indicative Timelines)

Indicative Timeline	Activity
X	Order for liquidation of Corporate Debtor; RP to act as liquidator unless replaced by the NCLT
X + (~ days)	Formation of liquidation estate by the liquidator
X + 30	Consolidation of claims by the liquidator; a creditor may withdraw or vary claim within 14 days from submission
X + (~ days)	Verification and acceptance / rejection of claims by the liquidator; appeal from any rejection within 14 days
X + (~ days) = Y	Distribution of assets from the liquidation estate (<i>please see distribution waterfall in the following slide</i>)
Y + (~ days) = Z	Dissolution of the Corporate Debtor by the NCLT
Z + 7	Copy of dissolution order to be forwarded to the authority with which the Corporate Debtor is registered

» Liquidation estate to include all assets of the Corporate Debtor, except:

- Assets owned by third parties but in possession of the Corporate Debtor
- Personal assets of shareholders or partners of the Corporate Debtor
- Assets of Indian or foreign subsidiaries of the Corporate Debtor

Section 53 of the Code deals with distribution of assets sale proceeds along with liquidation waterfall



The Process -

Section 55	Application can be made by-	Corporate Debtor with – a) Assets and income below a level b) Such class of creditors or such amount of debt c) Such other category of corporate persons	} as may be notified by Central Govt.
Section 56	Time period for completion	<ol style="list-style-type: none">1) To be completed within ninety days from the insolvency commencement date2) The resolution professional shall file an application with adjudicating authority (AA) to extend the period beyond ninety days if instructed to do so by a resolution passed at a meeting of committee of creditors and supported by a vote of seventy five percent of the voting share3) The AA if satisfied with the application may pass an order to extend the duration of such process beyond the said period of ninety days by such period as he thinks fit not exceeding forty five days.	

The Process -

Section 57	Manner of initiating	To be filed alongwith- a) Proof of the existence of default as evidenced by records available as may be specified by the Board and b) Such other information as may be specified by the Board that the corporate debtor is eligible for the fast track corporate insolvency resolution process.
Section 58	Application of Chapter II to this Chapter	The process under Chapter II and Chapter VII shall apply to this Chapter as the context may require.

Section 59- Voluntary Liquidation Process

(1)	A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate the proceedings
(2)	The voluntary liquidation of a Corporate person under section (1) shall meet such conditions and procedural requirements as may be specified by the board
(3)	<p>Voluntary proceedings shall meet following conditions-</p> <p>a) A Declaration from majority of the directors verified by an affidavit stating that-</p> <ul style="list-style-type: none">i) they have made a full inquiry into the affairs of the Company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be soldii) the Company is not being liquidated to defraud any person. <p>b) Above declaration to be accompanied with following documents</p> <ul style="list-style-type: none">i) audited financial statements and record of business operations of the Company for the previous two years or for the period since its incorporation, whichever is laterii) a report of the valuation of the assets of the company, if prepared by a registered valuer.

Section 59- Voluntary Liquidation Process

(3)	<p>(c) Within four weeks of a declaration under sub-clause (a), there shall be-</p> <ul style="list-style-type: none">(i) a special resolution of the members of the company in a general meeting appointing insolvency professional to act as liquidator or(ii) a resolution of the members in general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles <p>Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution</p>
(4)	<p>The Company shall notify the Registrar of Companies and the Board about resolution under Sub-section (3) to liquidate the company within seven days of such resolution or subsequent approval of the creditors , as the case may be.</p>
(5)	<p>Subject to approval of the creditors under – sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).</p>

Section 59- Voluntary Liquidation Process

(6)	The <i>provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply</i> to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
(7)	Where the affairs of the corporate person have been <i>completely wound up</i> , and its <i>assets completely liquidated</i> , the liquidator shall make an <i>application to the Adjudicating Authority for the dissolution of such corporate person</i> .
(8)	The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), <i>pass an order that the corporate debtor shall be dissolved from the date of that order</i> and the corporate debtor shall be dissolved accordingly.
(9)	A <i>copy of an order</i> under sub-section (8) shall within <i>fourteen days</i> from the date of such order, be forwarded <i>to the authority with which the corporate person is registered</i> .

- » There are two distinct resolution processes namely the Fresh Start and Insolvency Resolution for individual and partnership firms.

Fresh start

- » The Code allows individual debtors, who are unable to pay the debt, to start afresh. As per section 80 of the Code, a debtor, who is unable to pay his debt and fulfils the following conditions, shall be eligible to make application for a fresh start for discharge of his qualifying debt.
 - Gross annual income - not more than sixty thousand rupees;
 - The aggregate value of the asset - not more than twenty thousand rupees;
 - The aggregate value of the qualifying debt – not more than thirty five thousand rupees;
 - He is not an undischarged bankrupt and does not own a dwelling unit;

Insolvency resolution

- » Insolvency resolution process shall be initiated either by the debtor or creditor. In the process, both parties shall negotiate and shall arrive at a repayment plan under the supervision of a resolution professional. If the resolution plan fails or cannot be implemented, the bankruptcy of an individual shall be initiated.

ANALYSIS

- » **Fast track process:** The code allows proposes for insolvency process can be initiated at an early stage. Time allowed to complete resolution process is 180 days (additional 90 days if required) and the liquidation process required a maximum two years' time. So, the entire procedure shall be completed in less than three years' as against current average of 4.3 years.
- » **Moratorium to restrict asset strapping and siphoning off assets:** Moratorium to prohibit transferring of any assets or legal rights by the corporate debtor (Section 14 of the Code) and transfer of management to Resolution Professional under supervision of Committee of Creditors will prohibit transferring of any assets or legal rights by the corporate debtor (Section 14 of the Code). The violation of provision 14 shall be punishable with a minimum three years imprisonment term (Section 74 of the Code).
- » **Management control by insolvency professional:** On commencement of the resolution process, the management of affairs of the corporate debtor shall vest on resolution professional (Section 16, 17 and 25 of the Code). The resolution professional can bring expertise in his team to revamp the business, which can save the business from being liquidated.
- » **Protecting workers and employees:** The new code shall protect the interest of the workmen ahead of secured creditors. First, the workmen will get the share from assets sale proceeds and then the secured creditors and employees respectively.

- » **Right of all set of creditor:** A) The code provides voting right of all financial creditors be it secured or unsecured B) The code allows unsecured creditor to trigger insolvency resolution process. C) While distributing asset sale proceeds, unsecured financial creditors get priority and their order comes after workmen, secure creditors and employees' dues. D) Operational creditor to be paid liquidation value in priority to financial creditors within 30 days of approval of resolution plan by AA E) Dissenting financial creditor to be paid liquidation value prior to any recoveries made by consenting financial creditors
- » **Abolition of the official liquidator:** The code abolishes the existing official liquidator structure and the insolvency professional shall perform the role of the liquidator in the liquidation process. The official liquidators who are appointed by Central Government and are attached to the High Courts of the respective states have not very successful and most of the time they are overburdened with multiple assignment. Under the code, the liquidation procedure will be completed in a time-bound and transparent manner by a professional agency.
- » **Opens up Bond Market:** The Corporate Bond market activity has relatively been low in India compared to other countries in the world. The code brings in much needed transformation towards rights of other creditors and bond holders. Similarly, the provision towards ranking down Government Dues over other creditors in liquidation is expected to give desired confidence to all Investors.

- » Consequent to the dissolution of company law Board and repealing of SICA Act, all the matters pending with CLB shall stand transferred to NCLT whereas all existing registered BIFR cases stands abated and such companies may file with NCLT afresh within 180 days. This shall lead to NCLT dealing with backlogs of CLB/SICA cases. NCLT should possess adequate manpower and infrastructure to deal their cases apart from the responsibility of being Adjudicating Authority under this Code.
- » The current 33 DRTs set up across the country have huge pendency of recovery proceedings and are currently beset with inadequate infrastructure and manpower. With more than 58,000 pending cases, need to beef up its logistics.
- » Operationalisation of Information Utilities so as to ensure that the data and the information are complete and accurate.
- » SARFAESI may still be a preferred choice for lenders having sufficient mortgaged assets.
- » Secured creditors need to exercise professional judgement towards resolution process as liquidation itself may not be the best choice.
- » Overall development of ecosystem may take time for having adequately skilled insolvency professionals, requisite infrastructure with Adjudicating Authority, proactive training of all intermediaries, development of corporate Bond market, well capitalized ARCs, investment in distressed securities etc.

First Reported Case

Bank – Financial creditor	ICICI
Debtor	Inoventive Industries
Debt Amount	Rs. 965 Crores
Stuck at	NCLT failed to approve or reject
Reason	<p>“ It was granted protection under Maharashtra Industrial Development Act, none can proceed against the company.</p> <p>The Pune-based steel products maker, which had debt of Rs955 crore at the end of September, has contested the petition. It said that it is not in default because the industries, law and labour departments of the Maharashtra government had notified a suspension of the firm’s liabilities from 22 July 2016 to 21 July 2017.</p>

LENDERS PERSPECTIVE

- » Creditors in control as almost entire 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
- » Legal sanctity of NCLT and hence legal protection
- » Clear and fair distribution of funds. Government dues to get last priority
- » Protection of assets of secured borrowers with maximisation of realisation
- » Supervision and control post sanction of plan

When Banks should go for it?

- » 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)
- » When all other options exhausted
- » When lenders apprehend that the account is likely to go bad and borrower can siphon away funds or strip assets
- » Cases where SARFACIE 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

When secured lenders may not

- » When borrower has large unsecured financial creditors
- » When lenders don't have doubt about promoters integrity and managerial capabilities and are confident of business revival and survival.
- » When there is a single lender/very few lenders and they go together and can resolve account's stress outside the IBC's framework.
- » In cases of substantial value erosion if unit goes for liquidation

- » Create a separate cell/Team for cases referred to IBC
- » Members of such cell/team should be given adequate training and exposure
- » Appoint IRP/RP based on merit, ability and efficiency and not on lowest quote
- » Maintain list of IP having sector wise specialisation
- » Depute senior members at meeting of creditors preferably with decision making power
- » Appointment of IPs for representation in Committee of Creditors.
- » Creating and updating list of cases which can be referred
- » Understand consequences of referring any case to NCLT

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SFSL is a SEBI registered Category I Merchant Banking Company, a trading member of National Stock Exchange of India (NSE) in the Capital & Derivative Market Segment. The Company is promoted and managed by Chartered Accountants with Registered Office at Kolkata and Branches at New Delhi, Mumbai, Bangalore, Chennai, Hyderabad, Ahmedabad and Guwahati. SFSL provides wide spectrum of professional services in Merchant Banking Corporate Finance and International Financing. Over the years, it has developed specialisation in syndication of funds, issue management, financial restructuring and various other corporate advisory services.

Thank You

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