

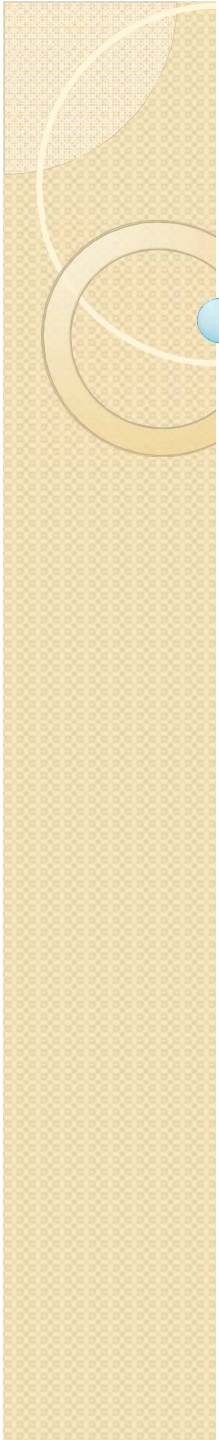


# **Insolvency and Bankruptcy Code 2016**

## **Overview**

**Madhusudan Sharma**


- 
- **Background**
  - **Legal Framework before IBC**
  - **Structure**
  - **Objects**
  - **Applicability**
  - **Terminology**
  - **Four Pillar**
  - **Judicial Framework**
  - **Key Features**
  - **Processes**




# Background

# Reasons Behind

- Huge level of Non Performing Assets (NPAs)
- Failure of earlier measures for recovery and resolution
- Sick Industrial Companies Act, 1985 (SICA)
  - Revival – a central theme
  - For industrial companies only (ABC)
  - Moratorium provisions misused by defaulters to ward-off creditors' action
  - Amendments pursuant to SARFAESI made SICA virtually irrelevant

- 
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)
    - Grants special rights to banks for recovery of debts
  - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)
    - Enforcement of security interests by creditors without intervention of Courts
    - “might is right” principle
    - Interests of stakeholders other than secured creditors get subdued

- 
- Sick Industrial Companies (Special Provisions) Repeal Act, 2003 – not notified;
  - Assets Reconstruction Companies (ARC) Model
  - Informal framework (prominently based on RBI Guidelines)
    - Corporate Debt Restructuring (CDR)
    - Joint Lenders Forum (JLF)
    - Strategic Debt Restructuring (SDR)
    - Scheme for Sustainable Structuring of Stressed Assets (S4)



# **Legal Framework before IBC, 2016**



## **For Corporate**

Companies Act, 1956 and 2013 - Winding up of Companies

Limited Liability Partnership Act, 2008 for Limited liability partnerships

The Micro, Small and Medium Enterprise Development Act, 2006 (MSME), provision for registration but not for insolvency and bankruptcy.

## **For Individuals and Partnerships firms:**

- The Presidency Towns Insolvency Act, 1909 (Calcutta, Bombay, and Madras)
- The Provincial Insolvency Act 1920 in areas other than the Presidency towns



## Commencement

- Passed by Lok Sabha on 5-May-16
- Passed by Rajya Sabha on 11-May-16
- Received President's Assent on 28-May-16
- Made applicable from 1-Dec-16

## Amendments

23-Nov-17, 6-Jun-18, 17-Aug-18, 28-Dec-19,  
20-Mar-18



# Laws Repealed

The Presidency Towns Insolvency Act, 1909  
The Provincial Insolvency Act, 1920

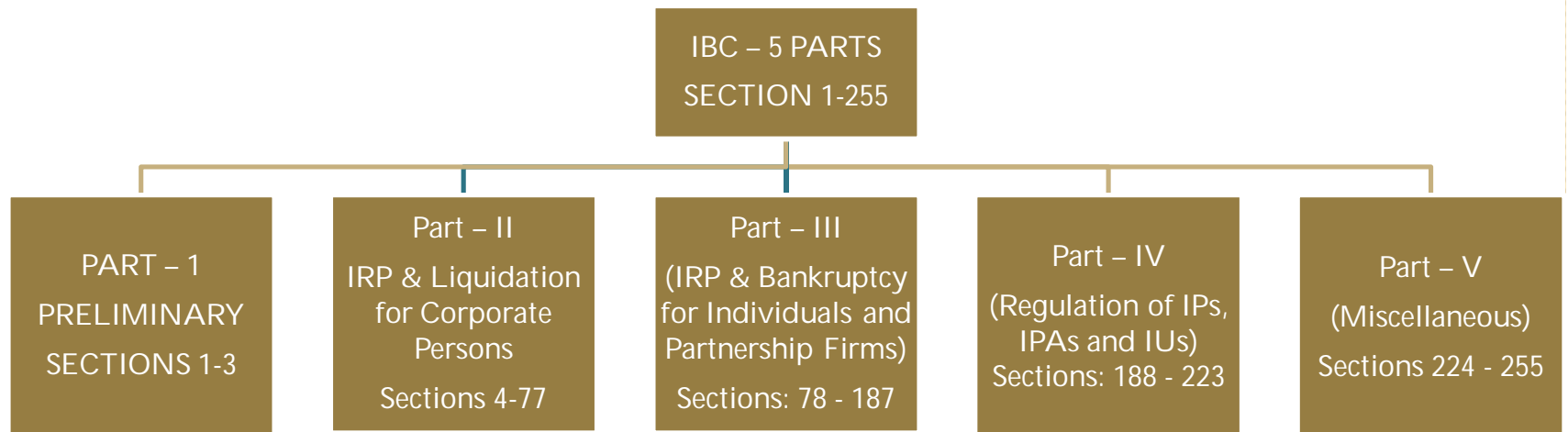
# Laws Amended

- The Indian Partnership Act, 1932
- The Central Excise Act, 1944
- The Income-tax Act, 1961
- The Customs Act, 1962
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993
- The Finance Act, 1994
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The Payment and Settlement Systems Act, 2007
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013

# Structure of the Code

- 5 Parts, 23 Chapters, 255 Sections, 12 Schedules
- Part I Preliminary, Application, Definitions,
- Part II Insolvency Resolution and Liquidation for corporation persons
- Part III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms,
- Part IV Regulation of Insolvency Professionals, Agencies and Information Utilities,
- Part V Miscellaneous, Repeals and amendments in other enactments; transitional provisions, Powers Central Governments to make Rules, Powers of IBBI to make Regulations.

# INSOLVENCY AND BANKRUPTCY CODE 2016





# Part I

Preliminary

Sec. 1 -3 Application, Definitions, Chapter-I

# Part II

## **Insolvency Resolution and Liquidation for corporation persons Chapters - 7, Sec. 4 to 77**

- Preliminary – Application, Definitions,
- Corporate Insolvency Resolution Process,
- Liquidation Process,
- Fast Track Corporate Insolvency Resolution Process,
- Voluntary Liquidation of Corporate Persons,
- Adjudicating Authority for Corporate Persons,
- Offences and Penalties

# Part III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

<b>Chapters</b>	<b>Sections</b>
I Preliminary	78-79
II Fresh Start Process	80-93
III Insolvency Resolution Process	94-120
IV Bankruptcy Order for Individuals and Partnership Firms	121-148
V Administration and Distribution of the Estate of the Bankrupt	149-178
VI Adjudicating Authority for Individual and Partnership Firms	179-183
VII Offences and Penalties	184-187



# Part IV

## **Regulation of Insolvency Professionals, Agencies and Information Utilities, Chapters – 7**

- IBBI and its Powers and Functions
- Insolvency Professional Agencies
- Insolvency Professionals
- Information Utilities
- Inspection and Investigation; Finance Accounts and Audit

# Part V

- Miscellaneous, Chapter-1, Repeals and amendments in other enactments; transitional provisions, Powers Central Governments to make Rules, Powers of IBBI to make Regulations.



# Objects of IBC

An Act to consolidate and amend the laws relating to re-organisation 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,
- balance the interests of all the stakeholders
- alteration in the order of priority of payment of Government dues
- to establish an Insolvency and Bankruptcy Board of India, and
- for matters connected therewith or incidental thereto.

# Legal Framework

- Insolvency and Bankruptcy Code 2016 enacted by the Parliament
  - under **Entry 9** "Bankruptcy and insolvency"  
in **List III of Schedule 7** of the Constitution
- Rules by the Central Government u/s 239
- Regulations by Insolvency and Bankruptcy Board of India (IBBI) u/s 240
- Notification for effective date by the Central Government u/s 1

# Rules

- Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. (for CIRP)  
(Notified on 30.11.2016, Effective from 01.12.2016)
- National Company Law Tribunal Rules, 2016
  - Rules 20, 21, 22, 23, 24 and 26 of Part III by virtue of Rule 10 of I&B(AAA) Rules 2016.
  - Part- III Institution of proceedings, petition, appeals etc.- Rule 20 to 33
  - Part- IV General Procedure - Rule 34 to 59

- 
- Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for **Personal Guarantors to Corporate Debtors**) Rules, 2019.

(Notified on 15.11.2019, Effective from 01.12.2019)


- Insolvency and Bankruptcy (Application to Adjudicating Authority for **Bankruptcy Process** for Personal Guarantors to Corporate Debtors) Rules, 2019.

(Notified on 15.11.2019, Effective from 01.12.2019)

# For Filing Applications


- Rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993
- Regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993



- 
- Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

# Regulations

- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- IBBI (Liquidation Process) Regulations, 2016
- IBBI (Voluntary Liquidation Process) Regulations, 2017
- IBBI (Fast Track Insolvency Resolution Process for Corporate Person) Regulations, 2017
- IBBI (**Insolvency Resolution Process for Personal Guarantors** to Corporate Debtors) Regulations, 2019. Notified on 20.11.2019 w.e.f. 01.12.2019

- 
- IBBI (**Bankruptcy Process** for Personal Guarantors to Corporate Debtors) Regulations, 2019. Notified on 20.11.2019 w.e.f 01.12.2019

## Enforcement Dates

- 01.12.2016 for Corporate Persons **excluding financial service provider**
- 15.11.2019 for Financial Service Providers **excluding Banks**
- 01.12.2019 for Personal Guarantors to Corporate Debtors



# Applicability - Subject

**Extent** – only in relation to their

- Insolvency,
- Liquidation,
- Voluntary liquidation, or
- Bankruptcy



# Applicability – Territorial Jurisdiction

- Applies to whole of India
- Earlier Part III relating to insolvency and bankruptcy of individuals and partnerships was not applicable to the State of Jammu & Kashmir {Sec. 1(2) }
- After abrogation of Article 370 of the Constitution, made applicable w.e.f. 18-Mar-2020

# Applicability to Persons

## Corporate Persons

- Companies incorporated under the Companies Act, 2013 or previous company law;
- Companies governed by any special Act, to the extent the provisions are consistent with that Act;
- Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008
- Such other body incorporated under any Act, as the Central Government may specify
- (Excluding Financial Service Providers)

# Financial service providers regulated by

:

- Reserve Bank of India (RBI),
- Securities and Exchange Board of India (SEBI),
- Insurance Regulatory and Development Authority of India (IRDA),
- Pension Fund Regulatory Authority (PFRA) and
- such other regulatory authorities as may be notified by the Central Government;

*{Sec 3(18)}*



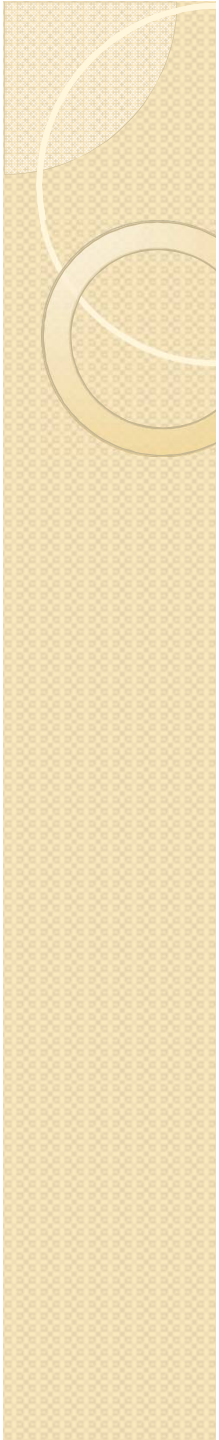
# Individuals and Firms

- Personal guarantors to corporate debtors\*
- {PG to CD} (Notified w.e.f. 01-Dec-19)
- Partnership firms
- Proprietorship firms\*
- Individuals (other than PG to CD)


\* Categories added w.e.f. 23-Nov-17

# Trigger

- Non payment of a debt when due and payable, whole or any part
- **For Corporate Debtors**(Sec. 4):
- Minimum Default of Rs.1 crore
- {w.e.f. 24-Mar-20, earlier it was Rs. 1 lakh}
- **For Individuals and Partnership firms**  
(Sec. 78) : Minimum Default of Rs. 1000
- Central Govt. may raise it to Rs.1 lakh



# Terminology

- 
- **Insolvency** is the inability of a person or a corporate person to pay their bills as and when due and payable.
  - **Bankruptcy** when a person is declared incapable of paying their dues
  - **Liquidation** is the process of winding up a Corporate person.
  - **Code** is a collection or compendium of laws. It refers to a systematic and comprehensive compilation of laws, rules or regulations that are consolidated and classified according to a particular subject matter

# Default

- “default” means **non-payment** of debt **when** whole or any part or instalment of the amount of debt has become **due and payable** and is not paid by the debtor or the corporate debtor, as the case may be;  
**Sec 3(12)**

# Debt

- **"debt"** means a liability or obligation in respect of a claim which is due **from any person** and **includes a financial debt and operational debt**; Sec 3 (11)

# Creditor

**"creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder; Sec 3 (10)

Includes:

- a financial creditor,
- an operational creditor,
- a secured creditor,
- an unsecured creditor and
- a decree-holder;

## **“Person” includes**

- an individual;
- a Hindu Undivided Family;
- a company;
- a trust;
- a partnership;
- a limited liability partnership; and
- any other entity established by a statute, and includes a person resident outside India;

{Sec 3(23)}





**“Corporate Person” means a:**

- Company under Companies Act
- Limited Liability Partnership under LLP Act,
- any other person incorporated with limited liability under any law
- **but shall not include any financial service provider;**

{Sec. 3 (7)}

# Operational Creditor (OC)

- **Sec 5 (20) "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;
- **Sec 5 (21) "operational debt"** means a **claim in respect of the provision of goods or services including employment** or a debt in respect of the **payment** of **dues** arising under any law for the time being in force and payable to the **Central Government, any State Government or any local authority;**

# Financial Creditor (FC)

- **Sec 5 (7) “financial creditor”** 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;
- **Sec 5 (8) “financial debt”** means a debt **along with interest, if any**, which is disbursed against the consideration for the **time value of money** and includes–
  - (a) money **borrowed against** the payment of **interest**;
  - (b) any amount raised by acceptance under any **acceptance credit facility** or its de-materialised equivalent;
  - (c) any amount raised pursuant to any note purchase facility or the issue of **bonds, notes, debentures, loan stock** or any similar instrument;

# FC

- (d) the amount of any liability in respect of any **lease or hire purchase** contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) **receivables sold or discounted** other than any receivables sold on non-recourse basis;
- (f) any amount raised under **any other transaction**, including any forward sale or purchase agreement, **having the commercial effect of a borrowing**;

# FC


- Explanation. -For the purposes of this sub-clause, -
- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

# FC

- (g) any **derivative transaction** entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any **counter-indemnity obligation** in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the **guarantee or indemnity** for any of the items referred to in sub-clause (a) to (h) of this clause;

## Dates

- **Initiation Date** – Date on which FC, OC, or CA makes an application to AA for initiating CIRP Sec 5(11)
- **Insolvency Commencement Date** - Date of admission of application for CIRP by AA u/s 7,9,or 10 - Sec 5(12) (Appointment of IRP 06-06-2018)
- **Liquidation Commencement Date** – Date on which proceedings for liquidation commences in accordance with Sec. 33 or 59. - Sec.5(17)
- **Bankruptcy Date** – Date on which a bankruptcy order is passed by AA under Sec. 126 -Sec 79(6)



# Framework for Implementation



# Four Pillar of IBC


- Insolvency Professionals (IP)
- Information Utilities (IU)
- Adjudicating Authorities (AA), and
- Insolvency and Bankruptcy Board of India (IBBI)


# Insolvency Professional

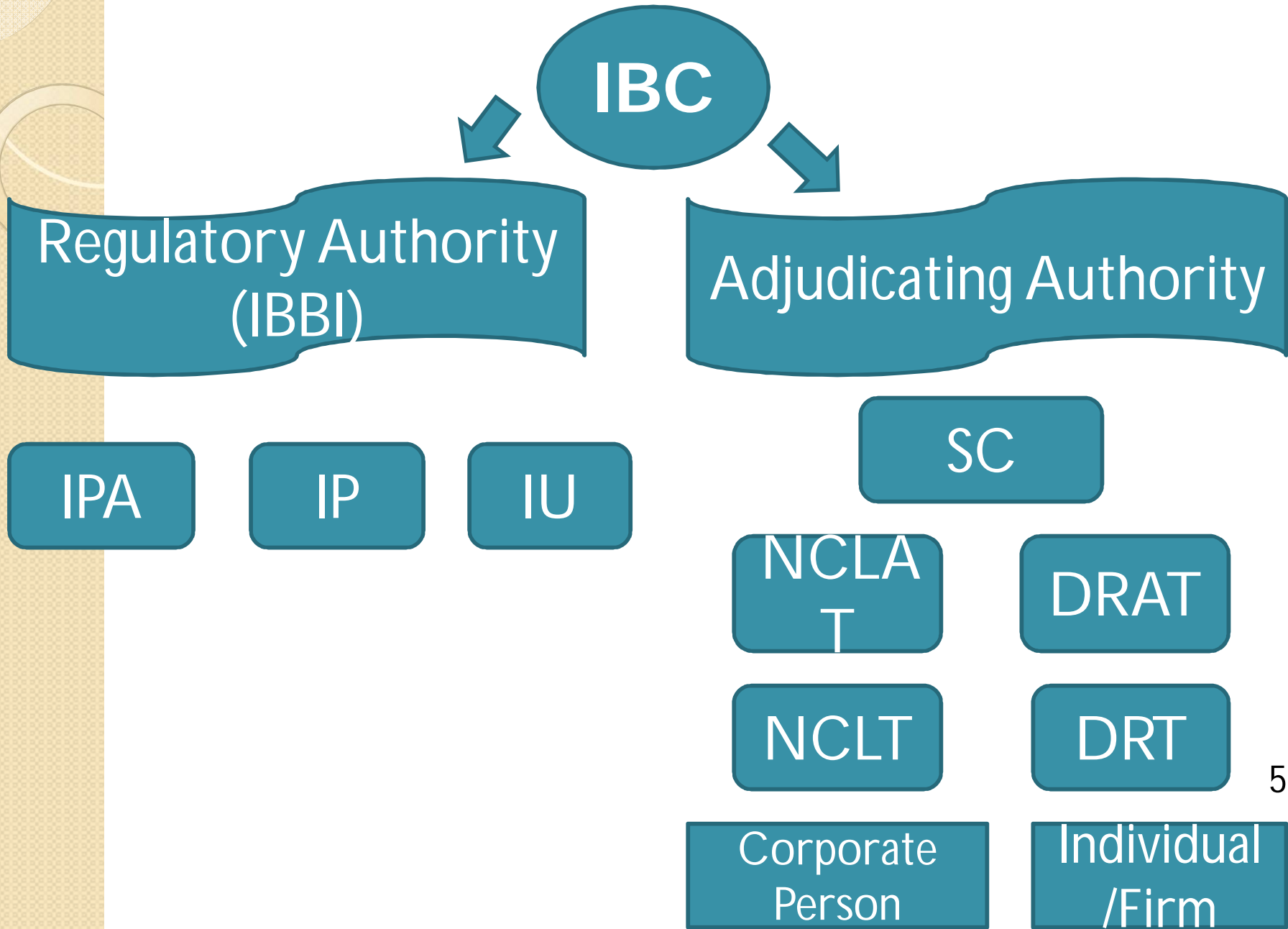
- Interim Resolution Professional (IRP)
- Resolution professional (RP)
- Liquidator
- Bankruptcy Trustee (BT)
- Representative of a Financial Creditor
- Representative of any member of the committee of creditors
- Authorised Representative of a class of Creditors (AR)


# Insolvency Professional Entity

- **Organisation** - company, registered partnership firm or a limited liability partnership (LLP)
- **Sole objective** - to provide support services to IPs, who are its partners or directors
- **Net worth** - not less than one crore rupees;
- **IPs** to be Majority shareholders, capital contributors, directors, whole time directors, or partners

- 
- **Insolvency Professional Agencies (IPA)** to:
    - enrol Insolvency Professionals
    - professional development
    - and regulation of
    - insolvency professionals;
  - IUs for storing financial information, defaults, security interests etc. (NeSL)
  - Insolvency and Bankruptcy Board of India (IBBI) - Regulatory Authority for
    - IPs, IPEs, IPAs, IUs, RVOs, and RVEs

- 
- Registered Valuers
  - Registered Valuer Entity (RVE)
  - Registered Valuer Organisations (RVO) for enrolment of Registered Valuers





# **Adjudicating and Appellate Authorities**


# Judicial Framework

- **Adjudicating Authority (AA)**
  - National Company Law Tribunal (NCLT)
  - Debt Recovery Tribunal (DRT)
- **Appellate Authority**
  - National Company Law Appellate Tribunal (NCLAT)
  - Debt Recovery Appellate Tribunal (DRAT)
- **Special Courts** under Companies Act for trial of offences under IBC {Sec 236(1)}
- **Supreme Court**



## For Corporate Persons – Sec 60

- (1) The AA, in relation to insolvency resolution and liquidation for corporate persons **including corporate debtors and personal guarantors thereof** shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.
- (2) where a CIRP or liquidation proceeding of a CD is pending before a NCLT, an application relating to the insolvency resolution or **liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such CD** shall be filed before the NCLT.



(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the CD pending in any court or tribunal shall stand transferred to the AA dealing with IRP or liquidation proceeding of such CD.

(4) The NCLT shall be vested with all the powers of the DRT as contemplated under Part III of this Code for the purpose of subsection (2).

# Appellate Authority - National Company Law Appellate Tribunal (NCLAT) (Sec 61)

- Appeal to be filed **within 30 days**
- Extension of maximum 15 days allowed, provided there is "sufficient cause"
- **Appeal to Hon'ble Supreme Court (Sec 62)**  
Against orders of NCLAT on a question of law
- **Within 45 days** from the date of **receipt of such order**
- Extension of maximum 15 days allowed, provided there is "sufficient cause"
- **Jurisdiction of any Civil Court or authority barred (Sec 63 and Sec 180)**

## Trial of offences by Special Court

- **Sec. 236**
- (1) Offences under of this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013
- (2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

## For Individuals and Partnership Firms

- Adjudicating authority - **Debt Recovery Tribunal (DRT) (Sec 179)**
- Constituted under the RDDBFI Act, having territorial jurisdiction over the place where the individual debtor actually and voluntarily **resides or carries on business or personally works** for gain
- Where application has been made against one partner in a firm, any other application against another partner in same firm shall be presented or transferred where first one is pending. Sec 95(3)



## **Appellate authority - Debt Recovery Appellate Tribunal (DRAT) (Sec 181)**

- Appeal to be filed within 30 days
- Extension of maximum 15 days, provided there is “sufficient cause”

### **Appeal to Supreme Court (Sec 182)**

- Against an order of DRAT, within 45 days
- Extension of Maximum 15 days, provided there is “sufficient cause”



# Key Features

- Object early detection and resolution of insolvency
- Time-bound process for maximisation of the value of assets of the Person
- All creditors, whether secured; unsecured; financial or operational; domestic or international may initiate a resolution process
- 'Debtor-in-possession' to 'Creditor-in-possession'
- Quite period - Moratorium
- Waterfall Mechanism – Priority of payment on Liquidation.
- Govt. dues no more Crown debt

# Processes under IBC

- For Corporate Persons
  - Insolvency Resolution (CIRP)
    - Fast Track
    - Normal
  - Compulsory Liquidation
  - Voluntary Liquidation
- For Individuals & firms
  - Fresh Start
  - Insolvency Resolution
  - Bankruptcy



**जय हिन्द**

**Jai Hind**

**धन्यवाद**

**Thanks**

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