

**CORPORATE
INSOLVENCY
RESOLUTION PROCESS
–STEP BY STEP**

28th December 2024

**Insolvency and
Bankruptcy Code
2016**

Preamble to IBC 2016

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

balance the interests of all the stakeholders

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.

THE INSOLVENCY AND BANKRUPTCY CODE 2016- INTRODUCTION

The Insolvency and Bankruptcy Code 2016 (IBC) was passed by Lok Sabha in May 2016. Came into effect in Dec 2016. Prior to May 2016 there were multiple laws in India dealing with insolvency and bankruptcy of Corporates and Individuals.

LEGAL FRAMEWORK

Chapter XIX & Chapter XX of Companies Act, 2013

Part VIA, Part VII & Section 391 of Companies Act, 1956

RDDBFI Act, 1993

SARFAESI Act, 2002

SICA Act, 1985

The Presidency Towns Insolvency Act, 1909

The Provincial Insolvency Act, 1920

Chapter XIII of the LLP Act, 2008

Out of the Court Settlements

- Bilateral restructuring
- One-time settlement(OTS)
- JLF/CDR/SDR
- Sale of loan to ARC

NEW FRAMEWORK

IBC Code 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
- ✓ to promote entrepreneurship,
- ✓ availability of credit and
- ✓ balance the interests of all the stakeholders
- ✓ alteration in the order of priority of payment of Government dues

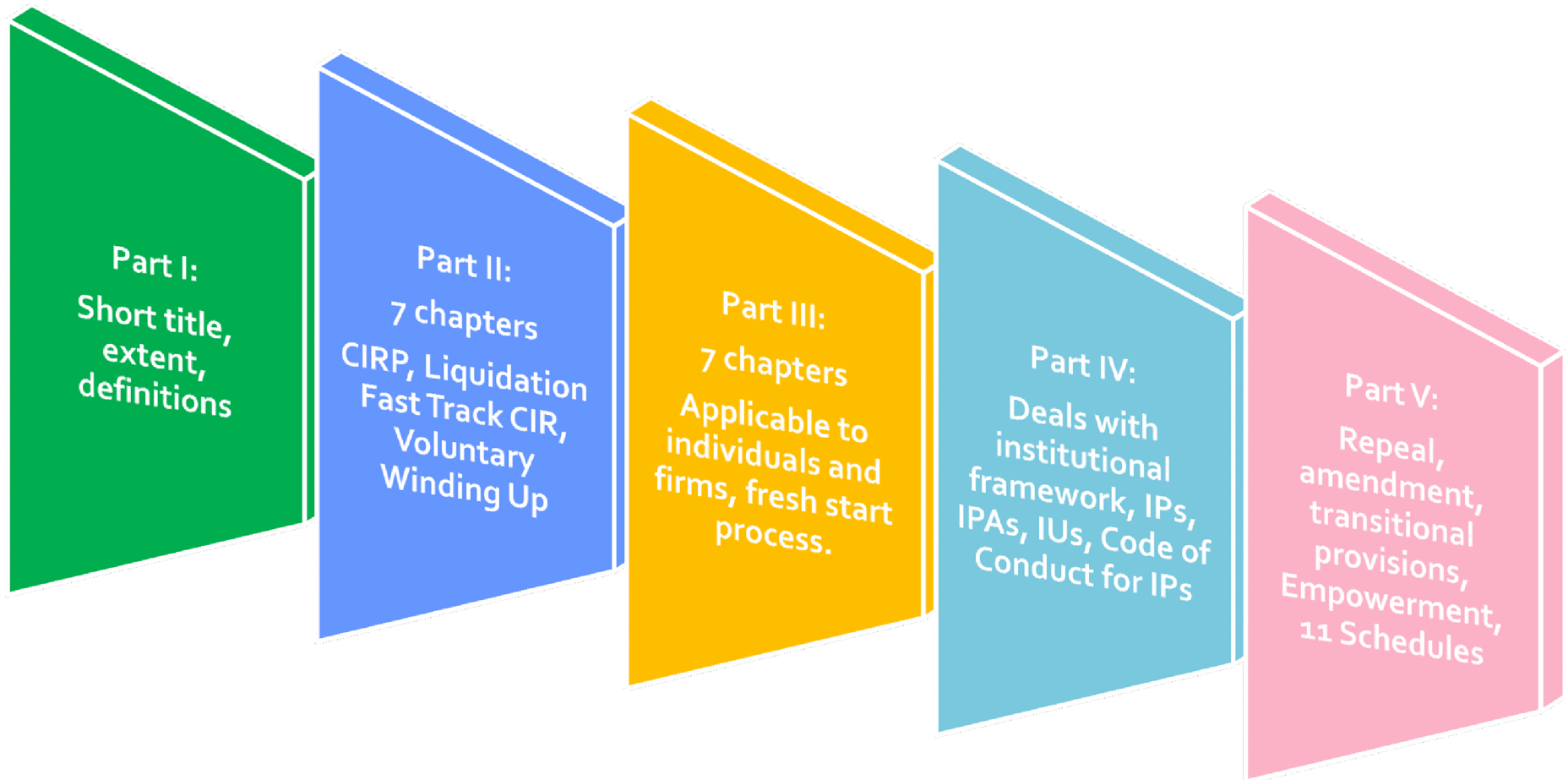
KEY HIGHLIGHTS OF IBC 2016

- ✓ IBC proposes a paradigm shift from the existing 'Debtor in possession' to a 'Creditor in control' regime.
- ✓ Formation of the creditor's committee to act as an custodian and trustee and work in unison to resolve an insolvency through a process.
- ✓ Introduce a qualified insolvency professional (IP) as intermediaries to oversee the process , who take over the management and control of the Corporate Debtor.
- ✓ Establishment of Insolvency and Bankruptcy Board-a regulator as an independent body

KEY HIGHLIGHTS OF IBC 2016

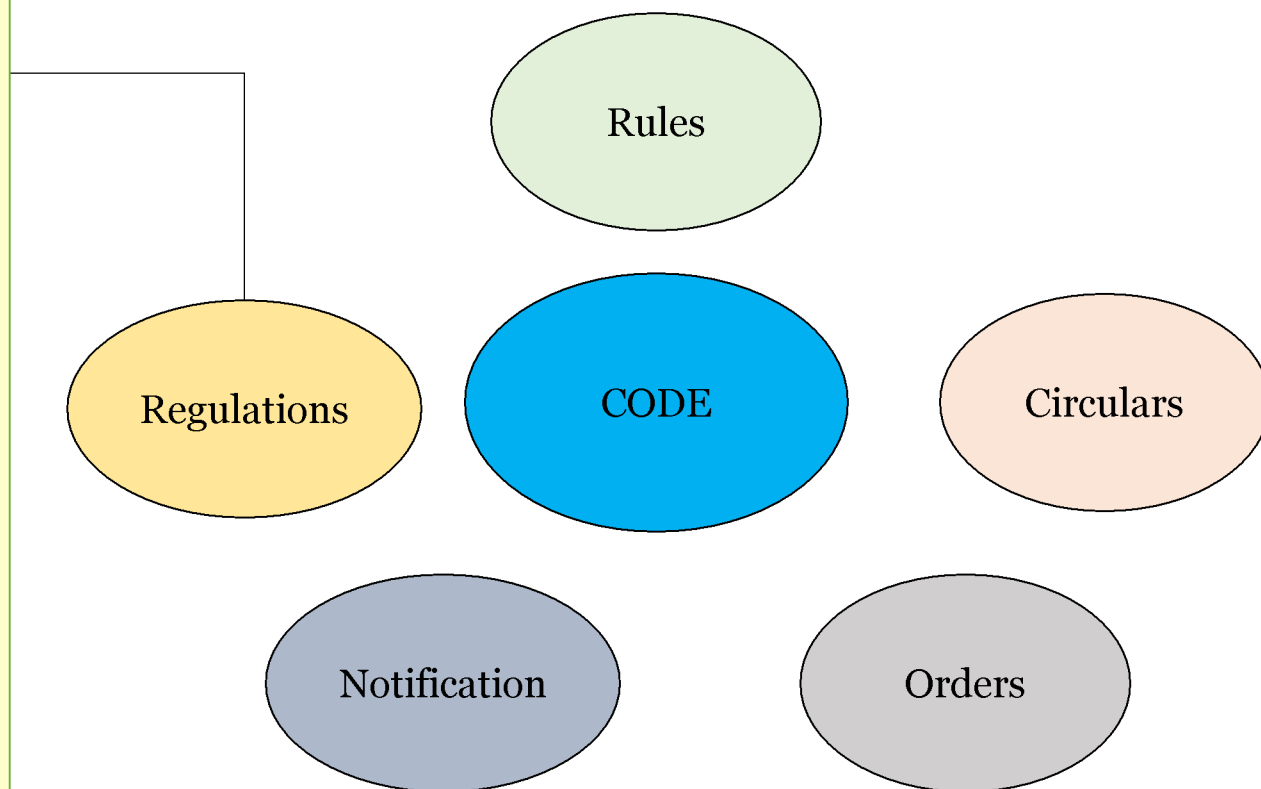
- ✓ Resolution -The code aims to resolve insolvencies in a strict time-bound manner - the evaluation and viability determination must be completed within 180 days(extendable to 270 days.)
- ✓ Moratorium period of 180 days (extendable upto 270 days) for the Company.
- ✓ Clearly defined 'order of priority' or the waterfall mechanism. The waterfall to render Government dues rank below the claims of other creditors
- ✓ Antecedent transactions can be investigated and in case of any illegal diversion of assets and personal contribution can be ordered by court.

STRUCTURE OF THE CODE

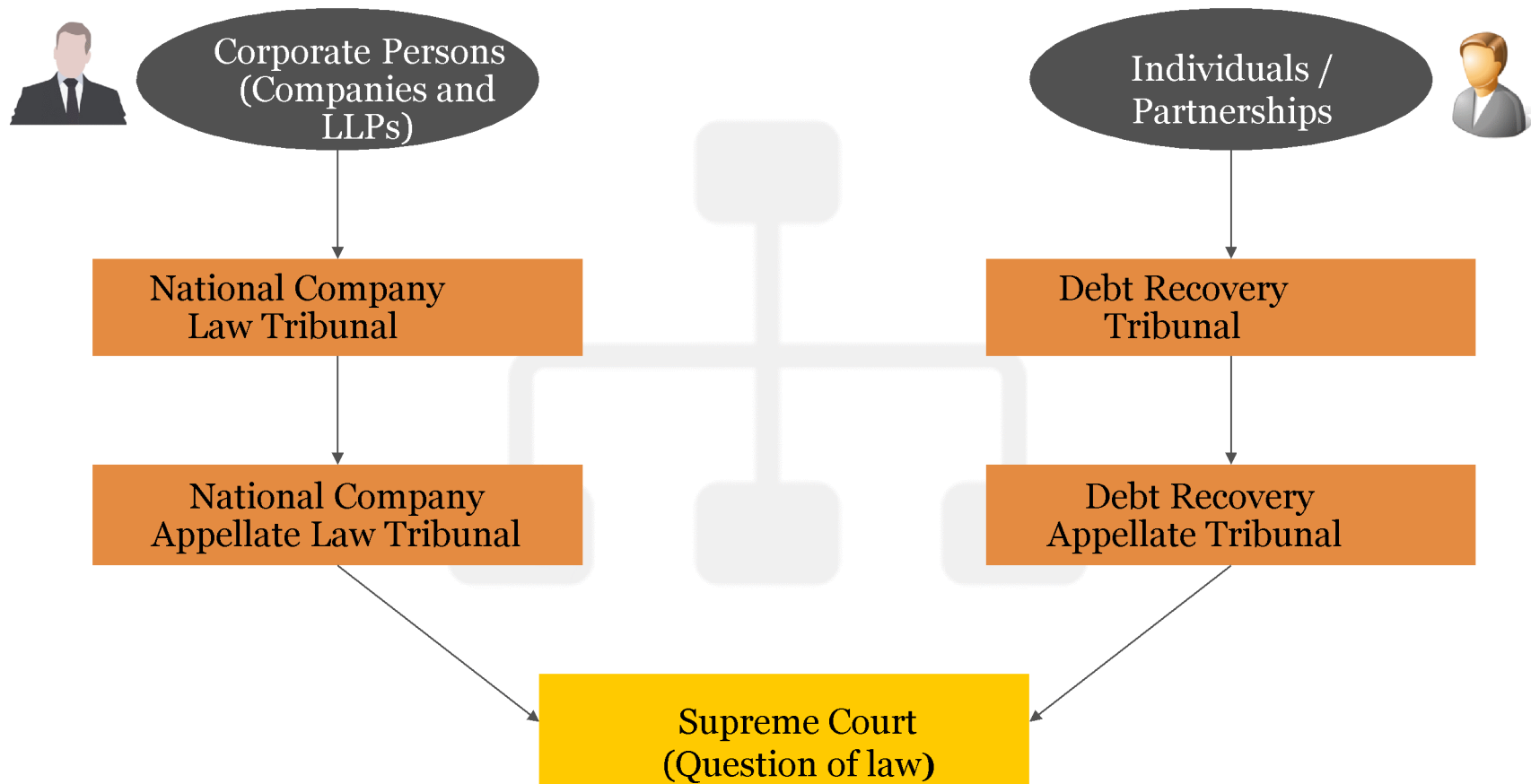


THE INSOLVENCY AND BANKRUPTCY CODE AND ITS REGULATIONS

1. IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
2. IBBI (Liquidation Process) Regulations, 2016
3. IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
4. IBBI (Voluntary liquidation Process) Regulations, 2017
5. IBBI (Inspection and Investigation) Regulations, 2017
6. IBBI (Information Utilities) Regulations, 2017
7. IBBI (Advisory Committee) Regulations, 2017
8. IBBI (Procedure for Governing Board Meetings) Regulations, 2017
9. Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017
10. IBBI (Insolvency Professionals) Regulations, 2016
11. IBBI (Insolvency Professional Agencies) Regulations, 2016
12. IBBI (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016



JUDICIAL STRUCTURE



INSTITUTIONAL FRAMEWORK

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

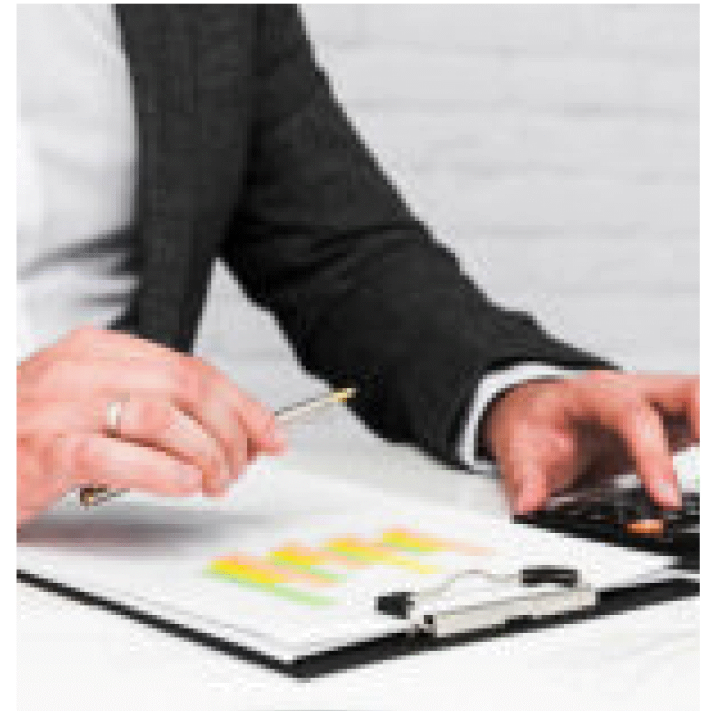
Insolvency and Bankruptcy Board of India (IBBI)	Adjudicating Authority (AA)	Insolvency Professionals Agencies (IPA)	Insolvency Professionals (IP)	Information Utilities (IU)	CoC
<ul style="list-style-type: none"> ➤ Regulatory authority of IPA, IP, and IU ➤ Empowered to make regulations in respect of all 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 	<ul style="list-style-type: none"> ➤ consists of Financial creditors who will appoint and supervise the actions of IPs; need to approve the resolution plan

Who Can Initiate The Corporate Insolvency Resolution Process

- If any Corporate Debtor commits a default, Corporate Insolvency Resolution can be initiated by filing an application before the Adjudicating Authority in the manner as provided under Chapter II of Part II of the Code.

CIRP may be initiated by either:

- A financial creditor (FC) under Section 7
- An operational creditor (OC) under Section 9
- A corporate applicant of a corporate debtor under Section 10 of the Code



Minimum Amount of Default

- The minimum amount of default under the Insolvency and Bankruptcy Code (IBC) is ₹1 crore:
- The government increased the minimum default amount from ₹1 lakh to ₹1 crore in a notification dated March 24, 2020.
- This threshold limit applies to applications filed on or after March 24, 2020, even if the debt is older than that date.

Consequences Of Initiation Of Corporate Insolvency And Resolution Process

- When insolvency is triggered under the code, there can be two outcomes: **Revival** of Corporate Debtor or **Liquidation**. All attempts are made to resolve the insolvency by either coming up with a restructuring plan or a new ownership plan. If the resolution attempts fail, the company's assets are liquidated.
- The primary aim of the code is to revive and save the CD (i.e, to resolve). Only once the CIRP fails, does the liquidation follow.



STAGE I: INITIATION OF CIRP

- The CIRP of a CD commences with an order from the Adjudicating Authority (AA), admitting an application to initiate the CIRP of the CD filed by a financial creditor or an Operational Creditor, or the corporate applicant. The date of this order becomes the insolvency commencement date (ICD).



STAGE II: MORATORIUM AND PUBLIC ANNOUNCEMENT

- Declaration of moratorium under Section 14 of the Code.
- Appointment of an insolvency professional to act as the Interim Resolution Professional (IRP).
- On and from the commencement of CIRP, the control and custody of the corporate debtor is transferred to the hands of the IRP, so appointed and the powers of the board of directors or the partners of the corporate debtor shall stand suspended.
- Public announcement in Form A by the Interim Resolution Professional to invite claims from creditors of the Corporate Debtor.

What Does Moratorium Mean ?

Moratorium for prohibiting all of the following, namely: -

- the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFESI
- the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

What Does Moratorium Mean ?

- It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, etc given by the CG,SG or Local Authority or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated, subject to the condition that there is no default in payment of current dues arising for the use.

What Does Moratorium Mean ?

- The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances
- The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process

STAGE III: CONSTITUTION OF COMMITTEE OF CREDITORS

- Collation, verification of the claims, and thereby preparation of the list of creditors.
- Constitution of Committee of Creditors.
- Filing of report certifying the constitution of the Committee of Creditors and list of creditors to the Adjudicating Authority.
- Holding the first meeting of the Committee of Creditors within 7 (seven) days of filing the report certifying the constitution of the committee of creditors.
- The committee shall fix the expenses to be incurred on or by the RP and the expenses shall constitute insolvency resolution process costs.
- The Committee of Creditors is the decision-making body of the Corporate Debtor, for the very reason that it is the investment and interest of these creditors which is at stake. Actions taken by the IRP/ RP are to be ratified by the members of the Committee of Creditors.

STAGE IV: APPOINTMENT OF RESOLUTION PROFESSIONAL

- The IRP so appointed may or may not be appointed as the Resolution Professional (RP), and the same is decided upon by the Committee of Creditors in its first meeting.
- The RP shall appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.

STAGE V: POWERS AND DUTIES OF THE IRP/RP

- The IRP or the RP may appoint any professional, 2 registered valuers to assist him in the discharge of his duties in the conduct of the corporate insolvency resolution process.
- The RP may sell an unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business if he believes that such a sale is necessary for a better realization of value under the facts and circumstances of the case. However, the book value of all the assets sold in aggregate shall not exceed **ten percent** of the total claims admitted by the IRP.
- The resolution professional shall form an opinion on whether the corporate debtor has been subjected to any transaction covered under **sections 43, 45, 50, or 66** of the Code.

STAGE VI: INITIATION OF EXPRESSION OF INTEREST PROCESS FOR SUBMISSION OF RESOLUTION PLAN

- The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G. The public announcement states that the corporate debtor is undergoing an insolvency action and that all interested candidates or bidders are asked to submit a resolution plan that could be chosen.
- The Resolution Professional shall check the eligibility of all the prospective resolution applicants and conduct due diligence.
- The Prospective Resolution Applicant shall submit the resolution plan within the due date prescribed in Form G.
- The plan so proposed must compulsorily deal with payment of the CIRP costs in priority, payment to operational creditors, and management of affairs of the corporate debtor on implementation of such plan. There are also other requirements laid down in provisions of the Code and regulations made thereunder which are required to be complied with.
- Contd.....

STAGE VI: INITIATION OF EXPRESSION OF INTEREST PROCESS FOR SUBMISSION OF RESOLUTION PLAN

RP will check whether the plan submitted by Resolution Applicant (RA) meets the basic criteria of the requirement of the Code.

The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder.

Thereafter, the committee shall evaluate all the plans, record its deliberations on the feasibility and viability of each resolution plan, and vote on all such resolution plans simultaneously.

STAGE VII: APPROVAL OF RESOLUTION PLAN

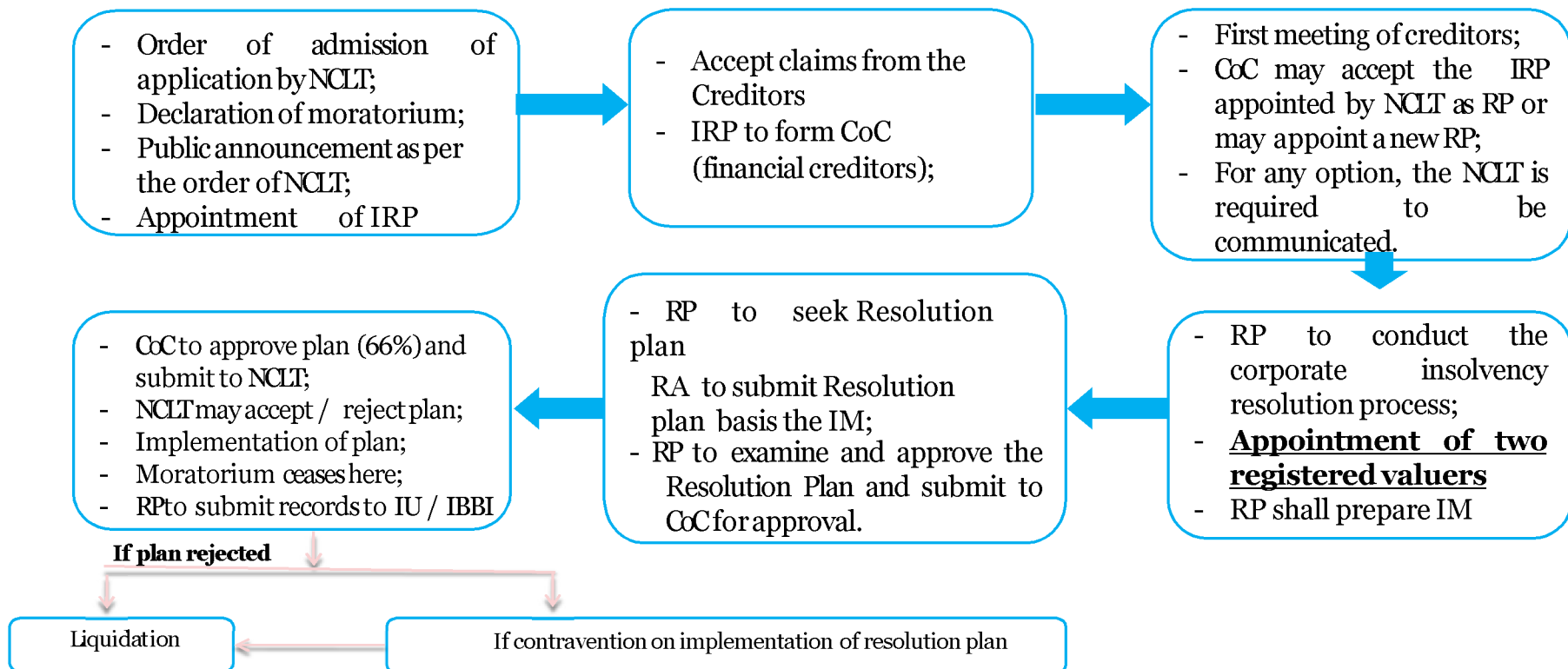
- Where the resolution plan is approved by the members of the Committee of Creditors with 66% of votes, the RP shall file an application before the Adjudicating Authority for approval of the plan. Following this, Adjudicating Authority may, upon its discretion, accept or reject the same.
- The resolution plan is implemented and becomes legally operative on the corporate debtor and all parties if the NCLT authorizes it.
- The Tribunal may order the corporate debtor's liquidation if the NCLT does not approve the resolution plan or it doesn't receive resolution plan before the expiry of CIRP period.

Time Limit For Completion Of CIRP Process

- As per Section 12(1) of the Code, the CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process. The Adjudicating Authority may grant a one-time extension of 90 days. The maximum time within which CIRP must be mandatorily completed, including any extension or litigation period, is 330 days.
- However, in exceptional cases, the said time limit can be extended even beyond 330 days. The Supreme Court in the matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others* held that the Adjudicating Authority may extend the timeline for completion of CIRP beyond 330 days in exceptional cases where the relevant litigants could not be held liable for such delay and the said extension is in the interest of all stakeholders.

CIRP: PROCESS

The entire process shall be completed within Resolution Period (180 days; extendable by 90 days)



Liquidation Process under IBC



When does Liquidation Trigger?

- Adjudicating Authority may or pass an order for liquidation of the Corporate Debtor (CD) according to the provisions of Section 33 (Liquidation Commencement Date) (i.e., Chapter III of Part II of IBC) in the following cases: –
- Where no application is filed with the Adjudicating Authority (NCLT) seeking approval of the resolution plan within the prescribed timeline (180 to 270 days, extendable to 330 days, from admission)
- Where NCLT rejects the resolution plan for non-compliance
- Where the Committee of Creditors(CoC) decides to liquidate the CD before confirmation of a resolution plan; or
- Where the CD contravenes, the terms agreed in the resolution plan approved by the NCLT

Effect & Consequences Of Company Liquidation

- The moratorium implemented under section 14 of the IBC shall cease to have effect from the day the National Company Law Tribunal (NCLT) passes such liquidation order
- Subject to Section 52 of IBC, no suit or legal proceedings shall be instituted against the corporate debtor. However, a lawsuit or legal proceeding may be initiated by the liquidator only with the prior approval of the Adjudicating Authority, and on behalf of the corporate debtor
- Under this section, the order of liquidation shall be a notice of discharge to the corporate debtor's officers, employees, and workers, except when the corporate debtor's business is carried out during the Company Liquidation process by the Liquidator under IBC.

Stage I: Appointment of Liquidator

- Appointment of Liquidator (Section 34) who has submitted the written consent in Form AA of Schedule II
- A public announcement needs to be made in Form B of Schedule II within five days of the pronouncement of the order for liquidation to invite claims, which shall be submitted inside 30 days from the liquidation initiation date
- Once the liquidation order passes, the resolution professional must do the filling of CIRP-5

Stage II: Verification of Claims & Reporting

- Verification and acceptance of claims and appointment of Valuers.
- **Preparation of Asset Memorandum and other reports-**
- Asset Memorandum- To evaluate the assets of the CD and prepare a report within 75 days. (Section 35(1)(c), Reg 5(1), Reg 34)
- Progress Report- The reporting of the progress of the liquidation within 15 days from the end of each quarter. (Sec. 35(1)(n))
- Preliminary Report- Report prepared by Regulation 13 to be submitted within 75 days. (Reg 2(1)(f) r.w. Reg 13)

Stage II: Verification of Claims & Reporting

- First Progress report- The quarterly report under Regulation 15 to be submitted within 15 days of the end of every quarter (Reg 2(1)(g) r.w. Reg 15).
- Subsequent Progress Report- In case the insolvency professional ceases to act as a liquidator, then within 15 days from the date of cessation, submit the following progress report.
- Sale Reports- To be enclosed with the Progress report after the sale of each asset according to Reg 5(1) r.w. Reg 36.
- Minutes of consultation with the stakeholders – After every meeting, Minutes of consultation with the stakeholders are to be circulated as per Reg 5(1) r.w. Reg 8.
- The Final Report, before distribution, is to be submitted within one year according to Reg 5(1) r.w. Reg 45

Stage III- Distribution of proceeds

- The Liquidator shall form Liquidation Estate (*subject to inclusions and exclusions*) and open a bank account in the name of the corporate debtor, followed by the words “in liquidation,” in a scheduled bank, for the receiving the amounts due to the CD and initiate the sale of assets.
- The liquidation process of any CD under the IBC Code shall be completed within one year from the liquidation commencement date, even if applications for avoidance transactions are pending.
- The liquidator shall not sell any property, whether immovable, movable or any actionable claims of the corporate debtor under liquidation, to any person who is ineligible under section 29A of the Code to become a resolution applicant.

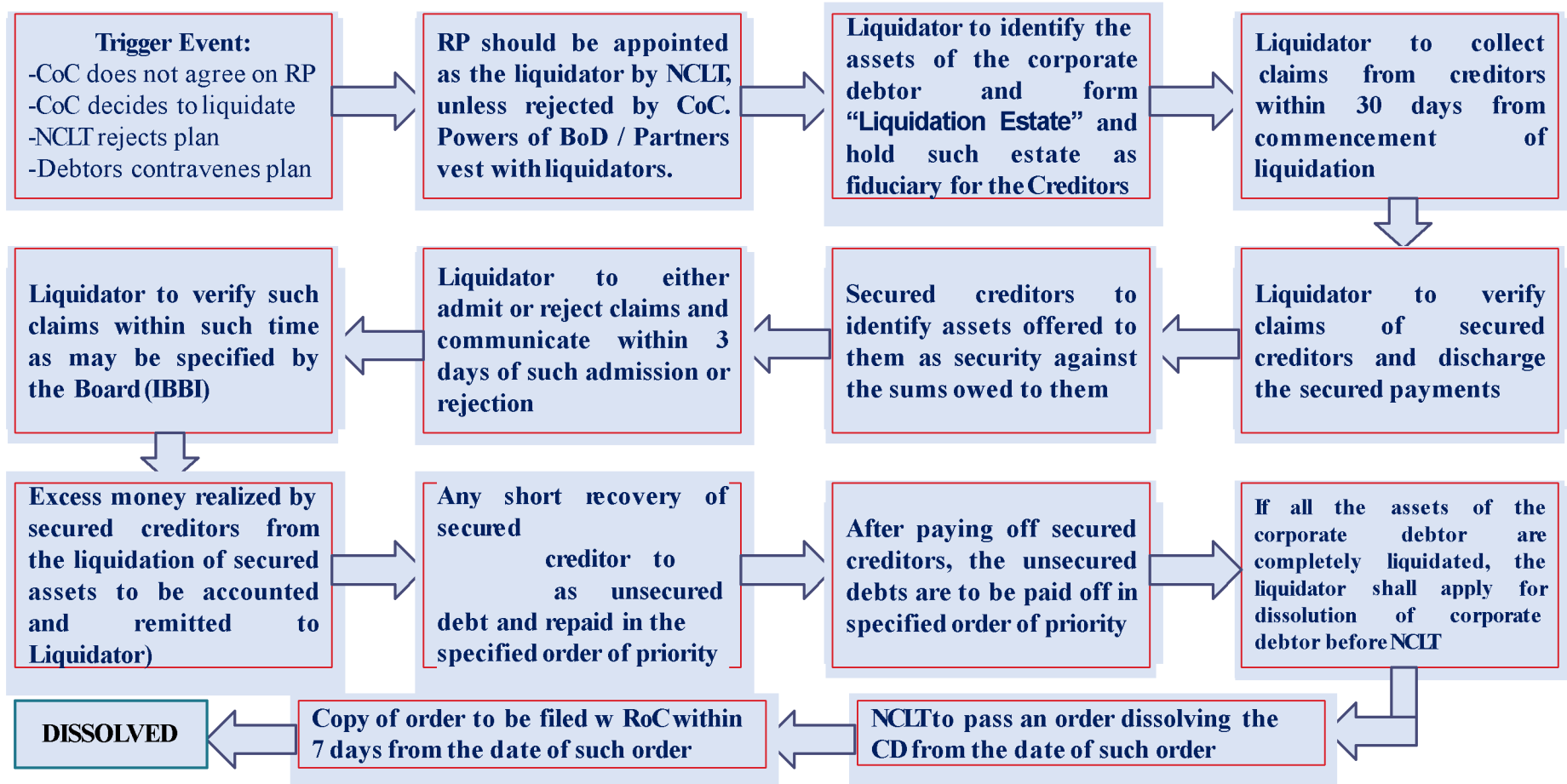
Stage III- Distribution of proceeds

- The proceeds from realisation shall be distributed by the Liquidator within 90 Days from the receipt of the amount among the stakeholders. (Regulation 42)
- The liquidator shall distribute the assets per the waterfall mechanism (Section 53) after the filing of stakeholders and the asset memorandum with the Adjudicating Authority.

Stage IV- Dissolution of Corporate Debtor under IBC

- After liquidating all the corporate debtor's assets, the Liquidator must file an application before the Adjudicating Authority for the corporate debtor's dissolution under Section 54 of the Code.
- If the Liquidator believes that there are insufficient realisable assets to cover the cost of the company liquidation and further inquiry is not necessary into the affairs of the corporate debtor, they may apply for an early dissolution (Regulation 14 of the Company Liquidation Regulations) at any time after the initial report is submitted.
- Orders for dissolution should be filed with the appropriate authority where the CD is registered.

LIQUIDATION PROCESS



MANNER OF SALE

The liquidator may sell-

- (a) an asset on a standalone basis;
 - (b) the assets in a slump sale;
 - (c) a set of assets collectively;
 - (d) the assets in parcels;
 - (e) the corporate debtor as a going concern; or
 - (f) the business(s) of the corporate debtor as a going concern:
- Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]

MODE OF SALE.

(1) Auction in the manner specified in Schedule I.

(2) Private sale when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Valuation under IBC 2016

Under CIRP



Appointment of two registered valuers

IRP/RP shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the **fair value and the liquidation value** of the corporate debtor in accordance with regulation 35

DUTY OF AN IRP/RP OF THE CORPORATE DEBTOR

- The two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
- The resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.
- The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

VALUATION REPORT

- After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value, the liquidation value and valuation reports to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value, the liquidation value and valuation reports

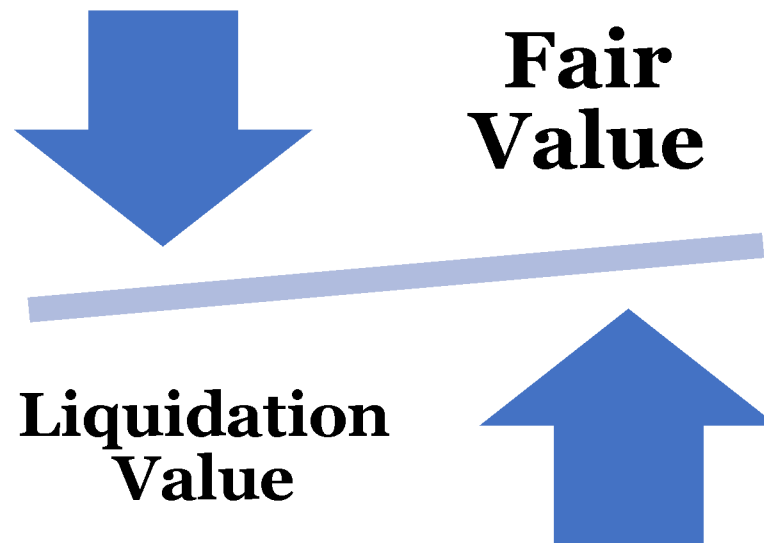
Appointment of third Valuer

- if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).
- “significantly different” means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$, where, L1= higher valuation of liquidation value L2= lower valuation of liquidation value.]

FAIR VALUE VS LIQUIDATION VALUE

Creditors will have the option to recover their dues from future earning of the company. Liquidation is the drastic solution to an end a business.

Liquidation Value is the reserve price for auction



Resolution value has to be higher than the liquidation value ..

Focus should be resolution, not liquidation

Soul of the Code to keep the firm alive by balancing the by balancing the interest of all stakeholders for which a successful resolution is required.

Fair Value

is defined as the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller on arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently, and without compulsion.

Fair Value

- This will enable the creditors to ascertain the market price of the distressed company.
- The Fair Value of an asset normally reflect its which maximum potential value of the assets. This highest and best use of the assets usually fetches value for continuing an asset's existing use, and thus the estimates assume so - "going-concern" basis.
- The concept of Fair Value will help to recover the current market value of the assets so as to achieve the maximum value of the assets.

LIQUIDATION VALUE

'Liquidation Value' is defined as 'the estimated realizable value of assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date'.

'Liquidation Value' is generally understood as the value of an asset on liquidation – auction sale. In this regard, Regulations 32, 33 and Schedule 1 of the Liquidation Process Regulations provide that a liquidator appointed as per the Code may sell the assets either on a piece-meal/ component basis, as packages or in a slump-sale, whichever may fetch higher value under given circumstances and within the prescribed timelines.

Valuation of assets intended to be sold during liquidation

- Where the valuation has been conducted under regulation 35 of the CIRP Regulations, 2016 the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.
- Where no such valuation report is available or where the liquidator after consultation with the consultation committee that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets.

Valuation of assets intended to be sold during liquidation

- The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.
- The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.]

Valuation of assets intended to be sold during liquidation

- Where valuation is undertaken as per sub-regulation (2), the liquidator shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the consultation committee before finalisation of valuation reports.
- The liquidator shall share the valuation reports with the members of the consultation committee after obtaining an undertaking that they shall maintain the confidentiality of such reports and shall not use these reports to cause an undue gain or undue loss to itself or any other person.
- In case there is deviation of twenty five percent in the valuation of an asset class under sub-regulation (2) from valuation under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall facilitate a meeting wherein the registered valuers shall explain the reasons for the difference to the consultation committee.]

WHY ROLE OF VALUER IS CRUCIAL UNDER IBC

- ✓ Valuation of assets is a key factor for an "informed decision making" under the Insolvency and Bankruptcy Code.
- ✓ Transparent and credible determination of value of the assets to facilitate comparison and informed decision making.
- ✓ Valuation is a very serious area as this is lying at the heart of the entire process. If valuations are faulty, the outcomes will be undesirable.
- ✓ The banks have taken an average haircut of over 60 per cent only as some accounts like Alok Industries have been bid out for a paltry 17 per cent of the money the bankrupt company owed to the lenders.
- ✓ The determination of 'value' of assets is an extremely crucial exercise, keeping in view its practical implication on the resolution plan, claims of creditors and prospective investors.



**MAKING
INFORMED
DECISIONS**

THANK YOU

