

R & A Insolvency and Bankruptcy Services

Insolvency and Bankruptcy Code, 2016 (IBC)

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted and came into force with effect from 28th May, 2016. With the emergence of Insolvency and Bankruptcy Code, 2016, there is a tremendous reform in the bankruptcy and insolvency process in India. The processes which took ages to conclude insolvency / bankruptcy, are now simplified and expedited, ensuring fair negotiations between Debtor and Creditor by removing the asymmetry of debt and default information.

Its Applicability:

The provisions of the IBC, 2016 are applicable to

- a) Individuals;
- b) Unlimited Partnership Firms;
- c) Limited Liability Partnerships (LLPs); and
- d) Companies.

Note: The provisions relating to Corporate in the Code, i.e., Limited Liability Partnerships and Companies are notified and in force. The provisions related to Individuals and Unlimited Partnership Firms, the Part III of IBC, 2016, is yet to be notified

Institutional Infrastructure involved in implementation of the IBC:

The four pillars of supporting institutional infrastructure, to make the Insolvency and Bankruptcy Process work efficiently are:

- a) The regulator – The Insolvency and Bankruptcy Board of India (IBBI)
- b) Adjudicating Authority (AA):
 - i. National Company Law Tribunal (NCLT) – For Corporate, i.e., Companies and Limited Liability Partnerships
 - ii. National Company Law Appellate Tribunal (NCLAT) will act as Appellate Authority.
 - iii. Debt Recovery Tribunal (DRT) – For Individuals and Unlimited Partnership Firms
- c) A private industry of Insolvency Professionals (IPs) with oversight by private Insolvency Professional Agencies (IPAs)
- d) A private industry of Information Utilities (IUs)

Corporate Insolvency Resolution Process(CIRP):

Initiation of CIRP

The Financial Creditor, Operational Creditor and the Corporate Debtor can initiate the Corporate Insolvency Process.

- a) Financial Creditor (by itself or jointly with other creditors), on occurrence of default, can file the application.
- b) Operational Creditor, after giving 10 days notice to the Corporate Debtor, on default or no response to such notice, can file the application.
- c) The Corporate Debtor himself may also initiate the Corporate Insolvency Process.

Time Lines

The code proposes a swift process and timeline of 180 days complete the insolvency process. This can be extended for 90 more days in exceptional case.

Role of Insolvency Professional:

An Insolvency Professional is the registered professional enrolled with Insolvency Professional Agency (ICSI, ICAI, ICMAI), who is authorized to act in relation to an insolvent individual or partnership or company. Such professional plays a very vital role in the resolution process starting from initiating the application till the closure of the resolution process.

Debt Recovery Modes:

<u>Individuals / partnership firms</u>	<u>Corporate</u>	<u>Demerits</u>
Filing Civil Suits under The Presidency Towns Insolvency Act, 1909, and The Provincial Insolvency Act, 1920 until notification of its repeal		
Available where lenders are not Bankers or Financial Institutions under	Available where lenders are not Bankers or Financial Institutions under	Resolution takes high time and the recovery rates are too low
Filing of application to DRT to Recovery of Debts due to Banks and Financial Institutions Act, 1993		
Available – where lenders are banks/FIs	Available – where lenders are banks/FIs	Lack of proper infrastructure in DRT DRT is over burdened Resolution consumes high time;

		Low recovery rates
Filing of application to DRT to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002		
Available – where lenders are banks/FIs where assets of debtors are secured	Available – where lenders are banks/FIs where assets of debtors are secured	lots of complications under the Act for obtaining possession without the intervention of the court; Filing of application before the Chief Metropolitan Magistrate or District Magistrate, is itself a time taking process Low recovery rates
Filing of Application under Insolvency and Bankruptcy Code, 2016		
Available to all irrespective of kind of lenders (The provisions of IBC are still to be notified)	Available to all irrespective of kind of lenders, whether assets are secured or not	New law with the objective to overcome the issues under existing modes

Advantage of IBC

Debtors / Borrowers:

1. The code covers insolvency of individuals, unlimited liability of partnerships, limited liability of partnerships and companies.
2. Even a debtor himself can initiate the process of application for insolvency resolution.
3. Debtors have a chance to prove their business viability by appointing an appropriate Interim Resolution Professional.
4. If suitable action is initiated debtor may avoid the takeover of the management by the Creditors under SARFAESI Act

Creditors / Lenders:

5. Creditors (both financial as well as operational creditors) can assess the financial liability of the Debtor and initiate the insolvency resolution process either to revive the financial position or to liquidate the debtor.
6. Irrespective of status of security – application can be initiated.
7. Recovery rates can be increased.
8. The institutional infrastructure involving the regulator, adjudicating authorities, professionals, insolvency utilities, shall enable the time bound insolvency resolution and liquidation / bankruptcy process.

Issues with the current arrangements:

1. While the insolvency laws dealing with companies and institutional creditors such as banks and financial institutions have been revisited from time to time, the bankruptcy laws relating to other debtors such as individuals, unlimited liability partnerships and sole proprietorships has remained unchanged. Currently, the loan recovery rates in India are among the lowest in the world. Creditors averse lending due to low recovery rates
2. In case of unsecured loan recovery one has to file money recovery suit under common law under the civil procedure in the Civil Court which will take years to decide.
3. For unsecured loans by banks the law which specifically deal with the recovery matters like Recovery of Debts Due to Banks and Financial Institutions Act 1993 through Debt Recovery Tribunal, is available, but, inadequacy of infrastructure at DRT shall not resolve the matters quickly.
4. Proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 deals specifically with the secured loan and there are lots of complications under the Act for obtaining possession without the intervention of the court
5. Overall, the time taken for resolution is high and the recovery rate is very low.

Objectives of Insolvency and Bankruptcy Code, 2016:

The main objects of IBC are as follows:

1. Low time to resolution.
2. Low loss in recovery
3. Higher levels of debt financing across wide variety of debt instruments.

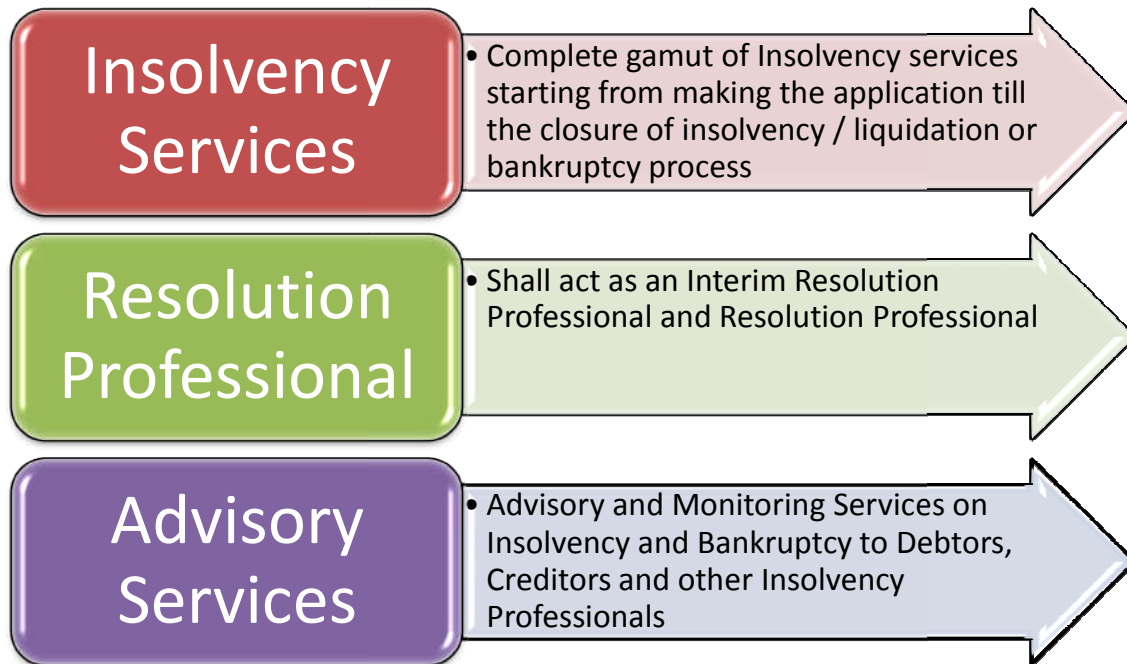
Our role - Insolvency and Bankruptcy Services

R & A adds Insolvency and Bankruptcy Services to its gamut of services. Mr. G. Raghu Babu, Co-founder and Partner and Mr. R. Ramakrishna Gupta, Partner of R & A Associates, Company Secretaries are the registered Insolvency Professionals.

Our Insolvency & Bankruptcy Team, shall play a vital role in providing appropriate support for Corporate as well as Individual insolvency and bankruptcy procedures and

provide sustenance for creditors / debtors during troubled debt recovery in various areas of business. Our key principle is to ensure win-win financial solutions for our clients' business objectives vis-à-vis the market situation.

We provide services under following category:



Our services under this segment include:

1. Advisory and Monitoring Services on Insolvency and Bankruptcy to Debtors, Creditors and other Insolvency Professionals.
2. Role and responsibilities as Interim Resolution Professional and Resolution Professional:
 - a. Management of Corporate Affairs of the Corporate Debtor
 - b. Determining the Financial position of the Debtor
 - c. Instructing the financial institutions
 - d. Executing Deeds, receipts and other documents of Debtor
 - e. Execution of Contracts and modification of the existing contracts where required.
 - f. Accessing electronic Records with Information Utility
 - g. Receive and Collate all the claims
 - h. Constitution of Committee of Creditors and conducting its Meetings
 - i. Monitoring the assets of the Debtor including Control and Custody of assets with ownership rights.
 - j. Co-ordination with Information Utility, where required.
 - k. Raise interim finance with the approval of Committee of Creditors

- l. Determining the Voting share of the Creditors
 - m. Preparation of Information Memorandum
 - n. Obtaining approval from the Committee of Creditors for certain actions
 - o. Examination of Resolution Plan and obtain approval of the Committee of Creditors.
 - p. Submission of Resolution Plan to Adjudicating Authority.
 - q. Co-ordination with the Insolvency and Bankruptcy Board of India.
3. Assistance in extension of period of Corporate Insolvency Process beyond 180 days.
4. Liquidator Services
5. Fast Track Corporate Insolvency Resolution Process
6. Representing the Creditor in the meeting of Committee of Creditors, where such Creditor is the member.
7. Appearance before the Tribunal – Adjudicating Authority
8. Drafting/Vetting the Notices, Response to Notice, Agreements, Information Memorandum, Resolution Plans and other documents involved in Insolvency resolution process.

R & A

Established in 1996, R & A Associates is an integrated Corporate Secretarial & Legal Services Firm, offering One-Stop solution for all Corporate Compliances and Legal Requirements.

Headquartered in Hyderabad, with branches in Gurgaon, Chennai and Mumbai, R & A has been on the forefront of the Corporate Legal Services sector – advising, guiding and servicing companies in India and abroad. The core team of the firm has over 150+ years of collective experience.

Our legal and advisory services play a vital role in implementing robust control mechanisms to facilitate proper compliance in accordance with the challenging and ever changing regulations of the country. We have a formidable track record and are distinguished for the expertise of our team, the good esteem of our clients and our reputation for unyielding work ethic.

Our Insolvency and Bankruptcy Services (I&B) Team:

Please feel free to reach us at

1. CS. G. Raghu Babu, Founder Partner at raghu@rna-cs.com or call him on 98480 27782

2. CS. R. Ramakrishna Gupta, Senior Partner at Ramakrishna@rna-cs.com or call him on 98480 19915
3. CS. T. Sandhya, Sr. Associate, at sandhya@rna-cs.com or call her at 9866559557

For more details you may visit our website rna-cs.com to clarify your queries on IBC under FAQs or you may even contact our team as mentioned above.