

## **FAQ on Insolvency and Bankruptcy Code, 2016 (IBC)**

**-Source** <http://lawgyaan.in/faq-insolvency-bankruptcy-code-2016-ibc/>

The motive behind these Frequently Asked Questions is to address the basic queries of the stakeholder (Companies, Individuals, Partnership Firms, CEO, MD, Directors, professionals, students) on the Insolvency and Bankruptcy Code, 2016.

### **Evolution, purpose of IBC and Authorities involved:**

- 1. What is Insolvency and Bankruptcy Code, 2016? When does it come into force?**  
The Bankruptcy Law Reforms Committee designed a set of processes to resolve insolvency and bankruptcy and with the suggestions of various committees, professionals and general public, the Insolvency and Bankruptcy Code, 2016 (IBC) was enacted and came into force with effect from 28<sup>th</sup> May, 2016. However, the provisions on Corporate Insolvency Resolution Process under IBC have come into effect only from 1<sup>st</sup> December, 2016.
- 2. What's the purpose of framing IBC?**  
It was framed with the intention to expedite & simplify the process of Insolvency and Bankruptcy proceedings in India, ensuring fair negotiations between Debtor and Creditor by removing the asymmetry of debt and default information.
- 3. How the process is said to be expedited?**  
The insolvency resolution process which would otherwise take ages to conclude, shall now be completed by the Adjudicating Authority within 180 days of making the application, unless extended for 90 more days as per the provisions of the Code
- 4. To whom IBC is applicable?**  
The provisions of the IBC, 2016 are applicable to Individuals, Unlimited Partnership Firms, Limited Liability Partnerships and Companies. The provisions relating to Corporate in the Code, i.e., Limited Liability Partnerships and Companies is notified and in force w.e.f. 1<sup>st</sup> December, 2016. The provisions related to Individuals and Unlimited Partnership Firms - the Part III of IBC, 2016 is yet to be notified.
- 5. What is debt?**  
As per Sec.3(11) of IBC "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.
- 6. What is default?**  
Sec.3(12) of IBC, "default" means non-payment of debt when whole or any part or instalment of the amount of the debt has become due and payable and is not repaid by the debtor or the Corporate debtor, as the case may be. For the purposes of Sec.7(1) of the IBC, default includes a default in respect of the financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
- 7. What are the possible consequences when a debt is defaulted?**

When an entity (individual or corporate) defaults on the debt repayment, there are three possibilities:

- A. A creditor or a group of creditors can enforce the debt repayment against the debtor;
- B. The debt can be reorganized; or
- C. If the entity is limited liability firm or company, then it can be liquidated. If the entity is an individual, then he can be forced into bankruptcy. In either case, the assets of entity are distributed among its creditors.

**8. Who are involved in the infrastructure of Insolvency and Bankruptcy Process under 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:**

**9. When can Corporate Insolvency Resolution Process be initiated?**

It can only be initiated when the minimum amount of default is rupees is one lakh or such higher amount as may be notified by the Central Government which shall not exceed one crore rupees.

**10. Who can initiate Corporate Insolvency Resolution Process?**

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.

**11. Who cannot initiate Corporate Insolvency Resolution Process?**

Sec.11 of the IBC, states that the following persons are not entitled to make an application to initiate Corporate Insolvency Resolution Process:

- A. A corporate debtor undergoing the corporate insolvency resolution process

- B. A corporate debtor having completed corporate insolvency resolution process twelve months preceeding the date of application.
- C. A corporate debtor or financial creditor who has violated any terms of the resolution plan which was approved twelve months before the date of making application.
- D. A corporate debtor in respect of whom a liquidation order has been made.

Here, Corporate debtor includes a corporate applicant in respect of such corporate debtor.

**12. What is the time limit within which Adjudicating Authority may reject the application on Corporate Insolvency Resolution?**

The Adjudicating Authority shall admit or reject application within 14 days of receipt of application.

**13. Who is “Interim Resolution Professional”?**

Interim Resolution Professional is the Insolvency Professional proposed by the Resolution applicant and appointed by Adjudicating Authority to manage the affairs of Corporate Debtor from the date of such appointment till the date of appointment of Resolution Professional (the other Insolvency Professional) by Committee of Creditors.

**14. When is Interim Resolution Professional appointed?**

The AA shall appoint the Interim Resolution Professional within 14 days from the insolvency commencement date (insolvency commencement date is the date of admission of application for insolvency resolution).

**15. What is the tenure of Interim Resolution Professional so appointed?**

The Interim Resolution Professional so appointed shall act as such for a maximum period of 30 days.

**16. What are duties of officers, employees, managers, etc. to report to the Resolution Professional? What are the consequences if they do not support?**

The officers and managers of the Corporate Debtor, shall report to Resolution Professional. They shall provide him all the documents or records as required by him in the course of his duties. Where any personnel or promoters of Corporate Debtor are not assisting or not co-operating Resolution Professional, he may file an application to Adjudicating Authority for necessary instructions. Then, Adjudicating Authority shall direct accordingly

**17. Who will constitute the Committee of Creditors (CoC)?**

Interim Resolution Professional shall constitute the Committee of Creditors, after collating all the claims on Debtor and on determining its Financial Position. Where the Debtor Company has no financial Creditors, then the IBBI shall specify the Constitution, Composition and Powers of CoC

**18. What is the time period within which the First meeting of Committee of Creditors is conducted?**

Interim Resolution Professional shall conduct the First meeting of Committee of Creditors, within seven days of constitution of CoC.

**19. What is the quorum at CoC meeting?**

Quorum of CoC meeting: - Members of the committee representing at least 33% of voting rights who are present in person or by video conferencing or other audio and visual means. However, the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the Committee.

**20. Who will be Chairperson of the CoC meeting?**

The resolution professional shall act as the Chairperson of the meeting of the Committee.

**21. How are the decisions taken by CoC?**

All the decisions of CoC shall be taken by vote of not less than 75% of voting share of Financial Creditors. Related Party should be excluded in determining the 75% of voting share.

**22. Who is Resolution Professional and when is he appointed?**

Resolution Professional is the Insolvency Professional appointed by the Committee of Creditors in its First Meeting. Either the Interim Resolution Professional or the other Insolvency Professional may be appointed as Resolution Professional.

**23. What is Resolution Plan?**

As per section 5(26) of the IBC, "Resolution Plan" means a plan proposed by any person for insolvency resolution of the Corporate Debtor as a going concern in accordance with Part II of IBC.

**24. Who prepares the Resolution Plan?**

As per section 30(1) a resolution applicant may submit a resolution plan to the resolution professional. It is prepared on the basis of the Information Memorandum given by the resolution professionals.

**25. What is Moratorium Period?**

During the Corporate Insolvency Resolution process, the Adjudication authority will declare moratorium period during which no action can be taken against the company or the assets of the company. Key focus will be on running the Company on going concern basis. A Resolution plan would have to be prepared and approved by the Committee of creditors

**26. When Adjudicating Authority may order Liquidation and who shall act as Liquidator?**

Adjudicating Authority can order liquidation if:

- A. Resolution Plan is not presented in given time
- B. Resolution Plan is not as per Rules
- C. Committee of Creditors demands liquidation
- D. Debtor violates the terms of Resolution Plan

On passing of order of liquidation, resolution professionals shall act as liquidator.

**27. What is Water fall mechanism?**

"Waterfall Mechanism" is the order of priority in which the proceeds

from the sale of liquidation assets are distributed. As per Sec.53 of the IBC, the order of priority is as follows:

- A. The insolvency resolution process cost and the liquidation costs paid in full.
- B. The following debts which shall rank equally between and among the following:
  - i. workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
  - ii. debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- C. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- D. financial debts owed to unsecured creditors;
- E. the following dues shall rank equally between and among the following:—
  - i. any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
  - ii. debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- F. any remaining debts and dues;
- G. preference shareholders, if any and
- H. Equity shareholders or the partners as the case may be

### **Creditors:**

#### **28. What is Financial Debt?**

As per section 5(8) of the IBC "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 dematerialized equivalent;
- C. Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.
- 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 nonrecourse basis;
- F. any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

- 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-clauses (a) to (h) of this clause;

**29. Who is Financial Creditor?**

As per section 5(7) of the IBC, "Financial creditor" means any person to whom financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

**30. What is operational debt?**

As per section 5(21) of the IBC "Operational Debt" means a claim in respect of the provision of goods or services including employment or debt in respect of the repayment of the dues arising under any law for the time being in force and payable to central government or any state government or any local authority.

**31. Who is Operational Creditor?**

As per section 5(20) of the IBC "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.

**32. Are all the Financial Creditors secured Creditors?**

No all the Financial Creditors are not secured Creditors.

**33. Are all unsecured creditors operational creditors?**

All unsecured creditors are not operational Creditors. However, all operational creditors are unsecured creditors.

**34. Whether workmen or employees come under operational creditor?**

Yes, the workmen and employee whose past payments are due comes under the definition of operational creditor.

**Others:**

**35. What is Information Utility?**

"Information Utility" means a person who is registered with the Insolvency and Bankruptcy Board of India as Information Utility to provide the services including Core services.

**36. What is the Fast Track Insolvency Process under IBC?**

Fast Track Process is available for Corporate Debtor with low income and assets, specified class of Creditors and any other category as notified by the Government. Under Fast Track Process, 90 days is the time limit to complete in the Resolution Process and further an extension of 45 days is allowed.

-----