

PRESENTATION ON

OPPORTUNITIES FOR CAs
IN INSOLVENCY PRACTICE
(w.r.t Corporate Insolvency)

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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 Insolvency and Bankruptcy Code, 2016 in November 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.
- » **Code has opened a new opportunities for professionals particularly Chartered Accountants.**

Current stress in the banking sector

Stressed assets in the banking system

As on March 31	2015	2016	2017
Overall			
Gross NPA Ratio / Gross Advances (%)	4.36	7.71	9.20
Net NPA Ratio /Net Advances (%)	2.50	4.65	5.30
Stressed Assets/ Gross Advances (%)	10.54	11.11	11.58
Public Sector			
Gross NPA Ratio / Gross Advances (%)	4.97	9.29	11.03
Net NPA Ratio /Net Advances (%)	2.92	5.73	6.47
Stressed Assets/ Gross Advances (%)	12.16	13.26	13.90
Private Sector			
Gross NPA Ratio / Gross Advances (%)	2.11	2.79	4.19
Net NPA Ratio /Net Advances (%)	0.94	1.35	2.19
Stressed Assets/ Gross Advances (%)	4.58	4.39	5.24

Source: Care Ratings report



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

Cont'd.

PSU Bank NPA In 2016-17

FY 16-17 (Rs in Cr)					
No	Bank	Gross NPA		Net NPA	
		AMT	%	AMT	%
1	SBI	112,343	6.9	58,277	3.71
2	PNB	55,370	12.53	32,702	7.81
3	BOB	42,719	10.46	18,080	5.06
4	BOI	52,045	13.22	25,305	6.90
5	Canara Bank	34,202	9.63	21,649	6.33
6	Union Bank	33,712	11.17	18,832	6.57
7	Syndicate Bank	17,609	8.50	10,411	5.21
8	IDBI Bank	44,753	21.25	25,206	13.21
9	Central Bank	27,251	17.81	14,218	10.20
10	OBC	22,859	13.73	14,118	8.96
11	Corporation Bank	17,045	11.70	11,692	8.33
12	Allahabad Bank	20,688	13.09	13,434	8.92
13	IOB	35,098	22.39	19,749	13.99
14	Andhra Bank	17,670	12.25	10,355	7.57
15	UCO Bank	22,541	17.12	10,703	8.94
16	Indian Bank	9,893	7.49	5,635	4.41
17	BOM	17,189	16.93	11,230	11.76
18	Dena Bank	12,619	16.27	7,735	10.66
19	Vijaya Bank	6,382	6.59	4,118	4.36
20	United Bank	10,952	15.53	6,592	10.02
21	PSB	6,298	10.45	4,375	7.51
Total		619,238	12.78	344,416	7.78

- » Government has come out with an Ordinance **named Banking Regulation (Amendment) 2017** dated 4th May 2017 has **authorised RBI to issue directions to Banks to initiate IBC**
- » **RBI** came out with a press release on 22nd May 2017 expressing their **intent to use power** vide aforesaid ordinance by working on a framework **for deciding cases to be referred to NCLT** for resolution under IBC. RBI also informed that it would be forming an **Internal Advisory Committee (IAC)** comprising of majority of independent Board members.
- » IAC focused on **top 500 cases** which were NPA with all or majority of the lenders.
- » Vide press release date June 13,2017 RBI informed that **IAC has recommended 12 large cases** to be referred to NCLT under IBC. Those cases have been selected on non discriminatory basis which is gross outstanding of more than Rs. 5000 crore and NPA with 60% or more classified as NPA as on March 2016. These 12 cases are about 25% of gross NPA of the banking system.
- » Interestingly RBI mentioned that such cases will be accorded priority by NCLT, which was retracted during hearing of Essar Steel case in Gujarat High Court
- » All the aforesaid cases have already been referred to NCLT and **11 cases** have **been admitted** till date #
- » For rest of **488 cases** RBI has given **6 months** time to Banks to come out with a resolution else Insolvency proceedings will have to be initiated ##.
- » The RBI has sent the second list of over **40 large corporate defaulters**, to be referred to the NCLT

Source: <https://economictimes.indiatimes.com/industry/indl-goods/svs/steel/top-5-steel-companies-in-bankruptcy-process-face-rs-2-09-lakh-crore-claims/articleshow/61812165.cms>

Source: <https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-sends-2nd-list-of-large-npas-for-resolution-advocates-ibc/articleshow/60411863.cms>

Erstwhile Legal Framework

***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

ROLES AND RESPONSIBILITIES OF INSOLVENCY PROFESSIONAL

Objective of IBC

First Objective

To see that the business is kept going to preserve economic value.



If it is not possible, the IP aims to

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.

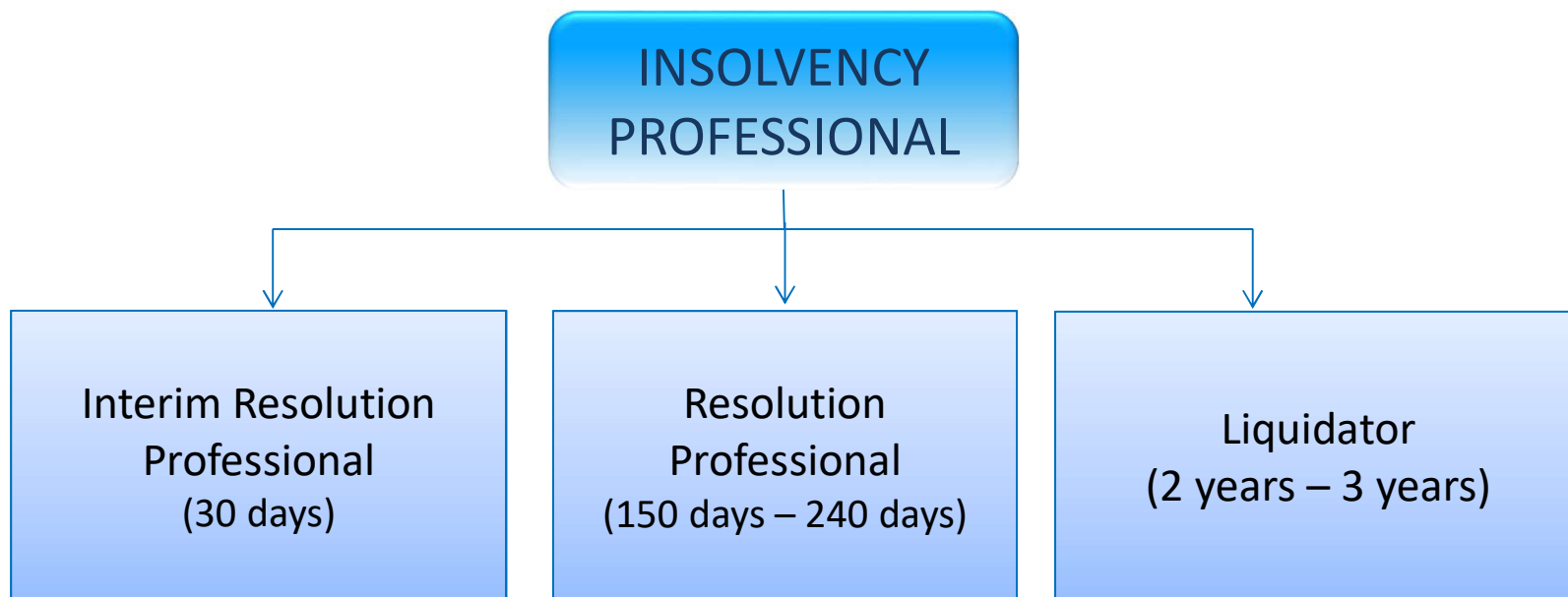
- sell the assets of the person or company who owes money
- collect money due to the person or company
- collate / verify / admit creditors' claims
- distribute the money collected after paying costs

Insolvency Professionals Needs Support From



Different hats worn by Insolvency Professional

The term **Insolvency Professional** has been used interchangeably in the Code and its relevant regulations as **Interim Resolution Professional** , **Resolution Professional**, and **Liquidator**



Responsibilities of IP's Under Different Categories

Called As	Appointed By	Role	Approval / report to
Interim Resolution Professional	Applicant or NCLT	<ul style="list-style-type: none"> • Verification of Balance Sheets • Collation of claims • Appointment of valuer • Determine financial position of debtor • Formation and conducting of meeting of COC 	None
Resolution Professional	Committee of financial creditors	<ul style="list-style-type: none"> • Preserve and protect assets • Update list of claims • Convene and attend all COC meetings • Prepare Information Memorandum • Check resolution plan and present to COC. 	Committee of creditors
Liquidator	Adjudicating Authority	<ul style="list-style-type: none"> • Prepare preliminary report, assets memorandum, sale report etc • Maintain relevant records • Realise and distribute 	Adjudicating Authority

- Manage operation of the corporate debtor as a **going concern**
- **Public announcement**
- Appointment of registered **valuers**
- Collection / Collation /verification and determination of **claims**
- **Constitute a committee of creditors**
- Holding first **meeting of CoC**
- Preparation of partial **information memorandum**
- Take immediate **custody and control** of all the assets
- **Monitor** assets of the corporate debtor
- Determine **financial position** of corporate debtor
- Collect all **information** relating to the assets, finances and operations of the corporate debtor

Roles and responsibilities of Resolution Professional

- Conduct entire **CIRP**
- **Manage the operations** of corporate debtor
- **Preserve and protect** the assets of the corporate debtor including continued business operations
- **Represent and act on behalf of the corporate debtor** including Court cases
- **Raise interim finances** subject to the approval of the CoC
- **Update** list of claims
- **Prepare information memorandum**
- **Invite** prospective lenders, investors, and any other person to put forward **resolution plans**
- Providing **access of information** to resolution applicant
- **Check resolution plan** for compliance with the code & present to CoC.
- **Submit resolution plan** approved by CoC **to NCLT**
- **Send** copy of **order** of NCLT approving/rejecting resolution plan **to participants and resolution applicants**

With recent amendments made on 7th Nov, 2017 in the CIRP regulation,

- IP has to ensure that Resolution Plan submitted to COC covers **details** of the resolution applicants and other connected persons covering :
 - ✓ **Identity**
 - ✓ **Conviction for any offence,**
 - ✓ **Criminal proceedings pending,**
 - ✓ **Disqualification to act as a director,**
 - ✓ **Identification as a willful defaulter**
 - ✓ **Debarment by SEBI**
 - ✓ **Transactions**, if any, with the corporate debtor in the preceding **two years**.
- Along with the resolution plan IP has to provide details of following transactions, if any, observed, found or determined by him (IP) to COC :-
 - **Preferential transactions** under section 43;
 - **Undervalued transactions** under section 45;
 - **Extortionate credit transactions** under section 50; and
 - **Fraudulent transactions** under section 66,
 - and the **orders, if any, of AA** in respect of such transactions.

- *Vide Ordinance notified on 23rd November, 2017 a new Section 29 A has been inserted by which eligibility of resolution applicants* needs to be established with applicants not being
 - a. **Undischarged insolvents**
 - b. **Wilful defaulters**
 - c. Accounts having been classified as **NPA for over one year**
 - d. **Convicted** of any offence punishable **with imprisonment for two years** or more
 - e. **Disqualified** to act as **Director**
 - f. **Prohibited by SEBI** in trading or accessing the securities market
 - g. **Guarantors** for any CD that is under insolvency or liquidation
 - h. Any “**connected person**” meets the above criteria
 - i. Subject to any disability, corresponding to clauses (a) to (i) under any law in a jurisdiction outside of India
- **Connected persons** are defined as
 - a. Any person who is promoter or in management or control of the resolution applicant
 - b. Any person who shall be promoter or in management or control of the business of the CD during implementation of the resolution plan
 - c. Holding / subsidiary / associate company or related party of the above

It is additional responsibility for RP to ensure such compliance

Roles and Responsibilities of Liquidator

- To receive , collect and verify **claims of all the creditors**
- To take into **custody / control** and evaluate all the assets, property, effects and actionable claims of the corporate debtor- protect and **preserve** the assets & properties.
- Form and hold **liquidation estate** as a fiduciary for the benefits of the creditors
- Carry on business for **beneficial liquidation** as necessary
- **Sell** movable and immovable properties by **auction/ private contract**
- Obtain **professional assistance**
- To institute or defend **suit**
- **Investigate financial affairs** of CD for undervalued/ preferential transactions
- **Apply to NCLT for orders** and directions as required
- Prepare **preliminary report, assets memorandum, sale report etc**
- **Maintain** relevant records
- **Realise and distribute**

Ways to set up profession / business

- **Insolvency Professional** can be only an individual, who is member of an **Insolvency Professional Agency** and enrolled with **Insolvency and Bankruptcy Board of India**.
- **ICAI** has formed an Insolvency Professional Agency (a section 8 company) named **Indian Institute of Insolvency Professionals of ICAI**.
- Insolvency Professionals can, however, form **Insolvency Professional Entity**, which can provide resources to the IP.
- Insolvency Professional Entity can be a **Partnership Firm, Limited Liability Firm or a Private Limited Company**. All the partners / directors of the company shall be jointly and severally liable for the acts of the individual IP taking up assignment.
- Formation and running of such businesses is subject to **approval from ICAI, IIIP of ICAI and IBBI**.

- A limited liability partnership, a registered partnership firm or a company may be **recognized as an insolvency professional entity** if-
 - (a) **majority of the partners** of the limited liability partnership or registered partnership firm are **registered as insolvency professionals**; or
 - (b) **majority of the whole-time directors** of the company are **registered as insolvency professionals**,
- An **insolvency professional entity shall be jointly and severally liable** for all acts or omissions of its partners or directors as insolvency professionals committed during such partnership or directorship.
- Insolvency Professional **can draw resources** from IPE
- There is no clarity if **billing** can be done by IPE or it has to be done by IP

SOME CHALLENGES FOR INSOLVENCY PROFESSIONALS

Challenges of the new professional opportunity (1/2)

- Only those to have appeared and cleared the **Limited Insolvency Examination** or National Insolvency Examination **are eligible** to work as Insolvency Professionals (IPs)
- In all of the situations, the **IP has to take into consideration the interests of all the stakeholders** involved, and not limited to financial stakeholders
- During the interaction the IP has an **opportunity to get a view from the various stakeholders** and may be able to recognise the problems that may be plaguing the business which can be brought to the **notice of the lenders** and may help bring about a resolution.
- The IP may have to **negotiate terms of engagement** with suppliers, financial partners, employees and workmen, apart from managing the business on behalf of the Committee of Creditors (COC)
- **Claim verification** is an extremely onerous and time taking task. Besides it has severe legal implication

Challenges of the new professional opportunity (2/2)

- **IP will also have to keep itself updated** on various matters relating to accounting standards, taxation, legal issues which allows the IP to gain rich knowledge
- IP required **specialized knowledge and staff** to look after the assignments. IP's present professional set up will require lot of efforts to keep up with the demands of this new professional segment.
- IP has **the risk of non continuation** as COC has the right to replace IRP to RP or even after confirmation as RP
- Creditors not willing to provide **indemnity protection**
- IP has to undertake serious **legal risk**. As of now no insurance products are available to protect.
- Hence, the opportunity brings a lot of **responsibilities** on the shoulders of the IP.

Efficiency of the resolution infrastructure depends on the capabilities of the insolvency professionals

IBBI Does a Quality Check on Insolvency Professionals

Salkat Das & Atmadip Ray

New Delhi | Kolkata: The Insolvency and Bankruptcy Board of India (IBBI), the regulator overseeing bad-loan resolutions, is scaling up its capability-assessment procedures to ensure that quality Insolvency Professionals are deployed in the potentially ₹8 lakh-crore exercise, seeking to win over an ecosystem that remains sceptical about the efficiency of the recovery infrastructure.

"Inspection and investigation are important regulatory responsibilities," said MS Sahoo, chairperson of the newly-established IBBI. "These need to be discharged with due care and diligence, with the least disruption to business. The regulations provide for discipline in the process of inspection and investigation."

Concerns have been raised that Insolvency Professionals (IPs) are not equipped to run any company. In one specific case, a debtor said it had lost an order valued at ₹1.30 crore due to negligence of the concerned IP.

IBBI said it will form a team to investigate whether service providers, including IPs, take adequate internal-control measures, procedures and safeguards in per-



Going to the IBC (Insolvency and Bankruptcy Code) would be the new normal where all resolution and reorganisation will get done

ARUNDHATI BHATTACHARYA
Chairman, State Bank of India

forming their duty, with a 10-day prior notice. In case of negligence, they may face disciplinary action.

"Going to the IBC (Insolvency and Bankruptcy Code) would be the new normal where all resolution and reorganisation will get done," Arundhati Bhattacharya, chairman of the State Bank of India, has said. "However, we have to see how efficiently they get done. There are lots of unan-

swered questions which will be answered only with time."

TEETHING TROUBLES

"As such, a large number of cases will get referred in a bunch, for which infrastructure may still not be there. However, once normal flow is restored, banks will not have a problem accepting the resolution taken by court," said Bhattacharya, who heads the country's biggest state-run lender.

The rules of insolvency resolution say that on appointment of a resolution professional (RP) or an interim resolution professional (IRP), the powers of the board of the company will cease.

"This may be interpreted to mean (a) that the powers of the board shall cease, but their functional and executive role will re-

main as it is, or (b) that the board completely steps down and the IRP or RP takes over the management," said Vinod Kothari, an insolvency practitioner.

"Since the executive management of the company has to remain intact while the company is a going concern, there is no reason for executive directors to become function-less. The idea of the law is not to make the RP get into executive management of companies," said Kothari.

Chartered and cost accountants, and company secretaries work as IPs. The IBBI has so far registered 396 IPs, while the banking system is saddled with ₹8 lakh crore of sticky loans—a significant part of which relates to sick companies.

HITTING A CENTURY

The National Company Law Tribunal, or NCLT, had accepted 98 applications, while the National Company Law Appellate Tribunal overruled NCLT in two specific cases that involved Starlog Enterprises and Kaliber Associates. Utilities help verify the credit outstanding/defaults. There is only one firm, the National e-Governance Securities, acting as the utility. Besides, there are about 1,000 IPs who have worked on an ad-hoc basis without IBBI certification.

Regulator desires to inspect and investigate to maintain quality of professionals

The Biggest Puzzle: Valuations

Valuation is another aspect in insolvency resolution. A reorganisation value must be determined.

To make an informed decision, the creditors must know both the value of collateral and the reorganisa-

tion value of the company, said Suvasis Paul, chairman, Valuation Surveying Division of Institution of Surveyors.

"Valuation issues permeate the entire bankruptcy process and impact each of

the stakeholders along the way," he said.

Given the complicated nature of the cases referred to the NCLT so far, the possibilities of achieving resolution plans, either in form of acquisition, writing down

of debt, or restructuring with 75% consent of lenders, look rather remote. The interest in buying large stressed assets is mostly limited to global players, such as Goldman Sachs, Aegon, and Bain Capital.

DEMAND SCENARIO

Expected applicants under IBC

Banks' corporate NPA cases

- Those where banks have initiated **legal action against the debtor** for recovery of dues, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (**RDDBFI**) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI**).
- Those where corporate debtor itself has sought legal action for collective resolution of insolvency, either under the Sick Industrial Companies Act, 1985 (**SICA**)
- Those where banks have chosen to restructure corporate debt under RBI's Corporate Debt Restructuring (**CDR**), Strategic Debt Restructuring (**SDR**) or similar mechanisms and failed.
- Cases where account has recently become NPA and bankers are **not accepting resolution outside SARFAESI**.

Others

- Those cases where some lenders or other non lending creditors have filed cases under the **winding-up provisions** of the Companies Act, 1956 (CA 56).
- Suppliers whose money are overdue, mostly as a pressure tactic
- Corporate who are having **cash flow problems** and have exhausted other options

Motivating factors for lenders to use IBC

- » **Creditors in control** as most 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.
- » **Clear and fair distribution of funds** in case of liquidation. Government does not get priority.
- » Protection of assets of secured borrowers with **maximisation of realisation**.
- » Positive **support from government** for realisation and resolution of NPAs.

IBC from lenders perspective

- » 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)
 - **TRA mechanism** is **not benefitting** some lenders in just manner.
- » When **security coverage is low** or very difficult to realise.
- » When lenders apprehend that the account is **likely to go bad** and borrower can **siphon** away funds or **strip assets**
- » Cases where **SARFAESI or RDDB 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**

Cases when borrowers may approach NCLT

- » Provides for **time bound resolution** forcing lenders to take a decisive action.
- » Resolution plan approved by NCLT has **legal sanction** and is **binding on all stakeholders**.
- » **Transparent process** under judicial supervision removes investigation and vigilance fear from lenders perspective which is expected to improve decision making.
- » Not only loans but **all type of debt including operational creditors and government dues** can be restructured/realigned/reduced under the code.
- » **Preempt** all creditors, legal cases and other recovery actions during moratorium period.
- » Borrower has the option of applying himself under the code in which case borrowers' proposed **IP would be appointed as IRP**.
- » Company to work under the control of **IRP/RP** who are supposed **to preserve economic value** of the company as a going concern entity.
- » It can be used as a **measure of last resort** when other options like CDR, SDR, S4A have been exhausted. **However, with recent amendment vide ordinance dated 23rd November 2017 existing promoters will have to be ready to lose control as in most cases they will be ineligible to be resolution applicant.**
- » **Attracting investor** (financial/strategic/JV Partner) would be easier particularly in case of unlisted companies.
- » Possibility of **raising additional finance** as the same will have priority as it **will form part of CIRP cost**.

» **WHAT IS THE SCOPE FOR IP PRACTICE IN INDIA**

» **LET'S DO SOME NUMBER CRUNCHING**

Cases under IBC

Corporate Insolvency Resolution Transaction

Quarter	No. of Corporates undergoing Resolution at the beginning of the Quarter	Admitted	Closure by			No. of Corporates undergoing Resolutions at the end of the Quarter
			Appeal / Review	Approval of Resolution Plan	Commence- ment of Liquidation	
Jan - Mar, 2017	0	37	1	-	-	36
Apr - Jun, 2017	36	125	10	-	-	151
Jul - Sep, 2017	151	214	3	2	7	353
Till Date	NA	376	14	2	7	353

Initiation of Corporate Insolvency Transaction

Quarter	No. of Resolutions Processes Initiated by			Total
	Financial Creditor	Operational Creditor	Corporate Debtor	
Jan - Mar, 2017	9	7	21	37
Apr - Jun, 2017	31	59	35	125
Jul - Sep, 2017	82	101	31	214
Till Date	122	167	87	376

Source: IBBI newsletter Jul-Sep 17

Registration of IP as on 30th September, 2017

City/Region	Enrolled with			Total
	The Indian Institute of Insolvency Professionals of ICAI	ICSI Insolvency Professionals Agency	Insolvency Professional Agency of Institute of Cost Accountants of India	
Delhi	131	103	29	263
Rest of the Northern Region	101	67	16	184
Mumbai	133	53	16	202
Rest of Western Region	81	44	7	132
Chennai	28	27	3	58
Rest of Southern Region	67	57	16	140
Kolkata	72	15	6	93
Rest of the Eastern Region	26	5	4	35
All India	639	371	97	1107

Source: IBBI newsletter Jul-Sep 17

Registration as on 27 th November 2017	No
Number of IP registered with IBBI	1241
Number of IPE registered with IBBI	49

What numbers say

CATEGORY	NO OF CASES
Winding-up Cases in Court	4500
BIFR/AAIFR Cases	1200
Failed and pending CDR Cases	460
Cases under DRT and DRAT	70000

RECENT ICRA REPORT ON SDR

- Bank loans worth **Rs 22,000 crore** which were recast under **SDR** in **2015-16** had **slipped into NPA** category during quarter ended March of **2016-17**
- The bill for NPA provisions might expand substantially — **slippages from SDR** accounts are estimated to have more than **doubled to Rs 49,500 crore** in the **April-June 2017** period
- In its sample set, **61** large borrowers having total **debt of Rs 2,45,000 crore** are currently undergoing a resolution through the **SDR scheme**

Restructured accounts - SBI

Type of Restructuring	No of Borrowers		
	CDR	SME	Debt Restructuring
Opening Restructured Accounts (As on 1 April 2016)	142	366	3247
Fresh Restructuring during FY 16-17	3	12	205
Write-offs of restructured accounts during FY 16-17	-28	-75	-1088
Total Restructured Accounts (As on 31 March 2017)	100	253	2345

CDR CELL – Overall status since inception (As on 30.09.2017)

Rs. Crore

**Total References
Received by CDR Cell**

No of Cases

656

Aggregate Debt

474351

**Cases Rejected
before Admission
or Approval**

**Cases under
consideration of
CDR EG**

**Total Cases
Approved**

No of Cases

125

-

531

Aggregate Debt

70998

-

403353

**Cases Withdrawn
on account of
package failure**

**Cases exited
successfully**

Live cases in CDR

No of Cases

291

110

130

Aggregate Debt

172463

84566

145528

REMUNERATION/ FEES 😊

Estimated Fees as Per Market Reference

- IBC code has left matter of **fees for IRP/RP to be decided between players**
- Normally applicant decides **fees** for IRP which is **reimbursed** to applicant to the extent ratified by COC
- **RP fees is decided by COC**
- As per newspaper reports/ Market reference
 - ✓ **IPs appointed by FC/ CD would generally earn Rs. 1.25 -8.00 lakh / month**, depending on the size of business and debts of cases.
 - ✓ For cases filed by **OC**, income opportunities are in the **range of Rs.0.50 – 1.50 lakh / month**
 - ✓ For **large cases**, **fees** charged is in the range of **Rs 1- 1.5 Cr / month**
- **Liquidator fee is to be decided by COC before liquidation**
- **In case no fees is decided** by COC Liquidator shall be paid **fees as per chart** in next slide
- **Fees prescribed under the Code** is in a manner which **incentivise liquidator** both time and value wise

Liquidators fees as prescribed by IBBI under the code

Amount of Realisation/Distribution (Rs.)	Percentage of Fee on the amount realised/distributed			
	In the first six months	In the next six months	In the next one year	Thereafter
Amount of Realisation (exclusive of liquidation costs)				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realised	0.25	0.19	0.13	0.10
Amount distributed to Stakeholders				
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums realised	0.13	0.10	0.06	0.05

SCOPE FOR CAs IN INSOLVENCY PROFESSION (OTHER THAN IP)

Scope for other roles under IBC for professionals (1/4)

Apart from IP, CA and other professionals have following opportunities

- **As Valuer** : As per IBC code IRP need to appoint **two valuers** to determine **liquidation value**. Valuers also required for valuation of current assests (akin to stock audit) Valuer is also required for valuing the assets under liquidation. Chartered Accountants with over 10 years of practice are allowed to do valuation.
- **Preparation of Resolution Plan** : Multiple resolution plan can be submitted to IP by interested parties who are called as resolution applicant. CA can assist resolution applicants in preparation of Resolution plan. **As per amendment carried out on 7th November 17**, resolution plan now need to provide details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant. Resolution applicant may need professional help to comply with the aforesaid requirement. Moreover, IP may insist on **certification of a CA** in this regard.
- **Forensic Audit** : IBC provides for **look back period of 2 years** in case of related parties and 1 years in case of other parties. It might be needed to conduct an forensic audit in some matters wherein Chartered Accountants can provide services.

Scope for other roles under IBC for professionals (2/4)

- **Due Diligence** : As per code IRP need to collect all information relating to the **assets, finances and operations** of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—
 - (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;

As per amendment carried out on 7th November 17, Resolution Professional is now required to submit to the committee following details:-

- (i) preferential transactions under **section 43**;
 - (ii) undervalued transactions under **section 45**;
 - (iii) extortionate credit transactions under **section 50**; and
 - (iv) fraudulent transactions under **section 66**,
- and the **orders, if any, of AA** in respect of such transactions.

Requirement of professionals has increased substantially to comply with the aforesaid requirement.

Scope for other roles under IBC for professionals (3/4)

- **Data processing** : As per IBC code IRP and RP are needed to collate and verify claims of the creditors. In a large operating company data could be huge. IRP/RP may avail services of practicing CA for data processing
- **Management of borrower** : IRP/RP are required to manage business of the borrower on a going concern basis. IRP/RP may engage CA and other professionals for assisting in management e.g. as CFO
- **Secretarial and legal work** : CIRP process requires huge amount of book keeping, holding of meeting, recording minutes, communication with NCLT etc. IP are expected to take help of professionals in this regard.
- **Representing lenders** : Any creditor who is part of COC are allowed to appoint other IP (other than RP) as their representative in COC. FCCB and ECB holders are expected to use this facility.
- **Representing before NCLT / NCLAT** : A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more **Chartered Accountants** to present his case before the Tribunal or the Appellate Tribunal.

Scope for other roles under IBC for professionals (4/4)

- **Stock Audit** : Most corporate Debtors enjoy working capital limits. It may be necessary to conduct periodic Stock Audit of the CD during the CIRP process.
- **Internal / Concurrent Audit** : **RP** can appoint Internal / Concurrent Auditors during the business under CIRP.
- **Monitoring and Supervision of Resolution Plan** : IBC requires provision of Monitoring and Supervision of Resolution Plan after its approval by NCLT during its period. CAs can provide services of such monitoring and supervision.
- **Consultation and Strategizing** : Enjoy the fruit with less risk and legal responsibility.
- **Requirement of vigilant CFO**: With IBC the need and utility of a vigilant CFO has increased due to following
 - Delay in payment of even operational creditors can lead company to Insolvency
 - On sniffing stress company should move to NCLT immediately. Too much delay can result in Promoters losing chance to retain control.
- **Management consulting** : With the latest amendments Corporate houses and Promoters will feel a strong need for availing consultancy services on **banking conduct and corporate governance to avoid being ineligible as resolution applicant and** find themselves in a difficult situation

PRESS CUTTINGS

Banks appoint insolvency professionals for 7 large accounts

ANUP ROY
Mumbai, 27 June

Banks are almost done giving mandates to insolvency professionals for the 12 big accounts, which are responsible for nearly ₹2 lakh crore of bad debts in the banking system.

According to sources, a bank with the highest exposure in working capital loans, and not term loans, will decide on the insolvency professionals. Thus, for example, in case of Amtek Auto, State Bank of India has a share of ₹3,500 crore, while Corporation Bank's share in term loan is ₹400 crore, but the latter has highest share in working capital loan given to the company. Therefore, Corporation Bank invited bids to fix insolvency professionals and gave the mandate to EY.

According to sources, so far in seven large cases insolvency professionals have been appointed.

SNAPSHOT

Accounts and insolvency professional firms

Company	Exposure* (₹ cr)	IP recipient
Amtek Auto Ltd	14,074	EY
Essar Steel	37,284	Alvarez & Marsal
Bhushan Steel	44,478	Deloitte
Electrosteel Steel	10,273.6	PwC
Jyoti Structures Ltd	5,165	BDO
Monnet Ispat & Energy	12,115	Grant Thornton
Alok Industries Ltd	22,075	Grant Thornton
ABG Shipyard	6,953	Yet to be decided
Bhushan Power & Steel Ltd	37,248	Yet to be decided
Lanco Infratech Ltd	44,364.6	Yet to be decided
Era Infra	10,065.4	Yet to be decided
Jaypee Infratech	9,635	Yet to be decided

*Exposures based on PTI story

Amtek Auto Ltd (₹14,074 crore) has gone to EY, Essar Steel (₹37,284 crore) to Alvarez & Marsal, Bhushan Steel (₹44,478 crore) to Deloitte, Electrosteel Steels (₹10,273.6 crore) to PwC, Jyoti Structures Ltd (₹5,165 crore) to BDO, while Monnet Ispat & Energy (₹12,115 crore) and Alok Industries Ltd (₹22,075 crore) have gone to Grant Thornton.

The mandates for ABG Shipyard (₹6,953 crore) and Bhushan Power & Steel Ltd (₹37,248 crore) will be decided

this week, while banks have not called bids for Lanco Infratech Ltd (₹44,364.6 crore), Era Infra (₹10,065.4 crore) and Jaypee Infratech (₹9,635 crore) yet.

In all cases, banks will have to take a huge haircut, while the resolution plan could come from the existing promoters themselves, say bankers. The promoters are now ready to sit at the negotiating table with the bankers as they fear losing full control of the company in a short while. It is also costly for the banks as the haircut and provisioning would be steep.

"Based on CRISIL's assessment of embedded value in the top 50 NPA cases, we estimate a 60 per cent haircut would be needed on these loan assets. That would mean banks will have to increase provisioning by another 25 per cent this fiscal year, compared with 9 per cent in the last," said Krishnan Sitaraman, senior director at CRISIL Ratings.

HOTTEST PROFESSION IN INDIA Many accountants prepare to take the insolvency exam as a ₹8-lakh crore debt recovery initiative is underway

The Rising League of Insolvency Pros

Salkat Das & Joel Rebello

Mumbai: India's incipient battle against bankruptcy is spawning new ideas — and career options.

After India enacted tougher laws to deal with sticky loans and the central bank stepped in accelerate the pace of recoveries, finance executives have stumbled upon a career-growth opportunity based, ironically, on insolvency. Independent insolvency professionals (IPs), are becoming critical for the success of a ₹8-lakh crore recovery initiative. The Insolvency and Bankruptcy Board of India (IBBI), set up last autumn and tasked with providing the framework for recovery proceedings, conducts exams that allow chartered accountants, company secretaries, cost accountants, and advocates to qualify as IPs.

Nagpur-based Arnab Basu, a cost accountant, wants to take the national test so that his 10+ year corporate career, facing a mid-life stagnation, gets a boost.

Kolkata-based Rajarshi Ghosh, a middle-aged accountancy professional, is also preparing for the insolvency examination. "In my city, job opportunities are limited but I need to grow in my career. Insolvency is one area to explore," Ghosh said.

Chartered and cost accountants, company secretaries, and lawyers with a minimum of 10 years of post-qualification experience may be eligible to be appointed as IPs. The IBBI has registered 396 IPs who have cleared their qualifying exams. There are 1,000 unregistered IPs. Former company CEOs, MDs, CGMs are also in the queue to qualify as IPs, which is seen as a crucial link in ensuring

that competing claims from stakeholders are settled and funds made available for productive sectors of the economy.

NOT THE CUSHIEST JOB

The role of IPs comes with its own set of challenges. "Insolvency is the most promising, but an equally challenging career," said Vinod Kothari, an insolvency practitioner from Kolkata.

"In many cases, borrowers do not cooperate while sharing the details, and creditors insist on fast-track processing. You have to manage everything, using all resources," Kothari said. "Your qualification matters, but your experience helps you navigate the situation."

The primary objective of an IP is to find a resolution plan. The professionals can act in two ways: Interim Resolution Professional, who are appointed by the borrower for the first 30 days of proceedings at the National Company Law Board; and Resolution Professionals, who are usually appointed by the committee of creditors for the next 150-240 days of the stipulated period.

"Insolvency professionals should first have huge convincing powers to deal with creditors," said Pavan Kumar Vijay, founder of Corporate Professionals that employs IPs. "They need to deal with warring financial creditors and tell them clearly that they are gathering to draw up a resolution plan. An IP should be a mix bag of management, financial and legal skills while

s/he must have knowledge of business and innovative ideas." Sanjay Grover, a CA and CS who has a 20-member team for his newly-launched Delhi firm called Ensemble Resolution Professionals, said the scope for such professionals would only increase



THE PROSPECTS

I plan to give the online test and become a full-time IP because there are lots of small cases where they will require professionals under the new law

SANJAY GROVER, CA and CS



THE CHALLENGES

In many cases, borrowers don't cooperate while sharing details, & creditors insist on fast-track processing. You have to manage everything, using all resources.

VINOD KOTHARI, Insolvency practitioner

as more bad loans come up for resolution. "Initially, when this law came into effect in December, we were given six months to do some work and we resolved the matter and recovered ₹28 crore for a client," said Grover. "Now, I too plan to give the online test and become a full-time IP because there are lots of small cases where they will require professionals under the new law."

COMPLEXITY AND CASH

"The initial fee structure for individual insolvency professionals like us was subdued. But it will increase once you prove your mettle," said Navneet Gupta, an insolvency professional, who claims he was the first chartered accountant to clear the IBBI exam in the country.

IRPs and RPs (Interim Resolution Professionals and Resolution Professionals), collectively called IPs, can earn ₹2 to ₹15 lakh, depending on the size of business and debts of cases, professionals said. For cases between operational creditors and companies, income opportunities are in the range of ₹50,000 to ₹1,50,000 a month as the nature of the cases are less complex.

- ✓ IPs, can earn Rs. 2-15 lakh, depending on the size of business and debts of cases.
- ✓ For cases between operational creditors and companies, income opportunities are in the range of Rs. 50,000 - 1,50,000 a month as the nature of the cases are less complex.



Debt Settlement

an attorney-prepared Debt Settlement forms are typically designed to provide you with the tools to get your debt and can be tailored to your unique situation. Download immediately

Bankruptcy proceedings to add new revenue streams for consultants

Scope for Higher Earnings

PwC, Deloitte, KPMG, EY, Grant Thornton, BDO and A&M along with the lawyers working with them are set to make anywhere around ₹200 crore by helping 12 companies with insolvency

Fee is not just for one person but for the whole team that is working on insolvency assignment

Many consultants are now looking to increase their team sizes by hiring around **500 executives** in next couple of months

EY has a 96-member team in its restructuring and turnaround practice and is looking to take the number of about **200** in the coming months

PwC is looking to hire an additional **100** people in next few months

Most consultants are still at price discovery stage but are charging about **₹1 crore to ₹1.25 crore** per month for a period of six to nine months



- Bankruptcy proceedings in all the 12 defaulters would follow RBI guideline
- **12 defaulters** include Monnet Ispat, Jyoti Structures, Electrosteel, Amtek Auto, Essar Steel, Bhushan Steel, Bhushan Power and Steel, Jaypee Infratech, Lanco Infratech, ABG Shipyard, Alok Industries, and Era Infra Engineering



Consultancies have also tied up with law firms like CAM, SAM and AZB who would charge over and above consultants' fees

- » **Opportunities** in field are **immense**; **Not only as IP** but as other service providers such as **valuer, service provider, consultant** etc.
- » Considering immense responsibility and work load a person may not be able to take more than 4-5 assignments as IP at a time. Maybe only 1-2 at a time if the CD is of very large size.
- » **Fees is being negotiated by applicant and IP.** However, no benchmarking as of now. Fees for liquidator are suggested in the Code.
- » It's a **new profession** which is yet to set its feet. Over course of time **fees should settle.**
- » Everyone needs to **create their own niche** segment. Big 6-7 are expected to focus on large ticket mandates.
- » Considering the complexity and tight timeline it will be difficult to complete the Insolvency process for an individual IP. A **person with support of an organization (IPE)** is more likely **to succeed.**
- » **Creditors** are also **reluctant to award assignment** to an **individual.**
- » Number of currently **registered IP** are **far many than the requirement** and many are not getting any assignment, perhaps due to lack of team support or networking. However, **these IP can look for other opportunities** in the Insolvency profession.

Team Sumedha towards IBC process

Sumedha Management Solutions Private Limited

IBBI/IPE/0020

SI No.	Name of IP /Location	Registration No.	Name of IPA Enrolled with
1	Mr. Bijay Murmuria Kolkata	IBBI/IPA-001/IP-N00007/2016-17/10026	The Indian Institute of Insolvency Professionals of ICAI
2	Mr. Mohan Lal Jain New Delhi	IBBI/IPA-002/IP-N00006/2016-17/10006	ICSI Insolvency Professionals Agency
3	Mr. B.S Rathi Mumbai	Passed Limited Insolvency Examination	-
4	Mr. Anil Birla Bangalore	IBBI/IP-001/IP-P00328/2017-18/10598	The Indian Institute of Insolvency Professionals of ICAI
5	Mr. Udayraj Patwardhan Nasik /Mumbai	IBBI/IPA-001/IP-P00024/2016-17/10057	The Indian Institute of Insolvency Professionals of ICAI
6	Mr. Anup Singh Kolkata	IBBI/IPA-001/IP-P00153/2017-2018/10322	The Indian Institute of Insolvency Professionals of ICAI
7	Mr. Arun Kapoor Mumbai	IBBI/IPA-003/IPN00030/2016-2017/10230	Insolvency Professional Agency of Institute of Cost Accountants of India
8	Mr. Gaurav Adukia Mumbai	Passed Limited Insolvency Examination	-
9	Ms Rajat Agarwal Kolkata	Passed Limited Insolvency Examination	-
10	Mr. Sunil Birla Bangalore	IBBI/IPA-001/IP-P00352/2017-18/10653	The Indian Institute of Insolvency Professionals of ICAI
11	Mr. Nikhil Dujari Mumbai	Passed Limited Insolvency Examination	-

Ques. 1 What are the eligibility criteria for registration as Insolvency Professional (IP)?

The eligibility criteria for registration as Insolvency Professional are as follows:

- I. Chartered Accountant, Company Secretary, Cost Accountant and Advocate who has passed the Limited Insolvency Examination and has ten years of experience and enrolled as a member of respective Institute/Bar Council [Regulation 5(c) of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 (IP Regulations)]
- II. A Graduate who has passed the Limited Insolvency Examination, and has fifteen years of experience in management, after he received a Bachelor's degree from a university established or recognized by law [Regulation 5(b) of the IP Regulations]
- III. Any other individual on passing the National Insolvency Examination [Regulation 5(a) of the IP Regulations]. The Insolvency & Bankruptcy Board of India (IBBI) is yet to notify the syllabus for National Insolvency Examination (as distinct from Limited Insolvency Examination, for which the syllabus is available on the IIPAI website <http://iiipicai.in/limited-insolvency-examination-second-edition>).

Ques. 2 I am a member of ICAI with 10 years of experience. Currently I am in employment. Whether I am eligible to register as an Insolvency Professional?

You are eligible to register as an Insolvency Professional. However you have to fulfil the following conditions:

- i. You have to pass the Limited Insolvency Examination conducted by Insolvency & Bankruptcy Board of India (IBBI).
- ii. Before filing the application Form A you have to resign from your present employment. As per Clause 23 of the Code of Conduct, an Insolvency Professional should not engage in any employment. Accordingly, a person cannot be registered as an Insolvency Professional if he is simultaneously under employment contract.

Ques. 3 I am a FCA with 10 + years of post-qualification experience (practice + employment). Whether I am eligible to register as an Insolvency Professional?

You are eligible to register as an Insolvency Professional. However you have to pass the Limited Insolvency Examination conducted by Insolvency & Bankruptcy Board of India (IBBI) before applying for registration, provided you are no longer in employment.

Ques. 4 I am a Chartered Accountant and hold a COP and also a partner with a CA firm. Whether I can register as an Insolvency Professional with IIPPI? Whether I can continue to hold my COP under ICAI and practice as a Chartered Accountant even after registering as an Insolvency Professional?

You can register as an Insolvency Professional. However you have to pass the Limited Insolvency Examination conducted by Insolvency & Bankruptcy Board of India (IBBI). Yes, you can continue to hold your CoP under ICAI and practice as a Chartered Accountant.

Ques. 5 How can I take the IBBI - Limited Insolvency Examination?

The Insolvency and Bankruptcy Board of India (IBBI) has notified the syllabus, format and frequency of the “Limited Insolvency Examination” under Regulation 3(3) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 applicable for the period 1st July, 2017 to 31st December, 2017.

Q1. Can an IP provide other attest and advisory services while in practice as an IP?

A. Yes, a member of the institute in full time practice can also act as an Insolvency Professional. In other words, an Insolvency Professional can continue to provide attest and advisory services.

Q2. Can an existing CA firm be converted into an IPE with majority of its partners holding IP license?

A. Yes, it is possible to convert existing CA firm/LLP into Insolvency Professional entity in compliance with the Chartered Accountants Act, 1949 and the Chartered Accountants Regulations 1988 and the Insolvency and Bankruptcy Code, 2016 and Rules made thereunder.

Q3. Can an IPE provide attest and advisory services, unrelated to insolvency and bankruptcy?

Yes, an Insolvency Professional Entity (IPE) can provide attest and other advisory services in addition to acting as Insolvency Professional under the Insolvency and Bankruptcy Code, 2016. The IPE needs to be registered with ICAI and has to comply with the Chartered Accountants Act, 1949 and Chartered Accountants Regulations 1988 and Guidelines.

Q4. Can an IP be partner in a CA firm as well as an IPE? Will the answer be different for a multidisciplinary IPE?

A. Yes, Member of ICAI in full time practice can be a partner in a CA firm as well as the IPE. The norms relating to empanelment with C&AG or Banks or any other regulators will need to be complied separately.

Q5. Can an IPE be appointed as IP for a Corporate debtor instead of an individual IP?

A. Yes, the IPE can be appointed as an IP for corporate debtors or on behalf of the creditors.

Q6. How does the interplay between the IP and IPE work in terms of appointment?

A. The appointment of IP or IPE is a commercial decision between the professional and the creditor/debtor.

Q7. What will be the form of contracting, if any, for appointment as an IP?

A. It is commercial understanding between creditor and IP/IPE.

Q8. Can an IPE be a multi-disciplinary firm?

A. Yes, only with Chartered Accountants and the professionals referred to in Regulation 53B of Chartered Accountants Regulation, 1988 and subject to Multi Disciplinary Guidelines issued by Council (Yet to be issued)

Q9. Are there any guidelines for name of the IPE?

A. Any IPE which is registered with ICAI will need to comply with Chartered Accountants Act, 1949 and Chartered Accountants Regulations 1988 and Guidelines issued from time to time.

Q10. Whether a Company could be an IPE and Member can be a whole time director as IP?

A. Any company could be an IPE in compliance with the IBC Code, 2016 and Rules made thereunder. Any member holding COP may be a whole time director of IPE which is a company only in compliance with Management Consultancy Guidelines issued by ICAI.

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Thank You

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