

# **The Insolvency and Bankruptcy Code, 2016**

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# The Processes proposed in IBC for corporates

**Insolvency Resolution Process (IRP)** will involve a process of negotiation between debtors and creditors, outside the court through the Resolution Professional (RP), leading up to a repayment plan.

**Liquidation** is a process led by the Adjudication Authority, once the IRP has failed.

**Fast track IRP** A truncated version of IRP for smaller firms or those with simpler debt structures.

# Process- distinctions

- **Trigger:**
  - Early
  - Equal
  - Empirical
- **Moratorium**
  - Immediate
  - Finite
- **Debtor not in control during IRP; Regulated resolution profession**
- **Business Decisions by a Creditor Committee**
- **Resolution Plan:**
  - Approved by creditors;
  - Scrutinised by Adjudicating authority for:
    - Compliance with law
    - Adherence to process
    - Operational creditors being paid liquidation value
    - Repayment of interim finance

# Process- distinctions

- **Liquidation:**
  - Failure of the creditors' committee to reach an agreement during the period stipulated above;
  - A decision of the creditors" committee to proceed with liquidation during the IRP; or
  - Failure of the debtor to adhere to terms of the resolution plan approved by the NCLT.
- **Voidable transactions**
  - Fraudulent Preference
  - Fraudulent Transfer
  - Undervalued Transactions
  - Extortionate Credit transactions
- **Distribution waterfall**
- **Penalties:**
  - Frivolous triggers;
  - concealment of property;
  - defrauding creditors,
  - fraudulent trading;
  - contravention of moratorium,
  - contravention of resolution plan.

# The Processes proposed in IBC for individuals

**Fresh Start** is a process by which individuals with:

- Income less than INR 60,000 pm
- Assets less than INR 20,000
- Debts less than INR 35,000

(arrived at using NSSO and Planning Commission data) will have their debts written off, and be given a “fresh start”.

**Insolvency Resolution Process (IRP)** will involve a process of negotiation between debtors and creditors, outside the court through the Resolution Professional (RP), leading up to a repayment plan.

- Secured creditors retain right to enforce
- In cases of personal guarantee, process collapsed with corporate debt- NCLT

**Bankruptcy procedure (BP)** is a process led by the Adjudication Authority, once the IRP has failed. Discharge in the form of “discharge-from-bankruptcy

- Assets excluded: tools of trade, domestic requirements, religious items, life insurance and pension plans.



# Distribution Waterfall

- **Costs of IRP (including any interim finance raised) and liquidation);**
- **Secured creditors and workmen dues (capped up to 3 months from the start of IRP);**
- **Employees' salaries (capped up to 3 months);**
- **Dues to unsecured financial creditors and debts payable to workmen in respect of the period 12 (twelve) months before the commencement of liquidation;**
- **Any amount due to the relevant State Government and/or the Government of India in respect of the whole or any part of the period of 2 (two) years prior to the date of commencement of liquidation;**
- **Any debts of secured creditors for any amount unpaid following the enforcement of security interest;**
- **Any remaining debt; and**
- **Remaining surplus to be distributed to shareholders.**

**All distributions as per the above waterfall will be net of the liquidator's fees, which will be deducted proportionately from each stage of the waterfall in order to incentivise the liquidator to ensure quicker recovery for each class of recipient.**

THANK YOU