

*De Jure*

*December 06, 2016*

A Step Closer to Solving the Insolvency



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The Insolvency and Bankruptcy Code, 2016 (the "***Insolvency Code, 2016***") had received the assent of the President of India on May 28, 2016. Since then, there have been discussions among the stakeholders with respect to its implementation and its repercussions on the interested parties, including corporates and individuals.

There have been certain material developments around the Insolvency Code, 2016 in last few days wherein the major provisions relating to the Insolvency Code, 2016 have been brought into force.

To start with, the provisions relating to the setting up of the Insolvency Professional Agencies ("***IPA***") and Insolvency Professional ("***IP***") got notified. In this respect, the Insolvency and Bankruptcy Board of India ("***IBBI***"), *vide* a notification dated November 21, 2016, has notified the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 which *inter alia* govern the procedure of registration of IPA with IBBI and mandates the IPA to adopt bye-laws, respectively. The IBBI has also notified the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, by way of a notification dated November 23, 2016, which *inter alia* provide for the procedure of appointment and registration of IP. Presently, several IPs and three IPAs namely, Indian Institute of Insolvency Professionals of ICAI, New Delhi, ICSI Insolvency Professionals Agency, New Delhi and Insolvency Professional Agency of ICAI, New Delhi, have been registered.

In the initial phase, the provisions relating to the insolvency process of the company, limited liability partnership ("***LLP***") and other body corporate have been notified. However, provisions relating to liquidation process, voluntary liquidation and fast track corporate insolvency process for the corporate person have not been notified as yet – which we expect to get notified in near future. In the later phase, provisions relating to bankruptcy process for individuals and partnership firms will get notified.

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In respect to the insolvency process for corporate persons, the IBBI has, *vide* a notification dated November 30, 2016, also notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**IRPCP Regulations, 2016**"), which have come into effect from December 01, 2016.

In order to initiate any process for insolvency resolution, an applicant is required to file an application with the Adjudicating Authority under the Insolvency Code, 2016 and therefore, the Ministry of Corporate Affairs ("**MCA**") has come up with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("**AAA Rules, 2016**"), which duly provide for such filings related framework.

For ease of reference, we have set out herein below the important provisions of the Insolvency Code, 2016, which have been notified and brought into force:

Date of Notification	Notified Sections	Description
November 15, 2016  [With effect from November 15, 2016]	Section 199 to Section 207 (both inclusive)	Section 199 to Section 205 deal with the provisions relating to the registration and functions of the IPA. Section 206 and Section 207 provides for mandatory registration of IP with the IPA and the IBBI, respectively.
	Section 217 to Section 220 (both inclusive)	These provisions deal with the inspection and investigation of an IPA, an IP and/or Information Utility, in the event of a complaint made by a person.

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Date of Notification	Notified Sections	Description
	Section 251	This provision provides for amendment to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Pursuant to such amendment, the rights provided to the secured creditors under Section 13(4) of the aforesaid Act of 2002 will be exercised in consonance with the provisions of Section 52 of the Insolvency Code, 2016.
	Section 254	It provides for deletion of Section 64(c) of the Limited Liability Partnership Act, 2008 pursuant to which a LLP would not be wound up by the National Company Law Tribunal (" <b>NCLT</b> "), on the ground of inability to pay debt, under the Limited Liability Partnership Act, 2008 but the said ground for winding up will come under the ambit of the Insolvency Code, 2016.
	Section 255	<p>It provides for amendment of the various provisions of the Companies Act, 2013 ("<b>CA, 2013</b>"). Some of the important provisions, which are to be amended are as follows:</p> <ul style="list-style-type: none"> <li>➤ the provisions relating to "Revival and Rehabilitation of Sick Companies" being Sections 253 to 269, shall be deleted;</li> <li>➤ the provisions relating to "voluntary winding up", being Sections 304 to 323, shall be deleted;</li> <li>➤ the provision relating to the meaning of "unable to pay its debt" from</li> </ul>

Date of Notification	Notified Sections	Description
		<p>Section 271(2), shall be deleted;</p> <ul style="list-style-type: none"> <li>➤ the creditor(s) will not have a right to file a winding up petition with the NCLT under the CA, 2013;</li> <li>➤ the Company Liquidator will be appointed from amongst the IPs;</li> <li>➤ "Power of Tribunal on application for stay of winding up" under Section 289 will be omitted and pursuant to such amendment, no application for revival after winding up can be made;</li> <li>➤ the provisions with respect to 'overriding preferential payment' under Section 326; and</li> <li>➤ the provisions relating to 'transfer of certain pending proceedings' under Section 434, will be amended.</li> </ul>
<p>November 30, 2016</p> <p>[With effect from December 1, 2016]</p>	<p>Section 2: clause (a) to clause (d) (<i>except with regard to voluntary liquidation or Bankruptcy</i>)</p>	<p>Any company incorporated under the CA, 2013, any company governed by any special Act, any LLP and any other body incorporated under any law in force shall be subject to the provisions of the Insolvency Code, 2016 in relation to the insolvency.</p>
	<p>Section 4 to Section 32 (both inclusive)</p>	<p>These provisions deal with the insolvency resolution process of corporate debtors.</p>

Date of Notification	Notified Sections	Description
	Section 60 to Section 77 (both inclusive)	Pursuant to these provisions, the jurisdiction to deal with any suit or proceeding in relation to the insolvency resolution and liquidation of companies and LLPs shall lie with the NCLT, National Company Law Appellate Tribunal and the Supreme Court.
	Section 236 to Section 238 (both inclusive)	Any offence punishable under the Insolvency Code, 2016 shall be tried by the Special Court established under the provisions of the CA, 2013, as per the manner prescribed in the aforesaid Code.

In addition to the aforesaid important provisions of the Insolvency Code, 2016, we have also set out herein below the important regulations and rules, of the IRPCP Regulations, 2016 and the AAA Rules, 2016, respectively.

Name of the Regulations/Rules	Particulars
IRPCP Regulations	<p>The IRPCP Regulations <i>inter alia</i> provide for the procedures and the formats/forms with respect to:</p> <ul style="list-style-type: none"> <li>a) the eligibility criteria for appointment of a Resolution Professional ("<b>RP</b>") in insolvency process of corporate person;</li> <li>b) the public announcement by the RP;</li> <li>c) submission of proof of claims by the financial creditor, operational creditor, workman &amp;</li> </ul>

Name of the Regulations/Rules	Particulars
	<p>employees and verification thereof by the RP;</p> <p>d) the establishment of the committee of creditors, the manner of its meetings and exercise of voting rights by such creditors;</p> <p>e) the manner of undertaking corporate insolvency resolution process;</p> <p>f) the components of the insolvency resolution process cost; and</p> <p>g) the framework for submission and approval of the resolution plan.</p>
AAA Rules	<p>The AAA Rules <i>inter alia</i> include the procedures and the formats/forms with respect to:</p> <p>a) filing of an application by financial creditor, operational creditor &amp; corporate applicant;</p> <p>b) issuing demand notice by the operational creditor;</p> <p>c) withdrawal of such applications filed by the financial creditor, operational creditor &amp; corporate applicant;</p> <p>d) appointment of interim resolution professional; and</p> <p>e) the application fee to be paid by the aforesaid relevant applicant.</p>

### Our View:

With the enforcement of Sick Industrial Companies (Special Provisions) Repeal Act, 2003 with effect from December 1, 2016, all kinds of proceedings pending before the Board for Industrial and Financial Reconstruction and Appellate Authority for

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Industrial and Financial Reconstruction have been abated and the concerned parties involved in such matters are required to take necessary steps by making an application to NCLT within 180 days from date of the aforesaid notification.

IBBI has been acting proactively for enforcing the provisions of the Insolvency Code, 2016 and has brought into force many operative provisions of the Insolvency Code, 2016 and regulations thereof. It is pertinent to note that the insolvency process provides for strict time line of 180 days from the date of admission of application (which is extendable up to 90 days) within which the lengthy insolvency resolution process needs to be completed, failing which, the corporate person will face liquidation. However, there are currently several logistical issues such as lack of members and infrastructure at NCLT level. Further, the framework of "information utility" has also not been set up as yet. Due to aforesaid issues and various other practical difficulties, it will be interesting to see whether the strict time line can be adhered to.

Since any creditor having a minimum default amount of Rs.1,00,000 against a corporate debtor may approach the NCLT for initiation of insolvency resolution process and on the other hand, a corporate debtor, being one of the Corporate Applicant, may also apply for insolvency resolution process, in order to take the benefit of the moratorium, we envisage that NCLT may be flooded with such applications from the creditors as well as the corporate debtors.

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