

Indicator: Resolving Insolvency

S. No.	Reform Implemented	Comments/Link
1	Operationalization of the Insolvency and Bankruptcy Code.	http://www.mca.gov.in/Ministry/pdf/CommencementNotification_01122016.pdf
2	<p>Eleven benches of the NCLT, 977 insolvency professionals, 3 IPAs and 2 IPEs are in operation all over the country.</p> <p>All rules and regulations with respect to the Code for facilitation of corporate insolvency resolution process and liquidation process were notified.</p> <p>Provisions related to Corporate Insolvency Resolution of the Code and those related to Liquidation came into force on December 1, 2016 and December 15, 2016 respectively.</p> <p>Transactions related to corporate insolvency commenced in December 2016.</p>	http://www.mca.gov.in/Ministry/pdf/Notification_14122016.pdf
3	Procedures available to a DEBTOR when commencing insolvency proceedings.	<p>Part II, Chapter II, Sections 6 and 10 of the IBC, 2016 provides a procedure whereby a corporate debtor can commence-insolvency resolution process. Section 59 provides that a corporate debtor who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings.</p> <p>Part II, Chapter III of the IRC, 2016 prescribes a Liquidation Process. Along with the Code, CIRP Regulations, 2016 and Liquidation Regulations also prescribe a liquidation process by the creditor(s) in case the resolution proceedings fail or the creditor(s) reach a decision to liquidate the corporate debtor.</p>
4	Provisions of insolvency framework that allow a CREDITOR to file for insolvency of the debtor.	Part II, Chapter II, Sections 7 and 8 of the IBC, 2016 provides a procedure whereby a creditor can commence insolvency resolution proceedings. CIRP Regulations, 2016 also provide for the Insolvency

		Resolution process for corporates.
5	Basis for commencement of insolvency proceedings under the Insolvency Code.	In order to commence the insolvency proceedings, the standard test used, is that the debtor is generally unable to pay its debts on maturity. Part II, Chapter II, Section 6 of the IRC, 2016 provides that where a corporate debtor has defaulted in paying a debt which has become due, the corporate insolvency resolution process may be initiated. Part II, Chapter I, Section 4(1) provides for insolvency/ liquidation where minimum amount of default is Rs. 1 lakh.
6	Insolvency Code allows continuation of contracts supplying essential goods and services to the debtor.	Part II, Chapter II, Sections 17 - 25 of the IBC, 2016 provides that during the resolution proceeding, it shall be the duty of the resolution professional (RP), whether interim or permanent, to manage the affairs of the corporate debtor as a going concern (Section 20) and preserve its value (Section 25). Section 14(2) provides that that the supply of essential goods or services to the corporate debtor shall not be terminated or suspended or interrupted during the moratorium period. Essential goods and services are defined under Regulation 32 of CIRP regulations.
7	Insolvency Code allows the rejection by the debtor of overly burdensome contracts.	Under Part II, Chapter II, Sections 17 - 25 of the IBC, 2016, the resolution professional manages the affairs of the corporate debtor. All the business decisions which are beneficial for the debtor are taken by the RP. Under Section 20 (2)(b) of the Code, the RP shall have the authority to amend or modify the contracts or transactions which were entered before the commencement of corporate insolvency resolution process. Under the Section 50(1), the resolution professional may make an application for avoidance of extortionate credit transactions. Under Regulation 5 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 also talks about when a transaction can be considered extortionate under section 50.
8	Insolvency Code allows avoidance of preferential	Part II, Chapter III, Section 43-44 of the IBC, 2016 (w.e.f.) 15-12-2016 provides for the avoidance of preferences given by the corporate

	transactions.	debtor to the related parties in the run up to insolvency.
9	Insolvency Code allows avoidance of undervalued transactions.	Part II, Chapter III, Section 45 of the IBC, 2016 (w.e.f.) 15-12-2016 provides for the avoidance of undervalued transactions such as gifts and transactions where the value of the consideration received by the corporate debtor is significantly less than the value provided by such corporate debtor.
10	Insolvency Code provides for the possibility of the debtor obtaining credit after commencement of insolvency proceedings.	Part II, Chapter III, Section 20(2)(c) 25 (2)(c) & 28(1)(a) of the IBC, 2016 provides that a RP after taking prior approval from the committee of creditors can raise interim finances to function during the proceedings.
11	Insolvency code assigns priority to post-commencement credit.	Section 53(1)(a) read with Section 5(13) and Section 5(15). Section 53(1)(a) prioritises insolvency resolution process costs and liquidation costs while distributing the proceeds from sale of liquidation. Part II Chapter I Section 5(13) (a) provides that 'insolvency resolution process cost' means the amount of any interim finance and cost incurred in raising such finance. Part II Chapter I Section 5(15) provides that 'interim finance' means any financial debt raised by the resolution professional during the insolvency resolution process period.
12	Creditors who can vote on the proposed reorganization plan.	Reorganization plan is voted on only by the creditors whose rights are modified or affected by the plan. Part II, Chapter III, Section 21 specifies that the committee of creditors shall comprise of financial creditors of the corporate debtor. Operational Creditors who are affected by the plan are not made part of committee of creditors if financial creditors are available. Section 30 (4) provides that the committee of creditors may approve a resolution plan by a vote of not less than seventy- five percent of voting share of financial creditors.
13	Insolvency code allows dissenting creditors in reorganization to receive at least as much as what they obtain in liquidation.	As per Sec.30 (2) (b) the adjudicating authority shall confirm that the resolution plan provides for the repayment of the operational creditors in such manner as specified by the Board which shall in no event be less than the amount the operational creditors would be paid in the event of a liquidation of the corporate debtor under section 53.

		<p>Regulation 38(1)(c) provides that liquidation value due to dissenting financial creditors is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan. Regulation 35(1) of CIRP regulation defines liquidation value as the estimated realizable value of the assets of the corporate debtor, if it were to be liquidated on the insolvency commencement date.</p>
14	<p>Insolvency code allows approval of the creditors for selection or appointment of the insolvency representative.</p>	<p>Part II, Chapter III, Section 22 (2) and (3) of the IBC, 2016 provides that at the first meeting of the committee of creditors, a RP is appointed by a majority of 75 per cent of voting share of the financial creditors.</p>
15	<p>Insolvency code require approval by the creditors for sale of substantial assets of the debtor.</p>	<p>Part II, Chapter III, Section 28 (1)(b) of the IBC, 2016 provides that a RP needs a prior approval from the committee of creditors before he/she creates any security interest over the assets of the corporate debtor.</p> <p>Regulation 29 of the CIRP Regulations, 2016 that RP may sell unencumbered asset(s) of the corporate debtor after the prior approval of the committee of the creditors.</p>
16	<p>Creditor has the right to request information from the insolvency representative in the Insolvency code.</p>	<p>Committee of Creditors is able to reach any viable decision for the debtor only when complete information about the corporate debtor is shared with them. Since RP manages the affairs of the company, it is essential that information about the debtor is available with the RP. As per Section 18(1)(a), the interim resolution professional is required to collect information relating to assets, finances and operations of the corporate debtor. Section 21(9) read with 21(10) allows the committee of creditors to access this financial information in relation to' corporate debtor during corporate insolvency resolution process within a period of 7 days of request of information.</p> <p>Regulation 36(3) of the CIRP regulations provides that a member of the creditor's committee may request the resolution professional for any</p>

		information and the resolution professional shall provide the same within a reasonable time.
17	Creditors has the right to object to decisions accepting or rejecting creditors' claims	Section 61 provides for appeal with NCLAT.
18	Time involved in the entire insolvency process	On occurrence of default in payment of debts on maturity, an application for the reorganization process will be made before the NCLT, Delhi Bench (Adjudicating Authority). The NCLT will ascertain the existence of default within 14 days of receipt of the application under (Section 7(4) of the Code). Once NCLT admits the application, the corporate insolvency reorganization process can be completed in less than 45 days.