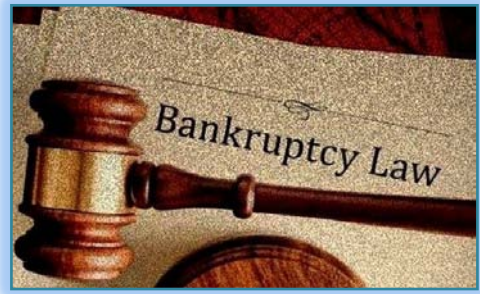


Impact of Bankruptcy Code on the Companies Act, 2013 and Opportunities for professionals under the Code



➤ **Introduction**

Insolvency & Bankruptcy Code, 2016 (IBC) received assent of President on 28/05/2016. The code has become an Act and provisions will be effective from the same day.

The Code offers a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals (other than financial firms). The Government proposed a separate framework for bankruptcy resolution in failing banks and financial sector entities.

The Code repeals the Presidency Towns Insolvency Act, 1909, and Provincial Insolvency Act, 1920, as well as amends 11 legislations, as listed below :

1. Indian Partnership Act, 1932
2. The Companies Act, 2013
3. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
4. Limited Liability Partnership Act, 2008,
5. Sick Industrial Companies (Special Provisions) Repeal Act, 2003
6. The Micro, Small and Medium Enterprise Development Act, 2006
7. Recovery of Debts Due to Banks and Financial Institutions Act, 1993
8. Central Excise Act, 1944
9. Income-Tax Act, 1961
10. Customs Act, 1962
11. Finance Act, 1994

To avoid any further litigation in insolvency proceedings, the Code will have an overriding effect over all other laws. It is specifically provided that civil courts or authority will not have jurisdiction for such cases and also cannot grant any injunction. The Code as a new law, replacing over a dozen laws, when implemented post the infrastructure being put in place, will prove to be the most important step in evolving the regimen of recovery of bad debts. Moreover, there will be a definite surge in economic growth in view of the rigid timeframe prescribed in the Code for resolution of insolvency and liquidation proceedings.

➤ **Amendments made to Companies Act, 2013 [Section 255 read with Schedule XI of (IBC)]**

RULE	PURPOSE OF RULE	AMENDMENT
2(23)	Definition of "Company Liquidator"	"Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act
2(94A)	Definition of "winding up"	"winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.
8(9)	Winding up of companies with charitable objects, etc	If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016
66(8)	Reduction of share capital	for the words, brackets and figures " is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim," the words and figures "commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim," shall be substituted
77(3)	Duty to register charges	the words "the liquidator", the words and figures "appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted.
117(3) (f)	Resolutions requiring a company to be wound up voluntarily	the word and figures "section 304", the words and figures "section 59 of the Insolvency and Bankruptcy Code, 2016" shall be substituted.
224(2)	Company or other body corporate is liable to be wound up	the words "wound up under this Act", the words and figures "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted.
230	Power to compromise or make arrangements with creditors and members	(a) in sub-section (1), after the word "liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted; (b) in sub-section (6), after the word "on the liquidator", the words "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted
249(1)	Restrictions on making	is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(e)	application under section 248 in certain situations	
253 to 269		Omitted
270	Winding up by Tribunal.	The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act
271	Circumstances in which company may be wound up by Tribunal.	A company may, on a petition under section 272, be wound up by the Tribunal,— (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality; (c) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up; (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."
272	Petition for winding up.	(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by— (a) the company; (b) any contributory or contributories; (c) all or any of the persons specified in clauses (a) and (b); (d) the Registrar; (e) any person authorised by the Central Government in that behalf; or (f) in a case falling under clause (b) of section 271, by the Central Government or a State Government. (2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder. (3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section: Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition: Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations. (4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed. (5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition
275	Company Liquidators and their appointments	(a) for sub-section (2), the following sub-section shall be substituted, namely:— "(2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;" (b) sub-section (4) shall be omitted.
280	Jurisdiction of Tribunal.	The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,— (a) any suit or proceeding by or against the company; (b) any claim made by or against the company, including claims by or against any of its branches in India; (c) any application made under section 233; (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements,

		privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made
289		Omitted
Part II		The heading "Part II.—Voluntary winding up" shall be omitted
304 to 323		Omitted
325		Omitted
326	Overriding preferential payments.	<p>(1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—</p> <p>(a) workmen's dues; and</p> <p>(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, pari passu with the workmen's dues:</p> <p>Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.</p> <p>(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.</p> <p>Explanation.—For the purposes of this section, and section 327—</p> <p>(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p>(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—</p> <p>(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);</p> <p>(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;</p> <p>(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;</p> <p>(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;</p> <p>(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.</p> <p>Illustration</p> <p>The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000</p>
327	Preferential payments	<p>(a) after sub-section (6), the following sub-section shall be inserted, namely:—</p> <p>" (7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.";</p> <p>(b) in the Explanation, for clause (c), the following clause shall be substituted, namely:—</p> <p>"(c) the expression "relevant date" means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional</p>

		liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016
329	Transfers not in good faith to be void.	Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator
334	Transfer, etc., after Commencement of winding up to be void.	In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void
336	Offences by officers of companies in liquidation	In section 336, in sub-section (1) , in the opening paragraph, for the words "whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up", the words "by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act" shall be substituted.
337	Penalty for frauds by officers	In section 337, for the words "or which subsequently passes a resolution for voluntary winding up,", the words "under this Act", shall be substituted
342(2), (3) and (4)		Omitted
343 (1)	Company Liquidator to exercise certain powers subject to sanction	(1) The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal,— (i) pay any class of creditors in full; (ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or (iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof
347	Disposal of books and papers of company	(1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs
348 (1)	Information as to pending liquidations	If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal: Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply
357	Commencement of winding up by Tribunal	The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up
370	Continuation of pending legal proceedings.	In the proviso, after the words "obtained for the winding up the company", the words "in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016" shall be inserted
372	Power of Court to stay or restrain proceedings	After the words "The provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted
419 (4)	Benches of Tribunal.	The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016

424	Procedure before Tribunal and Appellate Tribunal	(i) in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted; (ii) in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted
429(1)	Power to seek assistance of Chief Metropolitan Magistrate, etc.	The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,— (a) take possession of such property, books of account or other documents; and (b) cause the same to be entrusted to the Tribunal or other persons authorized by it.
434	Transfer of certain Pending proceedings	(1) On such date as may be notified by the Central Government in this behalf,— (a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act; (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order: Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and (c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer: Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government. (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.
468 (2)	Powers of Central Government to make rules relating to winding up.	(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act; (ii) for the holding of meetings of creditors and members in connection with proceedings under section 230; (iii) for giving effect to the provisions of this Act as to the reduction of the capital; (iv) generally for all applications to be made to the Tribunal under the provisions of this Act; (v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; (vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets; (vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator; (viii) the making of calls; and (ix) the fixing of a time within which debts and claims shall be proved.
Schedule V		in Part II, in section III, for clause (b), the following clause shall be substituted, namely:— "(b) where the company— (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or (iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II

➤ **Insolvency Professional Agency:**

Insolvency Professional Agency as defined under Insolvency and Bankruptcy Code 2016 means any person registered with the Board under section 201 as an insolvency professional agency.

Eligibility:

Only Companies registered under section 8 of Companies Act 2013 which satisfy the following conditions are authorised to be registered as Insolvency Professional Agency:

- a) Have sole object to carry on the functions of an insolvency professional agency
- b) Has bye- laws and governance structure in accordance with the Insolvency and Bankruptcy Board of India

I. has a minimum net worth of ten crore rupees

II. has a paid up share capital of five crore rupees

III. not under the control of person(s) resident outside India

IV. not more than 49% of its share capital is held, directly or indirectly, by persons resident outside India

V. its promoters, its directors and persons holding more than 10% of its share capital and the Company itself are fit and proper persons.

Explanation: For determining whether a person is fit and proper interalia following facts shall be considered:

- a. integrity, reputation and character,
- b. absence of convictions and restraint orders,
- c. competence including financial solvency and net worth
- d. is not a subsidiary of a body corporate through more than one layer.

Registration Procedure

- An application for the registration of Company as an Insolvency Professional Agency shall be made to the Board in the Form A of Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
- The application shall state specifically the following:
 - a) Name, Address of Registered office and Principal place of business, CIN, PAN.
 - b) Details of the person authorised to make application which shall include Name,

- c) Designation and Contact details.
- d) Confirmation that memorandum & Articles of association and byelaws are consistent with the Insolvency and Bankruptcy Board of India (Model ByeLaws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, and the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016.
- e) Clause number of the provisions of the byelaws which are in addition to the provisions of the model byelaws specified in the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
- f) Details of the persons holding more than 10%, directly or indirectly, of the share capital of the applicant.
- g) Who is in the control of Applicant Company.
- h) Details of the Board of Directors of the applicant Company.
- i) Details of the infrastructure of the Company like number and location of offices, IT and other computer facilities etc.

❖ ***Following documents shall be enclosed with application***

1. Board Resolution authorizing the director of the company to make the application
 2. Copies of Memorandum and Articles of Association.
 3. By Laws of Company
 4. In case promoters or person who is in control of the applicant company or person holding more than 10% of shares in applicant company is a Company
- ***On being satisfied Board shall consider the application and Shall grant the certificate of registration, if the applicant:***
 1. Fulfill the eligibility criteria
 2. has adequate infrastructure to perform its functions
 3. has in its employment, persons having adequate professional and other relevant experience

 **Role:**

An insolvency professional agency is a frontline regulator for insolvency professionals. It enrolls professional members, lays down standards of professional conduct for them and monitors their performance

Such an entity will have membership, monitoring, grievance redressal and disciplinary committees to regulate as well as have an oversight of the professional members.

➤ **Insolvency Professionals:** will conduct the insolvency resolution process, take over the management of a company, assist creditors in the collection of relevant information, and manage the liquidation process. The Code bestows such powers and duties upon the insolvency professional as required to efficiently drive the insolvency and liquidation process.

➤ **Functions of an Insolvency Professional**

Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely:—

- a) a fresh start order process
- b) individual insolvency resolution process
- c) corporate insolvency resolution process
- d) individual bankruptcy process and
- e) liquidation of a corporate debtor firm

➤ **Opportunities for professionals**

There are many professionals who currently act as liquidators in voluntary winding up. The scope for professionals will now get widened manifold under the Insolvency and Bankruptcy Code and they can act as Insolvency professionals for all types of winding up, insolvency, bankruptcy – be it for corporates, individuals or firms. They can also appear before the adjudicating authorities and represent their clients.

The Code now specified which persons can act as insolvency professionals. The professionals or persons possessing required qualifications and experience in the field of finance, law, management, insolvency or such other field, as it deems fit can act as insolvency professionals.

The adjudicating authority except for individuals and firms is the NCLT, professionals can appear before such authority and represent their clients. This will open new avenues of practice for professionals who would like to work with financial institutions on debt restructuring projects, one time settlements and the like. It will also give a chance to work for the society by helping the poor and marginalized sections.

➤ Criteria to become Insolvency Professional

1. For Chartered Accountants to become Insolvency Professional

An individual shall be eligible to be registered for a limited period (as per Regulation 9 of the said Regulations) as an insolvency professional if he has been 'in practice' for a minimum period of fifteen years as a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India and who is not in employment

✚ **Fee for Registration:**

An Insolvency Professional is required to submit an application for registration in Form A of the Second Schedule of the Insolvency Professionals Regulations to IIIPI with which he is being enrolled on or before 31st December, 2016 along with a non-refundable application fee of Seven thousand rupees.

The Cheque/ DD should be in favour of "**Indian Institute of Insolvency Professionals of ICAI**" which should be submitted to Secretariat, **4thFloor, Administrative Block, A- 29, Sector- 62, Noida** alongwith the Registration Form.

Limited period registration shall be valid for a period of six months from the date of such submission.

2. For Company Secretaries to become Insolvency Professional

- As per the Regulation 9 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 an individual shall be eligible to be registered for a limited period as an insolvency professional if he has been 'in practice' for a minimum period of fifteen years as a Company Secretary.
- Regulation 9(1)(b) requires Rs.5000/- fee to be collected by the Insolvency Professional Agency on behalf of the Insolvency and Bankruptcy Board of India.
- Regulation 9(3) states that an individual referred to in sub-regulation (1) shall be registered for a limited period upon submission of the details and fees collected by the Board, which shall be valid for a period of 6 months from the date of such submission.
- Accordingly, members who have been in practice for 15 years can immediately register as insolvency professionals for a period of 6 months, as detailed in the above regulations.

✚ **The Process of registration as Insolvency Professional with Insolvency and Bankruptcy Board of India**

First Stage: Enrolment as Professional Member with Insolvency Professional Agency

- (i) An eligible individual as stated in above regulation 9 is required to enrol himself/herself as professional Member with Insolvency Professional Agency.
- (ii) The Application for enrolment as member is available at link:
http://www.icsi.edu/docs/WebModules/application_enrolment_for_limitedperiod.pdf
- (iii) The ICSI Insolvency Professionals Agency is charging Rs 10,000/ for the Annual Membership Fee. (Regulation 11 of Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016).

Second Stage: Registration with Insolvency and Bankruptcy Board of India

A professional member of Insolvency Professional Agency should register himself as insolvency professional by making application in Form A of the Second Schedule of Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 which is to be sent through the Insolvency Professional Agency along with the non-refundable fee of Rs 5000/- which shall be collected by the Insolvency Professional Agency on behalf of the Board.

3. For Lawyers and Cost Accountants and to become Insolvency Professional

An individual shall be eligible to be registered for a limited period as an insolvency professional if he has been 'in practice' for fifteen years as a cost accountant or a lawyer enrolled as a member of institute of cost and management accountants of India/ Bar Council

✚ Fee for Registration:

An Insolvency Professional is required to submit an application for registration in Form A of the Second Schedule of the Insolvency Professionals Regulations to IIIPI with which he is being enrolled on or before 31st December, 2016 along with a non-refundable application fee of Seven thousand rupees.

The DD should be in favour of "Indian Institute of Insolvency Professionals of ICAI" which should be submitted to Secretariat, 4th Floor, Administrative Block, A- 29, Sector- 62, Noida alongwith the Registration Form.

Limited period registration shall be valid for a period of six months from the date of such submission. After that the eligibility criteria to become an Insolvency

Professional would be as per Regulation 5 of the Insolvency Professionals Regulations.

4. About IIIPI

The Indian Institute of Insolvency professionals of ICAI is a section 8 Company formed by the Institute of Chartered Accountants of India to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations.

5. About ICSIIPA

The ICSI Insolvency Professionals Agency is registered as a Section 8 Company and is a wholly-owned subsidiary of ICSI formed to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code 2016 and read with regulations.

➤ **Adjudicating Authority under the Code**

At present, the High Courts, the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and Debt Recovery Tribunal (DRT) are having overlapping jurisdiction in the matter of debt recovery and restructuring. This gives rise to systemic delays and complexities in the process. The code intends to overcome these challenges and aims to reduce the burden on the courts as all litigation will be filed under the Code as under:

Under Part II, Chapter VI of the Code, National Company Law Tribunal (NCLT) would be adjudicating authority for insolvency resolution and liquidation of Companies, Limited Liability Partnerships (LLPs), any entity with limited liability under any law and bankruptcy of personal guarantors thereof. An appeal can be preferred from orders of NCLT to National Company Law Appellate Tribunal (NCLAT) within 30 days (15 days' extension if there is sufficient ground). Jurisdiction is territorial based on location of registered office of corporate person. Orders of NCLAT are appealable on a question of law to the Supreme Court within 45 days.

Vide its notification dated June 01, 2016, the Central Government has constituted 11 (eleven) Benches of the NCLT in exercise of its powers under sub-section (1) of section 419 of the new Companies Act, 2013. Of the said 11 benches, two shall be situated in New Delhi, and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.

Under Part III, Chapter VI of the Code, Debt Recovery Tribunal (DRT) would be the adjudicating authority for insolvency resolution and bankruptcy of individuals, unlimited partnerships and partner/s thereof. Jurisdiction would be based on place of residence or works for gain or carries on business. Appeal can be made to Debt Recovery Appellate Tribunal (DRAT) within 30 days (15 days' extension if there is sufficient ground). Further appeal from DRAT would be within 45 days before the Supreme Court only on question of law. It is

specifically provided that Civil courts or authority not to have jurisdiction and also cannot grant any injunction.

In keeping with the broad philosophy that insolvency resolution must be commercially and professionally driven (rather than court driven), the role of adjudicating authorities is limited to ensuring due process rather than adjudicating on the merits of the insolvency resolution.

Article by CS Sandeep Kumar Jain