

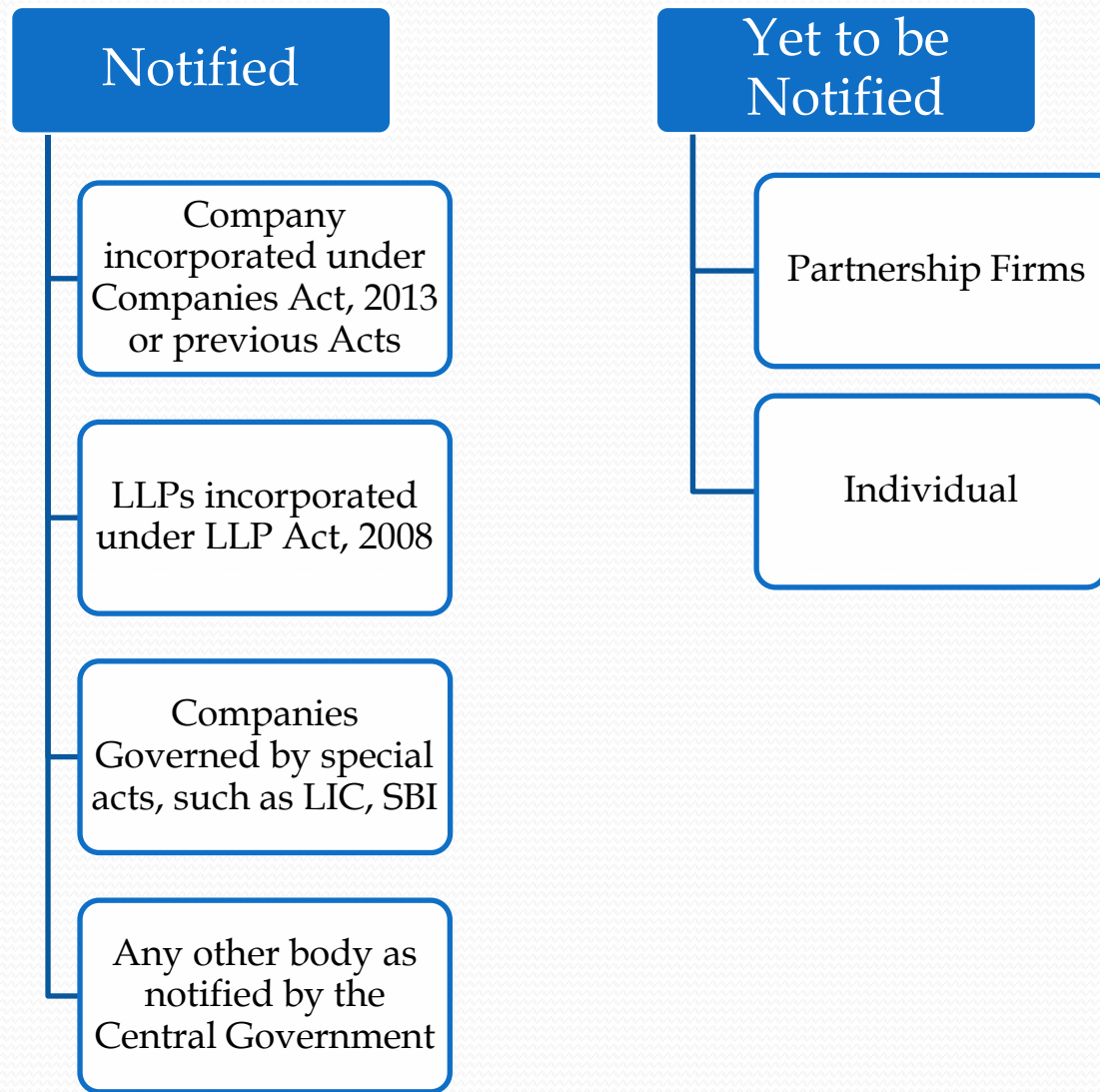
INSOLVENCY AND BANKRUPTCY CODE, 2016



A Presentation by:-

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APPLICABILITY OF IBC, 2016



OBJECTS OF THE CODE

- Creditor in control regime
- Consolidates existing insolvency laws and amends other legislations
- Overriding effect on all other laws inconsistent with the provisions of the Code
- Time bound resolutions for evaluation and viability determinations of companies referred for CIRP
- Clearly defined order of priority (*waterfall mechanism)
- Investigation of antecedent transactions in case of illegal diversion of assets of company
- Establishment of IBBI as an independent monitoring body for administration and governance of the insolvency and bankruptcy law

WHO CAN INVOKE?

Financial Creditor (Sec.7)

- Any person to whom a financial debt is owed &
- Includes a person to whom such debt legally assigned or transferred



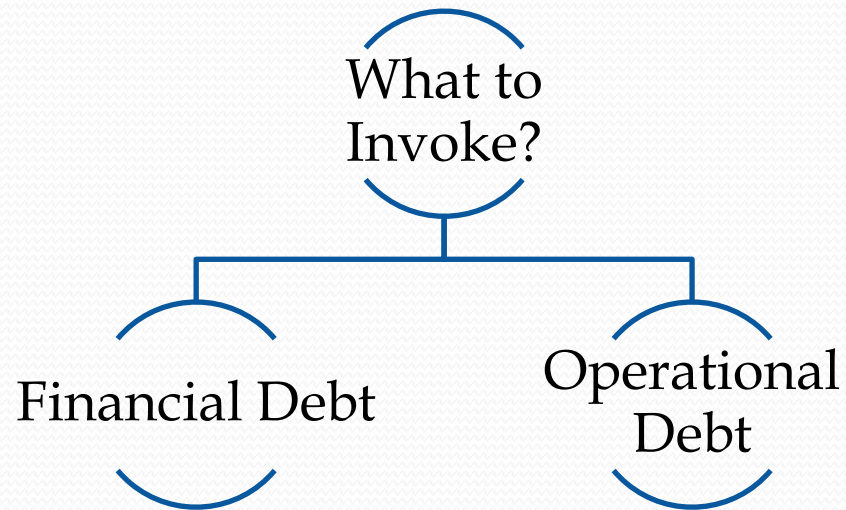
Operational Creditor (Sec.9)

- A person to whom an operational debt is owed &
- Includes any person to whom such debt legally assigned or transferred



Corporate Debtor (Sec.10)

- A corporate person who owes a debt to any person



Limit to invoke CIRP:

Pre-existence of Dispute: includes a suit or arbitration proceedings w.r.t-

- Existence of debt amount;
- Quality of goods or service; and
- Breach of representation or warranty.

INVOKING PROVISIONS OF CODE

DEFAULT



Minimum amount of Rs. 1 Crore

Where any Company or LLP commits-



A default in paying its



Financial debt



Operational debt



Then a financial creditor/ operational creditor/ Company & LLP itself



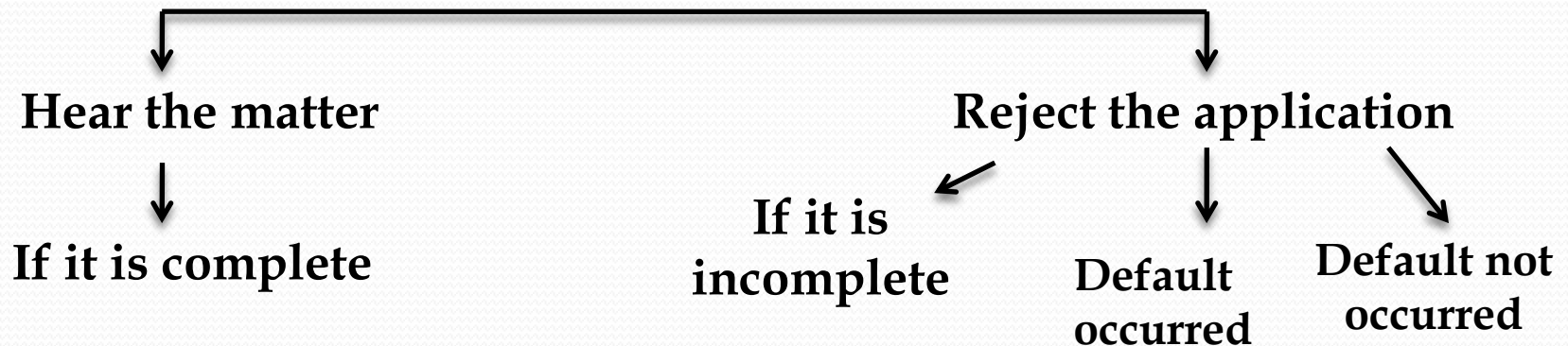
May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

Adjudicating Authority

- NCLT
 - Deal with insolvency matters of Co. & LLP
 - Appeal to NCLAT

GROUND FOR REJECTION

Adjudicating Authority within 14 days of receipt of application, by an order -



NOTICE OF REJECTION

Adjudicating Authority shall before rejecting application, give notice to applicant to rectify defects in application within 7 days from the date of receipt of such notice.

TIME BOUND



180 days



90 days
+ 60 days



330 days

FAST TRACK :

90 days



45 days



135 days

Adjudicating Authority after admission of application shall, by an order

**Declare a
Moratorium**

**Cause a Public
Announcement**

**Appoint Interim
Resolution Professional**

MORATORIUM EFFECT

[Sec.14 (1) (A) – (D)]

- **Adjudicating Authority shall by order prohibit the following:**
 - ✓ Institution/continuation/proceedings of suits including execution of any judgment, decree or order in any Court.
 - ✓ Transferring, encumbering, alienating or disposing of assets/legal right/beneficial interest.
 - ✓ Any action to Foreclosure, Recover or enforce any security interest created including any action under SARFAESI Act, 2002.
 - ✓ Recovery of any property by owner or lessor where such property is occupied.

MORATORIUM EFFECT

[Sec.14 (1) (A) - (D)]

- **Objective**

- ✓ Maximizing value of the Entity to Continue Operation
- ✓ No additional stress on Business
 - Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted
 - Central Government in consultation with any financial regulator may specify such transactions.

MORATORIUM PERIOD

[sec 14(1)]

- Order of Moratorium made by Adjudicating Authority;
 - Start from Date of Admission of Application;
- Cease to effect –
Date of Approval of Resolution Plan or Liquidation Order

Time bound settlement of
Insolvency.

Banks & Asset
reconstruction companies
immediate gainers

Comprehensive coverage-
Companies, LLP,
Individuals & more can be
added

Database of Serial
Defaulters

Protect workers



GUARANTORS UNDER IBC

Alpha & Omega Diagnostics (India) Ltd. vs. ARCIL (NCLAT Judgment dated 31st July 2017)

- Moratorium is applicable only on the assets of the corporate debtor that are reflected in the balance sheet
- No moratorium can be claimed on the assets of the guarantor



Post Amendment Ordinance, 2018:

- Section 5(5A): corporate guarantor defined
- Section 14: moratorium to not apply to a surety in a contract for guarantee to a corporate debtor

FACTORS TO DETERMINE INVOCATION OF IBC Vs. SARFEASI

Factors/ Parameters	SARFEASI ACT, 2002	IBC, 2016
Moratorium	No moratorium, allowing the filing of multiple suits.	Moratorium under Section 14 upon admission of application.
Creditor coverage	Only secured creditor (Banks and FIs) interest is protected.	All creditor interests are protected.
Management of the company	Management remains with the borrower.	Independent management by resolution professional.
Time-frame	Time consuming procedure	Time bound process- 330 days
Liquidation	The asset depreciates in value and the amount earned on sale by the lender shall discharge the debt.	Waterfall mechanism is followed to pay off the debt owed to the lenders on a pro-rata basis.
Expenses	For recovery, the expenses are lower.	Expensive, appointment of resolution.

Covid Impact on IBC-2020 Ordinance

- Can an application be filed against the debt which arose during the 'lock-down'?
- Can an application be filed in lieu of debt below Rs. 1.00 crore in the event the demand notice was issued before lock-down?

Let's Discuss...

- Do home buyers fall under the purview of Financial Creditors under Section 7 of the Code?
- Whether arrears of rent fall within the scope of operational or financial debt under the Code?
- Can personal/corporate guarantee be invoked during the moratorium period declared by NCLT upon the admission of an application under CIRP?
- Can insolvency and bankruptcy proceedings be initiated against a personal guarantor?
- Is the Limitation Act applicable under IBC?
- What is the standpoint of Del Credere Agents under IBC?
- Scheme of Arrangement under Section 230 of Companies Act, 2013 during liquidation of a corporate debtor under IBC.
- What is the status of decree holders under IBC?