

# **INSOLVENCY AND BANKRUPTCY CODE, 2016**

Presented by :  
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# Objective of the Code

**1. TO CREATE A NEW INSTITUTIONAL FRAMEWORK CONSISTING OF:**

- ☐ Insolvency and bankruptcy board
- ☐ Insolvency professional agencies
- ☐ Insolvency professionals
- ☐ Information utilities and
- ☐ Adjudicating authorities.

**2. TO OFFER A UNIFORM AND COMPREHENSIVE LEGISLATION.**

# Journey

## So Far

- On December 1, 2016: Insolvency & Bankruptcy Code came into effect
- On January 17, 2017 : First case of Innoventive Industries was admitted for Resolution Process by Mumbai Bench of NCLT
- On June 13, 2017 Internal committee of RBI shortlisted 12 companies for Insolvency Proceedings
- On August 16, 2017 IBBI introduced form F for submission of claims by Creditors other than Financial & Operational
- On November 23, 2017, IBC (Amendment) Ordinance was promulgated debarring the errant promoters from becoming resolution applicant in the resolution process. Later on Jan 18, 2018, with certain modifications, ordinance was replaced by Amendment Act, 2018

# Repeals and Amendments in other laws

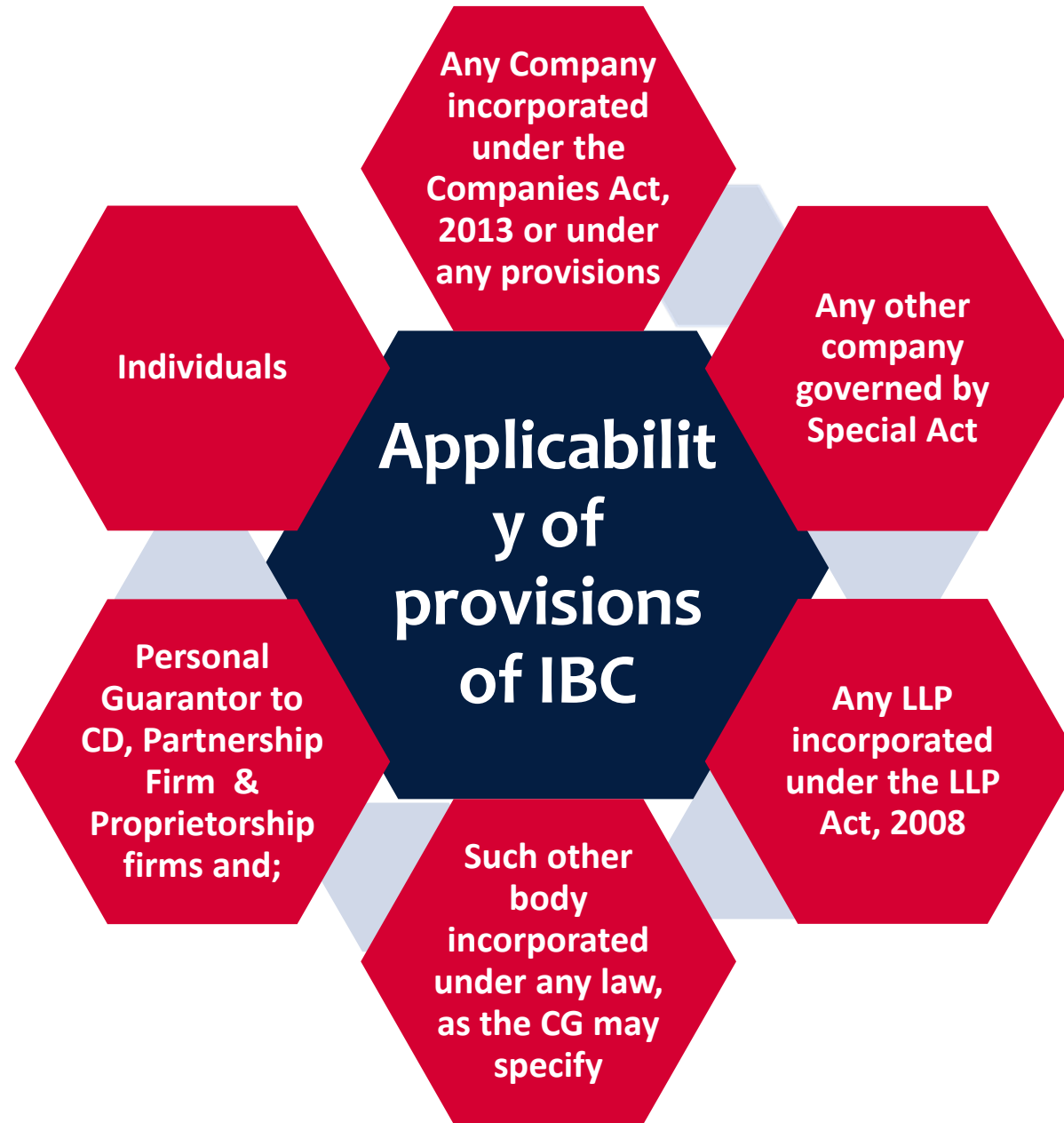
## Repealed

- ❖ The Presidency Towns Insolvency Act, 1909
- ❖ The Provincial Insolvency Act, 1920



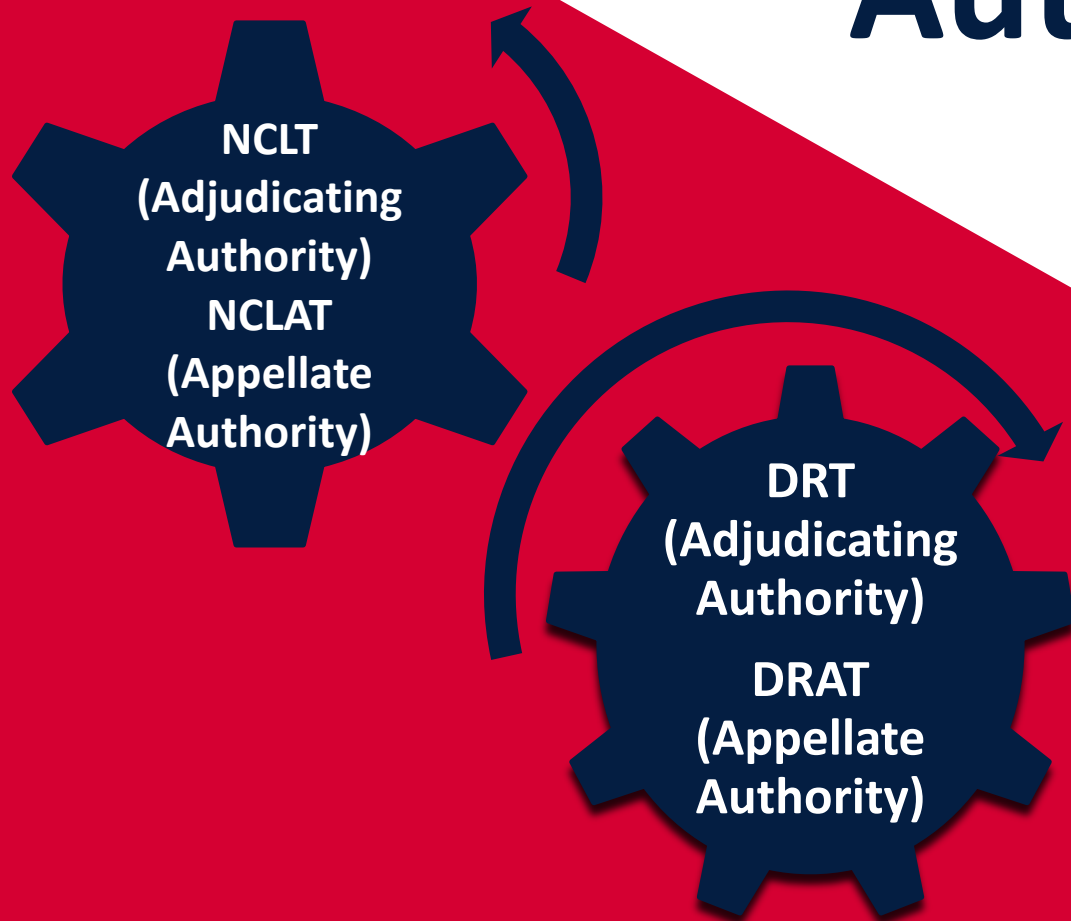
## Amended:

- The Indian Partnership Act, 1932
- The Central Excise Act, 1944
- The Income-tax Act, 1961
- The Customs Act, 1962
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993
- The Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The Finance Act, 1994
- The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Payment and Settlement Systems Act, 2007
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013



**In case of  
Companies and  
LLP**

# Adjudicating Authority



**In case of  
Individuals and  
Partnership Firms**

# Who can invoke CIRP?



Financial Creditor  
u/s 7 of the IBC



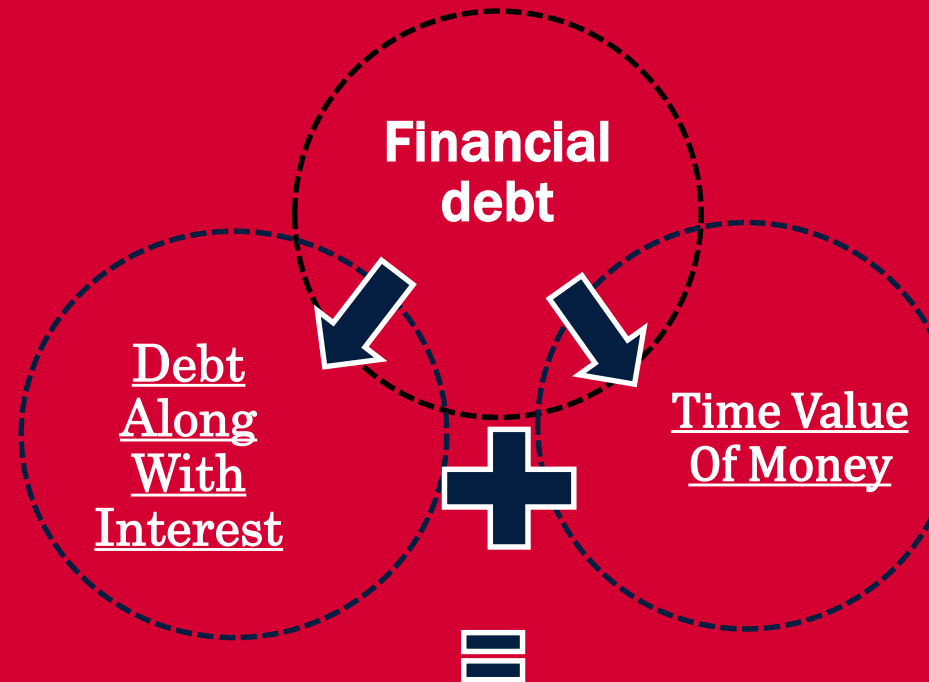
Operational Creditor  
u/s 9 of the IBC



Corporate Debtor  
u/s 10 of IBC

# Financial Creditor (FC)

As per section 5(7) of IBC: FC is a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred



**Financial Creditor**



## Key Points for FINANCIAL CREDITOR



On occurrence of default, FC may file application singly or jointly with other FC



No need to send demand notice to Corporate Debtor



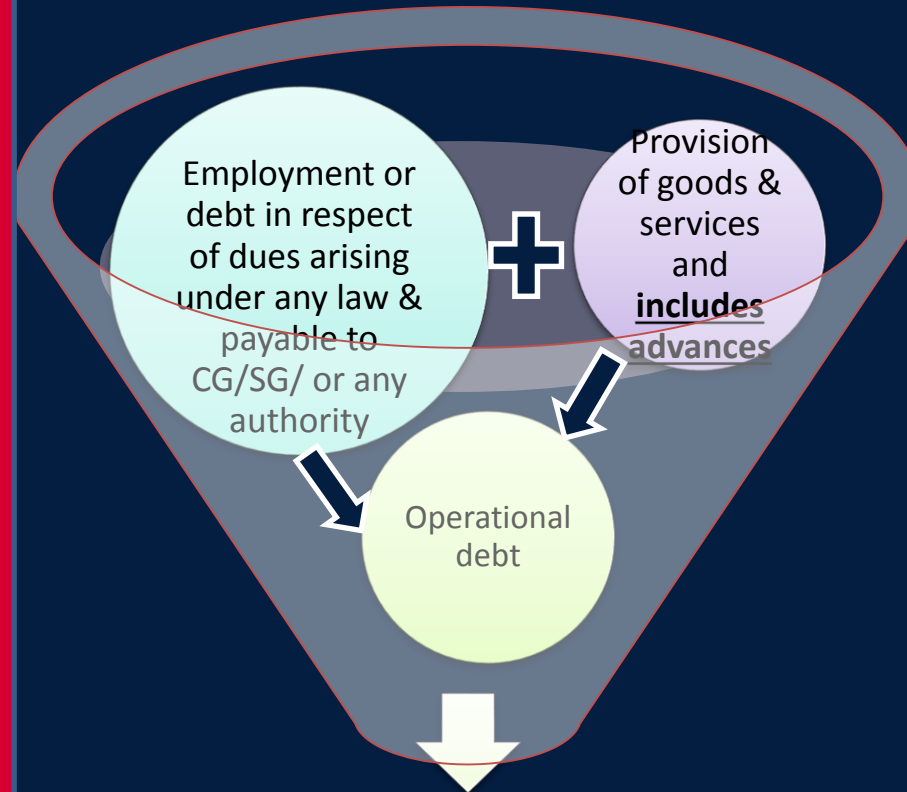
Mandatory to propose the name of IRP



Record/Evidence of default should be there.







# Operational Creditor (OC)

As per section 5(20) of IBC: OC is a person to whom an Operational debt is owed and includes a person to whom such debt has been legally assigned or transferred



Operational Creditor

## Key Points for OPERATIONAL CREDITOR

-  On occurrence of default, send demand notice u/s 8 to Corporate debtor
-  Within 10 days, Corporate debtor has to send the reply of notice
-  Reply may contain proof of repayment of debt or existence of dispute
-  File application with NCLT if payment not received
-  OC may not propose IRP in application
-  Record of default should be there.

On the date of admission of application by NCLT i.e. *insolvency commencement date*, CIRP is triggered.

IRP make PA within 3 days, for inviting claims from creditors.



Collation of claims invited from creditors and constitution of COC.



Meeting of COC to be held within 7 days of constitution of COC (comprising of all FC).



COC may allow the existing IRP to continue as RP or may replace him with another insolvency professional.



NCLT shall confirm the appointment of RP.

C

I

R

P

Appointed RP shall take over the affairs of the company and within 7 days appoint 2 registered valuers who shall determine the FAIR VALUE & LIQUIDATION VALUE.

RP shall prepare the information memorandum (IM) and submit the same to COC within 14 days of its appointment. (upon receiving undertaking)

RP shall invite EOI (including evaluation matrix) within the time frame provided by Regulations

COC shall approve the proposed resolution plan with majority of 75% and RP shall submit the approved Resolution plan to NCLT within 15 days from the expiry of 180/ 270 days.

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**Defaulter's Stay Away**



## Insertion of Section-29 A

Debarring the Existing promoter  
or defaulters from becoming  
resolution applicant for the  
companies undergoing CIRP

# Persons not eligible to be resolution applicant

Undischarged insolvent

Wilful defaulter

Promoter of a  
defaulter  
Corporate  
Debtor

Convicted for two years or  
more

Disqualified  
director under  
companies  
act, 2013

Connected  
person with  
Corporate  
Debtor

Guarantor of  
a company  
under CIRP

Connected  
person not  
eligible under  
above clauses

## Section 29 A not to apply on certain entities

A schedule  
Bank

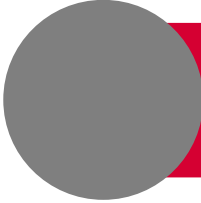
Asset  
Reconstruction  
company

Alternate  
Investment  
fund registered  
with SEBI

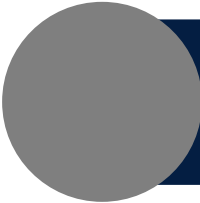


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# **Committee Report – Proposed Amendments**



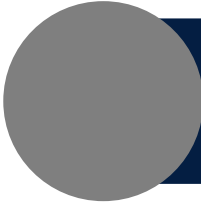
Reduction of threshold to 66 % voting from current 75% for approval of resolution plan, appointment of Resolution Professional, approval for extension of CIRP



Term of the IRP shall continue till the appointment of Resolution Professional



Submitting Certificate from a financial institution for operational creditor will be optional



Moratorium shall not apply to a surety in a contract of to a corporate debtor



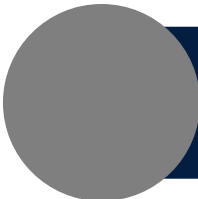
For approval of committee of creditors for certain actions, threshold of voting percentage will be 51% from 75%.



Fast track insolvency resolution process to be omitted



Withdrawal of CIRP Proceedings post admission by the approval of CoC with 90 % voting requirement



Requirement of special resolution passed by 3/4<sup>th</sup> majority of shareholders or partners of corporate debtor before filing for application under section 10 of the Code



**“First” in the code**



Innoventive  
Industries

- company to be admitted for resolution under the code

Synergies  
Dooray Ltd

- Resolution plan approved by NCLT

Bhupen  
Electronic Ltd.

- Company to be ordered for liquidation under IBC

Lokhandwala  
Construction

- company to file writ petition under article 142 of the code for settlement

Electrosteel  
Steels Limited

- company to get resolved under the list of 12 big defaulters

National e-  
Governance  
Services Limited  
(NeSL)

- First Information Utility formed under the code

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# Status of Cases

## Status of Cases under IBC till 26.04.2018

Total petitions admitted	710
Total Number of cases filed under IBC	More than 3000
Resolution in progress	565
Liquidation order passed	85
Resolution plan approved	15
Closed by appeal/review	More than 40

**Note : Data is subject to revision**

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# **Recovery Status in 2017**



## 2017 :Creditor's recover 1854.40 Cr out of claims of 5530.30 Cr

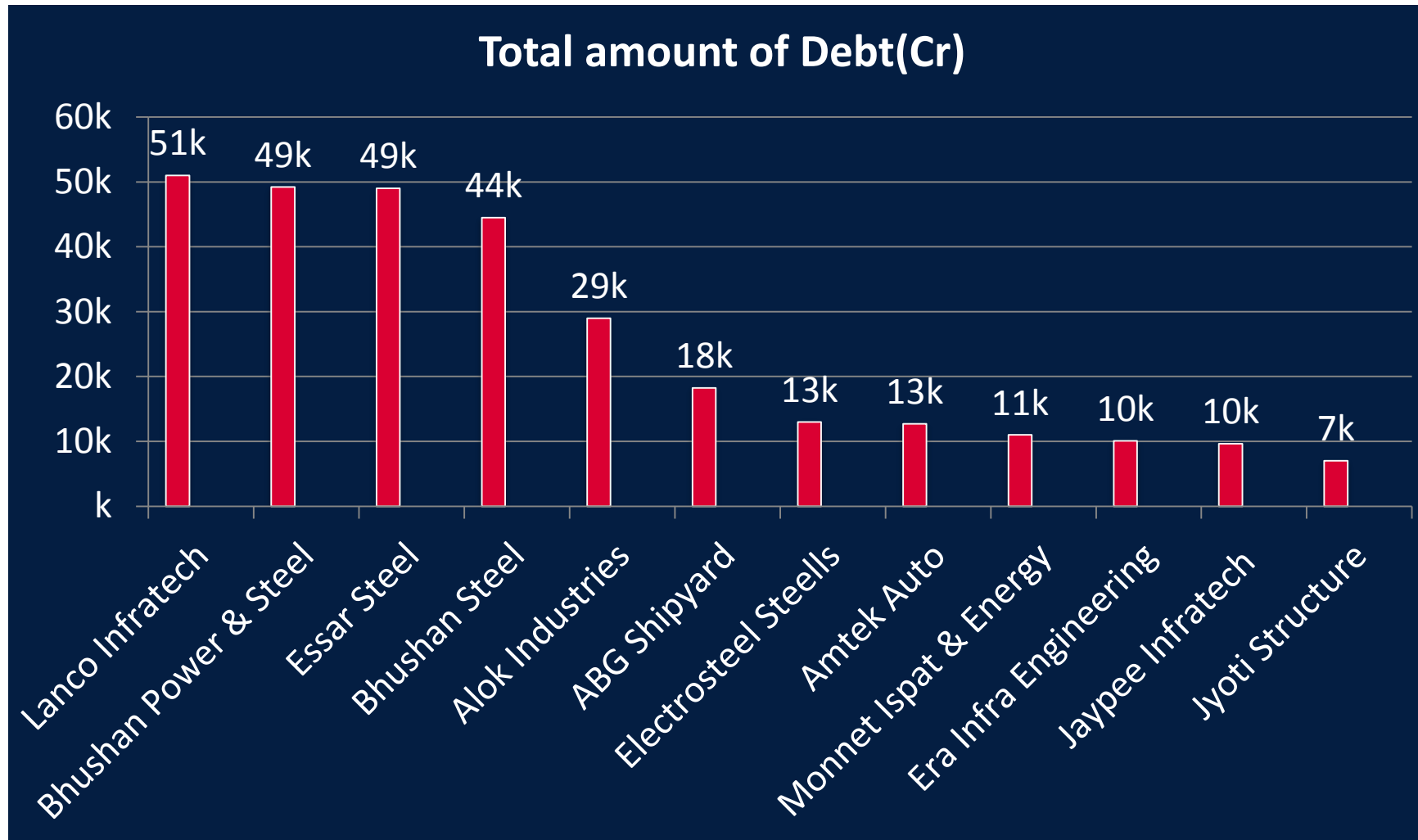
Name of corporate Debtor	Approval of Resolution	Total Claims (CR)	Resolution Amount	% Recovery
Synergies Dooray	Aug 02,2017	972.20	54.7	6
Shree Metaliks	Nov,07,2017	1287.2	607.3	47
Kamineni Steel &Power	Nov 27, 2017	1508.9	600	40
Chhaparia Industries	Sep 22, 2017	49.08	20.06	41
Jekpl Private Ltd.	Dec 15, 2017	599	162	27
Hotel Gaudavan	Dec 13, 2017	76.7	44.2	58
Prowess Interanational	Oct 17, 2017	3.4	3.4	100
West Bengal Essential	Nov 20, 2017	359.2	185.8	52
Shirdi Industries	Dec 12, 2017	67309	175	26
Nandan Hotels	Dec 14, 2017	NA	1.4	NA
<b>Total</b>		<b>5530</b>	<b>1854</b>	<b>33.53</b>

**Note : Data is subject to revision**







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# **“Dirty Dozen” defaulters of the Banking system**

# Twelve Big Defaulter's Claim Amount



**Note : Data is subject to revision**

	Name of Corporate Debtor	Resolution Applicant	Bid Amt/Total Debt(CR)
	Monnet Ispat and Energy	JSW Steel & AION Capital	3,750/11,000
	Alok Industries	Filed for Liquidation	4,500/29,000
	Bhushan Power and Steel	Tata Steel, JSW Steel, Liberty House	24,500/49,000
	Lanco Infratech	Thriveni Earthmovers	N/A/51,000
 JYOTI STRUCTURES LIMITED	Jyoti structure	Sharad Sanghi (HNI)	3,000 /7,000
	Era infra Engineering	Judgment reserved	N/A/10,000

	Name of Corporate Debtor	Resolution Applicant	Bid Amt/Total Debt
	Electrosteel Steels	Sold to Vedanta	5,320/ 13,000
	ABG Shipyard	Liberty house	5,200/18,000
	Amtek Auto	Liberty house	4,500 /13,000
	Essar Steel	Arcelor Mittal	30,000/49,000
	Jaypee Infratech	Suraksha ARC & Adani Group	7,000/10,000
	Bhushan Steel	Tata Steel	36,000/49,000



# Ongoing Issues



## Essar steel limited

- Arcelor Mittal India P Ltd and Numetal are contesting their disqualification u/s 29A done by RP with respect to issue of disqualification on account of Arcelow being promoter of Uttam Galva Steel (since it has defaulted in repayments).
- Numetal, owned by Russia's VTB Bank, was deemed ineligible by RP since Ruia family (promoters of Essar Steel, ), still owns a minority stake in the company.

## Binani Cement

- Bids were called for and CoC chose Dalmia Bharat Ltd-consortium as the winner. RP had also filed Dalmia Bharat resolution plan with the tribunal.
- However, UltraTech Cement Ltd had also bid for Binani Cement and alleged that process for choosing top bidder was not transparent.
- UltraTech complained to NCLT, offered to increase its bid to about Rs6,900 crore from about Rs6,200 crore earlier. But when that was not accepted, the firm struck a deal with Binani Industries Ltd, the parent of Binani Cement, to buy its 98.43% stake in the cement unit, provided the insolvency case was terminated.
- The 270-day time frame for approving a bankruptcy resolution plan for Binani Cement expired on April 21. However, the NCLT extended the time frame after deducting the period of litigation.
- NCLT reserved order on 24<sup>th</sup> April 2018 which will decide the winner of Binani Cement



## **Bhushan Steel**

- **RP of Bhushan Steel rejected bid of Liberty House on account of late submission and without opening**
- **Liberty House approached NCLT with reasons for submitting its bid late including issue of last date of submission and NCLT (Principal Bench) directed CoC to consider the bid of liberty house**
- **Liberty House has now offered Rs. 26,000 cr, Tata Steel had earlier offered Rs 17,000 crore to the lenders as upfront amount and Rs 7,200 crore for operations of Bhushan Power. JSW Steel made an offer of Rs 11,000 crore to the lenders and Rs 2,000 crore for the company**
- **CoC will likely meet in the coming week for considering bids.**

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# Precedents Decoding Code

## Whether moratorium applies on property of personal guarantor?

Financial creditor invoked personal guarantee of a promoter for default of repayment by the corporate debtor which was already under corporate insolvency resolution process. NCLAT held that in terms of Section 60 of the Code, any action against the property of personal guarantor cannot be initiated including recovery under SARFAESI during moratorium.

*Veeson's Energy Systems Vs State Bank of India*

## **whether requirement of certificate from financial institution is mandatory?**

**Held: Supreme Court examined the provisions related to the requirements to be met while filing of application u/s 9 of the Code. Court observed that the certificate as provided u/s 9(3)(c) is the confirmation of non-receipt of debt which can also be evidenced from other sources annexed to the application and it is of no consequence when opposite side appears and confirms non payment. Hence the requirement of certificate u/s 9(3)(c) of the Code has been held as directory**

**Shilpi Cable Technologies Limited Vs Macquarie Bank Limited**

**whether a dispute can exist only if there are pending legal proceedings?**

**Hon'ble Supere court held that adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.**

**Mobilox innvoations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd.**

## **whether a financial creditor can set off the amounts recoverable from amount payable to the Corporate Debtor?**

**Financial Creditor was using the premises of corporate debtor and adjusting rent from the payments due to the corporate debtor towards bank in relation to availing loan. NCLT held such transactions as illegal in light of moratorium u/s 14 and directed financial creditor to pay the amount back to the company for the period under moratorium.**

**Nicco Corporation Vs Canara Bank Ltd.**

## what are the grounds on which Adjudicating Authority can reject the application?

NCLT while dealing with an application u/s 10 of the Code, observed that applicant suppressed facts related to actions taken by the lenders for recovery and rejected the application finding it an attempt by the management to derail recovery of the lenders. However, NCLAT reversed this order of NCLT

*Unigreen Global Limited*

## **Whether time limit of 14 days for admitting or rejecting the application by Adjudicating Authority mandatory or directory?**

**Having noted the issues and compliances to be met while dealing with admission or rejection of the application, it was held that the 14 days time period is directory.**

**Surendra Trading co. Vs J.K. Jute mills**



## Whether Professional Services fall under the gamut of operational debt as defined u/s 5 (21) of IBC ?

**Applicant provided auditing services to the corporate debtor. NCLT noted that Professional services falls under the definition of services and qualifies being an “operational debt”.**

**Sanjay Ruia Vs Magna Opus Hospitality Pvt. Ltd.**

**Whether a Flat buyer who has been promised assured returns can initiate the proceeding for CIRP ?**

**NCLAT observed that the agreement entered into by the seller and buyer contained the clauses of assured return. while examining the agreement, court observed that the agreement and assured returns clause therein satisfied the requirements of applicant being a financial creditor**

**Nikhil Mehta VS AMR Infrastructure Ltd.**

## **Whether Limitation Act, 1963 would apply on the cases filed under IBC ?**

**NCLAT held that Limitation period under the Insolvency Code, started from the date of such law coming into force . Hence limitation under the Code starts from the enactment of the Code.**

**Black Pearl Hotels Pvt. Ltd. Vs Planet M Retail Limited**

## Whether Single application can be field against group companies ?

If debt is owed by Companies belonging to the same group , the application has to filed against each company. IBC does not allow collective enforcement of liabilities owed by a group of Companies against a single Company.

*Ishwar Kandelwal v. Amrapali Infrastucture Private Limited*

## Whether Pendency of winding up petition act as bar for initiating CIRP ?

If a 'winding up' or 'liquidation' proceeding has been initiated against the Corporate Debtor, petition under Section 7 or Section 9 against the said Corporate Debtor is maintainable. It is open for FC/ OC to file application. However, if winding up order has passed and liquidator is appointed, the application is not maintainable.

*Forech India Pvt. Ltd. Vs Edelweiss Assets Reconstruction Company Ltd. & Anr*

**Whether Invocation of Corporate Guarantee after initiating CIRP can be considered as an occurrence of default ?**

**NCLT held that If the Corporate Guarantee is not invoked before the commencement of CIRP date . Resolution professional can reject the claim to be admitted in the list of creditors.**

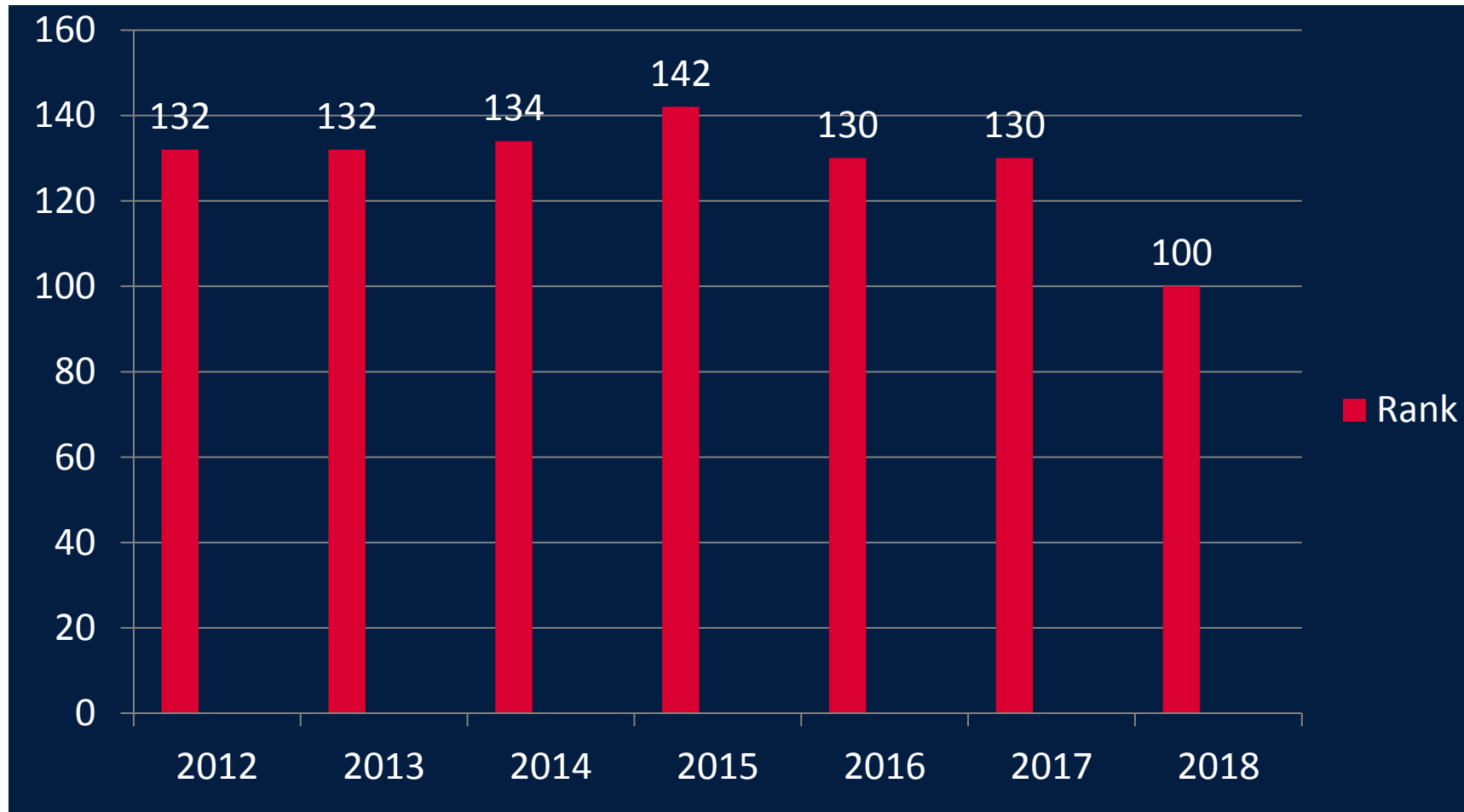
**Axis Bank & DBS V. Edu Smart Services Pvt. Ltd**

## Can a person file insolvency proceedings against Corporate Guarantor?

**NCLT admitted the matter filed against Ferro Alloys Corporation Limited (guarantor) initiated by the financial creditor of the borrower.**

**REC Ltd. Vs Ferro Alloys Ltd.**

# India's Ease of Doing Business Rankings



Source : World Bank Report





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