

DECIPHERING THE IBC ORDINANCE 2020 & PATH AHEAD FOR CREDITORS

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Insolvency and Bankruptcy Code,2016

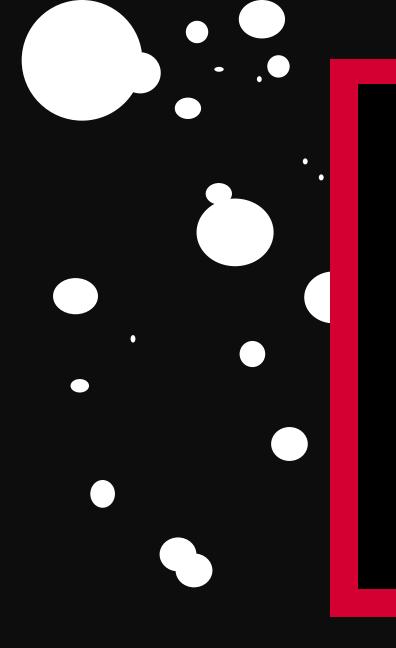
The Insolvency and Bankruptcy Code, 2016 provides for a time-bound process to resolve insolvency. Its Objectives:

(1) Maximization of assets' value (2) Promote Resolution

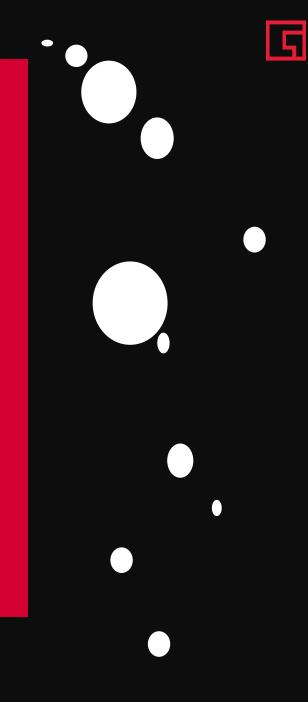
When a default in repayment occurs, creditors gain control over debtor's assets and take decisions to resolve insolvency/liquidation.

It has replaced the long, complex legal process by a speedy, expeditious and effective mechanism for recovery of dues from the companies.





COVID-19 RELATED AMENDMENTS IN





Default Limit

★ Vide notification dated
24th March 2020, Central
Government enhanced the
default from Rs. 1 lac to Rs.
1 cr.





No fresh proceedings

- ★ No new application can be filed for any default committed by corporate debtor arising on or after 25.03.2020 for a period of 6 months but exceeding 1 yr. (SECTION 10A)
- ★ No application shall ever be filed against the corporate debtor for the defaults occurring in said period

Fraudulent and Wrongful Trading

★ Restricts the resolution professional to file any application in respect of any default against which proceedings has been suspended as per section 10 A



IMAPACT



MINIMUM DEFAULT





Positive Environment

Saved the insolvency risk against the defaults to the small creditors

Life time Protection under IBC

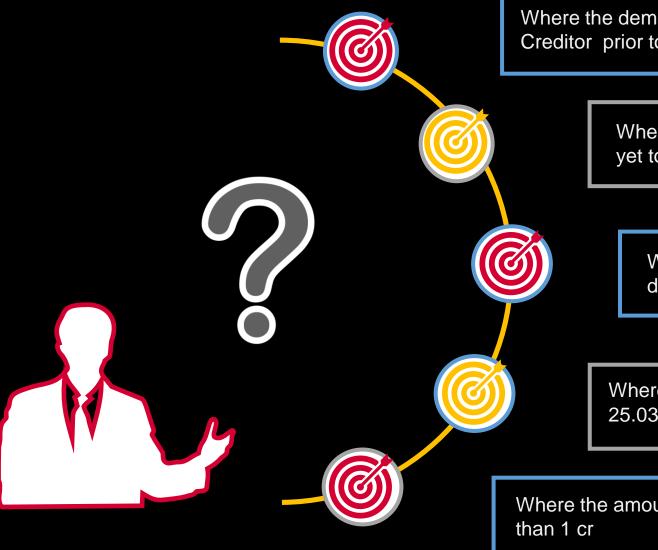
Removal of threat by the small creditors to drag a business to insolvency.

Protection to the directors/ promoters

Giving a lee-way to the defaulting promoters for trades done during the lockdown period.

Fate of cases before NCLT ??





Where the demand notice has been issued by the Operational Creditor prior to 25.03.2020

Where application under the Code has been filed and yet to be listed

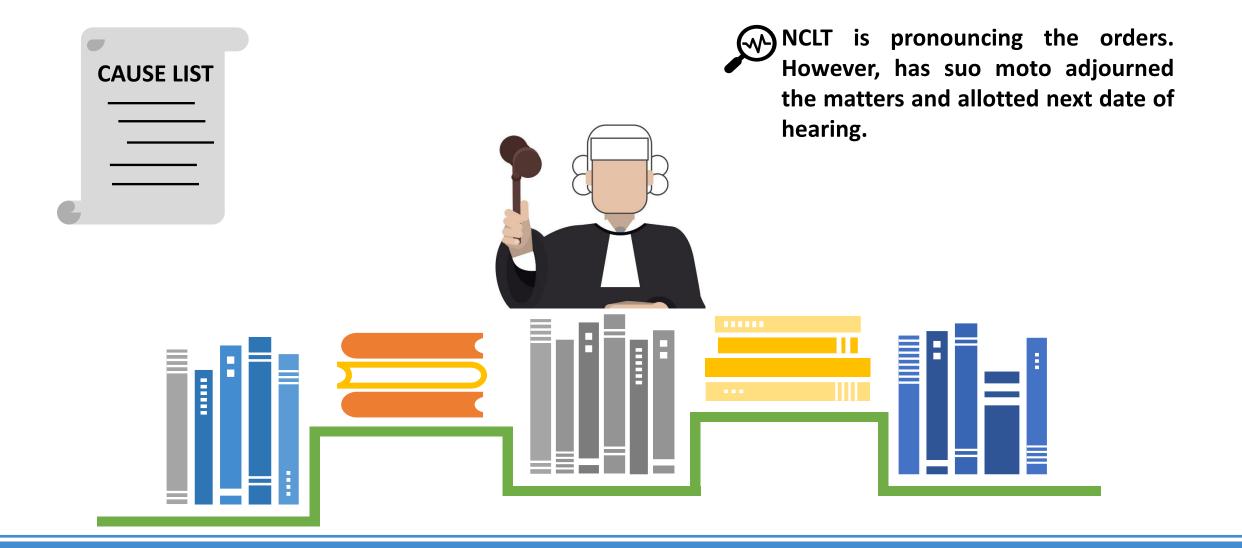
Where notice has been issued against the corporate debtor by the NCLT

Where the order has been pronounced after 25.03.2020

Where the amount involved in the aforesaid applications is less than 1 cr

Is NCLT Functional ?

5





Increase in threshold has prospective effect

The Kolkata Bench of the Hon'ble National Company Law Tribunal has, in its Order dated 20 May 2020 in *Foseco India Limited v Om Boseco Rail Products Limited* (*CP* (*IB*) *No* 1735/*KB*/2019), has held that the increase in threshold is prospective effect.





Change in payment schedule to the successful bidder on account of COVID-19

The Ahmadabad Bench of the Hon'ble National Company Law Tribunal has, in its Order dated 27 May 2020 in *Sunil Kumar Agarwal RP of DIGJAM Ltd*.*Vs*. *Suspended Board of Directors of DIGJAM Ltd (CP (IB) No 594/AHM/2018*), has allowed the successful resolution applicant to change the payment schedule after approval due to pandemic COVID 19.

Admission of CIRP challenged before HC

CIRP was admitted by The New Delhi Bench of the Hon'ble National Company Law Tribunal

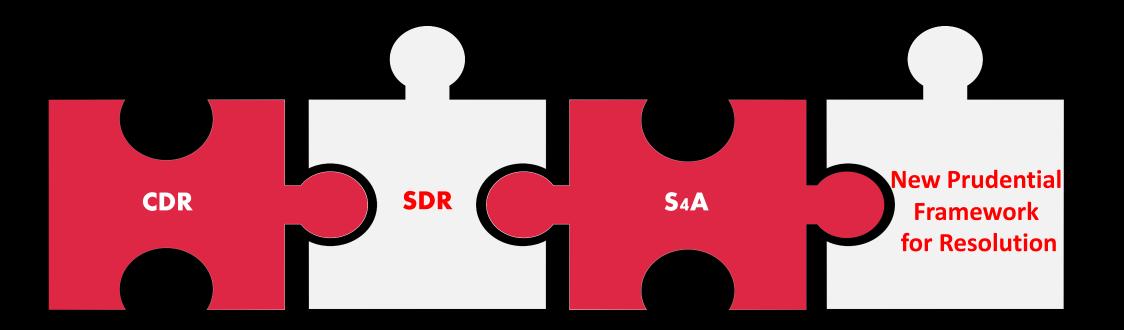
(**VMA Enterprises Pvt. Ltd**). It was challenged on the ground that Corporate Debtor is MSME and NCLT has flailed to consider notification dated 24.03.2020 wherein default limit has been increased.

HC stayed (interim) the CIRP till next date of hearing. Prima facie,

of the view that NCLT has erred in passing the order.



Alternate Restructuring for Stressed Companies





RBI's Prudential Framework for Resolution of Stressed Assets

Early Identification and Reporting of Stress

- Lenders are obligated to recognize the incipient stress in the loan account immediately upon default and must categorize these accounts as Special Mention Accounts (SMA).
- In all cases with exposure above Rs, 50 Mn or more

Resolution Plans and their Implementation

- Lenders are mandated to take a review of the defaulting account within 30 days.
- The lenders choose to implement a Resolution then sign a ICA
- Approve and Implement the Resolution Plan within 180-days
- Lenders may also choose initiate legal proceedings (under IBC or SARFAESI)

RBI's power to direct for insolvency under IBC

- Section 35AA of the BR Act. W
- CG has authorized RBI or such authorization is with regard to specific defaults

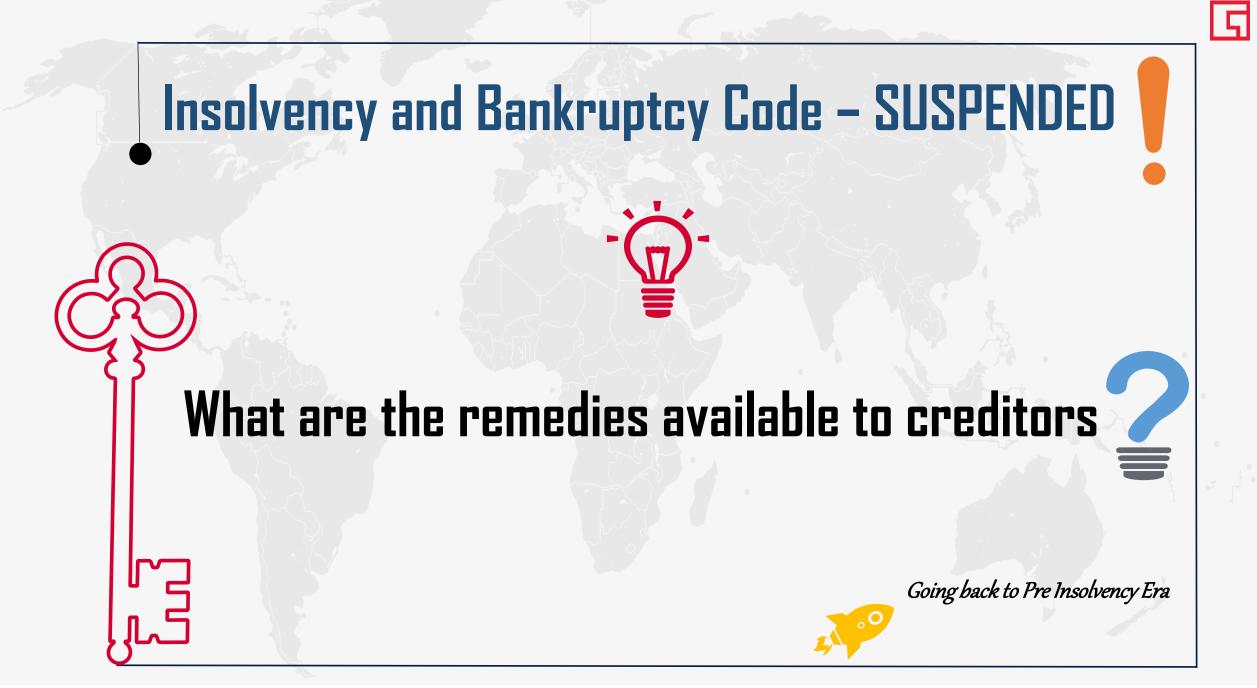






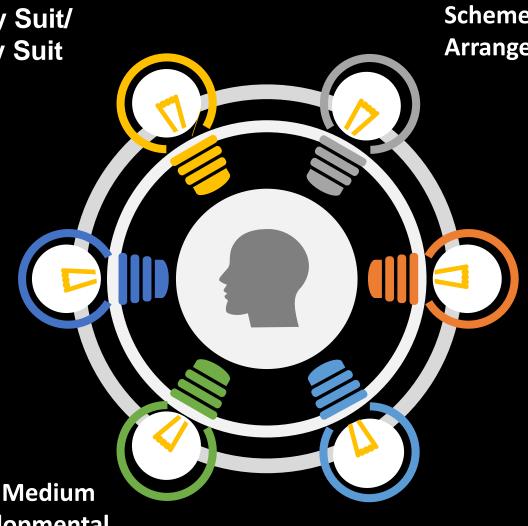
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The Negotiable **Instruments Act, 1881**



Scheme of Arrangement

> Securitization and **Reconstruction of Financial Assets and Enforcement of** Securities Interest Act, 2002

5

Micro, Small and Medium **Enterprises Developmental** Act, 2006

Real Estate (Regulation and Development) ACT, 2016

Scheme of Arrangement



The Scheme of Arrangement is a procedure under Section 230-234 of the Companies Act, 2013 for obtaining NCLT approval for compromise or arrangement between a company and its creditors or class of creditors. The company involved can negotiate with its creditors to reduce debt liabilities.

Essentially, a scheme can be used to bind majority of creditors or class of creditors, as the NCLT can sanction a scheme once it has been approved by a majority in number representing 75% in value of the class of creditors in question.

Compliant u/s 138 of Negotiable Instruments Act, 1881



The Negotiable Instruments Act, 1881 deals with negotiable instruments, such as promissory notes, bills of exchange, cheques etc.

The penal provisions contained in Sections 138 to 142 of the Act have been enacted to ensure that obligations undertaken by issuing cheques as a mode of deferred payment are honoured.

Section 138 of the Act provides for circumstances under which a case for dishonour of cheques is filed. A compliant has to be filed within 30 days from the date of intimation of dishonor of cheque from the bank.

Summary Suit & Recovery Suit



Summary Suit

Creditors can file summary suit under order 37 under Code of Civil Procedure. Summary procedure is applicable to recover a debt or liquidated demand in money arising on a written contract, an enactment or on a guarantee.

Recovery Suit

The suit can be instituted under Order IV of the Code of Civil Procedure 1908 (CPC). The Plaint is to be accompanied by the supporting documents viz, written contract, particulars of claim and correspondences if any.

Micro, Small and Medium Enterprises Developmental Act, 2006 (MSME)

Under the Act the preliminary liability of the Buyer is to make all payments before the agreed time or if in absence of such agreement, the MSME is entitled to receive payments within 45 days from the date of acceptance of goods or services.

On failure of such payment, a reference can be made to the Micro and Small Enterprise Facilitation Council- to be decided within 90 days.

Finance Ministry in its announcement has mentioned that they might come up with ordinance dealing with special framework for MSME sector under the Code which will deal with the insolvency of the MSME's

Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFEASI)

This act provides for the realization of any security interest in the favour of any secured creditor.

If the borrower defaults in repayment, a demand notice u/s 13 of the Act is to be sent by secured creditor to the borrower to discharge his liabilities within a period of 60 days.

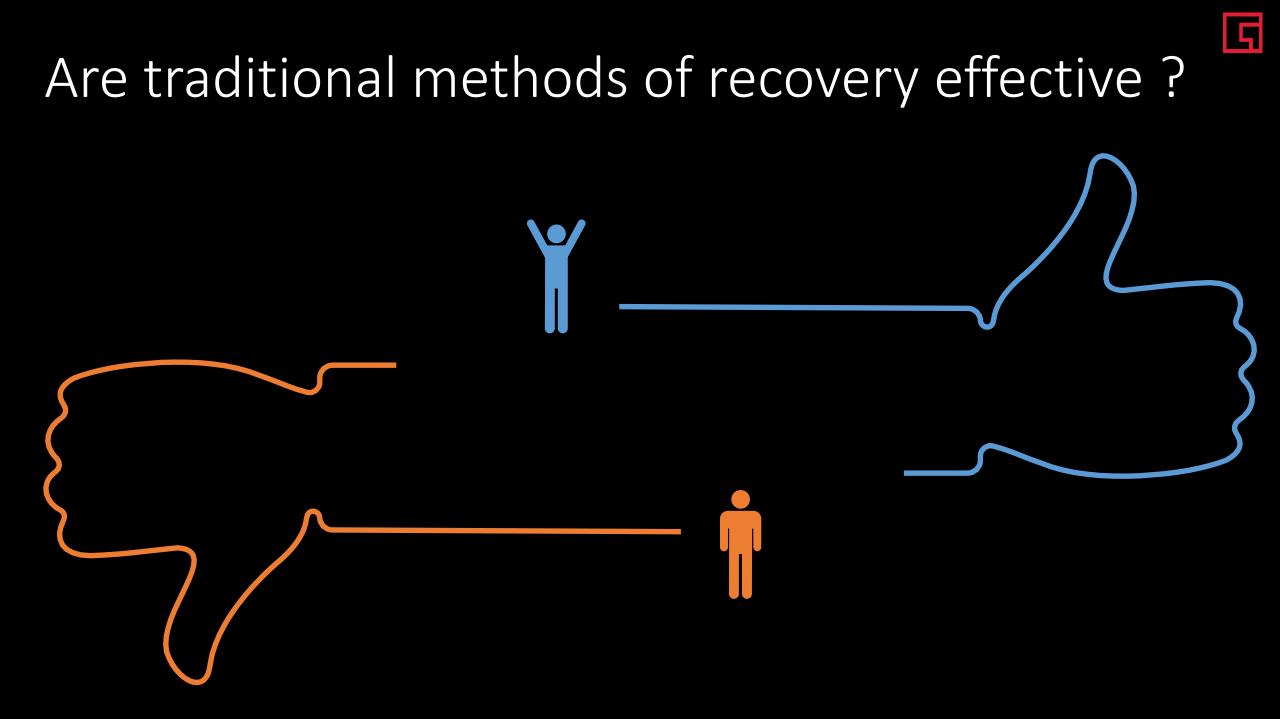
Real Estate (Regulation and Development) ACT, 2016 (RERA)



Act was established, inter alia, for the regulation of real estate sector and to protect interest of the allottess.

A compliant can be filed u/s 31 of the Act the developers, builder, and agents with the regulatory authority or the adjudicating officer for any volition under the Act..

Finance Minister has announced that COVID 19 will be treated as 'force majeure' for real estate sector and registration or the completion date for all the registered projects expiring on March 25, 2020, will be suo moto extended by six months.





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