

# **“IBC- Current Developments and Road Ahead from Ease of Doing Business to Economic Growth**



**Presented By:**  
**Mr. Pavan Kumar Vijay**  
**Past President- ICSI**  
**Founder- Corporate Professionals**

# Timeline



**2014**

**August 2014**

**Bankruptcy Law  
Recovery Committee  
was formed.**



**2015**

**Nov 2015 - Draft bill  
submitted by BLRC**

**Dec 2015 - IBC Bill was  
introduced in Lok  
Sabha**



**2016**

**05 May 2016 - Passed by  
Lok Sabha**

**11 May 2016- Passed by  
Rajya Sabha**



**2016**

**28 May 2016- Received  
President's accent**

**01 Dec 2016 - IBC came in  
to effect.**



# Major changes in IBC



1

Eligibility of resolution applicant for submitting resolution plans (barring defaulting promoters to bid for the company)– **Section 29A**

2

Voting threshold for decision making by the committee of creditors (from 75% to 66%)-  
**Section 21, 22, 27, 28**

3

Categorization of Home Buyers as Financial Creditors and thereby threshold limit for filing application i.e. 10% of total no. or 100 in no. under same real estate project - **Section 5(8)**

4

Applicability of Limitation Act on the Insolvency and Bankruptcy Code - **Section 238A**

5

Withdrawal of an application by COC having approval of 90% – **Section 12A**

# Major changes in IBC



6

Allowing comprehensive corporate restructuring through merger, amalgamation and demerger under a resolution plan & Liquidation- **Section 2(26) and Regulation 37 of CIRP**

7

Resolution plan shall be binding on the all stakeholders including the Central Government, any State Government- **Section 31**

8

Manner of distribution of amounts amongst financial and operational creditors under Resolution Plan- **Section 30**

9

Timeline for completion of CIRP increased to an overall limit of 330 days- **Section 12**

10

Corporate Debtor cannot not be prosecuted for any offence committed prior to commencement of the CIRP, if a resolution plan has been approved by the NCLT- **Section 32A**

# Evolution of law through Judicial Pronouncements





- ❑ Resolution plan is not approved by requisite percent of voting share of the financial creditors within the statutory period of 270 days, it is liable to be liquidated. – SC
- ❑ Only in exceptional cases over all limit of 330 days can be extended. - SC
- ❑ NCLT & NCLAT have no jurisdiction /authority to analyse or evaluate commercial decisions of COC- SC
- ❑ The role of RP under IBC is administrative and not adjudicatory - SC



- ❑ Fair and equitable treatment of operational creditors means that a resolution plan should protect their interests but it did not mean proportionate payment of debts. – SC
- ❑ RBI issued circular directing banks for initiating CIRP against companies. In all the cases where banks have initiated CIRP due to said circular, all such cases are declared non est in law. RBI circular declared ultra vires as whole- SC
- ❑ NCLT on receipt of a rejected resolution plan is not expected to do anything more but is obligated to initiate liquidation process against the corporate debtor- SC
- ❑ For effective participation of directors in the meetings of COC, directors are entitled to receive copy of relevant documents including the insolvency resolution plans- SC



- ❑ Once a resolution plan is approved by the CoC, it shall be binding on all stakeholders, including the guarantors. The resolution plan would therefore limit the guarantor's right of subrogation towards the creditor – **SC**
- ❑ Corporate Debtor cannot not be prosecuted for any offence committed prior to commencement of the CIRP, If A Resolution Plan Has Been approved by the NCLT- **HC**
- ❑ The NCLT has power and authority to pass an interim order to direct moratorium period over the corporate debtors if there is an apprehension of the selling off of the assets of the Corporate Debtor by its directors– **NCLAT**
- ❑ Exit route u/s 12A of the Code (i.e. for withdrawing the application) is only provided to the applicants invoking section 7,9,10 of the Code and not applicable to the resolution applicant.- **NCLAT**





# Journey so far..

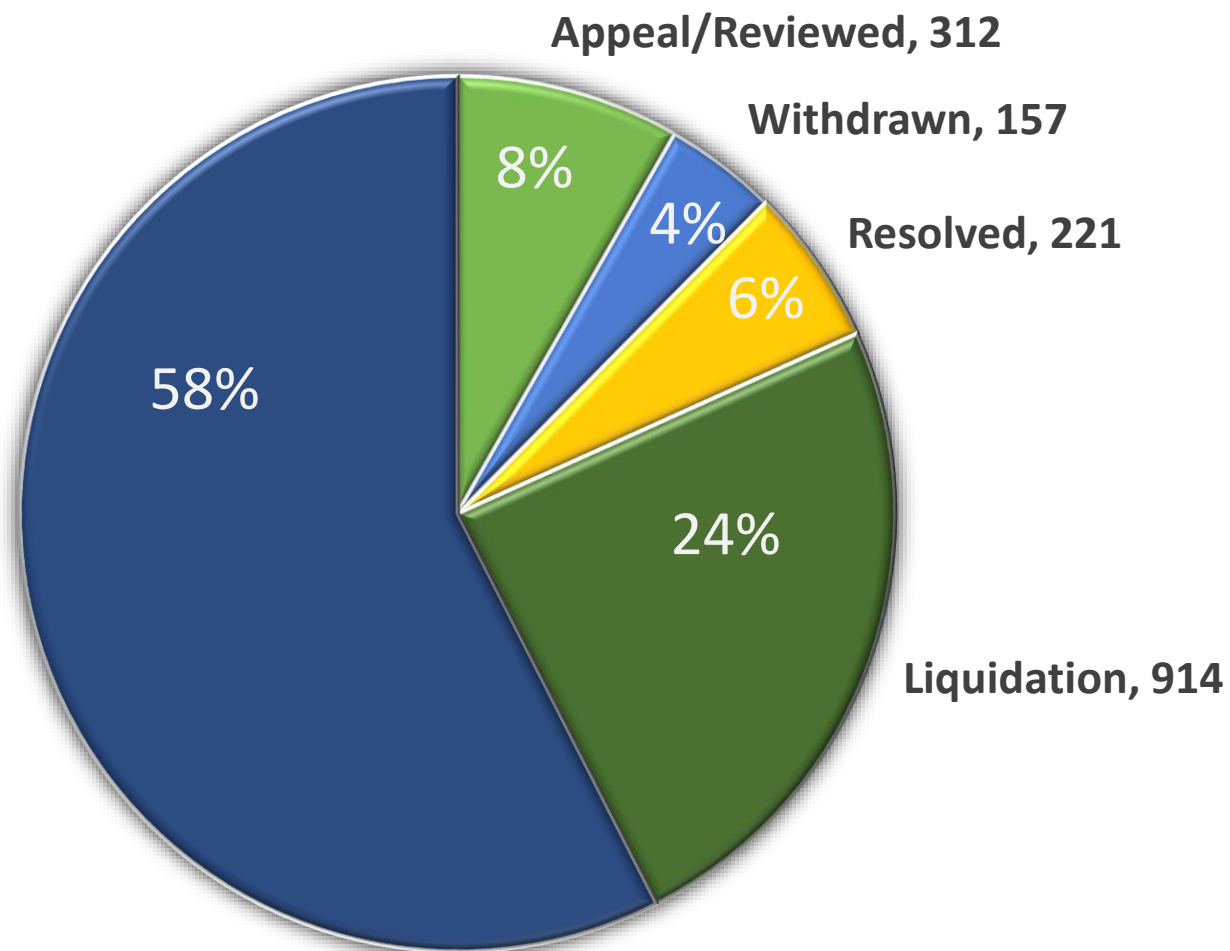


*As on March 2020*

**3774 Companies under CIRP**



CIRP on going ,  
2170



■ Appeal/Reviewed ■ Withdrawn ■ Resolved ■ Liquidation ■ CIRP on going



# Resolution

# Top 12 Defaulters










S.no.	Name of CD	Successful Resolution applicant	Amount Admitted (in cr)	Amount Realised (in Rs cr)	% of Claims Released
1	Electrosteel Steels Limited 	Vedanta Limited 	13175	5320	40.38
2	Bhushan Steel Limited 	Bamnipal Steel Limited 	56002	35571	63.50
3	Monnet Ispat & Energy Limited 	Consortium of JSW and AION Investments Pvt. Lt 	11015	2892	26.26
4	Essar Steel India Limited 	Arcelor Mittal India Pvt Limited 	49473	41018	82.91



# Resolution

# Top 12 Defaulters



S.no.	Name of CD	Successful Resolution applicant	Amount Admitted (in cr)	Amount Realised (in Rs cr)	% of Claims Released
5	Alok Industries Limited 	Reliance Industries Ltd., JM Financial Asset Reconstruction Company Ltd.  	29523	5052	17.11
6	Jyoti Structures Limited 	Group of HNI led by Mr Sharad Sanghi 	7365	3691	50.12
7	Jaypee Infratech Limited 	NBCC (India) Ltd 	23176	23223	100.20
8	Bhushan Power and steel Limited 	JSW Ltd. 	47158	19350	41.03

# Top 12 Defaulters



## Under CIRP



Amtek Auto Limited



Era Infra Engineering Limited

## Under Liquidation



Lanco Infratech



ABG Shipyard Limited

# Recovery under IBC v/s Other Forums



Lok Adalats

DRT's

SARFEASI

IBC

Recovery

%

FY 2018

4%

5%

32%

50%

Recovery

%

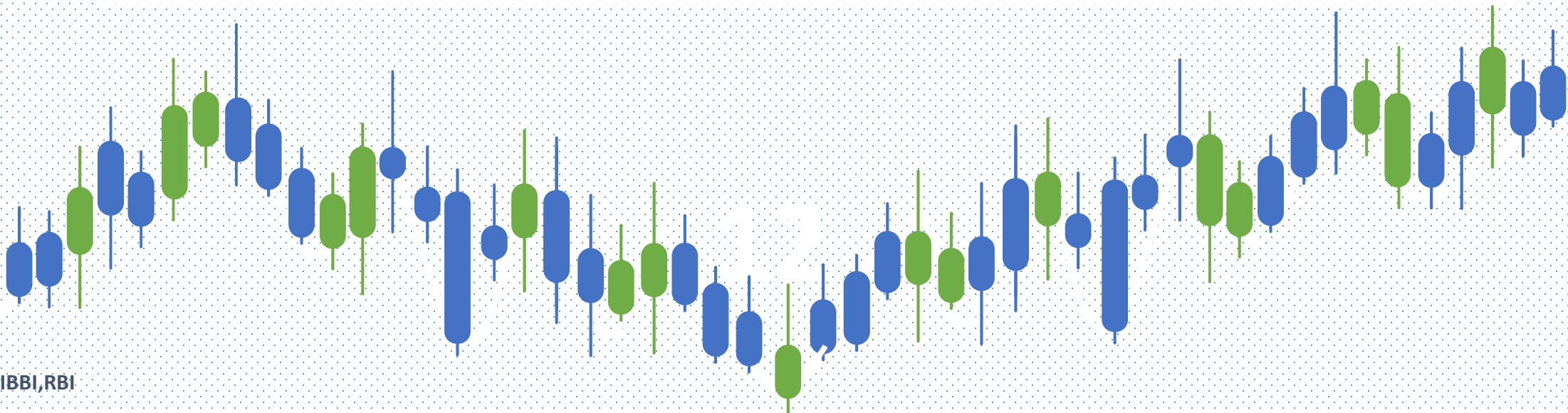
FY 2019

5%

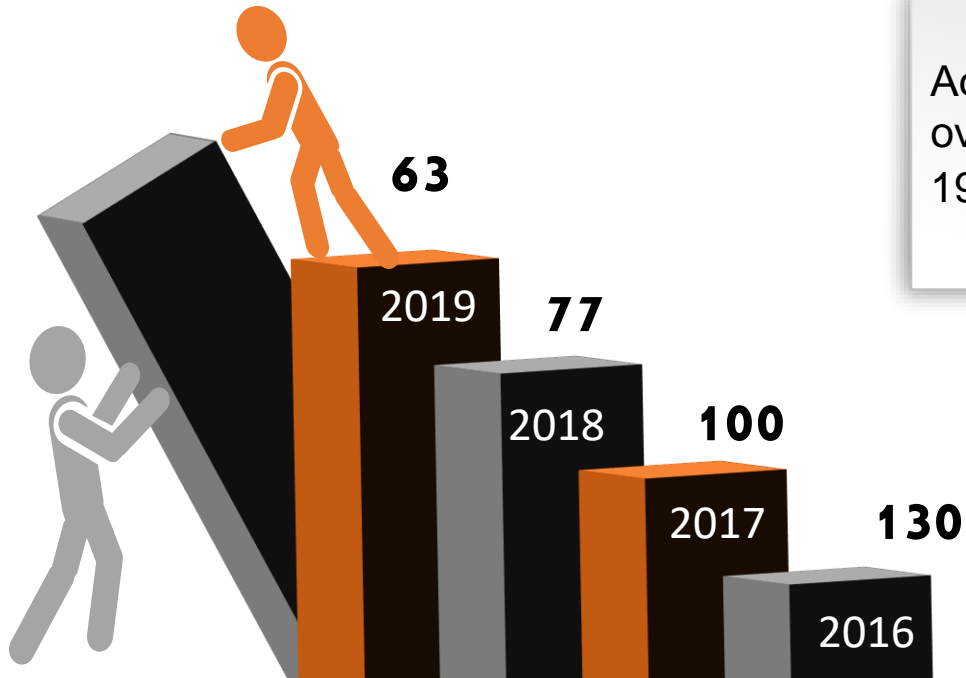
3%

14%

43%



# Ease of Doing Business in India



According to the Ease of Doing Business Report 2020, India's overall ranking has improved by 67 places to 63rd position among 190 countries since the inception of the Code.

With this India earned a place among the world's top ten improvers in ease of doing business, for the third consecutive year

The Code has improved the India's ease of doing business's ranking and also has resulted in better realization of dues by the creditors.

# Ease of Doing business in India and role of 'resolving insolvency' parameters



Particulars	2016	2017	2018	2019	2020
Rank in Resolving Insolvency	136	136	103	108	52
Time (yrs)	4.3	4.3	4.3	4.3	1.6
Recovery Rate (Cents in dollar)	25.7	26	26.4	26.5	71.6

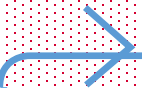


# COVID Related Amendments



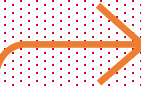
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Enhancement of  
minimum default  
limit from Rs. 1 lakh  
to Rs. 1cr



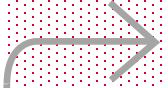
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Suspension of Fresh  
Insolvency  
Proceedings for Six  
months (from  
25.03.2020) which  
may be extended to  
1 year



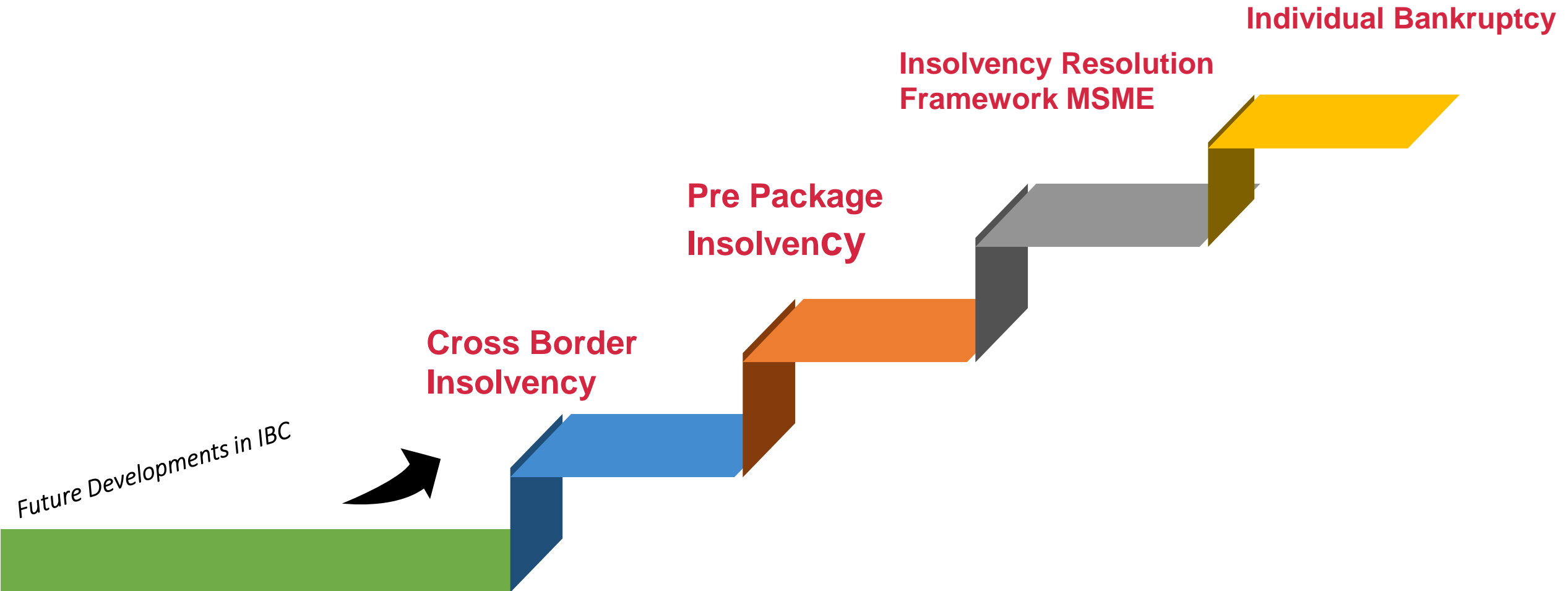
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No application shall  
ever be filed for the  
defaults occurred  
i.e. on or after  
25.03.2020 *(for Six  
months which may be  
extended to 1 yr)*





# ROAD AHEAD



# Cross Border Insolvency



Insolvency of borrowers who have assets or creditors in different jurisdictions, or are subject to insolvency proceedings in multiple jurisdictions.

Currently, only section 234 and 235 of the Code deal with cross border having limited scope. Separate Framework dealing with Cross Border Insolvency is yet to come.

- Cross-border provision will empower foreign creditors to claim assets on insolvent Indian companies and vice versa.
- Ease in Resolution
- M&A outlook in India to improve
- Boosts Investor's confidence

01

## Meaning

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02

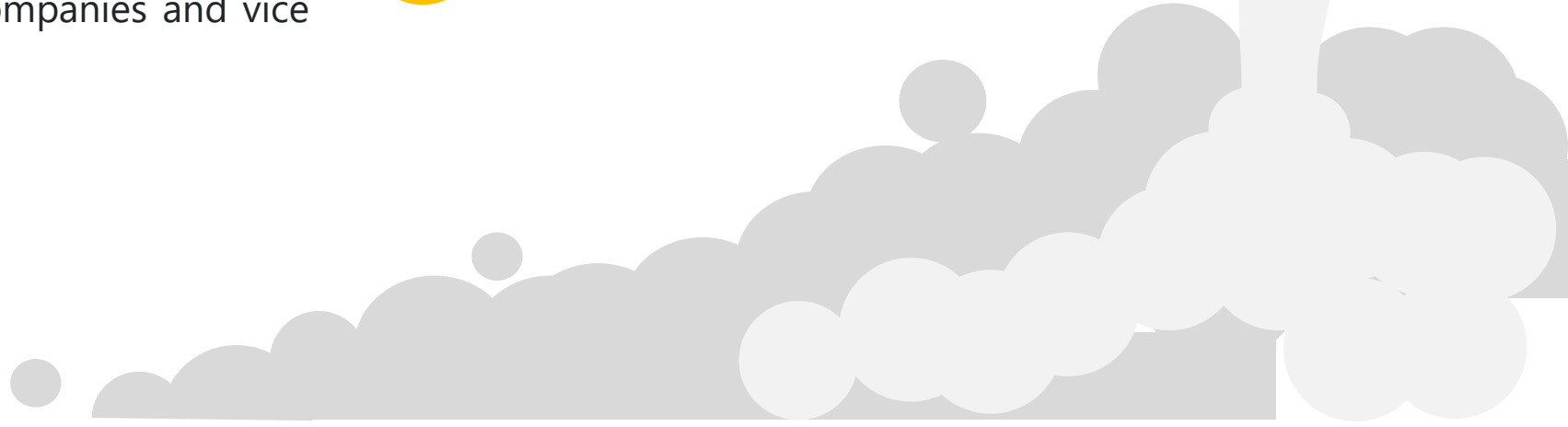
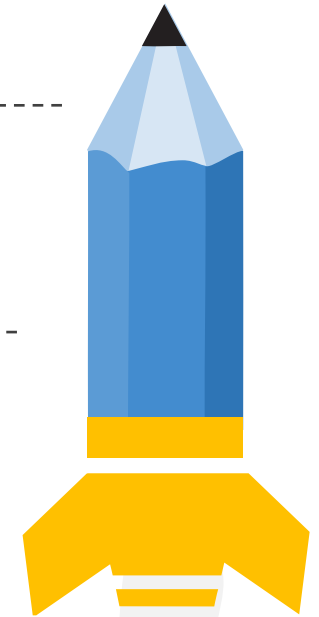
## Existing Provisions/ Development

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03

## Impact

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# Pre Package Insolvency



A pre package insolvency is a pre planned process in which financially distressed company and its creditors reach an agreement with a buyer for its sale prior to initiating CIRP.

Currently, there is no provision under the Code dealing with pre package insolvency. Separate Framework dealing with pre package insolvency is yet to come.

- It will promote early debt restructuring in a manner that best achieves the Code's objectives.
- Offer a chance to debtor company to revive the company while negotiating with creditors.
- Management to put genuine efforts for revival
- Continuity of business

01

## Meaning

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02

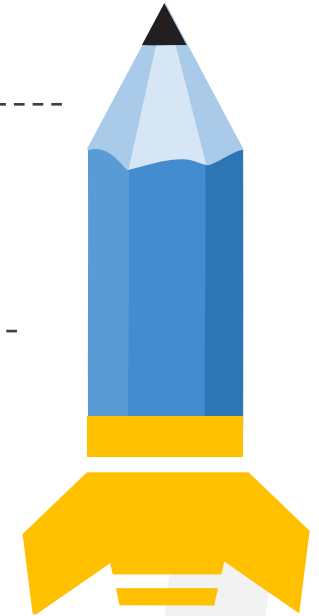
## Existing Provisions/ Development

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## Impact

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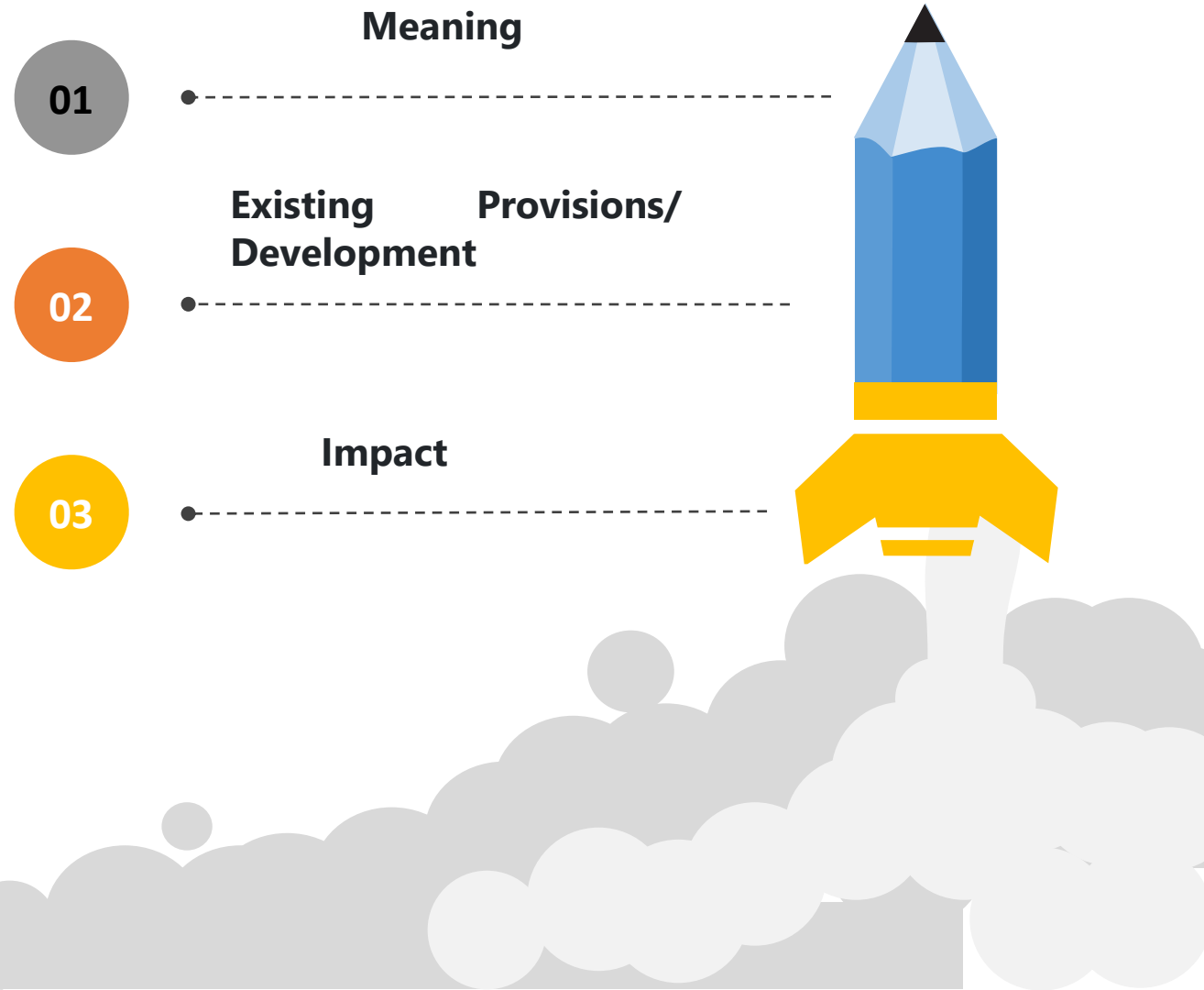
# Insolvency Resolution Framework MSME



Under this framework, MSMEs themselves will be able to apply to initiate bankruptcy proceedings through this mechanism.

Currently, Section 240A of the Code deals with MSME where exception is granted from section 29A (barring promoters to bid for company). Separate Framework dealing with resolution of MSME is expected to come soon.

- Follow **“debtor in control”** model while ordinarily the corporate insolvency resolution process follows a **“creditor in control”** system.
- No change in control
- Self restructuring plan



# Individual Resolution and Bankruptcy for Individual



A debtor or creditor can file for Insolvency Resolution and upon failure on resolution, Bankruptcy proceedings can be initiated.

Currently, Section 94- 148 of the Code deals deal with the Individual Resolution and Bankruptcy . Provisions in respect of personal guarantors are enforce however with respect to Individual and partnership are not yet enforced.

Poor frameworks for recovery have had an adverse impact on the credit market, notifying individual insolvency provisions will bring financial discipline in the people as well.

01

**Meaning**

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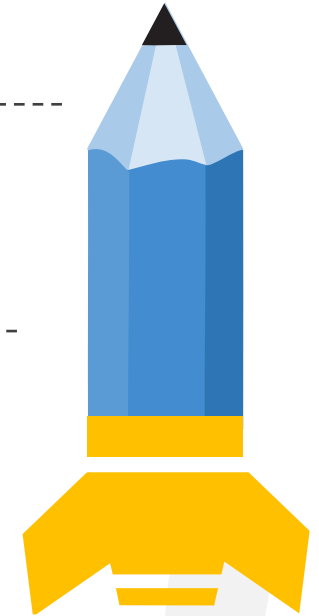
**Existing Provisions/  
Development**

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**Impact**

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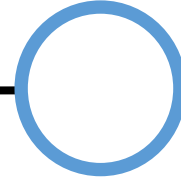


# Post Covid scenario



For any default prior to 25.03.2020

For any default on or after to 25.03.2020 for six months (which may be extended to 1yr)



**25 March 2020**

Action can be taken anytime (within limitation)

No action can be taken during entire lifetime

IMPACT



- Financial discipline improve
- Chances of Settlement might increase
- Increase in reserve cash

- Cost cutting , check on overheads
- Changes in Business Model
- Business to reach Optimum level



Thank You

