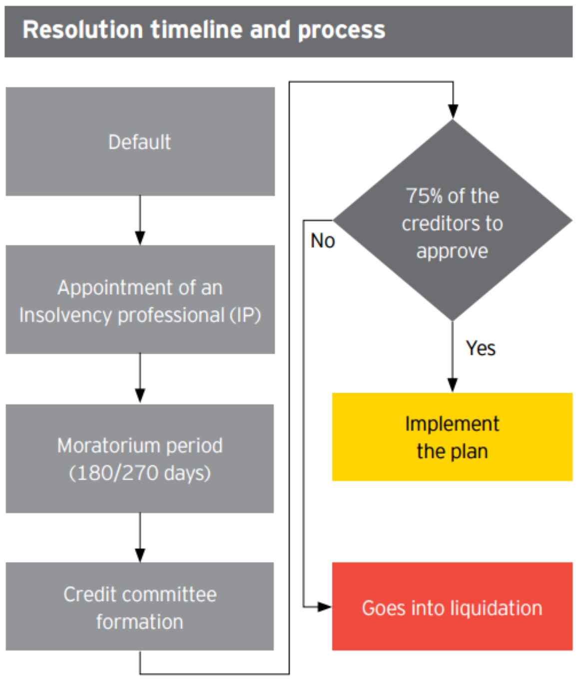
The Insolvency and Bankruptcy Code

1) Introduction

- Being bankrupt is a state of inability to repay debts to creditors.
- Under the proposed law, a bankrupt entity is a debtor who has been adjudged as bankrupt by an adjudicating authority that has passed a bankruptcy order.
- The Code seeks to achieve certainty for recovery and enforcement proceedings and to this extent it will specifically be a useful tool for creditors and investors.

2) Highlights of the Code

- The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 (extended to 270) days.
- The resolution processes will be conducted by licensed insolvency professionals (IPs). These IPs will be members of insolvency professional agencies (IPAs).
- Information utilities (IUs) will be established to collect, collate and disseminate financial information to facilitate insolvency resolution.
- The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.
- The Insolvency and Bankruptcy Board of India will be set up to regulate functioning of IPs, IPAs and IUs.
- Given that many corporate transactions and businesses involve an international element, the Code attempts to address this by including provisions for cross border insolvency.



3) **Objective**

- An act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner
- for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues
- The vision of the new law is to encourage entrepreneurship and innovation.

4) **Need for bankruptcy law**

- India's banking industry is in the throes of a crisis. Bad debts are piling up at banks.
- According to central bank data, stressed assets rose to 14.5% of banking sector loans at the end of December 2015. That's almost Rs 10 trillion of loans that are stuck.
- Freeing up this money is crucial for the banking sector to go about its business.
- multiplicity of laws has been a problem in the way of banks failing to recover their loans
- Many concerns have been existing and / or raised amongst international investors on the regulatory and country risks while providing financing to and/or investing in India.

5) **Four pillars of institutional infrastructure.**

- **Insolvency Professionals**
  a) They would play a key role in the efficient working of the bankruptcy process.
  b) They would be regulated by "Insolvency Professional Agencies‟.
- **Information Utilities**
  a) These would store facts about lenders and terms of lending in electronic databases
  b) This would eliminate delays and disputes about facts when default does take place
- **Adjudication**
  a) The NCLT will be the forum where firm insolvency will be heard and DRTs will be the forum where
  individual insolvencies will be heard.
- **Regulator**
  a) Regulator viz., "The Insolvency and Bankruptcy Board of India‟.
  b) This body will have regulatory over-sight over the Insolvency Professional, Insolvency Professional agencies and information utilities.

6) **impact of the Bankruptcy Act**

- With the addition of the Bankruptcy and Insolvency Code, the Indian lending system has gotten teeth in dealing with stressed borrowers and a difficult macroeconomic situation.
- As the Indian banking system stares at a Rs6.3 trillion bad loan pile, a legal stress resolution mechanism is the need of the hour.
- insolvency resolution is important for investments, whether Indian or foreign capital,
- Impact of the bankruptcy code will be widely positive, leading to a better management of stressed companies in India.
- There will be better financial discipline among companies, which will work to ensure that all their creditors are paid on time.
- code bestows significant powers on the legal system to deal with stressed companies,
- the powers have once again come into the hands of lenders as they are far above equity holders in the payout structure that the code mandates in a liquidation situation
- **Banks**
  a) The code provides a mechanism to handle increasing stressed assets
  b) Creation of Information utilities detailing about the lenders, defaulters would provide proactive information to the banks
  c) Timely recovery of loans and Relief in NPAs issue
  d) Appointment of Insolvency Resolution professionals (IRP) who are specialized in handling sick companies would be in place
  e) Challenge lies in maintaining the better relations between IRP and creditors
- **Government**
  a) Promote Ease of doing business and thereby more investment to the country
  b) Resolution of issues such as NPAs and wilful defaulters
  c) Free up bank's productive resources and increase the credit availability in the economy which could be used for welfare purposes
- **Business**
  a) A quick route to exit and no unnecessary litigation
  b) Inclusion of their names in the information repository would hamper their future prospects of acquiring loans
  c) Solving bankruptcy and insolvency cases in a quick manner will create a positive effect in the eyes of foreign investors.
- **Employees**

a) The Act would ensure payment of their due salaries and Protection of their provident fund

b) High number of exits would render many of them unemployed

- **Impact on real estate**

a) According to a report in 2015, the (NPAs) in real estate sectors were worth Rs 6,000 crore.

b) There are several developers who have for various reasons delayed repayments of loan

c) There is a possibility that an insolvency and bankruptcy petition will be filed against them by the creditors

d) The asset/property will be passed into the hands of an insolvency expert. For the creditors, it will be a boon.

e) If the insolvency expert is not competent enough to deliver the project as per the standard, the buyer may be affected.

f) This is also expected to facilitate efficient flow of capital in the real estate industry.

g) Creditors will be able recover a larger part of their investment faster which will eventually allow them to re-invest in other projects.

h) The act will help real estate companies access the corporate bond market which will allow them to see the opportunity from fresh credit lines.

7) <u>Conclusion</u>

- It would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes.
- The strict timelines for resolution of insolvency and liquidation proceedings would definitely be an incentive and provide the requisite impetus for economic growth
- when implemented in letter and spirit, provide a major boost to the India economy, especially on account of timely resolution and certainty in recovery