

RAJKOT BRANCH OF WIRC OF ICAI

Insolvency and Bankruptcy Code

- Emerging opportunity for CAs

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Background

- ▶ **Economy coming out of Covid impact**
- ▶ **India expected to grow at 7.20% in 2021**

India exports	7500 commodities to about 190 countries
overall exports (merchandise & services) during April-March 2020-21	USD 493.19 Billion
India imports	6000 commodities from 140 countries

Background

▶ **Our economy is set to take off on the back of –**

= significant improvement in EoDB

= infusion of investment and credit

= manufacturing environment

= launch of the PLI schemes across 13 sectors

Object of the Code

The Code has the following objectives:

- Consolidate and amend laws relating to reorganization and insolvency resolution;
- Time bound process for resolution and enforcement of debts against the Corporate Debtor;
- Maximize the value of assets;
- Promote entrepreneurship and availability of credit;
- Balance the interests of all stakeholders, including alteration in the order of priority of payment of Government dues; and
- Establish an Insolvency and Bankruptcy Board Of India (IBBI).

IBC framework- salient features

- innovative provisions including –

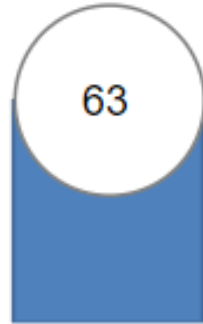
- ▶ **- the concept of ‘Creditor-in-Control’ as against the norm of ‘Debtor-in-Possession’.**
- ▶ **- It allows genuine business failures a second chance and instils confidence in lenders about their rights and their enforceability.**

IBC framework – legal supremacy

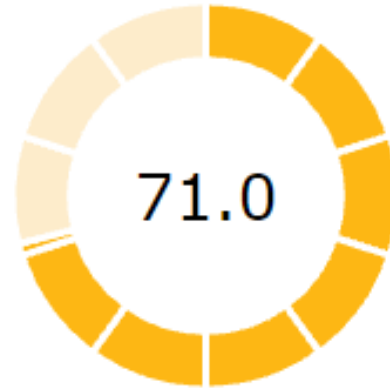
- **The Code repeals**
 - **the Presidency Towns Insolvency Act, 1909,**
 - **Provincial Insolvency Act, 1920**
- **amends 11 legislations.**
- **It has an overriding effect over all other laws and bars the civil courts from jurisdiction over issues relating to IBC.**
- **Financial Corporates are excluded from its purview**
- **presently only the Chapters relating to Corporate Insolvency resolution Process (CIRP) have been notified.**



DB Rank



DB Score



52

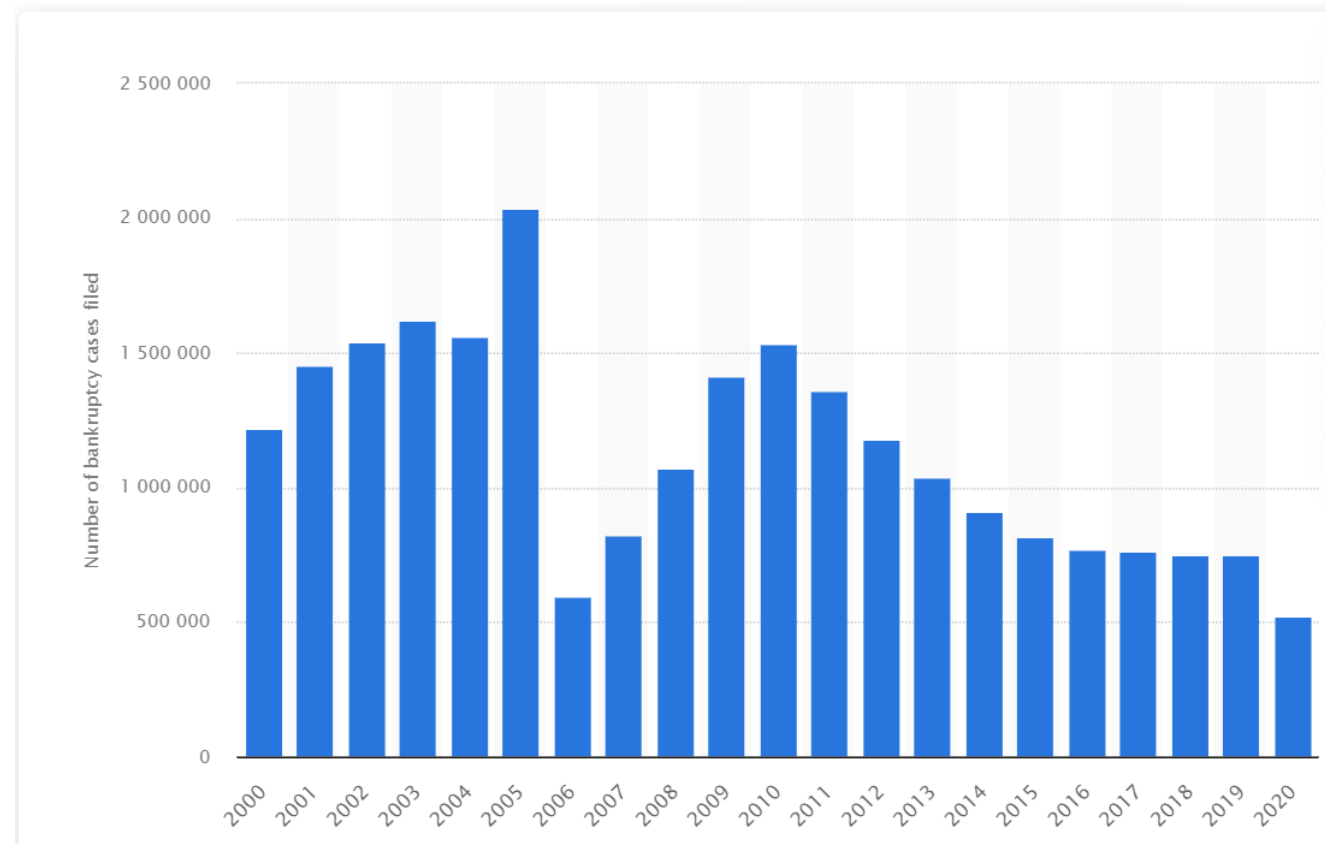


-  Starting a Business
-  Dealing with Construction Permits
-  Getting Electricity
-  Registering Property
-  Getting Credit
-  Protecting Minority Investors
-  Paying Taxes
-  Trading across Borders
-  Enforcing Contracts
-  Resolving Insolvency

Bankruptcy still a taboo ?

≈ In India, bankruptcy is often considered a taboo, whereas in western countries, declaring oneself bankrupt is almost like pressing a restart button in life.

≈ In 2020, 0.52 million Americans filed for bankruptcy.



How Many Times Has Donald Trump Filed Bankruptcy

≈ 6 Corporate Bankruptcies

≈ Trump has filed Chapter 11 bankruptcy for his companies six times.

≈ Chapter 11 bankruptcy allows companies to restructure or wipe away much of their debt to other companies, creditors, and shareholders while remaining in business but under the supervision of a bankruptcy court.

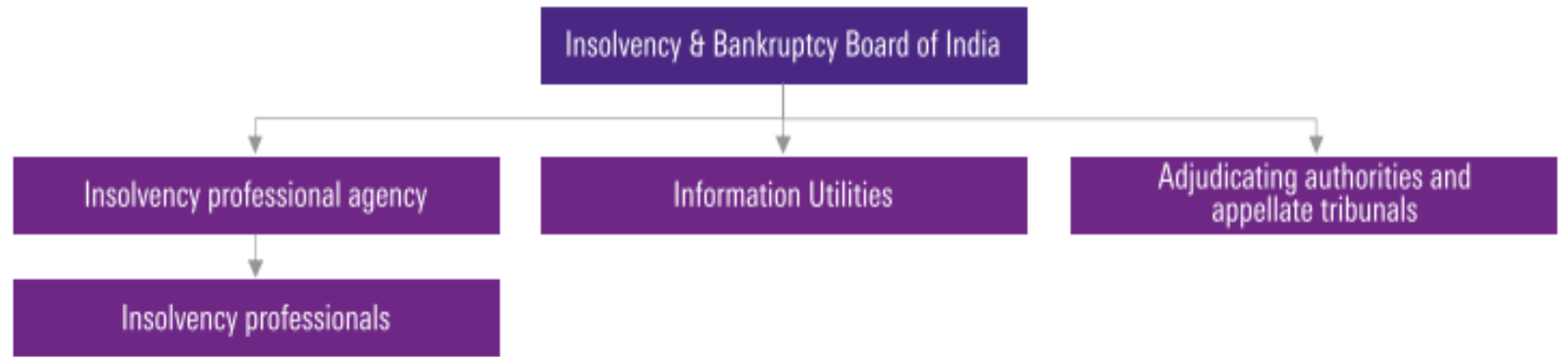
≈ Personal vs. Corporate Bankruptcy



IBC framework - ecosystem



Insolvency professionals are licensed professionals appointed by insolvency professional agencies who would take on the roles of resolution professional or liquidator/ bankruptcy trustee in an insolvency resolution process.



5 years of IBC

The Standing Committee on Finance in its report "*Implementation of Insolvency and Bankruptcy Code - Pitfalls and Solutions*" noted that IBC has had great success in changing credit culture of the country

- **As compared to multiple in-court and out of court resolution mechanics tried in last few years (before IBC), IBC has done exceptionally well. Timelines and recovery % are better than the erstwhile resolution mechanisms.**
- **Managed to resolve some of the largest and most complex corporate insolvencies**
- **Large number of cases were already stressed for long time, and were either BIFR or defunct cases. IBC has helped in cleaning up the backlog**
- **The ecosystem created in last 5 years is unparalleled by International standards**
- **Over 4,500 insolvencies initiated, large number of professionals trained, cultural and mind-set shift for lenders and detailed Supreme court judgements to settle some of the most complex issues**
- **Of the 4,541 admitted cases, 63% cases have exited the process with a resolution (36% recovery), settlement or liquidation**

IBC framework

IBC has emerged as a dominant channel for resolving stress

Recovery Channel	2018-19				2019-20			
	No. of cases referred	Amount involved (A)	Amount recovered (B)	(B)/(A)	No. of cases referred	Amount involved (A)	Amount recovered (B)	(B)/(A)
	No.	INR Cr.	INR Cr.	%	No.	INR Cr.	INR Cr.	%
Lok Adalats	40,87,555	53,484	2,750	5.1	59,86,790	67,801	4,211	6.2
DRTs	51,679	2,68,413	10,552	3.9	40,818	2,45,570	10,018	4.1
SARFAESI Act	2,35,437	2,58,642	38,905	15.0	1,05,523	1,96,582	52,563	26.7
IBC	1,152	1,45,457	66,440	45.7	1,953	2,32,478	1,05,773	45.5
Total	43,75,823	7,25,996	1,18,647	16.3	61,35,084	7,42,431	1,72,565	23.2

Source: IBBI.gov.in; EY analysis

India Distressed Assets Market – 2021

Opportunities For Global Investors

- ❑ **Key Sectors Under Stress:** infrastructure, power, textile, steel, telecom and real estate.
- ❑ **Substantial Supply Of Distressed Assets:** India's distressed asset market is comprised of assets worth \$115 billion.
- ❑ **Interim Financing:** IBC provide super ranking for interim financing which paved the way to revive many restructuring objectives, and allow the execution of a successful turnaround plan.

India Distressed Assets Market – 2021

Opportunities For Global Investors

- ❑ **Regulatory Transparency And Pro-Active Government Support:** effort to transform India's distressed assets market and achieve resolution for any distressed asset within a defined timeframe.
- ❑ **Investment Structures:** 3 (three) popular investment vehicles in India that global investors use to trade in the distressed asset market: (a) Alternative Investment Funds (AIFs), (b) Asset Reconstruction Companies (ARCs), and (c) Non-Banking Finance Companies (NBFCs).

India Distressed Assets Market – 2021

Opportunities For Global Investors

Some of the challenges that arise are attributes of the companies that in this position such as:

- ▶ Loss of market share
- ▶ Constrained resources
- ▶ Diminishing cash reserves
- ▶ Litigation leading to potential successor liability concerns
- ▶ Adversarial creditors
- ▶ Diminished workforce
- ▶ Dysfunctional Management

India Distressed Assets Market – 2021

Opportunities For Global Investors

While going through the process of Bankruptcy are issues that arise in the due diligence process, a few to address are:

- ▶ Valuation challenges
- ▶ Speed is critical
- ▶ Challenging Financial records
- ▶ Developing a go forward plan
- ▶ Assessing reputational damage with key vendors and customers
- ▶ Employee retention
- ▶ Potential creditor litigation

India Distressed Assets Market – 2021

Opportunities For Global Investors

Opportunities:

- ▶ Acquire key talent or business processes
- ▶ Geographic or Market expansion
- ▶ Strategic or synergistic product lines
- ▶ Expanded customer base
- ▶ Discounted value

IBC framework – Role of IP

The code clearly specifies functions and obligations of the Insolvency Professionals. Where any insolvency resolution, liquidation or bankruptcy process has been initiated, only an Insolvency Professionals shall be authorised to take such actions as may be necessary in the manner provided in the Code.

IBC framework – Role of IP

- ▶ **Role of the IP is can broadly be divided into –**
 - ▶ **A. Managing the Corporate**
 - ▶ **B. Managing the Process,**

IBC framework – Role of IP

Managing the Corporate Debtor

- vesting of entire management and operations of the company undergoing the CIRP with an IP
- managing multiple locations of registered/corporate & branch offices and operating units,
- control and custody of the assets of the corporate debtor
- manage the business of the corporate debtor as a going concern, interact and lead the management
- compliance and applicable legal requirements
- constitute a committee of creditors based on their credit exposure of the various creditors carry on the business administration of the debtor
- challenging role of addressing the various demands within the specified timelines.

IBC framework – Role of IP

Managing the Process

- receiving and processing claims - which may run into hundreds or even thousands, etc.
- reporting periodicity and quality
- adherence to Code of Conduct and an ethical framework
- required to collate financial facts regarding the debtor
- tackle legal issues, including proceedings in National Company Law Tribunal (NCLT),
- prepare periodic reports for NCLT & Committee of Creditors (CoC)
- identify prospective Resolution applicants
- provide data rooms, get due diligence organised
- facilitate a comprehensive resolution plan
- evaluate Resolution Proposals, meet with the Creditors in CoC apart from attempting to evolve a consensus on resolution proposals, etc.

IBC framework – Capabilities of IP

- **IP, accordingly, must necessarily be well-equipped with a multi-disciplinary capability.**
- **expertise in finance, law, management and business administration.**
- **multidisciplinary team of high-quality professionals**
- **result-oriented approach to execute the tasks within the shortest time-frame**

IBC framework – Opportunities for IPs

- **Host of professional and business opportunities for Insolvency Professionals with tremendous growth potential.**
- **Insolvency and Bankruptcy services are possibly the most demanding career option a professional can undertake.**
- **most challenging, involving and rewarding assignment**

IBC framework – Opportunities for IPs

- With the expected notification of the relevant sections of the Code and Regulations for Bankruptcy for Firms and Individuals, the likelihood of a sharp increase in the number of transactions referred thereunder is incontestable.
- personal debt at record levels - the correct advice about the options open to them to resolve their difficulties.
- can act as supervisors of individual voluntary arrangements or as trustees in bankruptcies
- Overall, it is seen globally that some 20 per cent of insolvent businesses are rescued in part or in full and one in every six insolvent individuals enters a voluntary arrangement as an alternative to bankruptcy.

Opportunities in Corporate Insolvency and Restructuring

restructuring of a company-

- corporate restructuring
- debt restructuring
- financial restructuring

Normally, Chartered Accountants would find a strong resonance with these requirements due to their deep understanding of the financial aspects of an enterprise's operations and their implications

Opportunities in Corporate Insolvency and Restructuring

- ▶ **Bankruptcy of Personal Guarantors for Corporate Debtors.**
- ▶ The **February 2018, circular of RBI**, closing the other avenues available for stressed asset restructuring, viz., S4A, CDR, SDR, etc., has also brought greater emphasis to bear on the IBC route for NPA resolution, with professional implications for IPs.
- ▶ As this profession gains acceptance and establishes its competence, newer avenues are also emerging as seen from the recent decision by **SEBI** to use the services of **IPs as Administrators** for recovery and refund in listed company cases

Opportunities in Corporate Insolvency and Restructuring

Opportunities for CAs within the ambit of IBC are:

- ▶ 1. Assisting IP in preparing for pre-CIRP preparation.
- ▶ 2. Reviewing the various risks involved in restructuring.
- ▶ 3. Developing risk mitigation strategies.
- ▶ 4. Working out a detailed bankable financial structure of the business.
- ▶ 5. Working out a detailed plan for restructuring the business from all angles.
- ▶ 6. Assessment of distressed assets, cash position, due diligence and turnaround feasibility.

Opportunities in Corporate Insolvency and Restructuring

Opportunities for CAs within the ambit of IBC are:

- ▶ 7. Advice on optimum utilisation of resources.
- ▶ 8. Corporate Applicant Insolvency.
- ▶ 9. Assessing Cross Border Insolvency transactions.
- ▶ 10. Representation before the Debt Recovery Tribunals – particularly after notification of individual/firm bankruptcies.
- ▶ 11. Representation before the NCLT or NCLAT, High Courts or Supreme Court.
- ▶ 12. Negotiating settlements.

Opportunities in Corporate Insolvency and Restructuring

Opportunities for CAs within the ambit of IBC are:

- ▶ 13. Advisory in relation to a merger or acquisition or takeover.
- ▶ 14. Advisory services to management on an ongoing basis.
- ▶ 15. Bankruptcy of Personal Guarantors, Firms and Individuals.
- ▶ 16. Handling the Liquidation Process.
- ▶ 17. Managing Interim Finance.
- ▶ 18. Spotting and evaluating distressed companies for restructuring and rescue planning

IBC framework – CAs as Insolvency Professionals

- It is interesting to note that Chartered Accountants (CAs) contribute to the bulk of the Insolvency Professionals (more than 60%).
- CAs are in key functions ranging from Finance to Advisory and Management to Audit.
- This wide-ranging engagement available to the CA Professionals provides the breadth and depth of experience necessary for successfully addressing multifarious issues relating to CIRP
- These professionals are duly enrolled by Insolvency Professional Agencies (IPAs) and registered for licencing with the regulatory body, i.e., the Insolvency and Bankruptcy Board of India (IBBI).

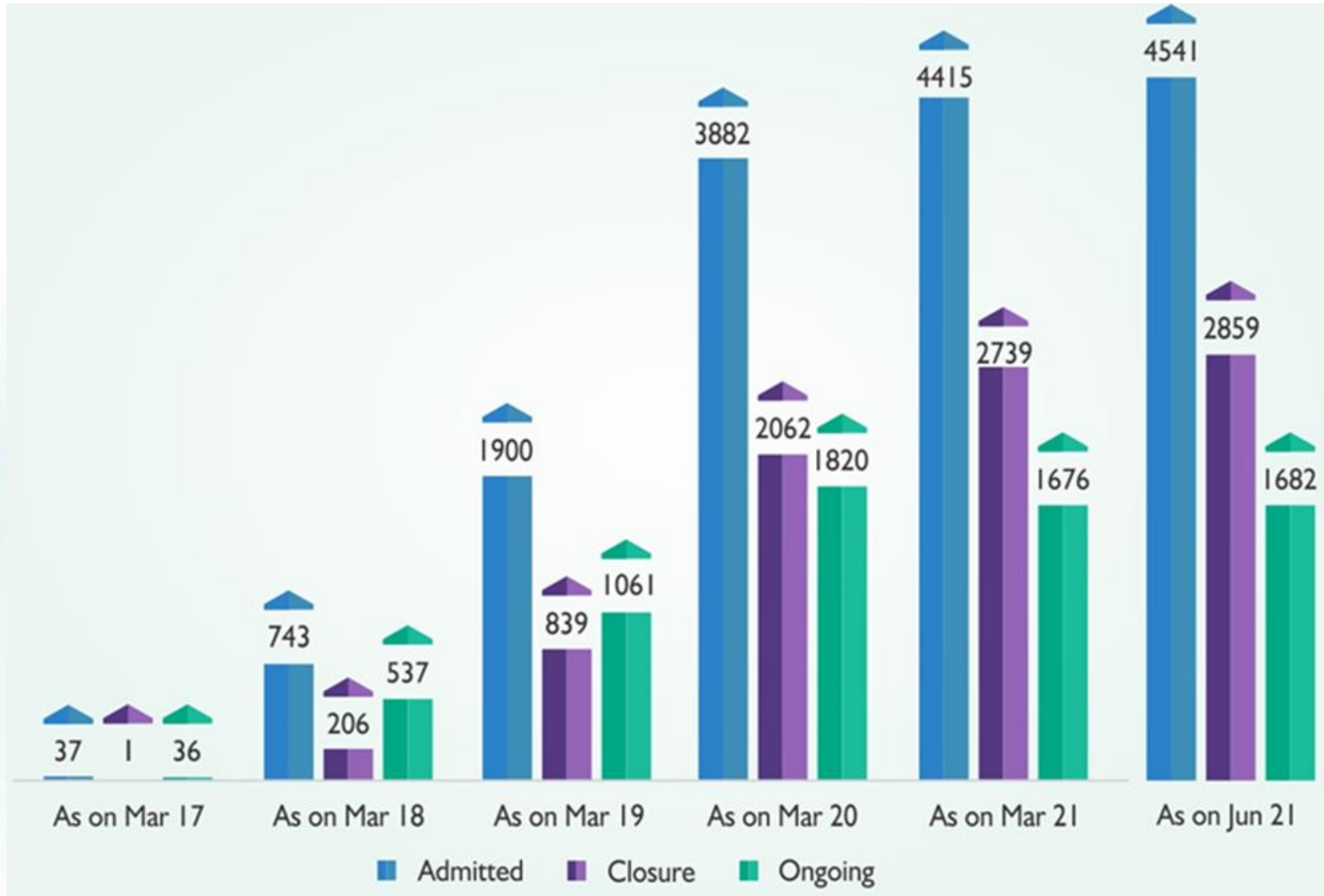
How to become IP

- **Qualification/ eligibility**
- - requiring professional standing for not less than 10 years for CA/CS/CWA & Advocates and 15 years for candidates from the Management Stream
- - completing a 50-hour Pre-Registration Course.
- - passing of an examination

IIPI

- ▶ Indian Institute of Insolvency Professionals of ICAI
- ▶ Insolvency Professional Agency - enrol insolvency professionals as its members
- ▶ IIPI is the first Insolvency Agency to have been registered with IBBI,
- ▶ More of 60 per cent of total insolvency professional of the country are currently enrolled with IIPI. □

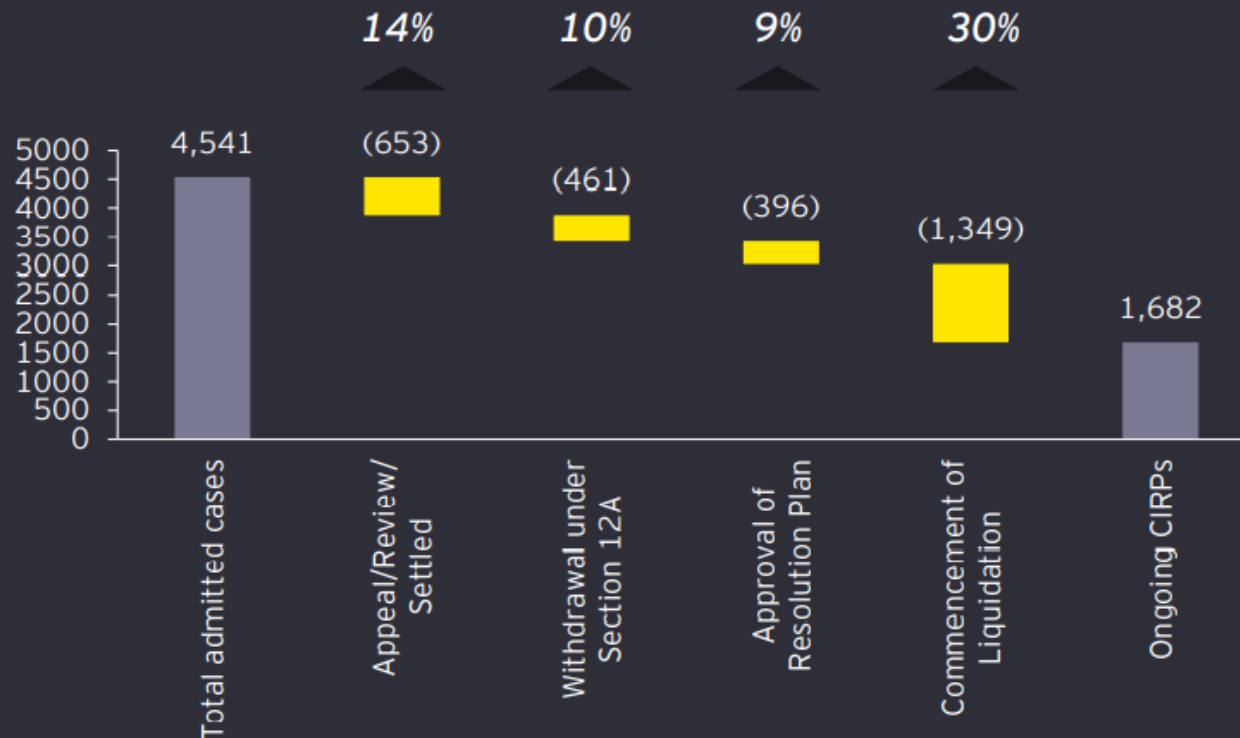
Corporate Insolvency Resolution Process



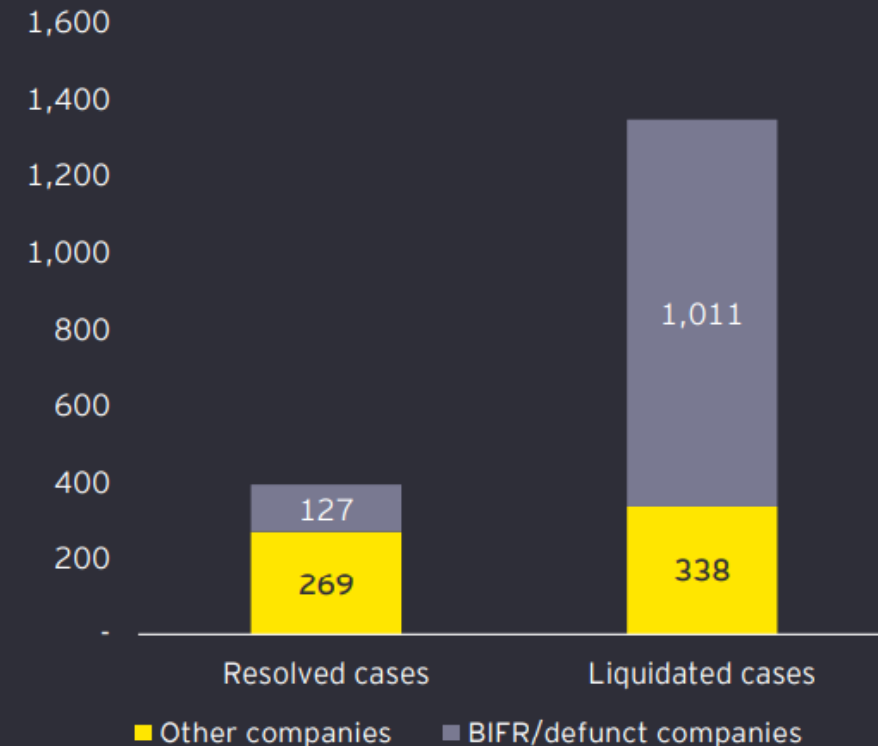
IBC framework

Of the 4,541 admitted cases, 63% cases have exited the process with a resolution, settlement or liquidation

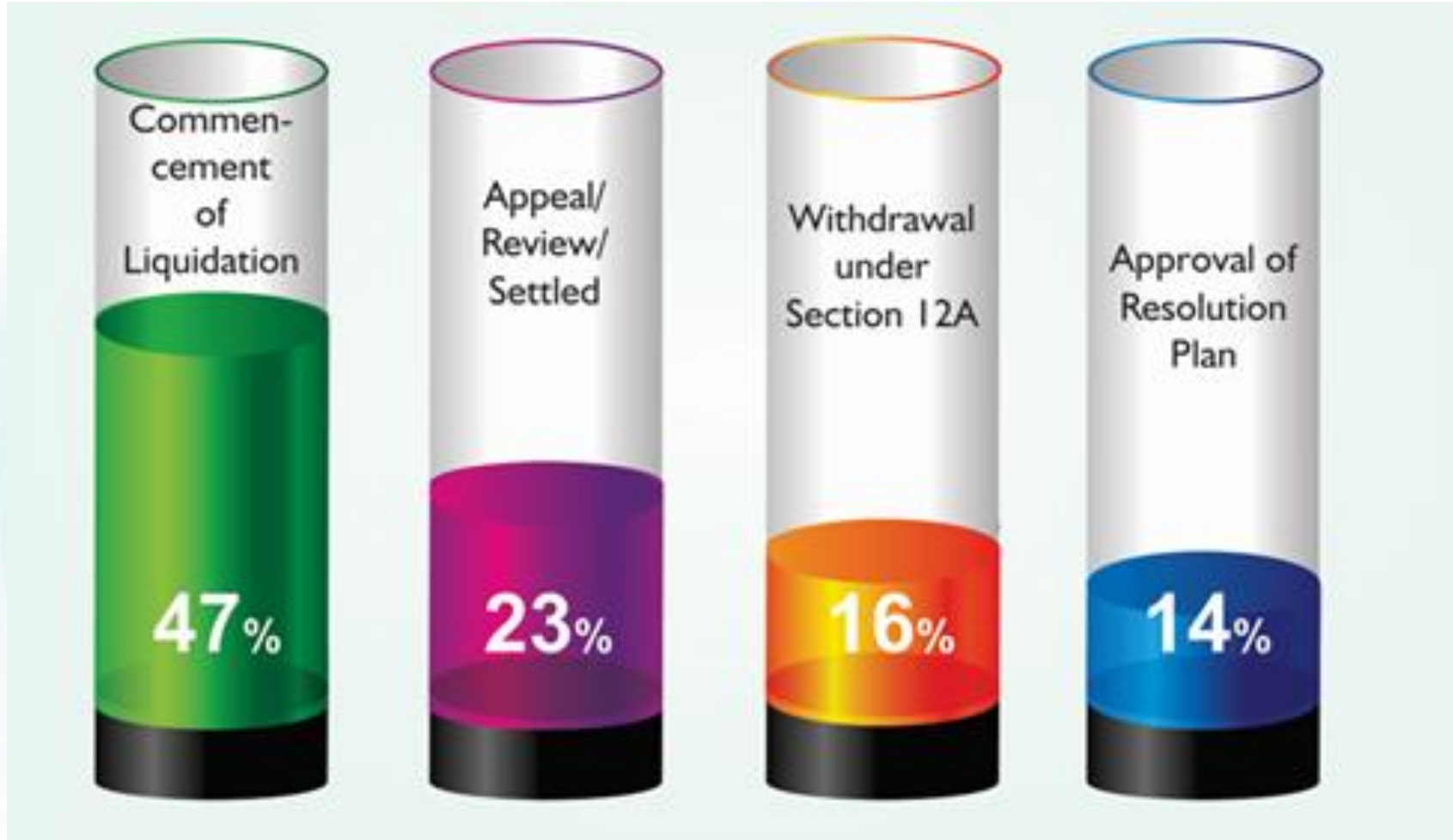
1 While 30% of cases have commenced liquidation...



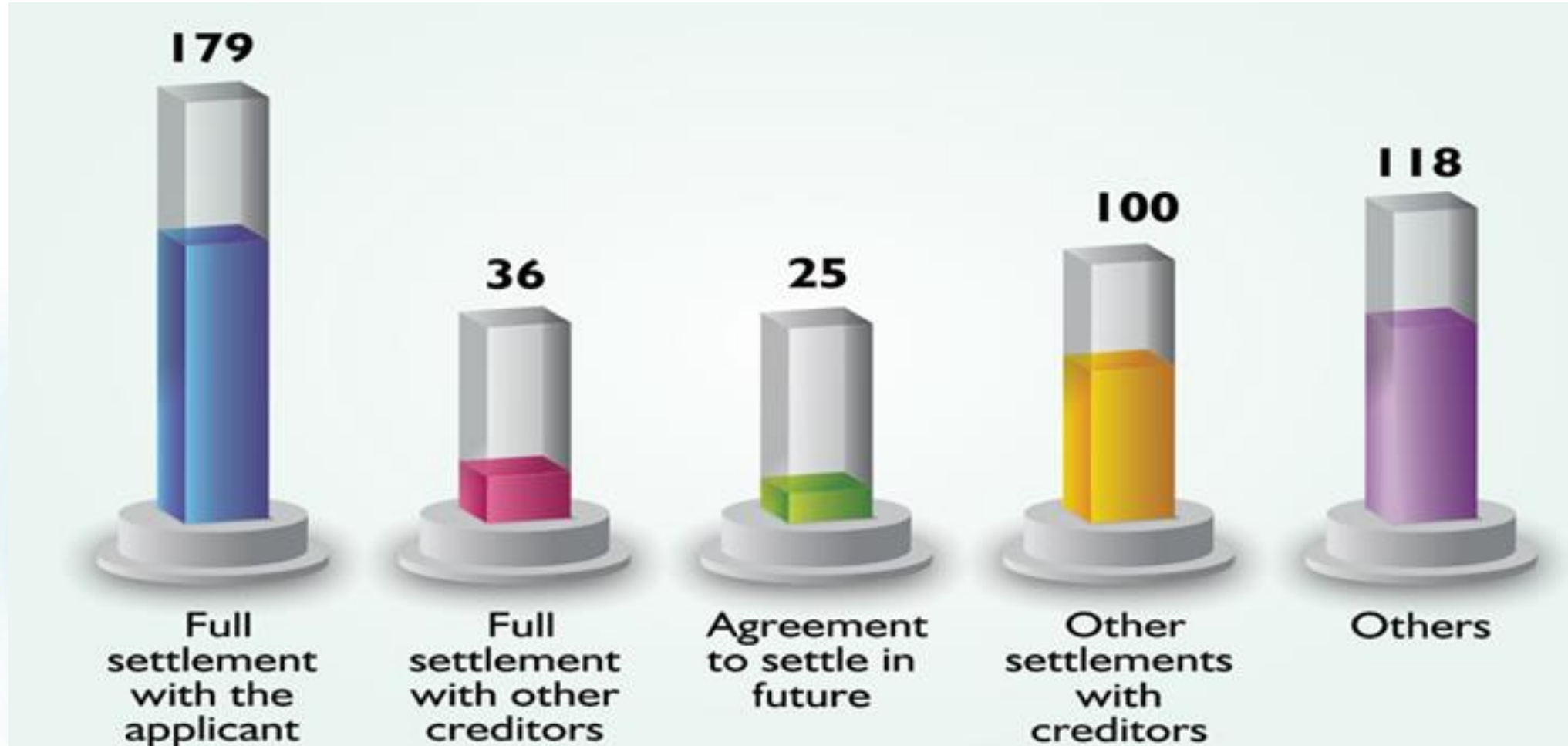
2 ...75% of liquidation cases were BIFR/defunct cases



Modes of closures of CIRPs



Reasons for withdrawal of CIRPs



Largest corporate insolvencies of decade

- ▶ 1. Dewan Housing Finance Ltd. – US\$13.93 billion
- ▶ 2. Bhushan Power and Steel – US\$6.9 billion
- ▶ 3. Essar Steel (US\$6.9 billion)
- ▶ 4. Lanco Infra – US\$ 6.3 billion
- ▶ 5. Bhushan Steel (US\$6.2 billion)
- ▶ 6. Reliance Communications – US\$4.6 billion
- ▶ 7. Alok Industries – US\$4.1 billion
- ▶ 8. Jet Airways – US\$2 billion

LANCO

Lanco Infratech Limited



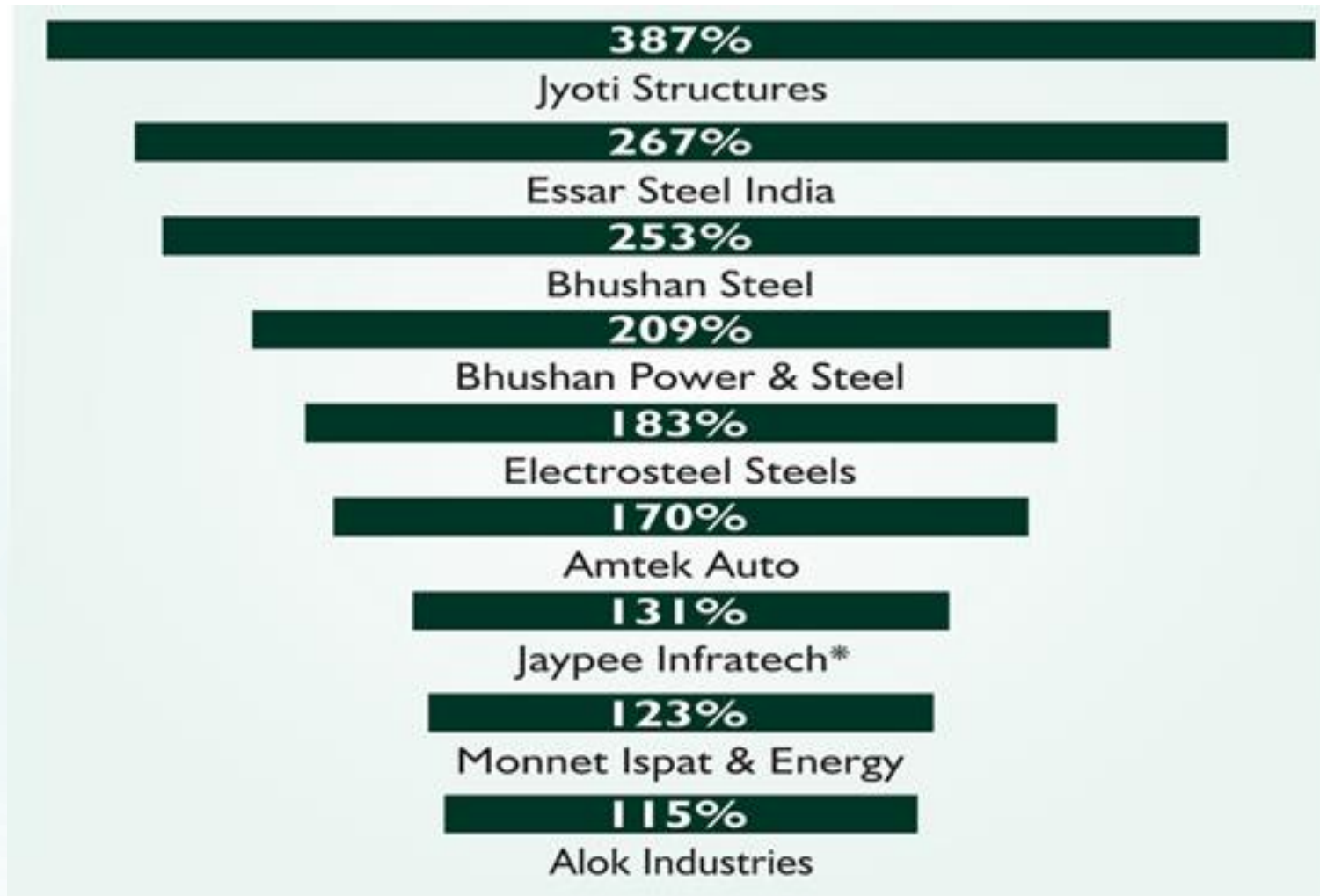
Twelve large accounts

(Amount in ₹ crore)

Name of CD	Claims of FCs Dealt Under Resolution			Realisation by all Claimants as a percentage of Liquidation Value	Successful Resolution Applicant
	Amount Admitted	Amount Realised	Realisation as % of Claims		
Completed					
Electrosteel Steels Limited	13175	5320	40.38	183.45	Vedanta Ltd.
Bhushan Steel Limited	56022	35571	63.5	252.88	Bannipal Steel Ltd.
	11015	2892	26.26	123.35	Consortium of JSW and AION Investments Pvt. Ltd.
Essar Steel India Limited	49473	41018	82.91	266.65	Arcelor Mittal India Pvt. Ltd.
Alok Industries Limited	29523	5052	17.11	115.39	Reliance Industries Limited, JM Financial Asset Reconstruction Company Ltd., JMFARC - March 2018 Trust
Jyoti Structures Limited	7365	3691	50.12	387.44	Group of HNIs led by Mr. Sharad Sanghi.
Bhushan Power & Steel Limited	47158	19350	41.03	209.12	JSW Limited
Jaypee Infratech Limited*	23176	23223	100.2	130.82	NBCC (India) Limited
Amtek Auto Limited	12641	2615	20.68	169.65	Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd.
Under Process					
Era Infra Engineering Limited	Under CIRP				
Lanco Infratech Limited	Under Liquidation				
ABG Shipyard Limited	Under Liquidation				

* The resolution plan of resolution applicant Suraksha Realty has been approved by the CoC and awaits approval of the Adjudicating Authority.

Realization by the claimants as % of liquidation value



Insolvency Resolution of Personal Guarantors

(Amount in ₹ crore)

Period	Applications filed by						Total			Adjudicating Authority	
	Debtor (u/s 94)			By Creditor (u/s 95)			Number	Debt Amount	Guarantee Amount	NCLT	DRT
	Number	Debt Amount	Guarantee Amount	Number	Debt Amount	Guarantee Amount					
2019 - 20	3	50.28	44.50	13	3252.99	4,452.08	16	3303.27	4496.58	15	1
2020 - 21	13	1301.78	596.47	115	25823.29	20404.15	128	27125.07	21000.62	122	6
Apr - Jun, 21	1	496.00	150.13	56	6937.43	8437.38	57	7433.43	8587.51	57	0
Total	17	1848.06	791.10	184	36013.71	33293.61	201	37861.77	34084.71	194	7

Pre Packs



- a debtor-driven agreement for the resolution of the debt between financial creditors and a distressed company.
- innovative corporate-rescue tool that incorporates the benefits of both informal and formal insolvency proceedings.
- In many jurisdictions, including the US and the UK, there exists a codified framework for pre-packs. Several empirical studies have found that, compared to conventional insolvency proceedings, they create more value for all stakeholders.

Pre Packs



benefits of pre-packs:

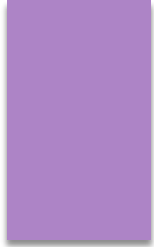
- (1) ease the burden on the NCLT and the NCLAT;**
- (2) drastically reduce the time for the resolution process;**
- (3) there is minimal disruption of the debtor's business, as the debtor is in possession throughout the process;**
- (4) there is also higher employee retention in pre-pack insolvency as compared to the conventional CIRP;**
- (5) transaction and administrative costs are relatively low as compared to the traditional CIRP.**

Complex issues

- ▶ cross-border insolvency
- ▶ group insolvency

Bad Bank (NARCL)

- ▶ Flush with 30.6 billion rupees (\$560 million), the new institution will take over bad loans from commercial banks
- ▶ NARCL will pay up to 15 percent of the agreed loan value in cash to the banks, and the remaining 85 percent in the form of government-guaranteed security receipts,
- ▶ NARCL is expected to buy INR 2 trillion worth of stressed assets from the banks in different phases





Thank you!

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