

RJA

**Rajput Jain & Associates**

Chartered Accountants

***Insolvency and Bankruptcy Code,  
2016:  
a Primer***

# About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

# Framework of IBC, 2016



**Part I** – Preliminary

**Part II** – Insolvency Resolution and Liquidation for Corporate Persons

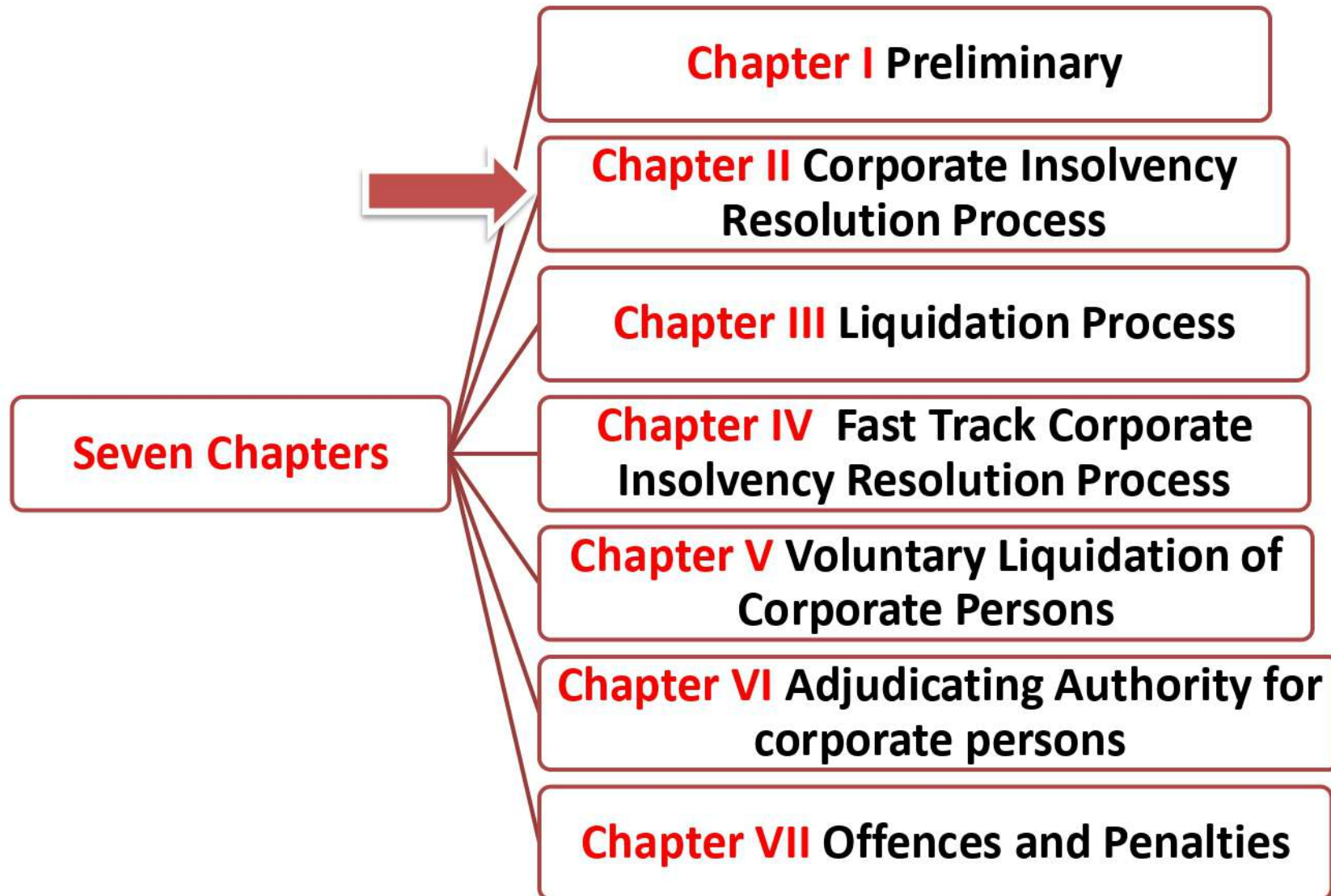
**Part III** – Insolvency Resolution and Bankruptcy for individuals and partnership firms

**Part IV** – Regulation of Insolvency professionals, agencies and information utilities

**Part V** – Miscellaneous

**Eleven Schedules** (Amendments to different Legislations)

# The framework of Part II - Insolvency Resolution and Liquidation for Corporate Persons



# INVOKING PROVISIONS OF CODE



## DEFAULT

In case of Co. & LLP

Minimum amount of ` 1 lakh

In case of Partnership & Individual

Minimum amount of ` 1 thousand

Minimum amount of ` 1 lakh & ` 1 thousand can be increased upto ` 1 Cr & ` 1 lakh respectively by CG

Where any Company or LLP commits-

A default in paying its

Financial debt

Operational debt

Then a financial creditor/ operational creditor/ Company & LLP itself

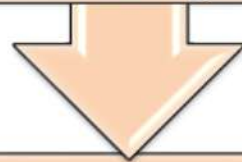
May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

# WHO CAN INVOKE



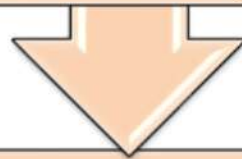
## Financial Creditor (Sec.7)

- Any person to whom a financial debt is owed &
- Includes a person to whom such debt legally assigned or transferred



## Operational Creditor (Sec.9)

- A person to whom an operational debt is owed &
- Includes any person to whom such debt legally assigned or transferred



## Corporate Debtor (Sec.10)

- A corporate person who owes a debt to any person

# ADJUDICATING AUTHORITY

## Trigger Point for filing of application by Operational Creditor:

After the expiry of 10 days from the date of delivery of the demand notice or invoice demanding the payment, if operational creditor does not receive payment or notice of the dispute from the corporate debtor

**Date of commencement of CIRP:** from the date of admission of the application

## NOTICE OF REJECTION

Adjudicating Authority shall before rejecting application on grounds of incompleteness, give notice to applicant to rectify defects in application within 7 days from the date of receipt of such notice

# TIME LINE



180 days



90 days  
(Maximum)



270 days

**FAST TRACK :**

90 days



45 days  
(One time)



135 days

**Adjudicating Authority after admission of application shall, by an order**

**Declare a  
Moratorium**

**Cause a Public  
Announcement**

**Appoint Interim  
Resolution Professional**



# MORATORIUM EFFECT – S. 14

## **Moratorium will not apply to guarantors (surety):**

1. There were conflicting judgments of NCLT and NCLAT whether the moratorium applies to guarantors of corporate debtor as well;
2. Now, it is made clear that the moratorium will **not** apply to surety (guarantors) of Corporate Debtors - section 14(3)(b) of Insolvency Code inserted w.e.f. 6-6-2018.
3. Thus, recovery proceedings, insolvency resolution process or bankruptcy proceedings against surety (guarantor) can be initiated even if moratorium is granted to corporate debtor.

**Note:** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period - E, W, T, IT to the extent these are not a direct input to the output produced or supplied by the corporate debtor.



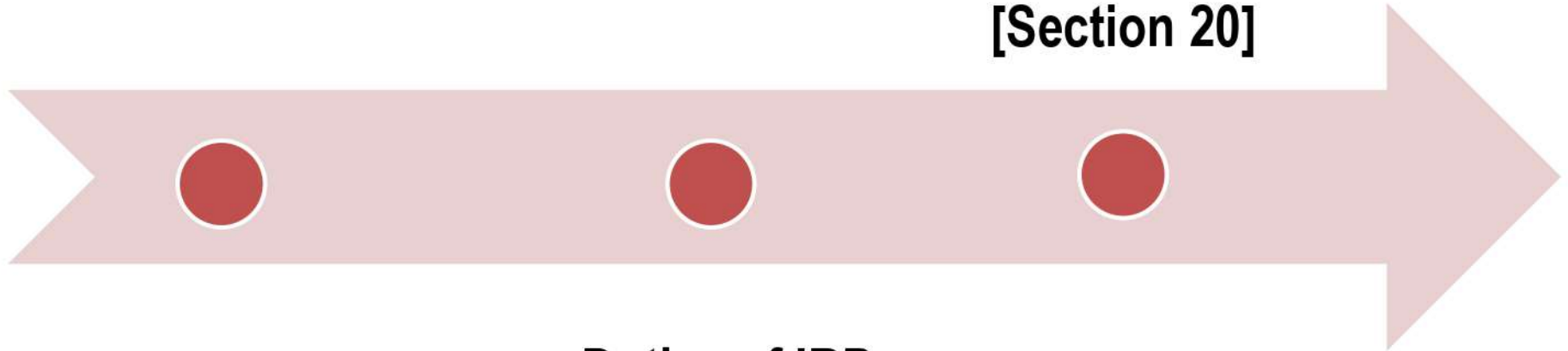
# **Role of Interim Resolution Professional**

# Three tier structure

**Management of  
the corporate  
entity  
[Section 17]**

**Powers of IRP for  
management of  
operations of the  
entity as going  
concern  
[Section 20]**

**Duties of IRP  
[Section 18]**



# Management of the corporate entity

1. Section 19 of the Code casts **obligations on the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor to extend all assistance and cooperation to the IRP** as may be required by him in managing the affairs of the corporate debtor and in case of default, the Interim RP may make an application to the Adjudicating Authority for necessary directions;
2. Regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the **IRP** may make an application to the Adjudicating Authority for an order **seeking the assistance of the local district administration in discharging his duties** under the Code or these Regulations.

# Duties of IRP

- **Collect all information** relating to the assets, liabilities, finances and operations of the corporate debtor for **determining the financial position** of the corporate debtor;
- **Receive and collect all the claims** submitted to him, **pursuant to the public announcements**;
- Constitute a **committee of creditors** [CoC];
- **Take control and custody of any asset** over which the corporate debtor has ownership rights

## Powers of IRP for management of operations of the entity as going concern

- Section 20 casts an **obligation on the interim RP to make every endeavor to protect and preserve the value of the property** of the corporate debtor and manage the operations of the corporate debtor **as a going concern**;
- **appoint accountants, legal or other professionals** as may be necessary;
- Enter/ amend/ modify **contracts on behalf of the corporate debtor**;
- **raise interim finance**;
- take all **such actions as are necessary to keep the entity as a going concern**;
- Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that the **interim RP shall within 7 days of his appointment, appoint two registered valuers** to determine the liquidation value



**Model time-line for corporate  
insolvency resolution process**

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
<b>Section 16(1)</b>	<b>Commencement of CIRP and appointment of IRP</b>	<b>....</b>	<b>T</b>
<b>Regulation 6(1)</b>	<b>Public announcement inviting claims</b>	<b>Within 3 Days of Appointment of IRP</b>	<b>T+3</b>
<b>Section 15(1)(c)/ Regulations 6(2)(c) and 12 (1)</b>	<b>Submission of claims</b>	<b>For 14 Days from Appointment of IRP</b>	<b>T+14</b>
<b>Regulation 12(2)</b>	<b>Submission of claims</b>	<b>Up to 90th day of commencement</b>	<b>T+90</b>



<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)		T+97
Section 21(6A) (b)/ Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
Section 22(1)/ Regulation 19(1)	1st meeting of the CoC	Within 7 days of the constitution of the CoC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	....
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
<b>Section 12(A)/ Regulation 30A</b>	<b>Submission of application for withdrawal of application admitted</b>	<b>Before issue of EoI</b>	<b>W</b>
	<b>CoC to dispose of the application</b>	<b>Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later</b>	<b>W+7</b>
	<b>Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA</b>	<b>Within 3 days of approval by CoC</b>	<b>W+10</b>

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
<b>Regulation 35A</b>	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	<b>T+75</b>
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	<b>T+115</b>
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	<b>T+135</b>

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
<b>Regulation 36 (1)</b>	<b>Submission of IM to CoC</b>	<b>Within 2 weeks of appointment of RP, but not later than 54th day of commencement</b>	<b>T+54</b>
<b>Regulation 36A</b>	<b>Publish Form G - EOI</b>	<b>Within 75 days of commencement</b>	<b>T+75</b>
	<b>Submission of EoI</b>	<b>At least 15 days from issue of EoI</b>	<b>T+90</b>
	<b>Provisional List of RAs by RP</b>	<b>Within 10 days from the last day of receipt of EoI</b>	<b>T+100</b>
	<b>Submission of objections to provisional list</b>	<b>For 5 days from the date of provisional list</b>	<b>T+105</b>
	<b>Final List of RAs by RP</b>	<b>Within 10 days of the receipt of objections</b>	<b>T+115</b>

<b>Section/ Regulation</b>	<b>Description of Activity</b>	<b>Norm</b>	<b>Latest Timeline</b>
<b>Regulation 36B</b>	<b>Issue of RFRP, including Evaluation Matrix and IM</b>	<b>Within 5 days of the issue of the provisional list</b>	<b>T+105</b>
	<b>Receipt of Resolution Plans</b>	<b>At least 30 days from issue of RFRP</b>	<b>T+135</b>
<b>Regulation 39(4)</b>	<b>Submission of CoC approved Resolution Plan to AA</b>	<b>As soon as approved by the CoC</b>	<b>T+165</b>
<b>Section 31(1)</b>	<b>Approval of resolution plan by AA</b>		<b>T=180</b>

# INTERIM RESOLUTION PROFESSIONALS

## APPOINTMENT:

Appointment by Adjudicating Authority within 14 days from Admission of Application

## TENURE:

shall not exceed 30 days from date of Appointment

## Once IRP is appointed :

Management of affairs of Corp. Debtor shall vest with IRP

Powers of BOD/ Partners (LLP) shall stand suspended & will be exercised by IRP

Officers & Managers of Corp. Debtor shall report to IRP

FI maintaining accounts of Corp. Debtor shall follow instructions of IRP

# **PUBLIC ANNOUNCEMENT**

- Public announcement contain following information:
  - Name & address of defaulted Corp. Debtor
  - Name of Registrar with which Corp. Debtor is incorporated or registered
  - Last date for submission of Claims
  - Details of Interim Resolution Professional
    - Management of Corporate Debtors
    - Responsible for Receiving claims
  - Penalties for False or Misleading Claims
  - Date on which the Insolvency Resolution Process close (i.e. 180 days from the date of admission of application)
- Public Announcement shall be made in such manner as may be specified





# RESOLUTION PLAN

- Preparation of **Information Memorandum** for formulating a Resolution Plan
- Providing to Resolution Applicant access to all relevant information
- **Resolution Applicant will submit a Resolution Plan** to the Resolution Professional prepared as per Information Memorandum
- Examination of Resolution Plan
- **Presentation of RP to CoC** for Approval
- **Submitting Resolution Plan to Adjudicating Authority**
- Adjudicating Authority may by order approve the Resolution Plan;
- Moratorium Period ends
- **RP will be binding** on the Corp. Debtor, its Employees, Members, Creditors, Guarantors & other Stakeholders
- If Resolution Plan:
  - Not ready within 180 days or
  - Adjudicating Authority rejects the Resolution Plan
- It will pass a **Liquidation Order**
- **RP will act as a Liquidator** and all the powers of the Board of Directors will vest with the Liquidator



# NEW INSTITUTIONS

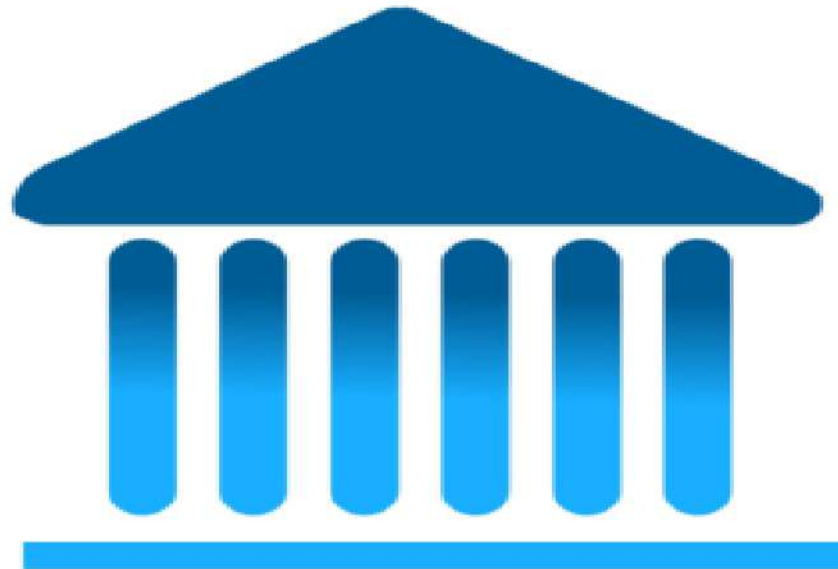
INSOLVENCY &  
BANKRUPTCY  
BOARD OF INDIA



INSOLVENCY  
PROFESSIONAL  
AGENCY



INFORMATION  
UTILITY



## STEP

1

On day one of the default, a creditor or a borrower can approach NCLT to initiate insolvency proceedings

## STEP

3

Within 180 days, the lenders' committee has to decide on a debt recast plan. Lenders would be given additional 90 days to arrive at a final plan

## STEP

2

Once the case is admitted, lenders to constitute creditors' committee, appoint Insolvency Professional which will run the borrower's company in the interim period

## STEP

4

If 66% of lenders agree, the committee would go ahead with debt restructuring, otherwise after 180 days, the company's assets will be liquidated

# PRIORITY

The following debts will be paid in "priority" given below:

Insolvency Resolution Cost & Liquidation Cost;

Debts to Secured Creditor (who have relinquished their security interest) & Workmens' dues (for 24 months before commencement);

Wages & Unpaid Dues to employees (other than workmen) (for 12 months before commencement);

Financial Debts to Unsecured Creditors;

Workmen's Dues for earlier period;

Any amount due to CG and SG & Debts to Secured Creditor following Enforcement of Security Interest - shall rank equally

Remaining Debts;

Preference Shareholders;

Equity Shareholders or partners.



**Certain Pitfalls**

# Seeking Clarity

**₹2.5 lakh cr**

Total debt on the books of top 12 companies in insolvency proceedings

**20%**

Applicability of MAT on the amount that is written down

**Lenders want** CBDT to give a leeway from MAT for insolvency cases

**New buyers** will factor in tax liabilities before buying insolvent companies

**MAT** would be triggered in the current financial year and in some cases lenders may have to treat it as an additional haircut on the loans



**The CBDT has been approached on the matter as a net outflow of tax on restructuring could impact enterprise value and hence level of sustainable debt**

**ET,  
29<sup>th</sup> Aug, 2017**

# Insolvency professionals face threats, draw staff ire while evaluating plans for debt-laden companies – ET, 24<sup>th</sup> August, 2017

## **In a Spot**

**Execs from EY, PwC, Deloitte, KPMG, Grant Thornton & BDO have been roped in for 12 high-profile insolvency cases**

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### **Interim resolution**

professionals (IRPs) will run co for six months and come up with a turnaround plan

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### **These professionals are**

facing threats of violence & some are being offered bribes

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### **Operational creditors**

mounting pressure to recover some of the dues

# Firms resort to kidnapping, theft to game NCLT proceedings



MANJU AB | Updated: Sep 29, 2017, 07:27 AM IST, DNA

*Reserve Bank of India should take note of the fact that managements of firms referred to NCLT are trying to delay the resolution process through litigations and intimidation, siphoning off company assets*

Fifty-year-old Devendra Jain, a qualified resolution professional with nearly two decades of experience in stressed assets management, was appointed to resolve the investors' woes in two Ponzi schemes - the Royal Twinkle Start Club and Citrus Check.

While working on the case Jain was suddenly kidnapped on September 11 evening by a group of agents of these two schemes. About 13 lakh investors had invested in around Rs 5,000 crore in the holiday plans and Jain was devising ways to get back the money. He was waiting for his car



Shares

29






# Bankruptcy Board seeks exemptions from SEBI, CBDT to protect resolution professionals

IBBI seeks an exemption in disclosure norms during the 180 days period when insolvency resolution professionals take over a firm to turn it around

By Tarun Sharma





# **Professional Opportunities**

# Scope

**Notice of Demand**

**Data processing**

**Information Memorandum**

**Valuation**

**Preparation of Resolution Plan**

**Monitoring and Supervision of Resolution Plan**

**Secretarial work**

**Forensic Audit**

**Stock Audit**

**Internal/ Concurrent Audit**

**Representing lenders**

**Representing before NCLT/ NCLAT**

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## Branch Offices

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