INSOLVENCY JURISPRUDENCE

NSA
LEGAL
Ahmedabad | Delhi | Jodhpur | Mumbai

Nipun Singhvi

Founding Partner

B.Com.(Hons.), LLB, LLM(Corporate Laws), CS, FCA, M&A(IIM-A) Certified IFRS - Forensic Accountant- Con. Bank Audit, Qualified ID (MCA) – IP (IBBI)

19-May-22

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Bankruptcy No. 1:
The Trump Taj Mahal, 1991

Bankruptcy No. 2:
Trump Castle, 1992

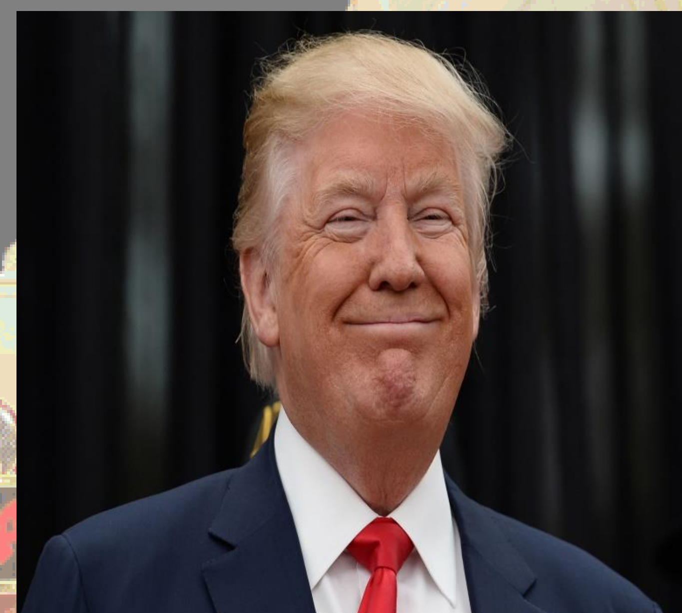
Bankruptcy No. 3:
Trump Plaza and Casino, 1992

Bankruptcy No. 4:
Plaza Hotel, 1992

Bankruptcy No. 5:
Trump Hotels and Casinos Resorts, 2004

Bankruptcy No. 6:
Trump Entertainment Resorts, 2009

Chapter 11 Bankruptcy



Code or Act?

Civil Procedure Code, 1908	**Companies Act,2013**
Code of Criminal Procedure , 1973	**Income tax Act, 1961**
Indian Penal Code,1860	**Finance Act,1994**

2015 — **BLRC**

May 2016 — **JPC**

2016 — **IBC**

Nov 2017 — **First Ordinance, 2017**

January 2018 — **Amendment Act , 2018**

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Aug 2019 — **Amendment Act,2019**

Aug 2019	**Amendment Act,2019**
Dec 2019	**Ordinance, 2019**
March 2020	**I- Amendt Act , 2020**
June 2020	**Ordinance, 2020**
Sept 2020	**II- Amendment Act,2020**

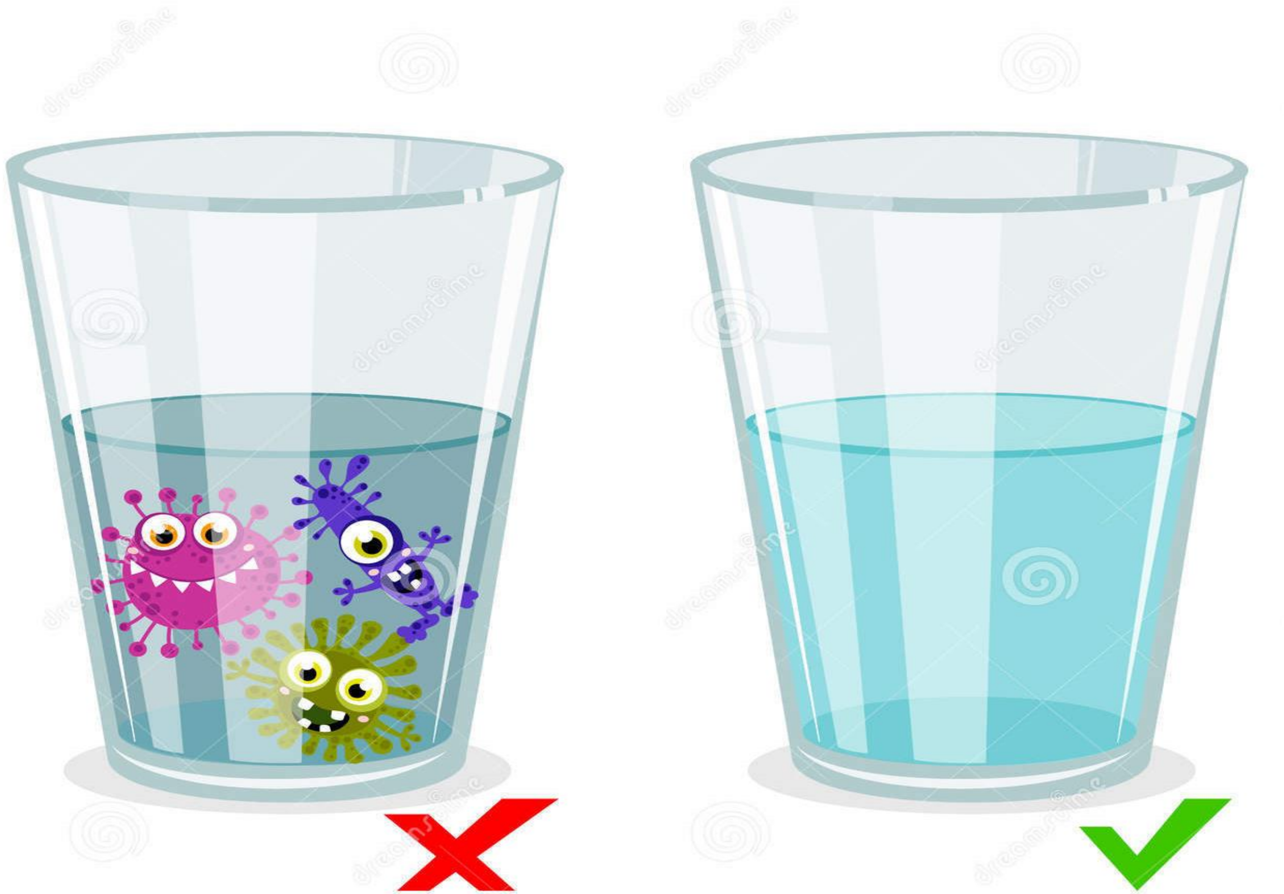
April 2021 — **Ordinance, 2021**

July 2021 — **Bill, 2021**

Aug 2021 — **Amendment Act,2021**

19-May-22

Dirty water to clean water



“Insolvency”

“Liquidation”

“Bankruptcy”

PG to CD

CD = Co. + LLP

"Insolvency" "Liquidation" "Bankruptcy"

Co. LLP	Insolvency • Stage 1	Liquidation • Stage 2	Dissolution • Stage 3
Individual	Insolvency • Stage 1	Bankruptcy • Stage 2	Discharge • Stage 3

PG to CD

238. Provisions of this Code to override other laws. -

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

RISHTE
MEIN HUM
TUMHARE
BAAP
LAGTE
HAIN

Companies Act,1956

1. Liquidation Costs
2. Government dues of 12 months
3. Workmen dues and Secured Creditors Debt
4. Workmen dues
5. Employees' dues
6. Unsecured Creditors
7. Preference Shareholders
8. Equity Shareholders

IBC,2016

1. Insolvency Process Costs
2. Liquidation Costs
3. Workmen dues of 24 months and Secured Creditors Debt
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6. Crown debts (2 years) & unpaid dues of secured creditors
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Insolvency

- CIRP

Liquidation

- Sale of Assets

Dissolution

- Closure

Insolvent ?

Liability		Assets	
Capital	125	Land	150
Loan	75	Building	40
		Cash	10
	200		200

Company Insolvent ?

Liability		Assets	
Capital	125	Land	150
Loan	30	Building	40
R&S	45	Cash	10
	200		200

Litigation of 500 pending in SC ?

Jio

vodafone

!dea

AIRCEL

VIDEOCON

RELIANCE Communications

Anil Dhirubhai Ambani Group

Moratorium can be considered as "Sanjivani Booti"

Lets not pay

GST !!

Income tax

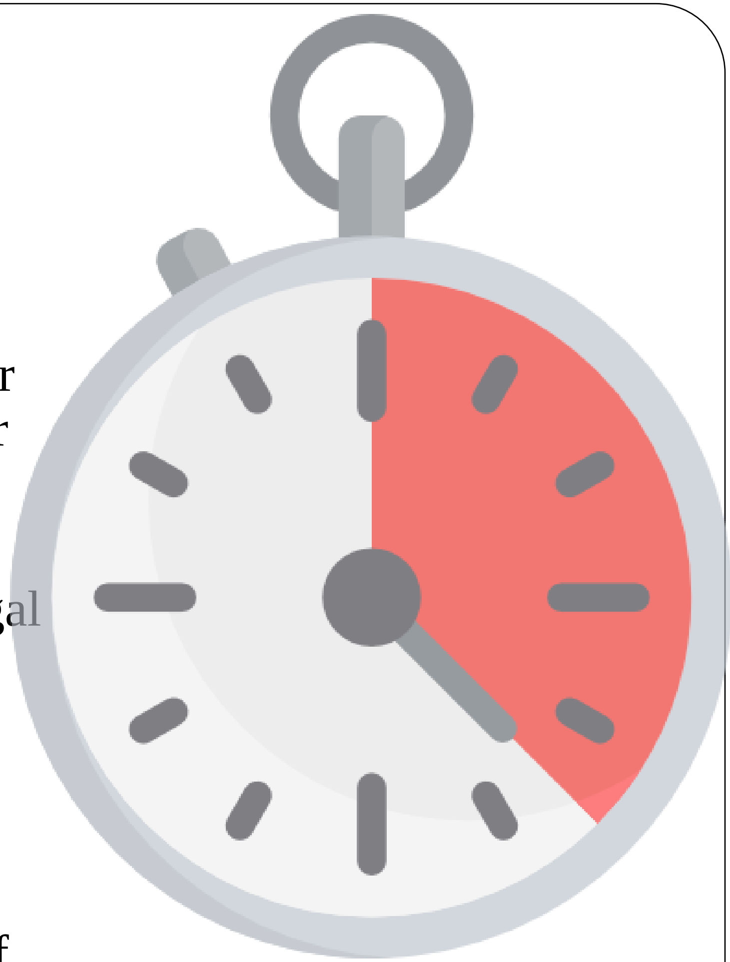
Municipal tax

Telecom dues

Valuation

- Registered Valuer with IBBI
- Compulsory Valuation by 2 valuers
- Two Registered Valuer
  - Land & Building
  - Plant & Machinery
  - Financial assets and Security

Moratorium



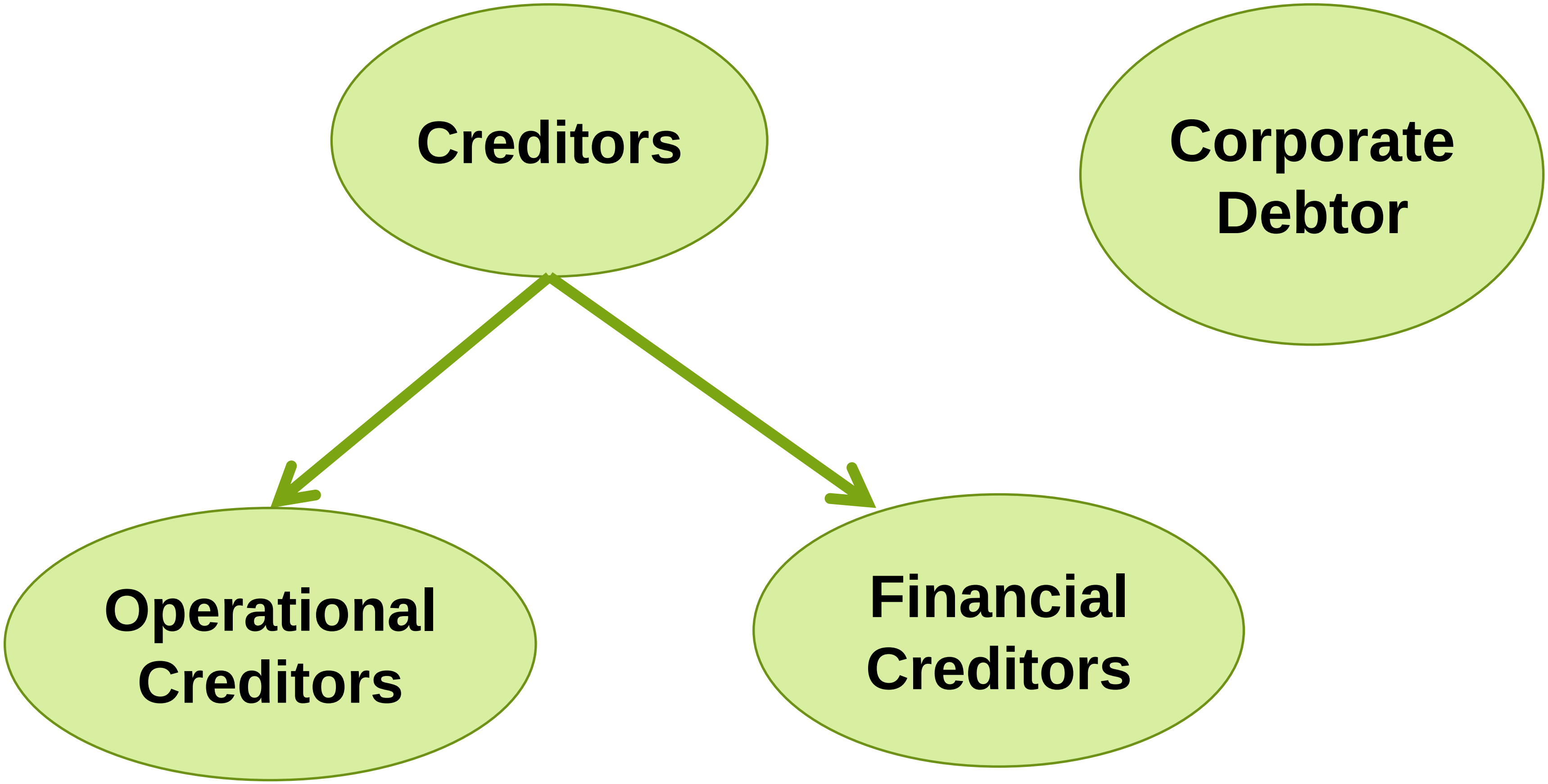
(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Who can initiate CIRP?



Operational	Financial
Employees	**Banks**
Trade Creditors	**Financial Institutions**
Labourers	**NBFC**
Rent expenses	**Lender**
Utility bills	
Tax deptt	

(20) "**operational creditor**" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "**operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

(7) "**financial creditor**" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) "**financial debt**" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

Companies Act,1956

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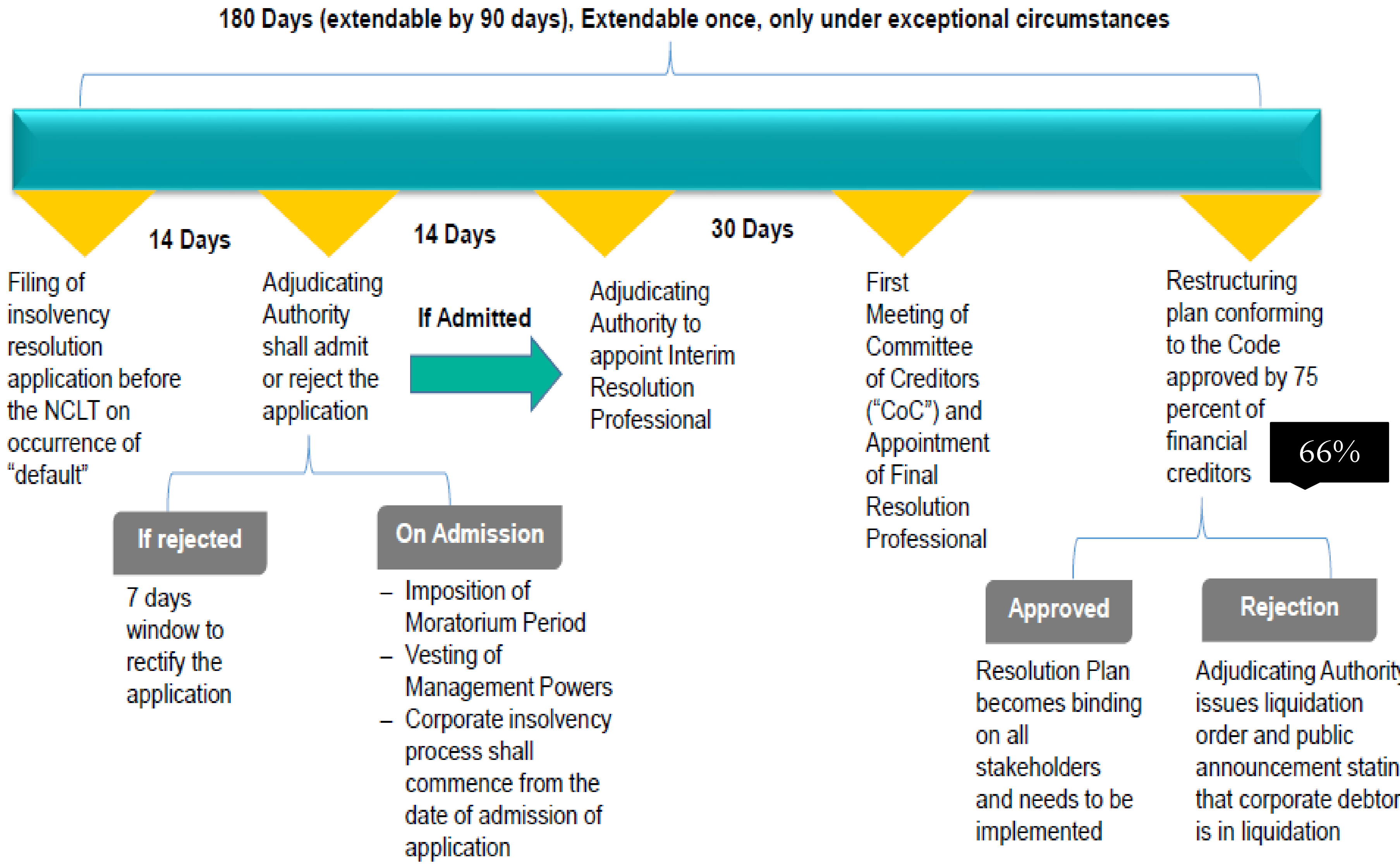
Time Bound Insolvency Resolution Process



FORM A

PUBLIC ANNOUNCEMENT

[Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

FOR THE ATTENTION OF THE CREDITORS OF JAYPEE INFRATECH LTD

RELEVANT PARTICULARS		
1	NAME OF CORPORATE DEBTOR	JAYPEE INFRATECH LTD
2	DATE OF INCORPORATION OF CORPORATE DEBTOR	5th April 2007
3	AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	Registrar of Companies under Companies Act, 1956
4	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTIFICATION NUMBER OF CORPORATE DEBTOR	L45203UP2007PLC033119
5	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE(IF ANY) OF CORPORATE DEBTOR	Sector - 128, Gautam Budh Nagar Noida - 201304 (U.P.)
6	INSOLVENCY COMMENCEMENT DATE IN RESPECT OF CORPORATE DEBTOR	9th August 2017
7	ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	180 days from the date of commencement of insolvency resolution process
8	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE INTERIM RESOLUTION PROFESSIONAL	Name: Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd C/o BSRR & Co Chartered Accountants Address: Building No.10, 8th Floor, Tower B, DLF Cyber City, Phase II, Gurugram - 122002 (Haryana) Registration Number: IBBI/IPA-001/IP-P00142/2017-18/10306 Email: **IRPJIL@bsraffiliates.com**
9	LAST DATE FOR SUBMISSION OF CLAIMS	24th August 2017

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against JAYPEE INFRATECH LIMITED on 9th August 2017.

The creditors of JAYPEE INFRATECH LIMITED, are hereby called upon to submit a proof of their claims on or before 24th August 2017 to the Interim Resolution Professional at the address mentioned against item 8.

The financial creditors shall submit their proof of claim by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claim by person, by post or electronic means.

The Submission of Proof of claim is to be made in accordance with Chapter IV of the Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016. The Proof of claim is to be submitted by way of the following specified forms

Form B - for claims by operational creditors

Form C - for claims for financial creditors

Form D - for claims by workmen and employees

In order to get a copy of the form, you may download the above mentioned forms in the website www.ibbi.gov.in and Insolvency and Bankruptcy Board of India (Insolvency resolution process. for corporate persons) Regulations, 2016.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of Interim Resolution Professional: Anuj Jain sd/-

Date : 10th August, 2017

Place : New Delhi, India

JAYPEE INFRATECH

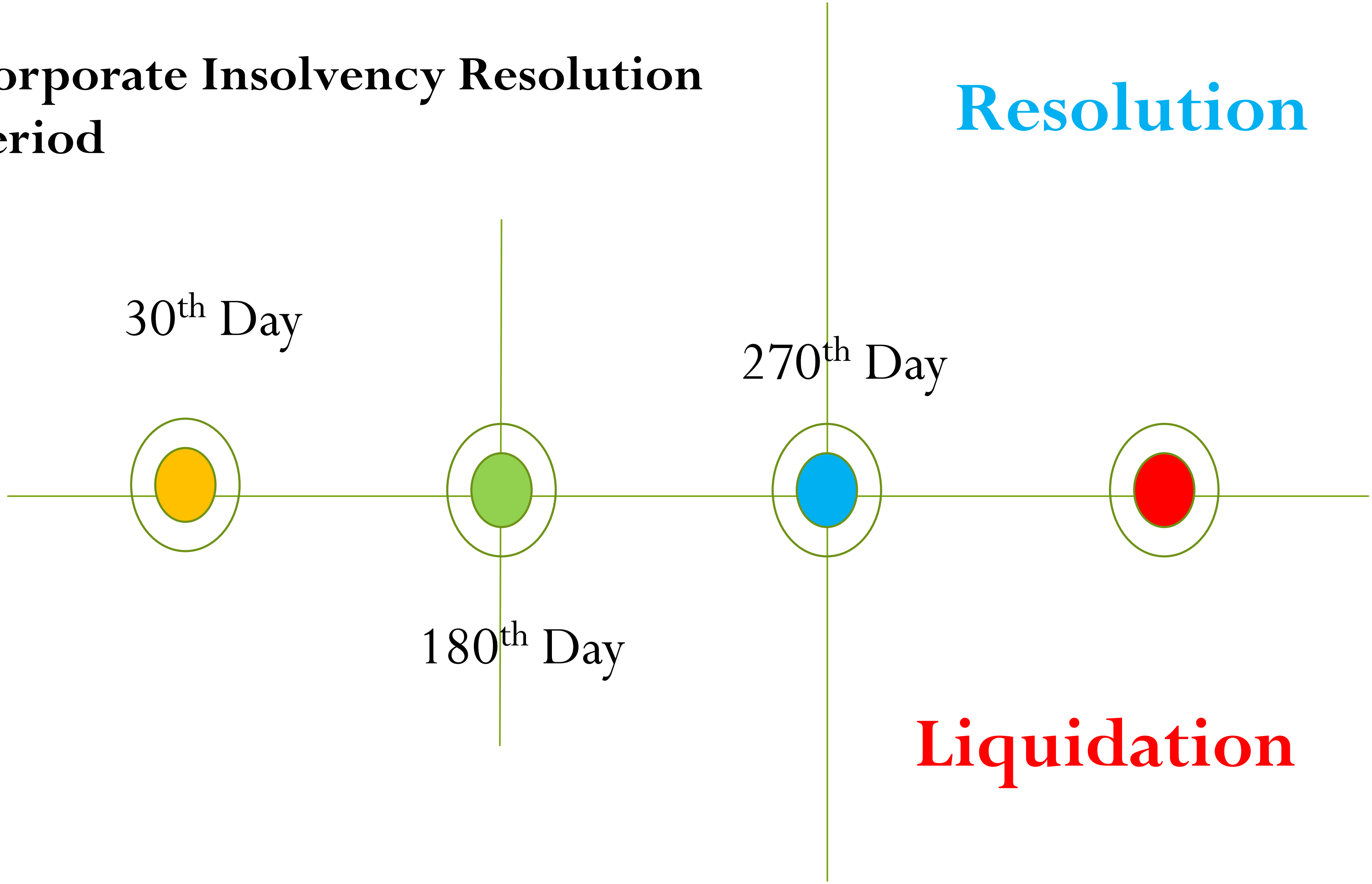
165 km expressway with 5 integrated townships

INDIAN MILESTONE IN INFRASTRUCTURE

Suspended BOD

Committee of Creditors

Corporate Insolvency Resolution Period



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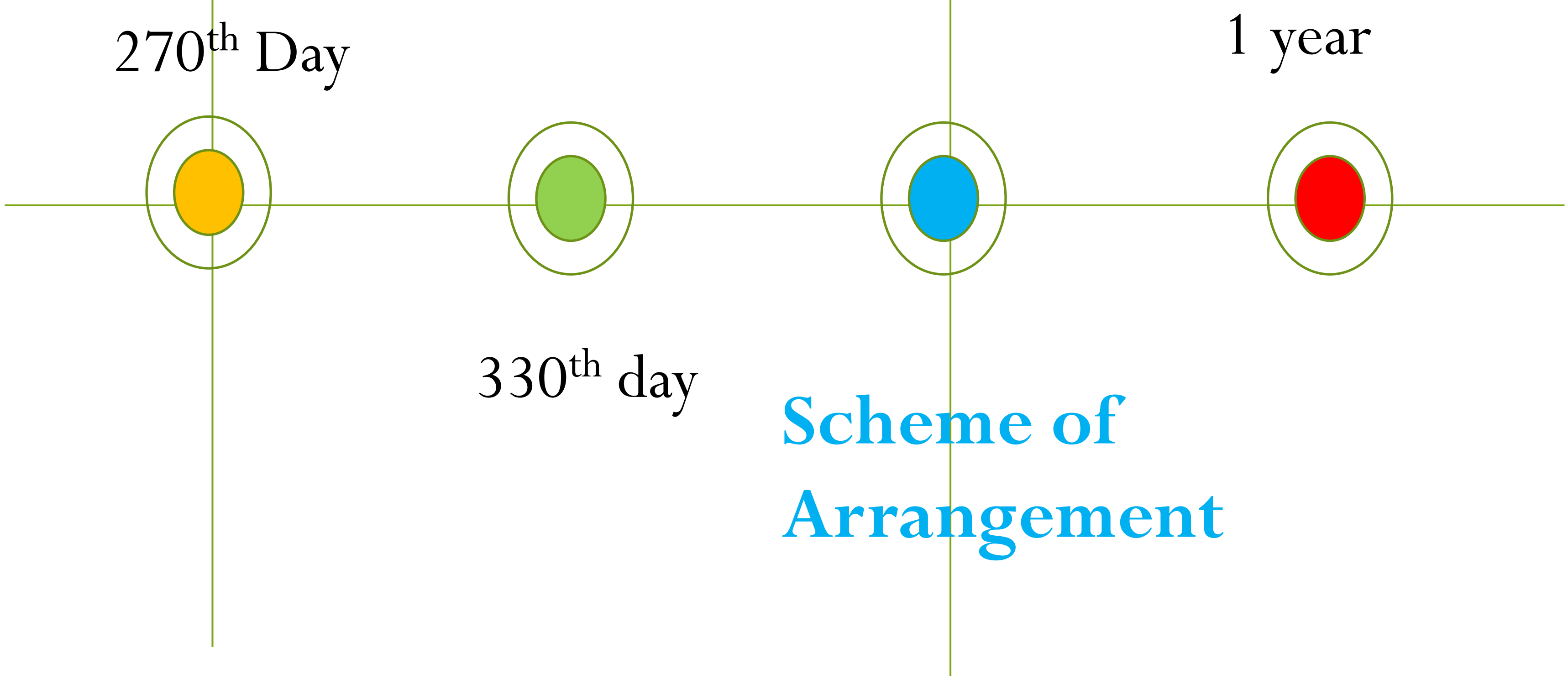
Resolution Plan

- Payment to creditors as if liquidation happens
- Distribution as per Section 53 waterfall
- Compliance of all laws
- Binding on all stakeholders

Corporate Insolvency Resolution Period



Life After Death

Compromise or arrangement under section 230 of the Companies Act, 2013

- While compromise or arrangement under section 230 of the Act is proposed, it must be utilised first and only on its closure / failure, liquidation under the Code may commence. The Code read with regulations may provide that where a credible proposal is made to the Liquidator under section 230 of the Act for compromise or arrangement of the CD within seven days of the date of order under section 33 of the Code for liquidation, the Liquidator shall file an application under the said section within ten days of the order of liquidation under section 33 of the Code. A member or a creditor may file an application under section 230 of the Act within 10 days of the order of liquidation. If approved by the NCLT, the Liquidator shall complete the process under section 230 within 90 days of the order of liquidation.

- **S. C. Sekaran Vs. Amit Gupta & Ors**

.. we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', ***carry on the business of the 'corporate debtor' for its beneficial liquidation etc.*** *as prescribed under Section 35 of the I&B Code…. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law.*

.. The 'Liquidator' if initiates, will complete the process under Section 230 of the Companies Act within 90 days…

Scheme of Arrangement under Liquidation

Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016

- *"32. Sale of Assets, etc.*

  The liquidator may sell-

  (a) an asset on a standalone basis;

  (b) the assets in a slump sale;

  (c) a set of assets collectively;

  (d) the assets in parcels;

  (e) the corporate debtor as a going concern; or

  (f) the business(s) of the corporate debtor as a going concern:

- *Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate."*

Resolution Plan

Amount to be paid is zero, if liquidation value is Zero

Normally operational creditors are getting zero

All claims get extinguished once approved

Tax dues are zeroed – Clean Slate Theory

Shareholders are getting zero- Listed companies

- 29-A Disqualification will have to be checked on date of submission of plan

- 270 days cannot be extended

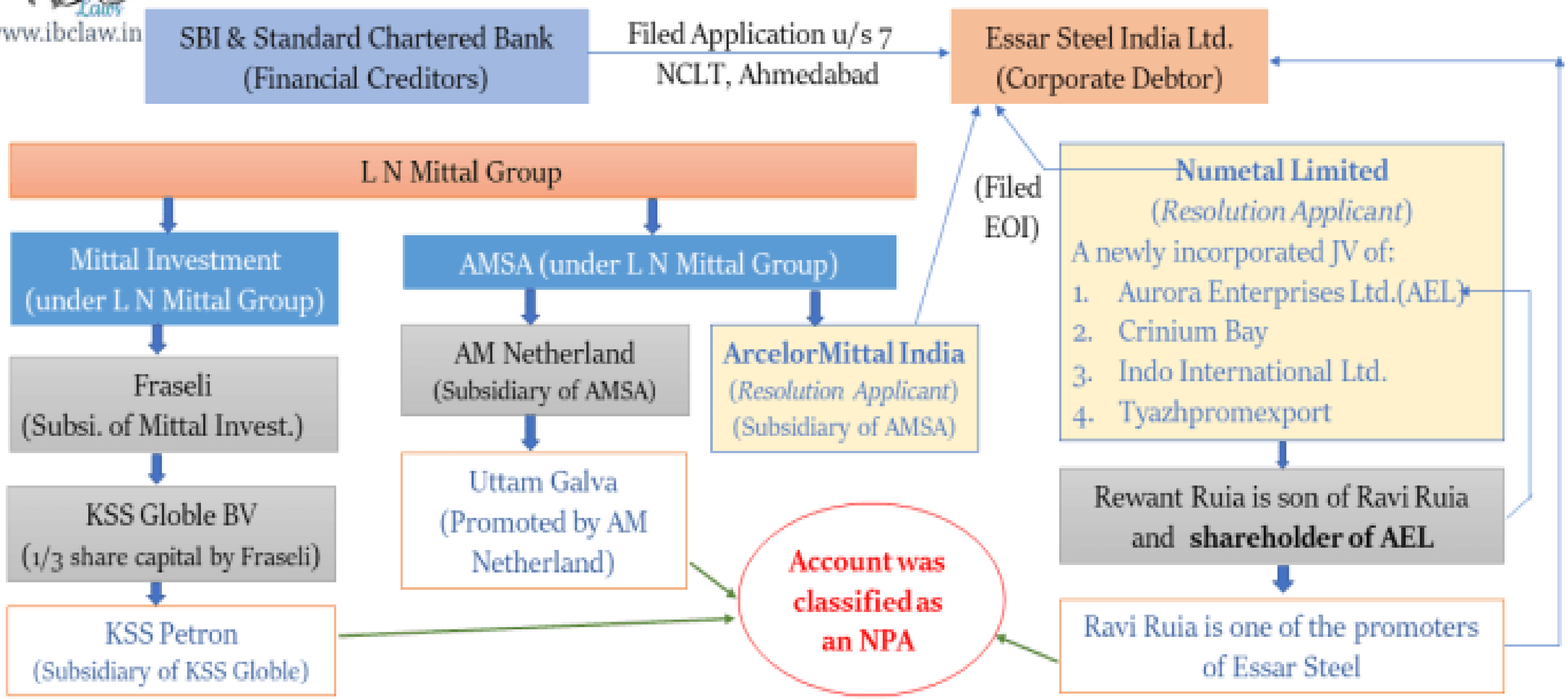
- Nov 2017 Ordinance 29-A introduced

ESSAR STEEL

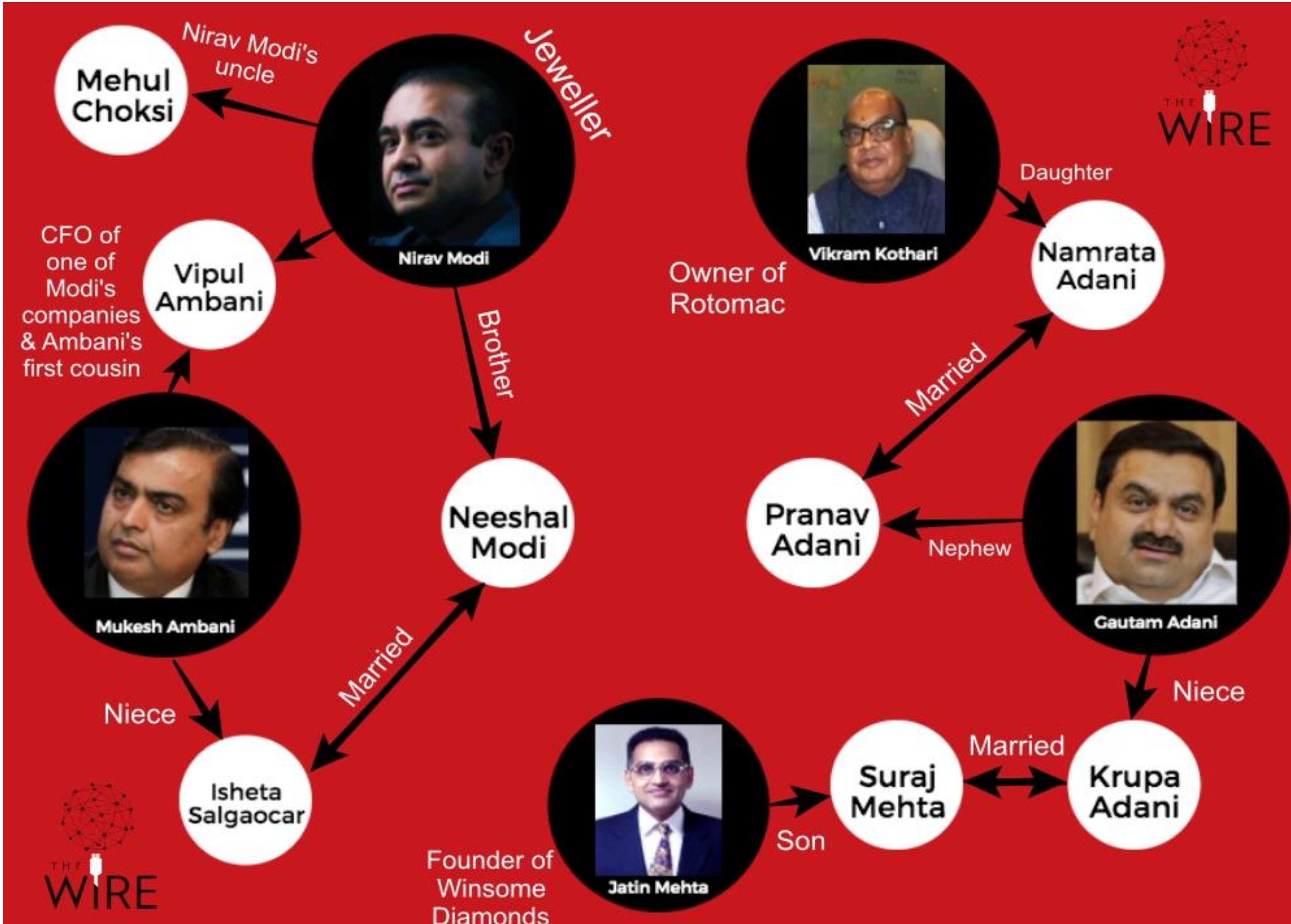
PART -I

www.ibclaw.in

Ineligibility of ArcelorMittal India & Numetal for Essar Resolution Plan



AM Netherlands is related party of ArcelorMittal India & was the promoter of Uttam Galva whose account was classified as NPA. LN Mittal/AMSA is promoter in management & control of ArcelorMittal India, KSS Global BV and KSS Petron(100% subs. of KSS Global BV). KSS Petron has a NPA for more than 1 yr. ***Numetal*** *is newly incorporated JV. Ravi Ruia (who Rewant Ruia is deemed to be acting in concert with) was the promoter of ESIL whose account was classified as an NPA. Rewant Ruia (who is acting jointly with the other shareholders of Numetal for the purposes of submission of the Resolution Plan) is ineligible u/s 29A.*



Mehul Choksi
Nirav Modi's uncle
Jeweller
Nirav Modi
CFO of one of Modi's companies & Ambani's first cousin
Vipul Ambani
Brother
Mukesh Ambani
Neeshal Modi
Married
Niece
Isheta Salgaocar
Vikram Kothari
Owner of Rotomac
Daughter
Namrata Adani
Married
Pranav Adani
Nephew
Gautam Adani
Niece
Jatin Mehta
Founder of Winsome Diamonds
Son
Suraj Mehta
Married
Krupa Adani
THE WIRE

adani wilmar

Ruchi Soya Industries Ltd.

- Role of RP

- Commercial decision of COC

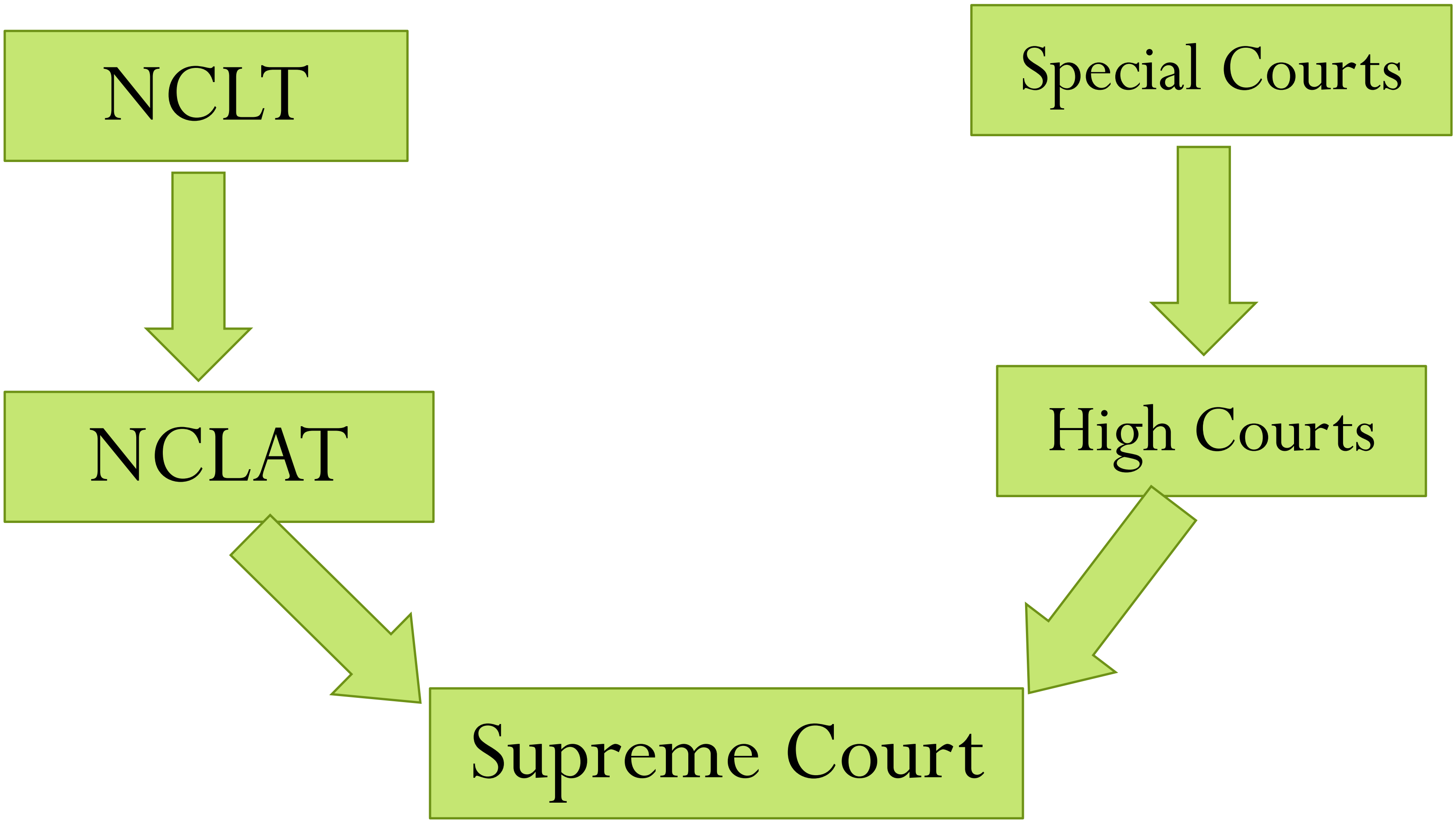
- Secured & Unsecured: Equity Principle

- Personal Guarantee

ESSAR STEEL

PART -II

Corporate Jurisdiction under IBC,2016



NCLT : Technical and Judicial Member

- Mandatory or Optional
- Madras Bar Association Vs. Union of India
- Nipun P Singhvi Vs. Union of India

SETTLEMENT

Pre-admission	Pre- COC	Post-COC
• Applicant • Mutually decided	• Applicant • IRP will move application • Payment of expenses	• 90% of COC agree • Applicant • Payment of all expenses

Appeal on QoL and QoF

Section 60/61

- NCLAT/NCLT are fact finding authorities
- Quasi-judicial proceedings
- Fact finding both tribunals
- Statutory Appeal under Code

Section 60(5)(c)

- Any question of law under IB Code
- Most used section in the IB Code

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May 2016	**JPC**
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+91 98290 31411

nipunsinghvi@yahoo.com

NSA LEGAL

Ahmedabad | Delhi | Jodhpur | Mumbai

Ahmedabad

111-112, University Plaza, Vijay Cross Roads,
Navrangpura, Ahmedabad 380009
+91 79 4002 9933
ahmedabad@nsalegal.in

Delhi

D-14, Lower Ground Floor,
Jangpura Extension, New Delhi 110014
+91 11 4164 9878
delhi@nsalegal.in

Mumbai

8, Ground Floor, Jolly Bhavan no. 1,
New Marines Lines, Mumbai 400020
+91 22 7969 7957
mumbai@nsalegal.in

Jodhpur

D-166, Shastri Nagar, Jodhpur 342003
+91 291 2612 933
jodhpur@nsalegal.in

CORPORATE ADVISORY | TAX STRUCTURING | ARBITRATION SERVICES
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contact@nsalegal.in www.nsalegal.in