

Salient Features of Insolvency & Bankruptcy Code

PREPARED BY:

Mr. Vimal K. Shah

(9426159641)

vimalkshah1@gmail.com

Mrs. Kavvita N.Choksi

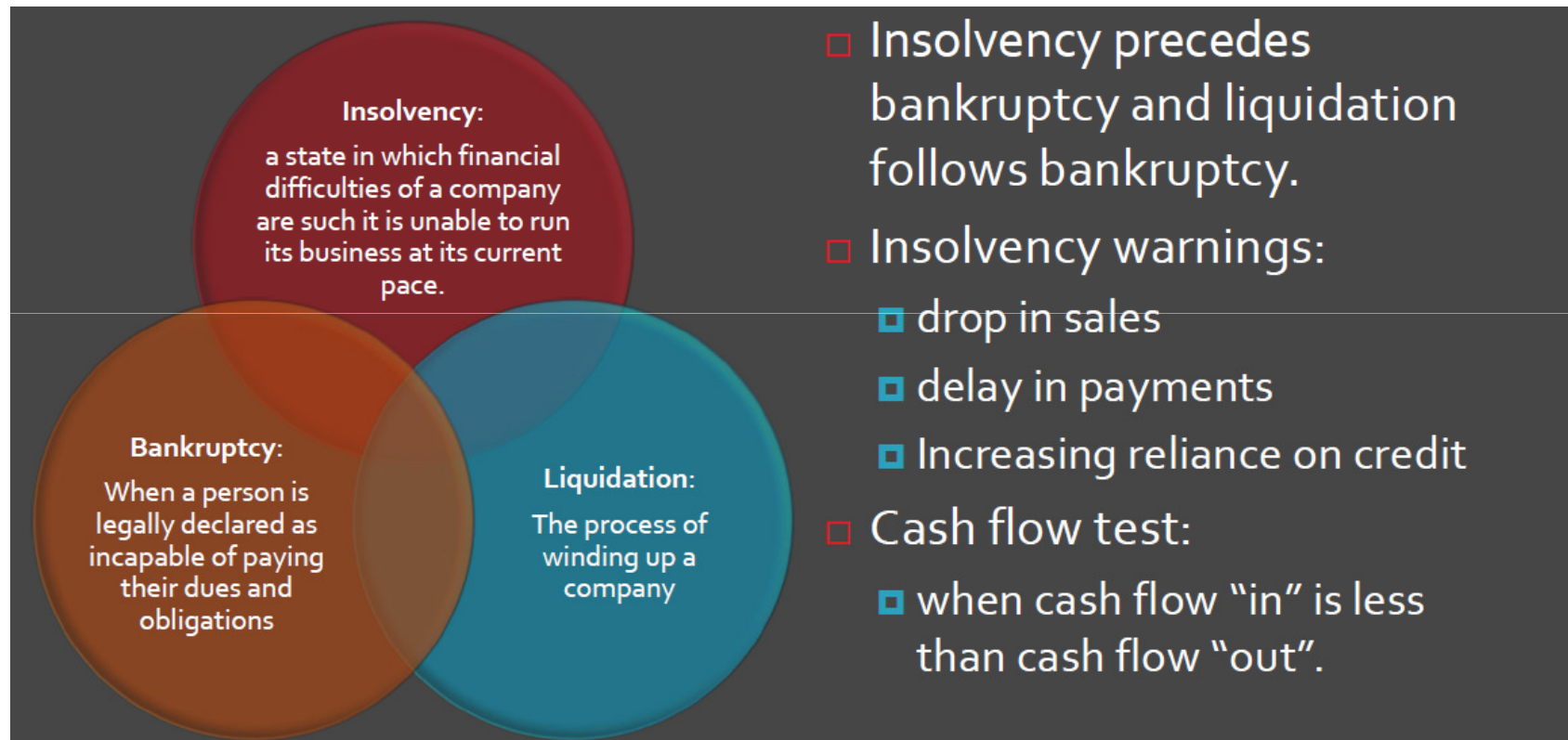
(9512333666)

kavitachoksi21@gmail.com

INSOLVENCY AND BANKRUPTCY



INSOLVENCY, BANKRUPTCY, LIQUIDATION

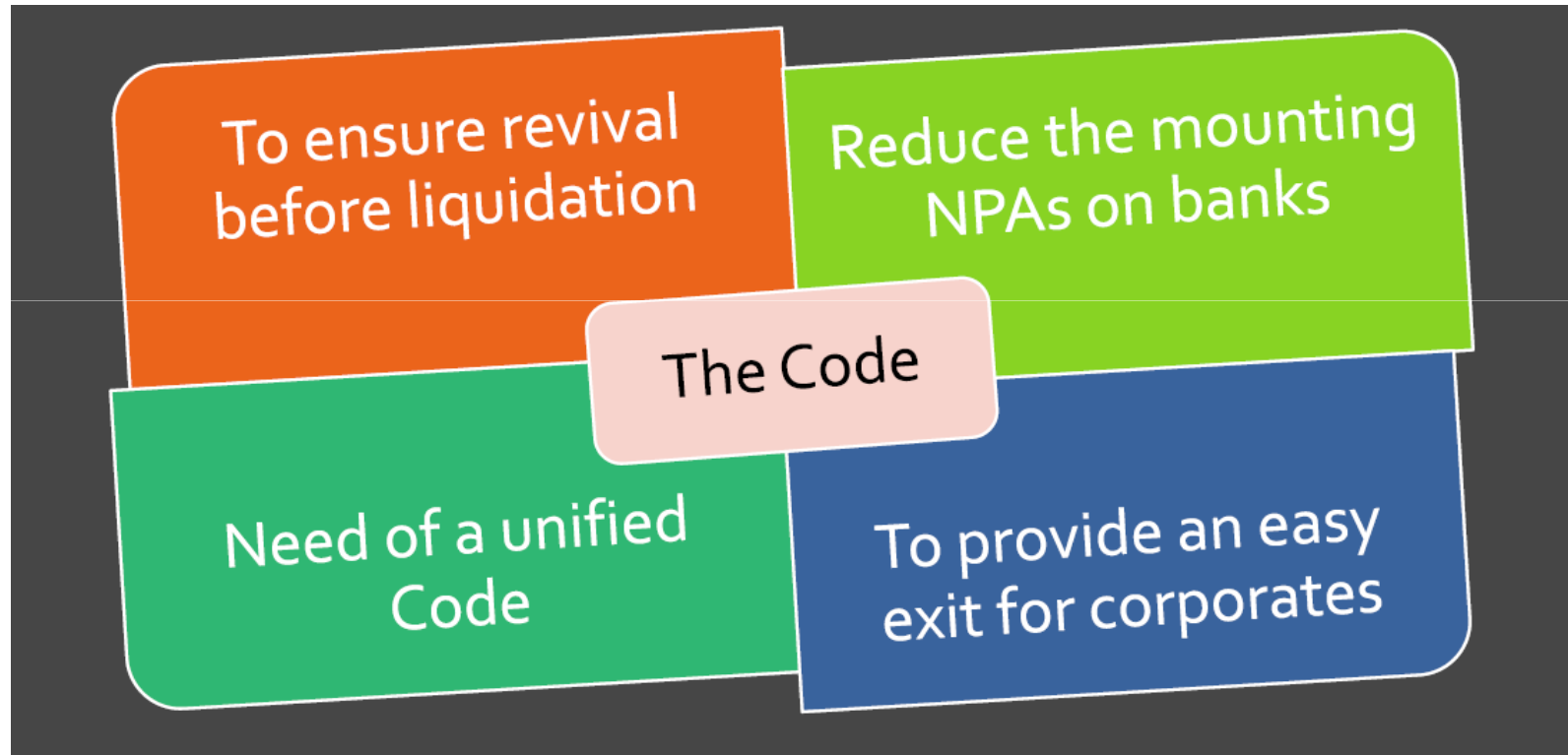


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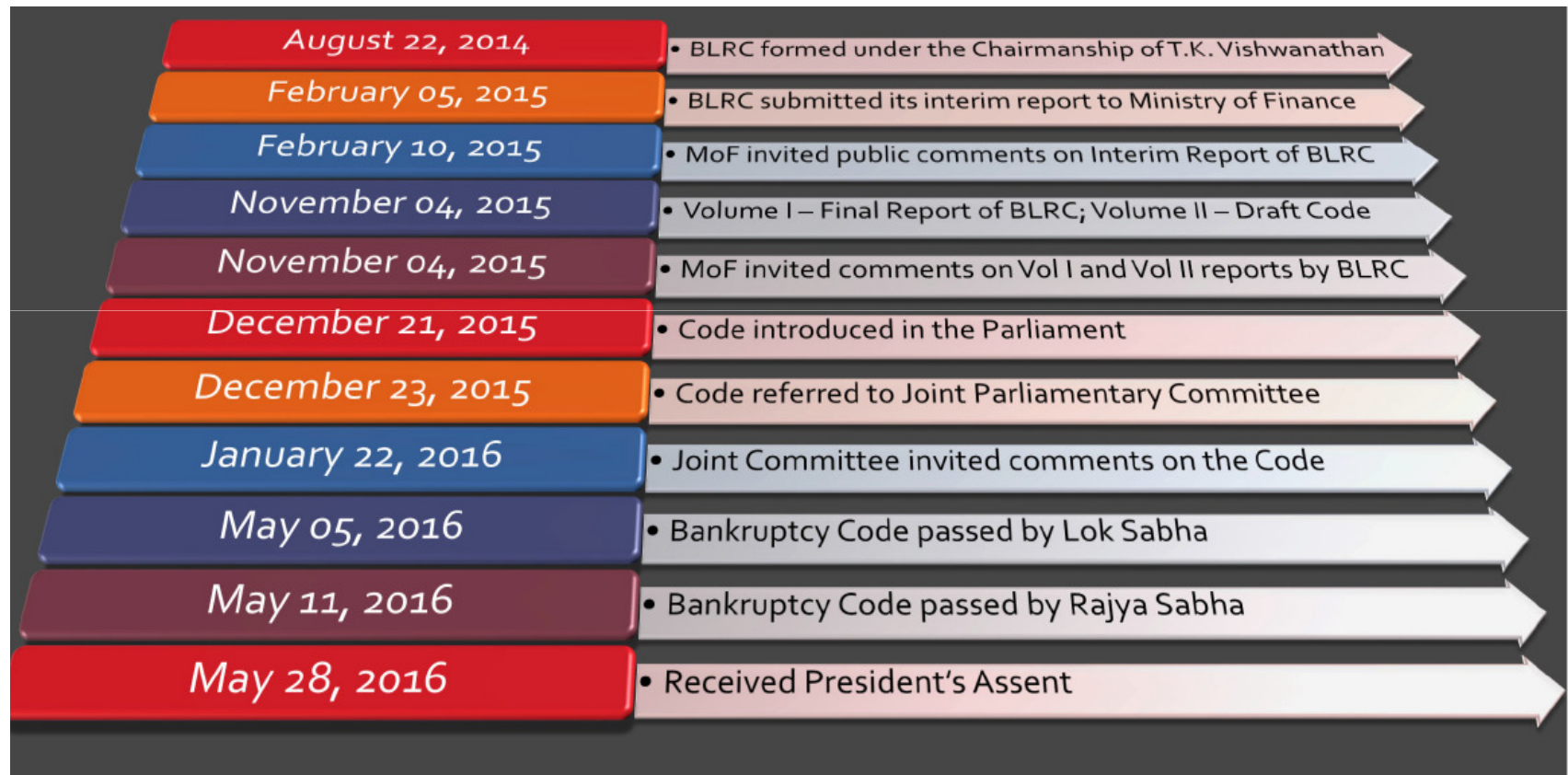
Insolvency is when an individual or organization is unable to meet its outstanding financial debt towards its lender as it becomes due. Insolvency can be resolved by way of changing the repayment plan of the loans or writing off a part thereof. If it cannot be resolved, then a legal action may lie against the insolvent and its assets will be sold to pay off the outstanding debts. Generally, an official assignee/liquidator appointed by the Government of India, realizes the assets and allocates it among the creditors of the insolvent.

Bankruptcy is a concept slightly different from insolvency, which is rather amicable. A bankruptcy is when a person voluntarily declares himself as an insolvent and goes to the court. On declaring him as 'bankrupt', the court is responsible to liquidate the personal property of the insolvent and hand it out to its creditors. It provides a fresh lease of life to the insolvent.

WHY CODE WAS NEEDED?



JOURNEY OF THE CODE



OBJECTIVE OF THE CODE

The new law aims to consolidate the laws relating to insolvency of companies and limited liability entities (including limited liability partnerships and other entities with limited liability), unlimited liability partnerships and individuals, contained in a number of legislations, into a single legislation and provide for their reorganization and resolution in a time bound manner for maximization of value of their assets. Such consolidation will provide for a greater clarity in law and facilitate the application of consistent and coherent provisions to different stakeholders affected by business failure or inability to pay debt.

The Code separates commercial aspects of the insolvency proceedings from judicial aspects. While **Insolvency Professionals (IPs)** will deal with commercial aspects such as management of the affairs of the corporate debtor, facilitating formation of committee of creditors, organising their meetings, examination of the resolution plan, etc., judicial issues will be handled by proposed Adjudicating Authorities (**National Company Law Tribunal / Debt Recovery Tribunal**). One more important institution created under the Code is the 'Information Utility' which would store financial information and data and terms of lending in electronic databases. This would eliminate delays and disputes about facts when default does take place.

The Code also provides a fast track insolvency resolution process for corporates and LLPs. This will be an enabler for start-ups and small and medium enterprises (SMEs) to complete the resolution process in 90 days (extendable to 45 days in deserving cases).

LIQUIDATION

In the event that:

- i. the COC cannot agree on a workable resolution plan within the IRP Period (i.e.180 days extendable once by another 90 days);
- ii. the COC decides to liquidate the company;
- iii. the NCLT rejects the resolution plan; or
- iv. the corporate debtor contravenes provisions of the resolution plan, the NCLT shall:
 - v. pass an order requiring liquidation of corporate debtor;
 - vi. make a public announcement of corporate debtor entering liquidation; and
 - vii. require a liquidation order to be sent to the registering authority of the corporate debtor (for example Registrar of Companies in case of companies incorporated under Companies Act).

The IP acting as the resolution professional shall, upon commencement of liquidation shall be appointed as the liquidator for the process, unless replaced by NCLT.

INSOLVENCY RESOLUTION PROCESS

An application to initiate an IRP under the Code can be either made by the debtor (personally or through an insolvency resolution professional) or by a creditor (either personally or jointly with other creditors through an insolvency resolution professional). However, a partner of a partnership firm is not eligible to apply for an IRP unless a joint application is filed by majority of the partners of the partnership firm.

Procedure for voluntary liquidation:

1. Declaration of Solvency to be made by the majority of Directors

Majority of directors of the company/entity must make a declaration verified by an affidavit stating that-

1. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets sold/ to be sold in the voluntary winding up; and
2. the company is not being liquidated to defraud any person

2. Documents to accompany the declaration

1. Audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
2. a report of the valuation of the assets of the company, if any prepared by a registered valuer.

Registrar of companies and insolvency and bankruptcy board of India to be notified about the general body resolution within seven days

The company is required to notify the Registrar of Companies and the Insolvency and Bankruptcy Board of India about the general body resolution for voluntary winding up of the company within seven days of such general body resolution or within seven days of the subsequent approval of the general body resolution by the creditors, as the case may be.

Approval of creditors must be obtained within seven days of general body resolution where the company owes any debt to any person

If the company owes any debt to any person, approval of the resolution for voluntary winding up of the company is required from creditors representing two-thirds in value of the debt of the company within seven days of general body resolution.

General body resolution to be passed within four weeks of making of declaration of solvency

The company should pass a special resolution in a general meeting where the company is to be liquidated voluntarily and appointment of an insolvency professional to act as liquidator.

Or

A resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act the liquidator should be passed.

- Voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.
- Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator can make an application to the Adjudicating Authority for the dissolution of such corporate person.
- On such application the Adjudicating Authority shall pass an order for dissolution.
- A copy of the order is to be forwarded to the authority with which the corporate is registered with fourteen days.

Thank

You

