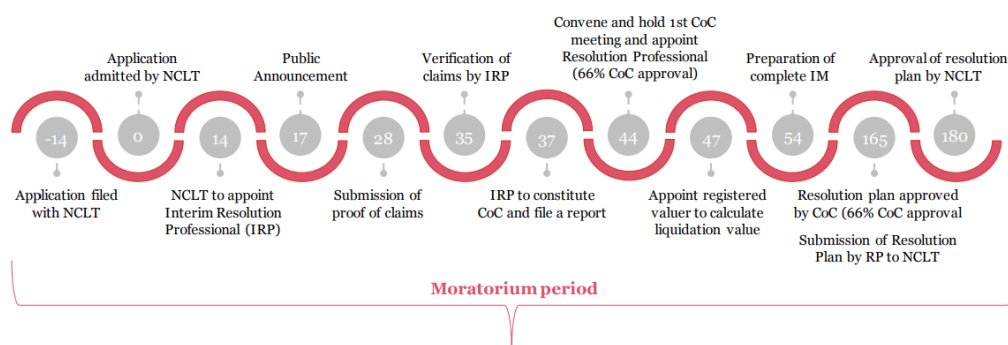


Benefits- Acquisitions of companies under Insolvency Process in I&B Code.

Preface: The companies made default in honouring the financial liabilities to the Banks, Financial Institutions etc, are usually declared as insolvent by the NCLT Order and the Corporate Insolvency Resolution Process starts by appointing the Insolvency Resolution Professional. Such companies are open for sale by the Committee of Creditors (“**COC**”) constituting Banks / Lenders of such companies to the potential buyers in the market.

Process / Sequence of Events:

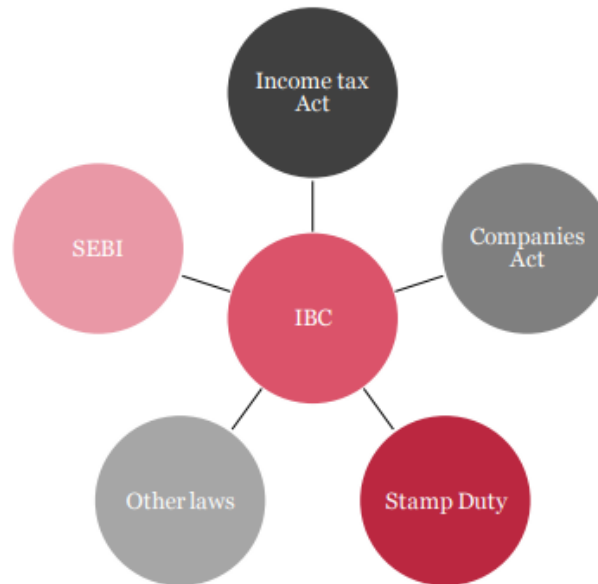


Benefits: Acquisition of companies under Corporate Insolvency Resolution Process (“**CIRP or Insolvency Process**”) administered by the National Company Law Tribunal (“**NCLT**”) as per the provisions of I&B Code, 2016 (“**Code**” or “**IBC**”). Code / IBC is the Act / Legislation passed by the Parliament in the year 2016 as Insolvency & Bankruptcy Code, 2016.

1. **Clean Company:** If the company is bought under Insolvency Process, the buyer gets a clean company irrespective of any old defaults. It means the buyer need not worry about the defaults and any other non-compliances made by the company including Tax obligations if any. While approving the transaction of acquiring such companies NCLT ensures that Resolution Plan submitted by the potential buyer is complied with all the norms. Accordingly, potential buyer will get a CLEAN company in hand and it can be run smoothly & effectively.
2. **Customised Payment Terms:** Terms of making payments to the Banks / Lenders can be customised and need not make the full payment of purchase consideration upfront. It can be made in tranches as per the resolution plan proposed & finalised between the COC & potential buyer/s.
3. **Loan Facilities:** Potential buyer/s can avail the loan facilities from the new Banks / Financial Institutions to fund the acquisition process. In some cases it is observed that even the funds are raised based on the potential business in future & mortgage of assets of the company as well.

4. **Haircut by Lenders:** Banks / Lenders are normally willing to take good amount of haircut on total existing loan exposure and hence such deals can be materialized in a best and the most reasonable cost consideration with the added advantage of support of additional loan funds from new Banks / FIs / ARCs etc.
5. **Consortium of Buyers:** Bidding in the process is allowed for the consortium of potential eligible buyers. Hence, more than one person / company can come together to participate in the Bidding process and take advantage of cost effective potentially good deals of buying a company under CIRP under IBC.

Regulatory Aspects:



Direct Tax Issues:

Section 41(1) & 28(iv)	Taxability of write back of loans	favourable
Section 115JB	Applicability of MAT provisions	neutral
Section 79	Implications of change in shareholdings on carry forward of tax-losses	favourable
Section 50CA & 56	Difference of shares issue price & fair value – to lenders for consideration	neutral

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SEBI Regulations:

LODR	<ul style="list-style-type: none"> • Role & responsibilities of BoD with IRP or RP • Shareholders' approval for transactions with related parties or for disposal of material subsidiary done away with if disclosed to stock exchanges. • Relaxation from reclassification of existing promoter or promoter group. • Schemes not to require SEBI & stock exchanges approval
ICDR	<p>Listed entities with approved resolution plans:</p> <ul style="list-style-type: none"> • Exemption from preferential issue procedure for equity shares and convertible securities. • Lock-in restrictions still apply
Takeover Code	<p>Acquisition pursuant to resolution plan:</p> <ul style="list-style-type: none"> • Exemption from open offer • Acquirer can hold more 75% in a listed entity
CSRR	<p>Due to implementation of resolution plan, if public shareholding falls:</p> <ul style="list-style-type: none"> • Below 25%: Increase to 25% within 3 years • Below 10%: Increase to at least 10% within 18 months
Delisting	<p>Listed entities with approved resolution plans:</p> <ul style="list-style-type: none"> • Exemption from delisting regulations if specific procedure for delisting is laid and exit option to existing public shareholders at a price not less than liquidation price • No tenure restriction to re-apply for listing

Companies Act:

Section 53 – Prohibition on issue of shares at discount	<ul style="list-style-type: none"> • Section 53 of the Companies Act, 2013 prohibits a company to issue shares at a discount. • However, an exemption has been provided in this respect when shares are issued to creditors at a discount, on conversion of their debt into shares in pursuance of any statutory resolution plan or debt restructuring scheme specified by RBI or specified under the Banking (Regulation) Act, 1949.
MCA circular for deemed shareholders approval - dated 25 Oct 2017	<ul style="list-style-type: none"> • Approval of shareholders/ members for implementation of resolution plan deemed to be received on approval by NCLT

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OL, RD, ROC approvals required ?	<ul style="list-style-type: none"> No separate approval/s required.
Stamp Duty aspects:	No specific exemptions given for the payment of stamp duties as may be applicable on acquisition of companies under CIRP.

Conclusion:

IBC is still an evolving legislation and getting mature with every new Judgement of Hon. Supreme Court, High Courts, NCLAT & NCLT. The purpose of introducing IBC was to clear the NPAs & give a fresh start to the Indian industry by keeping aside the defaulters & providing opportunities to better marker players by acquiring the insolvent companies under CIRP as clean companies irrespective of their old defaults & non compliances.

Under the IBC regime the efforts have been made to resolve the NPA issues by giving considerable relaxations to the new acquirers of such defaulting companies as described in above paragraphs & to create a smooth environment to deal with challenges of creating value for the nation as well as for the new acquirers.

It is observed that smart players are taking advantage of this new regime to create values & the success stories of Ruchi Soya Industries (acquired by Patanjali of Shri Ramdeo Baba) & Alok Industries (acquired by Reliance Industries along with JM Financials) and many more resolutions have been taking place.

Hence, potential acquirers along with other parties as consortium / JVs may come up & take advantage the IBC regime to create substantial values for the nation & corporates.

Thank You..!!

Note:

Views in this academic note are personal & only for the academic interest & not to be treated as any kind of legal advice to any person.