



# CONTENTS

	PAGE
<i>Foreword</i>	<i>I-3</i>
<i>Syllabus</i>	<i>I-7</i>
<i>Chapter-heads</i>	<i>I-13</i>

## **MODULE A: OVERVIEW OF CREDIT RECOVERY AND INSOLVENCY LAWS IN INDIA**

### **CHAPTER 1**

#### **CREDIT RECOVERY LAWS FOR BANKS**

<b>1.1</b>	Objectives	5
<b>1.2</b>	Credit recovery laws in India	5
<b>1.2.1</b>	Sick Industrial Companies (Special Provisions) Act, 1985 (“SICA”)	6
<b>1.2.2</b>	Recovery Laws	8
<b>1.2.3</b>	The Recovery of Debts (Due to Banks and Financial Institutions) Act, 1993: (RDDB & FI Act, 1993)	9
<b>1.2.4</b>	Constitutional Validity of RDDB and FI Act	10
<b>1.3</b>	Legal process for credit recovery	13
<b>1.3.1</b>	The Procedure for Recovery under the DRT Act	13
<b>1.3.2</b>	Enactment of Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)	14



## CONTENTS

	PAGE
<b>1.4</b> Adjudication, Delays & Remedies: Powers of Banks under the SARFAESI Act	18
<b>1.4.1</b> Jurisdiction of Commercial Courts for Debt Recovery by Banks and FIs	23
<b>1.5</b> Costs of recovery & optimisation thereof	24
<b>1.5.1</b> Other Costs	24
<b>1.6</b> Deciding between out-of-court settlement and legal actions	25
<b>1.6.1</b> Further Reforms - Insolvency and Bankruptcy Code, 2016	25
<b>1.7</b> Let us Sum-Up	26
<b>1.8</b> Key Words	27
<b>1.9</b> Check Your Progress	27

## **CHAPTER 2**

### **EVOLUTION OF INSOLVENCY AND BANKRUPTCY CODE**

<b>2.1</b> Objectives	31
<b>2.2</b> Genesis of the IBC and setting up of Insolvency and Bankruptcy Board of India (IBBI): Historical Background	31
<b>2.2.1</b> Brief Introduction to Bankruptcy Law Reforms Committee (BLRC)	38
<b>2.3</b> Insolvency versus liquidation	40
<b>2.4</b> Necessity for laws on insolvency	41
<b>2.5</b> Development of Insolvency and Bankruptcy Code (IBC)	43
<b>2.6</b> Let us Sum-Up	48
<b>2.7</b> Key Words	48
<b>2.8</b> Check Your Progress	48

## **MODULE B: EVOLUTION & PRACTICE OF INSOLVENCY AND BANKRUPTCY CODE**

### **CHAPTER 3**

#### **BANKRUPTCY LAWS - CROSS COUNTRY EXPERIENCE**

<b>3.1</b>	Objectives	55
<b>3.2</b>	Framework for restructuring financially distressed assets	55
<b>3.3</b>	Efficiency issues in restructuring	57
<b>3.4</b>	Bank receivership v/s Bankruptcy Codes: Impact on operations and efficiency of credit recovery	58
<b>3.5</b>	Bankruptcy Laws: Cross country experience	59
<b>3.6</b>	Important International cases	59
<b>3.7</b>	Let us Sum-Up	61
<b>3.8</b>	Check Your Progress	62

### **CHAPTER 4**

#### **STRUCTURE OF THE IBC**

<b>4.1</b>	Objectives	65
<b>4.2</b>	Division of chapters under IBC	65
<b>4.3</b>	Important Aspects	66
<b>4.4</b>	Insolvency Resolution and Liquidation for Corporate Persons	67
<b>4.5</b>	Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms	72
<b>4.6</b>	Regulation of Insolvency Professionals, Agencies, and Information Utilities	74



## CONTENTS

	PAGE
4.7 Let us Sum-Up	77
4.8 Check Your Progress	77

### **MODULE C: CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

#### **CHAPTER 5**

##### **INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

5.1 Objectives	83
5.2 Who can initiate CIRP?	83
5.3 Prerequisites for initiating insolvency resolution process	84
5.3.1 By Financial Creditor	84
5.3.2 By Operational Creditor	85
5.3.3 By Corporate Debtor	86
5.4 Who is a Financial Creditor, Operational Creditor and Other Creditor?	87
5.5 What constitutes a Financial Debt, Operational Debt and Other Debt	90
5.6 Relevant provisions, rules and regulations	90
5.7 Application to Adjudicating authority: Formats for application	91
5.8 Adjudication process and grounds for rejection of application	92
5.9 Let us Sum-Up	93
5.10 Check Your Progress	94

#### **CHAPTER 6**

##### **COMMENCEMENT OF CIRP**

6.1 Objectives	99
----------------	----

## CONTENTS



	PAGE
<b>6.2</b> Commencement of CIRP	99
<b>6.3</b> Public announcement and invitation to creditors to file claims	103
<b>6.4</b> Submission, verification of claims and constitution of Committee of Creditors	104
<b>6.4.1</b> Submission of claims	104
<b>6.4.2</b> Verification of claims	107
<b>6.4.3</b> Constitution of Committee of creditors	108
<b>6.5</b> Appointment of authorised representatives of CoC members to participate in the CoC	109
<b>6.6</b> Conduct of CoC meetings and voting	109
<b>6.7</b> Duties and powers of CoC	112
<b>6.7.1</b> Appointment/change of Interim Resolution Professional (IRP)/Resolution Professional (RP)	112
<b>6.8</b> Facilitating CIRP by IRP	115
<b>6.9</b> Approval of CIRP costs and certain other actions	117
<b>6.10</b> Approval of Resolution Plan	119
<b>6.11</b> Role of Promoters/Directors and Company Management during CIRP	122
<b>6.12</b> Requisites for effective participation in the CoC by bankers	122
<b>6.13</b> Let us Sum-Up	123
<b>6.14</b> Key Words	124
<b>6.15</b> Check Your Progress	124

## CHAPTER 7

### ROLES AND DUTIES OF IRP AND RP

<b>7.1</b> Objectives	129
<b>7.2</b> Responsibilities and duties of IRP and RP	129



## CONTENTS

	PAGE
7.2.1 Management of affairs of the corporate debtor	129
7.3 Duties of IRP	130
7.4 Implied skills and capabilities of IRP	132
7.5 Conducting and regulating the meetings of Committee of Creditors (CoC)	133
7.6 Preparation of the Information Memorandum	133
7.7 Finalising eligibility and qualification criteria for resolution applicants in consultation with CoC	135
7.8 Inviting eligible Resolution Applicants to submit resolution plans	139
7.9 Evaluation matrix for resolution plan	139
7.10 Evaluating resolution plans and examining for compliances	140
7.11 Filing petition for approval of resolution plan approved by the CoC	143
7.12 Engaging lawyers, accountants and other professionals	145
7.13 Let us Sum-Up	146
7.14 Check Your Progress	146

## **CHAPTER 8**

### **CATALYSING SUCCESSFUL RESOLUTION PLAN**

8.1 Objectives	151
8.2 Need for a resolution plan	151
8.3 What is a resolution plan?	152
8.4 Requisites for effective business plan: Beyond prescribed contents	153
8.5 Evaluation and approval of Resolution Plan by CoC: Factors considered	153



	PAGE
<b>8.6</b> Is resolution applicant necessarily to be made part of the discussions on the resolution plan?	155
<b>8.7</b> Does CoC need to give reasons for approval/rejection of the resolution plan?	156
<b>8.8</b> Can the resolution applicant challenge rejection of its resolution plan?	156
<b>8.9</b> Submission of the resolution plan to Adjudicating Authority (AA)	157
<b>8.10</b> Resolution plan: Adjudicating powers of AA	157
<b>8.11</b> Consequences of rejection of resolution plan	158
<b>8.12</b> Journey towards a successful resolution	158
<b>8.12.1</b> Consideration & Approval of Resolution Plans	159
<b>8.13</b> Let us Sum-Up	162
<b>8.14</b> Check Your Progress	163

## **CHAPTER 9**

### **FAST TRACK CIRP**

<b>9.1</b> Objectives	167
<b>9.2</b> Introduction	167
<b>9.3</b> What is fast track CIRP?	168
<b>9.4</b> Timelines	169
<b>9.5</b> How to Start Fast Track Corporate Insolvency Resolution Process (CIRP)?	169
<b>9.6</b> Let us Sum-Up	170
<b>9.7</b> Check Your Progress	170

## **CHAPTER 10**

### **FAILURE OF CIRP OR BUSINESS: LIQUIDATION & VOLUNTARY LIQUIDATION**

<b>10.1</b> Objectives	175
------------------------	-----



## CONTENTS

	PAGE
<b>10.2</b> Why does the CIRP fail?	<i>175</i>
<b>10.3</b> Liquidation process & regulations	<i>176</i>
<b>10.4</b> Role of liquidator	<i>178</i>
<b>10.5</b> Important commercial considerations in liquidation	<i>181</i>
<b>10.6</b> How to handle moral hazard in liquidation?	<i>182</i>
<b>10.7</b> Who can initiate voluntary liquidation?	<i>183</i>
<b>10.8</b> Voluntary liquidation process & regulations	<i>184</i>
<b>10.9</b> Let us Sum-Up	<i>187</i>
<b>10.10</b> Check Your Progress	<i>188</i>

### **MODULE D: INSOLVENCY RESOLUTION PROCESS FOR NON-CORPORATE ENTITIES**

#### **CHAPTER 11**

#### **INSOLVENCY RESOLUTION PROCESS FOR INDIVIDUALS AND FIRMS**

<b>11.1</b> Objectives	<i>193</i>
<b>11.2</b> Introduction	<i>193</i>
<b>11.3</b> Application for Insolvency and Bankruptcy Resolution	<i>194</i>
<b>11.4</b> Fresh start process	<i>195</i>
<b>11.5</b> Individual Insolvency Resolution Process	<i>198</i>
<b>11.5.1</b> Application to Initiate Insolvency Resolution Process	<i>198</i>
<b>11.5.2</b> Examination and Admission of Application	<i>199</i>
<b>11.5.3</b> Resolution of Objections/Applications of Creditors/Debtors	<i>199</i>
<b>11.5.4</b> Repayment Plan	<i>200</i>
<b>11.5.5</b> Adjudication : Acceptance or Rejection of Repayment Plan	<i>201</i>





	PAGE
<b>11.6</b> Bankruptcy Proceedings Against Individuals and Partnership Firms	202
<b>11.7</b> Let us Sum-Up	206
<b>11.8</b> Check Your Progress	207

## **MODULE E: OTHER IMPORTANT PROVISIONS/ MATTERS**

### **CHAPTER 12**

#### **ADJUDICATION, APPEALS, OFFENCES & PENALTIES**

<b>12.1</b> Objectives	213
<b>12.2</b> Adjudicating authority for corporate persons	213
<b>12.3</b> Adjudicating authority for individuals and partnership firms	214
<b>12.4</b> Jurisdiction	214
<b>12.5</b> Appeals	215
<b>12.6</b> Special courts	215
<b>12.7</b> PUFÉ: Preferential, Undervalued, Fraudulent and Extortionate transactions	217
<b>12.8</b> Trial of offences by Special Court	223
<b>12.9</b> Primacy of IBC	223
<b>12.10</b> Let us Sum-Up	224
<b>12.11</b> Check Your Progress	224

### **CHAPTER 13**

#### **REGULATORY & MISCELLANEOUS ASPECTS**

<b>13.1</b> Objectives	229
<b>13.2</b> Institutional framework	229
<b>13.3</b> Repeal/amendments of certain enactments	232



## CONTENTS

	PAGE
<b>13.4</b> Empowerment of Central Government and IBBI to make rules and regulations respectively	233
<b>13.5</b> Taking control/custody of assets located in a foreign country	235
<b>13.6</b> Let us Sum Up	236
<b>13.7</b> Check Your Progress	236
<b>CHAPTER 14</b>	
<hr/>	
<b>IMPORTANT CASE LAWS AND LESSONS DRAWN</b>	
<b>14.1</b> Important Case Laws	241
<i>Appendix I:</i> Application to Adjudicating Authority: Formats for Application	251
<i>Appendix II:</i> RBI circular on Prudential Framework for Resolution of Stressed Assets dated 7.6.2019	268
The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 - Gazette Notification dated 5th June, 2020	287