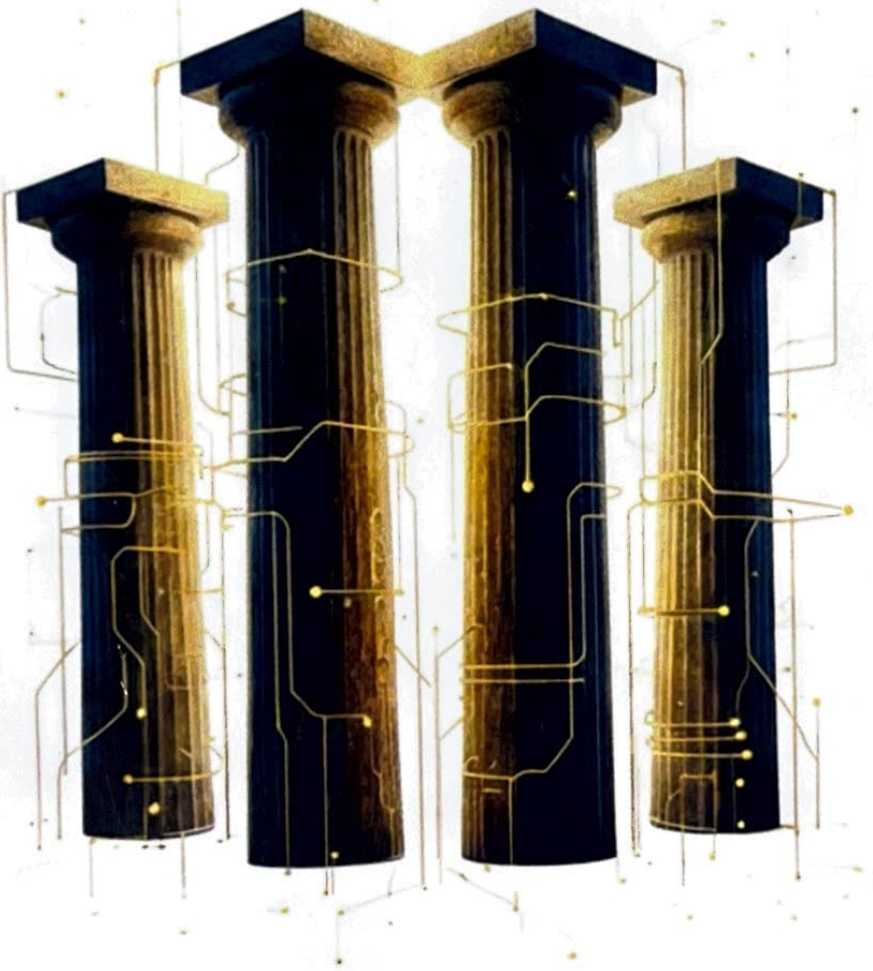


# **PILLARS OF INSOLVENCY AND BANKRUPTCY CODE 2016**



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## Foreword

The Insolvency and Bankruptcy Code, 2016 (IBC) stands as one of the most transformative economic legislations enacted in India since liberalisation. Its significance lies not merely in consolidating and replacing a fragmented insolvency regime, but in fundamentally re-engineering how financial distress is addressed in a market economy. The Code recognises that failure is an intrinsic feature of enterprise, innovation, and competition. What distinguishes a resilient economy is not the absence of failure, but the presence of a credible, predictable, and efficient mechanism to resolve it.

At its core, the IBC is an exercise in institutional design. It does not attempt to predetermine outcomes; instead, it creates a framework within which outcomes can be discovered through market processes, subject to legal discipline and regulatory oversight. Insolvency resolution under the IBC is therefore not a mere adjudicatory proceeding. It is a carefully structured interaction between institutions and markets, law and economics, rules and incentives.

This interaction can best be understood through the metaphor of an orchestra. Insolvency proceedings are not a solo performance, nor are they driven by any single actor, whether creditor, debtor, or court. They are a collective endeavour in which different entities perform distinct roles. The quality of the final performance, whether timely resolution, value maximisation, or revival of a viable enterprise, depends on coordination, discipline, and clarity of roles.

In IBC proceedings, two distinct sets of entities interact. The first set comprises the four institutional pillars that support and sustain the insolvency framework. These pillars do not compete for economic gain; they create, regulate, verify, and enforce the conditions within which insolvency resolution can take place. They are:

1. the regulator, the Insolvency and Bankruptcy Board of India (IBBI);
2. the adjudicating authority (AA), which has been assigned to the National Company Law Tribunal (NCLT);
3. the professionals, particularly insolvency professionals (IPs), but also registered valuers (RVs) and other professionals, along with their regulatory ecosystem, including Insolvency Professional Agencies (IPAs) and Registered Valuers Organisations (RVOs); and
4. the information utilities (IUs), such as the National E-Governance Services Ltd. (NESL).

The second set consists of market players, economic actors who participate in insolvency proceedings to maximise their respective interests. These include financial creditors, operational creditors, corporate debtors, promoters, committees of creditors, resolution applicants, interim finance providers, and other stakeholders. They play the insolvency 'game', but they do so within the rules laid down by the regulator, overseen by professionals and adjudicating authorities, and informed by verified data from information utilities.

This distinction between pillars and players is foundational to understanding the IBC. Confusing the two risks misdiagnosing both successes and failures of the regime. Outcomes under the IBC are produced by market players, but the quality, fairness, and credibility of those outcomes are determined by the strength of the institutional pillars.

The first pillar, the IBBI, is the architect and custodian of the insolvency ecosystem. The IBC consciously departed from the earlier model, where insolvency was treated as a sporadic judicial event, and instead recognised it as a continuous market process requiring active regulation. The IBBI performs this role by framing regulations, registering licensing and supervising IPs, IPAs, RVS, RVOs, and information utilities, and by enforcing discipline through inspection, investigation, and enforcement.

The importance of a strong regulator cannot be overstated. Insolvency is inherently susceptible to information asymmetry, conflicts of interest, and opportunistic behaviour. The IBBI mitigates these risks by setting standards of conduct, prescribing disclosure norms, and continuously refining the framework in response to market experience and judicial interpretation. Much like a conductor who ensures that each section of the orchestra follows the score and keeps time, the IBBI ensures coherence, predictability, and integrity in the insolvency process. Without a credible regulator, insolvency proceedings risk degenerating into ad hoc bargaining or prolonged litigation.

The second pillar is the adjudicating authority (AA). Its role under the IBC is both vital and deliberately limited. Unlike traditional company law or winding-up regimes, the IBC does not envisage the tribunal as the primary decision-maker on commercial matters. Instead, it assigns to the AA the role of gatekeeper, supervisor, and enforcer of the statutory framework.

The AA admits or rejects insolvency applications, grants moratoriums, appoints professionals, approves resolution plans, and ensures compliance with the Code. In doing so, it provides legal certainty and finality. At the same time, the jurisprudence under the IBC has consistently emphasised that they must not substitute their judgment for the commercial decisions of market players acting within the law. This balance between judicial oversight and judicial restraint is essential to the success of the insolvency regime. An overburdened, inconsistent, or interventionist adjudicatory system can disrupt the entire orchestration, regardless of how well other pillars perform.

The third pillar consists of professionals, particularly IPs and RVs, regulated through IPAs and RVOs. IPs occupy a unique and demanding position in the IBC framework. Upon commencement of insolvency, control of the corporate debtor shifts from the promoters to a neutral professional. The IP manages the enterprise as a going concern, preserves value, collates and verifies claims, convenes and facilitates the committee of creditors, and steers the process towards resolution or liquidation.

This role is neither clerical nor partisan. IPs are fiduciaries of the process itself. Their effectiveness depends on competence, independence, integrity, and institutional support. RVs, meanwhile, provide the economic compass by estimating enterprise and liquidation values, enabling informed commercial decisions. IPAs contribute by setting professional standards, monitoring conduct, and fostering continuous capacity building. Together, these professionals translate regulatory intent into operational reality. If they are weak, conflicted, or under-resourced, the insolvency process falters, regardless of statutory timelines.

The fourth pillar is the IU. One of the most persistent failures of India's pre-IBC insolvency regime was the absence of reliable, authenticated financial information. Insolvency proceedings were frequently stalled at the threshold by disputes over the existence of debt, the occurrence of default, or priority of claims. Information utilities were conceived as a systemic solution to this problem.

By receiving, storing, authenticating, and providing access to financial information, IUs create a shared factual foundation for insolvency proceedings. They reduce information asymmetry, limit frivolous disputes, and accelerate decision-making. IPs rely on them to verify claims; adjudicating authorities rely on them to establish default; and market players rely on them to assess risk and value. In the orchestral metaphor, information utilities provide the rhythm and timing, ensuring that the performance does not lose momentum due to factual discord.

Against this institutional backdrop operate the market players. Creditors seek recovery through revival of the company, resolution applicants seek acquisition opportunities, interim finance providers seek risk-adjusted returns, and corporate debtors seek survival or exit. The committee of creditors exercises commercial choice; resolution applicants compete on value and feasibility; debtors respond to incentives created by the possibility of loss of control. These actors drive outcomes, but they do so within a framework they do not control.

The genius of the IBC lies in this separation. Markets are allowed to function: to negotiate, compete, and allocate resources, but they do so under rules set by the regulator, processes overseen by professionals, facts verified by IUs, and legality ensured by AA. This separation ensures that insolvency outcomes are market-driven yet institutionally disciplined.

This volume, *Pillars of Insolvency and Bankruptcy Code, 2016*, rightly focuses on these institutional foundations. By examining the roles, responsibilities, and interconnections of the four pillars, it shifts attention from isolated outcomes to systemic capacity. It underscores a crucial insight: insolvency reform is not a one-time legislative event, but an ongoing process of institutional strengthening.

I sincerely thank the author, Dr. Parineeta Goswami, Assistant Professor, School of Law, UPES, Dehradun, for meticulously capturing the institutional intricacies of the IBC and for presenting them in such a clear and insightful manner. This volume is a valuable contribution that will enrich the understanding of practitioners, scholars, and policymakers alike.

As India's economy grows in complexity and integration with global markets, the demands on its insolvency framework will intensify. Cyclical downturns, sectoral disruptions, and cross-border distress will test not only market resilience but institutional robustness. Whether these tests result in timely resolution or prolonged uncertainty will depend on the strength of the four pillars that support the insolvency orchestra.

If these pillars remain strong, independent, and adaptive, the IBC will continue to serve its true purpose, not merely resolving distress, but reinforcing trust in markets, encouraging responsible risk-taking, and supporting sustainable economic growth.

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