

THE INSOLVENCY AND BANKRUPTCY CODE, 2016



LEARNING OUTCOMES

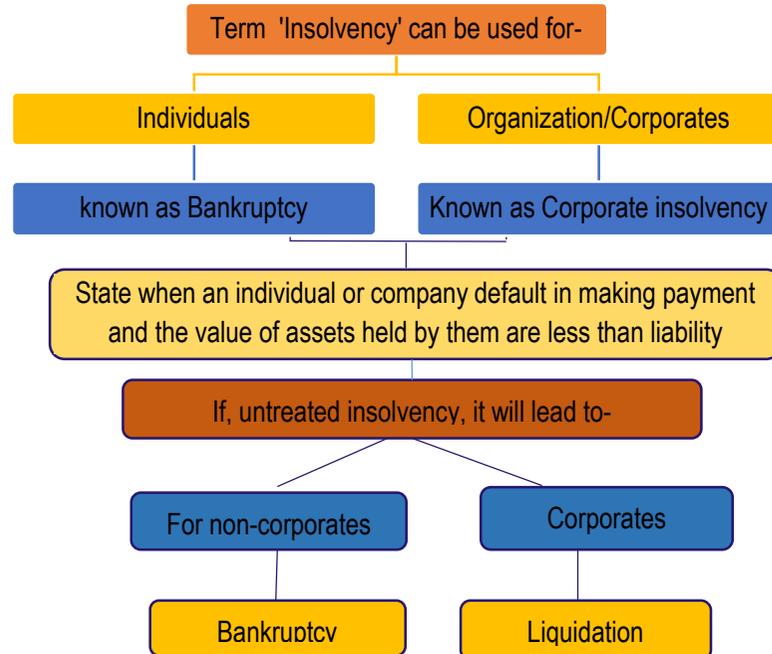
At the end of this Chapter, you will be able to:

- ❑ Explain the concepts of Insolvency and Bankruptcy Code, 2016 (Code)
- ❑ Explain the relationship between Bankruptcy, Insolvency and Liquidation
- ❑ Explain the important terminologies used in the Code.
- ❑ Identify the structure and applicability of the Code.
- ❑ Elaborate the manner and process of Insolvency Resolution Process for Corporate Persons

1. INTRODUCTION

Concept of Insolvency and Bankruptcy

- The term insolvency is used for both individuals and organizations. Insolvency is when there is a default in payment and it's not paid. Default is defined under section 3(12) of the Insolvency and Bankruptcy Code, 2016. Untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates. Creditors put money into debt investments today in return for the promise of fixed future cash flows. But the returns expected on these investments are still uncertain because at the time of repayment, the corporate or individual (debtor) may make repayments as promised, or he may default and does not make the payment. When default happens in payment, the debtor is considered insolvent. The debtor may be insolvent because of:
 - **Financial Failure:** a persistent mismatch between payments by the enterprise and receivables into the enterprise, even though the business model is generating revenues, or
 - **Business Failure:** which is a breakdown in the business model of the enterprise, and it is unable to generate sufficient revenues to meet payments¹ or there may be avoidance of transaction because of which also insolvency may have happened.



¹ The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design, November 2015

- From the above it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Insolvency situation can be resolved through resolution mechanism under the Code and a failed resolution mechanism would lead to liquidation process in relation to corporates and bankruptcy process in relation to individuals under the Code.
- **Avoidance Transactions:** It is covered in Chapter III of IBC, 2016. The relevant provisions are in the following Sections
 - Preferential Transactions (Sec 43 and 44)
 - Undervalued Transactions (Sec 45 to Sec 48)
 - Transactions Defrauding Creditors (Sec 49)
 - Extortionate Credit Transactions (Sec 50 and Sec 51)
 - There is also Provisions for Fraudulent Trading or wrongful Trading (Sec 66 and Sec 67)

The IRP/ RP/ Liquidator has to form an opinion, then determine the avoidance transactions and thereafter file the petition before Hon'ble NCLT under the above provisions against the perpetrators. There are timelines prescribed for the all the activities under Regulations. However the times are not mandatory as per NCLAT.

Case Law

NCLAT in the matter of *Prasant Chandra Rath (Suspended Director of Corporate Debtor) Vs. Surya Kanta Satapathy (RP) Company Appeal (AT) (Insolvency) No. 850 of 2022 and Company Appeal (AT) (Insolvency) No. 869 of 2022* in order dated 30th Sept 2022 has decided that CIRP Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the Insolvency Commencement Date is only directory.

Relationship between Bankruptcy, Insolvency & Liquidation

In lucid language, if any person or entity is unable to pay off the debts and it owes, to their creditor, on time or as and when they became due and payable, and if defaults then such person or entity is regarded as "insolvent".

Bankruptcy is a legal proceeding involving a person or business that is unable to repay outstanding debts. The bankruptcy process begins with a petition filed by the debtor, or by the creditors. All of the debtor's assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt.

Liquidation is the winding up of a corporation or incorporated entity. There are many persons that can initiate proceedings to cause the Liquidation, those being:-

- The Regulatory Bodies;
- The Directors of a Company;

- The Shareholders of a Company; and
- An Unpaid Creditor of a Company

In nut shell, **insolvency** is common to both bankruptcy and liquidation. Not being able to pay debts as and when they became due and payable are the leading cause of Liquidation and is the only way that can cause a natural person to become a bankrupt.

Objectives: A sound legal framework of Insolvency law was required for achieving the following objectives:-

- **Improved handling of conflicts between creditors and the debtor:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.
- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most efficient solution to maximise value during negotiations. The Insolvency law will create a platform for negotiation between creditors and external investors which can create the possibility of such rearrangements.
- **Drawing the line between malfeasance and business failure :**
 - (a) If malfeasance then promoters should be held responsible
 - (b) If business fails then, the company should move forward for its resolution.

The recommendations of the Bankruptcy Law Reforms Committee (BLRC) led to the enactment of the Insolvency and Bankruptcy Code, 2016 (“IBC or code”) on May 28, 2016.

The IBC, consolidating all existing insolvency-related laws, has brought about a revolutionary change in the form of a robust, modern and sophisticated insolvency framework. This framework seeks to achieve a resolution for corporate debtors in distress and failing that, their liquidation in a time bound manner. Prior to the IBC, the legislative framework for insolvency and restructuring was fragmented across multiple legislations, such as the Companies Act 2013, the Sick Industrial Companies (Special Provisions) Act, 1985, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act (RDDBFI Act), 1993, the Presidency Towns Insolvency Act, 1909, the Provincial Insolvency Act, 1920.

Preamble of the Code

Objectives of the Code are given in the Preamble.

An Act to-

- Consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals;
- In a time bound manner for maximisation of value of assets of such persons, - to promote entrepreneurship;

- Availability of credit;
- Balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues;
- To establish an Insolvency and Bankruptcy Board of India; and
- For matters connected therewith or incidental thereto.

IBC is not a recovery mechanism

As per preamble the objective of IBC is resolution of the corporate debtor and it cannot be used as a recovery mechanism.

Case Laws

NCLAT in the Company Appeal (AT) (Insolvency) No. 540 of 2020 dt 17th Jan 2022, in the matter of *M/s Amsons Communication Pvt. Ltd. Vs. M/s ATS Estates Pvt. Ltd.* has ordered that the provisions of Code cannot be allowed as a recovery mechanism or to recover the claim of interest by Operational Creditor.

Structure of the Code

The Code is structured into 5 parts comprising of 255 sections and 12 Schedules. Each part deals with a distinct aspect of the insolvency resolution process.

Part	Part Content	Chapters and Sections	Chapter / Contents
I	Preliminary	(1-3) Part I	1. Short title, extent & Commencement 2. Application 3. Definitions
II	Insolvency Resolutions and Liquidation for Corporate Persons	(4 – 77) Part II	1. Preliminary (Application & Definitions) 2. Corporate Insolvency Resolution Process 3. Liquidation Process 4. Pre-Packaged Insolvency Resolution Process 5. Fast Track Corporate Insolvency Resolution Process 6. Voluntary Liquidation of Corporate Persons 7. Adjudicating Authority for Corporate Persons 8. Offences & Penalties
III	Insolvency Resolution and Bankruptcy for Individuals and	(78 - 187) Part III	1. Preliminary (Application & Definitions) 2. Fresh Start Process 3. Insolvency Resolution Process 4. Bankruptcy Order for Individuals & Partnership

	Partnership Firms		Firms 5. Administration & Distribution of the Estate of the Bankrupt 6. Adjudicating Authority 7. Offences & Penalties
IV	Regulation of Insolvency Professionals, Agencies and Information Utilities	(188 – 223) Part IV	1. The Insolvency and Bankruptcy Board of India 2. Powers & Functions of the Board 3. Insolvency Professional Agencies 4. Insolvency Professionals 5. Information Utilities 6. Inspection & Investigation 7. Finance, Accounts & Audit
V	Miscellaneous	(224 – 255) Part V	Miscellaneous
	Schedules I to XII		

An **Insolvency and Bankruptcy Board of India (IBBI)** is established to administer the work of insolvency and bankruptcy of corporate persons, firms and individuals. IBBI is the regulator who regulates the main components of IBC ecosystem, i.e, Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs), Registered Valuers (RVs) and Information Utilities (IUs). IPA is the second limb of regulator.

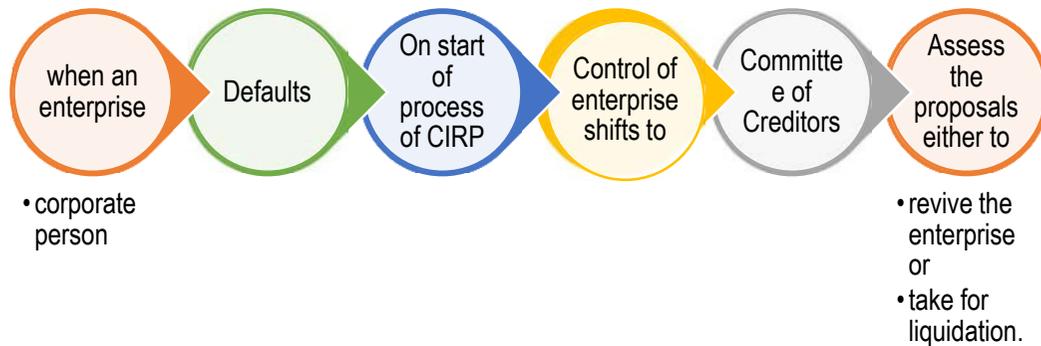
Foundation of Code

A key innovation of the IBC is a four-pillar institutional framework, comprising (a) the **first pillar**: the judicial Adjudicating Authority, being the National Company Law Tribunal (NCLT or Adjudicating Authority) where corporate insolvency matters shall be heard & NCLAT will be Appellate Authority; (b) the **second pillar**: the regulator, being Insolvency and Bankruptcy Board of India (IBBI) which has regulatory oversight over insolvency professionals and insolvency professional agencies (IPA); (c) the **third pillar**: a class of regulated persons, being the insolvency professionals who play a key role in the efficient working of the insolvency and bankruptcy process under the IBC; and, (d) the **fourth pillar**: a new industry called information utilities (IU) to electronically store facts about lenders and terms of lending.

Initiation of Corporate Insolvency Resolution Process (“CIRP”)

CIRP proceedings may be initiated against a corporate debtor by the corporate debtor itself or any of its financial creditor or operational creditor. When the Code was enacted, the minimum amount of default to initiate CIRP against a corporate debtor was INR One Lakh. However, the Central Government has by notification dated 24th March 2020 raised the threshold value of minimum amount of default to one crore rupees.

The detailed procedure for initiation of CIRP by stakeholders is described as follows:



Decisions are required to be taken in a time bound manner so that there are greater chances that the enterprise is saved as a going concern and productive resources of economy can be put to best use. The CIRP commences from the date of admission of an application filed for its initiation. The process entails a moratorium where a calm period is imposed and there is stay on suit or proceedings against the corporate debtor to give the debtor a better chance to revive and continue as a going concern. The moratorium period is 180 days and in limited circumstances, if the CoC, with a 66% majority, decides that the complexity of the case requires more time for a resolution plan to be finalized, a one-time extension of up to 90 days may be granted with prior approval of the NCLT.

The CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension and the time taken in legal proceedings in relation to the resolution process of the corporate debtor. The said amendment has been undertaken to ensure a timely resolution in view of the fact that the 270 day deadline was being breached on account of legal proceedings against the corporate debtor.

Provisions relating to Corporate Insolvency Resolution Process (section 4 to section 32 of the Code) will be applicable.

Provisions relating to Liquidation Process of Corporates (section 33 to section 54 of the Code) will be applicable in case where the enterprise is undergoing liquidation.

Provisions relating to Fast Track Corporate Insolvency Resolution Process of Small Corporate Persons (section 55 to section 58 of Insolvency Code) will be applicable in case where the enterprise is a small company as per Companies Act, 2013 or a start-up or an unlisted company with total assets not exceeding rupees one crore.

Provisions relating to Voluntary Liquidation (section 59 of the Code) will be applicable to corporate person who intends to liquidate itself voluntarily and has not committed any default.

Winding up of companies - In most of the cases, winding up of companies will be through the Liquidation Process under the Code only.

Bankruptcy of individuals and firms - Part III of Insolvency Code 2016 (containing sections 78-187) deals with insolvency resolution and bankruptcy for individuals and partnership firms. This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms. Debt Recovery Tribunal (DRT) will be the Adjudicating Authority and Debt Recovery Appellate Tribunal (DRAT) will be the Appellate Authority for individuals and firms. These provisions are not yet effective except for the provisions pertaining to personal guarantors to corporate debtors in which case the NCLT will be the Adjudicating Authority and NCLAT will be Appellate Authority, if the process is going on or otherwise DRT/ DRAT.

Flow of insolvency resolution process for individuals-

- The process will be managed by 'resolution professional' under the direction of 'Adjudicating Authority'.
- Insolvency Resolution Process will be initiated.
- Finalise 'repayment plan' with concurrence of debtor and committee of creditors.
- Upon consensus on repayment plan the individual or firm will get a discharge order.
- On failure to finalize the repayment plan, the creditors/debtor can file an application for 'bankruptcy' and the Adjudicating Authority may pass the bankruptcy order.
- The resolution professional who is a bankruptcy trustee will take over estate of the bankrupt. He will sell or dispose it off and satisfy payments of creditors to the extent possible.
- After that, the bankrupt will get a 'discharge order'.
- The discharge order will be registered with Board (IBBI) in a register referred to in section 196 of the Code.

Provisions of this Code to override other laws: Section 238 of the Code states that the Code shall have overriding effect over other laws.

For example, sections 53 and 178 of Insolvency and Bankruptcy Code, 2016 provide that distribution from sale of assets will be as specified in that section, notwithstanding anything to the contrary contained in any other law enacted by the Parliament or any State Legislature for the time being in force.

Many tax laws (including GST) also provide for first charge on assets of the taxable person. However, with the overriding effect of Section 238, distribution from sale of assets in Liquidation Process or payment as per the resolution plan in CIRP under the Code, will prevail over other laws.

Extent and Commencement of the Code:

As per section 1 of the Insolvency and Bankruptcy Code, it extends to the whole of India.

This Code came into enforcement on 28th May 2016, however, the Central Government appointed different dates for different provisions of this Code.

Significant amendments: The Code has been first amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2017, passed on November 23, 2017. This Ordinance became an Act on January 18, 2018. It was known as the Insolvency and Bankruptcy Code (Amendment) Act, 2018. It was made applicable from November 23, 2017.

The second amendment was made vide the **Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, on June 6, 2018**. Further, the said ordinance, in the form of the Insolvency and Bankruptcy (Second Amendment) Bill received the assent of the President on the 17th August, 2018 and thus the **Insolvency and Bankruptcy Code (Second Amendment) Act, 2018** was enacted.

The third amendment was made vide the **Insolvency and Bankruptcy Code (Amendment) Bill, 2019** which received the assent of the President on 5th August, 2019 and thus the **Insolvency and Bankruptcy Code (Amendment) Act, 2019** was promulgated.

The fourth amendment was made vide the **Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, on December 28, 2019**. Further, the said ordinance, in the form of the Insolvency and Bankruptcy (Amendment) Bill, 2020 received the assent of the President on the 13th March, 2020 and thus the **Insolvency and Bankruptcy Code (Amendment) Act, 2020** was enacted.

Due to the advent of COVID-19 pandemic, the IBC was amended by insertion of Section 10A to suspend the initiation of CIRP under Sections 7, 9 and 10 of the IBC for any default arising on or after March 25, 2020.

The Code has undergone significant amendments since its enactment-

- to keep up with the developments and demands of the economy
- for effective implementation of law
- to remove the bottlenecks

To achieve desired objectives of the Code, the President promulgated the 'Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Ministry of Law and Justice on 12th of August 2021 enacted the Insolvency and Bankruptcy Code (Amendment) Act, 2021 w.r.e.f from 4th day of April, 2021.

The amendments was made with an intent to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximizing outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses and which preserves jobs. By this amendment the Provisions related to PPIRP and MSMEs was introduced.

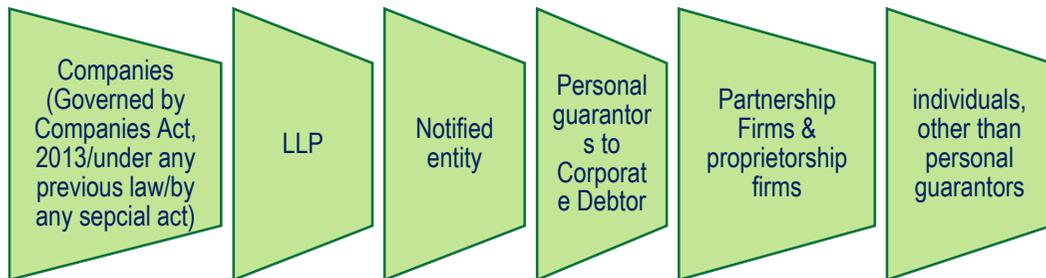
It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise

capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

Applicability of the Code [Section 2]

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

- (a) Any company incorporated under the Companies Act, 2013 or under any previous law.
- (b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
- (c) Any Limited Liability Partnership under the LLP Act 2008.
- (d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
- (e) ²Personal guarantors to corporate debtors (CD);
- (f) Partnership firms and proprietorship firms; and
- (g) Individuals, other than persons referred to in clause (e)



Case Law

SC in *Lalit Kumar Jain v. Union of India*, in 2021 held with respect to the “Application of Code” that there is sufficient indication in Code by sections 2(e), 5(22), sections 60 and 179 indicating that personal guarantors, though forming part of larger grouping of individuals, are to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through same adjudicatory process and by same forum as such corporate debtors.

² Personal guarantors of corporate debtors have been treated as a separate class. The application for bankruptcy of individual personal guarantor will have to be filed before NCLT as per section 60(2) of the IBC, 2016. Insolvency Code has been made applicable to personal guarantors of corporates w.e.f. 23-11-2017

Notification No. S.O. 4126 (E), dated 15-11-2019 making provisions of IBC applicable in respect of 'personal guarantors to corporate debtors' as another category of persons is valid. Even the approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under contract of guarantee.

Non-applicability of the Code: The Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency & Bankruptcy Code, 2016 states that "Corporate person" shall not include any financial service provider.

"Financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator [section 3(17)].

However, section 227 of the Code, which was notified on 1-5-2018 provided that, Central Government can notify financial service providers for purpose of insolvency and liquidation proceedings, which may be conducted under the Insolvency & Bankruptcy Code, in consultation with appropriate financial sector regulator. As per notification dated 18-11-2019 it has been notified by the central government that insolvency resolution and liquidation proceedings of non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet, shall be undertaken in accordance with the provisions of the Code and Rules made thereunder.

Case Laws

National Company Law Tribunal, Mumbai Bench, in 2022 decided in the *State Co-operative Bank Ltd. v. Shri Siddheshwar Sahakari Sakhar Karkhana Ltd.* that corporate debtor being a co-operative society was not a corporate person to whom provision of Code were applicable. Here as corporate debtor was registered/incorporated under Multi-State Co-operative Societies Act, 2002, which provides specific statutes for winding up of societies registered under same, and hence corporate debtor could not be put under insolvency resolution process.



2. IMPORTANT DEFINITIONS [SECTIONS 3 AND 5]

- (1) **Board** means the Insolvency and Bankruptcy Board of India (IBBI) established under section 188(1) of the Code [Section 3(1)].

The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued [Section 188(2)].

The board will have powers of civil court as to the issue of summons, discovery and production of books, inspection of books/registers and issue of commissions for examination of witnesses [Section 196(3) of the Code]

- (2) **Charge** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage; [Section 3(4)]
- (3) **Claim** means:
- (a) **a right to payment**, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
 - (b) **right to remedy for breach of contract** under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured; [Section 3(6)]
- (4) **Corporate Person** means :
- (a) a company as defined under section 2(20) of the Companies Act, 2013;
 - (b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,
 - (c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]
- (5) **Corporate Debtor** means a corporate person who owes a debt to any person. [Section 3(8)]
- (6) **Creditor** means any person to whom a debt is owed and includes –
- a financial creditor,
 - an operational creditor,
 - a secured creditor,
 - an unsecured creditor, and
 - a decree holder. [Section 3(10)]
- (7) **Debt** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)]
- Financial Debt** - "Financial debt" means a debt along with 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 dematerialised 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 non-recourse 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 section 2(d) and 2(zn) of the Real Estate (Regulation and Development) Act, 2016 .

- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account.
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution.
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause [Section 5(8) of Code, 2016]

Subscription money for purchase of shares is not financial debt - Subscription money for purchase of shares is not financial debt - *ACPC Enterprises v. Affinity Beauty Saloon (2018)* (NCLT – Delhi Bench)

Operational debt as per section 5(21) of the Code 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;

- (8) **Default** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]
- (9) **Financial service** includes any of the following services, namely:—
 - (a) accepting of deposits;
 - (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
 - (c) effecting contracts of insurance;

- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
 - (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
 - (i) buying, selling, or subscribing to, a financial product;
 - (ii) availing a financial service; or
 - (iii) exercising any right associated with a financial product or financial service;
 - (f) establishing or operating an investment scheme;
 - (g) maintaining or transferring records of ownership of a financial product;
 - (h) underwriting the issuance or subscription of a financial product; or
 - (i) selling, providing, or issuing stored value or payment instruments or providing payment services; [Section 3(16)]
- (10) **Financial Service Provider** means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator [Section 3(17)]

Financial Service Providers include banks, financial institutions, insurance companies, mutual funds etc.

- (11) **Financial Sector Regulator** means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes-
- the Reserve Bank of India,
 - the Securities and Exchange Board of India,
 - the Insurance Regulatory and Development Authority of India,
 - the Pension Fund Regulatory Authority, and
 - such other regulatory authorities as may be notified by the Central Government; [Section 3(18)]
- (12) **Insolvency professional (IP)** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207; [Section 3(19)]

Insolvency Professional is required to play a key role in implementation of the Code.

The word 'person', used refers to an individual to be IP. A LLP, partnership firm or a company can only be recognized as 'Insolvency Professional Entity' (IPE), which is not defined under the Code.

The Insolvency Professional should follow code of conduct as specified in section 208(2) of Insolvency Code and in First Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

- (13) **"Insolvency professional agency"** means any person registered with the Board under section 201 as an insolvency professional agency; [Section 3(20)]

Work relating to insolvency resolution is expected to be handled by 'Insolvency Professionals' (IP). These professionals are required to be registered with 'Insolvency Professional Agency' (IPA).

The Insolvency Professional Agencies (IPA) will develop professional standards, code of ethics and be first level regulator for insolvency professionals members. This will lead to development of a competitive industry for such professionals.

- (14) **"Information utility"** means a person who is registered with the Board as an information utility under section 210; [Section 3(21)]

The Insolvency and Bankruptcy processes are expected to function on basis of financial information available electronically.

Information Utility will collect, collate, authenticate and disseminate financial information to be used in insolvency, liquidation and bankruptcy proceedings.

- (15) A **person** includes:-

- an individual
- a Hindu Undivided Family
- a company
- a trust
- a partnership
- A limited liability partnership, and
- any other entity established under a Statute.

And includes a person resident outside India [Section 3(23)]

"Person resident outside India" means a person other than a person resident in India [section 3(25)].

"Person resident in India" shall have the meaning as assigned to such term in section 2(v) of FEMA [Section 3(24)]

- (16) **Property** includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property; [Section 3(27)]

- (17) **Secured creditor** means a creditor in favour of whom security interest is created; [Section 3(30)]
- (18) **Security Interest** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. [Section 3(31)]
- (19) A **transaction** includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor. [Section 3(33)]
- (20) **Transfer** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. [Section 3(34)]
- (21) **Adjudicating Authority-** National Company Law Tribunal (NCLT) constituted under section 408 of the Companies Act, 2013 is the Adjudicating Authority (AA) for purpose of insolvency resolution and liquidation for corporate persons and personal guarantors thereof [section 5(1) read with section 60(1) of the Code]

NCLT is also AA for the insolvency resolution or liquidation or bankruptcy of the corporate guarantor or personal guarantor of such CD when insolvency resolution or liquidation of such CD is pending before AA. [Section 60(2) of the Code]

National Company Law Appellate Tribunal (NCLAT) is the appellate authority over decisions of NCLT [section 61 of the Code]

Appeal against order of NCLAT can be filed to Supreme Court on question of law arising out of such order, within 45 days [section 62 of the Code]

Debt Recovery Tribunal (DRT) will be adjudicating authority for individuals and firms subject to section 60(2) – [section 179(1) of the Code]

- (22) **"Base resolution plan"** means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A, which deals with the Corporate debtors eligible for pre-packaged insolvency resolution process; [Section 5(2A)]

(23) **Corporate applicant means—**

- (a) corporate debtor; or
- (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may, under the constitutional document of the corporate debtor; or
- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

- (d) a person who has the control and supervision over the financial affairs of the corporate debtor; [Section 5(5)]
- (24) **Corporate guarantor** means a corporate person who is the surety in a contract of guarantee to a corporate debtor; [Section 5(5A)]
- (25) **Dispute** includes a suit or arbitration proceedings relating to—
- (a) the existence of the amount of debt;
 - (b) the quality of goods or service; or
 - (c) the breach of a representation or warranty; [Section 5(6)]
- (26) **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;[section 5(7)]
- (27) **Financial Debt** means a debt along with 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 dematerialised 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 non-recourse 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;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
 - (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause; [Section 5(8)]
- (28) **Initiation date** means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process or pre-packaged insolvency resolution process, as the case may be; [Section 5(11)]
- (29) **Insolvency commencement date** means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be; [Section 5(12)]
- (30) **Insolvency resolution process period** means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day; [Section 5(14)]
- (31) **Liquidation commencement date** means the date on which proceedings for liquidation commence in accordance with section 33 (Initiation of Liquidation) or section 59 (Voluntary Liquidation of corporate persons), as the case may be; [Section 5(17)]
- (32) **Liquidator** means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be;
- (33) **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; [Section 5(20)]
- (34) **Personal guarantor** means an individual who is the surety in a contract of guarantee to a corporate debtor; [Section 5(22)]
- (35) **Related party, in relation to a corporate debtor,** means—
- (a) **a director or partner or a relative** of a director or partner of the corporate debtor
 - (b) **a key managerial personnel or a relative** of a key managerial personnel of the corporate debtor;
 - (c) **a limited liability partnership or a partnership firm** in which a director, partner, or manager of the corporate debtor or his relative is a partner;
 - (d) **a private company** in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
 - (e) **a public company** in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

- (f) **any body corporate** whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (g) **any limited liability partnership or a partnership firm** whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
 - (h) **any person** on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
 - (i) **a body corporate which is a holding, subsidiary or an associate company** of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
 - (j) **any person who controls** more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
 - (k) **any person in whom the corporate debtor controls** more than twenty per cent. of voting rights on account of ownership or a voting agreement;
 - (l) **any person who can control the composition** of the board of directors or corresponding governing body of the corporate debtor;
 - (m) **any person who is associated with the corporate debtor** on account of—
 - (i) participation in policy making processes of the corporate debtor; or
 - (ii) having more than two directors in common between the corporate debtor and such person; or
 - (iii) interchange of managerial personnel between the corporate debtor and such person;
 - (iv) provision of essential technical information to, or from, the corporate debtor; [Section 5(24)]
- (36) **"related party", in relation to an individual**, means—
- (a) a person who is a relative of the individual or a relative of the spouse of the individual;
 - (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
 - (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent of its paid-up share capital;
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,

- (xviii) father's brother and sister,
 - (xix) mother's brother and sister, and
- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included; [Section 5(24A)]
- (37) **"Resolution applicant"** means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under section 25(2)(h) or pursuant to section 54K, as the case may be [Section 5(25)]
- (38) **"Resolution plan"** means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]
- Explanation.- For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger
- (39) **Resolution professional**, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process or the pre-packaged insolvency resolution process, as the case may be, and includes an interim resolution professional; [Section 5(27)]
- (40) **Voting share** means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor. [Section 5(28)]



3. CORPORATE INSOLVENCY RESOLUTION PROCESS [SECTIONS 4, 6-32 AND 32A]

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in Part II of the Code. This part comprises of seven chapters with section 4 to 77 of the Code. Each chapter deals with different issues relating to Insolvency Resolution and Liquidation of Corporate Persons.

Corporate Insolvency Resolution Process (CIRP) is a process during which the Committee of Creditors (CoC) assess whether the debtor's business is feasible and viable to continue, the options for its rescue and revival, if any and endeavour is to keep it as a going concern. If the insolvency resolution process fails or CoC decide that the business of debtor cannot be revived then, the debtor will undergo liquidation process and the assets of the debtor shall be realized and distributed by the liquidator among the stakeholders as per Sec 53. The liquidation can also be on a going concern basis where the corporate debtor shall not be dissolved.

The Insolvency Resolution Process provides a collective mechanism to lenders to deal with the overall distressed position of a corporate debtor. This is a significant departure from the earlier legal

framework under which the primary onus to initiate a re-organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes is to be completed within 180 days, extendable by 90 days, however the overall process has to be completed within an outer time limit of 330 days. However, in certain exceptional cases, it may be open for the Adjudicating Authority and/or Appellate Tribunal to extend the time beyond 330 days³.

The Code also provides for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

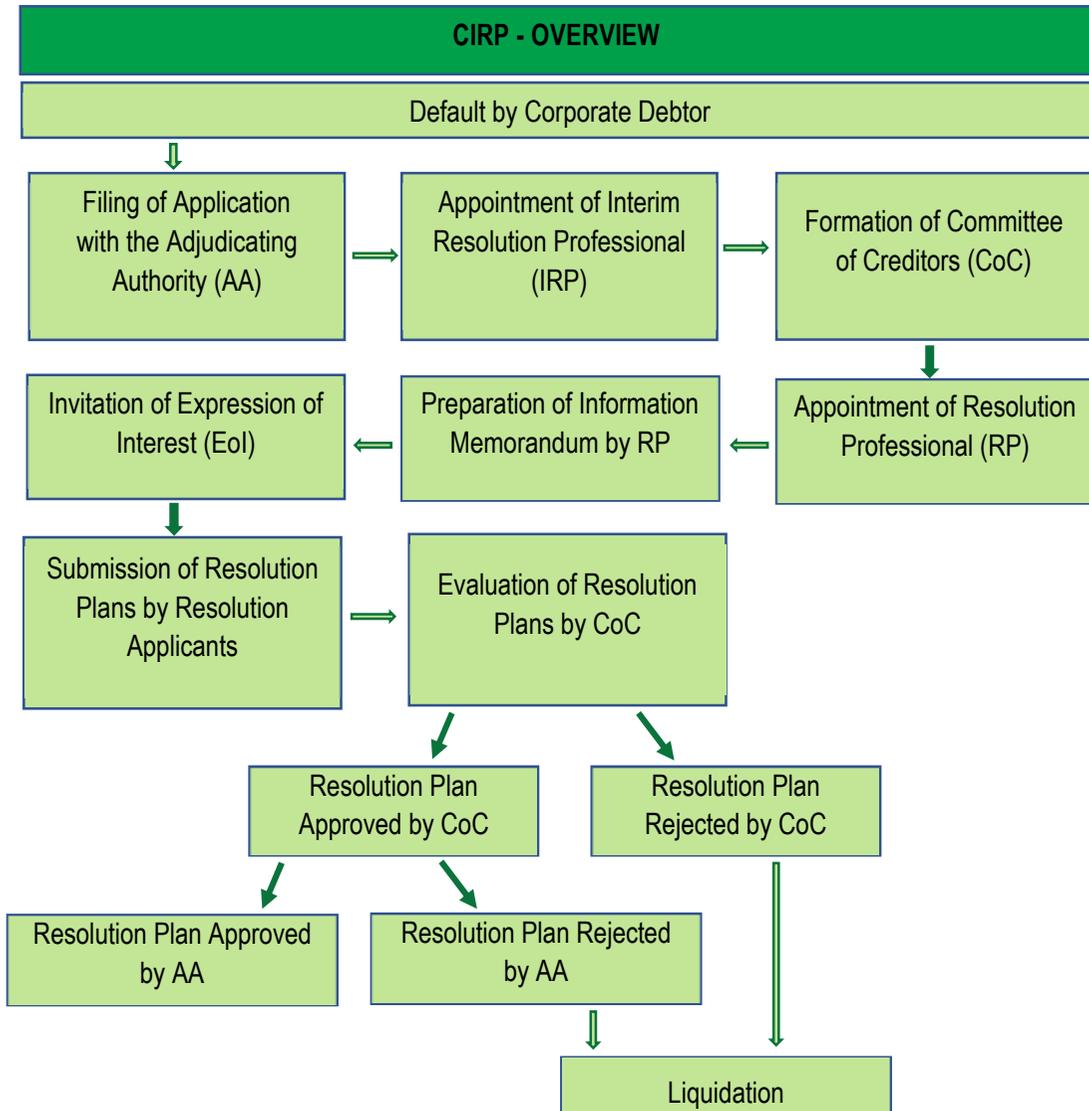
Process Flow

A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to:-

- Filing of application before NCLT by a financial creditor, operational creditor or a corporate applicant;
- Adjudication: Admission or Rejection of application. If admitted then:
 - Moratorium and Public Announcement;
 - Appointment of Interim Resolution Professional ;
 - Calling of claims ;
 - Formation of the Committee of Creditors
 - Appointment of Resolution Professional
 - Taking control and managing the operations of the corporate debtor by the IRP/ RP
 - Appointment of Registered Valuers
 - Preparation of Information memorandum & Invitation for Expression of Interest
 - Submission of Expression of Interest by prospective resolution applicants
 - Preparation of provisional and final list of resolution applicants by the Resolution Professional.
 - Issue of Request for Resolution Plan (RFRP), Information Memorandum and Evaluation Matrix to all the prospective resolution applicants
 - Submission of Resolution Plan by resolution applicants
 - Approval or rejection of the Resolution Plan by the CoC

³ CoC of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 of 2019)

- Approval or rejection of the Resolution Plan by the NCLT (Adjudicating Authority)
- Implementation of Resolution Plan if approved by NCLT



(I) Application to National Company Law Tribunal

The process of insolvency is triggered by occurrence of default. As per Section 3 (12) of the Code, **default** means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor.

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government has

by notification dated 24th March 2020 raised the threshold value of minimum amount of default to one crore rupees (section 4).

Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.

Filing of application before NCLT

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution process before NCLT.

(II) Who can initiate insolvency resolution process?

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II) [Section 6].

Provisions and procedures relating to each initiator are different.

Accordingly, the application may be made by:-

Financial creditor any person to whom a financial debt is owed &

- Includes a person to whom such debt is legally assigned or transferred;

Operational creditor any person to whom a operational debt is owed &

- Includes a person to whom such debt is legally assigned or transferred ;

Corporate debtor A corporate person who owes a debt to any person and committed default.

(A) Initiation of corporate insolvency resolution process by financial creditor

- (1) **Filing of application before adjudicating authority:** A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, **referred to in clauses (a) and (b) of sub-section (6A) of section 21**, an application for initiating corporate insolvency resolution process against the corporate debtor **shall be filed jointly** by not less than one hundred of such creditors in the same class or not less than ten per cent, of the total number of such creditors in the same class, whichever is less:

Provided further that for **financial creditors who are allottees** under a real estate project, an application for initiating corporate insolvency resolution process against the corporate

debtor **shall be filed jointly** by not less than one hundred of such allottees under the same real estate project or not less than ten per cent, of the total number of such allottees under the same real estate project, whichever is less:

Explanation: For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

Vide Notification S.O.1091(E) dated 27th February, 2019, the Central government hereby notified following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the Financial Creditor:-

- (i) a guardian;
 - (ii) an executor or administrator of an estate of a financial creditor;
 - (iii) a trustee (including a debenture trustee); and
 - (iv) a person duly authorized by the Board of Directors of a Company.
- (2) **Procedure to be followed by the Financial creditor:** The financial creditor shall file an application by itself / jointly against a corporate debtor before NCLT in accordance with the provisions contained in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Copy of such an application shall be forwarded to registered office of corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority .

Financial creditor shall along with the application furnish—

- (a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;
 - (b) **the name of the insolvency professional** proposed to act as an interim resolution professional; and
 - (c) **any other information** as may be specified by the Board.
- (3) **Time period for determination of default:** The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order within such time as specified, it shall record its reasons in writing for the same.

Case Law

Supreme Court in *Surendra Trading Company Vs. Juggilal Kamalpat Jute Mills Company Ltd. & Others* prescribed time period for determination of defaults. It was held that the time limit prescribed in IBC, 2016 for admitting or rejecting a petition or initiation of CIRP under proviso to sub-section (5) of section 7 or sub-section (5) of section 9 or sub-section (4) of section 10 is procedural in nature, a tool of aid in expeditious dispensation of justice and is directory.

Various provisions of the Code would indicate that there are three stages:

(i) First stage: Filing of the application: When the application is filed, the Registry of the Adjudicating Authority is supposed to scrutinize the same to find out as to whether it is complete in all respects or there are certain defects. If it is complete, the same shall be posted for preliminary hearing before the Adjudicating Authority.

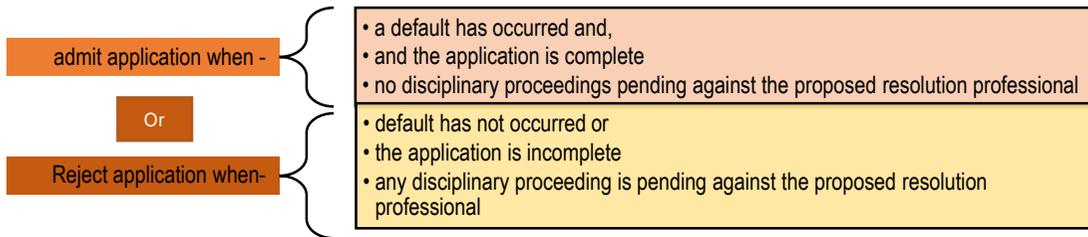
If there are defects, the applicant would be notified about those defects so that these are removed. For this purpose, seven days' time is given. Once the defects are removed then the application would be posted before the Adjudicating Authority.

(ii) Second Stage: When the application is listed before the Adjudicating Authority: It has to take a decision to either admit or reject the application. For this purpose, fourteen days' time is granted to the Adjudicating Authority. If the application is rejected, the matter is given a quietus (i.e. dead) at that level itself. However, if it is admitted, we enter the third stage.

(iii) Third Stage: After admission of the application: As application is admitted, insolvency resolution process commences. This resolution process is to be completed within 180 days, which is extendable, in certain cases, up to 90 days. Insofar as the first stage is concerned, it has no bearing on the insolvency resolution process at all, inasmuch as, unless the application is complete in every respect, the Adjudicating Authority is not supposed to deal with the same. It is at the second stage that the Adjudicating Authority is to apply its mind and decide as to whether the application should be admitted or rejected. Here adjudication process starts. However, in spite thereof, when this period of fourteen days given by the statute to the Adjudicating Authority to take a decision to admit or reject the application is directory, there is no reason to make it mandatory in respect of the first stage, which is pre-adjudication stage.

Thus, provision of removing the defects within seven days is directory and not mandatory in nature.

(4) **Order:** Where the Adjudicating Authority is satisfied, it may either —



Notice to rectify the defect in the application: Provided that the Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application **within seven days** of receipt of such notice from the Adjudicating Authority. It is applicable for all kind of applications filed i.e. by Financial Creditor or Operational Creditor or by the Corporate Debtor.

(5) **Commencement of corporate insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application.

(6) **Communication of Order:** The Adjudicating Authority shall communicate order of admission or rejection of such application within seven days, as the case may be —

- (1) in case of admission, to the financial creditor and the corporate debtor;
- (2) In case of rejection, to the financial creditor [Section 7]

(7) **Withdrawal of application:** Withdrawal of application shall be pursuant to Section 12A of the Code read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The following scenarios may arise for withdrawal of application:

1. Before admission of application

An application initiating CIRP may be withdrawn before its admission, at any time with the permission of the Adjudicating Authority. [Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

2. After admission of application

Once application is admitted, further three scenarios may arise:

(a) Before Constitution of CoC

- The applicant shall make an application for withdrawal to the Adjudicating Authority through the interim resolution professional;

(b) After Constitution of CoC but before issue of Invitation for Expression of Interest ("EoI")

- An application for withdrawal shall be firstly considered by the CoC, within seven days of its receipt.
- Such withdrawal application shall be approved by the CoC with ninety percent voting share,
- upon which the resolution professional shall submit such withdrawal application along with the approval of the committee,
- to the Adjudicating Authority on behalf of the applicant,
- within three days of such approval.

(c) After issue of invitation for EoI

- The same procedure as stipulated for scenario 'b' above shall apply.
- However, in this scenario, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

In all the above scenarios, the final approval of such withdrawal shall be by way of an order passed by the Adjudicating Authority.

Case Laws

1. National Company Law Tribunal, Mumbai Bench in *Bank of India v. Future Retail Ltd. in 2022*, came with an issue, where a financial creditor had provided various credit facilities and non-fund-based limits to corporate debtor. It were restructured under a sanctioned letter and framework agreement. Corporate debtor defaulted in repayment and account of corporate debtor was classified as a non-performing asset (NPA). Meanwhile, corporate debtor issued a letter to financial creditor and certain other lenders for one-time restructuring (OTR) facilities under 'resolution frame work agreement for Covid 19 related stress as per RBI Circular. Financial creditor considered corporate debtor's request allowing OTR and executed a framework agreement for restructuring of existing outstanding amount. However, corporate debtor again defaulted in repayment of an outstanding amount. Financial creditor filed petition under section 7. It was noted that corporate debtor, on payment obligation under OTR scheme, admitted default of its repayment and further, corporate debtor admitted outstanding amount in its meeting with lenders that events of default continued to subsist. It was held, in view of facts, that existence of debt and default had been proved and, therefore, petition filed by financial creditor to initiate CIRP against corporate debtor was admitted.

2. National Company Law Appellate Tribunal, New Delhi, in 2022 in *Siti Networks Ltd. v. Assets Care and Reconstruction Enterprises Ltd.* decided on continuation of proceeding by assignee on an application seeking substitution as financial creditor in place of original financial creditor.

In the given case, financial creditor sanctioned a loan to corporate debtor, however, corporate debtor failed and was classified as non-performing asset. Financial creditor filed an application under section 7 against corporate debtor and same was admitted by NCLT. Later, financial creditor vide registered assignment deed, assigned debt of corporate debtor to respondent i.e. assignee. Corporate debtor was informed about aforesaid assignment. Subsequently, assignee filed an application seeking substitution as financial creditor in place of original financial creditor and was permitted by NCLT to pursue application filed by original financial creditor. Challenging said order, instant appeal was filed by corporate debtor. It was held that section 5(7) of the Code defines financial creditor, also includes a person to whom such debt has been legally assigned or transferred to. Therefore by virtue of assignment, assignee became financial creditor and had stepped in shoes of original financial creditor and assignee had every right to continue proceeding, which was initiated by original financial creditor.

3. SC in *Manish Kumar v. Union of India* in 2021 came up with a decision on section 7 by section 3 of IBC (Amendment) Act, 2020 requiring minimum threshold for initiation of proceedings (class action) by certain categories of financial creditors against corporate debtors such as real estate developers, are Constitutionally Valid.

In the given case, CIRP was initiated by the Financial creditors requiring minimum threshold for initiation of proceedings (class action) by certain categories of financial creditors against corporate debtors such as real estate developers.

According to Provisos of section 7, it was required that in case of a real estate project, being conducted by a corporate debtor, an application can be filed by either one hundred allottees or allottees constituting one-tenth of allottees, whichever is less, if they are able to establish a default in regard to a financial creditor and it is not necessary that there must be default *qua* any of Applicants. It was held that since default can be *qua* any of applicants and even a person who is not an applicant and action is one which is understood to be in rem, in that, procedures under Code would bind entire set of stakeholders including whole of allottees.

(B) Initiation of corporate insolvency resolution process by operational creditor

- (1) **Serving of demand Notice:** On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor in such form and manner as may be ⁴prescribed.

"Demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

On receipt of demand notice by corporate debtor: The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice, bring to the notice of the operational creditor about-

- (a) **existence of a dispute about debt**, if any, record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
 - (b) **the payment of unpaid operational debt**— It is possible that corporate debtor might have already paid the unpaid operational debt, there in such situation, corporate debtor will inform within 10 days -
 - (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. [Section 8]
- (2) **Application for initiation of Corporate Insolvency Resolution Process by operational creditor after issue of demand notice:**
- (i) **Filing of application by operational creditor:** If no reply is received or payment or notice of the dispute under section 8(2) from the corporate debtor within ten days from the date of delivery of the notice or invoice demanding payment, or even if reply is received disputing the claim and operations creditors feels that the dispute is vague or untenable, operational creditor can file application⁵ before Adjudicating Authority (NCLT) for initiating a corporate insolvency resolution process.
 - (ii) **Providing of documents/ information:** The operational creditor shall, along with the application filed in prescribed form, furnish the following documents—

⁴ Rule 5, Form 3 & Form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

⁵ Rules 6, 8, 9 & 10 and Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

a copy of the invoice , or demand notice

- demanding payment, or delivered by the operational creditor to the corporate debtor;

an affidavit

- to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt

a copy of the certificate

- from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

a copy of a record with information utility

- confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

any other proof

- confirming that there is no payment of an unpaid operational debt by the corporate debtor, or

such other information,

- as may be prescribed.

- (3) **Appointment of IRP:** An operational creditor initiating a corporate insolvency resolution process, may propose a insolvency professional to act as an interim resolution professional.
- (4) **Order of an adjudicating authority:** The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order—

admit the application and communicate such decision to the operational creditor and the corporate debtor if,—	reject the application and communicate such decision to the operational creditor and the corporate debtor, if—
(a) the application made is complete; (b) there is no payment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any resolution professional proposed, if any.	(a) the application made is incomplete; (b) there has been payment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application which is incomplete, give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

- (5) **Withdrawal of application before or after admission:** The same procedure as stated under initiation of CIRP by financial creditor shall apply here as well for withdrawal of application.
- (6) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application [**Section 9**]

Case Laws

1. SC in the matter of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* Civil Appeal No. 9405 of 2017 dt 21st Sept 2017. It was decided that in sec 9 application if there is dispute then it cannot be admitted. It should not feeble legal argument or an assertion of facts unsupported by evidence and it need not be spurious, mere bluster, plainly frivolous or vexatious.
2. National Company Law Appellate Tribunal, Chennai in *Fipola Retail (India) (P.) Ltd. v. M2N Interiors* in 2021 admitted application filed by operational creditor under section 9 against corporate debtor in name of proprietary concern. Corporate debtor alleged that said application would not be maintainable as application had been filed in name of proprietary concern which is not a 'person' for purpose of filing application under section 9. It was held that such an application was maintainable, as section 2(f) provides that provisions of Code shall apply to partnership firms and proprietorship firm also.

(C) Initiation of corporate insolvency resolution process by corporate applicant.

- (1) **Commission of default:** Where a corporate debtor has committed a default, a **corporate applicant** thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. The application shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.⁶

"Corporate applicant means – (a) Corporate debtor, or **(b)** a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the **constitutional document** of the corporate debtor; or **(c)** an individual who is in charge of managing the operations and resources of the corporate debtor; or **(d)** a person who has the control and supervision over the financial affairs of the corporate debtor;

"constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership;

- (2) **Furnishing of information:** The corporate applicant shall, along with the application furnish the information relating to—

⁶ Rules 7, 8, 9 & 10 & Form 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

- (a) its **books of account and such other documents** relating to such period as may be specified; and
 - (b) the **insolvency professional** proposed to be appointed as an interim resolution professional.
 - (c) **special resolution** passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.
- (3) **Admission/rejection of application:** The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—
- (a) admit the application, if it is complete; and no disciplinary proceeding is pending against the proposed resolution professional
 - (b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

Case Law

NCLT Mumbai Bench in CP (IB) 918/MB/C-II/2020 dt. 10th Oct 2020 in the matter of *IGOPL Offshore P Ltd* has pronounced that section 10(3)(c) of the Code requires that a Special Resolution passed by the shareholders of the Corporate Debtor needs to filed along with the Company Petition.

- (4) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application.
[Section 10]

(III) Suspension of initiation of corporate insolvency resolution process

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation- For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.
[Section 10A]

The provisions of section 10A was extended twice and it was applicable for default up to 25/3/2021.

(IV) Persons not entitled to initiate insolvency process

Following persons shall not be entitled to initiate the corporate insolvency process:-

- (a) A corporate debtor undergoing an insolvency resolution process or a pre-packaged insolvency resolution process; or
 - (aa) A financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or
- (b) A corporate debtor having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or
 - (ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or
- (c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;
- (d) A corporate debtor in respect of whom a liquidation order has been made.

Explanation 1 - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Explanation 2- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor. [Section 11]

Following categories of Corporate debtors not entitled to file an application under section 11

- Corporate debtor undergoing CIRP/PPIRP
- A financial creditor / operational creditor undergoing a PPIRP
- Corporate debtor having completed CIRP 12 months before the date of making of the application
- a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, 12 months preceding the date of making of the application
- Corporate debtor violating the term of resolution plan
- Corporate debtor in respect of whom a liquidation order has been made

Example: Suppose ABC LLP (“Corporate Debtor”) has committed a default. Mr. X and Mr. Y, are partners of the Corporate Debtor contributing to the capital and sharing profits/losses in the ratio of 49% and 51% respectively. However, Mr. Y under the constitutional document of the Company, is being authorized to make an application for the corporate insolvency resolution process. Being a partner of the Corporate Debtor, Mr. Y filed an application on behalf of the Corporate Debtor for initiation of corporate insolvency resolution process.

As per section 10 of the Code, initiation of CIRP by a Corporate Debtor shall be made by filing an application along with information relating to books of accounts, interim resolution professional and resolution passed by at least three-fourths of total number of partners. In the given case, even though Mr. Y is authorized to file an application for initiation of CIRP, such act shall not stand valid if the resolution authorizing such filing has not been passed by at least three-fourths of total number of partners.

(V) Disposal of applications under section 54C and under section 7 or section 9 or section 10

- (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application under section 54C, before considering any application filed under section 7 or section 9 or section 10, in respect of the same corporate debtor.
- (2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 or 10, the Adjudicating Authority shall first dispose of the application under section 54C.
- (3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.
- (4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021. [Section 11A]

(VI) Adjudication: Admission or Rejection of Application

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

The insolvency resolution process shall commence from the date of admission of application by the Adjudicating Authority. It is referred to as the Insolvency Commencement Date.

(VII) Time-limit for completion of insolvency resolution process

- (1) **Period for completion of insolvency process:** The corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days** from the date of admission of the application to initiate such process.
- (2) **Filing of application for extension of period:** The resolution professional shall file an ⁷application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution

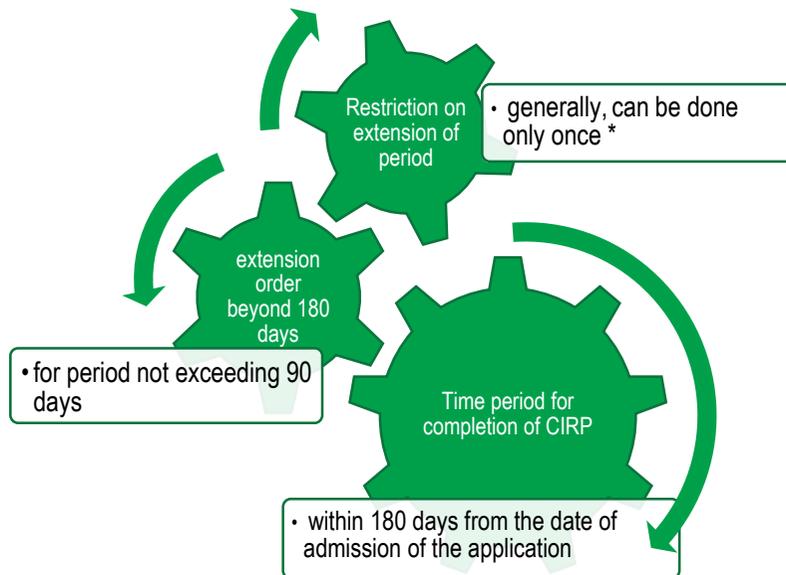
⁷ Under Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

passed at a meeting of the committee of creditors by a vote of sixty- six per cent (minimum) of the voting shares.

- (3) **Period of extension:** On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, **but not exceeding ninety days:** Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of **three hundred and thirty days** from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.



* Adjudicating Authority (NCLT) has power to extend the CIRP period beyond 270 days on the basis of reasonable justifications, in the interest of furtherance of the objectives of the Code.

(VIII) Appointment of Interim Resolution Professional

"Resolution Professional", means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

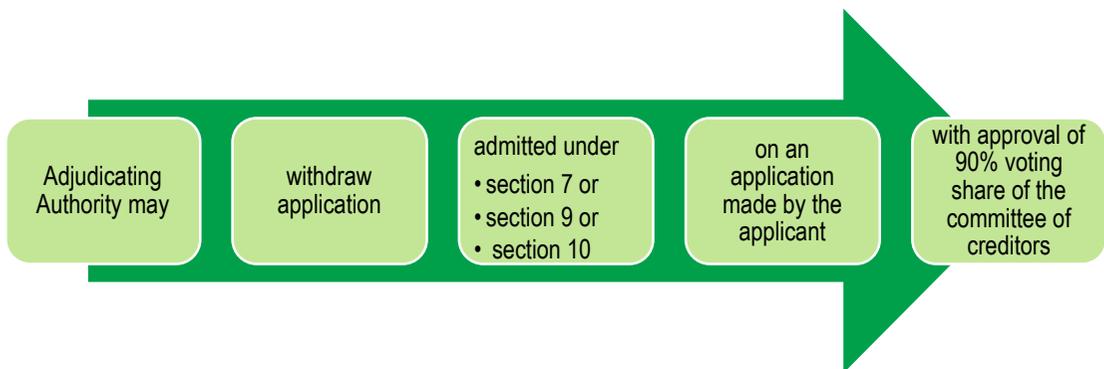
If applicant proposes for appointment of Insolvency professional

- obtain written communication from insolvency professional for appointment as interim resolution professional

(IX) Withdrawal of application admitted under section 7, 9 or 10 [Section 12A]

(1) **Before formation of Committee of Creditors:** Application can be withdrawn if settlement is there with the creditor and appropriate form is filed through IRP.

(2) **After Committee of Creditors is formed:**

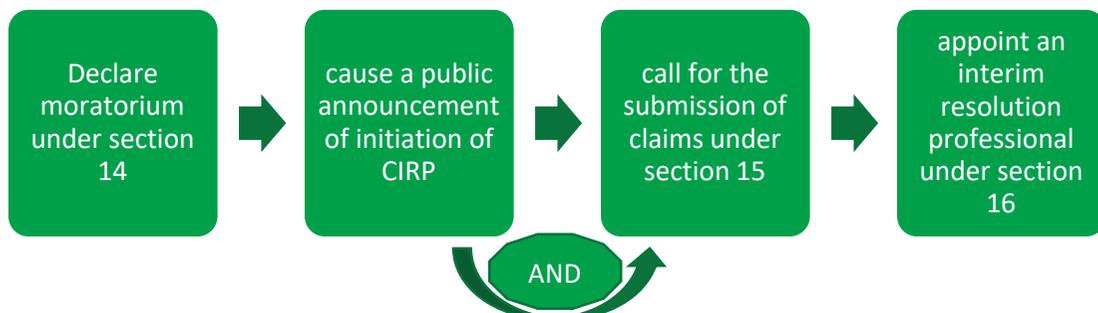


Case Law

SC in *Ashok G. Rajani v. Beacon Trusteeship Ltd.* said that Section 12A enables the NCLT to allow the withdrawal of an application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of 90 per cent voting shares of the Committee of Creditors. Section 12A clearly permits withdrawal of an application under section 7 that has been admitted on an application made by the applicant. The question of approval of the Committee of Creditors by the requisite percentage of votes, can only arise after the Committee of Creditors is constituted. Before the Committee of Creditors is constituted, there is, no bar to withdrawal by the applicant of an application admitted under section 7.

(X) Declaration of moratorium and public announcement:

After admission of application, the Adjudicating Authority shall pass following order —



The public announcement as referred above, shall be made immediately after the appointment of the interim resolution professional. **[Section 13]**

Moratorium:

Moratorium is a delay or suspension of an activity. In a legal context, it may refer to the temporary suspension of a law to allow a legal challenge to be carried out.

After the commencement of corporate insolvency resolution process a calm period, known as moratorium period is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to allow the IRP/ RP to carry out his/her task smoothly and disallowing creditors and other stakeholders to take any individual actions against the corporate debtor and disrupt the process.

- (1) **Declaration of moratorium period:** According to the section 14(1) of the Code, on the insolvency commencement date, the Adjudicating Authority shall by order, declare moratorium prohibiting all of the following, acts—
- (a) **the institution of suits or continuation of pending suits or proceedings** against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) **transferring, encumbering, alienating or disposing** of 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;
 - (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.

Explanation-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period

- (2) **The supply of essential goods or services⁸** to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

⁸ Regulation 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified
- (3) **Prohibited Acts:** Acts prohibited during Moratorium period, shall not apply to-
- (a) Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (b) A surety in a contract of guarantee to a corporate debtor.
- (4) **Effect of the order of moratorium:** The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

The provision of section 14(1) of the Code is not applicable on a surety in a contract of guarantee to a corporate debtor. Thus, recovery proceedings, insolvency resolution process or bankruptcy proceedings against surety (guarantor) can be initiated even if moratorium is granted to corporate debtor.

It is clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

When Moratorium period shall cease to have effect

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be [Section 14]

Example: After commencement of Corporate Insolvency Resolution Process, NCLT declared Moratorium against the corporate debtor. Within a month of declaration, corporate debtor disposed of his property. In line with section 14 of the Code, any transaction/disposal of any assets of Corporate Debtor during the moratorium period, is prohibited. Such an act of the Corporate Debtor is not valid.

However, as per Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, not exceeding 10% of the total claims admitted.

Public Announcement

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. "Immediately" refers to not more than **three days** from the date of appointment of the Interim Resolution Professional.

Particulars of the Public announcement: As per **Section 15** of the Code, public announcement shall include the followings and it shall be in the form prescribed :-

- a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.
- b) Name of the authority with which the corporate debtor is incorporated or registered.
- c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
- d) Penalties for false or misleading Claims.
- e) The last date for the submission of the claims as may be specified.
- f) The date on which the Corporate Insolvency Resolution Process ends.

The expenses of public announcement shall be borne by the applicant or which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

(XI) Appointment, Term and Powers of Interim Resolution Professional (IRP)

Appointment of IRP: Adjudicating authority shall appoint an Interim Resolution Professional on the insolvency commencement date. Section 16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, the resolution professional as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Where the **application for corporate insolvency resolution process is made by an operational creditor** and

- (a) **No name of an interim resolution professional is made.** The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may be appointed to act as an interim resolution professional.
- (b) **A name of an interim resolution professional is made** the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22. **[Section 16]**

The key duties to be performed by the Interim Resolution Professional are:-

- (a) collect all information relating to the **assets, finances and operations of the corporate debtor** for determining the financial position of the corporate debtor
- (b) **Collation of claims** received pursuant to public announcement made
- (c) **Constitution of the Committee of Creditors**
- (d) **monitor the assets** of the corporate debtor **and manage its operations** until a resolution professional is appointed by the committee of creditors
- (e) **File information** collected with the information utility, if necessary
- (f) Take **control and custody of any assets** over which corporate debtor has ownership rights
- (g) **Perform other duties** as specified by the Board **[Section 18]**

Powers of IRP: As per section 17 of the Code, from the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the IRP—

- (a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional. IRP shall be authorized to do the following:
 - act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;
 - take such actions, in the manner and subject to such restrictions, as may be specified by the Board;
 - have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
 - have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and
 - be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.
- (b) **Exercise of Power of BoD/ partners:** The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.
- (c) **Reporting of officers/managers:** The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

- (d) **Instructions to financial institutions:** The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Management of operations of corporate debtor as going concern: The IRP shall make every endeavor to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

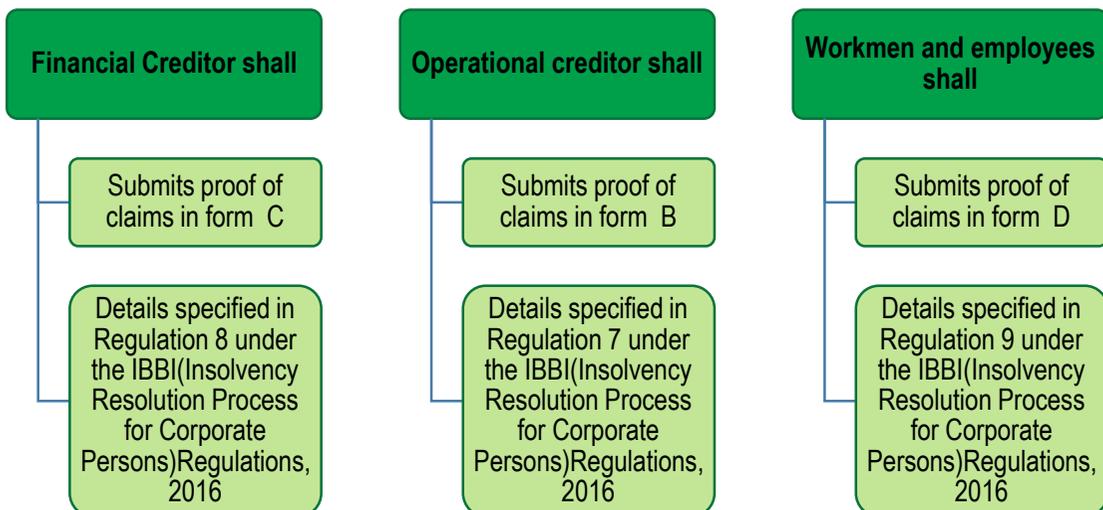
The interim resolution professional shall have the authority—

- (a) to appoint accountants, legal or other professionals as may be necessary;
- (b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;
- (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

- (d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and
 - (e) to take all such actions as are necessary to keep the corporate debtor as a going concern.
- [Section 20]**

Manner of submission of proof of claims to IRP: Proofs of claim shall be committed to IRP as follows:



A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. The IRP shall verify such claims within 7 days from the last date of receipt of the claims and within two days of such verification of claims, file a report to the Adjudicating Authority, certifying constitution of the CoC.

However, a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date. The IRP or the RP, as the case may be, shall verify every claim and thereupon maintain a list of creditors. Such list of creditors shall be filed with the Adjudicating Authority and also, displayed on the website, if any, of the Corporate Debtor.

(XII) Resolution Professional (RP)

Appointment: As per **Section 22** of the Code, the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

The Committee of Creditors in the first meeting by majority vote of not less than 66% of the Voting Share of the Financial Creditors either-

- **resolve to appoint** the interim resolution professional as a Resolution Professional, or
- **to replace** the interim resolution professional by another Resolution Professional.

Where the committee of creditors resolves—

- (a) **to continue the interim resolution professional as resolution professional** subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or
- (b) **to replace the interim resolution professional**, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.

The Adjudicating Authority shall forward the name of the resolution professional proposed to the Board for its confirmation and shall make such appointment after confirmation by the Board.

Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Example: Mr. Z was the Interim Resolution Professional (IRP) in XY Company. The committee of creditors by majority vote of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY Company. The said proposal was confirmed by the Board after 10

days. As per Section 22 of the Code, if Board does not confirm the proposed name as RP within 10 days of receipt of proposal, the Adjudicating authority shall direct IRP i.e., Mr. Z to continue as RP for such time as the Board confirms for the appointment of proposed RP.

Role and Duties of RP: The primary role and duty of RP is to conduct corporate insolvency resolution process and to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

- (1) RP shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

- (2) RP shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.
- (3) In case of any appointment of a resolution professional other than IRP, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional. **[Section 23]**

Duties: It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. The resolution professional shall undertake the following actions to protect the assets of the corporate debtor, namely:—

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- (c) raise interim finances subject to the approval of the committee of creditors;
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;
- (e) maintain an updated list of claims;
- (f) convene and attend all meetings of the committee of creditors;
- (g) prepare the information memorandum;
- (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of

operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;

- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
- (k) such other actions as may be specified by the Board. **[Section 25]**

Eligibility of an insolvency Professional to be appointed as a Resolution Professional : As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution process for corporate persons) Regulation, 2016, an insolvency professional shall be eligible for appointment as an interim resolution or a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor:-

- (a) He is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company.
- (b) He is not a related party of the corporate debtor.
- (c) He is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.
- (d) He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm in the last three financial years.

Fees of Resolution Professional: As per Section 5(13) of the Code, the fees payable to any person acting as a resolution professional and any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall be included in the insolvency resolution process costs and shall be paid in priority before payment to any other creditor. Recently IBBI has come out with the Circular, mandating minimum fees to be paid to the Resolution Professional. (Schedule II of IBBI (IRPCP) Regulations)

Replacement of Resolution Professional: As per the Section 27 of the Code, RP shall be replaced in the following manner:

- If at any time during the Corporate Insolvency Resolution Process the Committee of creditors is of the opinion that the resolution professional appointed is required to be replaced, they may apply to the Adjudicating Authority for replacement of such professional.
- As per Section 27 of the Code, the committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.
- The Committee of Creditors shall forward the name of the new proposed Insolvency

Professional to the Adjudicating Authority, and Adjudicating Authority shall forward such name to the Board for confirmation.

- After the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.
- Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional.

Preparation of information memorandum: (1) The resolution professional shall prepare an information memorandum containing such relevant information as may be specified by the Board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

- (a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;
- (b) to protect any intellectual property of the corporate debtor it may have access to; and
- (c) not to share relevant information with third parties unless clauses (a) and (b) above are complied with.

"Relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified. **[Section 29]**

(XIII) Committee of Creditors

Constitution of CoC: As per section 21, the **interim resolution professional** shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, **constitute a committee of creditors** (CoC).

The committee of creditors shall comprise of all the financial creditors of the corporate debtor.

When FC/ authorized representative is not entitled to participate in the CoC: for the Financial Creditor or the authorised representative of the financial creditor referred to in section 24(6), 24(6A), or 24(5), if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or

substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed prior to the insolvency commencement date.

In case where debts owed to two or more FC: The corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

In case, **any person is a financial creditor as well as an operational creditor,**—

- (a) such person **shall be a financial creditor to the extent of the financial debt owed by the corporate debtor**, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
- (b) such person **shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor** to such creditor.

Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

In case of consortium arrangement of FC: Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

- (a) Authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
- (b) Represent himself in the committee of creditors to the extent of his voting share;
- (c) Appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
- (d) Exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

Voting by authorised representative of class of FC: As per section 21(6A), if a financial debt is owned by a class of creditors, an insolvency professional can be appointed by adjudicating authority on receipt of application from interim Resolution professional.

Who can act as an authorised representative?

Where a financial debt is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors—

- such trustee or agent shall act on behalf of such financial creditors;

Where a financial debt is owed to a class of creditors other than the creditors covered above, the IRP shall make an application to the AA along with the list of all financial creditors, with the name of an insolvency professional

- to act as their authorised representative appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

Where a financial debt is represented by a guardian, executor or administrator,

- such person shall act as authorised representative on behalf of such financial creditors

Authorised Representative from the State or Union Territory having highest number of creditors in class

The Interim Resolution Professional shall offer the names of three insolvency professionals to be voted upon by the class of creditors, who must be from the State or Union Territory, which has the highest number of creditors in the class as per records of the corporate debtor.

Where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered.

Rights of Authorised representative: Above Authorised representative shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

All decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent of voting share of the financial creditors.

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.

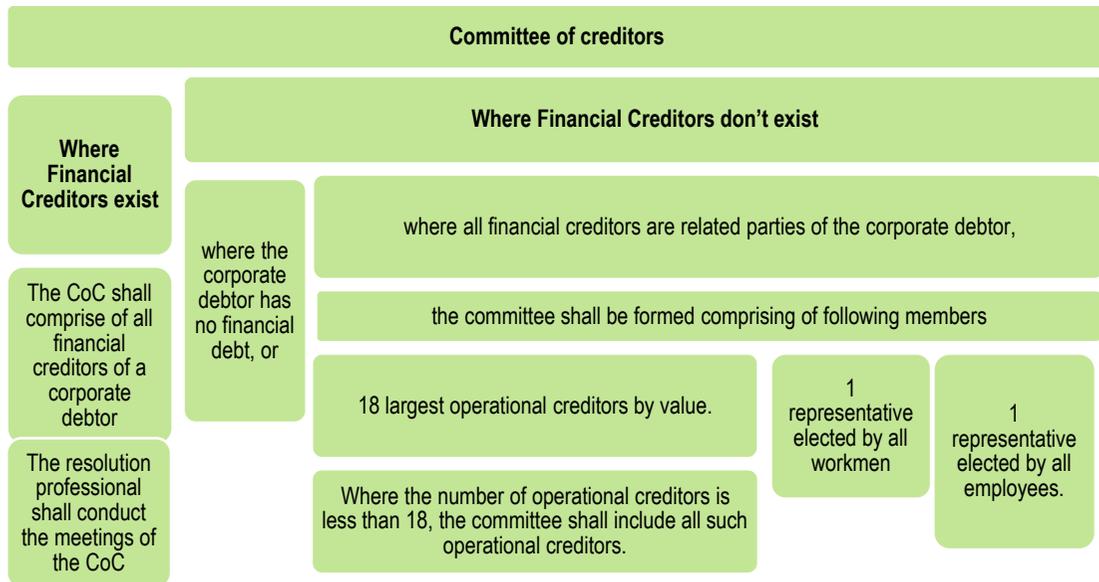
The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

The resolution professional shall make available any financial information so required by the committee of creditors as mentioned above within a period of seven days of such requisition.

(XIII) Meeting of committee of creditors

The provisions related to the meeting of committee of creditors are being dealt under the section 24 of the Code.

Composition: The composition of the committee shall be as follows:-



Procedure for conduct of meeting of CoC: The members of the committee of creditors may meet in person or by such electronic means. All the meeting of CoC shall be conducted by the RP. Notice of meeting shall be served to the following:

- members of Committee of creditors, including the authorised representatives;
- members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

The directors, partners and one representative of operational creditors, as referred above, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings. The absence of any them shall not invalidate proceedings of such meeting. The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

As per section 5(28) “**voting share**” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed

to such financial creditor in relation to the financial debt owed by the corporate debtor. Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor. However voting rights of committee with only operational creditor will be in proportion to debt due to each creditor to “total debt”. Whereas total debt will be equal to debts due to creditors, workmen and employees. [Regulation 16(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016].

Filing of report certifying constitution of the committee

The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received.

First Meeting of Creditors: The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report as mentioned above.

Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22 as per regulation 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Meetings of the committee

- (1) A resolution professional may convene a meeting of the committee as and when he considers necessary.
- (2) On a request received from members of the committee, shall convene a meeting if the same is made by members of the committee representing thirty three per cent of the voting rights.

Explanation—For the purposes of sub-regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.

- (3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights.

[Regulation 18 of the of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

Notice for meetings of the committee

- (1) A meeting of the committee shall be called by giving not less than five days' notice in writing to every participant,
- (2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative. [Regulation 19 of the of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.]

Quorum for the Meeting

- A meeting of committee of creditors shall quorate if members of the **committee of creditors representing at least thirty-three percent of the voting rights are present** either in person or by video/audio means. Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee. [Regulation 22 of the of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]
- If the **requisite quorum for committee of creditors is not fulfilled** the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of the committee attending the meeting.

Approval of committee of creditors for certain actions:

- (1) According to section 28 of the Code, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely:—
 - (a) **raise any interim finance** in excess of the amount as may be decided by the committee of creditors in their meeting;
 - (b) **create any security interest** over the assets of the corporate debtor;
 - (c) **change the capital structure** of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
 - (d) **record any change** in the ownership interest of the corporate debtor;
 - (e) **give instructions** to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
 - (f) **undertake any related party transaction;**
 - (g) **amend any constitutional documents** of the corporate debtor;
 - (h) **delegate its authority** to any other person;
 - (i) **dispose of or permit the disposal of shares** of any shareholder of the corporate debtor or their nominees to third parties;
 - (j) **make any change in the management** of the corporate debtor or its subsidiary;

- (k) **transfer rights or financial debts or operational debts** under material contracts otherwise than in the ordinary course of business;
 - (l) **make changes in the appointment or terms of contract** of such **personnel** as specified by the committee of creditors; or
 - (m) **make changes in the appointment or terms of contract** of **statutory auditors** or internal auditors of the corporate debtor.
- (2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the above actions.
- (3) No action shall be approved by the committee of creditors unless approved by a vote of sixty-six per cent of the voting shares.
- (4) Where any action is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.
- (5) The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

Voting by the committee

The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.

At the conclusion of a vote at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting. [Regulation 25 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.]

The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation

Rights and duties of authorised representative of financial creditors.

Right to vote and participate to the authorize representative in CoC Meetings: According to Section 25A of the Code, the authorised representative under section 21(6) or 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

To circulate the agenda and minutes: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

To act in the interest of Financial Creditor: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions.

Cast of vote by authorized representative: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall **abstain from voting** on behalf of such creditor.

The authorised representative under section 21(6) shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote.

Provided that for a vote to be cast in respect of an application under section 12 A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).

Instruction/ information filed by the authorised representative received by the FC he represents with CoC for voting: The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.—For the purposes of this section, the "electronic means" shall be such as may be specified.

Voting by Authorised Representative.

The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of sub-section (3) or sub-section (3A) of section 25A, as the case may be. [Regulation 25A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.]

(XIV) Persons not eligible to be resolution applicant

One of the key duties of a Resolution professional as per section 25 of the Code is to invite prospective resolution applicants to submit resolution plans for the Corporate Debtor and present all the resolution plans before the Committee of Creditors.

Grounds of ineligibility to be a resolution applicant: Section 29A states that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is a/an —

- (a) is an **undischarged insolvent**;
- (b) is a **wilful defaulter** in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (c) at the time of submission of the resolution plan **has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter**, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Exception : Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.—For the purposes of this proviso, the expression "**related party**" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause **shall not apply to such resolution applicant for a period of three years** from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

- (d) has been **convicted for any offence** punishable with imprisonment—
 - (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;]

- (e) is **disqualified to act as a director** under the Companies Act, 2013 (18 of 2013):
Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;
- (f) is **prohibited by the Securities and Exchange Board of India** from trading in securities or accessing the securities markets;
- (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:
Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;
- (h) has **executed a guarantee in favour of a creditor in respect of a corporate debtor** against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part ;
- (i) is subject to **any disability**, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a **connected person** not eligible under clauses (a) to (i).

Explanation I—For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "**related party**" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related

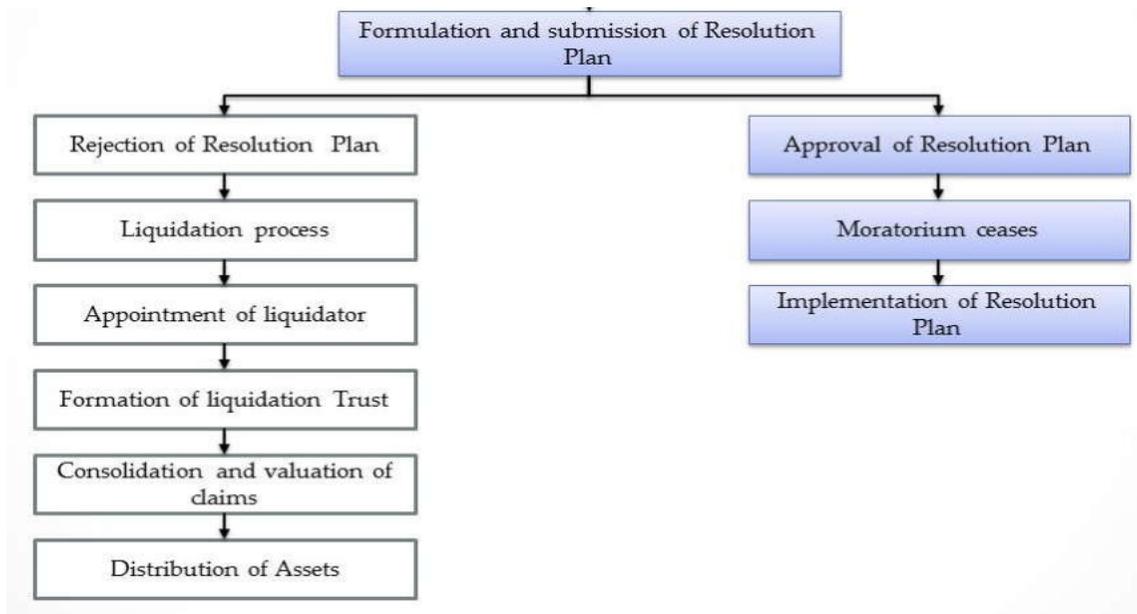
party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II.—For the purposes of this section, "**financial entity**" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

(XV) Resolution Plan

A resolution plan is defined under section 5(26) "means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II". It has to be approved by the CoC by a vote of not less than sixty-six per cent of voting share of the CoC members, before being presented to the Adjudicating Authority. The **sections 30 and 31 of the Code** deal with resolution plan. A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A, to the resolution professional prepared on the basis of the information memorandum.



Duty of resolution professional on submission of Resolution plan: The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) Provides the **manner for the payment of insolvency resolution process costs** in priority to the payment of other debts of the corporate debtor;
- (b) provides for the **payment of the debts of operational creditors** as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- i. where a resolution plan has not been approved or rejected by the Adjudicating Authority;
 - ii. where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
 - iii. where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;
- (c) provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force.
- (f) Conforms to such other requirements as may be specified by the Board.

Seeking approval of CoC: The resolution professional shall present such resolution plans, that satisfy the aforementioned conditions, to the committee of creditors for its approval by a vote of not less than sixty-six per cent of voting share of the financial creditors after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board. (Sec 30(3) and (4))

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it.

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A.

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to section 12(3), and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

Attending of meeting by resolution applicant: The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered.

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

Voting on resolution plan: The committee of creditors shall-

- (a) evaluate the resolution plans as per evaluation matrix;
- (b) record its deliberations on the feasibility and viability of each resolution plan; and
- (c) vote on all such resolution plans simultaneously.

Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes. Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved.

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting.

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code. (Reg 39(3B))

Submission of the resolution plan: The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. **[Section 30]**

Approval of resolution plan: If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements as per section 30(2), it shall by order approve the resolution plan which shall be binding on the following:

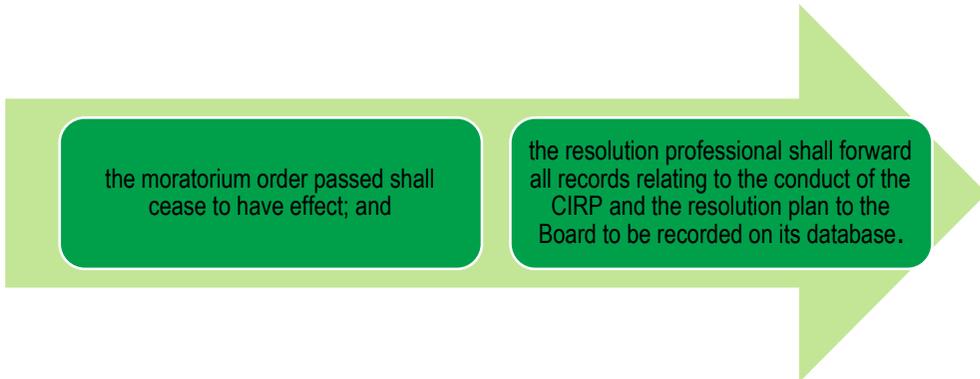
- corporate debtor and its employees,
- members, creditors, guarantors, and
- other stakeholders involved in the resolution plan
- Central Government, State Government and Local Authority

Case Law

SC in *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. Civil Appeal No. 8766-67 of 2019* dated 15th November 2019 it was decided that the successful resolution applicant does on a fresh slate, and all the liabilities get extinguished on approval of the resolution plan beyond what has been part of the plan.

Rejection of the resolution plan: Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the above requirements, it may, by an order, reject the resolution plan.

Consequences of approval: After the order of approval,—



The resolution applicant shall obtain the necessary approval pursuant to the resolution plan approved, within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as per section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors. **[Section 31]**

Case Law

Supreme Court in the matter of *K. Sashidhar Vs. Indian Overseas Bank & Ors.* in Civil Appeal No. 10673 of 2018, C.A. No.10719 of 2018, 10971 of 2018 and SLP (C) No.29181 of 2018 dt 5 Feb 2019 it was decided that No provision has been envisaged by the legislature to empower the RP, the NCLT or NCLAT, to reverse the commercial decision of the CoC

Liabilities for previous offences:

(1) **Liability of a Corporate Debtor for an offence committed prior to the commencement of the corporate insolvency resolution process:** Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process **shall cease**, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

- a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the

commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

(2) **When no action against the property of the corporate debtor shall be taken:** No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, **where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31**, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process. [Section 32A]

Appeal against Approval of Resolution Plan: Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

As per Section 61(3) of the Code, an appeal against an order of Adjudicating Authority for approving the resolution plan may be filed on the following grounds:-

- (a) The approved resolution plan is in contravention of the provisions of any law for the time being in force.
- (b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.
- (c) The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board.
- (d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.
- (e) The resolution plan does not comply with any other criteria specified by the Board.

Consequences of non-submission of a Resolution Plan: When the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period the Adjudicating Authority may pass orders for the liquidation of the corporate debtor.

Vide Circular No. IBBI/CIRP/41/2021, DATED 18-3-2021, under Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP regulations') provides a model timeline for carrying out various activities envisaged in a corporate insolvency resolution process (CIRP).

Regulation 40B of the CIRP regulations require an interim resolution professional (IRP)/ resolution professional (RP) to file a set of forms (CIRP 1 to CIRP 6) within seven days of completion of specific activities to enable monitoring progress of CIRP. This implies that a Form (CIRP 1 to CIRP 6) would not be filed until the related activity is not completed for whatever reason. This makes monitoring of progress difficult. Regulation 40B of CIRP regulations require filing of Form CIRP 7 within three days of due date of completion of any activity stated in column (2) of the table below is delayed, and continue to file Form CIRP 7 every 30 days, until the said activity remains incomplete.

<i>Sl. No.</i>	<i>Activity requiring filing of Form CIRP 7, if not completed by the specified date</i>	<i>Timeline for filing Form CIRP 7 for the first time</i>	<i>Timeline for subsequent filing of Form CIRP 7</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>1</i>	<i>Public announcement is not made by T+3rd day</i>	<i>Date specified in column (2) + 3 days</i>	<i>X+30th day, X+60th day, X+90th day, and so on, till the activity is completed.</i>
<i>2</i>	<i>Appointment of RP is not made by T+30th day</i>		
<i>3</i>	<i>Information memorandum is not issued within 51 days</i>		

	<i>from the date of public announcement</i>		
4	<i>RFRP is not issued within 51 days from the date of issue of information memorandum</i>		
5	<i>CIRP is not completed by T+180th day</i>		

T = Insolvency commencement date, and

X = Date of filing of Form CIRP 7 for the first time under column (3).

This circular is applicable for all the processes ongoing as on the date of this circular.



4. LIQUIDATION PROCESS

The Code concerns itself only with those corporate debtors which have defaulted in payment of debts. The corporate debtor, at the first stage, is put into resolution mode. The process is called the corporate insolvency resolution process. However, if attempts to resolve the insolvency of the corporate debtor fail, then only the liquidation provisions of the Code are triggered.

Where no plan is received during the CIRP period or where the plan presented is rejected by the Committee of Creditors or if the plan is not approved by the Adjudicating Authority, the Adjudicating Authority shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the Act. CIRP always precedes Liquidation Process. There is no provision under the Code for direct Liquidation without undergoing CIRP.

Initiation of Liquidation process:

Section 33 of the Code provides that where the Adjudicating Authority, —

- (a) **Not received a Resolution plan:** Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan; or
- (b) **rejects the resolution plan** for the non-compliance of the requirements specified therein, it shall—



Intimation of the decision of the committee of creditors to liquidate to Adjudicating authority:

Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

Contravention of resolution plan as approved by the Adjudicating Authority: Where the resolution plan approved by the Adjudicating Authority under section 31 or under sub-section (1) of section 54L, is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.

Determination of contravention of the provisions of the resolution plan: On receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

Bar to filing of suits and legal proceedings: Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor. A suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

Exception: Restrictions on filing of suits and legal proceedings shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

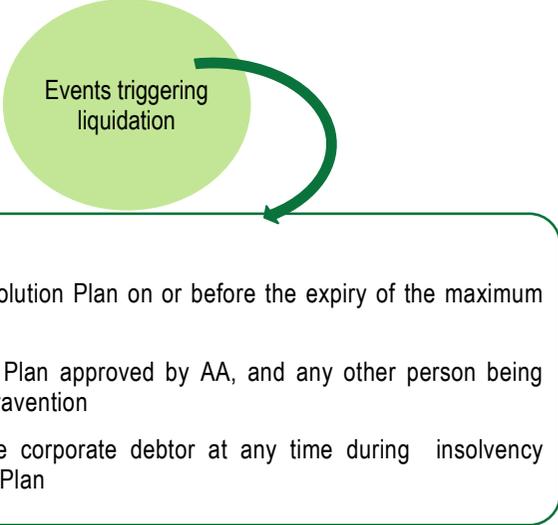
Order to be deemed to be notice of discharge: The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

So, from above it can be concluded that under the Code, a corporate debtor may be put into liquidation in the following scenarios:

- (i) Non-receipt of resolution plan during CIRP period;
- (ii) A 66% majority of the creditor's committee resolves to liquidate the corporate debtor at any time during the insolvency resolution process before confirmation of the resolution plan;

- (iii) The creditor's committee does not approve a resolution plan within 180 days (or within the extended 90 days);
- (iv) The NCLT rejects the resolution plan submitted to it on technical grounds; or
- (v) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.

Once the NCLT passes an order of liquidation, a moratorium is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate.



Events triggering liquidation

- On rejection of resolution plan
- Adjudicating Authority does not receive a Resolution Plan on or before the expiry of the maximum time permitted for resolution
- Corporate debtor contravenes the Resolution Plan approved by AA, and any other person being prejudicially affected applies against such contravention
- Creditors' Committee decides to liquidate the corporate debtor at any time during insolvency process, before confirmation of any Resolution Plan

Case Law:

National Company Law Appellate Tribunal, New Delhi, in *Sreedhar Tripathy v. Gujarat State Financial Corporation*, 2022 gave the verdict that where corporate debtor was not functioning for last 19 years and all machinery had become scrap and CoC in its commercial wisdom decided to liquidate corporate debtor, impugned order passed by NCLT directing liquidation of corporate debtor was not to be interfered with.

In the given case, NCLT directed for liquidation of corporate debtor. Here Appellant challenged said order on ground that CoC never wanted to continue with CIRP and decision taken by CoC for liquidation of corporate debtor was not in its commercial wisdom. It was noted that corporate debtor was not functional and was completely shut for last 19 years.

It was held that CoC in its Legislative scheme has been empowered to take decision to liquidate corporate debtor, any time after its constitution and before confirmation of resolution plan. As corporate debtor had not been functioning for last 19 years and all machinery had become scrap, even buildings were in broken-down condition and CIRP would involve huge costs, decision taken by CoC to liquidate corporate debtor was not arbitrary and same was not open for Judicial review by NCLT.

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. *An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed by the Raheja Portland Cement Limited in the capacity as operational creditor against the corporate debtor Makhija Builders and Developers Limited. The application was admitted by the order of the National Company Law Tribunal – Mumbai (NCLT, Mumbai) after giving a reasonable opportunity of being heard to Makhija Builders and Developers Limited and Mr. Ritesh was appointed as Interim Resolution Professional (IRP). However, Mr. Sanskar and Mr. Satvik, two of the directors of Makhija Builders and Developers Limited, were suspicious about the claims filed by Raheja Portland Cement Limited since they were much more than what was due to the company and therefore, they are desirous of making an appeal against the order of the NCLT, Mumbai. You, as a legal advisor, are required to advise them as to the maximum time within which an appeal against the order of the NCLT, Mumbai, can be filed by them with the National Company Law Appellate Tribunal (NCLAT).*
 - (a) *Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 45 days from the date of order.*
 - (b) *Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 30 days from the date of order.*
 - (c) *Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 15 days from the date of order.*
 - (d) *Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 10 days from the date of order.*

2. *Aakansha Plastics Limited, having registered office at Bhatinda, Punjab, was formed in the year 2005. On March 31, 2021, its paid-up share capital was ₹ 5,00,00,000; Amount due from Debtors viz. Shilpa Furnitures Private Limited and Shobhna Traders & Co. ₹ 4,00,00,000; Secured loans obtained from Crescent Bank Limited ₹ 6,00,00,000; Amount due to creditors, namely, Sambhav & Sons and Satyadev Suppliers Private Limited ₹ 3,00,00,000. The performance of the company decreased sharply due to stiff competition, wrong planning and*

mismanagement and it came on the verge of insolvency. Choose from the following alternatives as to who is the corporate debtor:

- (a) Shilpa Furnitures Private Limited and Shobhna Traders & Co.
 - (b) Aakansha Plastics Limited.
 - (c) Sambhav & Sons and Satyadev Suppliers Private Limited.
 - (d) Crescent Bank Limited.
3. *Ruby Petals Limited, a small company, files an application with the National Company Law Tribunal (NCLT) stating that the fast track corporate insolvency resolution process against it cannot be completed within the prescribed period of 90 days. On being satisfied, NCLT orders to extend the period of such process by 30 days. However, Ruby Petals Limited again initiates an application for further extension of time period of insolvency process by another 10 days. From the four options given below which one, do you think, is applicable in such a situation:*
- (a) *National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days since total extension does not exceed 45 days.*
 - (b) *National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days if the corporate debtor deposits ₹ 50,000 as penalty.*
 - (c) *National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days if the corporate debtor deposits ₹ 1,00,000 as penalty.*
 - (d) *National Company Law Tribunal cannot extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days since such extension shall not be granted more than once.*
4. *Munikh Hospitality Services Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code. The Resolution Professional (RP) Mr. Somesh, after his appointment, conducted a meeting of Committee of Creditors (CoC) but the same was adjourned due to the lack of quorum. At the appointed date and time, when the adjourned meeting was resumed, a resolution was passed by the CoC members present, representing 51% of the voting rights, for liquidation of Munikh Hospitality Services Limited, the Corporate Debtor, before the completion of the Corporate Insolvency Resolution Process (CIRP). You, as a qualified Chartered Accountant comprising the team of RP, are required to advise whether the resolution of liquidation passed by certain members of CoC representing 51% of the voting rights is valid or not considering the applicable provisions of the Insolvency and Bankruptcy Code, 2016.*

- (a) *The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 90% of the voting shares of the creditors.*
 - (b) *The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 66% of the voting shares of the creditors.*
 - (c) *The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since such resolution cannot be passed before the completion of the CIRP.*
 - (d) *The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is valid since the same has been passed by the majority of creditors.*
5. *Shivdeep submitted his claim as an operational creditor to the liquidator of Chiranjeevi Food Products Limited which is under liquidation. After submission of his claim, Shivdeep is desirous of altering it. Out of the following four options, which one correctly indicates the time period within which he can alter his claim after its submission.*
- (a) *Shivdeep can alter his claim within five days of its submission to the liquidator of Chiranjeevi Food Products Limited.*
 - (b) *Shivdeep can alter his claim within ten days of its submission to the liquidator of Chiranjeevi Food Products Limited.*
 - (c) *Shivdeep can alter his claim within fourteen days of its submission to the liquidator of Chiranjeevi Food Products Limited.*
 - (d) *Shivdeep can alter his claim within thirty days of its submission to the liquidator of Chiranjeevi Food Products Limited.*

Descriptive Questions

1. *When will the provisions of insolvency and liquidation be applicable to a corporate person?*
2. *What is the Insolvency Resolution Process for financial creditors?*
3. *What is the Insolvency Resolution Process for operational creditors?*
4. *What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?*
5. *What is the procedure of Insolvency Resolution Process for a Corporate Applicant?*
6. *Is there any time limit for completion of the Insolvency Resolution Process?*
7. *What is the effect of order of moratorium?*

8. *What is a Resolution plan?*
9. *What is the significance of the Corporate Insolvency Resolution Commencement Date?*
10. *Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He did not propose for the appointment of an interim resolution professional in the application. State the provisions given by the Code to resolve such a scenario including the term of IRP so appointed.*

ANSWERS

Answer to Multiple Choice Questions

1.	b	2.	b	3.	d	4.	b	5.	c
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Answer to Descriptive Answers

1. The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Vide Notification No. S.O.1205(E), date 24-03-22, minimum amount of default is increase to 1 crore for triggering CIRP under the IBC.

2. A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there are no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor.

If the Adjudicating Authority is satisfied that default has not occurred (reasons to be recorded in writing) or the application is incomplete or any disciplinary proceeding is pending against the resolution professional, it shall reject the application. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

3. On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

4. As per Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor under Section 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the **last three financial years**.
- He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to **five per cent** or more of the gross turnover of such firm in the **last three financial years**.

5. Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant shall be allowed to rectify the defect within seven days of receipt of notice of such rejection.

6. Section 12 states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 66% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall compulsorily be completed within **330 days** from the insolvency commencement date including any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

7. Section 14 contains the provisions relating to moratorium. During the moratorium period the following acts shall be prohibited:
- (a) The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of 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 SARFAESI Act, 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.

Explanation to Section 14 (1) clarifies that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, **shall not be suspended or terminated on the grounds of insolvency**, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

8. According to Section 5 (26), a 'resolution plan' means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code.

Explanation to Section 5 (26) clarifies that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

The aim of the Code is to revive the corporate debtor and therefore, resolution plan should be such that it is capable of resolving the insolvency of the corporate debtor as a going concern.

As per Section 30, the resolution applicant shall prepare resolution plan on the basis of information memorandum and submit the same to the resolution professional.

Each Resolution Plan shall be examined by the resolution professional to confirm that each such plan:

- (i) provides for payment of insolvency resolution costs;
- (ii) provides for repayment of the debts to operational creditors;
- (iii) provides for management of affairs of the company after approval of the resolution plan;
- (iv) provides for implementation and supervision of the resolution plan;
- (v) does not contravene provisions of the law for the time being in force; and
- (vi) conforms to such other requirement as may be specified by the Board.

The resolution plan needs to be submitted within the prescribed time as provided by Section 12. The prescribed time limit is 180 days and in case of extension it is 270 days. Further, 330 days have also been mandated which shall include any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

In case of Fast Track Resolution, the time limit is 90 days and if extension is required, another 45 days can be granted.

The resolution professional shall submit the resolution plan to the committee of creditors for its approval which may approve the plan by a vote of not less than 66% of voting share of the financial creditors. Operational creditors have no say in approving the resolution plan.

The resolution professional shall submit the approved plan to the Adjudicating Authority.

9. The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period till the completion of the corporate insolvency resolution process during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status.
10. **Appointment of IRP:** As per Section 16 of the Code where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application, the Adjudicating Authority shall make a reference to the Board (IBBI) for the recommendation of an insolvency professional who may act as an interim resolution professional.

The Board (IBBI) shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: the term of the Interim Resolution Professional shall continue from his appointment till the date of appointment of the Resolution Professional by COC in its first meeting under Section 22 of the Code.

