

# Role of Resolution Professional in CIRP

Jagdish Ahuja,  
B.Com, LL.B, FCS, ACMA  
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Focus is to improve India's Ease  
of doing business ranking to  
achieve the distinction of coming  
in first 50 countries.

The bankruptcy law reform was identified as a key priority for improving the ease of doing business in India (Budget 2015–16)

India ranked 136 out of 189  
countries in the World Bank's  
Doing Business report index

The BLR Committee Report too highlighted that as per the World Bank Report, the average time to resolve insolvency in 2014 was four years in India, compared to 0.8 years in Singapore and one year in London.

## The Preamble of the Code

"...to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."

# Applicability

The Code extends to the whole of India except Part III which shall not extend to the state of J&K

The Insolvency and Bankruptcy Code, 2016 is divided into

Five Parts

255 Sections

Eleven  
Schedules



# The Framework of the Code

Part-1 (Preliminary)

Part II (Insolvency  
Resolution &  
Liquidation for  
corporate Persons

Part III (Insolvency  
Resolution &  
Bankruptcy for  
individuals &  
Partnership firms

Part IV (Regulation of  
insolvency  
professionals, agencies  
& Information Utilities

Part V  
(Miscellaneous)

Eleven Schedules  
(Amendments to  
various other laws)

## Part II : Insolvency Resolution & Liquidation for corporate persons (Sec 24 to 62)

Chapter-1

Preliminary

Chapter-2

CIRP)

Chapter-3

Liquidation Process

Chapter-4

Fast Track Insolvency Resolution Process

Chapter-5

Voluntary Liquidation of Corporate Persons

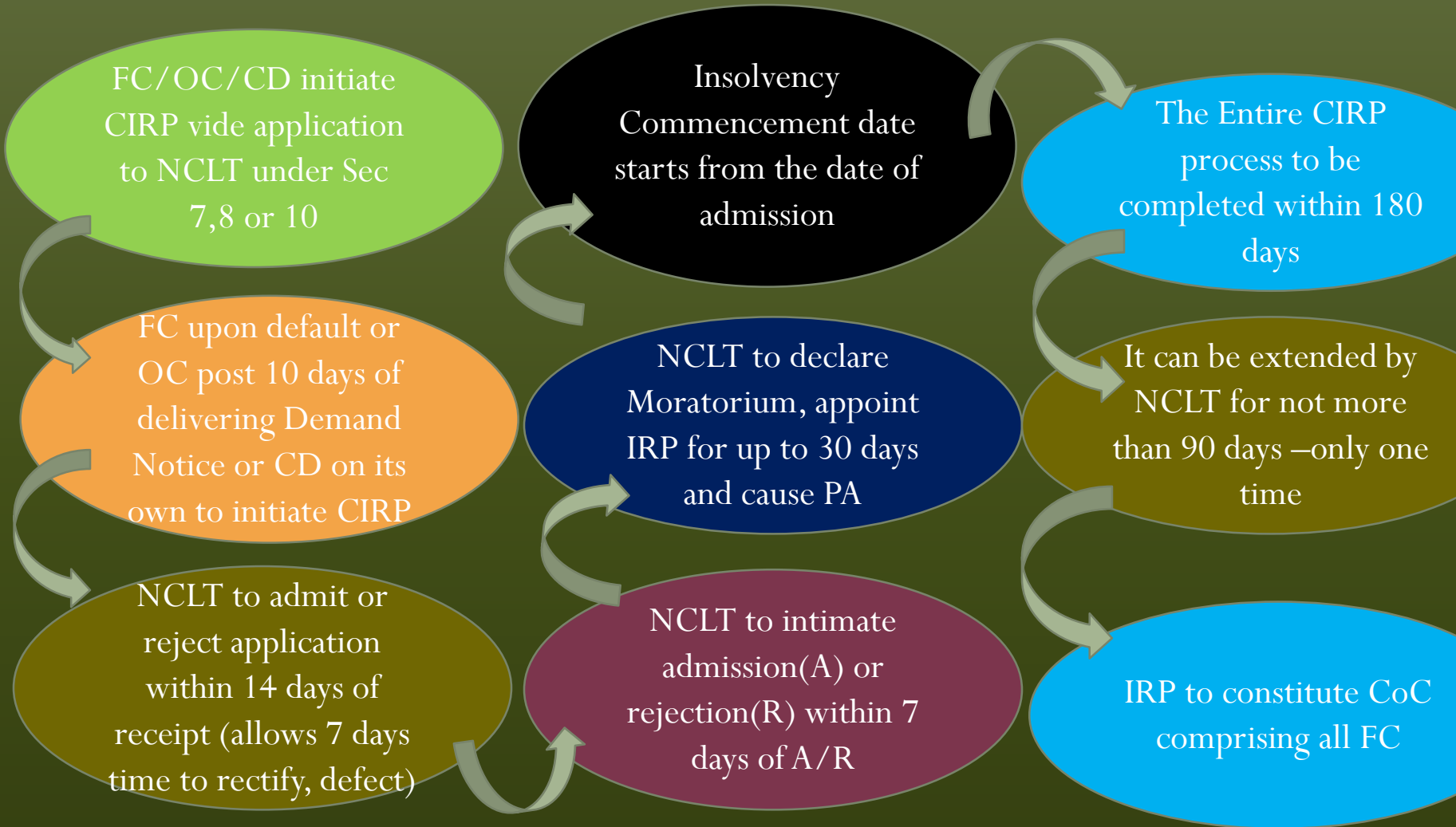
Chapter-6

Adjudicating Authorities for Corporate Persons

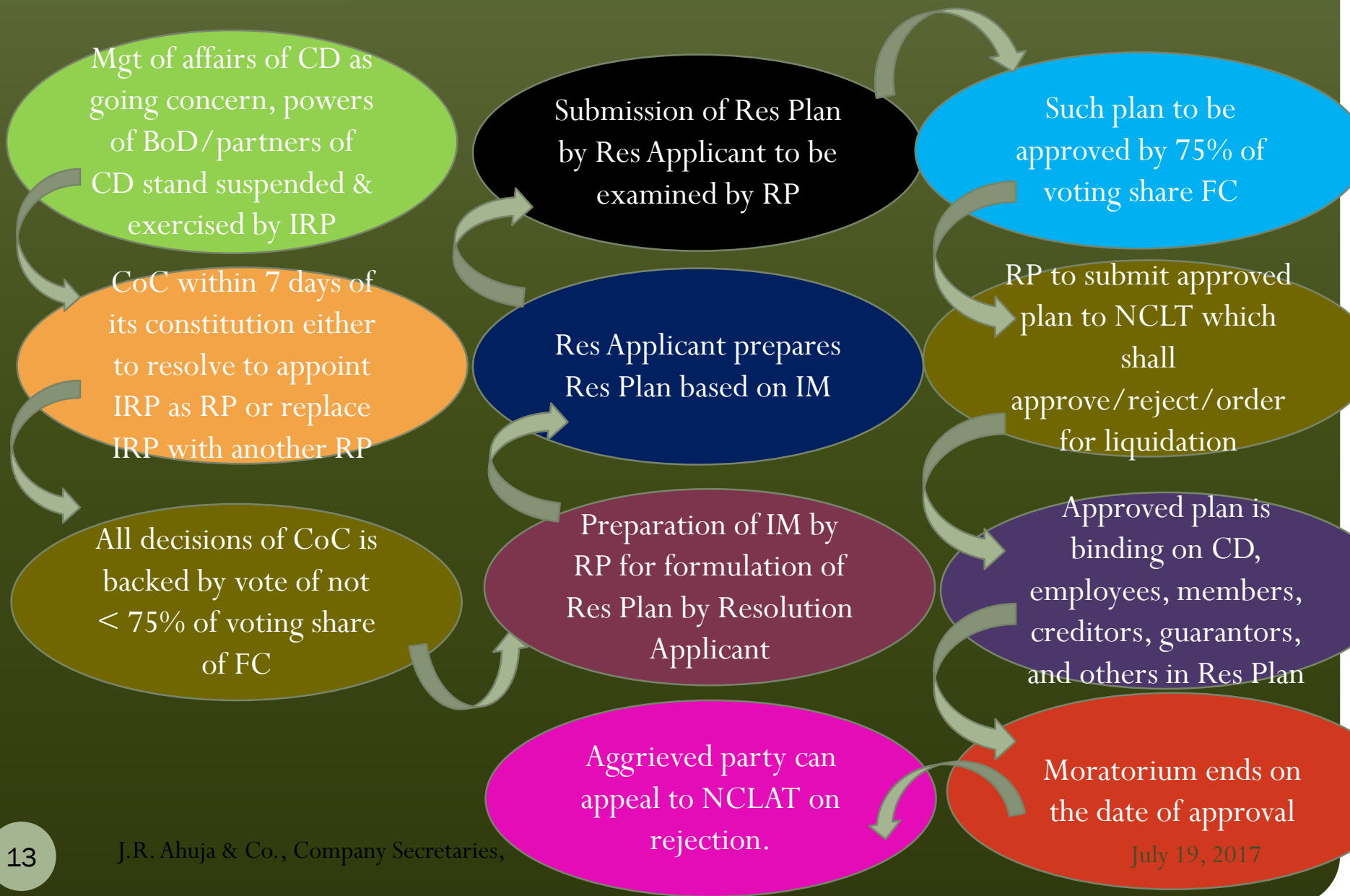
Chapter-7

Offences & Penalties

# Steps involved in Corporate Insolvency Resolution Process



## Continued.....



## Appeals & Appellate Authorities

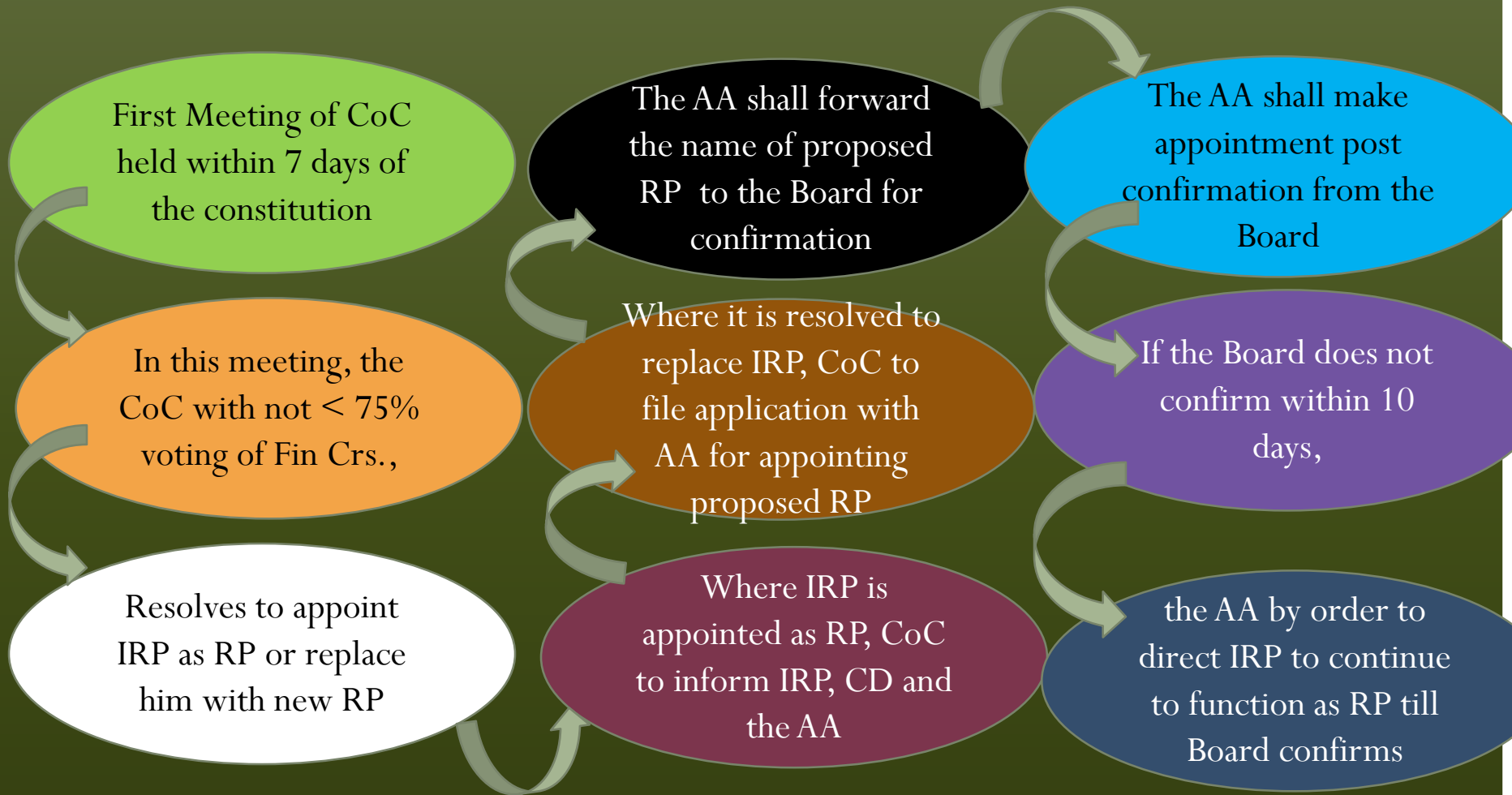
Sec 61 : Notwithstanding anything contrary contained in CA 2013, any person aggrieved by order of AA ma prefer appeal to NCLAT

Such Appeal to be filed within 30 days. NCLAT, if satisfied that there was sufficient cause, allow further period not exceeding 15 days

Sec 62: Any person aggrieved by the order of NCLAT may prefer appeal to SC on a **question of law** arising out of such order within 45 days of receipt of the order

SC, if satisfied that there was sufficient cause, allow further period not exceeding 15 days

# Appointment of Resolution Professional (Section 22)





## Sec 23: RP to conduct CIRP

Subject to Sec 27, RP shall conduct the entire CIRP & manage operations of CD during the CIRP period

The RP shall exercise powers and perform duties as are vested on the IRP

In case of appointment of RP other than IRP, the IRP shall provide all information, docs and records of CD in his possession and knowledge to the RP

# Meeting of Committee of Creditors (Section 24)

July 19, 2017

## Sec 24: Meeting of CoC

Meeting of CoC can be physical or by electronic means

All meetings of CoC to be conducted by RP

The RP shall give notice of each meeting to

- a) members of CoC
- b) members of suspended BoD or the partners of corporate persons
- c) operational creditors or their representative, if their dues is not < than 10% of the debt

## Sec 24: Meeting of CoC

The directors/partners/one Rep of operational Creditors can attend meeting but cannot vote

Provided their absence shall not invalidate meeting proceedings

A creditor may appoint an IP other than RP to represent such creditor in a meeting of CoC.

Fees payable to such IP to be borne by concerned creditor

## Sec 24: Meeting of CoC

Each Creditor to vote as per Voting share assigned to him based on his financial debt

The RP to determine the voting share to be assigned to each creditor in the manner specified by the Board

The meetings of CoC to be conducted in such manner as may be specified

# Duties of Resolution Professionals (Section 25)

To preserve & protect assets of CD including continued business operations of CD & for that purpose

Take immediate custody and control of all assets, business records of CD

Represent and act on behalf of the CD with third parties, exercise rights for the benefit of the CD in judicial, quasi-judicial or arbitration proceedings

Raise interim finance with approval of CoC

Maintain updated list of claims

Conduct and convene meetings of COC as and when required

Prepare Information Memorandum on the basis of which Resolution plan would be prepared

Invite prospective lenders, investors, and any other persons to put forward resolution plans

Present all resolution plans at the meetings of the committee of creditors

File application for avoidance of transactions in accordance with Chapter III, if any; and

such other actions as may be specified by the Board



# Duty of IRP V RP – Raise interim Finance

IRP	RP
Section 20	Section 25
Raise interim finance provided that no security interest be created over any encumbered property (EP) of the CD without the consent of the concerned creditor whose debt is secured over such EP	Raise interim finance, subject to approval of CoC U/S 28
Provided that no prior consent of CoC is required if <b>value</b> of the property is not less than twice the amount of debt	

Sec 26: Application for avoidance of transactions under clause (j) of subsection (2) of Section 25 not to affect CIRP proceedings

Avoidance of transactions refers to certain undervalued transaction u/s 45

If the Liquidator/RP, upon examination of transactions of the CD finds that certain transactions during the relevant period were undervalued, he shall make an application to AA to declare them void and reverse the effect of such transactions

Transactions will be considered undervalued, if

- a) CD makes a gift to a person
- b) CD enters into a transaction with a person which involves transfer of asset at significantly lower value

## Sec 46: Relevant Period for avoidable transactions

For making application, the Liquidator/RP shall demonstrate that

i) Such transactions were made with any person within the period of one year preceding the insolvency commencement date

ii) Such transactions was made with a related party within the period of two years preceding the insolvency commencement date

The AA may require an independent expert to assess evidence relating to value of such transactions

## Sec 28: Approval of CoC for certain actions

✓ Notwithstanding anything contained in any other law, for the time being in force, the RP shall during CIRP, not take any of the following actions without prior approval of CoC

## Sec 28: Approval of CoC for certain actions

Raise interim finance in excess of amt. decided by CoC

Create any security interest over CD assets

Change the capital structure of the CD

Record any change in ownership interest of CD

Give instruction to FI, maintaining A/cs of CD for debit instructions on such A/cs in excess of amt. decided by CoC

Undertake any related party transactions

## Sec 28: Approval of CoC for certain actions

Amend constitutional documents of the CD

Delegate its authority to any other person

Dispose or permit disposal of shares of any shareholder of the CD or their nominees to 3<sup>rd</sup> parties

Make any change in the mgt. of the CD or its subsidiary

Transfer rights or financial/operational debts under material contracts otherwise than in ordinary course of business

Changes in appointment or terms of contract of such personnel as specified by CoC

Make changes in appointment or terms of contract of statutory auditors, internal auditors of CD

- ▶ No action as above to be approved unless approved by vote of 75% of the voting shares

Where any action is taken by RP without approval as above, such action shall be void

The CoC may report such actions of the RP to the Board for taking necessary action

# Information Memorandum

Sec 29 read with (Regulation 36 of IBBI (Insolvency Resolution Process for corporate Persons) Regulations, 2016



- ✓ Sec 29(1) : Preparation of IM in such form and manner containing info as specified by the Board for formulating Res Plan

**Sec 29(2) : The above info to be provided to Res applicant in physical and Electronic Form**

**Provided he undertakes :**

- a) To comply with the provisions of the law relating to confidentiality and insider trading**
- b) To protect any Intellectual Property of the CD**
- c) Not to share relevant info with 3<sup>rd</sup> Parties unless above clauses are complied with.**

## Contents of Info Memorandum (Reg. 36)

(1) Subject to sub-regulation (4), the IRP/IP, as the case may be, shall submit an information memorandum in electronic form to each member of the committee and any potential resolution applicant containing–

(a) at least the matters listed in paragraphs (a) to (i) of sub-regulation (2), before its first meeting; and

b) matters listed in paragraphs (j) to (l) of sub-regulation (2), within fourteen days of the first meeting.

## Contents of Info Memorandum (Reg. 36 (2))

(a) assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;

(b) the latest annual financial statements;

(c) audited financial statements of the CD for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

## Contents of Info Memorandum (Reg. 36 (2))

(e) particulars of a debt due from or to the CD with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the CD by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the CD along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

## Contents of Info Memorandum (Reg. 36 (2))

(i) the number of workers and employees and liabilities of the corporate debtor towards them;

(j) the liquidation value;

(k) the liquidation value due to operational creditors; and

(l) other information, which the resolution professional deems relevant to the committee.

## Contents of Info Memorandum (Reg. 36 (3))

A member of the Committee may request the Res Professional for further info and he shall provide such info to all members within reasonable time if such info has a bearing on Res Plan

# Sec 30 Resolution Plan



## Sec 30 : Resolution Plan

A Res Applicant to submit Res plan to the RP prepared on the basis of IM

The RP to examine each Res Plan & confirm that each Res Plan

a) Provides for payment of IRP cost in priority to repayment of other debts

b) Provides for repayment of debts of OC as may be specified by the Board, which shall not be < the amt. to be paid to OC in the event of liquidation of CD u/s 53 (distribution of assets).

Provides for management of affairs of CD after approval of Res Plan

Provide for Implementation & supervision of Res Plan

Does not contravene any of the provisions of the law for the time being in force & conforms to such other requirements as may be specified by the Board

## Sec 30 : Resolution Plan

The CoC to approve Res Plan by 75% vote of FC

The Res Applicant may attend meeting of CoC in which his Res plan is considered

Provided he shall not have any right to vote, unless such Res Applicant is also a FC

The RP shall submit the Res Plan as approved by CoC to the AA

If AA is satisfied that the res plan as approved by CoC meets the requirements, it will by order, approve the plan which shall be binding on all concerned

If AA is not satisfied, it may by order reject the plan

Post approval order, the moratorium period shall cease and RP shall forward all records of CIRP to Board

- ✓ The IRP shall, within 7 days of his appointment appoint two Registered Valuers to determine Liquidation Value of CD as per Reg 35

Provided that following persons shall not be appointed as Regd. Valuers:

- a) a relative of the interim resolution professional;
- b) a related party of the CD
- c) An Auditor of CD in the 5 years preceding ins comm date; or
- d) A partner or director of the IPE

- (1) In case of assignment/transfer of debt, both the parties shall provide IRP/RP the terms of such assignment/transfer and identity of the assignee/transferee
- (2) The RP shall notify each participant and the AA of any resultant change in CoC within 2 days of such change

## Reg 29: Sale of Assets outside the ordinary course of Business

- (1) The RP may sell unencumbered assets of CD as per Reg 29 if he opines that it is needed for better realisation of value.

Provided that the book value of assets sold during CIRP period in aggregate does not exceed 10% of the total claims admitted by IRP.

- 2) The sale of assets to be with approval of CoC
- 3) A bonafide Purchaser will have free and marketable title notwithstanding any terms in the primary docs

The IRP/RP may apply to AA for an order seeking assistance of local district administration, in discharging his duties under the Code/Regulations

**General Code of  
Conduct applicable to  
IP  
First Schedule to IBBI  
[IP] Regulations**



Integrity and Objectivity, Independence and Impartiality, Professional Competence, Timeliness, Information Management, Representation of Correct facts, Confidentiality, Integrity, Occupation, Employability and restrictions, Remuneration and cost, Gifts

# Grey Areas

Expiration of  
tenure of IRP

Shortage of NCLT  
Benches

High Cost of  
Bankruptcy Res  
Process

Absence of IU

Shortage of Skilled  
Professionals /Cap  
acity Building of IP

Dilution of rights  
of Secured  
Creditors

Lack of consensus  
amongst Lenders

Non Co-operative  
Management

Disadvantageous  
to Trade  
Creditors

Need for better  
monitoring of IP

Synchronisation of  
the current  
restructuring  
scheme with the  
code

Potential higher  
provisioning for  
banking sector

Time Bound  
Process of CIRP

Establishment of  
infrastructure at  
NCLT

Cross  
border Insolvency

NPA Resolution

Conflicting views  
of NCLT & NCLAT

# Case Laws

## DISPUTE

### **Kirusa Software Pvt Ltd (OC) vs Mobilox Innovations Pvt Ltd. (CD)**

the CD disputed the claim on grounds of violation of Non-Disclosure Agreement by OC.

NCLT upheld the dispute & dismissed the proceedings.

The OC appealed and NCLAT while admitting the appeal ruled that debt was not connected to NDA and went on to explain the meaning of DISPUTE.

In its order, NCLAT said that a dispute would include any proceedings already initiated or pending or even those which are proposed to be initiated before a consumer court, tribunal, labour court etc. Earlier, disputes considered were limited to arbitration proceedings or suits. This wide definition is a source of concern, say experts.

As per Sec 5(6) Dispute includes a suit or arbitration proceedings relating to

- a) The existence of the amt of debt;
- b) The quality of goods or service ; or
- c) The breach of a representation or warranty

# TIMELINESS

- ▶ One of the important point in IBC Code is the timeliness it prescribes –
- ▶ 14 days for admission/rejection of claim and 270 days (with extension) for completion of the process
- ▶ The NCLAT order in JK Jute Ltd case held that the **14 days timelines for admitting/rejecting a claim** was a **directive** and courts do not necessarily have to adhere to the timeline though it held that once the case is admitted **270 days timeline** is mandatory.



## Profile of Jagdish Ahuja



B.Com, FCS, ACMA, LL.B.

Total 25 years of industry experience in Secretarial, Commercial, Accounts & Finance

Proprietor of JR Ahuja & Co, Company Secretaries in Mumbai since Jan 2012 (More than 5 years)

Guest Speakers at various forums of ICSI & ICAI (CMA) & visiting Faculty for ICSI-CCGRT/ICAI for Company law and Indirect tax subjects.

Contributed articles on Tax, Finance & Secretarial matters in reputed Newspapers and also in souvenirs of ICSI/ICAI

Contact: JR Ahuja & Co, Company Secretaries, UG 329, Dreams Mall, Bhandup West, Mumbai 400078; email: pcsjrahuja@gmail.com; Mobile: 9323144390, Landline: 8655044390

# Our Activities

Company Law practitioner

GST Practitioner (Proposed)

Insolvency & Bankruptcy Law  
Practitioner (Proposed)

Trade Mark Advisory Work including  
Application filings, hearing and  
advising esteemed clients.

Income Tax Practitioner

Legal including drafting and vetting of  
commercial agreements

Thank you

Nice talking to you

You can mail me  
[pcsjrahuja@gmail.com](mailto:pcsjrahuja@gmail.com)  
or contact me  
9323144390