Corporate Bankruptcy – A Primer

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PREFACE

The Insolvency and Bankruptcy Code, 2016 that received President's assent on May 28 2016, is a consolidated legislation providing for insolvency resolution process of individuals, partnership firms, Limited Liability Partnerships and Corporates. It proposes to repeal and amend a number of legislations. The Code also introduces new regulator "Insolvency and Bankruptcy Board of India" (The Board). The adjudication process in relation to corporates and LLPs would be under National Company Law Tribunal and in relation to individuals and partnerships under Debt Recovery Tribunal. The insolvency process will be handled by insolvency professionals who shall be a Member of the Insolvency Professional Agencies and registered with the Board.

This publication of the Institute of Company Secretaries of India titled "Corporate Bankruptcy – A Primer" covers basics of corporate insolvency resolution process under "The Insolvency and Bankruptcy Code 2016". It also covers step by step flow charts on insolvency resolution process by financial creditor, operational creditor and corporate debtor, role of insolvency resolution professional (including interim professional), moratorium aspects, comparison of the code with international insolvency regulatory framework, FAQs on Corporate Insolvency Resolution Process and much more.

I appreciate and acknowledge the efforts of CS Vineet Chaudhary, Central Council Member and Chairman, Corporate Laws and Governance Committee, ICSI and CS S M Sundaram, Advocate for their inputs and guidance in the preparation of manuscripts and in reviewing the publication.

I commend the dedicated efforts put in by CS Lakshmi Arun, Deputy Director, in writing the manuscript of this publication under the guidance of CS Alka Kapoor, Joint Secretary, Directorate of Corporate Laws and Governance, ICSI.

I am confident that the publication will prove to be of immense benefit to companies, professionals and students.

In any publication, there is always scope for further improvement. I would personally be grateful to users and readers for offering their suggestions/ comments for further refinement.

(CS Mamta Binani)

Place: New Delhi *President*

Date : 20th July 2016 Institute of Company Secretaries of India

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Chapter I

INTRODUCTION

Historical developments of Insolvency Laws in India

The law of Insolvency in India owes its origin to English law. Before the British came to India there was no law of Insolvency in the country. The earliest insolvency legislation can be traced to sections 23 and 24 of the Government of India Act, 1800 (39 and 40 Geo III c 79), which conferred insolvency jurisdiction on the Supreme Court.

The passing of Statute 9 in 1828 (Geo- IV c 73) was passed, which can be said to be the beginning of the special insolvency legislation in India. Under this Act, the relief for insolvent debtors were provided in the Presidency-towns. A further step in the development of Insolvency Law was taken when the Indian Insolvency Act, 1848 was passed. The Provisions of the Indian Insolvency Act, 1848, were, however, found to be inadequate to meet the changing conditions. However, the Act of 1848 was in force in the Presidency-towns until the enactment in 1909 of the present Presidency-towns Insolvency Act, 1909. The Presidency Towns Insolvency Act, 1909 and Provisional Insolvency Act, 1920 are two major enactments that deal with personal insolvency and have parallel provisions and their substantial content is also similar but the two differ in respect of their territorial jurisdiction. While Presidency Towns Insolvency Act, 1909 applies in Presidency towns namely, Kolkata, Mumbai and Chennai, Provincial Insolvency Act, 1920 applies to all provinces of India. These two Acts are applicable to individuals as well as to sole proprietorships and partnership firms.

Under the Constitution of India 'Bankruptcy & Insolvency' is provided in Entry 9 List III - Concurrent List, (Article 246 –Seventh Schedule to the Constitution) i.e. both Center and State Governments make laws relating to this subject.

The major legislations currently governing Corporate Insolvency are :

- Companies Act, 1956, relating to winding up of companies.
- The Sick Industrial Companies (Special Provisions) Act, 1985.

Reforms in Insolvency Law for Corporate Side

Over the last two decades, the Indian financial system has undergone tremendous

transformation. Various financial sector reforms have been initiated aimed at promoting an efficient, well-diversified and competitive financial system with the ultimate objective of improving the allocative efficiency of resources so as to accelerate economic development. As India swiftly moves to the centre stage of world economy there has been a consistent effort by the policy makers to undertake comprehensive reforms in the laws and systems to bring them at par with international standards and incentivise the foreign investors to invest in the Indian economy.

Some earlier regulatory initiatives

The Genesis[1]

- Industrial sickness had started right from the pre-Independence days.
  - Government had earlier tried to counter the sickness with some ad-hoc measures.
  - Nationalisation of Banks and certain other measures provided some temporary relief.
  - RBI monitored the industrial sickness.
  - A study group, came to be known as Tandon Committee was appointed by RBI in 1975.
  - In 1976, H.N. Ray committee was appointed.
  - In 1981, Tiwari Committee was appointed to suggest a comprehensive special legislation designed to deal with the problem of sickness laying down its basic objectives and parameters, remedies necessary for revival of sick Units.
  - The committee submitted its report to the Govt. in September 1983 and suggested the following :
    (a) Need for a special legislation
    (b) Need for setting up of exclusive quasi-judicial body.

Thus the SICA came into existence in 1985 and BIFR started functioning from 1987.

Eradi Committee – The Beginning (1999)

In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B. Eradi, to examine and make recommendations with regard to the

1. http://bifr.nic.in/aboutus.htm

desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies; The Committee recognized after considering international practices that the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies (as mentioned in paragraph 3 of the Preface). The Committee also recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court as at present. The Committee strongly recommended appointing Insolvency Professionals who are members of Institute of Chartered Accountant of India (ICAI), Institute of Company Secretaries of India (ICSI), Institute of Cost and Work Accountants of India (ICWAI), Bar Councils or corporate managers who are well versed in Corporate management on lines of U.K. Insolvency Act.

The Committee addressed and recommended the following key points :

- The Committee recognized after considering international practices that the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies.
- The Committee noted that there are three different agencies namely,
  - (i) the High Courts, which have powers to order winding up of companies under the provisions of the Companies Act, 1956;
  - (ii) the Company Law Board to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and
  - (iii) Board for Industrial and Financial Reconstruction (BIFR) which deals with the references relating to rehabilitation and revival of sick industrial companies.
- The committee brought out the dismal of time taken to wind up a company in India – it may run on an average upto 25 years.

Recommendations By N L Mitra Advisory Group (2001)

The Advisory Group examined the details of conflicting decisions on tribunalisation of justice. Tribunalised justice is a special character of civil law system. In a common law culture, there is an emphasis on judicial form and formalities. The conflict between the two systems is nothing new in India. Both the systems, that is the common law and the civil law systems, are now coming closer, common law systems adopting structure of administrative authority including administrative justice for the management of various state functions; and the civil law system on the other hand, incorporating the principles of accusive system and judicial process. In India, we have under the present constitutional paradigm partially adopted

tribunalised form of justice under article 323 A and 323 B20. But there are also judicial observations. It is true that in *L. Chandrakumar* 21, Supreme Court finally gave its nod in favour of tribunalised system of justice. But the reservation of judiciary against the erosion of judicial power especially at the High Court level is quite evident**.** It is not possible to oust the jurisdiction of the High Court under Articles 226 and 227 without amending the provision of Article 323B.

The Advisory Group discussed in details the possibility of avoiding the dualism in the system so that the whole process can be put into a straight line to avoid delay. In that context the following two methods have been discussed.

- Constituting a National Tribunal with benches at the jurisdiction of each High Court to receive and deal with all petitions for bankruptcy, restructuring and finally for insolvency with an appeal lying to the High Court and SLP to the Supreme Court; and
- Having a completely dedicated bench in each High Court dealing with the entire matter of bankruptcy; reorganisation(similar to reorganisation under Chapter 11 of the US code); and insolvency proceedings ensuring fast track liquidation, the only appeal being by way of a special leave petition to the Supreme Court.

J J IRANI COMMITTEE RECOMMENDATIONS (2005)

- The Insolvency Tribunal should have a general, non-intrusive and supervisory role in the rehabilitation and liquidation process. Greater intervention of the Tribunal is required only to resolve disputes by adopting a fast track approach. The Tribunal should adopt a commercial approach to dispute resolution observing the established legal principles of fairness in the process.
- The Tribunal should set standards of high quality and be able to meet requisite level of public expectations of fairness, impartiality, transparency and accountability. Selection of President and Members of the Tribunal should be such so as to enable a wide mix of expertise for conduct of its work.
- The Tribunal will require specialized expertise to address the issues referred to it. The law should prescribe an adequate qualification criterion for appointment to the Tribunal as well as training and continuing education for judges/members.
- Rules should be made in such way that ensure ready access to court records, court hearings, debtors and financial data and other public information.
- Standards to measure the competence, performance and services of the

Tribunal should be framed and adopted so that proper evaluation is done and further improvements can be suggested.

- The Tribunal should have clear authority and effective methods of enforcing its judgments. It should have adequate powers to deal with illegal activity or abusive conduct.

Viswanathan Committee (2014)

The Hon'ble Finance Minster in his Budget Speech of 2014-15 announced that an entrepreneur friendly legal bankruptcy framework would be developed for SMEs to enable easy exit. Pursuant to the above announcement, a Committee was set up under Shri TK Viswanathan, former Secretary General, Lok Sabha and former Union Law Secretary, on 22.8.2014 to study the corporate bankruptcy legal framework in India and submit a report.

Highlights of Committee Report

- The objectives of the Committee were to resolve insolvency with: lesser time involved, lesser loss in recovery, and higher levels of debt financing across instruments.
- The Committee has recommended a consolidation of the existing legal framework, by repealing two laws and amending six others. It has proposed to repeal the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. In addition, it has proposed to amend: (i) Companies Act, 2013, (ii) Sick Industrial Companies (Special Provisions) Repeal Act, 2013, (iii) Limited Liability Partnership Act, 2008, (iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (v) Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and (vi) Indian Partnership Act, 1932.
- The Committee has proposed to establish a creditors committee, where the financial creditors will have votes in proportion to their magnitude of debt. The creditors committee will undertake negotiations with the debtor, to come up with a revival or repayment plan.
- The report outlines the procedure for insolvency resolution for companies and individuals. The process may be initiated by either the debtor or the creditors.
- Presently, only secured financial creditors (creditors holding collateral against loans), can file an application for declaring a company sick. The Committee has proposed that operational creditors, such as employees whose salaries are due, be allowed to initiate the insolvency resolution process (IRP).

- The entire IRP will be managed by a licensed insolvency professional. During the IRP, the professional will control and manage the assets of the debtor, to ensure that they are protected, while the negotiations take place.
- The Committee has proposed to set up Insolvency Professional Agencies. The agencies will admit insolvency professionals as members and develop a code of conduct.
- The report recommends speedy insolvency resolution and time bound negotiations between creditors and the debtors. To ensure this, a 180 day time period for completion of the IRP has been recommended. For cases with high complexity, this time period may be extended by 90 days, if 75% of the creditors agree.
- The committee has proposed to establish information utilities which will maintain a range of information about firms, and thus avoid delays in the IRP, typically caused by a lack of data.
- The Committee has proposed to establish the Insolvency and Bankruptcy Board of India as the regulator, to maintain oversight over insolvency resolution in the country. The Board will regulate the insolvency professional agencies and information utilities, in addition to making regulations for insolvency resolution in India
- The Committee proposed two tribunals to adjudicate grievances under the law: (i) the National Company Law Tribunal will continue to have jurisdiction over insolvency resolution and liquidation of companies and limited liability partnerships; and (ii) the Debt Recovery Tribunal will have jurisdiction over insolvency and bankruptcy resolution of individuals.

The Timelines

- The committee brought out interim report in the month of February 2015 and the final report on November 04 2015.
- Ministry of Finance invited comments on Draft Insolvency and Bankruptcy Bill in November 2015 based on the recommendation of report of Vishwanathan Committee.
- The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha on December 21, 2015
- The bill was referred to Joint committee on The Insolvency and Bankruptcy Code, 2015.
- The report of the joint committee was presented in Loksabha and laid down in Rajya sabha on April 28, 2016.

- The code was passed by Loksabha on May 05, 2016.
- The Code was passed by Rajya Sabha on May 11, 2016.
- The Code received president's assent on May 28 2016.

The code shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

Highlights of the Insolvency and Bankruptcy Code 2016 in the context of corporate Insolvency

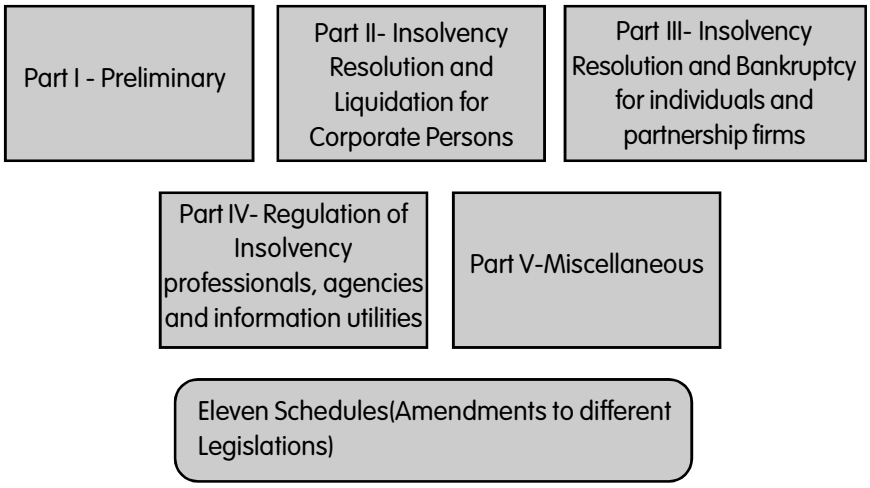
- The preamble of the code reads ads under:

  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 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 Fund, and for matters connected therewith or incidental thereto.

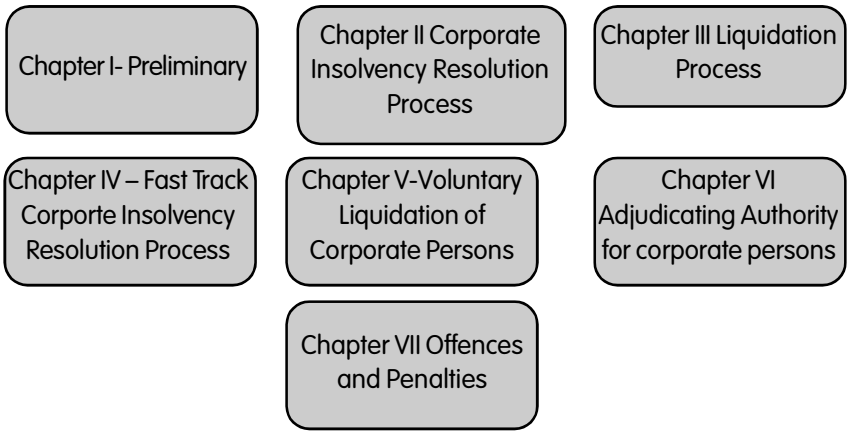
- The Code proposes to cover Insolvency of individuals, unlimited liability partnerships, Limited Liability partnerships (LLPs) and companies.
- The Insolvency Resolution Process (IRP) for individuals and unlimited liability partnerships varies from that of companies and LLPs. The Debt Recovery Tribunal ("DRT") shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal ("DRAT"). The National Company Law Tribunal ("NCLT") shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities. Appeals from the order of NCLT shall lie to the National Company Law Appellate Tribunal ("NCLAT").
- The Code proposes to establish an Insolvency Regulator (The Insolvency and Bankruptcy Board of India) to exercise regulatory oversight over
  - Insolvency Professionals,
  - Insolvency Professional Agencies and
  - Information Utilities.

- The Code proposes to regulate insolvency professionals and insolvency professional agencies. Under Regulator's oversight, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members leading to the development of a competitive industry for insolvency professionals.
- The Code proposes for information utilities which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.
- The Code proposes a swift process and timeline of 180 days for dealing with applications for corporate insolvency resolution. This can be extended for 90 days by the Adjudicating Authority only one time extension. During insolvency resolution period (of 180/270 days), the management of the debtor is placed in the hands of an interim resolution professional/ resolution professional.
- Further, an insolvency resolution plan prepared by the resolution professional has to be approved by a majority of 75% of voting share of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.
- The Code proposes for a fast track insolvency resolution process for companies with smaller operations. The process will have to be completed within 90 days, which may be extended upto 45 more days if 75% of financial creditors agree. **Extension shall not be given more than once.**

Framework of The Insolvency and Bankruptcy Code 2016



The framework of Part II-Insolvency Resolution and Liquidation for Corporate Persons



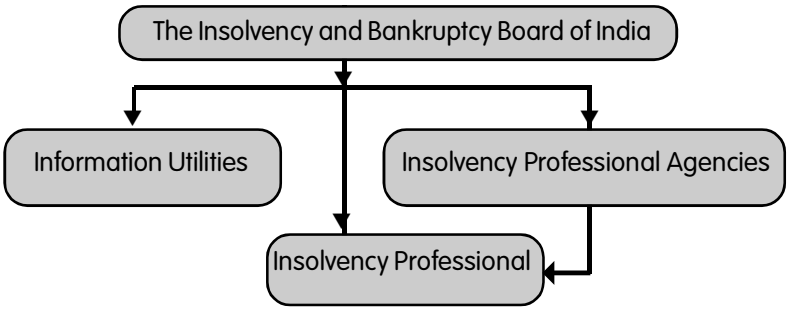
Impact of the Code on other Legislations.

- The Code seeks to repeal the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920.
- The Code seeks to amend the following 11 Legislations :
    1. The Indian Partnership Act, 1932
    2. The Central Excise Act ,1944
    3. The Income Tax Act, 1961
    4. The Customs Act, 1962
    5. Recovery of Debts Due to Banks and Financial Institutions Act, 1993
    6. The Finance Act, 1994
    7. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
    8. Sick Industrial Companies (Special Provisions) Repeal Act, 2003
    9. The payment and Settlement Systems Act, 2007
    10. The Limited Liability Partnership Act, 2008
    11. The Companies Act, 2013

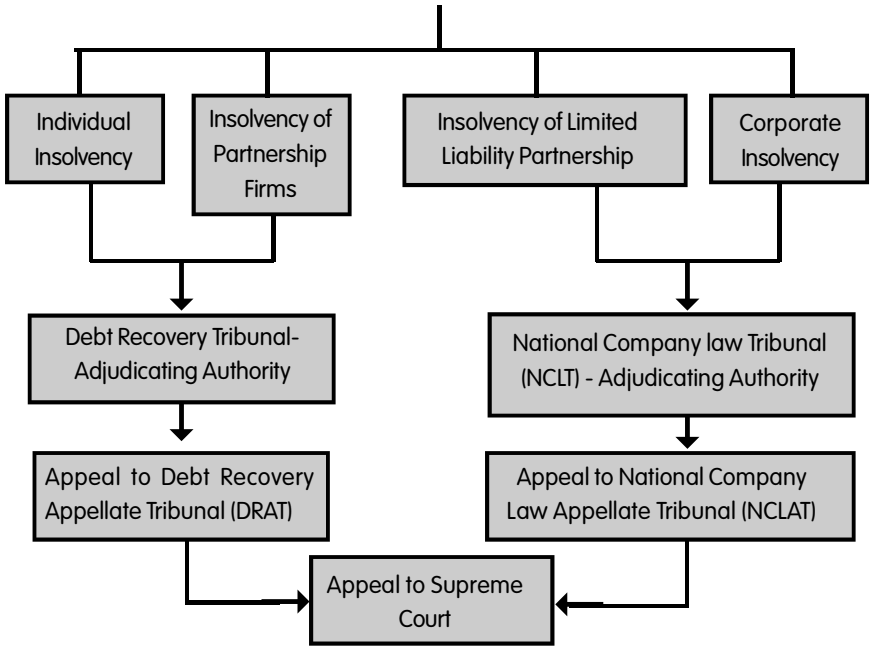
Chapter II

UNDERSTANDING THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Regulatory Mechanism



The Insolvency Adjudication Process



The Insolvency Regulator (Section 188)

The Code proposes to establish an Insolvency Regulator (The Insolvency and Bankruptcy Board of India) to exercise regulatory oversight over

- Insolvency Professionals,
- Insolvency Professional Agencies and
- Information Utilities.

Insolvency Professionals and Insolvency Professional Agencies. (Chapter III and Chapter IV of Part IV)

The code proposes to regulate insolvency professionals and insolvency professional agencies. Under Regulator's oversight, these agencies will develop professional standards, codes of ethics and exercise a disciplinary role over errant members leading to the development of a competitive industry for insolvency professionals.

Information Utilities (Chapter V of Part IV)

The Code proposes for information utilities which would collect, collate, authenticate and disseminate financial information from listed companies and financial and operational creditors of companies. An individual insolvency database is also proposed to be set up with the goal of providing information on insolvency status of individuals.

The Adjudication Authorities

The Debt Recovery Tribunal(DRT), Debt Recovery Appellate Tribunal ("DRAT"), The National Company Law Tribunal ("NCLT"), National Company Law Appellate Tribunal ("NCLAT") are the adjudicating authorities and will have the jurisdiction to hear and dispose of cases by or against the debtor.

Adjudicating Authority for individuals and unlimited liability partnership firms (Part III, Chapter VI)

The Debt Recovery Tribunal ("DRT") shall be the Adjudicating Authority with jurisdiction over individuals and unlimited liability partnership firms. Appeals from the order of DRT shall lie to the Debt Recovery Appellate Tribunal ("DRAT").

Adjudicating authority for corporate and LLPs (Part II, Chapter VI)

The National Company Law Tribunal ("NCLT") shall be the Adjudicating Authority with jurisdiction over companies, limited liability entities. Appeals from the order

of NCLT shall lie to the National Company Law Appellate Tribunal ("NCLAT"). NCLAT shall be the appellate authority to hear appeals arising out of the orders passed by the Regulator in respect of insolvency professional Agencies or information utilities.(clause 61, clause 202 and clause 211)

The process for Corporates and LLPs

1. The time lines

The code proposes a swift process and timeline of 180 days for dealing with applications for insolvency resolution. This can be extended for 90 days by the Adjudicating Authority only in exceptional cases. During insolvency resolution period (of 180/270 days), the management of the debtor is placed in the hands of an interim resolution professional/resolution professional.

2. Approval

An insolvency resolution plan prepared by the resolution professional has to be approved by a majority of 75% of voting share of the financial creditors. Once the plan is approved, it would require sanction of the Adjudicating Authority. If an insolvency resolution plan is rejected, the Adjudicating Authority will make an order for the liquidation.

3. Fast Track corporate Resolution Process(Part II Chapter IV)

The code proposes a fast track insolvency resolution process which may be applicable to certain categories of entities. In such a case, the insolvency resolution process has to be completed within a period of 90 days from the trigger date i.e commencement date. However, on request from the resolution professional based on the resolution passed by the committee of creditors, a one-time extension of 45 days can be granted by the Adjudicating Authority. The **order of priorities** in which the proceeds from the realisation of the assets of the entity are to be distributed to its creditors is also provided for.

The Process for Individuals and Unlimited Liability Partnerships:

The code proposes an insolvency regime for individuals and unlimited liability partnerships also. The code proposes two distinct processes Viz , Fresh Start and Insolvency Resolution.

Fresh Start process, indigent individuals with income and assets lesser than specified thresholds (annual gross income does not exceed Rs. 60,000 and aggregate value of assets does not exceed Rs.20,000) shall be eligible to apply for a discharge from their "qualifying debts" (i.e. debts which are liquidated, unsecured and not excluded debts and up to Rs.35,000). The resolution professional will investigate and prepare a final list of all qualifying debts and submit such list to the adjudicating authority atlease five days

before the moratorium period ends. . At the end of moratorium period, the Adjudicating Authority will pass an order on discharging of the debtor from the qualifying debts and accord an opportunity to the debtor to start afresh, financially. (Chapter II)

Insolvency Resolution Process, the creditors and the debtor will engage in negotiations to arrive at an agreeable repayment plan for composition of the debts and affairs of the debtor, supervised by a resolution professional.(Chapter III)

Important Definition pertaining to Corporate Insolvency Resolution Process

As per Insolvency and Bankruptcy Code 2016, Corporate Insolvency Resolution process can be initiated by

(a) Financial Creditor

(b) Operational Creditor and

(c) Corporate Debtor.

It is important to understand the terms financial debt, operational debt, financial creditor, operational creditor etc

"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;

"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 decreeholder;

"corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

"corporate debtor" means a corporate person who owes a debt to any person;

"insolvency professional" 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;

"insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency;

"information utility" means a person who is registered with the Board as an information utility under section 210;

"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;

"financial debt" means a debt alongwith 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 de-materialised 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 nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(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;

"financial information", in relation to a person, means one or more of the following categories of information, namely :

(a) records of the debt of the person;

(b) records of liabilities when the person is solvent;

(c) records of assets of person over which security interest has been created;

(d) records, if any, of instances of default by the person against any debt;

(e) records of the balance sheet and cash-flow statements of the person; and

(f) such other information as may be specified.

"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;

"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;

"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;

"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;

"**operational debt"** means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment 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.

Chapter III

The insolvency and Bankruptcy Code 2016 - An international comparison with reference to Corporate Insolvency Resolution Process

The insolvency and Bankruptcy code 2016(The Code)- An international Comparison (Sources: Interim Report of the Bankruptcy Law Reform Committee (interim report)

Sl. No.	*Particulars*	*Section No. of the Code*	*Details*	*International practice*
1	Proof of Insolvency	***Section 4(1)***	Apply to matters relating to the insolvency and liquidation of corporate debtors where minimum amount of the default is one lakh rupees and the govern-ment may by notification specify the minimum amount of default of higher value which shall not be more than	**US** The US does not require proof of insolvency in order for a company to undergo rescue procedures under Chapter 11 of the US Bankruptcy Code. **UK** Insolvency or ~~**likelihood of insolvency**~~ of a company as a trigger to invoke administration (the formal process for revival and rehabilitation of companies under financial distress). Since doubtful solvency is often an indicator of impending financial troubles, such a test is best suited for determining whether steps for rehabilitating the company are to be taken. In the UK, an administration order is made by the court only if it is satisfied that the company (a) 'is unable to pay its debts' or '~~**is likely to become unable to pay its debts**~~' and (b) that the administration order is reasonably likely to achieve the purpose of administration. The term "likely" has not been defined anywhere in Insolvency Act 1986(IA 1986) or the rules, and therefore it becomes relevant to look at the judicial development on this aspect.

			rupess one crore	
2	Role of unsecured creditors in the insolvency process	Section 8 and Section 9	An operational creditor can initiate insolvency resolution process after giving 10 days notice of demand for the payment of amount involoved in the default	International practice is in favour of permitting even unsecured creditors to file for the initiation of rescue proceedings in relation to the company **UK** In UK, any creditor can apply to the court for an administration order in relation to the company. **US** In the US, a Chapter 11 proceeding may be commenced on the filing of a petition under Chapter 11 by three or more entities, each of which is either a holder of a claim against the company that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such non-contingent, undisputed claims aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims..
3	Morato-rium	Section 13 and 14 and 31(3)(a)	NCLT can declare morator-ium period which starts from the date of acceptance of application by NCLT and continue till approval of the resolution plan.	Many countries provide for an automatic moratorium on other proceedings once the company enters formal insolvency proceedings. The possibility of abuse of the moratorium by the debtor company arising in such a case is prevented through the incorporation of suitable safeguards for secured creditors. **US** Section 362 of the US Bankruptcy Code provides for an automatic moratorium on the enforcement of claims against the company and its property upon the filing of a Chapter 11 petition. The moratorium covers judicial and administrative proceedings, enforcement of judgments against the company or its estate, acts to obtain possession/control of estate property, acts to create, perfect or enforce liens, acts to collect claims, exercise of right of set off, tax court proceedings etc; However, secured creditors can apply to the court to lift the stay under certain circumstances. The moratorium may be lifted for appropriate cause, including if, in the opinion of the court,

				the debtor company has not 'adequately protected' the property interests of the creditor during the period of the moratorium. Similarly, the moratorium may also be lifted with respect to an action against property of the debtor's estate, if the debtor does not have any equity in the property and such property is not required for the effective reorganisation of the debtor **UK** Schedule B1 of the IA 1986 (UK) provides for an interim moratorium applicable during the period between the filing of an application to appoint an administrator or giving of notice of intention to appoint an administrator and the actual appointment of such administrator. Further, the IA 1986 provides for an automatic moratorium on insolvency proceedings. The moratorium on insolvency proceedings is broad in nature. Further, there is an automatic moratorium on enforcement of security over the company's property, repossession of goods in the company's possession under a hire-purchase agreement (defined to include retention of title arrangements), exercise of a right of forfeiture by a landlord by peaceable re-entry and institution of legal proceedings against the company. The moratorium in these cases can be lifted with the approval of the administrator or the consent of the court. It is evident that in these jurisdictions, an automatic moratorium (coupled with an interim moratorium in the case of the UK) has been used to prevent a race to collect by the creditors, precipitating the liquidation of the company. Specific safeguards for protection of the interests of secured creditors and others with a proprietary interest in the assets in the possession of the firm (e.g. under hire purchase and retention of title arrangements) have been incorporated through express stipulation of circumstances under which a moratorium may be lifted in the US, and in the case of the UK, through provision for lifting of moratorium with the approval of the administrator or the consent of the court.

5	Appoint-ment of Resolution professio-nal	Section 16 and Section 22	Interim professio-nal is appointed by NCLT within 14 days from Insolvency commen-cement date for the term not exceeding 30 days and the interim professio-nal will be appointed as resolution professio-nal subject to approval of 75% of financial creditors at the committee of creditors at the meeting of committee of creditors or a new resolution professional will be appointed at the meeting of committee of creditors.	**UK** In the UK, the holder of a qualifying floating chargemay appoint an administrator out of court at any point. This enables a qualifying floating charge holder who has a substantial stake in the company's fortunes and receives early warning signals about impending financial trouble to act at the earliest and initiate proceedings for turning the company around. In order to appoint the administrator, the qualifying floating charge holder only has to file with the court the following documents: a. a notice of appointment- the notice must include a statutory declaration by or on behalf of the person that he/she is a QFCH, that each floating charge relied on is/was enforceable on the date of the appointment and that the appointment was in accordance with Schedule B1. Further, the notice must identify the administrator. b. the statement by the administrator that he consents to the appointment and that in his opinion, the purpose of the administration is likely to be achieved, and giving any other information and opinions as may be prescribed. c. such other documents as may be prescribed.
6	Takeover of Manage-ment and duties	Section 17, 18 and Section 25	The interim/ Resolution professional takes custody	**UK** In the UK, the administrator, once appointed, takes over the management of the company. The administrator plays a central role in the rescue process and has the power to do

	of resolutions provisional		and control of all assets of corporate debtor.	anything 'necessary or expedient for the management of the affairs, business and property of the company.' The administrator has the power to carry on the business of the company.Most significantly, it may be noted that a company in administration or an officer of a company in administration may not exercise a management power without the administrator's consent. Once appointed, the administrator shall manage the company's affairs, business and property. The power of the court to give directions to the administrator is limited to those instances where none of the administrator's proposals have been approved by the creditors' meeting, or where its directions are consistent with such proposals/revisions, or if the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals/revisions.5 Further, an administrator has the power to remove a director of the company or to appoint a director of the company. Most significantly, a company in administration oran officer of a company in administration may not exercise a management power without the administrator's consent. However, this does not mean that the entry into administration terminates board appointment ipso facto. But the board's power to exercise managerial powers is limited- if the administrator is of the opinion that the board is competent, he/she may permit them to remain in office and exercise managerial powers. In order to ensure that the board cooperates with the administrator, Section 235 of the IA 1986 imposes an obligation on the management of the company (including officers of the company) to give the administrator such information concerning the company and its promotion, formation, business, dealings, affairs or property that the administrator may at any time after the entry into administration reasonably require, and to attend on the administrator at such times as the latter may reasonably require. This requirement is similar to the obligation under Section 256(2)

				on the directors to cooperate with the interim administrator. **US** In contrast, the US follows a debtor-in-possession regime wherein the management remains in control of the debtor company even after Chapter-11 proceedings have been initiated. It has been suggested that in the case of a debtor-in-possession regime as under Chapter 11 of the US Bankruptcy Code, the management would be encouraged to make a timely reference for early resolution of financial distress as they would not fear the loss of control in the event of entry into insolvency proceedings.108 However, such a system has been criticized because it leaves the management (which may be responsible for the company's failure) in charge of managing the rescue proceedings.109 It could also increase risks of fraudulent activity by the management, including the siphoning away of the company's assets. However, the US bankruptcy law provides an important safeguard against the abuse of the debtor-in-possession regime by permitting the appointment of a trustee in certain circumstances. Section 1104(a) of the Bankruptcy Code permits the appointment of a trustee to take over the management of the debtor company on two grounds. A trustee shall be appointed for cause, including fraud, dishonesty, incompetence or gross mismanagement of the debtor company's affairs by the present management, either before or after the commencement of the Chapter 11 case, or for a similar cause.110 It must be noted that the grounds mentioned in Section 1104(a)(1) are not exhaustive. Further, a trustee shall also be appointed if such appointment is necessary in the interests of the debtor company's creditors, any equity shareholders, and other interests of the estate. The trustee may be appointed by the court on the request of an interested party or the trustee at any point of time after the commencement of Chapter 11 proceedings

				but before a plan has been confirmed. Once the trustee is appointed, unless the court orders otherwise, the trustee takes control of the assets and business operations of the debtor. The trustee steps into the shoes of the debtor and has fiduciary obligations to all the parties. The trustee'sduties are set out in Sections 1106 and Section 704. They include: (i) investigating the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the viability of continuing the business, any other matter relevant to the case or to the formulation of a plan; (ii) file a plan under Section 1121 or recommend conversion of the case to a case under chapter 7, 12, or 13 of this title or dismissal of the case; and (iii) post-confirmation of the plan, file such reports as are necessary or in accordance with the court orders, etc. An examination of the jurisprudence of the US courts on Section 1104(a) shows that this remedy for creditors and other interested parties has been considered to be an extraordinary one. This is based on the strong presumption that the debtor is to be left in possession even after Chapter 11 proceedings have commenced. In In re Lifeguard Industries, Inc., the court noted that the shareholders (management) of a debtor company continued to have the right to manage the company once Chapter 11 proceedings were initiated and the same could not be lightly interfered with. However, the court held that it had an obligation to 'scrutinize the actions of the corporation' upon the request of an interested party so as to "protect creditors' interests from the actions of inexperienced, incapable, or a foolhardy management." The appointment of a trustee must "better serve creditors, shareholders, and the public interest by promoting efficiency, effectiveness and transparency…" Further, in line with this reasoning, a very high standard of proof has been required by courts in cases under Section 1104(a). The interested party petitioning the court for the appointment of a trustee must show that there is 'clear and convincing' evidence that

				makes the appointment of the trustee necessary. The power of the court under Section 1104(a)(1) and Section 1104(a)(2) differ in as much as under the former, the court has no discretion once it has been found that sufficient cause for the appointment of a trustee exists. However, under the latter sub-section, the court can exercise some degree of discretion in whether to appoint a bankruptcy trustee. US courts have appointed a trustee under Section 1104(a)(1) where the evidence pointed towards fraud, dishonesty, mis-management, unauthorized post-petition transfers of the debtor's property etc. In Celeritas Technologies, the discord between the debtor and creditor which hindered reorganisation attempts was held to be sufficient cause to appoint a trustee under Section 1104(a)(1). It was found that the debtors were abusing the bankruptcy process to keep their assets and avoid repayment of a debt to a creditor. In another case, the failure of the debtor company to include relevant financial information in its original and amended schedules of assets and liabilities filed with the bankruptcy court in accordance with the Bankruptcy Code and Rules was held to raise issues of dishonest conduct,necessitating the appointment of a trustee. A bankruptcy trustee was also appointed for cause by the court where the debtor company had transferred certain assets, stocks etc, made loans to a corporation solely owned by the debtor company without the court's permission or disclosing the same to the court, and had not disclosed these transactions in the monthly financial reports. It was also held that the same also constituted grounds for appointment under Section 1104(a)(2). The pre-petition conduct of the debtor in placing its retail fuel operations beyond the reach of creditors, and post-petition conduct in not disclosing material and relevant information and making misrepresentations to the court and creditors was also held to necessitate

				the appointment of a trustee under Section 1104(a)(1). A trustee was also appointed under Section 1104(a)(1) where the person performing the role of debtor-in-possession had an interest which was adverse to the debtor's estate. This was held to be necessary in the best interests of creditors under Section 1104(a)(2). While appointing a trustee under Section 1104(a)(2) in the best interests of the creditors, the court has held that the debtor's ability to fulfil its duty of care to protect the assets, the debtor's duty of loyalty and duty of impartiality are relevant. Dishonest conduct or the withholding of information on the part of the debtor would work in favour of the appointment of a trustee. Other factors that the court would consider include: (i) the overall management of the debtor, in the past and present; (ii) the trustworthiness of the debtor company's management; (iii) the (no) confidence of the business community and creditors in the incumbent management; (iv) practical considerations including a balancing of the benefits from the appointment of a trustee against the costs of such appointment. The court takes into account equitable considerations in exercising its power to appoint a trustee under Section 1104(a)(2). Relevant cases where courts have appointed trustees in the best interests of the creditors include where there was a history of transactions which the debtor company carried out with affiliated companies at the cost of creditors;126 where there were inaccuracies and inconsistencies in the statements made by the debtor company's principal to the bankruptcy court leading the court to believe that the creditors cannot place trust in the debtor company to carry out its obligations to the creditors properly, where the debtor-in-possession made transfers aimed at placing the company's assets beyond the reach of its creditors etc.
8	Voting for the Plan	Section 30	Voting by not less than 75%	**US** In Chapter 11 proceedings in the US as each class of creditors that are impaired by the

			of voting share of financial creditors.	plan need to consent to it through a vote of two-thirds of that class in volume and half the allowed claims of that class. Any class of creditors that are not impaired by the plan are automatically deemed to have accepted the plan and any class that does not receive any property or claims under the plan are deemed to have rejected the plan. The US Bankruptcy Code provides for "cram down" of dissenting creditors as long as certain conditions are satisfied. *UK* : In a UK administration proceedings, acceptance of the proposal requires a simple majority in value of the creditors present and voting. · Germany: The plan needs to be approved by each class of creditors. For each class, approval requires majority vote in number of creditors voting on the plan, provided that this represents the majority of claims by aggregate amount. The plan may be "crammed down" on any non-approving class of creditors if (i) the plan does not make that class any worse than they would be in the event of liquidation, (ii) the plan provides that the creditors of such class will participate fairly in the economic value to be distributed to creditors and (iii) the plan has been approved by the majority of classes. *France* : In French sauvegarde proceedings, two committees of creditors plus a bond holders' committee are established. One committee consists of all institutions that have a claim against the debtor (financial institutions creditors' committee) and the second committee consists of all the major suppliers of the debtor (trade creditors' committee). Consent must be given by each committee and requires approval of two-thirds in value of those creditors who exercise their voting rights. Creditors of each committee and bondholders vote as a single class regardless of the security interest they may hold against the debtor.

Insolvency Laws in UK and US

1. Regulatory Framework in UK

The 1982 Report of the Insolvency Law review Committee, Insolvency Laws and

Practice (commonly known as "the Cork Report") recommended the adoption in the United Kingdom of Unified Insolvency legislation. Ultimately the Insolvency Act, 1986 (UK) was enacted and this encompasses both types of insolvency administrations, including corporate restructuring.

The existing UK insolvency framework is defined by the Insolvency Act 1986. According to the Act, failing companies are either liquidated or submitted to an insolvency process that may allow them to be rescued as going concerns.

The Insolvency Act, 1986 deals the insolvency of individuals and companies. The Act is divided into three groups and 14 Schedules as follows:

Group 1 deals with Company Insolvency

Group 2 deals with Insolvency of Individuals and

Group 3 deals with Miscellaneous Matters Bearing on both Company & Individual Insolvency

Basically, a company in financial difficulties may be made subject to any of five statutory procedures.

1. administration;
2. company voluntary arrangement;
3. scheme of arrangement;
4. receivership (including administrative receivership); and
5. liquidation (winding-up).

With the exception of schemes of arrangement, which fall within the ambit of the Companies Act, 2006, these are formal insolvency procedures governed by the Insolvency Act, 1986.

The administration procedure was introduced by the insolvency Act, 1986 and substantially revised by the Enterprise Act, 2002 to include a streamlined procedure allowing the company or (more often) its directors to appoint an administrator without the involvement of the Court subject to conditions.

Firms are in fact liquidated if they become the subject of a compulsory liquidation order obtained from the court by a creditor, shareholder or director. Alternatively, the company may itself decide to pass a liquidation resolution – subject to the approval of a creditors' meeting – for the company to be wound-up (a Creditors Voluntary Liquidation). Either way, the result of both these procedures is the winding-up of the company. Neither process makes any attempt to rescue or sustain the company as a legal entity.

The Insolvency Act 1986 also introduced three new procedures that held out the possibility of a company being brought back to life as a viable entity. These measures represented an attempt to emulate the 'rescue culture' that characterised the corporate sector in the US.

The first of these procedures – 'company voluntary arrangements' (CVAs) – provides a way in which a company in financial difficulty can come to a binding agreement with its creditors.

The second procedure – 'administration' – offers companies a breathing space during which creditors are restrained from taking action against them. During this period, an administrator is appointed by a court to put forward proposals to deal with the company's financial difficulties.

A third option – 'administrative receivership' – permits the appointment of a receiver by certain creditors (normally the holders of a floating charge) with the objective of ensuring repayment of secured debts.

The Enterprise Act 2002 attempted to embed a rescue culture by creating entry routes into administration that did not require a court order, and simplified the means by which a company could 'emerge' from administration. It also prohibited – with certain exceptions – the right of creditors to appoint an administrative receiver (which had previously blocked a company's ability to opt for administration).

In addition, the Act explicitly established a 'hierarchy of purposes' for the administration process. The primary duty of administrators was defined as rescuing the company as a going concern (a duty that does not exist for an administrative receiver). Only if this is not practicable – or not in the interests of creditors as a whole – is the administrator allowed to consider other options, such as realising the value of property in order to make a distribution to creditors.

US Bankruptcy laws

The English bankruptcy system was the model for bankruptcy laws in the English colonies in America and in the American states after independence from England in 1776.

Early American bankruptcy laws were only available to merchants and generally involved imprisonment until debts were paid or until property was liquidated or creditors agreed to the release of the debtor. The laws were enacted by each individual state and were inconsistent and discriminatory. For example, the laws and courts of one state might not enforce debts owed to citizens of other states or debts of certain types. The system was not uniform and some states became known as debtor's havens because of their unwillingness to enforce commercial obligations.

The lack of uniformity in bankruptcy and debt enforcement laws hindered business and commerce between the states. The United States Constitution as adopted in 1789 provides in Article I, Section 8, Clause 4 that the states granted to Congress the power to establish uniform laws on the subject of bankruptcies throughout the United States.

However, until 1898 there was no bankruptcy law in continuous effect in the United States. The Congress enacted temporary bankruptcy statutes in 1800, 1841 and 1867 to deal with economic downturns. However, those laws were temporary measures and were repealed as soon as economic conditions stabilized. The Act of 1800 was repealed in 1803. The Act of 1841 was repealed in 1843 and the Act of 1867 only lasted until 1878.

These early laws only permitted merchants, traders, bankers and factors to be placed in bankruptcy proceedings. The Acts of 1800 and 1841 vested jurisdiction in the federal district courts. The district court judges were given the power to appoint commissioners or assignees to take charge of and liquidate a debtor's property.

A permanent bankruptcy statute was not enacted until 1898. The National Bankruptcy Act of 1898 was based upon the liquidation of a debtor's non-exempt assets to pay creditors. In 1938 the law was amended to provide for the rehabilitation or reorganization of a debtor as an alternative to liquidation of assets. The Bankruptcy Act of 1898, together with its amendments, was known as the Bankruptcy Act. Under the Bankruptcy Act, the district court had jurisdiction over bankruptcy cases, but could appoint a referee in bankruptcy to oversee the administration of bankruptcy cases, the allowance of claims and the distribution of payments to creditors. The Bankruptcy Act governed bankruptcy in the United States for 80 years.

After a series of critical studies and review of the then existing law and practice, Congress passed the Bankruptcy Reform Act of 1978.

Since 1978

The US Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, which is codified as title 11 of the United States Code, has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases.

The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedure (often called the "Bankruptcy Rules") and local rules of each bankruptcy court. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The Bankruptcy Code and Bankruptcy Rules (and local rules) set forth the formal legal procedures for dealing with the debt problems of individuals and businesses.

Six basic types of bankruptcy cases are provided for under the Bankruptcy Code.

- Chapter 7 bankruptcy leading to liquidation. In this type of bankruptcy, a court-appointed trustee or administrator takes possession of any nonexempt assets, liquidates these assets (for example, by selling at an auction), and then uses the proceeds to pay creditors.
- Chapter 9, entitled Adjustment of Debts of a Municipality, provides essentially for reorganization. Only a "municipality" may file under chapter 9, which includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts.
- Chapter 11 entitled Reorganization, ordinarily is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a court-approved plan of reorganization..
- Chapter 12 allows a family farmer or fisherman to continue to operate the business while the plan is being carried out.
- Chapter 13 enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years.
- Chapter 15 is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country.

Chapter IV

INSOLVENCY RESOLUTION PROCESS BY FINANCIAL CREDITORS

When Corporate Insolvency Resolution Process can be initiated?

The corporate Insolvency Resolution Process can be initiated where **minimum amount of default is one lakh rupees**. The Central Government may prescribe higher value for minimum amount of default which shall not be more than one crore rupees.

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 repaid by the debtor or the corporate debtor, as the case may be.

The Adjudicating Authorities for Corporate Insolvency Resolution Process

1. National Company law tribunal(NCLT)
2. National Company Law Tribunal Appellate Tribunal

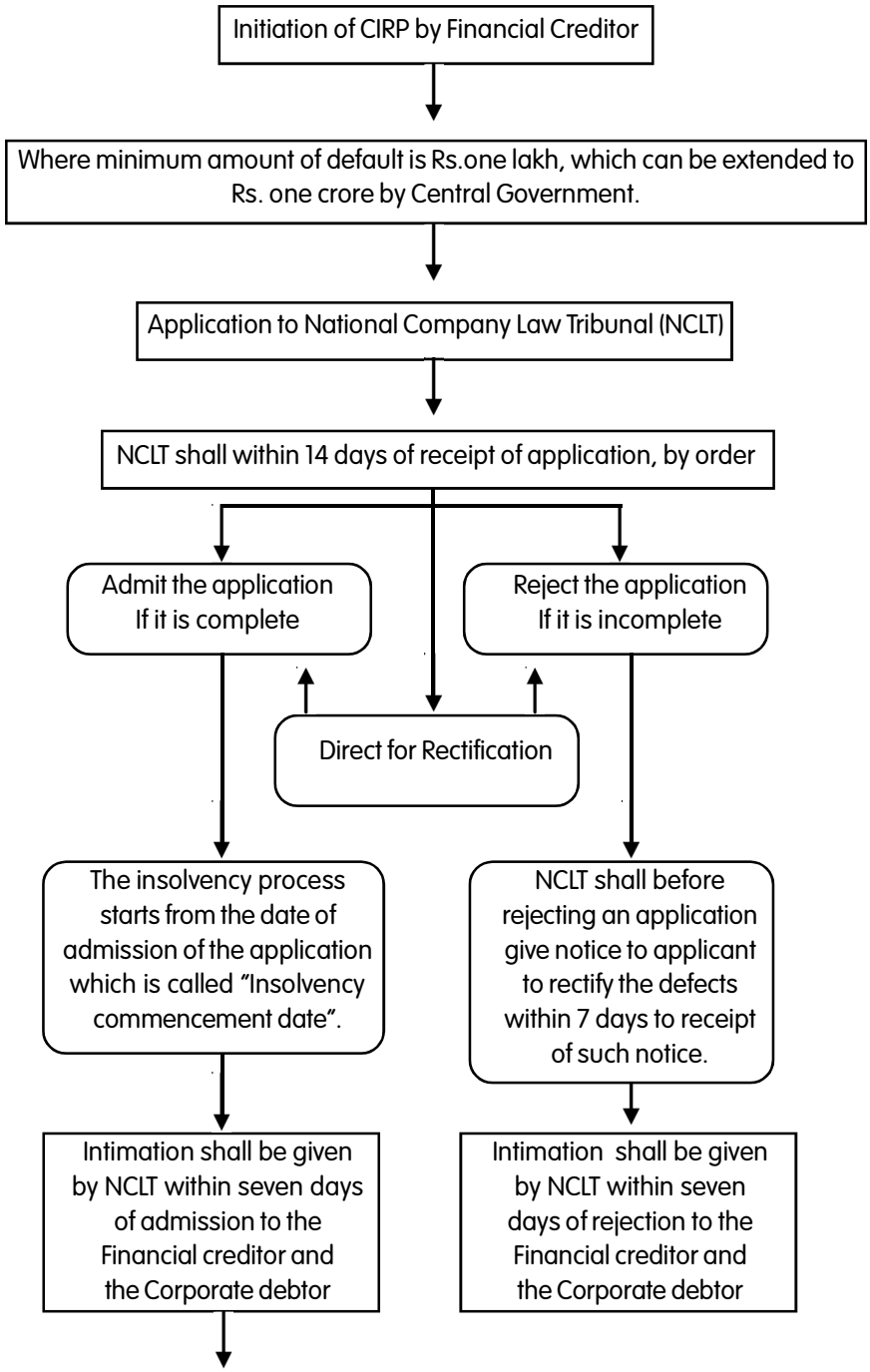
Persons eligible to apply to NCLT

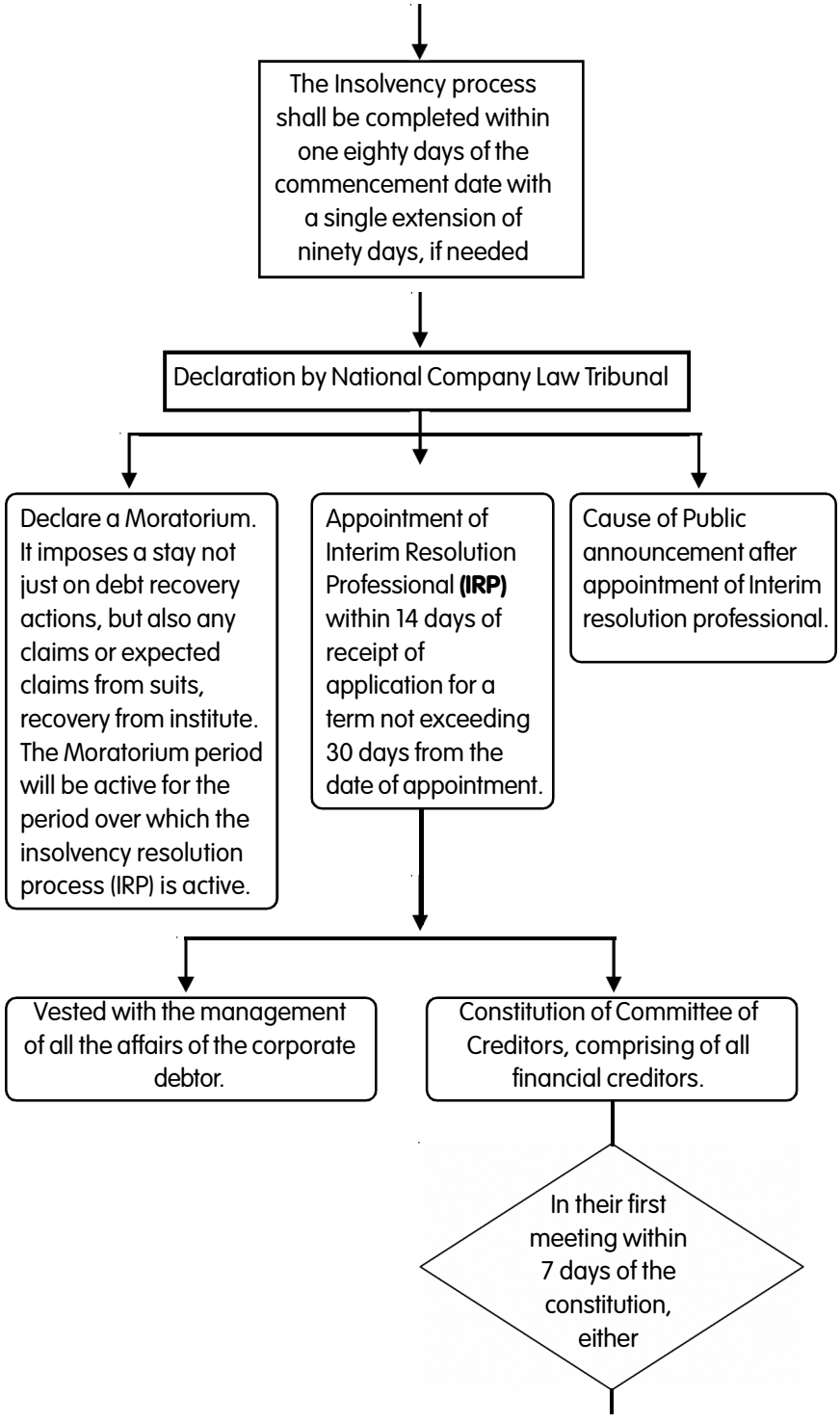
1. Financial creditor
2. Operational creditor
3. Corporate debtor

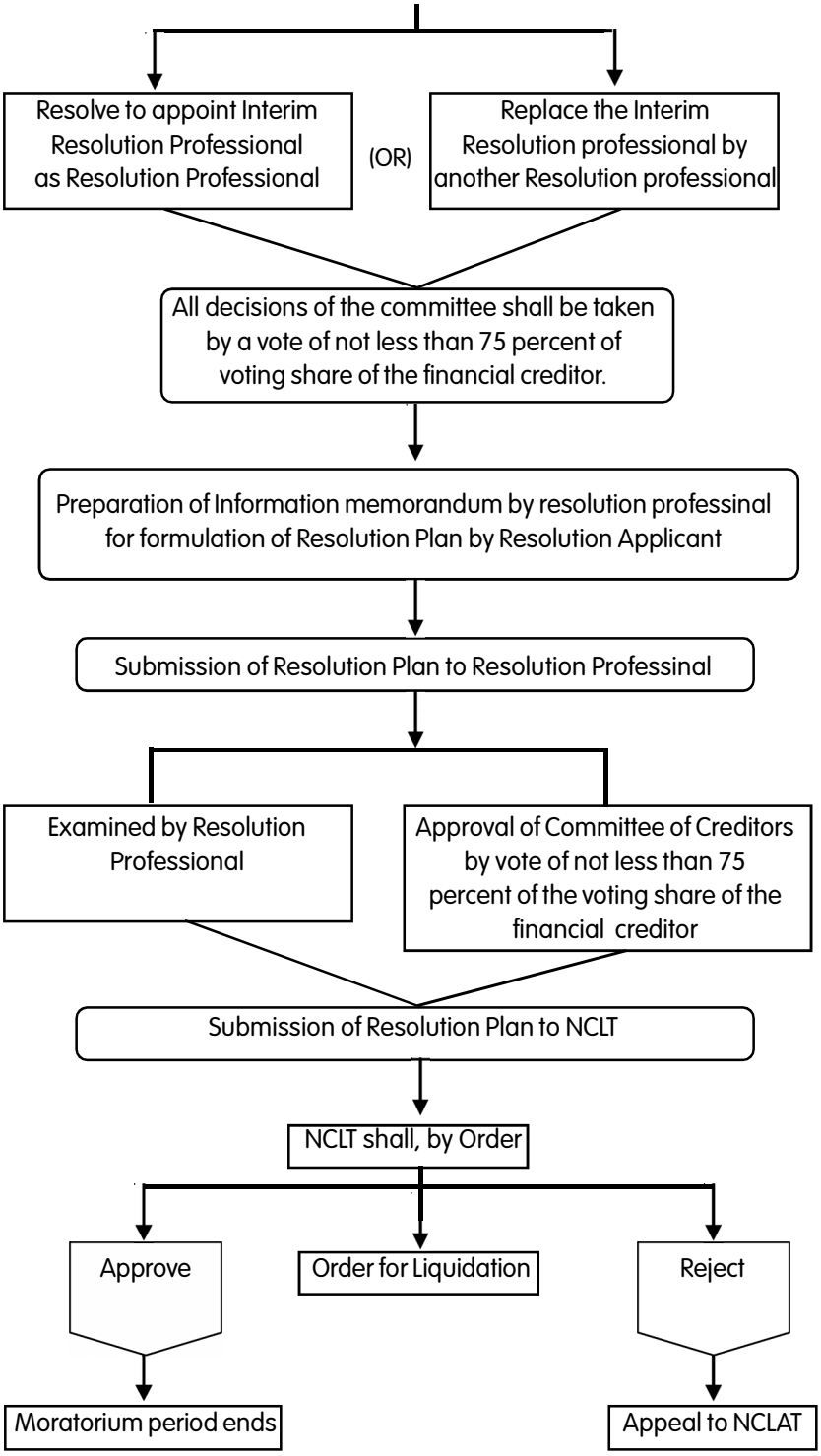
Time limit for corporate insolvency resolution process under sub-section (1) of Section 12

The Corporate insolvency resolution process shall commence from the date of admission of the application and it shall be completed within a period of one hundred and eighty days from the date of admission of the application. However it can further be extended(only once) to the period not exceeding ninety days, only on approval of NCLT on application made by resolution professional.

Flowchart on Corporate Insolvency Resolution Process by financial creditor(CIRP)




The Insolvency process shall be completed within one eighty days of the commencement date with a single extension of ninety days, if needed
Declaration by National Company Law Tribunal
Declare a Moratorium. It imposes a stay not just on debt recovery actions, but also any claims or expected claims from suits, recovery from institute. The Moratorium period will be active for the period over which the insolvency resolution process (IRP) is active.
Appointment of Interim Resolution Professional (IRP) within 14 days of receipt of application for a term not exceeding 30 days from the date of appointment.
Cause of Public announcement after appointment of Interim resolution professional.
Vested with the management of all the affairs of the corporate debtor.
Constitution of Committee of Creditors, comprising of all financial creditors.
In their first meeting within 7 days of the constitution, either


Resolve to appoint Interim Resolution Professional as Resolution Professional
(OR)
Replace the Interim Resolution professional by another Resolution professional
All decisions of the committee shall be taken by a vote of not less than 75 percent of voting share of the financial creditor.
Preparation of Information memorandum by resolution professinal for formulation of Resolution Plan by Resolution Applicant
Submission of Resolution Plan to Resolution Professinal
Examined by Resolution Professional
Approval of Committee of Creditors by vote of not less than 75 percent of the voting share of the financial creditor
Submission of Resolution Plan to NCLT
NCLT shall, by Order
Approve
Order for Liquidation
Reject
Moratorium period ends
Appeal to NCLAT

Corporate Insolvency Resolution Process by financial creditor

1. Application to NCLT by Financial Creditor singly or jointly

A financial creditor either by itself or jointly with other financial creditors may file an application before the NCLT when a default has occurred.

> "Default includes a default in respect of a financial debt owned not only by applicant financial creditor but to any other financial creditor of the corporate debtor."

2. Furnishing of evidence of default and other information along with application under section 3

The 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,
- the name of the resolution professional proposed to act as an interim resolution professional and
- any other information as specified by the Board.

3. NCLT to ascertain the default within 14 days of application under sub section (4) of section 7

The NCLT shall within fourteen days of the receipt of the application, ascertain the existence of default from the records of information utilities or on the basis of evidence furnished by the financial creditor.

4. Grounds of rejection of application as per provisions of sub-section (5) of section (7):-

When National Company Law Tribunal is satisfied that a:

- *Default has occurred* – The application is complete, and there is no discrepancy proceedings pending against the proposed resolution professional, it may, by order, admit such application or
- *Default has not occurred* – The application is incomplete, or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

5. Notice of Rejection

The NCLT shall, before rejecting the application give notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

6. Acceptance of Application

The Corporate insolvency resolution process shall commence from the date of admission of the application by NCLT

7. Notice of Acceptance of Application under sub-section (7) of section 7

The National Company law Tribunal shall communicate the order to the financial creditor within seven days of admission or rejection of such application, as the case may be.

8. NCLT to declare Moratorium, appoint interim resolution professional and cause a public announcement as per section 13

The NCLT shall after the admission of the application declare by order Moratorium, appointment of interim resolution professional and cause public announcement.

9. Moratorium period under sub-section (1) of section 14

The order of moratorium shall have effect from the date of admission of application for insolvency resolution process and shall cease to have effect from the date of approval of resolution plan or liquidation order, as the case may be.

10. Effect of Moratorium as provisions of clause (a) to (d) of sub-section (1) of section 14

The motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the Insolvency resolution process (IRP). There should be no additional stress on the business after the public announcement of the IRP.

The NCLT shall by order prohibit the following namely:

1. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.
2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
3. 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,
4. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Note – The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions as specified above shall not apply to such transactions as may be

notified by the Central Government in consultation with any financial sector regulator.

11. Tenure of Interim Resolution Professional as per sub-section(5) of section 16

The NCLT shall appoint an interim resolution professional at the start of the Insolvency resolution process i.e within fourteen days from the insolvency commencement date, if no disciplinary proceedings are pending against him. The term of shall not exceed 30 days from the date of his appointment.

12. Contents of public announcement under section 15

The Public announcement shall contain the following information, namely:-

(a) name and address of the corporate debtor under the process, name of the authority with which the corporate debtor is incorporated or registered,

(b) the last date for submission of claims,

(c) details of the 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 and

(e) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application, as the case may be.

The public announcement under this section shall be made in such manner as may be specified.

13. Management of Affairs of Corporate Debtor under section 17

From the date of appointment of interim resolution professional –

- the management of the affairs of the corporate debtor shall vest with the interim resolution professional;
- powers of Board of Directors or the partners as the case may be shall stand suspended and exercised by the interim resolution professional.
- The officers and the managers shall report and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.
- The financial institutions maintaining accounts of the corporate debtor shall act and furnish all the information relating to corporate debtor available with them to interim resolution professional.

Following are the powers vested with interim resolution professional with the management of the corporate debtor –

(a) to act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) to take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) 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.

14. Duties of interim resolution professional under section 18

The interim resolution professional shall perform the following duties, namely:-

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor information relating to – business operations for the previous two years, financial and operational payments for the previous two years, list of assets and liabilities as on the initiation date and such other matters as may be specified.

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement ,

(c) constitute a 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; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate ,financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority, to perform such other duties as may be specified by the Board.

Assets shall not include:

- assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment,
- assets of any Indian or foreign subsidiary of the corporate debtor and
- such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

15. Committee of Creditors

- ***Interim Resolution Professional to Constitute a Committee of Creditors***

  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.

- ***Committee of Creditors to Comprise of all Financial Creditors***

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

- ***Financial Creditor who is a related party to corporate Debtor not eligible to Vote.***

  A related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

  Related Party means related party as defined under Section 5(24) of The Insolvency and Bankruptcy Code 2016.

- ***Position of Financial Creditor in case of Consortium agreement***

  Where 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.

- ***Position of Financial Creditor when he is also an operational Creditor***

  If, 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. 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.

- ***Assignment of operational debt to financial creditor***.

  If 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.

- ***Manner of determining the voting share by financial creditor***

  The Insolvency and Bankruptcy Board of India may specify the manner of determining the voting share in respect of financial debts issued as securities.

- **Decisions of Committee of Creditors**

  All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five 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 comprise of such persons to exercise such functions in such manner as may be specified by the Board.

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The committee of creditors may, in their first meeting held within seven days of the constitution of committee, by a majority of vote of not less than seventy-five per cent of voting share of financial creditor, either resolve to appoint the interim resolution professional as resolution professional or replace the interim resolution professional by another resolution professional.

Replacement of resolution professional can also be done by committee in the meeting during the process period by filing an application before the NCLT for appointment of proposed resolution.

NCLT shall forward the name proposed to the Insolvency and Bankruptcy Board of India (the Board) for confirmation and shall make such appointment after confirmation by the Board. If no confirmation is received within ten days of the receipt of the name so proposed from the Board then NCLT shall by order, direct the Interim resolution professional to continue to function until such time the Board confirms the appointment of proposed resolution.

17. Duties of Resolution professional under section 25

The resolution professional has wider role, in addition to monitoring and supervising the entity, controlling its assets. Resolution professional conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the process period. He/she becomes the manager of the negotiation between the debtor and the creditors in assessing the viability of the entity.

In this role he/she has the responsibility of managing all information so that debtors and creditors are equally informed about the business in the negotiations. Finally, he/she is responsible for inviting and collecting proposals from solutions to keep the entity going.

It shall be the duty of resolution professional to preserve and protect the assets of corporate debtor including the continued business operations of corporate debtor..

Following actions to be undertaken for this purpose :

1. take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor,
2. 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,
3. raise interim finances subject to the approval of the committee of creditors,
4. appoint accountants, legal or other professionals in the manner as specified by Board,
5. maintain an updated list of claims,
6. convene and attend all meetings of the committee of creditors,
7. prepare the information memorandum in accordance with section 29 invite prospective lenders, investors, and any other persons to put forward resolution plans,
8. present all resolution plans at the meetings of the committee of creditors,
9. file application for avoidance of transactions in accordance with Chapter III, if any and
10. such other actions as may be specified by the Board.

Prior approval of committee of creditors by vote of seventy five percent of voting shares is required for the following actions.

(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.

Any such actions taken by the resolution professional without approval of the committee of creditors shall be considered void.

18. Meeting of Committee of Creditors under section 24

Members of the committee may meet in person or by such electronic means as may be specified. Resolution professional shall conduct all the meetings, including giving notices of each meeting to members of Committee of creditors, members of the suspended Board of Directors or the partners of the corporate persons, as the case may be.

Any creditor who is also a member of committee may appoint an insolvency professional other than resolution professional to represent such creditor in a meeting of creditors and the fees payable to such professional will be borne by such creditors.

Resolution professional shall determine voting share as specified by Board, each creditor shall vote proportionately according to the financial debt owed to such creditor.

19. Preparation of information memorandum under section 29

Resolution professional shall prepare an information memorandum for formulating resolution plan.

The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes:-

- to comply with provisions of law for the time being in force relating to confidentiality and insider trading,
- to protect any intellectual property of the corporate debtor it may have access to and
- not to share relevant information with third parties unless clauses (of this sub-section 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"

20. Submission of resolution plan under section 30

A resolution applicant shall submit resolution plan made on basis of information memorandum to resolution professional and he will examine and confirm that each resolution plan shall provide the following:-

(a) the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) the repayment of the debts of operational creditors in such manner 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;

(c) 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.

21. Approval of Resolution plan by Committee of Creditors

The Committee of creditors may approve a resolution plan by a vote of not less than seventy five percent of voting share of the financial creditors.

Section 5(28) defines voting share as follows :

"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.

22. Approval of Resolution plan by NCLT

If NCLT is satisfied that the resolution plan as approved by the committee of creditors confirms the above requirements, it shall by order approve the resolution plan and moratorium period ends here.

It shall be binding on corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in resolution plan.

If resolution plan not confirm to the requirements above, it may by order, reject resolution plan.

23. Order under section 31

After the Order of approval passed by NCLT the moratorium order shall cease to have effect and resolution professional shall forward all records relating to the conduct of corporate insolvency resolution process and resolution plan to the Board to be recorded on its database.

Any appeal from the order of NCLT approving resolution plan shall be made in the manner and on the grounds laid down in sub-section (3) of section 61. They are as follows :

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) 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;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

Chapter V

INSOLVENCY RESOLUTION PROCESS BY OPERATIONAL CREDITORS

Introduction

The Insolvency and Bankruptcy Code 2016(the Code) confers the following powers to operational creditors

(a) to initiate insolvency resolution process after serving demand notice to corporate debtor as may be prescribed.

(b) To receive notice of meeting of committee of creditors if the amount of their aggregate dues is not less than ten percent of the total debt.

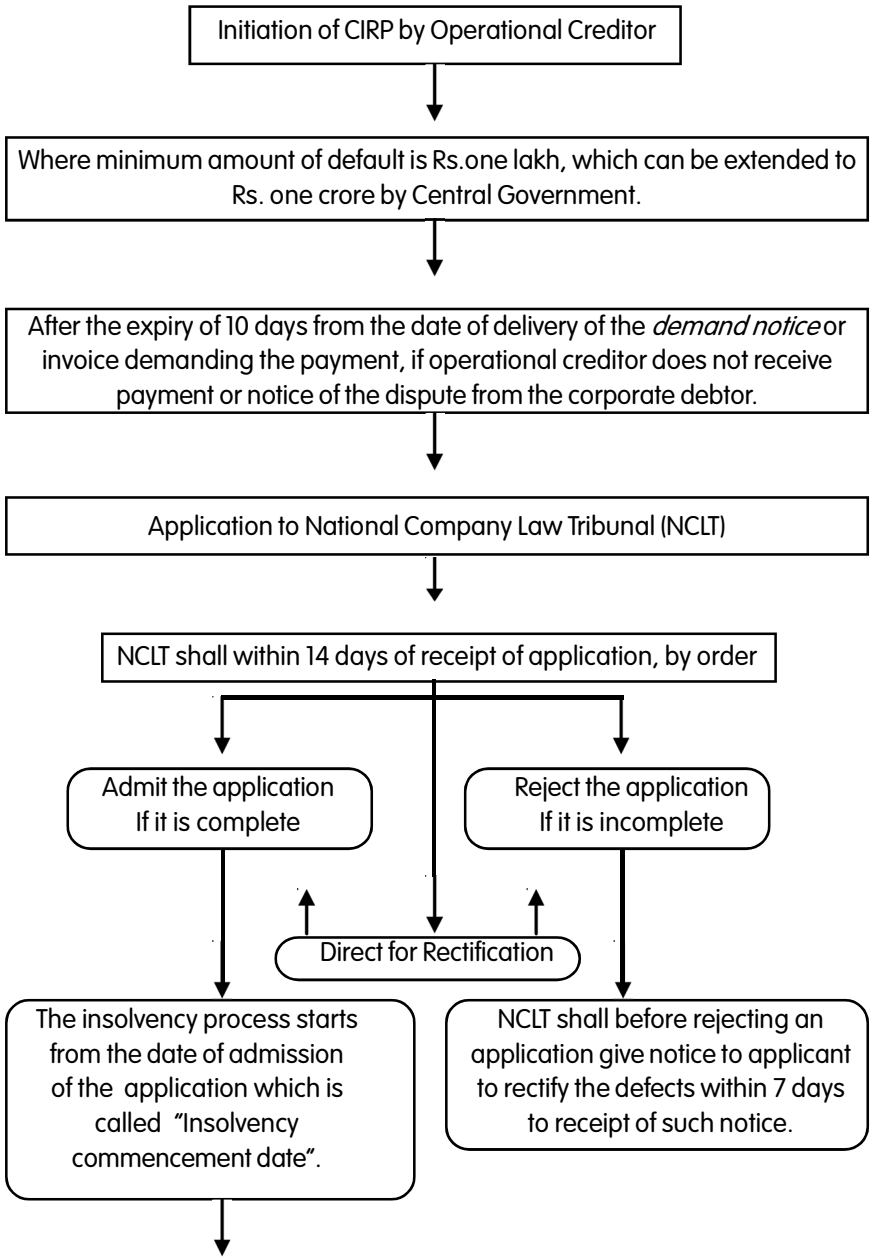
Section 3(11) states that debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

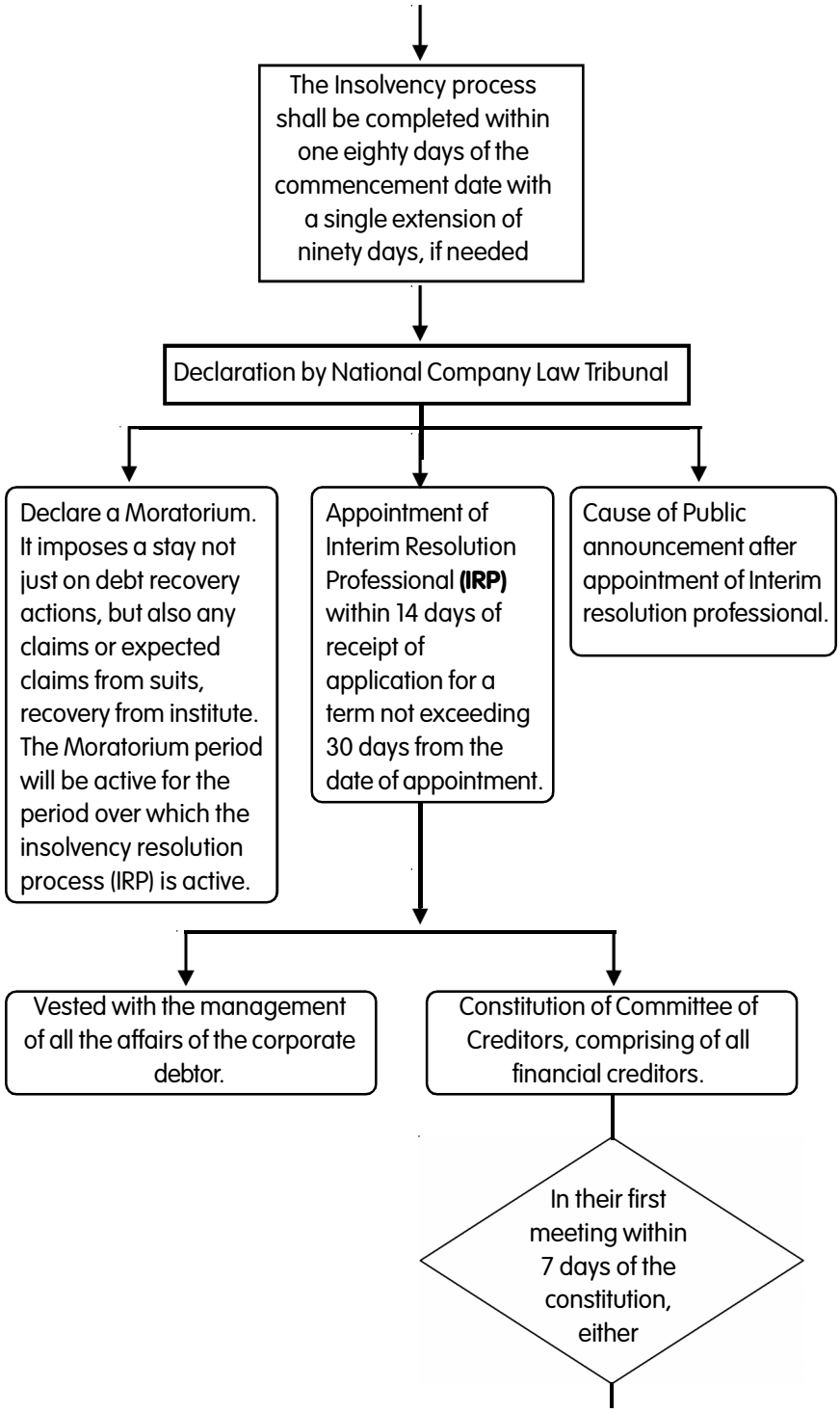
(c) To attend the meeting of the Committee of Creditors.

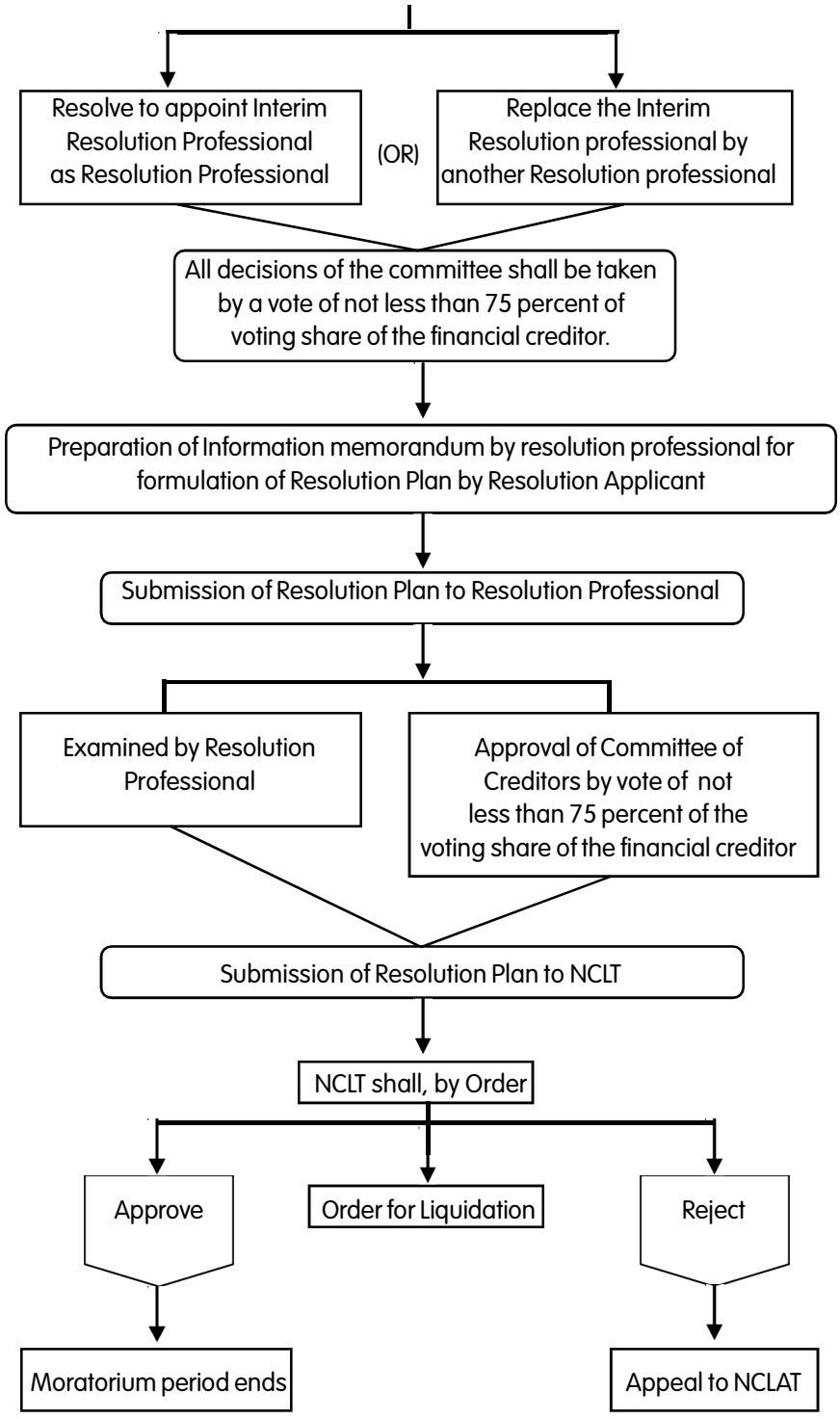
In fact, in the draft insolvency and bankruptcy code 2015 which came for public comments did not confer right on operational creditor to receive notice of the meeting of committee of creditors or to attend the meeting of committee of creditors. The joint committee on the Insolvency and Bankruptcy code considered the stakeholders opinion that where as operational creditor has right to make application for initiation of corporate insolvency resolution process, operational creditors like workmen, employees, suppliers have not been given any representations in the committee of creditors which is pivotal in whole resolution process. Accordingly, the code confers right to the operational creditors or their representatives to receive the notice of committee of creditors and to attend the meeting subject to thresholds. The code does not confer any right on them to vote at the meeting. It does not confer any right on them to become a member of committee of creditors also, because section 21(2) states that the committee of creditors shall consist of all financial creditors of corporate debtor.. However, proviso to section 21(8) states that if the corporate debtor does not have financial creditors, the committee of creditors shall comprise of such persons to exercise such functions in such manner as may be prescribed by the Insolvency and Bankruptcy Board of India.

Insolvency Resolution Process by Operational Creditor

Flowchart on Corporate Insolvency Resolution Process (CIRP)




The Insolvency process shall be completed within one eighty days of the commencement date with a single extension of ninety days, if needed
Declaration by National Company Law Tribunal
Declare a Moratorium. It imposes a stay not just on debt recovery actions, but also any claims or expected claims from suits, recovery from institute. The Moratorium period will be active for the period over which the insolvency resolution process (IRP) is active.
Appointment of Interim Resolution Professional (IRP) within 14 days of receipt of application for a term not exceeding 30 days from the date of appointment.
Cause of Public announcement after appointment of Interim resolution professional.
Vested with the management of all the affairs of the corporate debtor.
Constitution of Committee of Creditors, comprising of all financial creditors.
In their first meeting within 7 days of the constitution, either


Resolve to appoint Interim Resolution Professional as Resolution Professional
(OR)
Replace the Interim Resolution professional by another Resolution professional
All decisions of the committee shall be taken by a vote of not less than 75 percent of voting share of the financial creditor.
Preparation of Information memorandum by resolution professional for formulation of Resolution Plan by Resolution Applicant
Submission of Resolution Plan to Resolution Professional
Examined by Resolution Professional
Approval of Committee of Creditors by vote of not less than 75 percent of the voting share of the financial creditor
Submission of Resolution Plan to NCLT
NCLT shall, by Order
Approve
Order for Liquidation
Reject
Moratorium period ends
Appeal to NCLAT

Corporate Insolvency Resolution Process by operational creditor

1. Demand Notice on occurrence of default

Section 8 (1) states that an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

An explanation to this section states that "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

2. Corporate debtor to respond within 10 days

Section 8(2) states that rhe corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (*1*) bring to the notice of the operational creditor –

(*a*) existence of a dispute, if any, and 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 repayment of unpaid operational debt –

(*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.

3. Application to NCLT by operational Creditor under sub-section (1) of section 9

Operational creditor shall file an application for initiation of Insolvency resolution after the expiry of period of ten days from the date of delivery of the notice or invoice demanding payment and does not receive payment from the corporate debtor or notice of dispute he may file an application before NCLT in such a form and manner as may be prescribed.

Section 3(12) states that 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 repaid by the debtor or Corporate debtor as the case may be.

4. Furnishing of evidence of default and other information along with application under sub-section(3) of section 9

The financial creditor shall, along with the application furnish –

(i) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor.

(ii) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and Such other information as may be specified.

(iii) a copy of the certificate from thefinancial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(iv) such other information as may be specified.

Operational creditor may propose an interim resolution professional under sub-section (4) of section 9

An operational creditor initiating a corporate insolvency resolution process may propose a resolution professional to act as an interim resolution professional.

Section 16(3) states that Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for 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 act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

5. NCLT to ascertain the default within 14 days of application under sub section (5) of section 9

The NCLT shall within fourteen days of the receipt of the application, ascertain the existence of default from the records of information utilities or on the basis of evidence furnished by the financial creditor.

6. Grounds of rejection of application as per provisions of sub-section (5)(i& ii) of section (9) :

When National Company Law Tribunal is satisfied that a :

Admit

- the application is complete,
- there is no repayment of the unpaid operational debt,
- the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor,

- no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility, and
- there is no disciplinary proceedings pending against any resolution professional proposed , if any.

Reject

- the application made is incomplete,
- there has been repayment of the unpaid operational debt,
- the creditor has not delivered the invoice or notice for payment to the corporate debtor,
- notice of dispute has been received by the operational creditor or
- there is a record of dispute in the information utility or any disciplinary proceeding is pending against any proposed resolution professional.

7. Notice of Rejection

The NCLT shall, before rejecting the application give notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

8. Acceptance of Application

The Corporate insolvency resolution process shall commence from the date of admission of the application by NCLT.

9. Notice of Acceptance of Application under sub-section (7) of section 7

The National Company law Tribunal shall communicate the order to the operational creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be.

10. NCLT to declare Moratorium, appoint interim resolution professional and cause a public announcement as per section 13

The NCLT shall after the admission of the application declare by order Moratorium, appointment of interim resolution professional and cause public announcement.

11. Moratorium period under sub-section (1) of section 14

The order of moratorium shall have effect from the date of admission of application process and shall cease to have effect from the date of approval of resolution plan or liquidation order, as the case may be.

12. Effect of Moratorium as provisions of clause (a) to (d) of sub-section (1) of section 14

The motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the Insolvency

resolution process (IRP). There should be no additional stress on the business after the public announcement of the IRP.

The NCLT shall by order prohibit the following namely :

1. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.
2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
3. 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,
4. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Note – The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions as specified above shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. Tenure of Interim Resolution Professional as per sub-section(5) of section 16

The NCLT shall appoint an interim resolution professional at the start of the Insolvency resolution process i.e within fourteen days from the insolvency commencement date, if no disciplinary proceedings are pending against him. The term of shall not exceed 30 days from the date of his appointment.

14. Contents of public announcement under section 15

The Public announcement shall contain the following information, namely:-

(a) name and address of the corporate debtor under the process, name of the authority with which the corporate debtor is incorporated or registered,

(b) the last date for submission of claims,

(c) details of the 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 and

(e) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application, as the case may be.

The public announcement under this section shall be made in such manner as may be specified.

15. Management of Affairs of Corporate Debtor under section 17

From the date of appointment of interim resolution professional –

- The management of the affairs of the corporate debtor shall vest with the interim resolution professional;
- Powers of Board of Directors or the partners as the case may be shall stand suspended and exercised by the interim resolution professional.
- The officers and the managers shall report and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.
- The financial institutions maintaining accounts of the corporate debtor shall act and furnish all the information relating to corporate debtor available with them to interim resolution professional.

Following are the powers vested with interim resolution professional with the management of the corporate debtor –

(a) to act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) to take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) 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.

16. Duties of interim resolution professional under section 18

The interim resolution professional shall perform the following duties, namely :

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor information relating to – business operations for the previous two years, financial and operational payments for the previous two years, list

of assets and liabilities as on the initiation date and such other matters as may be specified.

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement ,

(c) constitute a 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; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate ,financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority, to perform such other duties as may be specified by the Board.

Assets shall not include :

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- ***Assignment of operational debt to financial creditor***:

  If 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.

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NCLT shall forward the name proposed to the Board for confirmation and shall make such appointment after confirmation by the Board. If no confirmation is received within ten days of the receipt of the name so proposed from the Board then NCLT shall by order, direct the Interim resolution professional to continue to function until such time the Board confirms the appointment of proposed resolution.

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In this role he/she has the responsibility of managing all information so that debtors and creditors are equally informed about the business in the negotiations. Finally, he/she is responsible for inviting and collecting proposals from solutions to keep the entity going.

It shall be the duty of resolution professional to preserve and protect the assets of corporate debtor including the continued business operations of corporate debtor.

Following actions to be undertaken for this purpose :

1. take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor,
2. 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,

3. raise interim finances subject to the approval of the committee of creditors,
4. appoint accountants, legal or other professionals in the manner as specified by Board,
5. maintain an updated list of claims,
6. convene and attend all meetings of the committee of creditors,
7. prepare the information memorandum in accordance with section 29 invite prospective lenders, investors, and any other persons to put forward resolution plans,
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9. file application for avoidance of transactions in accordance with Chapter III, if any and
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Prior approval of committee of creditors by vote of seventy five percent of voting shares is required for the following actions :

(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.

Any such actions taken by the resolution professional without approval of the committee of creditors shall be considered void.

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Members of the committee may meet in person or by such electronic means as may be specified. Resolution professional shall conduct all the meetings, including giving notices of each meeting to members of Committee of creditors, members of the suspended Board of Directors or the partners of the corporate persons, as the case may be.

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- to protect any intellectual property of the corporate debtor it may have access to and
- not to share relevant information with third parties unless clauses (of this sub-section 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"

22. Submission of resolution plan under section 30

A resolution applicant shall submit resolution plan made on basis of information memorandum to resolution professional and he will examine and confirm that each resolution plan shall provide the following:-

(a) the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) the repayment of the debts of operational creditors in such manner 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;

(c) 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.

23. Approval of Resolution plan by Committee of Creditors

The Committee of creditors may approve a resolution plan by a vote of not less than seventy five percent of voting share of the financial creditors.

Section 5(28) defines voting share as follows :

"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.

24. Approval of Resolution Plan by NCLT

If NCLT is satisfied that the resolution plan as approved by the committee of creditors confirms the above requirements, it shall by order approve the resolution plan and moratorium period ends here.

It shall be binding on corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in resolution plan.

If resolution plan not confirm to the requirements above, it may by order, reject resolution plan.

25. Order under section 31

After the Order of approval passed by NCLT the moratorium order shall cease to have effect and resolution professional shall forward all records relating to the conduct of corporate insolvency resolution process and resolution plan to the Board to be recorded on its database.

Any appeal from the order of NCLT approving resolution plan shall be made in the manner and on the grounds laid down in sub-section (3) of section 61. They are as follows :

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) 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;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

CHAPTER VI

CORPORATE INSOLVENCY RESOLUTION PROCESS BY CORPORATE DEBTOR

The insolvency and Bankruptcy Code 2016, enables Corporate Debtor to initiate insolvency Resolution Process. However, the following corporate debtor is not eligible to apply for insolvency resolution process.

(a) a corporate debtor undergoing a corporate insolvency resolution process, or

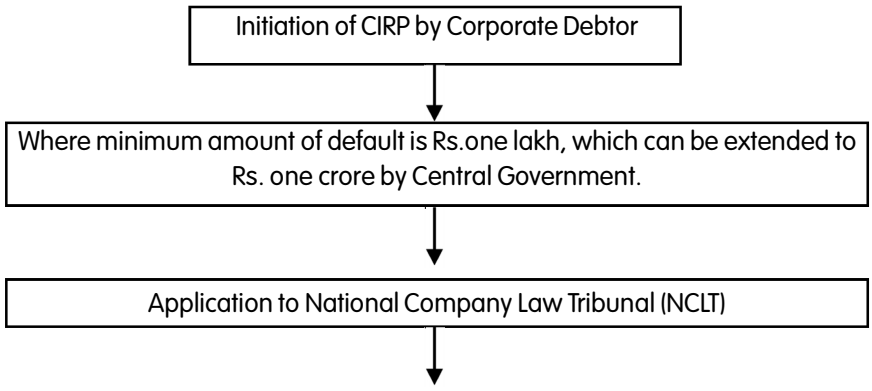
(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application, or

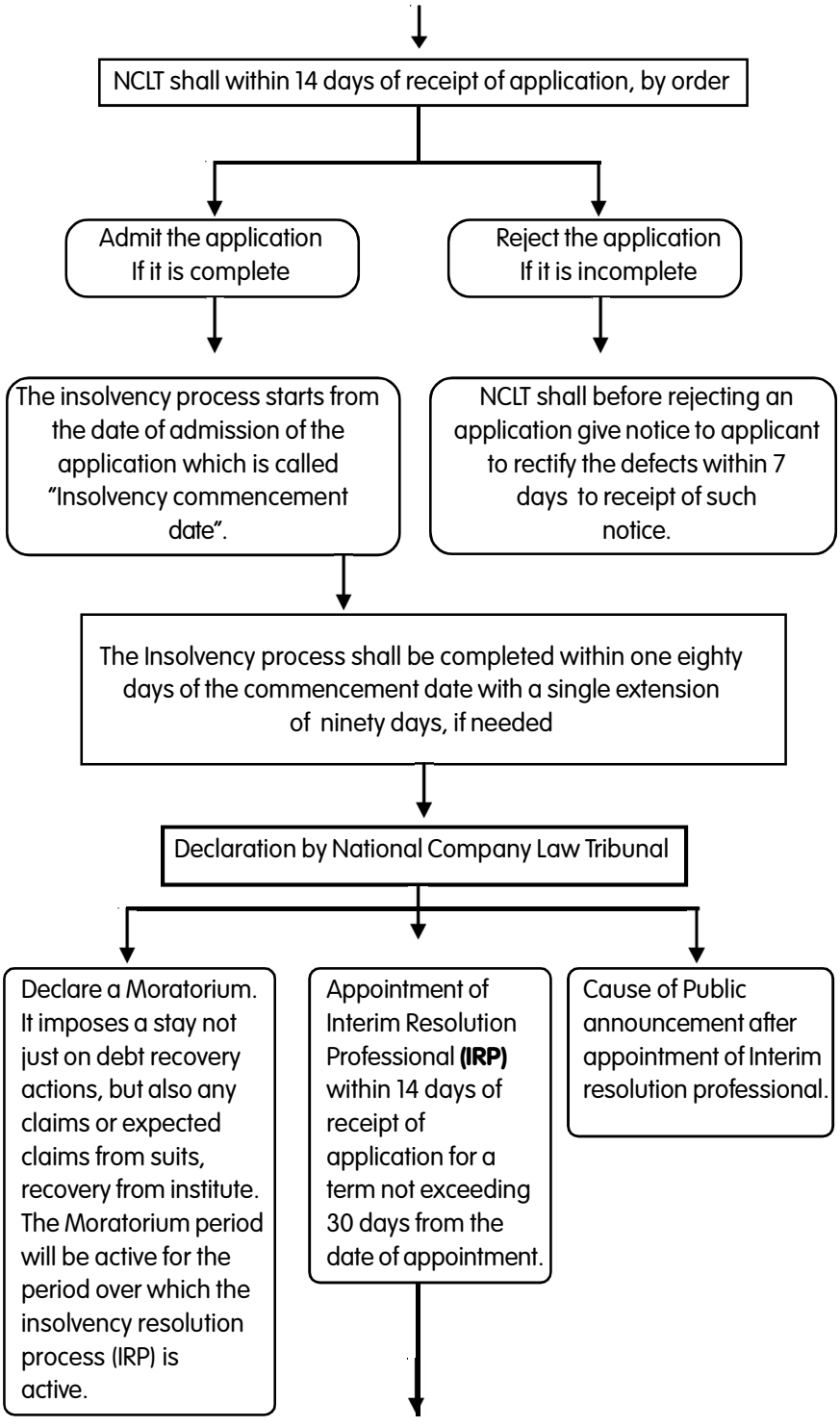
(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter, or

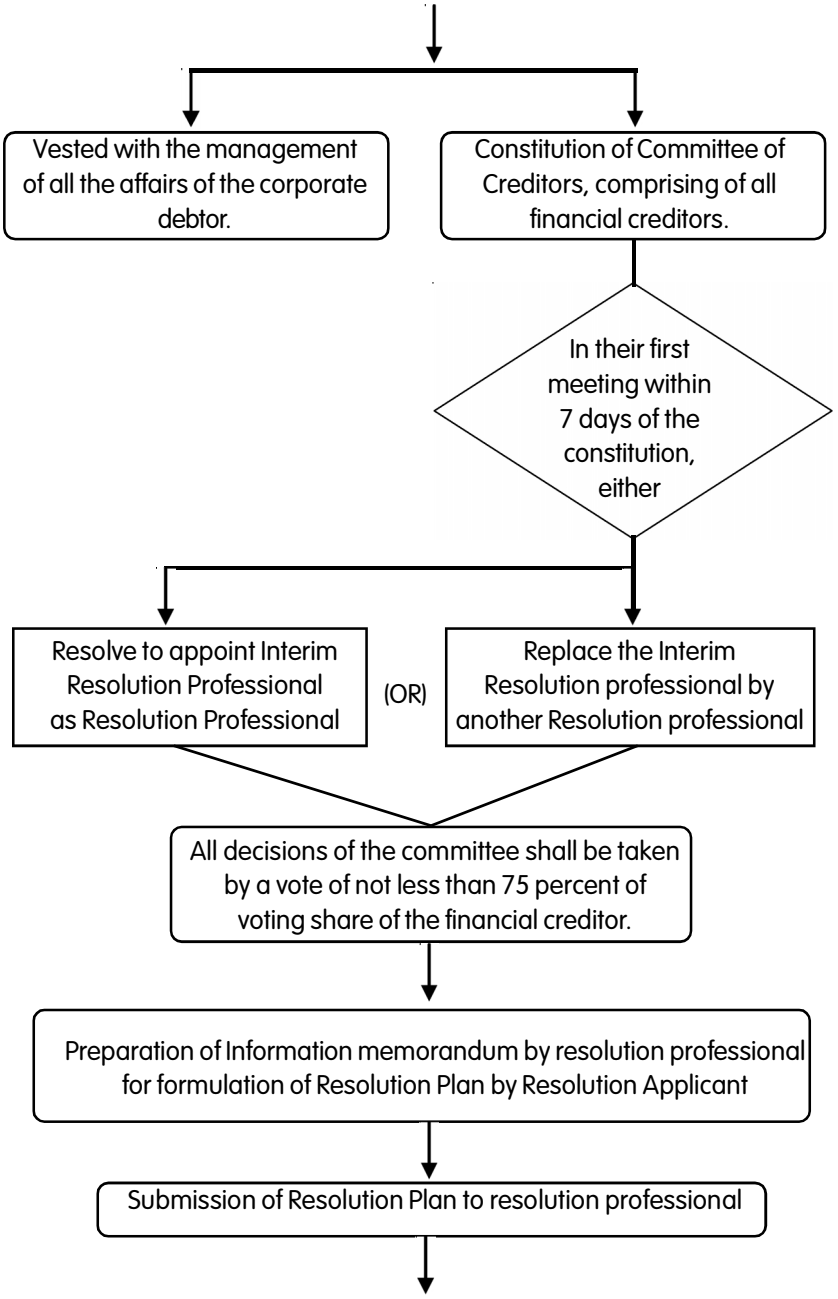
(d) a corporate debtor in respect of whom a liquidation order has been made.

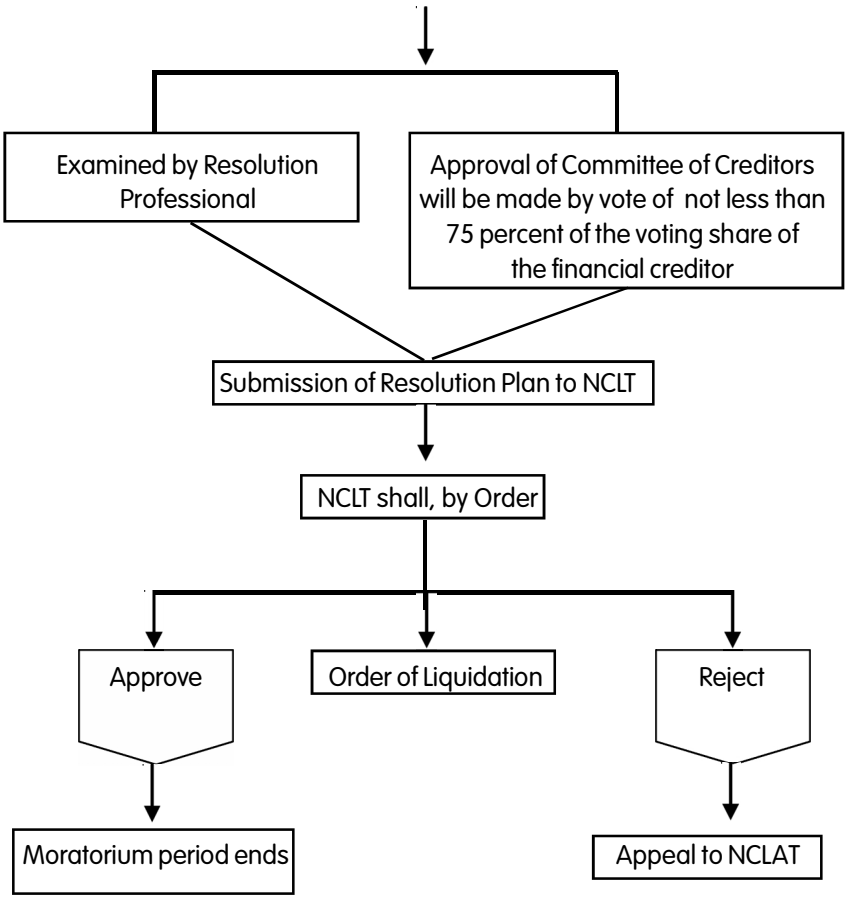
For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Flowchart on Corporate Insolvency Resolution Process (CIRP)




NCLT shall within 14 days of receipt of application, by order
Admit the application If it is complete
Reject the application If it is incomplete
The insolvency process starts from the date of admission of the application which is called "Insolvency commencement date".
NCLT shall before rejecting an application give notice to applicant to rectify the defects within 7 days to receipt of such notice.
The Insolvency process shall be completed within one eighty days of the commencement date with a single extension of ninety days, if needed
Declaration by National Company Law Tribunal
Declare a Moratorium. It imposes a stay not just on debt recovery actions, but also any claims or expected claims from suits, recovery from institute. The Moratorium period will be active for the period over which the insolvency resolution process (IRP) is active.
Appointment of Interim Resolution Professional **(IRP)** within 14 days of receipt of application for a term not exceeding 30 days from the date of appointment.
Cause of Public announcement after appointment of Interim resolution professional.


Vested with the management of all the affairs of the corporate debtor.
Constitution of Committee of Creditors, comprising of all financial creditors.
In their first meeting within 7 days of the constitution, either
Resolve to appoint Interim Resolution Professional as Resolution Professional
(OR)
Replace the Interim Resolution professional by another Resolution professional
All decisions of the committee shall be taken by a vote of not less than 75 percent of voting share of the financial creditor.
Preparation of Information memorandum by resolution professional for formulation of Resolution Plan by Resolution Applicant
Submission of Resolution Plan to resolution professional



Corporate Insolvency Resolution Process by Corporate Debtor

1. Application to NCLT by Corporate Debtor under sub-section (1) of section 10

Where a corporate debtor has committed default, a corporate applicant may himself file an application with the NCLT in the form or manner as may be prescribed.

2. Furnishing of evidence of default and other information along with application under sub-section (3) of section 10

The financial creditor shall, along with the application furnish:-

- its books of account and such other documents related to such period as may be specified, and
- the resolution professional proposed to be appointed as interim resolution professional.

3. NCLT to ascertain the default within 14 days of application under sub section (4) of section 10

The NCLT shall within fourteen days of the receipt of the application, ascertain the existence of default from the information and such other documents as furnished by the corporate debtor.

4. Notice of Rejection :

The NCLT shall, before rejecting the application give notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

5. Acceptance of Application :

The Corporate insolvency resolution process shall commence from the date of admission of the application by NCLT.

6. NCLT to declare Moratorium, appoint interim resolution professional and cause a public announcement as per section 13

The NCLT shall after the admission of the application declare by order Moratorium, appointment of interim resolution professional and cause public announcement.

7. Moratorium period under sub-section (1) of section 14

The order of moratorium shall have effect from the date of admission of application for insolvency resolution process and shall cease to have effect from the date of approval of resolution plan or liquidation order, as the case may be.

8. Effect of Moratorium as provisions of clause (a) to (d) of sub-section (1) of section 14

The motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the Insolvency resolution process (IRP). There should be no additional stress on the business after the public announcement of the IRP.

The NCLT shall by order prohibit the following namely:

1. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.
2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
3. 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,

4. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Note – The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions as specified above shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

9. Tenure of Interim Resolution Professional as per sub-section(5) of section 16

The NCLT shall appoint an interim resolution professional at the start of the Insolvency resolution process i.e within fourteen days from the insolvency commencement date, if no disciplinary proceedings are pending against him. The term of shall not exceed 30 days from the date of his appointment.

10. Contents of public announcement under section 15

The Public announcement shall contain the following information, namely:-

(a) name and address of the corporate debtor under the process, name of the authority with which the corporate debtor is incorporated or registered,

(b) the last date for submission of claims,

(c) details of the 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 and

(e) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application, as the case may be.

The public announcement under this section shall be made in such manner as may be specified.

11. Management of Affairs of Corporate Debtor under section 17

From the date of appointment of interim resolution professional –

- the management of the affairs of the corporate debtor shall vest with the interim resolution professional;
- powers of Board of Directors or the partners as the case may be shall stand suspended and exercised by the interim resolution professional.

- The officers and the managers shall report and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.
- The financial institutions maintaining accounts of the corporate debtor shall act and furnish all the information relating to corporate debtor available with them to interim resolution professional.

Following are the powers vested with interim resolution professional with the management of the corporate debtor -

(a) to act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) to take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) 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.

12. Duties of interim resolution professional under section 18

The interim resolution professional shall perform the following duties, namely :

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor information relating to – business operations for the previous two years, financial and operational payments for the previous two years, list of assets and liabilities as on the initiation date and such other matters as may be specified.

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement ,

(c) constitute a 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; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority, to perform such other duties as may be specified by the Board.

Assets shall not include :

- assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment,
- assets of any Indian or foreign subsidiary of the corporate debtor and
- such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

13. Committee of Creditors

- ***Interim Resolution Professional to Constitute a Committee of Creditors***

  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.

- ***Committee of Creditors to Comprise of all Financial Creditors***

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

- ***Financial Creditor who is a related party to corporate Debtor not eligible to Vote.***

  A related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

  Related Party means related party as defined under Section 5(24) of The Insolvency and Bankruptcy Code 2016.

- ***Position of Financial Creditor in case of Consortium agreement***

  Where 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.

- ***Position of Financial Creditor when he is also an operational Creditor***

  If, 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. 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.

- ***Assignment of operational debt to financial creditor***:

  If 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.

- ***Manner of determining the voting share by financial creditor***

  The Insolvency and Bankruptcy Board of India may specify the manner of determining the voting share in respect of financial debts issued as securities.

- **Decisions of Committee of Creditors**

  All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five 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 comprise of such persons to exercise such functions in such manner as may be specified by the Board.

14. Appointment of Resolution professional under section 22

The committee of creditors may, in their first meeting held within seven days of the constitution of committee, by a majority of vote of not less than seventy-five per cent of voting share of financial creditor, either resolve to appoint the interim resolution professional as resolution professional or replace the interim resolution professional by another resolution professional.

Replacement of resolution professional can also be done by committee in the meeting during the process period by filing an application before the NCLT for appointment of proposed resolution.

NCLT shall forward the name proposed to the Board for confirmation and shall

make such appointment after confirmation by the Board. If no confirmation is received within ten days of the receipt of the name so proposed from the Board then NCLT shall by order, direct the Interim resolution professional to continue to function until such time the Board confirms the appointment of proposed resolution.

15. Duties of Resolution professional under section 25

The resolution professional has wider role, in addition to monitoring and supervising the entity, controlling its assets. Resolution professional conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the process period. He/she becomes the manager of the negotiation between the debtor and the creditors in assessing the viability of the entity.

In this role he/she has the responsibility of managing all information so that debtors and creditors are equally informed about the business in the negotiations. Finally, he/she is responsible for inviting and collecting proposals from solutions to keep the entity going.

It shall be the duty of resolution professional to preserve and protect the assets of corporate debtor including the continued business operations of corporate debtor..

Following actions to be undertaken for this purpose :

1. take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor,
2. 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,
3. raise interim finances subject to the approval of the committee of creditors,
4. appoint accountants, legal or other professionals in the manner as specified by Board,
5. maintain an updated list of claims,
6. convene and attend all meetings of the committee of creditors,
7. prepare the information memorandum in accordance with section 29 invite prospective lenders, investors, and any other persons to put forward resolution plans,
8. present all resolution plans at the meetings of the committee of creditors,
9. file application for avoidance of transactions in accordance with Chapter III, if any and
10. such other actions as may be specified by the Board.

Prior approval of committee of creditors by vote of seventy five percent of voting shares is required for the following actions :

(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.

Any such actions taken by the resolution professional without approval of the committee of creditors shall be considered void.

16. Meeting of Committee of Creditors under section 24

Members of the committee may meet in person or by such electronic means as may be specified. Resolution professional shall conduct all the meetings, including giving notices of each meeting to members of Committee of creditors, members of the suspended Board of Directors or the partners of the corporate persons, as the case may be.

Any creditor who is also a member of committee may appoint an insolvency professional other than resolution professional to represent such creditor in a meeting of creditors and fees paybale to such professional will be brone by such creditor.

Resolution professional shall determine voting share as specified by Board, each creditor shall vote proportionately according to the financial debt owed to such creditor.

17. Preparation of information memorandum under section 29

Resolution professional shall prepare an information memorandum for formulating resolution plan.

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

- to comply with provisions of law for the time being in force relating to confidentiality and insider trading,
- to protect any intellectual property of the corporate debtor it may have access to and
- not to share relevant information with third parties unless clauses (of this sub-section 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".

18. Submission of resolution plan under section 30

A resolution applicant shall submit resolution plan made on basis of information memorandum to resolution professional and he will examine and confirm that each resolution plan shall provide the following :

(a) the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) the repayment of the debts of operational creditors in such manner 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;

(c) 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.

19. Approval of Resolution plan by Committee of Creditors

The Committee of creditors may approve a resolution plan by a vote of not less than seventy five percent of voting share of the financial creditors.

Section 5(28) defines voting share as follows :

"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.

20. Approval of resolution plan by NCLT

If NCLT is satisfied that the resolution plan as approved by the committee of creditors confirms the above requirements, it shall by order approve the resolution plan and moratorium period ends here.

It shall be binding on corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in resolution plan.

If resolution plan not confirm to the requirements above, it may by order, reject resolution plan.

21. Order under section 31

After the Order of approval passed by NCLT the moratorium order shall cease to have effect and resolution professional shall forward all records relating to the conduct of corporate insolvency resolution process and resolution plan to the Board to be recorded on its database.

Any appeal from the order of NCLT approving resolution plan shall be made in the manner and on the grounds laid down in sub-section (3) of section 61. They are as follows:-

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) 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;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

Chapter VII

Fast Track Corporate Insolvency Resolution Process

Complexities may come in the structure of liabilities and assets, or size of operations. Most entities are likely to have a less complex structure in these aspects. Their Insolvency is also likely to take a shorter time to resolve. These cases will be called fast track insolvency resolution process where insolvency resolution process (IRP) to be carried out takes a shorter time period than the default maximum period allowed.

The Code has specified three types of fast track cases: for entities with small scale of operations, for entities with low complexity of creditors and for such other categories of corporate debtors as may be prescribed. In the first two, definitions of what constitutes such entities will be issued by the Central Government.

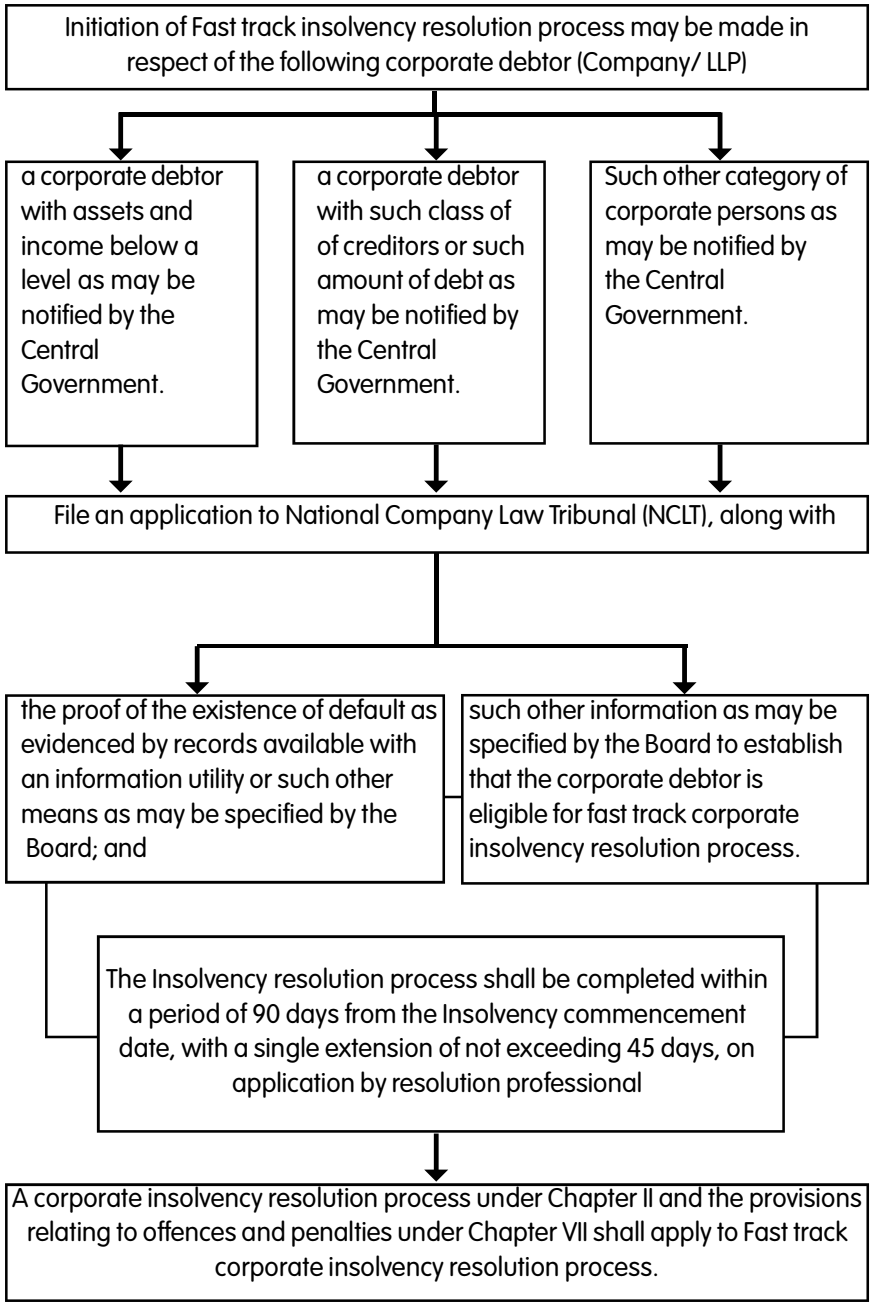
In fast track cases, the process flow of the IRP will be the same as per provisions of Chapter II of the Code, in order to retain the principles of transparency and collective action. Since the resolution is expected to be done in a shorter period, there will be a greater onus on the process at trigger.

The entity who triggers the fast track process must submit the documentation with the application to support the case for the fast track IRP. The National Company Law Tribunal (NCLT) will seek validation from the other parties involved before issuing the order for a fast track IRP. For example, if the creditor triggers the small entity fast track IRP, the application must include audited statements that the entity is eligible for this process. The NCLT will forward these to the debtor for validation. If there is no dispute from the debtor on the eligibility documents within a specified amount of time, the NCLT will issue the order for the fast track IRP.

The process is similar to that given in Chapter II, where an interim resolution professional who is in charge of collection and collation of claims, monitoring the entity and the creation of a creditors committee. Once the committee is formed, the RP will verify the submitted liabilities to the best of his/her ability. The Committee recommends that this time period should be at least half the time taken for the complex cases, or within 90 days. Similar to the provision for IRP, in a fast track process, if more than 75 % of the creditors are of the view that more time is required to resolve the stress, they may apply to the NCLT for an extension. The debtor or any other creditor will not be entitled to seek an extension.

The provisions relating to offences and penalties under chapter VII shall apply to this Fast track process.

Process Flow on the fast track corporate insolvency resolution process



Chapter VIII

Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) Vs The Insolvency and Bankruptcy Code, 2016 (IBC)

Comparison of SICA and IBC in relation to Corporate Insolvency / Bankruptcy.

Sl. No.	Particulars	SICA	IBC
1	Objects	SICA was a enacted in public Interest for timely detection of sick and potential sick industrial companies and speedy determination of preventive, ameliorative, remedial measures.	IBC is an act to, *inter alia*, consolidate and amend law relating to reorganization and insolvency resolution of corporate persons, in time bound manner for maximization of value of assets of such persons
2	Applicability	SICA applies only to sick industrial company (as defined under SICA)	IBC applicable to all corporate debtors in default (as defined under IBC).
3	Trigger Point	Reference is filed for Rehabilitation when the net-worth of the sick industrial company is fully eroded.	The insolvency resolution process may be triggered where there is a default of whole or any part or instalment of the amount due and payable is not repaid by the corporate debtor (default thresholds are specified under the IBC).
4	Persons entitled to file Reference / Application	Reference may be filed by sick industrial company or scheduled banks/financial institutions/Central Government/Reserve Bank/ State Level Financial Institution.	Application for insolvency resolution process may be made by (a) financial creditor, (b) operational creditor and (c) Corporate Debtor
5	Case of suo-moto rehabilitation	BIFR may determine under Section 17 (2) whether it would be practicable for the company to make its net worth exceed the	No such provision in the code.

		accumulated losses within a reasonable time. Here it is a case of suo moto efforts by a sick industrial company to make its net worth positive without involving BIFR. If it is practicable, the Bench would by an Order in writing give time to the company to make its net worth positive. If the conditions attached Order of BIFR are not complied within the time specified, then, BIFR review its Order and pass a fresh order in respect of such company under sub-section (3) of Section 17.	
6	Agency Appointed for Rehabilitation/ insolvency resolution	Operating Agency is appointed by BIFR for formulating rehabilitation scheme after the sick industrial company is declared sick. Operating Agency are the banks or financial institutions.	Interim insolvency professional is appointed by the NCLT within fourteen days from insolvency commencement date (i.e. when the application for insolvency resolution process is accepted). Insolvency Professional is appointed by the committee of creditors.
7	Suspension of legal proceedings	No suit or winding up petition etc. can lie against the sick industrial company in term of Section 22 of SICA without the consent of BIFR.	NCLT grants moratorium period from the date of insolvency commencement date and end with the date of approval of resolution plan by NCLT.
8	Submission of Rehabilitation proposal / resolution plan	Normally provided by the Company, which is approved by operating agency and later by BIFR	Resolution plan is based on the information memorandum provided by the resolution professional. The Resolution Applicant prepares the Resolution Plan. The resolution applicant, may be a financial creditor or operational creditor or corporate debtor.
9	Time period for Preparation of Scheme of Rehabilitation	SICA provided 90 days from the date of Order appointing the Operating Agency, a scheme with respect to sick industrial company, which may	No specific time for preparation of resolution plan given but the entire process of approval of resolution plan should be completed within 180 days from the date of admission of

		provide for one or more of the measures specified in the said Section.	application (date of insolvency commencement).
10	Examination of the Scheme / Resolution Plan	Scheme prepared by the Operating Agency is required to be **examined** by the BIFR and the latter has power to modify the scheme	The resolution professional examines each resolution plan. NCLT should be **satisfied** with the Resolution plan.
11	Publishing of Draft Scheme	Draft Rehabilitation Scheme is required to be published inviting suggestions within such time as may be mentioned in the notification from the shareholders, creditors, and employees of sick industrial company as well as transferee company (in case of scheme envisaging amalgamation) as well as any other company concerned (reverse merger cases) in the amalgamation.	Subject to the Rules to be prescribed, there is no such requirements of publishing of draft scheme of Resolution plan for inviting suggestions.
12	Consent to the scheme	If the scheme provides for financial assistance to the sick industrial company, the BIFR should cause the same to be circulated to the persons providing such financial assistance by giving their consent within a period 60 days or within further period of not exceeding 60 days for the consent	The Committee of Creditors may approve a resolution plan by a vote of not less than 75 % of the voting shares of the financial creditors.
13	Binding Effect of Scheme Sanctioned/ Resolution plan	It is binding on all concerned on and from the date of sanction.	Resolution Plan shall be binding on Corporate Debtor and its employees, Members, Creditors, Guarantors and other Stakeholders **involved in the resolution plan**.
14	Management of the operations.	It is vested with the sick industrial company	It is vested with resolution professionals.

Chapter IX

Frequently Asked Questions (FAQs) on Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC)

1. The insolvency and Bankruptcy Code 2016 has already received President's assent. Whether the provisions of the IBC are effective as on date?

The provisions of the IBC have not yet been notified in the Official Gazette. In terms of Section 1(3), the IBC shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, provided different dates for different provisions of this IBC and any reference in any such provision to the commencement of this IBC shall be construed as a reference to the commencement of that provision.

2. What is the applicability of IBC?

The provisions of IBC shall apply to –

(a) any company incorporated under the Companies Act, 2013 or under any previous company law;

(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and

(e) partnership firms and individuals,

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

3. What is this Law about?

Preamble "inter alia" to consolidate and amend the laws relating to reorganisation and insolvency of "corporate persons"

- in a time bound manner,
- for maximisation of value of assets of such persons,
- to promote entrepreneurship, availability of credit,
- balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and
- establish an establishment of Board of India and
- for matters connected therewith or incidental thereto.

4. What is the impact of IBC on other legislation?

The impact of IBC will have an overriding effect on other legislations, by amendments of the followings:

- The Indian Partnership Act 1932
- The Central Excise Act 1944
- The Income Tax Act 1961
- The Customs Act. 1962
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- The Finance Act 1994
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002
- Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The payment and Settlement Systems Act 2007
- The Limited Liability Partnership Act 2008
- The Companies Act, 2013

5. What Legislations are getting repealed on enforcement of IBC?

The IBC seeks to repeal:

1. The Presidency Towns Insolvency Act, 1909 and
2. Provincial Insolvency Act, 1920.

6. Who can initiate corporate Insolvency Resolution Process (CIRP)?

The CIRP can be initiated by Financial Creditor(under Section 7), operational Creditor(under Section 9) and Corporate Debtor(under Section 10)

7. When CIRP can be initiated?

The CIRP can only be initiated when the minimum amount of default is rupees is one lakh or such higher amount as may be notified by the Central Government which shall not exceed one crore rupees.

8. What is default?

Section 3(12) of the IBC states that "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 repaid by the debtor or the corporate debtor, as the case may be;

For the purposes of section 7(1) (i.e., Corporate Insolvency Resolution by financial creditor) of the IBC states that, 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.

9. What is debt?

As per section 3 (11) "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.

10. Who is Financial Creditor?

As per section 5(7) of the IBC "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.

11. What is financial debt?

As per section 5(8) of the IBC states that "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 de-materialised 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 nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(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 bshall 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;

12. Who is operational Creditor?

As per section 5(20) of the IBC "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.

13. What is operational debt?

As per section 5(21) of the IBC "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment 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.

14. Whether an operational creditor can assign or legally transfer any operational debt to a financial creditor?

Yes. However, as per section 21(5) 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.

15. Does financial creditor include Secured creditor?

Yes, financial creditor includes secured creditor, since the definition of financial debt covers security interest also.

16. Are all financial creditors secured creditors?

No, the definition of financial debt under section 5(8)(a) includes money borrowed against the payment of interest.

17. Are all unsecured creditors operational creditors?

All unsecured creditors are not operational creditors. However, all operational creditors are unsecured creditors.

18. Whether workmen/ employees come under operational creditor?

Yes the workmen and employees whose past payments are due comes under definition of operational creditor.

19. Who is a Corporate Debtor?

As per section 3(8) of the IBC "corporate debtor" means a corporate person who owes a debt to any person;

20. Who are corporate persons?

As per section 3(7) of the IBC "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force **but shall not include any financial service provider;**

21. Who is financial service provider?

As per section 3(17), "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.

22. What are covered under financial services?

According to sub-section (16) of section 3 "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;

23. Whether the defaulting financial service company is entitled to file an application for the corporate insolvency resolution process (CIRP) or whether financial creditor or operational creditor can initiate CIRP against financial service company?

As per definition of Corporate person defined under IBC it excludes financial service provider from the ambit of "corporate person", who can initiate the CIRP, therefore it cannot file an application nor can any CIRP be initiated against it by anybody.

24. Whether IBC is applicable to person resident outside India?

As per sub-section 23 of section 3 "person" includes –

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust;

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute,

and includes a person resident outside India.

Hence, as per definition a person includes a resident outside India.

25. Who is the adjudicating Authority for Corporate Insolvency Resolution Process (CIRP)?

National Company Law Tribunal (NCLT) is the adjudicating authority for Corporate Insolvency and Insolvency of LLPs.

26. Who is the Regulator under IBC?

The Insolvency and Bankruptcy Board of India is the Regulator under IBC.

27. To whom the application for CIRP has to be made?

The application for CIRP has to be made to NCLT.

28. Who are not entitled to initiate CIRP?

Section 11 of the IBC states that the following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely :

(a) a corporate debtor undergoing a corporate insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process 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 twelve months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

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

29. Is there any time limit within which the NCLT has to accept or reject the application?

The NCLT has to (also ascertain the existence of default in case of financial creditors) admit or reject the application within 14 days of receipt of application, as prescribed under Section 7, Section 9 and Section 10 as the case may with respect to financial creditor, operational creditor, corporate debtor respectively.

30. What is information Utility? What does it do?

Section 3(21) of the IBC states that "information utility" means a person who is registered with the Insolvency and Bankruptcy Board of India. As per Section 213 of the IBC an information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulation

31. What are Core Services?

Section 3(9) of the IBC states that "core services" means services rendered by an information utility for –

(a) accepting electronic submission of financial information in such form and manner as may be specified;

(b) safe and accurate recording of financial information;

(c) authenticating and verifying the financial information submitted by a person; and

(d) providing access to information stored with the information utility to persons as may be specified;

32. How does the information utility get information?

As per Section 215 (2), a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations. Further Section 215(3) states that an operational creditor may submit financial information to the information utility in such form and manner as may be specified.

33. What is the difference between initiation date and insolvency commencement date?

Section 3(12) states that "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority (i.e. NCLT) Whereas Section 3(11) states that "initiation date" is the date on which financial creditor (under sections 7), operational Creditor (under Section 9) or Corporate Debtor (under section 10), as the case may be makes an application to the NCLT for initiating corporate insolvency resolution process (CIRP).

34. What is Resolution Plan?

As per section 5(26) of the IBC states that "resolution plan" means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

35. Who prepares the Resolution Plan?

As per section 30 (1) of the IBC a resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum, given by the resolution professionals.

36. Who approves the Resolution Plan?

As per section 30(4) of the IBC sates that the committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors.

37. What should be contents of Resolution Plan?

As per section 30(2) of the IBC states that the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner 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;

(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.

38. Who constitutes committee of creditors?

As per section 21 (1) of the IBC states that 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.

39. What should be the Composition of Committee of Creditors?

As per section 21(2) of IBC states that the committee of creditors shall comprise all financial creditors of the corporate debtor. However a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

40. On whom the notice of meeting of committee of creditors should be served?

As per section 24(3) of IBC states that the resolution professional shall give notice of each meeting of the committee of creditors to –

(a) members of Committee of creditors;

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

41. What is the time limit within which the first meeting of committee of creditors should be held?

Section 22 (1) of the IBC states that the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

42. What should be the agenda at the first meeting of committee of creditors?

Section 22(2) of IBC states the agenda of the committee of creditors, who may, in the first meeting, by a majority vote of not less than seventy-five percent 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. In addition, there may be other agenda relating to CIRP.

43. Who is resolution professional? What is their role in CIRP?

As per section 5(27) of the IBC states "resolution professional" means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

The role of resolution professional include managing operations of corporate debtor, conducting meetings of committee of creditors and conducting entire corporate insolvency resolution process.

44. Who is interim resolution Professional? What is the term of his appointment?

Section 16(2) of the IBC states that where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The NCLT shall appoint an interim resolution professional within fourteen days

from the insolvency commencement date for the term which shall not exceed 30 days from the date of his appointment.

45. What is the difference between 'Interim Resolution Professional' and 'Resolution Professional'?

The name of Interim Resolution Professional is proposed by applicant of Insolvency process and appointed by NCLT. The Resolution Professional is appointed by the committee of creditors (with 75% of voting share of financial creditor). The committee of creditors may appoint Interim Resolution Professional as resolution professional or any other resolution professional. NCLT appoints resolution professional on confirmation by Insolvency and Bankruptcy Board of India.

46. How the appointment of Resolution Professional is confirmed?

As per section 22 (4) of IBC the National Company Law Tribunal (NCLT) shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board and under section 22(5) of the IBC 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 NCLT 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.

47. Whether any creditor who is a member of committee of creditor can appoint an insolvency professional other than the resolution professional to represent his interest?

Section 24(5) of the IBC states that any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors. Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

48. Whether operational creditor can attend and vote at the committee of creditors?

As per section 24(4) of the IBC state that the directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote

in such meeting. Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

49. Is a director or KMP of corporate debtor who has given loan to Corporate Debtor eligible to vote at the meeting of committee of creditors?

As per section 21 of the IBC which states that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

50. What if a person is both operational Creditor and financial creditor?

As per section 21(4) of the IBC states that where 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.

51. What if corporate persons do not have any financial creditor?

As per section 21(8) of the IBC states that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Insolvency and Bankruptcy Board of India.

52. When the financial creditor is related to corporate debtor is there any restriction with respect to his representation at the meeting of committee of creditors or voting?

As per section 21 of the IBC which provides that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors. Therefore the related financial creditor of the corporate debtor shall be restricted with respect to his representation at the meeting of committee of creditors and voting.

53. Who is related party in relation to corporate debtor?

Section 5(24) of the IBC states that "related party", in relation to a corporate debtor, means –

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

49. What is the difference in the role of financial creditor, operational creditor and Corporate Debtor in the CIRP?

Sl. No.	Particulars	Financial Creditor	Operational Creditor	Corporate debtor
1.	**Initiation of Insolvency resolution process**	On occurrence of default a financial creditor may itself or jointly with other financial creditor initiate the process.	On occurrence of default an operational creditor can initiate the process after the expiry of the period of ten days from the date of delivery of notice or invoice demanding payment and he does not receive the payment or notice of dispute from the corporate debtor.	Defualting Corporate debtor can initiate. However following person cannot initiate the process namely a corporate debtor undergoing the process, corporate debtor who having completed the process twelve months preceding the date of application, in respect of whom liquidation order has been made.
2.	**The definition of Default**	As per explanation to section 7(1), definition of default with reference to financial creditor is Default includes a default in respect of a financial debt owned not only to the applicant financial	As per section 3(12) Default means non-payment of debt when a whole or any part or instalment of the amount of the debt has become due and payable and is not repaid by the debtor or the corporate debtor as the case may be.	As per Section 3(12) Default means non-payment of debt when a whole or any part or instalment of the amount of the debt has become due and payable and is not repaid by the debtor or the corporate debtor as the case may be.

		creditor but to any other financial creditor of the corporate debtor.		
3.	**Documentation**	They have to submit record of default by the entity in electronic records of the liabilities filed in the information utilities incontrovertible event of default on any financial credit contract can be readily verifiable by accessing the system.	The evidence submitted of default can be either in electronic or physical form which includes a copy of invoice demanding payment or demand notice delivered by operational creditor to the corporate debtor.	The debtor must provide the statement of audited balance sheet of the entity at the time of application, with all assets and liabilities as well as the audited balance sheet for the two years prior to the application, and the cash flow statement of entities during such period.
4.	**Proposal of Insolvency resolution professional (IRP)**	Along with the application to the NCLT, propose the name of Insolvent professional to manage the IRP.	The IBC does not mandate the operational creditor to propose an insolvent professional. He may propose the same. If no proposal made NCLT shall make reference to the Insolvency and Bankruptcy Board of India for recommendation of Insolvency Professional, and based on the same appointment can be made.	The IBC requires that corporate debtor shall propose a registered insolvent professional to manage the IRP.
5.	**Members of Creditors committee**	The committee of creditors shall comprises all financial	They don't have any right of representation except in case where the aggregate dues are not less than 10	They will be invited to all the meetings for discussions only.

		creditors of the corporate debtor, where corporate debtor does not have any financial creditors, the committee shall comprise of such persons as specified by the Board.	percent of the debt. They cannot participate or vote in the meeting and even their absence from the meeting does not invalidate the proceedings of the meeting.	
6.	**Voting**	The voting of the creditors committee will be by majority vote of not less than 75% of voting share of financial creditors	They don't have any voting power.	Not relevant
8.	**Information Utilities service**	Financial creditor has to provide financial information and information relating to assets in relation to which any security has been created, to the information utility for record keeping.	Operational creditor may submit the financial information to the information utility in such a form as may be specified.	

50. What should be contents of the public announcement?

As per section 15(1) of the IBC states that the public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely :–

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims;

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;'

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

51. What is Moratorium?

The NCLT shall by order declare moratorium prohibit the following namely:

- The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.
- Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
- 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,
- the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Note – The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions as specified above shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

52. Is there any time limit within which the moratorium is to be declared?

Section 14(1) of the IBC states that subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the NCLT shall by order declare moratorium.

53. What is the duration of Moratorium?

As per section 14(4) of the IBC states that the order of moratorium shall have effect from the date of admission of the application for initiation of corporate insolvency resolution process (CIRP) till the date of order of NCLT.

56. What is the time limit within which the CIRP has to be competed?

As per Section 12(1)and Subject to sub-section (2), of the IBC states that 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.

57. Whether the time limit can be extended?

As per section 12(2) of the IBC the time limit can be extended, the resolution professional shall file an application to the NCLT to extend the period beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares. The NCLT if 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 (only one time extension).

58. On whom the Resolution plan approved by NCLT, shall be binding on?

As per section31 (1) if the NCLT is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

59. To whom an appeal is made if the resolution plan is rejected by NCLT?

If the resolution plan is rejected by NCLT then an appeal can be made to National Company Law Appellate Tribunal (NCLAT).

60. Describe broadly the role of Insolvency and Bankruptcy Board of India?

The Board regulates and oversee the functioning of Insolvency Professionals, Insolvency Professional Agencies and Information utilities through regulations covering code of conduct for insolvency professionals, model bye laws for insolvency professional agencies etc.

65. What are the sources of Insolvency and Bankruptcy Fund?

As per Section 224(2), there shall be credited to the Fund the following amounts, namely –

(a) the grants made by the Central Government for the purposes of the Fund;

(b) the amount deposited by persons as contribution to the Fund;

(c) the amount received in the Fund from any other source; and

(d) the interest or other income received out of the investment made from the Fund.

66. Who can withdraw from Insolvency and Bankruptcy Fund? For what purpose and to what extent?

As per Section 224(3) a person who has contributed any amount to the Fund may, in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority(i.e NCLT for Corporate Insolvency Adjudication), make an application to such Adjudicating Authority(i.e. NCLT) for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of such persons, meeting the incidental costs during the proceedings or such other purposes as may be prescribed. The rules framed may prescribe the purposes for which the withdrawal is permitted in addition to the purposes specified under Section 224(3)

67. Who is Insolvency Professional Agency?

As per Section 3(20), "insolvency professional agency" means any person registered with the Board under section 201 as an insolvency professional agency.

68. Who regulates Insolvency Professional Agency?

The Insolvency and Bankruptcy Board of India regulates the Insolvency Professional Agency.

69. Who is regulated by Insolvency Professional Agency?

Insolvency Professionals who are registered as member of an insolvency professional agency and registered with the Board are regulated by Insolvency Professional Agency.

70. What are the Functions of Insolvency Professional Agency?

As per Section 204, an insolvency professional agency shall perform the following functions, namely :–

(a) grant membership to persons who fulfil all requirements set out in its bye-laws on payment of membership fee;

(b) lay down standards of professional conduct for its members;

(c) monitor the performance of its members;

(d) safeguard the rights, privileges and interests of insolvency professionals who are its members;

(e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;

(f) redress the grievances of consumers against insolvency professionals who are its members; and

(g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

As per section 205, subject to the provisions of IBC and any rules or regulations made there under and after obtaining the approval of the Board, every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board under sub-section (2) of section 196.