

Corporate Insolvency Resolution Process

Nagpur branch of WIRC of the ICAI

Index

- Introduction
- Definition
- Corporate Insolvency Resolution Process
- Fast Track CIRP
- Enabling for Limited insolvency examination

Preamble

An Act to consolidate and amend the laws relating to Re-organisation and Insolvency Resolution in a time bound manner for maximisation of value of assets of such persons, before it becomes obsolete.

Insolvency Professional

Insolvency process can not be imagined without the involvement of IP who in many respects is in the lynch pin of the process; the link between the court, creditor & debtor.

- European Bank for Reconstruction and Development.

Banking Law Reforms Committee

*“The Limited Liability Company is a contract between equity and debt. **As long as debt obligation are met**, equity owners have complete control and creditors have no say in how the business is run. **When default take place, control is supposed to transfer to the creditors and equity owners have no say**”*

Creditors in possession

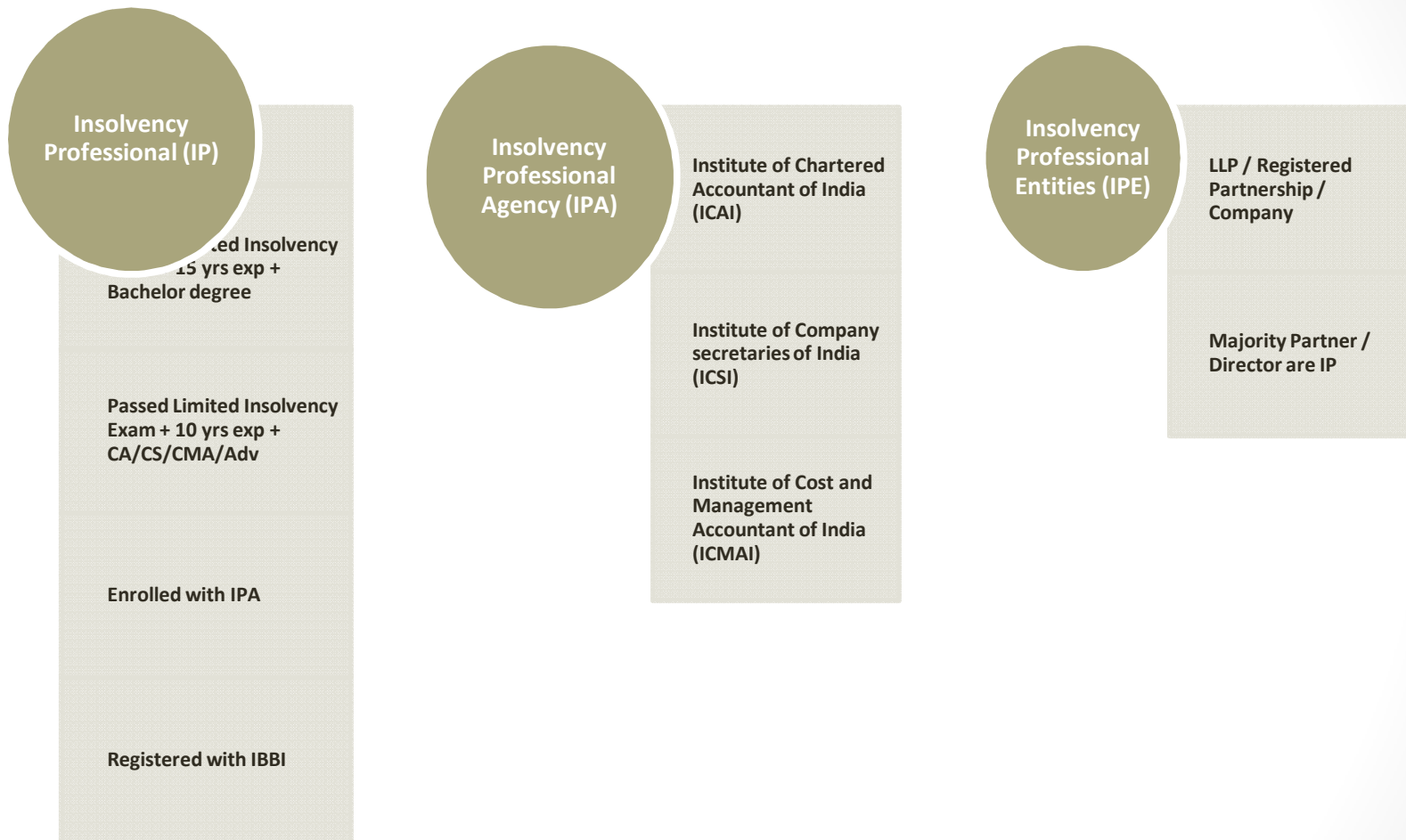
Background

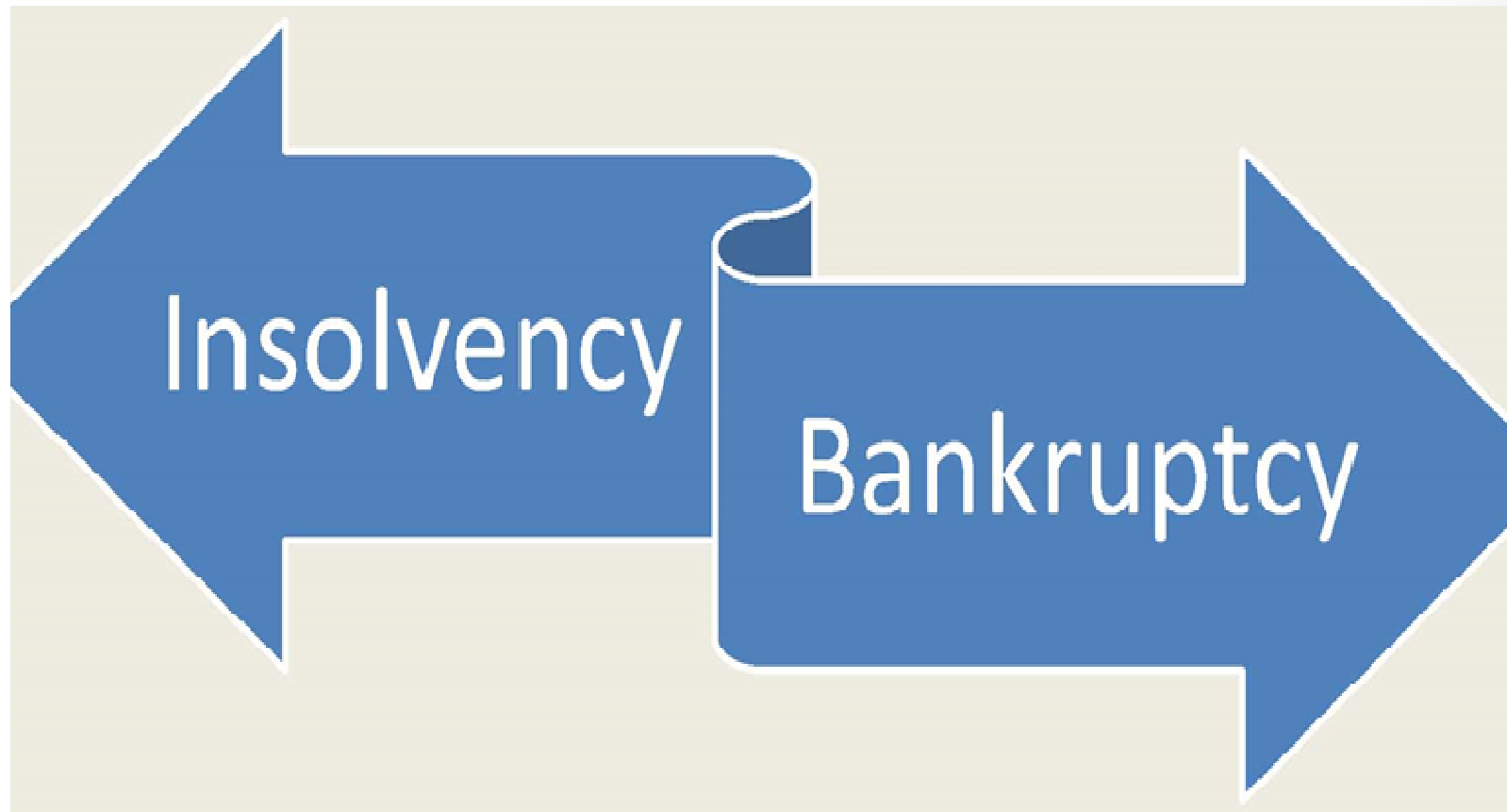
- India currently has multiple laws to deal with insolvency, which leads the entire resolution process fragmented, expensive and time – consuming with very low recovery rate.
- In this scenario, the Indian Government has introduced the Bankruptcy and Insolvency Code, 2016 which will consolidate the existing frame works and create a new institutional structure.
- The Co decreases time-bound processes for insolvency resolution of companies and individual switch there by will help India improve its World Bank insolvency ranking.

Key Highlights

- Paradigm shifts from Debtors in possession to CREDITORS in CONTROL.
- Test from EROSION to DEFAULT
- TIME BOUND
- REGULATOR -IBBI –INDEPENDENT BODY
- INSOLVENCY PROFESSIONAL
- Provide CONFIDENCE TO LENDERS AND INVESTORS
- Alteration in the ORDER of PRIORITY of payment of GOVERNMENT DUES .

Insolvency Professional : The Concept





Abbreviations:

- IBC -Insolvency and Bankruptcy Code, 2016
- CD -Corporate Debtors
- FC -Financial Creditors
- OC -Operational Creditors
- COC -Committee of Creditors
- AA -Adjudicating Authorities like NCLT or DRT
- IP -Insolvency Professional
- IRP -Interim Resolution Professional
- RP -Resolution Professional
- CIRP -Corporate Insolvency Resolution Process.
- IBBI -Insolvency and Bankruptcy Board of India.
- IU -Information Utilities.
- RP -Resolution Plan

Overview of Insolvency Code

Insolvency Code has 255 sections divided into following 5 parts and 11 Schedules:

- Part 1 – Preliminary – Section 1 to 3
- Part 2 – Insolvency Resolution and Liquidation for Corporate Person - Section 4 to 77
- Part 3 – Insolvency Resolution and Bankruptcy for individuals & Partnership Firms – Section 78 to 187
- Part 4 – Regulation of Insolvency Professionals, Agencies & Information Utilities – Section 188 to 223
- Part 5 – Miscellaneous – Section 224 to 255

Definitions in 3 parts & Regulations:

Each of the Part – 1, 2 and 3 has a definition section, i.e., section 3, section 5 and section 79 respectively. Thus, there are total 3 sections of definitions in Insolvency Code.

- The definitions given in section 3 (Part - 1) are applicable to entire Insolvency Code.
- The definitions given in section 5 (Part 2) are applicable to only to Part 2 and regulations made under section related thereto.
- The definitions given in section 79 (Part 3) are applicable to only to Part 3 and regulations to be made under section related thereto.

Regulations by IBBI

Important Regulations

- Insolvency Professional Agencies Regulation -2016
- Insolvency Professional -2016
- Insolvency Resolution Process For Corporate Person -2016
- Liquidation Process –2016
- Voluntary Liquidation Process -2017
- Information Utilities -2017
- Fast Track Insolvency Resolution Process for Corporate Person -2017

Some important Definitions:

“Corporate Person” means a company as defined in section 2(20) of the Companies Act, 2013, a limited liability partnership, as defined in section 2(1)(n) 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.** [Section 3(7)]

“Corporate Debtor” means a corporate person who owes a debt to any person. [Section 3(8)]

Some important Definitions:

“Creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder. [Section 3(10)]

“Debt” means a liability or obligation in respect of a claim which is due from any person and includes a *financial debt and operational debt*. [Section 3(11)]

“Default” means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]

Some important Definitions:

“Claim” means—

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured. [Section 3(6)]

“Secured Creditor” means a creditor in favour of whom security interest is created. [Section 3(30)]

“Security Interest” mortgage, charge, hypothecation, assignment and encumbrance or any other means, right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes agreement or arrangement securing payment or performance of any obligation of any person *provided that security* interest shall not include a performance guarantee. [Section 3(31)]

Some important Definitions:

“Workman” shall have the same meaning as assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947. [Section 3(36)]

Relevance – Workmen dues for two years preceding the liquidation commencement date will have priority along with secured creditors u/s 53.

Section 3(37) - Words and expressions used but not defined in the Insolvency Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.

“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. [Section 3(19)]

Some important Definitions:

Opportunities for Insolvency Professionals

- **“Resolution Professional”**, for the purposes of this Part 2, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional. [Section 5(27)]
- **“Liquidator”** means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part 2, as the case may be. [Section 5(18)]
- 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. [Section 24(5)]
- **“Resolution Professional”** means an insolvency professional appointed under this part as a resolution professional for conducting the fresh start process or insolvency resolution process. [Section 79(21)]
- **“Bankruptcy Trustee”** means the insolvency professional appointed as a trustee for the estate of the bankrupt under section 125. [Section 79(9)]

Some important Definitions

Important Definitions given in Part – 2 (Section 5)

“Adjudicating Authority”, for the purposes of this Part (relating to Corporate Persons), means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. [Section 5(1)]

“Corporate Applicant” means:

- (a) Corporate debtor; or
- (b) A member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
- (c) An individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) A person who has the control and supervision over the financial affairs of the corporate debtor. [Section 5(5)]

Some important Definitions:

“Dispute” includes a suit or arbitration proceedings relating to:

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty. [Section 5(6)]

“Operational Creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. [Section 5(20)]

“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. [Section 5(21)]

Some important Definitions:

“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. [Section 5(7)]

“Personal Guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor. [Section 5(22)]

“Resolution Applicant” means any person who submits a resolution plan to the resolution professional. [Section 5(25)]

“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. [Section 5(26)]

Some important Definitions:

Personnel includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor. [Section 5(24)]

Relevance – As per section 19, Personnel to extend cooperation to Interim Resolution Professional in managing the affairs of the corporate debtor.

Related Party – Section 5(23) has given an exhaustive list of related parties.

Relevance:

- (a) A related party cannot act as Insolvency Professional of that Corporate Debtor. [Regulation 3 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]
- (b) A related party cannot act as valuer of that Corporate Debtor. [Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]
- (c) A related party cannot act as liquidator of that Corporate Debtor. (b) A financial creditor who is related party cannot be part of Committee of Creditors. [Section 21(2)]
- (d) Insolvency Resolution Professional cannot undertake any related party transaction without prior approval of committee of creditors. [Section 21(1)(f)]
- (e) Any preference transaction with related party undertaken during preceding the insolvency commencement date can be avoided/modified. [section 43/44]

Some important Definitions:

Initiation date

Date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the AA for initiating CIRP [Section 5(11)]

Insolvency Commencement Date

Date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be. [Section 5(12)]

Interim Resolution Period -

The term of the interim resolution professional shall not exceed thirty days from date of his appointment. [Section 11(5)]

Insolvency Resolution Process Period means the period of 180 days beginning from the insolvency commencement date and ending on 180 day [Section 5(14)]. This can be extended by 90 days but only one extension is allowed. [Section 12(3)].

Some important Definitions:

Important Definitions given in CIRP Regulations

Applicant means the person(s) filling an application under section 7,9 or 10 as the case may be. [Regulation 2(1)(a)]

Committee means a Committee Of Creditors established under section 21. (COC) [Regulation 2(1)(d)]

Corporate Insolvency Resolution Process means the insolvency resolution process for corporate persons under Chapter II of Part II of the Code. [Regulation 2(e)]

Liquidation Value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date. [regulation 35]

Dissenting Financial Creditors means the financial creditors who voted against the resolution plan approved by the committee. [Regulation 2(f)]

Registered Valuer means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder [Regulation 2(m)]

Some important Definitions:

Evaluation Matrix

Means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval; [Régulation 2(1)(ha)]

Fair Value

Means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion. [CIRP 2(1)(hb)] [inserted 06-02-2017]

Liquidation Value

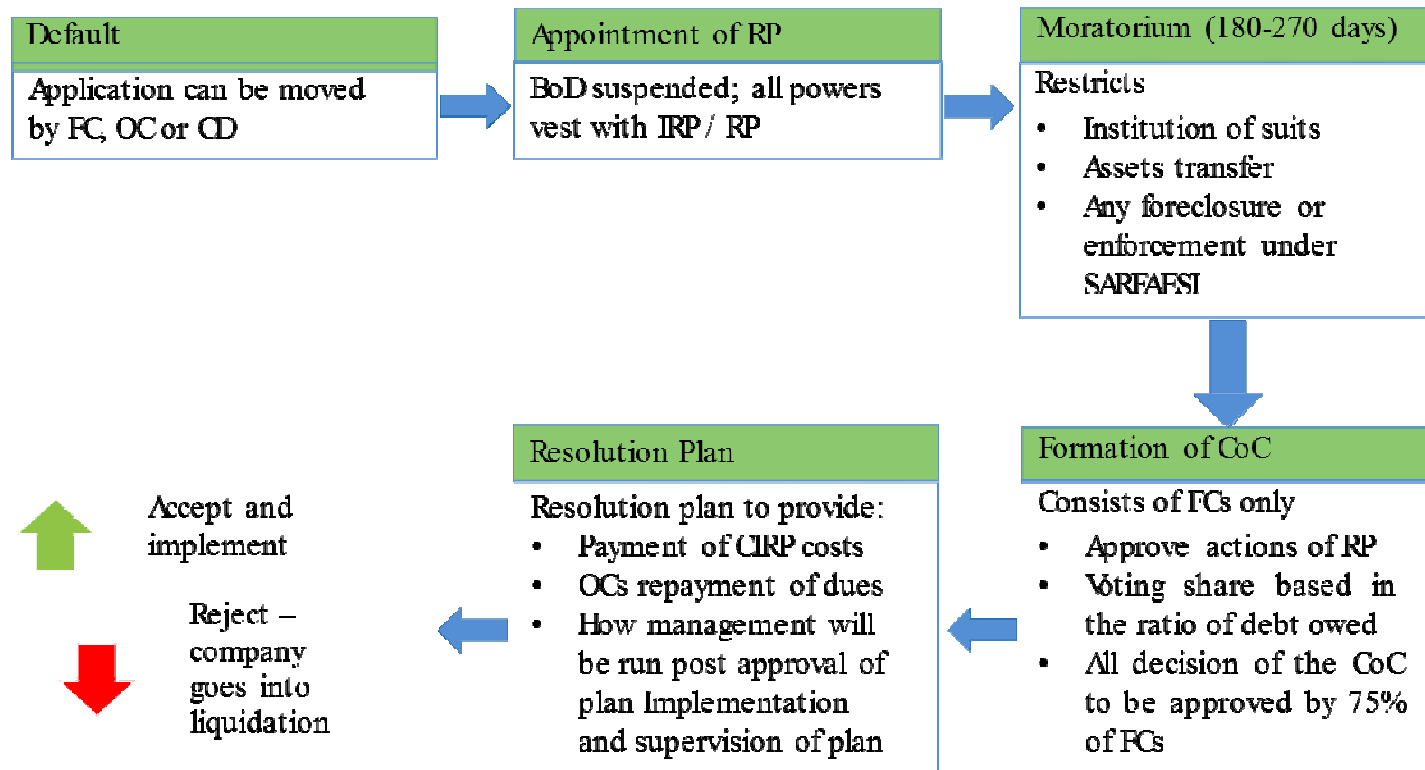
Means estimated realizable value of the assets of corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date. [Régulation 2 (1)(K)]

Corporate Insolvency Resolution Process (CIRP)

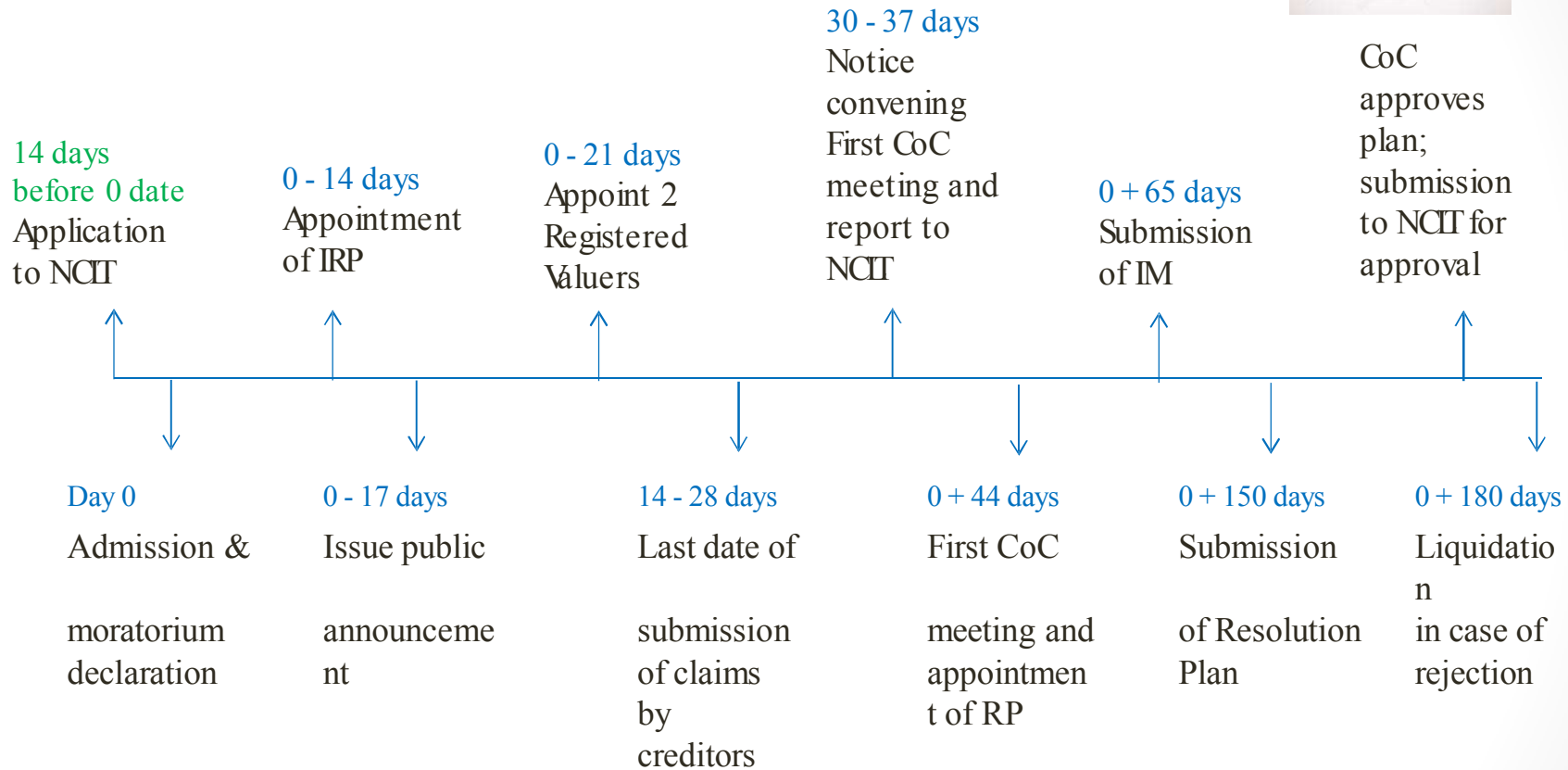
Admission of the Application

- The AA, within 14 days of receipt of application, by an order –
 - (a) Admit the application,
 - (b) Reject the application.
- CIRP shall be completed within a period of 180 days from the date of admission, maximum one extension of 90 days. Extension is subject to COC approval.

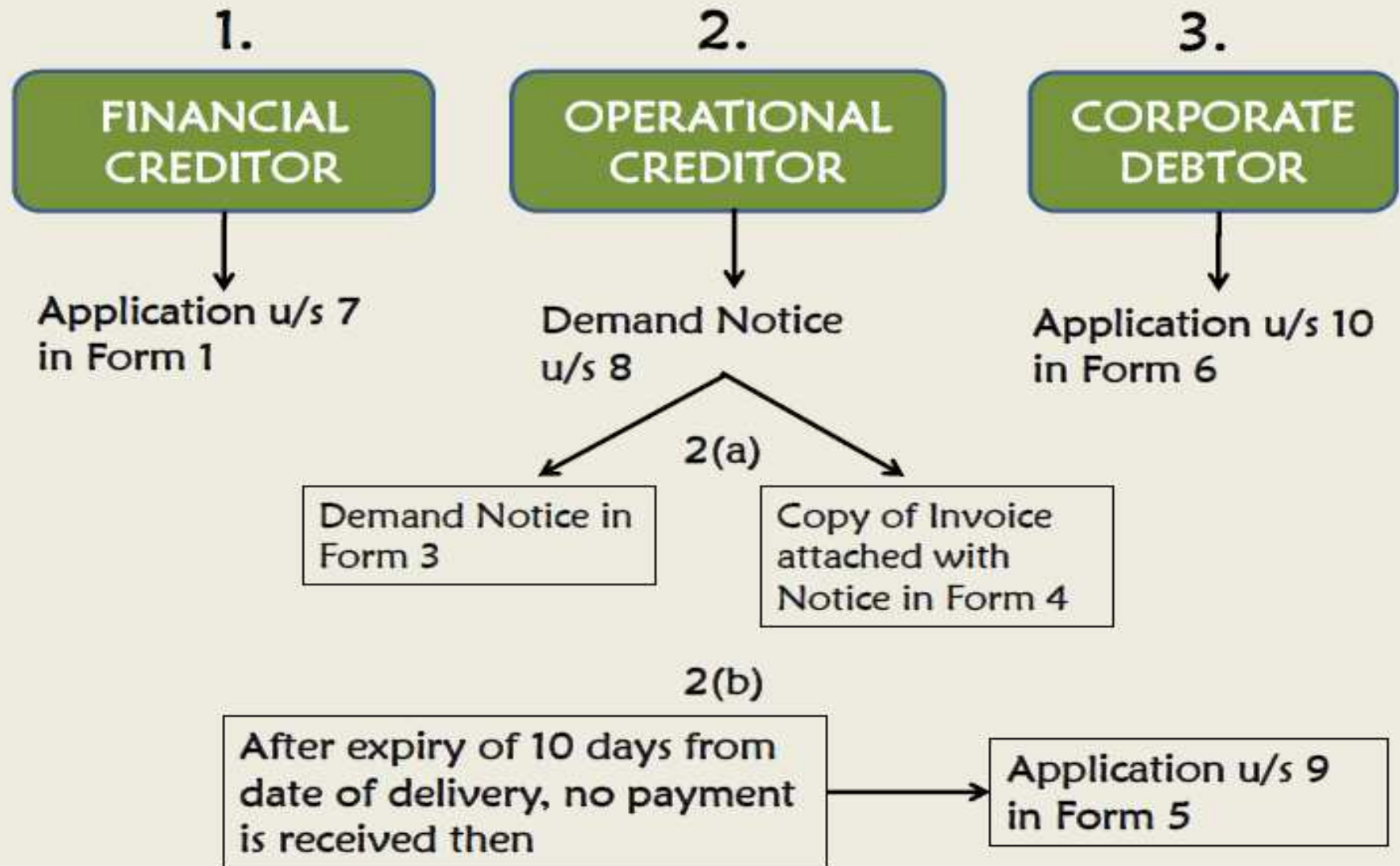
Corporate Insolvency Resolution Process



Timelines for CIRP



APPLICATION



Moratorium (Section 14)

1 The AA, after admission, shall by order declare a moratorium for prohibiting following –

(a) New suits or pending suits or proceedings including execution of any judgment, decree or order any court of law, tribunal, arbitration panel or other authority.

(b) Transferring, encumbering, alienating or disposing of any of its assets or legal right or beneficial interest.

(c) Any action to foreclose, recover or enforce any security interest in respect of its property including action under SARFAESI Act, 2002

(d) Recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Moratorium

- 2 Supply of essential goods or services shall not be terminated or suspended or interrupted during moratorium period.

Essential Goods or Services :

Electricity, Water, Telecommunication & Information Technology Services.

- 3 At any time during CIRP, if the AA approves the resolution plan or passes an order for Liquidation the Moratorium shall cease to have effect from the date such approval or liquidation order,

Shift of Management (Section 17)

From the date of appointment of IRP –

- Management of the affairs of the corporate debtor vest in the IRP.
- Powers of the board of directors or partners shall stand suspended and be exercised by the IRP.
- Officers and Managers shall report to the IRP and provide access to such documents and records of Corporate Debtor as required by IRP.
- Financial Institutions maintaining accounts shall act on the instructions of the IRP and furnish all information available with them to the IRP.

Duties of IRP and RP

To PRESERVE and PROTECT the assets of the CORPORATE debtor, including the continued business operations of the corporate debtor.

How to Do it / What is Supposed to be done

- Take immediately custody and control of all the assets of the Corporate Debtor.
- Represent and act on behalf of the CD
- Raise Interim Finance, subject to approval of COC
- Appoint accountants, legal or other professional
- Maintain an updated list of claims
- Convene and attend all meeting of COC
- Prepare Information Memorandum
- Invite prospective lenders, investors and any other person to put forward resolution plan.

Prior Approval of COC

RP Not to take any of the following actions without the prior approval of COC

- Raise interim finance
- Create security interest over the assets of CD
- Change capital Structure
- Record any change in the ownership interest of the CD.
- Undertake related party transactions
- Amend any constitutional documents
-

Public Announcement

RP, on appointment in **not later than 3 days vide this announcement invite the claims from the various creditors.**

The public announcement shall be in Form A of the schedule and be published

1. In two news papers.
 - (i) In English language
 - (ii) In Regional language newspaperHaving wide circulation at the location of the registered office and principal office.
2. On the website of CD;
3. On IBBI website

The applicant shall bear the expenses of Public announcement.

(the expenses on public announcement shall not form part of insolvency resolution process cost)

FORM A**PUBLIC ANNOUNCEMENT**

(Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

FOR THE ATTENTION OF THE CREDITORS OF ABC Limited

RELEVANT PARTICULARS		
1.	NAME OF CORPORATE DEBTOR	ABC Ltd.
2.	DATE OF INCORPORATION OF CORPORATE DEBTOR	25.07.2017
3.	AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	Register of Companies, Mumbai
4.	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTIFICATION NUMBER OF CORPORATE DEBTOR	CIN:U74990MH2009PTC195837
5.	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE DEBTOR	Sion , Mumbai - 400020
6.	INSOLVENCY COMMENCEMENT DATE IN RESPECT OF CORPORATE DEBTOR	
7.	ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	
8.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE INTERIM RESOLUTION PROFESSIONAL	Name : Priti Savla Address : 1004, Level 10, Sunshine Tower, Senapati Bapat Marg, Elphinstone Road, Mumbai - 400 013 Email : priti@psaindia.net Reg. No. : IBB/I/PA-001/IP-P00364/2017-18/10622
9.	LAST DATE FOR SUBMISSION OF CLAIMS	16/06/2018

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process against the ABC Ltd. on 19/05/2018.

The creditors of ABC Ltd, are hereby called upon to submit a proof of their claims on or before *[insert the date falling fourteen days from the appointment of the interim resolution professional]* to the interim resolution professional at the address mentioned against item 8.

The financial creditors shall submit their proof of claims by electronic means only. All other creditors may submit the proof of claims in person, by post or by electronic means.

Submission of false or misleading proofs of claim shall attract penalties.

Name and Signature of Interim Resolution Professional
Date and Place

: Priti Savla
: 20/05/2018 Mumbai

Valuation

Appointment of registered Valuers (Regulation 27)

The IRP within 7 days of the First CoC, appoint 2 registered valuers to determine the liquidation value and fair value of the corporate debtor in accordance with regulation 35.

The following persons shall not be appointed as registered Valuers;

- a) Relative of Resolution Professional;
- b) Related party of corporate debtor;
- c) An auditor of corporate debtor any time during preceding 5 years from insolvency commencement date; or
- d) A partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Regulation 35

Fair Value and liquidation value shall be determined as follows:-

- a) The two registered valuers shall be appointed under regulation 27 who shall submit an estimate of the fair value and of liquidation value.
- b) If the two estimate of a value are different, RP may appoint another registered valuer.
- c) The RP and registered valuers shall maintain confidentiality of the Fair Value and the liquidation value.

The average of the two closest estimates shall be considered the Fair Value or the liquidation value.³⁶

Claims

- Following are the types of creditors who would make the claim in the prescribed forms;

Sr. No.	Type of creditor	Form
1.	By Operational Creditor	Form B
2.	By Financial Creditor	Form C
3.	By workmen and Employee	Form D
4.	Claim by authorized representative of workmen & employee	Form E
5.	Amendment dated 16.08.2017 – claim by other than those covered under regulation 7, 8 or 9	Form F

Process of proof of claims

- **Substantiation of Claims**

The IRP or RP, as the case may be, may call for such other evidence or clarification from the creditors for substantiating the whole or part of its claim.

- **Cost of Proof**

A Creditor shall bear the cost of proving the debt due to such creditor.

Process of proof of claims

- **Submission of proof**

(a) The last date of submission of proof of claims shall be 14 days from the date of appointment of the IRP as mentioned in the public announcement.

(b) A creditor who has failed to submit the proof of claim within the time prescribed vide the public announcement shall submit the same till the approval of the resolution plan by the committee.

- **Verification of Claims**

The IRP or RP, as the case may be, shall verify every claim, as on the insolvency commencement date, within 7 days from the last date of receipt of the claim.

IBBI –order against IP (Order dated 13.04.2018)

Corporate Debtor Electrosteel Steels Limited

- The CIRP is a time bound process. Failure to complete CIRP within the specified period has severe consequences on stakeholders. Section 23 of the Code mandates the resolution professional to conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period.
- Clause 13 of the Code of Conduct for IP under the IBBI (Insolvency Professionals) Regulations, 2016 mandate an IP to adhere to the time lines specified in the Code and rules, regulations and guidelines there under for insolvency resolution.
- It also mandates an IP to promptly communicate with all stakeholders involved for the timely discharge of his duties. And each of the steps in a CIRP.

IBBI order cont....

- As IRP, he did not consider the claim of the claimant. He did not even respond to him. He did neither consider the claim nor respond to the complainant.
- He utterly disregarded his statutory duty under section 18(1)(b) of the Code, which mandates him to receive and collate all claims. He contravened the provisions of section 18(1) (b) of the Code.
- I, therefore, in exercise of the powers conferred under section 220 (2) of the Code read with sub-regulation (8) of regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016, hereby, impose a monetary penalty equal to one tenth of the total fee payable to him as IRP and RP in the CIRP of Electrosteel Steels Ltd.

List of creditors shall be :

- (a) Available for inspection by persons who submitted the proofs of claims, members, partners, directors and guarantors of the corporate debtor.
- (b) Displayed on website, if any
- (c) File with the AA
- (d) Presented at the first meeting of the committee of creditors

Determination of amount of claims: (Regn 14)

- (a) If the amount of claim by creditor is not precise, the IRP shall make best estimates of the amount of claim based on the information available with him.
- (b) IRP or RP shall revise the amount of claims admitted, as and when he comes across additional information warranting such revision.

Role as IRP / RP

- IRP – Till First COC -COC may change
- RP - Till approval of Resolution Plan or order of Liquidation
- During CIRP COC is of opinion that a RP appointed..... Required to be replaced. It may replace him with another RP. By >75% voting shares.

Formation of Committee of Creditors (CoC)

- Committee of creditors shall be of Financial Creditors.
- Related party shall not have any right of representation, participation or voting in the COC.
- COC can consist of only operational creditors, in case the company has no financial creditors.
 - 18 largest operational creditors by value.
 - one representative of workers.
 - one representative of employees.
- Voting right in such a COC shall be based on the proportion of debt due.

Voting Share

"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.

Meeting of the COC

- The COC has to be formed within 30 days from the insolvency commencement date & notice to be given for convening the first meeting of the COC.
- The RP shall convene the committee of COC as and when he considers necessary or on request of the members of the COC representing 33% of the voting rights.
- Notice Of the Meeting
 - (a) COC meeting shall be called by giving a notice not less than 7 days in writing to every participant.
 - (b) Committee may reduce such notice period but not less than 24 hours

Conduct of the meeting

- RP shall act as the chairman of the meeting
- RP will take Roll calls. Inform Name of all participants. Quorum.
- Minutes of the meeting should be noted and circulated within 48 hours of the said meeting.
- All decisions of the COC shall be taken by a vote of not less than 75% of voting share of the financial creditors.

Video Conferencing

Provide the participants an option to attend the meeting through video conferencing in accordance with this Regulation.

Voting through electronic means

The RP shall provide each member of the committee the means to exercise its VOTING in the meeting, by electronic voting system.....

Information Memorandum (IM) Section 29

The RP shall prepare the IM in such form and manner containing such relevant information as may be specified by the Board for formulating Resolution Plan.

The RP shall provide to the Resolution Applicant access to all relevant information.

Information Memorandum (IM)

Details shall be furnished in the information memorandum:

- (a) Assets & liabilities classified into appropriate categories for easy identification
- (b) Audited financial statements for the last two financial years and provisional financial statements for the current financial year up to a date not earlier than fourteen days from the date of the application;
- (c) List of creditors containing the name, amount claimed, amount admitted and security interest, if any

Information Memorandum (IM)

- (d) Related party details
- (e) Details of guarantees
- (f) Members or partners holding at least one per cent stake
- (g) Litigation details
- (h) Workers & employee details
- (i) ~~Liquidation value, Liquidation value due to operational creditor~~ (w.e.f. 31.12.2017)

Invitation to Resolution Plan Regulation 36A:

- RP shall issue an invitation, including evaluation matrix, to the prospective Resolution applicants, to submit Resolution plan at least 30 days before last date of submission of Resolution plan.
- The RP shall publish brief particulars of invitation in Form G of the Schedule:
 - a) On the website, if any, of CD; and
 - b) On the website, if any, designated by the Board for the purpose.

Form G
 Invitation of Resolution Plans
*(Under sub-regulation (5) of regulation 36A of the Insolvency and Bankruptcy Board of India
 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)*

FOR THE ATTENTION OF THE PROSPECTIVE RESOLUTION APPLICANTS OF

Sl. No.	Particulars	
1	NAME OF CORPORATE DEBTOR	
2	DATE OF INCORPORATION OF CORPORATE DEBTOR	
3	AUTHORITY UNDER WHICH CORPORATE DEBTOR IS INCORPORATED / REGISTERED	
4	CORPORATE IDENTITY NUMBER / LIMITED LIABILITY IDENTIFICATION NUMBER OF CORPORATE DEBTOR	
5	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE DEBTOR	
6	INSOLVENCY COMMENCEMENT DATE IN RESPECT OF CORPORATE DEBTOR	
7	ESTIMATED DATE OF CLOSURE OF INSOLVENCY RESOLUTION PROCESS	
8	DATE OF ISSUE OF INFORMATION MEMORANDUM	

9	MANNER OF OBTAINING THE INFORMATION MEMORANDUM BY THE PROSPECTIVE RESOLUTION APPLICANTS	The information memorandum would be shared with prospective resolution applicants in electronic form as prescribed under regulation 40 (8) of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after receiving an undertaking under regulation 40 (12).
10	DATE OF ISSUE OF INVITATION FOR RESOLUTION PLANS	06-03-2018
11	MANNER OF OBTAINING THE INVITATION BY THE PROSPECTIVE RESOLUTION APPLICANTS	The Resolution professional will send the invitation in electronic form after verification of KYC, capacity to invest, capability to manage and eligibility under section 29A of IBC, 2016 and pre qualification criteria, if any approved by COC.
12	DATE OF ISSUE OF EVALUATION MATRIX	06-03-2018

13	MANNER OF OBTAINING THE EVALUATION MATRIX BY THE PROSPECTIVE RESOLUTION APPLICANTS	Price exploration process and bidding process along with evaluation matrix shall be published on the website of corporate debtor and website, if any designated by IBBI for this purpose.
14	LAST DATE FOR SUBMISSION OF RESOLUTION PLANS	05-04-2018
15	MANNER OF SUBMITTING RESOLUTION PLANS BY A PROSPECTIVE RESOLUTION APPLICANT	manorfloatel@aaainsolvency.com
16	NAME, ADDRESS AND EMAIL OF THE RESOLUTION PROFESSIONAL, AS REGISTERED WITH THE BOARD	Anil Agarwal AVB & Associates, 2 nd Floor, 15F, Anil Roy Road Kolkata-700029 Phone: 033-40687105 Correspondence Address: AAA Insolvency Professionals LLP E-10A, Kailash Colony, New Delhi -110048 Phone: +91-11-46664600 anil@dvaonline.in
17	ADDRESS AND EMAIL, IF ANY, OTHER THAN GIVEN AT SL. NO. 16 TO BE USED FOR CORRESPONDENCE WITH THE RESOLUTION PROFESSIONAL	manorfloatel@aaainsolvency.com
18	REGISTRATION NUMBER OF RESOLUTION PROFESSIONAL, AS GRANTED BY THE BOARD	IBBI/IPA-001/IP-P00270/2017-18/10514

EXPRESSION OF INTEREST FOR INVESTMENT OPPORTUNITY IN **ARGL LIMITED**

ARGL Ltd (ARGL or Corporate Debtor) operates in manufacturing niche precision ring gears for auto and non-auto segments. The company offers flywheel ring gears/assemblies and the products are mainly used in passenger vehicles, two-wheelers, tractors, light commercial vehicles, heavy commercial vehicles, and stationary engines. The company's product portfolio includes high precision ring gears of DIN class 10 and Class 11 and caters to large global customer base.

Corporate Insolvency Resolution Process (CIRP) has been initiated with regards to ARGL Limited as per the provisions of Insolvency and Bankruptcy Code (IBC) 2016, by an order of National Company Law Tribunal (NCLT) dated 16 March 2018.

The IBC requires the Resolution Professional to invite prospective resolution applicants to submit resolution plans for the Corporate Debtor. Expression of Interest (EOI) are hereby invited from the interested resolution applicants to submit resolution plan for the Company. Interested parties shall submit financial statements of last 3 years, Proof of address and PAN Card copy. More information about the process and the Company will be provided to the shortlisted parties. Minimum conditions for applicants to approach the Resolution Professional of the Company with such plans are mentioned below.

In case of Body Corporate:

- a) Consolidated net worth of INR 250 crores or more at group level's as per immediately preceding completed financial year &
- b) Consolidated group revenues / turnover (excluding revenue from trade activities) of INR 500 crores or more for any of the preceding three financial years.

In case of Financial Institutions / Funds / PE Investors:

- a) Minimum Asset Under Management (AUM) or funds deployed of INR 3,000 crores during last 5 years as on 31 December 2017 or
- b) Committed funds available for investment / deployment in assets of INR 1,000 crores or more as at 31 December 2017

Amendment inserted on 28.03.2018

- The following regulation shall be inserted, namely: -
- 34A Disclosure of Costs.- The resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.”.
- Regulation 25A of IBBI (Insolvency Professionals) Regulations, 2016:
An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

The amendment regulations are effective from 1st April, 2018.

Resolution

Applicant

- 5(25)

Means any person who submits a Resolution Plan to the Resolution Professional

Plan

- 5(26)

Means a plan proposed by any person for insolvency resolution of the corporate debt or as going concern in accordance with Part-II.

Amendment-Section 29A inserted

A person shall not be eligible to submit a resolution plan, if such person or any other person acting jointly or in connect with such person—

- a) Is an undischarged insolvent;
- b) Is a willful defaulter;
- c) Has an account or an account of CD classified as NPA, at least one year before the date of commencement of CIRP of CD.
- d) Has been convicted any offence;
- e) Is disqualified as a director;
- f) Is prohibited by SEBI from trading in securities or accessing securities market;

Section 29A cont...

- h) Has been a promoter or in the management or control of a CD in which preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by AA under the code;
- i) Has executed an enforceable guarantee, in favour of creditor in respect of CD against which an application for insolvency resolution made by such creditor has been admitted under the code;
- j) Has been subject to any disability, corresponding to clause (a) to (h), under any law outside India;
- k) Has a connected person not eligible under clause (a) to (i).

Insolvency Resolution Process Cost

Definition Section 5(13)

- The amount of any interim finance –cost
- Fees payable to a Resolution Professional
- Cost incurred by the RP in running the business as going concern.
- At the expenses of the Government to facilitate the CIRP
- Any other cost as specified by the Board.

Insolvency Resolution Process Cost

Regulation No. 31

- Supplier of essential goods & services
- Amount due to a person whose right are prejudicially affected on account of moratorium.
- Expenses incurred by IRP as ratified regulation 33
- Expenses incurred by RP fixed under regulation 34
- Other costs directly relating to the CIRP and approved by COC.

Cost of IRP & RP

IRP

- The applicant shall fix the expenses to be incurred by the IRP.
- If not then AA.
- The applicant shall bear the expenses which shall be reimbursed by the extent it ratifies.
- The amount of expenses ratified by the committee shall be treated as Insolvency Resolution Process Cost.

RP

- The COC shall fix and expenses shall constitute insolvency resolution process cost.

Resolution Plan Regulation 37-39

- A Resolution Applicant may submit Resolution Plan to Resolution Professional. (30 days before the expiry of maximum period)
- The RP shall examine each resolution plan received by him to confirm to various conditions.
- The RP. Shall present to the COC for its approval such Resolution Plan which confirms the conditions referred above.
- The COC may approve a Resolution Plan by a vote of **not less than 75%** of voting share of the financial creditors.

Resolution Plan

RP must include measures required for implementing those but not Limited to following :

Asset sale

- Transfer of all or part of the assets of the corporate debtor to one or more persons;*
- Sale of all or part of the assets whether subject to any security interest or not;*
- Issuance of securities of the corporate debtor for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and*

Stake sale

- Substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons*

Security for the debt

- Satisfaction or modification of any security interest;*

Resolution Plan

Debt restructuring

- *Reduction in the amount payable to the creditors;*
- *Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*
- *Curing or waiving of any breach of the terms of any debt due from the corporate debtor;*
- *Amendments of the constitutional documents: Memorandum & Article of Association*

Government approvals

- *Obtaining necessary approvals from the Central and State Governments and other authorities.*

Resolution Plan –Mandatory contents

-Regulation 38

A RP shall identify specific sources of funds that will be used to pay the:

- Insolvency resolution process costs with priority in terms of IBC
- Liquidation value due to operational creditors, and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority
- Liquidation value due to **dissenting financial creditors** and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

Resolution Plan –Mandatory contents

-Regulation 38

38(1A) Resolution plan shall include a statement showing that how is the interest of all the stakeholders is dealt with.

38 (2)-Resolution Plan shall provide:

- a) Term of the plan and implementation schedule
- b) Management and control of business of CD during its term
- c) Adequate means to supervise its implementation

Resolution Plan Contd.

38(3) Resolution plan must contain details of Resolution applicant in following manner:

SR No	Details Required	Explanation
1	Identity	_____
2	Conviction for any criminal offence during preceding 5 years	_____
3	Criminal Proceedings pending, if any	_____
4	Disqualification, if any, under Companies Act 2013 to act as Director	_____
5	Identification as wilful defaulter by any Bank or financial Institution in accordance with RBI Guidelines	_____
6	Debarment , if any, from accessing to, or trading in securities markets under any order or direction of SEBI	_____
7	Transactions, if any, with the Corporate Debtor during preceding two years	_____

Evaluation Matrix

Quantitative

- Upfront payment
- Total payment –NPV discount rate
- Bank Guarantee
- Personal Guarantee
- Additional Security

Qualitative

- Industry experience
- Revival experience
- Credit rating

Example of Evaluation Matrix

S. No.	PARAMETERS	WEIGHTAGE	TOTAL SCORE (RANGE)	SCORE	RATIONALE
A	QUANTATIVE				
1	Upfront cash recovery as per resolution plan	40%	0-100	40	Bidder offering maximum upfront cash recovery will get a score of 100 and for other bidders the score will reduce by 10 against every 10% difference with highest bidder (rounding off would be done) Cash recovery within 30 days of approval of resolution plan by NCLT would be considered as upfront cash recovery.
2	Net present value (NPV) of continuing portion of debt (Discounting rate of 15% per annum would be used for NPV for all the bidders)	40%	0-100	40	Bidder offering highest NPV of continuing portion of debt will get a score of 100 and for other bidders the score will reduce by 10 against every 10% difference with highest bidder (rounding off would be done)
3	Term of resolution plan (number of years after approval of resolution plan by NCLT)	15%	0-100	15	Bidder offering minimum number of months for completion of resolution plan after approval of resolution plan by NCLT will get a score of 100 and for other bidders the score will reduce proportionately corresponding to the number of months offered by them as

	4	Fresh fund introduced (equity or debt) for the purpose of capital expenditure and working capital requirement	5%	0-100	5	Bidder introducing highest fresh funds will get a score of 100 and for other bidders the score will reduce by 10 against every 10% difference with highest bidder (rounding off would be done). The resolution professional will
		Total score of quantitative parameters	100%		100	
		Total weight of quantitative parameters (A)	80%		80	
B		QUALITATIVE PARAMETERS				
	1	Experience of resolution applicant/group in textile sector	20%	0-100	20	The experience of resolution applicant would be important as this is a running concern and the experienced person will have higher possibility of successful revival of the unit. The score will be awarded by COC based on presentation by resolution applicant along with documentary evidences.
	2	Financial strength of resolution applicant/group (applicant net worth, group net worth, revenue, EBIDTA equally considered)	20%	0-100	20	The financial strength of applicant would be important as the corporate debtor would need financial support for working capital and better utilisation of existing assets. The score will be awarded by COC based on presentation by resolution applicant along with documentary evidences. 20% of the

3	External credit rating of flagship company of the group	20%	0-100	20	External credit rating reflects financial position, debt profile, market reputation and risk profile of applicant. The score will be awarded by COC based on presentation by resolution applicant along with documentary evidences.
4	Availability of additional collateral security and personal/corporate guarantee and value thereof	40%	0-100	40	Additional collateral security will be given weightage of 50%, corporate guarantee will be given weightage of 25 % and personal guarantee of resolution applicant of Resolution will be given weightage of 25 %, proposed management would provide additional comfort to lenders. The market value of collateral security should be atleast 20% of the continuing debt for allocating score against collateral security.
	Total score of qualitative parameters	100%		100	
	Total weight of qualitative parameters (B)	20%		20	
	Total score of resolution applicant (A+B)			100	

Approval of Resolution Plan Regulation 39

- (1) Resolution Applicant shall submit Resolution Plan prepared as per the Code to Resolution professional within the time as given in invitation.
- (2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made there under along with the details of following transactions, if any, observed, found or determined by him :-
[w.e.f.7.11.2017]
 - (a) preferential transactions under section 43;
 - (b) undervalued transactions under section 45;
 - (c) extortionate credit transactions under section 50; and
 - (d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.”

Approval of Resolution Plan cont..

(3)The COC may approve Resolution plan with the modifications as it deems fit.

(3A)The COC while approving the Resolution Plan, shall specify the amounts payable from resources under Resolution Plan for the purpose of Reg 38(1) [w.e.f6.02.2018]

(4)The Resolution Professional shall submit the Resolution Plan approved by CoC to AA, at least 15 days before 180/270 days as the case may be with the certification that-

(a)The contents of the Resolution plan meet all the requirements of the Code and the Regulations and

(b) the Resolution Plan has been approved by the committee.

Resolution Plan Approved by NCLT

The Hyderabad Bench of NCLT has accepted the resolution plan proposed under the first petition 'filed' under the Insolvency and Bankruptcy Code, 2016, **Synergies-Dooray Automotive Ltd under Section 10**

R. Plan for Synergies

Creditors	Debt Outstanding (Rs. In Cr.)	Amount as per Rplan (Rs. In Cr.)	% of Debt Outstanding	#Present Value as per Rplan (Rs. In Cr.)	% of Debt Outstanding
EARC	86.92	4.89	5.63%	4.19	4.82%
AARC	122.06	6.86	5.62%	5.89	4.83%
MFL	673.91	37.91	5.63%	32.52	4.83%
SCL	89.26	3.51	3.93%	2.49	2.79%
	972.15	53.17	5.47%	45.09	4.64%

Distribution of Assets

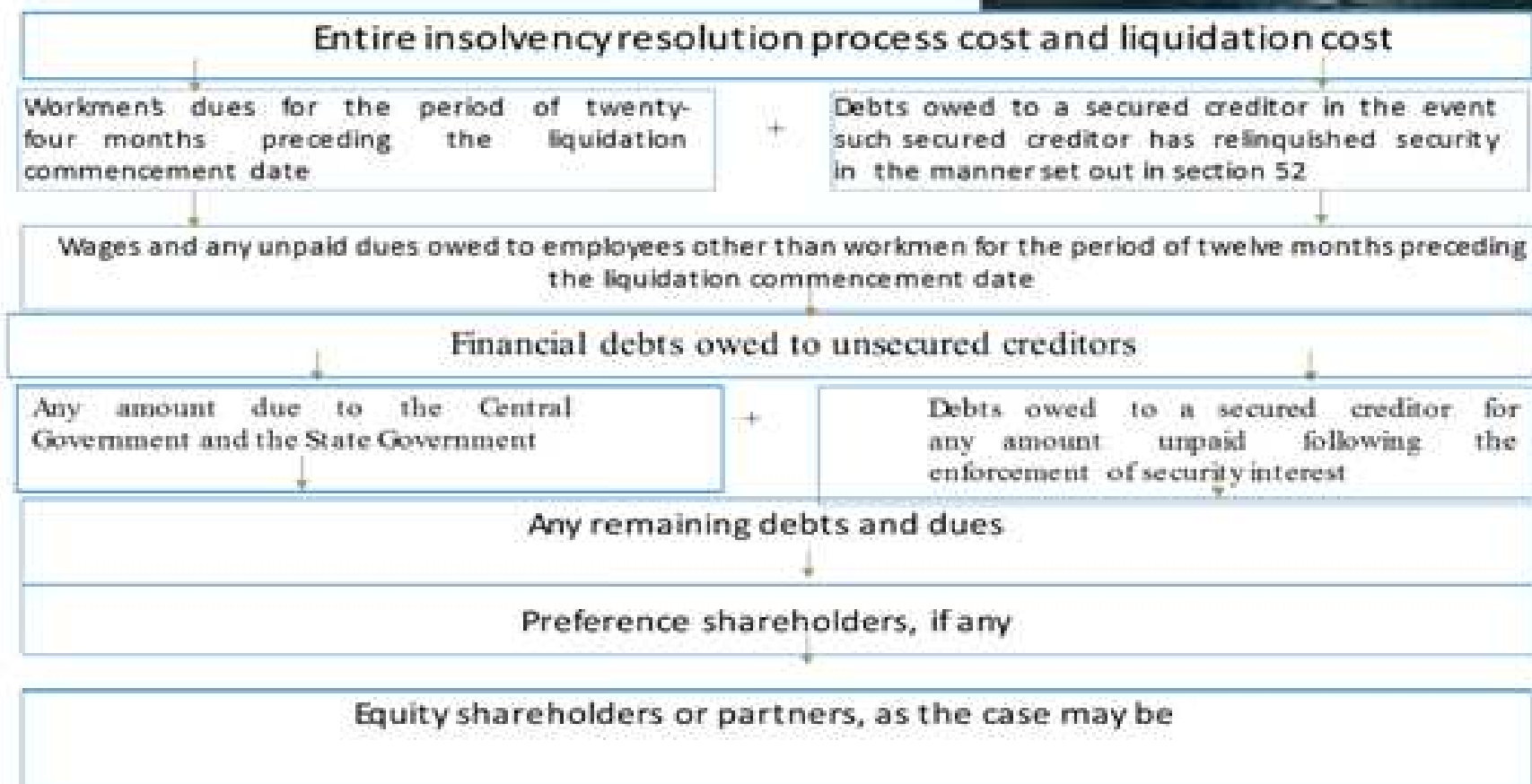
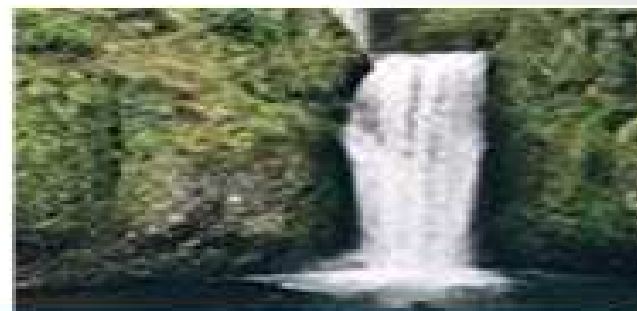
Insolvency Code overwrite other Laws

Section 53

Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority :

Liquidation water fall

Section 53



To,

[Redacted]
Opp. Vidya Vihar Railway Station,
Vidya Vihar (W),
Mumbai-400086.

Recd on 24/7/17
by speed post.

Sub: BIFR Matter-Pending dues in r/o M/s. [Redacted]

Goa.

Ref: Your letters dated 15/06/2017 and 26/06/2017.

Sir,

With reference to your above cited letters, I am to inform you that, the provisions of section 53 of the Insolvency and Bankruptcy Code, 2016 will prevail over the State Acts and this Department is not having any objection for distribution of assets as per the Insolvency and Bankruptcy Code, 2016.

[Redacted]

Yours faithfully,

[Signature]

[Redacted]
Commissioner of Commercial Taxes

Final Outcome of CIRP

- If the AA is satisfied that the Resolution Plans approved by COC meeting meets the requirements as ... **IT SHALL BY ORDER APPROVE THE RP.**
- **IT SHALL BE BINDING ON THE CD AND ITS EMPLOYEES, MEMBERS, CREDITORS, GUARANTORS AND OTHERS TAKE HOLDERS INVOLVED IN THE RP**

Fast Track - CIRP Chapter IV Section 55 to 58

- Regulation Notified on 14.06.2017
- Known as IBBI (Fast Track Insolvency Resolution Process for Corporate Person) Regulation, 2017.
- Qualifying Requirements: (Sec 55)
 - CD with ASSETS and INCOME below certain threshold.
 - CD with class of creditors or certain amount of debt
 - Other Category of Corporate person as may be notified.
- Time Period : (Sec 56)
 - 90 days from the date of Insolvency Commencement date.
 - One extension of 45 days based on COC resolution.
- Process for conducting -Chapter –II CIRP as the context may require.

Protection to IRP & RP

- Section 233 of code :

No suit, prosecution or other legal proceeding shall lie against the..... or an Insolvency Professional or liquidator for any thing which is done or intended to be done in good faith under this code or the rules or regulation made there under.

Enabling for Limited Insolvency Examination

Syllabus

Sr.	Subject/Topic	Weight (%)
1	The Insolvency & Bankruptcy Code, 2016 (Entire Code)	20
2	Rules and Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 31st December, 2017)	20
3	The Companies Act, 2013 - Chapters III, IV, V, VI, VII, IX, XV - Amalgamations Chapters XVII, XVIII, XX, XXVII The Partnership Act, 1932 The Limited Liability Partnership Act, 2008 (Nature of LLP; Partners and their Relations; Limitation of Liability; Financial Disclosures)	10
4	The Indian Contract Act, 1872, The Sale of Goods Act, 1930 The Transfer of Property Act, 1882, Specific Relief Act, 1963 Negotiable Instruments Act, 1881.	6
5	The RDDBF Act, 1993; The SERFESI Act, 2002; S4A of RBI; The Arbitration & Conciliation Act, 1996; The Limitation Act, 1963.	6

Syllabus

Sr.	Subject/Topic	Weight (%)
6	General Awareness (Eco, Financial Mkts, Rights of Workmen under Labour Laws & fundamental concept of Valuation)	6
7	Finance and Accounts (Corp Finance, Financial Analysis, Liquidity Mgmt, Tax Planning, GST)	6
8	Case Laws- Imp decisions of NCLT, Supreme Court, High Courts and NCLAT relating to CIRP, Corp & Voluntary Liquidation, Fast Track Resolution Process. List Given (5 questions of 2 marks each.)	10
9	Transaction analysis on Corporate Insolvency Resolution - 1 comprehension (4 questions based on the case carrying 2 marks each.)	8
10	Transaction analysis on Individual Insolvency Resolution and Individual Resolution. - 1 comprehension (4 questions on the case carrying two marks each.)	8
	Total	100

Format of Examination

- a. The examination will be conducted online (computer-based in proctored environment) with objective multiple-choice questions.
- b. The duration of the examination will be two hours.
- c. A candidate will be required to answer 87 questions in two hours for a total of 100 marks. $[(74 * 1) + (13 * 2)]$
- d. There will be negative marking of 25% of the marks assigned for the question.
- e. Passing mark for the examination is 60%.
- f. Passing candidates will be awarded a certificate by the Board.
- g. A candidate will be issued a temporary mark sheet on submission of examination paper.
- h. No workbook or study material will be provided.

Important Websites

Material

www.ibbi.gov.in

<http://www.iiipicai.in>

List of NCLT/NCLAT case laws

FAQs, Sample papers, video lectures, online tests

For registration of exam

www.nism.ac.in/certification or

www.ibbi.gov.in/limited-insolvency.html

THANK YOU

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