



Western Indian Regional Council – Institute of Chartered Accountant of India

Presented by :

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INSOLVENCY PROFESSIONAL

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THE INSOLVENCY & **BANKRUPTCY CODE, 2016**

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.**

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- Definition
- **Corporate Insolvency Resolution Process**
- Fast Track CIRP
- Liquidation
- Voluntary Liquidation

Insolvency Professional



Insolvency process cannot be imagined without the involvement of an IP who in many respects is in the lynch pin of the process ; the link between the Court, Creditor and Debtor

European Bank for Reconstruction and Development.

Banking Law Reform Committee

*“The Limited Liability Company is a contract between equity and debt. **As long as debt obligations are met,** equity owners have complete control and creditors have no say in how the business is run. When default takes 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 frameworks and create a new institutional structure.*
- The Code *creates time-bound processes for insolvency resolution of companies and individuals which thereby 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 .

Market Effect



Shilpi Cables erodes 73% value in 17 days as foreign lender raises bankruptcy charges

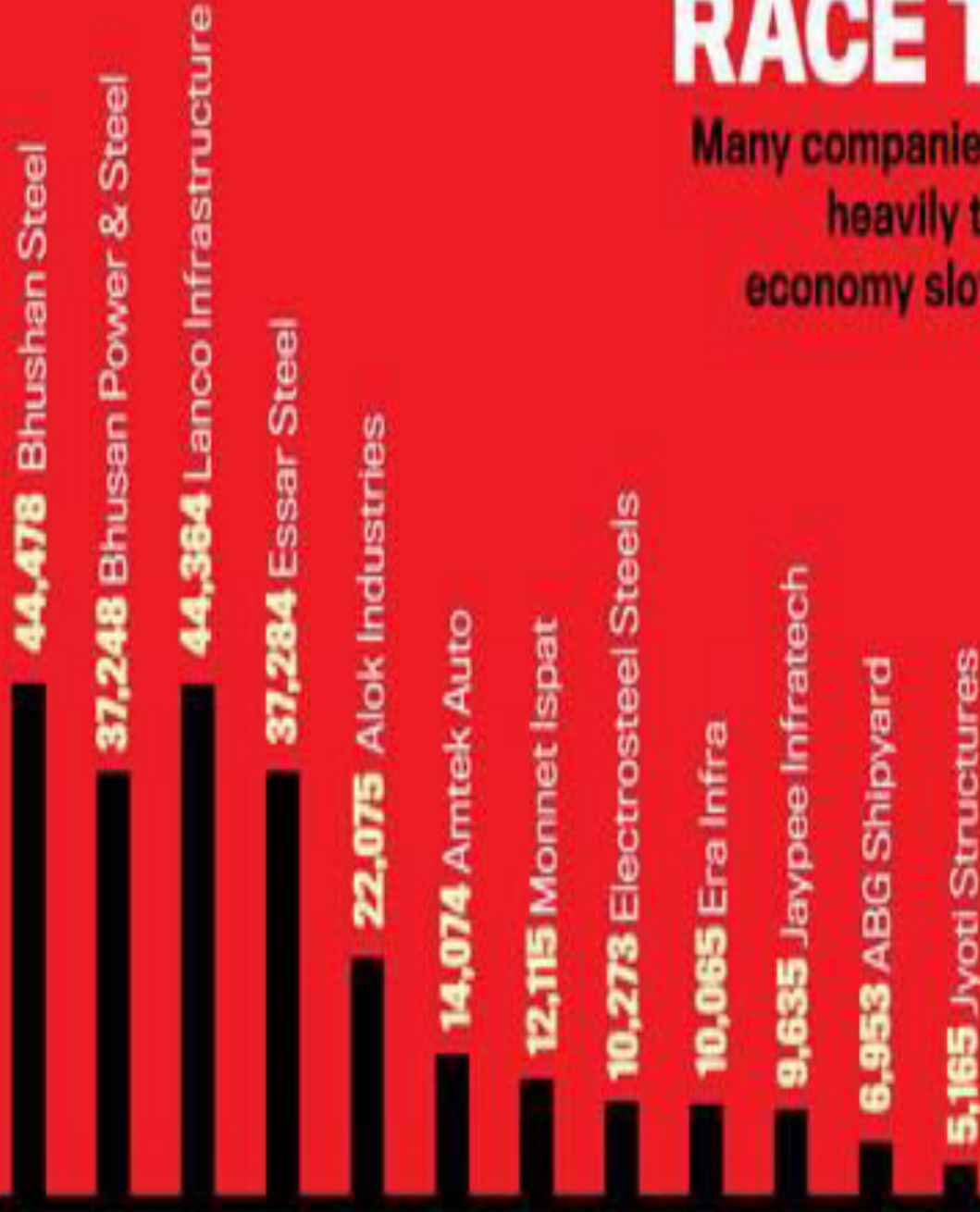
The share price of Shilpi Cable Technologies hit lower circuit for the 15th consecutive session on Wednesday after an overseas lender filed a petition against the company under the Insolvency and Bankruptcy Code, 2016.

Videocon plunges 35% in 2 days on fear of loan default

The stock of Videocon Industries fell by 34.5 % in the last two days as lenders sold shares pledged by its promoters against loans. The shares of the consumer durables and oil major closed at Rs 64.80 apiece on Tuesday, and the company lost Rs 1,200 crore of its market value since Monday after Dena Bank tagged it as a non-performing asset (NPA) a few days ago.

RACE TO THE BOTTOM

Many companies in steel and infrastructure borrowed heavily to fund expansion, but defaulted as the economy slowed and projects got stuck in red tape



(Unpaid debt, in Rs crore)



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 1-255 Sections divided into following 5 Parts and 11 Schedules

Part	Content - Section
I	Preliminary 1 to 3
II	Insolvency Resolution and Liquidation for Corporate Person (4 to 77)
III	Insolvency Resolution and Bankruptcy for Individual and Partnership
IV	Regulation of Insolvency Professionals, Agencies & Information Utilities (188-223)
V	Miscellaneous (224 to 255)

Definition in 3 Parts plus Regulations

Each of Part I, II & III has definition

Part	Section	Applicable to
I	3	Entire Insolvency code
II	5	Part – II of code
III	79	Part – III of code.

Regulations by IBBI

Regulations	Remark
Insolvency Professional Agencies Regulation - 2016	Illpia
Insolvency Professional - 2016	Our Regulation - IP
Insolvency Resolution Process For Corporate Person - 2016	Most Important from Practice point of view
Liquidation Process – 2016	
Voluntary Liquidation Process -2017	
Information Utilities - 2017	
Fast Track Insolvency Resolution Process for Corporate Person - 2017	

Some Important Definitions

Charge [3 (4)]

Means an Interest or lien created on the property or assets of any person or any of its undertakings or both as the case may be, as security and includes a mortgage;

Debt [3(11)]

Means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

Default [3 (12)]

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;

Some Important Definitions

Claim [3 (6)] Means

- (a) a right to payment, whether or not such right is reduced to judgement, 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 right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

Corporate Person [3(7)]

- Means a company defined in Companies Act,
- LLP
- Or any other person **incorporated with limited liability** under any law

*But shall not include

“ Financial Service Provider”

Some Important Definitions

Corporate Debtor 3(8)

Means a corporate person who owes a debt to any person

Insolvency Professional 3 (19)

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;

Some Important Definitions Section 5

Dispute 5(6)

Dispute includes a suit arbitration proceedings relating to –

- (a) The existence of the amount of debts;
- (b) The quality of goods or services; or
- (c) The breach of a representation or warranty;

Financial Creditor 5(7)

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 5(8)

Means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes ----

Initiation date 5(11)

Date on which makes an application to the AA for initiating CIRP

Some Important Definitions from CIRP Regu

Applicant [CIRP 2(1)(a)]

means the person(s) filling an application under section 7,9 or 10 as the case may be.

Committee [CIRP 2(1)(d)]

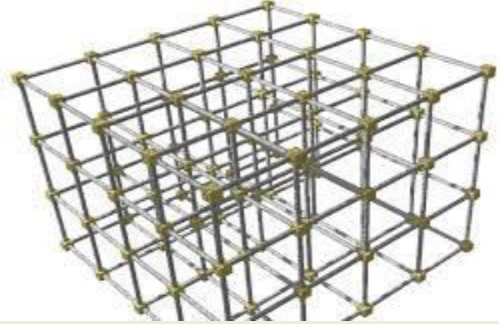
means a Committee Of Creditors established under section 21. (COC)

Dissenting financial creditors [CIRP 2(1)(f)]

Means the Financial Creditors who voted against the Resolution Plan.

Liquidation Value [CIRP 2 (1)(K)]

Means the amount determined in accordance with Regulation 35



Institutional Framework

- The Insolvency and Bankruptcy Board of India (the “Board”)
- Insolvency Professional Agencies
- **Insolvency Resolution Professionals**
- Information Utilities
- Adjudicating Authorities:-
 - National Company Law Tribunal (“NCLT”)
 - National Company Law Appellate Tribunal
 - Debt Recovery Tribunal (“DRT”)
 - Supreme Court



APPLICATION

1.

**FINANCIAL
CREDITOR**

Application u/s 7
in Form 1

2.

**OPERATIONAL
CREDITOR**

Demand Notice
u/s 8

2(a)

Demand Notice in
Form 3

Copy of Invoice
attached with
Notice in Form 4

2(b)

After expiry of 10 days from
date of delivery, no payment
is received then

Application u/s 9
in Form 5

3.

**CORPORATE
DEBTOR**

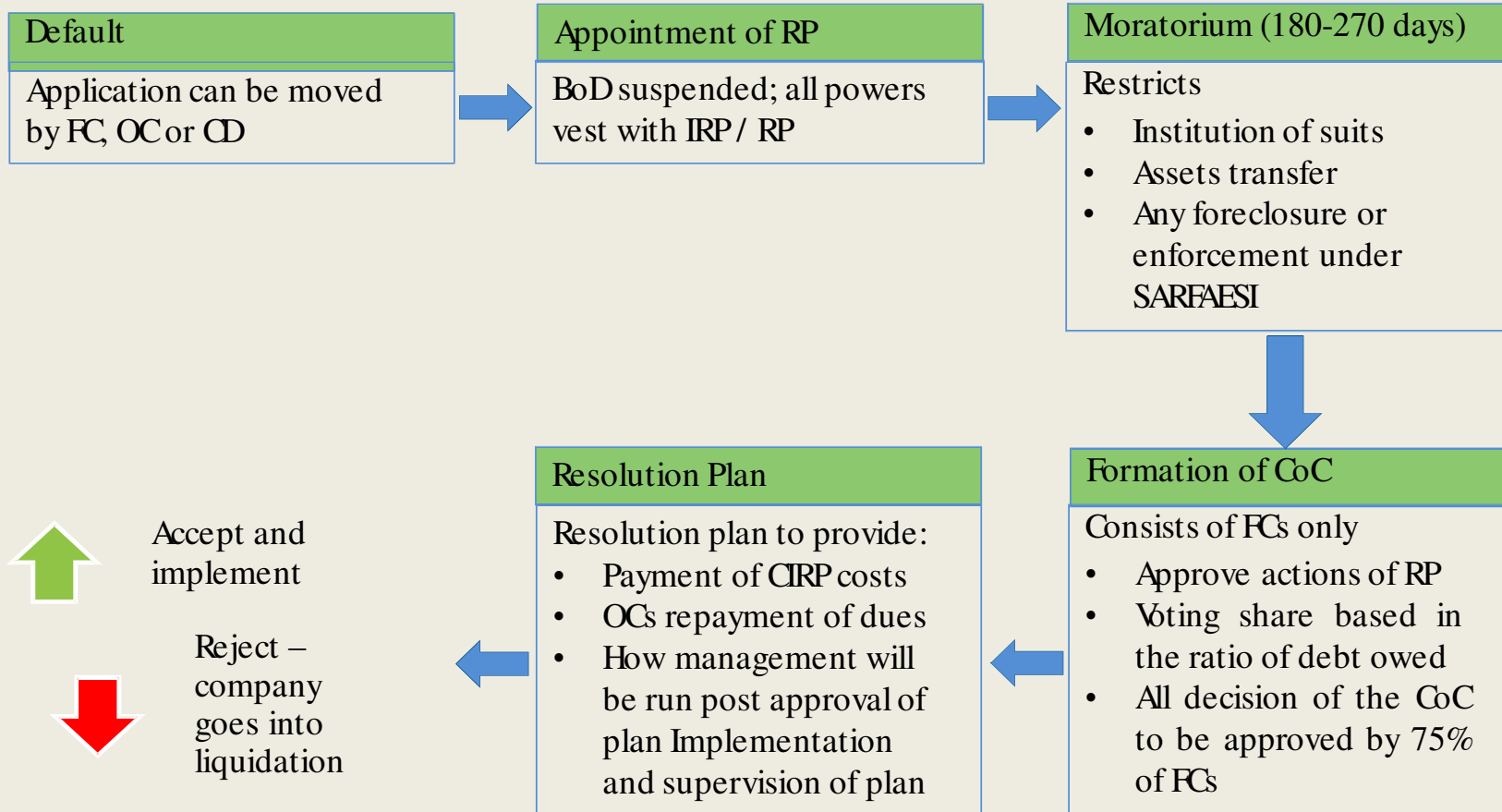
Application u/s 10
in Form 6

ADMISSION OF THE APPLICATION

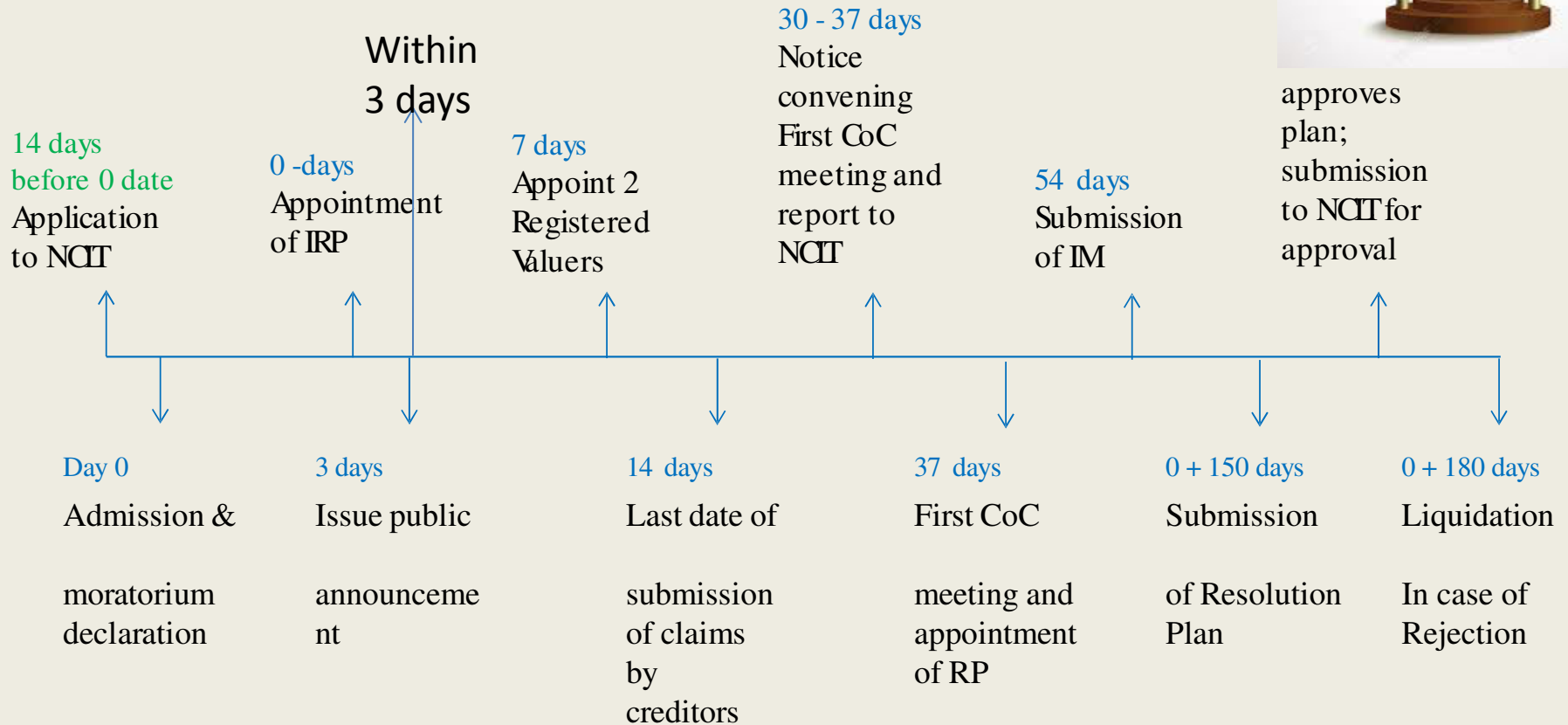
- The AA, within 14 days of receipt of application, by an order –
 - (a) Admit the application,
 - (b) Reject the application.
- CIRP shall be completed within a period of 180 days from the date of admission, maximum one extension of 90 days



Corporate Insolvency Resolution Process



Timelines for CIRP



MORATORIUM (Sec 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 & I. 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 Sec 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.
-

PUBLIC ANNOUNCEMENT



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

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

One in English language

One in Regional language newspaper

Vide circulation at the location of the registered office and principal office.

- The applicant shall bear the expenses of Public announcement which may be reimbursed by the committee to the extent it ratifies them.

(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
"M/S ABCD "

	RELEVANT PARTICULARS	
1.	NAME OF CORPORATE DEBTOR	ABCD
2.	DATE OF INCORPORATION OF CORPORATE DEBTOR	17-07-1987
3.	AUTHORITY UNDER WHICH CORPORATE	REGISTRAR OF COMPANIES, MUMBAI
4.	CORPORATE IDENTITY NUMBER OF CORPORATE DEBTOR	CIN: L27106GA1987PLC000764
5.	ADDRESS OF THE REGISTERED OFFICE AND PRINCIPAL OFFICE (IF ANY) OF CORPORATE DEBTOR	ABCD M G Road , Bhyander Maharashtra
6.	INSOLVENCY COMMENCEMENT DATE RESPECT OF CORPORATE DEBTOR	20/03/2017
7.	ESTIMATED DATE OF CLOSURE OF	16/09/2017
8.	NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE INTERIM RESOLUTION PROFESSIONAL	NAME: XYZ ADDRESS: Neelkanth Business park, Nathani Road, Opp. Vidyavihar Rly. Stn. Vidyavihar (w), Mumbai -400086 EMAIL: abcd@gmail.com REG NO.: IBBI/IPA-001/IP-P00008/2016-17/10027
9.	LAST DATE OF SUBMISSION OF CLAIMS	22/04/2017

Notice is hereby given that the Hon'ble National Company Law Tribunal, Mumbai Bench has ordered the commencement of a corporate insolvency resolution process (CIRP) against ABCD LIMITED on 20/03/2017

The Creditors of ABCD LIMITED are hereby called upon to submit a proof of their claims on or before 22/04/2017 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. The operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means.

The claims may be submitted in the Scheduled Forms B,C,D and E in terms of Regulations 7 , 8 and 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the Operational Creditors, Financial Creditors, Workmen or Employees and Authorized representative of workmen and employees respectively as the case may be. Submission of false or misleading proofs of claim shall attract penalties.

PLACE : MUMBAI
Date : 08/04/2017

Sd/-
(Pravin R. Navandar)
Interim Resolution Professional

Appointment of registered Valuers (Regulation 27)

The IRP within 7 days of his appointment, appoint 2 registered valuers to determine the **liquidation value** of the corporate debtor in accordance with regulation 35

- Regulation 35

Liquidation Value is the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were liquidated on the commencement date.



The average of the closest two estimates

shall be considered the liquidation value.

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

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.

- **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

- 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.

Sample letter

Dear Sir,

Further please clarify and submit supporting documents on the following points to enable us to verify, admit and classify your claim as secured or unsecured:

Whether your claim is secured or unsecured? If secured then legal documents to support the same.

If secured, what are the Assets you hold as security?

What is the quantum of security in physical terms and value as on, date of commencement of corporate insolvency process? Also provide relevant documents to support the same.

Have you registered charges under companies Act, with ROC, if so, please provide the relevant documents? If not registered please let us know the reasons for the same.

Any other information or documents to support your claim.

Please provide the above called for information as early as possible.

How long your role as IRP / RP

- IRP - 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.

COMMITTEE OF CREDITORS

- 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 COMMITTEE

- 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 24hours**

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.

Two New Hi tech

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

- Following 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

(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

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

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 debtor as going concern in accordance with Part – II.

Resolution Applicant - News

Sajjan Jindal-controlled JSW Steel is in discussion with Piramal Enterprises for a partnership that could result in a joint bidding of assets currently going through the insolvency process.

According to the contours of the arrangement, Piramal Enterprises would provide the funding and JSW Steel the management to the assets once they come up for bidding.

JSW Steel is interested in bidding for stressed assets in the steel sector. Jindal's son, Parth Jindal, recently said in Kolkata, "We are very keen on Bhushan Steel and Monnet Ispat. At the right price, even Essar would be attractive."

Ajay Piramal, chairman, Piramal Enterprises, had told Business Standard earlier this week that besides the joint venture with Bain Capital Credit India Investments for the asset reconstruction business, the company would get into a strategic partnership with other industry experts.

Resolution Plan Regulation 37-39



- A Resolution Applicant may submit Resolution Plan to Resolution Professional. (30 days before the expiry of maximum period)
- The R P 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 – Mandatory contents

- **A RP must 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 Contd.

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;*

CIRP Regulations - RP

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.*

Final Outcome of CIRP

- If the AA is satisfied that the R.Plan as approved by COC meeting the requirements as ... **IT SHALL BY ORDER APPROVE THE RP.**
- **IT SHALL BE BINDING ON THE CD AND ITS EMPLOYEES, MEMBERS, CREDITORS, GUARANTORS AND OTHER STAKEHOLDERS INVOLVED IN THE RP.**

Resolution Plan Accepted

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**

Liquidation

- Where the AA :
 - Expiry of 180 or 270 days.
 - Rejects the resolution Plan
 - Pass an order requiring the Corporate Debtor to be liquidated

The Hyderabad Bench of the NCLT has, orally pronounced the first liquidation order under the Insolvency and Bankruptcy Code, 2016. **VNR Infrastructures Ltd.,**

Some Practical Tips

If Appointed as IRP

- Read the Code and Regulation – 3 times minimum and keep on referring.
- Train your self and your assistant, staff and peons too.
- Do Hands Free Driving.
- RP and RP initially will take 70-110 % of your time.
- Delegate your other normal Practice to partner/s
- Take assistance / help / collaboration for other Professionals - Lawyers / CS etc. Out source if reqd.
- Keep your Travel baggage ready with all accessories
- Maintain working papers neatly filed.
- Its a challenging and satisfying JOB.
- **TAKE PART 50% FEES AND COST IN ADVANCE**

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.

Liquidation Process

- Liquidation Order
- Appointment of Liquidator
- Power and Duties
- Public Notice & Claim verification
- Liquidation Estate
- Reporting
- Investigation of Preceding 12/24 months transactions.
- Distribution of Assets
- Secured Creditors Option
- Liquidator fee

Liquidation Order – Sec 33

- If the NCLT does not receive RP within :
 - 180/270 days in case of normal CIRP
 - 90/135 days in case of Fast Track
- If the NCLT rejects the Resolution Plan for non-compliance of requirements
- If the RP, before confirmation of Resolution Plan, intimates the NCLT decision of the CoC to liquidate the company
- If the Resolution Plan is not properly implemented by Corporate Debtor, any aggrieved person shall apply to NCLT for liquidation

Consequence of Liquidation Order

- Issuance of Public Announcement stating that CD is in liquidation
- Order shall be sent to authority where CD is registered
- No suit or other legal proceeding shall be instituted against CD
- No suit shall be instituted on behalf of CD without prior NCLT approval
- Liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of CD unless business is continued for limited period during liquidation process by Liquidator
- All powers of BOD, KMP shall cease and shall be vested in the Liquidator

Appointment of Liquidator

If NCLT passes Liquidation Order

- RP appointed for CIRP shall act as Liquidator unless:
 - replaced by NCLT if the Resolution Plan was rejected for non-compliance of Code
 - IBBI recommends the replacement for reasons to be recorded in writing
- Personnel of CD shall extend all assistance and co-operation to Liquidator
- Liquidator may make application to NCLT for a direction in case of non-co- operation by any, present or past, officer, auditor, employee or promoter of CD – even IRP, RP and previous liquidator is covered under the provision

Powers & Duties of Liquidator (1/2)

- To verify claims of all the creditors
- To take into his custody or control, evaluate and measure all the assets, property, effects and actionable claims of the CD
- To carry out the business of CD for its beneficial liquidation if he considers necessary
- **To sell movable and immovable assets of CD by public auction or private contract an distribute proceeds as per provisions of the Code**
- To obtain any professional assistance to discharge his duties, obligations & responsibilities provided such professional is not a relative of Liquidator or related party of CD or has served as auditor to CD in 5 years preceding the Liquidation Commencement date
- To investigate financial affairs to determine undervalued or preferential transactions
- The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds

Powers & Duties of Liquidator (1/2)

- provided that any such consultation shall not be binding on the liquidator
 - provided further that records of such consultation shall be made available to other stakeholders not so consulted
 - Liquidator to maintain particulars of any consultation as specified in Form A
-
- Liquidator has power to access information from any information system for admission and proof of claims and identification of liquidation estate assets
 - Liquidator shall provide financial information, as may be specified, within 7 days from the date of request to any creditor
 - To file various reports with the NCLT on the progress of the liquidation proceedings

Public Notice

- Public Announcement shall be made in Form B within 5 days of appointment
- Claims to be submitted as on Liquidation Commencement Date
- Claims to be submitted within 30 days from Liquidation Commencement Date

Claims

- Claims shall include interest, if any, as on Liquidation Commencement Date.
- All claims shall be submitted with an affidavit.
- Creditor **may WITHDRAW** or vary his claim within 14 days of its submission.
- Claims to be verified **within 30 days** from last date of receipt of claims.

Liquidation Estate - Assets Included

Liquidation Estate is held by Liquidator as fiduciary for the benefit of creditors

Over which CD has ownership rights

In or not in possession of CD including but not limited to encumbered assets

Tangible assets, whether movable or immovable

Intangible and Contractual Rights

Subject to the determination of ownership by the court or authority

Any assets or their value recovered through proceedings for avoidance of transactions

Any asset of the CD in respect of which a secured creditor has relinquished security interest

Any other property belonging to or vested in the CD at the Insolvency commencement date

All proceeds of liquidation as and when they are realised

Liquidation Estate - Assets Excluded

Assets in possession of CD but owned by a 3rd party – assets held in trust, bailment contracts, Provident Fund, Pension Fund and Gratuity Fund; contracts for use of assets and not transfer of title, etc.

Assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions

Personal assets of any shareholder or partner of a CD, provided the assets are not held under avoidance transactions

Assets of any Indian or foreign subsidiary of CD

Any other assets as may be specified by the Board including assets subject to setoff on account of mutual dealings between CD and any creditor

Secured Creditors in Liquidation Process Sec 52

Secured Creditor may opt to:

- Relinquish security interest in Liquidation Estate in favour of Liquidator

- Realise its security interest on its own

On opting to realise Securities on own

- Identify the asset to be realised, inform the liquidator and seek permission
- Can enforce, realise, settle, compromise or deal with assets in compliance with law applicable to the assets enforced and to the secured creditor
- Apply to NCLT in case of any resistance to enforce security and seek relief
- Excess proceeds from sale of assets shall form part of Liquidation Estate
- Insolvency Resolution Costs due by secured creditors shall be form part of Liquidation Estate
- Unpaid debts of secured creditors shall be paid as per the waterfall mechanism

Distribution of Assets – Sec 53 defines order of priority

Insolvency Resolution Process Costs and Liquidation Costs

Workmen dues up to 24 months **AND** Debts owed to Secured Creditors who have relinquished Security

Employee Dues up to 12 months

Financial Debts owed to Unsecured Creditors

Government Dues (up to 24 months) **AND** unpaid debts of Secured Creditors following enforcement of security

Any remaining Debts and Dues

Preference Shareholders

Equity Shareholders

Contractual arrangements between recipients with equal ranking shall be disregarded, if disrupting the order of priority.

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Liquidator fees and Remuneration

- Liquidator's fee will be decided by CoC before liquidation order is passed:
- In all other cases, fee shall be as prescribed the Code as amount of % realised net of other liquidation costs and of the amount distributed
- Liquidator entitled to receive only 50% on realisation and balance on distribution

Amount of Realisation / Distribution (In Rupees)	Percentage of fee on the amount realised/distributed			
	In First six months	in next six months	in next one year	thereafter
Amount of Realisation (exclusive of liquidation costs)				
On the First 1 crore	5.00	3.75	2.50	1.88
On the next 9 crores	3.75	2.80	1.88	1.41
On the next 40 crores	2.50	1.88	1.25	0.94
On the next 50 crores	1.25	0.94	0.68	0.51
On further Sum Realised	0.25	0.19	0.13	0.10
Amount Distributed to stakeholders				
On the First 1 crore	2.50	1.88	1.25	0.94
On the next 9 crores	1.88	1.40	0.94	0.71
On the next 40 crores	1.25	0.94	0.63	0.47
On the next 50 crores	0.63	0.48	0.34	0.25
On further Sum Realised	0.13	0.10	0.06	0.05

Dissolution of Corporate Debtor

- Liquidator shall make an application to NCLT for:
 - Dissolution; if assets of CD are completely liquidated
 - Early dissolution – if realisable properties are insufficient to cover liquidation cost AND affairs do not require any further investigation
- Liquidator shall file Final report
 - Giving an account of liquidation
 - How liquidation has been conducted
 - How assets have been liquidated
 - Explain with reasons if liquidation costs exceeds estimate provided in Preliminary Report

Copy of Dissolution order shall be sent within 7 days to authority where Corporate Debtor is Registered.

Voluntary Liquidation Process

Corporate Persons

- Regulation - IBBI(Voluntary Liquidation Process) Regulation, 2017
- As per Reg 2(1)(c) “Liquidation Commencement Date” means the date on which the proceeding for Voluntary liquidation commences as per section 59(5) and Regulation 3(4)

Initiation of Voluntary Liquidation

- Pre- Condition
 - No default
 - Not initiated to defraud any person
- Requirements
 - Declaration
 - Audited financial Statement 2 yrs
 - Valuation
- Within 4 weeks of declaration, a special resolution is passed by the contributories for liquidating and appointing Insolvency Professional (I P)
- Approval of Creditors (If debt) Representing 2/3 in value within 7 days.
- Subject to the Creditors' Approval, the voluntary liquidation proceeding shall be deemed to have commenced from the date of passing of the Contributories' Resolution. “Liquidation Commencement Date” (LCD).

Few Points

- On and from LCD, the Corporate person shall **Cease to carry on its business**, except as far as required for the beneficial winding up of its business.
- Corporate person shall **continue to exist until dissolved**.
- Liquidator to prepare a **list of Stakeholders**, basis of claims admitted.
- Submit a **Preliminary Report** within **45** days from LCD.
- Shall **open a bank account** in the name of the Corporate Person followed by the words “ In Voluntary Liquidation”
- Payment above Rs. 5,000 by cheque or online.
- Distribute proceeds within 6 months.
- Endeavor to wind up within 12 months.
- Shall prepare & Send the Final Report on completion.

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 anything which is done or intended to be done in good faith under this code or the rules or regulation made thereunder.



THANK YOU

QUESTIONS ???

Pravin R. Navandar