

Study Course on How to Prepare for Insolvency & Bankruptcy Code Examination

Insolvency & Bankruptcy Code – (CIRP)

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CA Apoorva Bookseller
Insolvency Professional

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INSOLVENCY AND BANKRUPTCY CODE



Code got enacted on **28th May, 2016** and came into effect
from **15th December, 2016**

Introducing New Code



- The focus from **“Debtors in possession”** to **“Creditors in Control”**
- Time Bound Process by defining Time line and under the new jurisdiction of National Company Law Tribunal (NCLT) and Debt Recovery Tribunal (DRT)
- Access to information
- **Maximization of value of assets of such persons;**
- Consolidating and amending the existing laws relating to Insolvency and Bankruptcy to reduce ambiguity
- **Safeguard interest of all the stakeholders including alteration in the order of priority of payment of Government dues - New Waterfall Mechanism**
- Promote entrepreneurship

Acts Repealed / Amended by the Code

➤ Acts Repealed by the Code

- The Presidency Towns Insolvency Act, 1909 (Section 243)
- The Provincial Insolvency Act, 1920 (Section 243)
- The Sick Industrial Companies (Special Provisions) Act, 1985* (Section 252)

➤ Acts Amended by the Code

Acts	Section of the Code	Schedule
The Indian Partnership Act, 1932	245	I
The Central Excise Act, 1944	246	II
The Income Tax Act, 1961	247	III
The Customs Act, 1962	248	IV
The Recovery of Debts due to Banks and Financial Institutions Act, 1993	249	V
The Finance Act, 1994	250	VI
The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	251	VII
The Sick Industrial Companies (Special Provisions) Repeal Act, 2003	252	VIII
The Payment and Settlement Systems Act, 2007	253	IX
The Limited Liability Partnership Firm Act, 2008	254	X
The Companies Act, 2013	255	XI

Framework of the Code

In entirety, the Code has 255 sections which are divided into 5 parts as given below

Part-I Preliminary and
Definitions **Section 1 - 3**

Part-II
Insolvency Resolution
and Liquidation for
Corporate Debtors
7 Chapters
Section 4 - 77

Part-III Insolvency
Resolution and
bankruptcy for
Individuals and
Partnership Firms
7 Chapters
Section 78 - 187

Part-IV Regulation of
Insolvency Professionals,
Agencies and
Information Utilities
7 Chapters
Section 188 - 223

Part-V
Miscellaneous
(enables amendments
in other statutes such as
Companies Act, 2013)
Section 224 - 255
11 Schedules

* Part – III of this Code shall not extend to the State of Jammu and Kashmir

Framework of the Rules and Regulations

Rules and Regulations governing Corporate Insolvency and Liquidation Process

- Insolvency and Bankruptcy Board of India (**Insolvency Resolution Process For Corporate Persons**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Fast Track Insolvency Resolution Process for Corporate Persons**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Liquidation Process**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Voluntary Liquidation Process**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Application to Adjudicating Authority**) Rules, 2016

Rules and Regulations governing Information Utilities

- Insolvency and Bankruptcy Board of India (**Information Utilities**) Regulations, 2017

Framework of the Rules and Regulations

Rules and Regulations governing Board, Professionals and Professional Agencies

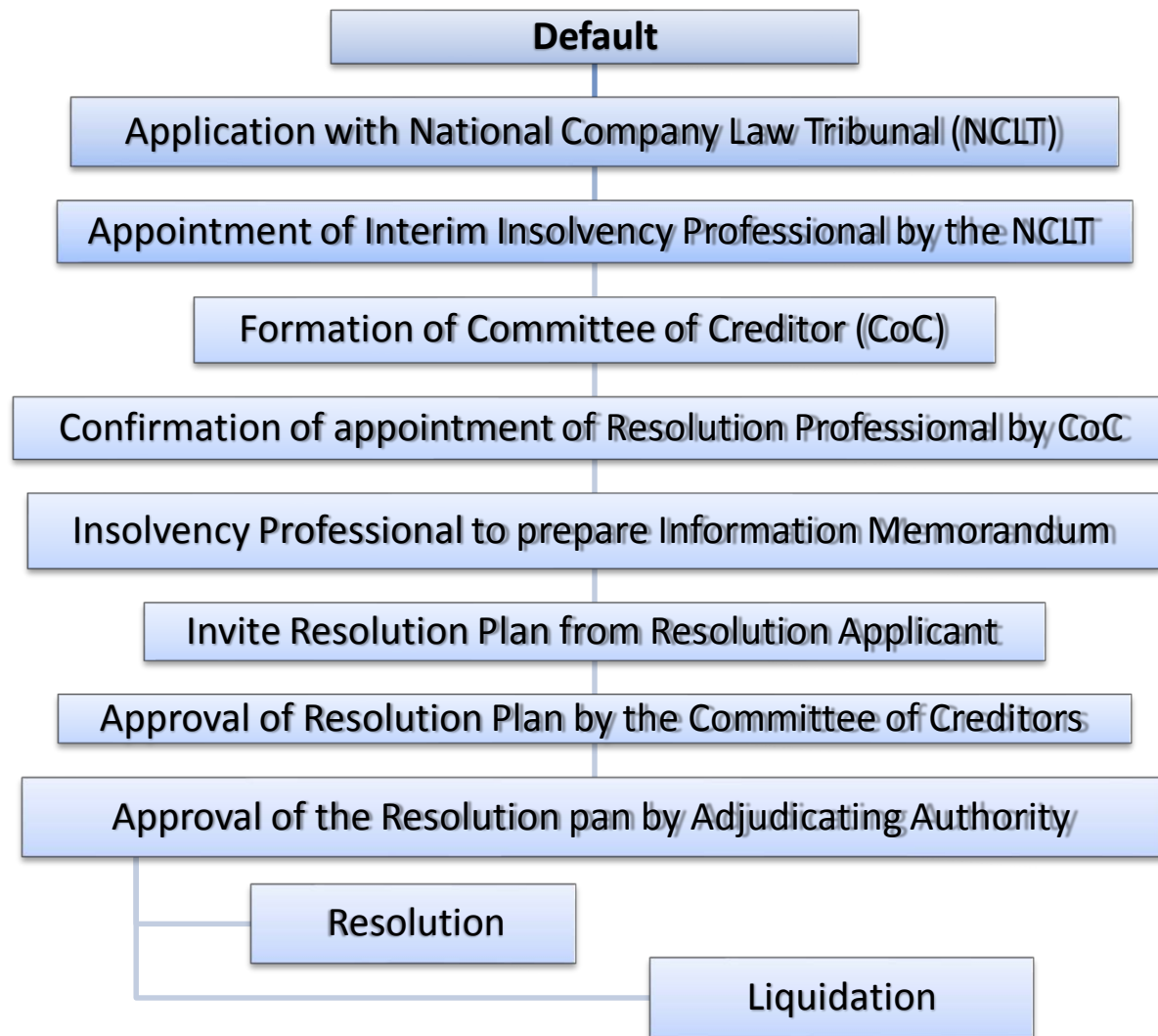
- Insolvency and Bankruptcy Board of India (**Insolvency Professional Agencies**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Insolvency Professionals**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Model Bye Laws and Governing Board of Insolvency Professional Agencies**) Regulations, 2016
- Insolvency and Bankruptcy Board of India (**Advisory Committee**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Engagement of Research Associates and Consultants**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Procedure for Governing Board Meetings**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Grievance and Complaint Handling Procedure**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Inspection and Investigation**) Regulations, 2017
- Insolvency and Bankruptcy Board of India (**Salary, Allowances and other terms and conditions of Service of Chairperson and Members**) Rules, 2016

Corporate Insolvency Resolution Process – CIRP

[Applicable to Corporate Debtors]

Process at a Glance

(Timebound process of 180 days + 90 Days / 90 days + 45 days)



Applicability

Section 4

Part II shall apply to the matters relating to the insolvency and liquidation of **CORPORATE DEBTORS** where the minimum amount of **DEFAULT** is Rs. 1 Lakh



Section 3(8)

“Corporate Debtors” means a **corporate person** who owes a debt to any person;

Section 3(7)

“Corporate Persons” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a Limited Liability Partnership Act, 2008 (6 of 2009) 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(12)

“**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;

Insolvency



What is Insolvency?

Insolvency is the state of being **unable to pay the money owed**, by a person or company, on time; those in a state of insolvency are said to be *insolvent*.

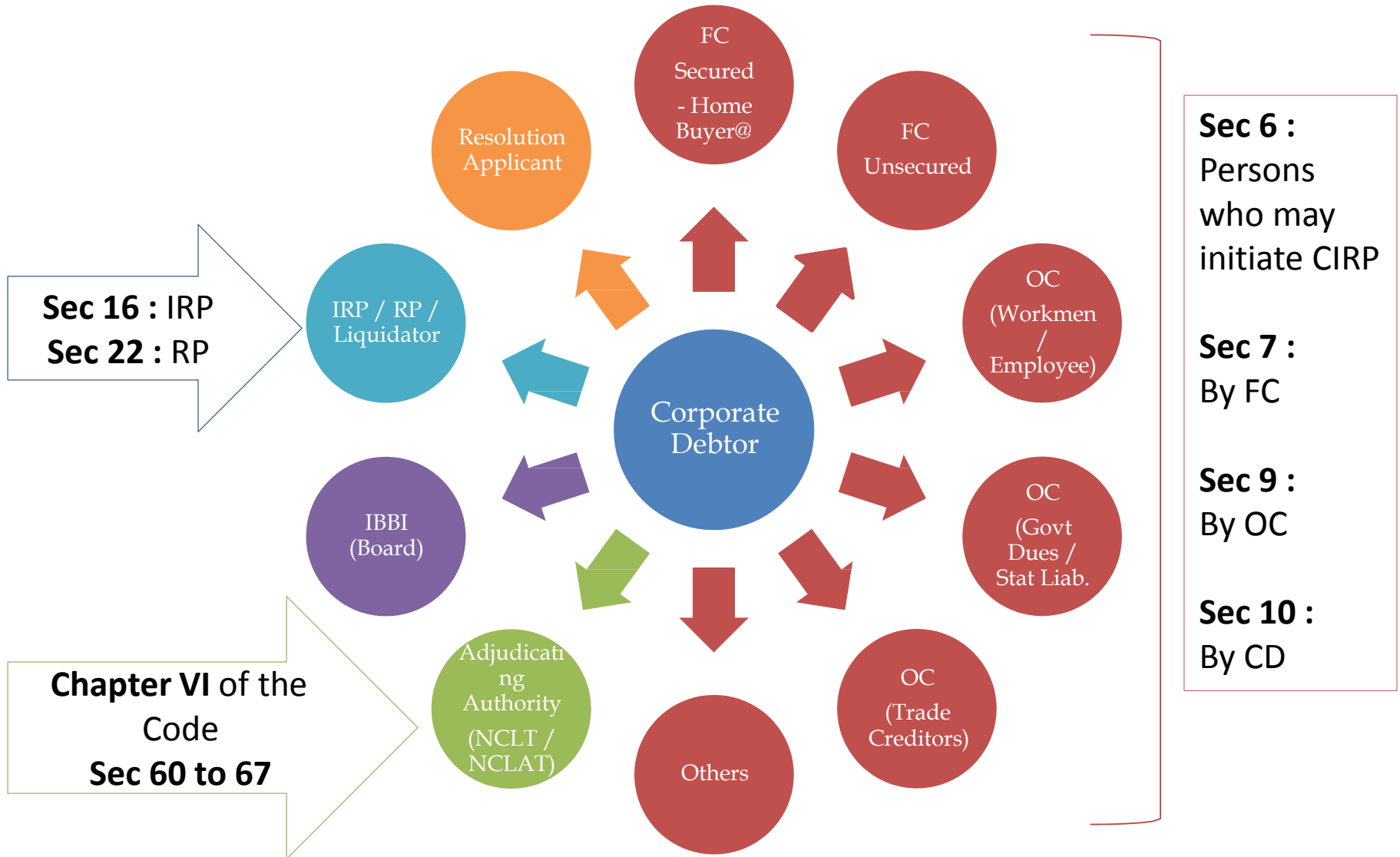
Which are the forms of Insolvency?

Cashflow Insolvency and Balance sheet Insolvency

Structure of CIRP

Headings	Corporate Insolvency Resolution Process [Chapter II]	Fast Track Corporate Insolvency Resolution Process [Chapter IV]
Sections	6 to 32	55 to 58
Regulations	1 to 40 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016	1 to 39 of Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process of Corporate Persons) Regulations, 2017
Applicability Criteria	The minimum amount of default is Rs. 1 Lakh Provided the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than Rs. 1 Crores	An Application may be made in respect of following Corporate Debtors; namely- <ul style="list-style-type: none"> - A Small Company OR - A Start up (Other than Partnership Firm) or - An unlisted company with total assets not exceeding Rs. 1 Crores

Important Players – Insolvency Process



Initiation of CIRP [Section 6 -10]

Section 5(11)

“**Initiation Date**” means the date on which a financial creditors (FC), corporate debtor (CD) or operational creditors (OC) as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process.

Section 6

Where any corporate debtor commits a default, **a financial creditor, an operational creditor or the corporate debtor itself** may initiate CIRP in respect of such corporate debtor in the manner as provided under Chapter II.

Adjudicating Authority shall **within 14 days** of the receipt of the application ascertain the existence of a default and if satisfied it may admit such application or may reject such application.

Before rejecting the application, Adjudicating Authority shall give a notice to the applicant to rectify the defect in the application **within 7 days** of receipt of such notice.

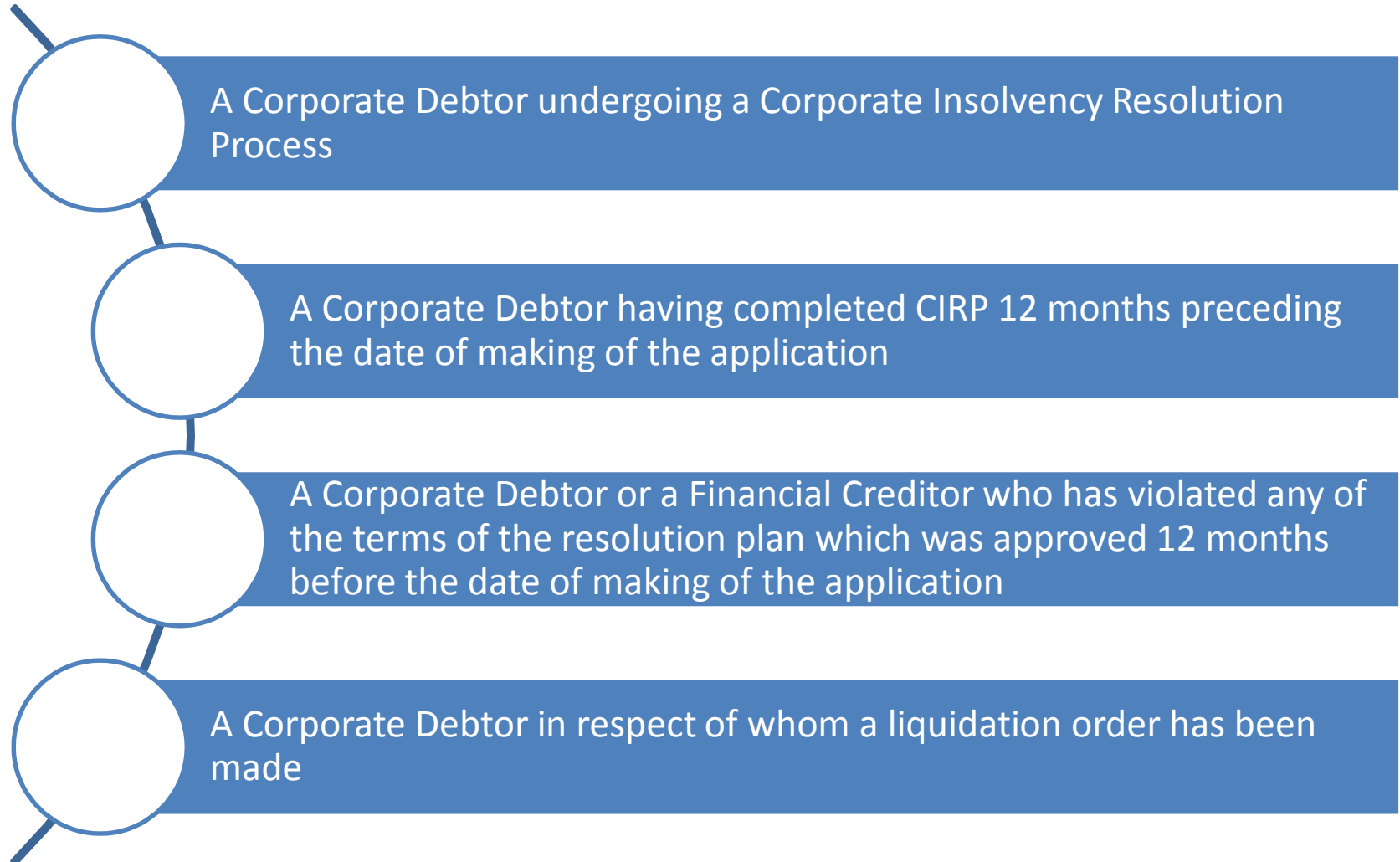
The Adjudicating Authority shall communicate the order **within 7 days** of admission or rejection of such application, as the case may be.

Application to Adjudicating Authority for initiating CIRP

Application to be made as prescribed in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as under –

Purpose	Form
Application by FINANCIAL CREDITOR(S) to initiate corporate insolvency resolution process under the code (Section 7)	Form 1
Written communication by proposed INTERIM RESOLUTION PROFESSIONAL	Form 2
Demand notice/invoice demanding payment in respect of UNPAID OPERATIONAL DEBT due from corporate debtor under the Code (Section 8)	Form 3
Form of notice with which invoice demanding payment is to be attached (by OPERATIONAL CREDITOR) (Section 8)	Form 4
Application by OPERATIONAL CREDITOR to initiate corporate insolvency resolution process under the code (Section 9)	Form 5
Application by CORPORATE APPLICANT to initiate corporate insolvency resolution process under the code (Section 10)	Form 6


Persons not entitled to make application – Sec 11



Eligibility of Resolution Professional [Reg 3]

- Resolution Professional and all partners and directors of the Insolvency Professional Entity of which he/she is a partner or director are **independent** of the corporate debtor.
- Criteria for Independency -
 - Is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013 where the Corporate Debtor is a company.
 - Is not a related party of the corporate debtor or
 - Is not an employee or proprietor or partner ***[in last 3 financial year]***
 - of a firm of auditors or a CS in practice or Cost auditors of the Corporate Debtor
 - of a legal or a consulting firm, that has or had any transaction with the Corporate Debtor amounting to ***10% or more of the gross turnover of such firm***
- Shall make disclosure at the time of appointment
- Shall not continue as a resolution professional if represents any of the other stakeholders in the same CIRP.

Time Limit – Sec 12



CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process

If resolution passed at a CoC meeting by a vote of 75% of the voting share, Resolution Professional shall file an application to Adjudicating Authority for extension of time.

The Adjudicating Authority may extend the further period beyond **180 days** as it thinks fit, but shall not exceeding **90 days [Max 270 days]**

Any extension of the period of CIRP shall not be granted more than **Once**.

Moratorium – Sec 14

Purpose : To ensure to keep the Corporate debtor's asset together during CIRP and to ensure to keep as going concern while creditors take a view on resolution of default. Also to ensure that multiple proceedings are not taking place simultaneously. The Order declare moratorium for prohibiting all of the following -

The Institution of suits or continuation of pending suits or proceedings against the CD including executing of any judgement, decree or order in any court of law, tribunal, arbitral panel or other authority

Transferring, encumbering, alienating or disposing of by the CD 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 CD in respect of Property including any action under SARFAESI Act, 2002

The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD

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

Essential Goods or Services [Sec 14(2) r.w. Reg 32]



To the extent these are not a direct input to the output produced or supplied by the Corporate Debtor

Illustration : Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purpose, and not for generation of hydro-electricity.

Commencement of CIRP

Section 5(12)

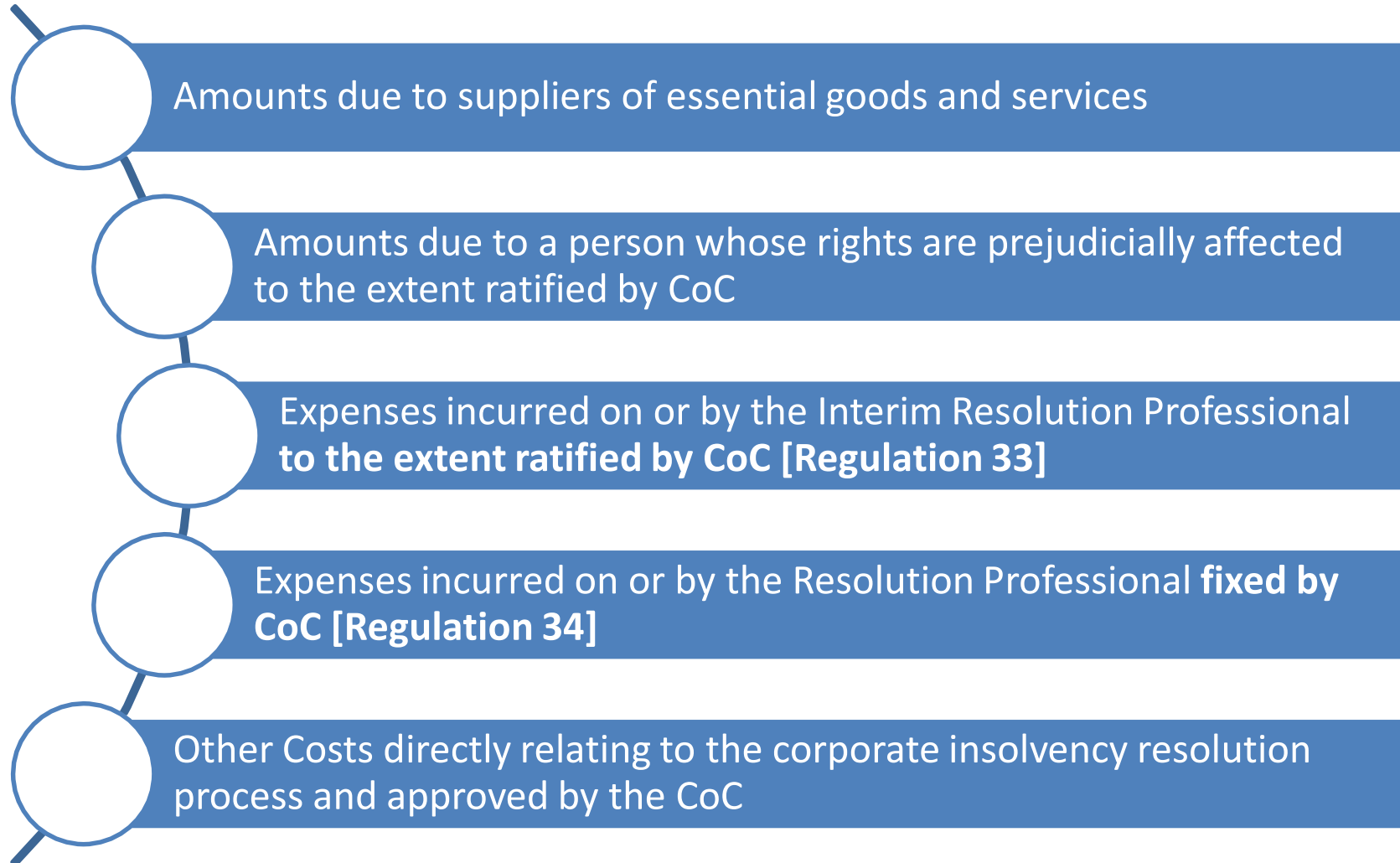
“Insolvency Commencement Date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under Section 7, 9 or Section 10, as the case may be –

On admission of an application for initiating corporate insolvency resolution process

- Appointment of Interim Resolution Professional for 30 days (On commencement or within 14 days of Commencement by Adjudicating Authority)
- Moratorium Announced
- Intimation to complete the CIRP within 180 days from the Commencement date



Insolvency Resolution Process Cost [r.w. Reg 31]



Roles and Responsibilities of Interim Resolution Professional

- To Monitor the assets and Manage the affairs of Corporate Debtor as a Going Concern
- To make **Public Announcement** for **inviting Claim** from Creditors
- To Collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor including
 - Business operations for **the past two years**
 - Financial and operational payments for **previous two years**
 - List of assets and liabilities as **on the initiation date** and
 - Such other matters as may be specified
- To Collect / Verify / determine and Collate all the Claims
- To Constitute **the Committee of Creditors**
- To hold **the first meeting of Committee of Creditors**
- To file information collected with the information utility, if necessary; and
- Take control of the assets over which the corporate debtor has ownership rights as recorded in the balance sheet or with the information utility or the depository of securities or any other registry that records the ownership of assets

Public Announcement [Sec 13, 15 and Reg 6]

Purpose	Form
Public Announcement	A



- a) Published within 3 days from the date of appointment of IRP
- b) Provide last date for submission of claim, which shall be 14 days from the date of appointment of IRP.



- To be published
- 1 English and 1 Regional language newspaper
 - At the location of registered office and principal office or any other location
 - Website of Corporate debtor
 - Website, if any, designated by IBBI



The applicant shall bear the expenses of the public announcement which may be reimbursed by the CoC to the extent it ratifies them.

These expenses shall not form part of Insolvency Resolution Process Costs.

Claims [Reg 7 – 15]

Purpose	Form
Written Consent to act as Authorised Representative	AB
Proof of claim by operational creditors except workmen and employees	B
Proof of claim by financial creditors	C
Submission of claim By Financial Creditors In A Class	CA
Proof of claim by a workman or an employee	D
Proof of claim submitted by authorised representative of workmen and employees	E
Proof of claim by creditors (other than financial creditors and operational creditors)	F

Claims [Reg 7 – 15]

Substantiation of Claims (Reg 10)

- IRP/RP may call for such evidence or clarification as he deem fit from a creditor for substantiating the whole or part of the claim

Cost of Proof (Reg 11)

- A creditor shall bear the cost of proving the debt due to him

Submission of proof of claims (Reg 12)

- On or before the last date mentioned in the Public Announcement
- If failed to submit within above timeline then may submit till approval of a resolution plan by the committee* (Refer time line)
- In case of financial creditor, it shall included in the committee from the date of admission of such claim provided such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

Claims [Reg 7 – 15]

Verification of Claim (Reg 13)

- IRP/RP shall verify within 7 days from the last date of the receipt of the claims and thereupon maintain the list of creditors.
- The list of Creditors shall be
 - Available for inspection by the persons who submitted proof of claim
 - Available for inspection by members, partners, directors and guarantors of Corporate Debtors
 - Displayed on website of Corporate debtor
 - Filed with Adjudicating Authority
 - Presented at the first meeting of the committee

Determination of amount of claim (Reg 14)

- IRP/RP shall make the best estimate of the amount of the claim based on the information available with him/her and revise the amount of claim admitted as soon as comes across additional information warranting such revision.

Debt in Foreign Currency (Reg 15)

- The claims determined in foreign currency shall be valued in INR at the “official exchange rate” [reference rate published by RBI or derived from such reference rate] as on the Insolvency Commencement Date.

Committee of Creditors [Sec 21 r.w. Reg 16-17]

Constitution of Committee of Creditors (CoC)

- Comprise of **all Financial Creditors**
- **Related Party shall not** have any right of representation, participation or voting in the a meeting of Committee of Creditors
- If there is **no Financial creditors then** Reg 16 provides that committee consists of
 - **18 largest operational creditors** by value
 - If **less than 18 Creditors** then include all such operational creditors
 - **1 representative** elected by all workmen other than those workmen included above and
 - **1 representative** elected by all employees other than those employees included in operational creditors

Voting Rights

- A member of the committee shall have voting rights **in proportion to** the debt due to such creditor to the total debt.

Time Line

- IRP shall file a report certifying constitution of the committee to the Adjudicating Authority **on or before expiry of 30 days** from the date of his appointment
- Shall convene the **1st meeting within 7 days** of filing the report.

Committee of Creditors – Different Scenarios

Where CD owes financial debts to two or more FC as part of consortium or arrangement

- Each FC shall be part of CoC and their voting share shall be determined on the basis of the financial debts owed to them.

Where any person is a FC as well as OC

- Such person shall be FC to the extent of the financial debt owed by the CD and shall be included in CoC with voting share proportionate to the extent of financial debts owed to such creditors.

Where OC has assigned or legally transferred any operational debt to a FC.

- The assignee or transferee shall be considered as an OC to the extent of such assignment or legal transfer.

Where terms of the financial debt extended as part of the Consortium arrangement or Syndicated facility or issued as Securities provided to single trustee or agent to act for all FC.

- Authorise the trustee or agent to act on his behalf
- Represent himself
- Appoint Insolvency Professional at his own cost to represent himself
- Exercise rights to vote to the extent of his voting rights

Do's and Don't of CoC meetings [Sec 24]

- All meetings of the CoC shall be **conducted by** Resolution Professional
- **Notice to be given to**
 - Members of CoC
 - Members of suspended Board of Directors or Partners of Corporate Persons, as the case may be;
 - Operational Creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.
- The directors, partners and one representative of Operational Creditors as referred above, **may attend but shall not have any right to vote** in such meetings.
- The absence of any such director, partner or representative **shall not invalidate proceedings of such meeting.**
- Any Creditor who is a member of CoC **may appoint Insolvency Professional other than the Resolution Professional** to represent such creditor in the meeting. The fees payable to such Insolvency Professional will be borne by such creditor.
- Each Creditor shall **vote in accordance with the voting share** assigned based on the financial debts owed to such creditor.
- RP shall determine the voting share to be assigned to each creditor

CoC meetings [Reg 18 to 26]

When to convene the meeting

- RP may convene the meeting as and when he considers necessary and
- shall convene if a request to that effect is made by members representing 33% of voting rights

Notice for the meeting

- Not less than 7 days notice in writing to every participants
- May be sent by hand delivery, or by Post
- In any event, be served by electronic means
- May reduce the notice period not less than 24 hours

Contents of notice

- Contain an agenda of the meeting
- State that a vote of the members shall not be taken at the meeting unless all members are present at such meeting
- The process and manner of voting by electronic means

Quorum of the meeting

- At least 33% of the voting rights are present either by person or by video conferencing or other audio and visual means
- May modify the percentage of voting rights required for quorum

CoC meetings [Reg 18 to 26]

Participation through Video Conferencing

- Shall provide an option to attend the meeting through video conferencing
- RP shall make necessary arrangement and to ensure uninterrupted and clear video or audio and visual connection
- To ensure no person other than the intended participants attends or has access to the proceedings of meeting through video conferencing or other audio and visual means
- Where a meeting is conducted through Video conferencing, the scheduled venue of the meeting as set forth in the notice convening the meeting which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Conduct of meeting

- RP shall act as the Chairperson of the meeting of the committee
- At the commencement of the meeting, RP shall take a roll call when every participants attending through video conferencing or other means shall state, for the record
- After the roll call, the RP shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete
- RP shall ensure that the requisite quorum is present throughout the meeting
- From commencement to conclusion of the meeting, no person other than participants shall be allowed without permission
- RP shall circulate the minutes of the meeting by electronic means **within 48 hours** of the said meeting.

Roles and Responsibilities of Resolution Professional

Sec 22 : Appointment of RP in 1st CoC meeting by a majority vote of not less than 75%

- To Monitor the assets and Manage the affairs of Corporate Debtor as a Going Concern
- To preserve and protect the assets of the corporate debtor including the continued business operations / records of the corporate debtors
- 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
- Raise Interim Finance subject to approval of CoC
- **To appoint two valuers**
- To appoint accountant, legal or other professionals in the manner as specified by Board
- To maintain an updated list of claims
- To convene and attend all meetings of CoC
- To prepare **information memorandum**
- To file application for **avoidance of transactions prejudicial to the business** or creditors
- **To invite prospective resolution applicants**, who fulfil such criteria as may be laid down
- To present all resolution plan at the meetings of CoC
- **To submit resolution plan approved by CoC to NCLT**
- To send copy of order of NCLT approving / rejecting resolution plan to participants and resolution applicants.

Approval of CoC for certain action [Sec 28]

- Raise any interim finance in excess of the amount as may be decided by CoC in their meeting
- Create any security interest over the assets of the CD
- Change the capital structure of CD including by way of issuance of additional securities, creating any new class of securities or buying back or redemption of issued securities
- Record any change in the ownership interest of the CD
- Give instructions to financial institutions maintaining accounts of CD for a debit transactions from any such accounts in excess of the amount as may be decided by the CoC in their meeting
- Undertake any related party transaction
- Amend any constitutional documents of the CD
- Delegate its authority to any other persons
- Dispose of or permit the disposal of shares of any shareholders of the corporate debtor or their nominees to the third parties
- Make any change in the management of the CD or its subsidiary
- Transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business
- Make changes in the appointment or terms of contract of such personnel / Statutory Auditors / Internal Auditors as specified by the CoC

Registered Valuers

Reg 27 : The Resolution Professional shall **within 7 days** of his appointment, appoint **2 registered valuers** to determine **the fair value and liquidation value** of the corporate debtor computed in accordance with internationally accepted valuation standards after physical verification of the inventory and fixed assets of the corporate debtor.

Following persons shall not be appointed as registered valuers namely –

- a) A relative of the resolution professional
- b) A related party of the corporate debtor
- c) An auditor of the corporate debtor at any time during the 5 years preceding the insolvency commencement date or
- d) A partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

Reg 35 : Fair value and liquidation value shall be determined –

- a) **2 valuers** shall submit their estimation of the values
- b) If in the opinion of RP, the values determined are **significantly different** then he may appoint third registered valuer who submit his/her estimation of values
- c) **The average of 2 closest estimates** shall be considered

Information Memorandum [Sec 29 r.w. Reg 36]

- The Resolution Professional has to prepare the Information Memorandum and submit within 2 weeks from the date of his appointment to the members of the CoC.

Purpose

- The Information Memorandum is the document which enables the resolution applicant to prepare a resolution plan
- Such information is envisaged to be prepared in order for the market participants (resolution applicants) to provide solutions for resolving the insolvency of the corporate debtor.
- The Resolution Professional is also required to provide access to all relevant information about the corporate debtor to the resolution applicant subject to the resolution applicant complying with eligibility criteria and certain restrictions relating to the confidentiality and compliance with law.



Information Memorandum [Sec 29 r.w. Reg 36]

Information Memorandum shall contain following details

- Asset and liabilities with such description, as on Commencement Date, as are generally necessary for ascertaining their values.
- Latest financial statements
- Audited financial statements for past two years and provisional financial statements for the current financial year made upto a date not earlier than 14 days from the date of the application;
- A list of creditors containing the information about name, the amounts claimed, amount admitted and security interest, if any, in respect of such claim
- Particulars of debt due from or to related parties
- Details of guarantee that have been given in relation to the debt of the CD by other persons, specifying which the guarantors is a related party
- Names and addresses of the members or partners holding at least 1% stake in CD along with the size of stake
- Details of all material litigation and an ongoing investigation or proceeding initiated by Government and Statutory Authorities
- Number of workers and employees and liabilities of CD towards them
- Other information which RP deems relevant to the committee

Invitation of Resolution Plan [Reg 36A]

Purpose	Form
Invitation For Expression of Interest <ul style="list-style-type: none">- On the website, if any of the CD and- On the website designated by IBBI	G

Time line

RP shall issue an invitation, including evaluation matrix to the prospective resolution applicants to submit the resolution plan **at least 30 days before** the last date of submission of resolution plan.

Where the invitation does not contain the evaluation matrix, then RP shall issue with the approval of CoC, the evaluation matrix to the prospective applicant **at least 15 days before** the last date for submission of resolution plan.

Norms for eligibility of resolution applicant as per Section 25(2)(h) of the Code and ineligibility of resolution applicant as per Section 29A to be provided alongwith other criteria as deem fit by Resolution Applicant along with the invitation for Expression of interest.

Persons not eligible to be resolution applicant [Sec 29A]

A person shall not be eligible to submit the resolution plan, if such person, or any other person acting jointly or in concert with such person –

- a) Is an undischarged insolvent
- b) Is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949 (10 of 1949)
- c) Has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949 (10 of 1949) and **at least a period of one year has lapsed** from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;

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

Persons not eligible to be resolution applicant [Sec 29A]

- d) Has been convicted for any offence punishable with imprisonment **for two years or more;**
- e) Is disqualified to act as a director under the Companies Act, 2013 (18 of 2013)
- f) Is prohibited by SEBI from trading in securities or accessing the securities markets;
- g) Has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- h) Has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this code;
- i) Has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

Persons not eligible to be resolution applicant [Sec 29A]

j) Has a connected person not eligible under clauses (a) to (i).

Explanation – For the purpose of this clause, the expression “connected person” means –

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

Provided that nothing in clause (iii) of this Explanation shall apply to –

- A schedule bank; or
- An asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); or
- An Alternative Investment Fund registered with the Securities and Exchange Board of India.

Transaction Prejudicial to Business

43

Preferential Transaction

45

Undervalued Transaction

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Extortionate Credit Transactions

66

Fraudulent Trading or wrongful trading

Preferential Transactions [Sec 43]

Where the liquidator or the resolution professional is of the opinion that the corporate debtor has at a “relevant time” **given a preference in such transactions** to any persons he shall apply to the Adjudicating Authority **for avoidance of** preferential transactions

Preference in transaction:

- a) There is a transfer of property or an interest of the corporate debtor
- b) For the benefit of a creditor on account of an antecedent financial debt or other liabilities
- c) Such transfer has the effect of putting such creditor in a beneficial position than in distribution of assets stated in section 53

Relevant Period:

Party related to Transaction	Relevant Period
Related party	2 years preceding the insolvency commencement date
Non related party	1 year preceding the insolvency commencement date

Undervalued Transactions [Sec 45]

If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) [*]¹ determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority **to declare such transactions as void and reverse** the effect of such transaction in accordance with this Chapter.

Undervalued transaction:

- a) makes a gift to a person **or**
- b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor and such transaction has not taken place in the ordinary course of business of the corporate debtor

Relevant Period:

Party related to Transaction	Relevant Period
Related party	2 years preceding the insolvency commencement date
Non related party	1 year preceding the insolvency commencement date

Extortionate Credit Transactions [Sec 50]

A transaction shall be considered extortionate under section 50(2) where the terms

- a) require the corporate debtor to make exorbitant payments in respect of the credit provided; or
- b) are unconscionable under the principles of law relating to contracts

Explanation : For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Relevant Time

Party related to Transaction	Relevant Period
Any Party	2 years preceding the insolvency commencement date

Fraudulent Transactions [Sec 66]

This section provides for certain orders that the adjudicating authority can pass if it is found that any person has **carried on the business of a Corporate Debtor with the intent to defraud its creditors or the creditors of another person (fraudulent Trading)**. Such persons can be directed to make contributions to the assets of the Corporate Debtor.

Subsection 2 provides that directors or partners of corporate debtors are personally liable if they fail to take reasonable steps to minimize the potential loss to the creditors when there is no possibility of avoiding the commencement of corporate insolvency resolution process. Such directors or partners may be liable to make contribution to the assets of the Corporate debtors on orders of the adjudicating authority.

The Resolution Professional has to submit to the CoC all resolution plan which comply with the requirements of the code and regulations made thereunder along with the details of transaction prejudicial to the business and the orders, if any, of the adjudicating authority in respect of such transactions.



Resolution Plan [Sec 30 r.w. Reg 37]

Purpose

The Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets, including but not limited to the following –

Business Structuring

- Transfer of all or part of the assets of CD to one or more persons;
- Sale of all or part of the assets whether subject to any security interest or not;
- The substantial acquisition of shares of the CD or the merger or consolidation of the CD with one or more persons

Debt Structuring

- Satisfaction or modification of any security interest
- Curing or waiving of any breach of the terms of any debt due from the corporate debtor
- Reduction in the amount payable to the creditors
- Extension of a maturity date or a change in interest rate or other terms of any debt due from the CD

Resolution Plan [Sec 30 r.w. Reg 37]

Trade Mix and Technology Change

- Change in portfolio of goods or services produced or rendered by CD
- Change in Technology used by CD

Government Approvals

- Obtaining necessary approvals from Central and State Governments and other Authorities

In nutshell,

The plan talks about

- a) Management and Control
- b) Source and Application of Funds
- c) Term of the plan and its implementation schedule
- d) Adequate means for supervising its implementation

Mandatory Contents in Resolution Plan [Reg 38]

- a) Resolution Plan shall identify the specific sources of funds that will be used to pay –
- ❖ Insolvency Resolution Process Cost
 - ❖ Liquidation value due to Operational Creditors and provide for such payment in priority to any financial creditors which shall in any event be made before expiry of 30 days after the approval of a resolution plan by 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.
- b) A resolution plan shall include a statement as to how it has dealt with the interest of all stakeholders, including financial creditors and operational creditors, of the corporate debtor
- c) A Plan shall provide –
- ❖ The Terms of the plan and its implementation
 - ❖ The management and control of the business of the corporate debtor during its term; and
 - ❖ Adequate means for supervising its implementations

Mandatory Contents in Resolution Plan [Reg 38]

- d) A plan shall contain details of resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.
- e) Details include – identity, conviction for any offences, if any, during **preceding 5 years**; pending criminal proceedings, disqualification under Companies Act, 2013 to act as a director, identification as a willful defaulter, if any, debarment from accessing to or trading in securities markets under any order or directions of SEBI and transactions if any, with the CD in **the preceding 2 years**.
- f) **“Connected Person”** means
- persons who are promoters or in the management or control of the resolution applicant;
 - persons who will be promoters or in management or control of the business the CD during the implementation of the resolution plan;
 - holding company, subsidiary company, associate company and related party of the persons referred above.

Time line – [Form H – Compliance Certificate]

Section / Regulation	Description of Activity	Norm	Timeline
Regulation 16(1)	Commencement of CIRP and appointment of IRP	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(c) and 12(1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)		T+97

Time line – [Form H – Compliance Certificate]

Section / Regulation	Description of Activity	Norm	Timeline
Section 21(6A) (b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1) / Regulation 19(1)	1 st Meeting of the CoC	Within 7 days of the constitution of the CoC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47

Time line – [Form H – Compliance Certificate]

Section / Regulation	Description of Activity	Norm	Timeline
Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
Section 12(A) / Regulation 30A	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115

Time line – [Form H – Compliance Certificate]

Section / Regulation	Description of Activity	Norm	Timeline
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54th day of commencement	T+54
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EoI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115

Time line – [Form H – Compliance Certificate]

Section / Regulation	Description of Activity	Norm	Timeline
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulations 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulations 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

Fast Track CIRP

Section 58

The Process for conducting CIRP under Chapter II shall apply to this chapter as the context may require.

Time Line

Instead of 180 Days – 90 days

Additional days instead of 90 days – 45 days.

Adjudicating Authority [Sec 60 – 62]

Headings	Corporate Persons
Adjudicating Authority	NCLT (Section 60)
Appeal from an order of AA	NCLAT (Section 61)
Time limit	Within 30 days + further extended by not more than 15 days
Appeal from an order of NCLAT/DRAT	Supreme Court (Section 62)
Time limit	Within 45 days + further extended by not more than 15 days

Reference Material

- Bare Act : Bharat / Taxmann Publication
- Case Laws : Refer <https://elearning.iiipicai.in/>

"Judicial Pronouncements under Insolvency and Bankruptcy Code, 2016" , Series 1" by Insolvency and Bankruptcy Laws Group under Corporate Laws & Corporate Governance Committee jointly with Indian Institute of Insolvency Professionals of ICAI
- Other Acts / FaQs : Refer <https://elearning.iiipicai.in/>
- Other Book Material : S.K.Pandab & Roshan Lohda / CA G. Sekhar and many more
- Prepare your own notes and references
- We have also come out with ***"Reference Guide – Insolvency and Bankruptcy Code of India"*** specially for existing and potential professionals



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If you still have any QUESTIONS

*Thank
you*



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