

# ANATOMY OF RESOLUTION PLAN

WESTERN INDIA REGIONAL COUNCIL OF - ICAI  
MERGER, ACQUISITIONS & BUSINESS  
RESTRUCTURING  
26<sup>TH</sup> & 27<sup>TH</sup> MAY, 2023

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# Preamble of IBC 2016

AN ACT TO CONSOLIDATE AND AMEND THE LAWS RELATING TO REORGANISATION AND **INSOLVENCY RESOLUTION** OF CORPORATE PERSONS, PARTNERSHIP FIRMS AND INDIVIDUALS IN A TIME BOUND MANNER FOR MAXIMISATION OF VALUE OF ASSETS OF SUCH PERSONS, TO PROMOTE ENTREPRENEURSHIP, AVAILABILITY OF CREDIT AND BALANCE THE INTERESTS OF ALL THE STAKEHOLDERS INCLUDING ALTERATION IN THE ORDER OF PRIORITY OF PAYMENT OF GOVERNMENT DUES AND TO ESTABLISH AN INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

## **SC on resolution – Arcelor Mittal ( R. F. Nariman ) ( 04.10.2018 )**

*We must not forget that the CD consists of several employees and **workmen whose daily bread is dependent on the outcome** of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.*

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*The period of time taken in litigation ought to be excluded.*

## SC – K.N Rajakumar vs V. Nagarajan (15.09.2021)

- It could thus be seen that one of the principal objects of the IBC is providing for revival of the CD and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, **liquidation being the last resort.**

# AN EXAMPLE – WHAT IT CAN DO ?



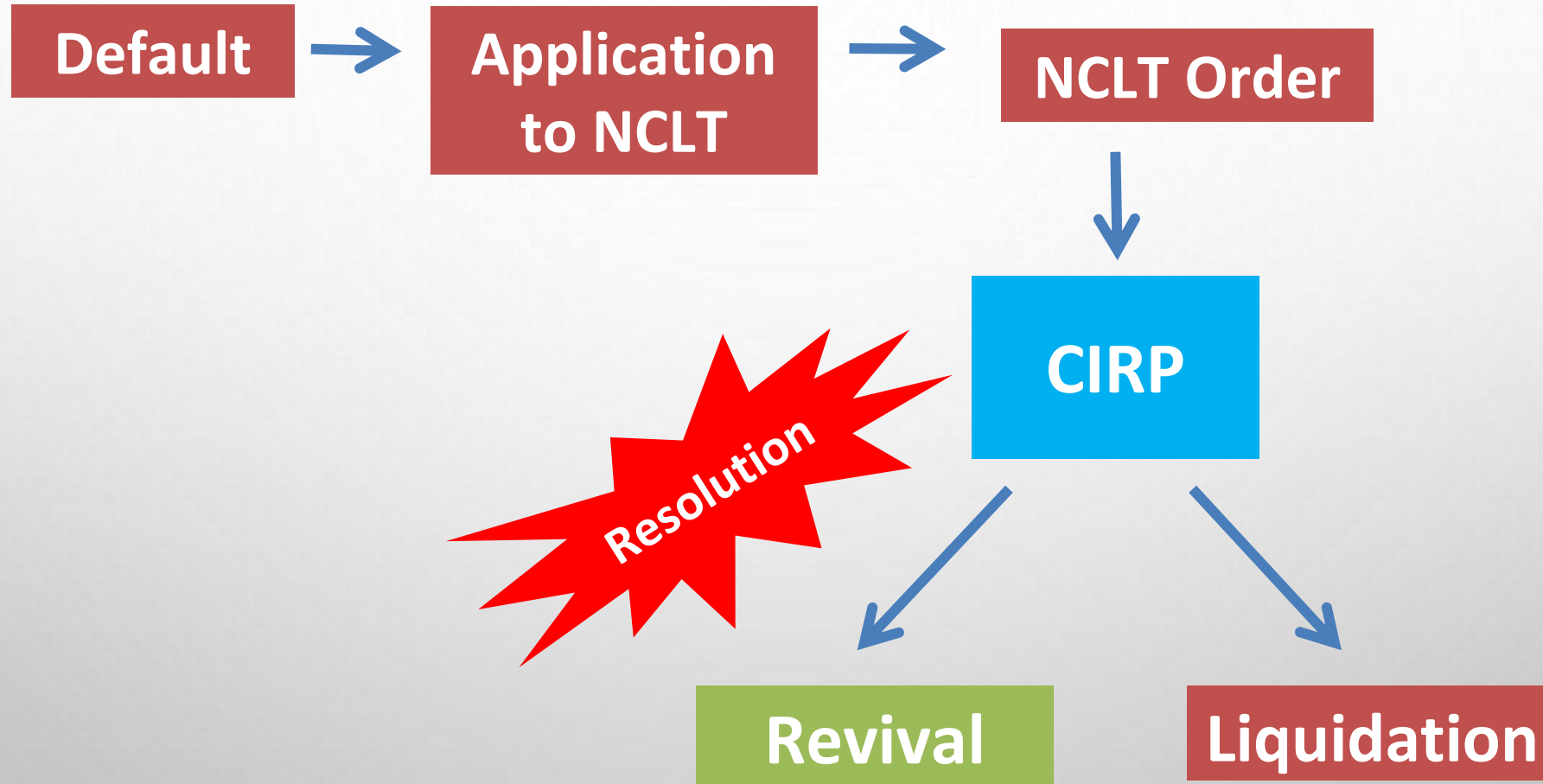
This can be through a  
Resolution Plan

**Phoenix Textile Mill  
once upon a time**

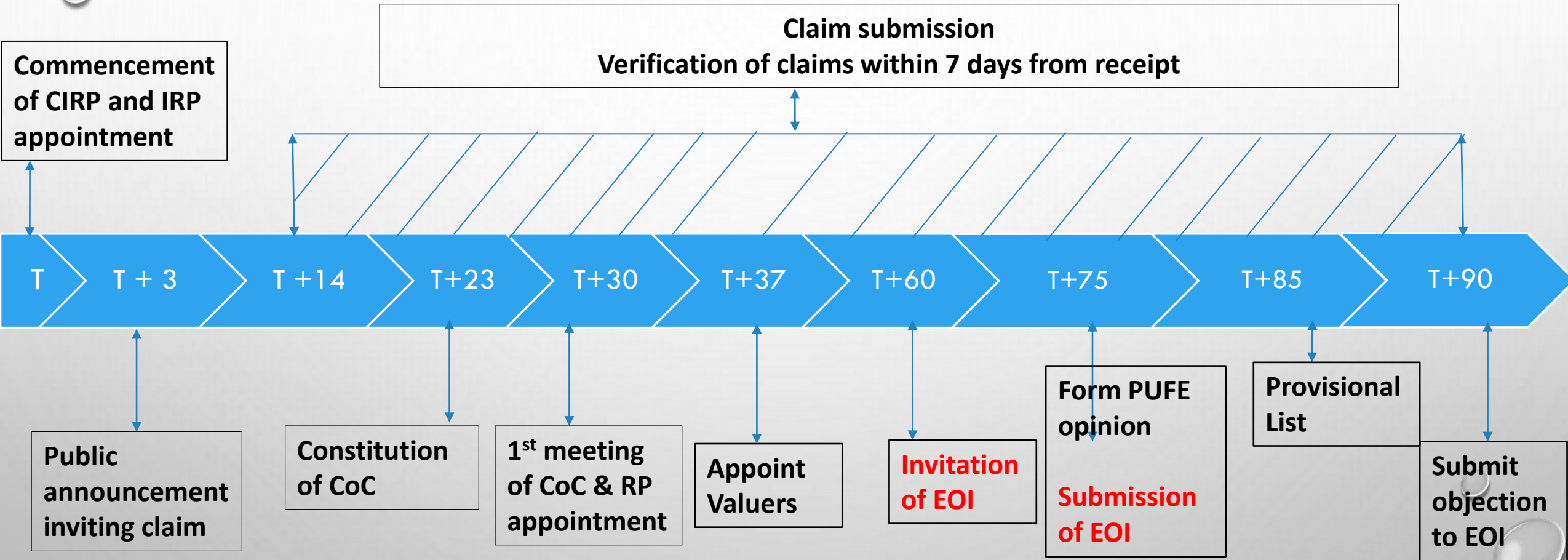


**TODAY**

# INSOLVENCY PROCESS



# CIRP Timeline



# CIRP Timeline

Submission of IM to COC



Final RA List

Determine PUF E

NCLT Application for PUF E

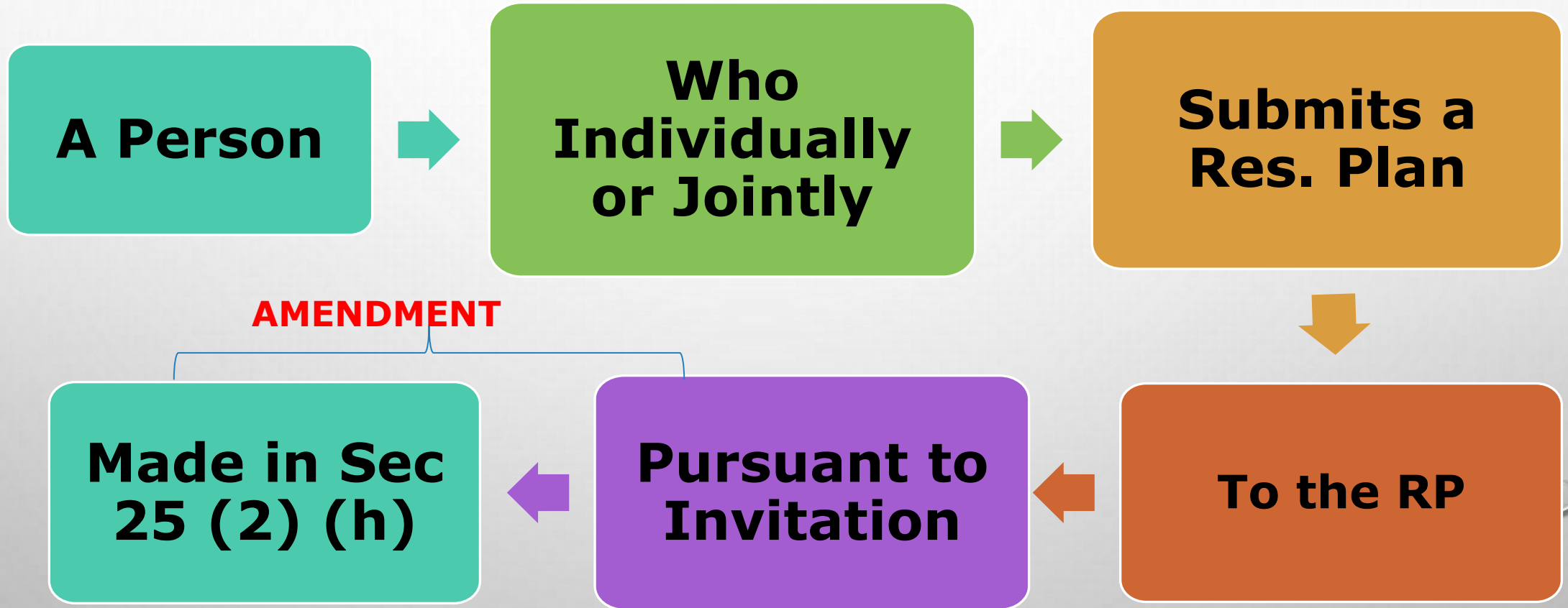
Receipt of R. Plan

Submit CoC approved plan to AA

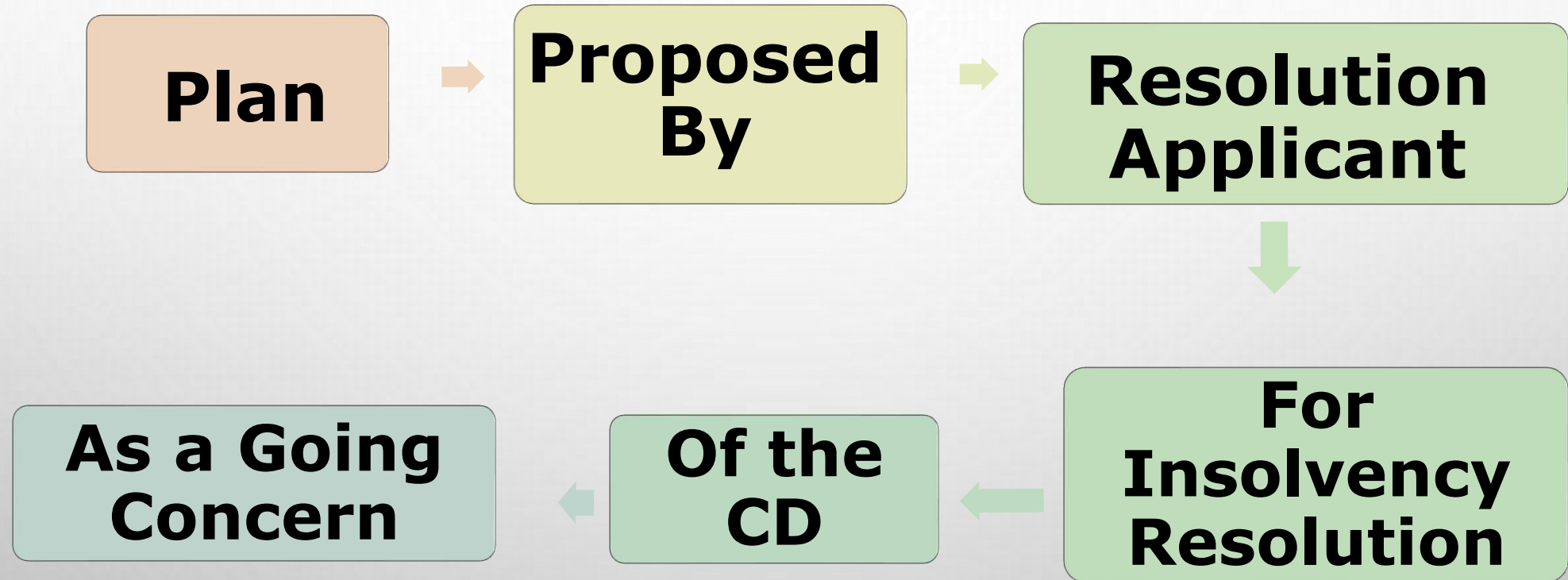
Approval of Plan by AA



# Resolution Applicant - sec 5(25)



## Resolution Plan – sec 5(26)



## DEFINITION AND AMENDMENT – RESOLUTION PLAN 5(26)

- “Resolution plan” means a plan proposed by (resolution applicant) for insolvency resolution of the corporate debtor as a going concern.
- EXPLANATION ADDED : ( 16.08.2019)

“It is hereby clarified that a Resolution Plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger”.

# Broad contents of Resolution Plan

1. Index, Abbreviations and Definitions.
2. Background of the Corporate Debtor and resolution applicant
3. Source and Utilization of the funds
4. Changes in capital structure
5. Timeline for plan implementation
6. Handover post approval by AA
7. Waivers & Prayers

# BASICS

- **Clean Slate**
- **Competition // Sunk cost**
- **Statutory process – Time consuming.**
- **Lack of information – Importance of due diligence**
- **No - warranties / representation / conditions / covenants / indemnities that are customary to M & A. Resolution Professionals – only Disclaimers.**
- **Resolution professional - say's “ as is where is” “as is what is” “ as is how is” “without recourse basis” and in accordance with the IBC – 2016.**

# BASICS - CONTD.

- **Security Performance Guarantee**
- **Evaluation Matrix**
- **Information Memorandum**
- **RFRP – Request for Resolution Plan.**
- **EOI – Expression of interest.**
- **29 A Check**
- **EOI - Eligibility Criteria**

## Tools Available for Resolution ( Reg 37)

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of corporate debtor for maximization of its assets, including but not limited to the following.



# Transfer of all or part of the assets of the Corporate Debtor to one or more persons;

- Sale of unit
- Multiple business / units



# Sale of all or part of the assets whether subject to any Security Interest or not

- At time SURPLUS ASSETS are there with CD.
- Some outdated units beyond repairs / renovation.
- Excess land or properties
- Unwanted / surplus residential properties.
- FC to be paid or sales realization directly to be deposited with fc.

# Restructuring of the corporate debtor, by way of Merger, Amalgamation and Demerger

- Resolution applicant may merge the company – CD with its own company.
- Eg. Bhushan Steel merged with Tata Steel. ( Later on post resolution )
- Binani Cement with Ultra Tech.

## Substantial acquisition of shares of the CD or the merger or consolidation of the CD with one or more persons

- If listing to be continued then some ( minimum 5% ) public shareholding needs to be continued.
- 

- Also exempt under SEBI – take over regulations

# Cancellation or Delisting of any shares of the Corporate Debtor, if applicable

- Delisting is allowed with going through SEBI delisting process.
- Eg. DHFL – existing shareholders asking what happened to their shares. – They were just cancelled. Company delisted.
- If shares are to be delisted then SEBI ( delisting of equity shares regulations, ) is not applicable. Exemption from the provisions of delisting regulations.
- Consultation paper / frame work for protection of interest of public equity shareholder in case of listed companies undergoing cirp

Satisfaction or modification of any security interest

# Curing or waiving of any breach of the terms of any debt due from the corporate debtor

- All earlier breach / default are nullified / white washed.
- Theory of clean slate.

# Reduction in the amount payable to the creditors

- All types of creditors may be given reduction ( popularly known as hair cut )
- Section 30(2)(4) - minimum payable to operational creditors.
- Even operational creditors can be secured and fall under 53(1)(b)
- Operational creditors to be paid in priority over financial creditors. [ Reg 38(1)(b)]

# At ₹10,000 cr, Reliance Cap Recovery may be Only 43%

Hinduja Group's offer, post bilateral talks, short of estimated liquidation value

Sangita.Mehta@timesgroup.com

**Mumbai:** Lenders to Anil Ambani-promoted Reliance Capital are likely to recover just about ₹10,000 crore after the winning bidder, Hinduja Group, declined to significantly improve its offer in the last round of bilateral negotiations that ended on Monday evening, people aware of the development told ET.

The recovery, totalling about ₹10,090 crore on factoring in the target company's cash balances and the Hinduja offer, falls short of the ₹12,500-13,000 crore estimated liquidation value.

A Hinduja Group entity, IndusInd International Holdings, offered ₹9,650 crore in the extended auction held on April 26. Hinduja improved the offer by only ₹10 crore during the bilateral negotiations, the people cited above said.

## DETAILED PLAN BY NEXT WEEK

In addition, the distressed financial services company has around ₹430 crore as cash balances, which would be distributed among the lenders. This would add up to ₹10,090 crore, equating to a 43% recovery for verified lenders.

Administrator Nageswara Rao Y has admitted ₹23,666 crore in claims from verified creditors.

"Hinduja Group will submit a



detailed resolution plan by next week while lenders are in the process of finalising distribution of the proceeds," one of the persons cited above said. After this, the administrator will invite lenders to vote on the eligible plans.

However, resolution of Reliance Capital will be subject to approval from the Supreme Court, which is scheduled to hear in August the auction-related dispute between Torrent Investments, a bidder also in the fray in the earlier rounds.

## CRUCIAL LIC, EPFO ROLES

The stand by LIC, the Employees' Provident Fund Organisation (EPFO) and JC Flowers Asset Reconstruction Co on approving the plan will be critical since they are majority debtholders. Yes Bank, an original Reliance Capital len-

der, sold its debt to JC Flowers ARC. A resolution plan can be approved only if 66% of creditors vote in its favour.

Separately, Credit Suisse-led bondholders have decided not to contest a decision by the National Company Law Tribunal (NCLT), which directed them to return the custody of Reliance General Insurance shares to the administrator, said the people cited above.

This has come as a major relief to the lenders that were worried the resolution might be delayed if Credit Suisse-led bondholders appealed against the tribunal's order.

In 2018, Credit Suisse-led investors invested in bonds issued by Reliance Home Finance, a Reliance Capital unit. The home finance company failed to honour the pa-

yment on the due date. As part of the settlement, investors extended the tenure of the bonds but took additional security — a corporate guarantee from Reliance Capital and a share pledge from Reliance General Insurance Co, another unit of Reliance Capital.

However, Reliance Home Finance again failed to meet payment obligations, following which IDBI Trusteeship invoked the share pledge.

Early in May, the tribunal directed Credit Suisse to hand over the custody of shares in the Reliance Capital insurance unit, while adding that doing so would not dilute the security interest of the bondholders.

In the first auction held on December 21, Torrent Investments made the highest offer of ₹8,640 crore, while the Hinduja Group entity offered ₹8,110 crore. However, within 24 hours, Hinduja made a revised, improved offer of ₹9,000 crore, a development Torrent contested at the NCLT, saying it violated the sanctity of the auction process as it was made after the deadline.

The NCLT bench ruled in favour of Torrent, barring lenders from holding a second auction. However, the appellate authority overturned the tribunal order. Mid-April, the Supreme Court directed lenders to hold a challenge-mechanism auction, but also said it would again hear the matter in August.



# Extension of a maturity date / a change in interest rate or other terms of debt due from CD

- All this benefits are available
- Amount can be free from interest – promoters loan

# Amendment of the constitutional documents of the Corporate Debtor

## Issuance of securities of the CD, for cash, property, securities or in exchange for claims or interests, or other appropriate purpose

- Existing shares are cancelled.
- No Separate Co. Law or Shareholders approval sought.
- New shares are issued to Resolution Applicant.
- New debentures / bonds are issued.

# Change in portfolio of goods or services produced or rendered by the corporate debtor

- Change of activity is allowed.
- In place of printing press – Software / Data center has been allowed. [ Print house private limited 13.04.2021 - NCLAT ]
- Should not be total sell – liquidation type.

# Change in Technology used by the Corporate Debtor

- Atomization

# Obtaining necessary approvals from the Central and State Government and other Authorities

- We request to expedite various approvals :-
  - Power connections
  - Factory licenses
  - Fire license
  - Water connection
  - DE bonding of unit

Sale of one or more assets of CD to one or more RA's submitting Res. Plans for such assets; and manner of dealing with remaining assets\*

More than one resolution applicant - project wise.

Part by part resolution allowed

Main issues in HDIL

Similar issues in Bombay Rayon Fashions

November 11, 2022: HDIL RP informs stock exchanges that resolution plans for six verticals have been approved, and four verticals including rest of the company will go into liquidation  
( From News paper )

\*( Inserted 16.09.2022 )

# Group Insolvency

- Where group as a whole needs to be RESOLVED in one go.
- E:g - videocon group. 13 Companies all in Consumer Durables



# Mandatory contents of the Resolution Plan

1. A resolution plan shall identify specific sources of funds that will be used to pay the -
  - a) Insolvency resolution **process costs** and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
  - b) Liquidation value or plan value as per Sec 53(1) whichever is higher due to Operational Creditors
  - c) 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.

## Mandatory contents of the Resolution Plan – Contd.

- d) Include a statement as to how it has dealt with the **interests of all stakeholders**
- e) Include a statement giving details if the resolution applicant has failed to implement or contributed to the failure of implementation of any other resolution plan

# Mandatory contents of the Resolution Plan – Contd.

2. A Resolution Plan shall provide:

- **Term** of plan and its **implementation** schedule
- Management and control of its business of CD during its term
- Adequate means **for supervising** its implementation
- Provides for the manner in which proceedings in respect of avoidance transactions.

## Mandatory contents of the Resolution Plan – Contd.

3. A Resolution Plan shall demonstrate that:
  - It addresses the cause of default
  - It is feasible and viable
  - It has provision for its effective implementation
  - It has provisions for approvals required and timeline for the same
  - RA has the capability to implement the plan.

## Shareholder Approval – Not Required. ( 30(2)(iii)(e )

**Explanation.** If any **approval of shareholders** is required under the Companies Act, or any other law for the implementation of actions under the Resolution plan, such approval shall be **deemed to have been given** and it shall **not be a contravention** of that act or law.

# Approval by COC ( 30 (4))

## Submission of Res. plan to COC

- The RP shall present to the coc for its approval such R plans which confirm the conditions referred ( 30 (3))

## Approval of Res. Plan

- The COC approve a resolution plan by a vote of not **less than 66%** of voting share of the FC, after considering its **feasibility and viability**, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in section 53(1) , including the priority and value of the security interest of a secured creditor. ( 30 (4))

## Approval of Res Plan by **AA** ( sec. 31)

If the AA is **satisfied** that the Res.Plan as approved by the COC meets the requirements as referred to in sec 30(2), it **shall** by order **approve** the res. Plan which shall be binding on the CD and its employees, members, creditors, **including the central government, any state government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed**, guarantors and other stakeholders involved in the res. Plan.

# SEBI – Relaxations – Under IBC

- Take over code not applicable
  - Change of promoter group carried on.
  - Approval of resolution plan need to be intimated within one day.
  - Delisting of shares without going through process.
  - Public shareholding can be brought below 25% ( minimum 5% ) ( subsequently to be increased to minimum 25% within maximum period of three years ) notification dated 18.06.2021.
- 
- SEBI - Proposal ( Nov. 2022 )  
Shareholders to provide an option to acquire shares in new CD.



# Permission of CCI

Provided that where the Res. Plan contains a provision for combination, as referred to in section 5 of the **Competition act, 2002**, the RA shall obtain the approval of the competition commission of india under that act **prior** to the approval of such R plan by the COC. Sec 31(4)

Ultra Tech Cements has taken prior permission from competition commission for resolution of Binani Cement.

## Sec 32A - Ring fencing Antecedent Liabilities of Companies: ibc saves the investors!

- The rationale behind the amendment is that an incoming investor, who is going to deploy significant money, resources and time into turning around the CD should not be punished for offences which the erstwhile management had committed prior to initiation or during pendency of the CIRP.
- 32A . Notwithstanding anything to the contrary contained **in this code or any other law** for the time being in force, the liability of a CD for an offence committed prior to the commencement of the CIRP shall cease, and the CD shall not be prosecuted for such an offence from the date the resolution plan has been approved by the AA, if the resolution plan results in the change in the management or control of the CD a person who was not- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; .....

## Delhi high court order dated 16.03.2020.

- Tata steel BSL limited cannot be prosecuted & is liable to be discharged u/s 32A of the IBC but the order will not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences in relation to the affairs of bhushan steel limited- tata steel BSL limited & anr vs. Union of india & anr.-Delhi high court
- [ In the matter of SFIO vs Bhushan Steel Limited order dated 16.08.2019]

# Liquidation as a Going Concern

- Even after liquidation order take over / purchase of company as a going concern is possible.
- Principle that going concern values are generally in excess of individual assets.
- Refer regulation 32a of liquidation Regulation.
- Based on remark in case of Gujrat NRE Coke
- Refer various case laws :
  1. Kwality limited - New Delhi ( 11.01.2020 )
  2. Topworth Pipes and Tubes p. Ltd. - Mumbai ( 09.03.2021)
  3. Sterling Biotech limited - Mumbai ( 11.11.2022 )
  4. Against – Mohan Gems ( Delhi, subsequently allowed by NCLAT 24.08.2021)

## Sterling Biotech ltd ( Mum. Nclt 11.11.2022 )

- The applicant submitted that a combine reading of the resolution plan, sec. 31 and 5(26) IBC and Reg. 32(e) of liquidation regulations indicates that the scheme of the code and the liquidation regulations **intend to confer benefits and reliefs to an applicant acquiring the corporate debtor as a going concern during liquidation proceedings of the same nature as contemplated for a resolution plan approved under section 31 of the code....**

## Commercial wisdom of COC // SC - K. Shashidhar ( *more skin in the game* )

Besides, the commercial wisdom of the coc has been given **paramount status** without any judicial intervention, there is an intrinsic assumption that financial creditors are fully informed about the viability of the CD and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the coc meetings through voting, as per voting shares, is a **collective business decision**. The legislature, consciously, has not provided any ground to challenge the 'commercial wisdom' of the individual financial creditors or their collective decision before the AA. **That is made non-justiciable.**

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**The code also vests the supreme authority to take decisions in respect of the CD in the coc**

SC – M.K. Rajgopal ( Res. Applicant ) vs Dr Periasamy Palani Gouder  
(Promoter)  
( CD - Appu Hotels limited ) (03.05.2023)

- Principal of commercial wisdom, not validate a decision taken by COC in contravention of law.
- Cannot brush aside the shortcomings of the COC in cases where decision making was done in contravention to a law which is in force for the time being.
- Rejected the Resolution plan.
- Challenged on one of ground of – commercial wisdom of coc was not justiciable and once the coc has approved the res. Plan by the requisite majority, there was very limited scope of interference by the courts.



# Delay

Particulars	Date	Remark
Date of Admission to cirp	05.05.2020	
Date of Resolution Plan voting by COC	22.01.2021	No delay
Date of Approval of Res. Plan by NCLT	15.07.2021	Approx six months
NCLAT order rejecting the Res. Plan	17.02.2022	Approx Seven months
SC order	03.05.2023	Approx 14 months

Value lost in process – Hotel managed by Resolution Professional. No owner.

Three years passed.

Case not resolved.

Again before NCLAT

Again Resolution Process.

No end in sight

Resolution Applicant may loose interest.



# Important Case Laws

- SC – Rainbow paper – Gujrat VAT liabilities
- SC – Jet airways - employees provident fund liabilities
- SC – Ghanshyam Mishra - Once plan is approved claims not filed does not stand.
- SC - Essar Steel - clean slate

## **238. Provisions of this code to override other laws.**

The provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

*Thank  
you*



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