



INSOLVENCY AND BANKRUPTCY CODE 2016

NEED

EASE OF DOING BUSINESS

ENTRY FOR BUSINESS

LEVEL PLAYING FIELD FOR BUSINESS

EXIT OF BUSINESS

FEATURES OF CODE

**Comprehensive
Law**

**No Multiplicity of
Laws**

**Low Time
Resolution**

**One Window
Clearance**

**One Chain of
Authority**

**Priority to the
interests of
workmen and
employees**

THE OVERRIDING EFFECT

- The Sick Industrial Companies (Special Provisions) Act, 1985;
- The Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920;

Amended 10 Central Acts

The Indian Partnership Act, 1932

The Income- tax Act, 1961

The Customs Act, 1962

The Recovery of Debts due to Banks and Financial Institutions Act, 1993

The Finance Act, 1994

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

The Sick Industrial Companies (Special Provisions) Repeal Act, 2003

The Payment and Settlement Systems Act, 2007

The Limited Liability Partnership Act, 2008

The Companies Act, 2013

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.

Rishten mein
hum tumhare
Baap lagte
hain



Concept of Insolvency and Bankruptcy

Term 'Insolvency' can be used for-

- Individuals
 - known as Bankruptcy
- Organization/Corporates
 - Known as Corporate insolvency

State when an individual or company are not able to pay the debt and the value of assets held by them are less than liability

INSOLVENCY IF TREATED

CORPORATES



- RESOLUTION PLAN and RECOVERY

NON
CORPORATES



- REPAYMENT PLAN and RECOVERY

INSOLVENCY IF NOT TREATED

Non
Corporates

- Bankruptcy

Corporates

- Liquidation

While insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

From the above it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically, insolvency situations have two options – resolution and recovery or liquidation

Objectives of the Code

The Insolvency and Bankruptcy Code, 2016 is intended to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default. The purpose of enactment of the Insolvency and Bankruptcy Code, 2016 is as follows:

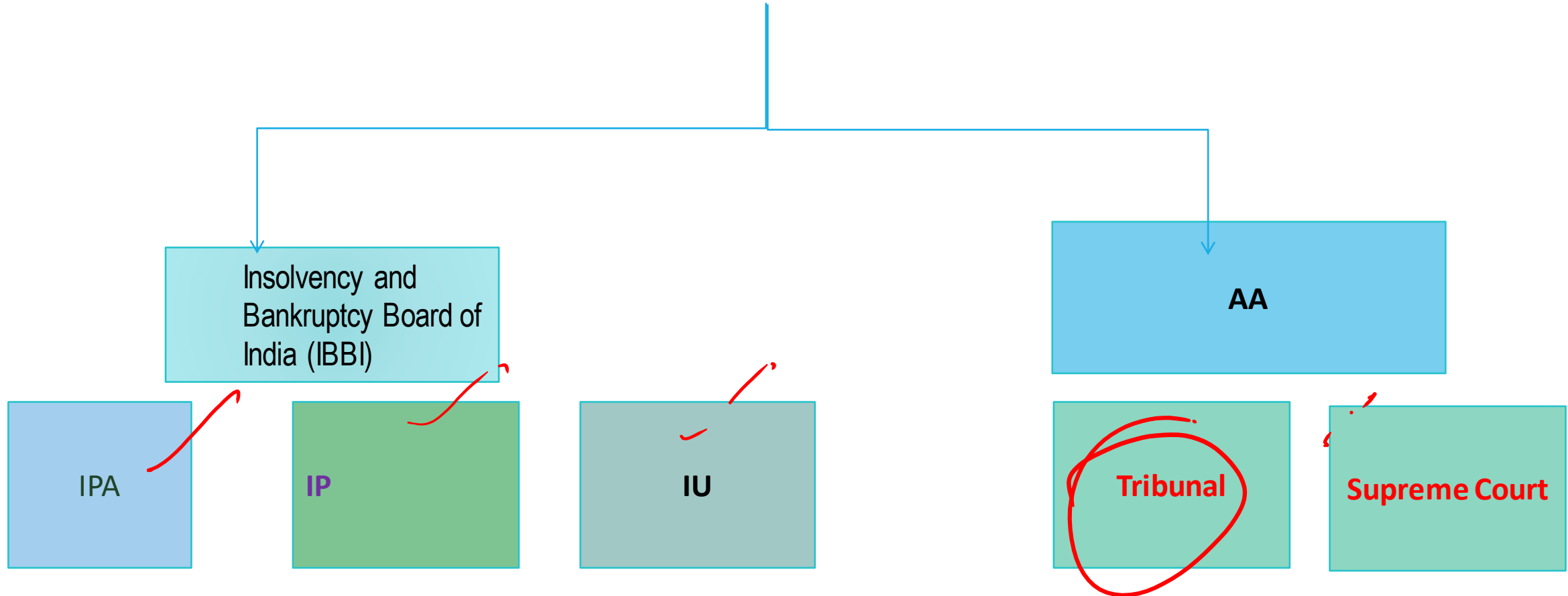
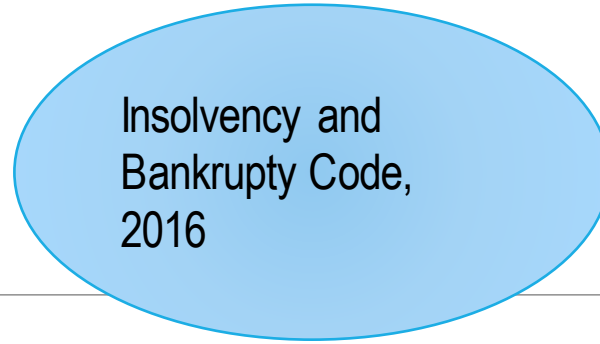
- To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.
- To fix time periods for execution of the law in a time bound manner.
- To maximize the value of assets of interested persons.
- To promote entrepreneurship
- To increase availability of credit.

Objectives of the Code

- To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
- To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.



FRAMEWORK



Insolvency and Bankruptcy Board of India-

Code provides for establishment of a Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions with respect to the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Insolvency and Bankruptcy Board of India was established on October 1, 2016. The head office of the Board is located at New Delhi.

The Board is a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

Insolvency Professional Agencies (IPA)-

Insolvency Professional Agencies (IPA)-The Code provides for establishment of insolvency professionals agencies to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations. IPA will perform three key functions:

Functions of IPA

Regulatory functions

Insolvency Professionals:

The Code provides for insolvency professionals as intermediaries who would play a key role in the efficient working of the bankruptcy process. The role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. He shall have the power and responsibility to monitor and manage the operations and assets of the enterprise.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor's business during the moratorium period and helps the creditors in reaching a consensus for a revival plan.

In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.

An Insolvency Professional if appointed as a Resolution Professional shall act as a as a neutral trustee of the assets of the organization.

Insolvency Professionals:

- Every insolvency professional shall abide by the following code of conduct:—
- to take reasonable care and diligence while performing his duties;
- to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- to allow the insolvency professional agency to inspect his records;
- to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
- to perform his functions in such manner and subject to such conditions as may be specified.

Information Utilities

The Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases, at all times.

The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency.

Obligations of Information Utility:*An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.*

For the purposes of providing core services to any person, every information utility shall—

Information Utilities

- (a) create and store financial information in a universally accessible format;
- (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information
- (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
- (d) meet such minimum service quality standards as may be specified by regulations;
- (e) get the information received from various persons authenticated by all concerned parties before storing such information;
- (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
- (g) publish such statistical information as may be specified by regulations;
- (h) have inter-operability with other information utilities.

Adjudicating Authority:

: The Adjudicating Authority for corporate insolvency and liquidation is the National Company Law Tribunal (NCLT). Appeals against NCLT orders shall lie with National Company Law Appellate Tribunal (NCLAT) and thereafter to the Supreme Court of India.

The Code has created one chain of authority for adjudication under the Code. Civil Courts have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority. No injunction shall be granted by any Court, Tribunal or Authority in respect of any action taken by the NCLT.

For individuals and other persons, the Adjudicating Authority is the Debt Recovery Tribunal (DRT), appeals lie to the Debt Recovery Appellate Tribunal (DRAT) and thereafter to the Supreme Court.

Adjudicating Authority

- NCLT for Corporates, LLP and Personal Guarantees related to Corporate Debtors
- DRT for Individuals and Partnerships

EXAMPLE

Example 1: XY & Co., a firm applied to NCLT to be declared insolvent on the ground that it is not able to pay off the debts to its creditors in present and in near future. State whether the act of the firm is valid as to the filing of application in terms of jurisdiction.

Answer: Not valid. As per the Code, in relation to insolvency matters, individuals and firms shall apply to the DRT and not to NCLT. Thus, there is violation of jurisdiction so far as Adjudicating Authority is concerned.

Structure of CODE

Part 1 to
Part 5

• Section 1 -255

Part 1 to
Part 5

• 12 Schedules

IBC

IBC		
Part 1 Preliminary	Part 2- Insolvency Resolutions and Liquidation for Corporate Persons 4-77	Part 3-Insolvency Resolution and Bankruptcy for Individuals and Partnership 78-187

IBC— A VIEW

IBC		
Part 4-Regulation of Insolvency Professionals, Agencies and Information Utilities 188-223	Part 5- MISCELLANEOUS 224-255	RULES

MARKS

• 4 TO 6

NATURE

• Both Directly and Indirect

History and Geography

WHOLE OF
INDIA
including JK

Enforcement
Date 28th
May 2016

Effective Date-
1-12-2016

12A-Settlement

10A-COVID EXEMPTION

PIRP

HOMEBUYERS

24th March 2020

29A and 32A

REGULATIONS

IPA
regulations

IP Regulations

IRP for
Corporate
Regulations

Liquidation
Regulations

Voluntary
Liquidation
Regulations

Provisions of this Code to override other laws-238

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.

APPLICABILITY

Companies

APPLICABILITY

Partnership
Firms

Proprietorship
Firms

Individuals

NOT to APPLY to FINANCIAL SERVICE PROVIDERS

Financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator [Section 3(17)].

Banks /FI/ARC

INSURANCE

MF/CIS

NBFC

However, Section 227 which was notified on 1-5-2018 provides that the Central Government may notify financial service providers for the purpose of insolvency and liquidation proceedings, which may be conducted under the Insolvency & Bankruptcy Code, in consultation with the appropriate financial sector regulator.

➤ **Applicable on Asset Size of 500 cr**

➤ **Nov 19**

CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

SECTIONS 4 AND 6-32

WITH INSOLVENCY RESOLUTION REGULATIONS 2016 (1 TO 40A

SCHEDULE OF ANNEXURE

FLOW OF PROCESS

- **Trigger Point**
- **Application for Initiation**
- **Declaration of Moratorium and Public Announcement**
- **Appointment of IRP and RP**
- **Constitution and Meeting of COC**
- **Resolution Plan**

TRIGGER OF THE PROCESS-6

of the Insolvency and Bankruptcy Code, 2016 provides that where any ***corporate debtor*** commits a ***default,***

- a financial creditor,
- an operational creditor or
- the corporate debtor itself

may initiate *corporate insolvency resolution process* in respect of such *corporate debtor*

in the manner as provided under Chapter II of Part II of the Code.

IMPORTANT DEFINITIONS [SECTIONS 3 AND 5]

Person means a company as defined under Section 2(20) of the Companies Act, 2013; a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or, any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]

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

DEFAULT 3(12)]

non-payment of
debt

when whole or any
part or instalment
of the amount of
debt

become due and
payable

is not paid by the
debtor

or the corporate
debtor

Amount of Default (section 4)

Before
24th
March

- Minimum Rs 1 lac

After
24th
March

- Minimum Rs 1 cr

2020

DEBT -3(6)

a liability or obligation in respect of a **claim** which is due from any **person**

financial
debt

operational
debt.

CLAIM[Section 3(6)]

Claim means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

Creditor Defined

Financial
Creditor

Operational
Creditor

Secured
Creditor

Unsecured
Creditor

Decree
Holder



FINANCIAL
DEBT

FC

- means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; [Section 5(7)]

- means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

FINANCIAL DEBT

Money Borrowed	AMOUNT RAISED	LIABILITY	DERIVATIVES	FACTORING
<p>against the payment of interest</p> <p>any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and</p> <p>(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the RERA ACT 2016</p>	<p>BY acceptance under any acceptance credit facility or its de-materialised equivalent;</p> <p>pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument</p> <p>any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing</p>	<p>in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards</p>	<p>any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;</p>	<p>receivables sold or discounted other than any receivables sold on non-recourse basis;</p>

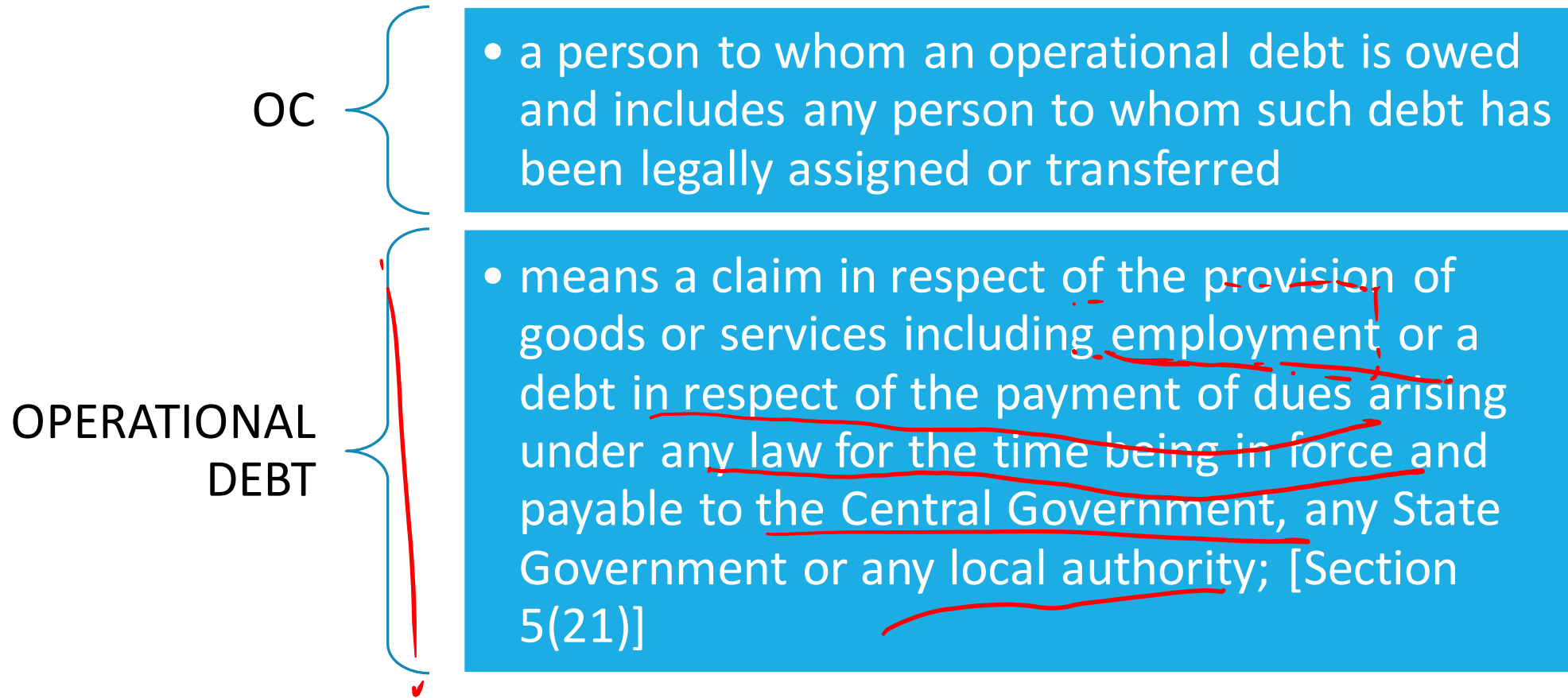
FINANCIAL DEBT

(h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause; [Section 5(8)]

FCI
→

Operational Creditor



Secured Creditor

Secured Creditor

- a creditor in favour of whom security interest is created

Security Interest

- right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. **Provided that security interest shall not include a performance guarantee;**

Date with Dates

Initiation date

- the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process; [Section 5(11)]

Insolvency commencement date

- the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under Sections 7, 9 or Section 10, as the case may be; [Section 5(12)]

Date with Dates

**Liquidation
commencement
date**

- the date on which proceedings for liquidation commence in accordance with Section 33 or Section 59, as the case may be; [Section 5(17)]

**Insolvency
resolution
process period**

- the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day; [Section 5(14)]

CLOSING DATE !!!

Section 12 of the Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within ~~180 days, extendable by 90 days~~ and that too once .

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall compulsorily be completed within 330 days from the insolvency commencement date including any extension and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

Section 55 provides for fast-track resolution of corporate insolvency within 90 days in respect of small corporates.

MCQ

What is the motive of enactment of the Insolvency and Bankruptcy Code, 2016?

- (a) To consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals
- (b) To maximize the value of assets of interested persons
- (c) To increase availability of credit
- (d) All of the above

Mcq

Which Legislations are getting repealed on enforcement of IBC?

(a) The Presidency Towns Insolvency Act 1909 and Sick Industrial Companies (Special Provisions) Act 1985.

(b) Sick Industrial Companies (Special Provisions) Act 1985 and The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

(c) Provincial Insolvency Act 1920 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

(d) Sick Industrial Companies (Special Provisions) Act 1985 and some provisions of Negotiable Instruments Act, 1881.

MCQ

Which of the following enactments has not been amended as part of the Insolvency and Bankruptcy Code, 2016?

The Indian Partnership Act, 1932

~~(b) The Customs Act, 1962~~

(c) The Recovery of Debts due to Banks and Financial Institutions Act, 1993

(d) The Limitation Act, 1963

Who is the Corporate Debtor as per the Code?

- (a) Company who owes a debt to any person
- (b) Corporate person who owes a debt to any person
- (c) Company who borrows from any company
- (d) Corporate person who owes a debt to any company

MCQ

According to the Code, which of the following is not a financial service?

- (a) Underwriting the Issuance of a financial product
- (b) Accepting of deposits
- (c) Operating an Investment scheme
- (d) Payment of wages to employees

Mcq

What is the meaning of Debt under the Code?

(a) Debt means a liability or obligation in respect of a claim which is due from any person

(b) It includes a financial debt and operational debt

(c) Both (a) & (b)

(d) None of the above

7. 9. 10

LETS PUT THE APPLICATION

Application by FC

A, B, C

either itself

or jointly with other financial creditors

any other person on behalf of the financial creditor

APPLICATION
TO NCLT
When Default
Occurs

It is provided that in case of financial creditors who are allottees under a real estate project, an application for initiating CIRP against the corporate debtor shall be filed jointly by:

- (i) not less than 100 of such allottees under the same real estate project; or
- (ii) not less than 10 per cent of the number of such allottees under the same real estate project;

Whichever is less.

SPECIFIC CASE -REAL ESTATE

Thus, in case of a real estate project where there are number of allottees, no single allottee can initiate CIRP. Further, if the company has floated many real estate projects, the allottees of different projects cannot join together to initiate CIRP against the company; rather they should belong to the same real estate project and fulfil the condition of minimum number of allottees. Only thereafter, they shall be capable of initiating CIRP.

APPLICANT and BEHALF OF APPLICANT

)a guardian;

an executor or administrator of an estate of a financial creditor

a trustee (including a debenture trustee); and

a person duly authorized by the Board of Directors of a company

Supporting Documents with Application

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified

b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board (IBBI).

Scrutiny of Debt

The NCLT under Section 7(4) shall, within 14 days from the receipt of an application, ascertain the **existence of default** from the records of information utility or on the basis of other evidence furnished by the financial creditor.

Where **existence of default could not be ascertained** it will record its reasons in writing if order is passed under subsection 5

ORDERS OF NCLT

Order
Admitting
Application

OR

Order
Rejecting
Application

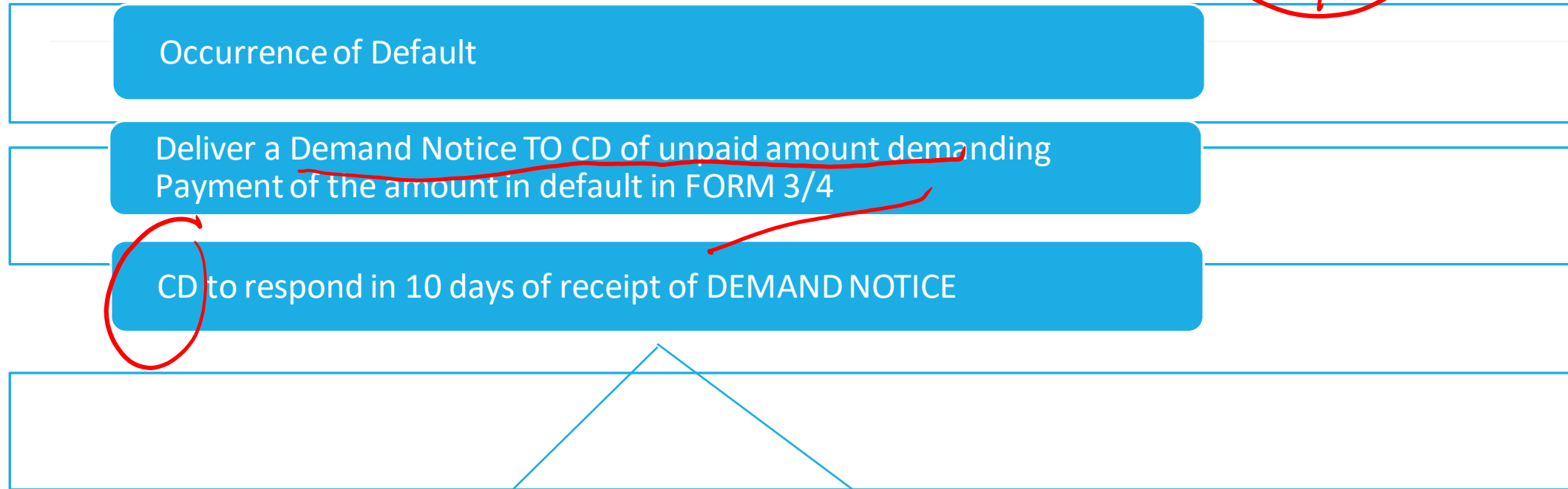
- default has occurred and application is complete in all respect and no disciplinary proceedings are pending against the proposed Interim Resolution Professional

- where NCLT is satisfied that no default has occurred or application is incomplete or any disciplinary proceedings are pending against the resolution professional

NCLT shall before rejecting application give notice to the applicant to rectify the default in his application within seven days of receipt of such notice from NCLT

PREREQUISITE BEFORE FILING APPLICATION BY OC

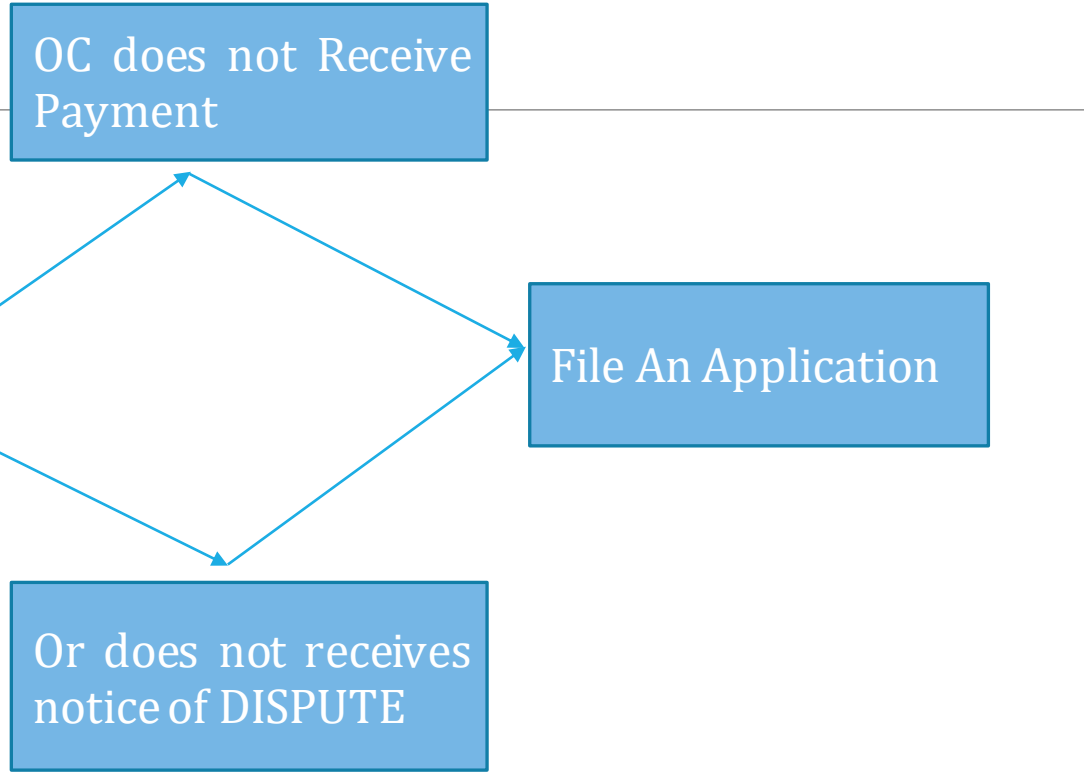
§ 9



existence of dispute and shall produce the evidence of any suit which is pending or any arbitration proceedings BEFORE RECEIPT OF NOTICE or invoice in relation to such dispute

Produce at NCLT the payment of unpaid OD by sending attested copy of RECORD OF EFT or attested copy of record that cheque has been encashed by OC

APPLICATION BY OC



5(6) “Disputes” include a “Suit” or “Arbitration Proceedings” relating to

- i) Existence of the amount of debt;
- ii) The quality of goods or services;
- iii) The breach of representation or warranty

Supporting documents with application

a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt

a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available

Supporting documents with application

) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available

any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed

REJECTING THE APPLICATION

The application is incomplete,

there has been payment of the unpaid operational debt,

creditor has not delivered the invoice or notice for payment to the corporate debtor,

any disciplinary proceeding is pending against any proposed resolution professional

notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility

ADMITTING THE APPLICATION

The application is complete,

there IS NO payment of the unpaid operational debt,

creditor has delivered the invoice or notice for payment to the corporate debtor,

NO disciplinary proceeding is pending against any proposed resolution professional

NO notice of dispute has been received by the operational creditor AND there is NO record of dispute in the information utility

There exists a dispute between the parties which are prior to issuance of Demand Notice, neither the Adjudicating Authority nor this Appellate Tribunal, in summary jurisdiction, can go into those issues which otherwise require a regular trial – M/s. M + R Logistics (India) Private Limited Vs. M/s AGA Publications Limited – NCLAT New Delhi

Case Name: M/s. M + R Logistics (India) Pvt. Ltd. Vs. M/s AGA Publications Ltd.
Corporate Debtor: AGA Publications Ltd., **Case Citation:** (2021) ibclaw.in 42 NCLAT
Appeal No.: CA(AT)(I)-667/2020-NCLAT, **Order/Judgment Date:** 01/02/2021, **Court/Bench:** NCLAT-
New Delhi

Brief about the decision:
NCLAT referring Mobilox Innovations case held that As per the decision of the Hon'ble Apex Court, the Corporate Debtor (Respondent in this case) must bring to the notice of Operational Creditor, the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute. In the present case, the Respondent very well brought to the notice of the Appellant with regard to the existence of dispute much prior to filing Section 9 Application. Therefore, the Judgment of Hon'ble Apex Court squarely applicable to the facts of present Case.(p20)

Period of limitation has to be seen with reference to date of application filed under Section 7 or 9 of the IBC, not date of demand notice issued under Section 8 of IBC – S. N. Tradelink Private Limited Vs. M/s. Millennium Structruals (India) Limited – NCLT Ahmedabad Bench

Case Name: S. N. Tradelink Private Limited Vs. M/s. Millennium Structruals (India) Limited
Corporate Debtor: Millennium Structruals (India) Ltd., **Case Citation:** (2020) ibclaw.in 136 NCLT
Appeal No.: CP(IB)-461/9/NCLT/INDORE/2019-NCLT, **Order/Judgment**
Date: 24/09/2020, **Court/Bench:** NCLT-Ahmedabad Bench

Brief about the decision:
I. Case Reference Case Citation : (2020) ibclaw.in 136 NCLT Case Name : S. N. Tradelink Private Limited Vs. M/s. Millennium Structruals (India) Limited Corporate Debtor : M/s. Millennium Structruals (India) Limited Appeal No. : CP (IB) No. 461/9/NCLT/INDORE/2019 Judgment...**READ MORE PERIOD OF LIMITATION HAS TO BE SEEN WITH REFERENCE TO DATE OF APPLICATION FILED UNDER SECTION 7 OR 9 OF THE IBC, NOT DATE OF DEMAND NOTICE ISSUED UNDER SECTION 8 OF IBC – S. N. TRADELINK PRIVATE LIMITED VS. M/S. MILLENNIUM STRUCTRUALS (INDIA) LIMITED – NCLT AHMEDABAD BENCH**

If Corporate Debtor did not choose to appear in response to the notice issued upon it and did not take stand as regards a pre-existing dispute qua the operational debt, it cannot be heard to say that no opportunity of being heard has been provided to it – Ravinder Kumar Kalra Vs. Ricela Health Foods Limited & Ors. – NCLAT New Delhi

Case Name: Ravinder Kumar Kalra Vs. Ricela Health Foods Ltd. & Ors.
Corporate Debtor: Evershine Solvex Pvt. Ltd., **Case Citation:** (2021) ibclaw.in 55 NCLAT
Appeal No.: CA(AT)(I)-54/2021-NCLAT, **Order/Judgment Date:** 01/02/2021, **Court/Bench:** NCLAT-New Delhi

Brief about the decision:
The Adjudicating Authority is obligated under law to issue a limited notice to Corporate Debtor at the pre-admission stage of application filed under Section 9 of the I&B Code. Under Section 9(5), the Adjudicating Authority is required to pass an order of admission on being satisfied about completion of application and there being an unpaid operational debt and default in its payment. The object of limited notice is to enable the Adjudicating Authority to satisfy itself that there is no pre-existing dispute qua the operational debt and no suit or arbitration proceeding in relation to such dispute was pending before the receipt of demand notice by Corporate Debtor as contemplated under Section 8(1) of the I&B Code. If the Corporate Debtor did not choose to appear in response to the notice issued upon it and did not take stand as regards a pre-existing dispute qua the operational debt, it cannot be heard to say that no opportunity of being heard has been provided to it. Viewed in this perspective, consideration of issue of maintainability by the Adjudicating Authority would be of no consequence if the same were neither raised in reply to the demand notice nor in reply to notice served upon the Respondent. The impugned order dated 15th December, 2020 was limited to dismissal of I.A. No. 283/2020 seeking setting aside of ex-parte order dated 17th February, 2020 culminating in passing of order of admission dated 27th February, 2020 limited to the ground of service of notice being invalid. Such ground not having weighed with the Adjudicating Authority, we find no infirmity in its dismissal in terms of the impugned order.

A dispute does not mean a mere denial viz. no payment is due because there is a dispute. It is to be remembered that Code is not substitute for Debt Enforcement Procedure – Shri Bijay Pratap Singh Vs. Unimax International – NCLAT

Case Name: Shri Bijay Pratap Singh Vs. Unimax International
Corporate Debtor: Soho Infrastructure Pvt. Ltd., **Case Citation:** [2020] ibclaw.in 165 NCLAT
Appeal No.: CA(AT)(I)-1273/2019-NCLAT, **Order/Judgment Date:** 15/06/2020, **Court/Bench:** NCLAT-New Delhi

Brief about the decision:
NCLAT held that one of the essential features for consideration of an Application under Section 9 of I & B Code is service of notice. A mere perusal of the paragraph 11 of the Impugned Order passed by the Adjudicating Authority patently indicates that a perusal of the pleadings showed that the proper 'service' was effected on the registered office of the 2nd Respondent/Corporate Debtor situated at D-410, Pocket 16, Sector VII, Rohini, New Delhi – 110085. Also, it was observed by the Adjudicating Authority that there was no change in the address of the 'Corporate Debtor' in the 'Ministry of Corporate Affairs Record' which also shows the same address. Even the Resolution passed by the 'Corporate Debtor' on 27.03.2019 had shown the same 'Registered Office' address. Therefore, the Adjudicating Authority had very rightly adverted to Section 27 of the General Clauses Act and Section 20 of the Companies Act, 2013 read with Rule 35 of the Companies (Incorporation) Rules, 2014 in and by which the 'service' is to be effected on the 'Registered Office' address and that process was carried out. Therefore, this Tribunal holds that it was 'Sufficient service' of the 'Demand Notice'. As such, the plea taken on behalf of the Appellant that there was no service affected upon the 'Corporate Debtor' is not acceded to by this Tribunal. The other plea taken that there was no service by hand or electronic mail service to the 'Corporate Debtor' relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case.

If Civil Suit has been filed after receipt of the demand notice, it will not be a dispute as defined in Section 5(6) of Code – G. T. Polymers A Partnership Firm Vs. Keshava Medi Devices Pvt. Ltd. – NCLAT

Case Name: G. T. Polymers A Partnership Firm Vs. Keshava Medi Devices Pvt. Ltd.
Corporate Debtor: Keshava Medi Devices Pvt. Ltd., **Case Citation:** [2020] ibclaw.in 122
NCLAT

Appeal No.: CA(AT)(I)-1266/2019-NCLAT, **Order/Judgment**
Date: 03/03/2020, **Court/Bench:** NCLAT-New **Delhi**

Brief about the decision:
I. Case Reference Case Citation : [2020] ibclaw.in 122 NCLAT Case Name : G. T. Polymers A Partnership Firm Vs. Keshava Medi Devices Pvt. Ltd. Appellant : G. T. Polymers A Partnership Firm Respondent : Keshava Medi Devices Pvt. Ltd....

Only in a situation where the Corporate Debtor within 10 days of the receipt of demand notice, has not sent the reply to the Operational Creditor, then only, an affidavit to that effect can be submitted in terms of Sec. 9(3)(b) of the Code- Sangeeta Goel Vs. Roidec India Chemicals Private Limited-NCLAT

Case Name: Sangeeta Goel Vs. Roidec India Chemicals Private Limited
Corporate Debtor: Roidec India Chemicals Pvt. Ltd., **Case Citation:** [2020] ibclaw.in 260 NCLAT
Appeal No.: CA(AT)(I)-17/2020-NCLAT, **Order/Judgment Date:** 17/03/2020, **Court/Bench:** NCLAT-
New Delhi

Brief about the decision:
NCLAT considering decisions of Hon'ble Supreme Courts in Macquarie Bank Vs. Shilpi Cable Technologies Ltd. and Surendra Trading Company V. Juggilal Kamlatpat held that it is clear that only in a situation where the Corporate Debtor within 10 days of the receipt of demand notice, has not sent the reply to the Operational Creditor, then only, an affidavit to that effect can be submitted in terms of Section 9(3)(b) of the Code. But in a case where such notice has been sent, in reply to the demand notice by the Corporate Debtor 'an affidavit to that effect cannot be given'.

**Retention Money is an Operational Debt & period of limitation start on completion of the Defect Liability Period-
Aashish Mohan Gupta vs Hind Inn and Hotels Ltd. – NCLAT**

Case Name: Aashish Mohan Gupta Vs. Hind Inn and Hotels Ltd.
Corporate Debtor: Hind Inn and Hotels Ltd., **Case Citation:** [2020] ibclaw.in 196 NCLAT
Appeal No.: CA(AT)(I)-1282/2019-NCLAT, **Order/Judgment Date:** 12/02/2020, **Court/Bench:** NCLAT-New Delhi

Brief about the decision:
NCLAT held that the Operational Creditor had awarded the work and the retention money cannot be treated as separate money. The retention money is a part of main bill which was retained by the Corporate Debtor as per the terms of the Work Order and the same shall be released after completion of the work and issuance of the Completion Certificate. Further the Defect Liability Period completed on 01.04.2015 and thereafter the Operational Creditor had requested the Corporate Debtor to release money. We are of the view that it is not barred by limitation. Learned Adjudicating Authority rightly observed and held that the debt fell due from 27.07.2015 when the mail was sent by Ginjar Hotel of the Corporate Debtor stating that the Operational Creditor had attended to all the concerns and rectified the same. The other submission of the learned Counsel for the Appellant that debt does not fall within the definition of Section 5(21) of IBC is concerned, the Operational Creditor had rendered services and there is no dispute with regard to the said services and we cannot accept that the said claims will not fall under the definition of Operational Debt. For the Beneficial reference Section 5(21) of IBC is reproduced. We are of the view that the Corporate Debtor is due and payable retention money which is part of the main Bill thereby the Operational Creditor is well within the definition of Section 5(20) IBC.

Merely because a suit has been filed by the Appellant & pending, cannot be a ground to reject the application under Sec. 7 of the Code. Pre-existing dispute cannot be a subject matter of Sec. 7, though it may be relevant u/s 9- Karan Goel Vs.M/s Pashupati Jewellers & Anr – NCLAT

Case Name: Karan Goel Vs.M/s Pashupati Jewellers & Anr
Corporate Debtor: Pashupati Jewellers, **Case Citation:** [2019] ibclaw.in 163 NCLAT
Appeal No.: CA(AT)(I)-1021/2019-NCLAT, **Order/Judgment Date:** 01/10/2019, **Court/Bench:** NCLAT-Delhi
New

Brief about the decision:
NCLAT held that it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application. The Respondent – M/s Pashupati Jewellers having enclosed the copy of the 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017 instituted on e-Stamp, issued by Government of National Capital Territory of Delhi, it was not open to the Adjudicating Authority to deliberate on the issue whether e-Stamp is a forged document or not. Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.

NCLAT referring Mobilox Innovations case held that As per the decision of the Hon'ble Apex Court, the Corporate Debtor (Respondent in this case) must bring to the notice of Operational Creditor, the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute.

APPLICATION BY CD -10

Where a corporate debtor
has committed a default

a corporate
applicant



Corporate Applicant means

corporate debtor

a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor

an individual who is in charge of managing the operations and resources of the corporate debtor.

a person who has the control and supervision over the financial affairs of the corporate debtor

Supporting Documents

information relating to books of account and other documents;

the name of a resolution professional proposed to be appointed as Interim Resolution Professional (IRP)

the special resolution ~~passed by the shareholders~~ of the corporate debtor or the resolution passed by **at least three-fourth of the total number of partners** of the corporate debtor, as the case may be, approving filing of the application

ORDERS OF NCLT-within 14 days

Order
Admitting
Application

OR

Order
Rejecting
Application

- application is complete in all respect and no disciplinary proceedings are pending against the proposed Interim Resolution Professional

- application is incomplete or any disciplinary proceedings are pending against the resolution professional

NCLT shall before rejecting application give notice to the applicant to rectify the default in his application within seven days of receipt of such notice from NCLT

Persons not entitled to initiate Insolvency Resolution Process:11,

A corporate debtor

- who is already undergoing an insolvency resolution process;
- having completed corporate insolvency resolution process **12 months** preceding the date of making of the application;
- who has violated any of the terms of resolution plan which was approved **12 months** before the date of making of an application;
- in respect of whom a liquidation order has been made;

A financial creditor

- who has violated any of the ~~terms of resolution plan which was approved~~ **12 months** before the date of making of an application.
- **CD INCLUDES Corporate Applicant**

CD under CIRP filing CIRP for another

²*[Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.]*

Withdrawal of Application admitted under Section 7, 9 or 10.

The Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of ninety per cent voting share of the Committee of Creditors ~~(CoC)~~, in such manner as may be specified. [refer Section 12A]

NOTE : Can it be withdrawn before FORMING OF COC

MCQ

Q.1 Who can initiate Corporate Insolvency Resolution Process (CIRP):

A. Corporate Debtor

B. Financial Creditor and Operational Creditor.

C. Financial Creditor, Operational Creditor and Corporate Debtor.

D. Corporate Debtor and Financial Creditor.

MCQ

Q.2. Which among the following is not entitled to initiate CIRP:

- A A corporate debtor in respect of whom a liquidation order has been made.
- B A corporate debtor that has not gone through a corporate insolvency resolution process.
- C A financial creditor.
- D An operational creditor.

MCQ

Q.3. What is the time limit for completion of insolvency resolution process:

- A 180 days from the date of appointment of resolution professional.
- B 180 days from the date of default by the corporate debtor.
- C 180 days from the date of submission of application for insolvency.
- D 180 days from the date of admission of the application.

MCQ

Q.4. How much is the extension period for completion of insolvency resolution process:

A 90 days.

B 180 days.

C 120 days.

D 150 days.

MCQ

Where a corporate debtor has committed a default, a corporate applicant there may file an application for initiating CIRP with the Adjudicating Authority under IBC, 2016. The Adjudicating Authority shall, within a period of _____ of the receipt of the application, by an order admit or reject the application.

7

14

21

30

MCQ

The Adjudicating Authority shall communicate the order of admission of application of CIRP u/s 7 of IBC, 2016 to _____.

Corporate Debtor

Financial Creditor

Interim Resolution Professional

Choose the correct one:

- 1 and 2
- 2 and 3
- 1 and 3
- All of the above

MCQ

Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section 7 of IBC, 2016, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application. Provided that the Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within _____ of receipt of such notice from the Adjudicating Authority.

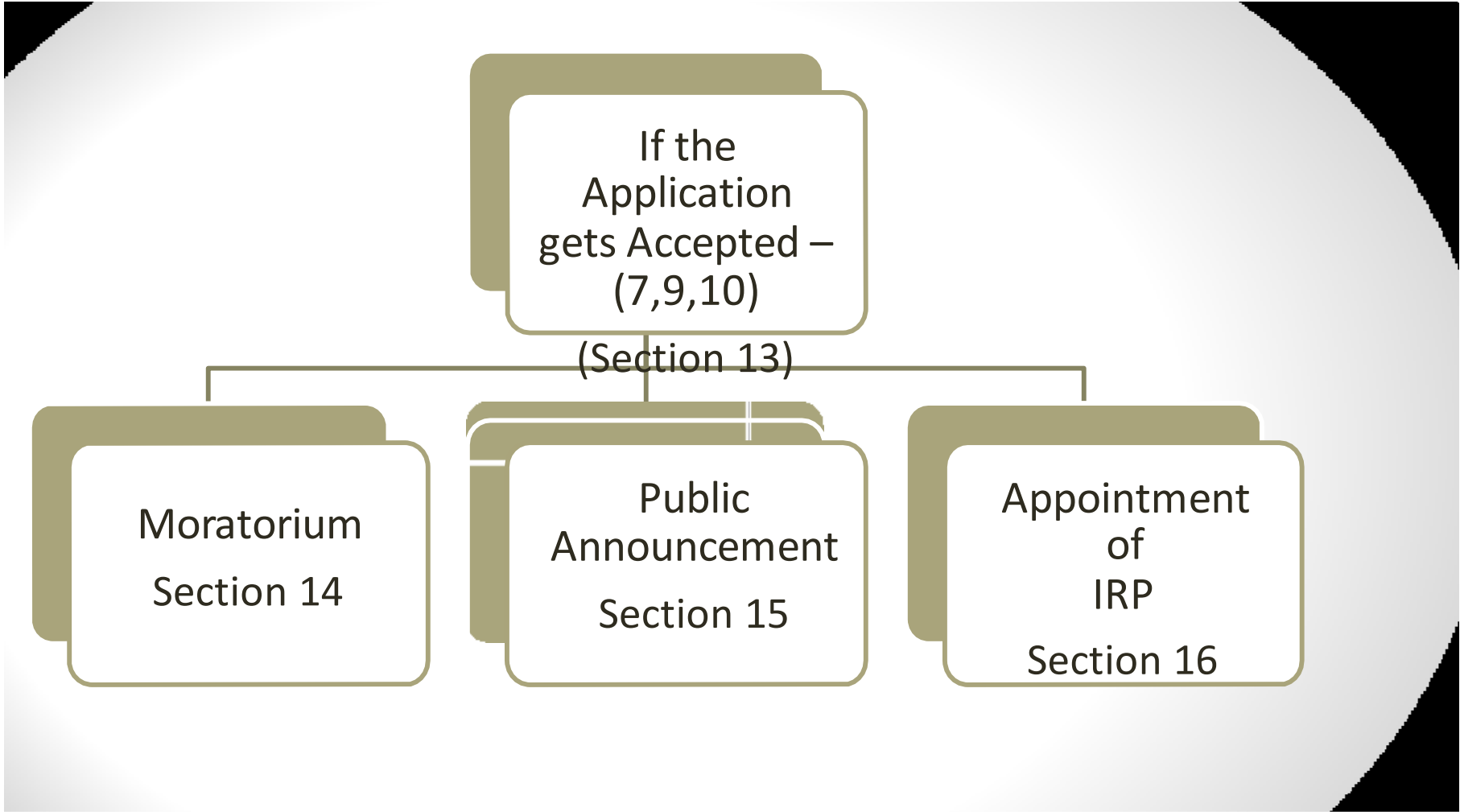
MCQ

1. A corporate debtor undergoing a corporate insolvency resolution process shall not be entitled to make an application to initiate CIRP.
2. A corporate debtor in respect of whom a liquidation order has been made shall not be entitled to make an application to initiate CIRP.

Which of the above statement is correct?

NCLT dismisses application file u/s 10 of IBC to initiate moratorium and to get stayed the proceedings initiated by the banks under the RDDB Act, 1993 and SARFAESSI Act, 2002 – M/s. Neesa Agritech and Foods Limited Vs. Small Industries Development Bank of India – NCLT Ahmedabad Bench

CIRP STARTS



CONTENTS OF ORDER ADMITTING APPLICATION AND IMPACT

after the admission of an insolvency application and commencement of Corporate Insolvency Resolution process, the Adjudicating authority will declare **moratorium** during which no action can be taken against the company or its assets in order to keep the company as a going concern.

IMPACT OF MOROTARIUM

The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority

Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein

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

Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI

NO SUSPENSION OF LICENCE

Explanation to Section 14 (1) clarifies that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, **shall not be suspended or terminated on the grounds of insolvency**, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period

SUPPLY OF ESSENTIAL SERVICES

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

Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

Exemption from Prohibitions

- Such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial regulator or any other authority shall be exempted from the application of Section 14 (1).
- A surety in a contract of guarantee to a corporate debtors shall be exempted from application of Section 14 (1) unlike corporate debtor a suit can be instituted against a surety during moratorium.

DURATION OF MORATORIUM

Date of effect of order

- date of such order till the completion of the corporate insolvency resolution process.

Date of effect of order

- It is provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be

Whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision, namely, Section 14 of the IBC – P. Mohanraj & Ors. Vs. M/S. Shah Brothers Ispat Pvt. Ltd. – Supreme Court

Any amount received during the CIRP when the moratorium is in force, is the asset of the Corporate Debtor and RP has to deal with the same as per the provisions of the Code – Mr. Sudip Bhattacharya RP of Reliance Naval & Engineering Ltd. Vs. UCO Bank – NCLT Ahmedabad Bench

Whether a Bank/Financial Institution can institute or continue with proceedings against a Guarantor under the SARFAESI Act, when proceedings under the IBC have been initiated against the Principal Borrower & the same are pending adjudication – Kiran Gupta Vs. State Bank of India & Anr – Delhi High Court

Case Name: Kiran Gupta Vs. State Bank of India & Anr
Corporate Debtor: Metenere Limited, **Case Citation:** (2020) ibclaw.in 38 HC
Appeal No.: WP(C)-7230/2020-NCLAT, **Order/Judgment Date:** 02/11/2020, **Court/Bench:** High Court-Delhi

Brief about the decision:
The view expressed by the Supreme Court in State Bank of India v. V.Ramakrishan and Another, reported as [2018] ibclaw.in 29 SC amply demonstrates that neither Section 14 nor Section 31 of the IB Code place any fetters on Banks/Financial Institutions from initiation and continuation of the proceedings against the guarantor for recovering their dues. That being the position, the plea taken by the counsel for the petitioner that all proceedings against the petitioner, who is only a guarantor, ought to be stayed under the SARFESI Act during the continuation of the Insolvency Resolution process qua the Principal Borrower, is rejected as meritless. The petitioner cannot escape her liability qua the respondent/Bank in such a manner. The liability of the principal borrower and the Guarantor remain co-extensive and the respondent/Bank is well entitled to initiate proceedings against the petitioner under the SARFESI Act during the continuation of the Insolvency Resolution Process against the Principal Borrower.

MCQ

Q.1. Who shall declare a moratorium:

A Insolvency Professional.

B Insolvency Professional Agency.

C Adjudicating Authority.

D Insolvency and Bankruptcy Board of India.

MCQ

Q.2. Which of the following activities shall not be prohibited or terminated during the moratorium period:

A Transferring, encumbering, alienating or disposing of any assets by the corporate debtor.

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

C any action to foreclose, recover or enforce any security interest created by the corporate debtor.

D The supply of essential goods or services to the corporate debtor.

PROCESS OF APPOINTMENT OF IRP

In case of Application filed by Financial Creditor or Corporate Debtor

~~IRP Proposed provided no disciplinary proceeding~~

the Adjudicating Authority shall appoint an Interim Resolution Professional on the insolvency commencement date.

Where a proposal is made for appointment For IRP

AA shall make a reference to the Board (IBBI) for the recommendation of an IP who IRP. IBBI shall recommend the name of an IP to AA against whom no disciplinary proceedings are pending, within **ten days** of the receipt of a reference from the AA.

In case of Application filed by Operational Creditor

Where no proposal is made for appointment of an IRP

ELIGIBILITY CRITERIA OF IRP/RP

Eligibility of an Insolvency Professional to be appointed as a Resolution Professional: As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Note: A person shall be considered independent of the corporate debtor, if he:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under Section 149 of the Companies Act, 2013, where the corporate debtor is a company.

(b) is not a related party of the corporate debtor.

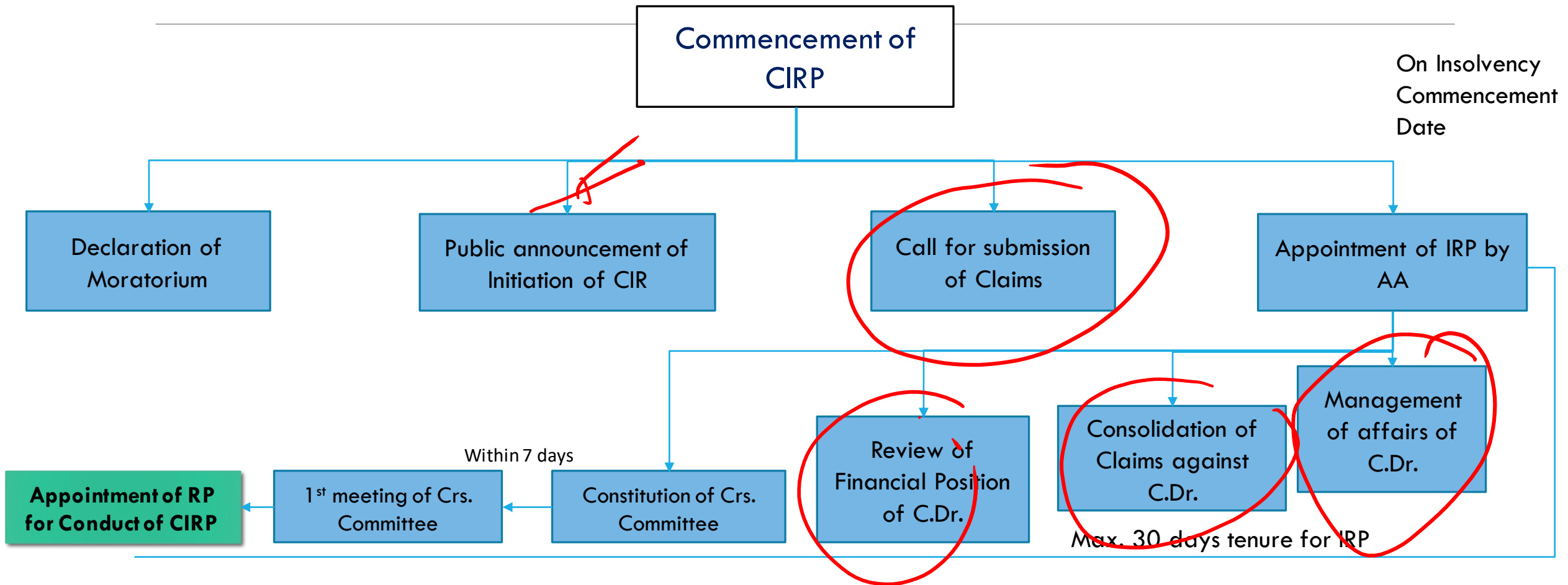
(c) is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.

(d) is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ~~five per cent or more~~ more of the gross turnover of such firm in the last three financial years.

Period of appointment of IRP:

- The term of the interim resolution professional shall continue from his appointment till the date of appointment of the resolution professional by CoC in its first meeting under Section 22.
- Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional and as per rule 17 of CIRP regulations the IRP will function as RP from 40th day of commencement of CIRP Process

Conduct of CIRP by IRP



PUBLIC ANNOUNCEMENT

(VI) Public Announcement of CIRP

Insolvency Professional shall make a public announcement of initiation of corporate insolvency resolution process in Form A immediately but not later than **three days** from the date of his appointment as an Interim Resolution Professional.

As per Section 15, public announcement shall include the following:

name and address of the corporate debtor under the CIRP;

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

the **last date for submission** of claims, as may be specified;

As per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

PUBLIC ANNOUNCEMENT

- **details of the interim resolution professional** who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- **penalties** for false or misleading claims; and
- the **date on which the CIRP shall close**, which shall be the **one hundred and eightieth day** from the date of the admission of the application under Sections 7, 9 or Section 10, as the case may be.
- **Expenses of Public Announcement:**The expenses of public announcement shall be borne **by the applicant** which may be **reimbursed by the Committee of Creditors**, to the extent it ratifies them.

Example

www.ibbi.gov.in

Powers of IRP:

:-

Management of Affairs: The management of the affairs of the corporate debtor shall vest in the interim resolution professional from the date of his appointment.

Exercise of Power of BoD/partners: The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

Reporting of officers/managers: The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

Instructions to financial institutions: The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

Powers of IRP

The interim resolution professional vested with the management of the corporate debtor shall—

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

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

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

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons

²[(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]

Duties of IRP-18

Collect all information relating to the assets, finances and operations of the corporate debtor for determining its financial position, including information relating to

(i) business operations for the previous two years.

(ii) financial and operational payments for the previous two years.

(iii) list of assets and liabilities as on the initiation date.

(iv) such other matters as may be specified.

Duties of IRP-18

- Receive and collate all the claims submitted by creditors.
- Constitute a Committee of Creditors (CoC).
- Monitor the assets of the corporate debtor.
- File information collected with the Information Utility (IU).

CUSTODY OF ASSET

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

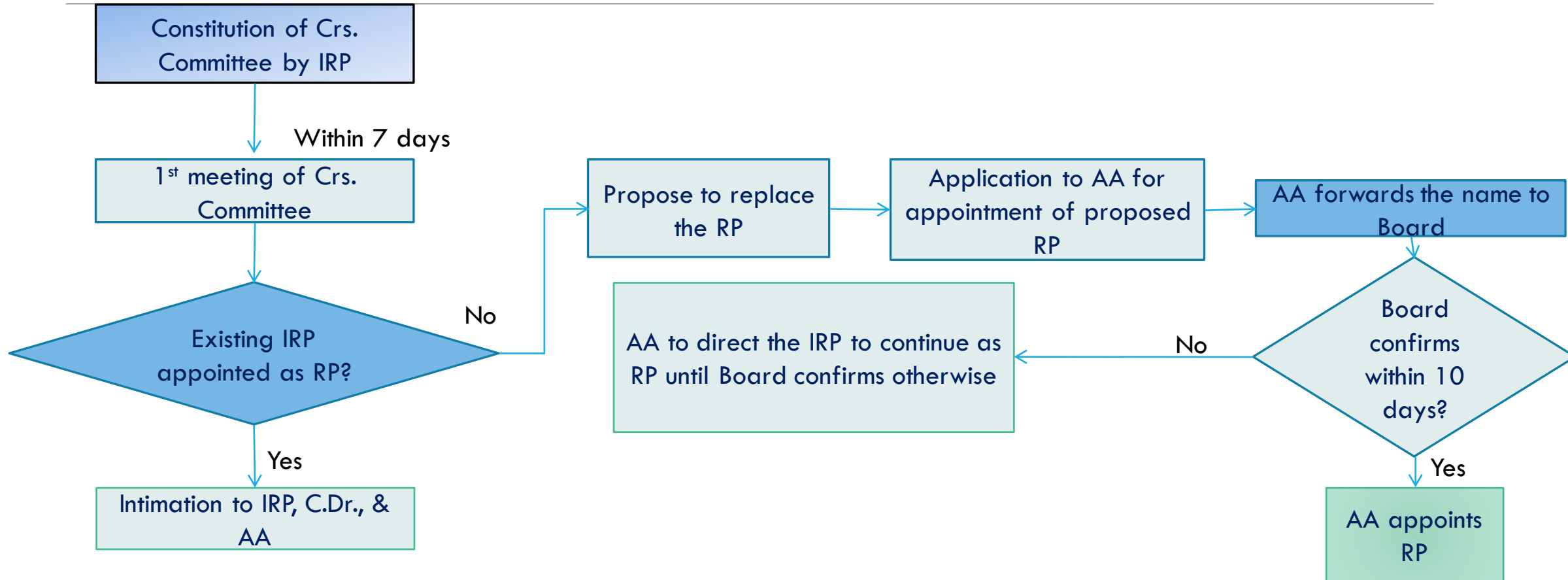
- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
- (ii) assets that may or may not be in possession of the corporate debtor;
- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property;
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

Duties of IRP

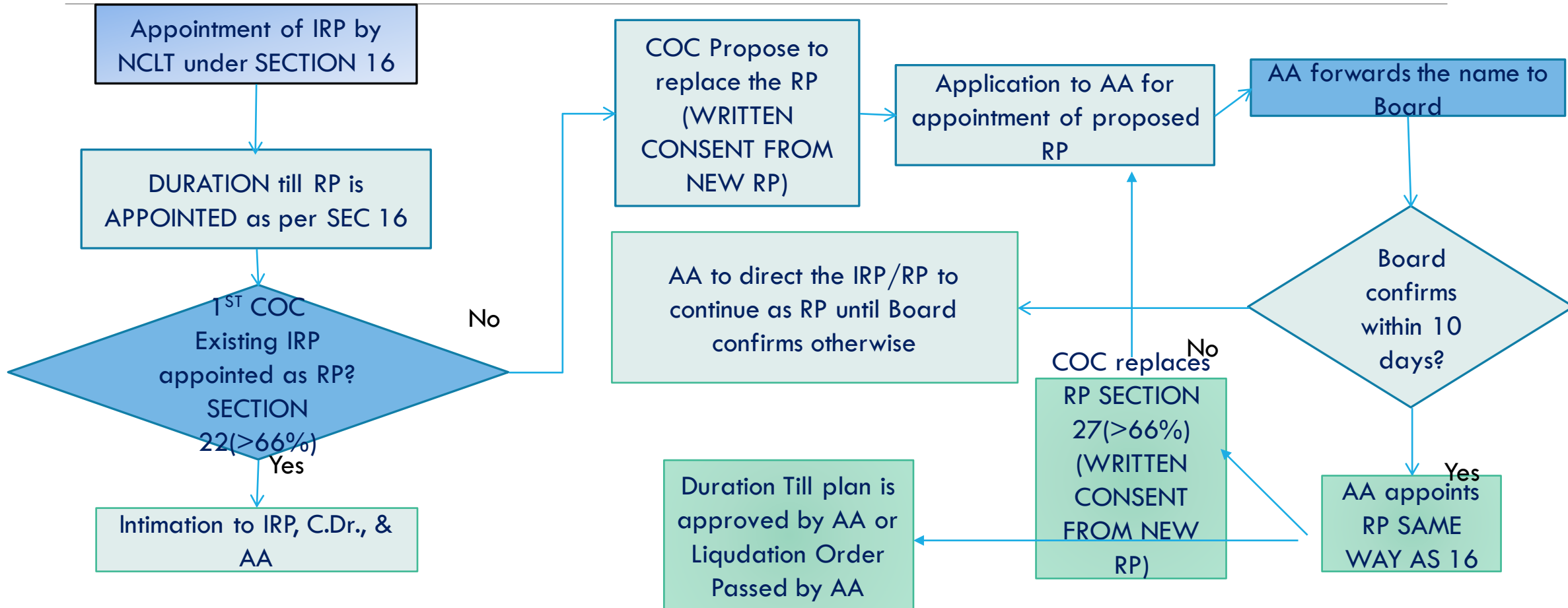
Note:The term "assets" shall not include the following items:

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

Appointment of resolution professional



Appointment of IRP and RP



QUESTION

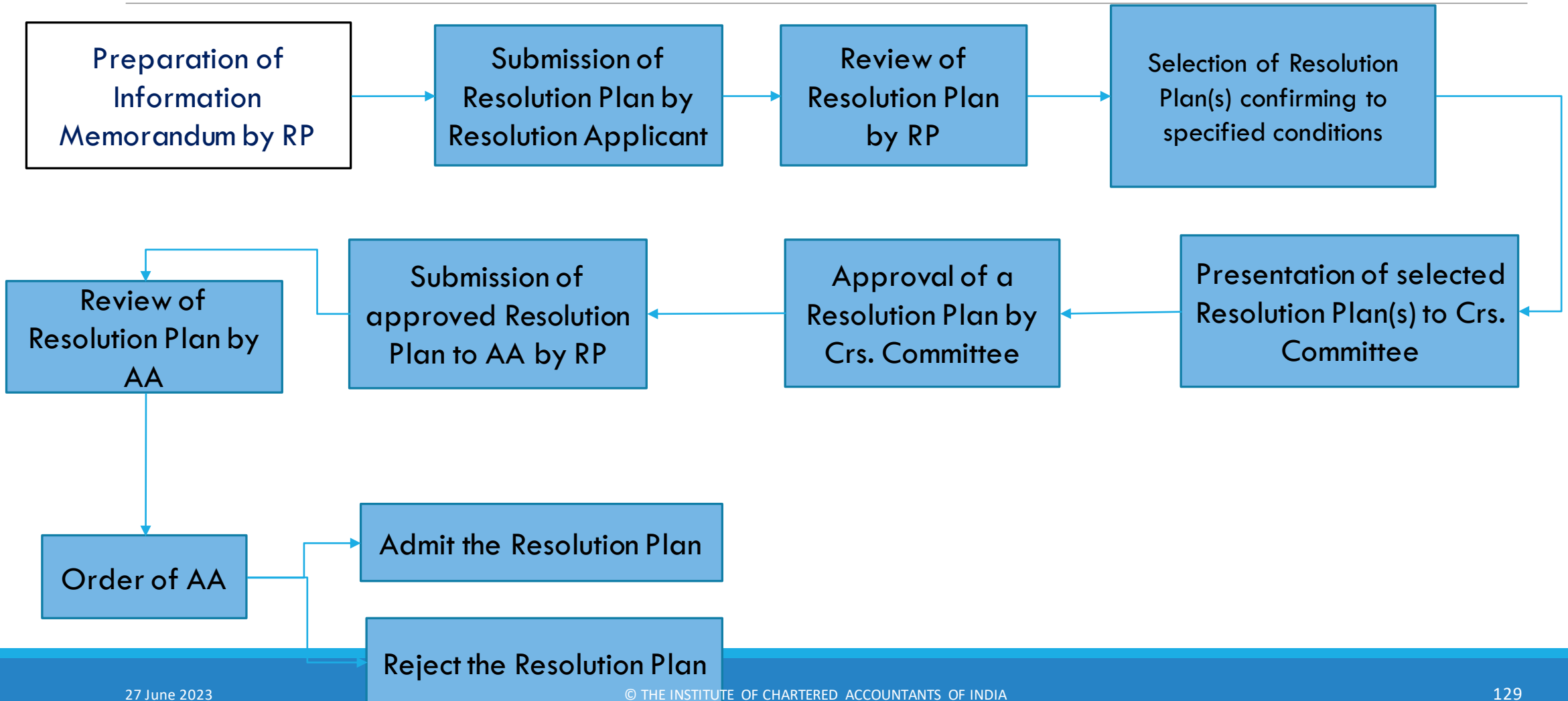
:Mr. Z was continuing as Interim resolution professional (IRP) in XY& Co. Limited. The Committee of Creditors by majority vote of seventy percent of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY & Co. Limited. The said proposal was confirmed by the IBBI after the expiry of 10 days. State whether Mr. Final can be appointed as Resolution professional immediately.

Answer: If IBBI does not confirm the proposed name of Mr. Final as RP within 10 days of receipt of proposal, the Adjudicating Authority shall direct IRP to continue as RP for such time as the IBBI confirms for the appointment of Proposed RP. Thereafter, Mr. Final shall be appointed as Resolution Professional and not before such confirmation. Reference of section 22, 22(5) rule 17

Question

Perfect Polyesters Ltd. is undergoing Corporate Insolvency Resolution Process as per Insolvency and Bankruptcy Code, 2016. Committee of Creditors is constituted. In the meantime, a Corporate Debtor — Perfect Polyesters Ltd. made a settlement with the applicant financial creditor and desires to get the application withdrawn and seeks your advice. (5 marks each)

Conduct of CIRP by RP



SHAKE HANDS !!



provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the RP.

Powers and Duties of RP

to preserve and protect the assets of the corporate debtor including the continued business operations of the corporate debtor.

Take immediate custody and control of all the assets of the corporate debtor, including the business records.

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 finances subject to the approval of the Committee of Creditors.

Appoint accountants, legal or other professionals in the manner as specified by IBBI.

Maintain an updated list of claims.

Convene and attend all meetings of the Committee of Creditors

Prepare the Information Memorandum

Invite prospective resolution applicants to submit RP and Present all resolution plans TO COC

File application for avoidance of transactions.

MCQ

Q.1. Who is a resolution professional:

A Independent person appointed by the High Court to conduct corporate insolvency resolution process.

B Insolvency professional appointed to conduct corporate insolvency resolution process.

C Independent person appointed by the applicant to conduct corporate insolvency resolution process.

D any person qualified to be appointed as a resolution professional and who has submitted an application to the Board to undertake corporate insolvency resolution process.

MCQ

Q.2. What is the eligibility for the resolution professional:

A Resolution professional should be above 30 years of age.

B Resolution professional should possess sound knowledge and judgment.

C Resolution professional and all partners and directors of the insolvency professional entity of which he is a partner or director should be independent of the corporate debtor.

D Resolution professional should carry out his tasks fairly and diligently.

MCQ

Q.3. What is the term of appointment of interim resolution professional:

A 30 days from the date of his appointment.

B 14 days from the date of his appointment.

C 20 days from the date of his appointment.

D Till the time Resolution Professional is appointed

MCQ

Q.4. Which of the following activities cannot be undertaken by an interim resolution professional:

A To appoint accountants, legal or other professionals.

B To issue instructions to personnel of the corporate debtor for keeping the corporate debtor as a going concern.

C To enter into contracts on behalf of the corporate debtor.

D To undertake liquidation proceedings of the corporate debtor.

QUESTION

(A) *In view of the deep recession prevailing in, the market for the past three years, M/s. Infra Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized Trade Union "Infra Labor Federation", made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the Company in person and through representations in writing to settle the arrears of wages and salaries due to its members. The Corporate Debtor neither disputed nor took any actions to settle the amount. Under the circumstances, Infra Labor Federation filed an application before the Adjudicating Authority*

i.e. with the National Company Law Tribunal for initiating a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, examine the following:

(i) *Validity of the Application.*

What will be the "Initiation date" for initiating the Corporate Insolvency Resolution Process?

ANSWER

As per section 5(20) of the Code, *"Operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*"

Whereas Operational Debt as per Section 5 (21) of the Code *means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."*

Accordingly, if there is any dues arising in the course of employment, then that will be considered as an operational debt and the person to whom such operational debt is owed shall be treated as the Operational Creditor. Therefore, workmen & employees shall be treated as Operational Creditor of the Corporate Debtor.

The term "person" as defined under section 3(23) of the IBC, 2016 includes "any other entity established under any statute". A trade union, when registered under the Trade Union Act, 1926 would come within the purview of any other entity "established" under the statute.

QUESTION

The Committee of Creditors of M/s XYZ Limited proposes to appoint Mr. Ajit, an Insolvency Professional, as Insolvency Resolution Professional in the matter of corporate insolvency process of M/s XYZ Limited. Mr. Ajit was a promoter of M/s ABC Limited which is a holding company of M/s XYZ Limited. Examine and decide whether Mr. Ajit is eligible for appointment as an Insolvency Resolution Professional under the Provisions of Insolvency and Bankruptcy Code, 2016.

QUESTION

1. Creative India Limited owes a sum of ₹ 2,80,00,000 to S a FINANCIAL CREDITOR, who assigns this debt to his two creditors, Mr. R – to the extent of ₹ 1,40,00,000 and Mr. M - to the extent of ₹ 1,40,00,000

Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

What is the situation if the assignment is to R -2,00,00,000 and to M 80,00,000

ANS

Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditor against corporate debtor on default of payment of debt of 1,00,00,000 or more. Assignee of financial debt is also financial creditor as per section 5(7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.



CONSTITUTION OF Committee of Creditors and Meeting and Powers

Committee of Creditors

Committee of creditors shall be formed with financial creditors only.

- Financial creditors which are related parties of the corporate debtor shall not form part of committee
- a financial creditor or the authorised representative of the financial creditor, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors
- Provided further that the above shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date

RELATED PARTY

- (a) **a director or partner or a relative** of a director or partner of the corporate debtor
- (b) **key managerial personnel or a relative** of key managerial personnel of the corporate debtor;
- (c) **a limited liability partnership or a partnership firm** in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- (d) **a private company** in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) **a public company** in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) **anybody corporate** whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

RELATED PARTY

- (g) **any limited liability partnership or a partnership firm** whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (h) **any person** whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- (i) **a body corporate which is a holding, subsidiary or an associate company** of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
- (j) **any person who controls** more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

RELATED PARTY

(k) **any person in whom the corporate debtor controls** more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) **any person who can control the composition** of the board of directors or corresponding governing body of the corporate debtor;

(m) **any person who is associated with the corporate debtor** on account of—

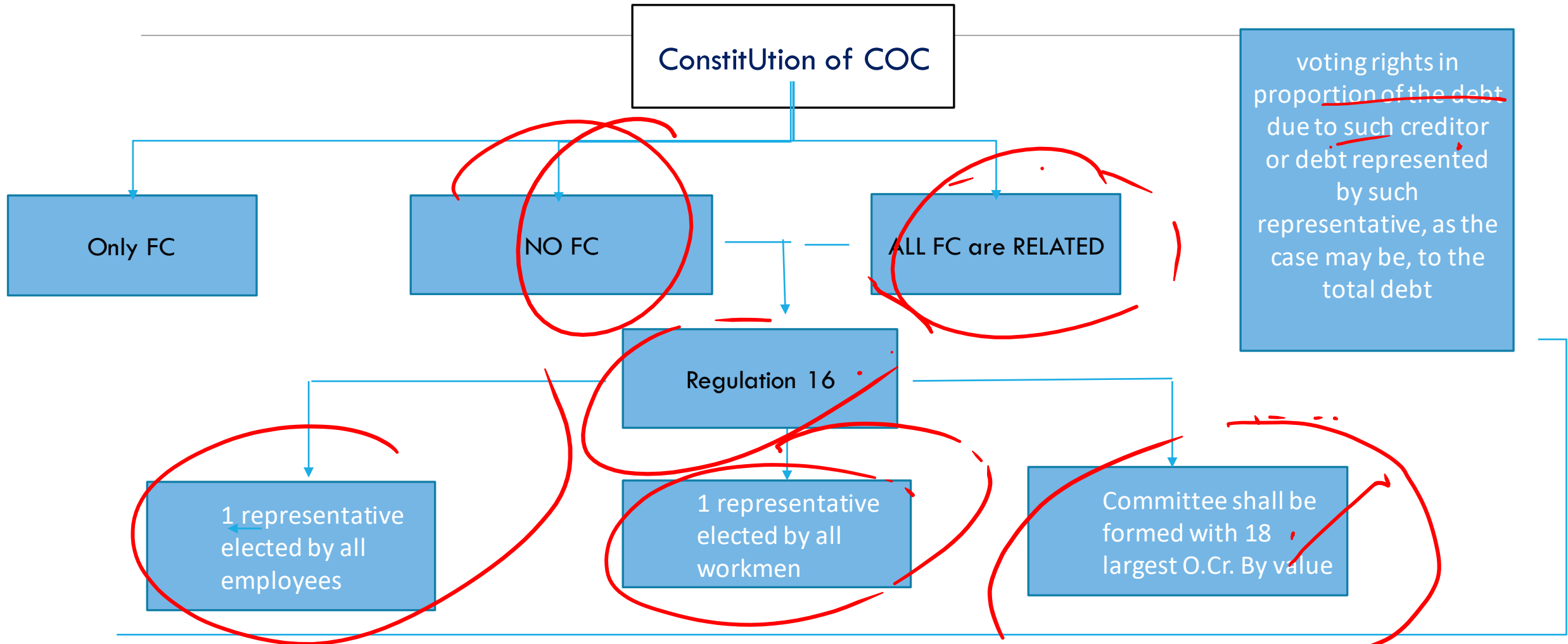
(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person;
or

(iii) interchange of managerial personnel between the corporate debtor and such person;

(iv) provision of essential technical information to, or from, the corporate debtor;

Once CIRP commences . . .



TOTAL DEBT

- Explanation – For the purposes of this sub-regulation, ‘total debt’ is the sum of-
 - (a) the amount of debt due to the creditors listed in sub-regulation 2(a);
 - (b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and
 - (c) the amount of the aggregate debt due to employees under sub-regulation 2(c).

Consortium Finance

Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their **voting share shall be determined on the basis of the financial debts owed to them**

Where any person is a financial creditor as well as an operational creditor, -

- such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor
- such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

Class of creditors ?

- Allottees
- Fixed deposit holders
- Debenture holders

Powers and Duties of AR

AUTHORISED REPRESENTATIVE

is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as AR for all the FC.

is owed to a class of creditors

is represented by a guardian, executor or administrator

the IRP shall make an application to the AA along with the list of all FC, containing the name of an insolvency professional, other than the IRP, to act as their AR who shall be appointed by the AA prior to the first meeting of the COC

It is to be noted that such AR under clause (a) or clause (b) or clause (c) shall attend the meetings of the COC, and vote on behalf of each financial creditor to the extent of his voting share.

RIGHTS OF AUTHORISED REPRESENTATIVE

:

Right to vote [Section 25A (1)]: The authorised representative of financial creditors under Section 21 (6) or 21 (6A) or 24 (5) shall have the right to participate and vote in the meetings of the CoC on behalf of the financial creditor he represents. This shall be done according to the prior instructions of such creditors obtained through physical or electronic means.

Duty to circulate the agenda and minutes [Section 25A (2)]: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

Duty not to act against interest of financial creditor [Section 25A (3)]: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions. If any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

AUTHORISED REPRESENTATIVE

If he represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share.

Duty to act as per majority instructions [Section 25A (3A)]:As against acting according to the individual instructions of financial creditors (refer heading '*Duty not to act against interest of financial creditor*'), the authorised representative under Section 21 (6A) (representing creditors belonging to a class) shall cast his vote on behalf of all the financial creditors he represents in accordance with the **decision taken by a vote of more than fifty per cent** of the voting share of the financial creditors he represents, who have cast their vote.

AUTHORISED REPRESENTATIVE

It is provided that for a vote to be cast in respect of an application under section 12A (*i.e.* withdrawal of application admitted by the Adjudicating Authority under Sections 7, 9 or 10), the authorised representative shall cast his vote in accordance with the provisions of Section 25A (3)*i.e.* as per the individual instructions of the financial creditors.

Duty to file instructions with CoC [Section 25A (4)]:The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be

VCD

Remuneration payable to Authorised Representatives

:Section 21(6B) provides for the payment of remuneration to the authorised representative as under:

(i) If it is payable under clauses (a) and (c) of Section 21 (6A), it shall be as per the terms of the financial debt or the relevant documentation; and

(ii) If it is payable under clause (b) of Section 21 (6A), it shall be as specified. Further, it shall form part of the insolvency resolution process costs.

LETS MEET !!

Meeting of COC: section 24

- (1) The members of the committee of creditors may meet in person or by such other electronic means as may be specified.
- (2) All meetings of the committee of creditors shall be conducted by the resolution professional.
- (3) The resolution professional shall give notice of each meeting of the committee of creditors to-
 - (a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];
 - (b) members of the suspended Board of Directors- NO VOTING RIGHTS
 - (c) operational creditors or their representatives if the amount of their aggregate dues is **not less than 10% of the debt.- No voting right**

Meeting of COC: section 24

The absence of any such director, partner or representative of OC, shall not invalidate proceedings of such meeting –

(5) Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor who is a member of the COC may appoint an IP other than the resolution professional to represent such creditor in a COC meeting

Provided that the fees payable to such IP representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

Regulation 18

A RP may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing **thirty three per cent of the voting rights.**

Regulation 19

Meeting of the committee shall be called by giving **not less than five days' notice in writing to every participant,** at the address it has provided to the RP and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Reg. 20

Provided that the committee may reduce the period to **24 hours** and **not less than forty-eight hours** if there is any AR

Voting %age required

As IRP or RP- we shall prepare a list of all the items which requires voting

How much voting % age required for each item

Voting system in a class of creditors

SHOW SOME POWER

Power of COC

- All the decisions of the COC shall be taken by vote of not less than **66% of voting share of FC or by majority (51%) or 90%**
- The COC shall have right to require the RP to furnish any financial information and the RP shall make available any financial information **within a period of 7 days of such requisition**

Prior Approval of COC

raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting

create any security interest over the assets of the corporate debtor

change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company

Prior Approval of COC

record any change in the ownership interest of the corporate debtor;

give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as maybe decided by the committee of creditors in their meeting

undertake any related party transaction

Prior Approval of COC

make any change in the management of the corporate debtor or its subsidiary;

delegate its authority to any other person

dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties

Prior Approval of COC

make any change in the management of the corporate debtor 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 as specified by the committee of creditors;
or (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor

COC

Q.1. Who constitutes the committee of creditors:

A Insolvency professional.

B Financial or operational creditor.

C Interim resolution professional.

D Adjudicating Authority.

Q.2. Which of the following actions does not require the prior approval of the committee of creditors:

A Appoint accountants, legal or other professionals for the corporate debtor.

B Create any security interest over the assets of the corporate debtor.

C Record any change in the ownership interest of the corporate debtor.

D Make any charge in the management of the corporate debtor or its subsidiary.

RESOLUTION PLAN

Definition OF
Resolution Plan

Who can apply for
Resolution Plan

Process of Inviting Rp

Contents of
Resolution Plan

Submission and
Approval AND
Implementation of RP

INVITING RESOLUTION PLAN-Section 25(2)

25. (1) It shall be the duty of the resolution professional to

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective lenders, investors, and any other persons to put forward resolution plans;

(i) present all resolution plans at the meetings of the committee of creditors;

PROCESS OF RESOLUTION PLAN

**IM PREPARED BY RP by
54th day**

FORM G by 75th day

EOI

RFRP

EVM

Any PRA who shows
Interest

Who fulfills and the
condition of EOI and is
approved PRA

Resolution Plan BASED ON RFRP, IM AND
EVM.

**ALONG WITH
AFFIDAVIT U/S29A**

INFORMATION MEMORANDUM SEC 29

29. (1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

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

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

INFORMATION MEMORANDUM SEC 29

(b) to protect any intellectual property of the corporate debtor it may have access

to; and

(c) not to share relevant information with third parties unless clauses (a) and (b)

of this sub-section are complied with.

Explanation.—For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

Information memorandum: Regulation 36

Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee **within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.**

The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.]

Resolution Plan

Resolution Plan

According to Section 5 (26), a 'resolution plan' means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code.

Explanation to Section 5 (26) clarifies that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

The aim of the Code is to revive the corporate debtor and therefore, resolution plan should be such that it is capable of resolving the insolvency of the corporate debtor as a going concern

Persons not eligible to be Resolution Applicant for submission of Resolution Plan:

According to Section 29A, a person shall not be eligible to submit a 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 **wilful defaulter** in accordance with the guidelines of the Reserve Bank of India;
- (c) at the time of submission of the resolution plan 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 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.

Persons not eligible to be Resolution Applicant for submission of Resolution Plan

Exception: It is 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 assets accounts before submission of resolution plan.

It is further provided that that nothing in the above clause shall apply to a resolution applicant where such applicant is a **financial entity** and is not a related party to the corporate debtor.

- (d) has been **convicted** for any offence punishable with imprisonment –
- (i) for **two years or more** under any Act specified under the Twelfth Schedule; or

Persons not eligible to be Resolution Applicant for submission of Resolution Plan

(ii) for **seven years or more** under any law for the time being in force:

It is provided that this clause shall not apply to a person after the expiry of a period of **two years** from the date of his release from imprisonment:

Further it is provided that this clause shall not apply in relation to a connected person.

(e) is **disqualified** to act as a director under the Companies Act, 2013.

It is provided that this clause shall not apply in relation to a connected person.

(f) is **prohibited by the Securities and Exchange Board of India (SEBI)** from trading in securities or accessing the securities markets.

Persons not eligible to be Resolution Applicant for submission of Resolution Plan

(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.

(h) has executed a **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 and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

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

PROCESS OF RESOLUTION PLAN

**Submission of
Resolution plan to RP
by resolution applicant**

**ALONG WITH
AFFIDAVIT U/S29A**

**Examination of
resolution plan
by RP**

**RP present resolution
plan for approval to
CoC**

**Approval by CoC
by vote not less
than 66%**

**RP to submit approved
resolution plan to
Adjudicating Authority**

The resolution applicant may attend the meeting of the Committee of Creditors in which the resolution plan of the applicant is considered. However, he shall not have a right to vote at the meeting of the Committee of Creditors unless such resolution applicant is also a financial creditor.

voting rights in ←

Examination of resolution plan by RP

: The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of **insolvency resolution process costs** in the manner specified by the IBBI in priority to the payment of other debts of the corporate debtor.

[(b) (1) provides for the payment of the **debts of operational creditors** in the manner specified by IBBI. The payment shall not be less than:

Examination of resolution plan by RP

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under Section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Section 53 (1), whichever is higher.

(2) provides for the payment of **debts of financial creditors** who do not vote in favour of the resolution plan, in the manner specified by the IBBI; but such payment shall not be less than the amount to be paid to such creditors according to Section 53 (7) in the event of a liquidation of the corporate debtor.

It is clarified that a distribution in accordance with the provisions of clause (b) of Section 30 (2) shall be fair and equitable to such creditors. [Explanation 1 to clause (b) of Section 30 (2)]

Examination of resolution plan by RP

Further, vide Explanation 2 to Section 30(2) (b), it is hereby declared that on and from the date of commencement of the IBC(Amendment) Act, 2019 (i.e. from 16-8-2019), the provisions of clause (b) of Section 30 (2) shall also apply to the corporate insolvency resolution process of a corporate debtor—

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
 - (ii) where an appeal has been preferred under Section 61 or Section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
 - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan.]
- (c) provides for the **management of the affairs of the Corporate debtor** after approval of the resolution plan.

Examination of resolution plan by RP

(d) **implementation and supervision** of the resolution plan.

(e) **does not contravene** any of the provisions of the law.

As per Explanation to clause (e) of Section 30 (2), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force 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.

For **example**, if a special resolution is required to be passed for implementation of some action under the resolution plan, such special resolution shall be deemed to have been passed by the shareholders.

(f) **conforms to such other requirements** as may be specified by IBBI.

Approval of Resolution Plan

(IX)

According to Section 31, if the Adjudicating Authority is satisfied that the resolution plan as approved by the Committee of Creditors under Section 30 (4) meets the requirements specified in Section 30 (2), it shall by order approve the resolution plan which shall be binding on the corporate debtor 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 resolution plan.

It is provided that the Adjudicating Authority shall, before passing an order for approval of the resolution plan, satisfy that the resolution plan has provisions for its effective implementation.

Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements as given above, it may, by an order, reject the resolution plan.

Approval of Resolution Plan

After the order of approval of resolution plan, the **moratorium order shall cease to have effect** and the Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to IBBI to be recorded on its database.

The resolution applicant shall, pursuant to the resolution plan approved under Section 31 (1), obtain the necessary approval required under any law for the time being in force **within a period of one year** from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

It is provided that in case the resolution plan contains a provision for **combination**, as referred to in Section 5 of the Competition Act, 2002, the resolution applicant shall obtain the **approval of the Competition Commission of India** prior to the approval of such resolution plan by the Committee of Creditors.

APPEAL

Appeal against Order of Approval of Resolution Plan: As per Section 32, an appeal against an order of Adjudicating Authority approving the resolution plan may be filed on the grounds stated in Section 61 (3).

Q.1. What is resolution plan:

A A plan proposed by the financial or operational creditor for insolvency resolution of the corporate debtor as a going concern.

B A plan proposed by the Adjudicating Authority creditor for insolvency resolution of the corporate debtor as a going concern.

C A plan proposed by any person for insolvency resolution of the corporate debtor as a going concern.

D A plan proposed by the corporate debtor themselves for insolvency resolution of the corporate debtor as a going concern.

Q.2. Who approves the resolution plan:

A Committee of creditors.

B Insolvency Professional.

C Adjudicating Authority.

D Insolvency and Bankruptcy Board of India.

Q.3. What is the voting requirement for approval of resolution plan by creditors:

A 85 percent of voting shares

B 66 percent of voting shares

C 75 percent of voting shares

D 90 percent of voting shares

TIME LIMIT FOR COMPLETION OF CIRP PROCESS AND MODEL TIME LINE

The corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days** from the date of admission of the application by the NCLT. There is provision for extension of this time limit. If extension is required, the Resolution Professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days. However, extension needs to be authorised by a resolution passed at a meeting of the Committee of Creditors (CoC) by a vote of **sixty-six per cent** of the voting shares.

On receipt of an application, if the Adjudicating Authority is satisfied that the corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may, by order, extend the duration by such further period, but not exceeding **ninety days**. It shall not be granted more than once.

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall **compulsorily be completed** within **330 days** from the insolvency commencement date including any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

LIQUIDATION

TRIGGER POINTS

Where before the expiry of the Insolvency Resolution Process period or the maximum period permitted for completion of the CIRP the Adjudicating Authority does not receive a Resolution Plan

Where the resolution professional before the confirmation of resolution plan intimates the Adjudicating Authority of the decision of Committee of Creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor

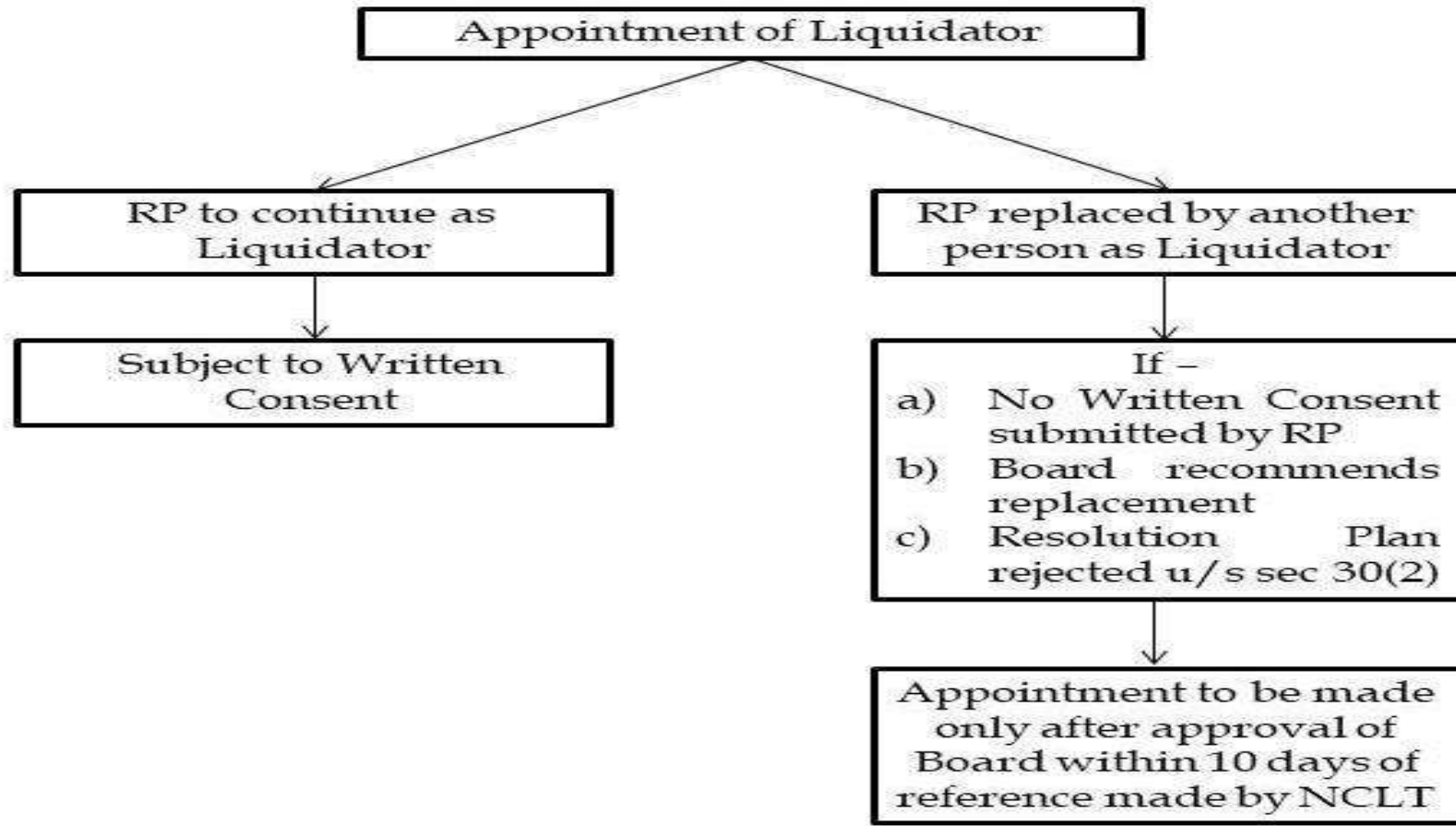
Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order

Explanation :Coc may take the decision to liquidate any time after its formation and before confirmation of RP including any time before preparation of IM

IMPACT OF ORDER

Moratorium

APPOINTMENT OF LIQUIDATOR



Appointment of Liquidator:

On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, shall cease to have effect and shall be vested in the liquidator.

Powers and Duties of Liquidator:

As per Section 35, a liquidator shall discharge his function under the directions of the Adjudicating Authority. Following are some of the important powers and duties of a liquidator:

- (a) To verify the claims of all the creditors.
- (b) To take all the assets, property, effects and actionable claims of the Corporate Debtor into his custody.
- (c) To evaluate the assets and property of the Corporate Debtor in the manner as specified by IBBI and make a report.
- (d) To take necessary measures to protect and preserve the assets and properties of the Corporate Debtor.
- (e) To carry on the business of Corporate Debtor for its beneficial liquidation.

(f) To sell the immovable and movable property as well as actionable claims of Corporate Debtor by public auction or private contract. However, such sale shall not be made to any person who is not eligible to be a resolution applicant.

(g) To draw, accept and endorse any negotiable instrument on behalf of the Corporate Debtor.

(h) To take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money payable from a contributory.

(i) To obtain any professional assistance from any person or appoint any professional, in discharge of his duties and responsibilities.

(

j) To invite and settle claims of creditors and claimants and distribute proceeds as per the applicable provisions.

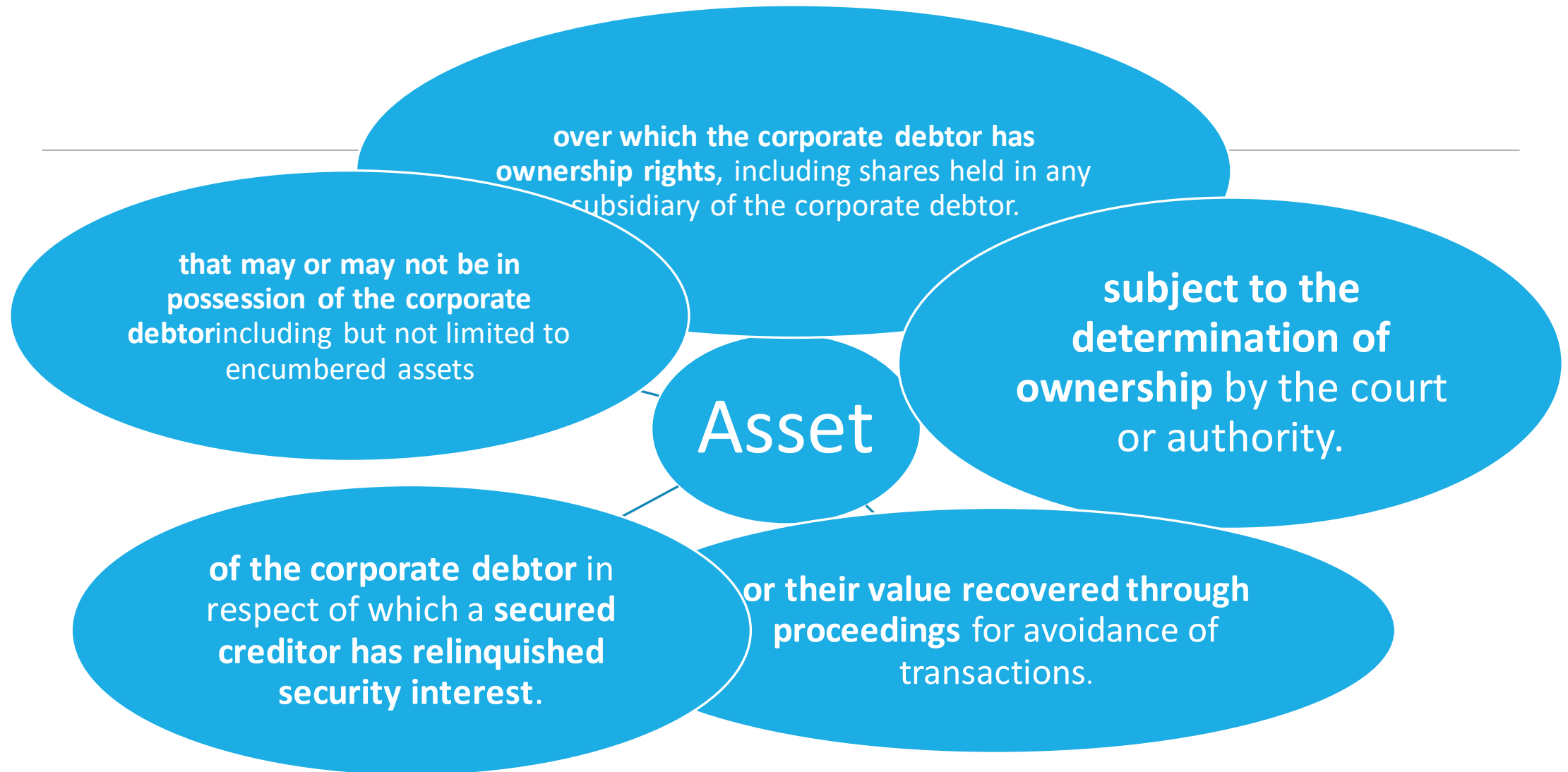
(k) To institute or defend any suit or other legal proceedings on behalf of the Corporate debtor.

(l) To investigate the financial affairs of the Corporate debtor to determine undervalued or preferential transactions.

(m) To apply to the Adjudicating Authority for such directions as may be necessary for the liquidation of the Corporate Debtor.

(n) To perform such other functions as may be specified by IBBI.

LIQUIDATION ESTATE



LIQUIDATION ESTATE

tangible assets,
whether movable or
immovable.

intangible assets

**any other property
belonging to or vested
in the corporate debtor
at the insolvency
commencement date.**

**all proceeds of
liquidation** as and when
they are realised

Exemptions from inclusion in the Liquidation Estate Assets

- (a) assets owned by a third party which are in possession of the corporate debtor, including—
- (i) assets held in trust for any third party;
 - (ii) bailment contracts;
 - (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
 - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

Exemptions from inclusion in the Liquidation Estate Assets

- (b) **assets in security collateral held by financial services providers** and are subject to netting and set off in multi-lateral trading or clearing transactions.
- (c) **personal assets of any shareholder or partner of a corporate debtor** except that such assets are not held on account of avoidance transactions that may be avoided under Chapter III.
- (d) **assets of any Indian or foreign subsidiary** of the corporate debtor.
- (e) any **other assets as may be specified by IBBI**, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

Q.1. Can an Adjudicating Authority order the liquidation of a corporate debtor before the expiry of insolvency resolution process period:

A No, an Adjudicating Authority cannot order the liquidation of a corporate debtor before the expiry of insolvency resolution process period.

B As per the discretion of the Adjudicating Authority

C Yes, if the Adjudicating Authority reject the resolution plan

D Yes, if the interim resolution professional does not constitute Committee of Creditors

Q.2 Can an Adjudicating Authority order the liquidation of a corporate debtor even after approving the resolution plan:

A Yes, if the resolution plan is contravened

B The Adjudicating Authority may order the liquidation of a corporate debtor even after approving the resolution plan on receiving an application from a third party who is unaffected by such liquidation

C Yes, the Adjudicating Authority may order for the liquidation of a corporate debtor if the committee of creditor does not approve the resolution plan after its approval by the Adjudicating Authority

D No, the Adjudicating Authority cannot order the liquidation of a corporate debtor after approving the resolution plan

Q.3. Under which of the following condition can an Adjudicating Authority order the liquidation of corporate debtor:

- A When the committee of creditors of corporate debtor decides to liquidate after the confirmation of resolution plan
- B When half of the committee of creditors of corporate debtor decides to liquidate before the confirmation of resolution plan
- C When half of the committee of creditors of corporate debtor decides to liquidate after the confirmation of resolution plan
- D When the committee of creditors of corporate debtor decides to liquidate before the confirmation of resolution plan

Q.4. What is the nature of liquidation order:

- A Deemed to be a notice of discharge to the officers of the corporate debtor
- B Deemed to be a notice of discharge to the financial creditor
- C Deemed to be a notice of discharge to the officers and workmen of the corporate debtor
- D Deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor

Q.5 Upon appointment of liquidator in a company, whose power shall be vested in the hands of the liquidator:

A Power of Executive Directors of the corporate debtor

B Power of Executive Directors and Independent Directors of the corporate debtor

C Power of Board of directors, Key Managerial Personnel and the partners of the corporate debtor

D Power of only Board of Directors of the corporate debtor

Q.6. Under which situation can an Adjudicating Authority replace the resolution professional from getting appointed as liquidator:

A When resolution plan has failed to meet the requirements and has been rejected by the Adjudicating Authority

B When resolution plan is not approved by the committee of creditors of corporate Debtor

C within 30 days of the direction issued by the Adjudicating Authority

D within 45 days of the direction issued by the Adjudicating Authority

Q.7. Can IBBI recommend the replacement of a liquidator in a liquidation process of corporate debtor:

A No, IBBI cannot recommend the replacement of a liquidator in a liquidation process of corporate debtor

B Only in those cases which are transferred from BIFR

C Only in cases where the Board has appointed the Interim Resolution Professional

D Yes, IBBI can recommend the replacement of a liquidator by recording the reasons in writing and intimating to Adjudicating Authority

Q.8. Which of the following assets are included in the liquidation estate:

A assets held in trust for any third party

B bailment contracts

C tangible assets, whether movable or immovable

D sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund

Q.9 Which of the following assets are not included in the liquidation estate:

A assets subject to the determination of ownership by the court or authority

B any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest

C intangible assets including but not limited to intellectual property, securities and financial instruments, insurance policies, contractual rights

D assets in security collateral held by financial service providers and are subject to netting and set-off in multi-lateral trading or clearing transactions.

Q.10.Which of the following assets are included in the liquidation estate:

A any assets or their value recovered through proceedings for avoidance of transactions as per the Code

B personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided as per the Code

C assets of any Indian or foreign subsidiary of the corporate debtor

D contractual agreements which do not stipulate transfer of title but only use of the assets

Consolidation of Claims

According to Section 38, the liquidator shall receive or collect the claims of creditors within a period of **thirty days** from the date of the commencement of the liquidation process. Submission of claims by various creditors shall be done as under:

financial creditor(a)

submit a claim to the liquidator by providing a record of such claim with an information utility.

In case the claim is not recorded in the information utility, the **financial creditor** may submit the claim in the same manner as is applicable to an operational creditor

operational creditor(b)

may submit a claim to the liquidator in the prescribed form and manner along with supporting documents as specified by IBBI.

partly a financial creditor and partly an operational creditor(c)

he shall submit claims to the liquidator to the extent of his financial debt as given in (a) and to the extent of his operational debt as given in (b).

Note: A creditor may withdraw or vary his claim within **fourteen days** of its submission.

(6) Verification of Claims

Section 39 deals with verification of claims by the liquidator. The verification shall be done within the time period as specified by IBBI. The liquidator may require any creditor or corporate debtor or any other person to produce some other document or evidence for the purpose of verifying the claim.

(7) Admission or Rejection of Claims

The liquidator may, after verification of claims under Section 39, either admit or reject the claim, in whole or in part. In case of rejection, he shall record the reasons in writing for such rejection. Further, he shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within **seven days** of such admission or rejection of claims

PUFE TRANSACTIONS

PREFERENTIAL TRANSACTIONS-43

there is a transfer of property t

- **or an interest thereof** of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an **antecedent financial debt or operational debt or other liabilities owed by the corporate debtor**

beneficial position

- the **transfer** under clause (a) has the effect of **putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53.**

Exceptions

(a) transfer made in the **ordinary course of the business or financial affairs** of the corporate debtor or the transferee;

(b) any transfer **creating a security interest in property** acquired by the corporate debtor to the extent that —

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before **thirty days** after the corporate debtor receives possession of such property.

It is provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Section 44: Orders in case of preferential transactions.

*44. The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of [section 43](#), by an order:

- (a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- (b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- (d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- (e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation I.—For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference,—

(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(ii) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II.—A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under [section 13](#).

UNDERVALUED TRANSACTIONS-45

such
transaction has
not taken place
in the ordinary
course of
business of the
corporate
debtor

- makes a **gift** to a person; or

-) 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,

Relevant Time-46

Related
Party

- It is given to a related party (other than by reason only of being an employee), during the period of **two years** preceding the insolvency

Unrelated
Party

- during the period of **one year** preceding the insolvency commencement date.

48

The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following:—

- (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
- (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
- (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
- (d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Application for PT and UT

Application
by RP or
Liquidator

- Order under 44 and 48

Application
by
Creditor-47

- Order under 47

Section 47

Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter.

Section 47-Order

:If the Adjudicating Authority, after examination of the application, is satisfied that—

(a) undervalued transactions had **occurred**; and

(b) liquidator or the resolution professional, after having sufficient information or opportunity to avail information of such transactions **did not report** such transaction to the Adjudicating Authority.

Then it shall **pass an order** as under:

(a) ~~restoring the position~~ as it existed before such transactions and reversing the effects thereof in the manner as laid down in Section 45 and Section 48;

(b) ~~requiring the IBBI to initiate disciplinary proceedings~~ against the liquidator or the resolution professional as the case may be.

:

Transactions defrauding Creditors

where the corporate debtor has entered into an undervalued transaction and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor for the specified reasons then AA may ORDER

- (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
- (ii) protecting the interests of persons who are victims of such transactions:

Extortionate Credit Transactions-50

- :an extortionate credit transaction involving the receipt of financial or operational debt during the period
- within **two years** preceding the insolvency commencement date
- IBBI may specify the circumstances in which a transaction shall be considered an extortionate credit transaction.

Orders of Adjudicating Authority in respect of Extortionate Credit Transactions:

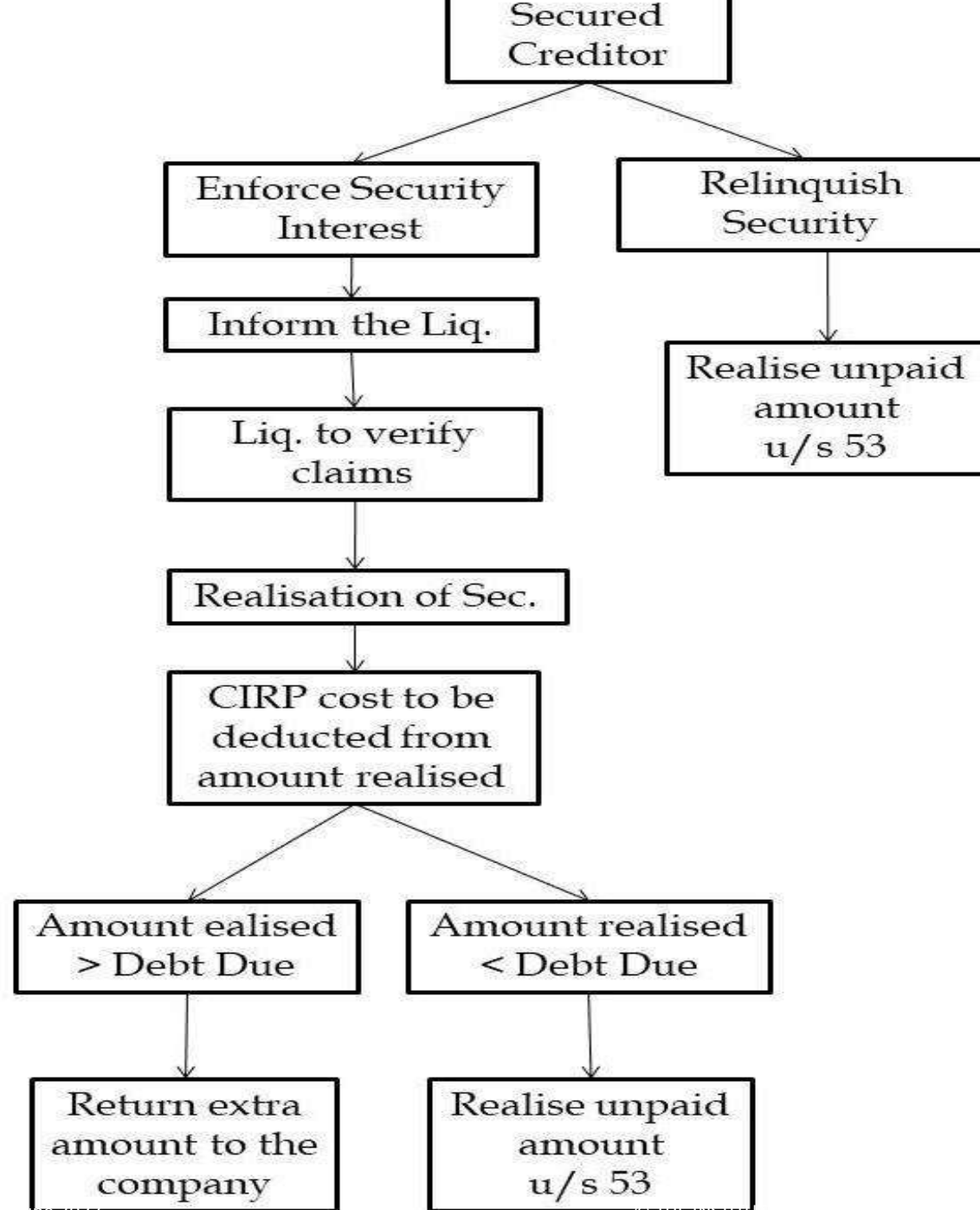
:

- (a) restore the position as it existed prior to such transaction;
- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modify the terms of the transaction;
- (d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- (e) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional.

Secured Creditor in Liquidation Proceedings

According to Section 52, a secured creditor in liquidation proceedings has following two options:

- (a) such **creditor may relinquish its security interest** to the liquidation estate and receive proceeds from the sale of assets by the liquidator as specified in Section 53; or
- (b) such **creditor may realise its security interest** as per the procedure given below.



Options
Available
To
Secured
Creditors
52

DISTRIBUTION OF ASSETS

ORDER OF PRIORITY

- (a) the insolvency resolution process costs and the liquidation costs;
- (b) the following debts which shall rank equally between and among the following:
 - (i) workmen's dues for the period of **twenty-four months** preceding the liquidation commencement date; and
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of **twelve months** preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

Priority of claim: The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients, and the proceeds to the relevant recipient shall be distributed after such deduction.

(11) Application for Dissolution of Corporate Debtor on Liquidation:

According to Section 54, where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

The Adjudicating Authority shall on application, order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

A copy of an order shall within **seven days** from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

FAST TRACK INSOLVENCY RESOLUTION

APPLICABILITY

a corporate debtor with assets and income below a level as may be notified by the Central Government

a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government

such other category of corporate persons as may be notified by the Central Government

APPLICABILITY

a small company under Section 2(85) of Companies Act

a start-up

an unlisted company with total assets not exceeding Rs. one crore as per financial statement immediately preceding the financial year

TIME PERIOD

PERIOD

- completed within a period of **ninety days**

Extension of Time Period

- by a vote of **seventy-five per cent by COC but not exceeding forty-five days** and any extension will be **ONCE**

PIRP

PREPACKAGED INSOLVENCY RESOLUTION PACKAGE

CONDITIONS

An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of [section 7](#) of the Micro, Small and Medium Enterprises Development Act, 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in [section 4](#), subject to the following conditions, that–

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under [section 33](#);

(d) it is eligible to submit a resolution plan under [section 29A](#);

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia*, –

-
- (i) that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;
 - (ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and
 - (iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);
 - (g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

-
- (4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with –
- (a) the declaration referred to in clause (f) of sub-section (2);
 - (b) the special resolution or resolution referred to in clause (g) of sub-section (2);
 - (c) a base resolution plan which conforms to the requirements referred to in [section 54K](#), and such other conditions as may be specified; and
 - (d) such other information and documents as may be specified.]

Duties of RP

54B. (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of [section 54A](#), namely:-

- (a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of [section 54A](#), and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of [section 54A](#);
- (b) file such reports and other documents, with the Board, as may be specified; and
- (c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall cease, if, –

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of [section 54A](#); or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority,

as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.]

APPLICATION

54C. (1) Where a corporate debtor meets the requirements of [section 54A](#), a corporate applicant thereof may file an application with the Adjudicating Authority for initiating pre-packaged insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish-

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of [section 54A](#);

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of [section 54A](#), and his report as referred to in clause (a) of sub-section (1) of [section 54B](#);

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

TIME FOR ORDER

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,-

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).]

54D: Time-limit for completion of pre-packaged insolvency resolution process.

(1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of [section 54K](#), within a period of ninety days from the pre-packaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.]

CONTENTS OF ORDER

[54E. (1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under [section 54C](#) –

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of [section 14](#), which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(b) appoint a resolution professional –

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the pre-packaged insolvency resolution process period comes to an end.]

BOARD DUTIES -54 H

During the pre-packaged insolvency resolution process period,—

- (a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;
- (b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and
- (c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.]

Section 54-I: Committee of creditors

.

(1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of [section 54F](#):

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

(2) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

54K: Consideration and approval of resolution plan

.

(1) The corporate debtor shall submit the base resolution plan, referred to in clause (c) of sub-section (4) of [section 54A](#), to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of [section 30](#), and the provisions of sub-sections (1), (2) and (5) of [section 30](#) shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.

(5) Where —

(a) the committee of creditors does not approve the base resolution plan under subsection (4); or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors,

claims as per the updated list of claims maintained by the resolution professional.]

the resolution professional shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.

(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.

(7) The resolution professional shall provide to the resolution applicants, —

(a) the basis for evaluation of resolution plans for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and

them.

(b) the relevant information referred to in [section 29](#), which shall, *mutatis mutandis* apply, to the proceedings under this Chapter,

in such manner as may be specified.

(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of [section 30](#).

(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst

(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under sub-section (12):

Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.

(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under sub-section (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of [section 53](#), including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

(14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor:

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

(15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

Explanation I.—For the removal of doubts, it is hereby clarified that, the corporate debtor being a resolution applicant under clause (25) of [section 5](#), may submit the base resolution plan either individually or jointly with any other person.

Explanation II.—For the purposes of sub-sections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed

54L: Approval of resolution plan- BY AA

. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of [section 54K](#), as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of [section 30](#), it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation.

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of [section 31](#), which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under [section 54N](#).

(

4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of [section 54J](#) and the resolution plan approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, of [section 54K](#), does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of [section 33](#); and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.]

54-0: Initiation of corporate insolvency resolution process.

- (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be, of [section 54K](#), by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.
- (2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —
- (a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

(b) appoint the resolution professional referred to in clause (b) of sub-section (1) of [section 54E](#) as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

(c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

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- (4) Where the Adjudicating Authority passes an order under sub-section (2) —
- (a) such order shall be deemed to be an order of admission of an application under [section 7](#) and shall have the same effect;
 - (b) the corporate insolvency resolution process shall commence from the date of such order;
 - (c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under [section 66](#) and [section 67A](#), if any, shall continue during the corporate insolvency resolution process;
 - (d) for the purposes of sections [43](#), [46](#) and [50](#), references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and
 - (e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections [43](#), [46](#) and [50](#).]

PRACTICE QUESTIONS

The Resolution Professional (RP) of a company receives a request from a member of the Committee of Creditors (CoC) (holding 30% share in the CoC) on 1 st July, 2022 at 5.30 PM to convene a meeting on an urgent basis to discuss the matter relating to raising interim finance. Considering the urgency and citing the reason that a request has come to convene a meeting, the RP circulates the notice of the meeting on 2nd July, 2022 in the morning itself at 11 AM. During the meeting, other members of the CoC have informed the RP that his action of convening the meeting based on the request received and the duration of notice is not sufficient as per the provisions of the Insolvency and Bankruptcy Code, 2016. Discuss the validity of the action taken by the RP.

Consider the following scenarios and examine whether the following resolutions stand approved in the meeting of the Committee of Creditors ?

S. No. Agenda Item % of members in value approving the item

1 Appointment of Valuers 50%

2 Replacement of the Resolution Professional 67%

3 Approval of the Resolution Plan 52%

4 Withdrawal of application u/s 12A of the 85%

5 Appointment of technical consultant to assist 56%

Rohit is appointed as Interim Resolution Professional of CoCo Ltd. During the first meeting of the Committee of Creditors, he has stated that being a person from engineering background he cannot ensure compliances under all the laws applicable to the company. Examine the statement made by Rohit in light of the relevant provisions of Insolvency and Bankruptcy Code, 2016. (c) coco Ltd. is undergoing Corporate Insolvency Resolution Process (CIRP). In order to achieve the objective of value maximisation, the Resolution Professional of Coco Ltd. is contemplating filing an application against the debtors, who have not paid their dues from last 1 year, under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code). However, his lawyer has opined that there exists no provision under the Code to initiate CIRP against another company by a company which itself is undergoing CIRP. Examine whether the opinion given by the lawyer is correct.

Multi Bank Ltd. acquired 10 per cent convertible debentures in Aaskar Ltd. In terms of the issue in the year 2012 these debentures were converted into the equity shares in Aaskar Ltd. Consequent to conversion Multi Bank Ltd. became the owner of 5 per cent equity holding in Bhaskar Ltd. Further Multi Bank Ltd. provided a loan of ` 10 Crore to Aaskar Ltd. that became due in the year 2018. Bhaskar Ltd. became defaulter in repayment of loans not only to Multi Bank Ltd. but also some other Banks. On the application by ICID Bank, the Adjudicating Authority initiated Corporate Insolvency Resolution Process (CIRP) and appointed an Interim Resolution Professional (IRP). Committee of Creditors constituted by IRP include Multii Bank Ltd. ICID Bank objected on the ground that Laxmi Bank Ltd. is a related party that should not have any right of representation, participation or voting. Examine the issue and offer your views.

An Operational Creditor of a Company has made an application to National Company Law Tribunal (NCLT) for initiating Corporate Insolvency Resolution Process (CIRP) for non-payment his dues for long time. The NCLT ordered for commencement of CIRP. During the course of CIRP period Corporate Director has agreed to settle the dues of Operational Creditor and requested him to withdraw the CIRP. Whether NCLT may allow the withdrawal of application admitted under Insolvency and Bankruptcy Code, 2016 in the above case. Will your answer differ, if the above application is made by Financial Creditor and subsequently Corporate Debtor settle its dues ?

Naveen Kumar, a Financial Creditor filed an Insolvency Application under Section 7 of Insolvency and Bankruptcy Code, 2016 against M/s ABC Private Ltd, Corporate Debtor (Defaulter) before the National Company Law Tribunal on 1st July, 2018. National Company Law Tribunal after satisfying that the default has occurred and the application is complete in all respects and all the related compliances have been met, admitted the application, by an order passed on 10th July, 2018 and appointed Kamal Kishore as Interim Resolution Professional (IRP). As per the Insolvency and Bankruptcy Code, 2016, state the following : (i) Initiation date for the Corporate Insolvency Resolution Process. (ii) Date of commencement of Insolvency. (iii) Date of issuance of Public Announcement. (iv) Tenure of Interim Resolution Professional. (v) Last Date for Creditors to file their Claims. (vi) Calculate Time Period for the completion of the Insolvency Resolution Process by the NCLT.

ESI Ltd. filed Corporate Insolvency Resolution Plan (CIRP) with the Adjudicating Authority, which was accepted, and Expression of Interest (EOI) was invited. One N Ltd. filed EOI. It was noticed that N Ltd was incorporated just 7 days before submission of the EOI as joint venture between AE Ltd and other two companies. It was further come to the notice that AE Ltd. was completely held by Sawant Seth (through various companies and a trust), said Sawant Seth was son of Ravi Seth, who was promoter of ESI Ltd. You as a Resolution Professional in this case, what would you suggest the Committee of Creditors and Adjudicating Authority about the acceptance or rejection of the EOI. Give reasons and quote the decided case law.

Section 240 A

Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process 2 [or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.

An application for Corporate Insolvency Resolution Process (CIRP) was filed by a Bank (being Financial Creditor) against SI Ltd, which was admitted by the NCLT and an Interim Resolution Professional was appointed, the Committee of Creditors (CoC) was constituted. Ajay , who was a member of the suspended Board of Directors of SI Ltd was neither allowed participation in CoC nor any information considered confidential was given, either by the resolution professional or the Committee of Creditors. Ajay made representations before the Adjudicating Authority to attend the meeting and for information/documents. Will Ajay succeed in his claim for attending the Meeting of Committee of Creditors and obtaining information about the CoC proceedings.

Section 27

(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under [section 22](#) is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

¹[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under [section 22](#) with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.]

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in [section 16](#).

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under [section 22](#) shall continue till the appointment of another resolution professional under this section.

The following particulars relate to M/s. Star House (P) Limited which has gone into Corporate Insolvency Resolution Process (CIRP):

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency & Bankruptcy Code, 2016

S. No.	Particulars	Amount in Rupees
1.	Amount realized from the sale of liquidation of Assets	7,00,000
2.	Secured Creditors who has relinquished the security	2,50,000
3.	Unsecured Financial Creditors.	2,00,000
4.	Income Tax Payable within a period of two years preceding the liquidation commencement date.	25,000
5.	Cess Payable to State Government within a period of one year preceding the liquidation commencement date.	10,000
6.	Fees payable to resolution professional.	37,500
	Expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern.	17,500
	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen	1,50,000

RECENT SUPREME COURT DECISIONS

CASE NO 1

Vidarbha Industries Ltd Vs Axis Bank

12.06.2022 Date of Judgement

SECTION 7(5)(a) Is mandatory or discretionary so if the company is running then

CASE NO 2

State Tax Officer vs Rainbow Papers Ltd

CASE NO 3

MK Rajagopalan vs Dr Periasamy Palani

DATED 03.05.2023

CASE NO 4

New Okhla Industrial Development Authority vs Anand Sonbadhra

CASE NO 5

IOB VS RCM Infra Structures Pvt Ltd

VOLUNTARY LIQUIDATION

liquidate
voluntarily

- has not committed any default

liquidate
voluntarily

- if any fixed period or event was specified in Articles of company for its dissolution.

PROCEDURE

Declaration

from majority of the directors of the company verified by an affidavit stating that—

a) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation

b) the company is not being liquidated to defraud any person

PROCEDURE

Documents declaration shall be accompanied with the following **documents** **namely**

A) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later

B) a report of the valuation of the assets of the company, if any prepared by a registered valuer.

PROCEDURE

Passing of Resolution

Within four weeks of a declaration, there shall be

A) a **special resolution** of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

B) a **resolution** of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

PROCEDURE

**Approval of creditors if
company owes debt**

DISSOLUTION

(6) Application of Provisions of this Code: The provisions of Sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Application to Adjudicating Authority for Dissolution of the Corporate Person: Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) Passing of Order of Dissolution: The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) Forwarding of Copy of Order of Dissolution: A copy of an order of dissolution, within fourteen days from the date of such order, shall be forwarded to the Authority with which the corporate person is registered.

SNAP SHOT

Initiation

Admission

IRP

SNAP SHOT

COC

RP

AR

SNAP SHOT

Resolution
PLAN

Order of
Liquidation

Liquidator

SNAP SHOT

Avoidable
Transactions

Distribution of
Assets

Voluntary
Liquidation



THANK YOU