

INSOLVENCY & BANKRUPTCY CODE, 2016 **(Insolvency Resolution & Liquidation for Corporate Persons)**

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Background

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Some earlier Legislative regularity initiatives for Corporate Sickness

- Nationalization of banks
- Tondon Committee (1975)
- H.N. Ray Committee (1976)
- Tiwari Committee (1981)
- On the recommendations of Tiwari Committee SICA, 1985 was notified & BIFR started functioning from 1987.

Eradi Committee (1999)

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Recommendations for desirability of changes in law relating to winding up

- Transparency
- To avoid delays

Recommendations:-

- Quick disposal
- First to see possibility of rehabilitation & revival of companies.
- Jurisdiction should be NCLT instead of HC.
- Appointment of Insolvency professional(s).

Eradi Committee (1999)

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Recommendations by NL Mitra Advisory Group (2001)

- Constitution of National Tribunal with benches of each HC.
- Appeal to HC & SLP to SC.

JJ Irani Committee (2005)

- To resolve the disputes in fast track approach

Viswanathan Committee (2014)

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Objects:-

- To study the Corporate bankruptcy Legal framework in India.

Recommendations:-

- To repeal -- Presidency Town Insolvency Act, 1909
- To amend --
 - Companies Act, 2013
 - SICA, Repeal Act, 2013
 - LLP Act, 2008
 - SRFAESI, 2002
 - Recovery of debt, dues to bank and FISSI, 1993
 - Indian Partnership Act.

Viswanathan Committee (2014)

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To establish Creditor's Committee.

Procedure for Insolvency Resolution:-

- Process may be initiated
 - by creditor or debtor.
 - By secured financial creditors
 - By operational creditors.

Viswanathan Committee (2014)

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Insolvency Resolution process:

- Will be managed by Insolvency professionals.
- Insolvency professional shall manage the assets of the company.
- Time bound Resolution.
- 180 days (extendable to another 90 days, (if 75% creditors agree).
- Establishment of Insolvency & Bankruptcy Board (As Regulator).
- Adjudication Jurisdiction
 - NCLT -- Companies & LLP
 - DRT -- Individuals & Partnership firms

Timelines

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Interim Report by Committee	-- February, 2015
Final Report	-- November, 2015
Insolvency & Bankruptcy Code, 2015 introduced in Lok Sabha	-- 21 December 2015
Referred to Joint Committee on IBC	-- 2015
Committee Report in Lok Sabha & Rajya Sabha	-- 28 April 2016
Code passed by Lok Sabha	-- 05 May 2016
Code passed by Rajya Sabha	-- 11 May 2016
President's Assent	-- 28 May 2016
Rule on IBC notified (effective from 01.12.2016)	-- 30 November 2016

Professional opportunities under IBC, NCLT & NCLAT

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- Jurisdiction
 - IBC
 - NCLT
 - NCLAT

- As Insolvency Professional
 - Registered Valuer
 - As Technical member of NCLT/NCLAT
- Appearance before NCLT / NCLAT

Insolvency & Bankruptcy Code, 2016

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Applicability:

Code shall apply for insolvency, liquidation, voluntary liquidation and bankruptcy of:-

- **Any company** incorporated under Companies Act, 2013 or any other previous Company Law.
- **Any company** governed by any **Special Act** for the time being in force.(Except in so far as said provisions are inconsistent with the provisions of such Special Act).
- LLP under LLP Act, 2008
- **Any other body** incorporated under any law for the time being in force, as the Central Government may by notification specify.
- **Partnership Firm**
- **Individual(s)**

Definitions

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“Board” means the Insolvency and Bankruptcy Board of India established under sub-section(1) of Section 188.

“Bye-laws” means the bye-laws made by the insolvency professional agency under section 205.

Definitions

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“Claim” means –

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

Definitions

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“Corporate Person” means –

- (a) a company as defined in clause (20) of section 2 of the Companies Act, 2013,
- (b) a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

Definitions

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“Corporate debtor” means a corporate person who owes a debt to any person.

“Creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder.

“Information utility” means a person who is registered with the Board as an information utility under section 210.

Definitions

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“Insolvency professional” means any person registered with the Board under section 201 as an insolvency professional agency.

“Insolvency professional agency” means any person registered with the Board under section 201 as in insolvency professional agency.

“Secured creditor” means a creditor in favour of whom security interest is created.

Definitions

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“Person” includes –

- (a) An individual;
- (b) A Hindu Undivided Family;
- (c) A company;
- (d) A trust;
- (e) A partnership;
- (f) A limited liability partnership; and
- (g) Any other entity established under a statute

and includes a person resident outside India.

Definitions

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“Transaction” includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor.

“Transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

“Transfer of property” means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property.

Framework of IBC

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- Part -I Preliminary & Definitions
 - Part-II Insolvency Resolution and Liquidation for Corporate Persons
 - Part-III Insolvency Resolution of Bankruptcy for Partnership Firms and Individuals
 - Part-IV Regulation of Insolvency Professional(s), Agencies and Information Utilities
 - Part-V Miscellaneous
-Eleven..schedules (Amendment to different Legislations)

Insolvency Resolution & Liquidation for Corporate Persons

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Applicability:

- Where minimum amount of default is Rs.1 lac or any other amount specified by CG which shall not be more than Rs.1 crore.

Definitions (only selected)

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“Adjudicating Authority” for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.

“Constitutional document” in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership.

Definitions

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“Corporate applicant” means –

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

Definitions

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“dispute” includes a suit or arbitration proceedings relating to --

- (a) The existence of the amount of debt;
- (b) The quality of goods or service; or
- (c) The breach of a representation or warranty.

“financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Definitions

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“financial debt” means a **debt along with interest**, if any, which is disbursed **against the consideration for the time value of money** and includes --

- (a) **money borrowed** against the payment of interest;
- (b) any **amount raised by acceptance** under any acceptance credit facility or its de-materialised equivalent.
- (c) any amount raised pursuant to any **note purchase facility** or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of **any lease or hire purchase contract** which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed.

Definitions

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- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) 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;
- (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.

Definitions

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“information memorandum” means a memorandum prepared by resolution professional under sub-section(1)of section 29.

“initiation date” means 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.

“insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under section 7, 9 or 10 as the case may be.

Definitions

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“insolvency resolution process period” means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day.

“interim finance” means any financial debt raised by the resolution professional during the insolvency resolution process period.

“liquidation cost” means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board.

Definitions

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“liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 50, as the case may be.

“liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.

“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.

Definitions

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“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

“personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor.

“personnel” includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor.

Definitions

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“resolution applicant” means any person who submits a resolution plan to the resolution professional.

“resolution plan” means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.

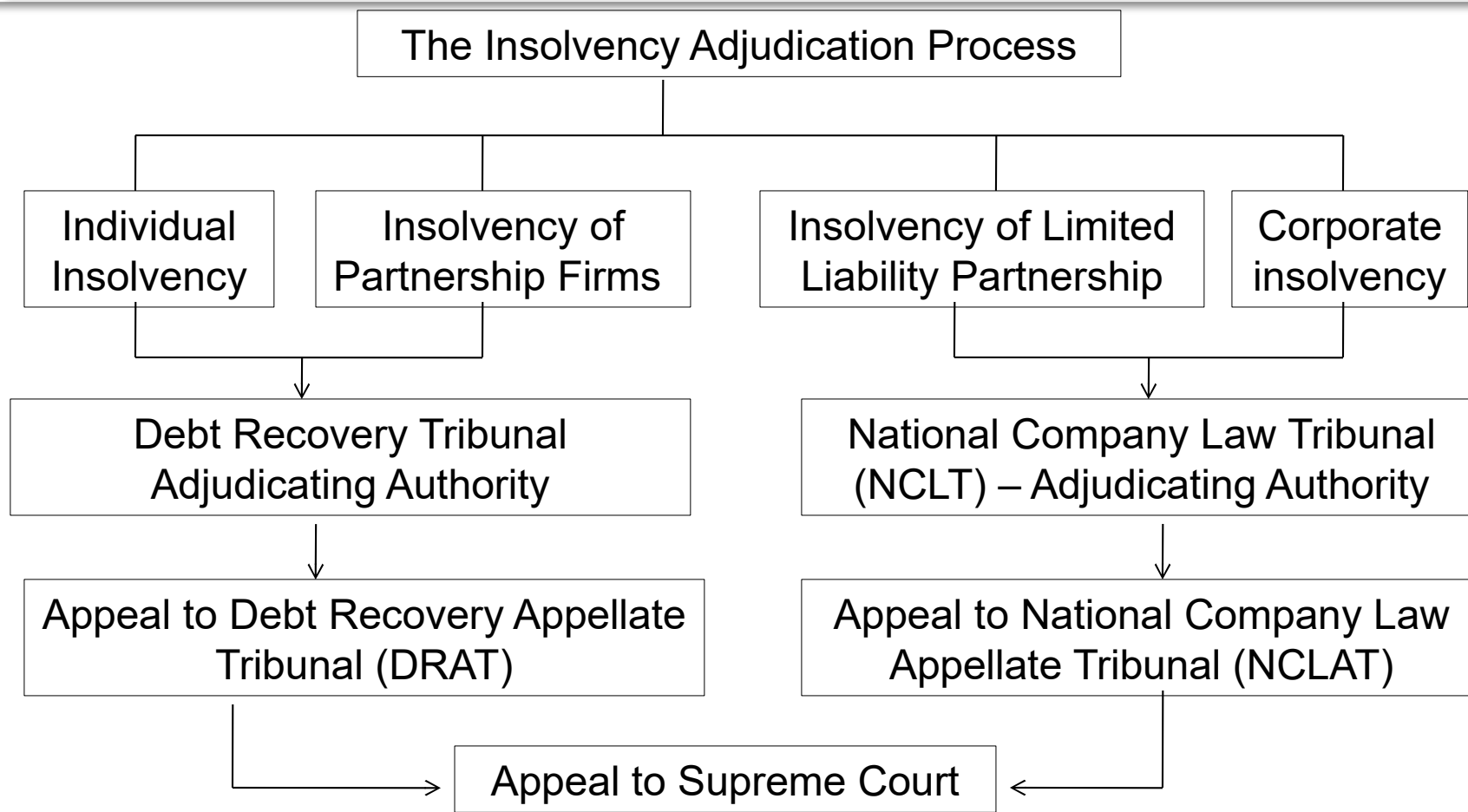
“resolution professional” for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional.

Definitions

“voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor.

Insolvency Adjudication Process

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Insolvency Resolution process for Corporate Persons

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Who can initiate Insolvency Resolution process:

- Financial creditor (either by itself or jointly with other financial creditors).
- Operational creditor.
- Corporate debtors.

Persons not entitled to make application

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- CD undergoing corporate insolvency process. OR
- CD having completed resolution process **12 months preceding the date of application.**
Or
- CD or financial creditor who has **violated terms of resolution approved 12 months before making application.**
- CD in respect of whom **liquidation order has been made.**

Insolvency Resolution by Financial Creditors

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To make application

- before NCLT of Jurisdiction (in prescribed form and fee) under section 7

Alongwith

- Record of default
 - Recorded with information utility
 - Name of resolution professional proposed to act as interim (RP)
 - Consent of RP in form-2
 - Certificate confirming eligibility of RP
 - Any other information as required by Board.

Insolvency Resolution by Financial Creditors

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Ascertainment of existence of debt

- By Adjudication Authority (NCLT)
- Within 14 days.

Admission /Rejection of Application

- Admission
 - If default is occurred.
 - If application is complete in all respect.
 - If no disciplinary proceedings pending against the proposal (RP).

Insolvency Resolution by Financial Creditors

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➤ Rejection

- If default has not occurred.
- If application is incomplete
- If disciplinary proceedings pending against (RP).

Before rejection notice to rectify the defects within 7 days from the receipt of notice.

Commencement of Corporate Insolvency Resolution Process – Date of admission of application by NCLT.

Insolvency Resolution by operational creditor (Section 9)

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I. Notice to Corporate Debtors

- Demand notice
- Evidence of default
- Copy of invoice
- Payment by Corporate debtors – within 10 days or
- Notice to creditors
 - a) Existence of dispute – Pendency of any suit or pendency of arbitration proceeding filed before receipt of notice or invoice.
 - b) Evidence of Payment of dues.

Insolvency Resolution by operational creditor (Section 9)

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II. Filing of petition by NCLT

- If no payment / communication received in 10 days
- Copy of invoice or demand notice.
- Affidavit that no notice of dispute from debtors.
- Copy of certificate from financial institution of operational creditors for no payment from corporate debtors.
- Propose the name of Resolution Profession (Form-2 & Certificate).
- Such other information as may be prescribed to act as Interim Resolution profession.

Insolvency Resolution by operational creditor (Section 9)

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Order of NCLT –

Admitted within 14 days from receipt of application

- If application is complete.
- There is no payment of debt.
- Copy of notice of dispute was delivered to corporate debtors.
- No notice of dispute received by operational creditors.
- No disciplinary proceeding pending against resolution professional.

Insolvency Resolution by operational creditor (Section 9)

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Rejection –

- If application is incomplete.
- If there is payment of debt.
- If creditors has not delivered the copy of notice to corporate debtors.
- If there is record for any dispute or notice of dispute received by operational creditors.

Before rejecting NCLT shall give notice of applicant to rectify the defects in 7 days from the date of receipt of that notice.

Commencement of Insolvency Resolution Process

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Commencement of Insolvency Resolution Process –

- From the date of admission of application.

Time limit for completion of Insolvency Resolution Process:-

- 180 days from the date of admission to initiate process.

Insolvency Resolution by operational creditor (Section 9)

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Extension of time --

- RP shall file an application before NCLT.
- Copy of Resolution passed by at the meeting of committee of creditors (75% of voting share).
- Extension maximum 90 days beyond 180 days.
- Only one extension allowed.

Process after Admission

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NCLT shall by order --

- Declare Moratorium
- Appoint Interim Resolution Professional (within 14 days from the date of commencement).
- Cause public announcement and call for claims.

Process after Admission

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Copy of order – within 7 days of Admission / Rejection

If admitted:-

- To financial creditor
- To corporate debtor

If Rejected:-

- To financial creditors

Process after Admission

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Moratorium

NCLT shall by order declare moratorium for prohibition of:-

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.

Process after Admission

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- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Provided—

- i) Supply of essential goods or services shall not be terminated/ suspended/ interrupted.

Process after Admission

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Provided—

- ii) Prohibition shall not apply to any transaction as may be notified by CG.

Order shall be affected from the date of order till completion of Insolvency Resolution process or date of approval of Resolution plan or date of order of liquidation as the case may be.

Process after Admission

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Public announcement – not later than 3 days from the date of announcement.

- Name and address of corporate debtor.
- Name of the authority where corporate debtor is registered.
- Last date for submitting claims.
- Details of interim resolution professional.
- Penalties for false and misleading claims.

Process after Admission

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- Date of closure of Insolvency Resolution Process.
- Copy of advertisement shall be:
 - on website of CD
 - on website of Board (if any).

Process after Admission

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Appointment of Interim Resolution Professional –

Within 14 days from the commencement of process.

I. Financial Creditors or Corporate Debtors:-

- Proposed by applicant (if no disciplinary proceeding against RP)

Process after Admission

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II. Operational Creditor:-

- If not proposed, NCLT shall make reference to Board. Board shall recommend within 10 days of receipt of reference.
- If proposed, the same shall be appointed (if no disciplinary proceeding against RP).

III. Term of Interim RP:-

- 30 days from the date of appointment.

Process after Admission

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Interim PR to manage the affairs of Corporate Debtors

From the date of his appointment:-

- a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional;
- b) 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.
- c) 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.

Process after Admission

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- d) 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.

Interim Resolution Professional

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Scope :-

- 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 as may be specified.

Interim Resolution Professional

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Duties :-

- Collect information for determining financial position of corporate debtors.
- Receive and collect all the claims submitted to him.
- Constitute a committee of creditors.
- Monitor the assets and manage operation until resolution professional is appointed by committee of professional.
- Take control and custody of all assets owned by corporate debtors. Tangible / intangible.
- Such other duties as may be specified by Board.

Interim Resolution Professional

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Powers :-

- To appoint accountant, legal practitioners.
- To enter into contract.
- To amend / modify the contracts.
- To raise interim finance
 - Without credit interest over encumbered property unless consent taken from creditors.
 - No consent required if value of property is not < twice of MC value of debt.
- Issue instruction to personnel of corporate debtors.
- To take all such action as are necessary to keep the corporate debtors as going concern.

Insolvency Resolution by operational creditor (Section 9)

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Committee of Creditors

- All financial creditors
- Related party creditors have no right to vote.
- Consortium creditors – every credit has right proportionated.
- If financial and operational creditors (both).
- Assignment of operational debts to financial creditors.

Insolvency Resolution by operational creditor (Section 9)

58

- All decision of the committee shall be taken by a vote not <75% of voting share of financial creditors.
- If no financial creditors – committee shall be constituted in manner as specified by Board.
- Right to have financial information in relation to corporate debts.
- RP shall make available information within 7 days from the date of requisition.

Insolvency Resolution by operational creditor (Section 9)

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First meeting of committee (convened by IRP)

- Within 7 days from the constitution.

Appointment of Resolution Professional

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- In the first meeting
- By majority of not >75% of vote
- Either appoint IRP as RP – intimation to IRP, Corporate debtors & NCLT or replace IRP by another RP – by filing application before NCLT for his appointment.

Appointment of Resolution Professional

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- NCLT shall forward the name of RP to Board for its confirmation and shall appoint after having confirmation from Board.
- If Board does not confirm the appointment within 10 days -- NCLT shall order IRP shall continue till Board confirms the proposed appointment.
- In case of replacement IRP shall provide all relevant information/ documents to RP. RP can be replaced at any time during process.

Replacement of RP by Committee of Creditors

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- With a vote of **75% of voting shares**
- Forwarding the name of proposed insolvency professional to adjudicating authority.
- Adjudicating authority shall forward the name to Board for its confirmation.
- If any disciplinary proceedings are pending against the proposed RP, the present RP shall continue till the

Resolution Professional(s)

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Powers & Duties:- Same as in IRP

In addition to that duties shall also include

- Maintain updated list of claims.
- Convene and attend all meetings of creditors.
- Prepare Information Memorandum.
- Invite prospective lenders, investors to put forward Resolution plans.
- Present all Resolution plans before meeting of Committee of Creditors.
- File application for avoidance of transaction.
- Any other action specified by Board.

Committee of Creditors

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Meetings of Committee of Creditors:-

By RP

Notice to --

- All members of committee
- Members of suspended Board of Directors/Partners as LLP
- All operational creditors if not < 10% of total debts.
- Members of suspended Board of Director/ Partner of LLP shall not have any voting right.
- Absence of above shall not invalidate the meeting.
- Any member may appoint insolvency professional to represent such creditor in meeting.

Restriction on powers of RP

65

Action to be taken by RP with prior approval of committee of members:-

- Raise Interim Finance in excess of amount decided by committee.
- Create security interest.
- Change capital structure of corporate debtors.
- Record any change in ownership interest of corporate debtors.

Restriction on powers of RP

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- 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 may be decided by the committee of creditors in their meeting.
- Undertake any related party transaction.
- Amend any constitutional documents of the corporate debtor.
- Delegate its authority to any other person.

Restriction on powers of RP

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- Dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties.
- 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.

Restriction on powers of RP

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- Make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- Make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Information Memorandum

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Preparation of Information Memorandum:-

- RP shall prepare in the manner as specified by Board.
- RP shall provide access to all relevant information to Resolution applicant

Provided Resolution applicant undertakes—

- To comply provisions of Act.
- To protect any intellectual property.
- Not to share information with third party.

Submission of Resolution Plan

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- Resolution applicant to Resolution professional
- RP shall examine each Resolution plan to confirm that each Resolution plan
 - Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
 - Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53.

Submission of Resolution Plan

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- Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- The implementation and supervision of the resolution plan;
- Does not contravene any of the provisions of the law for the time being in force;
- Conforms to such other requirements as may be specified by the Board.
- RP shall present to Committee of creditors for approval (with 75% of majority for financial creditor)
- RP shall submit approved resolution plan to NCLT.

Submission of Resolution Plan

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- If NCLT approves it shall be binding on corporate debtors, its employees, members and creditors, guarantor and other stakeholders involved in Resolution Plan after such order
 - i. Moratorium order shall ceased to have effect.
 - ii. RP shall forward all record relating to Corporate Resolution Process and Resolution Plan to Board to record data base.
- If NCLT does not approve, it shall reject by order.

Liquidation Process

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Resolution plan shall be rejected

- If no resolution received by NCLT.
or
- Expiry of maximum period permitted (180 days for resolution process)
or
- Expiry of fastrack corporate insolvency process
or
- Reject the resolution plan submitted by Resolution Applicant
or

Liquidation Process

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- RP intimate to NCLT to liquidate the corporate debtor where CD contravenes the resolution plan on application by a person other than CD

NCLT shall pass—

- ❑ An order requiring corporate debtor to be liquidated
- ❑ Issue a public announcement that corporate debtor is in liquidation.
- ❑ Require such order to be sent to authority with which corporate debtor is registered.

Liquidation Process

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- When liquidation order is passed no suit or other legal proceeding shall be instituted by or against the CD.
- However, suit can be instituted by liquidator with prior approval of NCLT (except for the transaction notified by CG).

Liquidation Process

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Appointment of Insolvency Professional as Liquidator

- By NCLT
- RP shall continue as Liquidator unless replaced by NCLT.
- All power of Director, KMPs, Partner of CD shall be vested with Liquidator.
- RP can be replaced by NCLT (if)
 - Resolution plan was rejected; or
 - Board recommends the replacement of RP
 - Fee shall be as may be specified by Board.
 - Fee shall be paid from the Liquidation of assets.

Liquidation Process

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Powers and duties of Liquidator

- To verify claims of all the creditors;
- To take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
- To evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
- To take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary.

Liquidation Process

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Powers and duties of Liquidator

- To carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary.
- Subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified.
- To obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities.

Liquidation Process

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Powers and duties of Liquidator

- To draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business.
- To invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code.

Liquidation Process

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Powers and duties of Liquidator

- 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 due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself.

Liquidation Process

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Powers and duties of Liquidator

- To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;
- To investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- To apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board;

Liquidation Process

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Powers and duties of Liquidator

- To take all such actions, steps or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- To perform such other functions as may be specified by the Board.

Liquidation Process

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Powers and duties of Liquidator

- The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53.

Provided that any such consultation shall not be binding on the liquidator.

Liquidation Process

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Powers of Liquidator to access information:-

Liquidator shall have power to access any information, system for admission of claims, identification of estate assets from following sources:-

- An information utility;
- Credit information systems regulated under any law for the time being in force.

Liquidation Process

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- Any agency of the Central, State or Local Government including any registration authorities;
- Information systems for financial and non-financial liabilities regulated under any law for the time being in force;
- Information systems for securities and assets posted as security interest regulated under any law for the time being in force;
- Any database maintained by the Board; and
- Any other source as may be specified by the Board.

Liquidation Estate

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Assets shall include:-

- a) Any asset over which CD has **ownership rights etc.**
- b) The assets that may or may not in the possession of CD including but not limited to encumbered assets.
- c) Tangible assets (movable or immovable).
- d) Intangible assets
- e) The assets subject to determination of ownership by the court or authority.
- f) Any asset or other value recovered through proceedings of avoidance of transaction.

Liquidation Estate

87

Assets shall include:-

- g) Assets in respect of which secured creditor has relinquished security interest.
- h) Any other property belonging to CD at the date of commencement of insolvency.
- i) All proceeds of liquidation as and when they are released.

Liquidation Estate

88

Assets not included:-

- g) Personal assets of any shareholder or partner of CD
- h) Assets of subsidiary CD (Indian or foreign).
- i) Any other assets as may be specified by the Board.

Liquidation Process

89

Consolidation of Claims

- Claims submitted by any creditor can be withdrawn or varied within 14 days of its submission.
- Recording of records for rejection of claim.
- Intimation to creditor & debtors within 7 days from its admission or rejection of claim.
- Creditor may file an appeal before NCLT against Rejection within 14 days of receipt of the decision.

Position of secured creditors in Liquidation Process

90

- Can relinquish its security interest in liquidation assets.
- Obtain permission of Liquidator.
- Secured creditor may enforce/ release/ settle/ compromise or deal with secured asset in accordance with law.

Position of secured creditors in Liquidation Process

91

- In case any resistance from any person, secured creditor may apply to adjudication authority.
- Receive proceeds from sale of assets by liquidator (Section 52)
- Where secured creditor get lesser than the amount due, the unpaid amount shall be available to them as per section 53 (e)(ii).

Distribution of Assets

92

RP shall complete the process of liquidation (Priority wise)

- Insolvency Resolution Process cost & Liquidation cost.
- The debts which shall rank equally between and among the following:-
 - Workmen's dues for the period of twenty four months preceding the liquidation commencement date; and
 - Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52.
- Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date.

Distribution of Assets

93

- Financial debts owed to unsecured creditors.
- The following dues shall rank equally between and among the following:-
 - 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;
 - Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.(Section 52)

Distribution of Assets

94

- Any remaining debts and dues;
- Preference shareholders, if any;
- Equity shareholders or partners as the case may be.
- Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.
- The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Preferential Transactions

95

Shall include:-

- a) Transfer of property or interest thereof for the benefit of creditors/surety/guarantor.
- b) By the transfer of said property such creditor or surety in a beneficial position then the position in the event of distribution of assets.

Shall not include:-

- c) Transfer made in ordinary course of business.

Preferential Transactions

96

Relevant time

- a) Transactions shall be deemed to be given at the relevant time if:
 - ▣ It is given to **related party** during the period of **two years** preceding the insolvency commencement date.
 - ▣ Preference is given to the person **other than related party**, during the **period of one year**, preceding the insolvency commencement date.
- b) RP or liquidator shall apply to adjudicating authority for avoidance of preferential transaction.
- c) Adjudicating authority shall pass the order.

Avoidance of under- valued transactions(by RP/LIQUIDATOR)

97

In case liquidator or RP is of the opinion that certain transactions were made **during relevant period** which are under – valued, he :-

- Shall make an application to adjudicating authority.
- For declaration of such transaction as void.
- Reverse the effect of such transaction.

Avoidance of under- valued transactions(by RP/LIQUIDATOR)

98

Application can be made **by the creditor** in case of under valued transaction if liquidator or RP has not reported any such under valued transaction to adjudicating authority

Adjudicating authority shall pass the order for :-

- Restoring the position as it exist before the transaction.
- To reverse the effect of the transaction.
- Requiring board to initiate disciplinary proceedings against the liquidator or RP

Corporate Debtors

99

Dissolution of Corporate Debtors:-

- Liquidator shall submit an application before NCLT.
- NCLT shall pass the order.
- Copy of order shall be filed within Registration authority within 7 days from the date of order.

Fast Track Corporate Liquidation

100

Insolvency Resolution Process:-

- Applicable to following corporate debtors having
 - Assets and income below a level as specified by CG.
- Such class of creditors as specified by CG.
- Such other category of corporate person as specified by CG.

Fast Track Corporate Liquidation

101

Timeline for Resolution:-

- 90 days
- Extendable to another 45 days (extension only once).

Application:-

- By creditor or corporate debtors.
- Documents required to be enclosed:
 - Proof of existence of default
 - Such other information as may be specified by Board.

Voluntary Liquidation (section 59)

102

Voluntary Liquidation of Corporate person:-

- Declaration of Solvency (By majority of directors on affidavit).
 - No debts or debt shall be paid in full
 - Not to be liquidated to defraud a Person.

Annexure

- Audited financial statements for the last 2 financial years.
- Valuation report by Registered Valuer.

Voluntary Liquidation (section 59)

103

- Convene general meeting and pass SR within 4 weeks of declaration for
 - Liquidation of company
 - Appointment of insolvency professional to act as Liquidator.
- If any debt to a person, creditors, represents $\frac{2}{3}^{\text{rd}}$ of total debts shall approve the resolution within 7 days of SR.
- Notify to Registrar and Board regarding SR & Resolution by creditors within 7 days from passing of such resolution.
- Liquidator shall complete the process of Liquidation.

Voluntary Liquidation (section 59)

104

Apply to NCLT:-

- Liquidator shall make an application to NCLT after completion of process.
- Order of NCLT.
- Filing of copy of order of NCLT – with Registrar within 14 days.

Offence and Penalties

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Offence and Penalties

Section	Particulars	Responsible person	Penalties
68	<ul style="list-style-type: none">• Willfully concealed any property, any debt of value of Rs.10,000 or more within 12 months immediately preceding insolvency commencement date• Fraudulently remove any part of the property of the value of Rs.10,000 or more.• Willfully concealed, destroyed, mutilated or falsified any books, paper etc.• Willfully created any security, interest over or diencess off any property	Any officer of the company	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both

Offence and Penalties

106

Section	Particulars	Responsible person	Penalties
69	<ul style="list-style-type: none">Punishment for transaction defrauding creditors(on or after commencement of insolvency)	Corporate debtors and officer	<u>Imprisonment</u> – 1 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
70	<ul style="list-style-type: none">Punishment for misconduct in the course of corporate insolvency resolution processNon-disclosure of information to RPNot giving the custody and control to the RP.Not providing books of accounts to RP	Officer	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both

Offence and Penalties

107

Section	Particulars	Responsible person	Penalties
71	<ul style="list-style-type: none">Punishment for falsification of books of accounts	Officer	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
72	<ul style="list-style-type: none">Punishment for willful material omission from statement of affairs relating to affairs of CD	Officer	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
73	<ul style="list-style-type: none">Punishment for false representation to creditors	Officer	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both

Offence and Penalties

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Section	Particulars	Responsible person	Penalties
74	<ul style="list-style-type: none"> Punishment for contravention of moratorium or resolution of plan 	Corporate debtor and officers	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.3 lacs or both
	<ul style="list-style-type: none"> Punishment for creditor 		<u>Imprisonment</u> – 1 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
	<ul style="list-style-type: none"> Punishment for contravention of resolution plan 	Creditor, officer, company	<u>Imprisonment</u> – 1 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
	<ul style="list-style-type: none"> Punishment for false information in application 	Every person	<u>Fine</u> – Rs.1 lac to Rs.1 crore

Offence and Penalties

109

Section	Particulars	Responsible person	Penalties
75	<ul style="list-style-type: none">Punishment for non-disclosure of dispute or repayment of debt	Operational creditor	<u>Imprisonment</u> – 1 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both
77	<ul style="list-style-type: none">Punishment for providing false information in application made by CD	CD or person	<u>Imprisonment</u> – 3 to 5 years <u>Fine</u> – Rs.1 lac to Rs.1 crore or both



THANK YOU