

INSOLVENCY & BANKRUPTCY

CODE, 2016

(Insolvency Resolution & Liquidation for Corporate Persons)

Advocate Arun Saxena
Saxena & Saxena Law Chambers
Advocates & Attorneys
603-604, New Delhi House,
27, Barakhamba Road,
New Delhi – 110 001.
Ph: 43044999, Mob.: 9810037364
E-mail : advisor@sslclegal.in

Background

2

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.

Constitution of committees

3

- Eradi committee (1999)
- N.L.Mitra advisory group (2001)
- J.J. Irani Committee (2005)
- Vishwanathan committee (2014)

Timelines

4

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	-- December 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

Insolvency & Bankruptcy Code, 2016

5

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

6

“**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

7

“**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, un matured, disputed, undisputed, secured or unsecured.

Definitions

8

“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

9

“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

10

“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

11

“**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

12

“Transaction” includes an **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.

Insolvency Resolution & Liquidation for Corporate Persons

13

Applicability:

This code is applicable:

- Where minimum amount of default is **Rs.1 lac** or any other amount as specified by CG (Not more than **Rs.1 crore**).

Definitions

14

“Corporate applicant” means –

- * a 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; or

- ***an individual** who is in charge of **managing the operations** and resources of the corporate debtor; or

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

Definitions

15

“**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

16

“**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.
- (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

17

- (e) receivables sold or discounted
- (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

18

“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

19

“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

20

“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

21

“**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

22

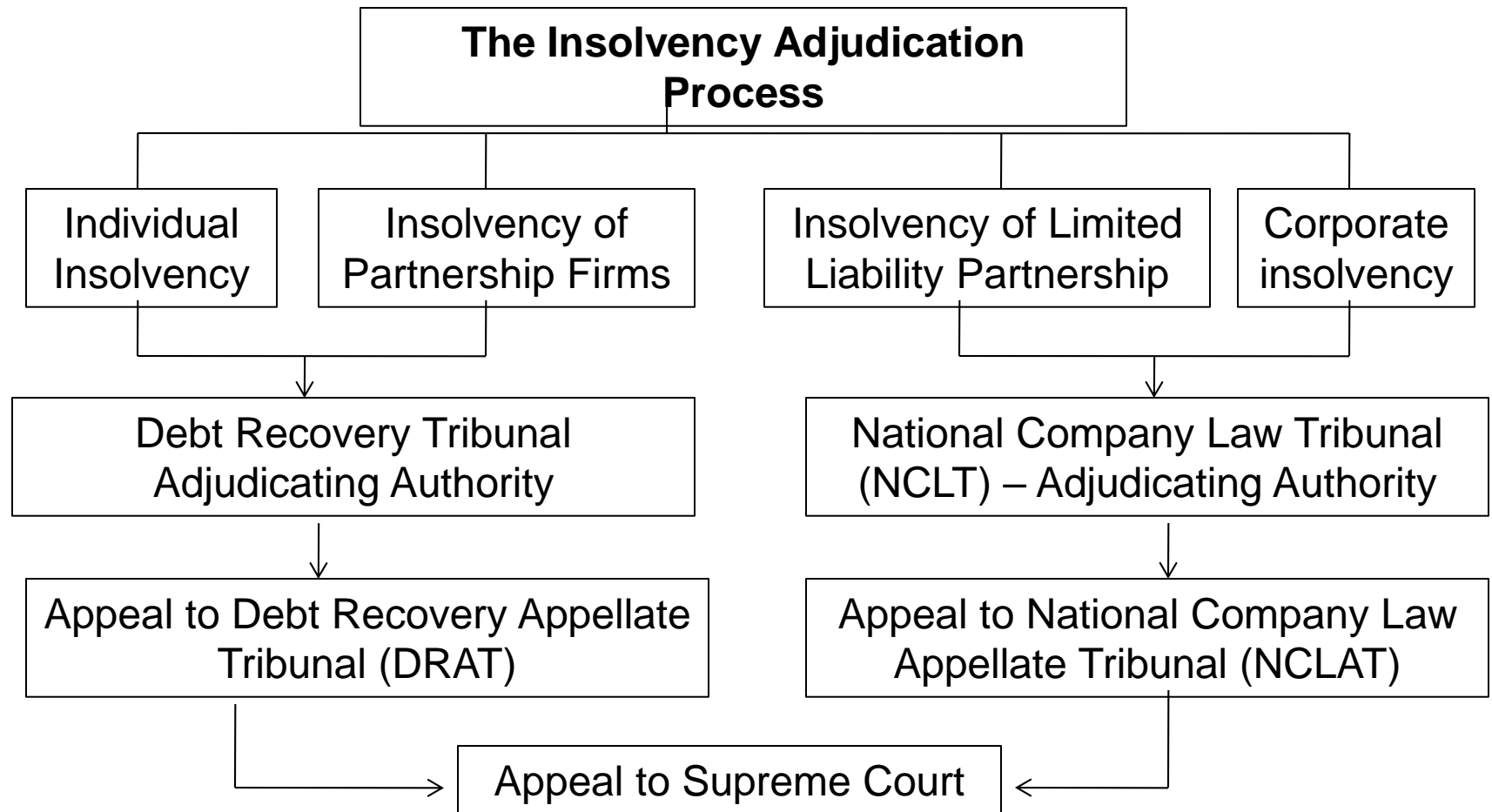
“**resolution applicant**” means any person who submits a resolution plan to the resolution professional.

“**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.

Insolvency Adjudication Process

23



Insolvency Resolution process for Corporate Persons

24

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

25

- 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

26

File an application

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

Along with:

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

Insolvency Resolution by Financial Creditors

27

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 IRP.

Insolvency Resolution by Financial Creditors

28

➤ **Rejection**

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

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

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

Insolvency Resolution by **operational creditor** (Section 9)

29

1. Notice to Corporate Debtor U/s 8

- Evidence of default
- Copy of invoice

- **2. Payment by Corporate debtor – within 10 days or**

- **Notice to operational creditor about**

- 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)

30

Filing of petition before NCLT (AA)

- If no payment / communication received in 10 days

Documents be attached with petition

- Copy of **invoice or demand notice**.
- **Affidavit** that no notice of dispute from debtor.
- Copy of **certificate from financial institution** of operational creditor for no payment from corporate debtor.
- Propose the **name of interim Resolution Professional** (Form-2 & Certificate).
- Such other information as may be prescribed to act as Interim Resolution profession.

Insolvency Resolution by operational creditor (Section 9)

31

Order of NCLT –

Admitted within 14 days from receipt of application

- If application is **complete**.
- There is **no payment of unpaid debt**.
- **notice** for dues U/s 8 was **delivered to corporate debtor**.
- **No notice of dispute** received by operational creditors.
- **No disciplinary proceeding** pending against resolution professional.

Insolvency Resolution by operational creditor (Section 9)

32

Rejection –

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

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

Commencement of Insolvency Resolution Process

33

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)

34

Extension of time --

- RP shall file an **application before NCLT.**
- **Attachment to the application**
- 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

35

NCLT shall by order --

- Declare Moratorium
- Appoint Interim Resolution Professional
- Cause public announcement and call for claims.

Process after Admission

36

Copy of order – within 7 days of Admission /
Rejection

Process after Admission

37

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

38

- 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

39

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

40

Public announcement – by IRP (not later than 3 days from the date of appointment).

- 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

41

- 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

42

Appointment of Interim Resolution Professional –

Within 14 days from the commencement of process.

I. Financial Creditor or Corporate Debtor:-

- As Proposed by applicant (if no disciplinary proceeding against IRP)

Process after Admission

43

II. Operational Creditor:-

Can be proposed by OC

- 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 IRP).

Term of Interim RP:-

- 30 days from the date of appointment.

Process after Admission

44

Interim RP 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

45

- 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

46

Scope :-

- a) To act and execute in the name and on behalf of the corporate debtor all deeds, receipts and other documents, if any;
- b) To take such actions, in the manner and subject to such restrictions, as may be specified by the Board;
- c) To have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;
- d) To 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

47

Duties :-

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

Interim Resolution Professional

48

Powers :-

- To appoint accountant, legal practitioners.
- To enter into contract.
- To amend / modify the contracts.
- To raise interim finance
 - Without creation of interest over encumbered property unless consent taken from COC.
 - 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)

49

Committee of Creditors

- All financial creditors
- Consortium creditors – every creditor has proportionate right.
- If financial and operational creditors (both).
- The creditors who have assigned operational debts to financial creditors.
- Related party creditors have no right to vote.

Insolvency Resolution by operational creditor (Section 9)

50

- All decisions 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.
- COC has 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)

51

First meeting of committee (convened by IRP)

- Within 7 days from the constitution.

Appointment of Resolution Professional

52

- In the first meeting
- By majority of vote not >75% of vote
- COC shall 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

53

- 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 COC

54

COC may replace the RP any time by a resolution passed by more than 75% of voting share.

RP shall file an application for replacement of RP before AA

Replacement of RP by COC

55

- 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 appointment of other RP.

Resolution Professional(s)

56

Powers & Duties:- similar as of IRP

In addition following 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 Committee of Creditors.
- File application for avoidance of transaction.
- Any other action specified by Board.

Committee of Creditors

57

Meetings of Committee of Creditors:-

To be convened By RP

Notice to --

- All members of committee
- Members of suspended Board of Directors/Partners as LLP
- All operational creditors of 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

58

Following actions are to be taken by RP only 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 debtor.
- Record any change in ownership interest of corporate debtor.

Restriction on powers of RP

59

- 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

60

- Dispose off 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 any rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.

Restriction on powers of RP

61

- 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

62

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 (s) provided Resolution applicant(s) undertake:—
 - To comply provisions of Act.
 - To protect any intellectual property.
 - Not to share information with third party.

Submission of Resolution Plan

63

- Resolution applicant shall submit resolution plan 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

64

- 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 the plan 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

65

- If NCLT approves the plan 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 the plan by order.

Liquidation Process

66

Liquidation process shall be directed by NCLT

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

Liquidation Process

67

- RP intimates 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

68

- 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

69

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

70

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

71

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

72

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

73

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

74

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

75

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

76

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

77

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

78

- 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

79

Liquidation Assets shall **include:-**

- a) Any asset over which CD has **ownership rights etc.**
- b) The assets that may or may not be 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

80

- 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

81

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

82

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

83

- Can relinquish its security interest in liquidation assets.
- **If relinquishment of securities not opted**
- Secured creditors shall obtain permission of Liquidator for the sale of assets.
- Secured creditor may enforce/ release/ settle/ compromise or deal with secured asset in accordance with law.

Position of secured creditors in Liquidation Process

84

- 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

85

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

86

- 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

87

- 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

88

- If in the opinion of RP/Liquidator CD had a preference in any transactions **at a relevant time**, the RP/Liquidator shall
- Apply to AA for avoidance of such transactions.

Preferential Transactions

89

Relevant time

- a) Transactions shall be deemed to be given at the relevant time if:
 - ▣ **If it is related to related party,**
during the period of **two years** preceding the insolvency commencement date.
 - ▣ **If other than related party,**
during the **period of one year**, preceding the insolvency commencement date.

Preferential Transactions

90

Shall include:-

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

Shall not include:-

- a) Transfer made in ordinary course of business.

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

91

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)

92

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

Liquidation of Corporate Debtor

93

Dissolution of Corporate Debtor :-

- 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 Insolvency Resolution Process

94

Fast Track 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.

No notification in this regard by CG so far

Fast Track Corporate Liquidation

95

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)

96

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)

97

- **Convene general meeting** and pass SR within 4 weeks of declaration for
 - Liquidation of company
 - Appointment of insolvency professional to act as Liquidator.
- 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)

98

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.

Fraudulent or malicious proceedings

99

- ❑ Fraudulently
- ❑ With malicious intention
- ❑ Penalty:
 - ❑ Not < Rs. one lakh
 - ❑ May extent to Rs. One crore

Fraudulent Trading

100

- If RP/Liquidator finds that CD is doing
- any business to defraud any creditor
- OR
- doing any fraudulent business

- Rp/ Liquidator shall file an application before AA

Offence and Penalties

101

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 dispose 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

102

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

103

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

104

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

105

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