



Introduction

The **Insolvency and Bankruptcy Code (IBC) 2016** is a **comprehensive law** governing **insolvency and bankruptcy** in India. It unifies the legal framework for resolving the insolvency of **corporate entities, individuals, and partnership firms**.

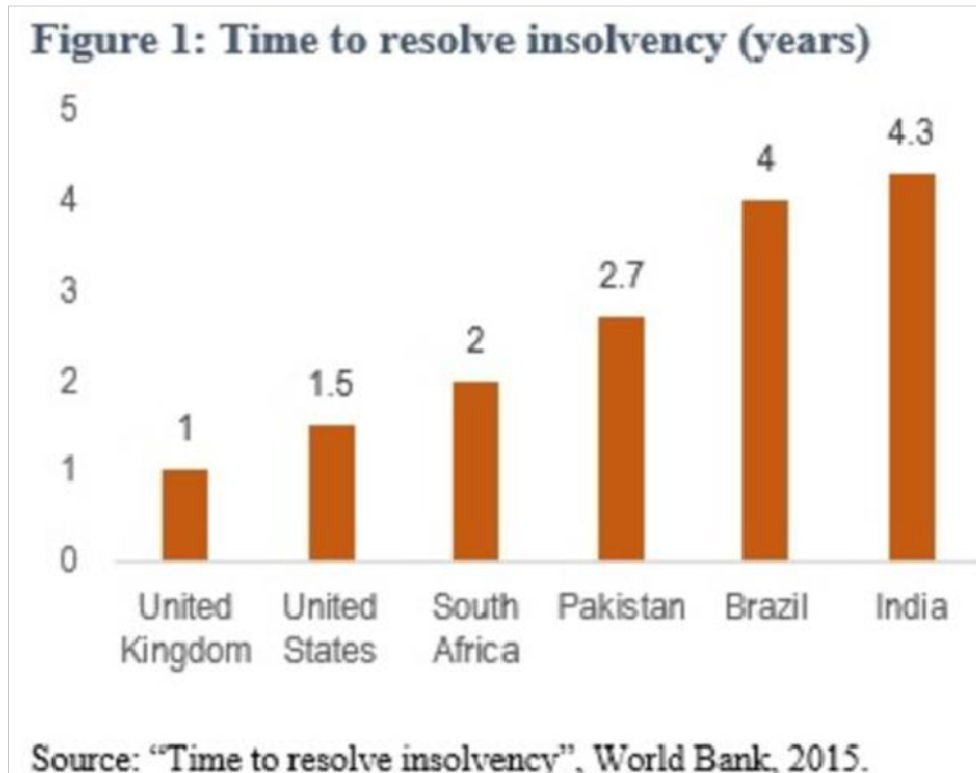
The Insolvency and Bankruptcy Code Bill **was drafted** by a specially constituted “**Bankruptcy Law Reforms Committee**” (BLRC) under the Ministry of Finance.

It was constituted under the chairmanship of Dr TK Viswnathan.

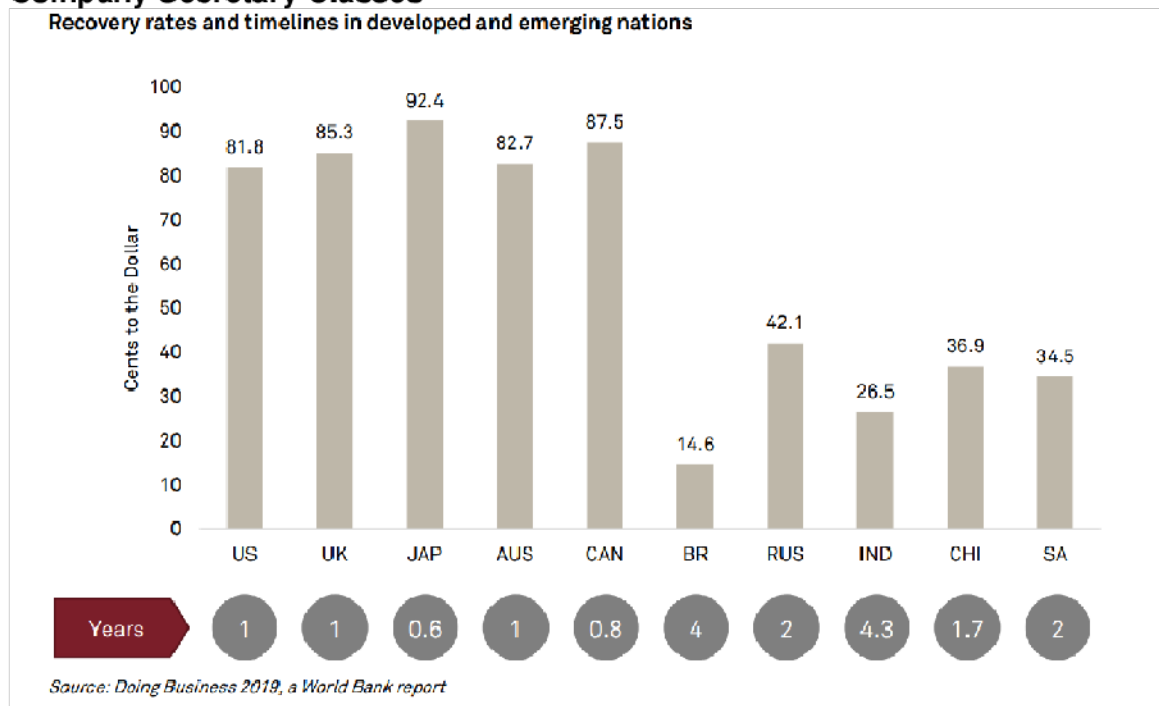
Important Dates in the Passage of IBC

- It was passed by Lok Sabha on 5 May 2016.
- It was passed by Rajya Sabha on 11 May 2016.
- It received presidential assent on 28 May 2016.

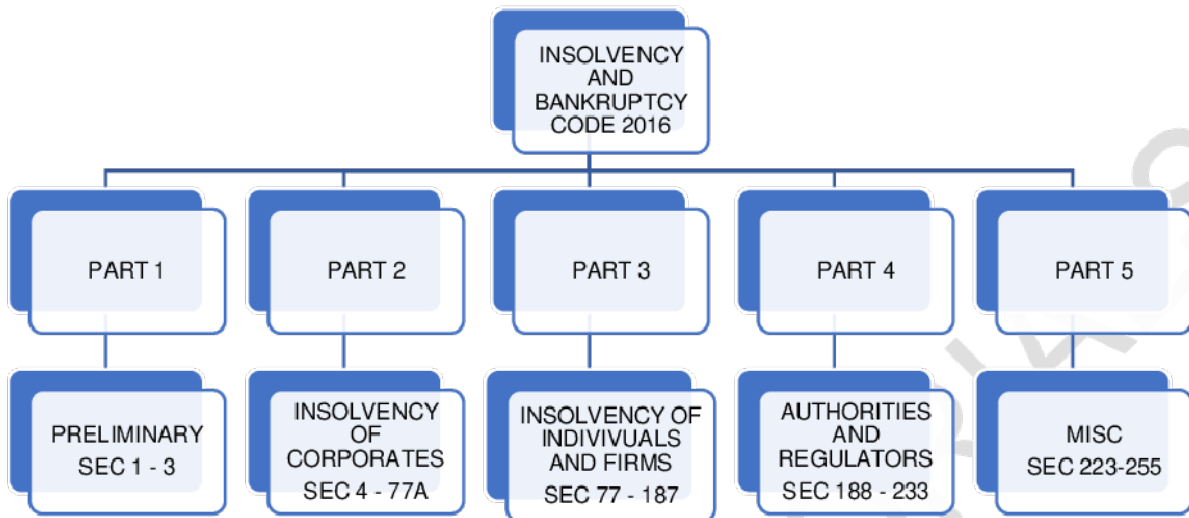
- An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner for maximisation of value of assets.
- To promote entrepreneurship, availability of credit, and balance the interests of all stakeholders, including alteration in the order of priority of payment of Government dues.
- To establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.



India takes a long time to resolve insolvency cases, averaging 4.3 years, compared to countries like the UK (1 year) and the US (1.5 years), highlighting inefficiencies in the process.

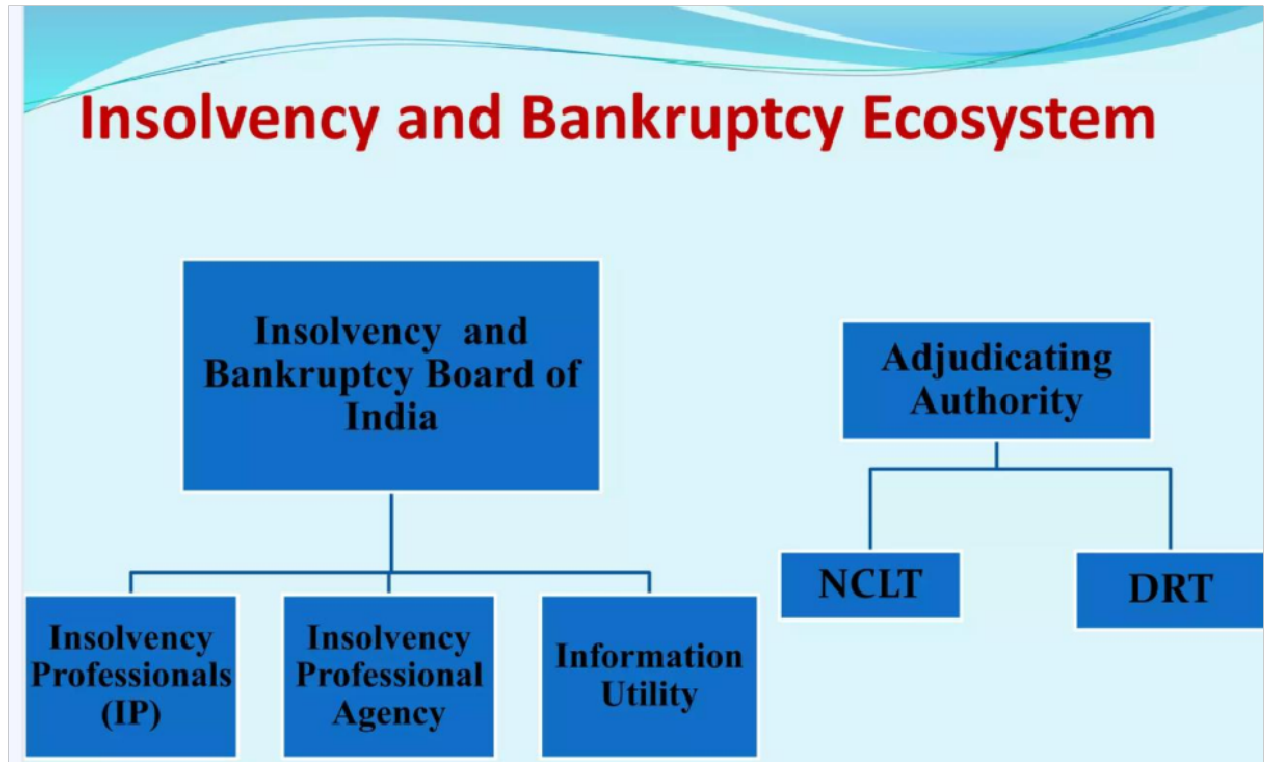


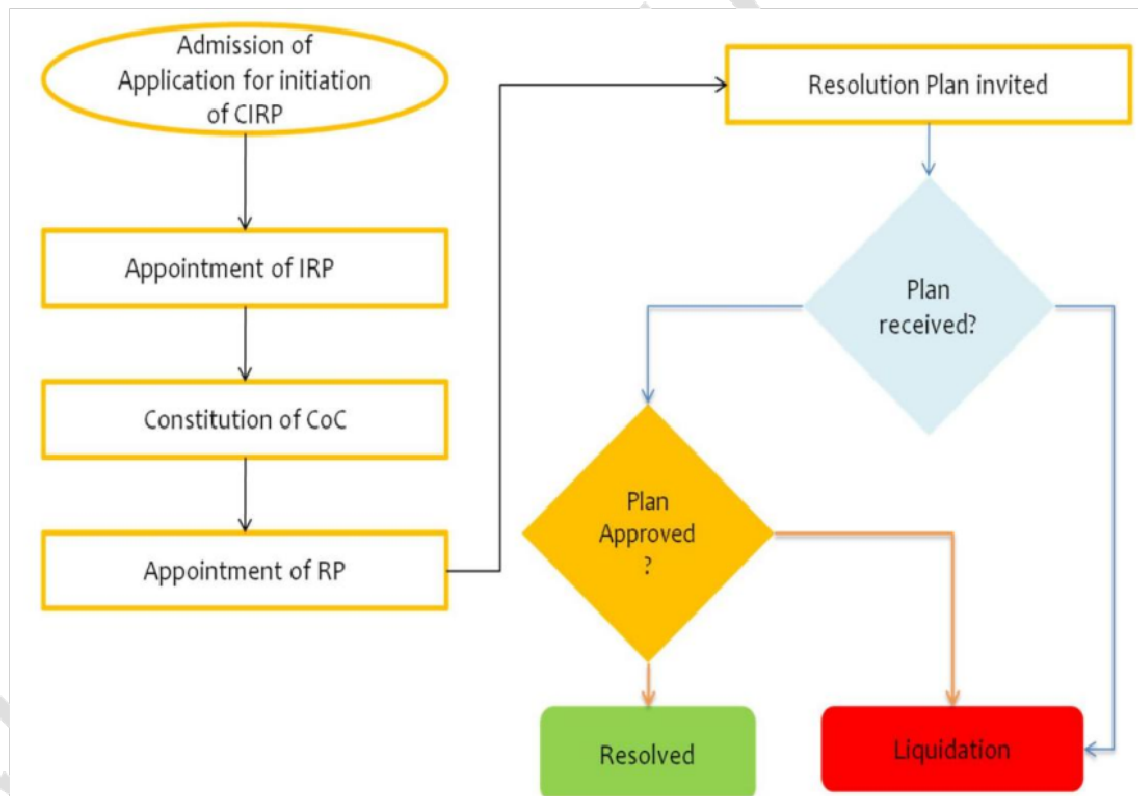
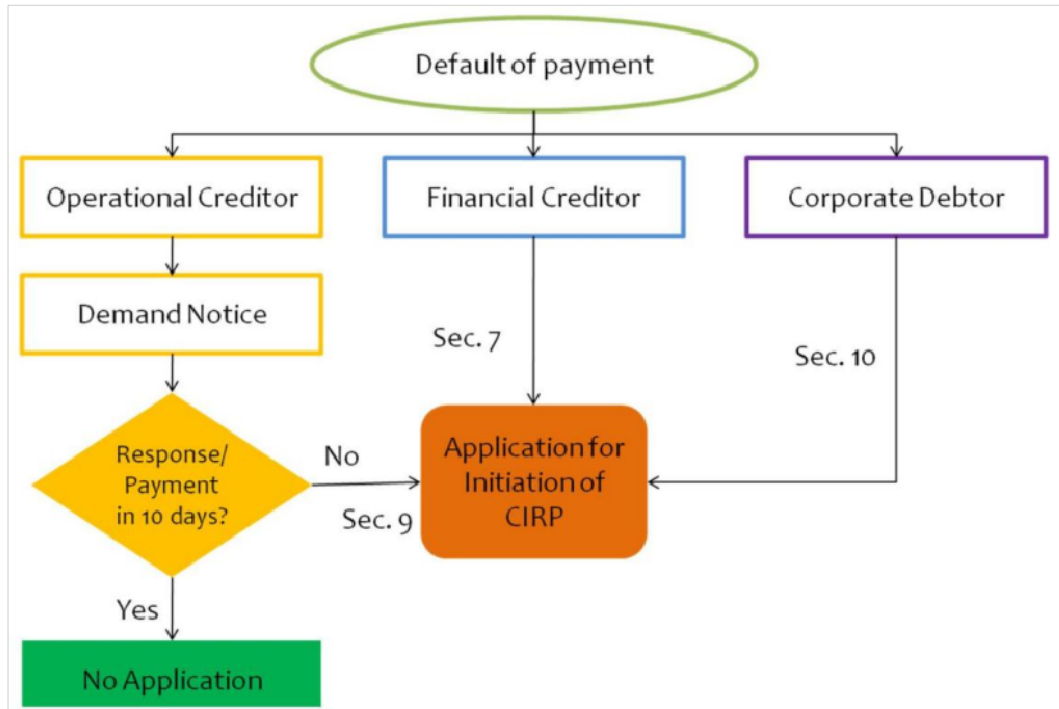
India has a low recovery rate of 26.5 cents to the dollar and takes an average of 4.3 years to resolve insolvency, indicating inefficiencies compared to developed countries like Japan (92.4 cents in 0.6 years) and the US (81.8 cents in 1 year).

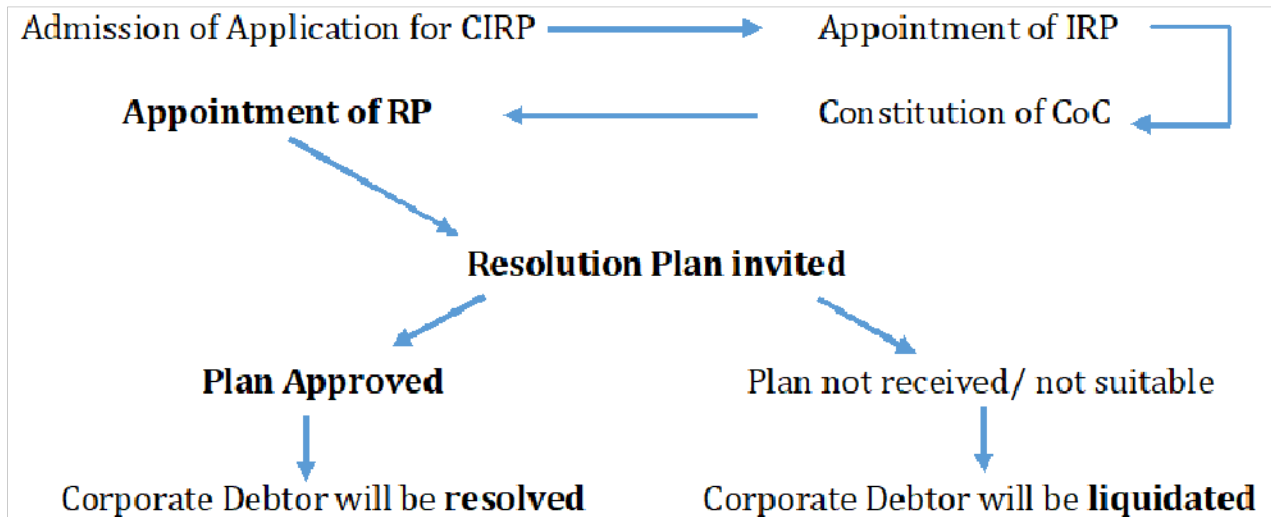


THE INSOLVENCY AND BANKRUPTCY CODE, 2016		
PART II		
<i>Insolvency Resolution and Liquidation for Corporate Persons</i>		
Chapter 1	Preliminary	Sections 4-5
Chapter II	Corporate Insolvency Resolution Process	Sections 6-32A
Chapter III	Liquidation Process	Sections 33-54
Chapter III-A	Pre-Packaged Insolvency Resolution Process	Sections 54A- 54P
Chapter IV	Fast Track Corporate Insolvency Resolution Process	Sections 55- 58
Chapter V	Voluntary Liquidation Of Corporate Persons	Sections 59
Chapter VI	Adjudicating Authority For Corporate Persons	Sections 60- 67A
Chapter VII	Offences and Penalties	Sections 68- 77A

Form Number	Purpose	Relevant Section	Description
Form 1	Application by Financial Creditor	Section 7	Used by a financial creditor to initiate Corporate Insolvency Resolution Process (CIRP) against a corporate debtor.
Form 2	Written Consent of Interim Resolution Professional (IRP)	Section 7	Used to obtain consent from a proposed Interim Resolution Professional (IRP) in an application filed by a financial creditor.
Form 3	Demand Notice/Invoice Demanding Payment	Section 8	Issued by an operational creditor to a corporate debtor demanding payment of unpaid operational debt.
Form 4	Notice with Invoice Demanding Payment	Section 8	Notice to be sent by an operational creditor attaching the unpaid invoice and demanding payment.
Form 5	Application by Operational Creditor	Section 9	Used by an operational creditor to initiate CIRP after issuing a demand notice and if no payment is received within 10 days.
Form 6	Application by Corporate Debtor to Initiate CIRP	Section 10	Used by a corporate debtor to initiate CIRP against itself if it is unable to pay its debts.







Insolvency and Bankruptcy Code, 2016 (IBC)

Part-I Preliminary

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Section-2: Application

Section-3: Definitions

Part-II Insolvency Resolution and Liquidation for Corporate Persons

Chapter-I Preliminary

Section-4: Application of this Part-II

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Chapter-II Corporate Insolvency Resolution Process

Application

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Section-9: Application for initiation of CIRP by operational creditor

Section-10: Initiation of corporate insolvency resolution process by corporate applicant

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Section-16: Appointment and tenure of interim resolution professional

Section-17: Management of affairs of corporate debtor by interim resolution professional

Section-18: Duties of interim resolution professional

Section-19: Personnel to extend cooperation to interim resolution professional

Section-20: Management of operations of corporate debtor as going concern

Committee of creditors

Section-21: Committee of creditors

Section-22: Appointment of resolution professional

Section-23: Resolution professional to conduct corporate insolvency resolution process

Section-24: Meeting of committee of creditors

Resolution Professional

Section-25: Duties of resolution professional

Section-25A: Rights and duties of authorised representative of financial creditors

Section-26: Application for avoidance of transactions not to affect proceedings

Section-27: Replacement of resolution professional by committee of creditors

Section-28: Approval of committee of creditors for certain actions

Section-29: **Preparation of information memorandum**

Resolution Applicant submits Plan

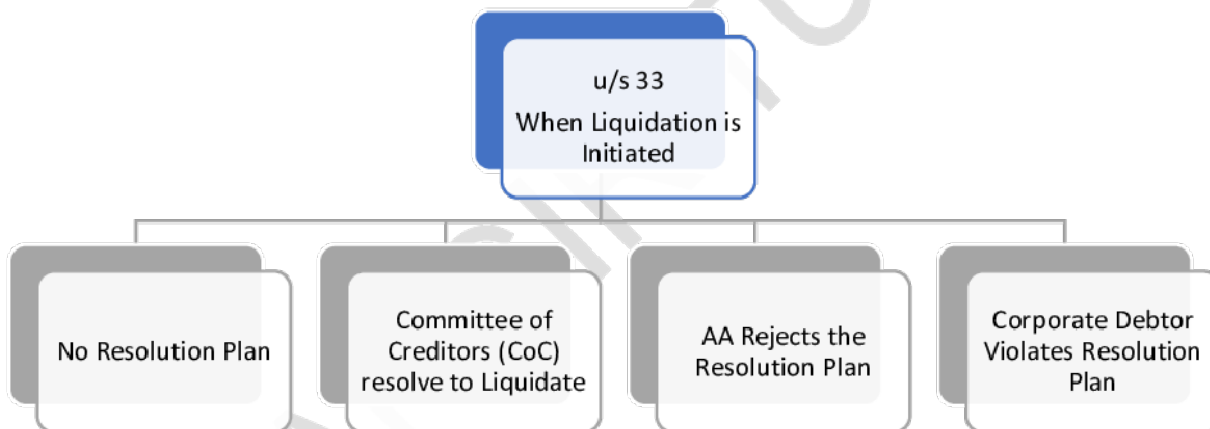
Section-29A: Persons not eligible to be resolution applicant

Section-30: Submission of resolution plan

Section-31: Approval of resolution plan

Section-32: Appeal

Section-32A: Liability for prior offences, etc.





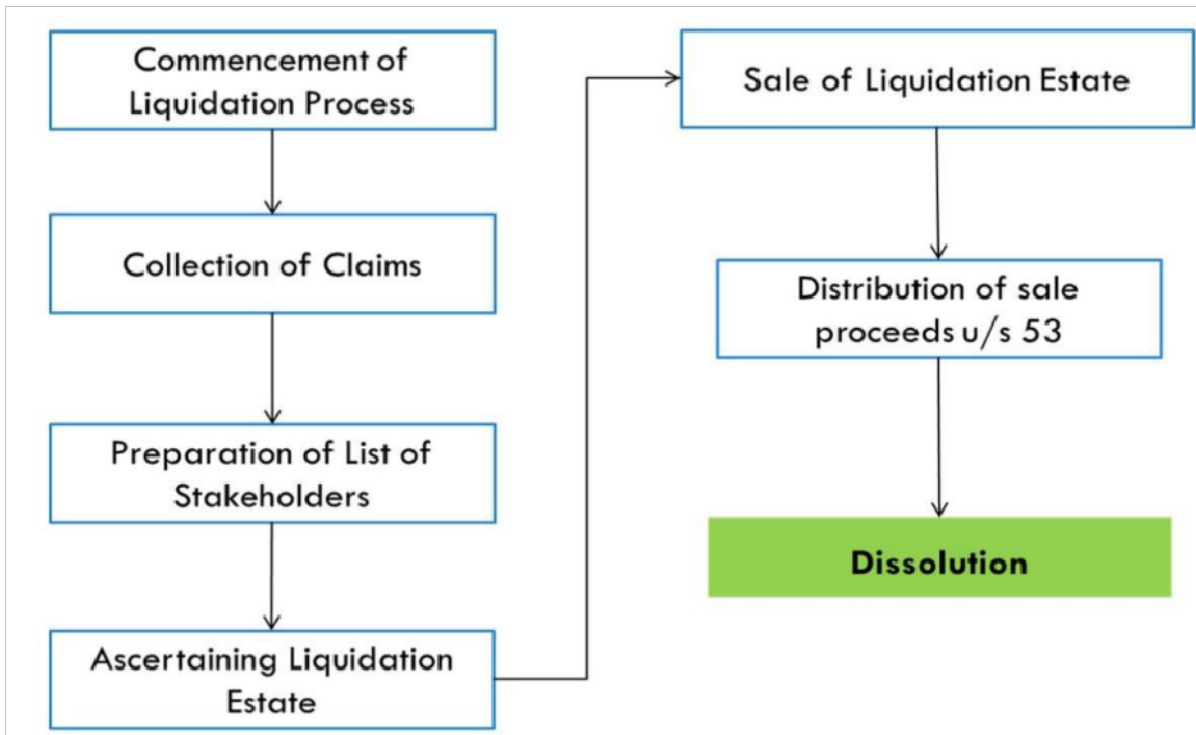
Appointment of Liquidators

INCLUSIONS

- ❖ Assets over which CD has ownership rights.
- ❖ Movable/Immovable tangible assets
- ❖ Intangible assets
- ❖ Assets in respect of which security interest has been relinquished by a secured creditor u/s 52 of IBC 2016.
- ❖ Assets subject to the determination of ownership by the court or authority
- ❖ Any assets or their value recovered through proceedings for avoidance of transactions
- ❖ All proceeds of liquidation as and when they are realized

EXCLUSIONS

- ❖ Assets in possession of CD, but owned by a 3rd party – assets held in trust, bailment contracts, contracts for 'use' of assets and not transfer of title, etc.
- ❖ Assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions
- ❖ Personal assets of any shareholder or partner of a CD, provided the assets are not held under avoidance transactions
- ❖ Assets of any Indian or foreign subsidiary of CD



CHAPTER III LIQUIDATION PROCESS

33. Initiation of liquidation.
34. Appointment of liquidator and fee to be paid.
35. Powers and duties of liquidator.
36. Liquidation estate.
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Section 1 of IBC – Insolvency and Bankruptcy Code, 2016 : Short title, extent and commencement

- (1) This **Code** may be called the **Insolvency and Bankruptcy Code, 2016**.
- (2) It extends to the **whole of India**:
- (3) It shall come into force on such **date** as the **Central Government** may, by **notification** in the **Official Gazette**, appoint:

Section 2: Application

2. The provisions of this **Code** shall apply to—

- a) any **company** incorporated under the **Companies Act, 2013** or under any previous company law;
- b) any other **company** governed by any **special Act** for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- c) any **Limited Liability Partnership** incorporated under the **Limited Liability Partnership Act, 2008**;
- d) such other **body incorporated** under any law for the time being in force, as the **Central Government** may, by **notification**, specify in this behalf;
- e) personal guarantors to **corporate debtors**;
- f) **partnership firms** and **proprietorship firms**; and
- g) **individuals**, other than persons referred to in clause (e),] in relation to their **insolvency, liquidation, voluntary liquidation, or bankruptcy**, as the case may be.

Section 3: Definitions

3. In this **Code**, unless the context otherwise requires,—

- (1) **“Board”** means the **Insolvency and Bankruptcy Board of India** established under sub-section (1) of section 188;
- (2) **“bench”** means a **bench** of the **Adjudicating Authority**;
- (3) **“bye-laws”** mean the **bye-laws** made by the **insolvency professional agency** under section 205;
- (4) **“charge”** means an **interest** or **lien** created on the property or assets of any person or any of its undertakings as security and includes a **mortgage**;
- (5) **“Chairperson”** means the **Chairperson of the Board**;
- (6) **“claim”** means—
 - (a) a **right to payment**, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
 - (b) right to **remedy for breach of contract** under any law, if such breach gives rise to a right to payment;
- (7) **“corporate person”** means a company as defined in clause (20) of section 2 of the **Companies Act, 2013**, a **limited liability partnership** or any other person incorporated with limited liability, but excludes a **financial service provider**;
- (8) **“corporate debtor”** means a **corporate person** who owes a **debt** to any person;
- (9) **“core services”** means services rendered by an **information utility** for—
 - (a) accepting **electronic submission of financial information**;
 - (b) **recording** of financial information;
 - (c) **authenticating and verifying** financial information;
 - (d) providing **access to information** to persons;
- (10) **“creditor”** means any person to whom a **debt** is owed, including a **financial creditor, operational creditor, secured creditor, and unsecured creditor**;
- (11) **“debt”** means a liability or obligation in respect of a **claim**, including **financial debt** and **operational debt**;
- (12) **“default”** means **non-payment of debt** when it is due and payable;
- (13) **“financial information”**, in relation to a person, includes—
 - (a) records of **debt** and **liabilities**;
 - (b) records of **assets** with **security interest**;
 - (c) instances of **default**;
 - (d) **balance sheet** and **cash-flow statements**;

- (14) **“financial institution”** means—
- (a) a **scheduled bank**;
 - (b) a **financial institution** as defined in section 45-I of the **Reserve Bank of India Act, 1934**;
 - (c) a **public financial institution** under the **Companies Act, 2013**;
 - (d) such other institution specified by the **Central Government**;
- (15) **“financial product”** includes **securities, insurance contracts, deposits, credit arrangements, and foreign currency contracts**;
- (16) **“financial service”** includes—
- (a) accepting **deposits**;
 - (b) administering **assets consisting of financial products**;
 - (c) effecting **insurance contracts**;
 - (d) managing **assets** and providing **financial advice**;
 - (e) operating **investment schemes**;
 - (f) maintaining records of **ownership** of financial products;
- (17) **“financial service provider”** means a person engaged in **providing financial services**;
- (18) **“financial sector regulator”** means a body regulating the **financial sector**, including the **RBI, SEBI, IRDAI, and PFRDA**;
- (19) **“insolvency professional”** means a person enrolled with an **insolvency professional agency** and registered with the **Board**;
- (20) **“insolvency professional agency”** means a person registered with the **Board** as an insolvency professional agency;
- (21) **“information utility”** means a person registered with the **Board** as an **information utility**;
- (22) **“notification”** means a notification published in the **Official Gazette**;
- (23) **“person”** includes an **individual, Hindu Undivided Family, company, trust, partnership, limited liability partnership**, and entities established under a statute, including a person resident outside India;
- (24) **“person resident in India”** shall have the meaning assigned in the **Foreign Exchange Management Act, 1999**;
- (25) **“person resident outside India”** means a person other than a person resident in India;
- (26) **“prescribed”** means prescribed by **rules** made by the **Central Government**;
- (27) **“property”** includes **money, goods, actionable claims, land**, and every description of property situated in India or outside India;
- (28) **“regulations”** means the regulations made by the **Board** under this **Code**;
- (29) **“Schedule”** means the **Schedule** annexed to this **Code**;
- (30) **“secured creditor”** means a **creditor** in favour of whom **security interest** is created;

- (31) **“security interest”** means **right, title, or interest** created in favour of a **secured creditor**, including **mortgage, charge, hypothecation, or encumbrance**;
- (32) **“specified”** means specified by **regulations** made by the **Board**;
- (33) **“transaction”** includes an agreement for the **transfer of assets or funds, goods, or services**;
- (34) **“transfer”** includes **sale, purchase, exchange, mortgage, pledge, gift, loan**, or any other form of transfer;
- (35) **“transfer of property”** means transfer of any property, including creation of a **charge**;
- (36) **“workman”** has the meaning assigned in the **Industrial Disputes Act, 1947**;
- (37) Words and expressions used but not defined in this **Code** but defined in various **Acts**, such as the **Indian Contract Act, 1872, Securities Contract (Regulation) Act, 1956, SEBI Act, 1992, and Companies Act, 2013**, shall have the meanings assigned in those Acts.

Chapter-I Preliminary

Section 4: Application of this Part

4.

(1) This **Part** shall apply to matters relating to the **insolvency** and **liquidation** of **corporate debtors** where the minimum amount of the **default** is **one lakh rupees**:

Provided that the **Central Government** may, by **notification**, specify the minimum amount of **default** of higher value, which shall not be more than **one crore rupees**.

Provided further that the **Central Government** may, by **notification**, specify such minimum amount of **default** of higher value, which shall not be more than **one crore rupees**, for matters relating to the **pre-packaged insolvency resolution process** of corporate debtors under **Chapter III-A**.

Section 5: Definitions

5.

In this **Part**, unless the context otherwise requires,—

(1) “**Adjudicating Authority**” means **National Company Law Tribunal** constituted under **section 408** of the **Companies Act, 2013**;

(2) “**Auditor**” means a **chartered accountant** certified by the **Institute of Chartered Accountants of India** under **section 6** of the **Chartered Accountants Act, 1949**;

1[(2A) “**Base resolution plan**” means a resolution plan provided by the corporate debtor under **clause (c)** of **sub-section (4)** of **section 54A**;

(3) “**Chapter**” means a Chapter under this **Part**;

(4) “**Constitutional document**”, in relation to a **corporate person**, includes **articles of association**, **memorandum of association**, and **incorporation document** of a **Limited Liability Partnership**;

(5) “**Corporate applicant**” means—

(a) **corporate debtor**; or

(b) a **member or partner** of the corporate debtor authorized to make an application for the **corporate insolvency resolution process** 1[or the **pre-packaged insolvency resolution process**, as the case may be,] under the **constitutional document** of the corporate debtor; or

(c) an individual in charge of managing the operations and resources of the corporate debtor; or

(d) a person with control and supervision over the **financial affairs** of the corporate debtor;

2[(5A) “**Corporate guarantor**” means a **corporate person** who is the surety in a **contract of guarantee** to a corporate debtor;]

(6) “**Dispute**” includes a suit or **arbitration proceedings** relating to—

(a) the existence of the amount of **debt**;

(b) the **quality of goods or services**; or

(c) the **breach** of a representation or **warranty**;

(7) “**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;

Company Secretary Classes

(8) **“Financial debt”** means a debt along with interest disbursed against the consideration for the **time value of money** and includes—

- (a) money borrowed against **interest**;
- (b) any amount raised by **acceptance under any credit facility** or its **de-materialised equivalent**;
- (c) any amount raised pursuant to the **issue of bonds, notes, debentures**, or any similar instrument;
- (d) liability in respect of **finance or capital lease** under the **Indian Accounting Standards**;
- (e) **receivables sold or discounted** (excluding **non-recourse** receivables);
- (f) any other transaction with the **commercial effect of a borrowing**;

[Explanation: For the purposes of this sub-clause,

- (i) 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
- (ii) the expressions, **“allottee”** and **“real estate project”** shall have the meanings assigned under **Real Estate (Regulation and Development) Act, 2016** (16 of 2016);]

- (g) any **derivative transaction** for protection against rate or price fluctuation, considering only the **market value**;
- (h) any **counter-indemnity obligation** in respect of a **guarantee, bond, or letter of credit** issued by a bank or financial institution;
- (i) liability in respect of any **guarantee or indemnity** for the above items;

(9) **“Financial position”** means the **financial information** of a person as on a specific date;

(10) **“Information memorandum”** means a memorandum prepared by the **resolution professional** under **section 29(1)**;

(11) **“Initiation date”** means the date on which a **financial creditor, corporate applicant, or operational creditor** makes an application to the **Adjudicating Authority** for initiating **corporate insolvency resolution process** 1[or **pre-packaged insolvency resolution process**, as applicable];

(12) **“Insolvency commencement date”** means the date of admission of an application for initiating the **corporate insolvency resolution process** by the **Adjudicating Authority** under **sections 7, 9, or 10**;

(13) **“Insolvency resolution process costs”** include—

- (a) **interim finance** and costs incurred in raising such finance;
- (b) fees payable to any person acting as a **resolution professional**;
- (c) costs incurred by the **resolution professional** in running the business of the corporate debtor as a **going concern**;
- (d) costs incurred by the **Government** to facilitate the insolvency resolution process; and
- (e) other costs specified by the Board;

(14) **“Insolvency resolution process period”** means the period of **180 days** from the **insolvency commencement date**;

(15) **“Interim finance”** means any **financial debt** raised by the **resolution professional** during the **insolvency resolution process period** 1[or by the corporate debtor during the **pre-packaged insolvency resolution process period**, as applicable,] 4[and other debt as notified];

(16) **“Liquidation cost”** refers to any cost incurred by the **liquidator** during **liquidation**, subject to regulations;

(17) “**Liquidation commencement date**” means the date on which **liquidation proceedings** commence as per **section 33** or **59**;

(18) “**Liquidator**” means an **insolvency professional** appointed to conduct **liquidation** as per **Chapter III** or **Chapter V**;

(19) “**Officer**” means an **officer in default** under **section 2(60)** of the **Companies Act, 2013** or a **designated partner** under the **Limited Liability Partnership Act, 2008**;

(20) “**Operational creditor**” refers to a person to whom an **operational debt** is owed;

(21) “**Operational debt**” refers to a claim regarding the provision of **goods or services** including **employment**, or dues payable to the **Government**;

(22) “**Personal guarantor**” means an individual who is a surety in a **contract of guarantee** to a corporate debtor;

(23) “**Personnel**” includes **directors, managers, key managerial personnel, designated partners**, and employees of the corporate debtor;

(24) “**Related party**”, in relation to a **corporate debtor**, refers to—

(a) a **director** or **partner** of the corporate debtor;

(b) **key managerial personnel** or their relatives;

(c) a **limited liability partnership** or firm where a director or manager of the corporate debtor is a partner;

(d) a **private company** where the corporate debtor's director holds more than **2%** of share capital;

(e) a **public company** where the corporate debtor's director holds more than **2%** of share capital;

(f) any body corporate whose **board** or **manager** acts on the instructions of the corporate debtor's director or manager;

(g) any **limited liability partnership** or partnership firm acting on the corporate debtor's manager's instructions;

(h) any person advising the corporate debtor's director or manager;

(i) any **holding, subsidiary, or associate company**;

(j) any person controlling **20% or more** voting rights;

(k) any person controlled by the corporate debtor;

(l) any person controlling the **board composition** of the corporate debtor;

(m) any person associated in policymaking or managerial exchange;

(25) “**Resolution applicant**” means a person **submitting a resolution plan** to the **resolution professional** as per **section 25(2)(h)** or **section 54K**;

(26) “**Resolution plan**” means a plan proposed for **insolvency resolution** of the corporate debtor as a **going concern**;

(27) “**Resolution professional**” refers to an **insolvency professional** appointed to conduct the **corporate insolvency resolution process** 1[or **pre-packaged insolvency resolution process**, as applicable];

(28) “**Voting share**” refers to the share of **voting rights** of a **financial creditor** in the **committee of creditors**, based on the proportion of **financial debt** owed.

Section 6: Persons Who May Initiate Corporate Insolvency Resolution Process

Initiation by Financial Creditor, Operational Creditor, or Corporate Debtor

Where any corporate debtor commits a default,

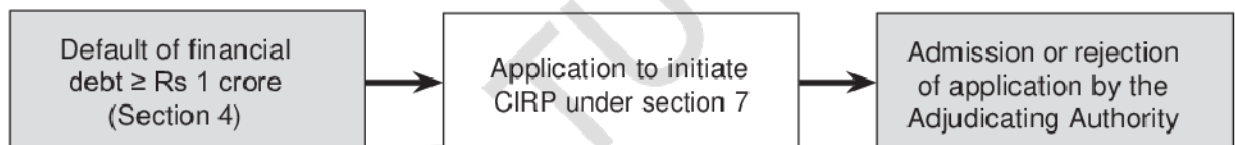
- a) a financial creditor,
- b) an operational creditor, or
- c) the corporate debtor itself

may initiate the corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

“Default” is defined in section 3(12) of the IBC as non-payment of **a debt when the whole or any part or installment of the amount of debt has become due and payable, and is not paid by the debtor or the corporate debtor, as the case may be.**

According to section 3(8), a “corporate debtor” means a corporate person who owes a debt to any person.

Initiation of corporate insolvency resolution process by financial creditor Section 7



Section 7(1): Filing of Application by Financial Creditors

A **financial creditor**, either by itself or **jointly** with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the **Central Government**, may file an **application** for initiating the **corporate insolvency resolution process (CIRP)** against a **corporate debtor** before the **Adjudicating Authority** when a **default** has occurred.

First Proviso: Joint Application by Certain Financial Creditors

Provided that for the **financial creditors**, referred to in **clauses (a) and (b) of sub-section (6A) of section 21**, an application for initiating **corporate insolvency resolution process** against the corporate debtor shall be filed **jointly** by not less than **one hundred** of such creditors in the same class or not less than **ten per cent.** of the total number of such creditors in the same class, **whichever is less.**

Second Proviso: Joint Application by Real Estate Allottees

Provided further that for **financial creditors** who are **allottees** under a **real estate project**, an application for initiating **corporate insolvency resolution process** against the corporate debtor shall be filed **jointly** by not less than **one hundred of such allottees** under the same **real estate project** or not less than **ten per cent.** of the total number of such allottees under the same real estate project, **whichever is less.**

Company Secretary Classes**Explanation: Default Includes Other Financial Creditors**

For the purposes of this sub-section, a **default** includes a default in respect of a **financial debt** owed not only to the **applicant financial creditor** but also to **any other financial creditor** of the corporate debtor.

Section 7 (2): Application Requirements

The **financial creditor** shall make an **application** under sub-section (1) in **Form 1** and manner and accompanied with such **fee** as may be prescribed.

Section 7 (3): Required Information

The **financial creditor** shall, along with the application, furnish—

(a) Record of Default

The **record of the default** recorded with the information utility or such other **record or evidence of default** as may be specified.

(b) Name of the Proposed Resolution Professional

The **name of the resolution professional** proposed to act as an **interim resolution professional**.

(c) Other Information

Any other **information** as may be specified by the **Board**.

Section 7 (4): Verification by Adjudicating Authority

The **Adjudicating Authority** shall, within **fourteen days** of the receipt of the application under sub-section (2), **ascertain the existence of a default** from the records of an information utility or on the basis of other **evidence** furnished by the financial creditor under sub-section (3).

Provided that if the **Adjudicating Authority** has not ascertained the existence of **default** and passed an order under sub-section (5) within such time, it shall **record its reasons in writing** for the same.

Section 7 (5): Admission or Rejection of Application

Where the **Adjudicating Authority** is satisfied that—

(a) Admission of Application

A **default has occurred**, the application under sub-section (2) is **complete**, and there are **no disciplinary proceedings pending** against the proposed resolution professional, it may, by order, **admit** such application.

(b) Rejection of Application

A **default has not occurred**, the application under sub-section (2) is **incomplete**, or any **disciplinary proceeding** is pending against the proposed resolution professional, it may, by order, **reject** such application:

Provided that the **Adjudicating Authority** shall, before **rejecting** the application under clause (b) of sub-section (5), give a notice to the applicant to **rectify the defect** in his application within **seven days** of receipt of such notice from the **Adjudicating Authority**.

Section 7 (6): Commencement of Corporate Insolvency Resolution Process

The **corporate insolvency resolution process** shall commence from the date of **admission of the application** under sub-section (5).

Company Secretary Classes

Section 7 (7): Communication of Orders

The **Adjudicating Authority** shall communicate—

(a) Communication of Admission

The **order under clause (a)** of sub-section (5) to the **financial creditor** and the **corporate debtor**.

(b) Communication of Rejection

The **order under clause (b)** of sub-section (5) to the **financial creditor**, within **seven days** of admission or rejection of such application, as the case may be.

In the matter of ***Surendra Trading Company v. Juggilal Kamlatpat Jute Mills Company Limited and Other***, the Supreme Court held that **time period of 14 days is directory and not mandatory**.

Section 5(12) of the Code defines "**insolvency commencement date**" which means 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.

Definition of "Financial Creditor" (Section 5(7))

"**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**.

Definition of "Financial Debt" (Section 5(8))

"**Financial debt**" means a debt along with interest disbursed against the consideration for the **time value of money** and includes—

(a) Money Borrowed Against Interest

Money borrowed with the obligation to pay **interest**.

(b) Amount Raised by Acceptance Under Any Credit Facility or its De-materialised Equivalent

Any amount raised through the acceptance of a **credit facility** or its dematerialised equivalent.

(c) Amount Raised Through Bonds, Notes, Debentures, or Similar Instruments

Any amount raised by the issuance of **bonds, notes, debentures**, or similar financial instruments.

(d) Liability in Respect of Finance or Capital Lease

Any liability under a **finance or capital lease**, in accordance with the **Indian Accounting Standards**.

(e) Receivables Sold or Discounted (Excluding Non-Recourse Receivables)

Receivables that are **sold** or **discounted**, excluding non-recourse receivables (where the seller retains no liability if the receivables are not paid).

(f) Any Other Transaction with the Commercial Effect of a Borrowing

Any transaction that has the **commercial effect of borrowing**.

Explanation for Sub-Clause (f):

(i) Any amount raised from an **allottee** under a **real estate project** shall be deemed to have the commercial effect of borrowing.

(ii) The terms "**allottee**" and "**real estate project**" shall have the meanings assigned under the **Real Estate (Regulation and Development) Act, 2016 (16 of 2016)**.

(g) Any Derivative Transaction for Protection Against Rate or Price Fluctuation

Any **derivative transaction** undertaken to protect against **rate or price fluctuations**, considering only the **market value**.

(h) Any Counter-Indemnity Obligation in Respect of a Guarantee, Bond, or Letter of Credit

Any **counter-indemnity obligation** related to a **guarantee, bond, or letter of credit** issued by a bank or financial institution.

Section 8: Insolvency Resolution by Operational Creditor

Section 8 (1): Delivery of Demand Notice

An **operational creditor** may, on the occurrence of a **default**, deliver a **demand notice** of unpaid operational debt or a copy of an **invoice** demanding payment of the amount involved in the default to the **corporate debtor** in such form and manner as may be prescribed:

- **Form 3:** This is the **Demand Notice** that the operational creditor issues to the corporate debtor, specifying the amount of unpaid debt and demanding payment.
- **Form 4:** This is the **Notice with Invoice** that the operational creditor issues, **attaching an invoice and demanding the unpaid amount** from the corporate debtor.

Section 8 (2): Response by Corporate Debtor

The **corporate debtor** shall, within a period of **ten days** of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor—

(a) Existence of a **dispute**, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) The **payment** of unpaid operational debt—

(i) By sending an attested copy of the record of **electronic transfer** of the unpaid amount from the bank account of the corporate debtor; or

(ii) By sending an attested copy of record that the **operational creditor** has encashed a **cheque** issued by the corporate debtor.

Explanation

For the purposes of this section, a “**demand notice**” means a notice served by an operational creditor to the corporate debtor demanding **payment** of the operational debt in respect of which the default has occurred.

Section 9: Application for Initiation of Corporate Insolvency Resolution Process by Operational Creditor

Section 9(1): Filing of Application

After the expiry of **ten days** from the delivery of the notice or invoice demanding payment under sub-section (1) of **Section 8**, if **the operational creditor does not receive**:

- **Payment** from the corporate debtor, or
- **Notice of dispute** under sub-section (2) of Section 8,

the operational creditor may file an **application** before the **Adjudicating Authority** for initiating a corporate insolvency resolution process.

Section 9(2): Form and Fee

The application under sub-section (1) shall be filed in **Form 5** and accompanied with such **fee** as may be prescribed.

Section 9(3): Information to be Furnished by the Operational Creditor

The operational creditor shall, along with the application, furnish:

- (a) A copy of the **invoice** demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- (b) An **affidavit** stating that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- (c) 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;
- (d) A copy of any **record** with the information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
- (e) Any other **proof** confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

Section 9(4): Proposal for Interim Resolution Professional

An operational creditor initiating a corporate insolvency resolution process under this section may propose a **resolution professional** to act as an **interim resolution professional**.

The **Adjudicating Authority** shall, within **fourteen days** of the receipt of the application under sub-section (2), by an order:

(i) Admission of Application:

The application will be **admitted** if:

- (a)** The application made under sub-section (2) is **complete**;
- (b)** There is no **payment** of the unpaid operational debt;
- (c)** The **invoice** or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (d)** No **notice of dispute** has been received by the operational creditor, or there is no record of dispute in the information utility; and
- (e)** There is no **disciplinary proceeding** pending against any resolution professional proposed under sub-section (4), if any.

(ii) Rejection of Application:

The application will be **rejected** if:

- (a)** The application made under sub-section (2) is **incomplete**;
- (b)** There has been **payment** of the unpaid operational debt;
- (c)** The creditor has not delivered the **invoice** or notice for payment to the corporate debtor;
- (d)** **Notice of dispute** has been received by the operational creditor, or there is a record of dispute in the information utility; or
- (e)** Any **disciplinary proceeding** is pending against any proposed resolution professional.

Provided that the Adjudicating Authority, before rejecting an application under sub-clause (a) of clause (ii), shall give a notice to the applicant to **rectify the defect** in his application within **seven days** of the date of receipt of such notice from the Adjudicating Authority.

Section 9(6): Commencement of Corporate Insolvency Resolution Process

The corporate insolvency resolution process shall commence from the date of **admission** of the application under sub-section (5) of this section.

Important Note

An operational creditor must individually meet the **Rs. 1 crore threshold** under **Section 4** of the IBC to initiate a **Corporate Insolvency Resolution Process (CIRP)**.

Unlike financial creditors under **Section 7**, operational creditors under **Section 9** cannot **combine claims** or file **joint applications** to meet the threshold requirement.

Section 10: Initiation of Corporate Insolvency Resolution Process by Corporate Applicant

Section 10(1): Filing of Application

Where a corporate debtor has committed a default, a corporate applicant may file an application for initiating the Corporate Insolvency Resolution Process (CIRP) with the Adjudicating Authority.

Section 10(2): Form and Fee

The application shall be filed in **Form 6**, containing the required particulars, and accompanied by the prescribed fee.

Section 10(3): Information to be Furnished by Corporate Applicant

The corporate applicant must furnish the following along with the application:

- (a) Information relating to its books of account and other documents for the specified period.
- (b) Information relating to the resolution professional proposed to be appointed as the interim resolution professional.
- (c) The special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourths of the total number of partners of the corporate debtor, as the case may be, approving the filing of the application.

Section 10(4): Adjudicating Authority's Decision

The Adjudicating Authority shall, within fourteen days of receiving the application:

- (a) Admit the application if it is complete and no disciplinary proceeding is pending against the proposed resolution professional; or
 - (b) Reject the application if it is incomplete or if any disciplinary proceeding is pending against the proposed resolution professional.
- Provided that the Adjudicating Authority shall give notice to the applicant to rectify the defects within seven days from the date of receipt of such notice before rejecting the application.

Section 10(5): Commencement of Corporate Insolvency Resolution Process

The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4).

Persons not entitled to make application (Section 11)

Section 11 of the Code states that certain **persons are not entitled to make applications for initiating a Corporate Insolvency Resolution Process.**

These are:

a) Corporate Debtor Undergoing CIRP

- A corporate debtor already undergoing a corporate insolvency resolution process or a pre-packaged insolvency resolution process.

(aa) Creditor of Corporate Debtor Undergoing Pre-Packaged Insolvency

- A financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process.

b) Corporate Debtor Post CIRP Completion

- A corporate debtor having completed a corporate insolvency resolution process twelve months preceding the date of making the application.

(ba) Corporate Debtor with Approved Resolution Plan

- A corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making the application.

c) Corporate Debtor/Financial Creditor Violating Resolution Plan

- A corporate debtor or a financial creditor who has violated any of the terms of a resolution plan approved twelve months before the date of making an application under this Chapter.

d) Corporate Debtor Under Liquidation

- A corporate debtor in respect of whom a liquidation order has been made.

Explanations

Explanation I:

- For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Explanation II:

- Clarifies that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating a corporate insolvency resolution process against another corporate debtor.

Amendment 2020: Corporate Debtor Can Initiate CIRP Against Another Corporate Debtor

- The Insolvency and Bankruptcy Code (Amendment) Act, 2020, added **Explanation II** to the IBC, allowing a corporate debtor to initiate CIRP against another corporate debtor for debts owed to it. This amendment clarifies the position of the law, affirming that a corporate debtor can act as a creditor to initiate CIRP against another corporate debtor.

Section 11A: Disposal of Applications Under Section 54C and Under Section 7, Section 9, or Section 10

1. Priority of Application Disposal When Section 54C Application is Pending:

- When an application filed under **Section 54C** is pending, the Adjudicating Authority shall pass an order to admit or reject the **Section 54C** application **before** considering any application filed under **Section 7, Section 9, or Section 10** during the pendency of the **Section 54C** application for the same corporate debtor.

2. Section 54C Application Filed Within 14 Days:

- If an application under **Section 54C** is filed within **fourteen days** of the filing of an application under **Section 7, Section 9, or Section 10**, which is pending for the same corporate debtor, then, regardless of the provisions in **Sections 7, 9, and 10**, the Adjudicating Authority shall first dispose of the **Section 54C** application.

3. Section 54C Application Filed After 14 Days:

- If an application under **Section 54C** is filed **after fourteen days** of the filing of any application under **Section 7, Section 9, or Section 10** for the same corporate debtor, the Adjudicating Authority shall first dispose of the application under **Section 7, Section 9, or Section 10**.

Pending Application	New Application Filed	Filing Time (from pending)	Application to be Disposed First
Application under Sections 7, 9, or 10	Section 54C application	Within 14 days	Section 54C
Application under Sections 7, 9, or 10	Section 54C application	After 14 days	Sections 7, 9, or 10
Section 54C application	Application under Sections 7, 9, or 10	Anytime	Section 54C

Explanation:

1. When Section 54C is filed after Sections 7, 9, or 10:

- If filed within 14 days, Section 54C takes priority.
- If filed after 14 days, the application under Sections 7, 9, or 10 will be disposed of first.

2. When Section 54C is already pending:

- Any new application under Sections 7, 9, or 10 will be set aside, as the Section 54C application will be disposed of first.

Time-limit for completion of insolvency resolution process (Section 12)

12(1): Completion Period for CIRP

The **corporate insolvency resolution process (CIRP)** shall be completed within a period of **one hundred and eighty days** from the date of admission of the application for initiation of such process.

12(2): Extension Application by the Resolution Professional

The **Resolution Professional** shall file an application to the **Adjudicating Authority** for extending the CIRP period beyond **one hundred and eighty days**, provided that the **Committee of Creditors (CoC)** passes a resolution with at least **sixty-six percent** of voting shares in favor of such extension.

12(3): Order for Extension

Upon receipt of the application under sub-section (2), if the **Adjudicating Authority** is satisfied that the CIRP cannot be completed within the stipulated **one hundred and eighty days**, it may, by order, extend the duration of the CIRP for a further period not exceeding **ninety days**:

Provided that any such extension shall not be granted more than once.

12(4): Mandatory Overall Completion Period

The CIRP shall be completed within a period of **three hundred and thirty days** from the **insolvency commencement date**, inclusive of any extension granted under this section and the time taken in **legal proceedings** related to such resolution process.

CIRP Completion and Liquidation

The **CIRP must be completed within 330 days** from the insolvency commencement date, including extensions and time for legal proceedings. If not completed, the **Adjudicating Authority must initiate liquidation** unless exceptional circumstances warrant an extension.

Provision	Description	Time Limit
Initial Period for CIRP	The Corporate Insolvency Resolution Process (CIRP) must be completed from the date of admission of the application..	180 days
Extension of Period	An extension may be requested by the Resolution Professional if the Committee of Creditors (CoC) passes a resolution with 66% of voting shares in favor of the extension.	Up to 90 additional days
Final Completion Period	CIRP, including any extension and time taken for legal proceedings , must conclude within this period.	330 days (mandatory)

Withdrawal of application admitted under section 7, 9 or 10 (Section 12A)

The Adjudicating Authority (AA) may allow the withdrawal of an application admitted under Section 7, 9, or 10, on an application made by the applicant with the approval of **90% voting share** of the Committee of Creditors (CoC).

Phases of Withdrawal

1. Case I: Before Admission

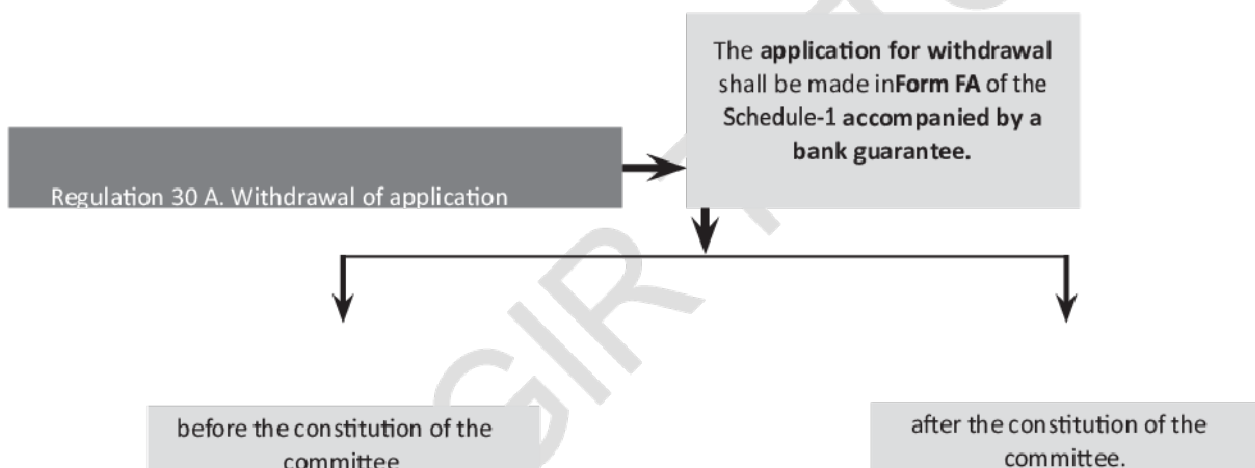
- Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 allows the applicant to request withdrawal before the application is admitted.

2. Case II: After Admission but Before Constitution of CoC

- Withdrawal can still be initiated, but specific processes are followed as detailed in Regulation 30A.

3. Case III: After Constitution of CoC

- Withdrawal is permitted under Section 12A, but it requires approval from **90%** of CoC voting shares.



Section 13: Declaration of Moratorium and Public Announcement

13. (1) Actions by the Adjudicating Authority

The **Adjudicating Authority**, after admission of the application under **section 7**, **section 9**, or **section 10**, shall, by an order—

- a. declare a **moratorium** for the purposes referred to in **section 14**;
- b. cause a **public announcement** of the initiation of corporate insolvency resolution process and call for the submission of claims under **section 15**; and
- c. appoint an **interim resolution professional** in the manner as laid down in **section 16**.

13. (2) Timing of Public Announcement

The **public announcement** referred to in **clause (b)** of **sub-section (1)** shall be made **immediately** after the appointment of the **interim resolution professional**.

Section 14: Moratorium

14. (1) Scope of the Moratorium

On the **insolvency commencement date**, the **Adjudicating Authority** shall declare a **moratorium** to prohibit the following:

(a) Institution and Continuation of Suits

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

(b) Transfer or Disposal of Assets

Transferring, **encumbering**, **alienating**, or **disposing** of any of the corporate debtor's **assets** or any **legal right** or **beneficial interest** therein.

(c) Enforcement of Security Interest

Any action to **foreclose**, **recover**, or **enforce** any **security interest** created by the corporate debtor in respect of its **property**, including actions under the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**.

(d) Recovery of Property by Owner or Lessor

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

Explanation: Licenses, permits, registrations, quotas, concessions, clearances, or similar grants or rights given by the Central or State Government, local authorities, sectoral regulators, or any other authority shall **not be suspended or terminated** due to insolvency, provided there is **no default** in payment of **current dues** for their use during the moratorium period.

14. (2) Essential Supplies

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

14. (2A) Critical Goods and Services

If the **interim resolution professional** or **resolution professional** considers the supply of goods or services as **critical** to preserve the corporate debtor's value and manage operations, such supplies shall not be **terminated, suspended, or interrupted** during the moratorium, unless the corporate debtor **fails to pay** dues arising during the moratorium.

14. (3) Exceptions to the Moratorium

The provisions of **sub-section (1)** do not apply to:

- a. Transactions, agreements, or arrangements **notified** by the **Central Government** in consultation with any financial sector regulator or other authority.
- b. A **surety** in a **contract of guarantee** to a corporate debtor.

14. (4) Duration of the Moratorium

The **moratorium** is effective from the date of the order until the **completion** of the corporate insolvency resolution process. However, if the Adjudicating Authority:

- Approves a **resolution plan** under **Section 31**; or
- Passes an order for **liquidation** under **Section 33**,

The **moratorium** ceases to be in effect from the date of such approval or order.

Section 15: Public Announcement of Corporate Insolvency Resolution Process

15. (1) Information in the Public Announcement

The public announcement of the corporate insolvency resolution process under the order referred to in **section 13** shall contain the following information:

- (a) Name and address of the **corporate debtor** under the corporate insolvency resolution process;
- (b) Name of the authority with which the corporate debtor is **incorporated** or **registered**;
- (c) The **last date** for submission of claims, as may be specified;
- (d) Details of the **interim resolution professional** who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- (e) **Penalties** for false or misleading claims; and
- (f) The date on which the corporate insolvency resolution process 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.

15. (2) Manner of Public Announcement

The public announcement under this section shall be made in such manner as may be **specified**.

Section 16 of the Code provides for the Appointment and Tenure of Interim Resolution Professional (IRP) as follows:

1. **Who appoints IRP:**

The **Adjudicating Authority** shall appoint an **interim resolution professional** on the **insolvency commencement date**.

2. **Appointment of IRP in case of application made by financial creditor or corporate applicant:**

Where the application for **corporate insolvency resolution process** is made by a **financial creditor** or the **corporate debtor**, as the case may be, the **resolution professional**, as proposed respectively in the application under **section 7** or **section 10**, shall be appointed as the **interim resolution professional**, if **no disciplinary proceedings** are pending against him.

3. **Appointment of IRP in case of application made by operational creditor:**

- **No proposal for IRP:** Where the application for **corporate insolvency resolution process** is made by an **operational creditor** and **no proposal** for an **interim resolution professional** is made, the **Adjudicating Authority** shall make a reference to the **Board** for the recommendation of an **insolvency professional** who may act as an **interim resolution professional**.
- **Proposal for IRP:** Where a proposal for an **interim resolution professional** is made under **sub-section (4) of section 9**, the **resolution professional** as proposed shall be appointed as the **interim resolution professional**, if **no disciplinary proceedings** are pending against him.

4. **Recommendation by the Board:**

The **Board** shall, within **ten days** of the receipt of a reference from the **Adjudicating Authority** under **sub-section (3)**, recommend the name of an **insolvency professional** to the **Adjudicating Authority** against whom **no disciplinary proceedings** are pending.

5. **Term of IRP:**

The term of the **interim resolution professional** shall continue till the date of appointment of the **resolution professional** under **section 22**.

Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016:

1. **Written Consent:**

The applicant must **obtain a Form 2 consent** from the proposed insolvency professional and submit it with the application under **rules 4, 6, or 7**.

2. **Eligibility Certificate:**

The application must include a **certificate confirming the eligibility** of the proposed insolvency professional as per the **IBBI Regulations, 2016**.

Section 17: Management of Affairs of Corporate Debtor by Interim Resolution Professional

Section 17 (1) – From the date of appointment of the interim resolution professional:

(a) Management of Affairs:

The **management of the affairs** of the corporate debtor shall **vest** in the interim resolution professional;

(b) Suspension of Board Powers:

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) Reporting to IRP:

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;

(d) 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.

Section 17 (2) – Powers and Duties of the Interim Resolution Professional:

(a) Execution of Documents:

Act and execute in the name and on behalf of the corporate debtor all **deeds, receipts, and other documents**, if any;

(b) Actions as per Board Guidelines:

Take such actions, in the manner and subject to such restrictions, **as may be specified by the Board**;

(c) Access to Electronic Records:

Have the authority to **access the electronic records** of the corporate debtor from **information utility** having financial information of the corporate debtor;

(d) Access to Corporate Records:

Have the authority to **access the books of account, records, and other relevant documents** of the corporate debtor available with **government authorities, statutory auditors, accountants**, and such other persons as may be specified;

(e) Compliance with Legal Requirements:

Be responsible for **complying with the requirements** under any law for the time being in force on behalf of the corporate debtor.

Section 18 – Duties of Interim Resolution Professional

The interim resolution professional shall perform the following duties, namely:

(a) Collection of Information:

Collect all information relating to the **assets, finances, and operations** of the corporate debtor for determining the **financial position** of the corporate debtor, 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; and
- (iv) Such other matters as may be specified.

(b) Receipt and Collation of Claims:

Receive and **collate all the claims** submitted by creditors to him, pursuant to the **public announcement** made under sections 13 and 15;

(c) Constitution of Committee of Creditors:

Constitute a **committee of creditors**;

(d) Monitoring of Assets and Operations:

Monitor the **assets of the corporate debtor** and manage its **operations** until a resolution professional is appointed by the committee of creditors;

(e) Filing of Information:

File **information collected** with the information utility, if necessary;

(f) Control and Custody of Assets:

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;
- (vi) Assets subject to the determination of ownership by a **court or authority**;

(g) Performance of Other Duties:

To perform such other duties as may be specified by the **Board**.

For the purposes of this section, the term “**assets**” shall **not include the following**:

(a) Third-Party Assets:

Assets owned by a **third party** in possession of the corporate debtor held under **trust** or under **contractual arrangements** including bailment;

(b) Assets of Subsidiaries:

Assets of any **Indian or foreign subsidiary** of the corporate debtor;

(c) Other Excluded Assets:

Such other assets as may be **notified by the Central Government** in consultation with any **financial sector regulator**.

Section 19 – Personnel to Extend Co-operation to Interim Resolution Professional

Section 19 (1) – Obligation to Cooperate:

The **personnel of the corporate debtor**, its **promoters** or any other person associated with the management of the corporate debtor shall **extend all assistance and cooperation** to the interim resolution professional as may be required by him in managing the **affairs of the corporate debtor**.

Section 19 (2) – Application for Directions:

Where any personnel of the corporate debtor, its promoter or any other person required to **assist or cooperate** with the interim resolution professional does **not assist or cooperate**, the interim resolution professional may make an application to the **Adjudicating Authority** for **necessary directions**.

Section 19 (3) – Directions from Adjudicating Authority:

The **Adjudicating Authority**, on receiving an application under sub-section (2), shall by an **order**, direct such personnel or other person to **comply with the instructions** of the interim resolution professional and to **cooperate with him** in the collection of information and management of the corporate debtor.

Section 20 – Management of Operations of Corporate Debtor as a Going Concern

Section 20 (1) – Obligation of the Interim Resolution Professional:

The **interim resolution professional** shall make every endeavour to **protect and preserve the value of the property** of the corporate debtor and **manage the operations** of the corporate debtor as a **going concern**.

Section 20 (2) – Authority of the Interim Resolution Professional:

For the purposes of sub-section (1), the interim resolution professional shall have the authority:

(a) Appointment of Professionals:

To **appoint accountants, legal or other professionals** as may be necessary;

(b) Entering into Contracts:

To **enter into contracts** on behalf of the corporate debtor or to **amend or modify** the contracts or transactions which were **entered into before the commencement of corporate insolvency resolution process**;

(c) Raising Interim Finance:

To **raise interim finance** provided that **no security interest** shall be created **over any encumbered property** of the corporate debtor **without the prior consent of the creditors** whose debt is secured over such encumbered property. It is provided that **no prior consent of the creditor** shall be required **where the value of such property is not less than the amount equivalent to twice the amount of the debt**;

(d) Issuing Instructions to Personnel:

To **issue instructions** to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a **going concern**; and

(e) Taking Necessary Actions:

To **take all such actions** as are necessary to keep the corporate debtor as a **going concern**.

Section 21 (1) – Constitution of Committee of Creditors:

The **interim resolution professional** shall, after **collation of all claims** received against the corporate debtor and determination of the **financial position** of the corporate debtor, constitute a **committee of creditors**.

Section 21 (2) – Composition of Committee:

The **committee of creditors** shall comprise **all financial creditors** of the corporate debtor:

- **Provided** that a **financial creditor** or the authorized representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, 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 first proviso 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**.

Section 21 (3) – Voting Share of Financial Creditors in Consortium:

Subject to sub-sections (6) and (6A), 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 based on the **financial debts owed** to them.

Section 21 (4) – Financial Creditor as Operational Creditor:

Where any person is a **financial creditor as well as an operational creditor**:

- (a) 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 a **voting share proportionate to the extent of financial debts owed to such creditor**;
- (b) 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.

Section 21 (5) – Assignment of Operational Debt to Financial Creditor:

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

Section 21 (6) – Representation of Financial Creditors in Consortium Arrangement:

Where the terms of the **financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may:**

- (a) Authorize the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;**
- (b) Represent himself in the committee of creditors to the extent of his voting share;**
- (c) Appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or**
- (d) Exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.**

Section 21 (6A) – Representation of Financial Creditors in Other Forms:

Where a **financial debt**:

(a) Is in the form of securities or deposits and the terms of the financial debt provide for the appointment of a trustee or agent to act as an authorized representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) Is owed to a class of creditors exceeding the 10 in number, other than the creditors covered under clause (a) or sub-section (6),

the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional,

other than the interim resolution professional,

to act as their authorized representative, who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) Is represented by a guardian, executor, or administrator, such person shall act as the authorized representative on behalf of such financial creditors,

and

Such authorized representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors and vote on behalf of each financial creditor to the extent of his voting share.

Section 21 (6B) – Remuneration of Authorized Representative:

The remuneration payable to the **authorized representative**:

- (i) Under clauses (a) and (c) of sub-section (6A), if any, shall be as per the **terms of the financial debt** or the relevant documentation; and
- (ii) Under clause (b) of sub-section (6A) shall be as specified, **which shall form part of the insolvency resolution process costs**.

Section 21 (7) – Voting and Voting Share Determination:

The **Board** may specify the **manner of voting** and the determining of the **voting share** in respect of financial debts covered under sub-sections (6) and (6A).

Section 21 (8) – Decision-Making by Committee of Creditors:

Save as otherwise provided in this Code, **all decisions of the committee of creditors** shall be taken by a vote of not less than **fifty-one percent of the voting share** of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the **committee of creditors** shall be constituted and shall comprise such persons to exercise such functions in such manner as specified in **Regulation 16**.

Section 21 (9) – Request for Financial Information:

The **committee of creditors** shall have the right to require the **resolution professional** to furnish any **financial information** in relation to the corporate debtor at any time during the corporate insolvency resolution process.

Section 21 (10) – Providing Financial Information:

The **resolution professional** shall make available any **financial information** so required by the committee of creditors under sub-section (9) within a period of **seven days** of such requisition.

Section 22 – Appointment of Resolution Professional

Section 22 (1) – First Meeting of the Committee of Creditors:

The **first meeting** of the committee of creditors shall be held within **seven days** of the constitution of the committee of creditors.

Section 22 (2) – Appointment or Replacement of Resolution Professional:

The **committee of creditors** may, in the first meeting, by a **majority vote of not less than sixty-six percent** of the voting share of the financial creditors, either resolve to appoint the **interim resolution professional** as a **resolution professional** or to **replace** the interim resolution professional with **another resolution professional**.

Section 22 (3) – Resolution by Committee of Creditors:

Where the **committee of creditors** resolves under sub-section (2):

(a) Continuation of IRP as Resolution Professional:

To continue the **interim resolution professional** as **resolution professional**, subject to a **written consent** from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the **corporate debtor**, and the **Adjudicating Authority**; or

(b) Replacement of Interim Resolution Professional:

To **replace** the interim resolution professional, it shall file an **application** before the **Adjudicating Authority** for the **appointment** of the proposed resolution professional, along with a **written consent** from the proposed resolution professional in the specified form.

Section 22 (4) – Forwarding Name to the Board:

The **Adjudicating Authority** shall forward the name of the **resolution professional** proposed under clause (b) of sub-section (3) to the **Board** for its confirmation and shall make such appointment after confirmation by the Board.

Section 22 (5) – Continuation of IRP Until Confirmation:

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.

Section 23: Resolution Professional to Conduct Corporate Insolvency Resolution Process

1. **Responsibility for Conducting CIRP:** The **resolution professional (RP)** is responsible for conducting the entire **corporate insolvency resolution process (CIRP)** and managing the operations of the corporate debtor during this period.
 - **Continuation of Management:** Even after the expiry of the CIRP period, the RP will continue managing the operations of the corporate debtor until the **Adjudicating Authority** either approves a resolution plan under **section 31(1)** or appoints a liquidator under **section 34**.
2. **Powers and Duties:** The **RP** shall have the same **powers and duties** as those vested in the **interim resolution professional (IRP)** under this chapter.
3. **Transfer of Information:** If a resolution professional is appointed under **section 22(4)**, the **interim resolution professional (IRP)** shall **provide all the information**, documents, and records pertaining to the corporate debtor in his possession and knowledge **to the RP**.

Section 24 – Meeting of Committee of Creditors

Section 24 (1) – Mode of Meeting:

The members of the **committee of creditors** may meet **in person** or by such **electronic means** as may be specified.

Section 24 (2) – Conduct of Meetings:

All meetings of the **committee of creditors** shall be conducted by the **resolution professional**.

Section 24 (3) – Notice of Meeting:

The **resolution professional** shall give notice of each meeting of the **committee of creditors** to:

- (a) **Members of the 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** or the **partners of the corporate persons**, as the case may be;
- (c) **Operational creditors** or their representatives if the amount of their **aggregate dues is not less than ten percent of the debt**.

Section 24 (4) – Attendance without Voting Rights:

The **directors, partners, and one representative of operational creditors**, as referred to in sub-section (3), **may attend the meetings** of the **committee of creditors**, **but shall not have any right to vote** in such meetings:

- **Provided that the absence of any such director, partner, or representative of operational creditors, as the case may be, shall not invalidate the proceedings of such meeting.**

Section 24 (5) – Appointment of Insolvency Professional by Creditor:

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

- **Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.**

Section 24 (6) – Voting by Creditors:

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

Section 24 (7) – Determination of Voting Share:

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

Section 24 (8) – Manner of Conducting Meetings:

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

Section 25 – Duties of Resolution Professional

Section 25 (1) – Duty to Preserve and Protect Assets:

It shall be the duty of the **resolution professional** to **preserve and protect the assets** of the corporate debtor, including the **continued business operations** of the corporate debtor.

Section 25 (2) – Actions to be Undertaken by Resolution Professional:

For the purposes of sub-section (1), the **resolution professional** shall undertake the following actions, namely:

(a) Custody and Control of Assets:

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

(b) Representation of Corporate Debtor:

Represent and act on behalf of the corporate debtor with **third parties**, exercising rights for the benefit of the corporate debtor in **judicial, quasi-judicial, or arbitration proceedings**;

(c) Raising Interim Finances:

Raise interim finances subject to the approval of the **committee of creditors** under section 28;

(d) Appointment of Professionals:

Appoint **accountants, legal, or other professionals** in the manner as specified by the **Board**;

(e) Maintenance of Claims List:

Maintain an **updated list of claims**;

(f) Convening Meetings:

Convene and attend all meetings of the **committee of creditors**;

(g) Preparation of Information Memorandum:

Prepare the **information memorandum** in accordance with section 29;

(h) Invitation of Prospective Resolution Applicants:

Invite prospective **resolution applicants**, who fulfil such criteria as may be laid down by him 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 by the **Board**, to submit a **resolution plan** or plans;

(i) Presentation of Resolution Plans:

Present all **resolution plans** at the meetings of the **committee of creditors**;

(j) Filing for Avoidance of Transactions:

File an application for **avoidance of transactions** in accordance with **Chapter III**, if any; and

(k) Other Actions:

Such other actions as may be specified by the **Board**.

Section 25A – Rights and Duties of Authorised Representative of Financial Creditors

Section 25A (1) – Right to Participate and Vote:

The **authorised representative** under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to **participate and vote** in meetings of the committee of creditors on behalf of the **financial creditor** he represents in accordance with the prior voting instructions of such creditors obtained through **physical or electronic means**.

Section 25A (2) – Duty to Circulate Agenda and Minutes:

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.

Section 25A (3) – Acting in Accordance with Financial Creditors' Instructions:

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**:

Provided that if the authorised representative 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**:

- **Provided further** that 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.

Section 25A (3A) – Voting in Accordance with Majority Decision:

Notwithstanding anything to the contrary contained in sub-section (3), the **authorised representative** under sub-section (6A) of section 21 **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 percent** of the **voting share** of the financial creditors he represents, **who have cast their vote**.

Section 25A (4) – Filing Voting Instructions:

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 are correctly recorded by the **interim resolution professional or resolution professional**, as the case may be.

Explanation:

For the purposes of this section, the term “**electronic means**” shall be such as may be specified.

Section 26 – Application for Avoidance of Transactions Not to Affect Proceedings

The filing of an **avoidance application** under clause (j) of sub-section (2) of **section 25** by the **resolution professional** shall **not affect** the proceedings of the **corporate insolvency resolution process**.

Section 27 – Replacement of Resolution Professional by Committee of Creditors

Section 27 (1) – Opinion of the Committee of Creditors:

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.

Section 27 (2) – Voting to Replace Resolution Professional:

The **committee of creditors** may, at a meeting, by a vote of **sixty-six percent 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.

Section 27 (3) – Forwarding Name to Adjudicating Authority:

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

Section 27 (4) – Confirmation by the Board:

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**.

Section 27 (5) – Continuation of Current Resolution Professional During Disciplinary Proceedings:

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

Section 28 – Approval of Committee of Creditors for Certain Actions

Section 28 (1) – Actions Requiring Prior Approval:

Notwithstanding anything contained in any other law for the time being in force, the **resolution professional**, during the **corporate insolvency resolution process**, shall not take any of the following actions without the **prior approval** of the **committee of creditors**, namely:

(a) Raising Interim Finance:

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

(b) Creation of Security Interest:

Create any **security interest** over the assets of the corporate debtor;

(c) Change in Capital Structure:

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;

(d) Ownership Change:

Record any **change in the ownership interest** of the corporate debtor;

(e) Debit Transactions Instructions:

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;

(f) Related Party Transactions:

Undertake any **related party transaction**;

(g) Amend Constitutional Documents:

Amend any **constitutional documents** of the corporate debtor;

(h) Delegation of Authority:

Delegate its **authority** to any other person;

(i) Disposal of Shares:

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

(j) Changes in Management:

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

(k) Transfer of Rights or Debts:

Transfer **rights or financial debts or operational debts** under material contracts otherwise than in the **ordinary course of business**;

(l) Changes in Personnel Appointment or Terms:

Make changes in the **appointment or terms of contract** of such personnel as specified by the committee of creditors; or

(m) Changes in Auditor Appointment or Terms:

Make changes in the **appointment or terms of contract** of **statutory auditors** or **internal auditors** of the corporate debtor.

Section 28 (2) – Convening a Meeting for Approval:

The **resolution professional** shall **convene a meeting** of the committee of creditors and **seek the vote** of the creditors prior to taking any of the actions under sub-section (1).

Section 28 (3) – Voting Requirement for Approval:

No action under sub-section (1) shall be approved by the **committee of creditors** unless approved by a vote of **sixty-six percent** of the **voting shares**.

Section 28 (4) – Void Actions Without Approval:

Where any action under sub-section (1) is taken by the **resolution professional** without seeking the approval of the **committee of creditors** in the manner as required in this section, such action shall be **void**.

Section 28 (5) – Reporting Unauthorized Actions:

The **committee of creditors** may **report the actions** of the resolution professional under sub-section (4) to the **Board** for taking necessary actions against him under this Code.

Section 29 – Preparation of Information Memorandum

Section 29 (1) – Duty to Prepare Information Memorandum:

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**.

Section 29 (2) – Access to Information for Resolution Applicant:

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**;
- (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.

Section 29A – Persons Not Eligible to Be Resolution Applicant

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) Undischarged Insolvent:

Is an **undischarged insolvent**;

(b) Wilful Defaulter:

Is a **wilful defaulter** in accordance with the guidelines of the **Reserve Bank of India** issued under the **Banking Regulation Act, 1949**;

(c) Account Classified as NPA:

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 a **non-performing asset** in accordance with the guidelines of the **Reserve Bank of India** issued under the **Banking Regulation Act, 1949**, or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of **one year** has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

- **Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon** and charges relating to **non-performing asset accounts** before submission of resolution plan;
- **Provided further** that nothing in this clause shall apply to a resolution applicant where such applicant is a **financial entity** and is not a related party to the corporate debtor.

Explanation I – For the purposes of this proviso, the expression “**related party**” shall not include a financial entity, regulated by a financial sector regulator, if it is a **financial creditor** of the corporate debtor and 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.

Explanation II – For the purposes of this clause, where a resolution applicant 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 a **non-performing asset** and **such account was acquired pursuant to a prior resolution plan approved under this Code**, then, the provisions of this clause shall not apply to such resolution applicant for a period of **three years** from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) Conviction for Offence:

Has been **convicted** for any offence punishable with imprisonment—

- (i) for two years or more under any Act specified under the Twelfth Schedule; or**
- (ii) for seven years or more under any law for the time being in force:**

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;

Is **disqualified** to act as a **director** under the **Companies Act, 2013**;

(f) Prohibited by SEBI:

Is **prohibited by the Securities and Exchange Board of India** from trading in securities or accessing the securities markets;

(g) Involved in Preferential, Undervalued, or Fraudulent Transactions:

Has been a **promoter or in the management or control** of a corporate debtor in which a **preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and** in respect of which **an order has been made by the Adjudicating Authority** under this Code:

- **Provided** that this clause shall not apply if a **preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction** has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a **resolution plan** approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) Executed a Guarantee:

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) Disability in Jurisdiction Outside India:

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

(j) Connected Person Not Eligible:

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

Section 30: Submission of Resolution Plan

➤ Submission:

A **resolution applicant** may submit a **resolution plan** along with an **affidavit stating eligibility** under **Section 29A** to the **resolution professional**, based on the **information memorandum**.

➤ Examination by Resolution Professional:

The **resolution professional** shall examine each plan to ensure it:

- **Provides payment of insolvency resolution process costs** as per priority outlined by the Board over other debts of the **corporate debtor**.
- Ensures payment of **operational creditors' debts**, either equal to or more than:
 - Amount payable in case of **liquidation** under **Section 53**, or
 - Amount payable if distributed under **Section 53's** priority order.
- Includes payment of debts to **financial creditors** who do not vote in favor of the plan, ensuring fair and **equitable distribution**.
- **Manages the affairs** of the **corporate debtor** after plan approval.
- Outlines plan **implementation** and **supervision**.
- Conforms to other **legal requirements** and does not violate existing laws.

Approval by CoC: The **resolution professional** shall present eligible plans to the **Committee of Creditors (CoC)**, which may approve a plan with 66% voting of financial creditors, considering feasibility, viability, and priority distribution under **Section 53**.

➤ Resolution Applicant's Role:

The **resolution applicant** may attend CoC meetings but cannot vote **unless they are a financial creditor**.

➤ Submission to Adjudicating Authority:

The **resolution professional** shall submit the **approved plan** to the **Adjudicating Authority**.

Section 31: Approval of Resolution Plan

Section 31 (1): Approval by Adjudicating Authority

If the **Adjudicating Authority** is satisfied that the **resolution plan** as approved by the **committee of creditors** under sub-section (4) of **section 30** meets the requirements as referred to in sub-section (2) of **section 30**,

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**.

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

Section 31 (2): Rejection of Resolution Plan

Where the **Adjudicating Authority** is satisfied that the **resolution plan** does not conform to the requirements referred to in sub-section (1), it may, by an order, **reject** the resolution plan.

Section 31 (3): Consequences of Approval Order

After the order of **approval** under sub-section (1):

- (a) the **moratorium order** passed by the **Adjudicating Authority** under **section 14** shall cease to have effect; and
- (b) the **resolution professional** shall forward all records relating to the conduct of the **corporate insolvency resolution process** and the **resolution plan** to the **Board** to be recorded on its database.

Section 31 (4): Obtaining Necessary Approvals

The **resolution applicant** shall, pursuant to the **resolution plan** approved under sub-section (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** under sub-section (1) or within such period as provided for in such law, whichever is later.

Where 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** under that Act prior to the **approval** of such resolution plan by the **committee of creditors**.

Section 32: Appeal

Any appeal from an order approving the resolution plan shall be conducted as per the process and grounds specified under **Section 61(3)**.

Section 32A: Liability for Prior Offences, etc.

Section 32A (1): Cessation of Corporate Debtor's Liability for Prior Offences

Notwithstanding anything in this Code or any other law, the **liability of a corporate debtor** for offences committed **prior to the commencement** of the **corporate insolvency resolution process (CIRP)** shall **cease** from the date the **resolution plan** is approved by the **Adjudicating Authority** under **section 31**, if the plan results in a change in **management** or **control** to a person who:

- (a) was not a **promoter**, in **management**, or a **related party**; or
- (b) is not a person whom the **investigating authority** suspects of having **abetted** or **conspired** in the offence, based on material in its possession.

If prosecution was initiated during CIRP, it shall be **discharged** upon approval of the resolution plan, subject to compliance with these conditions. However, individuals like **designated partners** or **officers in default**, responsible for the offence, will **continue to be liable**.

Section 32A (2): Protection of Corporate Debtor's Property

No action shall be taken against the **property** of the corporate debtor for offences committed **before CIRP**, if the property is covered under an approved **resolution plan** or **liquidation sale**, resulting in a change of control to a person who:

- (i) was not a **promoter**, in **management**, or a **related party**; or
- (ii) is not suspected by the **investigating authority** of **abetting** or **conspiring** in the offence.

Explanation:

"Action against property" includes **attachment**, **seizure**, or **confiscation** under applicable law. It does not bar action against **third-party property**, unless acquired through CIRP or liquidation.

Section 32A (3): Duty to Assist Investigations

Notwithstanding the immunity given in this section, the **corporate debtor** and related persons must provide **assistance and cooperation** to authorities investigating offences committed **before CIRP**.

(1) Conditions for Liquidation

Where the **Adjudicating Authority**,

- (a) Before the expiry of the **insolvency resolution process period** or the maximum period permitted for completion of the **corporate insolvency resolution process** under **section 12** or the **fast track corporate insolvency resolution process** under **section 56**, as the case may be,

does not receive a resolution plan under **sub-section (6)** of **section 30**; or

(b) Rejects the **resolution plan** under **section 31** for the **non-compliance** of the requirements specified therein, it shall:

(i) Pass an order requiring the **corporate debtor** to be **liquidated** in the manner as laid down in this Chapter;

(ii) Issue a **public announcement** stating that the **corporate debtor** is in liquidation; and

(iii) Require such order to be sent to the **authority** with which the **corporate debtor** is registered.

(2) Liquidation Decision by the Committee of Creditors (CoC)

Where the **resolution professional**, at any time during the **corporate insolvency resolution process** but before **confirmation of resolution plan**,

intimates the **Adjudicating Authority** of the decision of the **committee of creditors** approved by not less than **sixty-six percent of the voting share**

to **liquidate** the **corporate debtor**,

the **Adjudicating Authority** shall pass a **liquidation order** as referred to in sub-clauses (i), (ii), and (iii) of **clause (b)** of **sub-section (1)**.

Explanation: For the purpose of this sub-section, it is hereby declared that the **committee of creditors** may take the decision to **liquidate** the **corporate debtor**, any time after its **constitution** under **sub-section (1)** of **section 21** and before the confirmation of the resolution plan, including at any time before the preparation of the **information memorandum**.

(3) Application for Liquidation Due to Plan Contravention

Where the **resolution plan** approved by the **Adjudicating Authority** under **Section 31** or under **sub-section (1)** of **Section 54L** 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** as referred to in sub-clauses (i), (ii), (iii) of **clause (b)** of **sub-section (1)**.

On receipt of an **application** under **sub-section (3)**,

if the **Adjudicating Authority** determines that the **corporate debtor** has **contravened** the provisions of the **resolution plan**,

it shall pass a **liquidation order** as referred to in sub-clauses (i), (ii), and (iii) of **clause (b)** of **sub-section (1)**.

(5) Bar on New Legal Proceedings

Subject to **section 52**, when a **liquidation order** has been passed, no **suit** or other **legal proceeding** shall be instituted by or against the **corporate debtor**:

- **Provided** that a **suit** or other **legal proceeding** may be instituted by the **liquidator**, on behalf of the **corporate debtor**, with the **prior approval** of the **Adjudicating Authority**.

(6) Exception for Notified Transactions

The provisions of **sub-section (5)** shall not apply to **legal proceedings** in relation to such **transactions** as may be notified by the **Central Government** in consultation with any **financial sector regulator**.

(7) Notice of Discharge

The **order for liquidation** under this section shall be deemed to be a **notice of discharge** to the **officers, employees, and workmen** of the **corporate debtor**, except when the **business of the corporate debtor** is continued during the **liquidation process** by the **liquidator**.

Section 34 - Appointment of liquidator and fee to be paid

Section 34 (1) - Resolution Professional to Act as Liquidator

Where the **Adjudicating Authority** passes an order for **liquidation** of the corporate debtor under **section 33**, the **resolution professional** appointed for the **corporate insolvency resolution process** under **Chapter-II** [or for the **pre-packaged insolvency resolution process** under **Chapter III-A**]

shall, subject to submission of a **written consent** by the **resolution professional** to the **Adjudicatory Authority** in the specified form,

act as the **liquidator** for the purposes of liquidation, unless replaced by the **Adjudicating Authority** under **sub-section (4)**.

Section 34 (2) - Powers to Vest in Liquidator

On the appointment of a **liquidator** under this section, **all powers of the board of directors, key managerial personnel, and the partners of the corporate debtor**, as the case may be, shall **cease to have effect** and shall be **vested in the liquidator**.

Section 34 (3) - Assistance and Cooperation by Personnel

The **personnel of the corporate debtor** shall extend all **assistance and cooperation** to the **liquidator** as may be required by him in managing the affairs of the **corporate debtor**, and the provisions of **section 19** shall apply to the **voluntary liquidation process** as they do in the **liquidation process**, with the substitution of references to the **liquidator** for references to the **interim resolution professional**.

Section 34 (4) - Replacement of Resolution Professional

The **Adjudicating Authority** shall, by order, replace the **resolution professional**, if:

a) Rejection of Resolution Plan

The **resolution plan** submitted by the **resolution professional** under **section 30** was rejected for failure to meet the requirements mentioned in **sub-section (2)** of **section 30**.

b) Recommendation by the Board

The **Board** recommends the replacement of a **resolution professional** to the **Adjudicating Authority** for reasons to be recorded **in writing**.

c) Failure to Submit Written Consent

The **resolution professional** fails to submit **written consent** under **sub-section (1)**.

Section 34 (5) - Proposal for New Insolvency Professional

For the purposes of **clause (a)** and **clause (c)** of **sub-section (4)**, the **Adjudicating Authority** may direct the **Board** to propose the name of another **insolvency professional** to be appointed as a **liquidator**.

Section 34 (6) - Proposal by the Board

The **Board** shall propose the name of another insolvency professional, along with **written consent** from the professional in the specified form, **within ten days of the direction issued by the Adjudicating Authority** under **sub-section (5)**.

Section 34 (7) - Appointment of New Liquidator

The **Adjudicating Authority** shall, on receipt of the proposal from the **Board** for the appointment of an **insolvency professional** as the **liquidator**, appoint the proposed insolvency professional by an order.

Section 34 (8) - Fee for Conducting Liquidation Proceedings

An **insolvency professional** proposed to be appointed as a **liquidator** shall charge such **fee** for conducting the liquidation proceedings, proportional to the value of the liquidation estate assets, as specified by the **Board**.

The **fees** for the conduct of liquidation proceedings under **sub-section (8)** shall be paid to the **liquidator** from the **proceeds of the liquidation estate** under **section 53**.

SECTION 35 - POWERS AND DUTIES OF LIQUIDATOR

Section 35 provides an on-exhaustive list of powers and duties of the liquidator to ensure orderly completion of the liquidation proceedings.

Section 35 (1) - Powers and Duties of Liquidator

Subject to the **directions of the Adjudicating Authority**,

the **liquidator** shall have the following **powers and duties**, namely:—

- a) **to verify claims** of all the creditors;
- b) **to take into his custody or control** all the **assets, property, effects, and actionable claims** of the corporate debtor;
- c) **to evaluate the assets and property** of the corporate debtor in the manner as may be specified by the **Board** and prepare a report;
- d) **to take measures to protect and preserve the assets and properties** of the corporate debtor as he considers necessary;
- e) **to carry on the business** of the corporate debtor for its **beneficial liquidation** as he considers necessary;
- f) 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 the 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;

Provided that the liquidator shall not sell the **immovable and movable property** or **actionable claims** of the corporate debtor in liquidation to any person who is not eligible to be a **resolution applicant**.

- g) **to draw, accept, make, and endorse any negotiable instruments** including **bills of exchange, hundis, or promissory notes in the name and on behalf of the corporate debtor**, with the same effect concerning 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;
- h) **to take out letters of administration in his official name 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;
- i) **to obtain any professional assistance** from any person or appoint any professional in the discharge of his **duties, obligations, and responsibilities**;

- j) **to invite and settle claims** of creditors and claimants and **distribute proceeds** in accordance with the provisions of this Code;
- k) **to institute or defend any suit, prosecution, or other legal proceedings**, civil or criminal, in the name or on behalf of the corporate debtor;
- l) **to investigate the financial affairs** of the corporate debtor to determine **undervalued or preferential transactions**;
- m) **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, obligations, and functions as liquidator;
- n) **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**; and
- o) **to perform such other functions** as may be specified by the **Board**.

Section 35 (2) - Consultation with Stakeholders

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:

Provided further that the **records of any such consultation** shall be made available to all other stakeholders not so consulted, in a manner specified by the **Board**.

SECTION 36 LIQUIDATION ESTATE

Section 36 (1) - Formation of Liquidation Estate

For the purposes of **liquidation**, the **liquidator** shall form an **estate** of the assets mentioned in **sub-section (3)**, which will be called the **liquidation estate** in relation to the corporate debtor.

Section 36 (2) - Fiduciary Duty of Liquidator

The **liquidator** shall hold the **liquidation estate** as a **fiduciary** for the benefit of all the creditors.

Section 36 (3) - Composition of Liquidation Estate

Subject to **sub-section (4)**, the **liquidation estate** shall comprise all **liquidation estate assets**, which shall include the following:—

(a) Assets with Ownership Rights

Any **assets** over which the corporate debtor has **ownership rights**, including all **rights** and **interests** therein as evidenced in the **balance sheet** of the corporate debtor or an **information utility** or **records** in the **registry** or any **depository** recording securities of the corporate debtor or by any other means as may be specified by the **Board**, including **shares held** in any **subsidiary** of the corporate debtor;

(b) Possession of Assets

Assets that may or may not be in **possession** of the corporate debtor, including but not limited to **encumbered assets**;

(c) Tangible Assets

Tangible assets, whether **movable** or **immovable**;

(d) Intangible Assets

Intangible assets including but not limited to **intellectual property**, **securities** (including **shares held** in a **subsidiary** of the corporate debtor), **financial instruments**, **insurance policies**, and **contractual rights**;

(e) Assets Pending Ownership Determination

Assets subject to the determination of **ownership** by the **court** or **authority**;

(f) Assets Recovered from Avoidance of Transactions

Any **assets** or their value recovered through proceedings for **avoidance of transactions** in accordance with this Chapter;

(g) Relinquished Secured Assets

Any **asset** of the corporate debtor in respect of which a **secured creditor** has **relinquished security interest**;

(h) Other Property

Any other **property** belonging to or vested in the corporate debtor at the **insolvency commencement date**;

(i) Proceeds of Liquidation

All **proceeds of liquidation** as and when they are realised.

Section 36 (4) - Exclusions from Liquidation Estate

The following shall **not** be included in the **liquidation estate assets** and shall **not** be used for recovery in the liquidation:—

(a) Third-Party Owned Assets

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**;

(b) Collateral Held by Financial Services Providers

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 Shareholders or Partners

Personal assets of any **shareholder** or **partner** of a corporate debtor, provided such assets are not held on account of **avoidance transactions** that may be avoided under this Chapter;

(d) Subsidiary Assets

Assets of any **Indian** or **foreign subsidiary** of the corporate debtor;

(e) Other Exclusions

Any other **assets** as may be specified by the **Board**, including assets that could be subject to **set-off** on account of **mutual dealings** between the corporate debtor and any creditor.

SECTION 37 POWERS OF LIQUIDATOR TO ACCESS INFORMATION

Section 37 (1) - Access to Information Systems

Notwithstanding anything contained in any other law for the time being in force, the **liquidator** shall have the power to **access any information systems** for the purpose of **admission and proof of claims** and **identification of the liquidation estate assets** relating to the corporate debtor from the following sources, namely:—

- a) an **information utility**;
- b) **credit information systems** regulated under any law for the time being in force;
- c) any agency of the **Central, State, or Local Government**, including any **registration authorities**;
- d) **information systems** for **financial and non-financial liabilities** regulated under any law for the time being in force;
- e) **information systems** for **securities and assets** posted as **security interest** regulated under any law for the time being in force;
- f) any **database** maintained by the **Board**; and
- g) any other source as may be specified by the **Board**.

Section 37 (2) - Creditor's Right to Information

The **creditors** may require the **liquidator** to provide them with any **financial information** relating to the corporate debtor in such manner as may be specified.

Section 37 (3) - Timeframe for Providing Information

The **liquidator** shall provide information referred to in **sub-section (2)** to such creditors who have requested it within a period of **seven days** from the date of such request or provide **reasons** for not providing such information.

SECTION 38 CONSOLIDATION OF CLAIMS

Section 38 (1) - Collection of Claims by Liquidator

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**.

Section 38 (2) - Submission of Claims by Financial Creditors

A **financial creditor** may submit a claim to the **liquidator** by providing a **record of such claim** with an **information utility**:

Provided that where the **information** relating to the claim is not recorded in the **information utility**, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the **operational creditor** under **sub-section (3)**.

Section 38 (3) - Submission of Claims by Operational Creditors

An **operational creditor** may submit a claim to the **liquidator** in such **form** and in such **manner** and along with such **supporting documents** required to **prove the claim** as may be specified by the **Board**.

Section 38 (4) - Claims by Dual-Role Creditors

A creditor who is partly a **financial creditor** and partly an **operational creditor** shall submit claims to the **liquidator** to the extent of his **financial debt** in the manner as provided in **sub-section (2)** and to the extent of his **operational debt** under **sub-section (3)**.

Section 38 (5) - Withdrawal or Variation of Claims

A creditor may **withdraw or vary** his claim under this section within **fourteen days** of its submission.

Section 39 Verification of Claims

Section 39 (1) - Verification of Claims by Liquidator

The **liquidator** shall **verify the claims** submitted under **section 38** within **thirty days** from the **last date of receipt of claims** as per **Regulation 30 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**.

Section 39 (2) - Requirement for Additional Documents or Evidence

The **liquidator** may require any **creditor**, the **corporate debtor**, or any other **person** to produce any **document or evidence** which he considers necessary for the purpose of **verifying** the whole or any part of the claim.

Section 40 - Admission or Rejection of Claims

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, as the case may be. If the **liquidator rejects a claim**, he shall record in **writing** the reasons for such rejection. [**Section 40(1)**]

Communication of Decision

The **liquidator** 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. [**Section 40(2)**]

Section 41 - Determination of Valuation of Claims

The **liquidator** shall **determine the value** of claims admitted under **section 40** in such manner as may be specified by the **Insolvency and Bankruptcy Board of India**.

Section 42 - Appeal Against the Decision of Liquidator

A **creditor** may **appeal** to the **Adjudicating Authority** against the decision of the **liquidator** accepting or rejecting the claims within **fourteen days** of the receipt of such decision.

The **Insolvency and Bankruptcy Code (Second Amendment) Act, 2018** clarified that a **creditor** may appeal to the **Adjudicating Authority** against the decision of the **liquidator** in both scenarios, i.e., **acceptance** or **rejection** of claims.

Section 43: Preferential Transactions

Introduction

Section 43 of the **Insolvency and Bankruptcy Code, 2016**, ensures fair treatment of **creditors** during the **liquidation or resolution process** by **identifying** preferential transactions **made by a corporate debtor before insolvency**.

Related parties often possess information about the debtor's financial affairs and may collude to siphon off assets, anticipating insolvency. This section targets transactions that give preferential treatment to specific creditors, sureties, or guarantors based on antecedent debt, **putting them in a better position than they would have been without such transfers**.

The liquidator or resolution professional **can apply to the Adjudicating Authority to invalidate these transfers**, promoting fair distribution of assets among all creditors.

Section 43: Preferential Transactions and Relevant Time

Section 43 (1) - Application for Avoidance of Preferential Transactions

Where the **liquidator** or the **resolution professional**, as the case may be, is of the opinion that the **corporate debtor** has at a **relevant time** given a **preference** in such transactions and in such manner as laid down in **sub-section (2)** to any persons as referred to in **sub-section (4)**,

he shall apply to the **Adjudicating Authority** for **avoidance of preferential transactions** and for one or more of the orders referred to in **section 44**.

Section 43 (2) - Criteria for Deemed Preference

A **corporate debtor** shall be deemed to have given a **preference** if:

(a) There is a **transfer of property** or an **interest** thereof of the corporate debtor for the benefit of a **creditor, surety, or guarantor** for or on account of an **antecedent/prior financial debt, operational debt**, or other liabilities owed by the corporate debtor; and

(b) The transfer under **clause (a)** has the effect of putting such **creditor, surety, or 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**.

Section 43 (3) - Exclusions from Preference

For the purposes of **sub-section (2)**, a **preference** shall **not include the following transfers**:

(a) Transfer made in the **ordinary course of 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 the 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.

Provided that any transfer made in pursuance of the order of a **court** shall not preclude/prevent such transfer from being deemed as giving of preference by the corporate debtor.

Explanation:

For the purpose of **sub-section (3)**, “**new value**” means **money** or its worth in **goods, services, or new credit**, or release by the transferee of property previously transferred to such transferee in a transaction that is neither **void** nor **voidable** by the liquidator or the resolution professional under this Code, including proceeds of such property, **but does not include a financial debt or operational debt** substituted for existing financial debt or operational debt.

Section 43 (4) - Relevant Time for Preference

A **preference** shall be deemed to be given at a **relevant time** if:

(a) 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 commencement date**; or

(b) A preference is given to a **person other than a related party** during the period of **one year** preceding the **insolvency commencement date**.

Section 44 - Orders in Case of Preferential Transactions

Section 44 specifies the orders that may be passed by the **Adjudicating Authority** in relation to the avoidance of a **preferential transaction**. These **orders are aimed at reversing the effects of such transactions** and require the person who received the preference to repay any gains made as a result.

Section 44: Orders by Adjudicating Authority in Preferential Transactions

1. **Vesting of Property Transferred:**

The Adjudicating Authority may **require any property transferred** in connection with the giving of the preference to be **vested in the corporate debtor**.

Illustration: If a **plot of land** was transferred to a creditor as a preference, it must be **returned to the corporate debtor**.

2. **Vesting of Proceeds or Money:**

It may **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**.

Illustration: If a **machine was sold** and the proceeds were given as preference, the **proceeds** must be returned to the debtor.

3. **Release or Discharge of Security Interest:**

The Authority may **release or discharge (in whole or in part)** any **security interest** created by the corporate debtor.

Illustration: If a **mortgage was created** as a preferential act, it can be **cancelled**.

4. **Payment for Benefits Received:**

It may **require any person to pay sums** in respect of **benefits received** from the corporate debtor, with such sums payable to the **liquidator or resolution professional**, as directed by the Authority.

Illustration: If a person received a **cash benefit** unfairly, they must **repay that amount**.

5. **New or Revived Debts for Guarantors:**

The Authority may **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 preference, to be under such **new or revived debts** to that person as deemed appropriate.

Illustration: If a **guarantor's debt** was reduced, it can be **restored** to the original amount.

6. **Providing Security or Charge:**

It may **direct for providing security or charge** on any property for the discharge of financial debt or operational debt, with such security or charge having the **same priority** as the one released or discharged by preference.

Illustration: If a **charge on property** was released, a **new charge** can be created with the same priority.

7. **Extent of Debt Proof in Liquidation/Insolvency:**

It may **direct the extent to which any person**, whose property is vested in the corporate debtor, or on whom debts are imposed by the order, are to be **proved in liquidation or insolvency** for financial debts or operational debts arising from or released by preference.

Illustration:

If ₹1 lakh was returned to the corporate debtor because it was given as preference, the creditor can include this ₹1 lakh as part of their claim during the insolvency process.

Transactions in Good Faith and for Value

An order by the **Adjudicating Authority** under **section 44** shall not—

- 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**;
- 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**.

Presumption

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**:

- Had sufficient information of the initiation or commencement of the **insolvency resolution process** of the corporate debtor;
- 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 I to section 44]

Effect of Public Announcement

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**. [Explanation II to section 44]

Section 45: Avoidance of Undervalued Transactions

Section 45(1) - Application to Declare Undervalued Transactions

If, upon examining the transactions of the **corporate debtor**, the **liquidator** or the **resolution professional** finds that certain transactions made during the **relevant period** (under Section 46) are **undervalued**, they shall:

- **Make an application** to the **Adjudicating Authority**.
- Request the Authority to **declare the transactions as void**.
- Seek to **reverse the effect** of these transactions in accordance with the provisions of this Chapter.

Section 45(2) - Definition of Undervalued Transaction

A transaction is considered **undervalued** if it meets the following criteria:

- **(a) Gifts:** The corporate debtor makes a **gift** to a person.
- **(b) Transfer for Lesser Value:** The corporate debtor enters into a transaction where it **transfers assets** to a person for a **consideration** significantly **less than the value** of the assets.

Note: Such transactions must also not be part of the **ordinary course of business** of the corporate debtor.

Section 46: Relevant Period for Avoidable Transactions

Section 46(1) - Time Frame for Undervalued Transactions

In an application to avoid an **undervalued transaction**, the **liquidator** or the **resolution professional** must prove that:

(i) Transaction with Any Person: The transaction was made with any person **within one year** preceding the **insolvency commencement date**.

(ii) Transaction with a Related Party: The transaction was made with a **related party** within **two years** preceding the **insolvency commencement date**.

Section 46(2) - Independent Expert Assessment

The **Adjudicating Authority** may require an **independent expert** to evaluate the **evidence** regarding the value of the transactions mentioned under this section.

Section 47: Application by Creditor in Cases of Undervalued Transactions

Section 47(1) - Application by Creditor, Member, or Partner

If an **undervalued transaction** occurs and the **liquidator** or the **resolution professional** fails to report it to the **Adjudicating Authority**, a **creditor, member, or partner** of the corporate debtor may:

- **File an application** to the **Adjudicating Authority** to declare such transactions as **void** and reverse their effects in accordance with this Chapter.

Section 47(2) - Adjudicating Authority's Actions on Application

If, after examining the application, the **Adjudicating Authority** is satisfied that:

- (a) **An undervalued transaction** occurred; and
- (b) **The liquidator or resolution professional**, despite having sufficient information or the opportunity to obtain information about such transactions, **failed to report it**,

the Authority shall:

- (a) **Restore the position** as it existed before the transactions and **reverse their effects** as per **Section 45** and **Section 48**.
- (b) **Require the Board** to initiate **disciplinary proceedings** against the liquidator or the resolution professional.

Section 48: Order in Cases of Undervalued Transactions

Adjudicating Authority's Order under Section 45(1)

The **Adjudicating Authority**, when declaring an **undervalued transaction** as void under **Section 45**, may include the following directives in its order:

(a) Vesting of Property:

- Any property transferred as part of the undervalued transaction must be **returned** and **vested in the corporate debtor**.

(b) Release or Discharge of Security Interest:

- Any **security interest** granted by the corporate debtor may be **released or discharged**, either in whole or in part.

(c) Payment of Benefits Received:

- Any person who received benefits from the undervalued transaction may be required to **pay such sums** to the **liquidator** or **resolution professional**, as directed by the Adjudicating Authority.

- The person may be required to pay **consideration** for the transaction, as determined by an **independent expert**.

Section 49: Transactions Defrauding Creditors

Undervalued Transaction by Corporate Debtor

Where the **corporate debtor** has entered into an **undervalued transaction** as referred to in **sub-section (2) of section 45** and the **Adjudicating Authority** is satisfied that such transaction was **deliberately** entered into by the corporate debtor—

- **(a) For Keeping Assets Beyond Reach:** For keeping assets of the corporate debtor **beyond the reach** of any person who is entitled to make a claim against the corporate debtor; or
- **(b) To Adversely Affect Claimants:** In order to **adversely affect** the interests of such a person in relation to the claim,

Order by the Adjudicating Authority

The **Adjudicating Authority** shall make an order—

- **(i) Restore Pre-Transaction Position: Restoring the position** as it existed before such transaction as if the transaction had not been entered into; and
- **(ii) Protect Victim Interests: Protecting the interests** of persons who are victims of such transactions:

Proviso: Protection of Good Faith Acquirers and Beneficiaries

Provided that an order under this section—

- **(a) Exclude Good Faith Acquisitions:** Shall not affect any **interest in property** which was acquired from a person other than the corporate debtor and was acquired in **good faith**, for value, and without **notice** of the relevant circumstances, or affect any interest deriving from such an interest; and
- **(b) Exempt Good Faith Beneficiaries:** Shall not require a person who received a benefit from the transaction in **good faith**, for value, and without **notice** of the relevant circumstances to **pay any sum**, unless he was a **party** to the transaction.

Section 50: Extortionate Credit Transactions

Section 50(1) - Application for Avoidance of Extortionate Credit

If the **corporate debtor** was a party to an **extortionate credit transaction** involving the receipt of **financial or operational debt** within **two years** before the **insolvency commencement date**, the **liquidator** or the **resolution professional** may apply to the **Adjudicating Authority** to avoid such a transaction if its terms required **exorbitant payments** by the corporate debtor.

Section 50(2) - Specification of Circumstances by the Board

The **Board** may specify the **circumstances** under which a transaction will be considered as an **extortionate credit transaction** under **sub-section (1)**.

Explanation - Debt Complying with Law

It is clarified that any **debt extended** by a person providing **financial services** that complies with the **applicable law** will **not** be treated as an **extortionate credit transaction**.

Section 51: Orders of Adjudicating Authority in Respect of Extortionate Credit Transactions

Authority's Action on Extortionate Credit Transactions

If the **Adjudicating Authority**, upon examining the application under **Section 50(1)**, determines that the terms of the credit transaction required **exorbitant payments** by the corporate debtor, it shall issue an order to:

- a. **Restore the Pre-Transaction Position:** Reinstate the situation as it was before the transaction.
- b. **Set Aside Debt:** Cancel the whole or part of the debt created due to the extortionate credit transaction.
- c. **Modify Transaction Terms:** Adjust the terms of the transaction to ensure fairness.
- d. **Repayment by Parties:** Require any party involved in the transaction to **repay** the amount they received.
- e. **Relinquish Security Interest:** Mandate that any **security interest** created as part of the transaction be **relinquished** in favor of the **liquidator** or the **resolution professional**, as applicable.

Section 52: Secured Creditor in Liquidation Proceedings

52(1) - Options for Secured Creditors

A **secured creditor** in liquidation proceedings may choose to:

- **(a) Relinquish Security Interest:** Surrender its security interest to the **liquidation estate** and receive proceeds from the sale of assets by the liquidator as per **Section 53**.
- **(b) Realise Security Interest:** Enforce its security interest as specified in this section.

52(2) - Informing the Liquidator

If the secured creditor opts to **realise the security interest**, it must:

- Notify the **liquidator** of its security interest.
- Identify the asset subject to this security interest.

52(3) - Verification by the Liquidator

Before the security interest is realised:

- The **liquidator** must verify the security interest.
- The secured creditor can only realise a security interest proven through:
 - **(a) Records maintained by an information utility**, or
 - **(b) Other means** specified by the Board.

52(4) - Realisation of Secured Assets

The secured creditor can:

- **Enforce, realise, settle, compromise, or manage the secured assets** as per the applicable law and recover debts owed.

52(5) - Resistance during Realisation

If the secured creditor faces **resistance** from the corporate debtor or connected persons while:

- **Taking possession**, selling, or disposing of the secured asset,
- It may apply to the **Adjudicating Authority** for assistance.

52(6) - Adjudicating Authority's Order

Upon receiving the secured creditor's application, the **Adjudicating Authority** may:

- Pass necessary orders to facilitate the realisation of the security interest in line with applicable laws.

52(7) - Handling Excess Proceeds

If proceeds from enforcement exceed the debts due:

- **(a) Account to the Liquidator:** The secured creditor must account for the **surplus**.
- **(b) Tender Surplus to Liquidator:** Transfer any excess funds to the liquidator.

52(8) - Deduction of Insolvency Costs

The **insolvency resolution process costs** due from secured creditors who realise their security interests will:

- Be **deducted** from realisation proceeds.
- Transferred to the **liquidator** for inclusion in the liquidation estate.

52(9) - Unpaid Debts of Secured Creditors

If realisation proceeds are **inadequate** to cover the debts owed:

- The **remaining unpaid debts** will be paid by the liquidator as per **clause (e) of sub-section (1) of Section 53**.

53(1) - Priority of Distribution

Notwithstanding any other law, the **proceeds from the sale of liquidation assets** shall be distributed in the following order of priority:

- **(a) Insolvency and Liquidation Costs:**
 - Pay **insolvency resolution process costs** and **liquidation costs** in full.
- **(b) Debts of Equal Ranking:**
 - **(i) Workmen's Dues:** For the **24 months** preceding the liquidation commencement date.
 - **(ii) Secured Creditors' Debts:** In case the secured creditor has **relinquished security** as per Section 52.
- **(c) Employees' Wages and Unpaid Dues:**
 - Pay wages and unpaid dues to **employees (other than workmen)** for the **12 months** preceding the liquidation commencement date.
- **(d) Unsecured Creditors' Debts:**
 - Pay debts owed to **unsecured creditors**.
- **(e) Government Dues and Unpaid Secured Debts:**
 - These debts rank equally:
 - **(i) Government Dues:** Any amount owed to the **Central Government** or **State Government**, including sums due to the **Consolidated Fund of India** or a **State**, for the **2 years** preceding the liquidation commencement date.
 - **(ii) Secured Creditors' Unpaid Debts:** Any unpaid amount remaining after enforcing security interest.
- **(f) Remaining Debts and Dues:**
 - Pay all **other remaining debts** and dues.
- **(g) Preference Shareholders:**
 - Pay to **preference shareholders**, if any.
- **(h) Equity Shareholders or Partners:**
 - Pay to **equity shareholders** or **partners**, as applicable.

53(2) - Disregard of Disruptive Arrangements

Any **contractual arrangements** among recipients of equal ranking that **disrupt** the order of priority will be **disregarded** by the liquidator.

The **fees payable to the liquidator** will be proportionally **deducted from the proceeds** allocated to each class of recipients, and proceeds will be distributed to the recipients after this deduction.

Explanation - Distribution Within Equal Class

- **(i) Equal Payment Within Class:** At each stage, debts of recipients that rank equally will either be paid in **full** or in **equal proportion** if the proceeds are insufficient to cover the debts fully.
- **(ii) Definition of Workmen's Dues:** The term "**workmen's dues**" shall have the same meaning as defined in **Section 326 of the Companies Act, 2013**.

Section 54: Dissolution of Corporate Debtor

54(1) - Application for Dissolution

When the **assets of the corporate debtor** have been **completely liquidated**, the **liquidator** shall:

- Make an **application** to the **Adjudicating Authority** for the **dissolution** of the corporate debtor.

54(2) - Order of Dissolution

Upon receiving the application:

- The **Adjudicating Authority** shall order that the corporate debtor be **dissolved** from the date of the order.
- The **corporate debtor** shall be dissolved **accordingly**.

54(3) - Forwarding the Order

A copy of the **dissolution order** under sub-section (2) must be:

- **Forwarded within seven days** from the date of the order.
- Sent to the **authority** with which the corporate debtor is **registered**.

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS - Section 54A – 54P

Introduction

The **Pre-Packaged Insolvency Resolution Process (PIRP)** is a formal mechanism introduced under the Insolvency and Bankruptcy Code, 2016 to resolve the insolvency of **micro, small and medium enterprises (MSMEs)** in a time-bound and cost-effective manner. It blends the advantages of **informal workouts** and **formal insolvency proceedings**.

Unlike the **Corporate Insolvency Resolution Process (CIRP)**, PIRP allows the **debtor to retain control (debtor-in-possession)** while being supervised by a **Resolution Professional (RP)**. It is initiated **voluntarily** by the corporate debtor and completed within a fixed timeline of **120 days**.

PIRP (Sections 54A to 54P)

Section 54A – Corporate debtors eligible for PIRP

An application for PIRP may be made in respect of a **corporate debtor classified as an MSME** under Section 7(1) of the MSME Development Act, 2006.

The debtor:

- Must not have undergone PIRP or completed CIRP within 3 years preceding the initiation date.
- Must not be undergoing CIRP or be subject to a liquidation order.
- Must be eligible under **Section 29A**.
- Must have the **approval of financial creditors (not being related parties) representing not less than 66% in value**.
- Must file a **declaration from the majority of directors/partners**, and pass a **special resolution** or **three-fourths partner approval**.

Section 54B – Duties of resolution professional before initiation

The insolvency professional proposed to be appointed shall:

- Prepare a **report** confirming eligibility under Section 54A and conformity of the **base resolution plan**.
 - File such **report and documents** with the Board.
 - Perform such other duties as may be specified.
-

Where a corporate debtor meets the conditions under Section 54A, a **corporate applicant** may file an application with the **Adjudicating Authority**.

The application shall include:

- The declarations, resolutions and creditor approval required under Section 54A.
 - The **written consent** and report of the proposed RP.
 - A declaration of any transactions that may be avoided.
 - Financial statements and such other documents as may be specified.
- The **Adjudicating Authority** shall admit or reject the application within **14 days**, after providing an opportunity to rectify any defects within **7 days**.
-

Section 54D – Time limit for completion

The PIRP shall be completed within a period of **120 days** from the **pre-packaged insolvency commencement date**.

The **resolution professional** shall submit the resolution plan approved by the CoC within **90 days**, failing which, the RP shall file an application for **termination**.

Section 54E – Declaration of moratorium and public announcement

On the **commencement date**, the Adjudicating Authority shall:

- Declare a **moratorium** under Section 14 (1) and (3), *mutatis mutandis*.
- Appoint the proposed RP, or another, if disciplinary proceedings are pending.
- Direct a **public announcement** of PIRP to be made immediately.

The **moratorium** shall be effective until the end of the PIRP period.

Section 54F – Duties and powers of resolution professional

The RP shall conduct the PIRP and:

- Financial institutions shall provide all information relating to the debtor.
 - Promoters, directors and personnel shall extend cooperation as under Section 19(2) and (3), *mutatis mutandis*.
 - The **fees and expenses** of the RP shall be determined as may be specified, subject to **ratification by the CoC**.
-

Within **2 days** of the commencement date, the corporate debtor shall submit:

- A **list of claims**, along with details of creditors, security interests, and guarantees.
- A **preliminary information memorandum**.

Persons authorising submission with omissions or misstatements shall be **liable to pay compensation** unless done without knowledge or consent.

Section 54H – Management of affairs of corporate debtor

During the PIRP period, the **management of the affairs of the corporate debtor shall continue with the debtor**, unless transferred under Section 54J.

Section 54I – Committee of Creditors (CoC)

The RP shall:

- Constitute the **CoC** within **7 days** of commencement.
- Convene the **first meeting** within **7 days** of its constitution.

Section 21 (except sub-section 1) shall apply mutatis mutandis, with appropriate modifications.

Section 54J – Vesting management with resolution professional

Where the CoC resolves (by **66% voting share**) to vest management with the RP, the RP shall make an application to the Adjudicating Authority.

The Authority shall pass an order if it finds:

- The affairs were conducted in a **fraudulent manner**, or
- There was **gross mismanagement**.

Upon such order, specified provisions of CIRP (e.g., Sections 14, 17, 18, 19, 25, 28) shall apply mutatis mutandis.

The corporate debtor shall submit the **base resolution plan** to the RP within **2 days** of commencement.

The RP shall present it to the CoC.

The CoC may allow revisions or invite competing resolution applicants.

The plan shall comply with **Section 30(1), (2), and (5)**, mutatis mutandis.

Section 54L – Approval of resolution plan

The CoC may approve a plan (base or competing) by **66%** voting share.

The RP shall then submit it to the Adjudicating Authority.

If no plan is approved within the timeline, the PIRP shall be **terminated**.

Section 54M – Termination of PIRP

Where no resolution plan is submitted within **90 days** or approved within **120 days**, or if CoC resolves to terminate the process, the RP shall file an application for **termination** with the Adjudicating Authority.

Section 54N – Initiation of CIRP

At any time during PIRP, the **CoC may resolve** (by 66% vote) to initiate **CIRP**.

The RP shall file the application, and the Adjudicating Authority may **admit the application**, if satisfied.

Section 54O – Application of provisions of CIRP

From the **commencement date**, certain provisions of CIRP shall apply **mutatis mutandis** to PIRP proceedings unless otherwise specified or inconsistent.

Section 54P – Simplified or fast-track PIRP

The **Central Government** may notify a class of corporate debtors (including MSMEs) for whom a **simplified or fast-track PIRP** shall apply, with modifications to procedure and timelines, as may be specified.

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