



# **Insolvency and Bankruptcy Code 2016**

## **Corporate Insolvency Resolution Process (CIRP)**


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# Over view

# Corporate Insolvency Resolution Process

- Admission of application by AA
- Appointment of IRP
- Declaration of Moratorium
- Public announcement for inviting claims
- Collation of claims
- Constitution of Committee of Creditors (CoC)
- Appointment of RP in 1st meeting of CoC

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- Appointment of two valuers within 7 days of RP's appointment
  - Preparation of Information Memorandum (IM)
  - Invitation of Expression of Interest (EoI) with eligibility criteria approved by CoC
  - Evaluation and vetting of EoI
  - Issue IM, Request for Resolution Plan (RFRP) to eligible Resolution Applicant(s)
  - Receiving Resolution Plan(s)

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- Vetting of resolution plans and getting the deficiencies removed
  - Placement of vetted resolution plan(s) before the CoC
  - Approval of resolution plan by the CoC
  - Submission of resolution plan to AA
  - Application for Liquidation, if no plan or plan rejected by CoC
  - Approval of resolution plan by AA/Liquidation Order
  - Handing over to Monitoring Agency

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- Transaction Review Audit / Forensic Audit
  - Filing application for avoidance of preferential, undervalued, Fraudulent and Extortionate (PUFE) transactions before the AA

# Judicial Framework

- **Adjudicating Authority (AA)**
  - National Company Law Tribunal (NCLT)
  - Debt Recovery Tribunal (DRT)
- **Appellate Authority**
  - National Company Law Appellate Tribunal (NCLAT)
  - Debt Recovery Appellate Tribunal (DRAT)
- **Special Courts** under Companies Act for trial of offences under IBC {Sec 236(1)}
- **Supreme Court**

# Timelines

- 14 days for AA to accept or reject application for CIRP
- Additional up to 10 days for reasons to be recorded in writing. Sec 64 (1)
- Term of the IRP till the date of appointment of RP u/s 22. Sec 16(5) (earlier Up to 30 days 06-06-2018)
- 7 days for removal of defect in the application



# Timelines

- 180 days to complete the corporate insolvency resolution process. Sec 12(1)
- Up to 90 days' one time extension for CIRP. Sec 12 (2) & (3)
- 330 days to **mandatorily** complete CIRP (including any extension and the time taken in legal proceedings) (Proviso added on 16-08-2019)
- If no resolution plan within the prescribed time, Compulsory Liquidation (Sec 33)

## Fast Track CIRP

- Completion of CIRP - 90 days,
- extendable once by 45 days. {Sec 56}

## Who to conduct CIRP?

- RP shall conduct the entire corporate insolvency resolution process (CIRP) and manage the operations of CD during the CIRP period:
- If the resolution plan has been submitted to AA, RP shall, continue to manage the operations of the CD after the expiry of the CIRP period until an order is passed by the AA u/s 31. (Sec 25)



# Who can trigger the process ?

- A Financial Creditor (FC) - Sec 7
- An Operational Creditor (OC) - Sec 8 & 9
- The Corporate Debtor itself (CD) – Sec 10

# Who cannot trigger CIRP (Sec. 11)?

- a. CD who is already undergoing CIRP
- b. CD who has completed CIRP 12 months preceding the date of making of application
- c. CD or a FC who has violated any of the terms of a resolution plan which was approved 12 months before the date of making an application .
- d. CD in respect of whom a liquidation order has been made

# Explanation I to Sec 11

- CD includes Corporate Applicant in respect of such CD

*w.e.f. 28.12.2019*

- “corporate applicant” means –{Sec 5 (5)}
  - (a) corporate debtor; or
  - (b) a member or partner of the CD who is authorised to make an application for the CIRP under the constitutional document of the CD; or
  - (c) an individual who is in charge of managing the operations and resources of the CD; or
  - (d) a person who has the control, and supervision over the financial affairs of the CD;

## Explanation II to Sec 11

- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a CD referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.
- *w.e.f. 28.12.2019*

# When?

- On occurrence of default on the part of CD
- **Threshold to trigger** - Minimum amount of default Rs. 1 Crore w.e.f. 24.03.2020 (earlier Rs. 1 lakh)



# How?

- By applying to Adjudicating Authority (AA),
- National Company Law Tribunal (NCLT)
- Territorial Jurisdiction – Where Registered office of the CD is situated

# Application by FC

- Application by:
  - 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
- Default may be in respect of a financial debt owed to any other FC
- FC in a class of creditors shall file jointly with not less than 100 or not less than 10% of the total number in the class, whichever is less (w.e.f. 28-12-2019).
- Name of RP proposed to act as an IRP

# Application by OC

- Creditor has to deliver a 10 day demand notice
- CD has to show a dispute or evidence of repayment to avoid initiation of CIRP
- Separate application by each applicant,
- Jointly application only in case of representatives of workmen and employees
- Optional to furnish name of RP to be appointed as IRP

## Application by CD

- Special resolution passed by at least three-fourth majority of shareholders or partners
- Furnish name of RP to be appointed as IRP
- Financial statements-Audited for last two years and provisional for current year and other documents
- Record of default

# After-effects

- AA either admits or rejects the application;
- If admitted, CIRP commences from the date of admission and is called the Insolvency Commencement Date (ICD)
- Interim Resolution Professional (IRP) is appointed Sec 16(1)
- Declaration of Moratorium – Sec 14
- Powers of the Board of Directors of the CD suspended.

# After-effects

- Management of the affairs of CD vest in IRP.
- Officers and managers of the CD report to IRP and provide access to debtor's documents and records.
- IRP takes custody and control of the CD
- Personnel, promoters and other persons associated with the management of the CD shall extend all assistance and cooperation to the IRP

# Moratorium


- Moratorium starts from ICD and continues till completion of CIRP i.e. approval of Resolution plan or order of liquidation.
- Protects the CD from new and pending suits, and enforcement of security interest, and prohibits the CD from transferring, encumbering, disposing of any of its assets



## Moratorium Prohibits:

- (a) the institution of suits or continuation of pending **suits or proceedings against the CD** including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;



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- (c) any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, 2002;
  - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

## **Moratorium shall not apply to:**

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government
- (b) a surety in a contract of guarantee to a corporate debtor. {w.e.f. 28.12.2019}

# Essential Goods and Services

- The supply of essential goods or services to the CD shall not be terminated or suspended or interrupted during moratorium period. Sec(14)2)
- Electricity, water, telecommunication, and Information Technology services are essential goods and services
- to the extent these are not a direct input to the output produced or supplied by the CD.
- {Regulation 32}

# Amendments w.e.f. 28.12.2019

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

# Essential supplies

Where the IRP or RP considers the supply of goods or services critical to protect and preserve the value of the CD and manage the operations of such CD as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, **except where such CD has not paid dues** arising from such supply during the moratorium period or in such circumstances as may be specified. {Sec 14(2A)}

# Constitution of Committee of Creditors (CoC)

- CoC shall comprise of all financial creditors of the CD
- Financial creditor who is a related party of the CD, shall not have any right of representation, participation or voting in the CoC meeting
- Voting share shall be determined on the basis of the financial debts owed

## CoC When no FC

- Eighteen largest OCs will form CoC.
- One representative elected by all workmen
- One representative elected by all employees
- All the decisions then be taken by the Operational Creditors and all will have voting rights based on the debt outstanding.



# Voting % for CoC Decisions

- Sec 12A Withdrawal of Application 90%
- Sec 12(2) Approval of time extension 66%
- Sec 22(2) Appointment of RP 66%
- Sec 27(2) Replacement of RP 66%
- Sec 30(4) Approval of Resolution plan 66%
- Sec 33(2) Decision to liquidate CD 66%
- Sec 28 Approval of COC for certain acts 66%
- 21 (8) All other decisions 51%



# Appointment of RP

- Appointment of RP by CoC in 1<sup>st</sup> meeting with a vote of 66%
- IRP Term – Till the date of appointment of RP  
– Sec 16(5) (earlier IRP term 30 days)
- CoC may replace IRP with another RP or appoint him as RP –Sec 22(2)

# Fast Track CIRP

- Appointment of only one valuer instead of two,
- Other provisions of normal CIRP (Chapter II) applicable

## CDs eligible for Fast Track CIRP

- A small company, as defined under clause (85) of section 2 of Companies Act, 2013 (paid up capital less than Rs.50 lakh and turnover less than Rs.2 crore); or
- An unlisted company with total assets not exceeding Rs. 1 crore in the immediately preceding financial year
- A start-up as defined in the notification dated 23rd May, 2017 of the GoI Ministry of Commerce and Industry.



## **An entity is considered as a start-up if:**


- 5 years (10 years in case of biotechnology) have not passed since its incorporation;
- its turnover for any of the financial years since incorporation / registration has not exceeded Rs.25 crore; and
- it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.


# Information Memorandum

- IM contains the information required by resolution applicants to draw up the resolution plan for CD.

## **Contents of IM:**

- financial position of CD,
- description of assets and liabilities as on ICD,
- disputes by or against CD,
- list of creditors along with the amounts claimed, admitted, and security interest if any,

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- audited financial statements for the last two years and provisional for the current year
  - particulars of a debt due from or to CD with respect to related parties;
  - details of guarantees given in relation to the debts of CD by other persons, specifying the related party;

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- names and addresses of the members or partners holding at least one per cent stake in the CD along with the size of stake;
  - details of all material litigation and ongoing investigation or proceeding initiated by Government and statutory authorities;
  - number of workers and employees and liabilities of the CD towards them;
  - any other relevant information.







# Persons not eligible to be Resolution Applicant –Sec 29A

- (a) is an undischarged insolvent;
  - (b) is a wilful defaulter in accordance with RBI guidelines
  - (c) has an account, or an account of a CD under the management or control, classified as NPA for a
  - (d) has been convicted for any offence punishable with imprisonment and –
    - (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:
- (shall not apply after the expiry of a period of two years from the date of release from imprisonment)



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- (e) is disqualified to act as a director under the Companies Act, 2013
  - (f) is prohibited by the SEBI from trading in securities or accessing the securities markets;
  - (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the AA under this Code:

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- (h) has executed a guarantee in favour of a creditor in respect of a CD against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
  - (i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
  - (j) has a connected person not eligible under clauses (a) to (i).

## Contents of Resolution Plan

RP shall examine each resolution plan to confirm that it provides for:

(a) payment of insolvency resolution process costs in priority to the payment of other debts of the CD

(b) payment of the debts of OCs which shall not be less than the amount to be paid to them in liquidation u/s 53;

(c) management of the affairs of the CD after approval of the resolution plan;



## **Contents of Resolution Plan**

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

## Post CIRP

- Moratorium shall cease from the date of completion of CIRP or Date of passing an order approving the resolution plan or order for liquidation
- RP shall forward all records relating to conduct of CIRP and resolution plan to the Board


## Processes by IRP


- Public announcement for inviting claims
- Collect, verify and collate claims
- Constitute a Committee of Creditors (CoC),  
Comprising of FC or OC as may be the case
- File report of CoC constitution with AA
- Hold 1st meeting of CoC within 7 days of the  
constitution of CoC

## Processes by RP

- Appointment of two valuers within 7 days of RP's appointment
- Preparation of Information Memorandum (IM) within two weeks of RP's appointment
- Invitation of Expression of Interest (EoI) with eligibility criteria approved by CoC within 75 days of ICD
- Issuing of IM, Request for Resolution Plan (RFRP) to eligible Resolution Applicant(s) {RA} within 105 days of ICD



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- Receiving resolution plan within 135 days of ICD
  - Vetting of resolution plans and getting the deficiencies removed
  - Placement of vetted resolution plan(s) before the CoC
  - Approval /Acceptance of resolution plan by the CoC
  - Submission of resolution plan to AA

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- Approval of resolution plan by AA
  - Application for Liquidation, if no plan or plan rejected by CoC
  - Report of preferential, undervalued, Fraudulent and Extortionate (PUFE) transactions and filing application for avoidance before the AA

**जय हिन्द**

**Jai Hind**

**धन्यवाद**

**Thanks**

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