

*The Insolvency and  
Bankruptcy Code, 2016 (IBC  
2016)*

*Section 1 -32*

*Certificate course on IBC*

*Organised By*

*Voice of CA*

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## Synopsis of the code:

- **Part I- Preliminary ( Section 1-3)**
- **Part II- Insolvency Resolution and Liquidation For Corporate persons (Section 4-77) ( Chapter I- VII)**
- **Part III- Insolvency resolution and bankruptcy for individuals and partnership firms ( Section 78 – 187)( Chapter I-VII)**
- **Part IV- Regulation of insolvency professionals, agencies and information utilities ( Section 188- 223)**
- **Part V- Miscellaneous (Section 224 to 255)**
- **12 schedules of amendments to various associated acts .**
- **Regulations containing detailed procedural instructions.**

# The IBC 2016 Aims to....

1

- To Consolidate and amend laws relating to reorganisation and insolvency resolution .

2

- To reduce the time of resolution for maximizing the value of assets.

3

- To balance the interest of all stakeholders .

4

- To Develop Credit market and encourage entrepreneurship.

# Significant Features of the IBC 2016

- ❖ Single insolvency and bankruptcy framework. It replaces/ modifies /amends certain existing laws.
- ❖ **Overriding effect on all other laws** relating to Insolvency & Bankruptcy. S 238
- ❖ Not applicable to corporate financial service providers like Banks, NBFC, Insurance Co's etc. there will be separate legislation.
- ❖ **Provides for moratorium period from insolvency commencement date**
- ❖ **The Code shifts the focus from “Debtors” in possession to “Creditors in Control”.**
- ❖ **The test of insolvency has been shifted from “erosion of net worth” to “payment default”. Time bound resolution process at each stage**

# Impact of the IBC 2016

5

11/23/2020

BFR and SICA go off completely;

Corporate resolutions come under NCLT;

Tight timelines under the new law – entire process of resolution to be over in 180 to 270 days;

May lead to greater financial discipline;

Creditors have an upper hand in resolution plans;

Moratorium is not indefinite – limited moratorium;

If revival does not work out, entity to mandatorily go into liquidation;

- Companies and guarantors can be both brought under a common forum – NCLT/DRT;
- While borrowers may file resolution applications seeking moratorium, but borrower will have to face the threat of liquidation/bankruptcy ;
- Can debtors under banker-driven restructuring also go for NCLT/DRT resolution – yes. In view of mandatory timelines, the case may reach bankruptcy stage faster;
- Accelerating provisioning – faster transition into a case of loss assets.

# Understanding terminologies-

- **Insolvency** - inability to pay debts different from solvency
- **Liquidation** – process of selling assets and paying creditors - used only for corporate persons
- **Winding up** – larger term includes liquidation & removal of names used only for corporate persons
- **Removal of name** – like death certificate for individuals
- **Bankruptcy** – like liquidation and insolvency for corporate persons

## **Section: 1 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: Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.
3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

THE GAZETTE OF INDIA EXTRAORDINARY [PART II— Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.



## Section 2 Application:

- 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(37) IBC 2016 residuary definitions

- As defined in these legislations
- The Indian contract Act, 1872
- The Indian Partnership Act, 1932
- The Securities Contract (Regulation) Act, 1956
- The Securities Exchange Board of India Act, 1992
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013

# Part II- Insolvency Resolution and liquidation process for corporate persons

- Section 4: Application
- Section 5 : Definitions
- Section 6: Person who may initiate CIRP
- Section 7: CIRP by FC
- Section 8: Default Notice by OC
- Section 9: CIRP by OC
- Section 10 : CIRP by CD
- Section 11: Persons not entitled to make application.

# Time Limit for Completion of Insolvency Resolution Process

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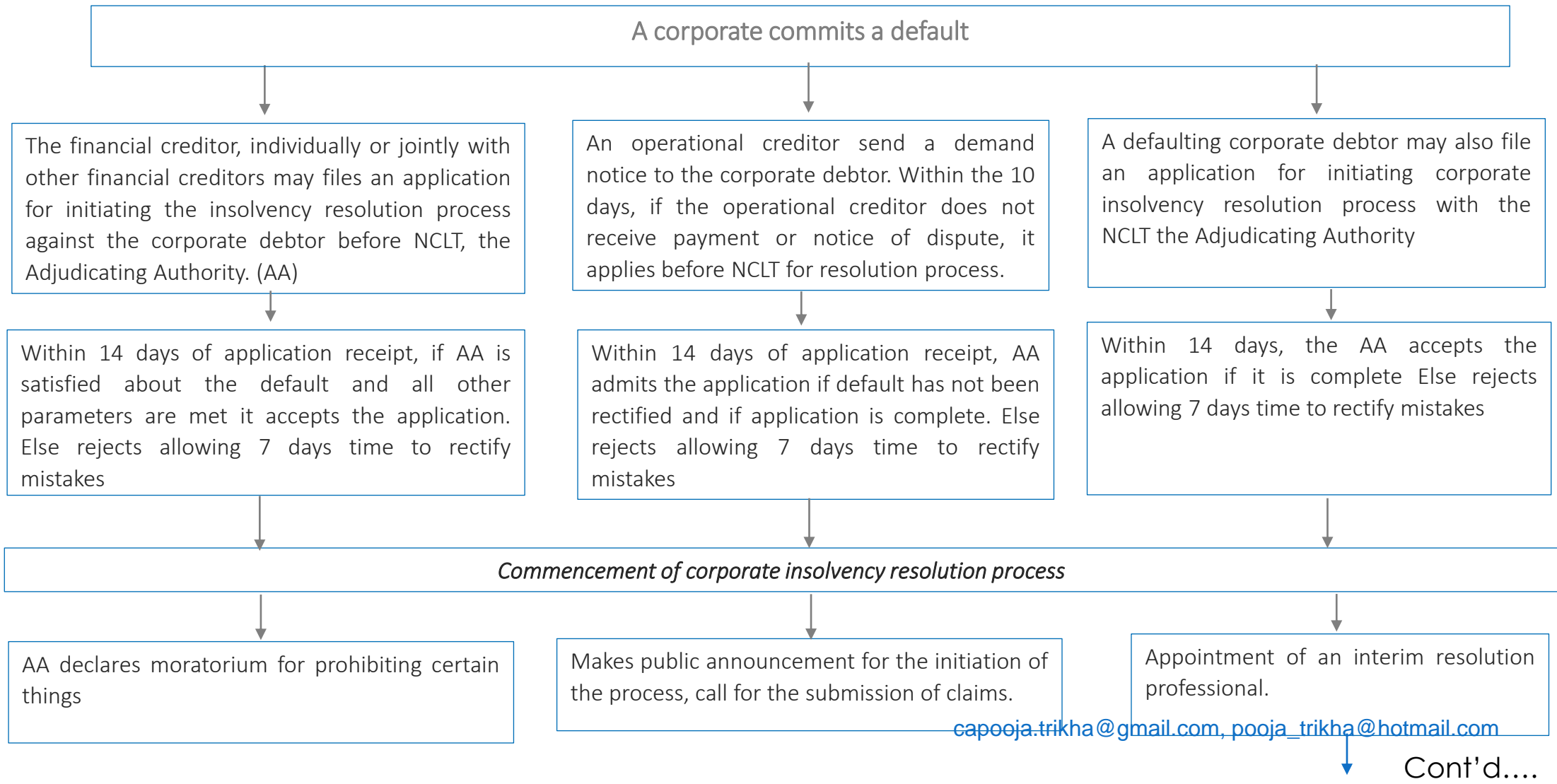
Time  
Limit

Sec 12 of the IBC 2016 – **180 days** may be extended by further period not exceeding 90 days

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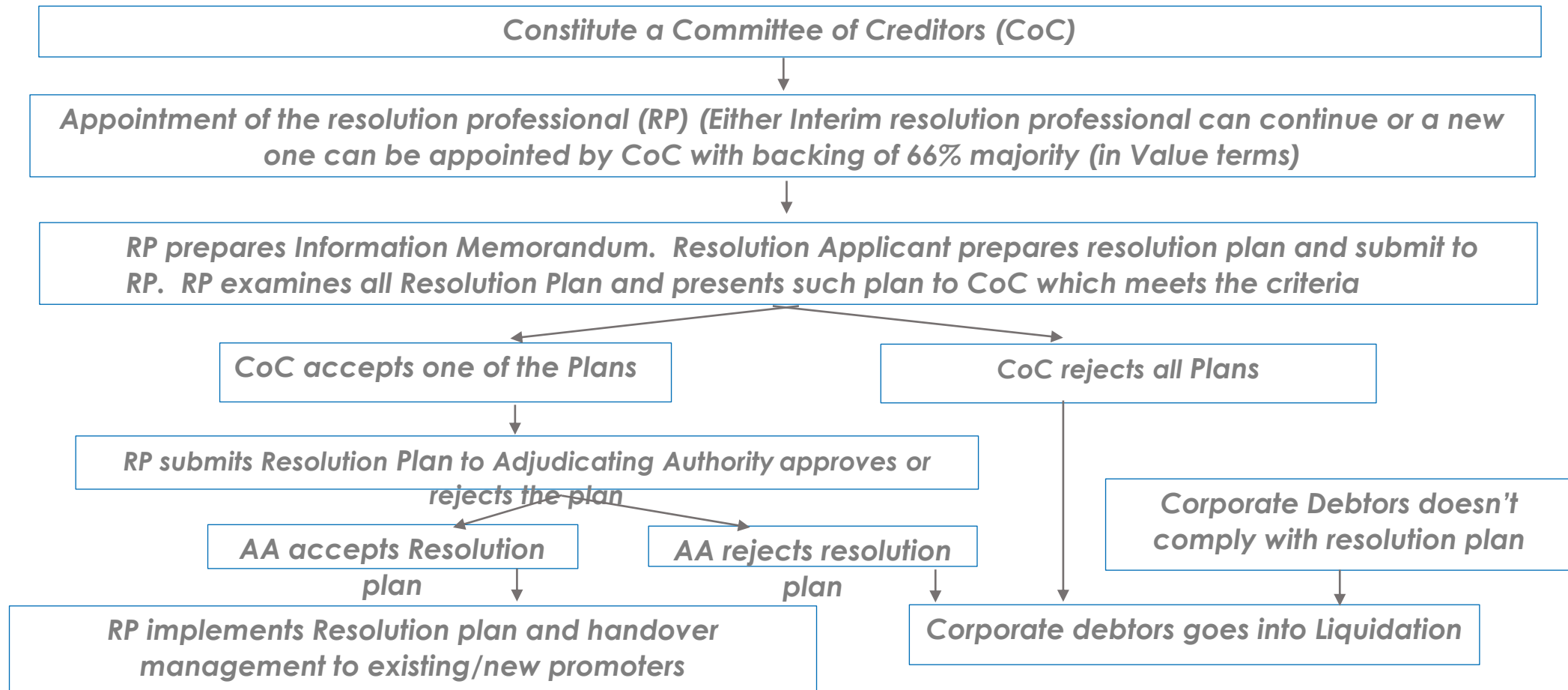
# Insolvency resolution process for corporate



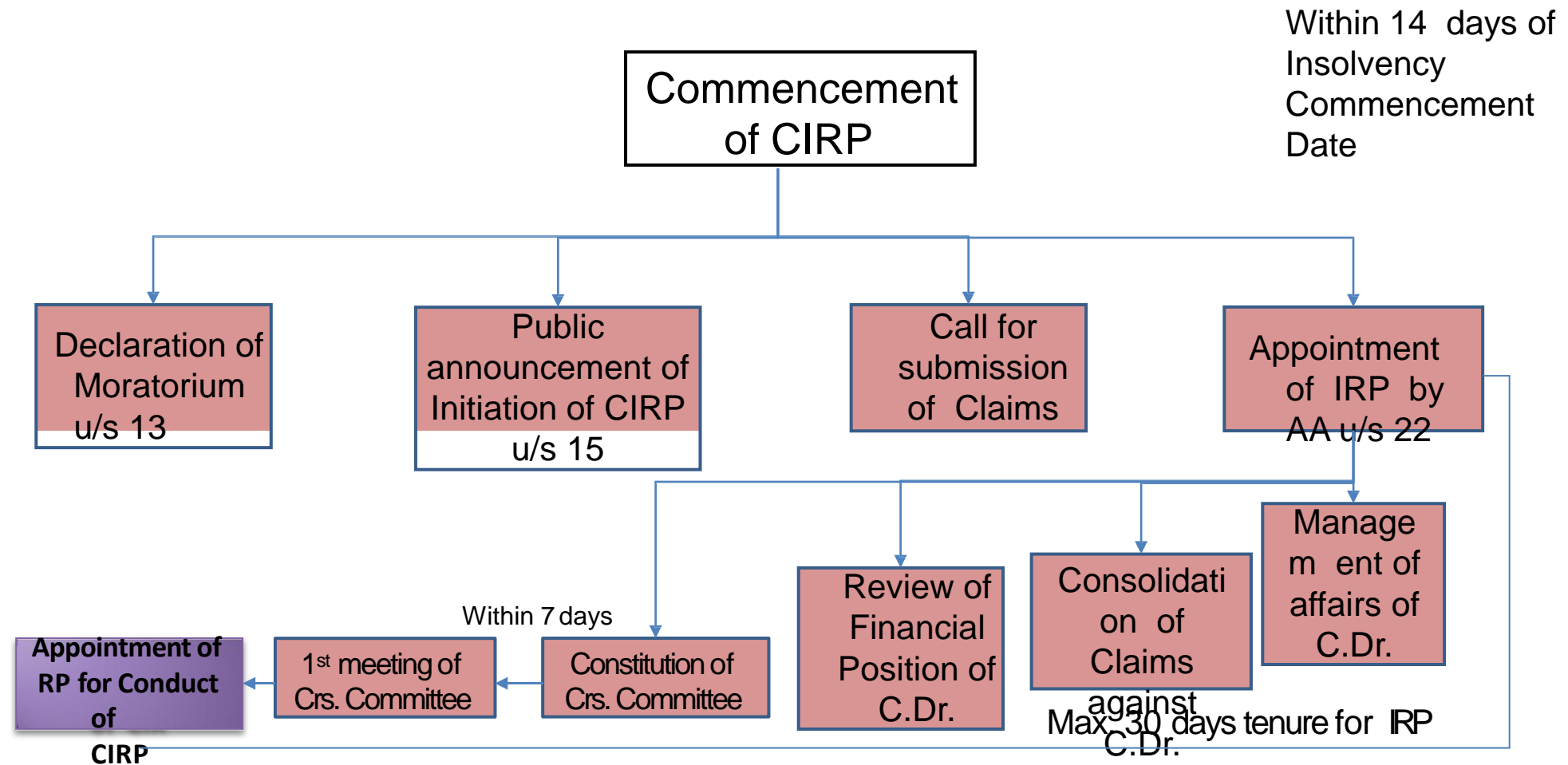
# Insolvency Resolution Process for Corporates

14

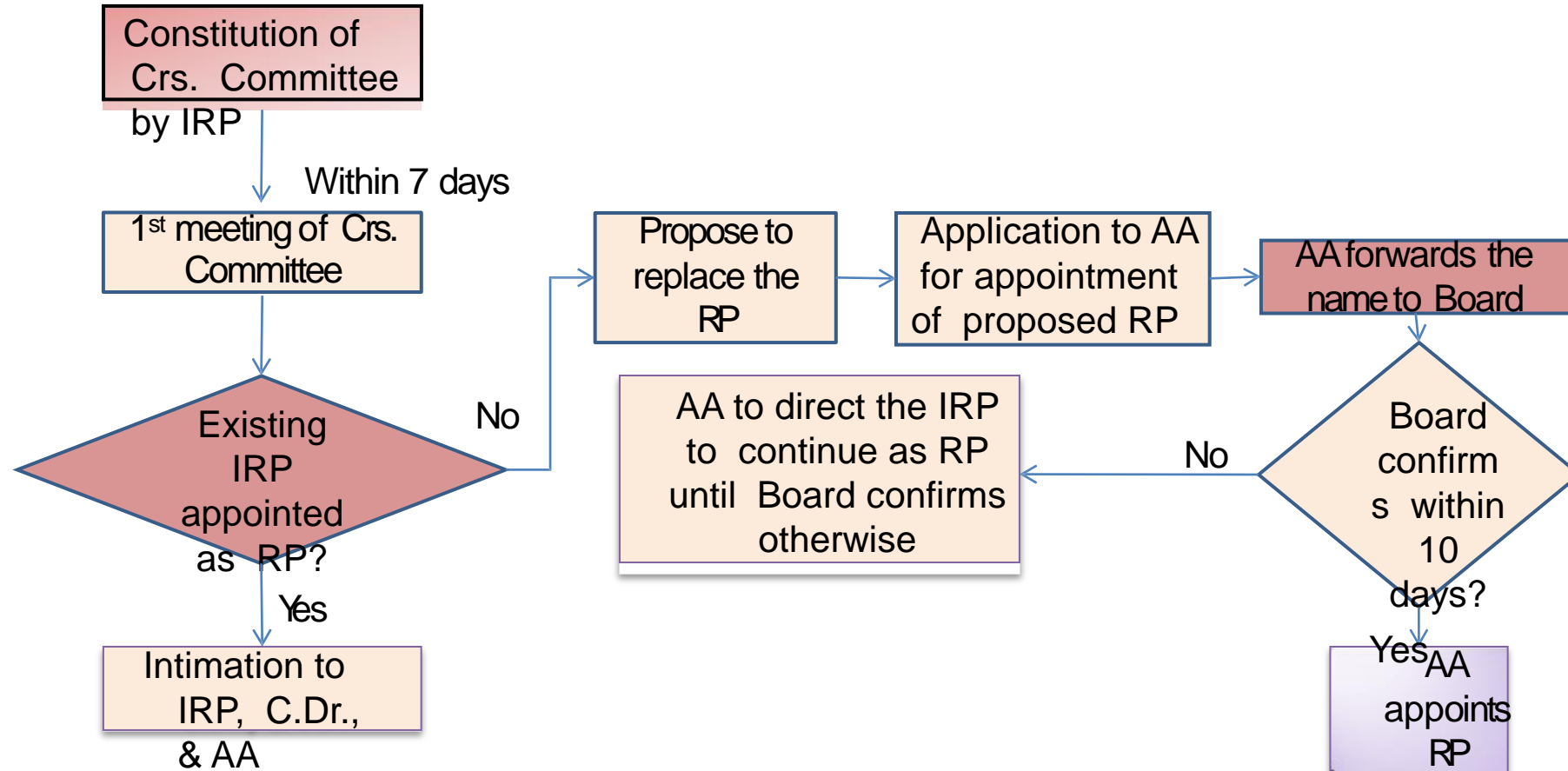
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# Once CIRP commences . . .

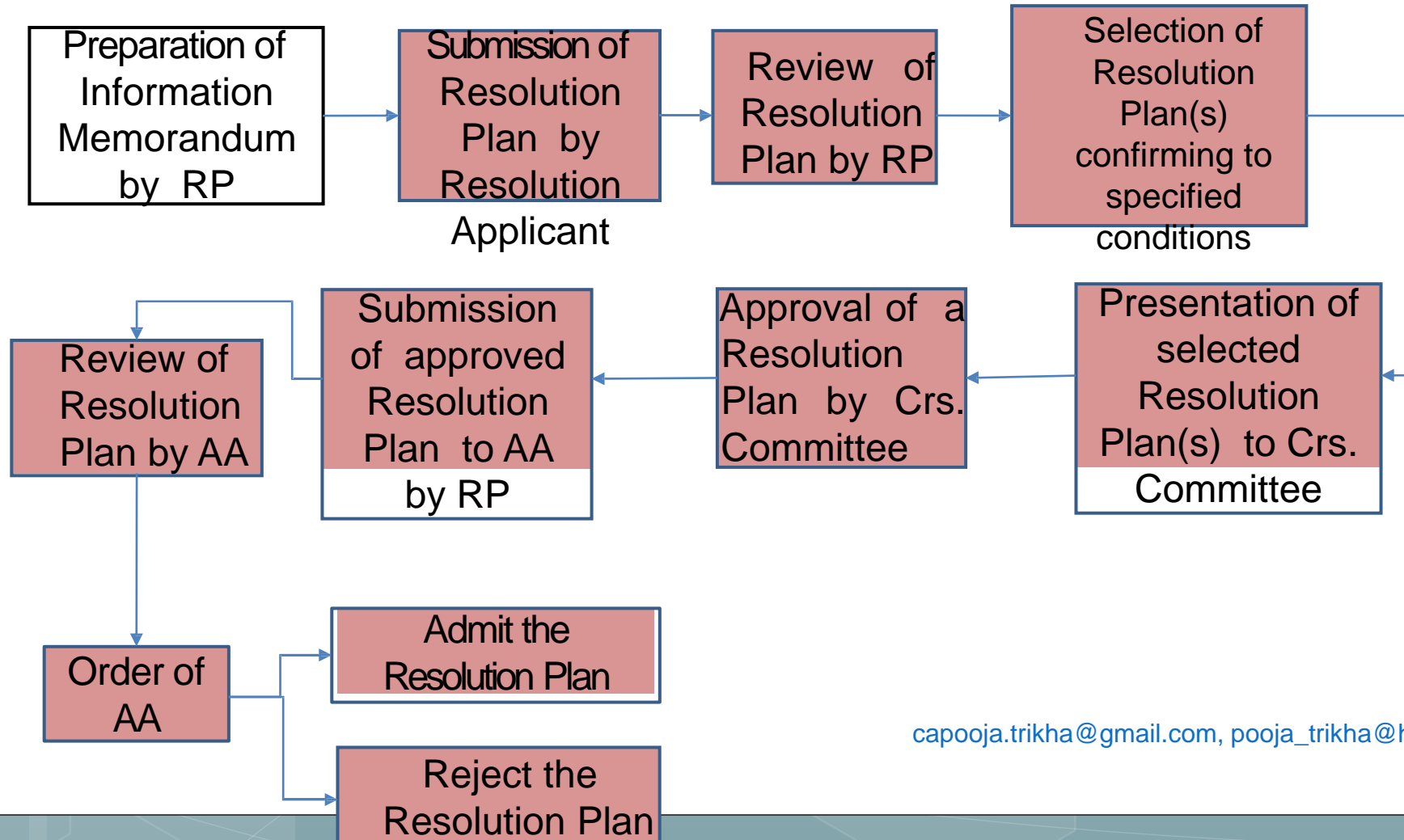


# Appointment of resolution professional





# Conduct of CIRP by RP



## Section 14: Moratorium AA by order of CIRP stops:

- (a) 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 of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

# Exceptions to Moratorium u/s 14

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

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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

# Appointment of Resolution Professional- section 16

- An insolvency professional shall be eligible to be appointed as a resolution professional -
  - If he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor
- Independent of the corporate debtor shall mean –
  - Eligible to be appointed as an independent director on the board of the corporate debtor under Section 149 of the Companies Act, 2013
  - Is not a related party of the corporate debtor; or
  - Is not an employee or proprietor or a partner, in the **last 3 FY** of:
    - ☞ A firm of auditors or PCS or cost auditors of the corporate debtor; or
    - ☞ A legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 10% or more of the gross turnover of such firm.
- Whether an insolvency professional needs to be independent of the creditor(s) filing an application against the corporate debtor?

## Section 17 – on CIRP initiation...

- the management of the affairs of the corporate debtor shall vest in the interim resolution professional;
- 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;
- Public announcement of corporate insolvency resolution process. Appointment and tenure of interim resolution professional.

Cont...

- 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;
- 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.
- The interim resolution professional vested with the management of the corporate debtor shall— (a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any; (b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board; (c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor; (d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

## Section 18: Duties of Interim Resolution Professional

- (a) 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) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;
- (c) constitute a committee of creditors;
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary;

(f) 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) to perform such other duties as may be specified by the Board. Explanation.—For the purposes of this sub-section, the term "assets" shall not include the following, namely:— (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment; (b) assets of any Indian or foreign subsidiary of the corporate debtor; and (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator



# Section 19: support from staff

**Section 19** (1) 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.

(2) 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.

(3) 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 resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

# Section 20-Management of CD as going Concern .

- (1) 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.
- (2) For the purposes of sub-section (1), the interim resolution professional shall have the authority— (a) to appoint accountants, legal or other professionals as may be necessary; (b) 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) 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: 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) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and (e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

## Section 21: COC

- Committee of creditors shall be formed with financial creditors only.
- Financial creditors which are related parties of the corporate debtor shall not form part of committee
- What if the corporate debtor has no financial creditor?
- Where all financial creditors are related parties of the corporate debtor?
- Committee shall be formed with 18 largest O.Cr. By value
  - ☞ If the number of O.Cr. is less than 18 then all the O.Cr. shall be included
- 1 representative elected by all workmen
  - ☞ Other than those included in 18 members
- 1 representative elected by all employees
  - ☞ Other than those included in 18 members

## Section 22: appointment of RP

- ❖ The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
- ❖ The COC in the first meeting, by a majority vote of not less than 75% (now 66%) of the voting share of the FC, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

## Section 23-Conduct of CIRP

- (1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.
- (2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.
- (3) In case of any appointment of a resolution professional under sub-sections (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

## Section 24-MEETING OF COC

- (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.
- (2) All meetings of the committee of creditors shall be conducted by the resolution professional.
- (3) The resolution professional shall give notice of each meeting of the committee of creditors to— (a) members of Committee of creditors; (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 per cent. of the debt.
- (4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings: Provided that the absence of any such direct or, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

- (5) 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.
- (6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
- (7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
- (8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

## Section 25- DUTIES OF RP

(1) 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.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:— (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor; (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings; (c) raise interim finances subject to the approval of the committee of creditors under section 28; (d) appoint accountants, legal or other professionals in the manner as specified by Board; (e) maintain an updated list of claims; (f) convene and attend all meetings of the committee of creditors; (g) prepare the information memorandum in accordance with section 29; (h) invite prospective lenders, investors, and any other persons to put forward resolution plans; (i) present all resolution plans at the meetings of the committee of creditors; (j) file application for avoidance of transactions in accordance with Chapter III, if any; and (k) such other actions as may be specified by the Board.



# Section 25A- Rights Duties of Authorised Representative of FC.

(1) The authorised representative under sub-section (6) or subsection (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.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

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.

<sup>2</sup>[(3A) 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 per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).]

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

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

# Section 26-AVOIDANCE APPLICATION NO IMPACT ON CIRP.

- ❑ 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 RP BY COC.

- (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.
- (2) The committee of creditors may, at a meeting, by a vote of seventy five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.
- (3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- (4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.
- (5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

# Section 28-APPROVAL OF COC FOR ACTS OF RP.

(1) 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) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting; (b) create any security interest over the assets of the corporate debtor; (c) 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) record any change in the ownership interest of the corporate debtor; (e) 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) undertake any related party transaction; (g) amend any constitutional documents of the corporate debtor; (h) delegate its authority to any other person; (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties; (j) make any change in the management of the corporate debtor or its subsidiary; (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) 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).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of seventy five per cent. of the voting shares.

(4) 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.

(5) 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 DAY- 54 OF CIRP.

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

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes— (a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading; (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 .

Section 29A of the Code put some barriers for resolution applicant to submit resolution plan. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

- a. is an undischarged insolvent;
- b. is a wilful defaulter in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949;
- c. person or a person acting jointly or in concert with such person who-
  - has an account classified as NPA;
  - is a promoter of a corporate debtor the account of which has been classified as NPA;
  - is in the management of a corporate debtor the account of which has been classified as NPA
  - is in control of a corporate debtor the account of which has been classified as NPA;



A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person— (a) is an undischarged insolvent; (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; (c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 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; (d) has been convicted for any offence punishable with imprisonment for two years or more; (e) is disqualified to act as a director under the Companies Act, 2013; (f) is prohibited by the Securities and Exchange Board of India 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 Adjudicating Authority under this Code; (h) has executed an enforceable 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; (i) has been 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)

# Resolution Plan

- Section 5 (26) defines “resolution plan” -
  - a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II
- Resolution plan is prepared by resolution applicants
  - Resolution applicant can be creditors of the corporate debtor, prospective lenders, prospective investors, or any other person
- Resolution plan shall be prepared on the basis of information memorandum prepared by RP

# Section 30-SUBMISSION OF RESOLUTION PLAN.

(1) A resolution applicant may submit a resolution plan ALONG WITH AFFIDAVIT STATING ELIGIBILITY U/S 29A to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor; (b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; (c) provides for the management of the affairs of the Corporate debtor after approval of the 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) conforms to such other requirements as may be specified by the Board.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

- (4) The committee of creditors may approve a resolution plan by a vote of not less than SIXTY SIX per cent. of voting share of the financial creditors.
- (5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.
- (6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

# Section 31-Approval of Resolution plan.

(1) 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, guarantors and other stakeholders involved in the resolution plan.

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

(3) 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 32-

- ❖ Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in subsection (3) of section 61.

# SECTION 32A- IMMUNITY FROM PRIOR OFFENCES

[32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—



(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

*Explanation.*—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

# Major changes so far ...

- ❖ Eligibility of resolution applicant for submitting resolution plans (barring defaulting promoters to bid for the company)– Section 29A
- ❖ Voting threshold for decision making by the committee of creditors (from 75% to 66%)- Section 21, 22, 27, 28
- ❖ Categorization of Home Buyers as Financial Creditors and thereby threshold limit for filing application i.e. 10% of total no. or 100 in no. under same real estate project - Section 5(8)
- ❖ Applicability of Limitation Act on the Insolvency and Bankruptcy Code - Section 238A
- ❖ Withdrawal of an application by COC having approval of 90% – Section 12A
- ❖ Allowing comprehensive corporate restructuring through merger, amalgamation and demerger under a resolution plan & Liquidation- Section 2(26) and Regulation 37 of CIRP

## Cont....

- ❖ Resolution plan shall be binding on the all stakeholders including the Central Government, any State Government- Section 31
- ❖ Manner of distribution of amounts amongst financial and operational creditors under Resolution Plan- Section 30
- ❖ Timeline for completion of CIRP increased to an overall limit of 330 days- Section 12
- ❖ Corporate Debtor cannot not be prosecuted for any offence committed prior to commencement of the CIRP, if a resolution plan has been approved by the NCLT- Section 32A

- Enhancement of minimum default limit from Rs. 1 lakh to Rs. 1 cr
- Suspension of Fresh Insolvency Proceedings for One year (from 25.03.2020)
- Suspension of Fresh Insolvency Proceedings for 1 year (from 25.03.2020)

## COVID Related Amendments

Thank  
you

