

THE INSOLVENCY
AND BANKRUPTCY
CODE, 2016

Part-i of IBC – Preamble of the Act

Part ii – Insolvency Resolution and Liquidation for Corporate Persons

The insolvency and Bankruptcy Board of India (insolvency Resolution Process for Corporate Persons) Regulations, 2016

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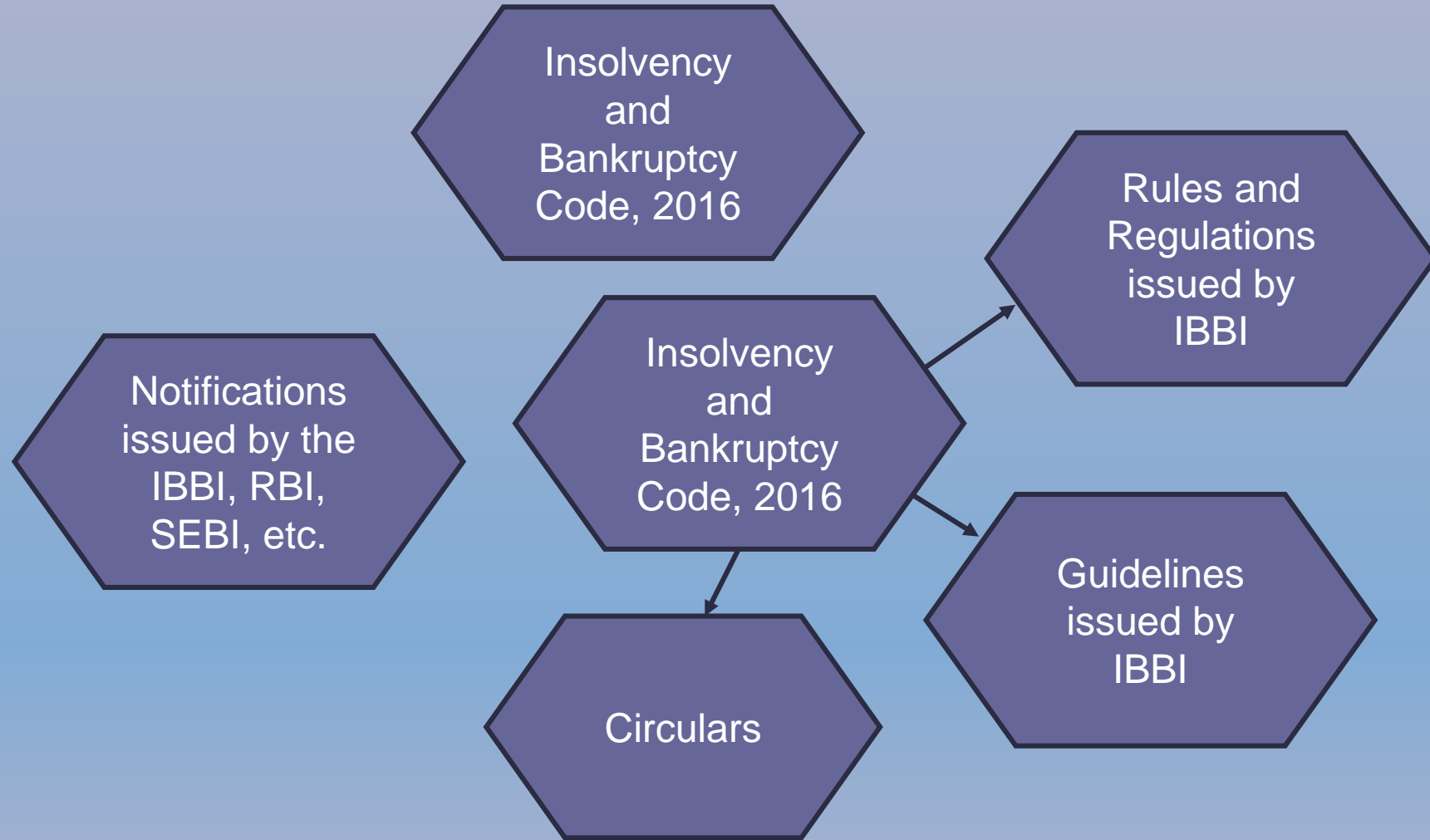
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Regulatory Framework



Part-i of IBC – Application of the Act

The provisions of this Code shall apply to;

- a. any company incorporated under the Companies Act, 2013 (18 of 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 (6 of 2009);
- 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.

Definitions

“Claim”

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

“Corporate Person”

- a company as defined in the Companies Act, 2013,
- a limited liability partnership, as defined the Limited Liability Partnership Act, 2008,
- any other person incorporated with limited liability under any law for the time being in force

Exclude: Financial service provider;

“Core Services” means services rendered by an information utility for

- accepting electronic submission of financial information in such form and manner as may be specified;
- safe and accurate recording of financial information;
- authenticating and verifying the financial information submitted by a person; and
- providing access to information stored with the information utility to persons as may be specified;

“Creditor”: Any person to whom a debt is owed and includes:

- i. A financial creditor
- ii. An operational creditor
- iii. A secured creditor
- iv. An unsecured creditor
- v. A decree holder

“Debt” means

- a liability or obligation in respect of a claim which is due from any person and
- includes a financial debt and operational debt;

“Corporate debtor” = Corporate Person + Debt

“Default” means

- non-payment of debt when whole or any part or instalment of the amount of debt
- which has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be

“Financial information in relation to a person” means

- records of the debt of the person;
- records of liabilities when the person is solvent;
- records of assets of person over which security interest has been created;
- records, if any, of instances of default by the person against any debt;
- records of the balance sheet and cash-flow statements of the person; and
- such other information as may be specified.

“Financial Product” Means

- securities,
- contracts of insurance, deposits,
- credit arrangements including loans and advances by banks and financial institutions,
- retirement benefit plans,
- small savings instruments,
- foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed

“Financial Services” includes any of the following services

- accepting of deposits;
- safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- effecting contracts of insurance;
- offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of;
 - i. buying, selling, or subscribing to, a financial product;
 - ii. availing a financial service; or
 - iii. exercising any right associated with a financial product or financial service;

- establishing or operating an investment scheme;
- maintaining or transferring records of ownership of a financial product;
- underwriting the issuance or subscription of a financial product; or
- selling, providing, or issuing stored value or payment instruments or providing payment services

“Financial Service Provider” means a

- person engaged in the business of providing financial services in terms of authorization issued or registration granted by a financial sector regulator;

“Financial Sector Rector” means

- an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and

- Includes
 - i. the Reserve Bank of India,
 - ii. the Securities and Exchange Board of India,
 - iii. the Insurance Regulatory and Development Authority of India,
 - iv. the Pension Fund Regulatory Authority and
 - v. such other regulatory authorities as may be notified by the Central Government;

“Insolvency Professional” means

- a person enrolled under section 206 with an Insolvency Professional Agency as its member and
- registered with the Board as an insolvency professional under section 207

“Insolvency Professional Agency” means

- any person registered with the Board under section 201 as an Insolvency Professional Agency (IPA)

“Person” include;

- An individual
- A Hindu Undivided family
- a company;
- a trust;
- a partnership;
- a limited liability partnership; and
- any other entity established under a statute, and
- includes a person resident outside

“Person Resident India (PRI) means

- shall have the meaning as assigned to such term in clause (v) of section 2 of the Foreign Exchange Management Act, 1999

“Property” includes

- money, goods, actionable claims, land; and
- every description of property situated in India or outside India and
- Interest (present/future/vested/contingent interest) arising out of, or incidental to, property;

“Security interest” means

- right, title or interest or a claim to property, created in favor of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation; and
- includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person;
- Security Interest shall not include a performance guarantee.

“Transaction” includes

- An agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor

“Transfer” includes

- sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien

“Transfer of Property” means

- transfer of any property; and includes a transfer of any interest in the property and creation of any charge upon such property

“Board” means

- the Insolvency and Bankruptcy Board of India (IBBI)

Part ii- Insolvency Resolution and Liquidation for Corporate Persons

Application:

- Matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.
- The Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Definitions:

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

ii. **“Constitutional document”** in relation to a corporate person, includes

- Articles of Association,
- Memorandum of Association of a company and
- Incorporation Document of a Limited Liability Partnership

iii. **“Corporate Applicant”** means

- corporate debtor; or
- a member or partner of the corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; (e.g. member of company); or
- an individual who is in charge of managing the operations and resources of the corporate debtor; (e.g. Managing Director, Manager); or
- a person who has the control and supervision over the financial affairs of the corporate debtor; (e.g. CEO,CFO)

iv. **“Corporate guarantor”**: a corporate person who is the surety in a contract of guarantee to a corporate debtor;

v. **“Dispute”** includes a suit or arbitration proceeding relating to

- the existence of the amount of debt;
- the quality of goods or service; or
- the breach of a representation or warranty

vi. **“Financial Creditor”** means

- any person to whom a financial debt is owed; and
- includes a person to whom such debt has been legally assigned or transferred to

vii. “Financial debt” means

- A debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes
- money borrowed against the payment of interest;
- any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;
- any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- receivables sold or discounted other than any receivables sold on non-recourse basis;
- any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing

- viii. “financial Position”: In relation to any person, means the financial information of a person as on a certain date.
- ix. “initiation date”: the date on which application to the Adjudicating Authority is made by a financial creditor/corporate applicant/operational creditor or initiating corporate insolvency resolution process;
- x. “insolvency Resolution Process Period”: the period of 180 days, beginning from the insolvency commencement date and ending on 180th day;
- xi. “interim finance”: any financial debt raised by the resolution professional during the insolvency resolution process period;
- xii. “Liquidator”: an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III/Chapter V of this Part.

xiii. “Operational Creditor”: a person to whom an operational debt is owed; and includes any person to whom such debt has been legally assigned or transferred;

xiv. “Operational debt”:

- a claim in respect of the provision of goods or services including employment (employee’s salary)
- or a debt in respect of the payment of dues arising under any law for the time being in force e.g. taxes and payable to the Central Government/any State Government/any local authority;

xv. “Personal guarantor”: an individual who is the surety in a contract of guarantee to a corporate debtor;

xvi. “Personnel” w.r.t. corporate debtor includes;

- the directors,
- managers,
- key managerial personnel,
- designated partners and
- employees.

xvii. “Related Party” in relation to a corporate debtor means

- Any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- Any person who is associated with the corporate debtor on account of;
 - i. participation in policy making processes of the corporate debtor; or
 - ii. having more than two directors in common between the corporate debtor and such person; or
 - iii. interchange of managerial personnel between the corporate debtor and such person; or
 - iv. provision of essential technical information to, or from, the corporate debtor
- Any person in whom the corporate debtor controls > 20% of voting rights on account of ownership or a voting agreement

- a director/partner of the corporate debtor or
- A relative of a director/partner of the corporate debtor.

- a private co. in which a director, partner or manager of the corporate debtor is a director and
- Hold along with his relatives >2% of its share capital

- Any person on whose advice, directions, or instructions, a director, partner, or manager of the corporate debtor is accustomed to act

- a key managerial personnel of the corporate debtor or
- a relative of a key managerial personnel of the corporate debtor

- A public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives,
- >2% of its paid-up share capital

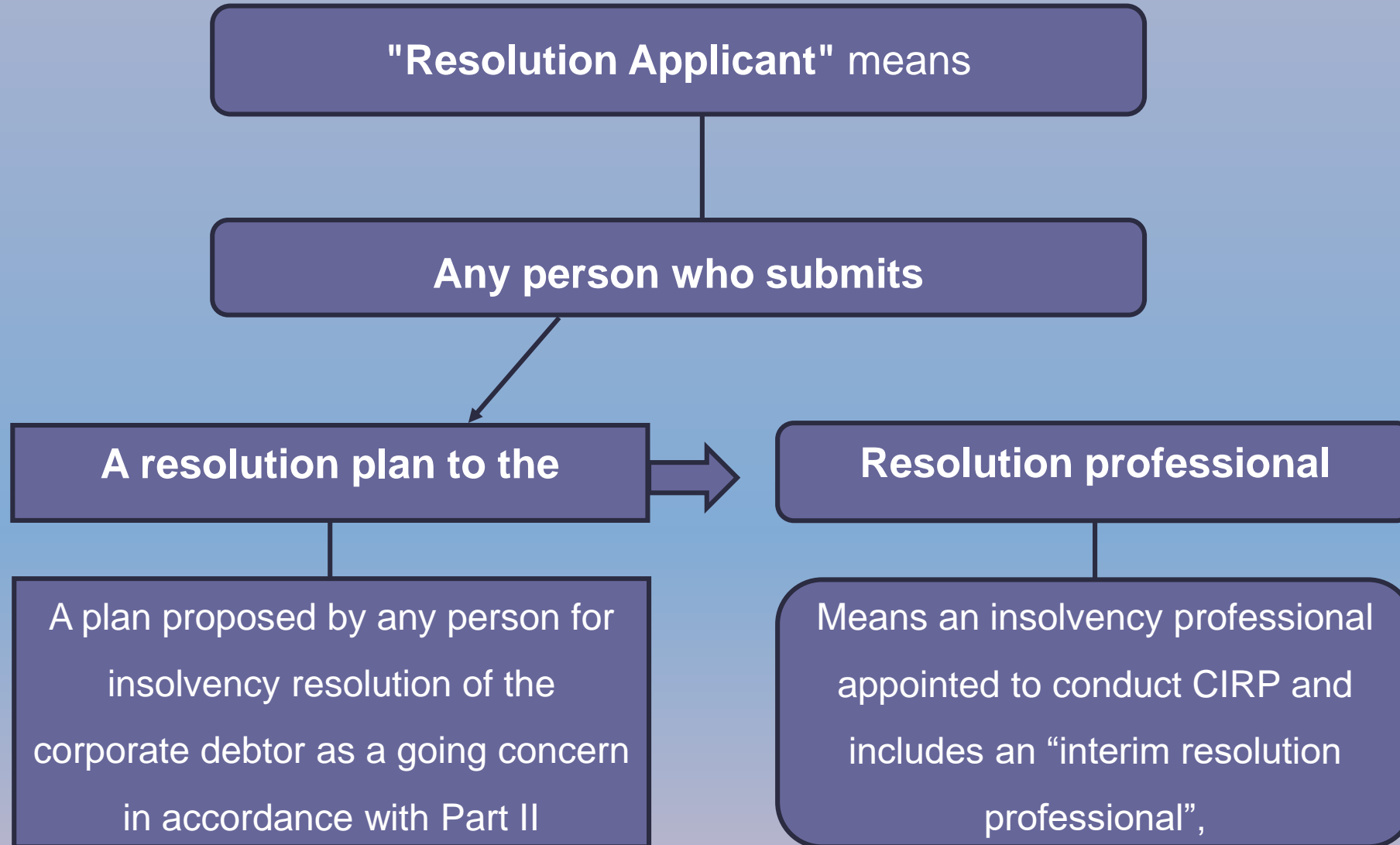
- A body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or
- a subsidiary of a holding company to which the corporate debtor is a subsidiary

- a LLP or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner

- any LLP or a Partnership Firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor

- Any person who controls > 20% of voting rights in the corporate debtor on account of ownership or a voting agreement

xviii. "Resolution Application" means

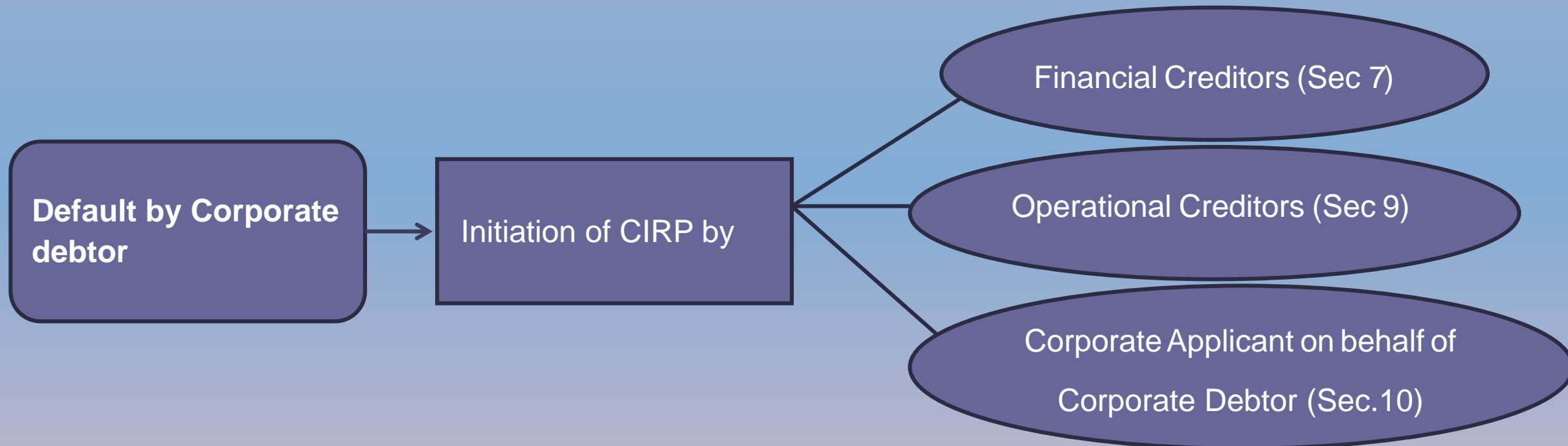


xviii. “Voting Share” means:

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

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Persons who may initiate corporate insolvency resolution process (Section 6)



Application for CIRP by financial Creditor (Sec: 7)

- (i) Financial creditor alone or jointly with other financial creditors can file application for CIRP by adjudicating authority.
- (ii) A default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
- (iii) Annexures to Application Form:
 - record of the default recorded with the information utility or such other record or evidence of default as may be specified;
 - the name of the resolution professional proposed to act as an interim resolution professional; and
 - any other information as may be specified by the Board.

iv. Ascertainment of existence of Default by the Adjudicating Authority

- Within 14 days of the receipt of the application from the records of an information utility; or
- on the basis of other evidence furnished by the financial creditor

v. Order by Adjudicating Authority (discretionary power)

1	<ul style="list-style-type: none">• Approval in following situation<ul style="list-style-type: none">○ A default has occurred and○ the application for CIRP is complete,and○ there is no disciplinary proceedings pending against the proposed resolution professional	<ul style="list-style-type: none">• Rejection in following situation i.e.<ul style="list-style-type: none">○ A default has not occurred or○ the application for CIRP is not complete, or○ there is disciplinary proceedings pending against the proposed resolution professional.
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2	<ul style="list-style-type: none">• Commencement of CIRP:<ul style="list-style-type: none">○ From the date of admission of the application by adjudicating authority.	<ul style="list-style-type: none">• A notice shall be given by Adjudicating Authority giving applicant 7 days time to rectify the defect in his application
3	<ul style="list-style-type: none">• Communication of order<ul style="list-style-type: none">○ To the financial creditor and the corporate debtor	<ul style="list-style-type: none">• Communication of order<ul style="list-style-type: none">○ to the financial creditor, within seven days of admission or rejection of such application, as the case may be

Insolvency Resolution by Operational Creditor (Sec: 7)

(i) Serving of demand notice by an operational creditor:

- On the occurrence of a default,
- Operational creditor may deliver a demand notice of unpaid operational debtor 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.

- ii. Notice by the corporate debtor to operational creditor within a period of ten days of the receipt of the demand notice or copy of the invoice demanding payment:
 - a. existence of a dispute, if any, 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.

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.

Application for initiation of corporate Insolvency Resolution by Operational Creditor (Sec: 9)

1. Application by operational creditor: After the expiry of the said period of 10 days u/s 8, the operational creditor may file an application before the Adjudicating Authority for initiating CIRP if:
 - the operational creditor does not receive payment from the corporate debtor u/s 8 or
 - notice of the dispute u/s 8
2. Mandatory Enclosures with the application:
 - a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

- an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- 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;
- a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
- any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

3. Appointment of 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.

4. Order by the Adjudicating Authority

Within fourteen days of the receipt of the application, Order by Adjudicating Authority;

Conditions subject to which Adjudicating Authority may admit the application and communicate such decision to the operational creditor and the corporate debtor if;

Reject the application and communicate such decision to the operational creditor and the corporate debtor, if;

- a. the application made 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, if any
 - a) application made is incomplete;
 - b) there the 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:

Commencement of CIRP:

- From the date of admission of the application

Mandatory notice

- to be given 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

Initiation of corporate Insolvency Resolution process by Corporate Applicant (Sec: 10)

- i. Application by a corporate applicant:
 - On default by corporate debtor
 - A corporate applicant may file an application for initiating CIRP with the Adjudicating Authority.
- ii. Mandatory enclosures:
 - the information relating to its books of account and such other documents for such period as may be specified;
 - the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

- the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

iii. Order by Adjudicating Authority (discretionary power)

Within fourteen days of the receipt of the application, Order by Adjudicating Authority;

1	<ul style="list-style-type: none"> • Approval in following situation <ul style="list-style-type: none"> ○ A default has occurred and ○ the application for CIRP is complete, and ○ there is no disciplinary proceedings pending against the proposed resolution professional 	<ul style="list-style-type: none"> • Rejection in following situation i.e. <ul style="list-style-type: none"> ○ A default has not occurred or ○ the application for CIRP is not complete, or ○ there is disciplinary proceedings pending against the proposed resolution professional.
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2	<ul style="list-style-type: none">• Commencement of CIRP:<ul style="list-style-type: none">○ From the date of admission of the application by adjudicating authority.	<ul style="list-style-type: none">• A notice shall be given by Adjudicating Authority giving applicant 7 days time to rectify the defect in his application
3	<ul style="list-style-type: none">• Communication of order<ul style="list-style-type: none">○ To the financial creditor and the corporate debtor	<ul style="list-style-type: none">• Communication of order<ul style="list-style-type: none">○ to the financial creditor, within seven days of admission or rejection of such application, as the case may be

Persons not entitled to make application (Sec: 11)

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely;

- a) a corporate debtor undergoing a corporate insolvency resolution process; or
- b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- d) a corporate debtor in respect of whom a liquidation order has been made.

Here, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Time-limit for completion of CIRP by Adjudicating Authority (Sec: 12)

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

- The Adjudicating Authority may allow the withdrawal of application admitted u/s 7/8/9,
- on an application made by the applicant
- with the approval of 90% voting share of the committee of creditors

Declaration of moratorium and public announcement (Sec: 13)

After admission of the application under section 7 or section 9 or section 10, Mandatory actions by the Adjudicating Authority,

(i) Declare a moratorium for the purposes referred to in sec 14

(ii) cause a public announcement of the initiation of CIRP and call for the submission of claims under section 15

The public announcement shall be made immediately after the appointment of the interim resolution professional.

(iii) Appoint an interim resolution professional in the manner as laid down in section 16.

Moratorium (Sec: 14)

- Moratorium is a temporary legal stay period commencing on the date of admission of application for Corporate Insolvency

Declaration of moratorium by the Adjudicating Authority on the insolvency commencement date

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

Exception

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

Declaration of moratorium by the Adjudicating Authority on the insolvency commencement date

(ii) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein

(iii) 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 SARFAESI, 2002

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Exception

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shall not apply to —

- a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
- b) a surety in a contract of guarantee to a corporate debtor

- The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
- Where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan u/s 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 and tenure of interim resolution professional (Sec: 16)

1. Appointment of Interim Resolution Professional:

- Appointment by the Adjudicating Authority within fourteen days from the insolvency commencement date.
- The resolution professional, as proposed respectively in the application under section 7/10, shall be appointed as the interim resolution professional,
 - i. Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor,
 - ii. If no disciplinary proceedings are pending against him.

2. Where the application for corporate insolvency resolution process is made by an operational creditor:

i. 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;

ii. A proposal for an interim resolution professional is made under section 9 (4)

- the resolution professional as proposed, shall be appointed as the interim resolution professional,
- if no disciplinary proceedings are pending against him.

3. The Board shall, within **ten days** of the receipt of a reference from the Adjudicating Authority, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.
4. The term of the interim resolution professional shall continue till the date of appointment of the resolution professional u/s 22.

Management of affairs of corporate debtor by interim resolution professional (Sec: 17)

1. From the date of appointment of the interim resolution professional, following **powers** are **exercised by “interim Resolution Professional”**:
 - i. the management of the affairs of the corporate debtor;
 - ii. the powers of the board of directors or the partners of the corporate debtor, as shall stand suspended and be exercised by the interim resolution professional;
 - iii. Reporting by officers and managers of the corporate debtor to the interim resolution professional and provision of access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

iv. 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.

2. For management of the Corporate Debtor, “Resolution Professional” shall

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

- iv. have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.
- be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

Duties of interim resolution professional (Sec: 18)

The interim resolution professional shall perform the following duties –

- 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; and
- 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.

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.

Personnel to extend co-operation to interim resolution professional (Sec: 19)

(1) Assistance and cooperation to the interim resolution professional:

Following 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:

- The personnel of the corporate debtor,
- Its promoters or any other person associated with the management of the corporate debtor.

2. Authority with interim resolution professional in case of non-co-operation:

Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate 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. Direction by the Adjudicating Authority on receipt of application to 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.

Management of operations of corporate debtor as going concern (Sec: 20)

Authority with the interim resolution professional, while making every endeavor 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:

- to appoint accountants, legal or other professionals as may be necessary;
- 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 CIRP;

- 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.

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.

- to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and
- to take all such actions as are necessary to keep the corporate debtor as a going concern.

Committee of creditors (CoC) (Sec: 21)

1. Constitution of CoC:

- By IRP
- Mandatory to be constituted
- After collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor.

2. Composition of CoC:

- The COC shall comprise all financial creditors of the corporate debtor.
- 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 on the basis of the financial debts owed to them.

3. Who cannot be part of CoC:

- i. a financial creditor or the authorized representative of the financial creditor u/s 24(5)/(6)/(6A),
- ii. if it is a related party of the corporate debtor,
- iii. No right of representation, participation or voting in a meeting of the CoC:

This restriction is not applicable 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, prior to the insolvency commencement date.

4. 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 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.

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

6. Appointment of single trustee or agent by financial debtor acting in consortium: 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:

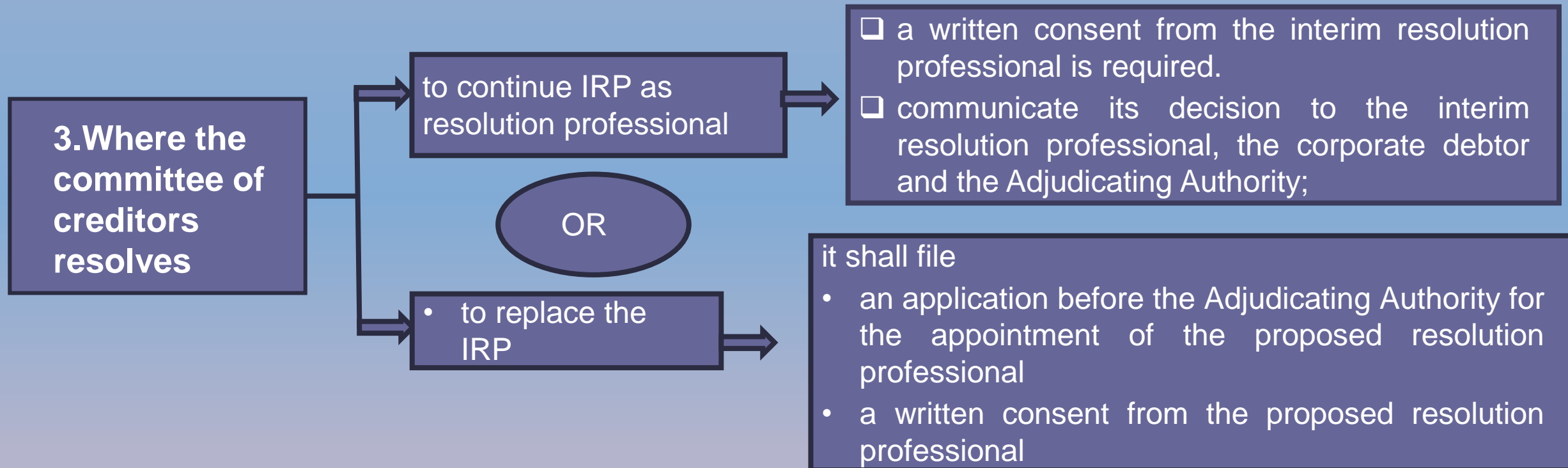
- authorize the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
- represent himself in the committee of creditors to the extent of his voting share;
- appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
- exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

(6A) Appointment of representative	Where a financial debt	Provisions
i. Appointment of trustee or agent	<ul style="list-style-type: none"> • is in the form of securities or deposits and • the terms of the financial debt provide for appointment of a trustee or agent to act as authorized representative for all the financial creditors 	<ul style="list-style-type: none"> • Such trustee or agent shall act on behalf of such financial creditors;
ii. Application by the interim resolution professional containing the name of an insolvency professional, other than the interim resolution professional, to act as authorized representatives of Creditors	is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered above who agreed for appointment of a single trustee or agent	<ul style="list-style-type: none"> • Application is made to the Adjudicating Authority • Enclosure: • List of all financial creditors • Such person shall be appointed prior to the first meeting of the committee of creditors;
Representation of financial Creditor by guardian, executor or administrator	is represented by a guardian, executor or administrator	

- Such person shall act as authorized representative on behalf of such financial creditors, and
- Such authorized representative shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.
- Voting in CoC: All decisions of the committee of creditors shall be taken by a vote of at least 51% of voting share of the financial creditors.
- Information to be procured by CoC: 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.
- The resolution professional shall make available any financial information so required by the CoC within a period of seven days of such requisition.

Appointment of Resolution Professional (Sec: 22)

1. The first meeting of the **CoC** shall be held **within seven days** of the constitution of the committee of creditors.
2. The CoC, may, in the first meeting, by a majority vote of not less than 66% 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 by another resolution professional.



4. Confirmation of appointment of resolution professional by IBBI:

The Adjudicating Authority shall forward the name of the resolution professional proposed to the Board (IBBI) for its confirmation and shall make such appointment after confirmation by the Board.

5. IRP to continue as resolution professional:

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 IRP to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Resolution professional to conduct corporate insolvency resolution process (Sec: 23)

1. obligation of the resolution professional:

- The resolution professional shall conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period.
- The resolution professional shall, if the resolution plan has been submitted u/s 30 continue to manage the operations of the corporate debtor after the expiry of the CIRP period until an order is passed by the Adjudicating Authority under section 31.

2. Powers and functions of the resolution professional:

- The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional.

Replacement of resolution professional by committee of creditors (Sec: 27)

Conditions for replacement of resolution professional:

- i. Approval of replacement of resolution professional with another resolution professional by the committee of creditors at a meeting, by a vote of 66% of voting shares.
- ii. A written consent from the proposed resolution professional in the specified form.
- iii. The CoC shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- iv. 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 stated before.
- v. Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under Section 22 shall continue till the appointment of another resolution professional under this section.

Meeting of committee of creditors (Sec: 24)

- i. Both electronic and physical meeting of the members of the committee of creditors is allowed.
- ii. All meetings of the committee of creditors shall be conducted by the resolution professional.
- iii. The resolution professional shall give notice of each meeting of the committee of creditors to-
 - a) members of committee of creditors, including the authorized representative's u/s 21
 - 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 $\geq 10\%$ of the debt.

Other invitees	Right to attend the meeting	Right to vote
The directors	✓	X
The partners	✓	X
One representative of operational creditors	✓	X

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

- iv. Appointment of insolvency professional: 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. But the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

- v. Voting by each creditor: Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

Duties of Resolution Professional (Sec: 25)

- preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
- take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- 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;
- raise interim finances subject to the approval of the committee of creditors under section 28;
- appoint accountants, legal or other professionals in the manner as specified by Board;
- maintain an updated list of claims;

- convene and attend all meetings of the committee of creditors;
- prepare the information memorandum in accordance with section 29;
- invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of 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.
- present all resolution plans at the meetings of the committee of creditors;
- file application for avoidance of transactions in accordance with Chapter III, if any; and
- such other actions as may be specified by the Board.

Rights and duties of authorized representative of financial creditors (Sec: 25A)

1. Voting rights of authorized representative:

- Right to participate and vote in meetings of the CoC 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. Duty of authorized representative:

- i. to circulate the agenda and minutes of the meeting of the CoC to the financial creditor he represents.
- ii. Not to act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

- iii. If the authorized representative represents several financial creditors, then he shall cast

his vote in respect of each financial creditor in accordance with instructions received from

- iii. If the authorized 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.
- iv. In the absence of any prior instruction from any financial creditor through physical or electronic means, the authorized representative shall abstain from voting on behalf of such creditor.
- v. File with CoC 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.

Preparation of information memorandum (Sec: 29)

- i. Information Memorandum is prepared by resolution professional to give an opportunity to any resolution applicant (any creditor) to submit resolution plan for revival and reconstruction of corporate debtor to avoid future insolvency and liquidation situations.
- ii. The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-
 - to comply with provisions of law for the time being in force relating to confidentiality and insider trading;
 - to protect any intellectual property of the corporate debtor it may have access to; and
 - not to share relevant information with third parties

Persons not eligible to be resolution applicant (Sec: 29A)

Who shall not be eligible to submit a resolution plan?

i	<ul style="list-style-type: none">• An undischarged insolvent;	
ii	<ul style="list-style-type: none">• A willful defaulter	
iii	<ul style="list-style-type: none">• At the time of submission of the resolution plan, he 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 or the guidelines of a financial sector regulator issued under any other law for the time being in force	<ul style="list-style-type: none">• At least a period of one year has lapsed from the date of such classification till the date of commencement of CIRP of the corporate debtor• Such 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 nonperforming asset accounts before submission of resolution plan.

iii	<p>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, prior to the insolvency commencement date</p>	<ul style="list-style-type: none">• 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.• This provision is not applicable if 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.
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iv	<ul style="list-style-type: none"> • has been convicted for any offence punishable with imprisonment <p>Not applicable to a “connected person”.</p>	<ul style="list-style-type: none"> i. for ≥ 2 years under any Act specified under the Twelfth Schedule; or ii. for ≥ 7 years or more under any law for the time being in force. <p>This disqualification shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment.</p>
v	<ul style="list-style-type: none"> • disqualified to act as a director under the Companies Act, 2013 	<p>Not applicable to a “connected person”.</p>
vi	<ul style="list-style-type: none"> • prohibited by SEBI from trading in securities or accessing the securities markets; 	

vii	<ul style="list-style-type: none"> 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 	<p>Not applicable where 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</p> <ol style="list-style-type: none"> 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;
viii	<p>has executed a guarantee in favor 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.</p>	

viii	is subject to any disability, corresponding to point (i) to (viii) under any law in a jurisdiction outside India
ix	is a connected person not eligible under clauses (i) to (viii)
1. The expression “Connected Person” means	<ul style="list-style-type: none"> i. any person who is the promoter or in the management or control of the resolution applicant; or ii. any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or iii. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii): iv. Provided that nothing in clause (iii) shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor.
2. The expression “Related Party” also not include	<ul style="list-style-type: none"> • 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, prior to the insolvency commencement date

“financial entity” shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely

- a scheduled bank;
- any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;
- an asset reconstruction company register with the Reserve Bank of India under section 3 of the SRFAESI Act, 2002;
- an Alternate Investment Fund registered with Securities and Exchange Board of India;
- such categories of persons as may be notified by the Central Government.

Submission of resolution plan (Sec: 30)

- i. Submission of resolution plan by resolution applicant to resolution professional:
 - Prepared on the basis of information memorandum
 - Submitted along with an affidavit stating that he is eligible under section 29A.
- ii. Examination of resolution plan by resolution professional to confirm that each resolution plan:
 - Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - 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.

- Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- The implementation and supervision of the resolution plan;
- Does not contravene any of the provisions of the law for the time being in force
- Confirms to such other requirements as may be specified by the Board.

Deemed approval of shareholders:

If any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

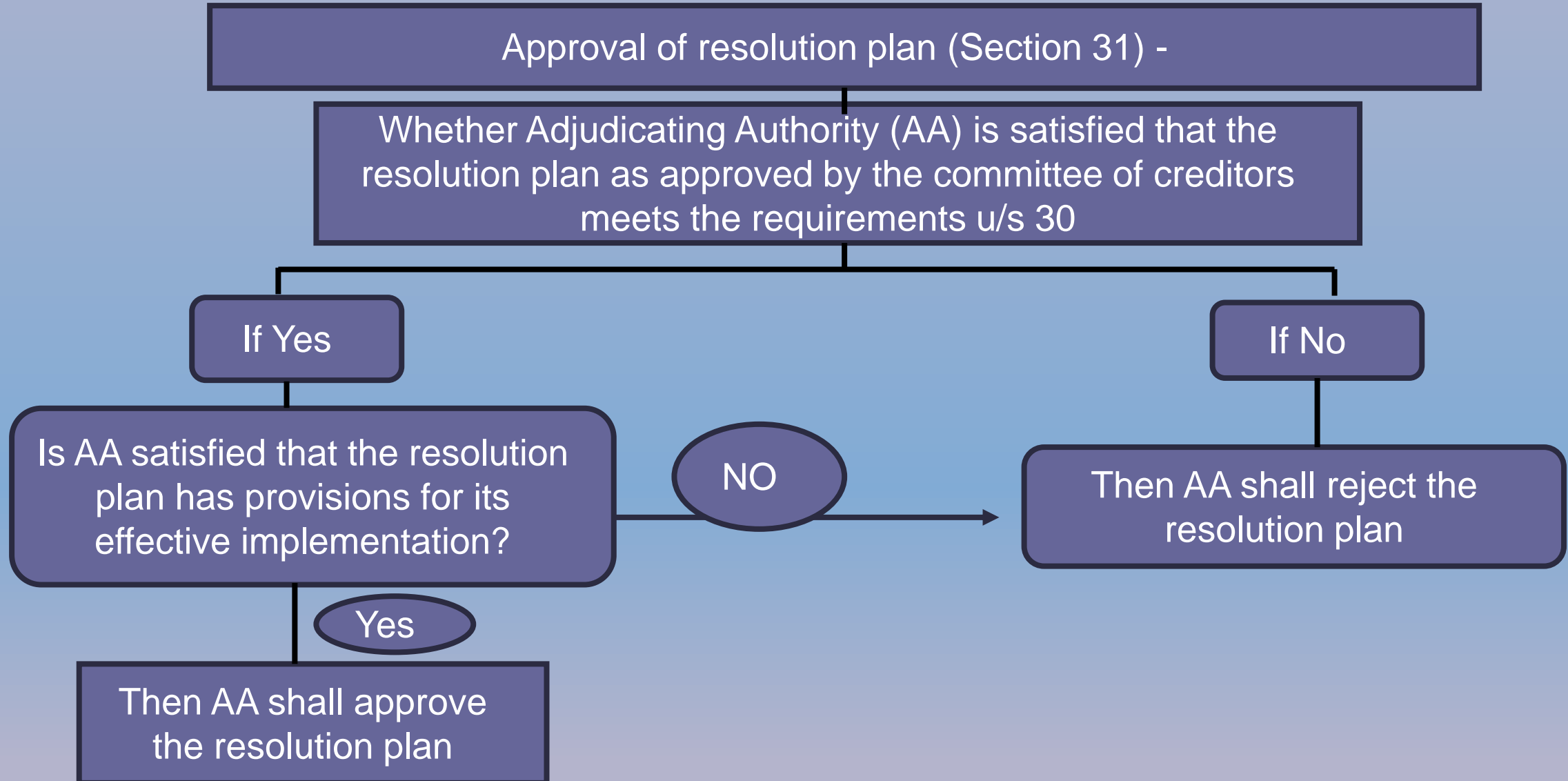
iii. Approval of resolution plan by the committee of creditors

- By vote of $\geq 66\%$ of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board.

- CoC shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it.
- The eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.
- The resolution applicant may attend the meeting of CoC in which the resolution plan of the applicant is considered. But 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.

iv. Submission of resolution plan approved by CoC

- By the resolution professional to the Adjudicating Authority.



Effect of approval of “resolution plan:

1. **Resolution Plan** shall be binding on
 - the corporate debtor; and
 - its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
2. The moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect.
3. 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.
4. The resolution applicant shall 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 or within such period as provided for in such law, whichever is later.
5. 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.

Chapter III

LIQUIDATION PROCESS

initiation of liquidation (Section 33)

This section lists out the situations in which liquidation order of corporate debtor is ordered:

- i. Next Slide**

(i) Where the Adjudicating Authority

does not receive resolution plan as approved by CoC u/s30 before the expiry of the insolvency resolution process period (180 days-if no extension is granted) or the maximum period permitted for completion of the CIRP u/s 12 (180 days +90 days) or the fast track CIRP u/s 56 (90days + 45 days), as the case may be.

OR

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.

Initiation of liquidation (Section 33)

This section lists out the situations in which liquidation order of corporate debtor is ordered:

(ii) Liquidation Order by the Adjudicating Authority (AA):

- Decision by CoC for liquidation of corporate debtor with 66% voting
- “Resolution Professional” shall intimate the decision of the CoC to AA at any time during the CIRP but before confirmation of resolution plan,
- the Adjudicating Authority shall pass a liquidation order.

(iii) Contravention of approved resolution plan 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 AA for a liquidation order.
- On receipt of such application, if AA determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

(iv) Consequence of Liquidation Order:

- 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.

Exception:

- With the prior approval of the Adjudicating Authority, a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor.
- Legal proceedings may be initiated in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(v) Deemed 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.

Appointment of liquidator and fee to be paid (Section 34):

- i. Who shall act as liquidator?
 - The resolution professional appointed for the CIRP act as the liquidator for the purposes of liquidation
 - subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form
 - unless replaced by the Adjudicating Authority
- ii. Transfer of all powers of the board of directors, key managerial personnel and the partners of the corporate debtor
 - Shall be vested in the liquidator
 - on the appointment of a liquidator under this section

(iii) Assistance and cooperation to the liquidator:

- 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.
- Provisions of section 19 shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(iv) The Adjudicating Authority shall by order replace the resolution professional, if—

- the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in section 30(2); or
- the Board recommends the replacement of a resolution professional to Adjudicating Authority for reasons to be recorded in writing;
- the resolution professional fails to submit written consent to act as liquidator.

(v) Appointment of liquidator proposed by Board:

- In cases other than recommendation of the Board for replacement of resolution professional, the Adjudicating Authority may direct the Board to propose name of another insolvency professional to be appointed as a liquidator.
- On receipt of such an application, the Board shall propose the name of another insolvency professional along with written consent from the insolvency professional in the specified form within ten days of the direction issued by the Adjudicating Authority.
- The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

(vi) Fees of the liquidator:

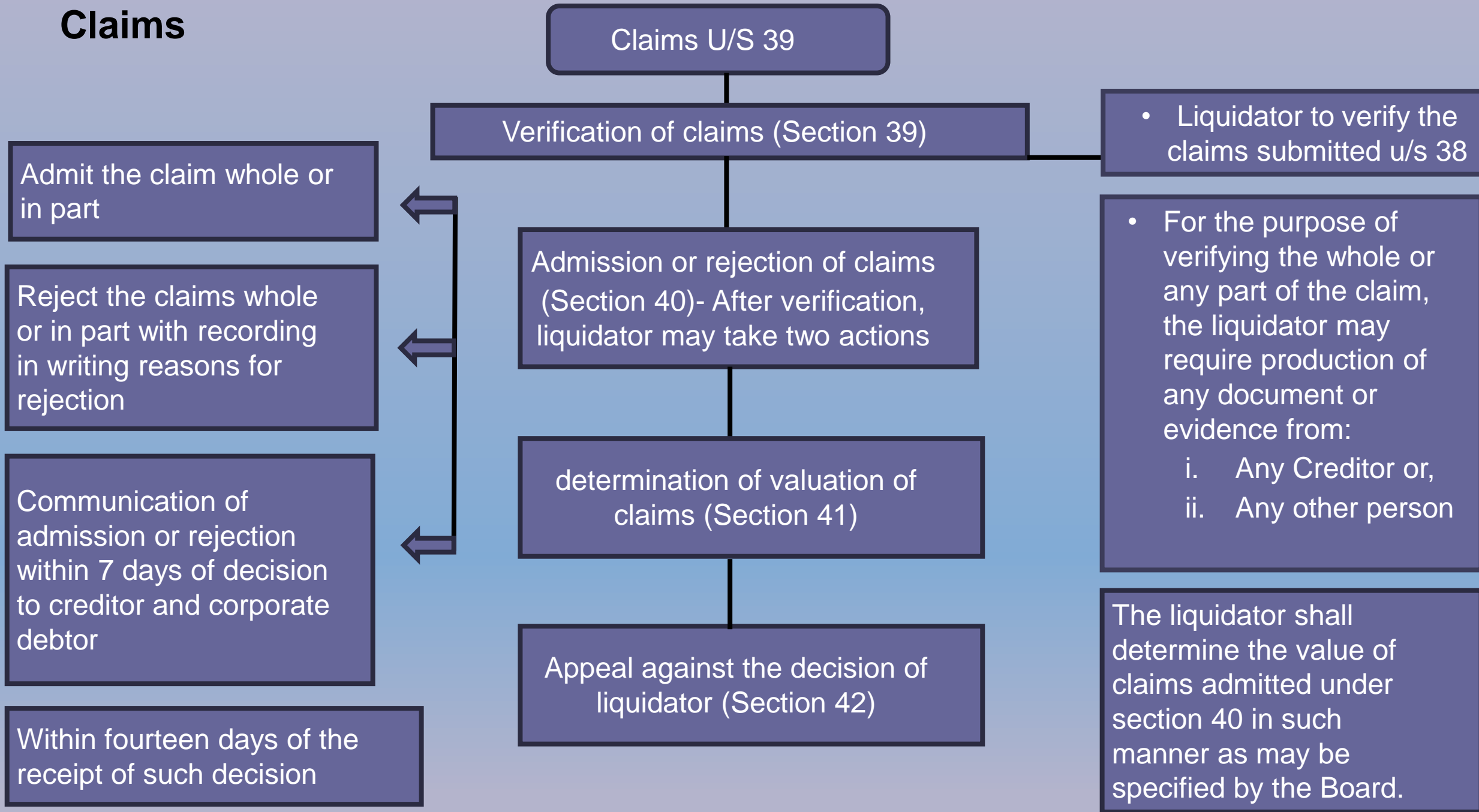
- Fees of the liquidator shall be, for the conduct of the liquidation proceedings, in such proportion to the value of the liquidation estate assets, as may be specified by the Board.
- The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate under section 53.

Consolidation of claims (Section 38):

(i) 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.

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

Claims



Preferential transactions and relevant time (Section 43):

(i) Preferential Transactions

- 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.

(ii) Deemed Preferential Transactions

- A corporate debtor shall be deemed to have given a preference, if;
 - ✓ there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

- ✓ Such transfer has the effect of putting such creditor or a surety or a 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.

(iii) Transactions not Included in Preferential Transactions

- Transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- Any transfer creating a security interest in property acquired by the corporate debtor to the extent that;
 - ✓ 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 corporate debtor to acquire such property; and
 - ✓ Such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property

✓ Any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

(iv) Application to the Adjudicating Authority by the Liquidator:

Where the liquidator/the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time, entered into preferential transactions, 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.

Avoidance of undervalued transaction (Section 45):

(i) Application by the liquidator or the resolution professional to the Adjudicating Authority:

- For declaring “undervalued transactions” as void and reverse the effect of such transaction in accordance with this Chapter.
- “Undervalued Transactions”: A transaction shall be considered undervalued where the corporate debtor—
 - ✓ makes a gift to a person; or
 - ✓ enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

(ii) Period of unavoidable transactions (Section 46):

Person with whom transaction is entered into	Period of transaction
<ul style="list-style-type: none">• With any person	<ul style="list-style-type: none">• Within the period of one year preceding the insolvency commencement date
<ul style="list-style-type: none">• With a related party	<ul style="list-style-type: none">• With a related party within the period of two years preceding the insolvency commencement date.

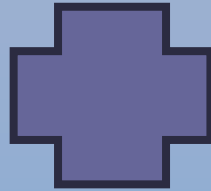
Application by creditor in cases of undervalued transactions (Section 47):

- i. Who can make an application in case of non-reporting of an undervalued transaction by the liquidator or the resolution professional?
- A creditor,
 - A member or
 - A partner of a corporate debtor, as the case may be.

Transactions defrauding creditors (Section 49):

(i) Which transactions are categorized as Transactions defrauding creditors:

Undervalued transactions entered into by corporate debtor



Adjudicating authority is satisfied that such transactions was deliberately entered into by such corporate debtor

(a) 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) in order to adversely affect the interests of such a person in relation to the claim

(ii) Mandatory order by the Adjudicating Authority;

- i. restoring the position as it existed before such transaction as if the transaction had not been entered into; and
- ii. protecting the interests of persons who are victims of such transactions.

The order is not applicable to the following:

- 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
- 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.

Extortionate credit transactions:

(i) Application for avoidance of such transaction to the Adjudicating Authority (Section 50)

- Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt
- during the period within two years preceding the insolvency commencement date,
- the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

The Board may specify the circumstances in which a transactions which shall be covered.

Any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Secured creditor in liquidation proceedings (Section 52):

(i) Rights of a Secured Creditor in the Liquidation Proceedings;

- Relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator; or
- Realize its security interest after informing the liquidator of such security interest and identify the asset subject to such security interest to be Realized. Before any security interest is Realized by the secured creditor, the liquidator shall verify such security interest and permit the secured creditor to Realize only such security interest, the existence of which may be proved either;
 - a. by the records of such security interest maintained by an information utility; or
 - b. by such other means as may be specified by the Board.

- Enforce, Realize, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being Realized and to the secured creditor and apply the proceeds to recover the debts due to it.
- If in the course of realizing a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to Realize such security interest in accordance with law for the time being in force. On receipt of application, the Adjudicating Authority, may pass such order as may be necessary to permit a secured creditor to Realize security interest in accordance with law for the time being in force.

(ii) Obligations of the Secured Creditors

Where the enforcement of the security interest yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-

- a) account to the liquidator for such surplus; and
- b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.
- c) The amount of insolvency resolution process costs, due from secured creditors who Realize their security interests in the manner provided in this section, shall be deducted from the proceeds of any realization by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

Distribution of assets (Section 53):

This is an overriding provisions which supersede any law enacted by the Parliament or any State Legislature for the time being in force.

Priority order and period for distribution of the proceeds from the sale of the liquidation assets :

- a) the insolvency resolution process costs and the liquidation costs paid in full;
- b) the following debts which shall rank equally between and among the following:
 - i. Workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - ii. Debts owed to a secured creditor in the event such secured creditor has relinquished security

- iii. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- iv. financial debts owed to unsecured creditors;
- v. the following dues shall rank equally between and among the following: -
 - Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
 - Any remaining debts and dues;
 - Preference shareholders, if any; and
 - Equity shareholders or partners, as the case may be.

- c) Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.
- d) At each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full.

Payment of the fees of the liquidator:

- Statutorily deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction.

c) Dissolution of corporate debtor (Section 54):

1. Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.
2. The Adjudicating Authority shall on application filed by the liquidator order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
3. A copy of an order shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered i.e. Ministry of Corporate Affairs (MCA).

Chapter IV

FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS

Fast track corporation insolvency resolution process (Section 55):

(i) Fast Track CIRP:

- A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process.

(ii) Corporate Debtor Eligible for Fast Track CIRP

- a. On the basis of Assets and income: corporate debtor with assets and income below a level as may be notified by the Central Government; or
- b. On the basis of creditors: A corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
- c. Such other category of corporate persons as may be notified by the Central Government.

Time period for completion of fast track corporate insolvency resolution process (Section 56):

90 days



One time extension of max 45 days

From the insolvency commencement date.

- Resolution passed at a meeting of Committee of Creditors with 75% voting.
- Application filed by Resolution Professional with Adjudicating Authority (AA)
- AA pass an extension order if satisfied that the subject matter of the case is such that fast track CIRP cannot be completed within ninety days

Manner of initiating fast track corporate insolvency resolution process (Section 57):

(i) Who can file application for fast track CIRP:

- A creditor or
- Corporate debtor

(ii) Enclosures with the application:

- the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
- such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track CIRP.

Applicability of Chapter ii to this Chapter: The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

Chapter V

Voluntary Liquidation of Corporate Persons

Voluntary liquidation of corporate persons (Section 59):

(i) Eligibility of a corporate person to liquidate itself voluntarily

No Default Committed

(ii) Conditions for voluntary liquidation proceedings of a corporate person registered as a company:

- (a) A declaration from majority of the directors of the company verified by an affidavit stating that ;
- they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - the company is not being liquidated to defraud any person;

(b) Enclosures with the declaration:

- Audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
- A report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) Within four weeks of a declaration by the Board of Directors, there shall be;

- a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
- a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator

If company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed within seven days of such resolution.

(iii) Notice of voluntary liquidation to RoC and Board by company

- Within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(iv) Deemed Commencement of voluntary liquidation proceedings:

- From the date of passing of the resolution by members of the meeting
- subject to approval of the creditors, if applicable.

(v) Applicability of the provisions of sections 35 to 53 of Chapter III and Chapter VII

To voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(vi) Application to the Adjudicating Authority for the dissolution of such corporate person by liquidator:

- Where the affairs of the corporate person have been completely wound up, and
- Its assets completely liquidated;

(vii) Order of dissolution of the corporate debtor by the Adjudicating Authority (AA):

- On receipt of such application, AA shall pass an order that the corporate debtor shall be dissolved from the date of that order and
- the corporate debtor shall be dissolved accordingly.

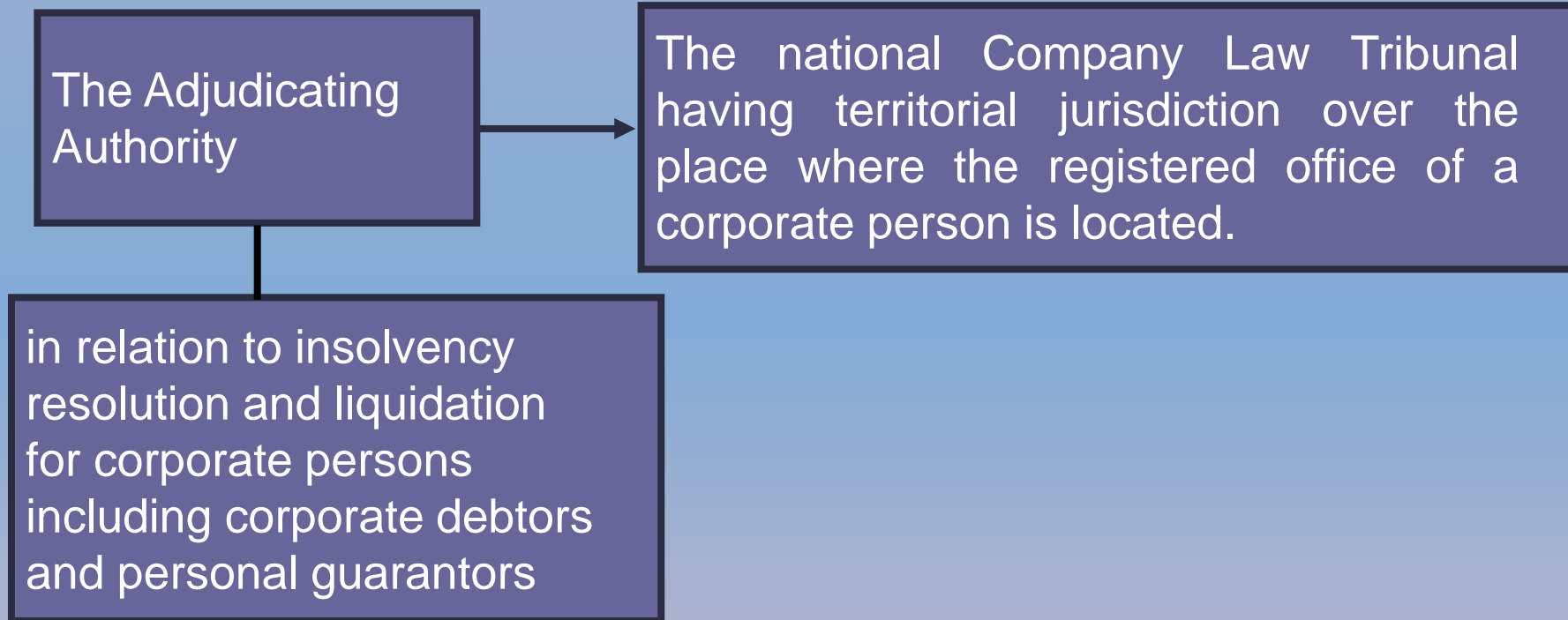
(viii) Forward a copy of dissolution order

- within fourteen days from the date of such order,
- to the authority with which the corporate person is registered (MCA).

Chapter VI

Adjudicating Authority for corporate persons (Section 60)

(i)



(ii) Transfer of following to NCLT where a CIRP or liquidation proceeding of a corporate debtor is pending before it:

- An application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor.

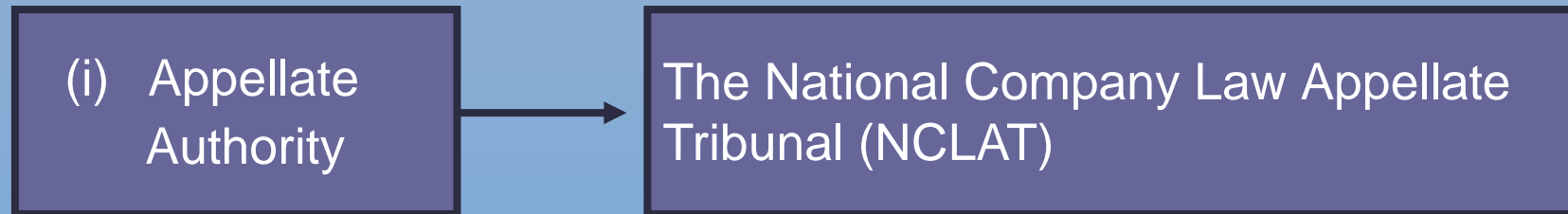
(iii) An insolvency resolution process/liquidation/ bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(iv) Jurisdiction of NCLT:

- to entertain or dispose of:
 - (a) any application or proceeding by or against the corporate debtor or corporate person;

- (a) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (b) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Appeals and Appellate Authority (Section 61):



(ii) Time limit of filing appeal:

- Within thirty days before the National Company Law Appellate Tribunal.
- Max. 15 days extension can be granted by NCLAT on just and sufficient ground.

(iii) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely;

- the approved resolution plan is in contravention of the provisions of any law for the time being in force;
- there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
- the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
- the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
- the resolution plan does not comply with any other criteria specified by the Board.

(iv) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

Appeal to Supreme Court (Section 62):



1. Appeal from the order of NCLAT may be filed to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
2. Further extension by maximum 15 days may be granted by the Supreme Court, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days.

Civil court not to have jurisdiction (Section 63):

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.

Consequence of non-disposal /order on applications within specified time (Section 64):

- i. NCLT or the NCLAT, as the case may be, shall record the reasons for not doing so within the period so specified; and
- ii. The President of the NCLT or the Chairperson of the NCLAT, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.
- iii. No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the NCLT or the NCLAT under this Code.



THANK

YOU