

## Chapter 2: Insolvency and Bankruptcy Code, 2016

### General Meaning of few terms:

<b>Insolvent</b>	(Liabilities > Assets) + Unable to pay debts
<b>Bankrupt</b>	[(Liabilities > Assets) + Unable to pay debts] + Non-Corporate Debtor + Untreated
<b>Liquidation</b>	[(Liabilities > Assets) + Unable to pay debts] + Corporate Debtor + Untreated + Insolvency Resolution Process (Unsuccessful)
<b>Winding Up</b>	Means closing down any business venture. But as a process it includes everything from appointment of Liquidator, Liquidation, Dissolution, etc.
<b>Dissolution</b>	Is similar to dying of Companies in which the legal identity of Co. comes to an end and it ceases to be a legal person and hence cannot contract in its own name.

### Relation between Insolvency, Bankruptcy & Liquidation

Headings	Insolvency	Bankruptcy	Liquidation
<b>Meaning</b>	(Liabilities > Assets) + Unable to pay debts	[(Liabilities > Assets) + Unable to pay debts] + Non-Corporate Debtor + Untreated	[(Liabilities > Assets) + Unable to pay debts] + Corporate Debtor + Untreated + Insolvency Resolution Process (Unsuccessful)
<b>Occurrence</b>	First stage of occurrence	Second stage of occurrence	Second stage of occurrence
<b>Declaration by</b>	By self or by creditor	By Court	Regulatory body, BOD, Shareholders, Creditors
<b>Selling of assets &amp; liabilities</b>	No selling of assets or liability.	Assets may or may not be sold based on the situation	Selling of assets & payments of liabilities is a part of Liquidation Process
<b>Person Involved</b>	Any Person	Non-Corporate	Corporate

### Why is IBC required?

- To enable the Corporate or other business entities to enjoy availability of credit & at the same time ensuring that the creditors do not have to bear the loss on account of default.
- Purpose of Act:
  - Consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, Partnership Firms & Individuals.
  - Fix time period for execution of law in a time bound manner
  - Maximize the value of assets of interested persons.
  - Promote Entrepreneurship
  - Increase availability of credit
  - Balance interests of all stakeholders including alteration in order of priority of payment of Government dues.
  - Establish an IBC Board of India as a regulatory body for insolvency and bankruptcy law.
- Curb multiple Laws dilemma: Since there are many laws in India dealing with insolvency & bankruptcy.
- There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India.
- Existing Laws also were not aligned with the market realities and was inadequate.

6. Resolution and jurisdiction vesting with multiple agencies with overlapping powers was leading to delayed complexities in the process.
7. Facilitate easy and time bound closure of business in India and to overcome these challenges, a strong bankruptcy law was required.

### Distinguishing features of New IBC

Heading	Features
<b>Comprehensive Law</b>	Covers and regulates the process of insolvency and bankruptcy of all types of persons.
<b>Departing from Multiplicity of Laws</b>	Withered away from multiple laws, covering the recovery of debts and insolvency & liquidation process. Presents one platform for all the reliefs relating to the same.
<b>Low Time Resolution</b>	The process is mandated to be completed within 180 days, extendable by maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days.
<b>One Window Clearance</b>	Applicant gets the appropriate relief by the same authority unlike the earlier position of law.
<b>Clarity in Process</b>	Clear & unambiguous process to be followed by all stakeholders. Shift of control from shareholders & promoters to creditors.
<b>One Chain of Authority</b>	Does not allow the Civil Courts to interfere with the application pending before the AA, hence reducing the multiplicity of litigations. The NCLT will adjudicate insolvency resolution for companies while the DRT for individuals.
<b>Protection of Workmen &amp; Employees'</b>	Excludes dues payable to workmen under PF, pension fund & gratuity fund from the debtor's assets during liquidation.
<b>New Regulatory Authority</b>	IBBI to regulate professionals, agencies and information utilities engaged in resolution of insolvencies. The Board has already been established and has started functioning.
<b>Establishment of Information Utilities (IUs)</b>	To function as a databank to collect, collate and circulate financial information and to facilitate insolvency resolution. In the long run, IUs will have data on debts and credits of all the business houses and it will be able to create an automatic trigger in case of default by any debtor and the authority may initiate the insolvency process as required. Such a system will reduce the risk of credit in the economy.

### Applicability of IBC, 2016

Company as per Companies Act, 2013

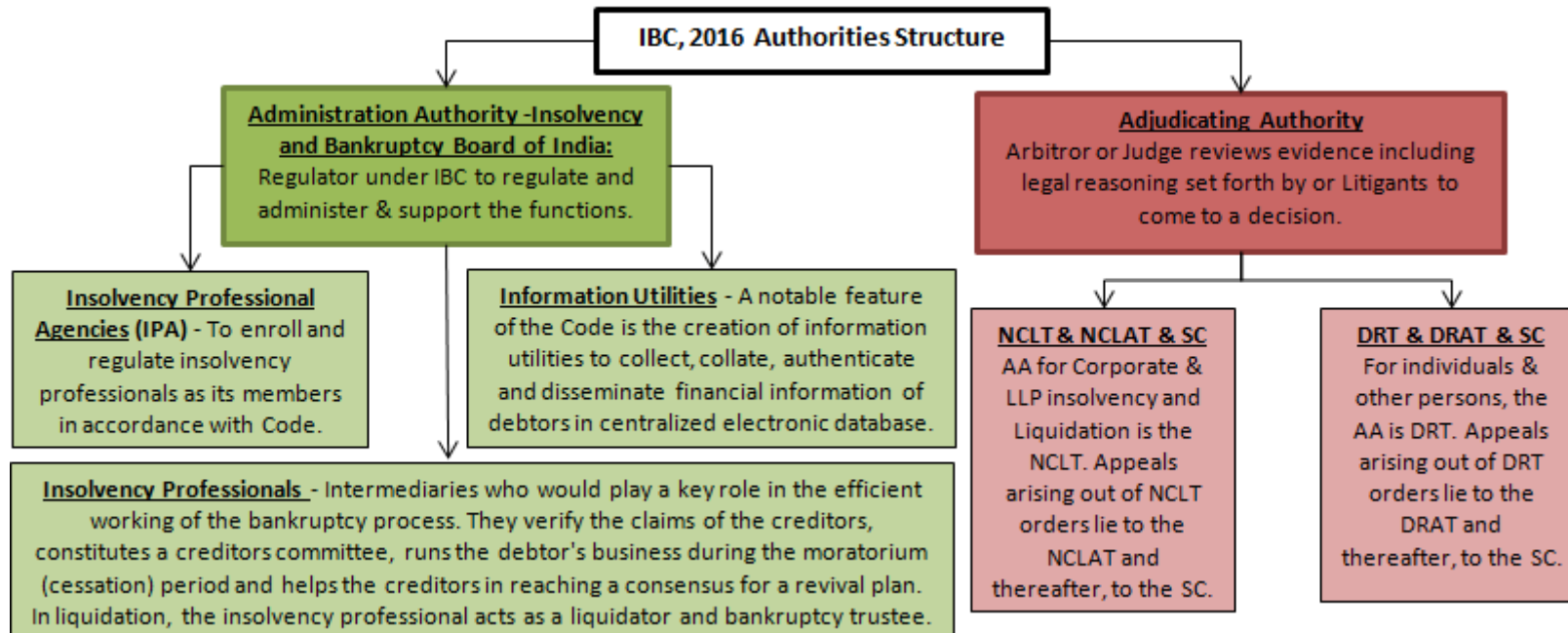
Company governed by Special Law

Any LLP

Any other Body Corporate

Partnership &amp; Individuals

### Authorities & Regulatory Mechanism of IBC



### Meanings of important terms

**Corporate Person:**

- i. Company as defined in 2(20) of Companies Act, 2013
- ii. LLP as defined in 2(1)(n) of the LLP Act, 2008
- iii. Person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

**Creditor:** any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder

**Corporate Debtor:** corporate person (Company, LLP, Person with Limited Liability) who owes a debt to any person

**Debt:** a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt

**Claim means:** a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment, fixed, disputed, undisputed, legal, equitable, secured or unsecured.

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

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**Financial information:** In relation to a person, means one or more of the categories of information, viz. records of:

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

**Person includes:**

- a. Individual
- b. Hindu Undivided Family;
- c. Company
- d. Trust;
- e. Partnership;
- f. LLP
- g. Any other entity established under a statute, and includes a person resident outside India;

**Secured creditor:** a creditor in favour of whom security interest is created.

**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

**Corporate Applicant:**

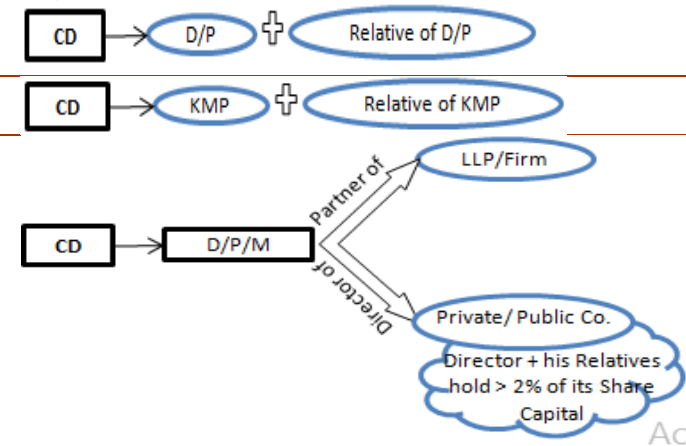
**Financial creditor:** any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

- a. CD; or
- b. member or partner of the CD who is authorised to make an application for the corporate insolvency resolution process; or
- c. individual in-charge of managing the operations & resources of the CD;
- d. a person having control & supervision over the financial affairs of the CD;

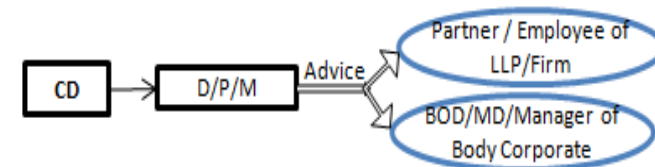
**Operational creditor:** a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

**(V. Imp) Related Party (Identified in )**

- a. a director or partner of the corporate debtor (CD) or a relative of a director or partner of the CD.
- b. a KMP of the CD or a relative of a KMP of the CD.
- c. LLP or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner
- d. a private company in which a director, partner or manager of the CD is a director and holds along with his relatives, more than 2% of its share capital
- e. a public company in which a director, partner or manager of the CD is a director and holds along with relatives, more than 2% of its paid-up share capital



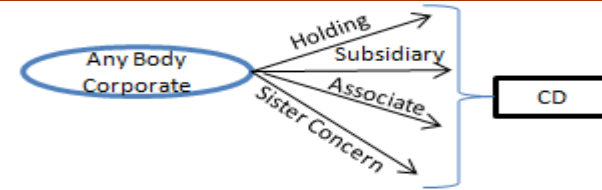
- f. any Body Corporate whose BOD, MD or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the CD.
- g. any LLP or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the CD.



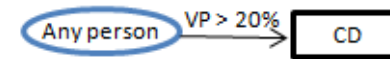
- h. any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act



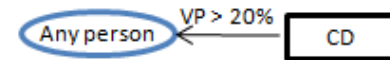
i. a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;



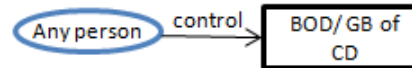
j. any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;



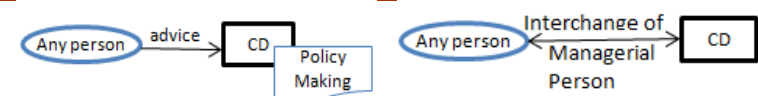
k. any person in whom the corporate debtor controls more than 20% of voting rights on account of ownership or a voting agreement;



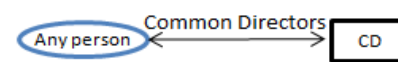
l. any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;



m. any person who is associated with the CD 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;



**What is Corporate Insolvency Resolution Process?**

Financial Creditor assesses if Debtor’s business is viable to continue or if other options for revival & rescue of debtors are available. Based on this assessment the IRP initiates. If IRP fails or Debtor’s business cannot be made profitable & needs to be wound up then debtor will go for Liquidation & assets of debtors are realized and distributed by Liquidator.

Application for IRP		
By Financial Creditors (FC)	By Operational Creditors (OC)	By Corporate Debtors
<p><b>1. Filing of application before AA</b></p> <p>a. FC may singly or together with file an application when a default has occurred.</p> <p>b. A default includes a default in respect of a financial debt owed to applicant or other FC.</p>	<p><b>1. Serving of demand Notice:</b> On the occurrence of default, an operational creditor shall first send a <u>demand notice</u> and a <u>copy of invoice</u> to the corporate debtor.</p>	<p><b>1. Commission of default:</b> Corporate applicant may file an application for initiating corporate IRP with the AA.</p>
<p><b>2. Furnishing of information by applicant</b></p> <p>a. record of the default recorded with the IU or such other record or evidence of default;</p>	<p><b>2. Action by CD on receipt of demand notice:</b> within a period of 10 days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about:</p>	<p><b>2. Furnishing of information:</b> The corporate applicant shall furnish the information w.r.t.:</p>

<p>b. the name of the resolution professional proposed to act as an IR professional; and</p> <p>c. any other information specified by the Board.</p>	<p>a. existence of dispute; or</p> <p>b. repayment of unpaid operational debt</p>	<p>a. books of account &amp; other documents relating to such period as may be specified;</p> <p>b. the resolution professional proposed to be appointed as an interim resolution professional.</p>
<p><b>3. <u>Period for determination of default</u></b> AA shall within 14 days of the receipt of the application, determine if a default exists.</p> <p><b>4. <u>Order by AA:</u></b></p> <p>a. <b>Default has occurred</b> - Admit such application by order</p> <p>b. <b>Default has not occurred</b> - Reject such application after giving an opportunity to the applicant to rectify the defect within 7 days of receipt of such notice from the AA.</p>	<p><b>3. <u>Filing of application by operational creditor:</u></b> Before AA for initiating Corporate Resolution Process in case of non-execution of any of above.</p> <p><b>4. <u>Providing of documents or information by OC</u></b></p> <p>a. a copy of the invoice or demand notice;</p> <p>b. an affidavit that there is no notice given by the CD relating to a dispute of the unpaid debt;</p> <p>c. a copy of certificate from the FIs maintaining accounts of OC confirming that there is no payment of an unpaid debt by the CD;</p> <p>d. such other information as may be specified.</p>	<p><b>3. <u>Admission/rejection of application:</u></b> The AA within a period of 14 days of the receipt of application, by an order:</p> <p>a. admit the application, if it is complete; or</p> <p>b. reject the application, if it is incomplete.</p> <p>Provided that AA shall before rejecting an application give a notice to the applicant to rectify the defects in his application within 7 days from the date of receipt of such notice from the Adjudicating Authority.</p>
<p>5. <b><u>Commencement of corporate IRP</u></b> from the date of admission of the application.</p> <p>6. <b><u>Communication of Order:</u></b> The AA shall communicate to the financial creditor within 7 days of admission or rejection and to the CD.</p>	<p>7. <b><u>OC to propose for a Professional during the resolution process:</u></b> to act as an interim resolution professional.</p> <p>8. <b><u>Order of an AA:</u></b> within 14 days of the receipt of application, by an order either admits or rejects the same &amp; communicates to OC &amp; CD.</p> <p><b>7A. <u>Admit the application if:</u></b></p> <p>a. The application made is complete</p> <p>b. No repayment of unpaid operational debt</p> <p>c. Invoice or notice for payment to the CD has been delivered by OC.</p> <p>d. No notice of dispute has been received by OC or there is no record of dispute in the IU; &amp;</p> <p>e. There is no disciplinary proceeding pending against any resolution professional proposed.</p> <p><b>7B. <u>Reject the application if:</u></b></p> <p>a. The application made is incomplete. Before rejecting this application gives a notice to the applicant to rectify the defect within 7 days of the date of receipt of such notice.</p> <p>b. Unpaid operational debt has been repaid</p> <p>c. Invoice or notice for payment to the CD has not been</p>	<p><b>4. <u>Commencement of IRP:</u></b> from the date of admission of the application.</p>

- |  |                                                                                                  |  |
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|  | delivered by OC.<br>d. CD gave notice of dispute to OC.<br>e. Proceeding is pending against IRP. |  |
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### Sec 11: Persons not entitled to make application to initiate corporate insolvency resolution process

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- a. a corporate debtor **undergoing** a corporate insolvency resolution process; or
- b. a corporate debtor having **completed corporate insolvency resolution process 12 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 12 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**.

### Sec 12: Time-limit for completion of insolvency resolution process

**Period for completion of insolvency process:** within a period of **180 days** from the date of admission of the application to initiate such process.

**Filing of application for extension of period:** The resolution professional shall file an **application to the AA** to extend the period of the corporate IRP beyond 180 days, if **instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares**.

**Period of extension:** If **AA is satisfied** that the subject matter of the case is such that corporate IRP cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, **but not exceeding 90 days**. Such extension shall **not be granted more than once**.

### Sec 13: Declaration of moratorium and public announcement

The AA, **after admission of the application**, shall, by an order:

- a. **Declare a moratorium** (Sec 14);
- b. **Appoint an interim resolution professional** (Sec 15)
- c. Immediately after appointment, **cause a public announcement of the initiation of corporate IRP and call for the submission of claims** (Sec 16)

### Sec 14: Moratorium

After the commencement of corporate insolvency resolution, **a calm period for 180 days is declared**, during which **all suits and legal proceedings etc. against the CD are kept in abeyance** to give time to the entity to resolve its status. It is called the Moratorium Period.

- a) **Declaration of moratorium period:** On the insolvency commencement date, the AA shall by order, declare moratorium **prohibiting all of the following**:
  - i. **Institution of suits or continuation of pending suits** or proceedings against the CD;
  - ii. **Transferring, encumbering, alienating or disposing any of its assets**;
  - iii. **Any action to foreclose, recover or enforce any security interest** created by the CD in respect of its property including any action under the SARFAESI Act, 2002;
  - iv. **Recovery of any property** by an owner where such property from the corporate debtor.
- b) 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.

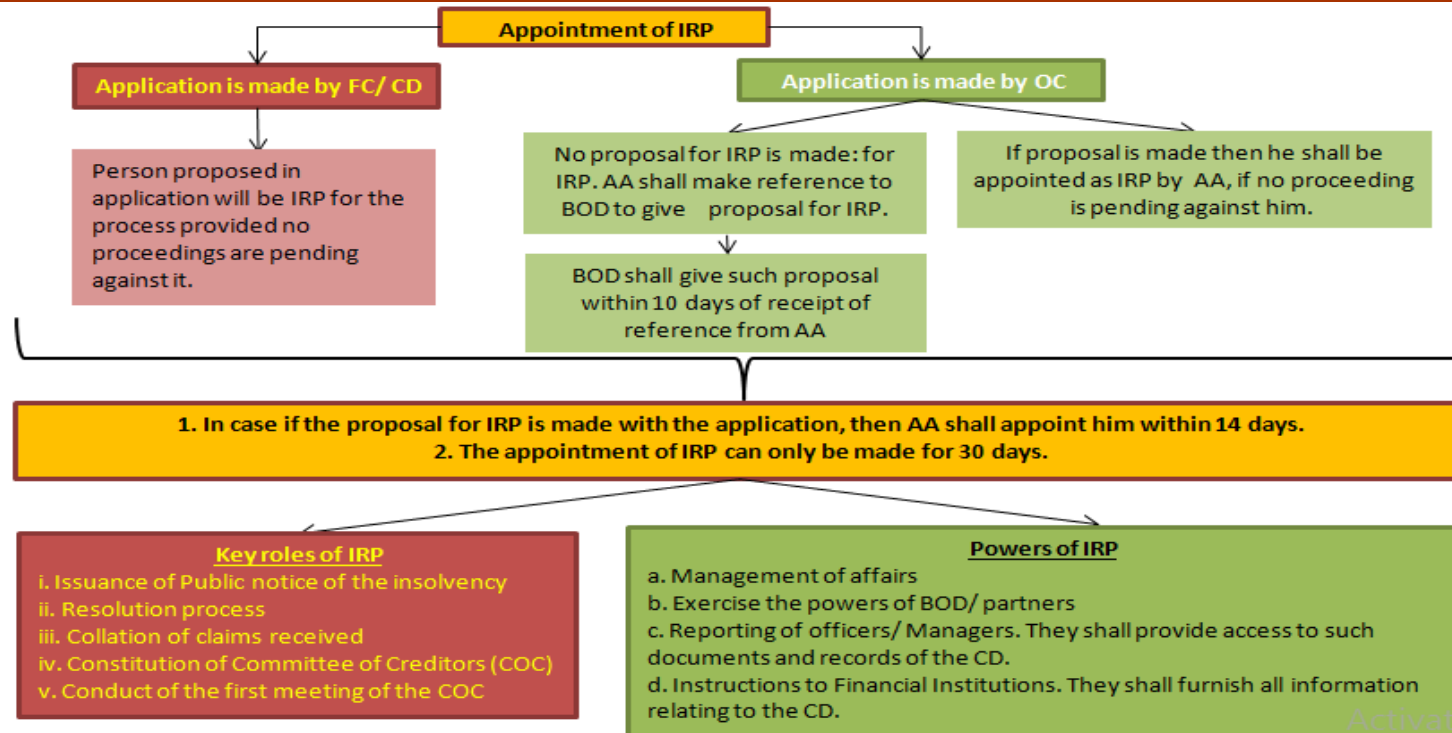
- c) **Prohibited Acts:** Prohibition shall not apply to such transactions as may be notified by the CG in consultation with any financial sector regulator.
- d) **Effect of the order of moratorium:** from the date of such order till the completion of the corporate insolvency resolution process.
- e) **When Moratorium period shall cease to have effect:** When during the corporate insolvency resolution process if the AA approves the resolution plan or passes an order for liquidation of corporate debtor, the moratorium shall cease to have effect from that date.

### Sec 15: Public Announcement of Corporate IRP

Interim Resolution Professional shall make the Public Announcement immediately (maximum within 3 days from the date of appt). The Public announcement shall include the following:

- Name & Address of CD under the Corporate IRP.
- Name of the authority with which the CD is incorporated or registered.
- Details of interim resolution Professional who shall be vested with the management of the CD and be responsible for receiving claims.
- Penalties for false or misleading Claims.
- The last date for the submission of the claim.
- The date on which the Corporate IRP ends. The expenses of public announcement shall be borne by the applicant that may be reimbursed by the Committee of Creditors, to the extent, it ratifies them.

### Sec 16: Appointment, tenure and Powers of interim resolution professional





**Sec 21: Committee of creditors**

After collection of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, the interim resolution professional shall constitute a committee of creditors. **Constitution of COC:**

- i. **ONLY Financial Creditors**
  - ii. Financial Creditors who are also **Related Parties** are not allowed
  - iii. Joint/ Consortium Creditor can represent **individually**
  - iv. If a person is FC & OC he shall **only represent his FC debt**
  - v. Where an OC has **transferred or assigned any operational debt to a FC**, the transferee or assignee shall be **considered as an OC to such extent**.
- The COC shall have right to require the resolution professional to furnish any financial information relating to CD. The **first meeting of the COC shall be held within 7 days of the constitution of the COC.**

**Sec 24: Meetings of COC**

1. First meeting will be held **within 7 days of constitution of COC** and be **conducted by the Resolution Professionals.**
2. **Notice** of meeting can be given to:
  - a. **Members of COC**
  - b. **Members of the suspended BOD**
  - c. **OC if their aggregate dues are not less than 10% of debt**
3. **Directors, Partners and one representative of OC** may attend the meetings but shall **not have any right to vote.**
4. The **creditors may appoint an Insolvency Professional apart from the Resolution Professional** to represent in a meeting and the **fees payable** to such Professional shall be **borne by such creditor.**
5. Each creditor shall vote in accordance with the voting share assigned. The RP shall determine the voting share in the manner specified by the Board.

**Sec 22: Appointment and functions of resolution professional**

The COC in the first meeting by a **majority vote of not less than 75% of the voting share of the Financial Creditors** may either **resolve** to appoint the interim resolution professional as a resolution professional **or to replace** the interim resolution professional by another resolution professional.

**Sec 23: Functions of Resolution professional**

1. RP shall conduct the **entire corporate insolvency resolution process.**
2. RP shall conduct the **powers & duties of IRP.**
3. IRP shall **provide all information, documents & records to RP.**
4. RP shall **take over the management of the debtor.**

**Sec 27: Replacement of resolution professional by committee of creditors**

Process of replacement of resolution professional is as follows:

- i. COC is of the opinion that RP as appointed is required to be replaced and be replaced by another RP.
- ii. The COC may by majority vote of 75 % of voting shares, propose to replace the RP appointed with another RP.
- iii. The COC shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- iv. The AA shall forward the name of the proposed resolution professional to the Board for its confirmation and a RP shall be appointed in the specified manner.
- v. Where any disciplinary proceedings are pending against the proposed RP, the RP appointed shall continue till the appointment of another resolution

professional under this section.

### Sec 28: Approval of COC for certain actions of RP during the corporate insolvency resolution process

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1. The RP shall not take any of the following actions without the prior approval of majority of COC i.e. 75% of voting shares:

- |                                                                                                                                                             |                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) raise any interim finance more than the amount as may be decided by the COC in their meeting;                                                           | (c) record any change in the ownership interest of the CD;                                                                                                   |
| (b) create any security interest over the assets of the CD;                                                                                                 | (d) change the capital structure of the CD (issuance of new securities, buying back or redemption of issued securities).                                     |
| (e) Instruct financial institutions maintaining accounts of CD for a debit transaction from its accounts more than the amount as may be decided by the COC; | (f) undertake any related party transaction;                                                                                                                 |
| (g) amend any constitutional documents of the CD;                                                                                                           | (h) delegate its authority to any other person;                                                                                                              |
| (i) make any change in the management of the CD or its subsidiary;                                                                                          | (j) dispose of or permit the disposal of shares of any shareholder of the CD or their nominees to third parties;                                             |
| (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 COC; or of statutory auditors or internal auditors of the CD. |

2. Actions conducted without the approval of COC shall be void and reported by the COC to the Board.

### Sec 29: Preparation of information memorandum:

The RP shall prepare an information memorandum containing such relevant information as may be specified by the Board. "Relevant information" means the information required by resolution applicant to make the resolution plan for CD. It shall include the financial position of the CD, all information related to disputes by or against the CD and any other matter. The RP shall provide access to all relevant information in physical and electronic form to the resolution applicant.

### Sec 30 to 31: Resolution plan

- Resolution professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.
- A resolution applicant may submit a resolution plan to the RP.
- The RP shall examine each resolution plan received by him to confirm that each resolution plan:
  - Provides for the payment of IRP costs in a manner specified by the Board in priority to the repayment of other debts of the CD;
  - Provides for the repayment of the debts of OC in such manner as may be specified by the Board which shall not be less than the amount to be paid in the event of a liquidation of the corporate debtor;
  - Provides for the management of the affairs of the CD after approval of the resolution plan;
  - Implementation and supervision of the resolution plan;
  - Does not contravene any of the provisions of the law for time being in force;
  - Conforms to such other requirements as may be specified by the Board.
- The committee of creditors may approve a resolution plan by a vote of not less than 75 % of voting share of the financial creditors after confirming that the conditions mentioned above are satisfied.
- The resolution applicant may attend the meeting of the COC in which the resolution plan of the applicant is considered. The resolution applicant shall not have a right to vote at the meeting of the COC. However, he may vote if he is also a financial creditor.
- The RP shall submit the approved resolution plan as approved to the Adjudicating Authority.
- If the AA is satisfied that the approved resolution plan meets the requirements it shall pass an order which shall be binding on the CD and its employees,

members, creditors, guarantors and other stakeholders involved in the resolution plan. If the AA is dissatisfied, they shall reject the resolution plan.

8. On passing order of approval of resolution plan: (a) the moratorium order passed by the AA shall cease to have effect; and (b) the RP shall forward all records relating to the conduct of the corporate IRP and the resolution plan to the Board to be recorded on its database.

### Sec 33: Initiation of liquidation

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A CD may be put into liquidation in the following scenarios:

- i. 75% majority of the creditor's committee resolves to liquidate the CD;
- ii. The creditor's committee does not approve a resolution plan within 180 days (or within the extended 90 days);
- iii. The NCLT rejects the resolution plan submitted to it on technical grounds; or
- iv. The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor. Once the NCLT passes an order of liquidation, no suit or other legal proceeding shall be instituted. This restriction however shall not apply to transactions notified by CG.

### Sec 34: Appointment of liquidator

1. By Default: Resolution professional to act as liquidator unless replaced by the AA.
2. Liquidator shall have same powers as that of the Board of Director (BOD)/ Key Managerial Personnel (KMP).
3. Personnel to extend cooperation to liquidator as may be required by him in managing the affairs of the CD in relation to voluntary liquidation process.
4. The AA shall by order replace the resolution professional, if—
  - a. The resolution plan submitted by the resolution professional was rejected for failure to meet the requirements; or
  - b. Board recommends the replacement for reasons to be recorded in writing. The AA may direct the Board to propose the name of another Insolvency Professional to be appointed as a liquidator. The Board shall propose the name of another IP within 10 days of the direction issued by AA.
5. The AA shall on receipt of Board's proposal, appoint such Insolvency Professional as Liquidator.
6. The Liquidator shall charge his fees in proportion to the value of liquidation estate assets as specified by the Board & shall be paid from such estate.

### Sec 35: Powers and Duties of Liquidator

- a. **to verify claims of all the creditors;**
- b. **to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;**
- c. **to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;**
- d. **to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;**
- e. **to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;**
- f. **to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract;**
- g. **to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor;**
- h. **to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate;**
- i. **to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;**

- j. to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- k. to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;
- l. to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;
- m. to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- n. to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- o. to perform such other functions as may be specified by the Board. The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds : Provided that any such consultation shall not be binding on the liquidator.

### Sec 36: Liquidation estate

Inclusion of Assets in Liquidation	Exclusion of Assets in Liquidation
1. Any asset over which CD has ownership.	1. Assets owned by 3 <sup>rd</sup> Party which are in possession of CD.
2. Encumbered Assets	2. Personal Assets of members or partners of the CD.
3. Tangible & Intangible Assets	3. Assets of any Indian or Foreign Subsidiary.
4. Assets issued as collateral over which creditor has relinquished his rights	4. Assets in security collateral held by Financial Service provider.
5. All proceeds of liquidation as and when they are realized.	5. Other assets as may be specified by IBBI.

### Sec 37: Liquidator's powers to access information

Liquidator has power to access Information Systems for admission of proof & Creditor may demand information from Liquidator.

### Sec 38: Consolidation of claims

1. Collect the claims within 30 days from the date of commencement of Liquidation Process.
2. FC / OC shall submit claims to the Liquidator by providing a record with an IU.
3. FC/ OC can withdraw or alter any claim within 14 days of its submission.

### Sec 39-42: Misc. Claims Provisions

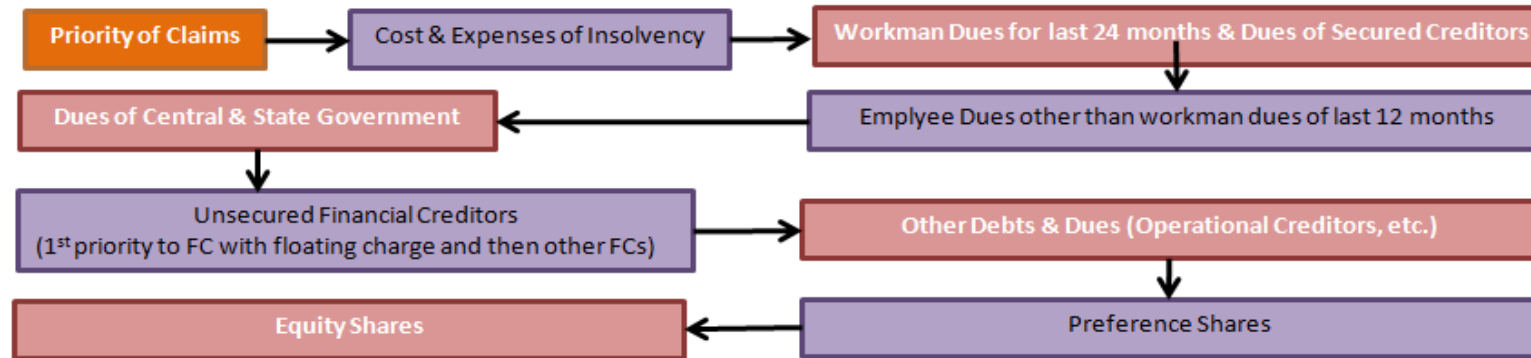
1. Verify the claims & demand information for such verification.
2. Accept or Reject the claim within 7 days and record reasons in writing in case of rejection.
3. Creditor can appeal to AA in 14 days against the decision of Liquidator rejecting claims.

### Sec 52: Secured Creditor in Liquidation proceedings

1. Relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator
2. Realize its security interest in the manner specified in this section.
3. To inform the liquidator about realization of security interest.
4. Before any security interest is realized by the secured creditor, the liquidator shall verify such security interest and permit accordingly.

5. If secured creditor faces resistance from the CD, the secured creditor may make an application to the AA
6. AA may pass an order to permit a secured creditor to realize security interest
7. In case of surplus, the secured creditor shall account to the liquidator for such surplus and hand over to the liquidator any surplus funds received.
8. Where the proceeds of the realization of the secured assets are not adequate, the unpaid debts of such secured creditor shall be paid by the liquidator.

### Sec 53: Distribution of Assets



### Sec 54: Dissolution of Corporate Debtor

1. After liquidation of CD, the Liquidator shall apply to the AA for dissolution of CD.
2. AA after receiving such application passes an order for dissolution which shall be effective on an immediate basis.
3. A copy of Dissolution order shall be forwarded to the Authority with which the CD is registered within 7 days of such order.