Handbook on Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016

Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Handbook on
Corporate Insolvency Resolution Process
under
The Insolvency and Bankruptcy Code, 2016

Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

DISCLAIMER:

The views expressed in this book are of the author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).

The information cited in this book has been drawn from various sources. While every effort has been made to keep the information cited in this book error free, the Institute or any office of the same does not take the responsibility for any typographical or clerical error which may have crept in while compiling the information provided in this book.

Published In	:	June 2021
Committee/Department	:	Committee on Insolvency & Bankruptcy Code
E-mail	:	cibc@icai.in
Website	:	www.icai.org
Price	:	₹ 100/-
ISBN No	:	978-81-8441-
Published by	:	The Publication Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002

Foreword

The implementation of the Corporate Insolvency Resolution Process (CIRP) under The Insolvency and Bankruptcy Code, 2016 began when the provisions relating to insolvency and liquidation of corporate persons came into force on December 2016, thus paving the journey of the Code and building a strong insolvency regime in the country to improve the Ease of Doing Business. Both the Debtors and Creditors have started to derive benefits with the implementation of the Code in the debt resolution space.

During last four years, several achievements have been made in the form of number of cases getting initiated under CIRP, number of cases getting successfully resolved, the amount realized by the creditors in comparison to their claims and the various judicial pronouncements that are made on issues under the Code. All these achievements could be made because of the effective functioning of the institutions involved in administration and execution of the process of insolvency resolution under the Code.

I commend the Committee on Insolvency & Bankruptcy Code of ICAI in taking this initiative of bringing out the publication - **Handbook on Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016** to help professionals appreciate the fundamental aspects of CIRP under the Code and also to know about its applications and intricacies.

I sincerely appreciate the entire Committee and particularly the efforts put in by CA. Durgesh Kumar Kabra, Chairman, Committee on Insolvency & Bankruptcy Code and CA. Prakash Sharma, Vice- Chairman, Committee on Insolvency & Bankruptcy Code to bring out this publication.

I am sure that this publication would be of great help to the members and other stakeholders.

CA. Nihar N. Jambusaria
President ICAI

Date: 27th June, 2021

Place: New Delhi

Preface

With the enactment of the framework for Insolvency Resolution and Liquidation for Corporate Persons under the Insolvency and Bankruptcy Code, 2016 a new era is born in the debt resolution space in the country. Since the provisions relating to Corporate Insolvency Resolution Process (CIRP) came into effect from December 1, 2016, a total of 4376 CIRPs have commenced by the end of March, 2021, as per IBBI data. Of these, 2653 have been closed. Of the CIRPs closed, 348 have ended in approval of Resolution Plans.

The Insolvency Professional as Interim Resolution Professional/Resolution Professional play a critical role in the conduct of the CIRP which include receiving and collating all the claims submitted by creditors pursuant to the public announcement, constituting Committee of Creditors (CoC), managing the operations of the Corporate Debtors as a going concern, preparation of Information Memorandum, inviting prospective Resolution Applicants, presenting all Resolution Plans at the meetings of the CoC and submitting the Resolution Plan as approved by CoC to the Adjudicating Authority.

Considering the significance of CIRP under the Code, the Committee on Insolvency & Bankruptcy Code of ICAI has taken the initiative to bring out this publication -**Handbook on Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016** so as to help members appreciate the important provisions relating to CIRP under the Code.

We take this opportunity in thanking the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr.) Debashis Mitra for their support and encouragement in bringing out this publication.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Vivek Kumar Arora, CA. Rajiv Khurana, CA. Sukhen Pal Babuta and CA. Arvind Kumar who prepared the Draft of the publication under the Convenorship and guidance of CA. Hans Raj Chugh, Central Council Member, ICAI.

We appreciate the efforts put in by Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of CA. Himanshu Gulati and CA. Abhishek Tarun for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, industries and other stakeholders will find the publication helpful.

CA. Durgesh Kumar Kabra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. Prakash Sharma
Vice- Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

Date: 23rd June, 2021

Contents

Chapter 1

Concept of Insolvency, Bankruptcy & Liquidation 1

Chapter 2

Evolution of Insolvency Laws 3

Chapter 3

Brief Outline of the Code 5

Chapter 4

Insolvency Resolution Process for Corporate Persons (Corporate Insolvency Resolution Process - CIRP) under IBC 10

Chapter 5

Liquidation Process under IBC 23

Chapter 6

Code of Conduct for Insolvency Professionals 26

Chapter 7

Landmark Judgements under IBC 30

Chapter 8

Structure of the Insolvency and Bankruptcy Code 42

Chapter 9

Querists' Section 46

Chapter 1
Concept of Insolvency, Bankruptcy & Liquidation

The handbook will be useful for professionals, businesspersons, entrepreneurs, bankers and consultants dealing with company matters.

It is a step by step guide for the implementation of the CIRP in accordance with the provisions of the IBC in simple language for easy understanding and comprehension.

Though the handbook may not follow the sequence of the IBC, its structure is designed in a way as to acquaint the beneficiaries of the process as it is supposed to be implemented.

The primary source of information of this handbook is the IBC, the regulations made thereunder and the various case laws on the subject.

Now, before proceeding with the procedures and nuances of the Corporate Insolvency Resolution Process (CIRP), it will be worthwhile to understand the terms Insolvency, Bankruptcy and Liquidation.

Insolvency

Insolvency is the state of a business of a debtor in which it is unable to pay its liabilities or has defaulted in the payment of its liabilities.

There are two types of insolvencies that form the basis for the initiation of rescue/reorganisation / rehabilitation measures under insolvency laws.

Balance Sheet Insolvency: When the debtor's assets are insufficient to meet its present and possible liabilities; i.e. though the debtor has not defaulted in its obligation to pay, but taking a complete view of the assets and liabilities, the latter far exceeds the former

It is a pre-emptive measure that leads to the invocation of the rehabilitation mechanism before the actual default by the debtor.

Cash Flow Insolvency: It is a situation where a debtor has actually defaulted in meeting its payment obligations. The assets of such debtor may be more than the liabilities, i.e., it may have positive net worth, but the cash position is such that it cannot meet its liabilities as and when they fall due.

Under the IBC, cash-flow insolvency test, i.e., actual default in making obliged payments is applied to trigger the insolvency resolution process.

Bankruptcy

This term is used interchangeably with insolvency. However, in some legal jurisdictions, a distinction is made between these two terms.

In some jurisdictions, the term insolvency is associated with legal entities and bankruptcy with natural persons. In other jurisdictions, differentiation is that insolvency is a 'state' of inability to pay liabilities or failure to pay liabilities, whereas bankruptcy is a 'status' granted by law. Thus, bankruptcy is a 'legal' state of insolvency.

Yet another differentiation coined by practitioners is that what liquidation is to a corporate person, bankruptcy is to a natural person.

Liquidation

Liquidation is the process of bringing a business to an end and distributing its assets to creditors. In IBC, it is one of the outcomes of the resolution process. If the resolution process fails, the debtor is ordered to be liquidated.

Chapter 2
Evolution of Insolvency Laws

The matters relating to Insolvency and Bankruptcy of persons and entities fall in the concurrent list (List-III of the seventh schedule) of the Constitution of India.

Constitution has empowered the Central and State Government to make the law about Insolvency and Bankruptcy matter in list – III (concurrent list) of seventh schedule of Constitution of India.

Therefore, both Central and State Governments have power to make laws relating to this subject.

Related Laws existing before the advent of IBC:

For Incorporated entities (e.g. Companies):

- Companies Act, 1956, now Companies Act, 2013
- **The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)**: To detect unviable ("sick") or potentially sick companies and to help with their revival, if possible, or their closure, if not. It also provided for setting up of the Board for Industrial and Financial Reconstruction (**BIFR**) and the Appellate Authority for Industrial and Financial Reconstruction (**AAIFR**). This Act was repealed with the enactment of IBC.
- **The Recovery of debts due to Banks and Financial Institutions Act, 1993**: To provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions
- **The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)**: To regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights.

For individuals and unincorporated entities:

- The Presidency Towns Insolvency Act, 1909: applicable in Presidency towns of Kolkata, Mumbai and Chennai
- The Provincial Insolvency Act, 1920: applicable in the rest of India

Committees of the Government

1. Tiwari Committee – recommended setting up of The Debt Recovery Tribunals (**DRTs**) and The Debt Recovery Appellate Tribunals (**DRATs**)
2. Narasimham Committee I & II - on Banking Sector Reforms
3. Justice Eradi Committee - to suggest reforms in the procedure followed in the insolvency proceedings
4. JJ Irani Committee - to advise the Government on the new Company Law

Bankruptcy Law Reforms Committee (BLRC)

The Bankruptcy Law Reforms Committee under the Chairmanship of Dr. T. K. Viswanathan submitted its report to the Finance Ministry on November 4, 2015.

The objectives of the Committee were to create a uniform framework that would cover matters of insolvency and bankruptcy of all legal entities and individuals.

The report of this committee formed the basis of the Insolvency and Bankruptcy Code, 2016.

Chapter 3
Brief Outline of the Code

The Insolvency and Bankruptcy Law Bill was introduced before the Lok Sabha on December 21 2015, was passed by the Lok Sabha on May 5, 2016 and the Rajya Sabha on May 11, 2016. It received the Presidential assent on May 28, 2016 and consequently became an Act.

The Code came into effect in phases from 5-8-2016 to 15-12-2016. Some provisions are yet to come into effect. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 came into effect from 1-12-2016 meaning thereby that applications to the National Company Law Tribunal could be made only after 1-12-2016.

Commencement - It is provided in the Code that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. However, the Govt may provide different dates for enforcement of different provisions. It further provides that any reference in any provision to the commencement of this Code shall be construed as a reference to the date provided by the Govt. for commencement of that provision

Extent - It extends to the whole of India.

Preamble of the IBC –

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

The law brings a paradigm shift in the regulatory approach to address business failures. For the first time, a law in India was enacted with the need to ensure business revival as the first priority. It shifts the focus from recovery to resolution.

The essence of the preamble can be elaborated as under:

- Time-bound resolution:- IBC prescribes and mandates strict timelines for completion of the entire process and of the various activities that the process is comprised of.
- Maximisation of the value of assets:- The law is aimed at maximizing the value of the assets of the debtor through this time bound process.
- Promotion of entrepreneurship:- By providing certainty of outcomes and time-bound exit to entrepreneurs from failing business so that they are not saddled with compliances in defunct companies, the law aims to promote the spirit of entrepreneurship.
- Ensuring availability of credit:- By providing certainty of outcomes and defining the priorities of payments to the creditors, the law aims to improve the credit culture and thus more credit to the industries. Also the primacy in the treatment of Unsecured Financial Creditors in CIRP may usher in a culture of unsecured credit which could be of great help to Start-Ups which do not have much tangible assets for securing their debt.
- Change in the priority of Govt. dues (Crown dues):- The law has changed the age-old practice of priority of Govt dues. As a result, these dues now rank much below the dues of secured creditors, giving further encouragement to lending by such creditors.

Appreciably, while the earlier bankruptcy laws kept the “debtor in possession” of the assets during the proceedings, the IBC has ushered in a significant change by introducing the "creditor in control" manner of implementing the resolution mechanism wherein, on the initiation of the resolution process, the control of the debtor shifts to creditors who, with the help of a court-appointed insolvency professional, manage the affairs of the debtor during the entire process.

IBC is the first unified law in India dealing with the insolvency and bankruptcy of individual and legal entities.

In order to achieve its objects, IBC created an efficient infrastructure constructed on the following five pillars -

1. Insolvency and Bankruptcy Board of India (IBBI)

It is the apex body ensuring to promote transparency and governance in the administration of the Code. The IBBI is the regulator framing the regulations for the implementation of the provisions of IBC, for setting up the infrastructure for effective functioning of the Code and providing accreditations to the Insolvency Professional Agencies, the Insolvency Professionals and the Information Utilities as also to have a regulatory oversight over their functioning.

It has also been designated as the 'Authority' under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the Country.

2. Insolvency Professional Agencies (IPA)

These are professional bodies registered with the IBBI for promoting and regulating the insolvency profession. IPAs are vested with the power to enrol, educate, monitor and regulate the profession of the Insolvency Professionals who are enrolled as its professional members. As of now, there are three IPAs registered with IBBI:

- Indian Institute of Insolvency Professionals of ICAI
- ICSI Institute of Insolvency Professionals
- Insolvency Professional Agency of Institute of Cost Accountants of India

3. Insolvency Professionals (IP)

These are individuals registered with the IBBI and enrolled with an Insolvency Professional Agency. IP's act as Interim Resolution Professional/ Resolution Professional/ Liquidator/ Bankruptcy Trustee in the corporate and individual resolution processes and their liquidation or bankruptcy processes.

4. Information Utility (IU)

These are centralized repositories of financial and credit information of borrowers. They store the financial information of the borrower in electronic form, validate the stored information as well as claims of creditors with the

borrowers. The maintaining of financial records of borrowers in electronic form eliminates delays and disputes when a default occurs. At present there is only one registered IU i.e. “National E-Governance Services Limited “.

5. Adjudicating Authorities (AA)

They are the authorities to adjudicate on matters pertaining to the IBC.

NCLT - The National Company Law Tribunal (NCLT) constituted under Section 408 of the Companies Act, 2013 is the Adjudicating Authority for the purpose of insolvency resolution and liquidation for corporate persons. Appeal against an order of the NCLT lies before the National Company Law Appellate Tribunal (**NCLAT**)

DRT - The Debt Recovery Tribunal (DRT) constituted under subsection (1) of Section 3 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is Adjudicating Authority for the purpose of insolvency resolution and bankruptcy of partnership firms and individuals. Appeal against an order of the DRT lies before the Debt Recovery Appellate Tribunal (DRAT)

Applicability of IBC

The provisions of this law are applicable to the following persons, entities.

- a company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law;
- a 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;
- any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009);
- such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;
- personal guarantors to corporate debtors.
- partnership firms and proprietorships; and
- individuals, other than personal guarantors to corporate debtors.

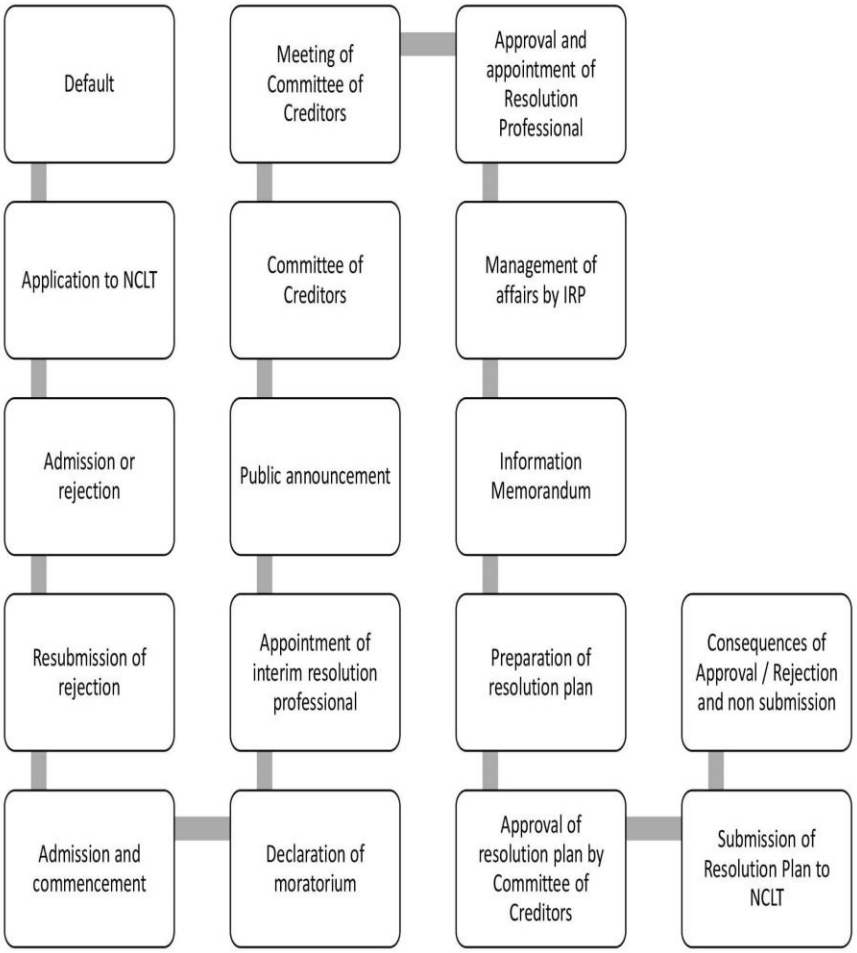
So far, the Govt has notified the provisions of the law in respect of

- Corporate Persons, i.e. Company incorporated under the Companies Act, 2013 or under any previous Company Law; Company governed by any Special Act for the time being in force;
- Limited Liability Partnership incorporated under the Limited Liability Partnership Act; and
- Personal Guarantors to Corporate Debtors.

Provisions of IBC in relation to partnership firms, proprietorships and individuals other than personal guarantors to corporate debtors have not yet been notified.

Chapter 4
Insolvency Resolution Process for Corporate Persons (Corporate Insolvency Resolution Process - CIRP) under IBC

Broad Process Flow for Corporate Insolvency Resolution



CIRP is covered in Part II of the IBC titled Insolvency Resolution And Liquidation For Corporate Persons.

Part II contains Seven Chapters (Chapters – I to VII & Sections 4 to 77A)

As suggested by the title, this part in respect of corporate persons, deals with, amongst others -

- Corporate Insolvency Resolution Process (CIRP) [Chapter-II, Sections 6 to 32];
- Liquidation Process [Chapter-III, Sections 33 to 54].

Initiation of CIRP

The following persons can initiate the CIRP in respect of a Corporate Person who owes a debt to any person (corporate debtor) and commits a default in payment of its due instalment(s) –

(such default not being less than the threshold amount specified by the Government which cannot be more than rupees one crore. The threshold at present is Rs 1 crore)

A Financial Creditor (Section 7) – meaning a person to whom a financial debt (i.e. debt along with interest, involving consideration for time value of money or amount raised from allottees of real estate projects) is owed;

- by making an application before the NCLT along with proof of default and name of the Insolvency Professional (IP) who will act as the Interim Resolution Professional (IRP)

An Operational Creditor (Sections 8 & 9) – meaning a person to whom an operational debt (i.e. claim in respect of provision of goods or services, employment or Tax/Govt dues) is owed;

- (Section 8) by first issuing a demand notice to the corporate debtor for unpaid operational debt who within 10 days of its receipt shall provide, proof of any dispute in respect of such payment, any pending suit/proceedings or proof of payment of the demanded amount and in case of failure of the corporate debtor to do so,
- (Section 9) by making an application before the NCLT along with copy of demand notice and affidavit that corporate debtor has not complied with the above Section 8. Name of the IP who will act as the IRP may be proposed (not mandatory)

The Corporate Debtor itself (Section 10) – where the corporate debtor has defaulted in the due payment of any of the debts described above.

- by making an application before the NCLT along with information in relation to its books of accounts, a special resolution by shareholders and name of the IP who will act as the IRP.

Special provision in respect of lockdown due to COVID-19 (Section 10A) - no application for initiation of CIRP shall ever be filed, for any default arising on or after 25th March, 2020 to 24th March, 2021.

Note: Section 11 specifies the persons not entitled to make an application for initiation of CIRP.

Admission of Application **-** The NCLT shall within 14 days of receipt of application, if the same is complete along with the other particulars furnished and there is no disciplinary proceeding pending against the proposed RP, admit the application. Upon admission, the NCLT shall -

- declare a moratorium (Section 14), which continues till the completion of CIRP, prohibiting in respect of the corporate debtor
  - ✓ the institution or continuation of suits, proceedings including execution of any judgement, decree;
  - ✓ transferring, encumbering, alienating or disposing off any of its assets;
  - ✓ foreclosure, recovery or enforcement of any security interest created by the corporate debtor
  - ✓ the recovery of any property in possession of corporate debtor, by the owner or lessor.

  The supply of essential goods or services (electricity, water, internet etc) to the corporate debtor shall not be interrupted during moratorium period.
- cause a public announcement (Section 15) (in Form A) of the initiation of CIRP in one English and one vernacular newspaper and calling for claims (with proof and in prescribed Form) from creditors within 14 days of appointment of IRP.
- order appointment of IRP (Section 16) who shall continue till the appointment of Resolution Professional (RP) substituting the IRP.

Withdrawal of application (Section 12A) - NCLT may allow the withdrawal of admitted application on an application made by the applicant with the approval of 90% voting share of the committee of creditors.

Time Limit for completion of CIRP – The CIRP has to be completed within 180 days of the admission of the application. It can be extended only once and by a maximum of 90 days by the NCLT on application of the RP consequent to such resolution passed at the meeting of the committee of creditors by not less than 66% voting share.

The CIRP shall mandatorily be completed within 330 days including any time taken in legal proceedings.

Functions & Duties of IRP (Sections 17 - 20)

- the management of the affairs of the corporate debtor shall vest in the IRP and its officers shall report to the IRP;
- the powers of the board of directors of the corporate debtor shall stand suspended and be exercised by the IRP;
- the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the IRP

The IRP shall perform the following duties: -

- collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor
- collate claims submitted by creditors;
- constitute a committee of creditors (COC);
- monitor the assets of the corporate debtor and manage its operations until an RP is appointed by the committee of creditors;
- file information collected with the information utility
- take control and custody of any asset of the corporate debtor as recorded in its balance sheet.

Committee of Creditors (COC)

The IRP shall, after collating the claims received, constitute a Committee of Creditors.

The COC shall comprise of all financial creditors who are not related parties of the corporate debtor.

If there are no unrelated financial creditors, the CoC is formed by including 18 largest operational creditors by value and one representative each of workers and employees.

The financial creditors in a class (allottees of real estate projects) shall be represented in the COC by IPs who shall be appointed as their authorized representatives (AR). ARs shall represent the interest of such financial creditors and vote in the COC meetings on instructions of such financial creditors.

First meeting of the COC has to be held within 7 days of its constitution.

Resolution Professional (RP)– Appointment, Functions and Duties (Section 22, 23 & 25)

The COC in its first meeting may resolve with not less than 66% voting share, to appoint the IRP as the RP or to replace him by another RP. The NCLT shall replace the IRP with the proposed RP by an order on an application filed by the COC consequent to the said resolution of the COC.

The RP shall conduct the entire CIRP and manage the affairs of the corporate debtor. He shall perform all the functions performed by the IRP.

In addition to the duties of the IRP, it is the duty of the RP to convene and attend all meetings of the COC, prepare the information memorandum (IM), invite prospective resolution applicants to submit a resolution plan or plans, present all resolution plans at the meetings of the COC and file application for avoidance of transactions

Meetings of the COC (Section 24) – The meetings of the COC (either in person or through electronic means) shall be conducted by the RP with the following participants:

(a) members of COC , including the ARs

(b) members of the suspended Board of Directors (no voting rights)

(c) operational creditors if their aggregate dues is not less than 10% of the debt (no voting rights).

However the absence of such director, or representative of operational creditors shall not invalidate proceedings of such meeting.

The major decisions in respect of the CIRP are taken with the prior approval of the COC.

Valuation of Assets (Regulation 27 & 35) The resolution professional shall appoint two registered valuers (within 7 days of his appointment but not later than 47th day from the insolvency commencement date) to determine the fair value and the liquidation value of the corporate debtor.

Information Memorandum (IM) (Section 29) – The RP shall prepare the IM containing details of all assets and liabilities and all such information of the corporate debtor as may be relevant to the COC members and the prospective resolution applicants for formulating a resolution plan.

Persons not eligible to be resolution applicant (Section 29A) – A person is ineligible to submit a resolution plan if he

(a) is an undischarged insolvent,

(b) a wilful defaulter,

(c) has an account classified as NPA,

(d) has been convicted for certain offence and two years have not elapsed from the date of release from imprisonment,

(e) is disqualified to act as a director under the Companies Act, 2013

(f) is prohibited by the SEBI from trading in securities or accessing the securities market,

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

(h) is a guarantor for a corporate debtor undergoing CIRP

However, certain exemptions have been provided in case of CIRP of MSMEs where the above clauses (c) and (h) do not apply (Section 240A).

Resolution Plan

Invitation for Expression of Interest (Regulation 36A) –

- The RP shall publish the invitation for expression of interest (EOI) in Form G not later than 75th day from the insolvency commencement date, from eligible prospective resolution applicants to submit resolution plans. Form G contains the dates for all activities involved upto approval of resolution plan.
- On receipt of the EOIs and after conducting the necessary due-diligence, the RP shall publish a provisional list of prospective resolution applicants within 10 days of last date of receipt of EOIs.
- Objections to this list can be made within 5 days and after considering them, the RP shall issue a final list of prospective resolution applicants to the COC within 10 days of the last date of receipt of objections.

Request for Resolution Plans (RFRP) (Regulation 36B)

- The RFRP contains details of each step in the process of submission and approval of resolution plan and specify the requirement of performance security from the prospective resolution applicants for ensuring the performance of the resolution plan.
- The RP shall issue the RFRP along with the IM and the Evaluation Matrix to all applicants in the provisional list as well as those who had objected to the said list.

Submission of Resolution Plan (Section 30)

A prospective resolution applicant in the final list may submit a resolution plan along with an affidavit stating that he is eligible under section 29A

The RP shall examine each resolution plan and confirm that it –

- provides for the payment of insolvency resolution process costs
- provides for the payment of debts of operational creditors which shall not be less than the amount to be paid to such creditors in the event of a liquidation under section 53 or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and

- provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of liquidation.
- 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
- conforms to such other requirements as may be specified by the Board.

Mandatory Contents of Resolution Plan (Regulation 38) -

- The amount payable under a resolution plan -
  - (a) to the operational creditors shall be paid in priority over financial creditors; and
  - (b) to the financial creditors, who did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour.
- A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders
- It shall give details if the resolution applicant or its related parties have failed to or contributed to the failure of implementation of any other resolution plan in the past.
- A resolution plan shall provide:
  - (a) the term of the plan and its implementation schedule;
  - (b) the management and control of the business of the corporate debtor during its term; and
  - (c) adequate means for supervising its implementation.
- A resolution plan shall demonstrate that –
  - (a) it addresses the cause of default;
  - (b) it is feasible and viable;

(c) it has provisions for its effective implementation;

(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution plan.

Approval of Resolution Plan (Regulation 39)

RP, after confirming the above compliance, shall present the resolution plans to the COC which shall –

- evaluate them as per evaluation matrix;
- record its deliberations on the feasibility and viability of each resolution plan; and
- vote on all such resolution plans simultaneously

Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:

A Resolution Plan is approved by COC if votes in favour are not less than 66% of the voting share.

RP shall submit such approved resolution plan to the NCLT for approval.

(Section 31) If the Adjudicating Authority is satisfied that the resolution plan as approved by the COC meets the specified requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors guarantors and other stakeholders involved in the resolution plan.

Immediately on the approval of the resolution plan, the order of Moratorium under section 14 will cease to have effect.

Filing for Avoidance Transactions.

During the CIRP, the RP manages the affairs of the CD and attempts to keep it as a going concern. The RP also files application for avoidable transactions [Section 25(2)j]. The avoidable transactions refer to those transactions which are.

(a) Preferential in nature (Section 43), i.e., the transactions where one creditor or class of them has been given preferred treatment in terms of payment or security in a manner that their status in the event of an order of liquidation is improved.

(b) Undervalued transactions (Section 45), i.e., transactions where assets of the CD have been gifted or transferred at a value that is less than their fair value.

(c) Extortionate credit transaction (Section 50), i.e., the transaction where the CD has agreed to terms which are unconscionable for the reason of the extremely high rate of interest, value of security or repayment period etc.

(d) Fraudulent Transactions (Section 66), i.e., these are those transactions that have been conducted with the objective of defrauding the creditors.

If the RP determines such transactions, it must apply with the AA seeking an order for setting them aside and compensating the corporate debtor for any loss.

Model time-line for corporate insolvency resolution process (Regulation 40A).

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

Section / Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	….	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c)/Regulations 6(2)(c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14

Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
[77][Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12 (2)		T+97]
Section 21(6A) (b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
[78][Section 22(1)/ Regulation 19(2)	1st meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+30]
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	……
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40th day of commencement	T+40
[79][Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47th day of commencement.	T+47]

Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54th day of commencement	T+54
Regulation 36A	Publish Form G Invitation of EoI	Within 75 days of commencement	T+75
	Submission of EoI	At least 15 days	T+90

		from issue of EoI (Assume 15 days)	
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

Chapter 5
Liquidation Process under IBC

When all efforts to revive the corporate debtor under the provisions of the CIRP have failed, the liquidation process of the corporate debtor is initiated as the last resort.

Liquidation Process of the corporate debtor is initiated when

1. no resolution plan is received or the resolution plan received is rejected by the Adjudicating Authority
2. the COC with not less than 66% of the voting share, at any time during the CIRP but before confirmation of a resolution plan, decides to liquidate the corporate debtor
3. the resolution plan approved by the Adjudicating Authority is contravened and person whose interests are prejudicially affected by such contravention, makes an application to the Adjudicating Authority for a liquidation

The Adjudicating Authority orders for liquidation of the corporate debtor.

On the order of liquidation, the RP is appointed as Liquidator if he consents to act so. On the appointment of the Liquidator again a public announcement is made, and creditors are asked to file their claims or update their claims filed under CIRP. Based on the claims and their verification, the Liquidator prepares the list of claimants. The Liquidator also prepares an assets memorandum in which he mentions the assets along with their description and estimated realisable value. The Liquidator can use the valuation of the assets as arrived at during the CIRP or can get the assets revalued again.

The Liquidator shall constitute a Shareholder's consultation committee that includes representatives of secured financial creditors, unsecured financial creditors, workmen, employees, etc. The consultation committee can advise the Liquidator on various matters, but such advice is not binding on the Liquidator.

The Liquidator realises the assets of the CD by selling them.

The sale can be of;

(a) an asset on a standalone basis.

(b) the assets in a slump sale.

(c) a set of assets collectively.

(d) the assets in parcels.

(e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Before selling the assets, the Liquidator can explore the possibility compromise of arrangements under the provisions of companies' act.

Distribution of sale proceeds in liquidation.

On sale of the assets and realisation of the sale proceeds the Liquidator distributes the proceeds to the claimants.

A distribution mechanism is prescribed under section 53 of the IBC which provides the priorities (waterfall) in which the sales realisation are distributed. The sales proceeds are distributed as per below mentioned priority.

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 in the manner set out in section 52;

c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

d). financial debts owed to unsecured creditors;

e). the following dues shall rank equally between and among the following: -

(i) 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;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

f). any remaining debts and dues;

g). preference shareholders, if any; and

h). equity shareholders or partners, as the case may be.

Dissolution of the Corporate Debtor

After the sale of the entire liquidation estate and distribution of the sales proceeds, the Liquidator applies to the AA seeking an order of dissolution of the corporate debtor, and the liquidation is closed. However, if the corporate debtor is sold as going concern the corporate debtor is not dissolved, and the liquidation process is closed by order of AA without dissolution of the corporate debtor.

Note: Provisions related to Liquidation Process are covered under Chapter III of Part II of Insolvency and Bankruptcy Code, 2016 (Section – 33 to 54).

Chapter 6
Code of Conduct for Insolvency Professionals

The Code of conduct for Insolvency Professionals is contained in the first schedule to the IBBI (Insolvency Professionals) Regulations, 2016 and is briefly enumerated as under –

Integrity and objectivity

An Insolvency Professional

1. must maintain integrity by being honest, straightforward, and forthright in all professional relationships.
2. must not misrepresent any facts or situations and should refrain from being involved in any action that would bring disrepute to the profession.
3. must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias, conflict of interest, coercion, or undue influence of any party.

3A. must disclose the details of any conflict of interests to the stakeholders.

4. appointed as an IRP, RP, liquidator, or bankruptcy trustee or his relative should not acquire, directly or indirectly, any of the assets of the debtor.

Independence and impartiality

An Insolvency Professional

5. must maintain complete independence in his professional relationships.
6. must not acquire any asset directly or indirectly which impairs his objectivity, independence or impartiality in the liquidation or bankruptcy process.
7. shall not take up an assignment if any of his related persons is not independent, of the corporate person.

8. shall disclose the existence of any pecuniary or personal relationship with any of the stakeholders entitled to distribution under sections 53 or 178 of the Code.

8A. shall disclose as to whether he was an employee etc of any financial creditor.

9. shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders.

Professional competence

10. An Insolvency Professional must maintain and upgrade his professional knowledge and skills to render competent professional service.

Representation of correct facts and correcting misapprehensions

An Insolvency Professional

11. must inform of a misapprehension or wrongful consideration of a fact of which he becomes aware, as soon as may be practicable.

12. must not conceal any material information from the Board, the Adjudicating Authority or any stakeholder.

Timeliness

An Insolvency Professional

13. must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder.

14. must not act with *mala fide* or be negligent while performing his functions and duties.

Information management

An Insolvency Professional

15. must make efforts to ensure that all communication to the stakeholders is made well in advance and in a simple, clear, and easily understandable manner.

16. must ensure that he maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision.

17. must not make any private communication with any of the stakeholders unless required by the Code or orders of the Adjudicating Authority.

18. must appear, co-operate and be available for inspections and investigations carried out by the Board or the insolvency professional agency.

19. must provide all information and records as may be required by the Board or the insolvency professional agency with which he is enrolled.

20. must be available and provide information for any periodic study, research and audit conducted by the Board.

Confidentiality

21. An insolvency professional must ensure that confidentiality of the information relating to the insolvency resolution process, liquidation or bankruptcy process is maintained at all times.

Occupation, employability and restrictions

22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments.

23. An insolvency professional must not engage in any employment when he holds a valid authorisation for assignment or when he is undertaking an assignment.

23A. Where an insolvency professional has conducted a corporate insolvency resolution process, he and his relatives shall not accept any employment of a creditor having more than ten percent voting power, the successful resolution applicant, the corporate debtor or any of their related parties, until a period of one year has elapsed from the date of his cessation from such process.

23B. An insolvency professional shall not engage or appoint any of his relatives or related parties, for or in connection with any work relating to his assignment.

23C. An insolvency professional shall not provide any service for the assignment which is being undertaken by his related parties.

24. An insolvency professional must not conduct business which is inconsistent with the reputation of the profession.

Remuneration and costs

An Insolvency Professional

25. must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

25A. shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency.

26. shall not accept any fees or charges other than those which are disclosed and approved.

27. shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process to all relevant stakeholders.

Gifts and hospitality

An Insolvency Professional

28. or his relative must not accept gifts or hospitality which undermines or affects his independence as an insolvency professional.

29. shall not offer gifts or hospitality or a financial advantage to a public servant or any other person, intending to obtain or retain work for himself.

Chapter 7
Landmark Judgements under IBC

Since its enactment the IBC has undergone multiple amendments and the Constitutional validity of its provisions have been put to test before the Apex Court.

Two landmark judgements of the Hon'ble Supreme Court of India in such cases have now become the cornerstones for interpretation of the provisions of the Code.

Swiss Ribbons Private Limited & Anr. v. Union of India

Swiss Ribbons Pvt. Ltd. & Anr. (Petitioners)

Vs.

Union of India & Ors. (Respondents)

Writ Petition (Civil) No. 99 of 2018

With

Writ Petition (Civil) No. 100 of 2018

Writ Petition (Civil) No. 115 of 2018

Writ Petition (Civil) No. 459 of 2018

Writ Petition (Civil) No. 598 of 2018

Writ Petition (Civil) No. 775 of 2018

Writ Petition (Civil) No. 822 of 2018

Writ Petition (Civil) No. 849 of 2018

Writ Petition (Civil) No. 1221 of 2018

Special Leave Petition (Civil) No. 28623 of 2018

Writ Petition (Civil) No. 37 of 2019

Date of Order: 25-01-2019

Constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016

Facts

The petitions were filed assailing the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016

Decision

The Hon'ble Supreme Court gave a significant verdict, in the above said case, and gave sanction to Insolvency and Bankruptcy Code, 2016 recognizing its constitutional validity.

The key sub-text in the case is set out in the Epilogue in the last three pages of the judgment:

"*The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated errors, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster.*"

The significant points in the verdict are as follows:

- The Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.
- The primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.
- Classification between financial creditor and operational creditor neither discriminatory, nor arbitrary, nor violative of article 14 of the constitution of India. Financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.

- Whereas a claim gives rise to a debt only when it becomes due, a default occurs only when a debt becomes due and payable and is not paid by the debtor. It is for this reason that a financial creditor has to prove default as opposed to an operational creditor who merely claims a right to payment of a liability or obligation in respect of a debt which may be due. When this aspect is borne in mind, the differentiation in the triggering of insolvency resolution process by financial creditors under Section 7 and by operational creditors under Sections 8 and 9 of the Code becomes clear.
- The NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded.
- Section 12A passes constitutional muster.
- The resolution professional has no adjudicatory powers. The resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority.
- Section 29-A was considered to be Constitutionally Valid. A resolution applicant has no vested right for consideration or approval of its resolution plan. It is clear that no vested right is taken away by application of Section 29A.
- Section 53 of the code does not violate article 14. Unsecured debts are of various kinds, and so long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infracted.

Committee of Creditors of Essar Steel India Limited v. Satish Kr Gupta & Ors

Committee of Creditors of Essar Steel India Limited

Through Authorised Signatory. (Appellant)

Versus

Satish Kumar Gupta & Ors. (Respondents)

Civil Appeal No. 8766-67 of 2019

Diary No. 24417 of 2019

Date of Order: 15.11.2019

Through this case about 13 Civil Appeals and 17 Writ petitions were decided and disposed of simultaneously by the Hon'ble Supreme Court and is a landmark judgement in which various aspects of the I& B Code 2016 have been dealt with and spelt so as to remove confusions amongst the users of the code.

Facts:

This group of appeals and writ petitions raises important questions as to the role of resolution applicants, resolution professionals, the Committee of Creditors that are constituted under the Code, the jurisdiction of the NCLT and the NCLAT, qua resolution plans that have been approved by the Committee of Creditors. The constitutional validity of Sections 4 and 6 of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 have also been challenged. These appeals and writ petitions are an aftermath of this Court's judgment dated 04.10.2018, reported as **Arcelor Mittal India Private Limited v. Satish Kumar Gupta** (2019) 2 SCC 1.

This judgement has unfolded various aspects, which are explained below topic wise one after the other.

1. **Dealing with Disputed Claims Filed before the Resolution Professional**

In the instant case, the RP admitted the claim of certain creditors notionally at INR 1 on the ground that claims are there but were under disputes pending before various authorities in respect of the amounts of claim. However, the NCLT directed the RP to register their entire claim and the same was also upheld by the Appellate Authority.

Decision of SC: The Supreme Court set aside the decision of the Appellate Authority on the ground that the RP was correct in only admitting the claim at a notional value of INR 1 due to the pendency of disputes with regard to these claims.

2. Validity of the Constitution of a Sub-Committee by the CoC

The question of validity of the constitution of Sub-committee by the CoC was another issue that was to be discussed and decided.

Decision of SC: The Supreme Court held that as regards CoC's powers on questions which have a vital bearing on the running of the business of the corporate debtor, the same shall not be delegated to any other person in terms of Section 28(1)(h). When it comes to approving a resolution plan under Section 30(4), though such powers are administrative in nature, they shall not be delegated to any other body as it is the CoC alone who has been vested with this important business decision which it must take by itself. The Supreme Court further clarified that sub-committees can be appointed for the purpose of negotiating with resolution applicants, or for the purpose of performing other ministerial or administrative acts, provided such acts are in the ultimate analysis approved and ratified by the CoC.

3. Jurisdiction of the Adjudicating Authority and the Appellate Tribunal

Next issue was relating to the jurisdiction of Adjudicating Authority and the Appellate Tribunal particularly the discretionary powers with reference to resolution plan being adjudicated and in turn trespassing of business decisions of the CoC in exercise of their commercial wisdom.

Decision of SC: The Supreme Court has made it clear that the scope of judicial review to be exercised by the Adjudicating Authority can in no circumstances trespass business decisions of the CoC and has to be within the four corners of Section 30(2) of the Code while the review by the Appellate Tribunal has to be confined to the grounds provided in terms of Section 32 read with Section 61(3) of the Code.

The Adjudicating Authority cannot exercise discretionary or equity jurisdiction outside Section 30(2) of the Code when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority. The Supreme Court further stressed that CoC exercises its commercial wisdom to arrive at a business decision of reviving corporate debtor after taking into consideration the key features of the Code. Thus the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of

Creditors ('CoC') with a caveat that the decision of the CoC must reflect the fact that the CoC has taken into account that the corporate debtor needs to keep going as a going concern during the insolvency resolution process and that it needs to maximise the value of its assets and the interests of all stakeholders including operational creditors have been taken care of.

It was observed by the Hon'ble Court that if nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to NIL after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, the judicial review by the Adjudicating Authority would further include examining whether the resolution plan as approved by the CoC has met the requirements referred to in Section 30(2) and would include the judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. If the Adjudicating Authority finds, in the facts of the case, that there is a breach of the aforesaid, it may send a resolution plan back to the CoC to re-submit such a plan after satisfying the aforesaid requirements but cannot interfere on merits with the commercial decision taken by CoC.

4. Differentiation between Secured and Unsecured Creditors

About equality of treatment for the same class of creditors, similarly placed creditors and about how to deal with unequals amongst the creditors, was the issue under consideration.

Decision of SC: The Supreme Court categorically stated that equitable treatment is only applicable to similarly situated creditors and that the aforesaid principle cannot be stretched to treating unequals equally as that will destroy the very objective of the Code. Equitable treatment is to be accorded to each creditor depending upon the class to which it belonged to whether secured or unsecured, financial or operational. It was further held that there is no residual jurisdiction not to approve a resolution plan on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care of. It is important to note that even under Sections 391 and 392 of the Companies Act, 1956, ultimately it is the commercial wisdom of the parties to the scheme, reflected in the 75% majority vote, which then binds all shareholders and creditors. Even under Sections 391 and 392, the High Court cannot act as a Court of appeal and sit in judgment over such commercial wisdom.

5. Extinguishment of Personal Guarantees and Undecided Claims

Next issue was about creditors who have not submitted their claims. About extinguishment of guarantees given by the promoters / promoter group of the corporate debtor.

Decision of SC: The Supreme Court has made clear the effect of the approval of the resolution plan on the claims of creditors who have not submitted their claims before the Resolution Professional within the time frame provided under the Code. The Supreme Court held that Section 31(1) of the Code makes it clear that once a resolution plan is approved by the CoC it shall be binding on all stakeholders, including guarantors. The Supreme Court therefore said that a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted as this would throw into uncertainty amounts payable by a prospective resolution applicant who has successfully taken over the business of the corporate debtor. All claims must be submitted to and decided by the RP so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor.

The Appellate Authority/ National Company Law Appellate Tribunal had in its judgment also extinguished the rights of creditors against guarantees that were extended by the promoters/promoter group of the corporate debtor. The Supreme Court set aside the aforesaid decision on the ground that the same was contrary to 31(1) of the Code and the judgment of the Supreme Court in State Bank of India v. V. Ramakrishnan was relied upon.

Apart from the aforesaid, the guarantors of the corporate debtor argued that their rights of subrogation, which they may have if they are ordered to pay amounts guaranteed by them in the pending legal proceedings could not be extinguished by the resolution plan. The Supreme Court observed in this regard that it was difficult to accept that the part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile directors of the corporate debtor. However, with regard to the present case, the Supreme Court clarified that it was not stating nothing which may affect the pending litigation on account of invocation of these guarantees. However NCLAT's Judgement being contrary to Section 31(1) of the Code was set aside.

6. Utilisation of Profits of the Corporate Debtor during CIRP to Pay Off Creditors

About the utilisation of profits that were generated during the CIRP process.

Decision of SC: The Appellate Authority had held that the profits of the corporate debtor during CIRP shall be used to pay off creditors of the corporate debtor. The Supreme Court set aside the aforesaid decision on the ground that the request for proposal issued in terms of section 25 of the Code and consented to by Arcelor Mittal and the CoC had provided that distribution of profits made during the corporate insolvency process will not go towards payment of debts of any creditor. This judgement of NCLAT was also therefore set aside.

7. Constitutional Validity of Section 4 and 6 of the Insolvency and Bankruptcy (Amendment) Act 2019

The constitutional validity of Section 4 and 6 of the Insolvency and Bankruptcy (Amendment) Act, 2019 was under challenge before the Supreme Court. Section 4 and 6 of the Amending Act, 2019 sought to introduce a mandatory timeline of 330 days for completion of CIRP, failing which, the corporate debtor would be liquidated. Section 6, on the other hand, specified the minimum payment to be made to operational creditors and dissenting financial creditors in the resolution plan.

Decision of SC: The Supreme Court observed that the time taken in legal proceedings should not harm a litigant if the tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant and a mandatory deadline without any exception would fall foul of Article 14 and Article 19(1)(g) of the Constitution of India. Thereby, the Supreme Court while leaving section 4 of the Amending Act, 2019 otherwise intact, struck down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution.

The effect of this declaration was clarified and it was held that ordinarily the time taken in relation to the CIRP of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it could be shown to that only a short period is left for completion of the CIRP beyond 330 days, and that it would be in the

interest of all stakeholders that the corporate debtor be put back to stand on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed or attributed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it was held that the Adjudicating Authority and/or Appellate Tribunal may extend the time beyond 330 days. Similarly, even under the new proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, the Adjudicating Authority and/or Appellate Tribunal may further extend time keeping the aforesaid parameters in mind. It was stated that only in such exceptional cases, time can be extended.

With regard to Section 6 of the Amending Act of 2019, the Supreme Court held that it was is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a minimum amount in terms of the section and the computation of such minimum amount was more favourable to operational creditors while in the case of dissentient financial creditor the minimum amount provided was a sum that was not earlier payable.

With regard to the challenge to sub-clause (b) of Section 6 of the Amending Act of 2019, the Supreme Court held that the provision was merely a guideline for the CoC which may be applied by the CoC in arriving at a business decision as to acceptance or rejection of a resolution plan and thereby, the aforesaid provision was upheld. It was also clarified that the CoC does not act in any fiduciary capacity to any group of creditors. The CoC has to take a business decision based upon ground realities by a majority, which then binds all stakeholders, including dissentient creditors. Thereby, Section 6 of the Amending Act of 2019 was upheld in its entirety.

Other Relevant Judgements involving interpretation of the provisions of IBC, 2016

- **Innoventive Industries Limited Vs. ICICI Bank and Anr – SC**
    - Claim means right to payment even if it is disputed.
    - Default is wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.
- **JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlpat Jute Mills Company Ltd and Ors. – SC**
    - "….a trade union is certainly an entity established under a statute – namely, the Trade Unions Act, and would therefore fall within the definition of "person" under Sections 3(23) of the Code. This being so, it is clear that an "operational debt", meaning a claim in respect of employment, could certainly be made by a person duly authorised to make such claim on behalf of a workman."
- **In the matter of: Rai Bahadur Shree Ram and Company Pvt Ltd. Vs. Rural Electrification Corporation Ltd & Anr.– NCLAT, New Delhi**
    - It is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantors'. Without initiating any 'Corporate Insolvency Resolution Process' against the 'Principal Borrower', it is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'.
- **In the matter: State Bank of India Vs. Sungrowth Share & Stocks Ltd.- NCLT Kolkata**
    - The I&B Code, 2016, the debtor is discharged on approval and implementation of the resolution plan. The resolution plan is approved when the Adjudicating Authority is satisfied that resolution plan is approved by CoC and its content are in

accordance with the law. Therefore, the principal debtor discharged under I & B Code, 2016 not on the instance of a creditor but due to operation of law that is approval of the resolution. Hence, the Guarantor is not discharged of its liability towards the creditor on discharge of principal debtors liability under the I & B Code, 2016

- **Edelweiss Asset Reconstruction Co. Ltd. Vs. Kalptaru Alloys Pvt. Ltd. – NCLT Ahmedabad**
    - The assignee of a debt is entitled to file application for initiation of CIRP as it steps into the shoe of Financial Creditor.
- **In the matter of: Cooperative Rabobank U.A. Singapore Branch Vs. Shailendra Ajmera – NCLAT, New Delhi**
    - Financial creditors to whom operational debt has been assigned remains OC for such assigned debt.
- **In the matter of: Andal Bonumalla Vs. Tomato Trading LLP & Anr. – NCLAT, New Delhi**
    - The advance paid for supply of goods is not an operational debt.
- **In the matter of: M. Ravindranath Reddy Vs. G Kishan & Ors. – NCLAT, New Delhi**
    - Lease of immovable property cannot be considered as supply of goods or rendering of any services and hence not an operational debt.
- **In the matter of: Sushil Ansal Vs. Ashok Tripathi & Ors. – NCLAT, New Delhi**
    - Decree-holder, though included in the definition of 'Creditor', does not fall within the definition of 'Financial Creditor' and cannot seek initiation of Corporate Insolvency Resolution Process as 'Financial Creditor'.
- **Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co Ltd. – SC**
    - Application for Initiation of CIRP is independent proceeding and must run its entire course and it has nothing to do with the pendency of winding up proceedings before HC.

- **Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt Ltd & Anr – SC**
    - The dispute claimed by a corporate debtor against the operational debt must truly exist and it should not be spurious, hypothetical and illusory.
- **K. Kishan Vs. Vijay Nirman Company Pvt Ltd. – SC**
    - Operational creditor cannot use the IBC either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.
- **In the matter of: Sudhi Sachdeva Vs. APPL Industries Ltd. – NCLAT, New Delhi**
- The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. The pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute.
- **Innoventive Industries Limited Vs. ICICI Bank & Anr – SC**
    - Once an IP is appointed to manage the affairs of CD, the erstwhile directors cannot maintain an appeal on behalf of the company.
- **Asset Reconstruction Company (India) Pvt Ltd vs. Shivam Water Treaters Pvt Ltd. – NCLT Mumbai.**
    - RP is acting as an officer of the Court and any hindrance in the working of the CIRP will amount to contempt of court.
- **K Sashidhar Vs. Indian Pverseas Bank & Ors – SC**
    - The Adjudicating Authority and The Appellate Authority do not have power to analyse or evaluate the commercial decisions of the CoC. AA cannot see the justness of rejecting of approving a resolution plan.
- **Sunil S Kakkad vs Atrium Infocomm Pvt Ltd. & Ors.– NCLAT**
    - The CoC can take a decision to liquidate the CD without taking any steps for resolution. This is a commercial decision of CoC and hence non justiciable.

Chapter 8
Structure of the Insolvency and Bankruptcy Code

The IBC is divided into Five Parts. Each part is further divided into Chapters. Rules and Regulations have been framed under the Code to facilitate the implementation of the provisions of the Code.

PART I Preliminary.	This includes the short title, extend and commencement, application and definitions. Section 1 to 3.
PART II Insolvency Resolution Process for Corporate Persons.	This part is divided into EIGHT Chapters. Chapter I Preliminary. Section 4 & 5. Chapter II Corporate Insolvency Resolution Process. Section 6 to 32A. Chapter III Liquidation Process. Section 33 to 54. Chapter IIIA Pre-Packaged Insolvency Resolution Process. Section 54A to 54P Chapter IV Fast Track Corporate Insolvency Resolution Process. Section 55 to 58 Chapter V Voluntary Liquidation of Corporate Persons. Section 59 Chapter VI Adjudicating Authority for Corporate Persons. Section 60 to 67A. Chapter VII Offences and Penalties. Section 68 to 77A

PART III Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms.	This part is divided into SEVEN Chapters, Chapter I Preliminary. Section 78 to 79. Chapter II Fresh Start Process. Section 80 to 93. Chapter III Insolvency Resolution Process. Section 94 to120. Chapter IV Bankruptcy Order for Individuals and Partnership Firms. Section 121 to 148. Chapter V Administration and Distribution of The Estate of The Bankrupt. Section 149 to 178. Chapter VI Adjudicating Authority for Individuals and Partnership Firms. Section 179 to 183. Chapter VII Offences and Penalties. Section 184 to187.
PART IV Regulation of Insolvency Professionals, Agencies and Information Utilities.	This part is divided into SEVEN Chapters, Chapter I Insolvency and Bankruptcy Board of India. Section 188 to 195. Chapter II Powers and Functions of the Board. Section 196 to 198. Chapter III Insolvency Professional Agencies. Section 199 to 205. Chapter IV Insolvency Professionals. Section 206 to 208. Chapter V Information Utilities. Section 209 to 216.

	Chapter VI Inspection and Investigation. Section 217 to 220. Chapter VII Finance, Accounts and Audit. Section 221 to 223
PART V	
Miscellaneous.	Section 224 to 255 and Schedule 1 to 12.

The Code has following Rules in relation to the working of the Code.

- The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Guarantors) Rules, 2019
- The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019
- The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
- The Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021.
- IBBI (Annual Report), Rules, 2018
- IBBI (Form of Annual Statement of Accounts) Rules, 2018
- IBBI (Salary, Allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2016
- IBBI (Medical Facility to Chairperson and Whole-Time Members) Scheme Rules, 2019

Insolvency & Bankruptcy Board of India has made following regulations in relation to matters specified in the Code.

- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- IBBI (Advisory Committee) Regulations, 2017
- IBBI (Liquidation Process) Regulations, 2016
- IBBI (Voluntary Liquidation Process) Regulations, 2017.
- IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017
- IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017
- IBBI (Employees' Service) Regulations, 2017
- IBBI (Insolvency Professionals) Regulations, 2016
- IBBI (Insolvency Professional Agencies) Regulation, 2016
- IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021
- IBBI (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
- IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019
- IBBI (Information Utilities) Regulations, 2017
- IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016
- The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017
- IBBI (Procedure for Governing Board Meetings) Regulations, 2017
- IBBI (Engagement of Research Associates and Consultants) Regulations, 2017
- IBBI (Mechanism for Issuing Regulations) Regulations, 2018

Chapter 9
Querists' Section

- **Application for initiation of CIRP can be made if the corporate debtor defaults in making payment of any of its liabilities. At what stage of default, can the application be filed? Is there any minimum limit of the amount of default for filing the application?**

The state of insolvency is a situation of the financial stress of a business. The earlier it is cured, the better it is. A corporate debtor or the creditors of such debtor should file an application for initiation of CIRP at the first instance of default. It is like taking a person to the hospital at the first symptom of a disease rather than waiting for it to become severe.

The IBC (Section 4) has prescribed a minimum amount of default of Rs 1 lac for initiation of CIRP. However, the Central Government may notify a higher minimum threshold amount of default not exceeding Rs 1 crore. The Central Government has, w.e.f. 25.03.2020 notified this minimum threshold amount as Rs 1 crore for initiation of CIRP due to COVID-19. Prior to this it was Rs 1 lac.

Where a corporate debtor has defaulted on obligations of more than one creditor, the default amount for the purpose of initiation of CIRP shall be calculated as under:

When CIRP is to be initiated on an application by –

Financial Creditor: can file an application individually or jointly with other financial creditors and amount of default will be the aggregate of the defaults of such financial creditors who file the application jointly.

Operational Creditor: cannot file an application jointly. Hence the default of that operational creditor who is filing the application has to be above the threshold amount.

Corporate Debtor itself – the aggregate amount of defaults towards all creditors will be considered to decide if the default is more than the threshold.

Employees: Can file an application jointly and therefore the defaults towards all such employees can be clubbed.

Creditors in a class (allottees of a real estate project): in addition to the threshold default amount, application shall be filed jointly by not less than one hundred of such allottees or not less than 10% of the total number of such allottees under the same real estate project, whichever is less.

What happens if the debtor makes payment of the default amount to the creditor before the admission order by AA?

Default is the trigger for initiating CIRP. If the debtor cures the default by making payment of the default amount, the creditor will not be able to file the application. However, if the payment is made after the filing of the application but before the AA admits it, the creditor will not be able to prove the default, and the AA will not admit the application.

However, an interesting situation may emerge when the debtor makes a part payment after the filing of the application but before its admission and the amount in default is reduced below Rs 1 crore, the default amount shall become less than the threshold limit of Rs 1 crore. Thus, the AA may not admit the application.

- **Is there any prescribed format for filing the application for initiation of CIRP?**

Yes, there are prescribed formats for filing applications for initiating CIRP by different creditors.

Type of applicant	• Form of application as per Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
Corporate debtor	• Form 6 Application by Corporate Debtor to initiate corporate insolvency resolution process under the Code
Financial Creditor	• Form 1 Application by financial creditor to initiate corporate insolvency resolution process under the Code
Operational Creditor	• Form 3 Form of demand notice/invoice demanding payment under the Code. • Form 4 Form of notice with which invoice \demanding payment is to be attached • Form 5 Application by operational creditor to initiate corporate insolvency resolution process under the Code.

- **Is there any fee payable to file the application?**

Applicant	Fee payable for filing application
Financial creditor(s)	25000.00
Corporate Debtor	25000.00
Operational Creditor	2000.00

- **In how many days the Adjudicating Authority admits the application?**

If the application is complete, the Adjudicating Authority admits the application for initiation of CIRP within 14 days of its receipt. However, if the application is not complete, the AA, before rejecting it, gives seven days' notice to the applicant to rectify the defects.

As provided in Section 64 of this Code where an application is not disposed of or order is not passed within the period specified , the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the National Company Law Appellate Tribunal, 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. However, these timelines are directory in nature.

- **If an application for initiation of CIRP is filed, can it be withdrawn?**

Yes, the applicant can withdraw the application filed before the Adjudicating Authority (AA) in the following situations:

Before Admission of Application

As provided in Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the AA may permit the withdrawal of the application made under rule 4, 6 or 7, as the case may be, on a request by the applicant before its admission.

After Admission of Application

As provided in section 12A read with regulation 30A of IBBI (Resolution Process for Corporate Persons) Regulation, 2016, the AA may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent.

voting share of the committee of creditors, in such manner as provided in Regulation 30A which provides as follows:

An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

- **Are there any eligibility criteria for the applicants to file an application for CIRP?**

Yes, the following persons are not entitled to make an application to initiate corporate insolvency resolution process: -

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

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

c. a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

d. a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A (Pre-Packed Insolvency Resolution Process), twelve months preceding the date of making of the application; or

e. 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

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

However, any corporate debtor falling in any of the above-mentioned categories can file an application for initiation of CIRP in respect of any other Corporate Debtor.

- **The IRP, in the public announcement, asks the creditors of the corporate debtor to file their claims; what is the time limit to file claims? Is there a format for filing the claims?**

The creditors are required to file their claims within 14 days of the initiation of CIRP. If a creditor fails to file the claim within 14 days, it may file it within 90 days of the Insolvency Commencement Date. The creditors must file their claim their claims prescribed form as below.

Type of Creditor	Claim Form
Financial Creditor	FORM C
Operational Creditors	FORM B
Class of Creditors	FORM CA
Workmen/Employee	FORM D
Representative of Workmen/Employee	FORM E
Other Creditors	FORM F

- **What is the Committee of Creditors "CoC"? Who are the members of this committee?**

The CoC is constituted by the IRP within 2 days after verification of the claim, i.e., the IRP must constitute CoC within 23 days of the commencement of the CIRP. It takes all important decisions in the conduct of CIRP.

CoC comprises of all unrelated financial creditors.

Where there are no unrelated financial creditors of the corporate debtor, the committee consists of

a. Largest 18 operational creditors by value; and

b. One representative of workmen; and

c. One representative of employees.

If there are less than 18 operational creditors all of them will be part of the committee.

Allotees under real estate projects are classified as financial creditors and are termed as "Creditor in class" if their number is more than 10. Due to large number of such creditors, it is not practical to allow individual participation of all such creditors. The IRP in the public announcement offers three choices of the IPs' out of which the creditor in class may choose one as its authorized representative (AR), while filing the claim form. The representative who is the choice of the greatest number of creditors is appointed as AR for all the creditors. These creditors are represented in the CoC by such AR. If there are more than one class of allottees, each class will have an AR.

- **Order of admission of the application suspends the management of the CD; are there still any duties/responsibilities of the management even after suspension?**

On the admission of an application seeking initiation of CIRP, the powers of the board of directors of the corporate debtor are suspended, and are exercised by the IRP. The management of the corporate debtor vests in the IRP. However, this does not absolve the promoters/directors of the corporate debtor of their duties.

As per Section 19, the personnel of the corporate debtor, its promoters or any other person associated with the management shall extend all assistance and cooperation to the IRP in managing the affairs of the corporate debtor.

Where any such person does not assist or cooperate, the IRP may make an application to the Adjudicating Authority for necessary directions.

- **What is the role of workers and employees of the corporate debtor after initiation of CIRP?**

Since the management of the corporate debtor vests with the IRP, the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the IRP.

- **What is a resolution plan and what does it includes?**

  A resolution plan is a proposal to revive the corporate debtor and provides for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets.

It may include the following but not limited to the following: -

(a) transfer/sale of all or part of its assets;

(b) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(c) the substantial acquisition of shares, or the merger or consolidation of the corporate debtor with one or more persons or cancellation or delisting of any shares;

(d) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(e) reduction in the amount payable to the creditors;

(f) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(g) amendment of the constitutional documents of the corporate debtor;

(h) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(i) change in portfolio of goods or services produced or rendered by the corporate debtor;

(j) change in technology used by the corporate debtor.

ISBN :

www.icai.org