

J B NAGAR CPE STUDY CIRCLE OF WIRC

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Preamble

- An Act to consolidate and amend the laws relating to re-organisation and Insolvency Resolution in a **time bound** manner for maximization of value of assets of such persons, **before it becomes obsolete**.
- Alteration in the order of priority of payment of Government dues.

Banking Law Reform Committee

“The Limited Liability Company is a contract between equity and debt. **As long as debt obligations are met,** equity owners have complete control and creditors have no say in how the business is run. **When default takes place, control** is supposed to transfer to the creditors and equity owners have no say”

Creditors in possession

Background

- India has / had multiple laws to deal with insolvency, which leads the entire resolution process fragmented, expensive and time-consuming with very low recovery rate.
- In this scenario, the Indian Government has introduced the Bankruptcy and Insolvency Code, 2016 which will consolidate the existing frameworks and create a new institutional structure.
- The Code creates time-bound processes for insolvency resolution of companies and individuals which thereby will help India improve its World Bank insolvency ranking.

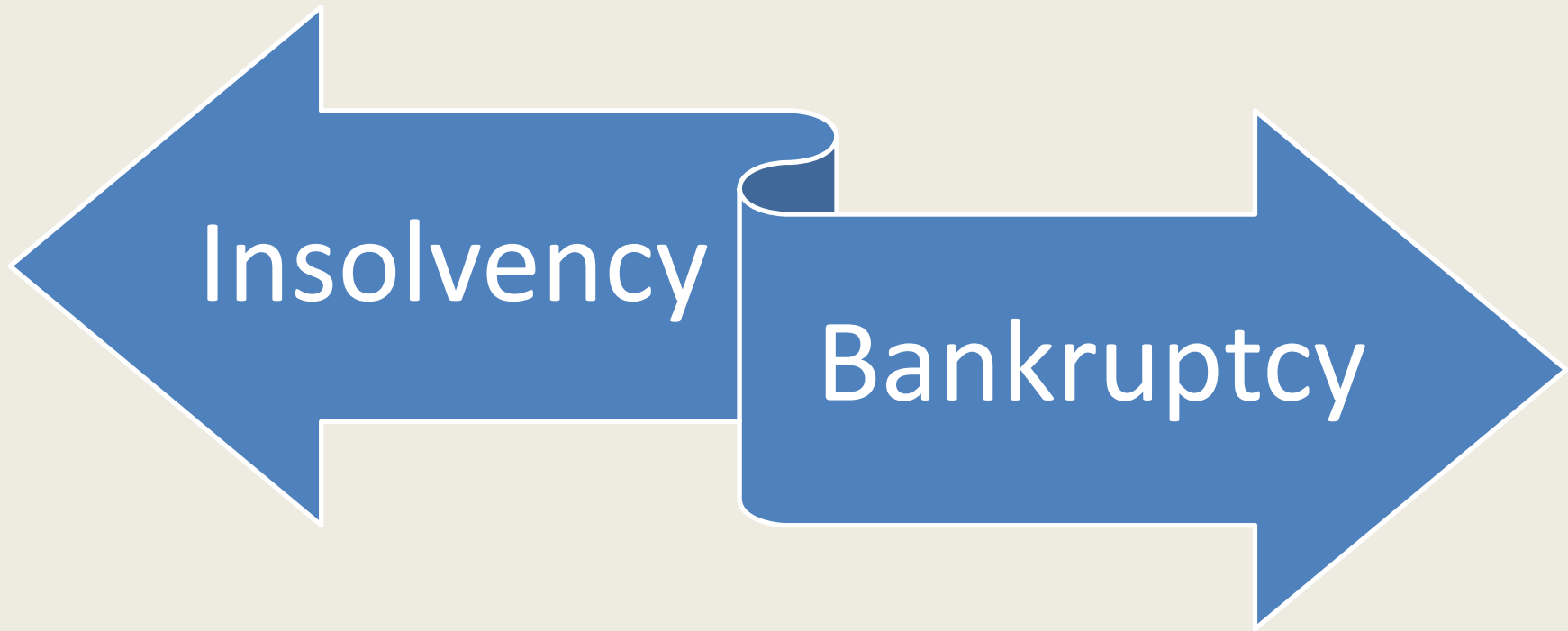
Key Highlights

- Paradigm shifts from Debtors in possession to CREDITORS in CONTROL.
- Test from EROSION to **DEFAULT**
- TIME BOUND
- REGULATOR - IBBI – INDEPENDENT BODY
- INSOLVENCY PROFESSIONAL
- Provides CONFIDENCE TO LENDERS AND INVESTORS
- **Alteration in the ORDER of PRIORITY of payment of GOVERNMENT DUES .**

Insolvency Professional

Insolvency process cannot be imagined without the involvement of an **IP** who in many respects is in the **lynchpin** of the process; the link between the Court, Creditor and Debtor

European Bank for Reconstruction and Development.



Institutional Framework

- The Insolvency and Bankruptcy Board of India (the “**Board**”)
- Insolvency Professional Agencies [3 institute]
- **Insolvency Resolution Professionals**
- Information Utilities
- Adjudicating Authorities:-
 - National Company Law Tribunal (“**NCLT**”)
 - National Company Law Appellate Tribunal (“**NCLAT**”)
 - Debt Recovery Tribunal (“**DRT**”)
 - Supreme Court

ABBREVIATIONS

- | | |
|---|---|
| <ul style="list-style-type: none">• IBC - Insolvency and Bankruptcy Code, 2016• CD - Corporate Debtors• FC - Financial Creditors• OC - Operational Creditors• COC - Committee of Creditors• AA - Adjudicating Authorities like NCLT or DRT | <ul style="list-style-type: none">• IP - Insolvency Professional• IRP - Interim Resolution Professional• RP - Resolution Professional• CIRP - Corporate Insolvency Resolution Process.• IBBI - Insolvency and Bankruptcy Board of India.• IU - Information Utilities.• RP - Resolution Plan |
|---|---|

Overview of Insolvency Code

Insolvency Code has 1-255 Sections divided into following 5 Parts and 11 Schedules

Part	Content - Section
I	Preliminary 1 to 3
II	Insolvency Resolution and Liquidation for Corporate Person (4 to 77)
III	Insolvency Resolution and Bankruptcy for Individual and Partnership
IV	Regulation of Insolvency Professionals, Agencies & Information Utilities (188-223)
V	Miscellaneous (224 to 255)

Regulations by IBBI

Regulations	Remark
Insolvency Professional Agencies Regulation - 2016	IIIPA of ICAI
Insolvency Professional - 2016	Regulation - IP
Insolvency Resolution Process For Corporate Person - 2016	Most Important from Practice point of view
Liquidation Process – 2016	
Voluntary Liquidation Process -2017	
Information Utilities - 2017	
Fast Track Insolvency Resolution Process for Corporate Person - 2017	

Some Important Definitions

Charge [3 (4)]

Means an Interest or lien created on the property or assets of any person or any of its undertakings or both as the case may be, as security and includes a mortgage;

Debt [3(11)]

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

Default [3 (12)]

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

Some Important Definitions

Claim [3 (6)] Means

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

Corporate Person [3(7)]

- Company
- LLP
- Or any other person **incorporated with limited liability** under any law
 - *But shall not include
 - “ Financial Service Provider”**

Some Important Definitions

Corporate Debtor 3(8)

Means a corporate person who owes a debt to any person

Insolvency Professional 3 (19)

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

Secured Creditor 3(30)

Means a creditor in favour of whom security interest is created.

Some Important Definitions Section 5

Dispute 5(6)

Dispute includes a suit or arbitration proceedings relating to –

- (a) The existence of the amount of debts;
- (b) The quality of goods or services; or
- (c) The breach of a representation or warranty;

Financial Creditor 5(7)

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

Some Important Definitions Section 5

Financial Debt 5(8)

Means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes ----

(a) (f)

Explanation -For the purposes of this sub-clause, -

*(i) any amount raised from an allottee under a **real estate project** shall be deemed to be an amount **having the commercial effect of a borrowing**; and*

*(ii) the expressions, “**allottee**” and “**real estate project**” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

Inserted by the second amendment Act, 2018 06.06.2018

Some Important Definitions from CIRP Regulations

Applicant [CIRP 2(1)(a)]

means the person(s) filling an application under section 7,9 or 10 as the case may be.

Committee [CIRP 2(1)(d)]

means a Committee Of Creditors established under section 21. (COC)

~~Dissenting financial creditors [CIRP 2(1)(f)] [omitted 05.10.2018]~~

~~Means the Financial Creditors who voted against the Resolution **Plan or abstained from voting** for the resolution plan, approved by the committee.~~

Evaluation Matrix [CIRP 2(1)(ha)]

Means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval;

Some Important Definitions from CIRP Regulations

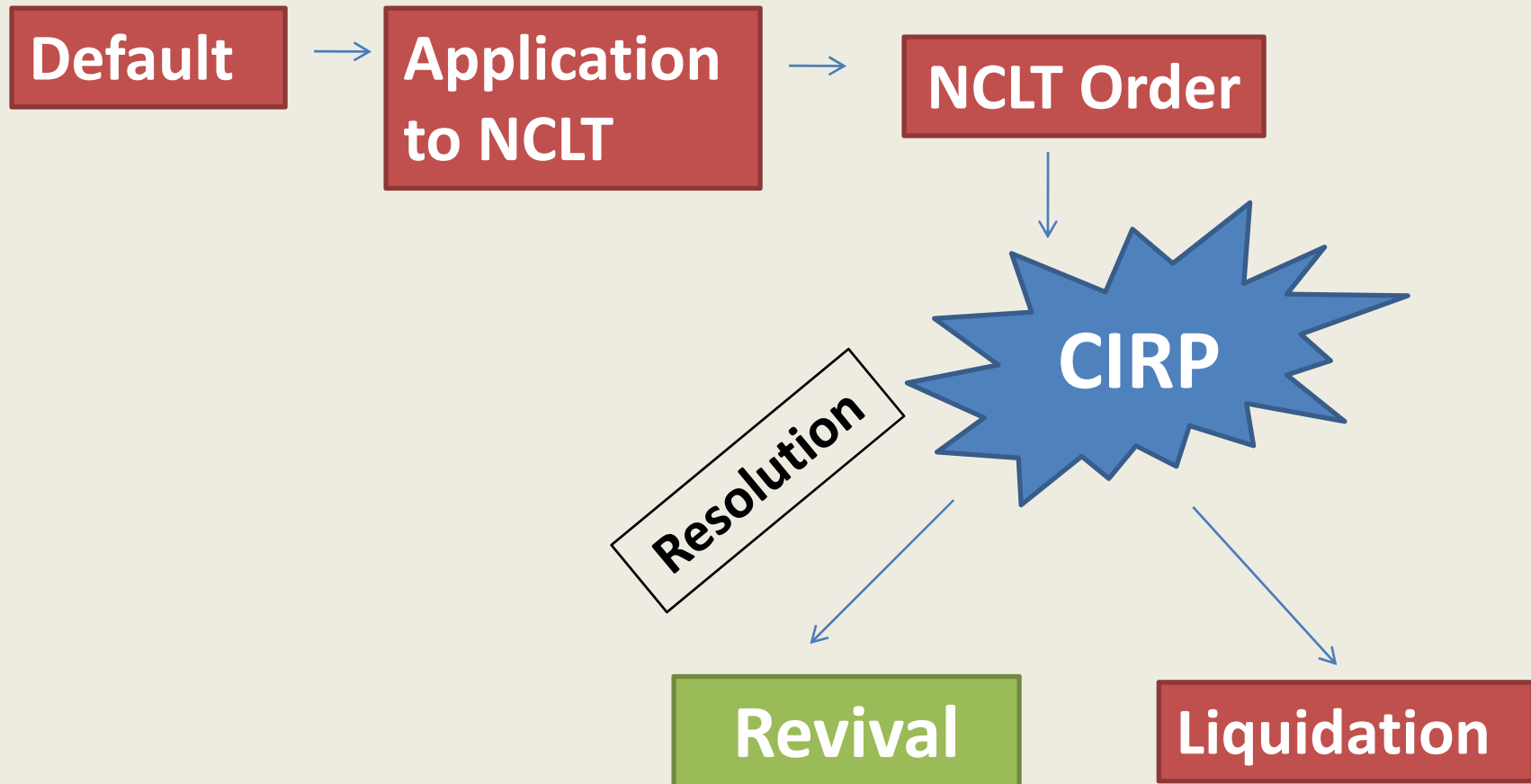
Fair Value [CIRP 2(1)(hb)] [inserted 06-02-2017]

Means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the solvency Commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

Liquidation Value [CIRP 2 (1)(K)]

Means estimated realizable value of the assets of corporate debtor, if the corporate debtor **were to be liquidated on the insolvency commencement date.**

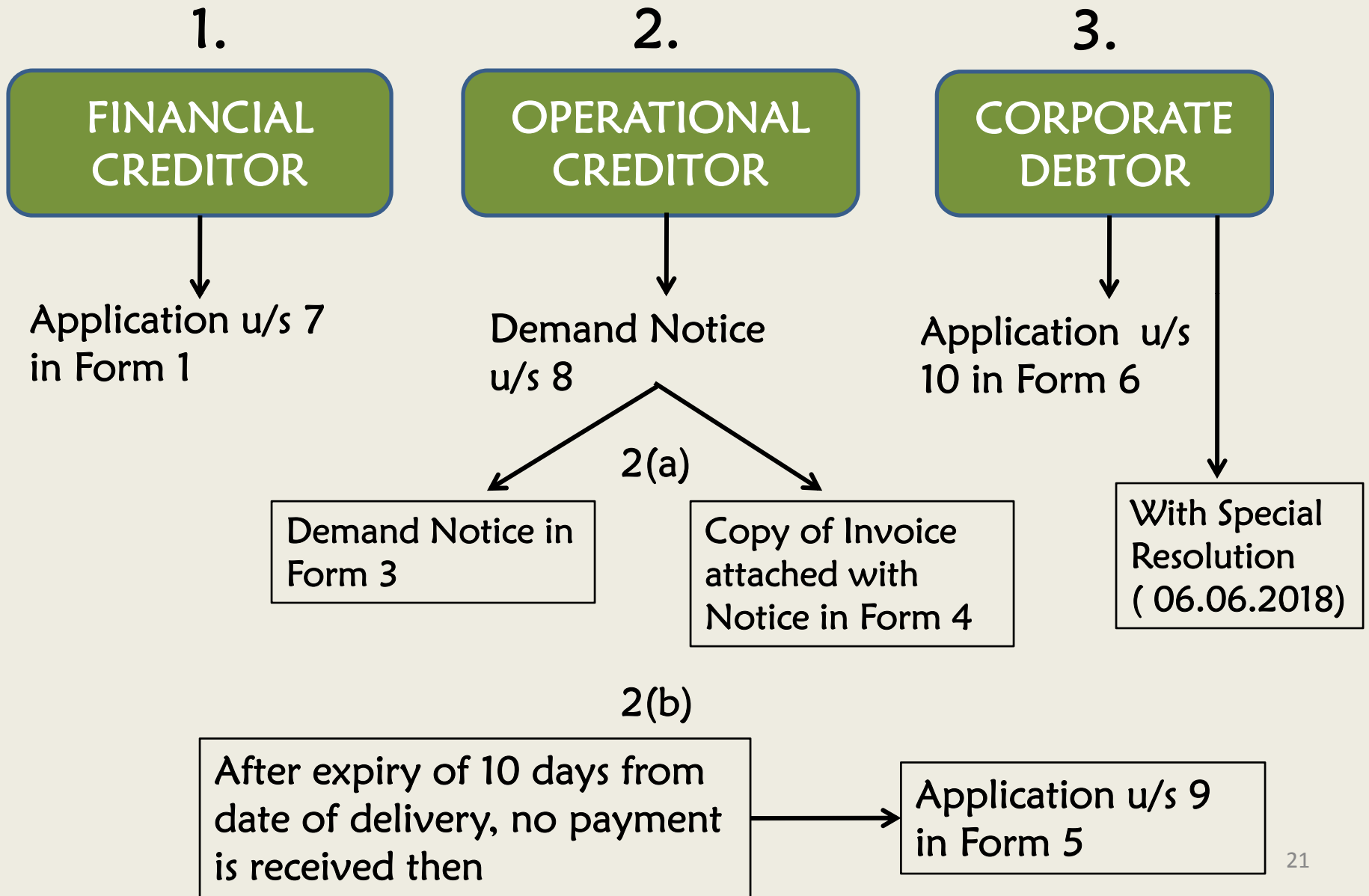
Insolvency Process



Persons who may initiate CIRP

- Where any corporate debtor commits a **default**, a **FC**, an **OC** or the **CD** itself may initiate CIRP in respect of such corporate.
- Amount of default > Rs. One lakh
- The Provisions of Limitation Act, 1963 – Shall Apply to the Proceedings or appeal.

APPLICATION



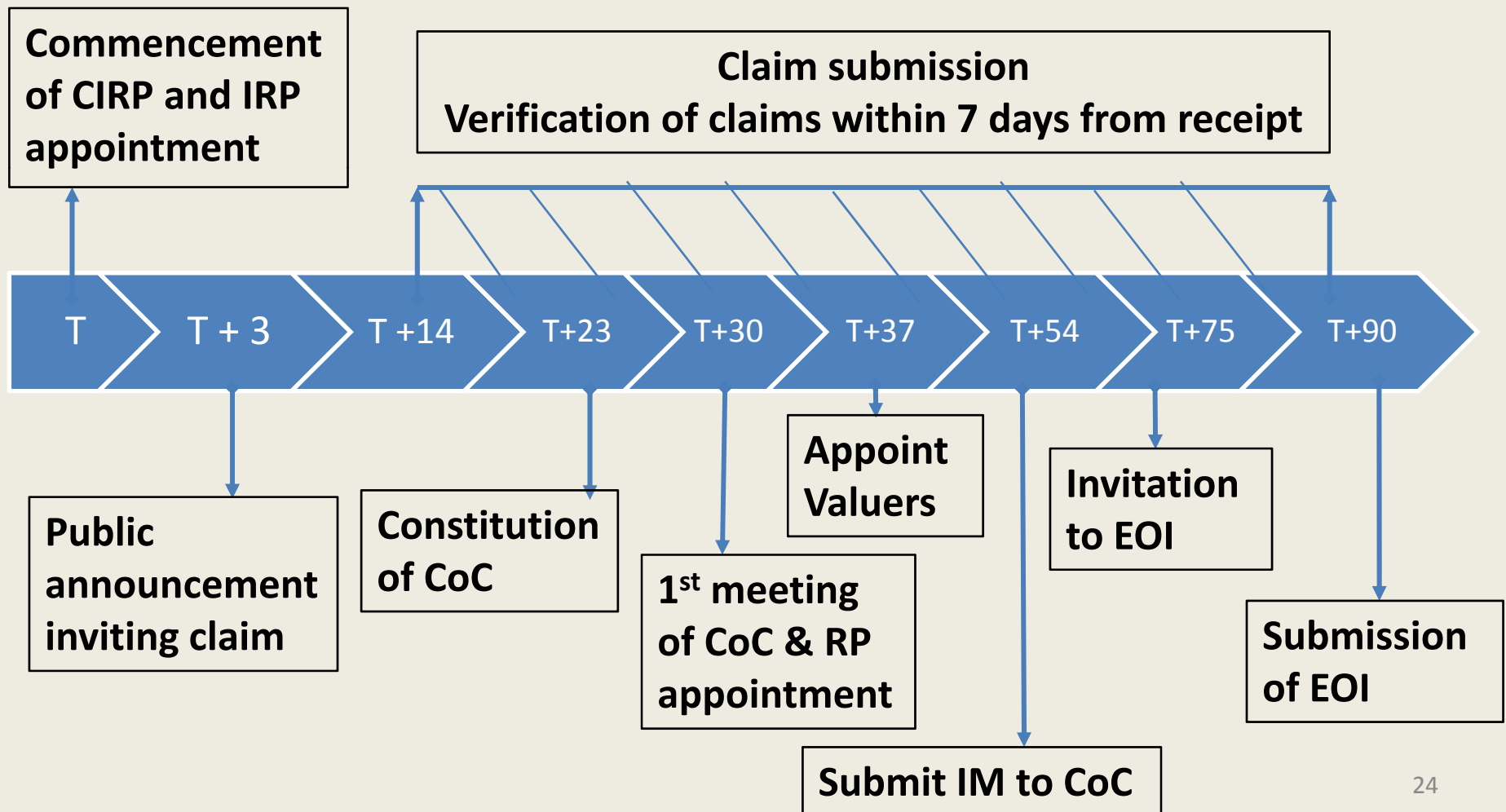
ADMISSION OF THE APPLICATION

- The AA, within 14 days of receipt of application, by an order –
 - (a) Admit the application,
 - (b) Reject the application.
- CIRP shall be completed within a period of 180 days from the date of admission, maximum one extension of 90 days. Extension is subject to COC approval.

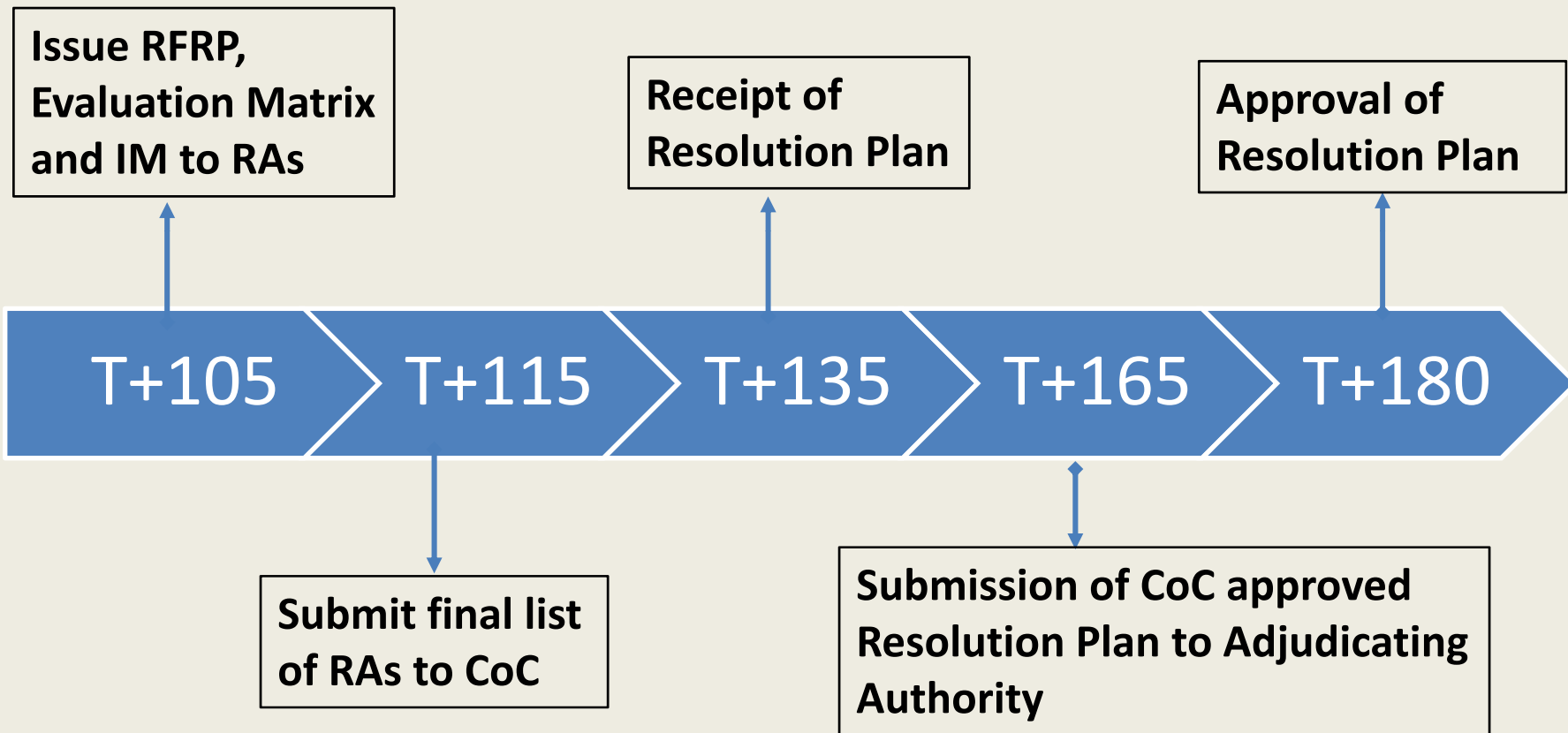
Time limit Mandatory for AA ?

Corporate Insolvency Resolution Process [CIRP]

Timelines for CIRP



Timelines for CIRP (Contd.)



If extension up to 270 days is required, request to Adjudicating Authority to be made before the 180 day deadline

Duties of IRP and RP

To PRESERVE and PROTECT the assets of the CORPORATE debtor, including the continued business operations of the corporate debtor.

How to do it?/What is supposed to be done?

- Take immediately custody and control of all the assets of the CD.
- Represent and act on behalf of the CD
- Raise Interim Finance, subject to approval of COC
- Appoint accountants, legal or other professional
- Maintain an updated list of claims
- Convene and attend all meeting of COC
- Prepare IM
- Invite prospective lenders, investors and any other person to put forward resolution plan.

SHIFT OF MANAGEMENT Sec 17

From the date of appointment of IRP –

- Management of the affairs of the corporate debtor vest in the IRP.
- Powers of the board of directors or partners shall stand suspended and be exercised by the IRP.
- Officers and Managers shall report to the IRP and provide access to such documents and records of CD as required by IRP.
- Financial Institutions maintaining accounts shall act on the instructions of the IRP and furnish all information available with them to the IRP.

MORATORIUM (Sec 14)

1. The AA, after admission, shall by order declare a moratorium for prohibiting following –
 - (a) New suits or pending suits or proceedings including execution of any judgment, decree or order any court of law, tribunal.
 - (b) Transferring, encumbering, alienating or disposing of any of its assets or legal right.
 - (c) Any action to foreclose, recover or enforce any security interest in respect of its property including action under SARFAESI Act, 2002
 - (d) Recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD

MORATORIUM

2. Supply of essential goods or services shall not be terminated or suspended

Essential Goods or Services :

Electricity, Water, Telecommunication & I. Technology Services.
(Not for production purpose)

3. If the AA **approves the resolution plan** or passes an order for Liquidation the Moratorium shall cease to have effect

PUBLIC ANNOUNCEMENT

- Immediately on his appointment in **not later than 3 days** vide this announcement invite the claims from the various creditors.

- The public announcement shall be in **Form A** of the schedule and be published -
 1. One in English language
One in Regional language newspaper
Vide circulation at the location of the regd office and principal office.
 2. On the website of CD;
 3. On IBBI website

CLAIMS

- Following are the types of creditors who would make the claim in the prescribed forms;

Sr. No.	Type of creditor	Form
1.	By Operational Creditor	B
2.	By Financial Creditor	C
3.	By Financial Creditor in a class (Home Buyers)	CA
3.	By workmen and Employee	D
4.	Claim by authorized rep. of workmen & employee	E
5.	Amendment dated 16.08.2017 – claim by other than those covered under regulation 7, 8 or 9	F

PROCESS OF PROOF OF CLAIMS

- **Substantiation of Claims**

The IRP or RP, may call for such other evidence or clarification from the creditors for substantiating the whole or part of its claim.

- **Submission of proof**

- a) a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. (14 days)
- b) A creditor who has failed to submit the proof of claim within the time prescribed vide the public announcement shall submit the same on or before the **90th day** of the CIRP commencement date.

PROCESS OF PROOF OF CLAIMS

- Verification of Claims

The IRP or RP, shall verify every claim, as on the insolvency commencement date, within 7 days from the last date of receipt of the claim and thereupon maintain a list.

- IP shall prepare and submit and display an up to date list of claim
- IBBI has passed a stricture against IP in the case of Electrosteel Limited due to lapses in claim verification.

- **Determination of amount of claims:**
(Regn. 14)

- a. If the amount of claim by creditor is not precise, the IRP shall make **best estimates** of the amount of claim based on the information available with him.
- b. IRP or RP shall revise the amount of claims admitted, as and when he comes across additional information warranting such revision.

VALUATION

Appointment of registered Valuers

(Regulation 27)

The RP within 7 days of **the First CoC**, appoint 2 registered valuers to determine the **liquidation value and fair value** of CD

Certain person shall not be appointed as valuers

Fair Value and liquidation Value

(Regulation 35)

shall be determined in the following:-

- a) The two regd. Valuers shall be appointed - who shall submit an estimate of **the fair value and of liquidation value**.
- b) If the two estimate of a value are significantly different, RP may appoint another registered valuer.
- c) The RP and registered valuers shall maintain confidentiality of the Fair Value and the liquidation value.

The average of the two closest estimates shall be considered the **Fair Value** or the liquidation value.

How long your role as IRP / RP

- **IRP** - First COC - COC may change
- **RP** - Till approval of Resolution Plan or order of Liquidation
- **During CIRP**
If COC is of opinion that a RP appointed is required to be replaced. It may replace him with another RP by not less than 66% voting shares.

Information Memorandum (IM)

Section 29

The RP shall prepare the IM as may be specified by IBBI for formulating Resolution Plan.

The RP shall provide to the Resolution Applicant access to all relevant information.

INFORMATION MEMORANDUM

- Following details shall be furnished:
 - a) Assets & liabilities classified into appropriate categories
 - b) Audited FS for the last two FY and provisional FS for the current FY up to a date **not earlier than 14 days from the date of the application;**
 - c) List of creditors containing the name, amount claimed, amount admitted and security interest , if any

INFORMATION MEMORANDUM

- d) Related party details
- e) Details of guarantees
- f) members or partners holding at least one per cent stake
- g) Litigation details
- h) workers & employee details
- ~~(i) Liquidation value, Liquidation value due to operational creditor (w.e.f. 31.12.2017)~~

COMMITTEE OF CREDITORS

- CoC shall be of Financial Creditors.
- Related party shall not have any right of representation, participation or voting in the COC.
- COC can consist of only operational creditors, in case the company has no financial creditors.
 - 18 largest operational creditors by value.
 - one representative of workers.
 - one representative of employees.
- Voting right in such a COC shall be based on the proportion of debt due.

Voting Share

"voting share" means the share of the voting rights of a single financial creditor in the CoC which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the CD.

MEETING OF THE COMMITTEE

- The RP shall convene the committee of COC as and when he considers necessary or on request of the members of the COC representing 33% of the voting rights.
- **Notice Of the Meeting**
 - a) COC meeting shall be called by giving a notice **not less than 5 days** in writing to every participant.
 - b) Committee may reduce such notice period **but not less than 24 hours / 48 hrs** in case if there is AR

Conduct of the meeting

- RP shall act as **the chairman** of the meeting
- Minutes of the meeting should be noted and circulated **within 48 hours of the said meeting.**
- Important decisions of the COC shall be taken by a vote of not less **than 66% of** voting share

Prior Approval of COC required for:

- Raise interim finance
- Create security interest over the assets of CD
- Change capital Structure
- Record any change in the ownership interest of the CD.
- Undertake related party transactions
- Amend any constitutional documents
- Make change in appointment of Statutory / Internal auditor of CD
-

Invitation for EOI

Regulation 36A:

- The RP shall publish brief particulars of invitation in Form G of the Schedule not later than 75 days :
 - a) English and regional newspaper
 - b) on the website, if any, of CD; and IBBI
- To specify the criteria for prospective resolution applicant as approved by CoC

Non Eligibility u/s 29A

- a) is an undischarged insolvent;
- b) is a wilful defaulter;
- c) has a NPA, at least one year before the date of commencement of CIRP of CD.
- d) convicted for any offence punishable > 2 yrs.
- e) is disqualified as a director;
- f) is prohibited by SEBI from trading in securities;
- g) Enforceable guarantee in favour of CD
- h) subject to any disability under any law outside India;
- i) has a connected person who is not eligible

Resolution Applicant

- **Sec 5(25)**

Means any person who individually or jointly with any other person, submits a Resolution Plan to the Resolution Professional pursuant to the invitation made under sec 25 (2) (h)

Resolution Plan

- **Sec 5(26)**

Means a plan proposed by resolution applicant for insolvency resolution of the CD as a going concern in accordance with Part – II.

Request for Resolution Plan (RFRP)

- The RP shall issue **provisional list** of eligible prospective resolution applicant and then the **final list**
- The RP shall issue IM , Evaluation Matrix and RFRP to the final list applicants
- RFRP shall lay down the step in the process along with the corresponding time line.

Evaluation Matrix

Quantitative

- Upfront payment
- Total payment – NPV discount rate
- Bank Guarantee
- Personal Guarantee
- Additional Security

Qualitative

- Industry experience
- Revival experience
- Credit rating

Resolution Plan Regulation 37-39

- A Resolution Applicant (RA) may submit R Plan to RP within the time given as per RFRP.
- The RA shall also give eligibility affidavit u/s 29A
- Undertaking that the contents of R plan are true and correct
- The RP shall examine each R plan received by him to confirms to various conditions.
- The RP shall present to the COC for its approval such R Plan which confirms the conditions referred above.
- The COC may approve a R Plan by a vote of **not less than 66%** of voting share

Resolution Plan (Regn. 37)

Measures as may be necessary for insolvency resolution of CD for maximization of value of its assets

But not Limited to following :

- Transfer of all or part of the assets of the CD;
- Sale of all or part of the assets whether subject to any security interest or not;
- Issuance of securities of the CD for cash, property, securities or in exchange for claims or interests, or other appropriate purpose;
- Cancellation / delisting of shares of CD

Resolution Plan (Regn. 37)

- Satisfaction / modification of any security interest
- Curing / waving any breach of the terms of any debt due from CD
- Reduction in the amount payable to the creditors
- Extension of maturity date / change in interest rate / change in other terms
- Change in portfolio of goods or services produced or rendered by the CD
-

Resolution Plan – Mandatory contents (Regulation 38)

38 (1) The amount due to the OC under a R Plan shall be given priority in payment over FC

38(1A) R plan must include a statement showing that how interest of all the stakeholders is dealt with.

38 (2)- Resolution Plan shall provide

- a) Term of the plan and implementation schedule
- b) Management and control of business of CD during its term
- c) Adequate means to supervise its implementation

Contd....

- **38 (3)** The R 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 the approvals required and the timeline for the same;
 - e) Applicant has the capability to implement the plan

Reg 39- Approval of Resolution Plan

1. RA shall submit R Plan prepared as per the Code to RP within the time as given in invitation.

2. The RP shall submit to the committee all R plans which comply with the requirements of the Code and regulations along with the details of following transactions, if any, observed, found or by him:-
 - a. preferential transactions under section 43;
 - b. undervalued transactions under section 45;
 - c. extortionate credit transactions under section 50; and
 - d. fraudulent transactions under section 66,and the orders, if any of the AA in respect of such transaction

Regulation 39- Approval of Resolution Plan continued

3. The CoC shall evaluate the R Plans strictly as per the evaluation matrix to identify the best resolution plan and may approve with such modification it deems fit.
4. The Resolution Professional shall submit the R Plan approved by CoC to AA, at least 15 days before 180 / 270 days along with a compliance certificate in **Form H**

Final Outcome of CIRP

- If the AA is satisfied that the R.Plan as approved by COC meeting the requirements as ... IT SHALL BY ORDER APPROVE THE RP.
- IT SHALL BE BINDING ON THE CD AND ITS EMPLOYEES, MEMBERS, CREDITORS, GUARANTORS AND OTHER STAKEHOLDERS INVOLVED IN THE RP.

Resolution Plan Approved by NCLT

The Hyderabad Bench of NCLT has accepted the resolution plan proposed under the first petition 'filed' under the Insolvency and Bankruptcy Code, 2016, **Synergies-Dooray Automotive Ltd** under **Section 10**

R. Plan for Synergies

Distribution of Assets

Insolvency Code overwrite other Laws

Sec 53

Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority :-

Distribution of Assets – Sec 53 defines order of priority

Insolvency Resolution Process Costs and Liquidation Costs

Workmen dues up to 24 months AND
Debts owed to Secured Creditors who have relinquished Security

Employee Dues up to 12 months

Financial Debts owed to Unsecured Creditors

Government Dues (up to 24 months) AND unpaid debts of Secured Creditors
following enforcement of security

Any remaining Debts and Dues

Preference Shareholders

Equity Shareholders

Contractual arrangements between recipients with equal ranking shall be disregarded,
if it disrupts the order of priority.

Protection to IRP & RP

- Section 233 of code :

No suit, prosecution or other legal proceeding shall lie against the or an Insolvency Professional or liquidator for anything which is done or intended to be done in good faith under this code or the rules or regulation made thereunder.

Some Practical Tips

If Appointed as IRP

- Read the Code and Regulation – 3 times minimum and keep on referring.
- Train your self and your assistant, staff and peons too.
- Do Hands Free Driving.
- RP and RP initially will take 70-110 % of your time.
- Delegate your other normal Practice to partner/s
- Take assistance / help / collaboration for other Professionals - Lawyers / CS etc. Out source if reqd.
- Keep your Travel baggage ready with all accessories
- Maintain working papers neatly filed.
- Its a challenging and satisfying JOB.
- **TAKE PART 50% FEES AND COST IN ADVANCE**

THANK YOU

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