IBC

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Proprietor
BPK ASSOCIATES, COMPANY SECRETARIES

LEGAL FRAMEWORK

1. **Insolvency and Bankruptcy Code, 2016**
2. **The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**
3. **Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,**

Five pillars of the Insolvency and Bankruptcy Code (IBC)

1. **Insolvency and Bankruptcy Board of India (IBBI):** The supreme authority that regulates the other three pillars of the IBC

2. **Insolvency Professional Agencies (IPAs):** Professional bodies that regulate and promote the insolvency profession

3. **Insolvency Professionals (IPs):** Experts who carry out the insolvency and bankruptcy process

4. **Information Utilities (IUs):** Centralized repositories of financial and credit information for borrowers

5. **Adjudicating Authorities (AA):** The National Company Law Tribunal and Debt Recovery Tribunal, which resolve and oversee the insolvency process

OVERVIEW OF THE IBC, 2016

The Insolvency and Bankruptcy Code, 2016 consists of total 255 sections organized in 5 Parts.

PART -1

PRELIMINARY

- 1 Chapter
- 1-3 Sections

PART – 2

INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS

- 7 Chapters
- 4-77 Sections

PART -3

INSOLVENCY RESOLUTION FOR INDIVIDUALS AND PARTNERSHIP FIRMS

- 7 Chapters

78-187 Sections

PART – 4

REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILIES

- 7 Chapters
- 188-233 Sections

PART – 5

MISCELLANEOUS

- 224-255 Sections

KEY DEFINITIONS UNDER SECTION 3

1. **"Claim"** means

   (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

   (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured [Section 3(6)]

2. **"Corporate Person"** means a company as defined in the Companies Act, 2013, a limited liability partnership, as defined in the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

   [Section 3(7)]

KEY DEFINITIONS UNDER SECTION 3

3. **“Corporate Debtor”** means a corporate person who owes a debt to any person. [Section 3(8)]

4. **“Creditor”** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. [Section 3(10)]

5. **“Debt”** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)].

KEY DEFINITIONS UNDER SECTION 3

6. **"Default"** 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 [Section 3(12)].

7. **"Insolvency Professional"** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section. [Section 3(19)].

8. **"Secured Creditor"** means a creditor in favour of whom security interest is created. [Section 3(30)]

INTRODUCTION-CIRP

- CIRP is the process of resolving the corporate insolvency of a corporate debtor in accordance with the provisions of the Code. The trigger for initiating the CIRP is the **‘DEFAULT’** by the corporate debtor.

- In CIRP, the financial creditors assess the viability of debtor’s business and the options for its revival and rehabilitation. If the corporate insolvency resolution process fails or the financial creditors decide that the business of the debtor cannot be carried on in a profitable manner and it should be wound up, the debtor’s business undergoes the liquidation process.

- The Insolvency resolution process has been widely covered under Chapter I of Part II of the Insolvency and Bankruptcy Code, 2016.

CONSEQUENCES OF INITIATION OF CIRP

- There are generally two consequences that can follow the initiation of CIRP, namely:
  1. Revival of the corporate debtor, or
  2. Liquidation.

- It is noteworthy to mention that the underlying purpose of the Code of 2016 is to go with the first consequence that is a revival of corporate debtors. Only when the same is not in favor, liquidation is called for.

- Revival can further lead to a restructuring of the existing set-up or a new plan of ownership that needs to be implemented.

CORPORATE INSOLVENCY RESOLUTION PROCESS ('CIRP')

Default *(Min. INR 1-Cr)*
**Central Govt. can set a higher default limit but not more than INR 1-Cr.*
(s.4)

→ Financial **OR**, Operational Creditors, file application for CIRP
(ss. 7, 9,10)

→ **Orders by NCLT ('AA')**
1) Admission {s.7(5)(a)}
a) Appoint Interim RP (s. 16)
b) Declare Moratorium {s.14(1)}
2) Rejection {s.7(5)(b)}

→ Claims called for and admitted by Interim IRP
(s.15)

→ Committee of Creditors ("COC") formed by IRP
(s. 21)

→ Appointment of Resolution Professional by COC and confirmation by AA
(s. 22)

→ Preparation of Information Memorandum by RP
{s. 29(1) r/w CIRP Reg 35 & 36}

→ RP will share Information Memorandum with the concerned stakeholders *{s.29(2)}*

→ RP will share Information Memorandum with all members of CoC
{s.29(2)}

→ RP will share publish Invitation for EoI *CIRP Reg. 36A /{s.29(2)}*

→ Resolution Professionals allowed access to all Information by RP
{s.29(2)}

→ Resolution Plan submitted by Resolution Applicants
{s.30(1)}

→ Verification of Eligibility of Resolution Applicant {s. 29A},
and of Resolution Plan
{s.30(2))

→ Approval by CoC
COC votes (*not less than 66%)*
s. 30(4)

→ **Orders of NCLT**
Acceptance {s. 31(1)}
Rejection {s. 31(2)}

Rejection by NCLT
→ Time Limit Available u/s 12(3): New Resolution Plan can be explored by RP/CoC
→ Time Limit u/s 12(3) Exhausted : Liquidation

Acceptance by NCLT
Implementation of Resolution Plan
Moratorium Ends

→ Resolution Applicant secures Other Regulatory Approvals
{s. 31(4)}

STAGES IN THE CIRP PROCESS

CIRP has a three-stage process:

1. **Pre-admission Process**
   (Section 3 – 11)

A person who can apply to NCLT to initiate the CIRP process Under Section 7 as Financial Creditor **"FCs",** in Section 9 as an Operational Creditor **"OCs",** or in Section 10 as a Corporate Debtor **"CDs".**

STAGES IN THE CIRP PROCESS

CIRP has a three-stage process:

2. **Post-Admission Process (Section 12 - 32A)**

After an application to NCLT, it is their discretion whether to accept or reject an application. The whole process of CIRP should be completed within 180 Days from the date of admission an application extension is allowed for 90 days only one extension is allowed by NCLT.

However, CIRP should be completed within a period of a maximum of 330 days from the date the insolvency commencement date. Otherwise, the Company would go into the Liquidation process as per Sections 33 to 54.

STAGES IN THE CIRP PROCESS

CIRP has a three-stage process:

3. Liquidation Stage (Sections 33 to 42 and Sections 52 to 54)

After an application to NCLT, it is their discretion whether to accept or reject an application. The whole process of CIRP should be completed within 180 Days from the date of admission an application extension is allowed for 90 days only one extension is allowed by NCLT.

However, CIRP should be completed within a period of a maximum of 330 days from the date the insolvency commencement date. Otherwise, the Company would go into the Liquidation process as per Sections 33 to 54.

Part 2 of the IBC, 2016 consists of 7 Chapters (Section 4 – 77) bifurcated as below:

- CHAPTER-1 –Preliminary (section 4-5)
- CHAPTER-2 - Corporate Insolvency Resolution Process (Section 6 to 32)
- CHAPTER-3 - Liquidation Process (Section 33 to 54)
- CHAPTER-3A - Pre-Packaged Insolvency Resolution Process (Section 54A. to 54P.)
- CHAPTER-4 - Fast Track Corporate Insolvency Resolution Process (Section 55 to 58)
- CHAPTER-5 - Voluntary Liquidation of Corporate Persons (Section 59)
- CHAPTER-6 - Adjudicating Authority for Corporate Persons (Section 60 to 67)
- CHAPTER-7 - Offences and Penalties (Section 68 to 77)

Section 4 – Applicability of Part 2:

This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is **ONE CRORE RUPEES.**

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Note:

Provided further that the CG may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A.

KEY DEFINITIONS UNDER SECTION 5

1. **"Dispute"** includes a suit or arbitration proceedings relating to –
   i. the existence of the amount of debt;
   ii.the quality of goods or service; or
   iii. the breach of a representation or warranty [Section 5(6)].

2. **"Financial Creditor"** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to [Section 5(7)].

3. **"Financial Debt"** means a debt along with interest, if any, and includes –

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;

KEY DEFINITIONS UNDER SECTION 5

c) any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument

d) the amount of any liability in respect of any lease or hire purchase contract;

e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

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

KEY DEFINITIONS UNDER SECTION 5

g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.

Time-limit for completion of Insolvency Resolution Process

Section 12 of the IBC,2016:

1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of **one hundred and eighty days from the date of admission of the application to initiate such process.**

2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a **vote of 66%. of the voting shares.**

Time-limit for completion of Insolvency Resolution Process

Section 12 of the IBC,2016:

3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process **cannot be completed within one hundred and eighty days,** it may by order **extend the duration** of such process beyond one hundred and eighty days by such further period as it thinks fit, **but not exceeding ninety days**:

Note: Any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Time-limit for completion of Insolvency Resolution Process

Section 12 of the IBC,2016:

4) The corporate insolvency resolution process shall mandatorily be completed within a period of **three hundred and thirty days** from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Declaration of Moratorium and Public Announcement

Section 13 of the IBC,2016:

The Adjudicating Authority, after admission of the application under section 7 or Section 9 or section 10, shall, by an order –

a) declare a moratorium for the purposes referred to in section 14;
b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
c) appoint an interim resolution professional

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

Moratorium

Section 14 of the IBC,2016:

- The word 'Moratorium' has not been defined under the Insolvency and Bankruptcy Code, 2016.

- Moratorium denotes the 'cooling period' which starts with the commencement of CIRP and ends when the Resolution Plan is either accepted or rejected by the Adjudicating Authority and if there is no resolution plan then liquidation petition is filed by the IRP/ RP.

- It gives time to the Corporate Debtor a chance to revive and come out of the financial distress by giving protection from recovery of pending debts and litigations etc.

Moratorium

Section 14 of the IBC,2016:

The following things are prohibited during the moratorium period:

Legal proceedings:

Section 14(1)(a):

- The initiation or continuation of suits or pending proceedings against the Corporate Debtor (CD), including the execution of any judgement, decree, or order in any court of law, tribunal, arbitration panel, or other authority, is barred.

- This provision grants the Adjudicating Authority (AA) broad powers to prevent the commencement or continuation of any legal proceeding against the CD and its property during the moratorium.

Moratorium - Case Study

Legal proceedings:

Section 14(1)(a):

Canara Bank v. Deccan Chronicle Holdings Limited

- The NCLAT held that the moratorium will not affect any proceedings initiated or pending before the Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136.

- Further, it will not affect the powers of any High Court under Article 226 of the Constitution.

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Moratorium

Section 14 of the IBC,2016:

The following things are prohibited during the moratorium period:

Transfer of assets:

Section 14(1)(b):

- The CD is prohibited from transferring, encumbering, alienating, or disposing of any of its assets or any legal right or beneficial interest therein.

- This restriction applies to the CD; however, the Interim Resolution Professional (IRP) or Resolution Professional (RP), while managing the CD as a going concern, can sell the assets of the CD in the ordinary course of business or in accordance with Regulation 29 of the CIRP Regulations, if not in the ordinary course.

Moratorium - Case Study

Transfer of assets:

Section 14(1)(b):

Canara Bank v. Deccan Chronicle Holdings Limited

- The NCLAT held that the IRP/RP is allowed to manage the corporate debtor's assets and may undertake transactions that are necessary for the operation of the corporate debtor as a going concern.

Moratorium

Section 14 of the IBC,2016:

The following things are prohibited during the moratorium period:

Enforcement of security interest:

Section 14(1)(c):

- Any action to foreclose, recover, or enforce any security interest created by the CD in respect of its property is prohibited.
- This includes cases where steps may have been taken by a creditor under any law for the enforcement of security (for example, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002).
- Once the moratorium begins, any further steps for enforcement of security must be suspended.

Moratorium - Case Study

Enforcement of security interest:

Section 14(1)(c):

Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. and Anr :

- Supreme Court held that once the CIRP is initiated, there is moratorium for any action to foreclose, recover or enforce any security interest created by CD in respect of its property including any action under the SARFAESI Act.
- IBC is a complete Code in itself and in view of the provisions of Section 238 of the IBC, the provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Moratorium

Section 14 of the IBC,2016:

The following things are prohibited during the moratorium period:

Recovery of property:

Section 14(1)(d):

- The recovery of any property by an owner or lessor that is occupied by or in the possession of the CD is prohibited during the moratorium.

Moratorium - Case Study

Recovery of property:

Section 14(1)(d):

Embassy Property Developments Pvt. Ltd. v. State of Karnataka

- The Supreme Court observed that the moratorium under Section 14 did not impact the right of the government to refuse the extension of a mining lease.

- The purpose of Section 14 was to preserve the status quo and not to create a new right.

Moratorium

Section 14 (2) of the IBC,2016:

Whether the supply of essential goods or services to the corporate debtor be terminated?

- If the IRP considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such CD as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such CD has not paid dues arising from such supply during the moratorium period.

Note: If the Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor, the moratorium shall cease to have effect from the date of such approval or liquidation order.

Moratorium - Case Study

Supply of Essential Goods and services during the CIRP

Section 14(2):

Shailesh Verma, RP of Lavasa Corporation Ltd. Vs. Maharashtra State Electricity Distribution Company Ltd

- NCLAT held that the direction of Adjudicating Authority to continue to supply electricity to corporate debtor during CIRP was subject to payment of outstanding dues within 90 days as directed by Adjudicating Authority.

- Corporate Debtor cannot enjoy the benefit of direction on one part, that is, to continue the supply of electricity and deny the payment of electricity dues of the CIRP period on other part .

Moratorium

Section 14 (3) of the IBC,2016:

Exceptions to Moratorium

- **Notified transactions:** Transactions, agreements, or other arrangements as may be notified by the Central Government in consultation with any financial regulator or any other authority. (No such transactions or arrangements have been notified so far).
- **Surety in a contract of guarantee:** A surety in a contract of guarantee to a Corporate Debtor (CD). This exception was introduced by the Insolvency and Bankruptcy (Amendment) Ordinance 2018 and later replaced by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.

Moratorium - Case Study

Exceptions to Moratorium

Section 14(3):

State Bank of India v. Ramkrishnan

- The Supreme Court held that Section 14 does not apply to the personal guarantor of the CD, but only to the CD itself.
- The court reasoned that in a contract of guarantee, the liability of the surety and that of the principal debtor is coextensive.
- Therefore, the creditor can proceed against the assets of either the principal debtor or the surety, or both, in any order.
- The court also considered the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, which amended Section 14 to clarify that it does not bar action against the guarantor..

Public Announcement of Corporate Insolvency Resolution Process

Section 15 of the IBC,2016:

The public announcement of the CIRP under the order referred to in section 13 shall contain the following information, namely: –

a) name and address of the corporate debtor under the CIRP;
b) name of the authority with which the corporate debtor is incorporated or registered;
c) the last date for submission of claims,
d) details of the IRP who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
e) penalties for false or misleading claims; and
f) the date on which the CIRP shall close, which shall be the 180th day from the date of the admission of the application under sections 7, 9 or 10, as the case may be.

Regulation 6 of the IBBI (CIRP) Regulation, 2016

An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.

Format of Public Announcement - Form A

Places of the publication of the Public Notice:

1. English Newspaper and one regional language newspaper with wide circulation at the location of the registered office
2. Website of the company
3. On the Website of the IBBI

FORM A

PUBLIC ANNOUNCEMENT

[Under Section 15 of the Insolvency and Bankruptcy Code (IBC), 2016 read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016]

FOR THE ATTENTION OF CREDITORS OF M/s SCOPE PROPERTIES PVT LTD

RELEVANT PARTICULARS		
1	Name of the Corporate Debtor	M/s SCOPE PROPERTIES PVT LTD
2	Date of Incorporation of Corporate Debtor	09/08/2004
3	Authority under which Corporate Debtor is Incorporated/ Registered	Registrar of Companies, Chennai, Tamil Nadu
4	Corporate Identity Number /Limited Liability Identification Number of Corporate Debtor	U70102TN2004PTC053916
5	Address of the Registered Office and Principal Office (if any) Of Corporate Debtor	69, NORTH USMAN ROAD, T. NAGAR CHENNAI TN 600017 INDIA
6	Insolvency Commencement Date in Respect of Corporate Debtor	27/03/2019 (As per order of NCLT dated 27/03/2019 in Company Petition no CP/1055/IB/2018
7	Estimated Date of Closure of Insolvency Resolution Process	24/09/2019 (180 days from the Insolvency Commencement date)
8	Name, and the Registration Number of the Insolvency Professional acting as interim resolution professional	Mr. Pankaj Srivastava, Registration No: IBBI/IPA-001/IP-P00245/ 2017-2018/10474

Format of Form A

9	Address, Email of the interim resolution professional, as registered with the Board	Address: Pai & Srivastava LLP, G02, Kundur Park, Amruthalli Jakkur Main Road, Jakkur, Bengaluru 560064 Email: rpal@paisri.com; psri@live.com
10	Address and e-mail to be used for correspondence with the interim resolution professional	Address: G02, Kundur Park, Amruthalli Jakkur Main Road, Jakkur, Bengaluru 560064 Email: rpal@paisri.com
11	Last Date for Submission of Claims	11/04/2019
12	Classes of Creditors, if any, under clause (b) of sub-section (6A) of section 21, ascertained by the interim resolution professional	Name of class(es): Nil
13	Names of Insolvency Professionals identified to act as Authorized Representative of Creditors in a class (three names for each class)	Not applicable
14	(a) Relevant Forms and (b) Details of authorized representatives are available at:	https://ibbi.gov.in/home/downloads Address: G02, Kundur Park, Amruthalli Jakkur Main Road, Jakkur, Bengaluru 560064 Email: rpal@paisri.com

Notice is hereby given that the National Company Law Tribunal, Chennai Bench has ordered the commencement of a Corporate Insolvency Resolution Process against **M/s SCOPE PROPERTIES PVT LTD** on 27/03/2019 Via order dated 27/03/2019

The Creditors of the **M/s SCOPE PROPERTIES PVT LTD** are hereby called upon to submit their claims with proof on or before 11/04/2019 to the Interim Resolution Professional at the address mentioned against item 10.

The financial creditors shall submit their proof of claims by electronic means only. The operational creditors, including workmen and employees, may submit the proof of claims by in person, by post or electronic means.

A financial creditor belonging to a class, as listed against the entry No. 12, shall indicate its choice of authorised representative from among the three insolvency professionals listed against entry No.13 to act as authorised representative of the class [specify class] in Form CA.

Submission of false or misleading proofs of claim shall attract penalties.

Date: 29th Mar 2019
Place: Bengaluru

Mr. Pankaj Srivastava
IBBI/IPA-001/IP-P00245/2017-2018/10474
Interim Resolution Professional

Format of Form A

Regulation 6 of the IBBI (CIRP) Regulation, 2016

Contents of the Public Announcement:

- The announcement must state where claim forms can be downloaded or obtained from,
- The announcement must offer choice of three insolvency professionals identified under Regulation 4A to act as the authorised representative of creditors in each class;
- The same should provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

Note: The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

Appointment and tenure of Interim Resolution Professional

Section 16 of the IBC,2016

1) The adjudicating authority appoints a person known as the **Interim Resolution Professional (IRP)** on the commencement date of insolvency who will conduct the entire proceeding.

1) The IRP is responsible to conduct the proceedings of CIRP and also to ascertain the operations of the corporate debtor as a going concern.

1) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the IRP, if no disciplinary proceedings are pending against him.

Appointment and tenure of IRP

Section 16 of the IBC,2016:

3) Where the application for corporate insolvency resolution process is made by an operational creditor and-

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the IBBI for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under section 9(4), the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Appointment and tenure of IRP

Section 16 of the IBC,2016:

4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority, recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

5) The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22.

Management of affairs of corporate debtor by the IRP

Section 17 of the IBC,2016:

1) From the date of appointment of the interim resolution professional, -

   a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

   b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

   c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

Management of affairs of corporate debtor by the IRP

Section 17 of the IBC,2016:

d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

2) The interim resolution professional vested with the management of the corporate debtor, shall-

a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

Management of affairs of corporate debtor by the IRP

Section 17 of the IBC,2016:

c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified;

e) Be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

Duties of Interim Resolution Professional

Section 18 of the IBC, 2016:

The Interim Resolution Professional shall perform the following duties, namely: -

a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -

   (i) business operations for the previous two years;

   (ii) financial and operational payments for the previous two years;

   (iii) list of assets and liabilities as on the initiation date; and

   (iv) such other matters as may be specified;

Duties of Interim Resolution Professional

Section 18 of the IBC, 2016:

b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

c) constitute a CoC;

d) monitor the assets of the corporate debtor and manage its operations until a RP is appointed by the CoC;

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

Duties of Interim Resolution Professional

Section 18 of the IBC, 2016:

f) Take control and custody of any asset over which the CD has ownership rights including –

  (i) assets over which the CD has ownership rights which may be located in a foreign country;

  (ii) assets that may or may not be in possession of the corporate debtor

  (iii) tangible assets, whether movable or immovable;

  (iv) intangible assets including intellectual property;

  (v) securities including shares held in any subsidiary of the CD, financial instruments, insurance policies;

  (vi) assets subject to the determination of ownership by a court or authority;

  (vii) to perform such other duties as may be specified by the Board.

Duties of Interim Resolution Professional

Section 18 of the IBC, 2016:

The following are not included under the ambit of Asset in this context:

(i) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(ii) assets of any Indian or foreign subsidiary of the corporate debtor; and

(iii) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Personnel to extend Co-operation to Interim resolution professional

Section 19 of the IBC,2016:

- The personnel of the CD, its promoters or any other person associated with the management of the corporate debtor shall extend full assistance and cooperation to the IRP as may be required by him in managing the affairs of the corporate debtor.
- Where any personnel of the CD, its promoter or any other person required to assist or cooperate with the IPR does not assist or cooperate, the IRP may make an application to the Adjudicating Authority for necessary directions.
- The Adjudicating Authority, on receiving an application, shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

Management of operations of corporate debtor as going concern

Section 20 of the IBC,2016

The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

Powers of the IRP:

a) To appoint accountants, legal or other professionals as may be necessary;
b) To enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

Management of operations of corporate debtor as going concern

Section 20 of the IBC,2016

Powers of the IRP:

c) To raise interim finance provided that no security interest shall be created over any encumbered property of the CD without the prior consent of the creditors whose debt is secured over such encumbered property:

Note: No prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

d) To issue instructions to personnel of the CD as may be necessary for keeping the corporate debtor as a going concern; and

e) To take all such actions as are necessary to keep the CD as a going concern.

Regulation 4 of the IBBI(CIRP)Regulation, 2016:

IRP to access the Books of Accounts

The IRP shall have access to the books of accounts account, records and other relevant documents and information, to the extent relevant for discharging his duties, of the CD held with-

(a)depositories of securities;

(b)professional advisors of the corporate debtor;

(c)information utilities;

(d)other registries that records the ownership of assets;

(e)members, promoters, partners, BOD and joint venture partners of the corporate debtor; and

(f) contractual counterparties of the corporate debtor.

Section 21 of the IBC, 2016:

Committee of creditors

- The committee of creditors plays a major role in the regime of insolvency.
- The committee of creditors is the supreme decision-making body in the CIRP, whose decision will affect the resolution of insolvency of the corporate debtor.
- It is the responsibility of the IRP to call for claims received from all the creditors within 14 days of public announcement and when the claim gets the verification, the committee of creditors is formed.
- The committee of creditors shall comprise all the financial creditors of the corporate debtor.

Committee of creditors

Section 21 of the IBC, 2016:

- If the financial creditor or the authorised representative of the financial creditor, is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Note: This shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Committee of creditors

Section 21 of the IBC, 2016:

Case 1: If the Financial creditor is a part of Consortium, how would the committee be structured?

If the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them subject to the conditions as laid down in section 21(6) or 21(6A)

Committee of creditors

Section 21 of the IBC, 2016:

Case 2: Where any person is a financial creditor as well as an operational creditor

Where any person is a financial creditor as well as an operational creditor, such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

Also, such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

Committee of creditors

Section 21 of the IBC, 2016:

Case 3: Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor

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

Committee of creditors

Section 21 of the IBC, 2016:

Case 4 : Where the terms of the financial debt extended as part of a consortium arrangement provide for a single trustee or agent to act for all financial creditors

If the above mentioned situation arises, each financial creditor may:

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

Committee of creditors

Section 21 of the IBC, 2016:

Case 4 : Where the terms of the financial debt extended as part of a consortium arrangement provide for a single trustee or agent to act for all financial creditors

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

Voting Mechanism for the CoC

Section 21(8) of the IBC, 2016:

- In general, all decisions of the CoC shall be taken by a vote of not less than 51% of voting share of the financial creditors.

- Other decisions as specified may be shall be taken by a vote of not less than 66% of voting share of the financial creditors.

Note: Where a CD does not have any financial creditors, the CoC shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.

The CoC shall have the right to require the resolution professional to furnish any financial information in relation to the CD at any time during the CIRP and the same shall be provided by the RP within 7 days of such requisition.

Regulation 16 of the IBBI(CIRP) Regulation, 2016 (Chapter V)

Committee with only operational creditors

Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up as follows:

a) Eighteen largest operational creditors by value

b) One representative elected by all workmen and one representative elected by all employees.

Note:

- If the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;
- A member of the committee shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, to the total debt.

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)

Appointment of the Authorised Representative for the class creditors

- The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors to act as the authorised representative of the creditors of the respective class.

- The IRP shall apply to the NCLT for appointment of the authorised representatives within two days of the verification of claims.

- Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)

Appointment of the Authorised Representative for the class creditors

On appointment of the authorized representative, the IRP shall:

a) provide the list of creditors in each class to the respective authorised representative appointed by the Adjudicating Authority.

b) provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

c) provide electronic means of communication between the authorised representative and the creditors in the class.

Note: The voting share of the authorised representative shall be in proportion to the financial debt which includes an interest at the rate of 8% per annum unless a different rate has been agreed to between the parties.

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

Fees for Authorized Representative:

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	30,000
101-1000	40,000
More than 1000	50,000

Note: The payment of fee to authorised representative shall be part of insolvency resolution process cost in respect of two meeting with the creditors he represents corresponding to a meeting of the committee of creditors.

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

The fee for any additional meeting beyond two meetings corresponding to a meeting of the committee of creditors shall be part of insolvency resolution process cost subject to approval of committee of creditors

- The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee:
- The creditors shall have a time window of at least twelve hours to submit their preliminary views.

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

The authorised representative shall:

i. Assist the creditors in a class he represents in understanding the discussions and considerations of the committee meetings and facilitate informed decision-making;

ii. Review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional, if any;

iii. Help the creditors in a class he represents during the consultation made by the resolution professional to prepare a strategy for marketing of the assets of the corporate debtor in terms of sub-regulation (1) of regulation 36C;

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

iv. work in collaboration with the creditors in a class he represents to enhance the marketability of the assets of the corporate debtor in terms of sub-regulation (3) of regulation 36C;

v. assist the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants;

vi. ensure that the creditors in a class he represents have access to any information or documents required to form an opinion on issues discussed in the committee meetings;

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

v. update regularly the creditors in a class he represents on the progress of the corporate insolvency resolution process;

vi. make suggestions for modifications of the resolution plan as may be required by the creditors in class he represents;

vii. record proceedings and prepare the minutes of the meeting with the creditors in a class he represents; and

Regulation 16A of the IBBI(CIRP) Regulation, 2016 (Chapter V)
Appointment of the Authorised Representative for the class creditors

viii. act as a representative for the creditors in a class he represents in representations before the Adjudicating Authority, National Company Law Appellate Tribunal, and other regulatory authorities.

Note: Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).

Regulation 17 of the IBBI(CIRP) Regulation, 2016
Constitution of CoC

1) The interim resolution professional shall file a report certifying constitution of the committee to the Adjudicating Authority within two days of the verification of claims received under regulation 12(1).

2) The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report.

3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.

Committee of Creditors - Case Study

Section 21:

Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC

- The decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors

- A resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour."

Committee of Creditors - Case Study

Section 21:

Vijay Kumar Jain v. Standard Chartered Bank

- The Supreme Court ruled that resolution plans must be provided to members of the suspended board of directors of the Corporate Debtor (CD).
- The Court affirmed that these directors have a right to participate in the Committee of Creditors (CoC) meetings.
- It was noted that a combined reading of the Insolvency and Bankruptcy Code (IBC) and the CIRP Regulations indicates that members of the suspended board of directors, who have a vital interest in the resolution plans discussed at CoC meetings, should receive copies of these plans along with the meeting notices.

Section 22 of the IBC, 2016:
Appointment of Resolution Professional (RP)

1. The first meeting of the CoC shall be held within 7 days of the constitution of the CoC.

2. The CoC may, in the first meeting, by a majority vote of not less than **66%** of the voting share of the financial creditors, either resolve to appoint the IRP as a RP or to replace the interim IRP by another RP.

3. Where the committee of creditors resolves under sub-section (2)-

   a) to continue the IRP as RP subject to a written consent from the IRP, it shall communicate its decision to the IRP, the corporate debtor and the Adjudicating Authority; or

Section 22 of the IBC, 2016:
Appointment of Resolution Professional (RP)

b) to replace the IRP, it shall file an application before the Adjudicating Authority for the appointment of the proposed RP along with a written consent from the proposed RP.

4. The Adjudicating Authority shall forward the name of the RP proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

5. Where the Board does not confirm the name of the proposed RP within 10 days of the receipt of the name of the proposed RP, the Adjudicating Authority shall, by order, direct the IRP to continue to function as the RP until such time as the Board confirms the appointment of the proposed RP.

Regulation 3 of the IBBI (CIRP) Regulations, 2016:
Eligibility for Resolution Professional

- An Insolvency Professional shall be eligible to be appointed as a RP for a CIRP of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Regulation 3 of the IBBI (CIRP) Regulations, 2016:

Eligibility for Resolution Professional

A person shall be considered independent of the corporate debtor, if he:

a) Is eligible to be appointed as Independent Director on the board of Corporate debtor, where the CD is a company

b) Is not a related party of the Corporate debtor

c) Is not an employee or proprietor or a partner:

   i. Of a firm of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or

   ii. Of a legal or a consulting firm, that has or had any the transaction with corporate debtor amounting to 5% or more of the gross turnover of such firm, in the last 3 financial years.

Regulation 3 of the IBBI (CIRP) Regulations, 2016:

Eligibility for Resolution Professional

- Where the committee decides to appoint the IRP as RP or replace the IRP under section 22 or replace the RP u/s 27, it shall obtain the written consent of the proposed resolution professional in **Form AA** of the Schedule.

- A RP shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

- A resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as a RP in a CIRP if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same CIRP.

Resolution Professional to conduct Corporate Insolvency Resolution Process Section 23 of the IBC, 2016:

1. Subject to section 27, the RP shall conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period

Provided that the RP shall continue to manage the operations of the corporate debtor after the expiry of the CIRP period, until an order approving the resolution plan u/s 31(1) or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

2. The RP shall exercise powers and perform duties as are vested or conferred on the IRP

3. In case of any appointment of a RP u/s 22(4), the IRP shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Resolution Professional - Case Study

Section 22(3):

Sunit Suri Vs. Ahsan Ahmed (RP) & CoC of SDU Travels Pvt. Ltd.

- The appellant, being the suspended director of CD- “SDU Travel Pvt Ltd.”, led application under section 22(3) of the IBC to replace the IRP stating that the IRP is not acting independently and is working under the influence of the other Suspended Directors.

- The NCLAT held that Section 22(3) of the IBC clearly confers power to the CoC to replace the IRP by preferring appeal before AA.

- The Appellate Tribunal held that when the Section 22(3)(b) of the IBC explicitly spells for the appointment of the proposed RP then the invocation of Rule 11 of the National Company Law Appellate Tribunal Rules 2016 cannot be pressed into service, showering power only to CoC to replace the IRP.

Resolution Professional - Case Study

Section 22(3) and 29A :

Sharavan Kumar Vishnoi Vs. Upma Jaiswal & Ors

- Ms. Upma Jaiswal, one of the Resolution Applicants preferred an application before the NCLT Allahabad Bench seeking specific directions to RP of Renu Residency Pvt. Ltd. ("Corporate Debtor") for placing the resolution plan as submitted by her before the CoC of the Corporate Debtor. The RP rejected the same.

- The NCLAT held that RP is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the RP to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not, the RP can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not.

Practical Difficulties faced by the Resolution Professional

Name of the RP	Anuj Jain
Name of the Corporate Debtor	Jaypee Kensington Boulevard Apartments Welfare Assn
Instance faced	The Uttar Pradesh Police has from F.I.R. No. 0098/2021, registered at Police Station Beta- II in District Greater Noida, took the extreme step to arrest the Interim Resolution Professional, Mr. Anuj Jain, who was working in that capacity pursuant to the order passed by the Court and entrusted with the functioning of the Company in question.

Practical Difficulties faced by the Resolution Professional

Reason for the occurrence	It was seen that the police official dealing with the case was not familiar with the provision of privilege of interim resolution appointed by the Court, in terms of Section 233 of the Insolvency and Bankruptcy Code.
Court's move	The court directed immediate release of the applicant, Anuj Jain, who was in the custody of Police Station, Beta-II, District Greater Noida, Uttar Pradesh and had to be produced before the Court of Chief Judicial Magistrate, Gautam Buddh Nagar, Uttar Pradesh.

Practical Difficulties faced by the Resolution Professional

Name of the RP	Subrata Monindranath Maity
Name of the Corporate Debtor	Guardian Home Private Limited
Instance faced	The complainant was working in a Pune-based company that had a business dispute with a Bengaluru company, which was before the NCLT, Mumbai. The matter was settled in the favour of the complainant's company in the NCLT. The Bengaluru company then filed an appeal before appellate authority in Delhi which passed an order in its favour in 2020, and the matter was transferred to the NCLT, Mumbai for further action. The NCLT appointed Maity as interim resolution professional for the further course of action. Meanwhile, both the disputing parties went for an out-of-court settlement and accordingly, the Pune company paid Rs 3 crore to the Bengaluru company.

Practical Difficulties faced by the Resolution Professional

Reason for the occurrence	Maity, along with a CA, went to the office of the complainant in Pune and allegedly demanded Rs 20 lakh bribe along with Rs 4 lakh official fee to complete the pending formalities at NCLT. Maity allegedly threatened the complainant that he will take coercive action against his company, if the money was not paid. The complainant then approached the CBI.
CBI move	The CBI arrested interim resolution professional of National Company Law Tribunal (NCLT), Subrata Maity, a jeweller and his employee for allegedly accepting Rs 2 lakh, the first instalment of a Rs 20-lakh bribe, from one of the litigants. The CBI searched the premises of the accused in Mumbai, Navi Mumbai, and Pune and recovered documents for examination.

Meetings of the CoC
Section 24 of the IBC, 2016:

1. The members of the CoC may meet in person or by such electronic means as may be specified.

2. All meetings of the CoC shall be conducted by the resolution professional.

3. The resolution professional shall give **notice of each meeting** of the CoC to-
   (a) members of CoC, including the authorised representatives referred to in section 21;
   (b) members of the suspended BoD or the partners of the corporate persons, as the case may be;
   (c) operational creditors or their representatives if the amount of their aggregate dues is not less than **10%** of the debt.

Meetings of the CoC
Section 24 of the IBC, 2016:

4. The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of CoC, but shall not have any right to vote in such meetings:

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

6. Any creditor who is a member of the CoC may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the CoC, subject to sub-sections (6), (6A) and (6B) of section 21.

Meetings of the CoC
Section 24 of the IBC, 2016:

7. Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

8. The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

9. The meetings of the committee of creditors shall be conducted in such manner as may be specified.

Regulation 24 of the IBBI(CIRP) Regulations, 2016:

Conduct of Meetings

1. The resolution professional shall act as the chairperson of the meeting of the committee.
2. On roll call the following things are to be specified by the member:
   (a) his name;
   (b) whether he is attending in the capacity of a member of the committee or any other participant;
   (c) whether he is representing a member or group of members;
   (d) the location from where he is participating;
   (e) that he has received the agenda and all the relevant material for the meeting;
   (f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.

Regulation 24 of the IBBI(CIRP) Regulations, 2016:
Conduct of Meetings

3. After the roll call, the RP shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.

4. The RP shall ensure that the required quorum is present throughout the meeting.

5. From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the RP shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility, without the permission of the resolution professional

Regulation 24 of the IBBI(CIRP) Regulations, 2016:
Conduct of Meetings

6. The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.

7. The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within 48 hours of the said meeting and seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system.

Regulation 25 of the IBBI(CIRP) Regulations, 2016:
Voting by the committee

1. The actions listed in section 28(1) shall be considered in meetings of the committee.

2. Any action other than those listed in section 28(1) requiring approval of the committee may be considered in meetings of the committee subject to the approval of the members of the committee.

3. The resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting at the conclusion of a vote at the meeting,

Regulation 25 of the IBBI(CIRP) Regulations, 2016:
Voting by the committee

4. The resolution professional shall circulate the minutes of the meeting by electronic means to all members of the committee and the authorized representative, if any, within 48 hours of the conclusion of the meeting; and seek a vote of the members who did not vote at the meeting on the matters listed for voting from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days

Note: On a request for extension made by a creditor, the voting window shall be extended in increments of twenty-four hours' period:

Duties of the Resolution Professional

Section 25 of the IBC, 2016

It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

For the fulfilment of the same, the RP shall take the following actions:

1. take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
2. represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
3. raise interim finances subject to the approval of the committee of creditor u/s 28;
4. appoint accountants, legal or other professionals in the manner as specified by Board;

Duties of the Resolution Professional

Section 25 of the IBC, 2016:

5. maintain an updated list of claims;
6. convene and attend all meetings of the committee of creditors;
7. prepare the information memorandum in accordance with section 29;
8. invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor
9. present all resolution plans at the meetings of the committee of creditors;
10. file application for avoidance of transactions
11. such other actions as may be specified by the Board.

Rights and duties of Authorised Representative of Financial Creditors Section 25A of the IBC,2016

1. The authorized representative under section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

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

3. The authorized representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions

Rights and duties of Authorised Representative of Financial Creditors
Section 25A of the IBC,2016

Note:

- If the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

- If any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

Section 25A of the IBC,2016
Rights and duties of Authorised Representative of Financial Creditors

Note:

- The authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than 50% of the voting share of the financial creditors he represents, who have cast their vote
- The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the IRP or RP, as the case may be.

Application for avoidance of transactions not to affect proceedings

Section 26 of the IBC,2016

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.

Replacement of resolution professional by committee of creditors

Section 27 of the IBC,2016

1. Where, at any time during the CIRP, the committee or creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

2. The committee of creditors may, at a meeting, by a vote of 66% of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional.

3. The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

Replacement of resolution professional by committee of creditors

Section 27 of the IBC,2016

4. The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

5. Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

Approval of Committee of Creditors for certain actions
Section 28 of the IBC,2016

1. Notwithstanding anything contained in any other law for the time being in force**, the resolution professional, during the CIRP, shall not take any of the following actions without the prior approval of the committee of creditors** namely:

    a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting

    b) create any security interest over the assets of the corporate debtor;

    c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

Approval of Committee of Creditors for certain actions
Section 28 of the IBC,2016

d) record any change in the ownership interest of the corporate debtor;

e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

f) undertake any related party transaction;

g) amend any constitutional documents of the corporate debtor;

h) delegate its authority to any other person;

Approval of Committee of Creditors for certain actions
Section 28 of the IBC,2016

i) dispose of or permit the disposal of shares of any shareholder of the CD or their nominees to third parties;

j) make any change in the management of the CD or its subsidiary;

k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;

l) make changes in the appointment or terms of contract of such personnel as specified by the CoC; or

m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Approval of Committee of Creditors for certain actions
Section 28 of the IBC,2016

2. The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

3. No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of sixty-six percent of the voting shares.

4. Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

5. The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.

Preparation of Information Memorandum
Section 29 of the IBC,2016

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

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

   b) to protect any intellectual property of the corporate debtor it may have access to; and

Preparation of Information Memorandum
Section 29 of the IBC,2016

c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Note –

For the purposes of this section, “relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

a) is an undischarged insolvent;

b) is a wilful defaulter in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949 (10 of 1949);

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

c) at the time of submission of the resolution plan has an account, or an account of a CD under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the RBI issued under the Banking Regulation Act, 1949 (or the guidelines of a financial sector regulator issued under any other law for the time being in force) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Note 1 – For the purposes of this proviso, the expression "**related party**" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares (or completion of such transactions as may be prescribed), prior to the insolvency commencement date.

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Note 2 –

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code.

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

d) has been convicted for any offence punishable with imprisonment –
   i. for two years or more under any Act specified under the Twelfth Schedule; or
   ii. for seven years or more under any law for the time being in force

Note 1: this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment

Note 2: this clause shall not apply in relation to a connected person

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013)

Note 2: this clause shall not apply in relation to a connected person

f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

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

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Note :

This clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction.

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

j) has a connected person not eligible under clauses (a) to (i).

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Explanation I: For the purposes of this clause, the expression "connected person" means—

i. any person who is the promoter or in the management or control of the resolution applicant; or

ii. any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

iii. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Note 1:

nothing in clause (iii) of Explanation shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor

Note 2:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Section 29A of the IBC,2016
Persons not eligible to be resolution applicant

Explanation II:

For the purposes of this sect ion, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely-

a) a scheduled bank;

b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

Persons not eligible to be resolution applicant
Section 29A of the IBC,2016

Explanation II:

c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the FEMA, 1999 (42 of 1999);

d) an asset reconstruct ion company register with the RBI under sect ion 3 of the SARFAESI, 2002 (54 of 2002);

e) an Alternate Investment Fund registered with SEBI;

f) such categories of persons as may be notified by the Central Government.

Regulation 36A(7)(g) of the IBBI (CIRP) Regn,2016

Expression of interest (EOI)

- An Expression of Interest (EOI) is not a resolution plan itself but rather a formal statement from a Prospective Resolution Applicant (PRA) indicating their intention to present a resolution plan for the Corporate Debtor (CD).

- The Corporate Insolvency Resolution Process (CIRP) Regulations require that a PRA submit an EOI before gaining access to the Information Memorandum (IM) and other relevant information. Here's a detailed breakdown of the process::

Regulation 36A(7)(g) of the IBBI (CIRP) Regn,2016

Expression of interest (EOI)

Submission of EOI :

Initial steps:

- A PRA must first submit an EOI to express its interest in formulating a resolution plan for the CD. This step is mandated by the CIRP Regulations to ensure that only serious and eligible applicants proceed to the subsequent stages.
- The PRA must fulfil certain prescribed conditions and provide specific undertakings as part of the EOI submission. These conditions typically include confidentiality undertakings and declarations of eligibility.

Regulation 36A(7)(g) of the IBBI (CIRP) Regn,2016

Expression of interest (EOI)

Submission of EOI :

Access to IM:

- Only after the PRA submits the EOI and complies with the required conditions will they be granted access to the IM and other relevant information. This access enables the PRA to prepare a detailed and informed resolution plan.

FORM G

INVITATION FOR EXPRESSION OF INTEREST

(Under Regulation 36A (1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Relevant Particulars

1.	Name of the corporate debtor	Galada Power And Telecommunication Limited
2.	Date of Incorporation of Corporate Debtor	24-06-1972
3.	Authority under which Corporate Debtor is incorporated / registered	Registrar of Companies, Hyderabad
4.	Corporate identity number / limited liability identification number of corporate debtor	L64203TG1972PLC001513
5.	Address of the registered office and principal office (if any) of the Corporate Debtor	P2/6, IDA Block III, Uppal, Hyderabad, Telengana 500039
6.	Insolvency commencement date in respect of Corporate Debtor	Date of Order: 14th August, 2019
7.	Date of invitation of expression of interest	06.11.2019

Format of Form G

8.	Eligibility for resolution applicants under section 25(2)(h) of the Code is available at:	http://www.galadapower.com/contact.html
9.	Norms of ineligibility applicable under section 29A are available at:	http://www.galadapower.com/contact.html
10.	Last date for receipt of expression of interest	21.11.2019
11.	Date of issue of provisional list of prospective resolution applicants	01.12.2019
12.	Last date for submission of objections to provisional list	06.12.2019
13.	Date of issue of final list of prospective resolution applicants	16.12.2019
14.	Date of issue of information memorandum, evaluation matrix and request for resolution plans to prospective resolution applicants	06.12.2019

Format of Form G

15.	Manner of obtaining request for resolution plan, evaluation matrix, information memorandum("IM") and further information	The Prospective resolution applicants are requested to send an email to eoi.galada@gmail.com Information Memorandum, RFRP and Evaluation Matrix will be provided via email/data room after execution of confidentiality undertaking.
16.	Last date for submission of resolution plans	05.01.2020
17.	Manner of submitting resolution plans to resolution professional	Physical Copy of the Resolution Plan should be sent in a plain SEALED ENVELOPE marked to: Mr. Nitin Panchal. (Resolution Professional of M/s. Galada Power and Telecommunication Ltd. C/O. 1221 Maker Chamber V, Nariman Point, Mumbai-400021
18.	Estimated date for submission of resolution plan to the Adjudicating Authority for approval	04.02.2020

Format of Form G

19.	Name and registration number of the resolution professional	**Mr. Nitin Vishwanath Panchal** **Registration Number: IBBI/IPA-001/IP-P00777/2017-2018/11350**
20.	Name, Address and e-email of the resolution professional, as registered with the Board	Registered Address with IBBI: A-203, SurajEleganza-iChs, Pitamber Lane, Near Dena Bank, Mahim (West), Mumbai City, Maharashtra ,400016 Email: nitin20768@gmail.com Registration Number: IBBI/IPA-001/IP-P00777/2017-2018/11350
21.	Address and email to be used for correspondence with the resolution professional	Mr. Nitin Panchal, For Communication: Address: 1221 Maker Chamber V, Jamnalal Bajaj Road, Nariman Point, Mumbai - 400021 Email: ip.galadapower@gmail.com
22.	Further Details are available at or with	Website: www.galadapower.com
23.	Date of publication of Form G	06.11.2019

Date:06.11.2019
Place:Hyderabad

Sd/-
Nitin Vishwanath Panchal
IBBI/IPA-001/IP-P00777/2017-2018/11350
Registered Address-A-203, Suraj Eleganza-iChs, Pitamber Lane,

Format of Form G

Submission of resolution plan
Section 30 of the IBC,2016

- Provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

    i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

    i. 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, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with section 53(1) in the event of a liquidation of the corporate debtor.

Submission of resolution plan
Section 30 of the IBC,2016

Note A distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Note 2—On and from the date of commencement of the IBC (Amendment) Act, 2019, the provisions of this clause shall also apply to the CIRP of a corporate debtor-

i. where a resolution plan has not been approved or rejected by the Adjudicating Authority;

ii. where an appeal has been preferred under section 61 or 62 or such an appeal is not time barred under any provision of law for the time being in force; or

iii. where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan

Evaluation Matrix

- The evaluation matrix is a critical component in the Corporate Insolvency Resolution Process (CIRP) as defined under Regulation 2(1)(ha) of the CIRP Regulations.

- It sets out the parameters and the manner of applying these parameters, which have been approved by the Committee of Creditors (CoC), for evaluating resolution plans submitted by Prospective Resolution Applicants (PRAs).

- Evaluation matrix is defined as the set of parameters and the manner of applying such parameters for evaluating resolution plans. These parameters are approved by the CoC and shared with the PRAs along with the Request for Resolution Plan (RFRP).

Criteria for evaluation:

- The matrix outlines specific criteria on which resolution plans will be assessed by the CoC.
- These criteria are designed to objectively compare different resolution plans to ensure the selection of the most viable and beneficial plan for the Corporate Debtor (CD) and its stakeholders.

Transparency and comparability:

- By providing a clear set of evaluation parameters, the matrix ensures transparency in the evaluation process.
- It reduces the likelihood of disputes and challenges by making the assessment criteria explicit and objective.
- The evaluation matrix allows the CoC to systematically compare one resolution plan against another, ensuring a fair and balanced decision-making process.

Parameters of Evaluation Matrix:

- **Financial parameters:** Includes aspects such as the upfront cash payment, equity infusion, debt restructuring terms, and financial viability.
- **Operational parameters:** Includes business continuity plans, operational turnaround strategies, and management competence.
- **Compliance parameters:** Ensures adherence to regulatory requirements, legal compliances, and corporate governance standards.
- **Social parameters:** May include considerations for employee retention, social responsibility, and stakeholder impact.

Implementation and impact:

Evaluation process:

- The CoC uses the evaluation matrix to score and rank the submitted resolution plans. Each plan is assessed based on how well it meets the criteria outlined in the matrix.

Decision-making:

- The evaluation matrix provides a structured approach to decision-making, helping the CoC to select the best resolution plan based on a balanced assessment of financial, operational, and compliance factors.

Reducing challenges:

- A well-defined and transparent evaluation matrix minimises the risk of challenges to the CoC's decisions, thereby streamlining the resolution process and enhancing its credibility.

Approval of resolution plan
Section 31 of the IBC,2016

1. If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors u/s 30(4) meets the requirements as referred to in section 30(2), it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

Approval of resolution plan
Section 31 of the IBC,2016

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

3. After the order of approval under sub-section (1), -

   (a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

   (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database

Approval of resolution plan
Section 31 of the IBC,2016

4. The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

Approval of resolution plan
Regulation 39 of the IBBI(CIRP) Regulations, 2016:

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;

(b) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code

Regulation 39 of the IBBI(CIRP) Regulations, 2016: Approval of resolution plan

(1A) The resolution professional may, if envisaged in the request for resolution plan-

(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or

(b) use a challenge mechanism to enable resolution applicants to improve their plans.

(1B) The committee shall not consider any resolution plan-

(a) received after the time as specified by the committee under regulation 36B; or

(b) received from a person who does not appear in the final list of prospective resolution applicants; or

(c) does not comply with the provisions of section 30(2) and sub-regulation (1).

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(2) The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined 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 adjudicating authority in respect of such transactions.

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(3) The committee shall-

(a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;

(b) record its deliberations on the feasibility and viability of each resolution plan; and

(c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(3B) 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:

Note 1: where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Note 2: where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

Illustration. - The committee is voting on two resolution plans, namely, A and B, simultaneously. The voting outcome is as under:

Voting outcome	% of votes in favour of		Status of approval
	Plan A	Plan B	
1	55	60	No Plan is approved, as neither of the Plans received requisite votes. The committee shall vote again on Plan B, which received the higher votes, subject to the timelines under the Code.
2	70	75	Plan B is approved, as it received higher votes, which is not less than requisite votes.
3	75	75	The committee shall approve either Plan A or Plan B, as per the tie-breaker formula announced before voting.

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the Schedule-I and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(5A) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the IBBI (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;

Regulation 39 of the IBBI(CIRP) Regulations, 2016:
Approval of resolution plan

(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

Regulation 39 of the IBBI(CIRP) Regulations, 2016: Approval of resolution plan

(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.

(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.

Regulation 39A of the IBBI(CIRP) Regulations, 2016:

Preservation of records

(1) The interim resolution professional or the resolution professional, as the case may be, shall preserve copies of all such records which are required to give a complete account of the corporate insolvency resolution process.

(2) Without prejudice to the generality of the obligations under sub-regulation (1), the interim resolution professional or the resolution professional, as the case may be, shall preserve copies of records relating to or forming the basis of:-

(a) his appointment as interim resolution professional or resolution professional, including the terms of appointment;

(b) handing over / taking over of the assignment;

Regulation 39A of the IBBI(CIRP) Regulations, 2016:
Preservation of records

(c) admission of corporate debtor into corporate insolvency resolution process;

(d) public announcement;

(e) the constitution of committee and meetings of the committee;

(f) claims, verification of claims, and list of creditors;

(g) engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;

(h) information memorandum;

(i) all filings with the Adjudicating Authority, Appellate Authority and their orders;

Regulation 39A of the IBBI(CIRP) Regulations, 2016:
Preservation of records

(j) invitation, consideration and approval of the resolution plan;

(k) statutory filings with Board and insolvency professional agencies;

(l) correspondence during the corporate insolvency resolution process;

(m) insolvency resolution process cost; and

(n) preferential, undervalued, extortionate credit transactions or fraudulent or wrongful trading.

Regulation 39A of the IBBI(CIRP) Regulations, 2016: Preservation of records

(3) The interim resolution professional or the resolution professional shall preserve :

(a) An electronic copy of all records (physical and electronic) for a minimum period of eight years; and

(b) A physical copy of records for a minimum period of three years; from the date of completion of the corporate insolvency resolution process or the conclusion of any proceeding relating to the corporate insolvency resolution process, before the Board, the Adjudicating Authority, Appellate Authority or any Court, whichever is later.

Regulation 39A of the IBBI(CIRP) Regulations, 2016:
Preservation of records

(4) The interim resolution professional or the resolution professional shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the Regulations.

Note: The records referred to in this regulation includes records pertaining to the period of a corporate insolvency resolution process during which the interim resolution professional or the resolution professional acted as such, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion.

Regulation 39B of the IBBI(CIRP) Regulations, 2016:

Meeting liquidation cost

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

Regulation 39B of the IBBI(CIRP) Regulations, 2016:

Meeting liquidation cost

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Note - For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Challenges in Implementation of the Resolution Plan

- In certain cases, successful resolution applicants have sought to withdraw from the resolution plan after its approval by the Committee of Creditors (CoC) and/or were unwilling to implement the resolution plan after approval by the Adjudicating Authority (AA).

- Such scenarios undermine the integrity and effectiveness of the CIRP, posing risks to the resolution process.

Challenges in Implementation of the Resolution Plan

- To address these issues, the Insolvency and Bankruptcy Board of India (IBBI) amended the CIRP Regulations on January 24, 2019. The key amendments include:

Performance security:

Regulation 39(4): The RP must submit an application to the AA for approval of the resolution plan along with evidence of performance security provided by the successful resolution applicant.

This security ensures that only genuine, capable, and credible applicants submit resolution plans, thereby discouraging withdrawal or non-implementation.

Challenges in Implementation of the Resolution Plan

Historical implementation record:

Regulation 38(1B): The resolution plan must include a statement indicating whether the resolution applicant or any of its related parties has previously failed to implement or contributed to the failure of implementing any plan approved by the AA under the IBC.

This disclosure helps assess the reliability and commitment of the applicant.

Creditor remedies:

Regulation 39(9): Creditors aggrieved by the non-implementation of an approved resolution plan may apply to the AA for appropriate directions.

This provision allows creditors to seek remedies beyond liquidation, such as requesting an extension to find a new resolution applicant.

Challenges in Implementation of Resolution Plan - Case Study

Committee of Creditors of Amtek Auto Ltd. v. Dinkar T. Venkatsubramanian

- The Supreme Court (SC) addressed the failure of a resolution plan due to the non-fulfillment of commitments by the successful resolution applicant.
- The SC permitted the RP to invite fresh offers within a prescribed timeframe and allowed the CoC to make a final decision and present it to the SC.
- The SC permitted the RP to invite fresh offers within a prescribed timeframe and allowed the CoC to make a final decision and present it to the SC.
- When the successful resolution applicant sought to withdraw, the SC rejected the withdrawal application, warning that such practices could be treated as contempt of court.

Appeal

Section 32 of the IBC,2016

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

Liability for prior offences, etc.

Section 32A of the IBC,2016

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

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

Liability for prior offences, etc

Section 32A of the IBC,2016

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

Note 1:

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

Liability for prior offences, etc.

Section 32A of the IBC,2016

Note 2:

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

Liability for prior offences, etc.

Section 32A of the IBC,2016

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

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

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

Liability for prior offences, etc.

Section 32A of the IBC,2016

Note - For the purposes of this sub-section, it is hereby clarified that,-

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

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

Liability for prior offences, etc.

Section 32A of the IBC,2016

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the CIRP

Regulation 40 of the IBBI(CIRP) Regulations, 2016:
Extension of the Corporate Insolvency Resolution Process Period

(1) The committee may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period.

(2) The resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

Clarification: It is clarified that the resolution professional shall continue to discharge his responsibilities under the corporate insolvency resolution process, till the application for extension is decided by the Adjudicating Authority

The Alternatives

1

IRP
(Resolution of insolvency)

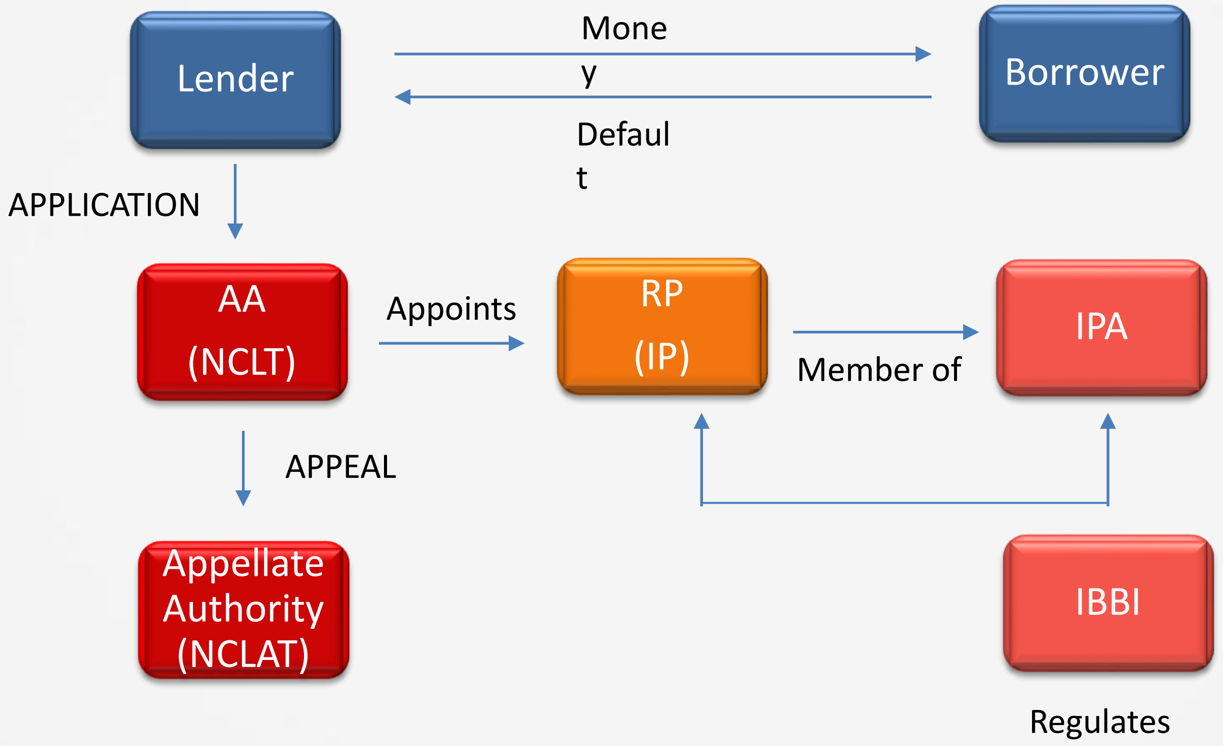
2

RIP
(Liquidation)

Process - IRP

Broad outline of the process of CIRP

Adjudicating Authority, Regulator and various other Constituents



Facts and Figures on insolvency

Total NPA before IBC	INR - 16 Lac Crores
NPA –after IBC	INR – 5.5 LAC CR
Number of IBC cases	6571
Number of companies Revived	480
No. of companies Liquidated or under L	1609
Largest single NPA	DHFL – Rs.87K Cr
Bank with highest NPA	SBI (Rs.12 L CR)

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IBC - TOP DEALS

Name of the CD	Acquirer / Resolution Applicant	Debt in Rs. Crores	Price paid by RA	Hair Cut To the lender as % of debt
Deewan Housing Finance Limited	Piramal capital and Housing Finance	87K	37.2 K	57%
Essar Steel Ltd	Arcelor Mittal	49 K	42K	15%
Bhushan Steel Ltd	Tata Steel	56K	35.2K	37%
Videocon industries and 12 other in Group	Vedanta Twin start Technologies	65K	3K	96%

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Key Areas

Understanding the Corporate Debtor

NCLT replacement of IRP & Charge Handover

Sequence of CIRP activities amidst challenges

Valuation Estimates

PUFE Transactions (Preferential, Under-valued, Fraudulent and Extortionate Transactions)

Verification & Validation of Resolution Plan

Engaging for Implementation of Plan and Charge Handover

NCLAT & Supreme Court Judgements

Timeline

Yield Maximization

Introduction

I. Facts about the Corporate Debtor
II. Production capacity and Product portfolio
III. Industry outlook
IV. Credit facilities availed by the Corporate Debtor
V. Reason for stress in the Corporate Debtor
VI. Initiation of CIRP
VII. Appointment of IRP
VIII. Constitution of Committee of Creditors

Change of Guard

I. Replacement of Interim Resolution Professional
II. Charge Handover Formalities – Documentation is the essence
III. Initials Steps
   - Communication with stakeholders
   - Review of information received from IRP
   - Preparation of model timeline and identification of compliance activities
   - Visit to Corporate Debtor’s Office premises for control & custody of assets
   - Discussion with management/KMPs for understanding of business
   - Understanding requirement to operate as going concern
   - Building relationship with factory workers (80 employees)
   - Challenges – limited operations at plant; shortage of experience staff; minimal cash flows; inadequate records; abnormalities in valuation, incomplete information memorandum: limited time for conclusion of CIRP.

Sequence of CIRP Activities

I. Review, Verification and Necessary Revision:
- Revision of Information Memorandum
- Review of Claim forms / List of Creditors / Reclassification
- Review of Valuation Reports - Discrepancies and appointment of Third Valuer
- Review of Books of Account for last 2 years – Red Flags in Related Party Transactions
- Review of transactions during CIRP - Appropriation by FC during Moratorium

Sequence of CIRP Activities

III. Convening CoC Meeting –
   - Notice
   - Agenda
   - Minutes
   - Voting

IV. Mechanism for Control over Payment, Change in Bank Authorization, RPT Approval

V. Recovery of Appropriation during moratorium

VI. Appointment of Professionals – Valuer, Transaction Auditor, Sales Advisor, Legal Advisor

VII. Circular Resolution for Extension of CIRP and approval of Extension Application

VIII. Issue of Invitation for Expression of Interest (including Eligibility Criteria & Form G)

IX. Process Memorandum & Evaluation Matrix

Sequence of CIRP Activities

X. Evaluation of Expression of Interest & eligibility under Section 29A

XI. Site Visits & Due Diligence of PRA's

XII. Review of Resolution Plan and Approval

XIII. Other Routine Activities

- Frequent plant visits & physical verification
- Budgeting / forecasting – Cash Flow Management
- Facilitating processing of Finished Goods & consequent sale
- Review of MIS – Weekly sales and expenses
- Payroll Management
- Facilitating Statutory Audit
- Listing Compliances under Chapter V- SEBI LODR
- Other Secretarial Compliances (Board Meeting, AGM etc)
- Representation before Regulators / Government Departments

Obtaining Valuation Estimates

I. Importance of valuation – Appointment of Registered Valuers; Subjective Assessment; International Valuation Standards; Valuation of entire assets; Confidentiality

II. Criticalities in Valuation Exercise:
   - Facilitation of details of all the assets of the Corporate Debtor
   - Physical Verification of assets
   - Compliance with International Valuation Standards
   - Review of Valuation Methodology used
   - Reasonableness of underlying assumptions
   - Completeness of Report
   - Substantial Difference – Subjective Interpretation
   - Appointment of 3rd Valuer
   - Introduction of Fair Value, Revision of Reports
   - Averaging as per IBC

Locating PUFE Transactions

I. Lack of Literature and Judicial Precedents
II. Critical Analysis of Section 43, 45, 50 and 66 of the Code.
III. Review of transactions in previous years – Form Preliminary Opinion
IV. Appointment of Transaction Reviewer
V. Steps undertaken:
    - Scrutiny of books of accounts
    - Identifying related party transactions such as material advances, repayment of liabilities, inter-company balance adjustments, guarantees, securities etc.
    - Evaluating authenticity of supporting documents like PO/WO, underlying agreements
    - Evaluating minutes for BoD and Audit Committee Approvals
    - Assessing the financial health of other entities
    - Identifying red flags for forming an opinion

Locating PUFE Transactions

VI. Discussion of draft report with CoC
VII. Obtaining responses/justifications from management of Corporate Debtor.
VIII. Forming final opinion and determination of PUFE Transactions
IX. Filing application with Adjudicating Authority

Note - Constructive interpretation of sections and reasonability of underlying transactions is an essence to form an Opinion on PUFE Transactions.

Value Maximization – Resolution Plan

I. Determining eligibility criteria
II. Publication of Invitation for Expression of Interest and Form G
III. Scouting for Bidders - Typical M&A pitching
IV. Receipt of Expression of Interests and Evaluation
V. Verification of Eligibility – Potential Resolution Applicants ("PRA")
VI. Signing of NDA, Data sharing on VDR (Secured with Audit Trail)
VII. Facilitating Site Visits
VIII. Responses to technical/financial queries
IX. Receipt of Resolution Plan before CoC – Complete Transparency
X. Section 29A eligibility – in Depth Scrutiny
XI. Evaluation of Resolution Plan Terms (Tenure, Upfront portion etc).

Value Maximization – Resolution Plan

XII. Assisting CoC - Analysis of Resolution Plans vis-a-vis Evaluation Matrix
XIII. Evaluating the Combination threshold
XIV. Intimating deficiencies in the plans to PRA(s)
XV. Developing multiple simulations for the CoC – Dissent and Settlement
XVI. Approval of Plan by the CoC – 20th April, 2018
XVII. Multiple Litigations during approval of Resolution Plan
XVIII. Re-Determination of LV as per Hon'ble NCLT Order – September 2019
XIX. Re-Approval of Same Resolution Plan by CoC – October 2019
XX. Approval of Resolution Plan by Hon'ble NCLT – 21st January, 2019
XXI. Appeal by Promoter and FC & Order of Hon'ble NCLAT
XXII. Appeal by Resolution Applicant and FC & Order of Hon'ble Supreme Court

Implementation

I. Appointment as Supervisor for Implementation for Resolution Plan

II. Settlement of Resolution Plan Amount
   - Freezing of CIRP cost
   - Identifying amount payable to stakeholders / bank details
   - Facilitating Escrow Account – For receipt & distribution
   - Distribution of Proceeds as per approved Resolution Plan
   - Arranging NOC from Existing Lenders

III. Facilitating necessary filings

IV. Handover of Possession – Title Deed, Plant visit

V. Challenges informed by Resolution Applicant – Appeal in NCLAT

Change in Control

I. Implementation of Hon’ble SC Order

II. Key Challenges:
   - Constructive Possession vs Actual Possession
   - How to handover a plant?
   - Assurance of control to RA

III. Steps taken:
   - Requested for Assistance as per Hon’ble SC Order
   - Visited Plant with RA, facilitated control handover to RA
   - Assisted in various activities – Land Survey, Regulatory Communication
   - Physical Stock Taking / Verification of Fixed Asset

IV. Documentation of Handover
   - Cut off Financials
   - Handover Over Document executed
   - Reported to Hon’ble NCLT

Yield Maximization

I. Core of Resolution – Maximization of Value for stakeholders
II. Value may or may not be Liquidation Value
III. Commercial wisdom of CoC is sacrosanct
IV. Litigations during and after CIRP lead to value erosion for all
V. Limited Judicial Review and Reasonable exercise of commercial wisdom is key to speedy resolution

Key Learnings

I. How to handle interpretation in a new law
II. Feasible solution for practical challenges
III. Rapport building with stakeholders (Employees, CoC etc)
IV. Review of limited judicial precedents
V. How to address compliances without guidelines
VI. Insight into the Concept of Custody & Control
VII. How to effect Handover of CD
VIII. Importance of documentation – Conduct of CIRP/Handover
IX. Intricacies of Valuation – Models/ Methodologies / Interpretations / Subjective
X. Importance of Support Team

Conclusion

I. The Code is still a reasonable new law and will keep evolving.
II. Judicial Precedents, Amendments and Guidelines will provide clarity
III. The object of Code is to free up capital and promote entrepreneurship.
IV. Every Judicial Precedent will have an impact on other CIRP
V. This landmark judgement has laid down clarity on Liquidation Value and paved way for many resolutions.
VI. Role of Chartered Accountants