# Corporate Insolvency Resolution Process ( CIRP)

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# KEY TERMS – Definitions – Section 3

**Debt**

(*11*) "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

**Operational debt – Section 5**

(*21*) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority

**Creditor – Section 3**

(*10*) "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;

**Operational Creditor- Section 5 (20)**

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

**Default – Section 3**

(*12*) "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 repaid by the debtor or the corporate debtor, as the case may be;

(6)"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;

# CIRP BY OPERATIONAL CREDITOR

The procedure for insolvency resolution by operational creditor laid down in **section 8** differs from the procedure applicable to financial creditors under **section 7** of the Code.

- An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

- The corporate debtor shall, within a period of **Ten days** of the receipt of the demand notice or copy of the invoice mentioned bring to the notice of the operational creditor –

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt–

i. by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

ii. by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor

- **Existence of dispute or payment of debt –**

The corporate debtor has a period of ten days from the receipt of the demand notice or invoice to inform the operational creditor of the existence of a dispute regarding the debt claim or of the payment of the debt by either sending:

(i) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor, or

(ii) an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

- **Application by Operational creditor:**

  After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

- The operational creditor shall, along with the application furnish –
  a. a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  b. an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

c. a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
d. a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
e. any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

- An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

- The Adjudicating Authority shall, within **fourteen days** of the receipt of the application by an order –

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if-

a) the application made is complete;

b) there is no payment of unpaid operational debt;

c) the notice for payment has been delivered by operational creditor to corporate debtor;

d) no notice of dispute has been received by operational creditor or no record of dispute in the information utility.

e) there is no disciplinary proceeding pending against any resolution professional proposed if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

a) the application made is incomplete;
b) there has been payment for unpaid operational debt;
c) the creditor has not delivered notice for payment;
d) notice of dispute has been received by OC or there is a record of dispute in information utility.
e) any disciplinary action is pending against resolution professional proposed if any.

Provided that adjudicating authority, shall before rejecting an application give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating authority.

# ADMISSION, REJECTION AND COMMENCEMENT OF CIRP BY OC

- **Admission of application –**

The National Company Law Tribunal shall admit the application and communicate such decision to the operational creditor and the corporate debtor within **fourteen days** of the receipt of such application if the conditions laid down under the Code have been fulfilled.

- **Rejection of Application –**

The National Company Law Tribunal shall reject the application and communicate such decision to the operational creditor and the corporate debtor within **fourteen days** of the receipt of such application if any of the prescribed conditions under the Code is not satisfied. The National Company Law Tribunal shall before rejecting an application give a notice to the applicant to rectify the defect in his application within **seven days** of the date of receipt of such notice from the National Company Law Tribunal.

- **Commencement of corporate insolvency resolution process –**

The corporate insolvency resolution process shall commence from the date of admission of the application

# The distinction in treatment of financial creditors and operational creditors

| Aspect | Operational Creditor (OC) | Financial Creditor (FC) |
|---|---|---|
| Definition | An OC is a person to whom an operational debt is owed. This includes suppliers of goods or services. | An FC is a person to whom a financial debt is owed, typically financial institutions or lenders. |
| **Nature of Debt** | The debt arises from the provision of goods or services. | The debt arises from borrowing or lending of funds. |
| **Initiation of Process** | Initiates insolvency under Section 9 if there is a default on operational debts. | Initiates insolvency under Section 7 based on default in payment of financial debts. |

| Aspect | Operational Creditor (OC) | Financial Creditor (FC) |
|---|---|---|
| **Types of Creditors** | Typically involves trade creditors, service providers, and suppliers. | Typically involves banks, financial institutions, and other lenders. |
| **Claim Type** | Operational claims are related to day-to-day business transactions. | Financial claims involve principal and interest on loans or other financial instruments. |
| **Resolution Process** | OCs generally require proof of default in operational debts and evidence of non-payment. | FCs can initiate insolvency proceedings with evidence of default on financial debts. |

| Aspect | Operational Creditor (OC) | Financial Creditor (FC) |
|---|---|---|
| **Role in Resolution** | OCs may file claims but do not participate in CoC meetings or decision-making processes. | FCs play a central role in the CoC, influencing the resolution plan and its approval. |
| **Voting Rights** | OCs do not have voting rights in the Committee of Creditors (CoC). | FCs have voting rights in the Committee of Creditors (CoC) and influence the resolution process. |

# Initiation of CIRP by

# Corporate Applicant / CD

# What is a Corporate Debtor under IBC?

As per the definition u/s 3(8) of the IBC –

corporate debtor is the Corporate Person who owes a debt to any person.

**What is a Corporate Person?**

- means

a company as defined in section 2 (20) of the Companies Act, 2013,

a limited liability partnership, as defined in section 2 (1)(n) of the

LLP 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;

# Who / What is Financial Service Provider?

- **Who / What is Financial Service Provider?**

  Section 3 (*17*) - "financial service provider" means

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

- **Who Financial Sector Regulator?**

Section 3 (*18*) -

"financial sector regulator" means

an authority or body constituted under any law
for the time being in force to -

regulate services or transactions of financial sector and
includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

- **What is Financial Service?**

Section 3 (*16*) -

"financial service" includes any of the following services, namely:—

(*a*) accepting of deposits;

(*b*) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(*c*) effecting contracts of insurance;

(*d*) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

- **What is Financial Service?**

  (*e*) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—

  (*i*) buying, selling, or subscribing to, a financial product;

  (*ii*) availing a financial service; or

  (iii) exercising any right associated with a financial product or financial service;

(*f*) establishing or operating an investment scheme;

(*g*) maintaining or transferring records of ownership of a financial product;

(*h*) underwriting the issuance or subscription of a financial product; or

(*i*) selling, providing, or issuing stored value or payment instruments or providing payment services;

# Initiation of CIRP by Corporate Applicant

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The application under sub-section *(1)* shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

As per Section 5(5) corporate applicant" means—

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or

(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

(d) a person who has the control and supervision over the financial affairs of the corporate debtor;

# Initiation of CIRP by Corporate Applicant

**Section 10.**

(1)Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(*2*) The application under sub-section (*1*) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(*3*) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(*b*) the resolution professional proposed to be appointed as an interim resolution professional.

(*4*) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(*a*) admit the application, if it is complete; or

(*b*) reject the application, if it is incomplete

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

*5*) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (*4*).

# CASE STUDY - SECTION 8 & 9

## 4. **Innoventive Industries Ltd. v. ICICI Bank & Another**

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| **Question Before The Court** | Notice prior to admission of a petition under Section 7 of I&B Code, 2016 should have been given. 2. There was complete non-application of mind by the Ld. Tribunal.<br>A party which has defaulted its obligation cannot complaint about other's alleged default. |
| **Parties** | Innoventive Industries Ltd. ---Petitioners<br>VS<br>ICICI Bank & Another ---Respondents |
| **Name Of The Court / Judge** | Supreme Court<br>Hon'ble S.J Mukhopadhaya |

# CASE STUDY - SECTION 8 & 9

## Innoventive Industries Ltd. v. ICICI Bank & Another

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| **Brief Facts Of The Case** | Innoventive Industris Limited became insolvent and ICICI bank initiated CIRP u/s 7 of the IBC.<br>The corporate debtor took shelter under the Maharashtra Relief Undertaking (Special Provisions) Act, 1958 (the "Maharashtra Act") under which Innoventive's liabilities were suspended by way of moratorium and said CIRP cannot be initiated. |
| **Conclusion / Judgement/ Verdict** | The Supreme Court upheld the decisions of NCLAT and NCLT and held that u/s 9, the adjudicating authority must admit the petition if the operational creditor complies with the procedural requirements of Section 8, and there is no pre-existing dispute about the debt's default. The Court emphasized that the merit of disputes should be resolved during the CIRP, not at the admission stage. |

# CASE STUDY - SECTION 8 & 9

**Vaibhav Agarwal v. Sunil Sachdeva**

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| **Questions before the Court** | .Whether lease rentals due from CD qualify as operational debt? |
| **Parties** | Vaibhav Agarwal – Appellant<br><br>Sunil Sachdeva - Respondent<br>Haldiram Fincap Pvt. Ltd – Corporate Debtor & Respondent |

**Brief facts**

.A lease agreement was entered for a period of 12 years by the Corporate Debtor – Haldiram Fincap in 2016.
However, the CD did not pay the lease rental.  So the Lessor.
Demand notice was served in the year 2019 for an amount of Rs. 85 Lacs.
When the lessee did not respond, the lessor filed an application u/s 9 of IBC and the NCLT allowed the petition.  Hence, the appeal.

**Conclusion**

The appeal was heard at NCLAT principal bench and the decision of the Tribunal was upheld.

**Date of the order – $2^{nd}$ July, 2024**

# CASE STUDY - SECTION 10

## M/s. Homigo Realty Private Limited v. NCLT

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| **Question Before The Court** | Can a Corporate Debtor itself file an application for the initiation of CIRP if it is unable to meet its financial obligations ?<br><br>Can a company that needs restructuring file a petition under section 10 ? |
| **Parties** | M/s. Homigo Realty Private Limited ---Petitioners |
| **Name Of The Court / Judge** | NCLT, Bengaluru |

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| **Brief Facts Of The Case** | Homigo Realty, a real estate company, filed a petition u/s 10 seeking to initiate CIRP against itself. The company argued that it was unable to meet its financial obligations and needed restructuring. |
| **Conclusion / Judgement/ Verdict** | NCLT admitted the application for CIRP as the company issued various cheques that were getting dishonored due to poor financial position. |

# CASE STUDY - SECTION 10

**Mr. Umesh Aggarwal v. Ricoh India Ltd. (2021)**

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| **Question Before The Court** | Is the decision of the Corporate Debtor for CIRP teneble if no Annual General Meeting (AGM) nor any Extra-ordinary General Meeting (EGM) was conducted for taking decision to file an application under Section 10 of the I&B Code for declaring insolvent of the 'corporate applicant'. |
| **Parties** | Umesh Aggarwal --Appellant<br>VS<br>Ricoh India Ltd **--**Respondents |
| **Name Of The Court / Judge** | National Company Law Appellate Tribunal , New Delhi<br>Hon'ble Sudhansu Jyoti Mukhopadhaya, J. |

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| **Brief Facts Of The Case** | Mr. Umesh Aggarwal, a promoter of Ricoh India Ltd., filed an appeal against the order of the AA that admitted an application under Section 10 for initiating CIRP of Ricoh India Ltd.<br><br>The appellant stated that the Company cannot apply for CIRP without any approval or consent of the company at a General Meeting. |
| **Conclusion / Judgement/ Verdict** | The NCLAT upheld the admission of the petition, ruling that Ricoh India Ltd. had met the procedural requirements of Section 10. It emphasized that the CD’s intention to resolve its financial difficulties through CIRP was valid, provided the statutory criteria were fulfilled. |

# CASE STUDY - SECTION 10

## UNIGREEN GLOBAL P LTD v. PUNJAB NATIONAL BANK

**Question Before The Court**

1. When a Corporate Applicant seeks CIRP of a CD, can a Creditor object to such application
2. If yes, what are the grounds for such objection?
3. What should AA consider while hearing such an application

**UNIGREEN GLOBAL P LTD** **-** Applicant

VS

Punjab National Bank **--** Respondents

COURT / TRIBUNAL – NCLT, DELHI

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| **Brief Facts Of The Case** | Unigreen Global Ltd – the CD and CA in this case had filed an application under section 10 of IBC seeking CIRP against itself without impleading any Creditor.<br><br>As per the list of creditors furnished by the Company, a sum of Rs. 100 Cr + was owed by it. The NCLT asked the applicant to serve a copy on the Creditors. The Creditors objected to the CIRP, stating that the company and its promoters are creating litigation on the properties mortgaged to them and are deliberately trying to take IBC route so that a moratorium is declared and all other legal proceedings concerning this CD come to a halt. |
| **Conclusion / Judgement/ Verdict** | The NCLT Delhi – Rejected the CIRP application stating that the interests of the Creditors will be substantially affected if the matter is admitted. Further stated that the CD had not come to the AA with clean hands. |

# CASE STUDY - SECTION 10

## GO AIRLINES INDIA LIMITED

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| **Question Before The Court** | Whether there are grounds for an application for CIRP u/s 10 ?<br>Whether it can be admitted ? |
| **Parties** | Go Airlines India Limited .--Applicant |

COURT / TRIBUNAL - NCLT, Delhi, Special Bench

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| **Brief Facts Of The Case** | The Company operates in Civil Aviation Industry.<br>The brand name is Go Air, later changed to Go First.<br>Third largest passenger airline.<br>One of the key operators in specific sectors like Leh, Jammu etc.<br>It leased Aircraft engines from Pratt and Whitney (P&W)<br>CD claims that it supplied faulty engines and hence, 35% of the aircrafts could not take off. This resulted in loss of business and financial distress. The total liabilities indicated are financial debt – INR. 6520 Crore, INR 2600 Crores towards lessors, INR 1200 Cr towards vendors |
| **Conclusion / Judgement/ Verdict** | in view of the unpaid debt subsisting above Rs. 01 Crore and the default committed by the Corporate Applicant towards the same, and the Corporate Applicant being not disqualified under Section 11 of IBC 2016, we have no other option but to admit the present Application under Section 10 of IBC 2016. Accordingly, the Application of the Corporate Applicant is admitted. |

# Withdrawal and Settlement under Section 12A of the Code

Thank you