Corporate Insolvency Resolution Process (CIRP)

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Agenda

- CIRP Overview
- Triggers for CIRP
- Who can initiate CIRP?
- Flow Chart of CIRP Process
- Who cannot file CIRP?
- Timeline for Completion of CIRP
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- Who can file Application under section 7?
- Financial Debt?
- Position of Home Buyers, Depositors & Class of Creditors
- Procedure for filing application for Initiation of CIRP (FC)

CIRP Overview

- The words “Insolvency” and “Bankruptcy” are generally used interchangeably in common parlance but there is a marked distinction between the two. Insolvency and bankruptcy are not synonymous.
- The term “insolvency” notes the state of one whose assets are in sufficient to pay his debts; or his general inability to pay his debts.
- The word “bankruptcy” is the condition of insolvency. It is a legal status of a person or an entity who cannot repay debts to creditors. The bankruptcy process begins with filing of a petition in a court or before an appropriate authority designated for this purpose.
- 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 CIRP 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.

Stages of CIRP

- Stage I: Initiation Of CIRP
- Stage II: Moratorium And Public Announcement
- Stage III: Constitution Of Committee
- Stage IV: Appointment Of Resolution Professional
- Stage V: Powers And Duties Of The IRP/RP
- Stage VI: Initiation Of Expression Of Interest Process For Submission Of Resolution Plan
- Stage VII: Approval Of Resolution Plan

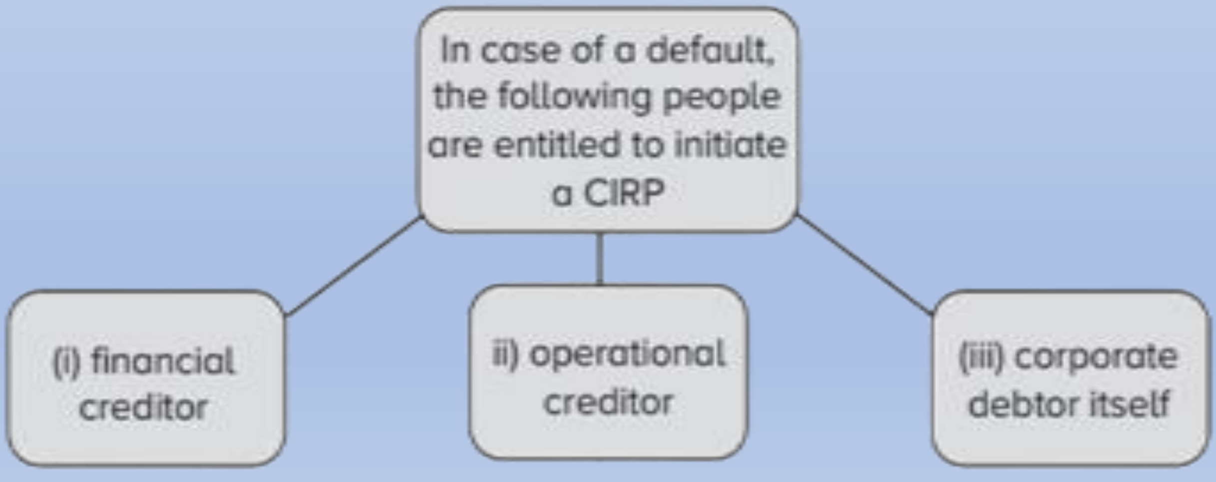
Triggers for CIRP

Section 4

- This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh 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.

Who Can initiate CIRP??

- Section 6 of the IBC, 2016 provides that where any corporate debtor commits a default, **a financial creditor, an operational creditor or the corporate debtor** itself may initiate CIRP in respect of such corporate debtor in the manner as provided under Chapter II of Part II of the Code.



Flow Chart of CIRP Process

- Application to NCLT
- Admission/Rejection
- Appointment of IRP
- Moratorium
- Appointment of COC
- Invitation for EOI
- EOI (Expression of Interest)
- Resolution Application
- Selection of Resolution Plan
- Approval of Resolution plan by NCLT
- Implementation of plan
- Handover of Company

Who Cannot File CIRP?? (Section 11)

Timeline for Completion of CIRP
(Regulation 40A of CIRP Regulations)

Who is Financial Creditor?
Meaning of Debt?
Whether Assignee is included in Financial Creditor? (Section 5(7)

Financial Debt?

“financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money 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;

(c) any amount raised pursuant to any note purchase facility or 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 which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

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

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***1*[*Explanation*.** -For the purposes of this sub-clause, -

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

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

(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;

CIRP by Financial Creditor

Section 7 of the IBC, 2016 lays down the procedure for the initiation of the corporate insolvency resolution process by a financial creditor or two or more financial creditors jointly.

- A financial creditor either by **itself or jointly** with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

- Provided that for the financial creditors, referred to in **section 21**, an application for initiation CIRP against the corporate debtor shall be filed jointly **by not less than 100 of such creditors** in the same class or **not less than 10% of the total number of such creditors** in the same class, **whichever is less.**

- The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

- The financial creditor shall, along with the application furnish –
  (a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;

b) the **name of the resolution professional** proposed to act as an interim resolution professional; and

c) any other information as may be specified by the Board

- The **Adjudicating Authority** shall, **within 14 days** of the receipt of the application ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

- Where the Adjudicating Authority is satisfied that –

  a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

b) default has **not occurred** or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, **reject** such application.

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

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

Position of Home Buyers, Depositors & Class of Creditors as Financial Creditors

Procedure for Filing application for Initiation of CIRP (By Financial Creditor)

- Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

Thank you