Insolvency Resolution for Corporate Persons

(Part II of the I&B Code,2016)

Chapter I – Preliminary (Sections 4 to 5)

Framework of Part II of I & B Code, 2016

Chapter I
Preliminary

Chapter II
Corporate Insolvency Resolution Process

Chapter III
Liquidation Process

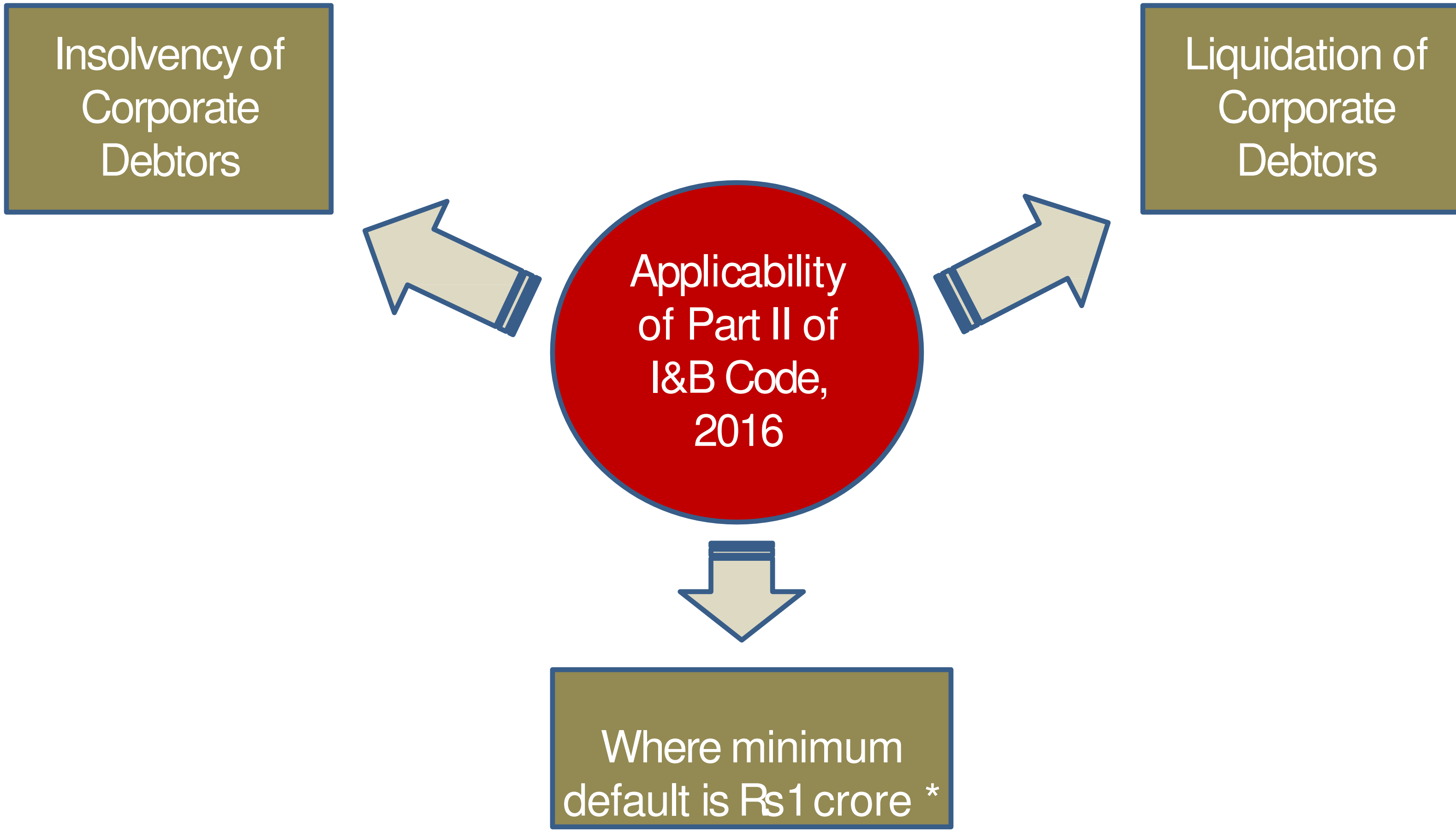
Chapter IV Fast Track Corporate Insolvency Resolution Process

Chapter V
Voluntary Liquidation of Corporate Persons

Chapter VI
Adjudicating Authority for Corporate Persons

Chapter VII
Offences & Penalties

Applicability of this Part (Section 4)



Insolvency Resolution for Corporate Persons

(Part II of the I&B Code, 2016)

Chapter II – Corporate Insolvency Resolution Process (Sections 6 to 32)

Persons who may initiate corporate insolvency resolution process (Sec 6)

Upon Corporate Debtor committing adefault

Initiation of CIR Process by Financial Creditor (Sec 7)

- Upon default by a CD in respect of financial debt owed to any FC
- CIR process can be initiated by one or more FCs
- By filing an application before AA (i.e. NCLT)
- Application to be made as prescribed (in Form 1 + Other documents mentioned therein including written communication from proposed IntRP in Form 2) along with stipulated fee of Rs25,000/-
- Application to be also accompanied by:
  a. Record of the default recorded with the information utility or such other record or evidence of default as may be specified
  b. Proposed name of the Interim Resolution Professional and
  c. Any other specified information by IBBI

Initiation of CIR Process by Financial Creditor (Sec 7) +A2AA Rule 4

- Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [A2AA Rules]
- Form 1, to be accompanied with documents & records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- Where the applicant (FC) is an assignee or transferee of a financial contract, the application be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.
- The applicant shall dispatch forthwith, a copy of the application filed with the AA, by registered or speed post to the registered office of the CD.
- In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf.

Initiation of CIR Process by Financial Creditor (Sec 7) +A2AA Rule 10

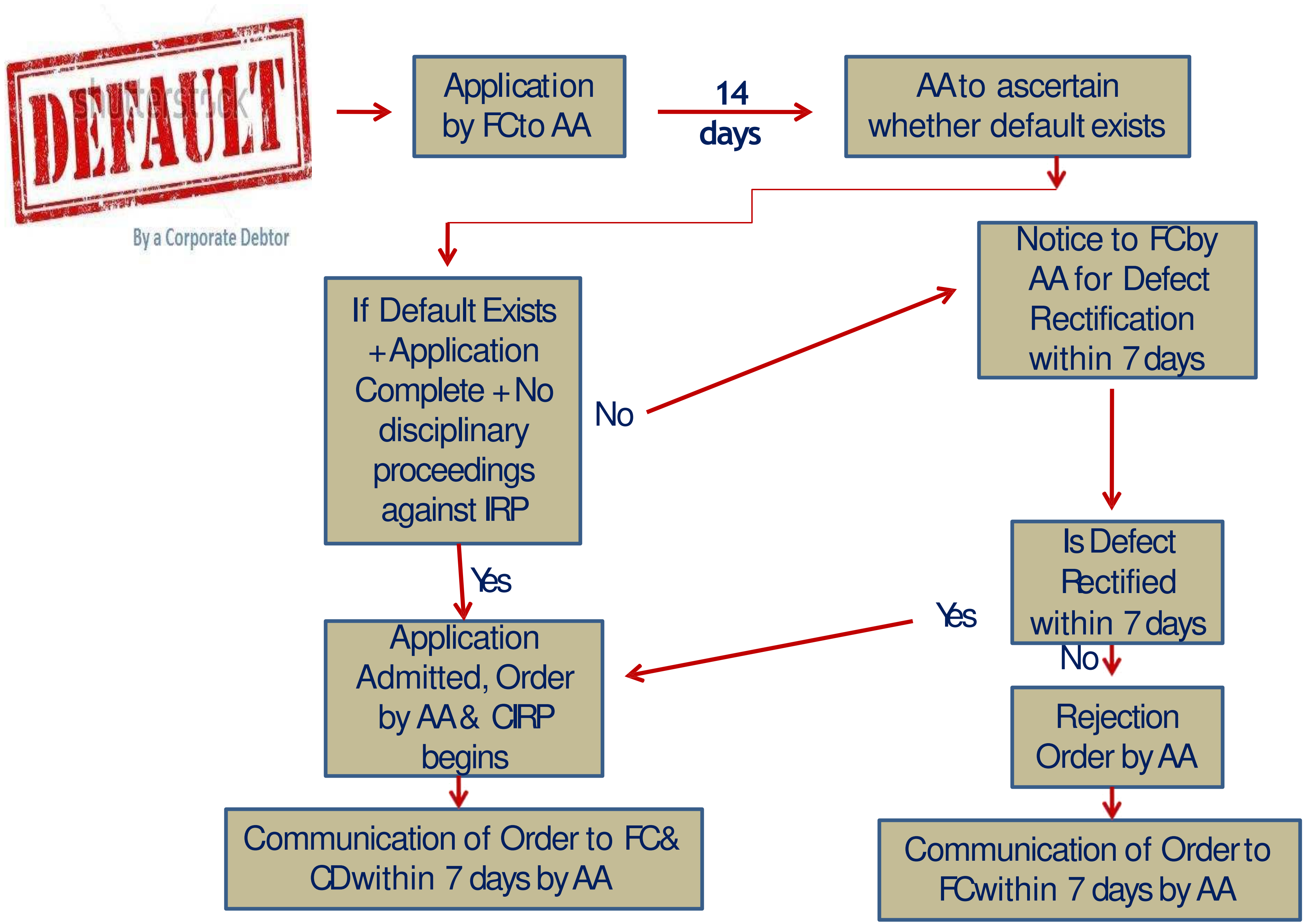
- Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application shall be filed before the AA in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the NCLT Rules, 2016.
- Applicant shall immediately after becoming aware, notify the AA of any winding-up petition presented against the CD
- The application shall be accompanied by stipulated fee
- The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as prescribed by the AA
- Provided that till such facility is made available, the applicant may submit the accompanying documents, & wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the AA

Initiation of CIR Process by Financial Creditor (Sec 7)

- ❖ AA to ascertain existence of default within 14 days of application
- ❖ AA to admit application by an order upon its satisfaction
  a. that default has occurred
  b. that application is complete and
  c. that there is no disciplinary proceedings pending against the RP
- ❖ AA to reject application by an order if it is not satisfied on any one of the above grounds

  (Provided that before such rejection, AA to give notice to the applicant to rectify defect in application within 7 days of notice)
- ❖ CIRP to commence from date of admission of application
- ❖ AA to communicate admission order to FC & CD within 7 days
- ❖ AA to communicate rejection order to FC within 7 days

Flow Chart for Initiation of CIR Process by Financial Creditor



Insolvency Resolution by Operational Creditor (Sec 8 +A2AA Rule 5)

- Upon occurrence of default by CD, OC may deliver Notice of Unpaid Operational Debt (Demand Notice) to CD in Form 3
- Alternatively the OC may send copy of invoice demanding payment of the defaulted amount to such CD, attached with a notice in Form 4
- The above notices, as case may be to be also filed with IU
- The above notices, as the case may be to be delivered to CD:
  a. at the registered office by hand, registered post or speed post with acknowledgement due; or
  b. by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the CD

Insolvency Resolution by Operational Creditor (Sec 8 +A2AA Rule 5)

- CD shall within 10 days of receipt of demand notice/invoice as aforesaid, bring to the notice of OC:

  a. existence of a dispute, if any and record of pendency of suit/arbitration proceedings filed before receipt of the aforesaid notice/invoice

  b. repayment of unpaid operational debt with evidence of payment as prescribed (refer Form 3 of A2AA Rules)

     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 any record that [name of the operational creditor] has received the payment.

Initiation of CIR Process by Operational Creditor (Sec 9 +A2AA Rules 6)

- Precondition for Initiation by OC before AA(NCLT):
  a. After expiry of 10 days of date of delivery of demand notice/invoice
  b. If OC does not receive payment due or notice of dispute
- Application to be in Form 5 along with fee of Rs2000/-
- Documents to be filed with Application by OC:
  a. copy of demand notice/invoice delivered
  b. affidavit stating that there is no notice given by CD relating to dispute of the unpaid operational debt
  c. copy of certificate from financial institutions maintaining accounts of the OC confirming that there is no payment for which demand notice was served
  d. other information as prescribed (see Form 5)
- OC to dispatch forthwith, copy of application filed with AA, by registered/speed post to the registered office of CD

Initiation of CIR Process by Operational Creditor (Sec 9)

- OC may propose the name of IRP
- AA to ascertain existence of default within 14 days of application
- AA to admit application by an order upon its satisfaction
  a. that application is complete
  b. that there has been no repayment of the unpaid operational debt
  c. that the invoice or demand notice has been delivered by OC
  d. That no notice of dispute has been received by the OC or there is no record of dispute in the information utility and
  e. that there is no disciplinary proceedings pending against the RP
- AA to reject application by an order if it is not satisfied on any one of the above grounds

  (Provided that before such rejection, AA to give notice to the applicant to rectify defect in application within 7 days of notice)
- CIRP to commence from date of admission of application
- AA to communicate admission/rejection order to both OC & CD

Initiation of CIRP by Corporate Applicant (Sec 10 +A2AA Rule 7)

- ❖ Upon default by a CD CIR process can be initiated by CA
- ❖ By filing an application before AA (i.e. NCLT)
- ❖ Application be made in Form 6 with fee of Rs 25,000/-
- ❖ Application to be also accompanied by:
  - a. its books of account and such other documents relating to such period as may be specified (See Form 6) and
  - b. proposed name of IRP
- ❖ CA shall dispatch forthwith, a copy of application filed with AA, by registered/speed post to the registered office of CD
- ❖ AA to ascertain existence of default within 14 days of application and by an order may admit application if it is complete or reject if incomplete

  (Provided that before such rejection, AA to give notice to the applicant to rectify defect in application within 7 days of notice)
- ❖ CIRP to commence from date of admission of application

Withdrawal of Application for CIRP (A2AA Rule 8)

- The AA may permit withdrawal of the application made under Rules 4, 6 or 7, as the case may be, on a request made by the applicant before or after admission. After admission but before issue of EoI for receiving the resolution plan.

Interim Resolution Professional (A2AA Rule 9)

- The applicant, wherever he is required to propose or proposes to appoint an IRP, shall obtain a written communication in Form 2 from the IP for appointment as an IRP and enclose it with the application made under rules 4, 6 or 7, as the case may be.

- The aforesaid application shall be accompanied by a certificate confirming the eligibility of the proposed IP for appointment as a RP in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. (format/affirmation part of Form 2)

Persons not entitled to make Application for CIRP (Sec 11)

A CD having completed CIRP 12 months prior to the date of making the application

A CD or a FC who has violated any terms of resolution plan which was approved 12 months before date of making application under this chapter

A CD in respect of whom a liquidation order has been made

For the purpose of Section 11, a CD includes CA in respect of such CD

Time limit for completion of Insolvency Resolution Process (Sec 12)

CIRP to be completed within 180 days from the date of admission by the AA

RP to file extension application before AA to extend the period of CIRP beyond 180 days if so instructed by a resolution at the meeting of committee of creditors by 66% of the voting shares

extend the period of CIRP for a period not exceeding 90 days

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

voting shares

Only One Extension shall be provided by AA

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12A. **Withdrawal of application admitted under section 7, 9 or 10. –**

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.

Declaration of Moratorium & Public Announcement (Sec 13)

❖ After admission of application, AA (NCLT) by an order, shall:

Declare a Moratorium for the purposes referred to in Section 14

Cause a public announcement (immediately after appointment of IRP) of the initiation of CIRC and call for the submission of claims under section 15

Appoint an Interim Resolution Professional in the manner laid down in section 16

The moratorium order prohibiting the following shall have effect from the date of the order till CIRP completion:

- ❖ The institution of suits or continuation of pendency suits or proceedings against CD including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority
- ❖ Transferring, encumbering, alienating or disposing of the CD any of its assets or any legal right or beneficial interest therein
- ❖ Any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, 2002
- ❖ The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD

Savings & Exceptions to Moratorium Order(Sec 14)

- Supply of essential goods or services to the CD as may be specified shall not be terminated or suspended or interrupted during moratorium period

- Moratorium order not to apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator

- Moratorium order shall cease to have effect in the following situations:
  a. If the Resolution Plan as provided for under Section 31 is approved by AA
  b. If the AA passes an order of liquidation of a CD under Section 33

Content of Public Announcement of CIRP (Sec 15)

Name & Address of the CD under the CIRP

Name of the Authority with which the CD is incorporated or registered

The last date of submission of claims (14 days from date of appointment of IntRP)

Details of the IRP who shall be vested with management of CD and be responsible for receiving claims

Penalties for false or misleading claims

The date on which the CIRP shall close (within 330 days)

Public announcement to be made in the manner prescribed

Appointment & Tenure of Interim Resolution Professional (Sec 16)

- AA to appoint IntRP within 14 days from the insolvency commencement date

- IntRP as proposed by FC/OC/CD in their application shall be appointed provided there is no pending disciplinary proceedings against him

- If in the application of the OC, name of IntRP is not proposed, the AA may make a reference to the Board to recommend a name. Board to make recommendation within 10 days of the receipt of such reference from AA.

- The term of the interim resolution professional shall continue till the date of appointment of the resolution professional

Management of affairs of CD by Interim Resolution Professional (Sec 17)

IntRP shall exercise following powers from date of appointment

- ❖ Taking charge of the management of affairs of CD
- ❖ Suspension of Powers of BOD/Partners of CD, to vest with IntRP
- ❖ Officers and managers of CD to report to him and also provide access to documents & records of CD as required
- ❖ Substantial control over the accounts of CD. Financial Institutions shall act on instructions of IntRP.
- ❖ Act and execute deeds, receipts & other docs on behalf of CD
- ❖ Take such actions in the manner specified by Board
- ❖ Access the electronic records of CD from the information utility that has financial information of CD
- ❖ Access the books of accounts, records & other relevant documents of CD available with government authorities/stat auditors/accountants & other specified persons

Duties of Interim Resolution Professional (Sec 18)

- Collect all information relating to the assets, finances and operations of CD for determining the financial position of CD
- Receive and collate all claims submitted by creditors
- Constitute a committee of creditors
- Monitor the assets of the CD and manage its operations until a RP is appointed by the committee of creditors
- File information collected, with IU, if required
- Take control and custody of any asset having ownership rights with CD as recorded in BS of CD, or with information utility or the depository or any other registry
- Perform other duties specified by Board (Refer IRPFCP Regulations, 2016)
- Exempted: Assets of third party held in trust by CD or under contractual arrangements including bailment, or of any Indian or Foreign subsidiary of CD or as specified by CG

Personnel to extend co-operation to Int Resolution Professional (Sec 19)

- The personnel of CD including its promoters or any other person associated with the management are obligated to extend all assistance and co-operation to IntRP while managing the affairs of the CD

- In case of any non co-operation as mentioned above, the IntRP shall make an application to AA bringing on record the facts and seek directions from the AA

- AA shall by an order direct such non co-operating personnel or other person to comply with the instructions of IntRP & to co-operate with him in terms of collection of information and management of the CD

Management of operations of CD as going concern (Sec 20)

- IntRP to make every endeavour to protect and preserve the value of the property of CD and manage the operations of the CD as a going concern.

- IntRP shall have the following authority for above purpose:
  a. Appoint accountants, legal and other professionals as necessary
  b. Enter into contracts or to amend/modify previous ones
  c. Raising interim finance without creation of security interest over any encumbered property of CD without prior consent of creditors whose debt is secured over such property. However, no prior consent shall be required if value of property is not less than the amount equivalent to twice the amount of debt.
  d. Issuing necessary instructions to personnel of CD
  e. Taking such other steps as may be necessary


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ありがとう
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