

Corporate Insolvency Resolution Process

A Handbook for the Guidance of Insolvency Professionals



Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Basic draft of this publication was prepared by CA. Kannan Tiruvengadam, CA. S. Badri Narayanan and Ms. S. Rita

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Foreword

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) has emerged as an indispensable legislation in building confidence of the investors and thereby fostering economic stability throughout the business ecosystem. Over the years, the Code has successfully steered through the challenges and won accolades. With the crucial role played by Insolvency Professionals, who are a key pillar under IBC and other stakeholders the stressed corporate sector of the economy is undergoing transformation leading to resilience in the entire spectrum of economic value chain.

With respect to Corporate Insolvency Resolution Process under IBC, we find that more and more cases are getting initiated and several cases are getting successfully resolved too, strengthening the debt resolution ecosystem and thereby positively impacting the business environment.

I am happy to note that the Committee on Insolvency & Bankruptcy Code of ICAI is bringing out the publication- ***“Corporate Insolvency Resolution Process - A Handbook for the Guidance of Insolvency Professionals”*** to help professionals understand the important provisions related to conduct of Corporate Insolvency Resolution Process and also to appreciate the various practical aspects and intricacies based on case laws, that are so critical in completing the various processes and procedures prescribed under the Code.

I extend my sincere appreciation to CA. Gyan Chandra Misra, Chairman, CA. Rajendra Kumar P., Vice-Chairman and all other members of the Committee on Insolvency & Bankruptcy Code for putting up their efforts in and bringing out this useful publication.

I am sure that this publication would be of great help to the members, especially to insolvency professionals and other stakeholders.

1st February, 2024

CA. Aniket Sunil Talati
President, ICAI

Preface

An inclusive and comprehensible framework for Insolvency Resolution is a crucial prerequisite for economic growth and stability of any nation. In the year 2016, India took a momentous step in this regard by enacting the Insolvency and Bankruptcy Code, 2016 (IBC or the Code)- a unitary codified legislation encompassing significant features which include time bound insolvency resolution process paving the way for maximisation of value of the stressed assets and balancing the interests of all stakeholders.

The provisions related to Corporate Insolvency Resolution Process (CIRP) came into force from 1st December 2016, thus instituting a strong ecosystem to address corporate insolvency. The key feature of the entire resolution process for corporate is that timelines are prescribed for all the activities to be undertaken during the conduct of the process. The Insolvency Professional appointed as Interim Resolution Professional or Resolution Professional for conducting CIRP hold the central position in the successful implementation and execution of the insolvency regime in the country.

The Committee on Insolvency & Bankruptcy Code of ICAI in continuation of its initiatives towards capacity building of professionals is bringing out this publication – **Corporate Insolvency Resolution Process – A Handbook for the Guidance of Insolvency Professionals** to facilitate professionals in understanding the various aspects and provisions connected to Corporate Insolvency Resolution Process and also know about the important case laws.

We would like to sincerely thank the President of ICAI, CA. Aniket Sunil Talati and Vice President of ICAI, CA. Ranjeet Kumar Agarwal for their support and encouragement in bringing out this publication.

We would like to thank all the Committee Members for their guidance and contribution in bringing out this publication.

We would like to sincerely appreciate and thank CA. Kannan Tiruvengadam, CA. S. Badri Narayanan who prepared the Draft of the publication.

We appreciate the efforts put in by Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of Ms. Sarita Aggarwal, CA. Yash Agarwal, CA. Shreya Vashisht, CA. Parma Rano and Ms. Nancy Mohini for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, especially insolvency professionals and other stakeholders will find the publication very helpful.

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Chairman
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Date: 1st February, 2024

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Chapter-1

Introduction

1.1 Journey of IBC

The journey of Insolvency and Bankruptcy Code, 2016 (IBC or the Code) as we know today is critical to be understood to lay down the context and to solidify the understanding of the resolution process.

Prior to IBC, there were multiple legal frameworks, running parallel to each other. Predominantly, the following legal frameworks were available to a creditor pre-IBC:

- a) The Presidency Towns Insolvency Act, 1909
- b) The Provincial Insolvency Act, 1920
- c) The Sick Industrial Companies (Special Provisions) Act, 1985
- d) The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- e) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

As evident, there were certain legislations which were a century old and the frameworks in general were observed to have not resulted in timely recovery of debt resulting in further deterioration of value of the debtor. Additionally, these frameworks, being recovery based, did not have a revival approach and were basically founded on Debtor-in-Possession model.

Keeping in view the challenges and weaknesses existing in the available frameworks, it was proposed to bring in a comprehensive insolvency resolution framework, with time as essence. In 2014-15 Budget Speech, the Government stated its intent to develop an entrepreneur friendly legal bankruptcy framework. Thus, the Bankruptcy Law and Reforms Committee (BLRC) was constituted under the Chairmanship of Dr. T.K. Viswanathan in August 2014. BLRC submitted Interim Report in February 2015 and the Final Report in November 2015, famously called as BLRC Report. The first part of the report lists the rationale and recommendations, and the second is the comprehensive draft bill for Insolvency and Bankruptcy. Similar to how the Constituent Assembly debates are referred for interpretation of Articles of

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Constitution of India, the courts often refer to BLRC Report for interpretation and evaluation of the provisions of the Code.

The Bill was passed by both the Houses of Parliament and IBC was notified in May 2016, thus creating the foundational ecosystem for the implementation of the Code. The Insolvency and Bankruptcy Board of India (IBBI) was established on 1st October 2016. Thereafter certain regulations were notified in November and December 2016.

The Code found its genesis in Creditor in Control Model and cash flow test for insolvency as compared to balance sheet test in previous frameworks. There has been significant emphasis on timelines to ensure optimized resolution process and the objective is prima facie revival and not recovery. The Code has heralded a new dawn in the insolvency resolution space in the nation.

1.2 Object of the Code

To understand the Code, it is important to appreciate the intent and object of the Code. The Preamble to the IBC is the heart and soul of the Code. It contains within it the essence and core of the Code. Hence, due understanding of the Code can only be achieved with appropriate appreciation of the Preamble.

The Preamble to the IBC lays down the basic structure of the IBC, which is to be retained at all times. As per Hon'ble Supreme Court Judgement *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.* [WP (Civil) Nos.99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019, "the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors."

Doctrine of Basic Structure emerged from the judgement of Hon'ble Supreme Court in *Kesavananda Bharati vs. State of Kerala*, (1973) 4 SCC 225 wherein it was held that Parliament could amend any part of the Constitution so long as it did not alter or amend the essential features of the Constitution. The court observed, "The edifice of our constitution is based upon the basic element in the Preamble. If any of these elements are removed the structure will not survive and it will not be the same constitution and will not be able to maintain its identity."

The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be 'Reorganisation' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. The Parliament has made a conscious effort to ensure that there is a significant difference between 'Resolution' and 'Recovery'. The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is 'maximising the value of assets' in the process of 'Resolution'- Anita Jindal Vs. M/s Jindal Buildtech Pvt. Ltd.- Company Appeal (At) (Insolvency) No. 512 of 2021.

1.3 Preamble of the IBC

The Preamble of the IBC states as under:

"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India and for matters connected therewith or incidental thereto".

The very beginning of Preamble states about consolidation and amendment of laws relating to reorganization and resolution. This is keeping in view the multiple parallel legal frameworks available and with intent to enable seamless implementation of IBC by necessary amendments in those laws. IBC provides for repealment of two enactments (The Presidency Towns Insolvency Act, 1909 & The Provincial Insolvency Act, 1920) and amendments in 11 enactments (The Indian Partnership Act, 1932, The Central Excise Act, 1944, The Income Tax Act, 1961, The Customs Act, 1962, The Recovery of Debts due to Banks and Financial Institutions Act, 1993, The Finance Act, 1994, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, The Payment and Settlement Systems Act, 2007, The Limited Liability Partnership Act, 2008, The Companies Act, 2013).

This amplifies the intent to make way for IBC and to ensure a harmonious interpretation of other legislation with IBC to ensure a comprehensive insolvency resolution framework.

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(a) Time-bound resolution

The essence of IBC is its timeline. This enhances the certainty for the stakeholders and brings clarity to the resolution process.

IBC provides for completion of Corporate Insolvency Resolution Process (CIRP) within 180 days from date of admission of application by Adjudicating Authority. A further extension of 90 days on application to Adjudicating Authority (AA) with approval of 66 percent voting share of Committee of Creditors (CoC) is allowed. Further, the maximum period of CIRP, including of legal proceedings, is stated to be 330 days. All the activities for CIRP envisaged under IBC have been provided specific Timelines under Regulation 40A IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

Time is of the essence under the IBC, as observed by Apex Court in Ebix Singapore Private Ltd vs. Committee of Creditors of Educomp Solutions Ltd & Anr. -Civil Appeal No. 3224 of 2020.

(b) Maximization of the value of assets

The law is aimed at maximizing the value of the assets of the debtor through this time bound process. IBC contains provisions to this effect including aspects relating to invitation to prospective resolution applicants satisfying eligibility criteria corresponding to the scale of operations and complexity of the corporate debtor for submission of resolution plans [Sec.25(2)(h)] and that a Resolution Plan shall provide measures for insolvency resolution of the Corporate Debtor (CD) for maximization of the value of its assets (Regulation 37 of CIRP regulations).

(c) Promotion of entrepreneurship and Ensuring availability of credit

Businesses can succeed or fail and the fate depends on multifaceted factors and situations. By providing certainty of outcomes and time-bound exit to entrepreneurs from failing business so that they are not saddled with compliances in defunct companies, the Code aims to promote the spirit of entrepreneurship.

The philosophy of the Code is mainly for reorganization and revival of the business thus encourages entrepreneurship. Recovered Debt is available for credit which will further stimulate investment and demand. Due to recovery, bank is unlocking value of its NPA's and more money is flowing into the system and similarly worthy entrepreneurs are being provided an opportunity to turnaround stressed asset and contribute to GDP of the nation.

By providing certainty of outcomes and defining the priorities of payments to the creditors, the law aims to improve the credit culture and thus more credit availability to the industries. The credit culture and behavioural psychology of the borrowers treating re-payment as an option rather than obligation has undergone a sea of change on account of the possibility of change in control on trigger of CIRP.

(d) Balancing interest of stakeholders

IBC strikes a fine balance in addressing and protecting the interests of all concerned stakeholders. A Corporate Debtor has to exist and conduct business by taking into consideration its stakeholders. Such stakeholders are required to be considered important cogs in the wheel of resolution as well. The Corporate Debtor, upon revival, cannot survive in isolation and hence continues to interact and work with its stakeholders upon its successful revival. IBC provides for various provisions which result in such balancing acts. A few are enumerated below:

- i. Payment of CIRP costs in priority – section 30(2)(a)
- ii. Payment to operational creditors of an amount not less than what they are entitled under water fall mechanism under section 53 or amount mentioned in the resolution plan distributed under section 53 whichever is higher – section 30(2)(b)(i) & (ii).
- iii. Payment to financial creditors who do not vote in favor of the resolution plan to be paid not less than what they are entitled under section 53 – section 30(2)(b)
- iv. Operational Creditors shall be paid in priority over financial creditors – Regulation 38(1)(a)
- v. Financial creditors who did not vote in favor of the resolution plan shall be paid in priority to financial creditors who voted in favor of the resolution plan - Regulation 38(1)(b)
- vi. Resolution Plan shall include a statement as to how it has dealt with the interest of all stake holders including financial creditors and operational creditors – Regulation 38 (1A)

It is to be remembered that balancing the interest of stakeholders does not imply equal treatment of all stakeholders in a resolution plan in CIRP. *In the matter of Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors. [Civil appeal no. 8766-*

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67 of 2019] and Ors. the Apex Court observed that “There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors”. In *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.* (supra) Apex Court observed that “Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation”.

(e) Alteration in the priority of Government dues (Crown Debt)

The waterfall mechanisms depicting order of priority of payment were laid down in section 529, 529A and 530 of the erstwhile Companies Act, 1956, and sections 326 and 327 of the Companies Act, 2013. A similar provision is provided in Section 53 of the Code.

To make the resolution framework successful and to facilitate implementation of an optimum economic legislation, the legislation acknowledges and accommodates the alteration of priority of government dues. This is with the object of achieving the intent of the Code in revival of Corporate Debtor with Government playing a supportive role in the list of stakeholders by stepping back in the order of priority. Government Dues is not defined in IBC and is only mentioned in preamble. There are judgements which have held that tax dues are crown debts.

The Apex Court in *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. & Ors.* [(2000) 5 SCC 694] dealt extensively with the doctrine of priority to Crown Debts. It was held that “common law doctrine of priority of State’s debts has been recognised by the High Courts of India as applicable in British India before 1950 and hence the doctrine has been treated as “law in force” within the meaning of Article 372(1) of Constitution”. It was further observed that “However, the Crown’s preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over a mortgagee or pledgee of goods or a secured creditor.”

BLRC Report stated that:

“Allowing crown debt (whether state or central) to prevail over the security interest of secured creditors is problematic for several reasons- (i) it leads to uncertainty for secured creditors regarding the sums that would be payable to them in the event of a company’s insolvency; (ii) it may slow or otherwise complicate the exercise of out of court enforcement rights by secured creditors and increase costs; (iii) the cost of credit for the debtor company may increase as secured creditors may ultimately pass on the risks arising from these to the debtor through higher interest rates; and (iv) it may reduce the attractiveness of certain kinds of security interests that would otherwise generate positive externalities, as where they encourage monitoring ex ante. Moreover, the dues payable to the Government in such circumstances are unlikely to be significant when compared to total government receipts, whereas the impact of non-payment on commercial creditors (including public sector banks) is likely to be substantial and may even lead to their insolvency and systemic issues for the economy.” It further states, *“The Committee has recommended to keep the right of the Central and State Government in the distribution waterfall in liquidation at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and developing a market for unsecured financing (including the development of bond markets). In the long run, this would increase the availability of finance, reduce the cost of capital, promote entrepreneurship and lead to faster economic growth. The government also will be the beneficiary of this process as economic growth will increase revenues.”*

Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Pr. Director General of Income Tax (Admn. & TPS) Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) No. 205 of 2017 & other appeals]* held that since statutory dues arising out of the existing law such as Income Tax and Value Added Tax arise when the company is operational, such statutory dues have direct nexus with the operation of the company and thus all such statutory dues would come within the meaning of operational debt. In *Ultra Tech Nathdwara Cement Ltd. v. Union of India and Ors, - D.B. Civil Writ Petition No. 9480/2019* Hon'ble Rajasthan High Court had held that *“Once the offer of the resolution applicant is accepted and the resolution plan is approved by the appropriate authority, the same is binding on all concerned to whom the industry concern may be having statutory dues. No right of audience is given*

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in the resolution proceedings to the operational creditors viz. the Central Govt. or the State Govt. as the case may be.”

In *Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*, Civil Appeal No. 7667 of 2021 Judgement, Hon'ble Supreme Court upheld that Customs dues would have lower priority than secured FC's dues. In *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*, (Supra). The Apex Court upheld that Section 53 of IBC is not violative of Article 14 of the Constitution in terms of treating Financial Debt and Operational Debt (Including Crown Debt) differently.

In Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) & Ors. [Writ Petition No. 8560 of 2018], Hon'ble High Court held that Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Income-tax Act, 1961.

In Jalgaon Janta Sahakari and Ors. Vs. Joint Commissioner of Sales Tax, Nodal-9, Mumbai and Ors, Writ Petition No. 2935 of 2018, Hon'ble HC held that a debt which is secured or becomes a 'first charge' on a property must be held to prevail over a crown debt, which is an unsecured one.

It is to be noted that Sec.53(1)(b)(ii) states debts owed to secured creditor. There are many pronouncements surrounding the aspect of statutory dues including the SC Judgement *In State Tax Officer (1) Vs. Rainbow Papers Limited Papers*, Civil Appeal No. 1661 Of 2020, where primary point of contention in *Rainbow Papers* was whether the liquidation waterfall under section 53, IBC overrides section 48 of Gujarat Value Added Tax Act, 2003 (GVAT Act) which provides the Government a first charge over the payer's property in relation to their dues under the legislation. The Apex Court had held that “As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority”.

Subsequently, in *Paschimanchal Vidyut Vitran Nigam Limited, vs. Raman Ispat Private Limited & Ors.*, Civil Appeal Nos. 7976 of 2019, the Apex Court held that “The careful design of Section 53 locates amounts payable to

secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors.” It was further held that, “Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174).”

The evolving jurisprudence of IBC is improving the law in context of market dynamics and further refining the resolution framework. In general, IBC has brought in a shift in the priority of Government dues.

The structure of Preamble is very well appreciated in *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (supra)* Judgement which lays down the intricacies of the Preamble from the lens of judiciary:

“...maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark.”

1.4 Establish Insolvency and Bankruptcy Board of India (IBBI)

The Preamble facilitates establishment of IBBI under section 188 of the IBC by the Central Government to, apart from other powers and functions, register insolvency professional agencies, insolvency professionals and information utilities which together with IBBI form the Institutional Framework under IBC.

1.5 IBC Ecosystem

IBC, being Economic Legislation, requires infrastructural support for successful implementation. The role of Judiciary is crucial in settling law and stimulate evolution of framework.

Broadly the following institutions are the pillars for effective implementation of the provisions of IBC and Regulations:

- a. Insolvency and Bankruptcy Board of India (IBBI) - Regulator (S.188-195 and S.240)
 - b. Insolvency Professional Agencies - Intermediaries (S.199-205)
 - c. Insolvency Professionals – Section 206-208
 - d. Information Utilities – credit information storing units – Section 209-216
- **Along with the Adjudicatory Mechanism with respect to corporate persons**
 - a. Hon'ble National Company Law Tribunal – NCLT – Section 60
 - b. Hon'ble National Company Law Appellate Tribunal – NCLAT – Section 61
 - c. Hon'ble Supreme Court – Section 62

The following is a brief on the pillars of the IBC ecosystem:

- **Insolvency and Bankruptcy Board of India (IBBI)**

The IBBI is the regulator framing the regulations for the implementation of the provisions of IBC, for setting up the infrastructure for effective functioning of the IBC and providing accreditations to the Insolvency Professional Agencies, the Insolvency Professionals and the Information Utilities as also to have a regulatory oversight over their functioning.

It has also been designated as the 'Authority' under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the Country.

IBC has 255 sections. Majority of the procedures are laid down by way of relevant Regulations. Hence, IBBI is bestowed with critical importance in the scheme of the Code. Further, IBBI plays an important role in supervision of IPA, IP and IUs and ensures the proper working of the functionaries.

- **Insolvency Professional Agencies (IPA)**

These are professional bodies registered with the IBBI for promoting and regulating the insolvency profession. IPAs are vested with the power to enroll, educate, monitor and regulate the profession of the Insolvency Professionals who are enrolled as its professional members. IPAs, on an application by IP, may issue Authorization for Assignment (AFA) which is valid for a period of 1 year. IPA will have information and records submitted to it by IPs, half yearly. IPA can expel professional members on expiry of 30 days of the order of Disciplinary Committee or upon non-payment of membership fees despite receiving two notices in writing.

As of now, there are three IPAs registered with IBBI:

- Indian Institute of Insolvency Professionals of ICAI
- ICSI Institute of Insolvency Professionals
- Insolvency Professional Agency of Institute of Cost Accountants of India

- **Insolvency Professionals (IP)**

Insolvency Professionals (IPs) are registered with the IBBI and enrolled with an Insolvency Professional Agency. IPs act as Interim Resolution Professional/ Resolution Professional/ Liquidator/ Bankruptcy Trustee/ Authorized Representatives in the corporate and individual resolution processes and their liquidation or bankruptcy processes. Insolvency Professionals now can be (a) an individual (b) Insolvency Professional Entity.

A company, a partnership firm or LLP may be recognized as Insolvency Professional Entity if:

- a. It is formed with the sole objective of providing support services to IPs or to carry on the activities of an IP or both.

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- b. It has a net worth of not less than one crore rupees.
- c. Majority of its equity shares and voting rights or capital contribution is by insolvency professionals who are its directors or partners.
- d. Majority of partners or directors are insolvency professionals.
- e. majority of its whole time directors are insolvency professionals, in case it is a company.
- f. None of the partners or directors is a partner or director of another IPE.

First Schedule to IP Regulations contains the Code of Conduct whereas the Second Schedule contains the stipulated forms. The Code of Conduct touches upon aspects such as Integrity and Objectivity, Independence and Impartiality, Professional Competence, Representation of Correct facts, Timeliness, Information Management, Confidentiality, Occupation, Employability and Restrictions, Remuneration and Costs, Gifts and Hospitality.

IPs have the following roles in a CIRP:

- Running of Corporate Debtor as going concern and taking custody of assets
- Public Announcement, Verification of Claims
- Constitution of CoC
- Convening CoC Meetings and facilitate decision making of CoC
- Ensuring compliances under IBC and report to Adjudicating Authority
- Identifying and reporting preferential, undervalued, fraudulent and extortionate credit transactions
- Ensuring compliances of all applicable laws
- Following Code of Conduct under IBC – Sec. 208

- **Information Utility (IU)**

These are centralized repositories of financial and credit information of borrowers. They store the financial information of the borrower in electronic form, validate the stored information as well as claims of creditors with the borrowers. The maintaining of financial records of borrowers in electronic

form eliminates delays and disputes when a default occurs. At present there is only one registered IU i.e. National E-Governance Services Limited (NeSL).

- **Adjudicating Authorities (AA)**

They are the authorities to adjudicate on matters pertaining to the IBC.

NCLT (National Company Law Tribunal) - constituted under Section 408 of the Companies Act, 2013 is the Adjudicating Authority for the purpose of insolvency resolution and liquidation for corporate persons. Appeal against an order of the NCLT lies before the Appellate Authority, i.e. National Company Law Appellate Tribunal (**NCLAT**)

DRT (Debt Recovery Tribunal) - constituted under subsection (1) of Section 3 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is Adjudicating Authority for the purpose of insolvency resolution and bankruptcy of partnership firms and individuals. Appeal against an order of the DRT lies before the Debt Recovery Appellate Tribunal (DRAT). Where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a NCLT, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such NCLT.

NCLAT - As per Section 61(1), any person aggrieved by the order of the Adjudicating Authority may prefer an appeal to the National Company Law Appellate Tribunal (NCLAT). As on date, there are two Benches, one at New Delhi and one at Chennai.

Supreme Court- As per Section 62, any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court on a question of law arising out of such order under this Code.

1.6 Applicability of IBC

As on date, provisions with respect to resolution of Corporate Persons have been made effective, whereas provisions relating to individuals (other than personal guarantor to corporate debtor) and partnership firms are yet to be notified. It is applicable to whole of India.

The provisions of this code are applicable to the following persons, entities.

- a company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law;

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- a company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009);
- such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf;
- Personal guarantors to corporate debtors.
- partnership firms and proprietorships; and
- Individuals, other than personal guarantors to corporate debtors.

So far, the Govt has notified the provisions of the Code in respect of:

- Corporate Persons, i.e. Company incorporated under the Companies Act, 2013 or under any previous Company Law; Company governed by any Special Act for the time being in force;
- Limited Liability Partnership incorporated under the Limited Liability Partnership Act; and
- Personal Guarantors to Corporate Debtors.

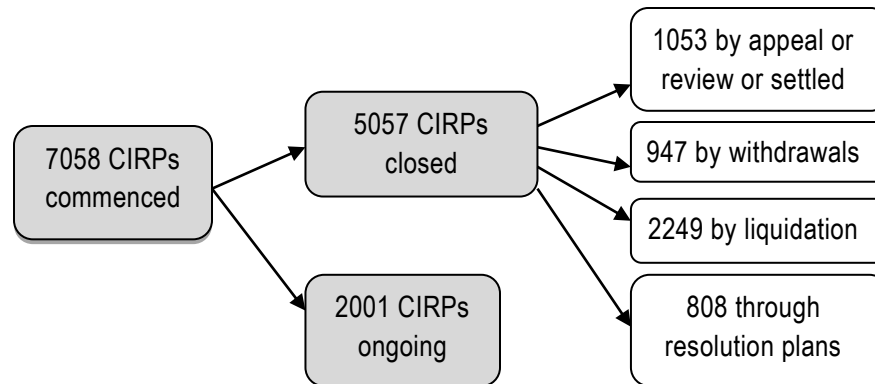
Provisions of IBC in relation to partnership firms, proprietorships, and individuals other than personal guarantors to corporate debtors have not yet been notified.

1.7 Status of Corporate Insolvency Resolution Process (CIRP) under IBC

The provisions related to CIRP came into effect from December 1, 2016

Status of Corporate Insolvency Resolution Process

- As per IBBI Newsletter July-September 2023, a total of 7058 CIRPs have commenced by end of September 2023. Of these, 5057 CIRPs have been closed. Of the CIRPs closed, the CD was rescued in 2808 cases, of which 1053 cases have been closed on appeal or review or settled; 947 cases have been withdrawn and 808 cases have ended in approval of resolution plans, while 2249 have ended in orders for liquidation.

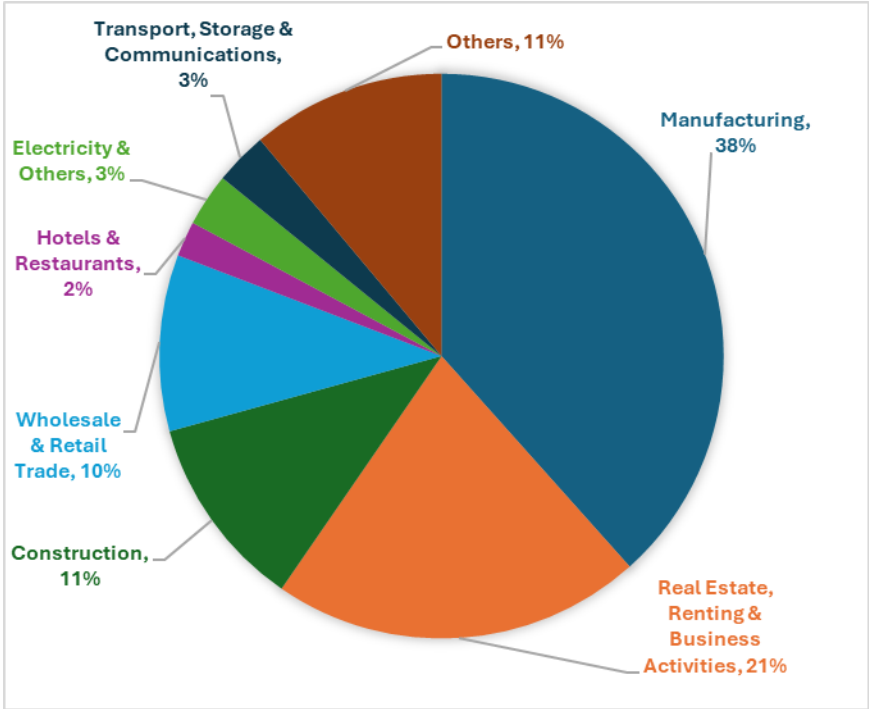


- As per said IBBI Newsletter, OCs triggered 49.46% of the CIRPs, followed by about 44.50% by FCs and remaining by the CDs. It is observed that about 80% of CIRPs having an underlying default of less than Rs.1 Crore, were initiated on applications by OCs while about 80% of CIRPs having default of more than Rs.10 Crore were initiated on application by FCs. The share of CIRPs initiated by CDs is declining over the time.
- For the 808 CDs rescued, when they entered the CIRP, the fair value and Liquidation value was Rs. 2.92 lakh crore and Rs. 1.87 lakh crore, though they owed Rs. 9.92 lakh crore to creditors. The resolution plans realised Rs. 3.16 lakh crore, which is around 168.54% of the liquidation value of these CDs. Realisation by financial creditors in comparison to their claims is around 33.80 %. The Realisation for all classes of creditors, as compared to their claims, is around 31.9%.

The Chart below gives Sector wise distribution of CIRPs as per admission as on September 2023. Maximum admission of CIRPs has taken place in Manufacturing Sector followed by Real Estate Sector.

Corporate Insolvency Resolution Process

Sectoral Distribution of CIRPs: Admission



Source: IBBI Newsletter July-September 2023

Chapter 2

Corporate Insolvency Resolution Process

2.1 Structure of IBC

The IBC is divided into five parts, with Part-I containing the preliminary, Part-II containing provisions dealing with Insolvency Resolution and Liquidation for Corporate Persons, Part-III dealing with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms, Part-IV dealing with Regulation of Insolvency Professionals, Agencies and Information Utilities and Part-V containing miscellaneous provisions.

Corporate Insolvency Resolution Process (CIRP) is covered in Part II of the IBC titled Insolvency Resolution and Liquidation for Corporate Persons. Part II also covers avoidance transactions to be identified and reported by Insolvency Professional.

2.2 Important Definitions

Section 3 of IBC lays down various definitions for the interpretation. Some important definitions are as under:

Section	Particulars	Definitions
Section 3		
(4)	“charge”	means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;
(6)	“claim”	(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,

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		disputed, undisputed, secured or unsecured;
(7)	“corporate person”	means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), 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
(8)	“corporate debtor”	means a corporate person who owes a debt to any person
(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
(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
(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 paid by the debtor or the corporate debtor, as the case may be
(19)	“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 5 professional under section 207;
(23)	“person”	includes- (a) an individual; (b) a Hindu Undivided Family; (c) a company; (d) a trust; (e) a partnership; (f) a limited liability partnership; and (g) any other entity established under a statute, and includes a person resident outside India;
(27)	“property”	includes- money, goods, actionable claims, land and every description of property situated in

Corporate Insolvency Resolution Process

		India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property
(30)	“secured creditor”	means a creditor in favour of whom security interest is created
(31)	“security interest”	means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. Security interest shall not include a performance guarantee
(34)	“transfer”	includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien
(35)	“transfer of property”	means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property
(36)	“workman”	shall have the same meaning as assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947(14 of 1947)

The definitions have been subject matter of judicial pronouncements which has clarified and crystallized the intent and meaning of the particular aspects:

- *As per Hon’ble NCLAT Judgement in Volkswagen Finance Pvt. Ltd. Vs. Shree Balaji Printopack Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 02 of 2020] charge is to be registered as per the provisions of section 77(1) of the Companies Act, 2013 or other applicable framework for a creditor to fall in the category of secured creditor. This was based on Section 77(3) of the Companies Act, which states: “Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator appointed under this Act or the Insolvency*

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and Bankruptcy Code, 2016, as the case may be, or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).”

Regulation 21 of IBBI (Liquidation Process) Regulations

stipulates that the existence of a security interest may be proved by a secured creditor based on:

- the records available in an information utility, if any.
- certificate of registration of charge issued by the Registrar of Companies; or
- proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

In UCO Bank Vs. G. Ramachandran, Liquidator of M/s. Sai regency Power Corporation Private Limited [IA/778(CHE)/2021 and IA/777(CHE)/2021 in IBA/92/2019], it was held that the security interest created by a creditor after submission of claim form with liquidator will be considered as ‘unsecured financial creditor’.

Security Interest plays an important role in keeping in view the provisions of Section 30(2)(b) of IBC wherein dissenting financial creditors are entitled an amount that would have been paid to such creditor, 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. *The Judgement of Hon’ble SC in DBS Bank Ltd Singapore Vs. Ruchi Soya Industries [CIVIL APPEAL NO. 9133 OF 2019] and an earlier judgement in India Resurgence ARC Private Limited v. Amit Metaliks Limited & Another* is a reference point in this.

Further, by way of interim order in *Stressed Asset Stabilisation Fund (SASF) Vs. Technology Development Board, [I.A. No. 514 of 2019] in CP(IB) No. 04 of 2017*, the Apex Court has stayed the operation of the judgement of the NCLAT in *Technology Development Board v. Anil Goel* in which the NCLAT had ruled that inter se priorities of secured creditors will not prevail in the liquidation waterfall under section 53 the IBC. This is important from the angle of priority

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amongst secured creditors.

- Section 4 lays down the threshold for triggering CIRP. As per Section 4, Part II shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is INR One Crore. It is to be noted that default is the pre-requisite for CIRP Trigger under Section 7, Section 9 and Section 10.

On aspect of default, attention may be given to Apex Court Judgement in *M. Suresh Kumar Reddy v. Canara Bank & Ors.* [Civil Appeal No. 7121 of 2022], wherein it was held that once the NCLT is satisfied that the default as occurred, there is hardly any discretion left with the NCLT to refuse admission of the application under Section 7 of the Insolvency and Bankruptcy Code, 2016. Reference may be drawn on Apex Court judgement in *E.S Krishnamurthy and others v. Bharath Hi Tech Builders Private Limited and Innoventive Industries Ltd. Vs. ICICI Bank & Anr.* [Civil Appeal Nos 8337-8338 of 2017] (*supra*), wherein it was held that *if NCLT is satisfied there is a debt and default, it is bound to admit a petition under Section 7 of the IBC and that the NCLT cannot direct parties to enter into settlement terms.*

In Vidarbha Industries Power Limited v. Axis Bank Limited [Civil Appeal No. 4633 of 2021], it was held that the NCLT has the discretion to reject or keep in abeyance a Section 7 petition if there are good reason to do so. *In Axis Bank Limited v. Vidarbha Industries Power Limited, (supra)* the Apex Court held that there are no grounds to review its judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Limited* which had held that the use of the word 'may' in Section 7(5)(a) of the IBC is intended to confer discretionary power on the NCLT to admit an application of a financial creditor seeking initiation of the corporate insolvency resolution process of the corporate debtor.

Hence, default should be of a debt due and payable to enable a trigger for CIRP.

One of the unique features of IBC is that it contains two sections on definitions with respect to corporate persons. Section 5 of IBC lays down additional definitions for the interpretation.

2.3 Some additional important definitions under Section 5:

Section	Particulars	Definitions
Section 5		
(1)	“Adjudicating Authority”	means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013
(5A)	“corporate guarantor”	means a corporate person who is the surety in a contract of guarantee to a corporate debtor
(6)	“dispute”	includes a suit or arbitration proceedings relating to– (a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty
(7)	“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
(8)	“financial debt”	means a debt along with 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 dematerialised 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

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		<p>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. (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;</p> <p>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;</p>
(10)	“information memorandum”	means a memorandum prepared by resolution professional under sub-section (1) of section 29;
(11)	“initiation date”	means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process
(12)	“insolvency commencement date”	means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:

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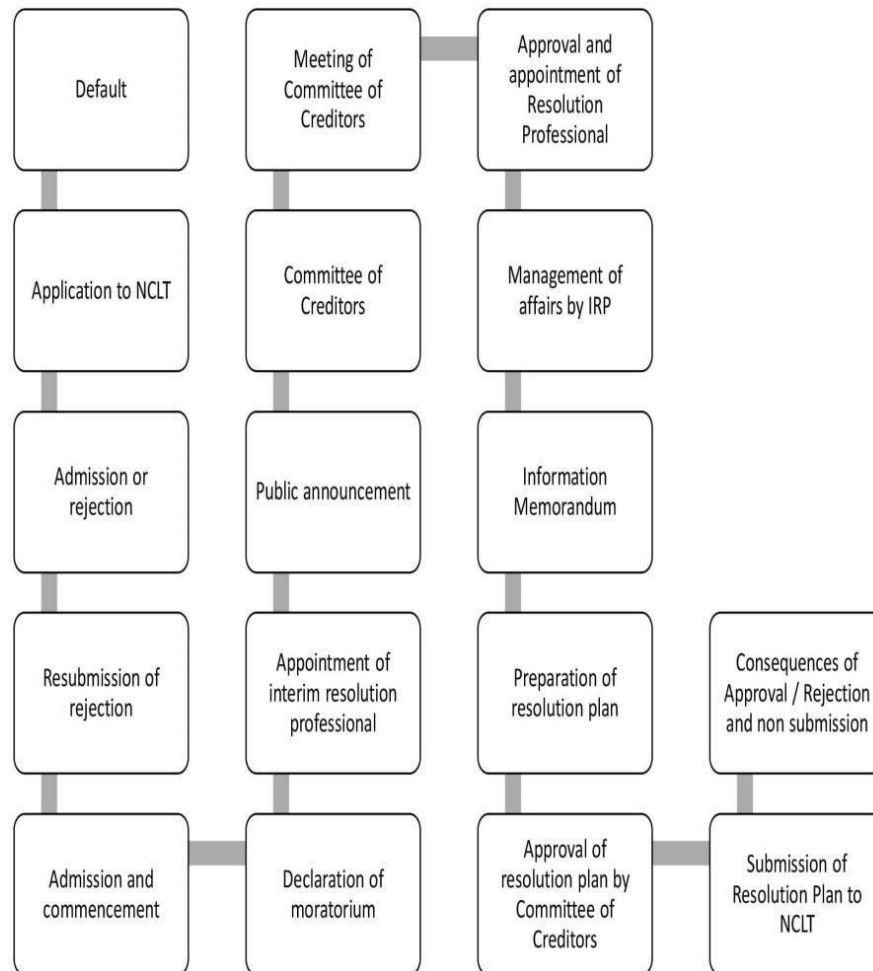
(13)	“insolvency resolution process cost”	(a) the amount of any interim finance and the costs incurred in raising such finance; (b) the fees payable to any person acting as a resolution professional; (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern; (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and (e) any other costs as may be specified by the Board;
(14)	“insolvency resolution process period”	means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day;
(15)	“interim finance”	means any financial debt raised by the resolution professional during the insolvency resolution process period and such other debt as may be notified
(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
(21)	“operational debt”	means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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
(22)	“personal guarantor”	means an individual who is the surety in a contract of guarantee to a corporate debtor;
(23)	“personnel”	includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor

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(25)	“resolution applicant”	means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25
(26)	“resolution plan”	means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II
(28)	“voting share”	means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor

The contours of existence of dispute was explained by the Hon'ble Supreme Court of India in Mobilox Innovations Private Limited v Kirusa Software Private Limited [Civil Appeal No.9405 of 2017] in the context of applications filed by operational creditors for initiation of CIRP. There are multiple judicial pronouncements which have come out during the journey of IBC on the aspects of whether a certain claim is an operational debt or financial debt. It was asserted by the Hon'ble Supreme Court in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. Vs. Axis Bank Limited & Ors. [Civil Appeal Nos. 8512- 8527 of 2019 with other appeals] that disbursement of funds should be done against the consideration of time value for money. Further, as per the definition, interest component is not compulsory, hence even an interest free loan may be a financial debt. Another relevant judgment delivered by the Hon'ble Supreme Court is in Pioneer Urban Land and Infrastructure Ltd. v. Union of India [WP (C) No. 43 of 2019 with other appeals] where the concept of 'financial debt' has been elaborately discussed in the light of several earlier judgments including Innoventive Industries Ltd. v. ICICI Bank [Civil Appeal Nos 8337-8338 of 2017] and Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (supra).

2.4 Process Flow for Corporate Insolvency Resolution Process (CIRP)



2.5 Order of Activities – Regulation 40A of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations)

Broadly, CIRP process can be broken down into:

- A. Application under Section 7 (Financial Creditor), Section 9 (Operational Creditor) & Section 10 (Corporate Debtor) and appointment of IRP and withdrawal of application (Section 12A)
- B. Public Announcement, Verification of Claims and Constitution of Committee of Creditors
- C. Appointment of RP and Valuers
- D. Preferential and Other Transactions (RP - Opinion, Determination and filing Application to AA)
- E. Information Memorandum, EOI (Expression of Interest), RFRP (Request for Resolution Plan) and EM (Evaluation Matrix)
- F. Submission and Approval of Resolution Plans

Section 6 of IBC states that where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided. Hence, only three categories of applicant are provided to trigger a CIRP.

2.6 Application by Financial Creditor - Section 7 of IBC

A Financial Creditor may trigger CIRP under Section 7 of IBC. As per Section 7 of IBC

- (1) 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.

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- (2) For the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21 (which refers to financial debt in form of securities / deposits and terms provide for appointment of trustee/agent and class of creditors represented by authorized representative), an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less.
- (3) For financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less.
- (4) Default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
- (5) Section 7(2) of IBC states that 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.
- (6) As per Section 7(3) 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.
- (7) As per Regulation 2A of CIRP Regulations, for the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: -
 - (a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891)

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- (b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.
- (8) Further, the Applicant Financial Creditor is to follow the procedure laid down in The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) which states that:
 - i. A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the CIRP Regulations. [Rule 4(1)]
 - ii. Where the applicant under Rule 4(1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer. [Rule 4(2)]
 - iii. The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority. [Rule 4(3)]
 - iv. In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf [Rule 4(4)]
 - v. The applicant, wherever he is required to propose or proposes to appoint an insolvency resolution professional, shall obtain a written communication in Form 2 from the insolvency professional for appointment as an interim resolution professional and enclose it with the application made under rules 4, 6 or 7, as the case may be. [Rule 9(1)]
 - vi. The application under Rule 9(1) shall be accompanied by a certificate confirming the eligibility of the proposed insolvency professional for appointment as a resolution professional in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. [Rule 9(2)]

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- vii. Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under subsection (1) of section 7, sub-section (1) of section 9 or subsection (1) of section 10 of the Code shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016. [Rule 10(1)]
- (9) 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 Section 7(2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application. The Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), 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. (Section 7(5))
- (10) The order is to be communicated to Financial Creditor and Corporate Debtor within 7 days of admission or rejection.

In view of the judicial pronouncements, it is sufficient for the Adjudicating Authority to examine existence of debt and default to admit a CIRP.

2.7 Application by Operational Creditor - Section 8 of IBC

- (1) Section 8(1) of IBC, states that an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor 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.
- (2) As per section 8(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice, 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-

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- (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.

A “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

(3) As per Regulation 2B of CIRP Regulations, the operational creditor shall, along with application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable. This requirement shall not apply to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

(4) Section 9 of IBC states that:

1. After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under subsection (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process
2. The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.
3. 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

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- 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 an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.
4. An operational creditor initiating a corporate insolvency resolution process under this section may propose a resolution professional to act as an interim resolution professional.
5. 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 is complete;
 - (b) there is no payment of the unpaid operational debt;
 - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
 - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
 - (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 corporate debtor if the above conditions are not met. Before rejecting an application, the Adjudicating Authority is to 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.
- (5) The Applicant Operational Creditor is to follow the procedure laid down in AA Rules which states that an operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5,

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accompanied with documents and records required therein and as specified in the CIRP Regulations and the applicant shall serve a copy of the application by registered post or speed post or by hand or by electronic means to the registered office of the corporate debtor and to the Board before filing with the AA.

Section 7 and Section 9 of IBC, 2016, Application are contrasted to each other to the extent that, (i) No demand notice is required to be sent by Financial Creditor to trigger CIRP whereas for an Operational Creditor to trigger CIRP, demand notice is a prerequisite, (ii) one or more Financial Creditors may come together to accumulate the Section 4 threshold limit to trigger CIRP, which is not allowed for Operational Creditor.

Further, existence of dispute is one of the basic grounds contended by Corporate Debtors for avoiding initiation of CIRP. The Apex Court Judgement in Mobilox Case (supra) may be referred to understand the context.

As per Regulation 2C and Regulation 2D of CIRP, financial creditor or operational creditor shall, while filing application under section 7 or 9, as the case may be, also furnish details of his/ its—

- (a) Permanent Account Number; and
- (b) Email-ID and shall also submit along with evidence, chronology of the debt and default including the date when the debt became due, date of default, dates of part payments, if any, date of last acknowledgment of debt and the limitation applicable.

2.8 Application by Corporate Debtor- Section 10 of IBC

- (1) Section 10(1) of IBC states that 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) As per Section 10(2) the application 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- (a) the information relating to its books of account and such other documents for such period as may be specified; (b) the information

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relating to the resolution professional proposed to be appointed as an interim resolution professional; and (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application. [Section 10(3)]

- (4) As per section 10(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 and no disciplinary proceeding is pending against the proposed resolution professional]; or
 - (b) reject the application, if it is incomplete or any disciplinary proceeding is pending against the proposed resolution professional.

The Adjudicating Authority shall, before rejecting an application, give 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) As per Rule 7 of AA Rules, a corporate applicant, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required therein and as specified in the CIRP Regulations and shall serve a copy of the application by registered post or speed post or by hand or by electronic mean to the Board before filing with AA.

It is quite evident that for a Section 10 Application also, the threshold default limit of INR 1 Crore applies.

2.9 Suspension of initiation of corporate insolvency resolution process: Section 10A of IBC

Section 10A of IBC states that:

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period

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of six months or such further period, not exceeding one year from such date, as may be notified in this behalf. No application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. This shall not apply to any default committed under the said sections before 25th March, 2020.

The period was extended upto 25th March 2021. This was a relaxation incorporated to prevent CIRP induced on account of financial distress caused due to COVID pandemic.

The substantive part of section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. The retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it. Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd. [Civil Appeal No. 4050 of 2020]

2.10 Persons not entitled to make application: Section 11 of IBC

Section 11 of IBC states that:

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process, namely: -

- (a) a corporate debtor undergoing a corporate insolvency resolution process or a pre-packaged insolvency resolution process; or
- (aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or;
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the

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terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

- (d) a corporate debtor in respect of whom a liquidation order has been made.

A corporate debtor includes a corporate applicant in respect of such corporate debtor. Nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.

2.11 Disposal of applications under section 54C and under section 7 or section 9 or section 10: Section 11A of IBC

Section 11A of IBC clarifies how a pre-pack insolvency resolution application shall be decided when a CIRP application is pending before the Adjudicating Authority.

- (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.
- (2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.
- (3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under section 7, section 9 or section 10.
- (4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2021.

2.12 Time-limit for completion of insolvency resolution process- Section 12 of IBC

Section 12 of IBC states that:

- (1) 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 sixty-six per cent. of the voting shares.
- (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.
- (4) Additionally, any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once: Further, 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.

Hon'ble Apex Court, in Essar Steel Judgement [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s] has held that the 330-day timeline is directory and cannot be mandatory, however, the stakeholders other than courts are expected to abide by timelines.

As per Regulation 40 of CIRP Regulations:

- (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.

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- (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.

This section (read with regulation) plays the role of substantial essence to IBC and stipulates the timeline within which process is to be completed. The extension can be from 180 days to 270 days and then upto 330 days from insolvency commencement date. Additionally, exclusion of time utilized in adjudication during CIRP is being sought and granted by the Adjudicating Authorities. RP may file for extension/exclusion of time well before expiry of CIRP period to ensure the sanctity of timelines.

2.13 Withdrawal of application admitted under section 7, 9 or 10 Section 12A of IBC

Section 12A states that:

The Adjudicating Authority may allow the withdrawal of an 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.

Section 12A of IBC was introduced in the statute book vide Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Act No. 26 of 2018) post recommendation made in ILC Report (March 2018), which noted that: "(vii) in order to cater to exceptional circumstances warranting withdrawal of an application for CIRP post-admission, it has been recommended to allow such exit provided the CoC approves such action by ninety per cent of voting share;" The Report considers that the settlement is between creditor and corporate debtor. The Report emphasizes that the law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. It also emphasizes that the liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution. The said Committee states that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The intent of the IBC is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors. The Report would further reveal that a settlement may be reached amongst all creditors and the debtor, for the

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purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor.

This is to be read with Regulation 30A of CIRP Regulations which states as under:

- (1) An application for withdrawal under section 12A may be made to the Adjudicating Authority
 - (a) before the constitution of the committee, by the applicant through the interim resolution professional.
 - (b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be.

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, **the applicant shall state the reasons justifying withdrawal after issue of such invitation.**

- (2) The application shall be made in Form FA of the Schedule-I accompanied **by a bank guarantee:**
 - (a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or;
 - (b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).
- (3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.
- (4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.
- (5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, **the resolution**

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professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

- (6) The Adjudicating Authority **may, by order, approve the application** submitted under sub-regulation (3) or (5).
- (7) Where the application is approved under sub-regulation (6), ***the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional***, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.

As per IBBI Newsletter of July to September 2023, 947 cases have been withdrawn under S.12A of IBC.

Judicial pronouncements to be considered in this regard:

- a. *At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case. Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019*
- b. *The provisions under Section 12A of the IBC have been made more stringent as compared to Section 30(4) of the IBC. Whereas under Section 30(4) of the IBC, the voting share of CoC for approving the Resolution Plan is 66%, the requirement under Section 12A of the IBC for withdrawal of CIRP is 90%. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the adjudicating authority or the appellate authority cannot sit in an appeal*

over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules. Vallal RCK v M/s Siva Industries & Anr, CIVIL APPEAL NOS. 1811-1812 OF 2022 SC order dt.03-06-2022

- c. *Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case. Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018] SC order dt. 14.12.2018*
- d. *It is the promoter who can settle the matter with creditors and submit such proposal to RP and he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A. Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019] NCLAT order dt. 07.08.2019*

2.14. Declaration of moratorium and public announcement read with Section 15 - Section 13 of IBC

Section 13 states that:

- (1) 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 in the manner as laid down in section 16
- (2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.

As per Regulation 6 of CIRP Regulations, an insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional. 'Immediately' means not later than three days from the date of his appointment.

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The public announcement shall:

- (a) be in Form A of the Schedule-I ;
- (b) be published-
 - (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;
 - (ii) on the website, if any, of the corporate debtor; and
 - (iii) on the website, if any, designated by the Board for the purpose,
- (ba) state where claim forms can be downloaded or obtained from, as the case may be;
- (bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class; and
- (c) 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.

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

2.15 Public announcement of corporate insolvency resolution process - Section 15 of IBC

Section 15 states that:

- (1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely: –
 - (a) name and address of the corporate debtor under the corporate insolvency resolution process;
 - (b) name of the authority with which the corporate debtor is incorporated or registered;

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- (c) the last date for submission of claims, as may be specified;
- (d) details of the interim resolution professional 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 corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

As per Regulation 6A, the interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available. Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.

Public Announcement is extremely critical as this serves in establishing insolvency proceedings as proceeding in rem. It is a strong defence against contention taken by creditors that they were not aware of the CIRP proceedings. It also serves as useful communication upon authorities who may have attached assets of the Corporate Debtor under prevailing laws.

2.16 Moratorium- Section 14 of IBC

Section 14 of IBC states that:

- (1) The Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -
 - (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any

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action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation to Section 14(1) of IBC, states that a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period

- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor 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 corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to — (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; (b) a surety in a contract of guarantee to a corporate debtor.

- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process. Moratorium shall cease to have effect on approval of resolution plan or passing of liquidation order by Adjudicating Authority.

This section provides for the calm period for the Corporate Debtor during CIRP in order for the RP and CoC to comply with the timelines and endeavor revival and value maximization. The purpose of moratorium is to create a calm period for reorganization of business without being disturbed by

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litigations. [*Swiss Ribbons Private Limited vs. Union of India(supra)*]. Section 14 ensures that essential supplies to Corporate Debtor are continued. Essential Supplies is defined in Regulation 32 of CIRP Regulations and includes electricity; water; telecommunication services; and information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor. Supreme Court has held in *P. Mohanraj v Shah Brothers Ispat Ltd.* [Civil Appeal No. 10355 of 2018], that Section 14 is intended at “shielding the corporate debtor from monetary attacks so that it gets the breathing space to continue as a ‘going concern’ and ultimately rehabilitate itself.” The court further observed that fissures in this shield emanating from interpretation had to be avoided to prevent adverse effects on the objective of Section 14.

Further, license, permit, quota etc. cannot be suspended or terminated provided current dues are being paid by Corporate Debtor. This helps in ensuring going concern for the Corporate Debtor. Additionally, Section 14(2A) was inserted to state that any goods or services considered as critical by the RP of Corporate Debtor, to protect and preserve the value of the Corporate Debtor and manage the operations as going concern shall not be suspended/terminated/interrupted during moratorium, provided corporate debtor has paid dues arising from such supply during moratorium period.

A bare perusal of the provisions of Section 14(1)(a) of the IBC shows that the continuation of any proceedings after initiation of CIRP is prohibited. Further, in accordance with Section 238 of the IBC, Section 14 of the IBC has an overriding effect over any other law for the time being in force.

There are several judgments on the issue that the IBC has an overriding effect over all laws for the time being in force, in case of conflict. These are:

- (i) *Innoventive Industries Limited Vs. ICICI Bank & Anr.* (2018) [Civil Appeal Nos 8337-8338 of 2017]
- (ii) *Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited & Ors* (2021) [CA No. 8129 of 2019 with other appeals]
- (iii) *Principal Commissioner of Income Tax Vs. Monnet Ispat and Energy Limited* [SLP No. 6483/2018]

Further, judgements on Section 14 of IBC, including following:

In the matter of Anand Rao Korada Resolution Professional Vs. Varsha

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Fabrics (P) Ltd., [Civil Appeal Nos. 8800 – 8801 of 2019] the Hon'ble Supreme Court was dealing with an issue pertaining to recovery of dues owed to workers at a time when the moratorium was in force. The Hon'ble Supreme Court, relying on Section 238 of the IBC held that an auction conducted under the aegis of the Hon'ble Odisha High Court could not hold good as it was violative of the provisions of Section 14 of the IBC. The rationale for setting aside the auction proceedings was that any alienation of assets of a corporate debtor during the pendency of CIRP (when moratorium is in force) will seriously jeopardize the interests of all stakeholders.

Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. & Anr. [Civil Appeal No. 4750 of 2021] Hon'ble Supreme Court held that a sale of a secured asset cannot be completed under the provisions of the SARFAESI Act once CIRP has been initiated and moratorium has been imposed. It is pertinent to note that in RCM Infrastructure (supra), the bidder had made the balance payment of the sale consideration after the initiation of CIRP and the consequential imposition of moratorium. Accordingly, the Hon'ble Supreme Court held that once the moratorium is in place, the sale of the secured asset cannot be completed.

In Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs, (Civil Appeal No. 7667/2021), the Apex Court held that once a moratorium either under Section 14 or under Section 33 (5) of IBC has been imposed on CD, no recovery proceedings can be initiated under the Customs Act, 1961.

The Hon'ble Supreme Court held that albeit the Customs Act and the IBC operate in distinct spheres, in case of conflict, the IBC would override the provisions of the Customs Act. In Sundaresh Bhatt (supra), the Hon'ble Supreme Court was to rule on whether the Central Board of Indirect Taxes and Customs (Customs Authority) could claim title over the corporate debtor's goods and issue notice to sell the goods in terms of the Customs Act when liquidation process had been initiated. The Hon'ble Supreme Court held that once the moratorium is in force, the Customs Authority cannot claim title over the goods and issue notice to sell such goods.

As regards arbitral proceedings, a petition under section 34 of the Arbitration and Conciliation Act, 1996 would be hit by section 14. Even a section 37 petition is barred upon declaration of the moratorium, as was laid down in the case of Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan P. Ltd.

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[Civil Appeal No. 16929 of 2017]. The mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.

If the supply of electricity is for managing the operations of the CD, the supply cannot be interrupted during moratorium except where CD has not paid dues arising from such supply during the moratorium. - Executive Engineer Uttar Gujarat VIJ Company Ltd. Vs Devang RP Samapat, RP [CA (AT) (Ins.) No. 371 and 372 of 2021].

Indian Overseas Bank Vs. Mr. Dinkar T Venkatsurbamaniam (NCLAT) - Company Appeal (AT) No. 267 of 2017 - Once Moratorium has been declared, it is not open to any person including 'Financial Creditor' and the Appellant Bank to recover any amount from the account of the 'Corporate Debtor', nor it can appropriate any amount towards its own dues.

The following practical pointers may be considered by an insolvency professional:

- a) Moratorium protects the assets of the Corporate Debtor. Hence, it is required to obtain complete custody and control of the assets in the first place.
- b) Enforcement of security interest during moratorium is prohibited. This might include sale/auction of assets, enforcement of attached properties by authorities, appropriation of FD amount/ Margin money held by creditors etc. Further, any action of the creditor, resulting in adjustment of its dues as on insolvency commencement date shall also be violative of moratorium.
- c) RP is required to inform concerned creditors (in sync with Regulation 6A), with respect to initiation of CIRP and there by enabling calm period towards preservation of assets of the Corporate Debtor.

2.17 Appointment and tenure of interim resolution professional: Section 16 of IBC

Section 16 of IBC states that:

- (1) The Adjudicating Authority shall appoint an interim resolution professional on the insolvency commencement date.

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- (2) 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 interim resolution professional, if no disciplinary proceedings are pending against him.
- (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 Board 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 sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.
- (4) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), 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.

The first role played by an IP is that of IRP in the CIRP. The tenure of IRP continues till an RP is appointed.

Role of IP:

The Bankruptcy Law Reforms Committee (BLRC) in its final report emphasized the role of an RP which stated that “*Insolvency professionals form a crucial pillar upon which rests the effective, timely functioning as well as credibility of the entire edifice of the insolvency and bankruptcy resolution process.*”

In Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.(supra), Apex Court held that RP is a facilitator of the resolution process whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority.

In the matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others,(supra)*, Hon'ble Supreme Court of India elucidated

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upon the role of the RP and observed that “*the resolution professional is a person who is not only to manage the affairs of the corporate debtor as a going concern from the stage of admission of an application under sections 7, 9 or 10 of the Code till a resolution plan is approved by the Adjudicating Authority, but is also a key person who is to appoint and convene meetings of the Committee of Creditors, so that they may decide upon resolution plans that are submitted in accordance with the detailed information given to resolution applicants by the resolution professional.*”

2.18 Powers and Duties of IRP

(a) Powers of IRP

Management of affairs of corporate debtor by interim resolution professional- Section 17 of IBC

Section 17(1) of IBC states that:

The moment CIRP is admitted, and IRP is appointed, the management of the affairs of the Corporate Debtor vest in the IRP and the powers of the board of directors or the partners of the CD, as the case may be, stand suspended and are exercised by IRP.

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.

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.

Further, as per Section 17(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;
- (c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

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- (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; and
- (e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

Specific attention is drawn to Section 17(2)(e), read with IBBI Circular No. IP/002/2018 dated 3rd January, 2018, which mandates that Insolvency Professional is required and is responsible for compliance with applicable legal framework. Hence, as a first step, the IP is required to obtain an understanding of legal and regulatory framework applicable to Corporate Debtor and then ensure necessary compliance for the Corporate Debtor, including those under Companies Act, 2013, Income Tax Act, 1961 etc.

(b) Duties of IRP as contemplated by Section 18 are as follows: Section 18 of IBC

Section 18 of IBC states that:

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;
- (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 committee of creditors;
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
- (e) file information collected with the information utility, if necessary; and

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- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –
 - (i) assets over which the corporate debtor 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 corporate debtor, financial instruments, insurance policies;
 - (vi) assets subject to the determination of ownership by a court or authority;
- (g) to perform such other duties as may be specified by the Board.

The term “assets” shall not include the following, namely: - (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment; (b) assets of any Indian or foreign subsidiary of the corporate debtor; and (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Out of the duties of IRP, collation and verification of claim, constitution of CoC and obtaining custody and control of assets of the Corporate Debtor may be considered as more critical duties. The entire edifice of going concern, value maximization and resolution depends on the assets base, for which custody and control with IRP is a must. Information Memorandum, Valuation etc, depend on such assets and hence this is a crucial duty which IRP is required to undertake.

2.19 Personnel to extend co-operation to interim resolution professionals: Section 19 of IBC

Section 19 of IBC states that:

- (1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend

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all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), 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.

An application under Section 19(2) is normally preferred by IP in cases on non-cooperation from suspended management and personnel. Such Application may be preferred in consonance with Section 19 of IBC.

This should be read in conjunction with recently inserted Regulation 3A of CIRP Regulations (Inserted by Notification No. No. IBBI/2023-24/GN/REG106, dated 18th September 2023):

(1) The interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case may be, of the following: -

(a) the records of information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such other information required under regulation 36;

(b) the assets recorded in the balance sheet of the corporate debtor or in any other records referred in clause (f) of section 18.

(2) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide to the interim resolution professional or resolution professional, as the case may be, a list of assets and records while handing over their custody and control, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.

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(3) *Where any asset or record has not been handed over or the list has not been provided, the interim resolution professional or resolution professional, as the case may be, shall himself prepare a list of assets and records while taking custody and control of assets and records, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.*

(4) *Each list of assets and records above shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody of such assets and records.*

(5) *The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such information required under regulation 36 which were required to be maintained by the corporate debtor but have not yet been handed over.*

(6) *The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the assets which are recorded in the balance sheet or in any other records referred in clause (f) of section 18 and whose custody has not been handed over.*

(7) *An application made under sub-section (2) of section 19 in respect of failure to provide any asset or record as requisitioned under the Code and this regulation, shall show presence of such asset or record in the notice of requisition and absence of such asset or record in the list of assets and records taken in control and custody under sub-regulation (2) and (3).*

As per Regulation 4(2), the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the interim resolution professional or the resolution professional, as the case may be.

As per Regulation 4(3), the creditor shall provide to the interim resolution professional or resolution professional, as the case may be, the information

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in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.

The above Regulations provides required clarity with respect to how to approach the aspect of custody and control of assets and obtaining of records.

2.20 Management of operations of corporate debtor as going concern - Section 20 of IBC

The Object of Code is to ensure revival and hence to keep CD as going concern. The IBC contains multiple provisions stressing on this aspect like Section 5(26), Section 14, Section 20, Section 23 and Section 25.

Section 20 of IBC states that:

- (1) 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.
- (2) The interim resolution professional shall have the authority- (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; (c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property: 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 corporate debtor 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 corporate debtor as a going concern.

A going concern Corporate Debtor will result in value maximization and maximize the interest of stakeholders in the CIRP.

“Going concern” refers to an enterprise continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations (Accounting Standards).

2.21 Committee of Creditors

The Committee of Creditors is the supreme decision-making body in the CIRP. The commercial wisdom of CoC has been held to be sacrosanct by the Apex Court and the scope of judicial intervention in such commercial wisdom has been narrowed down by various judicial pronouncements.

The constitution of CoC is based on the claims collated and verified by IP. As held by the Supreme Court in Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (supra)SC order dt. 25.01.2019, the resolution professional does not have quasi-judicial powers, but merely has administrative powers. This position has been expanded in Navneet Kumar Gupta Vs. Bharat Heavy Electricals Limited, where it has been held that the resolution professional cannot reject a claim without going into the evidence which corroborates the claim into account.

2.22 Proof of Claims

A. Claims by operational creditors-

Regulation 7 of CIRP Regulations provides:

A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule-I:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

- (1) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including –
 - (i) a contract for the supply of goods and services with corporate debtor;
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;

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- (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
- (iv) financial accounts.
- (v) copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:

Provided that provisions of this sub-clause shall not apply to those creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

B. Claims by financial creditors-

Regulation 8 of CIRP Regulations provides:

- (1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule-I:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

- (2) The existence of debt due to the financial creditor may be proved on the basis of –
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including –
 - (i) a financial contract supported by financial statements as evidence of the debt;
 - (ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor.
 - (iii) financial statements showing that the debt has not been paid; or
 - (iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

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C. Claims by creditors in a class-

Regulation 8A of CIRP Regulations provides:

- 1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule-I.
- 2) The existence of debt due to a creditor in a class may be proved on the basis of-
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including any-
 - (i) agreement for sale;
 - (ii) letter of allotment;
 - (iii) receipt of payment made; or
 - (iv) such other document, evidencing existence of debt.
- (3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.

D. Claims by workmen and employees

Regulation 9 of CIRP Regulations provides:

- (1) A person claiming to be a workman, or an employee of the corporate debtor shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule-I:

Provided that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee.
- (2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one claim with proof for all such dues on their behalf in Form E of the Schedule-I.
- (3) The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of –

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- a. records available with an information utility, if any; or
- b. other relevant documents, including –
 - (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;
 - (ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of dues, if any.

E. Claims by other creditors provides

Regulation 9A of CIRP Regulations provides:

- (1) A person claiming to be a creditor, other than those covered under regulation 7, 8, 8A or 9, shall submit its claim with proof to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the Schedule-I.
- (2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –
 - (a) the records available in an information utility, if any, or
 - (b) other relevant documents sufficient to establish the claim, including any or all of the following: -
 - (i) documentary evidence demanding satisfaction of the claim;
 - (ii) bank statements of the creditor showing non-satisfaction of claim;
 - (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.

F. Substantiation of claims

Regulation 10 of CIRP Regulations provides:

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

G. Cost of proof

Regulation 11 of CIRP Regulations provides:

A creditor shall bear the cost of proving the debt due to such creditor.

H. Submission of proof of claims:

Regulation 12 of CIRP Regulations provides:

- (1) A creditor shall submit a claim with proof on or before the last date mentioned in the public announcement.

Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.

- (2) **** omitted
- (3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

Update of claims: Regulation 12A of CIRP Regulations provides:

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

Verification of claims: Regulation 13 of CIRP Regulations provides:

- (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them,

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the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

- (1A) Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.
- (1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.
- (1C) The interim resolution professional or resolution professional, as the case may be, shall: -
 - (a) intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; and
 - (b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:- (i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and (ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.
- (2) The list of creditors shall be –
 - (a) available for inspection by the persons who submitted proofs of claim;
 - (b) available for inspection by members, partners, directors and guarantors of the corporate debtor or their authorised representatives;
 - (c) displayed on the website, if any, of the corporate debtor;
 - (ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the

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- (d) filed with the Adjudicating Authority; and
- (e) presented at the first meeting of the committee

Determination of amount of claim

Regulation 14 of CIRP Regulations provides:

- (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.
- (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

Debt in foreign currency

Regulation 15 of CIRP Regulations provides:

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.

Explanation - "official exchange rate" is the reference rate published by the Reserve Bank of India or derived from such reference rates.

From the above, the followings can be inferred:

- 1. Claims are to be collated and verified in accordance with Regulations and IBC. The procedural requirements along with documentation for substantiation of claim is required to be verified.
- 2. IP is required to verify the books of account and other records of Corporate Debtor for verification of claim.
- 3. IP does not have quasi-judicial power like Liquidator. Hence, IP has the power only to collate and verify claims. IP has to follow the procedure laid down in Regulation 13.

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4. In certain cases, IP may make the best estimate of claim.
5. Claims may be subject to upward/downward revision based on additional evidence.
6. IP has to verify security interest in accordance with available records and documents submitted by the claimant.

As per Section 21 of IBC:

- 1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
- 2) The committee of creditors shall comprise all financial creditors of the corporate debtor: Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it 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: Provided further that the first proviso 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
- 3) Where 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.
- 4) Where any person is a financial creditor as well as an operational creditor, -
 - (a) 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;

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- (b) 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.
- 5) 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.
- 6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, 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.
- 7) Sub-section (6A): Where a financial debt— (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors; (b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors; (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

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- 8) Sub-section (6B): The remuneration payable to the authorised representative- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and (ii) under clause (b) of sub-section (6A) shall be as specified which shall be form part of the insolvency resolution process costs.
- 9) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).
- 10) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors: Where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.
- 11) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.
- 12) The resolution professional shall make available any financial information so required by the committee of creditors within a period of seven days of such requisition.

The following can be inferred from the above:

- a) The CoC is constituted of unrelated financial creditors. Hence, the IP should clearly identify the related party financial creditors, as such creditors do not get any right to represent or vote in the CoC
- b) Related party status does not get triggered merely 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.
- c) The split between operational creditor and financial creditor is made clearly for composition of CoC.
- d) In situations of class of creditors, or financial debt being securities/deposits, trustee/agent exercises right and represents the class of creditors in CoC.

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- e) All decisions of CoC require approval of Members constituting 51% voting rights unless specified otherwise in the Code.
- f) Voting rights are based on the proportion of admitted debt to a financial creditor in relation to total financial debt of the Corporate Debtor.
- g) Proviso to Section 21(8) read with Regulation 16:

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 in accordance with Regulation 16, in which case the CoC shall be constituted with:

- eighteen largest operational creditors by value: if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors.
- one representative elected by all workmen other than those workmen included above; and
- one representative elected by all employees other than those employees included under first point above.

A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as the case may be, to the total debt. A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.

Further, it is to be noted that, in this Regulation, no differentiation has been made between related and unrelated operational creditors.

As per Regulation 17 of CIRP Regulations, 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 sub regulation 1 of regulation 12.

The committee and members of the committee shall discharge functions and exercise powers under the Code and these regulations in respect of corporate insolvency resolution process in compliance with the guidelines as may be issued by the Board. The interim resolution professional shall hold the first meeting of the committee within seven days of filing the report under this regulation.

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The following judgements reflect upon the views of courts w.r.t commercial wisdom of CoC:

1. *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] SC order dt. 25.01.2019-The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.*
2. *Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals] NCLAT order dt. 04.07.2019 -The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties are not supposed to decide the manner of distribution. The inter se distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.*
3. *State Bank of India Vs. Orissa Manganese & Minerals Ltd. [CA (IB) Nos. 402 and others in CP (IB) No. 371/KB/2017] NCLT, Kolkata order dt. 22.06.2018 CoC is the fit person to take its own business decision and no reason has been found to disturb or sit on the decision of the CoC taken on by majority vote share.*

2.23 Meetings of CoC – Section 24 of IBC

Section 24 of IBC states that:

- (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.
- (2) All meetings of the committee of creditors shall be conducted by the resolution professional.
- (3) The resolution professional shall give notice of each meeting of the committee of creditors to-
 - (a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);
 - (b) members of the suspended; Board of Directors or the partners of the corporate persons, as the case may be;

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- (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.
- (4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings: The absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.
- (5) Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

The fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.
- (6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
- (7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.
- (8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

Regulation 18 of CIRP Regulations related to Meetings of the committee provides:

- (1) A resolution professional may convene a meeting of the committee as and when he considers necessary.
- (2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty-three per cent of the voting rights. [Explanation: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority.

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- (3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty-three per cent of the voting rights.

Directors of suspended Board are entitled to participate in CoC and entitled to agenda documents including copy of resolution plan. (Apex Court Judgement in *Vijay Kumar Jain Vs Standard Chartered Bank*) [*Civil Appeal No. 8430 of 2018*]

Regulation 19 of CIRP Regulations related to Notice for Meetings of the committee provides:

- (1) A meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the interim resolution professional or the resolution professional, as the case may be and such notice may be sent by hand delivery or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20
- (2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit: Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative.]

Regulation 20 of CIRP Regulations related to Service of notice by electronic means provides that:

- (1) A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
- (2) The subject line in the e-mail shall state the name of the corporate debtor, the place, if any, the time and the date on which the meeting is scheduled.
- (3) If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

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- (4) When notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as “proof of sending”.
- (5) The obligation of the resolution professional shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond its control.
- (6) The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
- (7) If a participant, other than a member of the committee, fails to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice by such participant of any meeting shall not invalidate the decisions taken at such meeting

Regulation 21 of CIRP Regulations related to Contents of the notice for meeting provides:

- (1) The notice shall inform the participants of the venue, the time and date of the meeting and of the option available to them to participate through video conferencing or other audio and visual means and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means.
- (2) The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorised representative:

Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorised representative who will attend and vote at the meeting on its behalf.
- (3) The notice of the meeting shall contain the following- (i) a list of the matters to be discussed at the meeting; (ii) a list of the issues to be voted upon at the meeting; and (iii) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.

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- (4) The notice of the meeting shall-
 - (a) state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be cast:
 - (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and
 - (c) provide contact details of the person who will address the queries connected with the electronic voting.

Regulation 22 of CIRP Regulations related to Quorum at the meeting provides:

- (1) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means:

Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.
- (2) Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.
- (3) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.

Regulation 23 of CIRP Regulations related to Participation through video conferencing provides:

- (1) The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with this Regulation.
- (2) The resolution professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection.

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- (3) The resolution professional shall take due and reasonable care-
- a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - b) to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications for effective participation of the participants at the meeting;
 - c) to record proceedings and prepare the minutes of the meeting;
 - d) to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
 - e) to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means; and
 - f) to ensure that participants attending the meeting through audio and visual means are able to hear and see, if applicable, the other participants clearly during the course of the meeting: Provided that the persons, who are differently abled, may make request to the resolution professional to allow a person to accompany him at the meeting.
- (4) Where a meeting is conducted through video conferencing or other audio and visual means, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Regulation 24 of CIRP Regulations related to Conduct of meeting provides:

- (1) The resolution professional shall act as the chairperson of the meeting of the committee.
- (2) At the commencement of a meeting, the resolution professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following,-
 - (a) his name;

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- (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; and
 - (f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.
- (3) After the roll call, the resolution professional 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 resolution professional 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 resolution professional 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.
 - (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 forty eight hours of the said meeting.

Regulation 25 of CIRP Regulations related to Voting by the committee provides that:

- (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.

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- (3) The resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same.
- (4) At the conclusion of a vote at the meeting, 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.
- (5) The resolution professional shall-
 - (a) circulate the minutes of the meeting by electronic means to all members of the committee and the Authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and
 - (b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.
- (6) The Authorised representative shall circulate the minutes of the meeting received under sub-regulation (5) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

Regulation 25A of CIRP Regulations related to Voting by Authorised Representative provides that:

The Authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of subsection (3) or sub-section (3A) of section 25A, as the case may be.

2.24 Appointment of RP – Section 22 of IBC

Section 22 of IBC states:

The first meeting of CoC is to be held within seven days of the constitution of the committee of creditors. The committee of creditors may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting

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share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional. [Section 22(2)].

Where the committee of creditors resolves

- (a) to continue the interim resolution professional as resolution professional subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or
- (b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form. The Adjudicating Authority shall forward the name of the resolution professional proposed herein to the Board for its confirmation and shall make such appointment after confirmation by the Board. Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

Hence, it is not necessary for IRP to be appointed as RP. Further, the tenure of IRP is extended until an RP is appointed.

Similarly, Section 27 of IBC provides for replacement of RP appointed under Section 22 which states that where, at any time during the corporate insolvency resolution process, 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. This also requires resolution by a vote of sixty-six per cent. The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority. 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. Where any disciplinary proceedings are pending against the proposed resolution

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professional, the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

The tenure of IRP continues till an RP is appointed. As per Regulation 17, 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.

2.25 IRP to RP- Transition Provision: Section 23 of IBC

Section 23 of IBC states:

The resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

The resolution professional shall continue to manage the operations of the corporate debtor **after the expiry** of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

In case of any appointment of a resolution professional under sub-sections (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

As per Regulation 3(1A), where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule-I.

As per Regulation 4C, the interim resolution professional shall open an email account and use it for all correspondences with stakeholders and in the event of his replacement by a resolution professional, shall handover the credentials of the email to him and the resolution professional shall, in case

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of his replacement with another resolution professional or a liquidator, hand over the credentials of the email to the other resolution professional or the liquidator, as the case may be.

2.26 Duties of RP - Section 25 of IBC

Section 25 states that:

Apart from the duties laid down w.r.t IRP, RP has to undertake following:

- (1) Preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
- (2) For above, the resolution professional shall undertake the following actions, namely: -
 - (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
 - (b) 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;
 - (c) raise interim finances subject to the approval of the committee of creditors under section 28;
 - (d) appoint accountants, legal or other professionals in the manner as specified by Board;
 - (e) maintain an updated list of claims;
 - (f) convene and attend all meetings of the committee of creditors;
 - (g) prepare the information memorandum in accordance with section 29;
 - (h) 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 and such other conditions as may be specified by the Board, to submit a resolution plan or plans
 - (i) present all resolution plans at the meetings of the committee of creditors;
 - (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
 - (k) such other actions as may be specified by the Board.

2.27. EOI & RFRP

(a) EOI Process: Regulation 36A (4) of CIRP Regulations

The eligibility criteria for prospective resolution applicants (PRA) is approved by CoC and forms part of Request for Resolution Plan (RFRP) along with Evaluation Matrix. It is the responsibility of RP to assist the CoC' decision-making regarding eligibility criteria of PRA. Further, the RP shall draft the RFRP detailing the resolution plan submission process including performance guarantee and evaluation matrix to assist the CoC in evaluating multiple resolution plans.

Evaluation Matrix generally contains weightage to resolution plans based on various parameters inter alia quantitative (payment – upfront, deferred, equity infusion, capex and opex etc) and qualitative (track record, credit rating, experience in turnaround etc). Once all resolution plans are received, they are ranked in accordance with the evaluation matrix which further aids the decision making of CoC.

Invitation for submission of expression of interest is issued by RP in Form G. This is one of the starting steps for initiation of resolution plan submission process. Form G is published not later than 60th day from insolvency commencement date.

Regulation 36A of CIRP Regulations provides:

The resolution professional shall publish Form G

- (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;
- (ii) on the website, if any, of the corporate debtor;
- (iii) on the website, if any, designated by the Board for the purpose; and
- (iv) in any other manner as may be decided by the committee

Form G in the Schedule shall (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

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The process timeline that triggers on issue of Form G (Schedule I) and Detailed invitation for Expression of Interest as given under Regulation 36A is as under:

- a) Submission of EOI by PRA -Atleast 15 days from issue of Eoi
- b) RP to issue provisional list of PRA – within 10 days from last date for receipt of Eoi
- c) PRAs to submit objection to provisional list – within 5 days from the date of provisional list
- d) RP to issue final list of PRAs – within 10 days of receipt of objections

Thereafter, RP shall issue RFRP, including Evaluation Matrix and Information Memorandum (Regulation 36B) to PRAs– within 5 days of issue of Final List. At least 30 days from issue of RFRP is to be provided for receipt of Resolution Plans from PRAs. The RFRP can be amended only once. However, the last date for submission of resolution plan may be extended and the same is not considered as modification of RFRP.

(b) Detailed EOI- Regulation 36A (4) of CIRP Regulations

Regulation 36A (4) of CIRP Regulations provides:

The detailed invitation referred to in sub-regulation shall

- (a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause h) of sub section 2) of section 25;
- (b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;
- (c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and
- (d) not require payment of any fee or any non-refundable deposit for submission of expression of interest

Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made: Provided that such modification shall not be made more than once [Regulation 36A(4A)].

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A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation. The expression of interest received after the time specified in the invitation shall be rejected.

This is to ensure sanctity of timelines and to place certainty over the EoI Process, otherwise, the EoI process will be vulnerable to multiple re-initiation.

An expression of interest shall be unconditional and be accompanied by

- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause h) of sub section 2) of section 25;
- (b) relevant records in evidence of meeting the criteria under clause a);
- (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
- (d) relevant information and records to enable an assessment of ineligibility under clause (c);
- (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
- (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and
- (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub section 2) of section 29.

(c) Checking of EOI by RP – Regulation 36A (8) of CIRP Regulations

Regulation 36A (8) of IBC states that:

The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant

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complies with (a) the provisions of clause h) of sub section 2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest. The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence.

The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest. Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list may be made with supporting documents within five days from the date of issue of the provisional list. On considering the objections received, the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

(d) RFRP – Regulation 36B of CIRP Regulations

Regulation 36B of CIRP states that:

The resolution professional shall, within five days of the date of issue of the final list under of PRAs, issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list. Where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.

The request for resolution plans shall detail each step in the process and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines. The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plans. The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule [Regulation 36B(4A)].

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“Performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Any modification in the request for resolution plan or the evaluation matrix issued under sub regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub regulation. Such modifications shall not be made more than once. [Regulation 36B(5)].

The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans [Regulation 36B (6)]

If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor [Regulation 36B(6A)].

The resolution professional may, with the approval of the committee, re issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list [Regulation 36B (7)].

Further, as per Regulation 36C, the resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases. The decision to implement such strategy along with its cost shall be subject to the approval of the committee. The member(s) of the committee may also take measures for marketing of the assets of the corporate debtor.

2.28 Application for avoidance of transactions not to affect proceedings - Section 26 of IBC

Section 26 of IBC states that:

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.

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Regulation 35A states that, on or before the seventy fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66. Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date. Where the resolution professional makes a determination, he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.

The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated [Regulation 35A(3A)].

The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.

Avoidance Transactions are covered in Section 43, 45, 49, 50 and 66 of IBC. They have been covered subsequently in this publication.

2.29 Mandatory CoC Approval - Section 28 of IBC

Section 28 lays down certain actions, which the RP cannot undertake Suo moto and requires approval from Members holding 66% of voting rights in CoC.

Section 28 of IBC states that:

Following are the contemplated actions under this:

- (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;

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- (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;
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- (j) make any change in the management of the corporate debtor 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 committee of creditors; or
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Where any action 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. The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under this Code.

There can be instances where the Corporate Debtor and the related party both are undergoing CIRP. In such cases, any transaction between them needs to be compliant with Section 28 in both CIRP.

2.30 Preparation of Information Memorandum: Section 29 of IBC

As per Section 5(10), Information Memorandum means a memorandum prepared by the Resolution Professional under sub-section (1) of section 29.

As per Section 25(2)(g), duty is cast upon the RP to prepare an IM in such form and manner containing such relevant information as specified by the IBBI.

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Section 29 of IBC states that:

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

“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.

As per Regulation 36 of CIRP Regulations, the resolution professional shall submit the information memorandum in electronic form to each member of the committee on or before the ninety-fifth day from the insolvency commencement date.

The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor:

- (a) assets and liabilities including contingent liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values. ‘Description’ includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, geographical coordinates of fixed assets and any other relevant details.

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- (b) the latest annual financial statements;
- (c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- (d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- (e) particulars of a debt due from or to the corporate debtor with respect to related parties;
- (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- (h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;
- (j) company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities
- (k) Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements
- (l) other information, which the resolution professional deems relevant to the committee.

A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the

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resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.

The creditors shall provide to the resolution professional the latest financial statements and other relevant financial information of the corporate debtor available with them. [Regulation 36(3A)].

The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

Information Memorandum is a crucial document prepared by RP and shared with CoC and PRAs. This forms the base and substance of assessing viability and proposing a resolution for the Corporate Debtor. RP has to take adequate care and exercise prudent due diligence in preparation of Information Memorandum. Any misrepresentation or false factual matrix may even give ground to PRAs to withdraw its resolution plan based on circumstances.

The Hon'ble Supreme Court of India, in the matter of Ebix Singapore Private Limited Vs. CoC of Educomp Solutions Limited & Anr. [Civil Appeal No. 3224 of 2020] dealt with the duty of the RP to provide accurate information of the Corporate Debtor and made the following observation: – “189. Under the IBC, there is a duty upon the RP to collect as much information about the Corporate Debtor as is accurately possible to do. When such information is communicated through an IM to the Resolution Applicant, the RP must be careful to clarify when its information is not comprehensive and what factors may cause a change.”

2.31 Persons not eligible to be resolution applicant – Section 29A of IBC

This Section was not part of the original Code. An ordinance was introduced for amending the IBC on November 23, 2017 (Ordinance). The Ordinance introduced Section 29A setting out the eligibility criteria which must be satisfied in order for a person to be able to submit a resolution plan. The Ordinance was replaced by the Insolvency and Bankruptcy Code

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(Amendment) Act, 2018 on January 18, 2018. The object of this was to strengthen further the insolvency resolution process and for which it has been considered necessary to provide for prohibition of certain persons from submitting a resolution plan, who on account of their antecedents may adversely impact the credibility of the processes under the Code.

Section 29A underwent further changes subsequently pursuant to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 promulgated on June 6, 2018 as replaced by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. As far as sub-section (c) of Section 29A is concerned, the said amendment, inter alia, replaced the words “has an account” with “at the time of submission of the resolution plan has an account”

Section 29A of IBC states that:

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 willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
- (c) at the time of submission of the resolution plan 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 in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 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. 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 nonperforming asset accounts before submission of resolution plan.

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.

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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. [Explanation I]

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; [Explanation II]

- (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: Provided that 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: Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I;
- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013): Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;
- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (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:

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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;

- (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).

Explanation I - 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).

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

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;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central

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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;
- (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 Foreign Exchange Management Act, 1999 (42 of 1999);
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

Related Party to corporate debtor is defined in Section 5(24) whereas related party in relation to individual is defined in Section 5(24A).

2.32 Prominent Judicial Pronouncements on Section 29A of IBC:

In Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors, (supra) Hon'ble Supreme Court observed that it would be just to presume that there is an existence of business activity connection between the Resolution Applicant and the Corporate Debtor. However, if the "related person" is able to prove that there is no business relation between the Corporate Debtor and himself, such person cannot be possibly disqualified by Section 29A(j). The Court further mentioned in Para 75, that the terms "Related Party" and "Related"

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are subject to noscitur a sociis, where they would be bound by interpretation, and in the opinion of the Bench, would include only persons who are connected with the Corporate Debtor, in terms of Business activity.

In Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd., [Civil Appeal no. 9664 of 2019] Hon'ble Supreme Court laid down that a person ineligible to be RA under the Code was also ineligible from entering a compromise under the provisions of the Companies Act, 2013.

In Bank of Baroda and Anr. Vs. MBL infrastructures Limited, [CIVIL APPEAL NO. 8411 OF 2019], it is clarified the scope of ineligibility of a personal guarantor as a Resolution Applicant under section 29A(h) of the IBC.

In M/s Blue Frog Media Private Limited, the Mumbai bench of the National Company Law Tribunal (NCLT Mumbai) ruled that the object of Section 29A of the IBC requires a resolution professional to conduct adequate due diligence on a prospective resolution applicant and its related parties. The NCLT Mumbai implied that the resolution professional cannot merely rely on an affidavit provided by such an applicant to ensure that the resolution applicant does not fall under the criteria set out in Section 29A of the IBC.

MSME Exemption in 29A of IBC

Section 240A of the IBC allows exemption from Section 29A(c) and 29A(h) to a resolution applicant of MSME Corporate Debtor.

The Hon'ble Supreme Court in its recent judgment in the case of Hari Babu Thota v. X CIVIL APPEAL NO.4422/2023 has overturned the Hon'ble NCLAT's decision in Digambar Anandrao Pingle v. Shrikant Madanlal Zavar [CA (AT) (Ins.) No. 43-43A of 2021] and has held that, pursuant to Section 240A of the IBC the cut-off date for determining the eligibility of a Promotor of an MSME as a Resolution Applicant shall be the date of submission of the Resolution Plan and not the date of the commencement of Corporate Insolvency Resolution Process.

2.33 Resolution Plan – Section 30 of IBC

Section 30 of IBC states that:

- (1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

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- (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –
- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - (b) 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
 - (ii) 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 sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

It is clarified that a distribution in accordance with the provisions of this clause **shall be fair and equitable** to such creditors.

- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) the implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force
- (f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

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(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection. Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

2.34 Resolution Plan: Regulation 37 of CIRP Regulations

Regulation 37 of CIRP Regulations states that:

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

- (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
- (b) sale of all or part of the assets whether subject to any security interest or not;
- (ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;
- (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
- (ca) cancellation or delisting of any shares of the corporate debtor, if applicable;
- (d) satisfaction or modification of any security interest;
- (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- (f) reduction in the amount payable to the creditors;
- (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- (h) amendment of the constitutional documents of the corporate debtor;
- (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- (j) change in portfolio of goods or services produced or rendered by the corporate debtor;
- (k) change in technology used by the corporate debtor; and
- (l) obtaining necessary approvals from the Central and State Governments and other authorities; and

- (m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.

2.35 Mandatory contents of Resolution Plan: Regulation 38 of CIRP Regulations

Regulation 38 of CIRP Regulations states that:

(1) The amount payable under a resolution plan - (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

(2) A resolution plan shall provide:

- (a) the term of the plan and its implementation schedule;
- (b) the management and control of the business of the corporate debtor during its term; and
- (c) adequate means for supervising its implementation.
- (d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.

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- (3) A resolution plan shall demonstrate that
 - (a) it addresses the cause of default;
 - (b) it is feasible and viable;
 - (c) it has provisions for its effective implementation;
 - (d) it has provisions for approvals required and the timeline for the same; and
 - (e) the resolution applicant has the capability to implement the resolution plan.

The following can be inferred and should be considered by an RP:

- a) RP is required to verify and examine resolution plans vis a vis mandatory contents provided in Section 30(2) read with Regulation 38.
- b) Resolution Plan should be compliant with applicable law.
- c) Resolution Plan should not be conditional.
- d) RP to verify material adverse clauses incorporated in resolution plan.

2.36 Judicial Pronouncements related to jurisdiction

In Pratap Technocrats Private Limited v Monitoring Committee of Reliance Infratel Limited, [Civil Appeal No 676 of 2021], it has been held that the jurisdiction conferred upon the Adjudicating Authority-NCLT in regard to the approval of a Resolution Plan is statutorily structured by Sub-Section (1) of Section 31 of the Code and such jurisdiction is limited to determine whether the requirements which are specified in Sub-Section (2) of Section 30 of the Code have been fulfilled. Further, it has been explained that such jurisdiction which is statutorily defined, recognised and conferred, cannot be equated with the jurisdiction in equity that operates independently of the provisions of the statute for the reason that the Adjudicating Authority-NCLT, which is a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined therein.

In Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh, [CA (AT) (Ins.) No. 1039 of 2020], it was opined that aspects related to the valuation of the Corporate Debtor are not open to judicial scrutiny by the NCLT as the object behind such valuation process is to assist the CoC in taking a proper

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decision in respect of a Resolution Plan and it has further been indicated that the Adjudicating Authority-NCLT can approve a Resolution Plan even when it is below the liquidation value and that there is no provision under the Code which states that a resolution applicant's bid must match the liquidation value as the liquidation value is determined merely to assist the CoC in taking a decision on the Resolution Plan.

In M K Rajagopalan Vs Dr Periasamy Palani Gounder, Civil Appeal Nos. 1682-1683 of 2022, SC held that when the CoC was fully satisfied with the valuation conducted in respect of the Corporate Debtor and had endorsed the same, then it was unnecessary and unjustifiable to presume irregularities in the Resolution Plan and interfere therewith.

2.37 Approval of Resolution Plan: Section 31 of IBC

Section 31 of IBC states that:

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, 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.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform 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.

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(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.

Regulation 39 of CIRP Regulations related to Verification of claims states:

(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) Omitted by IBBI (CIRP) (Fourth Amendment) Regulation, 2018
- c) 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.

(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-

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- (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 sub-section (2) of section 30 and sub-regulation (1).

(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.

(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.

(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:

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:

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.

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(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.

(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:

(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.

(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.

2.38 Judicial Pronouncements on Commercial wisdom of CoC

1. *In Ebix Singapore (P) Ltd. Vs. Committee of Creditors of Educomp Solutions Limited,(supra), SC held that the Adjudicating Authority under Section 31(2) of the Code can only examine the validity of the*

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Resolution Plan on the anvil of the stipulation in Section 30(2) of the Code and either approve or reject the Resolution Plan but cannot compel the CoC to negotiate further with a successful Resolution Applicant.

2. *In Vallal RCK Vs. Siva Industries and Holdings Limited, (supra) it was held that the interference would be warranted only when the Adjudicating Authority or the Appellate Authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provisions of the statute or the Rules.*
3. *In Pratap Technocrats Private Limited (supra), the Court, after considering the relevant case-laws, pointed out that the Indian Legislature had departed from foreign insolvency regimes, and stated inter alia “However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the adjudicating authority other than the statutory requirements laid down under sub-section (2) of Section 30 IBC.”*
4. *In Arun Kumar Jagatramka Vs. Jindal Steel and Power Limited, [Civil Appeal No. 9664 of 2019 with other appeals], the relevant being Paragraph 89, SC held that the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the Code.*
5. *In Kalpraj Dharamshi v Kotak Investment Advisors Limited, [Civil Appeal Nos. 2943-2944 of 2020] the Court concluded that “... in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of “commercial wisdom”, NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%”*
6. *In Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, [Civil Appeal No(s). 3395/2020] SC held that “the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in*

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the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.'

7. *In Ghanshyam Mishra Judgement [CA No. 8129 of 2019 with other appeals] – SC – it was held that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under section 31 and of the Appellate Authority is limited to the extent provided under section 61(3) of the IBC.*
8. *Arcelormittal India Private Limited Vs. Satish Kumar Gupta and Ors [Civil Appeal Nos. 9402-9405 of 2018 and other appeals] - Section 30(2)(e) does not empower the RP to decide whether the Resolution Plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.*
9. *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors (supra), since the FCs are in the business of money lending, they are best equipped to assess viability and feasibility of the business of the CD. Even at the time of granting loans, they undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. They are in a good position to evaluate the contents of a resolution plan.*

2.39 Appeal – Section 32 of IBC

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.

2.40 Avoidance Transactions

The records released by the IBBI show that a total of Rs. 3 lakhs crores (approx.) worth from 1025 applications for avoidance transactions have been filed with the adjudicating authority as of September 2023. Recent amendments require resolution plan to provide for the manner in which proceedings in respect of avoidance transactions will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.

2.41 Preferential transactions and relevant time: Section: 43 of IBC

Section 43 of IBC states that:

- (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
- (2) A corporate debtor shall be deemed to have given a preference, if—
 - (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
 - (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.
- (3) For the purposes of sub-section (2), a preference shall not include the following transfers—
 - (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
 - (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and
 - (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

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Provided that any transfer made in pursuance of the order of a court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

- (4) A preference shall be deemed to be given at a relevant time, if –
 - (a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
 - (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

2.42 Avoidance of undervalued transactions: Section 45 of IBC

Section 45 of IBC states that:

- (1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.
- (2) A transaction shall be considered undervalued where the corporate debtor–
 - (a) makes a gift to a person; or
 - (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

2.43 Transactions defrauding creditors: Section 49 of IBC

Section 49 of IBC states:

- (1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor -
- (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
 - (b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-
 - (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
 - (ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section –

- (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

2.44 Extortionate credit transactions–Section 50 of IBC

Section 50 of IBC states:

- (1) Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the

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period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which a transaction which shall be covered under sub-section (1).

Explanation. - For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

2.45 Fraudulent trading or wrongful trading– Section 66 of IBC

Section 66 of IBC states:

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

- (a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and
- (b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

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(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

As per Regulation 5 of CIRP Regulations, a transaction shall be considered extortionate under section 50(2) where the terms: (1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or (2) are unconscionable under the principles of law relating to contracts.

IBBI vide Facilitation/003/2020 dated 7th August, 2020, had released a publication “Avoidance Transaction – Red Flags”, which is useful to an IP for approaching transaction review.

2.46 Judicial Pronouncements related to avoidance transactions

In Tata Steel BSL Limited Vs. Venus Recruiters Ltd & Ors [LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021] and [LPA 43/2021 and C.M. Nos. 3196/2021 & 3198/2021], High Court of Delhi, order dated 13th January 2023 it was held that Scheme of IBC makes it clear that avoidance applications and CIRP are a separate set of proceedings and adjudication of an avoidance application is independent of the resolution of the CD and can survive CIRP.

The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The amount should be made available to the creditors who are primarily financial institutions.

Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. & Ors., [Company Appeal (AT) (Insolvency) No. 437 of 2023], NCLAT held that avoidance application(s) can continue even after completion of CIRP.

2.47 Valuation

Regulation 27 of CIRP Regulations states:

- (1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.
- (2) The interim resolution professional or the resolution professional, as the case may be, may appoint any professional, in addition to registered valuers under sub-regulation (1), to assist him in discharge of his duties in conduct of the corporate insolvency resolution process, if he is of the opinion that the services of such professional are required and such services are not available with the corporate debtor.
- (3) The interim resolution professional or the resolution professional, as the case may be, shall appoint a professional under this regulation on an arm's length basis following an objective and transparent process: Following persons shall not be appointed, namely: -
 - (a) a relative of the resolution professional;
 - (b) a related party of the corporate debtor;
 - (c) an auditor of the corporate debtor at any time during the period of five years preceding the insolvency commencement date;
 - (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.
- (4) The invoice for fee and other expenses incurred by a professional appointed under this regulation shall be raised in the name of the professional and be paid directly into the bank account of such professional.

2.48 Fair value and Liquidation value

Regulation 35 of CIRP Regulations states that:

- (1) Fair value and liquidation value shall be determined in the following manner:-
 - a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted

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valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

- b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).

For the purpose of clause (b),

- (i) "asset class" means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017;
- (ii) "significantly different" means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$, where,
- L1= higher valuation of liquidation value
- L2= lower valuation of liquidation value.

- c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

(2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub section (2) of section 29

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value

2.49 Miscellaneous

a) Transfer of debt due to creditors – Regulation 28 of CIRP Regulation

Regulation 28 states that:

- (1) In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period,

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both parties shall, within seven days of such assignment or transfer, provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee.

(2) The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change.

b) Sale of assets outside the ordinary course of business- Regulation 29 of CIRP Regulation

Regulation 29 states that:

(1) The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case: Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.

(2) A sale of assets under this Regulation shall require the approval of the committee by a vote of sixty-six per cent of voting share of the members.

(3) A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature

c) Assistance of local district administration – Regulation 30 of CIRP Regulation

Regulation 30 states that:

The interim resolution professional or the resolution professional, as the case may be, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or these Regulations.

d) Audit of corporate debtor- Regulation 30B of CIRP Regulation

Regulation 30B states that:

(1) Any member(s) of the committee may propose an audit of the corporate debtor along with the objectives, scope, estimate of the costs, timeframe and name(s) of the proposed auditor(s).

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- (2) A proposal made under sub-regulation (1) shall be considered as per sub-regulation (3) of regulation 18 and an audit shall be conducted if such proposal is approved by the committee.
- (3) The audit shall be conducted by an insolvency professional having qualifications required for such an audit.
- (4) The auditor shall prepare a report detailing his findings and the same shall be presented before the committee along with the comments of the interim resolution professional or the resolution professional, as the case may be.
- (5) The expenses of such audit shall be treated as insolvency resolution process costs.

Insolvency resolution process costs–Regulation 31 of CIRP Regulations

Regulation 31 states that:

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (aa) fee payable to authorised representative under sub-regulation (8) of regulation 16A; (ab) out of pocket expenses of authorised representative for discharge of his functions under section 25A
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (ba) fee payable to the Board under regulation 31A;]
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

As per IBBI Discussion Paper dt. 07th June 2023 on” Measures for increasing the possibility of resolution, value of resolution plan and enabling timely resolution.”

The following sub-regulation is proposed to be added under Regulation 31 of CIRP Regulations:

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- (f) *Wherever the total assets of the CD as per the last available financial statements **exceed one hundred crore rupees**, the RP shall get the audit of IRPC conducted after finalisation of the cost of the IRPC for the financial year. The audit shall be conducted by a Chartered Accountant who is also recognized as an insolvency professional. The following conditions shall also apply:*
- (i) *Any Chartered Accountant who is disqualified under Section 141 of the Companies Act, 2013, from being appointed as an auditor of a company, shall also be deemed to be disqualified from conducting an audit of IRPC.*
 - (ii) *In addition, any Chartered Accountant who has been involved in the same CIRP as an Insolvency Professional, a consultant, an advisor, or in any other capacity, shall also be disqualified from conducting the audit of IRPC.*

2.50 Regulatory Fee – Regulation 31A of CIRP Regulations

Regulation 31A states that:

- (1) A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value: Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.

Explanation: For removal of doubts, it is hereby clarified that the regulatory fee under this sub-regulation, shall not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.

- (2) A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified in clause (cb) of sub-regulation (2) of regulation (7) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Costs of IRP (As per Regulation 33):

- (1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.
- (2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).
- (3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.
- (4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

Explanation - For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.

2.51 Resolution professional costs: Regulation 34 of CIRP Regulation

Regulation 34 states that:

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs. “Expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.

2.52 Disclosure of Costs- Regulation 34A of CIRP Regulations

Regulation 34A states that:

The interim resolution professional or the resolution professional, as the case may be, shall disclose item-wise insolvency resolution process costs in such manner as may be required by the Board.

2.53 Fee to be paid to interim resolution professional and resolution professional: Regulation 34B of CIRP Regulations

Regulation 34B states that:

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(1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.

(2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II (Refer Annexure-3)

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

(3) After the expiry of period mentioned in clause 2 of Schedule-II (Annexure-3), the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.

(4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II(Annexure-3) or may extend any other performance-linked incentive structure as it deems necessary.

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

2.54 Preserving Records – Regulation 39A of CIRP Regulations

Regulation 39A states:

(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

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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;
 - (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;
 - (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.
- (3) The interim resolution professional or the resolution professional shall preserve:
- (a) 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.

Chapter 3

Landmark Judgements of Supreme Court under IBC

Since its enactment the IBC has undergone multiple amendments. Some of the landmark judgements of Supreme Court are as follows:

Sr. No.	Dictum	Particulars of the Case	Date of Order/ Judgement
Section 5 (8) – Financial Debt			
1.	Disbursal of funds should be done against the consideration of time value for money.	Anuj Jain Interim Resolution Professional for JAYPEE Infratech Limited Vs. Axis Bank Limited etc. Civil Appeal Nos. 8512-8527 of 2019 with other Appeals	26.02.2020
2.	In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]	
Section 7- Initiation of corporate insolvency resolution process by financial creditor			
3.	The recovery certificate issued by DRT creates a fresh cause of action and 'Doctrine of Election' will not apply in initiating insolvency proceedings.	Tottempudi Salalith Vs. State Bank of India & Ors. (Civil Appeal No.2348 of 2021)	18.10.2023

Landmark Judgements of Supreme Court under IBC

4.	A Secured Creditor would definitely have a right to invoke the power under the SARFAESI Act and the said proceedings cannot be said to be without jurisdiction. Therefore, no benefit under Section 14 of the Limitation Act would be admissible to the Secured Creditor. The documents relating to acknowledgement claiming benefit of Section 18 could be accepted even at the appellate stage. A settlement offer akin to an OTS proposal would be an acknowledgment of debt for the purpose of Section 18 of Limitation Act.	Axis Bank Ltd. Vs. Naren Sheth & Anr. (Civil Appeal No. 2085 of 2022)	12.09.2023
5.	Once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. There is no doubt that the Corporate debtor committed a default within the meaning of Sec 3(12) of the IB	M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (Writ Petition (C) No. 421 of 2019)	11.05.2023

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	Code due to non-payment of the amounts due to the bank. Even assuming that NCLT has the power to reject the application under Sec 7 if there were good reasons to do so ,in the facts of the case , the conduct of the Appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Sec 7.		
6.	Apex Court further stated that a final judgment and order/decreed is binding on the judgment debtor and once a claim fructified into a final judgment and order/decreed, upon adjudication and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the recovery certificate.	Kotak Mahindra Bank Limited Vs. A. Balakrishnan & ANR Civil Appeal no. 689 of 2021	30.05.2022

Landmark Judgements of Supreme Court under IBC

7.	<p>(i)The term 'allotment' under second proviso to section 7 means allotment in the sense of documented booking as mentioned in section 11(1)(b) of the Real Estate (Regulation and Development) Act, 2016. A person to whom allotment of a plot, apartment, or a building has been made is an allottee. The allottee would also include a person who acquires the allotment either through sale, transfer or otherwise. What is required is allotment qua apartments, and not promised flats as per a brochure.</p> <p>ii. The default under section 7 need not be qua the applicant or applicants. Any number of applicants, without any amount being due to them, could move an application under section 7, if they are financial creditors (FCs) and there is a default, even if such default is owed to none of the applicants but to any other FC.</p>	<p>Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions]</p>	<p>19.01.2021</p>
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	<p>iii. It does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees.</p>		
8.	<p>An action under section 7 of the Code could be legitimately invoked against a corporate guarantor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a “corporate person”.</p>	<p>Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]</p>	<p>26.03.2021</p>
9.	<p>Any proceeding which is pending before the AA under section 7 of Code and if the petition is admitted by the AA recording the satisfaction with regard to the default and the debt being due from the CD, any application under section 8 of the Arbitration and Conciliation Act, 1996 made thereafter will not be maintainable.</p>	<p>Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Ltd.) & Ors. [Arbitration Petition (Civil) No. 48/2019 with another appeal]</p>	<p>26.03.2021</p>

Landmark Judgements of Supreme Court under IBC

10.	The burden of prima facie proving occurrence of the default and that the application filed under section 7 is within the period of limitation, is entirely on the FC.	Rajendra Narottamdas Sheth & Anr. Vs. Chandra Prakash Jain & Anr. [Civil Appeal No. 4222 of 2020]	30.09.2021
11.	The SC held that the RBI circular dated 12th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is ultra vires of section 35AA of the Banking Regulation Act, 1949 and all actions taken under the said circular which has triggered the CIRP under section 7 will fall along with the circular.	Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors [Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 and other appeals]	02.04.2019
12.	Section 7 application filed under the Code is an independent proceeding and must run its entire course, which has nothing to do with the pendency of winding up proceedings before the HC.	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]	22.01.2019
13.	The order of admission by NCLT, which was set-aside by the NCLAT, was restored	Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794-21795 of	03.08.2018

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	stating that FC being a foreign company need not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.	2017]	
14.	In the application filed for commencement of CIRP, the AA is not required to get into the merits of a foreign decree, because the AA under the Code does not have the powers of a Civil Court.	V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [Civil Appeal No. 9980 of 2018]	12.10.2018
15.	The scheme of section 7 stands in contrast with the scheme under section 8 where an OC is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	31.08.2017
16.	It was held that the NCLT has the discretion to reject or keep in abeyance a Section 7 petition if there are good reason to do so.	Vidarbha Industries Power Limited Vs. Axis Bank Limited	12.07.2022

Landmark Judgements of Supreme Court under IBC

Section 8 & 9 Insolvency Resolution by Operational Creditor and Application for initiation of CIRP by Operational Creditor			
17.	The Apex Court held that- it was not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor. It was patently clear that an Operational Creditor can only trigger the CIRP process when there is an undisputed debt and a default in payment thereof. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.	M/S S.S. Engineers Vs. Hindustan Petroleum Corporation Ltd. & Ors. Civil Appeal No. 4583 of 2022	15.07.2022
18.	The SC upheld the direction of NCLAT which ordered OC to pay the CIRP costs and fees of the IRP/RP, after the dismissal of its section 9 application by NCLAT.	Rajkumar Brothers and Production Pvt. Ltd. Vs. Harish Amilineni Shareholder and erstwhile Director of Amilonn Technologies Pvt. Ltd. & Anr. [Civil Appeal No. 4044 of 2020]	22.01.2021
19.	A dispute must truly exist in facts and should not be spurious, hypothetical and	Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr. [Civil Appeal No.	20.07.2020

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	illusory.	2730 of 2020]	
20.	OCs cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos. 21824 & 21825 of 2017]	14.08.2018
21.	The moment there is pre-existence of a dispute, the OC gets out of the clutches of the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	31.08.2017
22.	The expression 'an operational creditor may on the occurrence of a default deliver a demand notice' under section 8 of the Code must be read as including an OCs authorised agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the AA Rules.	Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]	15.12.2017
23.	So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017]	21.09.2017
Section 10 A - Suspension of initiation of CIRP			
24.	The substantive part of section 10A is to be construed harmoniously	Ramesh Kymal Vs. M/s Siemens Gamesa Renewable Power Pvt	09.02.2021

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	<p>with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. The retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it.</p> <p>The decision of the NCLAT was upheld that the bar on filing application for initiation of CIRP applies to defaults committed after March 25, 2020 though such application was filed after March 25, 2020 but before June 5, 2020.</p>	<p>Ltd. Civil Appeal No. 4050 of 2020</p>	
<p align="center">Section 11 - Persons not entitled to make application</p>			
<p>25.</p>	<p>The intention of the legislature was always to target the CD only</p>	<p>Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26</p>	<p>19.01.2021</p>

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	insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never had been the intention to create an obstacle in the path of the CD, in any of the circumstances contained in section 11, from maximizing its assets by trying to recover the liabilities due to it from others.	of 2020 with other writ petitions]	
26.	Section 11 is of limited application and only bars a CD from initiating an application under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of the section, it does not follow that until a liquidation order has been made against the CD, an insolvency application may be filed under section 7 or 9 of the Code.	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]	22.01.2019
Section 12- Time limit for completion of Insolvency Resolution Process			
27.	The resolution plan, which had consumed the time available under	Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T.	24.09.2019

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	<p>section 12 of the Code, has failed owing to non fulfilment of the commitment by Liberty House. However, the SC noted that the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16.08.2019) permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. Accordingly, it permitted the RP to invite fresh offers within a period of 21 days.</p>	<p>Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal]</p>	
28.	<p>While leaving the provision otherwise intact, the term “mandatorily” was struck down from second proviso to section 12(3), as being manifestly arbitrary under Article 14 of the Constitution and as being unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time</p>	<p>Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s</p>	15.11.2019

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	<p>taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days.</p>		
29.	<p>Section 12, construed in the light of the object sought to be achieved by the Code, and in the light of the consequence provided by section 33, makes it clear that the periods mentioned are mandatory and cannot be extended. Regulation 40A of the CIRP Regulations presents a model timeline of the CIRP, and it is of utmost importance for all authorities concerned to follow this model timeline as closely as possible.</p>	<p>Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]</p>	04.10.2018
30.	<p>Time is of essence in</p>	<p>Innoventive Industries</p>	31.08.2017

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	seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.	Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	
31.	The statutory scheme laying down time limits sends a clear message that time is the essence of the Code.	Surendra Trading Company Vs. Juggilal Kamalapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals]	19.09.2017
Section 12A - Withdrawal of application admitted under section 7, 9 or 10			
32.	When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the	Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Others Civil Appeal Nos. 1811-1812 of 2022	03.06.2022

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	Rules.		
33.	The exit route prescribed in section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking sections 7, 9 and 10 of the Code.	Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and other appeals]	22.01.2020
34.	At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	25.01.2019
35.	Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts	Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018]	14.12.2018

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	of each case.		
Section 14- Moratorium			
36.	<p>On the issue as to whether institution or continuation of a proceeding under section 138 of the Negotiable Instruments Act, 1881 (NI Act) can be said to be covered under moratorium, the SC held as under:</p> <p>i. A quasi-criminal proceeding which would result in the assets of the CD being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the CIRP in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to</p>	P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. [Civil Appeal No. 10355 of 2018 with other appeals]	01.03.2021

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	<p>discern any difference between the impact of a suit and a section 138 proceeding, insofar as the CD is concerned, on it getting the necessary breathing space to get back on its feet during the CIRP.</p> <p>ii. Section 14(1)(a) refers to monetary liabilities of the CD and section 14(1)(b) refers to the CD's assets, and together, these two clauses form a scheme which shields the CD from pecuniary attacks against it during the moratorium period so that the CD gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequence.</p> <p>iii. A moratorium does not extinguish any liability, civil or</p>		
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	<p>criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, and such shadow is lifted when the moratorium period comes to an end.</p> <p>iv. A section 138 proceeding can be said to be a “civil sheep” in a “criminal wolf’s” clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases.</p> <p>v. A quasi-criminal proceeding contained in Chapter XVII of the NI Act would, given the object and context of section 14 of the Code, amount to a “proceeding” within the meaning of section 14(1)(a) and therefore, the</p>		
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	<p>moratorium attaches to such proceeding.</p> <p>vi. Moratorium would apply only to the CD, and the natural persons mentioned in section 141 of the NI Act shall continue to be statutorily liable under Chapter XVII of the NI Act.</p>		
37.	<p>Once the proceedings under the Code had commenced and an order declaring moratorium has been passed by the AA, then if the assets of the CD are alienated during the pendency of the proceedings under the Code, it will seriously jeopardise the interest of all the stakeholders</p>	<p>Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. & Ors. [Civil Appeal Nos. 8800-8801 of 2019]</p>	18.11.2019
38.	<p>Moratorium imposed by section 14 is in the interest of the CD itself, thereby preserving its assets during the CIRP.</p>	<p>Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]</p>	25.01.2019
39.	<p>The mandate of the</p>	<p>Alchemist Asset</p>	23.10.2017

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	Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.	Reconstruction Company Ltd. Vs. Hotel Gaudavan Pvt. Ltd. & Ors. [Civil Appeal No. 16929 of 2017]	
40.	Once a moratorium either under Section 14 or under Section 33 (5) of IBC has been imposed on CD, no recovery proceedings can be initiated under the Customs Act, 1961. The Customs Act and the IBC operate in distinct spheres, in case of conflict, the IBC would override the provisions of the Customs Act. Once the moratorium is in force, the Customs Authority cannot claim title over any goods and issue notice to sell such goods.	Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board OF Indirect Taxes and Customs Civil Appeal No. 7667 of 2021	26.08.2022
41.	A sale of a secured asset cannot be completed under the provisions of the SARFAESI Act once	Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd. And Another Civil Appeal No. 4750 of 2021	18.05.2022

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	CIRP has been initiated and moratorium has been imposed.		
Section 15- Public announcement of corporate insolvency resolution process			
42.	<p>Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.</p> <p>The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process.</p>	RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. (Civil Appeal No. 5590 of 2021)	11.09.2023
Section 16- Appointment and tenure of IRP			
43.	Section 16 of the Code visualises the appointment of an IRP to manage the affairs of the CD. Such appointment is to be made by the AA.	Bank of New York Mellon Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017]	21.02.2017

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Section 17- Management of affairs of CD by IRP			
44.	Once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the CD.	M/s. Innoventive Industries Ltd. Vs. ICICI Bank & ANR. (Civil Appeal Nos. 8337-8338 of 2017)	31.08.2017
Section 18- Duties of IRP			
45.	The RP has administrative powers as opposed to quasi-judicial powers. The RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. Under the CIRP Regulations, the RP has to vet and verify claims made, and ultimately, determine the amount of each claim.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (Writ Petition (Civil) No. 99 of 2018)	25.01.2019
Section 21- Committee of Creditors			
46.	The SC held: (a) The collusive commercial arrangements between FCs and the CD would not constitute a 'financial debt'; (b) The objects and	Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. [Civil Appeal No. 2842 of 2020 with 3063 of 2020]	01.02.2021

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	<p>purposes of the Code are best served when the CIRP is driven by external creditors, so as to ensure that the CoC is not sabotaged by related parties of the CD. The purpose of excluding a related party of a CD from the CoC is to obviate conflicts of interest;</p> <p>(c) Exclusion under the first proviso to section 21(2) is related not to the debt itself but to the relationship existing between a related party FC and the CD; and</p> <p>(d) The FC, who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party FC divests itself of its shareholding or ceases to become a related party in a</p>		
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	business capacity with the sole intention of participating in the CoC and sabotage the CIRP, it would be in keeping with the object and purpose of the first proviso to section 21(2), to debar the former related party creditor.		
47.	While looking Section 53(1) it is clear that it is the Commercial Wisdom of the committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.	Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (Civil appeal No. 8766-67 of 2019)	15.11.2019
Section -24 Meeting of committee of creditors			
48.	A combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors of the CD being vitally interested in resolution plans that may be discussed at	Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018]	31.01.2019

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	meetings of the CoC, must be given a copy of such plans as part of documents that have to be furnished along with the notice of such meetings.		
Section-25 Duties of RP			
49.	The exclusion of assets owned by a third-party, but in the possession of the Corporate Debtor held under contractual arrangements, from the definition of the expression “assets”, is limited to Section 18. In other words, the Explanation under Section 18 does not extend to Section 25.	Victory Iron Works Ltd. Vs. Jitendra Lohia & Anr. (Civil Appeal No.1743 of 2021)	14.03.2023
50.	The SC was appalled with the developments leading to arrest of the IRP, who was working pursuant to the order passed by the Court and entrusted with the functioning of the CD. It observed that the police official dealing with the case is not familiar with the provision of privilege of IRP appointed by the Court in terms of section 233 of the Code. While	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No(s). 3395/2020]	02.03.2021

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	directing immediate release of the IRP, the SC directed the investigation officer not to take any coercive action against the IRP.		
Section 29 A- Persons not eligible to be Resolution Applicant			
51.	The Corporate Debtor not having an MSME status at the time of commencement of CIRP proceedings would disqualify the Resolution Applicant under Section 29A of the Code as benefit of Section 240A would not be available.	Hari Babu Thota (Civil Appeal No. 4422 of 2023)	29.11.2023
52.	Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section	Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. [Civil Appeal No. 9664 of 2019 with other appeals]	15.03.2021

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	<p>29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the Code, a scheme is a facet of the liquidation process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a scheme.</p> <p>The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A) permeates the liquidation process under Chapter III (by virtue of the provisions of section 35(1)(f)).</p>		
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53.	Constitutional validity of section 29A was upheld.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	25.01.2019
54	Section 29A is a de facto as opposed to a de jure position of persons mentioned therein. This is a typical see through provision so that one can see persons who are actually in control, whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to pierce the corporate veil to find out as to who are the real individuals or entities who are acting jointly or in concert for submission of a resolution plan.	Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors. (Civil Appeal Nos.9402-9405 of 2018)	04.10.2018
55	Clarified the scope of ineligibility of a personal guarantor as a Resolution Applicant under section 29A(h) of the IBC.	Bank of Baroda & Anr. Vs. MBL Infrastructures Limited & Ors Civil Appeal No. 8411 of 2019	18.01.2022

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Section 30- Submission of Resolution Plan			
56.	The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.	Ramkrishna Forgings Ltd. Vs. Ravindra Loonkar, RP of ACIL Ltd. & Anr. (Civil Appeal No.1527 of 2022)	21.11.2023

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57.	The RP, CoC and SRA already took note of the facts and yet took a conscious decision to go ahead with the resolution plan, as such it cannot be stated that the question of viability and feasibility was not examined in the proper perspective.	The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay & Ors. [Civil Appeal Nos. 2955 of 2020 and 2902 of 2020]	04.09.2020
58.	The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	25.01.2019
59.	Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 -9405 of 2018 and other appeals]	04.10.2018

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	parameters of section 30.		
Section 31- Approval of Resolution Plan			
60.	A secured creditor not satisfied with the proposed payout can vote against the resolution plan or the distribution of proceeds, in which case it is entitled to full liquidation value of the security payable in terms of Section 53(1) on liquidation of the corporate debtor.	DBS Bank Limited Singapore Vs. Ruchi Soya Industries Limited and Another (Civil Appeal No. 9133 of 2019)	03.01.2024
61.	Where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution.	Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd. (Criminal Appeal No.172 of 2023)	15.3.2023
62.	The Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives	Ramkrishna Forgings Limited Vs. Ravindra Loonkar, Resolution Profession of ACIL	21.11.2023

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	power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed.	Limited & Anr. (Civil Appeal No.1527 of 2022)	
63.	Once a resolution plan is approved by the AA under section 31(1), the claims as provided in the resolution plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the central government, any state government or any local authority, guarantors, and other stakeholders. On the date of approval of resolution plan by the AA, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.	Ghanashyam Mishra and Sons Private Limited Through The Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited Through The Director & Ors. (Civil Appeal No.8129 of 2019)	13.04.2021
64.	(i) The commercial wisdom of CoC has	Kalpraj Dharamshi & Anr. Vs. Kotak	10.03.2021

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	<p>been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code.</p> <p>(ii) There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. The legislature has consciously not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the AA and that the decision of</p>	<p>Investment Advisors Ltd. & Anr. [Civil Appeal Nos. 2943-2944 of 2020]</p>	
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	<p>CoC's 'commercial wisdom' is made non justiciable.</p> <p>(iii) Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.</p> <p>(iv) The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the Code.</p>		
65.	<p>The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting FCs. The discretion of the AA is circumscribed by section 31 to scrutiny of</p>	<p>K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]</p>	05.02.2019

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	resolution plan 'as approved' by the requisite percent of voting share of FCs.		
66.	SC held that the Adjudicating Authority under Section 31(2) of the Code can only examine the validity of the Resolution Plan on the anvil of the stipulation in Section 30(2) of the Code and either approve or reject the Resolution Plan but cannot compel the CoC to negotiate further with a successful Resolution Applicant.	Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited & Anr. Civil Appeal No. 3224 of 2020	13.09.2021
67.	Reinforced its earlier decision in Pratap Technocrats (P) Ltd. and Others Vs. Monitoring Committee of Reliance Infratel Limited and Another ("Pratap Technocrats") wherein it was held, "that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in	Pratap Technocrats (P) Ltd. & Ors. Vs. Monitoring Committee of Reliance Infratel Limited & Anr. Civil Appeal No 676 of 2021	10.08.2021

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	its commercial wisdom. Nor is there a residual equity-based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment.		
Commercial Wisdom of COC			
68.	It was held that the amount to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.	India Resurgence ARC Private Limited Vs. M/S. Amit Metaliks Limited & Anr. Civil Appeal No. 1700 of 2021	13.05.2021
69.	The scope of judicial review to be exercised by the Adjudicating	Committee of Creditors of Essar Steel India Limited Through	15.11.2019

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	Authority can in no circumstances trespass business decisions of the CoC and has to be within the four corners of Section 30(2) of the Code while the review by the Appellate Tribunal has to be confined to the grounds provided in terms of Section 32 read with Section 61(3) of the Code.	Authorised Signatory. Vs. Satish Kumar Gupta & Ors. Civil Appeal No. 8766-67 of 2019	
Others			
70.	Resolution Professional should have maintained a neutral stand. It is for the aggrieved parties to take appropriate proceedings or file an appeal before the Court. If required and necessary, the Court can take assistance and ascertain the facts from the Resolution Professional, in case an appeal(s) is preferred by the Committee of Creditors or a third party.	Regen Powertech Pvt. Ltd. Vs. Giriraj Enterprises & Anr. (Civil Appeal Nos. 5985-6001/2023)	25.09.2023
71.	Section 238 of IBC,2016 overrides the provisions of Electricity Act, 2003, Section 173 and 174.The Preamble	Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd. & Ors. (Civil Appeal Nos. 7976	17.07.2023

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	to the IBC expressly recognizes the shift in the law, with respect to ordering priority of claims, especially with respect to government dues. The provisions of the IBC are carefully thought out and give options to secured creditors and balance their interests with those of other creditors in a liquidation proceeding.	of 2019)	
72.	It was held that it is impossible to say that classifying real estate developers is not founded upon an intelligible differentia which distinguishes them from other operational creditors, nor is it possible to say that such classification is palpably arbitrary having no rational relation to the objects of the I&B Code.	Pioneer Urban Land & Infrastructure Limited & Another Vs. Union of India and others Writ Petition (Civil) No. 43 of 2019 and other Petitions	09.08.2019
73.	The Hon'ble Supreme Court held that a sale of a secured asset cannot be completed under the provisions of the SARFAESI Act once CIRP has been initiated	Indian Overseas Bank Vs. M/S RCM Infrastructure Ltd. and Another Civil Appeal No. 4750 of 2021	18.05.2022

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	<p>and moratorium has been imposed. It is pertinent to note that in RCM Infrastructure (supra), the bidder had made the balance payment of the sale consideration after the initiation of CIRP and the consequential imposition of moratorium.</p> <p>Accordingly, the Hon'ble Supreme Court held that once the moratorium is in place, the sale of the secured asset cannot not be completed.</p>		
74.	<p>The amount is to be paid to different classes or sub-classes of creditors in accordance with the provisions of the Code and the related regulations, is essentially the commercial wisdom of the committee of creditors and dissenting secured creditor like the Appellant cannot suggest higher amount to be paid to it with reference to the value of the security interest held by it.</p>	<p>India Resurgence ARC Private Limited Vs. M/s. Amit Metaliks Limited & Anr. Civil Appeal No. 1700 of 2021</p>	13.05.2021

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75.	<p>The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.</p> <p>The IBC is a complete code in itself. The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes, and circumscribes the ambit of such jurisdiction. Thus, while the Adjudicating Authority and Appellate Authority can</p>	<p>E. S. Krishnamurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd. Civil Appeal No 3325 of 2020</p>	14.12.2021
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Corporate Insolvency Resolution Process

	encourage settlements, they cannot direct them by acting as courts of equity. (Para 29)		
Section – 238 A			
76.	<p>Any application filed beyond 3 years from the date of default is barred by limitation. CIRP of the CD was set aside on the ground that the application filed under section 7 of the Code is barred by limitation, with the following observations:</p> <p>(a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation;</p> <p>(b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD;</p> <p>(c) intention of the Code is not to give a new lease of life to debts which are time-barred;</p> <p>(d) the period of limitation for an application seeking initiation of CIRP</p>	Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. [Civil Appeal No. 6347 of 2019]	14.08.20

Landmark Judgements of Supreme Court under IBC

	<p>under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963, and is, therefore, 3 years from the date when right to apply accrues;</p> <p>(e) trigger for initiation of CIRP by a FC is default on the part of the CD, that is to say, the right to apply under the Code accrues on the date when default occurs;</p> <p>(f) default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable;</p> <p>(g) if default had occurred over 3 years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be</p>		
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Corporate Insolvency Resolution Process

	condoned; and (h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act, 1963 does not apply to the application under consideration.		
77.	An application which is filed under section 7 of the Code will fall within Article 137 instead of Article 62 of the Limitation Act, 1963.	Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019]	18.09.19
78.	The date of coming into force of the Code does not and cannot form a trigger point of limitation for applications filed under the Code.	Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. [Civil Appeal No. 7673 of 2019] SC order dt. 30.09.2019	30.09.19
79.	If the default has occurred over 3 years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, 1963, save and except in those cases where, in the facts of the case, section 5 of the said Limitation Act, 1963 may be applied to	B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017]	11.10.18

Landmark Judgements of Supreme Court under IBC

	condone the delay in filing such application. Section 238A of the Code, being clarificatory of the law and being procedural in nature is retrospective in effect.		
80.	Section 238A of the Code makes the provisions of the Limitation Act, 1963 as far as may be, applicable to proceedings under the Code. All provisions of the Limitation Act, 1963 are applicable to proceedings in the NCLT/NCLAT to the extent feasible. The legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the	Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. and Anr. [Civil Appeal No. 9198 of 2019]	22.03.21

Corporate Insolvency Resolution Process

	<p>legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act, 1963 applicable to proceedings in the NCLT/NCLAT 'as far as may be'. Section 14 of the Limitation Act, 1963 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction</p>		
81.	<p>The SC took suo motu cognizance of the situation arising out of COVID-19 and resultant difficulties that may be faced by litigants as to period of limitation prescribed under general law of limitation or under Special Laws (both Central and/or State). In exercise of its powers under Articles 141 and 142 of the Constitution, it ordered extension of period of limitation for all proceedings, from</p>	<p>In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020]</p>	23.03.20

Landmark Judgements of Supreme Court under IBC

	15.03.2020, until further orders, and declared that the order is binding on all courts/tribunals and authorities.		
82.	Acknowledgement of debt in the balance sheet extends the period of limitation under section 18 of the Limitation Act, 1963. However, it would depend on the facts of each case as to whether an entry made in a balance sheet qua any creditor is unequivocal or has been entered into with caveats, which would establish whether an acknowledgement of liability has, in fact, been made. The majority decision of the full bench of the NCLAT in V. Padmakumar Vs. Stressed Assets Stabilisation Fund, was set aside.	Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. [Civil Appeal No. 323 of 2021 with other appeals]	15.04.2021
83.	An application under section 7 of the Code would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the	Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy Miscellaneous 435 and Anr. [Civil Appeal No. 1650 of 2020]	04.08.21

Corporate Insolvency Resolution Process

	<p>date of declaration of the loan account of the CD as NPA, if there were an acknowledgement of the debt by the CD before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.</p>		
Interplay of Limitation Act in IBC			
84.	<p>The recovery certificate issued by DRT creates a fresh cause of action and 'Doctrine of Election' will not apply in initiating insolvency proceedings.</p>	<p>Tottempudi Salalith Vs. State Bank of India & Ors. (Civil Appeal No.2348 of 2021)</p>	18.10.23
85.	<p>When will the clock for calculating the limitation period run for appeals filed under the IBC – Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of</p>	<p>V Nagarajan Vs. SKS Ispat and Power Ltd.& Ors. Civil Appeal No. 3327 of 2020</p>	22.10.21

Landmark Judgements of Supreme Court under IBC

	<p>the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause.</p>		
86.	<p>An application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. Moreover, a judgment and/or decree for</p>	<p>Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. Civil Appeal No. 1650 of 2020</p>	

Corporate Insolvency Resolution Process

	<p>money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid</p>		
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Chapter 4

Querists' Section

1. What shall be the effect to admission of application under Section 7,9 or 10?

As per Section 14, on the date of admission of the application, a moratorium shall commence in relation to all the debts and the powers of the board of directors shall stand suspended. An interim resolution professional (IRP) shall be appointed to manage the company's affairs and a public announcement of the initiation of CIRP shall be made in Form A.

2. What shall be the composition of the Committee of Creditors?

As per Section 21, the CoC shall comprise all unrelated financial creditors of the corporate debtor. In case there are no financial creditors, or all financial creditors are related parties, then the CoC shall be constituted as per Proviso to Section 21(8) read with Regulation 16 of CIRP Regulation.

3. To whom shall IRP/RP give notice of each meeting of the COC?

As per Section 24, an IRP/RP shall give notice of each meeting of COC to:

- Members of CoC, being unrelated financial creditors, including the authorised representatives
- Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be
- Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt as provided for in the Code (as at date of issuance of this Handbook).

4. What are the duties of an Interim Resolution Professional?

As per Section 18, key duties are inter alia to take control and custody of assets, receive and collate claims, constitute the CoC, run the company's operations, file information with Information Utility.

Corporate Insolvency Resolution Process

5. What is the significance of the Insolvency Commencement Date?

As per Section 5(12), it is the date on which application is admitted by NCLT. It is a reference date for various timelines under the resolution process. Claims are filed against dues against Corporate Debtor as on this date. Valuation is conducted as on this date. Provisional financials required for Information Memorandum are drawn as on this date. Avoidance transaction look back period is calculated using this date.

6. What shall be the order of disposal of application with respect to application under Section 54C (pre-packaged resolution) and Application under Section 7, 9 and 10?

As per Section 11A, Order of disposal - Pre-packaged insolvency resolution vs Section 7/9/10 applications: Where a pre-packaged insolvency resolution application under Section 54C is filed within 14 days of filing of a pending application under Section 7/9/10, the Adjudicating Authority shall first dispose the Section 54C application. If the Section 54C application is filed after 14 days, the Section 7/9/10 application shall be disposed first.

7. What shall be the manner of submission of claims to the interim resolution professional by a class of financial creditors?

As per Regulation 8A, claims shall be submitted to the interim resolution professional in electronic Form CA. Relevant documents shall be submitted in proof of claim.

8. What shall be the duties of resolution professional in relation to verification of claims?

As per Section 18(b) read with Regulation 13 of CIRP Regulation, the RP has to receive, collate and verify claims submitted within 7 days of appointment and thereupon maintain a list of creditors containing names of creditors along with amount claimed, admitted, security interest and update it.

9. How will the Resolution Professional request for Resolution Plans?

As per Regulation 36B, RP shall issue the request for resolution plans which shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the

prospective resolution applicant, along with corresponding timelines. The same has to be followed by resolution applicant(s).

10. What are the mandatory contents of a resolution plan?

As per Section 30(2) read with Regulation 38, a resolution plan shall include inter alia details like payment to operational creditors, dissenting financial creditors, insolvency resolution process cost payment, management of affairs of corporate debtor after approval of resolution plan etc. as specified.

11. What is the purpose of appointing registered valuers?

As per Regulation 27, registered valuers are appointed to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the CIRP Regulations. This helps the committee of creditors to assess the viability of the resolution plan.

12. What shall be the voting threshold for approval of decisions by the committee of creditors?

Voting threshold:

As Per Section 21(8), all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one percent of voting share of the financial creditors.

For actions stipulated in Section 28, all decisions shall be taken by a vote of not less than sixty-six percent of the voting share of the financial creditors.

As per section 30(4), the Resolution plan shall be approved by a vote of not less than 66% of voting shares of the Financial Creditors.

13. Can a group of operational creditors, with aggregate debt of more than threshold notified under Section 4, trigger CIRP under Section 9 of the Code?

No. This is allowed only for financial creditors. As per Section 9, a single operational creditor debt to corporate debtor has to be more than the threshold defined under section 4 to trigger CIRP on default.

Corporate Insolvency Resolution Process

14. Is interest component mandatory for a loan to be called a financial debt?

No. Section 5(8) uses the phrase “*interest, if any*”. Hence, even interest free loans may be financial debt provided there is disbursement against the consideration for the time value of money.

15. If an Operational Creditor assigns debt to financial creditor, will the nature of debt change to financial debt?

No. The nature of debt remains the same.

16. Can a resolution plan discriminate within same class of creditors?

No. For differential treatment in a resolution plan, there should be an intelligible differentia. There cannot be different treatment to creditors falling within the same class, in a resolution plan.

17. Can Debt which is not due and payable trigger CIRP?

No. Default only triggers CIRP (i.e. the debt which is due and payable, but not paid leads to CIRP).

18. Does unfunded PF and gratuity dues be paid in full?

Yes. As per Apex Court Judgement in Jet Airways and Mosaerbaer, PF and gratuity dues are amounts held in trust by Corporate Debtor for the employees and are to be paid in full. In case of resolution plan, resolution applicant shall provide for 100% payment for the same.

19. Can a financial creditor be resolution applicant?

Yes, a financial creditor can be resolution applicant.

20. Can RP reject a claim?

RP plays a facilitative role and does not have quasi-judicial powers like a liquidator. Hence, rejection of claim is not prerogative of the RP. One has to refer to Regulation 13 of CIRP for the procedure.

21. Can a buyback be affected during CIRP?

Yes. With approval of Members constituting 66% of voting rights.

22. Is a resolution applicant for an MSME exempted from entire Section 29A?

No. Exemption is only from Section 29A(c) and Section 29A(h).

23. Does CoC vote on only one resolution plan out of multiple plans?

No, all resolution plans are voted simultaneously. In case two or more plans obtain same percentage of requisite approval, then a tie breaker formula is used as decided by CoC.

24. Will an application for avoidance of transactions affect CIRP Proceedings?

As per Section 26 of IBC, 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.

Annexure 1 : Model timeline for CIRP

Regulation 40A of INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

40A. Model timeline for corporate insolvency resolution process.

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

Section / Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c)/ Regulations 6(2)(c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90 th day of commencement	T+90
Regulation 13(1)	Verification of claim received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97
Section 21(6A) (b) /	Application for appointment of AR	Within 2 days from verification of	T+23

Annexure 1: Model timeline for CIRP

Regulation 16A		claims received under regulation 12(1)	
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1)/ Regulation 19(2)	1st meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40th day of commencement .	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47th day of commencement .	T+47
Section 12(A) / Regulation 30A	Submission of application for Withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90%	Within 3 days of approval by CoC	W+10

Corporate Insolvency Resolution Process

	majority voting, by RP to AA		
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 130 days of commencement	T+130
Regulation 36 (1)	Submission of IM to CoC	Within 95 days of commencement	T+95
Regulation 36A	Publish Form G	Within 60 days of commencement	T+60
	Invitation of EoI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+75
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+85
	Submission of Objections to provisional list	For 5 days from the date of provisional list	T+90
	Final List of RAs by RP	Within 10 days of the receipt of objections	T+100
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution	At least 30 days	T+135

Annexure 1: Model timeline for CIRP

	Plans	from issue of RFRP (Assume 30 days)	
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of Resolution Plan		T+180

Annexure 2: Quick Reference of CIRP Regulations

Quick Reference of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Regulation	Particulars	Summary/ Broad Contours
Regulation 2	Definitions	
(ha)	“evaluation matrix”	means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval
(hb)	fair value	means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion
(k)	liquidation value	means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.
Regulation 2A	Record or evidence of default by financial creditor	
Regulation 2B	Record or evidence of transaction, debt and default by operational creditor	
Regulation 2C	Submission of information along with application	

Annexure 2: Quick Reference of CIRP Regulations

Regulation 2D	Details of debt, default and limitation in respect of applications under section 7 or section 9	
Regulation 3	Eligibility for resolution professional	
Regulation 3A	Assistance and cooperation by the personnel of the corporate debtor	
Regulation 4	Access to books	
Regulation 4A	Choice of authorised representative	
Regulation 4B	Disclosure of change in name and address of corporate debtor	
Regulation 4C	Process e-mail	
Regulation 5	Extortionate credit transaction	
Regulation 6	Public Announcement	Within 3 days of appointment in Form A, in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material

Corporate Insolvency Resolution Process

		business operations, on the website of Corporate Debtor and IBBI.
Regulation 6A	Communication to creditors	<p>The interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available.</p> <p>Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors</p>
Regulation 7-11	Filing of Claim, Substantiation of Claims, Cost of Proof	The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.
Regulation 12 and Regulation 12A	Submission of Proof of Claim and Updation of Claim	Creditor shall submit claim with proof on or before the last date mentioned in the public announcement (i.e 14 days). A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the

Annexure 2: Quick Reference of CIRP Regulations

		<p>resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later. The creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.</p> <p>A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.</p>
Regulation 13	Verification of Claims	<p>The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.</p> <p>Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.</p> <p>In the event that claims are received after the period specified</p>

Corporate Insolvency Resolution Process

		<p>under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.</p> <p>The interim resolution professional or resolution professional, as the case may be, shall:-</p> <ul style="list-style-type: none">a) intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; andb) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:-<ul style="list-style-type: none">(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.
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Annexure 2: Quick Reference of CIRP Regulations

Regulation 14	Determination of amount of claims	<p>Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.</p> <p>The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.</p>
Regulation 15	Debt in Foreign Currency	<p>The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date.</p>
Regulation 16	Committee with only operational creditors	<p>Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed under this Regulation shall consist of members as under -</p> <p>a) eighteen largest operational creditors by value:</p> <p><i>Provided</i> that if the number of operational creditors is less than eighteen, the committee shall include all such</p>

Corporate Insolvency Resolution Process

		<p>operational creditors;</p> <p>b) one representative elected by all workmen other than those workmen included under sub-clause (a); and</p> <p>c) one representative elected by all employees other than those employees included under sub-clause (a).</p> <p>Committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.</p>
Regulation 16A/16B	Authorized Representative and Committee with only creditors in a class.	<p>The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class.</p> <p>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).</p>
Regulation 17/18/19/20/21/22/23/24	Constitution of committee, Meeting of Committee, Notice, Service of Notice, Content of Notice, Quorum,	<p>Constitution of CoC and intimation to NCLT,</p> <p>First Meeting of CoC,</p> <p>Quorum -33%,</p>

Annexure 2: Quick Reference of CIRP Regulations

	Participation through video conferencing, Conduct of meeting	Notice – 5 days, Minutes – within forty-eight hours of the said meeting
Regulation 25/25A/26	Voting by the committee	Voting shall be kept open for at least twenty-four hours from the circulation of the minutes. The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of sub-section (3) or sub-section (3A) of section 25A. The resolution professional shall provide each member of the committee the means to exercise its vote by either electronic means or through electronic voting system in accordance with the provisions of this Regulation.
Regulation 27 & 35	Appointment of Professionals	Appointment of 2 Registered Valuers (7 days of appointment), Average of FV/LV only to CoC on receipt of NDA
Regulation 28	Transfer of debt due to creditors	In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall, within seven days of such assignment or transfer, provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the

Corporate Insolvency Resolution Process

		<p>identity of the assignee or transferee.</p> <p>The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change.</p>
Regulation 29	Sale of assets outside the ordinary course of business	<p>The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:</p> <p><i>Provided</i> that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional 66% voting approval of CoC required.</p>
Regulation 30	Assistance of local district administration.	<p>The interim resolution professional or the resolution professional, as the case may be, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or these Regulations</p>
Regulation 30A r/w Section 12A	Withdrawal of Application	<p>An application for withdrawal under section 12A may be made to the Adjudicating Authority- (a) before the constitution of the</p>

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		<p>committee, by the applicant through the interim resolution professional; (b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be.</p> <p>The application shall be made in Form FA of the [Schedule-I] accompanied by a bank guarantee.</p> <p>Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.</p> <p>Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.</p>
Regulation 30B	Audit of corporate debtor	<p>(1) Any member(s) of the committee may propose an audit of the corporate debtor along with the objectives, scope, estimate of the costs, timeframe and name(s) of the proposed auditor(s).</p> <p>(2) A proposal made under sub-regulation (1) shall be considered as per sub-regulation (3) of regulation 18 and an audit shall be conducted if such proposal is approved by the committee.</p> <p>(3) The audit shall be conducted</p>

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		<p>by an insolvency professional having qualifications required for such audit.</p> <p>(4) The auditor shall prepare a report detailing his findings and the same shall be presented before the committee along with the comments of the interim resolution professional or the resolution professional, as the case may be.</p> <p>(5) The expenses of such an audit shall be treated as insolvency resolution process costs.</p>
Regulation 31	Insolvency Resolution Process Cost	
Regulation 31A	Regulatory Fee	<p>Regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value.</p> <p>A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified.</p>

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Regulation 32	Essential Supplies	<p>(1) electricity</p> <p>(2) water</p> <p>(3) telecommunication services; and</p> <p>(4) information technology services,</p> <p>Not direct input to output of Corporate Debtor</p>
Regulation 33 and Regulation 34	Costs of the interim resolution professional and Resolution professional costs	
Regulation 34A	Disclosure of Costs.	The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise insolvency resolution process costs in such manner as may be required by the Board.
Regulation 34B	Fee to be paid to interim resolution professional and resolution professional.	<p>The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II(annexure)</p> <p>Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating</p>

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		<p>economic activity of corporate debtor and complexity related to process.</p> <p>The committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II(annexure) or may extend any other performance-linked incentive structure as it deems necessary.</p> <p>The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.</p>
Regulation 35	Fair value and Liquidation value	<p>(1) Fair value and liquidation value shall be determined in the following manner: -</p> <p>(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor.</p> <p>(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a</p>

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		<p>proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).</p> <p>“Significantly different” means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$, where,</p> <p>L1= higher valuation of liquidation value</p> <p>L2= lower valuation of liquidation value.</p> <p>The average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.</p> <p>After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value.</p>
Regulation 35A	Preferential and Other Transactions	75 day of the ICD for forming opinion, 115 day of the ICD for

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		<p>determination and 130 days for application</p> <p>The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.</p> <p>The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.</p>
<p>Regulation 36 r/w Section 29</p>	<p>Information Memorandum</p>	<p>The resolution professional shall submit the information memorandum in electronic form to each member of the committee on or before the ninety-fifth day from the insolvency commencement date.</p> <p>The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the stipulated details of the corporate debtor.</p> <p>The creditors shall provide to the resolution professional the latest</p>

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		<p>financial statements and other relevant financial information of the corporate debtor available with them.</p> <p>The resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.</p>
<p>Regulation 36A and 36B</p>	<p>Invitation for expression of interest and Request for resolution plans.</p>	<p>EOI in Form G in 60 days from ICD,</p> <p>RFRP to contain Bidding Process, Bid Bond, Evaluation of Bid as per matrix, Performance Security etc.</p> <p>The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list.</p> <p>If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the</p>

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		<p>corporate debtor.</p> <p>The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list.</p>
Regulation 36C	Strategy for marketing of assets of the corporate debtor	The resolution professional shall prepare a strategy for marketing of the assets of the corporate debtor in consultation with the committee, where the total assets as per the last available financial statements exceed one hundred crore rupees and may prepare such strategy in other cases.
Regulation 37	Resolution plan	Includes sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.
Regulation 38 r.w Sec. 30	Mandatory contents of resolution plan	<p>Priority to dissenting FC and OC, statement of interest of all, failure to implement statement, Term/implementation/supervision/ demonstrate course correction.</p> <p>SC Ruchi Soya case can be added.</p>
Regulation 39	Approval of resolution plan	Compliant Plans before CoC with preferential transaction review, evaluation as per matrix, approval by CoC, application before NCLT

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		<p>with performance security receipt and Form H (15 days before Maximum period for CIRP)</p> <p>Where only one resolution plan is put to vote, it shall be considered approved if it receives.</p> <p>requisite votes. 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. Provided that 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. 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.</p>
Regulation 39A	Preservation of records.	<p>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.</p> <ul style="list-style-type: none"> • electronic copy of all records (physical and electronic) for a minimum period of eight years. • a physical copy of records for

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		a minimum period of three years.
Regulation 39B	Meeting Liquidation cost	<p>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</p> <p>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)</p> <p>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.</p> <p>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</p>
Regulation 39BA	Assessment of Compromise or Arrangement	While deciding to liquidate the corporate debtor under section 33, the committee shall examine

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		<p>whether to explore compromise or arrangement as referred to under sub -regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33.</p> <p>Where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or before the Adjudicating Authority</p>
Regulation 39C	CoC may approve sale as going concern in liquidation	<p>While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33</p> <p>Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought</p>

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		<p>to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.</p> <p>The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.</p>
Regulation 39D	Fee of Liquidator	<p>While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –</p> <ol style="list-style-type: none"> a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013. b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and c) the balance period of liquidation.]
Regulation 40 r/w Section	Extension of the corporate	(1) The committee may instruct the resolution professional to make an

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12	insolvency resolution process period	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.
Regulation 40A	Model time-line for corporate insolvency resolution process	
Regulation 40B	Filing of Forms	
Regulation 40C	Special provision relating to time-line	Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process
Regulation 40D	Decision for liquidation.	The committee while considering the liquidation of the corporate debtor may consider factors including but not limited to non-operational status for preceding three years, goods produced or service offered or technology employed being obsolete, absence of any assets, lack of any intangible assets or factors which

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		<p>bring value as a going concern over and above the physical assets like brand value, intellectual property, accumulated losses, depreciation, investments that are yet to mature.</p> <p>Such consideration may be recorded and submitted in the application for liquidation submitted by the resolution professional to the Adjudicating Authority</p>
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Annexure 3: Minimum Fixed Fee to IRP/RP

Schedule-II

(Under Regulation 34B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

- **Minimum Fixed Fee.**

1. Minimum fixed fee as per the table -1 below shall be paid to the interim resolution professional or the resolution professional, as the case may be, for the period mentioned in clause 2:

Table-1: Minimum Fixed Fee Structure

Quantum of Claims Admitted	Minimum Fee Per Month (Rs. lakh)
(i) Less than or equal to Rs. 50 crore	1.00
(ii) More than Rs.50 crore but less than or equal to Rs.500 crore	2.00
(iii) More than Rs.500 crore but less than or equal to Rs.2,500 crore	3.00
(iv) More than Rs.2,500 crore but less than or equal to Rs.10,000 crore	4.00
(v) More than Rs.10,000 crore	5.00

- **Period for minimum fixed fee.**

2. The minimum fixed fee shall be applicable for the period, from appointment as interim resolution professional or resolution professional, till the time of –

- a) submission of application for approval of resolution plan under section 30
 - b) submission of application to liquidate the corporate debtor under section 33
 - c) submission of application for withdrawal under section 12A; or
 - d) order for closure of corporate insolvency resolution process;
- whichever is earlier.

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- **Performance-linked incentive fee for timely resolution.**

3. In cases where resolution plan is submitted to the Adjudicating Authority within the time period given in table-2 from the insolvency commencement date, performance-linked incentive fee as per table-2 may be paid to the resolution professional, after approval of such resolution plan by the Adjudicating Authority on commencement of payment to creditors by the resolution applicant.

Table-2: Performance-linked incentive fee for timely resolution

Time period from insolvency commencement date	Fee as % of Realisable Value
i) Less than or equal to 165 days	1.00
(ii) More than 165 days but less than or equal to 270 days	0.75
(iii) More than 270 days but less than or equal to 330 days	0.50
(iv) More than 330 days	0.00

- **Performance-linked incentive fee for value maximisation.**

4. The performance-linked incentive fee for value maximisation may be paid to the resolution professional at the rate of one per cent of the amount by which the realisable value is higher than the liquidation value, after approval of the resolution plan by Adjudicating Authority on commencement of payment to creditors by the resolution applicant.

Explanation: For the purposes of clause 3 and clause 4, “realisable value” means the amount payable to creditors in the resolution plan approved under section 31.

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