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The Insolvency and Bankruptcy Code, 2016



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Insolvency ?

Insolvency in this Code is regarded as a "state" where assets are insufficient to meet the liabilities.

Bankruptcy ?

Bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

Insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies.

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Past

- Multiple overlapping laws and adjudicating forums dealing with financial failure.

Past Laws

- Sick Industrial Companies (Special Provisions) Act, 1985
- Recovery of Debt Due to Banks and Financial Institutions Act, 1993
- SARFAESI, 2002
- Companies Act, 2013

Aim

- To facilitate easy and time bound closure of business in India.

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Introduced in the
Lok Sabha on 21st
December, 2015

Passed by both the
Houses of
Parliament and
notified in May
2016

President's Assent
on 28th May 2016



Hon'ble Minister of Finance and Corporate Affairs administering the oath of office to
Chairperson Dr. M. S. Sahoo on 1st October 2016.

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Purpose behind enactment of Insolvency and Bankruptcy Code, 2016:

- (a) To consolidate and amend the laws relating to insolvency.
- (b) To fix time periods for execution of the law in a time bound manner.
- (c) To maximize the value of assets of interested persons.
- (d) To promote entrepreneurship.
- (e) To increase availability of credit.
- (f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
- (g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

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shift of control
from debtor to creditor



Debtor in Control

Control and custody of assets continue to vest with debtors even in the event of a debt default.

Promoters continue to stay in control with limited rights to creditors except for secured financial creditors who have the right to repossess assets of the defaulter

Creditor in Control

The IBC proposes a Creditor in Control scenario

Once a default occurs, it is the Committee of Creditors who are empowered to make a decision

Committee of creditors is constituted to comprise all the financial creditors of the enterprise

Voting share is based on value of debt owing to the creditor



Distinguishing features of Code:

- a. One Chain of Authority
- b. One Window Clearance
- c. New Regulatory Authority (IBBI)
- d. Establishment of Information Utilities (IUs)
- e. Comprehensive Law (i.e. all insolvency related provisions in one place)
- f. Withering away of Multiplicity of Laws
- g. Protects the Interests of Workmen and Employees
- h. Clarity in Process
- i. Low Time Resolution



Loopholes in the Earlier Laws:

The framework of law which was in existence earlier had failed to resolve insolvency situations.

- Financial failure
- Business failure
- Malfeasance and mismanagement by promoters
- Multiple laws governing Debt resolution and multiple forums
- Parallel proceedings by different parties on the same debtor in different forums and Conflicts between laws and over jurisdictions
- Multiple laws governing Debt resolution and multiple forums
- Asymmetry of information



Structure of the Code:

The Code has been divided into five parts comprising of 255 sections and 11 Schedules. Out of these some sections have been notified by the Ministry of Corporate Affairs.

Part I - Preliminary (Section 1 - 3)

Part II - Insolvency Resolution & Liquidation for Corporate Persons.
(Section 4 -77)

Part III - Insolvency Resolution & Bankruptcy for Individuals and Partnership Firms (Section 78 - 187)

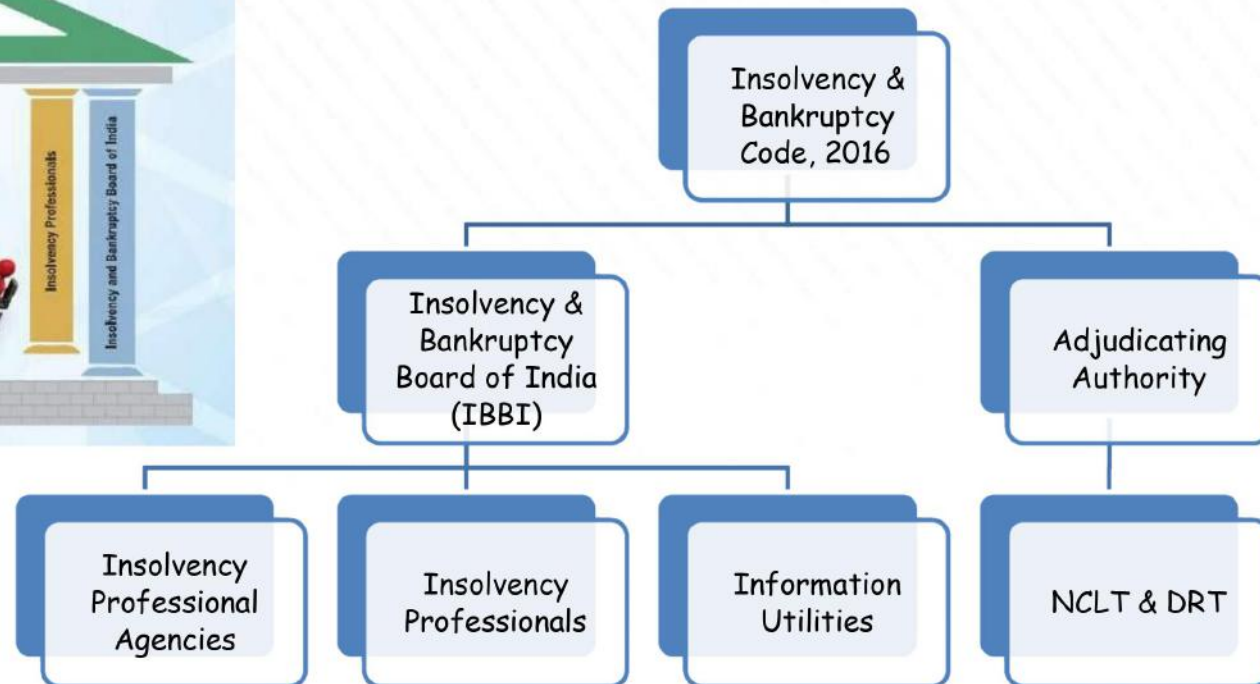
Part IV - Regulation of Insolvency Professionals, Agencies & Information Utilities (Section 188 - 223)

Part V - Miscellaneous (Section 224 - 255)

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Regulatory Mechanism:

The Insolvency and Bankruptcy Code, 2016 provides a new regulatory mechanism with an institutional set-up comprising of five pillars:-



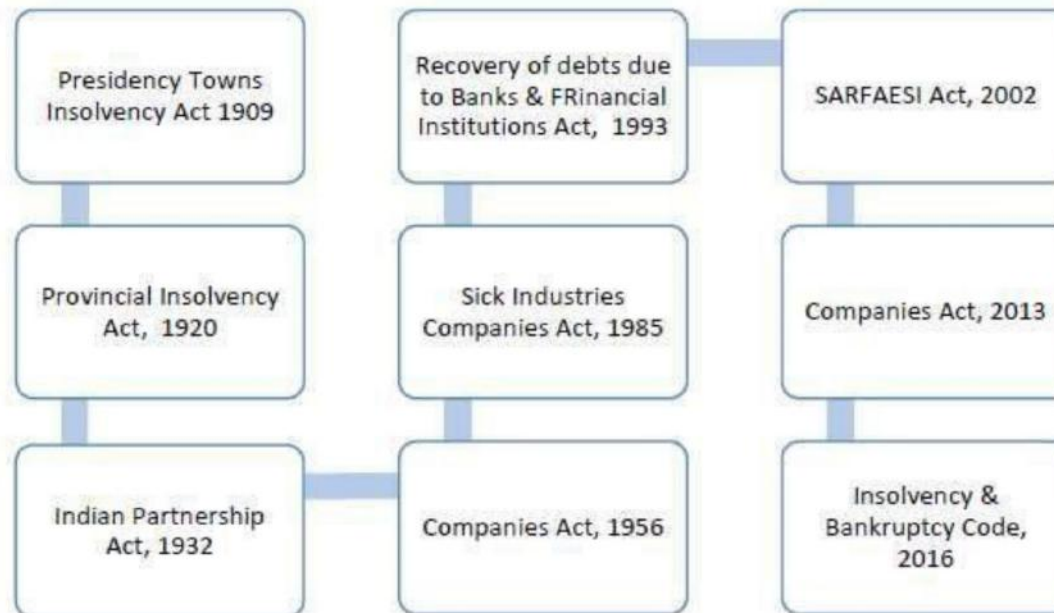
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Extent and Commencement of the Code

As per section 1 of the Insolvency and Bankruptcy Code

-This code is applicable to whole of India

-However part III does not apply to J&K



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Applicability of the Code (Sec-2) :

The Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

- a) Any company incorporated under the Companies Act, 2013 or under any previous law.
- b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
- c) Any Limited Liability Partnership under the LLP Act 2008.
- d) Such other body incorporated under any law, as CG may specify.
- e) Personal guarantors to corporate debtors.
- f) Partnership firms and individuals.

Exception: code is not applicable to corporates who are regulated financial service providers like Banks , Financial institutions and Insurance Companies

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CORPORATE INSOLVENCY RESOLUTION PROCESS

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in **Part II** of the Code.

Applicability of this Part (Section 4):

This part shall apply to matters relating to Insolvency & Liquidation of corporate debtors, **where the minimum amount of default is 1 lakh rupees.** Provided that CG may specify the minimum amount of default of higher value which shall be **not more than 1 crore.**

Definition of Default:

Default means non payment of debt when whole or any part or installment of the amount of debt has **become due & payable** and is **not paid** by the debtor or the corporate debtor, as the case may be.



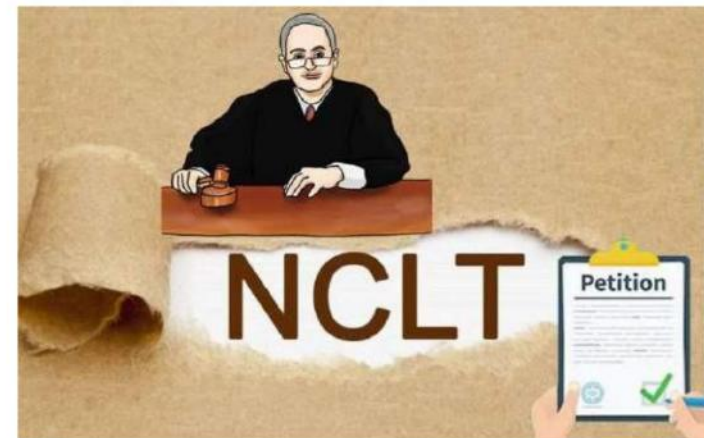
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Persons who may initiate Corporate Insolvency Resolution Process (Section 6):

Where any corporate debtor commits a default, following persons:

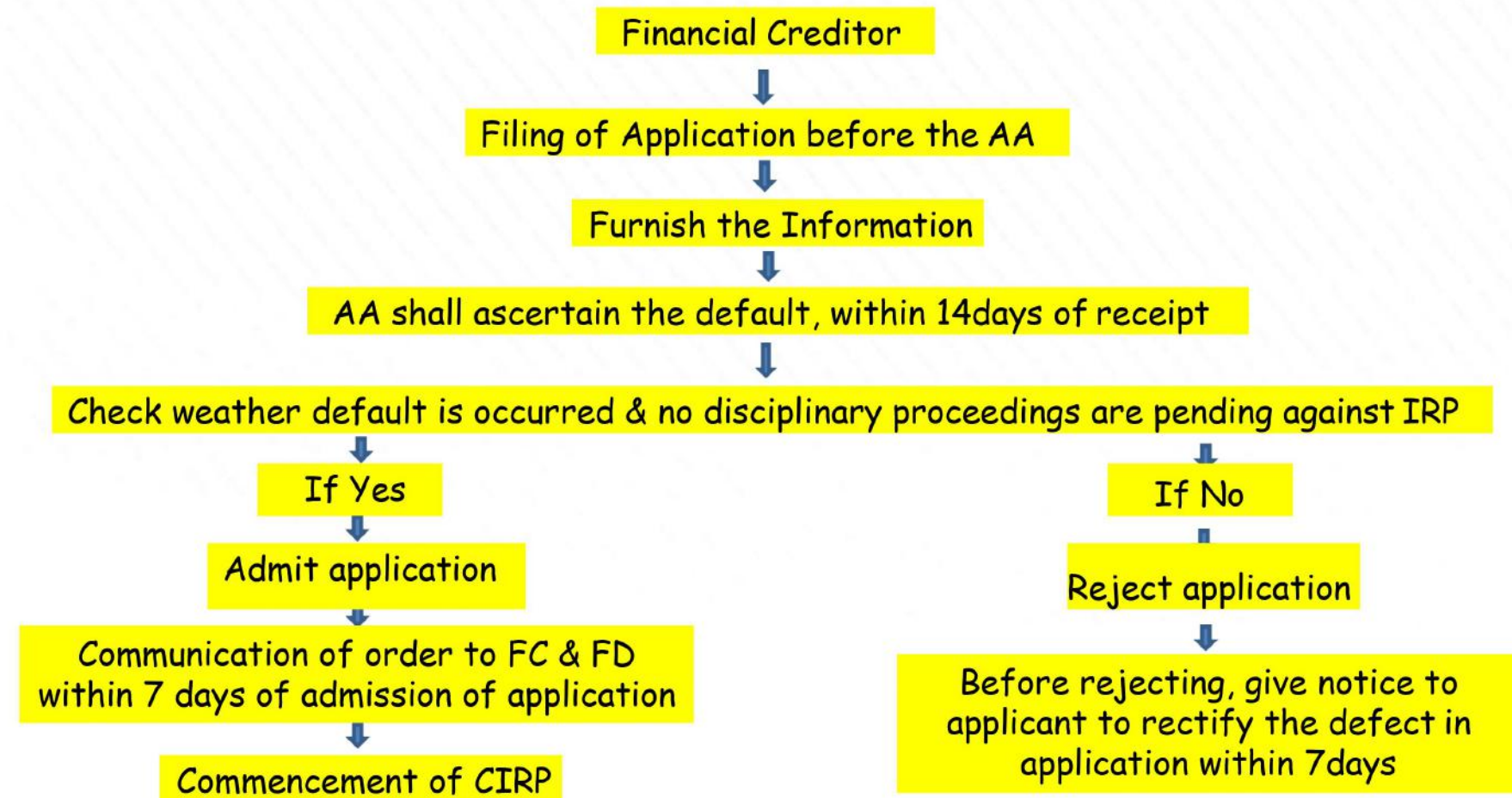
- (a) A Financial Creditor
- (b) An Operational Creditor or
- (c) The Corporate Debtor, himself

may initiate corporate insolvency resolution process in respect of such corporate debtor.



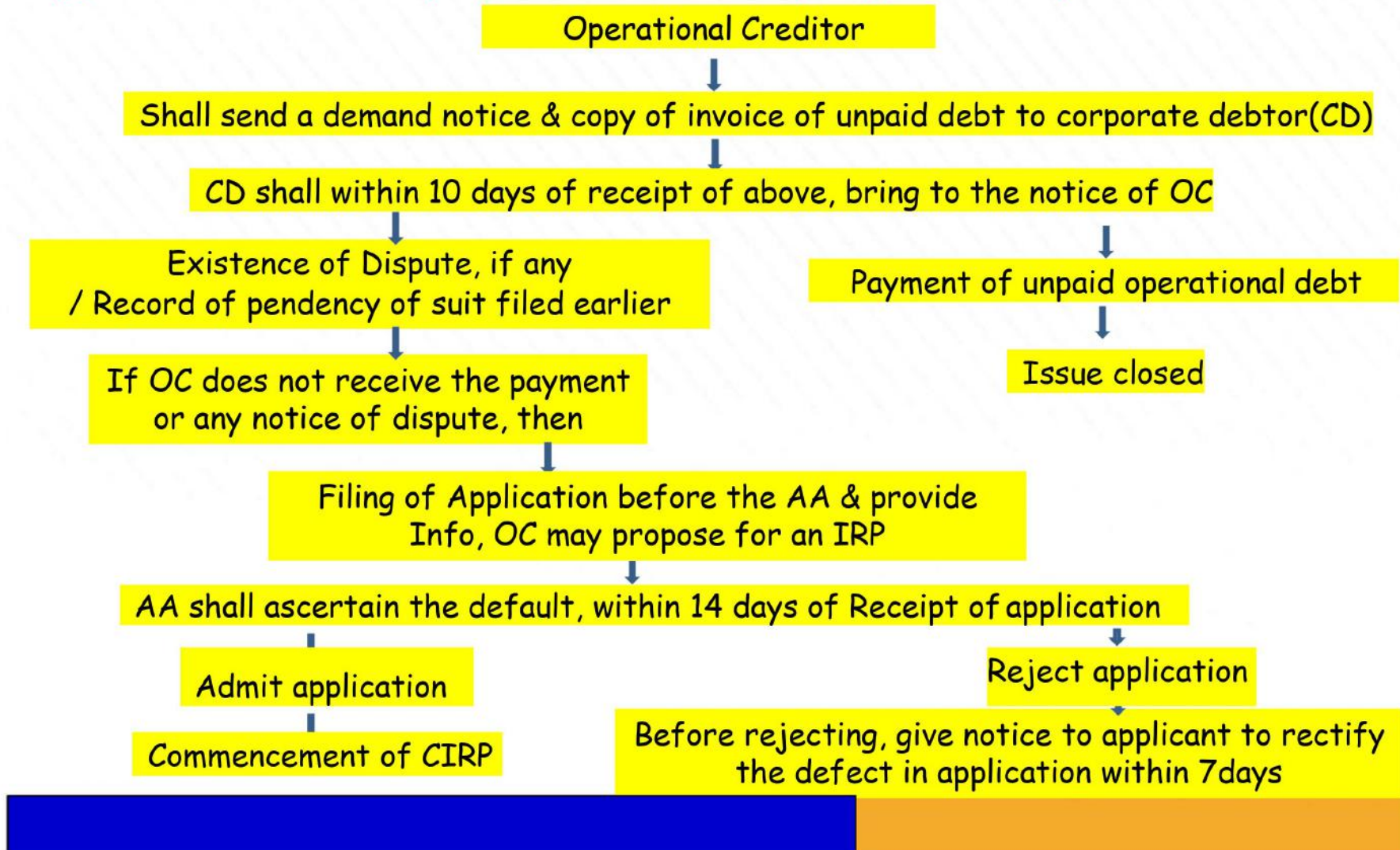
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(a) Initiation of CIRP by Financial Creditor(FC) (Sec-7):



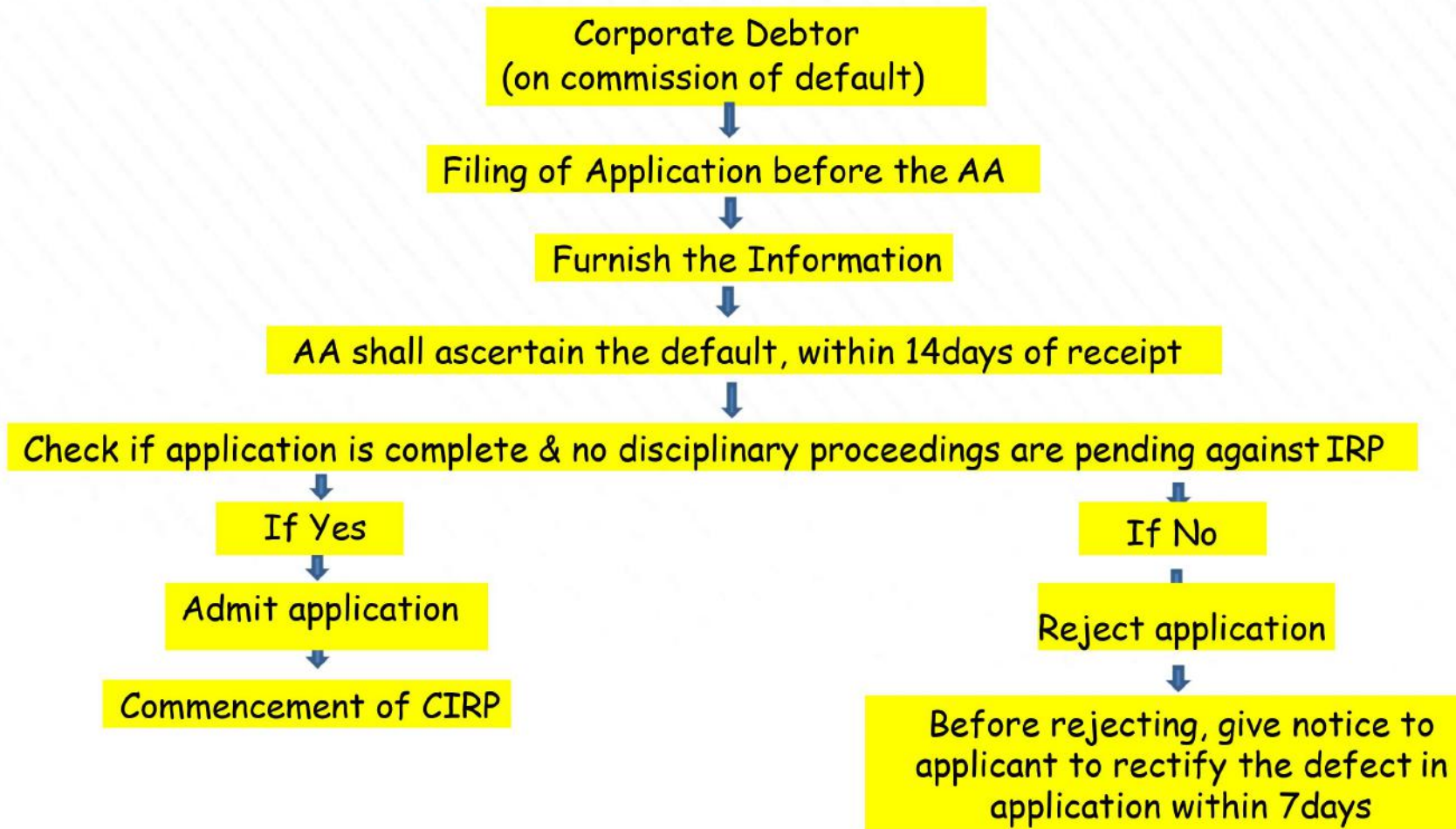
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(b) Initiation of CIRP by Operational Creditor(OC) (Sec-8 & 9):



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(c) Initiation of CIRP by Corporate Debtor(CD) (Sec-10):



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Persons not entitled to make Application(Sec-11):

- (a) a corporate debtor undergoing a corporate insolvency resolution process
- (b) a corporate debtor having completed corporate insolvency resolution process 12 months preceding the date of making of the application
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 months before the date of making of an application under this Chapter
- (d) a corporate debtor in respect of whom a liquidation order has been made

Time-limit for completion of insolvency resolution process (Sec-12):

- 180 days from the date of admission of the application
- One time extension can be granted for a max period of 90 days on instruction of Committee of Creditors (66% voting share)

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Withdrawal of Application admitted (Sec-12A):

AA may allow to withdraw the application, on an application made by the applicant with the approval of 90% of voting share of COC.

Declaration of moratorium and public announcement (Sec-13):

AA shall after admission of the application

- Declare Moratorium* (Sec-14)
- Appoint an Interim Resolution Professional (IRP)* (Sec-16)
- Cause a public announcement (within 3 days of appointment of IRP) of the initiation of CIRP and call for the submission of claims (Sec-15)



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*Moratorium

After the commencement of CIRP, a calm period for **180 days** is declared, during which all suits, legal proceedings, transferring/disposing off/dealing in any assets ,recovery of any property by an owner/lessor where such property is occupied by / in possession of CD. **shall cease** so as to give time to **entity to resolve** its status. This is called the Moratorium Period.

However supply of essential goods /services to the CD as may be specified shall not be terminated or suspended or interrupted



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Appointment, tenure and Power of IRP :

AA shall appoint an interim resolution professional within 14 days from the commencement of process.

□ Process of appointment of IRP

- If proposal for an IRP is made by applicant , he/she will be appointed , if no disciplinary proceedings are pending against him.
- If no proposal is made, AA shall make reference to IBBI for recommendation of IRP's name & then within 10 days, IBBI should recommend a name.

□ Tenure of IRP

Till the date of appointment of Resolution Professional u/s 22

□ key roles of an IRP

- (a) Issuance of public notice
- (b) Resolution process
- (c) Collation of claims received
- (d) Constitution of the COC
- (e) Conduct of the first meeting of the COC

Powers of IRP:

- (a) Management of CD's affairs
- (b) Exercise of Power of BoD/ partners
- (c) Reporting of officers/managers to IRP
- (d) Instructions to financial institutions



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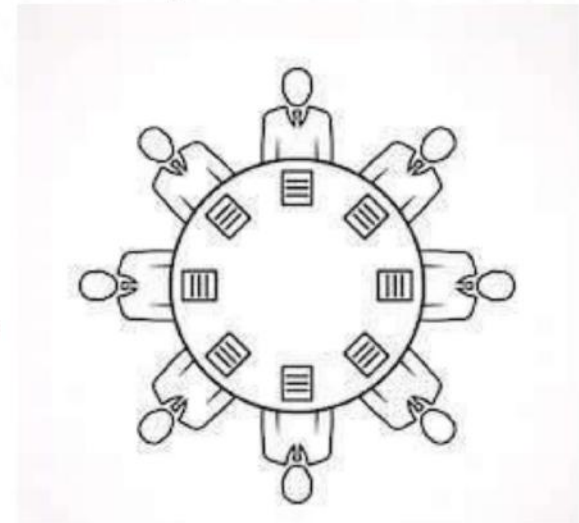
Committee of creditors:

After collection of all claims received, IRP shall form COC.

Constitution of COC:

- When Financial Creditor exist
 - All FC shall form part of COC (except related parties).
- When Financial Creditor doesn't exist or all FC are related parties
 - 18 largest operational creditors by value.
 - 1 representative elected by all workmen.
 - 1 representative elected by all employees.

All decisions of COC shall be taken by a vote of greater than or equal to 51% of voting share.



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Appointment of Resolution Professional (Sec-22) :

- 1st meeting of COC shall be held within 7days of formation of COC.
- COC, in this 1st meeting , either resolve to appoint IRP as RP or replace the IRP by another RP, by majority vote of $\geq 66\%$ of voting share.

RP to conduct CIRP (Sec-23) :

- RP shall conduct the entire CIRP & manage the operations of CD during CIRP period.
- RP shall exercise all powers as vested on CIRP.
- IRP shall provide all information/documents etc. to RP.

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Meeting of COC(Section 24):

- Meeting shall be conducted by RP.
- Meeting can be in person or electronic means.
- RP shall give notice of each meeting of COC to :
 - Members of COC
 - Members of suspended BOD or partners of CD
 - OC if amount of their aggregate dues is \geq 10% of the debt

Quorum

- atleast 33% of voting rights
- If quorum is not available, meeting shall stand adjourned at same time & place on the Next day



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Duties of RP (Section 23):

- Duty to preserve & protect the assets of CD including the continued business operations
- RP shall undertake the following actions
 - take immediate custody of assets and business records
 - represent & act on behalf of debtor
 - raise interim finances
 - appoint accounts, legal or other professionals
 - maintain updated list of claims
 - convene & attend all meetings of COC
 - prepare Information Memorandum
 - invite resolution applicant to put forward resolution plans
 - present resolution plans before COC



Replacement of RP by COC (Section 27):

If during CIRP, the COC is of the opinion that RP is required to be replaced, it may replace him with another RP (vote of 66%).

Approval of COC for certain actions (Sec-28) :

- To raise any interim finance (in excess of limit specified by coc)
- To create any security interest over assets of CD
- To change the capital structure of CD
- To give instructions to financial institutions maintaining accounts of the CD for a debit transaction (in excess of limit)
- To undertake any related party transactions
- To amend any constitutional document
- To delegate its authority to any other person
- To dispose of any shares of any SHS of CD to third party
- To make changes in management of CD or its subsidiary
- To make changes in the appointment / terms of contract of personnel as specified by COC or statutory / internal auditors of the corporate debtor

- For approval vote of 66% of voting share is required.
- If any action done without approval , then it is Void.



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Preparation of Information Memorandum (Sec-29) :

- RP shall prepare an Information Memorandum containing such relevant information for formulating a resolution plan.
- RP shall provide to the resolution applicant access to all relevant information in physical and electronic form.

Submission of Resolution plan (Sec-30) :

- A resolution applicant may submit a resolution plan to the RP prepared on the basis of the information memorandum.
- RP shall examine each resolution plan received by him to confirm that each resolution plan provides for-
 - payment of insolvency resolution process costs in priority to other debts
 - Payments of debts of OC
 - management of the affairs of the CD after approval of the plan
 - Implementation and supervision of plan
 - Plan does not contravene any existing law
- RP shall present this plan before COC for approval
- After considering feasibility & viability COC may approve a plan by vote of $\geq 66\%$
- RP shall submit the approved plan to AA

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Approval of Resolution plan by AA (Sec-31) :

- If AA is satisfied that the resolution plan as approved by the COC, **meets the requirements** , it shall by order **approve** the resolution plan which shall be binding on all.
- Where the Adjudicating Authority is satisfied that the resolution plan **does not** confirm to the requirements, it may, by an order, **reject** the resolution plan.

After approval of plan:

- moratorium order passed by the AA shall cease to have effect; and
- RP shall forward all records of CIRP & Plan to IBBI for database.



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Initiation of Liquidation Plan (Sec-30) :

If **attempts to resolve** the insolvency of the CD **fail**, then only the liquidation provisions of the Code are triggered.

A corporate debtor may be put into liquidation in the following scenarios :-

1. When resolution plan not received within 180 days + extension days, if any
2. When plan is rejected by AA
3. When RP, before confirmation of plan, intimates the AA of decision of COC to liquidate the CD
4. When plan approved by AA is contravened by CD, then any person other than CD, who is affected, may apply to AA for liquidation



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Appointment of Liquidator (Sec-34) :

- By Default RP = Liquidator (subject to submission of written consent by such RP)
- Powers of BOD / KMP shall vest with Liquidator now
- Employees, officers ,managers , shall extend to co operation
- AA shall by order replace the RP, if :
 - Plan submitted by RP was rejected
 - IBBI recommends replacement of RP to AA
 - RP fails to submit written consent



- Fees charged by Liquidator, shall be paid from the proceeds of liquidation estate

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Powers and Duties of Liquidator (Sec-35) :

- 13 Powers & Duties
- Liquidator may access any information system, relating to CD
- Any creditor may require the Liquidator to provide them with any financial information within 7 days of such request

Liquidation Estate (Sec-36) :

Liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

The liquidation estate shall comprise of all liquidation estate assets as follows:

Inclusions

- Assets over which the CD has ownership rights
- Encumbered assets, Tangible & Intangible Assets
- Assets issued as collateral over which creditors have relinquished rights
- All proceeds of liquidation as and when they are realized

Exclusions

- Assets owned by a third party which are in possession of CD
- Personal assets of any SHS or partners of CD
- Assets of any Indian or Foreign subsidiary of CD

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Liquidator will collect the claims within 30 days of commencement of process



Liquidator shall verify the claims



Creditor may withdraw the claim / alter it within 14 days of submission



Liquidator may accept / reject the claim within 7 days



Against such acceptance / rejection appeal can be filed before AA

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Distribution of Assets (Sec-53) :

Following is the order of priority :

- Insolvency & Liquidation costs in full
- Workmen dues for last 24 months before the Liquidation commencement date & debts of Secured creditors if he has relinquished his security u/s 52
- Other employee's salaries/dues up to 12 months
- Financial debts owned to unsecured creditors
- Government dues for whole or part of last 2 years & Debts owned to secured creditors i.e. any unpaid amount (in case of deficit u/s 52)
- Any remaining debts and dues
- Preference shareholders, if any
- Equity shareholders

***The above order of payment shall not be changed**



Dissolution of CD (Sec-54) :

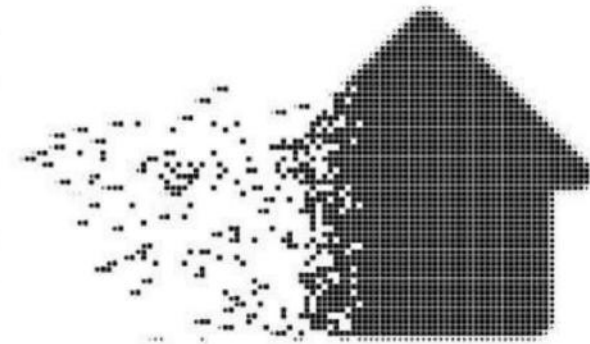
Liquidator shall make application to AA for dissolution



Date of Order = Date of Dissolution



Within 7 days of date of order , A copy of Order need to be forwarded to the authority, with which such Debtor is registered



Punishment where no specific penalty / punishment is provided (Sec-235A) :

- Minimum fine - 1 lakh
- Maximum fine - 2 crores

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Status of CIRP's as on 31st Dec 2018 :

Status of CIRPs	No. of CIRPs
Admitted	1484
Closed on Appeal / Review/ Settled	142
Closed by Withdrawal under section 12A	63
Closed by Resolution	79

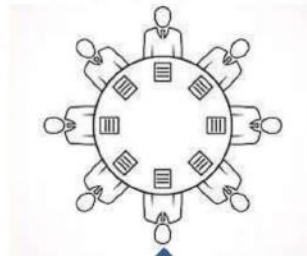
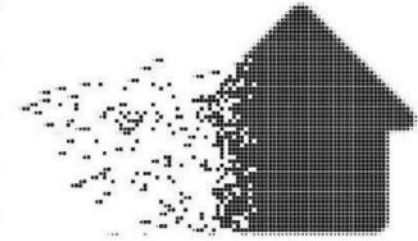
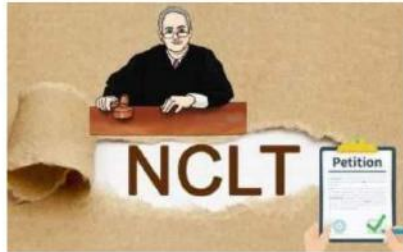
IP's as on 31st Dec 2018 :

Eligibility	No. of IPs		
	Male	Female	Total
Member of ICAI	1189	103	1292
Member of ICSI	386	66	452
Member of ICAI (Cost)	127	10	137
Member of Bar Council	124	13	137
Managerial Experience	261	11	272
Total	2085	205	2290

source- <https://ibbi.gov.in/>

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AT A GLANCE



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“Doing business has become easier in India due to Insolvency and Bankruptcy Code. The banking system has also got strengthened.”

—Mr. Narendra Modi, Hon'ble Prime Minister
at the First Uttarakhand Investors' Summit
in Dehradun on 7th October, 2018.

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CALM
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ALWAYS PAY
YOUR DEBTS



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