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# A Conceptual Understanding of Corporate Insolvency Resolution Process

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MUSKAN SADHWANI<sup>1</sup> AND JANHAVI AWASTHI<sup>2</sup>

## ABSTRACT

*The Insolvency and bankruptcy Code, 2016 accord a procedure for resolving the insolvency of corporate debtors within the time period of 330 days called the corporate insolvency resolution process. Financial Creditor assesses to the authority if Debtor's business is viable to continue or if other options for revival or rescue of debtors are available. In case this Process fails or the Debtor's business cannot be made profitable and need to be wound up then the debtor will go for liquidation and assets of debtors are realized and distributed by liquidators. This paper aims to understand easily the concept and legal provision of the CIRP Process which seeks to provide resolution to a Corporate Person in case of default is made in making due payment.*

*In India, this law helps to redeem a business by immediate termination process without further reduction of the value of the goods. The code contains an administrator, debt management experts, information resources and judicial systems to help speed up the debt settlement process too thus leading to the creation of a new institutional framework compared to the original. It is the work of the debtor to begin the process of resolving fraudulent debts against corporate debtors.*

**Keywords:** Debtors, creditors, liquidation, resolution, Insolvency and bankruptcy.

## I. INTRODUCTION

Now Insolvency and Bankruptcy Code seeks to furnish resolution to Corporate Persons, Individuals or partnership firms in case of default is made by such persons in making payment which is due and payable to another person. This code operates with the intention to initially endeavour and revive the defaulting corporate person so that the resources employed by such person are not wasted. However, in case there is no achievable solution then Liquidation is inevitable. The Code discerns the importance of time as else there is depletion in the value of the resources and therefore in order to retain and maximize the value, the Code comes up with the CIRP process, which is to be accomplished within the stipulated time frame.

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<sup>1</sup> Author is a student, India.

<sup>2</sup> Author is a student, India.

When the Corporate Debtor bilking in making payments to its creditors the process can be initiated against it them. The Central government on notified that the minimum threshold under section 4 of the Code to initiate any proceeding of insolvency against a Corporate Debtor shall be not less than one crore rupees.

<b>BY FINANCIAL CREDITOR</b>	<b>BY OPERATIONAL CREDITOR</b>	<b>BY CORPORATE CREDITOR</b>
<p><b>FILLING OF APPLICATION BEFORE ADJUDICATING AUTHORITY (NCLT):</b></p> <p>under Section 7, Creditors may file an application as per rule 4 form 1</p> <ul style="list-style-type: none"> <li>• when default occurs in respect of financial debts,</li> <li>• Default Exceed threshold Limit 1 lakh as per section 4 owed to the applicant or other creditors.</li> </ul>	<p><b>SERVING OF DEMAND NOTICE UNDER SECTION 8:</b></p> <p>on the occurrence of default, an operational creditor shall first send a demand notice and a copy of the invoice to the corporate debtor</p>	<p><b>COMMISSION OF DEFAULT:</b></p> <p>The corporate applicant may file an application under section 10 of the Act before NCLT.</p>
<p><b>Furnishing of Information by Applicant</b></p> <ul style="list-style-type: none"> <li>• The proof for the existence of the financial debt as recorded by an information utility.</li> <li>• The name of the resolution professional proposed to act as IR professional.</li> <li>• Any other information specified by the Board.</li> </ul>	<p><b>Action by Corporate Debtor on receipt of demand notice:</b></p> <p>Within a period of 10 days of the receipt of the demand notice or copy of invoice bring to the notice of the operational creditor about:</p> <ul style="list-style-type: none"> <li>• Existence of dispute</li> </ul>	<p><b>Furnishing of information:</b></p> <p>Books of accounts and other documents relating to such period as may be satisfied.</p>

	<ul style="list-style-type: none"> <li>• Repayment of unpaid operational debt.</li> </ul>	
<p>Period of Determination of Default:</p> <p>NCLT shall within 14 days of the receipt of the application determine if :</p> <ul style="list-style-type: none"> <li>• Default has occurred: Admit such application by order.</li> <li>• Default has not occurred: Reject such application after giving an opportunity to the applicant to ratify the defect within 7 days of receipt of such notice.</li> </ul>	<p>Filling of application by operational creditor:</p> <p>Before NCLT for initiating corporate resolution process in case of non- execution of any of above. With documents required.</p>	<p>Authority may accept or reject the application</p>
<p>Commencement and appointment of Insolvency resolution professional as per section 22, 23, 27 form the admission of the application.</p>	<p>Authority is empowered to reject or accept the application as per section 9(5).</p>	<p>Commencement of IRP</p>
<p>Declaration of moratorium as per section 13 and 14.</p>		

Collection or analysis of facts and Constitution of committee of creditors and appoint RP as per section 18.		
Resolution Plan as per section 30 and 31 which can be accepted or rejected by the NCLT.		

## II. FINANCIAL CREDITOR

As per section 5(7), it is an entity whose relationship with the corporate debtor arises as a result of financial debt. Therefore, if a debt owed by the corporate debtor comes within the ambit of “financial debt”, the person or entity to which such debt is owed will be called a financial creditor.

### i. Application by a financial creditor:

As per Section 7 of the IBC, a financial creditor may initiate the CIRP against the corporate debtor if the corporate debtor has become incapacitated to pay the financial debt owed to the financial creditor.

### ii. Prerequisite for a financial creditor to initiate CIRP:

- Financial debt: Section 5(8) of the Code defines the term “financial debt” which means a debt that includes the interest that is distributed to the debtors on the time value of money.
- Default: the corporate debtor must have defaulted in the payment of the financial creditor. Section 3(12)<sup>3</sup> of the Code defines “default as the non-payment of the whole or any part or instalment of debt that has become due but has not been repaid by the Corporate Debtor.” Therefore, default arises for the reason of non-payment of any instalment of the accrued amount as well as interest. Threshold of default: As per Section 4 of the Code, to initiate the proceeding for the CIRP process there should be the minimum amount of default is one lakh rupees, provided that the Central Government may amend the minimum amount of default but which shall not be more than one crore rupees.

<sup>3</sup> Insolvency and Bankruptcy Code, 2016

### **iii. Form and format of the application**

As per Rule 4 of the Adjudicating Authority Rules, Form 1 is for the financial creditor to file an application before the adjudicating authority. The form includes Particulars of the applicant, the corporate debtor, the proposed interim resolution professional, Particulars of financial debt, and Particulars of financial debt (Documents, records, and evidence of default).

### **iv. Supporting documents to the application:**

- The proof for the commencement of the default of the said financial debt.
- A written communication from the insolvency professional proposed to be appointed as the interim resolution professional in accordance with Form 2 of the Adjudicating Authority Rules.
- As per the Schedule of the Adjudicating Authority, proof of payment of the court fee shall be attached to the application.
- If the application is being filed on behalf of the financial creditor, then the document stating the authorization of the applicant and nominee in an application filed on behalf of the financial centre
- Demand notices or letters of communication and affidavit in support of the application.
- Under section 2A of the Banker's Book Evidence Act, 1891, the banker's book and the evidence is required to be submitted.

Court fee: As per the Rules, the financial creditor is needed to pay INR 25,000 (rupees twenty-five thousand only) for the purpose of filing the application under Section 7 of the Code.

### **v. Appointment of Resolution Professional**

When a debtor is admitted into a CIRP, he or she temporarily suspends the board of directors. Also, managers are placed under an independent specialist of 'interim decision'. Moreover, from this point onwards managers cease to manage any company affairs until the end of the CIRP.

Under section 18(c) of the code, the IRP is also required to form a Committee of creditors (COC) within 30 days of the commencement of the process. Once the COC is established, the committee then appoints the RP. The IRP may hold new positions or appointments may be made subject to a decision of the committee.

**vi. Moratorium** is declared by the NCLT under section 13 with the reasons referred under section 14 which states that the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

- The continuation of pending suits, institution of new suit, execution of judgment, decree or order in any court of law, tribunal against the corporate debtor.
- the corporate debtor cannot transfer, encumber, alienate or dispose of any of its assets or any legal right or beneficial interest therein;
- Under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any action to recover, foreclose enforce any security interest created by the corporate debtor in respect of its property.
- In case of recovery by the owner or lesser of a property where such property is occupied by or in the possession of the corporate debtor. During the moratorium period, the supply of essential goods or services shall not be terminated or interrupted to the corporate debtor as may be specified.

**vii. Collation and analysis of facts:** The claims made in the petition by the petitioner will be categorized by the IPR systematically, and making an analysis of the same as per Section 18 (b) of The Code. The code authorizes the IRP to call a meeting with the petitioner In case the IRP needs an exposition of a claim concerning the same for the clarification required.

**viii. Resolution Plan:** A plan that aims to provide a resolution to the problems of the corporate debtor's insolvency and its consequent inability to pay off debts. It is required to be approved by the committee of creditors and comply with mandatory requirements should be complied as per IBC. It is defined under 5(26) of the Act and made by the Resolution applicant defined under 5(25).

**Persons not eligible to be resolution applicants as per section 29 A:** 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 is an undischarged insolvent.
- In accordance with the guidelines issued under the **Banking Regulation Act, 1949** by the reserve bank of India the person who is a wilful defaulter.
- Person who has been convicted for any offence punishable with imprisonment for two to seven years under any Act specified under the 12<sup>th</sup> schedule.

- Under the **Companies Act, 2013**, any person who is disqualified to act as a director.
- Is **prohibited** from trading in securities or accessing the securities markets **by the Securities and Exchange Board** of India.
- A person in the management or control of a corporate debtor in which a **preferential transaction, extortionate credit transaction, undervalued transaction or fraudulent transaction** has taken place, in respect of which an order has been made by the Adjudicating Authority under this Code;
- any disability to a person, according to clauses (a) to (h), under any law in a jurisdiction outside India;

#### **The submission process of Resolution Plan before Committee of Creditors (COC) under Section-30 of IBC, 2016**

- A resolution plan shall be submitted by the applicant along with **an affidavit** stating that he is eligible under section 29A to the resolution professional prepared on the basis of the **information memorandum**.
- Professionals shall examine the resolution plan.
- The resolution applicant of the committee of the creditor shall attend the meeting in which the resolution plan is considered and further it shall be submitted to the Adjudicatory authority.

**ix. Manner of approval of Resolution Plan under Section-31 of IBC:** Approval of the “Resolution Plan”: A resolution plan for the revival of the company must be approved within 180 days from the commencement of CIRP by creditors. NCLT may extend this period by a further 90 days. Any person, management, creditors or a third party may propose such a plan. Resolution professionals are responsible for ensuring that the plan meets the requirements set out in the Insolvency and Bankruptcy Code, 2016.

If a plan is approved within this period and sanctioned by NCLT: The approved resolution plan becomes binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. It is the responsibility of the resolution. Specialist to obtain all the necessary accreditation required under any law for a period not exceeding one year from the date of approval by the adjudicatory authority.

In the case, the resolution plan is not approved then NCLT is obliged to order the settlement of the corporate debtor. After approval of the liquidation, the COC appoints a liquidator to sell



the assets owed by the company to share with stakeholders. Distribution is done in terms of section 53 of the Insolvency and Bankruptcy Code 2016.

### III. Operational creditor

As per Section 9 of the Code, an operational creditor can file an application to initiate the CIRP of the corporate debtor in case of nonpayment of dues.

i. Prerequisites for an operational creditor to file an application: Following are the prerequisites for an operational creditor that need to be fulfilled before filing an application before the Adjudicating Authority:

- Operational debt: According to Section 5(21) of the Code, an operational debt means a claim in respect of the provision of goods or services. It also includes a debt in respect of the repayment of the dues arising under any law for the time being in force and payable to the Central, State Government or any local authority.

- Default: As per Section 4 of the Code, “the minimum amount of default for initiating the CIRP is one lakh rupees, provided that the Central Government may specify the minimum amount of default of higher value which shall not be more than one crore rupees.”

- Non-existence of a dispute: The third prerequisite that needs to be fulfilled by the operational creditor before filing an application is the non-existence of a dispute between the parties to the application.

- Demand notice: One of the important requirements under section 8 of the code for an operational creditor prior to file an application against the corporate debtor is the communication of demand notice. Under Section 9, the operational creditor has to serve the demand notice to pay back the dues within 10 days, to the corporate debtor in Form 3 of the Adjudicating Authority Rules, 2016.

- Form and format of the application: The Adjudicating Authority Rules, 2016 prescribe the format for filing an application under Section 9 of the Code. Form 5 provided by the said rules is the prescribed form for an operational creditor to file an application before the adjudicating authority. Court fee: As per the Schedule to the Rules, the operational creditor is required to pay INR 2,000 (rupees two thousand only) for the purpose of filing the application under Section 9 of the Code.

- Powers of national corporate court: In terms of Section 9 (5) of the Code, the Adjudicating Authority is empowered to approve or reject an application made by an

operational creditor. Adjudicating authorities must, within 14 days of receiving a CIRP application, by order-\

1. Accept the application and refer the decision to the corporate debtor and the operational creditor Credit if, -

- The complete application is made;
- There is no amount payable for unpaid operational debt;
- An invoice or payment notice to the Corporate Debtor sent by a operational creditor;
- No notice of dispute received by the operational creditor or no record of the dispute using the information.

2. Reject the application and refer the decision to a operational creditor and to the Company Debtor, if-

- The Application made is incomplete;
- The payment of outstanding operational debt;
- The creditor does not submit an invoice or payment notice to the Corporate Debtor;
- The notice of dispute has been received by the operational creditor or there is a record of the dispute in the use of the information.

#### **IV. CONCLUSION**

The principal intent of the Insolvency and Bankruptcy Code, 2016 behind its enactment was the revival and rehabilitation of the corporate debtors, the code has also provided an effectual debt recovery mechanism for the financial and operational creditors of “debtor in possession” to a new mechanism of “creditor in possession”.

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