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# Corporate Insolvency Resolution Process (CIRP): Insolvency and Bankruptcy Code

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## ABSTRACT

*Insolvency and bankruptcy code is a law that is being proposed to combine and revise the laws concerning the restructuring and resolution of financially troubled companies, partnerships, and individuals within a specified time frame. The aim is to maximise the value of their assets, encourage entrepreneurship, facilitate access to credit, and ensure the fair treatment of all involved parties. This law also includes changes in the order of payment priority for government debts and the creation of an Insolvency and Bankruptcy Board of India. Additionally, it covers related matters and any ancillary issues. This report deals specifically with the corporate insolvency proceedings, and the details regarding the insolvency procedure regarding individuals, firms etc. are not included as a topic of discussion.*

## I. INTRODUCTION

Initially, there was no procedure that was put in place that could help banks recover their debts to corporate facilities without going through extremely tiring court procedures. Many business tycoons exploited the banks which led to many banks running out of businesses and increasing the number of NPA's (non performing assets) by a large number.

1. To tackle this the then government devised a mechanism to enable the banks to recover their debts without judicial intervention by making the Sick Industrial Companies Act (SICA) 1985 . According to the provisions of this act, once the company has accumulated debt equivalent to the net worth of the company, it could be declared as a sick company and the creditors can collect their arrears. This process however, was not effective, it meant that the bank has no remedy until the company is declared a sick one and in addition to this, only a small percentage of money can be taken after liquidation which makes the position of banks worse.
2. In another attempt to fix this issue, the government made DRT's as a mechanism for fast track judicial proceedings. The objective was to avoid the tedious process of a normal judicial court and a speedy recovery of money by the bank. However the

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government underestimated the scale of the problem, and subsequently the proceedings in DRT became equivalent to the normal civil court's proceedings. As of the report until 2022, there are estimated to be over 1.6 lakh pending cases before the DRT <sup>[1]</sup>. In addition to this from data recorded in 2019 there are 5000 companies who want to liquidate themselves and are unable to do so because of the procedure that needs to be followed. This shows clear failure of the idea of fast track judicial proceedings.<sup>2</sup>

3. Due to the failure of DRT's the parliament sought for a mechanism to enable the banks to recover debts without any judicial intervention. In the year 2002 Securitisation and Reconstruction of Financial Assets Enforcement of Security Interest Act (SARFAESI Act) was introduced. Using this mechanism companies could be liquidated with minimal judicial intervention. However, even this could not solve the increasing number of NPA's. The SARFAESI act had 2 major flaws, its procedures took a long time and there was no method for trying to revive a company.
4. To rectify the flaws of the SARFAESI ACT the government introduced the Insolvency and Bankruptcy Code. This code served 3 purposes:
  - a. Minimal intervention of the Judiciary.
  - b. Quick debt recovery process.
  - c. Mechanism to revive a company.

## **II. OVERVIEW**

### **(A) Why was IBC Introduced?**

There are 4 major issues that IBC sought to tackle:

1. Reducing the of NPA's
2. To provide an easy exit for corporates
3. Need for uniform code
4. Ensure revival before liquidation

### **(B) Who can initiate proceedings under IBC?**

There are 3 groups of people entitled to initiate the proceedings before the respective Adjudicating authority:

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<sup>2</sup> K Ram Kumar, Bank Wants Special Recovery Tribunals for high valued debts, The Hindu Business Line (19th July ,2022), <https://www.thehindubusinessline.com/money-and-banking/banks-want-special-recovery-tribunals-for-high-value-debts/article65657565.ece>

1. Financial Creditor; Section 7<sup>3</sup> of IBC talks about the procedure for applying as a financial creditor,3.1 of this report gives an overview of the same process.
2. Operational Creditor; Section 8,9<sup>4</sup> of IBC talks about the procedure for applying as a financial creditor,3.2 of this report gives an overview of the same process.
3. Corporate Debtor; Section 10<sup>5</sup> of IBC talks about the procedure for applying as a financial creditor,3.3 of this report gives an overview of the same process.

### **(C) Structure of IBC.**

IBC contains 3 major parts:

1. Part II [Section 4 -Section 67] talks about recovery of debts from corporate persons, mechanism for revival of insolvent companies and the process of liquidation.
2. Part III [section 78 - section 187] talks about recovery of debt from Individuals and partnership firms etc.
3. Part IV [section 188- section 223] talks about the general regulations etc with regard to insolvency professionals, agencies and information utilities.

**This report however sticks strictly to the 1st part i.e the Part II of the code.**

### **(D) When can IBC be invoked against corporations?**

IBC was created with the prime objective to reduce the number of NPAs in the country, for the effective execution of this objective, the code provides a speedy mechanism with a low entry bracket. According to section 4 of the code, ant debt from the amount higher than 1 lakh (can be increased by the CG but in any case, not more than 1 cr) can initiate proceedings immediately after the default has occurred.

## **III. ADMISSION OF APPLICATION**

### **(A) Application by a Financial Creditor.**

Section 7 of this code talks about the application for insolvency submitted by the Financial Creditor. Financial creditor is a person or a group of persons who has directly lent money and other financial aids to the corporation. When a Corporate body has defaulted in the payments of a financial body which is over the limit specified in section 4 of this code, financial creditors can submit an application to the adjudicating authorities.<sup>6</sup>

<sup>3</sup> Insolvency and Bankruptcy code § section 7, No. 31, Act of parliament, 2016 (India)

<sup>4</sup> Insolvency and Bankruptcy code § section 8,9, No. 31, Act of parliament, 2016 (India)

<sup>5</sup> Insolvency and Bankruptcy code § section 10, No. 31, Act of parliament, 2016 (India)

<sup>6</sup> According to the provisions of this code the adjudicating authorities for corporates (part II) will be the NCLT and

For a financial creditor to invoke section 7 the following essentials have to be satisfied:

- a) Existence of debt
- b) Default of such debt
- c) Debt to be due to a financial creditor
- d) Debt owed by a corporate body

To make a valid application, along with the application the financial debtor must submit any record of debt, name of resolution professional and any other information that will help the adjudicating authority the existence of such debt<sup>7</sup>. After verification of all the reports provided, the authority after examination of reports concludes if the case can be admitted. In case where the report is admitted, the process mention in part 4 of this report will be initiated, however, if it is not admitted for the reason of incorrect or insufficient material provided along with application<sup>8</sup>, the AA can give a notice to the applicants to rectify and give the applicants a time period of 7 days to rectify the same. If the AA is satisfied that the reports are satisfying and that there is no disciplinary action pending against any party, the application is said to be admitted. When an application is admitted the AA has to inform both the parties within 7 days of the admission<sup>9</sup>.

#### **(B) Application by an Operational creditor.**

An operational creditor is any person or a group of persons to whom the company has defaulted payment in exchange of a service or a product given to the company for instance, if a company has used the services of a CA and have not given the amount agreed after availing the services the CA will be an operational creditor.

The procedure for initiation procedure under IBC as an operational creditor is an elaborate one, as it is difficult to ascertain the existence of dues and disciplinary actions in such cases. An Operational creditor prior to filing an application with the AA has to send a notice to the corporate debtor demanding the payment along with an invoice of the defaulted amount<sup>10</sup>. The corporate debtor has a period of 10 days to reply to the demand notice, either with

- 1) the existence of an issue [OR]<sup>11</sup> with record of pendency of suit or arbitration proceedings

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for any default classified in part III the adjudicating authority will be the Debt Recovery Tribunal

<sup>7</sup> Insolvency and Bankruptcy code § section 7 (3) (a) - (c), No. 31, Act of parliament, 2016 (India)

<sup>8</sup> Insolvency and Bankruptcy code § section 7 (5), No. 31, Act of parliament, 2016 (India)

<sup>9</sup> Insolvency and Bankruptcy code § section 7 (6), No. 31, Act of parliament, 2016 (India)

<sup>10</sup> Insolvency and Bankruptcy code § section 8, No. 31, Act of parliament, 2016 (India)

<sup>11</sup> Amendment of 2018, prior to the amendment existence of proceedings was a mandate

- 2) The payment of said amount along with either electronic proof or through bank statements showing that the said amount was encashed.

After the expiry of 10 days if the corporate debtor has failed to pay the amount or send a reply acknowledging the dispute, the operational creditor can approach the AA and submit an application<sup>12</sup>.

The application however has to be submitted along with:

- a) Copy of demand notice
- b) Affidavit confirming no reply
- c) Certificate from any financial institution certifying the default (if available).
- d) Copy of information utility if available
- e) Any other document highlighting the default in payment.

If all of the documents are submitted along with such an application, the AA (NCLT) may reject or admit the application, based on the criteria mentioned in subsection 5 of section 9.

### **(C) Application by Corporate Debtor**

The last category of persons who can initiate proceedings under this code is the corporate debtor himself. This may sound absurd but after the corporation has decided that they cannot proceed further and that the company is far beyond revival, they can't simply move on to the next project without appropriately closing the corporation, although the companies act has provisions of winding up but it requires a lot of time. Hence to close up their existing companies in an efficient manner, the companies declare themselves as insolvent.

For initiating procedure against themselves, the company has to make an application to the AA, along with the application the corporate debtor also has to file details regarding the following:

- a) Information regarding the books of account.
- b) Information regarding the insolvency professional.
- c) Special resolution passed by the shareholders of the company or resolution passed by 3/4th of the partners as the case may be<sup>13</sup>.

If the AA is satisfied with the application and its report the application will be submitted and if the application is being rejected a notice preceded by 7-day notice will be given to the applicant

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<sup>12</sup> Insolvency and Bankruptcy code § section9, No. 31, Act of parliament, 2016 (India)

<sup>13</sup> Insolvency and Bankruptcy code § section 10, No. 31, Act of parliament, 2016 (India)

to rectify errors.

#### **IV. CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)**

The Insolvency and Bankruptcy code had 2 major features that the SARFAESI Act does not have, one being the corporate revival mechanism also called the CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP). This is the process of trying to revive a company's financial status before trying to liquidate the company. In essence the resolution professional (RP) along with the creditors run the company in any way they deem fit until the company generates enough money to pay back all the credits that are defaulted. After the credits are paid back, the company will be given back to its original owner.

Another major objective of the act is to reduce the amount of time that it takes for the banks to recover the defaulted money, the CIRP process seems like a time consuming one, considering that before liquidation there must be efforts put in to revive the finance of the company, however, the entire CIRP is extended only to 180 days<sup>14</sup>. In addition to this the count of 180 days starts off from the day on which the adjudicating authority admits the application and not on after the appointment of the resolution professional, as will be discussed later in this paper, the resolution professional will be appointed approximately 30 days into the process and will have only 90 days to come up with a plan. There are exceptional situations where a time of additional 90 days will be given, however to increase the time limit 66% of the creditors should be voting in favour of such period, the value of each vote will be proportional to the amount defaulted (for instance if a corporate debtor has taken a debt of 1 cr in total and of the 1 cr 700k is from SBI 1 vote of SBI would be considered as 70% of votes).

The NCLT on the admission of an application grants a moratorium to the corporate debtor until the resolution plan is made<sup>15</sup>. A moratorium is similar to a stay order, it prevents the financial creditors from selling or alienating any property of the debtor that is either mortgaged or given as security etc. Once the adjudicating authority has granted the moratorium the creditors become incapable of initiating any action against the debtor even if the provision of the SARFAESI act empowers the creditors to do so.

##### **(A) Procedure Of The Corporate Resolution Process:**

The procedure of reviving a company starts from the admission of the applications made under 7,8,9 or 10 by respective creditors. Once this application is admitted, the NCLT may issue a

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<sup>14</sup> Insolvency and Bankruptcy code § section12, No. 31, Act of parliament, 2016 (India)

<sup>15</sup> Insolvency and Bankruptcy code § section14, No. 31, Act of parliament, 2016 (India)

notice announcing the initiation of such proceedings<sup>16</sup>. After application is being admitted the 1st step in CIRP is to appoint an IRP or Interim Resolution Professional.

**1. Appointment of IRP:** An IRP is appointed by the NCLT, during the submission of an application under section 7 or 10 of the code, it is mandatory to mention an IRP and after conducting investigations if the NCLT is satisfied that there are no disciplinary proceedings against the proposed resolution professional, he will be appointed as the IRP. In case of submission of the application by an operational debtor under section 8, proposing an Interim Resolution Professional is not a mandate. If the operational creditor has chosen to propose the name as an IRP, the NCLT after doing the due diligence may appoint the proposed professional, however if the operational debtor chooses not to have any IRP proposal, the NCLT will appoint any IRP on behalf of the Operational debtor<sup>17</sup>.

The IRP has the powers equivalent to the board of directors of the company, once the board loses their power to run the company the IRP steps in and takes all the major decisions till the CoC is formed. The IRP has the rights to demand for all the information of the company including classified electronic records to the financial statements from the bank. According to the provisions of section 17 of the IBC<sup>18</sup>, the IRP has 3 major powers:

- a) Exercise the powers of the BoD
- b) Reporting of officers and managers
- c) Power to instruct financial institutions to claim any information.

All these powers are given to the IRP with the objective of making it easier for him to manage the functioning of a business and to ensure conditions for a successful revival benefiting both the creditors and debtors.

**2. Announcement and Claims:** The next step of CIRP starts after the IRP is appointed, it is the duty of the IRP to make public announcements of the initiation of insolvency provisions on the official website of Insolvency and bankruptcy board of India (IBBI)<sup>19</sup>. In this public announcement details pertaining to the company, date on which the CIRP ends, the details regarding last date to send forth claims etc will be mentioned. All of these claims will be subjected to strict scrutiny, in addition to this the code also provides for punishments for persons trying to falsely claim such amounts. This is an essential step in the CIRP as the whole

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<sup>16</sup> Insolvency and Bankruptcy code § section13, No. 31, Act of parliament, 2016 (India)

<sup>17</sup> Insolvency and Bankruptcy code § section16, No. 31, Act of parliament, 2016 (India)

<sup>18</sup> Insolvency and Bankruptcy code § section17, No. 31, Act of parliament, 2016 (India)

<sup>19</sup> The insolvency and bankruptcy board of India, <https://ibbi.gov.in/en/public-announcement>



resolution plan will revolve around paying back the debts of creditors, if the creditors fail to claim their debts before the last date mentioned in the announcement, they cannot claim such amount after the revival of the company.

**3. Forming a Committee of Creditors:** After verifying the claims made, the IRP forms a committee of creditors composed of all the financial creditors to whom the corporate debtor has defaulted to<sup>20</sup>. It is essential to note that the financial creditors are the only class of defaulters that will be qualified to be a part of the committee of creditors, if the company does not have any financial creditors then the CoC will consist of a few such members as referred by the IBBI<sup>21</sup>. This committee acts as an equivalent to the board of directors and collectively takes decisions regarding the daily affairs of the company.

The committee of creditors have the powers to run the business and all of the decisions taken by the CoC will be based on a system of votes. The value of the votes will be proportionate to the sum of money defaulted. In any case no decision of the CoC will be considered if the value of votes in favour of those decisions is greater than 75% of the total voting share<sup>22</sup>.

The CoC also has the right to be submitted with any financial information of the corporate debtor as demanded during the pendency of the resolution process. All of such information so demanded by the committee of creditors will be submitted within a period of 7 days of such demand<sup>23</sup>.

In addition to this, any person being classified as related party in accordance to section 24, if they are financial creditors to the company can be a part of the CoC however, do not have rights of representation, voting or attend meetings of the CoC

**4. Appointment of Resolution Professional:** After the committee of creditors are formed, within a week a meeting is held which is attended by all the members. In this meeting, the committee of creditors may choose to do one of two things:

- a) Appoint the IRP as the RP.
- b) Request for appointment of new RP<sup>24</sup>.

If the committee votes in favour of (a), the IRP will continue his position of responsibility as RP and if the committee votes for (b) the committee will request for a new RP from the board. If the CoC is okay with the new RP then they will vote in favour and if not a demand for another

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<sup>20</sup> Insolvency and Bankruptcy code § section 21, No. 31, Act of parliament, 2016 (India).

<sup>21</sup> Insolvency and Bankruptcy code § section 21, proviso of subsection (8), No. 31, Act of parliament, 2016 (India).

<sup>22</sup> Insolvency and Bankruptcy code § section 21 subsection (8), No. 31, Act of parliament, 2016 (India).

<sup>23</sup> Insolvency and Bankruptcy code § section 21 subsections (9) and (10), No. 31, Act of parliament, 2016 (India).

<sup>24</sup> Insolvency and Bankruptcy code § section 22, No. 31, Act of parliament, 2016 (India).

one will be placed. Until the RP is finalised the IRP will continue in his position of power.

Once a resolution professional is appointed, it does not mean that the CoC loses its power to exercise authority over the resolution professional. The code provides for a mechanism where an appointed RP can be removed<sup>25</sup>. If the CoC is of the opinion that the work of the resolution professional is substandard and not satisfactory, the committee of creditors may remove such professional, if the 75% of the committee votes in favour of such removal.

Once the appointed RP is removed, it will be the duty of the CoC to suggest a new member as the RP to the adjudicating authority. The adjudicating authority after confirming lack of disciplinary actions against the newly proposed RP will appoint him as the resolution professional. It is also pertinent to note that the old resolution professional will continue to perform his duties till the new RP is appointed.

**(B) Duties of the resolution professional towards the Committee of creditors<sup>26</sup>:**

Irrespective of all the powers given to the resolution professional, there are certain activities that he cannot perform without the approval of the CoC, namely:

- 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;
- 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;

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<sup>25</sup> Insolvency and Bankruptcy code § section27, No. 31, Act of parliament, 2016 (India).

<sup>26</sup> Insolvency and Bankruptcy code § section28, No. 31, Act of parliament, 2016 (India).

- 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.

If a resolution professional wants to do any of the aforementioned acts, he has to seek vote from the committee of creditors. Only if the committee approves these acts can the resolution professional can perform such action. Any such request will be considered to be approved only when 75 % of the committee has voted in favour of such an act. If the RP does take any such actions the CoC may intimate the board and the board may take any unnecessary disciplinary actions.

**5. Circulation of Information memorandum<sup>27</sup>:** The resolution professional's major duty is to handle the day-to-day business operations of the company. Along with this however, the RP also has to assist the banks and CoC. To complete the second function, the RP is supposed to collect all the information in relation with the company. This memorandum is to be submitted to the applicant who initiated the insolvency procedure both electronically and physically. This will help in taking efficient decisions to run the business and will also help in making the resolution plan. However, the applicant has to comply with 3 conditions:

- a) To comply with provisions of law for the time being in force relating to confidentiality and insider trading; This condition was held in place because the business during this course will be exposed to a lot of people who have no liability towards the company. This will increase the risk of malpractices and leave the company in a vulnerable position. The objective of IBC is a symbiotic well-being of corporates and banks, if the banks will have such high powers, the corporates will sooner or later be in the same position. Hence, to avoid such things from happening the financial debtor applicant will be forced to abide by the rules relating to insider trading.
- b) To protect any intellectual property of the corporate debtor it may have access to. Intellectual property in many cases is the core of functioning of several businesses. Any

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<sup>27</sup> Insolvency and Bankruptcy code § section29, No. 31, Act of parliament, 2016 (India).

THE DETAILS THAT ARE TO BE ADDED IN THE MEMORANDUM WILL BE UPDATED FROM TIME TO TIME BY THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

harm caused to it will directly affect the business as a whole. Hence the authority of the applicant will be restricted in the best interest of the business.

- c) Not to share relevant information with third parties unless clauses (a) and (b) are complied with. In the process of revival of the company the applicant has to for the greater good relay information to parties, however in no cases will the information as specified in the above classes will be given up.

Therefore, the resolution professional will gather all the information that will assist the applicant in making the resolution plan provided the applicant does not take undue advantage of his situation and cause any wrongful loss to the company.

**6. Creating a resolution plan<sup>28</sup>:** The applicant creditor has the duty to submit a resolution plan to the resolution professional. Contrary to what most people believe the resolution professional doesn't make the actual resolution plan he only plays the role of the supervisor when it comes to making the plan. The actual plan however will be made by the creditor who applied to initiate this process. This is one of the main reasons why the memorandum of information is given to the applicant. The major part of the resolution plan depends upon the information collected in the memorandum, hence why it is an essential component in the CIRP. The resolution professional however examines the credibility of the plan. In order to provide a standard to compare to, this code provides a few conditions that need to be satisfied for the resolution plan to be put forth for the next step. All these conditions are a mandate and a plan will be put forth by the RP only if it satisfies all of the conditioner specified.

The following are the basic conditions a plan has to satisfy:

- a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
- b) Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53
- 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;

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<sup>28</sup> Insolvency and Bankruptcy code § section 30, No. 31, Act of parliament, 2016 (India).

- 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.

In clause (a) the reason for the priority being given to the financial creditor is that more often than not, financial creditors pool in large sums of money and form the basic capital on top of which the entire business runs, in several cases we have seen that companies have robbed the banks of thousands of crores. In comparison to this the debt owed to the operational creditor is very small.

**7. Approval of resolution plan<sup>29</sup>:** Once the resolution plan is made and is examined by the resolution professional, it further has to be put before the committee of creditors. Each creditor will examine the quality of the plan and will examine the effectiveness of the plan and whether going forward with the plan, the company will indefinitely be able to clear all of its debts.

For further perusal of the plan, all of the creditors' votes have to be taken into consideration, if more than 75% vote in favour of the resolution plan. Each vote will have the value proportional to the quantity of debt. If the application is initially submitted by the Operational creditor or the Corporate Debtor, the applicant may attend the meeting, but in no case does the applicant have the right to vote, unless the applicant is a financial debtor.

**8. Approval of plan by the Adjudicating Authority<sup>30</sup>:**

Even after the voting in favour of the resolution plan, the CIRP does not end, It has another additional level of examination attached to it. The Adjudicating authority (herein, the NCLT) will have to approve of the plan made by the applicant subsequent to the approval by the CoC's.

The NCLT will have to comply with 2 conditions while examining the CIRP.

- 1) It has indeed been approved by at least 75% of the Committee of creditors.
- 2) It has satisfied all the conditions established in section 30 sub section 2.

If both of this criterion is complied with then the Adjudicating authority will approve of the corporate resolution plan.

## **V. EFFECT OF APPROVAL OF RESOLUTION PLAN**

Once the resolution plan is approved by the adjudicating authority, it will become binding on

- i) corporate debtor

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<sup>29</sup> Insolvency and Bankruptcy code § section 30, No. 31, Act of parliament, 2016 (India).

<sup>30</sup> Insolvency and Bankruptcy code § section 31, No. 31, Act of parliament, 2016 (India).

- ii) employees of corporate debtor
- iii) creditors of the corporate debtor
- iv) guarantors and stakeholders of the corporate debtor.

In addition to this, the moratorium that was passed under section 14 will cease to be in force, and a report regarding the conduct and the resolution plan will be given to the IBBI by the RP.

**(A) Brief Summary Of The Cirp Procedure:**

Step 1. Application by the creditors to the adjudicating authorities: 14-day time period will be given to accept the application based on the details provided, if the details given are wrong or insufficient, they will give them a period of 7 days to rectify such issues.

Step 2: If the application is admitted, a public notice should be sent within 7 days.

Step 3: An interim resolution professional will be appointed within 14 days of admission of application.

Step 4: IRP makes a public announcement within 3 days of being appointed.

Step 5: Subsequent to the notice sent by the IRP, the creditors will send in claims. (The notice shall consist of the last date for sending in the claim, if the claim submitted is after the last date of the date mentioned.

Step 6: All the claims sent must be verified by the IRP, the false claims will be penalised.

Step 7: Constitution of the Committee of Creditors.

**\*STEPS 1 TO STEP 7 SHOULD BE COMPLETED WITHIN A PERIOD OF 30 DAYS\***

Step 8: Within 1 week of the constitution of the committee of creditors (CoC) the first meeting of the CoC will be held. During this meeting the CoC will vote in favour of appointing the IRP as the RP, or against it. If the majority of votes are against the IRP, a new professional appointed by the board will become the RP and the IRP will continue his business till the RP is appointed.

Step 9: The applicant debtor comes up with a resolution plan.

Step 10: The resolution plan is sent for the approval of RP

Step 11: After approval of RP, the plan should be approved by the COC

Step 12: After the approval by the CoC the adjudicating authority will approve the resolution plan and only after that will the corporate insolvency resolution process will be said to have been completed.

**\*STEP 3 TO 12 WILL BE COMPLETED WITHIN A PERIOD OFF 180 DAYS UNDER**

**NORMAL CIRCUMSTANCES\*****VI. CASE ANALYSIS****1. Maitreya Doshi Vs. Anand Rathi Global Financial Ltd.<sup>31</sup>:**

**Facts of the case:** In the present case, an appeal was brought before the Supreme Court challenging the NCLAT's order. The NCLAT had directed that Corporate Insolvency Resolution Process (CIRP) proceedings under Section 7 could be initiated against both corporate co-borrowers.

The respondent in this matter was an NBFC (a Financial Creditor) that had provided a loan to Premier Limited ("Premier") under three separate Loan-cum-Pledge Agreements. According to the appellant, who was a director in both Premier and Doshi Holdings, Doshi Holdings had pledged shares it held in Premier as security for the loan granted by the Financial Creditor.

Unfortunately, Premier failed to meet the repayment obligations specified in the Loan-cum-Pledge Agreements. As a consequence, the Financial Creditor filed a petition under Section 7 of the IBC (Insolvency and Bankruptcy Code) to initiate CIRP against Premier due to its default in loan repayment. Additionally, the Financial Creditor also filed a separate petition against Doshi Holdings, under Section 7 of the IBC, seeking initiation of CIRP with regard to the same loan and based on the same loan documents.

The NCLT (National Company Law Tribunal) accepted both CIRP applications. Against the NCLT's order allowing the CIRP application against Doshi Holdings, an appeal was lodged. However, the NCLAT dismissed the appeal and upheld the order for admission of the petition under Section 7 of the IBC. Subsequently, the appellant approached the Supreme Court, filing an appeal against the NCLAT's decision.

**JUDGEMENT:**

Following the hearing of both parties, the Supreme Court rejected the appellant's plea and upheld the NCLAT's order. The Court clarified that when two borrowers or two corporate entities are considered as corporate debtors, the initiation of CIRP (Corporate Insolvency Resolution Process) can be pursued against both of them. However, it was emphasised that the same number of dues cannot be collected from both corporate debtors. If a portion of the outstanding dues is recovered from one corporate debtor, any remaining balance may be recovered from the other corporate debtor, who is considered a co-borrower.

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<sup>31</sup> Maitreya Doshi Vs. Anand Rathi Global Financial Ltd, 2022, SCC 1276 (INDIA)

## **2. Angre Port (P.) Ltd. v. TAG 15 (IMO. 9705550)<sup>32</sup>:**

**Facts of the case:** Angre Port Private Ltd submitted an interim plea under the rules of Order XIII-A and Order XII Rule 6 of the Code of Civil Procedure, 1908, in a bid to obtain a summary judgement against TAG 15 (IMO. 9705550), a vessel owned by Tag Offshore Ltd. They are seeking a sum of Rs. 9,37,19,098 along with an annual interest of 18%, starting from 18th December 2020.

The plaintiff claimed that they harboured the vessel at their port on 13th February 2019, and had promptly issued berthing charge bills. They also incurred additional costs to safeguard the ship during a storm. Subsequently, the ship's owning company entered liquidation under the IBC, and a Liquidator was appointed as Defendant No. 2. The plaintiff initiated this Admiralty lawsuit to recoup the berthing fees and the extra storm-related costs.

**Judgement:** According to the High Court's observation, Section 33(5) does not prevent port authorities from using Admiralty jurisdiction to enforce their maritime claim against a ship owned by a corporate debtor in liquidation. Section 33(5) only prohibits legal proceedings against the corporate debtor itself, not against the vessel as it is considered a separate legal entity under the Admiralty Act.

An action in rem against the vessel allows the claimant to seek recovery of the claim amount through an admiralty sale of the vessel without suing the owner. The vessel is held liable for the claim, and the owner's presence is not necessary for the claim's adjudication.

The court in conclusion held that, port authorities can pursue their maritime claim against the vessel under Admiralty jurisdiction, as the vessel is treated as a separate entity, and the action in rem is directed at the vessel itself, not the owner.

## **3. State Bank of India v. Krishidhan Seeds (P.) Ltd.<sup>33</sup>**

**Facts of the case:** In the current case, the National Company Law Tribunal (NCLT) denied a request made by the State Bank of India (referred to as the "appellant") to begin the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (referred to as the "respondent") under Section 7 of the Insolvency and Bankruptcy Code (IBC).

The appellant had provided credit to the respondent, with a balance of Rs. 102.4 crores remaining. The respondent and other parties gave the appellant security to secure these loan arrangements.

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<sup>32</sup> Angre Port (P.) Ltd. v. TAG 15 (IMO. 9705550), 2022, HC 48 Bombay (INDIA)

<sup>33</sup> State Bank of India vs Krishidhan Seeds Pvt. Ltd. 2022 1 SCC 362 (INDIA)



However, the respondent did not follow the predetermined conditions of the credit facility and missed repayments. As a result, on June 10, 2014, the appellant designated the respondent's account as a Non-Performing Asset.

**Judgement:** In this instance, the State Bank of India used a variety of legal options to try and collect an outstanding debt from a corporate debtor.

On appeal, the Supreme Court explained that the statute of limitations for filing CIRP could be extended by an unqualified recognition of debt in a balance sheet within three years of the date of default. The NCLT and NCLAT verdicts were both overturned by the Supreme Court based on this reasoning.

## VII. CONCLUSION

The Corporate Insolvency Resolution Process (CIRP) has undergone a thorough investigation, and it is clear that this mechanism is essential for reducing financial distress and assuring the rebirth of financially challenged enterprises. The CIRP has several important consequences for a variety of stakeholders, including creditors, debtors, employees, and the economy as a whole. These implications were introduced and improved by legislation and regulatory organisations. Finally, the following crucial ideas become clear:

**1. Facilitating Debt Resolution:** The CIRP provides an organised and time-bound strategy to deal with corporate insolvency, allowing creditors the chance to maximise their recoveries while empowering debtors to discover workable solutions to get out of financial troubles.

**2. Safeguarding Stakeholder Interests:** By encouraging transparent and equitable decision-making procedures, the CIRP seeks to protect the interests of all stakeholders, including employees. It guarantees that the settlement strategy is in everyone's best interests.

**3. Enhancing Economic Stability:** By promoting the revival of distressed companies, the CIRP helps maintain economic stability and preserves business value. Preventing the liquidation of viable businesses reduces the negative impact on the economy and employment.

**4. Encouraging a Culture of Entrepreneurship:** The availability of an effective insolvency resolution mechanism encourages entrepreneurship and risk-taking by providing a safety net for entrepreneurs to venture into business with the assurance that the process can provide relief during financial crises.

**5. Addressing Non-Performing Assets (NPAs):** The CIRP aids in tackling the issue of NPAs in the banking sector by facilitating the timely resolution of stressed assets and reducing the burden on financial institutions.

**6. Challenges and Reforms:** While the CIRP has shown promising results, certain challenges like delays in the resolution process and capacity constraints of insolvency professionals require continuous evaluation and reforms to enhance its effectiveness.

**7. Importance of Stakeholder Cooperation:** Successful outcomes of the CIRP depend on the cooperation and coordination of all stakeholders involved, including creditors, debtors, regulatory authorities, and insolvency professionals.

**8. Continuous Learning and Adaptation:** Given the evolving nature of corporate insolvency issues, a learning-oriented approach, coupled with periodic reviews and amendments to the insolvency framework, is essential to maintain its relevance and efficacy.

In conclusion, the Corporate Insolvency Resolution Process serves as a vital mechanism for the resolution of financial distress in the corporate sector. Its implementation has the potential to foster economic growth, protect stakeholders' interests, and promote a culture of entrepreneurship. However, ongoing improvements and a collaborative approach are necessary to ensure its continued success in addressing the challenges posed by corporate insolvency.

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