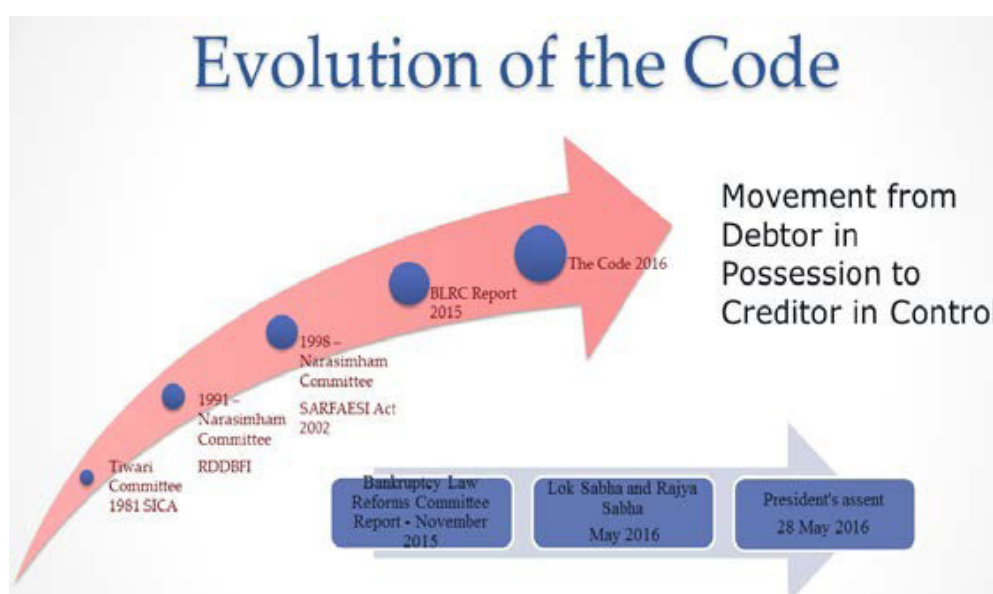


Chapter - 26

Overview of Insolvency and Bankruptcy Code 2016

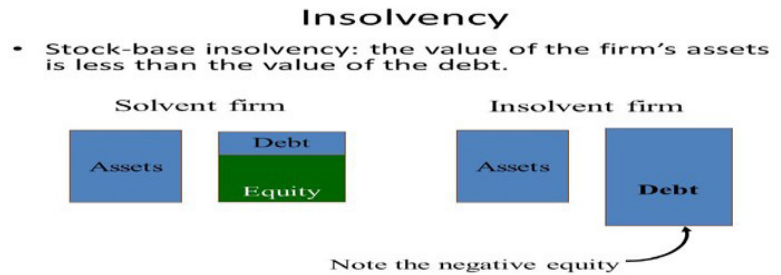
26.1 INTRODUCTION

1. The **Insolvency and Bankruptcy Code, 2016** is one of the **major economic reform Code** initiated by the Government in the year 2015.
2. There were **multiple overlapping laws** and **adjudicating forums** dealing with financial failure and insolvency of companies and individuals in India.
3. The **existing laws also were not aligned with the market realities**, had several problems and were inadequate.
4. As per that legal framework, provisions relating to insolvency and bankruptcy for companies could be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013.
5. Resolution and jurisdiction vesting with multiple agencies with overlapping powers was leading to delays and complexities in the process.
6. To **facilitate easy and time bound closure of business in India** and to overcome these challenges, a **strong bankruptcy law was required**.
7. The Insolvency and Bankruptcy Code, 2015 was **introduced in the Lok Sabha on 21st December, 2015** and referred to the **Joint Committee on the Insolvency and Bankruptcy Code, 2016**. The Committee had presented its recommendations in the modified Bill based on its suggestions.
8. Further, the Insolvency and Bankruptcy Code, 2016 was **passed by both the Houses of Parliament and notified in May 2016**. Being one of the major economic reforms it paves the way focussing on creditor driven insolvency resolution.



26.2 WHAT IS INSOLVENCY AND BANKRUPTCY?

- The term **insolvency** is used for both individuals and organizations. For individuals, it is known as **bankruptcy** and for corporate it is called **corporate insolvency**. Both refer to a situation when an individual or company are **not able to pay the debt in present or near future** and the **value of assets held by them are less than liability**.
- Insolvency in this Code is regarded as a “state” where **assets are insufficient to meet the liabilities**. If untreated, insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.
- While **insolvency** is a situation which **arises due to inability to pay off the debts** due to insufficient assets, **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.
- From the above, it is evident that **insolvency is a state and bankruptcy is a conclusion**. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies. Typically insolvency situations have two options – **resolution and recovery** or **liquidation**.



26.3 RELATIONSHIP BETWEEN BANKRUPTCY, INSOLVENCY & LIQUIDATION

- “Bankruptcy”** is a **legal proceeding** involving a **person or business that is unable to repay outstanding debts**.
- The bankruptcy process **begins with a petition** filed by the debtor, or by the creditors.
- All of the **debtor's assets are measured and evaluated**, and then these assets may be used to repay a portion of outstanding debt.
- In lucid language, **if any person or entity is unable to pay off the debts, it owes to its creditors**, on time or as and when they became due and payable, then such person or entity is regarded as **“insolvent”**.
- “Liquidation”** is the **winding up of a corporation or incorporated entity**. There are many entities that can initiate proceedings that will lead to Liquidation, those being:-
 - The Regulatory Bodies;
 - The Directors of a Company;
 - The Shareholders of a Company; and
 - An Unpaid Creditor of a Company
- In nut shell, **insolvency is common to both bankruptcy and liquidation**. Not being able to pay debts as and when they became due and payable is the leading cause for Liquidation and is the only way that can cause a natural person to become a bankrupt.

26.4 PURPOSE BEHIND ENACTMENT OF INSOLVENCY AND BANKRUPTCY CODE, 2016

1. The Insolvency and Bankruptcy Code, 2016 is **intended to strike the right balance of interests of all stakeholders** of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default.
2. As per the **Preamble** to the Code, the purpose of this Act is as under:-
 - (a) To **consolidate and amend the laws** relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals.
 - (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.

26.5 DISTINGUISHING FEATURES OF CODE

1. Comprehensive Law:

- Insolvency Code is a **comprehensive law** which **envisages and regulates the process of insolvency and bankruptcy** of all persons including corporates, partnerships, LLPs and individuals.

2. Withering away of Multiplicity of Laws:

- The Code has withered away the multiple laws **covering the recovery of debts and insolvency** and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.

3. Low Time Resolution :

- The Code provides a low time resolution and **defines fixed time frames for insolvency resolution of companies and individuals**. The process is mandated to be **completed within 180 days, extendable by maximum of 90 days**. Further, for a speedier process there is provision for **fast-track resolution of corporate insolvency within 90 days**. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

4. One Window Clearance:

- The Code has been drafted to provide **one window clearance to the applicant** whereby he **gets the appropriate relief by the same authority** unlike the earlier position of law wherein case the company is not able to revive the procedure for winding up and liquidation, has to be initiated under separate laws governed by separate authorities.

5. Clarity in Process:

- There is a **clear and unambiguous process** to be **followed by all stakeholders**. There is also shift of control from shareholders and promoters to creditors.

6. One Chain of Authority:

- There is one chain of authority under the Code. It **does not even allow the Civil Courts to interfere** with the application pending before the adjudicating authority, thereby **reducing the multiplicity of litigations**. The **National Company Law Tribunal (NCLT)** will adjudicate insolvency resolution for **companies**. The **Debt Recovery Tribunal (DRT)** will adjudicate insolvency resolution for **individuals**.

7. Protects the Interests of Workmen and Employees :

- The Code also **protects the interests of workman and employees**. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation.

8. New Regulatory Authority :

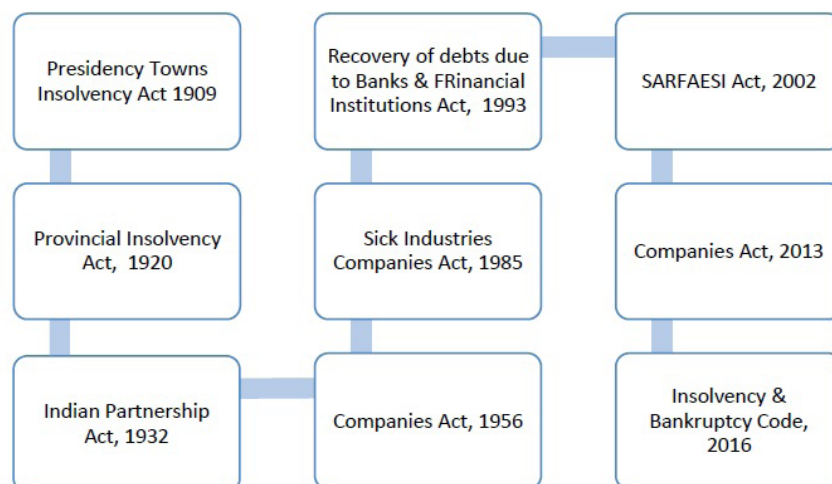
- It provides for constitution of a new regulatory authority, '**Insolvency and Bankruptcy Board of India**' to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and has started functioning.

9. Establishment of Information Utilities (IUs):

- A unique feature of code is establishment of Information Utilities (IUs) which are **intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution**. It is envisioned that in the long run, IUs will have data on debts and credits of all the business houses and it will be able to create an automatic trigger in case of default by any debtor and the authority may initiate the insolvency process as required. Such a system will **reduce the risk of credit in the economy**.

26.6 NEED FOR A NEW LAW

- According to the Ease of Doing Business Report of the World Bank, it takes an **average of four to five years** in insolvency resolution process in India.
- The main reason behind such delay in the legal process is the **existence of overlapping legislations and adjudicating authorities** dealing with insolvency of companies and individuals in India.
- The **Government of India** then **formulated a plan to refurbish the prevailing bankruptcy laws and replace** them with one that will **facilitate hassle-free and time-bound revival and closure** of businesses.
- The **framework of law** which was **in existence earlier** had **failed** to resolve insolvency situations.



- (a) **Financial failure** – a persistent mismatch between payments by the enterprise and receivables into the enterprise, even though the business model is generating revenues.
 - (b) **Business failure** – which is a breakdown in the business model of the enterprise, and is unable to generate sufficient revenues to meet payments.
 - (c) **Malfeasance and mismanagement** by promoters
5. The **laws** which were **in existence** were **not aligned with the market realities** and had several inadequacies.
 6. There was **no single window resolution available** and the resolution and jurisdiction was with the multiple agencies with overlapping powers that was leading to **delays and complexities** in the process.
 7. The **Companies Act** deals with the **corporate insolvency law** and **the individual insolvency laws** were being dealt by a century old two Acts, i.e., The Provincial Towns Insolvency Act and the Presidency Towns Insolvency Act.
 - (a) **Multiple laws governing Debt resolution** and multiple forums
 - (b) **Parallel proceedings by different parties** on the same debtor in different forums and Conflicts between laws and over jurisdictions.
 - (c) **Asymmetry** of information

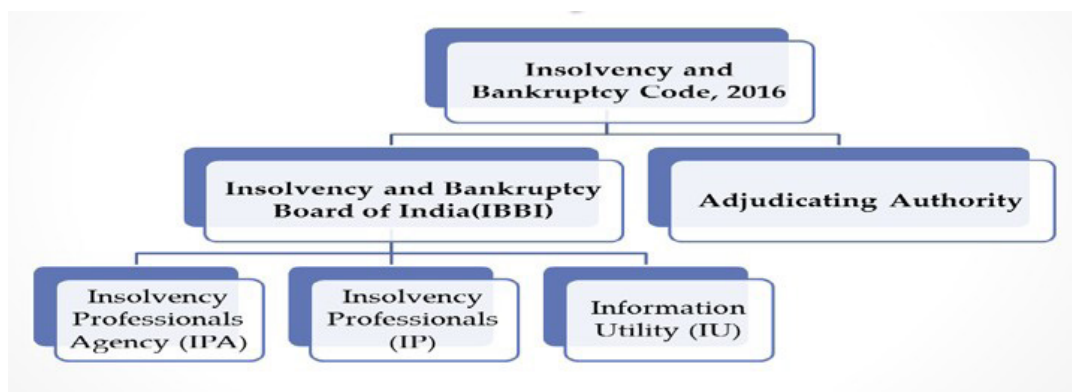
26.7 STRUCTURE OF THE CODE

1. The Code has been divided in to **five parts comprising** of **255 sections and 11 Schedules**.
2. Out of these **some sections** have been **notified by the Ministry** of Corporate Affairs.
3. In order to **bring clarity and a better understanding**, certain **Regulations have also been notified** by the Government.

Structure of code				
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)

26.8 REGULATORY MECHANISM

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



1. Insolvency Professionals-

- The Code provides for insolvency professionals as **intermediaries** who would **play a key role in the efficient working** of the bankruptcy process.
- The role of the IP **encompasses a wide range of functions**, which include **adhering to procedure of the law**, as well as **accounting and finance** related functions.
- In the resolution process, the insolvency professional **verifies the claims of the creditors**, constitutes a **creditors committee**, runs the **debtor's business during the moratorium period** and **helps the creditors** in reaching a **consensus for a revival plan**.
- In liquidation, the insolvency professional **acts as liquidator and bankruptcy trustee**.

2. Insolvency Professional Agencies-

- The Code provides for establishment of insolvency professionals agencies to **enroll and regulate insolvency professionals** as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

3. Information Utilities –

- A notable feature of the Code is the **creation of information utilities to collect, collate, authenticate and disseminate financial information of debtors** in centralised electronic database.
- The Code requires creditors to **provide financial information of debtors** to multiple utilities on an ongoing basis.
- Such information would be **available to creditors, resolution professionals, liquidators and other stakeholders** in insolvency and bankruptcy proceedings.
- The purpose of the same is to **remove information asymmetry and dependency on the debtor's management for critical information** that is needed to swiftly resolve the state of insolvency.

4. Insolvency and Bankruptcy Board of India-

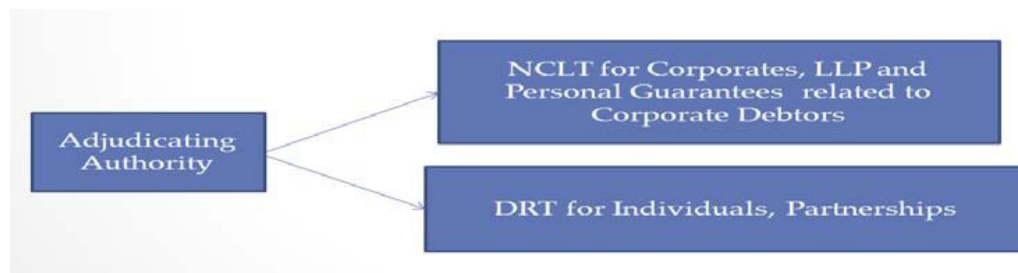
- The Code provides for **establishment of a Regulator** who will **oversee these entities and to perform legislative, executive and quasi-judicial functions** with respect to the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.
- The **Insolvency and Bankruptcy Board of India** was **established on October 1, 2016**. The head office of the Board is located at New Delhi.

5. Adjudicating Authority-

- The adjudicating authority **for corporate insolvency and liquidation** is the **NCLT**. **Appeals** arising out of NCLT orders **lie to the National Company Law Appellate Tribunal** and, thereafter, to

the Supreme Court of India.

- (b) The Code has created one chain of authority for adjudication under the Code.
- (c) Civil Courts have been prohibited to interfere in the matters related with application pending before the adjudicating authority.



- (d) No injunction shall be granted by any Court, Tribunal or Authority in respect of any action taken by the NCLT.
- (e) For individuals and other persons, the adjudicating authority is the DRT. Appeals arising out of DRT orders lie to the Debt Recovery Appellate Tribunal and thereafter, to the Supreme Court.

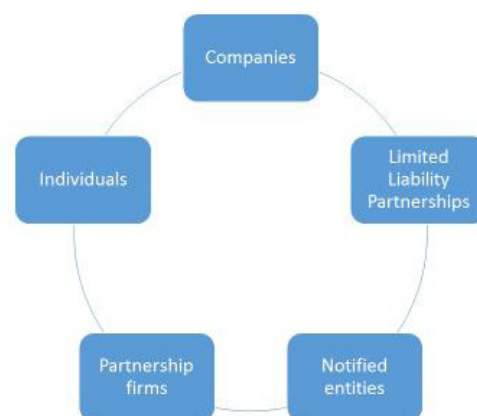
26.9 EXTENT AND COMMENCEMENT OF THE CODE:

- As per section 1 of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir.
- This Code came into an enforcement on 28th May 2016, however, the Central Government appointed different dates for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

26.10 APPLICABILITY OF THE CODE

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

- Any company incorporated under the Companies Act, 2013 or under any previous law.
- 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.
- Any Limited Liability Partnership under the LLP Act 2008.
- Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
- Partnership firms and individuals.



26.11 IMPORTANT DEFINITIONS [SECTIONS 3 AND 5]

- Corporate Person** means

- a company as defined under section 2(20) of the Companies Act, 2013;

- (b) a **Limited Liability Partnership** as defined in 2(1)(n) of Limited Liability Act, 2008; or,
- (c) any **other person incorporated with limited liability** under any law for the time being in force but shall **not include any financial service provider**. [Section 3(7)]
- 2. Corporate Debtor** means a corporate **person who owes a debt** to any person. [Section 3(8)]
- 3. 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. [Section 3(10)]
- 4. 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. [Section 3(11)]
- 5. Claim** means a **right to payment or right to remedy for breach of contract** if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. [Section 3(6)]
- 6. 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 repaid** by the debtor or the corporate debtor, as the case may be. [Section 3(12)]
- 7. Financial information**, in relation to a person, means one or more of the following categories of information, namely:—
- records of the **debt** of the person;
 - records of **liabilities** when the person is solvent;
 - records of **assets of person** over which security interest has been created;
 - records, if any, of **instances of default** by the person against any debt;
 - records of the **balance sheet** and **cash-flow statements** of the person; and
 - such **other information** as may be specified. [Section 3(13)]
- 8. A person** includes:-
- an **individual**
 - a **Hindu Undivided Family**
 - a **company**
 - a **trust**
 - a **partnership**
 - A **limited liability partnership**, and
 - any **other entity** established under a Statute.
- And **includes a person resident outside India** [Section 3(23)]
- 9. Secured creditor** means a **creditor in favour of whom security interest is created**; [Section 3(30)]
- 10. 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.[Section 3(31)]

11. A **transaction** includes an **agreement or arrangement in writing for transfer of assets**, or funds, goods or services, from or to the corporate debtor. [Section 3(33)]
12. **Transfer** includes **sale, purchase, exchange, mortgage, pledge, gift, loan** or any other form of transfer of right, title, possession or lien. In case of property- transfer of property means transfer of any property. [Section 3(34)]
13. **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; [Section 3(35)]
14. **Adjudicating Authority**, for the purposes of this Part II (Insolvency Resolution and Liquidation for corporate persons), means **National Company Law Tribunal** constituted under section 408 of the Companies Act, 2013. [Section 5(1)]
15. **Corporate applicant** means—
 - (a) **corporate debtor**; or
 - (b) a **member or partner** of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
 - (c) an **individual** who is **in charge of managing the operations** and resources of the corporate debtor; or
 - (d) a **person** who has the **control and supervision over the financial affairs** of the corporate debtor; [Section 5(5)]
16. **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; [Section 5(6)]
17. **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; [section 5(7)]
18. **Financial position**, in relation to any person, means the **financial information of a person** as on a certain date; [Section 5(9)]
19. **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; [Section 5(11)]
20. **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; [Section 5(12)]
21. **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; [Section 5(14)]
22. **Liquidation commencement date** means the **date on which proceedings for liquidation commence** in accordance with section 33 or section 59, as the case may be; [Section 5(17)]
23. **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; [Section 5(20)]

24. Related party, in relation to a corporate debtor, means—

- (a) a director or partner or a relative of a director or partner of the corporate debtor
- (b) a key managerial personnel or a relative of a key managerial personnel of the corporate debtor;
- (c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
- (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
- (k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- (m) any person who is associated with the corporate debtor on account of—
 - (i) participation in policy making processes of the corporate debtor; or
 - (ii) having more than two directors in common between the corporate debtor and such person; or
 - (iii) interchange of managerial personnel between the corporate debtor and such person; [Section 5(24)]

25. Resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]

26. Resolution professional, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional; [Section 5(27)]

27. 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.

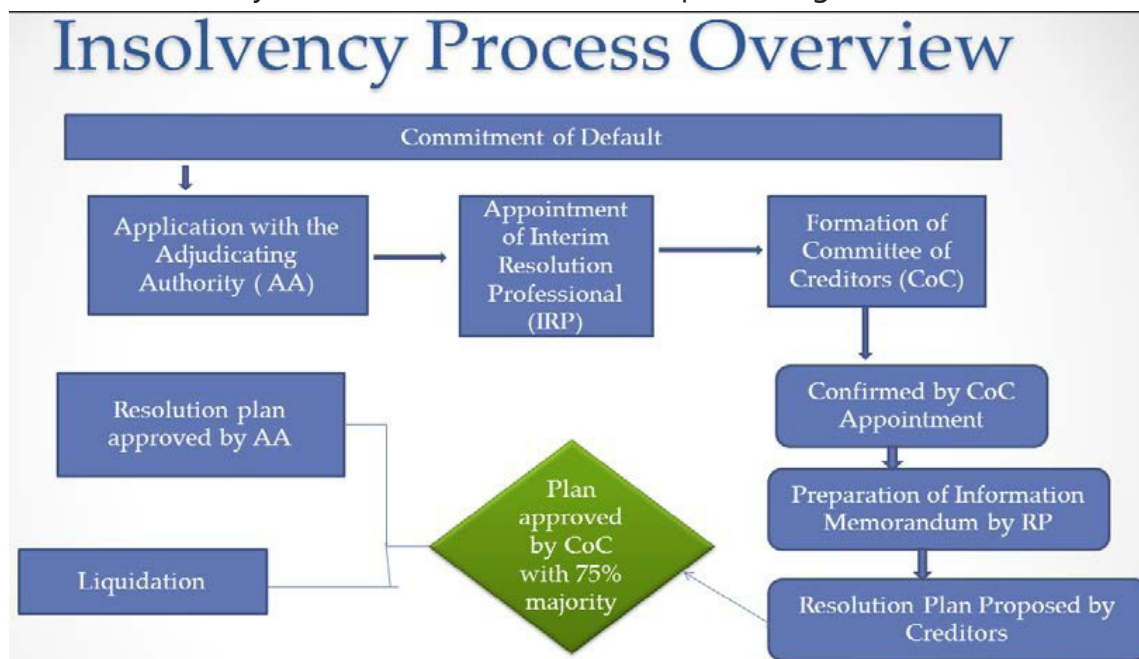
26.12 CORPORATE INSOLVENCY RESOLUTION PROCESS [SECTIONS 4, 6- 32]

1. Introduction

- Provisions related to **Insolvency Resolution and Liquidation process for Corporate Persons** are covered in **Part II** of the Code.
- Corporate Insolvency Resolution is a process during which **financial creditors assess** whether the **debtor's business is viable to continue** and the **options for its rescue and revival**.
- If the insolvency resolution process fails or **financial creditors decide that the business of debtor cannot be carried on profitably** and it should be **wound up**, the **debtor will undergo liquidation process** and the assets of the debtor are realized and distributed by the liquidator.
- The Insolvency Resolution Process provides a **collective mechanism to lenders to deal with the overall distressed position of a corporate debtor**. This is a significant departure from the existing legal framework under which the primary onus to initiate a reorganisation process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

(e) Process Flow

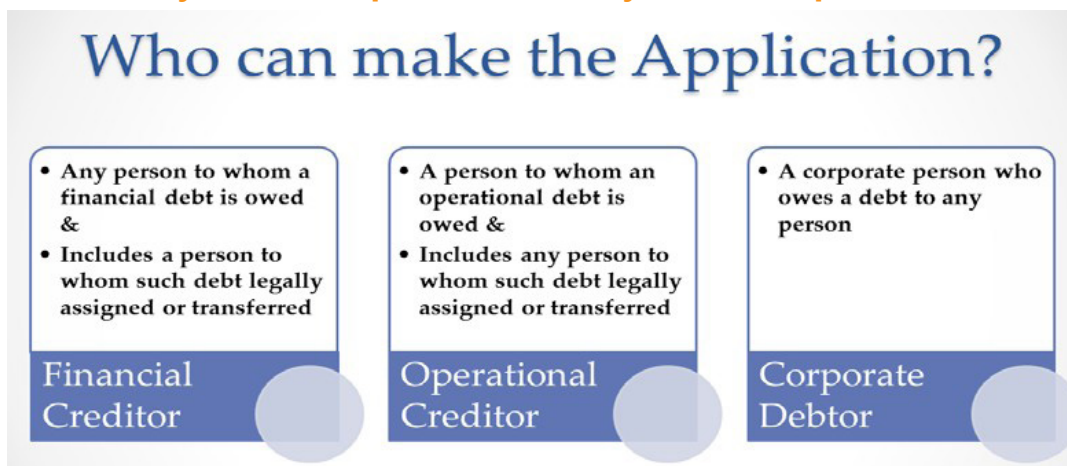
- Process of insolvency resolution framework for corporate is given in below flow chart



2. Applicability of this Part II on the commitment of default:

- The **process of insolvency is triggered by occurrence of default**. Under Section 3 (12) of the Code says that, default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor.
- The **provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more**. However, the **Central Government may**, by notification, **specify the minimum amount of default of higher value which shall not be more than one crore rupees**. [Section 4]

3. 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** itself
- may **initiate corporate insolvency resolution process** in respect of such corporate debtor.

4. Initiation of corporate insolvency resolution process by financial creditor (Section 7)

(a) Filing of application before adjudicating authority:

- (i) A **financial creditor** either by **itself or jointly** with other financial creditors may **file an application for initiating corporate insolvency resolution process** against a corporate debtor before the Adjudicating Authority when a default has occurred.
- (ii) A **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.

(b) Furnishing of information:

- The financial creditor shall, along with the application furnish—
 - (i) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;
 - (ii) **the name of the resolution professional** proposed to act as an interim resolution professional; and
 - (iii) **any other information** as may be specified by the Board.

(c) Time period for determination of default:

- The **Adjudicating Authority** shall, **within fourteen days** of the receipt of the application, **ascertain the existence of a default** from the records of information utility or on the basis of other evidence furnished by the financial creditor.

(d) Order:

- Where the Adjudicating Authority is satisfied that -
 - (i) a **default has occurred** and the application is complete and there is no disciplinary proceeding pending against the proposed resolution professional, it may, by order, **admit such applica-**

tion; or

- (ii) **default has not occurred** or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, **reject such application**:
- Provided that the Adjudicating Authority shall, **before rejecting** the application, **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.

(e) Commencement of corporate insolvency resolution process:

- The corporate insolvency resolution process shall **commence from the date of admission** of the application.

(f) Communication of Order:

- The **Adjudicating Authority** shall **communicate**—
 - (i) the **order to the financial creditor** and the **corporate debtor**;
 - (ii) the order to the financial creditor, **within seven days of admission or rejection** of such application, as the case may be.

5. Insolvency resolution by operational creditor (Section 8)

(a) Serving of demand Notice:

- (i) On the occurrence of default, an **operational creditor** shall first **send a demand notice** and a **copy of invoice** to the **corporate debtor**.
- (ii) “**Demand notice**” means a **notice served by an operational creditor to the corporate debtor demanding repayment** of the operational debt in respect of which the default has occurred.

(b) On receipt of demand notice by corporate debtor:

- **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** about-
 - (i) **existence of dispute**, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
 - (ii) **repayment of unpaid operational debt**—
 - by sending an attested copy of the record of **electronic transfer of the unpaid amount from the bank account** of the corporate debtor; or
 - by sending an attested copy of record that the **operational creditor has encashed a cheque** issued by the corporate debtor.

6. Application for initiation of corporate insolvency resolution process by operational creditor (Section 9)

(a) Filing of application by operational creditor:

- **After the expiry of the period of ten days** from the date of delivery of the notice or invoice demanding payment, if the **operational creditor does not receive payment** from the corporate debtor or notice of the dispute, the operational creditor may **file an application before the Adjudicating Authority** for initiating corporate insolvency resolution process.

(b) Providing of documents/ information:

- The operational creditor shall, along with the application furnish the following documents—
 - (i) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
 - (ii) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
 - (iii) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and
 - (iv) such other information as may be specified.

(c) An operational creditor propose for an interim resolution professional during resolution process:

- An operational creditor initiating a corporate insolvency resolution process, may propose a resolution professional to act as an interim resolution professional.

(d) Order of an adjudicating authority:

- 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 -
 - the application made is complete;
 - there is no repayment of the unpaid operational debt;
 - the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
 - no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
 - 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 the corporate debtor, if -
 - the application made is incomplete;
 - there has been repayment of the unpaid operational debt;
 - the creditor has not delivered the invoice or notice for payment to the corporate debtor;
 - notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
 - any disciplinary proceeding is pending against any proposed resolution professional:
- Provided that Adjudicating Authority, shall before rejecting an application which is incomplete, gives 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.

(e) Commencement of insolvency resolution process:

- The corporate insolvency resolution process shall commence from the date of admission of the application.

7. Initiation of corporate insolvency resolution process by corporate applicant (Section 10)

(a) Commission of default:

- Where a corporate debtor has committed a default, the corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(b) Furnishing of information:

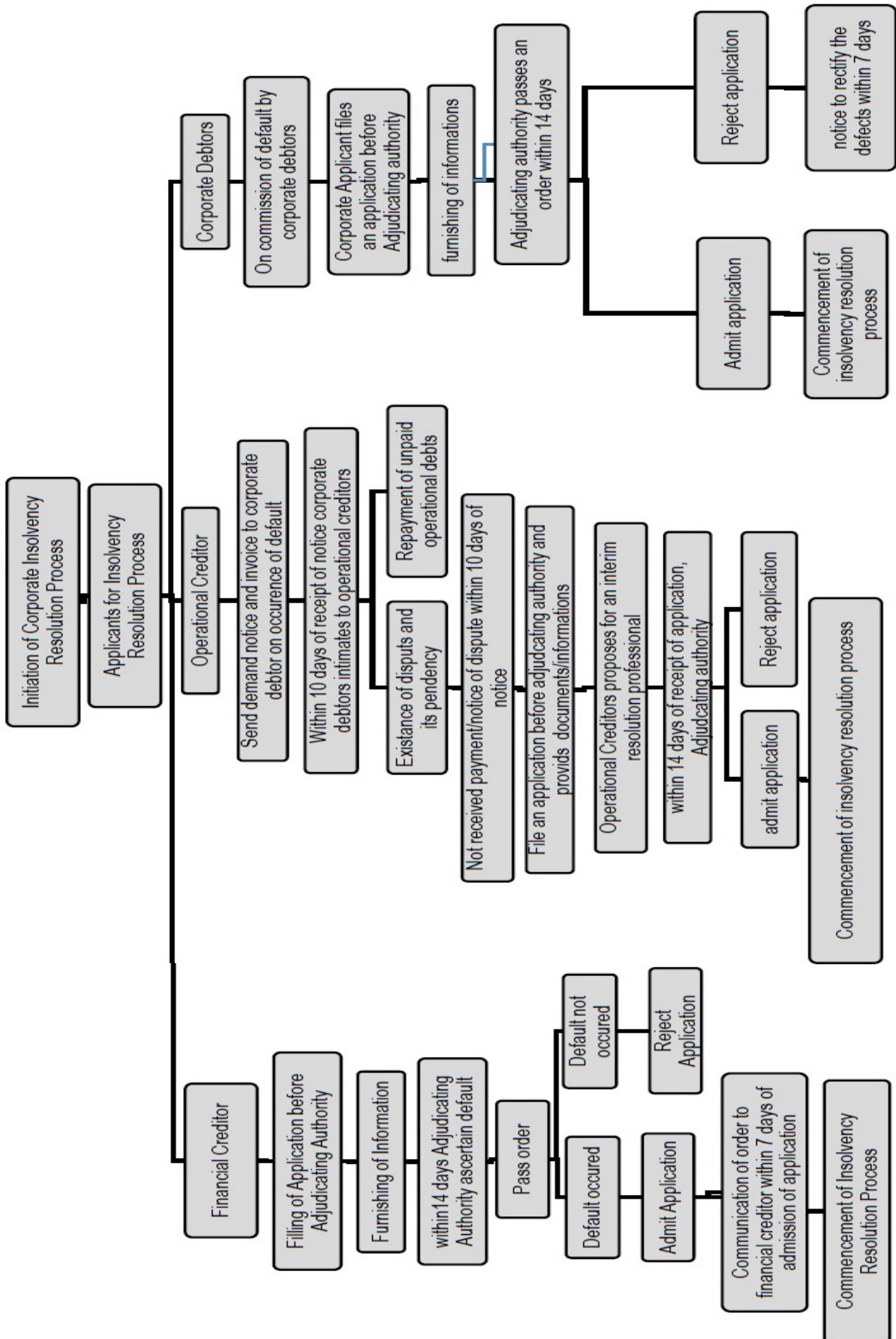
- The corporate applicant shall, along with the application furnish the information relating to—
 - (i) its books of account and such other documents relating to such period as may be specified; and
 - (ii) the resolution professional proposed to be appointed as an interim resolution professional.

(c) Admission/rejection of application:

- The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—
 - (i) admits the application, if it is complete; or
 - (ii) rejects the application, if it is incomplete:
- Provided that Adjudicating Authority shall, before rejecting an application, gives a 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.

(d) Commencement of insolvency resolution process:

- The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.



8. Persons not entitled to make application (Section 11)

- The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process -
 - (a) a corporate debtor **undergoing a corporate 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
 - (c) a **corporate debtor** or a **financial creditor** who has **violated any of the 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**.
- **Explanation:** Corporate debtor includes a corporate applicant in respect of such corporate debtor.

9. Time-limit for completion of insolvency resolution process (Section 12)

(a) Period for completion of insolvency process:

- 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.

(b) Filing of application for extension of period:

- 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 seventy-five per cent of the voting shares**.

(c) Period of extension:

- On receipt of an application, 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**:
- Provided that any **extension** of the period of corporate insolvency resolution process under this section shall **not be granted more than once**.

10. Declaration of moratorium and public announcement (Section 13)

- The Adjudicating Authority, after admission of the application, shall, by an order—
 - (a) **declare a moratorium**;
 - (b) **cause a public announcement** of the initiation of corporate insolvency resolution process and call for the submission of claims, and
 - (c) **appoint an interim resolution professional** in the manner as laid down in section 16.
- The **public announcement** as referred above, shall be **made immediately after the appointment of the interim resolution professional**.

11. Moratorium (Section 14)

- After the commencement of corporate insolvency resolution, a **calm period for 180 days is declared**, during which all suits and legal proceedings etc. against the Corporate Debtor are

kept in abeyance to give time to the entity to resolve its status. It is called the Moratorium Period.

(a) Declaration of moratorium period:

- According to the section 14 of the Code, on the insolvency commencement date, the **Adjudicating Authority shall by order, declare moratorium** prohibiting all of the following acts—
 - (i) **the institution of suits or continuation of pending suits or proceedings** against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) **transferring, encumbering, alienating or disposing** of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) **any action to foreclose, recover or enforce any security interest** created by the corporate debtor or in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (iv) **the recovery of any property** by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(b) 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.

(c) Prohibited Acts:

- **Acts prohibited during Moratorium period**, shall **not apply to such transactions** as may be **notified by the Central Government** in consultation with any financial sector regulator.

(d) Effect of the order of moratorium:

- The order of moratorium shall **have effect from the date of such order till the completion** of the corporate insolvency resolution process:

(e) When Moratorium period shall cease to have effect:

- Provided that where at any time during the corporate insolvency resolution process period, if the **Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor**, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

12. Public Announcement of Corporate Insolvency Resolution Process (Section 15)

- **Interim Resolution Professional** shall make the **Public Announcement immediately after his appointment**. "Immediately" refers to not **more than three days** from the date of appointment of the Interim Resolution Professional.
- As per Section 15 of the Code, public announcement shall include the following:-
 - (a) **Name & Address of Corporate Debtor** under the Corporate Insolvency Resolution Process.
 - (b) Name of the **authority** with which the corporate debtor is incorporated or registered.
 - (c) **Details of interim resolution Professional** who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
 - (d) **Penalties for false or misleading Claims**.
 - (e) The **last date** for the submission of the claims.

- (f) The **date on which the Corporate Insolvency Resolution Process ends**.
- The **expenses** of public announcement shall be **borne by the applicant** which may be reimbursed by the Committee of Creditors, to the extent, it ratifies them.

13. Appointment, tenure and Power of interim resolution professional (Section 16)

- The Adjudicating Authority shall appoint an interim resolution professional **within fourteen days** from the insolvency commencement date.
- As per section 16 of the Code, following is the process for the appointment of interim resolution professional-

(a) Process of appointment of Interim resolution professional

- (i) **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 in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.
- (ii) **Where the application for corporate insolvency resolution process is made by an operational creditor and-**
 - **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;
 - **a proposal for an interim resolution professional is made**, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.
- The **Board** shall, **within ten days** of the receipt of a reference from the Adjudicating Authority, **recommend the name of an insolvency professional to the Adjudicating Authority** against whom no disciplinary proceedings are pending.

(b) Term of appointment

- The term of the interim resolution professional shall **not exceed thirty days** from date of his appointment.

(c) Key roles of an Interim Resolution Professional

- (i) **Issuance of public notice** of the Corporate Insolvency
- (ii) **Resolution process**
- (iii) **Collation of claims** received
- (iv) **Constitution of the Committee** of Creditors
- (v) **Conduct of the first meeting** of the Committee of Creditors

14. Powers of Interim Resolution Professional (Section 17)

- As Per Section 17 of the Code, the interim resolution professional shall have following powers:-

(a) Management of Affairs:

- The management of the affairs of the corporate debtor shall **vest in the interim resolution professional from the date of his appointment**.

(b) Exercise of Power of BoD/ partners:

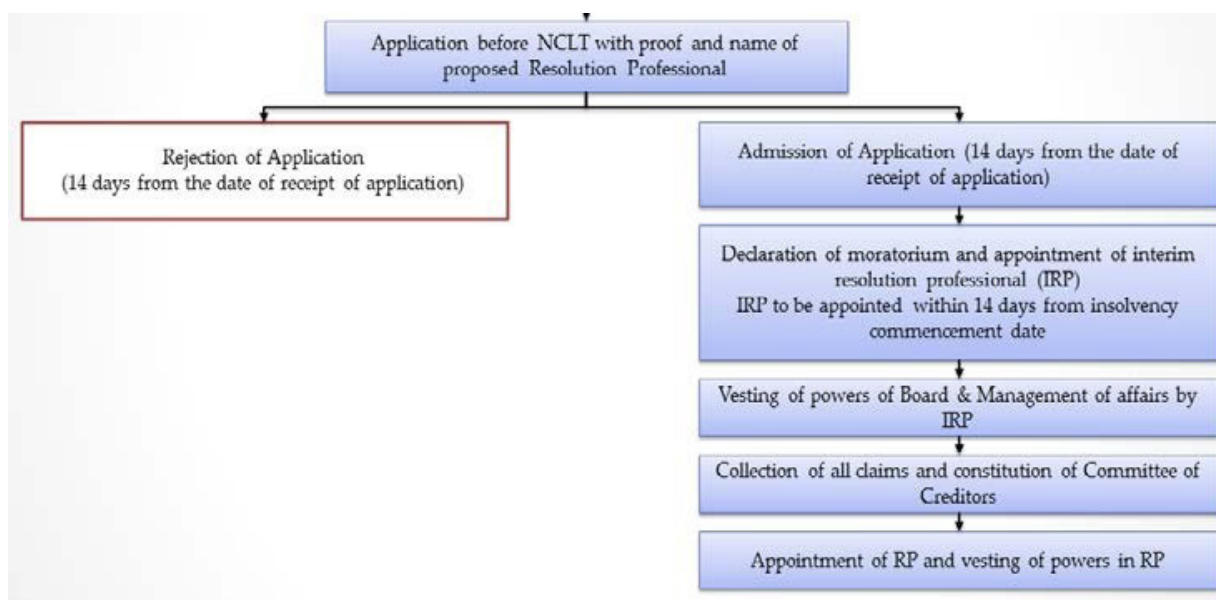
- The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

(c) Reporting of officers/managers:

- 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.

(d) Instructions to financial institutions:

- 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.
- The chart below explains the flow of interim resolution professional.

**15. Committee of creditors (Section 21)**

- As per the Section 21 of the Code, the interim resolution professional shall after collection of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors:
 - The committee of creditors shall comprise of all financial creditors of the corporate debtor.
 - Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.
 - 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.
 - Where any person is a financial creditor as well as an operational creditor,-
 - 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 propor-

- tionate to the extent of financial debts owed to such creditor;
- 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.
- (d) 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.
- (e) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may—
- (i) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
 - (ii) represent himself in the committee of creditors to the extent of his voting share;
 - (iii) 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
 - (iv) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.
- (f) The Board may specify the manner of determining the voting share in respect of financial debts issued as securities.
- (g) All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent of voting share of the financial creditors.
- Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board.
- (h) 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.
- (i) 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.
 - (j) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. (Section 22)

16. Meeting of committee of creditors (Section 24)

- Section 24 specifies the conduct of meeting of Committee of creditors.

(a) Conduct of meeting:

- (i) The members of the committee of creditors may meet in person or by such electronic means as may be specified. All meetings of the committee of creditors shall be conducted by the resolution professional.
- (ii) The resolution professional shall give notice of each meeting of the committee of creditors to—
 - members of Committee of creditors;
 - 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.
 - (iii) The **directors, partners and one representative of operational creditors**, may **attend** the meetings of committee of creditors, but shall **not have any right to vote** in such meetings.
 - Provided that the **absence of any such director, partner or representative of operational creditors**, as the case may be, shall **not invalidate proceedings** of such meeting.
- (b) Appointment of insolvency professional to represent creditor in a meeting of the committee of creditors :**
- 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:
 - Provided that the **fees payable** to such insolvency professional representing any individual creditor will be **borne by such creditor**.
- (c) Right to vote to creditor:**
- (i) Each creditor shall **vote in accordance with the voting share** assigned to him based on the financial debts owed to such creditor.
 - (ii) The **resolution professional shall determine the voting share** to be assigned to each creditor in the manner specified by the Board.
 - (iii) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

17. Appointment and functions of resolution professional (Section 22)

- According to Section 22 of the Code, the **committee of creditors**, may, **in the first meeting**, by a **majority vote of not less than 75 % of the voting 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.

18. Functions of Resolution professional (Section 23)

- Section 23 states the following functions of resolution professional-
 - (a) 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.
 - (b) The resolution professional shall **exercise powers and perform duties** as are vested or conferred on the interim resolution professional.
 - (c) In case of any appointment of a resolution professional, 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.
- The **Resolution Professional's primary function** is to **take over the management of the corporate borrower** and operate its business as a going concern under the broad directions of committee of creditors.
- The **thrust of the Code is to allow a shift of control from the defaulting debtor's management to its creditors**, where the creditors drive the business of the debtor with the Resolution Profes-

sional acting as their agent.

19. Replacement of resolution professional by committee of creditors (Section 27)

- Section 27 provides manner of replacement of resolution professional with another resolution professional by committee of creditors. Process of replacement of resolution professional is as follows:
 - (a) **Committee of creditors is of the opinion** that a resolution professional as appointed, is required to be replaced, it may replace him with another resolution professional.
 - (b) **By majority:**
 - The committee of creditors may, at a meeting, by a vote of 75 % of voting shares, propose to replace the resolution professional appointed with another resolution professional.
 - (c) **Forwarding of name to Adjudicating Authority :**
 - The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
 - (d) **Further forwarding name to Board:**
 - 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.
 - (e) **Continuation of office:**
 - Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed shall continue till the appointment of another resolution professional under this section.

20. Approval of committee of creditors for certain actions of resolution professional, during the corporate insolvency resolution process (Section 28)

- The resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors -
 - (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;

- (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.

■ Approval of the committee of creditors

- (a) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions.
- (b) No action shall be approved by the committee of creditors unless approved by a vote of seventy five percent of the voting shares. 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.

■ Report the actions of the resolution professional to the Board

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

21. Preparation of information memorandum (Section 29)

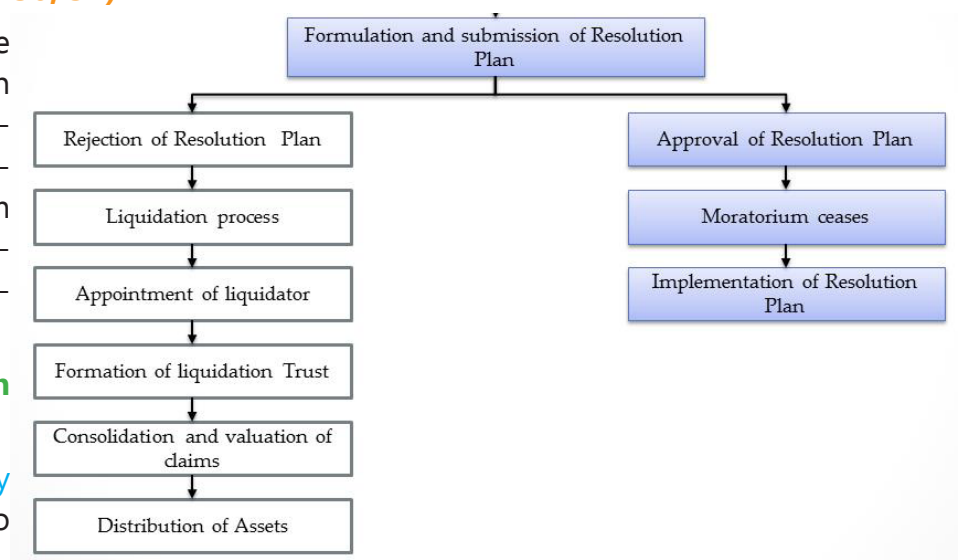
- According to section 29 of the code, the resolution professional shall prepare an information memorandum containing such relevant information as may be specified by the Board for formulating a resolution plan.
- The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form.
- "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.

22. Resolution plan (Section 30, 31)

- Section 30 to 31 of the Code deals with resolution plan. Resolution professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.

(a) Submission of resolution plan:

- A resolution applicant may submit a resolution plan to



the resolution professional prepared on the basis of the information memorandum.

(b) Examination of Resolution Plan:

- The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—
 - (i) 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;
 - (ii) 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;
 - (iii) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - (iv) the implementation and supervision of the resolution plan;
 - (v) does not contravene any of the provisions of the law for the time being in force;
 - (vi) conforms to such other requirements as may be specified by the Board.

(c) Approval from Committee of creditors:

- The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions as mentioned above.
- The committee of creditors may approve a resolution plan by a vote of not less than 75 % of voting share of the financial creditors.

(d) Right of resolution applicant to attend the meeting of the committee of creditors:

- 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.

(e) Submission of approved resolution plan to adjudicating authority:

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

(f) Approval of resolution plan adjudicating authority:

- (i) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
- (ii) 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.
- (iii) After the order of approval of resolution plan—
 - the moratorium order passed by the Adjudicating Authority shall cease to have effect; and
 - 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.

26.13 LIQUIDATION PROCESS

- The Code concerns itself only with those corporate debtors which have defaulted in payment of debts. The **corporate debtor, at the first stage, is put into resolution mode**. The process is called the corporate insolvency resolution process. However, **if attempts to resolve the insolvency of the corporate debtor fail, then only the liquidation provisions of the Code are triggered**.
- Where **no plan is presented** or where the **plan presented is not approved by the Adjudicating Authority** it shall **pass an order** requiring the Corporate Debtor to be liquidated in the manner as laid down in **Chapter III** of the Act.
- **Section 33 to 54** of the Code provides the law related to the liquidation process.

1. Initiation of liquidation (Section 33)

- Section 33 of the Code deals with the **initiation of liquidation process**. Provisions states that where the **Adjudicating Authority**-

(a) Not received a Resolution plan:

- **Before the expiry of the insolvency resolution process period** or the **maximum period permitted for completion** of the corporate insolvency resolution process or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan; or

(b) Rejects the resolution plan for the non-compliance of the requirements specified therein,

- It shall -

- (i) **pass an order requiring the corporate debtor to be liquidated** in the manner as laid down in this Chapter;
- (ii) **issue a public announcement** stating that the corporate debtor is in liquidation; and
- (iii) **require such order to be sent to the authority** with which the corporate debtor is registered.

(c) Intimation of the decision of the committee of creditors to liquidate to Adjudicating authority:

- Where the **resolution professional**, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, **intimates the Adjudicating Authority** of the decision of the committee of creditors to liquidate the corporate debtor, the **Adjudicating Authority shall pass a liquidation order**.

(d) Contravention of resolution plan as approved by the Adjudicating Authority:

- Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, **any person other than the corporate debtor, whose interests are prejudicially affected** by such contravention, may make an **application to the Adjudicating Authority for a liquidation order**.

(e) Determination of contravention the provisions of the resolution plan:

- **On receipt of an application**, if the **Adjudicating Authority determines** that the corporate debtor has **contravened** the provisions of the resolution plan, it shall **pass a liquidation order**.

(f) Bar to filing of suits and legal proceedings:

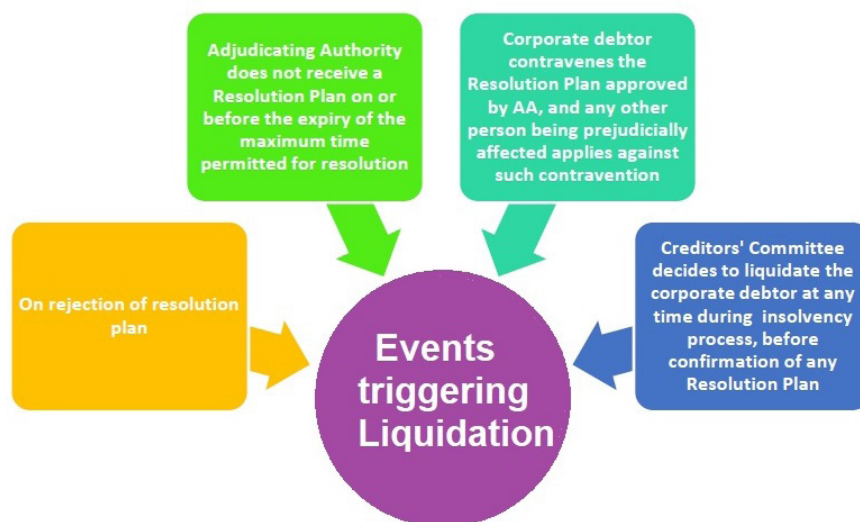
- Subject to section 52, when a liquidation order has been passed, **no suit or other legal proceeding** shall be **instituted by or against the corporate debtor**:

- Provided that a **suit or other legal proceeding** may be instituted by the liquidator, on behalf of the corporate debtor, with the **prior approval** of the **Adjudicating Authority**.
- **Restrictions** on filing of suits and legal proceedings shall **not apply to legal proceedings** in relation to such transactions as may be **notified by the Central Government** in consultation with any financial sector regulator.

(g) Order to be deemed to be notice of discharge:

- The order for liquidation under this section shall be deemed to be a notice of discharge to the **officers, employees and workmen of the corporate debtor**, **except** when the **business** of the corporate debtor is **continued during the liquidation process** by the liquidator.
- So, from above it can be concluded that under the Code, a **corporate debtor may be put into liquidation in the following scenarios:**
 - (i) A **75% majority of the creditor's committee** resolves to liquidate the corporate debtor at any time during the insolvency resolution process;
 - (ii) The **creditor's committee** does **not approve a resolution plan within 180 days** (or within the **extended 90 days**);
 - (iii) The **NCLT rejects the resolution plan** submitted to it on technical grounds; or
 - (iv) The **debtor contravenes the agreed resolution plan** and an affected person makes an application to the NCLT to liquidate the corporate debtor.

- **Once the NCLT passes an order of liquidation**, a **moratorium is imposed** on the pending legal proceedings against the corporate debtor, and the **assets** of the debtor (including the proceeds of liquidation) **vest in the liquidation estate**.



(2) Appointment of liquidator (Section 34)

- Section 34 of the Code provides for appointment of liquidator.
 - (a) Resolution professional to act as liquidator:
 - It states that where the **Adjudicating Authority passes an order for liquidation of the corporate debtor**, the **resolution professional** appointed for the corporate insolvency resolution process, shall **act as the liquidator** for the purposes of liquidation unless replaced by the Adjudicating Authority.
 - (b) **Powers of Board of Director (BOD)/ Key Managerial Personnel (KMP) vested with liquidator:**
 - On the **appointment of a liquidator**, **all powers of the BOD, KMP and the partners** of the corporate debtor, as the case may be, shall **cease to have effect** and shall be vested with the liquidator.

(c) Personnel to extend cooperation to liquidator:

- The **personnel of the corporate debtor** shall extend all **assistance and cooperation to the liquidator** as may be required by him **in managing the affairs** of the corporate debtor in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional.

(d) Order to replace the resolution professional:

- The **Adjudicating Authority** shall by **order replace** the **resolution professional**, if—
 - (i) the **resolution plan** submitted by the resolution professional **was rejected for failure to meet the requirements**; or
 - (ii) the **Board recommends the replacement of a resolution professional** to the Adjudicating Authority for reasons to be recorded in writing.
- **On rejection of resolution plan** due to failure to meet the requirements, the **Adjudicating Authority** may **direct the Board to propose the name of another insolvency professional** to be appointed as a liquidator.
- The **Board shall propose the name** of another insolvency professional **within ten days** of the direction issued by the Adjudicating Authority.

(e) Adjudicating Authority to appoint insolvency professional as the liquidator:

- The **Adjudicating Authority** shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, **by an order appoint** such **insolvency professional as the liquidator**.

(f) Charge of fees for conduct of liquidation proceedings:

- An **insolvency professional proposed to be appointed as a liquidator** shall **charge such fee** for the conduct of the liquidation proceedings and in such **proportion to the value** of the **liquidation estate assets**, as may be specified by the Board.

(g) Payment of fees:

- The **fees** for the conduct of the liquidation proceedings shall be paid to the liquidator **from the proceeds of the liquidation estate**.

(3) Powers and duties of liquidator (Section 35)

- Section 35 of the Code specifies the following power and duties of liquidator—
 - (a) to **verify claims** of all the creditors;
 - (b) to **take into his custody or control** all the assets, property, effects and actionable claims of the corporate debtor;
 - (c) to **evaluate the assets and property** of the corporate debtor in the manner as may be specified by the Board and prepare a report;
 - (d) to take such **measures to protect and preserve the assets and properties** of the corporate debtor as he considers necessary;
 - (e) to **carry on the business** of the corporate debtor for its beneficial liquidation as he considers necessary;
 - (f) to **sell the immovable and movable property and actionable claims** of the corporate debtor in

- liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
- (g) to **draw, accept, make and endorse any negotiable instruments** including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;
- (h) to **take out, in his official name, letter of administration to any deceased contributory** and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;
- (i) to **obtain any professional assistance** from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;
- (j) to **invite and settle claims** of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;
- (k) to **institute or defend any suit, prosecution or other legal proceedings**, civil or criminal, in the name of or on behalf of the corporate debtor;
- (l) to **investigate the financial affairs** of the corporate debtor to determine undervalued or preferential transactions;
- (m) to **take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument** and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;
- (n) to **apply to the Adjudicating Authority for such orders or directions** as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and
- (o) to **perform such other functions** as may be specified by the Board.
- The liquidator shall **have the power to consult any of the stakeholders** entitled to a distribution of proceeds.
 - Provided that any **such consultation shall not be binding on the liquidator**:
 - Provided further that the **records of any such consultation** shall be **made available to all other stakeholders** not so consulted, in a manner specified by the Board.

(4) Liquidation estate (Section 36)

- According to section 36 of the code, for the purposes of liquidation, the **liquidator shall form an estate of the assets**, which will be called the liquidation estate in relation to the corporate debtor.
- The liquidator shall **hold the liquidation estate as a fiduciary for benefit of all the creditors**.

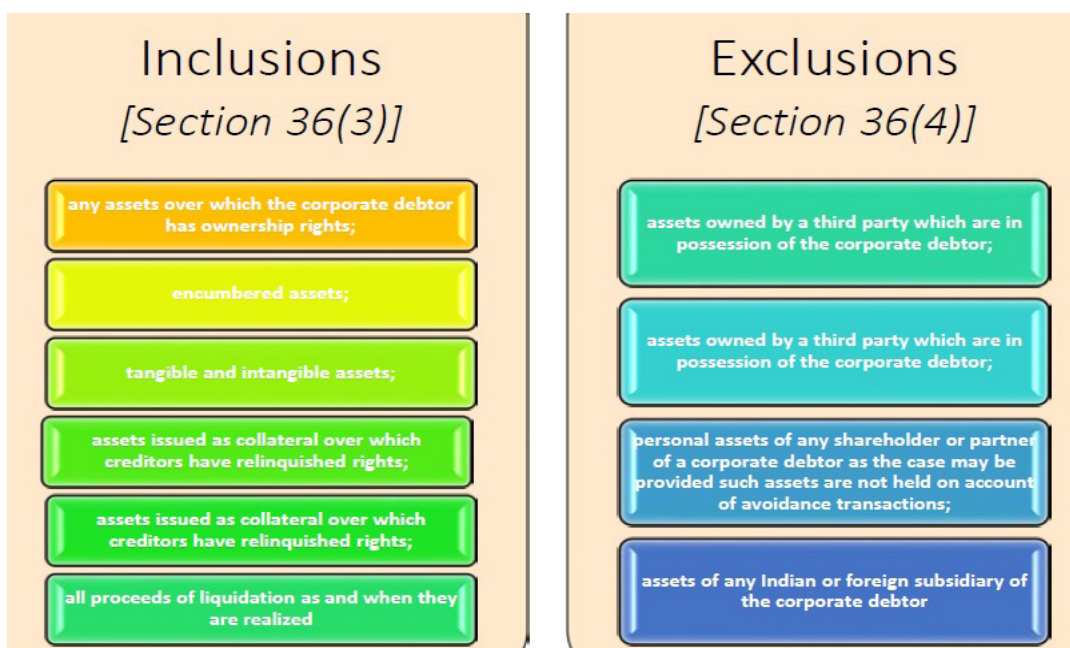
(A) Comprising of liquidation estate:

- The liquidation estate shall comprise of all liquidation estate assets which shall include the following:—

- (a) **any assets over which the corporate debtor has ownership rights**, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) **assets that may or may not be in possession** of the corporate debtor including but not limited to encumbered assets;
- (c) **tangible assets**, whether movable or immovable;
- (d) **intangible assets** including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) **assets subject to the determination of ownership** by the court or authority;
- (f) **any assets or their value recovered through proceedings** for avoidance of transactions in accordance with this Chapter;
- (g) **any asset of the corporate debtor** in respect of which a **secured creditor has relinquished** security interest;
- (h) **any other property** belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) **all proceeds of liquidation** as and when they are realised.

(B) Exceptions to the assets from inclusion in the liquidation estate assets:

- The following shall **not be included in the liquidation estate assets** and shall **not be used for recovery** in the liquidation:—
 - (a) **assets owned by a third party** which are in possession of the corporate debtor, including—
 - (i) **assets held in trust** for any third party;
 - (ii) **bailment contracts**;
 - (iii) all **sums due to any workman or employee** from the provident fund, the pension fund and the gratuity fund;
 - (iv) other **contractual arrangements** which do not stipulate transfer of title but only use of the assets; and
 - (v) such **other assets** as may be notified by the Central Government in consultation with any financial sector regulator;
 - (b) **assets in security collateral held by financial services providers** and are subject to netting and set-off in multi-lateral trading or clearing transactions;
 - (c) **personal assets of any shareholder or partner of a corporate debtor** as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
 - (d) **assets of any Indian or foreign subsidiary** of the corporate debtor; or
 - (e) **any other assets as may be specified by the Board**, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.



(5) Powers of liquidator to access information (Section 37)

- The liquidator shall have the power to access any information systems for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the corporate debtor. The creditors may require the liquidator to provide them any financial information relating to the corporate debtor. The liquidator shall provide information to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

(6) Consolidation of claims (Section 38)

- Section 38 of the Code deals with provisions related to the consolidation of claims. Accordingly-

(a) Collection of claims by liquidator:

- The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

(b) Submission of claims:

- A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility;
- Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor.

(c) Supportive documents:

- An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(d) Amount of claims to be submitted:

- A creditor who is partly a financial creditor and partly an operational creditor shall submit

claims to the liquidator to the extent of his financial debt and to the extent of his operational debt.

(e) Alteration in claim:

- A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

(7) Verification of claims (Section 39)

- The liquidator shall verify the claims submitted within such time as specified by the Board. The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

(8) Admission or rejection of claims (Section 40)

- (a) The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part, as the case may be:
- Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.
- (b) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

(9) Determination of valuation of claims (Section 41)

- The liquidator shall determine the value of claims admitted in such manner as may be specified by the Board.

(10) Appeal against the decision of liquidator (Section 42)

- A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.

(11) Secured creditor in liquidation proceedings (Section 52)

(a) A secured creditor in the liquidation proceedings may-

- (i) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator, or
- (ii) realise its security interest in the manner specified in this section.

(b) To inform the liquidator about realisation of security interest:

- Where the secured creditor realises security interest under clause (b) above, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(c) Verification by liquidator of security interest:

- Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—
- (i) by the records of such security interest maintained by an information utility; or
- (ii) by such other means as may be specified by the Board.

(d) Rights of secured creditor related to secured assets:

- A **secured creditor** may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(e) Restriction in realising of secured asset:

- If in the course of realising a secured asset, any **secured creditor faces resistance from the corporate debtor** or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the **secured creditor may make an application to the Adjudicating Authority** to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(f) Passing of order by Adjudicating Authority:

- The **Adjudicating Authority**, on the receipt of an application from a secured creditor may **pass such order** as may be **necessary to permit a secured creditor** to realise security interest in accordance with law for the time being in force.

(g) Yield of surplus:

- Where the **enforcement of the security interest yields an amount** by way of proceeds which is **in excess of the debts due** to the secured creditor, the secured creditor shall—
 - (i) **account to the liquidator** for such **surplus**; and
 - (ii) **tender to the liquidator** any **surplus funds received** from the enforcement of such secured assets.

(h) Amount of insolvency resolution process to be included in the liquidation estate:

- The amount of insolvency resolution process **costs**, due from secured creditors who realise their security interests in the manner provided in this section, **shall be deducted from the proceeds of any realisation** by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(i) Unpaid debts to be paid by liquidator:

- Where the **proceeds of the realisation of the secured assets are not adequate** to repay debts owed to the secured creditor, the **unpaid debts** of such secured creditor shall be **paid by the liquidator**.

(12) Distribution of assets (Section 53)

- The Code significantly changes the priority waterfall for distribution of liquidation proceeds.

(a) Distribution of proceeds from the sale of the liquidation assets:

- The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority-
 - (i) the **insolvency resolution process costs** and the **liquidation costs** paid in full;
 - (ii) the **following debts which shall rank equally** between and among the following :—
 - **workmen's dues** for the **period of twenty-four months** preceding the liquidation commencement date; and
 - **debts owed to a secured creditor** in the event such secured creditor has relinquished security in the manner set out in section 52;

- (iii) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (iv) financial debts owed to unsecured creditors;
- (v) the following dues shall rank equally between and among the following:—
 - any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (vi) any remaining debts and dues;
- (vii) preference shareholders, if any; and
- (viii) equity shareholders or partners, as the case may be.

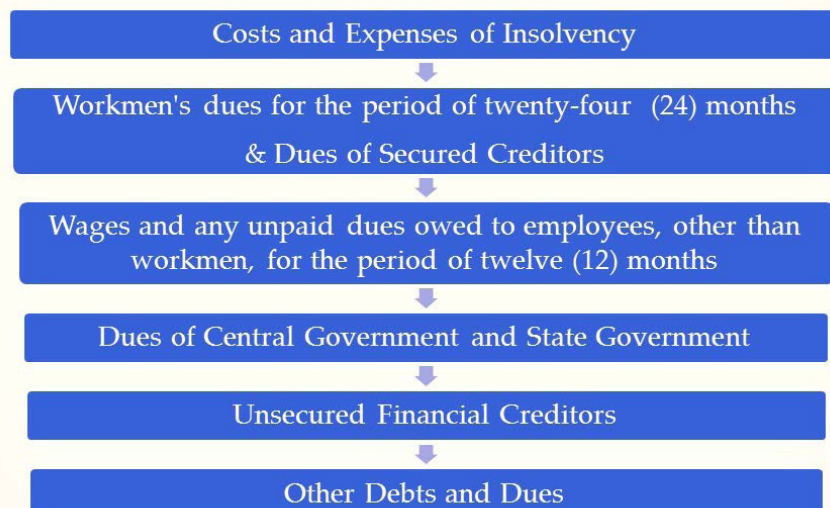
(b) Disregard of order of priority:

- Any contractual arrangements between recipients with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

(c) Fees to liquidator:

- The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients, and the proceeds to the relevant recipient shall be distributed after such deduction.
- **Explanation—** For the purpose of this section—
 - (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

Priority of Claims



(13) Dissolution of corporate debtor (Section 54)**(a) Application by liquidator dissolution:**

- Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.

(b) Date of dissolution:

- The Adjudicating Authority shall on application filed by the liquidator orders that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(c) Submission of order copy:

- A copy of an order shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.