

Insolvency & Bankruptcy Code

- Promulgated on 28.05.2016
- BIFR scrapped by notification dated 25.11.2016 w.e.f. 1.12.16
- IBC functional w.e.f. 1.12.16
 - Corporate Insolvency Resolution Process (CIRP) Regulation framed and effective w.e.f. 1.12.16
 - Liquidation Regulation under IBC framed and effective w.e.f. 15.12.16
- As per Ministry of Corporate Affairs notification dated 07.12.2016 the winding up matters are to be transferred in the following way
 - Winding up for inability to pay debt
 - Where petition filed and served before 15.12.16 the petition will remain with High Court and disposed off under Companies Act, 1956
 - All new petitions to be filed in NCLT under IBC Part-II, Chapter-II (CIRP)
 - Voluntary Winding Up cases to continue with High Court till 1.4.17
 - Cases where BIFR has recorded opinion under Section 20 of SICA for Winding up of the companies
 - Where appeals pending in AAIFR the reference/appeal abates and fresh petition to be filed in NCLT under Part-II, Chapter-II of IBC(CIRP)
 - Where no appeal pending in AAIFR the winding up to be conducted by the High Court under Companies Act, 1956

RESTRUCTURING UNDER IBC

CIRP Procedure under Part-II, Chapter-II of IBC

- The maximum permissible time for completion of Corporate Insolvency Resolution Process (CIRP) shall be 180 days which can be further extended by another 90 days with the approval of NCLT upon an application made in this behalf by RP if instructed to do so by the Committee of Creditors (CC) by a vote of 75%

- Filing of application under CIRP
 - Application for commencement of resolution process can be filed by Financial Creditor (FC), Operational Creditor (OC) or Corporate Debtor (CD)
 - FC means any creditor to whom financial debt is owed by CD and covers
 - Unsecured and Secured FC
 - Money Borrowed against interest
 - Lease or Hire Purchase Sale or Discounting of receivable, towards sale or purchase agreement, derivate transaction, guarantee, counter indemnity against any transaction having commercial effect of borrowing
 - FC/CD can file CIRP application on commitment of default
 - OC has to give a ten days demand notice before filing an application
 - The CIRP applicant whether FC/CD/OC will propose an Insolvency Professional to act as the Interim Resolution Professional (IRP) while filing an application.

- Admission of CIRP
 - Within 14 days of filing an application, Adjudicating Authority (NCLT) will decide on the admission of the application
 - On admission of application, the NCLT will pass an order-
 - Appointing the proposed IP as IRP
 - Declare a moratorium (Section 14)- all suits, decrees, arbitration matters covered- stay on transferring, alienating, encumbering assets
 - cause public announcement for initiation of CIRP and submission of claims
 - Stay on SARFAESI Action- Stay on recovery of property held by CD on lease and in possession of CD
 - Where application by OC and no proposed IRP is suggested NCLT to make reference to IBBI for recommending an IP to act as an IRP

- IRP term not to exceed 30 days from the date of appointment
- Role of Interim Resolution Professional
 - IRP will take over management of CD
 - Powers of Board of Directors of CD shall be suspended
 - Officers/management of CD will report to IRP
 - Banks/FIs maintaining accounts of CD will act as per instructions of IRP
 - Collect all information relating to assets, finance, operations of CD
 - Receive and collate all claims and constitute Committee of Creditors (CC)
 - Manage operations of CD as a Going Concern
 - Take control and custody of any assets over which CD has ownership rights in India or abroad including assets not in possession of the CD
- Meeting of CC
 - To be convened by IRP within 7 days of constitution of CC
 - IRP to determine voting share he can estimate the value of debt and share of the concerned FC)
 - Decision to be taken by CC by vote of not less than 75% of voting share of FCs
 - CC in first meeting by majority vote of not less than 75% may decide to appoint IRP as RP or to replace him with their proposed RP
 - In case CC decides to replace IRP with their proposed RP the NCLT will forward the name of the proposed RP to IBBI (Board) for confirmation and on confirmation, appoint the proposed RP as the RP. However, if Board does not confirm the name within 10 days, NCLT will direct IRP to continue as RP till further orders.
 - Can replace the RP with another RP

- Role of RP
 - To conduct the CIRP
 - All powers of IRP to be exercised by RP
 - Can raise interim finance
 - Appoint accountants, legal and other professionals
 - Convene meetings of CC
 - Prepare Information Memorandum
 - Invite Lenders/Investors and other persons to put forward their resolution plan
 - Put resolution plans for consideration/approval of CC
 - File application for avoidance of extortionate credit transactions, transactions for defrauding creditors, undervalued transactions and preferential or avoidable transactions

- Preparation of Information Memorandum (IM)
 - RP to prepare IM with such relevant information as may be specified by the board for formulating a resolution plan

- Submission of Resolution Plan

RP to recommend the resolution plan provided it provides for the following:

 - Payment of Insolvency Resolution Process cost in priority to other debts
 - Repayment of debt of OC in such manner as not to be less than the amount payable to them in the event of liquidation of CD
 - Management of CD after approval of Resolution Plan
 - Implementation and supervision of Resolution Plan
 - Does not contravene any provisions of law

- Approval of Resolution Plan
 - Where the resolution plan is approved by more than 75% votes in CC and is in compliance with the provisions of law, the NCLT would approve the plan which will be binding on all the stakeholders including CD, Guarantors, employees, creditors, shareholders, etc.

Liquidation

- Initiation of Liquidation
 - The NCLT will pass a liquidation order in the following circumstances:
 - a. In case no resolution plan is received within the stipulated time of 180/270 days
 - b. NCLT rejects the Resolution Plan
 - c. If RP intimates NCLT that CC with a vote of more than 75% has decided to liquidate the CD
 - d. Where Resolution Plan approved by the NCLT has been contravened by CD or any person other than the CD (scheme has failed)
- Implication of liquidation order
 - RP under CIRP to act as liquidator
 - No suit or other legal proceedings will be instituted by or against the CD, provided that liquidator can, with prior permission of NCLT, institute a suit or legal proceeding
 - Liquidation order is deemed to be a notice of discharge to officers, employees and workers of the CD except when business of CD is continued during the liquidation process.
 - Board of directors suspended and all the powers to vest in the liquidator
 - NCLT can replace the resolution professional in case resolution plan submitted by RP was not as prescribed by the law/rules or if the Board recommends replacement of RP

- Powers and Duties of Liquidator

- To receive and verify claims of creditors and admit or reject claims
- To take into his custody and control all assets, properties and actionable claims of CD
- To evaluate assets, property of CD
- Protect and preserve assets, properties of CD
- Carry on business of CD for its beneficial liquidation
- File application for avoidance of preferential transactions, undervalued transactions, transactions for defrauding of creditors, extortionate credit transactions (normally one year and two years if it is to related party)

- Liquidation Estate

- Liquidator shall form a liquidation estate of assets and properties of the CD
- Liquidator shall hold liquidation estate as fiduciary for benefit of all creditors

- Secured creditor in liquidation proceedings

The secured creditor in liquidation proceedings may:

- [section 52(1)(a)] relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets as per section 53
- Realize its security interest in the following manner:
 - a. Inform the liquidator of its security interest and identify assets subject to such security interest
 - b. Liquidator to verify security interest and permit the secured creditor to realize such security interest, the existence of which is proved by the records of information utility or such other means as specified by the board
 - c. Secured creditor can enforce, settle, compromise or deal with secured assets in accordance with law (including SARFAESI or execution

proceedings in DRT etc.). In case secured creditor faces resistance from CD or any person connected therewith in taking possession, selling or disposing off assets, the creditor can approach NCLT for directions to facilitate the enforcement/sale etc

- d. Amount of Insolvency Resolution cost due from the secured creditor to be deduced from sale proceeds generated from sale of secured assets
- e. Where money recovered in excess of dues, the secured creditor shall account to liquidator and tender to him the excess funds
- f. Where money received is less than the debt due towards the secured creditor, the secured creditor to approach liquidator for recovery of balance dues in terms of waterfall mechanism as set out in Section 53

- Distribution of Assets (Waterfall Mechanism) – Section 53

The sale of the assets of the liquidation estate will be distributed in the manner and in the priority as set out below:

1. Insolvency Resolution Process costs and Liquidation costs in full
2. Workers dues for a period of 24 months preceding liquidation commencement date and dues to secured creditor who has relinquished his security interest shall be distributed on pari passu basis
3. Wages and unpaid dues to employees (other than workman) for 12 months preceding the liquidation commencement date
4. Financial debt owed to unsecured creditors
5. Following debts on pari passu basis:
 - a) Amount due to Central Government & State Government
 - b) Debts due to secured creditor remaining unpaid following the enforcement of Security interest
6. Any remaining debts or dues
7. Preference shareholders
8. Equity shareholders

Effect on Personal Guarantees

The proceedings for Insolvency and Bankruptcy of individuals who are guarantors of the CD shall be conducted under the jurisdiction of NCLT where the Insolvency/Liquidation of the CD is being conducted

TIMELINE-CIRP

DESCRIPTION	DAYS
Filing of Application	(-) 14
Admission of Application/ CIRP commencement date/ Declaration of Moratorium	0 Date
NCLT to appoint interim Resolution Professional (IRP)	14 th Day
Public Announcement	16 th Day
Appointment of Registered Valuer to calculate Liquidation value	21 st Day
Creditors to submit claims	37 th Day
IRP to constitute COC & submit Report	44 th Day
1 st COC Meeting	51 th day
Preparation of IM	65 th Day
Submission of Resolution Plan	150 th Day
COC approval of RP	-
Application for approval by NCLT	-
Initiation of Liquidation Process	180 th Day