1. Introduction
Concept of 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. Untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.

Term 'Insolvency' can be used for-

- Individuals
  - known as Bankruptcy

- Organization/Corporates
  - Known as Corporate insolvency

State when an individual or company are not able to pay the debt and the value of assets held by them are less than liability

If, untreated insolvency, it will lead to-

- For non-corporates
  - Bankruptcy

- Corporates
  - Liquidation
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.

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 the 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 their creditor, 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 to cause the 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 are the leading cause of Liquidations and is the only way that can cause a natural person to become a bankrupt.

Need for a New Law

As per the Ease of Doing Business Report of the World Bank, it takes an average of four to five years in insolvency resolution 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 for revival and closure of businesses.
The existing framework of law has failed to resolve insolvency situations.

- **Financial failure** – a persistent mismatch between payments by the enterprise and receivables into the enterprise, even though the business model is generating revenues.

- **Business failure** – which is a breakdown in the business model of the enterprise, and it, is unable to generate sufficient revenues to meet payments.

- **Malfeasance and mismanagement by promoters**

Since, the existing laws were not aligned with the market realities and had several problems and were inadequate. 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. 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.

- Multiple laws governing Debt resolution and multiple forums
- Parallel proceedings by different parties on the same debtor in different forums and Conflicts between laws and over jurisdictions.
- Asymmetry of information

**Objectives:** A sound legal framework of bankruptcy law is required for achieving the following objectives:-

- **Improved handling of conflicts between creditors and the debtor:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.

- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most efficient solution to maximise value during negotiations. The bankruptcy law will create a
platform for negotiation between creditors and external financiers which can create the possibility of such rearrangements.

- **Drawing the line between malfeasance and business failure:** Under a weak insolvency regime, the stereotype of “rich promoters of defaulting entities” generates two strands of thinking:
  
  (a) the idea that all default involves malfeasance and
  
  (b) the idea that promoters should be held personally financially responsible for defaults of the firms that they control.

- **Clearly allocate losses in macroeconomic downturns:** With a sound bankruptcy framework, these losses are clearly allocated to some people. Loss allocation could take place through taxes, inflation, currency depreciation, expropriation, or wage or consumption suppression. These could fall upon foreign creditors, small business owners, savers, workers, owners of financial and non-financial assets, importers, exporters.

The following **benefits are expected from the new Law:-**

- Asset stripping by promoters is controlled after and before default.
- The promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring.
- Others in the economy can make proposals to buy the company at a certain price, alongside a certain debt restructuring.
- All parties knows that if no deal is struck within the stipulated period, the company will go into liquidation. This will help avoid delaying tactics.
- The inability of promoters to steal from the company, owing to the supervision of the IP (Insolvency Professional), also helps reduce the incentive to have a slow lingering death.

The Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship, and facilitate more investments leading to higher economic growth and development.

**Structure of the Code**

The Code is structured into 5 parts comprising of 255 sections and 11 Schedules. Each part deals with a distinct aspect of the insolvency resolution process.

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An **Insolvency and Bankruptcy Board of India (IBBI)** is established to administer the work of insolvency and bankruptcy of corporate persons, firms and individuals.

**Foundation of Code:**

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When an enterprise defaults, control of enterprise shifts to the Committee of Creditors. The proposals are assessed either to revive the enterprise or to take for liquidation.
Decisions are required to be taken in a time bound manner so that there are greater chances that the enterprise is saved as a going concern and productive resources of economy can be put to best use.

**Insolvency of corporate persons** - Part II of the Code, deals with insolvency resolution and liquidation for corporate persons.

At first instance, **corporate insolvency process will be initiated**.

**Insolvency professional will form a committee of creditors** and with their consensus, efforts will be made to develop finalise plan to revive the corporate person.

This process will last for 180 days, extendable by further maximum 90 days.

'**Resolution plan**' will be drafted to restore the corporate.

**A Fast Track Corporate Insolvency Resolution** will be available to small corporate persons.

If the efforts fail to rehabilitate the enterprise, the corporate person will be liquidated in time bound manner.

**NCLT will be Adjudicating Authority and NCLAT will be appellate authority** for corporate persons.

**Provisions relating to Corporate Insolvency Resolution Process** (section 4 to section 32 of Insolvency Code) will be applicable.

**Provisions relating to Liquidation Process of Corporates** (section 33 to section 59 of Insolvency Code) will be effective in case where the enterprise is taken for liquidation.

**Winding up of companies** - In most of the cases, winding up of companies will be through the Insolvency Resolution Process only. Direct winding up process under Companies Act, 2013 will be used very rarely.

**Bankruptcy of individuals and firms** - Part III of Insolvency Code 2016 deals with insolvency resolution and liquidation for individuals and firms. For individuals and firms, there are two distinct processes - fresh start and insolvency resolution. These are followed by bankruptcy order. Debt Recovery Tribunal (DRT) will be adjudicating authority and DRAT will be appellate authority for individuals and firms. These provisions are not yet effective as not notified [as on 30th April, 2018].

In case of other individuals and firms, the process is similar to that applicable to corporate persons.

**Flow of insolvency process**-

- The process will be managed by 'resolution professional' under direction of 'Adjudicating Authority'.
- Insolvency Resolution Process will be initiated.
- Finalise 'repayment plan' with concurrence of debtor and committee of creditors.
- On consensus on repayment plan.
• the individual or firm will get a discharge order.
• On failure to finalize the repayment plan, the person will be declared 'bankrupt'.
• The resolution professional will take over estate of the bankrupt. He will sell or dispose it off and satisfy repayments of creditors to the extent possible.
• After that, the bankrupt will get a 'discharge order'.
• The discharge order will be registered with Board (IBBI) in a register maintained under section 196 of Insolvency Code, 2016.

Provisions of this Code to override other laws: Section 238 of the Code, 2016 states that the Code shall have overriding effect over other laws.

For example, sections 53 and 178 of Insolvency Code, 2016 provide that distribution from sale of assets will be as specified in that section, notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force. However, many tax laws (including GST) provide for first charge on assets of the taxable person. This is also an overriding provision.

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.

Applicability of the Code
The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:
(a) Any company incorporated under the Companies Act, 2013 or under any previous law.
(b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
(c) Any Limited Liability Partnership under the LLP Act 2008.
(d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.

1[(e) personal guarantors to corporate debtors; 

1 Clauses (e), (f) and (g) substituted for clause (e) by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017. Prior to its substitution, clause (e) read as under: "(e) Partnership firms and individuals".
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(f) partnership firms and proprietorship firms; and
(g) individuals, other than persons referred to in clause (e)]

Features of the Insolvency and Bankruptcy Code:
The Insolvency and Bankruptcy Code, 2016 has following distinguishing features:-

(i) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP’s and individuals.

(ii) **No 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.

(iii) **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 to 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.

(iv) **One Window Clearance:** It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in 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.

(v) **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.

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

(vii) **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 started functioning.

Key Objectives of the Code
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. The purpose of enactment of the Insolvency and Bankruptcy Code, 2016 is
as follows:
(a) To consolidate and amend the laws relating to re-organization 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.

**Regulatory Mechanism**
The Insolvency and Bankruptcy Code, 2016 provides a new regulatory mechanism with an institutional set-up comprising of five pillars:-
- Insolvency and Bankruptcy Board of India
- Insolvency Professional Agencies
- Insolvency Professionals
- Information Utilities
- Adjudicating Authority
1. **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.

The Board is a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

**Composition of the Board**

(a) a Chairperson;

(b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex-officio;

(c) one member to be nominated by the Reserve Bank of India, ex officio ;

(d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members

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.

**Principles governing registration of Insolvency Professional Agency**

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code
Functions of Insolvency professional agencies (IPA): It will perform three key functions:

- **Regulatory functions**: Drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members.
- **Executive functions**: Monitoring, inspecting and investigating members on a regular basis, gathering information on their performance, with the overarching objective of preventing frivolous behaviour, and malfeasance in the conduct of IP duties.
- **Quasi-judicial functions**: Addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions.

3. **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. He shall have the power and responsibility to monitor and manage the operations and assets of the enterprise.

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 a liquidator and bankruptcy trustee.

An Insolvency Professional if appointed as a Resolution Professional shall act as a neutral trustee of the assets of the organization.

Every insolvency professional shall abide by the following code of conduct:

- to take reasonable care and diligence while performing his duties;
- to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- to allow the insolvency professional agency to inspect his records;
- to submit a copy of the records of every proceeding before the Adjudicating Authority.
to the Board as well as to the insolvency professional agency of which he is a member; and

- to perform his functions in such manner and subject to such conditions as may be specified.

4. **Information Utilities** – The Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases, at all times.

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 this is to remove information asymmetry and dependency on the debtor’s management for critical information that is needed to swiftly resolve insolvency.

**Obligations of Information Utility:**

An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.

For the purposes of providing core services to any person, every information utility shall—

(a) create and store financial information in a universally accessible format;

(b) accept electronic submissions of financial information from persons who are under obligations to submit financial information;

(c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;

(d) meet such minimum service quality standards as may be specified by regulations;

(e) get the information received from various persons authenticated by all concerned parties before storing such information;

(f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;

(g) publish such statistical information as may be specified by regulations;

(h) have inter-operability with other information utilities.

5. **Adjudicating Authority** – The Adjudicating Authority for corporate insolvency and liquidation is the National Company Law Tribunal (NCLT). Appeals against NCLT orders shall lie with National Company Law Appellate Tribunal (NCLAT) and thereafter to the Supreme Court of India.

The Code has created one chain of authority for adjudication under the Code. Civil Courts
have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority. No injunction shall be granted by any Court, Tribunal or Authority in respect of any action taken by the NCLT.

For individuals and other persons, the Adjudicating Authority is the Debt Recovery Tribunal (DRT), appeals lie to the Debt Recovery Appellate Tribunal (DRAT) and thereafter to the Supreme Court.

Example: XY & Co., a firm applied to NCLT to be declared insolvent as the firm is not able to pay off debts to his creditors in present and in coming future. State whether the act of the firm is valid as to the filing of application in terms of jurisdiction.

Answer: No, as per the Code, individual & firms in relation to Insolvency matters shall apply to the DRT not to NCLT. Here there is violation of jurisdiction in relation to adjudicating authority.

2. Important Definitions [Sections 3 and 5]

(1) **Board** means the Insolvency and Bankruptcy Board of India established under section 188(1) [Section 3(1)]

(2) **Charge** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;[Section 3(4)]

(3) **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)]

(4) **Corporate Person** means

(a) 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)]

(5) Corporate Debtor means a corporate person who owes a debt to any person. [Section 3(8)]

(6) Core services means services rendered by an information utility for—
(a) accepting electronic submission of financial information
(b) safe and accurate recording of financial information;
(c) authenticating and verifying the financial information submitted by a person; and
(d) providing access to information stored with the information utility to persons [Section 3(9)]

(7) 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)]

(8) 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)]

(9) 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)]

(10) Financial information, in relation to a person, means one or more of the following categories of information, namely:—
(a) records of the debt of the person;
(b) records of liabilities when the person is solvent;
(c) records of assets of person over which security interest has been created;
(d) records, if any, of instances of default by the person against any debt;
(e) records of the balance sheet and cash-flow statements of the person; and
(f) such other information as may be specified. [Section 3(13)]

(11) Financial Product means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts
to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument. [Section 3(15)]

(12) **Financial service** includes any of the following services, namely:—

(a) accepting of deposits;

(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(c) effecting contracts of insurance;

(d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

(e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
   (i) buying, selling, or subscribing to, a financial product;
   (ii) availing a financial service; or
   (iii) exercising any right associated with a financial product or financial service;

(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services; [Section 3(16)]

(13) **Financial Service Provider** means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator e.g. banks, financial institutions, insurance companies, mutual funds etc. [Section 3(17)].

(14) **Financial Sector Regulator** means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes-

- the Reserve Bank of India,
- the Securities and Exchange Board of India,
- the Insurance Regulatory and Development Authority of India,
- the Pension Fund Regulatory Authority, and
- such other regulatory authorities as may be notified by the Central Government; [Section 3(18)]
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(15) **Insolvency professional** means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207; [Section 3(19)]

(16) "**Insolvency professional agency**" means any person registered with the Board under section 201 as an insolvency professional agency; [Section 3(20)]

(17) "**Information utility**" means a person who is registered with the Board as an information utility under section 210; [Section 3(21)]

(18) 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)]

(19) **Property** includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property; [Section 3(27)]

(20) **Secured creditor** means a creditor in favour of whom security interest is created; [Section 3(30)]

(22) **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)]

(23) 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)]

(24) **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)]

(25) **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)]

(26) **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)]

(27) "Constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership; [Section 5(4)]

(28) 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)]

(29) "Corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor; [Section 5(5A)]

(30) 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)]

(31) 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)]

(32) Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes:-

a) Any money borrowed against the payment of interest.

b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent.

c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.

d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards.

2 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. Since notified after 30th April, 2018, so this definition is not applicable for November 2018 examination.
e) Any receivables sold or discounted other than any receivables sold on non-recourse basis.

f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

3 Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account.

h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution.

i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in above clauses. [Section 5(8)].

33 Financial position, in relation to any person, means the financial information of a person as on a certain date; [Section 5(9)]

34 Information memorandum means a memorandum prepared by resolution professional under sub-section (1) of section 29; [Section 5(10)]

35 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)]

36 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)]

37 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)]

38 "Interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period; [Section 5(15)]

39 "Liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board; [Section 5(16)]
(40) **Liquidation commencement date** means the date on which proceedings for liquidation commence in accordance with section 33 (Initiation of Liquidation) or section 59 (Voluntary Liquidation of corporate persons), as the case may be; [Section 5(17)]

(41) **Liquidator** means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be; [Section 5(18)]

(42) **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)]

(43) "**Operational debt**" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority; [Section 5(21)]

(44) "**Personal guarantor**" means an individual who is the surety in a contract of guarantee to a corporate debtor; [Section 5(22)]

(45) "**Personnel**" includes the directors, managers, key managerial personnel, designated partners and employees, if any, of the corporate debtor; [Section 5(23)]

(46) **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) any body 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

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4 The word "repayment" is substituted by the word “payment” vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
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;

(iv) provision of essential technical information to, or from, the corporate debtor; [Section 5(24)]

(47) “Related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

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5 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This new insertion is not applicable for November 2018 examination.
(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "Relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughters's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister; and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included; [Section 5(24A)]
19.22 Corporate and Allied Laws

(48) "Resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25; [Section 5(25)]

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

(50) 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)]

(51) 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. [Section 5(28)]

3. Corporate Insolvency Resolution Process [Sections 4, 6-32]

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in Part II of the Code. This part comprises of seven chapters with section 4 to 77 of the Code. Each chapter deals with different issues relating to Insolvency Resolution and liquidation of corporate persons. The term corporate person has been defined in section 3(7) of the Code. Insolvency resolution and Liquidation of financial service providers is excluded from the scope 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 any. If the insolvency resolution process fails or financial creditors decide that the business of debtor cannot be carried on in a profitable manner and it should be wound up, the debtor will undergo liquidation process and the assets of the debtor shall be 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 re-organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 days, extendable by 90 days. It also

6 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017. Prior to its substitution, clause (25) read as under: ‘(25) "resolution applicant" means any person who submits a resolution plan to the resolution professional;’

7 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.
provides 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.

Process Flow
A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to:-

- Filing of application before NCLT
- Adjudication: Admission or Rejection of application
- Moratorium and Public Announcement
- Appointment of Interim Resolution Professional
- Formation of the Committee of Creditors
- Preparation and approval of the Resolution Plan
- Consequences of non-submission of the Resolution Plan

(I) Application to National Company Law Tribunal
The process of insolvency is triggered by occurrence of default. As per Section 3(12) of the Code, 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]

Filing of application before NCLT

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution before NCLT.

Who can initiate insolvency resolution process?

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II) [Section 6].

The application may be made by:-

Financial creditor any person to whom a financial debt is owed &
• Includes a person to whom such debt is legally assigned or transferred

Operational creditor any person to whom a operational debt is owed &
• Includes a person to whom such debt is legally assigned or transferred

Corporate debtor A corporate person who owes a debt to any person

(A) Initiation of corporate insolvency resolution process by financial creditor

(i) Filing of application before adjudicating authority: 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.

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.

(ii) Furnishing of information: The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

8 The word "other financial creditors" s replaced with “the other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government” vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
(c) any other information as may be specified by the Board.

(iii) 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 an information utility or on the basis of other evidence furnished by the financial creditor.

(iv) Order: Where the Adjudicating Authority is satisfied, either—

**May admit application when**
- a default has occurred and,
- and the application is complete
- no disciplinary proceedings pending against the proposed resolution professional

**May reject application when**
- default has not occurred or
- the application is incomplete
- any disciplinary proceeding is pending against the proposed resolution professional

Notice to rectify the defect in the 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.

(v) Commencement of corporate insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application.

(vi) Communication of Order: The Adjudicating Authority shall communicate order of admission or rejection of such application within seven days, as the case may be—

1. in case of admission, to the financial creditor and the corporate debtor;
2. In case of rejection, to the financial creditor [Section 7]

(B) Insolvency resolution by operational creditor

Serving of demand Notice: On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice demanding payment of the amount involved in the default to the corporate debtor.

"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.

On receipt of demand notice by corporate debtor: The 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—

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9 Word "repayment" is substituted with the word "payment" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable to November 2018 examination.
(1) **existence of a 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;

(2) **the repayment of unpaid operational debt**— (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. [Section 8]

**Application for initiation of corporate insolvency resolution process by operational creditor:**

(i) **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 a corporate insolvency resolution process.

(ii) **Providing of documents/ information:** The operational creditor shall, along with the application furnish the following documents—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) 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

12 "(d) such other information as may be specified.

(iii) **An operational creditor to act as an interim resolution professional during the resolution process:** An operational creditor initiating a corporate insolvency resolution process, may propose a resolution professional to act as an interim resolution professional.

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10 Substituted for "if any, and" by the word "if any, or" through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

11 Substituted for "by the corporate debtor; and" with the word "by the corporate debtor, if available" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

12 clause (d) vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018 is replaced with the following clauses "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed". This amendment is not applicable for November 2018 examination.
(iv) Order of an adjudicating authority: The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order—

<table>
<thead>
<tr>
<th>Admit the application and communicate such decision to the operational creditor and the corporate debtor if,—</th>
<th>Reject the application and communicate such decision to the operational creditor and the corporate debtor, if—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the application made is complete; (b) there is no repayment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any resolution professional proposed, if any.</td>
<td>(a) the application made is incomplete; (b) there has been repayment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or (e) any disciplinary proceeding is pending against any proposed resolution professional:</td>
</tr>
</tbody>
</table>

Provided that Adjudicating Authority, shall before rejecting an application which is incomplete, give 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.

(v) Commencement of insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application [Section 9]

(C) Initiation of corporate insolvency resolution process by corporate applicant.

(i) Commission of default: Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

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13 Substituted for "repayment" by the word “payment” through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

14 Substituted for word "repayment" by the word “payment” through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
(ii) **Furnishing of information:** The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional."

(iii) **Admission/rejection of application:** The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete [and no disciplinary proceeding is pending against the proposed resolution professional]; or

(b) reject the application, if it is incomplete [or any disciplinary proceeding is pending against the proposed resolution professional]:

Provided that Adjudicating Authority shall, before rejecting an application, give 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.

(iv) **Commencement of insolvency resolution process:** The corporate insolvency resolution process shall commence from the date of admission of the application. [Section 10]

**Persons not entitled to initiate insolvency process**

Following persons shall not be entitled to initiate the corporate insolvency process:-

(a) A corporate debtor already undergoing an insolvency resolution process; or

(b) A corporate debtor having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or

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15 Substituted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018 with the following—“the corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

This amendment is not applicable for November 2018 examination.

16 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This insertion is not applicable for November 2018 examination.

17 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This insertion is not applicable for November 2018 examination.
(c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;

(d) A corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. [Section 11]

Example: Suppose a ABC Pvt. Ltd. has committed a default, and is undergoing a corporate insolvency resolution process. Mr. X and Mr. Y, are partners of the ABC Pvt. Ltd. However, Mr. X under the constitutional document of the Company, is being authorized to make an application for the corporate insolvency resolution process. Being a partner of ABC Pvt. Ltd. Mr. Y filed an application on behalf of Mr. X for initiation of corporate insolvency process. State the validity of the act of Mr. Y for initiating corporate insolvency resolution process with the Adjudicating Authority?

Answer: According to section 11, a corporate debtor includes a corporate applicant in respect of such corporate debtor. Whereas as Corporate applicant means as per the definition given in section 5(15) corporate applicant can also be a member or partner of the corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor. Since in the given case, Mr. X is the authorized person not Mr. Y, so his act is invalid as to filing of an application to Adjudicating authority to initiate corporate insolvency resolution process.

(II) Adjudication: Admission or Rejection of Application

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

The insolvency resolution process shall commence from the date of admission of application by the Adjudicating Authority. It is referred to as the Corporate Insolvency Resolution Date.

Time-limit for completion of insolvency resolution process

(1) 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.

(2) 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 sixty-five per cent. of the voting shares.

(3) 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

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18 Substituted by "sixty-six" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
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. [Section 12]

Withdrawal of application admitted under section 7, 9 or 10

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be prescribed. [Section 12A]

Process flow for insolvency resolution process

The chart below explains the process flow for insolvency resolution process:

(III) Declaration of moratorium and public announcement:

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.

19 This is a newly inserted provision by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
The public announcement as referred above, shall be made immediately after the appointment of the interim resolution professional. [Section 13]

Moratorium:

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

1) 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—

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

2) 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.

3) 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.

4) 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:

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. [Section 14]

20 The said provision is substituted with the following given provision vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. (3) The provisions of sub-section (1) shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.

This amendment is not applicable for November 2018 examination.
Example: After commencement of Corporate Insolvency Resolution, NCLT declared Moratorium against the corporate debtor. Within a month of declaration, corporate debtor disposed of his property. State validity of the act of corporate debtor.

Answer: As per section 14 of the Code, any transaction/disposal of any assets of Corporate Debtor during the moratorium period which is 180 days from date of commencement of corporate insolvency resolution, is prohibited. So such an act of corporate debtor is not valid.

Public Announcement

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 21 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.

(IV) Appointment, Tenure and Powers of Interim Resolution Professional (IRP)

Appointment of IRP: Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date. Section 16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, the resolution professional as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Where the application for corporate insolvency resolution process is made by an operational creditor and

(a) 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.

21 Substituted "claims" with the following "claims, as may be specified" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
(b) A proposal for an interim resolution professional is made the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

**Period of appointment of IRP:** The term of Interim Resolution Professional shall not exceed 30 days from the date of appointment. [*Section 16*]

**The key roles/Duties** to be performed by the Interim Resolution Professional are:-

(a) Issuance of public notice of the Corporate Insolvency Resolution process

(b) Collation of claims received

(c) Constitution of the Committee of Creditors

(d) Conduct of the first meeting of the Committee of Creditors

(e) File information collected with the information utility

(f) Control on assets over which corporate debtor has ownership rights

(g) Perform other duties as specified by the Board [*Section 18*]

For the purposes of this sub-section, the term "assets" shall not include the following, namely:

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

**Powers of IRP:** 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.

The interim resolution professional vested with the management of the corporate debtor shall—

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22 This period of term is substituted with the following amendment “shall continue till the date of appointment of the resolution professional under section 22“ made vide the by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

23 Substituted by word "section" vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 Examination.
(i) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(ii) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(iii) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(iv) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

(v) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

(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.

**Personnel to extend cooperation to interim resolution professional.**

(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution

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24 This amendment shall be replaced by “may be specified; and” vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

25 This is a newly inserted clause vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
Management of operations of corporate debtor as going concern.

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern. [Section 20]

Resolution Professional (RP)

Appointment: As per Section 22 of the Code the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

The Committee of Creditors in the first meeting by majority vote of not less than 26% 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.

The Adjudicating Authority shall forward the name of the resolution professional proposed to the Board for its confirmation and shall make such appointment after confirmation by the Board.

If the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority

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26 Substituted by "sixty six" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendments not applicable for November 2018 examination.
shall direct the interim resolution professional to continue as the resolution professional until such time as the Board confirms the Appointment of the proposed resolution professional.

**Role and Duties of RP:** The primary role and duty of RP is to conduct corporate insolvency resolution process and to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(1) RP shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

27 [Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.]

(2) RP shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3) 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. [Section 23]

**Duties:** The resolution professional shall undertake the following actions to protect the assets of the corporate debtor, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum;

28 (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;

27 Newly inserted proviso vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

28 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017. Prior to its substitution, clause (h) read as under: (h) Invite prospective lenders, Investors, and any other persons to put forward resolution plans.
(i) present all resolution plans at the meetings of the committee of creditors;
(j) file application for avoidance of transactions in accordance with Chapter III, if any; and
(k) such other actions as may be specified by the Board. [Section 25]

Application for avoidance of transactions not to affect proceedings

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process. [Section 26]

Fees of Resolution Professional: As per Section 5(13) of the Code, the fees payable to any person acting as a resolution professional and any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall be included in the insolvency resolution process costs. It shall have priority over other costs in the event of winding up of the corporate debtor.

Replacement of Resolution Professional: As per the Section 27 of the Code, RP shall be replaced in the following manner:

- If a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional.
- The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.
- As per Section 27 of the Code, the Committee of Creditors may replace the insolvency Resolution Professional with another resolution professional by passing a resolution for the same to be approved by a vote of seventy five per cent of voting shares of the creditors.
- The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and
- After the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.
- Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

29 This provision is substituted with the following amendment “The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.” made vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
Example: Mr. Z was continuing as Interim resolution professional (IRP) in XY Company. The committee of creditors by majority vote of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY Company. The said proposal was confirmed by the Board after the 10 days. State whether Mr. Final is appointed as Resolution professional.

Answer: No, as per the Code, if Board does not confirm the proposed name as RP within 10 days of receipt of proposal, the Adjudicating authority shall direct IRP to continue as RP for such time as the Board would have confirmed for the appointment of Proposed RP.

Preparation of information memorandum: (1) The resolution professional shall prepare an information memorandum containing such relevant information as may be specified by the Board for formulating a resolution plan. (2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) above are complied with.

"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. [Section 29]

(VI) Committee of Creditors

After the collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, the interim resolution professional shall constitute a committee of creditors. The provisions related to the committee of creditors are being dealt under the sections 21 & 24 of the Code.

Constitution of CoC: The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

Comprising of CoC: The committee of creditors shall comprise all financial creditors of the corporate debtor.

Exception: 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:

30 For word “related party to whom a corporate debtor owes a financial debt” is replaced with the “financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor” by the
Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Financial creditor to be part 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 creditor is both financial and operational: Where any person is a financial creditor as well as an operational creditor,—

(a) 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 proportionate to the extent of financial debts owed to such creditor;

(b) 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.

Transfer/assignment of debt: 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.

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—

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) 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

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.
19.40 Corporate and Allied Laws

34(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall be jointly borne by the financial creditors.

35(7) **Determination of voting share**: The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6).

(8) **Decision based on majority of voting share**: 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:

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34 Sub-sections (6A) and (6B) inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

35 Sub-section (7) & (8) have been replaced with the following provisions: “(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one 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 shall comprise of such persons to exercise such functions in such manner as may be specified” vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
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."

(9) **Requisition to require resolution professional:** 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.

(10) **Resolution professional to furnish financial information:** 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. [Section 21]

**Meeting of Committee of Creditors:** The members of the committee of creditors may meet in person or by such electronic means as may be specified.

**Conduct of meeting of CoC:** All meetings of the committee of creditors shall be conducted by the resolution professional.

**Notice:** The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of Committee of creditors,

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

**Attending of meeting:** The directors, partners and one representative of operational creditors, as referred above, 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.

**Appointment of Insolvency Professional:** 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.

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36 Substituted the word "Committee of creditors" with the "Committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

38 Substituted for "Any creditor" by the "Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor" through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
Voting: Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

Determination of voting share: The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

The meetings of the committee of creditors shall be conducted in such manner as may be specified. [Section 24]

Quorum for the Meeting

- A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.

- If the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.

- The adjourned meeting shall quorate with the members of the committee attending the meeting.

Example: Committee of creditors approved the resolution plan with respect to the management of affairs of the company by more than 50% of voting share of the financial creditors. State whether decision given on the resolution plan is binding on the corporate debtors and all its creditors?

Answer: No, as per the Code, the resolution plan shall be approved by the committee of creditors by vote of not less than 75% of voting share of the financial creditors. Resolution plan was not passed by majority.

Approval of committee of creditors for certain actions:

(1) According to section 28 of the Code, 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 namely:—

(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
d) record any change in the ownership interest of the corporate debtor;

e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;

f) undertake any related party transaction;

g) amend any constitutional documents of the corporate debtor;

h) delegate its authority to any other person;

i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;

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.

(2) 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 above actions.

(3) No action shall be approved by the committee of creditors unless approved by a vote of seventy five per cent of the voting shares.

(4) 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.

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

39Rights and duties of authorised representative of financial creditors.

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

39 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This inserted provision is not applicable for November 2018 examination.
Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.—For the purposes of this section, the "electronic means" shall be such as may be specified. [Section 25A].

**Persons not eligible to be resolution applicant.**

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

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40 Inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017.
41 Word “has an account” has been replaced with the “at the time of submission of the resolution plan has an account” Vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
42 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
43 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code.

44(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013

49 Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

50 Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise

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44 This provision is amended with the following amendments made vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018.

49 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.

50 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part ;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

54Explanation— For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)

55Provided that nothing in clause (iii) of this Explanation shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Rights Act, 2002.
Interest Act, 2002; or
(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.”

Explanation II.—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;
(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;
(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
(f) such categories of persons as may be notified by the Central Government.]

(VII) Resolution Plan
A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency. Provision given in sections 30 and 31 of the Code deals with resolution plan. Resolution professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.

56 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
Submission of Resolution Plan by Resolution applicant to resolution professional

A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

Formulation of Resolution Plan

- The Resolution Professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.
- Resolution Professional shall provide access of the following to a Resolution applicant in order to prepare the Resolution Plan:
  - Financial position of corporate debtor
  - Information required by applicant for resolution plan
  - Other matters pertaining to corporate debtor
- Resolution Professional shall examine the Resolution Plan confirming the following and submit the same to Committee of Creditors for its approval.
  
  (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

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57 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

58 Substituted for “repayment” with “payment” by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.
(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force.

(f) conforms to such other requirements as may be specified by the Board.

60 Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

Submission of Resolution Plan

• The resolution plan shall be approved by the Committee of Creditors by a vote of not less than seventy five percent of voting share of the financial creditors.

• The committee of creditors may approve a resolution plan by a vote of not less than 75% per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

59 Substituted for “repayment” with “payment” by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

60 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.

61 Substituted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017

62 With with 66% by the by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.
63 Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018

- The creditors committee considers proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days). Anyone can submit a revival proposal, but it must necessarily provide for payment of operational debts to the extent of the liquidation waterfall.

- 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.

- Subsequently, the Resolution Professional shall submit the Resolution Plan as approved by Committee of Creditors to the Adjudicating Authority. [Section 30]

**Approval of resolution plan:** If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements as per section 30(2), it shall by order approve the resolution plan which shall be binding on the following:

- corporate debtor and its employees,
- members, creditors, guarantors, and
- other stakeholders involved in the resolution plan.

Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the above requirements, it may, by an order, reject the resolution plan.

After the order of approval,—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) 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. [Section 31]

**Appeal against Approval of Resolution Plan:** Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

As per Section 61(3) of the Code, an appeal against an order of Adjudicating Authority for approving the resolution plan may be filed on the following grounds:-

(a) The approved resolution plan is in contravention of the provisions of any law for the time

63 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.
being in force.

(b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.

(c) The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board.

(d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.

(e) The resolution plan does not comply with any other criteria specified by the Board.

**Consequences of non-submission of a Resolution Plan:** When the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period the Adjudicating Authority may pass orders for the liquidation of the corporate debtor.

### 4. 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.

**(I) Initiation of liquidation:**

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—
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 approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

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.

Determination of contravention of 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.

Bar to filing to 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. 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.

Exception: 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.

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:

64 inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
(i) A 65% 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.

(II) Appointment of liquidator: Section 34 of the Code provides of appointment of liquidator.

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.

Powers of BoD/KMP vested in liquidator: On the appointment of a liquidator, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

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65 Replaced by 66% vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This is not applicable for November 2018 examination.
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.

66Order to replace the resolution professional: The Adjudicating Authority shall by order replace the resolution professional, if—

- the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements; or
- the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing, or
- the resolution professional fails to submit written consent

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 67[along with written consent from the insolvency professional in the specified form.] within ten days of the direction issued by the Adjudicating Authority.

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.

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.

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 under section 53.

(III) Powers and duties of liquidator: Section 35 of the Code specifies the following power and duties of liquidator-

(a) to verify claims of the creditors;

66 Third ground for replacement of Resolution Professional has been inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.

67 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This not applicable for November 2018 examination.
(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 as may be specified by the Board and prepare a report;

(d) to take measures to protect and preserve the assets and properties of the corporate debtor;

(e) to carry on the business of the corporate debtor for its beneficial liquidation;

(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;

[68] Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant]

(g) to draw, accept, make and endorse any negotiable instruments 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 on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

[68] Inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018, w.r.e.f. 23-11-2017
(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. 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.

**Powers of liquidator to access information:**

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 [Section 37].

**IV) Liquidation estate:**

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 the benefit of all the creditors.

**Comprising of liquidation estate:** The liquidation estate shall comprise 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.

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 acquiring 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.
Inclusions [Section 36(3)]

- any assets over which the corporate debtor has ownership rights;
- encumbered assets;
- tangible and intangible assets;
- ownership of assets determined by the court/authority;
- assets or their value recovered through proceedings;
- assets issued as collateral over which creditors have relinquished rights;
- property belonging to or vested in the corporate debtor at the insolvency commencement date;
- all proceeds of liquidation as and when they are realized.

Exclusions [Section 36(4)]

- assets owned by a third party which are in possession of the corporate debtor;
- assets in security collateral held by financial services providers;
- personal assets of any shareholder/partner of a corporate debtor, are not held on account of avoidance transactions;
- assets of any Indian or foreign subsidiary of the corporate debtor;
- any other assets as may be specified by the Board.

(V) Consolidation of claims:

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

1. **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.

2. **Submission of claims**: A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility. 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.

3. **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.

4. **Extent 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.
(5) **Alteration in claim:** A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

**Verification of claims:** 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 [Section 39]

**Admission or rejection of claims:** The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part. Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

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 [Section 40]

**Determination of valuation of claims:** The liquidator shall determine the value of claims admitted in such manner as may be specified by the Board. [Section 41]

**Appeal against the decision of liquidator:** A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision. [Section 42]

(VI) **Preferential transactions & Extortionate Credit Transactions**

According to section 43 of the Code, where the liquidator or the resolution professional (RP), is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions to any of the following persons:

(a) A related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date.

(b) A person other than a related party during the period of one year preceding the insolvency commencement date. [Sub-section (4)]

In such case, the liquidator or RP shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

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<tr>
<th>circumstances under which transactions will be referred to as preferential transactions</th>
<th>circumstances under which transactions will not be referred to as preferential transactions</th>
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<tr>
<td>A corporate debtor shall be deemed to have given a preference in the following circumstances:-</td>
<td>Following transfers shall not be referred to as a preference transaction:-</td>
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<tr>
<td>a) If there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial</td>
<td>a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.</td>
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69 Inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, w.e.f. 6-6-2018. This amendment is not applicable for November 2018 examination.
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| debt or operational debt or other liabilities owed by the corporate debtor. | b) Any transfer creating a security interest in property acquired by the corporate debtor to the extent that—
| b) If the transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code. | (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property. Further, any transfer made in pursuance of the order of a Court shall not preclude such transfer to be deemed as giving of preference by the corporate debtor. |

The term “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

**Orders in case of preferential transactions**

The Adjudicating Authority, may, on an application made by the resolution professional or liquidator, by an order:

(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
(f) direct for providing security or charge on any property for the discharge of any financial
debt or operational debt under the order, and such security or charge to have the same
priority as a security or charge released or discharged wholly or in part by the giving of the
preference; and

(g) direct for providing the extent to which any person whose property is so vested in the
corporate debtor, or on whom financial debts or operational debts are imposed by the
order, are to be proved in the liquidation or the corporate insolvency resolution process for
financial debts or operational debts which arose from, or were released or discharged
wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate
debtor or any interest derived from such interest and was acquired in good faith and for
value;

(b) require a person, who received a benefit from the preferential transaction in good faith and
for value to pay a sum to the liquidator or the resolution professional. [Section 44]

Avoidance of undervalued transactions: If the liquidator or the RP, on an examination of the
transactions of the corporate debtor, determines that certain transactions were made during the
relevant period were undervalued, he shall make an application to the Adjudicating Authority to
declare such transactions as void and reverse the effect of such transaction.

A transaction shall be considered undervalued where the corporate debtor —

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets
by the corporate debtor for a consideration the value of which is significantly less than the
value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate
debtor. [Section 45]

Relevant period for avoidable transactions: In an application for avoiding a transaction at
undervalue, the liquidator or resolution professional shall determine:

(a) That the transaction was entered within the period of one year preceding the insolvency
commencement date; or

(b) That the transaction was made with a related party within a period of two years preceding
the insolvency commencement date. [Section 46]

In case where liquidator or RP has not reported to the adjudicating authority of the
undervalued transaction: Section 47 of the Code states that where an undervalued
transaction has taken place and the liquidator or the resolution professional has not reported it
to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor may make
an application to the Adjudicating Authority to declare such transactions void and reverse their
effect.
Where the Adjudicating Authority, after examination of the application made under sub-section (1), is satisfied that—

(a) undervalued transactions had occurred; and

(b) liquidator or the resolution professional, as the case may be, after having sufficient information or opportunity to avail information of such transactions did not report such transaction to the Adjudicating Authority,

it shall pass an order—

(a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48;

(b) requiring the Board to initiate disciplinary proceedings against the liquidator or the resolution professional as the case may be.

**Order in cases of undervalued transactions.**

According to section 48 of the Code states that the order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following:—

(a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

(b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

**Transactions defrauding creditors:** As per section 49 of the Code, where the corporate debtor has entered into an undervalued transaction under section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

However, an order passed under this section—

(1) **shall not affect any interest in property which was acquired from a person other than the corporate debtor** and was acquired in good faith, for value and without
notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(2) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Extortionate credit transactions:

(1) According to section 50 of the Code, where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

(2) The Board may specify the circumstances in which the said transactions shall be considered as an extortionate credit transaction as given under the above provision.

Exception: Where any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

Order of Adjudicating authority: As per Section 51 of the Code, if an Adjudicating Authority after examining the application is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order:

(a) Restore the position as it existed prior to such transaction;
(b) Set aside the whole or part of the debt created on account of the extortionate credit transaction;
(c) Modify the terms of the transaction;
(d) Require any person who is, or was, a party to the transaction to repay any amount received by such person; or
(e) Require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

(VII) Secured creditor in liquidation proceedings

(1) Rights of secured creditor: A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator, or

(b) realise its security interest in the manner specified in this section.

(2) To inform the liquidator of realise 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.
Verification by liquidator of security interest: Before any security interest is realised by the secured creditor, 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—

(a) by the records of such security interest maintained by an information utility; or
(b) by such other means as may be specified by the Board.

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.

Restriction in realising of a 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.

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.

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—

(a) account to the liquidator for such surplus; and
(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

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.

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 [Section 52]

(VIII) Distribution of assets
Section 53 of the Code lays the provisions related to distribution of assets or the proceeds from the sale of the liquidation assets.

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 —
(a) the insolvency resolution process costs and the liquidation costs paid in full;
(b) the following debts which shall rank equally between and among the following:
   (i) workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and
   (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
(d) financial debts owed to unsecured creditors;
(e) the following dues shall rank equally between and among the following:
   (i) 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;
   (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
(f) any remaining debts and dues;
(g) preference shareholders, if any; and
(h) equity shareholders or partners, as the case may be.
(2) **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.

(3) **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.

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 the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 [Section 53]

(IX) **Dissolution of corporate debtor**

**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.

**Date of dissolution**: The Adjudicating Authority shall on application filed by the liquidator order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

**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. [Section 54]

5. **Fast Track Insolvency Resolution for Corporate Persons**

A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed in an expeditious manner i.e., with 90 (ninety) days from the insolvency commencement date. The provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall, mutatis mutandis, apply to the conduct of a fast track corporate insolvency resolution process. The provisions related to the fast track insolvency resolution are being covered under sections 55 to 58 of the Code.

**Who may apply?**

An application under this category can be made by any corporate debtor falling under any of the below mentioned category:-

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government.[Section 55]

**Time period for completion of fast track corporate insolvency resolution process**

The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.
"Fast track commencement date" means the date of admission of an application by the Adjudicating Authority for initiating the fast track process under Chapter IV of Part II of the Code;

Extension: The Adjudicating Authority may extend time period for fast track corporate insolvency resolution process.

The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five percent of the voting share.

And if Adjudicating Authority is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order; extend the duration of such process to a further period which shall not be exceeding forty-five days.

The extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once. [Section 56]

Manner of initiating fast track corporate insolvency resolution process: An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along with—

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process. Manner of initiating fast track corporate insolvency resolution process. [Section 57]

Applicability of Chapter II to his chapter: The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require. [Section 58]

6. Voluntary Liquidation of Corporate Persons [Section 59]

(1) Person who may initiate voluntary liquidation proceeding: A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter V of Part II of the Code.

(2) Requirements for voluntary liquidation to be specified by the Board: The voluntary liquidation of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Conditions of initiation of voluntary liquidation proceedings: Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

   (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to
pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration given above shall be accompanied with the following documents, namely:—

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration, there shall be—

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles, or

(iii) on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) Notification to Registrar of company and the Board: The Company shall notify the Registrar of Companies and the Board about the resolution to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Commencement of liquidation proceeding: The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.

(6) Application of provisions of this Code: The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Application to adjudicating authority on complete wound up of the corporate person: Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) Passing of an order of dissolution: The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) Forward of copy of order: A copy of an order shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.