



भारतीय दिवाला और शोधन अक्षमता बोर्ड Insolvency and Bankruptcy Board of India

Information Brochure on Insolvency Resolution of Corporate Persons¹

The Insolvency and Bankruptcy Code, 2016

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Board of India (IBBI), established on 1st October, 2016 in accordance with the Insolvency and Bankruptcy Code, 2016 (Code), is a body corporate having perpetual succession. It is a key pillar of the ecosystem responsible for implementation of the Code. It is a unique regulator; regulates service providers as well as transactions. It has regulatory oversight over Insolvency Professionals, Insolvency Professional Agencies, Information Utilities, Registered Valuers, and Registered Valuer Organisations. It writes regulations to govern transactions, namely, Corporate Insolvency Resolution Process, Corporate Liquidation, Individual Insolvency, and Individual Bankruptcy under the Code and enforces the Code, rules and regulations made thereunder.

Corporate Insolvency Resolution Process

Corporate insolvency resolution process (CIRP) is the process for resolution of insolvency of a corporate debtor (other than a financial service provider) under the Code. This brochure describes the process as under:

- A. Approach**
- B. Insolvency Resolution Process for Corporate Persons**
- C. Fast Track Insolvency Resolution Process for Corporate Persons**

¹*Disclaimer: This brochure is designed for the sole purpose of creating awareness on the subject and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. A reader must do his own research and / or seek professional advice if he intends to take any action or decision in the matters covered in this brochure. The content of this brochure has been last updated on 10th January, 2018. The Code, Rules, and Regulations relevant to the matter are available at www.ibbi.gov.in.*

A. Approach

The policies and institutions of an economy should provide adequate freedom to every person to enable him to pursue his economic interests meaningfully. Inclusive economies provide such freedom to pursue vocation, create a level playing field for good ideas to replace obsolete ones, and encourage scarce resources to chase the most productive avenues. Such economies unleash and realise full potential of every person and thereby develop faster.

Business plans entail informed risk taking to compete and succeed. Either incumbents are displaced by new businesses or new businesses fail to carve out a competitive space for themselves. Either way, failure of some businesses is integral to a market economy. When a business fails, it needs to be resolved at the earliest and expeditiously. Any undue delay in commencement or conclusion of resolution may lead to exodus of key stakeholders and aggravate the failure, sometimes beyond repair. If the resolution is not possible, an orderly exit mechanism should allow stakeholders to recover their dues from liquidation proceeds of the business and free-up resources for reallocation.

However, this is not how business failures were addressed till recently. There was no mechanism that rescued failed firms or released resources from failed firms to alternate firms. The resources did not move seamlessly from less competitive firms to more competitive firms continuously. This deterred optimal utilisation of resources and dampened entrepreneurship.

The promoters stayed in control of the company even after default. The creditors were ineffectual in recovering their dues. The recovery rates obtained in India when default takes place are among the lowest in the world. This has resulted in a constrained

credit market where lenders are averse to take informed risks. Viable projects are crowded out due to lack of funding or inordinately high-risk premium demanded by lenders. In absence of a predictable and orderly mechanism of resolution of insolvency, this risk is priced arbitrarily and invariably higher, based on the worst-case scenario of no-recovery and write-off of investment. The probability of failure is thus aggressively built into the hurdle rate of such risk capital. The resultant high cost of capital creates a vicious cycle where entrepreneurs with feasible projects are priced-out as they refuse to access market at such high cost and capital providers end up financing the riskier ventures who are willing to borrow at such high cost. The outcome is high rate of failures and further risk aversion among lenders, creating a vicious cycle of distorted credit markets.

As a part of comprehensive economic reforms, India made decisive paradigm shift in the early 1990s from State provision of goods and services to State regulation for provision of goods and services by market. The thrust of the reforms since then has been provision of economic freedom and building institutions to promote and protect such freedom and regulate such freedom only to address market failures. The Indian economy witnessed freedom of entry in the 1990s led primarily by reform in securities laws, and freedom to compete in the 2000s led primarily by reform in competition laws. The economic reforms have ensured that an entrepreneur in India today has freedom to start and pursue his venture in a nurturing environment. This decade has witnessed the ultimate economic freedom, the freedom to exit, led primarily by reform in insolvency and bankruptcy framework. The Insolvency and Bankruptcy Code, 2016 completes the virtuous cycle of freedom with freedom to exit.

The Code enables a firm to get in and get out of business with ease, keep striving for

resurrection and new pursuits, undeterred by honest business failures. It reduces incidence of failure in two ways. First, the inevitable consequence of default in terms of insolvency proceedings prompts behavioural changes on the part of debtor to try hard to prevent business failure. Second, it reduces failure by setting in motion a process that rehabilitates failing but viable businesses. If rehabilitation is not possible, the Code facilitates closure of businesses with the least cost and disruptions. The Code thus addresses business failures by reducing the chances of failure, rescuing failing businesses where possible and releasing resources from businesses, where rehabilitation is not possible and thereby promotes entrepreneurship. It improves availability of credit by (i) preventing default, (ii) recovering default from future earnings of the firm, post-resolution, and (iii) recovering default from sale of liquidation assets. It enables the optimum utilisation of resources, all the time, either by (a) preventing use of resources below the optimum potential, (b) ensuring efficient resource use within the firm through resolution of insolvency; or (c) releasing unutilised or under-utilised resources for efficient uses through closure of the firm. By liberating the resources stuck up in inefficient and defunct firms for continuous recycling, the Code has changed the journey from 'Hopeless End' to 'Endless Hope'.

B. Insolvency Resolution Process for Corporate Persons

The Code read with the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 and the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 govern CIRP:

1. On a minimum default of Rs.1 lakh by a corporate debtor, a stakeholder – a financial creditor, an operational creditor or a corporate applicant - may initiate CIRP in respect of such

corporate debtor by filing an application with the Adjudicating Authority (AA). It is an entitlement of a stakeholder to initiate CIRP. It is not an obligation. It may not initiate CIRP if it has reasons not to do so.

2. The following persons are not eligible to initiate CIRP:
 - a. a corporate debtor who is undergoing CIRP;
 - b. a corporate debtor who has completed CIRP in the last twelve months;
 - c. a corporate debtor or a financial creditor who has violated any of the terms of resolution plan approved in the last twelve months; and
 - d. a corporate debtor in respect of whom a liquidation order has been made.
3. The AA for a corporate person is the National Company Law Tribunal (NCLT), having territorial jurisdiction over the location of registered office of the corporate person.
4. A financial creditor may initiate the CIRP itself or jointly with other financial creditors by filing an application before the AA with the proof of default on debt owed to itself or to any other financial creditor of the corporate debtor. A financial creditor can initiate CIRP even when the corporate debtor has defaulted to another financial creditor.
5. An operational creditor needs to deliver to the corporate debtor a demand notice or a copy of an invoice of unpaid debt demanding payment of default amount. If after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, the operational creditor does not receive payment from the corporate debtor or notice of existence of a

- dispute, it may initiate CIRP by filing an application with the AA.
6. A creditor needs to produce, along with the application, the evidence of the default recorded with an information utility (IU) or such other specified record or evidence.
 7. A corporate applicant may initiate CIRP of the corporate debtor by filing an application with the AA.
 8. The financial creditor and the corporate debtor initiating the CIRP need to propose the name of an Interim Resolution Professional (IRP) in the application. It is optional for the operational creditors filing the application to propose an IRP.
 9. The financial creditor and the operational creditor need to send a copy of the application filed with the AA to the corporate debtor.
 10. The AA admits the application within a period of fourteen days of its receipt if it is in order. It may reject an application after giving the applicant an opportunity to rectify the defect in the application.
 11. The AA may permit withdrawal of application on a request made by the applicant before admission.
 12. Once admitted, CIRP commences on the date of admission (Insolvency commencement date) and needs to be completed within 180 days from this date.
 13. On admission, the AA passes an order declaring a moratorium which continues till completion of CIRP. This protects the corporate debtor from new and pending suits, and enforcement of security interest, and prohibits the corporate debtor from transferring, encumbering, disposing of any of its assets.
 14. During moratorium period, the essential goods and services such as electricity, water, telecommunication, and information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor, are not terminated or suspended or interrupted.
 15. The AA appoints an IRP, as proposed by the financial creditor or the corporate applicant, within 14 days from the insolvency commencement date. If no IRP is proposed in the application by an operational creditor, the AA makes a reference to the IBBI and the IBBI recommends an IRP within 10 days of receipt of such reference from AA. An IRP holds office up to 30 days from date of his appointment.
 16. Immediately upon appointment of the IRP, the management of the affairs of the corporate debtor vest in him. The powers of the board of directors of the corporate debtor are suspended and exercised by the IRP. The officers and managers of the corporate debtor report to him and provide access to debtor's documents and records. The personnel of the corporate debtor, its promoters and other persons associated with the management of the corporate debtor extend all assistance and cooperation to the IRP.
 17. The IRP manages the operations of the corporate debtor as a going concern. He takes control of assets of the corporate debtor. These assets do not include: (i) assets owned by a third party but in possession of the corporate debtor held under trust or under contractual arrangements including bailment, (ii) assets of any Indian or foreign subsidiary of the corporate debtor; and

- (iii) assets as may be notified by the Central Government.
18. Within three days of his appointment, the IRP makes a public announcement, inviting all the potential creditors to file claims against the debtor for their dues. One needs to submit proof of claim within fourteen days from the date of appointment of the IRP. However, a creditor can submit proof of claim till the approval of the resolution plan by the Committee of Creditors (CoC).
 19. Within seven days of his appointment, the IRP appoints two registered valuers to determine the liquidation value of the corporate debtor. Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date. The registered valuers submit an estimate of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor. The liquidation value is kept confidential and is shared with every member of the CoC after receiving the resolution plans and after obtaining confidentiality undertakings.
 20. The IRP constitutes the CoC on the basis of claims received against the corporate debtor. The CoC comprises of all the financial creditors of the corporate debtor. However, a related party to whom a corporate debtor owes a financial debt does not have any right of representation, participation or voting in a meeting of the CoC.
 21. Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the CoC is constituted with eighteen largest operational creditors by value, and one representative of workmen and employees each; other than those workmen or employees already included in the group of eighteen largest operational creditors.
 22. The IRP files a report on constitution of the CoC with the AA on or before the expiry of thirty days from the date of his appointment and convenes the first meeting of the CoC within seven days of such filing.
 23. The CoC in its first meeting decides either to appoint the IRP as the Resolution Professional (RP) or to replace the IRP by another Insolvency Professional (IP) as RP.
 24. The RP conducts the entire resolution process and manages the operations of the corporate debtor during the CIRP.
 25. Specified decisions are taken by the CoC. The RP presides over the meetings of the CoC. The CoC decides the matters by a vote of seventy five percent of the voting shares.
 26. The IRP prepares an Information Memorandum (IM) and submits to each member of the CoC and potential resolution applicants. The IM contains the information required by resolution applicants to draw up resolution plan for the corporate debtor. It provides the financial position of the corporate debtor, information related to disputes by or against the corporate debtor, list of creditors along with the amounts claimed by them and the amounts admitted, and security interests, if any, in respect of such claims, and any other relevant information.
 27. The RP may, based on the complexity and scale of operations of the corporate debtor, specify the eligibility criteria for potential resolution applicant with the approval of the CoC. He invites

resolution plans from prospective eligible resolution applicants.

28. The resolution plan should resolve insolvency of the corporate debtor as a going concern. It should be feasible and viable. Subject to these, resolution plan permits limitless possibilities - turn-around, buy-out, merger, acquisition, takeover, change in product lines, change in management, etc.
29. The Code prohibits a person having the specified ineligibilities from submitting a resolution plan. A person is not eligible to submit a resolution plan if he is an undischarged insolvent, is a wilful defaulter, has an NPA account for more than a year, has been convicted of an offence punishable for more than two years, is disqualified to act as a director, is prohibited from accessing or trading in securities market, etc.
30. The RP examines each resolution plan to confirm that it provides for and/or meets the following requirements:
 - a. It has identified sources of funds to pay the insolvency resolution process costs. This payment will be paid in priority to any other creditor.
 - b. It provides for at least the liquidation value due to the operational creditors in priority to any financial creditor. This payment is to be made before the expiry of thirty days from the date of approval of the resolution plan by the AA.
 - c. It provides for at least the liquidation value due to dissenting financial creditors. This payment is to be made before any recoveries are made by the financial creditors who voted in favour of the resolution plan. Creditors in CoC who abstained from voting and the creditors who voted against the approved resolution plan are considered as dissenting creditors for this purpose.
31. The insolvency resolution process cost includes the following:
 - d. It provides for: (a) the term of the plan and its implementation schedule, (b) the management and control of the business of the corporate debtor during the implementation period, and (iii) adequate means for supervision of the plan.
 - e. It does not contravene any of the provisions of the law for the time being in force.
 - f. It includes a statement as to how it has dealt with the interests of all stakeholders, including financial and operational creditors of the corporate debtor.
32. The RP presents the resolution plans that conform to the criteria specified in the Code and prescribed by the CoC.
 - a. the amount of interim finance and the cost incurred in raising such finance;
 - b. the fees payable to IRP;
 - c. any cost incurred by the RP in running the business of the corporate debtor as a going concern;
 - d. any cost incurred at the expense of the Government to facilitate CIRP;
 - e. amounts due to suppliers of essential goods and services;
 - f. amounts due to a person whose rights are prejudicially affected because of the moratorium imposed;
 - g. expenses incurred on or by the interim resolution professional to the extent ratified and fixed by the CoC; and
 - h. other costs directly relating to the corporate insolvency resolution process and approved by the CoC.

33. The CoC deliberates and after considering its viability and feasibility, approves a resolution plan by a vote of not less than 75% of voting share.
34. The RP submits the resolution plan, as approved by the CoC, to the AA for its approval.
35. If the AA is satisfied that the resolution plan, as approved by the CoC, meets the requirements specified in the Code and the regulations, it approves the resolution plan. On approval by the AA, the resolution plan is binding on corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
36. On approval of resolution plan by the AA, CIRP ends and the moratorium ceases to have effect.
37. The Code provides for a one-time extension of resolution period up to ninety days for valid reasons on an application filed by the resolution professional on the instructions of the CoC, with AA. If satisfied, the AA grants the extension.
38. If no CoC approved resolution plan is submitted to the AA within 180 days (or before the extended period) or the submitted resolution plan is rejected by the AA, the liquidation process is triggered for the corporate debtor.
39. The CoC may decide to liquidate the corporate debtor anytime during CIRP.
40. A person aggrieved by an order of the AA, be it admission or rejection of application for initiation of CIRP or the approval or rejection of the resolution plan, may prefer an appeal to the appellate authority (NCLAT). A person aggrieved by the order of NCLAT may further prefer an appeal to the Supreme

Court on a question of law. No civil court has jurisdiction in matters on which the NCLT or the NCLAT has jurisdiction under the Code.

41. It is duty of the RP to apply to AA for directions or orders wherever he finds preferential transactions, undervalued transactions, extortionate credit transactions, and fraudulent transactions.

C. Fast Track Insolvency Resolution Process for Corporate Persons

Small corporates generally have simple operating models and clear capital structures. Insolvency of such firms can be potentially addressed more expeditiously compared to normal period of 180 days. The Code provides for fast track resolution of such corporates in 90 days, extendable by 45 days. The Code read with the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 and the IBBI (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 govern the Fast Track CIRP. Apart from the compressed timelines and appointment of only one valuer instead of two, the Fast Track Process is broadly similar to the CIRP.

The following corporate debtors are eligible for resolution under the Fast Track Process:

- i. a *small company*, as defined under clause (85) of section 2 of Companies Act, 2013 (where paid up capital is less than Rs.50 lakh and turnover is less than Rs.2 crore); or
- ii. an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.
- iii. a *start-up* as defined in the notification dated 23rd May, 2017 of the Government of India in the Ministry of Commerce and Industry. An entity is considered as a start-up if:

- a. five years (ten years in case of biotechnology) have not passed since its incorporation;
- b. its turnover for any of the financial years since incorporation/registration has not exceeded Rs.25 crore; and
- c. it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

If after initiating the fast track process the IRP finds, based on records of the corporate debtor and claims, that fast track is not applicable, he shall apply to AA for converting fast track CIRP to normal CIRP.

It is envisaged that successful implementation of the Code will manifest into expansion of credit markets, particularly unsecured credit market for asset light businesses. The Code aspires to expand the capital avenues for business finance, where various classes of capital providers can distinguish and price credit risks across risk categories and offer differentiated and customized credit products for businesses at different stages of maturity and financial strength. It further encourages entrepreneurs to take informed risk and pursue their ideas with the confidence that in case the idea needs a fresh lease of life at a later stage or does not fructify into a viable venture, there is an orderly and predictable mechanism that provides for insolvency resolution, wherever possible and ease of exit, wherever required.