



# Western Indian Regional Council – Institute of Chartered Accountant of India

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**INSOLVENCY PROFESSIONAL**

# Corporate Insolvency Resolution Process [CIRP]

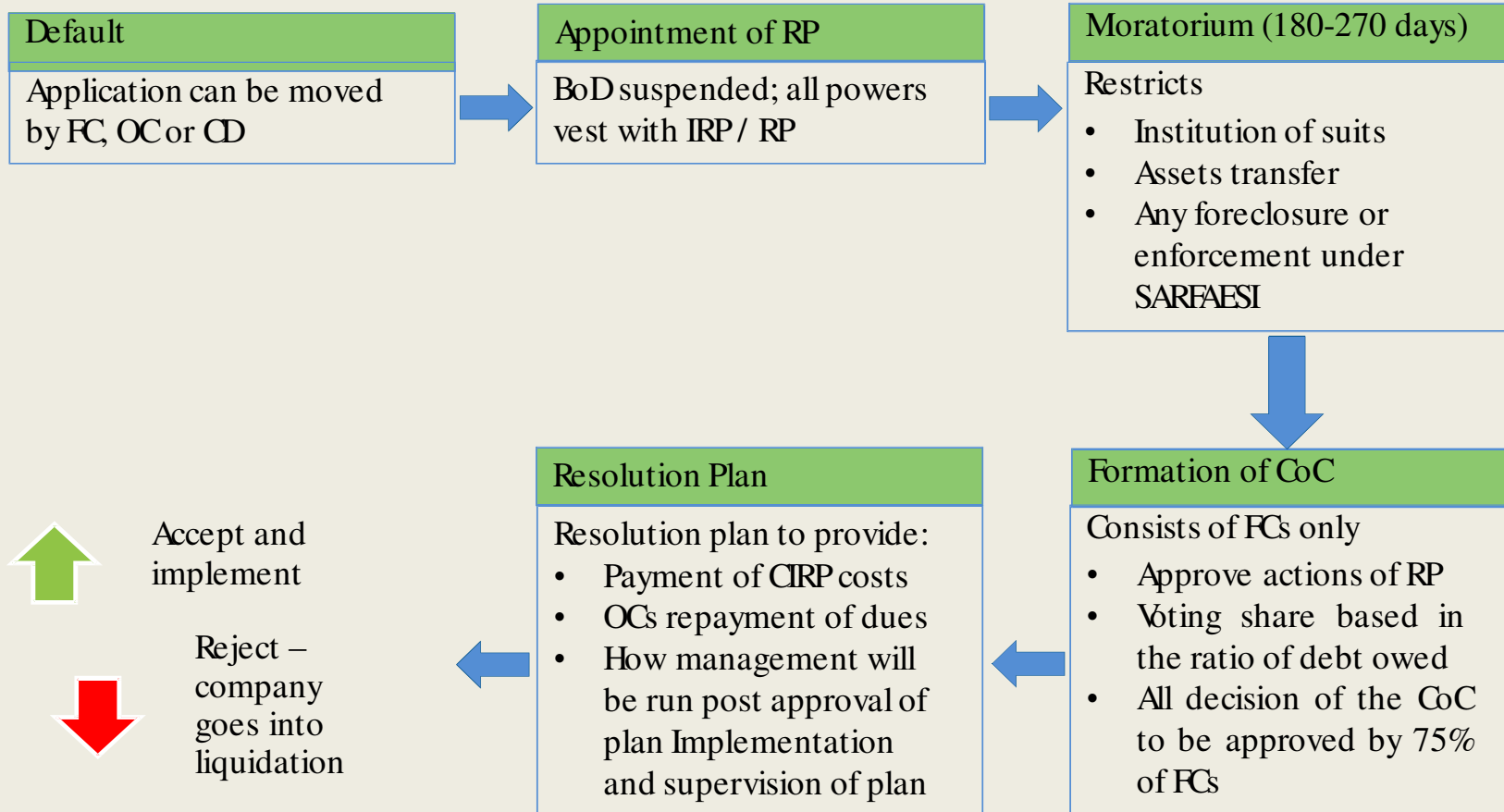


# Preamble

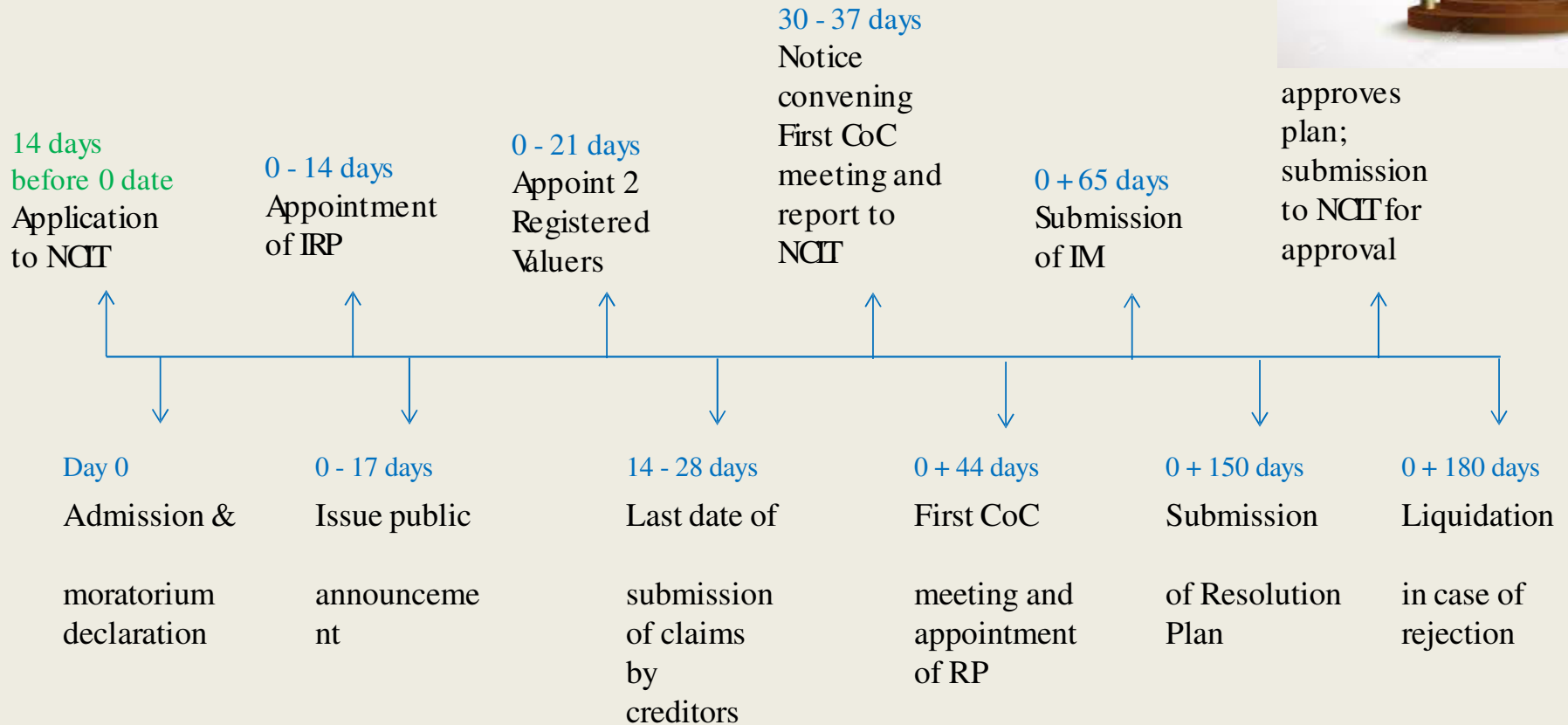


- An Act to consolidate and amend the laws relating to Re-organisation and Insolvency Resolution in a time bound manner for maximisation of value of assets of such persons, before it becomes obsolete.

# Corporate Insolvency Resolution Process



# Timelines for CIRP



# Co-operation / Non Co-operation

## Section 19

- The personnel of the CD, its promoters or any other - shall extend all assistance and co-operation.
- Does not assist or co-operate IRP may make an application to AA.
- AA by an order direct to comply with the instruction of the Resolution Professional.

# Assistance of District Administration

## Regulation 30

- *IRP , may make an application to the AA for an order seeking the assistance of the Local administration in discharging his duties under the code or the Regulations.*

## Appointment of registered Valuers (Regulation 27)

The IRP within 7 days of his appointment, appoint 2 registered valuers to determine the **liquidation value** of the corporate debtor in accordance with regulation 35



- Regulation 35

Liquidation Value is the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were liquidated on the commencement date.



# INFORMATION MEMORANDUM

- Following details shall be furnished in the information memorandum:
  - (a) Assets & liabilities classified into appropriate categories for easy identification
  - (b) Audited financial statements for the last two financial years and provisional financial statements for the current financial year up to a date **not earlier than fourteen days from the date of the application;**
  - (c ) List of creditors containing the name, amount claimed, amount admitted and security interest , if any

# Information Memorandum ( IM )

## Section 29

The RP shall prepare the IM in such form and manner containing such relevant information as may be specified by the Board for formulating Resolution Plan.

The RP shall provide to the Resolution Applicant access to all relevant information.

# INFORMATION MEMORANDUM

(d) Related party details

(e ) Details of guarantees

(f) members or partners holding at least one per cent stake

(g) Litigation details

(h) workers & employee details

(i) Liquidation value, Liquidation value due to operational creditor

# Sale of Assets Out side the Business

- RP – may sell, unencumbered assets.
- Necessary for better realisation of value.
- Provided Book value > 10% of claim admitted by IRP.
- Requires the approval of COC
- Bona fide purchaser will have a free and marketable Title.

# INSOLVENCY RESOLUTION PROCESS COST

## Definition Section 5(13)

- The amount of any interim finance – cost
- Fees payable to a Resolution Professional
- Cost incurred by the RP in running the business as going concern.
- At the expenses of the Government to facilitate the CIRP
- Any other cost as specified by the Board.

# INSOLVENCY RESOLUTION PROCESS COST

## Regulation

- Supplier of essential goods & services
- Amount due to a person whose right are prejudicially affected on account of moratorium.
- Expenses incurred by IRP as ratified regulation 33
- Expenses incurred by RP fixed under regulation 34
- Other costs directly relating to the CIRP and approved by COC.

# Essential Supplies

Code : The supply of essential goods or services to the CD shall not be terminated or suspended or interrupted during moratorium period.

Essential Goods supplies :

- Electricity, Water, Telecommunication, Information Technology Services
- To the extent these are not a direct input to the out put produced or supplied by the corporate debtor.



# Cost of IRP & RP

- IRP
- The applicant shall fix the expenses to be incurred by the IRP.
- If not then AA.
- The applicant shall bear the expenses which shall be reimbursed by the extent it ratifies.
- The amount of expenses ratified by the committee shall be treated as Insolvency Resolution Process Cost.
- RP
- The COC shall fix and expenses shall constitute insolvency resolution process cost.

# Resolution

## Applicant

- 5(25)  
Means any person who submits a Resolution Plan to the Resolution Professional

## Plan

- 5(26)  
Means a plan proposed by any person for insolvency resolution of the corporate debtor as going concern in accordance with Part – II.

# Resolution Plan

- A Resolution Applicant may submit Resolution Plan to Resolution Professional. ( 30 days before the expiry of maximum period )
- The R P shall examine each resolution plan received by him to confirms to various conditions.
- The RP. Shall present to the COC for its approval such Resolution Plan which confirms the conditions referred above.
- The COC may approve a Resolution Plan by a vote of **not less than 75%** of voting share of the financial creditors.

# Resolution Plan – Mandatory contents

- **A RP must identify specific sources of funds that will be used to pay the:**
  - Insolvency resolution process costs with priority in terms of IBC
  - Liquidation value due to operational creditors, and;
    - *Provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority*
  - Liquidation value due to ***dissenting financial creditors*** and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

# CIRP Regulations – Resolution Plan

**RP must include measures required for implementing those**

**But not Limited to following :**

## **Asset sale**

- *Transfer of all or part of the assets of the corporate debtor to one or more persons;*
- *Sale of all or part of the assets whether subject to any security interest or not;*
- *Issuance of securities of the corporate debtor for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and*

## **Stake sale**

- *Substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons*

## **Security for the debt**

- *Satisfaction or modification of any security interest;*

# CIRP Regulations - RP

## **Debt restructuring**

- *Reduction in the amount payable to the creditors;*
- *Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;*
- *Curing or waiving of any breach of the terms of any debt due from the corporate debtor;*
- *Amendments of the constitutional documents:  
Memorandum & Article of Association*

## **Government approvals**

- *Obtaining necessary approvals from the Central and State Governments and other authorities.*

# Resolution Plan

- **A RP must provide:**
  - *Term of the RP and its implementation schedule;*
  - *Management and control of the business of the corporate debtor during its term; and*
  - *Means for supervising its implementation.*

# Final Outcome of CIRP

## Section 31

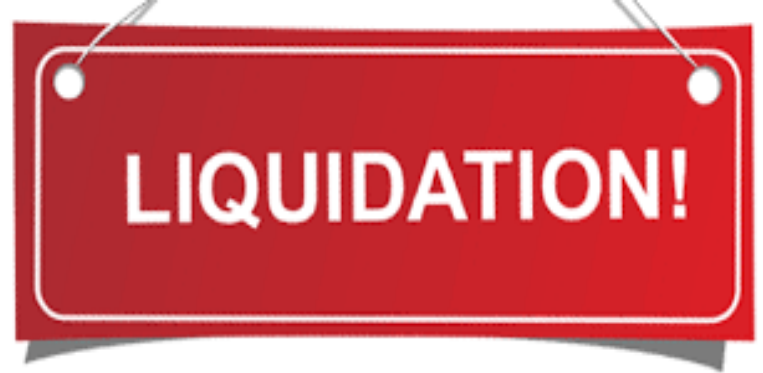
- If the AA is satisfied that the RP as approved by COC meeting the requirements as ... IT SHALL BY ORDER APPROVE THE RP.
- IT SHALL BE BINDING ON THE CD AND ITS EMPLOYEES, MEMBERS, CREDITORS, GUARANTORS AND OTHER STAKEHOLDERS INVOLVED IN THE RP.



# Assistance of Local Administration

A person in charge of the management or control of the business and operations of the CD after a Resolution Plan is approved by AA, may make an application to the AA for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan

# Liquidation



- Where the AA :
  - Expiry of 180 or 270 days.
  - Does Not Receive a Resolution Plan
  - Rejects the resolution Plan
  
- Pass an order requiring the Corporate Debtor to be liquidated

# Some Practical Tips

## If Appointed as IRP

- Read the Code and Regulation – 3 times minimum and keep on referring.
- Train your self and your assistant, staff and peons too.
- Do Hands Free Driving.
- RP and RP initially will take 80-110 % of your time.
- Delegate your other normal Practice to partner/s
- Take assistance / help / collaboration for other Professionals - Lawyers / CS etc.
- Keep your Travel baggage ready with all accessories
- Maintain working papers neatly filed.
- Its a very challenging and satisfying JOB.

# Protection to IRP & RP

- Section 233 of code :

No suit, prosecution or other legal proceeding shall lie against the ..... or an Insolvency Professional or liquidator for anything which is done or intended to be done in good faith under this code or the rules or regulation made there under.

# Liquidation water fall

## Section 53



Entire insolvency resolution process cost and liquidation cost

Workmen's dues for the period of twenty-four months preceding the liquidation commencement date

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Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52

Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date

Financial debts owed to unsecured creditors

Any amount due to the Central Government and the State Government

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Debts owed to a secured creditor for any amount unpaid following the enforcement of security interest

Any remaining debts and dues

Preference shareholders, if any

Equity shareholders or partners, as the case may be

**THANK YOU**

**QUESTIONS ???**

**Pravin R. Navandar**