



Critical Analysis of Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016

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Introduction

Insolvency and Bankruptcy Code, 2016 (IBC) is one of the greatest transformations that Corporate Law has seen in India. Insolvency and Bank

Corporate Insolvency Resolution Process in IBC

The Corporate Insolvency Resolution Process (CIRP) is the mechanism provided under the Insolvency and Bankruptcy Code, 2016 (IBC) to resolve cases of Corporate Insolvency.

Section 6 to 32A under Part II of the Insolvency and Bankruptcy Code 2016 explains the stages of the Corporate Insolvency Resolution Process (CIRP). Part II can be divided into the following stages of CIRP-

1. **Initiation of CIRP** (Section 6-10) deals with initiation of CIRP under IBC.
2. **Moratorium** (Sections 13-14) of IBC imposes the moratorium which helps in a smooth resolution process by prohibiting external interferences.
3. **Committee of Creditors** (Section 21) allows the constitution of the Committee of Creditors to consist of Financial Creditors.
4. **Resolution Professional** (Sections 16-25) allows the appointment of a Resolution Professional who will conduct day-to-day affairs during the CIRP.
5. **Resolution Plan** (Section 25-31A) deals with the Resolution Plan, its preparation and approval.

Following are the stages of CIRP-

Initiation of CIRP

Initiation of Corporate Insolvency Resolution Process (CIRP) is dealt with under sections 6-10 of the IBC, 2016 CIRP can be initiated by Financial creditors, Operational Creditors and the Corporate Debtor itself if the Corporate Debtor makes a default of a minimum of one Crore rupees. To initiate CIRP an application has to

be filled before the Adjudicating Authority (NCLT) to initiate the CIRP. If NCLT admits the application then CIRP will be initiated.

According to section 4 of the IBC, 2016 default of a minimum of Rs. 1 crore shall be made by a Corporate Debtor to initiate CIRP.

1. **Initiation by Financial Creditors-** Section 7 talks about initiation of CIRP by Financial Creditors. According to this section, one or more Financial Creditors can file an application before NCLT to initiate the CIRP against a Corporate Debtor. It further states that in case of a real estate project the allottees can also file an application under section 7 subject to application against corporate debtor shall be filled by a minimum of 100 allottees or 10% of total allottees of the real estate project whichever is less.

Financial Creditor shall furnish following documents along with the application before NCLT-

- a. Evidence of default by Corporate Debtor.
- b. Name of the Resolution Professional and Interim Resolution Professional.
- c. Any other information which the board specifies.

2. **Initiation by Operational Creditors-** Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 talk about initiation of CIRP by operational creditors. According to Section 8, the operational creditor may, on the occurrence of default by the corporate debtor deliver a demand notice of 10 days for the payment of unpaid operational debt.

According to section 9 after the expiry of 10 days of demand notice if the operational creditor does not receive payment from the corporate debtor, the operational creditor Can file an application before NCLT to initiate CIRP. Further The operational creator shall along with the application furnish following documents before the NCLT-

- a. A copy of demand notice.
- b. An affidavit to the effect that there is no notice given by the corporate data relating to the dispute of the unpaid operational debt.
- c. A copy of the certificate from the financial institution maintaining the accounts of operational creator confirming that there is no a payment often unpaid operational debt.
- d. Any other proof confirming that no personal debt has been paid.
- e. Any other information as may be prescribed.
- f. The name of the resolution professional to act as a interim resolution professional.

3. **Initiation by corporate debtor-** Section 10 of insolvency and Bankruptcy Code 2016 talks about initiation of CIRP by corporate debtor. According to this section corporate debtor may file an application for initiation of CIRP before the NCLT. The corporate data shell furnish following documents along with the application before NCLT-

- a. Information relating to its books of account and such other documents as may be prescribed.
- b. Name of the resolution professional who shall act as an interim resolution professional.

- c. Special resolution passed by shareholders of the corporate data or resolution passed by at least three- fourth of the total number of partners of the corporate debtor.

Moratorium

This is the second stage of CIRP . If the adjudicating authority accepts the application under Section 7, 9 and 10 then the adjudicating authority shall declare a moratorium, orders a public announcement for initiation of CIRP and appoints an interim resolution professional.

The purpose of moratorium is to keep the Assets of the corporate debtor safe and secure during the CIRP. According to section 14 of IBC 2016 the adjudicating authority orders the moratorium for the following purposes-

- a. To prohibit any institution of suit or continuation of pending suites against the corporate debtor .
- b. To prohibit transferring, alienating, disposing, etc. Of the property of the corporate debtor.
- c.

Public Announcement

The public announcement of the initiation of CIRP shall contain following information-

- a. Name and address of the corporate debtor.
- b. Name of the authority with which the corporate data is incorporated or registered.
- c. Last date of submission of claims so stop
- d. Details of interim resolution professional.
- e. Penalties for false and misleading claims.
- f. The date on which the corporate insolvency resolution process will be closed, generally it is of 180 days from the date of admission of application.

Interim Resolution Professional

Section 16 of the IBC, 2016 deals with appointment of Interim Resolution Professional by adjudicating authority. The adjudicating authority shall within 14 days of the admission of an application under Section 7, 9 or 10 appoint an interim resolution professional for the purpose of cirp. The adjudicating authority shall appoints a person whose name is provided in the application if that person has no disciplinary proceeding pending against him.

When an application under section 9 is made by operational creditor and no name is given for interim resolution professional the adjudicating authority shall take recommendation of the Board of an insolvency professional who may act as a interim resolution professional. The Board shall within 10 days recommend the name of insolvency professional.

Committee of Creditors

It is one of the most important stage of CIRP in this stage Committee of Creditors consisting of financial creditors. According to section 21 of IBC, 2016, the interim resolution professional shall after collecting all the claims constitute a committee of creditors comprising all the financial creditors except related parties after Corporate Debtor is the corporate debtor does not have any financial creditor then the committee of creditors shall comprise of such persons to do the tasks as may be prescribed.

Resolution professional

the resolution professional is the person appointed by committee of creditors for performing day to day tasks of CIRP. Section 22 of IBC 2016 deals with appointment of resolution professional, according to the section the committee of creditors shall within 7 days of constitution conduct its first meeting and shall appoint resolution professional buy a majority of not less than 66% of the voting shares off the financial creditors or shall appoint interim resolution professional as a resolution professional.

If the committee of creditors appoints interim resolution professional as the resolution professional then it shall communicate its decision to interim resolution professional, corporate debtor and the adjudicating authority. The committee of creditors replaces the interim resolution professional then it shall make an application to the adjudicating authority for the appointment of proposed resolution professional. The adjudicating authority shall confirm the name of the proposed resolution professional from the board and after that shall make such an appointment.

According to section 27 of IBC 2016 if at any time the committee of creditors is of the view that the resolution professional is required to be replaced, the Committee of Creditors may by 66% of voting shares resolves to replace the Resolution Professional.

The resolution professional shall conduct the entire corporate insolvency resolution process and manage the conduct of the corporate debtor during period of corporate insolvency resolution process.

Following are the duties of the resolution professional given under section 25 of the code-

- a. The resolution professional shall preserve and protect all the assets of the corporate debtor.
- b. The resolution professional shall take custody of all the assets of the corporate debtor.
- c. The resolution professional shall represent the corporate debtor in judicial and quasi-judicial proceedings.
- d. Update the list of claims.
- e. Convene and attend all the meetings of the committee of creditors.
- f. Prepare the information memorandum.
- g. Invite the prospectus resolution applicants.
- h. Present all the resolution plans before the committee of creditors.
- i. Any such actions as may be specified by the board.

Information memorandum

Creating an information memorandum is one of the most important duties of the resolution professional. It contains all the information necessary for formulating a resolution plan.

Submission of Resolution Plan

Section 30 of insolvency and Bankruptcy Code 2016 deals with submission of resolution plan. According to this section resolution applicant may submit a resolution plan along with an affidavit of his eligibility under section 29A of IBC 2016. The resolution professional shall examine each and every resolution plan submitted to him and confirms that the resolution plan provides for the payment of insolvency resolution process costs and provides for the payment of debt of operational creditor in such manner as may be specified by the board. The resolution plan shall further provides the management of affairs of the corporate debtor, does not contravene with any provision of the law for the time being in force

