



# INSOLVENCY RESOLUTION OF INDIVIDUAL AND PARTNERSHIP FIRMS UNDER IBC 2016

**ABHIPSA BARAL  
STUDENT  
AMITY LAW SCHOOL, NOIDA**

## **1. Introduction**

The Insolvency and Bankruptcy Code, 2016 (IBC) in India has significantly impacted insolvency resolution and bankruptcy proceedings, extending its scope to individuals and partnership firms. The IBC provides a structured framework for resolving financial distress, aiming for asset value maximization and fair distribution among creditors. Individuals can initiate insolvency proceedings by filing a petition with the Adjudicating Authority i.e. the DRT in the case of individual & partnership firms. The application filed before the Adjudicating Authority must include relevant financial information and documents. The Adjudicating Authority appoints a resolution professional to manage the debtor's affairs during the insolvency resolution process, which may involve debt restructuring, asset sales, or other measures to revitalize and revive the situation of individual's or partnership firm's financial instability.

Partnership firms can also benefit from the IBC's insolvency resolution mechanisms. The insolvency resolution process is creditor-driven and adheres to strict timelines, with creditors collaborating with the resolution professional to formulate and approve a resolution plan. If the resolution process fails, the debtor may face bankruptcy, which involves the liquidation of assets under the supervision of a bankruptcy trustee appointed by the Adjudicating Authority. The proceeds are distributed among creditors according to the priority specified in the IBC.

Moreover, there are certain provisions listed in the Insolvency and Bankruptcy Code, 2016 to initiate resolution process of an individual or a partnership firm. In essence, the introduction of provisions for individual and partnership firm insolvency within the ambit of the IBC represents a significant step towards a more inclusive and robust insolvency framework in India. It aims to address financial distress promptly and effectively, thereby fostering economic resilience and stability.<sup>1</sup>

<sup>1</sup> Abhiman Das, *Insolvency and Bankruptcy Reforms: The Way Forward*, Sage Publications, 2020

## **Insolvency Resolution Process**

The provisions given under section 94 to section 120 of the Insolvency and Bankruptcy Code, 2016 deal with the proper procedure to be followed while initiating the insolvency resolution process.

The provisions are as follows:

### **1.1. Section 94 of Insolvency and Bankruptcy Code, 2016 hereinafter referred as the 'IBC': Application by Debtor to Initiate Insolvency Resolution Process**

Section 94 allows a Debtor to submit an application before the Adjudicating Authority for initiating the insolvency resolution process of Individual and Partnership Firm. Moreover, the Debtor can file such an application if they are unable to pay their debts as they become due. This situation of inability to pay debts should be proven to the satisfaction of the Adjudicating Authority.

The application filed by the Debtor must meet certain requirements as prescribed under the IBC and related regulations. These requirements may include providing details of the Debtor's financial situation, liabilities, assets, and any previous attempts at resolution.

Furthermore, the application must be verified by the Debtor or any authorized signatory, stating that the contents of the application are true and correct to the best of their knowledge and belief.

Upon receiving the application, the Adjudicating Authority will examine the merits of the case and decide whether to admit or reject the application. If the Adjudicating Authority is satisfied that the Debtor has defaulted and the application meets the requirements, it may admit the application and initiate the insolvency resolution process.

Once the application is admitted, a moratorium period begins, during which Creditors are prohibited from taking any action against the Debtor to recover their dues. A Resolution Professional is appointed to manage the affairs of the Debtor and work towards finding a resolution to the insolvency.

Overall, Section 94 of the IBC provides a mechanism for Debtors who are unable to pay their debts to seek relief through the insolvency resolution process, subject to fulfilling certain conditions and requirements specified under the law.

### **1.2. Section 95 of the IBC: Application by a Creditor to Initiate the Insolvency Resolution Process**

Section 95 allows any Creditor individually or jointly with Creditors or with any Resolution Professional to file an application with the Adjudicating Authority to initiate the insolvency resolution process against a Debtor. In the case of partnership firms, the application is filed against any one or more partners of the firm or the firm.

Moreover, the application filed by the Creditor must comply with the procedural requirements set out in the IBC and related regulations. This includes providing details of the debt owed, the default committed by the Debtor,

and any attempts made to recover the debt before initiating insolvency proceedings. There should be failure by the Debtor to pay the debt within a period of fourteen days of the service of the notice of demand and relevant evidence of such default or non-repayment of debt should be provided before the Adjudicating Authority.

Upon receiving the application, the Adjudicating Authority will assess its merits and decide whether to admit or reject the application. If the Adjudicating Authority is satisfied that the conditions for initiating insolvency proceedings are met, it may admit the application and commence the insolvency resolution process.

Once the application is admitted, a moratorium period begins, during which Creditors are restrained from taking any action against the Debtor for recovery of their dues. A Resolution Professional is appointed to oversee the affairs of the Debtor and work towards finding a resolution to the insolvency.<sup>2</sup>

Hence, Section 95 of the IBC provides a legal framework for Creditors to seek recourse against Debtors who have defaulted on their obligations, by initiating the insolvency resolution process through the Adjudicating Authority, subject to meeting certain conditions and procedural requirements outlined in the law.<sup>3</sup>

### 1.3. Section 96 of IBC: Interim Moratorium

Section 96 of IBC provides for the imposition of an Interim moratorium upon the filing of an application for insolvency resolution by a Debtor or a Creditor. The moratorium serves as a temporary protection mechanism for the Debtor against any legal proceedings, enforcement of security interests, or actions to recover debts during the initial stages of the insolvency process.

The interim moratorium begins from the date of filing of the application for insolvency resolution with the Adjudicating Authority. It remains in force until the Adjudicating Authority passes an order either admitting or rejecting the application.

During the interim moratorium period, all actions to recover debts, including legal proceedings, arbitration, or execution of any judgment against the Debtor are stayed. Additionally, any security interest created by the Debtor stands frozen, and no new security interest can be created during this period.

Section 96 specifies certain exceptions to the interim moratorium. These include actions by a financial regulator to protect the financial system or the interests of depositors, actions related to safeguarding or disposing of assets securing the debts, or actions taken with the approval of the Resolution Professional or the Adjudicating Authority.

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<sup>2</sup> <https://www.ibbi.gov.in/uploads/law/IBC%20Part%20III.pdf>

<sup>3</sup> Bankruptcy for Individuals and Partnership firms <https://www.taxmann.com/post/blog/bankruptcy-for-individuals-and-partnership-firms>

The interim moratorium remains in force until the Adjudicating Authority passes an order either admitting or rejecting the application for insolvency resolution. Upon admission of the application, the interim moratorium is replaced by a full moratorium under Section 14 of the IBC.

In summary, Section 96 of the IBC provides for the imposition of an interim moratorium upon the filing of an application for insolvency resolution, offering temporary relief to the Debtor from Creditor actions while the Adjudicating Authority considers the application.

#### **1.4. Section 97 of IBC: Appointment of Resolution Professional**

Section 97 empowers the Adjudicating Authority to appoint an Interim Resolution Professional upon admission of an application for insolvency resolution. The Interim Resolution Professional assumes control of the affairs of the Debtor during the initial stages of the insolvency process.

The Adjudicating Authority must confirm the appointment of a Resolution Professional for insolvency resolution applications filed through a Resolution Professional within seven days of the application date. The Board must communicate with the Adjudicating Authority in writing within seven days of receiving directions, either confirming the appointment or rejecting it and nominating another Resolution Professional. If the application is filed by the Debtor or Creditor themselves, the Adjudicating Authority must direct the Board to nominate a Resolution Professional within seven days of filing the application.

The Board must nominate a Resolution Professional within ten days of receiving the direction. The Adjudicating Authority will appoint the Resolution Professional recommended under sub-section (2) or as nominated by the Board under sub-section (4). The Resolution Professional will be provided with a copy of the application for insolvency resolution process.

#### **1.5. Section 98 of IBC: Replacement of Resolution Professional**

Section 98 of IBC addresses the provision for the replacement of a Resolution Professional. Section 98 empowers the Committee of Creditors (CoC) to replace the Resolution Professional appointed under Section 97 with another insolvency professional at any time during the insolvency resolution process.

The Adjudicating Authority can be consulted by a Debtor or Creditor if they believe a Resolution Professional appointed under section 97 needs replacement. The Authority must make a reference to the Board within seven days of receiving the application. The Board, with the approval of the Representation from the Adjudicating Authority, recommends the Resolution Professional's name to the Adjudicating Authority. Creditors can also apply for replacement if a new Resolution Professional is chosen for the repayment plan implementation.

If the Adjudicating Authority admits an application, it will direct the Board to confirm that no disciplinary proceedings are pending against the proposed Resolution Professional. The Board will send a communication within ten days of receiving the direction, either confirming the appointment or rejecting it and recommending a new

Resolution Professional. The Adjudicating Authority will then appoint a new Resolution Professional based on the Board's communication. The Adjudicating Authority can also direct the replacement Resolution Professional to share all information about the insolvency resolution process and cooperate with the new professional in necessary matters.

### **1.6. Section 99 of IBC: Submission of report by Resolution Professional**

The Resolution Professional is responsible for examining applications filed under sections 94 or 95 within ten days of appointment and recommending approval or rejection. If the application is filed under section 95, the Resolution Professional may require the Debtor to prove repayment by providing evidence of electronic transfer, encashment of a cheque, or a signed acknowledgment by the Creditor. If the debt is registered with the information utility, the Debtor cannot dispute its validity. The Resolution Professional may seek additional information or explanation from the Debtor, Creditor, or any other person they believe may provide such information. The person must provide the requested information within seven days of receiving the request. The Resolution Professional must ensure the application meets the requirements set out in section 94 or 95 and that the applicant has provided the requested information. If the Resolution Professional finds the Debtor eligible for a fresh start under Chapter II, the application should be treated as an application under section 81 by the Adjudicating Authority.

The Resolution Professional must record the reasons for recommending the application's acceptance or rejection in the report under sub-section (7) and provide a copy to the Debtor or Creditor.

Once resolution plans are received from prospective resolution applicants, the Resolution Professional evaluates these plans and prepares a report assessing their feasibility, viability, and compliance with the requirements of the IBC. This report is submitted to the CoC for their consideration.<sup>4</sup>

### **1.7. Section 100 of IBC: Admission or Rejection of the Application**

Section 100 of the Insolvency and Bankruptcy Code, 2016 outlines the process by which the Adjudicating Authority determines whether to admit or reject an application for insolvency resolution.

Upon receipt of an application for insolvency resolution, the Adjudicating Authority examines the application along with any evidence or documents provided by the applicant, whether it's the Debtor or a Creditor.

<sup>4</sup> <https://www.ibbi.gov.in/uploads/law/IBC%20Part%20III.pdf>

The Adjudicating Authority must pass an order within 14 days of submitting a report under section 99, either admitting or rejecting an application referred to in section 94 or 95. If the application is admitted, the Adjudicating Authority may issue instructions for negotiations between the Debtor and Creditors and a repayment plan.

The Adjudicating Authority must provide a copy of the order, the Resolution Professional's report, and the application to Creditors within seven days. If the application is rejected due to the Resolution Professional's report indicating the intention to defraud, the Creditor is entitled to file for bankruptcy under Chapter IV. The order must be provided to Creditors within seven days.

### **1.8. Section 101 of IBC: Moratorium**

On the admission of application under section 100 initiates a moratorium on all debts and ceases at the end of one hundred and eighty (180) days, starting from the date of admission or the date the Adjudicating Authority passes an order on the repayment plan under section 114.

During this period, any pending legal action or proceeding regarding a debt is halted, Creditors cannot initiate any legal action, and the Debtor cannot transfer, alienate, encumber, or dispose of their assets.

If an order admitting the application under section 96 is made for a firm, the moratorium applies to all partners. However, the provisions of this section do not apply to transactions notified by the Central Government in consultation with any financial sector regulator.

### **1.9. Section 102 of IBC: Public Notice and Claims from Creditors**

The Adjudicating Authority must issue a public notice within seven days of a section 100 order inviting claims from all Creditors within 21 days. The notice should include details of the order admitting the application, details of the Resolution Professional with whom claims are to be registered, and the last date for submission of claims. The notice should be published in at least one English and one vernacular newspaper in the Debtor's state, affixed in the Adjudicating Authority's premises, and placed on the Authority's website.

### **1.10. Section 103 of IBC: Registering of Claims by Creditors**

Creditors must register claims with a Resolution Professional via electronic communication, courier, speed post, or registered letter. They must also provide personal information and prescribed particulars to the Resolution Professional, in addition to the claims mentioned in sub-section (1).

### **1.11. Section 104 of IBC: Preparation of List of Creditors**

The Resolution Professional is required to create a list of Creditors based on the information provided in the Debtor's application and claims received by the professional under section 102 and must do so within thirty days of receiving the notice.

### **1.12. Section 105 of IBC: Repayment Plan**

The Debtor must provide a repayment plan with a proposal for Creditors to restructure their debts or affairs, which may authorize the Resolution Professional to continue the Debtor's business, realize the Debtor's assets, or administer the Debtor's funds. The plan should include justification for the plan, reasons for Creditors' agreement, payment for the Resolution Professional's fee, and other specified matters. The plan should also include provisions for the Resolution Professional to pay the fee and address any other relevant matters.

### **1.13. Section 106 of IBC: Report of Resolution Professional on Repayment Plan**

The Resolution Professional must submit a repayment plan and report to the Adjudicating Authority within 21 days of the last date of claims submission. The report must include compliance with current laws, a reasonable prospect of approval, and the necessity of summoning a Creditors' meeting if necessary.

If the Resolution Professional recommends not summoning the Creditors, reasons must be provided. When summoning a meeting, the report must specify the date and time and place. The meeting should be held between 14 and 28 days from the submission of the report. The Resolution Professional must consider the convenience of Creditors when determining the date and venue.

### **1.14. Section 107 of IBC: Summoning of Meeting of Creditors**

The Resolution Professional must notify Creditors of a meeting at least fourteen days in advance and send the notice to the list of Creditors prepared under section 104. The notice must include the address of the Adjudicating Authority, the repayment plan and report, the Debtor's statement of affairs, the Resolution Professional's report, and forms for proxy voting. The proxy voting, including electronic voting, must be conducted in a specified manner and form. The notice must also include a copy of the repayment plan, statement of affairs, and proxy voting forms.

### **1.15. Section 108 of IBC: Conduct of Meeting of Creditors**

The Creditors' meeting must follow the guidelines outlined in sections 109, 110, and 111. They can approve, modify, or reject the repayment plan. The Resolution Professional must obtain Debtor consent for any modifications suggested by the Creditors. The meeting can be adjourned for up to seven days for sufficient cause.

### **1.16. Section 109 of IBC: Voting rights in Meeting of Creditors**

Creditors have the right to vote at Creditors' meetings regarding the repayment plan, based on their assigned voting share. The Resolution Professional determines this share in accordance with the Board's guidelines. Creditors cannot vote on debts for unliquidated amounts or if they are not listed in the list or are an associate of the Debtor. They cannot vote on unliquidated debts or if they are not a Creditor mentioned in the list.

### **1.17. Section 110 of IBC: Rights of Secured Creditors in relation to Repayment Plan**

Secured Creditors have the right to participate and vote in Creditors' meetings, but they must forfeit their right to enforce security during the repayment plan period. If Secured Creditors don't wish to forfeit their right to enforce security, at the meeting they must submit an affidavit to the Resolution Professional, mentioning that their right to vote is only for the unsecured part of the debt and the estimated value of the unsecured part.

If a secured Creditor participates in the voting on the repayment plan, the secured and unsecured parts of the debt will be treated as separate debts. If they do not participate in the voting but the repayment plan affects their right to enforce security, their concurrence must be obtained.

For further explanation the "period of the repayment plan" refers to the period from the order passed under section 114 until the notice given by the Resolution Professional under section 117 or report submitted by the Resolution Professional under section 118.

### **1.18. Section 111 of IBC: Approval of Resolution Plan**

The repayment plan or any modifications must be approved by a majority of Creditors, either in person or by proxy, in a meeting of Creditors, ensuring the plan's approval and effective implementation.

### **1.19. Section 112 of IBC: Report of Meeting of Creditors on Repayment Plan**

The Resolution Professional is required to create a report detailing the Creditors' meeting on the repayment plan, including the approval or rejection of the plan, any modifications, proposed resolutions, the decision on these resolutions, the list of Creditors present or represented, voting records for all Creditors, and any other relevant information to be shared with the Adjudicating Authority.

### **1.20. Section 113 of IBC: Notice of Decisions taken at Meeting of Creditors**

The Resolution Professional must provide a copy of the report from the Creditors' meeting, prepared under section 99, to the Debtor, Creditors, including those not present, and the Adjudicating Authority.

### **1.21. Section 114 of IBC: Order of Adjudicating Authority on Repayment Plan**

The Resolution Professional prepares a repayment plan outlining how the debts and liabilities of the corporate Debtor will be addressed. This plan typically includes details such as the terms of repayment, restructuring of debts, treatment of various classes of Creditors, and any other necessary provisions for the revival of the corporate Debtor. Once the repayment plan is prepared, the Resolution Professional submits it to the Adjudicating Authority. The Adjudicating Authority can approve or reject a repayment plan based on a report from the Resolution Professional, provided a meeting of Creditors is not summoned. If a meeting is not held, the authority can pass an order based on the Resolution Professional's report. The order may also provide directions for implementing the



plan. If the plan requires modification, the authority may direct Resolution Professional to re-convene a meeting of Creditors for reconsideration.

The order issued by the Adjudicating Authority under Section 114 of the IBC has a legal effect and binds all stakeholders involved in the insolvency proceedings, including the corporate Debtor, Creditors, and any other parties affected by the repayment plan.<sup>5</sup>

### **1.22. Section 115 of IBC: Effect of order of Adjudicating Authority on Repayment Plan**

When the Adjudicating Authority approves the repayment plan submitted by the Resolution Professional under section 114, then the repayment plan would effect as if it is proposed by the Debtor, and it should be binding on both the Debtor and Creditors.

If the plan is rejected, the Debtor and Creditors can file for bankruptcy under Chapter IV. A copy of the order passed by the Adjudicating Authority must be provided to the Board for recording an entry in the register.

### **1.23. Section 116 of IBC: Implementation and Supervision of Repayment Plan**

The Resolution Professional appointed under section 97 or section 98 is the person responsible for overlooking at the repayment plan implementation. They can apply for directions from the Adjudicating Authority if necessary, and the Adjudicating Authority can issue directions based on an application under sub-section (2).

### **1.24. Section 117 of IBC: Completion of Repayment Plan**

The Resolution Professional must send a notice of the repayment plan's full implementation to those bound by it and the Adjudicating Authority within 14 days. The professional must also provide a report summarizing all receipts and payments made under the plan. The Resolution Professional can extend the time for a maximum of seven days. The Resolution Professional may apply to the Adjudicating Authority to extend the time period for furnishing such documents for a period not exceeding 7 days.

### **1.25. Section 118 of IBC: Repayment Plan Coming to end Prematurely**

A repayment plan is considered premature if it has not been fully implemented for all individuals within the specified period. A report must be submitted by the Resolution Professional to the Adjudicating Authority with all details of the receipts and payments made, the reasons for the which it ended prematurely, and the details of creditors whose claims have not been fully satisfied.

The Adjudicating Authority will then pass an order stating that the repayment plan has not been fully implemented. If the debtor or creditor's claims have not been fully satisfied, they may apply for bankruptcy under Chapter IV. Moreover, the Adjudicating Authority will send a copy of the report and order to the parties impacted by the

<sup>5</sup> Bankruptcy for Individuals and Partnership firms <https://www.taxmann.com/post/blog/bankruptcy-for-individuals-and-partnership-firms>

repayment plan, and also forward the order to the Board for recording entries in the register. The copy of the order passed by AA shall be provided to Board for the purpose of recording an entry in the register referred under section 196.<sup>6</sup>

### **1.26. Section 119 of IBC: Discharge Order**

The discharge order marks the end of the insolvency resolution process for the corporate Debtor. Once the discharge order is issued, the corporate Debtor is released from its debts and liabilities that were part of the insolvency process. This means that Creditors cannot pursue the corporate Debtor for those debts anymore. With the discharge order in hand, the corporate Debtor can resume its normal business operations without the burden of past debts and liabilities. The discharge order has a legal effect and binds all stakeholders involved in the insolvency proceedings, including the corporate Debtor, Creditors, and any other parties affected by the insolvency.

The resolution professional must apply to the Adjudicating Authority for a discharge order regarding the debts mentioned in the repayment plan, which may be early or complete implementation. The discharge order will be forwarded to the Board for recording entries in the register. It is important to note that the discharge order does not release any other person from any liability regarding their debt.

### **1.27. Section 120 of IBC: Standard of Conduct**

The Resolution Professional is required to adhere to the code of conduct outlined in section 208 of the IBC.

## **2. Conclusion**

The Insolvency and Bankruptcy Code (IBC) of 2016 in India has brought about a significant transformation in the resolution and bankruptcy processes for individual and partnership firms. Through an analysis of the various aspects surrounding insolvency resolution and bankruptcy proceedings, several conclusions can be drawn:

- The introduction of the IBC has provided a robust legal framework for insolvency resolution and bankruptcy proceedings for individual and partnership firms. It has streamlined and expedited the process, reducing the time and resources required for resolution.
- The IBC has improved the efficiency and transparency of the insolvency resolution process. The IBC emphasizes the protection of stakeholder interests, including creditors, debtors, and investors. It ensures equitable distribution of assets and promotes creditor participation in the resolution process, thereby fostering confidence in the insolvency regime.

<sup>6</sup> <https://www.ibbi.gov.in/uploads/law/IBC%20Part%20III.pdf>

- The IBC offers opportunities for debt restructuring and revival of financially distressed individual and partnership firms. It encourages resolution through negotiation and restructuring, enabling viable businesses to continue operations and contribute to economic growth.
- The IBC has led to the professionalization of insolvency proceedings through the involvement of insolvency professionals and registered valuers. Their expertise ensures fair and objective assessment of assets and liabilities, facilitating efficient resolution outcomes.
- The IBC has significantly improved the resolution and bankruptcy processes for individual and partnership firms in India. It has established a transparent and efficient framework that balances the interests of stakeholders while promoting business revival and economic growth. However, ongoing efforts are needed to address challenges and further refine the insolvency regime to ensure its effectiveness and sustainability in the long term.

