

## 1. Introduction: Concept of Insolvency & Bankruptcy

- Insolvency arises on default in payment (defined under Section 3(12)) and, if untreated, leads to bankruptcy for individuals/partnerships or liquidation for corporates
- Default may be due to financial failure (persistent mismatch of payments vs receivables) or business failure (breakdown of business model)
- Insolvency is a state; bankruptcy is its legal conclusion. Resolution under the Code can avert liquidation/bankruptcy

## 2. Objectives of Insolvency Law

- **Resolve conflicts** between creditors & debtor; reduce information asymmetry
- **Prevent value destruction**; enable efficient negotiations & value-maximising restructurings
- Distinguish **malfeasance** (hold promoters liable) from business failure (facilitate resolution)

## 3. Institutional Framework (Four Pillars)

1. Adjudicating Authority: **NCLT** (appellate: NCLAT)
2. Regulator: **IBBI** (oversees IPs, IPAs, RVs, IUs)
3. Insolvency **Professionals**: manage resolution processes
4. Information Utilities: electronically record credit transactions

#### 4. **Corporate Insolvency Resolution Process (CIRP)**

- Can be initiated by corporate debtor, any financial or operational creditor
- Default threshold: ₹1 crore
- **Moratorium** on suits/claims for 180 days (one-time extension of 90 days by CoC with NCLT approval)
- **Process completion** mandated within 330 days (including extensions & related legal proceedings)

#### 5. **Resolution & Liquidation Provisions for Corporates**

- CIRP: Secs 4–32
- Liquidation: Secs 33–54
- **Fast Track** CIRP (small/start-up/unlisted cos. ≤ ₹1 cr assets): Secs 55–58
- Voluntary Liquidation (no default): Sec 59

#### 6. **Bankruptcy of Individuals & Firms (Part III)**

- Secs 78–187; DRT/DRAT as Adjudicating/Appeal Authority (except personal guarantors before NCLT/NCLAT)
- Flow: resolution professional → IRP → repayment plan with creditor committee → discharge order
- If plan fails → bankruptcy order → trustee takes over estate → asset disposal → discharge order registered with IBBI under Sec 196

#### 7. **Overriding Effect of the Code**

- Sec 238 **overrides all other laws** for distribution/payment under liquidation or resolution plans (e.g., Secs 53 & 178 prevail over tax/GST liens)

## 8. **Applicability (Sec 2)**

Applies to:

- Companies (Companies Act & special acts)
- LLPs (LLP Act 2008)
- Other bodies by Central Government notification
- Personal guarantors of corporate debtors
- Partnerships & proprietorships
- Individuals (other than personal guarantors)

## 9. **Personal Guarantors**

- **Treated as separate class**; bankruptcy petitions filed before NCLT (Sec 60(2)) (**Byju Ravichandran**)
- Even approved resolution plans do not discharge guarantors ipso facto
- Lalit Kumar Jain v. Union of India (SC 2021): personal guarantors dealt by same forum as corporate debtor

## 10. **Non-Applicability**

- “Corporate person” excludes financial service providers (Sec 3(7)); “financial service provider” defined in Sec 3(17)
- Sec 227 empowers Central Government to notify financial sector entities under IBC; **NBFCs  $\geq$  ₹500 Cr Asset Size** (**DHFL**)
- State Co-op Bank v. Siddheshwar Sakhar Karkhana (NCLT Mumbai 2022): co-operative society not a “corporate person” under IBC

## Timeline & Fast-Track

- **Standard CIRP:** 180 days + one-time 90 day extension; overall outer limit 330 days (plus rare judicial extensions).
- **Fast-Track:** 90 days+ 10 days for eligible small corporates.

## CIRP Process Flow

1. File application at NCLT (default  $\geq$  threshold)
2. NCLT admission/rejection  $\rightarrow$  moratorium, public notice
3. IRP appointment; claims invited; CoC constituted
4. RP appointment; valuation; Info Memo; EoI call
5. Shortlist applicants; RFRP & Eval Matrix issued
6. Resolution plans submitted & evaluated
7. CoC voting on plan  $\rightarrow$  NCLT sanction  $\rightarrow$  implementation
8. If no plan, liquidation or liquidating on going concern

## Application Threshold [§ 4]

- Default must be  $\geq$  ₹1 Crore
- Pre-Pack Insolvency Resolution Process (**PPIRP**) - Fast Track for MSME's. Usually 10 Lakh, Govt can set upto Max 1 crore.

## Who May Initiate [§ 6]

- **Financial creditor** (§ 7)
- **Operational creditor** (§ 9)
- **Corporate applicant** (self-initiation) (§ 10)

## By Financial Creditor [§ 7]

- **Who:** one or more FCs, or authorized agents (guardian, executor, trustee, board-authorized person).
- **How:** File prescribed application + evidence of default (info-utility record or equivalent) + proposed IRP name.
- **14-day test:** NCLT must ascertain default or record reasons for delay.
- **Defects:** NCLT gives 7 days to cure before rejection.
- **Order:** admit (if complete, default established, no RP disciplinary action) or reject (if incomplete, no default, or RP under discipline); communicate within 7 days.
- **Withdrawal:** allowed pre- or post-admission with NCLT permission and, post-CoC formation, CoC 90% voting share.
- **Commencement:** date of admission.

## By Operational Creditor [§§ 8–9]

- **Demand Notice (§ 8):** OC issues notice/invoice; CD has 10 days to (a) pay (bank transfer record, cheque encashment, IU record) or (b) record dispute (suit/arbitration pending).
- **Application (§ 9):** if no payment/dispute reply, or dispute is frivolous, OC files prescribed application + affidavit of no payment + other proofs + proposed IRP.
- **14-day test:** NCLT admits or rejects (same cure-period mechanism).
- **Commencement & Withdrawal:** as per § 7.

## By Corporate Applicant [§ 10]

- **Who:** CD itself; member/partner authorized in constitutional docs; key managerial person; or financial controller.
- **File:** prescribed application + books of account + proposed IRP + special resolution/partner vote ( $\frac{3}{4}$ ).
- **Admission:** within 14 days if complete + no RP disciplinary action (7 day cure-period for defects).
- **Commencement:** date of admission.

## **Barred Applicants [§ 11]**

Corporate debtor or FC/OC of CD if any of the following in preceding 12 months:

- undergoing CIRP/PPIRP or had IA withdrawn
- had a plan approved under III-A
- violated terms of an approved plan
- subjected to a liquidation order

## **Section 11A: Priority of Pre-Pack (PPIRP) Applications**

If a PPIRP application is [filed first, or within 14 days of a CIRP application](#) being filed, the PPIRP application will prevail.

This means the NCLT will admit and proceed with the PPIRP application, effectively putting the CIRP application on hold or rejecting it.

## **Section 14: Moratorium**

- From insolvency commencement date until resolution/ liquidation:
  - No new or ongoing [suits](#)/ proceedings against the debtor.
  - No [asset transfers, encumbrances](#), or security enforcement.
  - No [recovery](#) of debtor-occupied property by owners/lessors.

- **Exceptions:**
  - Critical supplies (essential goods/services) must continue.
  - Statutory licences/permits not to be suspended if current dues paid.
  - Recovery actions may proceed against personal guarantors.
- Moratorium lifts on NCLT approval of a resolution plan or liquidation order.

## **Section 16: Appointment of IRP**

- **Filed by Financial Creditor, Debtor** - IP usually Mentioned in Application
- **Filed by Operational Creditor and No IP mentioned** - NCLT refers IBBI

## **Section 17: Vesting & Powers of IRP**

- IRP takes over management of debtor's affairs; board/partners' powers suspended.
- IRP may execute deeds, access debt-data from IUs, inspect books, and act on debtor's behalf in legal/compliance matters.

## **Section 18: Duties of IRP**

- Collect debtor's asset/finance/operation data.
- Collate and certify creditor claims.
- Constitute the CoC.
- Monitor assets, manage operations as going concern.
- File requisite information with IUs.

## **Section 20: IRP Additional Authorities**

- Appoint professionals (legal, accounting).
- Enter/amend contracts for debtor.
- **Raise interim finance** (secured only over **unencumbered assets  $\geq 2\times$  debt**).
- Issue instructions to staff to preserve going-concern value.

## **Proof of Claims & CoC Constitution**

- **Claims forms:**

- Form C: Financial creditors (Reg 8 IRPCP Regs)
- Form B: Operational creditors (Reg 7 IRPCP Regs)
- Form D: Employees/workmen (Reg 9 IRPCP Regs)
- IRP verifies claims within 7 days of claim-deadline; files CoC constitution report.
- Late claims (up to 90 days post-commencement) may be submitted, verified, and listed; CoC list published.

### **Section 22–23, 25: Resolution Professional (RP)**

- **Appointment (§ 22):** CoC's first meeting (within 7 days of constitution) votes by  $\geq 66\%$  voting share to (a) continue IRP as RP or (b) replace IRP with another IP; Board confirmation required.
- **Role & duties (§ 23):** RP continues IRP functions, preserves debtor assets, manages operations until plan approval/liquidation.
- **Actions (§ 25):** RP must prepare an information memorandum; invite Eols; evaluate and present plans to CoC; file applications to avoid preferential/undervalued/fraudulent transactions (Chapter III).

### **Section 21: Committee of Creditors (CoC)**

- Comprises all financial creditors, voting by debt-proportionate share.
- Related-party FCs have no voting rights (except RBI-regulated FCs for equity conversions).
- Consortium debts: trustee/agent or each FC can represent/vote.
- For FC classes (e.g. real-estate allottees), NCLT appoints an IP as class representative; **voting share equals sum of class members' shares**.
- CoC decisions require  $\geq 51\%$  **voting share** (**except 90% for withdrawing application, 66% for Sec 28 exemptions**).
- CoC can require any information from RP at any time during CIRP.

## Section 22–23, 25: Resolution Professional (RP)

- **Appointment (§ 22):** First CoC meeting (within 7 days of constitution) votes by  $\geq 66\%$  **voting share** to (a) confirm IRP as RP or (b) replace IRP; Board confirmation then follows.
- **Role (§ 23):** RP inherits IRP duties, preserves debtor assets, and manages operations until plan approval or liquidation.
- **Responsibilities (§ 25):** Prepare info-memorandum, invite EoIs, evaluate plans, present to CoC, and file avoidance-transaction applications (Ch III).

## Section 21 & Related Regs: Committee of Creditors (CoC)

- Composed of all financial creditors, voting by debt-proportionate share; **related-party FCs lose voting rights** (with limited RBI-regulated exceptions).
- **Consortium FCs** may act through **trustee/agent** or individually.
- If **no FCs** or all are related parties, CoC comprises up to **18 largest OCs** + **1 employee** and **one workman rep**.
- Decisions require  $\geq 51\%$  voting share; CoC can requisition information from RP at any time.

## CoC Meetings (IRPCP Regs 17–22)

- First meeting: within 7 days of CoC report.
- Quorum:  $\geq 33\%$  voting share (1/3rd); adjourned meetings require any attendance.
- Notices:  $\geq 5$  days (can reduce to  $\geq 48$  hours with authorised reps).
- RP convenes meetings; FCs with  $\geq 33\%$  voting share can demand/propose meetings or items.

## Section 28: CoC Approval for Major Actions

RP needs prior CoC ( $\geq 66\%$ ) approval to: raise finance beyond CoC-decided limits, create security interests, alter capital structure/ownership, foreclose security, [related-party transactions](#), amend constitutional documents, delegate authority, dispose shares, [change](#) management/personnel or [auditors](#), and transfer material contracts. Unapproved actions are void; CoC may report RP to IBBI.

## Section 25A & Reg 25A: Authorised Representatives

- For [FC classes](#), NCLT appoints an [IP Representative](#) ([from the state from which most of the creditors are from, say Andhra](#))
- Authorised reps vote per each FC's instructions; if no instruction, they must abstain.
- Must circulate agendas/minutes to represented FCs and act per their instructions.

## Section 29A: Resolution Applicant Ineligibility

A person (or connected party) cannot bid if they are:

- a. undischarged insolvent;
- b. wilful defaulter; have NPAs  $< 1$  year old (unless cured);
- c. convicted of serious offences; disqualified as a director;
- d. prohibited by SEBI;
- e. involved in avoidance/fraudulent transactions (unless pre-existing); guarantors to invoked guarantee; or

- f. disqualified by equivalent foreign law. Exceptions for financial entities under specified conditions.

## Section 30–31: Resolution Plan Criteria & Approval

When a company is going through insolvency, different people (called resolution applicants) submit plans to fix the company's problems.

The Resolution Professional (RP) carefully checks each plan to make sure it meets important rules, such as:

- Paying the [insolvency process costs](#) first: The plan should cover the costs of running the insolvency process.
- Some financial creditors don't get to vote on the plan but should still get their fair share.
- Creditors vote on the plans based on how much they are owed. A [plan needs 66% voting](#) to get approved.
- If there's a tie, there's a tie-breaker formula.
- **Post-approval:** plan implementer must secure statutory/competition approvals within [1 year](#) or as per law. Appeals (per § 61) may be filed on grounds of legal contravention, RP irregularity, OC/FC payment issues, or IBBI criteria breach.

## Section 32A: Cessation of Prosecution for Pre-Commencement Offences

- Approved-plan change-of-control stops corporate prosecution for prior offences, except [designated partners/officers in default remain liable](#).

- No action on debtor property covered by approved plan transferred to non-related new owners.
- Debtor and related parties must still cooperate with criminal investigations.

### **Section 33: Liquidation Triggers & Process**

NCLT must order liquidation if:

- No plan received by CIRP deadline (180 + 90 days),
- CoC ( $\geq 66\%$ ) resolves for liquidation pre-plan confirmation,
- NCLT rejects plan on legal non-compliance,
- Debtor contravenes approved plan and affected party applies, or
- Debtor fails to implement plan obligations.

On liquidation order: vest all debtor assets in estate; impose moratorium (with limited statutory exceptions); NCLT order serves as discharge notice for officers/employees unless business continues under the liquidator.

1. **Appeals** can be filed in SC against NCLT within 45 days
2. **Fast Track** to be completed in 90 days (with One-time 10 days extension)
3. IP must not be a partner in an audit firm associated with CD in the past 3 years.

4. IP should not be associated with any firm that made a transaction with CD, accounting for 5% of its turnover.
5. If both FC and OC exists, then Only the FCs become part of CoC.
6. CoC meeting notice sent to OC if **dues > 10% of total debt** (**cannot vote, just attend**)
7. **Quorum** for CoC meeting - **33%**.
8. IP will prepare Information Memorandum and submit to Resolution Applications, based on which they will propose each of their Plans.
9. **Share Subscription Money** is **not** 'Financial Debt'.
10. **Homebuyers** can file as Financial Creditors: **100 or 1/10th**

RA must not be:

1. Convicted 12th Schedule offence for more than 2 years
2. Other offences - 7 years

\*If Resolution fails and AA orders liquidation, RP will become OL (with written consent)