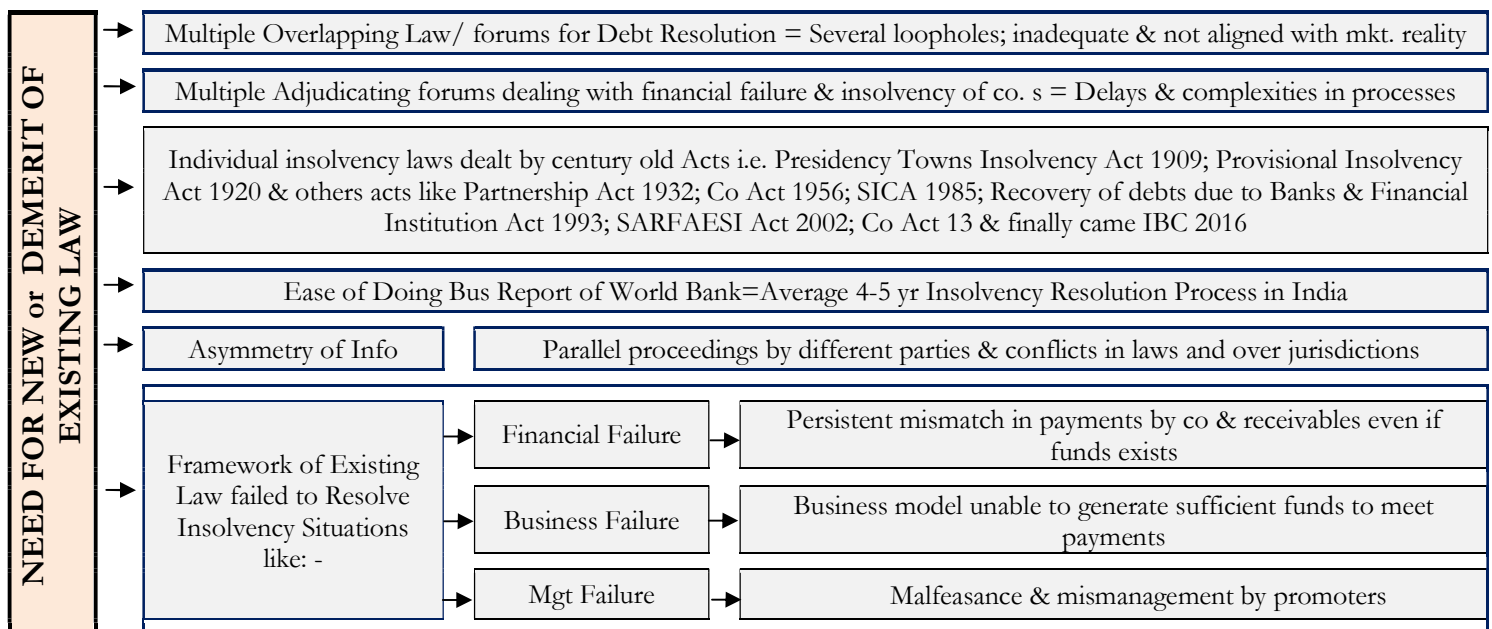
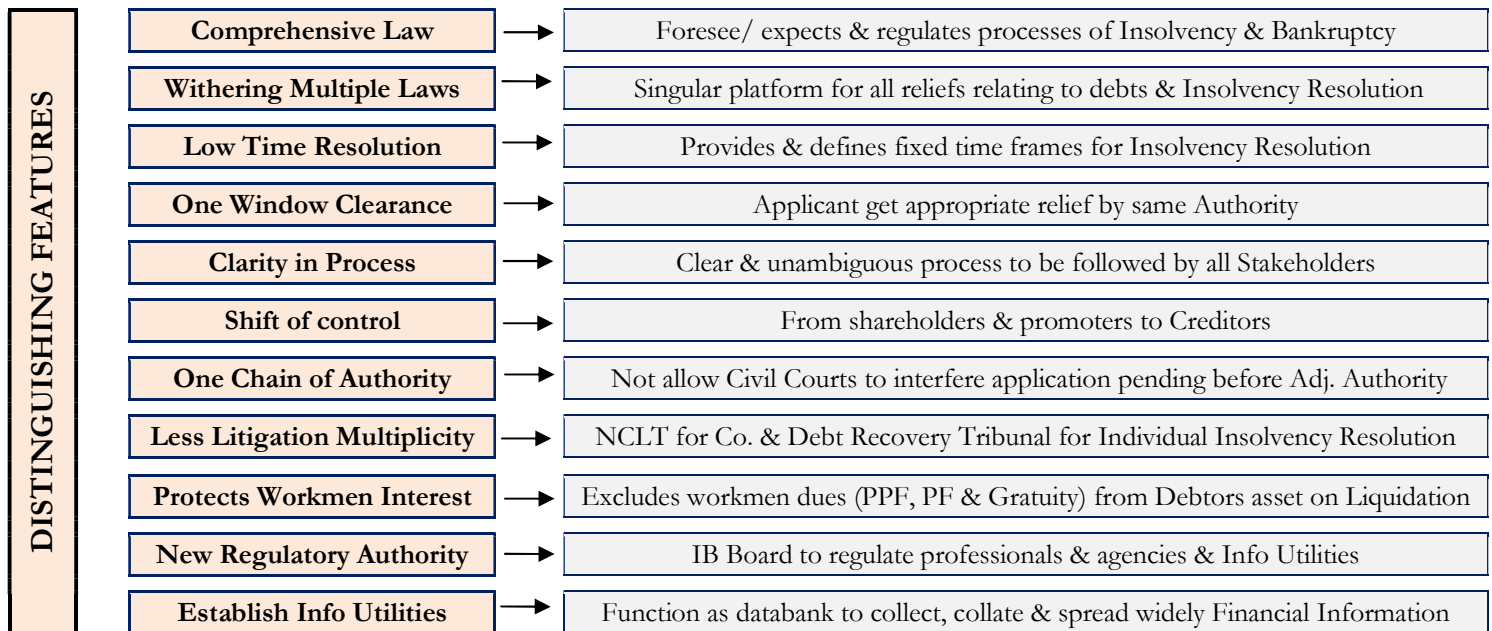
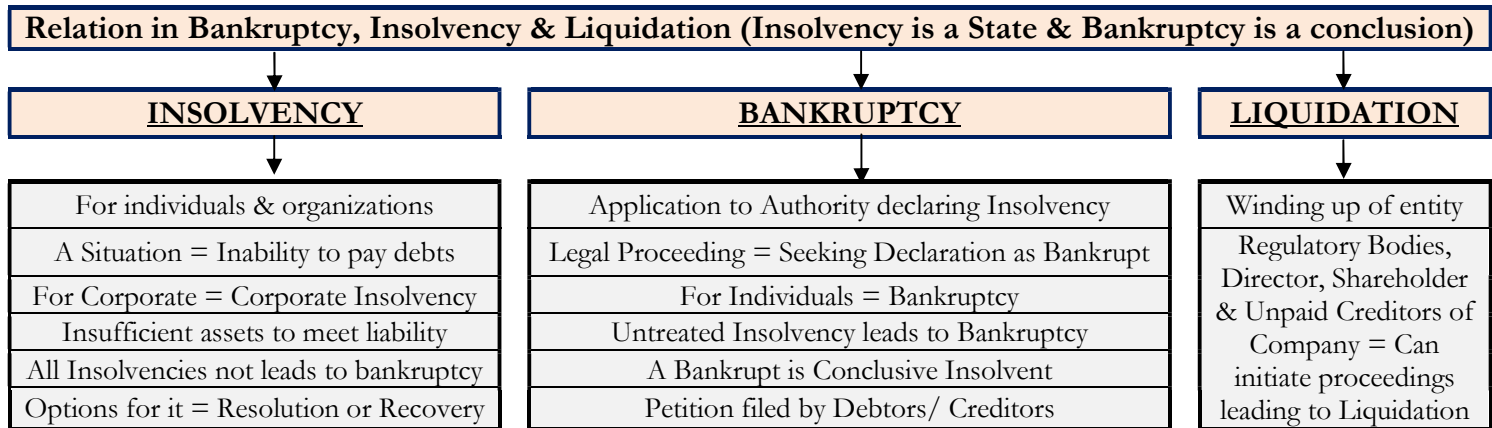
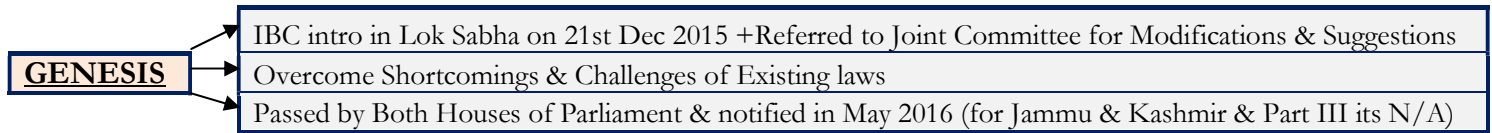


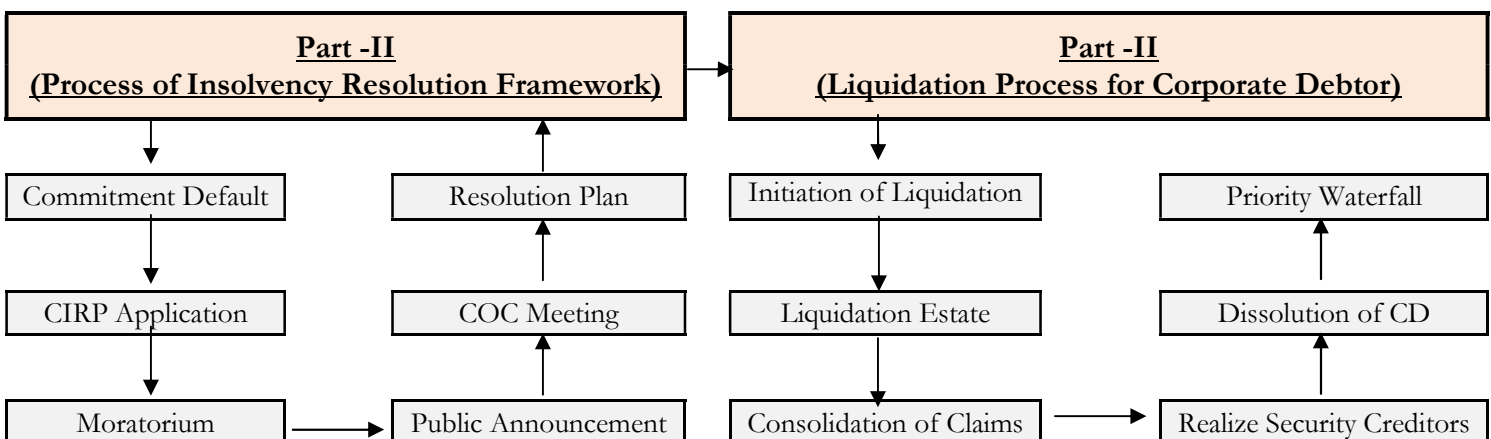
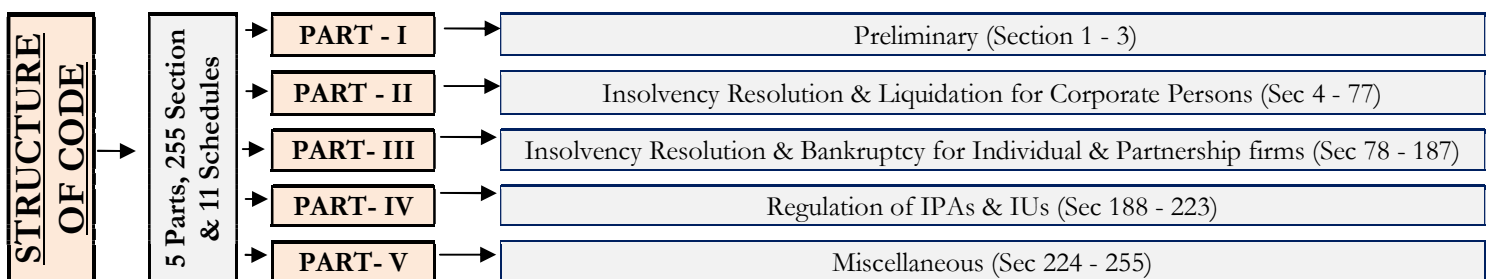
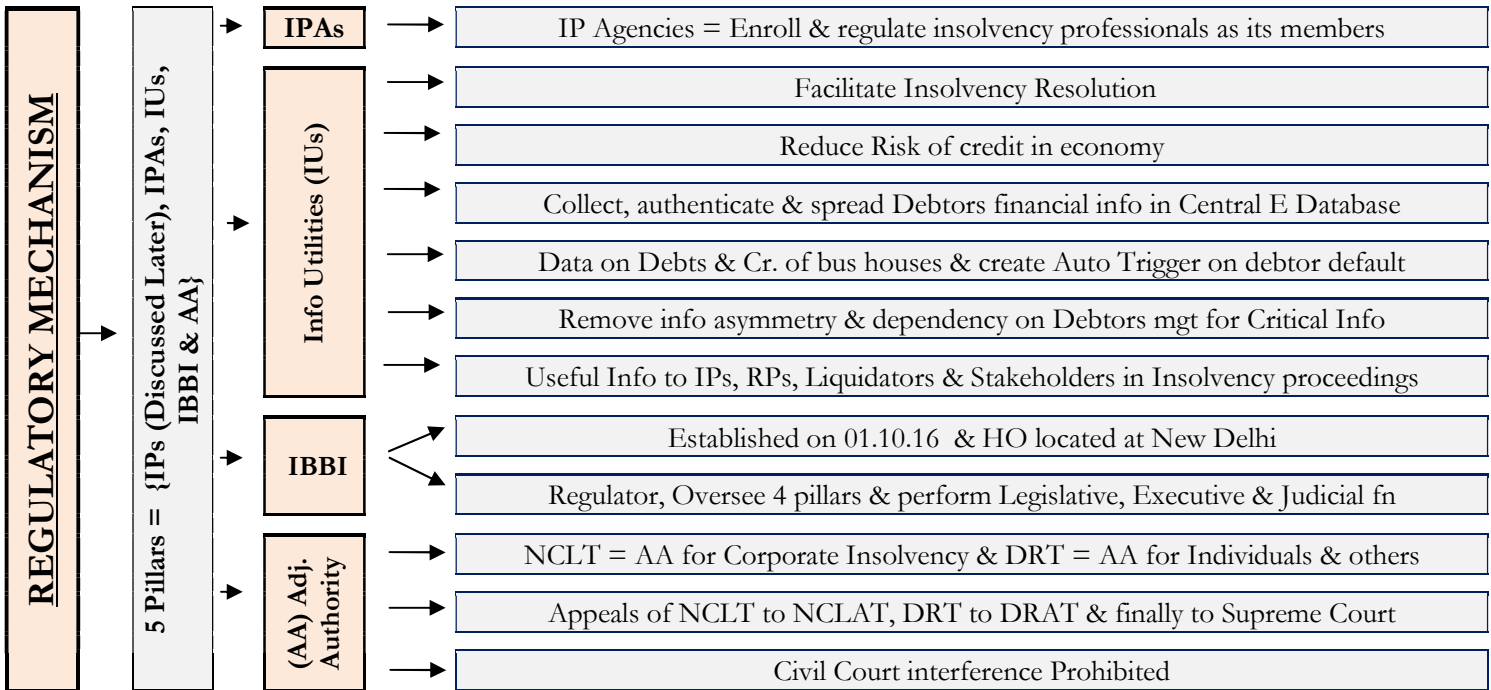
INSOLVENCY & BANKRUPTCY CODE - 2016



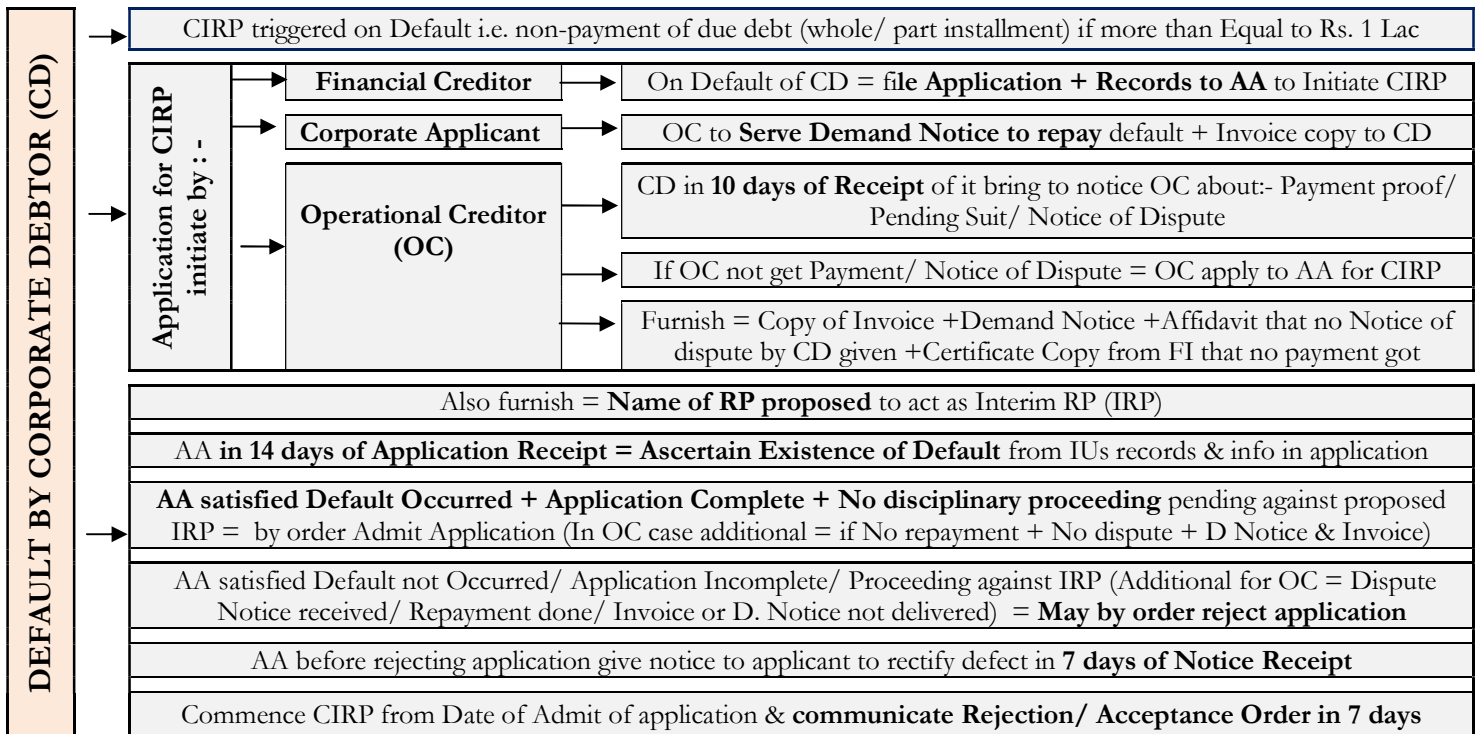
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PURPOSE OF ENACTMENT OF IBC Code 2016 (as per its Preamble)

Consolidate, amend laws of reorganization & Insolvency Resolution	Stakeholders Enjoy availability of credit
Fix Time periods for execution of law in time bound manner	Creditors not to bear losses on default
Strike Right Balance of Stakeholders Interests	Increase Credit Availability
Establish Insolvency & Bankruptcy Board of India as Regulatory Body	Promote Entrepreneurship
Movement from Debtor in Possession to Creditor in Control	Maximize Value of Assets of Interested Persons
Overcome shortcomings & challenges of Existing laws	Alter order priority to pay Govt. Dues
Facilitate easy & time bound closure of businesses in India	Focus on Creditor driven Insolvency Resolution



INSOLVENCY & BANKRUPTCY CODE - 2016



Persons not Entitled to make CIRP Application	→	CD/ Corporate Applicant undergoing a CIRP
	→	CD/ Corporate Applicant in respect of whom liquidation order made
	→	CD/ Corporate Applicant having completed CIRP 12 months before making application
	→	CD/ Corporate Applicant/FC violated term of Resolution Plans approved 12 month before Application

TIME LIMIT TO COMPLETE CIRP: - In 180 days from Date of Admission of Application of CIRP
 = RP to file Application to AA to extend 180 days time (if instructed by COC by more or equal 75% votes)
 = AA satisfy CIRP can't be completed in 180 days = Order to extend max 90 days (not more than once)

MORATORIUM	→	After commencement of CIRP = Moratorium period of 180 days declared by order in which All Suits & Legal proceedings against CD are kept in abeyance (waiting) i.e. by <u>prohibiting following acts</u> : - 1. Institution of Suits/ proceedings against CD & execute Judgment/ Court order before any Authority 2. T/f or dispose by CD Assets, Legal rights or Beneficial interests 3. Close, Recover or Enforce Security Interest by CD of its Property & action under SARFAESI Act 4. Recovery of Property by Owner or Lesser where property is occupied or in possession with CD
	→	In Moratorium Period = Supply of Essential G & S to CD not be terminated / suspended or interrupted
	→	Order of Moratorium = effective from Date of Order to Completion of CIRP
	→	AA Approve Resolution plan or pass CD Liquidation order = then Moratorium Period ceases effect

ROLE & POWERS OF IRP (Interim Resolution Professional)	
ROLE	POWERS
Issue of Public Notice of CIRP	Mgt of affairs of CD
Collation & verification of Claims received	Office/ Mgr of CD reports to IRP & provide access of docs & records
Help Creditors reach consensus for Revival Plan	Instruct Financial Institution(FI) managing CD A/c
As Liquidator & Bankruptcy Trustee	Exercise of BODs/ partners powers as theirs stand suspended
Constitute COC & conduct its 1st Meeting	
Adhere procedure of law, a/c & finance fn	

INSOLVENCY & BANKRUPTCY CODE - 2016

APPOINTMENT & TENURE OF IRP

AA to appoint IRP in 14 days from CIRP Commence Date

If application by FC/ CD/ OC = IRP proposed in Application appointed if no disciplinary proceeding pending

If Application by OC but no proposal for IRP = AA refers Board to recommend IRP = Board in 10 days of Receipt of Reference from AA recommend IRP Name having no pending proceeding

Term of IRP not more than 30 days from appointment

IRP to make **PUBLIC ANNOUNCEMENT** in 3 days of his appointment including: -

Last date for Submission of Claims

Date on which CIRP Ends

Name of Authority with which CD is incorporated or registered

Details of IRP to manage CD bus & responsible for receiving Claims

Penalties for False & Misleading Claims

Name & address of CD under CIRP

COMMITTEE OF CREDITORS(COC)

Constitution

- 1st Meeting of COC = In 7 days of Constitution (comprising all Financial Creditors of Corporate Debtor)
- Related Party to whom CD owes a Financial Debt = no right to representation, participate & vote at meeting
- CD owe debt to 2 or more FCs by agreement = Each FC to be part of COC & voting share as per debts owed
- OC assigned or legally t/f any Operational Debt to Financial Creditor, assignee or transferee = OC to its extent
- Board may specify manner of determining voting shares in respect of financial debt issued as securities
- If A person is both FC & OC = FC with voting right to extent Financial Debt owed to him by CD & included in COC & be considered OC to extent of Operational Debt owed to him by CD
- FC may assign voting right to agent/ trustee to act on his behalf or appoint IRP at own cost (jointly/ severally)
- COC Right = to require IRPs to furnish any financial info during CIRP & that to be given in 7 days

Meeting

- Members of COC may meet in Person or E means & All meetings conducted by RPs
- Directors/ partners & 1 Representative of OCs = may attend meeting without vote & absence not invalidate it
- RP to determine voting rights assigned in manner as per Board & each Creditor vote as per it only
- RP to give **Notice of each COC meeting to:** - o COC Members o Members of Suspended BODs/ Partners o OCs or their representatives if amt of their Dues Aggregate is not less than 10% of Debt

RESOLUTION PROFESSIONAL (RP)

Appointment & Functions of RP

COC in 1st meeting by majority not less than 75 % votes resolve to Appoint IRP as RP or Replace him by other RP

RP to conduct entire CIRP & mg CD affairs

RP exercise powers & duties vested with IRP & IRP to provide all Info, Docs & Records of CD to RP

Take over mgt of CD & operate its bus as Going Concern under Broad Directions of COC

Replacement of RP by COC

Forwarding Name to AA by COC of such IP

Further forwarding Name to Board for its confirmation

Any disciplinary proceeding pending against proposed RP = RP already appointed to continue office till replacement

Approval of COC for Certain Actions of RP during CIRP: - If not taken then = Void action

Make changes in appointment/ terms of contract of personnel as per COC or of statutory/ internal auditors

Create any security interest over assets of CD

Amend Constitutional documents of CD

Change in mgt of CD or subsidiary

Delegate authority to other person

Undertake Related party transaction

Change capital structure of CD by issue additional/ create new class of securities, buy back or redemption

Raise interim finance in excess of decided in COC meeting

Dispose or permit disposal of shares of shareholders of CD

T/f rights or financial/ operational debts under contracts

Instruct FI for amt from A/c in excess of COC decision

Record any change in ownership interest of CD

RP to convene meeting of COC & seek vote of 75% of Creditors prior taking actions above

COC to report to Board to take necessary actions against RP for actions undertaken above without approval

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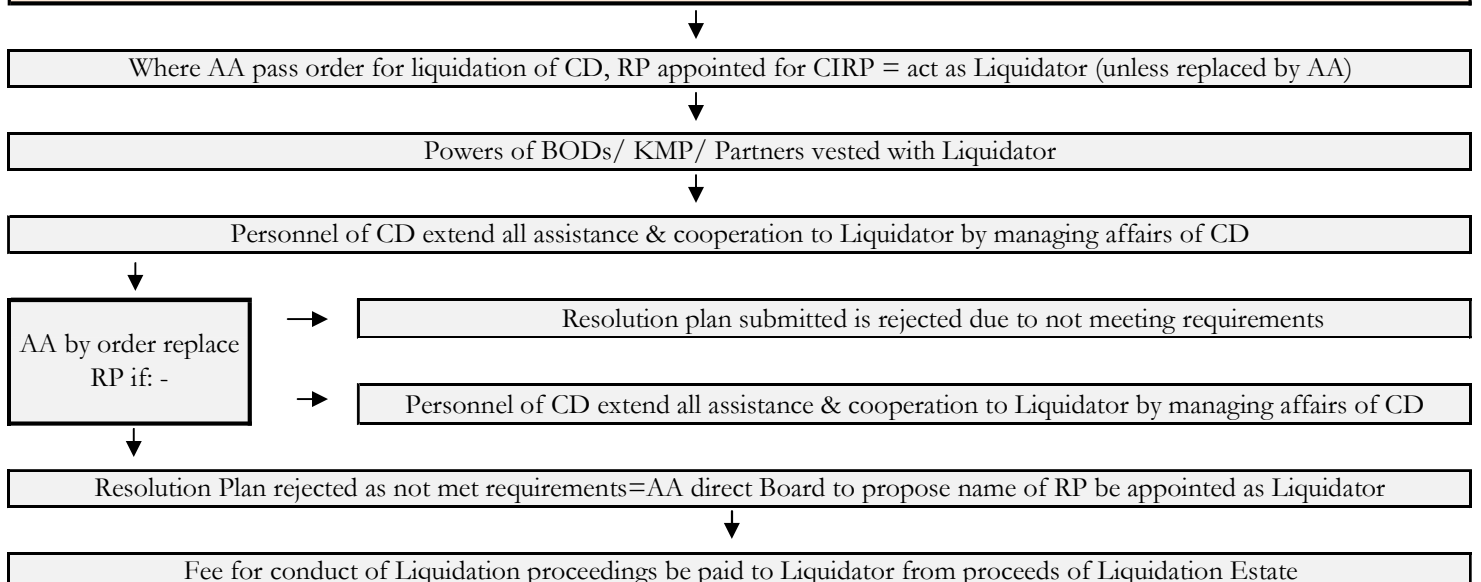
RESOLUTION PLAN

- RP to make a Info Memorandum which shall contain Info for preparing Resolution Plan
- A Resolution applicant may submit a Resolution Plan to RP prepared on basis of Info Memorandum
- RP examine each Plan received confirms to: -
 - Provides for pay of CIRP Costs in manner specified by Board in Priority to repayment of Debts
 - Provides for repay of Debts of OC in manner by Board not be less than amt to be paid to OC
 - Provides for mgt of affairs of CD after approval of Resolution Plan
 - Implement & Supervise of Resolution Plan & other requirements as may be specified by Board
 - Doesn't contravene any of provisions of Law for time being in force
- COC may approve Resolution Plan by vote not less than 75% of voting shares of Financial Creditors
- Resolution applicant may attend = but can't vote unless being a FC at COC meet where plan of Applicant considered
- RP to submit Resolution Plan as approved by COC to AA
- AA is satisfied Resolution Plan as approved meets requirements = order its Approval or by order Reject it (binding on CD and employees, members, creditors, guarantors & other stakeholders involved in Resolution Plan)

INITIATION OF LIQUIDATION

- If Corporate Debtor CIRP fails then = Liquidation provisions are triggered
- Order passed requiring CD be liquidated if: -
 - No plan is presented or if presented plan isn't approved by AA
 - COC not approve Resolution Plan in 180 days (90 further days)
 - 75% Majority of COC resolves to liquidate CD
 - NCLT rejects Resolution Plan on Technical grounds
- RP any time during CIRP but before Confirm of Resolution Plan = Intimate AA decision ordering liquidate CD
- Resolution Plan if contravened by CD = Person except CD affected by it = Apply to AA (NCLT) for Liquidation order
- On receipt of application if AA determines CD contravened provisions of Resolution plan = pass Liquidation Order
- Liquidation Order passed = No suit or Other Legal proceeding be instituted by or against CD
- Liquidation Order = Deemed Notice of discharge to officers, employees & workmen of CD except if bus of CD continued during liquidation process by Liquidator
- NCLT pass Liquidation Order = Moratorium is imposed on pending legal proceedings against CD
- Assets of Debtor & Liquidation proceeds = Vests in Liquidation Estate

APPOINTMENT OF LIQUIDATOR



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POWERS & DUTIES OF LIQUIDATOR

Take in custody or control all Assets, property, effects & actionable Claims of CD	
Perform other functions as may be prescribed by Board	
Take out in official name, letter of admin to deceased contributory & do in official name any act to get payment of money due & payable from contributory or his estate	
Take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument & to use common seal for liquidation, discharge of A & L & his functions thereon	
Sell immovable/ movable property & actionable claims of CD by Auction or private contract & t/f such property	
Draw/ accept/ make/ endorse negotiable instruments, B/E or promissory note in name & on behalf of CD for liability	
Obtain any professional assistance in discharge of duties, obligations & responsibilities	
Invite & settle claims of Creditors & claimants and distribute proceeds as per Code provisions	
Defend any suit, proceedings or prosecution civil or criminal in name of on behalf of CD	
Investigate financial affairs of CD to determine undervalued preferential transactions	
Apply to AA for orders or directions necessary for Liquidation & report progress of Liquidation	
Consult stakeholders entitled to distribution of proceeds & such consultation not binding on Liquidator	
Records of such consultation made available to all other stakeholders not consulted in manner of Board	
Verify claims of all creditors	Evaluate & make report of assets & property of CD
Take measures to protect/preserve CD assets/ properties	Carry on business of CD for its Beneficial Liquidation

LIQUIDATION ESTATE (LE)

Liquidator to form & hold Estate of Assets w.r.t. CD = LE for all Creditors benefit & Liquidation purpose

INCLUDE

Movable & immovable Tangible Assets
Assets CD has ownership rights as per B/S of CD
Encumbered assets
Assets may/ mayn't be in CD possession
Liquidation proceeds as & when realized
Property belong to/ vest in CD at CIRP Commence Date
CD Assets of which Creditor relinquished Security Interest
Assets/ its Value recovered by proceedings
Assets determining ownership by Court/ Authority
Intangible Asset, Intellectual property, Security Financial Instruments, Insurances & Contractual Rights

EXCLUDE

Personal Assets of Shareholder or partner of CD
Other Assets as specified by Board
Assets set off on A/c of Mutual deal in CD & Creditor
Assets owned by 3rd Party in possession of CD: -
o Assets held in trust for 3rd party o Bailment Contract
o All sums due to Workmen or employees
o Contractual arrangements of only Asset use not Title
o Assets CG notify in consult with Financial Regulator
Assets of Indian/ Foreign Subsidiary of CD
Assets in Security/ Collateral held by Financial Service Provider with set off of Trading & clearing transaction

CONSOLIDATION OF CLAIMS

Collection of Assets by Liquidator in 30 days from start of Liquidation Process
Submission of Claims by Financial creditor to Liquidator with records of claim with IUs
OC may submit claim to Liquidator with supporting docs prescribed by Board
Creditor who is partly FC & OC to submit claims to Liquidator to extent of Financial debt owed
Creditor may withdraw or Vary his claim in 14 days of Submission
Liquidator verifies claims submitted & may require any person to produce docs necessary to verify claim
After verification = Admit or Reject claim in whole or part & record reasons in writing why if so rejected
Liquidator to determine Value of claims in manner as specified by Board
Creditor may appeal to AA against Liquidator decision rejecting claim in 14 days of it

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DISSOLUTION of Corporate Debtor

- Assets of CD completely Liquidated, Liquidator to make application to AA for Dissolution of CD
- AA on app by Liquidator = order CD to be dissolved from order Date & CD dissolved accordingly
- A copy of Order in 7 days from Order date = Forwarded to Authority with which CD is Registered

Secured Creditors (SCs) in Liquidation Proceedings may :-

Relinquish its Security Interest to LE & receive proceeds by Sale of Assets by Liquidator

Realize Security Interest in manner specified

Inform Liquidator about realization of Security Interest

Verify & permit Security Interest by Liquidator before realization & existence proved by records or other means

SC = May enforce, realize, settle, compromise or deal with Secured Assets by law for Security Interest

SC apply to AA to Facilitate Realization of Security Interest if Restricted by CD/ others

AA on such application pass order = Permit SC realize Security Interest

Realized Security Interest in excess of Debts due i.e. Yield of surplus = SC to provide it to Liquidator

CIRP costs & Dues from SCs who realized their Security Interest = deducted from realization proceeds by SC

Realization amt of Secured Assets not adequate to repay debts owed to SC = Unpaid debts paid by liquidator

PRIORITY WATERFALL TO DISTRIBUTE LIQUIDATION PROCEED/ ASSET/ SETTLE CLAIM

CIRP Costs & Expenses & Liquidation costs = Paid in Full

Debts ranking Equally in:

- = Workmen dues for 24 months before Liquidation Commencement (LC)
- = Debts owed to/ Dues of Secured Creditors if Relinquished Security

Wages/ Unpaid dues to Employees (except workmen) = For 12 months before Liquidation Commencement

Financial Debts owed to Secured creditors

Dues ranking equally in:-

- = Due of CG/ SG & amount of Consolidated Fund for 2 years before LC
- = Debts owed to secured creditor for amount unpaid after Security interest

Remaining Debts & Dues

Preference Shareholders

Equity Shareholders/ Partners