Date __/__/__

# The Insolvency and Bankruptcy Code

1) Main purpose of the code

* To resolve India's Bad debt problem by creating a data base of defaulters

* To Establish The Insolvency and Bankruptcy Board of India

* To facilitate easy exit of bankrupt corporates and individuals.

→ Insolvency is state of affairs from which an entity may either "emerge" or "Cease" [TL > TA]

→ Bankruptcy is the end of road
↓
Entity can't repay The Debts

If the resolution process of insolvency fails

Insolvency resolution process fails → Liquidation

| Insolvency resolution process fails | Liquidation |
|---|---|
| ↓ Initiators | ↓ Initiators |
| * Financial creditor | * unpaid creditors |
| * operational creditor | * Shareholders |
| * corporate Debtor it self | * Directors |
| | * Regulatory Bodies |

* 5 pillars of the code

1) Insolvency professionals
2) Insolvency professional agencies
3) Information utilities
4) IBB of India
5) Adjudicating Authorities

↓ NCLT [CO, LLP, personal Gaurantees to CD]
↓ appeal to NCLAT
↓ appeal to Supreme court

↓ DRT [Individual, partnership]
↓ appeal to DRAT
↓ appeal to SC

* NO injuction shall be granted by any court, tribunal, any authority against order of "Adjudicating Authority"

Date __ /__ /__

(Sec 7)
Insolvency resolution process by "Financial Creditor"

↓

Jointly or it self

↓

enclosure the documents

↓

* Record of default with recorded in utility (or) other evidence
* name interim resolution professional
* any other info specified.

↓

Adjudicating Authority

↓

with in 14 days

↓

Admits application

If Satisfied

* Default occurred → ✗
* application for initiating process complete → ✗
* no desciplinary action against proposed professional → ✗

Reject if

↓

7 days time to rectify

↓

* process start from date of aplication to AA

Date ___/___/___

Sec(8) Demand of payment By operational creditor

↓

Send demand Notice to CD along with Copy of invoice

↓ with in "10" days

Corporate Debtor

↓

[Respond]

↓

Regarding Exisistence of dispute, pending of suit

↓

Before receipt of Notice.

↓

* Send attested Copy of electronic t/f of funds from Bank

* Send attested Copy of record that Cheque encashed by Creditor

Sec 9

Initiation of insolvency resolution by "operational creditor"

↓

NO reply or payment with in 10 Da

↓

make Application to ADJUDICATING authority

enclouse

1) Copy of invoice & demand notice
2) An affidavit to the effect there is NO reply
3) Copy of Certificate from FI confirming there is no payment from CD
4) any other specified.

Page No.

Date __/__/__

AA

14 days of application

Reject if

accept if Satisfied

a) application process Complete ×
b) There is no repayment ×
c) Invoice (or) Notice has delivered to "CD" ×
d) No disciplinary action against proposed professional ×

give 7 days to rectify

Insolvency resolution process Completed with in

180 days

Extra 90 days

"If Committee" of Creditors passed resolation [75% voting]

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Date _ / _ /

Sec (14) Moratorium.

Start from Insolvency Commencement date By "AA"

prohibits

1) Institution (or) continuation of Suits

2) Excution of decree & Judgment by court

3) T/f, alientating, disposing of any asset (or) legal right (or) interest by corporate Debtor

4) Recovery of any property by any owner, or lessor from the occupation, & possession under CD

5) Any action to foreclose, recover or enforce any security interest created by CD

period of moratorium

till completion of insolvency process

Ceases

1) Resolution plan approved by "AA"

2) AA pass liquidation order.

* Supply of essential goods (or) services to "CD" not to be be terminated or suspended during moratorium period.

Sec 21 Committee of Creditors [COC]

* It composes only Financial creditors

Different Situations

Consortium finance

2 or more members

each of such "FC" shall part a member of "COC"

proportion to debt

A person is "FC" as well as "OC"

* Such person shall be "FC" to extent of his debt and included as member

* "OC" to extent of operational debt

"OC" assignment of debt

transferee shall be considered as "OC" to such transfer

Single trustee for 1 or more "FC"

[Consortium or Syndicate]

each "FC" authorise

1) act on behalf of to extent voting share

2) represent himself

3) exercise vote with jointly severally

(4) may appoint resolution professional at his own cost

Date __/__/__

Saathi

Appointment of resolution professional (RP)

First meeting of "COC"

held with in 7 days from formation

majority vote of Not less than 75% of voting share to

appoint interim RP as a "RP" (or) Replace the IRP

procedure

① COC

* file application with "AA" with proposed RP

② Forward By "AA" to Board

③ If Board confirms "AA" shall make appointment of "RP"

④ If NO response from Board

"AA" pass order "IRP" as "RP"

Date ___ /___ /______

preperation of information memorandum

"RP" shall provide all info to "applicant" in physical and electronic

provided that

(a) Comply with provisons Law being in force

(b) To protect any intellectual property of CD

Submission of Resolution plan (Sec 30)

Based on information memorandum applicant

↓

Submit → Resolution plan

↓

to "AA"

↓

Examine

① provide for payment of resolution process cost in priority to other debts

② payment to "OC" shall not be less than amt paid in case of liquidation under (Sec 53)

③ implementation Supervision of plan.

④ does not Contravene to any Law

⑤ As per specified by Board

COC may approve plan with 75% voting

↓

Submit same to "AA"

Page No.

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Date __/__/__

Consequences of approval of plan

moratorium ceases

plan shall binding on CD, employees members, creditors all stake holders

Initiation of liquidation

4 Situations

① AA does not recieve the plan before
① expiry of RP period
② max period ~~by~~ for RP
③ Fast track corporate resolution process (Sec 53)

② If "AA" reject plan bcz of not compliance

③ Decision of "COC" to liquidate before approval plan by RP intimate to AA

④ application made by other than "CD" whose interest is affected bcz of contravention of plan other than CD ~~to~~ "AA"

if "AA" satisfy pass liquidation

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# Asset Not forming Liquidation Estate

① Asset owned by $3^{rd}$ party

i) Asset held in trust

ii) Bailment

iii) due to employee & workmen

PF, GF

(iv) other agreements does not stipulate T/f of asset

(v) other notified by CG

② Assets in Colletral security held by FI financial service providers

Subject to Netting off Set off

③ personal assets of any share holder, partner of CD

④ assets of any indian foriegn Subsidiary of CD

⑤ Specified by Board

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