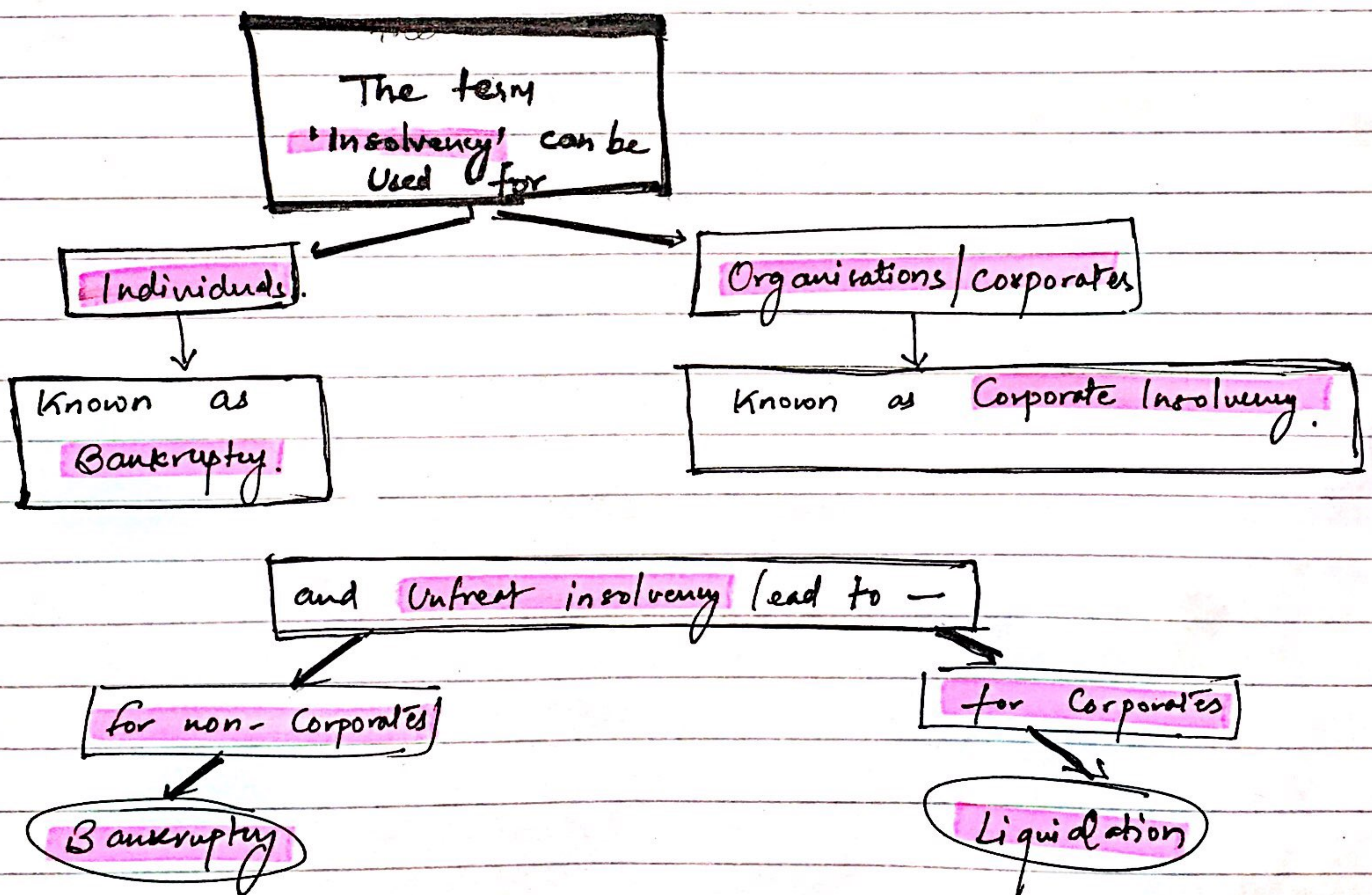


The Insolvency and Bankruptcy Code, 2016.

Insolvency is the ^{state} situation which arise due to inability to pay off the debts due to insufficient assets.
[TL > TA].

Bankruptcy is the ^{Conclusion.} situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt.



(*) A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to bankruptcies.

Insolvency have two options.

Resolution and Recovery.

Liquidation.

Initiators.

Initiators.

- ① Financial Creditors.
- ② Operational Creditors.
- ③ Corporate Debtors - itself

- ① Unpaid Creditors.
- ② Shareholders.
- ③ Directors.
- ④ Regulatory Bodies.

Existing Law and framework.

~~Debtor of course~~

* failed to resolve insolvency situations because of —

① Financial failure.

② Business failure.

③ Malfeasance and mismanagement by promoters.
wrong doing.

* Existing Law not aligned with market realities.

* No single window resolution: (Complex process)

* Resolution and jurisdiction was with multiple agencies with overlapping powers.

* Delayed and complexities in process.

* Multiple laws governing debt resolution and multiple forums.

* Parallel proceedings by different parties on the same debtor in different forums.

* Conflicts b/w laws and over jurisdictions.

* Asymmetry of information.

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~~ exit of bankrupt corporates and individuals.

→ Features ⇒ * Comprehensive Law. — deals for all persons i.e. Corporates, Partnership, LLPs, & individuals.

* No multiplicity of Laws. — Single platform

* Low time resolution. — fixed time frame i.e. within 180 days. extendable to 90 days.

* One window clearance. — winding up and liquidation by same authority.

* One chain of authority. → NCLT for Corporates.
→ DRT for individuals.

* Priority to interest of workman and employees. — During liquidation exclude dues payable to workmen under PF, Pension and Gratuity from debtor's assets.

* New Regulatory authority. — 'IBBI, 'Insolvency and Bankruptcy Board of India'.

Regulatory Mechanism → five pillars of the Code.

①

Insolvency and Bankruptcy Board of India (IBBI).

- * Established on 01. Oct. 2016.
- * Regulator—who oversee the entities.
- * Perform legislative, executive and Quasi-judicial functions w.r.t. IP, IPA and IU.
- * Perpetual succession & common seal.
- * Having power according to Code.
- * Constitution → ⇒ One chairperson.

⇒ Three Members from C.G.
Not below joint secretary rank.
each represent Ministry of finance, Min. of Corp. affairs, and Ministry of Law, ex-officio.

⇒ One member - Nominated by RBI.

⇒ Five members - Nominated by C.G.
Out of which at least three shall be whole-time members.

②

Insolvency Professional Agencies [IPA]

- * Established to enroll and regulate IP. as its members.

* Functions.

Regulatory functions → Drafting codes and detailed standards through bye-laws.

And made public and are binding on all members.

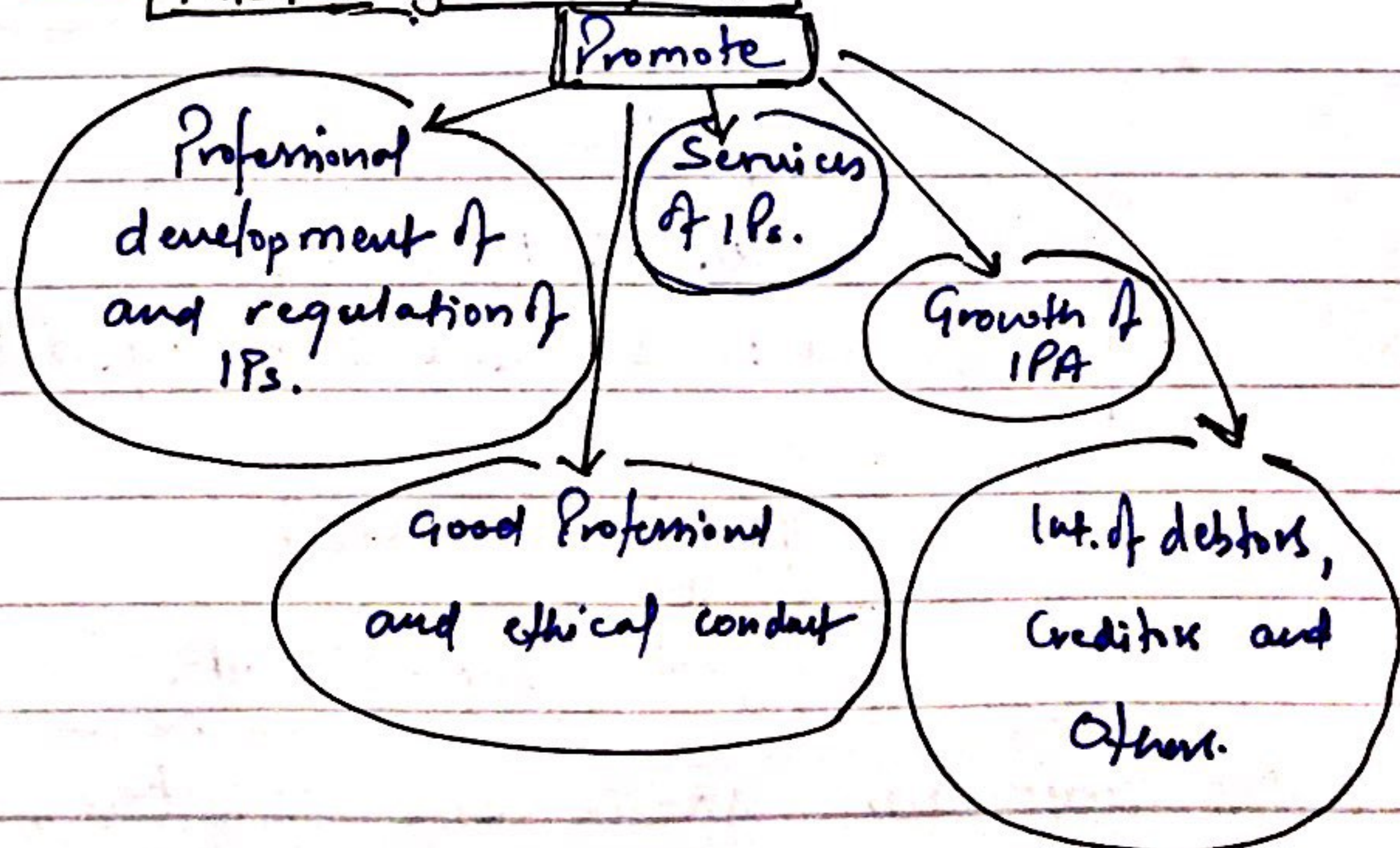
Executive function. →

- Monitor, inspect and investigate the members.
- Performance evaluation of members.
- Malfeasance in the conduct of IP duties.

Quasi-judicial functions.

Addressing grievances, hearing complaints against members and taking suitable actions.

* Principles governing IPA



3

Insolvency Professionals. [IP]

- * Act as intermediaries.
- * Play key role in efficient working of bankruptcy process.
- * Functions
 - Adhering to procedure of law.
 - Accounting / Finance related.
 - ⇒ Verifies the claims of creditors
 - Constitutes of Creditors Committee
 - ⇒ Run debtor's business during moratorium period.
 - ⇒ Helps creditors in reaching a conclusion for revival plan.
 - ⇒ Act as Liquidator and bankruptcy trustee.

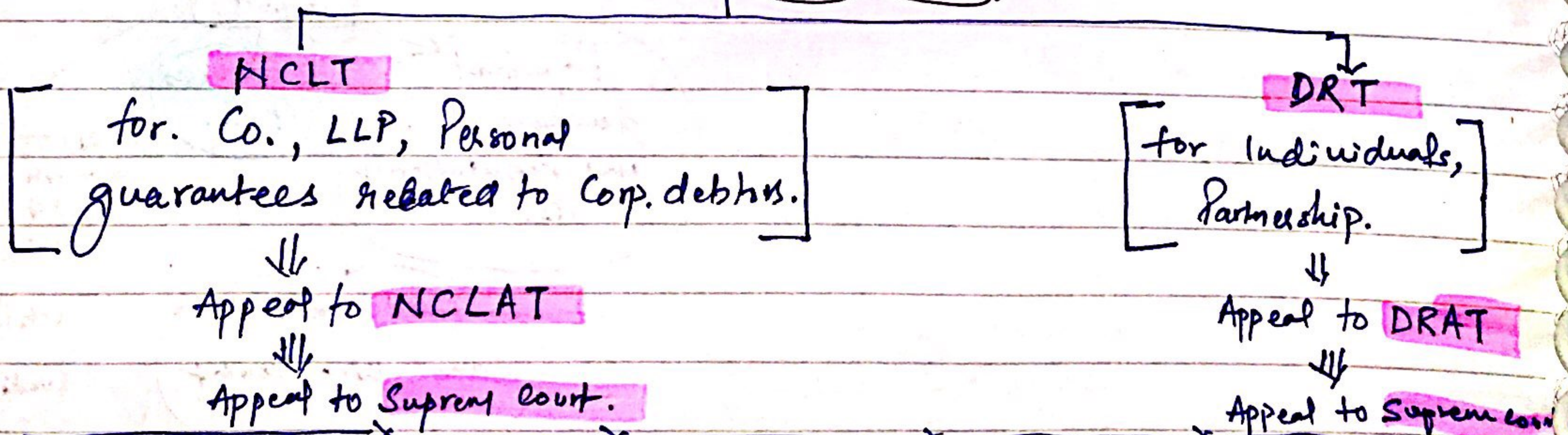
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Information Utilities. [IU]

- * IU required to collect, collate, authenticate and disseminate financial info. of debtors in centralized electronic database, at all the time.
- * It removes information asymmetry.
- * Obligations of IU.
 - Create/store in universally accessible format.
 - Accept financial information.
 - Accept in specified form and manner.
 - Maintain quality standards.
 - Get the information received from various persons of resolution process.
 - Publish such statistical information.
 - Have inter-connectivity with other information utilities.

5

Adjudicating Authority. [AA]



- * No injunction shall be granted by any court, tribunal, any authority against order of "Adjudicating Authority".

Sec. 7

Insolvency resolution process By 'Financial Creditor'.

Jointly or it self.

filing application with
enclosure of documents.

* Record of default.

Recorded in Utility or other evidence.

* Name of Resolution professional.

* Any other info. specified.

Adjudicating Authority

within 14 days of Application.

Admit application if.
satisfied.

Reject if.

① Default occurred.

→ X

AND ② Application is complete.

→ OR X

AND ③ No disciplinary action
against proposed professional.

→ OR X

Notice to rectify defects
within 7 days of receipt of notice.

Process start from the
date of application to AA.

Sec. 8

Demand of Payment By Operational Creditor

Send demand notice to Corp. Debtors
along with copy of invoices.

with in 10 Days.
(of receipt of Notice)

Corporate Debtor

Respond

Regarding existence
of dispute, pending of suit.
before receipt of notice.

* Send attested
Copy of electronic t/f of
fund from bank.
↓ OR

* Attested Copy of cheque
record encashed by creditor.

Sec. 9

Initiation of Insolvency Resolution by 'Operational Creditors'.

↓
No reply or payment within 10 Days

↓
Make application to AA.
↓
with enclosures.

- ① Copy of invoices or demand notice.
- ② An affidavit to the effect there is no reply.
- ③ Certificate (copy) from financial institution confirming there is no payment from CD.
- ④ Any other as specified.
- ⑤ Proposed name of professional. (Resolution Professional).

A. A

within 14 Days of application.

↓
Accept, if satisfied.

↓
Reject, if

① Application is complete.

→ X

② There is no repayment.

→ X

③ Proper Invoice or notice has delivered to CD.

→ X

④ No disciplinary action against proposed professional

⇒ X

Give 7 Days to Rectify.

Process starts from the date of application to AA.

Insolvency Resolution Process Completed

with in. ↓

180 Days.

Extra 90 Days.

Only if Committee of
Creditors (CoC) has

passed resolution

[75% Voting]

Sec. 14

Moratorium.

Starts from Insolvency Commencement date by 'AA'.

Prohibits.

1. Institution (OR) Continuation of suits.
2. Execution of decree OR judgment by court.
3. T/f, alienating, disposing of any assets (OR) legal right (OR) interest by corporate debtors.
4. Recovery of any property by any owner, (OR) lessor from the occupation, OR possession under corporate Debtor.
5. Any action to foreclosure, 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. passed liquidation order

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

Committee of Creditors. [COC].

- ⇒ *
- Composes only financial creditors.
 - RP shall conduct all the meetings of COC.
 - RP is required to file a report to AA certifying the constitution of COC.
 - Report shall be filed before 30 Days from the date of appointment of RP.

⇒ If Financial Creditors does not exist, then

Committee shall be formed comprising of followings:-

- 18 Largest operational creditors by value.
- 1 representative elected by all workmen.
- 1 representative elected by all employees.

* If no. of operational creditor < 18 , → Committee include all such creditors.

⇒ Voting.

All decisions of COC, shall taken by vote of minimum 75% of voting share of the financial creditors.

Voting share determined based on the value of the debt of creditor in proportion of total debt.

⇒ First meeting of COC. → * Within 7 days of the constitution of the COC.

⊗ In first meeting of CoC., may resolve to ⁽ⁱ⁾ appoint
IRP as RP (or) ⁽ⁱⁱ⁾ to replace the IRP by another RP

⇒ Notice of the Meeting. to :-

- * Members of CoC.
- * Members of Suspended BOD / Partners of corporate person.
- * Operational creditors (OR) their representatives.
if their dues is not less than 10% of the debt.

* Operational Creditors → have not right to vote in CoC
they may attend meeting of CoC.

* financial creditor which is Related party of CD, shall not have right to Representation, Participation or voting in the Meeting of CoC.

⇒ Quorum of Meeting —

⊗ Atleast 33% of the Voting rights
either in person (OR) by video/audio means.

⊗ If Quorum not exist → Meeting adjourned at same time
and place on next day.

Appointment of Resolution Professional. (RP).

First meeting of CoC.

(held within 7 Days from formation.)

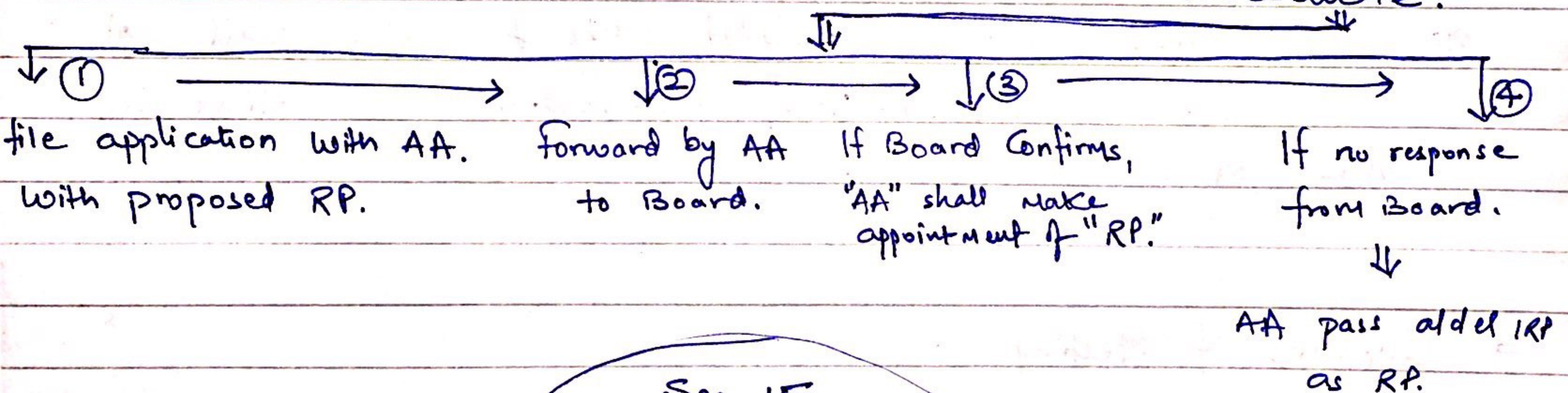
By Majority vote i.e. Not less than 75% of voting share.
to...

Appoint IRP as
a RP.

(OR)

Replace the IRP
with new RP.

Procedure.



Sec. 15

Public Announcement.

* Immediately after appointment of RP
→ within 3 Days of appointment.

Public announcement shall include:-

- ① Name & Address of CD.
- ② Name of authority with which CD is registered.
- ③ Detail of IRP
- ④ Penalties for false or misleading claims.
- ⑤ Last date of submission of claims.

⑥ End date of CIRP.

Submission of Resolution Plan.

RP prepare and submit information memorandum to resolution applicant in order to prepare the resolution plan.



RP examine and submit it to CoC for approval.



COC approve

[By vote of not less than 75% of voting shares]



After CoC approval,

Submit the plan to 'AA' for ^{approval} approving.

⇒ AA examine the plan and approve on following grounds:-

(i) Provide for payment of resolution process cost in priority to other debts.

(ii) Payment to "OC" shall not be less than the amount paid in case of liquidation u/s 53.

(iii) Proper implementation supervision of plan.

(iv) Does not contravene to any law.

(v) As per specified by board.

* Consequences of approval of plan.

↓
Moratorium ceases.

↓
Plan shall be binding on
CD, Employees, members,
creditors, & all stakeholders.

Order of Liquidation by AA

of Corporate debtors in following Cases :-

4 Cases.

- ① AA does not receive resolution Plan, before
① Expiry of Resolution Process period i.e. 180 Days.
② Max. period, i.e. $180 + 90$ Days.
 - ② If 'AA' reject plan bcz of non compliance.
 - ③ Decision of CoC to liquidate before approval 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
- ③ Fast track Corporate resolution process.
(Sec. 53)

Priority of claims.

for distribution of liquidation proceeds :-

- ① Cost and Expenses of insolvency.
↓
- ② Workmen's dues for period of 24 months and dues of secured Creditors.
↓
- ③ Wages and any unpaid dues owed to employees for the period of 12 months.
↓
- ④ Dues of CG and SG.
↓
- ⑤ Unsecured financial Creditors.
↓
- ⑥ Other debts and dues.

Fast track Insolvency Resolution for Corporate Persons.

Time Period. $\Rightarrow$ 90 Days from insolvency commencement date.

Extension by AA $\Rightarrow$ One time extension of Maximum 45 Days.

Who may apply. $\Rightarrow$ Any CD falling under any of the below category.

CD. with assets and Income below a level as may be notified by CG.

A CD, with such class of credits or such amount of debt as may be notified by the CG.

Other Categories of CD, as may be notified by the CG.

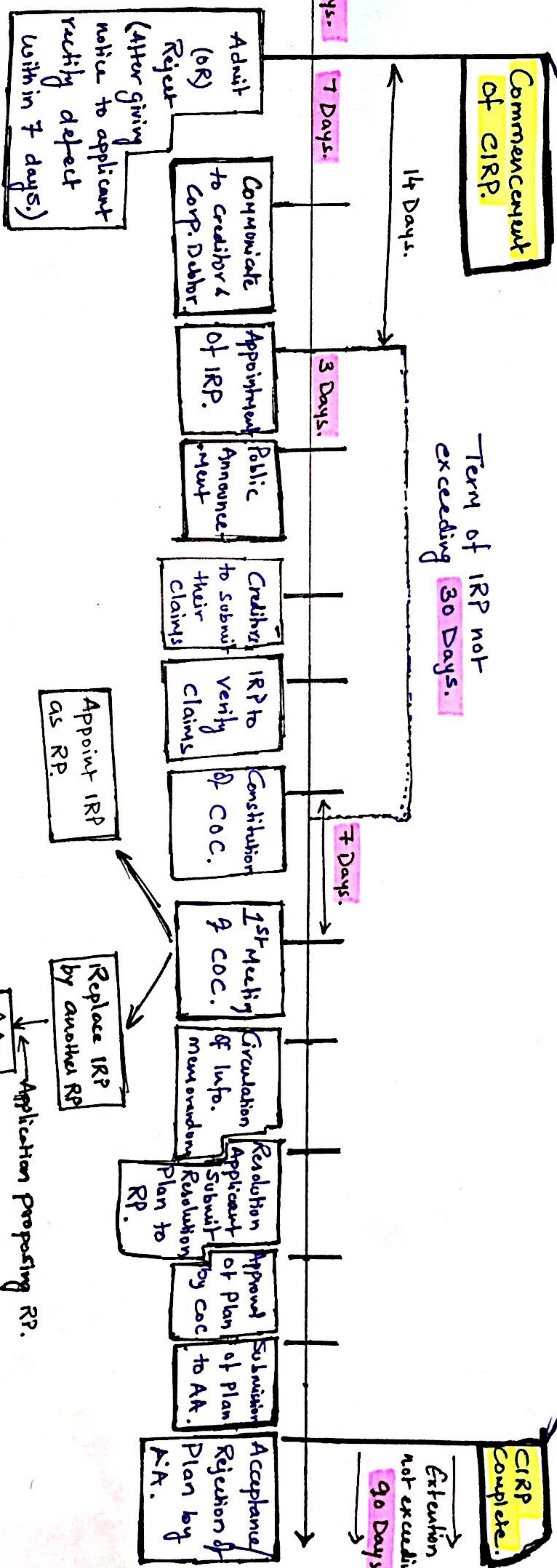
180 Days.

Commencement of CIRP.

Term of IRP not exceeding 30 Days.

CIRP Complete.

Extension not exceeding 90 Days.



TIMELINE - Corporate Insolvency Resolution Process.