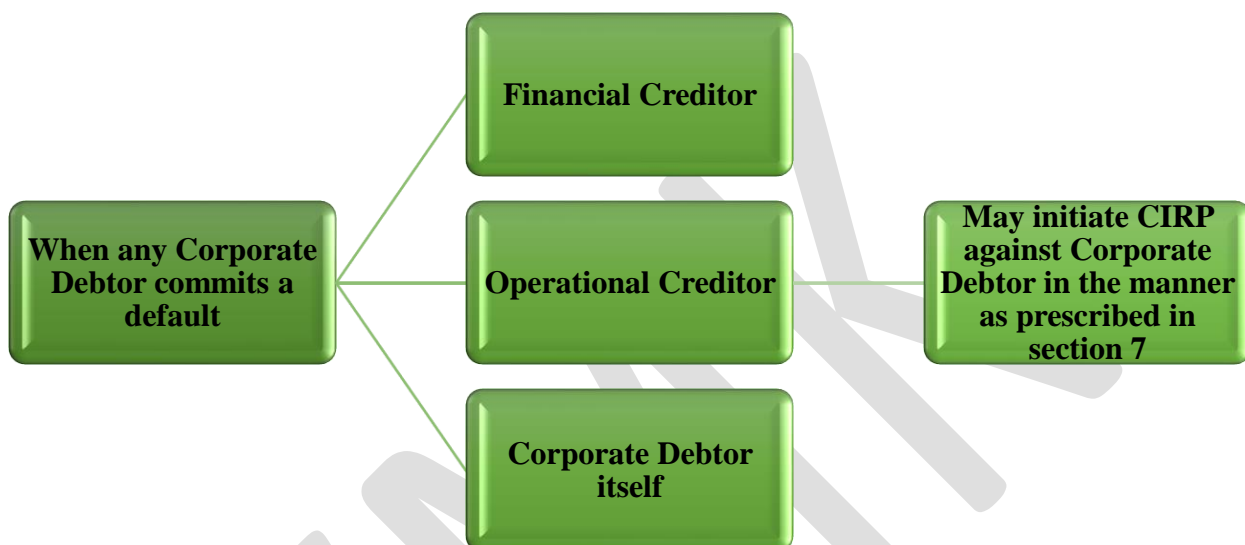


FRAMEWORK OF INSOLVENCY AND BANKRUPTCY CODE, 2016

{Section 6 to 10 covered in this article}

Section 6: Person Who May Initiate Corporate Insolvency Resolution Process:



Section 7: Corporate Insolvency Resolution Process by Financial Creditors:

(1) A Financial Creditor either by himself or jointly with other financial creditors, or **any other person on behalf of financial creditors as may be notified by central government*** may file an application for initiating CIRP against the corporate debtor to Adjudicating Authority when the **default** * occurred.

**Default means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable but not paid by the debtor or corporate debtor. [as per Section 3 clause (12)].*

**The aforesaid section 7 of the Code was amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.*

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Initially only the financial creditors were entitled to file an application for initiating corporate insolvency resolution process against a corporate debtor but after the enactment of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, a financial creditor or any other person on behalf of the financial creditor, as may be notified by the Central Government, may also file an application for initiating corporate insolvency resolution process against a corporate debtor before the National Company Law Tribunal when a **default** has occurred.

Provided that where a financial debt:

a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

b) is owed to a **class of creditors** exceeding the number as may be specified (given below), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(Written in clause (a) and (b) of Section 21(sub-section 6A)

For class of financial creditors- application to initiate CIRP against the corporate debtor shall **jointly** be filed by:

atleast 100 of such
creditors in the same
class; **OR**

10% of total number of
such creditors in the same
class;

which ever is less

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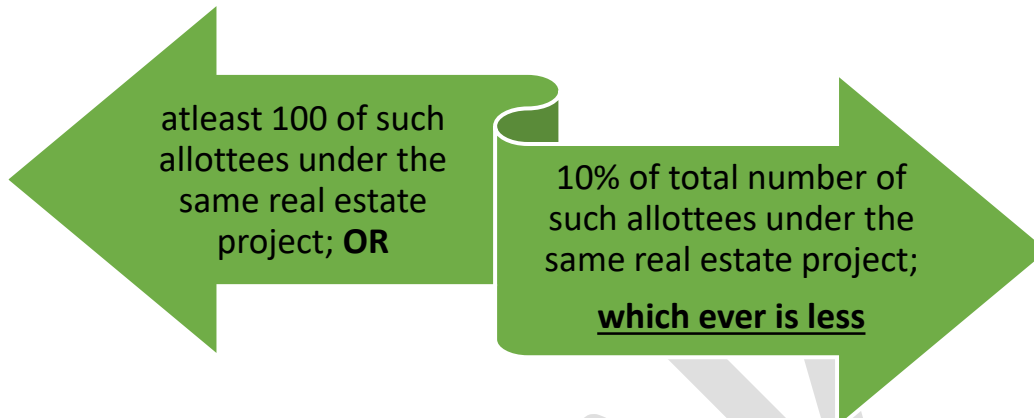
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For financial creditors who are allottees under a real estate project:



(2) Application by Financial Creditor:

The Financial creditor shall make an application against the corporate debtor to Adjudicating authority in **Form 1** accompanied with documents and records required therein and **application fees of Rs. 25,000 are payable.**

- Ministry of corporate affairs 2016 wide its notificated dated 24th September, 2020 in IBC (Application to Adjudicating Authority) Rules, requires an applicant to provide a copy of the application for initiating corporate insolvency resolution process against a corporate debtor, inter alia, to the Board (IBBI), before filing the same with the Adjudicating Authority.

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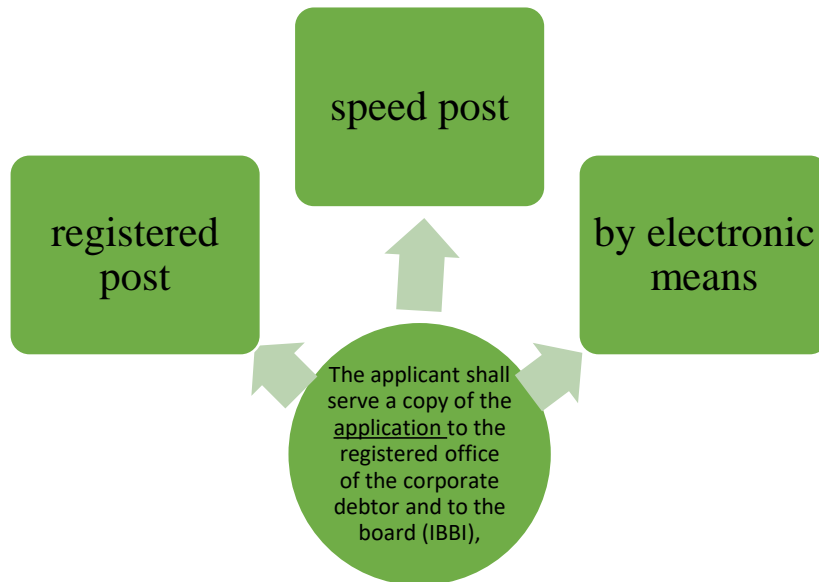


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(3) The financial creditor shall, along with the application furnish the following:

i. record of the default recorded with the information utility or such other record or evidence of default as may be specified;

ii. the name of the resolution professional proposed to act as an interim resolution professional; and

iii. any other information as may be specified by the Board.

(4) The Adjudicating authority (NCLT) shall respond **within 14 days** ascertain the existence of the default from the records of Information Utility or based on evidence given by the financial creditor.

Provided, if the adjudicating authority has not ascertained the existence of default and passed an order under sub section (5), it shall record its reasons in writing for the same.

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(5) The Adjudicating authority (NCLT) may by its order:

Reject, if any of the conditions for admitting is not fulfilled, but before rejecting a notice is given to the applicant to rectify the defect within 7 days.

Accept, if Default occurred, & application is complete & No disciplinary proceedings pending against the proposed resolutional professional

CIRP will commenced on the date of acceptance of application and Duty of Interim Resolution Professional begins.

Section 8: Insolvency resolution by operational creditor:

1. Section 8 of the Insolvency and Bankruptcy Code, 2016 lays down the procedure for the initiation of the corporate insolvency resolution process by an operational creditor.

On the occurrence of the default, operational creditor delivers these to the corporate debtor:

- demand notice of unpaid operational debt (in Form-3); and
- a copy of invoice demanding payment (in Form-4);

A “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

2. The Corporate debtor shall respond **within 10 days** of receiving demand notice from an operational creditor.

- Corporate debtor can provide in his support, the existence of dispute or record of pendency of suit or arbitration proceedings filed in relation to such dispute;

- Copy of the record of transfer of operational debt or present the record that operational creditor has encashed the amount so transferred by the corporate debtor.

Section 9: Application for initiation of corporate insolvency resolution process by operational creditor:

1. After the expiry of 10 days from the date of delivery of notice to the corporate debtor, if the operational creditor doesn't receive the payment or is not satisfied with the reply made by corporate debtor under section 8, then in such case operational creditor may file an application before Adjudicating authority (NCLT) for initiating corporate insolvency resolution process.
2. Application shall be file in such form (**Form 5**) and manner and accompanied with such fees as may be prescribed. Application fees of Rs. 2,000 are payable.
3. The operational creditor shall, along with the application furnish the following –

copy of the certificate from financial institutions maintaining an account of the operational creditor confirming that no payment was made (if available)

copy of an invoice demanding payment or notice delivered to corporate debtor;

an affidavit giving the effect that there is no notice given by corporate debtor relating to the dispute of unpaid operational debt

copy of any record available with Information Utility confirming payment due; or any other relevant proof. (if available)

4. An operational creditor initiating CIRP may propose a resolution professional to act as an interim resolution professional.
5. The Adjudicating authority (NCLT) shall **within 14 days** of receipt of the application:

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Reject, if application is incomplete or there has been payment of unpaid operational debt or the creditor has not delivered the invoice / notice for the payment or disciplinary proceedings are pending against any proposed Resolution professional;



Accept, if application is complete & there is no payment of unpaid operational debt & there is no proceeding pending against such dispute;



Before rejection a notice to the applicant is given to rectify the defect **within 7 days**.

If the application made by operational creditor is accepted by the Adjudicating authority [NCLT], the corporate insolvency resolution process shall start by communicating the decision to operational creditor and corporate debtor.

Section 10: Initiation of corporate insolvency resolution process by corporate applicant (Voluntarily) :

When corporate debtor has committed a default, corporate applicant may file an application for initiating Corporate Insolvency Resolution Process with NCLT.

The application shall be filed in such form (FORM-6) and in such manner and accompanied with such fee as may be prescribed. Application fee of Rs. 25,000 are payable.

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Along with the application, corporate applicant shall furnish the following:

- Information relating to its books of account;
- Information relating to the resolution professional proposed to be appointed;
- Special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of corporate debtor, as the case may be.

Case Reference:

In Armada Singapore Pte. Ltd. Vs. Ashapura Minechem Ltd., in I.A.No.3052 of 2019 in Company Appeal (AT) (Insolvency) No.350 of 2019 and batch order dated 30.09.2019, the Hon'ble NCLAT held that a Petition filed under Section 10 of IBC, 2016 is **not maintainable without the approval of the shareholders** of the Corporate Debtor in its 'Annual General Meeting' / 'Extra-Ordinary General Meeting'

NCLT shall pass the following order within 14 days from the date of receipt of application:

Admit the application, if it is complete;

Reject, if it is incomplete. Provided, 7 days' time period will be given to corporate debtor to rectify the defects from his application.

If the application made by the corporate debtor is accepted by the Adjudicating authority [NCLT], the corporate insolvency resolution process shall commence from the date of admission of application.

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Important Judgements:

In the case of **Surendra Trading Company V/S. Juggilal Kamlapat Jute Mills Ltd. & Ors**, The question before the NCLAT was, whether time of fourteen days mentioned under section 9(5) granted to the adjudicating authority for deciding the existence of default and admitting or rejecting the application is directory or mandatory. Also NCLAT held that the provision mentioned under section 7(5) or section 9 (5) or section 10(4) is procedural in nature, an important tool for expeditious dispensation of justice and is directory. Further question (with which supreme Court is concerned) was as to whether the period of seven days for rectifying the defects under proviso to sub-section (5) of Section 9 is mandatory or directory. The provision mentioned for removing the defects within 7 days is not mandatory; rather it is directory in nature.

SUSPENSION OF INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS

Section 10A was inserted vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 which came into effect from 05th June, 2020 with the onset of Covid 19 pandemic. suspending the initiation of any proceedings under Section 7, 9 and 10 of the IBC for any default in payment which is committed during Section 10A period (i.e. **between March 25, 2020 to March 25, 2021**)

The section also states that “no application shall be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period” which means that **no financial creditor, operational creditor or corporate applicant** can file an insolvency application for the defaults occurring between 25th March, 2020 to 25th March, 2021.

The aim and objective of Section 10A of the IBC was to protect a corporate debtor from the filing of any insolvency application against it for any default committed during the period when COVID-19 pandemic was prevailing.

In the instant case of -

Vishal Agarwal

V/s.

ICICI Prudential Real Estate AIF-I & Anr.

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An appeal (**Company Appeal (AT) (Insolvency) No. 1016 of 2022**), was filed against the order of the Adjudicating Authority by which application filed under section 7 of the Code, 2016 by the Financial Creditor was admitted.

The Counsel for the Appellant stated that the application was not maintainable since the date of default for repayment occurs on 31.08.2020, which was during the prohibitory period under section 10A of the Code, 2016.

The learned counsel for the Respondent on the other hand contends that the default was on quarter ending September 2019 and December 2019.

The Hon'ble NCLAT held that the submission of the learned counsel for the Appellant that the date of repayment of instalment is 31.08.2020 only and is not acceptable. As the clear admission of default in payment of interest for quarter ending September 30, 2019 and December 31, 2019.

Therefore the application being barred by Section 10A, benefit under Section 10A can be claimed by the appellant only when there is clear default during the prohibited period (which is between 25th March, 2020 to 25th March, 2021). The said benefit cannot be claimed by the appellant by ignoring the admission of default which was prior to 25.03.2020.

Therefore, there is no merit in the Appeal. Hence, the Appeal was dismissed.

Conclusion:

If a company is not capable of repaying the debt, then in such cases the company is restructured or liquidated.

The basic criteria for initiating Corporate Restructuring Resolution Process under the Insolvency and Bankruptcy code is "debt" and "default" of minimum INR 1 Crore.

When a company defaults in furnishing payments to its creditors, as discussed above, the creditors hold a right to bring forward a CIRP petition before the Adjudicating Authority (NCLT).

Instances wherein a company is the corporate debtor, the appropriate Adjudicating Authority is the National Company Law Tribunal (hereinafter referred to as "NCLT").

The Corporate Insolvency Resolution Process is essential in making a final attempt to sustain the corporate debtor. If a corporate becomes unable to pay off its debt then a financial creditor, an operational creditor, or the corporate debtor itself (voluntarily) may initiate CIRP after making an application to the Adjudicating authority (NCLT).

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CIRP is the process through which it is determined whether the person who has defaulted is capable of repayment or not (Resolution Professionals will evaluate the assets and liabilities to determine the repayment capability).

Once an application is filed, the NCLT reviews the merits of the petition considering whether the petition holds a right to be heard before the tribunal or not. If the tribunal does not find merits in the petition, for instance, the defaulted amount does not meet the minimum threshold of INR One Crore, then NCLT will reject the petition.

The Insolvency and Bankruptcy Code, 2016 provides a comprehensive legal framework for the timely and efficient resolution of insolvency cases. The IBC aims to protect the interests of all stakeholders involved in the resolution process, including creditors, debtors, and employees, and provides for a single window clearance system for insolvency resolution.

In next article, we will converse about the persons who are not entitled to make an application for initiating corporate insolvency resolution process.

[Note: Section 1 to 5 of IBC are covered in previous article, you can refer it from the link given herewith]

<https://www.brandnametrademarkregistration.com/2024/02/01/insolvency-and-bankruptcy-code-2016-section-1-to-5/>