INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 7 | Issue 3

2025

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Corporate Insolvency Resolution Process: An Overview of the Procedural Regime and its Economic Relevance

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ABSTRACT

Corporate Insolvency Resolution Process governed by Insolvency and Bankruptcy Code, 2016 deals with recovery mechanism adopted by creditors against the corporate debtor. The entire process is a constant interplay of commercial wisdom and judicial discretion. It can be initiated either by Financial Creditor, Operational Creditor or Corporate Debtor himself. Once it is accepted an interim resolution professional will be appointed and he convenes a Committee of Creditors. With the approval of Committee of Creditors, a resolution professional will be appointed, who invites resolution plans from resolution applicants. The one plan which is passed by Committee of Creditors will be sent to National Company Law Tribunal for approval. This process is guided by constant overview of National Company Law Tribunal and each step is interpreted in multiple ways by the judiciary. Moreover, the economic relevance of this process with particular focus on a developmental comparison before and after 2016 is given. In particular the decision in the matter of Essar Steel Insolvency Case and its impact in the Indian economy is analysed in detail.

I. INTRODUCTION

Economy of a developing nation is always a dynamic creature undergoing unprecedented changes in every turns. In a market where multiple players are involved, it is important to strike a right balance between rights of the market players and interest of the nation.

Insolvency is often treated as the procedure of financial death and rebirth.[2] By not letting a sinking company to vanish into infinity, reviving their soul and bestowing it a new identity is the core of corporate insolvency.

Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC) is the backbone legislation which protects and regulates the process of corporate insolvency in India. Prior to IBC, 2016, the matters of insolvency, liquidation etc were governed by Companies Act, 2013,

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[2] Navin K Pahwa, *Corporate Insolvency: Its operations and emerging problems,* 30 National Law School of India Review 111-118 (2018).

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Sick Industrial Companies (Special Provisions) Act, 1985, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act (RDDBFI Act), 1993 etc. [3]

It was enacted based on the report submitted by Bankruptcy law Reforms committee chaired by, former secretary General, Lok Sabha and former Union law secretary, Dr TK Viswanathan. The committee submitted the draft bill on 4 November 2015.[4]After various discussions and debates in both the houses and after considering the opinion of Joint Parliamentary Committee[5] the bill finally got assent on 28 May 2016.

The Act is a saviour for the stakeholders and financial institution by completely erasing the burden of winding up of a company and subsequent financial uncertainty. Choosing to revive a company rather than awarding a sudden death do save not just the parties involved but the economy as a whole.

The constitutionality of this bill lies in the seventh schedule of the Constitution wherein Insolvency and bankruptcy is a matter expressly conferred to Concurrent list.[6] Further entry 43[7] and 44[8] of Central List also deal with related matters. Incorporation, regulation and winding up of corporations other than those specified in List I are given to state governments.[9]

The Code applies to companies under Companies Act, 2013, companies governed by special act, Limited Liability Partnerships under LLP Act 2008, body incorporated and so notified by central govt, personal guarantors to corporate debtors, partnership firm, proprietorship firm, and individuals. But it is not applicable to insurance companies.[10]

II. CORPORATE INSOLVENCY RESOLUTION PROCESS: AN OVERVIEW

Corporate Insolvency Resolution Process (hereinafter referred as CIRP) is a term used to refer to the process undertaken by various players in order to revive a sinking company from its unpaid debt owed to multiple creditors. It can be considered as a recovery mechanism adopted

[3] THE JOURNEY OF INSOLVENCY AND BANKRUPTCY CODE, MONTAQ https://www.mondaq.com /advicecentre/content/3750/The-Journey-of-Insolvency-Bankruptcy-Code (last visited 16/06/2025, 08:06 AM)
[4]THE REPORT OF BANKRUPTCY LAW REFORMS COMMITTEE https://ibbi.gov.in/uploads/resources/ BLRCReportVol1_04112015.pdf (last visited 16/06/2025, 08:15 AM)
[5]REPORT OF JOINT COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE 2015, https://ibbi.gov.in/uploads/resources/16_Joint_Committee_on_Insolvency_and_Bankruptcy_Code_2015_1.pdf (last visited 16/06/2025, 08:36 AM)
[6] Entry 9, List III, 7th Schedule, Constitution of India, 1950
[7] Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies, Entry 43, List I, 7th Schedule, Constitution of India, 1950
[8] Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one state, but not including universities, Entry 44, List I, 7th Schedule, Constitution of India, 1950
[9] Entry 32, List II, 7th Schedule, Constitution of India, 1950
[10] Insolvency and Bankruptcy Code, 2016, No. 31, § 4, Acts of Parliament, 2016 (India)

by creditors against the corporate debtor. This is a process wherein both companies and National Company law Tribunal have an equal role to play. S 6 provides that a Financial Creditor, an Operational Creditor or the Corporate Debtor himself can initiate CIRP. Once the process is initiated the Corporate Debtor's affairs will be dealt by an appointed insolvency professional under the periodical oversight of NCLT in all steps. The ultimate object is to make sure that the process ends within a period of 180 to 330 days failing which liquidation proceedings commence.

Previously CIRP was conducted under Companies Act and it was burdensome, fragmented and inefficient. Under the IBC, with the supervision of NCLT, the process has been made fast enough to mitigate loss of time and cost. Specific timelines are provided under the code for the process. S 64 mandates that where these timelines are not adhered to, either by NCLT or NCLAT, they shall record the reasons.[11]

III. INITIATION BY FINANCIAL CREDITOR

S 7[12] as amended by Amendment Act of 2021 provides that a Financial Creditor (hereinafter referred as FC) either by himself or all other FCs together or any person on behalf of the FC as may be notified by the central govt can initiate CIRP. Any member of consortium of banks can individually file application seeking initiation of insolvency proceedings where default has occurred.[13]

As per S 4 Corporate insolvency and liquidation can be initiated for a minimum debt of 1 crore as opposed to the previous limit of 1 Lakh.[14]

FC shall make an application under S 7(1) in the prescribed Form 1 accompanied with fee of Rs 25,000/- as prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and make the payment through the online portal bharatkosh.gov.in/nclt.gov.in. Along with the application, FC shall submit record of the default with information utility, ie. Information related to the financial transaction of Corporate Debtor or any other evidence of default[15] along with details of a proposed interim resolution professional[16] and other information specified by the board.[17]

If the applicant failed to produce any record from Information Utility or any bank statement

[11] Insolvency and Bankruptcy Code, 2016, No. 31, § 64, Acts of Parliament, 2016 (India)
[12] Insolvency and Bankruptcy Code, 2016, No. 31, § 7, Acts of Parliament, 2016 (India)
[13] ICICI Bank v. Tirupatu Inks. Ltd. (2017) 144 SCL 415
[14] Revised notification on 24 March 2024
[15] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(3)(a), Acts of Parliament, 2016 (India)
[16] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(3)(b), Acts of Parliament, 2016 (India)
[17] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(3)(c), Acts of Parliament, 2016 (India)

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and the only document produced was the copy of demand notice, then the application is liable to be rejected.[18] On the basis of these evidence Adjudicating authority has to determine whether default has taken place within 14 days of the receipt of application[19] and can either accept or reject the application.[20]

Even if the debt is time barred, the application u/s 7 cannot be held to be barred by limitation when there is a continuous cause of action.[21] In the case of *Urban Infrastructure Trustee Ltd v. Neelkanth Township and Constructions Pvt Ltd*[22] it was held that even if an arbitration proceeding is pending under S 21 of arbitration act[23], the case of application of CIRP by financial creditor u/s 7 remains undisturbed. NCLT is not an authority to determine quantum of default. The only essential u/s 7 is that there must have been a default committed.[24]

CIRP is supposed to commence from the date of admission of this application.[25] Once it is admitted it must be communicated to FCs and CD[26] and if its rejected it need to be communicated to FCs only[27] as and when within 7 days.

IV. INITIATION BY OPERATIONAL CREDITOR

S 7 deals with initiation of CIRP by FC whereas S 8 and 9 deal with initiation by Operational creditor (hereinafter referred as OC). As per S 5(20) an operational creditor means a person to whom an operational debt is owed, i.e. a claim with regard to provision of any goods and service including employment and any amount due to central or state govt by virtue of a law in force.[28]

A proprietary concern is not a person entitled to file CIRP application as an operational creditor.[29] The difference between FCs and OCs are discussed in detail in the case of *Swiss Ribbons P. Ltd. V. Union of India.*[30]

As per S 8 on occurrence of a default, OC shall deliver a notice of demand of unpaid debt or get copy of the invoice demanding the payment of default amount to the CD. This is a

[18] Srikanta Sarda v. Tansway Marketing Pvt Ltd, NCLT (CP)/(IB) 400/KB/2017
[19] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(4), Acts of Parliament, 2016 (India)
[20] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(5), Acts of Parliament, 2016 (India)
[21] Mack Soft Tech Pvt Ltd v. Quinn Logistics india Ltd, NCLAT CA (AT) (Ins.) No. 143 of 2017
[22] Urban Infrastructure Trustee Ltd v. Neelkanth Township and Constructions Pvt Ltd, CP No. 21/(Ins.) NCLT/MB 2017
[23] Arbitration and Conciliation Act 1996, No. 26, § 21, Act of Parliament, 1996 (India).
[24] Bank of Baroda v. Metaphor Exports Pvt Ltd (CP) 422 (ND) of 2016
[25] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(6), Acts of Parliament, 2016 (India)
[26] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(7)(a), Acts of Parliament, 2016 (India)
[27] Insolvency and Bankruptcy Code, 2016, No. 31, § 7(7)(b), Acts of Parliament, 2016 (India)
[28] Insolvency and Bankruptcy Code, 2016, No. 31, § 5(20), Acts of Parliament, 2016 (India)
[29] Wind Water System v. Narendra Emporis Ltd (2020) 115 taxmann.com 275 (NCLT)
[30] Swiss Ribbons P. Ltd. V. Union of India, (2019) 213 Comp Cas 198 (SC)

mandatory condition precedent for initiation of CIRP u/s 9. In the case of *Macquarie bank Ltd v. Shilpi Cable Technologies Ltd*[31] the Supreme Court clarified that delivery of demand notice u/s 8 of IBC must be read as including an Operational Creditor's authorised agent and lawyer.

Within a period of 10 days of the receipt of such notice the CD must bring to the notice of the operational creditor the existence of a dispute or the record of pendency of a suit or arbitration proceeding filed before the receipt of such demand notice.[32] It is mandatory that the dispute must be pre-existing as in held in *Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd*.[33] Further the court observed that the authority does not need to be satisfied that the claim is prima facie likely to succeed. However, they should be alert to detect wholly spurious claims merely raised to make a cloud of objections. That is, the authority need not examine the merits of the dispute except to the extent.

If on the expiry of 10 days the OC neither received payment of debt nor notice of dispute that he may trigger the insolvency process before adjudicating authority. An application with that regard has to be filed u/s 9(1) along with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents mandated under the said form.[34]

Under Rule 6(2) the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the CD. This prescribed application format and fee payment is mandatory in this regard.[35]

The statutory requirement under S 9(3) is to furnish a copy of demand notice, an affidavit that no notice of dispute has been provided by CD, a certificate from the financial institution of the OC that the money has not been paid yet and any other proof with respect to non-payment of default amount. In addition, the OC also propose a resolution professional to act as interim RP.[36]

The courts have consistently refused to entertain petitions u/s 9 of the Code, so far as the CD was able to show a pre-existing dispute.[37] In the case of *Cowgule Construction Chemicals P. Ltd v. Pride Hotel P. Ltd*[38] the AA was of the opinion that the dispute raised was a pre-existing

[31] Macquarie bank Ltd v. Shilpi Cable Technologies Ltd, (2018) 2 SCC 674
[32] Insolvency and Bankruptcy Code, 2016, No. 31, § 8(2)(a), Acts of Parliament, 2016 (India)
[33] Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd, (2018) 1 SCC 353
[34] Kay Bouvet Engg Ltd v. Overseas Infrastructure Alliance (India) (P) Ltd, (2021) 10 SCC 483
[35] Insolvency and Bankruptcy Code, 2016, No. 31, § 9(2), Acts of Parliament, 2016 (India)
[36] Insolvency and Bankruptcy Code, 2016, No. 31, § 9(4), Acts of Parliament, 2016 (India)
[37] Equipment Conductors and Cables Ltd v. Transmission Corporation of Andhra Pradesh Ltd (2019) 214 Comp Cas 1 (NCLAT)
[38] Cowgule Construction Chemicals P. Ltd v. Pride Hotel P. Ltd, (2019) 214 Comp Cas 475 (NCLT)

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real dispute and the OC had knowledge of the same. Therefore, the application was held not fit for acceptance.

Principle of natural justice is also cardinal with respect to this scenario. In the case of *Anmol Tekriwal v. MN Auxichem*[39], the Adjudicating Authority held that no notice before admission of the petition u/s 9 was served to the CD and hence the admission order would be violative of principles of natural justice. A limited notice to the CD is necessary before admitting a petition.[40]

Within 14 dyas the adjudicating authority will either admit or reject the application.[41] The adjudicating authority when determining an application u/s 9 will have to find out[42]

- Whether there is an operation debt exceeding 1 crore?
- Whether the documentary evidence shows that the debt due has not yet been paid?
- Whether there is any pending dispute filed before the receipt of demand notice?

If any of these conditions are lacking, the application will be rejected. case of rejection there will be a notice to rectify the defect within 7 days.[43] And thus, the CIRP commences from the date of the order of acceptance.

V. INITIATION BY CORPORATE APPLICANT

The third mode of initiation of CIRP is via the corporate applicant. Corporate applicant could either be the CD itself, a member or partner of CD who is authorised to make an application for CIRP, the person who manages operations and resources of CD, or one who supervises the financial affairs of CD.[44] However, the CD in respect of whom a liquidation order has been initiated is not entitled to make an application to initiate CIRP.[45]

They are also supposed to give particulars similar to that discussed in the other two modes and the adjudicating authority will either admit or reject it within 14 days. Rule 7 of the Insolvency and Bankruptcy (Application to AA) Rules, 2016 empowers AA to look into the documents which are being filed by the corporate applicant and ascertain if the documents are in order.

The Amendment made in 6/6/2018 in S 10 vide second amendment act 2018 provides that before filing this application corporate applicant must get a special resolution passed by AGM

[39] Anmol Tekriwal v. MN Auxichem, (2019) 214 Comp Cas 174 (NCLAT)
[40] Steel Konnect (India) P. Ltd v. Hero Fincorp Ltd., (2018) 208 Comp Cas 678 (NCLAT)
[41] Insolvency and Bankruptcy Code, 2016, No. 31, § 9(5), Acts of Parliament, 2016 (India)
[42] Mobilox Innovations (P) Ltd v. Kirusa Software (P) Ltd, (2018) 1 SCC 353
[43] Insolvency and Bankruptcy Code, 2016, No. 31, § 9(5) Proviso, Acts of Parliament, 2016 (India)
[44] Insolvency and Bankruptcy Code, 2016, No. 31, § 5(5), Acts of Parliament, 2016 (India)
[45] Abhay N Manudhane v. Gupta Coal India P. Ltd (2020) 115 taxmann.com 190 (NCLAT)

or EGM. In the case of *Gaja Trustee Co. P. Ltd v. Haldia Coke and Chemicals P. Ltd* [46] it was held that the board of directors are not empowered to file a petition u/s 10 for its own liquidation or dissolution or CIRP. If CD files an application without approval of the shareholders, it would be void, notwithstanding the liquidation order has been passed.[47] CIRP in this case shall commence from the date of acceptance of this application.[48] The class of persons who are not entitled to initiate a CIRP are enlisted u/s 11 of IBC.

The CD if listed with the stock exchange, is required to give intimation of the order of CIRP to stock exchange within 24 hours of the receipt of the same and host a copy of the orders at the website of the company.[49]

VI. MORATORIUM

Immediately after acceptance of the application for CIRP, a moratorium will be issued and a public announcement will be made under S 13. Moratorium prohibits any institution of suits or continuation of any legal proceedings and any monetary transfer of assets and interests.[50]

However, the supply of any essentials goods or services shall not be terminated.[51] This mortarium will not apply with respect to any transaction so notified by Central Govt after consulting any financial sector regulator and also to a surety with whom CD entered into a contract of guarantee.[52]

Similarly, as held in the case of *Tayal Cotton Ltd v. State of Maharashtra*[53] the moratorium prohibiting institution of proceedings was not applicable to criminal proceedings. In cases of Money Laundering under Prevention of money laundering Act, 2022, it was settled that this is a crime and hence the provision for confiscation of property under this act prevails over IBC.[54] This will continue to be in operation till the completion of CIRP.[55]

VII. APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL

Along with the application for the successful regulation of CIRP, an insolvency professional will be appointed as interim Resolution Professional by the AA.[56] RP manages the affairs of

[46] Gaja Trustee Co. P. Ltd v. Haldia Coke and Chemicals P. Ltd, (2018) 3 Comp Cas Ol 328 (NCLAT)
[47] Vandana Industries Ltd v. IL&FS Financial Services Ltd& Anr
[48] Insolvency and Bankruptcy Code, 2016, No. 31, § 10(5), Acts of Parliament, 2016 (India)
[49] SEBI (LODR) Regulation, 2015
[50] Insolvency and Bankruptcy Code, 2016, No. 31, § 14(1), Acts of Parliament, 2016 (India)
[51] Insolvency and Bankruptcy Code, 2016, No. 31, § 14(2), Acts of Parliament, 2016 (India)
[52] Insolvency and Bankruptcy Code, 2016, No. 31, § 14(3), Acts of Parliament, 2016 (India)
[53] Tayal Cotton Ltd v. State of Maharashtra, (2019) 212 Comp Cas 421 (Bom)
[54] Varrsana inspat Ltd. v. Deputy director, ED (2019) 214 Comp Cas 332 (NCLAT)
[55] Insolvency and Bankruptcy Code, 2016, No. 31, § 14(4), Acts of Parliament, 2016 (India)
[56] Insolvency and Bankruptcy Code, 2016, No. 31, § 16, Acts of Parliament, 2016 (India)

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the CD as a going concern from the stage of admission of an application u/s 7, 9 or 10 till a resolution plan is approved by the AA.[57]

Duties of IRP are enlisted in S 18 which includes constitution of Committee of Creditors (hereinafter referred as CoC) and filing of information collected with the information utility. In the case of *Essar Steel (India) Ltd. Committee of creditors v. Satish Kumar Gupta*[58] the duties of RP are discussed in detail.

The Court held that RP is obliged to appoint and convene the CoC meetings so that they may decide upon the resolution plans. Meanwhile RP is required to examine that the Resolution Plan submitted by various applicants is complete in all respect before they are placed before CoC. Moreover, he needs to collect, collate and finally admit claims of all creditors which must then be examined from payment, in full or in part or not at all, by the RA and be finally negotiated and decided by the CoC.

The applicant proposes to appoint a RP after obtaining a written communication from insolvency professional. The consent shall be obtained in the form prescribed in Form 2 as contained in Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

S 5(27) defines RP as insolvency professional appointed to conduct the CIRP or pre-packed IRP and also includes an interim RP. Insolvency professional is a person enrolled under s 206 of Insolvency Code, 2016 with an IP agency as its ember and registered with the IBBI as an insolvency professional u/s 207 of Ins code, 2016.[59] The conditions for eligibility is specified under Regulation 3 of Insolvency Bankruptcy Board of India (IRP for Corporate Persons) Regulations, 2016.

He may access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the code.[60] The CD, his promoters and other persons associated with the management of the CD shall provide the required info time to time[61] and the creditors shall provide information regarding assets and liabilities of the CD from the last valuation report, stock statement, audit report, stock audit report etc.[62] RP can take custody and control of records of asset, finances, balance sheet and operations of CD.[63]

If any such personnel is not cooperating, RP may inform this to Adjudicating Authority and

[57] Insolvency and Bankruptcy Code, 2016, No. 31, § 17, Acts of Parliament, 2016 (India)
[58] Essar Steel (India) Ltd. Committee of creditors v. Satish Kumar Gupta, (2020) 8 SCC 531
[59] Insolvency and Bankruptcy Code, 2016, No. 31, § 3(19), Acts of Parliament, 2016 (India)
[60] Reg 4 Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
[61] Reg 4(2) Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016
[62] Reg 4(3) Insolvency Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016
[63] Insolvency and Bankruptcy Code, 2016, No. 31, § 3A, Acts of Parliament, 2016 (India)

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they shall by an order direct them to comply with the instruction of RP.[64] For an RP, the management of operations of CD is a going concern wherein he is obliged to preserve the value of such property.[65] A RP is a facilitator of the resolution process, who is given administrative functions as opposed to quasi-judicial powers and therefore, it do not extend to adjudication.[66]

VIII. COMMITTEE OF CREDITORS

The Interim Resolution Professional after collation of all claims received against the CD and the determination of the financial position of the CD, must constitute a Committee of Creditors.[67] The CoC consists of all financial creditors of the CD.[68] If the FC or an authorised representative of the FC, is a related party of the CD, then they shall not have any right of representation, participation or voting rights. If a CD has no financial debt where all FCs are related parties of the CD, the CoC shall be set up in accordance with regulation 16 of IBBI (IRP for Corporate Persons) Regulation, 2016. Such a committee shall consist of 18 largest OC by value and one representative each elected by all workmen and all employees.

CoC consists of multiple financial creditors to whom debt is owed by different means. Therefore, FCs having similar type of debt are treated as a class. For example, homebuyers, fixed deposit holders, debenture holders etc.

Considering the fact that these FCs are numerous in number, it is more or less impractical to include them all in the CoC. Therefore, one or more authorised representatives are appointed to represent an entire class in CoC meetings. The IRP shall select the IP, who is the choice of the largest number of FCs in the class to act as Authorised Representative (hereinafter referred as AR) of the creditors of that class.[69] It is NCLT who appoints these IP as AR within 2 days of verification of claims.[70] Any delay in appointment of AR for any class shall not devalidate the previous decisions taken by the committee. If a class wants to replace their AR, they can request the same to the RP. To initiate that request at least 10 % of voting share may back the request and once the request is made, RP will open a voting window for at least 24 hours.[71] The RP shall provide electronic means of communication between the authorised representative and the creditors in the class.[72] His duties are enlisted/s 25A of IBC, 2016.

[64] Insolvency and Bankruptcy Code, 2016, No. 31, § 19, Acts of Parliament, 2016 (India)
[65] Insolvency and Bankruptcy Code, 2016, No. 31, § 20, Acts of Parliament, 2016 (India)
[66] Reg 10,12,13,14 and 35A, IBBI (Insolvency Resolution Process for CP) Regulations, 2016
[67] Insolvency and Bankruptcy Code, 2016, No. 31, § 21(1), Acts of Parliament, 2016 (India)
[68] Insolvency and Bankruptcy Code, 2016, No. 31, § 21(2), Acts of Parliament, 2016 (India)
[69] Reg 16A (1) IBBI (IRP for Corporate Persons) Regulation, 2016
[70] Insolvency and Bankruptcy Code, 2016, No. 31, § 16A(2), Acts of Parliament, 2016 (India)
[71] Insolvency and Bankruptcy Code, 2016, No. 31, § 16A(3A), Acts of Parliament, 2016 (India)
[72] Insolvency and Bankruptcy Code, 2016, No. 31, § 16A(6), Acts of Parliament, 2016 (India)

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The fee payable to the AR per meeting of CoC attended by him[73] and per meeting of class of creditors convened by him[74] are governed by the IBBI (IRP for Corporate Persons) Regulation, 2016. These payments are part of CIRP Cost in respect of two meeting with the class of creditors and one meeting of CoC and any payment beyond this shall be the burden of CIRP cost only with the approval of CoC.[75] The roles and responsibilities of AR are detailed under Sub regulation 10 in IBBI (IRP for Corporate Persons) Regulation, 2016 Second Amendment regulations, 2023.

Once the CoC is constituted, IRP shall file a report certifying the same to the Adjudicating Authority within 2 days.[76] The voting share of a FC in a class is determined in proportion to their debt in addition to an interest rate of 8% per annum unless otherwise agreed for a different rate between the parties.[77] Within 7 days of filing this report IRP shall convene the first meeting of the committee.[78]

IX. APPOINTMENT OF RESOLUTION PROFESSIONAL

In the first meeting itself, the CoC is directed to either appoint the IRP as RP or replace him with another RP by a majority vote of not less than 66%.[79] For replacement of IRP, an application shall be sent to AA.[80] If the CoC does not confirm the appointment of RP within 10 days, AA shall direct the IRP to continue as RP until the board takes a decision on that matter.[81] The duties of RP are given u/s 25. He can be replaced any time by a resolution passed by 66%.[82] Within 7 days of appointment but not after 47 days, the RP shall appoint two registered valuers to determine the fair value and the liquidation value of the CD and this will remain as a confidential information.[83]

All meeting of CoC is conducted by RP[84] and it can be in person or by electronic means.[85] Each

[73] Sub reg 8(a) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[74] 8(b) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[75] 8(c), (d) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[76] Regulation 12(1) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[77] 16(7) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[78] Regulation 17(2) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 r/w S 22 Insolvency and Bankruptcy Code, 2016
[79] Insolvency and Bankruptcy Code, 2016, No. 31, § 22(2), Acts of Parliament, 2016 (India)
[80] Insolvency and Bankruptcy Code, 2016, No. 31, § 22(3)(b), Acts of Parliament, 2016 (India)
[81] Insolvency and Bankruptcy Code, 2016, No. 31, § 22(5), Acts of Parliament, 2016 (India)
[82] Insolvency and Bankruptcy Code, 2016, No. 31, § 27, Acts of Parliament, 2016 (India)
[83] Regulation 35 IBBI (IRP for Corporate Persons) Regulation, 2016
[84] Insolvency and Bankruptcy Code, 2016, No. 31, § 24(2), Acts of Parliament, 2016 (India)
[85] Insolvency and Bankruptcy Code, 2016, No. 31, § 24(1), Acts of Parliament, 2016 (India)

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creditor can vote in proportion to the voting share allotted to him by the RP[86] based on their debt owed.[87] In matters such as recording any change in the ownership interest of Cd, amending any constitutional documents like AoA or MoA of the CD, creating any security interest over the assets of CD etc, the Rp can never take a decision independently without prior approval of CoC.[88] Any such decision without prior approval of CoC will be void.[89]

X. RESOLUTION PLAN

The proposed plan of action for CIRP of CD is called the resolution plan.[90] The person who prepares it individually or jointly is called Resolution applicant.[91]

The resolution professional prepares an information memorandum highlighting the significant information of CD including its operations, financial statements etc to the prospective resolution applicant.[92] RP shares the information memorandum only after receiving an undertaking from a member of CoC that the RA shall maintain confidentiality.[93] The RP shall provide to the RA sufficient access to all relevant information i.e, information required to make a resolution plan.[94]

RA after giving an affidavit that he is eligible u/s 29A to propose a plan, submit a Resolution Plan to the RP.[95] The RP makes sure that the plan contains provision to settle the cost of CIRP, payment of debt to both operational creditors and financial creditors.[96] Such a plan shall be submitted before CoC for its approval.[97] In the meeting wherein the approval of plan is the agenda, RA can also attend the CoC meeting without right to vote.[98]

The resolution plan is to be approved and held to be binding on the corporate Debtor, its employees, members, creditors, guarantors and other stakeholders.[99] In the case of *North East Centre for Technology Application and Reach v. Sri Vari metal Works P. Ltd.*[100], the resolution applicant raised a grievance with regard to non-consideration of his resolution plan. The court

[86] Insolvency and Bankruptcy Code, 2016, No. 31, § 24(7), Acts of Parliament, 2016 (India)
[87] Insolvency and Bankruptcy Code, 2016, No. 31, § 24(6), Acts of Parliament, 2016 (India)
[88] Insolvency and Bankruptcy Code, 2016, No. 31, § 28, Acts of Parliament, 2016 (India)
[89] Insolvency and Bankruptcy Code, 2016, No. 31, § 28(4), Acts of Parliament, 2016 (India)
[90] Insolvency and Bankruptcy Code, 2016, No. 31, § 5(26), Acts of Parliament, 2016 (India)
[91] Insolvency and Bankruptcy Code, 2016, No. 31, § 5(25), Acts of Parliament, 2016 (India)
[92] Regulation 36(2) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[93] Regulation 36(4) Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023
[94] Insolvency and Bankruptcy Code, 2016, No. 31, § 29(2), Acts of Parliament, 2016 (India)
[95] Insolvency and Bankruptcy Code, 2016, No. 31, § 30(1), Acts of Parliament, 2016 (India)
[96] Insolvency and Bankruptcy Code, 2016, No. 31, § 30(2), Acts of Parliament, 2016 (India)
[97] Insolvency and Bankruptcy Code, 2016, No. 31, § 30(3), Acts of Parliament, 2016 (India)
[98] Insolvency and Bankruptcy Code, 2016, No. 31, § 30(5), Acts of Parliament, 2016 (India)
[99] Ravindra Beleyur v. Merchem Ltd (2019) 214 Comp Cas 69 (NCLT)
[100] (2019) 214 Comp Cas 101 (NCLAT)

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refused to consider the matter since the plan was submitted after the expiry of 270 days and four months after expression of interest.

Once the plan is approved by the CoC u/s 30(4) the AA if satisfied that it abides by the statutory requirements, shall by order approve it and it shall be binding on all parties involved in the R. Plan.[101] If AA is not satisfied, it can reject the plan.[102] If the resolution plan contains a provision for combination[103], prior to the approval of CoC it is mandatory to seek the approval of Competition Commission of India.[104]

XI. ECONOMIC RELEVANCE OF A ROBUST INSOLVENCY MECHANISM

In 2016, the very year in which Insolvency and Bankruptcy Code was introduced, World Bank's Doing Business Report positioned India in 130th rank out of 189 economies. The report ranks economies on the basis of ease of doing business and they assert these are not countries with little government control, rather they are economies where an efficient regulatory mechanism exists.[105]

Economists opined that the unsatisfactory regulatory mechanism with respect to Corporate Insolvency is a significant reason for this downfall. This has a direct reflection in the state of credit markets in our country and it causes increased stress on the problem of enormous loans made to corporates. This turns out to be a serious shackle on the lending capacity of Indian banks, and thereby further choking the already inadequate credit market and thus, it makes for business enterprises troublesome to fund for themselves.[106]

World bank discontinued its Doing Business Report in 2021 and in its last report released on 2020, India ranked 63 out of 190 countries.[107] This jump is certainly backed by the advanced Corporate Insolvency mechanism that stabilised our credit market.

The Corporate Insolvency Resolution Process deals with two types of distress in firms. Firstly, the financial distress where the firm has a feasible business but the financial structure is thorny. In such cases, Insolvency resolution protects and revives it in new form. Secondly, economic distress where the core business of the firm itself is unviable and in such cases the obvious

[101] Insolvency and Bankruptcy Code, 2016, No. 31, § 31, Acts of Parliament, 2016 (India)
[102] Insolvency and Bankruptcy Code, 2016, No. 31, § 31(2), Acts of Parliament, 2016 (India)
[103] Competition Act, 2002, No. 12, § 5, Acts of Parliament, 2002 (India)
[104] Insolvency and Bankruptcy Code, 2016, No. 31, § 31(4) Proviso, Acts of Parliament, 2016 (India)
[105]DOING BUSINESS 2016, 13TH EDITION, https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf (last visited 17/06/2025 09:57 PM)
[106] Rajeswari Sengupta, Anjali Sharma, *Corporate Insolvency Resolution in India-Lessons from a Cross Country Comparison,* 51 Economic and Political Weekly 37-46 (2016).
[107] DOING BUSINESS 2020 https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf (last visited 17/06/2025 07:20 PM)

remedy is liquidation. [108]

The famous insolvency case of *Essar Steel Industries Limited*, settled by the Supreme Court of India is a practical example of the potential impact of an effective insolvency in national economy.[109]

Global Companies named, Arcelor Mittal took over ESIL via resolution plan offering advance cash amount of Rs 42,000 Crore to the FCs and Rs 8,000 Crore as capital infusion in the coming years, which was the highest realization in a single insolvency. However, the unequal treatment of Financial Creditors and Operational Creditors brought the matter to the Apex Court where the commercial wisdom of Committee of Creditors was appreciated and the court gave legal standing to the differential treatment by drawing the intelligible differentia in the class of creditors.[110]

The impact of this judgement in the economy was tremendous. The production of ESIL raised to its highest ever of 6.78 MT in 2018-19 during the post-insolvency phase. There was an increase of 23% in their total income. Moreover, SBI, the largest lender of India, reached its highest quarterly profit and their net profit increases 41% in 2019. Further, owing to the gain from ESIL resolution, ICICI bank, the private sector lender, had an unprecedented increase of 158% in their net profit.[111]

This case is a proof as to how far a Corporate Insolvency of a private player can influence the macroeconomic growth of a nation. In these times of India exploring its own innovations in capitalist economy, it is highly imperative to have a well-defined CIRP. Since our market is still not immune from corporate debt crisis and unforeseen business downfalls, CIRP is the only process that could ensure capital recycling and redirection of productive assets to more competitive players.

XII. CONCLUSION

Indian economy has entered into a new credit culture across the financial sector after introduction of Insolvency and Bankruptcy Code, 2016. Though argued to be a creditor- centric mechanism, the CIRP in India, does strike a right balance in protecting interests of both parties.

The time bound process with judicial oversight in every step ensures transparency,

[108]Aghion Philippe, Oliver Hartand, John Moore, *The Economics of Bankruptcy Reforms*, 8 Journal of Law, Economics and Organization,523-546 (1992)
[109] Essar Steel India Ltd v. Satish Kumar Gupta and Ors, (2020) 8 SCC 531.
[110] Aakash Thiagarjamurthy, Sheetal Kumar, *Case Comment: Critical Analysis of Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta and Ors,* 1.4 JCLJ 1137 (2021).
[111] CASE STUDY ESSAR STEEL INDIA LIMITED, IIIPICAI https://www.iiipicai.in/wp-content/uploads/2021/02/IIIPI-Case-Study-Essar-Steel-India-Limited.pdf (last visited 16/06/2025 08:20 PM)

accountability and compliance with existing laws, thereby limiting unnecessary litigations. By shifting the debt settlement duty from the defaulted directors to an independent professional, the system fosters in general financial discipline.

This has proven to have a significant impact in reducing the issues of non-performing assets, improvisation of recovery rates, boosting credit market and enhancing the ease of doing business. CIRP has become a cornerstone of India's economic reform by making sure that the unstable firms exit the market and viable ones get an opportunity to revive itself.

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