

Summary of Insolvency and Bankruptcy Code

The term insolvency is used for both individuals and organizations. For individuals, it is known as bankruptcy and for corporate it is called corporate insolvency.

Insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets .

Entities that can initiate proceedings that will lead to Liquidation are:

- a. The Regulatory Bodies
- b. The Directors of a Company
- c. The Shareholders of a Company
- d. An Unpaid Creditor of a Company

Merits of Insolvency and Bankruptcy Code, 2016:

- a. It Consolidates multiple existing laws
- b. Fixes time to complete the process (180 days)
- c. One Window Clearance of all applications
- d. Protects interests of Workmen (It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor's assets during liquidation)

FIVE Pillars of Insolvency and Bankruptcy Code, 2016:

1. Insolvency Professionals
2. Insolvency Professional Agencies
3. Information Utilities
4. Insolvency and Bankruptcy Board of India
5. Adjudicating Authority

Applicability of the Code

- a. All Companies
- b. All LLPs

Definition of Person in the Code includes

- a. an individual
- b. HUF
- c. Company
- d. Trust
- e. Partnership
- f. LLP

Corporate Insolvency Resolution Process (V.Imp)

The process of insolvency is triggered by occurrence of a payment default, which shall be **Rs.1 Lakh or more**.

The Insolvency process can be initiated by an of these:

- a. a Financial Creditor
- b. an Operational Creditor
- c. the Corporate Debtor (Company itself)

[*Initiation of corporate insolvency resolution process by Financial Creditor*]

A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process to the adjudicating authority.

The Adjudicating Authority shall, within **fourteen days** of the receipt of the application, ascertain the existence of a default.

If the Adjudicating Authority decides that a default has occurred, It shall **admit** the application. Or else, it will reject it. This shall be communicated within **7 days**.

The corporate insolvency resolution process shall commence from the date of admission of the application

[***Insolvency resolution by Operational Creditor***]

On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor (Company).

The corporate debtor (Company) shall, within a period of **ten days** of the receipt of the demand notice, revert back to the OC.

If the Company fails to pay the debt within those 10 days, the Operational Creditor will commence the Insolvency Resolution Process, by filing of application with the Adjudicating Authority.

Along with the application, the OC shall attach documents like copy of invoices, an Affidavit, a Certificate from Financial Institutions showing the amount in default.

If the Adjudicating Authority decides that a default has occurred, It shall **admit** the application. Or else, it will reject it. This shall be communicated within **7 days**.

The corporate insolvency resolution process shall commence from the date of admission of the application.

[***Initiation of corporate insolvency resolution process by Corporate Applicant***]

The Company (Corporate Debtor) can itself file an application with the AA for the insolvency process.

While filing the application, it shall specify who is going to be appointed as the Resolution Professional .

The AA shall admit the application and insolvency process starts immediately. Or Reject, if the Application is incomplete.

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process:

- a. a corporate debtor undergoing a corporate insolvency resolution process
- b. a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application
- c. a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter

The corporate insolvency resolution process shall be completed within a period of **180 days** from the date of admission of the application to initiate such process

The resolution professional can file an application to the Adjudicating Authority to extend the period of the corporate insolvency beyond 180 days.

The AA shall grant extension for a period not exceeding **90 days**.

The Adjudicating Authority, after admission of the application, shall

- a. declare a moratorium
- b. Cause a public announcement
- c. appoint an interim resolution professional

What is Moratorium

During the above mentioned 180 days, all suits and legal proceedings against the company shall be temporarily suspended. This is called Moratorium Period.

As soon as AA gives an order to Liquidate, the Moratorium period shall cease.

Roles of an Interim Resolution Professional

- a. Issuance of public notice of the Corporate Insolvency
- b. Resolution process
- c. Collation of claims received
- d. Constitution of the Committee of Creditors
- e. Conduct of the first meeting of the Committee of Creditors

What does a public announcement Include:

- a. Name and Address of the Company
- b. Details of interim resolution Professional
- c. Penalties for false or misleading Claims
- d. The last date for the submission of the claims
- e. The date on which the Corporate Insolvency Resolution Process ends

Committee of Creditors

The Interim Resolution Professional shall constitute a Committee of Creditors of the company.

The committee of creditors shall comprise of all financial creditors only (No Operational Creditors).

The members of the committee of creditors may meet in person or by such electronic means.

During meeting, Creditors shall be given voting power based on their loans to the company.

The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions.

No action shall be approved by the committee of creditors unless approved by a vote of **75%** of the voting shares

Appointment of liquidator

Once the Adjudicating Authority passes an order for liquidation, the Interim Resolution Professional shall act as the Liquidator, unless the AA replaces him with someone else.

On the appointment of a liquidator, all powers of the BOD, KMP and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested with the liquidator.

The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate.

Powers and duties of liquidator:

- a. Verify creditor claims
- b. evaluate assets
- c. sell movable and immovable properties
- d. Draw or accept Negotiable Instruments
- e. Settle Claims
- f. Investigate Financial Affairs

Assets included in liquidation estate

- a. Tangible assets whether movable or immovable
- b. Assets subject to the determination of ownership by the court
- c. intangible assets including but not limited to intellectual property, securities

Assets NOT included in liquidation estate

- A. assets owned by a third party
- B. assets in security collateral held by financial services providers
- C. personal assets of any shareholder or partner of a corporate debtor
- D. assets of any Indian or foreign subsidiary