

INSOLVENCY & BANKRUPTCY CODE, 2016

Insolvency Resolution
for Individuals

Applicability & Commencement

❑ Extends to whole of India

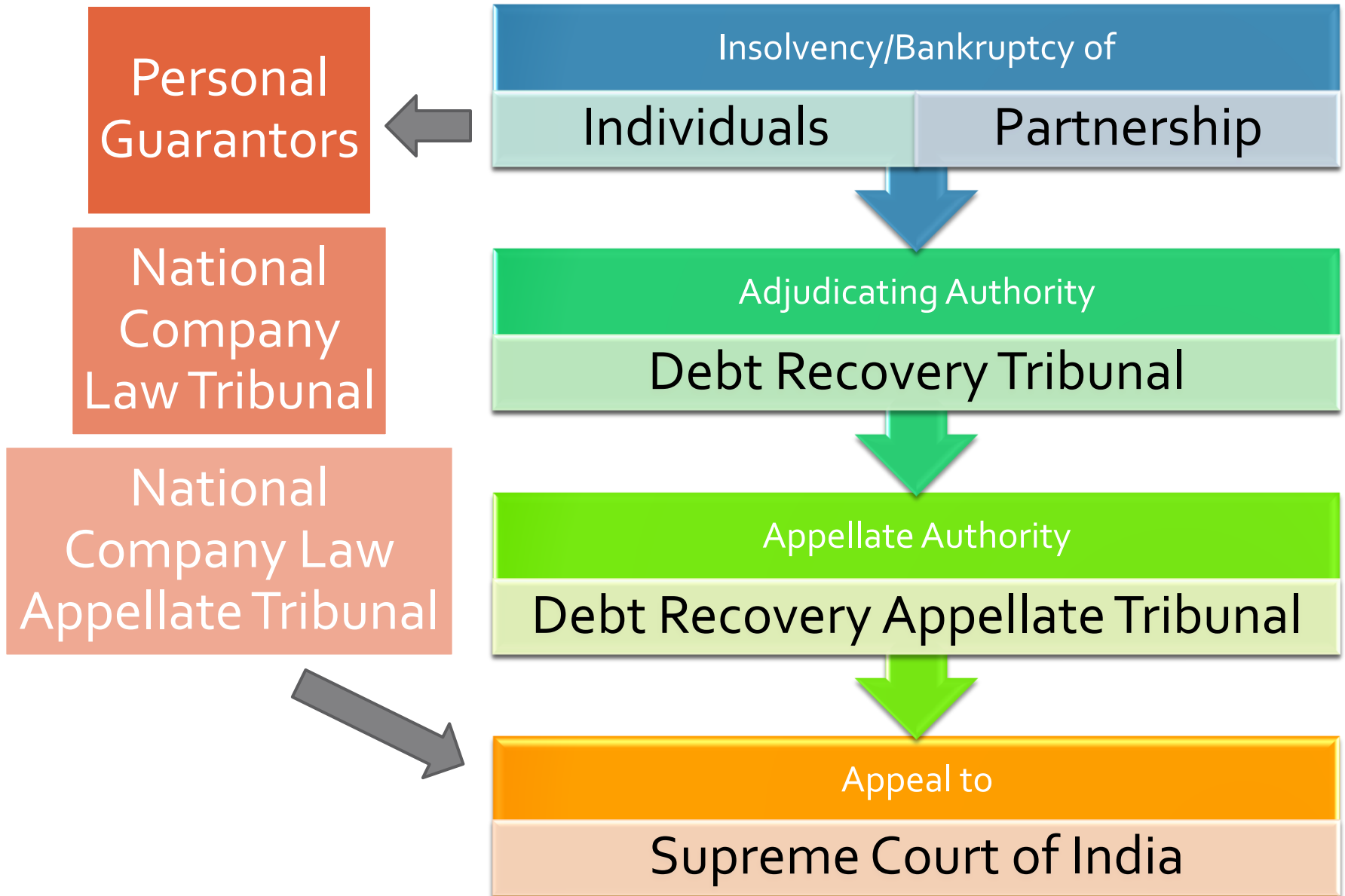
❑ Has come in force in phased manner

❑ Applies to:

- A company
- Company governed by special act to the extent provisions are consistent with that act
- LLPs
- Such other incorporated body as CG may notify
- Personal Guarantors to Corporate Debtors
- Partnership/Proprietor firms and
- Individuals, other than Personal Guarantors to CDs

In relation to their insolvency, voluntary liquidation or bankruptcy, as the case may be.

Process of Adjudication



Individual Bankruptcy and Insolvency

- **The Presidency Towns Insolvency Act, 1909**, covers the insolvency of individuals and of partnerships and associations of individuals in the three erstwhile Presidency towns of Chennai, Kolkata and Mumbai. The 1861 Indian High Courts Act led to the setting up of the High Court system in place of the Presidency towns Supreme Courts, which also has jurisdiction over insolvency related matters in the Presidency towns.
- **The Provincial Insolvency Act 1920**, is the insolvency law for individuals in areas other than the Presidency towns, deals with insolvency of individuals, including individuals as proprietors. Section 3(1) of the Provincial Insolvency Act, 1920, allows the State Government to empower subordinate courts to hear insolvency petitions, with district courts acting as the court of appeal

Notification No. S.O. 4126E dt. 15th November, 2019 w.e.f. 1st December 2019

following Sections came into force:

- clause (e) of section 2
 - The provisions of this Code shall apply to: -
 - (e) personal guarantors to corporate debtors
- section 78 (except with regard to fresh start process) and section 79
 - Application of Part III and its Definitions
- sections 94 to 187 [both inclusive]
 - Insolvency Resolution and Bankruptcy for Individuals/Partnerships

Section 60(2) & (3)

- Where a CIRP or liquidation proceeding of a CD is pending before NCLT
 - application relating to the insolvency resolution or liquidation or bankruptcy
 - of a corporate guarantor or personal guarantor of such corporate debtor
 - shall be filed before the NCLT
-
- An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor
 - pending in any court or tribunal shall stand transferred to the
 - NCLT dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

Definitions

Board – 3(1)

- Means the Insolvency and Bankruptcy Board of India established under Section 188(1)

Bench – 3(2)

- Means a bench of the Adjudicating Authority

Bye-Laws –
3(3)

- Mean the bye-laws made by the insolvency professional agency under Section 205. [to be consistent with the Board specified model bye-laws under Section 196(2)]

Chairperson
– 3(5)

- Means the Chairperson of the Board

Corporate
Debtor – 3(8)

- Means a corporate person who owes a debt to any person

Default – 3(12)

Means non-payment of debt when whole or part of installment of amount of debt has become due & payable & is not repaid by debtor/CD as the case may be

Financial Service Provider – 3(17)

Means a person engaged in the business of providing financial services in terms of authorization issued or registration granted by the financial sector regulator

Financial Sector Regulator – 3(18)

Authority to regulate services or transactions of financial sector & includes RBI, SEBI, IRDA, PFRA & other regulatory authorities as may be notified by CG

Insolvency Professional – 3(19)

Means a person enrolled u/s 206 with an Insolvency Professional Agency as its member & registered with the Board as an Insolvency Professional u/s 207

Insolvency Professional Agency – 3(20)

Means any person registered with the Board u/s 201 as an Insolvency Professional Agency

Information Utility – 3(21)

- Means a person registered with the Board as an Information Utility u/s 210

Notification – 3(22)

- Means a notification published in the Official Gazette, and the terms notified and notify shall be construed accordingly

Person Resident in India – 3(24)

- Shall have the meaning as assigned to such term in Section 2(v) of FEMA, 1999.

Person Resident Outside India – 3(25)

- Means a person other than a person resident outside India

Prescribed – 3(26)

- Means prescribed by rules made by the Central Government

Regulations – 3(28)

- Means regulations made by the Board under this Code

Schedule – 3(29)

- Means the Schedule annexed to this Code

Secured Creditor – 3(30)

- Means a creditor in whose favour security interest is created

Specified – 3(32)

- Means specified by regulations made by the Board under this Code and the term “specify” shall be construed accordingly

Transaction – 3(33)

- Includes a agreement or arrangement in writing for the transfer of assets, or funds, goods or services from or to the corporate debtor

Transfer of
Property –
3(35)

Means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property

Workman –
3(36)

Shall have the same meaning as assigned to it in Section 2(s) of the Industrial Disputes Act, 1947

Words not
defined -
3(37)

Words and expressions used but not defined in this Code but defined in the:

- Indian Contract Act
- Indian Partnership Act
- SEBI Act, 1992
- RDDBFI Act, 1993
- LLP Act, 2008 and
- Companies Act, 2013 shall have the same meanings respectively assigned to them in those Acts

Framework of Part III of I & B Code, 2016

Chapter I
Preliminary

Chapter II
Fresh Start
Process

Chapter III
Insolvency
Resolution Process

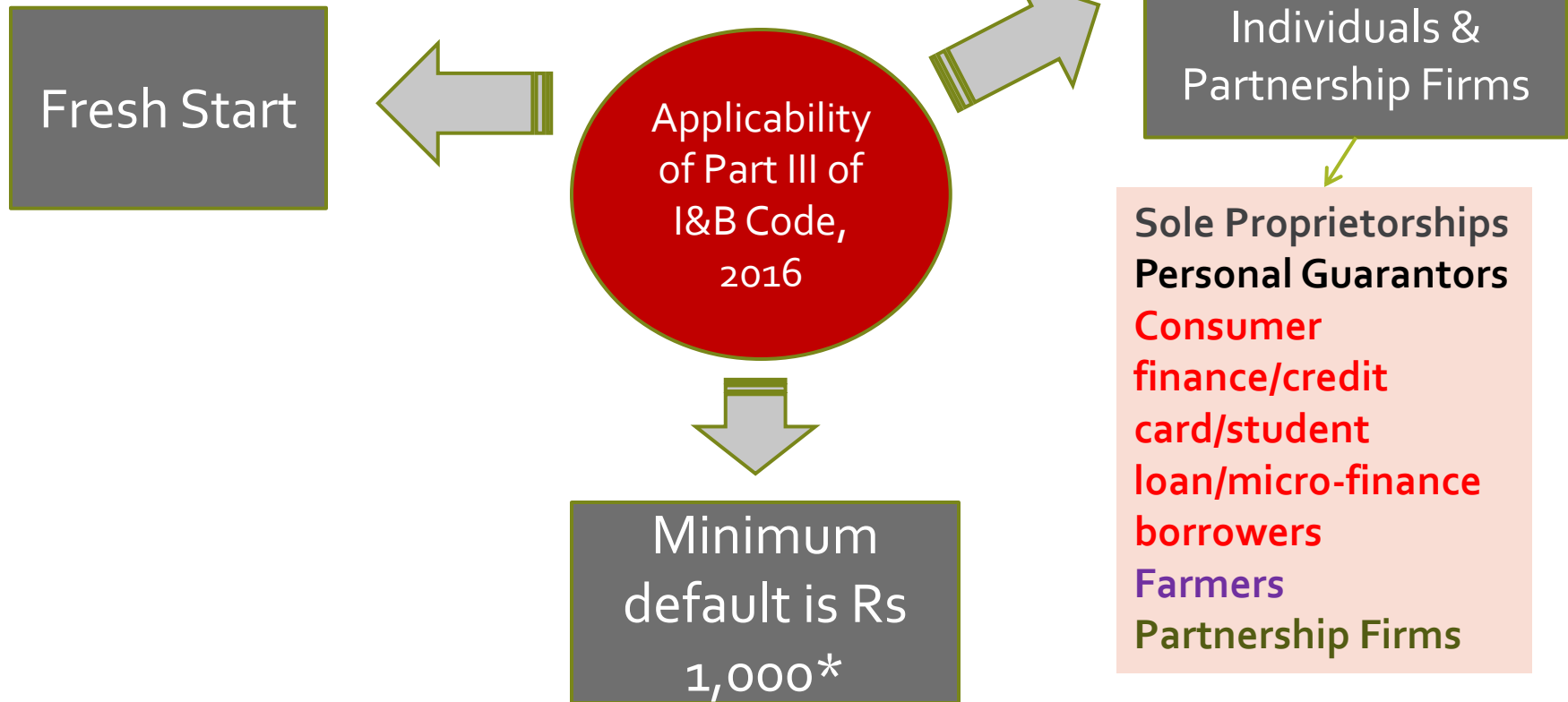
Chapter IV
Bankruptcy Order
for Individuals &
Partnership Firms

Chapter V
Administration &
Distribution of
Estate of Bankrupt

Chapter VI
Adjudicating
Authority for
Individuals &
Partnership Firms

Chapter VII
Offences &
Penalties

Insolvency Resolution & Bankruptcy for Individual & Partnership Firms



*CG may, by notification, specify a higher amount which shall not exceed Rs 1 lakh

**Adjudicating
Authority – 79(1)**

Associate – 79(2)

Bankrupt – 79(3)

**Bankruptcy –
79(4)**

**Bankruptcy Debt
– 79(5)**

**Bankruptcy
Commencement
Date – 79(6)**

**Bankruptcy
Order – 79(7)**

**Bankruptcy
Process – 79(8)**

**Bankruptcy
Trustee – 79(9)**

Chapter – 79(10)

**Committee of
Creditors- 79(11)**

Debtor - 79(12)

**Discharge
Order – 79(13)**

**Excluded
Assets –
79(14)**

**Excluded Debt
– 79(15)**

Firm – 79(16)

**Immediate
Family –
79(17)**

**Partnership
Debt– 79(18)**

**Qualifying
Debt– 79(19)**

**Repayment
Plan – 79(20)**

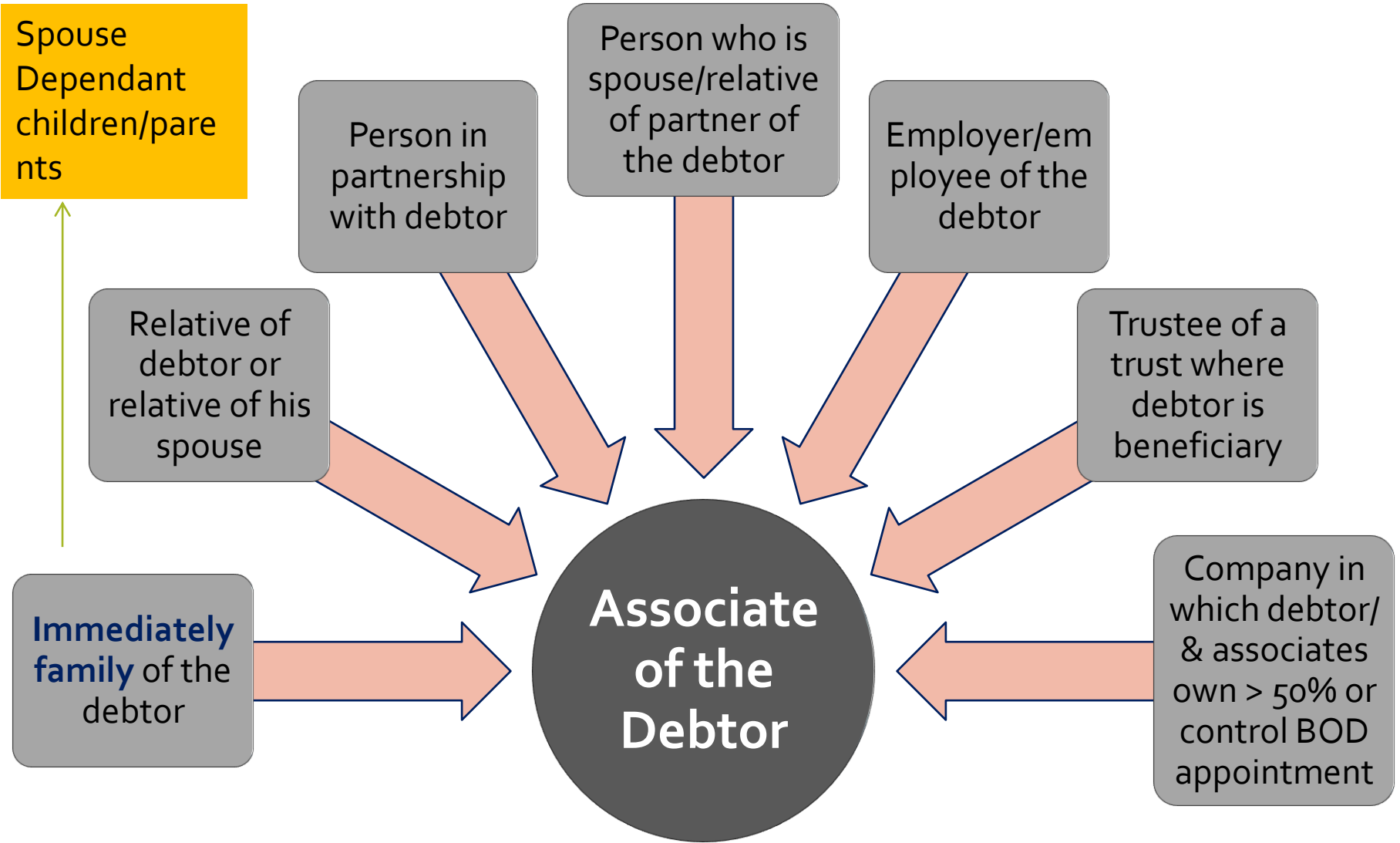
**Resolution
Professional –
79(21)**

**Un-discharged
Bankrupt –
79(22)**

Adjudicating Authority – S 79(1)

- Debt Recovery Tribunal (DRT)
- Objective of DRT to ensure that the Insolvency or Bankruptcy Resolution is being performed within the framework of law
- Physical infrastructure of AA for Individual insolvency need to be more widespread across the country to facilitate access to justice for the common Indian.
- Current DRT benches have wider presence than NCLT
- Hence, DRT has been vested with the jurisdiction over individual insolvency and bankruptcy matters.

Associate – S 79(2)



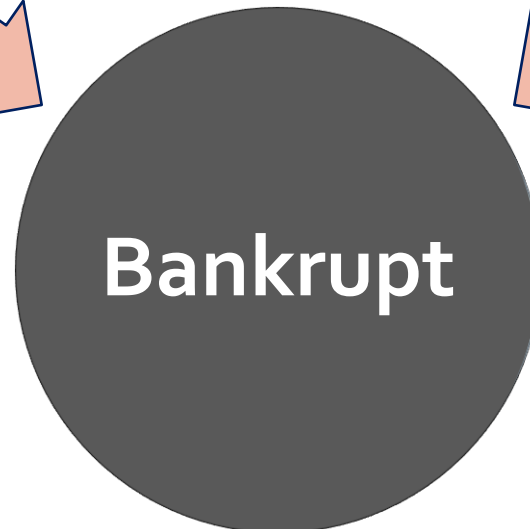
Relatives for the above purpose are member of HUF + person as may be prescribed

Bankrupt – S 79(3)

Each of the partners of the firm where bankruptcy order u/s 126 has been made against a firm

Debtor who has been adjudged as bankrupt by a bankruptcy order u/s 126

Any person adjudged as an un-discharged insolvent



Bankruptcy order means an order passed by an AA u/s 126. Refer S 79(7)

Bankrupt who has not received a discharge order u/s 138 – Refer S 79(22)

Bankruptcy Debt – S 79(5)

Any debt for which he may become liable after BC date but before his discharge for transactions entered before such date

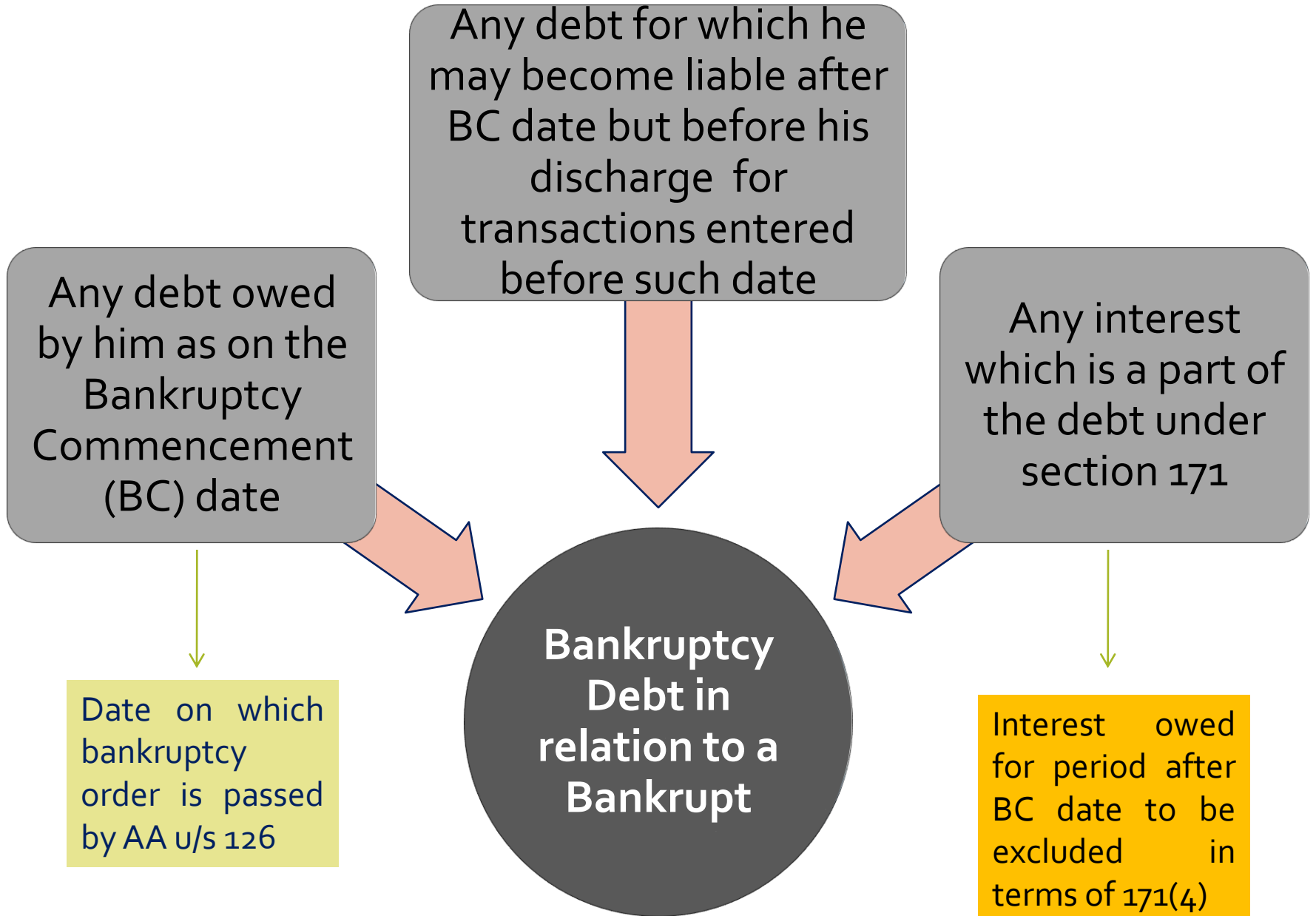
Any debt owed by him as on the Bankruptcy Commencement (BC) date

Any interest which is a part of the debt under section 171

Bankruptcy Debt in relation to a Bankrupt

Date on which bankruptcy order is passed by AA u/s 126

Interest owed for period after BC date to be excluded in terms of 171(4)



Bankruptcy Process – S 79(8)

- A process against a debtor under Chapter IV of Part III of the Code dealing with “bankruptcy order for individuals and partnership firms”
- A process against a debtor under Chapter V of Part III of the Code dealing with “administration and distribution of the estate of the bankrupt”
- Above 2 combined shall constitute a bankruptcy process

Bankruptcy Trustee – S 79(9)

- Means an Insolvency Professional appointed as trustee for the estate of bankrupt u/s 125
- IP plays the dual role of resolution professional and bankruptcy trustee as the case may be
- Position of bankruptcy trustee is akin to that of a liquidator in the case of corporate liquidation

Discharge Order – S 79(13)

U/s 119 in case of
Insolvency Resolution
Process

U/s 92 dealing
with Fresh Start
Process

U/s 138 which
provides for
discharge order
under
bankruptcy

Order Passed
by AA releasing
Debtor of his
claims in the
insolvency
proceedings

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graph TD; A[U/s 119 in case of Insolvency Resolution Process] --> D((Order Passed by AA releasing Debtor of his claims in the insolvency proceedings)); B[U/s 92 dealing with Fresh Start Process] --> D; C[U/s 138 which provides for discharge order under bankruptcy] --> D;
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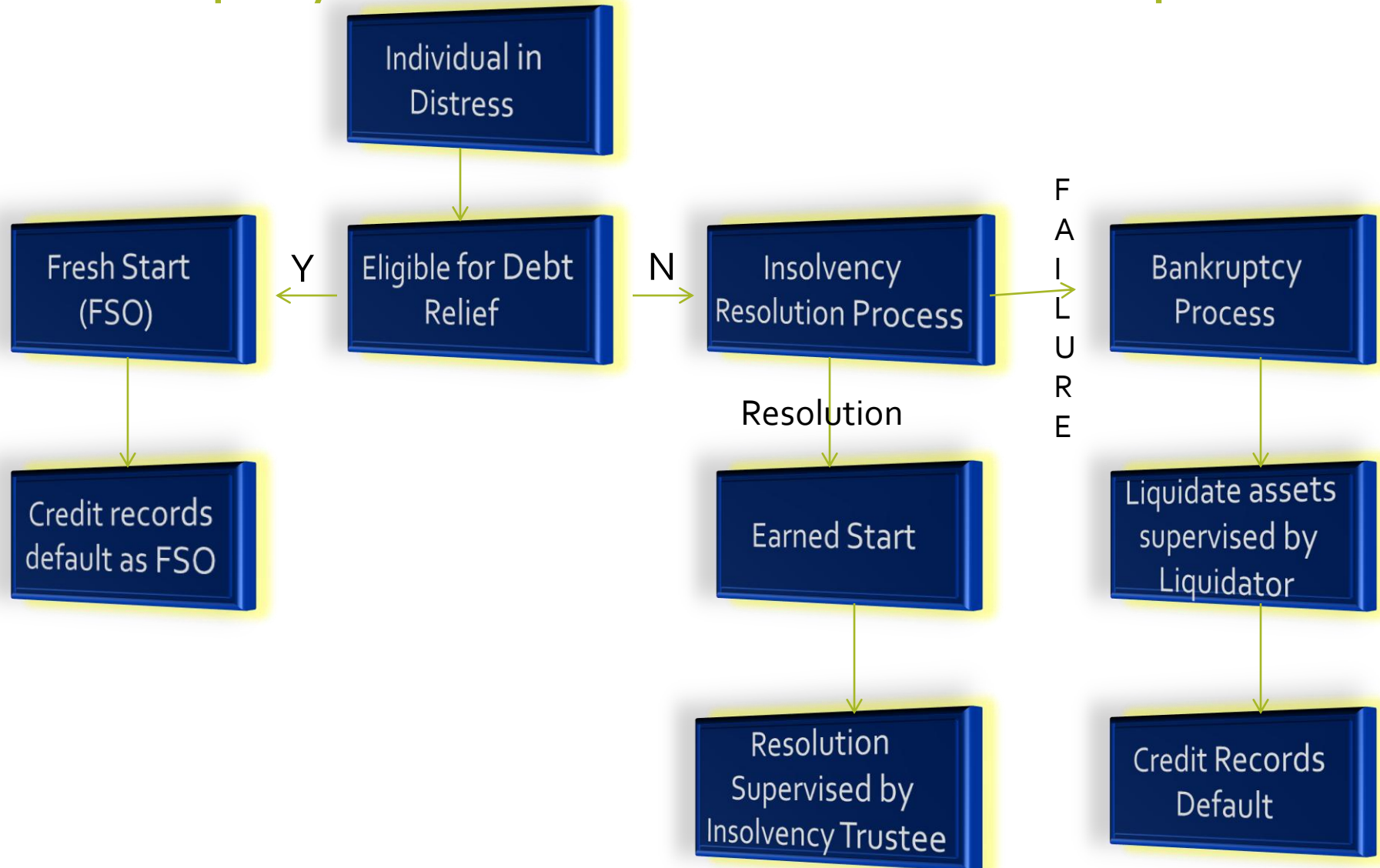
Excluded Assets – S 79(14)

- unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation,
- unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;
- any unencumbered personal ornaments not exceeding a value of Rs. 1 Lakh of the debtor or his immediate family which cannot be parted with, in accordance with religious usage; - Rule 5
- any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and
- an unencumbered single dwelling unit owned by the debtor having following value: -
 - dwelling unit in urban area – 25 Lakhs
 - dwelling unit in rural area – 10 Lakhs

Excluded Debts – S 79(15)

- liability to pay fine imposed by a court or tribunal;
- liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;
- liability to pay maintenance to any person under any law for the time being in force;
- liability in relation to a student loan;
- any other debt as may be prescribed;

Flow Chart on Insolvency Resolution & Bankruptcy for Individual & Partnership Firms



Fresh Start Eligibility Conditions

A debtor who is **unable to pay his debt** & fulfills the conditions as mentioned below shall make an application for a fresh start for discharge of his qualifying debt

Gross Annual Income does not exceed Rs 60,000/-

Aggregate Value of the Assets & Qualifying Debts does not exceed Rs 20,000/- & Rs 35,000/- respectively

Debtor does not own a dwelling unit, irrespective of whether it is encumbered or not

Debtor is not an un-discharged bankrupt

A fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him

No previous fresh start order has been made in relation to debtor in the preceding 12 months of the date of the application for fresh start

Fresh Start Process

Individual Debtor (ID)

Application to AA

Filed Personally

within 7 days

AA will direct the Board to nominate RP

within 10 days

RP appointed

Filed through RP

within 7 days

AA will confirm from the Board that there are no disciplinary proceedings

within 10 days

RP examines application, submits report to AA recommending acceptance/rejection

INTERIM MORATORIUM PERIOD

MORATORIUM PERIOD OF 180 DAYS

Rejected

within 14 days

Challenge by Cr./Dr. application to AA

within 10 days

Amend debts, make application to AA

Order of AA passed

within 14 days

Application admitted

Application rejected

AA states the amount accepted as Qual. Debt

within 7 days

Order + Application Copy to Creditors

within 10 days

within 10 days

Objection by Creditor to RP

RP shall examine, then accept or reject

If accepted, AA to forward order to Board

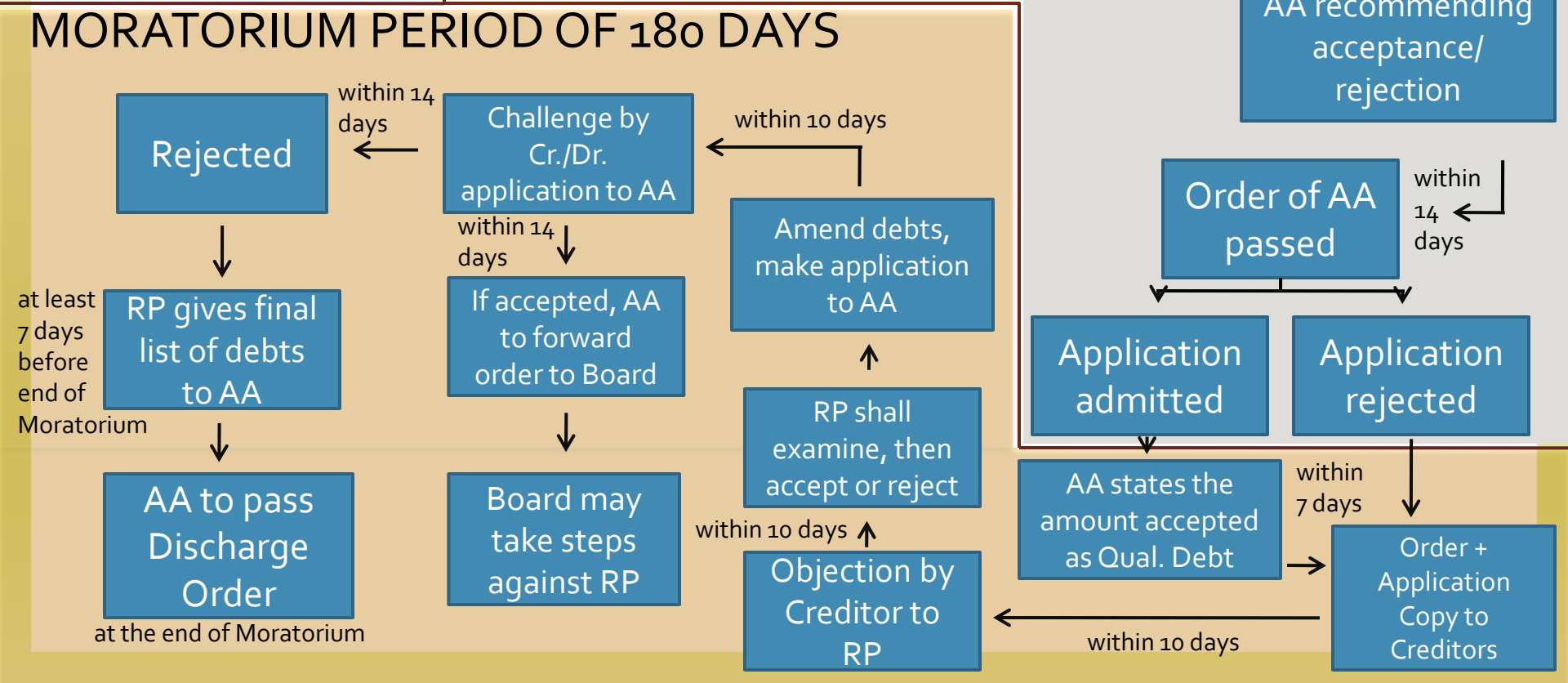
Board may take steps against RP

RP gives final list of debts to AA

AA to pass Discharge Order

at the end of Moratorium

at least 7 days before end of Moratorium



Insolvency Resolution Process

By a Debtor – Sec 94 r/w Rule 6

- Application in Form A – personally or through Insolvency Professional
- Application fee Rs. 2,000/-
- Application to be served to every financial creditor and the Corporate Debtor
- Application will also provide information about associates, assets of guarantor and immediate family, annual income, directorships, businesses, debts, excluded assets, etc.
- 'Immediate Family' include spouse, dependent children and dependent parents.
- Particulars of Resolution Professional (if application is filed by RP) along with a declaration and signature of RP in the application itself
- Documents to be attached include IT returns, WT returns, Statement of Affairs, GST Returns, bank account statements, documentary evidences of the assets, etc.
- Application to be filed in electronic form, if such facility is available and as directed by AA
- Application can not be submitted, if a process of fresh start, resolution or bankruptcy is undergoing or is already an undischarged bankrupt
- Application can be submitted only for 'excluded debts' – Sec 94(3)

Insolvency Resolution Process

By a Creditor – Sec 95 r/w Rule 7

- **14 days Demand Notice to be given u/s 95(4)(b) to debtor in Form B**
- **Application in Form C – by creditor, severally or jointly or through IP**
- **Application fee Rs. 2,000/-**
- **Application to be served to debtor/guarantor and the Corporate Debtor**
- **Application will also provide information about assets of guarantor and immediate family, annual income, directorships, businesses, debts, excluded assets, etc.**
- **Particulars of Resolution Professional (if application is filed by RP) along with a declaration and signature of RP in the application itself**
- **Documents to be attached include demand notice, IT returns, WT returns, documentary evidences of the assets, if any, etc**
- **Application to be filed in electronic form, if such facility is available and as directed by AA**

Interim Moratorium – Sec 96

- **Applicable to applications filed under section 94 or section 95**
- **Shall commence on the date of the application**
- **Shall cease to have effect on the date of admission of such application**
- **During the interim-moratorium period: -**
 - **any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and**
 - **the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.**

Appointment of RP – Sec 97 r/w Rule 8 & Reg. 4

- AA will appoint a RP, if application is not filed through an RP from the database of IPs shared by the Board from time to time
- AA will appoint the RP, if application is file through an RP after verification of the disciplinary proceedings from the database of IPs shared by the Board
- The appointed RP shall be provided with a copy of the application.
- The appointment of RP is expected to be done in 14 days, however, in the case of JK Jute Mills Co. Ltd. vs Surendra Trading Co.; Macquarie Bank Limited vs Shilpi Cable Technologies Limited, Hon'ble Supreme Court has relaxed and held that the timeline is important but not at the cost of justice.

Appointment of RP – Sec 97 r/w Rule 8 - Eligibility

- he, an IPE where he is partner or a director, and all the partners and directors of the said IPE are independent of the guarantor;
- he is not subject to any ongoing disciplinary proceeding or a restraint order of the IBBI or IPA;
- the IPE of which he is a partner or a director, or any other partner or director of such IPE does not represent any party in the resolution process.
- Independence:
 - (a) is not an associate of the guarantor;
 - (b) is not a related party of the corporate debtor; and
 - (c) has not acted or is not acting as interim resolution professional, resolution professional or liquidator in respect of the corporate debtor;
- related party shall have the meaning assigned to it in sub-section (24) of section 5.

Report by RP – Sec 99

- RP shall examine the application within 10 days of his appointment
- Submit a report to the AA recommending for approval or rejection of the application.
- Where the application has been filed under section 95, the RP may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing evidences
- The resolution professional shall examine the application and ascertain that
 - (a) the application satisfies the requirements set out in section 94 or 95;
 - (b) the applicant has provided information and given explanation sought by the RP
- After examination, he may recommend acceptance or rejection of the application in his report.
- Where the RP finds that the debtor is eligible for a fresh start, he shall recommend the same to AA
- RP shall give a copy of the report to the debtor or the creditor, as the case may be

Admission Sec 100 r/w Rule 10

- NCLT will deal with the applications under rule 20 to 26 of Part III of the National Company Law Tribunal Rules, 2016
- DRT will deal with the applications under rule 3 of the Debt Recovery Tribunal (procedure) Rules, 1993 and Regulations 3, 4, 5, and 11 of the Debt Recovery Tribunal Regulations, 2015.
- NCLT, within 14 days from the submission of the report, pass an order either admitting or rejecting the application
- AA will verify the existence of debt, disbursement of debt and default in repayment and after giving an opportunity to other parties
- Where AA admits an application, it may, on the request of the RP issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.
- AA shall provide a copy of the order passed along with the report to the creditors within seven days from the date of the said order.
- If the application is rejected by the AA on the basis of report submitted by the RP or that the application was made with the intention to defraud his creditors or the RP, AA may record that creditor is entitled to file for bankruptcy

Moratorium – Sec 101

- Shall commence on date of admission in relation to all the debts and shall cease to have effect at the end of 180 days or on the date the AA passes an order on the repayment plan, whichever is earlier.
- During the moratorium period: -
 - any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
 - the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
 - the debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;

Public Notice – Sec 102

- AA shall issue a public notice within 7 days of passing the order inviting claims from all creditors within 21 days of such issue.
- The notice shall include–
 - (a) details of the order admitting the application;
 - (b) particulars of the resolution professional with whom the claims are to be registered; and
 - (c) the last date for submission of claims.
- The notice shall be –
 - (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
 - affixed in the premises of the AA; and
 - Placed on the website of AA

List of Creditors – Sec 104 r/w Reg. 9

- RP shall prepare a list of creditors within 30 days of public notice on the basis of –
 - (a) the information disclosed in the application
 - (b) claims received
- The list of creditors shall contain:
 - names of creditors,
 - amount claimed,
 - amount admitted and security interest, if any, in respect of such claims.
- RP shall
 - make the list of creditors available for inspection by the persons who submitted claims with proof;
 - serve a copy of the list of creditors to the guarantor;
 - make available the list of creditors on the website, if any, of the guarantor;
 - present the list of creditors at the meeting of creditors; and
 - file a certified copy of the list of creditors with the AA along with the repayment plan.

Meeting of Creditors – Sec 107 r/w Reg. 11-16

- RP shall issue a notice calling the meeting of the creditors at least 14 days before the date fixed for such meeting.
- RP shall send the notice of the meeting to the list of creditors
- Notice shall state the address of the AA to which the repayment plan and report of the RP on the repayment plan has been submitted and shall be accompanied by –
 - (a) a copy of the repayment plan;
 - (b) a copy of the statement of affairs of the debtor;
 - (c) a copy of the said report of the resolution professional; and
 - (d) forms for proxy voting.

Repayment Plan – Sec 105

- Similar to a “Resolution Plan” in case of corporate insolvency, “Repayment Plan” can be said to be the key to resolution in case of non-corporate insolvency.
- It is plan/ proposal, containing terms as per which the debtor will pay his debts to the creditors, and also provides for the manner in which the affairs of the debtors will be carried on.

Features of Repayment Plan

Shall be prepared
by Debtor in
consultation with
RP

Proposal for
restructuring of
debts

May authorise RP
to carry the
business of the
Debtor

Must have reasons
why the creditor
may agree to the
Plan

Justification for
preparation

Contents of Repayment Plan Reg 17

Term and Implementation schedule and amount to be paid

Sources of Funds to pay IRP Costs

Minimum budget for duration of plan

Financing required for payment

Manner of conducting the business and Role of RP

Details of excluded assets and debts

Approval of Repayment Plan – Sec 114

- AA shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the RP
- Provided that where a meeting of creditors is not summoned, the AA shall pass an order on the basis of the report prepared by the RP
- The order of the AA approving the repayment plan may also provide for directions for implementing the repayment plan.
- Where the AA is of the opinion that the repayment plan requires modification, it may direct the RP to re-convene a meeting of the creditors for reconsidering the repayment plan.

Effect of Order – Sec 115

- Where the AA has approved the repayment plan under section 114, the repayment plan shall –
 - (a) take effect as if proposed by the debtor in the meeting; and
 - (b) be binding on creditors mentioned in the repayment plan and the debtor.
- Where the AA rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.
- A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

Completion of Plan – Sec 117

- The RP shall within fourteen days of the completion of the repayment plan, forward to the persons who are bound by the repayment plan under section 115 and the Adjudicating Authority, the following documents, namely –
 - (a) a notice that the repayment plan has been fully implemented; and
 - (b) a copy of a report by the resolution professional summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan as compared with the repayment plan approved by the meeting of the creditors

Discharge Order – Sec 119

- On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.
- The repayment plan may provide for - (a) early discharge; or (b) discharge on complete implementation of the repayment plan.
- The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register
- The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt

Insolvency Resolution Process

***When RP finds that D is eligible for a FSP, RP shall submit report accordingly

Debtor (D)/
Creditors
Individually or
Jointly (C)

Application
to AA

Filed
Personally

within 7 days

AA will direct the
Board to
nominate RP

within 10
days

RP
appointed

Filed
through RP

within 7 days

AA will confirm
from the Board that
there are no
disciplinary
proceedings

within
10
days

RP examines
application,
submits report to
AA recommending
acceptance/
Rejection***

INTERIM MORATORIUM PERIOD

MORATORIUM PERIOD OF 180 DAYS

Discharge
Order

RP to fwd
information to
persons bound
by plan

within 14
days

Implementation,
supervision &
completion of plan

AA to pass order
approving/
rejecting plan

RP to call meeting
of Cs & issue a 14
days' notice

Conduct the
meeting;
approve/modify
/reject plan

Report by RP
on meeting
to AA, D & Cs

RP to submit
Plan & Report
on Plan

D shall prepare
Repayment
Plan

List of Cs to be
prepared by RP

within 21
days
of last
submi
ssion
of
claim

within
30
days
of PN

Order of AA
passed

within
14
days

Application
admitted, may
instruct negotiation
between D & C

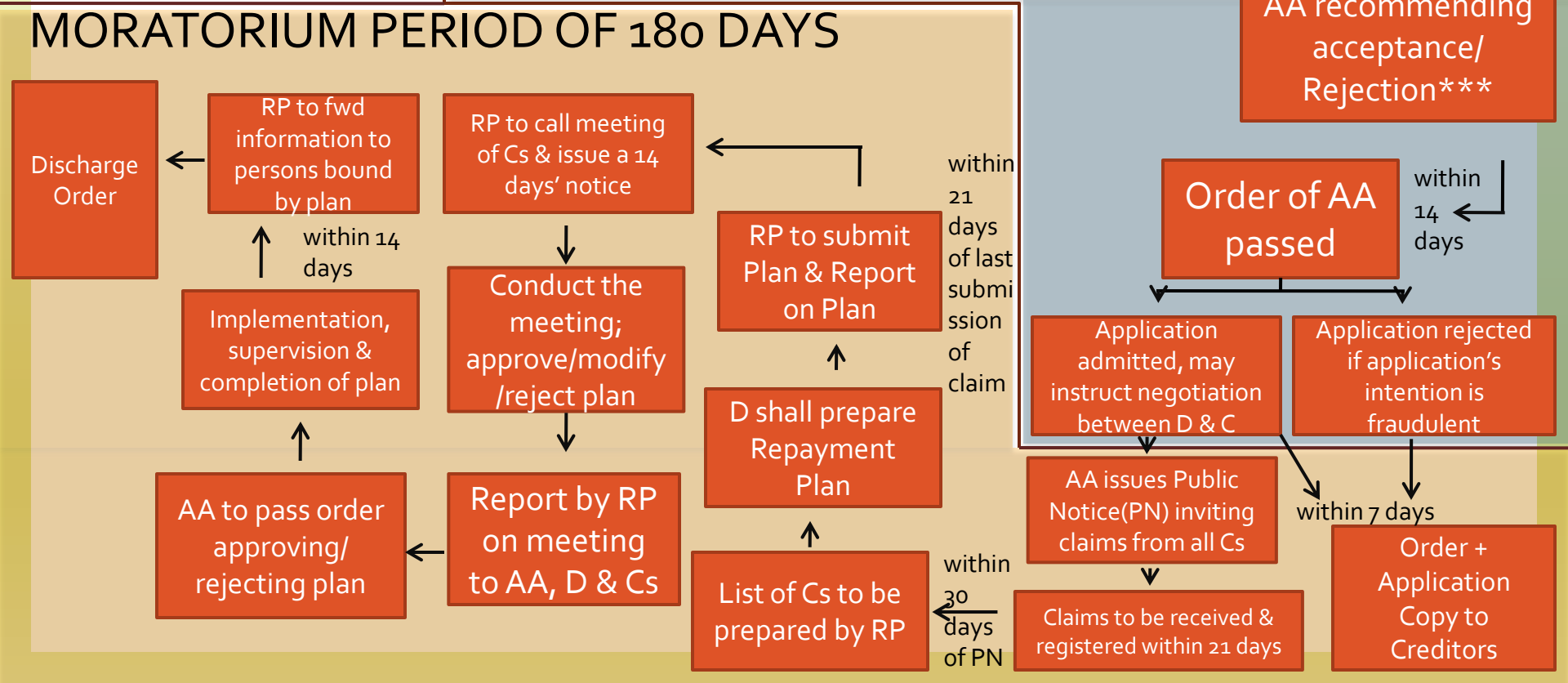
Application rejected
if application's
intention is
fraudulent

AA issues Public
Notice(PN) inviting
claims from all Cs

Claims to be received &
registered within 21 days

within 7 days

Order +
Application
Copy to
Creditors



Personal Insolvency v/s Corporate Insolvency

Basis	Individual Insolvency	Corporate Insolvency
<u>Types of Creditors</u>	No distinction between Creditors	Financial/Operational/ etc.
<u>CoC</u>	No concept of CoC – only list of creditors	CoC mandatory – constituting of FCs
<u>Conducting meetings</u>	Not Mandatory	Mandatory
<u>Interim Moratorium</u>	Yes	No
<u>Approval of Plan</u>	75%	66%
<u>Reection of Plan</u>	Application for Bankruptcy may be filed	Liquidation is mandatory
<u>Role of RP</u>	Report before admission	Role only after admission

Fresh Start Process v. Insolvency Resolution Process

Basis	Fresh Start	Insolvency
<u>Application by</u>	Individual Debtor	Individual Debtor/ Partner of Firm/ Creditors
<u>Pre-condition</u>	Unable to pay	Default by Debtor
<u>Nature of Debt</u>	Qualifying Debts u/s 79(19)	All debts other than excluded Debts u/s 79(15)
<u>Notice to Public</u>	No	Yes
<u>Meeting of Creditors</u>	No	Yes
<u>Repayment Plan</u>	Not required	Required
<u>Role of Creditors</u>	Right to object	Claims invited, then list of Creditors prepared