



Motto

“ सत्यं वद। धर्मं चर।
इष्टार्कं कुरु। अर्कं न कुरु।”

Vision

“ To be a global leader in promoting
good corporate governance ”

Mission

“ To develop high calibre professionals facilitating
good corporate governance ”

ICSI INSOLVENCY PROFESSIONALS AGENCY

(A wholly owned subsidiary of ICSI and registered with IBBI)

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THE INSOLVENCY AND BANKRUPTCY CODE, 2016 : Resolving Insolvency (A Simplified Guide)



*‘Bestowing a Fresh Lease
of Life to Corporates’
and Individuals*

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Foreword

Devataakaarya-siddhyartham sabhaastambha-samudbhavam,
Sri Narasimham mahaaveeram namaami runamuktaye !!

The above lines from Runa Vimochana Narasimha Stotra is a prayer which one offers to Lord Narasimha Subhashitam and translates as: For achieving the divine mission, He who emerged out of a pillar, in the Court hall (of the demon) to such a greatly valorous Lord Narasimha, I am praying to liquidate my debts.

This quote connects me to the preamble of the newly introduced Insolvency and Bankruptcy Code, 2016 (“Code”) which reads as:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.....“

The prima facie objective of the Code is the resolution and revival of financially distressed and debt stricken corporates and non corporate entities. Once the debts are restructured, debtor will be relieved from the burden of repayment of his debts and can focus on his core business activities.

The Code which seeks to bring out a major economic turnaround in the society, would certainly help foster the Sankalp se Siddhi initiative of the Hon'ble Prime Minister Shri Narendra Modi . The Code has put in place a regime to consolidate all the existing laws relating to insolvency of Corporates, LLPs, Partnership Firms and individuals at one place. The scheme of the Code is in stark distinction to the earlier laws which focussed on ‘Debtor in possession’, as the Code, focuses on ‘Creditor in possession’ concept.

With a view to ensure better understanding and clarity of the Code to a common man, ICSI Insolvency Professionals Agency (ICSI IPA) has come out with the booklet titled “Insolvency and Bankruptcy Code, 2016 : Resolving Insolvency (A Simplified Guide)”. This guide is a sincere attempt on part of ICSI IPA to sensitize the stakeholders viz. the corporates, firms, individuals, creditors, debtors, banks and financial institutions, deposit holders, homebuyers, small businessmen, employees and other stakeholders about the legislative framework of the Code and the benefits that they can derive from this new legislation.

I am confident that this guide in simple language would ensure easy understanding of the Code by one and all.

CS (Dr.) Shyam Agrawal

President,

The Institute of Company Secretaries of India

Message from CEO

ICSI Insolvency Professionals Agency's booklet titled "Insolvency and Bankruptcy Code, 2016 : Resolving Insolvency (A Simplified Guide)" comes at a time when the law on bankruptcy is evolving through various judicial pronouncements of the Tribunals, Appellate Tribunal, High Courts and Supreme Court. The Code provides an opportunity for every company, firm and individual to address their problem of debt in a time bound manner.

This booklet has been prepared to sensitize the stakeholders about the Code which attempts to cover the following aspects:

- The importance of the Code for the common man and the benefits that may be derived from it.
- Broad framework of the Code – provides an overall view of various processes of insolvency resolution as well as the exit mechanism available under the Code.
- Institutional mechanism under the Code – to help the stakeholders to understand the role of Adjudicating Authority, Insolvency and Bankruptcy Board of India, Insolvency Professional Agencies, Insolvency Professionals and Information Utilities under the Code.
- Insolvency Resolution processes for corporates and individuals under the Code.
- Exit routes provided under the Code for both corporates and individuals.

It has been our sincere effort to cover every facet of the Code in the most simplified language so as to create the much needed awareness and education in respect of the law related to insolvency and bankruptcy.

We are confident that this booklet would prove to be useful to one and all.

CS ALKA KAPOOR

Chief Executive Officer

ICSI Insolvency Professionals Agency

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

BACKGROUND

The Insolvency and Bankruptcy Code, 2016 is a breather in recent times as it makes both the individual and corporate insolvency process comprehensive yet simple. It encompasses within its ambit a wide array of persons ranging from a farmer to a multi-billion dollar businessman, from start-ups to big corporate houses. However, it is important that every individual and corporate must understand the mechanism of the Code and recognize their rights under it in order to utilize the Code to its full potential. A maxim by Dave Ramsey rightly states that- "There are no shortcuts when it comes to getting out of debt" and hence it is important for the businesses and individuals to adopt the structured Code rather than looking for other shortcut means of getting out of debt.

The Code provides for time bound Insolvency Resolution/turnaround (i.e. within 180 days/ 90 days, as the case may be). It provides for "Moratorium" i.e. calm period that stays all legal proceedings during those 180 days for easy resolution. If there is no possibility of a viable turnaround within 180 days (plus one time extension of 90 days) as envisaged under the Code, only then the Corporate Debtor will undergo liquidation. The Code as an economic reform gives an easy route to the Entities to 'Exit' the market on account of business failures unlike earlier reforms which were broadly focused on the ease 'Entry'.

Financial Defaults by Corporates

Corporates, whether big or small, are also susceptible to risks and business or financial failures. In such cases it does not only affect the corporate but also the stakeholders of such corporate. For example, suppliers of goods and service providers form a crucial part of a company's success in business operations. Any financial default by the company to suppliers and service providers will not take the company too far.

Indebtedness of Individuals

On the individual front, we are witnessing farmers, kirana-shop owners and many more who procure loans from banks, financial institutions or other individuals to carry on their work or business. There may be circumstances when they fail to meet their liabilities and debt obligations. It becomes increasingly difficult for them to find a way out of such indebtedness in the absence of any structured remedy available to them.

The need for Unified Code

All these factors made it imperative that a mechanism must be put in place to address such instances of insolvency and bankruptcy which would bestow an opportunity to start afresh for the corporates, start-ups and individuals. Although there was a legislative framework earlier but the law was scattered with multi-layered adjudication mechanism.

This led the Government to promulgate the Insolvency and Bankruptcy Code, 2016 ('Code') that would help in resolving the financial and debt crisis of corporates, firms & individuals through a structured process, in a time bound manner.

WHY DOES THE COMMON MAN NEED THE CODE?

The basis for making an application for resolving insolvency is default in paying back the debts, whether it is by individual or corporates. The reason for the same may be business/financial failure of corporates and in case of individuals it may be due to job cuts, crop failure for farmers and so on. The Code provides for a fresh start over from the genuine failures through a structured plan. Some of the issues addressed through the Code are:



Default in payment to banks, financial institutions and individuals by companies

- Failure to pay term loans and other borrowings to banks and financial institutions.
- Apart from banks and financial institutions, even individuals lend money in the form of debentures, bonds, deposits etc. There may be failure to pay them as well.

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Default in payment of dues to suppliers, employees etc.

- Payment to persons supplying goods or providing services to the company is important to ensure continuity and good business relations. However, many companies avoid making such payments which puts the suppliers into agony while increasing the bad debts of the company.
- Non payment of salary by the employer to the employee is a common phenomenon in our country. It is not uncommon that an employee is not remunerated for months together.

Failure of start-ups

- There is no dearth of upcoming entrepreneurs in our country, especially with the introduction of multitude of schemes to promote them and their vision. However, about 90% of the start-ups fail according to a new study by IBM.
- The Indian Legal Framework, prior to the enactment of the Code, was not kind to these failed start-ups when it came to quick resolution or closure of the businesses. It involved lengthy process with uncertain outcomes, all of which, did not contribute to the ease of doing business.



To help farmers tide over crisis

- India is mainly an agricultural country. About 70% of the population are farmers and form the backbone of the country as the prosperity of the nation largely depends on them.
- According to the National Crime Records Bureau data, out of the total 8,007 farmers that had committed suicide in 2015, 3,097 farmers had committed suicide because of bankruptcy or debts after taking loans from banks and registered microfinance institutions. They become incapable to pay off these loans mainly due to crop failure resulting in increase in debts.

Job cuts

- Job cuts have been on the rise since time immemorial.
- As the urban middle class - with home loans, personal loans, credit card debts and monthly EMI payments- lose jobs, it is likely to create a scary situation in the economy with debts rising to insurmountable levels.



Social Stigma

- In India, bankruptcy or insolvency is considered as extremely shameful. People feel scared in declaring themselves bankrupt due to the social stigma attached to it.
- An Insolvent person also loses credibility in the eyes of the creditors and it becomes difficult for him to get loans in the future.

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HOW WILL THE CODE BENEFIT VARIOUS STAKEHOLDERS?



Farmers*

The solution given to farmers under the Code is to apply for Fresh Start Process through which a farmer can write off his debts upto Rs. 35,000 through a judicial order. The application can be filed by farmers either on their own or through insolvency professionals.

An individual struggling to pay off his debts*

An individual struggling to pay off his debts can apply for Fresh Start Process or Insolvency Resolution Process, depending on the quantum of debt. If none of the resolution process works out, application for bankruptcy may be made to discharge the individual of all debts.



Person facing social stigma*

The Code has laid down a process for individuals to apply for Insolvency Resolution Process, which will help them in dealing with the financial crisis by making structured payments rather than be bogged down by it.

This will help in changing the outlook of the society towards bankrupts and insolvents.

Start ups

Failing start ups can now adopt the Fast Track Insolvency Resolution Process to exit faster. The Fast Track Process provides a mechanism whereby the process must end in 90 days (with one-time extension of 45 days).



Non-payment of salary to employees by employers

The salaried employees can now claim their overdue salary in the capacity of operational creditors under the Corporate Insolvency Resolution Process prescribed by the Code.

Default of payment by companies

The financial crisis of a defaulting company may be resolved by initiating the Resolution Process under the Code, by the Financial Creditor / Operational Creditor or the defaulting company itself in a time bound manner.



Relief for home buyers

Following a trail of cases in NCLT such as Jaypee Infratech and Amrapali Silicon City where real estate companies have been admitted for insolvency resolution process, homebuyers have been recognised as a creditor under the Code which enables them to claim their dues.

*Provisions relating to Individual Insolvency are yet to be notified.

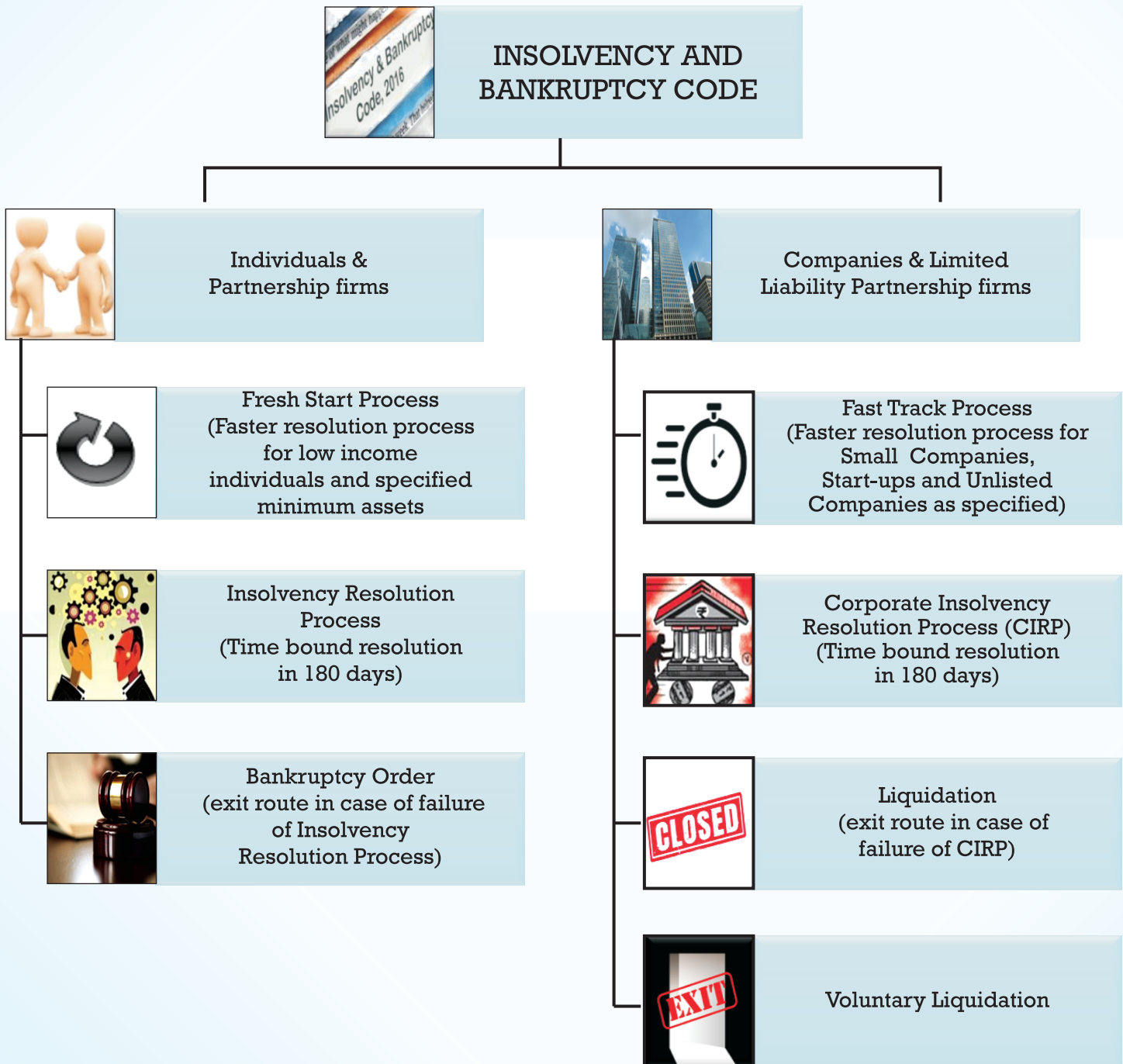
THE INSOLVENCY AND BANKRUPTCY CODE, 2016

BROAD FRAMEWORK OF THE CODE

The Code prescribes a two fold insolvency resolution process, namely:

1. Insolvency Resolution of Individuals and Partnerships.
2. Insolvency Resolution of Corporates and LLPs.

The broad framework of the Code can be understood from the following diagram:

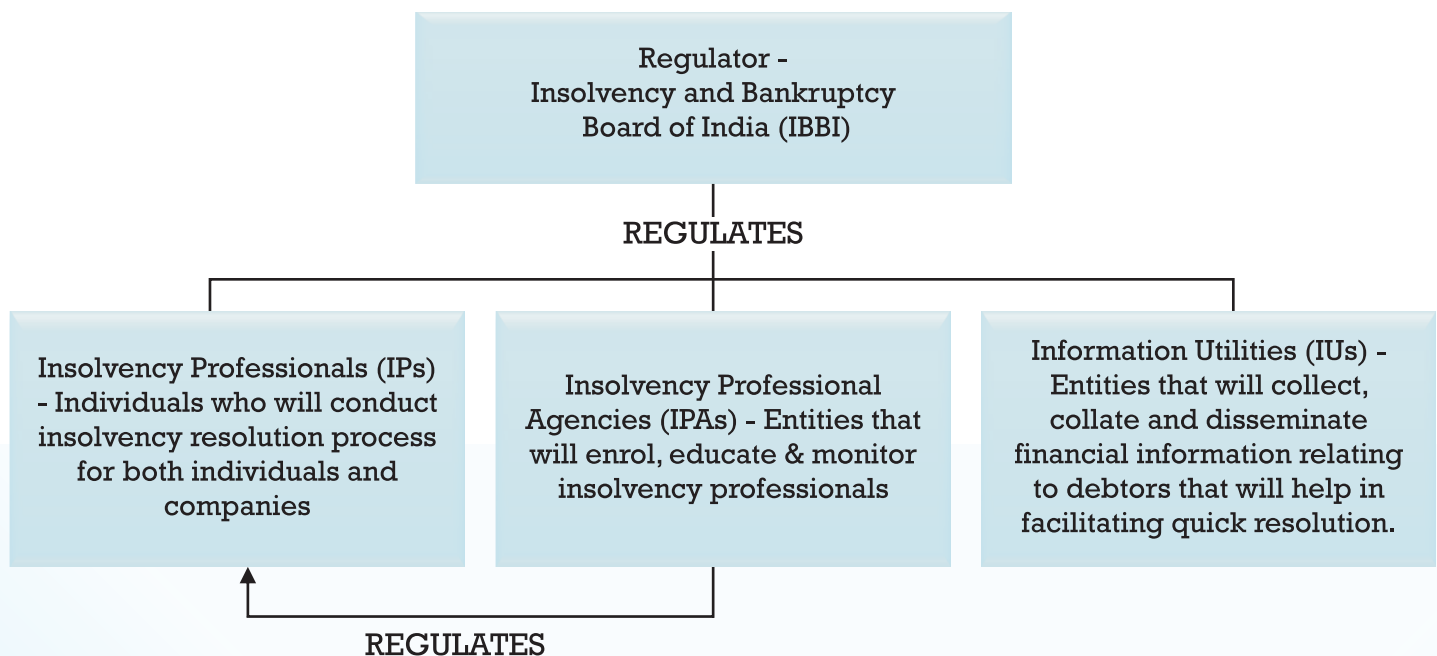


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INSTITUTIONAL FRAMEWORK UNDER THE CODE

The foundation of the Code is based on five pillars, viz., Adjudicating Authority, Insolvency and Bankruptcy Board of India, Information Utilities, Insolvency Professionals and Insolvency Professional Agencies. The overview of the institutional framework can be assessed from the diagram below:

Adjudicating Authority (forum for filing applications and appeals) -
Companies & LLP - National Company Law Tribunal (NCLT) & National Company Law Appellate Tribunal (NCLAT)
Individual & Partnership firms - Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT)

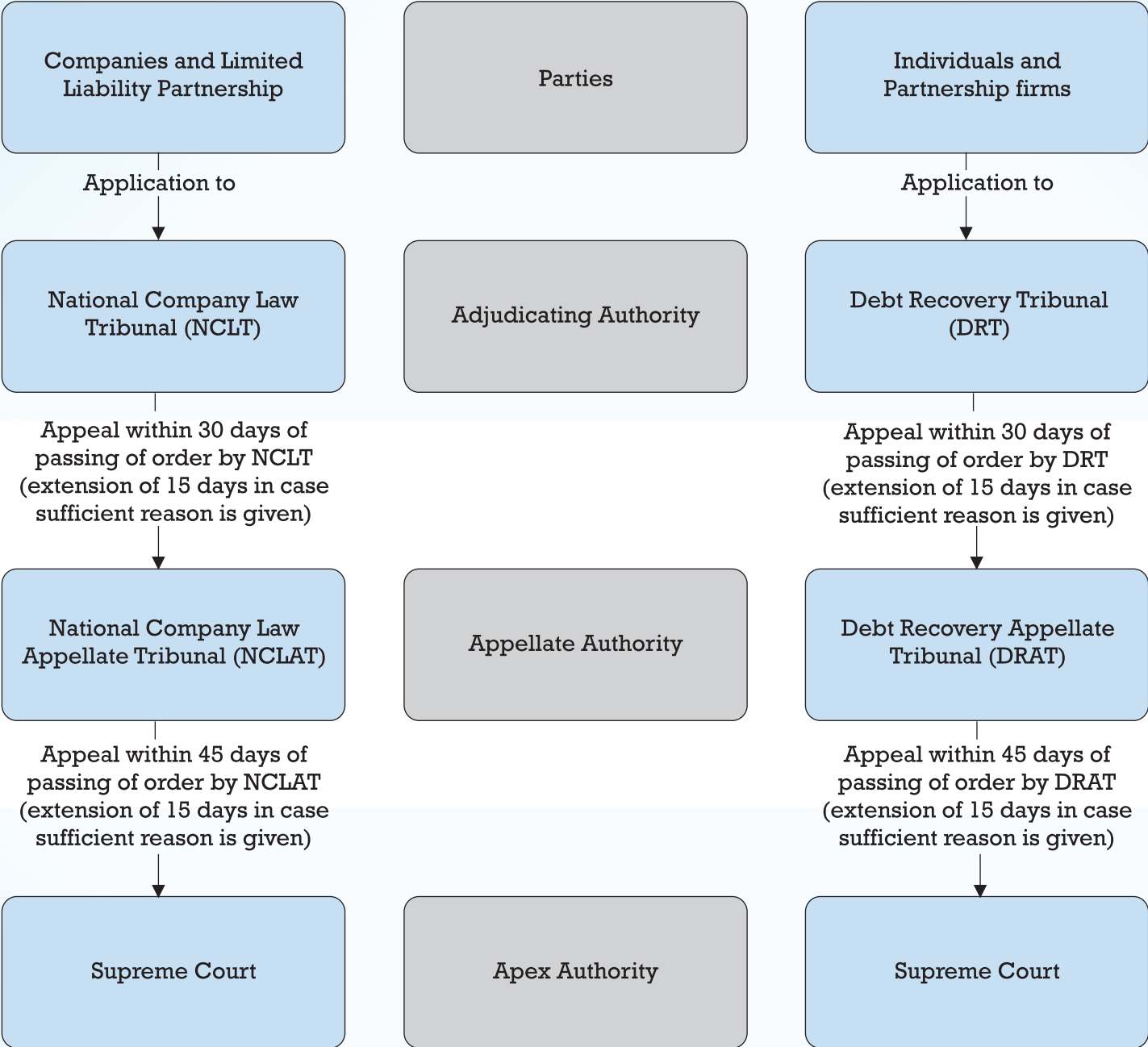


1. ADJUDICATING AUTHORITY

The Adjudicating Authorities (AAs) under the Code are National Company Law Tribunal (NCLT) in case of Companies and Limited Liability Partnership firms and Debt Recovery Tribunal (DRT) in case of Individuals and Partnership firms. Any person may initiate an application for the resolution process to NCLT. Any person aggrieved by the decision or order of NCLT may file an appeal with National Company Law Appellate Tribunal (NCLAT) within a period of 30 days, with an extension of 15 days, provided that there is sufficient cause for not filing the appeal within the prescribed time period. Further appeal shall lie with the Supreme Court. The time limit for the same is 45 days from the date of receipt of order of NCLAT with an extension period of 15 days. The appeal mechanism under the Code can be better understood with the help of the diagram below.

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Both NCLT and NCLAT have the powers of the Court



Jurisdiction of NCLT

{ The application shall be filed before NCLT Bench having territorial jurisdiction over the place where the registered office of the corporate person is located. }

Jurisdiction of DRT

{ The application shall be filed before DRT Bench having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain. }

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2. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (The Regulatory Authority)

The regulator under the Code is Insolvency and Bankruptcy Board of India ('IBBI' or 'Board') which was established by Government of India on October 1, 2016. One of the core functions of IBBI is to regulate the functioning of the other three pillars - Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.

Major functions of IBBI



Making regulations and guidelines on matters relating to insolvency and bankruptcy as prescribed under the Code

Registration of insolvency professional agencies, insolvency professionals and information utilities

Registration



Carrying out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities

Collecting and maintaining records relating to insolvency and bankruptcy cases



Specifying mechanism for grievances redressal against insolvency professionals, insolvency professional agencies and information utilities

Promote transparency and best practices in its governance



3. INSOLVENCY PROFESSIONAL AGENCIES

Insolvency Professional Agencies (IPAs) are entities that have been incorporated as not-for-profit companies to enrol, educate, monitor, regulate and guide the insolvency professionals. There are 3 IPAs that are registered with IBBI at present, viz., ICSI Insolvency Professionals Agency (ICSI IPA), Indian Institute of Insolvency Professionals of ICAI (IIPICAI) and Insolvency Professional Agency of ICMAI (IPAICMAI).

Role of Insolvency Professional Agencies



Enrolment of Insolvency Professionals and suspension of membership of IPs, if required



Laying down standards of professional conduct for Insolvency Professionals (members)



Educating and training its members



Monitoring of Insolvency Professionals



Safeguard the rights, privileges and interests of its members



Redressal of grievances of consumers against its members

4. INSOLVENCY PROFESSIONALS

An Individual who has passed the Limited Insolvency Examination and has ten years of experience as a Chartered Accountant/Company Secretary/Cost Accountant/Advocate or Graduate who has passed Limited Insolvency Examination and has management experience of 15 years is eligible to be registered as an Insolvency Professional. They have to be registered with any of the Insolvency Professional Agency and also with IBBI. They are professionals who conduct the insolvency resolution process with respect to both individuals and corporates. They have a critical role to play under the Code and are subject to oversight by Insolvency and Bankruptcy Board of India (regulator) and Insolvency Professional Agency of which he is a member.

RESOLUTION PROCESS UNDER THE CODE

As discussed earlier, the Code provides for resolution process of:

- A. Companies and Limited Liability Partnership Firms
- B. Individuals and Partnership Firms

A. IN THE CASE OF COMPANIES AND LIMITED LIABILITY PARTNERSHIP FIRMS

1. CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP)

• **When can CIRP be initiated?**

The creditors or the debtor itself may initiate insolvency resolution process against a Company or LLP when the minimum amount of default by corporate debtor is Rs. 1,00,000

• **Who may initiate CIRP?**



FINANCIAL CREDITOR

"a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred"

(For example- Banks, any financial institution/company, debenture/deposit holders, individuals etc.)



OPERATIONAL CREDITOR

"a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred"

(For example-Service provider, supplier of goods, workmen, employees etc.)



CORPORATE DEBTOR

"a corporate person who owes a debt to any person"

(The Company or LLP can initiate insolvency resolution process against itself)

i) Financial Creditor

When a corporate debtor fails to repay his debt, the financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the NCLT.

ii) Operational creditor

An Operational creditor on the occurrence of default in respect of the provision of goods or services including employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Central government, any state government or any local authority may deliver a demand notice of unpaid operational debt along with copy of an invoice demanding payment of the amount involved to the defaulting corporate debtor. If the operational creditor did not receive payment or

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notice of dispute pending if any from the corporate debtor within ten days from the date of delivery of the notice, the operational creditor may file an application to adjudicating authority for initiation of corporate insolvency process.

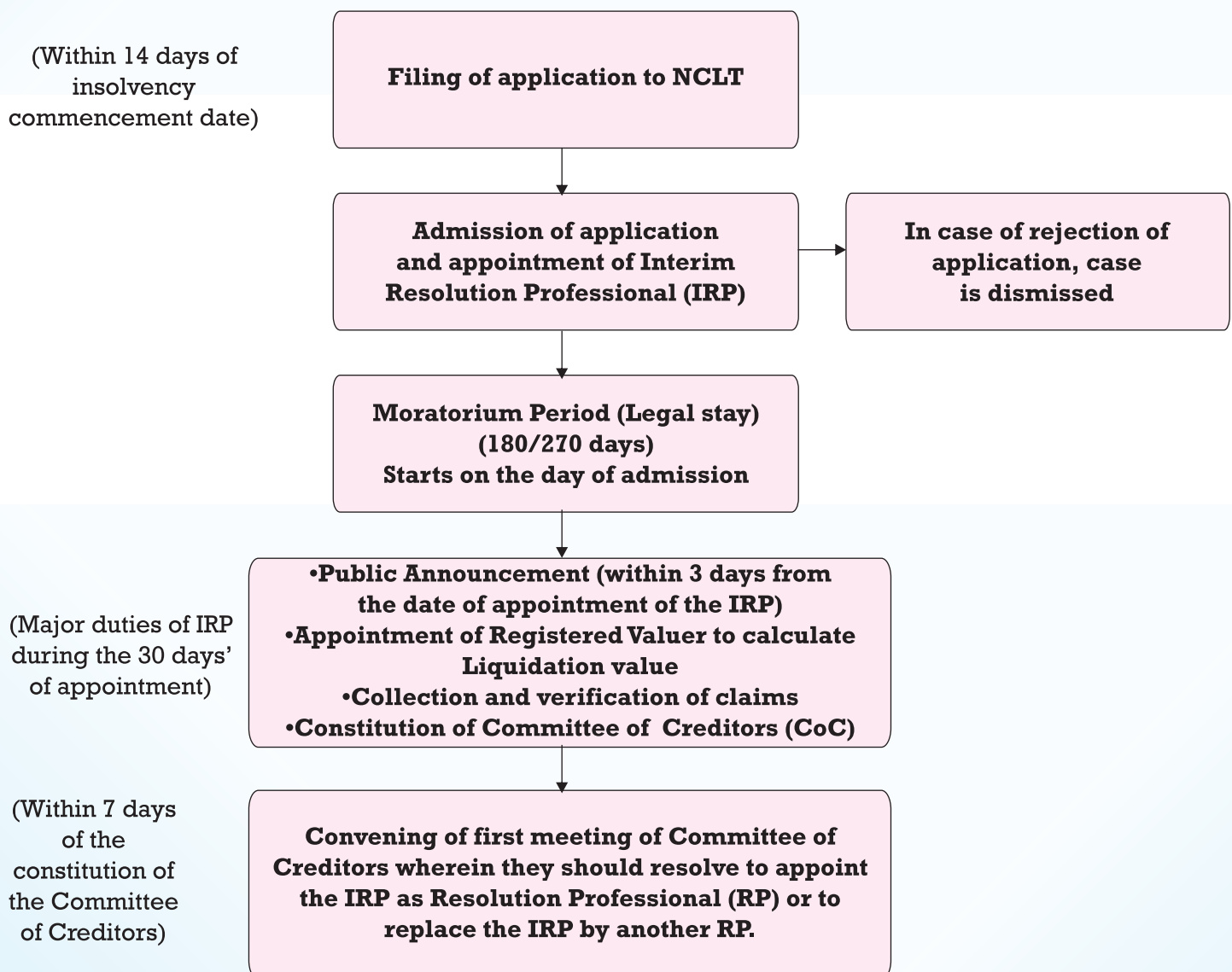
iii) Corporate debtor itself

In case the corporate debtor has committed a default, a corporate debtor itself or through its authorised representative may initiate the Corporate Insolvency Resolution Process.

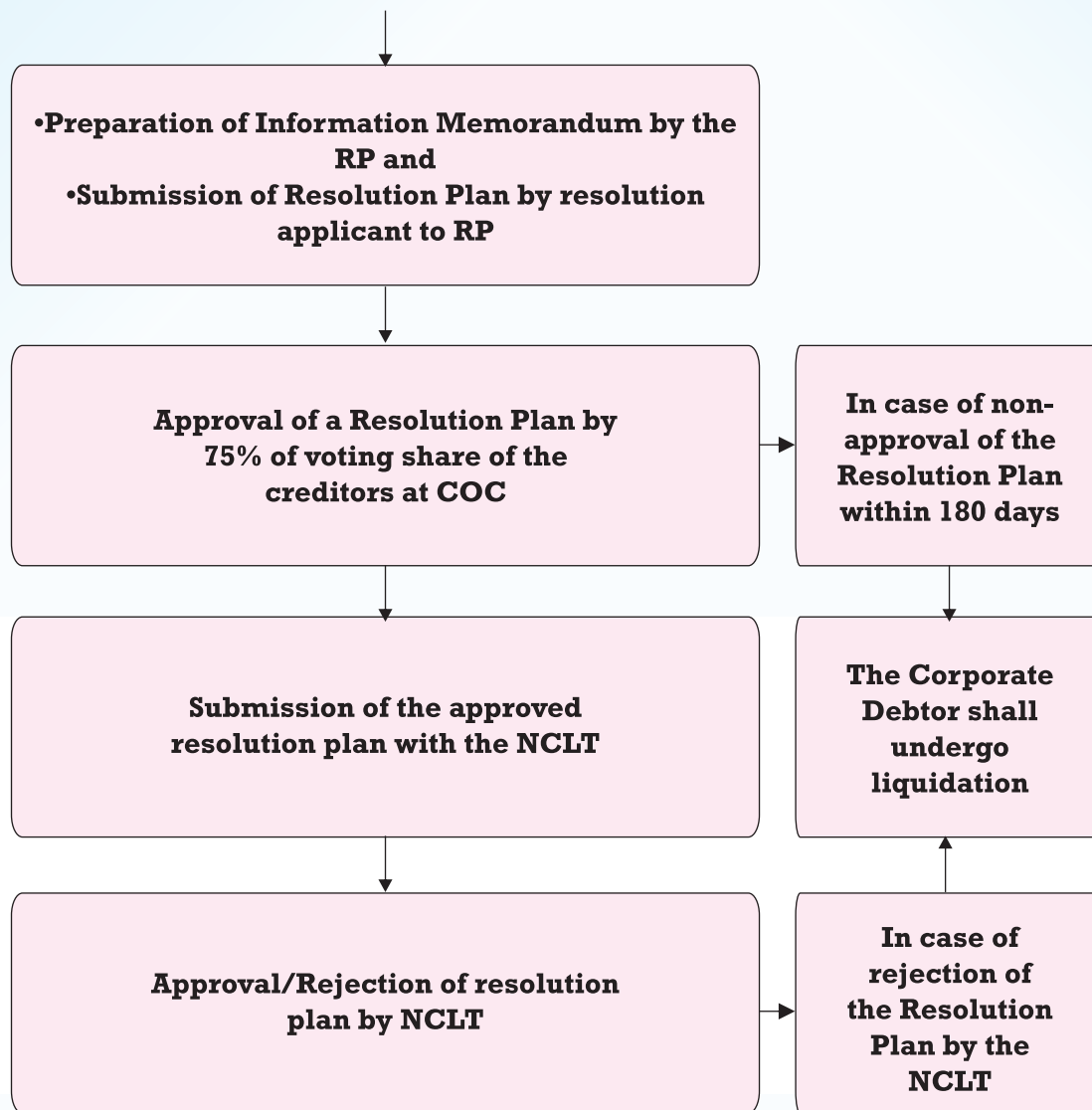
- **Time limit for the Completion of CIRP**

The time limit for the completion of the CIRP is 180 days from the insolvency commencement date with a one-time extension of maximum 90 days, if permitted by Adjudicating Authority.

- **Process under CIRP**



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2. FAST TRACK INSOLVENCY RESOLUTION PROCESS- (For small companies, start-ups and unlisted Companies)

A faster resolution process exclusively for Small Companies, Start-ups and Unlisted Companies has also been specified under the Code.

• Who can apply ?

An Operational Creditor, Financial Creditor and Corporate Debtor can on default of minimum Rs. 1,00,000 can apply to NCLT for initiation of insolvency resolution process under the Code for fast track resolution process.

• Time limit for completion of Fast Track Process

The time limit for the completion of resolution under fast track process is 90 days from the insolvency commencement date with a one-time extension of maximum 45 days, if permitted by the NCLT.

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• **Entities that are covered**



SMALL COMPANY

- Small Company i.e. a company, other than a public company, that satisfies either of the following conditions:
- Paid up share capital ≤ Rs. 50 lakhs or such higher amount not exceeding Rs. 5 Crore; or
- Turnover as per its last profit & loss account ≤ Rs. 2 Crore or such higher amount not exceeding Rs. 20 Crore
- (However, it is also not applicable to Holding or Subsidiary company, Section 8 Company or Company/Body Corporate governed by any Special Act)



START-UP

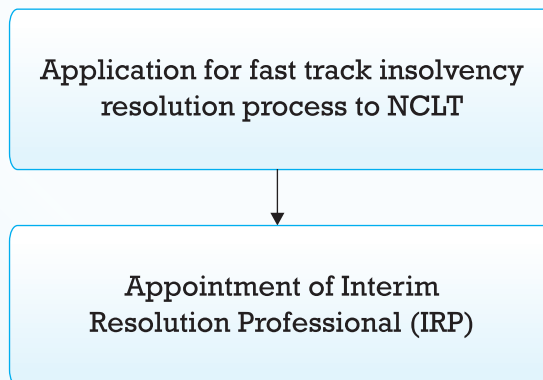
- If it is incorporated as a private limited company or registered partnership firm or a limited liability partnership in India; and
- Up to 7 years from the date of its incorporation/ registration (10 years in case of biotechnology sector); and
- If its turnover for any of the financial years since incorporation/ registration ≤ Rs. 25 Crore; and
- If it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.



UNLISTED COMPANY

- Unlisted Company with total assets ≤ Rs. 1 Crore (as per the financial statement of the immediately preceding financial year)

• **Process under Fast Track Process:**



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Public announcement by IRP for claims and appointment of Registered Valuer to determine liquidation value

(Public announcement- within 3 days from the date of appointment)

(Appointment of Registered Valuer- within 7 days of IRP's appointment)

Submission of claims by creditors

Verification of claims and preparation of list of creditors by IRP as well as forming an opinion whether fast track process is applicable to the debtor

Formation of Committee of Creditors and holding their first meeting by IRP

Appointment of IRP as Resolution Professional (RP) or appointment of another RP

Submission of Information Memorandum to each member of the Committee of Creditors and any potential resolution applicant

Submission of resolution plan by any applicant to RP and its approval by Committee of Creditors

(The resolution plan must be submitted at least 30 days before the expiry of the maximum period of 90 days permissible for completion of the process)

Approval/Rejection of resolution plan by Adjudicating Authority

In case of rejection of the Resolution Plan by the Adjudicating Authority, The Corporate Debtor shall undergo liquidation

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B. RESOLUTION PROCESS FOR INDIVIDUALS

It is a common scenario to see that the individuals encounter financial hardships due to which they are unable to make payments of their rent, utility bills, taxes and personal loans. For such persons, the Code envisages:

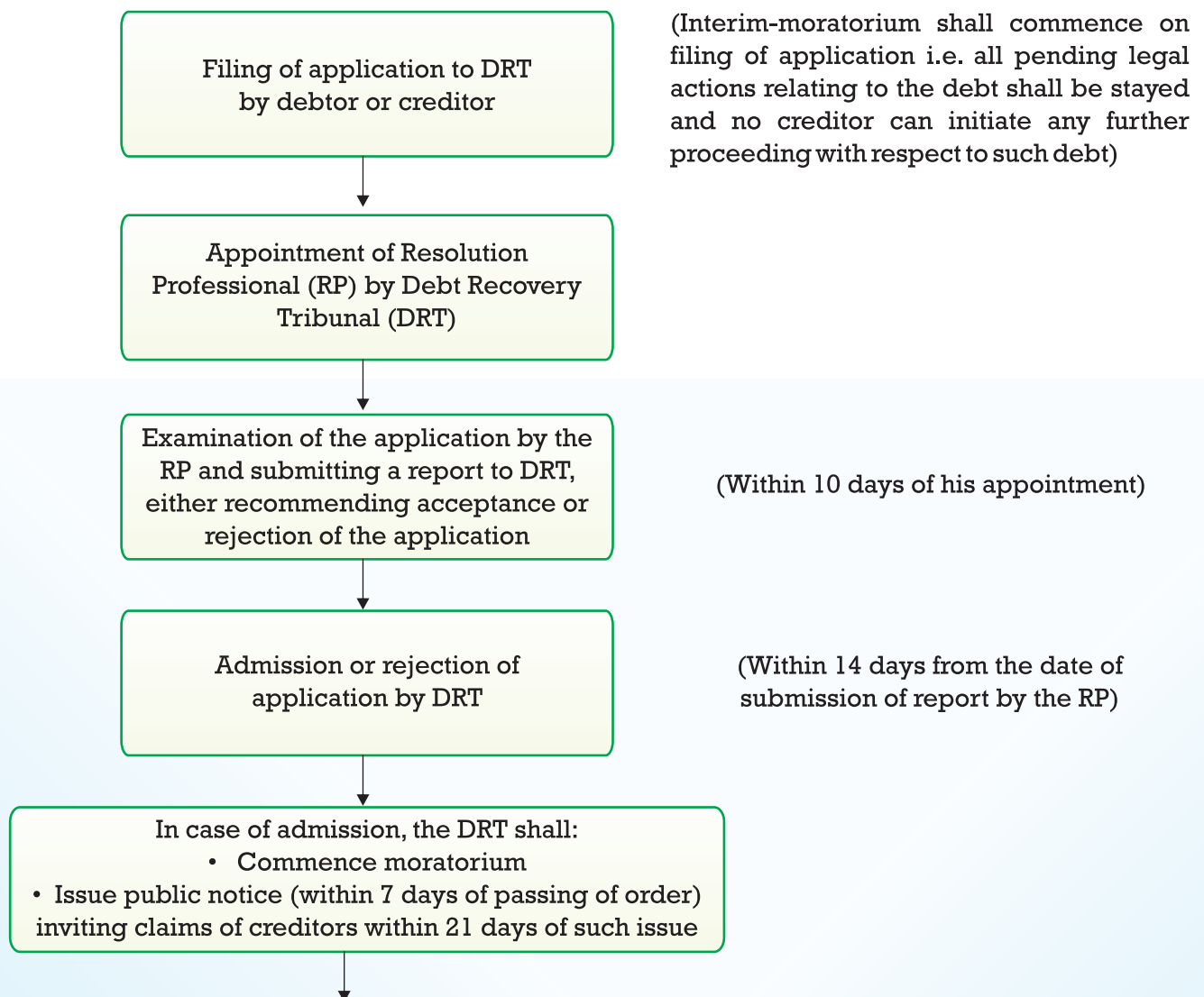
- an Insolvency Resolution Process which involves a negotiation between the debtor and creditor under the supervision of a resolution professional; and
- a Fresh Start Process whereby individuals with a certain level of assets and income are allowed to write-off their debts and to make a fresh start.

In case the insolvency resolution process does not work out then the individuals may undergo bankruptcy process through which they are declared as bankrupt.

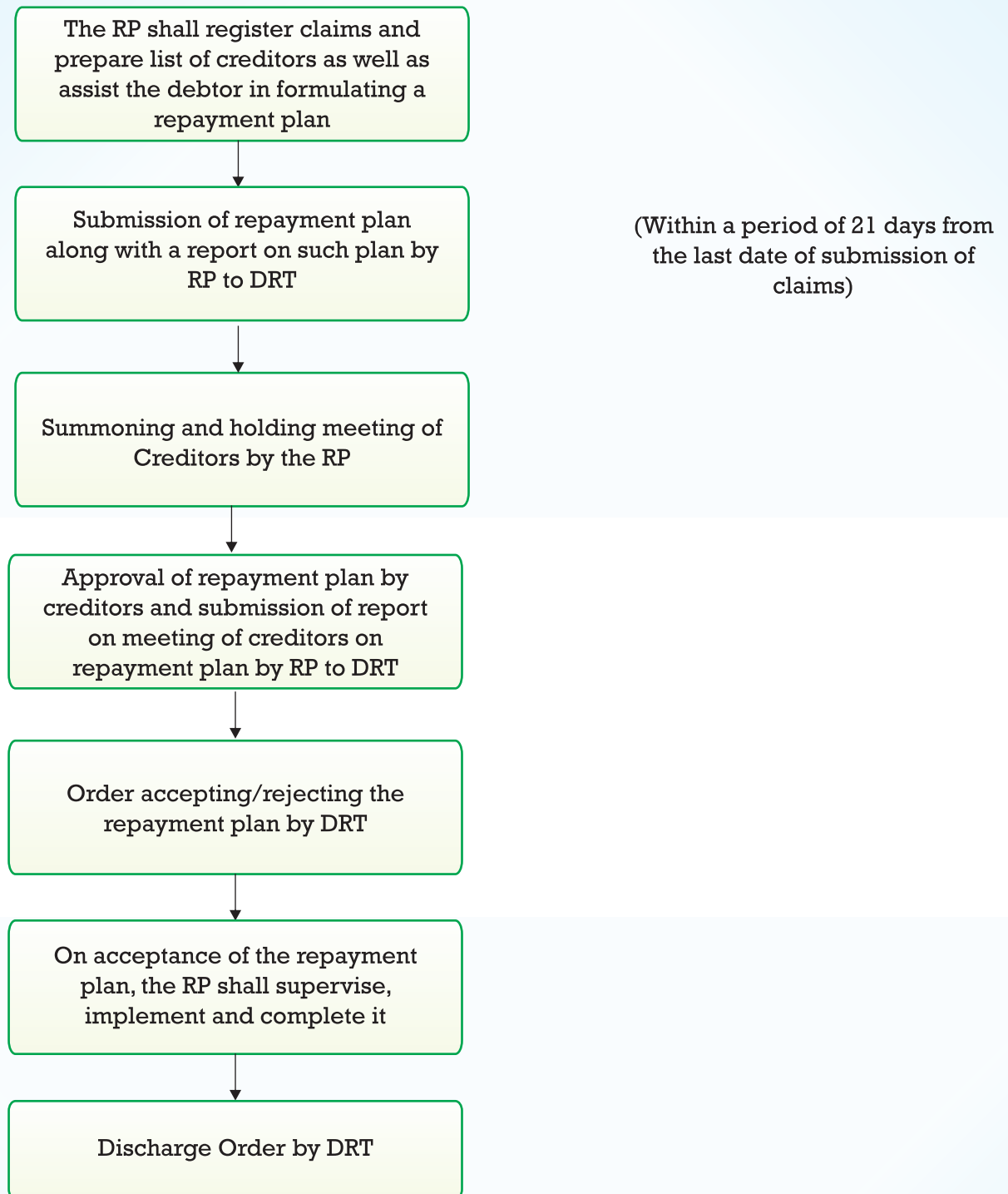
Condition for initiating Insolvency Resolution Process: The minimum amount of default prescribed for initiating Insolvency Resolution process by/against an individual or a partnership firm is INR 1,000 (Rupees One Thousand).

1. INSOLVENCY RESOLUTION PROCESS

- **Application can be given by: Either the Debtor or the Creditor on default to DRT**
- **Process:**



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2. FRESH START PROCESS- Faster resolution process for low income individuals and specified minimum assets

• Who can initiate?

A debtor unable to pay his debts and fulfil the conditions specified is entitled to make an application (either personally or through Resolution Professional) for a fresh start for discharge of his qualifying debt.

• Eligibility:

- The gross annual income of the debtor \leq Rs. 60,000

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- The aggregate value of the assets of the debtor \leq Rs. 20,000
 - The aggregate value of the qualifying debts \leq Rs. 35,000
 - The debtor is not an undischarged bankrupt
 - The debtor does not own a dwelling unit, irrespective of encumbrances on it
 - A fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him and
 - No previous fresh start order has been made preceding 12 months of the date of the application for fresh start against the debtor
- **Persons that may generally be covered:**

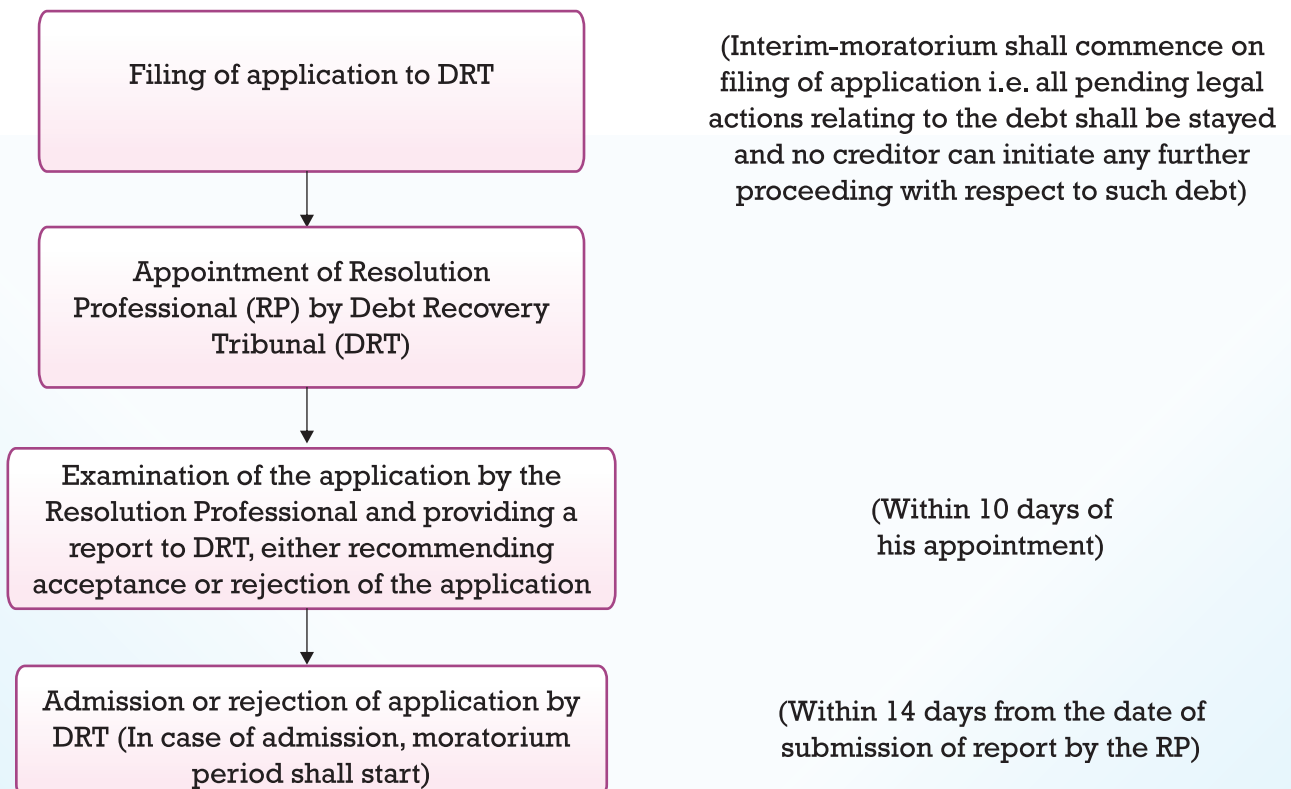


Farmers

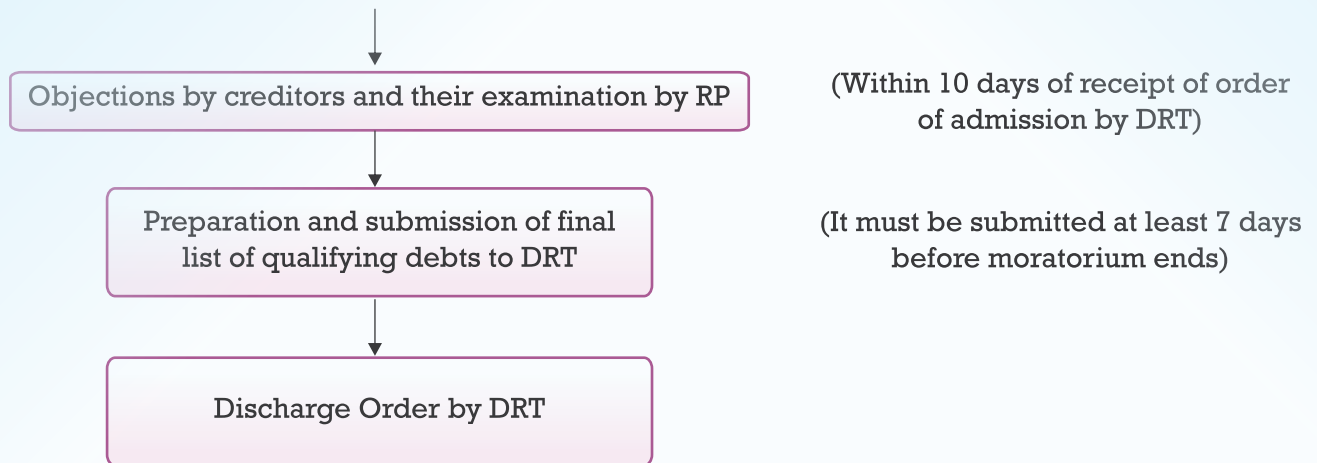


Small traders

- **Process:**



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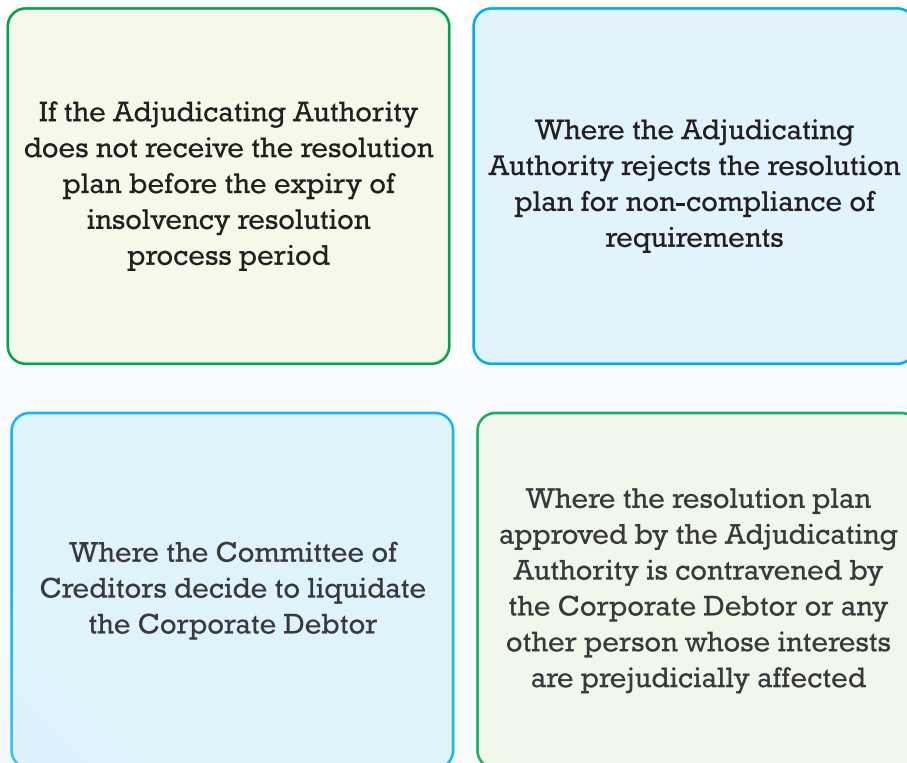


Exit Routes under the Code

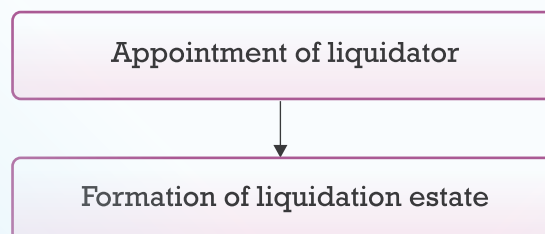
1. LIQUIDATION - Exit route in case of failure of CIRP

In the event of failure of CIRP, liquidation shall be initiated.

• Grounds for liquidation



• Process



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Public Announcement and verification/admission/rejection of claims

Consolidation of claims

Payment waterfall for distribution of assets

Dissolution of Corporate Debtor
(to be completed within 2 years)

Once the NCLT passes an order of liquidation, a **moratorium** is imposed on the pending legal proceedings against the corporate debtor, and the assets of the debtor (including the proceeds of liquidation) vest in the liquidation estate. **Moratorium is a order prohibiting the institution of suits, continuation of pending suits, execution of any judgment, decree, transferring any of its assets/any legal right/beneficial interest therein, any action to enforce any security interest created by the corporate debtor and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.**

With regard to distribution of proceeds, the Code provides for priority:

- **Order of priority of payment of debt**

Insolvency resolution process and liquidation costs

Workmen dues (upto 24 months) AND dues to secured creditor who has relinquished security (to rank equally)

Wages and unpaid dues to employees (upto 12 months)

Financial debts of unsecured creditors

Government dues (upto 2 years) AND unpaid secured creditors following enforcement of security interest (to rank equally)

Any remaining debts and dues

Preference shareholders, if any

Equity shareholders or partners, as the case may be

2. VOLUNTARY LIQUIDATION

Any company, including, solvent companies, can wind-up business under the Code. In case the companies are capable of settling the dues but do not want to continue business for any reason, they may initiate voluntary liquidation proceeding if it satisfies all the prescribed conditions, viz.:

- It has not committed any default.
- A declaration from majority of directors of the company verified by an affidavit that-
 - i) they have made full enquiry into the affairs of the company and have formed an opinion that either the company has no debt or that it will pay its debt in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - ii) liquidation is not initiated to defraud any person
- The declaration must be accompanied with audited financial statement and valuation report of the corporate person.
- Within 4 weeks of declaration:
 - i) there shall be a special resolution of the members of the company in a general meeting for such voluntary liquidation and appointment of insolvency professional as liquidator; or
 - ii) there shall be an ordinary resolution of the members of the members of the company in a general meeting for voluntary liquidation as a result of expiry of duration fixed by its articles or on the occurrence of any event for dissolution.
- If the corporate person owes any debt to any person, creditors representing two-thirds in value of debt of the company shall approve the abovementioned resolution within 7 days of its passing in the general meeting.
- **Commencement date**

The voluntary liquidation shall be deemed to have commenced from the date of passing of resolution in the general meeting by the members of the company.

• **Voluntary Liquidation Process**

- Appointment of liquidator
- Formation of liquidation estate
- Public Announcement and verification/admission/rejection of claims
- Consolidation of claims
- Distribution of assets
- Dissolution of corporate debtor (to be completed within 12 months)

3. BANKRUPTCY ORDER: Exit Route in case of failure of Insolvency Resolution Process of individuals and partnership firms

When an individual or partnership firm seeking resolution of their debts are unable to do so under the insolvency resolution process prescribed by the Code, such an individual or partnership firm or their creditors may apply to Debt Recovery Tribunal (DRT) for bankruptcy order in respect of such an individual or partnership firm. On passing of the bankruptcy order by the DRT, the concerned individual or partnership firm is discharged of all the debts.

• **Who can initiate?**

Any Debtor or Creditor can apply to DRT to initiate bankruptcy proceedings.

• **Circumstances in which it can be applied:**

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Person 1: I have heard that one can apply for Bankruptcy Order under IBC only under 3 circumstances. Do you know about it?

Person 2: Yes, that's true! First circumstance is when DRT rejects the application for Insolvency Resolution Process

Person 1: Okay. Second ?

Person 2: Next circumstance is when DRT rejects the repayment plan under Insolvency Resolution

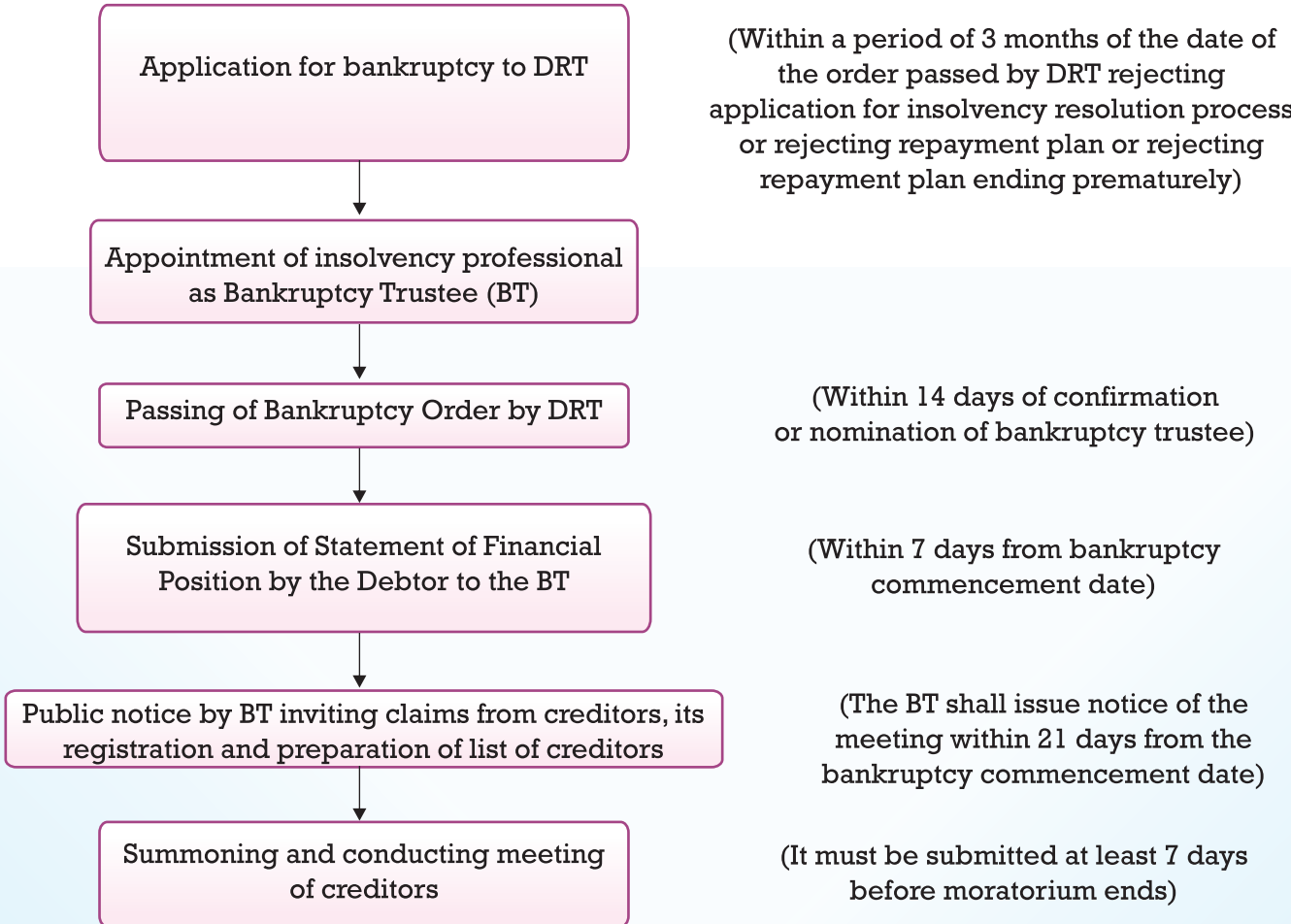
Person 1: And the third?

Person 2: Third is when DRT passes an Order that the repayment plan has not been completely implemented

Person 1: Wow! Thanks for the useful information.

Person 2: My pleasure!

Process:



THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Administration and distribution of estate of bankrupt

The BT shall submit a report on the administration of the estate of the bankrupt in the creditors meeting

On approval of the report by the creditors, the BT shall apply to DRT for Discharge

Passing of Discharge Order by DRT

(The creditors should approve the report within 7 days of receipt of report)

(Discharge Order must be passed on the expiry of one year from bankruptcy commencement date or within 7 days of approval of creditors of administration of the estate of the bankrupt, whichever is earlier)

CONCLUSION

The Code is a huge step towards the ease of doing business in India and has the potential of solving chronic issues relating to insolvency and bankruptcy of corporate and individuals. It provides for resolution of these issues in a time bound manner. It not only divides the authority and the jurisdiction of the NCLT and DRT between individuals and companies thereby ensuring speedy disposal of cases but also provides with a list of priorities which shall be given preference for settlement of such debts at the time of liquidation of the assets of the company.

The Code accepts that businesses and individuals may falter in repaying their debts and allows them to make a new start. While facilitating failed firms to wind up endlessly and bankrupt individuals to come out of their debt trap, the Code can pave the way to resurrection also.

ABOUT ICSI INSOLVENCY PROFESSIONALS AGENCY (ICSI IPA) & ITS PROFESSIONAL MEMBERS

The ICSI Insolvency Professionals Agency ('ICSI IPA') is a section 8 Company incorporated under the Companies Act, 2013 and is a wholly owned subsidiary of the Institute of Company Secretaries of India. ICSI IPA is registered as an Insolvency Professional Agency with Insolvency and Bankruptcy Board of India (IBBI) under the aegis of the Code.

ICSI IPA has an important role to enrol, educate, train and monitor the performance of its members practicing as Insolvency Professionals as well as to make the public aware about the Code and its benefits.

ICSI IPA has been growing since its incorporation in November, 2016 with over 350 professionals registered with us as on date.

Many of our members have taken up assignments as Insolvency Professionals/Liquidators in various cases under Corporate Insolvency Resolution Process/Liquidation. Our professional members are eligible to take up cases under Fast Track Process as well as insolvency resolution cases of individuals and partnership firms.

Information about our professional members can be viewed at our website: <http://icsiipa.com/Professional-Members-Directory>

FREQUENTLY ASKED QUESTIONS (FAQs)

Q.1 Why does the Insolvency and Bankruptcy Code, 2016 seem to be a big legislative reform?

Ans. The Code mainly addresses the four most important areas which were not dealt with earlier-

First, the Code provides for a **single platform** for insolvency resolution process. Earlier there were various different legislations.

Two, it is time bound: it sets a time limit of 180 days for formulation and approval of insolvency resolution plan, with a one-time extension of 90-days.

Three, it shifts the control of affairs of the company from the hands of Board/Promoters to Resolution Professional till the resolution plan is finalised.

Lastly, the Code provides for the resolution of debt while the company continues to operate as a going concern.

Q.2 To whom does the Code apply?

Ans. The Code applies to Companies, Limited Liability Partnerships (LLPs), Partnership Firms and Individuals. However, at present, only provisions with respect of Companies and LLPs have been notified.

Q.3 Who are the beneficiaries under the Code?

Ans. The beneficiaries under the Code include:

Debtor (Corporates/individual and other debtors) – A debtor can revive its debt crisis through effective time bound resolution mechanism.

Creditors – Can expect return of their loans or amount due.

Small Companies/Start-ups/Unlisted Companies – Can revive their business through fast track insolvency resolution process

Small Traders/Farmers- Can come out of insolvency through fresh start process.

Q.4 Who can file application for initiation of Corporate Insolvency Resolution Process under the Code?

Ans. Where an application is filed against a Company or LLP under the Code, the process is termed as Corporate Insolvency Resolution Process (CIRP) which may be initiated by:

- i) Financial Creditors like banks, financial institutions/ debenture/deposit holders or individuals
- ii) Operational Creditors like supplier of goods or service providers or any workmen, or employee etc.
- iii) Corporate Debtor i.e. the Company or the LLP itself

Provided such Company/LLP must have defaulted in repayment of an amount of Rs. 1,00,000/- (Rupees One Lac) or more.

Q.5 If an application is admitted against a Company under the Code, does that mean that the Company has become insolvent?

Ans. No, it does not mean Company has become insolvent. It indicates there is a need for business and /or financial restructuring of the Company.

Q.6 Before which forum should a person file an application for initiation of CIRP? Also, whether the forum for filing application against individual and partnership firm is same or different?

Ans. The appropriate forum for initiating CIRP is National Company Law Tribunal (NCLT).

The forum for filing application against an Individual or Partnership Firm is Debt Recovery Tribunal (DRT).

Q.7 Is NCLT a Court?

Ans. Yes, NCLT has the powers of a Court.

Q.8 Who conducts CIRP and how does it work?

Ans. CIRP is conducted by an Insolvency Professional (IP) who is appointed as a Resolution Professional (RP) for this purpose. Once an application for insolvency resolution is admitted against a Company before NCLT, the NCLT appoints a RP. Simultaneously, NCLT also stays the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor and prohibits transfer or alienation of any assets or legal rights by the Corporate Debtor. Immediately after admission of an application for insolvency resolution against a Company, the Board of Directors of the Company is suspended and the control of affairs of the Company shifts to the hands of the RP. The RP then vide a public announcement in the newspapers and on the website of Insolvency and Bankruptcy Board of India (IBBI) advertises for claims and thereafter constitutes a Committee of Creditors (CoC) with representatives of financial creditors of Company as its members. The CoC prepares a resolution plan for restructuring and revival of the Company including debt restructuring which is required to be approved by the CoC. If the CoC approves the resolution plan, the same is submitted before NCLT for its approval.

Q.9 Is it necessary for every creditor to submit his/its claim? If yes, then within what time?

Ans. Upon appointment of a Resolution Professional by NCLT, IRP is required to issue a public announcement. A creditor must submit proof of claim within the time provided in public announcement. A creditor, who fails to submit proof of claim within the time limit stipulated in the public announcement, may submit such proof till the approval of a resolution plan by the committee of creditors.

Q. 10 What happens if NCLT does not receive any Resolution Plan from CoC or if the Resolution Plan so submitted by CoC is not approved by NCLT?

Ans. In both the above situations, the NCLT passes an order for liquidation of the Company.

Q.11 Whether the Code will help in improving India's Global standings in ease of doing business?

Ans. With the time bound process under the Code, it is expected that India's ranking in ease of doing business will improve substantially from the current 130th position.

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

Note

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