LEARNING OUTCOMES

At the end of this Chapter, you will be able to:

- Know the concepts of Insolvency and Bankruptcy.
- Explain the Relationship between bankruptcy, insolvency and liquidation.
- Know about development and need of the Code.
- Explain the important terminologies used in the Code.
- Identify the structure and applicability of the Code.
- Understand the manner and process of Insolvency Resolution Process.
- Understand the manner of Fast track resolution corporate process.
- Know the process of Voluntary liquidation of corporate person.
1. INTRODUCTION

The Insolvency and Bankruptcy Code, 2015 was introduced in the Lok Sabha on 21st December, 2015 and referred to the Joint Committee on the Insolvency and Bankruptcy Code, 2016. The Committee had presented its recommendations and a modified Bill based on its suggestions.

Further, the Insolvency and Bankruptcy Code, 2016 was passed by both the Houses of Parliament and notified in May 2016. Being one of the major economic reforms it paves the way focussing on creditor driven insolvency resolution.

Concept of Insolvency and Bankruptcy

- 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. Both refer to a situation when an individual or company are not able to pay the debt in present or near future and the value of assets held by them are less than liability.

- Insolvency in this Code is regarded as a “state” where assets are insufficient to meet the liabilities. If untreated insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.
While insolvency is a situation which arises due to inability to pay off the debts due to insufficient assets, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

From the above it is evident that insolvency is a state and bankruptcy is a conclusion. A bankrupt would be a conclusive insolvent whereas all insolvencies will not lead to
bankruptcies. Typically insolvency situations have two options – resolution and recovery or liquidation

**Relationship between Bankruptcy, Insolvency & Liquidation**

**Bankruptcy** is a legal proceeding involving a person or business that is unable to repay outstanding debts. The bankruptcy process begins with a petition filed by the debtor, or by the creditors. All of the debtor’s assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt.

In lucid language, if any person or entity is unable to pay off the debts, it owes, to their creditor, on time or as and when they became due and payable, then such person or entity is regarded as “insolvent”.

**Liquidation** is the winding up of a corporation or incorporated entity. There are many entities that can initiate proceedings to cause the Liquidation, those being:-

- The Regulatory Bodies;
- The Directors of a Company;
- The Shareholders of a Company; and
- An Unpaid Creditor of a Company

In nutshell, **insolvency** is common to both bankruptcy and liquidation. Not being able to pay debts as and when they became due and payable are the leading cause of Liquidations and is the only way that can cause a natural person to become a bankrupt.

**Need for a New Law**

As per the Ease of Doing Business Report of the World Bank, it takes an average of four to five years in insolvency resolution in India. The main reason behind such delay in the legal process is the existence of overlapping legislations and adjudicating authorities dealing with insolvency of companies and individuals in India.

The Government of India then formulated a plan to refurbish the prevailing bankruptcy laws and replace them with one that will facilitate hassle-free and time-bound for revival and closure of businesses.
The existing framework of law has failed to resolve insolvency situations.

- **Financial failure** – a persistent mismatch between payments by the enterprise and receivables into the enterprise, even though the business model is generating revenues.

- **Business failure** – which is a breakdown in the business model of the enterprise, and it, is unable to generate sufficient revenues to meet payments.

- **Malfeasance and mismanagement by promoters**

Since, the existing laws were not aligned with the market realities and had several problems and were inadequate. There was no single window resolution available and the resolution and jurisdiction was with the multiple agencies with overlapping powers that was leading to delays and complexities in the process. The Companies Act deals with the corporate insolvency law and the individual insolvency laws were being dealt by a century old two Acts, i.e., The Provincial Towns Insolvency Act and the Presidency Towns Insolvency Act.

- Multiple laws governing Debt resolution and multiple forums

- Parallel proceedings by different parties on the same debtor in different forums and Conflicts between laws and over jurisdictions.

- Asymmetry of information
Objectives: A sound legal framework of bankruptcy law is required for achieving the following objectives:-

- **Improved handling of conflicts between creditors and the debtor:** It can provide procedural certainty about the process of negotiation, in such a way as to reduce problems of common property and reduce information asymmetry for all economic participants.

- **Avoid destruction of value:** It can also provide flexibility for parties to arrive at the most efficient solution to maximise value during negotiations. The bankruptcy law will create a platform for negotiation between creditors and external financiers which can create the possibility of such rearrangements.

- **Drawing the line between malfeasance and business failure:** Under a weak insolvency regime, the stereotype of “rich promoters of defaulting entities” generates two strands of thinking:
  
  (a) the idea that all default involves malfeasance and
  
  (b) the idea that promoters should be held personally financially responsible for defaults of the firms that they control.

- **Clearly allocate losses in macroeconomic downturns:** With a sound bankruptcy framework, these losses are clearly allocated to some people. Loss allocation could take place through taxes, inflation, currency depreciation, expropriation, or wage or consumption suppression. These could fall upon foreign creditors, small business owners, savers, workers, owners of financial and non-financial assets, importers, exporters.

The following **benefits are expected from the new Law**:-

- Asset stripping by promoters is controlled after and before default.

- The promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring

- Others in the economy can make proposals to buy the company at a certain price, alongside a certain debt restructuring

- All parties knows that if no deal is struck within the stipulated period, the company will go into liquidation. This will help avoid delaying tactics.

- The inability of promoters to steal from the company, owing to the supervision of the IP, also helps reduce the incentive to have a slow lingering death.

The Code seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy which would support development of credit markets and encourage entrepreneurship, and facilitate more investments leading to higher economic growth and development.
### Structure of the Code

The Code is structured into 5 parts comprising of 255 sections and 11 Schedules. Each part deals with a distinct aspect of the insolvency resolution process. Part II, Chapters I and II are of particular significance for the students and are discussed in detail hereunder:

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Extent and Commencement of the Code:

As per section 1 of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir.

This Code came into an enforcement on 28th May 2016, however, the Central Government appointed different dates for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

Applicability of the Code

The provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-

(a) Any company incorporated under the Companies Act, 2013 or under any previous law.
(b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
(c) Any Limited Liability Partnership under the LLP Act 2008.
(d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
(e) Partnership firms and individuals.
Exceptions: There is an exception to the applicability of the Code that it shall not apply to corporate persons who are regulated financial service providers like Banks, Financial Institutions and Insurance companies.

Features of the Insolvency and Bankruptcy Code:

The Insolvency and Bankruptcy Code, 2016 has following distinguishing features:-

(i) **Comprehensive Law:** Insolvency Code is a comprehensive law which envisages and regulates the process of insolvency and bankruptcy of all persons including corporates, partnerships, LLP’s and individuals.

(ii) **No Multiplicity of Laws:** The Code has withered away the multiple laws covering the recovery of debts and insolvency and liquidation process and presents singular platform for all the reliefs relating to recovery of debts and insolvency.

(iii) **Low Time Resolution:** The Code provides a low time resolution and defines fixed time frames for insolvency resolution of companies and individuals. The process is mandated to be completed within 180 days, extendable to maximum of 90 days. Further, for a speedier process there is provision for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

(iv) **One Window Clearance:** It has been drafted to provide one window clearance to the applicant whereby he gets the appropriate relief at the same authority unlike the earlier position of law where in case the company is not able to revive the procedure for winding up and liquidation has to be initiated under separate laws governed by separate authorities.

(v) **One Chain of Authority:** There is one chain of authority under the Code. It does not even allow the civil courts to interfere with the application pending before the adjudicating authority, thereby reducing the multiplicity of litigations. The National Company Law Tribunal (NCLT) will adjudicate insolvency resolution for companies. The Debt Recovery Tribunal (DRT) will adjudicate insolvency resolution for individuals.

(vi) **Priority to the interests of workman and employees:** The Code also protects the interests of workman and employees. It excludes dues payable to workmen under provident fund, pension fund and gratuity fund from the debtor’s assets during liquidation.

(vii) **New Regulatory Authority:** It provides for constitution of a new regulatory authority ‘Insolvency and Bankruptcy Board of India’ to regulate professionals, agencies and information utilities engaged in resolution of insolvencies of companies, partnership firms and individuals. The Board has already been established and started functioning.

Key Objectives of the Code

The Insolvency and Bankruptcy Code, 2016 is intended to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default. The purpose of enactment of the Insolvency and Bankruptcy Code, 2016 is as follows:
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(a) To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.

(b) To fix time periods for execution of the law in a time bound manner.

(c) To maximize the value of assets of interested persons.

(d) To promote entrepreneurship

(e) To increase availability of credit.

(f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.

(g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.

Regulatory Mechanism

The Insolvency and Bankruptcy Code, 2016 provides a new regulatory mechanism with an institutional set-up comprising of five pillars:-

- Insolvency and Bankruptcy Board of India
- Insolvency Professional Agencies
- Insolvency Professionals
- Information Utilities
- Adjudicating Authority

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1. **Insolvency and Bankruptcy Board of India** - The Code provides for establishment of a Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions with respect to the Insolvency Professionals, Insolvency Professional Agencies and Information Utilities. The Insolvency and Bankruptcy Board of India was established on October 1, 2016. The head office of the Board is located at New Delhi.

The Board is a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

**Composition of the Board**

(a) a Chairperson;

(b) three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex-officio;

(c) one member to be nominated by the Reserve Bank of India, ex officio;

(d) five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members

2. **Insolvency Professional Agencies** - The Code provides for establishment of insolvency professionals agencies to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

**Principles governing registration of Insolvency Professional Agency**

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code
Functions of Insolvency professional agencies (IPA): It will perform three key functions:

- **Regulatory functions**: drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members.
- **Executive functions**: monitoring, inspecting and investigating members on a regular basis; gathering information on their performance, with the over-arching objective of preventing frivolous behaviour, and malfeasance in the conduct of IP duties.
- **Quasi-judicial functions**: addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions.

3. **Insolvency Professionals**: The Code provides for insolvency professionals as intermediaries who would play a key role in the efficient working of the bankruptcy process. The role of the IP encompasses a wide range of functions, which include adhering to procedure of the law, as well as accounting and finance related functions. He shall have the power and responsibility to monitor and manage the operations and assets of the enterprise.

In the resolution process, the insolvency professional verifies the claims of the creditors, constitutes a creditors committee, runs the debtor’s business during the moratorium period and helps the creditors in reaching a consensus for a revival plan. In liquidation, the insolvency professional acts as a liquidator and bankruptcy trustee.

An Insolvency Professional if appointed as a Resolution Professional shall act as a neutral trustee of the assets of the organization.

Every insolvency professional shall abide by the following code of conduct:

- to take reasonable care and diligence while performing his duties;
- to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- to allow the insolvency professional agency to inspect his records;
- to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
4. **Information Utilities** – The Code envisages creation of information utility to collect, collate, authenticate and disseminate financial information of debtors in centralized electronic databases, at all times.

The Code requires creditors to provide financial information of debtors to multiple utilities on an ongoing basis. Such information would be available to creditors, resolution professionals, liquidators and other stakeholders in insolvency and bankruptcy proceedings. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve insolvency.

**Obligations of Information Utility:**

An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.

For the purposes of providing core services to any person, every information utility shall—

(a) create and store financial information in a universally accessible format;
(b) accept electronic submissions of financial information from persons who are under obligations to submit financial information
(c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
(d) meet such minimum service quality standards as may be specified by regulations;
(e) get the information received from various persons authenticated by all concerned parties before storing such information;
(f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
(g) publish such statistical information as may be specified by regulations;
(h) have inter-operatability with other information utilities.

5. **Adjudicating Authority** - The Adjudicating Authority for corporate insolvency and liquidation is the National Company Law Tribunal (NCLT). Appeals against NCLT orders shall lie with National Company Law Appellate Tribunal (NCLAT) and thereafter to the Supreme Court of India.

The Code has created one chain of authority for adjudication under the Code. Civil Courts have been prohibited to interfere in the matters related with application pending before the Adjudicating Authority. No injunction shall be granted by any Court, Tribunal or Authority in respect of any action taken by the NCLT.
For individuals and other persons, the Adjudicating Authority is the Debt Recovery Tribunal (DRT), appeals lie to the Debt Recovery Appellate Tribunal (DRAT) and thereafter to the Supreme Court.

Example: XY & Co., a firm applied to NCLT to be declared insolvent as the firm is not able to pay off debts to his creditors in present and in coming future. State whether the act of the firm is valid as to the filing of application in terms of jurisdiction.

Answer: No, as per the Code, individual & firms in relation to Insolvency matters shall apply to the DRT not to NCLT. Here there is violation of jurisdiction in relation to adjudicating authority.

2. IMPORTANT DEFINITIONS [SECTIONS 3 AND 5]

(1) **Claim** means a right to payment or right to remedy for breach of contract if such breach gives rise to a right to payment whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. [Section 3(6)]

(2) **Corporate Person** means
   
   (a) a company as defined under section 2(20) of the Companies Act, 2013;
   
   (b) a Limited Liability Partnership as defined in 2(1)(n) of Limited Liability Act, 2008; or,
   
   (c) any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. [Section 3(7)]

(3) **Corporate Debtor** means a corporate person who owes a debt to any person. [Section 3(8)]

(4) **Creditor** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. [Section 3(10)]

(5) **Debt** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)]

(6) **Default** means non-payment of debt when whole or any part or instalment of the amount of
debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]

(7) **Financial information**, in relation to a person, means one or more of the following categories of information, namely:—

(a) records of the debt of the person;

(b) records of liabilities when the person is solvent;

(c) records of assets of person over which security interest has been created;

(d) records, if any, of instances of default by the person against any debt;

(e) records of the balance sheet and cash-flow statements of the person; and

(f) such other information as may be specified. [Section 3(13)]

(8) A **person** includes:-

- an individual

- a Hindu Undivided Family

- a company

- a trust

- a partnership

- A limited liability partnership, and

- any other entity established under a Statute.

And includes a person resident outside India [Section 3(23)]

(9) **Secured creditor** means a creditor in favour of whom security interest is created; [Section 3(30)]

(10) **Security Interest** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person. [Section 3(31)]

(11) A **transaction** includes an agreement or arrangement in writing for transfer of assets, or funds, goods or services, from or to the corporate debtor. [Section 3(33)]

(12) **Transfer** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. In case of property- transfer of property means transfer of any property. [Section 3(34)]

(13) **Transfer of property** means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property; [Section 3(35)]
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(14) **Adjudicating Authority**, for the purposes of this Part II (Insolvency Resolution and Liquidation for corporate persons), means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013. [Section 5(1)]

(15) **Corporate applicant** means—

(a) corporate debtor; or

(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or

(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or

(d) a person who has the control and supervision over the financial affairs of the corporate debtor; [Section 5(5)]

(16) **Dispute** includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty; [Section 5(6)]

(17) **Financial creditor** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; [Section 5(7)]

(18) **Financial position**, in relation to any person, means the financial information of a person as on a certain date; [Section 5(9)]

(19) **Initiation date** means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process; [Section 5(11)]

(20) **Insolvency commencement date** means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be; [Section 5(12)]

(21) **Insolvency resolution process period** means the period of one hundred and eighty days beginning from the insolvency commencement date and ending on one hundred and eightieth day; [Section 5(14)]

(22) **Liquidation commencement date** means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be; [Section 5(17)]

(23) **Operational creditor** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; [Section 5(20)]
(24) **Related party**, in relation to a corporate debtor, means—

(a) **a director or partner or a relative** of a director or partner of the corporate debtor

(b) **a key managerial personnel or a relative** of a key managerial personnel of the corporate debtor;

(c) **a limited liability partnership or a partnership firm** in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) **a private company** in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) **a public company** in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) **any body corporate** whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) **any limited liability partnership or a partnership firm** whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) **any person** on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) **a body corporate which is a holding, subsidiary or an associate company** of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) **any person who controls** more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) **any person in whom the corporate debtor controls** more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) **any person who can control the composition** of the board of directors or corresponding governing body of the corporate debtor;

(m) **any person who is associated with the corporate debtor** on account of—

   (i) participation in policy making processes of the corporate debtor; or

   (ii) having more than two directors in common between the corporate debtor and such person; or

   (iii) interchange of managerial personnel between the corporate debtor and such person; [Section 5(24)]
(25) **Resolution plan** means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; [Section 5(26)]

(26) **Resolution professional**, for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional; [Section 5(27)]

(26) **Voting share** means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor. [Section 5(28)]

### 3. CORPORATE INSOLVENCY RESOLUTION PROCESS

**[SECTIONS 4, 6-32]**

Provisions related to Insolvency Resolution and Liquidation process for Corporate Persons are covered in Part II of the Code.

Corporate Insolvency Resolution is a process during which financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival, if any. If the insolvency resolution process fails or financial creditors decide that the business of debtor cannot be carried on in a profitable manner and it should be wound up, the debtor will undergo liquidation process and the assets of the debtor shall be realized and distributed by the liquidator.

The Insolvency Resolution Process provides a collective mechanism to lenders to deal with the overall distressed position of a corporate debtor. This is a significant departure from the existing legal framework under which the primary onus to initiate a re-organization process lies with the debtor, and lenders may pursue distinct actions for recovery, security enforcement and debt restructuring.

The Code creates time-bound processes for insolvency resolution of companies and individuals. These processes will be completed within 180 days, extendable by 90 days. It also provides for fast-track resolution of corporate insolvency within 90 days. If insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.

#### i. Process Flow

A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to:-

- Filing of application before NCLT
- Adjudication: Admission or Rejection of application
- Moratorium and Public Announcement
- Appointment of Interim Resolution Professional
- Formation of the Committee of Creditors
ii. **Application to National Company Law Tribunal**

**Commitment of Default**

The process of insolvency is triggered by occurrence of default. As per Section 3 (12) of the Code, default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor.

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.[ Section 4]

**Filing of application before NCLT**

The corporate insolvency process may be initiated against any defaulting corporate debtor by making an application for corporate insolvency resolution. The application may be made by:-

(a) Financial creditor

(b) Operational creditor

(c) Corporate debtor
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Who can make the Application?

- **Filling of an application by a financial creditor:** A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

- **Evidence in support of default and name of the Interim resolution professional by financial creditor:** The Financial Creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the Interim Resolution Professional.

- **Filling of an application by an operational creditor:** An operational creditor shall on the occurrence of default, shall:
  
  - first send a demand notice and a copy of invoice to the corporate debtor.
  - The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings.
  - He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.
  - After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

- **Filing of an application by corporate applicant:** Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. The corporate applicant shall furnish the information relating to books of account and other documents and name of a resolution professional proposed to be appointed as interim resolution professional.
Persons not entitled to initiate insolvency process: As per Section 11 of the Code the following persons shall not be entitled to initiate the corporate insolvency process:-

(a) A corporate debtor already undergoing an insolvency resolution process; or

(b) A corporate debtor having completed corporate insolvency resolution process 12 (twelve) months preceding the date of making of the application; or

(c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 (twelve) months before the date of making of an application;

(d) A corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. [Section 11]

Example: State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.

Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority, State whether he is entitled to make an application to initiate corporate insolvency resolution process?

Answer: 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; or

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(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; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. [Section 11]

As per the facts, corporate applicant Mr. X is a corporate debtor who is undergoing a corporate insolvency resolution process, he shall not be entitled to make application to initiate corporate insolvency resolution process.

iii. Adjudication: Admission or Rejection of Application

The Adjudicating Authority may either accept or reject the application within fourteen days of
receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

The insolvency resolution process shall commence from the date of admission of application by the Adjudicating Authority. It is referred to as the Corporate Insolvency Resolution Date.

The chart below explains the process flow for insolvency resolution process:

iv. Moratorium

After the commencement of corporate insolvency resolution a calm period for 180 days is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status. It is called the Moratorium Period. [Section 14]

Section 14 of the Code provides that the following acts shall be prohibited during the moratorium period:

(a) The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002.

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. [Section 14]

Example: After commencement of Corporate Insolvency Resolution, NCLT declared Moratorium against the corporate debtor. Within a month of declaration, corporate debtor disposed of his property. State validity of the act of corporate debtor.

Answer: As per section 14 of the Code, any transaction/disposal/ of any assets of Corporate Debtor during the moratorium period which is 180 days from date of commencement of corporate insolvency resolution, is prohibited. So such an act of corporate debtor is not valid.

v. Appointment, Term and Powers of Interim Resolution Professional (IRP)

Appointment of IRP: Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date. Section16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, the resolution professional as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Where the application for corporate insolvency resolution process is made by an operational creditor and

(a) No proposal for an interim resolution professional is made. The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

(b) A proposal for an interim resolution professional is made the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of Interim Resolution Professional shall not exceed 30 days from the date of appointment.

Powers of IRP: As Per Section 17 of the Code, the interim resolution professional shall have following powers:-

(a) Management of Affairs: The management of the affairs of the corporate debtor shall vest in the interim resolution professional from the date of his appointment.

(b) Exercise of Power of BoD/ partners: The powers of the board of directors or the partners of
the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

(c) **Reporting of officers/managers**: The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

(d) **Instructions to financial institutions**: The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

The key roles to be performed by the Interim Resolution Professional are:-

(a) Issuance of public notice of the Corporate Insolvency Resolution process

(b) Collation of claims received

(c) Constitution of the Committee of Creditors

(d) Conduct of the first meeting of the Committee of Creditors

vi. **Appointment of Resolution Professional (RP)**

The Committee of Creditors in the first meeting by majority vote of not less than 75% of the Voting Share of the Financial Creditors either-

- resolve to appoint the interim resolution professional as a Resolution Professional, or
- to replace the interim resolution professional by another Resolution Professional.

If the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall direct the interim resolution professional to continue as the resolution professional until such time as the Board confirms the Appointment of the proposed resolution professional.

**Role of a Resolution Professional**

The Resolution Professional's primary function is to take over the management of the corporate borrower and operate its business as a going concern under the broad directions of a committee of creditors.

The thrust of the Code is to allow a shift of control from the defaulting debtor's management to its creditors, where the creditors drive the business of the debtor with the Resolution Professional acting as their agent. The following are the key tasks to be performed by a resolution professional:-

(a) Obtaining Valuation of the entity

(b) Preparation of Information Memorandum
Eligibility of an insolvency Professional to be appointed as a Resolution Professional

As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor:

(a) He is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company.

(b) He is not a related party of the corporate debtor.

(c) He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.

(d) He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

Fees of Resolution Professional

As per Section 5(13) of the Code, the fees payable to any person acting as a resolution professional and any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern shall be included in the insolvency resolution process costs. It shall have priority over other costs in the event of winding up of the corporate debtor.

Replacement of Resolution Professional

- If a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority for replacement of such professional.

- The Adjudicating Authority within seven days of receipt of the application may make reference to the Board for Replacement of Resolution Professional.

- As per Section 27 of the Code, the Committee of Creditors may replace the insolvency Resolution Professional with another resolution professional by passing a resolution for the same to be approved by a vote of seventy five per cent of voting shares of the creditors.

- The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and

- After the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.
Example: Mr. Z was continuing as Interim resolution professional (IRP) in XY company. The committee of creditors by majority vote of financial creditors proposed to appoint Mr. Final as Resolution professional (RP) of the XY & Co. The said proposal was confirmed by the Board after the 10 days. State whether Mr. Final is appointed as Resolution professional.

Answer: No, as per the Code, if Board does not confirm the proposed name as RP within 10 days of receipt of proposal, the Adjudicating authority shall direct IRP to continue as RP for such time as the Board would have confirmed for the appointment of Proposed RP.

vii. Public Announcement

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. “Immediately” here means not more than three days from the date of appointment of the Interim Resolution Professional.

As per Section 15 of the Code, public announcement shall include the following:-

(a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.

(b) Name of the authority with which the corporate debtor is incorporated or registered.

(c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.

(d) Penalties for false or misleading Claims.

(e) The last date for the submission of the claims.

(f) The date on which the Corporate Insolvency Resolution Process ends.

The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

viii. Committee of Creditors

After the collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, the interim resolution professional shall constitute a committee of creditors.

The composition of the committee shall be as follows:-

1. **Where Financial Creditors exist:** The Committee of creditors shall comprise of all financial creditors of a corporate debtor. The Resolution Professional shall identify the financial creditors and constitutes a creditors committee. The resolution professional shall conduct all the meetings of the Committee of Creditors.

   After the constitution of committee of creditors, the interim resolution professional is required to file a report certifying the constitution of the committee to the Adjudicating Authority. The report shall be filed on or before the expiry of thirty days from the date of appointment of the interim resolution professional.
2. **Where Financial Creditors don’t exist:** As per Regulation 16 of the Insolvency and Bankruptcy (Insolvency Resolution) Regulations, 2016, where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be formed comprising of following members:-

(a) 18 largest operational creditors by value.
(b) 1 representative elected by all workmen
(c) 1 representative elected by all employees.

Where the number of operational creditors is less than 18, the committee shall include all such operational creditors.

### Composition of CoC

- All financial creditors
- Related parties of corporate debtor CANNOT form part of CoC

### Voting in the Meeting

All the decisions of the committee of creditors shall be taken by vote of **minimum seventy five percent of the voting share of the financial creditors.** The voting share is determined based on the value of the debt of the creditor in proportion to the total debt.

Where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board.

### First Meeting of Creditors

- The first meeting of the committee of creditors shall be held **within seven days of the constitution of the committee** of creditors.

- The committee of creditors in the first meeting may by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

### Notice of the Meeting

The resolution professional shall give notice of each meeting of the committee of creditors to:-
(a) Members of Committee of creditors;
(b) Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
(c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

The Operational Creditors do not have right to vote in the meeting of Committee of Creditors, however, they may attend the meetings of Committee of Creditors.

Further, as defined in section 5(24) of the Code, a Related Party to whom a Corporate Debtor owes a financial debt shall not have any right of Representation, Participation or Voting in a meeting of the Committee of Creditors.

**Quorum for the Meeting**

- A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.
- If the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of the committee attending the meeting.

**Example**: Committee of creditors approved the resolution plan with respect to the management of affairs of the company by more than 50% of voting share of the financial creditors. State whether decision given on the resolution plan is binding on the corporate debtors and all its creditors?

**Answer**: No, as per the Code, the resolution plan shall be approved by the committee of creditors by vote of not less than 75% of voting share of the financial creditors. Resolution plan was not passed by majority.

**ix. Resolution Plan (Section 22-31)**

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

**Formulation of Resolution Plan**

- The Resolution Professional shall prepare an Information Memorandum which shall contain information for preparing resolution plan.
- Resolution Professional shall provide access of the following to a Resolution applicant in order to prepare the Resolution Plan:
Financial position of corporate debtor
- Information required by applicant for resolution plan
- Other matters pertaining to corporate debtor

Resolution Professional shall examine the Resolution Plan and submit the same to Committee of Creditors for its approval.

Submission of Resolution Plan
- The resolution plan shall be approved by the Committee of Creditors by a vote of not less than seventy five percent of voting share of the financial creditors.
- Each decision of the creditors committee requires a 75% majority vote. Decisions of the creditors committee are binding on the corporate debtor and all its creditors.
- The creditors committee considers proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days). Anyone can submit a revival proposal, but it must necessarily provide for payment of operational debts to the extent of the liquidation waterfall.
- Subsequently, the Resolution Professional shall submit the Resolution Plan as approved by Committee of Creditors to the Adjudicating Authority.

Appeal against Approval of Resolution Plan
As per Section 61(3) of the Code, an appeal against an order of Adjudicating Authority for approving the resolution plan may be filed on the following grounds:-
(a) The approved resolution plan is in contravention of the provisions of any law for the time being in force.

(b) There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period.

(c) The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board.

(d) The insolvency resolution process costs have not been provided for repayment in priority to all other debts.

(e) The resolution plan does not comply with any other criteria specified by the Board.

x. Consequences of non-submission of a Resolution Plan

When the Resolution Plan is not filed within 180 days of the Commencement date or such other extended period the Adjudicating Authority may pass orders for the liquidation of the corporate debtor.

xi. Order of Liquidation

As per Section 33 of the Code, the Adjudicating Authority may order for liquidation of the Corporate Debtor in the following cases:

a) Where before the expiry of the Insolvency Resolution Process or within 180 days of the initiation of Insolvency Resolution, the Adjudicating Authority does not receive the Resolution Plan.

b) If the Committee of Creditors before the expiry of the resolution process intimate the Adjudicating Authority of their decision that they have passed an order for liquidation of the Corporate Debtor.

c) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.

Once the Adjudicating Authority 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.
xii. Priority of Claims

The Code has significantly changed the priority waterfall for distribution of liquidation proceeds. It may be as follows:

1. Costs and Expenses of Insolvency
2. Workmen's dues for the period of 24 months & dues of secured creditors
3. Wages and any unpaid dues owed to employees, other than workmen, for the period of 12 months
4. Dues of Central Government & State Government
5. Unsecured Financial creditors
6. Other debts and dues

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely:-

(a) the insolvency resolution process costs and the liquidation costs paid in full;
(b) the following debts which shall rank equally between and among the following:
   (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
   (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
(d) financial debts owed to unsecured creditors;
(e) the following dues shall rank equally between and among the following:
   (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
   (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
(f) any remaining debts and dues;
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(g) preference shareholders, if any; and
(h) equity shareholders or partners, as the case may be.

4. FAST TRACK INSOLVENCY RESOLUTION FOR CORPORATE PERSONS

A fast track insolvency resolution, as the name suggests, is a process wherein the insolvency resolution process shall be completed in an expeditious manner i.e., with 90 (ninety) days from the insolvency commencement date. The provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall, mutatis mutandis, apply to the conduct of a fast track corporate insolvency resolution process.

Who may apply?

An application under this category can be made by any corporate debtor falling under any of the below mentioned category:-

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or
(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
(c) such other category of corporate persons as may be notified by the Central Government.

Time period for completion of fast track corporate insolvency resolution process

The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

Extension: The Adjudicating Authority may extend time period for fast track corporate insolvency resolution process. The aggrieved may make an application to the Adjudicating Authority and it is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order; extend the duration of such process to a further period which shall not be exceeding forty-five days.

The extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

5. VOLUNTARY LIQUIDATION OF CORPORATE PERSONS [SECTION 59]

(1) Person who may initiate voluntary liquidation proceeding: A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter V of Part II of the Code.
(2) The voluntary liquidation of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board.

(3) **Conditions of initiation of voluntary liquidation proceedings:** Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

(a) a declaration from majority of the directors of the company verified by an affidavit stating that—

(i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

(ii) the company is not being liquidated to defraud any person;

(b) the declaration given above shall be accompanied with the following documents, namely:—

(i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration, there shall be—

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles, or

(iii) on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) **Notification to Registrar of company and the Board:** The Company shall notify the Registrar of Companies and the Board about the resolution to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.
(5) **Commencement of liquidation proceeding:** The voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution.

(6) **Application of provisions of this Code:** The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) **Application to adjudicating authority on complete wound up of the corporate person:** Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

(8) **Passing of an order of dissolution:** The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) **Forward of copy of order:** A copy of an order shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.
**TEST YOUR KNOWLEDGE**

**Question 1**

*When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?*

**Answer**

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

**Question 2**

*Who may initiate corporate insolvency process against a corporate person?*

**Answer**

The corporate insolvency process may be initiated against any defaulting corporate debtor by -

(a) Financial creditor,
(b) Operational creditor
(c) Corporate debtor

**Question 3**

*What is the Insolvency Resolution Process for financial creditors?*

**Answer**

A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.
Question 4

What is the Insolvency Resolution Process for operational creditors?

Answer

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

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

Question 5

What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

Answer

As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
- He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

Question 6

What is the procedure of Insolvency Resolution Process for a Corporate Applicant?
Answer

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Question 7

Is there any time limit for completion of the Insolvency Resolution Process?

Answer

Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Question 8

What is the effect of order of moratorium?

Answer

Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:

a) The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
**Question 9**

*What is a Resolution plan?*

**Answer**

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

As per Section 30, the Insolvency Resolution Professional (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority (NCLT) prepared by the Resolution applicant on the basis of information memorandum.

The Resolution Plan should provide for:

(i) payment of insolvency resolution costs;
(ii) repayment of the debts to operational creditors;
(iii) management of affairs of the Company after approval of the resolution plan;
(iv) implementation and supervision of the resolution plan;
(v) does not contravene provisions of the law for the time being in force; and
(vi) conforms to such other requirement as may be specified by the Board.

**Question 10**

*When can a corporate person initiate voluntary liquidation process?*

**Answer**

Section 59 of the Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

(a) A declaration from majority of the directors of the company verified by an affidavit stating
   
i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
   
ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:
   
i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.