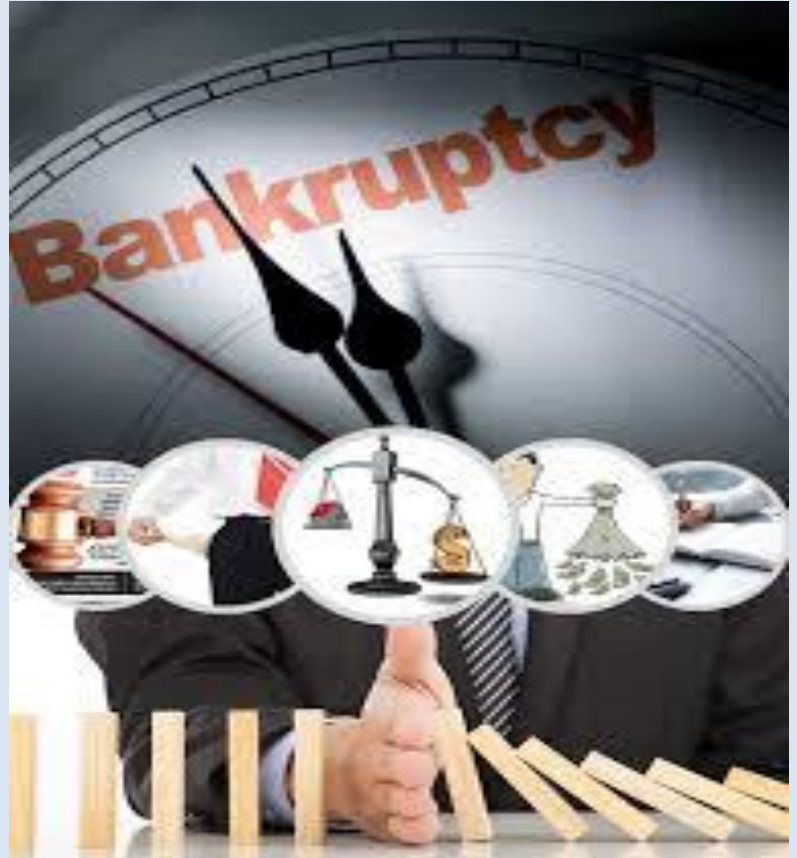


**INSOLVENCY PROFESSIONAL AGENCY OF THE
INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Fortnightly Newsletter

16th April – 30th April, 2017



**INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF
INDIA**

**INSTITUTE OF COST ACCOUNTANTS OF INDIA
CMA BHAWAN, 3, INSTITUTIONAL AREA
4TH FLOOR, LODHI ROAD
NEW DELHI- 110003**

Disclaimer:

The material and information included in the 'Fortnightly Newsletter' has been prepared with due diligence and care. Adequate emphasis has been placed on collecting and reporting the content that might be most useful for value addition and for the knowledge of the members. Howsoever, IPA of ICAI shall not be held responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Newsletter.

© The IPA of ICAI has all rights reserved for its 'Fortnightly Newsletter'. No part of this Newsletter may be copied or produced in any form or means without having the prior approval of the IPA.

Published by:

Insolvency Professional Agency of Institute of Cost Accountants of India

(Section 8 Company registered under the Companies Act, 2013)

CIN: U74999DL2016NPL308717

4th Floor, CMA Bhawan, 3, Institutional Area,

Lodhi Road, New Delhi - 110003

Phone No: 011-24666112

Email: ipa@icmai.in



**President, The Institute of Cost Accountants of India, and
Chairman, Insolvency Professional Agency of Institute of Cost Accountants of India**
“CMA Bhawan”, 3 Institutional Area,
4th Floor, Lodhi Road, New Delhi-110003

FOREWORD

Dear Professional Colleagues,

I am happy that the Insolvency Professional Agency of Institute of Cost Accountants of India has taken an initiative of publishing Fortnightly Newsletter to provide the information, updates and related developments in the area of Insolvency and Bankruptcy in India. The Agency had brought its first fortnightly newsletter in 2nd week of April 2017. The first edition of fortnightly newsletter covers Corporate Insolvency Resolution Process (CIRP). It gives me immense pleasure that the Agency is publishing its 2nd Fortnightly Newsletter covering the topic of Overview of Corporate Insolvency Resolution Process, Liquidation, cases admitted by NCLT, public announcements made by Insolvency Professionals and status of recent cases.

IPA provides the platform to members of Institute and other professionals and graduates who meet the qualification and experience criteria, and also passed the “Limited Insolvency Examination” to get enrolled as Insolvency Professionals and thus utilize their expertise in the process of revival and resolution of the sick companies.

*I have a pleasure to inform that the Insolvency Professional Agency of Institute of Cost Accountants of India has been associated with ASSOCHAM for the International Conference on “**New Corporate Insolvency Regime**” supported by Insolvency and Bankruptcy Board of India and the UNCITRAL, and is being organised in partnership with INSOL India, the leading insolvency industry advocacy body and SIPI – the newly set up think tank on insolvency. The Conference will be held on 28th and 29th April, 2017 at Hotel The Ashok, New Delhi.*

I am sure that together we can and together we will go a long way in making a strong and healthy insolvency regime in the nation. Hence, I urge more and more members, and other professionals to come forward and get enrolled as Insolvency Professionals.

With warm regards,

(CMA Manas Kumar Thakur)

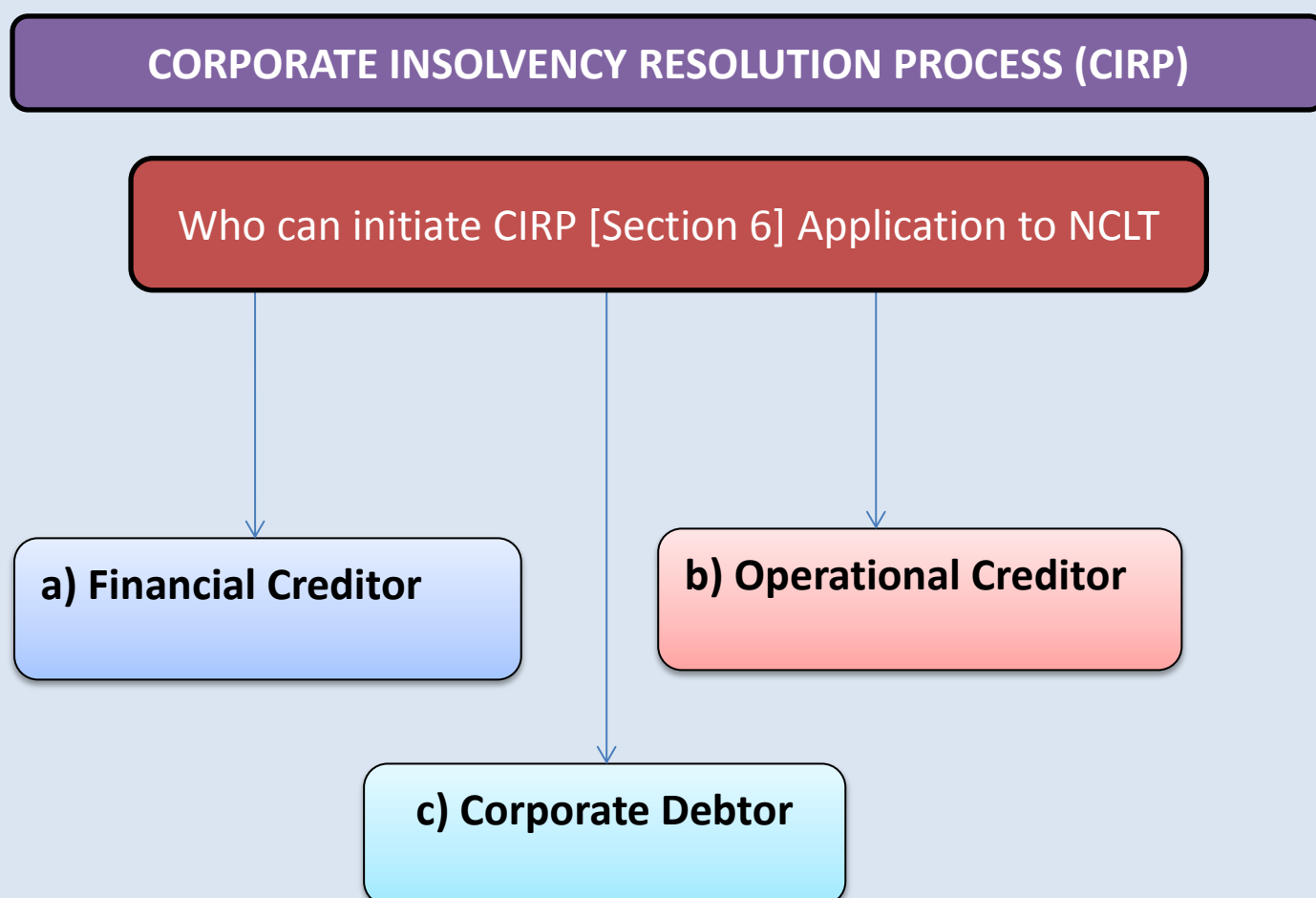
Date: 25th April 2017

"Success is where preparation and opportunity meet- Bobby Unser"

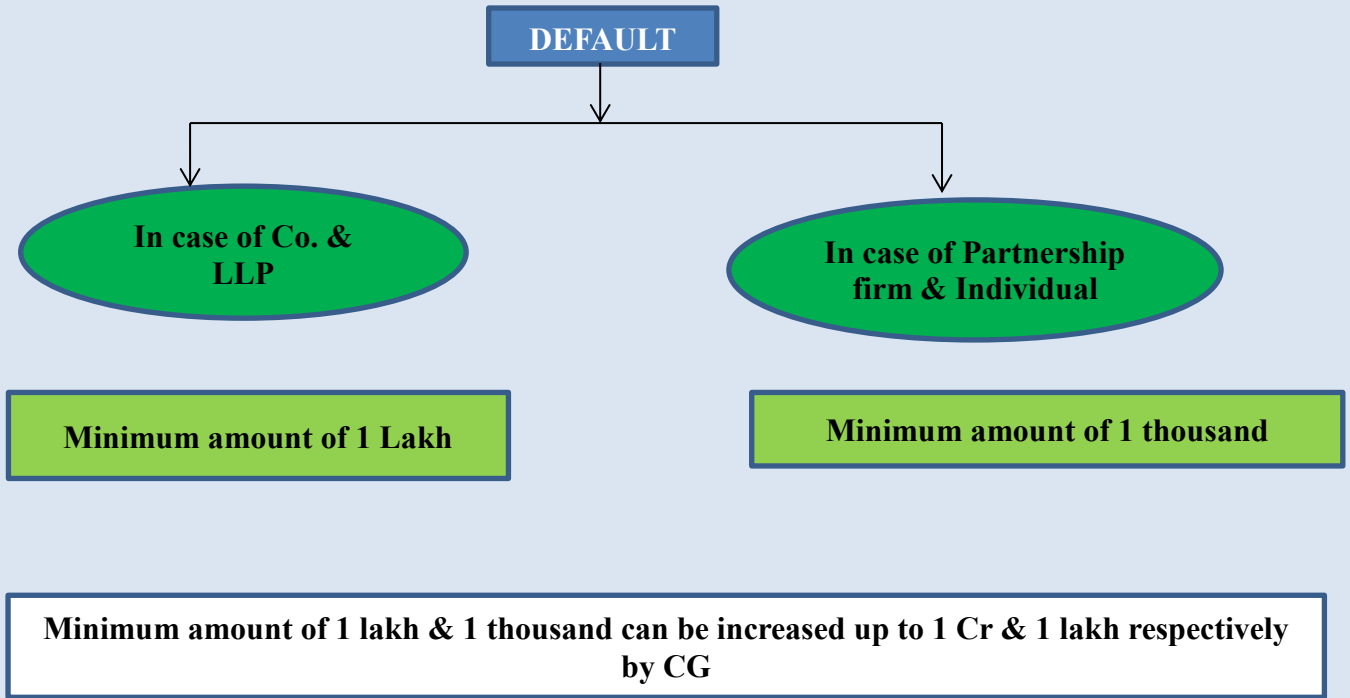
Dear Professional Colleagues,

The Insolvency and Bankruptcy Code, 2016 provides the much needed platform to facilitate an easy revival and rehabilitation process for companies in financial distressed because of the factors beyond their control and also due to certain internal or external factors. For the revival of the financial strength of such corporate as well as safeguard the interest of the lenders such as Banks and financial institutions, timely support through restructuring is very much required. The Reserve Bank of India through its Schemes on Corporate Debt Restructuring (CDR), Strategic Debt Restructuring (SDR), Joint Lenders' Form (JLF), Scheme for Sustainable Structuring of Stressed Assets (S4A) etc. provided the guidelines to banks and financial institutions for financial restructuring of corporate. But these schemes are not giving the desired results due to various factors particularly related to implementation by the corporates. Insolvency and Bankruptcy Code provides level playing field for both debtor and creditors to initiate Insolvency Resolutions Process in time bound manner by way of simplified procedures for both Insolvency Process for Corporate Persons (CIRP) and the liquidation process for corporate persons. It also safeguards the interest of other stakeholders such as operational creditors, bondholders, shareholders, government etc.

An Overview of Corporate Insolvency Resolution Process:



Triggering Insolvency Provisions:



Where any Co. & LLP Commits

A default in paying its

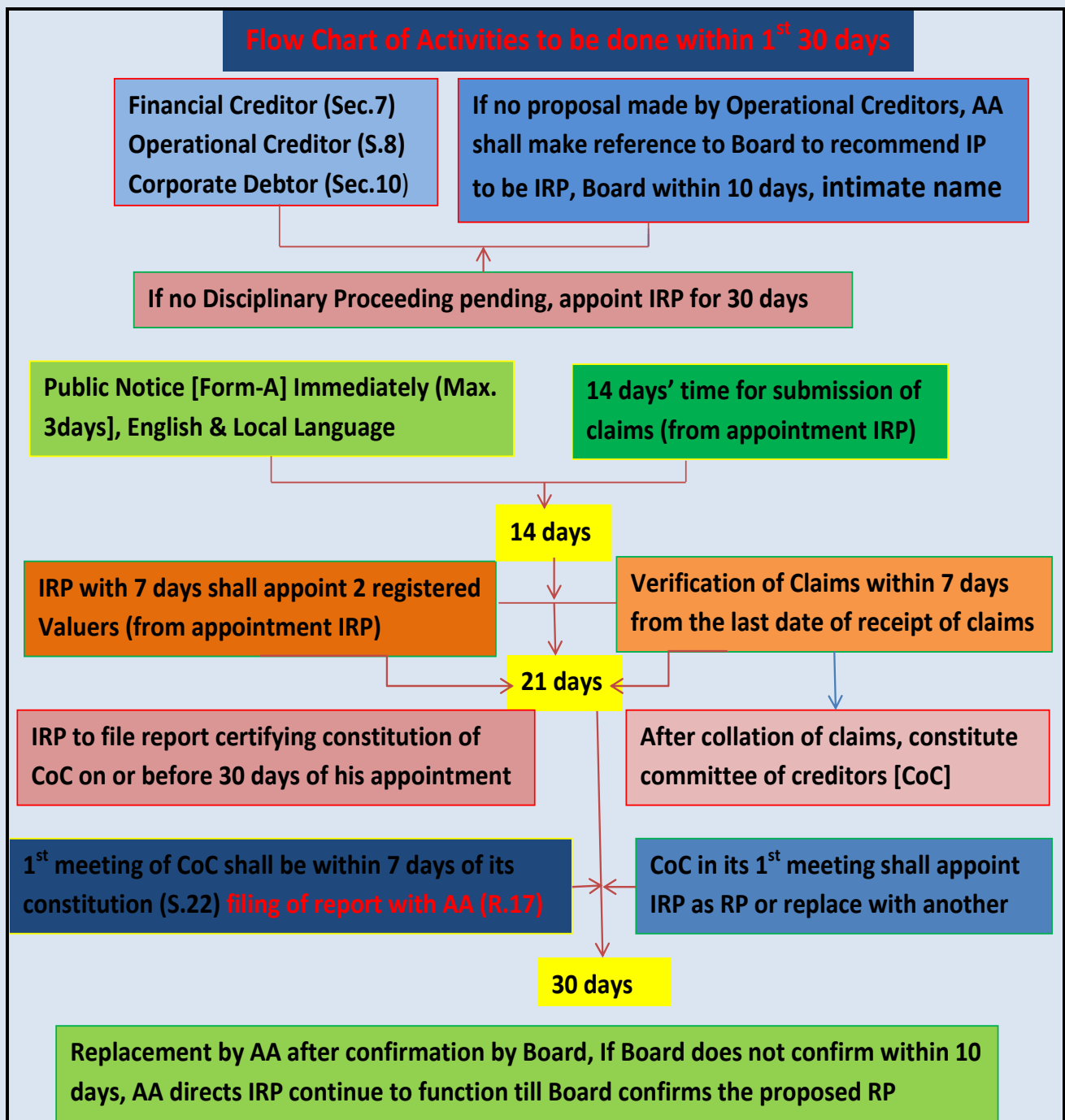
Operational Creditor

Financial Creditor

Then a financial creditor/ operational creditor/ Company & LLP itself

May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

Flow Chart of Activities to be done by an Interim Resolution Professional (IRP):



Liquidation Process:

Section 33 of the Insolvency and Bankruptcy Code 2016 provides the grounds when the Liquidation shall be ordered by the Adjudicating Authority (National Company Law Tribunal- NCLT):

1. (a) Before the expiry of the insolvency resolution process period (180 days) or the maximum period permitted (180+90= 270days) for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process (90 days) or maximum period permitted (90+45= 135 days) under section 56, as the case may be, the NCLT does not receive a resolution plan under sub-section (6) of section 30; or
(b) NCLT rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,
2. Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.
3. 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.
4. On receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

After the liquidation order is passed by the Adjudicating Authority, the process of liquidation commences and the resolution professional appointed for the corporate insolvency resolution process shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority. For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in section 36(3) of the Code, which will be called the liquidation estate in relation to the corporate debtor. The procedure relating to Liquidation Process for Corporate Persons shall be as per *the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016*. The gist of which is provided after the Flow Chart.

Liquidation Process Flow Chart

Liquidation order

Liquidation order will be passed if:

- CIRP ends
- Plan not submitted to NCLT
- Plan not approved
- Decided by CoC
- Plan not properly implemented

Liquidation steps

- Appointment of liquidator
- Public Notice within 5 days
- Formation of liquidation estate
- No legal suit or proceeding by or against the debtor
- Verification of claims
- Consolidation of claims
- Distribution of assets
- Dissolution of debtors (shall be completed within 2 years)
- If Liquidator fails to complete with 2 years, shall make application to AA for extension

Liquidator

Liquidator shall:

- Form liquidation estate
- take custody & control of all assets
- consolidate, verify, admit and determine creditors' claims
- Carry on the business for its beneficial liquidation

Priority Distribution of Claims

Insolvency resolution process and liquidation costs

Secured creditor & workmen dues (upto 24 months)

Other employee dues (upto 12 months)

Financial debts of unsecured creditors

Government dues (upto 2 years) and unpaid secured creditors

Any remaining debts and dues

Preference shareholders, if any

Equity shareholders or partners, as the case may be

Reporting

- Preliminary report – within 30 days from the date of the order;
- Progress report – within 15 days after end of every period of 3 months from the date of order

Distribution of Assets by Liquidator

- Distribution of proceeds within 6 months from receipt of amount
- Deduction of Insolvency cost if any and Liquidation cost before such distribution

Insolvency and liquidation cost

- Insolvency cost include interim funding, cost of running the debtor as going concern (e.g. rent or salary of employees), cost of IP etc
- Liquidation cost include any cost incurred by liquidator during liquidation period

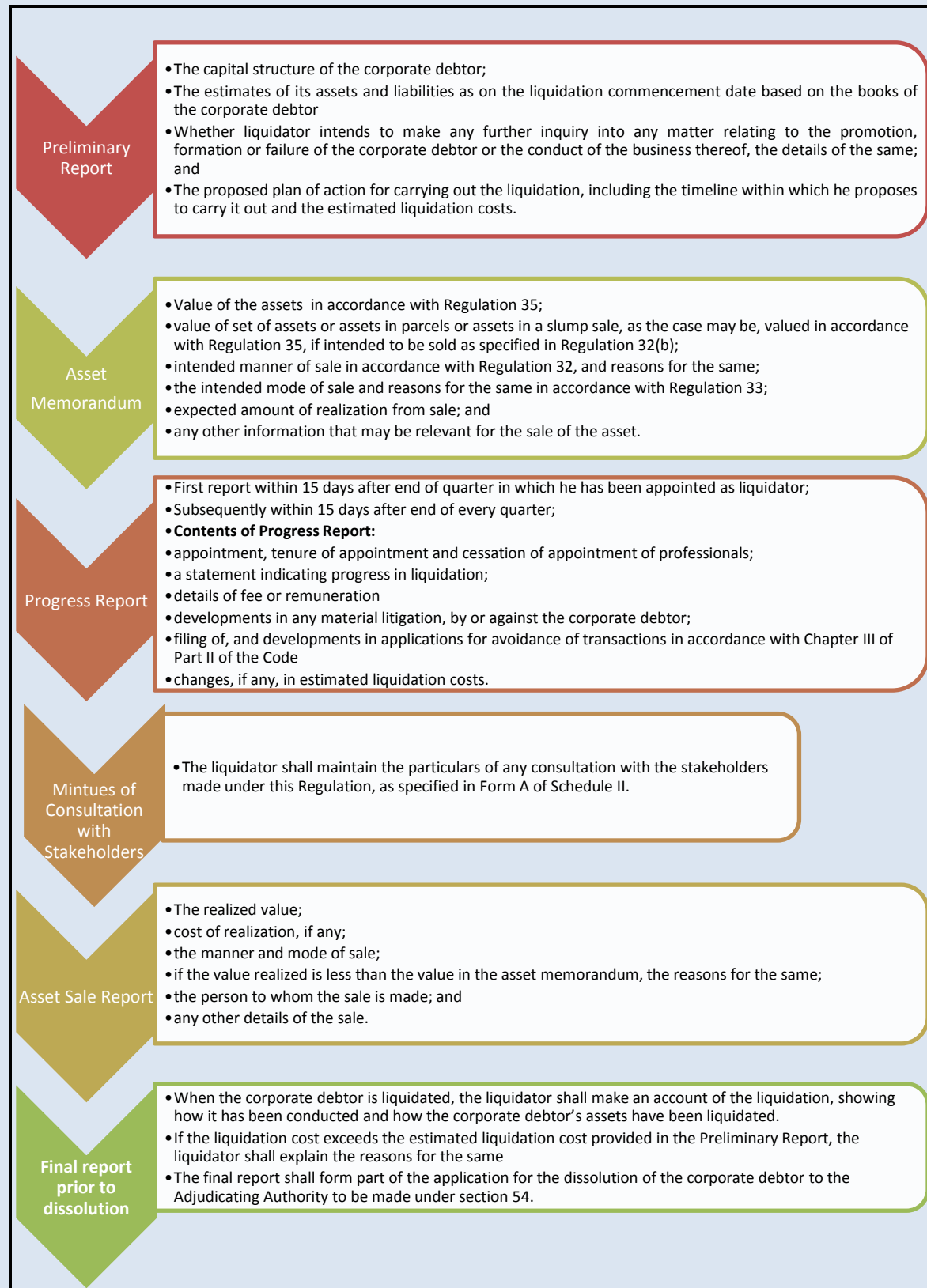
Secured creditor (Sec 52) in liquidation

- Secured creditor has the option to:
- enforce and realise the security outside the Code, or
 - relinquish its security interest and receive proceeds as per defined priority of claims

Gist of the *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016* notified by IBBI on 15th December 2016:

1. *Prohibit an insolvency professional from acting as a liquidator for a corporate debtor if he is not independent of the corporate debtor.*
2. *Prohibit partners or directors of an insolvency professional entity of which the insolvency professional is a partner or director from representing other stakeholders in the same liquidation process.*
3. *Liquidator, and also registered valuer(s) and professional(s) assisting him in liquidation are required to make disclosures: initial and continuing –about pecuniary or personal relationship with any of the stakeholders entitled to distribution of assets.*
4. *Specify the manner and contents of public announcement;*
5. *Specify the manner of receipt and verification of claims of stakeholders;*
6. *Reports and registers to be maintained, preserved and submitted by the liquidator;*
7. *Manner of realisation of assets and security interest, and distribution of proceeds to stakeholders;*
8. *Provide that a liquidator should ordinarily sell the assets through auctions. He may sell the assets through private sale only when the asset is perishable; the asset is likely to deteriorate in value significantly if not sold immediately or the asset is sold at a price higher than the reserve price of a failed auction.*
9. *Liquidator may sell an asset on standalone basis, or assets in a slump sale, assets in parcels or a set of assets collectively.*
10. *Liquidator to prepare and submit a preliminary report, asset memorandum, sale report, progress report, and final report prior to liquidation to the adjudicating authority, which is the NCLT.*
11. *Provide that the fee payable to a liquidator shall form a part of liquidation cost. These Regulations further provide that a liquidator shall be paid such fees and in such manner as has been decided by the committee of creditors during the resolution process.*
12. *In all other cases, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs and of the amount distributed.*

Contents of various reports:



Details of cases admitted by NCLT:

S.No.	Name of Corporate Debtor	Name of Bench	Creditor/ Debtor	Section	Insolvency Professionals	Amount of Default (Crore)
1.	M/s Murli Industries Ltd.	Mumbai	Financial Creditor	7	Vijay Kumar V lyer	1365.4
2.	M/s Status Food Pvt. Ltd.	Ahmedabad	Operational Creditor	9	-	0.22
3.	M/s. Pooja-Tex Prints Pvt. Ltd	Ahmedabad	Operational Creditor	10	-	-

Details of the cases in respect of which the public announcement has been made:

S.No.	Name of Corporate Debtor	Name of Bench	Creditor/ Debtor	Section	Insolvency Professionals	Amount of Default (Crore)
1.	M/s. Era Infra Engineering Limited	Chandigarh	Corporate Debtor	10	Mr. Vivek Goyal	
2.	M/s. Sky blue papers Pvt. Ltd.	Chandigarh	Corporate Debtor	10	Mr. Jalesh Kumar	18.29
3.	M/s. Super Multicolors Printers Pvt. Ltd.	Chandigarh	Corporate Debtor	10	Mr. Prakash Dev Sharma	215.06
4.	M/s. Nilgai Furniture Pvt. Ltd.	Mumbai	Corporate Debtor	10	Mr. Pradip C. Shah	
5.	M/s. Gujarat NRE Coke Limited	Kolkata	Corporate Debtor	10	Mr. Sumit Binani	3879.71
6.	M/s. Janata Chemicals Pvt. Ltd.	Mumbai	Operational Creditor	9	Mr. Amit Gupta	0.23
7.	M/s MBL Infrastructures Ltd.	Mumbai	Financial Creditor	7	Mr. Atanu Mukherjee	7.26
8.	M/s. Swiber Offshore(India) Pvt. Ltd.	Mumbai	Operational Creditor	9	Mr. Rajeev Mannadiar	0.48
9.	M/s. Gupta Corporation Pvt. Ltd.	New Delhi	Corporate Debtor	10	Mr. Rohit Jain	314.18

Status of recent cases:

Sr. No.	Name of the Case	Case Status
1.	M/s DF Deutsche Forfait AG and Anr. Vs. M/s. Uttam Galva Steel Limited	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Mumbai Bench of National Company Law Tribunal.</p> <p>The amount of claim due to the petitioner was USD 16,542,886.33 equivalent to Rs. 110,40,30,876.44 towards 20000 tons of prime steel billets.</p> <p>The matter was admitted on the grounds of compliance under section 9 of the code.</p>
2.	Pawan Dubey & Anr. Vs. M/s. J.B.K. Developers Pvt. Ltd.	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Principal Bench of National Company Law Tribunal.</p> <p>The amount of claim due to the petitioner was Rs. 25,97, 940/- towards the allotment of Residential Flat.</p> <p>This matter was dismissed on the ground that the petitioner cannot be treated as “Operational Creditor” within the meaning of section 9 of the Code as the debt incurred by the respondents has not arisen out of provision of goods, services or employment. It can also not be considered ‘Financial Debt’ within the meaning of section 5 (8) to mean a debt which is disbursed against the consideration of the time, value or money.</p>
3.	Speculum Plast Pvt. Ltd. Vs. M/s PTC Techno Pvt. Ltd.	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Principal Bench of National Company Law Tribunal.</p> <p>The amount of claim due to the petitioner was Rs. 24,18,273.36</p> <p>This matter was dismissed on the ground that the invoices are raised were for the period of 01.04.2013 to 19.09.2013 for the services rendered. The Present Proceedings have been initiated on 29.03.2017, i.e. After a period of three years from the last invoice raised and the Operational Creditor has failed to satisfy this bench as to how this claim is legally recoverable being beyond the period of limitation. The claim being time barred cannot be termed as a legally recoverable debt.</p>

4.	Raman Seth & Anr. Vs. M/s Unitech Hi-Tech Developers Pvt. Ltd	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Principal Bench of National Company Law Tribunal.</p> <p>The amount of claim due to the petitioner was Rs. 1,37,72,565.40 towards the allotment of apartment.</p> <p>This matter was dismissed on the ground that the petitioner cannot be treated as “Operational Creditor” within the meaning of section 9 of the Code as the debt incurred by the respondents has not arisen out of provision of goods, services or employment. It can also not be considered ‘Financial Debt’ within the meaning of section 5 (8) to mean a debt which is disbursed against the consideration of the time, value or money.</p>
----	---	---

Seminars/Conference/Program held by IPA from 16th April 2017 to 30th April 2017

1. Seminar on Insolvency and Bankruptcy Code 2016- Practical Aspects for Bankers

The seminar was conducted specifically for bankers giving them the brief of relevant provisions of Insolvency and Bankruptcy Code 2016 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in association with Head Quarters of the Institute of Cost Accountants of India and EIRC of the Institute on 21st April 2017 at Kolkata. Dr. M.S. Sahoo, Chairperson of Insolvency and Bankruptcy Board of India was Chief Guest of the Program and Guest of Honors were Shri V.P. Singh, Judicial Member of NCLT Kolkata Bench, Smt. Rekha Warriar, Regional Director of Eastern Region Reserve Bank of India. The eminent speakers of the program were CMA J K Budhiraja, CEO, Insolvency Professional Agency of Institute and Senior Director (Technical) and Shri Sanjeev Pandey, Dy. General Manager, Insolvency and Bankruptcy Board of India. A comparative position of IBC and SARFAESI was presented before the large numbers of audience who were senior executives from various bankers in Kolkata. Dr. M.S. Sahoo, Chairperson, IBBI also released the Institute’s publication on “*Insolvency and Bankruptcy Code 2016- Practical Aspects for Bankers*”. The program was very well received and appreciated by the Bankers.

2. National webinar on “Practical Aspects of Insolvency and Bankruptcy 2016”

It was conducted by CMA J.K. Budhiraja, CEO of the Insolvency Professional Agency of the Institute on 26th April 2017. He touched upon various provisions of IBC 2016 and briefly explained them. This was received by the members very well.

3. International Conference on “New Corporate Insolvency Regime”

The Insolvency Professional Agency of Institute of Cost Accountants of India was associated with ASSOCHAM for the *International Conference on “New Corporate Insolvency Regime” Ushering an Era of Change*, supported by Insolvency and Bankruptcy Board of India and the UNCITRAL, and partners of the conference were INSOL India, the leading insolvency industry

advocacy body and SIPI – the newly set up think tank on insolvency. The International Conference was held on 28th and 29th April, 2017 at Hotel The Ashok, New Delhi. The conference was an effort to sensitize the Corporate India about the principles of the IBC; share global best practices with them and obtain market feedback on regular basis. The Chief Guest of the Conference was Shri Arjun Ram Meghwal, Minister of State for Finance & Corporate Affairs, GOI. The international conference were addressed by eminent national and international speakers having expertise in Insolvency and bankruptcy regime, Judges of Supreme Court of India and Supreme Court of Singapore, Chairperson- National Company Law Appellate Tribunal (NCLAT), President- National Company Law Tribunal (NCLT), Chairperson and Whole Time Member of Insolvency and Bankruptcy Board of India, bankers, Chairman- Bankruptcy Law Reforms Committee (BLRC), three professional institutes etc. CMA Sanjay Gupta, Vice President of the Institute was also one of the speakers in the conference. More than 300 delegates attended the conference and it was received very well by all.

FORTHCOMING EVENTS BY THE IPA OF ICAI

- **National Webinar on "How to prepare for limited Insolvency Examination"** is scheduled to be held on 8th May 2017.

IBBI UPDATE:

Dr. (Ms.) Mukulita Vijayawargiya took charge as a Whole Time Member of the Insolvency and Bankruptcy Board of India in New Delhi. She will also look after Information Technology, Limited Insolvency Examination, National Insolvency Examination, Finance and Accounts and Communication.

Dr. (Ms.) Vijayawargiya was a member of Bankruptcy Law Reforms Committee (BLRC) based on which, the Insolvency and Bankruptcy Code, 2016 has been framed. She played a key role in drafting the Insolvency and Bankruptcy Code, 2016 as Additional Secretary in the Legislative Department, Ministry of Law & Justice. Dr. Vijayawargiya served as a member of Indian Legal Service. She has vast experience of 35 years in various fields of law. She has been associated with drafting/vetting of more than 100 legislative proposals in the legislative department.

IBBI invites public comments on Draft regulations for Fast Track Resolution process for Eligible Corporate Persons

Insolvency and Bankruptcy Board of India (IBBI) vide Press Release dated 18th April 2017 issued '[Draft Regulations for Fast Track Resolution Process for Eligible Corporate Persons](#)' '[A draft notification under Section 55\(2\) of IBC, 2016 for eligible corporate debtors](#)' has also been issued specifying the threshold for initiating the Fast Track Corporate Insolvency Resolution Process.

The Board has invited public comments on the draft regulations on 1) Fast Track Insolvency Resolution Process for Corporate persons and 2) for eligible Corporate Debtor under Fast Track Insolvency Resolution Process, separately.

The aforesaid draft Regulations are available on IPA as well as Institute's websites: www.ipaicmai.in and www.icmai.in respectively; and also on IBBI website www.ibbi.gov.in.

To facilitate members, the Institute will send the consolidated comments/ suggestions of members/stakeholders to the IBBI.

In view of the above, it is requested that the members may send their comments/suggestions on each provision of the draft regulations by email at: ipa@icmai.in latest by **May 5th 2017** to enable the Institute to submit the consolidated comments of the members by 8th May 2017 in the following format:

Regulation No.	Sub-Regulation No.	Page No/ Line No	Comments	Justification
----------------	--------------------	------------------	----------	---------------

Enrolment is open under Regulation 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulation 2016. Any person, who has passed 'Limited Insolvency Examination' and meets qualification and experience criteria under Regulation 4 of the said Regulations, may enroll with 'Insolvency Professional Agency of Institute of Cost Accountants of India'. The details regarding eligibility and other details concerning enrolment and registration are given at www.ipaicmai.in

With Best Wishes:

CMA J K Budhiraja

Chief Executive Officer (CEO)

Insolvency Professional Agency of

Institute of Cost Accountants of India CMA Bhawan, 3,

Institutional Area, Lodhi Road, New Delhi - 110003

Phone No: 011-24666112

Email: ipa@icmai.in



Insolvency Professional Agency of
Institute of Cost Accountants of India

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI)
(Section 8 Company of the Institute of Cost Accountants of India)

About IPA of ICAI: *The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI), a section 8 company incorporated under the Companies Act 2013 has been promoted by the Institute of Cost Accountants of India to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder.*

Enrol and Register as an Insolvency Professional

Enrollment is Open: For Professionals & Advocates and Graduates having Management Experience

IPA of ICAI enrolls the professionals as 'Insolvency Professionals' under Regulation 7 read with Regulations 4 & 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, if

1. He/she has passed the '*Limited Insolvency Examination*', conducted by the Insolvency & Bankruptcy Board of India (IBBI) and
2. Has/she has ten years of experience as -
 - (a) a cost accountant enrolled as a member of the Institute of Cost Accountants of India,
 - (b) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (c) a company secretary enrolled as a member of the Institute of Company Secretaries of India, or
 - (d) an advocate enrolled with a Bar Council. enrolled with a Bar Council, [OR]
3. He/ she has fifteen years of experience in management, after receiving a Bachelor's degree from a University established or recognized by law.

Professional may function as:

- ❖ Interim Insolvency Professional in Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Resolution Professionals for Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Liquidator in Liquidation Process for Corporate Persons;
- ❖ Liquidator in Voluntary Liquidation for Corporate Persons;
- ❖ Bankruptcy Professional for Bankruptcy of Individual and Partnership Firm.

Why to enrol as Insolvency Professional

- + It's a niche area of practice with opportunities galore
- + With the first mover's advantage, there is an opportunity to create a brand name
- + Adequate handholding from IBBI and the IPA of ICAI

CMA J. K. Budhiraja

CEO, Insolvency Professional Agency of Institute of Cost Accountants of India

Registered Address:

CMA Bhawan, 4th Floor, 3, Institutional Area,
Lodhi Road, New Delhi- 110003

Phone No.: 011 24666141, 24666120

Mail Id: ipa@icmai.in

Website: www.ipaicmai.in