

(Q1) What is the extent of the applicability of the provisions of the Insolvency and Bankruptcy Code, 2016?

The provisions of this Code shall apply to—

- (a) Any company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law
- (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act
- (c) Any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009)
- (d) Such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf
- (e) Personal guarantors to corporate debtors
- (f) Partnership firms and proprietorship firms and
- (g) Individuals, other than persons referred to in clause

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

(Q2) Are there any rights specified for the foreign creditor and domestic creditor under the Insolvency and Bankruptcy Code, 2016?

The Insolvency and Bankruptcy Code, 2016 does not make a distinction between domestic and foreign creditors. Any creditor, operational or Financial could exercise the right given under the Code in so far as the application for insolvency is made within India and under the Code

(Q3) Who is the corporate guarantor according to the Insolvency and bankruptcy code, 2016?

“Corporate guarantor” means a corporate person who is the surety in a contract of guarantee to a corporate debtor.

(Q4) When can a corporate resolution process start?

Corporate resolution process starts on 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, provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority.

(Q5) What is the trigger for filing of an application by financial creditor before Adjudicating Authority?

Under a code, in relation to corporates, two kinds of creditors, viz., financial creditor and operational creditors can file application when they have financial debt or operational debt due on the company. Under section 7 of the Code, the trigger for filing of an application by financial creditor before Adjudicating

Authority is when a minimum default of Rs. One lakh in respect of any financial debt has occurred.

(Q6) Who may initiate corporate insolvency resolution process?

Where a corporate debtor commits a default (minimum of Rs. One lakh as prescribed under section 4), following person may initiate corporate insolvency resolution process:

- I. Financial creditors (section 7)
- II. Operational creditor (section 9)
- III. Corporate debtor itself (section 10)

(Q7) Can an applicant withdraw the application admitted under section 7 or section 9 or section 10 of Insolvency and bankruptcy Code, 2016?

Yes, the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed within three days of such approval.

(Q8) Who can be invited to submit resolution plan?

It is now mandatory for the resolution professional to invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the board, to submit a resolution plan or plans and who shall not suffer from any disqualification mentioned under section 29A.

(Q9) Who are the ineligible persons who cannot be a resolution applicant?

1. the person is an undischarged insolvent;
2. the person is a wilful defaulter in terms of the RBI Guidelines issued under the Banking Regulation Act, 1949;
3. the person has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with RBI Guidelines issued under the Banking Regulation Act, 1949 and at least a period of 1 (One) year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;
4. the person has been convicted for any offence punishable with imprisonment for 2 (Two) years or more;
5. the person is disqualified to act as a director under the Companies Act, 2013;
6. the person is prohibited by SEBI from trading in securities or accessing the securities markets;
7. the person has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate

- credit transaction or fraudulent transaction has taken place and an order has been made by the adjudicating authority under the provisions of the Code;
8. a person who has executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Code;
 9. a person who has been subject to the above listed disabilities under any law in a jurisdiction outside India;
 10. connected persons, i.e. persons connected to the person disqualified under any of the aforementioned points, such as those who are promoters or in management of control of the resolution applicant, or will be promoters or in management of control of the business of the corporate debtor during the implementation of the resolution plan, the holding company, subsidiary company, associate company or related party of the above referred persons – exception has been carved out for scheduled banks, asset reconstruction companies registered with RBI under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and alternative investment funds registered with SEBI.

(Q10) Is moratorium applicable on a personal guarantor or a corporate guarantor to a corporate debtor?

No, as Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 has amended sub section (3) to provide that moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor and that the moratorium will be restricted to the assets of the corporate debtor only.

(Q11) What is the term of an appointment of an Interim resolution professional appointed by Adjudicating Authority under Insolvency and Bankruptcy Code, 2016 ?

The term of interim resolution professional shall continue till the date of appointment of the resolution professional under section 22 as clarified by the Insolvency Bankruptcy Code (Second Amendment) Act, 2018.

(Q12) Is it mandatory under the Insolvency and Bankruptcy Code, 2016 for an operational creditors to submit a certificate from financial institution to prove non- payment of operational debt?

No, as the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 has made section the requirement for operational creditors to submit a certificate from financial institution to prove non- payment of operational debt optional and introduced other means of proving non-payment of operational debt by corporate debtor, like records with Information Utilities or any other such proof as may be notified by the Central Government.

(Q13) Is it required by a corporate applicant to take the approval from the shareholders of the corporate debtor before filing Corporate Insolvency Resolution Process application under Insolvency and Bankruptcy Code, 2016?

Yes, as it was observed that many applications were filed on behalf of the corporate debtor under the Code without an underlying shareholder approval and since Corporate Insolvency Resolution Process is a significant event for a corporate debtor which may also lead to its liquidation shareholder's approval is essential and thus, the Code has been amended to provide for the requirement to obtain an approval of shareholders by special resolution or an approval of at least three-fourth of the total number of partners, as the case may be, as a precondition for filing for Corporate Insolvency Resolution Process.

(Q14) Who all are the persons who cannot invoke the resolution process under Insolvency and Bankruptcy Code, 2016?

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:

- (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.

(Q15) Is the time limit of 270 days within which corporate insolvency resolution process to be completed mandatory?

Time limit of 270 days granted under section 12 for completion of insolvency resolution process is mandatory, because resultant effect of non-compliance is initiation of liquidation proceedings under section 33.

(Q16) Who all are not allowed to be part of Committee of Creditors?

In accordance with Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, financial creditor or the authorized representative of the financial creditors referred to in sub section (6) or sub section (6A) or sub section (5) of section 24, if it is a related party of the corporate debtor shall not have any right of representation, participation or voting in a meeting of committee of creditors.

(Q17) What is the mechanism for participation of security holders, deposit holders and all other classes of financial creditors which exceed a certain number in meetings of committee of creditors through an authorised representative?

Insolvency and bankruptcy code (Second Amendment) Act, 2018 has brought in the concept of Authorised representative. Such a representative may either be trustee or agent appoint under the terms of debt agreement of such creditors, otherwise an insolvency professional may be appointed by the NCLT for each such class of financial creditors.

Where a financial debt is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors. Such authorised representative may attend and vote on behalf of such financial creditors in the said meeting, express the concerns of the creditors being represented by it in the meeting, obtain clarity in issuers and communicate any important concerns to the represented creditors. This shall further ensure inter se coordination among the creditors by having a common representative as well as effective participation in the meetings of the Committee of Creditors as participation by a single person representing many creditors is not only cost and time effective but also helps in smooth functioning of the meeting.

(Q18) What is the voting threshold for appointment of resolution professional?

The voting threshold was felt should be reduced from seventy-five per cent to sixty-six per cent for obtaining the approval of CoC for the appointment of RP. Also, consent of the IRP to act as the RP or The consent of RP to be appointed as such should be provided.

(Q19) What is the voting share threshold for routine decision of the Committee of creditors?

Section 21 (8) of the Code as amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 provides that all decisions of the Committee of creditors shall be taken by a vote of not less than 51 per cent of the voting share of the financial creditors.

(Q20) What all are the decisions of the Committee of Creditors where sixty-six percent of the voting share of the creditors are required?

Decisions includes:

Applying for an extension for the CIRP period from 180 to 270 Days.

Appointment and replacement of a resolution professional.

Approving a resolution plan

Certain actions requiring approval of Committee of creditors

Passing a resolution for liquidation

(Q21) What are the duties of the resolution professional?

1. It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.
2. For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -
 - (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
 - (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

- (c) raise interim finances subject to the approval of the committee of creditors under section 28;
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;
- (e) maintain an updated list of claims;
- (f) convene and attend all meetings of the committee of creditors;
- (g) prepare the information memorandum in accordance with section 29
- (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.
- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any; and
- (k) such other actions as may be specified by the Board

(Q22) What are the rights and duties of authorised representative of financial creditors?

1. The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
2. It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
3. The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

4. The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

(Q23) What is the status of home buyers under IBC, 2016?

The current definition of 'financial debt' is sufficient to include the amounts raised from home buyers / allottees under a real estate project, and hence, they are to be treated as financial creditors under the Code. However, given the confusion at this stage, it was felt prudent to explicitly clarify that such creditors fall within the definition of financial creditor, by inserting an explanation to section 5(8)(f) of the Code. Accordingly, in CIRP, they will be a part of the CoC and in the event of liquidation, they will fall within the relevant entry in the liquidation waterfall under section 53.

(Q24) What is the impact of the Insolvency and Bankruptcy Code, 2016 on Companies Act, SICA or SARFAESI?

The Code consolidates and amends the laws relating to the reorganization and insolvency of corporations, partnerships and individuals. It may be noted that existing judicial proceedings under the Companies Act will be transferred from CLB to NCLT for all cases and from High Court to NCLT in specific cases. Also, all proceedings under SICA will abate, with the option for the company to make a reference to NCLT within 180 days of the commencement of the Code. Further, on declaration of moratorium, all actions under the SARFAESI Act will be prohibited till the insolvency resolution process under the Code. Besides, there are numerous matters (such as sale of part of an organization and carve-out of business) that may need the approval of shareholders as per constitutional documents, shareholder agreements and other similar documents. The resolution plan will take effect notwithstanding such approval. However, the Code and regulations are silent on whether such actions contemplated in the resolution plans (or otherwise) can be completed without specific approval as required under the Companies Act.

(Q25) Can insolvency resolution process against the "personal guarantor" be filed under sub-section (2) of section 60 before the same Adjudicating authority where corporate insolvency resolution process has been initiated against the corporate debtor and not before the Debts Recovery Tribunal?

As, the order of moratorium will be applicable only to the proceedings against corporate debtor and the personal guarantor, if pending before any court of law/ tribunal or authority but the order of moratorium will not be applicable for filing application for triggering corporate insolvency resolution process under section 7 or 9 or 10, against the guarantor or the personal guarantor under sub-section (2) of section 60. Where corporate insolvency resolution process has been initiated against the corporate debtor, the insolvency and bankruptcy resolution process against the personal guarantor can be filed under sub-section (2) of section 60 before the same Adjudication Authority and not before the Debt Recovery Tribunal.

(Q26) What is the timeline within which resolution plans require approval from Regulators or Authority?

The resolution applicant shall pursuant to the resolution plan approved, obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

(Q27) What are the factors on which a resolution professional examine a resolution plan submitted?

The factors on the basis of which a resolution plan is examined by a resolution professional are that the resolution plan:

- 1) Provided for the payment of insolvency resolution process cost
- 2) Provides for the repayment of the debts of operational creditors
- 3) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan
- 4) Provides for the implementation and supervision of the resolution plan
- 5) Does not contravene any of the provisions of the law for the time being in force
- 6) Conforms to such other requirements as may be specified by the Board

Also, the resolution applicant may submit a resolution plan along with the affidavit stating that it is eligible to submit a resolution plan under section 29A.

(Q28) What reliefs has been provided for the micro, small and medium enterprises (MSME) under Insolvency and Bankruptcy Code, 2016 ?

A new section has been brought under the Code, where central government may in the public interest by notification direct that any of the provisions of the Insolvency and Bankruptcy Code, 2016 shall not apply/ apply to micro, small and medium enterprises with such modifications as may be specified in the notification.

The provisions of clause (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any MSME. Thus the promoters of MSMEs can bid for their stressed assets even without clearing dues if they are not wilful defaulters.

(Q29) What is the status of application of Limitation Act, 1963 to the Insolvency and Bankruptcy Code, 2016?

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals under the Insolvency and Bankruptcy Code, 2016 before the NCLT or the NCLAT, as the case may be.

(Q30) Can appeal be made against the decision of Liquidator?

Section 42 of the Code provides that claims rejected by the liquidator may be appealed to the NCLT. But this does not include challenges regarding acceptance of claims. Accepted claims may be disputed by the creditor herself in terms of valuation or by other creditors whose claims have been rejected and are similarly placed to a claim that has been accepted. Providing a right to a creditor to challenge such accepted claims may be essential, especially since liquidation may be the last resort for recovery of debt. Further, section 60(5)(b) provides that NCLT will have the power to entertain or dispose of any disputes relating to claims by or against the corporate debtor and does not make any distinction based on acceptance or rejection of the claim disputed. Section 60 applies to both CIRP and liquidation and thus, a conjoint reading of sections 42 and 60 presents an anomaly as section 42 is narrower as it does not cover accepted claims. Accordingly, appeals from accepting claims has been included in section 42.

(Q31) What all are the stages under Insolvency and Bankruptcy Code, 2016 where the consent of Interim resolution professional/ resolution application/ liquidator is felt necessary?

Following are the milestones of the corporate insolvency resolution process or liquidation process where consent of the Interim resolution professional or resolution professional or liquidator may be obtain:

- 1) Appointment of the resolution professional under section 22 in the first meeting of committee of creditor
- 2) Appointment of a new resolution professional on replacement of the existing resolution professional in section 27
- 3) Appointment of the existing resolution professional in corporate insolvency resolution process as the liquidator under section 34(1)
- 4) Appointment of new resolution professional as the liquidator under section 34(4)