

## **Insolvency and Bankruptcy Board of India**

### **Frequently Asked Questions (FAQs) on Corporate Insolvency Resolution Process ('CIRP')**

#### **Q1. What are the objectives of the Insolvency and Bankruptcy Code, 2016 (Code)?**

Ans: The Code consolidates and amends the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

#### **Q2. What is corporate insolvency?**

Ans: Corporate insolvency is a state where a corporate person fails to pay debt, whether whole or any part or instalment, when due and payable.

#### **Q3. Who is a corporate person?**

Ans: A corporate person means:

- a) a company as defined under the Companies Act, 2013;
- b) a Limited Liability Partnership as defined under the Limited Liability Partnership Act, 2008;
- or
- c) any other person incorporated with limited liability under any law

It does not include any Financial Service Provider. However, Financial Service Provider could be notified for the purpose of their insolvency and liquidation proceedings, under section 227 of the Code.

#### **Q4. Who is a corporate debtor?**

Ans: A corporate debtor is a corporate person who owes a debt to any person.

#### **Q5. What is corporate insolvency resolution process (CIRP)?**

Ans: CIRP is the process of resolving the corporate insolvency of a corporate debtor in accordance with the provisions of the Code.

#### **Q6. Who can initiate CIRP?**

Ans: CIRP may be initiated by a financial creditor under section 7, an operational creditor under section 9 and corporate applicant of corporate debtor under section 10 of the Code.

**Q7. What is the minimum default amount for initiating CIRP against a corporate debtor?**

Ans: The minimum amount of default for initiating CIRP was ₹ 1 lakh till recently. The Government vide notification dated 24<sup>th</sup> March, 2020, has increased the minimum amount of default to ₹ 1 crore.

**Q8. Who is a Financial Creditor?**

Ans: Any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

**Q9. What is Financial Debt?**

Ans: It means a debt along with interest, if any, disbursed against consideration of time value of money. It also includes those enumerated in section 5(8)(a) to (i) of the Code, such as money borrowed against the payment of interest, amount of any liability in respect of any lease or hire purchase contract, any amount raised for a transaction having commercial effect of borrowing such as amount raised from allottee under a real estate project etc.

**Q10. Who is an Operational Creditor?**

Ans: Any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

**Q11. What is Operational Debt?**

Ans: It means claim arising in relation to supply of goods and services. It also includes claims in relation to employment or dues payable to Central Government, State Government or any local authority.

**Q12. Who is a Corporate Applicant?**

Ans: Corporate Applicant means:

- a) corporate debtor;
- b) a member or partner of the corporate debtor who is authorised to make an application for the CIRP under its constitutional document 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.

**Q13. Which court/tribunal has the jurisdiction to hear an application for CIRP?**

Ans: National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located serves as the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons.

**Q14. What documents are required to be submitted by a Financial Creditor along with the application for CIRP?**

Ans: The documents to be submitted by a financial creditor along with the application as stated in section 7(3) of the Code and rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, *inter-alia*, include, record of default recorded with information utility or other record or evidence of default as specified and the name of the proposed interim resolution professional.

**Q15. What documents are required to be submitted by an Operational Creditor along with the application for CIRP?**

Ans: The documents to be submitted by an operational creditor along with the application as stated in section 9(3) of the Code and rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 *inter alia*, include a copy of the invoice demanding payment or demand notice delivered by the operational creditor, affidavit stating that no dispute of the debt has been raised by the corporate debtor and a copy of certificate from financial institution, record with information utility or any other proof, confirming that there is no payment of unpaid debt.

**Q16. Is there a specific form/format for the demand notice/ invoice demanding payment to be sent to corporate debtor under section 8?**

Ans: Yes. As per rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the demand notice needs to be furnished to the corporate debtor in Form 3 or copy of an invoice attached with a notice in Form 4.

**Q17. Can a corporate debtor undergoing CIRP file an application for initiating CIRP against its own debtors?**

Ans: Yes, a corporate debtor undergoing CIRP can do so in terms of section 11 of the Code.

**Q18. What documents are required to be submitted by a corporate debtor / corporate applicant along with the application for CIRP?**

Ans: The documents to be submitted by a corporate debtor along with the application, as stated in section 10(3) of the Code and rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, *inter alia*, include information relating to its books of account, name of the proposed interim resolution professional and special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor (as the case may be) approving filing of application.

**Q19. Is there a form/format for the application to be filed before the Adjudicating Authority?**

Ans: Yes. The form of application to be filed by the financial creditor, operational creditor and corporate debtor are provided under Form 1, Form 5 and Form 6 respectively of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**Q20. Can a corporate debtor undergoing liquidation, file an application for initiation of CIRP on itself?**

Ans: No.

**Q21. What is time limit within which the CIRP should be completed?**

Ans: As per section 12(1) of the Code, the CIRP shall be completed within a period of 180 days from the date of admission of the application to initiate such process. The Adjudicating Authority may grant a one-time extension of 90 days. The maximum time within which CIRP has to be mandatorily completed, including any extension or litigation period, is 330 days.

**Q22. What is the procedure to extend the time period beyond one hundred and eighty days?**

Ans: The committee of creditors is required to pass a resolution, with sixty-six percent of the total voting share, to extend the CIRP. Thereafter, the resolution professional needs to file an application to the Adjudicating Authority seeking approval for such extension.

**Q23. Can a CIRP once initiated be withdrawn?**

Ans: Yes. It can be withdrawn either before admission by the Adjudicating Authority or even after admission. The Adjudicating Authority may allow withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant through the resolution professional, with the approval of 90 percent of voting share of the committee of creditors. The application for withdrawal may also be made by the applicant through interim resolution professional even before the constitution of committee of creditors.

**Q24. What does the Insolvency Resolution Process Costs include?**

Ans: The Insolvency Resolution Process Costs is defined to mean those costs indicated in section 5(13) of the Code read with regulation 31 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It includes amount of any interim finance along with cost of raising such finance, fee and expenses of interim resolution professional or resolution professional ratified/approved by the committee of creditors, fee of the authorised representative representing class of creditor, cost incurred for running the corporate debtor as going concern, amount due to suppliers of essential goods and services etc.

**Q25. Who will fix and bear the expenses/ cost incurred by the interim resolution professional?**

Ans: As per regulation 33 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant is required to fix the expenses incurred or to be incurred by the interim resolution professional. In case, the expenses are not fixed by the applicant, the Adjudicating Authority shall fix the expenses. Such costs/expenses shall be borne by the applicant which shall be reimbursed by the committee of creditors to the extent ratified by it. Further, the amount of the expenses ratified by the committee of creditors shall form part of insolvency resolution process costs.

**Q26. Who will fix and bear the expenses/ cost incurred by the resolution professional?**

Ans: The committee of creditors shall fix the expenses to be incurred on or by the resolution professional and such expenses shall form part of insolvency resolution process costs.

**Q27. How is an Interim Resolution Professional appointed in a CIRP?**

Ans: The Adjudicating Authority appoints the insolvency professional proposed by the financial or operational creditor in their application, as the interim resolution professional on the insolvency commencement date. However, where the name of the insolvency professional is not proposed in the application filed by an operational creditor, the Adjudicating Authority makes a reference to the Board for the recommendation of an insolvency professional, who may act as an interim resolution professional. The Board within ten days of the receipt of a reference from the Adjudicating Authority, recommends the name of an Insolvency Professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

**Q28. What is the term of an interim resolution professional?**

Ans: The term of an interim resolution professional continues till the date of appointment of the resolution professional under section 22.

**Q29. What is the first step to be taken by interim resolution professional after admission of CIRP?**

Ans: After admission of CIRP by the Adjudicating Authority, an interim resolution professional makes a public announcement in Form A within three days from his appointment and calls for submission of claims from the stakeholders.

**Q30. What are the contents of a public announcement?**

Ans: The public announcement contains information relating to (a) name and address of the corporate debtor, (b) name of authority where corporate debtor is incorporated/ registered, (c) last date for submission of claims, (d) details of interim resolution professional, (e) estimated date of closure of CIRP, (f) state where claim forms can be downloaded or obtained from, and (g) choice

of three insolvency professionals identified to act as the authorised representative of creditors in each class etc.

**Q31. Where is the public announcement made?**

Ans: The public announcement is published in (a) one English and one regional language newspaper, (b) on the website of corporate debtor, if any, and (c) on the website designated by the Board.

**Q32. Is there any prescribed form for public announcement?**

Ans: Yes, Form A to the Schedule to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**Q33. Who bears the expenses of public announcement?**

Ans: The applicant initiating CIRP bears the expenses of the public announcement which may be reimbursed to the extent ratified by the committee of creditors.

**Q34. What does moratorium mean?**

Ans: As per section 14(1) of the Code, an order of moratorium passed by the Adjudicating Authority shall prohibit the following:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree, or order in any court of law, tribunal, arbitration panel or other authority.
- b) transferring, encumbering, alienating, or disposing off 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) recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

**Q35. Whether moratorium would apply to a guarantor of the corporate debtor?**

Ans: As per section 14(3) of the Code, the order of moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor. Consequently, actions or proceedings, if any, against a guarantor of the corporate debtor are not impacted by the order of moratorium.

**Q36. What is the duration of moratorium?**

Ans: The order of moratorium comes into force from the date of such order by the Adjudicating Authority till the completion of the CIRP. Further, if the Adjudicating Authority approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33, the moratorium ceases to have effect from the date of such approval of resolution plan or liquidation order, as the case may be.

**Q37. Can a license, permit, registration, quota, concession, clearance or similar grants or rights stand suspended/terminated on grounds of insolvency?**

Ans: No, such grants or rights given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, cannot be suspended or terminated on the grounds of insolvency. However, this is subject to the condition that there is no default in payment of current dues arising for their use or continuation during the moratorium period.

**Q38. Can a supplier terminate or suspend supply of essential goods and services to the corporate debtor during the moratorium period?**

Ans: No, essential goods and services specified under regulation 32 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, cannot be terminated or suspended during moratorium.

**Q39. What constitutes essential goods and services as per the Code?**

Ans: The essential goods and services specified are (a) electricity; (b) water; (c) telecommunication services; and (d) information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor. For instance, water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, but not for generation of hydroelectricity.

**Q40. Will the supply of critical goods and services be terminated, suspended or interrupted during the moratorium period?**

Ans: Where the interim resolution professional or resolution professional, as the case may be, considers that supply of certain goods or services are critical to protect and preserve the value of the corporate debtor and manage the operations of corporate debtor as a going concern, then supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium. However, this is subject to the condition that the corporate debtor makes payment for the supplies arising during the moratorium period.

**Q41. Who will manage the corporate debtor after admission of CIRP?**

Ans: Upon the appointment of the interim resolution professional, the affairs of the corporate debtor shall be managed by him. Thereafter, it shall be managed by the resolution professional upon his appointment.

**Q42. What happens to the power of the board of directors or the partners of the corporate debtor?**

Ans: The powers of the board of directors or the partners of the corporate debtor as the case may be, shall stand suspended upon the appointment of the interim resolution professional. Such powers shall be exercised by the interim resolution professional and resolution professional, as the case may be.

**Q43. To whom does an officer/manager of a corporate debtor report after commencement of CIRP?**

Ans: As per section 17(1)(c) of the Code, the officers and managers of the corporate debtor shall report to the interim resolution professional. Upon appointment of resolution professional, the resolution professional shall exercise the same powers and perform duties vested or conferred on interim resolution professional, in terms of section 23(2) of the Code.

**Q44. Whether financial institutions of corporate debtor are bound by the instructions of interim resolution professional or resolution professional?**

Ans: As per section 17(1)(d) of the Code, the financial institutions maintaining the accounts of the corporate debtor are bound to act on the instructions of the interim resolution professional in relation to such accounts and are required to furnish information relating to the corporate debtor. The same powers are also available to a resolution professional after his appointment.

**Q45. Who is required to perform the compliance obligations on behalf of the corporate debtor?**

Ans: During CIRP, the responsibility to comply with the requirements under any law on behalf of the corporate debtor lies with the interim resolution professional and resolution professional, as the case may be.

**Q46. What are the forms prescribed for submission of claims by the stakeholders?**

Ans: The Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides various forms for filing of claims by different stakeholders which are as under:

<b>S. No.</b>	<b>Form</b>	<b>Stakeholder category</b>
1.	Form B	Operational Creditor
2.	Form C	Financial Creditor
3.	Form CA	Class of Creditors
4.	Form D	Workman or employee
5.	Form E	Authorised representative of workmen/employees
6.	Form F	Other Creditors

**Q47. How is the committee of creditors constituted?**

Ans: The interim resolution professional shall receive and collate all claims submitted by creditors pursuant to the public announcement and thereafter constitute the committee of creditors comprising of financial creditors, which is not a related party.

**Q48. Whether a financial creditor being a related party of the corporate debtor, can participate or vote in the committee of creditors.**

Ans: No, a financial creditor which is a related party to the corporate debtor is not included in the committee of creditors and therefore, shall not have any voting share in the committee.

**Q49. How shall the voting share of financial creditors be determined in case of consortium finance arrangement?**

Ans: In a case, where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

**Q50. What will the committee of creditors comprise in case there is no financial creditor or they are related parties?**

Ans: Where the corporate debtor does not have financial creditors or where all financial creditors are its related parties, the committee of creditors shall comprise of operational creditors and shall be set up as per regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**Q51. Who shall be the members of the committee of creditors consisting of only operational creditors?**

Ans: As per regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee of creditors having only operational creditors shall consist of following members:

- a) eighteen largest operational creditors by value or all operational creditors, where they are less than eighteen in number;
- b) one representative elected by workmen other than workmen included under 'a'; and
- c) one representative elected by all employees other than employees included under 'a'

**Q52. How is the resolution professional appointed by the committee of creditors?**

Ans: The committee of creditors, may, in the first meeting or subsequent meeting either resolve to appoint the interim resolution professional as resolution professional or to replace the interim resolution professional by another resolution professional by at least sixty-six percent voting share.

**Q53. Who shall be the recipients of the notice of the meeting of committee of creditors?**

Ans: The interim resolution professional or resolution professional, as the case may be, shall send the notice of the meeting of committee of creditors to:

- a) all the members of the committee of creditors including authorised representatives,
- b) members of suspended board of directors or partners of corporate debtor, and
- c) operational creditors or their representatives if amount of their aggregate due is not less than 10% of the debt.

However, only the members of the committee of creditors shall have voting rights while others shall have right to participation only.

**Q54. What is the quorum for the meeting of committee of creditors?**

Ans: There should be members holding at least thirty three percent of voting rights either present in person or by video conferencing or by audio visual means, to form a quorum.

**Q55. What are the contents of the notice of meeting of committee of creditors?**

Ans: The contents of the notice are provided in regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The notice contains information relating to venue, time, and options available for participation through video conferencing or audio and visual means. It shall also contain:

- a) a list of the matters to be discussed at the meeting;
- b) a list of the issues to be voted upon at the meeting; and
- c) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting

**Q56. Does a member of committee of creditors need to be physically present in the meeting to cast vote?**

Ans: A member of the committee of creditors can participate in the meeting through electronic means also. As per regulation 25 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional is required to take the vote of the members of the committee of creditors present in the meeting. However, in respect of members who did not vote at the meeting on the matters listed for voting, the resolution professional shall also seek a vote, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least 24 hours from the circulation of the minutes.

**Q57. How is the authorised representative for the class of creditors appointed?**

Ans: The interim resolution professional shall identify three insolvency professionals, from the State or Union Territory, which has the highest number of creditors in the class as per records of

the corporate debtor, for representation of such creditors. The interim resolution professional, in public announcement (Form A), shall offer choice of three such insolvency professionals to act as the authorised representative for the class of creditors. Thereafter, the insolvency professional who is the choice of the highest number of financial creditors in the class is selected by the interim resolution professional to act as the authorised representative of the creditors in respective class and apply to the Adjudicating Authority for his appointment.

**Q58. What are the rights and duties of the authorised representative of financial creditors?**

Ans: The rights and duties of the authorised representative are as provided under section 25A of the Code. It includes the right to participate and vote in the meetings of committee of creditors. The authorised representative circulates the agenda of the meeting to the creditors in class and may seek their preliminary views to enable him to effectively participate in the meeting. Thereafter, the authorised representative circulates the minutes of the meeting and seeks voting instructions from such creditors to enable him to vote accordingly.

**Q59. When is the first meeting of committee of creditors held?**

Ans: The first meeting of committee of creditors is to be held within 7 days of filing of report of its constitution to the Adjudicating Authority. It is held within 30 days from insolvency commencement date.

**Q60. What happens to the CIRP where the interim resolution professional is not appointed as resolution professional by committee of creditors or Adjudicating Authority?**

Ans: The interim resolution professional continues to perform the functions of the resolution professional from the 40<sup>th</sup> day of the insolvency commencement date till a resolution professional is appointed.

**Q61. Whether interim resolution professional or resolution professional can unilaterally undertake significant actions during CIRP?**

Ans: No. Section 28(1)(a) to (m) of the Code, elaborate the list of actions that require prior approval of the committee of creditors by a vote of sixty-six per cent of the voting shares. These include matters like interim finance, creation of security interest over the assets of corporate debtor, change of capital structure or recording any change in ownership interest of corporate debtor, undertaking related party transactions, making change in management, etc.

**Q62. What happens when resolution professional acts without approval of committee of creditors for actions listed under Section 28(1)?**

Ans: Such action shall be void. The committee of creditors may report the actions of the resolution professional to the Board for taking necessary actions against him under the relevant provisions of the Code.

**Q63. When can a resolution professional be replaced?**

Ans: Where the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may pass a resolution to that effect by a vote of sixty-six per cent of voting shares. The committee of creditors may thereafter apply to the Adjudicating Authority for the appointment of proposed resolution professional along with the written consent from such person in the specified form.

**Q64. Who will appoint the valuers and for what purpose?**

Ans: The resolution professional appoints two registered valuers within 7 days of his appointment but not later than 47<sup>th</sup> day from the insolvency commencement date, to determine the fair value and liquidation value of the corporate debtor.

**Q65. What is fair value?**

Ans: As per regulation 2(hb) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, fair value means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

**Q66. What is liquidation value?**

Ans: As per regulation 2(k) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, liquidation value means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

**Q67. Can fair value or liquidation be shared with members of committee of creditors or the prospective resolution applicant?**

Ans: The fair value and liquidation value may be shared with the members of the committee of creditors only after the receipt of resolution plan in accordance with the Code and Regulations, and receiving the confidentiality undertaking from each such member. However, fair and liquidation value is not shared with the prospective resolution applicant.

**Q68. What is Information Memorandum? Who prepares it? When is it prepared?**

Ans: The information memorandum means a memorandum prepared by the resolution professional under section 29(1) containing relevant information of the corporate debtor for formulating a resolution plan. It shall contain those details specified in regulation 36(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The resolution professional is required to submit the information memorandum in electronic

form to each member of the committee of creditors within 2 weeks of his appointment, but not later than 54<sup>th</sup> day from the insolvency commencement date, whichever is earlier. The sharing of information memorandum by the resolution professional to the members of the committee of creditors or to a resolution applicant is subject to receiving a confidentiality undertaking, in terms of regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**Q69. When does the Resolution Professional publish invitation for the Expression of Interest?**

Ans: In terms of section 25(2)(h) of the Code, the resolution professional invites prospective resolution applicants who fulfill the criteria laid down with the approval of the committee of creditors, to submit a resolution plan or plans. For this purpose, the resolution professional publishes brief particulars of the invitation for expression of interest in Form G of the Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Form G states where detailed invitation for expression of interest, containing the eligibility criteria for prospective resolution applicants, can be downloaded or obtained and the last date of submission by eligible prospective resolution applicant.

**Q70. Is there any provisional list of eligible prospective resolution applicants issued by the resolution professional?**

Ans: Yes, the resolution professional prepares and issues a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest

**Q71. Can objection be raised against the provisional list of eligible prospective resolution applicants issued by resolution professional?**

Ans: Yes, such objection may be made with supporting documents within five days from the date of issue of the provisional list.

**Q72. When does the resolution professional issue Request for resolution plan? To whom it is issued and what are its contents?**

Ans: The resolution professional issues the request for resolution plan, along with information memorandum and evaluation matrix to every prospective resolution applicant, appearing in the provisional list and to those who have contested the decision of resolution professional for his non-inclusion in that list. The request for resolution plan is issued within five days of the date of issue of the provisional list. It shall detail each step of the process, the manner and purpose of interaction between the resolution professional and prospective resolution applicant and the timelines for each activity.

**Q73. When is the final list of eligible prospective resolution applicants issued by the resolution professional?**

Ans: The resolution professional issues the final list of prospective resolution applicants to the committee of creditors, within ten days of the last date for receipt of objections.

**Q74. Does the request for resolution plans submission also require submission of any non-refundable deposit?**

Ans: No, the request for resolution plan does not require submission of any non-refundable deposit.

**Q75. What is Resolution Plan?**

Ans: As section 5(26) of the Code, 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. It may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

**Q76. Who prepares the Resolution Plan?**

Ans: A resolution applicant prepares the Resolution Plan on the basis of the information memorandum given by the resolution professional.

**Q77. Is there any list of persons who are not eligible to act as resolution applicants?**

Ans: Yes, section 29A of the Code lists out the kind of persons who are not eligible to submit a resolution plan, either individually or acting jointly or in concert. The ineligibilities include undischarged insolvent, willful defaulter as per guidelines of RBI, classification of account as Non-Performing Asset for more than one year, conviction for certain offences, disqualification to act as director of company, prohibition from trading in securities market, invoked guarantee remaining unpaid, having connected person with similar ineligibilities etc.

**Q78. How can a resolution applicant submit his resolution plan?**

Ans: A resolution applicant may submit a resolution plan to the resolution professional, prepared on the basis of the information memorandum, along with an affidavit stating that he is eligible under section 29A.

**Q79. Within what time resolution applicants are to submit their resolution plans?**

Ans: The prospective resolution applicants shall be provided a minimum of thirty days to submit the resolution plan(s).

**Q80. Is there any requirement for furnishing performance security by the resolution applicant?**

Ans: Yes, the request for resolution plan requires the resolution applicant to provide a performance security of such nature, value, duration, and source within the time specified. Further, such performance security is liable to be forfeited in case of any failure or contribution in failure by the resolution applicant in implementation of resolution plan approved by the Adjudicating Authority.

**Q81: Who shall examine that the resolution plan meets the requirements laid down under Section 30(2)?**

Ans: The resolution professional.

**Q82: What is the process of approval of resolution plan?**

Ans: The committee of creditors evaluates all compliant resolution plans as per evaluation matrix and thereafter vote on all such plans simultaneously. The resolution plan needs an approval of at least sixty-six percent of voting share of the committee of creditors. Further, the resolution plan, which receives the highest votes, is considered as approved. After the resolution plan is approved by the committee of creditors, the resolution professional submits the resolution plan to the Adjudicating Authority. Thereafter, the Adjudicating Authority accords final approval to the resolution plan under section 31(1) of the Code.

**Q83: Can a resolution applicant attend meeting of the committee of creditors?**

Ans: Yes. The resolution applicant may attend the meeting of the committee of creditors. However, the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

**Q84. After filing of claim, when can one expect the payment to be credited or made?**

Ans: The payments will be made as per the resolution plan approved by the committee of creditors of the corporate debtor, and further by the Adjudicating Authority, including any modifications thereof. All payments shall be dealt with in accordance with the provisions of the Code.

**Q85. What is the manner of payment to operational creditors and dissenting financial creditors under a resolution plan?**

Ans: The payment to operational creditors and to financial creditors who do not vote in favour of the resolution plan are required to be provided in the resolution plan in the manner stated in section 30(2)(b) of the Code. Further, regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for the mandatory contents of the resolution plan, which *inter alia* include that amount payable to the operational creditors and to financial creditors who did not vote in favour of the resolution plan shall be paid in priority to financial creditors who voted in favor of resolution plan.

**Q86. What happens when the resolution plan is not filed within 180 days of the commencement date or such other extended period?**

Ans: The Adjudicating Authority may pass orders for the liquidation of the corporate debtor if the resolution plan is not filed within 180 days of insolvency commencement date or such other extended period.

**Q87. Does committee of creditors make any assessment of corporate debtor to be sold as a going concern?**

Ans: Under regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, while approving the resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee of creditors may recommend that the liquidator may first explore sale of the corporate debtor as a going concern or sale of business of the corporate debtor as a going concern,. The committee of creditors may also identify and group the assets/liabilities, which according to commercial considerations may be sold as going concern.

**Q88. Who is responsible for determining and filing applications in relation to avoidance transactions of a corporate debtor against which CIRP has been admitted?**

Ans: As per section 25(2)(j) of the Code, it is the duty of the resolution professional to file application for avoidance of transactions under sections 43 (preferential transactions), 45 (undervalued transactions), 50 (extortionate transactions) or 66 (fraudulent transactions) of the Code. In terms of regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the resolution professional is required to form an opinion on such transactions within 75 days, to make determination within 115 days and file application before Adjudicating Authority within 135 days from insolvency commencement date.

**Q89. What is the look back period for determination of preferential and other transactions under the Code?**

Ans: The look back period for preferential or undervalued transactions is one year preceding the insolvency commencement date in case of non-related party, and two years preceding the insolvency commencement date in case of related party. For extortionate transactions, the look back period is two years preceding insolvency commencement date. There is no specific look back period for fraudulent transactions.

**Q90. Which authority acts as Appellate Authority for CIRP and liquidation under the Code?**

Ans: National Company Law Appellate Tribunal.

**Q91. What are the timelines for filling an appeal before the National Company Law Appellate Tribunal under the Code?**

Ans: Every appeal before National Company Law Appellate Tribunal is to be filed within a period of 30 days from the date of order by National Company Law Tribunal. However, National Company Law Appellate Tribunal may allow an appeal after the expiry of said period on genuine reasons, but such period should not exceed 15 days.

**Q92. What are the grounds for appeal against an order approving a resolution plan under section 31 of the Code?**

Ans: The grounds on which an order approving resolution plan can be challenged under the Code are as laid down in section 61(3)(i) to (v). It, *inter alia*, includes grounds such as approved resolution plan in contravention of provision of any law, material irregularity in exercise of powers by resolution professional, debts owed to operational creditors not provided in resolution plan in manner specified insolvency resolution process costs not provided for repayment in priority to other debts etc.

**Q93. What are the grounds for appeal against liquidation order passed under section 33 of the Code?**

Ans: An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

**Q94. Can an appeal be made against the order of National Company Law Appellate Tribunal?**

Ans: Any person aggrieved by the order of National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law.

**Q95. What are the timelines for filling an appeal before Supreme Court of India?**

Ans: Every appeal before Supreme Court is to be filed within a period of 45 days from the date of order by National Company Law Appellate Tribunal. However, Supreme Court may allow an appeal after the expiry of said period on genuine reasons but such period should not exceed 15 days.

**Q96. Whether any civil court or authority has jurisdiction to entertain any suit or proceeding under the Code?**

Ans: No

**Q97. What is procedure and timelines for filling online forms by the Insolvency Professional on the electronic platform of the Board?**

Ans: Please refer regulation 40B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that prescribes timeline with in which an insolvency professional, shall file the Forms, along with the enclosures thereto, on the electronic platform of the Board.

**Q98. Who can go for Fast track corporation insolvency resolution process (Fast Track CIRP)?**

Ans: Chapter IV Part II of the Code provides a fast track process for insolvency resolution, which is applicable in respect of the following category of corporate debtors laid down in section 55(2) of the Code:

- 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.

**Q99. What are the categories of corporate debtor, notified by the Central Government for the purpose of Fast Track CIRP?**

Ans: The Central Government has notified the following categories of corporate debtors:

- a) a small company as defined under 2(85) of Companies Act, 2013 (18 of 2013); or
- b) a startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), dated the 23rd May, 2017; or
- c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding ₹ 1 crore.

**Q100. What are the timelines for completion of Fast Track CIRP?**

Ans: The fast track process is required to be conducted within a period of 90 days with a provision of one-time extension of up to 45 days.

**Q101. Whether there is any regulation governing Fast Track CIRP?**

Ans: Yes. The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

*Disclaimer: The FAQs have been prepared solely for the purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or seek professional advice, if it intends to take any action or decision using the material covered here.*