



भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

Insolvency Resolution Process and Bankruptcy Process for Personal Guarantors to Corporate Debtors

>> Information Brochure <<



Insolvency and Bankruptcy Board of India

Individual Insolvency Division

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About the Code

The Insolvency and Bankruptcy Code, 2016 (Code) provides a time-bound, market mechanism for reorganisation and insolvency resolution of persons (companies, limited liability partnerships, partnership and proprietorship firms and individuals) in distress. The objective of such reorganisation and resolution is maximisation of value of assets of the persons to promote entrepreneurship, enhance availability of credit, and balance of the interests of all stakeholders.

The resolution process begins with admission of an application filed by an entitled stakeholder in the event of a threshold amount of default. The Code envisages a calm period when the stakeholders endeavour to resolve the distress without fear of recovery or enforcement actions. In case of corporate insolvency, the creditors assess the viability of the corporate debtor (CD) and endeavour to rescue it through a resolution plan. Corporate insolvency resolution process (CIRP) ends up either with an approval of a resolution plan rehabilitating the CD or an order for commencement of its liquidation.

In case of individual insolvency, the debtors and creditors negotiate a repayment plan, which is implemented under the supervision of a resolution professional. A bankruptcy process, entailing sale of the assets of the debtor, arises on failure of either the insolvency resolution process or implementation of repayment plan. The Code envisages a Fresh Start Process to discharge individuals with extremely limited means of their debt, where the chances of recovery is very less compared to the efforts involved.

In sync with its objectives, the Code provides for clawing back the value lost in avoidance transactions. In liquidation waterfall, Government stands at the bottom of the list, only above the equity. In

case of bankruptcy, the Government stands at the bottom of the list, above unsecured creditors. The Code has overriding effect over other laws in case of any conflict or inconsistencies.

The Code provides an ecosystem comprising of four pillars to help the stakeholders to resolve their stress. First of these is a class of regulated persons, insolvency professionals (IPs). They play a key role in the efficient working of the insolvency, liquidation, and bankruptcy processes. The second pillar is a new industry of the Information Utilities (IUs). They store financial information about debtors in electronic database and eliminate delays and disputes during resolution process. The third is the Adjudicating Authority (AA), namely, the National Company Law Tribunal (NCLT) in case of corporate insolvency and the Debt Recovery Tribunal (DRT) in case of individual insolvency.

The fourth pillar is the regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). Set up as a unique regulator, it regulates a profession as well as processes. It has regulatory oversight over IPs, IPAs, IPEs and IUs. It writes and enforces rules for processes, namely, CIRP, corporate liquidation, fresh start, individual insolvency resolution and individual bankruptcy under the Code. It is also the 'Authority' under the Valuers Rules for regulation and development of the valuation profession.

Individual Insolvency

The Code makes several improvements over the existing legislation on individual insolvency and adopts a more benign approach. The focus is on rehabilitation of the debtor as opposed adjudging him as insolvent. The Code provides an objective trigger for initiation of insolvency resolution process instead of relying on the commission of an 'act of

insolvency'. It also mandates a moratorium which provides a breathing space for the debtor and creditors to negotiate a repayment plan. Further, it enables automatic discharge instead of requiring that discharge be granted by the AA on the satisfaction that the insolvent has conducted himself well in the run up to and during insolvency.

Part III of the Code makes provisions for insolvency resolution and bankruptcy of individuals and partnership firms. For this purpose, it classifies individuals into three categories, namely, (i) personal guarantors (PGs) to corporate debtors (CDs), (ii) partnership firms and proprietorship firms, and (iii) other individuals. This enables implementation of individual insolvency in a phased manner considering the wider impact of these provisions.

As a first step in implementing Part III of the Code, the Government has notified the commencement of provisions relating to insolvency and bankruptcy processes for PGs of CDs, with effect from 1st December, 2019. It has notified:

- (i) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**IIRP Rules**); and
- (ii) the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**Bankruptcy Rules**).

The IBBI has notified:

- (i) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to the Corporate Debtors) Regulations, 2019 (**IIRP Regulations**); and

(ii) Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to the Corporate Debtors) Regulations, 2019 (**Bankruptcy Regulations**).

The Code read with the aforesaid rules and regulation together provide for the procedure for insolvency resolution and bankruptcy process for PGs to the CDs.

Insolvency Resolution Process of Personal Guarantor

Filing of Application

- ⇒ An application for insolvency resolution process may be filed before the AA on a default of Rs. 1000.
- ⇒ A PG may file an application himself or through a Resolution Professional (RP) (in Form A of IIRP Rules) in respect of default of debt, other than excluded debt. (**S.94**)
- ⇒ Where a creditor wishes to file an application, it shall issue a notice (in Form B of IIRP Rules) calling upon the PG to make the payment. Only if the PG fails to make the payment within 14 days of receipt of such notice, the creditor may initiate insolvency proceeding against him.
- ⇒ A creditor may file an application either himself or jointly with other creditors or through an RP (in Form C of the IIRP Rules), in respect of default of debt, other than excluded debt. (**S.95**)
- ⇒ The application shall be accompanied with a fee of Rs.2000. (**Rule 6 (1) or 7(2) of IIRP Rules**)

Interim Moratorium (**S.96**)

- ⇒ Interim moratorium commences on the date of filing of an application for insolvency resolution, in relation to all the debts and ceases to have effect on the date of admission of the application.

- ⇒ During this period, every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed and the creditors of the PG shall not initiate any legal action or proceedings in respect of any such debt.

Appointment of Resolution Professional (**S.97**)

- ⇒ If the application is filed through a RP, the AA checks the database of IBBI for any disciplinary proceedings against the RP. If there are no disciplinary proceedings, the AA appoints the RP.
- ⇒ If the application is filed by the applicant himself, or the AA finds disciplinary proceedings against the RP proposed by the applicant, the AA appoints an RP from the panel of IPs shared by the IBBI.
- ⇒ Both PG and creditor can apply to AA for replacement of RP. AA may refer to the panel of IPs shared by IBBI and appoint a new RP accordingly. (**S.98**)

Report by the Resolution Professional (**S.99**)

On his appointment, the RP examines the application with respect to the eligibility of the PG or creditor, as the case may be, for initiation of insolvency resolution process, qualifying debt and other requirements as specified in section 94 or 95 of the Code and submits a report recommending acceptance or rejection of the application, within ten days of his appointment.

Admission or Rejection of Application (**S.100**)

- ⇒ The AA passes an order either admitting or rejecting the application, within fourteen days of the receipt of report of the RP.
- ⇒ Where the AA rejects the application on the basis of report submitted by the RP or that the application was made with the intention to defraud the creditors or the RP, the creditors shall be entitled to file an application for bankruptcy.

Moratorium (S.101)

- ⇒ On admission of application, moratorium commences in relation to all the debts.
- ⇒ During this period, every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed. Further, the creditors of the PG are barred from initiating any legal action or proceedings in respect of any such debt and the PG is barred from transferring, alienating, encumbering, or disposing of any of his assets or legal rights or beneficial interests therein.
- ⇒ The moratorium lasts till the date the AA passes an order approving or rejecting the repayment plan, and in any case before the expiry of 180 days from the date of admission.

Issuance of Public Notice and Claim of Creditors (S.102)

The AA issues a public notice, within seven days of the date of admission of application, inviting claims from the creditors of the PG, within twenty-one days of the notice.

Registration of Claims by the Creditors (S.103)

- ⇒ The creditors register their claims with the RP along with proof, on or before the last date mentioned in the public notice. (*Reg. 7(1) of IIRP Regulations*)
- ⇒ The creditors may send details by way of electronic communication or through courier, speed post or registered letter. The cost relating to submission of claim, including proof, shall be borne by the creditors. (*Reg. 7(2) of IIRP Regulation*)

Preparation of List of Creditors (S.104)

- ⇒ The RP verifies each claim as soon as it is received and prepares a list of creditors, on the basis of the information provided in the application filed by the debtor / creditor, and the claims received, within thirty days from the date of public notice. (*Reg. 7(5) of IIRP*

Regulations)

- ⇒ The list of creditors contains the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims. (*Reg. 9(1) of IIRP Regulations*)

Repayment Plan (S.105)

- ⇒ The PG prepares a Repayment Plan, in consultation with the RP, containing a proposal to the creditors for restructuring of his debts or affairs and its implementation schedule as well as the source of funds. (*Reg. 17 of IIRP Regulations*)
- ⇒ The plan may provide for transfer or sale of all or part of the assets of the PG along with the mode and manner of such sale, satisfaction or modification of any security interest, reduction in amount payable to creditors and modification as to the terms of repayment, etc.
- ⇒ The plan provides for a minimum budget required for the PG to cover his reasonable expenses and also of his immediate family members to the extent they are dependent on him, provided that at the very least, 10 per cent of the realizable income of the PG is used for repayment of his debts.
- ⇒ The RP submits the repayment plan along with his report on such plan to the AA within twenty-one days from the last date of submission of claims. (*S.106*)
- ⇒ The report may provide for necessity of summoning a meeting of creditors to consider repayment plan, and if necessary, the date, place, and time of the meeting.

Meeting of Creditors

- ⇒ Where a meeting is necessary, as per the report of the RP, he summons the first meeting of the creditors to approve the repayment plan by issuing a notice calling the meeting of creditors at least fourteen days before the date fixed for such meeting (*S.107*)

(1)). He shall convene any other meeting of creditors, by giving such notice to the other participants as decided by the creditors, which shall not less than forty-eight hours. Further, the RP shall convene a meeting of creditors on a request by creditors having thirty-three percent of voting share of creditors. (*Reg. 11(4) of the IIRP Regulations*)

- ⇒ In the meeting of creditors, creditors may decide to approve, modify or reject the repayment plan. (*S.108*)
- ⇒ The voting share of each creditor is in proportion to the debt owed to such creditor.
- ⇒ The repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in the meeting. (*S.111*)
- ⇒ Any decision taken by the creditors requires approval of more than 50 percent of voting share of the creditors who vote, unless otherwise specified in the Code. (*Reg. 11(6) of IIRP Regulations*)

Approval or Rejection of the Repayment Plan

- ⇒ The RP prepares a report of the meeting of creditors on the repayment plan. (*S.112(1)*)
- ⇒ He provides a copy of the report of the meeting of the creditors to the PG, creditors, and the AA. (*S.113*)
- ⇒ The AA, by an order, approves or rejects the repayment plan based on the report submitted by the RP.
- ⇒ The order of the AA may provide for directions for implementation of repayment plan.
- ⇒ Where the AA is of the opinion that the repayment plan requires modification, it may direct the RP to re-convene a meeting of the creditors for reconsidering the same. (*S.114*)

Effect of Approval/Non-Approval of the Repayment Plan

- ⇒ The repayment plan after its approval shall be binding on the

creditors mentioned in the plan and the PG. (*S.115 (1)*)

- ⇒ Where the AA rejects the repayment plan, the debtor and the creditors shall be entitled to file an application for bankruptcy. (*S.115 (2)*)
- ⇒ The RP supervises its implementation of the repayment plan. (*S.116 (1)*)
- ⇒ He may approach AA for any directions, if necessary, in relation to any matter arising under the plan. (*S.116 (2)*)

Completion of Repayment Plan (*S.117*)

Within 14 days of completion of repayment plan, the RP shall inform the AA and the persons who are bound by the repayment plan that it has been fully implemented. The RP shall also share the report summarising all receipts and payments made in pursuance of the plan.

Premature End to the Repayment Plan (*S.118*)

- ⇒ The repayment plan shall be deemed to have come to an end prematurely if it has not been fully implemented in respect of all persons bound by it, within the period mentioned in it. (*S.118 (1)*)
- ⇒ In such cases, the RP is required to submit a report stating the receipts and repayments made, reasons for premature end and details of creditors whose claims have not been fully satisfied. (*S.118 (2)*)
- ⇒ Based on such report, the AA shall pass an order that the repayment plan has not been completely implemented. (*S.118 (3)*)
- ⇒ The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to apply for a bankruptcy. (*S.118 (4)*)

Discharge Order (*S.119*)

- ⇒ The RP shall apply to the AA for a discharge order in relation to the debts mentioned in the repayment plan and the AA may pass such

- discharge order.
- ⇒ The repayment plan may provide for an early discharge or discharge on complete implementation of the repayment plan. (*S.119(2)*)
 - ⇒ The discharge order shall be forwarded to the IBBI, for the purpose of recording entries in the register.

Bankruptcy Process of Personal Guarantor

Application for Initiation of Bankruptcy Process (*S. 121*)

An application for initiation of the bankruptcy process may be filed, along with a fee of Rs. 2000 (*Rule 6(1) & 7(1) of Bankruptcy Rules*), either by the PG himself or by creditor individually or jointly, within 3 months from the date of order passed by the AA:

- ⇒ rejecting an application for initiation of insolvency process against the PG;
- ⇒ rejecting the repayment plan; or
- ⇒ recording that the repayment plan has not been completely implemented.

Interim Moratorium

- ⇒ Interim moratorium commences on the date of filing of the application for bankruptcy process, on all actions against the properties of the PG in respect of his debts and ceases to have effect on the bankruptcy commencement date (BCD). (*S. 124 (1)*)
- ⇒ During this period, every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed and the creditors of the PG are barred from initiating any legal action or proceedings in respect of any debt.

Appointment of Bankruptcy Trustee (*S. 125*)

- ⇒ Where the applicant has proposed the name of an IP to act as a

bankruptcy trustee (BT), the AA checks the database of IBBI for any disciplinary proceedings against the IP. If there are no disciplinary proceedings, the AA appoints the IP as BT.

- ⇒ Where no BT has been proposed, or if the AA finds disciplinary proceedings against the IP proposed by the applicant, the AA appoints the BT from the panel of IPs shared by the IBBI.
- ⇒ The committee of creditors can apply to AA for replacement of the BT. The AA may refer to the panel of IPs shared by IBBI and appoint a new BT accordingly. (*S. 145*).
- ⇒ If the BT resigns (*S. 146*) or there is a vacancy in the office of the BT for any other reason (*S. 147*), the AA may refer the panel of IPs shared by IBBI and appoint a new BT accordingly.

Bankruptcy Order

- ⇒ The AA pass a bankruptcy order admitting the application (*S. 126*). On issue of the order, the PG is considered bankrupt.
- ⇒ The order continues to have effect till the PG / bankrupt is discharged by way of a discharge order of the AA. (*S. 138*)
- ⇒ On passing of the bankruptcy order, the estate of the PG vests in the BT. A creditor of the PG indebted in respect of any debt claimed as a bankruptcy debt is barred from initiating any action against the property of the PG in respect of such debt; or commence any suit or other legal proceedings except with the leave of the AA. (*S.128*)
- ⇒ Where bankruptcy order is passed on the application for bankruptcy by a creditor, the PG shall submit his statement of financial position to the BT within seven days from the BCD. (*S.129*)

Notice to Creditors and Submission of Claim by Creditors

- ⇒ The AA may issue or direct the BT (*Rule 9 of Bankruptcy Rules*) to issue notices to the creditors of the PG, mentioned either in the statement of affairs submitted by the PG or as given in the

application submitted by the PG. (*S. 130*)

- ⇒ The AA also issues a public notice inviting claims from creditors mentioning *inter-alia* the last date for submission of claims. (*S. 130(2)*)
- ⇒ The creditors shall register claims with the proof (*Rule 12 (1) of Bankruptcy Rules*) with the BT within seven days of the publication of the public notice. (*S. 131*)
- ⇒ Future claims, i.e. claims, which are not due and payable on the BCD, may also be submitted to the BT. In the case of rent, interest and such other payments of a periodical nature, a creditor may claim only for the amounts due and unpaid up to the BCD. (*Reg. 14 of Bankruptcy Regulations*)
- ⇒ Within fourteen days from the BCD, the BT prepare a list of creditors of the PG on the basis of the information disclosed by the PG in the application for bankruptcy, the statement of affairs filed by the PG, and claims received by the BT (*S. 132*).

Meeting of the Creditors

- ⇒ The BT shall, within 21 days from the BCD, issue a notice for calling a meeting of the creditors, to every creditor mentioned in the list of creditors. (*S. 133 (1)*)
- ⇒ During the meeting, the committee of creditors shall be established and any other business the BT finds fit shall also be conducted. (*S.134(3)*)
- ⇒ A BT may convene a meeting of the committee as and when he considers necessary and shall also convene a meeting on a request by creditors having not less than 33 percent of voting share. (*Reg. 21 of Bankruptcy Regulations*)

Disqualifications of Bankrupt

- ⇒ From the BCD, the bankrupt shall be disqualified to be appointed as trustee in respect of any trust, estate or settlement, appointed/

act as public servant, elected to any public office where appointment is by election, elect/sit/vote as a member of any local authority. (*S. 140(2)*).

- ⇒ The disqualifications shall cease to have effect if the bankruptcy order against the bankrupt is modified or recalled, or, when he is discharged. (*S.140(3)*).

Restrictions on the Bankrupt (*S. 141*)

From the BCD till the passing of the discharge order, a bankrupt shall:

- ⇒ not act as a director of any company, or directly or indirectly;
- ⇒ not create any charge on her estate or take any further debt, without the consent of the BT;
- ⇒ prior to entering any financial or commercial transaction, either individually or jointly, inform his business partners and all the related parties, involved in such transaction that he is undergoing a bankruptcy process;
- ⇒ not maintain any legal action or proceedings in relation to the bankruptcy debts without the approval of the AA;
- ⇒ not travel overseas without the permission of the AA;
- ⇒ neither be appointed nor act as a trustee or representative in respect of any trust, estate or settlement, a public servant; and
- ⇒ not be elected to any public office where the appointment to such office is by election.
- ⇒ not be elected or sit or vote as a member of any local authority.

Modification or Recall of Bankruptcy Order (*S. 142*)

The AA may, on an application or *suo motu*, modify or recall a bankruptcy order, if:

- ⇒ there is an error apparent on the face of an order; or
- ⇒ both the bankruptcy debts and expenses of the bankruptcy either have been paid or secured.

Functions and Rights of the Bankruptcy Trustee

- ⇒ The BT is responsible for investigating the affairs, realizing the estate, and distributing the estate of the bankrupt among the creditors. (*S. 149*)
- ⇒ The BT holds property of every description, makes contracts, sues and is sued, enters into engagements in respect of the estate of the bankrupt, employs persons to assist him, executes any power of attorney, deed or other instrument and does any other act which is necessary or expedient for the purposes of or in connection with the exercise of his rights. (*S. 151*)

Payment of Debts

- ⇒ *Interim Dividend*: Whenever the BT has sufficient funds in his hand, he may declare and distribute interim dividend among the creditors. (*S. 174 (1)*)
- ⇒ *Distribution of Property*: With the approval of the committee of creditors, the BT may distribute the property in its existing form amongst the creditors, according to its estimated value. (*S. 175*)
- ⇒ *Final Dividend*: After realisation of the entire estate of the bankrupt, the BT shall give notice for declaration of final dividend or that no dividend shall be declared. If any surplus remains after settlement of claims of all creditors and the payment of expenses of the bankruptcy process, the bankrupt will be entitled to the same. (*S. 176*)

Priority of payment of Debts (*S. 178*)

The debts of the bankrupt person shall be paid to each class of creditors in the following priority provided that within the same class, each creditor shall be entitled to the same share:

- ⇒ Firstly, the costs and expenses incurred by the trustee for the bankruptcy process in full.
- ⇒ Secondly, the workmen's dues for the period of 24 months preceding the BCD and debts owed to secured creditors.

- ⇒ Thirdly, wages and any unpaid dues owed to employees, other than workmen, of the bankrupt for the period of twelve months preceding the BCD.
- ⇒ Fourthly, any amount due to the Central Government and the State Government, including the amount to be received on account of Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the BCD.
- ⇒ All other debts and dues owed by the bankrupt, including unsecured debts.
- ⇒ Any surplus remaining after the payment of the aforesaid debts shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the BCD. Such interest payments shall rank equally irrespective of the nature of the debt.

Discharge of Bankrupt

- ⇒ On the completion of the administration and distribution of the estate of the bankrupt, the BT shall convene a meeting of the committee of creditors and submit a report of the administration of the estate of the bankrupt for approval. (*S. 137 (1)*)
- ⇒ The BT shall apply to the AA for discharge of the bankrupt on the expiry of one year from the BCD or within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt, where such approval is obtained prior to elapse of one year from the BCD and the AA shall pass the order of discharge. (*S. 138*)

Release of the Bankruptcy Trustee (*S. 148*)

After the completion of the administration of the bankruptcy process, the committee of creditors shall approve the release of the BT of his duties from the date of such approval.

Some Important Definitions

Adjudicating Authority

- ⇒ For insolvency resolution and bankruptcy process of individuals, the Debt Recovery Tribunal (DRT) has been designated as the AA (*S. 179 (1)*) and Appellate Authority is the Debt Recovery Appellate Tribunal (DRAT) (*S. 181 (1)*).
- ⇒ Where an application for corporate insolvency resolution process or liquidation proceeding of a CD is pending before a National Company Law Tribunal (NCLT), the application relating to insolvency resolution or bankruptcy process of a PG shall be filed before the same NCLT. (*S. 60(2)*)
- ⇒ The Code provides for transfer of any insolvency resolution or bankruptcy process of a PG of the CD pending in any court or tribunal to the relevant NCLT where the application for insolvency or liquidation of the CD is being processed (*S. 60(3)*).

Bankruptcy Debt (*S. 79 (5)*)

Bankruptcy Debt is any debt owed by the PG as on the bankruptcy commencement date (BCD). It also includes the debt for which he may become liable after BCD but before his discharge by reason of any transaction entered before the BCD.

Bankruptcy Commencement Date (*S. 79 (6)*)

The date on which a bankruptcy order is passed by the AA.

Excluded Debt (*S. 79 (15)*)

Excluded debts include court or tribunal fines, child support payments, student loans, money owed under a criminal charge. An application cannot be made for these kinds of debts.

Excluded Assets (*S. 79 (14)*)

The Code specifies following assets to be excluded from the bankruptcy estate to provide the necessity for the livelihood of the PG

after his discharge from the bankruptcy:

- ⇒ unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation;
- ⇒ unencumbered furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;
- ⇒ any unencumbered personal ornaments of up to one lakh rupees, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;
- ⇒ any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family; and
- ⇒ an unencumbered single dwelling unit owned by the debtor of value ten lakh rupees in case the dwelling unit is in rural area and twenty lakh rupees in case the dwelling unit is in urban area.

Personal Guarantor (*Rule 3 (e) of IIRP Rules*)

A PG is a debtor who is a PG to a CD and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part.

Qualifying debt (*S. 79 (19)*)

The qualifying debt means the amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time. However, this shall not include any excluded debt and debt to the extent it is secured.

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