

Handbook on Resolution Plan under The Insolvency and Bankruptcy Code, 2016



Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The Insolvency and Bankruptcy Code, 2016 (IBC) has been introduced with the overall objective of promoting entrepreneurship and balance the interest of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. When we look at the objectives of the Code; the distinguishing feature that comes before us is the Resolution Plan which one can say emphatically to be the key success of IBC era.

IBC provides detailed process for submission of Resolution Plan and the approval for the same by the Adjudicating Authority. It clearly specifies the steps for invitation for expression of interest by Resolution Professional from interested and prospective resolution applicants to submit resolution plans. Further, it also specifies the mandatory contents of the Resolution Plan.

I appreciate the Committee on Insolvency & Bankruptcy Code of ICAI in taking the initiative of bringing out the instant publication - **Handbook on Resolution Plan under The Insolvency and Bankruptcy Code, 2016** to help the professionals in understanding the finer aspects of a Resolution Plan in the insolvency resolution.

I extend my sincere appreciation to the entire Committee functionaries more specifically CA. Durgesh Kumar Kabra, Chairman, Committee on Insolvency & Bankruptcy Code and CA. Prakash Sharma, Vice- Chairman, Committee on Insolvency & Bankruptcy Code to bring out this very useful publication.

I am sure that this publication would be immensely helpful to the members and other stakeholders.

CA. Nihar N. Jambusaria
President ICAI

Date: 27th June, 2021

Place: New Delhi

Preface

The defining part in the entire framework of insolvency resolution under The Insolvency and Bankruptcy Code, 2016 is the approval of the Resolution Plan which is binding on the corporate debtor and its employees, members, creditors and other stakeholders. Timely resolution helps to promote entrepreneurship and availability of credit and also the time-bound process paves way to Ease of Doing Business in an economy like ours.

As provided in the Code, Resolution Plan is meant for insolvency resolution of the Corporate Debtor as a going concern. It is fundamentally held that Liquidation should be the last resort. The Code is envisaged for resolution of corporate debtor and not for recovery of debt by creditors. Considering the significance of a Resolution Plan in the process of insolvency resolution, the Committee on Insolvency & Bankruptcy Code of ICAI has brought out this publication -**Handbook on Resolution Plan under The Insolvency and Bankruptcy Code, 2016** so as to familiarise with the various provisions as provided under the Code.

The publication covers the various facets related to Resolution plan, its implications, the role of Resolution Professional and the Frequently Asked Questions on the same.

We take this opportunity to thank the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr.) Debashis Mitra for their continued support and encouragement in bringing out the publication.

We would like to thank all the Committee Members for their help and guidance in bringing out this publication. We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Pravin R Navandar, CA. Rekha Shah and CA. Rajendra K Bhuta who after multiple engagement sessions prepared the Draft of the publication under the Convenorship and guidance of Chairman of the Committee.

The technical contribution by team of ICAI Officers namely Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI, assisted by the Committee

Secretariat comprising of CA. Himanshu Gulati and CA. Abhishek Tarun for providing administrative support in bringing out this publication is also acknowledged.

We sincerely believe that the members of the profession, industries and other stakeholders will find the publication immensely helpful.

CA. Durgesh Kumar Kabra

Chairman

Committee on Insolvency &

Bankruptcy Code, ICAI

CA. Prakash Sharma

Vice- Chairman

Committee on Insolvency &

Bankruptcy Code, ICAI

Date: 23rd June, 2021

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Chapter 1

Introduction

The Corporate Finance is based on funding from equity and debt. As long as debt obligations are met, equity owners have complete control, and creditors have no say in how the business is run. When default takes place, control is supposed to transfer to the creditors, equity owners should have no say. But in India, for many decades, creditors had low power when faced with default. Promoters stayed in control of the company even after default. Under these conditions, the recovery rates obtained in India remained very low.

When creditors know that they have weak rights resulting in a low recovery rate, they are averse to lend. Hence, lending in India has been concentrated in a few large companies that have a low probability of failure. Further, secured credit dominates, as creditors rights are partially present only in this case. Lenders have an emphasis on secured credit. In this case, credit analysis is relatively easy. It only requires taking a view on the market value of the collateral. As a consequence, credit analysis as a sophisticated analysis of the business prospects of a firm has shrivelled and unsecured lending remained uncharted territory as a form of lending.

To address this problem, among others, The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) was enacted. The objective of the Code is to consolidate and amend the laws relating to reorganization 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 including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

After detailed deliberation by the Bankruptcy Law Reforms Committee (“BLRC”) on number and capability of operational creditors of most of Corporate Debtors in India, in the Insolvency and Bankruptcy Code it is

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envisaged that there is only one correct forum for evaluating such possibilities is that the decision making is given to a Committee of Creditors (hereinafter referred to as “CoC”), where all financial creditors have votes in proportion to the magnitude of debt that they hold.

There may be many situations in which a viable mechanism can be found through which the Corporate Debtor is protected as a going concern. To the extent that this can be done, the costs imposed upon society go down, as liquidation involves the destruction of the organisational capital of the Corporate Debtor.

The solution structured in the Code is when default takes place a Corporate Insolvency Resolution Process (CIRP) can be initiated and run for as long as 180 days. The IRP/RP (IP) is to oversee the Corporate debtor who is given substantial powers. While the CIRP is in process, the law enshrines a calm period which gives a better chance for the firm to survive as a going concern and assures creditors and Corporate Debtor that assets are protected while they negotiate. For the 180 days for which the CIRP is in operation, the CoC analyse the company, hear revival proposals, and make up its mind about what must be done. When 66% of the CoC members agree on a revival plan, this plan would be binding on all the remaining stakeholders including employees, workmen, operational creditors, State/Central Governments and shareholders. In limited circumstances, if 66 % of the CoC decides that the complexity of a case requires more time for a resolution plan to be finalised, a onetime extension on expiry of the 180 days period, for up to 90 days is possible with the prior approval of the Adjudicating Authority.

Time is the essence

In the recent Hon'ble Supreme Court Judgement, it is held that “*Time Is The Essence Of The Corporate Insolvency Resolution Process*”: The instant judgment required the Hon'ble Supreme Court to balance two conflicting ideas that arise in insolvency proceedings. It is a well-recognised principle that the liquidation of the corporate debtor is the last resort. The Hon'ble Supreme Court held that the primary focus of the IBC is to ensure revival and continuation of the corporate debtor by protecting it from a corporate death by liquidation. Therefore, the IBC is envisaged as a beneficial legislation that puts the corporate debtor back on its feet and not mere recovery legislation for creditors.

To rescue the Corporate Debtor, external bids are invited from resolution applicants interested in submitting resolution/revival plans. A resolution plan can propose multiple approaches for resolving the debtor, including debt restructuring and reorganization of its affairs and capital structure. The CoC then votes to accept or reject plans. As revival of Corporate Debtors is required to have support from operational creditors as well, the BLRC also recommends that a resolution plan must necessarily provide for certain protections for operational creditors. A plan approved by the committee must be eventually approved by the Adjudicating Authority for it to be binding on all affected stakeholders. The entire process must be completed within strict timelines, failing which the debtor is to be liquidated. This (automatic liquidation upon failure to complete the process within stipulated timelines) is one of the most unique features of the Code.

Chapter 2

Resolution Plan under the Code

Objective:

The objective of the Resolution Plan is to get a proposal from a Resolution Applicant that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. The objectives of the Resolution Plan under the Code with the order of its priority is:

1. The first objective is "resolution".
2. The second objective is "maximisation of value of assets of the 'Corporate Debtor' and
3. the third objective is "promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders".

Section 5(26) of IBC, 2016 - "Resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II; it has been further clarified by the explanation that resolution plan may include provisions for restructuring of the Corporate debtor including by way of merger, amalgamation and demerger.

In order to understand it more clearly it has to be further stated that:

- a) Resolution is not a sale, but the resolution of corporate debtor as a going concern.
 - Resolution is not an auction, feasibility and viability of a resolution plan are not amenable to bidding or auction. It requires application of mind by financial creditors who understand the business well;
 - Resolution is not recovery. While recovery bleeds the corporate debtor to death, resolution endeavours to keep the corporate debtor alive. IBC prohibits and discourages recovery in several ways;
 - Resolution is not liquidation. Liquidation is inequitable as it considers the claims of a set of stakeholders only if there is any

Resolution Plan under the Code

surplus after satisfying the claims of a prior set of stakeholders fully. IBC, therefore, does not allow liquidation of a corporate debtor directly.

- b) The Resolution plan enhances the economic value as under:
- Resolution Plan is a proposal by the Resolution Applicant, providing Revival Plan to ensure continuity of business along with most effective use of assets and equipment. The proposal takes into consideration the production facility and infrastructure which can be put to optimum economic use.
 - The plan provides for continuance of workers and employees in the employment, and additional employment to be generated by employing additional workforce.
 - The plan provides to explore company's history of the business and goodwill to its full extent.
 - The resolution applicant provides to infuse required funds for debt restructuring and capital restructuring working capital requirement and refurbishing of the plant and machineries. The objective of debt restructuring is to satisfy the secured lenders through settlement terms and release the securities.
 - The Resolution applicant provides to take over the management of the company by inducting professional, experienced, successful promoter directors and independent directors for success of the Resolution plan. The resolution applicant enjoys full freedom of management of the company.
 - The resolution applicant is required to abide by its commitment to infuse the funds requirement for initial payment and subsequent instalment in a timely manner.
 - The Resolution applicant normally has adequate resources to induct additional capital as it will be required in future with the consent of new board of directors and its shareholders.
 - The resolution Applicant may acquire the business of the Corporate debtor and merge with its existing business to create inorganic growth to use scale of operations.

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Regulation 37 of Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) issued by IBBI provides for various tools to structure the Resolution plan by means of the following measures:

- a. transfer of all or part of the assets of the corporate debtor to one or more persons;
- b. sale of all or part of the assets whether subject to any security interest or not;
- ba. restructuring of the corporate debtor, by way of merger, amalgamation and demerger ;
- c. the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
- ca. cancellation or delisting of any shares of the corporate debtor, if applicable;
- d. satisfaction or modification of any security interest;
- e. curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- f. reduction in the amount payable to the creditors;
- g. extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- h. amendment of the constitutional documents of the corporate debtor;
- i. issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- j. change in portfolio of goods or services produced or rendered by the corporate debtor;
- k. change in technology used by the corporate debtor; and
- l. obtaining necessary approvals from the Central and State Governments and other authorities.

The Road to Resolution of Financial Service Providers under IBC

Insolvency and Bankruptcy Code, 2016 ("IBC") applies to corporate debtors other than financial services providers ("FSPs"). However, in terms of Section

Resolution Plan under the Code

227 of the IBC, the Central Government is empowered to notify, in consultation with the relevant financial sector regulators, either FSPs or which categories of FSPs should be included for the purpose of their insolvency and liquidation proceedings under the terms of the IBC. The Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority Rules), 2019 ("FSP Rules") issued under Section 227 of the IBC were notified in the official gazette by the Ministry of Corporate Affairs on November 15, 2019, and came into effect the same day. The FSP Rules extend the applicability of the IBC to such FSPs, with certain modifications as specified by way of the FSP Rules. FSPs will therefore be resolved through a combination of the IBC principles and processes and the distinct processes set out in the FSP Rules.

Resolution Plan: approvals and deemed no objection

In addition to compliances with all other provisions applicable to resolution plans under the IBC, the FSP Rules provide that a resolution plan submitted for an FSP must specifically include a statement about how it satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider in accordance with applicable laws.

Reinforcing the centrality of the Committee of Creditors, their approval is required for the resolution plan. Following such approval, the appropriate regulator is also required to provide a no-objection certificate. This no objection certificate is required to be provided by the Appropriate Regulator on the basis of 'fit and proper' criteria applicable to the business of the FSP, without prejudice to the applicability of the eligibility criteria prescribed under Section 29A of the IBC. Given that the resolution of financial firms must be undertaken swiftly, a concept of "deemed" no-objection has been built in following 45 working days from the submission of the application to the appropriate regulator. In this regard, the Rules also provide for the constitution of an Advisory Committee which advises the Administrator in the operations of the FSP during the corporate insolvency resolution process.

The timelines for resolution appear to be aligned with the IBC i.e. a directory period of 330 days.

The resolution plan once approved by the NCLT will be binding on creditors, members and other stakeholders as set out in Section 31 (1) of the IBC.

Chapter 3

Information Memorandum

Purpose

The primary purpose of an Information Memorandum is to provide information to the members of CoC and Resolution Applicant with basic information of the Corporate Debtor for informed decision during CIRP and the Resolution Applicant to make informed decision for submitting Resolution Plan.

Information Memorandum is a comprehensive description of all the business and the fundraising proposal. It is intended to provide all the information needed by an investor to make a fully informed decision in a positive and appealing manner. It is something which represents a resume of the corporate debtor which is seeking investment from the prospective investor.

In the CIRP, Information Memorandum is a basis document which contains all the aspect of the Corporate Debtor that will enable the Resolution Applicant to prepare resolution Plan.

Information memorandum is defined as - “information memorandum” means a memorandum prepared by resolution professional under sub-section (1) of section 29.

Time and manner of Submission of Information Memorandum

It is one of the duties of the Resolution Professional under section 25 (g) to prepare the information Memorandum in accordance with the provisions of section 29. Section 29 provides that the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board (i.e. IBBI) for formulating a resolution plan. The Board has prescribed in the Regulation 36 the form and way Information is to be prepared and circulated amongst CoC members and Resolution Applicant. The Regulation 36 provides that subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.

Content of Information Memorandum

CIRP Regulation 36 (2) provides that the Information Memorandum to contain the following information.

- a. assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values. The details to include such as: date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details;
- b. the latest annual financial statements;
- c. audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
- d. a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- e. particulars of a debt due from or to the corporate debtor with respect to related parties;
- f. details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- g. the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- h. details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- i. the number of workers and employees and liabilities of the corporate debtor towards them; and
- j. other information, which the resolution professional deems relevant to the committee.

A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan. It is very important

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to note that members of committee can request for further information but should be of the nature described in the Regulation.

Sharing of information with Resolution Applicant

The resolution professional shall provide information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified. The access to all such relevant information can be provided in physical and electronic form to such resolution applicant provided he undertakes:

- (a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading.
- (b) to protect any intellectual property of the corporate debtor it may have access to; and
- (c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Regulation 36(4) provides that the resolution professional shall share the information memorandum after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

Consequences of failure to prepare Information Memorandum

Failure to obtain the requisite information, documents for preparation of Information Memorandum by the Resolution Professional and not placing the Information Memorandum to CoC will amount to failure on the part of Resolution Professional to perform his duties under section 25(2)(g) and section 29(1). Such non-performance of duty by Resolution Professional will call for disciplinary action from IBBI. Without Information Memorandum there cannot be any Resolution Plan, without resolution plan the Corporate Debtor will lead to liquidation.

Chapter 4

Expression of Interest

It is the duty of the Resolution Professional under section 25(2)(h) to invite expression of interest from prospective resolution applicants, who fulfil such criteria as may be laid down by Resolution Professional 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.

The conditions for invitation of expression of interest are specified in Regulation 36A which are as under:

- (1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.
- (2) The resolution professional shall publish Form G-
 - (a) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;
 - (b) on the website, if any, of the corporate debtor;
 - (c) on the website, if any, designated by the Board for the purpose; and
 - (d) in any other manner as may be decided by the committee.
- (3) The Form G in the Schedule shall -
 - (a) state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and
 - (b) provide the last date for submission of expression of interest which shall not be less than fifteen days from the date of issue of detailed invitation.

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- (4) The detailed invitation referred to in sub-regulation (3) shall-
 - (a) specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;
 - (b) state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;
 - (c) provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and
 - (d) not require payment of any fee or any non-refundable deposit for submission of expression of interest.
- (5) A prospective resolution applicant, who meet the requirements of the invitation for expression of interest, may submit expression of interest within the time specified in the invitation under clause (b) of sub-regulation (3).
- (6) The expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.
- (7) An expression of interest shall be unconditional and be accompanied by-
 - (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;
 - (b) relevant records in evidence of meeting the criteria under clause (a);
 - (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
 - (d) relevant information and records to enable an assessment of ineligibility under clause (c);
 - (e) an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
 - (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true

and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and

- (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.
- (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-
 - (a) the provisions of clause (h) of sub-section (2) of section 25;
 - (b) the applicable provisions of section 29A, and
 - (c) other requirements, as specified in the invitation for expression of interest.
- (9) The resolution professional may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence under sub-regulation (8).
- (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.
- (11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.
- (12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

If no expression of interest received after publication of form G

After publication of Form G, if no expression of interest is received by the Committee of Creditor, Committee of Creditors can make second cycle of advertisement of Form G and explore the possibility of getting expression of interest from interested Resolution Applicant. If the CoC is of the opinion that time left under CIRP is expiring under those circumstances for exploring the feasibility of getting Resolution plan the committee may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period by further period upto 90 days. The Resolution Professional on receiving an instruction from the CoC make an application for such extension. Application for extension of time can be made only once.

Chapter 5

Resolution Applicant

Eligibility or non – eligibility of Resolution Applicant for submission of the Resolution plan

As provided in Section 5(25), "Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25. Section 25 (2) (h) casts the duty on 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.

As per Regulation 36A (4) the detailed invitation for expression of interest shall specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25; and state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants. Only eligible person as per criteria of Committee can submit the resolution plan.

Person not eligible to be resolution applicant is provided in section 29A

Section 29A is probably the most substantial and rather most debated provision of the Insolvency and Bankruptcy Code, 2016. The section sought to restrict people who with their misconduct contributed to defaults of companies or who were otherwise undesirable or could misuse their position due to lack of restriction to participate in the resolution process and regain control of the corporate debtor.

Section 29A provides as under: A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

- (a) is an undischarged insolvent;
- (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

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- (c) at the time of submission of the resolution plan 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 the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of 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:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I. - For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

Explanation II. - For the purposes of this clause, where a resolution applicant 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 and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

- (d) has been convicted for any offence punishable with imprisonment –
- (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person.

- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person.

- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (g) 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 in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

- (h) has executed a 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 this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- (i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i).

The Connected Person is barred from participating in the Resolution Process.

A Connected Person has been defined under explanation to clause - (j) of

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Section 29A of the Insolvency and Bankruptcy Code, 2016. The explanation given in the provision states that:

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

Provided that nothing in clause (iii) shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date;

It further states that it would not apply to the following financial entity as prescribed by Central Government in consultation with the financial sector regulator:

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017

made under the Foreign Exchange Management Act, 1999 (42 of 1999);

- (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

The identification of Connected Person is important as these persons are barred from participating in the Resolution Process.

Connected person vis-a-vis related party:

The terms 'Related Party' and 'Connected Person' are defined under Section 5(24) and explanation to clause (j) of Section 29A of the Code respectively. However, while both are barred from participating in the resolution process, the key difference between the two lies in the personal relationship a person has with the resolution applicant. The scope of the term connected person is wider than that of the related party.

In fact, the definition of a connected person includes the related party (in respect of the person who is a promoter or in control or management of the corporate debtor and the person who shall be the promoter or in management or control of the business of corporate debtor while implementing the resolution process). The definition of Related Party in respect to a person was introduced by the amendment of 2018 providing clarity to the scope of connected persons who have to be tested for disqualifications given under paragraph (a) through (i) of Section 29A. In the case of a married individual, the relative of the individual's spouse will also be included within the scope of a connected person. In retrospect, we find that the amendment of 2018 has widened the scope of a connected person.

The applicability of the provisions of Section 29A as regards MSME.

The amendment to the section 240A was made which specifically dispenses the applicability of Section 29A clause (c) and (h) in case the Corporate Debtor is a Micro, Small or Medium Enterprise.

Chapter 6

Model Request for Resolution Plan (RFRP)

6.1 A Resolution Plan Process

The Resolution Applicant(s) having provided a declaration that it is not ineligible under section 29A of the IBC or any provision of the IBC or Applicable Laws to submit Resolution Plan has signed Confidentiality Undertaking, the RFRP is issued by the Resolution Professional, in consultation with the CoC and pursuant to the approval of the CoC.

- 6.1.1 Under the Resolution Plan Process, access to Information Memorandum and Data Room containing additional information on the Corporate Debtor is provided to the Resolution Applicant(s) to undertake due diligence of the business and operations of the Corporate Debtor.
- 6.1.2 The Resolution Applicant(s) or representatives of the Resolution Applicant(s), who are / is desirous of undertaking a site visit of the Corporate Debtor or management interaction shall intimate the Resolution Professional of such Site Visit.
- 6.1.3 The Resolution Applicant (s) may carry out its own comprehensive due diligence in respect of the Corporate Debtor and shall be deemed to have full knowledge of the condition of the Corporate Debtor, assets, relevant documents, information, etc. whether or not the Resolution Applicant(s) actually inspects or participates in the Site Visit or verifies the documentation provided by the Resolution Professional. The Resolution Applicants shall be deemed to have conducted due diligence with respect to all aspects of the Corporate Debtor, including Site Visit, when they submit the Resolution Plan. No claims, allegations or otherwise shall be entertained by the Resolution Professional/CoC on account of the Resolution Applicant (s) not done due diligence or not taking the Site Visit.
- 6.1.4 The Resolution Plan shall be submitted by the Resolution Applicant(s) in sealed envelopes The Resolution Plan, shall be signed by an authorized signatory of the Resolution Applicant(s) and supported by evidence of authority of such person.

- 6.1.5 The Resolution Plan received by the Resolution Professional after the Binding Plan Due Date shall be subject to sole discretion of the CoC. The CoC may at its discretion, reject or further evaluate such Resolution Plans.
- 6.1.6 The Resolution Professional shall, as per the IBC, examine each Resolution Plan received for their mandatory compliance with the provisions of the IBC, and the CIRP Regulations and present all compliant Resolution Plans to the CoC for its consideration. The Resolution Plans presented by the Resolution Professional to the CoC shall be considered, evaluated, assessed based on commercial wisdom of CoC and may be approved by the CoC as per the provisions of IBC and CIRP Regulations. The broad process and general terms of resolution plan are as under :

6.2 Examination and evaluation of Resolution Plan

- 6.2.1 Resolution Professional shall examine the Resolution Plan submitted by the Resolution Applicant(s), in accordance with the IBC and CIRP Regulations and place all Resolution Plans that conform to the provisions of the IBC and the CIRP Regulations and the Applicable Laws, before the CoC. The CoC will evaluate the Resolution Plan in accordance with the evaluation criteria, the provisions of the IBC, the CIRP Regulations and the RFRP. The Committee of Creditors will satisfy themselves about the credentials and antecedents of the Resolution Applicant(s) and the viability and feasibility of their Resolution Plan.
- 6.2.2 The CoC reserves its right to negotiate with the Resolution Applicant(s) to achieve best outcome of the Resolution Plan Process.

6.3 Amendment to the Request for resolution plans

At any time before the approval of the Resolution Plan by the Committee of Creditors, the CoC may, for any reason whatsoever, amend, modify or supplement the RFRP or the Evaluation Criteria. The amendment, modification or supplementary information shall be notified by email or website or Data Room to the Resolution Applicant(s) and such amendments shall form part of the RFRP, Evaluation Criteria and the Resolution Plan Process and will be binding on the Resolution Applicant(s).

6.4 Right to verify the Resolution Plan

- 6.4.1 Resolution Professional shall, as per the IBC and CIRP Regulations,

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examine each Resolution Plan received along with other documents/information as submitted by Resolution Applicant(s) for their mandatory compliance with the provisions of the IBC and the CIRP Regulations. Resolution Professional shall not present the Resolution Plan to the CoC for approval as per section 30 (3) of the IBC, where it is found non-compliant with the mandatory requirements as stated in the IBC and/ or CIRP Regulations.

- 6.4.2 The Resolution Professional and the CoC reserve the right to verify, at any stage of the process, the antecedents of the Resolution Applicant(s) and such other persons connected with the Resolution Applicant(s) in submitting the Resolution Plan, the eligibility of the Resolution Applicant(s), the authenticity of the documents submitted by the Resolution Applicant(s) and, may request additional information or documents, as may be required by them for the purposes of verifying the antecedents, eligibility and the representations made in the Resolution Plan submitted.
- 6.4.3 The Resolution Professional and CoC reserve the right at their sole discretion to contact the Resolution Applicant(s) bank, Financial Creditor, financing institutions and any other person as may be required or expedient to verify the information or document as submitted by the Resolution Applicant(s) as part of its Resolution Plan, for the purpose of the Resolution Plan Process, and the Resolution Applicant(s) consents to the same.

6.5 Right to disqualify and accept or reject any or all Resolution Plans

- 6.5.1 Notwithstanding anything contained in the RFRP, the CoC reserve the absolute right to (i) disqualify any Resolution Applicant(s) that is found to have made a false disclosure or made any misrepresentation with regard to its eligibility to participate in the process or submit Resolution Plan at any stage of the process; (ii) accept any Resolution Plan, with or without modification; (iii) reject any Resolution Plan without giving any reason; (iv) call upon the Resolution Applicant(s) to submit a revised Resolution Plan; or (v) select or approve any proposal or Resolution Plan, as it may deem fit, at any time, without any liability or any obligation for such acceptance or rejection without assigning any reasons for such actions.

6.5.2 The Resolution Applicant(s) should note that:

- Where a Resolution Applicant(s) has submitted an incomplete Resolution Plan, which does not meet the requirements set out in the RFRP, provisions of the IBC or the CIRP Regulations, or conceals any material information, makes a wrong statement, misrepresents facts or makes a misleading statement in the Resolution Plan, in any manner whatsoever, Resolution Professional / the CoC reserves the right to reject such Resolution Plan.
- If for any reason whatsoever, the Resolution Plan submitted by the Resolution Applicant(s) or the Successful Resolution Applicant(s) is rejected, the CoC may:
 - a) consider the offer from any other Resolution Applicant(s), whose Resolution Plan is responsive and valid, including any deviations/ amendments to the Resolution Plan, as may be acceptable to the CoC; or
 - b) take any such measure as may be deemed fit at the sole discretion of CoC.
- The CoC shall have no obligation to undertake or continue the Resolution Plan Process with the Resolution Applicant(s) having the Highest Evaluated Compliant Resolution Plan and further it shall have discretionary rights to engage in negotiations/ discussions with other Resolution Applicant(s) having a Compliant Resolution Plan.
- If any Resolution Plan is received by the Resolution Professional from any eligible Resolution Applicant(s) at any stage of the Resolution Plan Process, the Resolution Professional would be free to examine such Resolution Plan with the approval of CoC and the Resolution Applicant(s) will not have any right to object to submission or consideration of such plan.
- If the Resolution Professional receives only a single Resolution Plan, then CoC have the discretion to either discuss with the said Resolution Applicant(s) who has submitted such Resolution Plan or any other person, on the terms of the Resolution Plan.

6.6 Clarifications

6.6.1 While the data/ information provided in the RFRP & Data Room has been

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prepared and provided in good faith, the Resolution Professional, Resolution Process Advisor and the members of CoC shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of information provided, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability and completeness of the information provided, even if any loss or damage is caused to any of the Resolution Applicant(s) by any act or omission on their part.

- 6.6.2 The Resolution Professional may, if deemed necessary, issue interpretations and clarifications to the Resolution Applicant(s). All clarifications and interpretations issued by the RP shall be deemed to be part of the RFRP if provided in writing or through Data Room. Verbal clarifications and information provided by the RP or their employees shall not in any way or manner be binding on the RP or be deemed to amend the RFRP.
- 6.6.3 It is expected that the Resolution Applicant(s) shall have undertaken an independent due-diligence and appraisal of the Corporate Debtor for participation in the Resolution Plan Process and shall not rely on the information provided by the Resolution Professional.

6.7 Preparation and Submission of Resolution Plan

- 6.7.1 Language: The Resolution Plan and all related correspondence and supporting RFRP in relation to the Resolution Plan Process shall preferably be in English language.
- 6.7.2 The Resolution Applicant (s) is required to submit information in accordance with the RFRP, and in accordance with the IBC and the CIRP Regulations wherever relevant and shall sign each page of all the Resolution Plan and the documents attached to it. Resolution Applicant(s) should provide such information in order to satisfactorily establish its eligibility, competence and suitability for submission of the Resolution Plan for the Corporate Debtor.
- 6.7.3 All requisite forms, documents, authorizations should be duly signed by the authorized signatory of the Resolution Applicant and appropriately stamped. The authorized signatory shall have a designation of no less than a director of the Resolution Applicant supported by evidence of such authority by way of a board resolution authorizing such director. The

authorized signatory may also be a person holding a designation equivalent to a key managerial person (as defined under the Companies Act, 2013) authorized in terms of a power of attorney in his favor executed under the authority of a board resolution of the Resolution Applicant.

- 6.7.4 The Resolution Applicant should provide information sought herein in order to satisfactorily establish the Resolution Applicant's competence and ability to manage and operate the Corporate Debtor to the satisfaction of the Resolution Professional / CoC.
- 6.7.5 A Resolution Plan once submitted by the Resolution Applicant(s) cannot be amended by the Resolution Applicant(s) unless it is required to be done pursuant to a request for additional information or clarification sought by the Resolution Professional or the CoC.
- 6.7.6 A Resolution Plan once made/ submitted shall be valid till the Resolution Plan approved /rejected by the Adjudicating Authority.
- 6.7.7 A Resolution Plan submitted by a Resolution Applicant(s) shall be irrevocable and binding on the Resolution Applicant(s). No modification, alteration, amendment, or change may be made to a Resolution Plan submitted by a Resolution Applicant(s) except as specifically provided in the RFRP.
- 6.7.8 A Resolution Plan submitted by Resolution Applicant(s) shall be unconditional in nature. It is hereby clarified that any conditionality in the Resolution Plan shall lead to rendering of that particular Resolution Plan as non- responsive, and accordingly the CoC shall have the right to reject such Resolution Plan.
- 6.7.9 In case a Resolution Plan provides for deferred payment, the Resolution Plan should ensure that charge created on assets of the Corporate Debtor shall continue and such charge shall only be released on receipt of full payment on respective date as specified in the Resolution Plan.
- 6.7.10 In case present shareholder/directors/subsidiary companies / associate companies/ friends and relatives have given any guarantee for debts of the Corporate debtor, such personal guarantees will be released only after the satisfactory full payment on respective date as specified in the Resolution Plan.

6.8 Bank guarantee / Earnest Money Deposit to be submitted along with Resolution Plan

6.8.1 Resolution Applicant(s) shall provide a Bank guarantee / Earnest Money Deposit as per Form G, as part of the Binding Resolution Plan (hereinafter referred to as the "Binding Submission Bond Guarantee" or "BSBG"). The BSBG shall be valid for the Plan Validity Period and shall be renewed / extended by the Resolution Applicant(s) for a period as may be required till approval of Resolution plan by Adjudicating Authority ("BSBG Validity Period"). The BSBG shall have a claim period of [30 days] after the BSBG Validity Period.

6.8.2 It is hereby clarified that non-submission of the BSBG by the Resolution Applicant(s), along with the submission of the Resolution Plan, shall lead to rendering of that Resolution Plan as non- responsive, and accordingly the Resolution Plan stands cancelled.

6.8.3 Return of BSBG

The BSBG of the Resolution Applicant(s), who has not been selected as the Successful Resolution Applicant(s), shall be returned within [30days] after the date of declaration of the Successful Resolution Applicant(s) or the end of the Plan Validity Period, whichever is earlier.

6.8.4 Return of BSBG to the Successful Resolution Applicant(s)

The BSBG shall be returned to the Successful Resolution Applicant(s), upon submission of Performance Guarantee by the Successful Resolution Applicant(s).

6.8.5 Forfeiture of BSBG of the Successful Resolution Applicant(s)/ Resolution Applicant(s)

The Designated Lender shall be entitled to invoke the BSBG where (a) the Successful Resolution Applicant(s)/Resolution Applicant(s) fails to extend the validity of the BSBG as may be required by the CoC, or (b) Successful Resolution Applicant(s)/Resolution Applicant(s) fails to submit the Performance Guarantee within the stipulated time; or (c) Successful Resolution Applicant(s)/Resolution Applicant(s) is found to have made a false or misleading representation or statement (d) in case of any other non- compliance with the Resolution Plan Process by the Successful Resolution Applicant(s)/Resolution Applicant(s).

- 6.8.6 It is clarified that any invocation of the BSBG by the Designated Lender shall not limit any rights or remedies that the CoC may have under Applicable Law or otherwise, against any Resolution Applicant(s) or Successful Resolution Applicant(s), as the case may be.

6.9 Performance Guarantee

- 6.9.1 Within *[7 days]* of the date of approval of the Successful Plan by the CoC, the Successful Resolution Applicant(s) shall provide a Performance Guarantee of as stipulated in Form G ("Performance Guarantee"). The Performance Guarantee shall be valid for an initial period of *[6months]* from the date of approval by the CoC and shall be extended / renewed by the Successful Resolution Applicant(s) for such period until 100% (one hundred percent) of the Successful Resolution Applicant(s) Contribution is made by the Successful Resolution Applicant(s) in accordance with the Resolution Plan ("Performance Guarantee Validity Period"). The Performance Guarantee shall have a claim period of *[30]* days after the Performance Guarantee Validity Period.
- 6.9.2 The CoC shall have the right to invoke the Performance Guarantee by issuance of a written demand in the prescribed format to invoke Performance Guarantee. The Performance Guarantee can be invoked at any time, if (a) any of the conditions under the Resolution Plan are breached; or (b) non-receipt of required approvals within the timelines specified in the Resolution Plan or if the Resolution Plan is not effective due to any approval required by the Resolution Applicant(s) to give effect to the Resolution Plan; or (c) Successful Resolution Applicant(s) fails to make payment under Regulation 38(1) of the CIRP Regulations. The Performance Guarantee shall be returned in a period of *[30 working]* days after Final successful completion of all the payments as per the payment schedule under Resolution Plan.
- 6.9.3 Non-submission of the Performance Guarantee by the Successful Resolution Applicant(s), as per the provisions of the Clause 6.9.1, will lead to rendering of resolution Plan by such Resolution Applicant(s) as non-responsive, and Resolution Plan stands cancelled.

6.10 Terms and conditions for Participation

The Resolution Applicant(s) is deemed to have made the following acknowledgements and representations:

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- 6.10.1 The Resolution Applicant(s) acknowledges that the CoC /Resolution Professional/ Resolution Process Advisor is neither providing any representation or warranty express or implied regarding the status of business, the business prospects or assets the Corporate Debtor nor do they have any obligation to give such representation or warranty in relation to the Corporate Debtor and the CoC/Resolution Professional/Resolution Process Advisor assume no liability whatsoever in this respect.
- 6.10.2 The Resolution Applicant(s) is in receipt of critical information relating to the Corporate Debtor and that the Resolution Applicant(s) shall keep all such critical information, confidential and shall not disclose or divulge such critical information, to any Person.
- 6.10.3 The Resolution Applicant(s) shall use such critical information relating to the Corporate Debtor only for the purpose of preparation and submission of the Resolution Plan, in accordance with the terms of the RFRP.
- 6.10.4 The Resolution Applicant(s) shall represent to the CoC that they have the necessary financial resources available for supporting the Resolution Plan that will be submitted by them and for any further infusion/contribution for additional funds into the Corporate Debtor as may be indicated in the Resolution Plan.
- 6.10.5 The Resolution Applicant(s) acknowledges that it shall fulfill all the terms of the RFRP, Resolution Plan Process and the Resolution Plan (as submitted by it and as accepted by the CoC), if it is declared as a Successful Resolution Applicant(s) upon the completion of the Resolution Plan Process.
- 6.10.6 The Resolution Applicant(s) confirms that the Resolution Professional, the members of CoC, Resolution Process Advisor, employees, and agents are indemnified for all acts done in good faith in respect of matters arising out of or in relation to the Resolution Plan Process.
- 6.10.7 The Resolution Applicant(s) represents to the CoC that it has/ they have obtained all requisite corporate permissions and regulatory approvals required for submission of the Resolution Plan and shall be required to submit the requisite supporting documents along with the Resolution Plan in this regard.

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- 6.10.8 The Resolution Applicant(s) shall be evaluated on the basis of the declarations and/ or information and/ or RFRPs in relevant appendices of the RFRP, Evaluation Criteria, the provisions of the IBC and CIRP Regulations.
- 6.10.9 The Resolution Applicant(s) acknowledges that implementation of Approved Resolution Plan may be subject to approvals including approvals from the regulatory authorities (as amended from time to time), the CoC and the Adjudicating Authority, other regulatory approvals and the Resolution Applicant(s) shall, submit the necessary applications for obtaining all such approvals prior to the submission of the Resolution Plan of the Successful Resolution Applicant(s) for approval by the Adjudicating Authority, and shall obtain all such approvals prior to the Transfer Date. Resolution Professional and CoC shall not be responsible for obtaining any approval.
- 6.10.10 The Resolution Applicant acknowledges that it shall submit the Resolution Plan in accordance with the provisions of the IBC and the CIRP Regulations. The Resolution Applicant(s) acknowledges that it shall pay consideration in accordance with the terms concluded as per negotiations between the CoC in accordance with the terms and conditions set out in the Definitive Agreements.

6.10.11 Other Essential Requirements

The Resolution Applicant(s) shall additionally include the following in the Resolution Plan:

- (a) Details of any required approvals and the timeline within which such required approvals will be obtained. The Resolution Applicant(s) shall bear the responsibility for the receipt of any required approvals for the implementation of the Resolution Plan.
- (b) Provide projections for the Corporate Debtor and provide for detailed income statement or profit and loss account linked to capacity utilization and production plan, a balance sheet, cash flow statement and debt service coverage calculations prepared on sound commercial principles along with the assumptions made for arriving at the projections in support of the Resolution Plan. CoC shall have the right to examine the feasibility, viability and such other parameters of the Resolution Plan, as may be specified under the IBC and may reject any Resolution Plan

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which does not meet such requirements. Resolution Applicant shall also provide for treatment of residual debt, treatment of existing security charge, etc.

- (c) Any other disclosure required to establish and assess the eligibility of the Applicant(s) under IBC and including under 29A of the IBC along with any supporting documents confirming the same.
- (d) Conforms to the requirements as specified under the IBC; and
- (e) Affidavit containing following details for the Resolution Applicant(s) and Connected Persons and in case of a consortium, for each consortium member and their Connected Persons, and for the following persons
 - (i) Person who are promoters or in the management or control of Resolution Applicant(s)
 - (ii) Persons who will be promoters or in management or control of the business of the Corporate Debtor during the implementation of the Approved Resolution Plan
 - (iii) Holding Company, Subsidiary Company, Associate Company and Related Party of person referred to in items (i) and (ii):
 - (iv) Identity;
 - (v) Disclosure on being an undischarged insolvent under law in India or any law in a jurisdiction outside India;
 - (vi) Disclosure on being declared as willful defaulters (by banks/Financial Institutions ("FIs") or any other financial agency) in accordance with the guidelines laid down by the RBI, if any, or any law in a jurisdiction /outside India;
 - (vii) Details of any director(s) disqualified under Companies Act, 2013 or any jurisdiction outside India;
 - (viii) Details of any convictions for any offence; if any, during preceding 5 (five) years under any law in India or in a jurisdiction outside India;
 - (ix) Details of any criminal proceedings pending; if any;
 - (x) Details of debarment, if any, from accessing to, or trading

in, securities markets under any order or directions of the SEBI;

- (xi) Details of transactions, if any, with the Corporate Debtor in the preceding 2 (two) years;
- (xii) Any other details as required to be provided under the Resolution Plan in terms of the IBC.

6.11 Important notes to the Resolution Applicant(s)

- 6.11.1 The RFRP constitutes an invitation for submission of Resolution Plan. Submission of Resolution Plan by Resolution Applicant(s) in a sealed envelope would constitute offer by such Resolution Applicant(s), on the terms set out in the RFRP.
- 6.11.2 The Resolution Plan shall be in compliance with sub section (2) of Section 30 of the IBC, the CIRP Regulations and other Applicable Law or such other condition as may be specified by the Insolvency and Bankruptcy Board of India.
- 6.11.3 The Resolution Plan shall be evaluated by the CoC inter alia on the basis of the declarations made and/ or information submitted by the Resolution Applicant(s) and / or RFRP.
- 6.11.4 The Resolution Professional and CoC reserve the right to conduct due diligence/know your customer verifications on the Resolution Applicant(s) at any stage of the Resolution Plan Process.
- 6.11.5 The Resolution Applicant(s) will not provide alternate plans in the Resolution Plan and that the Resolution Plan constitutes of only one resolution plan for insolvency resolution of the Corporate Debtor.
- 6.11.6 This RFRP is issued upon an express understanding and agreement that the Resolution Applicant(s) shall use it solely for the purpose of preparation and submission of the Resolution Plan and for the purpose necessarily associated herewith and for no other purpose whatsoever.
- 6.11.7 Resolution Plan submitted by the Resolution Applicant(s) shall become the property of the CoC and they shall have no obligation to return the same to the Resolution Applicant(s). However, the BSBG submitted by the unsuccessful Resolution Applicant(s) shall be returned in accordance with and subject to the terms of the RFRP.

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- 6.11.8 No change or supplemental information to the Binding Resolution Plan shall be accepted after the Binding Plan Due Date. The CoC may, at its sole discretion, ask for additional information/RFRP and/or seek clarifications from a Resolution Applicant(s), after the Binding Plan Due Date. Delay in submission of additional information and/or documents sought by the CoC shall make the Plan liable for rejection.
- 6.11.9 No extension of time shall be granted under any circumstances to the Resolution Applicant(s) for submission of the Resolution Plan including, but not limited to, on the grounds that the Resolution Applicant(s) did not obtain a complete set of the RFRP or on any other ground. The Resolution Professional may, with the approval of the CoC extend the timelines if expedient for obtaining the best Resolution Plan for the Corporate Debtor.
- 6.11.10 The entire Resolution Debt Amount assumed by the Resolution Applicant(s) in the Resolution Plan shall be binding on the Resolution Applicant(s). It is for instance clarified that the amount due to the operational creditors under a Resolution Plan shall be given priority in payment over financial creditors.
- 6.11.11 Resolution Applicant(s) understand and acknowledge that based on the financial projections provided in the Resolution Plan, the CoC may stipulate appropriate financial covenants.
- 6.11.12 This RFRP has not been filed, registered or approved in any jurisdiction and receipt of the RFRP by residents in jurisdictions outside India should inform themselves of and observe any applicable legal requirements as may be applicable to them.
- 6.11.13 The Resolution Applicant(s) should satisfy itself that the RFRP received by it is complete in all respects. In the event that the RFRP or any part thereof is or missing, the Resolution Applicant(s) shall notify immediately. In the event such written notice is not received within [7days] from the date of issuance of the RFRP to the Resolution Applicant(s), RFRP received by the Resolution Applicant(s) shall be deemed to be complete in all respects.
- 6.11.14 The Resolution Applicant(s) should regularly visit the Data Room to keep themselves updated regarding clarifications / amendments / time extensions, if any, in relation to the Resolution Plan Process. The Resolution Applicant(s) are also advised to regularly visit the website of the Corporate Debtor.

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- 6.11.15 All payments under the RFRP shall be made in INR (Indian Rupees). However, debt infusion in the Corporate Debtor as part of the Resolution Plan could be in foreign currency in accordance with the Applicable Laws.
- 6.11.16 The Resolution Applicant(s) shall ensure compliance with any amendment or clarifications to the IBC, or to any of the rules and regulations issued thereunder, as amended from time to time. If members of the CoC require any information, document, or other support from the Resolution Applicant(s), to comply with their obligations under the IBC or for the purposes of conducting any diligence, the Resolution Applicant(s) shall provide the same at its own cost between the submission of Resolution Plan till approval of the Resolution Plan by Adjudicating Authority, the Resolution Applicant(s) shall provide a certificate specifying that its financial capability continues to be sufficient for implementation of proposed Resolution Plan.
- 6.11.17 The Resolution Applicant(s) cannot unilaterally change / withdraw the Resolution Plan once submitted to the Resolution Professional.
- 6.11.18 If the Resolution Applicant(s) conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Resolution Plan, in any manner whatsoever, the CoC reserves the right to reject such Resolution Plan and forfeit/invoke the BSBG or Performance Guarantee. The Resolution Applicant(s) shall be solely responsible for such disqualification based on its declarations in the Resolution Plan.
- 6.11.19 This RFRP includes statements, which reflect the various assumptions arrived at on the basis of the information provided by the Corporate Debtor and the Resolution Applicant(s) is required to make its own assessments of the information provided. This RFRP does not purport to contain all the information required by the Resolution Applicant(s). The Resolution Applicant(s) should conduct independent investigations and analysis and should check the accuracy, reliability and completeness of the information in the RFRP and obtain independent advice from appropriate sources, prior to making an assessment of the Corporate Debtor.
- 6.11.20 The Resolution Applicant(s) shall be deemed to have conducted due diligence exercise with respect to all aspects of the Corporate Debtor,

including Site Visit, when they submit the Resolution Plan. Resolution Applicant(s) are invited to visit and inspect the Site at their own expense. Failure to undertake a Site Visit will not be a valid ground to relieve the Resolution Applicant(s) subsequently after submission of its Resolution Plan nor shall it relieve the Resolution Applicant(s) from any responsibility for estimating the difficulty or costs of successfully fulfilling the terms and condition of Resolution Plan.

- 6.11.21 Distributing/ taking / sending / dispatching / transmitting the RFRP in certain foreign jurisdictions may be restricted by law, and persons in whose possession this invitation comes should inform themselves about, and observe, any such restrictions. Neither the Corporate Debtor, the Resolution Professional or the CoC or Resolution Process Advisor shall be liable for any damages whether direct or indirect, incidental, special or consequential including lost revenue or lost profits that may arise from or in connection with the use of the RFRP. This RFRP has not been filed, registered or approved in any jurisdiction and recipients of the RFRP by residents in jurisdictions outside India should inform themselves of and observe any applicable legal requirements as may be applicable to them.

6.12 Resolution Plan Evaluation Process

- 6.12.1 The Evaluation Process of the Resolution Plan(s) submitted by the Resolution Applicant(s) shall comprise of the following steps:

Step I: Submission and Receipt of Resolution Plans, opening of sealed Resolution Plans, examination of the Resolution Plans with respect to compliance of IBC and CIRP Regulations by Resolution Professional and subsequent submission of the Compliant Resolution Plans by the Resolution Professional to the CoC;

Step II: Examination and evaluation of Compliant Resolution Plans by the CoC;

Step III: Presentation of Resolution Plans by Resolution Applicants whose Compliant Resolution Plans have been submitted by Resolution Professional to CoC as may be deemed necessary and as advised by the CoC;

Step IV: Negotiations by CoC with Resolution Applicant(s) having the [Top 3] (Three) Highest Evaluated Compliant Resolution Plan.

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Step V: Evaluation of the negotiated Compliant Resolution Plan by the CoC/ and approval of the Resolution Plan of Successful Resolution Applicant(s) by the CoC, Further evaluation of the negotiated Compliant Resolution Plan will be done using the same Evaluation Matrix of the RFRP. In case of any change in the Evaluation Matrix, Resolution Applicant will be informed/ intimated at least (5 days) prior.

Step VI: Declaration of Successful Resolution Applicant(s) and intimation to Successful Resolution Applicants(s);

Step VII: Submission of the Performance Guarantee by the Successful Resolution Applicant(s);

Step VIII: Approval of the Resolution Plan by the Adjudicating Authority and

Step IX: Execution of Definitive Agreements with Successful Resolution Applicant(s) if any The above Evaluation Process is only indicative and may be varied at the sole discretion of the CoC.

6.12.1.1 The Resolution Professional and the Resolution Process Advisor and CoC reserve the right to conduct due diligence on the Successful Resolution Applicant(s) with the assistance of external agencies at any stage of the Resolution Plan Process. The scope of the due diligence shall include but not be limited to the following parameters:

- a) compliance with Applicable Laws;
- b) submission of documents for the requisite 'know your customer' checks to the satisfaction of the Resolution Professional;
- c) review of the financial capability of the Successful Resolution Applicant(s); and
- d) Any other matter, which the Resolution Professional may deem fit or necessary.

6.12.1.2 The Resolution Plan submitted by the Resolution Applicant(s) shall be examined by the Resolution Professional for mandatory compliance with IBC, and CIRP Regulations and evaluated by the CoC based on the information and documents furnished by the Resolution Applicant(s), in accordance with the terms and conditions detailed in the RFRP as amended from time to time and any such other additional process the CoC may apply for evaluation.

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- 6.12.2 The Resolution Plan shall be evaluated based on Evaluation Criteria and as per the conditions specified by the IBC and IBBI. The CoC reserves the right to amend or modify the criteria for the evaluation of the Resolution Plan submitted by the Resolution Applicant(s) at any stage of the process provided in the RFRP. In case of any amendment or modification in the criteria, the same shall be conveyed to the Resolution Applicant(s).

6.13. Process for management of the corporate debtor from the date of approval of resolution plan by CoC to date of order of Adjudicating Authority.

- 6.13.1 Interim Monitoring Committee: Interim Monitoring Committee (IMC) shall be constituted consisting of Resolution Professional (RP), One Representative of Resolution Applicant (RA) and Designated Financial creditor representing CoC.
- 6.13.2 IMC shall take decision on i) How to conduct and run the business, 2) how to retain the required employees, 3) How to retain and preserve the value of the assets 4) Asset monitoring mechanism 5) approve the cost to run the business 6) strategy to recover the amount dues from debtors. 7) Revenue planning and 8) other subjects of importance to preserve the value of Corporate Debtor.
- 6.13.3 All the decisions taken in the IMC should have unanimous consent of all three members. In case of difference of opinion, the subject will be reported to CoC, the decision of CoC will be binding on RA.
- 6.13.4 Amount required for implementation of points mentioned shall be contributed by the Resolution Applicant.
- 6.13.5 Control Custody and Management of the Corporate Debtor during this period shall continue to be with Resolution Professional.
- 6.13.6 IMC shall not take any decision of the subject matters as prescribed under section 28 of the I & B Code and status quo will be maintained on these matters.
- 6.13.7 If the Designated Financial Creditor is of the opinion that the subject matter is of importance to be referred to CoC then in that case the subject will be discussed in CoC and decision of the CoC will be binding on all the parties.

- 6.3.8 In case the Resolution Plan which was approved by the CoC is not approved by the Adjudicating Authority the amount contributed by the Resolution Applicant will be considered as Interim Finance and shall be liable for interest at the rate of, say, 12% per annum. The amount contributed including interest due thereon will be considered as part of CIRP cost and shall be paid accordingly.

6.14. Arbitration

During the CIRP if there is dispute in respect of the matters of such as, difference in rights amongst creditors, rights of corporate debtors, promoters, directors, key managerial persons, rights of IRP/RP, CIRP proceedings, liabilities obligations, duties, views/opinions then in that case there are some matters which are required to be adjudicated by NCLT only as per the provisions of IBC. Such matters will be placed before Adjudicating Authority only. Subject to compliance of Arbitration and Conciliation Act, 1996 the , matters/disputes/ conflicts which can be resolved through the process of Arbitration, such matters will be placed before the panel of Arbitrators to be resolved within CIRP period till order of the approval or rejection of Resolution Plan by the Adjudicating Authority. Whereas, the matters arising out of conflicts, disputes between Corporate Debtor, Corporate Person, Corporate guarantor, Insolvency Professional, Interim Resolution Professional, Resolution Professional, Liquidator, Financial Creditors, Stakeholders, Operational Creditor, Employees, Resolution Applicant, Authorised Representative, Registered Valuers, Auditor, Forensic Auditors or any third party in respect of claims, rights, obligations, duties, performance, Liabilities in relation to any matter of Resolution Plan or CIRP process shall be adjudicated by panel of arbitrators, provided the Arbitration Agreement exists in writing between the parties to the disputes as required under Arbitration and Conciliation Act, 1996.

Note: In this Chapter, model timelines and model processes have been suggested to help in understanding the subject.

Chapter 7

Resolution Plan – Checklist for Resolution Applicant

CONTENTS OF RESOLUTION PLAN

1. Suggestive Checklist for Submission of Binding Resolution Plan

1. Covering Letter for submission of Binding Resolution Plan along with an undertaking.
2. Power of Attorney/Board Resolution, as applicable to submit Binding Resolution Plan.
3. Bank Guarantee / Earnest Money Deposit (Binding Submission Bond Guarantee)
4. Overview of the Resolution Applicant(s) [Resolution Applicant(s) to provide the brief overview about itself.]
5. Composition and Ownership Structure of the Resolution Applicant(s)
6. Corporate structure of the Resolution Applicant(s), and Group Companies, affiliates, Parent Company and the Ultimate Parent Company of the Resolution Applicant(s)
7. Creditworthiness and financial capability of the Resolution Applicant(s) Resolution Applicant(s) to provide the credit rating from credit rating agencies and other documents evidencing the creditworthiness of the Resolution Applicant(s) or other obligors under the Resolution Plan to infuse funds in the Corporate Debtor.
8. Previous Experience [Resolution Applicant(s) to provide the details of investments in relevant sector as per EOI]
9. Binding Resolution Plan
10. Indicative Timeline of Events for Implementation of Proposed Resolution Plan
11. Supervision of the Resolution Plan [Resolution Applicant(s) to provide the details about how it proposes to supervise the implementation of the Resolution Plan.

12. Evidence of funding / monies available to fund the Resolution Plan i.e. evidence of available line of credit, term sheet, etc.

2. Compliance with the mandatory contents of the Resolution Plan

The Resolution Applicant(s) shall prepare the Resolution Plan in accordance with the requirements of the IBC, the CIRP Regulations and the RFRP. The Resolution Plan shall mandatorily include details as set out in sub section (2) of section 30 of the IBC and regulation 38 of the CIRP Regulations, including, but not limited to, the following:

- (i) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the Corporate Debtor.
- (ii) Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan.
- (iii) The implementation and supervision of the resolution plan.
- (iv) does not contravene any of the provisions of the law for the time being in force.
- (v) confirms to such other requirements as may be specified by the Board.

3. A Resolution Plan shall also provide for the following:

- (a) A Resolution Plan shall include a statement as to how it has dealt with the Interest of all Stakeholders including Financial Creditors and Operational Creditors.
- (b) term of the plan and its implementation schedule
- (c) management and control of the business of the Corporate Debtor during its term
- (d) adequate means for supervising its implementation.
- (e) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

4. A resolution plan shall demonstrate that –

- (a) it addresses the cause of default;
- (b) it is feasible and viable;

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- (c) it has provisions for its effective implementation;
- (d) it has provisions for approvals required and the timeline for the same; and
- (e) resolution applicant has the capability to implement the resolution plan.

5. Suggestive list for the Resolution Plan to also provide for details on:

- a) Any infusion and/or arrangement of funds as may be required for working capital and expenditure requirements of the Corporate Debtor shall be in compliance of the following:
 - (i) In the event of infusion of debt, such debt shall be arranged without any obligation on members of CoC to provide such funds.
 - (ii) Any infusion of fresh equity for (a) improving operations, (b) debt repayment, (c) Capital expenditure & (d) any other purpose; shall be clearly specified along with the timelines for such infusion.
 - (iii) Any infusion of funds into the Corporate Debtor as part of the Resolution Plan shall be satisfactorily demonstrated including by way of firm financing proposals.
- b) Financial ability of the Resolution Applicant(s) including last 3 years annual report of relevant entities or the entities in which investments have been made in relevant sector.
- c) Financial assumptions, Projections & Business plan for the Corporate Debtor
- d) Percentage Shareholding in Corporate Debtor offered to Financial Creditor by way of debt-to-equity conversion
- e) Prior Experience in managing/turning around of Companies including managerial competence, technical abilities, key management personal experience
- f) Indemnity for the CoC, Resolution Professional and Resolution Process Advisor for all acts done in good faith. The indemnity will survive the CIRP period.

6. Procedures for Submission of Resolution Plan before Committee of Creditors: Resolution Professional shall issue various information to all parties who have reverted to the expression of interest and whose name covered in the provisional list. Resolution professional shall make a request

for resolution plan to the parties covered under the provisional list in the manner set out in Regulation 36B of CIRP.

As per Regulation 36B – Request for resolution plans

- (1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans, within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to -
 - (a) every prospective resolution applicant in the provisional list; and
 - (b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.
- (2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.
- (3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).
- (4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.
- (4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in

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relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

- (5) Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).
- (6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.
- (7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list.

Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.

7. Section-30 of IBC, 2016: - Submission of resolution plan

- (1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.
- (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –
 - (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - (b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than
 - (i) the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub section (1) of section 53,

whichever is higher and provides for the payment of debts of

financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of liquidation of the corporate debtor.

Explanation – a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

As per Regulation 38 - The amount payable under a resolution plan –

- (a) to the operational creditors shall be paid in priority over financial creditors; and
- (b) to the financial creditors, who have a right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) The implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force.
- (f) conforms to such other requirements as may be specified by the Board.

Explanation. For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

- (3) The Resolution Professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).
- (4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

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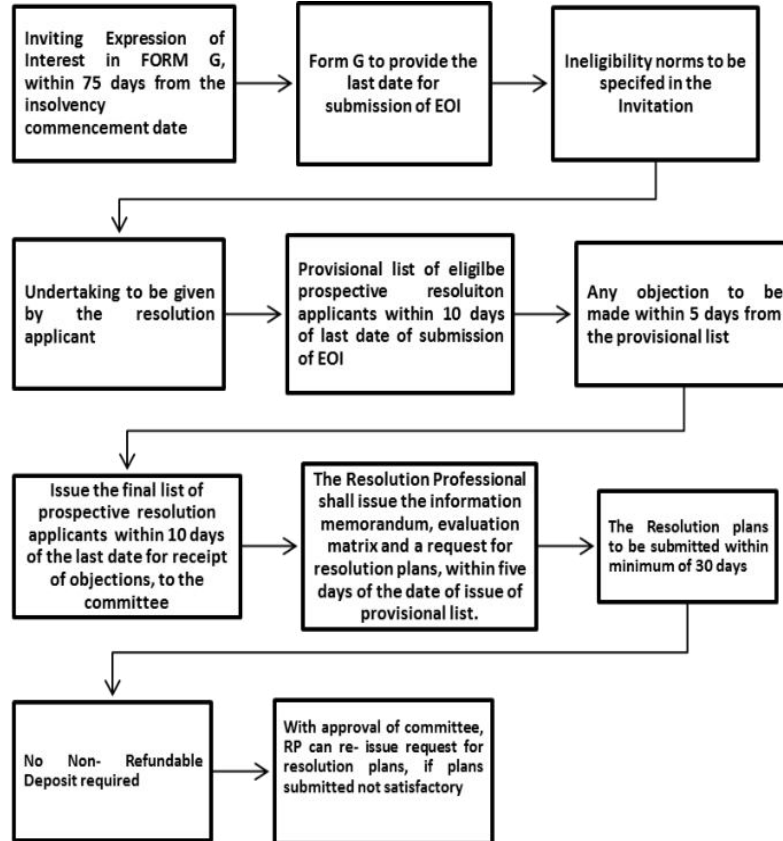
Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Committee of Creditors can allow Resolution Applicant a period not exceeding 30 days to make payment of overdue amount in accordance with the proviso to clause (c) of section 29A to get out of ineligibility under section 29A but this will not amount to extension of period for the purposes of the proviso to sub-section (3) of section 12, :

- (5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered but he shall have no right to vote unless he is a financial creditor:
- (6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Resolution Plan – Checklist for Resolution Applicant

Snapshot of steps for submission of resolution plan



Chapter 8

Valuation under IBC

Overview

The valuation under Insolvency and Bankruptcy Code 2016; is an important area for Registered Valuers under all three asset classes- Plant & Machinery, Land & Building and Securities or Financial Assets. IBC along with Rules and Regulations framed thereunder, have laid down the basic regulatory requirement-

As per Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP" Regulations), the Resolution Professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two Registered Valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35:

CIRP Regulations further provides that the following persons shall not be appointed as Registered Valuers, namely:

- (a) a relative of the Resolution Professional;
- (b) a related party of the Corporate Debtor;
- (c) an Auditor of the Corporate Debtor at any time during the five years preceding the insolvency commencement date; or
- (d) a Partner or Director of the insolvency professional entity of which the resolution professional is a partner or director.

Who can be Valuer?

IBBI Circular IBBI/RV/019/2018 (w.e.f. 01.02. 2019) specifies that only valuers registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017 may be appointed by the resolution professional. Payment, whether as fee or otherwise, to any person, other than a Registered Valuer for any valuation shall not form part of the insolvency resolution process costs or liquidation cost.

Framework of Valuation under IBC

The term Fair Value and Liquidation Value have been defined under CIRP Regulations as follows:

CIRP Regulation Clause 2(hb): *“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.*

Clause 2(k): *“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.*

The Concept of Fair Value and Liquidation Value

A. ICAI Valuation Standards, 2018

Fair value: Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date.

It can be seen that the definition of ‘Fair Value’ is identical to the definition given under Ind AS 113.

Liquidation value: It is the amount that will be realised on sale of an asset or a group of assets when an actual/hypothetical termination of the business is contemplated/ assumed.

Liquidation value is the net value of a company's physical assets if it were to go out of business and the assets sold. The liquidation value is the value of company real estate, fixtures, equipment, and inventory. Intangible assets are excluded from a company's liquidation value.

There are generally four levels of valuation for business assets: market value, book value, liquidation value, and salvage value. Each level of value provides a way for accountants and analysts to classify the aggregate value of assets. Liquidation value is especially important in the case of bankruptcies.

Intangible assets such as a company's intellectual property, goodwill, and brand recognition are not included in Liquidation Value. However, if a company is sold rather than liquidated, both the liquidation value and

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intangible assets determine the company's going-concern value. Investors look at the difference between a company's market capitalization and its going-concern value to determine whether the company's stock is worth buying.

Market vs. Book vs. Liquidation vs. Salvage

Market value typically provides the highest valuation of assets although the measure could be lower than book value if the value of the assets has decreased due to market demand rather than business use.

The book value is the value of the asset as listed on the balance sheet.

The liquidation value is the expected value of the asset once it has been liquidated or sold, presumably at a loss to historical cost.

The salvage value is the value given to an asset at the end of its useful life; i.e. it is the scrap value.

Liquidation value is usually lower than book value but greater than salvage value.

B. International Valuation Standards 2020

As per International Valuation Standards 2020 (IVS 104 Bases of Value), the term Fair Value and Liquidation Value are defined as follows:

Fair Value

(International Financial Reporting Standards)

IFRS 13 defines Fair Value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Liquidation Value

Liquidation Value is the amount that would be realized when an asset or group of assets are sold on a piecemeal basis. Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation Value can be determined under different premises of value:

- (a) An orderly transaction with a typical marketing period or
- (b) A forced transaction with a shortened marketing period

A valuer must disclose which premise of value is assumed.

It is to be noted that the IBC has defined the terms 'Fair Value and Liquidation Value'.

As per Regulation 35 of CIRP Regulations, the

(1) Fair Value and Liquidation Value shall be determined in the following manner: -

- a. the two Registered Valuers appointed under regulation 27 shall submit to the Resolution Professional an estimate of the Fair Value and of the Liquidation Value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the Corporate Debtor;
- b. if in the opinion of the Resolution Professional, the two estimates of a value are significantly different, he may appoint another Registered Valuer who shall submit an estimate of the value computed in the same manner; and
- c. the average of the two closest estimates of a value shall be considered the fair value or the Liquidation Value, as the case may be.

(2) After the receipt of resolution plans the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29:

(3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.

Chapter 9

Role of Resolution Professional

1. Role of the Resolution Professional with respect to the Resolution Plan under the Corporate Insolvency Resolution Process in IBC

- Preparing the information memorandum

The Resolution Professional is required to make and submit the information memorandum in order to formulate a resolution plan. He is also required to provide all relevant information to the resolution applicant. Regulation 36(2) provides for the details to be contained in the information memorandum. Explanation to Section 29 mentions the meaning of the term 'relevant information' to mean information which is required by the resolution applicant to make a resolution plan for a corporate debtor. It includes information relating to the financial position, disputes and any other matter in relation to a corporate debtor.

Before submitting resolution plan to Committee of Creditors the resolution professional shall examine each resolution plan received by him and ensure compliance with Sec 30(2) of the Code.

- Examining the resolution plan

The resolution professional facilitates the resolution plan. As per Section 30, on the basis of the information memorandum prepared by the resolution professional the resolution applicant submits the resolution plan to the resolution professional.

The RP is required to examine each resolution plan submitted to him to ensure that each resolution plan has in the manner specified by the Board:

- Has provided for the priority of the payment of insolvency resolution process costs to the payment of other debts of the corporate debtor.
- Has provided for the payment of debts of the operational creditor not less than.
 - (a) Amount paid to be paid to such creditor in the event of liquidation under Section 53(1).

Role of Resolution Professional

(b) Amount to be paid to such creditor if the amount is to be distributed as per the order of priority under section 53(1).

whichever is higher.

- Has provided for the payment of debts of the financial creditor (not voting in favour of the resolution plan) not less than the amount paid to such creditors in the event of liquidation of the corporate debtor as per section 53(1).
- Provides for the management of the affairs of the corporate debtor after approval of the plan?
- Provides for the implementation and supervision of the resolution plan?
- Contravenes any of the provisions of the law for the time being in force?
- Confirms to such other requirements as specified by the board?

If the resolution confirms the above condition then, the resolution professional presents the resolution plan for the approval of the committee of creditors. If the committee approves the plan it has to do so by a vote of not less than 66% of the voting share of financial creditors.

The resolution professional shall also to conduct due diligence in terms of regulation 36A(8) based on the material on record in order to satisfy that the prospective resolution applicant complies with such criteria as laid down by him with the approval of CoC as per section 25(2)(h) and applicable provisions of section 29A as well as other requirements as specified in the invitation for Expression of Interest (EOI).

The approved resolution plan is then submitted to the Adjudicating Authority by the resolution professional. The Adjudicating Authority if it is satisfied, approves the resolution plan by an order and such order will be binding to the corporate debtor, employees of the corporate debtor, members, creditors, guarantors and other stakeholders that are involved in the resolution plan. If the Adjudicating Authority is not satisfied, it may by order reject the resolution plan as per Section 31.

Hon'ble Supreme Court in Essar Steel case in their order discussed about the importance of resolution professional with regard to ensuing resolution plan complete in all respects and quoted as under:

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“Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.”

Chapter 10

Approval of Resolution Plan

Approval of Resolution Plan is provided under Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

- (a) an affidavit stating that it is eligible under section 29A to submit resolution plans;
- (b) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) The resolution plan which does not comply with the above shall be rejected.

(2) The resolution professional shall submit all resolution plans to the CoC. which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -

- (a) preferential transactions under section 43;
- (b) undervalued transactions under section 45;
- (c) extortionate credit transactions under section 50; and
- (d) fraudulent transactions under section 66,

and the orders, if any, of the Adjudicating Authority in respect of such transactions.

(3) The committee shall-

- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;

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- (b) record its deliberations on the feasibility and viability of each resolution plan; and
- (c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

(3B) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

Illustration. - The committee is voting on two resolution plans, namely, A and B, simultaneously. The voting outcome is as under:

Voting outcome	% of votes in favour of		Status of approval
	Plan A	Plan B	
1	55	60	No Plan is approved, as neither of the Plans received requisite votes. The committee shall vote again on Plan B, which received the higher votes, subject to the timelines under the Code.
2	70	75	Plan B is approved, as it received higher votes, which is not less than requisite votes.
3	75	75	The committee shall approve either Plan A or Plan B, as per the tie-breaker formula announced before voting.]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in Form H of the

Approval of Resolution Plan

Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

(5) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, and the resolution plan satisfy that the resolution plan has provisions for its effective implementation it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

(6) The Supreme Court in the case of *SBI v. V. Ramakrishnan* 2018 SCC OnLine SC 963, while addressing this issue placed strong reliance on Section 31 of the IBC which states that once the resolution plan is approved it will be binding on all the stakeholders including the guarantors. On the basis of the said provision, it held that the guarantor cannot be relieved from making payment by virtue of Section 133 of the Contract Act even if the debt is varied under the resolution plan as the resolution plan is binding on the guarantor as well.

(7) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(8) The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors. If, within its limited jurisdiction, the Adjudicating Authority finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.

(9) The approval of Resolution plan is to start with fresh slate, extinguishment of liabilities after approval of Resolution Plan is necessary [Ref: Ghanashyam Mishra and Sons Private Ltd v. Edelweiss Asset Reconstruction Company dated 13th April, 2021] The Hon'ble Supreme Court in the matter of Ghanashyam

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Mishra and Sons Private Limited through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. has given its judgment dated 13th April, 2021 wherein it was directed that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 all claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

Effect of Order of Approval of Resolution Plan

- (1) The moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect.
- (2) The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.
- (3) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), 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. Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.
- (4) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.
- (5) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan.

Approval of Resolution Plan

- (6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.
- (7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.
- (8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.
- (9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.

Liability for Prior offences

The Code was amended by inserting section 32A w e f 28.12.2019.

- (1) The liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-
 - a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

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If a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled but the liability will not cease if every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

- (2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –
- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
 - (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Liquidation due to Order of Rejection of Resolution Plan or opting for Liquidation or non-compliance of Resolution Plan.

- (1) Where the Adjudicating Authority rejects the plan under section 31 for the noncompliance of the requirement specified therein it shall pass an order requiring the corporate debtor to be liquidated.

Approval of Resolution Plan

- (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.
- (3) Where the resolution plan approved by the Adjudicating Authority under section 31 is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order.
- (4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order.

The Code describes four ways in which liquidation can be triggered:

- a. By rejection of resolution plan by the adjudicator if it fails to meet the necessary conditions.
- b. By failure to reach an agreement in the committee of creditors during the stipulated period.
- c. By a decision of the committee of creditors during the CIRP.
- d. By the failure of adherence to terms of a resolution plan

Chapter 11

Compliances

The Board has specified a significant form i.e., Form H a Compliance Certificate . The resolution professional shall endeavor to submit the resolution plan approved by the committee to the Adjudicating Authority along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

FORM H COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, [Name of the resolution professional], an insolvency professional enrolled with [name of insolvency professional agency] and registered with the Board with registration number [registration number], am the resolution professional for the corporate insolvency resolution process (CIRP) of [name of the corporate debtor (CD)].

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	
2	Date of Initiation of CIRP	
3	Date of Appointment of IRP	
4	Date of Publication of Public Announcement	
5	Date of Constitution of CoC	
6	Date of First Meeting of CoC	
7	Date of Appointment of RP	
8	Date of Appointment of Registered Valuers	
9	Date of Issue of Invitation for EOI	
10	Date of Final List of Eligible Prospective Resolution Applicants	
11	Date of Invitation of Resolution Plan	

Compliances

12	Last Date of Submission of Resolution Plan	
13	Date of Approval of Resolution Plan by CoC	
14	Date of Filing of Resolution Plan with Adjudicating Authority	
15	Date of Expiry of 180 days of CIRP	
16	Date of Order extending the period of CIRP	
17	Date of Expiry of Extended Period of CIRP	
18	Fair Value	
19	Liquidation value	
20	Number of Meetings of CoC held	

3. I have examined the Resolution Plan received from Resolution Applicant (.....) and approved by Committee of Creditors (CoC) of [Name of the corporate debtor].

4. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicant (.....) has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by [state the number of votes by which Resolution Plan was approved by CoC] % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) The voting was held in the meeting of the CoC on [state the date of meeting] where all the members of the CoC were present.

or

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I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

[strike off the part that is not relevant]

5. The list of financial creditors of the CD [state the name of CD] being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		(b) Other				

Compliances

		than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan.				
		Total [(a)+ (b)]				
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan				
		Total[(a)+ (b)]				
3	Operational	(a) Related				

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	Creditors	Party of Corporate Debtor				
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv)				
		Total[(a) + (b)]				
4	Other debts and dues					
Grand Total						

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity				
2	Preference				
3					

9. The compliance of the Resolution Plan is as under:

Compliances

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		
[Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the		

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	affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		
[Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in		

Compliances

	payment over financial creditors?]		
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?		
[Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]		
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that –		

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	(a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?		
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		
[Regulation 39(4)]	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	T
Regulation 6(1)	Publication of Public Announcement	T+3	
Section 15(1)(c)	Submission of Claims	T+14	

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/Regulation 12 (1)			
Regulation 13(1)	Verification of Claims	T+21	
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	
Regulation 35A	Determination of fraudulent and other transactions	T+115	
Regulation 27	Appointment of two Registered Valuers	T+47	
[Regulation 36(1)]	Submission of Information Memorandum to CoC	T+54]	
Regulation 36A	Invitation of EoI	T+75	
	Publication of Form G	T+75	
	Provisional List of Resolution Applicants	T+100	
	Final List of Resolution Applicants	T+115	
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	
Section 30(6)/ Regulation	Submission of CoC approved Resolution Plan	T+165	

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39(4)			
Section 31(1)	Approval of Resolution Plan	T=180	

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				
2				
3				

12. The Resolution Plan is not subject to any contingency. or

The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

- i.
- ii.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1				
2				
3				

14. The Resolution Plan is being filed days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

Sl.	Type of Transaction	Date of Filing	Date of Order	Brief of the
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Compliances

No.		with Adjudicating Authority	of the Adjudicating Authority	Order
1	Preferential transactions under section 43			
2	Undervalued transactions under section 45			
3	Extortionate credit transactions under section 50			
4	Fraudulent transactions under section 66			

[15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs.....
- b. Estimated liquid assets available: Rs.....
- c. Contributions required to be made: Rs.....
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
2		
..		
Total		

15B. The committee has recommended under regulation 39C as under:

- (a) Sale of corporate debtor as a going concern: Yes / No
- (b) Sale of business of corporate debtor as a going concern: Yes / No

The details of recommendation are available with the resolution professional.

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15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]

16. I (Name of Resolution Professional) hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

Name of the Resolution Professional:

IP Registration No:

Address as registered with the Board:

Email id as registered with the Board:

Date:

Place:

Chapter 12

Frequently Asked Questions on Resolution Plan

Q.1 What are the objectives of the Resolution Plan under the Code with the order of its priority?

Ans:

- The first objective is "resolution".
- The second objective is "maximisation of value of assets of the 'Corporate Debtor' and
- the third objective is "promoting entrepreneurship, availability of credit and balancing the interests of all stakeholders".

Q.2 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 54th 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.

Q.3 What is the purpose of Information Memorandum ?

Ans: Purpose of the Information memorandum is to provide information to the members of CoC and Resolution Applicant with basic

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information of the Corporate Debtor for informed decision during CIRP and the Resolution Applicant to make informed decision for submitting Resolution Plan. In the CIRP, Information Memorandum is a basis document which contains all the aspect of the Corporate Debtor that will enable the Resolution Applicant to prepare resolution Plan.

Q.4 What are the consequences of failure to prepare Information Memorandum.

Ans: Failure to obtain the requisite information, documents for preparation of Information Memorandum by the Resolution Professional and not placing the Information Memorandum to CoC will amount to failure on the part of Resolution Professional to perform his duties under section 25(2)(g) and section 29(1). Such non-performance of duty by Resolution Professional will call for disciplinary action from IBBI. Without Information Memorandum there cannot be any Resolution Plan, without resolution plan the Corporate Debtor will lead to liquidation.

Q.5 What is the meaning of Resolution Applicant?

Ans: As provided in Section 5(25): "Resolution Applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25. Section 25 (2) (h) casts the duty on 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.

Q.6 Is Resolution Applicant required to give Bank guarantee / Earnest Money Deposit for submitting Resolution Plan?

Ans: Resolution Applicant(s) is required to provide a Bank guarantee / Earnest Money Deposit as per RFRP document, as part of the Binding Resolution Plan (hereinafter referred to as the "Binding Submission Bond Guarantee" or "BSBG"). The BSBG shall be valid for the Plan Validity Period and shall be renewed / extended by the Resolution Applicant(s) for a period as may be required till approval of Resolution plan by Adjudicating Authority.

Frequently Asked Questions on Resolution Plan

Q.7 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.

Q.8 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.

Q.9 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.

Q.10 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.

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Q11. 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.

Q.12 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.

Q.13 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.

Q.14 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.

Q.15 Is Section 29A applicable to MSME Corporate Debtor?

Ans: The amendment to the section 240A was made which specifically dispenses the applicability of Section 29A clause (c) and (h) in case the Corporate Debtor is a Micro, Small or Medium Enterprise.

Q.16 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.

Frequently Asked Questions on Resolution Plan

Q.17 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.

Q.18 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.

Q.19 Can a resolution applicant attend meeting of the committee of creditors?

Ans: Yes. The resolution applicant may attend the meeting in which the resolution plan of Applicant is considered. 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.

Q.20 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.

Q.21 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

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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 favour of resolution plan.

Q.22 What happens when the resolution plan is not filed within 180 days or within 270 days as the case may be 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.

Q.23 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.

Q.24 Who can be valuer?

Ans: IBBI Circular IBBI/RV/019/2018 (w.e.f. 01.02. 2019) specifies that only valuers registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017 may be appointed by the resolution professional. Payment, whether as fee or otherwise, to any person, other than a Registered Valuer for any valuation shall not form part of the insolvency resolution process costs or liquidation cost.

Q.25 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 47th day from the

Frequently Asked Questions on Resolution Plan

insolvency commencement date, to determine the fair value and liquidation value of the corporate debtor.

Q.26 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.

Q.27 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.

Q.28 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.

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