



# Module-C Unit-9

## CAIIB PAPER-1

### **Advanced Bank Management (ABM)**



## CAIIB Paper 1 (ABM) Module C Unit 9: Resolution of Stressed Assets under Insolvency and 25 Bankruptcy Code 2016

### Definition Of Insolvency And Bankruptcy

Insolvency is a situation where liabilities of an individual or an entity exceed its assets and is unable to pay debt obligations. Bankruptcy is the legal recognition of the insolvency as beyond resolution. A bankrupt person or entity is a debtor who has been adjudged as bankrupt by a due Adjudicating Authority by passing a bankruptcy order. The court appoints a trustee who is responsible for selling the property and discharge obligations to the creditors. Under IBC, such trustee is the resolution professional.

### To Whom The Code Is Applicable

#### Part-II of the Code is applicable to:

- Companies and LLPs (termed as Corporate Debtor)
- Personal Guarantors to Corporate Debtors
- Any other body incorporated under any Law for the time being in force, as the Central Government may specify by notification.

#### Part-III of the Code applies to:

- Partnership and Proprietorship Concerns
- Individuals

### Legal Elements Of The Code

Insolvency & Bankruptcy Board of India (IBBI, the Regulator)

- Insolvency Professional Agencies
- Insolvency Professionals (Interim Resolution Professionals, Resolution Professionals)
- Information Utilities
- The Creditors
  - ✓ Financial Creditors (FC)
  - ✓ Operational Creditors (OC)
- Committee of Creditors
- The Corporate Debtor (CD)
- The Judiciary
  - ✓ National Company Law Tribunal (NCLT – Adjudicating Authority for Corporate)
  - ✓ National Company Law Appellate Tribunal (NCLAT – Appellate Authority for Corporate)
  - ✓ Debt Recovery Tribunals (Adjudicating Authority for individuals and partnerships)
  - ✓ Debt Recovery Appellate Tribunals (Appellate Authority for individuals and partnerships)

- ✓ Supreme Court (Supreme Authority)

### Regulatory Authority (IBBI)

- The Insolvency and Bankruptcy Board of India is entrusted with the task of regulating both the profession and process of IBC. Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities are under the regulatory supervision of IBBI.
- Apart from these four, IBBI is the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 for regulation and development of the profession of valuers in the country.

### Insolvency Professionals (IP)

- Insolvency Professionals (IPs) are the frontline warriors implementing IBC. They are professionals licensed/registered by IBBI to undertake the role of the Interim Resolution Professional (IRP), Resolution Professional (RP), liquidator and/or bankruptcy trustee under any resolution process initiated under the Code. The IP does the end-to-end job, depending upon her role, of IBC

### Insolvency Professional Agencies (IPA)

- IPAs are bodies or entities registered with IBBI and are responsible for promoting the best professional standards among Insolvency Professionals (IP). Every IP must be a member of an IPA before seeking registration with IBBI.
- As of now there are three IPAs, namely, a) Institute of Company Secretaries of India, b) Institute of Chartered Accountants of India and c) Institute of Cost Accountants of India

### Insolvency Professional Entities (IPEs)

- IPEs are registered firm (Partnership or LLP or Company) of IPs. It is not a mandatory set up but internal between those IPs, who are members, to provide infrastructural support service to IPs themselves.

### Information Utilities (IUs)

- IUs are reservoirs of financial information of all entities under the Code. It is a pooling centre of information from entities like banks, FIs, NBFCs, ARCs, Corporates, firms, individuals, utilities on any financial or other credit transaction with them. The information is then authenticated by IU with the counterparties before documenting.
- The information available with the IUs are accessible through a Central Application Programming Interface (CAPI). When a person or entity intends to initiate a CIRP against a Corporate Debtor, it must attach a copy of certificate of default issued by IU with the CIRP application filed with the Adjudicating Authority.

### Creditors and Committee of Creditors (CoC)

- Financial Creditors are those who have lent money to the Corporate Debtor (CD), meant for paying back, without any trade transaction. Operational creditors are those who have supplied goods or services on credit or those who have made advance payment of money to the CD in consideration of receiving back goods or service.
- The Committee of Creditors is a committee of, normally, only financial creditors and is formed by the Interim Resolution Professional based on the claims received from the creditors. Each financial creditor will have a voting power proportionate to the exposure to the corporate debtor. Operational creditors have only observatory role in CoC except where there are no financial creditors. Quorum of CoC is 33% by value.
- Critical matters are passed by the CoC with 66% majority and routine matters with a 51% majority. Withdrawal of Application for Resolution under section 12A requires 90% majority of the Committee (all by value).

### Adjudicating Authority

- The National Company Law Tribunal (NCLT) is the adjudicating authority for insolvency resolution process of corporate entities, namely, Companies, LLPs or other corporate entities incorporated under any law in force.
- The Debt Recovery Tribunal (DRT) is the adjudicating authority for non Corporate entities (Individuals, Proprietors, Partners of a Partnership). Appellate authorities are National Company Law Appellate Tribunal (NCLAT) and Debt Recovery Appellate Tribunal (DRAT) for orders of NCLT and DRT respectively.

### **Paradigm Shift**

- IBC made leaning of the law from “Debtors in Possession” to “Creditors in Control” as, on appointment of IRP, she takes over as CEO of the CD and on formation, CoC supersedes the Board of Directors of the CD.
- The original promoters or their related parties are barred from bidding for a resolution of the corporate entity at default, which, effectively takes away the ownership, control and management of the corporate entity from the hands of the existing promoters.

### **Corporate Insolvency Resolution Process**

#### **Initiation of Corporate Insolvency Resolution Process**

- Insolvency and bankruptcy resolution process can be initiated when a Corporate Debtor commits a default of Rs. one crore or more. Initiation can be by the Financial Creditors, Operational Creditor or the Corporate Debtor itself, by filing an application before NCLT.
- ‘Default’ means non-payment of dues either in full or in part to any of the creditors. Therefore, CIRP can be initiated by any third party for dues to her even when the accounts with bank(s) are standard assets.

#### **Interim Resolution Professional/Resolution Professional (IRP/RP)**

- The applicant (FC or CD as the case may be) shall propose name of an IP to act as Interim Resolution Professional. In the case of application by OC, proposition of IRP is optional.
- Why 'interim' is because only CoC, when formed later, can decide who is regular Resolution Professional. Once appointed, all powers of the CEO and Board of Directors of CD will vest with the IRP and it is her responsibility to run the CD as a going concern.

### Moratorium

- The NCLT will declare moratorium from the date of commencement of insolvency till the completion of the same against institution of suits, transfer of assets, foreclosure, recovery or enforcement under SARFAESI, recovery by owner of property or assets in possession of CD.

### Resolution Plan

- A resolution plan must provide for payment of insolvency resolution process costs, pay liquidation value to operational creditor in priority in payment over financial creditors, management of the affairs of the borrower after the plan is approved and implementation and supervision of the approved plan.

### Time Norms

- The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:

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Section/ Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	....	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c)/ Regulations 6(2) (c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90 <sup>th</sup> day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97
Section 21(6A) (b)/Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1)/ Regulation 19(2)	1 <sup>st</sup> meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	.....
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40 <sup>th</sup> day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47 <sup>th</sup> day of commencement.	T+47
Section 12(A)/ Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135

Regulation 36 (1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54 <sup>th</sup> day of commencement	T+54
Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EoI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
Regulation 36B	Final List of RAs by RP	Within 10 days of the receipt of objections	T+115
	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

### Appointment of Interim Resolution Professional (IRP)

- As proposed by the CIRP Applicant, the NCLT, while admitting the CIRP, by virtue of the same order, also appoints an Interim Resolution Professional (IRP), provided there is no ongoing investigation or disciplinary action against the IP.
- As it is not mandatory for Operational Creditor to propose any IP for appointment as IRP, in the absence of such proposed names, in consultation with IBBI, NCLT appoints an IRP within 14 days of admission of CIRP.
- Immediately on her appointment, the IRP takes control of the entire assets and affairs of the corporate debtor as an on-going concern. The powers of the board of directors shall stand suspended from the date of initiation of CIRP.

### Public announcement

- Within three days of appointment, the IRP, has to make a Public Announcement of commencement of CIRP, published on the websites of IBBI as well as CD and also in two newspapers including one in regional language to invite all creditors for submission of claims and **proof of claims (PoC) within 11 days from the date of the announcement.**

### Constitution of Committee of Creditors (COC)

- Based on the claims received from Financial Creditors, the IRP shall constitute a Committee of Creditors (CoC) consisting of all those financial creditors (who are not a related party to the Corporate Debtor).
- The CoC has to meet within seven days of its constitution. In case there are no financial creditors (other than related parties) at all, the CoC shall consist of only operational creditors with
  - ✓ 18 largest such creditors by value,

- ✓ One representative elected by all workmen other than workmen included in top 18 operational creditors and
- ✓ One representative elected by all employees other than employees included in the top 18 operational creditors
- The CoC, in its first meeting, will decide on either continuation of IRP as RP or nomination of another IP as RP by a majority of 66% vote in favour. In case CoC decides to replace IRP, the IRP will immediately file the CoC resolution for appointment of RP together with consent letter from the proposed RP with NCLT.
- The RP, within 7 days of her appointment, must appoint two valuers, who are registered with IBBI, to determine the fair value and liquidation value of the CD. The valuation received from the valuers must be kept by RP in strict confidence and it can be disclosed even to the members of CoC only against a Non-Disclosure Agreement (NDA) individually from each member.
- Each CoC member has voting power proportionate to her share in the financial debt of the Corporate Debtor (immaterial whether debt secured or unsecured, as, both are treated as equal for voting).

### Withdrawal of CIRP

- The Adjudicating Authority can allow the withdrawal of CIRP on an application made by the applicant with the approval of 90% voting share of the CoC, but before publication of expression of interest for submitting the resolution plan.

### Information Memorandum (IM)

Information memorandum is a compilation of the entire information on the of the CD. It is prepared by the Resolution Professional incorporating following information:

- Assets and liabilities as on insolvency commencement date
- Latest annual financial statements
- Audited financial statements for last two financial years
- A list of creditors, amount claimed, claims admitted, and details of security interest held by them in respect of such claims
- Particulars of debt due from or to Corporate Debtor with respect to related parties.
- Details of Guarantees that has been given in relation to debt of CD by other persons, specifying which of the Guarantors is a related party
- Names of addressed of members or partners holding at least 1% stake in CD with total holding
- The number of workers and employees and liabilities of CD towards them.
- Any Other information, which RP deems relevant to CoC/Potential investors

### Liquidation Process

Initiation of Liquidation process A liquidation process is automatically initiated under the Code where,

- The CIRP fails as no resolution plan is received or is not approved by the CoC;

- Any of the stakeholder's defaults or deviates from terms of approved Resolution Plan;
- Creditors representing 66% of the outstanding financial debt resolve to liquidate the corporate debtor at any time before the preparation of the information memorandum.
- The corporate debtor contravenes the CIRP and anyone prejudicially affected applies for liquidation.

If otherwise not ineligible, the RP himself can be appointed as liquidator.

### Public Announcement

- The Liquidator, on her appointment, makes a public announcement in minimum one each of English and regional language newspapers stating that the CD is in liquidation, with intimation to Registrar of Companies with whom the CD is registered.
- In the public announcement, liquidator also invites proof of claims from stakeholders **of the CD within 5 days of her appointment.**

### Stakeholder List

The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted, with

- The amounts of claim admitted, if applicable,
- The extent to which the debts or dues are secured or unsecured, if applicable,
- The details of the stakeholders, and
- The proofs admitted or rejected in part, and the proofs wholly rejected.

The list of stakeholders is to be filed with the Adjudicating Authority within forty-five days from the last date for receipt of the claims and, as modified from time to time, shall be

- Available for inspection by the persons who submitted proofs of claim;
- Available for inspection by members, partners, directors and guarantors of the corporate debtor;
- Displayed on the website, if any, of the corporate debtor.
- Filed on the electronic platform of the Board for dissemination on its website:

### Stakeholders' consultation committee

The liquidator has to constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared, to advise her on matters relating to

- Appointment of professionals and their remuneration;
- Sale, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy:

The decision(s), if any, taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting. The composition of the consultation committee shall be as

<i>Class of Stakeholders</i>	<i>Description</i>	<i>Number of Representatives</i>
Secured financial creditors, who have relinquished their security interests under section 52	Where claims of such creditors admitted during the liquidation process is less than 50% of liquidation value	Number of creditors in the category, subject to a maximum of 2
	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the category, subject to a maximum of 4
Unsecured financial creditors	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Workmen and employees	1	1
Governments	1	1

<i>Class of Stakeholders</i>	<i>Description</i>	<i>Number of Representatives</i>
Operational creditors other than Workmen, employees and Governments	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Shareholders or partners, if any	--	1

### Formation of Liquidation Estate

- For the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the CD and she shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.
- Liquidation estate shall comprise of all assets that may or may not be in possession of the corporate debtor, whether tangible or intangible, whether moveable or immovable; but shall exclude assets owned by a third party which are in possession of the corporate debtor, assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions, personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions, assets of any Indian or foreign subsidiary of the corporate debtor; or any other assets as may be specified by the Board,

including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

### The Powers and Duties of the Liquidator

- To collect and verify the claims of all the creditors
- To acquire custody and control over the assets, properties, effects and actionable claims of the CD
- To evaluate of the assets and properties of the CD and preparation of a report thereof
- To protect and preserve the assets and properties of the CD
- To conduct the business of the CD for its beneficial liquidation
- To sell the immovable and movable properties and actionable claims of the CD in liquidation by public action or private contract along with the power to transfer such property to any person or body corporate.
- To draw, accept, make and Endorse any negotiable instrument
- To obtain professional assistance from any person or appointment of professional in discharge of her duties, obligations and responsibilities
- To invite and settle claims of creditors and distribute proceeds as per the provisions of the Code
- To institute legal proceedings and suits (civil or criminal) in the name or on behalf of the CD
- To investigate the financial affairs of the CD to determine undervalued, fraudulent or preferential transactions
- To execute documents and deeds on behalf of the CD as may be necessary for liquidation, distribution of assets and in discharge of her duties and obligations and functions as liquidator;
- To apply to the Adjudicating Authority for such orders or directions as maybe necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board.
- To access information system for the purpose of admission or proof of claims and identification of the liquidation estate of CD from any Information Utility or any agency of Central, State Govt. or local Govt. including any registration authority
- To provide information about the CD **when required by creditors within 7 days of such request.**

### Reports by Liquidator

**The liquidator shall prepare and submit to the NCLT:**

- A preliminary report;
- An asset memorandum;
- Progress report(s);
- Sale report(s);
- Minutes of consultation with stakeholders; and
- The final report prior to dissolution

## **Pre-Packaged Insolvency Resolution Process For Stressed MSMEs**

Pre-packaged Insolvency Resolution Process for stressed micro, small and medium enterprises (MSMEs) will allow the stressed debtor, ie, the MSMEs, and its creditors to quickly work out a plan to turn around the MSME corporate entity without a bankruptcy process, which would then be sanctioned by the Adjudicating Authority.

### **Applicability**

- The pre-pack framework is applicable to MSMEs default value up to Rs. 1 crore, beyond which, IBC or other resolution mechanisms can continue to be used. PIRP can be contemplated only after a **period of three years** from the date of previous PIRP or CIRP, if anything of that kind was done earlier.
- However, if any CIRP has been recently filed, then, if PIRP is **filed within 14 days**, PIRP will prevail. **If 14 days have past**, CIRP will be proceeded with.

### **Initiation/Trigger**

- While the CIRP under IBC is creditor-in-control model, that is, the creditors take over the management and find out course of resolution, the PIRP is on a reverse framework of debtor-in-possession model, where the debtor has to approach creditors for resolution with a base resolution plan in place.
- In case of a default by an MSME and if a minimum of 66 per cent creditors vote in favour, the financial creditors can initiate the PIRP and file an application with the adjudicating authority for the same. In case a corporate debtor does not have any financial creditors, it may approve the application filing through a special resolution with a 75 per cent majority and move the court to initiate PIRP. Then the court will appoint an insolvency resolution professional as approved by creditors.

### **Timelines**

- **120 days from the date** of commencement is the time frame given for completion of the entire PIR process.
- Also, within **90 days of date of commencement**, the Resolution Personal has to submit the resolution plan to the adjudicating authority after the same is approved by the committee of creditors. The PIRP will stand terminated in case the plan is not approved by the committee of creditors (CoC) within the time.

### **Resolution Plan**

- Under PIRP also, the **applicability of section 29A of IBC**, which prohibits defaulting promoters or wilful defaulters from participating in the resolution process, has been extended.
- The MSME defaulter, who is under PIRP has to, within two days of PIRP commencement, submit a base resolution plan to the resolution professional.

Any changes thereon have to be done before its approval by the CoC. Nevertheless, if the resolution plan does not envisage payment to the operational creditors in full or in case the resolution plan is not approved by creditors, new bids can be invited.

### Comparison of PIRP with CIRP

Criteria	PIRP for MSME	CIRP
Eligibility	Only MSMEs	All corporate debtors
Default threshold	Up to Rs. 1 crore	Over Rs. 1 crore
Initiation by	Only Corporate Debtor (CD), post-approval by shareholders & unrelated Fin Creditors	Financial Creditor/Operational Creditor/Corporate Debtor
Timeline	90 days to submit resolution plan to adjudicating authority, 120 days for entire process. No extension	180 days extendable up to max 330 days
Management control	Corporate Debtor-in-Possession with Creditor-in-Control	Creditor in control
Resolution plan	CD to submit Base Resolution Plan. If CoC rejects, or if Operational Creditors not paid in full, competing bids can be invited.	EOIs invited from all prospective resolution applicants.
Section 29A applicability	Section 29A applicable	Section 29A applicable
Consequence of failure	Termination of PIRP, or liquidation or initiation of CIRP	Liquidation
Moratorium	Moratorium protection from date of commencement	Moratorium protection from date of filing of plea
Termination	Can terminate process with min 66% CoC votes	Section 12A to withdraw from CIRP with 90% vote of CoC
Other terms	<p>(a) If promoters not diluting equity as part of resolution, CoC needs to record reasons for it</p> <p>(b) PIRP cannot run in parallel to CIRP</p> <p>(c) 3-year cool-off period from any other PIRP, CIRP</p>	No such conditions.

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