

Frequently Asked Questions (FAQs) on Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC)

1. What is IBC?

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy.

2. What is the applicability of IBC?

The provisions of IBC shall apply to:

- a) any company incorporated under the Companies Act, 2013 or under any previous company law;
- b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;
- c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
- d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
- e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

3. Who can initiate corporate Insolvency Resolution Process (CIRP)?

The CIRP can be initiated by Financial Creditor (under Section 7), operational Creditor (under Section 9) and Corporate Debtor (under Section 10)

4. When CIRP can be initiated?

The CIRP can only be initiated when the minimum amount of default is rupees is one lac or such higher amount as may be notified by the Central Government which shall not exceed one crore rupees.

5. What is default?

Section 3(12) of the IBC states that “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be; For the purposes of section 7(1) (i.e., Corporate Insolvency Resolution by financial creditor) of the IBC states that, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

6. What is debt?

As per section 3 (11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

7. Who is Financial Creditor?

As per section 5(7) of the IBC “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

8. What is financial debt?

As per section 5(8) of the IBC states that “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes:

- a) money borrowed against the payment of interest;
- b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
- f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

9. Who is operational Creditor?

As per section 5(20) of the IBC “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

10. What is operational debt?

As per section 5(21) of the IBC “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

11. Whether an operational creditor can assign or legally transfer any operational debt to a financial creditor?

Yes. However, as per section 21(5) where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

12. Does financial creditor include Secured creditor?

Yes, financial creditor includes secured creditor, since the definition of financial debt covers security interest also.

13. Whether workmen/ employees come under operational creditor?

Yes the workmen and employees whose past payments are due come under definition of operational creditor.

14. Who is a Corporate Debtor?

As per section 3(8) of the IBC “corporate debtor” means a corporate person who owes a debt to any person;

15. Who are corporate persons?

As per section 3(7) of the IBC “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force **but shall not include any financial service provider;**

16. Who is financial service provider?

As per section 3(17), “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.

17. What are covered under financial services?

According to sub-section (16) of section 3 “financial service” includes any of the following services, namely:

- a) accepting of deposits;
- b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- c) effecting contracts of insurance;
- d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of –
 - i. buying, selling, or subscribing to, a financial product;
 - ii. availing a financial service; or
 - iii. exercising any right associated with a financial product or financial service;

- f) establishing or operating an investment scheme;
- g) maintaining or transferring records of ownership of a financial product;
- h) underwriting the issuance or subscription of a financial product; or
- i) selling, providing, or issuing stored value or payment instruments or providing payment services;

18. Whether the defaulting financial service company is entitled to file an application for the corporate insolvency resolution process (CIRP) or whether financial creditor or operational creditor can initiate CIRP against financial service company?

As per definition of Corporate person defined under IBC it excludes financial service provider from the ambit of “corporate person”, who can initiate the CIRP, therefore it cannot file an application nor can any CIRP be initiated against it by anybody.

19. Whether IBC is applicable to person resident outside India?

As per sub-section 23 of section 3 “person” includes –

- a) an individual;
- b) a Hindu Undivided Family;
- c) a company;
- d) a trust;
- e) a partnership;
- f) a limited liability partnership; and
- g) any other entity established under a statute, and includes a person resident outside India.

Hence, as per definition a person includes a resident outside India.

20. Who is the adjudicating Authority for Corporate Insolvency Resolution Process (CIRP)?

National Company Law Tribunal (NCLT) is the adjudicating authority for Corporate Insolvency and Insolvency of LLPs.

21. Who are not entitled to initiate CIRP?

Section 11 of the IBC states that the following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely :

- a) a corporate debtor undergoing a corporate insolvency resolution process; or
- b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- d) a corporate debtor in respect of whom a liquidation order has been made. For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

22. Is there any time limit within which the NCLT has to accept or reject the application?

The NCLT has to (also ascertain the existence of default in case of financial creditors) admit or reject the application within 14 days of receipt of application, as prescribed under Section 7, Section 9 and Section 10 as the case may with respect to financial creditor, operational creditor, corporate debtor respectively.

23. What is information Utility? What does it do?

Section 3(21) of the IBC states that “information utility” means a person who is registered with the Insolvency and Bankruptcy Board of India. As per Section 213 of the IBC an information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulation

24. What are Core Services?

Section 3(9) of the IBC states that “core services” means services rendered by an information utility for

- a. accepting electronic submission of financial information in such form and manner as may be specified;
- b. safe and accurate recording of financial information;
- c. authenticating and verifying the financial information submitted by a person; and
- d. providing access to information stored with the information utility to persons as may be specified;

25. How does the information utility get information?

As per Section 215 (2), a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations. Further Section 215(3) states that an operational creditor may submit financial information to the information utility in such form and manner as may be specified.

26. What is the difference between initiation date and insolvency commencement date?

Section 3(12) states that “insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority (i.e. NCLT) Whereas Section 3(11) states that “initiation date” is the date on which financial creditor (under sections 7), operational Creditor (under Section 9) or Corporate Debtor (under section 10), as the case may be makes an application to the NCLT for initiating corporate insolvency resolution process (CIRP).

27. What is Resolution Plan?

As per section 5(26) of the IBC states that “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;

28. Who prepares the Resolution Plan?

As per section 30 (1) of the IBC a resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum, given by the resolution professionals.

29. Who approves the Resolution Plan?

As per section 30(4) of the IBC states that the committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors.

30. What should be contents of Resolution Plan?

As per section 30(2) of the IBC states that 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 repayment of other debts of the corporate debtor;
- b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
- 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.

31. Who constitutes committee of creditors?

As per section 21 (1) of the IBC states that the interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

32. What should be the Composition of Committee of Creditors?

As per section 21(2) of IBC states that the committee of creditors shall comprise all financial creditors of the corporate debtor. However a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

33. On whom the notice of meeting of committee of creditors should be served?

As per section 24(3) of IBC states that the resolution professional shall give notice of each meeting of the committee of creditors to –

- a) members of Committee of creditors;
- b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

34. What is the time limit within which the first meeting of committee of creditors should be held?

Section 22 (1) of the IBC states that the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

35. What should be the agenda at the first meeting of committee of creditors?

Section 22(2) of IBC states the agenda of the committee of creditors, who may, in the first meeting, by a majority vote of not less than seventy-five percent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional. In addition, there may be other agenda relating to CIRP.

36. Who is resolution professional? What is their role in CIRP?

As per section 5(27) of the IBC states “resolution professional” means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional. The role of resolution professional include managing operations of corporate debtor, conducting meetings of committee of creditors and conducting entire corporate insolvency resolution process.

37. Who is interim resolution Professional? What is the term of his appointment?

Section 16(2) of the IBC states that where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him. The NCLT shall appoint an interim resolution professional within fourteen days from the insolvency commencement date for the term which shall not exceed 30 days from the date of his appointment.

38. What is the difference between ‘Interim Resolution Professional’ and ‘Resolution Professional’?

The name of Interim Resolution Professional is proposed by applicant of Insolvency process and appointed by NCLT. The Resolution Professional is appointed by the committee of creditors (with 75% of voting share of financial creditor). The committee of creditors may appoint Interim Resolution Professional as resolution professional or any other resolution professional. NCLT appoints resolution professional on confirmation by Insolvency and Bankruptcy Board of India.

39. How the appointment of Resolution Professional is confirmed?

As per section 22 (4) of IBC the National Company Law Tribunal (NCLT) shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board and under section 22(5) of the IBC where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the NCLT shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

40. Whether any creditor who is a member of committee of creditor can appoint an insolvency professional other than the resolution professional to represent his interest?

Section 24(5) of the IBC states that any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors. Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

41. Whether operational creditor can attend and vote at the committee of creditors?

As per section 24(4) of the IBC state that the directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meeting. Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

42. Is a director or KMP of corporate debtor who has given loan to Corporate Debtor eligible to vote at the meeting of committee of creditors?

As per section 21 of the IBC which states that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

43. What if a person is both operational Creditor and financial creditor?

As per section 21(4) of the IBC states that where any person is a financial creditor as well as an operational creditor

- a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
- b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

44. What if corporate persons do not have any financial creditor?

As per section 21(8) of the IBC states that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Insolvency and Bankruptcy Board of India.

45. When the financial creditor is related to corporate debtor is there any restriction with respect to his representation at the meeting of committee of creditors or voting?

As per section 21 of the IBC which provides that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors. Therefore the related financial creditor of the corporate debtor shall be restricted with respect to his representation at the meeting of committee of creditors and voting.

46. Who is related party in relation to corporate debtor?

Section 5(24) of the IBC states that “related party”, in relation to a corporate debtor, means:

- a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;
- b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

47. What should be contents of the public announcement?

As per section 15(1) of the IBC states that the public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely :

- a) name and address of the corporate debtor under the corporate insolvency resolution process;
- b) name of the authority with which the corporate debtor is incorporated or registered;
- c) the last date for submission of claims;
- d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

- e) penalties for false or misleading claims; and
- f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

48. What is Moratorium?

The NCLT shall by order declare moratorium prohibit the following namely:

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Note – The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. The provisions as specified above shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

49. Is there any time limit within which the moratorium is to be declared?

Section 14(1) of the IBC states that subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the NCLT shall by order declare moratorium.

50. What is the duration of Moratorium?

As per section 14(4) of the IBC states that the order of moratorium shall have effect from the date of admission of the application for initiation of corporate insolvency resolution process (CIRP) till the date of order of NCLT.

51. What is the time limit within which the CIRP has to be completed?

As per Section 12(1) and Subject to sub-section (2), of the IBC states that the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

52. Whether the time limit can be extended?

As per section 12(2) of the IBC the time limit can be extended, the resolution professional shall file an application to the NCLT to extend the period beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares. The NCLT if satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days (only one time extension).

53. On whom the Resolution plan approved by NCLT, shall be binding on?

As per section 31 (1) if the NCLT 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, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

54. To whom an appeal is made if the resolution plan is rejected by NCLT?

If the resolution plan is rejected by NCLT then an appeal can be made to National Company Law Appellate Tribunal (NCLAT).

55. Describe broadly the role of Insolvency and Bankruptcy Board of India?

The Board regulates and oversees the functioning of Insolvency Professionals, Insolvency Professional Agencies and Information utilities through regulations covering code of conduct for insolvency professionals, model bye laws for insolvency professional agencies etc.

56. What are the sources of Insolvency and Bankruptcy Fund?

As per Section 224(2), there shall be credited to the Fund the following amounts, namely –

- a) the grants made by the Central Government for the purposes of the Fund;
- b) the amount deposited by persons as contribution to the Fund;
- c) the amount received in the Fund from any other source; and
- d) the interest or other income received out of the investment made from the Fund.

57. Who can withdraw from Insolvency and Bankruptcy Fund? For what purpose and to what extent?

As per Section 224(3) a person who has contributed any amount to the Fund may, in the event of proceedings initiated in respect of such person under this Code before an Adjudicating Authority(i.e NCLT for Corporate Insolvency Adjudication), make an application to such Adjudicating Authority(i.e. NCLT) for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of such persons, meeting the incidental costs during the proceedings or such other purposes as may be prescribed. The rules framed may prescribe the purposes for which the withdrawal is permitted in addition to the purposes specified under Section 224(3)

58. Who is Insolvency Professional Agency?

As per Section 3(20), “insolvency professional agency” means any person registered with the Board under section 201 as an insolvency professional agency.

59. Who regulates Insolvency Professional Agency?

The Insolvency and Bankruptcy Board of India regulates the Insolvency Professional Agency.

60. Who is regulated by Insolvency Professional Agency?

Insolvency Professionals who are registered as member of an insolvency professional agency and registered with the Board are regulated by Insolvency Professional Agency.

61. What are the Functions of Insolvency Professional Agency?

As per Section 204, an insolvency professional agency shall perform the following functions, namely :–

- (a) grant membership to persons who fulfil all requirements set out in its bye-laws on payment of membership fee;
- (b) lay down standards of professional conduct for its members;
- (c) monitor the performance of its members;
- (d) safeguard the rights, privileges and interests of insolvency professionals who are its members;
- (e) suspend or cancel the membership of insolvency professionals who are its members on the grounds set out in its bye-laws;
- (f) redress the grievances of consumers against insolvency professionals who are its members; and
- (g) publish information about its functions, list of its members, performance of its members and such other information as may be specified by regulations.

As per section 205, subject to the provisions of IBC and any rules or regulations made there under and after obtaining the approval of the Board, every insolvency professional agency shall make bye-laws consistent with the model bye-laws specified by the Board under sub-section (2) of section 196.

Source: ICSI website