



Resolution



III

**SECTION III: CORPORATE
INSOLVENCY RESOLUTION
PROCESS**

Editor’s Note:

Corporate Insolvency Resolution Process is a process laid down in the Code for reviving the company (here: corporate debtor) from its state of insolvency. In colloquial terms, insolvency refers to inability to pay, but the test under the Code has been shifted from “inability” to “failure”, thereby moving from the so-called “balance sheet test” to the “liquidity” or “cashflow test”. CIRP under IBC can be initiated even if default is wilful, i.e. when the corporate debtor has the ability to pay, yet chooses not to pay. Therefore, under IBC, the focal point is “default” of a payment obligation.

The objectives of the Code, as stated in its Preamble include “reorganisation and insolvency resolution” which implies that the idea is to revive and not liquidate. When a company falls into insolvency, the first step is to try and resolve and not liquidate.

An application for CIRP can be filed by a financial creditor, an operational creditor or the corporate debtor itself.

Once an application filed by either of the creditor or the corporate debtor itself is admitted by the Adjudicating Authority, the first and foremost implication is the applicability of moratorium. “Moratorium”, also referred to as stay or “calm period” is the period during which no creditor, whatsoever can undertake recovery actions against the Corporate Debtor.

During this period, the

corporate debtor too, cannot alienate its assets. However, the umbrella protection of moratorium is not all pervasive – it comes with exceptions as discussed further. This period is exclusively for the Corporate Debtor to revive and reorganize to be fit again. The Code provides a moratorium of 180 days or 270 days as a result of a one-time extension of maximum 90 days.

When the order of commencement of CIRP is passed, the Adjudicating Authority also appoints an insolvency professional to act as the Interim Resolution Professional (IRP). On and from the commencement of CIRP, the control of the corporate debtor is transferred to the hands of the IRP, so appointed. Meanwhile, the board of directors of the corporate debtor remains in animated suspension. It is the duty of the IRP to make public announcement of commencement of CIRP, invite

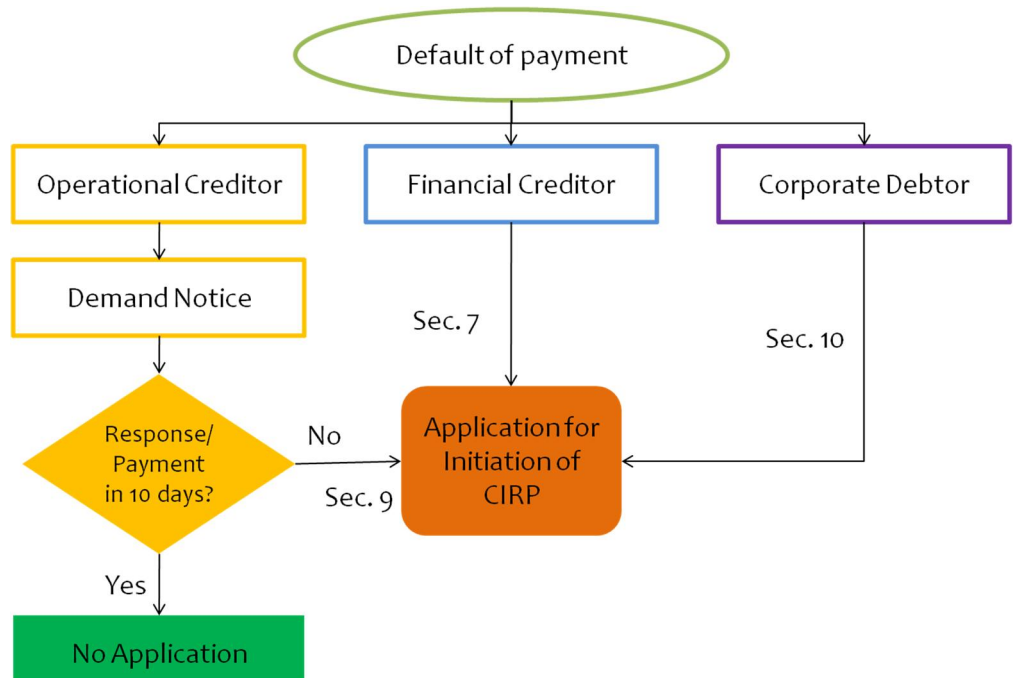


Figure 8: Initiation of CIRP

Corporate Insolvency Resolution Process

claims from creditors, and constitute the committee of creditors. The IRP so appointed may or may not be appointed as the Resolution Professional (RP), and the same is decided upon by the Committee of Creditors in its first meeting.

The most important role of the RP is to invite Resolution Plans. The IRP/RP shall, with co-operation of the board of directors and/ or retained officials of the corporate debtor do or ensure to get done, all such acts as may be necessary to keep the corporate debtor in an operating/ going-concern stage.

Insolvency Professionals are one of the four pillars which uphold the Code. The Code is a car and Insolvency Professional, its driver. Being the executive hand of the entire structure laid down by the Code, the role of Insolvency Professionals becomes crucial to ensure fulfilment of the objectives of the Code.

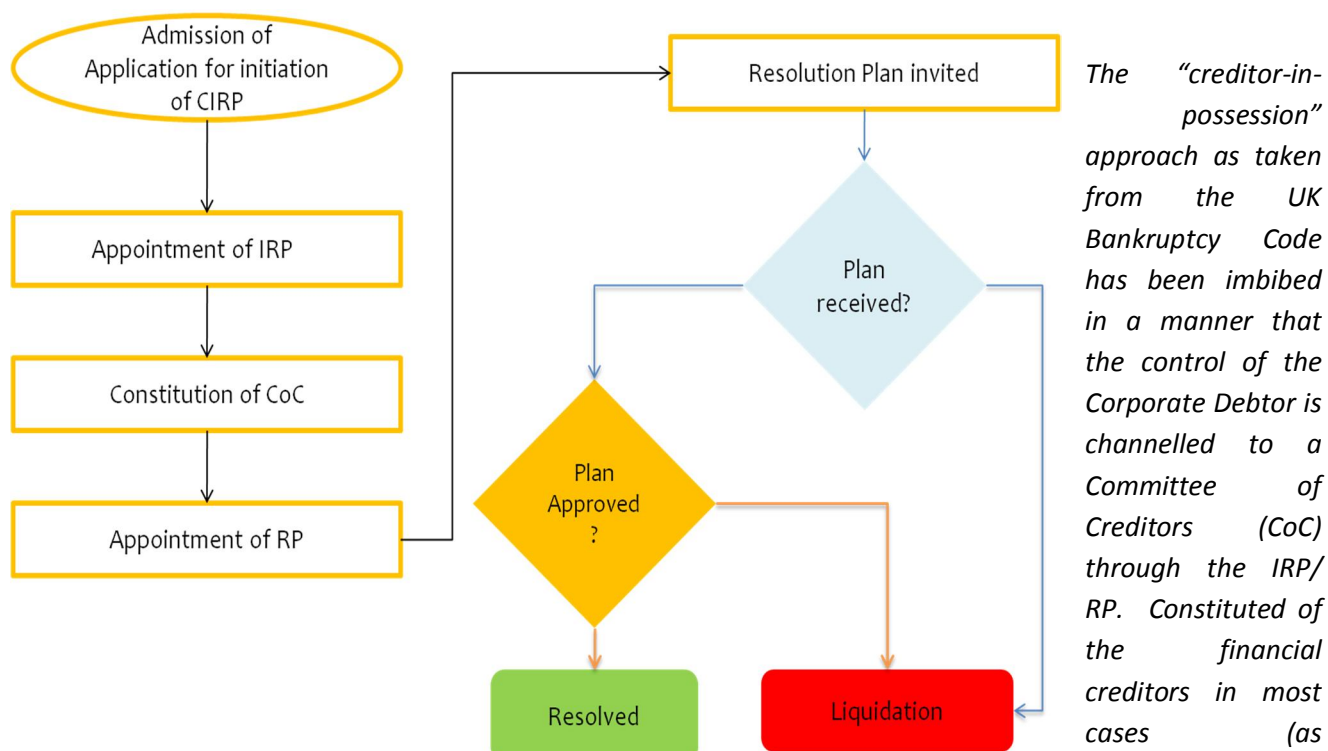


Figure 9: Corporate Insolvency Resolution Process

making body of the Corporate Debtor, for the very reason that it is the investment and interest of these creditors which is at stake. Actions taken by the IRP/ RP are to be ratified by this CoC. The Code has laid down different thresholds for approval of different transactions, viz. substantial matters like approval of resolution plans, removal of RP, require the atleast 66% consent, whereas routine matters like ratification of costs etc. requires atleast 51% consent. This section also covers certain important aspects concerning meetings of the CoC.

The CoC sits together to gauge feasibility and acceptability of resolution plans submitted by various resolution applicants. Resolution Plan perhaps is the most important element of the entire process of resolution. Resolution Plan refers to a plan proposed by a resolution applicant (person/ entity making such proposal) to resolve the insolvency of the corporate debtor. The plan so proposed must compulsorily deal with payment of the CIRP Costs in priority, payment to operational creditors, management of affairs of the corporate debtor on implementation of such plan and other

requirements laid down in section 30 of the Code. It is the duty of the RP to invite resolution plans from prospective applicants.

From the plans so received, the RP shall first ensure that the plan is compliant to the provisions of the Code and then present the plan before the Committee of Creditors, who may accept or reject the same. As such, the RP has a preliminary but crucial role to play. Where the Resolution Plan is accepted, the RP files an application before the Adjudicating Authority for approval of the plan ratified by the Committee, following which, Adjudicating Authority may, upon its discretion accept or reject the same.

When the resolution plan receives a nod from both CoC and Adjudicating authority, the plan operates as a 'statutory magic' and binds all stakeholders involved in the resolution plan. However, where the resolution plan is rejected by the Committee of Creditors itself, or by NCLT, or the RP receives no resolution plans at all, the Corporate Debtor goes into liquidation by a formal order of the NCLT.

It is pertinent to note that Resolution Plans are the way out from insolvency and an escape from liquidation. However, it was noted that Resolution Plans were being proposed by the very promoters, ex-directors and their relatives of the Corporate Debtors, as a result of which, the control of the Corporate Debtor went back to those persons who led it to insolvency, and that too, free from all debt and at 'discounted' prices. The very intent of the Code was frustrated. Hence, to avoid the same, the much-talked about Section 29A of the Code was introduced. With the intent to prohibit all persons with vested interest from proposing plans, section 29A enlists criteria for ineligibility of Resolution Applicants. Hence, those applicants attracting any one or more of the clauses shall be ineligible to propose a resolution plan.

As simple as it may sound, recent developments have clearly indicated that approval of resolution plans is indeed a tedious task. The landmark case of Essar Steel is one such example. In most cases the approval/ rejection of a resolution plan is preceded by applications by aggrieved parties (including unsuccessful resolution applicant) and may also be followed by an appeal by the aggrieved party before the Appellate Tribunal i.e. National Company Law Appellate Tribunal.

Having discussed the basic structure of CIRP, we shall now delve into various loopholes, judicial developments that have come in light whilst practical execution of the provisions of the Code.