



FINANCIAL CONSULTANTS

# Bankruptcy Code and Voluntary Liquidation

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# Highlights



Need for bankruptcy law reforms  
AND  
the Bankruptcy law reforms committee  
& its reports

# Insolvency regime in India

- **Multiple laws – multiple fora**
- **Lack of holistic remedy**
- **Insolvency resolution framework for Individuals stagnant for over 100 years!**
  - The Presidency Towns Insolvency Act, 1909, covers the insolvency of individuals and of partnerships and associations of individuals
    - The 1861 Indian High Courts Act led to the setting up of the High Court system in place of the Presidency towns Supreme Courts, which also has jurisdiction over insolvency
  - The Provincial Insolvency Act, 1920, is the insolvency law for individuals in areas other than the Presidency towns, deals with insolvency of individuals, including individuals as proprietors
- **Framework for resolution of Corporate bankruptcy is vegetating too**
  - Winding up provisions under the Companies Act, 1956 unchanged for nearly 6 decades;
  - Limited liability partnerships are registered under the Limited Liability Partnership Act, 2008
  - The Micro, Small and Medium Enterprise Development Act, 2006, registers MSMEs but does not have provision for insolvency and bankruptcy

# Insolvency regime in India

## Other laws in place . . .

### The SARFAESI Act, 2002

- Enforcement of security interests by creditors is based on a “might is right” principle;
- Interests of stakeholders other than creditors get subdued

### • The RDDBFI Act, 1993

- Grants special rights to banks for recovery of debts

### • SICA

- Revival – a central theme
- Applies to industrial companies only
- Moratorium provisions of SICA were widely used by defaulters to ward-off creditors’ action
- Amendments pursuant to SARFAESI made SICA virtually irrelevant

### • ARC Business Model

- Also based on “might is right” principle

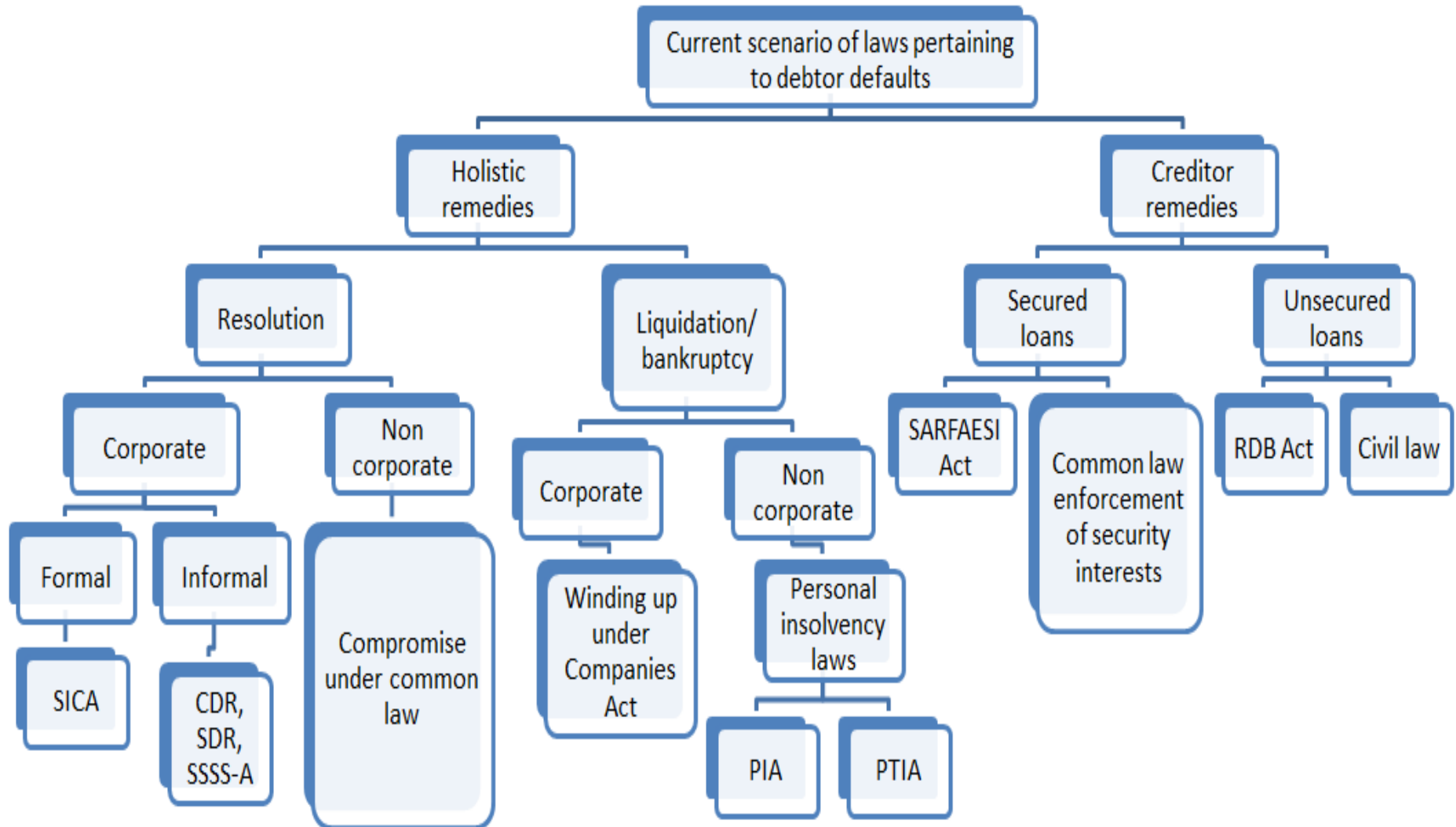
### • Informal framework (prominently based on RBI Guidelines)

- Corporate Debt Restructuring
- Joint Lenders Forum
- Strategic Debt Restructuring
- Scheme for Sustainable Structuring of Stressed Assets

# Notified Sections and Regulations

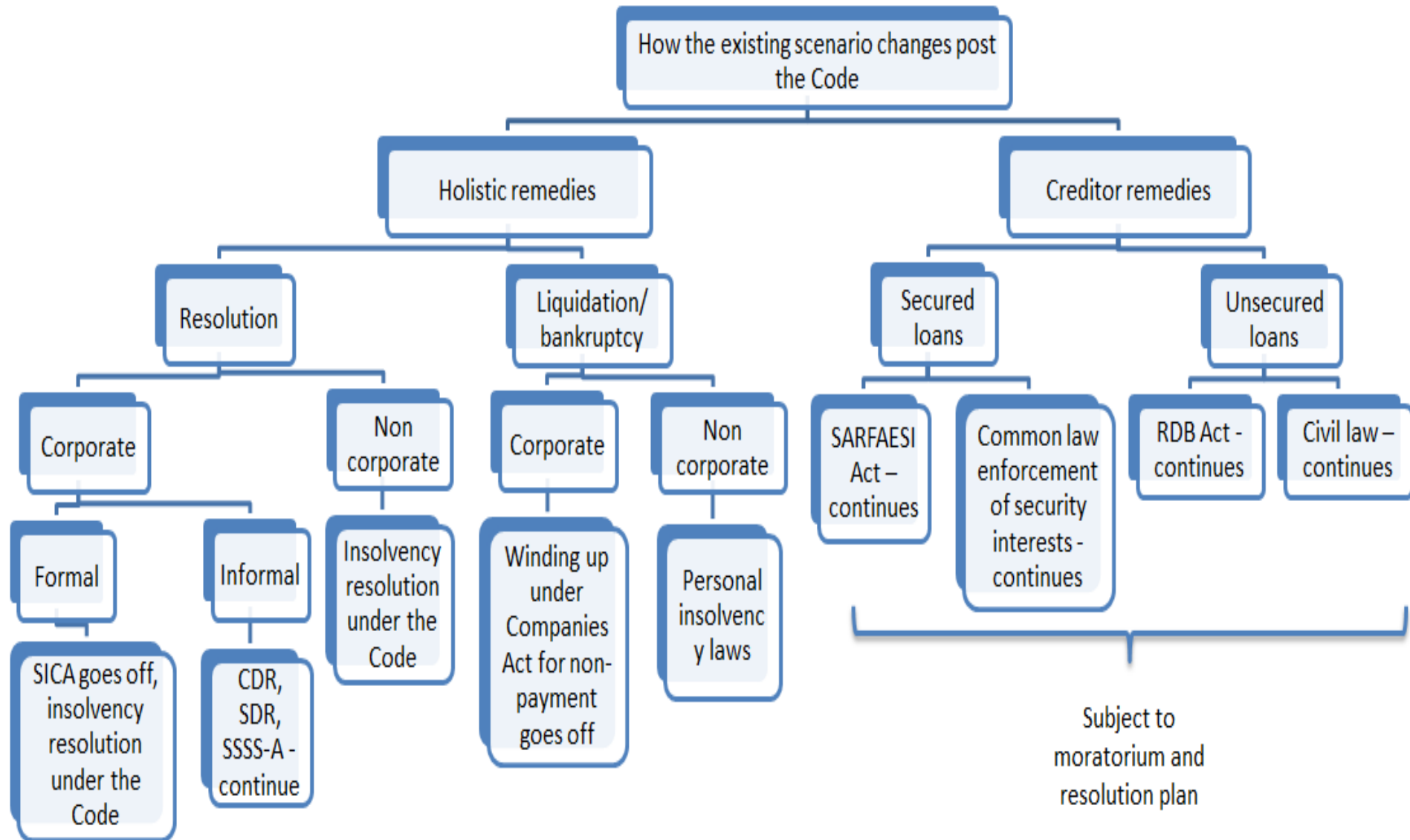
- On May 28, 2016, the Code received President's assent
- Proviso to section 1 (2) of the Code provides for piecemeal enforcement i.e., different dates may be appointed for different provisions of the Code.
- Till date, the Ministry of Corporate Affairs has issued 7 notifications notifying the provisions of the Code
- Regulations and Rules notified so far are –
  - Corporate Persons Regulations
  - Liquidation Process
  - Voluntary Liquidation Process
  - Application to Adjudicating Authority Rules
  - IP Regulation
  - IPA Regulation
  - Model-Bye Law Regulation

# Scenario of laws prior to the Code

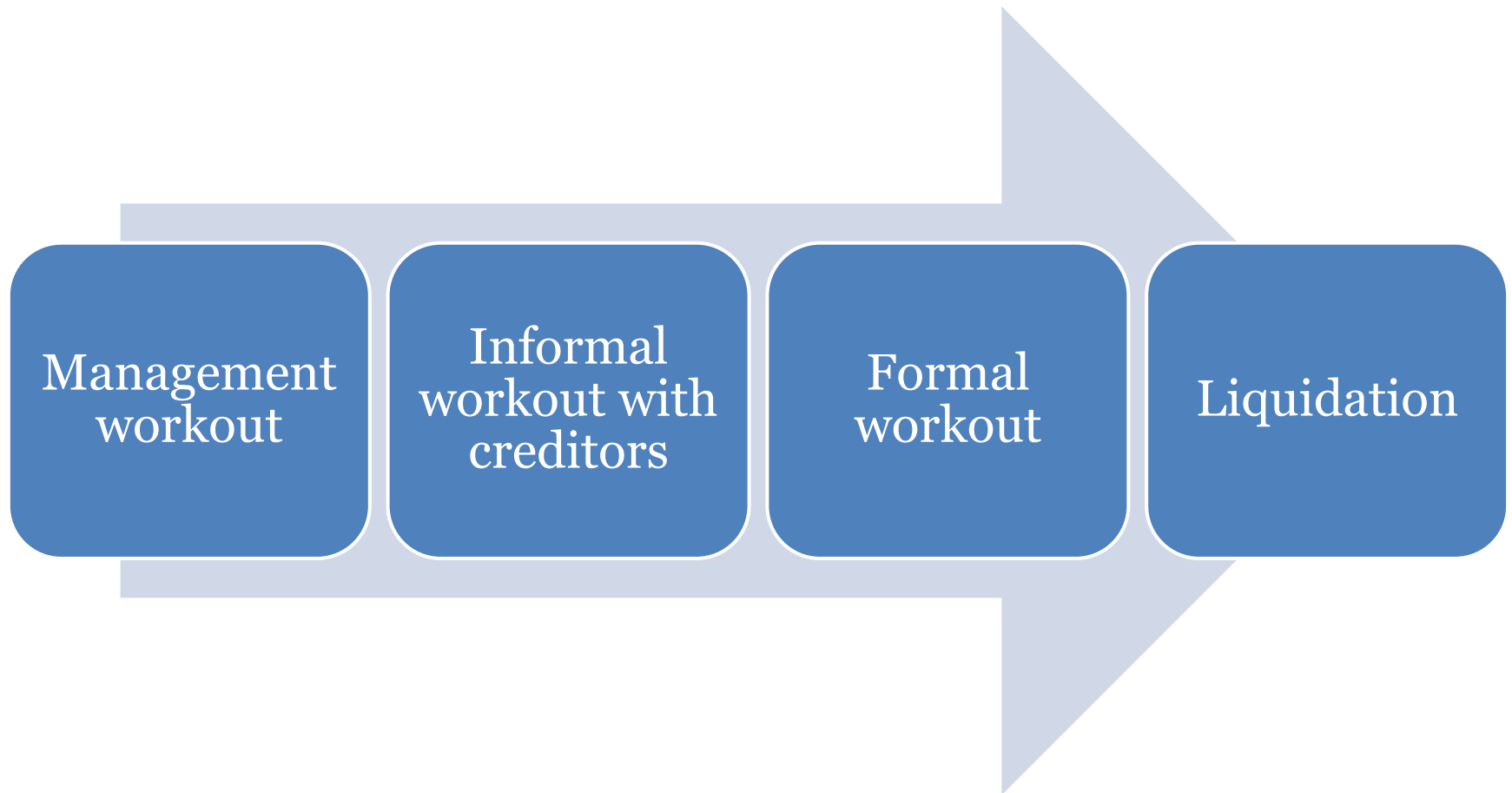




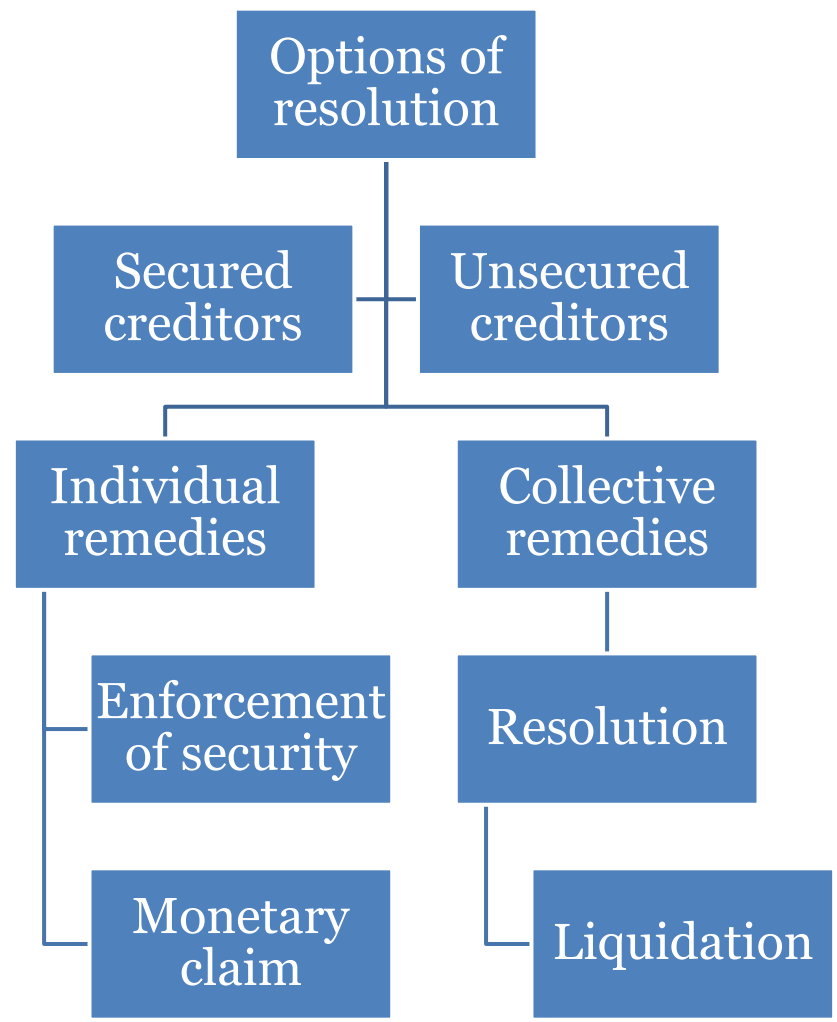
# Scenario of the laws post Code



# When entities go into red



# Key objectives in liquidation



# Why collective remedies

- Individual pursuit by creditors will throw debtor into a tizzy
  - He should get a breathing time, so as to focus on business and bring it back to track
- Where revival is possible, liquidation must be avoided
- Important to ensure business remains a going concern
- Even if it comes to liquidation, business gets much better valuation as a going concern
- Creditor remedies work on might-is-right principles, disregarding larger stakes
  - Insolvency systems work on pari passu principle
- Objective of insolvency laws is to ensure equitable distribution

# Highlights of the Code - corporate insolvency

- Default made the basis of corporate insolvency resolution, not inability to pay
- First moratorium starts on admission
  - 180 days + 90 days
  - Stays SARFAESI proceedings also
- Creditors' committee has an upper hand in resolution plan
- Affairs of the company comes under control of the Resolution professional
  - Though entity remains a going concern
- Preparation of resolution plan and approval by creditors with 75% voting share
- Liquidation proceedings commence on rejection of resolution plan, or failure to submit it
- Moratorium on liquidation order
- Liquidation estate
- Avoidance of certain transactions
- Secured creditor may either relinquish security interest, or may enforce it
- Priority of distribution
  - Financial creditors given priority
  - Government claims recede to item 5
- Dissolution

# Highlights of the Code - non corporate debtors

- Fresh start order
  - Gives a complete discharge in case of insolvency; small amount of unsecured debt, small assets
- Insolvency process
  - Application based on failure to pay on demand notice
  - Self-filed or creditor-filed
- First Moratorium starts on application itself
- Second moratorium starts on admission of application
- Repayment plan to be prepared by resolution professional, approved by 3/4<sup>th</sup> in value majority
- Secured creditor may either stay out, or join the resolution plan, fully or partly
- Implementation of resolution plan and discharge
- If resolution plan application or resolution are not accepted to creditors, bankruptcy application may be filed
- First moratorium starts on making of application
- Second moratorium starts on admission of application
- Claims from creditors and proof
- Assets get vested in trustee
- Distribution and discharge

# Applicability and commencement

- **Applies to whole of India**
  - **Part III** relating to insolvency and bankruptcy of individuals and partnerships is not applicable in J&K
- **To Commence as on the date as notified by the Central Government in the Official Gazette -**
  - Piecemeal commencement possible.
  - **24 sections notified** till date.
- **Persons covered**
  - Companies incorporated under the Companies Act, 2013 or previous company law;
  - Companies governed by any special Act, to the extent the provisions are consistent with that Act;
  - LLPs
  - Any other body corporate, incorporated under any Act for the time being in force, as the Central Government may specify;
  - Partnership firms
  - Individuals
- **Extent**
  - The Code shall be applicable only to the extent of insolvency, liquidation or bankruptcy.



# Insolvency resolution process & liquidation for corporate entities



# Corporate insolvency Resolution process: initiation and commencement

- **Who can trigger?**
  - A financial creditor (solely or jointly), or
  - An operational creditor, or
  - The corporate debtor itself.
- **When?**
  - Once there is occurrence of default on the part of the corporate debtor
  - In case a financial creditor is the applicant, default may be in respect of a financial debt owed to any financial creditor
  - In case of an operational creditor, the creditor has to deliver a demand notice before the CIR can be triggered.
    - The corporate debtor, in turn, has to show a dispute or show evidence of repayment to avoid initiation of CIR.
- **How?**
  - By applying to AA, which under part II is NCLT.
  - Requisite documentation to be done.
- **After-effect?**
  - AA either admits or rejects the application;
  - **If admitted, CIR commences and the date of admission of application is called the insolvency commencement date**
- **Who cannot initiate the process?**
  - a corporate debtor who is already undergoing CIR
  - a corporate debtor who has completed CIR 12 months preceding the date of making of the application
  - a corporate debtor or a financial creditor who has violated any of the terms of a resolution plan which was approved 12 months before the date of making an application .
  - A corporate debtor in respect of whom a liquidation order has been made.

# Snapshot of corporate insolvency resolution process (1/3)

- Pre-insolvency process
  - Default by C.Dr.
  - Initiation of CIR by F.Cr./ O.Cr./ Corporate applicant
    - No time limit prescribed for filing an application before the AA
  - Admission of CIR application by AA
    - Order shall be communicated within 7 days of admission/ rejection of such application
- Insolvency and resolution process
  - Commencement of CIR
  - Declare moratorium by an order
    - Shall be declared on the insolvency commencement date
  - Cause a public announcement
    - initiation of corporate insolvency resolution process and call for the submission of claims

# Snapshot of corporate insolvency resolution process (2/3)

- Appointment of an IRP
  - AA shall appoint an IRP within 14 days from the insolvency commencement date
  - Term shall not exceed 30 days from the date of his appointment
- An IRP shall constitute a committee of creditors
  - Comprising of financial creditors
  - The Chandigarh Bench of NCLT has been directing the IRP to file report of events every week
- Hold 1<sup>st</sup> meeting of committee of creditors
  - Within 7 days of the constitution of committee
- Appointment of RP
- Collection of claims and other relevant details
- Preparation of information memorandum by RP
- Submission of resolution plan by resolution applicant
- Acceptance of resolution plan by committee of creditors

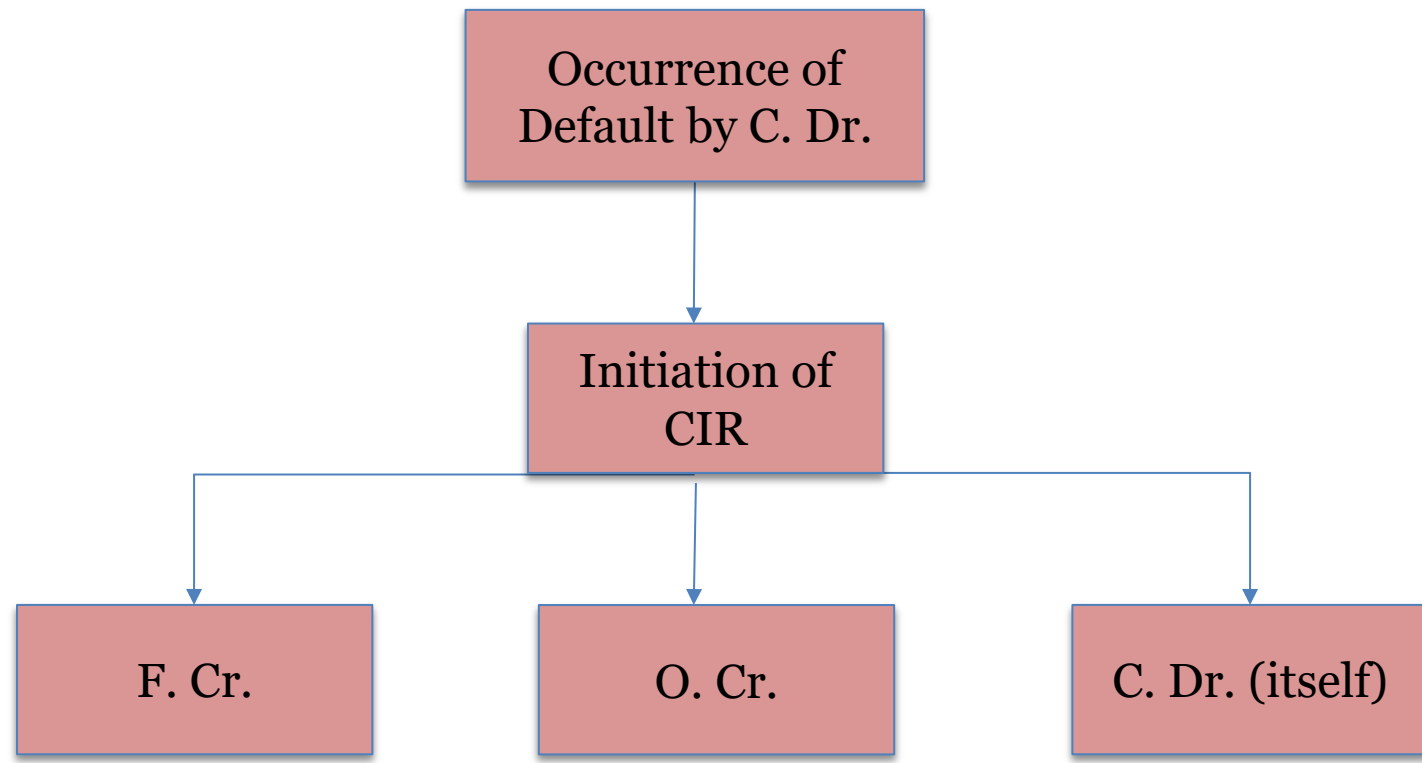
# Snapshot of corporate insolvency resolution process (3/3)

- Submission of resolution plan to AA
- Approval of resolution plan by AA
- CIR process shall be completed
  - Within 180 days from the date of admission
  - One time extension is allowed
    - Not exceeding 90 days
- Post-insolvency process
  - Moratorium shall cease from the date of completion of CIR process
    - Date of passing an order approving the resolution plan OR order for liquidation
  - Resolution professional shall forward all records relating to conduct of CIR process and resolution plan to the board

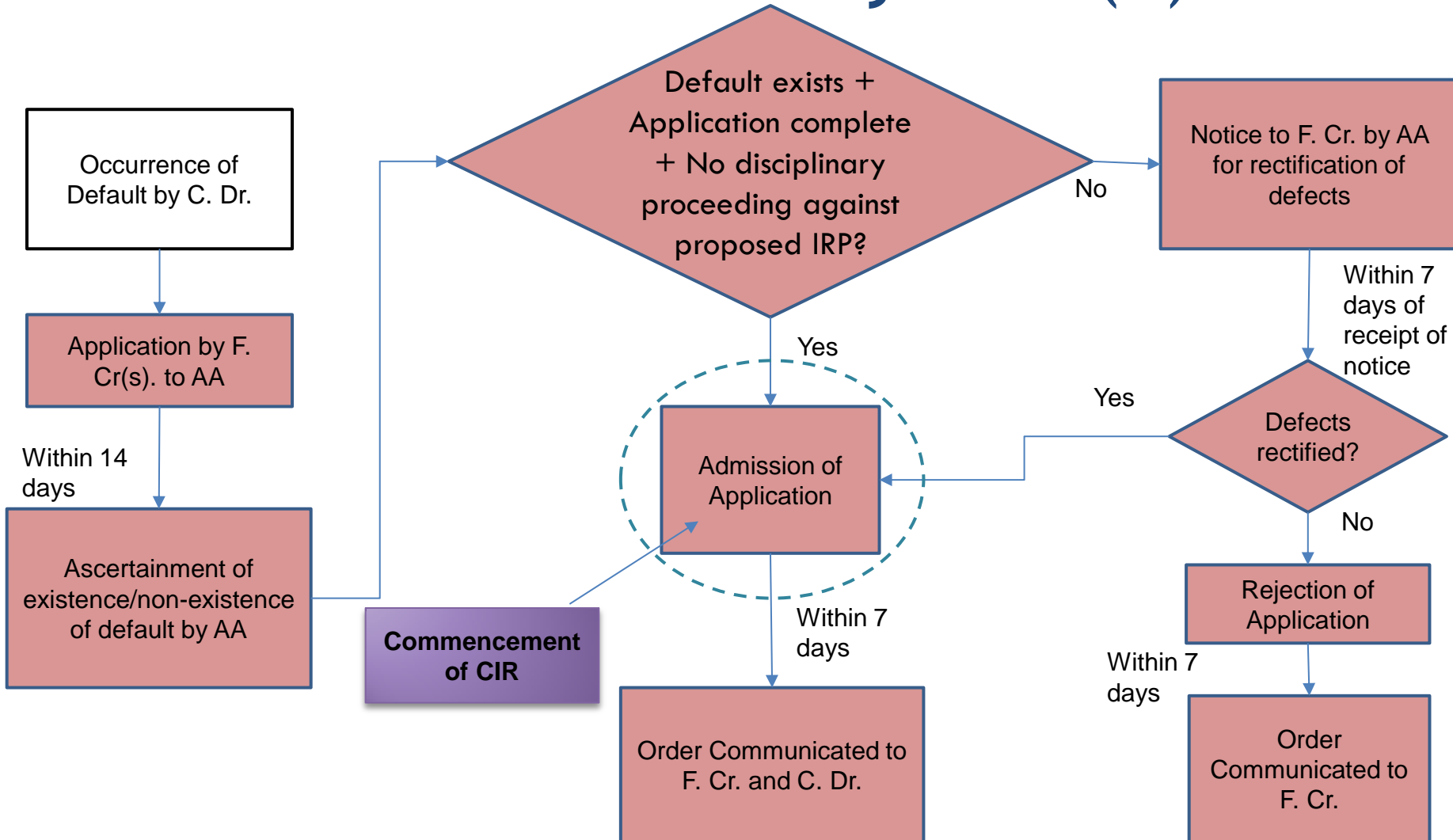
## Conflict between the CIRP and MRU Act

- Whether the provisions of the Code shall have overriding effect over the MRU Act?
- If yes, whether an application under the Code shall be accepted?
  - In *ICICI Bank Ltd. vs. M/s. Innoventive Industries Ltd.*, the NCLT held
    - The Code has come into existence subsequent to the MRU Act.
    - The non-obstante clause contained in section 238 of the Code shall prevail upon any other law for time being in force
    - The notification issued under the MRU Act will not operate as a bar to passing an order under section 7 of the Code.

# Initiation of CIR



# Initiation of CIR by F.CR(S).



# Potential defense by the Corporate Debtor u/s 7

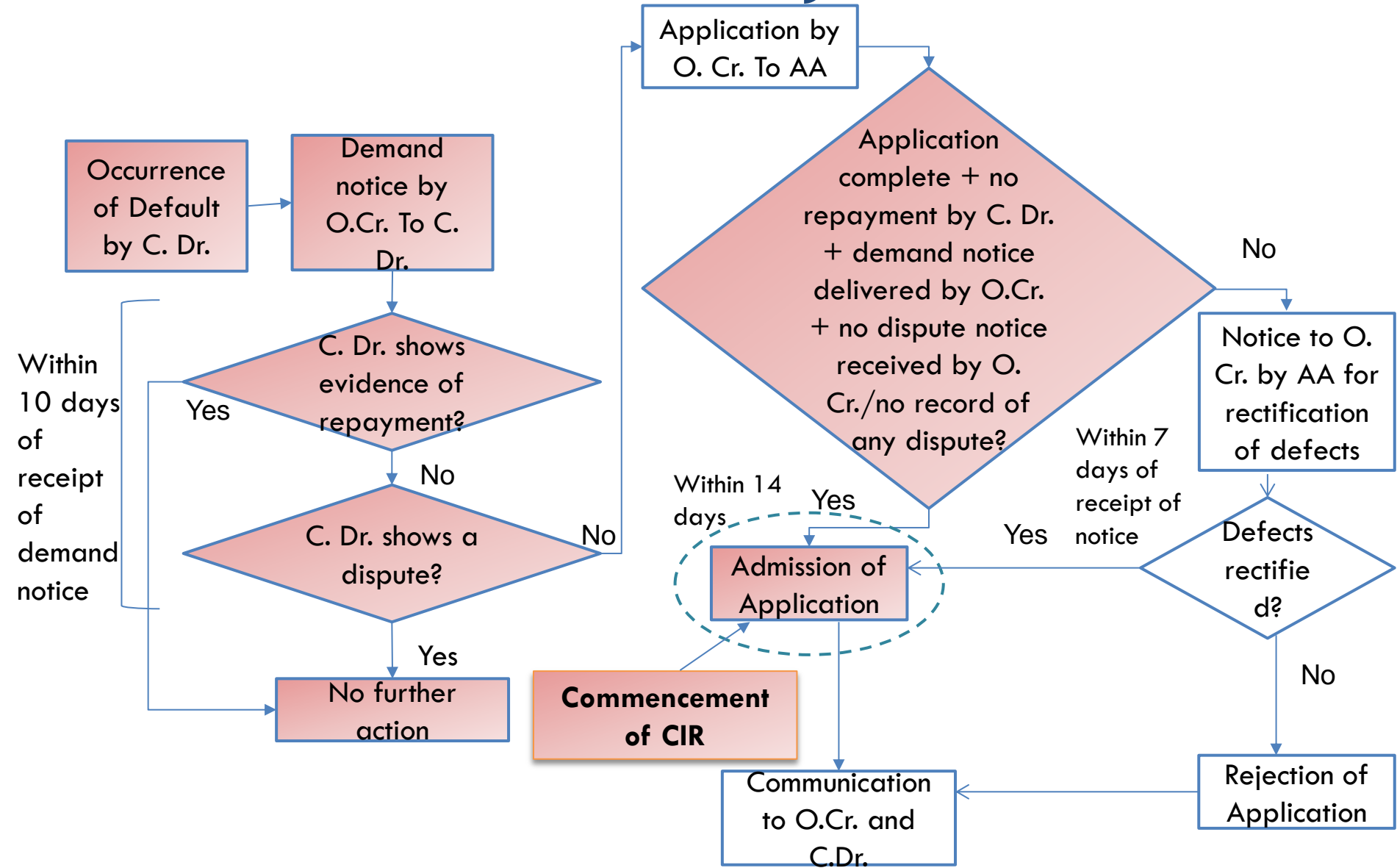
- **Attack on claim**
  - **Amount of the claim** – if the amount is 1 lakh even after the dispute – the Application can still be admitted
  - **Existence of claim itself** – the same has to be proved by either party
  - **Claim being time-barred**
- **Procedural defects**
  - The Application is not filed in requisite format
  - Copy of Application not served to the Corp Debtor “*forthwith*” the filing with NCLT
  - No Board Resolution authorising such filing of Application
- **Existence of Joint Lender’s Forum**
  - *...the process of rectification and restructuring on one hand and the process of recovery by one of the members of the said JLF on the other hand cannot be permitted simultaneously and at the same time.* [IDFC Bank Ltd vs Ruchi Soya Industries Ltd](#)
- **The Applicant is not a financial creditor at all**
  - Assured Return associated with delivery of possession of land is not a financial debt - [Nikhil Mehta & Sons \(HUF\) & Ors vs AMR Infrastructures Ltd](#)
    - (Appeal in NCLAT is pending)



## Instances of the Application being not maintainable u/s 7

- If winding up petition has been filed against the Corp Debtor
  - Eg – [Nikhil Mehta & Sons \(HUF\) & Ors vs AMR Infrastructures Ltd](#)
    - (Appeal in NCLAT is pending)
      - Section 446 of CA 1956 provides that suits can be commenced / proceeded with leave of the Court if Order of winding up passed / OL appointed
- If the debt claimed is not a financial debt
  - [Nikhil Mehta & Sons \(HUF\) & Ors vs AMR Infrastructures Ltd](#)
    - (Appeal in NCLAT is pending)
- Scheme of Arrangement should not co-exist

# Initiation of CIR by O.C.R.



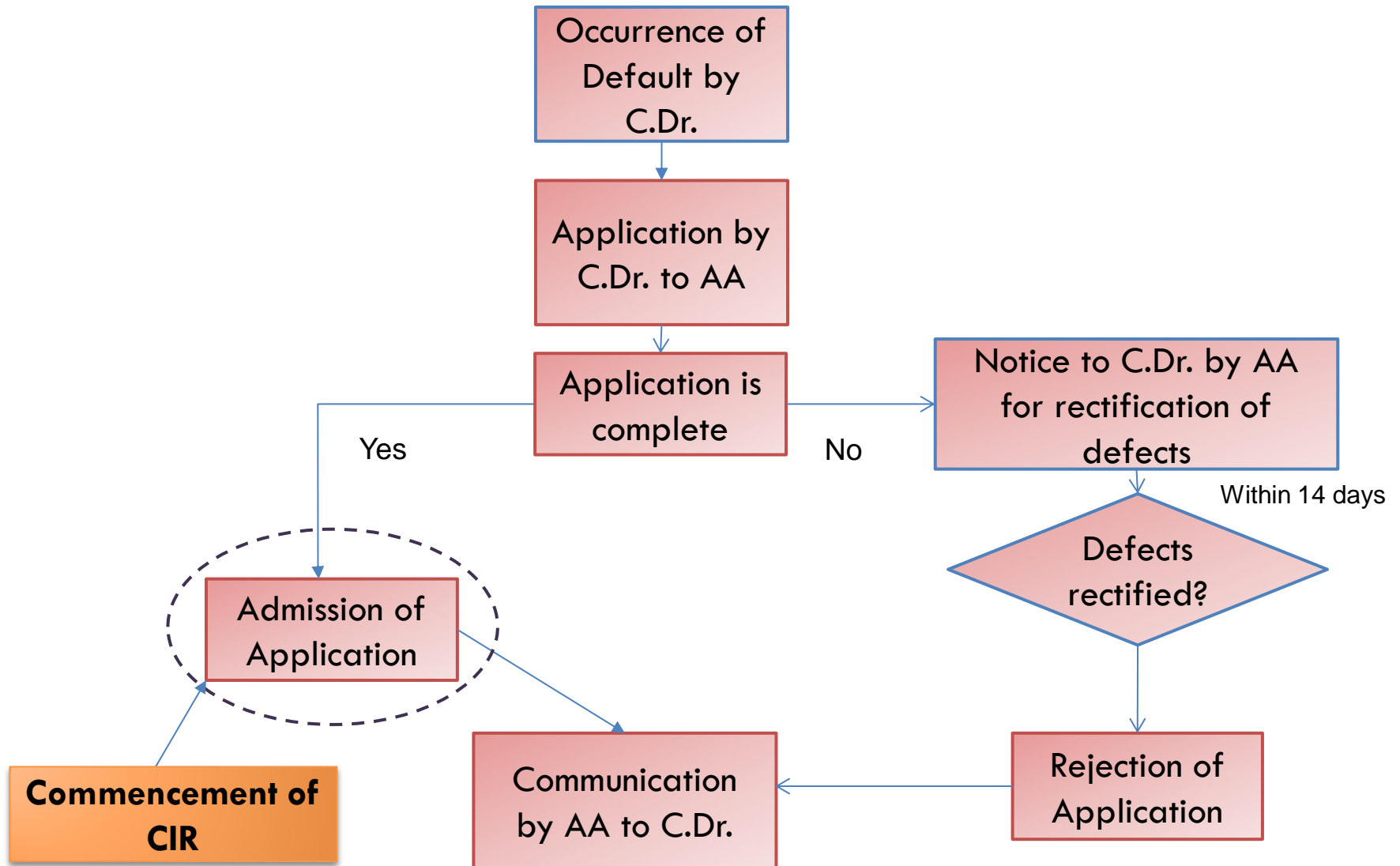
# Potential defense by the Corporate Debtor u/s 8 & 9 (1/2)

- **Attack on claim**
  - **Existence of claim itself** – the same has to be proved by either party
  - **Claim being time-barred**
    - Only issuing legal notice does not save the limitation; legal proceedings should be initiated within limitation([Seema Gupta vs Supreme Infrastructure India Ltd & Ors](#))
- **Existence of Dispute**
  - has to be in existence **prior** to the receipt of the demand notice **and** also existence of record of pendency of suit or arbitration proceeding filed in relation to such dispute
    - However, application was rejected only on existence of dispute – ([Ambience Private Limited](#))
- **Procedural defects**
  - The Application is not filed in requisite format
  - Copy of Application not served to the Corp Debtor “**forthwith**” the filing with NCLT
  - No Board Resolution authorising such filing of Application

# Potential defense by the Corporate Debtor u/s 8 & 9 (2/2)

- The Application is not complete
  - certificate from financial institution could not be attached
    - Eg: Astra Offshore Sdn Bhd vs Swiber (Offshore)(India) Pvt Ltd, Smart Timing vs National Steel Agro Industries Ltd,
- The Applicant is not an operational creditor at all
  - Eg: Vinod Awasthy vs AMR Infrastructure Ltd
  - The definition of Op Debt is not framed as “any debt which is not a financial debt”
  - As per S. 5(21) Debt must arise only out of – (a) provision of goods, (b) services (c) out of employment, or (d) Govt dues
  - Does not include dues on account of advance made to purchase a flat etc – remedy under Consumer Protection Act and General Law of Land
- The claim in the Application is against a Corporate Group and not a single Company
  - Eg: Ishwar Khandelwal vs Amrapali Infrastructure Private Limited

# Initiation of CIR by C.DR. itself



# When is the Application not maintainable u/s 10

- When the Application is made for seeking clarification (Eg - [Hindustan Motors Limited](#) application was made to seek clarification under Eighth Schedule of IBC)
- When the Application is not complete

# Constitutional validity of the Code being challenged

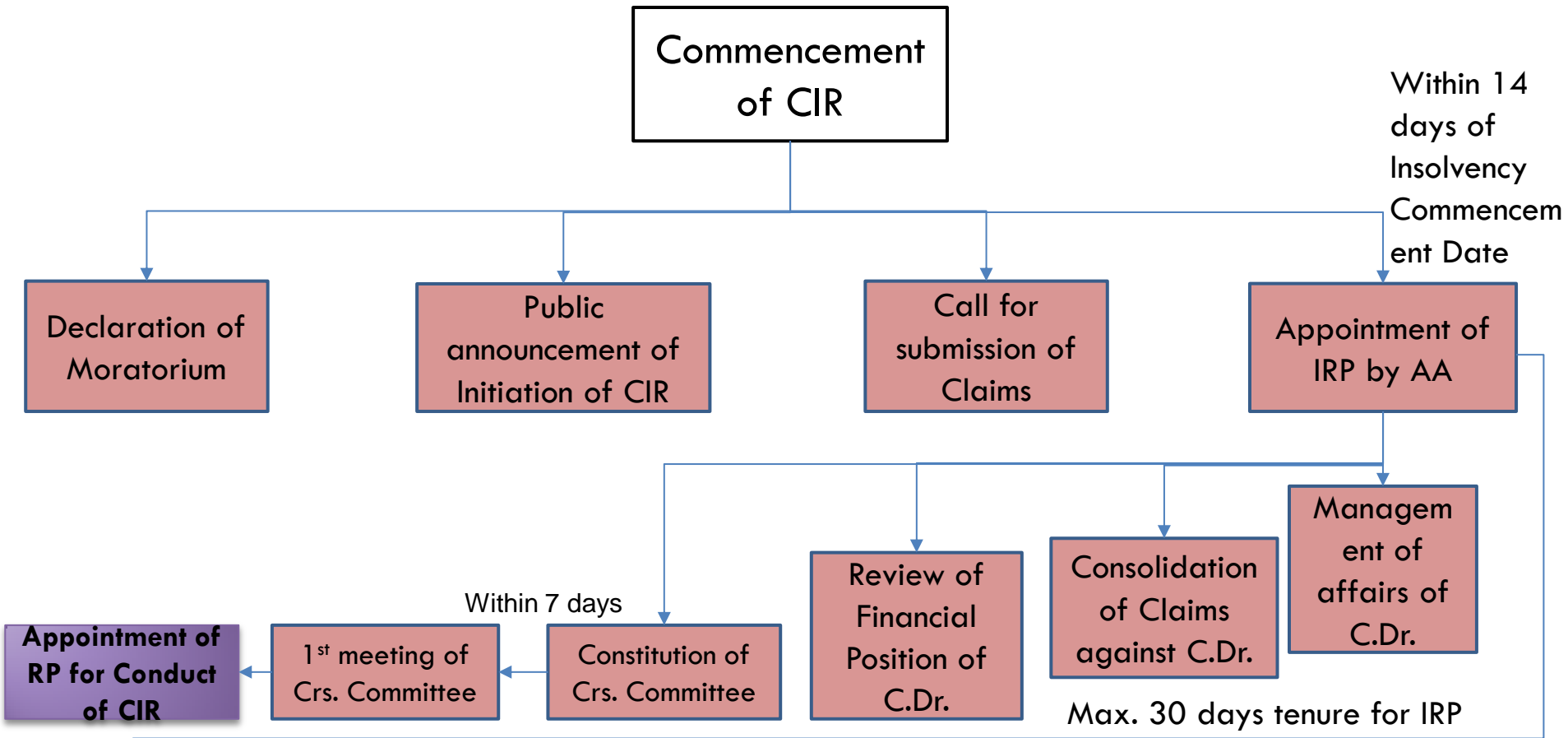
- The constitutional validity of the Code has been challenged in the Bombay High Court and Calcutta High Court in the matter of Innovative Industries Limited and Sree Metaliks Limited respectively.
- The grounds of challenge is:
  - Once claim is proved, the Corporate Debtor has no opportunity to make his defense or argue
  - The provision of the Code has been appreciated by the NCLT, Mumbai Bench in – [ICICI Bank Limited vs Innovative Industries Limited](#)

# Sec 420(1) and 424(1) of CA, 2013 to be aligned with IBC

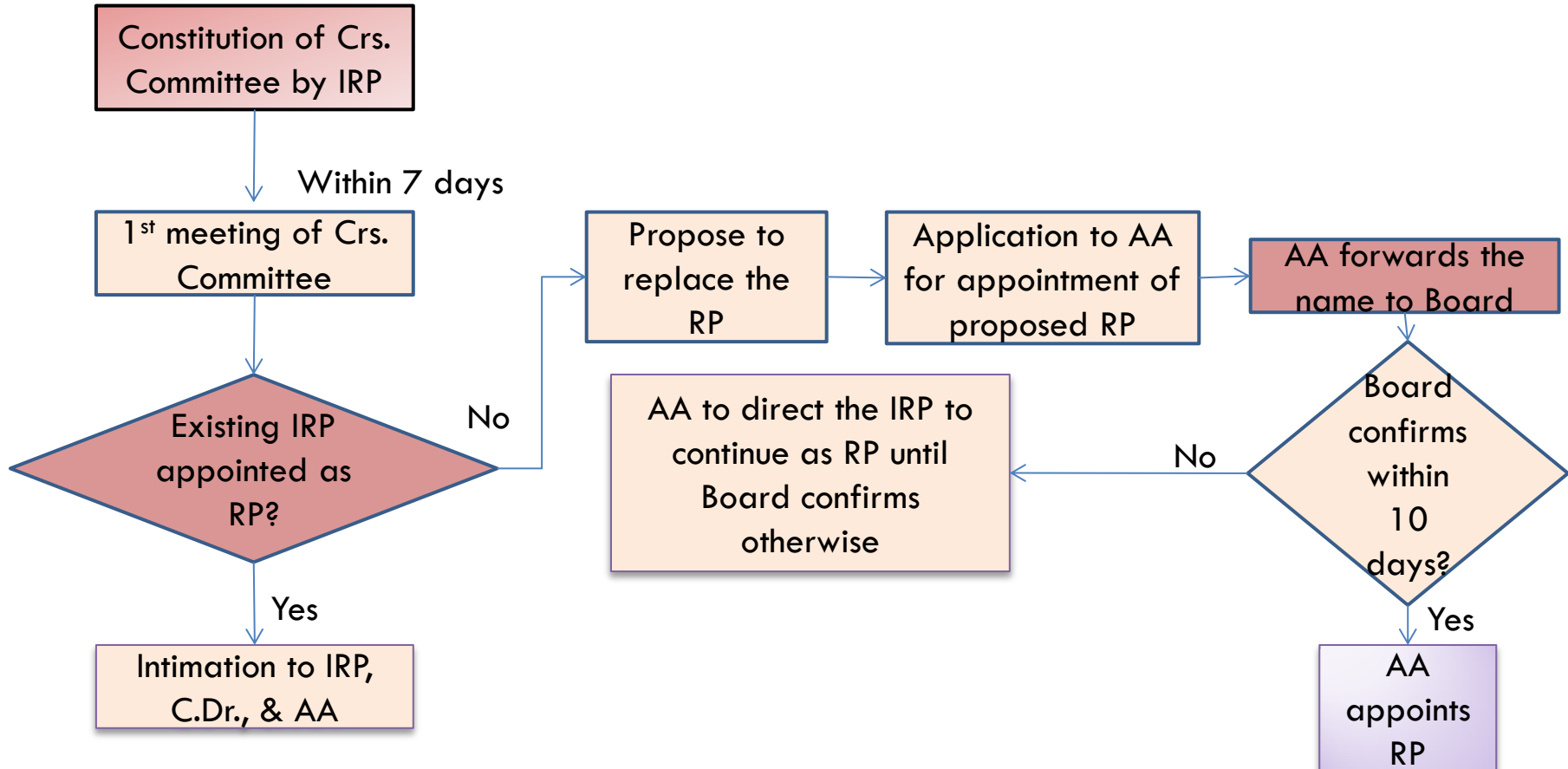
- Companies Act, 2013
  - **Sec 420(1)** – gives power to the NCLT to give reasonable opportunity of being heard
  - **Sec 424(1)** – The NCLT and NCLAT shall, **while disposing of matters**, be guided by the principles of natural justice and, subject to the other provisions of CA, 2013 or of the IBC, 2016 and of any rules made thereunder, the NCLT and NCLAT shall have power to regulate their own procedure
- IBC, 2016
  - Parameters for disposal of matters in IBC is mentioned in section 7, 8, 9 and 10
  - Idea of natural justice cannot be carried beyond what is specifically provided in the law



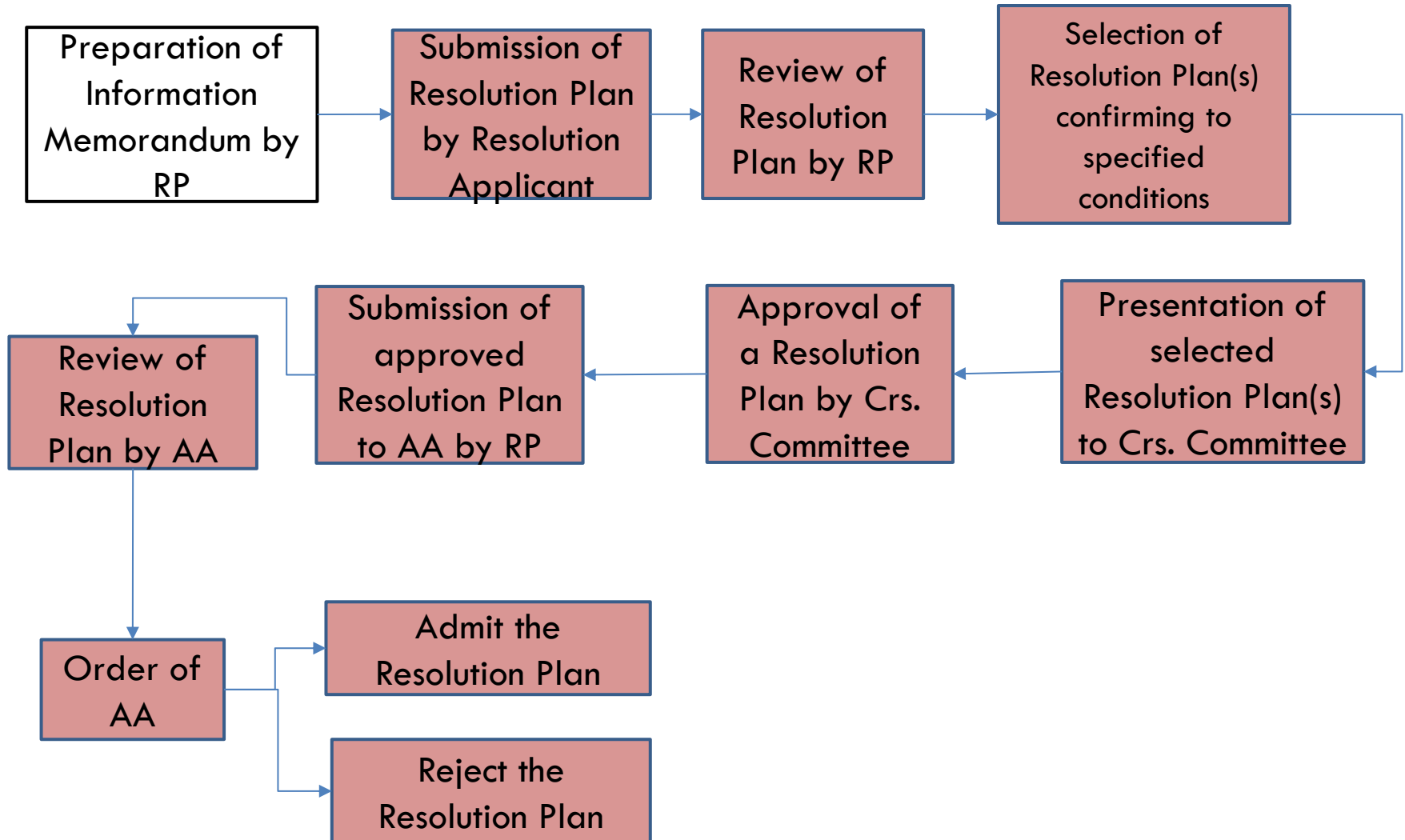
# Once CIR commences . . .



# Appointment of resolution professional



# Conduct of CIR by RP



## 3 stages of corporate insolvency resolution

- Insolvency application accepted, plan not yet sanctioned
  - Moratorium of SARFAESI action, any other action
- Resolution plan sanctioned
  - Creditor action will depend on the resolution plan; resolution plan mandatory on all
- Liquidation proceedings
  - Secured creditor staying in liquidation process
    - Security interest relinquished, secured creditor cannot take enforcement action
  - Secured creditor stays out of liquidation
    - Security interest enforcement/SARFAESI permitted

# Effect of Moratorium order

- AA shall declare moratorium order on the insolvency commencement date prohibiting –
  - institution of suits or continuation of pending suits or proceedings against the C.Dr.
    - including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority
  - transferring, encumbering, alienating or disposing of any of its assets or any legal right or beneficial interest
  - recovery of any property by an owner or lessor
  - action to foreclose, recover or enforce any security interest created by the C.Dr. in respect of its property
    - including any action under the SARFAESI Act, 2002
- Moratorium shall have effect till the completion of the CIR process or liquidation order

# Effect of Moratorium order on SARFAESI Proceedings

- Code prohibits SARFAESI proceedings during moratorium period.
- Following circumstances might arise –
  - **Moratorium starts before sending notice under section 13 (2)**
    - Notice shall be served after completion of 180 days (or 270 days, if an extension is granted)
  - **Moratorium starts after sending notice under section 13 (2) to the borrower**
    - Fresh notice under section 13 (2) shall be served after completion of 180 days or 270 days, as the case may be.
  - **Moratorium starts after sending notice under section 13 (2) to the borrower + repossessing the asset**
    - Repossessed asset shall be sold only after completion of 180 days or 270 days, as the case may be.
  - **Moratorium starts after sending notice under section 13 (2) to the borrower + repossessing the asset + sale of repossessed asset**
    - Such secured creditor shall rank 5<sup>th</sup> in the waterfall priority to the extent of unsecured portion

# Implementation of the resolution plan

- There is nothing in the Code for implementation
  - Unlike non-corporate resolution, where implementation of repayment plan is under the aegis of the resolution professional
- Resolution plan is binding [sec 31 (1) ]
  - On debtor
  - Employees
  - Members
  - Creditors
  - Guarantors
  - Other stakeholders
- What is the effect of non adherence?
  - In case of non corporate persons, failure to implements leads to bankruptcy



# Corporate Persons Regulations



# Appointment of Resolution Professional

- An insolvency professional shall be eligible to be appointed as a resolution professional -
  - If he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor
- Independent of the corporate debtor shall mean –
  - Eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013
  - Is not a related party of the corporate debtor; or
  - Is not an employee or proprietor or a partner, in the **last 3 FY** of:
    - A firm of auditors or PCS or cost auditors of the corporate debtor; or
    - A legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 10% or more of the gross turnover of such firm.
- Whether an insolvency professional needs to be independent of the creditor(s) filing an application against the corporate debtor?

# Duties of Resolution Professional

- Make disclosure of independence at the time of appointment (Reg 3 (2))
- Make a public announcement (in form A) on appointment as an IRP
  - Within 3 days from the date of appointment
- File a report certifying constitution of the committee to the Adjudicating Authority
  - Within 30 days from the date of appointment
- Circulate the minutes of the meeting to all participants by electronic means
  - Within 48 hours of the said meeting
- A record of the summary of the decision taken on a relevant agenda item shall be circulated
  - Within 24 hours of the conclusion of the voting
- Appoint 2 registered valuers to determine the liquidation value of the corporate debtor
  - Within 7 days from the date of appointment

# Duties of Resolution Professional

- Submit an information memorandum in electronic form
  - To each member of the committee and any potential resolution applicant (upon submission of an undertaking)
    - Before 1<sup>st</sup> meeting – matters listed in paragraphs (a) to (i) of Reg. 36 (2)
    - Within 14 days of the 1<sup>st</sup> meeting - matters listed in paragraphs (j) to (l) of Reg. 36 (2)
- Submit the resolution plan approved by the committee to the AA with the certification that -
  - the contents of the resolution plan meet all the requirements of the Code and the Regulations; and
  - the resolution plan has been approved by the committee

# Committee of Creditors

- Committee of creditors shall be formed with financial creditors only.
  - Financial creditors which are related parties of the corporate debtor shall not form part of committee
- What if the corporate debtor has no financial creditor?
- Where all financial creditors are related parties of the corporate debtor?
  - Committee shall be formed with 18 largest O.Cr. By value
    - If the number of O.Cr. is less than 18 then all the O.Cr. shall be included
  - 1 representative elected by all workmen
    - Other than those included in 18 members
  - 1 representative elected by all employees
    - Other than those included in 18 members

# Who will bear the stage wise cost?

- Expenses of public announcement
  - Shall be borne by applicant which may be reimbursed by the Committee to the extent ratified
- Cost of proving the debt
  - Shall be borne by respective creditors
- Cost of IRP/ RP
  - Any expenses to be incurred or payment to be made to IP – applicant shall borne the expense
  - As soon as the committee meets – proposal shall be laid before the committee and committee shall either ratify the expenses or reject the proposal
    - If committee ratifies the proposal – expenses shall be borne by the committee to the extent they agree to ratify
    - If committee rejects the proposal – expenses shall be borne by the applicant
  - Once the resolution plan is approved – the expenses shall be borne by the corporate debtor and shall rank first as far as priority is concerned (Ref. Reg 38 of IRP for CP)
  - If the resolution plan is rejected -- the expenses shall be borne by the corporate debtor and shall rank first as far as priority is concerned (Ref. section 53 of the Code)

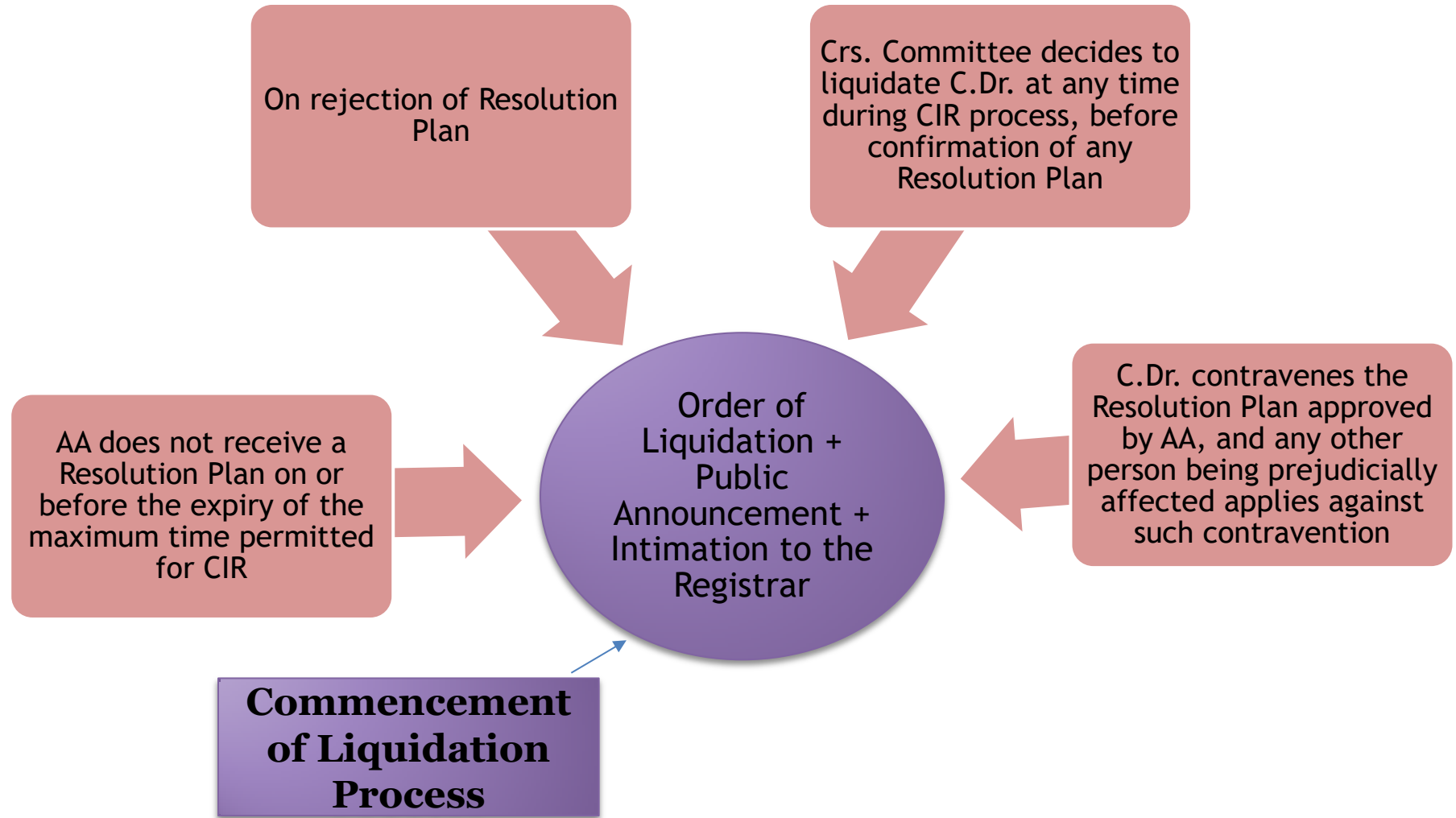
# Fast Track IRP

- Meant for small corporate debtors –
  - Those with assets and income below a level as may be notified by the Central Government
  - Those with such class of creditors or such amount of debt as may be notified by the Central Government
  - Other category as may be notified by the Central Government.
- Default completion time is 90 days from the insolvency commencement date
  - One-time extension of a maximum of 45 days permissible
  - Necessity of extension to be determined by AA



# Corporate compulsory liquidation

# Liquidation - when?





# Liquidation - few points

- Immediate impact of liquidation order
  - Company ceases to be a going concern
  - All assets get vested in trustee
  - All employees get discharged
  - Interest stops accruing
- Moratorium commences once a liquidation order is passed
  - Not applicable to any proceeding pending in appeal before the Supreme Court or a High Court
  - Suit or other legal proceeding on behalf of C.Dr. may be commenced by the liquidator with the prior approval of AA
- Avoidance of transactions
  - Preferential transactions
  - Undervalued transactions
  - Transactions defrauding creditors
  - Extortionate credit transactions

# Different modes of winding up companies

- Resolution and Winding up in case of a default – Chapter II and III of this Code
- Winding up on any of the grounds listed in section 271, as amended by the Code – Section 271 of Companies Act
- Voluntary winding up (other than summary winding up process below) – Chapter V of this Code.
- Summary winding up of companies having assets upto Rs 1 crore – sections 361-365 of Companies Act, 2013
- Winding up of unregistered companies including partnership firms and foreign companies – sections 375 and 376 of Companies Act, 2013
- Dissolution without winding up by merger – section 232 (3) (d) of the Companies Act, 2013
- Removal of the name of a defunct company from register of members – section 248 of the Companies Act, 2013
- In case of financial service providers, until explicit provisions are enacted, either the Companies Act 2013, and/or the relevant special laws, will continue to prevail.

# Snapshot of liquidation process (1/2)

- Passing of liquidation order
  - No suit or other legal proceeding shall be initiated
    - Without prior approval of the AA
    - Shall not apply to any proceeding pending in appeal before the SC or a HC
    - Such transactions as may be notified by the CG in consultation with any financial sector regulator
- Appointment of liquidator
- Formation of liquidation estate
- Receive or collect the claims of creditors
  - within a period of 30 days from the date of the commencement of the liquidation process
- Verify claims of all the creditors
  - After verification shall either admit or reject the claim
    - Communicate the decision within 3 days of such admission or rejection of claims
- Determine the value of claims admitted
- Creditor may appeal to the AA against the decision of the liquidator rejecting the claims
  - within fourteen days of the receipt of such decision

# Snapshot of liquidation process (2/2)

- Liquidator shall apply to the AA for avoidance of –
  - Preferential transactions
  - Undervalued transactions
  - Transactions defrauding creditors
  - Extortionate credit transactions
- Proceeds from the sale of the liquidation assets shall be distributed in the order of priority
- Make an application to the AA for dissolution
  - On assets being completely liquidated
- AA shall pass an order
  - Copy shall be forwarded to the authority with which the C.Dr. is registered
    - Within 7 days from the date of such order

# Liquidation estate

## Inclusions

- Assets over which C.Dr. has ownership rights.
- Assets in or not in possession of C.Dr. including but not limited to encumbered assets
- Movable/Immovable tangible assets
- Intangible assets
- Assets in respect of which security interest has been relinquished by a secured creditor
- Assets subject to the determination of ownership by the court or authority
- Any assets or their value recovered through proceedings for avoidance of transactions
- Any other property belonging to or vested in the C.Dr. at the insolvency commencement date
- All proceeds of liquidation as and when they are realised

## Exclusions

- Assets in possession of C. Dr., but owned by a 3<sup>rd</sup> party – assets held in trust, bailment contracts, contracts for ‘use’ of assets and not transfer of title, etc.
- 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 C.Dr. , provided the assets are not held under avoidance transactions
- Assets of any Indian or foreign subsidiary of C.Dr.
- Any other assets as may be specified by the Board.

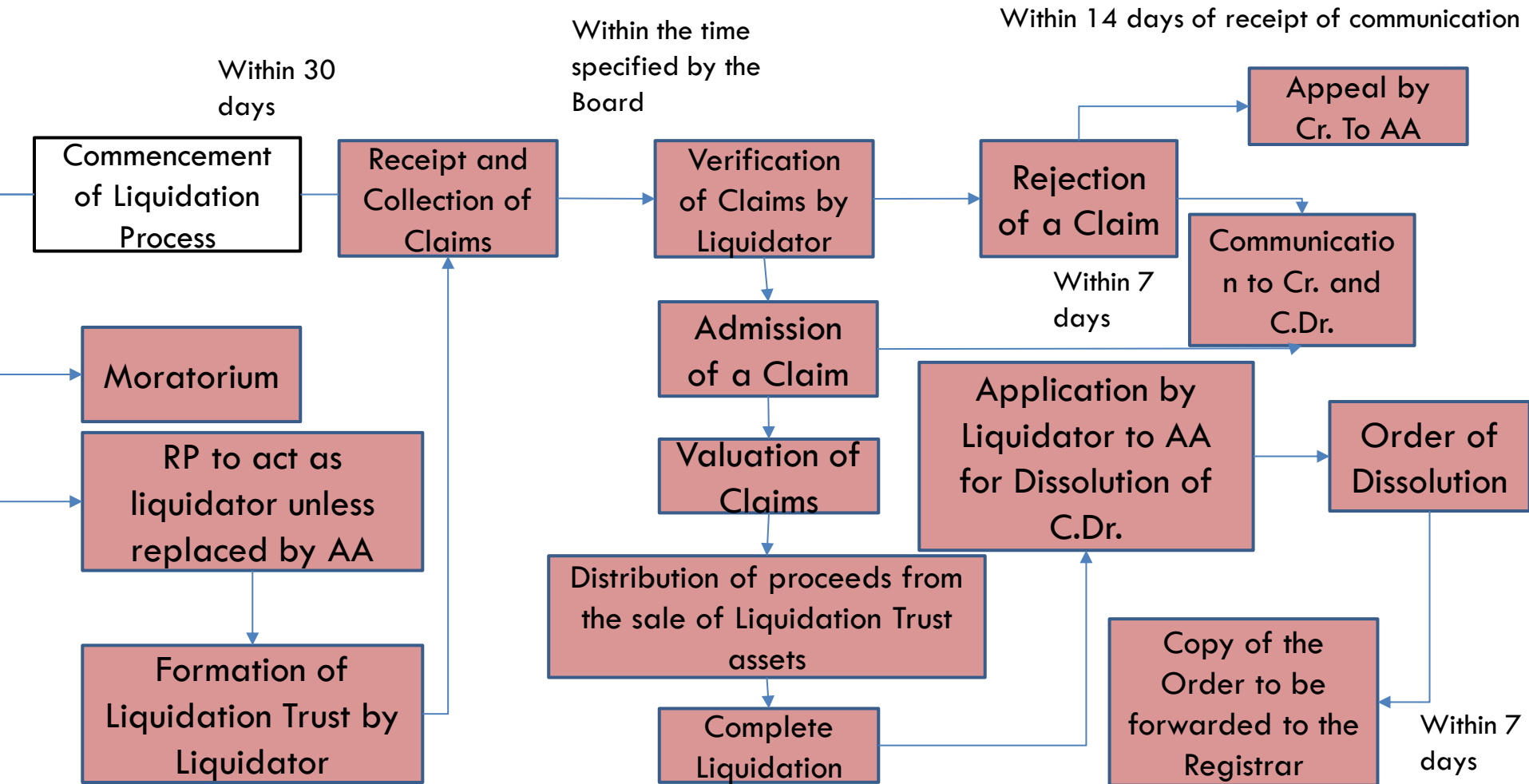
## Exclusions from liquidation estate

- Assets acquired on hire purchase, in *Manasuba & Co. P. Ltd., Re, (1973)*
- Amount received by way of deposit: *Dinshaw & Co. (Bankers) Ltd. v. Mst. Krishna Piary, (1941)* general rule of exclusion of trust money, and holding that where money is deposited by a person with a Bank as security for the good behaviour of an employee, the deposit is trust money
- [New Bank of India Limited v. Pearey Lal](#) (1962): amount held for remittance was held as trust money
- An advance received in respect of a contract which was under negotiations retains its character of trust money, upon the failure of negotiations. *Kodak Ltd. v. South Indian Film Corpn. Ltd., (1937)*

## Common law rule of set off

- Mutual obligations of parties may be set off if the common principles of set off are applicable:
  - A has Rs 1 00000 to receive from B
  - A has Rs 60000 to pay to B
  - A can prove only for Rs 40000, setting of the entire obligation

# Liquidation process





## Major differences between current liquidation procedures and the Code

- Liquidator appointed by creditors, full control of creditors
- NCLT's role is adjudicative, however, most of the powers are auto-pilot powers
- Timelines very tight
- No role of civil courts at all
- Priority of payments majorly changed

# Preferential transactions

- Sec 43- Corporates & Sec 165 – Individuals
- Examples-
  - payment or set-off of debts not yet due;
  - performance of acts - no obligation to perform;
  - granting of a security interest to secure existing unsecured debts;
  - unusual methods of payment;
  - payment of a debt of considerable size in comparison to the assets of the debtor;
  - payment of debts in response to extreme pressure from a creditor
- Defences available
  - transaction as consistent with normal commercial practice
  - ordinary course of business
  - 'new' credit & 'new' value
  - counterparty proves that it was unaware of a preference
  - no knowledge of the debtor's insolvency
- Creation of an escrow in favour of certain payees was held to be voidable preference in *Re Lewis' of Leicester Ltd* (1995)

## Undervalued transaction

- Sec 45 – Corporate & Sec 164 – Individuals
  - What is not an arm's length transaction is an undervalued transaction
  - Imply unequal exchange
- What constitutes an 'undervalued transaction'?
  - Gift
  - Significantly less value
- Not of 'proportionate value' but 'ordinary course of business' – Is it covered under undervalued transaction?
- In *Hill vs Spread Trustee Co Limited*, creation of security interest has been regarded as undervalued transaction.

# Transactions defrauding creditors

- **Sec 49- Corporate**
  - the transaction is an undervalued transaction under subsection (2) of section 45;
  - such transaction was deliberately entered into by the corporate debtor;
  - the transaction was entered into:
    - (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim
    - (b) to adversely affect the interests of such a person in relation to the claim.

## Extortionate credit transactions

- Sec 50 – Corporate & Sec 167 – Individuals
- What constitutes ‘extortionate’?
- Cannot presume that every regulated financial services provider will necessarily be compliant with either the law, or self-framed fair lending code

## Power of the RP or liquidator to seek avoidance and reversal of transactions

- Broad description of the transaction to be avoided
  - Any transfer made to a certain creditor, surety or guarantor.
    - So as to put the recipient in a beneficial position in relation to other creditors
  - Gifts or transfer of property at a value significantly lower than the consideration paid by the debtor
  - Any transaction deliberately intended
    - to put the assets of entity beyond the reach
    - adversely affect the interest to any claim
  - Any financial or operating debt on exorbitant terms

# Distribution of assets: order of priority

- Insolvency resolution process costs and the liquidation costs paid in full
- debts which shall rank equally
  - debts owed to a secured creditor in the event such secured creditor has relinquished security
  - workmen's dues for the period of 24 months preceding the liquidation commencement date
- wages and any unpaid dues owed to employees
  - other than workmen for the period of 12 months preceding the liquidation commencement date
- financial debts owed to unsecured creditors
- dues which shall rank equally
  - amount due to the CG and the SG
    - including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of 2 years preceding the liquidation commencement date;
  - debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- any remaining debts and dues;
- preference shareholders, if any; and
- equity shareholders or partners, as the case may be.
- Fees payable to liquidator shall be deducted proportionately from the proceeds payable to each class of aforementioned recipients

# Distribution of assets: order of priority ..contd

- The section brings very important changes in the priority of distribution.
  - First, it puts government dues, which, by several specific statutes are put on the top of the waterfall, to a position below unsecured lenders.
  - Second, it distinguishes between financial creditors and operational creditors, putting the former in priority over the latter.
  - Third, by putting the unrealized part of a secured creditor's claim who enforces security interest outside liquidation, to a position subordinated to unsecured creditors, it gives a positive temptation to secured creditors to join the queue in winding up, and gain priority.



## Critical question for secured creditor

- Whether to stay in liquidation proceedings, or stay out of liquidation?
  - Secured creditors will have to take an early call on whether to stay out of liquidation or to stay in liquidation
    - Staying out – secured creditor enforces security interest, for remaining claim, he is at par with unsecured lenders
    - Staying in - secured creditor relinquishes security interest. Asset becomes part of the common pool. Secured creditor gains first priority out of all assets
  - Decision to be based on:
    - LTV ratio of the secured asset vs. LTV ratio of other free assets of the entity
    - Recovery rate depends on the choice
  - Choice once made cannot be changed

## Provisioning implications of the Code

- Once an insolvency resolution application is filed
  - Prima facie, this is an indication of weakness in credit; should warrant provisioning
- Once resolution application is sanctioned
  - Provisioning may be required based on the fair value of the restructured facility
- Once company goes into liquidation
  - Deeper provisioning may be required looking at the deficit on assets



# Liquidation Regulation

# Stage-wise submission of reports

- The liquidator shall prepare and submit to the AA
  - a preliminary report
    - Within 75 days from the liquidation commencement date
  - an asset memorandum
    - Within 75 days from the liquidation commencement date
  - progress report(s)
    - 1<sup>st</sup> Progress Report
      - Within 15 days after the end of the quarter in which the liquidator is appointed
    - Subsequent progress reports
      - Within 15 days after the end of every quarter during which he acts as liquidator
    - IP ceases to act as a liquidator
      - Within 15 days of such cessation shall provide a report for the quarter up to the date

# Stage-wise submission of reports

- The liquidator shall prepare and submit to the AA
  - sale report(s)
    - On sale of an asset
  - minutes of consultation with stakeholders
  - the final report prior to dissolution

# Resolution Plan

- Section 5 (26) defines “resolution plan” -
  - a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II
- Resolution plan is prepared by resolution applicants –
  - Resolution applicant can be creditors of the corporate debtor, prospective lenders, prospective investors, or any other person
- Resolution plan shall be prepared on the basis of information memorandum prepared by RP

## Vertical comparison

- Section 30 (2) of the Code provides for essential components in the resolution plan which calls for vertical comparison
  - Resolution plan must provide for –
    - repayment of debts of operational creditors in such manner as may be specified by the Board
      - Shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under section 53
- Vertical comparison means a comparison between a creditor's entitlement in the resolution plan and in a hypothetical liquidation

## Duties of liquidator

- Make public announcement
  - Within 5 days from appointment
- Verify the claims submitted
  - Within 30 days from the last date for receipt of claims
- File the list of stakeholders with AA
  - Within 45 days from the last date for receipt of claims
- Inform the secured creditor if a person is willing to buy the secured asset
  - Within 21 days of receipt of the intimation
- liquidate the corporate debtor
  - Within a period of 2 years



## Liquidator's fee

- Fee payable to the liquidator shall form part of the liquidation cost
- Liquidator shall be paid fees as decided by the committee before a liquidation order is passed under section 33 (1) (a) and 33 (2)
- In all other cases, liquidator shall be paid fees as provided in **next slide**

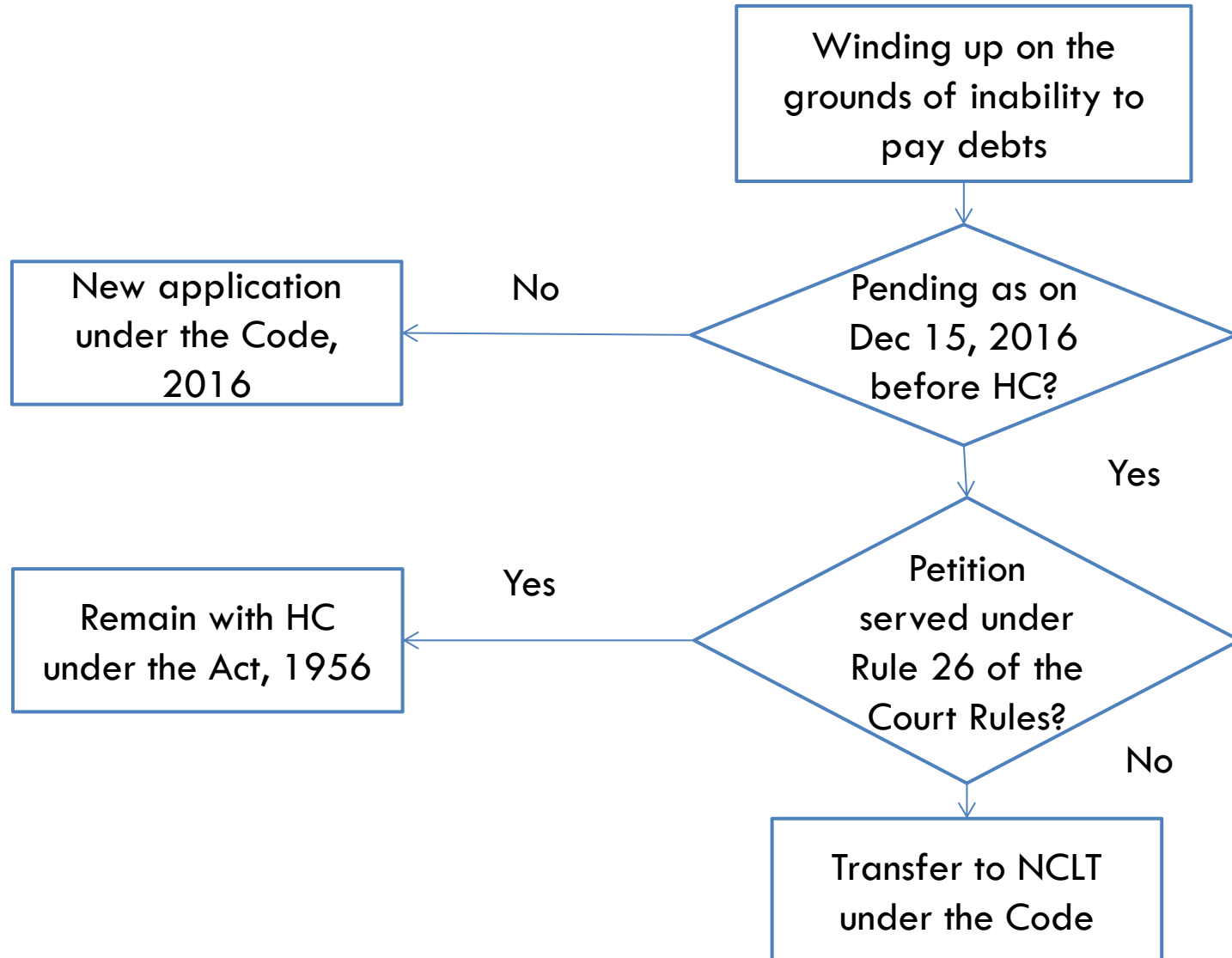
## Liquidator's fee

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized / distributed			
	in the first six months	in the next six months	in the next one year	Thereafter
<i>Amount of Realisation (exclusive of liquidation costs)</i>				
On the first 1 crore	5.00	3.75	2.50	1.88
On the next 9 crore	3.75	2.80	1.88	1.41
On the next 40 crore	2.50	1.88	1.25	0.94
On the next 50 crore	1.25	0.94	0.68	0.51
On further sums realized	0.25	0.19	0.13	0.10
<i>Amount Distributed to Stakeholders</i>				
On the first 1 crore	2.50	1.88	1.25	0.94
On the next 9 crore	1.88	1.40	0.94	0.71
On the next 40 crore	1.25	0.94	0.63	0.47
On the next 50 crore	0.63	0.48	0.34	0.25
On further sums distributed	0.13	0.10	0.06	0.05

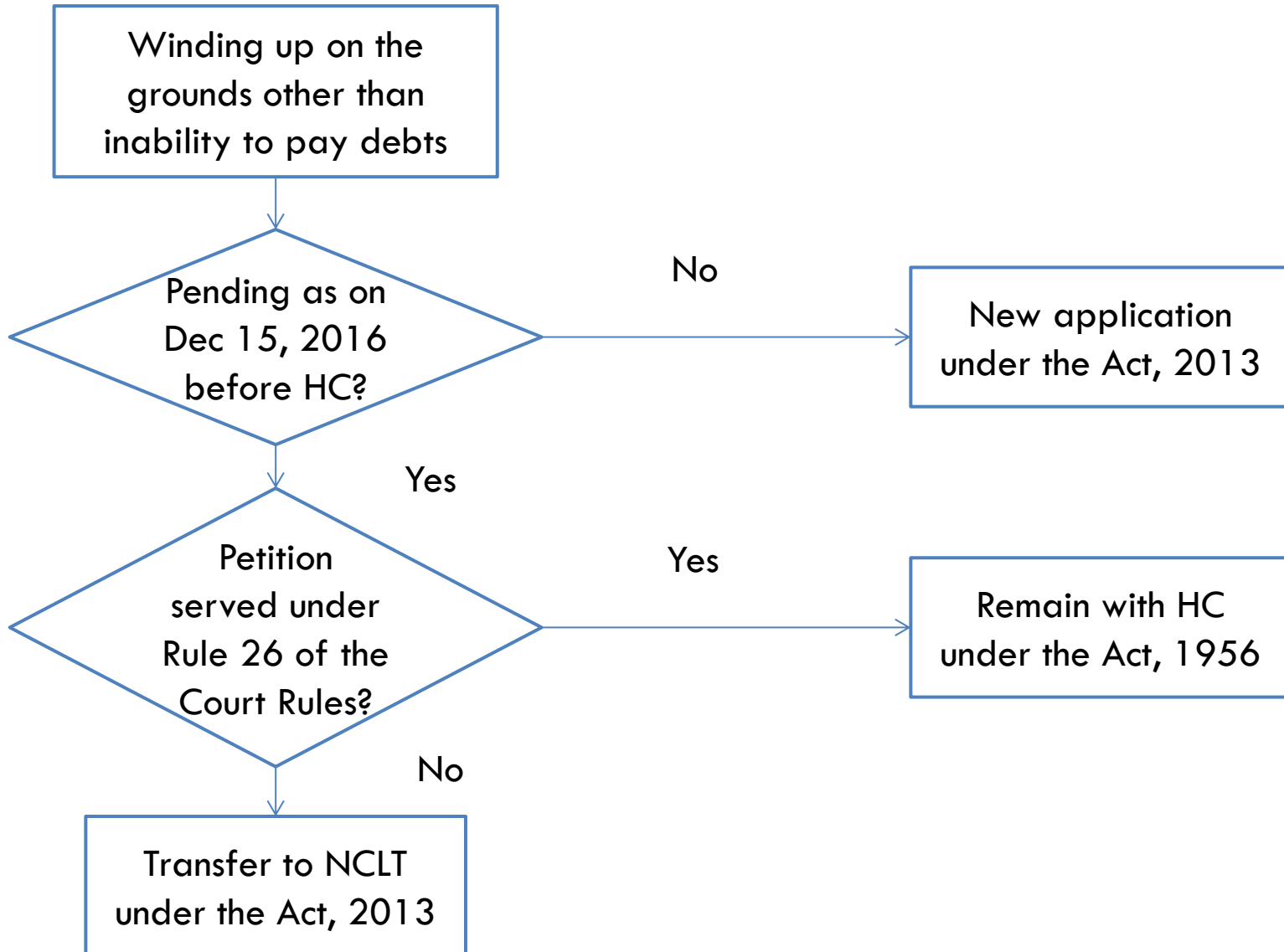


# Transfer of proceedings

# Transfer of winding up proceedings



# Transfer of winding up proceedings





# Voluntary Liquidation



# Legislative Overview

# International Scenario

- UK
  - Chapter II of the Insolvency Act, 1986 provides for voluntary winding up
    - When can a company be wound up voluntarily?
      - Period fixed for the duration of the company by its articles expires + passing of resolution in the general meeting; or
      - On occurrence of event the articles provide the company to be dissolved + passing of resolution in the general meeting; or
      - Company resolves by SR for winding up
    - Chapter III deals with members' voluntary winding up
      - Sections 91 - 96
    - Chapter IV deals with creditors' voluntary winding up
      - Sections 97 - 106
- Singapore
  - Section 271 provides for 2 modes of winding up
    - Compulsory, i.e., winding up by court
    - Voluntary (division 3)
      - Members' voluntary winding up (division 3 (2))
      - Creditors' voluntary winding up (division 3 (3))



# Indian Scenario

- **1956 Act**
  - Sections 484 to 520 – specific sections applicable to voluntary winding up (members' and creditors' )
  - Section 454 (statement of affairs) by virtue of sec 511A
  - Sections 528 to 560 – provisions applicable to every mode of winding up
- **2013 Act**
  - Sections 304 to 323 – specific sections applicable to voluntary winding up
  - Sections 324 to 358- provisions applicable to every mode of winding up
  - Section 365 – dissolution
- **By virtue of IBC, sections 304 to 323 of Companies Act stand deleted**
- **IBC:**
  - Section 59 (notified on 30.03.2017)
  - Sections 35 to 53 [applied by virtue of sec 59 (6)]
- **A shrinking law:**
  - 37 dedicated sections in the 1956 Act
  - 20 dedicated sections in the 2013 Act
  - 1 dedicated section in IBC, 2016

# Different modes of winding up companies

- Resolution and Winding up in case of a default - Chapter II and III of this Code
- Winding up on any of the grounds listed in section 271 of CA, 2013, as amended by the Code - Section 271 of Companies Act
- **Voluntary winding up (other than summary winding up process below) - Chapter V of this Code.**
- Summary winding up of companies having assets upto Rs 1 crore - sections 361-365 of Companies Act, 2013
- Winding up of unregistered companies including partnership firms and foreign companies - sections 375 and 376 of Companies Act, 2013
- Dissolution without winding up by merger - section 232 (3) (d) of the Companies Act, 2013
- Removal of the name of a defunct company from register of members - section 248 of the Companies Act, 2013
- **In case of financial service providers, until explicit provisions are enacted, either the Companies Act 2013, and/or the relevant special laws, will continue to prevail.**

# Highlights of the Code - voluntary liquidation

- Voluntary liquidation procedure removed from Companies Act and shifted to the Code
- Distinction between members' voluntary and creditors' voluntary winding up removed
  - Creditors' approval required in all voluntary winding up - 2/3rds in value
- Voluntary winding up proceedings start from the date of passing of resolution
- Liquidator steps-in, powers of board of directors cease
- Code not applicable to financial sector entities
  - So, section 271 of the Companies Act will have to be used in such cases
- remaining unclaimed and undistributed go into Company Liquidation Account in the Public Account of India before Order of dissolution- Reg 39
- Liquidator receives a receipt from RBI for such payment
- Money can be claimed from IBBI - who make an order after satisfaction and taking adequate security
  - After 15 years, money goes to the general reserve account of the Central Government - Reg 39(6)
- Once the affairs are completely wound up, application for dissolution
- Dissolution order



# Companies Eligible, not Eligible

# Entities that may go for voluntary liquidation

## Under IBC

- Any Company (S. 59(3))
  - Public or private
  - Listed or unlisted
- LLPs (S. 59(2))
- Other bodies corporate with limited liability

## Under Companies Act

- Unregistered companies
- Foreign companies

## No

- Insolvent entities
- Financial services providers
  - VL of financial service provider - either the CA, 2013 and/or the relevant special laws, will continue to prevail



# Who can / cannot be a Liquidator

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# Qualification of IP to be liquidator - Reg 6

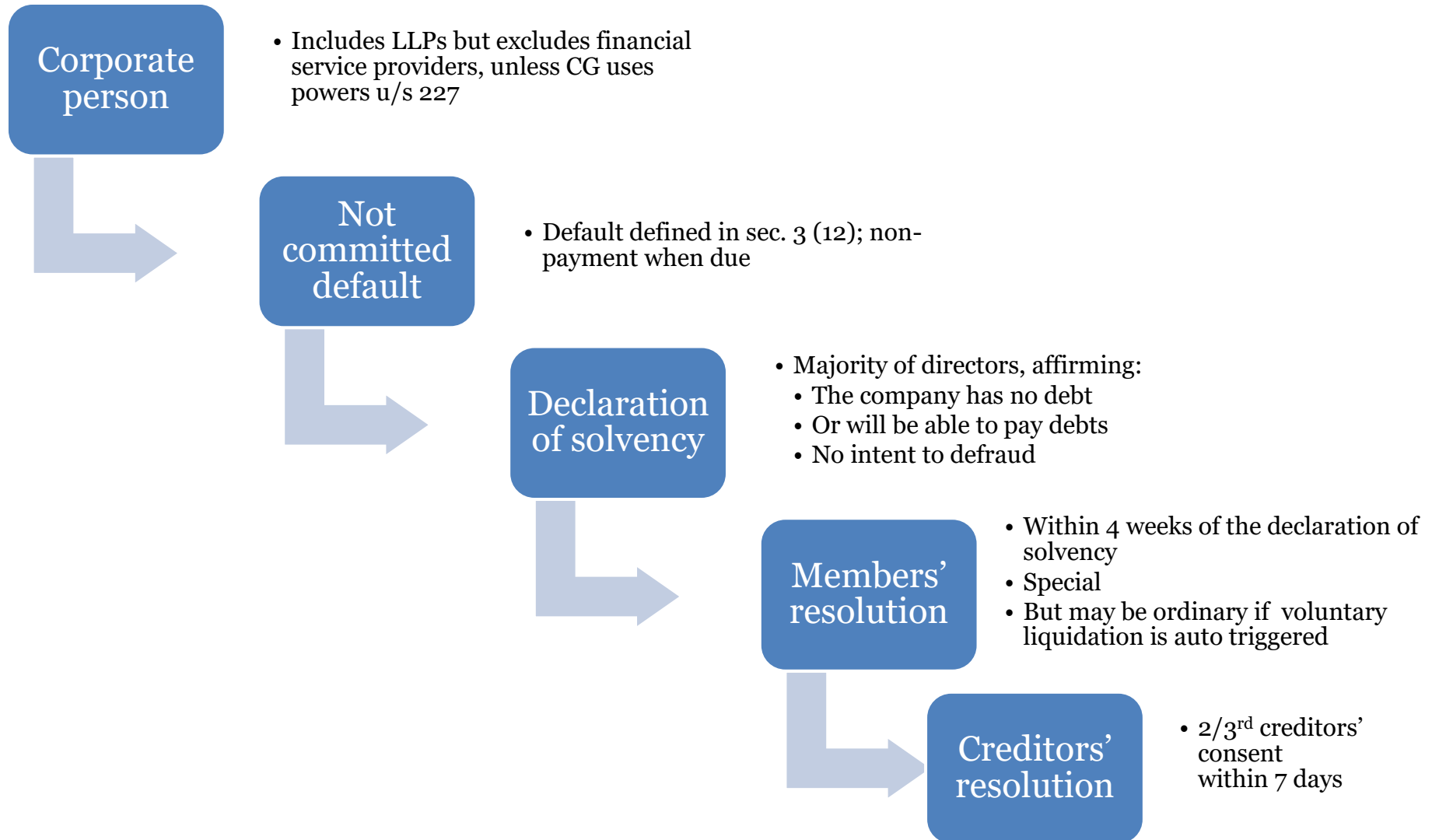
- Should be independent of the corporate debtor
  - In case of independent IP – such IP should be independent
  - In case of partner / director of IPE – all the partners / directors of such IPE shall be independent
    - Conditions of independence:
      - The IP is eligible to be appointed as an ID on the board of the corporate debtor, in case of a company
      - Is not a related party of the corporate person
      - Has not been an employee / proprietor / partner at anytime in the last 3 years
        - Of a firm auditors / CS / cost auditors of the corporate person
        - Of a legal or a consulting firm that has or had any transaction contributing ten per cent or more of the gross turnover of such firm
- Should not be under a restraint order of the IBBI
- Liquidator should disclose to the IBBI and the RoC
  - the existence of any pecuniary or personal relationship
  - with the corporate debtor or any of its stakeholders
  - as soon as he becomes aware of it
- Partners / Directors of same IPE cannot act as liquidators of a corporate debtor and its stakeholder at the same time



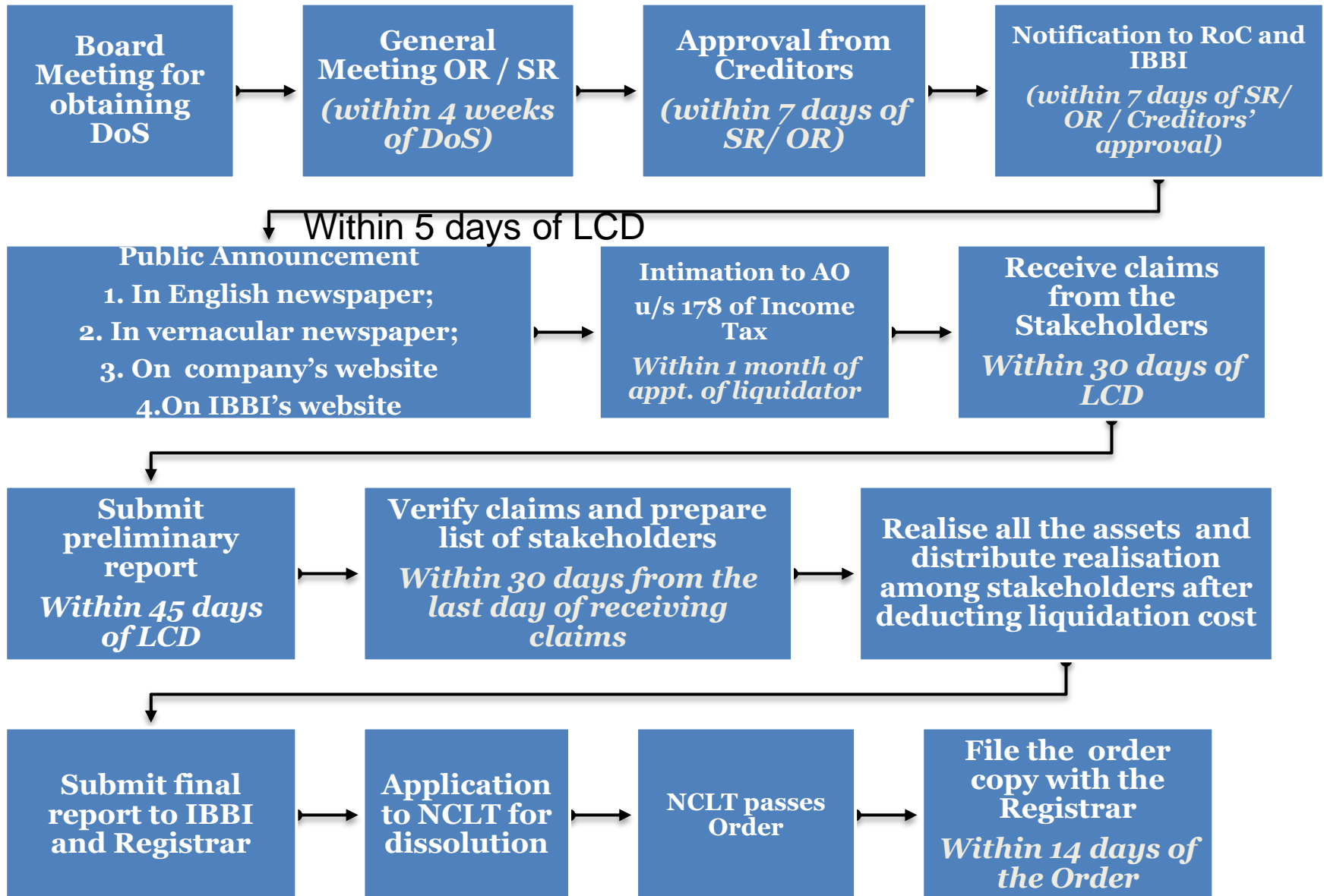
# Process overview



# Pre-conditions for voluntary liquidation

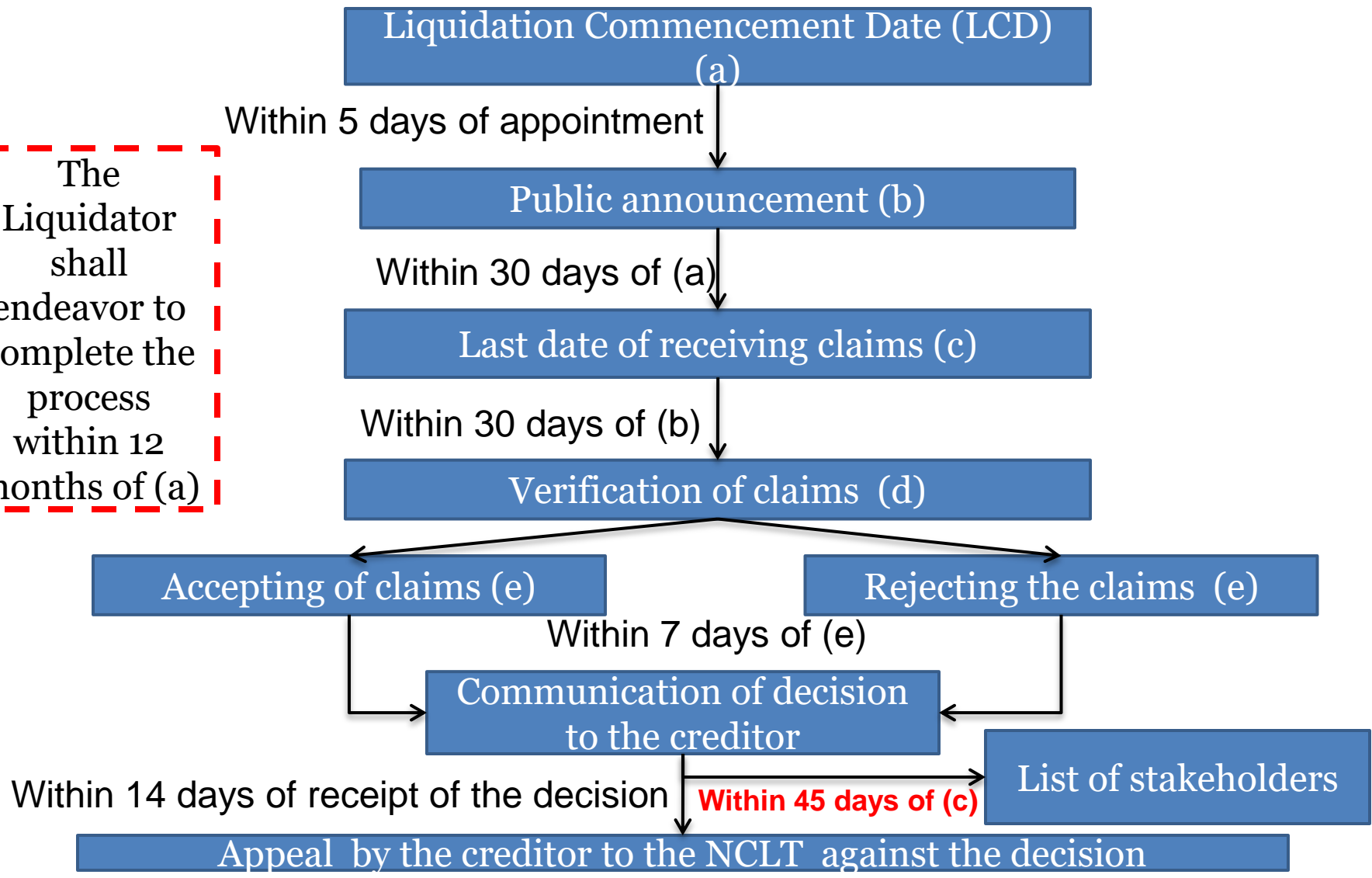


# Complete Process



# Timelines for Liquidator

The Liquidator shall endeavor to complete the process within 12 months of (a)



# Declaration of Solvency

- Obtain DoS by majority directors / DPs of the corporate person verified by an affidavit
  - **DOS shall contain the following:**
    - Shall list each debt as on the date of making the DoS
    - That they have made full inquiry into the affairs of the corporate person and either
      - That it has no debts; or
      - That its assets are sufficient to pay off the debts in full
    - The corporate person is not being liquidated to defraud any person
- The DoS shall accompany the following documents:
  - Audited financial statements for previous 2 yrs or since incorporation – whichever is later
  - Record of business operations
    - Seems this is required either in case of a new business or for the period for which the accounts are not audited
  - Valuation report, **if any**, prepared by a registered valuer

# SR / OR / Creditors' approval

- Within 4 weeks of DoS – obtain SR / OR from the members in a GM for
  - **Voluntary Liquidation**
  - **appointment of liquidator along with his remuneration**
  - **Manner and mode of value and sale of the assets**
  - **Distribution in kind**
    - In case the clause of VL is present in the Charter of the Company – OR is sufficient
      - As a result of expiry of period of duration fixed by Charter
      - On the occurrence of any event, mentioned in the Charter on which the corporate person shall get dissolved
    - If otherwise – SR is required
- Within 7 days of SR/ OR – approval of the resolution by creditors representing 2/3 in value of the debt
- The corporate person shall **cease to carry on its business except as far as required for beneficial winding up of its business from the date of passing SR/OR**
- Within 7 days of SR/ OR / creditors' approval (as the case may be) – notification to RoC and IBBI regarding the SR / OR and the creditors' approval
- Once the affairs are completely wound up **and** assets completely liquidated – the liquidator shall make an application to the NCLT for dissolution of the corporate person
- NCLT passes an order for dissolution
- From 14 days of the Order – the Order to be forwarded to the RoC

# Liquidation commencement date

- Section 59 (5)
  - Subject to approval of creditors, the date on which members pass special / ordinary resolution
- Two situations
  - Members pass special resolution, creditors do NOT approve it – voluntary liquidation does not commence at all
  - Members pass special resolution, creditors approve it – voluntary liquidation commences
- From what date?
  - Members' resolution 18<sup>th</sup> Jan
  - Creditors' approval 25<sup>th</sup> Jan
  - Liquidation commences, on 25<sup>th</sup> Jan, with effect from on 18<sup>th</sup> Jan

# Phases in voluntary liquidation

- Board decision to liquidate
  - In view of the materiality of the board decision, the board must immediately call general meeting
  - Disclosure requirements, if applicable
  - From the board meeting to the general meeting date, the company is a going concern, as before.
- General meeting passes special / ordinary resolution
  - Liquidation commences, though not yet effective
- Creditors' meeting passes requisite resolution
  - If creditors approve, the liquidation dates back to the date of shareholders' resolution
- From the date of shareholders' resolution till dissolution, the company is under liquidation, managed by liquidator
- Final meeting and dissolution order
  - The company ceases to exist
- Revival of the company

# Consequences of liquidation commencement

## 1/2

- Cease to carry business but exists until dissolution
  - Except for the beneficial winding up of the business
- No vesting of assets in the liquidator (unlike case of an insolvent company) [SC ruling in Hari Prasad Jayantilal, House of Lords ruling in Ayerst (Inspector of Taxes) v. C & K (Construction) Ltd., (1975) 2 All ER 537]
- Directors cease to hold office
  - Section 491 of CA 1956 contained explicit provision; by implication, apply to voluntary liquidation under the Code.
  - Liquidator assumes office as the agent of the company – Hari Prasad Jayantilal Company vs ITO AIR 1966 SC 1481
- Name, stationary to reflect company in liquidation
  - Specific provisions in sec 547 of CA 1956; nothing in the Code. However, important to make an ongoing disclosure
- Registered office of the company stays
- Discharge of employees:
  - In Reigate vs. Union Manufacturing Co, (1918) 1 KB 593, court held voluntary winding up serves as a notice of discharge to employees, except where the winding up is being done with a view to reconstruct the company



# Consequences of liquidation commencement

## 2/2

- Interest on debt
  - In case of insolvent companies, interest stops accruing; no such reason in case of solvent companies
  - However, provisions about claims refer to claims as on the date of commencement of liquidation
- Consolidation of suits
  - Unlike in case of compulsory liquidation, voluntary winding up does not stay suits by or against the company
  - No consolidation of suits as well before the NCLT
- Further claims by creditors
  - company's creditors cannot file suit for recovery of debt; instead they will have to lodge claims on the liquidator



# Powers and duties of liquidator

# Powers and Duties of the liquidator - Sec-35 and Ch- IV of the Reg (1/3)

- Subject to the directions of NCLT, the liquidator shall have the following powers and duties:
  - to invite and settle claims of creditors and claimants and distribute proceeds
  - To verify claims of all creditors
  - to take into his custody or control all the assets, property, effects and actionable claims of the CP
  - To evaluate the assets and property of the CP in a manner as may be specified by IBBI and prepare a report
  - To take measures to protect and preserve the assets and properties of the CP
  - To carry the business of the CP for its beneficial liquidation
  - To sell the immovable and movable property and actionable claim of the CP by
    - Public auction
    - Private contract
  - Power to transfer such property to any person or body corporate or to sell the same in parcels
  - to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the CP with the same effect and with respect to same liability as if such instruments were drawn, made, endorsed by or on behalf of the CP in the ordinary course of business

# Powers and Duties of the liquidator - Sec-35 and Ch- IV of the Reg (2/3)

- to take out, in his official name, letter of administration to any deceased contributory and to any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the CP
- to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities
  - At reasonable remuneration
  - Remuneration shall form part of liquidation cost
  - The professional should not be:
    - Relative of the liquidator
    - Related party of the corporate person
    - Served as an auditor to the corporate person at anytime during the 5 years preceding the liquidation commencement date
  - The professional shall forthwith disclose to the liquidator his pecuniary or personal relationship with (a) Any of the stakeholders (b) The CP itself

# Powers and Duties of the liquidator - Sec-35 and Ch- IV of the Reg (3/3)

- to institute or defend any suit, prosecution or other legal proceedings, on behalf of the CP
  - civil or
  - Criminal
- to investigate the financial affairs of the CP and to determine undervalued or preferential transactions
- To take all such actions, steps, sign or execute documents etc as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator
- To apply to the NCLT for such orders or directions as may be necessary
- To report the progress of the liquidation process
- To consult any of the stakeholders entitled to distribution of proceeds under section 53
  - The stakeholders consulted shall extend all assistance and cooperation to the liquidator to complete the liquidation of the CP
  - However such consultation shall not be binding on the liquidator
  - The liquidator shall maintain the particulars of any consultation with the stakeholders
  - The records of such consultation shall be made available to all the other stakeholders not so consulted
- To recover and realise all assets and dues to the corporate person in a time-bound manner for maximisation of value to stakeholders
- To realise uncalled capital or unpaid capital contributions

# Reporting and record-keeping requirements

- The liquidator has major reporting and record-keeping requirements
  - Preliminary Report
  - Annual Status Report
  - Minutes of consultations with stakeholders
  - Final Report
- Record keeping requirement
  - A formidable list of 18 registers laid by the Regulations
    - The 18<sup>th</sup> one is actually an open item
  - These records are to be maintained for 8 years after dissolution
- Preservation of records
  - Physical / electronic copy to be maintained for at least 8 years after dissolution either by the liquidator / Information utility

# Registers and Books maintained by the Liquidator

- Indicative formats of each of the below is provided in the Schedule II of the Regulations
  - Cash Book
  - Ledger
  - Bank Ledger
  - Register of Fixed Assets and Inventories
  - Securities and Investment Register
  - Register of Book Debts and Outstanding Debts
  - Tenants Ledger
  - Suits Register
  - Decree Register
  - Register of Claims and Dividends
  - Contributories Ledger
  - Distributions Register
  - Fee Register
  - Suspense Register
  - Documents Register
  - Books Register
  - Register of unclaimed dividends and undistributed properties deposited in accordance with Regulation 39; and
  - such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor.
- In case the books of accounts are not complete as on the liquidation commencement date – the liquidator shall have them completed and brought-up-to-date , with all convenient speed
- The Liquidator shall keep receipts of all payments made or expenses incurred by him



# Detailed Procedures



# Valuation requirement

- Valuations are required at following stages
  - Valuation by the Board of Directors at the time of making declaration of solvency [sec 59 (3) (b) (ii)]
  - In case the liquidator finds substantial difference between values as initially estimated, and the disposal prices, he needs to explain the same [reg 38 (1) (c) (iv)]
    - Therefore he may engage a valuer(s) to examine the difference before he disposes the asset

# Public announcement by Liquidator

- To be made by the liquidator
- In Form A of Schedule I
- Within 5 days of his appointment
  - **This means that the creditors approval has to be actually obtained within 4 days of SR / OR passed**
- To call upon the stakeholders to submit their claims along with the proof thereof
  - As on the liquidation commencement date
  - Within 30 days from the liquidation commencement date
    - i.e the stakeholders have effectively less than 30 days to submit their claims
- To be published in
  - English
  - One regional language newspaper with wide circulation
    - At the location of the registered office of the CP
    - At the location of the principal office of the CP
    - At any other location, where in the opinion of the liquidator, the CP conducts material business
  - On the website of the CP, if any
  - On the website of the IBBI

# Preliminary Report

- Has to be submitted by the Liquidator
- To the corporate person
- Within 45 days of liquidation commencement date
- Contents of the PR:
  - Capital structure of the CP
  - Estimates of the assets and liabilities as on the liquidation commencement date
    - Based on the books of the CP – if reliable , or
    - based on reliable records and data otherwise
      - The reasons of not relying on the books have to recorded in writing by the liquidator
  - Whether the liquidator intends to make any further inquiry into the matter relating to promotion, formation, failure or the conduct of the corporate person
  - Proposed plan of action, estimated timelines and estimated liquidation costs

# Classification of creditors vs Claims

Creditor type	Form of submitting claims	Mode of submitting claims
Operational creditor	Form B	In person / by post / by electronic means
Financial creditor	Form C	Only electronic means
Workmen and employees	If individually - Form D  If by an Authorised Representative – all claims clubbed in Form E	In person / by post / by electronic means
Other stakeholders Eg Shareholders in case of unpaid dividend	Form F	In person / by post / by electronic means

***There is no provision for creditors crystallizing out of contingent liability of the CP***

# Basis to prove the existence of claim

- To establish the existence of debt
  - An indicative list of basis is given
- As per the records of the Information Utility
- Contract (operational / financial / employment ) as the case may be
- Financial accounts of the CP (except for other stakeholders)
- An Order of a court, tribunal or any authority that has adjudicated upon non payment of a claim
- Document evidencing amount getting accrued and due and that it is not paid and a document demanding payment
- Affidavit that the documentary evidence and bank statements are true – this is provided only for Other stakeholders
- Documentary / electronic evidence of shareholding
- *For debt in respect of bills of exchange, promissory notes or other NI or security of like nature – such NI or security should be produced before the liquidator before the claim is admitted (R.21)*
- The liquidator may call for such other evidence or clarification as he may deem fit for substantiating the claim (R. 22)

***For claims of workmen and employees only - the liquidator shall admit the claim on the basis of books of account of the corporate person, in case no claim is made by the workmen himself (R.18(4))***

# Basis to prove security interest

- Indicative list
  - Records available with the information utility
  - Charge certificate issued by RoC
  - Proof of registration of charge with the CERSAI
  - Other relevant documents which adequately establish security interest

# Cost of proof

- For proof produced by claimant – cost to be borne by the claimant
- For verification by the liquidator – cost to form part of liquidation cost
  - **In case of false claim**
    - the liquidator shall endeavor to recover the costs incurred from such claimant, **and**
    - provide the details of such claimant to the IBBI

# Determination of amount of claim (1/2)

- In case of any contingency or any other reason
  - The liquidator shall make best estimate of the amount of claim based on:
    - The information available with him
    - Consultation with claimant
    - Consultation with the CP
- Debt in foreign currency
  - shall be valued in Indian currency
  - at the official exchange rate published by the RBI
  - as on the liquidation commencement date
- Debt of periodical payment like monthly rents / interest
  - Only amounts due and unpaid upto liquidation commencement date can be claimed



# Determination of amount of claim (2/2)

- Mutual credits and set off
  - For mutual dealings between the corporate person and the creditor
  - The sums due and from the corporate debtor and the creditor shall be set off and net amount shall be paid to the either party

# List of stakeholders

- To be prepared by the Liquidator
- Within 45 days of the last date of acceptance of claims
- The list can be modified from time to time
- Available for inspection by
  - Claimants
  - Members, partners, directors, guarantors of the CP
- Displayed on the website of
  - the CP
  - IBBI
- Shall contain
  - Amount accepted
  - Extent to which secured / unsecured
  - Details of stakeholders
  - Proofs admitted / rejected in parts and proofs wholly rejected

# Liquidation Cost

- Remuneration of the liquidator
- Remuneration of the professional engaged by the liquidator
  - Remuneration should be reasonable
- Cost incurred by the liquidator for verification and determination of a claim
- Routine costs such as rent of the registered office, salaries/ wages paid to the employees/ security guard etc



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# Conduct of liquidation

# Realisation of assets

- The manner and mode of sale of assets to be approved by the corporate person
- The liquidator may value and sale the assets in such approved mode
- “assets” include an asset, all assets, a set of assets or parcel of assets, as the case may be, in relation to sale of assets

# Realisation of uncalled / unpaid capital

- Reg 33
- Liquidator shall realise any amount due from any contributory
- To call and realise the uncalled capital / unpaid capital (call made prior to the liquidation commencement date)
- 15 days Notice to be given to the contributory
- Money to be paid within 15 days of the receipt of the notice
- In case of charge on the uncalled capital – the liquidator shall hold the realised money subject to the rights of the charge holder
- In case the contributory does not pay the called money – he will not be entitled to any distribution

# bank account opened by the liquidator

- The liquidator shall open a bank account
- In a scheduled bank
- In the name of the corporate person
- Followed by the words “in voluntary liquidation”
- For the receipt of all monies due to the corporate person
- All monies received by the liquidator shall be deposited in the bank account
- Without any deduction
- In not later than the next working day
- Money in the bank shall be used only for distribution of assets
- Payment above Rs 5000 can be made only by cheque or online
- **The realised amount should be distributed within 6 months from the receipt**

# Distribution of assets: order of priority

- The liquidation costs paid in full
- debts which shall rank equally
  - debts owed to a secured creditor in the event such secured creditor has relinquished security
  - workmen's dues for the period of 24 months preceding the liquidation commencement date
- wages and any unpaid dues owed to employees
  - other than workmen for the period of 12 months preceding the liquidation commencement date
- financial debts owed to unsecured creditors
- dues which shall rank equally
  - amount due to the CG and the SG
    - including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of 2 years preceding the liquidation commencement date;
  - debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- any remaining debts and dues;
- preference shareholders, if any; and
- equity shareholders or partners, as the case may be.
- Fees payable to liquidator shall be deducted proportionately from the proceeds payable to each class of aforementioned recipients



# Distribution of assets: order of priority ..contd

- The section brings very important changes in the priority of distribution.
  - First, it puts government dues, which, by several specific statutes are put on the top of the waterfall, to a position below unsecured lenders.
  - Second, it distinguishes between financial creditors and operational creditors, putting the former in priority over the latter.
  - Third, by putting the unrealized part of a secured creditor's claim who enforces security interest outside liquidation, to a position subordinated to unsecured creditors, it gives a positive temptation to secured creditors to join the queue in winding up, and gain priority.

# Timeline for completion of liquidation

- Endeavour should be to complete the liquidation process within 12 months of liquidation commencement date
- If the process continues beyond 12 months
  - The liquidator has to do the following:
    - Hold a meeting of contributories
      - within 15 days of the end of 12 months, every year, until dissolution
    - Present an Annual Status Report
      - indicating progress in liquidation and
      - containing the audited accounts of liquidation showing receipts and payments since liquidation commencement date

# Final Report (1/2)

- To be prepared on completion of the liquidation process
- To consist of
  - Audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since liquidation commencement date
  - Statement demonstrating that the
    - Assets have been disposed of
    - Debts have been discharged to the satisfaction of the creditors
    - Litigation
      - Either nothing pending; or
      - Sufficient provision has been made to meet obligation arising out of pending litigation
  - A sale statement in respect of all assets
    - Refer next slide
- This Report shall be send to the RoC and IBBI
- **And submitted to the NCLT along with the application for dissolution**

## Final Report (2/2)

- sale statement in respect of all assets shall contain the following –
  - the realized value;
  - cost of realization, if any;
  - the manner and mode of sale;
  - an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets;
  - the person to whom the sale is made; and
  - any other relevant details of the sale.

# Unclaimed / Undistributed amount

- The Liquidator shall apply to the NCLT for order to deposit such amount
  - In the Companies Liquidation Account in the Public Account of India
    - If not – the liquidator will have to pay interest at 12% p.a and also will be liable to penalty
- While making such payment, a statement of the details of such unclaimed / undistributed amount to be furnished
  - To RoC and IBBI
- The RBI will give a receipt to the liquidator in this regard
  - such receipt shall be an effectual discharge of the liquidator in respect thereof
- Can be claimed by applying to IBBI within 15 years
- If remains unclaimed – after 15 years shall be transferred to the general revenue account of the Central Government.

# Instance for suspension of the process

- The liquidator shall make application for suspension of the liq. Process to the NCLT if:
  - Liquidation being done to defraud a person
  - On liquidation, the corporate person will be unable to pay debt in full



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# Tax Implications

# Taxation aspects

- Taxation of shareholder
  - Sec 2 (22) ( c) distribution made by companies in liquidation, to the extent the same pertains to accumulated profits, to be taxed as dividend
    - Hence, dividend distribution tax u/s 115-O will be applicable
    - Liquidator needs to ensure the same is paid within 14 days of the distribution, declaration or payment (earliest)
    - Distribution of assets may happen in tranches
      - So question, whether what is distributed is capital or accumulated profits?
        - It is possible to take a view that the capital is distributed first, before the profits
    - Note that distribution in respect of bonus shares is regarded as dividend
  - Sec 46 (2) capital gains payable on the consideration received, minus what is treated as dividends
- Taxation of the company upto dissolution
  - The company survives till the date of dissolution – hence, tax payable till that date
  - Sec 178 of the Income tax Act
    - Within 1 month of appointment, liquidator to intimate the assessing officer
    - AO may require the liquidator within 3 months to set aside amount for estimated tax liability
    - No distribution shall be made without intimating the AO or before setting aside such money
- Obligations of the liquidator
  - Sec 2 (35) of the Income-tax Act – liquidator is the principal officer – several rulings
  - Sec 178 (4) imposes personal liability on the liquidator for taxes if money already distribution by the liquidator
  - Hence, it makes sense to obtain a declaration from the contributories that they will refund their distribution to the extent required for tax payment
- Directors' liability - section 179 in case of private companies



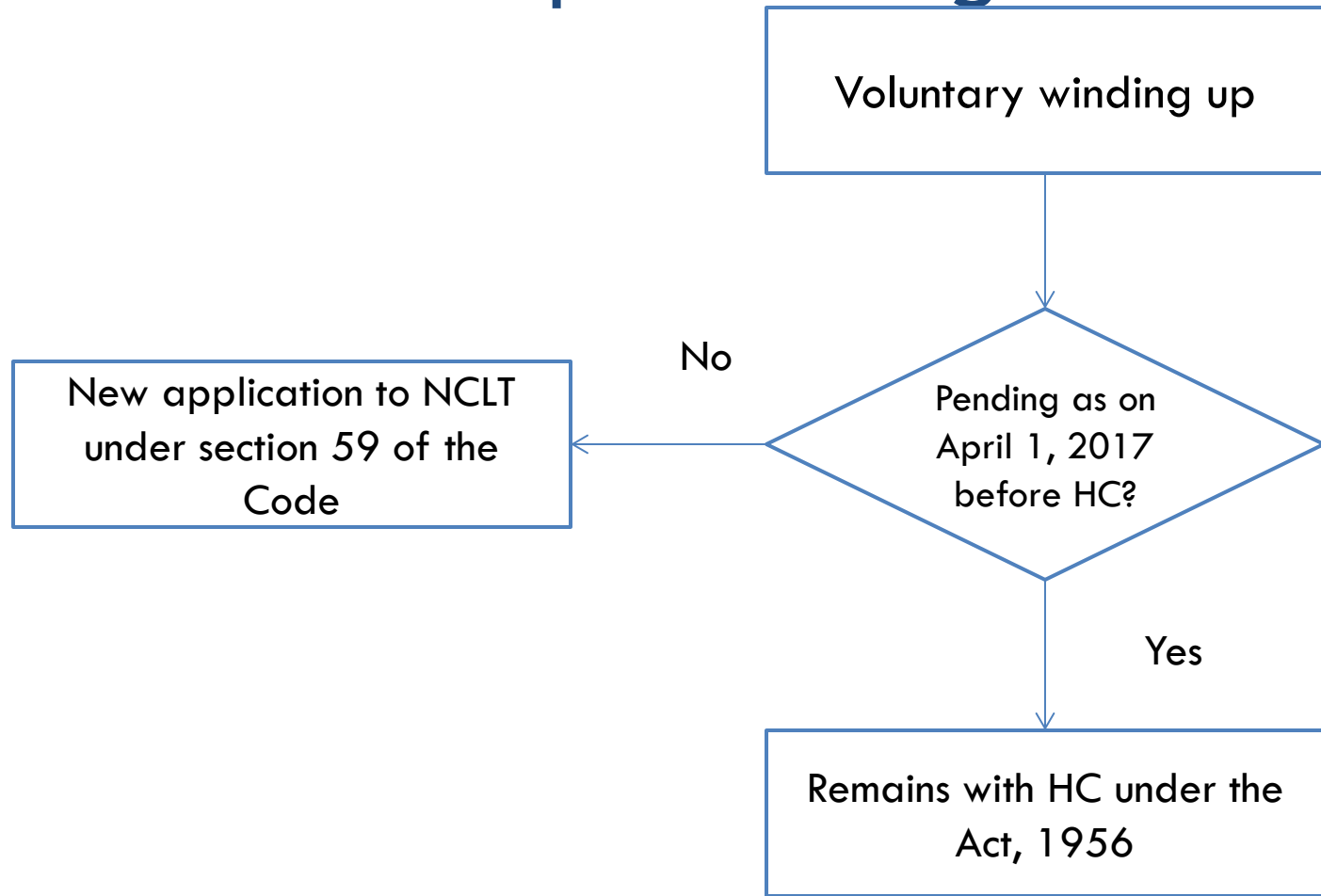
# Liability to VAT or sales tax

- Liability to tax on sales made upto the date of liquidation order
  - **Beyond doubt**
- Whether any sales made in course of liquidation are liable to be taxed?
  - **SC ruling in Hindustan Urban Infrastructure Ltd., 2015 ruling, clearly yes**  
[<http://judis.nic.in/supremecourt/imgs1.aspx?filename=42256>]
- In essence, the liquidator continues to be liable for all taxes due on the company, in the same manner as directors would have been liable



# Transfer of pending proceedings

# Transfer of voluntary winding up proceedings





# Practical queries

# Manner of selling assets

- Reg 31 provides liquidation may sell assets in such manner and mode as permitted by corporate person
  - Ideally, the special resolution approving voluntary liquidation may grant permission to liquidator
- Transparency of selling process important
  - Liquidator accountable for any shortfalls vis-à-vis valuations done by the board
- Can liquidator distribute assets in kind
  - Generally permitted. However, specific approval may be obtained in the members' resolution
- Can liquidator sell assets for consideration in form of shares of the acquirer
  - Specific provision in sec. 494 of CA 1956; seems relevant in many cases as the company may be sold as a going concern

# Revival of a company

- Can a company dissolved under orders of NCLT be revived?
  - Section 560 (6) of CA 1956 contained provisions for restoration
    - Within 20 years of name being struck off
  - Similar provisions in CA, 2013 – sec 252 (3)
  - Long trail of rulings both in UK and India on restoration
- Every case of a dissolution order leads to the name being struck off
- Therefore, sec 252(3) ought to be applicable in case of dissolution under IBC as well
  - The purpose of restoration is mainly to admit a claim that may have remained, or distribution an asset that may have escaped attention – Oakleagues Ltd (1995) 2 BCLC 624

# Comparing between VL , reduction of capital and merger

- Depending on situations, an entity have evaluate several options to achieve the objective of corporate exit:
  - Merger into another entity
  - Reduction of capital
  - Fast track exit
  - Conversion into LLP followed by winding up of LLP
  - Voluntary liquidation
  - Compulsory liquidation
    - Self-filed, under sec 271 (1) (a) of the CA, 2013
- FTE is relevant only where the company has NIL assets and liabilities – hence, not comparable
- The options may be compared from several viewpoints:
  - Tax neutrality
    - Capital gains
    - Dividend distribution tax
  - Speed of execution
  - Continuation of corporate existence
  - Control on liquidation process

## Few Practical Queries

- What will be the fate of the subsidiary company whose holding company has filed for liquidation?
- Will IT returns be filed for a company under liquidation ?
- What will be the fate of a guarantee provided by a corporate person which is under liquidation?
- Can dividend be declared by a company which is under liquidation?
- Whether liquidator's accounts needs to be audited?





# Transfer of proceedings



# APPEALS

# Appeals – Sec 61

Points for discussion	Section 10FQ of the Co Act, 1956	Section 421 of the Co Act, 2013	Section 61 of the Code
The authority the order of which is appealable	NCLT	NCLT	NCLT
When an appeal cannot be filed	Where the order was made by NCLT with the consent of parties.	Where the order is made by NCLT with the consent of parties.	No such provision
Who can file an appeal?	Any person aggrieved	Any person aggrieved	Any person aggrieved
Appellate authority	NCLAT	NCLAT	NCLAT
Time-limit for filing an appeal	Within 45 days	Within 45 days	Within 30 days
Extension of time-limit	No limit specified, though there is a provision for extension	Not exceeding 45 days	Not exceeding 15 days

# Adjudicating authorities under the code

# Adjudicating authority for corporate persons

- **National Company Law Tribunal**
  - having territorial jurisdiction over the place where the registered office of the company is located
- **Appellate Authority is the National Company Law Appellate Tribunal**
  - Appeal to be filed within 30 days
  - Extension of maximum 15 days allowed, provided there is 'sufficient cause'
- **Appeal to Hon'ble Supreme Court**
  - Against orders of NCLAT on a question of law
  - Within 45 days of receipt of NCLAT's order
- **Jurisdiction of any Civil Court of authority barred**
- **Strict timelines for NCLT/NCLAT**
  - Reasons to be recorded for not passing orders within time limits specified in the Code
  - Non-obstante provisions – override the Companies Act, 2013
  - President of NCLT/Chairperson of NCLAT may extend the period specified under the Code to a maximum of 10 days – reasons to be recorded

# Adjudicating authority for individuals and partnership firms

- **The Debt Recovery Tribunal (constituted under the RDDBFI Act)**
  - having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain
- **Appellate authority is the Debt Recovery Appellate Tribunal**
  - Appeal to be filed within 30 days
  - Extension of maximum 15 days possible, provided there is 'sufficient cause'
- **Appeal to Supreme Court**
  - Against an order of DRAT(on question of law), within 45 days
  - Extension possible for further 15 days, in case there is 'sufficient cause'
- **Jurisdiction of any Civil court or authority barred**
- **Abidance to timelines**
  - In case order is not passed by DRT/DRAT within specified timelines, reasons shall be recorded in writing
  - Chairperson of the DRAT may extend the timelines
  - Extension limits not specified, unlike in the case of NCLT/NCLAT

# Institutional and regulatory framework

# The framework consists of . . .

- **The Insolvency and Bankruptcy Board of India**
  - Body corporate having head office at NCR (Section (f) of section 2 of the National Capital Region Planning Board Act, 1985)
  - Chairperson + 3 members representing Ministry of Finance, MCA, and Ministry of Law + 1 member to be nominated by RBI + 5 members to be nominated by the Central Government
  - primary functions of the Board will include registration of insolvency professionals, insolvency institutions, information utilities, provide guidelines on the conduct of bankruptcy resolution, etc.
  - If the Board does not perform an act within the time specified in the Code, the AA may condone the delay – reasons to be recorded in writing.
- **Insolvency Professional Agencies**
  - Registered with the Board – Certificate of Registration granted
  - Enrols Insolvency Professionals as its members
- **Insolvency Professionals**
  - To be necessarily enrolled with an Insolvency Professional Agency
  - May be practically read as administrators (pre-liquidation stage) and liquidators (post-liquidation order)
- **Information Utilities**
  - storing financial information – this may be seen as electronic filing of defaults, security interests.



# Other important provisions

# Insolvency and bankruptcy fund

- Section 224
- For insolvency resolution, liquidation, and bankruptcy of persons under the Code.
- To consist of the following amounts
  - grants made by CG for the purpose
  - the amount deposited by persons as contribution to the Fund
  - the amount received in the Fund from any other source
  - the interest or other income received out of the investment made from the Fund
- Administrator
  - To be appointed by CG

# Overriding law

- Section 234
- “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

# Transitional Provisions

- Until the Board is constituted or a financial sector regulator is designated under section 195
  - Shall be exercised by the Central Government
- Central Government may by regulation provide for
  - Recognition of persons having qualification and experience in the field of finance law, management or insolvency as insolvency professional/ agencies
  - Recognition of persons with technological, statistical, and data protection capability as information utilities
  - conduct of the CIR, insolvency resolution process, liquidation process, FSP and bankruptcy process

# Information Utility & Financial information

- Certificate of registration – to be granted by the Board
- Set up Governing board consisting of independent members – monitoring purpose
- Obligations
  - Create and store financial information in a universally accessible format
  - Accept electronic submissions of financial information
  - Accept electronic submissions of financial information
  - Meet such minimum service quality standards
  - Authenticate information before storing
  - Provide access to the financial information stored by it
  - Publish such statistical information as may be specified by regulations
  - Inter-operability with other information utilities
- Financial information
  - Any person may submit on payment of fees
  - FC - Financial information and information relating to assets in relation to which any security interest has been created
  - OC – Financial information

# Repeals and other laws affected

- **Repealed**

- The Presidency Towns Insolvency Act, 1909
- The Provincial Insolvency Act, 1920

- **Amendments to**

- The Indian Partnership Act, 1932
- The Central Excise Act, 1944
- The Income-tax Act, 1961
- The Customs Act, 1962
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993
- The Finance Act, 1994
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Sick Industrial Companies (Special Provisions) Repeal Act, 2003
- The Payment and Settlement Systems Act, 2007
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013



# Impact of the Code on banks and financial institutions

# Impact of the Code 1 / 2

- BIFR and SICA go off completely; however, corporate resolutions come under NCLT
- Tight timelines under the new law – entire process of resolution to be over in 6-9 months
  - May lead to greater financial discipline
- Creditors have an upper hand in resolution plans
- Moratorium is not indefinite – limited moratorium; if revival does not work out, entity to mandatorily go into liquidation
- Companies and guarantors can be both brought under a common forum – NCLT
- While borrowers may file resolution applications seeking moratorium, but borrower will have to face the threat of liquidation
- Can debtors under banker-driven restructuring also go for NCLT resolution – yes. In view of mandatory timelines, the case may reach bankruptcy stage faster
  - Accelerating provisioning – faster transition into a case of loss assets



## Impact of the Code 2/2

- Parity between secured and unsecured creditors
  - In voting on resolution plans, unsecured financial creditors, working capital lenders, term lenders – all get parity
- Can a bank stay out of resolution?
  - Yes, Clearly provided for in case of non-corporate persons; seems logical in case of corporate entities too
- Major change in priority of distribution on liquidation
  - State claims moved from first position to fifth position; utmost priority for secured creditors
- Floating charges completely ignored by the law
- Major chances of delaying tactics in case of non-corporate borrowers
- Cult of bankruptcy may usher a new era of consumer defaults

# Structuring of loans

- Focus has to be on assets and cashflows
  - Guarantees help only if they are backed by assets and cashflows
  - Letter of comfort not a guarantee, and hence, not sufficient to rope in the comfort-provider into insolvency
- Lending against core assets vs peripheral assets
  - As far as possible, recovery of loans against core assets should proceed against under the Code rather than SARFAESI Act
- As far as possible, ascertainable security interests are better than unascertainable securities
- Lending to operating entities versus lending to upstream entities
  - Separation of legal entity may disentitle the bank from claiming assets of the downstream entities
- Loans against pledge of unlisted shares
  - Shares are unlikely to have any value in bankruptcy
- Financial leases may become interesting:
  - Permitted by RBI long time back; however, not used by banks at all
  - Has complete protection under the Code, as the leased assets do not form part of the estate
- Secured bonds versus loans:
  - Secured bonds have the benefit of SARFAESI as well Companies Act

## Restructuring under RBI guidelines vs resolution under the Code

- That an entity is undergoing restructuring under RBI guidelines is no bar on other creditors petitioning resolution under the Code
  - The Code treats secured and unsecured creditors at par
  - Non-banking creditors have no say in bank-driven restructuring; all financial creditors at par in resolution under the Code



# SICA and Repeals Act

# Failure of SICA

- SICA lacked in many aspects –
  - SICA was made applicable only to industrial undertakings
  - Section 22 of the SICA which dealt with moratorium was misused to defer action by creditors.
  - The institutional machinery was not being able to serve the expected purpose.
  - The Goswami Committee Report provided critical analysis of the legislation and its effectiveness in meeting the ends SICA was made for.
  - Later, it was decided to shift the provisions relating to revival and rehabilitation of sick companies to
    - The Companies Act, 1956 vide the Companies (Second Amendment) Act, 2002
      - Part VIA (sections 424A to 424L) was introduced in the Companies Act, 1956
      - NCLT and NCLAT were to replace BIFR and AAIFR, respectively
        - Provisions were not notified and thus never enforced.

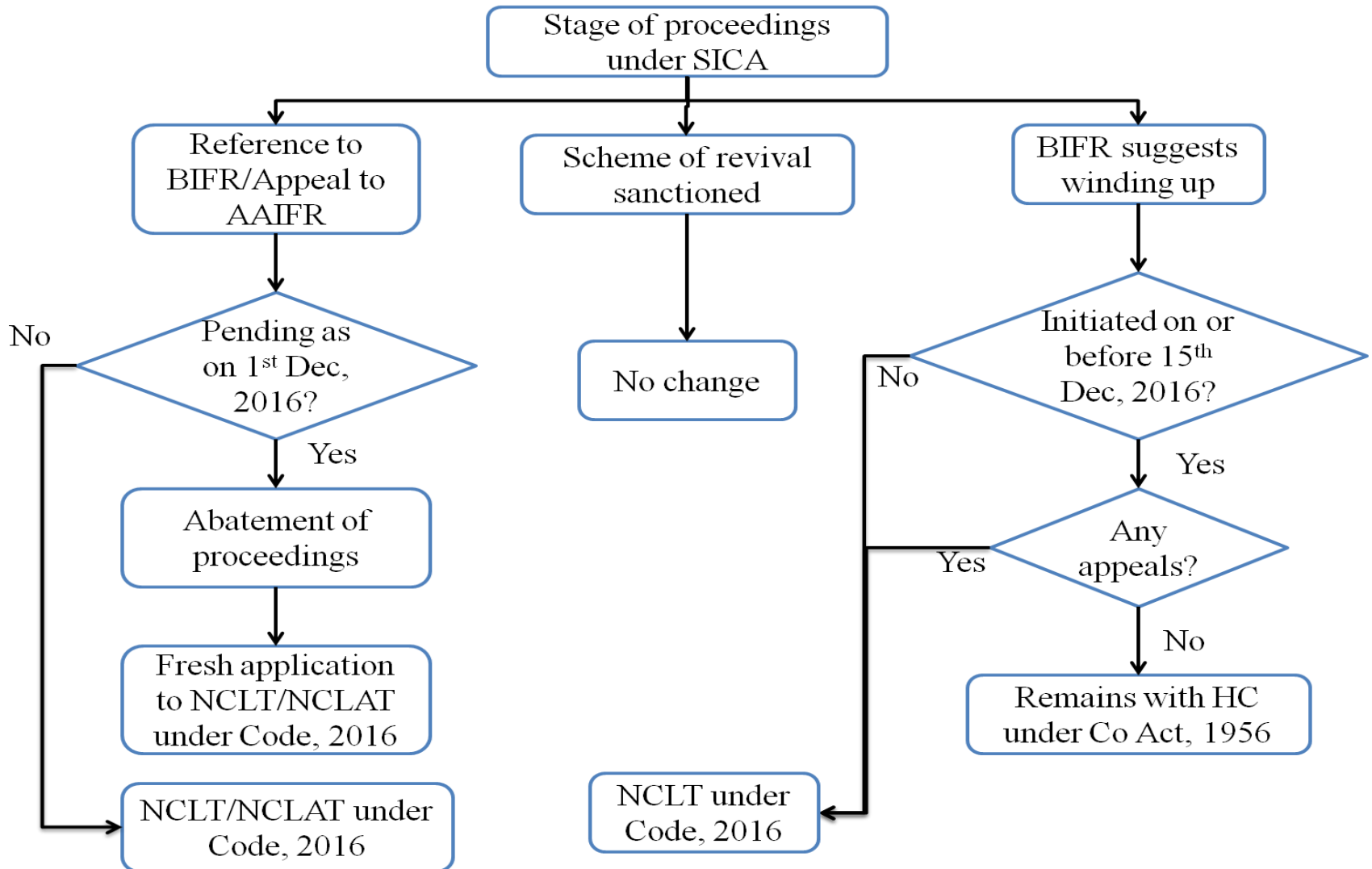
## SICA Repeals Act

- Section 255 of the Code read with 11th schedule provides for amendments in the Companies Act, 2013
  - Notified vide notification dated November 15, 2016
  - Para 8 of 11th schedule provides for deletion of sections 253 to 269 i.e., revival and rehabilitation sections
- Section 252 of the Code read with 8th schedule provides for substitution in section 4 (b) of the SICA Repeal Act
  - Notified vide notification dated November 1, 2016
- SICA Repeals Act
  - Notified vide notification dated November 25, 2016 which shall come into force from December 1, 2016



# Transfer of proceedings

# Transfer of proceedings







# Status of Applications made so far

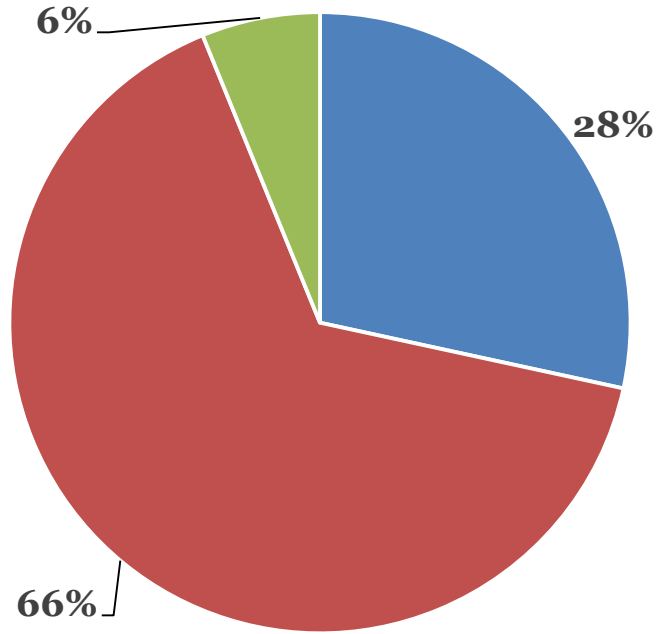


# Snapshot of filings

- 34% of the cases admitted are voluntary filings by companies
  - Only 14% are filings by financial creditors
  - Motivations behind filings by companies
    - Companies want hard timelines for definitive action by creditors
    - Company has lost substratum and carries with statutory or other liabilities; promoters want to get rid
- Rejections
  - Limitation
  - Creditor not being a financial creditor
  - Creditor not having served demand notice in prescribed form
  - Operational debt being disputed debt

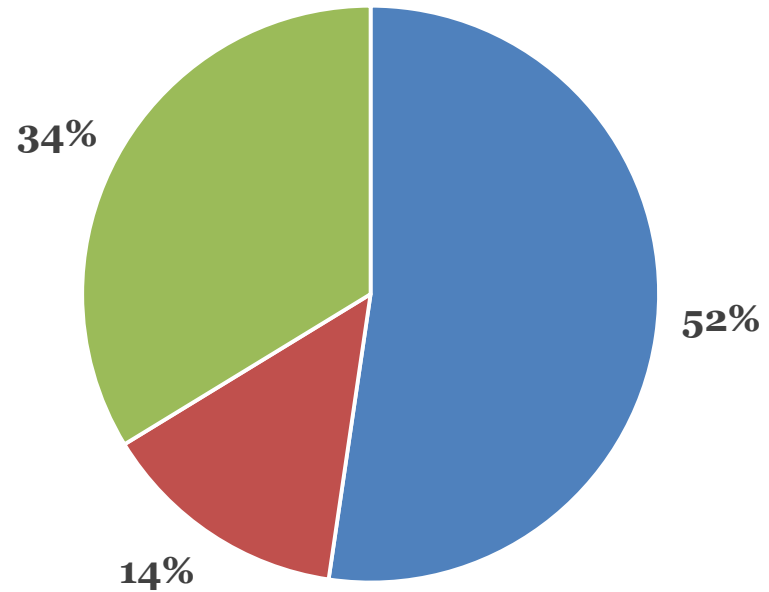
# Snapshot of filings (1/2)

**Applications' Status**



- Rejected/dismissed
- Admitted
- Whithdrawn

**Applicant Category**

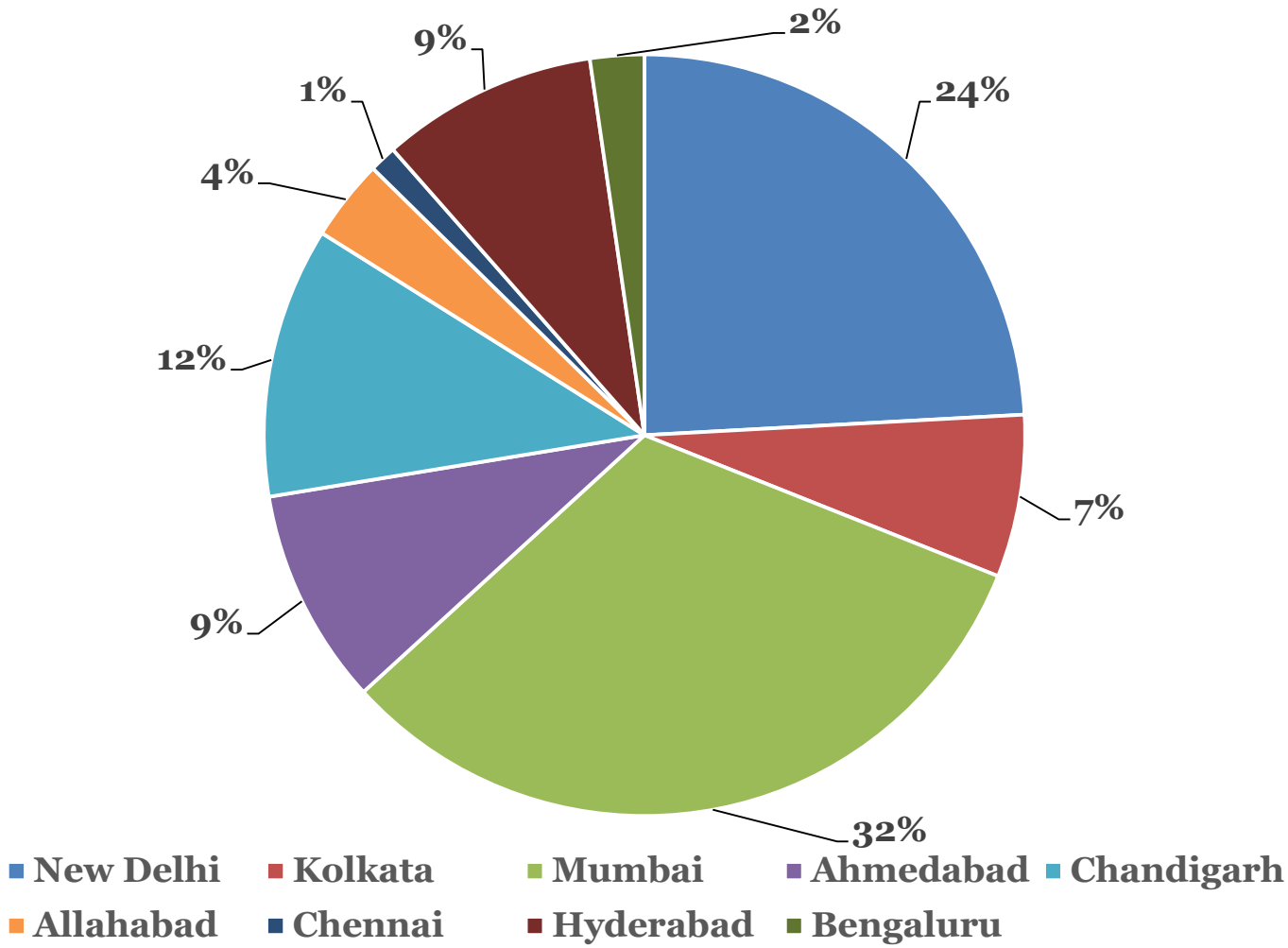


- Operational Creditor
- Financial Creditor
- Corporate Debtor



# Snapshot of filings (1/2)

## NCLT Benches' share in cases filed



## Some Important NCLT Rulings

- When winding-up petition against Corporate Debtor is sub-judice before the HC

The application of OC was **allowed** in [Alcon Laboratories \(India\) Pvt Ltd v. Vasan Healthcare Pvt Ltd.](#)

Held, winding-up petition didn't bar insolvency proceedings since HC didn't pass any order and no Official Liquidation had been appointed.

- When debt assignee is the applicant u/s 9 of the Code and there is a dispute as to “dispute”

It was held in [Df Deutsche Forfait AG and Anr. v. Uttam Galva Steel Ltd.](#) that debt being properly assigned to Deutsche and thereafter by Deutsche to Misr Bank, and since assignement need not be confirmed by the corporate debtor, the Petition is not defective.

Hence, the bench **admitted** the application and ordered to initiate insolvency proceedings.

It was further observed, the proceedings under the Code are summary proceedings. The parties are not expected to bring contentious claims.

- **When debt is time barred**

In [Deem Roll-tech Ltd v. R.L. Steel & Energy Ltd](#) the Principal bench **dismissed** the u/s 9, given applicability of Limitation Act, 1963, the debt is time barred hence not eligible. Further, it was noted that the petitioner had sought multiple remedies on same course of action in different legal forums.

- **When the OC is not OC as per the Code**

It was construed in [Mukesh Kumar & Anr. v. AMR Infrastructure Limited](#) , to file a petition u/s 9, it is a prerequisite to be OC as per the Code. What is important is that the debt owed should be “Operational Debt”, i.e. “debt arising out of provision of goods or services, employment or government dues”. Held, application **dismissed**.

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
1	Innoventive Industries Limited	ICICI Bank Limited	FC	Mumbai	Admitted
2	Bhupen Electronic Limited	VIP Finvest Consultancy Pvt Ltd	FC	Mumbai	Admitted
3	Sree Metaliks Limited	Srei Equipments Finance Ltd.	FC	Kolkata	Admitted
4	Raipur Power & Steel Limited	Tomorrow Sales Agency Pvt. Ltd	FC	Delhi	Admitted
5	REI Agro Limited	Mr. Surendra Kumar Joshi	FC	Kolkata	Admitted
6	Starlog Enterprises Limited	ICICI Bank Limited	FC	Mumbai	Admitted

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
7	Neelkanth Township and Construction Pvt Limited	Urban Infrastructure Trustee Ltd	FC	Mumbai	Dismissed
8	Esskay Motors Pvt Ltd	HDFC Bank Limited	FC	Mumbai	Dismissed
9	Swiber Offshore (India) Pvt. Ltd.	Astra Offshore Sdn Bhd.	OC	Mumbai	Rejected
10	National Steel and Agro Industries Ltd.	Smart Timimg Steel Ltd.	OC	Mumbai	Rejected
11	Midas Touch Export Private Limited	Shyam Infodab Private Limited	OC	Mumbai	Admitted
12	Unimark Remedies Ltd.	Ashok Alco-Chem Ltd.	OC	Mumbai	Admitted
13	MCL Global Steel Pvt. Ltd.	Essar Projects India Ltd.	OC	Mumbai	Admitted



Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
14	Mobilox Innovations Pvt Ltd	Kirusa Software Pvt Ltd	OC	Mumbai	Rejected
15	Miltech Industries Private Limited	J.J. Plastalloy Pvt Ltd	OC	Mumbai	Dismissed
16	Supreme Infrastructure India Limited	Mrs Seema Gupta	OC	Mumbai	Rejected
17	AMR Infrastructure Ltd	Nikhil Mehta & Sons (HUF) & Ors	FC	Delhi	Dismissed
18	Ambience Private Limited	One Coat Plaster Shivam Construction Company	OC	Delhi	Dismissed
19	AMR Infrastructure Ltd	Vinod Awasthy	OC	Delhi	Dismissed
20	Amrapali Infrastructure Private Limited	Ishwar Kandelwal	OC	Delhi	Rejected
21	Nicco Corporation Limited		CD	Kolkata	Admitted

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
22	Rave Scans Private Limited		CD	Delhi	Admitted
23	Synergies-Doorey Automotive Limited		CD	Hyderabad	Admitted
24	U.B.Engineering Ltd.		CD	Mumbai	Admitted
25	Kamineni Steel & Power India Private Limited		CD	Hyderabad	Admitted
26	VNR Infrastructure Limited		CD	Hyderabad	Admitted
27	Hind Motors Ltd.		CD	Chandigarh	Admitted
28	Keshav Sponge & Energy Pvt. Ltd.		CD	Kolkata	Admitted
29	Hind Motor Mohali Private Limited		CD	Chandigarh	Admitted

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
30	Chhaparia Industries Private Limited		CD	Mumbai	Admitted
31	Shree Rajeshwar Weaving Mills Pvt. Ltd.		CD	Mumbai	Admitted
32	VNR Infra Metals Private Ltd		CD	Hyderabad	Admitted
33	Kadevi Industries Limited	Indian Bank	CD	Hyderabad	Admitted
34	Recorders and Medicare Systems Pvt. Ltd		CD	Chandigarh	Admitted
35	Ultra Drytech Engineering Ltd.		CD	Mumbai	Admitted
36	Facor Steel Limited		CD	Mumbai	Admitted
37	Gupta Coal India Pvt. Ltd		CD	Mumbai	Admitted
38	Hindustan Motors Limited	Hindustan Motors Limited	Under Sc VIII - SICA repeal	Kolkata	Dismissed

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
39	Waaree Energies Ltd	Gujrat Borosil Ltd	OC	Mumbai	Withdrawn
40	Getit Infoservices Private Limited	Nowfloats Technologies Private Limited	OC	New Delhi	Dismissed
41	AMR Infrastructure Limited	Creative Solutions	OC	Delhi	Dismissed
42	Era Infra Engineering Limited	Prideco Commercial Projects Pvt. Ltd.	OC	Delhi	Admitted
43	Clutch Auto Limited	Incredible Unique Buildcon Pvt. Ltd.	OC	Delhi	Admitted
44	R. L. Steel & Energy Limited	Deem Roll Tech Limited	OC	Delhi	Dismissed. With cost of Rs. 25,000/-

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
45	AMR Infrastructure Limited	Mukesh Kumar & anr.	OC	Delhi	Dismissed
46	J.B.K. developers Pvt. Ltd.	Pawan Dubey & anr.	OC	Delhi	Dismissed
47	SORIL Infra Resources Limited	Annapurna Infrastructure Pvt. Ltd. & ors	OC	Delhi	Dismissed. With cost of Rs. 1,00,000/-
48	Getit Stores Pvt. Ltd.	Nowfloats technologies Pvt. Ltd.	OC	Delhi	Rejected
49	Ekdantam Infra Pvt. Ltd.	RS Polychem	OC	Delhi	Admitted
50	PTC Techno Pvt Ltd	Speculum Plast Pvt Ltd	OC	Delhi	Rejected
51	Unitech Hi-Tech Developers Ltd.	Raman Seth & Anr.	OC	Delhi	Rejected

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
52	Alok Industries Limited	Arun Structurals & Engineers Pvt. Ltd.	OC	Ahemdabad	Withdrawn
53	Jodpl Pvt. Ltd		CD	Allahabad	Admitted
54	Jelpl Pvt Ltd		CD	Allahabad	Admitted
55	Jackonblock Facilities Services Pvt Ltd	Subodh Entertainments Company	OC	Bengaluru	Admitted
56	SRS Modem Sales Limited		CD	Chandigarh	Admitted
57	Super Multicolor Printers Pvt Ltd		CD	Chandigarh	Admitted
58	Meyer Apparel Ltd.	Surbhi Body Products (P) Ltd.	OC	Chandigarh	Admitted

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
59	Sky blue Papers Pvt. Ltd.		CD	Chandigarh	Admitted
60	Recorders and Medicare Systems Pvt. Ltd.		CD	Chandigarh	Admitted
61	Uttam Galva Steel Ltd.	DF Deutsche Forfait AG & Anr.	OC	Mumbai	Admitted
62	Murli Industried Ltd.	Edeweiss Asset Reconstruction Co. Ltd.	FC	Mumbai	Admitted
63	Swiber Offshore (India) Pvt. Ltd.	Global Marine Supply Co.	OC	Mumbai	Admitted
64	Gupta Energy Pvt. Ltd.		CD	Mumbai	Admitted
65	Marmagoa Steel Ltd.		CD	Mumbai	Admitted
66	Janata Chemicals Pvt. Ltd.	National Gas Agencies	OC	Mumbai	Admitted
67	Geometrix Laser Solutions Private Limited	B.V.S Lakshmi	FC	Hyderabad	Dismissed

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
68	M/s Stratus Food Private Ltd	Ms Umiya Trading	OC	Ahemdabad	Admitted
69	Pooja Tex - Prints Private Limited	Gaurinandan Fashion Private Ltd	OC	Ahemdabad	Admitted
70	Bloosoms Oils & Fats Limited		CD	Hyderabad	Admitted
71	Lanco Infratech Limited	KKV Naga Prasad	OC	Hyderabad	Rejected
72	Mayapur Vastu Developments Pvt Ltd	Vinod Kothari Consultants Pvt Ltd	OC	Kolkata	Dismissed
73	National Steel and Agro Industries Ltd	Smart Timing Steel Ltd	OC	Mumbai	Dismissed



Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
74	Gupta Corporation Pvt Ltd		CD	Mumbai	Admitted
75	Vasan Health Care Pvt Ltd	Alcon Laboratories (India) Pvt Ltd	OC	Chennai	Admitted
76	1. Meyer Apparel Ltd 2. Meyer Apparel Ltd	1. Surbhi Body Products (P) Ltd. 2. Godolo and Godolo Exports Pvt Ltd	OC	Chandigarh	Admitted
77	Panacea Biotech Ltd.	Wanbury Ltd	OC	Chandigarh	Dismissed
78	Avni Energy Solutions Pvt Ltd	Fortune Plastech	OC	Bengaluru	Dismissed

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
79	Raman ISPAT Pvt. Ltd.		CD	Allahabad	Admitted
80	Gujarat Oleo Chem Ltd.		CD	Ahmedabad	Admitted
81	Steel Konnect (India) Pvt. Ltd.	Hero Fincorp Ltd.	FC	Ahmedabad	Admitted
82	Shirani Automative Pvt. Ltd.	Shree Raj Rajeshwari Car Care	OC	Ahmedabad	Withdrew
83	Entire Ceramics Ltd.	Acme Specialities	OC	Ahmedabad	Withdrew
84	Sagar Automobiles Pvt. Ltd.	Master Engineering Works	OC	Ahmedabad	Withdrew

Sr. No.	Corporate Debtor	Applicant Name	Applicant Classification	NCLT Bench	Status
85	Pal Mohan Electronics Pvt. Ltd.	DS Plastics Pvt. Ltd.	OC	New Delhi	Admission Pending
86	N/a	Helpline Hospitality Pvt. Ltd.	OC	New Delhi	Admission Pending
87	B K Educational Services Pvt. Ltd.	Parag Gupta	FC	New Delhi	Admitted