

The Way Forward for Personal Insolvency

-Megha Mittal



A
G
E
N
D
A

- Introduction
- Understanding Terminologies
- Fresh Start Process
- Insolvency Resolution Process
- Repayment Plan
- The Way Forward



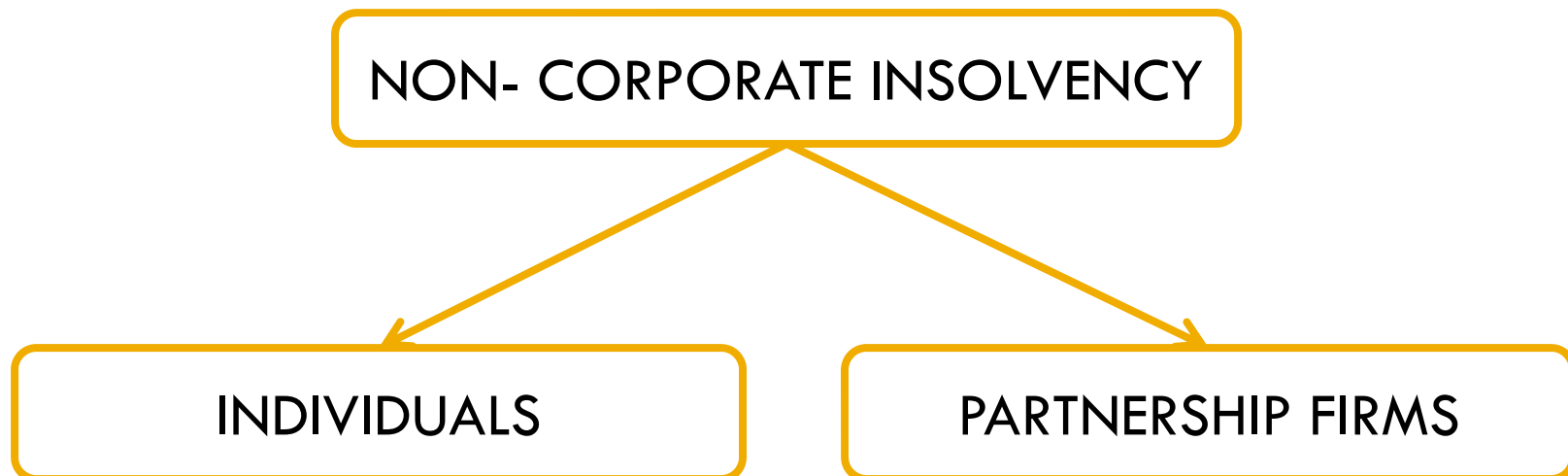
INTRODUCTION

Introducing Personal Insolvency/ Non-Corporate Insolvency under the Insolvency and Bankruptcy Code, 2016

Applicability (1 / 2)

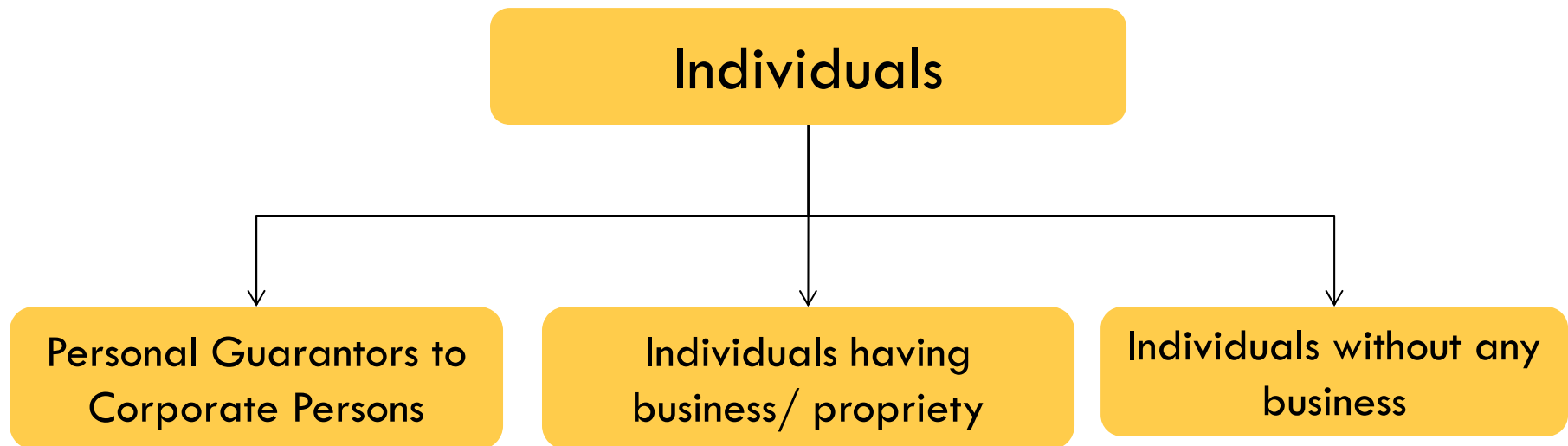
Part III of IBC, 2016

Section 78 of the Code states that ***“This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than one thousand rupees”***



Applicability (2/2)

While the Code provides for no such distinction, the Rules and Regulations dealing with Non-Corporate Insolvency, have been categorised in 3 different classes of Individuals, viz.



Objective

As was observed in the Bankruptcy Law Reforms Committee Report, the Code was enacted with the objective of

More Legal Clarity

- *all the provisions in one Code will allow for higher legal clarity when there arises any question of insolvency or bankruptcy*

Coherent Policies

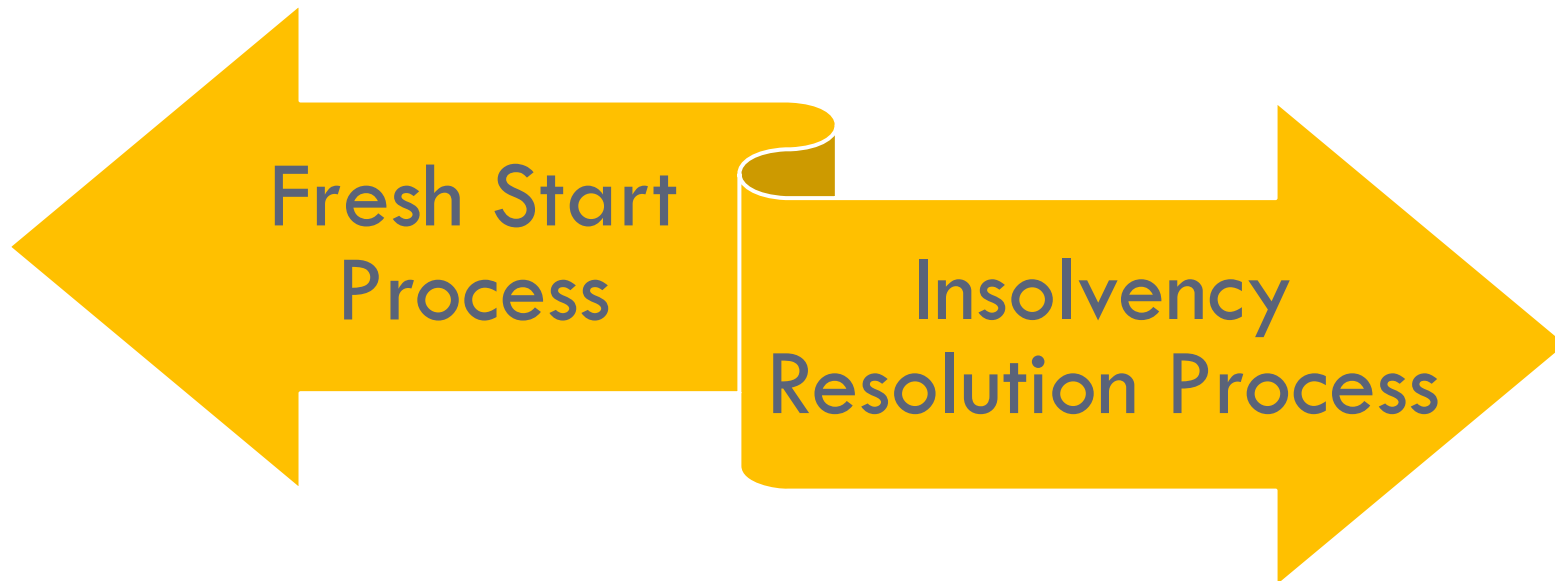
- *a common insolvency and bankruptcy framework for individual and enterprise will enable more coherent policies when the two interact*

Replacing existing laws with the Code

- *To Replace Presidency Towns Insolvency Act, 1909 & Provincial Insolvency Act, 1920 with the Code.*

The Two Routes

The Code envisages two distinct processes for individual insolvency law, both before the Adjudicating Authority:





of specialized words in
ular subject.
the study of terms

terminology

[tur-muh-nol-uh-jee]

noun, plural 'terminologies'

1. the system of terms belonging or peculiar to a science, art, or specialized subject; nomenclature.
2. the science of terms, as in particular sciences or arts.

Word Origin and History for 'terminology'

- 1, from German Terminologie (1786), a hybrid of *terminus* and *logia*, coined by C.G. Schütz of Jena, from Medieval Latin *terminus* "word, expression" (see *terminus*) + *logia* "with, a speaking of"

UNDERSTANDING TERMINOLOGIES

Connotation of the various terms referred to

Adjudicating Authority (1 / 2)

DEBT RECOVERY TRIBUNAL

Debt Recovery Tribunal (DRT), constituted under the Recovery of Debts Due to Banks and Financial Institution Act, 1993, is recognized as the Adjudicating Authority for the purpose of Non-Corporate Insolvency.

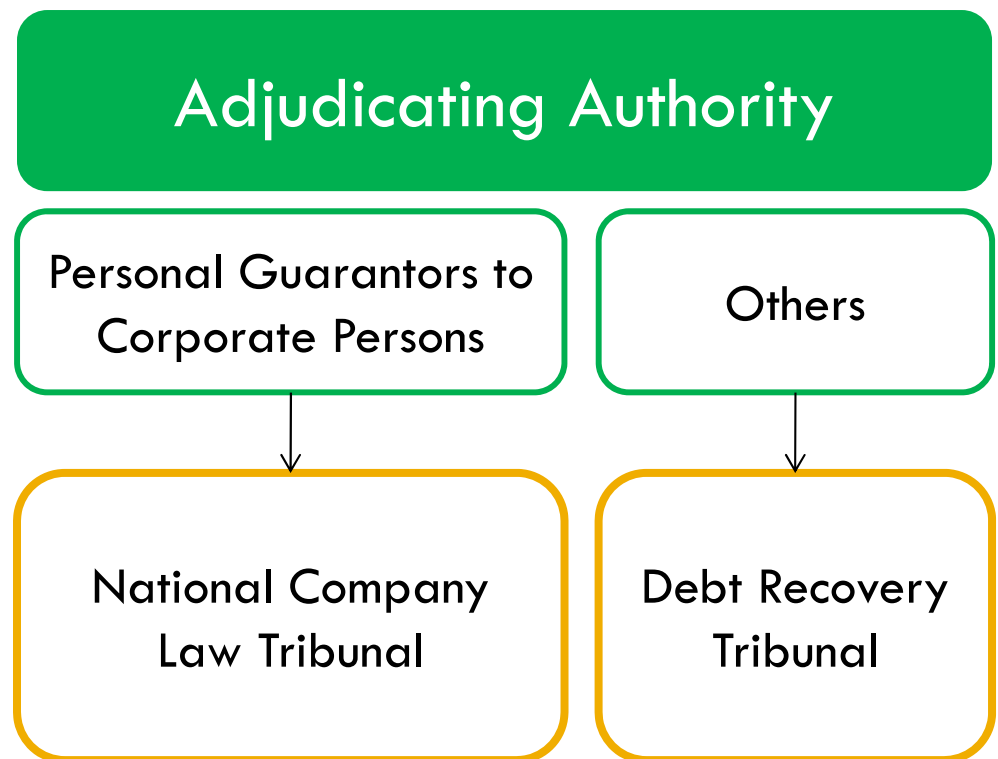


Adjudicating Authority (2/2)

Personal Guarantors to a Corporate Person- An Exception!

Section 60 of the Code provides

“The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located”



Excluded Assets



Unencumbered tools, vehicles and other equipments, necessary for employment, business or vocation.



Unencumbered furniture, equipment, necessary for basic domestic needs



Unencumbered personal ornaments, that cannot be parted with in accordance with religious usage



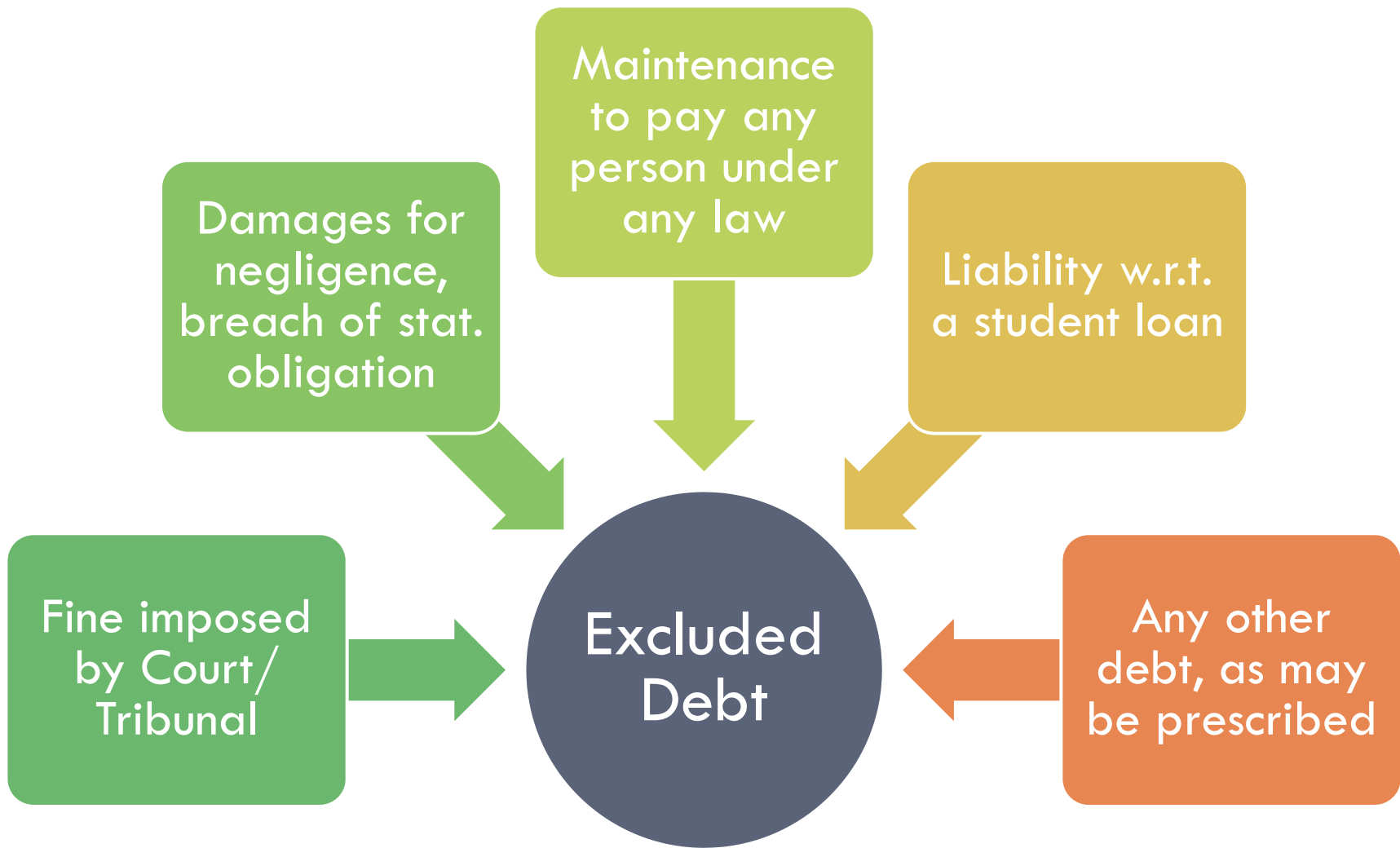
Unencumbered life insurance policy/ pension plan



Unencumbered single dwelling unit

Upto Rs.
5,00,000/-

Excluded Debt



Qualifying Debt

Section 79 (19) of the Code

“Qualifying debt” means amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include

An excluded debt

A secured debt

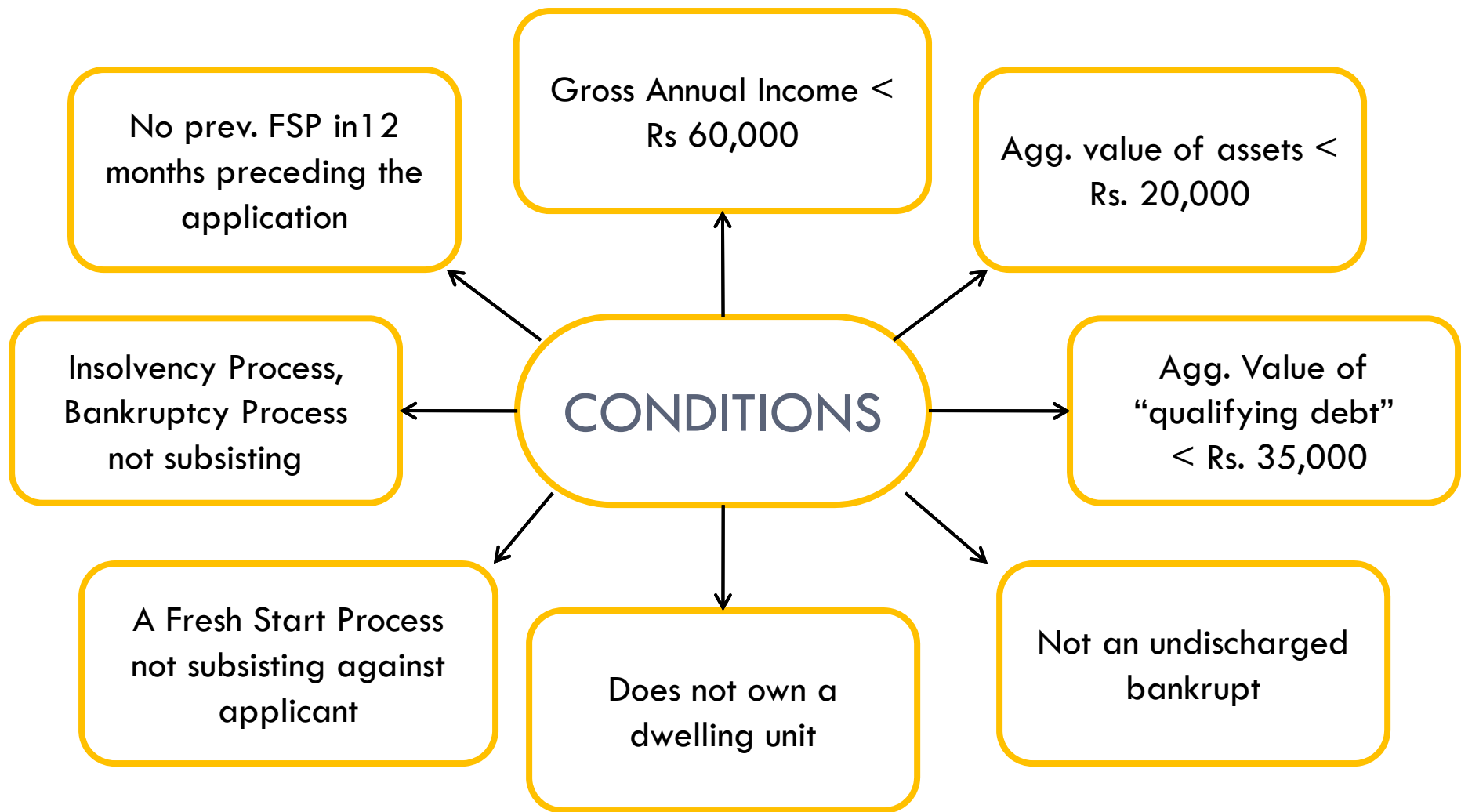
Debt incurred 3 months prior to application for FSP



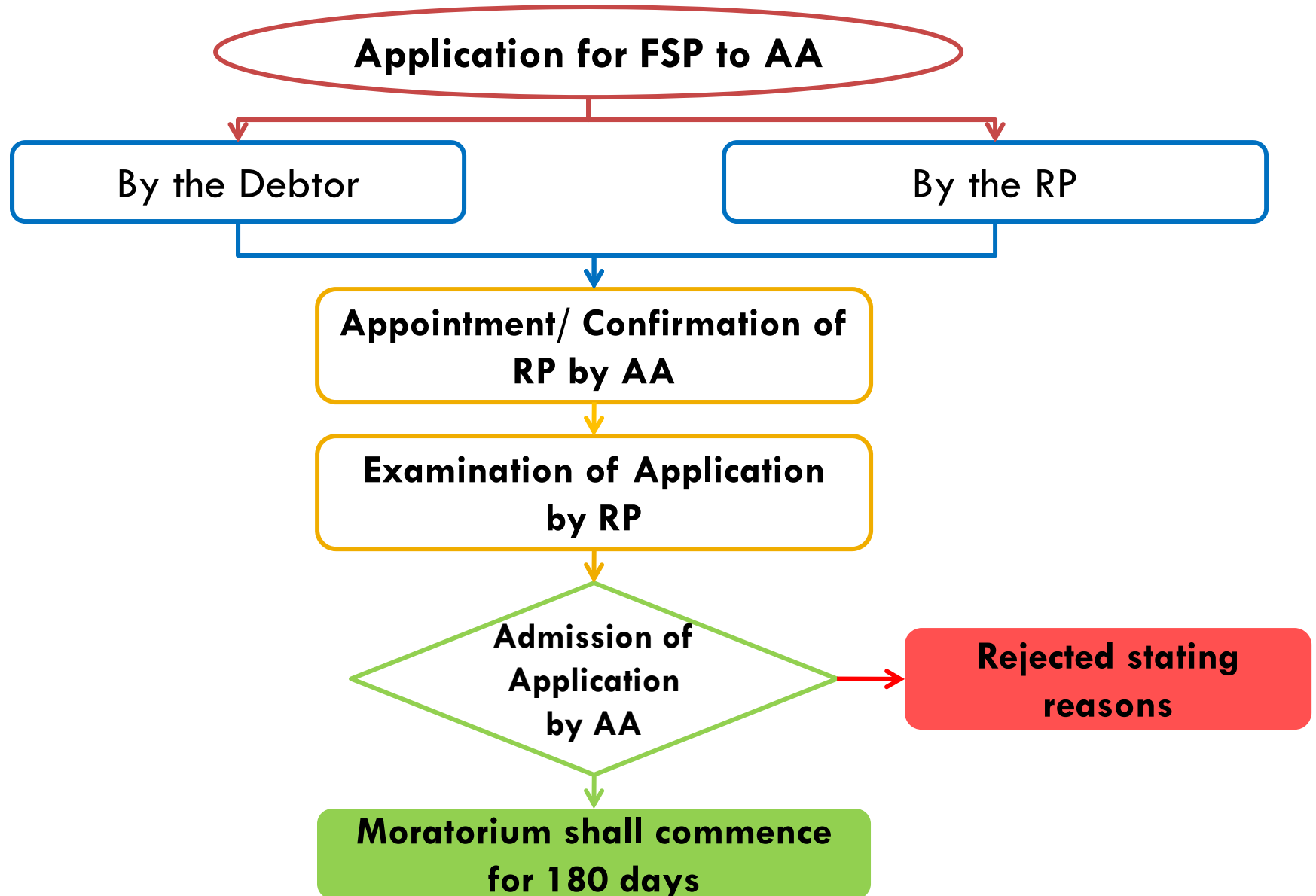
FRESH-START PROCESS

Chapter II of Part III of the Insolvency and Bankruptcy Code, 2016

Eligibility for Fresh-Start Process



Application for FSP



Effects of Admission

With admission of the Application, the debtor becomes subject to certain restrictions; and as such, the debtor shall:

Not act as a director of a company

Not dispose of or alienate his assets

Inform business partners, if any, about the FSP

Inform about FSP prior to entering into any transaction, financial/ commercial of more than Rs. 1,00,000

Disclose the name in which transactions are entered into, if different from the application

Not travel outside India, except with permission of the AA

Discharge Order under FSP

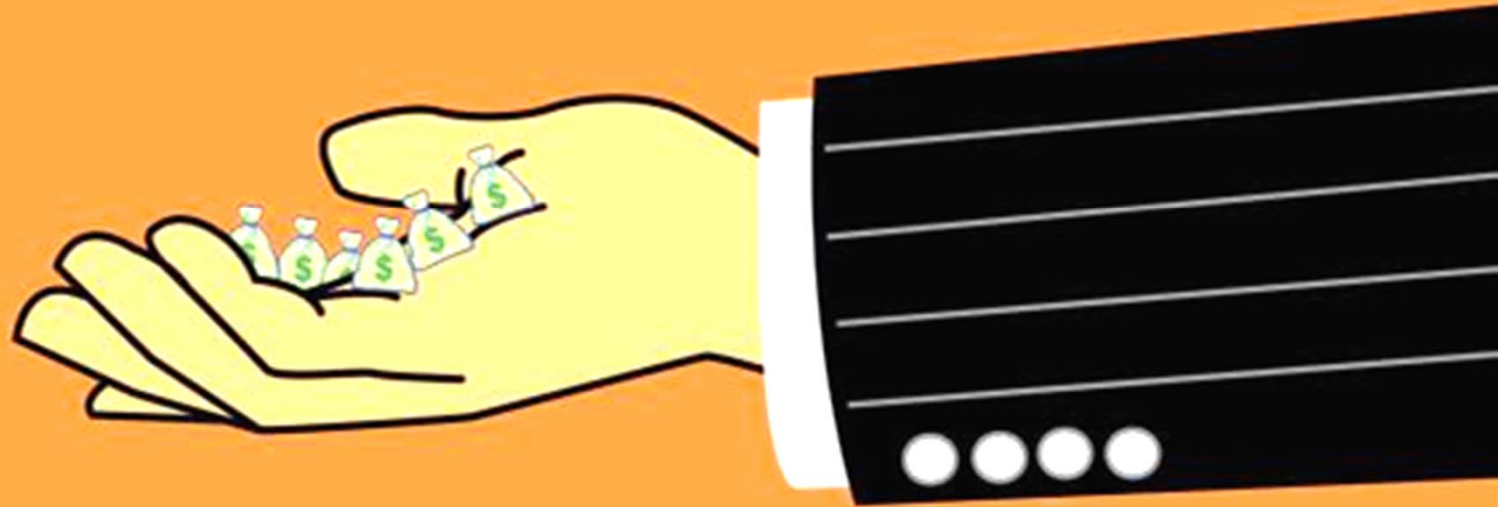
- RP shall prepare and submit the final list of qualifying debt at least 7 days before expiry of moratorium

- Via the discharge order, the debtor is discharged of the following liabilities-
 - penalties in respect of the qualifying debts from the date of application till the date of the discharge order

 - interest including penal interest in respect of the qualifying debts from the date of application till the date of the discharge order

 - any other sums owed under any contract in respect of the qualifying debts from the date of application till the date of the discharge order.

Note: The debtor shall not be discharged of “excluded debts”



Insolvency Resolution Process

Chapter III of the Code- An “earned start” for the debtor!

Application for initiation

Application can be filed by

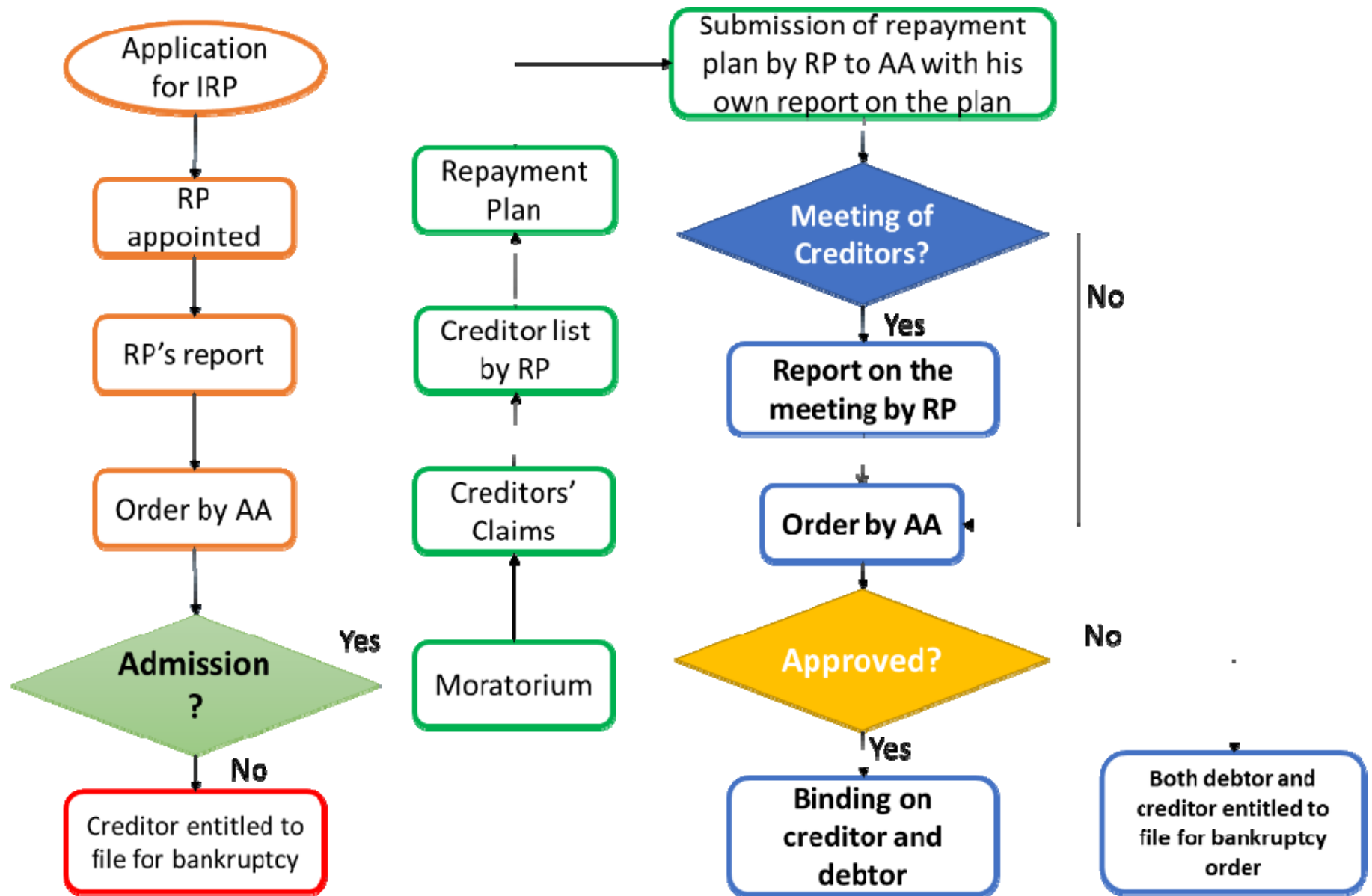
Debtor

- filed by a **debtor**;
- who has committed **default** of debt, other than **excluded debt**;
- either personally or through a Resolution Professional (RP)
- In case of partnership, consented by majority of partners;

Creditors

- filed by a **creditor**;
- either individually or jointly with other creditors;
- directly or through a Resolution Professional (RP)
- Only if debtors fails to pay within 14 days of service of demand notice.

The Process



Moratorium!

Date of admission of Application (X)

Any pending legal action w.r.t. any debt- deemed stay

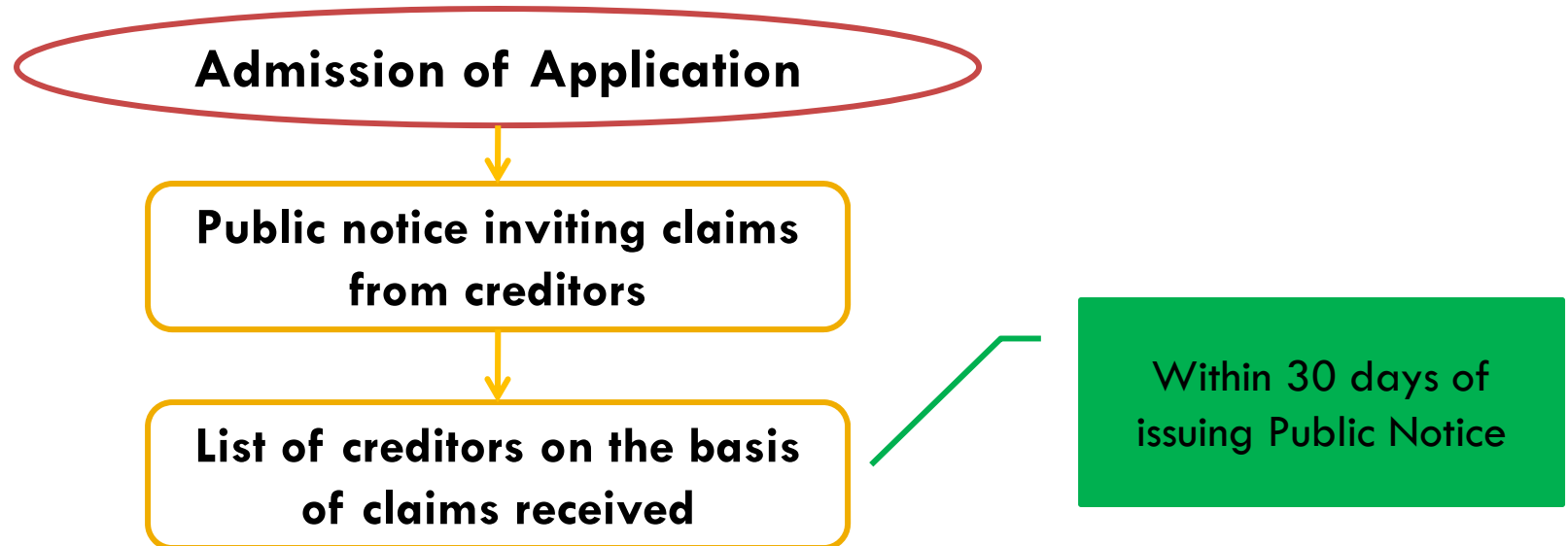
Creditors shall not initiate any legal action against any debt

The debtor shall not transfer, alienate, encumber, any of his assets or legal rights

X+180 days- Expiry of Moratorium OR Approval of Repayment Plan, whichever is earlier.

Creditors & their rights! (1 / 2)

Determining the list of creditors



Creditors & their rights! (1 / 2)

Meeting of Creditors

➤ Notice of the Meeting-

- Minimum 14 days' notice;
- To all the creditors forming part of the CoC;

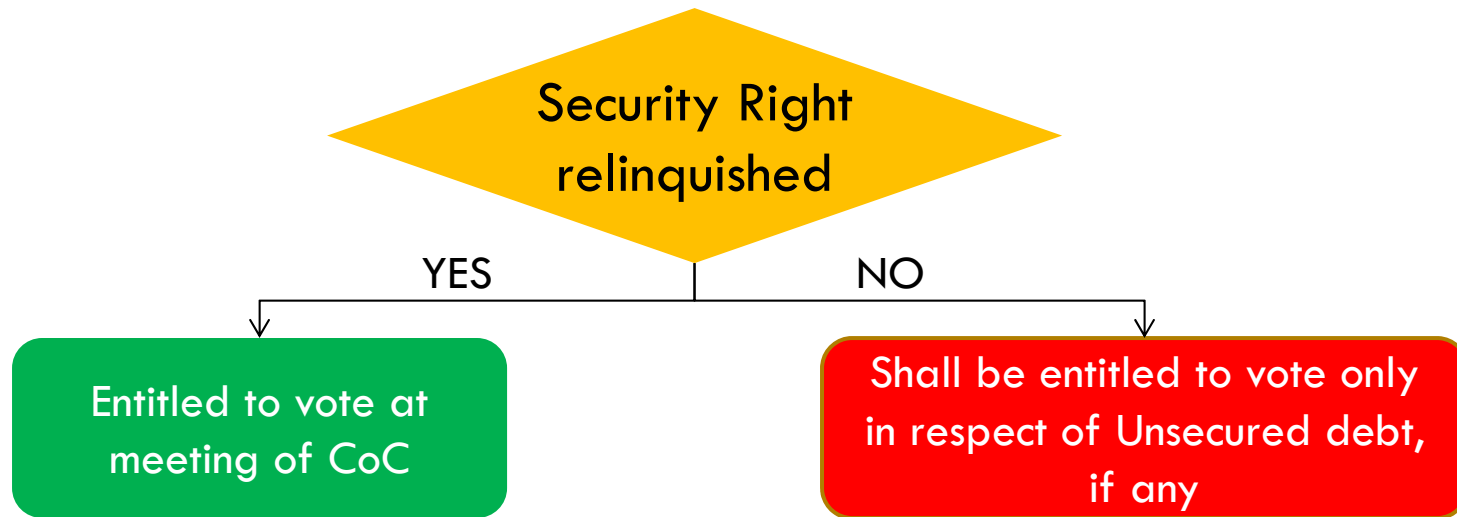
➤ Agenda-

- To discuss, approve, modify or reject the Repayment Plan;
- Any other matter is the RP/ creditors think necessary.

➤ Voting Rights-

- Based on value of the claim as a percentage of the total claim;
- Secured Creditor shall be entitled to vote for a Repayment Plan, **only if he forfeits his security.**
- Associates of the debtor are not entitled to vote, even if they form part of the CoC.

Rights of a Secured Creditor



NOTE:

"If the Secured creditor does not relinquish his right & the Repayment Plan affects his right to enforce security, his concurrence shall be obtained"



REPAYMENT PLAN

“Repayment Plan: The Show-stopper!”

What is a Repayment Plan?

Similar to a “Resolution Plan” in case of corporate insolvency, “Repayment Plan” can be said to be the key to resolution in case of non-corporate insolvency.

It is plan/ proposal, containing terms as per which the debtor will pay his debts to the creditors, and also provides for the manner in which the affairs of the debtors will be carried on.

Features of a Repayment Plan

Shall be prepared by the debtor, in consultation with the RP

Contains proposal for restructuring of debtor's debts towards the creditors

Features of a Repayment Plan

May authorise the RP to carry the business/ trade of the debtor, on behalf of his name.

Must contain justification for preparation of the plan; and
Reasons why the creditors may agree to it.

Approval of the Plan (1 / 3)

Approval of Repayment Plan by CoC

Section 111 states that:

“The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.”

Approval of the Plan (2/3)

Illustration:

Mr. A is under going insolvency process, wherein Mr. B is appointed as the RP. On the basis of public announcement, claims have been received from 10 creditors of total value Rs. 5,00,000/-

Repayment Plan is placed before the CoC for approval. Only 6 creditors having dues of Rs. 3,50,000/- are present and entitled to vote in the meeting.

Approval of the Plan (3/3)

Scenario 1:

3 Creditors having dues of Rs. 2,75,000/- approve the Plan

Votes in Favour-

% of total claims- 55%

% of present & voting- 78.57%

Outcome-

Plan approved

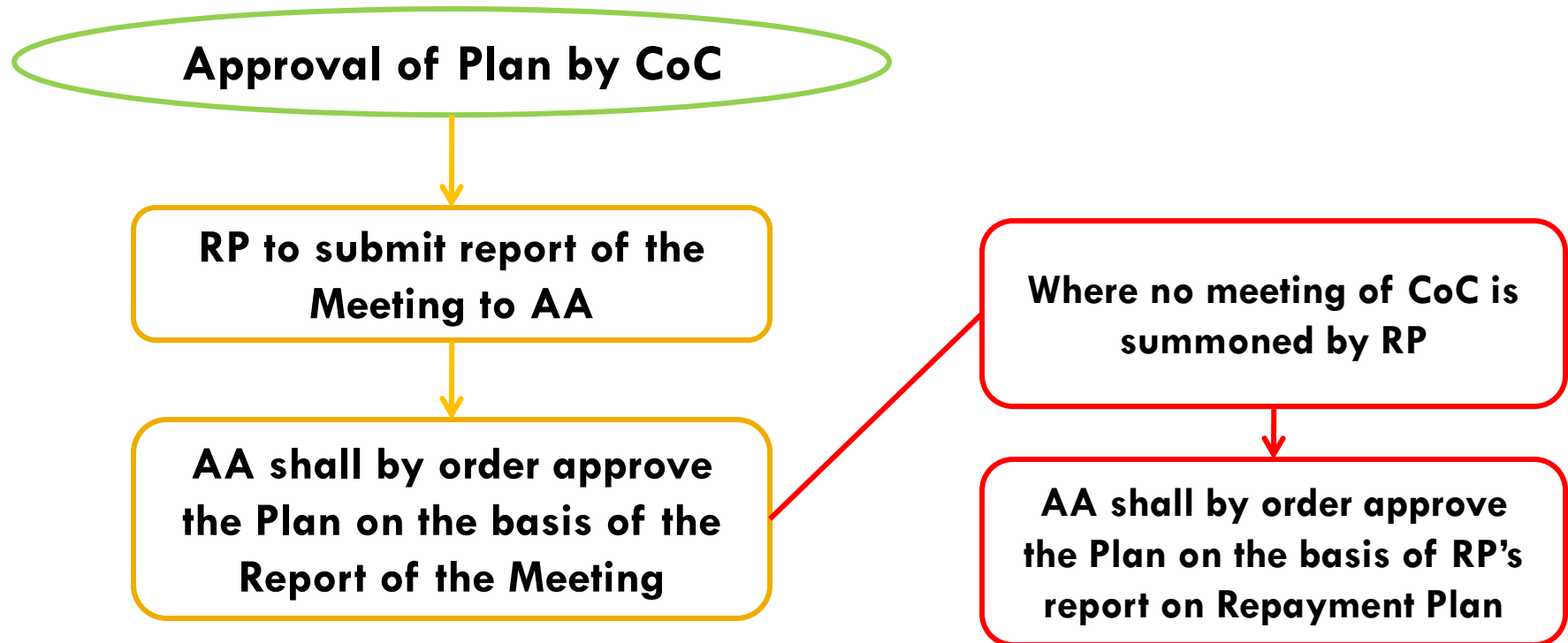
Scenario 2:

Of the 3 creditors who approved the plan, 2 were present in proxy, not in person.

Outcome-

Plan is still considered approved!

Order of the AA



Effect of Approval of Plan

Become effective as if proposed by debtor

Be binding on the creditors mentioned in the Plan

Once approved, the Plan shall:

RP shall supervise the implementation of the Plan

AA may issue specific direction w.r.t. implementation

Completion of Repayment Plan

Full Completion of Plan

RP shall notify all persons bound by the Plan, that the Plan has been fully implemented

Report w.r.t. All receipts & payments pursuant to implementation of Plan shall be sent to all persons bound by the Plan

Premature Termination of Plan

RP shall submit report stating reasons for premature end of repayment plan;
Details of creditors whose dues have not been paid as per Plan

Creditors whose claims have not been fully satisfied may apply for bankruptcy order.



THE WAY FORWARD

Enforcement of provisions w.r.t Non-Corporate Insolvency- A new Arena!

Status of Enforcement

Currently, provisions w.r.t. Non-Corporate Insolvency have not been notified and as such, non-corporate insolvency is still subject to the century old laws- Provincial Insolvency Act, 1920 & Presidency Towns Insolvency Act, 1909.

Once notified, by virtue of section 243 of the Code, the above two laws shall stand annulled and be replaced by the Code.

Phased Implementation

While, Rules & Regulations with respect to Personal Guarantors of Corporate Debtors in anticipated to be notified soon; we still wait for laws dealing with insolvency of the other two categories.

Thank
you!