



INSOLVENCY AND BANKRUPTCY CODE 2016

Frequently Asked Questions

This article is a part of SunLegal's '**Simplifying Law Series**' that seek to demystify laws and break them down for easy understanding and assimilation of the readers.

By
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Q. TO WHOM SHALL THE PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 (CODE) APPLY?

The Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:

- Any company incorporated under the Companies Act, 2013 or under any previous law.
 - Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such special Act.
 - Any Limited Liability Partnership under the LLP Act 2008.
 - Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
 - Partnership firms and individuals (Yet to be notified).
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Q. WHO MAY INITIATE CORPORATE INSOLVENCY PROCESS AGAINST A CORPORATE PERSON?

The corporate insolvency process may be initiated against any defaulting corporate debtor by

- Financial creditor
- Operational creditor
- Corporate debtor

Q. WHAT IS THE INSOLVENCY RESOLUTION PROCESS FOR FINANCIAL CREDITORS?

- A financial creditor may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.
- The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also provide the name of the interim resolution professional.
- Where the Adjudicating Authority, within fourteen days of receipt of the application, is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor. However, if the case is not such then the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority. The Adjudicating Authority shall communicate the order to the financial creditor within seven days of admission or rejection of such application.

Q. WHAT IS THE INSOLVENCY RESOLUTION PROCESS FOR OPERATIONAL CREDITORS?

- An operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.
 - The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. The corporate debtor shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.
 - After the expiry of ten days the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent.
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- The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

Q. WHAT IS A FAST TRACK INSOLVENCY PROCESS UNDER THE CODE?

The Fast Track process is available only to a corporate debtor with low income and assets and has a specified class of creditors and/or any other category notified by the Government. Under a Fast Track process, the limit to complete the process gets reduced to 90 days and a further extension of up to 45 days is allowed.

Q. WHICH ARE THE ADJUDICATING AUTHORITIES UNDER THE CODE?

The NCLT will act as the Adjudicating Authority in case of a corporate whereas DRTs will act as the Adjudicating Authority in cases of individuals or partnership firms. For both these cases, the NCLAT will act as the appellate authority.

Q. IS THERE A PUNISHMENT PRESCRIBED FOR A DEFAULTER UNDER THE CODE?

The Code prescribes a strict punishment for such defaulters . It proposes a jail-term up to five years to the debtors and debars such bankrupt individuals from holding any public office and imposes monetary sanctions as well.

Q. WHAT ARE THE KEY ROLES OF AN INTERIM RESOLUTION PROFESSIONAL?

The key roles of an Interim Resolution Professional are:-

- Issuance of public notice of the Corporate Insolvency Resolution process
- Collating the claims received
- Constitution of the Committee of Creditors
- Conduct of the first meeting of the Committee of Creditors

Q. IS THERE ANY TIME LIMIT FOR COMPLETION OF THE INSOLVENCY RESOLUTION PROCESS?

Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the committee of creditors, by a

vote of 75% of voting shares, upon consideration provide one extension which shall not extend more than 90 days.

Q. WHAT IS THE PROCEDURE OF APPOINTMENT OF A RESOLUTION PROFESSIONAL?

The committee of creditors, may, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional by a majority vote of at least 75% in the first meeting. Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional

Q. WHAT ARE THE KEY TASKS TO BE PERFORMED BY A RESOLUTION PROFESSIONAL?

The following are the key tasks to be performed by a resolution professional:-

- Obtaining Valuation of the entity
- Preparation of Information Memorandum
- Preparation of Resolution plan
- Obtaining consent of the Committee of Creditors for the Resolution plan
- Periodic reporting to the Board

Q. WHAT IS A RESOLUTION PLAN?

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

As per Section 30, the Insolvency Resolution Professional (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority prepared by resolution applicant on the basis of information memorandum.

The Resolution Plan should provide for:

- payment of insolvency resolution costs;
 - repayment of the debts to operational creditors;
 - management of affairs of the Company after approval of the resolution plan;
 - implementation and supervision of the resolution plan;
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- does not contravene provisions of the law for the time being in force; and
 - conforms to such other requirement as may be specified by the Board.

Q. CAN THE ADJUDICATING AUTHORITY ORDER LIQUIDATION, IF YES, THEN WHO SHALL ACT AS THE LIQUIDATOR?

Yes, the adjudicating authority can order liquidation if, (i) the resolution plan is not presented in time and/or, (ii) the resolution plan is not as per the rules and/or, (iii) the committee of creditors demands for a liquidation and/or, (iv) the debtor violates the terms of such resolution plan. In such case, the resolution professional shall act as the liquidator.

For any queries on this subject please contact:

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