

The Insolvency and Bankruptcy Code, 2016 (IBC 2016)

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Slides courtesy: Dr. Rajkumar Adukia

The Codes of India..

1. The Indian Penal Code, 1860

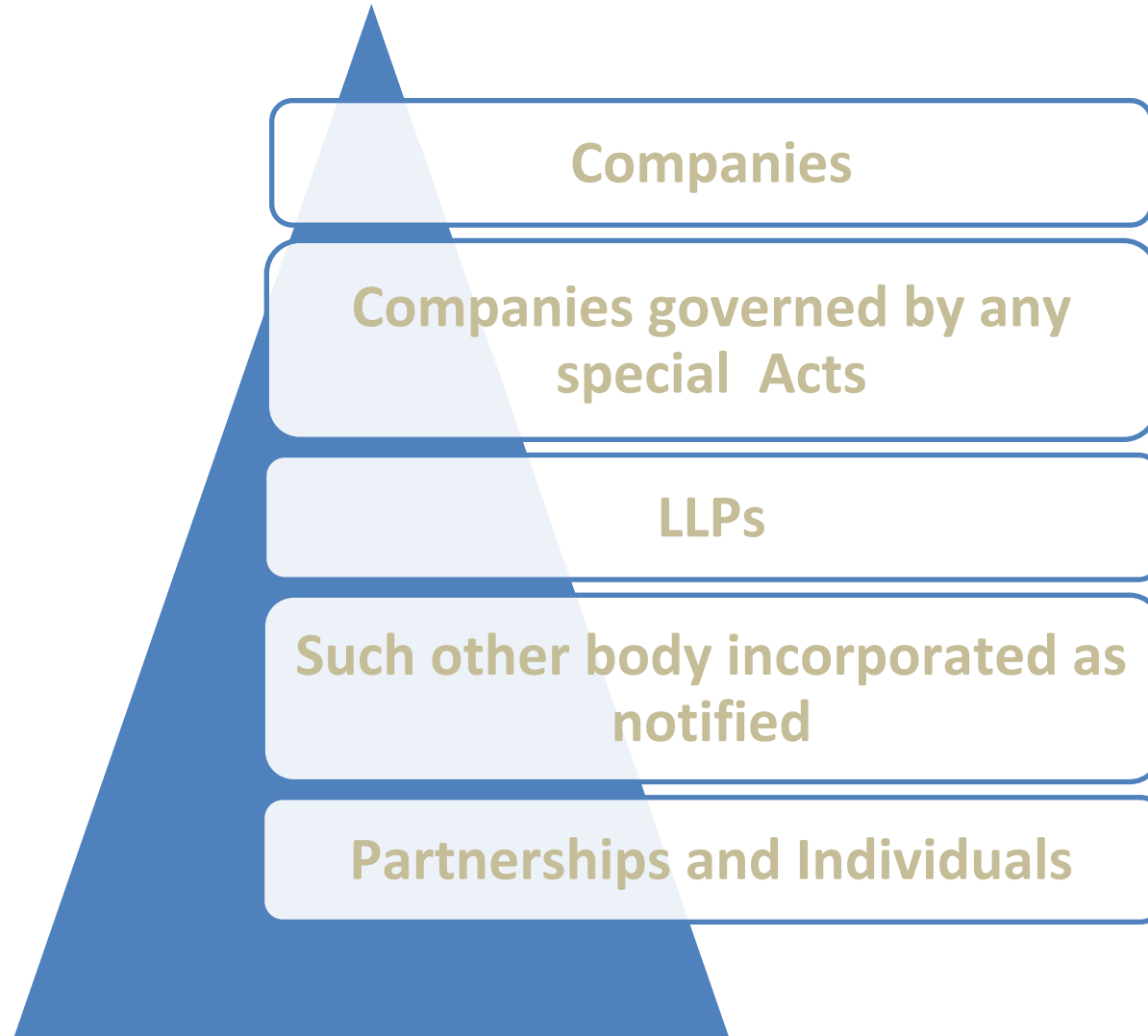
2. The Code of Civil Procedure, 1908

3. The Code of Criminal Procedure, 1973

4. The Insolvency and Bankruptcy Code, 2016 (The IBC 2016)

5. Land Revenue Code of various States

The IBC 2016 Applies to.....



Code does not apply to..

- **Part III** of the Code pertaining to insolvency of Individuals and Firms – **does not apply to State of Jammu and Kashmir**
- **Part II** The Code is **not applicable to Financial Service Providers.**
- For MFIs, NBFCs and financial service providers the Ministry of Finance has released draft of **“The Financial Resolution and Deposit Insurance Bill, 2017”** on which it has invited suggestions from all stakeholders. **Cabinet approves the proposal.**
- www.dicgc.org under DICGC act 1961 will become regulator

The IBC 2016 Applies for....

For Company and LLP-

Insolvency Resolution Process

Liquidation Process

**Fast Track Insolvency
Resolution Process**

**Voluntary Liquidation
Process**

The IBC 2016 Applies for....

For Individual & Partnership-

- **Fresh Start Process**
- **Insolvency Resolution Process**
- **Bankruptcy Order**

The IBC 2016 Aims to....

1

- To promote entrepreneurship;

2

- To make credit available;

3

- To balance the interest of all stakeholders by consolidating and amending the existing laws relating to insolvency and bankruptcy;

4

- To reduce the time of resolution for maximizing the value of assets.

Significant Features of the IBC 2016

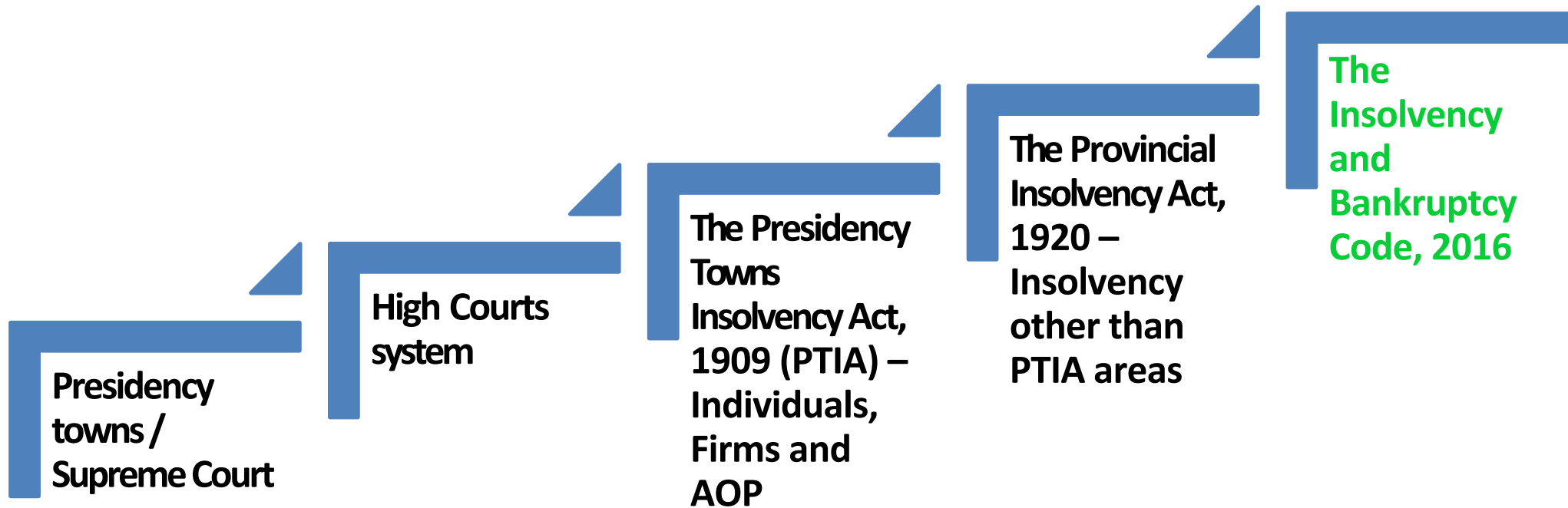
- ❖ Single insolvency and bankruptcy framework. It replaces/modifies/amends certain existing laws.
- ❖ Overriding effect on all other laws relating to Insolvency & Bankruptcy. S 238
- ❖ Not applicable to corporate financial service providers like Banks, NBFC, Insurance Co's etc. there will be separate legislation.
- ❖ Provides for moratorium period from insolvency commencement date
- ❖ The Code shifts the focus from “Debtors” in possession to “Creditors in Control”.
- ❖ The test of insolvency has been shifted from “erosion of net worth” to “payment default”.
- ❖ Time bound resolution process at each stage

Significant Features of the IBC 2016

Contd...

- ❖ Establishment of The Insolvency and Bankruptcy Board of India - a regulator as an independent body. Section 188 it will be a body corporate
- ❖ A clearly defined distribution of recovery proceeds.
- ❖ Insolvency Professional to take over management and control of the Corporate Debtor.
- ❖ Government dues would rank below the claims of other creditors.-section 53 distribution of assets 53(1)(e) 5th position out of 8 position below financial unsecured creditors
- ❖ Have provisions to deal with concealment, fraud and /or manipulation leading to fine and/or imprisonment.
- ❖ Provide confidence to Lenders and Investors in the debt market.

Insolvency Resolution Framework for Individuals, Firms and AOI



11 Enactments Amended by the IBC 2016 (S 245 to 255) schedules first to eleventh

- 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

Acts Repealed by the Code




Presidency Towns Insolvency Act, 1909 (Sec 243)

Provincial Insolvency Act, 1920 (Sec 243)

Impact of the IBC 2016

- Rand SICA go off completely;
- Corporate resolutions come under NCLT;
- Tight timelines under the new law – entire process of resolution to be over in 180 to 270 days;
- 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;

Impact of the IBC 2016



Companies and guarantors can be both brought under a common forum – NCLT/DRT;

While borrowers may file resolution applications seeking moratorium, but borrower will have to face the threat of liquidation/bankruptcy ;

Can debtors under banker-driven restructuring also go for NCLT/DRT resolution – yes. In view of mandatory timelines, the case may reach bankruptcy stage faster;

Accelerating provisioning – faster transition into a case of loss assets.

The Insolvency and Bankruptcy Code, 2016

5 Parts- 7 chapters in each Part II,III,IV



255 Sections



11 Schedules (Sections 245 to 255)

IBC, 2016 – Analysing the Parts I to V

Part I

PRELIMINARY - 1
Chapter - Section 1 -3

Part II applies to corporate persons other than financial service providers

Part – III applies to individuals and partnership firms except those located in state of Jammu & Kashmir proviso S1(2)

Section 3 definitions

Part II

**INSOLVENCY
RESOLUTION AND
LIQUIDATION FOR
CORPORATE
PERSONS -**

7 Chapters - Sections 4
-77

Section 5 definitions

**Part III INSOLVENCY
RESOLUTION FOR
INDIVIDUALS AND
PARTNERSHIP
FIRMS**

- 7 Chapters
- Section 78-187
- Section 79 definitions

Part IV

**REGULATION OF
INSOLVENCY
PROFESSIONALS,
AGENCIES AND
INFORMATION
UTILITIES**

- 7 Chapters
- Section 188-223

Part V

MISCELLANEOUS

- Section 224-255
- (Section 245-255 enables amendments in other statutes, 11 legislations)

Journey of the Code



Rules relevant to the IBC 2016 (S 239)/CA 2013

Events	Notification/ Effective Date
1. The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Service of Chairperson and members) Rules, 2016.	29th August, 2016 w.e.f. 29th august 2016
2. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.	30th November 2016, w.e.f. 1st December, 2016
3. The Companies (Transfer of Pending Proceedings) Rules, 2016	7th December, 2016, w.e.f. 15th December, 2016, except Rule 4 which shall come into effect from 1st April, 2017
4. The National Company Law Tribunal Rules, 2016	21st July, 2016
5. The National Company Law Appellate Tribunal Rules, 2016. <small>snehal.kamdar@jjkandco.com</small>	21st July, 2016

Regulations under the IBC 2016(S 240)

Events	Notification/ Effective Date
1. The Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016	21 st November, 2016 w.e.f. 22 nd November, 2016
2. The Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016	21 st November, 2016 w.e.f. 22 nd November, 2016
3. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016	23 rd November, 2016, w.e.f. 29 th November, 2016
4. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	30 th November, 2016, w.e.f. 1 st December, 2016
5. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016	15 th December, 2016

6.The Insolvency and Bankruptcy Board of India (Advisory Committee) Regulations, 2017	30th January, 2017 w.e.f. 31st January, 2017
7. The Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017	30 th January, 2017 w.e.f. 31 st January, 2017
8. The Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017	30 th January, 2017 w.e.f. 31 st January, 2017
9.The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017	30 th March 2017 w.e.f 1 st April 2017
10.Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017	30 th March 2017 w.e.f 1 st April 2017
11. The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017	12 th June, 2017
12. The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017	14 th June, 2017

S. No.	Aspects	The IBBI (Liquidation Process) Regulations, 2016	The IBBI (Voluntary Liquidation) Regulations, 2017
1.	Regulations	46	40
2.	Chapter	7	7
3.	Schedules	3	2
4.	When does it apply?	Under Part II - Chapter III on Liquidation Process – Where time exceeds as per sec 12 or sec 56 or the plan is rejected by the adjudicating authority (AA) then the AA shall pass an order for insolvency resolution under Chapter III of part II the IBC 2016	Section 59 of the IBC 2016 (Notified w.e.f 1 st April 2017)
5.	Who is the AA? <small>snehal.kamdar@jjkandco.com</small>	NCLT	NCLT (sec 59 is notified w.e.f 1 st April 2017)

The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017- notified on 12th June, 2017

Inspection & Investigation- Part-IV, Chapter VI, S 217 to 220

- 5 Chapters, 14 Regulations & FORM A (submission of claims)
- The IBBI announced the regulations in exercise of its powers conferred by sections 196, 217, 218, 219, 220 read with section 240 of the Insolvency and Bankruptcy Code, 2016.
- These regulations provide the power to conduct inspections of records of service provider, procedure of inspection, investigation of a service provider, procedure for conducting the investigation, submission of an interim and final investigation report, issuance of a show-cause notice and the requirements for a valid show-cause notice.

Understanding terminologies-

- **Insolvency** - inability to pay debts different from solvency
- **Liquidation** – process of selling assets and paying creditors - used only for corporate persons
- **Winding up** – larger term includes liquidation & removal of names used only for corporate persons
- **Removal of name** – like death certificate for individuals
- **Bankruptcy** – like liquidation and insolvency for corporate persons

Section 3(37) IBC 2016 residuary definitions

As defined in these legislations

- The Indian contract Act, 1872
- The Indian Partnership Act, 1932
- The Securities Contract (Regulation) Act, 1956
- The Securities Exchange Board of India Act, 1992
- The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- The Limited Liability Partnership Act, 2008
- The Companies Act, 2013

Time Limit for Completion of Insolvency Resolution Process

Time Limit Sec 12 of the IBC 2016 – **180 days** may be extended by further period not exceeding 90 days

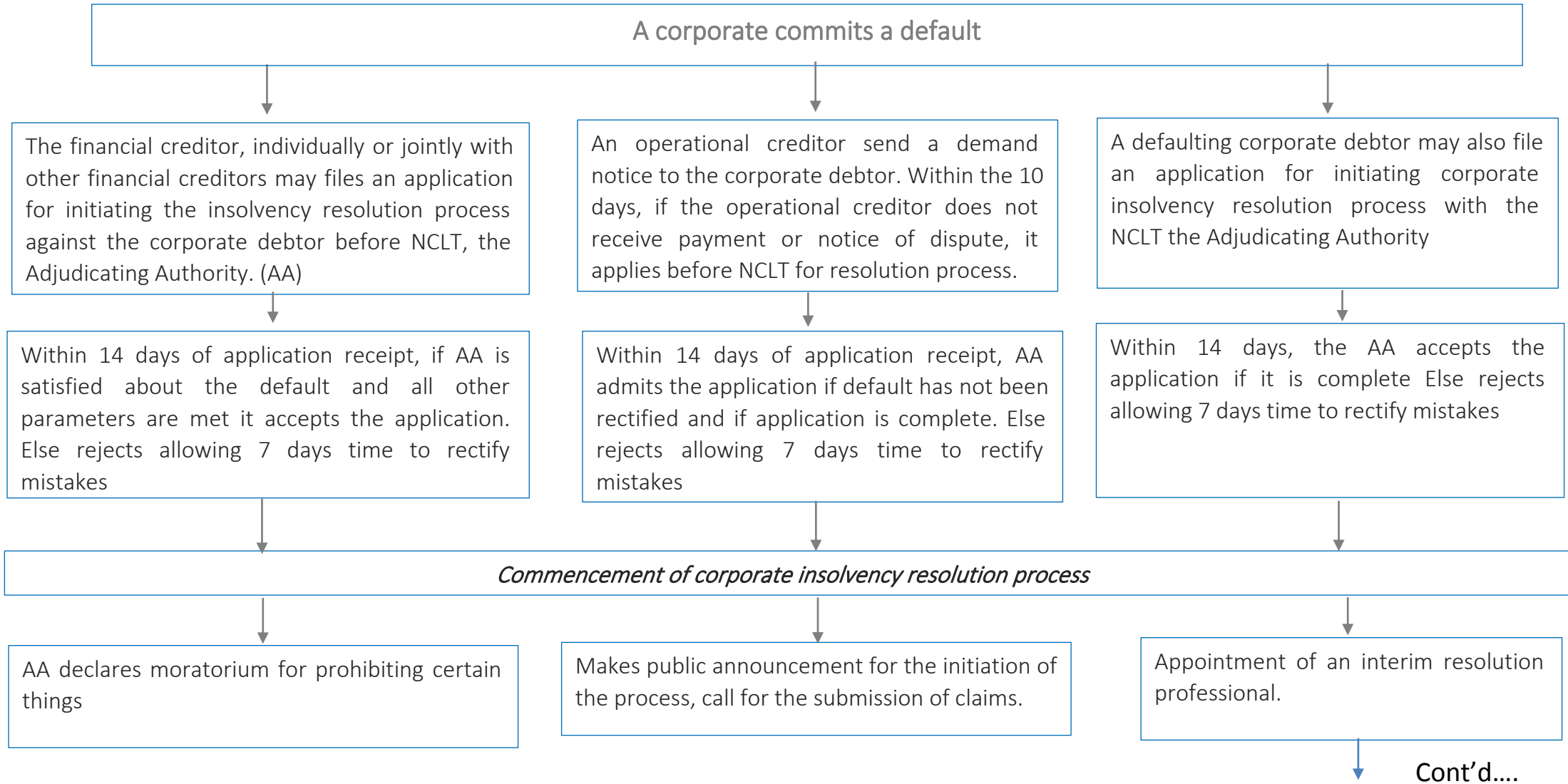
Sec 56 of IBC – fast track **90 days** may be extended by 45 days only once, initiated by a creditor or a corporate debtor

Part II of IBC 2016 (S 4 to 77)

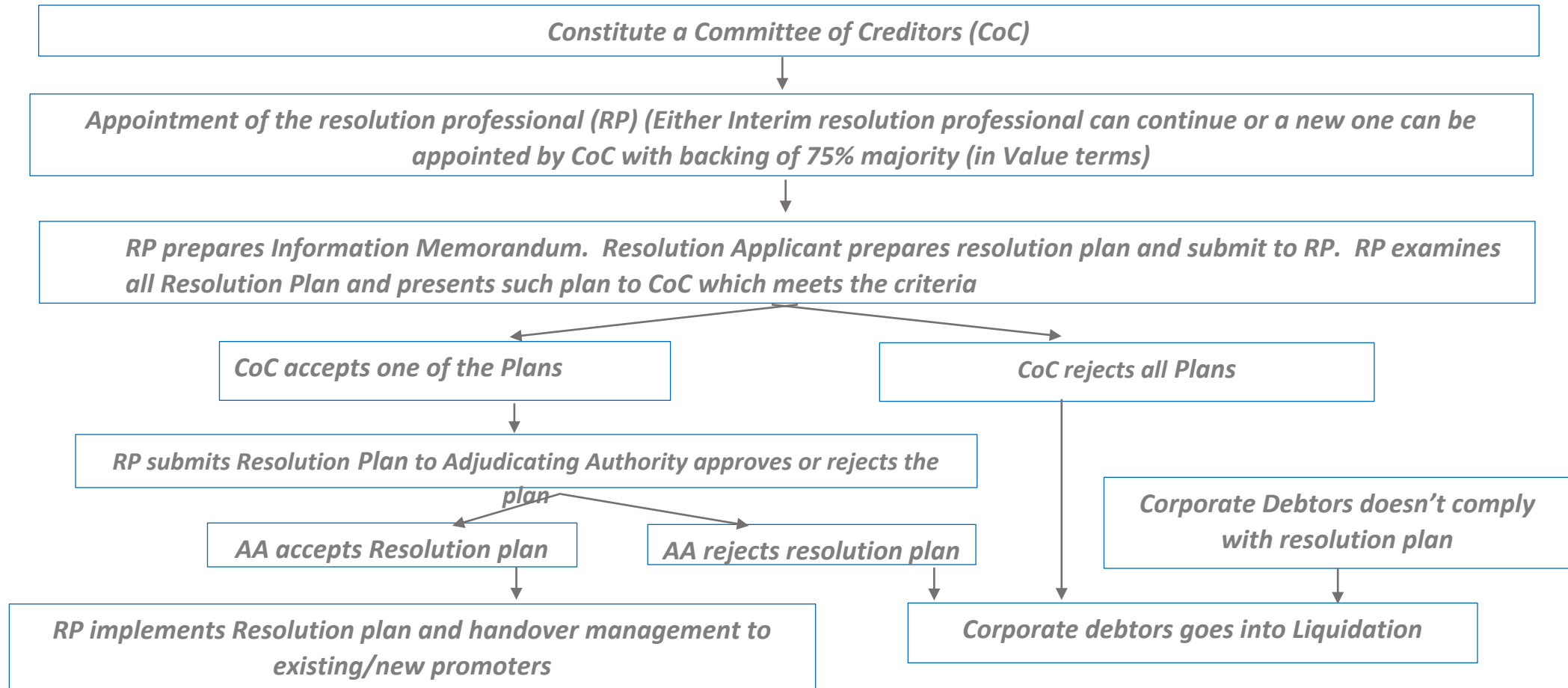
CORPORATE INSOLVENCY RESOLUTION PROCESS AND LIQUIDATION FOR CORPORATE PERSONS

- C I Preliminary S 4 & 5
- C II Corporate Insolvency Resolution Process S 6 to 32
- C III Liquidation Process S 33 to 54
- C IV Fast Track Corporate Insolvency Resolution Process S 55 to 58
- C V Voluntary Liquidation of Corporate Persons S 59
- C VI Adjudicating Authority for Corporate Persons S 60 to 67
- C VII Offences and Penalties S 68 to 77

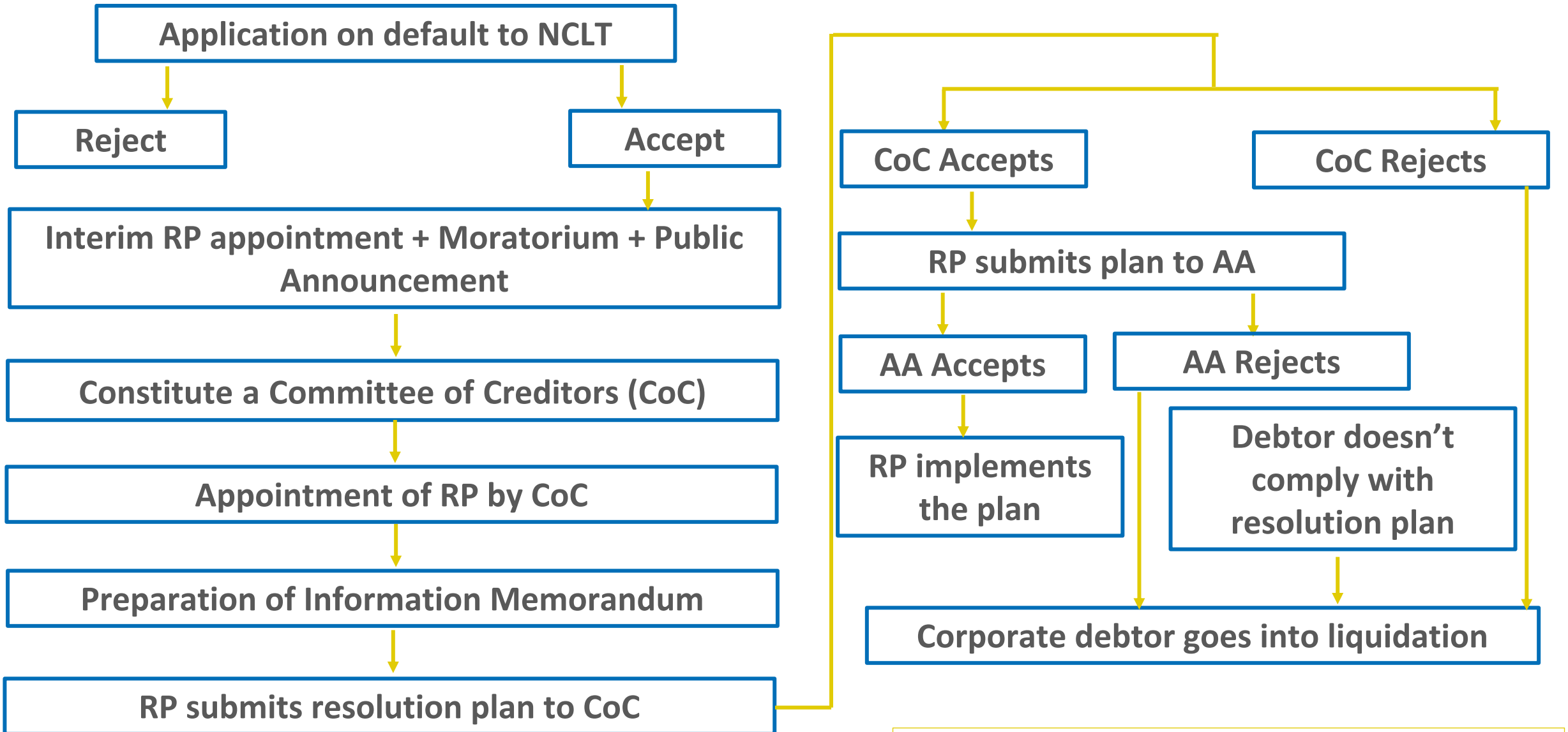
Insolvency resolution process for corporate



Insolvency Resolution Process for Corporates

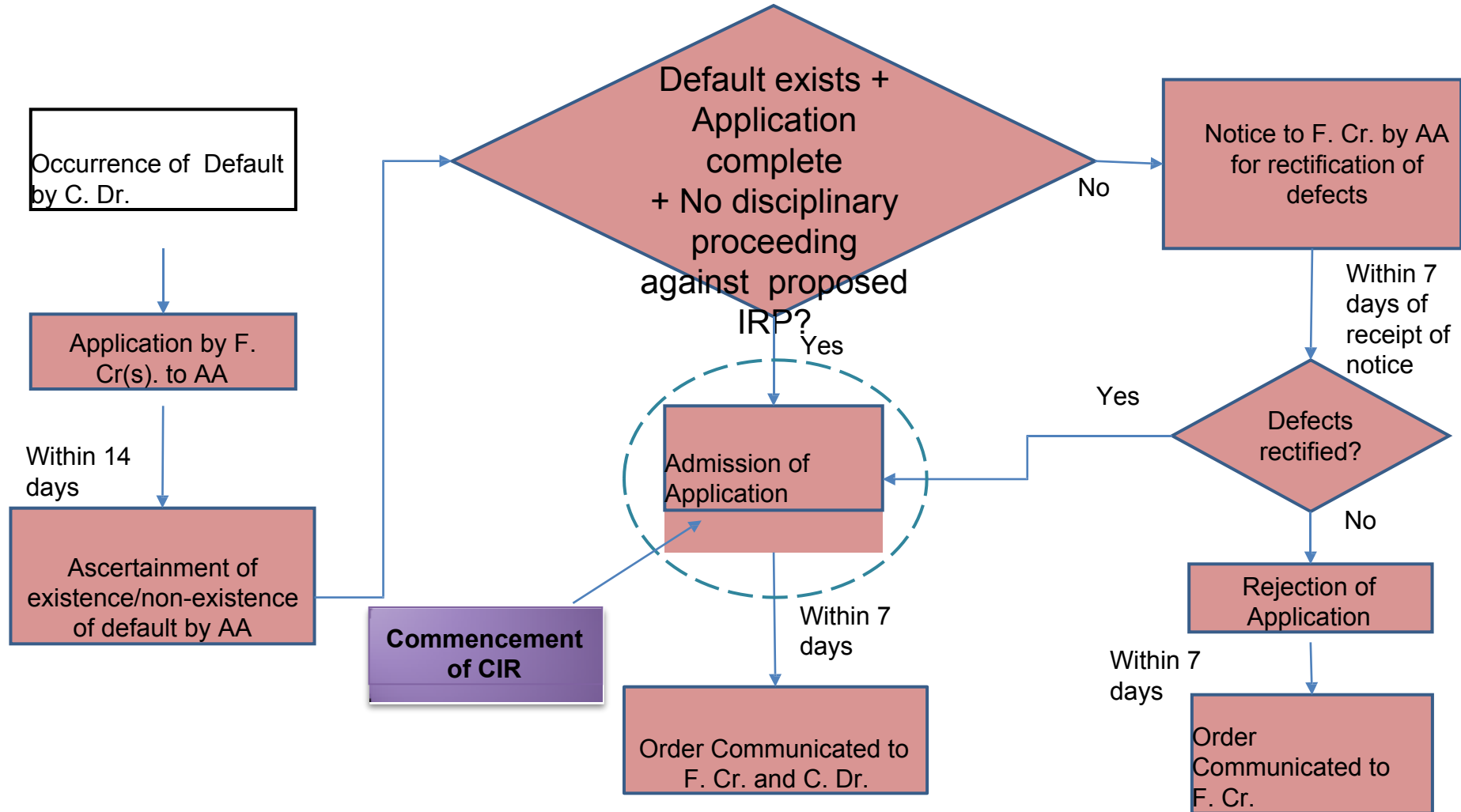


Summary of insolvency resolution process for corporate



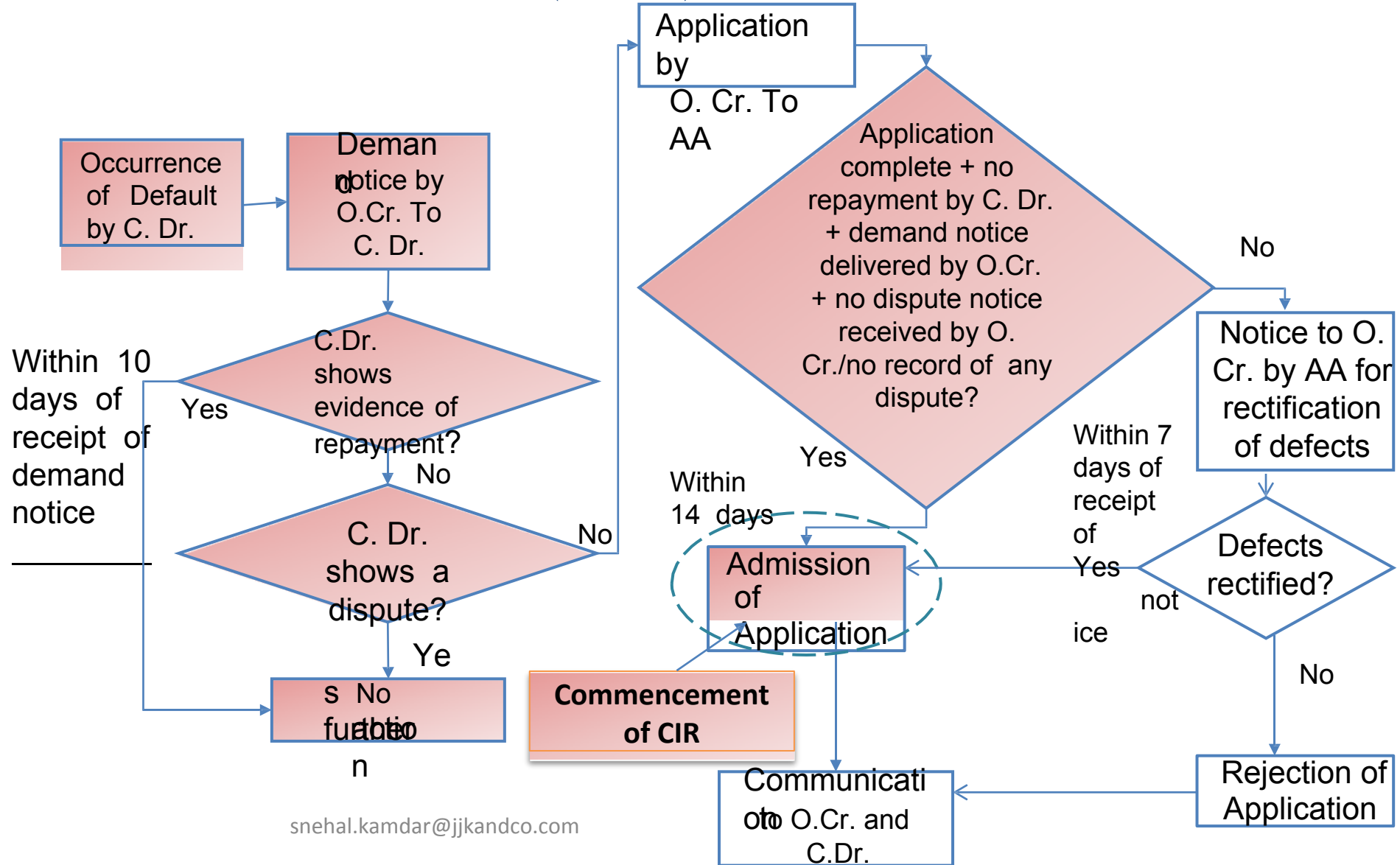
RP: Resolution Professional, AA: Adjudicating Authority

Initiation of CIRP by Financial Creditor (S 7)

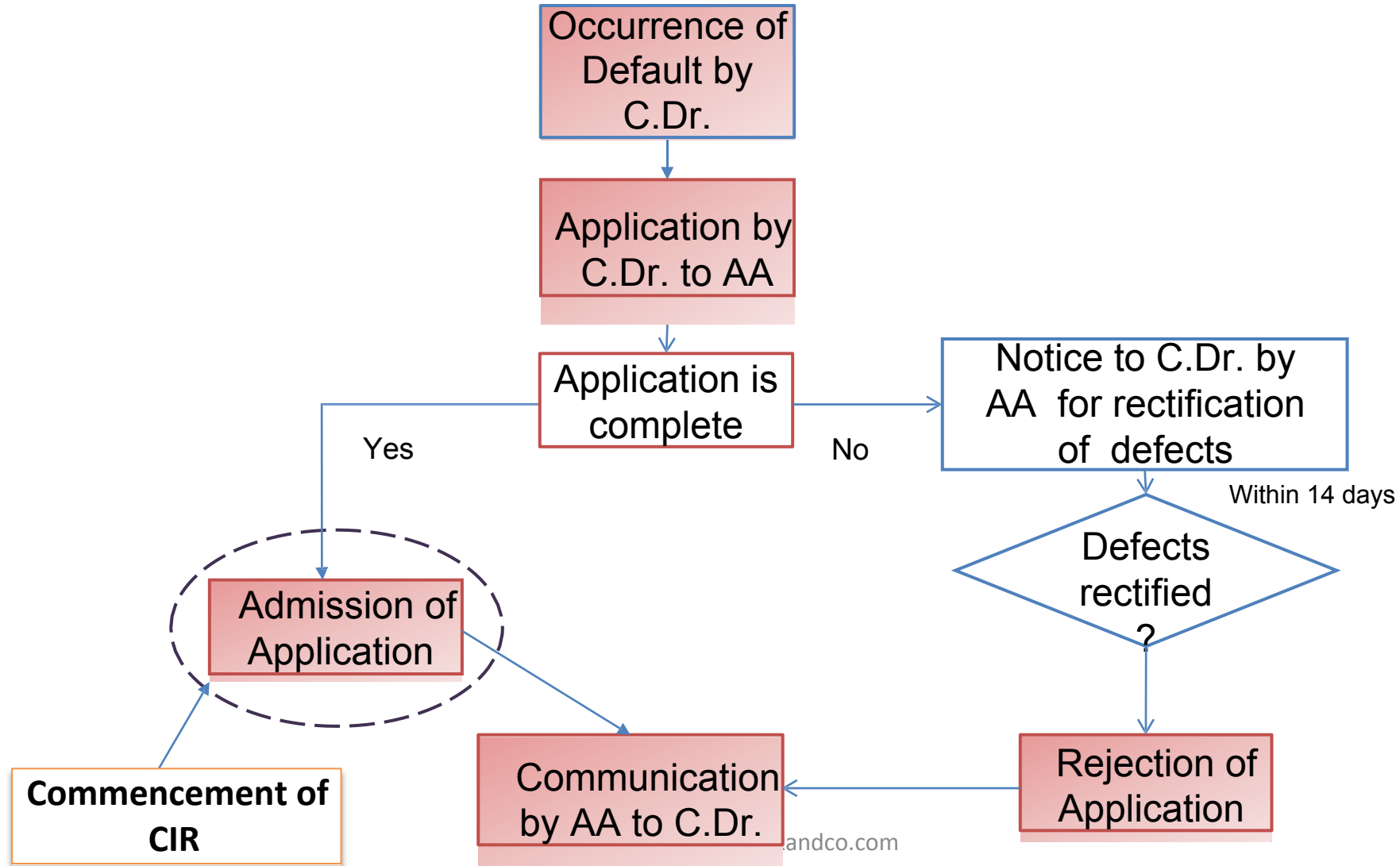


Operational Creditor

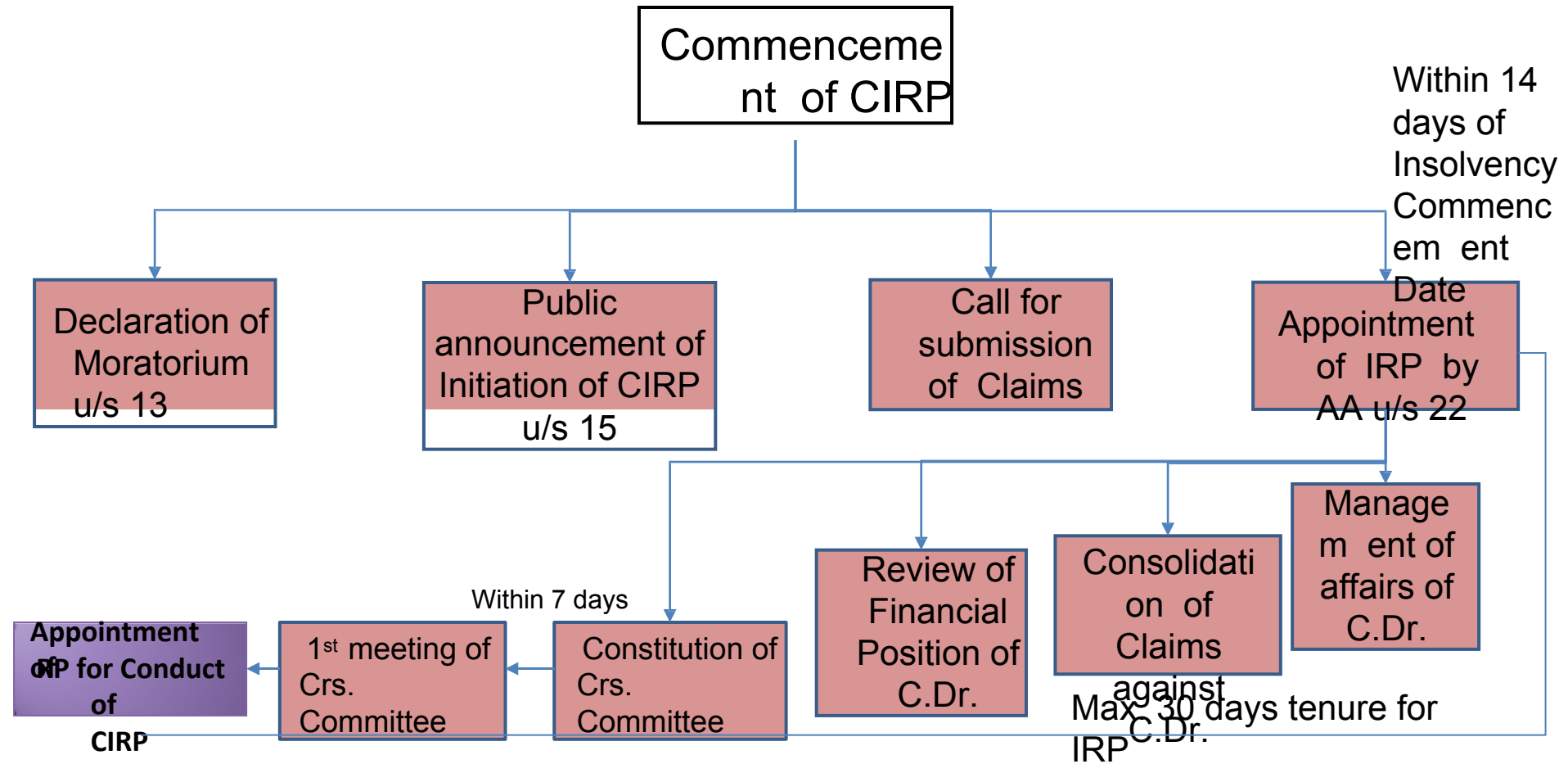
(S 9)



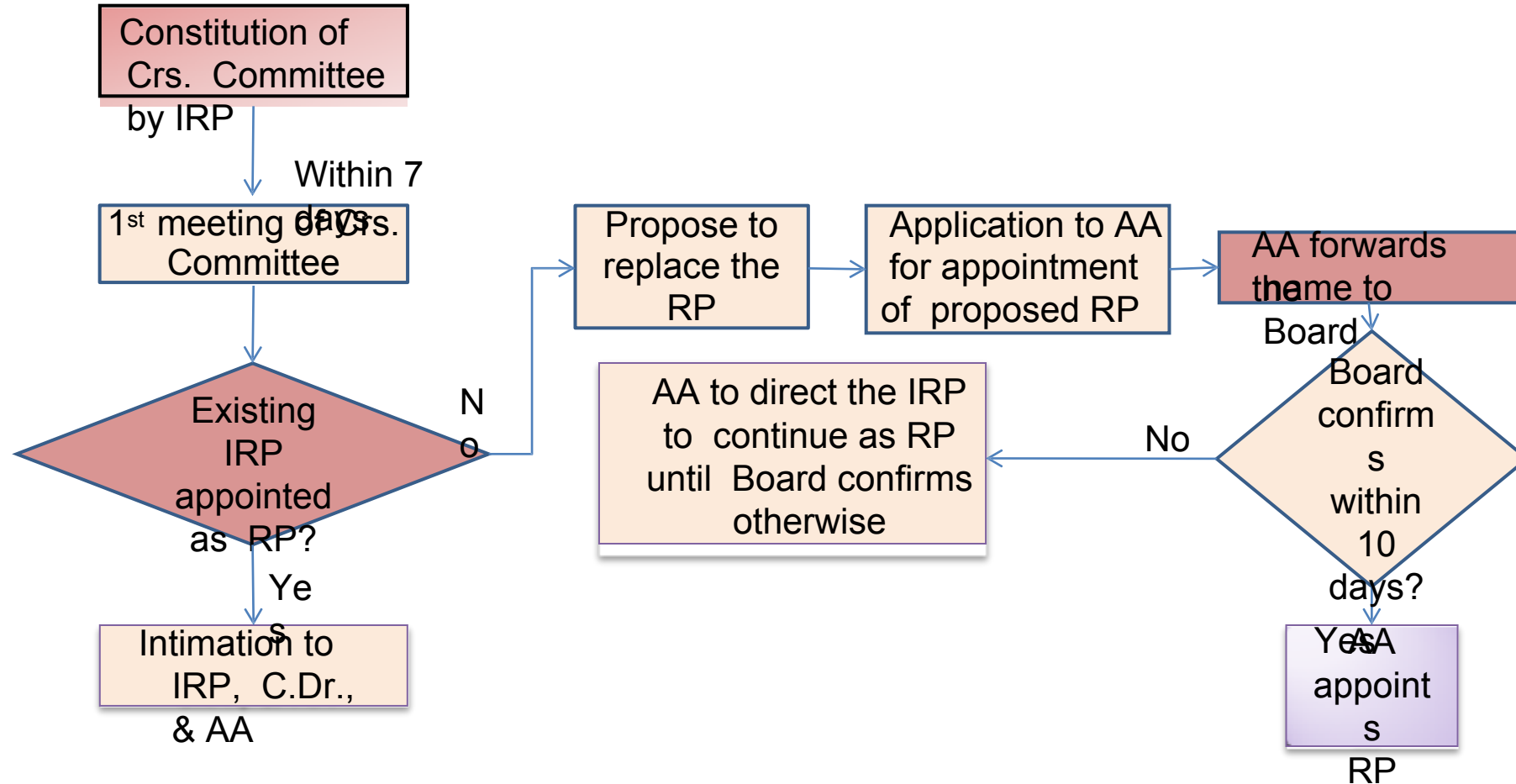
Initiation of CIRP by Corporate Applicant



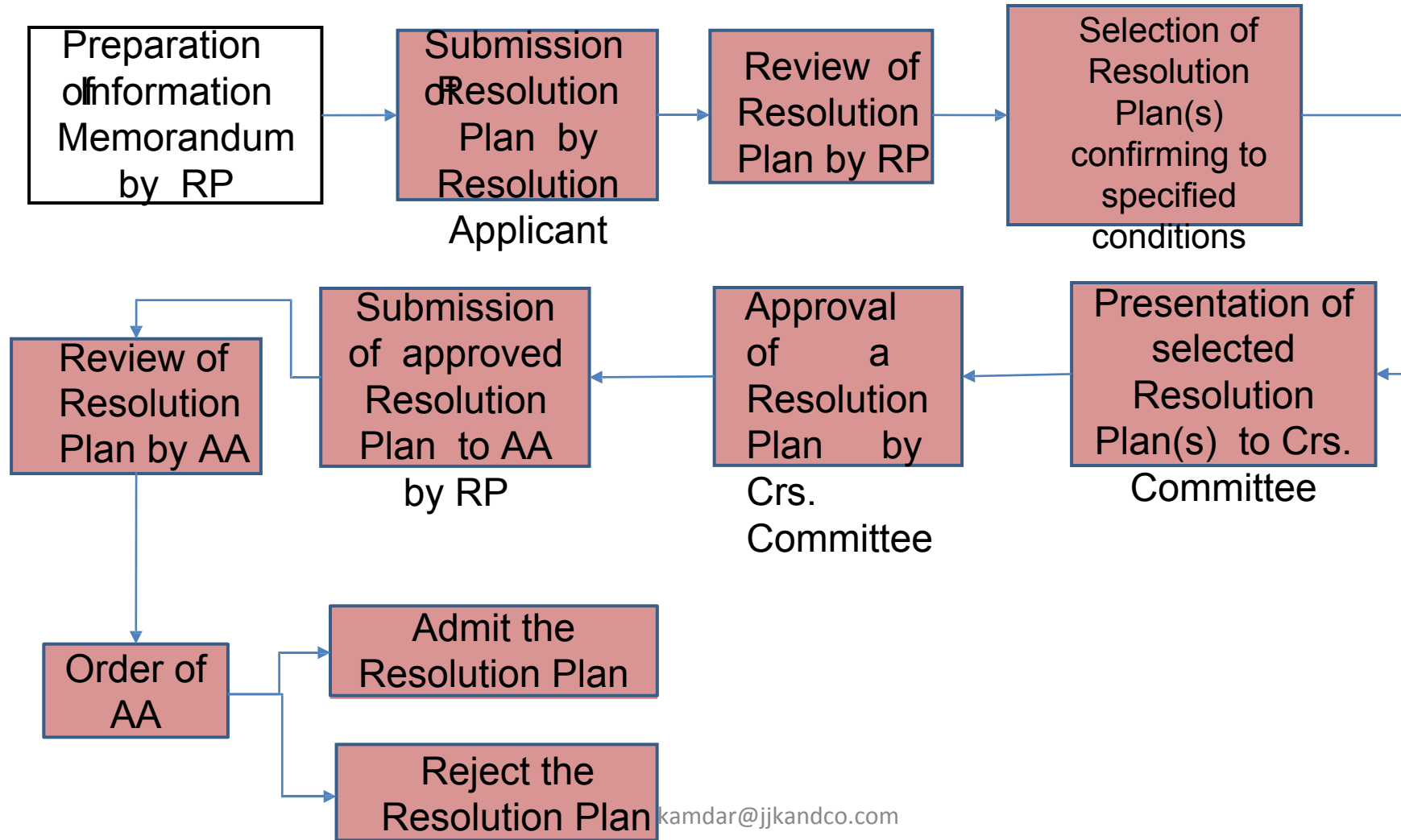
Once CIRP commences . . .



Appointment of resolution professional



Conduct of CIRP 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.
 - transferring, encumbering, judgment, alienating or disposing of assets or its court of or disposing of assets or its law, any legal right or beneficial interest
 - recovery of any property by an owner or lessor or 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 5th 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

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 1st meeting – matters listed in paragraphs (a) to (i) of Reg. 36 (2)
 - ∞ Within 14 days of the 1st 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

Registered valuer under The Draft Companies (Registered Valuers and Valuation) Rules, 2017

- Registered Valuer- Section 247 under chapter XVII of the Companies Act, 2013
- 5 Chapters, 20 Rules and 3 Schedules
- Deals with eligibility, qualifications and registration of valuers, recognition of valuation professional organizations, valuation standards, disciplinary proceedings.
- Valuation examination has to be passed to become a registered valuer

Committee of Creditors

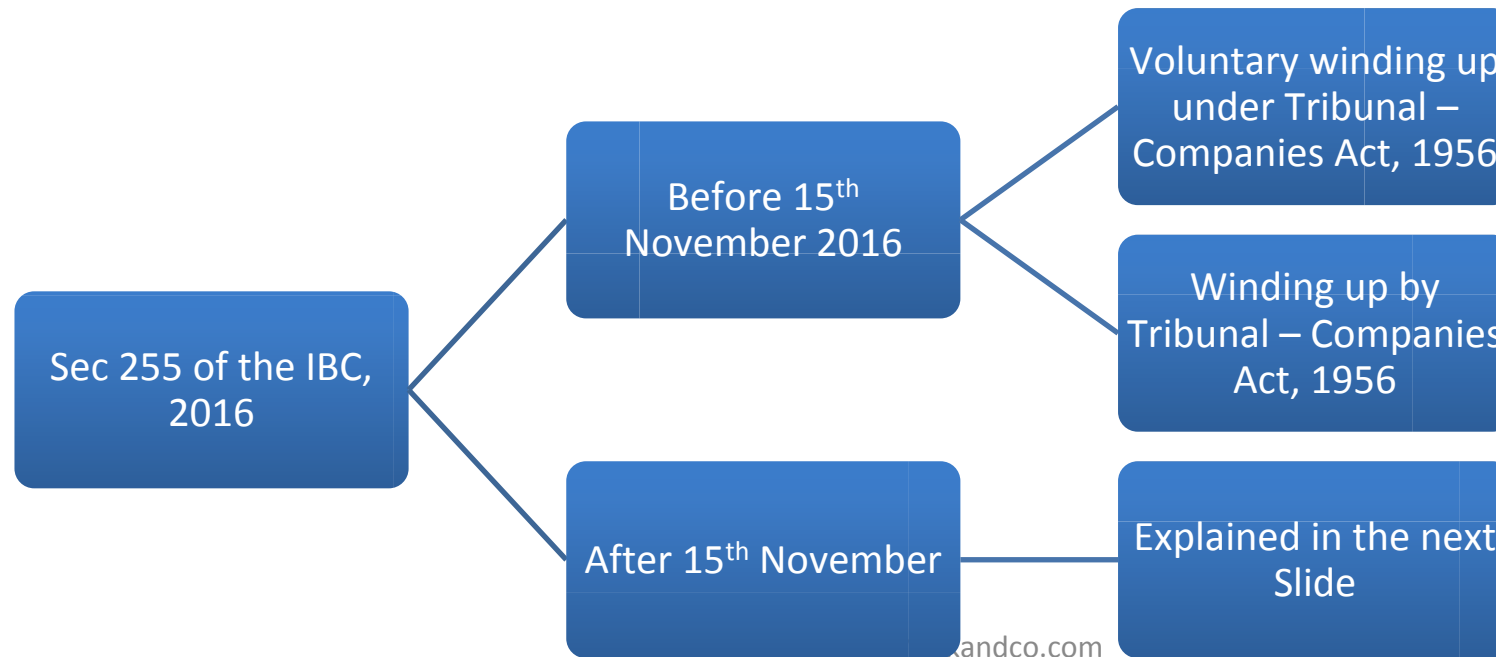
- Committee of creditors shall be formed with financial creditors only.
 - Financial creditors which are related parties of the corporate debtor shall not form part of committee
- What if the corporate debtor has no financial creditor?
- Where all financial creditors are related parties of the corporate 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)

Amendments to the Companies Act, 2013 under IBC

- Section 255 of the Code notified on 15th November, 2016 brought about a number of amendments to the Companies Act, 2013 under Eleventh Schedule
- MCA through its notification dated 07th December, 2016 has notified the provisions of **Chapter XX of the Companies Act, 2013** w.e.f. 15th December, 2016



Post Notification of Sec 255 (15th Nov, 16)

Section 2(94A) of the Companies Act, 2013 has been amended to define “Winding Up” as *“winding up under this Act or liquidation under Insolvency and Bankruptcy Code, 2016”*



Winding up on Inability to Pay Debts

Winding up on grounds other than Inability to pay debts

Voluntary Winding up

Winding Up on Inability to Pay Debts

- Section 271(1)(a) of the Companies Act, 2013 omitted by Section 255 of the Code
- Section 271(1)(a) deals with Winding up by Tribunal on account of Inability to Pay Debts
- Section 7 to 9 of the Code now deals with it
- Application to AA for initiation of Corporate Insolvency Resolution Process can be made where there is a **'default'**
- **'Default'** defined in the Code to mean non-repayment of a debt, whether in whole or in part, has become due and payable by a corporate person
- Which means under the Code insolvency resolution can be initiated even against financially solvent company that has defaulted payment
- Once the resolution process is accepted by the Tribunal, Insolvency Professional is appointed to conduct the Corporate Insolvency Resolution Process
- The process to be completed within 180days from the date of admission of the application by the Tribunal
- On failure of which the Tribunal will order for Liquidation of the Corporate Person

Winding up on grounds other than inability to pay debts

- Section 271 of the Companies Act, 2013 deals with the following
 - 271(a) Passing of special resolution to that effect
 - 271(b) Acting against Sovereignty and Integrity of India, security of state
 - 271(c) Conducting affairs in a fraudulent manner
 - 271(d) Default in filing of financial statements or annual returns with the registrar
 - 271(e) On just and equitable ground in the opinion of the Tribunal
- These provisions are notified under Chapter XX w.e.f .15th December 2016, therefore winding up application for the above grounds shall be made to the Tribunal
- Provisions of Companies Act, 2013 shall apply.

Fast Track IRP

- Sections 55 to 58 under chapter IV of Part II (w.e.f. 14th June, 2017)

Applicable to the following categories of corporate debtors:

- a small company, or
- a startup (other than the partnership firm), or
- an unlisted company with total assets, not exceeding Rs.1 crore.

- Default completion time is 90 days from the insolvency commencement date as against 180 days in other cases.
 - One-time extension of a maximum of 45 days permissible
 - Necessity of extension to be determined by AA

The Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

- W.e.f 14th June 2017
- The IBBI announced the regulations in exercise of its powers conferred by sections 58, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016.
- 10 Chapters, 39 Regulations and Schedules
- Various forms are prescribed under Schedule (Form A to E)
- These regulations provide the process for initiation of insolvency resolution of eligible corporate debtors, conduct of the Fast Track Process, proof of claims, approval of the resolution plan by the Adjudicating Authority.

Voluntary Liquidation



Sec 255 of IBC, 2016 repeals part II of chapter XX -sections 304 to 323 on Voluntary winding up under Companies Act, 2013

Sec 59 of IBC, 2016 (on Voluntary winding up applicable w.e.f 1st April 2017). The IBBI (Voluntary Liquidation Process) Regulations, 2017 comes into force w.e.f 1st April 2017

As per Sec 468(3) of the Companies Act, 2013, the 1956 Act does not apply anymore given Sec 59 of the IBC, 2016 is notified.

Voluntary Liquidation

Time limit- 12 months from the voluntary liquidation commencement date.

- **Steps involved-**
- Step – 1: Filing of application
- Step – 2: Commencement of voluntary liquidation
- Step – 3: Appointment of Liquidator and Public Announcement
- Step – 4: Submission of Preliminary Report and Completion of Books of Account
- Step – 5: Appointment of Professionals
- Step – 6 Consultation with Stakeholders
- Step – 7: Claims by creditors
- Step – 8: Determination and Verification of Claims
- Step – 9 Preparation of List of Stakeholders
- Step – 10: Realisation and Distribution
- Step – 11: Submission of Final Report
- Step -12: Dissolution

Formats Prescribed under IBBI (Voluntary Liquidation Process) Regulations, 2017

Form Name	Particulars
Form A	Public Announcement
Form B	Proof of claim by Operational creditors except by workmen & employees
Form C	Proof of claim by financial creditors
Form D	Proof of claim by workmen & employees
Form E	Proof of claim by authorised representative of workmen & employees
Form F	Proof of claim by any other stakeholder

List of Books to be maintained by a Liquidator – Schedule - II

Cash Book;

Ledger;

Bank Ledger;

Register of Fixed Assets and Inventories;

Securities and Investment Register;

Register of Book Debts and Outstanding Debts;

Tenant Ledger;

Suits Register;

Decree Register;

Register of claims and dividends;

Contributories Ledger;

Fee Register;

Suspense Register:

Cont....

Documents Register;

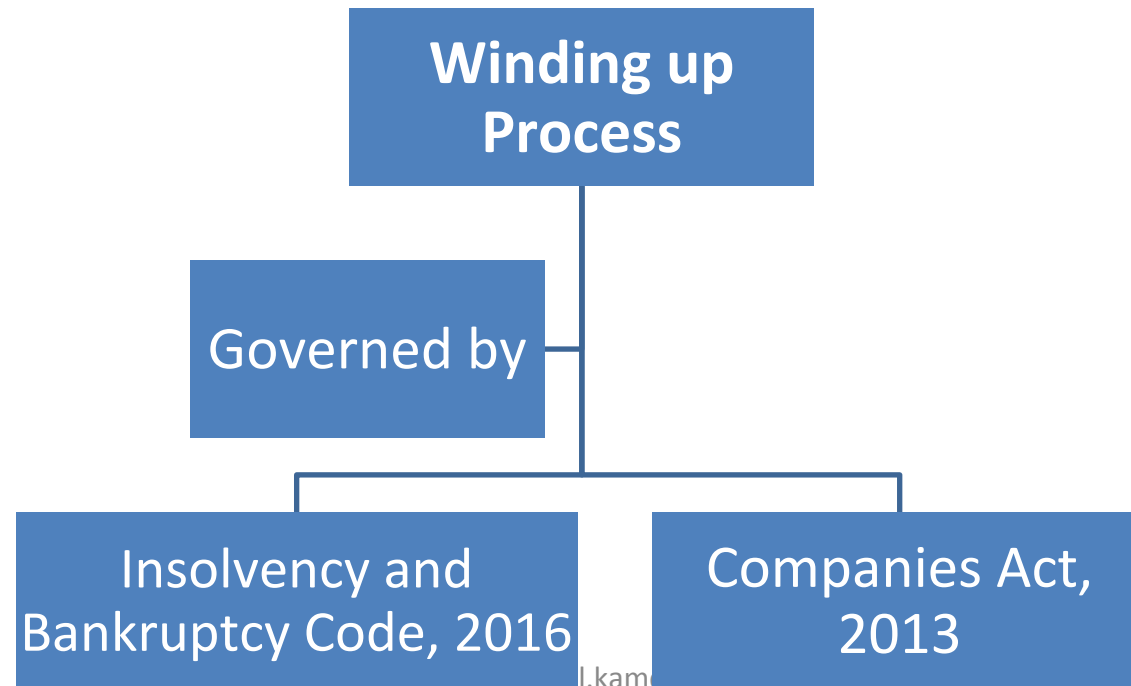
Books Register;

Register of unclaimed dividends & undistributed properties deposited in accordance with Regulation 39;

Such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor;

Winding up, liquidation & dissolution

- Sec 2(94A) of the Companies Act, 2013 defines “winding up”- introduced by Sec 255 the Eleventh Schedule of the IBC 2016
- “Winding Up” – ***‘winding up under this Act or under Insolvency and Bankruptcy Code, 2016’***



Winding up and Applicable Provisions

CORPORATE INSOLVENCY RESOLUTION PROCESS (INABILITY TO PAY)

- IBC, 2016
- IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

WINDING UP ON GROUNDS OTHER THAN INABILITY TO PAY

- Companies Act, 2013
- Companies Court Rules, 1959

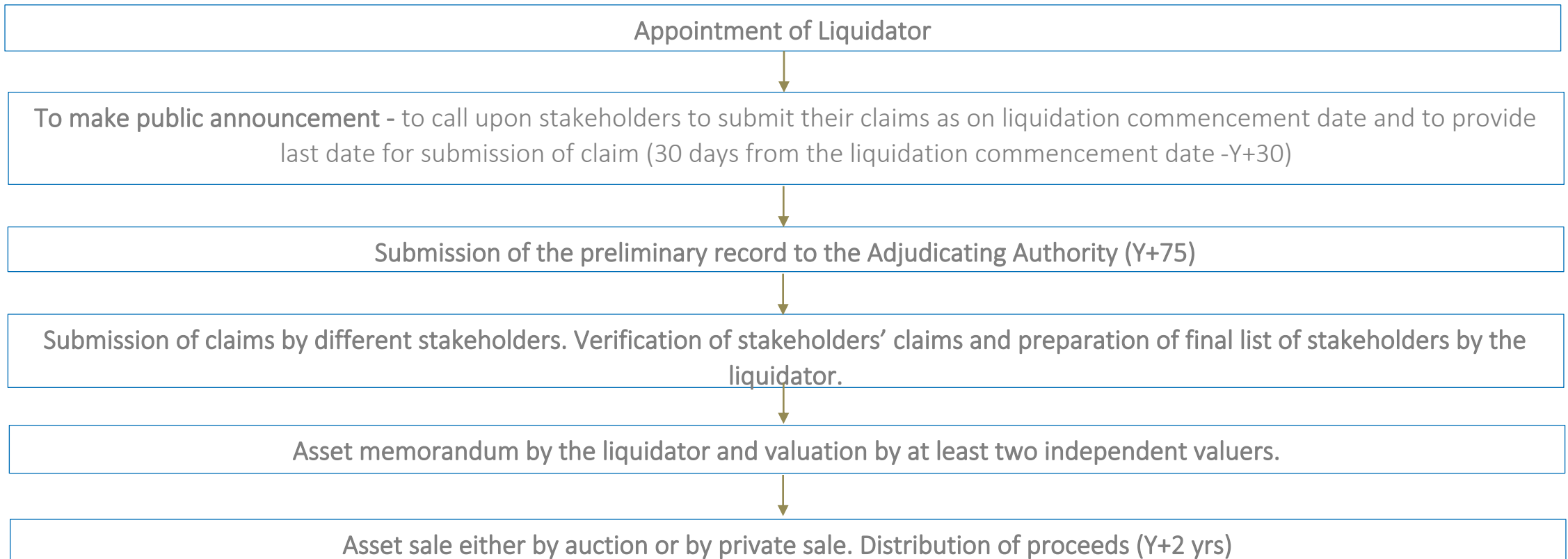
VOLUNTARY WINDING UP

- Section 59 of the IBC, 2016
- The IBBI (Voluntary Liquidation Process). Regulation, 2017
- (Both w.e.f 1st April 2017)

Liquidation and distribution of recovery proceeds

The Insolvency and Bankruptcy Board of India has framed new regulations under 'Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [the regulation]' to deal with liquidation process

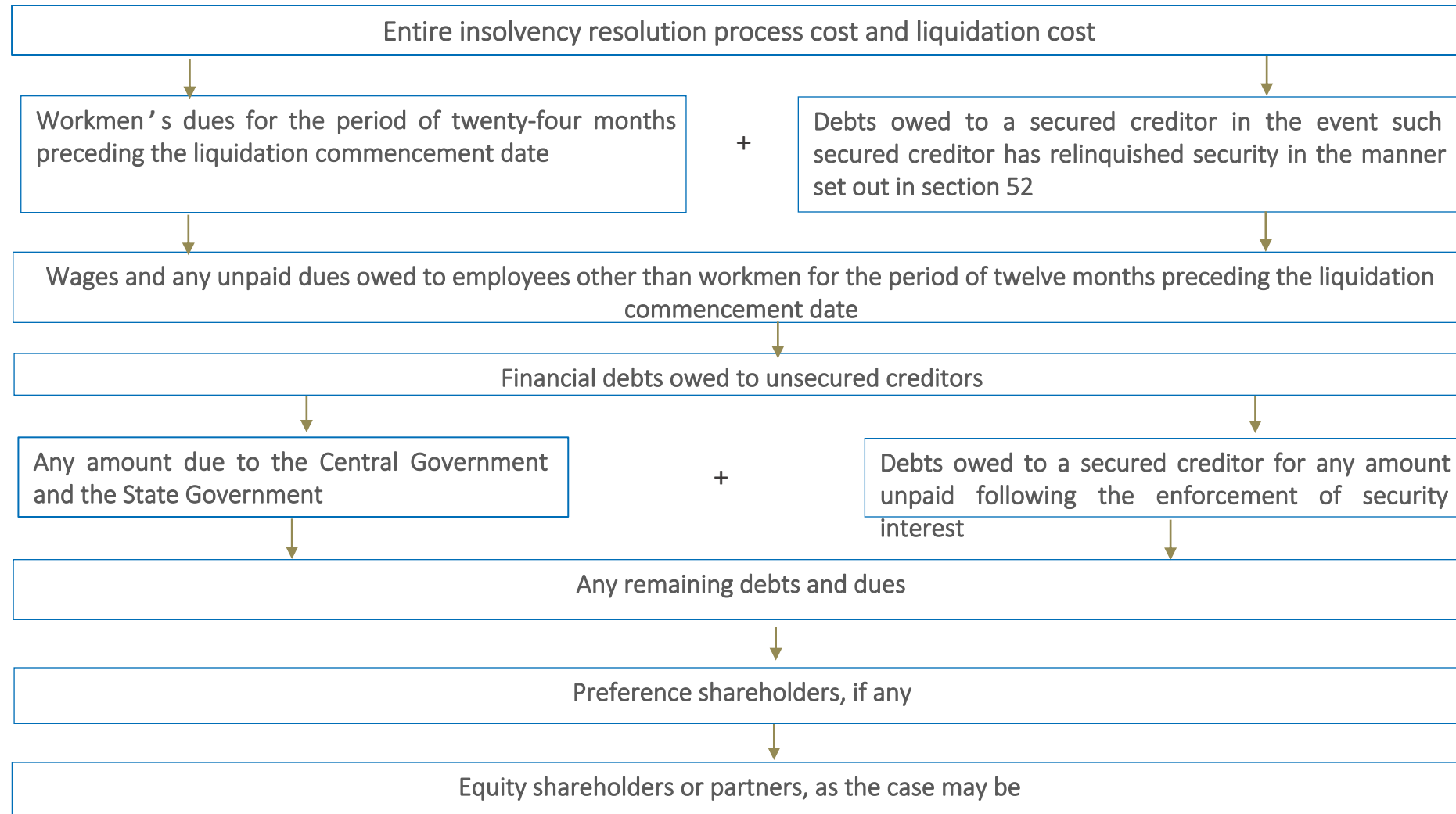
Liquidation Process



Liquidation commencement date: means the date on which proceedings for liquidation commence in accordance with section 33 or section 59 of the Code (Y)

Liquidation waterfall

Section 53 of the Code deals with distribution of assets sale proceeds along with liquidation waterfall.



Part III (S78-187)

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUAL AND PARTNERSHIP FIRMS

- C I Preliminary S 78 & 79
- C II Fresh Start Process S 80 to 93
- C III Insolvency Resolution Process S 94 to 120
- C IV Bankruptcy Order for Individuals and Partnership Firms S 121 to 148
- C V Administration and Distribution of the Estate of the Bankrupt S 149 to 178
- C VI Adjudicating Authority for Individuals and Partnership Firms S 179 to 183
- C VII Offences and Penalties S 184 to 187

Fresh Start: Eligibility Conditions

Maximum Gross
Annual Income of Rs.
60000

Maximum aggregate
value of assets Rs.
20000

Maximum aggregate
value of qualifying
debts Rs. 35000

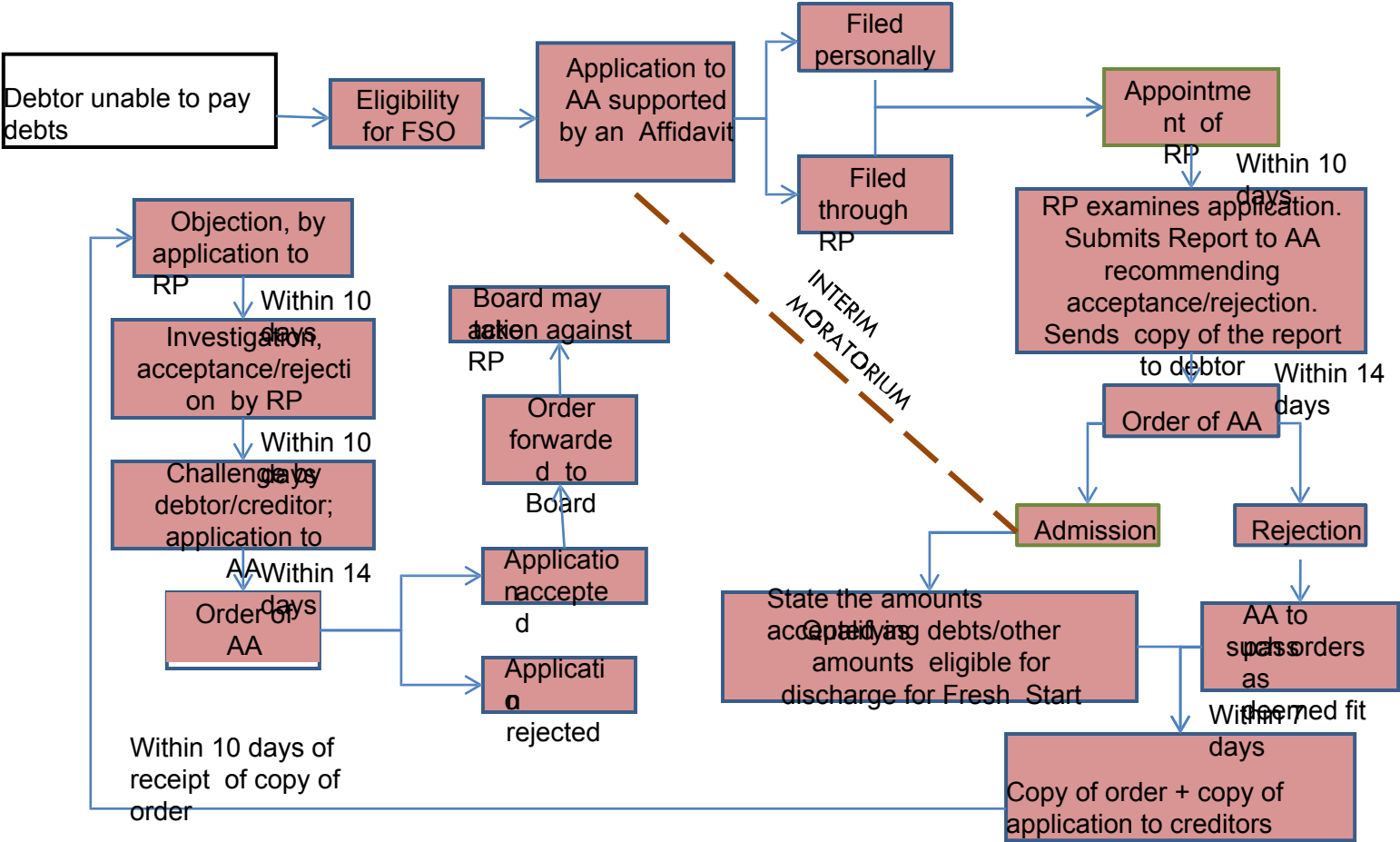
No dwelling unit

Not an undischarged
bankrupt

No Fresh Start
Process/Insolvency
Process/Bankruptcy
process subsisting

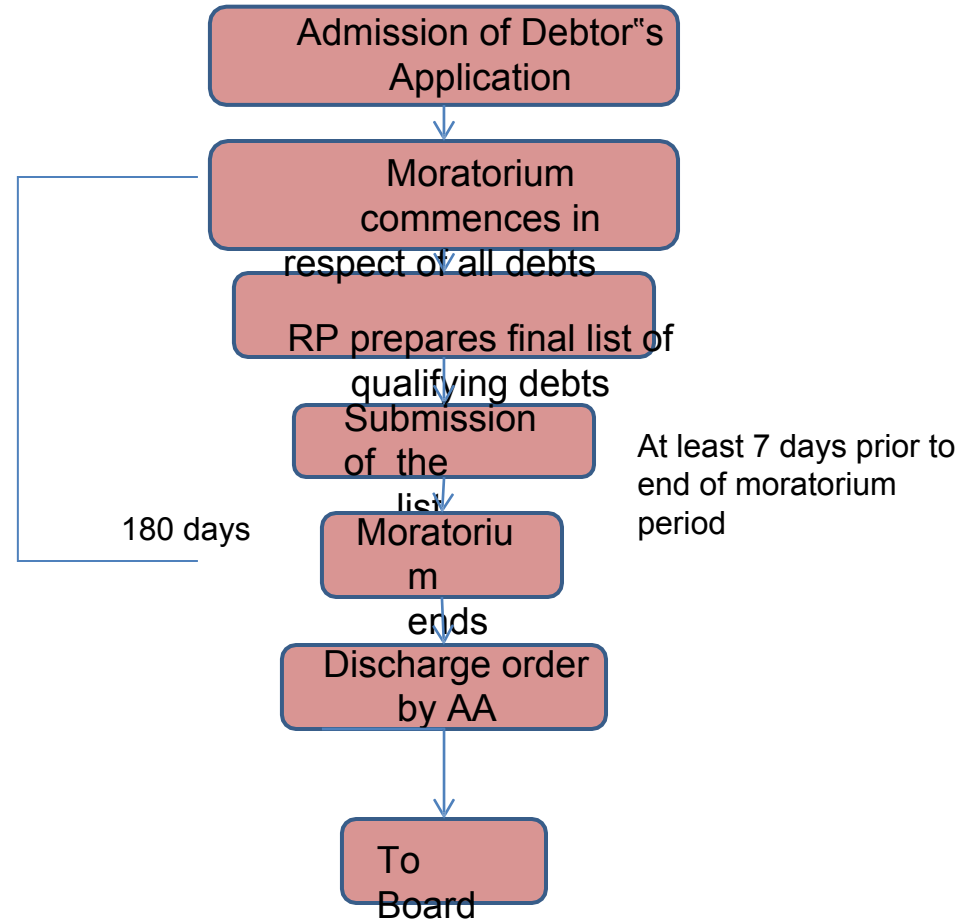
No Fresh Start
Order in the last 12
months prior to the
date of application

Fresh Start Process [Phase I: Admission of Debtor's Application]



Fresh Start Process

[Phase II: Discharge Order]



Insolvency Resolution Process

- Application to AA

- By debtor committing the default

- ☞ Personally or through RP

- ☞ In respect of a partnership firm, all or majority of the partners shall jointly apply; single partner is not eligible.

- ☞ Only in respect of debts which are not excluded debts.

- ☞ An undischarged bankrupt, or a debtor already undergoing FSP, IRP or Bankruptcy order not eligible to apply.

- Also, if there is an existing IRP, admitted during 12 months preceding the date of submission of application.

- By creditor

- ☞ Personally, or jointly with other creditors, or through RP.

- ☞ Against the firm or any one or more partners of the firm.

- ☞ Copy of application to the debtor.

- Manner of appointment of RP

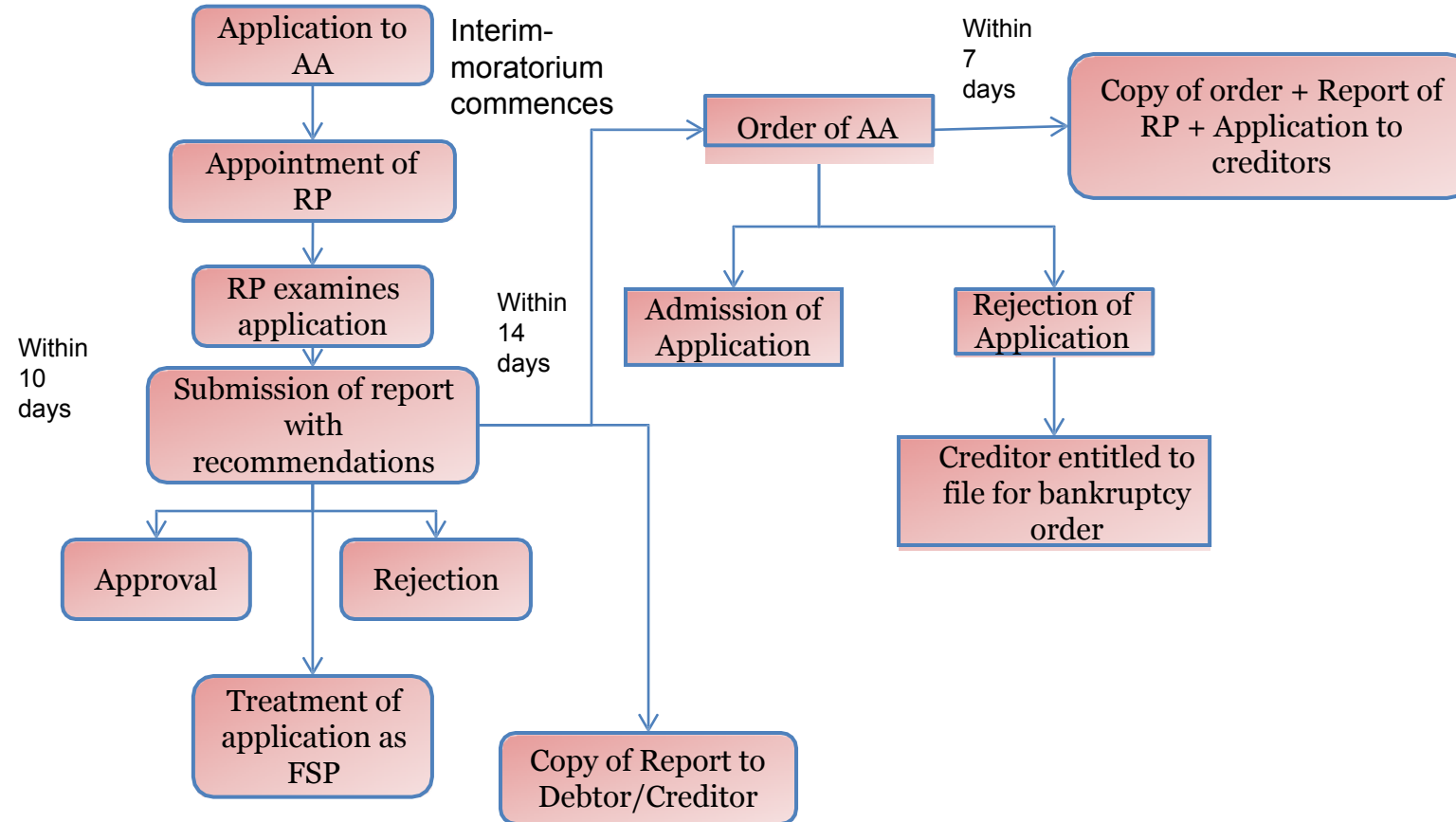
- Same as that in FSP

- Effect of filing application

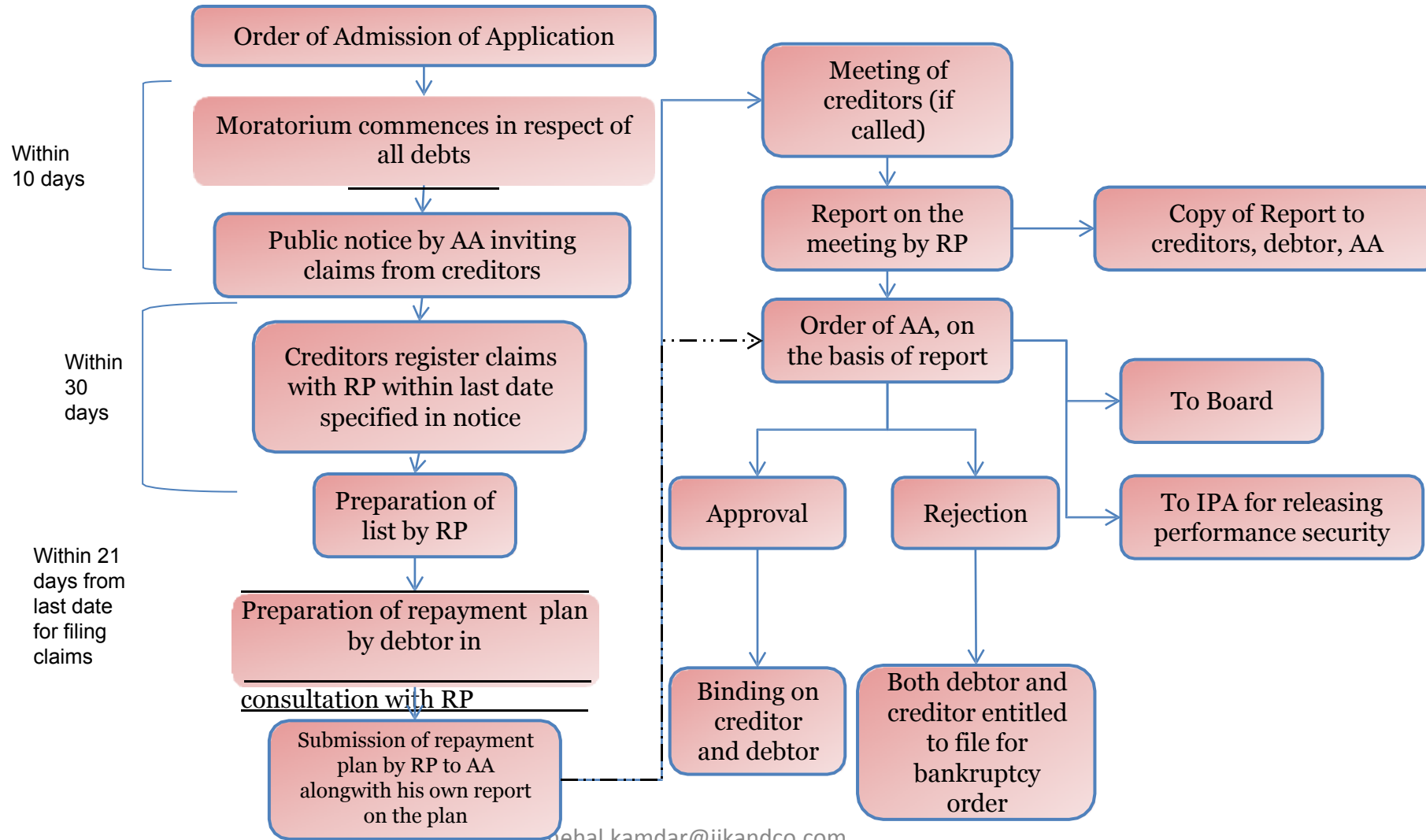
- Commencement of interim-moratorium

- ☐ To end on admission of such application

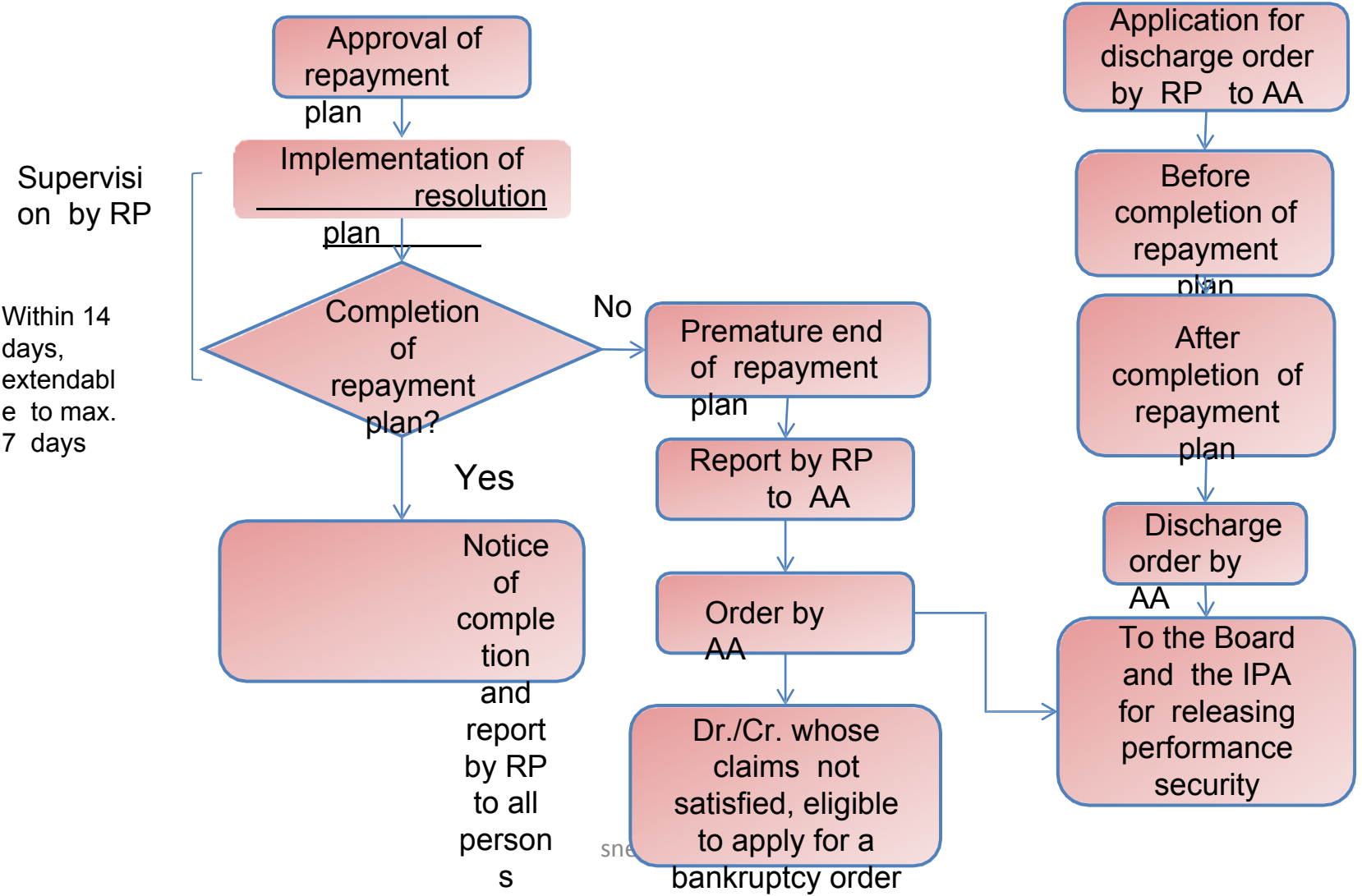
Insolvency Resolution Process: Phase I



Insolvency Resolution Process: Phase II



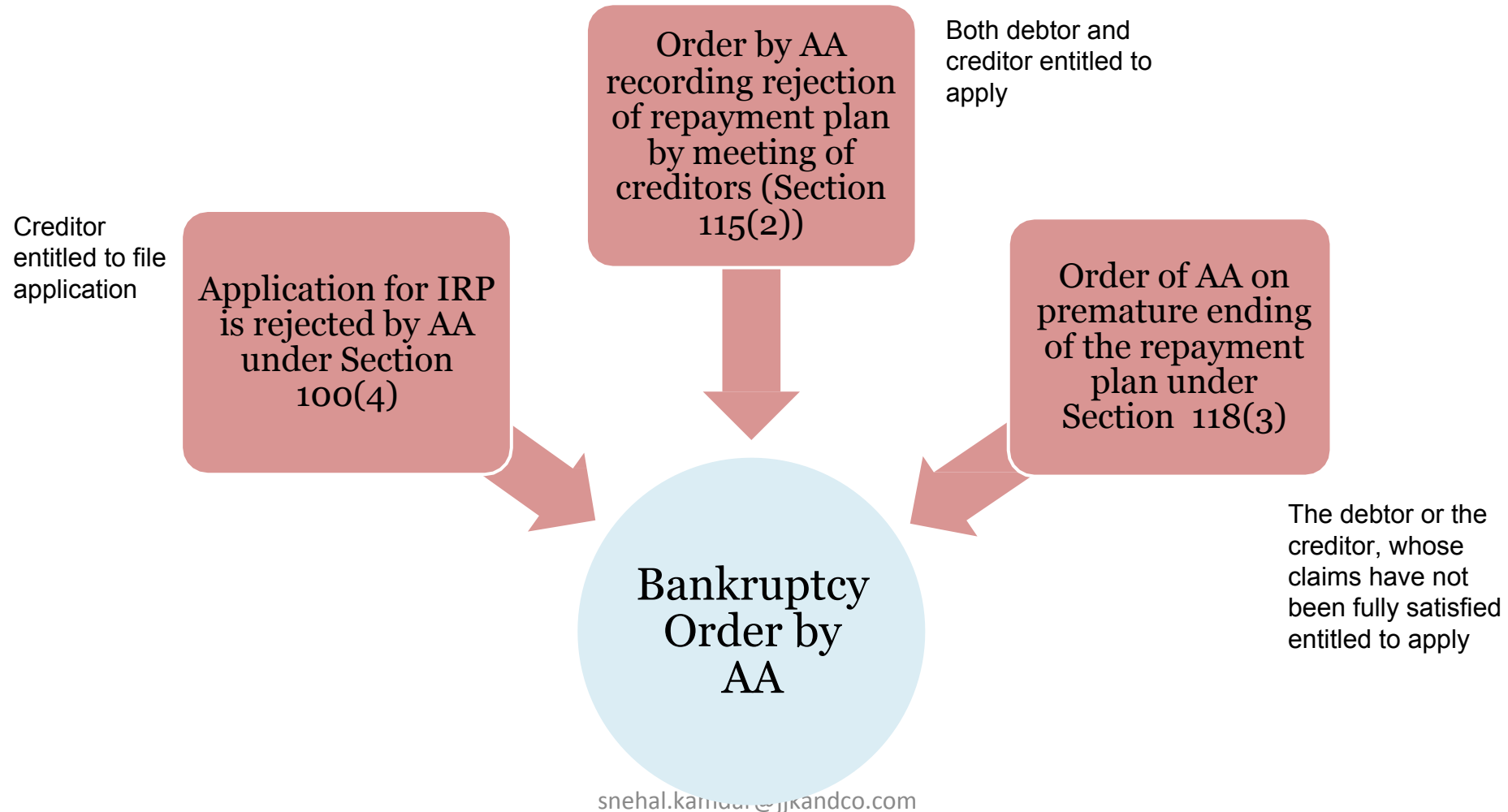
Insolvency Resolution Process: Phase III



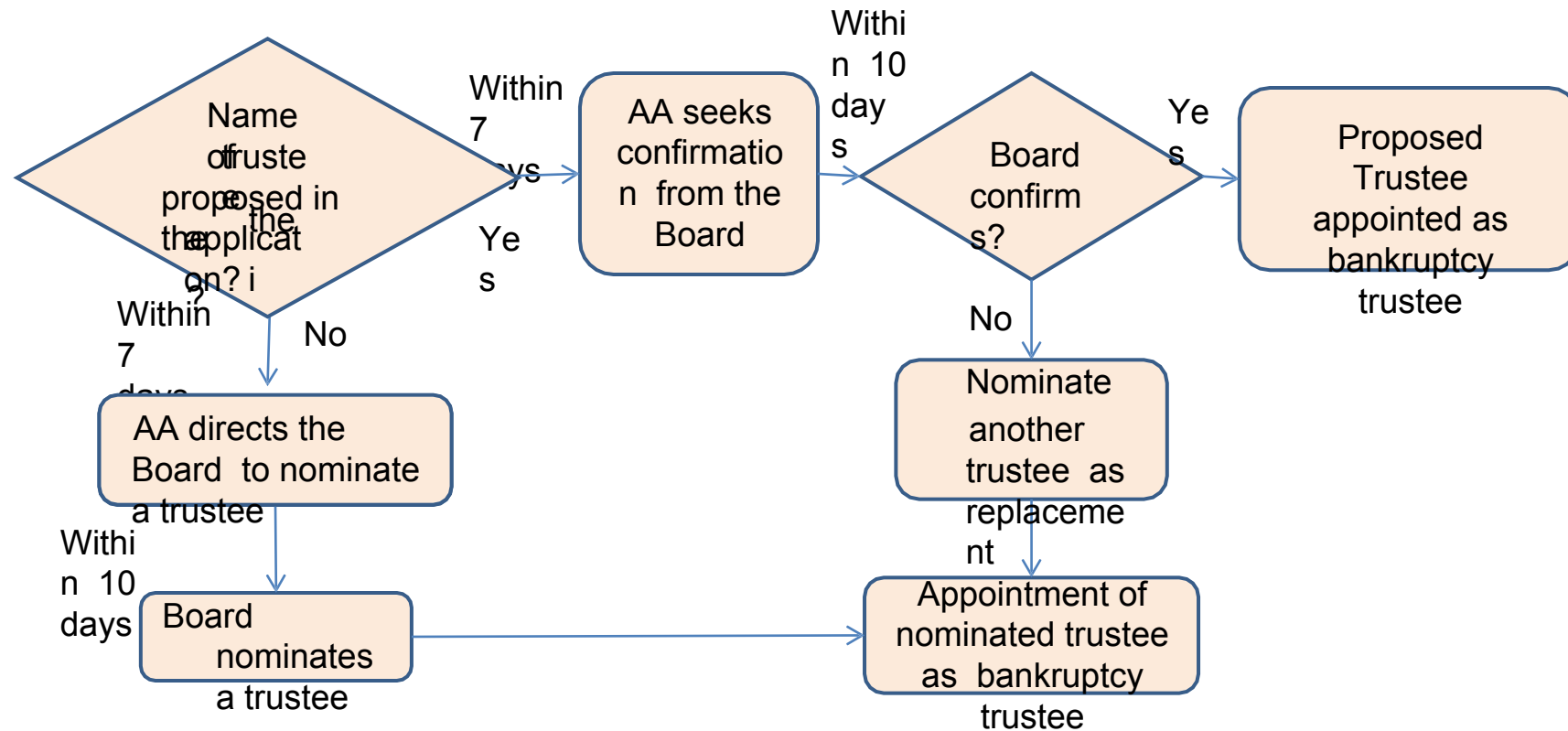
Application for bankruptcy order

- To AA
- By a creditor, individually or jointly with other creditors
- By debtor
 - In case of a firm, application may be filed by any of its partners
- Within 3 months of the order passed by AA under Section 100(4), or 115(2), or 118(3), as the case may be (refer succeeding slide)
- Applicant may propose an insolvency professional to act as bankruptcy trustee
- Application shall not be withdrawn without the leave of AA
- Interim moratorium commences once application is filed
 - Terminates on bankruptcy commencement date
 - Such interim-moratorium provisions not to apply to transactions notified by the Central Government in consultation with any financial sector regulator

Bankruptcy Order - When can be applied for?



Appointment of bankruptcy trustee



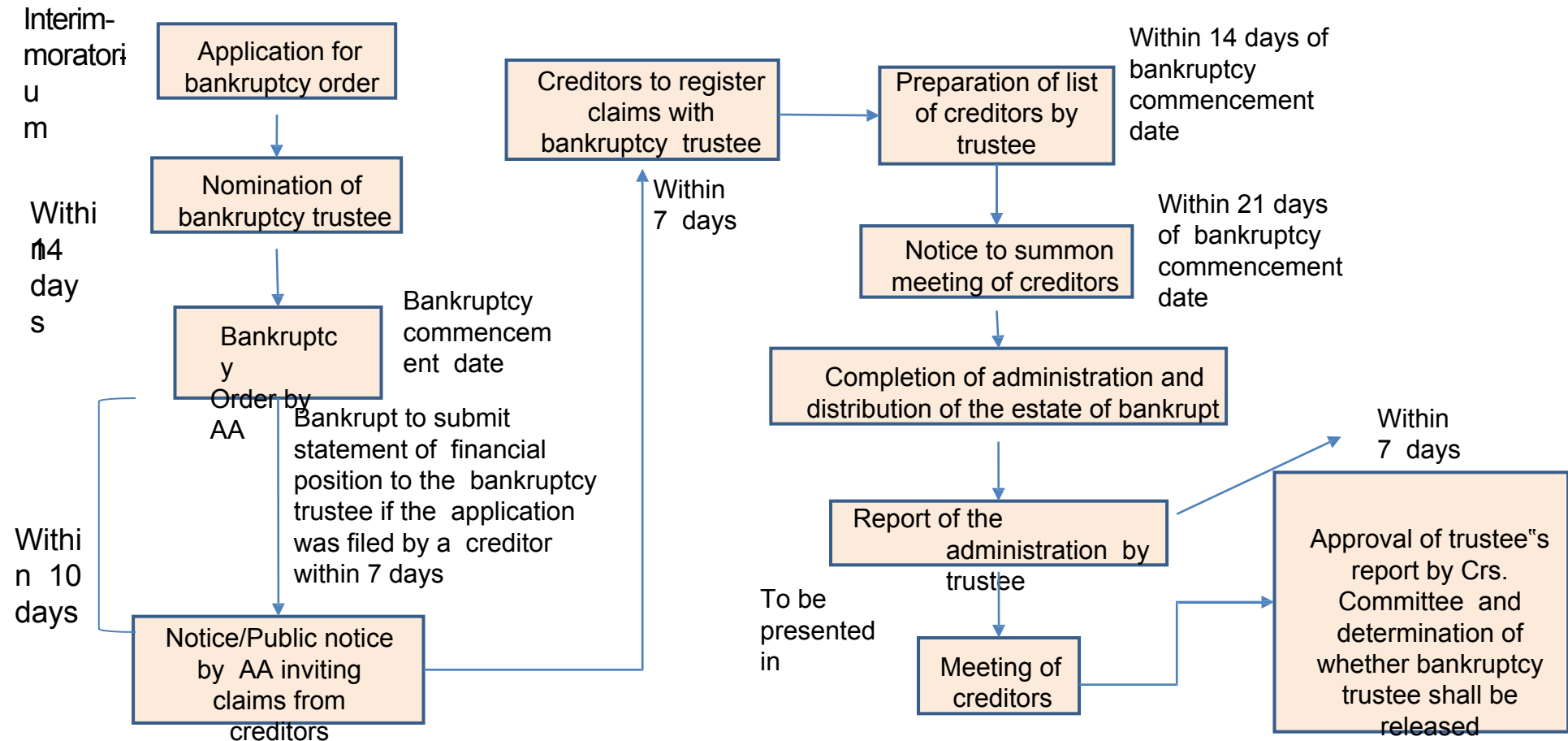
Bankruptcy Order

- By AA, within 14 days of nomination of bankruptcy trustee
- Effective till discharge of the bankrupt
- Effects
 - the estate of the bankrupt to vest in the bankruptcy trustee
 - the estate of the bankrupt to be divided among his creditors
 - bar on a creditor to commence proceedings in respect of a debt claimed as bankruptcy debt
 - right of a secured creditor to realize or otherwise deal with his

security interest not affected

∞ No entitlement to any interest in respect of debt after the bankruptcy commencement date if no steps are taken to realise the security within 30 days from the said date

Bankruptcy Order



The Estate of the Bankrupt

- Vesting

- In the bankruptcy trustee immediately from the date of his appointment
- Effective without any conveyance, assignment or transfer

- Inclusions in the estate

- All property belonging to or vested in the bankrupt at the bankruptcy commencement date

- Capacity to exercise powers over such property (or capacity to initiate proceedings for exercising such powers) existing at the bankruptcy commencement date or before the date of discharge order
- Property, which by virtue of this law, is comprised in the estate

- Exclusions from the estate

- Excluded assets
- Property held on trust
- Assets as notified by the Central Government in consultation with financial regulator

Discharge order

- Application by bankruptcy trustee to AA
- Earlier of –
 - Expiry of 1 year from the bankruptcy commencement date
 - Within 7 days of the approval of the committee of creditors of the completion of administration of estate of the bankrupt, if the said approval is accorded before the expiry of 1 year from the bankruptcy commencement date
- Effects
 - Bankrupt is released from all bankruptcy debts
 - In case the application for discharge is filed within 7 days of the creditors' approval,
the discharge does not affect
 - ∞ functions of the bankruptcy trustee
 - ∞ the operation of the provisions of Chapters IV and V of Part III
- These remain unaffected
 - Right of the secured creditor to enforce his security for the payment of a debt from
which the bankrupt is discharged
 - Bankrupt is not released in respect of debts incurred by means of fraud or breach of trust to which he was a party
 - Bankrupt is not released from any excluded debt

Proof of debt

- Bankruptcy trustee to give notice to every creditor
 - Within 14 days from days of preparing list of creditors
- Copy of decree – valid proof
- Interest on debt - provable as part of the debt
 - Except in so far as owed in respect of period after bankruptcy commencement date
- Proof of debt by secured creditors-
 - Realises his security, produce proof of the balance due to him;
 - Surrenders security to the bankruptcy trustee for the general benefit of the creditors
- ∞ May produce proof of his whole claim

Priority of payment

- ❑ The costs and expenses incurred by the **bankruptcy trustee**

- ❑ Secondly,

- ❑ The **workmen's dues** for the period of **24 months** preceding the bankruptcy commencement date; and

- ❑ Debts owed to **secured creditors**;

- ❑ Wages and any unpaid dues owed to **employees**, other than workmen, of the bankrupt for the period of **12 months** preceding the bankruptcy commencement date

- ❑ Central Government and the State Government dues

- ❑ All other debts and dues owed by the bankrupt including unsecured debts

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

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

Transactions defrauding creditors

- Sec 49- Corporate
 - the transaction is an undervalued transaction under sub- section (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 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 from the proceeds
- proportionately payable to each class of the aforementioned recipients

Distribution of Assets: Order of Priority

- 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.

• Whether to stay in liquidation proceedings or stay out of liquidation?

CRITICAL QUESTION FOR SECURED CREDITOR

- Creditors will have to take an early call on Secure Liquidation
-Whether to Stay Out of Liquidation or Stay in
 - ☞ 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

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

Tabulating Liquidation and Voluntary Liquidation Process under the IBC, 2016

S.No	Particulars	Part/Regulation	Liquidation of Corporate Persons	Voluntary Liquidation of Corporate Persons
1	Sections applicable	Both fall under Part II of the Code on INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS	Chapter III Sections 33-54	Chapter V Section – 59
2	Offence and Penalties	Chapter VII of Part II – on Offences and Penalties	S 69 to 77 for Liquidation – for the penal provision.	Applicable Chapter VII
3	Regulations Applicable and w.e.f		IBBI (Liquidation Process) Regulations, 2016 W.e.f 15 th December 2016 snehal.kamdar@jjkandco.com	IBBI (Voluntary Liquidation Process) Regulations, 2017 W.e.f 1 st April 2017

4	Number of Regulations		41 Regulations Schedules I&II I – Proof of Claims II – Books	46 Regulations Schedules I, II and III
5	Liquidation Commencement Date		<p>Defined under IBC code 2016 Section 3(17) - "Liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be;</p> <p>Insolvency Commencement Date(Sec 50, Sec 46, Sec 43, Sec 36, Date of the Commencement of the Liquidation (Sec 38), Liquidation Commencement Date (Sec 53).</p> <p>Definition of Insolvency Commencement Date – Sec 3(12) of the IBC Code 2016 - "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10,</p>	<p>Defined under Regulation 2(1)© -</p> <p>The date on which the proceedings for voluntary liquidation commence as per section 59(5) and Regulation 3(4)</p>

6	Stakeholders		<p>Regulations 2(1)(k) -“stakeholders” means the stakeholders entitled to distribution of proceeds under section 53.</p>	<p>Regulations 2(1)(f) - “stakeholders” mean the stakeholders entitled to proceeds from the sale of liquidation assets under section 53.</p>
7.	Creditor’s Approval		<p>There is no question of approval of creditors in a regular liquidation process from section 33 to 54, though it can be initiated by them</p>	<p>Section 59 – Regulations Proviso to Regulation 3(1)© - Creditors representing 2/3rds of the value of debt shall approve within seven days from the date of passing of the resolution</p>

8	Initiation of Liquidation Process		<p>Liquidation of a Corporate Person Is Initiated under Section 33 of IBC, 2016 by an order of the Adjudicating Authority</p> <ul style="list-style-type: none"> -When Resolution plan is not received or -When the Resolution Plan is rejected -Decision of the Committee of Creditors to liquidate the Corporate Debtor -On Contravention of the Resolution Plan approved by AA, application to AA by those whose interest is affected 	<p>Voluntary Liquidation Proceedings of a corporate person is initiated by a declaration, resolution, approval and information</p> <ul style="list-style-type: none"> -Of a company given under Section 59 (3) of the IBC 2016 -Other than a company under Regulation 3
9	Appointment of Liquidator		<p>Section 34 of the IBC, 2016</p> <ul style="list-style-type: none"> -Resolution Professional appointed for CIRP under Chapter II of Part II shall act as a Liquidator 	<p>Resolution passed in the General meeting for Voluntary liquidation and appointment of the Liquidator</p>

10	Replacement of Liquidator		<p>Under section 34(4) of the IBC, 2016 the AA replaces the liquidator on two grounds</p> <ul style="list-style-type: none"> -The Resolution plan submitted u/s 30 fails to meet the requirement -The board recommends replacement of liquidator 	No specific provision
11.	Liquidator's Fee		<p>Section 34(9) states that the Liquidator's fee shall be paid from the proceeds of liquidation estate.</p> <p>According to Regulation 4</p> <ul style="list-style-type: none"> -Fee agreed upon by the Committee of Creditor before Liquidation order passed under 33(1)(a) and 33(2). (Reg 4(2)) -Fee as a percentage of assets realized in all other cases (Reg 4(3)) 	According to regulation 7 the liquidator remuneration will form part of Liquidation Cost

12	Powers and Duties of the Liquidator	Section 35 of the IBC 2016	<p>Section 35(1) (a) to (o) defines 15 duties and powers of the Liquidator</p> <p>Chapter III covering regulations 5-11</p> <ol style="list-style-type: none"> 1.Reporting 2.Books to be maintained 3.Appointment of Professionals 4.Consultation with Stakeholders 5.Personnel to extend co-operation 6.Disclaimer of Onerous property 7.Extortionate Credit transactions 	<p>Chapter IV covering regulations 8-14</p> <ol style="list-style-type: none"> 1.Reporting 2.Books to be maintained 3.Appointment of Professionals 4.Consultation with Stakeholders 5.Extortionate Credit transactions 6.Public Announcement
13	Power of the Liquidator to access information	Section 37 of the IBC 2016	<p>Notwithstanding anything contained in any other law for the time being in force, the liquidator can access information from</p> <ul style="list-style-type: none"> -an information utility -credit information systems -agency of Central, State or Local Government -Financial/Non- Financial information utility -Information systems for securities -Database of the board -Any other source specified by the board 	<p>Same thing applicable for Voluntary liquidation due to application of section 59(6)</p>

14	Liquidation Estate	Section 36 (1) to (4) – The liquidator holds it in a fiduciary capacity	Estate of the assets listed under section 36 mainly those on which it has ownership rights. It also includes assets that do not form part of the assets under 36(4) mainly assets owned by a third party	Section 59 (6) - The provisions of sections 35 to 53 of Chapter III shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
15	Consolidation and Verification of Claims	Section 38 & 39 of the IBC 2016	<ul style="list-style-type: none"> - The liquidator shall receive or collect claims within 30 days from the date of commencement of Liquidation - Both financial and operational creditors shall submit claims with supporting documents - Financial creditor (Form - Claims can be withdrawn within 14 days from the date of submission - The claims are verified and further supporting evidence may be requested by the liquidator 	<ul style="list-style-type: none"> - Same provisions- Section 59(6) - Claims shall be proved by the stakeholder (Reg 15) <p>Following forms are submitted</p> <ul style="list-style-type: none"> - Operational Creditor Form B of Schedule I (Reg 16) - Financial Creditor Form C Schedule I (Reg 17) - Workmen and employees – Form D of Schedule I (Reg 18) - Other stakeholder Form E of Schedule I - The claimant shall bear the cost of proving its claims - Foreign Currency debts are converted into Indian Rupees on the liquidation commencement date - The claims shall be verified within 30 days by the liquidator - The liquidator shall prepare a list of stake holders within 45 days from the last date for receipt of claims

Difference between Part II and Part III of the Code

Noticeable differences	Part II - Corporates & LLP	Part III - Individual & Partnership
Adjudicating Authority	NCLT	DRT
Interim Moratorium	Not available	From the date of Application
Professionals	Interim Resolution professional & Resolution Professional	Resolution Professional
Demand Notice	10 days	14 Days
Public Notice to be issued	Applicant	Adjudicating authority
Public Notice to be Given	3 days	7 days
Claims	14 Days	21 Days

Cont....

CoC Meeting	7 days from the date of Constitution of CoC	Nil
IM	14 Day from the date of Constitution of CoC	Nil
Plan	Resolution Plan	Repayment plan
Notice of the Meeting	7 days	14 days
Adjournment of Meeting	Next day	7 days
Publication Notice	5 days	10 days
Consolidation of Claims	30 days	7 days
List of Creditors	30 days	14 Days
Meeting of Creditors	Nil	21 Days

Institutional Entities under IBC, 2016

Insolvency and Bankruptcy Board of India (IBBI)

Adjudicating Authority (AA) – NCLT , NCLAT, DRT, DRAT, SC

Insolvency Professionals Agencies (IPA)

Insolvency Professionals (IP)

Information Utilities (IU)

Insolvency Professional

A person enrolled u/s 206 with an insolvency professional agency as it's MEMBER

And Registered with the Board u/s 207.

Transfer of Proceedings from High Court to Tribunal

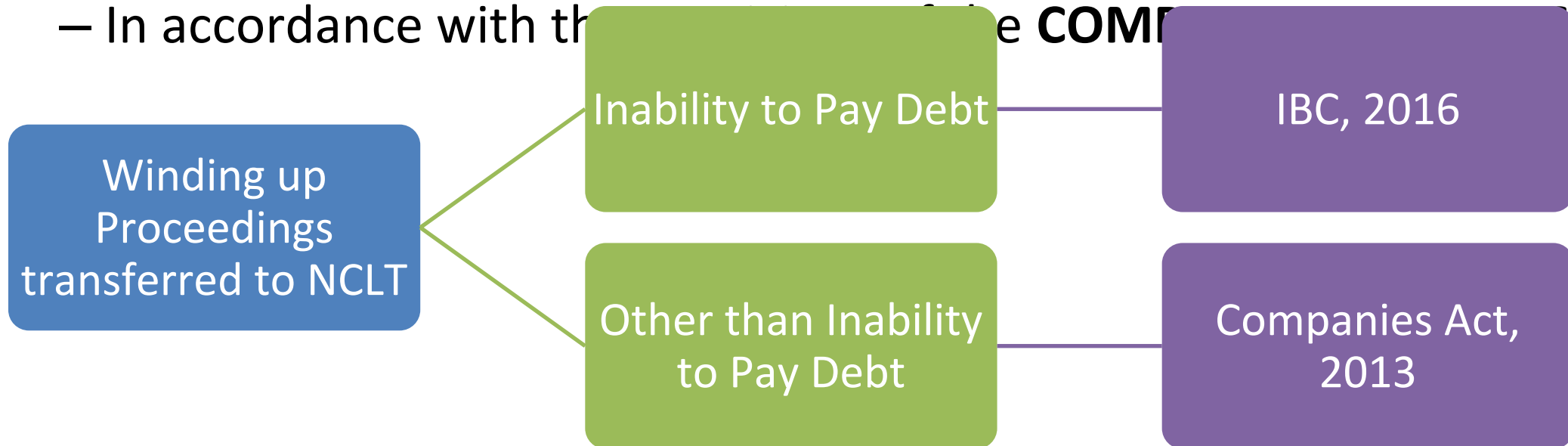
COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2016 clarifies as follows

- **Winding up proceedings pending before High Court (HC) on account of inability to pay debts**
 - All proceedings pending before HC as on 15th December, 2016
 - And the notice for which has not been served on the respondent
 - Shall stand transferred to the respective Bench of the Tribunal having jurisdiction
 - And shall be dealt with according to the **PROVISIONS OF THE CODE**
- **Winding up proceedings pending before High Court (HC) on account of other than inability to pay debts**
 - All proceedings pending before HC as on 15th December, 2016
 - And the notice for which has not been served on the respondent
 - Shall stand transferred to the respective Bench of the Tribunal having jurisdiction
 - And shall be dealt with according to the provisions of the **COMPANIES ACT, 2013**

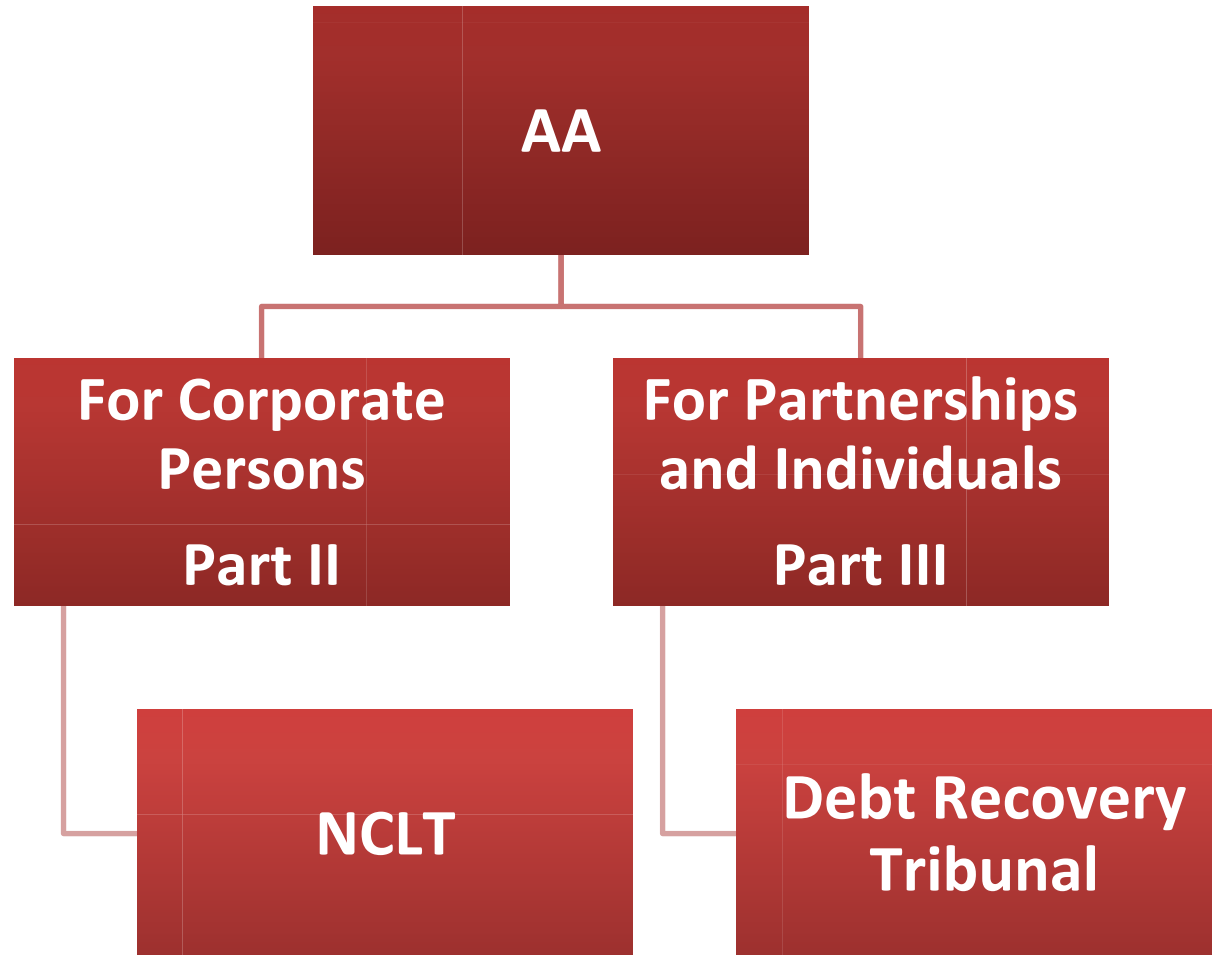
Transfer of Proceedings from High Court to Tribunal...

- **Winding up proceedings pending before High Court (HC) relating to Voluntary Winding Up**

- All proceedings pending before HC as on 1st April, 2017
- Shall continue to be dealt with by the High Courts
- In accordance with the provisions of the **COMPANIES ACT, 2013**



Adjudicating Authority (AA)



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

Adjudicating Authority for individuals and 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

Resolution Professional / Liquidator

“Resolution Professional”, for the purposes of this Part, means

- an insolvency professional
- appointed to conduct the corporate insolvency resolution process and
- includes an interim resolution professional

“Liquidator” means

- an insolvency professional appointed as a liquidator
- in accordance with the provisions of Chapter III or Chapter V of this Part.

Insolvency Professional Agency

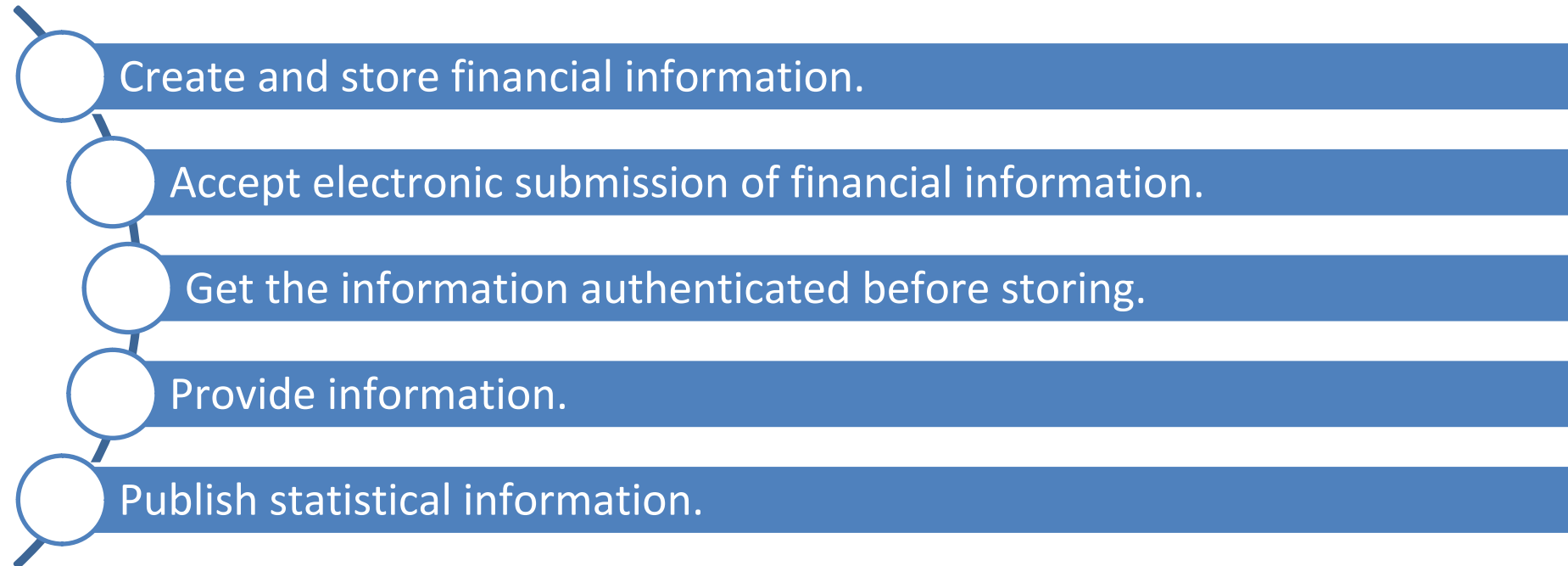
“Insolvency Professional Agency” means any person registered with the Board under section 201 as an insolvency professional agency”

- Indian Institute of Insolvency Professional of ICAI –
- Web site www.iiipicai.in
- Other IPAs www.icsiipa.com
- www.ipaicmai.in

Information Utility

“ Information utility means a person who is registered with the Board under section 210”

Role and Responsibility

- 
- Create and store financial information.
 - Accept electronic submission of financial information.
 - Get the information authenticated before storing.
 - Provide information.
 - Publish statistical information.

Appeals – Sec 61

Points for discussion	Section 10FQ of the Co Act, 1956	Section 421 of the Companies 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

Appeals – Sec 62

Points of comparison	Section 10GF of the Companies Act, 1956	Section 423 of the Companies Act, 2013	Section 62 of the Code
Who can file an appeal?	Any person aggrieved by the order of NCLAT	Any person aggrieved by the order of NCLAT	Any person aggrieved by the order of NCLAT
Appeal may be made before	Supreme Court	Supreme Court	Supreme Court
Time-limit for filing an appeal	Within 60 days	Within 60 days	Within 45 days
Extension of time-limit	Not exceeding 60 days	Not exceeding 60 days	Not exceeding 15 days

Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017

- Issued on **25th May, 2017**

Provides:

- Who can act as IRP?
- Determination of Vicinity
- Expression of Interest of IPs in Form A
- Eligible IPs
- Process of selection of IP

Useful websites

- www.mca.gov.in
- www.ibbi.gov.in
- www.insol.org
- www.insolindia.com
- www.iiipicai.org
- www.icsiipa.com
- www.ipaicmai.in
- www.insolvencyprofessionals.org.in

Questions?



*Thank
you*

