

# CRILW-Vol. 2

## INSOLVENCY

### DEFINITIONS IN SECTION 5 OF THE CODE

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
14. <b>“Interim Finance”</b> means any financial debt raised by the resolution professional during the insolvency resolution process period [Section 5(15)].	14. <b>“Interim Finance”</b> means any financial debt raised by the resolution professional during the insolvency resolution process period and such other debt as may be notified [Section 5(15)].

## PETITION FOR CORPORATE INSOLVENCY RESOLUTION PROCESS

### INTRODUCTION

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
Part II of the Insolvency and Bankruptcy Code, 2016 deals with the insolvency resolution and liquidation for corporate persons. Section 4 of the Insolvency and Bankruptcy Code, 2016 provides that Part II of the Code shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is <b>one lakh rupees</b> . The proviso to section 4 empowers the Central Government to specify, by notification, the minimum amount of default of higher value but it shall not be more than <b>one crore rupees</b> .	Part II of the Insolvency and Bankruptcy Code, 2016 deals with the insolvency resolution and liquidation for corporate persons. Section 4 of the Insolvency and Bankruptcy Code, 2016 provides that Part II of the Code shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is <del>one lakh rupees</del> . <b>one crore rupees</b> . The proviso to section 4 empowers the Central Government to specify, by notification, the minimum amount of default of higher value but it shall not be more than <b>one crore rupees</b> .

### The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

### SUSPENSION OF INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS

#### SECTION 10A

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Section	Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising <b>on or after 25<sup>th</sup> March, 2020</b> for a period of six

	<p><b>months or such further period, not exceeding one year</b> from such date, as may be notified in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.</p>
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## CONDUCTING CIRP

### The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Concepts	<p><b><u>Section 14 (2A)</u></b></p> <p>Where the <b>interim resolution professional or resolution professional</b>, as the case may be, considers the <b>supply of goods or services</b> critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services <b>shall not be terminated, suspended or interrupted</b> during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.</p>

### INTERIM RESOLUTION PROFESSIONAL SECTIONS 16, 17 & 18

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p><b><u>Appointment and Tenure of Interim Resolution Professional</u></b> [SECTION 16]</p> <p>The Adjudication Authority (NCLT) shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.</p> <p><b><u>Tenure of Interim Resolution Professional–</u></b> As per <b><u>The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018</u></b> the term of the interim resolution professional continues till the date of appointment of the resolution professional under section 22 of the Code.</p>	<p><b><u>Appointment and Tenure of Interim Resolution Professional</u></b> [SECTION 16]</p> <p>The Adjudication Authority (NCLT) shall appoint an interim resolution professional <del>within fourteen days from the insolvency commencement date.</del> <b>on the insolvency commencement date.</b></p> <p><b><u>Tenure of Interim Resolution Professional–</u></b> As per <b><u>The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018</u></b> the term of the interim resolution professional continues till the date of appointment of the resolution professional under section 22 of the Code.</p>

## PREPARATION OF INFORMATION MEMORANDUM

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>Section 29 read with <u>regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</u> lays down the preparation of an information memorandum as one of the main functions of the resolution professional. An information memorandum is envisaged to be prepared in order for the resolution applicants (market participants) to provide solutions for resolving the insolvency of the corporate debtor.</p> <p><u>Section 29</u>(1) provides that the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.</p> <p>The Explanation appended to Section 29 clarifies that for the purposes of this section, <u>“relevant information”</u> means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.</p>	<p>Section 29 read with <u>regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</u> lays down the preparation of an information memorandum as one of the main functions of the resolution professional. An information memorandum is envisaged to be prepared in order for the resolution applicants (market participants) to provide solutions for resolving the insolvency of the corporate debtor.</p> <p><u>Section 29</u>(1) provides that the resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.</p> <p>Resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier. (<u>regulation 36</u>)</p> <p>The Explanation appended to Section 29 clarifies that for the purposes of this section, <u>“relevant information”</u> means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.</p>

### CONTENT OF INFORMATION MEMORANDUM

Regulation 36(2)

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Concepts	<p>The information memorandum shall contain <u>the following details of the corporate debtor</u>:-</p> <p>(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values</p>

	(b) the latest annual financial statements;
	(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;
	(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
	(e) particulars of a debt due from or to the corporate debtor with respect to related parties;
	<b><u>Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</u></b>
	The resolution professional shall publish brief particulars of <b>the invitation for expression of interest in <u>Form G</u></b> of the Schedule at the earliest, <b>not later than seventy-fifth day</b> from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

## PREPARATION & APPROVAL OF RESOLUTION PLAN

### WATERFALL ARRANGEMENT

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Concept	<p><b>Section 53</b> of the code provides for the <b>manner of distribution of assets</b> in case of <b>liquidation</b> and order of priority of distribution. It is pertinent to note that this order of priority is notwithstanding anything contrary which is contained in any other Central or State Law. This order of priority is also known as the “waterfall arrangement”.</p> <p>Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of liquidation assets shall be <u>distributed in the following order of priority and within such period and in such manner as may be specified:</u></p> <p>(a) Insolvency resolution process costs and liquidation costs paid in full</p> <p>(b) Following debts shall rank equally between and among the following:</p>

	<ul style="list-style-type: none"> <li>(i) Workmen's dues for the period 24 months preceding the liquidation commencement date.</li> <li>(ii) Debts owed to secured creditor in the event such secured creditor has relinquished security under section 52.</li> <li>(c) Dues and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date</li> <li>(d) Financial debts owed to unsecured creditors.</li> <li>(e) Following dues shall rank equally between and among the following: <ul style="list-style-type: none"> <li>(i) Any amount due to Central/State Government including amount to be received on account of Consolidated Fund of India and Consolidated fund of State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date</li> <li>(ii) Debts owed to a secured creditors for any amount unpaid following enforcement of security interest.</li> </ul> </li> <li>(f) Any remaining debts as dues</li> <li>(g) Preference shareholders, if any; and</li> <li>(h) Equity shareholders or partners, as case may be.</li> </ul>
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### Regulation 40C

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
New Concept	<p style="text-align: center;"><b><u>Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020</u></b></p> <p>“Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of <b>lockdown imposed by the Central Government</b> in the wake of <b>Covid-19</b> outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a <b>corporate insolvency resolution process.</b>”</p>

# CONVENING AND CONDUCT OF MEETINGS OF COMMITTEE OF CREDITORS

## COMMITTEE OF CREDITORS

<u>Before Amendment (Earlier)</u>	<u>After Amendment (Now)</u>
<p>Section 21 and 24 of the Insolvency and Bankruptcy Code, 2016 make provisions relating to the committee of creditors. Section 21 deals with the <b><u>constitution</u></b> of committee of creditors while section 24 prescribes the <b><u>modalities for the meeting</u></b> of the committee of creditors.</p> <p><b><u>Section 28</u></b> of the Code lists out certain actions that may be taken by the resolution professional only with the prior approval of the committee of creditors by a vote of <b>66 per cent</b> of the voting shares.</p> <p><b><u>The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018</u></b> has added a new section 25A to provide for <b><u>rights and duties of authorised representative</u></b> of financial creditors.</p> <p><b><u>Composition of committee of creditors</u></b> – Section 21(2) provides that the committee of creditors shall comprise all financial creditors of the corporate debtor. According to section 5(7) of the Code, a “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.</p> <p><b><u>Exclusion of related party</u></b> –First proviso to section 21(2) provides that a financial creditor or the authorised representative of the financial creditor, if it is a related party of the corporate debtor, shall not have any <b><u>right of representation, participation or voting</u></b> in a meeting of the committee of creditors.</p> <p><b><u>According to section 5(24), a “related party”, in relation to a corporate debtor, means-</u></b></p>	<p>Section 21 and 24 of the Insolvency and Bankruptcy Code, 2016 make provisions relating to the committee of creditors. Section 21 deals with the <b><u>constitution</u></b> of committee of creditors while section 24 prescribes the <b><u>modalities for the meeting</u></b> of the committee of creditors.</p> <p><b><u>Section 28</u></b> of the Code lists out certain actions that may be taken by the resolution professional only with the prior approval of the committee of creditors by a vote of <b>66 per cent</b> of the voting shares.</p> <p><b><u>The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018</u></b> has added a new section 25A to provide for <b><u>rights and duties of authorised representative</u></b> of financial creditors.</p> <p><b><u>Composition of committee of creditors</u></b> –Section 21(2) provides that the committee of creditors shall comprise all financial creditors of the corporate debtor. According to section 5(7) of the Code, a “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.</p> <p><b><u>Exclusion of related party</u></b> –<b>First proviso</b> to section 21(2) provides that a financial creditor or the authorised representative of the financial creditor, if it is a related party of the corporate debtor, shall not have any <b><u>right of representation, participation or voting</u></b> in a meeting of the committee of creditors.</p> <p>Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity share</p> <p><b><u>According to section 5(24), a “related party”, in relation to a corporate debtor, means-</u></b></p>