

M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws And Governance

UNIT -I : The Insolvency and bankruptcy Code, 2016

Lecture : 3

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Resolution Plan

A resolution plan is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. It needs to be approved by the committee of creditors ("COC") and comply with mandatory requirements prescribed in IBC.

Section 5(26) of IBC, 2016 -"Resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

Resolution Applicant

Resolution applicant is simply, "any person who submits a resolution plan to the resolution professional. While the expectation from this wide definition is that the market at large will be the primary source of resolution plans, it is also open to creditors, and until very recently, the erstwhile promoters of the corporate debtor, to propose resolution plans. The RP moreover, does not have any discretion regarding which plans to present to the COC – he or she is statutorily bound to present all plans that meet the mandatory requirements. In practice, the COC typically authorizes the RP to **prescribe eligibility** and **evaluation criteria** for resolution applicants so as to ensure that only serious applicants submit plans.

The RP is not expressly prohibited from submitting a resolution plan, but given that the RP also has the statutory duty to verify whether a plan meets the mandatory requirements, it could lead to a conflict of interest for the RP.

Resolution plan – Section 30

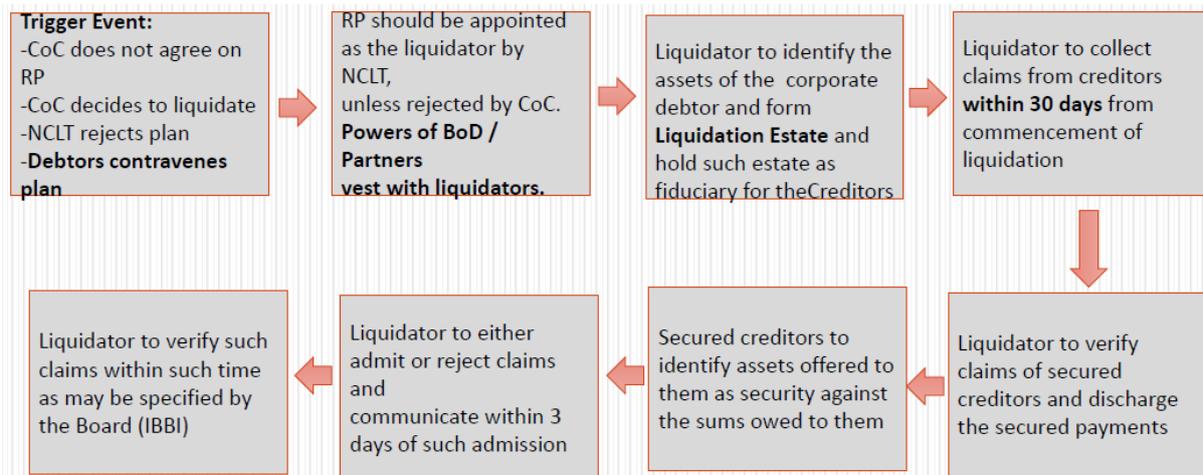
A resolution applicant may submit a resolution plan

- The RP shall examine each resolution plan received by him to confirm that each resolution plan—
 - (a) provides for the payment of insolvency resolution process costs
 - (b) provides for the repayment of the debts of operational creditors
 - (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan; (d) the implementation and supervision of the resolution plan;
- The RP shall present to the COC for its approval
- The COC may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.
- The resolution applicant may attend the meeting of the COC in which the resolution plan of the applicant is considered:
- The RP shall submit the resolution plan as approved by the COC to the Adjudicating Authority.

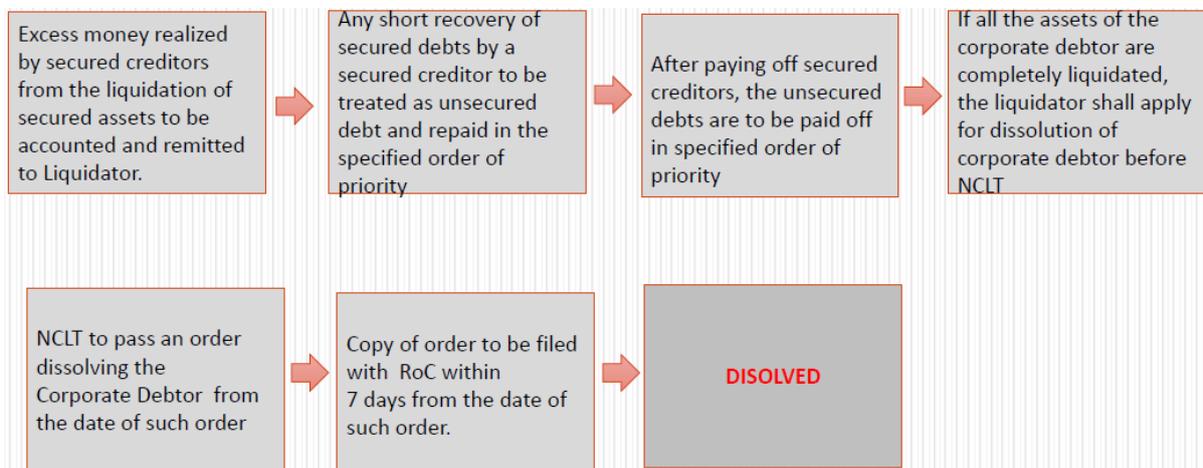
Approval of Resolution plan –Section 31

- If Adjudicating Authority is satisfied that the resolution plan as approved by the CoC, meets the requirements it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.
- After the order of approval under sub-section (1), —
 - a) the moratorium order passed by the AA under section 14 shall cease to have effect; and
 - (b) the RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

Liquidation – Process



Liquidation



Resolution Vs Liquidation

Factors	Resolution	Liquidation
Intent	Revival	Dissolution
Responsibility	Going Concern	Not necessary
Time	Short (270 days max)	Long (Ideally 2 years but can go beyond)
Claims	No adjudication	To be adjudicated
Distribution of Assets	That's not the objective	That's the objective
Hair cut	Voluntary acceptance	No choice

Factors	Resolution	Liquidation
Fee	Negotiated	Fixed by Regulations, if not fixed by CoC
Initiation	Can be initiated by FC, OC or CD	Cannot be initiated except voluntary liquidation
Moratorium	Mandatorily applicable	Limited Applicability
Action under SARFAESI	Stayed	Creditor can opt to stay out of liquidation
Interim Resolution Professional	Interim Resolution Professional is appointed for 30 days	No interim liquidator

Factors	Resolution	Liquidation
Committee of Creditors	CoC oversees resolution process. RP acts in accordance with directions of CoC	Tribunal oversees the liquidation process. Creditors advice not binding on liquidator
Inviting Plan/Bids	RP invites resolution applicants for submitting resolution plan	Liquidator invites bids for properties
Appeal	Appeal against approval of resolution plan lies on specific grounds	For filing appeal against liquidation order, there is no such restriction
Fast Track	Fast track resolution is possible	No fast track liquidation

Liquidation Estate -Section 36

Inclusions -Section 36(3)

- Any assets over which the corporate debtor has ownership rights
- Assets that may/ may not be in possession of the corporate debtor, including encumbered assets Tangible assets (movable/ immovable)
- Intangible assets (such as IPs), securities, financial instruments, insurance policies, contractual rights
- Assets subject to determination of ownership by Courts
- Assets recovered through proceedings for avoidance of transactions
- Asset in respect of which secured creditor has relinquished security interest
- Any other property vested in the corporate debtor on the insolvency commencement date
- All realization proceeds of liquidation

Exclusions -Section 36(4)

- Assets in the possession of corporate debtor but owned by third parties
- Assets in security collateral held by financial service providers
- Personal assets of shareholder or partner of corporate debtor
- Assets of subsidiaries (Indian/ foreign) of the corporate debtor
- Any other assets as may be specified by the IBBI

Distribution of liquidation Asset

