

# Insolvency and Bankruptcy Code, 2016.

## Insolvency

State where the Liabilities > Assets

If treated

If Untreated

It may lead to

Liquidation

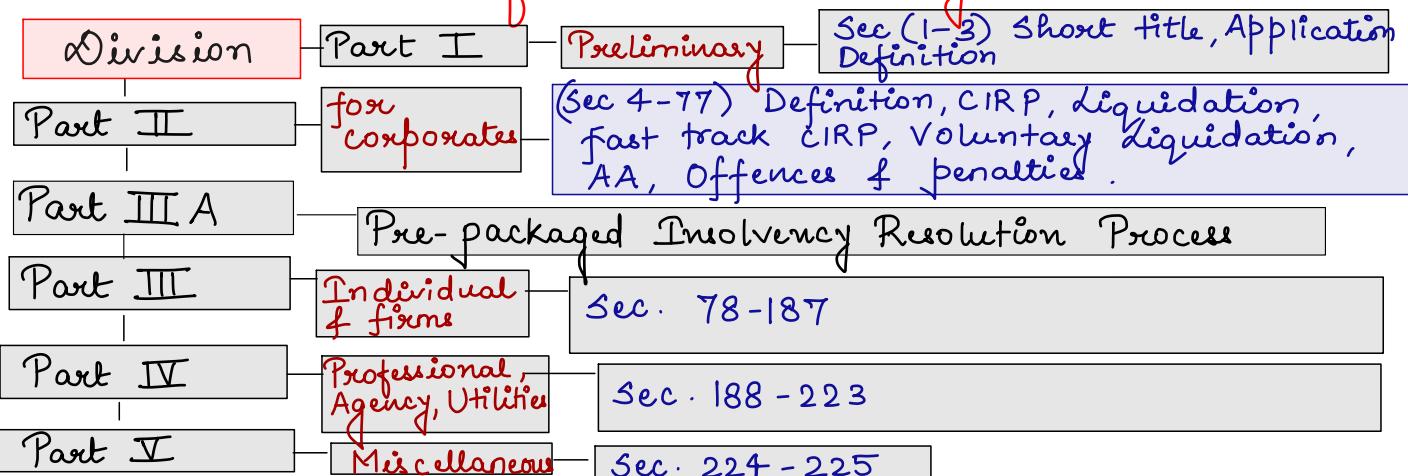
for corporates

Bankruptcy

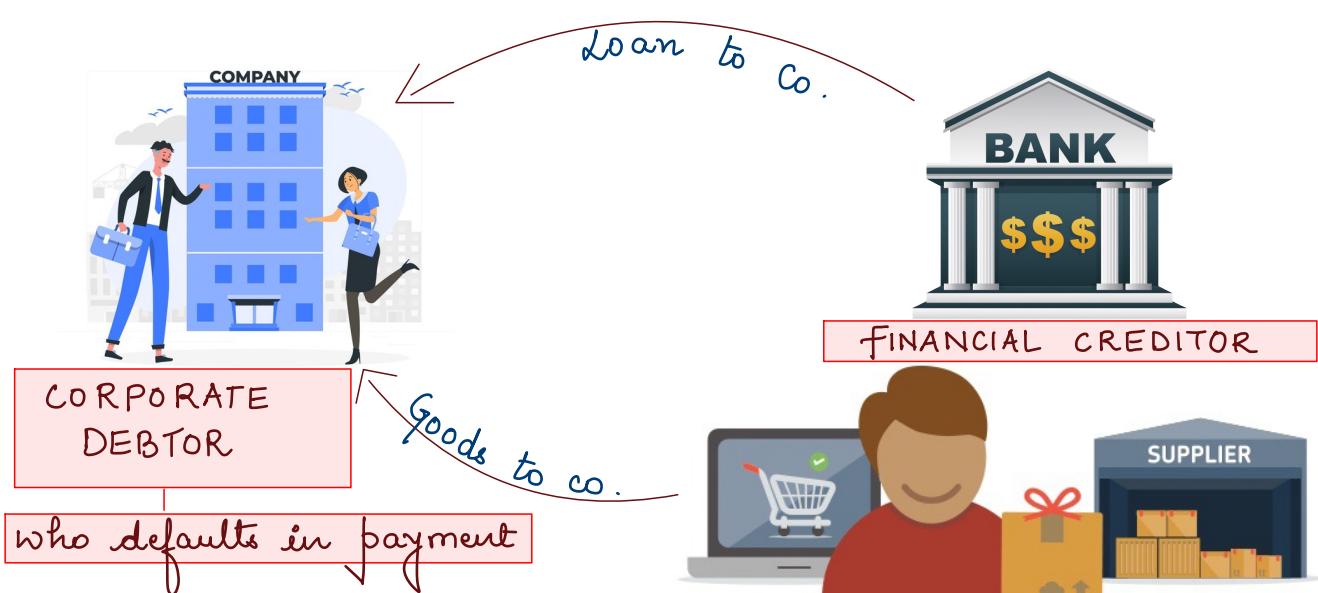
for Non-Corporates

Code which repealed and amended many laws.

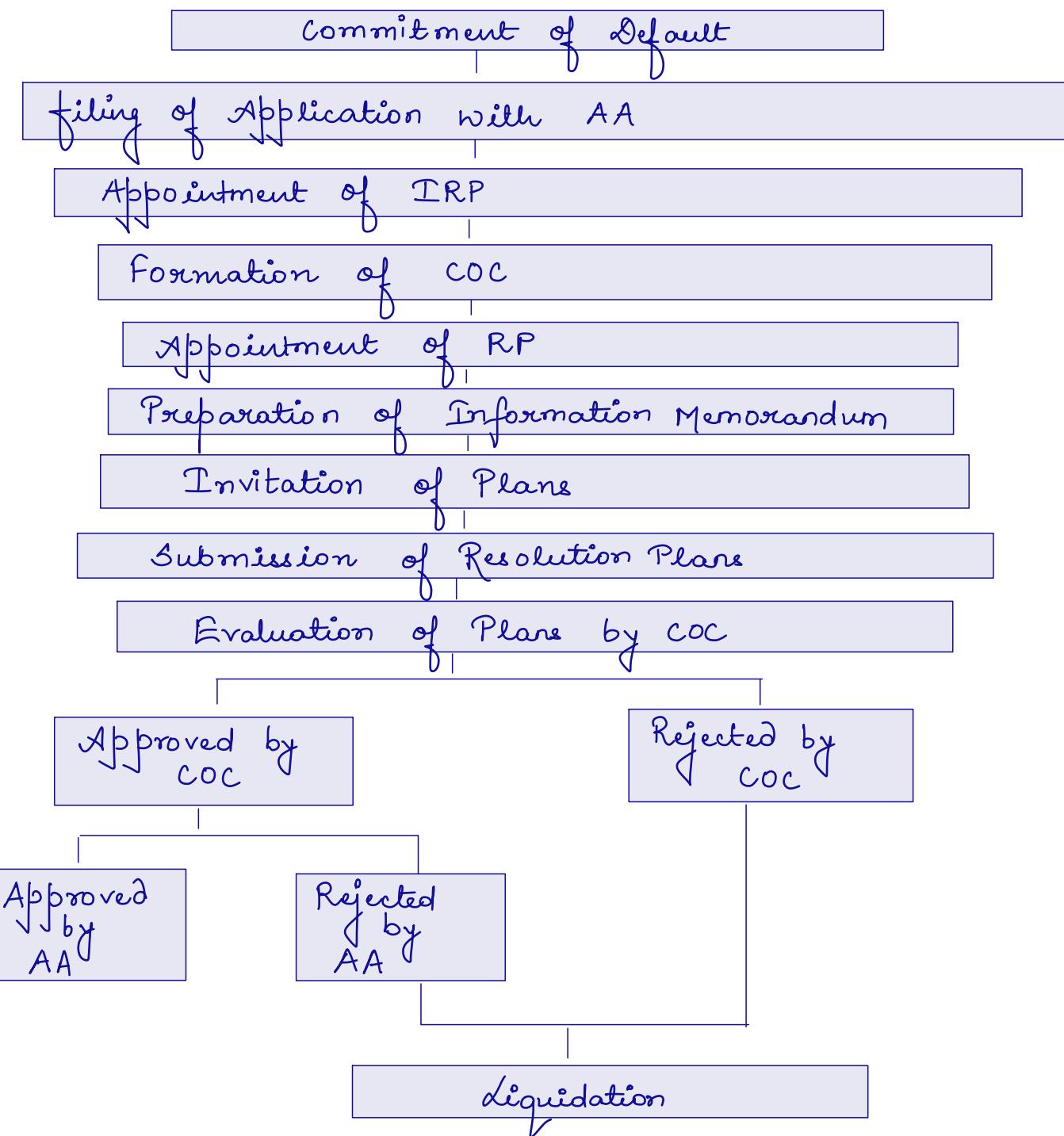
Came into force on 28th May 2016



## Parties under IBC

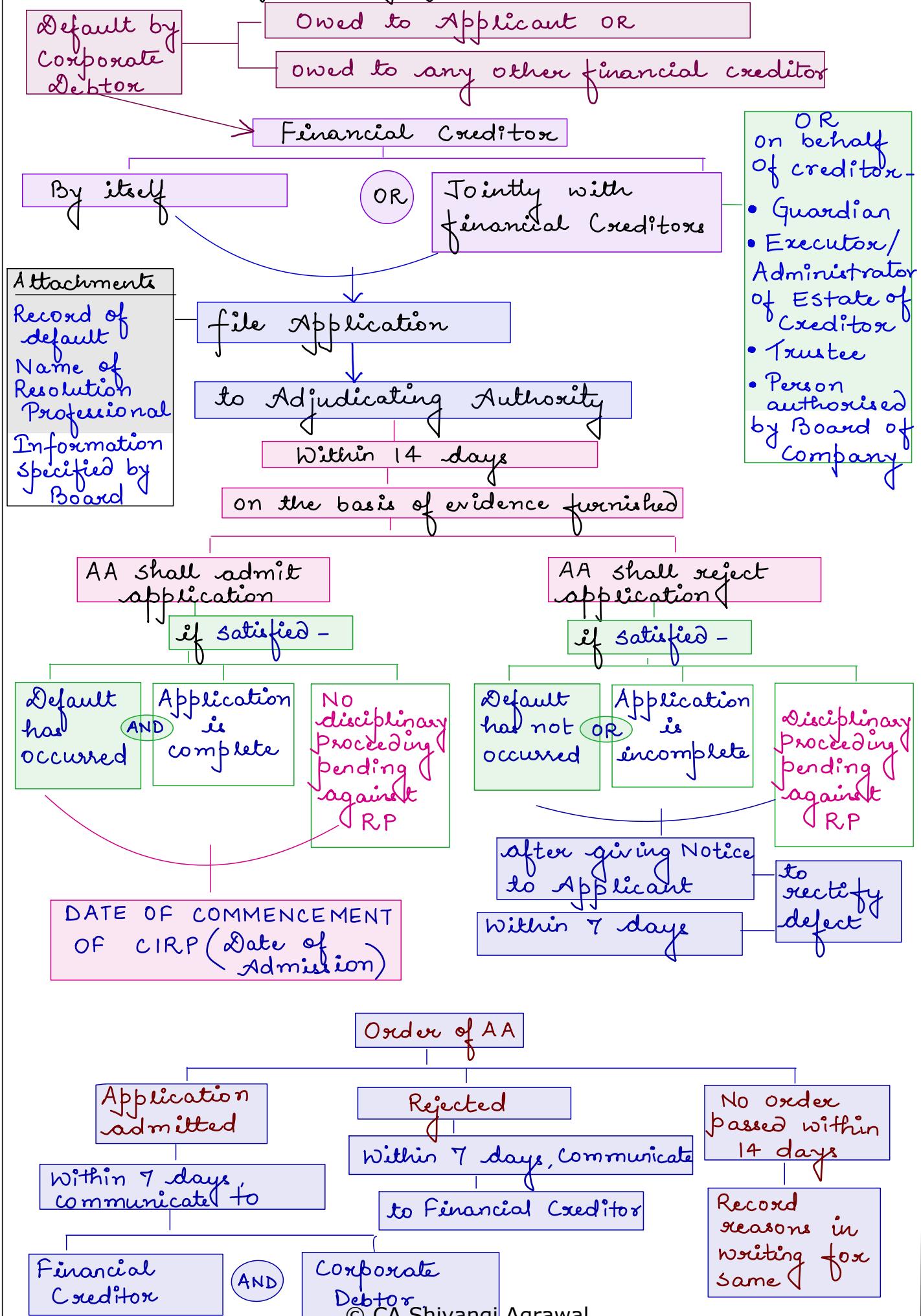


# CIRP Overview

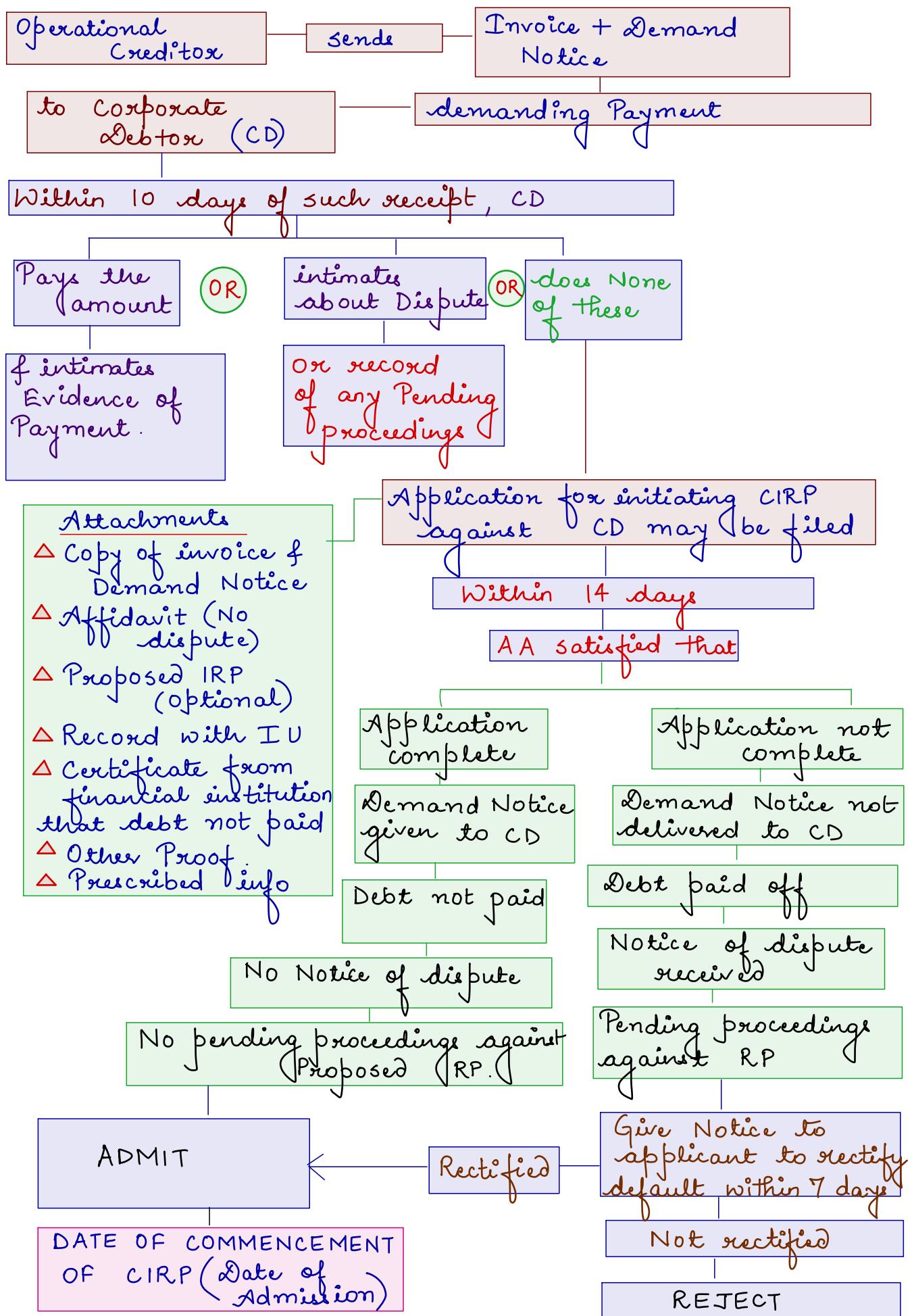


CIRP	Corporate Insolvency Resolution Process
IP	Insolvency Professional
IRP	Interim Resolution Professional
RP	Resolution Professional
COC	Committee of Creditors
CD	Corporate Debtor
AA	Adjudicating Authority - NCLT
Board	TBBI
RP	can mean Resolution Plan also

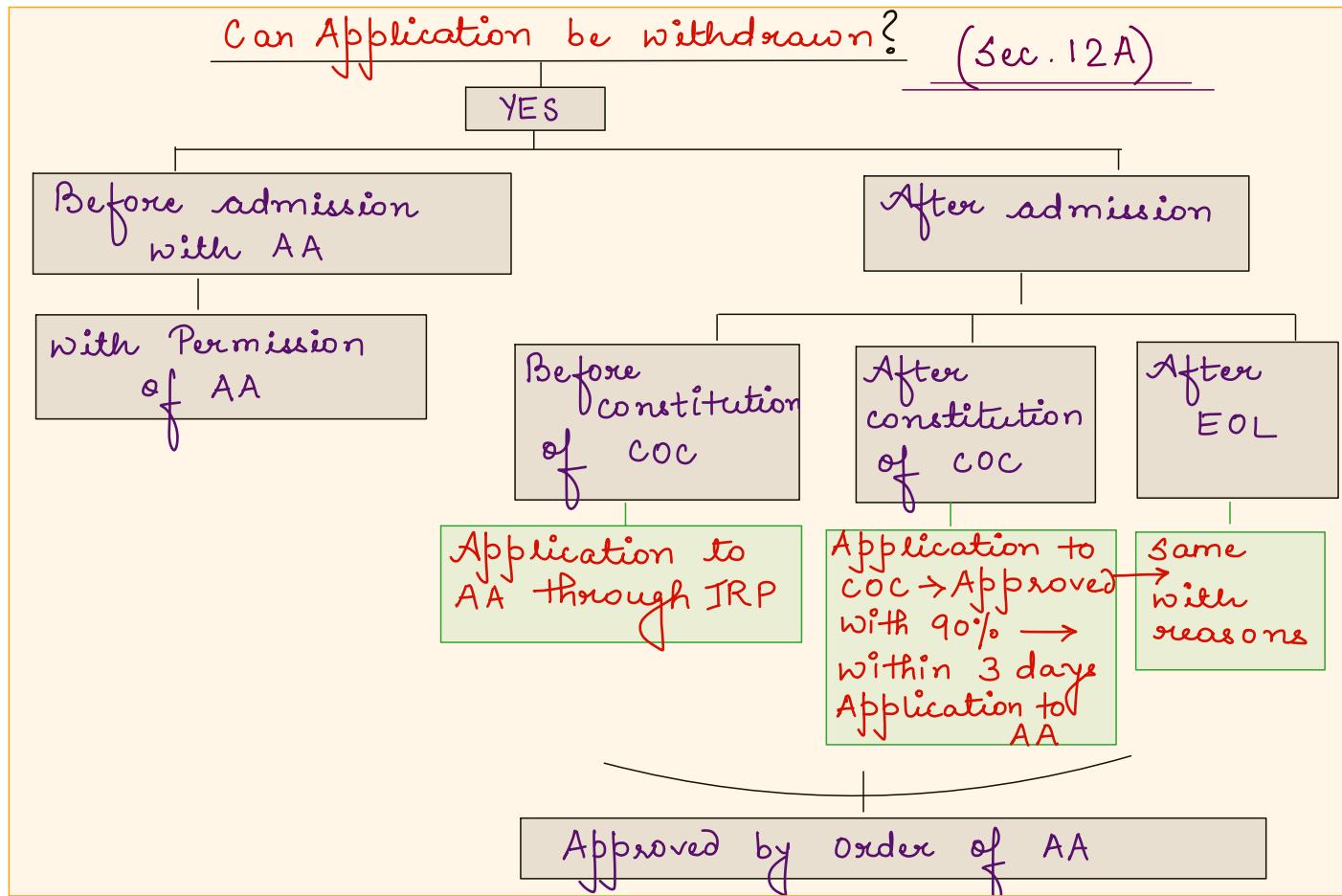
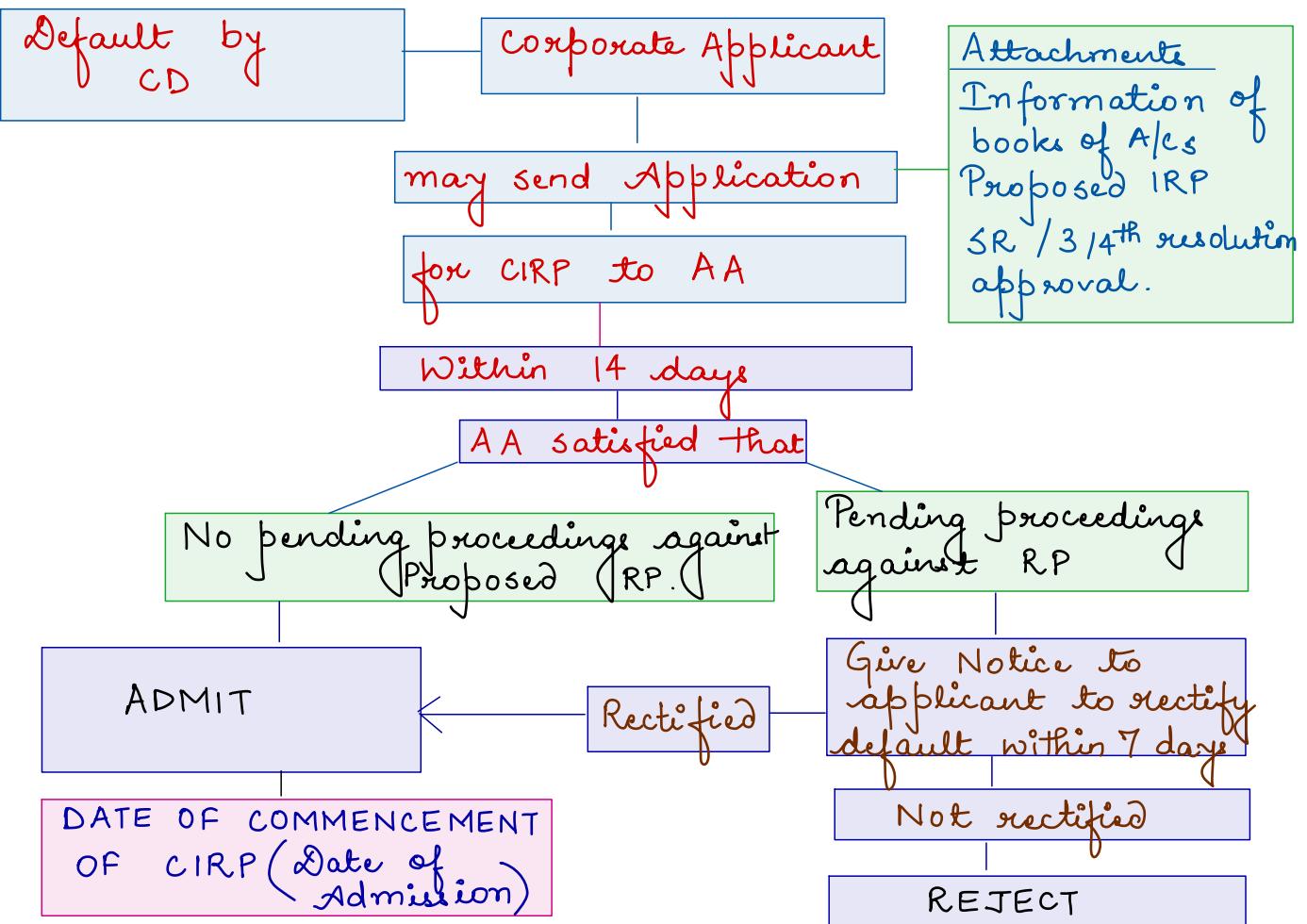
## Initiation of CIRP by financial Creditor (Sec. 7)



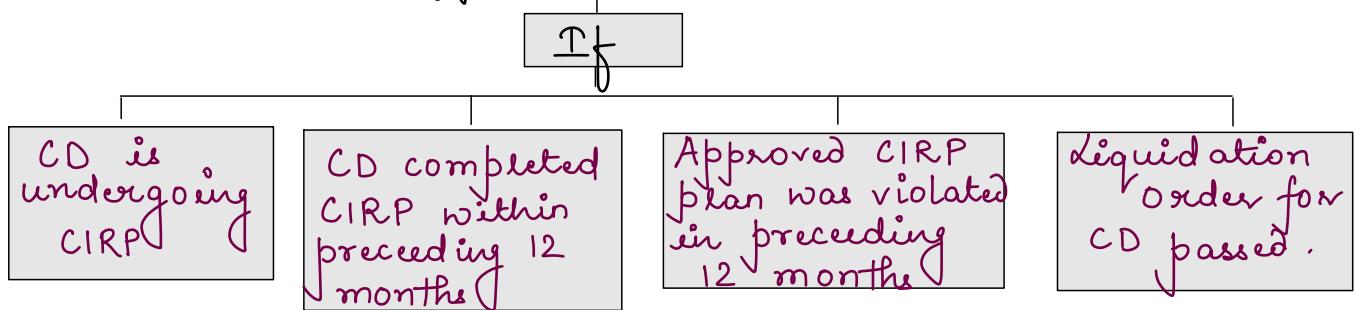
## Initiation of CIRP by Operational Creditor (sec. 8 + sec. 9)



## Initiation of CIRP by Corporate Applicant (Sec. 10)



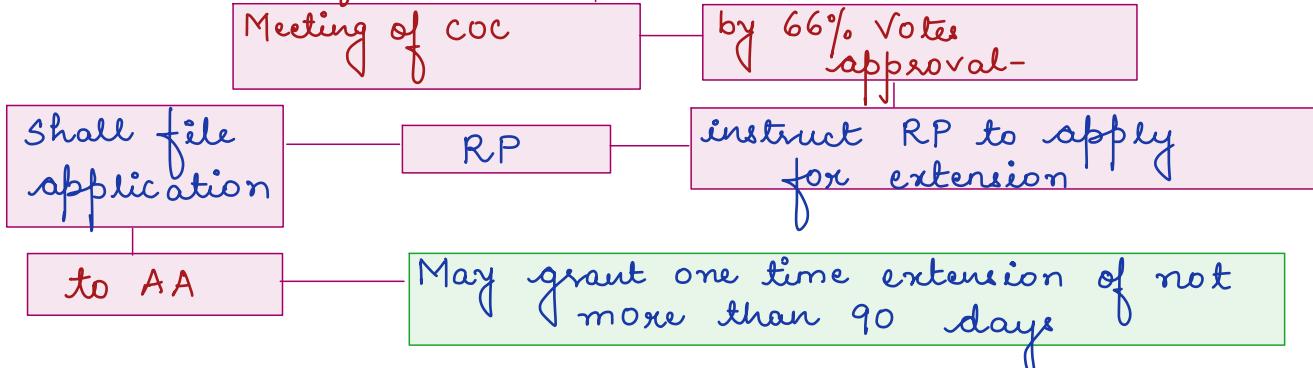
## When Application can't be made? (Sec. 11)



## Time limit for completion of CIRP (Sec. 12)

CIRP to be completed within 180 days from commencement

if not possible then -



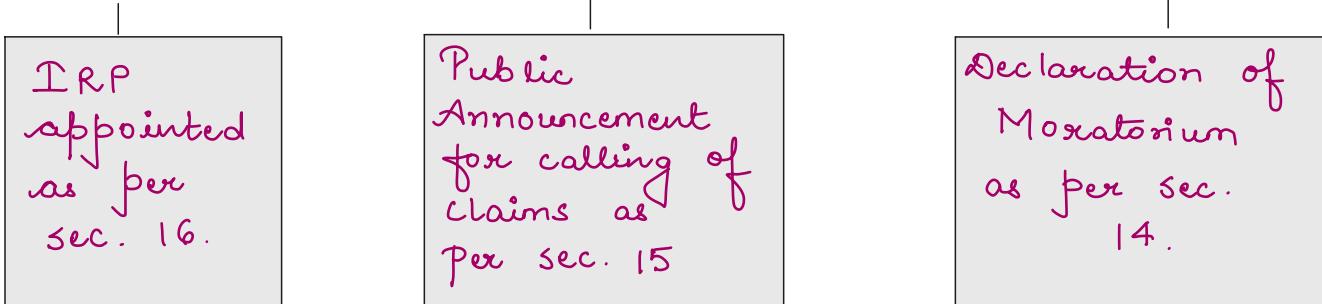
CIRP to be completed within 330 days (including extension and time in legal proceedings)

If Not -

Within 90 days from 16.08.2019 (Amendment Act 2019)

## After admission of Application

AA passes 3 Orders



## Moratorium (Sec. 14)

Delay or suspension of an activity.

On Insolvency commencement date, AA

shall prohibit -

Institution of suits/  
continuation of Pending  
suits against CD

Transferring /  
encumbering /  
disposing of Assets / legal  
right of CD

Recovery of any property by owner in possession of CD.

Execution of any Order of court/  
Authority

Action to foreclose/recover/enforce security interest

Supply of essential goods / services not to be Terminated & licensed by Regulator also suspended or interrupted.

N.A

→ Transaction notified by CG  
→ Surety who has given guarantee for CD.

### Tenure of Moratorium

Otherwise

If Resolution Plan approved

If liquidation order passed

Till date of such approval

Till date of such order

Till end of CIRP.

## Public Announcement (Sec. 15)

Immediately (within 3 days) of appointment of IRP

IRP to make Public Announcement

### Contents

Name & Address of CD

Authority under which registered

Details of IRP

Last date for submission of claims

Penalty for false claims

CIRP end date.

## Appointment of IRP (sec. 16)

CIRP application is made by -

Financial Creditor (sec. 7)

Corporate Debtor (sec. 10)

Operational Creditor (sec. 9)

If no disciplinary proceeding pending against Proposed RP

He shall be appointed as IRP

If no disciplinary proceeding pending against Proposed RP

He shall be appointed as IRP

Whether IRP is proposed in Application or not?

Yes

No

AA refers the matter to IBBI

within 10 days

IBBI recommends name.

Person so appointed shall continue till appointment of RP u/s 22.

### Powers of IRP :-

Management of affairs (of CD) by IRP

Board Powers suspended and to be exercised by IRP.

Officers to report to IRP and provide all docs.

Execute Deeds / Documents

Take actions specified by Board

Access electronic records from IU

Access books of A/c's, record with Authorities

Compliance with law

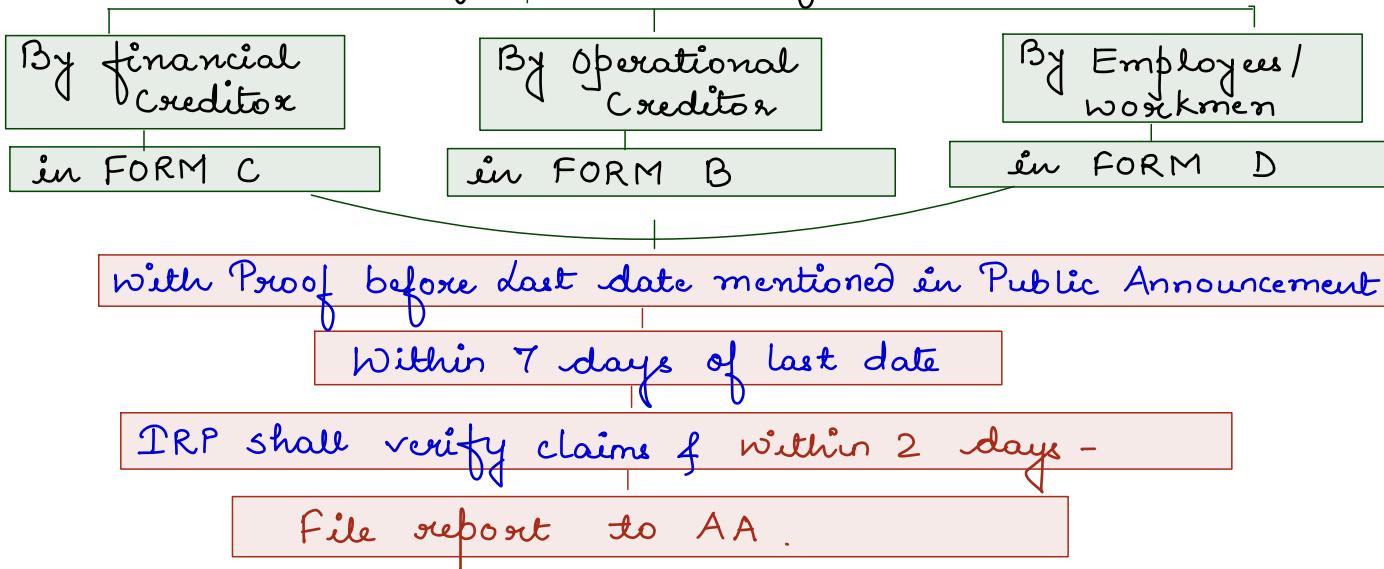
Financial Institutions to act on instructions of IRP and furnish information to IRP.

IRP shall endeavor to protect and preserve property of CD and manage operations as a going concern.

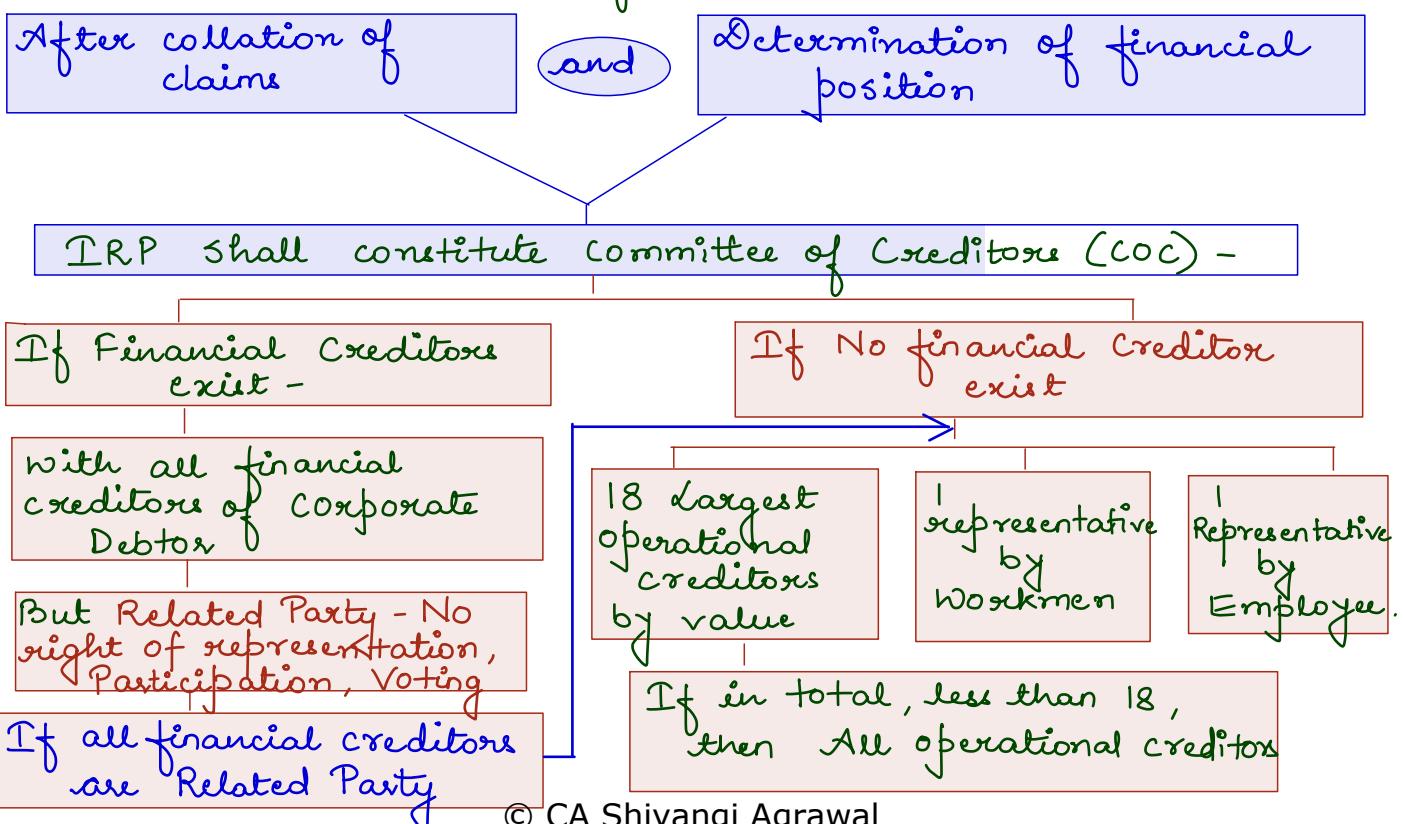
## Key Duties of IRP

- Collect info about assets, finances etc.
- Collate claims
- Constitute COC
- Monitor assets
- file info with IU
- Take control and custody of assets
- Perform duties specified

## Manner of submission of Claims



## Committee of Creditors (Sec. 21)



## Special Cases :

2 or more financial Creditors as a part of consortium

Person is financial as well as Operational Creditor

Operational creditor assigns his debt to financial Creditor

Each financial creditor shall be a part of COC

Voting Share to be proportionate to financial debt owed to him by CD

Assignee considered as Operational Creditor to the extent of operational debt owed

Voting right be in proportion of financial debts owed.

## Meeting of Creditors

Constitution of Committee

within 7 days

5 days Notice to Every Participant .  
May be reduced by COC to not less than 24 / 48 hrs.

Conduct 1st meeting of COC .

Notice

Representing 33% of Voting rights in person or by AV

Quorum

Voting

If not

Actions requiring approval shall be approved by vote of 66% / 51%.

Meeting adjourned to same time Place next day .

COC may demand any info relating to CD from RP and RP to furnish it within 7 days

## Appointment of RP (Sec. 22)

In the 1st meeting of COC, By 66% voter - Appoint

IRP as RP

Replace IRP

If written consent obtained

COC sends

Application (Proposed IRP + his consent) AA

COC communicates decision to -  
IRP  
Corporate Debtor  
Adjudicating Authority

within 10 days

to Board

forward it

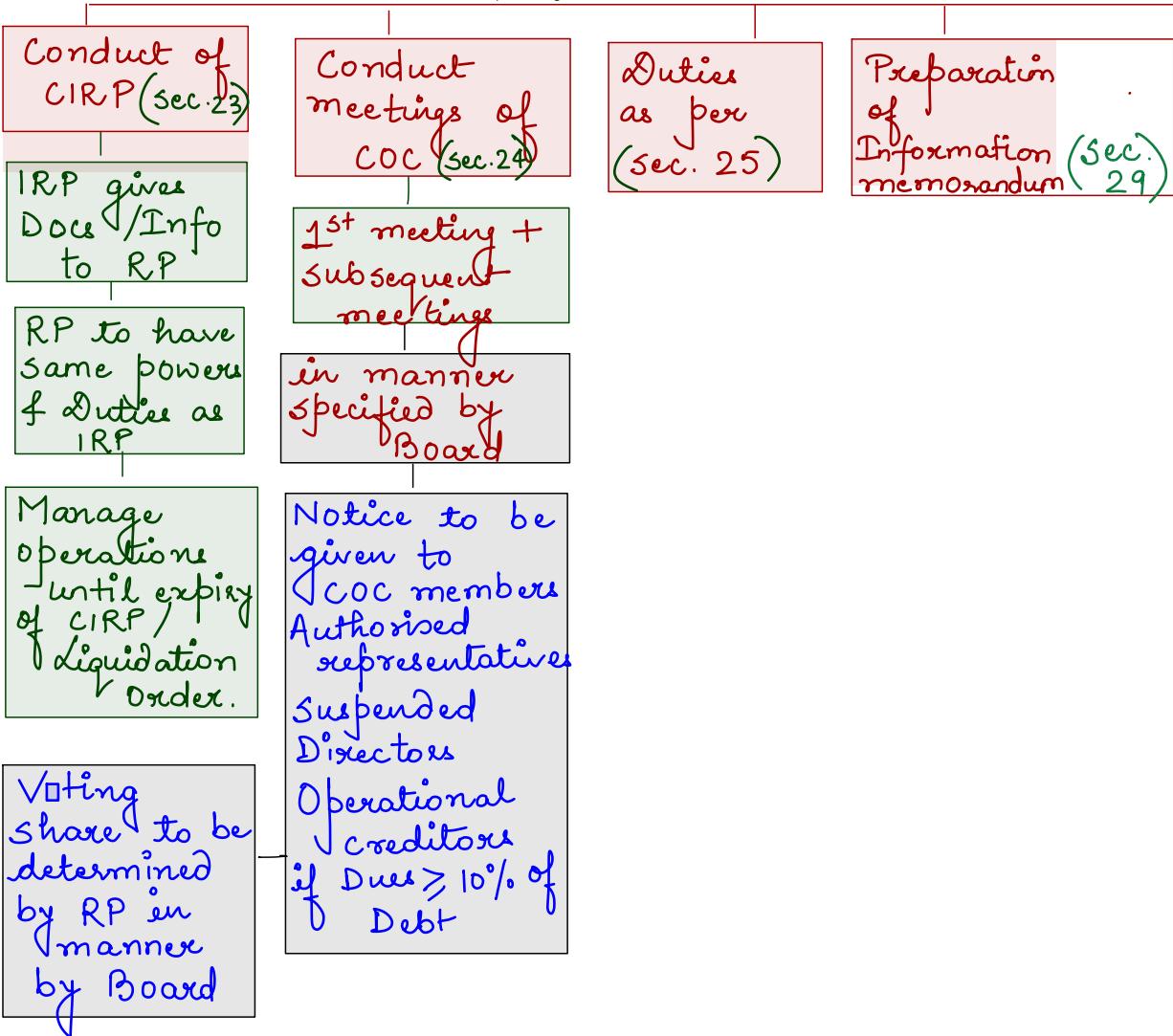
Confirms

Proposed RP appointed

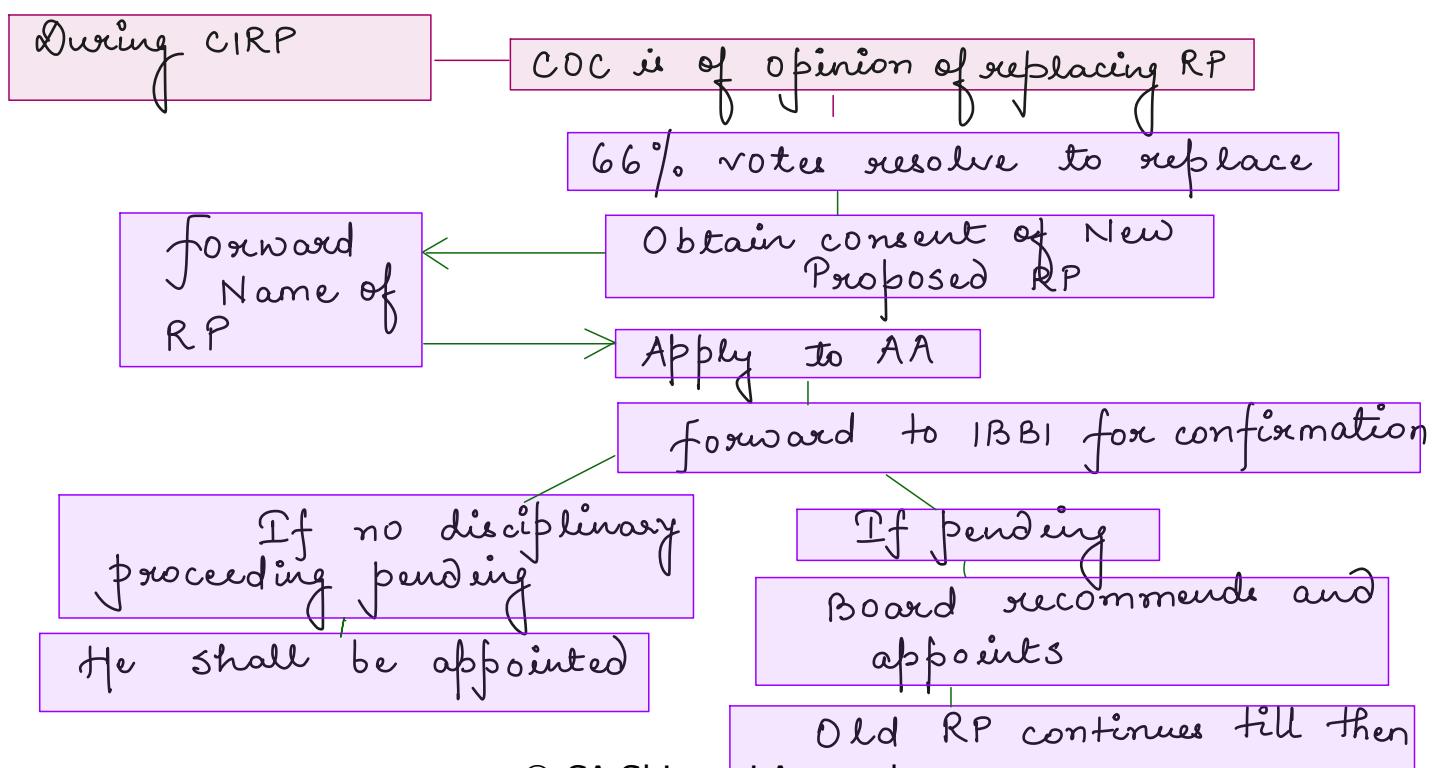
Board doesn't confirm

IRP continue as RP, until Board confirms other

## Duties of RP



## Replacement of Resolution Professional (sec. 27)



## Duties/Actions (Sec. 25) — Subject to Approval (Sec. 28)

Preserve, protect assets of CD and continue its business.	Take custody and control of assets
Exercise rights for CD's benefit in proceedings	filing of application for avoidance of transactions (chapter II)
Maintain updated list of claims.	Appoint required accountants, professionals etc.
Represent CD while 3rd party dealings	Other actions as specified by Board.

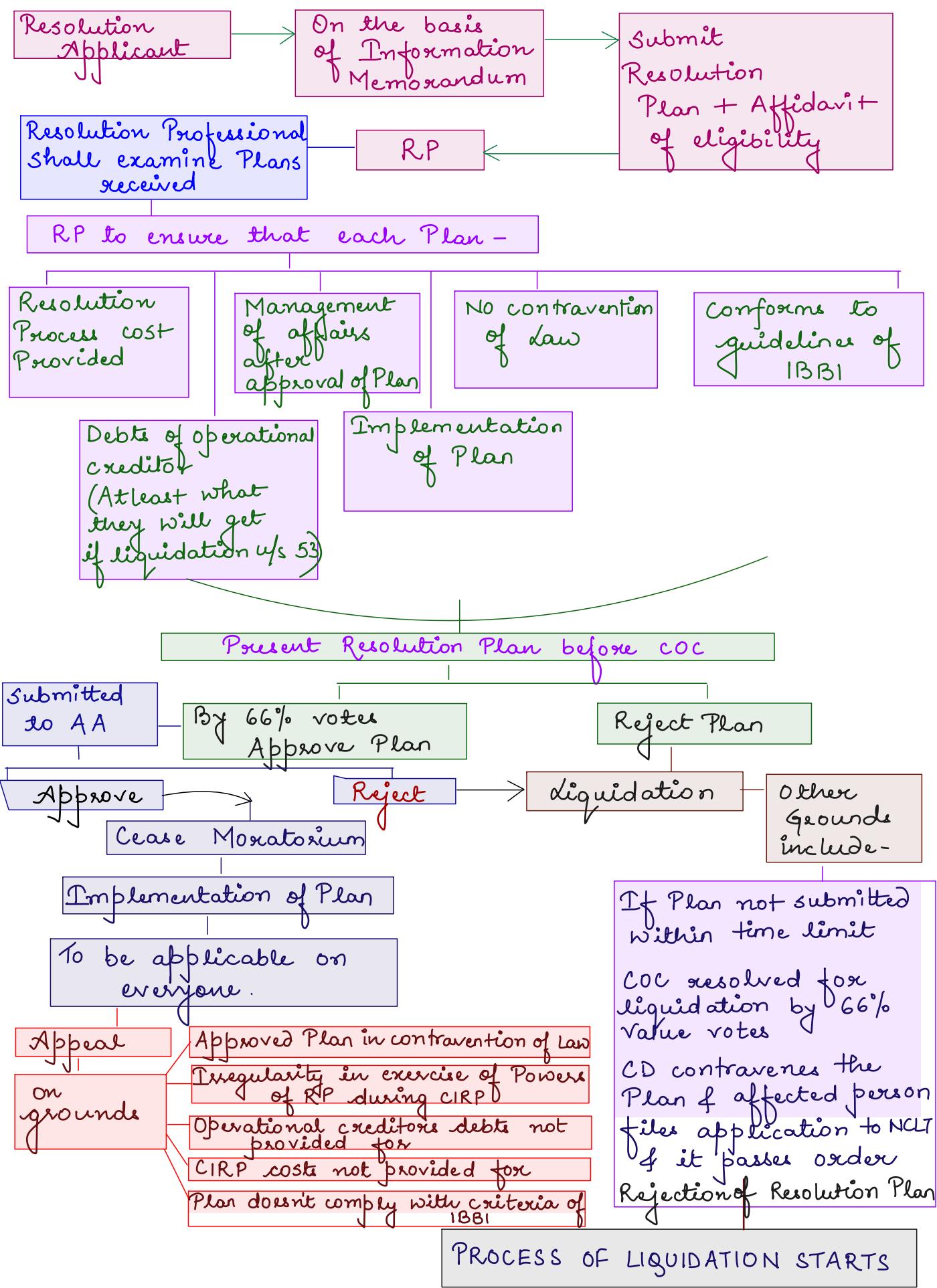
Invite Prospective resolution applicants to submit resolution plan from eligible **resolution Applicants**

### Section 29A

#### Person not eligible

Undischarged insolvent	Wilful defaulter according to RBI
Disqualified as a director under companies Act.	Prohibited by SEBI for trading
Has an account classified as NPA and 1 year or more elapsed from such date.	convicted for offence - imprisonment - 2 years/more (Twelfth schedule)
Promoter/in mgmt of corporate Debtor in which Preferential/Under valued / fraudulent transaction convicted for offence - imprisonment - 7 years/more (under any other law)	Executed Guarantee in favour of Creditor in respect of CD against which application for resolving insolvency admitted and such guarantee invoked by creditor and remains unpaid
Disability as above under foreign law	Connected Person not eligible

## Submission of Resolution Plan (Sec. 30)



Order of liquidation may be passed on above grounds

Deemed to be notice of discharge to Employee etc.

Appointment of liquidator

except where business  
is continued

Resolution Professional to  
act as liquidator  
Subject to his written  
consent

Shall have all  
powers of BOD, KMP

and personnel to extend  
all assistance to  
liquidator

If

Plan was  
rejected on  
failure to  
meet  
requirements

OR

Board  
recommends  
replacement  
of RP for  
reasons in  
writing

OR

RP doesn't  
give  
written  
consent

AA  
directs Board  
to propose a  
name

within  
10 days

Name  
is proposed  
with  
written  
consent

Such IP  
is appointed  
as liquidator

### Powers and Duties of Liquidator (sec. 35)

Verify claims, Invite and settle claims

Take into custody all assets etc.

Evaluate Assets & Property & prepare report

Protect assets / properties  
carry business

Sell property by auction/transfer / in specified manner

Draw, accept, make, endorse Negotiable Instrument

Take out in official name letter of administration to  
deceased contributory

Obtain professional assistance

Institute suit

Investigate affairs - Undervalued/ Preferential transactions

To take all actions to sign / execute / verify deed, document  
bond etc.

Apply to AA for necessary orders, Other specified functions

Liquidator also has power to access info. Creditor may require liquidator to provide any financial info to them -  
AND Liquidator → within 7 days → Provide info / reasons for not doing so.

## Liquidation Estate

Inclusions	Exclusions
Assets over which CD has ownership rights	Owned by 3rd party in CD's possession
Encumbered Assets	Collateral held by financial service providers
Tangible / Intangible Assets	Personal assets of shareholder / Partner
Ownership of Assets determined by court	Assets of Indian / foreign subsidiary
Assets recovered through proceedings	Other assets specified by Board
Assets issued as collateral over which creditors have relinquished right	
Proceeds of liquidation	
Property at Insolvency commencement	

## Consolidation of Claims (Sec. 38)

### Commencement of Liquidation Proceedings

Within 30 days

Liquidator to collect claims of Creditors with record with Information Utility / supporting doc

Verify claims within 30 days from last date of receipt of claims

May withdraw or vary within 14 days of submission

May require other document and then, it may -

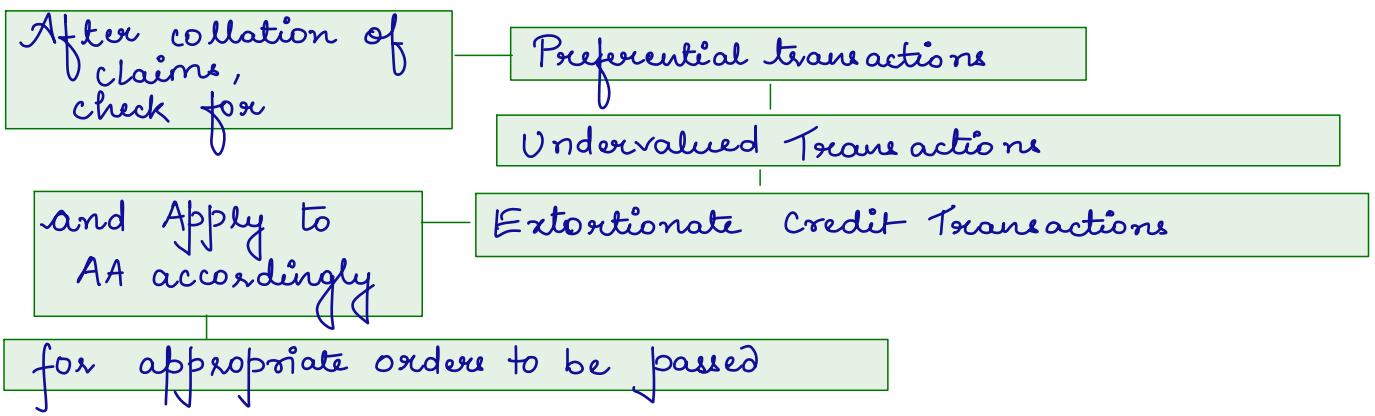
Admit

Reject

Record reasons

Appeal within 14 days of receipt of such Decision to AA

Liquidator shall determine value of claims in manner



### Distribution of Assets (Sec. 53)

- 1 I.R.P and liquidation costs in full
- 2 Workmen's Dues for 24 months preceding liquidation commencement date  
AND  
Debt of secured creditor
- 3 Wages and Unpaid dues to employee other than workmen for preceding 12 months
- 4 Financial Debt to unsecured creditor
- 5 Amt due to CG/SG  
AND  
Debt of Secured creditor unpaid following enforcement of security Interest
- 6 Remaining Debts and Dues
- 7 Preference shareholders
- 8 Equity shareholders / Partner

Any contractual arrangement with equal ranking if disrupting order of priority shall be disregarded

Liquidator shall distribute proceeds within 90 days from receipt of Amount to stakeholders

When assets completely liquidated

Liquidator shall make application to AA for dissolution

## Bankruptcy Process for Individuals.

Application of Bankruptcy in case of fraud/rejection/ Non-satisfaction

Intervim Moratorium

Appointment of Insolvency Professional as Bankruptcy Trustee

Passing of Bankruptcy order

Invitation and registration of claims

Calling of meeting of creditors by Bankruptcy Trustee

Apply to AA within 7 days for release.

Order by AA

Discharge of Bankruptcy Trustee