

INSOLVENCY AND BANKRUPTCY CODE, 2016

Ashapurna Bordoloi

PURPOSE

The Insolvency and Bankruptcy code was enacted with the aim of promoting entrepreneurship, availability of credit, and balance the interests of all stakeholders

It consolidates and amending the laws relating to reorganization and insolvency resolution.

The purpose of IBC is to carry out insolvency proceeding in a time bound manner.

The time frame for viability determination and evaluation should not be more than 180 days.

SCOPE AND APPLICATION

This Act applies to the following:

- Corporate Enterprises;
- Limited Liability Partnership and Partnership Firms
- Individuals.

It applies in the case of the following:

- Insolvency
- Liquidation
- Bankruptcy

Section 238: The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Class reading:

Power Grid Corporation of India Ltd. Vs Jyoti Structures Ltd,

TIME BOUND RESOLUTION

TIME BOUND RESOLUTION

- Insolvency resolution [Chapter 2 of part II]

180 days + 90 days (extension) = 270 days

- Fast track Insolvency resolution [chapter 4 of part II]

90 days + 45 days (just once) = 135 days

STRUCTURE OF THE CODE

The Code has **255 sections** which are divided into **5 Parts**

Part I
Preliminary
(Definitions)

Part II
Insolvency Resolution
and Liquidation for
Corporate
Persons

Part III
Insolvency
Resolution and
Bankruptcy for
individuals and
Partnership Firms

Part IV
Regulation of
Insolvency
Professionals, Agencies
and Information
Utilities

Part V
Miscellaneous (enables
amendments in other
statutes such as
Companies

Act 2013)

IMPORTANT AUTHORITIES

1. Insolvency and Bankruptcy Board of India

Chapter 1 of the Part 4 deals with the board

One of the first and also important authorities that has been set up by this Act is the Insolvency and Bankruptcy Board of India (IBBI) via **section 188**.

Chapter 2 deals with the powers and functions of the Board.

This Board has been vested with the task of registering, regulation and inspection of Insolvency Professional agencies, Insolvency professionals, and Information utilities.

Make model by laws in that regard.

2. Insolvency Professional Agencies

Section 3 (20) Any person registered with the Board under sec 201.

Chapter 2 of part 4 of this Code deals with Insolvency Professional Agencies in the sections 199, 200 and 201.

The power to register and regulate these agencies lies with the IBBI . The IPA have the right to appeal against any decision of the Board may appeal u/s 202- authority

3. Insolvency professionals

Section 3(19) Any person registered u/s 207 with IBBI and enrolled u/s 206 with IPA.

Chapter 4 of Part 4 deals with the powers and functions of IPs in the matters of insolvency resolution, fresh start, liquidation or bankruptcy proceedings.

4. Information Utilities

Section 3(21) A person registered with IBBI u/s 210

Chapter 5 of part 4 deals with the registration, functions, services of the IUs. It also deals with the procedure to submission of information and rights and obligations of a person making such submissions.

Section 211 also gives IUs the right to appeal to NCLT

ADJUDICATING AUTHORITIES

Section 5 (1) of IBC

NCLT

DRT

Corporate
entities,
LLPS
companies

Individuals
and
partnership
firms

People who can Invoke provisions of IBC

Section 6

- 1. Financial creditor:** u/s 5(7) Any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. [section 7]
- 2. Operational creditor:** u/s 5(20) A person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. [section 8, 9]

3. Corporate applicant: U/s 5 It includes corporate debtor, a member or partner of the corporate debtor, an individual who is in charge of managing the operations of CD, a person who has the control and supervision over the financial affairs of CD. A corporate debtor himself can file an application for initiating corporate insolvency. **[section 10]**

INDIVIDUAL BANKRUPTCY

Part III deals with it

Part V

Section 243 of the Code provides that Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 will be repealed.

However,

‘clarified that Section 243 of the Code which provides for repeal of said enactments has not been notified till date and further, provisions related to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it is advised that stakeholders who intend to pursue their insolvency cases may approach appropriate authority/court under the existing enactments, instead of approaching the Debt Recovery Tribunals.’

Source: <https://taxguru.in/income-tax/no-repealment-of-presidency-towns-insolvency-act-1909-provincial-insolvency-act-1920.html>

PART II

Corporate Insolvency Resolution Process

This is dealt by the Part II of the Act, which is

divided into:

Insolvency
Resolution
Chapter II

Liquidation
Process
Chapter III

Fast Track
Insolvency
Resolution
Chapter IV

Voluntary
Liquidation of
Corporate Person
Chapter V

Adjudicating
Authority for
Corporate Persons
Chapter VI

Offences and
Penalties
Chapter VII

INSOLVENCY RESOLUTION – CHAPTER 2

Process of filing an application for IR

After filing an application for insolvency resolution to

the NCLT,

All the information should be furnished to UI along
with the name of resolution professional,

If NCLT satisfied, admits it, if not rejects it, within 7
days for FC and 14 days for OC and CD.

Section 11 Persons not entitles to make an
application.

Time of completion of Insolvency Resolution

Section 12 provides for the time frame within which the insolvency resolution should be completed.

180 days from the date of admission of the application,

Extension if the passed by Committee of creditors by a vote of 75% up to 90 days.

Granted just once

Process of execution of RP

NCLT makes a public announcement under section 13

declares a moratorium.

After that an interim resolution professional is appointed within 14 days with a term of 30 days under section 16.

From there on management of affairs of CD and all other business under IRP (section 17, 18, 19, 20 and 21).

U/s 21 a Committee of creditors is formed

Either continuance of IRP or appointment of new Resolution Professional within 10 days, in a meeting within 7 days of formation of CC, by the CC.

Section 25 lists down the duties of RP.

Refer to the bare act.

Amendment Act passed on 1st January 2018 replaced the clause h, by the following:

"(h) invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans."

CC can replace RP u/s 27

Section 28 provided that RP should take permission of CC before taking certain actions, on non compliance, CC will report to the Board.

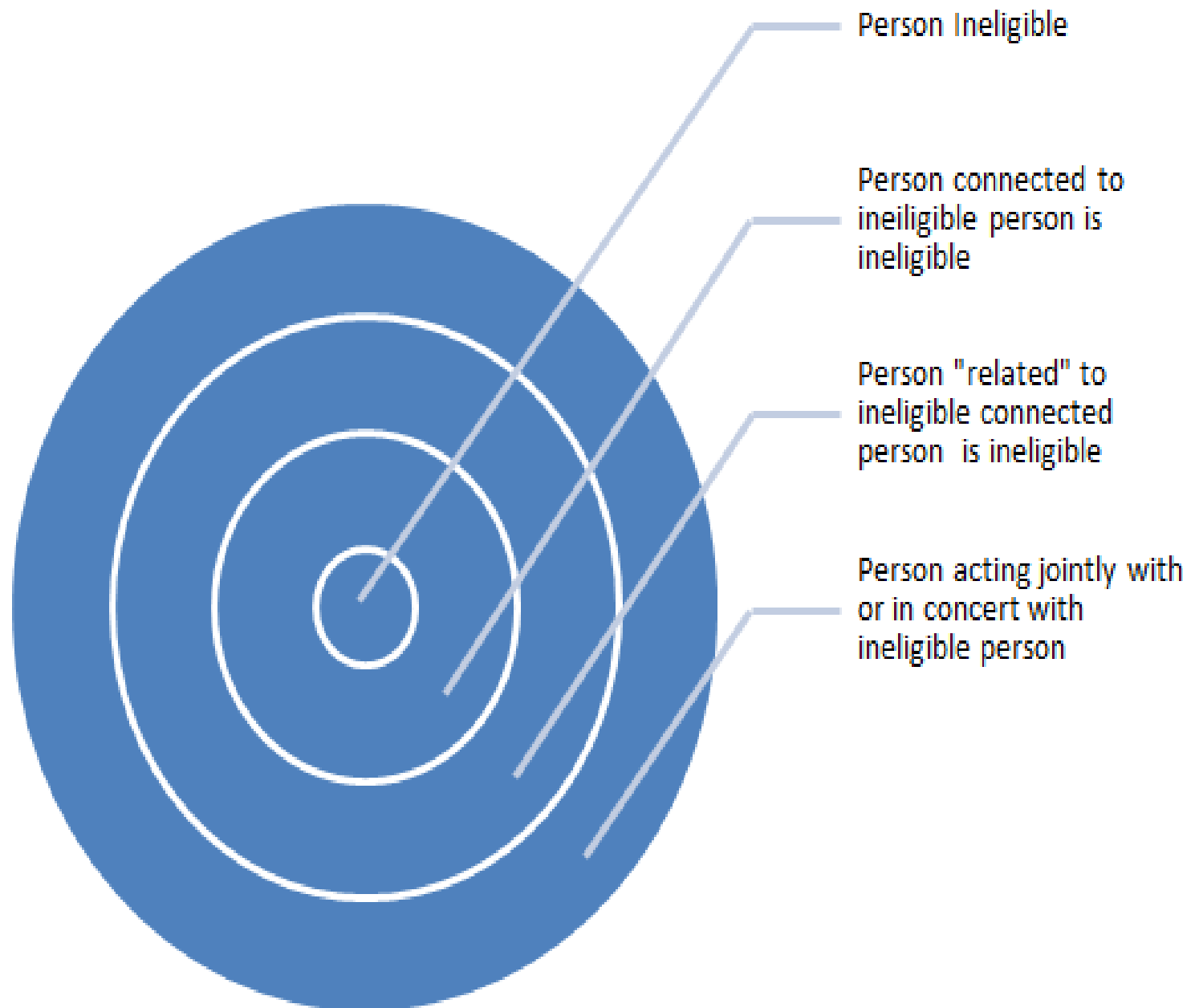
Section 29 provides for the RP to prepare an information memorandum and grant the resolution applicant access to all relevant information to make a resolution plan.

Via 2017 Amendment Act a sub section to 29 was inserted.

Section 29 A and need for 2017 Amendment

The purpose of this section is to state the people who are not eligible to submit a resolution plan., so that IBC is not used by wilful defaulters and likes, it also includes people outside the jurisdiction of Indian laws.

Section 29A is a restrictive provision- any person falling in the negative list is not eligible to submit a resolution plan.



Before 29A, every individual or body corporate can participate in a bidding process of Corporate Debtor which is subject to CIRP irrespective of being original promoter, director or person connected to them directly or indirectly.

It could be misused by persons who by their misconduct or fraudulent motives, contributed to the default of the Corporate Debtor, to regain the control of their company again by bidding.

Section 29A was introduced to disqualify only those, who had contributed in the downfall of the corporate debtor or were unsuitable to run the company because of their antecedents whether directly or indirectly. The Section 29A of the code made it clear, once you make your company an NPA account, you better find out a way to pay up or be ready to lose the Ownership.

- Any person or person acting in concert with a person whose account is classified as NPA for the past one from commencement of insolvency proceedings, unless they off the entire debt along with interest before submission of resolution plan.
- A person who has executed enforceable guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Code.

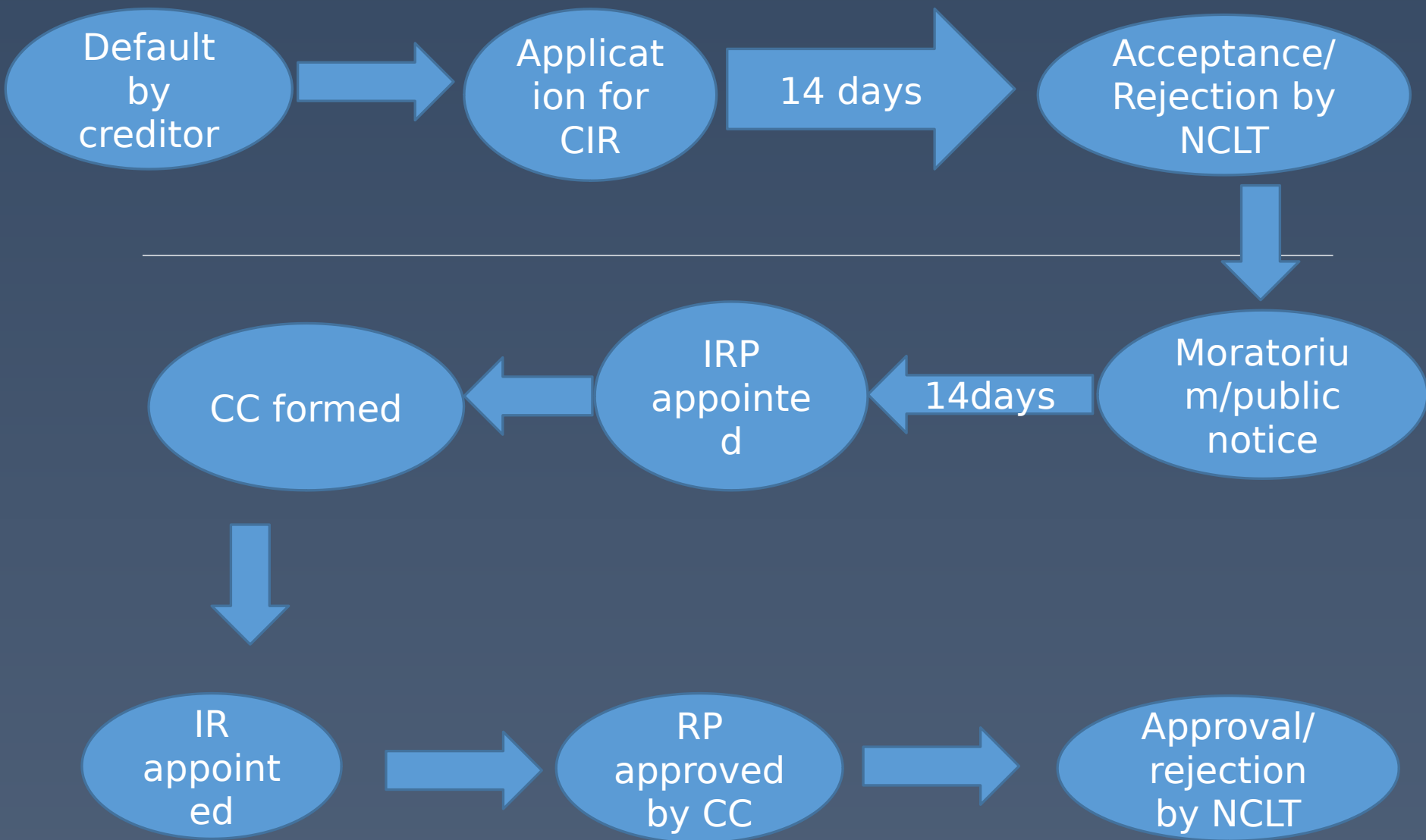
Class reading:

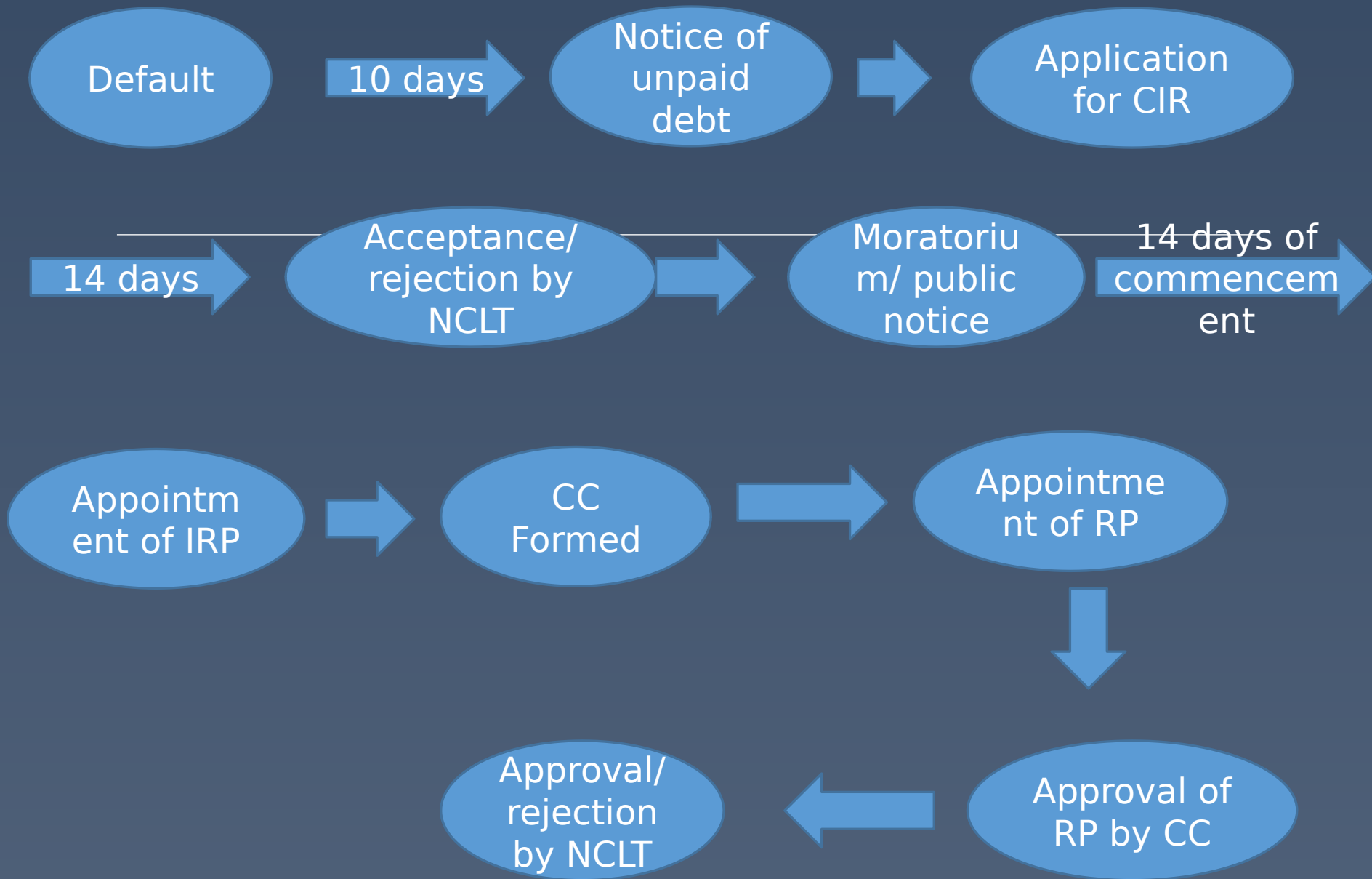
RBL Bank Ltd. v. MBL Infrastructures Ltd.

[CA(IB) No, 2017.]

Followed by submission of resolution plan u/s 30 to NCLT after receiving approval from CC by 75% of votes.

Section 31 NCLT approves it or rejects it.





Class reading:

Neelkanth Township and Construction Pvt Ltd V Urban Infrastructure
Trustee Limited, 2017 NCLT- Section 7

Synergies Dooray Case

LIQUIDATION PROCESS – CHAPTER 3

If an insolvency resolution is not in place within the time frame (section 12 and 56) then NCLT will pass a liquidation order. [u/s 33].

It can be initiated:

- Suo Moto
- RP by application
- Any person whose interest is prejudicially affected.

After an order has been passed u/s 33 for liquidation, a public announcement is made by NCLT.

~~An official liquidator is appointed-~~ the RP earlier appointed acts as a liquidator.

The liquidator should have access to all information needed for proof of claim and identification of liquidation estate assets.

Wider power than CA, 2013- no permission needed from NCLT

Consolidation of claims within 30 days from commencement of the process.

Verification, accept/reject claims.

Avoid referential, undervalue, extortiating credit defrauding transactions (Section 45 to 51)

Order of priority payment on liquidation u/s 58

- Liquidation charges
- Workmen due and secured creditors

- Wages and unpaid dues to employees
- Unsecured creditors
- Government
- Secured creditors after enforcement of security
- Remaining debts
- Preference shareholders
- Equity shareholders

PART III

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Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms

Fresh Start
Process
Chapter 2

Insolvency
Resolution
Process
Chapter 3

Bankruptcy order for
individual and PF
Chapter 4

Admission and
distribution of
assets
Chapter 5

Adjudicating
Authority
Chapter 6

Offence and
Penalties
Chapter 7

FRESH START PROCESS

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Fresh start process for discharge of qualifying debts :

This was introduced with the intent to give another chance to those set of individuals whose income is less. (Section 80, 81)

Appointment of RP

Examination, accepted /rejected of application by DRT

Effect: Moratorium for 180 from date of admission

Refer bare act

Section 85 (3) (f)

Class reading:

SBI V Prafulchandra. V. Patel and ors, 2010

INSOLVENCY RESOLUTION PROCESS

Insolvency Resolution Process

Can be initiated by:

- Debtor (section 94)

- Creditor (section 95)

Same process

Creditors register their claims u/s 103

Prepare a repayment plan and submit to DRT along with a report which will have the details of the next CC meeting.

CC approves plan.

DRT approves or rejects

If rejected can file for bankruptcy

Section 121 provides for filing an application for
bankruptcy, the circumstances

Section 122 by debtor

Section 123 by creditor

Interim moratorium

Appointment of Bankruptcy trustee Section 125

Bankruptcy order within 14 days of confirmation
of bankruptcy trustee.

INFORMATION UTILITIES

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National E-Governance Services Limited (NeSL) is the first Information Utility to be granted license to function as IU under IBC.

IBBI has issued IBBI (Information Utilities) Regulations, 2017 to provide a framework for registration and regulation of IUs. For laying down Technical Standards of IUs, a Technical Committee was constituted on May 3, 2016 under the chairmanship of Dr. R. B. Barman, which submitted its first report on 16th August 2017. Based on the recommendation of the Committee the Board has laid down Technical Standards to ensure and enforce the reliability, confidentiality and security of financial information to be stored by UU.