

LIMITED INSOLVENCY EXAMINATION THE INSOLVENCY AND BANKRUPTCY CODE, 2016

MODULE: CORPORATE INSOLVENCY RESOLUTION PROCESS

PRESENTED BY

CA IP REVATHI RAGHUNATHAN

ACKNOWLEDGEMENT

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SYLLABUS OF THE EXAM

SL.NO	SUBJECT – On IBC	WEIGHT %
1	The IBC 2016 (Whole code) (255 sections)	10
2	Rules and Regulations under the IBC 2016	15
3	Case Laws – Supreme Court, High Court, NCLAT, NCLT – relating to CIRP, Corporate Liquidation, Voluntary Liquidation and Fast Track Resolution process – (5 questions of 2 marks each)	10
4	Case Study on CIRP and Liquidation. There will be one comprehension narrating a case and there will be ten questions based on the case carrying two marks each.	20
5	Case Analysis on Individual Insolvency Resolution and Bankruptcy. There will be one comprehension narrating a case and there will be four questions based on the case carrying two marks each.	08
6	Case study on Companies/Firms and LLP. There will be one comprehension narrating a case and there will be three questions based on the case carrying two marks each	06
7	Case study on Business and Professional Ethics. There will be one comprehension narrating a case and there will be three questions based on the case carrying two marks each	06

SYLLABUS OF THE EXAM

SL.NO	SUBJECT	WEIGHT %
8	The Companies Act (13 Chapters), the LLP Act and the Partnership Act	04
9	The Contract Act, NI Act, TPA, CPC, OCA, PMLA, RDBA, A&C Act, SARFAESI, MSME, RERA, SCRA, SEBI	11
10	Finance and Accounts (Corporate Finance; Financial Analysis; Liquidity Management; Tax Planning and GST)	05
11	General Awareness	05

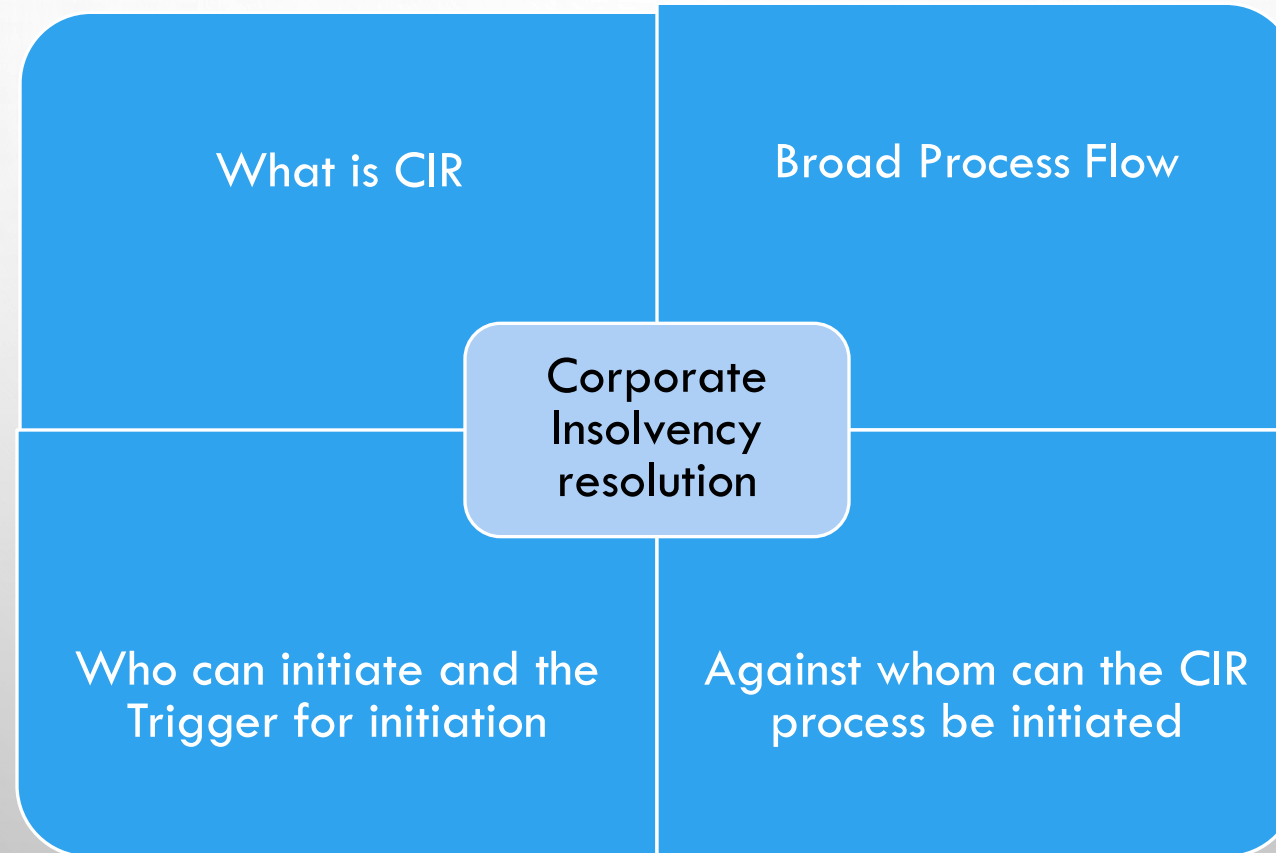
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MODULE: CORPORATE INSOLVENCY RESOLUTION PROCESS

OVERVIEW AND SECTION 4



WHAT IS PART II OF THE IBC

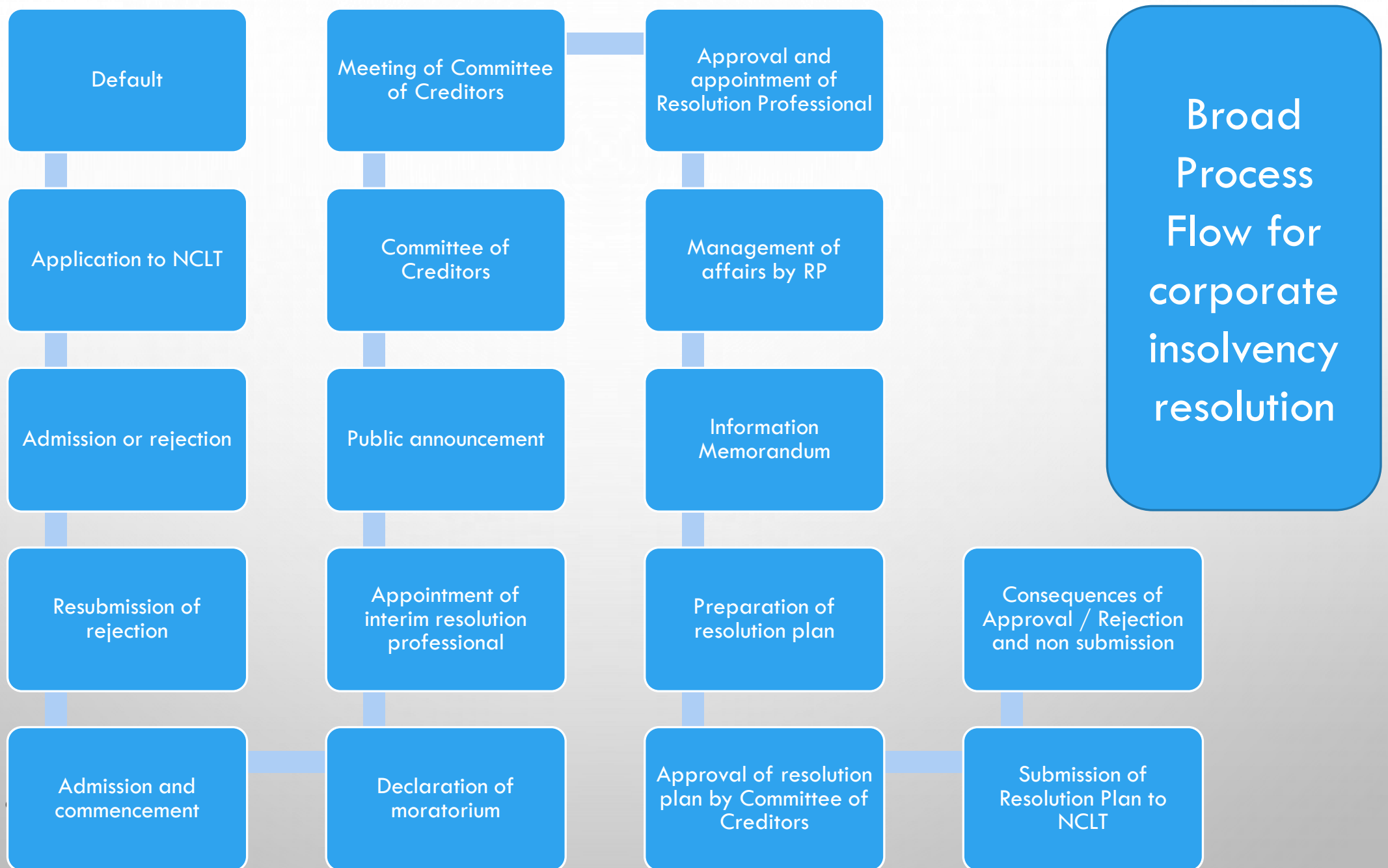




What is Corporate Insolvency Resolution

A comprehensive process that covers the gamut of insolvency resolution framework for Corporates and includes processes relating to

- Filing of application before NCLT and admission thereof
- Appointment of Interim Resolution Professional
- Formation of the Committee of Creditors
- Confirmation of the Resolution professional
- Preparation and approval of the Resolution Plan





WHO CAN INITIATE THE PROCESS



Financial Creditor

Operational Creditor

Financial Debtor

Sec 3 (12) of the Act defines a default as “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not **paid** by the debtor or the corporate debtor, as the case may be

The fundamental elements of default are as under

- Existence of a debt
- A part , whole or instalment of the debt should have become due and payable
- Non payment of such debt or part or any instalment thereof



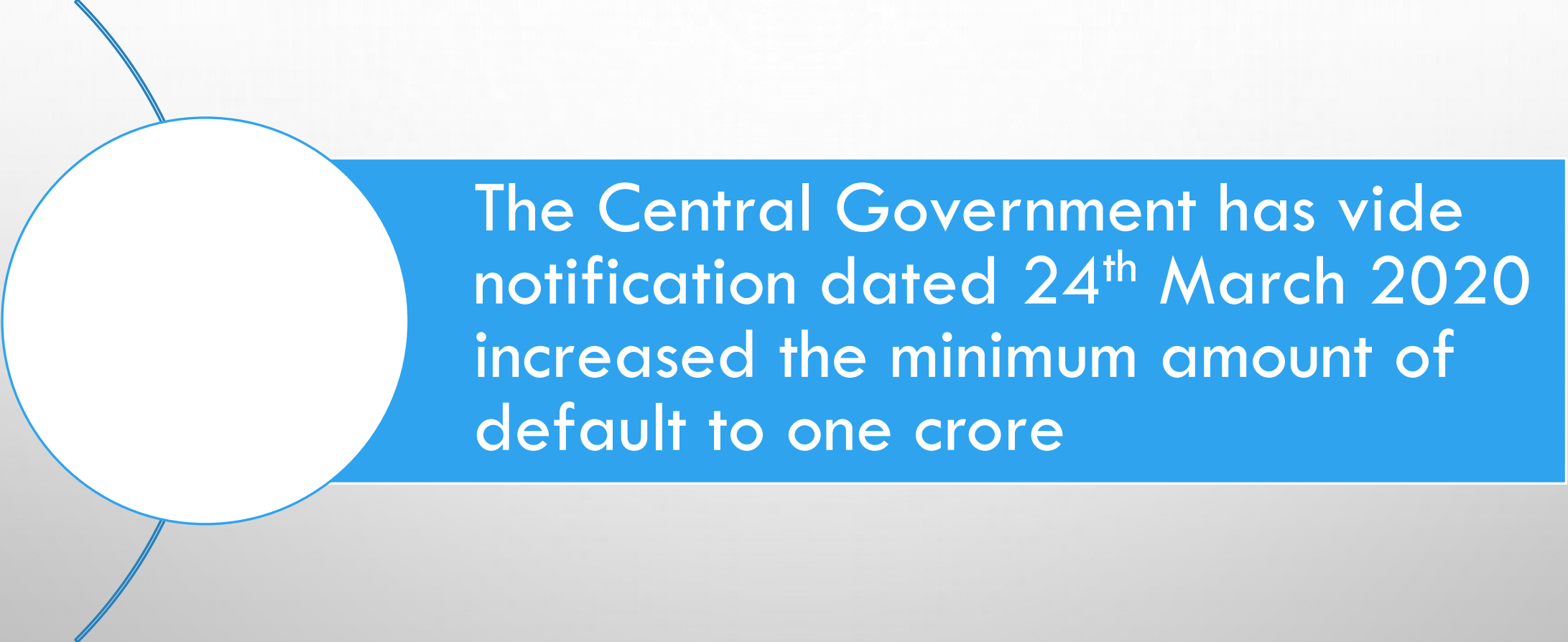
WHAT IS THE TRIGGER FOR INITIATION ? DEFAULT – SECTION 4

This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors ~~where the minimum amount of the default is one lakh rupees~~

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.



WHAT IS THE TRIGGER FOR INITIATION ? DEFAULT



The Central Government has vide notification dated 24th March 2020 increased the minimum amount of default to one crore



WHOM CAN CIR BE INITIATED AGAINST – (SECTION 2)

Corporate debtor means a corporate person who owes a debt to any other person

Corporate debtor can be a Company, LLP or any other person incorporated under any law for the time being in force

Any other company governed by any special act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of the said act

Can never be a financial service provider who operates under the authority of a financial sector regulator such as RBI, SEBI, IRDA, PFRA etc.



WHOM CAN CIR BE INITIATED AGAINST – (SECTION 2)

Personal guarantors to Corporate Debtors

Partnership firms and proprietorship firms

Individuals, other person referred to in 1 above.

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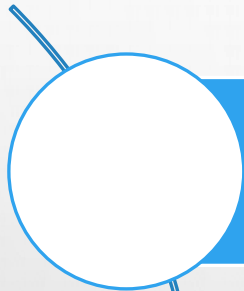
MODULE: CORPORATE INSOLVENCY RESOLUTION PROCESS

KEY DEFINITIONS – SECTION 5

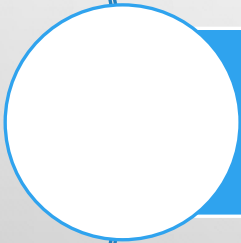
Presented by CA Revathi Raghunathan



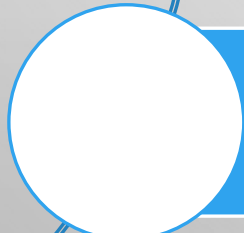
WHO IS A CORPORATE DEBTOR 3(8)



Corporate debtor means a corporate person who owes a debt to any other person



Corporate debtor can be a Company, LLP or any other person with limited liability under any law



Can never be a financial service provider who operates under the authority of a financial sector regulator such as RBI, SEBI, IRDA, PFRA etc.



WHO IS A CORPORATE GUARANTOR 5(5A)

Corporate Guarantor

means a corporate
person who is the surety

in a contract of
guarantee to a
corporate debtor



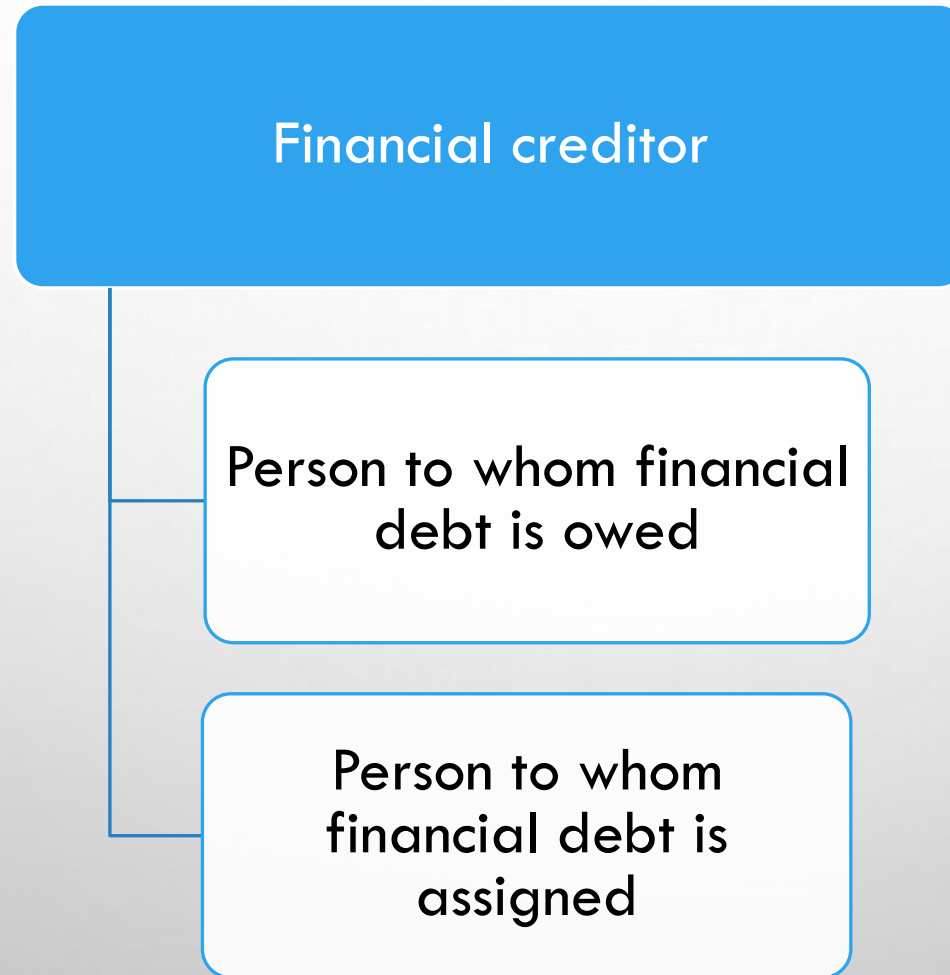
WHAT IS A DISPUTE 5(6)

"dispute" includes a suit or arbitration proceedings relating to

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty



WHO IS A FINANCIAL CREDITOR 5(7)





WHAT IS A FINANCIAL DEBT 5(8)

- a. Money borrowed against interest
- b. any amount raised by acceptance under any acceptance credit facility or its de- materialised equivalent;
- c. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument
- d. the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;



WHAT IS A FINANCIAL DEBT 5(8)

e. receivables sold or discounted other than any receivables sold on non-recourse basis;


f. any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; ;

Explanation (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

Explanation (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]



WHAT IS A FINANCIAL DEBT 5(8)



(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause



WHAT IS INITIATION DATE, INSOLVENCY COMMENCEMENT DATE AND INTERIM FINANCE

Initiation date 5(11)

- Application to adjudicating authority **BY**
- Corporate applicant
- Financial creditor
- Operational creditor

Insolvency commencement date 5(12)

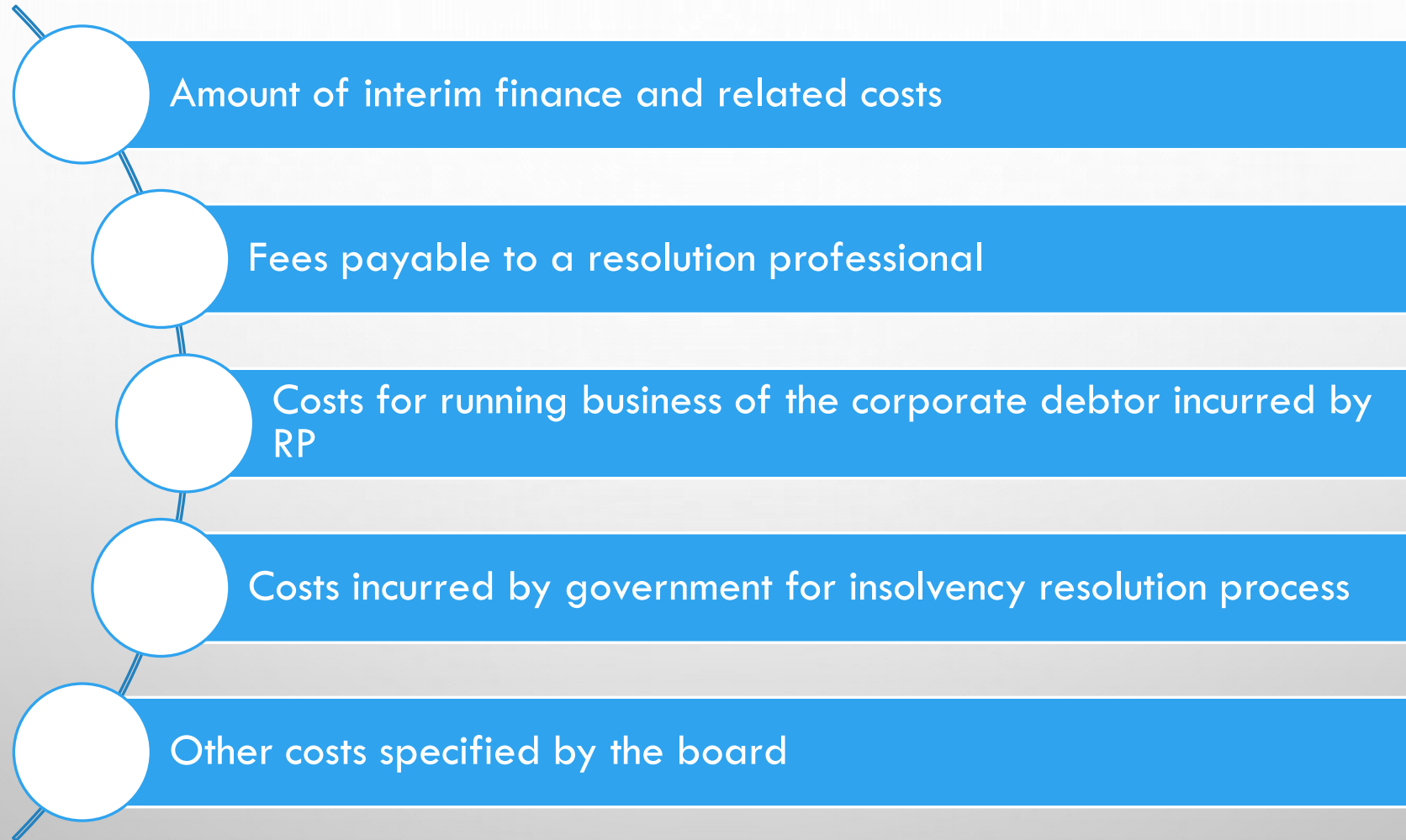
- Acceptance of application **FOR**
 - Corporate insolvency resolution process **BY**
- Adjudicating authority **UNDER**
- Sec 7, 9 or 10

Interim finance 5(15)

- Debt raised by resolution professional **DURING**
- Resolution process period



WHAT IS INSOLVENCY RESOLUTION PROCESS COST 5(13)





WHAT IS AN OPERATIONAL DEBT 5(21)

Operational debt means

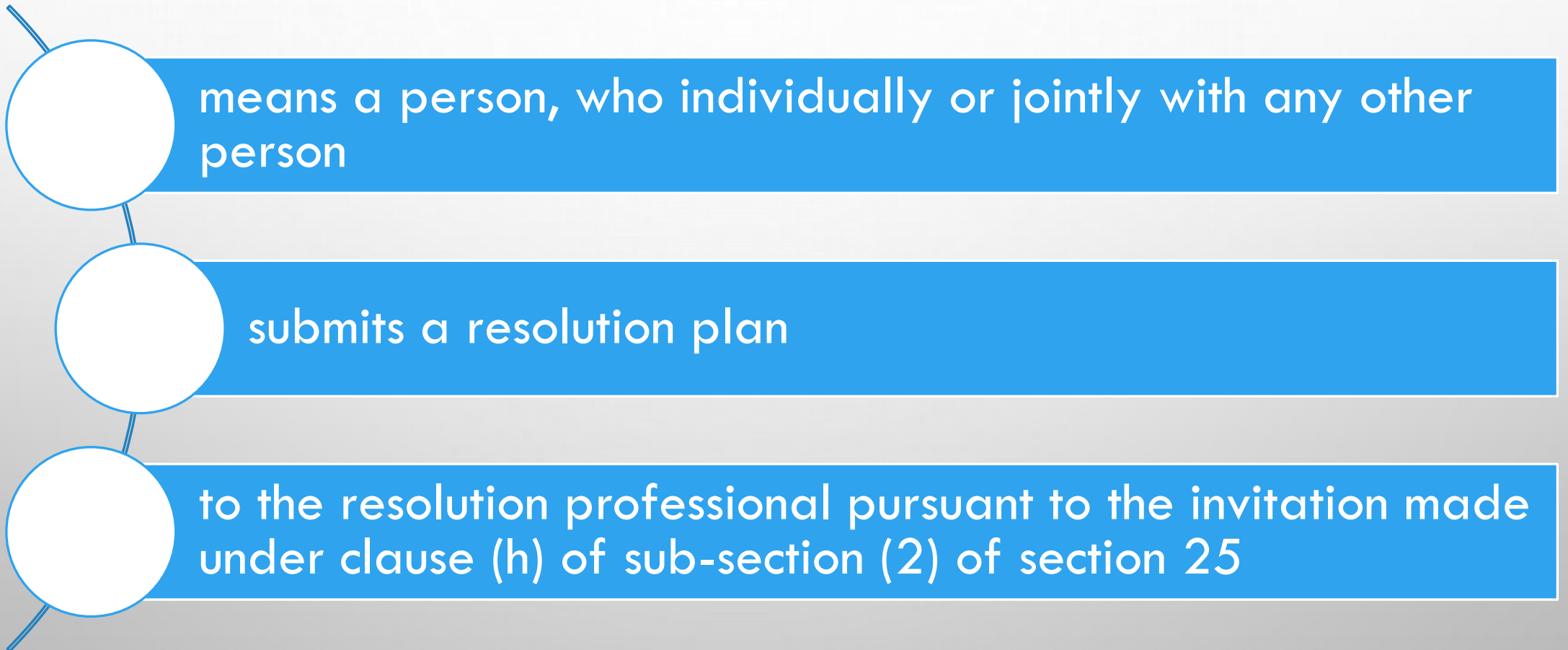
Claims regarding provision of goods or service includes employment

Debt regarding payment of dues under any Law

Amount payable to any central government or state government or any local authority



WHO IS A RESOLUTION APPLICANT 5(25)





WHAT IS A RESOLUTION PLAN AND RESOLUTION PROFESSIONAL

Resolution plan 5(26)

- Plan proposed by resolution applicant for insolvency resolution of a Corporate debtor

Resolution professional 5(27)

- Professional appointed to conduct insolvency resolution process and Includes an interim resolution professional

LIMITED INSOLVENCY EXAMINATION

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

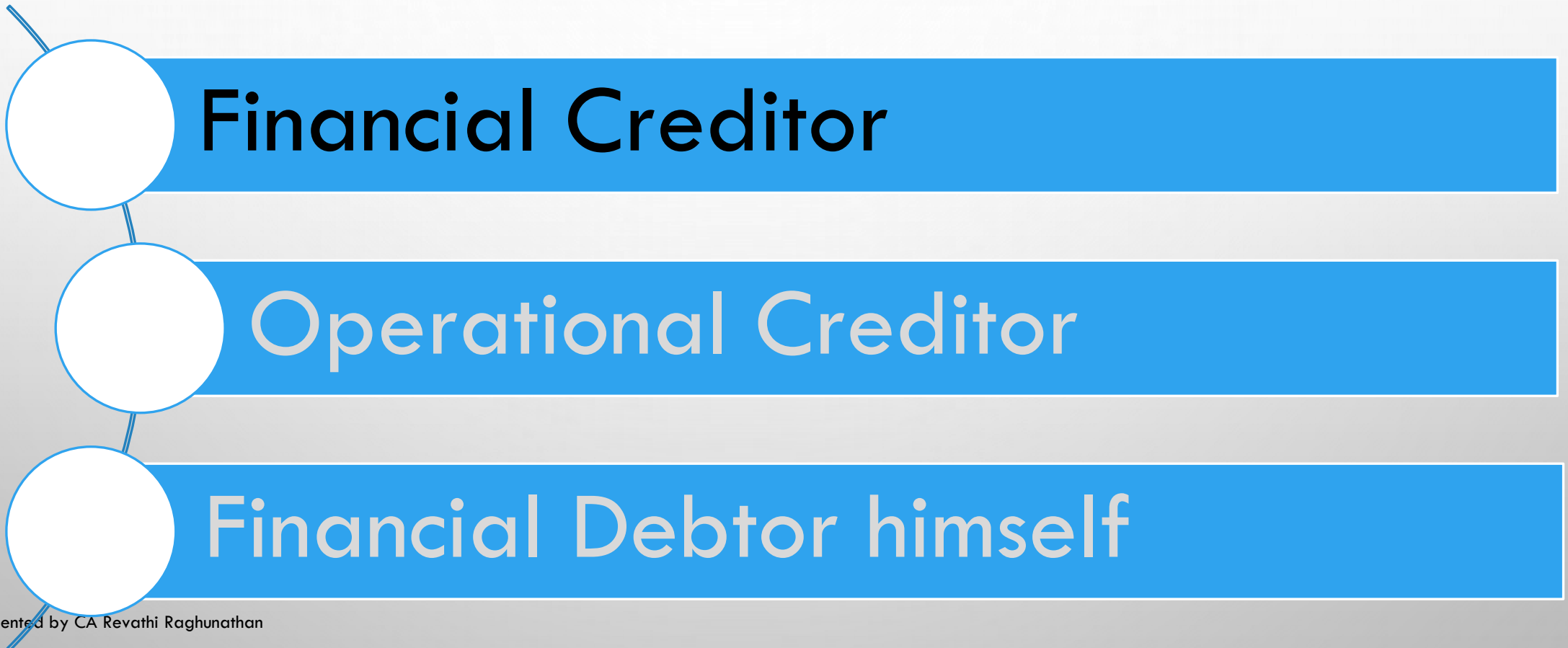
MODULE: CORPORATE INSOLVENCY RESOLUTION PROCESS

INITIATION OF CIR BY FINANCIAL CREDITOR

SECTION 6 AND 7 AND APPLICATION TO ADJUDICATING
AUTHORITY RULES



INITIATION OF CORP INSOLVENCY RESOLUTION – SECTION 6





WHO IS A FINANCIAL CREDITOR

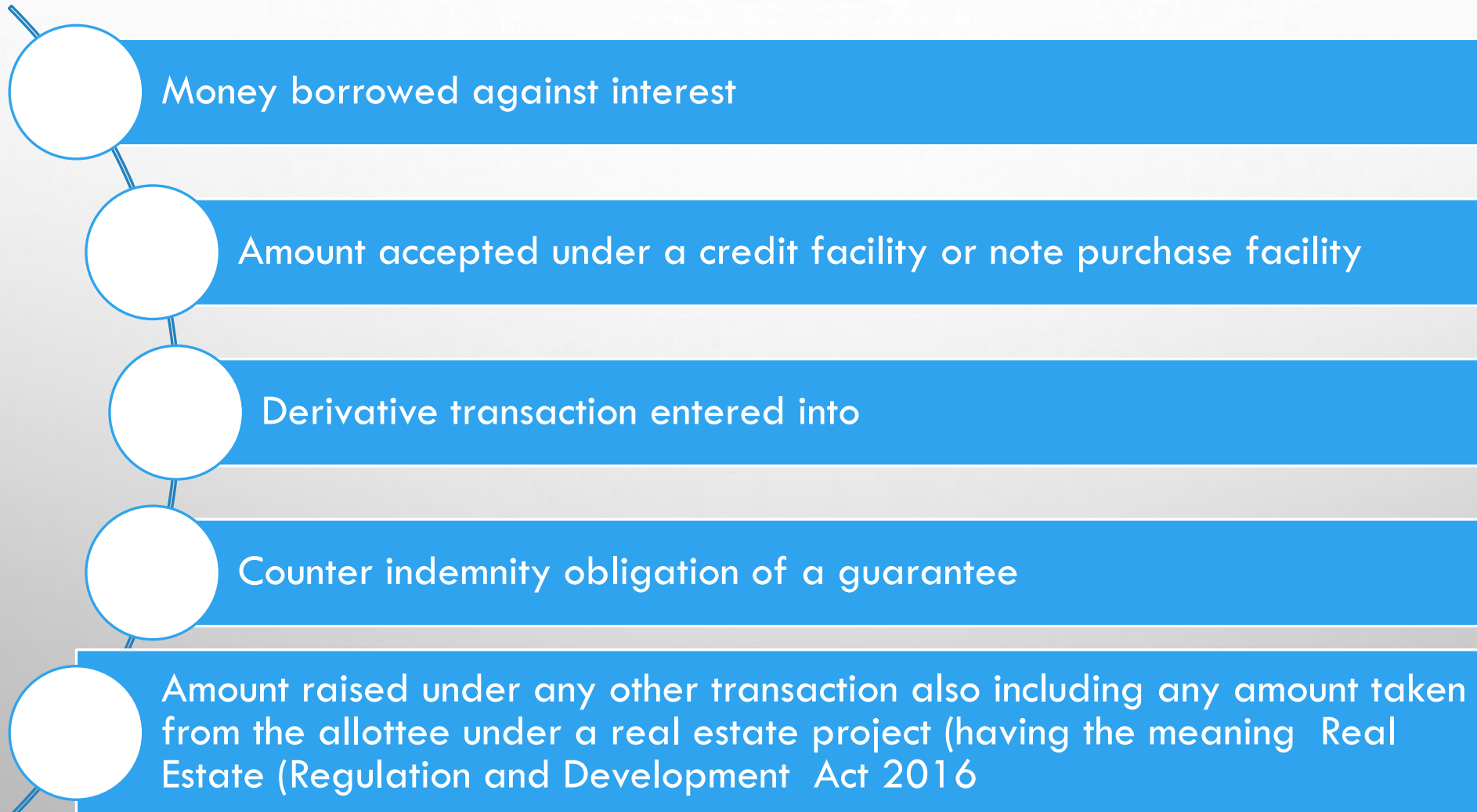
Financial creditor

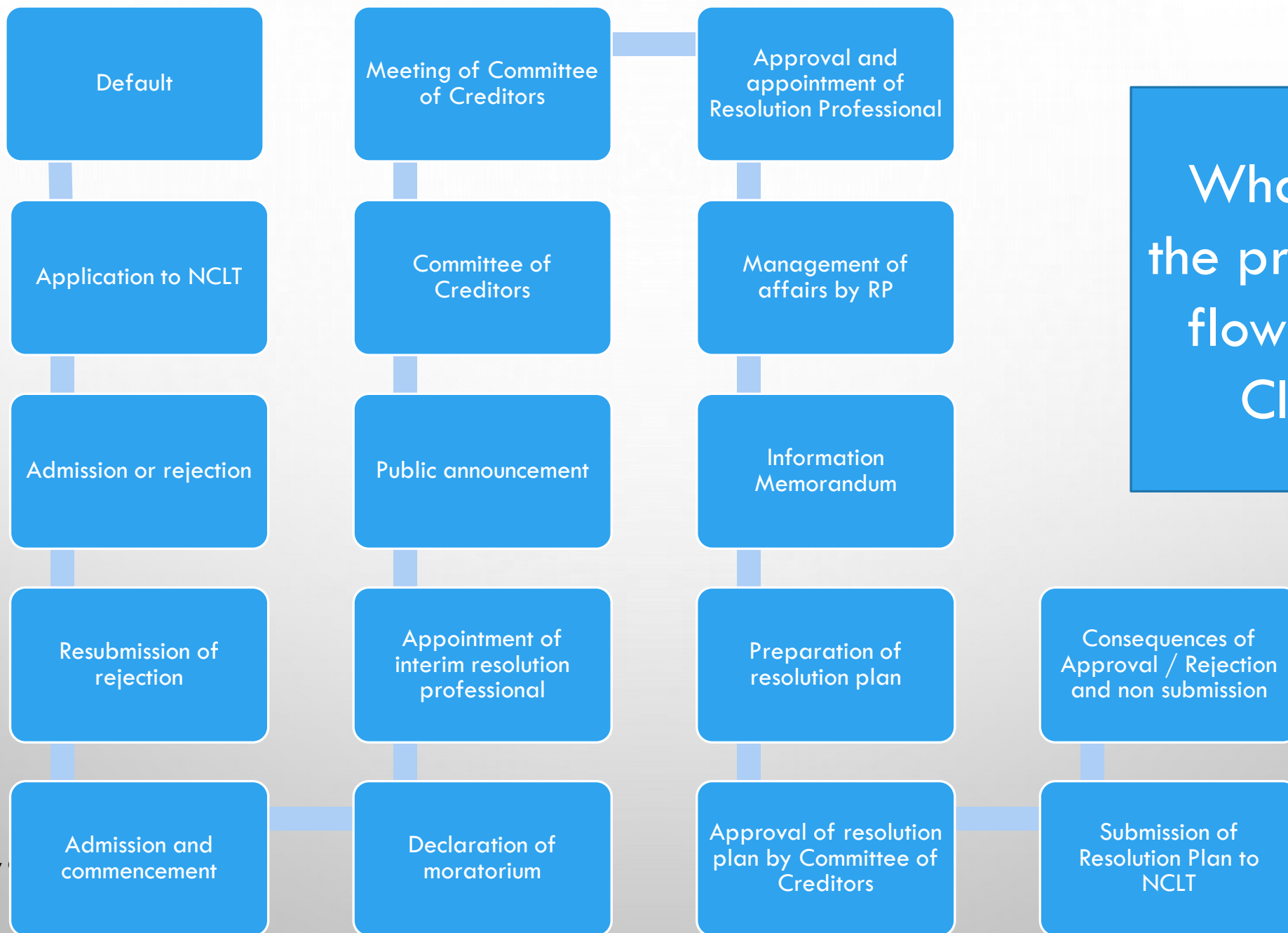
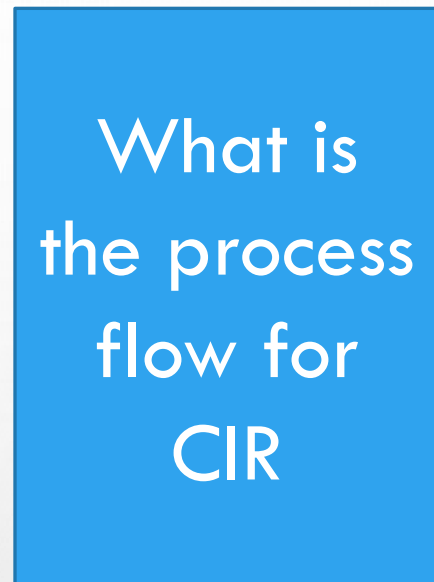
Person to whom
financial debt is
owed

Person to whom
financial debt is
assigned



WHAT IS A FINANCIAL DEBT







WHAT ARE THE PROCEDURAL ASPECTS COVERED WHEN CIR IS INITIATED BY FINANCIAL CREDITOR (SECTION 7)

Parameter	Aspect
By whom	FC singly or jointly with other FCs, or any other person on behalf of the FC, as may be notified by the Central Government Proviso 1 FC as in 21(6A)(a) and (b) shall file an application for initiating CIRP against CD by not less than 100 of such creditors in the same class or 10% of total such creditors in the same class – WHICHEVER IS LESS Proviso 2 FC who are allottees in a under a real estate project – same as Proviso 1
Condition	Default should have occurred
Debt default	Of the Financial creditor or any other creditor
Application to accompanied by	Proof of debt Proof of default Name of insolvency resolution professional
Confirmation of default by AA	14 days from Information Utility or other evidence



PROCEDURE BY FINANCIAL CREDITOR AS APPLICANT

Submits application to NCLT

NCLT reviews application and confirms default

If application is ok, pass orders for admission

Else reject by NCLT and 7 days time to rectify



ASPECTS IN THE RULES (RULE 4)

Application in Form 1 and proposal of Resolution professional in Form 2

To also be sent to the Corp Debtor by registered / Speed post

In case of joint applications, one nominee shall be identified from amongst the financial creditors

In case of an assigned or transferred debt contract, the instrument of assignment / transfer to also be furnished



WHAT IS THE APPLICATION FORMAT TO NCLT – RULE 4 AND 10

A financial creditor either by itself or jointly against corporate debtor (Rule 4)

Bulky back ups can also be furnished in soft copy (Rule 10)

Rule 4- application to be made in Form 1 with a fees Rs. 25000/- (Rule 10)



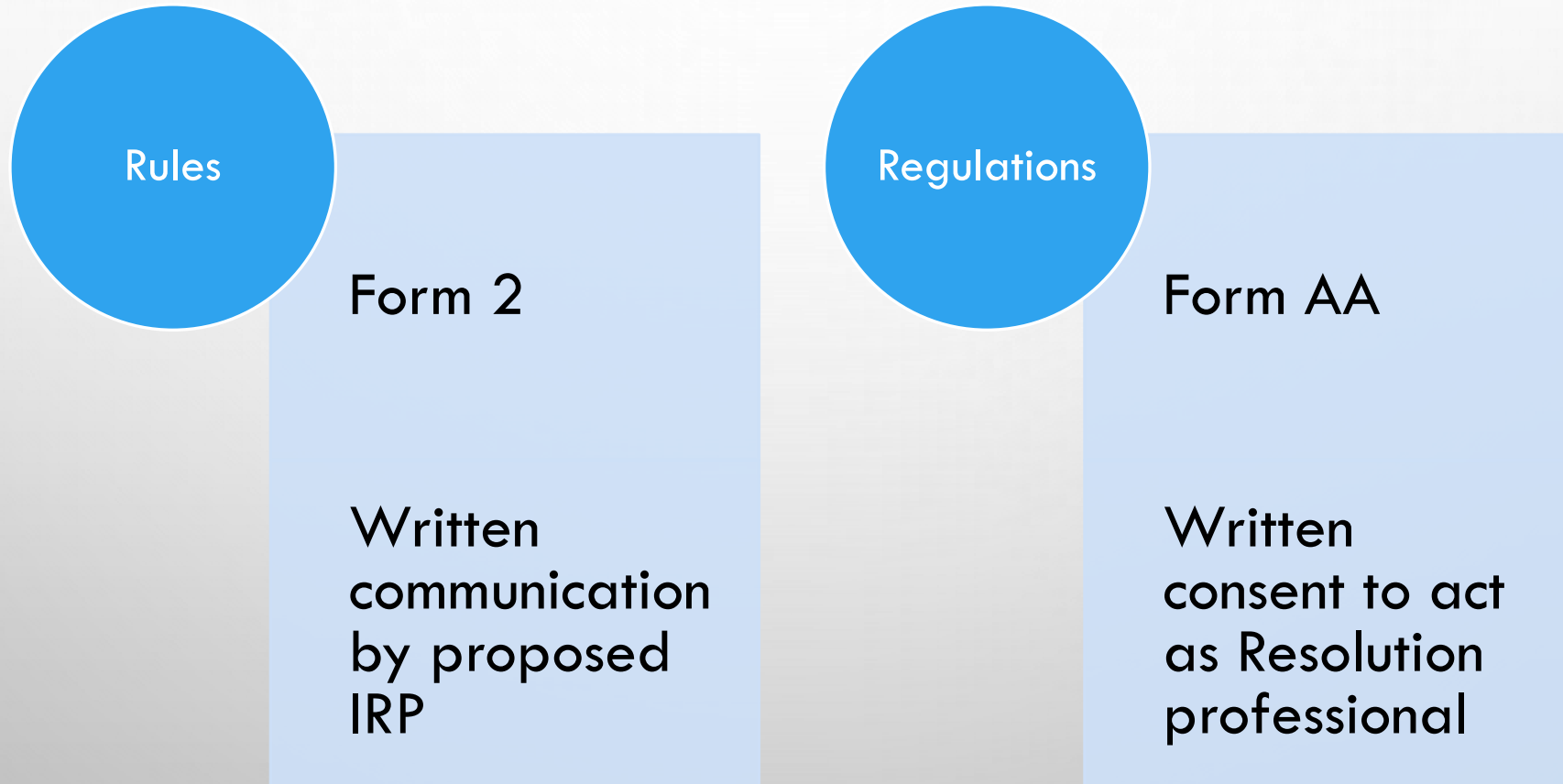
HOW CAN A INSOLVENCY PROFESSIONAL BE APPOINTED AS IRP – RULE 9

Applicant in **Form 2**
shall obtain written
document

FROM

An insolvency
professional for his
appointment as
Interim Resolution
Professional

FORM 2 AND FORM AA





WHAT ARE THE GROUNDS FOR REJECTION BY NCLT



Disciplinary proceeding against Resolution Professional



Application is incomplete



Default cannot be established

LIMITED INSOLVENCY EXAMINATION

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

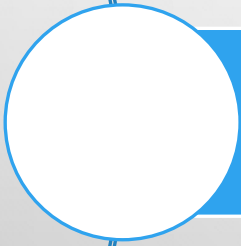
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OPERATIONAL CREDITOR –
SECTION 8 AND SECTION 9

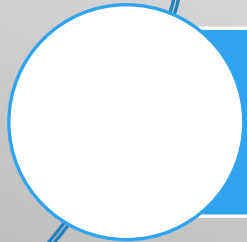
WHO CAN INITIATE



Financial Creditor



Operational Creditor



Financial Debtor himself

WHAT IS AN OPERATIONAL DEBT 5(21)




Dues for Provision of Goods



Dues for Provision of service



Dues for employment



Debt regarding payment of dues under any Law and payable to any central government or state government or any local authority

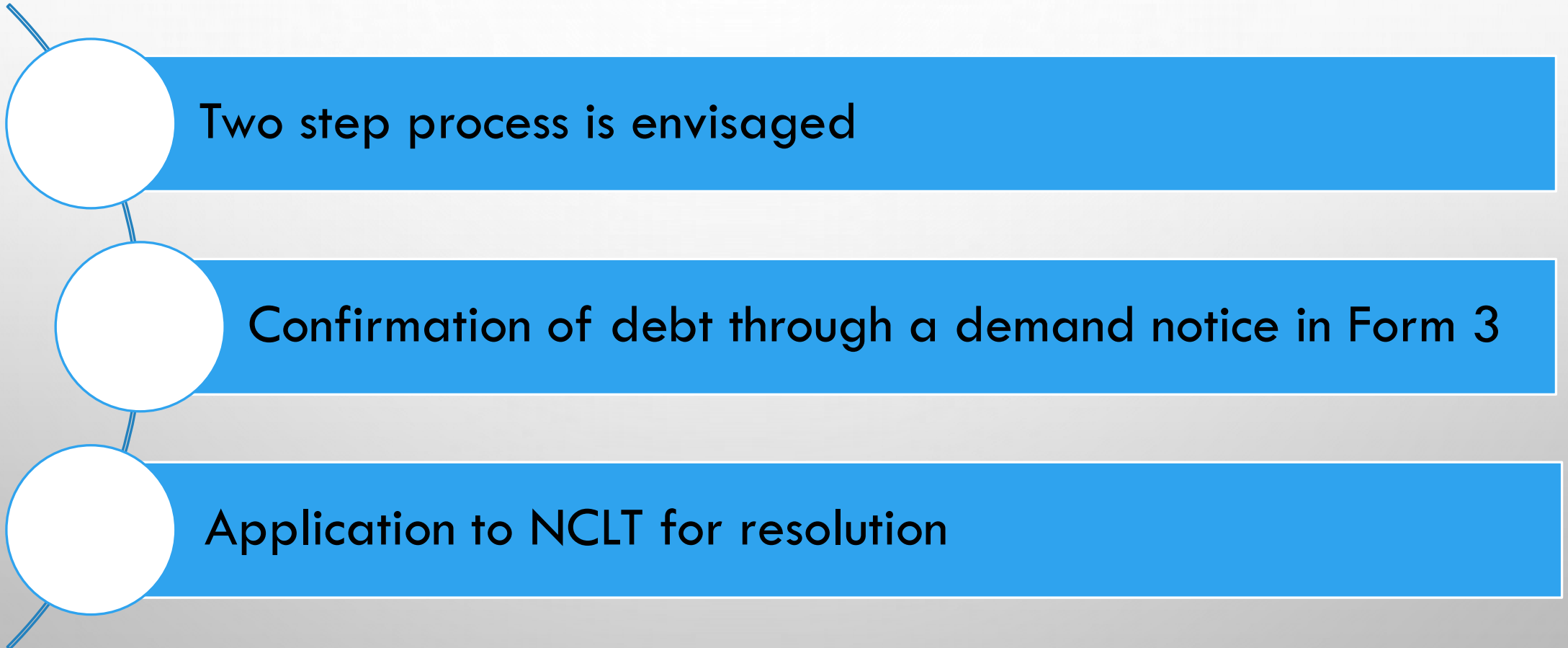
MCQ

DEBT INCLUDES

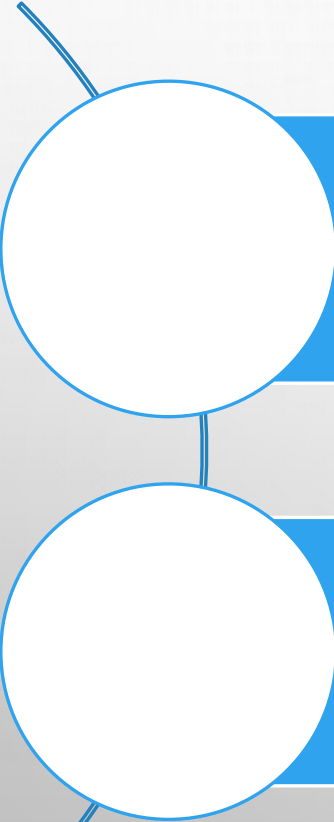
- a) FINANCIAL DEBT
- b) OPERATIONAL DEBT
- c) BOTH OF THE ABOVE
- d) NONE OF THE ABOVE

ANSWER – C – BOTH OF THE ABOVE

WHAT IS THE PROCESS FLOW FOR AN APPLICATION BY OPERATIONAL CREDITOR



HOW CAN A DEBT BE CONFIRMED



Confirmation of debt through a demand notice in Form 3 is integral (Demand notice is notice served by OC to CD demanding payment of the operational debt towards which default has occurred)

If the debt has already been disputed, then process under this code is not possible

LIKELY SITUATIONS WHEN THE NOTICE IS SENT

SECTION 8(2)

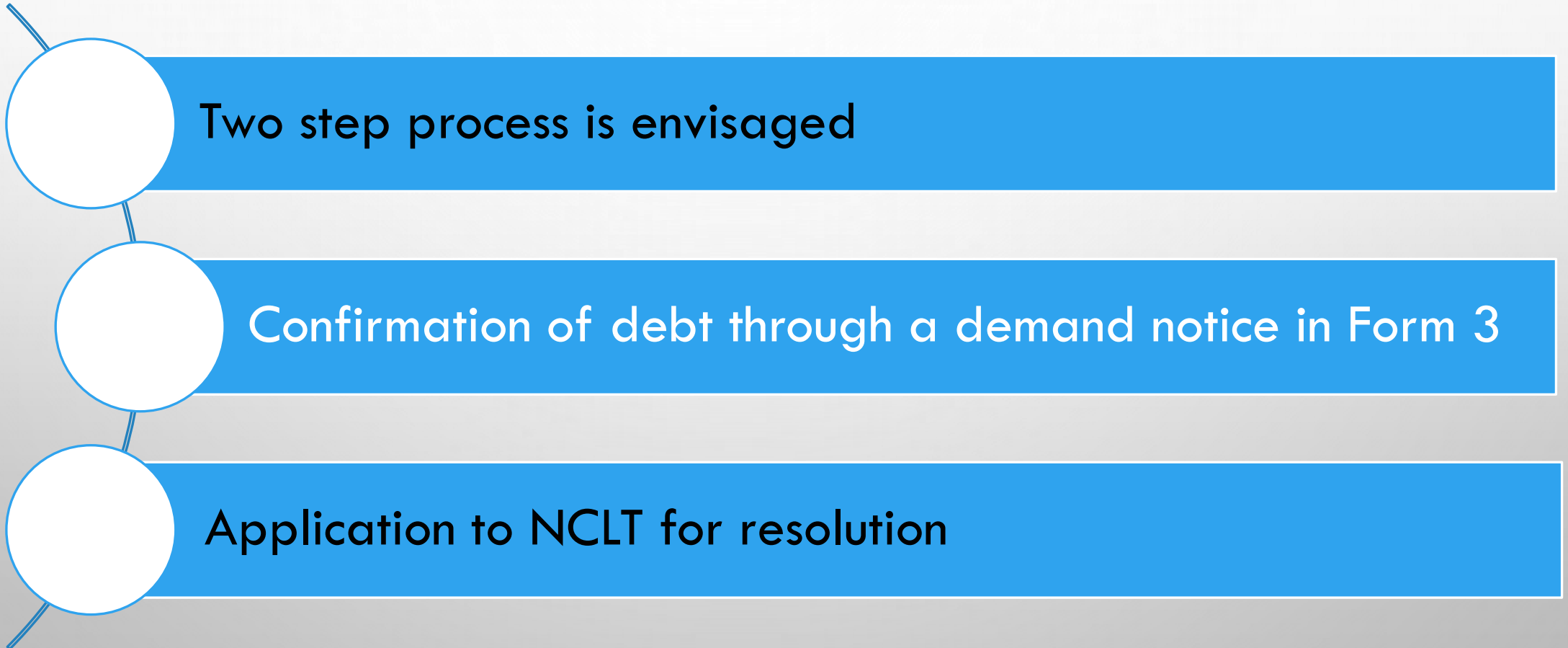
Debtor has three options (
within 10 days time)

a. Provide evidence of existence of dispute if any or record of pendency of suit or arbitration proceedings - **BEFORE** the receipt of such notice or invoice in relation to the dispute

b. If already paid, provide payment details along with proof – attested copy of electronic transfer or encashment of cheque by the OC

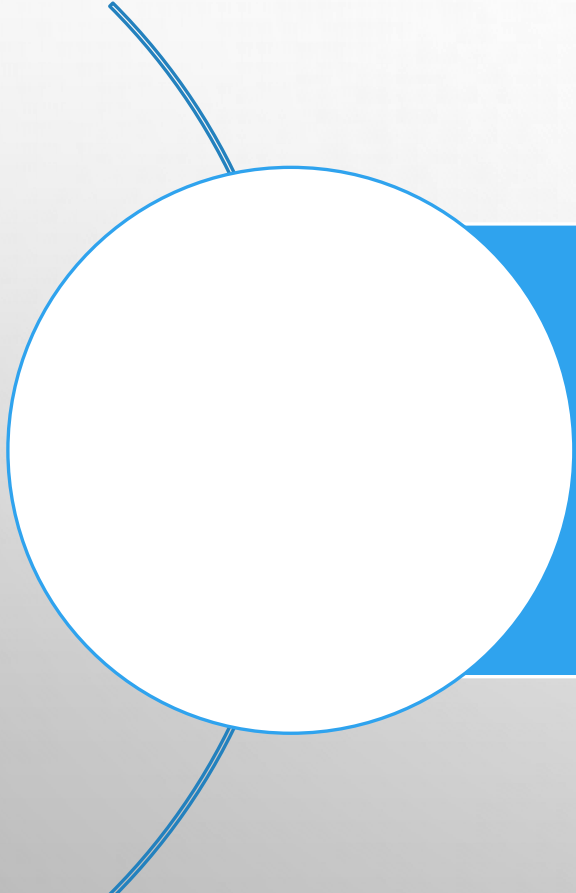
Pay after receipt of notice and provide details

PROCESS FOR OPERATIONAL CREDITOR





WHEN AN APPLICATION TO NCLT FOR RESOLUTION BE MADE BY OPERATIONAL CREDITOR (SECTION 9)



If no response is received on dispute or no payment is received, then the application can be preferred to the NCLT (within 10 days)



WHAT ARE THE PROCEDURAL ASPECTS COVERED WHEN CIR IS INITIATED BY OPERATIONAL CREDITOR – (RULE 6)

Parameter	Aspect
By whom	Operational Creditor
Condition	Default should have occurred and no dispute as at the date of the demand notice
Form	In Form 5 plus Rs 2000
Attachments to application	<ul style="list-style-type: none">•Demand notice / Invoice copy – Form 3 and 4•Affidavit that there is no dispute raised by the debtor•Certification from financial institutions that there is no payment of an unpaid operational debt by the corporate debtor, if available•Copy of any record from IU or any other proof that there is unpaid operational debt
Insolvency Professional	“MAY” be proposed in Form 2



WHAT IS THE APPLICATION FORMAT TO NCLT – RULE 5, 6 AND 10

Rule 5	Rule 6	Rule 10
<ul style="list-style-type: none">An operational creditor shall submit to corporate debtor the following<ul style="list-style-type: none">(a)demand notice in Form 3 OR(b)copy of invoice along with Form 4	<ul style="list-style-type: none">Required documents and records attached in the application to NCLT made by OPERATIONAL CREDITOR in Form 5	<ul style="list-style-type: none">Application can be filed online and bulky accompanying documents may be submitted in electronic form, in scanned, in acceptable data storage device
<ul style="list-style-type: none">Demand notice to be served at registered office or in electronic means and copy of demand notice to be filed with information utility if any	<ul style="list-style-type: none">copy of application sent to Adjudicating authority to registered office of corporate debtor	<ul style="list-style-type: none">Application to be accompanied by Fees as specified in the schedule (Rs.2000)



WHEN AN APPLICATION TO NCLT IS ADMITTED

Parameters

Application should be complete

Operational debt is remaining unpaid

Invoice / demand notice has been delivered and proved as delivered

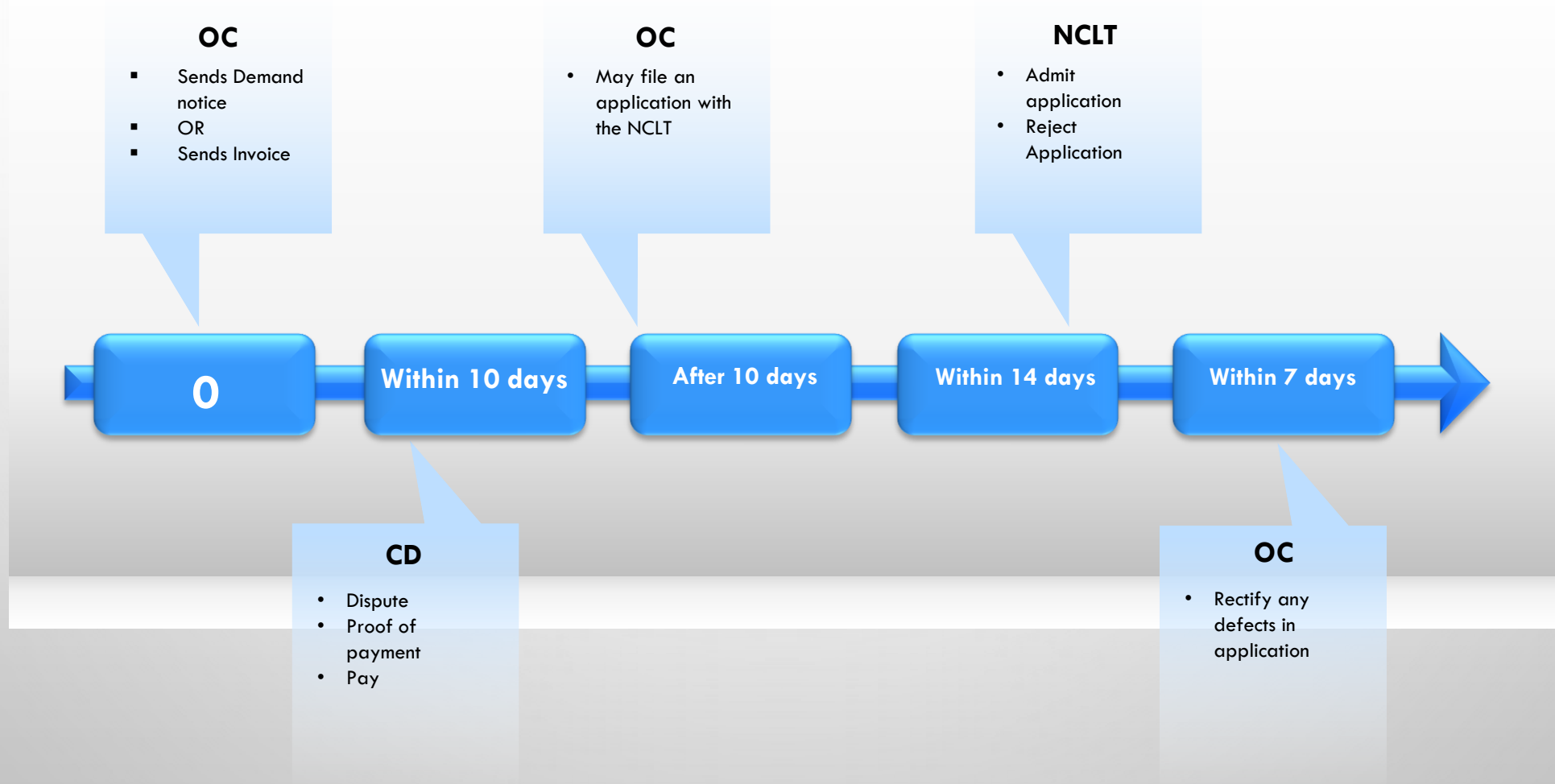
The debt is not disputed by the Corporate debtor / information utility prior to the delivery of the notice

No disciplinary proceeding pending against the resolution professional

In case of any defect, 7 days time is provided by to rectify

P If all is found in order NCLT may pass orders for corporate insolvency resolution

Section &



LIMITED INSOLVENCY EXAMINATION

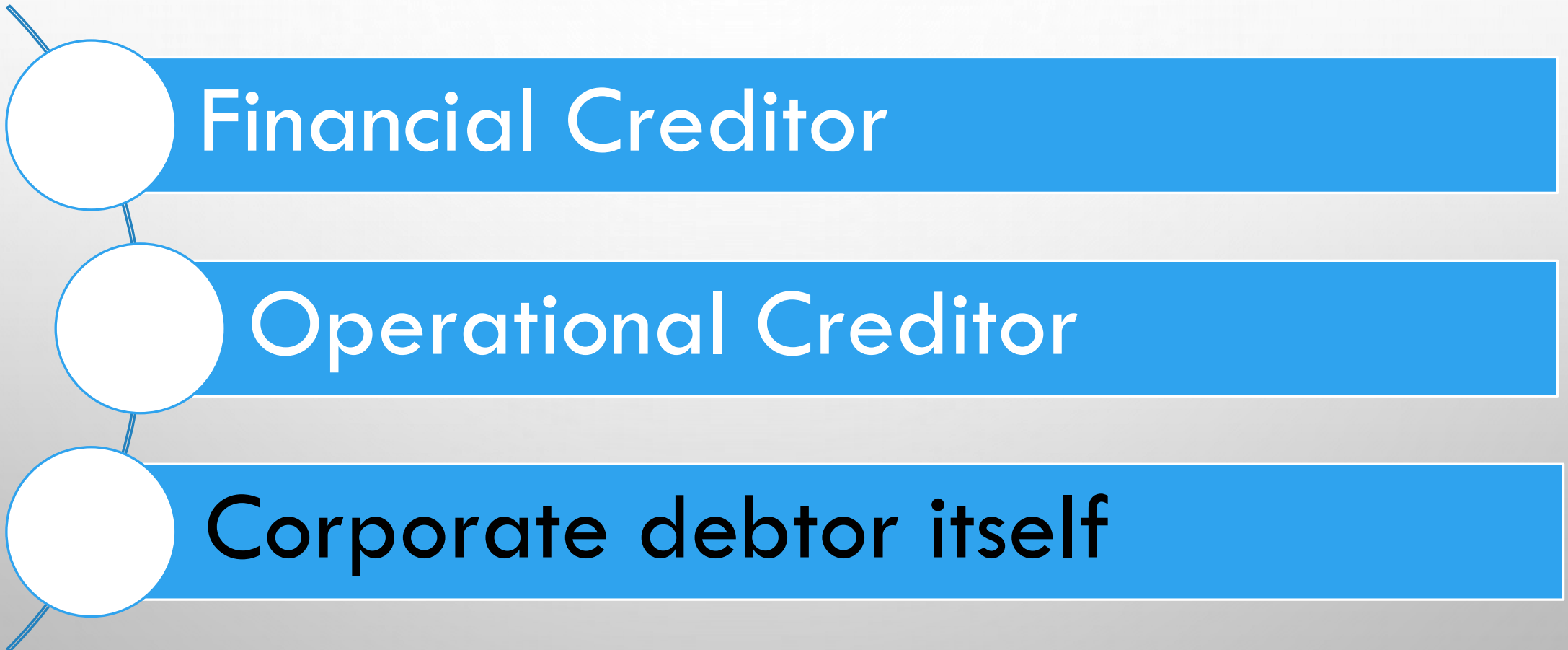
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CORPORATE APPLICANT— SECTION 10 AND 11

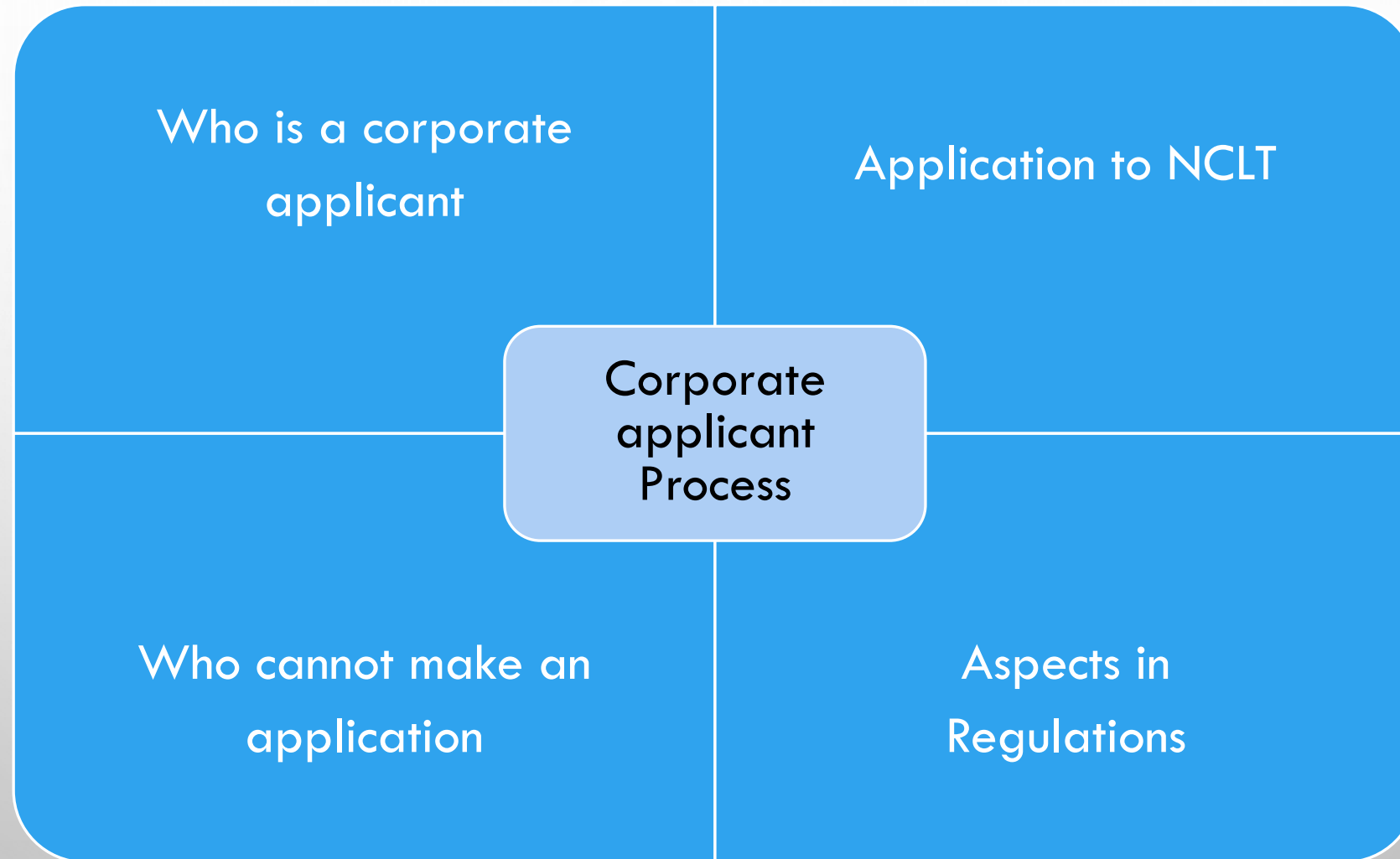


WHO CAN INITIATE





CORPORATE APPLICANT PROCESS





WHO IS A CORPORATE APPLICANT (SECTION 5(5))



Corporate Debtor

Member or partner of a corporate debtor authorized on this behalf

a person who has the control and supervision over the financial affairs of the corporate debtor

an individual who is in charge of managing the operations and resources of the corporate debtor



WHAT IS THE PROCEDURE FOR APPLICATION TO NCLT FOR RESOLUTION BY CORP. DEBTOR

Parameter	Aspect
By whom	Corporate Debtor
Condition	Default should have occurred in payment of debt
Form	In Form 6 plus Rs 25000
Attachments to application	Books of accounts and other documents Information in relation to RP proposed to be appointed Special Resolution passed by shareholders or 3/4 th of the total no of partners of CD.
Insolvency Professional	“Should” be proposed in Form 2
Actions by NCLT	Accept and pass order if all is found complete within 14 days Else reject and no DC is pending against proposed RP and provide 7 days time for resubmission after rectification



WHAT ARE THE ASPECTS IN RULE

Rule 7

- Required documents and records attached in the application made in Form 6
- copy of application sent to Adjudicating authority to registered office of corporate debtor through registered post or speed post



WHO CANNOT MAKE AN APPLICATION UNDER CHAPTER II SECTION 11

(a) corporate debtor - undergoing a corporate insolvency resolution process; or

(b) a corporate debtor - having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

A corporate debtor in respect of whom a liquidation order has been passed.



WHAT ARE THE APPLICATION FORMATS UNDER IBC

Application to Adjudicating Authority Rules	Form Number
Application by Financial Creditor	1
Written Communication of consent by Resolution Professional	2
Notice of Demand served by Operational Creditor	3 and 4
Application by Operational Creditor	5
Application by Corporate Applicant	6



FEES PAYABLE ALONG WITH APPLICATION

Application to Adjudicating Authority Rules	Form Number
Application by Financial Creditor	Rs. 25000
Application by Operational Creditor	Rs 2000
Application by Corporate Applicant	Rs 25000



SOME RELEVANT DOCUMENTS

Documents	Financial Creditor	Operational Creditor	Corporate Applicant
Proof of debt and default	Yes	Yes	Yes
Consent of Resolution Professional	Yes	Yes	Yes
Proof of payment of fee	Yes	Yes	Yes
Demand Notice in Form 3	Not Appl	Yes	Not Appl
Books of Accounts relevant to default	Not Appl	Yes	Not Appl
Special Resolution by Shareholder/ partner (3/4) consent	No	No	Yes
Information related to RP	Yes	Not Appl	Yes
Statement of Affairs upto 14 days of Appln	Not Appl	Not Appl	Yes
Authorisation in case of Joint Applicants	Yes	Not Appl	Not Appl



SOME RELEVANT DOCUMENTS

Documents	Financial Creditor	Operational Creditor	Corporate Applicant
Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available	Not Appl	If Available	Not Appl
Affidavit	Yes	Yes	Yes

• **WHICH AMONG THE FOLLOWING IS NOT ENTITLED TO INITIATE CIRP:**

- a) A CORPORATE DEBTOR IN RESPECT OF WHOM A LIQUIDATION ORDER HAS BEEN MADE.
- b) A CORPORATE DEBTOR THAT HAS NOT GONE THROUGH A CORPORATE INSOLVENCY RESOLUTION PROCESS.
- c) A FINANCIAL CREDITOR.
- d) AN OPERATIONAL CREDITOR.

ANSWER - A

MCQ

WHO CAN INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP):

- a) ONLY CORPORATE DEBTOR
- b) FINANCIAL CREDITOR AND OPERATIONAL CREDITOR.
- c) FINANCIAL CREDITOR AND OPERATIONAL CREDITOR AND CORPORATE DEBTOR.
- d) CORPORATE DEBTOR AND FINANCIAL CREDITOR.

ANSWER – C - FINANCIAL CREDITOR AND OPERATIONAL CREDITOR AND CORPORATE DEBTOR

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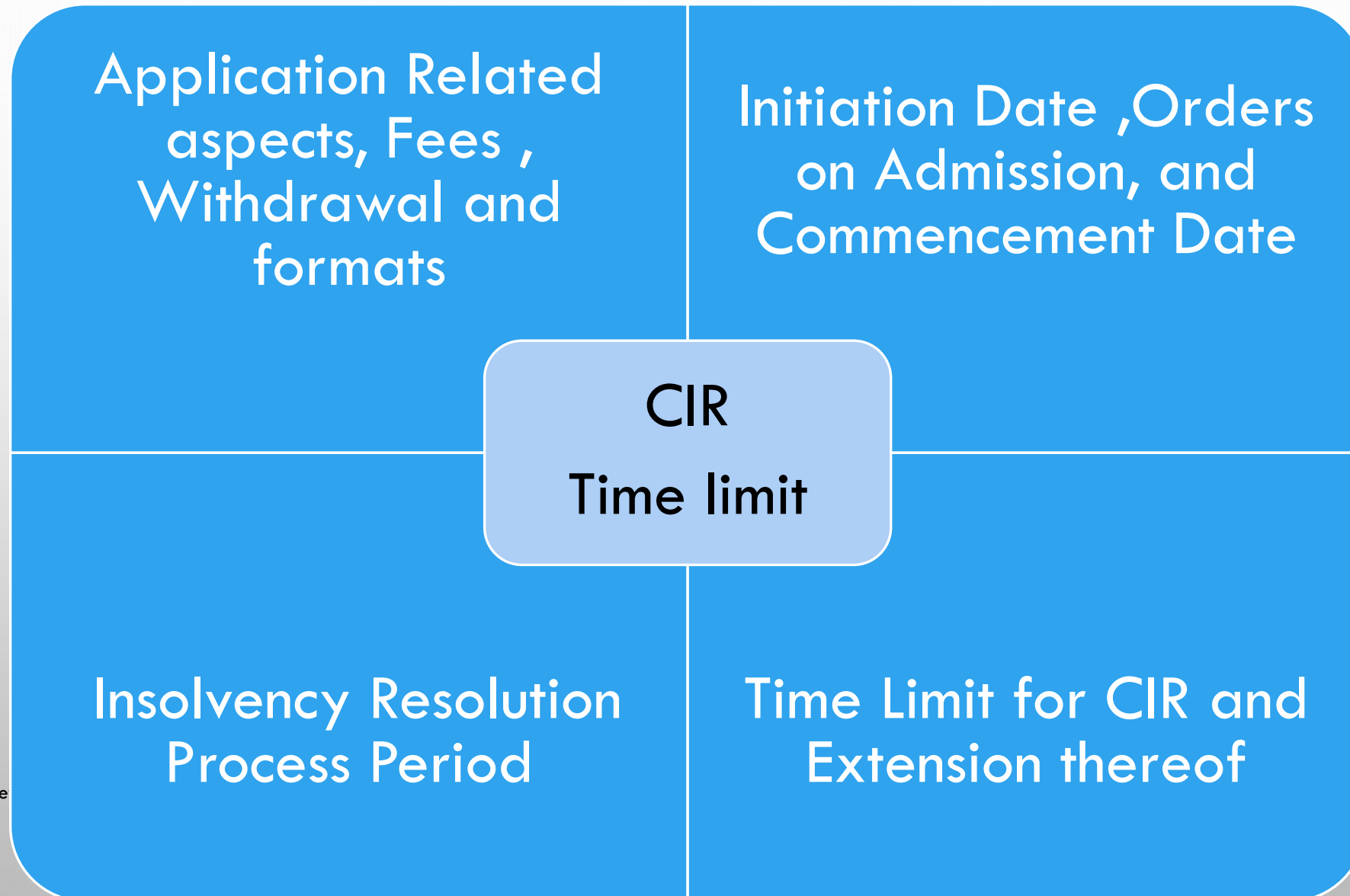
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CIR TIME LIMIT

SECTION 12 AND SECTION 12 A

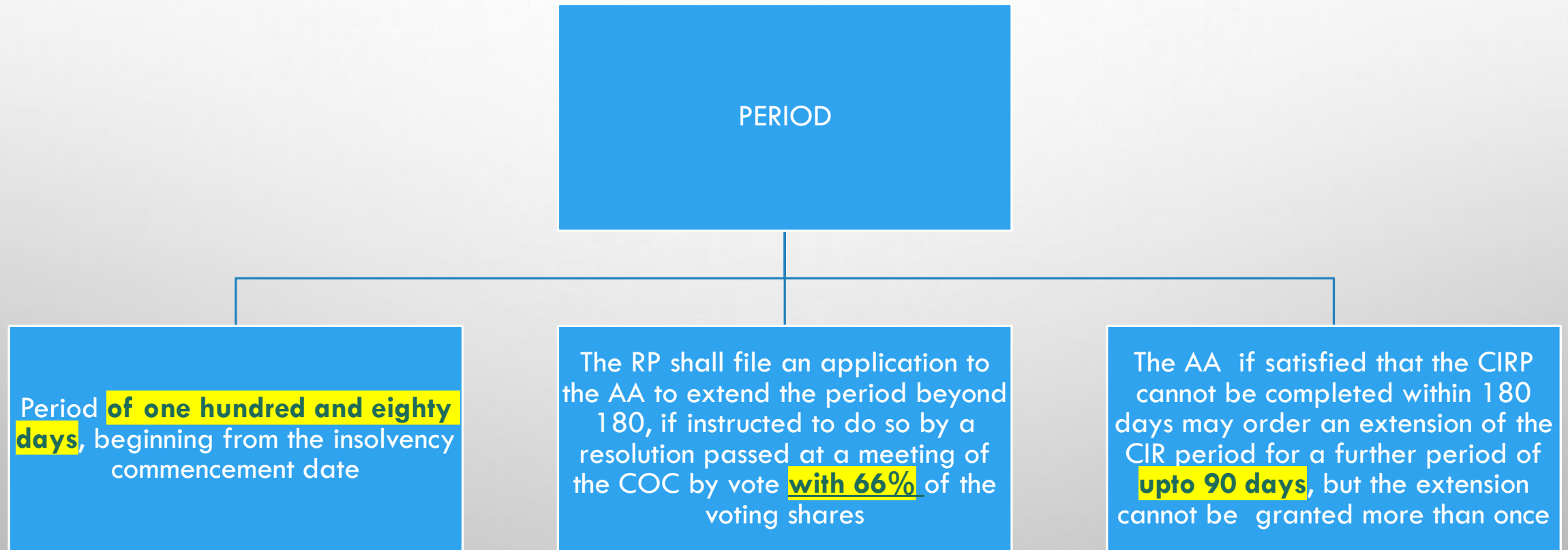


CORPORATE INSOLVENCY RESOLUTION PROCESS





WHAT IS THE INSOLVENCY RESOLUTION PROCESS PERIOD – SECTION 12



MCQ

WHAT WILL BE THE MAXIMUM TIME LIMIT IN WHICH THE PROCESS SHALL BE COMPLETED FROM THE INSOLVENCY COMMENCEMENT DATE?

- a) 90 DAYS
- b) 180 DAYS
- c) 12 MONTHS
- d) 335 DAYS

ANSWER (B) – 180 DAYS

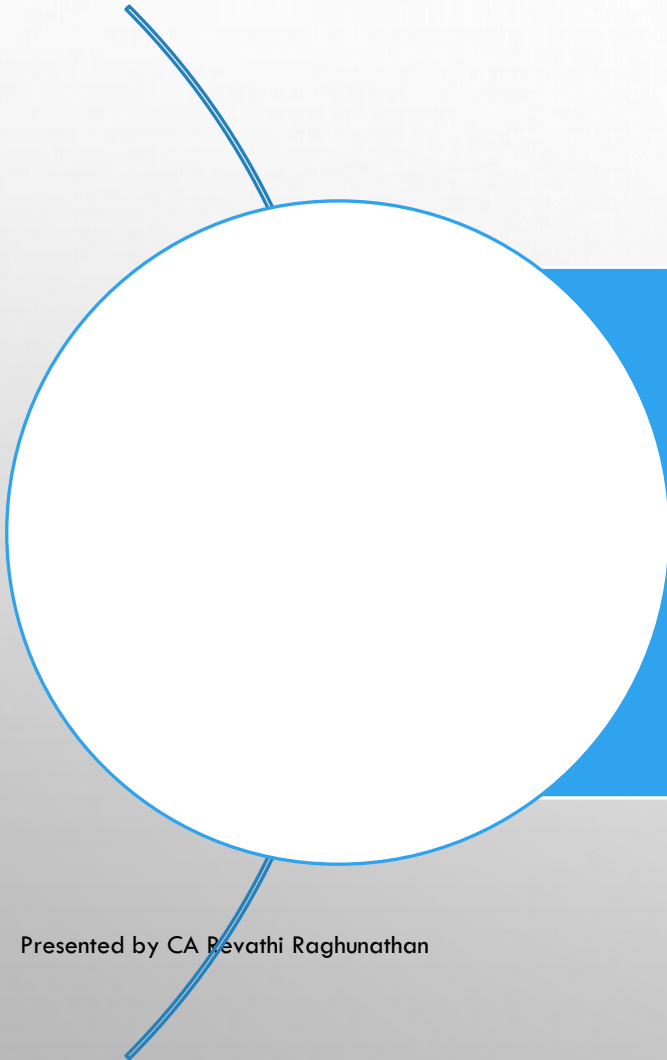
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THE AA MAY EXTEND THE PERIOD FOR THE PROCESS BEYOND THE TIME LIMIT ----- ONLY

- a) TWICE
- b) THRICE
- c) ONCE
- d) NONE OF THE ABOVE

ANSWER - C- ONCE

RELEVANCE OF THE CIR TIME PERIOD



The Corporate Debtor on admission of the application for corporate insolvency resolution becomes eligible for a 180 day “calm period” during which period the debtor and creditors are required to define and submit a resolution plan to the NCLT to enable the corporate debtor to resolve the debt default situation or alternately be liquidated and wound up



WITHDRAWAL OF APPLICATION – SECTION 12A

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of **ninety per cent** voting share of the committee of creditors, in such manner as may be specified.

162. Withdrawal of Application (Inserted vide notification da...



WHAT ARE THE ORDERS PASSED ON ADMISSION -

SECTION 14

(a) declare a moratorium for the purposes referred to in section 14;

(b) cause a public announcement of the initiation of corporate insolvency resolution process (**immediately** after the appointment of the IRP) and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.



MORATORIUM - SECTION 14

(1) As on the ICD, the AA shall by order declare a moratorium prohibiting the following;

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;



MORATORIUM - SECTION 14

(1) As on the ICD, the AA shall by order declare a moratorium prohibiting the following;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation : A licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period



MORATORIUM - SECTION 14

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period. ; (Electricity, water, telecom service and information technology services – Regulation 32)

(2A) where the IRP considers the supply of goods and services critical to manage the operations of the CD as a going concern then if the CD has paid the dues the supply of the goods or services shall not be interrupted or terminated

(3) The provisions of sub-section (1) shall not apply to —

- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
- (b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

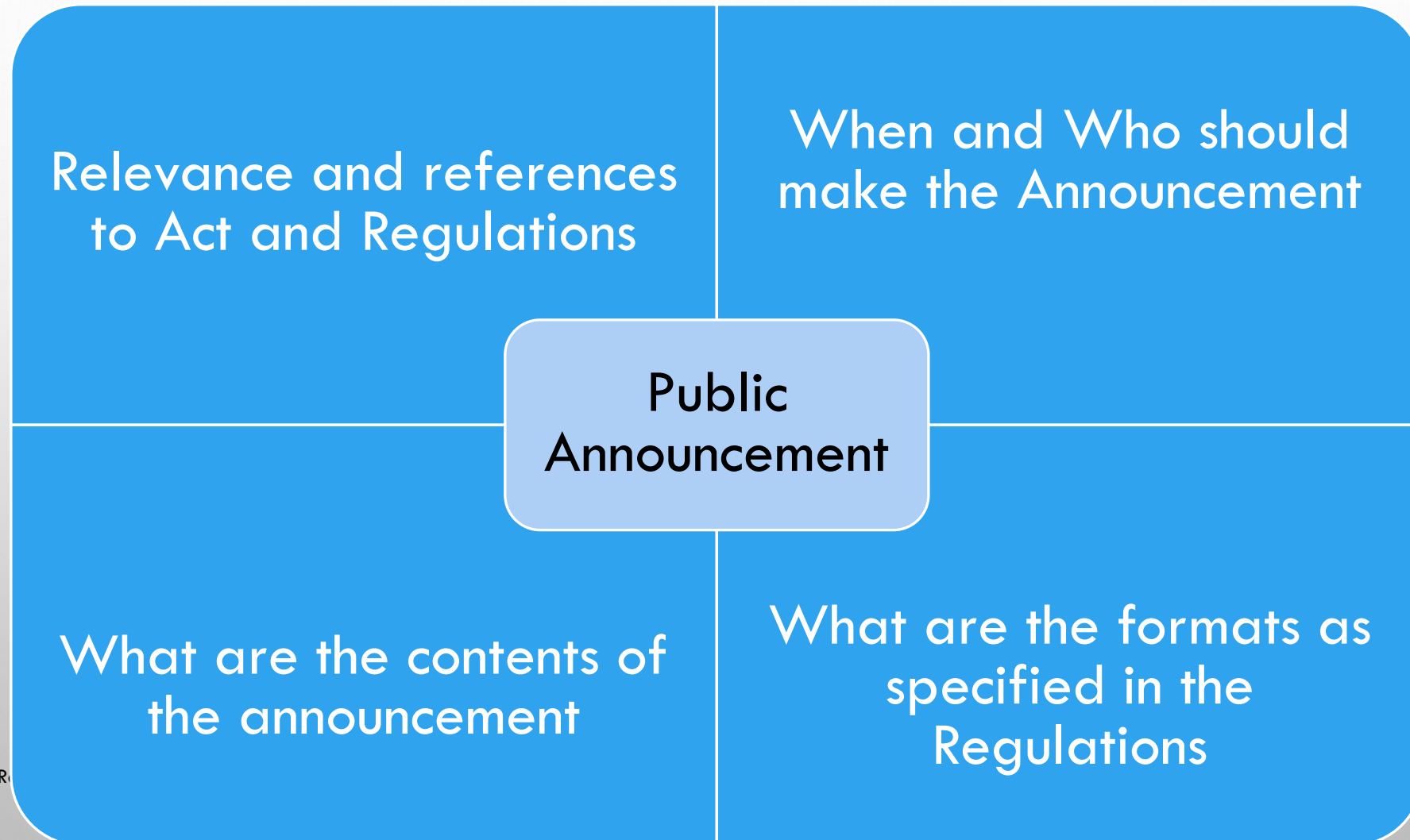


MORATORIUM - SECTION 14

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.



PUBLIC ANNOUNCEMENT





WHAT IS THE PURPOSE OF THE PUBLIC ANNOUNCEMENT- SECTION 15



Intimate the general public on the commencement of the Corporate Insolvency Commencement process



Collect Claims from various creditors to whom money is owed by the corporate entity



WHO SHOULD MAKE THE PUBLIC ANNOUNCEMENT

The Public Announcement should be made by the Interim Resolution Professional

Orders for the same shall have been passed by NCLT in orders passed after admission of the Application



WHAT ARE THE CONTENTS OF PUBLIC ANNOUNCEMENT- SECTION 15

Name and address of Corporate Debtor under corporate insolvency process

Name of authority with which corporate debtor is registered

The last date of submission of claims as may be specified

Details of IRP and penalties for false or misleading claims

The date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be



WHEN SHOULD THE PUBLIC ANNOUNCEMENT BE MADE- REGULATION 6



Public announcement shall “immediately” be made after the appointment of IRP

“Immediately” refers to not more than three days from the date of IRP’s appointment as per the regulation



SPECIFIC ASPECTS RELATED TO PUBLIC ANNOUNCEMENT – REGULATION 6

The public announcement shall be made in

- One English and One Regional language paper with wide circulation at the place of registered office and principal office of the Corporate Debtor and in any other location as may be necessary as per the Interim Resolution Professional where the Corporate debtor conducts material business operations
- Website of the corporate debtor / designated by the Board, if any
- state where claim forms can be downloaded or obtained from
- offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class;



SPECIFIC ASPECTS RELATED TO PUBLIC ANNOUNCEMENT – REGULATION 6

Last date for submission of proofs of claims which shall be 14 days date of appointment of Interim Resolution Professional

Expense of the announcement shall be borne by the applicant and may be reimbursed by the committee to the extent ratified.

The expenses of announcement shall NOT be a part of Insolvency Process Resolution Costs



SPECIFIC ASPECTS RELATED TO PUBLIC ANNOUNCEMENT

Particulars	FORM
FORM OF PUBLIC ANNOUNCEMENT	Form A
WRITTEN CONSENT TO ACT AS RESOLUTION PROFESSIONAL	Form AA
WRITTEN CONSENT TO ACT AS AUTHORISED REPRESENTATIVE	Form AB
PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES	Form B
PROOF OF CLAIM BY FINANCIAL CREDITORS	Form C
PROOF OF CLAIM BY FINANCIAL CREDITORS IN A CLASS	Form CA
PROOF OF CLAIM BY A WORKMAN OR AN EMPLOYEE	Form D
PROOF OF CLAIM SUBMITTED BY AUTHORISED REPRESENTATIVE OF WORKMEN AND EMPLOYEES	Form E



LIMITED INSOLVENCY EXAMINATION THE INSOLVENCY AND BANKRUPTCY CODE, 2016

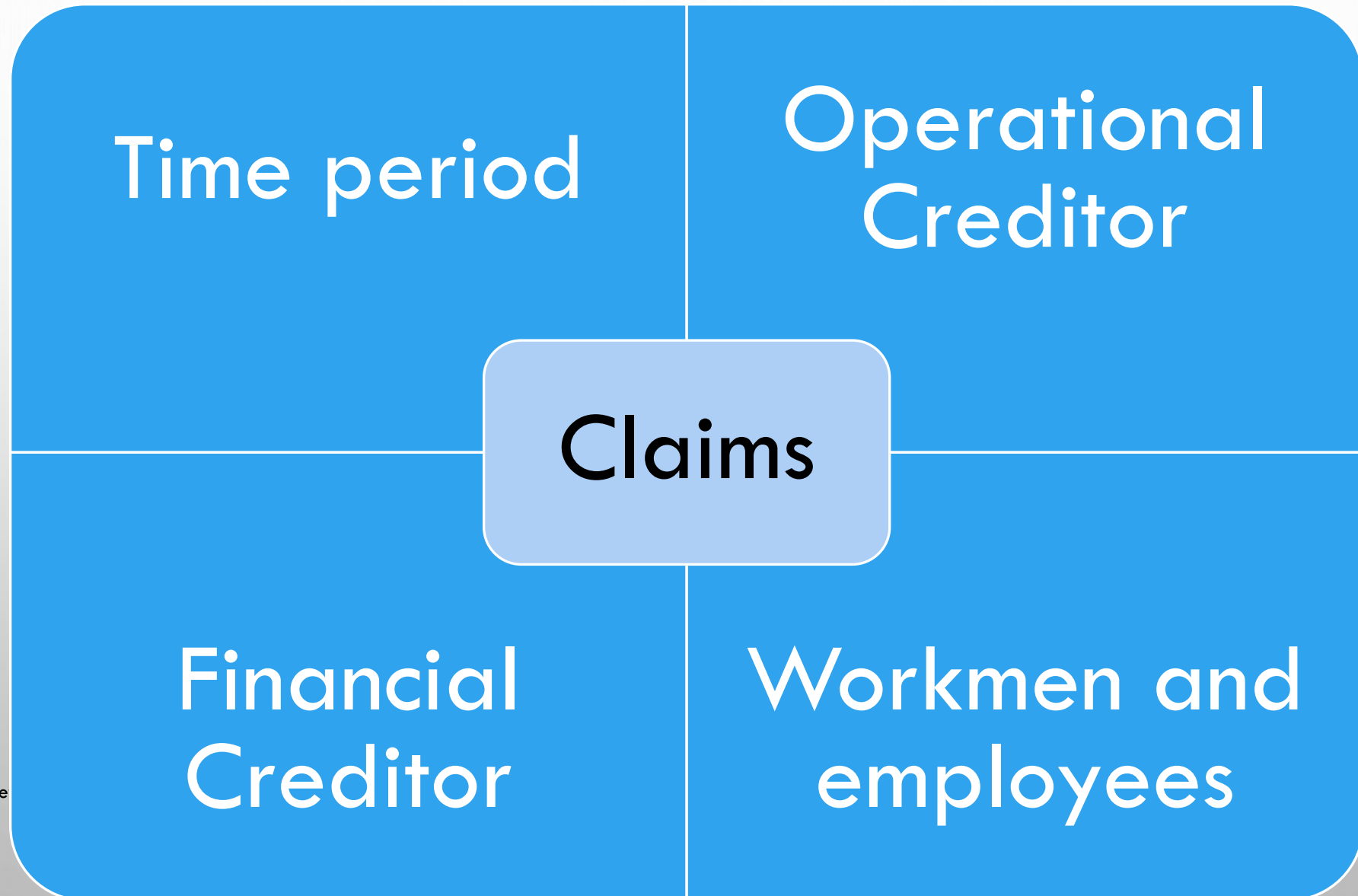
MODULE: CORPORATE INSOLVENCY RESOLUTION
PROCESS

SUBMISSION OF CLAIMS

REGULATION 7 TO 15



SUBMISSION OF CLAIMS





SUBMISSION OF CLAIMS BY OPERATIONAL CREDITOR

Regulation 7 as per Form B

- A person claiming to be an operational creditor, shall submit claim with proof to the IRP in person, by post or by electronic means in Form B of the Schedule
- Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee
- The existence of debt due to the operational creditor under this Regulation may be proved on the basis of
 - (a) the records available with an information utility, if any or
 - (b) other relevant documents*



SUBMISSION OF CLAIMS BY OPERATIONAL CREDITOR

Regulation 7 as per Form B

*Other relevant documents include

- (i) a contract for the supply of goods and services with corporate debtor
- (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor
- (iii) an order of a court or tribunal that has adjudicated upon the non payment of a debt, if any or
- (iv) financial accounts



CLAIMS BY FINANCIAL CREDITORS

Regulation 8 as per Form C

- A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the IRP

Such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

- The existence of debt due to the financial creditor may be proved on the basis of –
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including -
 - a financial contract supported by financial statements as evidence of the debt;
 - a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor
 - financial statements showing that the debt has not been paid
 - an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.



CLAIMS BY CREDITORS IN A CLASS

Regulation 8A as per Form CA

- A person claiming to be a creditor in a class shall submit claim with proof to the IRP in electronic form in Form CA of the Schedule.
- existence of debt due to a creditor in a class may be proved on the basis of-
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including any-
 - (i) agreement for sale;
 - (ii) letter of allotment;
 - (iii) receipt of payment made; or
 - (iv) such other document, evidencing existence of debt.
- creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.



SUBMISSION OF CLAIMS BY WORKMEN OR EMPLOYEE

Regulation 9 as per Form D / E

- A person claiming to be a workman or an employee of the corporate debtor shall submit claim with proof to the IRP in person, by post or by electronic means in Form D of the Schedule
- Such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of Committee
- Where there are dues to numerous workmen or employees of the corporate debtor, an authorized representative may submit one claim with proof for all such dues on their behalf in **Form E** of the Schedule
- The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of
 - (a) records available with the information utility or
 - (b) other relevant documents*



SUBMISSION OF CLAIMS BY WORKMEN AND EMPLOYEES

Regulation 9 as per Form D/E

***Other relevant documents includes**

- (i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues
- (ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made or
- (iii) an order of a court or tribunal that has adjudicated upon the non payment of a dues, if any



CLAIMS BY OTHER CREDITORS

Regulation 9A as per Form F

- A person claiming to be a creditor, other than those covered under regulations 7, 8, or 9, shall submit its claim with proof to the IRP or RP in person, by post or by electronic means in Form F of the Schedule.
- existence of claim due of the creditor may be proved on the basis of-
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, sufficient to establish the claim, including any or all of the following
 - (i) documentary evidence demanding satisfaction of the claim;
 - (ii) bank statements of the creditor showing non-satisfaction of claim;
 - (iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Substantiation of claims (Reg 10)	The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim
Cost of proof (Reg 11)	A creditor shall bear the cost of proving the debt due to such creditor



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Submission of proof of claims (Reg 12)	<ul style="list-style-type: none">• A creditor shall submit claim with proof on or before the last date mentioned in the public announcement• A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, till the approval of the resolution plan by the committee (substitutes - as on or before the ninetieth day of the insolvency commencement date- vide notification dated 03/07/2018)• Where the creditor is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim. <p>such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.</p>



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Verification of claims (Reg 13)	IRP or RP shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Verification of claims (Reg 13)	<p>The list of creditors shall be</p> <ul style="list-style-type: none">(i) available for inspection by the persons who submitted proofs of claim(ii) available for inspection by members, partners, directors and guarantors of the corporate debtor(iii) displayed on the website, if any, of the corporate debtor(iv) filed with the Adjudicating Authority and(v) presented at the first meeting of the committee



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Determination of amount of claim (Reg 14)	<ul style="list-style-type: none">• Where the amount claimed by a creditor is not precise due to any contingency or other reason, the IRP or RP, shall make the best estimate of the amount of the claim based on the information available with him• IRP or RP shall revise the amounts of claims admitted, including the estimates of claims made as soon as may be practicable, when he comes across additional information warranting such revision



OTHER ASPECTS RELATING TO CLAIM SUBMISSION

Aspects covered	Descriptions
Debts in foreign currency (Reg 15)	The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the insolvency commencement date

LIMITED INSOLVENCY EXAMINATION THE INSOLVENCY AND BANKRUPTCY CODE, 2016

MODULE: CORPORATE INSOLVENCY RESOLUTION PROCESS

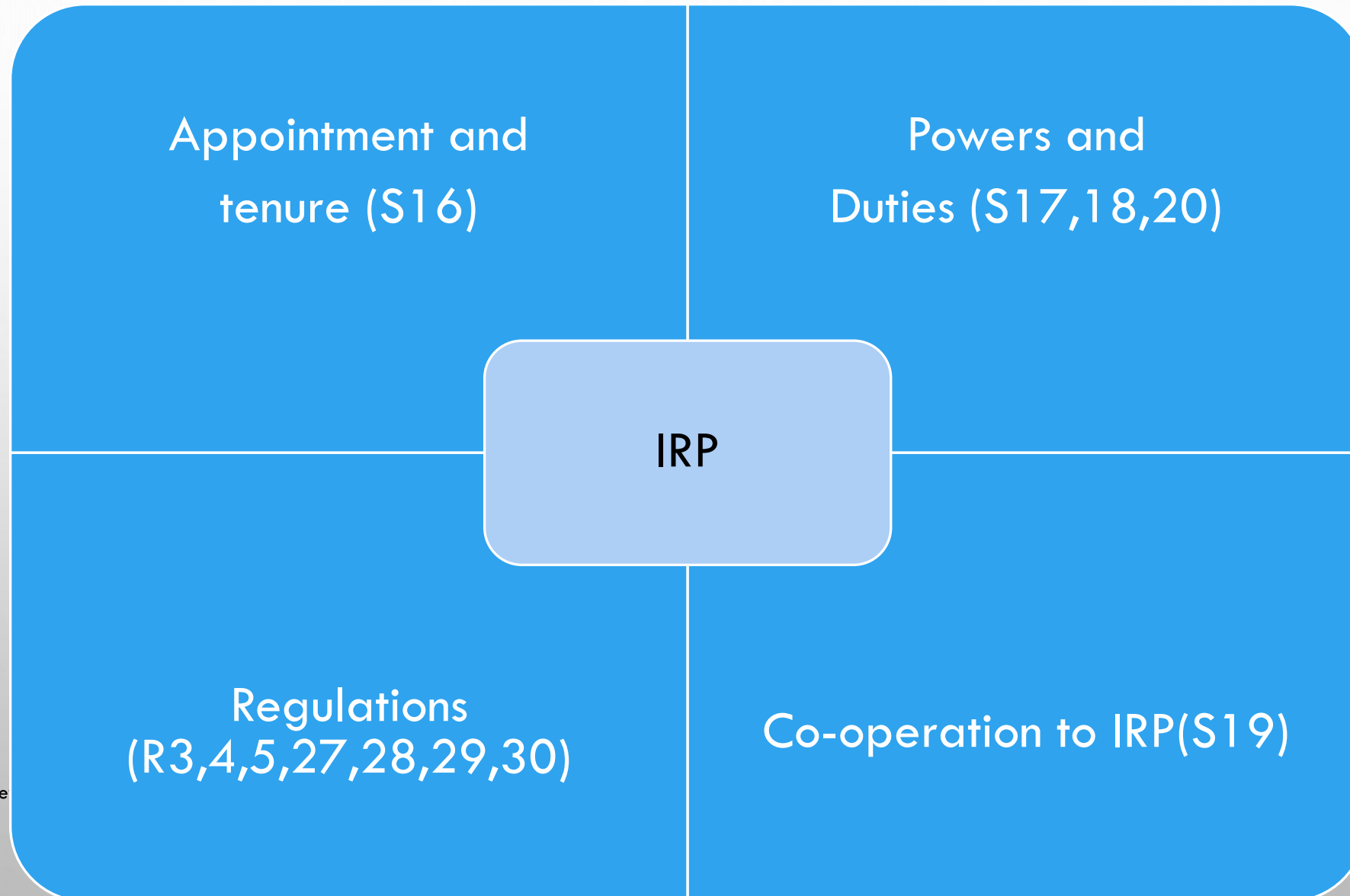
INTERIM RESOLUTION PROFESSIONAL

SECTIONS 16 , 17 ,18, 19 AND 20 AND REGULATIONS

3,4,5,27-30



INTERIM RESOLUTION PROFESSIONAL





APPOINTMENT AND TENURE – SECTION 16

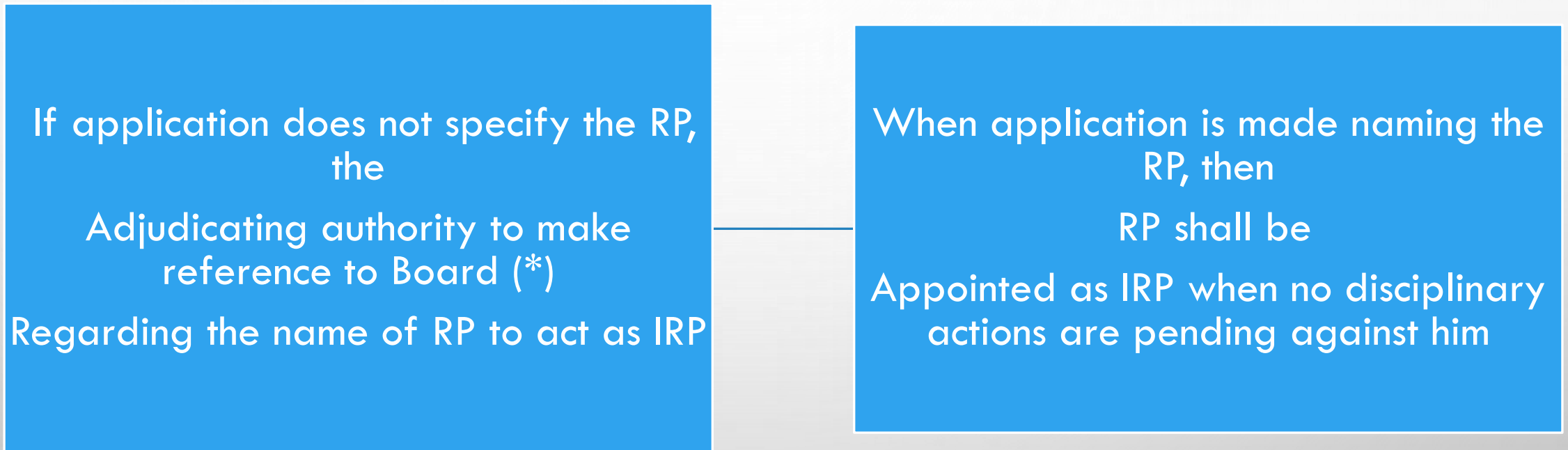
Adjudicating authority appoints IRP on the commencement date

Resolution professional to be specified in the application made by the applicant shall be appointed as IRP IF no disciplinary proceedings are pending against him

Term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22



APPOINTMENT OF IRP - OPERATIONAL CREDITOR



* (Board shall recommend an IRP within 10 days of receipt of reference from the adjudicating authority)



KEY POWERS OF AN IRP - SECTION 17

Management of affairs of corporate debtor shall vest in the IRP

The powers of the BoD shall be suspended and such powers shall be exercised by the IRP

The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of corporate debtor as may be required

The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional



KEY POWERS OF AN IRP - SECTION 17

The financial institutions shall furnish all information relating to the corporate debtor available with them

The IRP shall act and execute deeds, receipts and other documents on behalf of corporate debtor


The IRP shall take such actions, in the manner and subject to such restrictions, as may be specified by the Board

Authority to access the books of account, records and other relevant documents of corporate debtor with government authorities, statutory auditors, accountants and such other persons as may be specified; and

Be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor



ROLES AND DUTIES OF IRP - SECTION 18



Collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to —

- (i) business operations for the previous two years;
- (ii) financial and operational payments for the previous two years;
- (iii) list of assets and liabilities as on the initiation date; and
- (iv) such other matters as may be specified



ROLES AND DUTIES OF IRP - SECTION 18



Receive and collate all the claims submitted by creditors to him, pursuant to the public announcement

Constitute a committee of creditors

Monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;



ROLES AND DUTIES OF IRP - SECTION 18



File information with the utility as may be necessary

Take control and custody of the “assets” of corporate debtor in which the debtor has ownership rights



ASSETS INCLUDE

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
- (ii) assets that may or may not be in possession of the corporate debtor;
- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
- (vi) assets subject to the determination of ownership by a court or authority



ASSETS FOR CUSTODY AND CONTROL DO NOT INCLUDE



(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator



COOPERATION WITH IRP - SECTION 19

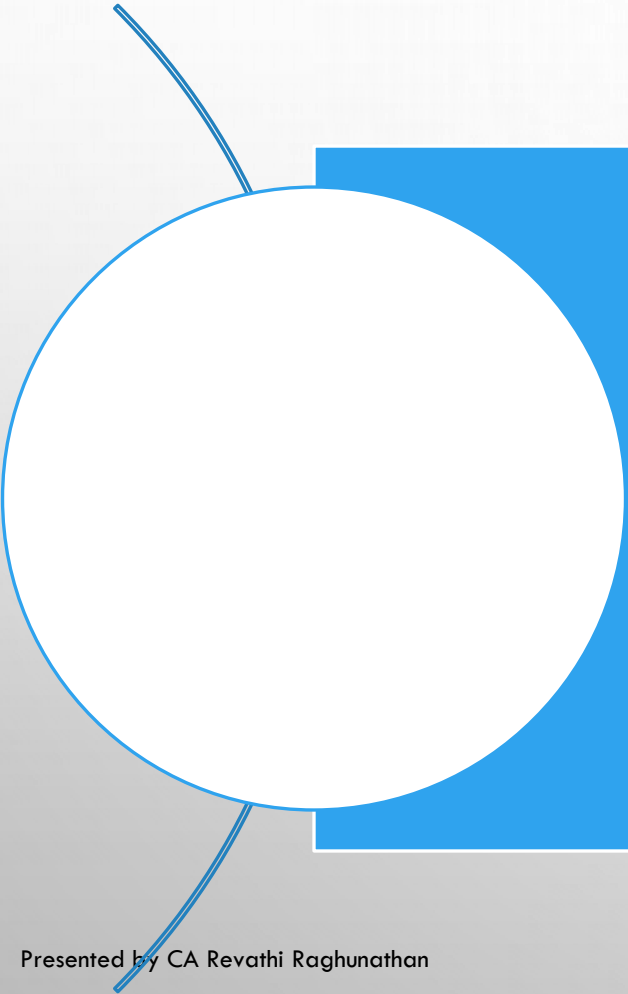
The personnel of the corporate debtor and other persons involved in management of corporate debtor shall assist IRP in managing affairs of the Corporate Debtor

Where due assistance or co-operation is not provided to the IRP, **the IRP shall make an application to the adjudicating authority (19(2) application)**

The adjudicating authority shall direct such personnel or other person to comply with IRP's instructions and to cooperate with him



MANAGING CD AS A GOING CONCERN- SECTION 20

A decorative graphic on the left side of the slide. It consists of a large white circle with a blue outline. Two blue lines extend from the top and bottom of the circle, curving upwards and outwards, framing the main text area.

The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern



ROLES AND DUTIES OF IRP GOING CONCERN- SECTION 20

to appoint accountants, legal or other professionals as may be necessary

to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.



ROLES AND DUTIES OF IRP GOING CONCERN- SECTION 20



to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and



to take all such actions as are necessary to keep the corporate debtor as a going concern



ACCESS TO INFORMATION OF CORPORATE DEBTOR HELD WITH - REGULATION 4

(a) depositories of securities

(b) professional advisors of the corporate debtor

(c) information utilities

(d) other registries that records the ownership of assets

(e) members, promoters, partners, board of directors and joint venture partners of the corporate debtors

(f) contractual counterparties of the corporate debtor



REGISTERED VALUATION – REGULATION 27



The Resolution Professional shall cause to conduct a Registered Valuation of the Corporate Debtor

Two registered valuers to be appointed by the Resolution Professional within seven days of his appointment, (vide notification dated 3rd July 2018 - but not later than forty-seventh day from the insolvency commencement date)

They are appointed to determine the fair value and liquidation value of the corporate debtor



REGISTERED VALUATION - REGULATION 27

Persons ineligible for appointment as Registered valuer

- Relative of the resolution professional
- Related party of the corporate debtor
- An auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date
- A partner or director of the insolvency professional entity of which the resolution professional is a partner or director



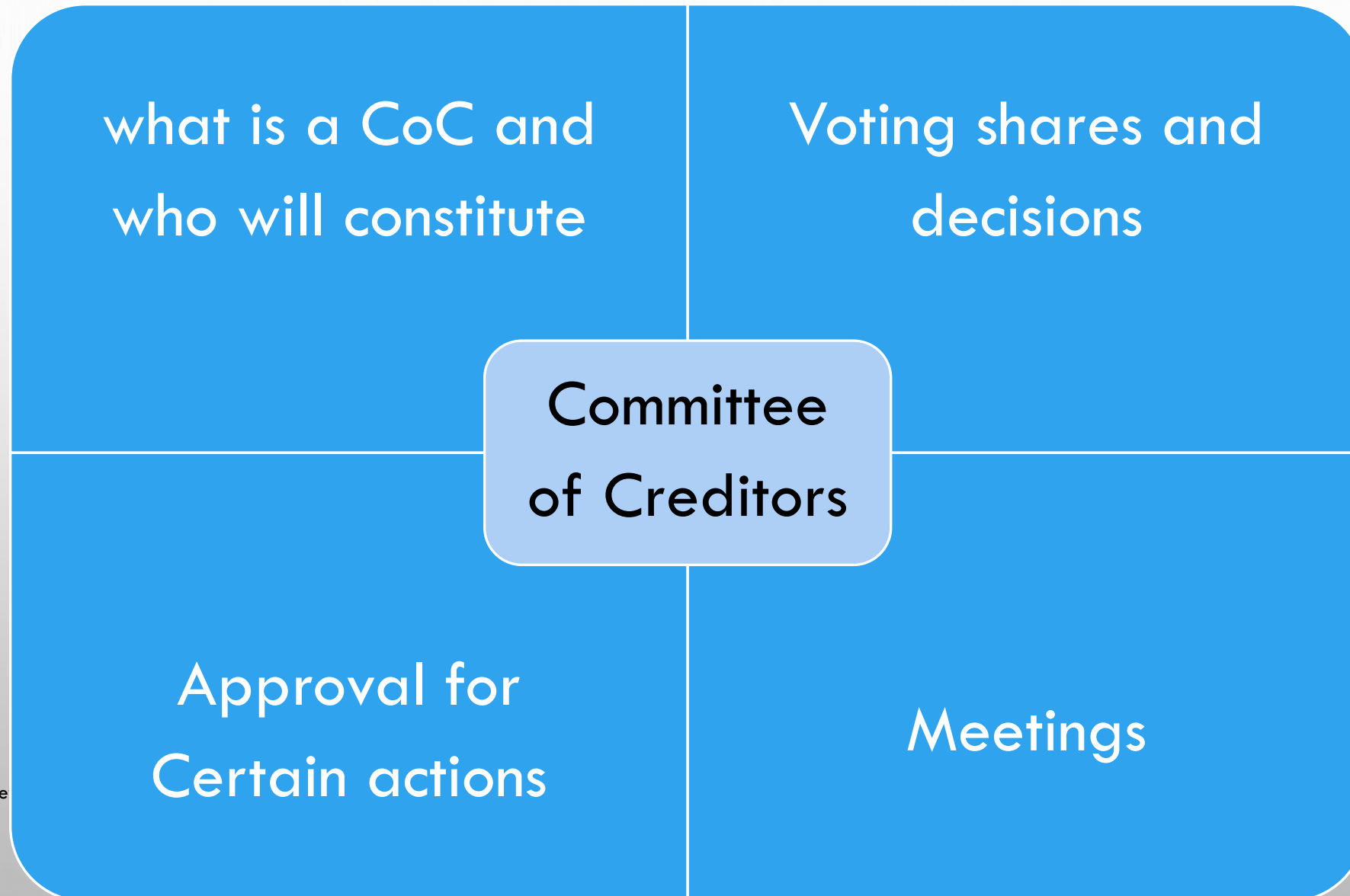
FAIR VALUE AND LIQUIDATION VALUE – REGULATION 35

The two registered valuers appointed under Regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor.

If in the opinion of the resolution professional, the two estimates of value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.



COMMITTEE OF CREDITORS





WHAT AND WHO CONSTITUTES COMMITTEE OF CREDITORS- SECTION 21

The IRP shall collect
all the claims of
creditors against the
Corporate debtor



Determine financial
position of
Corporate debtor



Constitute the
committee of
creditors

Composition of CoC

- All financial creditors (FC) excluding FC who are related parties to the corporate debtor
- Related parties of corporate debtor CANNOT form part of CoC

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 shares or instruments convertible into equity shares, prior to the insolvency commencement date.



VOTING SHARES AND DECISIONS- SECTION 21

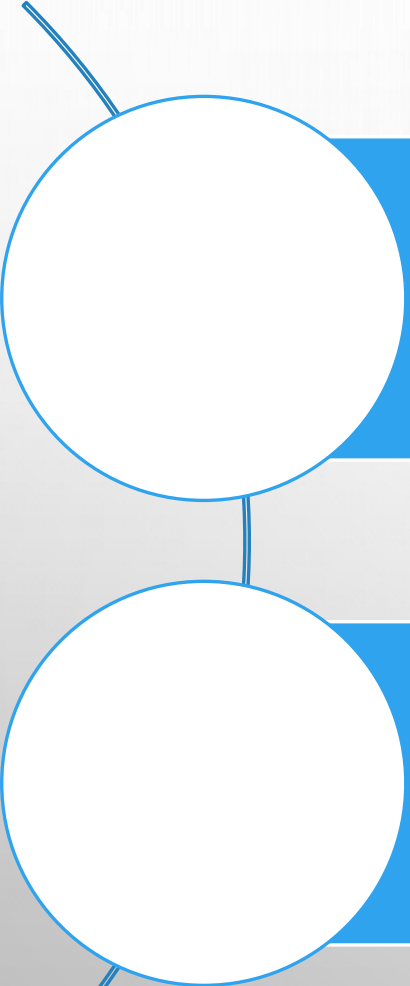
All the decisions of the committee of creditors shall be taken by vote of **not less than fifty one** of voting share of the FC

Board may specify the manner of voting and the determining of the voting share in respect of financial debts extended to securities

Where there are no financial creditors, the CoC comprise of such persons to exercise such functions in such manner as may be specified



WHERE CD OWES DEBTS TO TWO OR MORE FC- SECTION 21



Subject to sub-sections (6) and (6A), where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement

each such financial creditor shall be part of CoC and their voting share shall be determined on the basis of the financial debts owed to them.



COMMITTEE OF CREDITORS WHERE A PERSON IS FC AS WELL AS OC- SECTION 21

The diagram consists of two white circles connected by a vertical line. Each circle is connected to a blue rectangular box containing text. The top circle is connected to a box that defines a Financial Creditor (FC), and the bottom circle is connected to a box that defines an Operational Creditor (OC).

shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the CoC with voting share proportionate to that extent

shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.



ASSIGNING THE RIGHTS BY OC - SECTION 21



operational creditor has assigned or legally transferred any operational debt to a financial creditor

the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer

MCQ

WHETHER AN OPERATIONAL CREDITOR CAN ASSIGN OR LEGALLY TRANSFER ANY OPERATIONAL DEBT TO A FINANCIAL CREDITOR:

- a) YES. HOWEVER, THE TRANSFEREE SHALL BE CONSIDERED AS AN OPERATIONAL CREDITOR TO SUCH EXTENT OF TRANSFER.
- b) YES BUT THE TRANSFEREE SHALL BE CONSIDERED AS A FINANCIAL CREDITOR IN RELATION TO SUCH TRANSFER.
- c) NO. AN OPERATIONAL CREDITOR CANNOT ASSIGN OR LEGALLY TRANSFER ANY OPERATIONAL DEBT TO A FINANCIAL CREDITOR.
- d) NO. AN OPERATIONAL CREDITOR CAN ASSIGN OR LEGALLY TRANSFER AN OPERATIONAL DEBT ONLY TO AN OPERATIONAL CREDITOR.

ANSWER (A)



SINGLE TRUSTEE OR AGENT IN CASE OF CONSORTIUM ARRANGEMENT - SECTION 21

Terms of the financial debt extended as part of consortium arrangement or syndicated facility provide for a single trustee or agent to act for all FCs, each FC may-

authorise the trustee or agent to act on his behalf in the CoC to the extent of his voting share

represent himself in the CoC to the extent of his voting share

appoint an IP (other than the resolution professional) at his own cost to represent himself in the CoC to the extent of his voting share;

exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally



IN CASE THE FINANCIAL DEBT IS IN THE FORM OF SECURITIES OR DEPOSITS- SECTION 21

Where a financial debt (6A)

- is in the form of securities or deposits and the terms provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, **he shall act on behalf of such financial creditors;**
 - is owed to a class of creditors exceeding the number as may be specified, (at least 10 FC, as per defn 1(aa) of CIRP Regulations, other than the creditors covered above, the IRP shall make an application to the AA along with the list of all FCs, containing the name of an IP other than IRP, to act as their authorised representative **who shall be appointed by the AA Authority prior to the first meeting of the CoC**
 - is represented by a guardian, executor or administrator, he shall act as authorised representative on behalf of such FCs,
- AND** such authorised representative shall attend the meetings of the CoC, and vote on behalf of each financial creditor to the extent of his voting share.



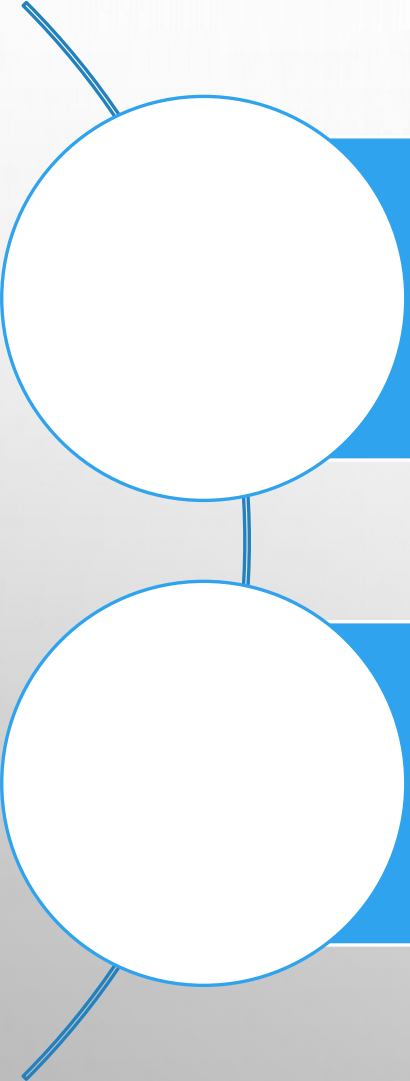
REMUNERATION PAYABLE TO THE AUTHORISED REPRESENTATIVE- SECTION 21

Remuneration payable to the authorised representative-

- under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation
- under clause (b) of sub-section (6A) shall be as specified which shall be form part of the insolvency resolution process costs.



ASSIGNING THE RIGHTS BY OC - SECTION 21



Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor

the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer



RIGHT OF COC TO ASK FOR DOCUMENTS - SECTION 21



CoC shall have the right to require the RP to furnish any financial information in relation to the corporate debtor at any time during the CIRP

RP shall make available any financial information so required by the CoC above within a period of seven days of such requisition.



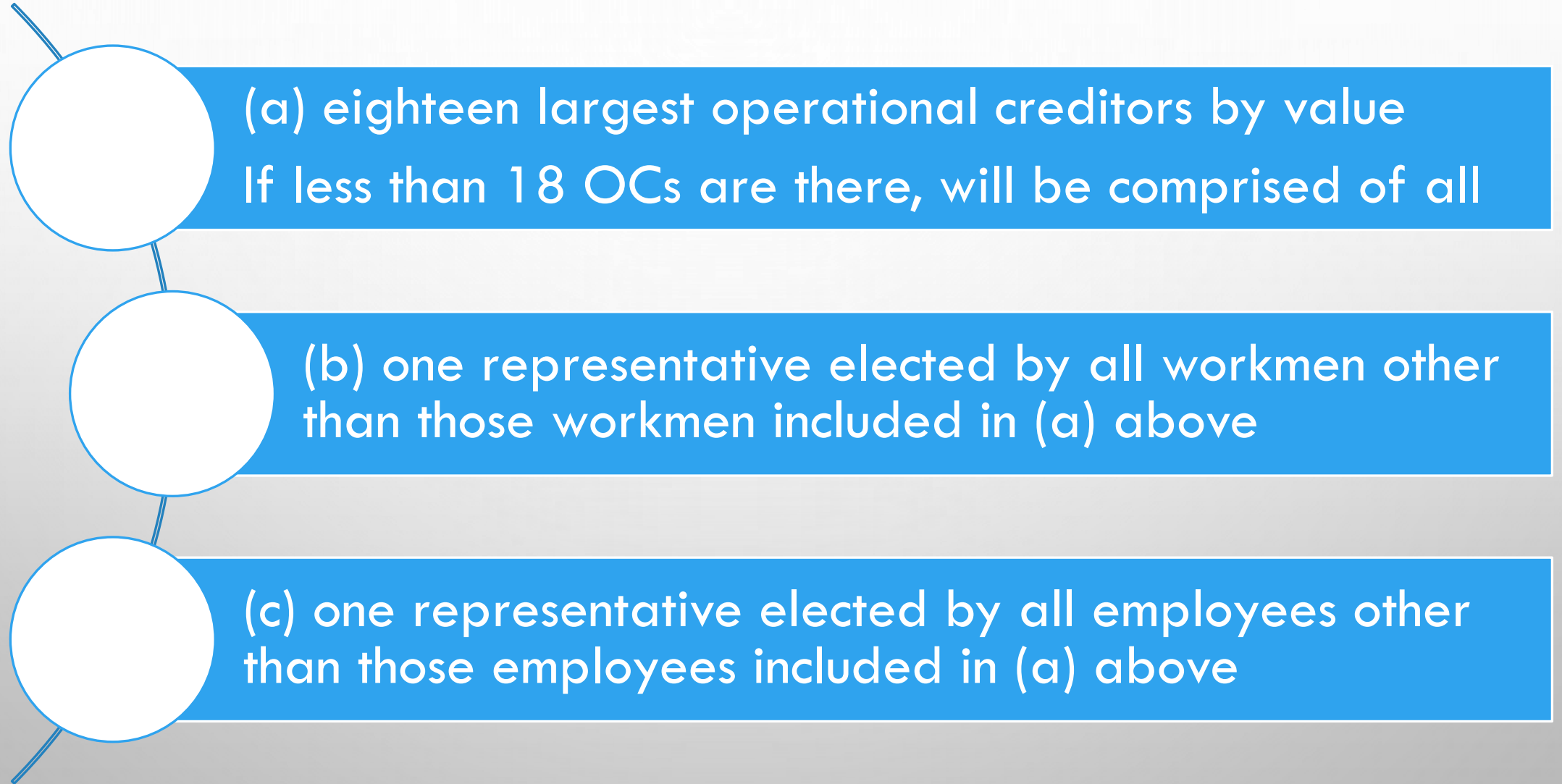
COMMITTEE WITH ONLY OPERATIONAL CREDITORS- REGULATION 16

Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.

The committee formed under this Regulation shall consist of members as under



COMPOSITION OF COMMITTEE WITH ONLY OPERATIONAL CREDITORS- REGULATION 16



MCQ

WHO CONSTITUTES THE COMMITTEE OF CREDITORS:

- a) INSOLVENCY PROFESSIONAL.
- b) FINANCIAL OR OPERATIONAL CREDITOR.
- c) INTERIM RESOLUTION PROFESSIONAL.
- d) ADJUDICATING AUTHORITY.

ANSWER - B



VOTING RIGHTS OF COMMITTEE FORMED BY OC- REGULATION 16

- The committee shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative to the total debt.
- Explanation – For the purposes of this sub-regulation, ‘total debt’ is the sum of-
 - (a) the amount of debt due to the creditors listed in sub-regulation 2(a);
 - (b) the amount of the aggregate debt due to workmen under sub-regulation 2(b);
 - (c) the amount of the aggregate debt due to employees under sub-regulation 2(c).
- Committee and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members.



AUTHORISED REPRESENTATIVE- 16A (INSERTED VIDE NOTIFICATION DATED 3RD JULY 2018)

Form CA

- IRP shall select the IP, who is the choice of the highest number of financial creditors in the class in Form CA received under Regulation 12 (1), to act as the authorised representative of the creditors of the respective class:
- Choice for an IP to act as authorised representative in Form CA received under Regulation 12 (2) shall not be considered.
- IRP shall apply to AA for appointment of the authorised representatives selected within two days of the verification of claims received.
- Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.
- IRP shall provide the list of creditors in each class to the respective authorised representative appointed by the AA.
- IRP or RP shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

Clarification: The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.



AUTHORISED REPRESENTATIVE- REGULATION 16A (INSERTED VIDE NOTIFICATION DATED 3RD JULY 2018)

- IRP or RP shall provide electronic means of communication between the authorised representative and the creditors in the class.
- The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of 8% per annum unless a different rate has been agreed to between the parties.
- Authorised representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.



FEES TO AUTHORISED REPRESENTATIVE- REGULATION 16A (INSERTED VIDE NOTIFICATION DATED 3RD JULY 2018)

- The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

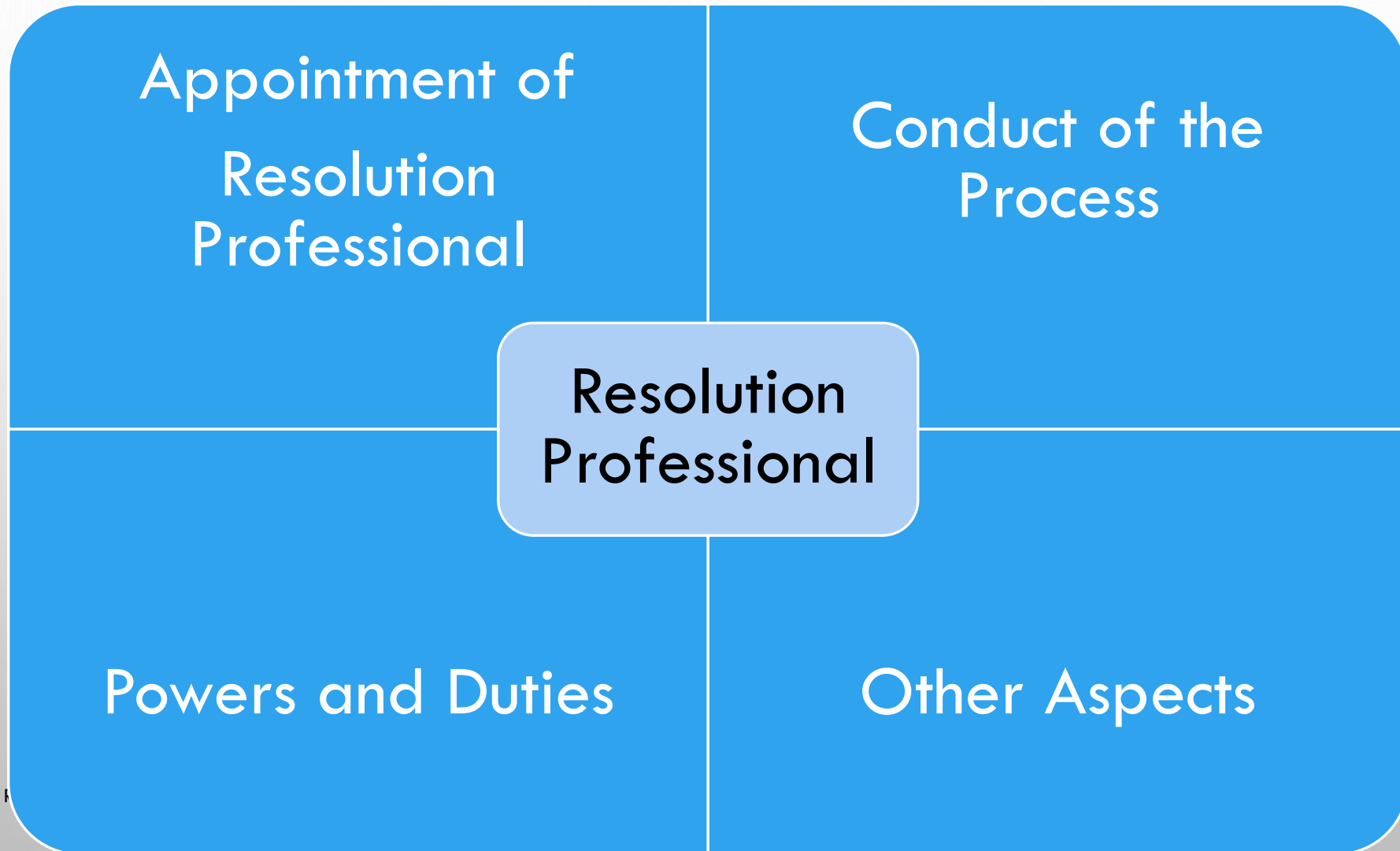


COMMITTEE WITH ONLY CREDITORS IN A CLASS- REGULATION 16B

- Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).



RESOLUTION PROFESSIONAL





APPOINTMENT OF RP- – SECTION 22

The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors

The committee of creditors, may, in the first meeting, by a majority vote of not **less than 66%** of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.



APPOINTMENT OF RP- – SECTION 22

Where the committee of creditors resolves under sub-section (2) —

(a) to continue the interim resolution professional as resolution professional, subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.



APPOINTMENT OF RP- SECTION 22

AA shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

Where the Board does not confirm the name of the proposed resolution professional within 10 days of the receipt of the name of the proposed resolution professional, the AA shall, by order, direct the IRP to continue to function as the RP until such time as the Board confirms the appointment of the proposed resolution professional.

MCQ

WHICH OF THE FOLLOWING AGENDA ITEMS SHOULD BE TAKEN UP IN THE FIRST MEETING OF COMMITTEE OF CREDITORS:

- a) APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL AS INSOLVENCY PROFESSIONAL OR TO REPLACEMENT OF THE INTERIM RESOLUTION PROFESSIONAL BY ANOTHER RESOLUTION PROFESSIONAL.
- b) PREPARATION OF DRAFT RESOLUTION PLAN.
- c) DISCUSSION OF THE STATUS OF THE CORPORATE DEBTOR AS ON THE PRESENT DATE AND THE ROAD MAP AHEAD.
- d) COLLECTION OF INFORMATION ON CORPORATE DEBTOR FROM INDEPENDENT SOURCES.

ANSWER - A



CONDUCT OF RESOLUTION PROCESS- SECTION 23

Subject to section 27, the RP shall conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period.

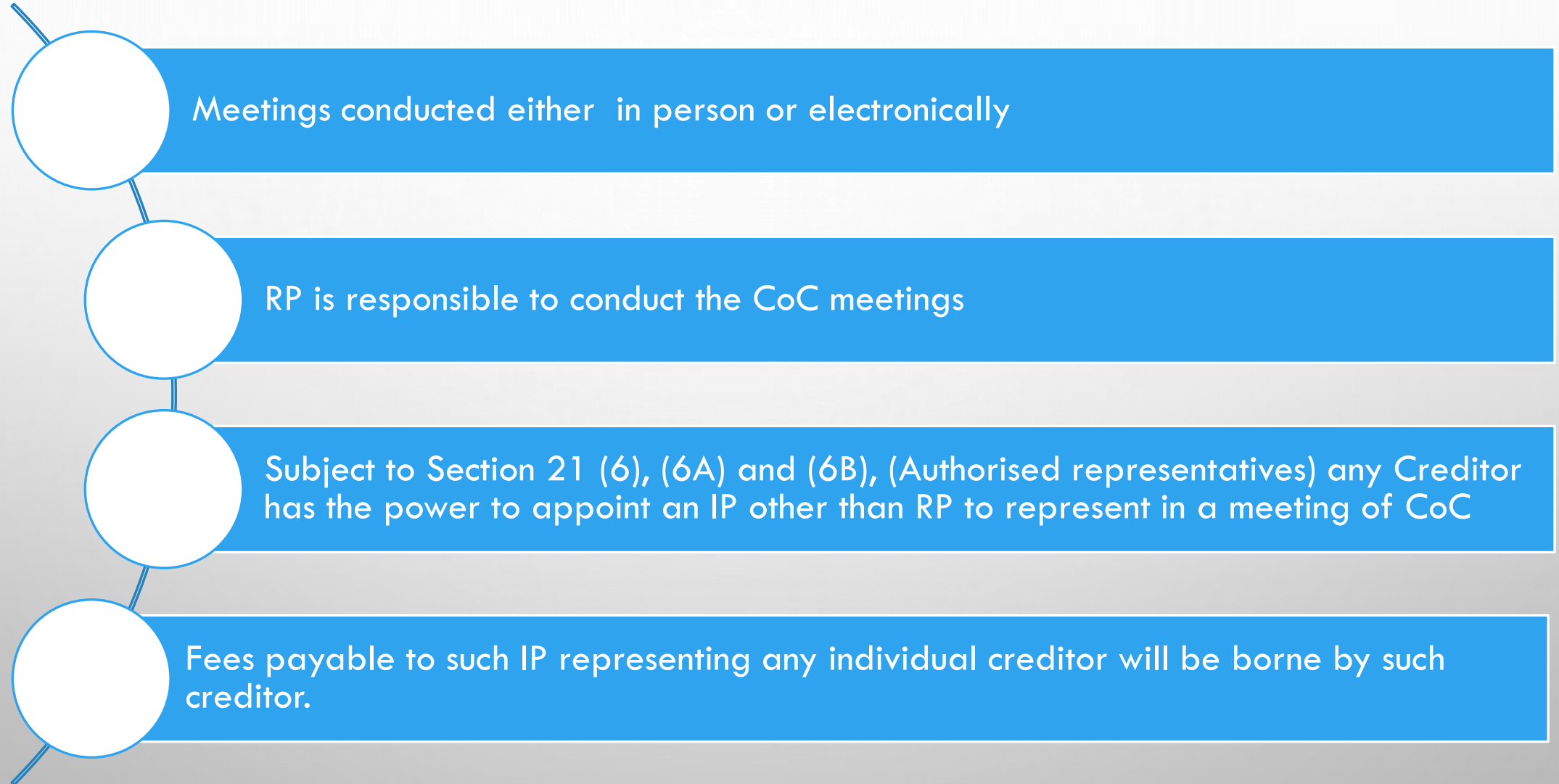
Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the CIRP period until an order, approving the resolution plan is passed under section 31(1), or, appointing a liquidator is passed u/s 34 by the Adjudicating Authority

RP shall exercise powers and perform duties as are vested or conferred on the IRP

In case of any replacement of an IRP, the IRP shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional RP.



MEETINGS- SECTION 24





MEETINGS- SECTION 24

- 1 The RP shall give notice of each meeting of the COC :
- 2 Members of the COC , including authorized representatives appointed u/s 21(6), (6A) and (5)
- 3 members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- 4 Operational creditors or their representatives if the amount of their aggregate dues is not less than 10% of the debt.
- 5 Voting share assigned to each creditor, by the Resolution professional in the manner specified by the Board
- 6 The directors, partners and one representative of operational creditors may attend the meetings of CoC but shall not have any right to vote in such meetings. Their absence shall not invalidate the proceedings of the meeting



CONSTITUTION OF COMMITTEE AND ITS MEETING- REGULATION

17

Regulation	Description
17	<ul style="list-style-type: none">• IRP shall file a report certifying constitution of the committee to the AA within two days of the verification of claims received under Regulation 12.• IRP shall hold the first meeting of the committee within seven days of filing the report under this regulation.• Where the appointment of resolution professional is delayed, the IRP shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22.
18	<ul style="list-style-type: none">• RP may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights.



MEETINGS OF THE COMMITTEE - REGULATION 19 AND 20

Regulation	Description
19	<ul style="list-style-type: none">• Notice calling meeting shall not be LESS THAN FIVE DAYS• It shall be in writing sent to address so provided• Committee may reduce the period to such other period of not less than twenty four hours as it deems fit, BUT forty-eight hours if there is any authorised representative.
20	<ul style="list-style-type: none">• Service of notice by electronic means• The e-mail shall state the name of corporate debtor, place , date of meeting• Obligation of RP satisfied when e-mail is transmitted



CONTENTS OF NOTICE – REGULATION- 21

Regulation	Description
21	<p>Contents of notice for the meeting</p> <ul style="list-style-type: none">• State the venue, time, date of the meeting• Means of participation in the meeting like video or other audio and visual means• Agenda shall contain<ul style="list-style-type: none">(a) list of matters to be discussed(b) issues requiring votes(c) copies of relevant documents for discussion• If electronic means necessary information to enable participation through the respective mode to be stated



QUORUM AT THE MEETING– REGULATION 22

Regulation	Description
22	<ul style="list-style-type: none">Members representing at least thirty three percent of the voting shares present either in<ul style="list-style-type: none">(a) person or(b) video conferencing or(c) other video and audio meansCommittee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.Meeting adjourned to same place and time on next day if quorum not presentFor adjourned meeting members present shall be considered as quorumRP shall verify whether quorum is present throughout the meeting




MEETINGS OF THE COMMITTEE – REGULATION

Regulation	Description
23	<ul style="list-style-type: none">• RP shall make arrangements for uninterrupted and clear video or audio and visual connection• RP shall take reasonable care for<ul style="list-style-type: none">(a)safeguard integrity of the meeting(b)record the proceedings and prepare minutes of the meeting(c)no third party has access the proceedings of the meetings
24	<ul style="list-style-type: none">• Conduct of the meeting• RP shall be the CHAIRMAN of the meeting• Proper records regarding the participants shall be maintained by the RP• Minutes to the e- participants shall be circulated by RP within forty eight hours of the meeting



DUTIES OF RP – SECTION 25




(1) It shall be the duty of the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;



DUTIES OF RP – SECTION 25



(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;



DUTIES OF RP – SECTION 25

- (g) prepare the information memorandum in accordance with section 29
- (h) invite prospective lenders, investors, and any other persons to put forward resolution plans;
- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions in accordance with Chapter III, if any
- k. Such other actions as may be specified by the Board



RIGHTS AND DUTIES OF AUTHORISED REPRESENTATIVE OF FINANCIAL CREDITORS- SECTION 25A

- Authorised representative under Section 21 (6) and 21(6A) or section 24 (5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.
- It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.
- Authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.



RIGHTS AND DUTIES OF AUTHORISED REPRESENTATIVE OF FINANCIAL CREDITORS- SECTION 25A

- Authorised representative shall file with the CoC any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the IRP or RP, as the case may be.

Explanation.- For the purposes of this section, the “electronic means” shall be such as may be specified.



APPLICATION FOR AVOIDANCE OF TRANSACTIONS NOT TO AFFECT PROCEEDINGS. - SECTION 26

The filing of an avoidance application under Section 25 (2) (i) by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.



REPLACEMENT OF RESOLUTION PROFESSIONAL BY COMMITTEE OF CREDITORS - SECTION 27

- Where, at any time during the CIRP the CoC is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.
- CoC may, at a meeting, by a **vote of 66% of voting shares,** resolve to replace the RP appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.
- The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- AA shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.
- Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional shall continue till the appointment of another resolution professional under this section.



TRANSFER OF DEBT DUE TO CREDITORS.

Details	Description
Regulation 28	<ul style="list-style-type: none">• In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee
	<ul style="list-style-type: none">• The resolution professional shall notify each participant and the Adjudicating Authority of any resultant change in the committee within two days of such change



SALE OF ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS. .

Details	Description
Regulation 29	<ul style="list-style-type: none">The resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case:
	<ul style="list-style-type: none">Provided that the book value of all assets sold during corporate insolvency resolution process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional
	<ul style="list-style-type: none">A sale of assets under this Regulation shall require the approval of the committee by a vote of 66% of voting share of the members
	<ul style="list-style-type: none">A bona fide purchaser of assets sold under this Regulation shall have a free and marketable title to such assets notwithstanding the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.



ASSISTANCE OF LOCAL DISTRICT ADMINISTRATION.

Details	Description
Regulation 30	<ul style="list-style-type: none">• The interim resolution professional or the resolution professional, as the case may be, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or these Regulation



WITHDRAWAL OF APPLICATION (INSERTED VIDE NOTIFICATION DATED 25TH JULY, 2019)

Details	Description
<p>Regulation 30A</p> <p><u>71.</u> <u>Withdrawal</u> <u>of</u> <u>Application –</u> <u>Section 12A</u></p>	<ul style="list-style-type: none">• An application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A.• Application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.• Committee shall consider the application made within 7 days of its constitution or seven days of receipt of the application, whichever is later.• Where the application is approved by the committee with 90% voting share, the resolution professional shall submit the application to the AA on behalf of the applicant, within three days of such approval.• AA may, by order, approve the application submitted under sub-regulation (4).



APPROVAL OF COC FOR CERTAIN ACTIONS- SECTION 28

The RP shall take approval from CoC for the following

- Raising interim finance in excess of certain amount
- Creation of security interest on assets of corporate debtors
- Change in capital structure by way of issue/buy back/redemption of securities
- Change in ownership interest of the corporate debtor
- Instructions to financial institutions in certain matters
- Related party transactions
- Constitutional documents amendments
- Delegation of authority
- Disposal of shares
- Change in management and transfer of rights or debts



APPROVAL OF COC FOR CERTAIN ACTIONS- SECTION 28

- RP shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions.
- No action shall be approved by the CoC unless approved by a vote of **66% of the voting shares.**
- Any action is taken by the RP without seeking the approval of the CoC in the manner as required in this section, such action shall be void.
- CoC may report the actions of the RP to the Board for taking necessary actions against him under this code.



VOTING BY THE COMMITTEE – REGULATION

Regulation	Description
25	<ul style="list-style-type: none">• If all members are present in the meeting then the RP shall take a vote of the members of the committee on any item listed, and shall announce the decision taken, along with details of members who voted for and against.• circulate the minutes of the meeting by electronic means to all members of the committee/ authorised representative within forty-eight hours of the conclusion of the meeting• If all the members are not present at a meeting, a vote shall not be taken at the meeting and the RP shall circulate a minutes of the meeting by electronic means to all members of the committee within 48 hours of the meeting and seek a vote on the matters listed for voting, by electronic voting system where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.• Authorised representative shall circulate the minutes of the meeting received under sub-regulation (5) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.
26	<ul style="list-style-type: none">• Voting through electronic means• At end of voting portal will be blocked

LIMITED INSOLVENCY EXAMINATION

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

MODULE: CORPORATE INSOLVENCY RESOLUTION
PROCESS

INFORMATION MEMORANDUM AND RESOLUTION
PLAN— SECTIONS 29 , 30 , 31 AND 32 AND
REGULATION 36-40



HOW IS INFORMATION MEMORANDUM PREPARED - SECTION 29

Preparation

- By Resolution professional
- It shall contain information for preparing resolution plan and shall be furnished to the applicant

Access to information

- Resolution applicant to undertake (a) compliance of Law (b) protect intellectual property of CD and (c) not share information to third parties

Relevant information

- Financial position of corporate debtor
- Information required by applicant for resolution plan
- Other matters pertaining to corporate debtor



CONTENTS OF INFORMATION MEMORANDUM – SECTION 29

Regulation 36

- Assets and liabilities with such description, as on the fast track commencement date, as on the insolvency commencement date, as are generally necessary;

Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.

- the latest annual financial statements;
- audited financial statements of the corporate debtor for the last 2 financial years and provisional financial statements for the current financial year made up to a date not earlier than 14 days from the date of the application;
- 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;



INFORMATION MEMORANDUM – SECTION 29

Regulation 36

- details of guarantees that have been given in relation to the debts of the CD by other persons, specifying which of the guarantors is a related party;
- the names and addresses of the members or partners holding at least one per cent stake in the CD along with the size of stake;
- details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- the number of workers and employees and liabilities of the corporate debtor towards them; and
- other information, which the resolution professional deems relevant to the committee.



PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT- SECTION 29 A

- A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the RBI

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as NPA in accordance with the guidelines of the RBI or the guidelines of a financial sector regulator issued under any other law for the time being in force and at least a period of 1 year has lapsed from the date of such classification till the date of commencement of the CIRP of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to NPA accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.



PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT-

SECTION 29 A

Explanation I.-

For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II. –

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;



PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT- SECTION 29 A

- has been convicted for any offence punishable with imprisonment

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of 2 years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I

- is disqualified to act as a director under the Companies Act, 2013

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I

- is prohibited by the SEBI from trading in securities or accessing the securities markets



PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT- SECTION 29 A

- has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

- has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part
- is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- has a connected person not eligible under clauses (a) to (i).



PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT- SECTION 29 A

Explanation 1. — For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of *Explanation 1* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;



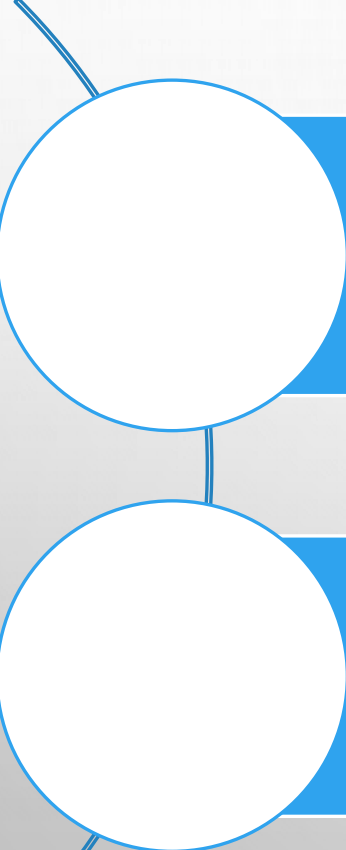
PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT- SECTION 29 A

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf-

- a scheduled bank;
- any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the FEMA Act, 1999;
- an asset reconstruction company register with the Reserve Bank of India under section 3 of the SARFAESI Act, 2002;
- an Alternate Investment Fund registered with SEBI;
- such categories of persons as may be notified by the Central Government.



SUBMISSION OF A RESOLUTION PLAN – SECTION 30

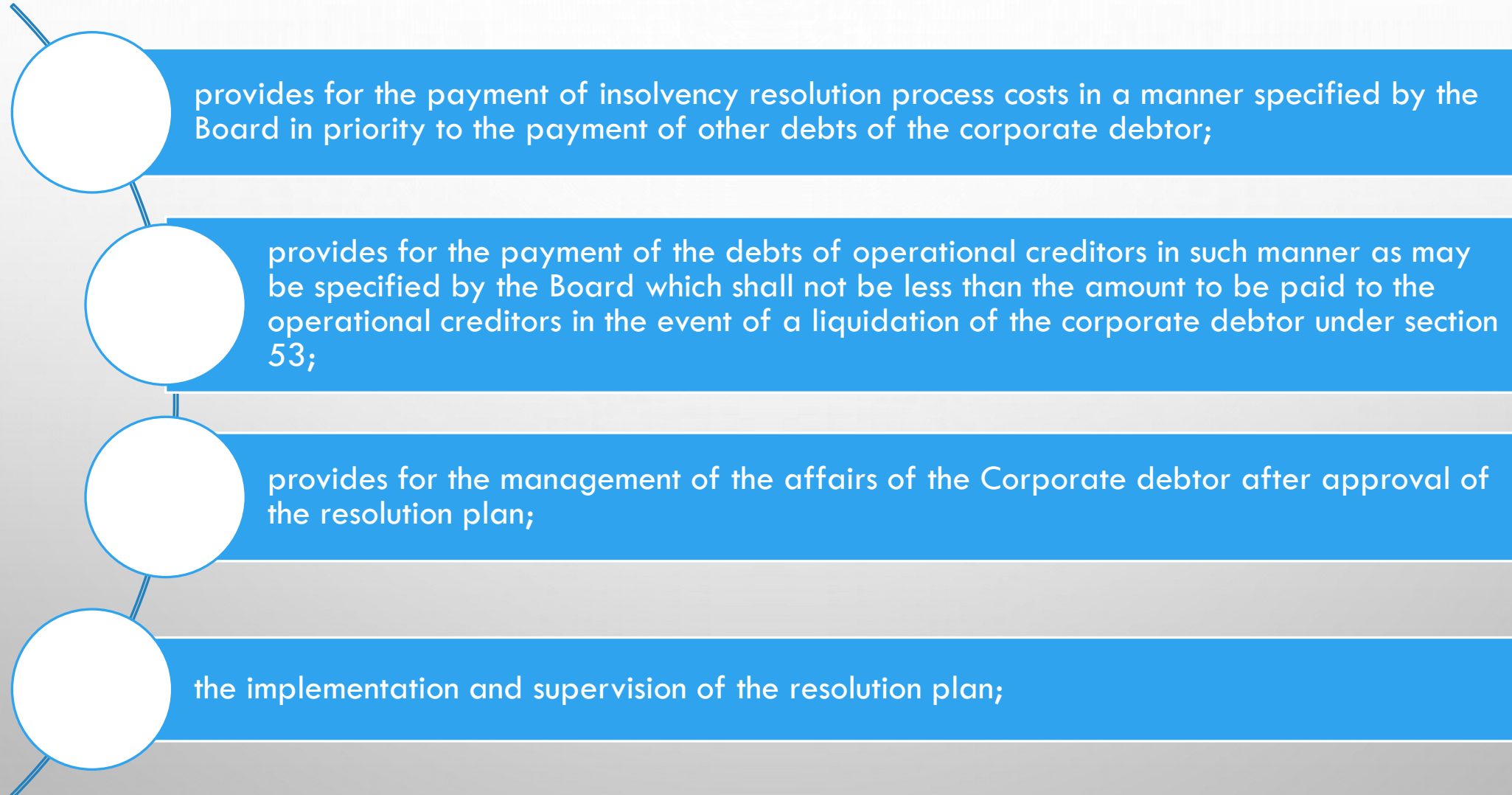


A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan confirms to the following



SUBMISSION OF A RESOLUTION PLAN – SECTION 30





SUBMISSION OF A RESOLUTION PLAN – SECTION 30

does not contravene any of the provisions of the law for the time being in force

conforms to such other requirements as may be specified by the Board

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2) .



SUBMISSION OF A RESOLUTION PLAN – SECTION 30

The committee of creditors may approve a resolution plan by a vote of not less than **66% of voting share of the Financial Creditors**, after considering its feasibility and viability, and such other requirements as may be specified by the Board.

Provided that the CoC shall not approve a RP, submitted before the commencement of the IBC (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the CoC, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to clause 29A(c):

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to 12(3), and the CIRP shall be completed within the period specified in that sub-section.



SUBMISSION OF A RESOLUTION PLAN – SECTION 30

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.



IMPACTS OF APPROVAL OF A RESOLUTION PLAN – SECTION 31

Once Resolution Plan is approved it shall be binding the Corporate debtor, and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

Once is approved (a) the moratorium order shall cease;
(b) all the records along with the resolution Plan shall be forwarded to the Board



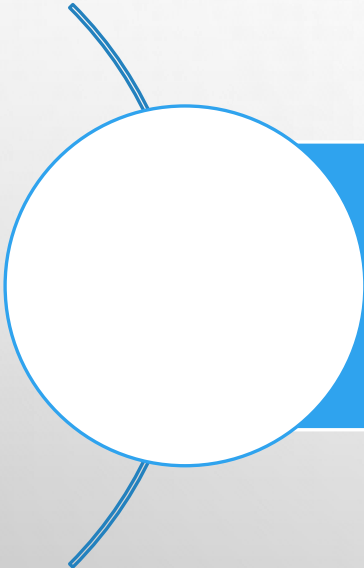
IMPACTS OF APPROVAL OF A RESOLUTION PLAN – SECTION 31

The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force **within a period of one year from the date of approval of the resolution plan** by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.



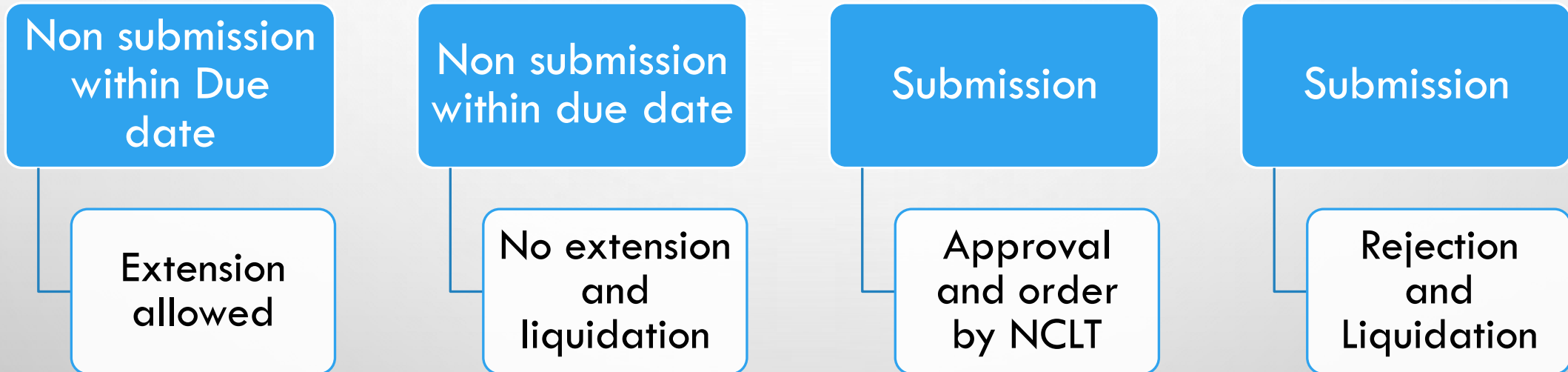
WHAT IS THE FORMAT FOR AN APPEAL - SECTION 32



Any appeal from an order approving the resolution plan shall be in the manner and on grounds laid under the respective sections



RESOLUTION PLAN - WHAT CAN HAPPEN ?





INVITATION FOR EXPRESSION OF INTEREST- REGULATION 36A

Submitted in **Form G**

RP shall publish brief particulars of the invitation for expression of interest not later than 75th day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

RP shall publish Form G-

- (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the resolution professional, the corporate debtor conducts material business operations;
- (ii) on the website, if any, of the corporate debtor;
- (iii) on the website, if any, designated by the Board for the purpose; and
- (iv) in any other manner as may be decided by the committee.

MCQ

WHO APPROVES THE RESOLUTION PLAN:

- a) COMMITTEE OF CREDITORS.
- b) INSOLVENCY PROFESSIONAL.
- c) ADJUDICATING AUTHORITY.
- d) INSOLVENCY AND BANKRUPTCY BOARD OF INDIA.

ANSWER - A



INVITATION FOR EXPRESSION OF INTEREST- REGULATION 36A

Contents of Form G and Invitation

The Form G in the Schedule shall -

- state where the detailed invitation for expression of interest can be downloaded or obtained from, as the case may be; and
- provide the last date for submission of expression of interest which shall not be less than 15 days from the date of issue of detailed invitation.

The detailed invitation referred above shall-

- specify the criteria for prospective resolution applicants, as approved by the committee in accordance with Section 25 (2) (h);
- state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;
- provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and
- not require payment of any fee or any non-refundable deposit for submission of expression of interest.



INVITATION FOR EXPRESSION OF INTEREST- REGULATION 36A

Contents of Expression of Interest

An expression of interest shall be unconditional and be accompanied by-

- an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under Section 25 (2) (h)
- relevant records in evidence of meeting the criteria under clause (a);
- an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
- relevant information and records to enable an assessment of ineligibility under clause (c);
- an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
- an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code; and
- an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29 (2)



INVITATION FOR EXPRESSION OF INTEREST- REGULATION 36A

Contents of Expression of Interest

- RP shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-
 - (a) the provisions of section 25 (2) (h);
 - (b) the applicable provisions of section 29A, and
 - (c) other requirements, as specified in the invitation for expression of interest.
- RP may seek any clarification or additional information or document from the prospective resolution applicant for conducting due diligence.
- RP shall issue a provisional list of eligible prospective resolution applicants within 10 days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.
- Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list may be made with supporting documents within 5 days from the date of issue of the provisional list.
- On considering the objections received , RP shall issue the final list of prospective resolution applicants within 10 days of the last date for receipt of objections, to the committee.



REQUEST FOR RESOLUTION PLAN- REGULATION 36B

- RP shall issue the information memorandum, evaluation matrix and a request for resolution plans, within 5 days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to –
 - (a) every prospective resolution applicant in the provisional list; and
 - (b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.
- Request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.
- Request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).
- Request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.
- Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).
- RP with the approval of the committee, extend the timeline for submission of resolution plans.
- RP may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list:
Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.



MEASURES IN RESOLUTION PLAN- REGULATION 37



(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable



MEASURES IN RESOLUTION PLAN- REGULATION 37

(d) satisfaction or modification of any security interest; ;

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;



MEASURES IN RESOLUTION PLAN - REGULATION 37

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.



RESOLUTION PLAN

Details	Mandatory contents of resolution plan
Regulation 38	<ul style="list-style-type: none">• The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.• RP shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor. <p>A resolution plan shall provide:</p> <p>(a) the term of the plan and its implementation schedule;</p> <p>(b) the management and control of the business of the corporate debtor during its term; and</p> <p>(c) adequate means for supervising its implementation.</p>



RESOLUTION PLAN CONTD.....

Details	What shall a Resolution Plan demonstrate
Regulation 38	<p>A resolution plan shall demonstrate that –</p> <ul style="list-style-type: none">(a) it addresses the cause of default;(b) it is feasible and viable;(c) it has provisions for its effective implementation;(d) it has provisions for approvals required and the timeline for the same; and(e) the resolution applicant has the capability to implement the resolution plan.



RESOLUTION PLAN CONTD....

Details	Approval of resolution plan
Regulation 39	<p>A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the RP electronically within the time given in the request for resolution plans under regulation 36B along with</p> <ul style="list-style-type: none">• an affidavit stating that it is eligible under section 29A to submit resolution plans;• an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.



RESOLUTION PLAN CONTD...

Details	Approval of resolution plan
Regulation 39	<ul style="list-style-type: none">• Resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.• RP shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-<ul style="list-style-type: none">(a) preferential transactions under section 43;(b) undervalued transactions under section 45;(c) extortionate credit transactions under section 50; and(d) fraudulent transactions under section 66 <p>and the orders, if any, of the adjudicating authority in respect of such transactions.</p>



RESOLUTION PLAN CONTD...

Details	Approval of resolution plan
Regulation 39	<ul style="list-style-type: none">• A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.• No proceedings shall be initiated against the IRP or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.• A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the AA, may make an application to the AA for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.



PRESERVATION OF RECORDS

Details	
Regulation 39A	<ul style="list-style-type: none">• IRP or the RP shall preserve a physical as well as an electronic copy of the records relating to corporate insolvency resolution process of the corporate debtor as per the record retention schedule as may be communicated by the Board in consultation with Insolvency Professional Agencies.



EXTENSION OF CIRP PERIOD

Details	Extension of insolvency resolution process period
Regulation 40	<ul style="list-style-type: none">• The committee may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period• The resolution professional shall, on receiving an instruction from the committee under this Regulation, make an application to the Adjudicating Authority for such extension.

LIABILITY FOR OFFENCES PRIOR TO CIRP – SECTION 32A

- THE LIABILITY OF A CORPORATE DEBTOR FOR AN OFFENCE COMMITTED **PRIOR** TO THE COMMENCEMENT OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS **SHALL CEASE**, AND THE CORPORATE DEBTOR SHALL NOT BE PROSECUTED FOR SUCH AN OFFENCE FROM THE DATE THE RESOLUTION PLAN HAS BEEN APPROVED BY THE ADJUDICATING AUTHORITY UNDER SECTION 31, IF THE RESOLUTION PLAN RESULTS IN THE CHANGE IN THE MANAGEMENT OR CONTROL OF THE CORPORATE DEBTOR **TO A PERSON WHO WAS NOT** -

SECTION 32A

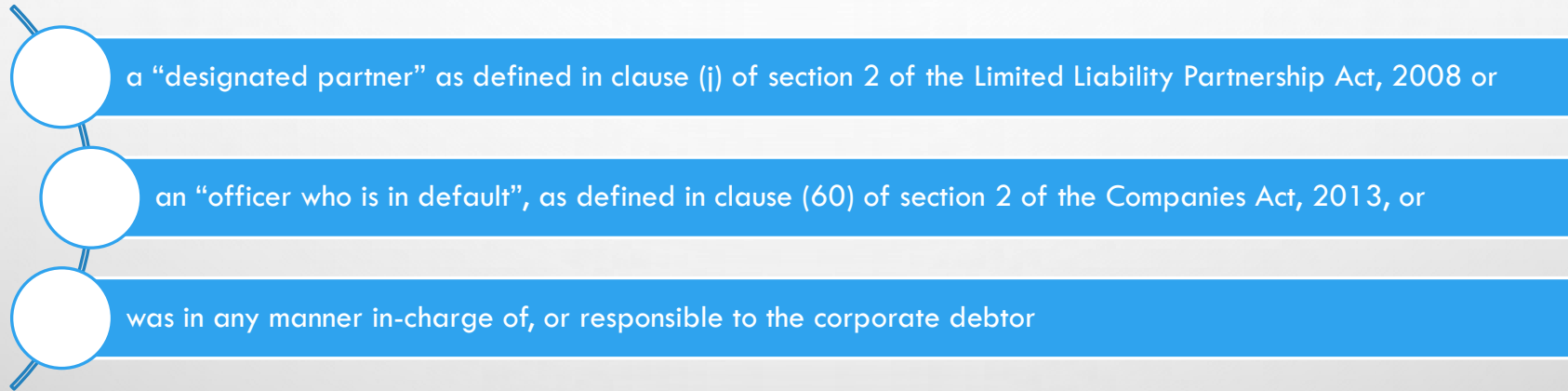
(A) A PROMOTER OR IN THE MANAGEMENT OR CONTROL OF THE CORPORATE DEBTOR OR A RELATED PARTY OF SUCH A PERSON; OR

(B) A PERSON WITH REGARD TO WHOM THE RELEVANT INVESTIGATING AUTHORITY HAS, ON THE BASIS OF MATERIAL IN ITS POSSESSION, REASON TO BELIEVE THAT HE HAD ABETTED OR CONSPIRED FOR THE COMMISSION OF THE OFFENCE, AND HAS SUBMITTED OR FILED A REPORT OR A COMPLAINT TO THE RELEVANT STATUTORY AUTHORITY OR COURT –

PROVIDED THAT IF A PROSECUTION HAD BEEN INSTITUTED DURING THE CORPORATE INSOLVENCY RESOLUTION PROCESS AGAINST SUCH CORPORATE DEBTOR, IT SHALL STAND DISCHARGED FROM THE DATE OF APPROVAL OF THE RESOLUTION PLAN SUBJECT TO REQUIREMENTS OF THIS SUB-SECTION HAVING FULFILLED

SECTION 32A

- PROVIDED FURTHER THAT EVERY PERSON WHO WAS



- FOR THE CONDUCT OF ITS BUSINESS OR ASSOCIATED WITH THE CORPORATE DEBTOR IN ANY MANNER AND WHO WAS DIRECTLY OR INDIRECTLY INVOLVED IN THE COMMISSION OF SUCH OFFENCE AS PER THE REPORT SUBMITTED OR COMPLAINT FILED BY THE INVESTIGATING AUTHORITY, **SHALL CONTINUE TO BE LIABLE TO BE PROSECUTED AND PUNISHED FOR SUCH AN OFFENCE COMMITTED BY THE CORPORATE DEBTOR NOTWITHSTANDING THAT THE CORPORATE DEBTOR’S LIABILITY HAS CEASED UNDER THIS SUB-SECTION.**

SECTION 32A

- NO ACTION SHALL BE TAKEN AGAINST THE PROPERTY OF THE CORPORATE DEBTOR IN RELATION TO AN OFFENCE COMMITTED PRIOR TO THE COMMENCEMENT OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS OF THE CORPORATE DEBTOR, WHERE SUCH PROPERTY IS COVERED UNDER A RESOLUTION PLAN APPROVED BY THE ADJUDICATING AUTHORITY UNDER SECTION 31, WHICH RESULTS IN THE CHANGE IN CONTROL OF THE CORPORATE DEBTOR TO A PERSON, OR SALE OF LIQUIDATION ASSETS UNDER THE PROVISIONS OF CHAPTER III OF PART II OF THIS CODE TO A PERSON, WHO WAS NOT –



(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or



(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

SECTION 32A

(I) AN ACTION AGAINST THE PROPERTY OF THE CORPORATE DEBTOR IN RELATION TO AN OFFENCE SHALL INCLUDE THE ATTACHMENT, SEIZURE, RETENTION OR CONFISCATION OF SUCH PROPERTY UNDER SUCH LAW AS MAY BE APPLICABLE TO THE CORPORATE DEBTOR;

(II) NOTHING IN THIS SUB-SECTION SHALL BE CONSTRUED TO BAR AN ACTION AGAINST THE PROPERTY OF ANY PERSON, OTHER THAN THE CORPORATE DEBTOR OR A PERSON WHO HAS ACQUIRED SUCH PROPERTY THROUGH CORPORATE INSOLVENCY RESOLUTION PROCESS OR LIQUIDATION PROCESS UNDER THIS CODE AND FULFILLS THE REQUIREMENTS SPECIFIED IN THIS SECTION, AGAINST WHOM SUCH AN ACTION MAY BE TAKEN UNDER SUCH LAW AS MAY BE APPLICABLE.

SECTION 32A

- SUBJECT TO THE PROVISIONS CONTAINED IN SUB-SECTIONS (1) AND (2), AND NOTWITHSTANDING THE IMMUNITY GIVEN IN THIS SECTION, THE CORPORATE DEBTOR AND ANY PERSON, WHO MAY BE REQUIRED TO PROVIDE ASSISTANCE UNDER SUCH LAW AS MAY BE APPLICABLE TO SUCH CORPORATE DEBTOR OR PERSON, SHALL EXTEND ALL ASSISTANCE AND CO-OPERATION TO ANY AUTHORITY INVESTIGATING AN OFFENCE COMMITTED PRIOR TO THE COMMENCEMENT OF THE CORPORATE INSOLVENCY RESOLUTION PROCESS.

INITIATION OF LIQUIDATION – SECTION 33

A. BY AA –

1. BEFORE THE EXPIRY OF THE INSOLVENCY RESOLUTION PERIOD OR MAXIMUM PERIOD PERMITTED FOR COMPLETION OF CIRP, DOES NOT RECEIVE RESOLUTION PLAN U/S 30
2. REJECTS RESOLUTION PLAN U/S 31 FOR NON COMPLIANCE OF REQUIREMENTS

B. BY RP

1. COMMUNICATES TO AA ABOUT COC (NOT LESS THAN 66% OF VOTING SHARE) DECISION TO LIQUIDATE THE CD

C. WHERE THE APPROVED RESOLUTION PLAN IS CONTRAVENED BY THE CONCERNED CD OR ANY PERSON OTHER THAN THE CD, WHOSE INTERESTS ARE PREJUDICIALLY AFFECTED BY THE CONTRAVENTION MAY MAKE AN APPLICATION TO THE AA FOR A LIQUIDATION ORDER.



THANK YOU

Presented by CA Revathi Raghunathan